COMPUTATION PROBLEMS ON CUSTOMS DUTY

1. **Computation of customs duty:** An importer imported some goods in February 2008 and the goods were cleared from Mumbai port for warehousing on 8th February 2008 after assessment. Assessable value was Rs.4,86,000 (US $ 10,000 at the rate of exchange Rs.48.60 per US $). The rate of duty on that date was 25% (assume that no additional duty is payable). The goods were warehoused at Pune and were cleared from Pune warehouse on 4th March 2008, when rate of duty was 20% and exchange rate was Rs.48.75 =1 US $. What is the duty payable while removing the goods from Pune on 4th March 2008?

   Sol: As per section 14 of the Act, the assessable value is to be determined by applying rate of exchange in force on the date on which bill of entry is presented u/s 46. Under section 46, bill of entry is presented either for home consumption or for warehousing. Therefore, in case of warehoused goods, the rate of exchange in the force on the date on which the into-bond bill of entry for warehousing is presented, i.e. in this case, Rs.48.60 per US $ on 8-2-2008, shall be the rate applicable for arriving at the assessable value.

   However, as per 15(1)(b) of the Act, the rate of duty applicable on goods cleared from warehouse U/s 68 shall be the rate in force on the date on which ex-bond bill of entry for home consumption is presented. Therefore, the rate of duty in force on 4-3-2008 i.e. 20% shall be applicable.

   Accordingly, the duty, payable while removing the goods from warehouse shall be computed as follows -

Assessable value i.e. US$ 10,000 × Rs. 48.60 per US $	4,86,000
Customs duty @ 20.6% (including 2% EC & 1% SHEC)-Assuming no other duty payable.	1,00,116

2. **Assesseable value – Rule3 & Rule 10:** What would be the value for the purpose of customs, if a consignment imported by air has a CIF price of US $ 2,500 including freight US $ 700 and insurance US $ 90? Exchange rate notified by CBEC U/s 14 of Customs Act, 1962 is Rs. 45.50.

   Sol: In the case of import by air, airfreight can not be higher than 20% of FOB price, hence assessable value may be ascertained s follows –

Particulars	US $	US $
CIF value		2,500
Less: Air freight	700	
Insurance charges	90	790
FOB value		1,710
Computation of Assessable value:		
FOB value as calculated above	1,710	
Add: Freight restricted to 20% of FOB value	342	
Insurance charges (actual)	90	2,142
CIF value in Indian Rupees (US $ 2,142 × Rs. 45.50)		97,461.00
Add: Landing charges at 1% of CIF value		974.61
Assessable value (in rupees)		98,435.61

3. **Computation of Costs when FOR value not ascertainable - Rule 10(2):** The CIF value of certain imported goods is Rs.1,21,350. Compute FOB value, cost of transport and cost of insurance assuming that none of them is ascertainable. Also compute its assessable value.

   Sol: In this question the FOB value, cost of transport and cost of insurance are unascertainable. Therefore, as per third proviso to Rule 10(2),-

   a. Cost of transport= 20% of (FOB Value + Cost of Insurance) or CIF Value × 20 ÷ 120 = Rs.20, 225.

   b. Cost of insurance = 1.125% of (FOB Value + Transport Cost) or CIF Value ×1.125 ÷101.125 = Rs.1,350.

   Accordingly, FOB Value = 1,21,350 - 20,225 - 1,350 = Rs.99,775.

   Assessable Value = CIF value + Landing Charges @1% = 1,21,350 + 1% of 1,21,350 = Rs. 1,22,564.

4. Computation of assessable value and customs duty: From the following Particulars, calculate-assessable value and total customs duty payable:

a. Date of presentation of bill of entry : 20.6.2007 (Rate of BCD 25%; Exchange Rate: Rs. 43.60 and rate notified by CBEC Rs.43.80).

b. Date of arrival of goods in India: 30.6.2007 [Rate of BCD 20%; Exchange Rate: Rs. 43.90 and rate notified by CBEC Rs.44.00.

c. Rate of Additional Customs Duty: 14%.

d. CIF value 2,000 US Dollars; Air Freight 500 US Dollars, Insurance cost 100 US Dollars [Landing Charges not ascertainable].

e. Education Cess applicable 2% and SHEC is 1%. Assume there is no special CVD.

Sol: Computation of assessable value and the total customs duty payable –

Computation of FOB value	**US $**	**US $**
CIF value		2,000
Less: Air freight	500	
Insurance Charges	100	600
Fob Value		**1,400**
Computation of Assessable Value –		
FOB value as calculated above		1,400
Add: Air Freight restricted to 20% of FOB value in case of imports of goods by air	280	
Insurances charges (actual)	100	380
CIF value (for customs purposes)		**1,780**
Add: Landing charges at 1% of CIF value		18
Assessable Value		1,798
		Rs.
Assessable Value in Indian rupees (1,797.8 × 43.80)		78,743.64
Basic customs duty (20% of Rs. 78,734.64)		15,748.73
Additional duty of customs = 14.42% of (78,734.64 + 15,748.73)		13,625.80
Education cess & SHEC 3% of (15,748.73 + 13,625.80)		881.24
Customs Duty Payable (approx.)		**30,256**

Note: Rate of duty will be that applicable on the date of presentation of bill of entry or entry inwards, whichever is later i.e 20% as on 30.6.2007.

5. Computation of customs duty payable: An actual user imports (date of imports 15-7-2007) the following goods from England per S.S. Vishal:

		Tariff Heading	**Value FOB**
1.	Second hand numerically controlled horizontal lathe machine	84.5811	£1,000
2.	A.C. motors	85.0110	£ 500

Other relevant data are:

Exchange Rate	£1 =Rs. 80
Freight	£ 150
Insurance	£25

Rate of Duty:

Basic Customs duty	10%
Additional duty of customs under section 3(1) of CTA, 1975	14%
Additional duty of customs under section 3(5) of CTA, 1975	4%
Educational and Secondary & Higher Education Cess	2% + 1%

It is found that the lathe machine is undervalued. It is proposed to load the FOB value of the lathe machine by 25%. Partly does not want show cause notice and personal hearing.
Compute a) Assessable value b) Total customs duty payable.

Sol: Since the party doesn't want show-cause notice and personal hearing in connection with under-valuation, hence, the value of the lathe machine shall be loaded by 25%.

Accordingly, the calculation of assessable value and the total customs duty payable shall be as follows-

	Lathe Machine (£)*	AC Motor (£)	Total (£)
FOB value (* 1000 + 25% loading)	1250	500	1750
Add: Insurance and Freight (to be apportioned between the lathe machine and the AC motors in ratio of their value)	125 (1250 × 175 ÷1750)	50 (500×175 ÷1750)	17 (£150+ £25)
CIF value	1375	550	1925
Exchange Rate (£ 1 = Rs. 80)	**Rs.**	**Rs.**	**Rs.**
CIF value in Rupees	1,10,000.00	44,000.00	1,54,000.00
Add: Landing charges @ 1%	1,000.00	440.00	1,54,00
Assessable value	1,11,100.00	44,440.00	1,55,540.00
Add: Basic Customs Duty @ 10% (1)	11,110.00	4,444.00	15,554.00
Total for levy of section 3(1) duty	1,22,210.00	48,884.00	1,71,094.00
Add: Section 3(1) duty @ 14.42% (2)	17,622.68	7,049.07	24,671.
Add: EC & SHEC @ 2% + 1% of [1+2] (3)	861.98	344.79	1,206.77
Total for levy of section 3(5) duty	1,40,694.66	56,277.86	1,96,972.53
Add: Section 3(5) duty @ 4% (4)	5,627.79	2.251.11	7,878.60
Total Customs Duty payable [1+2+3+4]	**35,222.45**	**14,088.98**	**49,311.43**

6. **Computation of customs duty:** Compute the customs duty liability as per the provisions of the Customs Act 1962, from the following information. Make suitable assumptions and indicate the same in your answer.

Product imported	'X'
Total FOB value of the goods	US $ 74000
Quantity imported	100 MTS
Ocean freight	US $ 10000
Insurance	US $ 740
Landing charges	1% of CIF value
Exchange Rate	IUS $ = Rs. 45
Date of presentation of Bill of Entry	28.02.08
Date of Entry Inwards of the vessel	03.03.08

Customs duty rates:

Type of custom duty -	As on 28.02.08	As on 03.03.08
Basic Customs Duty	5%	10%
Additional duty under section 3(1)	14%	8%
Additional duty under section 3(5)	Nil	Nil

Will your answer change if the actual cost of freight and insurance is not available?

Sol: As per Section 15(1)(a), the rate and valuation in force applicable to the imported goods shall be the rate as prevalent on the date of presentation of bill of entry or entry inwards, whichever is later. In this case, the date of entry inwards being later, the relevant date will be 03.03.2008.

Particulars	US $
FOB value Ocean freight Insurance	74,000 10,000 740
Total CIF Value	**84,740**
Exchange rate 1$= Rs. 45 CIF value in rupees (84,740 × 454) **Add:** Landing charges @ 1% of CIF value Total Assessable value **Add:** Basic customs duty @ 10% (1) Total for levy of section 3(1) duty **Add:** Additional duty of customs under section 3(1) @ 8.24% (2) **Add:** Education cess and SHEC @ 3% on [1+2] (3)	Rs. 38,13,300.00 38,133.00 38,51,433.00 3,85,143.30 42,36,576.30 3,49,093.89 22,027.12
Total Customs duties (1+2+3) (rounded off)	**756,264**

If actual cost of freight and insurance are not available: The computation will be as under –

Particulars	US $
FOB value Ocean freight @ 20% of FOB value Insurance @ 1.125% of FOB value	74,000.00 14,800.00 832.50
Total CIF Value	**89,632.50**
Exchange rate 1$ = Rs. 45 CIF value in rupees (8,92,632.5 × 45) **Add:** Landing charges @ 1% of CIF value **Total Assessable value** **Add:** Basic customs duty @ 10% (1) Total for levy of section 3(1) duty **Add:** Additional duty of customs under section 3(1) @ 8.24% (2) **Add:** Education Cess and SHEC @ 3% on [1 + 2] (3)	Rs. 40,33,462.50 40,334.63 40,73,797.13 4,07,379.71 44,81,176.84 3,69,248.97 23,298.86
Total Customs duties [1 + 2 + 3] (rounded off)	**7,99,928**

7. **Computation of customs duty payable in case of deemed removal u/s 72:** Certain goods were imported in February 2008. "Into bond" bill of entry was presented on 14th February 2008 and goods were cleared from the port for warehousing. Assessable value was $ 5,00,000.

   Customs officer issued the order under section 60 permitting the deposit of the goods in warehouse on 21st February 2008 for 3 months. Goods were not cleared even after warehousing period was over, i.e., 21st May 2008 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 2008. What is the amount of duty payable while removing the goods?

   Compute on the basis of following information (assume that no additional duty of customs or special additional duty of customs is payable):

	14.2.2008	**21.5.2008**	**28.6.2008**
Rate of Exchange per US $	Rs. 48.20	Rs. 48.40	Rs. 38
Basic customs duty	35%	30%	25%

Sol: Computation of customs duty payable by the importer (in Rs.)

Assessable value US $ 5,00,000 × Rs. 48.20 (Note 1)	2,41,00,000
Basic Customs duty @ 30.9% (Note 2)	74,46,900

Notes:

a. As per section 14, the assessable value is to be computed as per the exchange rate in force on the date on which into-bond bill of entry for warehousing is filed u/s 46 of the Act. Therefore, the rate of exchange in force as on 14th February i.e. Rs. 48.20 per US $ will be taken.

b. As per decision of the Supreme Court in Kesoram Rayon v. CC [1996] 86 ELT 464 (SC) when the warehousing period expires without extension thereof, the date on which warehousing period comes to an end will be the date of deemed removal and the rate of duty prevalent on that date shall be applicable for determining customs duty. Therefore, the date of expiry of warehousing period i.e. 21st May will be the date of deemed removal and rate of duty prevalent on that date i.e. 30% (plus 3%EC & SHEC) shall be the rate of customs duty chargeable on such goods.

8. Computation of duty drawback U/s 74: Calculate the amount of duty drawback allowable under Sec. 74 of the Customs Act, 1962 in following cases:

a. Salman imported a motor car for his personal use and paid Rs. 5,00,000 as import duty. The car is re-exported after 6 months and 20 days.

b. Nisha imported wearing apparel and paid Rs. 50,000 as import duty. As she did not like the apparel, these are re-exported after 20 days.

c. Super Tech Ltd. imported 10 computer systems paying customs duty of Rs. 50 lakh. Due to some technical problems, the computer systems were returned to foreign supplier after 2 months without using them at all.

Sol: The amount of duty drawback in the aforesaid case is as follows -

a. Period of personal use = 6 months 20 days = 3 quarters. Hence, drawback admissible = 5,00,000 - 4% × 3 × 5,00,000 = Rs. 4,40,000.

b. No drawback is admissible on wearing apparel.

c. Drawback = 98% of 50 lakh = Rs. 491akh.

9. Eligibility for special brand rate: An exporter exported 2,000 pairs of leather shoes @ Rs.750 per pair. All industry rate of drawback is fixed on average basis, i.e., @ 11% of FOB subject to maximum of Rs. 80 per pair. The exporter found that the actual duty paid on inputs was Rs. 1,95,000. He has approached you, as a consultant, to apply under Rule 7 of the drawback rules for fixation of 'special brand rate'. Advise him suitably.

Sol: The exporter can apply for special brand rate if duty drawback as per all industry rate is less than 80% of the duties paid by the exporter.

Drawback as per all industry rate is 11% of F.O.B. (11% × Rs. 750 × 2,000) = Rs. 1,65,000 (subject to maximum of Rs. 1,60,000). Thus allowable drawback as per all industry rate is Rs.1,60,000.

Actual import duty paid by the importer is Rs. 1,95,000.

All industry rate is (Rs.1,60,000 ÷ Rs.1,95,000) ×100 = 82.05% of the duties paid by the exporter.

Hence, he is not eligible to apply for Special Brand rate.

10. Computation of customs duty: After visiting USA, Mrs. & Mr. X brought to India a laptop computer valued at Rs.80,000, personal effects valued at Rs.90,000 and a personal computer for Rs.52,000 What is the customs duty payable?

Sol: Assessable value of the baggage = 52,000 - 25,000 = RS. 27,000.

Duty payable = 36.05% (35% + 3% EC & SHEC, no additional duty payable on baggage) of 27,000 Rs.9,734.

Notes:

a) **Laptop- exempt:** One laptop computer imported by a passenger (other than a member of the crew) of 18 years or above as a part of the baggage has been exempted from the whole of Customs duty leviable thereon. Hence the laptop brought by Mr. & Mrs. X will be allowed duty free clearance.

b) Personal effects are not included in the value of baggage. The value of personal computer i.e. Rs. 52,000 will be reduced by general free allowance (GFA). Assuming that the assessee stayed for more than 3 days, hence, under Rule 3, the GFA of Rs. 25,000 will be available. However, the GFA will be allowed once, it cannot be pooled. In other words, Mrs. and Mr. X cannot claim that GFA @ Rs. 25,000 each should be separately allowed from the value of a single taxable goods i.e. personal computer.

11.**Computation of assessable value and customs duty:** Mr. A, an Indian resident, aged 50 years returned to India after visiting England on 10/04/2008. He had been to England on 1/04/2008. On his way back to India he brought following goods with him -

a. His personal effects like clothes etc. valued at Rs. 40,000;

b. 1 litre of Wine worth Rs.1,000;

c. A video cassette recorder worth Rs. 11,000;

d. A microwave oven worth Rs. 20,000.

What is the customs duty payable?

Sol: Under Rule 3 of the baggage rules, Mr. A, being of more than 10 years of age with stay of more than 3 days, is eligible for the following general free allowance -

1. Used personal effects of any amount; and

2. Other articles, other than those mentioned in Annex. I, upto a value of Rs. 25,000.

Hence, the duty payable by Mr. A shall be - **Rs.**

a. Personal effects like cloths etc.	Nil
b. Wine upto 2 Ltr. Can be accommodated in General Free Allowance.	1,000
c. Video cassette recorder is dutiable	11,000
d. A microwave oven	20,000
Total dutiable goods imported (that can be accommodated in General Free Allowance)	32,000
Less: General Free Allowance under Rule 3	25,000
Balance Goods on which duty is payable	7,000
Customs Duty payable @ 36.05%	2,524

12.**Computation of customs duty:** Mrs. & Mr. Kapoor visited Germany and brought following goods while returning to India on 8-2-2008-

a. Their personal effects like clothes, etc., valued at Rs. 35,000.

b. A personal computer bought for Rs, 36,000.

c. A laptop computer bought for Rs. 95,000.

d. Two litres of liquor bought for Rs.1,600.

e. A new camera bought for Rs. 37,400.

What is the amount of customs duty payable?

Sol: In this question, Mrs. and Mr. Kapoor have brought certain goods while returning to India. The question doesn't mention whether the same have been brought through separate baggages or through a single baggage. If the goods have been brought in a single baggage, the same would be supported by a single baggage declaration form and, in that event, the general free allowance will be available only once and the same cannot be pooled in respect of Mr. Kapoor and. Mrs. Kapoor separately.

However, if the goods are brought in separate baggages support by two separate baggage declaration forms, the general free allowance will be available separately to Mrs. and Mr. Kapoor

It has been assumed that Mrs. and Mr. Kapoor have brought- two separate baggages in a manner so as to lower the incidence of customs duty. Accordingly, -

a. Used personal effects and laptop computer are exempt from customs duty. Hence, then can be accommodated in the baggage of either of the two.

b. The personal computer can be brought on the account of Mrs. Kapoor. She will get g-eneral free allowance of Rs. 25,000 under Rule 3 and, therefore, assessable value of her baggage will be = Rs.36,000 - Rs.25,000 = Rs.11,000. Duty thereon = 11,000×36.05% = RS. 3,966.

c. Two litres of liquor and camera can be brought on the account of Mr. Kapoor. He will get general free allowance of Rs. 25,000 under Rule 3 and, therefore, assessable value of his baggage will be = Rs.1,600 + Rs.37,400 - Rs. 25,000 = Rs.14,000. Duty thereon = 14,000 × 36.05% = Rs, 5,047.

13.Computation of penalty for improper importation of goods - Section 112: Mr. S was found engaged in smuggling in respect of certain imported goods, the value whereof; as computed for the purposes of section 14 of the Customs Act, 1962, is Rs.10 lakhs. Compute the maximum amount of penalty imposable on Mr. S in the following independent cases -

a. if the said goods are prohibited goods, otherwise chargeable to duty ®10%

b. if the said goods are non-prohibited goods chargeable to duty ®10% ;

c. if the said goods are non-prohibited goods chargeable to Nil rate of duty, but the value declared by Mr.S is Rs.12 lakhs (higher value declared to claim higher export incentives);

d. if the said goods are prohibited goods, which were declared by Mr.S to be some other goods valuing Rs.25 lakhs chargeable to duty @ 10%.

e. if the said goods are non-prohibited goods chargeable to duty @ 30%, but Mr.S had declared them to be some other goods valuing Rs. 25,00,000 chargeable to duty @ 5%.

Sol: The amount of penalty imposable on Mr.S in the aforesaid cases shall be as follows:-

a. Penalty = Value of goods or Rs. 5,000, whichever is higher = Rs.10 lakhs ;

b. Penalty = Duty sought to be evaded or Rs. 5,000, whichever is higher = Rs.1,03,000

Duty sought to be evaded = 10 lakhs × 10.3% = Rs. 1,03,000.

c. Penalty = Rs.2,00,000, being the higher of the following -

i. Declared Value - Actual Value = Rs.12 lakhs - Rs.10 lakhs = Rs.2,00,000 ;

ii. Rs5,000

d. In this case, the goods are prohibited goods, which have been declared by Mr.S to be some other goods valuing Rs. 25 lakhs. Since the value declared by Mr.S is higher than its actual value and the goods are prohibited ones, therefore, penalty = Rs.15,00,000, being the highest of the following three –

a. Actual value i.e. Rs. 10,00,000;

b. Declared value - Actual Value = Rs. 25,00,000 - Rs.10,00,000 = Rs.15,00,000 ;

c. Rs. 5,000.

e. In this case, the goods are dutiable goods on which duty has been sought to be evaded and the value declared by Mr.S is also higher than its actual value. Therefore, maximum penalty imposable = Rs.15,00,000, being the highest of the following three -

a. Duty sought to be evaded i.e.‚ (30.9% of .10 lakhs - 5.15% of 25 lakhs) = Rs.1,80,250

b. Declared Value - Actual Value = Rs. 25,90,000 - Rs.10,00,000 = Rs. 15,00,000;

c. Rs.5,000

PREVIOUS EXAM QUESTIONS

14. M/s H.R.C imported a consignment of computer software and manuals valued at U.S. $ 42 lakhs and contended that the actual value was only U.S.$ 10 lakhs while the balance amount represented license fee for using the software at multiple locations and as such customs duty is payable only on the actual value of U.S.$10 lakhs. Is the contention, raised by M/s H.R.C., correct? Discuss.

Ans: As per Interpretative Notes to Rule 10(1)(c), reproduction royalty is not included in assessable value. On similar facts, it was held in State Bank of India v. CC. [2000] 115 ELT 597 (SC) that

a. Since no separate value of the software has been indicated in the agreement except the licence fee, therefore, the price was payable for only allowing the SBI to use the software in a limited way at its own centers for a limited period and it was called as license fees. Total cost incurred including the licence fee for countrywide use would be the transaction value on which duty is to be paid.

b. Countrywide use of the software and reproduction of software are two different things and licence fee for countrywide use cannot be considered as charges for right to reproduce the imported goods because reproduction and use are two different things.

Accordingly; the total cost incurred, including the license fee for countrywide use of software, would be the transaction value on which customs duty was to be charged.

Hence, contention raised by M/s. HRC is incorrect; it will have to pay duty on total sum of - US$42 lakhs.

15. 'V' steels imported various items for its captive power plant with technical know-how from, 'N' Engineering U.S.A. the relevant drawings of the turbine shaft and layout of the turbine with other items were also supplied. One of the items which was a turbine shaft was in a semi-finished condition. Before fitting, this turbine shaft had to be further ground and finished as per the dimensions of the shaft indicated in the layout drawing. "V" steels paid US$2000 for the layout drawing and did not pay any customs duty on this amount. The customs Department has claimed that this amount of US$ 2000 forms part of the transaction value under Rule 10(1) of the Customs Import Valuation Rules, 2007. "V" steel claims that the drawing indicating the dimensions of the turbine shaft was merely a layout drawing of turbine with other items of the turbine room. Explain with reference to provisions of Rule 10.

Ans: As per Rule 10 (1) (e) of the Customs Valuation Rules 2007, in determination of the transaction value, any payment made by the buyer as a condition of sale of goods will be included in the value of the goods.

As per the facts given above, the turbine shaft was imported in a semi-finished condition and has to be fitted and finished as per the indications in the layout drawing. Thus, this drawing is necessary for further finishing of the imported turbine shaft i.e. in the final production of the imported item before it is fitted. Therefore, as the payment of US $2000 is made for layout drawing without which the plant cannot be installed, hence, the value of such layout drawing will be included in the value of the goods.

16. Discuss briefly with reference to the decided case law whether the landing charges after the landing of the goods, but prior to their clearance for customs purposes are to be included for determining the value under Section 14 of Customs Act, 1962 and arriving on the customs duty payable.

Ans: It was held in Garden Silk Mills Ltd v. UOI [1999] 113 ELT 358 (SC) that the element of port charges which have to be borne by the importer in addition to the CIF value before the goods can be cleared for home consumption will form a part or an element of value. Therefore, landing charges imposed on or after the time of discharge of goods from the vessel prior to their clearance to be taken into account while determining the value unless the seller or his agent is under obligation to bear it.

In view of Rule 10(2)(b) of the Customs Import Valuation Rules, 2007, landing charges are added @1 % of CIF value of the goods irrespective of the actual amount of such landing charges.

17. ABC Ltd. who is an exporter finds that the amount of drawback refunded to it is less than what it is entitled to on the basis of the rates of drawback announced by the Commissioner. Briefly discuss whether ABC Ltd. can claim the difference of drawback short refunded and the procedure to be followed in this regard.

Ans: Supplementary Claim [Rule 15]: ABC Ltd. is eligible for claiming the difference of drawback. It may prefer a supplementary claim in the prescribed form.

Rule 15 provides that where any exporter finds that the amount of drawback paid to him is less than what he is entitled to on the basis of the amount or rate of drawback determined by the Commissioner, he may prefer a supplementary claim.

Time-limit for preferring supplementary claim:

Case	Claim to be file within 3 months from -
a. In case of All Industry rates	The date of determination of such All Industry Rate.
b. In case of brand rates or special brand rates	The date of communication of the said rate.
c. In all other cases	Te date of payment of settlement of the original drawback claim by the proper officer.

On sufficient cause being shown, the aforesaid period of three months may be extended by the Assistant Commissioner of Customs or Deputy Commissioner of Customs, by a further period of 9 months.

Date of filing of claim: The date of filing of supplementary claim for the purpose of section 75A shall be the date of affixing the Dated Receipt Stamp on such claims which are complete in all respects and for which an acknowledgement shall be issued in the form prescribed by the Commissioner of Customs.

Deficient claims: Claims which are not complete in all respects or are not accompanied by the required documents shall be returned to the claimant with a deficiency memo in the form prescribed by the Commission of Customs within 15 days of submission and shal1 be deemed not to have been field.

Where the exporter resubmits the supplementary claim after complying with the requirements specified in the deficiency memo, the same will be treated as a claim filed for the purpose of section 75A.

18. M/s RIL Ltd. claimed duty drawback in respect of its export products. Over 97% of the inputs by weight of the product were procured indigenously and were not excisable. All industry rates under the Customs and Central Excise Duties Drawback Rules, 1995 were fixed taking into account the incidence of customs duty on imported product inputs. Explain briefly with reference to Rule 3(1)(ii) of the said rules whether the claim of M/s RIL will merit consideration by the authorities.

Ans: It was clarified by the Board that since all industry rates are fixed using average quantum of excise duty/customs duty paid on inputs used in the manufacture of export products, therefore, even if export products are manufactured partly out of non-dutiable inputs, the drawback should be allowed on such export products as per the all industry rates fixed for the purpose.

However, rule 3 provides that no drawback shall be allowed if the exported goods have been produced or manufactured using imported materials or excisable materials on which duties have not been paid.

In this case, there was no duty incidence on 97% of the inputs used in the export product; the duty incidence on remaining 3% of the inputs was insignificant. The Clarification of the Board deals with the case of party duty paid and party non-duty paid inputs; it doesn't cover the case where almost whole of the inputs are non-duty paid. Since almost whole of the inputs have not suffered any duty at all, it is clear evidence that no duties have been paid on the same. Accordingly, as per Rule 3, no drawback can be allowed in respect of the same.

Therefore, in view of what has discussed above, M/s. RIL Ltd, is not entitled to any drawback and claim made by it will be rejected by the authorities concerned.

19. Answer the following -

a) When the ship on its arrival from Dubai was searched by the Customs Officer, they found 2,000 biscuits of Gold kept concealed in the ceiling of one of the unoccupied Cabin. The Chief cook of the ship admitted the concealing of the Gold. The Captain of the ship deposed in his statement that he along with Chief Engineer and Chief Officer had inspected the vessel for contraband and inspection did not reveal anything. No Evidence was also found that captain was involved in the smuggling of Gold. Discuss whether the ship is liable to confiscation under the Custom Act.

b) M/s. XYZ, a 100% export oriented undertaking (100% E.O.U. in short) imported DG sets and furnace oil duty free for setting up captive power plant for its power requirements for export production. They used the power so generated for export production but sold surplus power in domestic tariff area. Is customs department justified in demanding duty on DG sets and furnace oil as surplus power has been sold in Domestic tariff area.

Ans:

a) The facts of the case are similar to that in Fargo Marine Co. Ltd. v. CC [2004] 176 ELT 347 (Tri.), wherein it was held that as per Section 115 upon it being shown that a conveyance (ship) was used for smuggling without the knowledge or connivance of its owner, his agent or master, its liability to confiscation can be overcome.

Hence, in the instant case, in absence of any evidence that the smuggling of gold in question, had taken place with the knowledge of the owner of the vessel, his agent or master of the vessel, the confiscation is contrary to the provisions of Section 115 and is not sustainable.

b) The facts of the case are similar to that in CC v. Hand Era Textile Ltd. [2005] 180 ELT A44 (SCE) In this case, DG sets and furnace oil were imported duty free to set up power plant for meeting power-production requirements for export. The assessee has met the export requirements and has sold only the surplus power in Domestic Tariff Area. Thus, where the export requirements have been fulfilled, the import duty cannot be demanded on DG sets and furnace oil and hence, the demand raised by the Customs Department is unjustified.

However, if there is any restrictive clause in the notification that the imported goods should be solely or exclusively used for the purpose of manufacture of goods for export, then, the demand raised by the Customs Department may be justified.

20. The Customs Officers seized non-notified goods, namely Cameras, photofilms of foreign origin valued at Rs.2 lakhs from the possession of Mr. K.P.S when he was traveling from Chandigarh to Shimla under the belief that the goods were smuggled. Mr. K.P.S did not have any vouchers in his possession relating to the goods. The defence of K.P.S is that he had purchased the goods from hawkers at Chandigarh for being sold at Shimla from his shop and goods are not smuggled goods. Please discuss whether these goods are liable to confiscation under the Customs Act, 1962?

Ans: Section 123 applies only to gold and manufactures thereof, watches, and other notified goods. In case of non-notified goods the burden to prove that the goods are smuggled goods vests on the customs authorities and in absence of such proof the goods are not liable to confiscation.

The facts of the case are similar to Biplab Rakshit v. CC. [2002] 143 ELT 108 (Tri.), wherein the Tribunal has held that merely because the person could not produce the documentary evidence showing legal importation of the goods in question, the said fact will not lead to the conclusion that the goods are smuggled. If the possessor of the non-notified goods is required to produce the documents, then, the very purpose of Section 123 gets defeated.

Hence, the goods of foreign origin found in possession of Mr. K.P.S. are not liable to confiscation

The End