EXAM ORIENTED NOTES

FOR INDIRECT TAX LAWS

10th Edition

For CA FINAL / CS PROFESSIONAL – NOV 2022

- 150 plus Illustrations and CYP for practice
- More than 200 MCQs solved
- Amendments up to 30.04.2022
- Authors' Notes for conceptual clarity
- Diagrammatic and tabular presentation of concepts
- Memory keys for quick recall

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PhD in Management of Taxation, B.Com, M.Com, MBA in Finance, CCA, CFM, ADFM, DBA in Auditing and LLB (p)

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- → Sub Group Member of Indirect Tax Committee WIRC of ICAI (2018-19)
- → Member of the Students Committee of WIRC of ICAI (2020 21)

---- PREFACE -----

Welcome to this edition of Exploring Indirect Tax Laws!

It gives us an immense pleasure to present for you this book on Indirect Tax Laws (This Edition). It is a comprehensive book explaining concepts, problems of Indirect Tax Laws in a lucid and informative manner. It has been developed exclusively for the students of CA/CS Final (Old & New Course). The book will also be useful for the practitioners, professionals and industry people.

This book has been written with all possible Memory Techniques so that the contents presented within can be well absorbed and retained by the students. Besides this, the book aims for arriving at quick and thorough learning through clear and simple language. This book contains the interpretations of sections, rule and provisions in diagrammatic forms.

Key features of the textbook are:

- 150 plus solved Illustration
- Amendments up to 30.04.2022
- Authors' Notes for conceptual clarity
- Diagrammatic and tabular presentation of concepts
- Memory keys for quick recall

Valuable suggestions and constructive feedback from learners is welcome and would be gratefully acknowledged. You can send them across at 09320473019 or drmaheshgour@gmail.com. In case, after printing of this book, ICAI comes up with any amendments, you can download the same from www.camaheshgour.com

---- NOTE ----

The author has covered every amendments upto 30-04-2022 relevant for NOV'22 examinations. If ICAI after publishing this book, issues any inapplicability of certain amendments for NOV'22 examination then students are advised to refer www.camaheshgour.com for all the updates about exclusion. Also if ICAI issues any statutory updates applicable for NOV'22 examination then it will be available on the above site. Students are advised to refer the above site for all the relevant updates.

---- DEDICATION -----

THIS BOOK IS DEDICATED TO THE ARMED FORCES OF THE COUNTRY BECAUSE OF WHOM WE CAN SLEEP PEACEFULY. THE ROYALTY FROM THIS BOOK WOULD BE DONATED FOR THE BENEFIT OF THE ARMED FORCES.

---- ABOUT THE AUTHOR ----

ABOUT CA MAHESH GOUR



CA Mahesh Gour a member of the Institute of Chartered Accountants of India. He has over 10 degrees, some of them are PhD (Management of Taxation), LLB, MBA (Finance). He is an eminent and nation famous faculty of Indirect Taxation. He has been teaching tax laws to students at various levels for over 13 years. More than 35,000 students have benefitted from his extraordinary teaching skills. He is a professor who uses 3D animation while teaching for conceptual clarity. The students have appreciated his insights and teaching methods and have regarded him as a great motivator. He has over 13 years of experience in advisory. He is a published author in various newspapers and has also authored various books on Indirect tax and GST for professionals and students. Currently, he is visiting faculty at various institutes in Mumbai. He is also a visiting faculty WIRC of The Institute of Chartered Accountants of India. CA Dr. Mahesh Gour was honoured with title of Master Mind and Memory Guru for his outstanding skills of memorising.

He is the first and the only professor who uses his unique method of Mnemonics and Memory Technique while teaching and this is exemplary when he made a 10th Standard student memorise CA Final book with page numbers in mere 4 days. He is a founder and director of Aaditya Foundation and SDMA Consultants Pvt Ltd.

You can visit his website www.camaheshgour.com to read more about the subject and latest case studies.

Achievements

- Member of Expert Group of ICAI for formulation of Syllabus of Indirect Tax (2016-17)
- ➤ Sub Group Member of Indirect Tax Committee WIRC of ICAI (2018-19)
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CUSTOMS

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Basic Concepts of Customs



CHAPTER OUTLINES

- Relevant Definitions.
- Important Concepts relating to Customs Duty.
- Types of Goods.



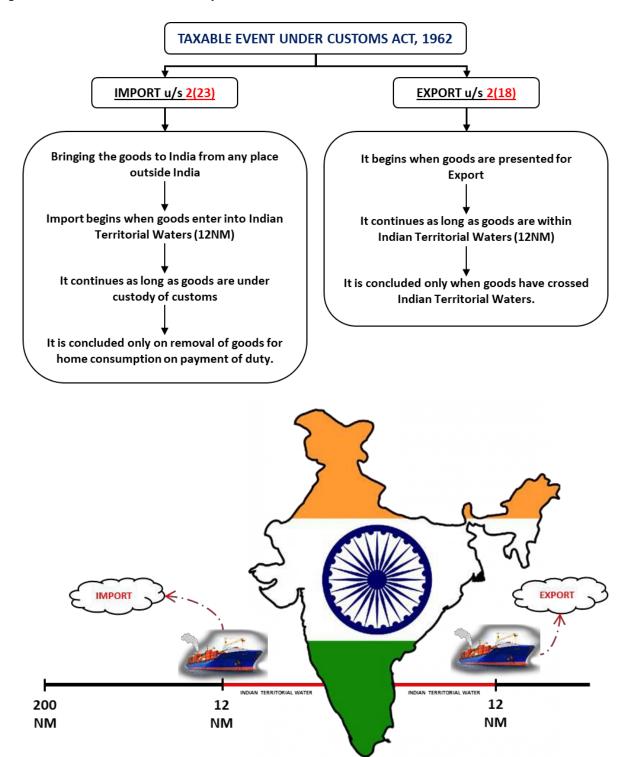
BACKGROUND OF CUSTOMS LAW

In ancient times a merchant entering a kingdom with goods had to make a gift to the kind and in today's time this custom was formalized in to Customs Duty.

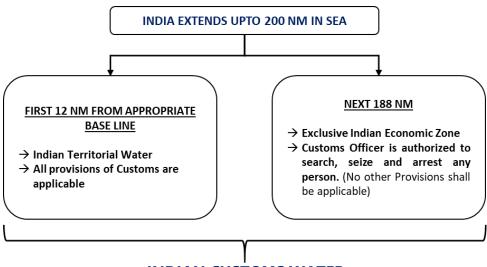
CUSTOMS DUTY

Customs Duty is imposed under the Customs Act, formulated in 1962.

The Customs Act, 1962 is the basic statute which governs entry or exit of different categories of vessels, crafts, goods, passengers etc. into or outside the country. The Act extends to the whole of India.



INDIA INCLUDES THE TERRITORIAL WATERS OF INDIA [SECTION 2(27)]



INDIAN CUSTOMS WATER

Indian customs waters cover both the Indian territorial waters, exclusive economic zone, Continental Shelf and includes any bay, gulf, harbor, creek or tidal river. Indian territorial waters extend up to 12 nautical miles (nm) from the base line Whereas, exclusive economic zone of India is an area beyond the Indian territoria waters. The limit of exclusive economic zone is 200 nautical miles from the nearest point of the baseline Therefore, Indian customs waters extend to a total of 200 nm from base line.

OTHER IMPORTANT TERMS

- **1. Baseline:** It is the lower water mark along the coast.
- **2. Continental Shelf of India:** Continental shelf is the part of the sea floor adjoining a land mass where the depth gradually increases before it plunges into the ocean deeps. The maximum depth of sea water in the continental shelf is 200 meters. Continental shelf of India extends beyond the limit of its territorial waters throughout the natural prolongation of its land territory to the outer edge of the continental margin or to a distance of 200 nautical miles from the baseline.

GOODS [SECTION 2(22)]



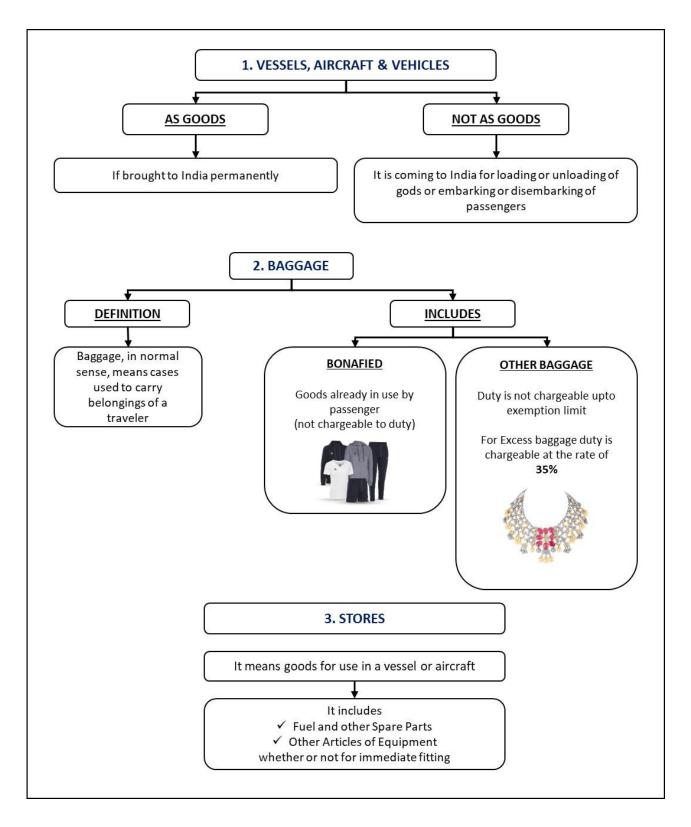
4. Currency and Negotiable instruments – (FEMA Act will be applicable).



5. Any other kind of movable property.



ANALYSIS OF GOODS



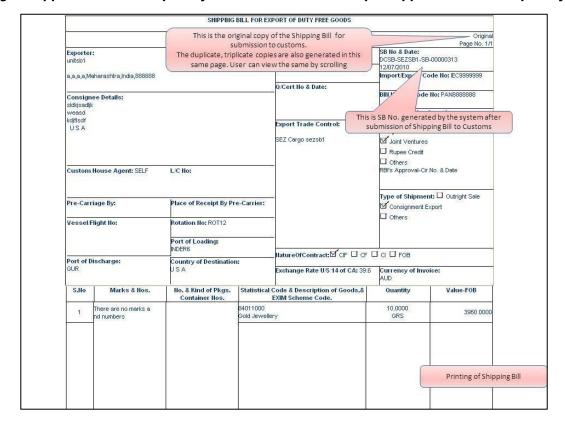
BILL OF ENTRY [SECTION 2(4)]

- ♣ "Bill of entry" means a bill of entry referred in section 46.
- 🖶 It is filed for import of goods with details etc. of goods

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	KAGE	S	Q	UANTIT	Y	N	umber	Shipmen CUSTO DUT	OMS	nd Code			oition DUTY		e Da	le			IGST				
No. and Des crip tion	Marks and Numb ers	Serial No.	Unit Cod e	Weight/ Volume /Numbe r etc.	Description R.I.T.C. No (Give details of each class separatel y)	Customs Tariff heading 	Natur e of duty code	Assessable Value under Section 14 Customs Act, 1962 (Rs.)	RATE Basic Auxilia ry (Rs.)	AMOU NT Basic Auxilia ry (Rs.)	Exemption Notification No. and year	Value under Section 3 Customs Tariff Act, 1975 (Rs.)	Rate	SAD	Total Additio nal Duty	GST Code	IGST Rate	Exempt ion Notific ation for claimin g exempt ion from IGST		GST Comp ensati on Cess Rate	Exem ption Notifi cation for claimi ng exemp tion from GST Com pensa tion Cess	GST Compe nsation Cess Amoun	TOTAL
(1)	(2)	(3)	(4)					(9) N WORDS). Import Cler		(11)		(13)			(16)		(18)	(19)	(20)	(21)	(22)	(23)	(24)

BILL OF EXPORT/SHIPPING BILL [SECTION 2(5)/2(37)]

- 4 "Shipping bill" means a shipping bill referred to in section 50; 4
- "Bill of export" means a bill of export referred to in section 50.
- ♣ Shipping bill applies in case of export by aircraft/vessel. Bill of export applies in case of export by land.



IMPORTANT CONCEPTS RELATING TO CUSTOMS DUTY

Section	Term/Used	Definition	Explanation
2(15)	Duty	"Duty" means a duty of customs leviable under this Act.	Duty includes import duties as well as export duties.
2(23)	Import	"Import": with its grammatical variations and cognate expressions, • means bringing into India from a place outside India.	Thus, words "imported" or "importations" etc. are to be construed accordingly.
2(25)	Imported goods	"Imported goods" means- i) any goods ii) brought into India iii) from a place outside India iv) but does not include goods, which have been cleared for home consumption	
2(18)	Export	"Export": with its grammatical variations and cognate expressions, means taking out of India to a place outside India	Thus, the words "exported" or "exportation", etc. are to be construed accordingly
2(19)	Export goods	"Export goods" means- • any goods • which are TO BE TAKEN out of India • to a place outside India;	The words "to be taken" suggest that as soon as goods are actually exported viz. "already taken" outside India, they cease to be export goods

TYPES OF GOODS

IMPORTED GOODS PROHIBITED GOODS [SECTION 2(25)]

The goods brought to India form a place outside India are referred to as imported goods only as long as import duty has not been paid thereon.

PROHIBITED GOODS [SECTION 11]





The CG has empowered to prohibit import or export of certain goods and they are referred as prohibited goods.

- By issuing a notification, the CG may Prohibit import/export of customs goods. The prohibition may be absolute or conditional.
- Such Prohibition may be based on any of the following:
 - Protection to Domestic industry
 - Any international agreement
 - Protection of patent, copyrights and Trade marks
 - Establishment of any industry
 - · Preventing of smuggling
 - Prevention of deceptive practices
 - Protection of national treasures of artistic, historic or archaeological value
 - Prevention of the contravention of any law
 - Implementation of any treaty, agreement or convention with any country
 - Conservation of foreign exchange and safeguarding of balance of payment
 - Prevention of surplus of any agricultural product or the product of fisheries.
 - Prevention of injury to the economy of the country by the uncontrolled import or export of gold or silver etc.



RELEVANT CASE LAW								
NAME OF CASE	HC / SC	DISPUTE	JUDGEMENT					
CCus. (Prev.), Mumbai v. M. Ambalal & Co. 2010 (260) ELT 487 (SC)	SC	Whether the benefit of exemption meant for imported goods can also be given to the smuggled goods?	Hence, it held that it would be contrary to the purpose of exemption notifications to give the benefit meant for imported goods to smuggled goods.					

NOTIFIED GOODS [SECTION 11A TO 11G]



Detection of illegally imported goods and prevention of their disposal:

- 1. Provision regarding notified goods are applicable throughout the country.
- 2. These are the goods declared by the Central Govt. as likely goods to be smuggled to India.
- 3. From the date of issue of notification any person having possession of such notified goods for commercial purpose is required to intimate the description of quantity, address where the goods are stored to the customs officer within next 7 days.
- 4. If any person acquired such goods, he shall have a record of the source person and the quantity of the goods acquired.
- 5. Such goods can be issued only under a cover of invoice: Containing name, and address of the seller as well as buyer. The seller should also comply with maintenance of record of customers.
- 6. If those goods are shifted from one place to another then during the course of transit, the goods shall be complied with either a invoice or challan.

Note: These provisions are not applicable if the goods are held by a person in the residential premises for personal use but he should have documentary evidence that the goods have not been smuggled in India.

SPECIFIED GOODS [SECTION 11H TO 11M]



Prevention or detection of illegal export of goods:

- 1. "Illegal export" means the export of any goods in contravention of the provisions of this Act or any other law in force for the time being. The CG may specify certain goods by issuing a notification which are likely to be smuggled out of India.
- 2. The Central Govt. may declare certain goods as specified goods if those are likely to be smuggled out of India.
- 3. Provision regarding specified goods are applicable only within 100 km belt across the coastline of India.
- 4. Provisions are not applicable unless the value of such goods exceeds Rs. 15,000.
- 5. During the course of transportation, the good shall be accompanied with an Invoice of the seller or challan of the owner.
- 6. The aforesaid restrictions shall not apply to a petty sale of goods whose market price in a day does not exceed Rs. 2,500.

TRANSIT GOODS [SECTION 52 TO 54]

Transit goods are those goods which are brought to India through any vessels or aircraft but those are not unloaded in India. These are also referred to as same bottom goods.

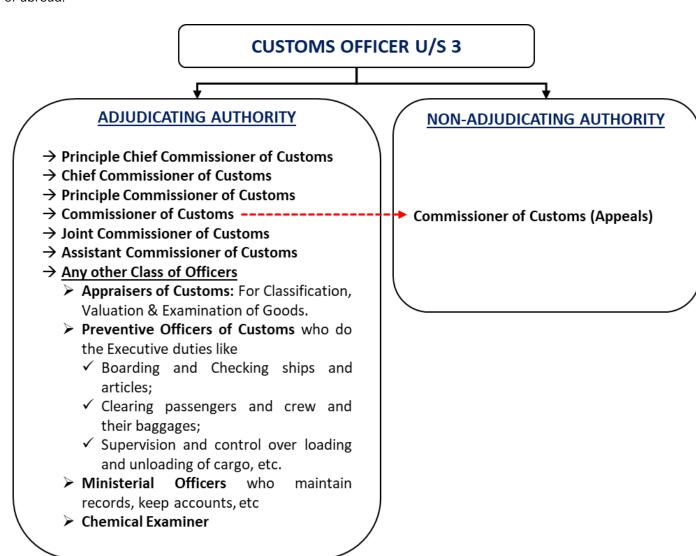
COASTAL GOODS [SECTION 91 TO 99]

Coastal goods are domestic goods which are transported within India through sea route.

If duty has been paid on Imported goods and those goods are transported through sea route within India, those are also treated as coastal goods.

TRANSSHIPMENT GOODS [SECTION 52 TO 54]

Transshipment goods are unloaded in India but those are to be sent to some other place whether in India or abroad.



APPOINTMENT OF CUSTOMS OFFICERS [SECTION 4]

All the Officers are appointed by the CBIC.

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CBIC may authorize Chief Commissioner or Commissioner or Assistant Commissioner.

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To appoint officers of customs below the rank of Assistant Commissioner.

POWERS OF CUSTOMS OFFICERS [SECTION 5]

Every officer is entitled to exercise the powers given to him and also the power of his subordinate officers but the Commissioner (Appeal) cannot exercise the Power of Adjudicating Authority.

Entrustment of Functions of Board and Customs Officers on Certain Other

OFFICERS [SECTION 6]

The CG may authorize any officer of **CG or SG or Local Authority** to discharge any of the func- tions of Customs officer for every purpose.

It means the Central Govt. may delegate functions of customs officers to any Central Govt. or State Govt. officer and such person shall also be a customs officer for all the purpose is of the Act.

THE CENTRAL BOARD IS EMPOWERED TO APPOINT [SECTION 7]

- (a) <u>Customs</u> Port and Air Port u/s Section 7 For all import and export through sea route or through air.
- (b) **Inland container depot or air freight stations** for completion of Customs formalities at the place other than customs port or airport.
- (c) **Land customs station** for import and export through land route.
- (d) **Coastal port** for transportation of goods within India through sea route.

COMMISSIONER OF CUSTOMS IS EMPOWERED TO APPOINT [SECTION 8/10]

- (a) **Appointment of Customs Area u/s 8** Commissioner of customs empowered to appoint the customs Area within the customs port or Airport.
- (b) <u>Appointment of Boarding Station</u> u/s 10- Commissioner of customs empowered to appoint the Boarding Station
- (c) <u>Appointment of Warehousing Station</u> u/s 9 CBSC of Customs empowered to appoint Warehousing Station.

CHARGING SECTION [SECTION 12]

- 1. This section is the charging section of the Act. Except as provided in this Act, or any other law for the time being in force, duties of customs shall be levied at such rates as may be specified under the Customs Tariff Act, 1975 (51 of 1975), or any other law for the time being in force, on goods imported into and exported from India [Sub-section (1)].
- 2. The provisions of sub-section (1) shall apply in respect of all goods belonging to Government as they apply in respect of goods not belonging to Government.

Hence, there is no general exemption to goods imported by Government. But imports by Indian Navy, specific equipment required by police, Ministry of Defence, Costal Guard etc. are fully exempt from customs duty by virtue of specific notifications subject to fulfillment of conditions and/or procedure set out in the notification.

The following propositions arise from the above provisions:-

- 1. Duties of customs shall be levied on goods. However, it may be noted that this levy is subject to other sections in the Act. For instance:
 - Section 13 no duty on pilfered goods Section
 - 22 reduced duty on damaged good Section
 - 23 remission of duty on destroyed goods.
- 2. The goods shall be such as are imported or exported to or from India;
- 3. The duty shall be charged at such rates as may be specified under the Customs Tariff Act, 1975.
- 4. Government goods shall be treated at par with non-Governmental goods for the purposes of levy of customs duty.

PERSON IN CHARGE [SECTION 2(31)]

In relation to:

- **4** a vessel the master of the vessel;
- **4** an aircraft the commander or pilot-in-charge of the aircraft;
- **4 a railway train -** the conductor, guard, or other person having the chief direction of train;
- **4** any other conveyance the driver or other person-in-charge of the conveyance;

PROPER OFFICER [SECTION 2(34)]

In relation to any functions to be performed under this Act, means the Officer of Customs who is assigned those functions by the Board or the Commissioner of Customs.

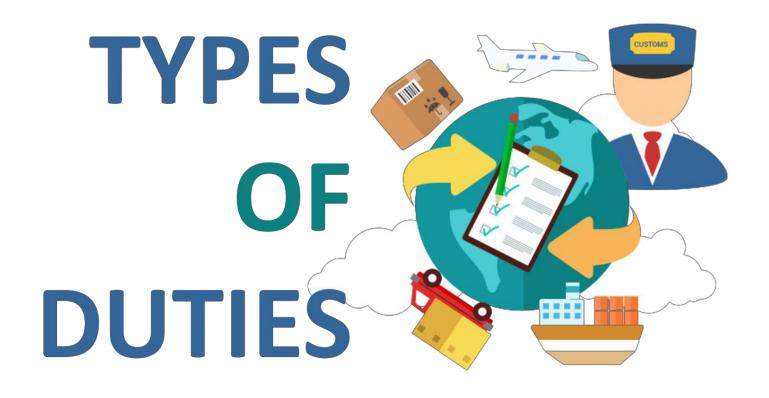
RELEVANT CASE							
NAME OF CASE	HC / SC	DISPUTE	JUDGEMENT				
Tirupati Udyog Ltd. v. UOI 2011 (272) ELT 209 (AP)	НС	Are the clearance of goods from DTA to Special Economic Zone chargeable to export duty under the SEZ Act, 2005 or the Customs Act, 1962?	 The High Court, on the basis of the following observations, inferred that the clearance of goods from DTA to Special Economic Zone is not liable to export duty under the SEZ Act, 2005 or under Customs Act, 1962. A charging section has to be construed strictly. If a person has not been brought within the ambit of the charging sections by clear words, he cannot be taxed at all. SEZ Act does not contain any provision for levy and collection of export duty for goods, supplied by a DTA unit to a Unit in Special Economic Zone for its authorised operations. In the absence of a charging provision in the SEZ Act providing for the levy of customs duty on such goods, export duty 				

CHECK YOUR KNOWLEDGE

- 1. Read the following and choose the correct option:
 - i. Indian customs waters extend up to 12 nautical miles;
 - ii. Indian customs waters extend up to 24 nautical miles;
 - iii. Indian customs waters extend up to exclusive economic zone of India;
 - iv. Indian customs waters include territorial waters and extend up to 200 nautical miles.
 - (a) Only (ii)
 - (b) (iii) and (iv)
 - (c) (ii) and (iv)
 - (d) Only (iv)
- 2. The taxable event under the Customs Act, 1962 is:
 - (a) Import of goods into India/ export of goods from India;
 - (b) Supply of goods into India/ Supply of goods from India to outside India;
 - (c) Sale of goods into India/ Sale of goods outside India;
 - (d) Manufacture of goods into India for supply outside India.

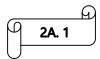
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Types of Duties



CHAPTER OUTLINES

- Types of Import Duties.
- Customs Tariff Act, 1975.
- Format for Calculation.



Basic Customs Duty is levied under the provisions of Section 12 of the Customs Act and section 2 of the Customs Tariff Act.

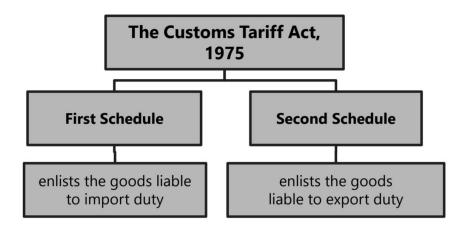
CHARGING SECTION [SECTION 12]

The duties of customs shall be levied

- ♣ at such rates* as may be specified under the Customs Tariff Act, 1975 or any other law for the time being in force
- on goods imported into or exported from India [Section 12 of the Customs Act, 1962]

*RATES OF BASIC CUSTOM DUTY

The rates at which duties of customs shall be levied under the Customs Act 1962 are specified in the First and Second Schedules [Section 2 of the Customs Tariff Act, 1975]



TYPES OF IMPORT DUTIES

SECTION	DESCRIPTION OF DUTY SPECIFIED
2	BCD or Basic Customs Duty (Charging Section 12 of Customs Act, 1962; Rate of duty is specified in Schedules of the Customs Tariff Act, 1975]
	Social Welfare Surcharge
3(7)	IGST on any article imported to India
3(9)	GST Compensation Cess
6	Protective duty to protect domestic industry on recommendation of Tariff Commission.
8B	Safeguard Duty against bulk imports
9	Countervailing duty on subsidized articles (Max. Duty=Subsidy granted by foreign country)
9 A	Anti-dumping duty [Max. Duty=Margin of Dumping= Normal Value-Import price]

FORMAT FOR COMPUTATION OF DUTIES

Assessable Value u/s 14(1) or tariff Value u/s 14(2) of Customs Act	XXX
Add: 1) Basic Customs duty u/s 12 on Assessable Value and any sum chargeable on that article under any law for the time being in force as an addition to, and in the same manner as, a duty of customs.	XXX
OR	
Add: 2) SOCIAL WELFARE SURCHARGE @ 10% of BCD (if goods imported on or after 02.02.2018)	XXX
[A] Total value u/s 3(8) for levy of Integrated Tax u/s 3(7) and GST Compensation Cess u/s 3(9)	XXX
Add: 3) Integrated tax under Section 3(7) = Applicable Rate of IT computed on [A] above.	
(Integrated tax will be exclusive of SWS/EC and SHEC, as SWS on Integrated Tax have been exempted vide NN 13/2018 – Cus. Dated 02-02-2018) / EC and SHEC on Integrated Tax have been exempted vide NN 54 & 55/2017 – Cus. Dated 30-06-2017)	XXX
Add: 4) GST Compensation Cess under Section 3(9) = Applicable rate of GST Compensation cess computed on [A] above.	XXX
(GST Compensation will be exclusive of EC and SHEC, as EC and SHEC on GST Compensation Cess have been exempted vide NN 54 & 55/2017 – Cus. Dated 30-06-2017)	
Total cost of imported goods	XXX
Total Customs Duty [1+2+3+4]	XXX

NOTE: Non Inclusion of Duties: In computation of value for levy Integrated tax and GST Compensation Cess, the following duties shall not be included –

- a) Integrated Tax referred to in Section 3(7) of CTA, 1975
- **b)** GST Compensation Cess referred to in Section 3(9) of CTA, 1975

CUSTOMS TARIFF ACT, 1975

BASIC CUSTOMS DUTY [SECTION 2]

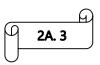
- Levied under **Section 12 i.e. Charging Section** of Customs Act.
- **↓** Levied as a percentage of Value as determined under section 14(1).
- ♣ The rates vary for different items ex 5%, 12.5%, 15%, 25% and 30%.
- Normal rate (peak rate) 10%

PREFERENTIAL RATE OF DUTY [SECTION 4]

The Central Government has the power to declare certain areas as preferential areas, the imports wherefrom are chargeable to preferential rate of duty.

Duty leviable at standard rate unless conditions for charge of duty at preferential rate fulfilled. The following are the conditions:

- (a) at the time of importation, the importer/owner of the article must claim that the article is chargeable with a preferential rate of duty.
- (b) the importer/owner must also claim that such article has been produced or manufactured in a preferential area;
- (c) such preferential area, being a country or territory, must be notified as a preferential area by the Central Government; and
- (d) the origin of such article (i.e. identification whether such article is a produce or manufacture of notified preferential area) must be determined in accordance with rules made in this behalf.



INTEGRATED GOODS AND SERVICE TAX (IGST) [SECTION 3(7)]

Any article which is imported into India shall, in addition, be liable to integrated tax rat such rate, not exceeding forty percent, as is leviable under section 5 of IGST Act, 2017 on a like article on its supply in India.

GOODS AND SERVICE TAX COMPENSATION CESS [SECTION 3(9)]

GST Compensation cess is a compensation cess levied u/s 8 of the Goods and Service Tax (Compensation to State) Act, 2017. GST compensation cess is levied on intra-state supply of goods or services and inter-state supply of goods and services to provide compensation to the States for loss of revenue due to implementation of GST in India.

It may be noted that GST compensation cess would be applicable to only those supply of goods or services that have been notified by the Central Government. As of now, GST Compensation cess is levied on luxury and sin goods like pan masala, tobacco, etc.

ADDITIONAL CUSTOMS DUTY (CVD) [SECTION 3(1)] → Also Called 'Countervailing Duty' (CVD).

- 4 Duty is equal to excise duty levied on a like product manufactured or produced in India.
- If like article is not produced or manufactured in India, the excise duty that would be leviable on that article had it been produced in India is the base.
- ♣ If the product is leviable with different rates, then highest rate among those rates is to be considered.
- In the case of an article imported into India, where the Central Government has fixed a tariff value for the like article produced or manufactured in India under section 3(2) of the Central Excise Act, 1944, the value of the imported article shall be deemed to be such tariff value. Finance Act 2009 (Effective from 19.08.2009)
- The Duty is leviable on Value of goods plus basic customs duty and NCCD payable.
- CVD payable at effective rate of Excise duty
- **↓** CVD payable even if similar goods not produced in India

Both the duties are independent duties, exemption given in respect of basic customs duty cannot be said to be having effect of exemption from payment of additional duty of customs also.

SPECIAL ADDITIONAL CUSTOMS DUTY [SECTION 3(5)]

- (a) It is chargeable on an aggregate of assessable value and all duties. (except duties charged u/s 8B, 8C, 9, 9A)
- (b) The rate of duty is fixed @ 4%.
- (c) This duty is to equalize imported goods with the domestic goods in respect of CST/VAT. Therefore, unless exempted, it is necessarily chargeable on all imports.
- (d) Credit is available for this duty only to manufacturer.
- (e) Credit of this duty cannot be utilized for payment of service tax.
- (f) This duty is not chargeable to education cess

PROTECTIVE DUTY [SECTION 6]

- (a) On recommendation of tariff commission of India, this duty can be imposed by CG with immediate effect by issuing a notification.
- (b) For every purpose, this duty is treated at par with the Basic customs duty u/s 2 of the CTA.
- (c) The **Central Government has the power to reduce or to increase** such duty by issuing a notification in Official Gazette and get the permission in the Parliament.

EMERGENCY POWER TO IMPOSE OR ENHANCE EXPORT DUTIES [SECTION 8]

CENTRAL GOVERNMENT EMPOWERED TO IMPOSE/ENHANCE THE EXPORT DUTIES: The Central Government may impose or enhance export duties by making amendment to the Second Schedule by issue of a notification in the Official Gazette.

CONDITIONS TO BE SATISFIED:

- (a) The goods may or may not be specified in the Second Schedule
- (b) The Central Government is satisfied that circumstances exist, which render it necessary for the imposition or enhancement of export duties.

If the above conditions are satisfied, the Central Government may impose or enhance export duties.



EXAMPLE:

Generally, in summer season, the production of milk becomes low as compared with other seasons. If the available milk is not able to meet the requirements of the people, the Government may impose or enhance the duty on exports of milk powder or stop the exports of milk powder.

EMERGENCY POWER TO IMPOSE OR ENHANCE IMPORT DUTIES [SECTION 8A]

CENTRAL GOVERNMENT EMPOWERED TO IMPOSE/ENHANCE THE IMPORT DUTIES: The Central Government may impose or enhance import duties by making amendment to the First Schedule by issue of a notification in the Official Gazette.

CONDITIONS TO BE SATISFIED: If the following conditions are satisfied, the Central Government may provide for the enhancement of the import duty.

- (a) The goods should be specified in the First Schedule.
- (b) The Central Government is satisfied that circumstances exist, which render it necessary for the enhancement of import duties.

Proviso to sub-section (1) provides that the Central Government shall not issue any notification under this section unless the earlier notification amending the rate of duty has been placed before the Parliament and the same has been passed with or without modifications.

SAFEGUARD DUTY [SECTION 8B]

If the Central Government on enquiry finds that increased import have caused serious injury to domestic industry or threatening to cause serious injury to domestic industry THEN here are provisions for levy of safeguard duty on provisional basis on import of such articles.

(a) EXEMPTIONS FROM SAFEGUARD DUTY:

- **Articles from developing country**: Articles originating from developing country, so long as the share of imports of that article from that country does not exceed 3% of the total imports of that article into India.
- 4 Articles originating from more than one developing country: Articles originating from more than one developing country, so long as the aggregate of imports from developing countries each with less than 3% import share taken together does not exceed 9% of the total imports of that article into India.

(b) DURATION OF SAFEGUARD DUTY:

- The Central Government is having power to impose a **provisional safeguard** in appropriate cases, but he **Provisional safeguard duty cannot** remain In force for more than **200 days** from the date when it was first imposed.
- ♣ The Duty can be enforced till the expiry of 4 years from the date of imposition.
- The Central Government can provide extension but total period of imposition cannot be beyond **10 years** from the date of imposition.
- (c) IMPORTS BY 100% EOU OR UNITS IN A SPECIAL ECONOMIC ZONE: Safeguard duty shall not apply to articles imported by a 100% EOU/unit in a SEZ unless
 - (i) specifically made applicable; or
 - (ii) the article imported is either cleared as such into DTA or used in the manufacture of any goods that are cleared into DTA and in such cases safeguard duty shall be levied on that portion of the article so cleared or so used as was leviable when it was imported into India

ILLUSTRATION 1:

Write a short note on the applicability of safeguard duty under the Customs Tariff Act, 1975 on articles imported by EOU/SEZ unit and cleared as such into domestic tariff area (DTA).

Answer: Section 8B(2A) of Customs Tariff Act, 1975, provides for levy of safeguard duty on articles imported by an 100% EOU/unit in a SEZ that are cleared as such into DTA. In such cases, safeguard duty shall be levied on that portion of the article so cleared as was leviable when it was imported into India.

COUNTERVAILING DUTY ON SUBSIDIZED ARTICLES [SECTION 9]

If it is brought to the notice of CG, that the goods being supplied to India below the normal cost have been subsidized by the Govt. in the country of origin, immediately this duty is imposed by the issue of notification.

(a) PROVISIONALLY IMPOSED:

Initially collection of this duty is a provisional basis for 6 months. It means if the fact of subsidy is not confirmed on being verified by the Govt. of India with the Govt. of the country of origin of the goods, the amount of duty will be refunded.

(b) RETROSPECTIVE LEVY:

Central Government can retrospectively levy anti-subsidy duty if imports in a relatively short period have caused injury to the domestic industry.

Duty can be imposed retrospectively from a date prior to date of imposition of provisional countervailing duty but not beyond 90 days from the date of notification of provisional duty.

(c) DURATION:

The countervailing duty cease to have effect on the expiry of 5 years from the date of imposition and Central Govt. can provide further extension of 5 years.

(d) AMOUNT OF COUNTERVAILING DUTY ON SUBSIDIZED ARTICLES:

The amount of countervailing duty shall not exceed the amount of subsidy paid or bestowed as aforesaid.

POINTS TO BE NOTED:

Countervailing duty shall not be levied unless it is determined that -

- (i) The subsidy relates to export performance;
- (ii) The subsidy relates to the use of domestic goods over imported goods in the export article; or
- (iii) The subsidy has been conferred on a limited number of persons engaged in the manufacture, production or export of articles.

Note:-

Anti-circumvention measure in respect of countervailing duty: Where the Central Government, on such inquiry as it considers necessary, is of the opinion that circumvention of countervailing duty has taken place, by either of the following ways:-

- (i) by altering the description or name or composition of the article on which such duty has been imposed
- (ii) by import of such article in an unassembled or disassembled form
- (iii) by changing the country of its origin or export or
- (iv) in any other manner, whereby the countervailing duty so imposed is rendered ineffective it may extend the countervailing duty to such other article also.

ABSORPTION OF COUNTERVAILING DUTY [SECTION 9(1B)]

Where the Central Government, on such inquiry as it considers necessary, is of the opinion that

- absorption of countervailing duty has taken place
- where by the countervailing duty so imposed is rendered ineffective,

it may modify such duty to counter the effect of such absorption, from such date, not earlier than the date of initiation of the inquiry, as the Central Government may, by notification in the Official Gazette, Specify.



EXEMPTION FOR EOU AND SEZ [Section 9(2A)]

Not with standing anything contained in sub-sections (1) and (2), any countervailing duty imposed shall not apply to article imported by a 100% export-oriented undertaking or a unit in a special economic zone, unless,-

- i.) it is specifically made applicable in such notification or to such undertaking or unit or
- ii.) such article is either cleared as such into the domestic tariff area or used in the manufacture of any goods that are cleared into the domestic tariff area, in which case, countervailing duty shall be imposed on that portion of the article so cleared or used, as was applicable when it was imported into India.



REVOCATIONOF CVD BEFORE SPECIFIED PERIOD [SECTION 9(6)]

Provided also thar if the said duty is revoked temporarily, the period of such revocation shall not exceed one year at a time

ANTI DUMPING DUTY [SECTION 9A and 9AA]

- (a) If the goods are offered in India at a price below the normal price because of excess production overseas, this is called as dumping.
- **(b)** The difference between the normal price in exporting market and dumping price (export price) is called as dumping margin.
- **(c)** As and when the domestic industry brings it to the notice of CG, immediately this duty is imposed by issue of notification.

(d) PROVISIONALLY IMPOSED:

This duty is initially collected on provisional basis. It means the govt. may find that there is no dumping or the importer can prove that there was no dumping. In either situation if is proved that there is no dumping, the anti-dumping duty will be refunded.

(e) RETROSPECTIVE LEVY:

Central Government can retrospectively levy anti-subsidy duty if imports in a relatively short period have caused injury to the domestic industry.

Duty can be imposed retrospectively from a date prior to date of imposition of provisional anti-dumping duty but not beyond 90 days from the date of notification of provisional duty.

(f) REFUND:

Refund of ADD can be claimed where importer proves to the satisfaction of CG that he has paid ADD in Excess of actual MOD in relation to such article.

(q) AMOUNT OF ADD:



(h) NO ADD TO ARTICLES IMPORTED BY A 100% EOU:

ADD shall not apply to articles imported by a hundred per cent, export-oriented undertaking unless, —

(i) specifically made applicable in such notifications or such impositions, as the case may be; or

(ii) the article imported is either cleared as such into the DTA or used in the manufacture of any goods that are cleared into the DTA, and in such cases anti-dumping duty shall be levied on that portion of the article so cleared or so used as was leviable when it was imported into India

(i) DURATION:

The anti-dumping duty cease to have effect on the expiry of 5 years from the date of imposition and Central Govt. can provide further extension of 5 years.

EXAMPLE:

If normal value in exporting country is Rs.11 and export price Rs.8, dumping margin Rs.3. If landed cost is Rs.9 and fair selling price of domestic industry is Rs.10, then injury margin is Rs.1. Hence ADD of only Rs.1 can be imposed.



ABSORPTION OF ANTI-DUMPING DUTY [SECTION 9A(1B)]

Where the Central Government, on such inquiry as it may consider necessary, is of the opinion that

- absorption of anti-dumping duty has taken place
- where by the anti-dumping duty so imposed is rendered Ineffective it may modify such duty to counter the effect of such absorption, from such date, not earlier than the date of initiation of the inquiry, as the Central Government may, be notification in the Official Gazette, specify.



EXEMPTION FOR EOU AND SEZ [SECTION 9A(2A)]

Not with standing anything contained in sub-section (1) and sub-section (2), any antidumping duty imposed shall not apply to articles imported by a 100% export-oriented undertaking or a unit in a special economic zone, unless,-

- i) it is specifically made applicable in such notification or to such undertaking or unit; or
- ii) such article is either cleared as such into the domestic tariff area or used in the manufacture of any goods that are cleared into the domestic tariff area, in which case, anti- so dumping duty shall be imposed on that portion of the article cleared or used, as was applicable when it was imported into India.

REVOCATION OF CVD BEFORE SPECIFIED PERIOD

+ ident also that if the said duty is revoked temporarity, the period of such revocation shall not exceed one year at a time.

ILLUSTRATION 2:-

What will be the dates of commencement of the definitive anti-dumping duty in the following cases under section 9A of the Customs Tariff Act, 1975 and the rules made thereunder:

- (i) where no provisional duty is imposed;
- (ii) where provisional duty is imposed;
- where anti-dumping duty is imposed retrospectively from a date prior to the date of imposition of (iii) provisional duty.

Answer:

The Central Government has power to levy anti-dumping duty on dumped articles in accordance with the provisions of section 9A of the Customs Tariff Act, 1975 and the rules framed thereunder.

(i) In a case where no provisional duty is imposed, the date of commencement of anti-dumping duty will be the date of publication of notification, imposing anti-dumping duty under section 9A(1), in the Official Gazette.



- (ii) In a case where provisional duty is imposed under section 9A(2), the date of commencement of anti-dumping duty will be the date of publication of notification, imposing provisional duty under section 9A(2), in the Official Gazette.
- (iii) In a case where anti-dumping duty is imposed retrospectively under section 9A(3) from a date prior to the date of imposition of provisional duty, the date of commencement of anti-dumping duty will be such prior date as may be notified in the notification imposing anti-dumping duty retrospectively, but not beyond 90 days from the date of such notification of provisional duty.

ILLUSTRATION 3:

With reference to the Customs Tariff Act, 1975, discuss the validity of the imposition of customs duties in the following cases:-

- (a) Both countervailing duty and anti-dumping duty have been imposed on an article to compensate for the same situation of dumping.
- (b) Countervailing duty has been levied on an article for the reason that the same is exempt from duty borne by a like article when meant for consumption in the country of origin.
- (c) Definitive anti-dumping duty has been levied on articles imported from a member country of World Trade Organization as a determination has been made in the prescribed manner that import of such article into India threatens material injury to the indigenous industry

Answer:

(a) Not valid.

As per section 9B of the Customs Tariff Act, 1975, no article shall be subjected to both countervailing and antidumping duties to compensate for the same situation of dumping or export subsidization.

(b) Not valid.

As per section 9B of the Customs Tariff Act, 1975, countervailing or anti-dumping duties shall not be levied by reasons of exemption of such articles from duties or taxes borne by the like articles when meant for consumption in the country of origin or exportation or by reasons of refund of such duties or taxes.

(c) Valid.

As per section 9B of the Customs Tariff Act, 1975, no definitive countervailing duty or anti-dumping duty shall be levied on the import into India of any article from a member country of the World Trade Organisation or from a country with whom Government of India has a most favoured nation agreement, unless a determination has been made in the prescribed manner that import of such article into India causes or threatens material

injury to any established industry in India or materially retards the establishment of any industry in ndia.

SOCIAL WELFARE SURCHARGE

1 A social welfare surcharge has been imposed on imported goods @ 10% of total customs duties (excluding certain duties) w.e.f. 02-02-2018. Hence, effective rate of BCD = 10% general rate of basic customs duty (BCD) + SWS @ 10% of BCD = 11%

2. NO SWS ON EXPORT OF GOODS

Export goods are not liable to social welfare surcharge. They are also not liable to Education Cess and Secondary & Higher Education Cess.

ILLUSTRATION 4:

The assessable value of imported goods is 20,00,000. The basic customs duty is 10%. Integrated tax leviable under section 3(7) of the Customs Tariff Act, 1975 is 18%. GST Compensation Cess is leviable @ 15%. Social Welfare Surcharge @ 10%. Compute total customs duty and imported cost of the goods.

SOLUTION: Computation of imported cost and customs duty (Amounts in Rs.)

:

Particulars	Amount
Assessable Value	20,00,000
Add: 1) Basic Customs duty @ 10% of Assessable Value	2,00,000
Add: 2) SWS @ 10%	20,000
Total value for levy of Integrated Tax u/s 3(7) of CTA, 1975	22,20,000
Add: 3) Integrated tax under Section 3(7) @ 18% of 22,20,000	3,99,600
Add: 4) GST Compensation Cess under Section 3(9) @ 15% of 22,20,000	3,33,000
Total cost of imported goods	29,52,600
Total Customs Duty [1+2+3+4]	9,52,600

ILLUSTRATION 5:

The assessable value of imported goods is 10,00,000. The basic customs duty is 10%. Integrated tax leviable under section 3(7) of the Customs Tariff Act, 1975 is 12%. GST Compensation Cess is leviable @ 15%. Social Welfare Surcharge @ 10%. Compute total customs duty and imported cost of the goods, if imports are made on or after 02-02-2018.

SOLUTION: Computation of imported cost and customs duty (Amounts in Rs.):

Particulars	Amount
Assessable Value	10,00,000
Add: 1) Basic Customs duty @ 10% of Assessable Value	1,00,000
Add: 2) SWS @ 10% of BCD	10,000
Total value for levy of Integrated Tax u/s 3(7) of CTA, 1975	11,10,000
Add: 3) Integrated tax under Section 3(7) @ 18% of 11,10,000	1,33,200
Add: 4) GST Compensation Cess under Section 3(9) @ 15% of 11,10,000	1,66,500
Total cost of imported goods	14,09,700
Total Customs Duty [1+2+3+4]	4,09,700

ILLUSTRATION 6:

COMPUTATION OF SAFEGUARD DUTY: Determine the custos duty payable under Customs Tariff Act, 1975 including the safeguard duty of 30% u/s 8B of the said Act with the following details available on hand:

Import of Sodium Nitrite from a developing country from 26th February,2021 to 25th February,2020 (both days inclusive)

Share of imports of sodium nitrite from the developing country against total imports of Sodium Nitrite to India

	4%
Basic Customs Duty	10%
Integrated tax u/s 3(7) of Customs Tariff Act, 1975	18%
GST compensation Cess	NIL
Social welfare Surcharge	3%

Solution: Computation of customs duty payable thereon (amount in RS) (4 Marks, May 2016)



Assessable value of sodium nitrite imported	30,00,000
Add: Basic custom duty @10% (RS 30,00,000 x 10%	3,00,000
Add: Safeguard Duty	9,00,000
Add: (SWS 10% of 3,00,000)	
	30,000
Total for	42,30,000
IGST u/s 3(7) of Customs Tariff Act (RS.42,30,000x18%)	7,61,400
Total Customs Duty Payable (RS.3,00,000+RS.9,00,000+RS.30,000+RS.7,61,400)	49,91,400

Working Note:

Safeguard duty is imposable in the given case since share of imports of sodium nitrite from the developing country is more than 3% of the total imports of sodium nitrite into india.

ILLUSTRATION 7:

<u>COMPUTATION OF SAFEGUARD DUTY:</u> Determine the safeguard duty payable by A ltd ,B ltd,C ltd & z ltd.under section 8B of the Customs Tariff Act,1975 from the following:

Imports of Sodium Nitrite from developing & developed countries from 26th march,2017 to 25th March 2018 (both days inclusive) are as follows:

Importer	Country of Imports	RS in crores
A ltd	Developing country	140
B ltd	Developing country	164
C ltd	Developing country	104
Z ltd	Developing country	100
Others	Developed country	4492
	Total	5000

NOTE: Safeguard duty 30%

Solution:

According to section 8B of Customs Tariff Act,1975, in case of articles originating from a developing country (i.e a country notified by the government of India for purpose of levy o such duty), this duty cannot be imposed under following circumstances,-

- (a) If the imports of such article from developing country does not exceed 3% of the total imports of that article into India.
- **(b)** Where the article is originating from more than one developing countries(each with less than 3% import share), then the aggregate of imports from all such countries taken together does not exceed 9% of total imports of that article into India.

Importer	Country of Imports	Rs. in crores	%of Imports	
A ltd	Developing country	140	2.8%	
B ltd	Developing country	164		3.28%
C ltd	Developing country	104	2.08%	
Z ltd	Developing country	100	2%	
Others	Developed country	4492		
	Total	5000	6.88%	3.28%

Safeguard duty is as follows:

Importer	Country of Imports	RS in crores	Safeguard duty	
A ltd	Developing country	140	30%	Nil
B ltd	Developing country	164	30%	49.2
C ltd	Developing country	104	30%	Nil
Z ltd	Developing country	100	30%	Nil

Articles originating from more than one developing countries (each with less than 3% import share), then the aggregate of imports from all such countries taken together does not exceed 9% (i.e in the given case 6.88%) of the total imports of that articles into India. **Therefore**, **Safeguard duty is not applicable to A Ltd**, **C Ltd**, **Z Ltd**.

CHECK YOUR KNOWLEDGE

- 1. The integrated tax leviable on imported goods is levied-
 - (a) as an additional duty of customs under section 3(7) of the Customs Tariff Act, 1975;
 - (b) as integrated tax under section 5 of the Integrated Goods and Services Tax Act, 2017;
 - (c) as a duty of customs under the Customs Tariff Act, 1975 read with Integrated Goods and Services Tax Act, 2017;
 - (d) None of the above
- 2. Which of the following are levied as additional duties of customs under section 3 of the Customs Act, 1962?
 - (i) Duty equal to excise duty leviable on like product manufactured in India;
 - (ii) Countervailing duty as special additional duty;
 - (iii) Special additional duty to counterbalance sales tax;
 - (iv) Anti-dumping duty to protect domestic industry
 - a) All of above;
 - b) (i), (ii) and (iv); c)
 - (i), (iii) and (iv), **d)**
 - (i), (ii) and (iii)
- 3. Safeguard duty cannot be imposed if:
 - (a) The article on which is proposed to be imposed originates from a developed country provided its share of imports is not more than 3% of total imports of that article in India;
 - (b) The article on which is proposed to be imposed originates from a developing country provided its share of imports is not more than 5% of total imports of that article in India;
 - (c) The article on which is proposed to be imposed originates from more than one developing country and its aggregate share of imports from developing countries each with less than 3% share taken together does not exceed 9% of total imports of that article into India.
 - (d) The article is imported by a person in special Category State.
- 4. Some banks in China are giving interest free loans to its domestic manufacturers for manufacture of solar panels. This interest free loan would qualify as subsidy for levying of countervailing duty under section 9 of the Customs Tariff Act, 1975 in India on import of such solar panels if:
 - (a) Such interest free loans is given by public or Government banks;
 - (b) Such interest free loan is given by private banks on their own without any direction or instruction from the Government:
 - (c) None of above;
 - (d) Both (a) and (b)
- 5. Countervailing duty under section 9 of the Customs Tariff Act shall not be levied unless it is determined that:
 - (i) Subsidy relates to export performance;
 - (ii) Subsidy relates to use of domestic goods over imported goods in export article;
 - (iii) Subsidy is conferred on all persons engaged in the manufacture of export article.
 - (a) All of above

- (b) Only (iii)
- (c) (ii) and (iii)
- (d) (i) and (ii)

6. Anti-Dumping duty is calculated as

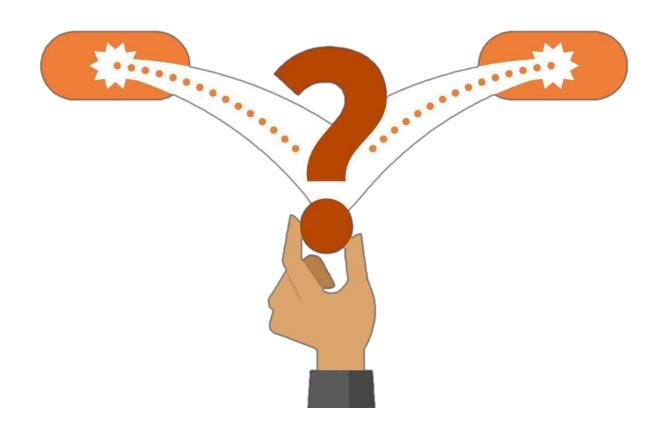
- (a) Higher of margin of dumping or injury margin;
- (b) Lower of margin of dumping or injury margin;
- (c) Higher of export price or normal value;
- (d) Lower of export price or normal value.

7. Which of the following is valid?

- (i) Imposition of countervailing duty and anti-dumping duty on same article;
- (ii) Countervailing duty has been imposed on an article for the reason that same is exempt from duty borne by a like article when meant for consumption in country of origin;
- (iii) Imposition of anti-dumping duty on articles imported from a member country of WTO on determination that import of such article materially retards the establishment of any industry in India.
- (a) All of above;
- (b) (i) and (ii);
- (c) (i) and (iii);
- (d) Only (iii)
- 8. Social welfare surcharge is leviable on-
 - (i) Basic Customs Duty;
 - (ii) IGST;
 - (iii) Anti-Dumping Duty;
 - (iv) GST Compensation Cess
 - (a) Only (i)
 - (b) (i) + (ii) + (iii)
 - (c) (i) + (ii) + (iv)
 - (d) (i) + (iii)

2B

Classification of Imported and Exported Goods



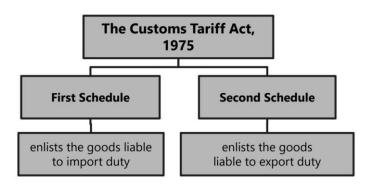
CHAPTER OUTLINES

- RULE 1
- RULE 2
- RULE 3: When Goods are covered under more than one heading
- RULE 4: Akin Goods (Most Closely Resembling Goods)
- RULE 5: Classification of Packing Materials
- RULE 6: Determination of Sub-headings
- Classification of Parts & Accessories.

Need for classification of goods: One of the important steps in assessing the amount of duty payable is classification of the goods within the ambit of the Schedule to the Customs Tariff Act. The correct classification of goods is necessary to ascertain the rate of custom duty which goods are subject to.

THE CUSTOMS TARIFF ACT, 1975

SCHEDULES TO TARIFF



RULES OF INTERPRETATION AND EXPLANATORY NOTES

The Indian Customs Tariff is based upon the Harmonized System of Nomenclature.

The Harmonized Commodity Description and Coding System (HS) of tariff nomenclature generally referred to as "Harmonized System of Nomenclature" is an internationally standardized system of names and numbers for classifying traded products developed and maintained by the World Customs Organization (WCO) (formerly the Customs Cooperation Council), an independent inter governmental organization.

Along the lines of HSN, the customs tariff has a set of Rules of Interpretation of the First Schedule i.e. Import tariff schedule and General Explanatory notes.

(i) Rules of interpretation → Six

(ii) General explanatory notes → Three

These rules of interpretation and general explanatory notes are an integral part of the Schedule. The purpose of inclusion of the rules of interpretation and the general explanatory notes as an integral part of the first schedule is to give clear direction as to how the nomenclature in the schedule is to be interpreted and to give statutory force to the interpretative rules and the general explanatory notes.

FIRST SCHEDULE OF THE CUSTOMS TARIFF

The First Schedule comprises of 98 chapters grouped under 21 sections.

(i) SECTIONS:

A group of Chapters representing a particular class of goods.

(ii) CHAPTERS:

Each section is divided into various chapters and subchapters. Each chapter contains goods of one class.

(iii) CHAPTER NOTES:

They are mentioned at the beginning of each chapter. These notes are part of the statute and hence have the legal authority in determining the classification of goods.

(iv) HEADING:

Each chapter and sub-chapter is further divided into various headings.

(v) SUB-HEADING:

Each heading is further divided into various subheadings.

GENERAL INTERPRETATION RULES (RULES OF CLASSIFICATION)

RULE 1

The chapter title is only for reference (for the sake of convenience), classification is always done using section and chapter notes. Further, if headings and section/chapter notes do not otherwise require, classification shall be as per Rules 2,3,4,5 or 6.

ISSUES:

Mere reading of the heading may not be enough, all goods will not necessarily be classified under that chapter.

EXAMPLE:

Chapter 39 is titled "Plastic" but all Plastics cannot be classified under that heading. The chapter notes, specifically excluded plastic toys, watches, automobile parts etc.

RULE 2

RULE NO. 2(A)	RULE NO. 2(B)	
Any semi finished goods or unfinished goods should be classified as finished goods, if they contain essential character of finished goods.	Reference to material/substance, to include reference to mixtures or combination of that material/substance	
 Example: 1. A cycle without seat, classified as a finished Good cycle. 2. Passenger coach without seat classified as a finished goods passenger coach. 	Any reference to goods of a given material or Substance shall be taken to include a reference to goods consisting wholly or partly of such material or substance.	
Issues:		
1. Goods removed in (SKD/CKD) classified as Final	Example:	
Product not as part. 2. Goods that do not require complicated process to make finished goods.	 Gold classification shall also consist of articles partly made up of gold. Steel with carbon classified as steel only. Gold with copper will be classified as 'Gold' Plastic bucket with iron handle to be classified as plastic article. 	
	But if such goods consist of more than one material or substance and each such substance is equally significant, classification, shall be made according to the principle specified in Rule 3	

RULE 3: WHEN GOODS ARE COVERED UNDER MORE THAN ONE HEADINGS

The chapter title is only for reference (for the sake of convenience), classification is always done using section and chapter notes. Further, if headings and section/chapter notes do not otherwise require, classification shall be as per Rules 2, 3, 4, 5 or 6.

In case of any conflict between 2 headings, prefer the specific heading rather than general headings.

(a)

Example:

If there are two heading:

1. Heading No. 8215:Spoons, forks, ladles, skimmers, fish-knives etc.

2. Heading No. 7323:

Table, kitchen or other household articles of iron and steels.

Spoon will be classified under 8215

When no specific heading is given, classification should be based on **essential character**

(b)

Example:

1. Book with CD classified as Book.



Printer with fax/scanner classified as printer.



3. Mobile with camera, MP3 etc. classified as Mobile.



4. A lock of vehicle with alarm is to be classified as 'lock' not 'burglar or fire alarm' as lock is the main line of defense and alarm is only secondary to security of the moving object.



If there are two heading, prefer the **later** (the later is better)

(c)

This rule is also known as 'latter the better maxim'.

Example:

If there are two heading:

Heading No. 4010: Conveyor transmission belting





4. Heading No. 5910:

transmission belting, conveyor belting or textile material conveyor and transmission belting.



Textile Material

RULE 4: AKIN GOODS (MOST CLOSELY RESEMBLING GOODS)

If any of the new items is produced commercially, for which there is no specific entry under CTA, 1975, then such goods are classifiable under the heading of their most akin goods.

EXAMPLE:

Plastic films used to remove the glare of the sunlight, pasted on car glass windows \rightarrow classified under 3925 30 00 Builders were of plastics not elsewhere specified – shutters, blinds (including Venetian blinds). Even though this is not a builders' but is most akin to the plastic blinds.

RULE 5: CLASSIFICATION OF PACKING MATERIALS

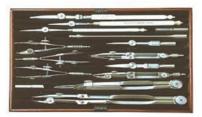


RULE 5(a) → Specific Size / Shape

Such material is classifiable under the heading of the goods with which those goods are going to be used.

EXAMPLE:

1. Drawing Instrument box as Drawing Instrument



- 2. Jewellery Box as Jewellery.
- Cases of Musical Instruments will be classified as musical instrument.

(If Such articles are normally sold with such cases)

RULE 5(b) → General Use

Such material is classifiable under their respective heading.

EXAMPLE → Container

NOTE:

Durable Containers capable of Repetitive Use should be classified Separately.

EXAMPLE:

Gas Cylinders are meant for repetitive use and therefore cannot be classifiable along with gas.

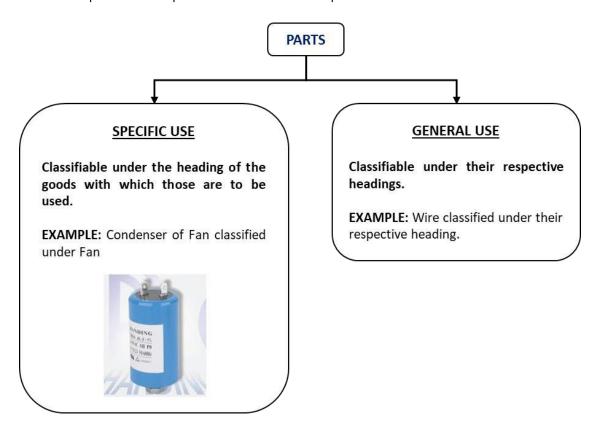


RULE 6: DETERMINATION OF SUB-HEADINGS

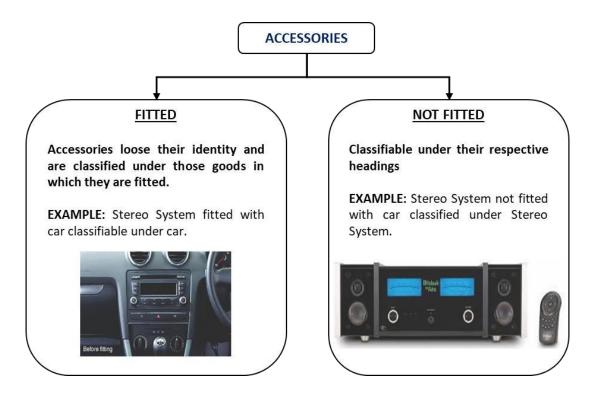
Rule No. 1 to 5 shall apply mutatis mutandis (as it is) for determination of sub-headings.

CLASSIFICATION OF PARTS AND ACCESSORIES

Part: An essential component of the product without which the product cannot function.



Accessory: Supplementary or subordinate in nature and need not be essential for actual functioning of the product.



RELEVANT CASE						
NAME OF CASE	HC / SC	DISPUTE	JUDGEMENT			
State of Punjab v. Nokia India Private Limited 2015 (315) ELT 162 (SC)	SC	Whether the mobile battery charger is classifiable as an accessory of the cell phone or as an integral part of the same?	The Apex Court held that mobile battery charger is an accessory to mobile phone and not an integral part of it. Further, battery charger cannot be held to be a composite part of the cell phone, but is an independent product which can be sold separately without selling the cell phone.			
M/s CPS Textiles P Ltd. Joint Secretary 2010 ELT 228 (Mad.)	НС	(i) Will the description of the goods as per the documents submitted along with the Shipping Bill be a relevant criterion for the purpose ofclassification, if not otherwise disputed on the basis of any technical opinion or test? (ii) Whether a separate notice is required to be issued for payment of interest which is mandatory and automatically applies for recovery of excess drawback?	The High Court held that the description of the goods as per the documents submitted along with the Shipping Bill would be a relevant criterion for the purpose of classification, if not otherwise disputed on the basis of any technical opinion or test. The petitioner could not plead that the exported goods should be classified under different headings contrary to the description given in the invoice and the Shipping Bill which had been assessed and cleared for export. Further, the Court, while interpreting section 75A(2) of the Customs Act, 1962, noted that when the claimant is liable to pay the excess amount of drawback, he is liable to pay interest as well. The section provides for payment of interest automatically along with excess drawback. No notice for the payment of interest need be issued separately as the payment of interest becomes automatic, once it is held that excess drawback has to be repaid.			

CHECK YOUR KNOWLEDGE

- 1. Electric shaving machine is classifiable under following:
 - 8510: Shavers and hair clippers with self-contained electric motors;
 - 8509: Electro mechanical domestic appliances with self-contained electric motor
 - As per rules of classification, electric shaving machine should be classifiable under
 - (a) 8510
 - (b) 8509
 - (c) More information is needed;
 - (d) Can be classified under both
- 2. Which of the following is correct?
 - (i) Cases which are specially designed or fitted to contain a specific article and given with the articles for which they are intended shall follow the classification of items which are packed;
 - (ii) Packing materials whether capable of repetitive use or not, cleared along with goods, are classifiable with goods.
 - (a) (i)
 - (b) (ii) (c)
 - Both (d)

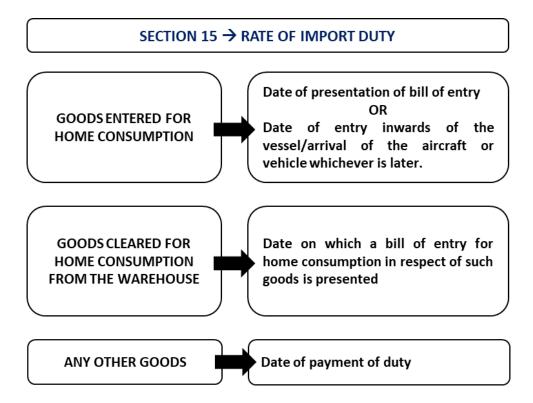
None

CHAPTER OUTLINES

- [Sec. 13] Duty on Pilfered ?? Goods.
- [Sec. 14] Valuation of Goods.
- [Sec. 15 & 16] Relevance Date for Rate of Duty & Tariff Valuation.
- [Sec. 17] Assessment.
- [Sec. 18] Provisional Assessment.
- [Sec. 19] Classification of Goods and Changing of Duty.
- [Sec. 20] Reimposation of Goods.
- [Sec. 21] Jetsam, Flodsam, Derlict & Wreckage.
- [Sec. 22] Abatement of Duty (Value) on Damaged Goods.
- [Sec. 23] Remission of Duty (Lost).
- [Sec. 24] Dematuring of Goods (e.g. Alcohol or Spirit).
- [Sec. 25] Power of central Government to grant Exemption.
- [Sec. 26] Refund of Export Duty in certain cases.
- [Sec. 26A] Refund of Import Duty in certain cases (of the Customs Act, 1962).
- [Sec. 29] Arrival of Vessel/Aircraft at Customs Port/Airport only.
- [Sec. 30] Import General Manifest/Import Report.
- [Sec. 31] Unloading of Goods.
- [Sec. 32].
- [Sec. 33 to 36].
- [Sec. 35] Root Note.
- [Sec. 37] Power to board Conveyances.
- [Sec. 38] Power to require Production of Documents and Ask Questions.
- [Sec. 40] Export Goods not to be loaded unless duty passed by proper Officer.
- [Sec. 42] No Conveyance to leave without written Order application to both Imported and Exported Goods.
- [Sec. 45] Custody.
- [Sec. 46] Filing of 'Bill of Entry'.
- [Sec. 47] Removal of Goods.
- [Sec. 48] Disposal of Goods.
- [Sec. 49] Warehousing without Warehousing.

DUTY ON PILFERED GOODS [SECTIONS 13]

- ♣ The meaning of "Pilfer" is petty theft or to steal in small quantities. To establish small pilferage, during physical examination by customs, there should be evidence of tampering with the package.
- ♣ If any of the goods are pilfered after being unloaded in India and before their removal for home consumption or for warehouse from the customs Area, then the importer shall not be liable to pay duty on pilfered goods unless the goods are restored to him. [Section 45 is referred]
- Liability of Duty in case of pilferage while in custody of custodian:-If any imported goods are pilfered after unloading thereof in a customs area while in the custody of a person approved by the Commissioner u/s 45 (1), that person shall be liable to pay duty on such goods at the rate prevailing on the date of delivery of an import manifest or an import report to the proper officer u/s 30 for the arrival of the conveyance in which the said goods were carried.



POINTS TO BE NOTED:

- 1. If goods are pilfered after the order of clearance is made but before the goods are actually cleared, duty is leviable.
- 2. Section 13 deals with only pilferage. It does not deal with loss/destruction of goods.
- 3. Provisions of section 13 would not apply if it can be shown that pilferage took place prior to the unloading of goods.
- 4. In case of pilferage, only section 13 applies and claim of refund under section 23(1) is not permissible.
- 5. Section 13 applies to the goods which are under the custody of the custodian under section 45.

VALUATION OF GOODS [SECTION 14]

- **Section 14(1)** \rightarrow AV = Transaction Value (If Certain Conditions are Satisfied
- **Lesson Section 14(2)** → AV = Tariff Value (In respect of Certain Notified Goods) **For**

detailed provisions of Section 14, refer Chapter 4: Valuation

RELEVANT DATE FOR RATE OF DUTY AND TARIFF VALUATION [SECTIONS 15 & 16] ILLUSTRATION 1:

Bill of entry is presented on 01.01.20XX, the vessel arrives on 03.01.20XX. In this situation, relevant date for determination of the rate of import duty is 03.01.20XX because though for procedural purposes, the Bill of Entry was filed on 01.01.20XX, for the purpose of determining the rate of duty and tariff valuation of such goods, Bill of Entry will be deemed to have been filed on 03.01.20XX.

Answer: In respect of baggage and goods imported by post, the provisions of section 15 will not be applicable as they are independently covered by other sections.

RELEVANT CASE LAWS

Section 15 has generated a lot of interest in terms of case law development. In Bharat Surfacants Pvt. Ltd. v. UOI 1989 (43) ELT 189, the Supreme Court held that the rate of duty and tariff valuation would be done on the date of final entry of the ship. In this case, a ship entered Bombay and made prior entry on 4.7.81 at which time the duty was 12.5%. Since there was no space, the ship proceeded to Karachi and after that came back to Bombay on 23.7.81 and was granted final entry on 4.8.81 when the duty rate had been revised to 15.0%. The Supreme Court held that the rate applicable would be 15.0% only since the formality of entry inward could be done only on 4.8.81.

It would also be important to note that date of contract is not relevant and only the date of importation is relevant as per the decision of the Supreme Court in Rajkumar Knitting Mills P.Ltd vs CC 1998 (98) ELT 292.

It is also relevant to note that Section 15 deals with only the rate of duty and tariff valuation and not the valuation under section 14.

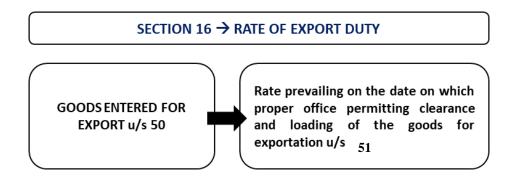
ILLUSTRATION 2:

An importer, imported consignment of goods, chargeable to duty @ 40% ad valorem. The vessel arrived on 31st May, 20XX. A bill of entry for warehousing the goods was presented on 2nd June, 20XX and the goods were duly warehoused. In the meantime, an exemption notification was issued on 15th October, 20XX reducing the effective customs duty to 25% ad valorem.

Thereafter, the importer filed a bill of entry for home consumption on 20th October claiming 25% duty. The customs Department charged higher rate of duty @ 40% ad valorem. Give your views on the same, discussing the relevant provisions of the Customs Act, 1962.

Answer:

According to section 15(1)(b) of the Customs Act, the relevant date for determination of rate of duty and tariff value in case of goods cleared from a warehouse is the date on which a bill of entry for home consumption in respect of such goods is presented. Therefore, the relevant date for determining the duty in the given case will be 20.10.20XX (the date on which the bill of entry for home consumption is presented) and thus, the relevant rate of duty will be 25%.



NOTE:

Provisions of Section 15 & 16 do not apply to baggage & goods imported & exported by Post.

SELF ASSESSMENT UNDER [SECTION 17]

Assessment in customs revised w.e.f 1/3/2011:

Assessment of customs duty by an importer or exporter includes provisional assessment, self assessment, reassessment and any assessment in which the duty assessed is nil.

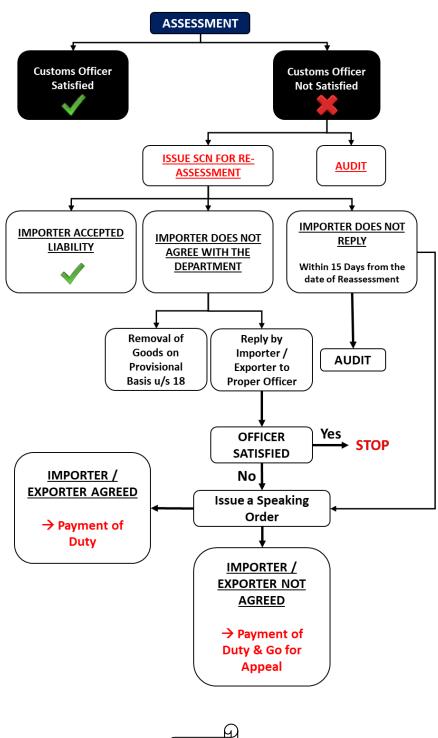
The procedure for self-assessment by importer or exporter is as follows: STEP 1:

IMPORTER files

- BILL OF ENTRY
- BAQRI → Brokers Note; Agreement;
 Quotation; Research Report; Invoic.e

EXPORTER files

- Shipping Bill → in case of Air / Vessel
- o Bill of Export → in case of Land Route



PROVISIONAL ASSESSMENT [SECTION 18]

1. PROVISIONAL ASSESSMENT CAN BE DONE IN FOLLOWING CASES \rightarrow Key $\overline{\text{IDT}}$

- **↓ Inquiry:** Importer / Exporter furnished all Documents / Information but Proper Officer still deems it necessary to make further enquiry
- **Documents / Information:** The necessary Document have not been produced by Importer / Exporter.
- Test: It is deemed necessary to carry out chemical or other tests on Goods.

Such Information / Document shall be made available by the importer / exporter within 1 month from the date of such order of provisional assessment / or the date of such requisition by the Proper Officer.

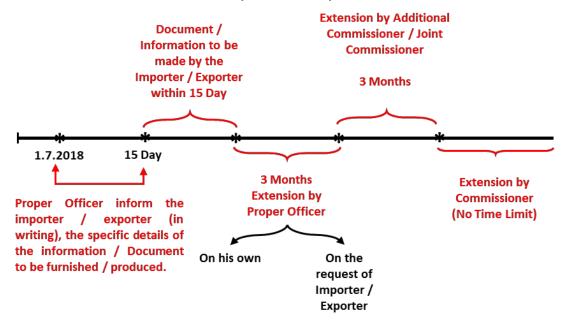
2. PROCEDURE OF PROVISIONAL ASSESSMENT

- ♣ The importer / exporter has to furnish bond / guarantee / security for payment of difference, if any. ♣ Goods can be cleared after payment of duty provisionally assessed and after providing the security. ♣ After final assessment, the difference is to be paid / refunded.
- In case the goods were warehoused bond to execute for twice the difference in duty.

3. GOVERNMENT HAS NOTIFIED CUSTOMS (FINALIZATION OF PROVISIONAL ASSESSMENT) REGULATIONS, 2018 WHEREIN IT IS PROVIDED THAT:

- (i) One month will be allowed for importer/exporter to furnish the deficient information from the date of the provisional assessment order or as requested
- (ii) Intimation for furnishing deficient information will be issued to the importer/exporter within fifteen days from date of provisional assessment order
- (iii) Extension not exceeding three months will be granted to the importer/ exporter for this purpose. Power to extend by a further three months is available with the Additional Commissioner or Joint Commissioner of Customs and with further powers with Commissioner of Customs
- (iv) Upon receipt of the information, assessment is required to be finalized within two months from the date when the last of the information was furnished by the importer/exporter. Where documents are not furnished, provisional assessment is to be finalized within two months from the end of the time allowed for furnishing the information. This time period of two months may be extended by Commissioner of Customs by additional three months
- (v) Assessment to be finalized as per section 18 and any shortfall in duty paid to be appropriated from the security collected
- (vi) Bond executed at the time of order of provisional assessment may be cancelled on finalization of the assessment
- (vii) Failure to adhere to these Regulations attracts penalty of `50,000 to importer/exporter and authorized person/CH Broker.

4. TIME LIMIT FOR SUBMISSION OF INFORMATION / DOCUMENT / REPORT etc.



Note: All the Information / Document need to be submitted in one instance by the Importer / Exporter, After submission inform the Proper Officer in writing.

5. TIME LIMIT FOR FINALIZATION OF PROVISIONAL ASSESSMENT

Exporter not submitted Information /

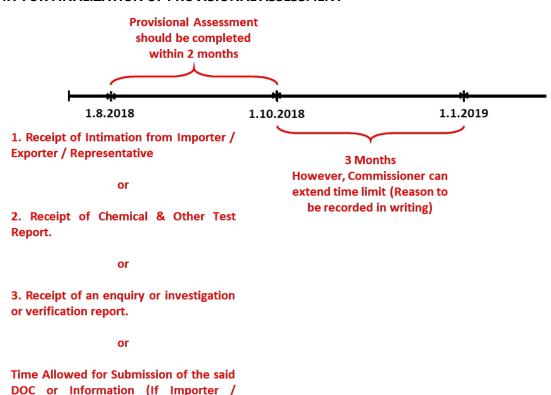


ILLUSTRATION 3:

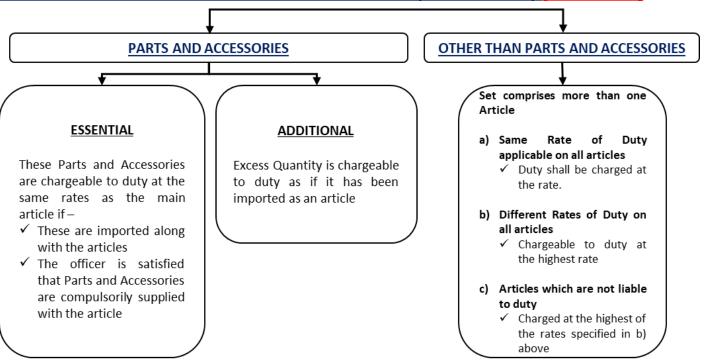
Report)

If duty was provisionally assessed in April month then interest shall be payable from 1st April to date of payment of such amount.

Interest will be granted if refund is not made within 3 months from the date of final assessment of duty @ 6% (u/s 27 A)



CLASSIFICATION OF GOODS AND CHARGING OF DUTY (GOODS IN SET) [SECTION 19]



RE-IMPORTATION OF GOODS [SECTION 20]

In case the goods have been imported into India after exportation therefrom:

- (i) they shall be liable to such duty as the goods of like kind and value are liable; and
- (ii) they shall be subject to such restrictions and conditions as apply to like goods of the same kind and value.

Re-imports are entitled for following concessions as have been notified by the Government:

CONCESSIONAL DUTY PAYABLE IN CASE OF RE-IMPORTATION OF GOODS EXPORTED FOR REPAIRS OR EXPORTED UNDER DUTY DRAWBACK, REBATE ETC.			
SR. NO.	DESCRIPTION OF GOODS EXPORTED	AMOUNT OF IMPORT DUTY PAYABLE IF RE-IMPORTED	CONDITION
1	_ .	Amount of incentive availed of at the time of export	a) 3 years. This is extendable to 5 years.b) The exported goods and the reimported goods must be the same.
2	Goods exported for repairs abroad	Duty of customs which would be leviable if the value of reimported goods after repairs were made up of the fair cost of repairs carried out including cost of materials used in repairs (whether such costs are actually incurred or not), insurance and freight charges, both ways.	 a) Same as Above b) Same as Above c) the ownership of the goods should also not have changed.

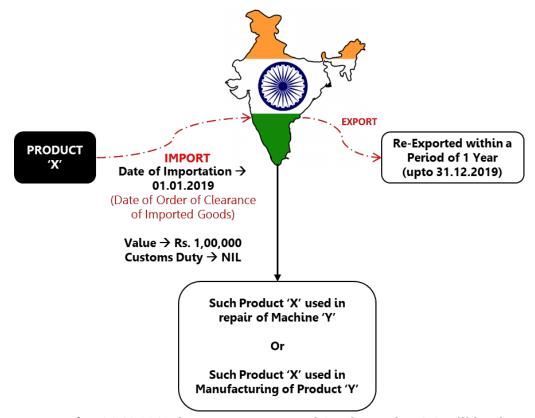
EXEMPTION TO RE-IMPORT OF GOODS AND PARTS THEREOF FOR REPAIRS, RECONDITIONING, REPROCESSING, REMAKING OR SIMILAR OTHER PROCESS

SR. NO.	MANUFACTURED IN INDIA AND RE-IMPORTED FOR	RE-IMPORTATION FROM THE DATE OF EXPORTATION	CONDITION
1	Repairs or for reconditioning	3 Years. In case of export to Nepal, such time-limit is 10 years.	a) Goods must be re-exported within six months (extendable till one year) of the date of re-
2*	 (a) Reprocessing (b) Refining (c) Re-making (d) Subject to any process similar to the processes referred to in clauses (a) to (c) above. 	1 Year	importation b) The Assistant Commissioner / Deputy Commissioner of Customs is satisfied as regards identity of the goods. c) The importer at the time of importation executes a bond.

Note: In 2* above, if any loss of imported goods is noticed during such operation, such loss shall be exempted from whole of the custom duties subject to the satisfaction of Assistant/ Deputy Commissioner of Customs.

The exemption is available even if quantity re-imported is short or low in quantity as long as nature and variety of goods is same.

EXAMPLE:



If Re-export after 31.12.2019 then Duty on Imported Goods (Product 'X') will be charged.

ILLUSTRATION 4:

A machine was originally imported from Japan at Rs. 250 lakh in July, 20XX on payment of all duties of customs. The said machine was exported (sent-back) to supplier for repairs in December, 20XX and re-imported without any re-manufacturing or re-processing in October next year after repairs. Since the machine was under warranty period, the repairs were carried out free of cost.

However, the fair cost of repairs carried out (including cost of material Rs. 6 lakh) would have been Rs. 9 lakh. Actual insurance and freight charges (to and from) were Rs. 3 lakh. The rate of basic customs duty is 10% and integrated tax is 12%. Ignore GST compensation cess.

Compute the amount of customs duty payable (if any) on re-import of the machine after repairs. The ownership of the machine has not been changed during the period.

Note: The importer intends to avail exemption, if any, with regard to re - importation of goods which had been exported for repairs abroad.

Answer: As per Notification No. 46/2017 Cus. dated 30.06.2017, duty payable on re- importation of goods which had been exported for repairs abroad is the duty of customs which would be leviable if the value of re-imported goods after repairs were made up of the fair cost of repairs carried out including cost of materials used in repairs (whether such costs are actually incurred or not), insurance and freight charges, both ways. However, following conditions need to be satisfied for availing this concession:

- (a) goods must be re-imported within 3 years, extendable by further 2 years, after their exportation;
- (b) exported goods and the re-imported goods must be the same;
- (c) ownership of the goods should not change.

Since all the conditions specified above are fulfilled in the given case, the customs duty payable on re-imported goods will be computed as under:

Particulars	Amount (Rs.)
Value of goods re-imported after exports [Rs. 9 lakh (including cost of materials) + Rs. 3 lakh]	12,00,000
Add: Basic customs duty @ 10% (A)	1,20,000
Add: Social Welfare Surcharge @ 10% on Rs. 1,20,000 (B)	12,000
Value for computing integrated tax under section 3(7) of Customs Tariff Act, 1975	13,32,000
Integrated tax @ 12% (Rs. 13,32,000 x 12%) - (C)	1,59,840
Customs duty and integrated tax payable [(A) +(B)+ (C)]	2,91,840

JETSAM, FLOTSAM, DERELICT AND WRECKAGE [SECTION 21]

All goods, derelict, jetsam, flotsam and wreck brought or coming into India, shall be dealt with as if they were imported into India, unless it be shown to the satisfaction of the proper officer that they are entitled to be admitted duty-free under this Act.

- **Jetsam** This refers to goods jettisoned from the vessel to save her from sinking.
- **Flotsam** Jettisoned goods which continue floating in the sea are called flotsam.
- **♣ Derelict** This refers to any cargo, vessel, etc. abandoned in the sea with no hope of recovery.
- ♣ Wreck If any boat or steamer or a vessel gets destroyed in any accident, the broken parts thereof are referred as wreckage.

If any of these goods arrive or are brought to India then the person claiming title to such goods is liable to pay duty as if these are imported goods.

ILLUSTRATION 5:

Distinguish between Jetsam and Flotsam

Answer: Jetsam and Flotsam are goods which are jettisoned (i.e. thrown with speed) from the vessel into the sea to reduce weight of vessel to prevent it from sinking. They are not abandoned goods. Jetsam gets sunk whereas Flotsam does not sink but floats. Duty is payable on both unless they are entitled to be admitted free of duty.

ABATEMENT OF DUTY (VALUE) ON DAMAGED GOODS [SECTION 22]

If the goods are damaged at any time:

- 1. Before unloading in India
- 2. During the course of unloading in India
- 3. When the goods are under custody of the custodian
- 4. During transit between customs area and warehouse.
- 5. During warehouse.

And such damage results into reduction in the value of goods then the duty liability of the importer will also be reduced in proportion of the devaluation of goods.

AMOUNT OF DUTY CHARGEABLE AFTER ABATEMENT

= Duty on goods before damage / Deterioration ×

Value of Damaged / Deteriorated Goods

Value of Goods before damage / deterioration

ILLUSTRATION 5:

If the value of goods is Rs. 10,000 and after damage the value is Rs. 2,000 then duty payable on Rs. 10,000/- should be appropriately reduced to 20% (proportion of 2000 to 10000).

REMISSION OF DUTY ON GOODS LOST, DESTROYED OR ABANDONED [SECTION 23]

a. REMISSION OF DUTY:

Any imported goods have been lost (otherwise than as a result of pilferage) or destroyed, at any time before clearance for home consumption, the Assistant Commissioner of Customs or Deputy Commissioner of Customs shall remit the duty on such goods. [Sub-section (1)].

POINTS TO BE NOTED:

- 1. It comes into play after the duty has been paid and even after an order for home consumption has been passed, but before the goods are actually cleared, and then it is found that they have been lost/destroyed.
- 2. In that case the provision is not that goods will not be liable to duty, but duty paid on such goods shall be remitted by the Assistant/Deputy Commissioner of Customs.
- 3. The remission of duty is permissible only in the case of total loss of goods. This implies that the loss is forever and beyond recovery. The loss referred to in this section is generally due to natural causes like fire, flood, etc.
- 4. In the above situation, the loss/ destruction have to be proved to the satisfaction of the Assistant Commissioner or Deputy Commissioner. Thereupon, he may pass remission orders canceling the payment of duty. In case duty has already been paid, refund can be obtained after getting the remission orders.

b. RIGHT TO RELINQUISH THE TITLE TO THE GOODS-ABANDONMENT OF GOODS:

The owner of any imported goods may, at any time before an order for clearance of goods for home consumption under section 47 or an order for permitting the deposit of goods in a warehouse under section 60 has been made, relinquish his title to the goods and thereupon he shall not be liable to pay the duty thereon.

However, the owner of any such imported goods shall not be allowed to relinquish his title to such goods regarding which an offence appears to have been committed under this Act or any other law for the time being in force.

DISTINGUISH BETWEEN SECTION 13 AND SECTION 23

Basis	Pilferage of Goods u/s 13	Loss or Destruction of goods u/s 23
Meaning	The word 'pilfer' means to steal, especially in small quantities; petty theft.	The word 'lost' or 'destroyed' refers to total loss of goods i.e. loss is forever and beyond recovery. Abandonment of goods is possible where the importer is unwilling / unable to take the delivery of the imported goods
Duty on goods	The importer shall not be liable to pay the duty leviable on such goods.	The duty paid on such goods shall be remitted to the importer.
Subsequent restoration of goods	Where the pilfered goods are restored to the importer after pilferage, the importer become liable to duty.	In case of destruction of goods, the restoration is not possible.
Warehoused goods	Provisions of section 13 are not applicable to warehoused goods.	Provisions of section 23 apply to warehoused goods also.
Onus to prove the pilferage/destruction or loss of goods	The onus to prove the pilferage does not lie on the importer as it is obvious at the time of examination by the proper officer.	The importer has to prove the loss / destruction to the satisfaction of the Assistant / Deputy Commissioner of Customs.
Time of occurrence of pilferage or loss / destruction	The imported goods must have been pilfered after the unloading thereof and before the proper officer has made an order for clearance for home consumption or deposit in a warehouse.	The imported goods must have been lost/destroyed at any time before clearance for home consumption under section 47.

ILLUSTRATION 6:

Peerless Scraps, imported during August 20XX, by sea, a consignment of metal scrap weighing 6,000 M.T. (metric tonnes) from U.S.A. They filed a bill of entry for home consumption. The Assistant Commissioner passed an order for clearance of goods and applicable duty was paid by them. Peerless Scraps thereafter found, on taking delivery from the Port Trust Authorities (i.e., before the clearance for home consumption), that only 5,500 M.T. of scrap were available at the docks although they had paid duty for the entire 6.000

M.T., since there was no short-landing of cargo. The short-delivery of 500 M.T. was also substantiated by the

Port-Trust Authorities, who gave a "weighment certificate" to Peerless Scraps.

On filing a representation to the Customs Department, Peerless Scraps has been directed in writing to justify as to which provision of the Customs Act, 1962 governs their claim for remission of duty on the 500 M.T. not delivered by the Port-Trust.

You are approached by Peerless Scraps as "Counsel" for an opinion/advice. Examine the issues and tender your opinion as per law, giving reasons.

Answer:

As per provisions of section 23, where it is shown to the satisfaction of Assistant or Deputy Commissioner that any imported goods have been lost or destroyed, otherwise than as a result of pilferage at any time before clearance for home consumption, the Assistant or Deputy Commissioner shall remit the duty on such goods. Therefore, duty shall be remitted only if loss has occurred before clearance for home consumption.

In the given case, it is apparent from the facts that quantity of scrap received in India was 6000 metric tonnes and

500 metric tonnes thereof was lost when it was in custody of Port Authorities i.e. before clearance for home consumption was made. Also, the loss of 500 MT of scrap cannot be construed to be pilferage, as loss of such huge quantity cannot be treated as "Petty Theft".

Hence, Peerless Scraps may take shelter under section 23 justifying his claim for remission of duty

DENATURING OF THE GOODS (E.G. ALCOHOL OR SPIRIT) [SECTION 24]

- 1. The Central Government is authorized to make the rules for denaturing of the goods.
- 2. If the goods imported are capable of being used for multiple purpose then duty will be attracted at the highest rate that may be applicable.
- 3. The importer can make an application so that the customs officer will mix the prescribed substance in a prescribed quantity and thereafter the goods are of only one particular use.

 In other words such mixing results into change of the nature of goods.
- 4. The duty will be payable as per classification after the change of nature.

ILLUSTRATION 7:

Ethyl Alcohol which is not denatured attracts a higher rate of customs duty whereas denatured ethyl alcohol attracts lower rate of duty. Assuming undenatured ethyl alcohol is imported, certain very bitter chemicals can be added to denature the spirits as per Rules and once they are denatured, they attract the lower rate of duty.

POWER OF CENTRAL GOVT. TO GRANT EXEMPTION [SECTION 25]

- lacktriangle By issue of Notification o In Public Interest o Applicable to All
- **♣** By issue of Order → Special Circumstance → Applicable to Particular Person since date specified in order.

EXEMPTION FROM CUSTOMS DUTY ON IMPORTED GOODS USED FOR INWARD PROCESSING OF GOODS [SECTION 25A]

Where the Central Government is satisfied that it is necessary in the public interest so to do, it may, by notification, exempt such of the goods which are imported for the purposes of repair, further processing or manufacture, as may be specified therein, from the whole or any part of duty of customs leviable thereon, subject to the following conditions, namely:—

- (a) the goods shall be re-exported after such repair, further processing or manufacture, as the case may be, within a period of one year from the date on which the order for clearance of the imported goods is made;
- (b) the imported goods are identifiable in the export goods; and
- (c) such other conditions as may be specified in that notification.

EXEMPTION FROM CUSTOMS DUTY ON RE-IMPORTED GOODS USED FOR OUTWARD PROCESSING [SECTION 25B]

Notwithstanding anything contained in section 20, where the Central Government is satisfied that it is necessary in the public interest so to do, it may, by notification, exempt such of the goods which are re-imported after being exported for the purposes of repair, further processing or manufacture, as may be specified therein, from the whole or any part of duty of customs leviable thereon, subject to the following conditions, namely:—

- (a) the goods shall be re-imported into India after such repair, further processing or manufacture, as the case may be, within a period of one year from the date on which the order permitting clearance for export is made;
- (b) the exported goods are identifiable in the re-imported goods; and
- (c) such other conditions as may be specified in that notification."

REFUND OF EXPORT DUTY IN CERTAIN CASES [SECTION 26]

Where on the exportation of any goods any duty has been paid, such duty shall be refunded to the person by whom or on whose behalf it was paid, if-

- (1) the goods are returned to such person otherwise than by way of re-sale;
- (2) the goods are re-imported within 1 year from the date of exportation; and
- (3) an application for refund of such duty is made behalf the expiry of 6 months from the date on which the proper officer makes an order for the clearance of the goods.

REFUND OF IMPORT DUTY IN CERTAIN CASES [SECTION 26A]

1. APPLICABILITY:

This section applies in respect to the importation of any goods capable of being easily identified as imported goods, if:

- a) Any duty has been paid on clearance of such goods for home consumption;
- b) The goods are found to be defective or otherwise not in conformity with the specifications agreed upon between the importer and the supplier of goods;
- c) The goods have not been worked, repaired or used after importation except where such use was indispensable to discover the defects or non-conformity with the specifications;
- d) The goods are identified to the satisfaction of the Assistant Commissioner of Customs or Deputy Commissioner of Customs as the goods which were imported;
- e) The importer does not claim drawback under any other provision of this Act; and
- f) Either of the following
 - i. The goods are exported; or
 - ii. The importer relinquishes his title to the goods and abandons them to customs; or
 - iii. Such goods are destroyed or rendered commercially valueless in the presence of the proper officer.

2. TIME-LIMIT OF EXPORT/RELINQUISHMENT/DESTRUCTION:

Within a period of upto 30 days from the date on which the proper officer makes an order for the clearance of imported goods for home consumption under section 47.

3. REFUND:

Duty paid at the time of clearance of such goods shall be refunded to the person by whom or on whose behalf it was paid.

NOTE:

1. An application for refund of duty shall be made before the expiry of 6 months from the relevant date in the prescribed form and manner.

"Relevant Date" means;

- (a) in cases where the goods are exported out of India, the date on which the proper officer makes an order permitting clearance and loading of goods for exportation under section 51.
- (b) in cases where the title to the goods in relinquished, the date of such relinquishment; and
- (c) in cases where the goods are destroyed or rendered commercially valueless, the date of such destruction or rendering of goods commercially valueless.

2. Exceptions to this section:

- **(a) Offending goods:** This section shall not apply to the goods regarding which an offence appears to have been committed under this Act or any other law for the time being in force.
- **(b) Perishable goods or Expired goods:** No refund shall be allowed under this section in respect of perishable goods and goods which have exceeded their shelf life or their recommended storage- beforeuse period.
- 3. The Board may, by notification in Official Gazette, specify any other condition subject to which the refund under this section may be allowed.

ARRIVAL OF VESSEL/AIRCRAFT AT CUSTOMS PORT/AIRPORT ONLY [SECTION 29]

Procedure to be followed by the Carrier in case of import [Key → PLOW]

- Personnel-in-charge entering India shall call or land at Customs Port or customs airport only.
- ♣ While arriving by land route, the vehicle should come by approved route to 'Land customs station' only.
- ♣ It can land at Other place only if compelled by accident, stress of weather or other unavoidable cause and intimate to the nearest police station/custom officer.
- ♣ Person in charge, Without the consent, of officer permits any goods to be unloaded from, or any of the crew or passengers to depart from the vicinity. Where the departure or removal is necessary for reasons of health, safety or the preservation of life or property it can be carried on.

NOTE:

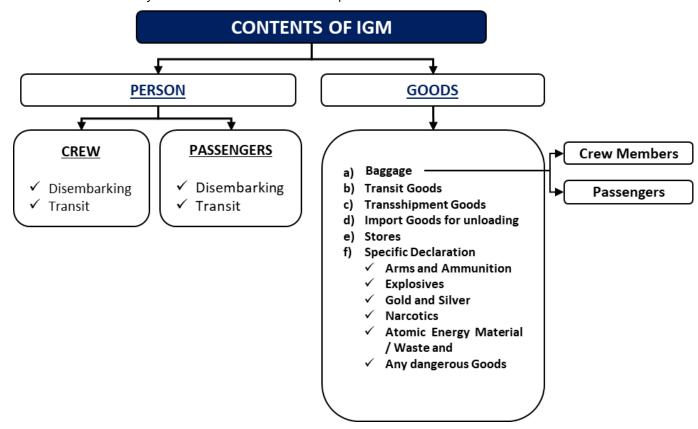
However, CBEC may allow such person in charge to permit such vessel / aircraft to cell / land at a place other than customs port / airport.

Any contravention of this provisions will operate as a presumption against the person-in-charge of conveyance or beneficial owner to have an intention to illegally imports goods into India. So, entry (or attempt to enter) goods originating from outside India into any place not notified as a customs station is barred.

IMPORT GENERAL MANIFEST/IMPORT REPORT [SECTION 30]

Import by	What to be filed	Filing-Whether before or after Arrival	Time-Limit for Filing
Vessel	IGM (filed electronically)	Before Arrival	Any time
Aircraft	IGM (filed electronically)	Before Arrival	Any time
Vehicle	Import Report (IR)	After Arrival	Within 12 hours of Arrival

- In case of delay, unless there is a valid reason, the person in charge is punishable with fine up to Rs.50,000/-
- The IGM contains a declaration to the effect that the information furnished therein is correct and it is to be signed by the person who is filing it.
- The customs officer may allow a correction in the IGM provided it is not material.



UNLOADING OF GOODS [SECTION 31]

- 1. After submission of IGM, the customs officer may examine the vessels or aircraft before granted of entry inward.
- 2. Any of the goods shall not be unloaded unless entry inward has been granted but this does not apply for passengers, baggage, perishable items and import by post.
- 3. The unloading shall always be under supervision of the customs officer who will ensure that any of the goods which are not to be unloaded in India are not unloaded in India.
- 4. The unloading shall be in customs area only appointed by commissioner under section 8 on a working day, during working hours.
- 5. Where a vessel is parked away from customs port, the goods can be brought to the customs port only through steamer or boat.
- 6. The goods cannot be unloaded from the ship unless permission is granted by the customs officer.

GOODS THAT CANNOT BE UNLOADED [SECTION 32]

Any of the goods which are not mentioned in the IGM cannot be unloaded

LOADING AND UNLOADING OF GOODS AT APPROVED PLACES ONLY [SECTION 33]

Section 33 provides that loading and unloading of goods are to be undertaken only at places approved under section 8(a) of the Customs Act, 1962.

UNLOADING OF GOODS UNDER SUPERVISION OF CUSTOMS OFFICER [SECTION 33 to 36]

Unloading of the Goods shall take place under supervision of **Customs Officer (Section 34)**, within the **Customs areas (Section 34)** only on a **working day (Section 36)** during working hours i.e. not on Sundays or any holidays observed by customs department or any other day after working hours except after giving notice and on payment of fees.

BOAT NOTE [SECTION 35]

In case the vessel arriving at the port does not get a berth, then the import cargo is taken from the ship to the shore and the export cargo is taken from the shore to the ship, in boats.

POWER TO BOARD CONVEYANCES [SECTION 37]

Proper officer may at any time board any conveyance carrying imported goods or export goods and may remain on such conveyance for such time as he considers necessary.

POWER TO REQUIRE PRODUCTION OF DOCUMENTS AND ASK QUESTIONS [SECTION 38]

Proper officer may require the person-in-charge of any conveyance carrying imported goods/export goods to produce any document and to answer any questions and; thereupon the latter shall produce documents and answer such questions.

EXPORT GOODS NOT TO BE LOADED UNLESS PASSED BY PROPER OFFICER [SECTION 40]

Export General Manifest provides that the person-in-charge of a conveyance carrying export goods shall, before departure of the conveyance from a customs station, deliver to the proper officer in the case of a vessel or aircraft, an export manifest, and in the case of a vehicle, an export report, in the prescribed form. The person delivering the export manifest or export report shall, at the foot thereof, make and subscribe to a declaration as to the truth of its contents.

If the export manifest/report is incorrect or incomplete then it can be amended or supplemented after permission of the proper officer. The permission will be granted only if the proper officer is satisfied that there was no fraudulent intention of the person-in-charge.

NO CONVEYANCE TO LEAVE WITHOUT WRITTEN ORDER – APPLICATION TO BOTH IMPORTED AND EXPORT GOODS [SECTION 42]

Conveyance cannot leave without order: The person-in-charge of a conveyance which-

- (a) has brought any imported goods or
- (b) has landed any export goods

at a customs station shall not cause or permit the conveyance to depart from that customs station unit a written order to that effect has been given by the proper officer.

CUSTODY [SECTION 45] → Key COR LP

- 4 After Unloading, the goods shall be in the Custody of **Custodians** appointed by the CG.
- ♣ The Custodian shall not permit removal of the goods unless a valid **Order** for removal of the goods has been passed by the proper officer.
- 4 The Custodians shall maintain proper **Records** for the goods unloaded and removed.
- ♣ After unloading and before removal, if any of the Goods are Lost, the Duty liability in respect of such good shall be of the Custodians.
- As per Section 13, if there is any **Pilferage** (theft) of Goods after unloading and before removal from customs area then the Duty liability in respect of the goods pilfered will not be of the importer unless such goods are restored to him.

FILING OF "BILL OF ENTRY" [SECTION 46]

This is the Document, required to be filed by the importer for removal of goods from customs area.

The BOE shall be accompanied with maximum possible document such as:

- Copy of Agreement or contract
- Copy of broker 's note, if any
- Quotation given by the Supplier
- ♣ Any Report of test or analysis, etc., if any

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Before Amendment:	After Amendment :
The importer shall present the bill of entry before the end of the next day following the day (excluding holidays) preceding the day on which the aircraft or vessel or vehicle carrying the goods arrives at a customs station at which such goods are to be cleared for home consumption or warehousing.	The importer shall present the bill of entry "before the end of the day (including holidays) preceding the year" on which the aircraft or vessel or vehicle carrying the goods arrives at a customs station at which such goods are to be cleared for home consumption or warehousing

However, a bill of entry may be presented within 30 days of the expected arrival of the aircraft or vessel or vehicle by which the goods have been shipped for importation into India.

Where the bill of entry is not presented within the time so specified and the proper officer is satisfied that there was no sufficient cause for such delay, the importer shall pay such charges for late presentation of the bill of entry as may be prescribed.

Charges for late presentation of the bill of entry @ Rs. 5,000 per day for the initial 3 days of default and Rs. 10,000 per day for each day of default thereafter.

TYPES OF BILL FO ENTRY

Types	Colour of BOE	BOE is presented in 4 copies:
BOE for Home Consumption	(White)	Original – For Customs Authority
BOE for Warehousing	(Yellow)	Duplicate – Custodian of cargo Triplicate – Importer
BOE for Ex Bond clearance for HC	(Green)	Quadruplicate – Banker

NOTE: Bill of entry may be presented before the delivery of import manifest (import through vessel or aircraft) or Import report (import through land route) if the vessel/aircraft/vehicle by which the goods have been shipped for importation into India is expected to arrive within 30 days from the date of such presentation. (Effective from 06.08.2014)

REMOVAL OF GOODS [SECTION 47]

- ♣ Where a BOE has been filed for home Consumption, the importer shall pay the Duty within specified time limit*, and in case of delay, interest is payable for the period of delay at the prescribed rates (15% p.a.)
- Proper officer shall pass an order after satisfaction and payment Duty.
- ♣ For Clearances of Goods for HC, "Out of Customs Charge order" is passed.
- When a BOE is filed for Warehousing, the warehousing procedure shall be fulfilled.
- ♣ If the Goods are not removed within 30 days since unloading, then **demurrage** becomes payable (in case of extension).

*SPECIFIED TIME LIMIT

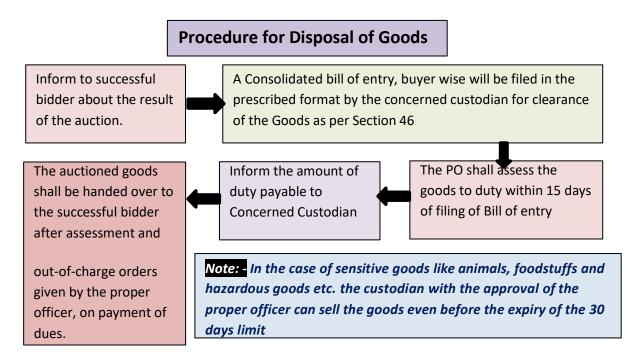
The importer shall pay the import duty –

- (a) On the date of presentation of the bill of entry in the case of self-assessment; or
- (b) Within one day (excluding holidays) from the date on which the bill of entry is returned to him by the proper officer for payment of duty in case of assessment, reassessment or provisional assessment; or
- (c) In the case of deferred payment, from such due date as may be specified by rules made in this behalf.

And where the importer fails to pay the duty within the time so specified, he shall pay interest on the duty not paid or short paid till the date of its payment, at such rate not less than 10% but not exceeding 36%, as may be fixed by the Central Government, by notification in the Official Gazette. [Present notified rate is 15%].

DISPOSAL OF GOODS [SECTION 48]

Where the importer fails to remove the goods within the prescribed time limit of 30 days and no extension has been allowed, then custodian may dispose off such goods after giving notice to the importer and as per the direction of the proper officer of customs.



WAREHOUSING WITHOUT WAREHOUSING [SECTION 49]

Where the assessment cannot be completed (within reasonable time) or where assessment has been completed and duty has been paid but goods cannot be removed from the customs area, the importer may apply for storage of these goods in a warehouse (for a period not exceeding 30 days in a public warehouse plus extension by commissioner for further period of 30 days) without proper warehousing. This is called as warehousing without warehousing.

PAYMENT OF DUTY, INTEREST, PENALTY ETC. THROUGH ELECTRONIC CASH LEDGER [SECTION 51A]

A new system to leverage payments-automation is enabled in Customs clearance (imports or exports) where Central Board of Indirect Taxes and Customs (CBIC) to prescribe the persons who are permitted to hold balance in Electronic Cash Ledger and the procedures for deposit, utilization and refund of surplus balance. These regulations are yet to be notified.

With the use of an authorized mode of payment, persons who regularly make payment – duty, interest and even penalty, if any – are permitted to 'deposit' a certain amount of money. And then when the occasion to make payment arises, they can pay by debit to the balance in this deposit account (electronic cash ledger balance). Person who may be required to regularly make payment are importer, exporter (of dutiable goods) or Customs Brokers.

- (1) Every deposit made towards duty, interest, penalty, fee or any other sum payable by a person under the provisions of this Act or under the Customs Tariff Act, 1975 or under any other law for the time being in force or the rules and regulations made thereunder, using authorised mode of payment shall, subject to prescribed conditions and restrictions, be credited to the electronic cash ledger of such person, to be maintained in the prescribed manner.
- (2) The amount available in the electronic cash ledger may be used for making any payment towards duty, interest, penalty, fees or any other sum payable under the provisions of this Act or under the Customs Tariff Act, 1975 or under any other law for the time being in force or the rules and regulations made thereunder in the prescribed manner and conditions and prescribed time limit.
- (3) The balance in the electronic cash ledger, after payment of duty, interest, penalty, fee or any other amount payable, may be refunded in the prescribed manner.
- (4) Board is empowered to exempt the deposits made by specified class of persons or with respect to specified categories of goods, from all or any of the provisions of this section if it is necessary or expedient so to do.

RELEVANT POINTS FROM CASE LAWS

- 1. Can the goods be confiscated after the order under section 47?
- → Proceedings under section 28, 110, and 124 are not subject to the order under section 47 of the Act.

2. In case of detention of goods by the Department, who is to pay the demurrage charges?

→ In case there is detention of goods by Customs authorities for whatever reason, and goods so detained are given to the custody of approved custodian during the pendency of adjudication of rival claims between the department and the importer, the importer is entitled to be furnished with a detention certificate or an order detaining the goods indicating reasons which is to serve as the evidence of detention and as a receipt of the goods by the department. Upon the settlement of dispute, if the department succeeds in establishing that detention is justified, the importer has to bear the burden of demurrage, and if the department fails the department has to bear the same.

CUSTOMS (IMPORT OF GOODS AT CONCESSIONAL RATE OF DUTY) RULES. 2017

The salient features of the rules are discussed hereunder:

[Rule 2] Application: These rules shall apply to an importer, who intends to avail the benefit of an exemption notification issued under section 25(1) of the Customs Act, 1962 and where the benefit of such exemption Is dependent upon the use of imported goods covered by that notification for the manufacture of any commodity or provision of output service. These rules shall apply only in respect of such exemption notifications which provide for the observance of these rules.

[Rule 3] Definition:

(a) Exemption notification: means a notification issued under section 25(1) of the Customs

- (b) Information: means the information provided by the manufacturer who intends to avail the benefit of an exemption notification.
- (c) Jurisdictional Custom Officer: means an officer of Customs of a rank equivalent to the rank of Superintendent or an Appraiser exercising jurisdiction over the premises where either the imported goods shall be put to use for manufacture or for rendering output services.
- **Amendments in Rule 3**
- (i) Capital goods: means goods, the value of which is capitalised in the books of account of the importer.
- (ii) Job work: means any treatment, process or manufacture, consistent with the exemption notification undertaken by a person on goods belonging to the importer except gold, jewellery and articles thereof, and other precious metals or stones; and the term "job worker" shall be construed accordingly. The definition of "manufacture" and "output service" has been amended as follows: -

"Manufacture" means the processing of raw materials or inputs by the importer in any manner that results in emergence of a new product having a distinct nature or character or use or name; and the term "manufacturer" shall be construed accordingly. "Output service" means supply of service excluding after-sales service, utilizing imported goods.'.



The following new definitions have been inserted in Rule 3 containing Definitions (iii)Common portal: means the common customs electronic portal as referredto in section 154C of the Act. CBIC has notified ICEGATE (https://www.icegate.gov.in) as common Customselectronic portal.

(iv)Customs automated system: means the Indian Customs Electronic DataInterchange

(v)Date of import: means the date of the order made under section 47 of theAct permitting clearance of such goods.

Rule 4, 5, 6, 6A, 7 and 8(1) has been amended to provide the following: -

Importer to give prior information [Rule 4] – 👫



Earlier, the importer intending to avail benefit of concessional rate of duty on the goods imported, was required to provide information to the Deputy Commissioner of Customs or Assistant Commissioner of Customs of the place where imported goods would be put to use for manufacturing or rendering of services except after- sales services.

However, now the importer is required to provide one-time information on common portal in the prescribed form consisting of the following particulars namely:-

- (i) the name and address of the importer and his job worker, if any;
- (ii) the goods produced or process undertaken at the manufacturing facility ofthe importer or his job worker, if any, or both;
- the nature and description of goods imported used in the manufacture ofgoods at the premises (iii) of the importer or the job worker, if any;
- (iv) particulars of the exemption notification applicable on such import;
- (v) nature of output service rendered utilising the goods imported; and
- (vi) the intended port(s) of import



On acceptance of the above information, an **Import of Goods at Concessional Rate Identification Number (IIN)** shall be generated against such information furnished.

The importer also has an option to update the prescribed form in case of any change in the details on the common portal.

The importer who intends to avail the benefit of an exemption notification shall submit a continuity bond with such surety or security as deemed appropriate bythe Deputy Commissioner of Customs or the Assistant Commissioner of Customs, as the case may be, having jurisdiction over the premises where the goods imported shall be put to use for manufacture of goods or for rendering output service, withan undertaking to pay the amount equal to the difference between the duty leviable on inputs but for the exemption and that already paid, if any, at the time of import, along with interest, at the rate fixed by notification issued under section 28AA ofthe Act, for the period starting from the date of import of the goods on which the exemption was availed and ending with the date of actual payment of the entire amount of the difference of duty that he is liable to pay.

The requirement to submit the continuity bond shall continue to exists in the amended regulations.

Procedure to be followed [Rule 5] -

Prior to the amendment in rule 5, the importer was required to furnish the detailsof estimated quantity and value of goods to be imported on an annual basis before undertaking the imports, to the Deputy Commissioner/Assistant Commissioner of Customs having jurisdiction over the premises where imported goods shall be putto use.

Such information was also required to be intimated to Deputy Commissioner/ Assistant Commissioner of Customs at the Custom station of importation.

With the amendment in rule 5, the importer who intends to avail the benefit of an exemption notification shall now mention IIN and continuity bond number while filing bill of entry.

Accordingly, the Deputy/ Assistant Commissioner of Customs at the Custom Station of importation, shall allow the benefit of the exemption notification to the importer.

Once a Bill of Entry is cleared for home consumption, the bond submitted by the importer gets debited automatically in the customs automated system and the details shall be made available electronically to the Jurisdictional Custom Officer.

The new process aims at removing manual intervention and simplifying the procedure with focus on automation and faceless procedure to avail the benefit of concessional rate of duty.

Importer to maintain records [Rule 6] -



Earlier, the importer was required to provide information of goods received in premises within 2 days to the jurisdictional custom officer. The importer was also required to maintain the specific details in respect of goods imported and file return on a quarterly basis by 10th of the following quarter.

However, now the importer shall not be required to intimate the jurisdictional officer regarding receipt of goods imported.

Further, the importer shall maintain an account in such manner to clearly indicatethe quantity-

- (i) and value of goods imported;
- (ii) and date of receipt of the goods imported in the relevant premises;
- (iii) of such goods consumed;
- (iv) of goods sent for job work, nature of job work carried out;
- (v) of goods received after job work;
- (vi) of goods re-exported, if any, under rule 7; and
- (vii) remaining in stock, according to Bills of Entry

and shall produce the said account as and when required by the Deputy/ Assistant Commissioner of Customs, having jurisdiction over the premises or where the goods imported shall be put to use for manufacture of goods or for rendering output service:

Further, in case of non-receipt or short receipt of goods imported in the relevant premises, the importer shall intimate such non-receipt or short receipt immediately on the common portal in the prescribed form.

The importer shall submit a monthly statement on the common portal in the prescribed form by the 10th day of the following month.

Procedure for allowing imported goods for job work [Rule 6A] -



The copy of intimation was then forwarded to Customs officers under whose jurisdiction the premises of job-worker is situated. The importer was required to send the goods under a challan specifying description and quantity of the goods. The maximum period for which the goods can be sent to the job worker was 6 months from the date of issue of challan.

Thereafter, completion of job-work, processed goods had to be sent to the importer under challan or challan of principal manufacturer duly endorsed by him.

However, now the importer is no longer required to intimate jurisdictional customs officer about his intention of sending goods to job-worker.

Further, the importer shall maintain a record of the goods sent for job work during the month and mention the same in the prescribed monthly statement.

The importer shall send the goods to the premises of the job worker under an invoice or wherever applicable through an e-way bill, as specified in the CGST Act, 2017, mentioning the description and quantity of the goods.

The maximum period for which the goods can be sent to the job worker shall be 6 months from the date of invoice or an e-way bill.

In case the importer is not able to establish that the goods sent for job work have been used as per the particulars mentioned under rule 4, the Jurisdictional Custom Officer shall take necessary action against the importer under rules 8 and 8A. The job worker shall,-

- (i) maintain an account of receipt of goods, manufacturing process undertaken thereon and the waste generated, if any, during such process;
- (ii) produce the account details before the Jurisdictional Custom Officer as and when required by the said officer; and
- (iii) after completion of the job work, send the processed goods to the importer or to another job worker as directed by the importer for carrying out the remaining processes, if any, under the cover of an invoice or an e-way bill.

Procedure for allowing imported goods for unit transfer [Rule 6B] -



Newly introduced rule 6B prescribes procedure for transfer of imported goods to inter-unit.

The importer shall maintain a record of the goods sent for unit transfer during themonth and mention the same in the specified monthly statement.

The importer shall send the goods under an invoice or wherever applicable through an e-way bill, as specified in the CGST Act, 2017, mentioning the description and quantity of the goods.

The importer shall in relation to transfer of goods to another unit,-

- (i) maintain an account of receipt of goods, manufacturing process undertaken thereon and the waste generated, if any, during such process;
- (ii) produce the account details before the Jurisdictional Custom Officer as and when required by the said officer; and
- (iii) after completion of the said process, send the processed goods back to the premises of the importer from where the goods were received or to a job worker for carrying out the remaining processes, if any, under the cover of an invoice or an e-way bill.

Re-export or clearance of unutilized or defective goods [Rule 7] 🚣



Earlier, the importer was allowed to re-export the unutilized or defective imported goods within 6 months from the date of import pursuant to obtaining permission of jurisdictional Deputy Commissioner of Customs/ Assistant Commissioner of Customs having jurisdiction over the premises where imported good are put to use. The value of such re-export not to be less than value of such goods at the time of import.

However, now rule 7 is substituted to provide for the following:

- The importer who has availed the benefit of an exemption notification shalluse the goods imported in accordance with the conditions specified in exemption notification within 6 months of date of import.
- The importer is allowed to suo moto decide to either re-export or clear the unutilized goods for home consumption within 6 months from date of import.

The importer who opts to re-export such goods shall record the details of necessary export documents in the monthly statement. Further, the value of such goods for re-export shall not be less than the value of the said goods at the time of import.

The importer who opts to clear the unutilised or defective goods for home consumption, shall pay the duty along with interest on the common portal and the particulars of such clearance and the payment of duty shall be recorded by the importer in the monthly statement.

As per the clarification provided by the circular, the period for calculation of such interest would start from the date of import of such goods and end with the dateof actual payment

The importer has an option to clear the capital goods imported, after having been used for the specified purpose, on payment of duty equal to the difference between the duty leviable on such goods but for the exemption availed and that already

paid, if any, at the time of importation, along with interest, at the rate fixed by the notification issued under section 28AA of the Act, on the depreciated value allowedin straight line method, as specified below, namely:—

- (i) for every quarter in the first year @ 4%;
- (ii) for every quarter in the second year @ 3%;
- (iii) for every guarter in the third year @3%;
- (iv) for every guarter in the fourth and fifth year @ 2.5%;
- (v) and thereafter for every quarter @ 2%.

Explanation. -

- (i) For the purpose of computing rate of depreciation for any part of a quarter, a full quarter shall be taken into account.
- (ii) The depreciation shall be allowed from the date when the imported capital goods have come into use for the purpose as specified in the exemption notification upto the date of its clearance.

The importer shall, record the particulars of such clearance and payment of duty in the monthly statement.

Recovery of duty in certain cases [Rule 8]



(1) Rule 8(1) has been substituted. Earlier rule 8(1) provides for recovery of duty incase of non-compliance of condition of exemption notification or failure to take action by re-export or clearance of unutilized or defective goods under rule 7.

However, now the Deputy Commissioner of Customs or the Assistant Commissioner of Customs, having jurisdiction over the premises where the imported goods shallbe put to use for manufacture of goods or for rendering output service shall continue to take action and recover duties in the event of:

- Failure by the importer to comply with the conditions to avail the benefit of exemption notification
- Failure by the importer to make prescribed payment

By invoking the bond to initiate the recovery proceedings of the amount equal to the difference between the duty leviable on such goods but for the exemption and that already paid, if any at the time of importation, along with interest at the

prescribed rate starting from the date of importation of the goods on which the exemption was availed and ending with the date of actual payment of the entire amount of the difference of duty that he is liable to pay.

[Notification No. 07/2022 Cus (N.T.) dated 01.02.2022 and Circular No. 04/2022 Cus dated 27.02.2022] [Effective from 01.03.2022]

(2) Notwithstanding anything specified in these rules in relation to removal and processing goods for job work, the importer of imported shall be responsible for ensuring that the said goods are used in accordance with the purposes provided in the exemption notification and in the event of failure to do so, the Jurisdictional Deputy Commissioner of Customs, or, as the case may be, the Assistant Commissioner of Customs having jurisdiction over the premises where the imported goods shall be put to use for manufacture of goods or for rendering output service, shall take action under these rules, without prejudice to any other action which may be taken under the Act, rules or regulations made thereunder or under any other law for the time being in force.

[Rule 8A] Penalty

The importer or a job worker who contravenes any of the provisions of these rules or abets such contravention, shall be liable to a penalty to an extent of the amount specified under clause (ii) of sub-section (2) of section 158 of the Act without prejudice to any other action which may be taken under the Act, rules or regulations made thereunder or under any other law for the time being in force. [Effective from 02.02.2021]

CUSTOMS AUDIT [SECTION 99A]

Place to Carried out Audit	Such audit is permitted to the carried out swiftly either at the premises of the auditee or at the office of the proper officer.		
Meaning of Auditee	It includes an importer or exporter or custodian approved under section 45 or licensee of a warehouse and any other person concerned directly or indirectly in clearing, forwarding, stocking,		
Features of Audit Procedure	(i) Auditee is to preserve records for conduct of this audit for a period of five years (ii) Risk based assessment will identify persons to be audited (iii) Audit will be conducted at the premises of the auditee by the authorized officers who will intimate fifteen days in advance of their schedule visit (iv) Based on the findings, auditee may accept the liabilities and voluntarily discharge the duty, interest and penalty, as applicable (v) Assistance of experts can be availed for conducting this audit such as CA, CWA or IT professionals with permission of Principal Commissioner/ Commissioner of Customs (vi) Contravention of these Regulations attracts penalty of `50.000		
Types of Audit	7. Transaction based audit (TBA)	Under TBA, transactions are audited. It may be noted that a TBA may subsequently be converted into a Premises based Audit (PBA).	
	8. Premises based audit (PBA)	The new provision on Customs Audit under section 99A of the Customs Act, 1962 has extended the scope of Premises Based Audit by including other entities who are concerned with imports or exports. In PBA, customs would review the import and export over a given period and check all relevant commercial records, including financial statements and contracts to verify the particulars given in a goods declaration. PBA would enable the department to bridge the communication divide and usher in a new era of partnership with trade. Further, Board may also select any criteria or Theme for the audit.	
Selection of Audit	Directorate General of Analysis and Risk Management has been entrusted the responsibility of identifying the potential focus areas and entities for various types of audit.		
Executive Commissione rates to assist Audit Commissione rates	ist Audit The executive customs commissionerates shall also assist Audit commissione the conduct of Theme based audit and Premises based		
	the progress and Commissioner shal randomly based on	ioners shall put in place a suitable monitoring arrangement to review performance of audit. Apart from overall supervision, Chief ll examine on a selective basis, 5% of the Audit reports, selected the quarterly reports submitted by Audit Commissionerates to ensure conducted as per prescribed procedures.	

Specified deposits exempted from provisions of electronic cash ledger[Section 51A]



Section 51A of the Customs Act, 1962, provides for payment of duty, interest, penalty, feeor any other sum payable by a person through deposit made in electronic cash ledger.

In terms of Section 51A(4) of the Customs Act, 1962, CBIC may by notification exemptcertain deposits to which provisions of Electronic Cash Ledger will not be applicable.

Accordingly, CBIC has specified certain deposits which are exempted from provisions ofpayment through electronic cash ledger: -

- (i) with respect to goods imported or exported in customs stations where customsautomated system is not in place;
- (ii) with respect to accompanied baggage;
- (iii) other than those used for making payment of,-
 - (a) any duty of customs, including cesses and surcharges levied as duties ofcustoms;
 - (b) IGST;
 - (c) GST Compensation Cess;
 - (d) interest, penalty, fees or any other amount payable under the said Act, or the Customs Tariff Act, 1975.

[Notification No. 19/2022 Cus (N.T.) dated 30.03.2022][Effective from 01.06.2022]

FLOW OF ASSESSMENT AND CLEARANCE PROCEDURE

The master of the vessel calls on the port, files the arrival report and the import general manifest [IGM]



Customs authorities check the documents, grant entry inwards to the vessel and permit the master of the vessel to land and unload the cargo.



The vessel discharges the cargo into the custody of the port trust authorities



The importer of the goods delivers the negotiable bill of lading received from the supplier of the goods to the master of the vessel and obtains the delivery order.



The Importer will file Bill of Entry



The customs authorities check the bill of entry with the IGM and note the bill of entry in the IGM.



The bill of entry is then processed by the appraising Department to decide upon the tariff classification and valuation.



Customs authorities may physically examine the goods



FOR HOME CONSUMPTION

→ If the bill of entry for home consumption is presented, then the customs duty is collected and "pass out of customs charge" is issued.

FOR WAREHOUSE

- → If the bill of entry for warehousing is presented, then the importer executes a warehousing bond equal to twice the amount of duty assessed and then the goods are deposited into the warehouse.
- → The importer on showing the "pass out of customs charge" to the port trust authorities takes delivery of the goods.
- → the importer files a bill of entry for ex- bond clearance for home consumption at the time of clearance of goods from such warehouse.
- → The customs duty is then collected and the goods are allowed to be taken from the port.

CHECK YOUR KNOWLEDGE

- 1. What is the relevant date for determining rate of duty in case of warehoused goods before clearing for home consumption?
 - (a) Date of presentation of in-bond bill of entry;
 - (b) Date of presentation of ex-bond bill of entry i.e. bill of entry for home consumption;
 - (c) Date of payment of duty;
 - (d) Date of import of goods into India
- 2. Which of the following is correct for destroyed goods under section 23?
- (a) It is only applicable in case of total loss of goods even if same can be recovered.
- (b) The importer is not required to pay duty on such goods.
- (c) The provisions are also applicable even if goods are destroyed after warehousing.
- (d) The importer need not prove the loss to the proper officer.
- 3. In which of the following cases, importer can claim pilferage and choose not to pay duty under section 13 of Customs Act?
 - i. Goods pilfered while on high seas;
 - ii. Goods pilfered before unloading;
 - iii. Goods pilfered after unloading but before order for home consumption given by proper officer;
 - iv. Goods cleared for home consumption.
- (a) (i) and (ii)
- (b) (i) and (iii)
- (c) Only (ii)
- (d) Only (iii)
- 4. In which of the following cases, can an importer claim abatement of duty under section 22 of Customs Act.
 - i. Goods pilfered during unloading;
 - ii. Goods damaged by accident (due to negligence of the importer) after unloading but before examination for assessment by customs authorities;
 - iii. Goods destroyed by accident while in warehouse;
 - iv. Goods deteriorated by accident (not due to negligence of the importer) after unloading but before examination for assessment by customs authorities.
- a) Only (iv)
- b) Only (iii)
- c) Both (i) and (iii)
- d) All of above.
- 5. Which of the following statement(s) is/are correct?
 - (i) Special exemption under section 25 of the Customs Act is granted by issuing a notification; (ii) General exemption under section 25 of the Customs Act is granted by issuing an order;
 - (iii) Special exemption is required to be published in official gazette;
 - (iv) General exemption is not required to be published in official gazette.
 - a) All of above
 - b) None of above
 - c) Both (i) and (ii)
 - d) (ii) and (iv)

- 6. ABC Ltd. exported certain goods last year. The buyer has sent back those goods since the same were under warranty and required repairs. Which of the following condition(s) is/are to be satisfied by ABC Ltd. to avail exemption on goods re-imported for repairs under Notification No. 158/95- Cus dated 14.11.1995?
 - (i) The re-import has to be for repairs only;
 - (ii) Goods must be re-exported after repairs;
 - (iii) Goods must be re-exported within 6 months or 1 year if time is extended;
 - (iv) In case goods are not repaired, new goods have to be sent by ABC Ltd within 6 months.
 - a) (i), (ii) and (iv);
 - b) (i), (ii) and (iii);
 - c) (ii) and (iii);
 - d) All of above
- 7. XYZ Ltd. sent certain goods abroad for repairs. XYZ Ltd. has been advised by their consultants that they will have to pay customs duty only on fair cost of repairs, freight and insurance charges, both ways, on reimport of exported goods under Notification No. 46/2017 Cus. dated 30.06.2017 provided they fulfill following conditions:
 - (i) The re-importation is done within 3 or, if time is extended, 5 years;
 - (ii) The exported and re-imported goods are same;
 - (iii) The ownership of goods should not have changed. Choose which one of above is correct.
 - a) (i), (ii) and (iii)
 - b) (ii) and (iii)
 - c) (i) and (iii)
 - d) Only (ii)
- 8. In which of the following cases, the refund under section 27 of the Customs Act, 1962 is credited to the consumer welfare fund?
 - (a) If the importer proves that there is no unjust enrichment;
 - (b) Where goods are imported for non-personal use of an individual;
 - (c) If the amount of refund relates to drawback under sections 74 and 75 of the Customs Act, 1962
 - (d) If the amount relates to export duty paid on goods which have been returned to exporter as specified under section 26 of the Customs Act, 1962.

4

Valuation





CHAPTER OUTLINES

- [Sec. 14(1)] Imported Goods as per Transaction Value.
- [Sec. 14(2)] Tariff Value.
- / [Sec. 14(1) & 14(2)] Summary Chart
- Customs Valuation (Determination of Value of Imported Goods Rules 2007, Import valuation (w.e.f. 10th Oct, 2007).
- Normal Transaction Value.
- Identical Similar Goods.
- [Rule 10] Additions.
- [Rule 11] Declaration by Importer (Valuation Declaration).
- [Rule 12] Rejection of Declaration.
- Determination of Value of Goods purchased on High Seas Basis
- [Rule 4] Value Based on Identical Goods.
- [Rule 5] Value Based on Similar Goods.
- [Rule 6] Change of Order.
- [Rule 7] Deductive Value Method.
- [Rule 8] Computed Value.
- [Rule 9] Residual Method.

The manner in which duties of customs are charged on goods imported into India (import duty) or goods exported from India (export duty) is basically either by way of –

- (a) A specific duty based on the quantity of the goods like Rs. 1000 per metric tone of steel or
- (b) Ad valorem, namely expressed as percentage of the value of the goods i.e. 40% ad valorem. etc.

The disadvantage with a specific rated levy is that the revenue to the Government remains fixed, unless there is variation in the quantum of total imports and exports. The continuous upward trend in the price of goods has suggested that the Government is losing increase in its revenue by not following ad valorem basis of duties.

TERMS USED IN COMMERCIAL PARLANCE

BILL OF LADING:

A negotiable document given by the carriers of the cargo giving particulars of

- (a) Port of shipment
- (b) No. of packages covered by the consignment
- (c) Marks and numbers on the page
- (d) Name of the vessel in which the goods have been dispatched
- (e) Name of the consignee of the goods,
- (f) whether the freight has been pre-paid or is to be collected at the destination.

It is a negotiable document which has to be surrendered to the carrier for getting delivery of the goods.

AIR CONSIGNMENT NOTE:

It is a document corresponding to Bill of Lading, in the case of cargo imported or exported by air.

♣ LETTER OF CREDIT:

This is an instrument delivered by the bank intimating the seller that the buyer has instructed the bank and the bank will according to these instructions pay the seller of the goods, the bill amount for the supply of the goods on presentation of certain documents evidencing shipment of the goods.

MATE's RECEIPT:

A receipt given by the First mate or First officer or cargo supervisor of the conveyance certifying the total quantity of the consignment received on board the vessel or the aircraft. A bill of lading or air consignment note is issued by the agent of the Carrier Company on surrender of the mate's receipt.

CUSTOMS BROKER:

Since the importers / exporters may not be able to devote time and energy to clear imported goods or export goods, and since it involves running about to several organisations apart from customs, like Port, Trust, steamer agents, insurance companies, the assistance of agency organisation having adquate technical knowledge and expertise has been provided in the form of customs broker.

TECHNICAL TERMS RELATED TO VALUE

EX-FACTORY PRICE:

It is the price of the goods at the factory gate. It includes cost of production and manufacturer's margin of profit.

F.A.S (FREE ALONGSIDE):

It is the cost at which the export goods are delivered alongside the ship, ready for shipment. It includes ex-factory + local freight + local taxes.

♣ F.O.B (FREE ON BOARD):

Technically there is not much of a difference between FAS and FOB cost. FOB means the stage at which the goods are placed on board the conveyance carrying the vessel. It can be said to include FAS + loading charges + export duty cess.

C.I.F. (COST INSURANCE FREIGHT):

It is the cost at which the goods are delivered at the Indian port (F.O.B. +Insurance + Freight). It covers cost of goods. Sometimes there is referred as CFC also.

IMPORTED GOODS AS PER TRANSACTION VALUE [SECTION 14(1)]

Value of imported /export goods to be determined as per this section:

The value of -

- a) imported goods and,
- b) export goods, for the purposes of the -
 - Customs Tariff Act, 1975, or
 - any other law for the time being in force.

shall be determined as per this section.

- **Value = Transaction Value:** The value shall be the transaction value of such imported/export goods
- Transaction Value: Transaction Value means
 - i) the price actually paid or payable
 - ii) for the goods when sold for
 - imported into India for delivery at the time and place of importation,
 - export from India for delivery at the time and place of exportation
 - iii) where the buyer and seller of the goods are not related and
 - iv) price is the sole consideration for the sale
 - v) subject to other conditions as may be specified in the rules made in this behalf viz.
 - vi) Customs Valuation (Determination of Value of Imported Goods) Rules, 2007;
 - vii) Customs Valuation (Determination of Value of Export Goods) Rules, 2007.
- **Transaction Value of imported goods to include certain items:** The transaction value in the case of imported goods shall include, in addition to the price as aforesaid, any amount paid or payable for cost and services, including commissions and brokerage, engineering, design work, royalties and licence fees, costs of transportation to the place of importation, insurance, loading, unloading and handling charges to the extent and in the manner specified in the rules made in this behalf.
- Rules to provide for certain items: The rules made in this behalf may provide for,:
 - a) the circumstances in which the buyer and the seller shall be deemed to be related;
 - b) the manner of determination of value in respect of goods when there is no sale, or the buyer and the seller are related, or price is not the sole consideration for the sale or in any other case;
 - c) the manner of acceptance or rejection of value declared by the importer or exporter, as the case may be, where the proper officer has reason to doubt the truth or accuracy of such value, and determination of value for the purposes of this section.
- **Conversion of foreign currency into Indian currency as per rate specified by CBIC:** Such price shall be calculated with reference to the rate of exchange as in force on the date on which
 - a) a bill of entry is presented under section 46, or(in case of import)
 - b) a shipping bill or bill of export is presented under section 50 (in case of export).

"Rate of exchange" means the rate of exchange

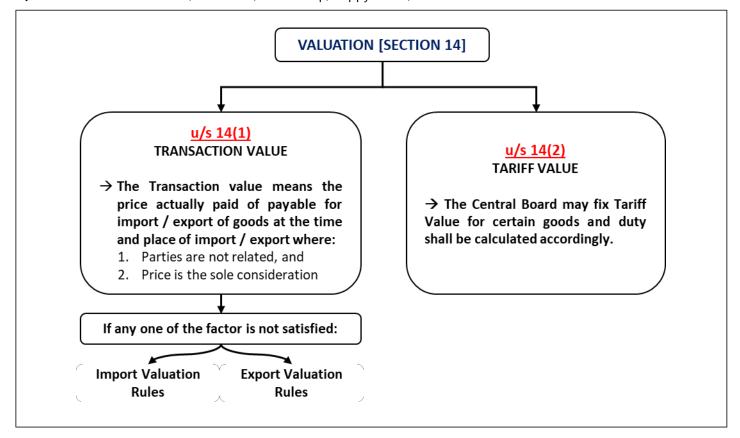
- i) determined by the Board, or
- ii) ascertained in such manner as the Board may direct, for the conversion of Indian currency into foreign currency or foreign currency into Indian currency.
- Valuation in case of sale or purchase on high sea basis:
 - a) High sea transactions: It means sale or purchase of goods, on high sea basis while they are in the seas i.e. they are on their way to India but have not reached India.
 - b) Value shall be last transaction value [Section 14(1)]: Transaction value means-
 - the price actually paid or payable for the goods when sols for import into India
 - for delivery at the "time and place" of importation.

Thus, price charged for delivery at the time and place of importation into India viz. the transaction value paid by the buyer shall be taken as the value. In case of two or more high sea transactions, the last transaction value shall be taken.

TARIFF VALUE [SECTION 14(2)]

Transaction value not acceptable when buyer and seller and related in such cases valuation shall be as per Tariff Value fixed/prescribed as per section 14(2)

- 1) Overriding effect: These provisions have overriding effect over section 14(1).
- 2) Tariff value: If the Board is satisfied that it is necessary or expedient so to do, it may, -
 - by notification in the Official Gazette,
 - fix tariff values for any class of imported goods or export goods,
 - having regard to the trend of value of such or like goods, and where any such tariff values are fixed, the duty shall be chargeable with reference to such tariff value.
- 3) Relevant date for determination of tariff value: Section 15 and section 16 provide for the relevant date for determination of tariff value of imported goods and export goods respectively.
- 4) Goods notified: Palm oil, Palmolein, Brass Scrap, Poppy Seeds, Gold and Silver.



CUSTOMS VALUATION (DETERMINATION OF VALUE OF IMPORTED GOODS) RULES, 2007 IMPORT VALUATION (W.E.F 10TH OCT, 2007)

IMPORT VALUATION RULES

- RULE 1: Short Title, Commencement and Applicability
- RULE 2: Definitions

Related

Identical Goods

Similar Goods

Normal Transaction Value

- RULE 3: Transaction Value
- **♣ RULE 4:** Value based on identical goods
- RULE 5: Value based on similar goods
- **♣ RULE 6:** Change of order of Rule 7 and 8
- RULE 7: Deduction Method (Goods of like kind)
- ♣ RULE 8: Calculation method
- **RULE 9:** Residual method

- **RULE 10:** Additions (Compulsory)
- RULE 11: Declaration
- **RULE 12:** Rejection of Declaration

RULE 2(2): RELATED Key CVM POEL

The seller and importer are said to be related if:

- ♣ They are Officers/Directors of each other's business;
- They are Partners in Business;
- They are Legally recognized partners in business;
- They are Employer and Employee;
- Same person holds or controls at least 5% of the total Voting power in both;
- ♣ One Controls or owns another;
- ♣ Both of them together Control a third person;
- ♣ They are Members of the same family.

EXAMPLE

M/s IES Ltd. (assessee) imported certain goods at US \$ 20 per unit from an exporter who was holding 30% equity in the share capital of the importer company. Subsequently, the assessee entered into an agreement with the same exporter to import the said goods in bulk at US \$ 14 per unit. When imports at the reduced price were effected pursuant to this agreement, the Department rejected the transaction value stating that the price was influenced by the relationship and completed the assessment on the basis of transaction value of the earlier imports i.e., at US \$20 per unit under rule 4 of the Customs Valuation (Determination of Value of Imported Goods) Rules 2007.

State briefly, whether the Department's action is sustainable in law? ANSWER:

No, the Department's action is not sustainable in law. Rule 2(2) of Customs Valuation (Determination of Value of Imported Goods) Rules, 2007, inter alia, provides that persons shall be deemed to be "related" if one of them directly or indirectly controls the other. The word "control" has not been defined under the said rules. As per common parlance, control is established when one enterprise holds at least 51% of the equity shareholding of the other company. However, in the instant case, the exporter company held only 30% of shareholding of the assessee. Thus, exporter company did not exercise control over the assessee. So, the two parties cannot be said to be related.

The fact that assessee had made bulk imports could be a reason for reduction of import price. The burden to prove under-valuation lies on the Revenue and in absence of any evidence from the Department to prove under-valuation, the price declared by the assessee is acceptable.

In the light of foregoing discussion, it can be inferred that Department's action is not sustainable in law.

NORMAL TRANSACTION VALUE

- ♣ This is the Value at which the "Greatest Aggregate Quantity" of the Goods is sold.
- ♣ All the Transactions which are to be considered together are grouped on the basis of value Charged.
- ♣ The Value at which largest quantity has been sold is referred to as Normal transaction Value.

EXAMPLE

(a) Sales

Sale quantity	Unit price
40 units	100
30 units	90
15 units	100
50 units	95
25 units	105
35 units	90
5 units	100

(b) Totals

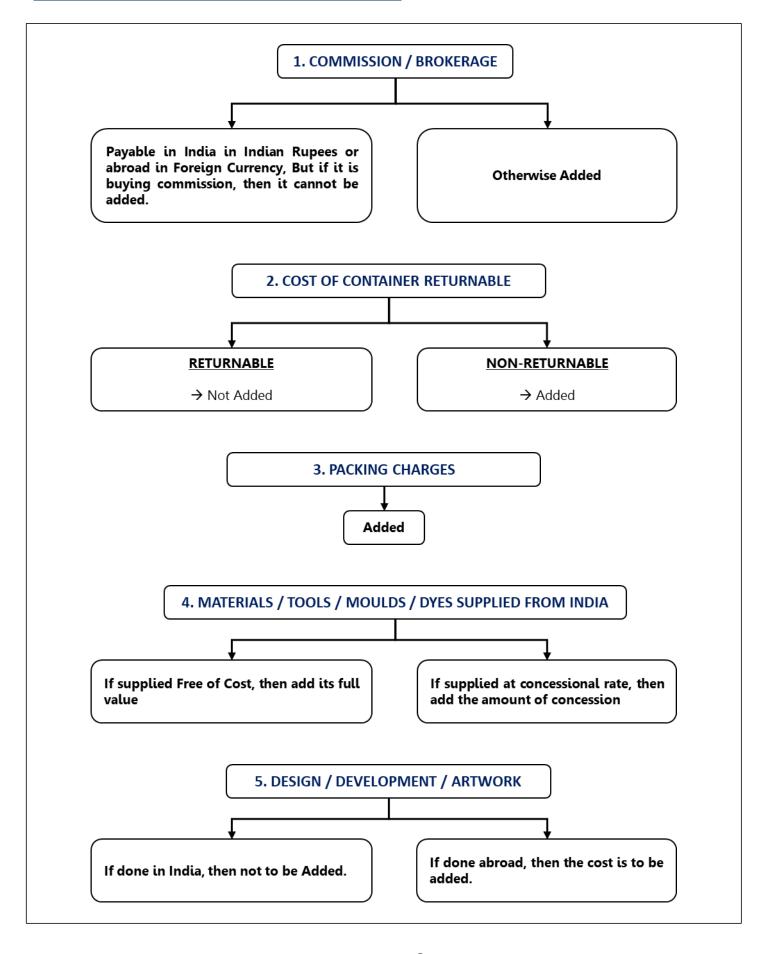
Total quantity sold	<u>Unit price</u>
65	90
50	95
60	100
25	105

In this example, the greatest number of units sold at a particular price is 65, therefore, the unit price in the greatest aggregate quantity is 90

IDENTICAL GOODS Rule 2(1)(d)	SIMILAR GOODS Rule 2(1)(f)
(a) They are identical in physical appearance.(b) Manufactured in same country(c) By same or another manufacturer	(a) These are the goods which are not absolutely alike but capable of performing same function.(b) Manufactured in same country.(c) By same or another manufacturer.

- 1. Any of the imported goods for which drawing, design, material, dyes etc. has been supplied from India either free of cost or in concessional rate will not be considered as identical goods or similar goods.
- 2. If the goods imported earlier have been assessed provisionally then those goods also cannot be considered as identical or similar goods.

RULE 10: ADDITIONS: CASE TO CASE ADDITIONS



6. ROYALTY FOR IMPORTED GOODS:

- a. Only Royalties and License Fees, related to the imported Goods that the Buyer is required to pay as a condition of sale of goods being valued, is added.
- b. It includes payments in respect of patents, trademarks and copyrights.
- c. The charges for the right to reproduce the imported goods shall not be added.
- d. Payments made by the buyer for the right to distribute or resell the imported goods shall not be added, if such payments are not a condition of the sale.
- **7.** Any part of **Subsequent sale proceeds** to be payable to the supplier.
- **8.** Any payment by importer on behalf of the supplier to any other person is required to be added.
- **9.** Inspection charges of imported goods where contract does not specify for certification by an independent agency: Not Includible. Any inspection of imported goods prior to import is includible in assessable value, if done at request of buyer or under the contract. But, inspection done by supplier at his will is not includible.

NOTE: Expenses will be added if those are incurred at the time of importation of goods, but if expenses are incurred after the arrival of Goods in India, then it is not to be added.

COMPULSARY ADDITIONS

1. Cost of Transportation, loading, unloading and handling charges is not ascertainable: Where the cost referred to in 10(2)(a) i.e. Cost of transportation, loading, unloading and handling charges associated with the delivery of the imported goods to the place of importation is not ascertainable, such cost shall be 20% of the free on board value of the goods.

[A]
COST OF
TRANSPORTATION,
LOADING,
UNLOADING AND
HANDLING CHARGES

2. Cost of Transportation, loading, unloading and handling charges when FOB value not ascertainable but FOB value + Cost of Insurance ascertainable: Where the FOB value of the goods is not ascertainable but the sum of FOB value of the goods and the cost of insurance to the place of importation is ascertainable, the cost of transportation, loading, unloading and handling charges associated with the delivery of the imported goods to the place of importation shall be 20% of such sum i.e. 20% of [FOB Value + Cost of Insurance]

3. Air Freight etc. Cannot exceed 20% of FOB value of the goods: In case of importation of goods by air, even if the actual cost of transport, loading, unloading and handling charges associated with the delivery of the imported goods to the place of importation is ascertainable, the same shall not exceed 20% of FOB value of the goods.

- **1. Transshipment costs to be excluded:** In the case of goods imported by sea or air and transshipped to another customs station in India, the cost of insurance, transport, loading, unloading, handling charges associatted with such transshipment shall be excluded.
- **2. Ship Demurrage charges on charted vessels, lighterage or barge charges Includible:** The cost of transport of imported goods referred above includes the ship demurrage charges on charted vehicles, lighterage or barge charges.
- **3. Treatment of transshipment costs:** The transshipment charges with respect to a container being moved from port to an ICD and CFS were excluded from the transaction value of the goods. Costs related to transshipment of goods (from ports to ICDs; port to port, port to CFS, Airport to Airport etc.) within India will be excluded, providing uniform treatment to different modes of transshipment.

[B] INSURANCE CHARGES

1. Cost of insurance not ascertainable: However, in the case of the cost of insurance to the place of importation is not ascertainable, such cost shall be 1.125% of the FOB value of the goods.

2. Cost of Insurance when FOB value not ascertainable but FOB value + Cost of Transportation, loading, unloading and handling charges ascertainable: Where the FOB value of the goods is not ascertainable but the sum of FOB value of the goods and the cost of transport, loading, unloading and handling charges associated with the delivery of imported goods to the place of importation is ascertainable, the cost of insurance to the place of importation shall be 1.125% of such sum i.e. 1.125% of [FOB value + Cost of Transport, loading, unloading and handling charges

associated with the delivery of the imported goods to the place of

CHART SHOWING THE DETERMINATION COMPUTATION ASSESSABLE VALUE AFTER ADJUSTMENTS UNDER RULE 10:

FOB Price (Free on Board)

Add: Charges for costs and services as per Rule 10(1) (Excluding charges for Postimportation Activities)

FOB as per Customs

Add: The following adjustments [(a) and(b)] under Rule 10(2)

(a) Actual cost of transport, loading, unloading and handling charges associated with the delivery of the imported goods to the place of importation (In case of air it cannot exceed 20% of **Customs FOB** value of goods)

(If not ascertainable - 20% of the Customs FOB value of goods. In case Customs FOB value is also not ascertainable, then it will be 20% of [Customs FOB value + Cost of Insurance])

(b) Actual Cost of insurance

(If not ascertainable - **1.125% of the Customs FOB** value of goods. In case Customs FOB value is also not ascertainable then it will be 1.125% of [Customs FOB value + Cost of transport, loading, unloading and handling charges])

CIF value (Customs FOB value + cost of transport + cost of insurance) being Assessable Value for the Purpose of calculating duties of custom

DECLARATION BY IMPORTER (VALUATION DECLARATION) UNDER RULE 11:

- 1) The importer shall furnish a declaration disclosing full and accurate details relating to the value of imported goods and
- 2) Any other statement, information or document as considered necessary by the proper officer for determining value.
- 3) Customs officer has the power to satisfy himself as to the truth or accuracy of any statement, information, document or declaration for valuation purposes.

REJECTION OF DECLARATION UNDER RULE 12:

The importer is required to **make a declaration** that the details furnished by him are Correct.

- 1) Furnishing of details and making of declaration does not prohibit the Customs officer to **demand Additional information** or to inspect goods or to carry out any testing or analysis.
- 2) If the Customs **O**fficer is **not satisfied**, he may **reject the Value declared** by the importer but before rejection, he shall give an opportunity of making representation to the importer.
- 3) If the value is rejected and an application is made by the importer, the Customs officer shall give explanation in writing for rejection of the value. This will help the importer in filing the appeal where he does not accept the value determined by the Customs Officer.

ILLUSTRATION:

Answer the following with reference to the provisions of section 14 of the Customs Act, 1962 and the rules made thereunder:

- (i) What shall be the value, if there is a price rise of the imported goods in international market between the date of contract and the date of actual importation but the importer pays the contract price?
- (ii) Whether the payment for post-importation process is includible in the value if the same is related to imported goods and is a condition of the sale of the imported goods?

Answer

- (i) The value of the imported goods or export goods is its transaction value, which means the price actually paid or payable for the goods. Where a contract has been entered into, the transaction value shall be the price stated in the contract, unless it is not legally acceptable. Price rise between date of contract and date of actual import is irrelevant, as the price actually paid or payable shall be taken to be the value. Thus, price stated in the contract (unless unacceptable) shall be taken.
- (ii) As per explanation to Rule 10(1) of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007, the payment for post-importation process is includible in the value of the imported goods if the same is related to such imported goods and is a condition of the sale thereof.

INTERPRETATIVE NOTES [RULE 13]

The interpretative notes specified in the Schedule to these rules shall apply for the interpretation of these rules.

PROBLEM 1

XY Ltd. imported a machine at an invoice price of Rs. 17,00,000. This sum includes Rs. 2,00,000 attributable to post-importation activities to be carried out by the seller. XY Ltd. had supplied raw material worth Rs. 5,00,000 to the seller for the manufacture of the said machine. The goods were imported by vessel and actual cost of transport is Rs. 80,000. The importer has also paid demurrage charges Rs. 5,000 and lighterage and barge charges Rs. 15,000, in addition to the said Rs. 80,000. The importer also paid Rs. 25,000 for transportation of goods from the port of entry to Inland Container Depot. The actual cost of insurance is Rs. 50,000. Compute assessable value.

Solution: Computation of Assessable Value (Amount in Rs.)

Particulars	Amount (Rs.)
Invoice Price	
Add: Adjustment under Rule 10(1) for raw material supplied by XY Ltd.	5,00,000
Less: Amount attributable to post-importation activities.	<u>2,00,000</u>
FOB Value	20,00,000
Add: Actual Cost of Transport (80,000 + 5,000 + 15,000)	1,00,000
Add: Actual Cost of Insurance	<u>50,000</u>
Assessable Value	21,50,000

NOTES:

- (1) It has been assumed that the amount attributable to post-importation activities is not payable as a condition of the sale of imported goods and hence, the same cannot be included in assessable value.
- (2) Demurrage charges, lighterage and barge charges form part of cost of transport in view of Explanation to Rule 10(2) and are, therefore, includible in the assessable value. However, the cost of transportation from port of entry to Inland Container Depot do not form part of the cost of transport as per Rule 10(2).

CHECK Y OUR KNOWLEDGE:

What will be your answer in example above if, other facts remaining the same, the actual freight and actual cost of insurance, both, are unascertainable? [Rs. 24,22,500; Hint: Cost of transport is 20% of FOB]

PROBLEM 2

Compute the assessable value from the following information:

- (i) FOB value of machine \$ 10,000;
- (ii) Air Freight, loading, unloading and handling charges associated with the delivery of the imported goods to the place of importation \$ 2,500;
- (iii) Cost of Insurance: \$ 500;
- (iv) Unloading and handling charges at the place of importation 50,000;
- (v) Exchange rate as notified by CBIC 1 \$ = 65.

SOLUTION: Computation of Assessable value

FOB value of machine	\$	10,000
Add: Cost of transport, loading, unloading and handling charges associated with the delivery of the imported goods to the place of importation (Since it exceeds	<i>t</i>	2.000
20% of FOB value, it shall be restricted to 20% of FOB value)	\$	2,000
Add: Cost of Insurance charges to the place of importation (Actual) CIF Value being Assessable Value	\$	500 12,500
Cir value being Assessable value	Ψ	12,300
Exchange rate to be applied is 1 \$ = 65, as notified by CBIC	\$	65
CIF Value being Assessable Value in Indian Rupees	Rs.	8,12,500

PROBLEM 3

Compute the assessable value from the following information:

- (i) FOB value of machine Not Ascertainable
- (ii) FOB Value of Machine and air freight, loading, unloading and handling charges associated with the delivery of the imported goods to the place of importation US \$ 15,000.
- (iii) Cost of Insurance: Not ascertainable
- (iv) Unloading and handling charges at the place of importation 50,000
- (v) Exchange rate as notified by CBIC 1 \$ = 65

SOLUTION: Computation of assessable value

FOB value of machine and cost of transport, loading, unloading and handling charges associated with the delivery of the imported goods to the place of importation Add: Cost of Insurance charges to the place of importation since not ascertainable	\$	15,000.00
shall be 1.125% of FOB value of machine and cost of transport, loading, unloading and handling charges. i.e. 1.125% of \$ 15,000	\$	168.75
CIF Value being Assessable Value Exchange rate to be applied is 1 \$ = 65, as notified by CBIC CIF Value being Assessable Value in Indian Rupees	\$ \$	15,168.75 65.00 9,85,968.75

Compute the assessable value and Custom duty Payable from the following information: (CA Final June 2009, 6 Marks) (Similar 5 Marks, Nov. 2012) Date of import 20th Feb'18

- (i) FOB value of machine 8,000 UK Pounds
- (ii) Freight paid (air) 2,500 UK Pounds (iii) Design and development charges paid in UK 500 UK Pounds
- (iv) Commission payable to local agent @ 2% of FOB in Indian
- (v) Date of bill of entry 24-10-2018 (Rate BCD 10%, Exchange rate as notified by CBIC T100 per UK Pound)
- (vi) Date of arrival of aircraft 20-10-2018 (Rate BCD 18%, Exchange rate as notified by CBIC T 95 per UK Pound)
- (vii) Integrated tax leviable under Section 3(7) of CTA, 1975 @ 12%
- (viii) Insurance charges actually paid but details not available.

SOLUTION: Computation of Assessable value & customs duty

FOB cost	£	8,000
Add: Design and development charges paid in UK	£	500
Total		8,500
Exchange rate to be applied is 1 \pm (Pound) = Rs. 100, as notified by CBIC on date of		
presentation of bill of enrty.		100
Total sum in Indian		8,50,000
Add: Commission to the Agent @ 2% of FOB cost x Rs. 100 per pound		<u>16,000</u>
FOB Value as per customs		8,66,000
Add: Insurance charges (1.125% of Customs FOB)		9,742.50
Add: Air freight (Restricted to 20% of Customs FOB)		<u>1,73,200.00</u>
Total CIF Value being Assessable Value		10,48,942.50
Add: Basic Customs duty @ 10% (Rate of Custom duty is applicable of the date of		
presentation of Bill of Entry since it is presented after arrival of aircraft)		1,04,894.25
Add: Social welfare surcharge @ 10% of [1]		10,489.43
Total for Integrated tax leviable u/s 3(7)		11,64,326.18
Add: Integrated tax @ 12% of ? 11,64,326.18		1,39,719.14
Total imported cost (rounded off)		13,04,045
		2,55,103

PROBLEM 5

Compute the customs duty payable from the following data -

Machinery imported from USA by air on 01-03-18 US \$ 10050

Accessories worth US \$ 2000 compulsorily supplied with machine, price is included in price of machine

Air freight US \$ 3000

Insurance US \$ 100

Local agent's commission 1,500

Exchange rate 1 US \$ = Rs. 60

Customs duty on machine 10% ad valorem

Customs duty on accessory 20% ad valorem

Integrated tax 12.00 %

GST Compensation Cess

NIL

SWS = 10%

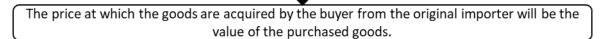
SOLUTION: Computation of customs duty payable –

Cost of machinery inclusive of accessory (FOB) (See Note)		US \$	10,050.00
Total (in Indian Z) US \$ 10,050 x Rs. 60 (being the exchange rate)			6,03,000.00
Add: Agency commission			1,500.00
FOB value as per Customs			6,04,500.00
Add: Cost of insurance US \$ 100 x Rs. 60 (being the exchange rate)			6,000.00
Add: Air freight (restricted to 20% of FOB value as per customs)			1,20,900.00
CIF value/Assessable value	[A]		7,31,400.00
Add: Basic Customs duty (10% of assessable value)	[B]		73,140.00
Add: SWS @ 10% of [B]	[C]		7,314.00
Total for Integrated tax u/s 3(7) CTA, 1975 = [A] + [B] + [C]	[D]		8,11,854.00
Add: Integrated tax @ 12% of Rs. 8,06,734.20 i.e. [D]	[E]		97,422.00
Total imported cost (rounded off)			9,09,276.00
Total customs duty payable = [B] + [C] + [E] (rounded off)			1,77,876.00

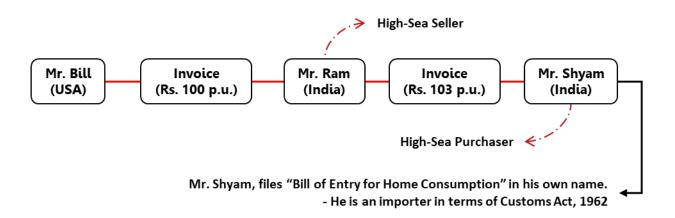
DETERMINATION OF VALUE OF GOODS PURCHASED ON HIGH SEAS BASIS



"Purchase on High Seas" basis means that the imported goods are acquired by a buyer from the original importer while they in the high seas (purchase takes place before they reach India)



In case of **more than one High Sea** basis, the **last sale price** that means actual high-seas-sale contract price paid by the last buyer would be taken as the value of such goods.



The service charges/high-seas-sales-commission are to be included in the CIF value of imported goods (such charges being not in nature of buying commission meriting exclusion from assessable value). Therefore, it is clarified that the actual high-seas-contract price paid by the Indian buyer would constitute the transaction value under Rule 3 of Customs Valuation Rules, 2007.



Issue for consideration is: What should be the assessable value in such a situation?

- WhetherRs.100/- p.u. (the price charge by the foreign supplier to the original importer) or
- WhetherRs.103/- p.u. (the price charge by the original importer from the Indian buyer)

RULE 3: TRANSACTION VALUE AS VALUE

Condition (1) Parties are not Related →	Condition (2) Parties are Related →
 Transaction value is acceptable as A.V. provided: (a) The buyer is not subject to any limitation regarding the use of goods except as required under Indian law or by Public Authorities in India. Limit the geographical area in which goods may be resold. Do not Substantially affect the value of Goods. (b) There is no condition for resale. (c) The seller is not entitled for any part of sale proceeds in resale. 	If the importer can prove that the relation has not affected the transaction value and it is close to value of identical goods or value of goods of same kind. Then such transaction is acceptable as A.V.

Notes:

- Addition shall be made as per rule 10
- Declaration as per given Rule 11
- If the value cannot be determined under this rule then it shall be determined under Rule 4.

RULE 4: VALUE BASED ON IDENTICAL GOODS

- 1. Where T.V. of imported goods is rejected then such goods shall be valued at par with the identical goods, imported at or about the same time in same or closest quantity at a same Commercial Level.
- 2. Adjustments are allowed to be made for
 - a. Time gap
 - b. Quantity difference
 - c. Difference of commercial level

Notes:

- 1. The transaction value of identical goods will be used in determining the value of imported goods only if the **following condition** are fulfilled:
 - a. Identical goods are sold at the same commercial level.
 - b. They are in substantially **same quantities** as the goods being valued.
- 2. After determining comparable values, the **lowest** of them shall be adopted.
- 3. If the value cannot be determined according to rule 4 then it shall be determined under Rule 5

PROBLEM 6:

A consignment of 800 metric tonnes of edible oil of Malaysian origin was imported by a charitable organization in India for free distribution to below poverty line citizens in a backward area under the scheme designed by the Food and Agricultural Organization. This being a special transaction, a nominal price of US\$ 10 per metric tonne was charged for the consignment to cover the freight and insurance charges. The Customs House found out that at or about the time of importation of this gift consignment there were following imports of edible oil of Malaysian origin:

SR. NO.	QUANTITY IMPORTED IN METRIC TONNES	UNIT PRICE IN US \$ (CIF)
1	20	260
2	100	220
3	500	200
4	900	175
5	400	180
6	780	160

The rate of exchange on the relevant date was 1 US \$ = Rs. 70.00 and the rate of basic customs duty was 10% ad valorem. Ignore Integrated tax and GST Compensation Cess. Calculate the amount of duty leviable on the consignment under the Customs Act, 1962 with appropriate assumptions and explanations, where required.

Answer: DETERMINATION OF TRANSACTION VALUE OF THE SUBJECT GOODS:- In the instant case, while determining the transaction value of the goods, following factors need consideration:-

- 1. In the given case, US \$10 per metric tonne has been paid only towards freight and insurance charges and no amount has been paid or payable towards the cost of goods. Thus, there is no transaction value for the subject goods. Consequently, we have to look for transaction value of identical goods under rule 4 of Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 [Customs Valuation (DVIG) Rules, 2007].
- 2. Rule 4(1)(a) of the aforementioned rules provides that subject to the provisions of rule 3, the value of imported goods shall be the transaction value of identical goods sold for export to India and imported at or about the same time as the goods being valued. In the six imports given during the relevant time, the goods are identical in description and of the same country of origin.
- 3. Further, clause (b) of rule 4(1) of the said rules requires that the comparable import should be at the same commercial level and in substantially same quantity as the goods being valued. Since, nothing is known about the level of the transactions of the comparable consignments, it is assumed to be at the same commercial level.
- 4. As far as the quantities are concerned, the consignments of 20 and 100 metric tonnes cannot be considered to be of substantially the same quantity. Hence, remaining 4 consignments are left for our consideration.
- 5. However, the unit prices in these 4 consignments are different. Rule 4(3) of Customs Valuation (DVIG) Rules, 2007 stipulates that in applying rule 4 of the said rules, if more than one transaction value of identical goods is found, the lowest of such value shall be used to determine the value of imported goods. Accordingly, the unit price of the consignment under valuation would be US \$ 160 per metric tonne.

COMPUTATION OF AMOUNT OF DUTY

Payable CIF Value Of 800 Metric Tonnes = 800 x 160 = US \$ 1,28,000 At the exchange rate of \$ 1 = Rs. 70 CIF Value (in Rupees) = Rs. 89,60,000 Assessable Value = Rs. 89,60,000 10% of Ad Valorem duty on Rs. 89,60,000 = Rs. 8,96,000 Add: Social Welfare Surcharge @ 10% (rounded off) = Rs. 89,600 Total custom duty payable = Rs. 9,85,600

RULE 5: VALUE BASED ON SIMILAR GOODS

- 1. The goods shall be valued at par with the similar goods, imported at or about the same time in same or closest quantity.
- 2. Adjustments are allowed to be made for a. Time gap
 - b. Quantity difference
 - c. Difference of commercial level

Notes:

- 4. The transaction value of similar goods will be used in determining the value of imported goods only if **following condition** are fulfilled:
 - a. similar goods are sold at the same commercial level.
 - b. They are in substantially same quantities as the goods being valued.
- 5. After determining comparable values, the **lowest** of them shall be adopted.
- 6. If the value cannot be determined according to rule 5 then it shall be determined under Rule 7 or 8.

RULE 6: CHANGE OF ORDER

- 1. If the value of imported goods cannot be determined under the provisions of **Rule 3, 4 and 5**, then the value shall be determined under provisions of Rule 7 and 8.
- 2. At the request of importer, and with the approval of the proper officer, the order of applicability of **Rules 7 and 8 can be reversed**.

RULE 7: DEDUCTIVE VALUE METHOD

- ♣ If TV of identical and similar goods is not available, then deductive value method is used.
- ♣ When same, identical or similar imported goods are sold in India and price in India is available and the sale should be in the same condition as they are imported.
- Assessable Value is calculated by reducing post-importation costs as expenses from this selling price.

DEDUCTIONS

- Selling Expenses (commission etc.,) and selling profits
- Direct and indirect cost of marketing the goods in India.
- ♣ Transport, insurance and associated costs within India.
- Customs duties, sales tax and other taxes levied in India.

The price will be Unit price sold in greatest numbers of quantity to be considered for valuation

If the imported goods or identical/similar imported goods are not sold at or about the same time of importation of the goods being valued, the valuation will be unit price at the earliest date after importation but before the expiry of ninety days after such importation.

If the imported goods or identical/similar imported goods are not sold, but goods sold after processing, adjustments should be made for the processing cost, if any.

PROBLEM 7:

Deductive value – Rule 7: M/s. XYZ Co. imported goods declaring transaction value of Rs. 1,000 per unit, which was rejected. Rule 4 & 5 of the import valuation Rules are found inapplicable, as no similar identical goods are imported in India. M/s XYZ Co. furnishes you the following data & request you to compute the value of imported goods as per Rule 7:

- (1) Sale Price in India (after value addition): Rs. 2,100 per unit (inclusive of GST @ 5%)
- (2) Commission to Indian agent on above sales: 4% of sale price (before GST)
- (3) Value addition after import: Rs. 50 per unit
- (4) Freight & Insurance from Port of import to factory of importation: Rs. 60 & RS 20per unit
- (5) General Expenses after importation: RS 90 per unit
- (6) Net profit margin (normally earned by others also) :20% of sale price (before GST)
- (7) Rate of Basis Customs Duty:10% IGST @ 5% under Section 3(7) of CTA, 1975. SWS applicable (no other duty leviable)

SOLUTION: Computation Of customs Value under Rule 7:

Particulars	RS.
	(por unit)
Selling price(inclusive of IGST)	2,100
Less : IGST(Rs.2,100 x 5% /105%	100
Sale price before IGST	2,000
Less: Post importation expenses-	
Commission on sale to Indian agents [4% of RS.2,00]	80
Value addition after import	50
Freight & Insurance from Port of import of factory of importation rs(60+20=80 per	
unit)	80
General Expenses after importation	
Net profit margin in india	90
Assessable Value	1115.31

RULE 8: COMPUTED VALUE

- ♣ If valuation is not possible by deductive method, computing the value can be used.
- 4 This method can be used before deductive value method. If Customs Officer approves
- ♣ In this method, value is the sum of -
- (a) Cost of Value of materials, labour and processing charges for producing the imported goods.
- (b) Amount of General expenses and profit.
- (c) The cost or value of all other expenses under rule 10: transport, insurance, loading, unloading and handling charges.

Mr. X imported certain goods from a related person Mr. Paa of US and transaction value has been rejected. Rules 4 and 5 of the Import Valuation Rules are found inapplicable, as no similar/ identical goods are imported in India. Mr. X furnishes cost related data of imports and requests Customs Authorities to determine value accordingly as per Rule 8. The relevant data are

(1) Cost of materials incurred by Mr. Paa	\$ 1,500
(2) Fabrication charges incurred by Mr. Paa	\$ 800
(3) Other chargeable expenses incurred by Mr. Paa	\$ 750
(4) Other indirect costs incurred by Mr. Paa	\$ 600
(5) Freight from Mr. Paa's factory to US port	\$ 250
(6) Loading charges at US port	\$ 100
(7) Normal net profit margin of Mr. Paa	20% of FOB
(8) Air freight from US port to Indian port	\$ 1,500
(9) Insurance from US port to Indian port	\$ 50
(10) Exchange Rate	60 per \$

The customs Authorities are of the opinions that since value as per Rule 7 can be determined at Rs. 4,00,000, there is no need to apply Rule 8.

SOLUTION: As per rule 6, at request of important, Rule 8 may be applied before Rule 7. Hence, request of Mr. X to apply Rule 8 is valid and since Rule 8 data is available, the Customs Authority cannot insist upon valuation as per Rule 7.

Computation of value as per Rule 8:

1	Cost of materials incurred by Mr. Paa	\$	1,500
2	Fabrication charges incurred by Mr. Paa	\$	800
3	Other chargeable expenses incurred by Mr. Paa	\$	750
4	Other indirect costs incurred by Mr. Paa	\$	600
5	Freight from Mr. Paa's factory to US port	\$	250
6	Loading charges at US port	\$	100
	Total cost incurred by Mr. Paa	\$	4,000
7	Normal net profit margin of Mr. Paa [20% of FOB or 250% of cost = 25% of \$ 4,000]	\$	1,000
	FOB price	\$	650
9	Air fright from US port to Indian [Air freigh cannot exceed 20% of FOB, hence, restricted to 20% of \$ 5000] [Rule 10 (2) (a)] (\$1,000-\$200-\$100) Insurance from US port to Indian port [Rule 10 (2 (b)]	\$	50
	CIF/ Assessable Value under Customs	\$	5.700
10	Exchange rate	Rs.	60
	Assessable Value under Customs		3,42,000

RULE 9: RESIDUAL METHOD

- Similar to 'best judgment method'.
- ♣ This method can be considered if valuation is not possible by rule 3 to 8.
- Mix of the all other rules and general provisions of all rules.
- Assessment will be done based on with available data in India.

RESIDUAL VALUE CANNOT BE DETERMINED ON THE BASIS OF:

- 1. Sale price in India of the goods produced in India.
- 2. Sale price of the goods on the domestic market of the Country of Exportation;
- 3. Sale price of the goods for the export to a Country other than India;
- 4. Cost of production of identical or similar goods if that is not computed as per provisions of Rule 8 (i.e. if it does not cover all the elements as mentioned in Rule 8):
- 5. A system which provides for the acceptance, for customs purposes, of the **highest of the two** alternative values;
- 6. Minimum customs values; or
- 7. Arbitrary or fictitious Values.

MANNER OF COMPUTING VALUE IN CASE OF WAREHOUSED GOODS

Where the goods deposited in a warehouse under the provisions of the Customs Act, 1962 are sold to any person before clearance for home consumption or export under the said Act, the value of such goods for the purpose of calculating the integrated tax under sub-section (7) shall be—

- (a) where the whole of the goods are sold, the value determined under Section 3(8) of Customs Tariff Act, 1975 or the transaction value of such goods, whichever is higher; or
- (b) where any part of the goods is sold, the proportionate value of such goods as determined under Section3(8) of Customs Tariff Act, 1975 or the transaction value of such goods, whichever is higher.

However, where the whole of the warehoused goods or any part thereof are sold more than once before such clearance for home consumption or export, the transaction value of the last such transaction shall be the transaction value for the purposes of clause (a) or clause (b).

Further, in respect of warehoused goods which remain unsold, the value or the proportionate value, as the case may be, of such goods shall be determined in accordance with the provisions of Section 3(8) of Customs Tariff Act, 1975.

PROBLEM 9

Computation of Assessable Value & GST liability: Product 'Z' was imported by Mr. X by air. The details of the import transaction are as follows:

Particulars	US \$
Price of 'Z' at exporter's factory	8,500
Freight from factory of the exporter to load airport(airport in the country of exporter)	250
Loading & handling charges at the load airport	250
Freight from load airport to the airport of importation in India	4,500
Insurance charges	2,000

Through the aircraft arrived on 22-08-2018, the bill of entry for home consumption was presented by Mr.x on 20-08-2018

The other details furnished by Mr. X are:

	20-08-2018	22-08-2018
Rate of basic customs duty	20%	10%
Exchange rate notified by CBIC	Rs.60 per US \$	Rs 63 per US \$
Exchange rate prescribed by RBI	Rs.61 per US \$	Rs.62 per US \$
Integrated tax leviable under section 3(7) of the customs Tariff		
Act,1975	18%	12%

Compute-

- 1) Value of product 'Z' for the purpose of levying customs duty;
- 2) Customs duty & tax payable

Solution:

Approach 1: Computation Of Assessable value & customs duty-

Particulars		US \$
FOB Value		
Factory price	\$ 8,500	
Freight from factory to foreign airport	\$ 250	
Loading at foreign airport	\$ 250	
		9,000
Add: Cost of transport under Rule 10(2)(a)	[WN-1]	1,800
Add: Insurance cost on actual basis under Rule 10(2)(b)		2,000
CIF Value or Assessable Value		RS.12,800
Exchange rate as per CBIC	[WN-2]	60
Assessable value (Rs. 60 x 12,800 US \$)		7,68,000
Add: Basic customs duty @ 10% [A]		76,800
Add: SWS @ 10% on BCD [B]	[WN-3]	7.680
Sub-Total		8,52,480
Add: IGST on sub-total above @ 12% [C]	[WN-4]	1,02,297
Total duty & tax payable [A+B+C](rounded off)		1,86,778

Working Notes:

- 1) In the case of goods imported by air, air freight shall not exceed 20% of the FOB value of the Goods. [Fifth proviso to rule 10(2) of the Customs Valuation (Determination of Value of Imported Good) Rules ,2007(CVR)]. FOB value in the case is the ex-factory price of the goods(8,500 US \$) plus the cost of transport from factory to load airport (250 US \$) plus loading & handling charges at the load airport (250 US \$) which is 9,000 US \$
- 2) Rate of exchange determined by CBIC is to be considered [Clause (a) of the explanation to section 14 of the customs Act,1962)
- 3) Section 15 of the Customs Act,1962 provides that rate of duty shall be the rate in force on the date of presentation of bill of entry or the rate in the force on the date of arrival of aircraft, whichever is later.
- 4) Integrated tax is levied on the sum total of the assessable value of the imported goods & customs duties [Section 3(8) of the Customs Tariff Act,1962]. Social Welfare Surcharge leviable on integrated tax have been exempted vide Notification No.13/2018-Cus. dated 2-2-2018.
- 5) No landing charges are to be added to the CIF value in view of the amendment in Rule 10(2) of the CVR vide Notification NO.91/2017-Cus. (NT) dated 26-09-2017

Approach 2 (used by ICAI in RTP May 2018):

The approach used by the RTP May 2018 is that-

- i) Rule 10(2)(a) covers freight /handling in foreign country Total of all freight & handling cost (including that incurred at the Foreign port of export or foreign country) shall be addable as per provisions of Rule 10(2) and in the case of import by air, said total cannot exceed 20% of FOB
- ii) **FOB** FOB for this purpose shall include the freight and handling cost at foreign port.

The revised calculation is given below-

Computation of Assessable value & customs duty -

Particulars			Amount
Ex-factory price of the goods		US \$	8,500
Freight from factory of the exporter to load airport (airport in the cou	ntry of exporter) US \$ 250		
Loading & handling charges at the load airport	US \$ 250		
Freight from load airport to the airport of importation in India	US \$ 4,500		
Total cost of transport, loading & handling charges associated with the imported goods to the place of importation	e delivery of the		
Add: Cost of transport, loading, unloading & handling charges assorbed delivery of the imported goods to the place of importation (rest FOB value)		US\$	1,800
Insurance (actual)		US \$	2,000
CIF for customs purpose being Assessable Value	[WN-2]	US \$	12,300
Exchange rate as per CBIC (RS.64 per US \$)	-		
Assessable value (Rs.60 x 12,300 US \$)	[WN-3]	RS.	7,38,000.00
Add: Basic customs duty @ 10 % [A]		RS.	73,800.00
Add: SWS @ 10% of custom duty [B]		RS.	7,380.00
Value for the purpose of levying integrated tax	[WN-4]	RS.	8,19,180.00
Add: Integrated tax leviable under section 3(7) @ 12% [C]		RS.	98,301.60
Total duty & tax payable [A+B+C] (rounded off)			1,79,482

Working Notes:

- 1. In the case of goods imported by air, the cost of transport ,loading ,unloading & handling charges associated with delivery of the imported goods to the place of importation shall not exceed 20% of the FOB value of the goods. [Fifth proviso to rule 10(2) of the Customs Valuation (Determination of Value of imported Goods) Rule, 2007 (CVR)].
 - FOB value in the case is the ex-factory price of the goods (8,500 US \$) plus the cost of transport from factory to load airport (250 US \$) plus loading & handling charges at the load airport (250 US \$) which is 9,000 US \$
- 2. Rate of exchange determined by CBIC is to considered [Clause(a) of the explanation to section 14 of the Customs Act.1962].
- 3. Section 15 of the Customs Act,1962 provides that rate of duty shall be the rate in the force on the date of presentation of bill of entry or the rate in the force on the date of arrival of aircraft, whichever is later.
- 4. Integrated tax is levied on the sum total of the assessable value of the imported goods & customs duties [Section3(8) of the Customs Tariff Act,1962]. Social Welfare Surcharge leviable on integrated tax have been exempted vide Notification No.13/2018-Cus.dated 2-2-2018
- 5. No landing charges are to be added to the CIF value in view of the amendment in Rule 10(2) of the CVR vide.
 - Notification No.91/2017-Cus (NT) dated 26-09-2017.

PROBLEM 10

Mother Mary Hospital and Research Centre imported a machine from Delta Scientific Equipments, Chicago for in house research. The price of the machine was settled at US \$ 5,000. The machine was shipped on 10.04.20XX. Meanwhile, the Hospital Authorities negotiated for a reduction in the price. As a result, Delta Scientific Equipments agreed to reduce the price by \$ 850 and sent the revised price of \$ 4,150 under a telex dated 15.04.20XX. The machine arrived in India on 18.04.20XX. The Commissioner of Customs has decided to take the original price as the transaction value of the goods on the ground that the price is reduced only after the goods have been shipped.

Do you agree to the stand taken by the Commissioner? Give reasons in support of your answer.

Answer:

No, the Commissioner's approach is not correct in law.

As per section 14 of the Customs Act, the transaction value of the goods is the price actually paid or payable for the goods at the time and place of importation. Further, the Supreme Court in the case Garden Silk Mills v. UOI has held that importation gets complete only when the goods become part of mass of goods within the country. Therefore, since in the instant case the price of the goods was reduced while they were in transit, it could not be contended that the price was revised after importation took place. Hence, the goods should be valued as per the reduced price, which was the price actually paid at the time of importation.

PROBLEM 11

'A' had imported goods from Finland. Due to deep draught at the port, such goods were not taken to the jetty in the port but were unloaded at the outer anchorage. The charges incurred for such unloading and transport of the goods from outer anchorage to the jetty in barges (small boats) were Rs. 1,35,000. 'A' claims that such charges form part of the loading and unloading charges and should be deemed to be included in the CIF value of such goods, made under rule 10(2)(b) of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007.

Discuss the tenability of 'A's' claim.

Answer:

As per Rule 2(da), "place of importation" means the customs station, where the goods are brought for being cleared for home consumption or for being removed for deposit in a warehouse. Therefore, the outer anchorage where the goods are unloaded would not be the place of importation. Rule 10(2)(a) stipulates that for the purposes of section 14(1) of the Customs Act, 1962 and Valuation rules, value of imported goods shall be the value of such goods and shall include, the cost of transport, loading, unloading and handling charges associated with the delivery of the imported goods to the place of importation.

Therefore, in cases where the big mother vessels cannot enter the harbour for any reason and goods are brought to the docks by smaller vessels like barges, the cost incurred by the importer for bringing the goods to the landmass or place of consumption, such as barge charges will also be included in the cost of transportation. Therefore, 'A's claim is not tenable in law.

CUSTOMS VALUATION (DETERMINATION OF VALUE OF EXPORT GOODS) RULES, 2007

Notification No. 95/2007 Cus. (NT) dated 13.09.2007 has notified Customs Valuation (Determination of Value of Export Goods) Rules, 2007. They shall come into force from 10.10.2007. They shall apply to the export goods

RULE 2 – DEFINITIONS

- (1) In these rules, unless the context otherwise requires, -
 - (a) "goods of like kind and quality" means export goods which are identical or similar in physical characteristics, quality and reputation as the goods being valued, and perform the same functions or are commercially interchangeable with the goods being valued, produced by the same person or a different person; and
 - **(b)** "**transaction value**" means the value of export goods within the meaning of sub-section (1) of section 14 of the Customs Act, 1962 (52 of 1962).
- (2) For the purposes of these rules, persons shall be deemed to be "related" only if
 - (i) they are officers or directors of one another's businesses;
 - (ii) they are legally recognised partners in business;
 - (iii) they are employer and employee;
 - (iv) any person directly or indirectly owns, controls or holds five per cent or more of the outstanding voting stock or shares of both of them;
 - (v) one of them directly or indirectly controls the other;
 - (vi) both of them are directly or indirectly controlled by a third person;
 - (vii) together they directly or indirectly control a third person; or
 - (viii) they are members of the same family.

Explanation I. - The term "person" also includes legal persons.

Explanation II. - Persons who are associated in the business of one another in that one is the sole agent or sole distributor or sole concessionaire, howsoever described, of the other shall be deemed to be related for the purpose of these rules, if they fall within the criteria of this sub-rule.

RULE 3 - DETERMINATION OF THE METHOD OF VALUATION

- (1) Subject to rule 8, the value of export goods shall be the transaction value.
- (2) The transaction value shall be accepted even where the buyer and seller are related, provided that the relationship has not influenced the price.
- (3) If the value cannot be determined under the provisions of sub-rule (1) and sub-rule (2), the value shall be determined by proceeding sequentially through rules 4 to 6.

RULE 4 - DETERMINATION OF EXPORT VALUE BY COMPARISON

- (1) The value of the export goods shall be based on the transaction value of goods of like kind and quality exported at or about the same time to other buyers in the same destination country of importation or in its absence another destination country of importation adjusted in accordance with the provisions of sub-rule (2).
- (2) In determining the value of export goods under sub-rule (1), the proper officer shall make such adjustments as appear to him reasonable, taking into consideration the relevant factors, including- (i) difference in the dates of exportation,
 - (ii) difference in commercial levels and quantity levels,
 - (iii) difference in composition, quality and design between the goods to be assessed and the goods with which they are being compared,
 - (iv) difference in domestic freight and insurance charges depending on the place of exportation.

RULE 5 - COMPUTED VALUE METHOD

If the value cannot be determined under rule 4, it shall be based on a computed value, which shall include the following:-

- (a) cost of production, manufacture or processing of export goods;
- (b) charges, if any, for the design or brand;
- (c) an amount towards profit.

RULE 6 - RESIDUAL METHOD

(1) Subject to the provisions of rule 3, where the value of the export goods cannot be determined under the provisions of rules 4 and 5, the value shall be determined using reasonable means consistent with the principles and general provisions of these rules provided that local market price of the export goods may not be the only basis for determining the value of export goods

RULE 7 - DECLARATION BY THE EXPORTER

The exporter shall furnish a declaration relating to the value of export goods in the manner specified in this behalf.

RULE 8 - REJECTION OF DECLARED VALUE

- (1) When the proper officer has reason to doubt the truth or accuracy of the value declared in relation to any export goods, he may ask the exporter of such goods to furnish further information including documents or other evidence and if, after receiving such further information, or in the absence of a response of such exporter, the proper officer still has reasonable doubt about the truth or accuracy of the value so declared, the transaction value shall be deemed to have not been determined in accordance with sub-rule (1) of rule 3.
- (2) At the request of an exporter, the proper officer shall intimate the exporter in writing the ground for doubting the truth or accuracy of the value declared in relation to the export goods by such exporter and provide a reasonable opportunity of being heard, before taking a final decision under sub-rule (1).

A material was imported by air at CIF price of 5,000 US\$. Freight paid was 1,500 US\$ and insurance cost was 500 US\$. The banker realized the payment from importer at the exchange rate of Rs. 71 per dollar. Central Board of Excise and Customs notified the exchange rate as Rs. 70 per US\$. Find the value of the material for the purpose of levying duty.

Answer:

PARTICULARS	AMOUNT	
CIF value	5000 US \$	
Less: Freight	1500 US \$	
Less: Insurance	500 US \$	
Therefore, FOB value	3000 US \$	
Assessable value for Customs purpose		
FOB value	3000 US \$	
Add: Freight (20% of FOB value) [Note 1]	600 US \$	
Add: Insurance (actual)	500 US \$	
CIF for customs purpose	4100 US \$	
Exchange rate as per CBIC [Note 2]	Rs. 70 per US \$	
Assessable value (Rs. 70 x 4100 US \$)	Rs. 2,87,000	

NOTES:

- 1. If the goods are imported by air, the freight cannot exceed 20% of FOB price [Fifth proviso to rule 10(2) of the Customs (Determination of Value of Imported Goods) Rules, 2007].
- 2. Rate of exchange determined by CBIC is considered [clause (a) of the explanation to section 14 of the Customs Act, 1962].

PROBLEM 12

From the particulars given below, find out the assessable value of the imported goods under the Customs Act, 1962:

	<u>US \$</u>
(i) Cost of the machine at the factory of the exporter	10,000
(ii) Transport charges from the factory of exporter to the port for shipment	500
(iii) Handling charges paid for loading the machine in the ship	50
(iv) Buying commission paid by the importer	50
(v) Freight charges from exporting country to India	1,000
(vi) Exchange rate to be considered: 1\$ = Rs. 70	
(vii) Actual insurance charges paid are not ascertainable	

Answer: Computation of assessable value of the imported goods

PARTICULARS	AMOUNT
Cost of the machine at the factory	10,000.00
Transport charges up to port	500.00
Handling charges at the port	50.00
FOB	10,550.00
Freight charges up to India	1,000.00
Insurance charges @ 1.125% of FOB [Note 1]	118.69
CIF	11,668.69
CIF in Indian rupees @ Rs. 70/ per \$	Rs.
Assessable Value	Rs.
Assessable Value (rounded off)	Rs. 8,16,80

NOTES:

- (1) Insurance charges have been included @ 1.125% of FOB value of goods [Third proviso to rule 10(2) of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007].
- (2) Buying commission is not included in the assessable value [Rule 10(1)(a)(i) of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007].

PROBLEM 13

Compute export duty from the following data:

- (i) FOB price of goods: US \$ 1,00,000.
- (ii) Shipping bill presented electronically on 26.04.20XX.
- (iii) Proper officer passed order permitting clearance and loading of goods for export (Let Export Order) on 04.05.20XX.
- (iv) Rate of exchange and rate of export duty are as under:

	Rate of Exchange	Rate of Export Duty
On 26.04.20XX	1 US \$ = Rs. 70	10%
On 04.05.20XX	1 US \$ = Rs. 72	8%

(v) Rate of exchange is notified for export by Central Board of Excise and Customs.

(Make suitable assumptions wherever required and show the workings.)

Answer: Computation of Export Duty

PARTICUL	AMOUNT
FOB price of goods [Note 1]	\$ 1,00,000
Value in Indian currency (US \$ 1,00,000 x Rs. 70) [Note 2]	Rs. 70,00,000
Export duty @ 8% [Note 3]	5,60,000

NOTES:

- 1. As per section 14(1) of the Customs Act, 1962, assessable value of the export goods is the transaction value of such goods which is the price actually paid or payable for the goods when sold for export from India for delivery at the time and place of exportation.
- 2. As per third proviso to section 14(1) of the Customs Act, 1962, assessable value has to be calculated with reference to the rate of exchange notified by the CBIC on the date of presentation of shipping bill of export.
 - 3. As per section 16(1)(a) of the Customs Act, 1962, in case of goods entered for export, the rate of duty prevalent on the date on which the proper officer makes an order permitting clearance and loading of the goods for exportation, is considered.

PROBLEM 14

Foreign Trade International Ltd. has imported one machine from England. It has given the following particulars:

(i)	Price of machine	8,000 UK Pounds
(ii)	Freight paid (air)	2,500 UK Pounds
(iii)	Design and development charges paid in UK	500 UK Pounds
(iv)	Commission payable to local agent of exporter @ 2% of price of machine, in Indian	

	Rupees		
(v)	Date of bill of entry	24.10.20XX (Rate BCD 10%; Exchange rate as notified by CBIC Rs. 100 per UK Pound)	
(vi)	ate of arrival of aircraft 20.10.20XX (Rate of BCD 20%; Exchange rate as notified by CBIC Rs. 98 per UK Pound)		
(vii)	Integrated tax leviable under section 3(7) of the Customs Tariff Act, 1975 is 12%		
(viii)	Insurance charges have been actually paid but details are not available.		

Compute the total customs duty and integrated tax payable by Foreign Trade International Ltd. Note: Ignore GST Compensation Cess.

Answer: Computation of total duty and integrated tax payable

PARTICULARS	AMOUNT
Price of machine	8,000 UK pounds
Add: Design and development charges [Note 1]	500 UK pounds
Total	8,500 UK pounds
Total in rupees @ Rs. 100 per pound [Note 2]	Rs. 8,50,000.00
Add: Local agency commission [Note 1] (2% of 8000 UK pounds) = 160 UK pounds × Rs. 100	Rs. 16,000.00
FOB value as per Customs	Rs. 8,66,000.00
Add: Air freight (8,66,000 x 20%) [Note 3]	Rs. 1,73,200.00
Add: Insurance @ 1.125% of customs FOB [Note 4]	Rs. 9,742.50
CIF Value	Rs. 10,48,942.50
Assessable value (rounded off)	Rs. 10,48,942.00
Add: Basic custom duty @ 10% [Note 5]	Rs. 1,04,894.20
Add: Social Welfare Surcharge @ 10% on Rs. 1,04,894.20	Rs. 10,489.42
Total	Rs. 11,64,325.62
Add: Integrated tax leviable under section 3(7) @ 12% [Note 7]	Rs. 1,39,719.07
Total duty and integrated tax payable (Rounded off) (Rs. 1,04,894.20 + Rs. 10,489.42 + Rs. 1,39,719.07)	Rs. 2,55,102

- 1. Design and development charges paid in UK and commission paid to local agent (since it is not buying commission) are includible in the assessable value [Rule 10 of the Customs (Determination of Value of Imported Goods) Rules, 2007]
- 2. The rate of exchange notified by the CBIC on the date of presentation of bill of entry has been considered [Section 14 of the Customs Act, 1962].
- 3. If the goods are imported by air, the freight cannot exceed 20% of FOB price [Fifth proviso to rule 10(2) of the Customs (Determination of Value of Imported Goods) Rules, 2007].
- 4. Where the insurance charges are not ascertainable, such cost is taken as 1.125% of FOB value of the goods [Third proviso to Rule 10(2) of the Customs (Determination of value of Imported Goods) Rules, 2007].
- 5. Section 15 of the Customs Act, 1962 provides that rate of duty shall be the rate in force on the date of presentation of bill of entry or the rate in force on the date of arrival of aircraft, whichever is later.
- 6. Integrated tax leviable under section 3(7) of the Customs Tariff Act, 1975 is levied on the sum total of the assessable value of the imported goods, customs duties and applicable social welfare surcharge.

Compute the total duty and integrated tax payable under the Customs Law on an imported equipment based on the following information:

- (1) Assessable value of the imported equipment US \$ 10,100
- (2) Date of bill of entry is 25.4.20XX. Basic customs duty on this date is 10% and exchange rate notified by the Central Board of Excise and Customs is US \$ 1 = `65.
- (3) Date of entry inwards is 21.4.20XX. Basic customs duty on this date is 20% and exchange rate notified by the Central Board of Excise and Customs is US \$ 1 = `70.
- (4) Integrated tax payable under section 3(7) of the Customs Tariff Act, 1975: 12%
- (5) Social Welfare surcharge 10%

Make suitable assumptions where required and show the relevant workings and round off your answer to the nearest rupee.

Note: Ignore GST Compensation Cess.

ANSWER: Computation of total customs duty and integrated tax payable

PARTIC	AMOUNT
Assessable value (\$ 10,100 x 65) [Note-1]	6,56,500.00
Add: Basic custom duty @ 10% [Note-2]	65,650.00
Add: Social Welfare Surcharge @ 10% on Rs. 65,650	6,565.00
Total	7,28,715.00
Add: Integrated tax under section 3(7) @ 12% [Note-3]	87,445.80
Total Customs duty and integrated tax payable (rounded off to nearest rupee)	1,59,660

NOTES:

- 1. Rate of exchange notified by CBIC as prevalent on the date of filing of bill of entry would be the applicable rate [Proviso to section 14(1) of Customs Act,1962]. The rate of exchange notified by the CBIC on the date of presentation of bill of entry has been considered [Section 14 of the Customs Act, 1962].
- 2. Rate of duty would be the rate as prevalent on the date of filing of bill of entry or entry inwards whichever is later. [Proviso to section 15 of the Customs Act, 1962].
- 3. Integrated tax leviable under section 3(7) of the Customs Tariff Act, 1975 is levied on the sum total of the assessable value of the imported goods, customs duties and applicable social welfare surcharge.

PROBLEM 16

Compute the total duty and integrated tax payable under the Customs Law on an imported equipment based on the following information:

- (1) Assessable value of the imported equipment US \$ 10,100
- (2) Date of bill of entry is 25.4.20XX. Basic customs duty on this date is 10% and exchange rate notified by the Central Board of Excise and Customs is US \$ 1 = `65.
- (3) Date of entry inwards is 21.4.20XX. Basic customs duty on this date is 20% and exchange rate notified by the Central Board of Excise and Customs is US \$ 1 = `70.
- (4) Integrated tax payable under section 3(7) of the Customs Tariff Act, 1975: 12%
- (5) Social Welfare surcharge 10%

Make suitable assumptions where required and show the relevant workings and round off your answer to the nearest rupee.

Note: Ignore GST Compensation Cess.

ANSWER: Computation of total customs duty and integrated tax payable

PARTICULARS	AMOUNT
Assessable value (\$ 10,100 x 65) [Note-1]	6,56,500.00
Add: Basic custom duty @ 10% [Note-2]	65,650.00
Add: Social Welfare Surcharge @ 10% on Rs. 65,650	6,565.00
Total	7,28,715.00
Add: Integrated tax under section 3(7) @ 12% [Note-3]	87,445.80
Total Customs duty and integrated tax payable (rounded off to nearest rupee)	1,59,660

NOTES:

- 1. Rate of exchange notified by CBIC as prevalent on the date of filing of bill of entry would be the applicable rate [Proviso to section 14(1) of Customs Act,1962]. The rate of exchange notified by the CBIC on the date of presentation of bill of entry has been considered [Section 14 of the Customs Act, 1962].
- 2. Rate of duty would be the rate as prevalent on the date of filing of bill of entry or entry inwards whichever is later. [Proviso to section 15 of the Customs Act, 1962].
- 3. Integrated tax leviable under section 3(7) of the Customs Tariff Act, 1975 is levied on the sum total of the assessable value of the imported goods, customs duties and applicable social welfare surcharge.

PROBLEM 17

From the following particulars, calculate total customs duty and integrated tax payable

- (i) Date of presentation of bill of entry: 20.6.20XX [Rate of BCD 20%; Inter-bank exchange rate: Rs. 61.60 and rate notified by CBIC Rs. 70].
- (ii) Date of arrival of aircraft in India: 30.6.20XX [Rate of BCD 10%; Inter-bank exchange rate: Rs. 61.80 and rate notified by CBIC Rs. 73.00].
- (iii) Rate of Integrated tax leviable under section 3(7) of the Customs Tariff Act: 12%. Ignore GST Compensation Cess.
- (iv) CIF value 2,000 US Dollars; Air freight 500 US Dollars, Insurance cost 100 US Dollars [Landing charges not ascertainable].
- (v) Social Welfare Surcharge 10%

ANSWER: Computation of total customs duty and integrated tax payable

PARTICULARS	AMOUNT
CIF value	2000 US Dollars
Less: Freight	500 US Dollars
Less: Insurance	100 US Dollars
FOB Value	1400 US Dollars
Add: Air Freight [Note1]	280 US Dollars
Add: Insurance (actual amount)	100 US Dollars
Value @ Rs. 70.00 [Note 2]	Rs. 1,24,600.00
Assessable Value	Rs. 1,24,600.00
Basic Custom Duty @ 10% (a) [Note 3]	Rs. 12,460.00
Add: Social Welfare Surcharge @ 10% on 1,24,600 (b)	Rs. 1,246.00
Sub-total	Rs. 1,38,306.00
Integrated tax under section 3(7) (12% on Rs. 1,38,306) (c) [Note 4]	Rs. 16,596.72
Total duty and integrated tax (a +b + c) (rounded off)	Rs. 30,303

- 1. If the goods are imported by air, the freight cannot exceed 20% of FOB price [Fifth proviso to Rule 10(2) of the Customs (Determination of Value of Imported Goods) Rules, 2007].
- 2. Rate of exchange notified by CBIC on the date of presentation of bill of entry would be the applicate rate. [Proviso to Section 14(1) of the Customs Act, 1962].
- 3. Rate of duty would be the rate as prevalent on the date of filing of bill of entry or arrival of aircraft, whichever is later [proviso to section 15 of the Customs Act, 1962].
- 4. Integrated tax leviable under section 3(7) of the Customs Tariff Act, 1975 is levied on the sum total of the assessable value of the imported goods, customs duties and applicable social welfare surcharge.

15000 chalices were imported for charitable distribution in India by XY Charitable Trust. The Trust did not pay either for the cost of goods or for the design and development charges, which was borne by the supplier. Customs officer computed its FOB value at USD 20,000 (including design and development charges), which was accepted by the Trust. Other details obtained were as follows:

	PARTICULARS		AMOU
Freight paid (air) (in USD)			4,500
Design & development charges	paid in USA (in USD))	2,500
Commission payable to an ager	nt in India (in Rs.)		12,500
Exchange rate notified by CBIC	and rate of basic du	ty is as follows:	
Date of Bill of Entry 08.09.20XX	BCD 20%	Exchange Rate 70	
Date of arrival of aircraft 30.09.20XX	BCD 10%	Exchange Rate 72	
The inter-bank rate was 1 USD			420/
Integrated tax payable u/s 3(7)		H Act, 1975	12%
Social Welfare surcharge as app	licable		

Compute the amount of total customs duty and integrated tax payable on importation of chalices. Make suitable assumptions where required. Working notes should form part of your answer.

Note: Ignore GST Compensation Cess.

ANSWER: Computation of total customs duty and integrated tax payable

PARTICULARS	AMOU
FOB value computed by Customs Officer (including design and development	20,000
Exchange rate [Note 1]	Rs. 70
FOB value computed by Customs Officer (in rupees)	14,00,0
Add: Commission payable to agent in India	12,500.
FOB value as per customs	14,12,5
Add: Air freight (Rs. 14,12,500 × 20%) [Note 2]	2,82,50
Add: Insurance (1.125% of Rs. 14,12,500) [Note 3]	15,890.
CIF value for customs purposes	17,10,8
Assessable value	17,10,8
Add: Basic custom duty @ 10% (Rs.17,10,890.63× 10%) – rounded off [Note 4]	1,71,08
Add: Social Welfare surcharge @ 10% on Rs. 1,71,089 rounded off	17,109
Total	18,99,0
Integrated tax leviable under section 3(7) of Customs Tariff Act, 1975 @ 12% (Rs. 18,99,089× 12%) [Rounded off] [Note 5]	2,27,89
Total customs duty and integrated tax payable (Rs. 1,71,089 + Rs. 17,109 + Rs. 2,27,890)	4,16,08 8

- 1. Rate of exchange notified by CBIC on the date of filing of bill of entry has to be considered [Third proviso to section 14 of the Customs Act, 1962].
- 2. In case of goods imported by air, freight cannot exceed 20% of FOB value [fifth proviso to rule 10(2) of the Customs (Determination of Value of Imported Goods) Rules, 2007].

- 3. Insurance charges, when not ascertainable, have to be included @ 1.125% of FOB value of goods [Third proviso to rule 10(2) of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007].
- 4. Rate of duty will be the rate in force on the date of presentation of bill of entry or on the date of arrival of the aircraft, whichever is later [Proviso to section 15 of the Customs Act, 1962].
- 5. Integrated tax leviable under section 3(7) of the Customs Tariff Act, 1975 is levied on the sum total of the assessable value of the imported goods, customs duties and applicable social welfare surcharge.

Mr. Backpack imported second-hand goods from a UK supplier by air, which was contracted on CIF basis. However, there were changes in prices in the international market between the date of contract and actual importation. As a result of several negotiations, the parties agreed for a negotiated price payable as follows:

PARTICULARS	CONTRACT PRICE (₤)	CHANGED PRICE (£)	NEGOTIATED PRICE (₤)
CIF Value	5000	5800	5500
Air Freight	300	600	500
Insurance	500	650	600

Other details are as under:

PARTICULARS		AMOUNT	
Vendor inspection charges (inspection carried out by foreign supplier on his own, not required under contract or for making the goods ready for shipment)		€ 600	
Commission payable to local ag	ent @ 1% of FOB in	local currency	
Date of Bill of Entry 08.09.20XX	BCD 20%	Exchange Rate in Rs.	
Date of arrival of aircraft	BCD	Exchange Rate in Rs.	
30.09.20XX	10%	106	
The inter-bank rate was 1 UK PC	DUND = Rs. 106		

ompute the assessable value and calculate basic customs duty payable by Mr. Backpack.

PARTICULAR	AMOUNT
CIF value (negotiated price) [Note-1]	£ 5,500
Less: Air freight	£ 500
Less: Insurance	£ 600
FOB value	€ 4,400
Add: Vendor inspection charges [Note-2]	Nil
FOB value as per Customs	€ 4,400
Add: Freight [Note-3]	£ 500
Add: Insurance [Note-4]	£ 600
	€ 5,500
Value in rupees [5,500 x Rs. 102]	Rs. 5,61,000.00
Add: Commission payable to local agent [1% of FOB value] [Note-6] = (US $4,400 \times 102$) × 1%	Rs. 4,488.00
Total	Rs. 5,65,488.00
Assessable value	Rs. 5,65,488.00
Add: Basic custom duty @ 10% [Note-7] – rounded off	Rs. 56,548.80
Social Welfare Surcharge (10% of Rs. 56,548.80) [rounded off]	Rs. 5,655.00
Customs duty payable [rounded off]	Rs. 62,203.00

- 1. As per Section 14 of the Customs Act, 1962, the value of the imported goods is the transaction value, which means the price actually paid or payable for the goods. In this case, since the contract was renegotiated and the importer paid the re-negotiated price, the transaction value would be such re-negotiated price and not the contract price.
- 2. Only the payments actually made as a condition of sale of the imported goods by the buyer to the seller are includible in the assessable value under rule 10(1)(e) of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007. Charges of vendor inspection on the goods carried out by foreign supplier on his own and not required for making the goods ready for shipment, are not includible in the assessable value of the imported goods [Bombay Dyeing & Mfg. v. CC 1997 (90) ELT 276 (SC)].
- 3. Actual amount incurred towards freight will be considered since freight is not more than 20% of FOB value [Fifth proviso to rule 10(2) of Customs Valuation Rules].
- 4. Actual insurance charges paid are includible in the assessable value as per rule 10(2)(b) of the Customs Valuation Rules.
- 5. Rate of exchange notified by CBIC on the date of filing of bill of entry will be considered as per third proviso to section 14 of the Customs Act, 1962.
- 6. Commission paid to local agent (since it is not buying commission) is includible in the assessable value on the presumption that local agent has been appointed by the exporter [Rule 10(1)(a)(i) of the Customs Valuation Rules].
- 7. As per proviso to section 15 of the Customs Act, 1962, rate of duty will be the rate in force on the date of presentation of bill of entry or on the date of arrival of the aircraft, whichever is later.

F. Ltd. imported a machine from UK in May, 20XX. The details in this regard are as under:

- i.) FOB value of the machine: 10,000 UK Pound
- ii.) Freight (Air): 3000 UK Pound
- iii.) Licence fee, the buyer was required to pay in UK: 400 UK Pound
- iv.) Buying commission paid in India Rs. 20,000
- v.) Date of bill of entry was 20.05.20XX and the rate of exchange notified by CBIC on this date was Rs.99.00 per one pound. Rate of BCD was 7.5%.
- vi.) Date of arrival of aircraft was 25.05.20XX and the rate of exchange notified by CBIC on this date was `98.50 per pound and rate of BCD was 10%.
- vii.) Integrated tax under section 3(7) of Customs Tariff Act was 12% and ignore GST Compensation Cess.
- viii.) Insurance premium details were not available.

You are required to compute the total customs duty and integrated tax payable on the importation of machine. You may make suitable assumptions wherever required.

ANSWER: Computation of assessable value and total customs duty and integrated tax payable by F Ltd.

PARTICUL	AMOUNT
FOB value	10,000 UK Pound
Add: License fee required to be paid in UK [Note – 1]	400 UK Pound
Customs FOB value	10,400 UK Pound
Value in rupees [Rs. 99 x 10,400]	Rs. 10,29,600.00
Add: Air freight [Restricted to 20% of Rs. 10,29,600 (customs FOB value)] [Note – 3]	Rs. 2,05,920.00
Add: Insurance @ 1.125% of Rs. 10,29,600 [Note – 4]	Rs. 11,583.00
Add: Buying commission is not includible in the assessable value [Note – 5]	-
CIF Value	Rs. 12,47,103.00
Assessable value	Rs. 12,47,103.00
Add: Basic custom duty @ 10% (Rs. 12,47,103 × 10%) [rounded off] (A)	Rs. 1,24,710
Add: Social Welfare Surcharge (10% of Rs. 1,24,710) [rounded off] (B)	Rs. 12,471
Value for integrated tax under section 3(7) of the Customs Tariff Act, 1975	Rs. 13,84,284
Add: Integrated tax under section 3(7) @ 12% - rounded off (C) [Note – 7]	Rs. 1,66,115
Total customs duty and integrated tax payable [(A) + (B) + (C)]	Rs. 3,03,295

NOTE:

- 1. Engineering and design charges paid in UK, licence fee relating to imported goods payable by the buyer as a condition of sale, materials and components supplied by the buyer free of cost and actual insurance charges paid are all includible in the assessable value Rule 10(1)(c) of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 [hereinafter referred to as Customs Valuation Rules].
- 2. Rate of exchange notified by CBIC on the date of filing of bill of entry has to be considered [Third proviso to section 14 of the Customs Act, 1962].
- 3. In case of goods imported by air, freight cannot exceed 20% of FOB value [Fifth proviso to rule 10(2) of the Customs Valuation Rules].
- 4. Insurance charges, when not ascertainable, have to be included @ 1.125% of FOB value of goods [Third proviso to rule 10(2) of the Customs Valuation Rules].
- 5. Buying commission is not included in the assessable value [Clause (a)(i) of sub-rule (1) of rule 10 of the Customs Valuation Rules].
- 6. Rate of duty will be the rate in force on the date of presentation of bill of entry or on the date of arrival of the aircraft, whichever is later [Proviso to section 15 of the Customs Act, 1962].
- 7. Integrated tax leviable under section 3(7) of the Customs Tariff Act, 1975 is levied on the sum total of the assessable value of the imported goods, customs duties and applicable social welfare surcharge.

PROBLEM 21

BSA & Company Ltd. has imported a machine from U.K. From the following particulars furnished by it, arrive at the assessable value for the purpose of customs duty payable

PARTICULARS	AMOUNT
Price of the machine	10,000 U.K. Pounds
Freight (air)	3,000 U.K. Pounds
Engineering and design charges paid to a firm in U.K.	500 U.K. Pounds
License fee relating to imported goods payable by the buyer as a condition of sale	20% of Price of machine
Materials and components supplied in UK by the buyer free of cost valued at Rs. 20,000	
Insurance paid to the insurer in India	Rs. 6,000
Buying commission paid by the buyer to his agent in U.K	100 U.K. Pounds

Other particulars:

- (i) Inter-bank exchange rate: Rs. 98 per U.K. Pound.
- (ii) CBIC had notified for purpose of section 14 of the Customs Act, 1962, exchange rate of Rs. 100 per U.K. Pound.

(iii) Importer paid Rs. 5,000 towards demurrage charges for delay in clearing the machine from the Airport. (Make suitable assumptions wherever required and show workings with explanations)

ANSWER: Computation of assessable value of machine imported by BSA & Co

PARTICUL	AMOUNT
Price of the machine	£ 10,000
Add: Engineering and design charges paid in UK [Note 1]	£ 500
Add: Licence fee relating to imported goods payable by the buyer as a condition of sale (20%	£ 2,000
Total	£ 12500
Value in Indian currency [£12,500 x Rs. 100] [Note 2]	Rs. 12,50,000
Add: Materials and components supplied by the buyer free of cost [Note 1]	Rs. 20,000
FOB	Rs. 12,70,000
Add: Freight [Note 3]	Rs. 2,54,000
Add: Insurance paid to the insurer in India [Note 1]	Rs. 6,000
CIF value	Rs. 15,30,000
Assessable value (rounded off)	Rs. 15,30,000.00

NOTE:

- 1. Engineering and design charges paid in UK, licence fee relating to imported goods payable by the buyer as a condition of sale, materials and components supplied by the buyer free of cost and actual insurance charges paid are all includible in the assessable value [Rule 10 of the Customs (Determination of Value of Imported Goods) Rules, 2007].
- 2. As per Explanation to section 14(1) of the Customs Act, 1962, assessable value should be calculated with reference to the rate of exchange notified by the CBIC.
- 3. If the goods are imported by air, the freight cannot exceed 20% of FOB price [Fifth proviso to rule 10(2) of the Customs (Determination of Value of Imported Goods) Rules, 2007].
- 4. Buying commission is not included in the assessable value [Rule 10(1)(a) of the Customs (Determination of Value of Imported Goods) Rules, 2007].
- 5. Only ship demurrage charges on chartered vessels are included in the cost of transport of the imported goods. Thus, demurrage charges for delay in clearing the machine from the Airport will not be includible in the assessable value [Explanation to Rule 10(2) of the Customs (Determination of Value of Imported Goods) Rules, 2007]

PROBLEM 22

Jagat Corporation Limited imported some goods from US. The details of the transaction are as follows:-

AUTHORITY RATE OF EXCHA	
CBIC	1 US \$ = Rs.70
RBI	1 US \$ = Rs. 71

CIF value of the goods is \$ 1,50,000 Rate of basic custom duty is 10% Rate of social welfare surcharge is 10%

Integrated tax leviable under section 3(7) of Customs Tariff Act, 1975 is 18%. Ignore GST Compensation Cess.

Calculate total customs duty and integrated tax payable thereon.

ANSWER: Computation of total custom duty and integrated tax payable

PARTICULARS	AMOUNT
CIF Value	\$ 1,50,000.00
Assessable value (in Rs.) = $$1,50,000 \times Rs.70$ (Note -1)	Rs. 1,05,00,000.00
Add: Basic custom duty @ 10% (Rs. 1,05,00,000 × 10%)	Rs. 10,50,000.00
Add: Social Welfare surcharge [Rs. 10,50,000 × 10%]	Rs. 1,05,000
Sub-total	Rs. 1,16,55,000.00
Add: Integrated tax leviable under section 3(7) of Customs Tariff Act (Rs. 1,16,55,000 \times 18%) (Note-3)	Rs. 20,97,900.00
Total custom duty and integrated tax payable (rounded off)	Rs. 32,52,900

NOTES

- 1. The applicable exchange rate is the rate notified by CBIC [Explanation to section 14(1) of the Customs Act, 1962].
- 2. Integrated tax leviable under section 3(7) of the Customs Tariff Act, 1975 is levied on the sum total of the assessable value of the imported goods, customs duties and applicable social welfare surcharge.

PROBLEM 23

ABC Industries Ltd. imports an equipment by air. CIF price of the equipment is 6,000 US\$, freight paid is 1,200 US\$ and insurance cost is 1,800 US\$. The banker realizes the payment from importer at the exchange rate of Rs. 61 per US\$. Central Board of Excise and Customs notifies the exchange rate as Rs. 70 per US\$ while rate of exchange notified by RBI is Rs. 72 per US\$. ABC Industries Ltd. expends Rs. 56,000 in India for certain development activities with respect to the imported equipment.

Basic customs duty is 10%, Integrated tax u/s 3(7) of the Customs Tariff Act is leviable @ 12% and social welfare surcharge is 10% on duty. Ignore GST Compensation Cess.

You are required to compute the amount of total duty and integrated tax payable by ABC Industries Ltd. under Customs law.

ANSWER: Computation of customs duty and integrated tax payable by ABC Industries Ltd.

PARTICULARS	AMOUNT
CIF value	6,000 US \$
Less: Freight	1,200 US \$
Less: Insurance	1,800 US \$
FOB value	3,000 US \$
Add: Freight (20% of FOB value) [Note 1]	600 US \$
Add: Insurance (actual)	1,800 US \$
CIF	5,400 US \$
Exchange rate as per CBIC [Note 3]	Rs. 70 per US \$
Assessable value = Rs. 70 x 5,400 US \$	Rs. 3,78,000
Add: Basic customs duty @ 10%	Rs. 37,800
Add: Social Welfare Surcharge @ 10%	Rs. 3,780
Sub-total Sub-total	Rs. 4,19,580
Integrated tax u/s 3(7) of the Customs Tariff Act @ 12% of Rs. 4,19,580 [Note 5]	Rs. 50,349.60
Total customs duty and integrated tax payable [Rs. 37,800 + Rs. 3,780 + Rs. 50,349.60]	Rs. 91,929.60
Total customs duty and integrated tax payable (rounded off)	Rs. 91,930

NOTES:

- 1. If the goods are imported by air, the freight cannot exceed 20% of FOB price [Fifth proviso to rule 10(2) of the Customs (Determination of Value of Imported Goods) Rules, 2007].
- 2. Rate of exchange determined by CBIC is considered [Clause (a) of the explanation to section 14 of the Customs Act, 1962].
- 3. Rule 10(1)(b)(iv) of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 inter alia provides that value of development work undertaken elsewhere than in India is includible in the value of the imported goods. Thus, development charges of Rs. 56,000 paid for work done in India have not been included for the purposes of arriving at the assessable value.
- 4. Integrated tax leviable under section 3(7) of the Customs Tariff Act, 1975 is levied on the sum total of the assessable value of the imported goods, customs duties and applicable social welfare surcharge.

PROBLEM 24

Compute the total customs duty and integrated tax payable under Customs law on an imported machine, based on the following information:

PARTICULARS	
Cost of the machine at the factory of the exporter	\$ 20,000
Transport charges from the factory of exporter to the port for shipment	\$ 800
Handling charges paid for loading the machine in the ship	\$ 50
Freight charges from exporting country to India	\$ 5,000
Buying commission paid by the importer	\$ 100
Lighterage charges paid by the importer at port of importation	Rs. 12,000
Freight incurred from port of entry to Inland Container depot	Rs. 60,000
Ship demurrage charges paid at port of importation	Rs. 24,000
Integrated tax payable under section 3(7) of the Customs Tariff Act, 1975	12%
Date of bill of entry	
20.01.20XX (Rate BCD 20%; Exchange rate as notified by CBIC Rs. 70 per US \$)	

Date of entry inward 25.03.20XX (Rate of BCD 10%; Exchange rate as notified by CBIC Rs. 75 per US \$)

Note: Ignore GST Compensation Cess

ANSWER: Computation of customs duty and integrated tax payable on the imported goods.

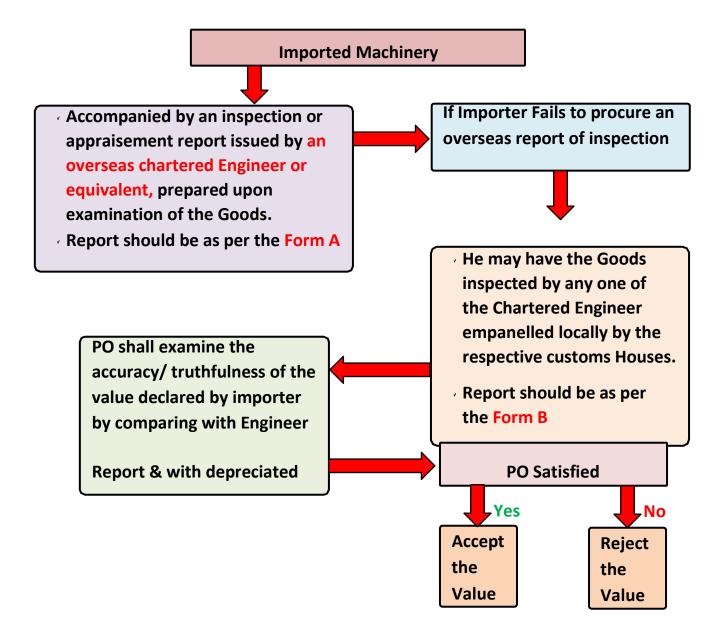
PARTICULARS	AMOUNT
Cost of the machine at the factory	\$ 20,000
Transport charges up to port	\$ 800
Handling charges at the port	\$ 50
FOB	\$ 20,850
FOB value in Indian rupees @ Rs. 70/- per \$ [Note 1]	Rs. 14,59,500
Freight charges up to India [US \$ 5,000 x Rs. 70]	Rs. 3,50,000
Lighterage charges paid by the importer [Note 2]	Rs. 12,000
Ship demurrage charges on chartered vessels [Note 2]	Rs. 24,000
Insurance charges @ 1.125% of FOB [Note 3]	Rs. 16,419.38
CIF	Rs. 18,61,919.38
Add: Basic customs duty @ 10% [Note 4] [a]	Rs. 1,86,192
Add: Social Welfare surcharge @ 10% [b]	Rs. 18,619.20
Total	Rs. 20,66,730.58
Add: Integrated tax @ 12% of Rs. 20,66,730.58 [c] [Note 5]	Rs. 2,48,007.67
Total custom duty and integrated tax payable [(a) +(b) + (c)] rounded off	Rs. 4,52,819

NOTES

- 1. Rate of exchange notified by CBIC on the date of presentation of bill of entry is considered [Explanation to section 14 of the Customs Act, 1962].
- 2. Cost of transport of the imported goods includes ship demurrage charges and lighterage charges [Explanation to Rule 10(2) of Customs Valuation (Determination of Value of Imported Goods) Rules, 2007].
- 3. Insurance charges is included @ 1.125% of FOB value of goods [Third proviso to rule 10(2) of Customs Valuation (Determination of Value of Imported Goods) Rules, 2007].
- 4. Rate of duty is the rate prevalent on the date of presentation of bill of entry or the rate prevalent on the date of entry inwards, whichever is later [Section 15 of the Customs Act, 1962].
- 5. Integrated tax leviable under section 3(7) of the Customs Tariff Act, 1975 is levied on the sum total of the assessable value of the imported goods, customs duties and applicable Social welfare surcharge.

RELEVANT CASE LAW				
NAME OF CASE	HC / SC	DISPUTE	JUDGEMENT	
Gira Enterprises v. CCus. 2014 (307) ELT 209 (SC)	SC	Can the value of imported goods be increased if Department fails to provide to the importer, evidence of import of identical goods at higher prices?	The Supreme Court held that mere existence of allege computer printout was not proof of existence of comparab imports. Even if assumed that such printout did exist and content thereof were true, such printout must have been supplied to the appellant and it should have been given reasonable opportunit to establish that the import transactions were not comparable. Thus, in the given case, the value of imported goods could not be enhanced on the basis of value of identical goods as Department was not able to provide evidence of import of identical goods a higher prices.	

Valuation of Second Hand Machinery



CHECK YOUR KNOWLEDGE

- 1. The transaction value of imported goods is not accepted for valuation purposes when:
 - (i) The use of the imported goods by the buyer is subject to the restrictions imposed by the seller which substantially affect the value of goods;
 - (ii) The buyer and seller are not related;
 - (iii) Price is not the sole consideration for sale.
 - (a) (i) and (iii)
 - (b) Only (i)
 - (c) Only (iii)
 - (d) All of above
- 2. The relevant date for determining the rate of exchange in case of imported goods is:
 - (a) Date when the vessel arrives in India;
 - (b) Date of presentation of bill of entry
 - (c) Date of examination of goods by proper officer;
 - (d) Date of deposit of duty
- 3. Which of the following is/are not correct for 'identical' goods' for valuation purposes under the Customs Act, 1962?
 - (i) Identical goods are same in all respects, including physical characteristics, quality and reputation as the goods being valued except for minor differences in appearance that do not affect the value of goods:
 - (ii) Identical goods can be produced in any country;
 - (iii) Identical goods are produced by same person who produced the goods being valued, or where no such goods are available, goods produced by a different person.
 - (a) All of above;
 - (b) (i) and (iii)
 - (c) Only (ii)
 - (d) Only (iii)
- 4. Which of the following values is not includible in the transaction value of goods under rule 10(1) of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007
 - (a) Buying Commissions
 - (b) Royalties
 - (c) License fees
 - (d) Cost of packing
- 5. For valuation purposes under the Customs Act, 1962, which of the following transactions would be considered as having been made between related persons?
 - (i) A foreign company A Ltd. having a joint venture with Indian company B Ltd. in the name of AB Ltd. The transactions between A Ltd. and AB Ltd.
 - (ii) A foreign company A Ltd. having a joint venture with Indian company B Ltd. in the name of AB Ltd. The transactions between A Ltd. and B Ltd.
 - (iii) A Inc, a company in USA, appoints Mr. X as its sole agent to sell its products in India. The transactions between A Inc. and Mr. X
 - (iv) A Inc., a company in USA, holding 30% of share capital of importer company B Ltd. The transactions between A Inc. and B Ltd.

- (a) All of above;
- (b) None of above;
- (c) (i), (ii) and (iii)
- (d) (ii), (iii) and (iv)
- 6. For determining the CIF price of the imported goods, certain additions have to be made to the value of imported goods under rule 10(2) of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007. If cost of insurance is not ascertainable from the documents submitted before customs authorities, then such sum is:
 - (i) 20% of free on board value of goods;
 - (ii) 1.125% of free on board value of goods;
 - (iii) Where free on board value is not ascertainable, but sum of free on board value and cost of transport, loading, unloading and handling charges up to place of importation are available; then 1.125% of such sum.
 - (iv) Where free on board value is not ascertainable, but sum of free on board value and cost of transport, loading, unloading and handling charges up to place of importation are available; then 20% of such sum.
 - (a) (i) or (iii)
 - (b) (i) or (iv)
 - (c) (ii) or (iii)
 - (d) (ii) or (iv)
- 7. Certain goods were imported by air. The free on board value of goods is Rs. 100. The cost of transport, loading, unloading and handling charges up to place of importation is Rs. 25. The cost of insurance is Rs. 10. For the purposes of rule 10(2) of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007, which of the following shall be added to the value of imported goods?
 - (a) Cost of transport, loading, unloading and handling charges Rs. 25; and Cost of insurance Rs. 10;
 - (b) Cost of transport, loading, unloading and handling charges Rs. 25; and Cost of insurance Rs. 1.125
 - (c) Cost of transport, loading, unloading and handling charges Rs. 20; and Cost of insurance Rs. 1.125
 - (d) Cost of transport, loading, unloading and handling charges Rs. 20; and Cost of insurance Rs. 10
- 8. Which of the following statements is not correct in the context of valuation of imported goods?
 - (a) Buying commission is not includible in the value of imported goods.
 - (b) Rate of exchange notified by CBIC on date of presentation of bill of entry is to be considered.
 - (c) For imports by air, the cost of transport, loading, unloading and handling charges up to place of importation cannot exceed 20% of free on board value of goods;
 - (d) Social welfare surcharge is leviable on basic customs duty, integrated tax and GST compensation cess.



Duty Drawback



• [Sec. 74] Drawback allowable on re-export of Duty paid Goods.

CHAPTER OUTLINES

- [Sec. 75] Drawback on material used in the manufacture of Exported Goods.
- [Sec. 75A] Interest on Drawback.
- [Sec. 76] Prohibition and Regulation of Drawbacks.

MEANING OF DRAWBACK

Section 74

Drawback allowable on re-export of duty paid goods

Drawback in relation to any goods exported out of India, means the refund of duty or tax or cess as referred to in the Customs Tariff Act, 1975 and paid on importation of such goods in terms of section 74 of the Customs Act. [Amended by Notification No. 57/2017-Cus. (NT), dated 29-06-2017 w.e.f. 01-07-2017]

Section 75

Drawback on material used in the manufacture of exported goods.

Drawback in relation to any goods manufactured in India and exported, means the rebate of duty excluding IGST leviable under Section 3(7) and the compensation cess leviable under Section 3(9) of the Customs Tariff Act, 1975 chargeable on any imported materials or excisable materials used in the manufacture of such goods. [Amended by NN 88/2017-Cus. (NT), dated 21-09-2017 w.e.f. 01-10-2017]

DRAWBACK ALLOWABLE ON RE-EXPORT OF DUTY PAID GOODS [SECTION 74]

(1) DRAWBACK ONLY ON DUTY PAID IMPORTED GOODS:

Only imported goods on which duty has been paid on importation are eligible for drawback.

(2) ORDER FOR EXPORTATION:

The goods so imported must have been entered for exportation either –

- a. Under Section 51; or
- b. Under Section 77 as baggage; or
- c. Under Section 84(a) by Post.

and the proper officer must have made an order for permitting clearance of goods for exportation.

The goods shall be deemed to have been entered for export on the date with reference to which the rate of duty is calculated under Section 16.

(3) THE GOODS SHOULD BE CAPABLE OF BEING EASILY IDENTIFIED:

Such goods are identified to the satisfaction of the Assistant or Deputy Commissioner as the goods which were imported.

(4) DRAWBACK IS ALLOWED EQUAL TO 98% OF THE IMPORT DUTY:

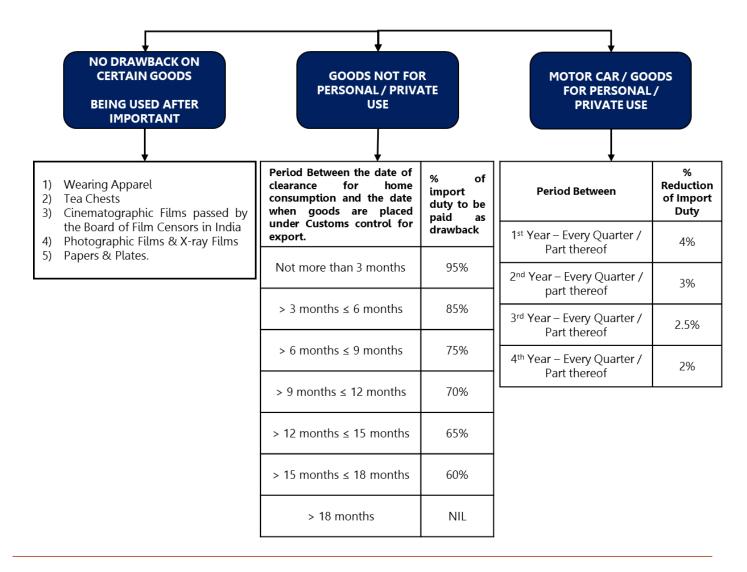
98% of the import duty paid is allowed as drawback in case the goods are exported out of India without being put to use. In case the goods are taken into use and then exported, duty drawback shall be allowed at notified rates u/s 74(2) having regard to the duration of use, the depreciation in value and other relevant circumstances.

(5) RE-EXPORT WITHIN 2 YEARS:

The goods must be entered for export within 2 years from the date of payment of duty on the importation

thereof. However, extension can be granted by the Board on sufficient cause been shown. In the case of goods assessed to duty provisionally u/s 18, the date of payment of the payment of the provisional duty shall be deemed to be the date of payment of duty.

For the purpose of this section **Re-export of Imported Goods (Drawback of Customs Duties) Rules, 1995** has been framed by the Central Government.



RE-EXPORT OF IMPORTED GOODS (DRAWBACK OF CUSTOMS DUTIES) RULES, 1995

PROCEDURE FOR CLAIMING DRAWBACK ON GOODS EXPORTED BY POST [RULE 3]

(1) WHERE GOODS ARE TO BE EXPORTED BY POST UNDER A CLAIM FOR DRAWBACK UNDER THESE RULES –

- a) The outer packing carrying the address of the consignee shall also carry in bold letters the words
 - "DRAWBACK EXPORT";
- b) The exported shall deliver to the competent Postal Authority, along with the parcel or package, a claim in the prescribed form in quadruplicate, duly filled in.

(2) DATE OF RECEIPT OF DRAWBACK CLAIM:

The date of receipt of the aforesaid claim form by the proper officer of customs from the postal authorities shall

be deemed to be the date of filing of drawback claim by the exporter for the purpose of Section 75A and an intimation of the same shall be given by the proper officer of customs to the exporter in such form as the **Principal Commissioner or Commissioner of Customs** may prescribe.

(3) DEFICIENCIES IN CLAIM TO BE INFORMED:

In case the aforesaid claim form is not complete in all respects, the exporter shall be informed of the deficiencies therein within 15 days of its receipt from postal authorities by a deficiency memo in the form prescribed by the Principal Commissioner or Commissioner of Customs, and such claim shall be deemed not to have been received for the purpose of (2) above.



(4) COMPLIANCE OF REQUIREMENTS SPECIFIED IN DEFICIENCY MEMO:

When the exporter complies with the requirements specified in the deficiency memo, within 30 days of receipt of the deficiency memo, he shall be issued an acknowledgement by the proper officer in the form prescribed by the Principal Commissioner or Commissioner of Customs and the date of such acknowledgement shall be deemed to be date of filing the claim for the purpose of Section 75A.

STATEMENTS / DECLARATIONS TO BE MADE ON EXPORTS OTHER THAN BY POST [RULE 4]

In the case of exports other than by post, the exporter shall, at the time of export of the goods, -

(1) DECLARATION TO BE MADE ON SHIPPING BILL:

State on the shipping bill or bill of export, the description, quantity and such other particulars as are necessary for deciding whether the goods are entitled to drawback under Section 74 and make a declaration on the relevant shipping bill or bill of export that, -

- a) The export is being made under a claim for drawback under section 74 of the Customs Act;
- b) That the duties of customs were paid on the goods imported;
- c) That the imported goods were, or were not, taken into use after importation.

However, the Principal Commissioner or Commissioner can exempt the exporter from compliance of above requirements if the same is beyond his control.

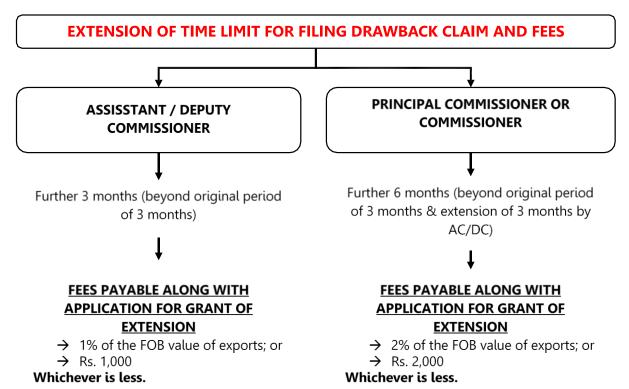
(2) DOCUMENTS TO BE FURNISHED:

Furnish to the proper officer of Customs, a copy of the Bill of Entry or any other prescribed document against which goods were cleared on importation, import invoice, documentary evidence of payment of duty, export invoice and packing list and permission from Reserve Bank of India to re-export the goods, wherever necessary.

MANNER & TIME OF CLAIMING DRAWBACK ON GOODS EXPORTED OTHER THAN BY POST [RULE 5]

(1) CLAIM TO BE MADE WITHIN 3 MONTHS OF EXPORT:

A claim for drawback, in case of goods exported other than by post, shall be filed in the specified form within 3 months from the date on which an order permitting clearance and loading of goods for exportation u/s 51 is made by proper officer of Customs.



(2) LIST OF DOCUMENTS TO FILED ALONG WITH CLAIM OF DDB:

The claim shall be filed along with the following documents, -

- **a. Triplicate copy of the Shipping Bill.** Bearing examination report recorded by the Proper Officer of the Customs at the time of Export.
- **b.** Copy of Bill of Entry or any other prescribed document against which goods were cleared on importation.
- c. Import Invoice;
- d. Evidence of Payment of Duty at the time of Import.
- e. Export Invoice & Packing List.
- f. Copy of Bill of Lading / Airway Bill.
- g. Permission of RBI for re-export of goods, wherever necessary.
- h. Any other documents as may be specified in deficiency memo.

(3) DATE OF FILING CLAIM:

The date of filing of the claim for the purpose of Section 75A shall be the date of affixing the Dated Receipt Stamp on the claims, which are complete in all respects, and for which an acknowledgement shall be issued in the form prescribed by the Principal Commissioner or Commissioner of Customs.

(4) DEFICIENCY MEMO:

Any claim which is incomplete in any material particulars or is without the documents specified above, shall not be accepted for the purpose of Section 75A and such claim shall be returned to the claimant with the deficiency memo in the form prescribed nu the Principal Commissioner or Commissioner of Customs within 15 days of submission and shall be deemed not to have been filed.

Where exporter complies with requirements specified in deficiency memo within 30 days from the date of receipt of deficiency memo, the same will be treated as a claim filed for the purpose of Section 75A.

(5) CLAIM FOR DRAWBACK ORDERED BY COMMISSIONER (APPEALS), CENTRAL GOVERNMENT OR ANY COURT:

Where any order for payment of drawback us made by Commissioner (Appeals), Central Government or any Court against an order of the Proper Officer of Customs, the exported may file a claim for drawback under this rule within 3 months from the date of receipt of order so made.

PAYMENT OF DRAWBACK AND INTEREST [RULE 6]

The drawback under these rules and interest, if any, shall be paid by the officers of Customs to the exported or to the agent specially authorized by the exporter to receive the said amount of drawback and interest. The date of payment of drawback and interest shall be deemed to be the date of issue of cheque; or the date of credit in the exporter's account maintained with the Customs House, as the case may be.

REPAYMENT OF ERRONEOUS OR EXCESS PAYMENT OF DRAWBACK AND INTEREST [RULE 7]

Where an amount of drawback and interest, if any, has been paid erroneously or the amount so paid is in excess of what the claimant is entitled to, the claimant shall, on demand by any officer of customs repay the amount so paid erroneously or in excess, and where the claimant fails to repay the amount it shall be recovered in the manner laid down in Section 142 of the Customs Act, 1962, as "Recovery of Sums due to Government".

DUTY DRAWBACK ON IMPORTED MATERIALS USED IN THE MANUFACTURE OF GOODS WHICH ARE EXPORTED

DRAWBACK ON IMPORTED MATERIALS USED IN THE MANUFACTURE OF GOODS WHICH ARE EXPORTED [SECTION 75]

The provisions regarding drawback in case of imported materials used in the manufacture of goods, which are exported are as follows, -

(a) NOTIFIED GOODS:

Drawback is allowed on goods which are notified by Central Government.

(b) MANUFACTURING PROCESS OR OTHER OPERATIONS MUST BE PERFORMED:

Such goods must either be manufactured or processed, or in respect of which any operation must have been carried out in India.

(c) ORDER FOR EXPORTING BY PROPER OFFICER:

Such goods must have been entered for exportation and the order permitting loading thereof has been made by proper officer u/s 51, or they must have entered for export by post u/s 84(a) and in respect of which proper officer has made an order permitting clearance for exportation.

(d) DUTY DRAWBACK OF CUSTOM DUTIES TO BE ALLOWED:

The drawback of duties of customs chargeable on any imported materials of a class or description, which is used in the manufacture or processing or in carrying out any such operation on such goods shall be allowed.

(e) NO DRAWBACK TO BE ALLOWED IN CASE OF NEGATIVE VALUE ADDITION:

If the **export value of such goods** or class of goods is **less than the value of the imported materials** used in the manufacturing, processing of such goods or carrying out any operation on them, then, **no drawback shall be allowed.**

(f) MINIMUM VALUE ADDITION:

If the export value of such goods is not more than such percentage of the value of the imported materials used in their manufacture etc., as specified by the Central Government, no drawback shall be allowed.

CUSTOMS AND CENTRAL EXCISE DUTIES DRAWBACK RULES, 2017

In exercise of the powers conferred upon it by section 75(2), the Central Government has made the Customs and Central Excise Duties Drawback Rules, 2017 vide Notification No.88/2017-N.T. dated 21.09.2017

DEFINITION [RULE 2]

- (a) **Drawback** in relation to any goods manufactured in India and exported, means the rebate of duty excluding integrated tax leviable under sub-section (7) and compensation cess leviable under sub-section (9) respectively of section 3 of the Customs Tariff Act, 1975 chargeable on any imported materials or excisable materials used in the manufacture of such goods.
- (b) **Excisable Material** means any material produced or manufactured in India subject to a duty of excise under the Central Excise Act, 1944.
- (c) **Export** with its grammatical variations and cognate expressions means
 - (i) taking out of India to a place outside India or
 - (ii) taking out from a place in Domestic Tariff Area (DTA) to a special economic zone and includes loading of provisions or store or equipment for use on board a vessel or aircraft proceeding to a foreign port.

The export is complete when goods cross territorial waters of India and property passes to purchases. If export is not complete, duty drawback is not payable.

[UOI v. Rajindra Dyeing and Printing Mills 2005 (180) ELT 433 (SC)]

- (d) Imported Material means any material imported into India and on which duty is chargeable under the Customs Act, 1962.
- **(e) Manufacture** includes processing of or any other operation carried out on goods, and the term manufacturer shall be construed accordingly
- (f) Tax Invoice means the tax invoice referred to in section 31 of the Central Goods and Services Tax Act, 2017.

DRAWBACK [RULE 3]

Drawback may be allowed at such amounts and such rates determined by Government and reduced by any amount of exemption availed on the export of goods (reduced rate of duty or tax paid/ Credit availed). **All Industry Drawback Rates (AIDR)** are fixed under rule 3 by considering average quantity and value of each class of inputs imported or manufactured in India. **Drawback is limited to incidence of duties of Customs on inputs used and remnant Central Excise Duty on specified petroleum products used for generation of captive power for manufacture or processing of export goods.**

NO DRAWBACK IN CERTAIN CASES

No drawback is allowed in the case of the following:

- i. Packing materials for export of blended tea, except tea chests.
- ii. goods manufactured out of duty free materials.
- iii. Jute batching oil used in manufacture jute yarn, twine etc.
- iv. Packing material used for jute yarn, fabrics etc.

FACTORS CONSIDERED WHILE DETERMINING AMOUNT/RATE OF DRAWBACK:

In determining the amount or rate of drawback under this rule, the Central Government shall have regard to –

- (a) the average quantity or value of each class or description of the materials from which a particular class of goods is ordinarily produced or manufactured in India;
- (b) the average quantity or value of the imported materials or excisable materials used for production or manufacture in India of a particular class of goods;
- (c) the average amount of duties paid on imported materials or excisable materials used in the manufacture of semis, components and intermediate products which are used in the manufacture of goods;
- (d) the average amount of duties paid on materials wasted in the process of manufacture and catalytic agents: However, if any such waste or catalytic agent is re-used in any process of manufacture or is sold, the average amount of duties on the waste or catalytic agent re-used or sold shall also be deducted;
- (e) the average amount of duties paid on imported materials or excisable materials used for containing or, packing the export goods;
- (f) any other information which the Central Government may consider relevant or useful for the purpose.

REVISION OF RATES/AMOUNT [RULE 4]

The rates/amount of drawback may be revised by the Central Government.

DETERMINATION OF DATE FROM WHICH THE AMOUNT OR RATE OF DRAWBACK IS TO COME INTO FORCE AND THE EFFECTIVE DATE FOR APPLICATION OF AMOUNT OR RATE OF DRAWBACK [RULE 5]

- (i) The Central Government will specify the period of validity for the drawback.
- (ii) Retrospective effect from the date of notification.
- (iii) The rate must be determined under section 16 or under section 83(2).

Government annually notifies ALL INDUSTRY RATES in the form of a Drawback Schedule, after the announcement of the Union Budget.

CASES WHERE AMOUNT OR RATE OF DRAWBACK HAS NOT BEEN DETERMINED [RULE 6]

Where no drawback is determined, the manufacturer/exporter has to apply for drawback within 3 months seeking a brand rate from the Government giving all date and information about use of inputs, manufacture etc.

Where the rate is lower than **80% of the duties paid**, revised rate may be applied for within 3 months. Proper rate will be fixed by the Government brand rate letter will be issued accordingly and provisional payment will be allowed subject to adjustment. Provisional drawback amount, as may be specified by the Central Government, will be paid by the proper officer of Customs pending processing of the application for brand rate of drawback. This amount would be equal to the customs component of all industry rate corresponding to the export goods, if applicable.

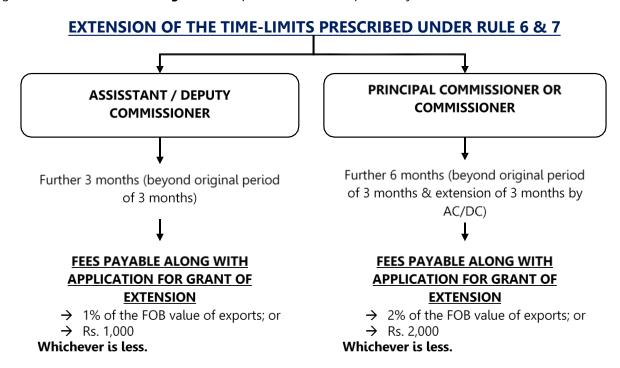
However, application for Special Brand Rate cannot be made where a claim for drawback under rule 3 or rule 4 has been made. In other words, where the exporter has already filed a duty drawback claim under All Industry Rates (AIR) Schedule, he cannot request for fixation of Special Brand Rate of drawback. Thus, the exporter should determine prior to export of goods, whether to claim drawback under AIR or Special Brand Rate.

NOTE:

CBIC has clarified that since safeguard duties and **countervailing duties** are not taken into consideration while fixing All Industry Rates of drawback, the drawback of the same can be claimed under an application for Brand Rate under rule 6 or rule 7 of the Customs & Central Excise Duties Duties Drawback Rules, 1995.

This implies that drawback shall be admissible only where the inputs which suffered safeguard duties were actually used in the goods exported as confirmed by the verification conducted for fixation of Brand Rate.

Further, where imported goods subject to safeguard duties / **countervailing duties** are exported out of the country as such, then the drawback payable under section 74 of the Customs Act would also include the incidence of safeguard duties / **countervailing duties** as part of total duties paid, subject to fulfillment of other conditions.



NOTE:

The concerned authority may, on an application and after making such enquiry as he thinks fit, grant extension or refuse to grant extension after recording in writing the reasons for such refusal.

CASES WHERE NO AMOUNT OR RATE OF DRAWBACK IS TO BE DETERMINED [RULE 8]

No amount or rate of drawback shall be determined in respect of any goods or class of goods under rule 6 or rule 7, as the case may be, if the export value of each of such goods or class of goods in the bill of export or shipping bill –

- (i) is less than the value of the imported materials used in the manufacture of such goods or class of goods; or
- (ii) is not more than such percentage of the value of the imported materials used in the manufacture of such goods or class of goods as the Central Government may, by notification in the Official Gazette, specify in this behalf.

UPPER LIMIT OF DRAWBACK MONEY OR RATE [RULE 9]

The upper limit of drawback money or rate determined under rule 3 should not exceed one third of the market price of the export product.

POWER TO REQUIRE SUBMISSION OF INFORMATION AND DOCUMENTS [RULE 10]

Any officer of Government authorized by Assistant Commissioner/Deputy Commissioner of Central Excise/Customs has power to require submission of information and documents to determine the rate of drawback.

ACCESS TO MANUFACTORY [RULE 11]

Access to manufactory has to be provided to Assistant/Deputy Commissioner Customs of Central Excise to verify the facts.

PROCEDURE FOR CLAIMING DRAWBACK FOR GOODS EXPORTED BY POST [RULE 12]

- (a) Outer packing containing the address of the consignee shall carry the words "Draw back Export".
- (b) Exporter to furnish prescribed form to the postal authorities containing all details.
- (c) The date of claim of drawback will be the date of filing of prescribed form to customs by the postal authorities.

STATEMENT/DECLARATION TO BE MADE ON EXPORTS OTHER THAN BY POST [RULE 13]

- (1) Declaration is to be given in shipping bill stating that drawback is being claimed and all duties have been paid.
- (2) The exporter shall furnish to the proper officer copy of shipping invoices and any other document.
- (3) In respect of brand rates (rules 6 & 7) additional declaration is to be given that:
 - (a) materials or components; and
 - (b) The materials continue to be imported and not being obtained from indigenous sources there has been no change in manufacturing formula or quantum per unit of imported materials or components if any, utilised in the manufacture of export goods.
- (4) In respect of duties of customs and central excise paid on the containers, packing materials and materials used in the manufacture of the export goods on which drawback is claimed, no separate claim for rebate of duty under the Central Excise Rules, 2002 or any other law has been or will be made to the Central Excise authorities.

The Principal Commissioner/Commissioner is empowered to exempt any importer or his agent from the provisions of this clause for reasons for to be recorded in the order.

MANNER AND TIME OF CLAIMING [RULE 14]

Electronic shipping bill in Electronic Data Interchange (EDI) under the claim of drawback or triplicate copy of the shipping bill is the document for the claim. Documents to be enclosed are the following:

- (a) Copy of export contract or letter of credit
- (b) Copy of packing list
- (c) Copy of ARE-1
- (d) Insurance certificate
- (e) Copy of drawback brand rate letter.

After giving acknowledgement, a deficiency memo will be issued calling for wanting details within 10 days. Compliance and re-submission by the exporter is to be done within the time frame. This is procedural in nature and claim cannot be rejected for procedural lapses.

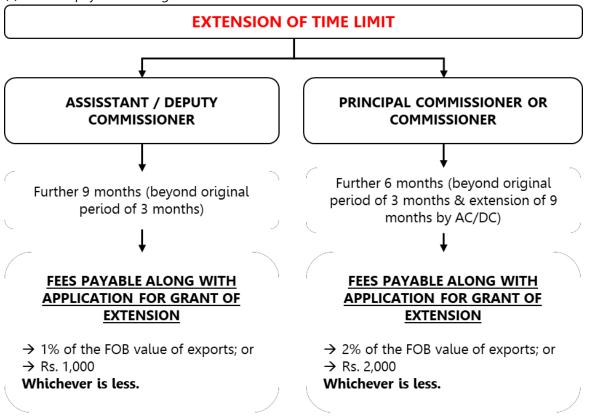
PAYMENT OF DRAWBACK AND INTEREST [RULE 15]

One or more claims can be combined and adjustments of all dues can be made and cheque issued or amount credited to exporter or his Custom House account.

SUPPLEMENTARY CLAIM [RULE 16]

Supplementary claims can be made in prescribed Form within 3 months from,

- (a) Date of publication of such rate in case of revised rate granted
- (b) Date of communication of the said rate in case of brand rate (rule 6 & 7)
- (c) Date of payment of original drawback in other cases.



NOTE:

The concerned authority may, on an application and after making such enquiry as he thinks fit, grant extension or refuse to grant extension after recording in writing the reasons for such refusal.

REPAYMENT OF ERRONEOUS OR EXCESS PAYMENT OF DRAWBACK & INTEREST [RULE 17]

Erroneous payments are to be repaid on demand or otherwise recovered u/s 142 of Customs Act with interest.

ADJUDICATION OF CASES UNDER RULE 17 OF THE CUSTOMS AND CENTRAL EXCISE DUTIES DRAWBACK RULES, 2017

- (i) Simple demand of erroneously paid drawback:
 - ♣ Assistant/Deputy Commissioner of Customs
 → Amount of Drawback without any limit.
- (ii) Cases involving collusion, willful misstatement or suppression of facts etc:
 - ♣ Additional/Joint Commissioner of Customs → Amount of Drawback is without any limit
 - Deputy/Assistant Commissioner of Customs → Amount of Drawback is upto Rs. 5 lakhs

RECOVERY OF AMOUNT OF DRAWBACK WHERE EXPORT PROCEEDS NOT REALISED [RULE 18]

If the exporter fails to produce evidence in respect of realisation of export proceeds within the period allowed under the Foreign Exchange Management Act, 1999, or any extension of the said period by the Reserve Bank of India, the Deputy / Assistant Commissioner of Customs shall issue a notice to the exporter to produce evidence of realisation of export proceeds within 30 days. Where the exporter does not produce such evidence within the said period of thirty days, the Assistant Commissioner of Customs or Deputy Commissioner of Customs shall pass an order to recover the amount of drawback paid to the claimant and the exporter shall repay the amount so demanded within thirty days of the receipt of the said order. Recovery of drawback will be effected in case of non – receipt of payment from the consignee, based on R.E.I. or bank certificate.

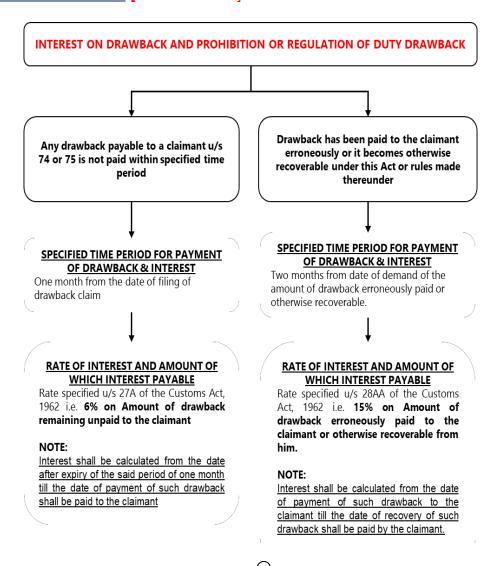
However, such recovery shall not be made in case the non-realisation of sale proceeds is compensated by the Export Credit Guarantee Corporation of India Ltd. under an insurance cover and the Reserve Bank of India writes off the requirement of realisation of sale proceeds on merits and the exporter produces a certificate from the concerned Foreign Mission of India about the fact of non-recovery of sale proceeds from the buyer.

If export proceeds are not realized, duty drawback allowed can be recovered even if proceedings under FEMA are dropped.

POWER TO RELAX [RULE 19]

Any relaxation in procedure may be made by the Government after recording the reasons in writing.

INTEREST ON DRAWBACK [SECTION 75A]



PROHIBITION & REGULATION OF DRAWBACK [SECTION 76]

- (a) Notwithstanding anything herein before contained, no drawback shall be allowed
 - (i) In respect of any goods, the market price of which is less than the amount of drawback due thereon,
 - (ii) where the amount of drawback in respect of any goods is less than fifty rupees.
- (b) Without prejudice to the provision of sub-section (i) of the central government is of the opinion that goods of any specified description in respect of which drawback is claimed under this chapter are likely to be smuggled back into India, it may by notification in the official Gazette, direct that drawback shall not be allowed in respect of such goods or may be allowed subject to such restrictions and conditions as may be specified in the notification

The market price is as prevailing in India and not the price which exporter expects to receive from the foreign customer. [Om Prakash Bhatia v. CC 2003 ELT 423 (SC)].

PROBLEM:

Answer the following with reference to the provisions of the Customs Act, 1962 and rules made there under:

1. Mr. X filed a claim for payment of duty drawback amounting to Z 1,50,000 on 30-07-2017. But the amount was received on 29-10-2017. You are required to calculate the amount of interest payable to Mr. X on the amount of duty drawback claimed.

SOLUTION: Computation of interest payable to Mr. X on duty drawback claimed: (amount in Rs.) Duty drawback claimed 1,50,000 Date of filing drawback claim 30-07-2017 Starting date of interest [30-07-2017 + 1 month] 31-08-2017 Date of payment of drawback 29-10-2017 No. of days of delay [31-08-2017 to 29-10-2017] 60 days Rate of interest 6% Quantum of interest (rounded off) R 1,50,000 x 60 ÷ 365 x 6%] 1,479

Working Note: Since the claim of duty drawback is not paid to claimant within 1 month from the date of filing such claim, interest @ 6% per annum is payable from the date after the expiry of the said 1 month period till the date of payment of such drawback.

2. Mr. X was erroneously refunded a sum of Rs. 20,000 in exceeds of actual drawback on 20-06-2017. The same was demanded by the department on 14-08-2017 and the same was return to the department on 20-10-2017. You are required to calculate the amount of interest chargeable from Mr. X. Provided brief reasons for your answer.

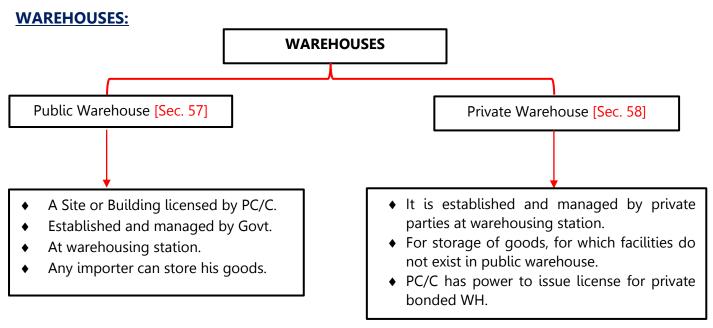
SOLUTION: computation of interests chargeable from Mr. X on excess duty drawback paid.

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Duty drawback erroneously refunded	20,000
Date of repayment of erroneous drawback	20-06-2017
Date of payment by the assessee	20-10-2017
No. of days of delay [21-06-2017 to 20-10-2017]	122 days
Rate of interest	15%
Quantum of interest (rounded off) R 20,000 x 122 ÷ 365 x 15%]	1,003

Working Note: interest of payable, by the claimant, on erroneous refund of duty drawback @ 15% per annum for the period beginning from the date of payment of such drawback to the claimant, till the date of recovery of such drawback.



Warehousing under Customs



SPECIAL WAREHOUSE [SECTION 58A]

- → Special warehouse which would remain under physical control of proper officer (under customs lock).
- → The Principal Commissioner/Commissioner of customs may, subject to such conditions as may be prescribed, license a special warehouse wherein dutiable goods may be deposited.
- → No person will enter the warehouse or remove any goods therefrom without the permission of the proper officer.

CANCELLATION OF LICENSE [SECTION 58B]

If the licensee contravenes any of the provisions of the customs law or breaches any of the conditions of the licence. Before, cancellation, the licensee shall be given a reasonable opportunity of being heard.

During the pendency of an enquiry under this section, operations of the warehouse may be suspended.

During suspension period, no goods shall be deposited in such warehouse.

Where the licence is cancelled, the goods warehoused shall:

- (i) be removed from such warehouse to another warehouse or
- (ii) be cleared for home consumption/export.

The goods shall be removed within 7 days from the date on which order of such cancellation is served on the licensee or within such extended period as the proper officer may allow.

Till the time the goods are deposited in the warehouse (whether in case of suspension or removal), they will continue to be governed by the warehousing provisions under Customs law.

WAREHOUSING BOND [SECTION 59]

Where a BOE is filed u/s 46 for warehousing. Assessment is completed u/s 17/18.

Types of Bond:-

a) Consignment Bond :-

On the basis of duty determined, the importer is required to execute a Consignment bond for :

- i. Thrice the amount of duty already assessed.
- ii. To pay interest @ 24% p.a and fine and penalty, [Mandatory Penalty of 100%]
- iii. Compliance of all appropriate provisions, rules and regulations.
- iv. To pay warehousing charges.

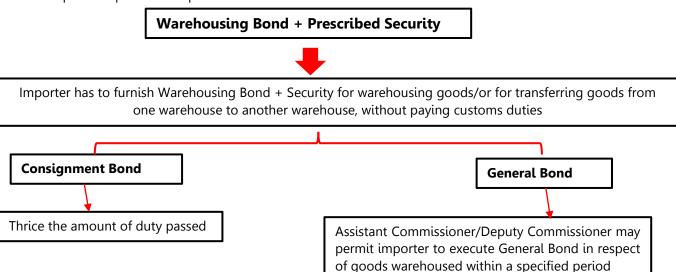


b) General Bond :-

The Assistant/Deputy Commissioner of Customs may permit an importer to execute a general bond in such amount as he may approve in respect of the warehousing of goods to be imported by the importer within a specified period.

The bond amount is determined by Assistant/Deputy Commissioner of Customs, having regard to:

- past imports warehoused and the duty involved in such consignments;
- anticipated imports and expected revenue involved.



PERMISSION FOR REMOVAL OF GOODS FOR DEPOSIT IN WAREHOUSE [SECTION 60]

Once the importer has furnished the stipulated bond and security (i.e. he has complied with the provisions of section 59 in respect of any goods), the proper officer may make an order permitting the deposit of the goods in a warehouse. Such order may also be made electronically through the customs automated system on the basis of risk evaluation through appropriate selection criteria.

PERIOD FOR WHICH GOODS MAY REMAIN IN A WAREHOUSE [SECTION 61]

A. Warehousing Period

Time period for which different class of goods may be warehoused is tabulated as under:

S. No.	Class of goods		Time for which the goods may remain warehoused
1.	Goods for use in any 100% EOU/ EHTP/ STP warehouse where manufacture or other operations are permitted under section 65		
	(i) Capital goods (ii) Other goods		Till the clearance of such goods from warehouse
			Till the consumption or clearance of such goods from warehouse
2.	2. Goods other than 1 above		Till the expiry of 1 year from the date of order permitting deposit of goods in warehouse

B. <u>Interest on warehoused goods</u>

Provisions relating to interest payable on goods which remain warehoused beyond the prescribed period are tabulated below:

		•		
S. No.	Class of goods	Provisio	n relating to interest payable	
1.	Capital goods and other goods for use in any 100%/EOU/ EHTP/STP/warehouse where manufacture or other operations are permitted under section 65	No interest is payable		
2.	Goods other than 1 above	Interest will be payable if goods remain in the warehouse beyond 90 days from the date on which the order permitting deposit of goods in a warehouse under section 60 is made.		
		Rate of interest Amount on which interest is payable Period for which interest is payable	15% p.a. Duty payable at the time of clearance of the goods. From the expiry of the 90 days till the date of payment of duty on the warehoused goods.	

Do you know?

- 1. If no customs duty is payable at the time of clearance of goods from warehouse, no interest is payable. Interest is mere 'accessory' to principal.
- 2. Goods which are not removed from the warehouse after the expiry of the period permitted for warehousing or extended, are deemed to be improperly removed in terms of section 72.

The rate of duty applicable in such case will be the rate in force on the date of deemed removal, i.e. the date on which the permitted period or its permitted extension comes to an end. When the demand notice is issued is not relevant for determining the rate of duty.

Section 15(1)(b) has no application in such cases where the goods are removed from warehouse beyond the permitted period of warehousing; it is applicable only to the cases where a bill of entry is presented for removal from warehouse under section 68.

Illustration 1 -

'X', an importer, (other than 100% EOU, STP unit, EHTP unit) imported some goods and deposited them in the warehouse on 12th April. These goods were re-exported without payment of duty on 15th August. With reference to the Customs Act, 1962, discuss whether any interest under section 61 of the Customs Act, 1962 is payable by 'X'?

Answer:

As per section 61(2) of the Customs Act, 1962, if goods (belonging to importer other than 100% EOU, STP unit, EHTP unit) remain in a warehouse beyond a period of 90 days from the date on which the order under section 60(1) is made, interest is payable @ 15% on the amount of duty payable at the time of clearance of the goods, for the period from the expiry of the said 90 days till the date of payment of duty on the warehoused goods.

In Pratibha Processors v. UOI 1996 (88) ELT 12 (SC), the Apex Court has held that when goods at the time of removal from warehouse are wholly exempted from payment of duty, the liability to pay interest cannot be saddled on a non-existing duty. Liability to pay interest under section 61(2) of the Customs Act is solely dependant upon the eligibility or actual liability to pay duty. In case the liability to pay duty is nil, then, the interest will also be nil.

Therefore, since in this case the goods have been re-exported without payment of duty, no interest is payable by 'X'.

Illustration 2 -

Comment on the validity of the following statements:

- (a) Goods, other than capital goods, intended for use in any hundred per cent export-oriented undertaking, can be warehoused only till the expiry of five years.
- (b) Interest free period of ninety (90) days under section 61(2) in respect of warehoused goods (not intended for being used in 100% EOU) commences from the date on which an into-bond bill of entry in respect of such goods is presented.

Answer:

- (a) Invalid. Goods, other than capital goods, intended to be used in a 100% EOU/ STP unit/ EHTP unit can be warehoused till the consumption or clearance of such goods from the warehouse. Further, capital goods intended to be used in a 100% EOU can also be warehoused till the clearance of such goods from the warehouse.
- (b) Invalid. As per section 61, if goods (not intended for being used in 100% EOU, STP unit, EHTP unit) remain in a warehouse beyond a period of 90 days from the date on which the order permitting deposit of goods in a warehouse under section 60(1) is made, interest is payable @ 15% on the amount of duty payable at the time of clearance of the goods, for the period from the expiry of the said 90 days till the date of payment of duty on the warehoused goods.
 - In other words, the relevant date for determining the commencement of the period of 90 days is the date of order made under section 60 permitting removal of goods from the customs station for deposit in a warehouse, and not the date on which into-bond bill of entry in respect of such goods is presented.

OWNER'S RIGHT TO DEAL WITH WAREHOUSED GOODS [SECTION 64]

When the imported goods are warehoused, the temporary possession and the custody of the goods are passed on to the warehouse keeper. However, the remaining titular rights of the goods vest with the owner. Thus, the owner has every access to the goods.

In the course of his dealings with the goods, he may:

- (a) inspect the goods;
- (b) ensure that the goods do not deteriorate or get damaged during storage in the warehouse;
- (c) sort the goods; or
- (d) show the goods for sale

Manufacturer During Warehouse [Section 65]

The owner of any warehoused goods may carry on any manufacturing process or other operation in relation to warehoused goods.

- i. With the perm ission of the Assistant/Deputy Commissioner and
- ii. Subject to the prescribed conditions and on payment of the prescribed fees.

	1	2	3			
	nished products are orted out of India.	If finished products are wholly cleared for home consumption (Removed in DTA).	Part of finished go exported and othe cleared for home c	r parts are		
Impo Con	duty is chargeable. ort duty on the goods tained in such exported ds will remitted.	Duty will be chargeable as if manufactured goods have been imported.	Point No. 1 and 2 bo apply.	oth will		

Wastage or Refuse of Warehouse:-

During the manufacturing operations or other processes done in the warehouse, waste or refuse may also arise. The question that arises is whether any import duty should be levied on the waste or refuse so generated. The answer is dependent upon whether finished product manufactured is exported out of India or cleared for home consumption.

In this respect, the following provisions shall apply: –

(a) if the whole or any part of the goods resulting from such operations are exported, import duty shall be remitted on the quantity of the warehoused goods contained in so much of the waste or refuse as has arisen from the operations carried on in relation to the goods exported.

However, such waste or refuse is either destroyed or duty is paid on such waste or refuse as if it had been imported into India in that form.

(b) if the whole or any part of the goods resulting from such operations are cleared from the warehouse for home consumption, import duty shall be charged on the quantity of the warehoused goods contained in so much of the waste or refuse as has arisen from the operations carried on in relation to the goods cleared for home consumption.

For Example:-

Let us take the case of cutlery manufactured out of imported high- speed cutting steel strips. Locally procured plastic is used for providing handles to the cutlery i.e. knife, fork, etc. In a batch process 200 kg imported steel strips and 100 kg plastic is issued for the manufacture of the cutlery items. 400 gross knives are manufactured and they are cleared for home consumption. The steel strip content in the above knives is 178 kg. The weight of the plastic handles is 85 kg. The waste is in the form of shaving etc. The total weight of the waste is [(200+100)-(178+85)=37kg]. The steel content of the waste is 22 kg. So import duty of customs at the rate applicable to steel strips should be collected on the waste.

The other alternative is where the finished goods are exported out of the country. Take the same example. In this case the manufacturer has two options. He can destroy the waste. Then he will not be required to pay duty on the steel strip content in the waste. If he does not choose to destroy the waste, then he has to pay duty on the steel strip content in the waste. Remission of duty on the imported material content in the waste or refuse is allowed only when the final product concerned is exported out of India and the waste is destroyed.

For Example:-

Let us now take an example where the final products are both exported and cleared for home consumption. The question of appropriating the waste will have to be decided first. The imported raw material is rubber. The end product is motor vehicle tyre. The additional materials used are (1) beading wire, (2) tyre cord warp sheet (3) chemicals and (4) mineral oil.

chemicals and (1) material off.	
Total quantity of rubber issued	1500 kg
Weight of beadwire used	10 kg
Weight of tyre chord warp sheet used	180 kg
Weight of chemical used	4 kg
Weight of mineral oil used	16 kg
Total weight of raw materials issued	1710 kg
Total no. of tyres manufactured	100 pcs
Weight per tyre	16.5 kg
Thus total weight 100 tyres	1650 kg
Wastage	60 kg
Total no. of tyres cleared for home consumption	25 pcs
Total no. of tyres exported	75 pcs.
Wastage relatable to tyres exported 60 kg	45 kg

Imported rubber content in the waste relatable to the exported tyres = $45 \times \frac{1500}{1710} = 39.5 \ kg \ (appx.)$

Import duty leviable on the import rubber content in the waste can be remitted if 45 kgs of the waste are destroyed.

Weight of waste relatable to tyres cleared for home consumption = 15 kg
Imported rubber content in the waste = 13.2 kg

Import duty is compulsorily leviable on this quantity of import rubber.



Illustration 1 -

"If manufacturing operations are carried out on warehoused goods and finished products are cleared for home consumption, then appropriate duty of customs should be levied on the quantity of the warehoused goods contained in the waste or refuse arising out of such manufacturing process."

Examine the validity of the said statement in the context of section 65 of the Customs Act, 1962 dealing with manufacture and other operations in relation to warehoused goods.

Answer:

The said statement is valid.

Section 65 lays down that if the finished products arising as a result of operations carried out in the warehouse are cleared for home consumption, import duty would be charged on the quantity of the warehoused goods contained in the waste or refuse arising from such operations.

Power to Exempt Imported Materials used in the Manufacture of Goods in Warehouse [Section 66]

If –

- any imported materials are used in accordance with the provisions of section 65 for the manufacture of any goods and
- the rate of duty leviable on the imported exceeds the rate of duty leviable on such goods, the Central Government, if satisfied that in the interests of the establishment or development of any domestic industry it is necessary so to do, may by notification in the Official Gazette, exempt the imported materials from the whole or part of the excess rate of duty.

Transfer of Warehoused Goods From One Warehouse to Another [Section 67]

The owner of any warehoused goods may remove them from one warehouse to another, with the permission of the proper officer.

<u>Clearance of Warehoused Goods for Home Consumption [Section 68]</u>

The importer of any warehoused goods may clear such goods for home consumption only on the fulfilment of the following conditions:

- i. File an ex-bond bill of entry for home consumption,
- ii. Duty leviable on such goods and all penalties, rent, interest/and other charges payable in respect of such goods have been paid; and
- iii. The proper officer has made an order for clearance of such goods for home consumption.

Relinquishment of title: The owner of any warehoused goods may relinquish his title to such warehoused goods only:

- i. At any time before an order for clearance of goods for home consumption has been made, and
- ii. Upon payment of rent, interest and other charges and penalties, if any, in respect of the goods and on such relinquishment, he shall not be liable to pay duty thereon.

No relinquishment in case of offence: The owner of any such warehoused goods shall not be allowed to relinquish his title to such goods regarding which an offence appears to have been committed under this Act or any other law for the time being in force.

<u>Clearance of Warehouse Goods for Exportation [Section 69]</u>

Any warehoused goods may be exported to a place outside India without payment of import duty, only on the fulfilment of the following conditions:

- i. File a shipping bill or bill of export, in the prescribed form or a label or declaration accompanying the goods as referred to in u/s 82 has been presented in respect of such Goods. (w.e.f. 10.5.13), this amendments enables export of warehoused Goods under postal export documents reffered to in Section 82 also.
- ii. Export duty leviable on export of such goods, and all other dues such as the penalties, warehouse rent, interest and other warehousing charges have been paid; and
- iii. The proper officer has made an order for clearance of such goods for exportation.

Do you Know?

In case Government of India is of the opinion that goods of any specified description are likely to be smuggled back into India, it may by notification in the Official Gazette, direct that such goods: shall not be exported to any place outside India without payment of duty or may be allowed to be so exported subject to such restrictions and conditions as may be specified in the notification.



Duty in Case of Volatile Goods [Section 70]

The Assistant/Deputy Commissioner of Customs is empowered to remit the import duty leviable on such shortage/deficiency if following conditions are satisfied:

- i. The goods are found deficient in quantity at the time of removal from the bonded warehouse.
- ii. This shortage/deficiency is on account of natural loss i.e. evaporation etc.
- iii. Such goods are notified by the Central Government.

Removal of Goods from Warehouse [Section 71]

Provides that the warehoused goods are not to be removed except for home consumption or exportation or to another warehouse or as otherwise provided by the Act.

Consequences of Default [Section 72]

- If Goods are removed in contravention of Section 71.
- If Samples are drawn without payment of duty.
- Those goods which are not removed within prescribed time limit for warehousing u/s. 61. (Warehousing Interest @ 18% p.a.)
- The customs officer is entitled to demand payment of duty + interest + warehousing charges + penalty.
- If the goods are available, he may detain and dispose off such quantity of goods after giving proper notice of demand to the owner of the Goods.

Cancellation of Bond [Section 73]

• When the whole goods covered by any bond executed u/s. 59 have been cleared for home consumption or export and all dues paid, then proper officer shall cancel the bond.

Warehouse keeper to be the custodian of warehoused goods [Section 73A]

As per section 73A, all warehoused goods will remain in the custody of the person who has been granted a licence under section 57/58/58A until they are cleared for home consumption/ transferred to another warehouse/exported/removed as otherwise provided under this Act.

The responsibilities of the warehouse keeper (licensee) who has custody of the warehoused goods will be such as may be prescribed.

Where any warehoused goods are removed in contravention of section 71, the licensee shall be liable to pay duty, interest, fine and penalties.

This would be in addition to any other action that may be taken against him under this Act or any other law for the time being in force.

ILLUSTRATION:-

1.	Mr. Bhar imported goods on 14 (in Euro) 50,000. Goods were		•			
	in bonded warehouse issued warehousing period, nor clea 18.4.2010. Only after a notice warehouse issued warehousing period, nor clea 18.4.2010. Only after a notice warehouse warehoused the goods additional duty or SAD is payar of duty payable by Mr. Bhar warehouse (1 Euro =) (ii) Basic customs duty 12% (on	on 19.1.2010. Mr. Bhan ared the goods with was issued under sect from the warehou able, on the basis of the hile removing the go 65 (on 15.1.2010), 66	r neither obtained per hin the permitted wa tion 72 demanding du use, on 15th May, 201 following information, oods 5 (on 18.4.2010) and 67	mission of time for the arehousing period of ty and other charges, 0. Assuming that no compute the amount (on 15.5.2010)		
ANS	In Kesoram Rayan v. CC86 ELT 464 = (1996) 5 SSC 576, it has been held that goods which are not removed from warehouse within the permissible period, are deemed to be improperly removed on the day it should have been removed. Thus, duty applicable on such date (i.e. last date on which the goods should have been removed) is applicable, and not the date on which goods were actually removed.					
	Hence, rate of duty applicable in Entry for ware-housing is relevant. Hence, exchange Hence, Assessable Value is₹32,5 cess @ 2% is ₹9,750 and SAHE compared to the set of the s	vant for valuation. Sub rate relevant is 1 Euro 50,000 (50,000 × 65). Ba	osequent change in foro o =₹65.	eign exchange rate is		
	goods were cleared from the port for warehousing. Assessable value was US \$ 5,00,000. Customs officer issued the order under section 60 permitting the deposit of the goods in warehouse on 21st February 2011 for 3 months. Goods were not cleared even after warehousing period was over, i.e., 21st May 2011 and extension was also not obtained. Customs officer issued notice under section 72 demanding duty and other charges. Goods were cleared by importer on 28th June 2011 What is the amount of duty payable while removing the goods? Compute on the basis of following information					
	(assume that no additional du	ty or special addition	nal duty is payable):	inpute on the busis		
	=	ty or special addition	21.5.2011	28.6.2011		
	=					
	(assume that no additional du	14.2.2011	21.5.2011	28.6.2011		
ANS	(assume that no additional du	14.2.2011 ₹48.20 35%	21.5.2011 ₹48.40 30%	28.6.2011 ₹38		
ANS	Rate of Exchange per US \$	14.2.2011 ₹48.20 35% ayable by the importe	21.5.2011 ₹48.40 30%	28.6.2011 ₹38		
ANS	Rate of Exchange per US \$ Basic customs duty Computation of customs duty page 1.	14.2.2011 ₹48.20 35% ayable by the importe	21.5.2011 ₹48.40 30%	28.6.2011 ₹38 25%		
ANS	Rate of Exchange per US \$ Basic customs duty Computation of customs duty paragraphs and the computation of customs duty paragraphs and the customs duty paragraphs are computation of customs duty paragraphs.	14.2.2011 ₹48.20 35% ayable by the importe	21.5.2011 ₹48.40 30% er (Note 1)	28.6.2011 ₹38 25%		
ANS	Rate of Exchange per US \$ Basic customs duty Computation of customs duty particles and the computation of customs duty @ 30.9% Notes: (1) As per section 14, the asson the date on which is	14.2.2011 ₹48.20 35% ayable by the importe 0 ×₹48.20 sessable value is to be into-bond bill of entry	21.5.2011 ₹48.40 30% er (Note 1) (Note2) e computed as per the ey for warehousing is fill	28.6.2011 ₹38 25% ₹2,41,00,000 ₹74,46,900 exchange rate in force ed u/s 46 of the Act.		
ANS	Rate of Exchange per US \$ Basic customs duty Computation of customs duty particles and particles are also assessable value US \$ 5,00,00 Basic Customs duty @ 30.9% Notes: (1) As per section 14, the assessable value US \$ 5,00,000	ayable by the imported of the into-bond bill of entry in the change in force as on the change i	21.5.2011 ₹48.40 30% er (Note 1) (Note2) e computed as per the er y for warehousing is fill 14 th February i.e.₹48.20 ram Rayon v. CC [1996] 86 on thereof, the date of the emed removal and the eng customs duty. Therefore	28.6.2011 ₹38 25% ₹2,41,00,000 ₹74,46,900 exchange rate in force ed u/s 46 of the Act. per US \$ will be taken. ELT 464 (SC) when the n which warehousing rate of duty prevalent ore, the date of expiry		



3.

(The assessee imported capital goods and deposited them in the warehouse) The said goods were not removed from the warehouse within the period permitted under Section 61(1)(a) i.e. 5 years. Subsequently, the assessee filed an application for relinquishment of title of such warehoused goods. The department contended that since the assessee did not file an application for extension of warehousing period before the expiration of five years period fixed under Section 61(1)(a), after expiration of the said period, the goods could no longer be termed as 'warehoused goods'. Therefore, the assessee lost has title to the same and consequently he lost its right to relinquish its title thereto. It was further claimed that the relinquishment of title to the said goods ought to have been made by the assessee before the expiration of the warehousing period and not thereafter and therefore the goods were 'deemed to have been improperly removed from the warehouse'. Consequently the assessee became liable to pay duty, penalty and interest with respect to the said goods as provided under Section 72(1)(b) of the Customs Act, 1962

Discuss whether the contention of the department is correct, by referring to case law, if any.

ANS

As per the facts of the case, the assessee imported goods and warehoused them. On failure to clear goods within the permissible warehousing period, he submit application for relinquishment of title to the goods in terms of Section 68 of Customs Act, 1962. However, the department has contended that since the assessee had failed to clear the goods within the permissible period, the goods shall be deemed to be removed after expiry of warehousing period. Thus, the assessee is not entitled to relinquish the title to the goods.

The issue for consideration is whether after expiry of permissible warehousing period, title can be relinquished or not. The contention of the department that the assessee cannot relinquish his title after expiry of warehousing period is incorrect on account of following reasons:

- (1) Section 68 of Customs Act gives a right to the assessee to surrender his title to the goods at any time before an order of clearance of Goods is made by the proper officer. In the given case, nodoubt period of warehousing had expired, but still no demand order has been made by proper officer in terms of Section 72 of the Customs Act,
- 1962. In the absence of passing off any such demand order, the assessee is entitled to relinquish his title to the goods.
- (2) Further, it shall be noticed that if the assessee fulfills the condition association with relinquishment of title, then relinquishment is his right. Relinquishment does not depends upon the discretion of the assessee. The only condition specified in Section 68 is that the order for clearance of home consumption should not have been made. Section 68 nowhere specifies that the title shall be surrendered before the expiry of warehousing period.
- (3) Further, "warehoused goods" has been defined in Section 2 to mean "goods deposited in warehouse". This defini- tion nowhere provides that goods shall be referred to as warehoused goods only till the expiry of permissible warehousing period. Thus, the goods are "warehoused goods" till the time these are actually cleared in pursuance of an order for clearance for home consumption.

On identical facts, the same view has been taken by Rajasthan HC in case of **J K CEMENT WORKS-2008.**

6

Baggage, Stores and Import by Post



CHAPTER OUTLINES

- [Sec. 77] Declaration by Owner of Baggages.
- [Sec. 78] Rate of Duty.
- [Rule 3 & 4] General Free Allowances.
- [Rule 5] Jewelry Allowances (Stay Period > 1 Year).
- [Rule 6] Personal & Household Articles other than mentioned in Annexures I & II.
- Import by Post.
- Stores.
- Coastal Goods.



BAGGAGE

The term "baggage" has been defined under section 2(3) of the Customs Act, to include unaccompanied baggage as well but does not include motor vehicles. The term baggage is a comprehensive term which means the luggage of a passenger accompanied or unaccompanied and comprises of trunks or bags and the personal belongings of the passenger. It is not limited to the meaning of bonafide baggage as defined in clause 3 of Tourist Baggage Rules,

1958..

DECLARATION BY OWNER OF BAGGAGE [SECTION 77]

The Owner of baggage shall for the purpose of clearing it make declaration of its contents to a proper officer.

RATE OF DUTY [SECTION 78]

35% + (3.5% i.e. SWS @ 10% of 35%) \rightarrow 38.5%

ENTRY OF BAGGAGE BY OWNER [SECTION 77]

Under this section the owner of the baggage has to make a declaration of its contents to the proper officer of customs, for the purpose of clearing it. This is known as Baggage Declaration Form. Declaring packing list is sufficient declaration.

RATE OF DUTY AND TARIFF VALUATION APPLICABLE TO BAGGAGE [SECTION 78]

Section 78 of the Customs Act stipulates that the rate of the duty and tariff valuation, if any applicable to baggage shall be the rate of and valuation in force on the date on which a declaration is made in respect of such baggage under section 77. Therefore, the relevant date is the date of filing baggage declaration under section 77.

Rate of duty on baggage is 35% ad valorem. This rate of duty is not applicable to fire arms, cartridges of fire arms exceeding 50, cigarettes, cigars or tobacco in excess of the quantity prescribed for importation free of duty under the relevant baggage rules and goods imported through a courier service. Valuation rules apply to valuation of baggage also.

DUTY EXEMPTION TO BAGGAGE [SECTION 79]

Section 79(1) of the Customs Act refers to the duty relief available in respect of baggage. It stipulates that the proper officer, may subject to any rules made under sub-section (2) pass free of duty

- (a) any article in the baggage, of a passenger or a member of the crew, in respect of which the said officer is satisfied that it has been in his use for such minimum period as may be specified in the rules;
- (b) any article in the baggage of a passenger in respect of which the officer is satisfied that it is for the use of the passenger or his family or is a bonafide gift or souvenir, provided that the value of each such article and the total value of all such articles does not exceed such limits as may be specified in the rule.

The law thus envisages two categories of baggage, namely those belonging to (a) passengers; and (b) members of the crew. Similarly, it envisages three classes of goods, namely (a) personal effects, which have been in the use of the person for a minimum period; (b) household effects, which is used by the family including the person; and (c) gifts and souvenirs. Sub-section (2) of section 79 enables the Central Government to make rules for the purposes of carrying out the provisions of section 79(1). It also stipulates that such rules may specify

- (a) the minimum period for which any article has been used by a passenger or a member of the crew for the purposes of [clause (a) of sub-section (1)] determining personal effects;
- (b) The maximum value of any individual article and the maximum total value of all the articles which may be passed free of duty [under clause (b) of sub-section (1)] i.e., household effects, gifts, souvenirs etc;
- (c) the conditions to be fulfilled before or after clearance subject to which the baggage may be passed free of duty.
 - Sub-section (3) of section 79 provides that different rules may be made for different classes of persons.

PASSENGER BAGGAGE RULES

In pursuance of the powers conferred under section 79 of the Customs Act, the Government had earlier passed the Baggage Rules 1998. The Baggage Rules, 1998 have been substituted with the new Baggage Rules, 2016. The salient features of the Baggage rules 2016 are discussed hereunder:

GENERAL DUTY-FREE BAGGAGE ALLOWANCE:

The general duty-free baggage allowance for different class of passengers coming from different countries is given hereunder:

RULE NO.	CLASS OF PASSENGER	ORIGIN COUNTRY FROM WHICH THE PASSENGER IS	ARTICLES ALLOWED FREE OF DUTY
3.	Indian resident or Foreigner residing in India or Tourist of Indian origin, excluding an infant	Any country other than Nepal, Bhutan or Myanmar	(i) Used personal effects and travel souvenirs; and (ii) Articles up to the value of Rs. 50,000 (excluding articles mentioned in Annexure I), if carried on in person or in the accompanied baggage of the passenger
3.	Tourist of foreign origin excluding infant	Any country other than Nepal, Bhutan or Myanmar	(i) Used personal effects and travel souvenirs; and (ii) Articles up to the value of Rs. 15,000 (excluding articles mentioned in Annexure I), if carried on in person or in the accompanied baggage of the passenger
4.	Indian resident or Foreigner residing in India or Tourist, excluding an infant	Nepal, Bhutan or Myanmar	 (i) Used personal effects and travel souvenirs; and (ii) Articles up to the value of Rs. 15,000 (excluding articles mentioned in Annexure I), if carried on in person or in the accompanied baggage of the passenger. On arriving by land: Only used personal effects.

When a passenger is an infant, only used personal effects will be allowed duty free. The general duty-free baggage allowance of a passenger cannot be pooled with the general duty free baggage allowance of any other passenger.

- (a) "Infant" means a child not more than two years of age;
- (b) "Resident" means a person holding a valid passport issued under the Passports Act, 1967 and normally residing in India;
- (c) "Tourist" means a person not normally resident in India, who enters India for a stay of not more than six months in the course of any twelve months period for legitimate non-immigrant purposes;
- (d) "Personal effects" means things required for satisfying daily necessities but does not include jewellery.

EXAMPLE 1:

On 20-08-18, Mr. Bretlee a tourist of Chinese origin comes to India, along with his wife Chinglee and child Brucelee and age of child 2 years

1 Personal effects

Bretlee Rs. 50,000
Chinglee Rs. 60,000
Brucelee Rs. 30,000
2 laptops Rs. 40,000 each
3 bottles of wine of 1 liter each Total Value Rs. 6,000
Digital Camera Rs. 11,000
Mobile Rs. 20,000

Calculate the customs duty payable?

Solution:

2

3

4

Particulars	Bretlee	Chinglee	Brucelee
Personal effect	Exempt	Exempt	Exempt
Laptop	Exempt	Exempt	
Wine 2 bottle	4,000		
Wind 1 bottle		2,000	
Digital Camera	11,000		
Mobile		20,000	
	15,000	22,000	
GFA	(15,000)	15,000	
		7,000	
Custom duty @ 38.5%		2,695	
(35 + 10%) (Duty + SWS)			

EXAMPLE 2:

On 22-07-18, Mrs. A, a person of Indian origin, aged 40 years came to India along with her baby aged 2 years. She carried with her following goods:

- 1. Personal effects like clothes of Mrs. A valued at 40,000
- 2. Used personal effects of infant valued at 70,000
- 3. Laptop worth 50,000
- 4. Travel souvenirs valued at 30,000
- 5. 1 liter wine worth 10,000
- 6. Mobile worth 15,000
- 7. Digital camera 60,340
- 8. Cigars 20 worth 4,000

What is the customs duty payable?

SOLUTION: Computation of Customs duty payable by Mrs. (Amount in Rs.):

	personal control and project and the control a	(
1.	Personal effects like clothes of Mrs. A	Exempt
2.	Used personal effects of infant	Exempt
3.	Laptop	Exempt
4.	Travel souvenirs	Exempt
5.	Wine (upto 2 liters can be accommodated in GFA)	10,000
6.	Mobile	15,000
7.	Digital camera	60,340
8.	Cigars (upto 25 nos. Can be accommodated in GFA)	<u>4,000</u>
	Total dutiable goods imported (that can be accommodated in GFA)	89,340
	Less: General Free Allowance under Rule 3	50,000
	Balance goods on which duty is payable	39,340
	Customs duty payable @ 38.5%	15,136

JEWELLERY ALLOWANCE [RULE 5]

RULE NO.	CLASS OF PASSENGER	ORIGIN COUNTRY FROM WHICH THE PASSENGER IS COMING	ARTICLES ALLOWED FREE OF DUTY
5.	Passenger residing abroad for more than	Any country	GENTLEMAN: Jewellery upto a weight of 20 gms with a value cap of Rs. 50,000
	one year		LADY PASSENGER:
			Jewellery upto a weight of 40 gms with a value cap of Rs. 1,00,000

EXAMPLE 3:

Compute duty liability in respect of Jewellery in independent cases stay period more than 1 year

Passenger	Weight	Value	Duty Free allowance	AV	Duty Liability 38.5%
Mr. M	18 gm	52,000	50,000	2,000	770
N	22 gm	44,000	40,000	4,000	1,540
0	20 gm	50,000	50,000		
Р	25 gm	75,000	50,000	25,000	9,625

Mrs. Q	39 gm	1,12,500	1,00,000	12,500	4,812.5
R	45 gm	90,000	80,000	10,000	3,850
S	45 gm	1,12,500	1,00,000	12,500	4812.5
T	50 gm	1,50,000	1,00,000	50,000	19,250

TRANSFER OF RESIDENCE [RULE 6]

A person, who is engaged in a profession abroad, or is transferring his residence to India, will be allowed duty free clearance of articles on his return in the manner given in the Appendix below.

This allowance would be in addition to the general duty free baggage allowance under rule 3 or 4, as the case may be.

APPENDIX

DURATION OF STAY ABROAD	ARTICLES ALLOWED FREE OF DUTY	CONDITIONS	RELAXATION
From 3 months upto 6 months	Personal and household articles, other than those mentioned in Annexure I or Annexure II but including articles mentioned in Annexure III upto an aggregate value of Rs. 60,000	Indian passenger	-

From 6 months upto 1 year	Personal and household articles, other than those mentioned in Annexure I or Annexure II but including articles Mentioned in Annexure III, upto an aggregate value of Rs. 1,00,000	Indian passenger	-
Minimum of 1 year during the preceding 2 years	Personal and household articles, other than those mentioned in Annexure I or Annexure II but including articles mentioned in Annexure III upto an aggregate value of Rs. 2,00,000	The Indian passenger should not have availed this concession in the preceding 3 years.	-
թյլուmum of 2 years or more	Personal and house household articles, other than those listed at Annexure I or Annexure II but including articles mentioned in Annexure III upto an aggregate value of Rs. 5,00,000	(i) Minimum stay of 2 abroad, preceding the date of arrival on transfer residence;	The shortfall of upto 2 months in stay abroad can be condoned by Deputy/Assistant Commissioner of Customs if the early return is on account of (i) terminal leave or being availed of by passenger; or (ii) any other circumstances for reasons to be
			short visits in excess of 6
		(iii) Passenger has availed this concession in the preceding 3 years.	No relaxation

EXAMPLE 4:

Mr. Rahul an Indian resident and an engineer by profession who was engaged in profession UK for 9 months, brought with him on 10th April, 2018 the following used items on his return to India

Personal effect Digital Video displayer AC Rs. 1,00,000 Rs. 5,000 Rs. 45,000



Music SystemRs. 55,000Microwave OvenRs. 28,000Fax MachineRs. 52,000Domestic Refrigerator (Capacity 250 liters)Rs. 1,20,000Jewellery 18 gmsRs. 75,000

Solution:

Particulars	
Personal effect – Exempt	
Digital Video Displayer	5,000
AC	45,000
Music System	55,000
Microwave Oven	28,000
Fax Machine	52,000
Domestic Refrigerator	1,20,000
Jewellery	75,000
(-) GFA as per Rule 3	3,80,000 (50,000)
(-) Exemption as per Rule 6	(1,00,000)
	2,30,000
	@ 38.5%
	88,550

LURRENCY [RULE 7]

The import and export of currency under these rules will be governed in accordance with the provisions of the Foreign Exchange Management (Export and Import of Currency) Regulations, 2015, and the notifications issued thereunder.

UNACCOMPANIED BAGGAGE [RULE 8]

The various provisions in the above rules are also applicable to the unaccompanied baggage, unless specifically excluded, if unaccompanied baggage had been in possession, abroad, of the passenger and is dispatched within 1 month of his arrival in India or such further period as the Deputy/Assistant Commissioner may allow.

The said unaccompanied baggage can also land in India upto 2 months before the arrival of the passenger. However, if the passenger is not able to arrive in India within two months due to circumstances beyond his control like sudden illness to himself or any member of family, natural calamities, disturbed conditions, disruption of the transport or travel arrangements in the country etc., the Deputy/Assistant Commissioner may extend the said period of 2 months upto a maximum of 1 year for reasons to be recorded.

CREW BAGGAGE [RULE 9]

These baggage rules are also applicable to the members of the crew engaged in foreign going conveyance for importation of their baggage, when they are finally paid off on termination of their engagement.

However, other crew members of a vessel and aircraft will be allowed to bring items like chocolates, cheese, cosmetics and other petty gift items for their personal or family use for a value not exceeding Rs. 1500.

Family, under these rules, includes all persons who are residing in the same house and form part of the same domestic establishment.

GOODS LISTED IN ANNEXURE I, II AND III ARE GIVEN BELOW:

ANNEXURE-I (SEE RULE 3, 4 AND 6)

- 1. Fire arms.
- 2. Cartridges of fire arms exceeding 50.
- 3. Cigarettes exceeding 100 sticks or cigars exceeding 25 or tobacco exceeding 125 gms.
- 4. Alcoholic liquor or wines in excess of two litres.
- 5. Gold or silver in any form other than ornaments.
- 6. Flat Panel (Liquid Crystal Display/Light-Emitting Diode/Plasma) television.

ANNEXURE- II (SEE RULE 6)

- 1. Colour Television.
- 2. Video Home Theatre System.
- 3. Dish Washer.
- 4. Domestic Refrigerators of capacity above 300 litres or its equivalent.
- 5. Deep Freezer.
- 6. Video camera or the combination of any such Video camera with one or more of the following goods, namely:
 - a. television receiver;
 - b. sound recording or reproducing apparatus;
 - c. video reproducing apparatus.
- 7. Cinematographic films of 35 mm and above.
- 8. Gold or Silver, in any form, other than ornaments.

ANNEXURE III (SEE RULE 6)

- 1. Video Cassette Recorder or Video Cassette Player or Video Television Receiver or Video Cassette Disk Player.
- 2. Digital Video Disc player.
- 3. Music System.
- 4. Air-Conditioner.
- 5. Microwave Oven.
- 6. Word Processing Machine.
- 7. Fax Machine.
- 8. Portable Photocopying Machine.
- 9. Washing Machine.
- 10. Electrical or Liquefied Petroleum Gas Cooking Range
- 11. Personal Computer (Desktop Computer)
- 12. Laptop Computer (Note book Computer)
- 13. Domestic Refrigerators of capacity up to 300 litres or its equivalent.

EXAMPLE 5

Mr. Sujoy, an Indian entrepreneur, went to London to explore new business opportunities on 01.04.2016. His wife also joined him in London after three months. The following details are submitted by them with the Customs authorities on their return to India on 15.04.2017:

- (a) used personal effects worth Rs. 80,000, (b) 2 music systems each worth Rs. 50,000,
- (c) the jewellery brought by Mr. Sujoy worth Rs. 48,000 [20 grams] and the jewellery brought by his wife

worth Rs. 96,000 [40 grams].

With reference to Baggage Rules, 2016, determine whether Mr. and Mrs. Sujoy will be required to pay any customs duty?

Solution:

As per rule 3 of the Baggage Rules, 2016, an Indian resident arriving from any country other than Nepal, Bhutan or Myanmar, shall be allowed clearance free of duty articles in his bona fide baggage, that is to say, used personal effects and travel souvenirs; and articles [other than certain specified articles], upto the value of Rs. 50,000 if these are carried on the person or in the accompanied baggage of the passenger.

Thus, there is no customs duty on used personal effects and travel souvenirs and general duty free baggage allowance is Rs. 50,000 per passenger. Thus, duty liability of Mr. Sujoy and his wife is nil for the used personal effects worth Rs.

80,000 and 2 music systems each worth Rs. 50,000.

As per rule 5 of the Baggage Rules, 2016, the jewellery allowance is as follows:

- Jewellery brought by → Gentlemen Passenger
 Duty free allowance → Jewellery upto a weight of 20 grams with a value cap of Rs. 50,000
- ↓ Jewellery brought by → Lady Passenger
 Duty free allowance → Jewellery upto a weight of 40 grams with a value cap of Rs. 1,00,000

However, the jewellery allowance is applicable only to a passenger residing abroad for more than 1 year.

Consequently, there is no duty liability on the jewellery brought by Mr. Sujoy as he had stayed abroad for period exceeding 1 year and weight of the jewellery brought by him is 20 grams with a value less than Rs. 50,000.

However, his wife is not eligible for this additional jewellery allowance as she had stayed abroad for a period of less than a year. Thus, she has to pay customs duty on the entire amount of jewellery brought by her as she has already exhausted the general duty free baggage allowance of Rs. 50,000 allowed under rule 3.

EXAMPLE 6

After visiting USA for a month, Mrs. and Mr. X (Indian residents aged 40 and 45 years respectively) brought to India a laptop computer valued at Rs. 80,000, used personal effects valued at Rs. 90,000 and a personal computer for Rs. 52,000. What is the customs duty payable?

Solution:

- (1) As per Baggage Rules, 2016, an Indian resident arriving from any country other than Nepal, Bhutan or Myanmar is allowed duty free clearance of
 - a. Used personal effects and travel souvenirs without any value limit.
- b. Articles [other than certain specified artcles] upto a value of Rs. 50,000 carried as accompanied baggage [General duty-free baggage allowance].

Further, such general duty-free baggage allowance of a passenger cannot be pooled with the general duty free baggage allowance of any other passenger.

- (2) One laptop computer when imported into India by a passenger of the age of 18 years or above (other than member of crew) is exempt from whole of the customs duty [Notification No. 11/2004 Cus. dated 08.01.2004].
- (3) Accordingly, there will be no customs duty on used personal effects (worth Rs. 90,000) of Mrs. and Mr. X and

laptop computer brought by them will be exempt from duty. Duty payable on personal computer after exhausting the duty free baggage allowance will be Rs. 52,000 - Rs. 50,000 = Rs. 2,000. Effective rate of duty for baggage = 38.5% [including social welfare surcharge @ 10%] Therefore, total customs duty = Rs. 770



EXAMPLE 7

What is the relevant date for determination of rate of duty under the Customs Act, 1962 in the case of clearance of baggage?

Solution:

As per section 78 of the Customs Act, 1962, the relevant date for determination of rate of duty in case of clearance of baggage is the date on which a declaration is made in respect of such baggage under section 77.

TEMPORARY DETENTION OF BAGGAGE [SECTION 80]

It may so happen that a passenger has brought with him an article, which is prohibited. The passenger may not insist on taking it into the Indian Territory. On the contrary, he may opt to re-export it or take it with him when he leaves the country.

Similarly, a passenger may not unnecessarily pay duty on an article, which he can conveniently avoid taking into the town, if the duty is heavy. In such case also, he may opt to take the article with him when he leaves the country.

In both the cases, he will have to deposit the article with the customs authorities and take it back at the port of his departure.

"Where the baggage of a passenger contains any article which is dutiable or the import of which is prohibited and in respect of which a true declaration has been made under section 77, the proper officer may, at the request of the passenger, detain such article for the purpose of being returned to him on his leaving India and if for any reason, the passenger is not able to collect the article at the time of his leaving India the article may be returned to him through any other passenger authorised by him and leaving India or as cargo consigned in his name".

Declaration – the essence: The declaration of the goods brought in is an absolute necessity. If the goods are not declared under section 77, the passenger cannot subsequently claim the benefit under section 80 and the goods are liable for confiscation.

IMPORT/EXPORT OF GOODS BY POST

LABEL OR DECLARATION ACCOMPANYING GOODS TO BE TREATED AS ENTRY [SECTION 82]

In the case of goods imported or exported by post, -

- any label or declaration accompanying the goods,
- which contains the description, quantity and value thereof,
- shall be deemed to be an entry for import or export for the purposes of this act

RATE OF DUTY AND TARIFF VALUATION IN RESPECT OF GOODS IMPORTED BY POST [SECTION 83(1)]

The rate of duty and tariff value, if any, applicable to any goods imported by post shall be-

- the date on which the postal authorities present to the proper officer a list containing the particulars of goods for the purpose of assessing the duty thereon; or
- 💶 in case of goods imported by a vessel, the date of the arrival of the vessel, whichever is later.

RATE OF DUTY AND TARIFF VALUATION IN RESPECT OF GOODS EXPORTED BY POST [SECTION 83(2)]

The rate of duty and tariff value, if any, applicable to any goods exported by post shall be-

- the rate and valuation in force on the date on which
- the exporter delivers such goods the postal authorities for exportation.

REGULATIONS REGARDING GOODS IMPORTED OR TO BE EXPORTED BY POST [SECTION 84]

The Board may make regulations providing for –

- a) the form and manner in which an entry may be made in respect of any specified class of goods imported or to be exported by post, other than goods which are accompanied by a label or declaration containing the description, quantity and value thereof;
- b) the examination, assessment to duty, and clearance of goods imported or to be exported by post;
- c) the transit or transshipment of goods imported by post, from one customs station to another or to a place outside India.

EXAMPLE 1:

M/s XYZ Ltd. Imported certain goods valuing Rs. 20 lakhs (assessable value) from America by post. compute the amount of duty payable by the importer in the light of the following information

Date of presentation of a list particulars of said goods to proper officer of customs	20-05-2018
Rate of duty prevalent on the date of such presentation	8%
Date of arrival of vessel through which the packet containing the said goods was	
important	26-05-2018
Rate of duty prevalent on the date of such arrival	10%

SOLUTION:

As per section 83 of the customs act, 1962, in case of importation of goods by post, the date for determination of rate of duty shall be,

- a) The date on which postal authorities present a list containing particulars of the said goods to the proper officer of customs; or
- b) If such goods are imported by a vessel, the date of arrival of the vessel whichever is later. In this case, the date of arrival of vessel, being latter in time, shall be the rate of duty prevalent on that date shall be applicable. Therefore, duty payable will be 10% as increased by Social Welfare surcharge @ 10% = 11% of Rs. 20 lakhs = Rs. 2,20,000.

STORES – CONCESSIONS, EXEMPTIONS, DRAWBACK [SEC 85 – 90]

STORES MAY BE ALLOWED TO BE WAREHOUSED WITHOUT ASSESSMENT TO DUTY [SECTION 85]

Where any imported goods are entered for warehousing and the importer makes and subscribes to a declaration that the goods are to be supplied as stores to vessels or aircrafts without payment of import duty

TRANSIT AND TRANSSHIPMENT OF STORES [SECTION 86]

- (1) Any stores imported in a vessel or aircraft may, without payment of duty, remain on board such vessel or aircraft while it is in India.
- (2) Any stores imported in a vessel or aircraft may, with the permission of the proper officer, be transferred to any vessel or aircraft as stores for consumption therein as provided u/s 87 or 90.

IMPORTED STORES MAY BE CONSUMED ON BOARD A FOREIGN – GOING VESSEL OR AIRCRAFT [SECTION 87]

Any imported stores on board a vessel or aircraft (other than stores to which section 90 applies)

√ may, without payment of duty,

√ be consumed thereon as stores

√ during the periods such vessel or aircraft is a foreign – going or aircraft.

APPLICATION OF SECTION 69 (EXPORT OF WAREHOUSED GOODS) AND CHAPTER X (DRAWBACK) TO STORES [SECTION 88]

100% drawback shall be allowed on fuel and lubricating oil taken on board any foreign going aircraft as stores (instead of normal 98%)

STORES TO BE FREE OF EXPORT DUTY [SECTION 89]

Goods that are -

- √ produced or manufactured in India and
- √ required as stores on any foreign going vessel or aircraft

may be exported free of duty in such quantities as the proper officer may determine, having regard to the size of the vessel or aircraft, the number of passengers and crew and the length of the voyage or journey on which the vessel or aircraft is about to depart.

CONCESSIONS IN RESPECT OF IMPORTED STORES FOR THE NAVY [SECTION 90]

- (1) Applicability: This section applies to -
 - (a) stores for the use of ship of the Indian Navy;
 - **(b)** stores supplied free by the Government for the use of the crew of a ship of the Indian Navy in accordance with their conditions of services.
- (2) Such Imported stores may, without payment of duty, be consumed on board ship of the Indian Navy.

100% drawback shall be allowed on fuel and lubricating oil taken on board any foreign – going aircraft as stores (instead of normal 98%)

7

TRANSIT AND TRANSHIPMENT



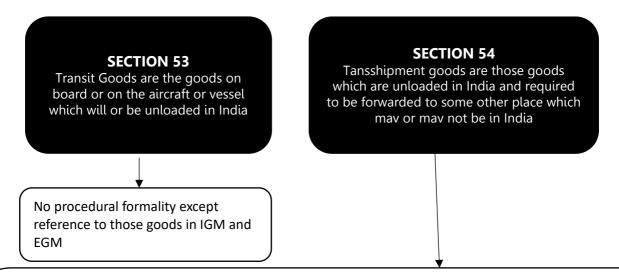
CHAPTER OUTLINES

[Sec. 53] Transit of goods in the same Vessel or air.

[Sec. 54] Transshipment of Goods without Payment of Duty.

[Sec. 55] Liability of Duty on Goods transited under Sec. 53 or Transshipped under Sec. 54.

As per Section 52, 53 to 56 shall not apply to (a) baggage, (b) goods imported by post and (c) stores



These goods should not be Prohibited goods u/s 11 of the Act

If imported goods are intended for Transhipment, a bill of transhipment shall be presented to the proper officer. Where the goods are being transhipped under an international treaty or bilateral agreement between Government of India and Government of the foreign country, a declaration for transhipment instead of a bill of transhipment shall be presented to the proper officer in the prescribed form.

Cases where transhipment without payment of Duty is allowable:

Where any goods imported into a Customs Station are mentioned in the import Manifest/report as for transhipment

- (i) to any major port as defined in Indian Ports Act, 1908 or the customs airport of Mumbai,
- (ii) Calcutta, Delhi or Chennai, or any other customs port/airport notified by the Board, or to any other customs station and the proper officer is satisfied that the goods are bonafide intended for transhipment to such customs station, the proper officer may allow the goods to be transhipped without payment of duty.

Note 1: Liability of duty on goods transited u/s 53 or transhipped u/s 54 [Section 55]

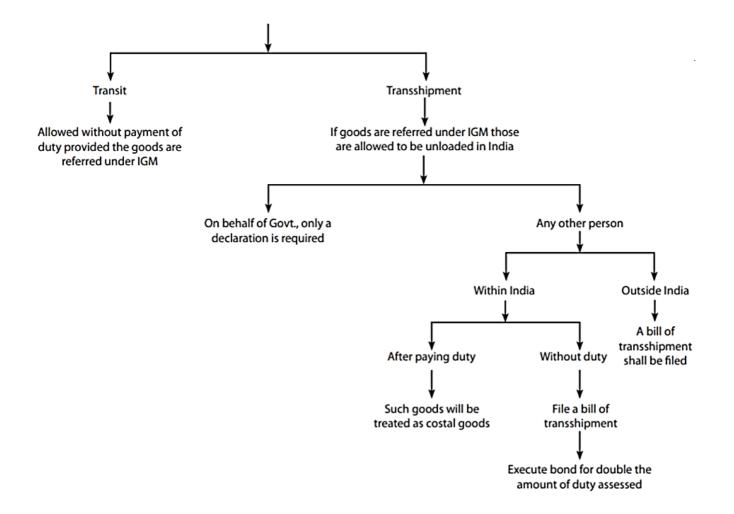
→ Where goods are allowed to be transited u/s 53 or transhipped u/s 54 to any customs stations, then on their arrival at such customs station:

- They shall be liable to duty.
- They shall be entered in the like manner as the goods are entered on the first importation.
- The provisions of this Act and any rules and regulations shall apply in relation to such goods.

Note 2: Conditions under which exemption from duty is allowed on transit and transhipment of goods are:

- i. The goods should be mentioned in the import manifest.
- ii. The goods should be intended for transhipment or transit, as the case may be.
- iii. The goods should not be prohibited goods. iv.
- iv. A bill of transhipment should be presented to the proper officer.
- v. The owner of the vessel should execute a bond with surety. vi. Container or package transhipped should be sealed

SECTION 52 TO SECTION 55: TRANSIT AND TRANSHIPMENT





CHAPTER OUTLINES

- Important Definitions.
- [Sec. 39] Entry Outwards.

[Sec. 40] Export Goods NOT TO be loaded unless only passed by Proper Officer.

[Sec. 41] Export General Manifest.

[Sec. 41A] Passenger's Name Record Information.

[Sec. 42] No Passengers to leave without Written Order.

[Sec. 50] Procedure for the clearance of Export Goods Entry of Goods for Exportation.

[Sec. 51] Clearance of Goods for Exportation.



IMPORTANT DEFINITIONS

- (a) Export [Section 2(18)] with its grammatical variations and cognate expressions, means taking out of India to a place outside India.
- (b) Export goods [Section 2(19)] means any goods, which are to be taken out of India to a place outside India.
- **(c) Exporter [Section 2(20)]** in relation to any goods at any time between their entry for export and the time when they are exported, includes any owner, beneficial owner or any person holding himself out to be the exporter.

Control Over Export Goods

It would be convenient at this juncture to discuss the provision relating to the export of the goods in so far as it

applies to the master of the vessel or his agent. The steamer agent comes into the picture only after the customs have

permitted the export goods to be shipped.

LOADING OF EXPORT GOODS [SECTION 40]

The first and foremost duty cast on the master of the vessel under section 40 is that export goods are not to be loaded unless duly passed by Proper Officer. The person-in-charge of a conveyance shall not permit the loading at a customs station

- (a) of export goods, other than baggage and mail bags, unless a shipping bill or bill of export or a bill of transshipment, as the case may be, duly passed by the proper officer, has been handed over to him by the exporter;
- (b) of baggage and mail bags, unless their export has been duly permitted by the proper officer.

ENTRY OUTWARDS [SECTION 39]

One of the important requirements in this regard is that the vessel in question should be scheduled to go to the port of consignment. It is therefore, necessary that the vessel or conveyance in question should be cleared to go to on a foreign voyage and the port of destination should be in the vessel's itinerary. This permission to be granted by the Customs authorities is known as "Entry Outwards".

Section 39 stipulates that export goods are not to be loaded on vessel until entry outwards is granted. The master of the vessel shall not permit the loading of any export goods, other than baggage and mail bags, until an order has been given by the proper officer granting entry-outwards to such vessel. This restriction is for vessels and not for aircraft and vehicles. Therefore, for loading of goods for export, the following requirements are to be fulfilled:

- (i) Entry outwards to be granted under section 39.
- (ii) Shipping bill under section 50
- (iii) 'Let-export' order under section 51
- (iv) Boat note under section 35 in case the vessel is anchored away from the wharf and the goods are carried in a boat to the vessel.

EXPORT GOODS NOT TO BE LOADED UNLESS DULY PASSED BY PROPER OFFICER [SECTION 40]

This section applies to all types of conveyances. The goods can be taken on board only if they are accompanied by the following documents:

- (i) In case of export goods other than baggage and mail bags
 - the goods shall be accompanied by
 - Shipping Bill (at seaports/airports)
 - Bill of Export (at Land Customs Station)
 - Bill of Transhipment (for transhipment goods) all duly passed by the proper officer.
- (ii) In case of baggage and mail bags they should be permitted by Customs for export.

EXPORT GENERAL MANIFEST [SECTION 41]

This is the most important responsibility cast on the person-in-charge of the conveyance. He (including the Master of the vessel) has to give to the Customs Authorities a complete list of the cargo exported from India and taken by the conveyance under his charge. Section 41(1) of the Customs Act, 1962 provides that the person-in-charge of a conveyance carrying export goods shall, before the departure of the conveyance from a Customs station, deliver to the proper officer, in the case of a vessel or aircraft an export manifest by presenting electronically, and in the case of a vehicle, an export report in the prescribed form. Such person-in-charge or other person fails to deliver the departure manifest or export manifest or the export report or any part thereof within such time, and the proper officer is satisfied that there is no sufficient cause for such delay, such person-in-charge or other person shall be liable to pay penalty not exceeding fifty thousand rupees.

However, in cases where it is not feasible to deliver export manifest by presenting them electronically, the Principal Commissioner/Commissioner of Customs may, allow the same to be delivered in any other manner.

The person delivering the export manifest or export report shall make and subscribe a declaration as to the truth of its contents as a footnote thereof.

Amendment to EGM: If the proper officer is satisfied that the export manifest or the export report is in any way incorrect and there was no fraudulent intention, he may permit such manifest or report to be amended or supplemented. [Section 41(3)]

Preparation of EGM/ER: The procedure for preparation of EGM/ER is as follows:

- (i) In the case of shipment by sea, the ship's officer gives a receipt after he has received the consignment on board the ship. This receipt is called mate receipt. It is surrendered to the steamer agent or the agent who issues the bill of lading.
- (ii) In the case of shipment by air, after the cargo is delivered to the airways for loading, the airways issues an air consignment note.
- (iii) In the case of train and lorry a railway receipt or a lorry receipt as the case may be is issued as soon as the consignment is received by the carrier.

The export general manifest or report is the consolidated report of all such Bills of Lading/air consignment notes/railway receipts/lorry receipts issued.

Form & Content of Export General Manifest or Export Report: The form of the export general manifest/export report is prescribed under the following:

- (a) The Export Manifest (Vessel) Regulations, 1976
- (b) The Export Manifest (Aircraft) Regulations, 1976
- (c) The Export Manifest (Form) Regulations, 1975

In all the three regulations the common features are as follows:

- (1) The manifest/report shall be delivered in duplicate.
- (2) It shall consist of
 - (a) Cargo report
 - (b) Vessel's store list,
 - (c) Private property list of master, officers and crew
 - (d) In case the vessel/aircraft/conveyance carries passengers, a passenger manifest.
- (3) The cargo list shall give the following details in separate sheets.
 - (a) Cargo shipped
 - (b) Cargo transshipped,
 - (c) Cargo lying in the vessel/aircraft, but not landed or transshipped (same bottom cargo)
 - (d) Cargo in respect of which drawback is claimed.
 - (e) In case of the vessel, the dutiable goods, including arms and ammunition forming part of the ordinary equipment of a vessel.
- (4) Specific declaration should be made in respect of the following cargo, irrespective of whether it comprises same bottom cargo, shipment or transshipment
 - (i) arms (ii) ammunition
 - (iii) explosives (iv) narcotics
 - (v) dangerous drugs or (vi) gold

If the vessel/aircraft does not carry any such cargo, a nil report should be furnished.

PASSENGER AND CREW DEPARTURE MANIFEST AND PASSENGER NAME RECORD INFORMATION [SECTION 41A]

The person-in-charge of a conveyance that departs from India to a place outside India or any other person as may be specified by the Central Government, shall deliver to the proper officer:

- (i) the passenger and crew departure manifest; and
- (ii) the passenger name record information of departing passengers, in such form, containing such particulars, in such manner and within such time, as may be prescribed.

Where the passenger and crew departure manifest or the passenger's name record information or any part thereof is not delivered to the proper officer within the prescribed time and if the proper officer is satisfied that there was no sufficient cause for such delay, the person-in-charge or the other specified person shall be liable to such penalty, not exceeding Rs. 50,000, as may be prescribed.

NO CONVEYANCE TO LEAVE WITHOUT WRITTEN ORDER [SECTION 42]

The person-in-charge of the conveyance which has brought any imported goods or has loaded any export goods at a customs station shall not cause or permit the conveyance to depart from that customs station until a written order to that effect has been given by the proper officer.

Section 42(2) stipulates that no such order shall be given until

- (a) The person-in-charge of a conveyance has answered the questions put to him under Section 38; (b) The provisions of section 41 have been complied with;
- (c) The shipping bills or bills of export, the bills of transshipment, if any and such other documents, as the proper officer may require, have been delivered to him;
- (d) All duties leviable on any stores consumed in such conveyance and all charges and penalties due in respect of such conveyance or from the personin- charge thereof have been paid or the payment secured by such guarantee or deposit of such amount as the proper officer may direct;
- (e) The person-in-charge of the conveyance has satisfied the proper officer that no penalty is leviable on him under section 116 or the payment of any penalty that may be levied upon him under that section has been secured by such guarantee or deposit of such amount as the proper officer may direct;
- (f) In any case where any export goods have been loaded without payment of export duty or in contravention of any provision of this Act or any other law for the time being in force in relation to export of goods-
 - (i) Such goods have been unloaded, or
 - (ii) Where the Assistant Commissioner is satisfied that it is not practicable to unload such goods, the person- in-charge of the conveyance has given an undertaking, secured by such guarantee or deposit of such amount as the proper officer may direct, for bringing back the goods to India.

The obligations on the part of the conveyance and/or the person-in-charge have been numerated in sub-section (2).

Explanation to above points

- (a) Apart from filing the IGM/Import report the person-in-charge of the vessel has to answer the questions put to him under section 38. Section 38 is invoked normally, when the particulars furnished, are inadequate and when the customs department feel that the person-in charge is deliberately suppressing some vital facts. If the same are not furnished in spite of use of section 38, obviously there is something wrong and the vessel cannot be permitted to depart without furnishing such information.
- (b) Obvious fulfillment of provisions of section 41 is a pre-requisite for any conveyance leaving an Indian port. Either the Export General Manifest or Export Report should have been filed or the necessary undertaking given by the ship's agent and with necessary security deposit.
- (c) The shipping bills and other shipping documents in respect of the exported goods have to be furnished to the proper officer of customs department. The original shipping bill/bill of export forms the voucher record of the duty and other amounts paid and duplicate the proof of quantity actually shipped. These are basic records relating to shipment.
- (d) Technically speaking, all stores consumed during the stay of the conveyance at a particular customs station amount to import and home consumption. Thus customs duty is leviable on such stores. It is customary to have an inventory of ship stores at the time of arrival and again at the time of departure of the conveyance. Customs duty is leviable on the difference.

- (e) Similarly, a liability is cast on the person-in-charge of the conveyance, to account for all goods manifested for discharge at a particular station. If the goods manifested for discharge are not unloaded, the personin-charge has to explain under section 116 of the Customs Act, as to what happened to such goods. He can show that
 - (i) The goods were really unloaded at the particular customs station;
 - (ii) The goods were not unloaded but were over carried and brought back to that particular station later;
 - (iii) The goods were not unloaded, but were over carried and delivered in some other place.

If he does not give a satisfactory explanation with supporting documents, a presumption arises that such goods are surreptitiously landed in India and smuggled into the country, in which case he is liable to penalty equal to twice the amount that would be leviable on such goods as duty and other charges had such goods been properly landed in India.

As seen from above, the liability to penalty for short landing of goods is on the person-in-charge of the conveyance. However, it is sufficient if the notice is served on the owner of the conveyance.

PROCEDURE FOR THE CLEARANCE OF EXPORT GOODS ENTRY OF GOODS FOR EXPORTATION [SECTION 50]

The exporter is, under section 50 of the Customs Act, required to present electronically to a proper officer of customs a shipping bill in case of export by a vessel or by air and a bill of export, in case of export by a vehicle.

However, the Principal Commissioner/Commissioner of Customs may, in cases where it is not feasible to make entry by presenting electronically, allow an entry to be presented in any other manner. Hence, manual submission of shipping bill/bill of export is allowable in cases where electronic submission is not feasible.

The form of the shipping bill is regulated by the Shipping Bill (Forms & Regulations) Act, 1991. The forms are as follows:

Dutiable goods	Yellow
Duty-free goods	While
With drawback claim	Green
Duty free ex-bond	Pink
Export under DEPB Scheme	Blue

Normally a shipping bill is permitted to be filed only after an entry outward has been granted for the particular vessel or aircraft by which the goods are to be exported. However, under special circumstances the Principal Commissioner/Commissioner of Customs may permit advance shipping bill to be filed. The exporter of any goods, while presenting a shipping bill or bill of export, shall make and subscribe to a declaration as to the truth of its contents.

CLEARANCE OF GOODS FOR EXPORTATION [SECTION 51]

After the shipping bill is filed, they are presented for the customs appraisal. Here also there are two parts namely, scrutinising assessment and physical check of assessment. Since the export regulations are not strict and rigid, these procedures are very simple. After the customs officer is satisfied that the goods are not prohibited and the exporter has paid the duty and other charges payable in respect of same, he makes the order for shipment on the duplicate copy of the shipping bill. This is known as "Let Export" orders.

However, Central Government may permit certain class of exporters to make deferred payment of said duty or any charges in such manner as may be provided by rules.

Further, in case of deferred payment of duty, where the exporter fails to pay the export duty, either in full or in part, by such due date as may be specified by rules, he will have to pay interest on said duty not paid or short paid till the date of its payment. The Central Government will notify the rate of interest within a range of 5% p.a. to 36% p.a.

NOTICE OF SHORT-EXPORT OF GOODS

According to the Notice of Short Export Rules, 1963, if any goods mentioned in a shipping bill or bill of export and cleared for exportation are not exported, the exporter shall, within seven days, from the date of departure of the conveyance by which such goods were exported, furnish the prescribed information to the proper officer in respect of such goods.

FLOW PATTERN FOR EXPORT

Let us now consider the various steps and controls exercised by the Customs department on the export goods.

- (i) The exporter files an application for export of goods known as Shipping Bill.
- (ii) After the appraising department, assesses the export duty on the shipping bill, export cess, etc. are collected.
- (iii) Thereafter the Shipping Bill along with the export cargo is presented to the Customs officers in charge of supervision of the loading of the Cargo. (These officers are generally called Preventive Officers in the major Custom Houses.) The Preventive Officer after satisfying himself that all the customs checks including Export Trade Control license and export duty payment have been completed, will endorse the shipping bill with a "Let Ship" order.
- (iv) On receipt of the cargo on board the ship, the master/mate/agent of the ship issues a receipt of the quantity and particulars of the cargo loaded on the ship.
- (v) If the ship is not berthed alongside the quay and the goods have to be taken to the ship by boats/lighters the boat note procedure would be followed.
- (vi) When the Shipping Bill is presented to the master/agent/mate of the vessel, the export cargo will be permitted to be loaded.
- (vii) The Customs Officer endorses on the Shipping Bill the quantity of the goods loaded into the ship under the Shipping Bill.



FOREIGN TRADE POLICY

NEED OF FOREIGN TRADE



Introduction

Purpose

Legislation governing Foreign Trade.

Salient Features of FTP.

Administration of FTP.

Trade Facilitation to through FDI Initiation.

General Provision applicable to Input and Export of Goods.

Provision relating to Import of Goods.

Provision relating to Export of Goods.

Duty Exemption and Permission of Scheme.

Reward Scheme.

Status Holder.

EPCG Scheme.

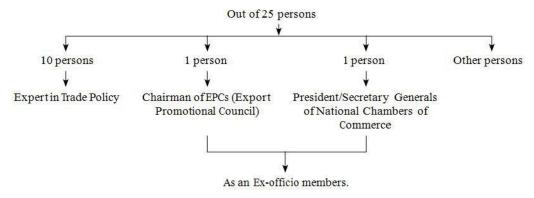
Deemed Export.

EDU, EHTP, STP & BTP Scheme.

CHAPTER OUTLINES

INTRODUCTION	FTP is a set of guidelines or instructions issued by the CG in matters related to import and export of goods in India. Its primary purpose is not merely to earn foreign exchange but also to stimulate grater economic activity. FTP was earlier called as EXIM policy.
PURPOSE	→To promote foreign trade →Regulate export import →Formulate EXIM policy →Authorised to appoint Director General of Foreign Trade (DGFT)
LEGISLATION GOVERNING FOREIGN TRADE	Ministry of Commerce and Industry Governance the affairs relating to the promotion and regulation of foreign trade. Foreign Trade (Development and Regulation) Act, 1992 For the development and regulation of foreign trade. As per the provision of the act, the govt.: →May make provisions for controlling foreign trade. →May prohibit, restrict and regulate exports and imports. →Is authorised to formulate and implement and EXIM policy and also amend the same from time to time. →Is also authorised to appoint a DGFT.
SALIENT FEATURES OF FTP	 →Free export import unless specifically regulated by the provisions of the policy or any other law. →Some goods are free for import and export but can be imported/exported only through State Trading Enterprises (STE). →There are restrictions on export and import for various strategic/health, defence, environment and other reasons. →Exports are promoted through various promotional schemes. E.g. Duty Exemption Scheme, Advance Authorisation Scheme, Duty Free Import Authorisation Scheme, DDB, Duty Remission Scheme, etc. →Capital goods can be imported at NIL duty under the scheme of EPCG. →Duty credit scripts schemes are designed to promote exports of some specified goods to specified markets and to promote export of specified services.
ADMINISTRATION OF FTP	(1) DGFT DGFT issues authorisation (means license). It also grants importer exporter code number. Note: Decision of DGFT is final and binding in respect of interpretation of any provision of FTP. (2) Other Authorities (i) CBEC (ii) Reserve Bank of India (iii) State Value Added Tax Department

BOARD OF TRADE (25 MEMBERS)



Note: BOT will meet atleast once in every quarter.

TRADE DGFT has set up a secured EDI message exchange system for various documentation related import and export. E.g. Import, Export Authorisation, Bills of Shipment, BOE etc. **FACILITATIONS** These has reduced the physical interface of export and import with the govt. depart and is a THROUGH EDI **INITIATIVES** GENERAL 1. Exports and imports are free unless regulated. 2. **Compliance with laws:** Every exporter and importer shall comply with the provisions of **PROVISIONS** the foreign trade development and regulation act. All imported goods shall also be subject **APPLICABLE TO** to domestic laws. **IMPORT AND EXPORT OF GOODS** 3. Interpretation of policy: DGFT decision is final decision. 4. Exemption from policy/procedures. 5. DGFT may pass such orders or grant such relaxation or relief, as he may deem fit and proper, on grounds of genuine hardship and adverse impact on trade. 6. **Principles of restrictions:** DGFT may, through a notification, adopt and enforce any measures necessary for (a) Protection of →Public morals →Human, animal or plant life or health →Patents, trade mark and copyrights →National treasures of artistic, historic and archaeological value →Trade of fissionable material (b) Conservation of exhaustible natural resource Prevention of traffic in arms, ammusim and implements of war and use of prison labour. Minimum export import price. →Bank guarantee/legal undertaking/bonds with customs authority. 7. Authorisation not a right: No person may claim an authorisation as a right and DGFT or RA shall have power to refuse to grant or renew the same in accordance with provisions of FT Development and Regulation Act (FT (DAR) Act). 8. Importer/Exporter Code (IEC) →It is a unique 10 digit code, issued by DGFT. DGFT has decided to use Income Tax PAN as EIC number i.e. IEC will be issued by DGFT with the difference that it will be alpha numeric (instead of 10 digit numeric at present) and will be same as PAN of an entity. →IEC code is mandatory. →Facility of electronic form. →Application with document with prescribed fees (₹ 500). →IEC issued/email within 2 working days. →Incomplete or ineligible application shall be rejected with reason. 9. Mandatory documents for export/import of goods from/into India →Bill of lading/airway bill →Commercial invoke cum packing list →For export Shipping bill/Bill of export →For import BOE **PROVISIONS** 1) Actual user condition. 2) Second hand goods – Import of second hand capital goods and re-conditioned spares **RELATING TO IMPORT OF GOODS** shall be allowed freely. However, second hand PC, laptop, AC, diesel generating sets will only be allowed against authorisation subject to restriction. 3) Import of gifts and samples – No duty upto prescribed limit. 4) Passenger baggage – Refer (Rule 3/4/5/6) 5) Re-import of goods repair abroad. (Refer Section 20 of Customs Act, 1962) 6) Import of goods used in projects abroad. E.g. After completion of projects abroad, contractors may imports, without an authorisation. goods including capital goods used in the project provided they have been used for atleast one year.

PROVISION RELATING TO EXPORT OF GOODS

1) Export of Gifts

Goods including edible items of value not exceeding ₹ 5 lakhs in a licensing year, may be exported as a gift. However, items mentioned as restricted for exports shall not exported as gift without an authorisation.

2) Export of Spares

Warranty spares of plant, equipment, machinery, automobiles or any other goods (except restricted goods) may be exported along with main equipment or subsequently but within contracted period of such goods subject to approval of RBI.

3) Third Party Exports

3rd party exports means exports made by an exporter or manufacturer on behalf of another exporter. In such cases, export documents such as shipping bills shall indicate name of both manufacturing exporter/manufacturer and 3rd party exporter.

4) Export of Imported Goods

Export of such goods imported against payment in freely convertible currency would be permitted provided export proceeds are realised in freely convertible currency. However, export of such goods to notified countries will be permitted in Indian rupees subject to atleast 15% value additions.

5) Denomination of Export Contract

All export contracts and invokes shall be denominated either in freely convertible currency **or**

Indian rupees but export proceeds shall be realised in freely convertible currency. However, export proceeds may also be realised in rupees, provided it is through a freely convertible amount of a non-resident bank situated in any country other than a member country of Nepal or Bhutan.



Principal of	With effect from 10.08.2021, principles of restrictions and prohibitions for imports/exports have been
restrictions and	revised as follows:-
prohibitions for	DGFT may, through a notification, impose 'prohibition' or 'restriction':-
imports/exports	a. on export of foodstuffs or other essential products for preventing or relieving critical shortages;
revised to be in line	b. on imports and exports necessary for the application of standards or regulations for the
with international	classification, grading or marketing of commodities in international trade;
agreements	c. on imports of fisheries product, imported in any form, for enforcement of governmental
	measures to restrict production of the domestic product or for certain other purposes;
	d. on import to safeguard country's external financial position and to ensure a level of reserves.
	e. on imports to promote establishment of a particular industry;
	f. for preventing sudden increases in imports from causing serious injury to domestic producers or
	to relieve producers who have suffered such injury;
	g. for protection of human, animal or plant life or health
	h. relating to the importations or exportations of gold or silver;
	i. necessary to secure compliance with laws and regulations including those relating to the
	protection of patents, trademarks and copyrights, and the prevention of deceptive practices

j. relating to the products of prison labour
k. for the protection of national treasures of artistic, historic or archaeological value
l. for the conservation of exhaustible natural resources
m. for ensuring essential quantities for the domestic processing industry
n. essential to the acquisition or distribution of products in general or local short supply;
o. for the protection of country's essential security interests:
i. relating to fissionable materials or the materials from which they are derived;
ii. relating to the traffic in arms, ammunition and implements of war;
iii. taken in time of war or other emergency in international relations; or
p. in pursuance of country's obligations under the United Nations Charter for the maintenance of
international peace and security. The aforesaid principles of restrictions and prohibitions for imports/
exports have been amended to be in line with international agreements.
[Notification No. 17/2015-2020 dated 10.08.2021]

EXPORT PROMOTION SCHEMES

•	on and Remission neme	Remission of duties & Taxes EPCG on Exported Product (RDTEP) Scheme	EOU Scheme, STP, EHTP, BTP	Deemed Export
Duty Exemption	Duty Remission		Refer Main Book	Refer Main
Scheme	Scheme		Vol.2 (Just Read)	Book Vol.2 (Just Read)
 Advance authorisation scheme Duty free import authorisation scheme 	1. Duty Drawback Scheme (Refer Sec. 74 & 75 of Customs Act)			

1. Duty Exemption SchemeAdvance Authorisation (AA) and Duty Free Import Authorisation

Advance Authorisation (AA)	Duty Free Import Authorisation (DFIA)
(i) Advantage: Inputs imported without payments of	(i) Advantage: Inputs imported without payments of
customs duty	customs duty
(The goods imported are exempt from basic customs	(The goods imported are exempt only from basic duty,
duty, ST upto 31.6.2022, Compensation Cess upto	IGST & Compensation Cess, being not exempt, shall be
31.6.2022, Anti-dumping and Safeguard duty, unless	adjusted as Input TaxCredit)
otherwise specified.)	, and the second second
(ii) <u>Items which can be imported:</u>	(ii) <u>Items which can be imported:</u>
(a) Input, fuel, oil, catalyst which are used in exported	(a) Input, fuel, oil, catalyst which are used in exported
Goods.	Goods.
	· `

ii) <u>Items which cannot be imported:</u> (iii) rohibited Goods mentioned in Indian Trade Clarification 1)	Trontotted Goods mentioned in material rade
rohibited Goods mentioned in Indian Trade Clarification 1)	Prohibited Goods mentioned in Indian Trade
,	
TC) [Harmonized System] Cla	larification (ITC) [Harmonized System]
2)	Raw Sugar
3)	Import of tyres
	Actual user condition
'	es – Actual user condition
nereunder will be with actual user condition. It will not	
e transferable even after completion of export bligation.	
lowever, Authorisation holder will have an option to	
ispose off product manufactured out of duty free inputs	
nce export obligation is completed. In case where	
ENVAT credit facility on inputs has been availed for the	
xported goods, even after completion of export	
bligations, the goods imported against Advance	
uthorisation shall be utilized only in the manufacture of	
utiable goods whether within the same factory or utside (by supporting manufacturer). Waste/scrap	
rising out of manufacturing process, as allowed, can be	
isposed off on payment of applicable duty even before	
ulfilment of export obligation.	

(v) Minimum value addition	(v) Minimum value addition
15% of import value (in case of tea 50%)	20% of import value
If inputs are supplied free of Cost by foreign buyer in	'
such	
case for calculation of value addition, notional value shall	
be taken (Eg 15% of market value)	() [] 11 D
(vi) Eligible Person	(vi) Eligible Person
(a) Manufacturer (b) Merchant Exporter	(a) Manufacturer (b) Merchant Exporter
(vii) <u>SION</u>	(vii) <u>SION</u>
The import of raw material is on the basis of standard	The import of raw material is on the basis of
input –	standard input – output Norms (SION)
output Norms (SION)	
(viii) Annual Advance Authorization [Eligible]	
(a) Status Certificate Holders	
(b) All other categories of exporter having past export	
Performance (In preceding 2 years)	
(ix) Limit of Annual Advance Authorization	
300% of FOB value of physical export & / or FOB value of	
deemed export in preceding financial year.	
OR	
Rs 1 Crore WHICH EVER IS HIGHER	
Authorization for Annual Requirement shall be issued	
only where SIONs or valid Ad Hoc Norms exists on the date of issue of Authorization. It is not available on	
self-declaration basis.	
Standard Input Output Norms (SION) are standard norms	
which define the amount of input(s) required to manufacturer unit of output for export purpose. SION is	
notified by DGFT on basis of recommendation of Norms	
Committee.	
Committee	
	_

Note: Basis of issuance of Advance Authorisation:

Advance Authorisation is issued for inputs in relation to resultant product, on the following basis:

(A) As per SION notified (available in Hand Book of Procedures)

Or

(B) On the basis of self declaration Regional Authority may also issue Advance Authorisation where there is no Sion/ Valid AD Hoc Norms for an expert product or where SION/ Ad Hpc norms have been notified/published but exported intends to use additional inputs in the manufacturing process, based on self declaration by applicant. Wastage so claimed shall be subject to wastage Norms as decided by Norms committee. The application shall submit an undertaking to abide by decision of Norms committee. The application shall submit an undertaking to abide by decision of Norms Committee.

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(C) Applicant specific prior fixation of norms by the Norms Committee.

Or

- (D) On the basis of Self Ratification Scheme. Where there is no SION / valid Adhoc Norms for an export product and where SION has been notified but exporter intends to use additional inputs in the manufacturing process, eligible exporter can apply for an Advance Authorisation under this scheme on self-declaration and self-ratification basis. RA may issue Advance Authorisations and such cases need not be referred to Norms Committees for ratification of norms. An exporter (manufacturer or merchane exporter) who holds AEO (Authorised Economic Operator) Certificate under Common Accreditation Programme of CBI&C is eligible to opt for the scheme
- (x) Validity period of imports
- (a) 12 months from the date of issue of authorization. (b) Advance authorization for deemed export shall be coterminous with contracted duration of project execution or 12 months from the date of issue of authorization, whichever is less.
- (x) Validity period of imports

Applicant shall file online application to Regional Authority concerned before starting export under DFIA

- (xi) Export Obligation period
- 18 months from the date of issue of authorization or notified by DGFT

NOTE: In case of items falling in categories of defence, military store, aerospace and nuclear energy 24 months

(xi) Export Obligation period
Export shall be completed within 12
months from the date of online filing

of application.

Note: - Meaning of Deemed Export

- (a) Supply of goods by a registered person against Advance Authorisation.
- **(b)** Supply of capital goods by a registered person against Export Promotion Capital Goods Authorisation.
- (c) Supply of goods by a registered person to Export Oriented Unit.

Example 1: AAAR : Compute Entitlement advance authorization for annual requirement for an exporter having performance is 3-4 years and last financial year's details being

- (a) Physical Export [FOB Rs40 Lakh]
- (b) Deemed Export [FOR Rs8 Lakh]

Answer: Since exporter has export performance is at least 2 years, it is eligible for advance authorization for annual requirement

The entitlement would be:

- 300% of the [40 lakh + 8 Lakh] = Rs. 144 lakh; or
- Rs. 1 Crore,

Whichever is higher i.e., Rs. 144 Lakh

Example 2:

Aadi Ltd. Has imported inputs without payment of duty under AA

- CIF Value = Rs. 10,00,000

After processing, the final product is exported

What should be the minimum FOB value of exported Goods?

Answer: Minimum export value (FOB value) addition

= 10 lakhs + 15% of 10 lakhs = Rs. 11.5 lakhs

2. Scheme for Remission of Duties and Taxes on Exported products (RoDTEP)

With effect from 01.01.2021, Government has introduced a new scheme for Remission of Duties and Taxes on Exported Products (RoDTEP) for eligible export of goods RoDTEP scheme is based on the globally accepted principle that taxes and duties should not be exported, and taxes and levies borne on the exported products should be either exempted or remitted to exporters. This scheme provides for remission of the amount in the form of duty credit scrip credited in an exporter's ledger account with customs.

A) Objective of the Scheme

The objective of the scheme is to refund, currently unrefunded:

Duties/ taxes/ levies, at the Central, State & local level, borne on the exported product including prior stage cumulative indirect taxes on goods & services used in production of the exported product, and Such indirect duties/taxes/levies in respect of distribution of exported products

B) Salient features of the scheme

It seeks to refund to exporters the embedded Central, State and local duties/taxes that were so far not being rebated/refunded

Duty credit is issued -

in lieu of remission of any duty/tax/levy chargeable on any material used in the manufacture/processing of goods or for carrying out any operation on such goods in India that are exported, where such duty/tax/levy is not exempted/remitted/credited under any other Scheme;

against export of notified goods under FTP. Value of the said goods for calculation of duty credit to be allowed under the scheme shall be the declared export FOB value of the said goods or up to 1.5 times the market price of the said goods, whicheveris less.

The refund in the form duty credits would be credited in the electronic credit ledger in the customs automated account of the exporter. Such duty credit shall be used only to pay basic customs duty on imported goods. The duty credit scrips are freely transferable, i.e. credits can be transferred to other importers.

The rebate under the scheme shall not be available in respect of duties and taxes already exempted or remitted or credited

C) Eligibility for the scheme

All Exporters of eligible RoDTEP export items are eligible for the scheme.

D) Reward under the scheme

Rebate would be granted to eligible exporters at a notified rate as a % of FOB value with a value cap per unit of the eligible exported product, wherever required, on export of items However, for certain export items, a fixed quantum of rebate amount per unit may also be notified

Rebate would not be dependent on the realization of export proceeds at the time of issue of rebate. However, rebate will be deemed never to have been allowed in of non-receipt of sale proceeds within time allowed under the Foreign Exchange Management Act, 1999.

E) Ineligible supplies/ items/ categories under ReDTEP

Following shall not be taken into account for calculation of entitlement under the scheme

- Export of imported goods in same or substantially the same form
- Exports through trans-shipment, meaning thereby exports that are originating in third country but transshipped through India.
- Export products which are subject to minimum export price or export duty
- Products which are restricted/prohibited under FTP
- Supplies of products manufactured by DTA units to SEZ/FTWZ units
- Products manufactured in EHTP and BTP
- Goods which have been taken into use after manufacture
- Exports for which the electronic documentation in ICEGATE EDI has not been generated/exports from non-EDI ports
- Products manufactured or exported availing the benefit of Notification No 321997 Cus-dated 01.04.1997
- Deemed Exports
- Products manufactured partly or wholly in a warehouse under section 65 of the Customs Act
- Goods for which claim of duty credit is not filed in a shipping bill or bill of export in the customs automated system
- Inclusion of exports made under these categories in RoDTEP Scheme will be decided later.

Products manufactured or exported in discharge of EO against an AA/DFIA/Special AA issued under a duty exemption scheme of relevant FTP Products manufactured/exported by a unit licensed as 100% EOU in terms of the provisions of FTP or by any of the units situated in FTZ/EPZ/SEZ

[Notification No. 19/2015-2020 dated 17.08.2021 read with Notification No. 76/2021 = Cus. (NT) dated 23.09.2021 and press Release dated]

STATUS HOLDER

Status Holder are business leaders who have excelled in international trade and have successfully contributed to country's foreign trade. Status Holders are expected to not only contribute towards India's export but also provide guidance and hand holding to new entrepreneurs.

STATUS CATEGORY

Status Category	Export Performance FOB / FOR (as converted) Value (in US \$ million)
One Star Export House	3
Two Star Export House	25
Three Star Export House	100
Four Star Export House	500
Five Star Export House	2000

PRIVILEGES OF STATUS HOLDER

Status Holders are granted certain benefits like:

- (a) Authorization and Custom clearances for both imports and exports on self-declaration basis.
- (b) Fixation of Input Output Norms (SION) on priority i.e. within 60 days.
- (c) Exemption from compulsory negotiation of documents through banks. The remittance receipts, however, would continue to be received through banking channels.
- (d) Exemption from furnishing of Bank Guarantee in Schemes under FTP
- (e) Two Star Export Houses and above are permitted to establish export warehouses.
- (f) Three Star and above Export Houses shall be entitled to get benefit of Accredited Clients Programme (ACP) as oer the guidelines of CBEC.
- (g) Grant of double weightage for calculation of Export Performance for Grant of Status

1. Eligible Exports for double weightage:

Micro, Small & Medium Enterprise

Manufacturing units having ISO / BIS

Units located in North Eastern States Including Sikkim, Jammu & Kashmir.

Units located in Agri Export Zones.

- 2. One Star Export House only eligible: Double weightage shall be available for grant of One Star Export House Category only. Such benefit of double weightage shall not be admissible for grant of status recognition of other categories namely Two Star Export House, Three Star Export House, Four Star Export House and Five Star Export House.
- 3. A shipment can get double weightage only once in any of above categories.

(h)

- i. Status Holders shall be entitled to export freely exportable items (excluding Gems and Jewellery, Articles of Golds and Precious Metals) on free of cost basis for export promotion subject to an annual limit of 2% of average annual export realization during preceding 3 licensing years.
- **ii.** Annual limit of Rupees 1 Crore or 2% of average annual export realization during preceding three licensing years, whichever is lower. (for exporters of the following sectors-(1) Gems and Jewellery Sector, (2) Articles of Gold and precious metals sector).

Note: - For export of pharma products by pharmaceutical companies, the annual limit would be 2% of the average annual export realization during proceeding 3 licensing years.

In case of supplies of pharmaceutical products, vaccines and lifesaving drugs to health programmes of international agencies such as UN, WHO-PAHO and Government Health Programmes, the annual limit shall be upto 8% of the average annual export realization during preceding 3 licensing years.

Such free of cost supplies shall not be entitled to Duty Drawback or any other export incentive under any export promotion scheme.

EXAMPLE:

ABC Ltd. a medium enterprise, covered under MSMED Act has made exports worth US \$ 25 Lakhs per annum (on an average) during last 3 years. It wants to export certain goods for export promotion on Free of Cost basis, which are worth Rs. 32 Lakh. Can it do so, given that 1\$ = Rs. 60.

Solution:

Exports by MSMEs are given double weightage for determination of one-star status. Hence, for said purpose, exports are worth $= 25 \text{ Lakh } \times 2 = 50 \text{ Lakh} = 50 \text{ Million}$. Therefore ABC Ltd. is eligible for status of One Star Export House.

(i) A status holder can export goods free of cost for export promotion as follows: 2% of average exorts of last 3 years i.e. 2% of \$ 25 Lakh x Rs. 60 per \$ = Rs. 30 Lakh.

Hence it can export freely export promotion material upto Rs. 30 Lakh

3. EPCG SCHEMES

Eligible person	 Manufacturer Merchant Exporter Service Provider 	
Purpose	For pre-production For post-production	
Amount of Duty	Zero	
Export obligation	6 times of duty saved on Capital Goods	
Export obligation period	Fulfilled in 6 years	
Validity period	Valid for 18 months from the date of issue of authorisation	

NOTE:

- IGST/Compensation Cess paid and Cenvat Credit not availed then, IGST/Compensation Cess would not be taken for computation of duty saved
 - 2. Actual user Conditions till export obligation is complete.

Eligible and Ineligible Capital Goods

Eligible (Import of CG without payment of duty)

- → Any CG (Refer definition of CG)
- \rightarrow Catalyst
- → CG for project imports notified by CBEC
- → Computer Systems & Software which are a

Part of the capital Goods being Imported

→ Spares, Moulds, Dies, Jigs, Fixtures Tooks &
Refactories,

Ineligible (Duty will be charged at the time of import)

- → Second hand CG
- \rightarrow Any CG for:
- **⇒** Export of Electrical energy
- ⇒ Supply of Electrical (under deemed export)
- ⇒ Use of power in their own unit
- Supply/export of electricity transmission

NOTES:

- Shipment under advance authorisation, DFIA, drawback scheme or reward scheme would also be counted for fulfilment of export obligation under EPCG scheme.
- 2. Both physical export as well as deemed exports shall also be counted towards fulfilment of export obligation.
- 3. Incentive for early fulfilment of export obligation.
 In case where authorisation holder has fulfilled 75% or more of specific export obligation and 100% of average export obligation till date, if any, in half or less than half the original export obligation specified (it means within 3 years) remaining export obligation shall be condone and the authorisation redeemed.
- 4. Post Export EPCG duty credit scrips
 Under these scheme capital goods are imported on full payment of duties. Later BCD paid on capital goods is remitted in the form of freely transferable duty credit scrips.
- 5. 25% less EO in Case of ingeniousness sourcing of Capital Goods = 6 times 4.5 times E.g. Domestic purchase of Capital Goods 'A' → IGST payable Rs. 1,00,000 but Notional Customs Duties payable (considering it as deemed import) Rs. 1,20,000 → 4.5 times = Rs. 5,40,000

NOTES:

A person holding on EPCG authorization may source Capital Goods from a domestic manufacturer. Such Domestic Manufacturer shall be eligible for deemed export benefits under FTP & as may be provided under GST Rules under the category of deemed exports.

4. DEEMED EXPORTS

Deemed exports referred to those transactions in which goods manufactured in India are supplied to specified projects or to specific categories of consumers. In deemed exports, goods supplied do not leave the country and payment for such supplies is received either in Indian rupees or in free foreign exchange by the recipient of the goods.

The objective of the deemed exports is to ensure that the domestic suppliers are not in disadvantageous position visa vis foreign suppliers in terms of the fiscal concessions. The underlying theory is that foreign exchange saved must be treated at par with foreign exchange earned by placing Indian manufacturers at par with foreign suppliers. Deemed exports broadly cover the areas –

- (a) Supplies to domestic entities who can import their requirements duty free or at reduced rate of duty.
- (b) Supplies to projects/proposes that involve international competitive bidding.
- (c) supplies to infrastructure projects of national importance.

Categories of supplies considered as 'deemed exports':

Supply by manufacturer	Supply of goods to projects or turnkey contracts financed by multilateral or bilateral agencies/Funds notified by Department of Economic Affairs (DEA), under International Competitive Bidding
Supply by goods advance authorization for Annual	Supply of goodsa to any project where import is permitted at zero customs duty as per customs Notification No. 12/2012- Cus dated 17-03-2012 and supply is made against International Competitive Bidding
Supply of goods to unitsEOU/STP/BTP/EHTP	Supply of goods to mega power projects against International Competitive Bidding (even if customs duty on imports made by such projects is not zero). The ICB procedures should be followed. Supplier is eligible for benefits as specified. International Competitive Bidding (ICB) is not mandatory for mega power projects if requisite quantum of power has been tied up through tariff based competitive bidding or if project has been awarded through tariff based competitive bidding
Supply of capital goods against EPCG authorisation	Supply of goods to UN or international organisations for their official use or supplied to projects financed by them.

Supply of marine freight	Supply of goods to nuclear projects through
provided said containers	competitive bidding (need not be International
exported within 6	Competitive Bidding)

Benefits for Deemed Exports

Deemed exports shall be eligible for any / all of the following benefits in respect of manufacture and supply of goods, qualifying as deemed exports, subject to specified terms and conditions:

- (a) Advance authorisations / Advance authorisations for Annual requirement /
- DFIA (b) Deemed export drawback
- (c) Refund of terminal excise duty if exemption is not available.

5. Eou, EHTP, STP & BTP SCHEME

Eligibility	Manufacturer of Goods (including repair, remaking, reconditioning, reengineering, rendering of services, Development of software, Agriculture.) Ineligible: Trading Units		
Entitlement	1. Reimbursement of Central Sales Tax CST. 2. Exemption from excise duty. 3. Reimbursement of duty paid on fuel. 4. CENVAT credit		
Other Entitlements	 Exemption from industrial licensing 100% in EEFC account No bank guarantee in certain cases 100% FDI 		
Export permitted	All goods & services except prohibited goods.		
Import permitted	Export promotion material only upto 1.5 % of FOB value of previous year export. All goods including capital goods except prohibited items of import.		
	 3. Certain specified goods from DTA without payment of duty for creating central facility. 4. Second hand capital goods without any age limit, duty free. 5. Procurement and export of spares/ components, upto 5% of FOB value of exports, may be allowed to same consignee/ buyer of the export article, subject to the condition that it shall not count for NFE and direct tax benefits. 		
Procurement Mode	Import Procure from bonded warehouses in DTA, and Procure from international exhibition held in India.		
Duty exemption	 Basic cutoms duty. Additional duty of customs (CVD or special CVD) IGST leviable u/s 3(7) of Customs Tariff Act, 1975 GST Compensation Cess leviable u/s 3(9) of Customs Tariff Act, 1975, as per notification issued by the department of Revenue. Exemption from IGST and GST compensation cess is available upto 31-03-2022. 		
Positive NFE (Net Foreign Exchange Earning)	EOU/EHTP/STP/BTP unit shall be a positive net foreign exchange earner except for sector specific provision as specified, where a higher value addition shall be required. NFE earning shall be calculated cumulatively in blocks of 5 years, starting from commencement of production.		
Investment Criteria	1. For EOU, minimum investment of Rs. 1 Crore in P & M 2. Not applicable to EHTP/ STP/ BTP, Handicrafts/ Agriculture/ Floriculture/ Aquaculture/ Animal Husbandry/ Information Technology Services, Brass Hardware and Handmade jewellery sectors.		
Deemed Exports	Considered as deemed exports and eligible for relevant entitlement.		
Inter unit transfer	Prior intimation to concerned Development Commissioner (DC) is to be given. Transfer of capital goods is also be allowed.		
Subcontracting	 Annual permission required from customs authorities. 50% of overall value of production can be subcontracted. Job work can be undertaken by EOU unit on behalf DTA exporters. 		

DTA sale of finished products rejects/ waste/ scrap/ remnants/ and by-products	1. DTA sale by units manufacturing and exporting more than one product – upto 90% of FOB value of export of the specific products subject to the condition that total DTA sale does not exceed the overall entitlement of 50% of FOB value of exports for the unit, as stipulated above. 2. DTA sale of Rejects within an overall limit of 50% may be sold in DTA on payment of duties. Sale of rejects upto 5% of FOB value of exports shall not be subject to achievement of NFE.
Letter of permission or letter of intent or legal undertaking LoP/LoI Sale of Unutilized Material	Extension of 1 year by the DC and further 1 year by the Unit Approval Committee. Valid for 5 years from commencement of production – extension for 5 years. If unable to utilize then 1. transferred to another EOU/ EHTP/ STP/ BTP/ SEZ unit 2. disposed off in DTA with approval of Customs authorities on payment of applicable duties and submission of import authorization; or
Exit from EOU scheme Conversion	3. exported. Prior approval of DC required. Subjective to payment of excise and customs duties and industrial policy in force. Existing DTA units may also apply for conversion into an EOU/ EHTP/ STP/ BTP unit. Existing EHTP/ STP units may also apply for conversion/ merger to EOU unit and vice-versa. In such cases, units will remain in bond and avail exemptions in duties and taxes as applicable.

10

Refund



UNDER CUSTOMS

CHAPTER OUTLINES

- Demand.
- Refund.
- [Sec. 27(1B)] Manner of Computation of Limitation Period of One Year.
- [Sec. 27A] Interest on Delayed Refunds.



REFUND

GLIMPSES

- 1. WHY REFUND
- 2. APPLICATION FOR REFUND AND TIME LIMIT
- 3. NO REFUND ADMISSIBLE IF AMOUNT IS LESS THAN 100
- 4. MANNER OF COMPUTATION OF LIMITATION PERIOD OF ONE YEAR [SECTION 27 (1B)]
- 5. CIRCUMSTANCES WHEN REFUND GRANTED TO ASSESSEE

WHY REFUND

- (i) If assessee has paid excess amount of excise duty/customs duty/service tax because of

 - a. Wrong Valuationb. Wrong Classification
- (ii) Provisional assessment etc.

APPLICATION FOR REFUND AND TIME LIMIT

Section 27 provides that any person claiming refund of any duty or interest.

- (a) paid by him; or
- (b) borne by him,

may make an application in such form and manner as may be prescribed for such refund to the Assistant Commissioner/ Deputy Commissioner of Customs, before the expiry of 1 year, from the date of payment of such duty

Time Limit not applicable in case duty is paid under protest: The limitation of one year shall not apply where any duty or interest has been paid under protest. Hence, in case of duty/interest paid under protest, refund claim may be filed without any time-limit

NO REFUND ADMISSIBLE IF AMOUNT IS LESS THAN ₹ 100

Where the amount of refund claimed is less than ₹100, the same shall not be refunded.

MANNER OF COMPUTATION OF LIMITATION PERIOD OF ONE YEAR [SECTION 27(1B)] [JAN 21]

The period of limitation for submission of refund application is one year and it is computed in the following manner:

In case where	The time limit of one year should be calculated from	
Refund claim is filed by the importer/ exporter is filed	Date of payment of duty interest	
by the		
Refund claim is filed by another person, from whom	The date of purchase of goods	
duty was collected		
Goods are exempt from duty by a special order	Date of issue of such exemption order	
Duty is paid provisionally	The date of adjustment of duty after the final assessment	
	thereof or in case of re-assessment, from the date of such	
	re-assessment	
Refund arises as a result of any judgment/ decree /	Date of such judgement / decree/ order direction	
order / direction of the appellate Authority/ Appellate		
Tribunal/ court		

The limitation of one is not applicable if duty is paid under protest.

DO YOU KNOW?

Would the period of limitation for claiming refund applicable to refund of amount paid on account of duty paid twice under mistake? [JAN 21]

Ans:-

The High Court, in Parimal Ray v. Cus. 2015 (318) ELT 379 (Cal), has ruled that the Law of limitation under Customs Act is applicable to duty or interest paid under that Act

However, any sum paid to the exchequer by mistake is not the duty or excess duty but is simply money paid to the account of Government Hence, limitation of one year applicable to refunds of customs duty will not apply to refunds of amount paid to the Government by mistake in new of the same the limitation period of one year will not apply to the duty paid by mistake

CIRCUMSTANCES WHEN REFUND GRANTED TO ASSESSEE

The amount of customs duty along with interest if any paid thereon shall be paid to the applicant instead of being credited to the fund in the following circumstance:-

- a) **Refund to importer/exporter if duty incidence is not passed:** If the importer or exporter has paid the duty and interest and has not passed on the incidence of such duty and interest to any other person
- b) **Import made by individual for personal use:** If the duty and interest in paid on imports made by an individual for his personal use
- c) **Refund to buyer if duty burden not passed:** If the duty and interest has been borne by the buyer and he has not passed on the incidence thereof to any other person
- d) Duty Drawback: In case of drawback of duty payable U/S 74 and 75 of the Customs Act 1962
- Refund of Export Duty: In case the refund is in respect of the export duty as specified in Section 26 of Customs Act 1962
- f) **Notified class of applicants**: In case the duty and interest is borne by any other such class of applicants as the Central Government may by notification in the official gazette specify and such class of persons have not passed on the incidence thereof to any other person
- g) **Excess duty paid by importer [Inserted by Finance Act, 2017 w.e.f. 31-3-2017]:** The duty paid in excess by the importer before an order permitting clearance of goods for home consumption is made where-
 - I. Such excess payment of duty is evident from the bill of entry in the case of self-assessed bill of entry; or
 - II. the duty actually payable is reflected in the reassessed bill of entry in the case of reassessment

INTEREST ON DELAYED REFUNDS [SECTION 27A]

The provisions relating to interest on delayed refunds are as under;

- (1) **Circumstances in which refund can be granted:** If any duty ordered to be refunded is not refunded within **3 months** from the date of receipt of application, interest shall be paid to that applicant.
- (2) **Period for which interest will be paid:** Interest will be paid on such duty from the date immediately after the expiry of three months from the date of receipt of such application till the date of refund of such duty.
- (3) Rate of interest: 6% p.a.
- (4) Refund in consequence of Appellate Authority's order: Where any order of refund is made by the Commissioner (Appeals), Appellate Tribunal or any court against an order of the Assistant Commissioner of Customs or Deputy Commissioner of Customs the order passed by the Commissioner (Appeals), Appellate Tribunal or, as the case may be by the court shall be deemed to be an order passed for the purposes of this section.

EXAMPLE:-

M/s RSM filed a claim for refund of duty amounting to 5 Crores on 25-12-2014, however. such claim was rejected by the Department vide order dated 23-6-2016. Aggrieved thereby, the assessee filed appeal and succeeded vide final appellate order dated 25-1-2017. The refund was paid on 25-3-2017. The assessee has sought interest under section 27A on delay in refund, while Department contends that since the refund has been granted within 3 months from the date of appellate order, no interest is due as here is no delay Decide the issue and compute the amount of interest, if any

Amount of refund [A]	5,00,00,000
Date of making application [B]	25-12-2014
Three Months period from the date of application expires on $-[C] = [B] + 3$ months	25-03-2015
D ate of making refund [D]	25-03-2017
No. of years and days for which interest to be granted [E] =[D] – [C]	2 years
Interest on Refund @ 6% [A] x [E] x 6%	60,00,000

RELEVANT CASE LAWS						
NAME OF CASE	HC / SC	DISPUTE	JUDGEMENT			
Kemtech International Pvt. Ltd. v. CCus. 2013 (292) ELT 321 (SC)	SC	Is the adjudicating authority required to supply to the assessee copies of the documents on which it proposes to place reliance for the purpose of re-quantification of short-levy of customs duty?	The Apex Court held that for the purpose of requantification of short-levy of customs duty, the adjudicating authority, following the principles of natural justice, should supply to the assessee all the documents on which it proposed to place reliance. Thereafter the assessee might furnish their explanation thereon and might provide additional evidence, in support of their claim.			
Uniworth Textiles Ltd. vs. CCEx. 2013 (288) ELT 161 (SC) SC Whether extended period of limitation for demand of customs duty can be invoked in a case where the assessee had sought a clarification about exemption from a wrong authority?		The Supreme Court held that mere nonpayment of duties could not be equated with collusion or wilful misstatement or suppression of facts as then there would be no form of non-payment which would amount to ordinary default. The Apex Court opined that something more must be shown to construe the acts of the assessee as fit for the applicability of the proviso.				
CCus. v. Dinesh Chhajer 2014 (300) ELT 498 (Kar.) HC Can customs duty be demanded under section 28 and/or section 125(2) of the Customs Act, 1962 from a person dealing in smuggled goods when no such goods are seized from him?		The High Court held that Tribunal was justified in holding that no duty is leviable against the assessee as he is neither the importer nor the owner of the goods or was in possession of any goods.				