VALUATION & DUTY LIABILITY FOR CUSTOSMS

1. Define 'Related Persons' as per Customs Valuation Rules,1988

Answer: For the purpose 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 5 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.

2. When are the custom authorities precluded from enhancing the value on the basis of contemporaneous import at higher price invoking Rule 4 of the Customs (Determination of Price of Imported Goods) Rules, 1989 read with section 14 of the Customs Act, 1962.

Answer: If methodology given under Rule 3 is not followed then custom authorities are precluded from enhancing the value of goods imported on the basis of contemporaneous imports. According to Rule 3, the value shall be transaction value determined in accordance with Rule 4 and where conditions of Rule 4 are not satisfied then valuation has to be done in accordance with Rule 5 to 8. The value can be enhanced on the basis of identical or similar goods imported at or about the same time as the goods are being valued. If the contemporaneous imports does not satisfy the criteria of the identical goods or similar goods then custom authorities cannot enhance the value.

3. In a particular case of import of goods, the seller in USA and the Indian buyer were found to be together controlling a third company in India. What are the conditions subject to which then transaction value of such goods would be accepted for customs purpose?

Answer:

(A) Rule 2(2) of Customs Valuation Rules, 1989 specifies the situations in which persons shall be related. One of the specified situations is that the persons together directly or indirectly control a third person. It has been further clarified in the explanation to this sub-rule that the term' person' also includes legal persons. In view of the above, the seller and buyer are deemed to be related in the given case.

(B) Rule 4(3) of Customs Valuation Rules deals with acceptance of transaction value where buyer and seller are related. Refer Rule 4(3) above.

4. Discuss the concept of 'Price actually paid or payable' with reference to 'Transaction Value' as given in Interpretative notes of Customs Valuation Rules, 1989.

Answer:

(a) The price actually paid or payable is the total payment made or to be made by the buyer to or for the benefit of the seller for the imported goods.

(b) The payment need not necessarily take the form of a transfer of money. Payment may be made directly or indirectly.

(c) Activities undertaken by the buyer on his own account, other than those for which an adjustment is provided in Rule 9, are not considered to be an indirect payment to the seller, even though they might be regarded as of benefit to the seller. The costs of such activities shall not be added in determining the value of imported goods.

(d) The value of imported goods shall not include the following charges or costs, provided that they are distinguished from the price actually paid or payable for the imported goods:

- Charges for construction, erection, assembly, maintenance or technical assistance, undertaken after importation on imported goods such as industrial plant, machinery or equipment;
- The cost of transport after importation;
- Duties and taxes in India.

(e) The price actually paid or payable refers to the price for the imported goods. Thus the flow of dividends or other payments from the buyer to the seller that do not relate to the imported goods are not part of the customs value.

5. Explain whether the costs and services as given in Rule 9 of the Customs Valuation Rules, 1989 are to be added to the value of the identical goods or similar imported goods under Rule 5 & 6 respectively.

Answer:

(a) Rule 5(1)(c) of the Customs Valuation Rules, 1989 provides that where imported goods are being valued as per Rule 5, the value of identical goods is adjusted to take into account the difference attributable to the commercial level or to the quantity or both.

(b) Rule 5{2) provides that where costs and charges referred to in Rule 9 are included in the value of identical goods, adjustment has to be made for the difference in such costs and charges between the imported goods and identical goods.

(c) Therefore, if the value of the identical goods does not include certain specific costs and charges relating to the imported goods, these are to be included as per Rule 9.

6. Determine Assessable Value from the following:

Sale quantity	Unit Price	Number of Sales	Total quantity sold at each price
1-10 units	100	10 sales of 5 units 5 sales of 3 units	65
11-25 units	95	5 sales of 11 units	55
Over 25 units	90	1 sale of 30 units 1 sale of 50 units	80

Answer: The greatest number of units sold at a price is 80, therefore, the unit price in the greatest aggregate quantity is 90.

7. XYZ Co., the assessee, has claimed before the Customs Authority that since the exports of goods in its case attracted no duty, the value, for purposes of the Customs Act, 1963, to be declared shall be the value of goods, which he expects to receive on sale of goods in the overseas market.

Briefly discuss giving reasons whether the stand taken by the XYZ Co. is correct.

Answer: The Supreme Court has addressed this issue in **M/s Om Prakash Bhatia V. Commissioner of Customs, Delhi** 2004 (155) ELT 423. The Apex Court observed that for finding the value section 14 of the Customs Act has £o be read with section 2(41) which defines the term Value'. According to it value means the value as determined in accordance with section 14(1).

According to section 14(1) the value of such goods shall be deemed to be the price at which such or like goods are ordinarily sold, or offered for sale, for delivery at the time and place of importation or exportation, as the case may be, in the course of international trade, where the seller and the buyer have no interest in the business of each other and the price is the sole consideration for the sale or offer for sale. Therefore, irrespective of the fact whether duty is to be levied or not. the value has to be determined in accordance with the provisions of section 14 only. Hence, contention of XYZ Co. is to be rejected.

8. DD India Private Limited Imported components and spares of diesel engines such as impellers, gaskets, elements etc., from 00 Asia Private Limited, Singapore. The Special Valuation Branch (SVB) Customs House Chennai Initiated Investigation into the question of admissibility of invoice value for the purpose of valuation of goods Imported and assessment of custom duty.

The SVB found that DD India was re-selling the imported components at a margin of 65% (which includes expenses and profits) in the domestic market. The SVB felt that the said margin should not be more than 45%.

The SVB came to the following conclusions:

1. DD India is related to DD Asia as per rule 2(2) of the Customs Valuation Rules, 1987 as DD India are the sole distributors in India of DD Asia.
2. The "transaction value" shall be determined as per rule 8 of the Customs Valuation Rules, 1989. Consequently the invoice value of all imports by DD India was ordered t be loaded by 20% for the purpose of assessment of the custom duty.

DD India taken over the distribution from M/s Elandtee, who were the erstwhile distributors In India for DD Asia. During the enquiry proceedings DD India had placed evidence before the SVB that the margins enjoyed by M/s Elandtee was also 65%. However, this was ignored by SVB as not relevant.

The SVB also rejected the price list of foreign suppliers produced by DD India without assigning an reasons. Write a brief note on the two conclusions arrived at by SVB and state, how as the Excise and Customs consultant of DD India you would assail the same in the aforesaid facts and circumstances of the case.

Answer: According to explanation to rule 2(2) of the Custom Valuation Rules, 1989, a sole distributor can be treated as a related person only if he is related in any of the manner specified under rules 2(r) to rule 2(viii). Therefore, in the given case, on the basis of given facts, DD India cannot be treated as a related person. First conclusion of SVB is not sustainable.

Second conclusion of SVB is also not sustainable. Assessment of duty has to be based on the price actually paid or payable and not on any fictitious or notional price. Rule 5 to 8 are adopted only when transaction value is not available. In ***Eicher Tractors*** *Ltd. V. CC2000(122) ELT321, 325* the Supreme Court has held that the reason should fall within the scope of rule 4{2). Before adopting rule 8 i.e. best judgment, all preceding rules shall be applied and it has to be determined why value cannot be decided according to any of those rules. The adjudicating authority cannot directly adopt rule 8 without examining the applicability of preceding rules.

It is to be noted that the facts given do not indicate that SVB has applied any of the preceding rules. Therefore, adoption of rule 8 is not correct.

9. Due to congestion in the ports or non-availability of deep draught all ports are not navigable unto the jetty. Goods have to be discharges or transshipped at the outer anchorage with the help of barges. The charges associated with the delivery of cargo at outer anchorage are called 'barging/ lighterage charges'. State giving the reasons whether such charges have to be included for purpose of determination of assessable value under the Customs Valuation (Determination of price of imported goods) Rules, 1989**.**

Answer: AS per MF (DR) Circular No. 29/2005 - Cus dated 13.04.2001, the barging /lighterage charges borne by the importer in bringing the goods from outer anchorage to the landmass should be included in the assessable value as 'extended cost of transportation' under rule 9{2)(a) of the Customs Valuation Rules, 1988. The value of goods is deemed to be the price at which such goods are ordinarily sold or offered for sale for delivery at the time and place of importation in the course of international trade. The importation gets completed when the goods reach the landmass of the country and not at the outer anchorage point. Therefore, all the expenses incurred by the importer in bringing the goods to the landmass of the country will be includible in the assessable value.

10. A consignment of 800 metric tones of skimmed milk powder of US origin was imported by a non-profit making organization for free distribution of milk to the children In a tribal area under a World Health Programme. This being a special transaction a nominal price of US $ 10 per metric ton was charged for the consignment to cover freight and insurance charges. The customs department found out at or about the importation of this gift consignment there were the following imports of the skimmed milk powder of US origin:

Sl. 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 as on the relevant date was 1 US$ = Rs. 40.

Briefly explain how the assessable value for the purposes of the customs duty will be arrived at in this case under the Customs Act, 1963 and the Customs Valuation Rules, 1988.

Answer: In the given case only a nominal value of US$ 10 has been charged for covering up the cost of transportation and insurance of the goods. Not being the actual price of the goods, value cannot be determined in accordance with Rule 4 and hence, valuation has to be done on the basis of Rule 5 i.e. identical goods.

As per Rule 5, the contemporaneous imports at the same commercial level and in substantially same quantity will be considered. Therefore, consignments of 20 tonnes and 100 tonnes cannot be considered while the remaining four consignments can be considered to be of substantially the same quantity.

According to Rule 5(3) if more than one transaction is found for identical goods then lowest of them shall be considered for determination of import value of the goods. Therefore, unit price in the given case will be taken at US $ 160 per metric tonne.

Particulars	Value
1. CIF value of 800 metric tones @ US $ 160 per MT	1,28,000
2. Rate of Exchange	1US $= Rs.40
3. CIF in Indian Rupees = (1) × (2)	Rs.51,20,000
4. Add: Landing Charges @ 1% of CIF value (3)	Rs.51,200
5. Assessable Value = (3) + (4)	Rs.51,71,200

11: M/s SAS imported 10000 citizen calculators model No. CT 500 of Chinese origin from Singapore and declared value to be US$0.90 per piece in the Bill of Entry. The customs authorities enhanced the value to be US$ 1.80 per piece on the basis of price list of citizen calculator and contemporaneous imports at the same value. Is the action of Customs justified.

Answer: The customs authorities have enhanced the value of the goods based on price list of the contemporaneous imports of identical goods. Now, it is for the importer to prove that the price declared by him in the Bill of Entry is the genuine price and it is not affected by any other consideration. The facts of the case are similar to that of ***SAS Impex V. CC*** *2002 (144) ELT 215 (T)* where the Tribunal held that enhancement of value on the basis of contemporaneous imports is sustainable in absence of any evidence that the price declared in the Bill of Entry is the genuine price.

12. Gujrat Dry Fruits Limited imported dry fruits and declared the value as under –

Date of imports	Quantity	Declared value per MT	Country of import
November 2008	250	25,000	Egypt
November 2008	150	25,000	Egypt

It was found that imports were also made by some other dealers as indicated below

Date of Imports:

Date of import and importer	Quantity (MT)	Declared Value Rs. per MT	Country of import
September 2008 Mumbai Intil	50	35,000	Dubai
October 2008 Chennai Fruits Ltd	20	40,000	Persia

The Customs Department has sought to assess the imports made by the Gujarat Fruits Ltd. as contemporaneous imports under section 14 read with Rule 5 of the Customs Valuation Rules, 1989. Briefly examine whether the action proposed by the Department is correct.

Answer: The goods are said to be identical only if the goods to be valued have been produced in the same country. In the given question, the goods in question have been imported from Egypt while other importers have imported goods from other countries. Moreover, there is a substantial difference in the quantity of the goods imported and contemporaneous imports taken by the customs for enhancing the value. In accordance with the provisions of section 14 and the Customs Valuation Rules. 1989 the action taken by the Department is not correct.

13. C & Co. imported second hand machinery and declared the transaction value in the Bill of Entry filed for the purpose of assessment of import duty. The Assistant Commissioner ignored the transaction value and based on the chartered engineer's certificate showing that the machinery was in working condition and had a residual life of 10 years, he completed the assessment under Rule 8 of the Customs Valuation (Determination of value of Imported Goods) Rules, 1989 after allowing maximum depreciation of 70%.

Discuss briefly giving reasons whether the action of the Assistant Commissioner is valid in law.

Answer: The facts given in the case are similar to the facts in **Tolin Rubber Pvt. Ltd. V. COC, Cochin,** [2005] 163 ELT 289 (SC). In this case the Supreme Court stated that the value of the goods has to be determined as per rule 4(1) of the Customs Valuation Rules, 1989 and only in the circumstances referred under rule 4(2) the transaction value can be rejected and further determination has to be made as per rule 8. The assessing authority has not given any reason for rejecting the transaction value. It was held by the Supreme Court that the price declared by the company in the Bill of Entry has to be accepted by the Department.

Applying the same ratio in the given situation, it may be concluded that the decision of the Assistant Commissioner is not valid in law.

14. V Steels imported various items for its captive power plant with technical know-how from N engineering USA. The relevant drawings of the turbine shaft and lay out of the turbine with other items were also supplied. One of the items which was turbine shaft was in semi-finished condition. Before fitting the turbine shaft had to be further ground and finished as per the dimensions of the shaft indicated in the lay out drawings. V Steels paid US$ 2001 for the layout drawings and did not pay any custom duty on this amount. The Customs Department claims that this amount of USS 2001 forms part of the transaction value under Rule 9(1) of the Custom Valuation Rules, 1989. The counter of V steels to this claim made by the Department is that the drawings indicating the dimensions of the turbine shaft was merely a layout drawing of the turbine with other items of the turbine room.

Explain with reference to the provisions of Rule 9 of the Customs Valuation Rules, 1988, whether the claim made by the Department is tenable.

Answer : In accordance with Rule 9(1){e) **of** the **Customs** Valuation Rules, **1989, in determining 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.**

In the given case, the turbine shaft was imported in the semi-finished **condition and before** lilting, it has to be finished as per the specifications in the drawing. Therefore, drawing becomes essential for finishing and **fitting** of the shaft. Therefore, amount of USS **2001** paid **towards** the drawings, which is **essential** for working of the turbine, has to be included in the **assessable** value.

15. Rule 4 of the Customs Valuation Rules, 1989, states that the transaction value of the good shall be the price actually paid or payable for the goods when sold for export to India adjusted in accordance with provisions of Rule 9 with regard to costs and services. What is the benefit available to the importer with respect to cost of transportation for importation by air when FOB value is ascertainable.

Answer : The cost of transportation is required to be added with the FOB value for **valuation purposes.** Where the import is by air, if the **cost of** import **exceeds** 20% of **FOB** value **then for** the purpose of valuation it shall be restricted to 20% of the FOB value.

16. M/s H.R.C. imported a consignment of computer software and manual valued at USS 42 lacs and contended that the actual value was only US S 10 lakhs and the balance amount represented licence fee for using the software at multiple locations and as such custom duty Is payable only on the actual value of US $ 10 lakhs. Is the contention raised by M/s HRC correct? Discuss.

Answer : The facts of the case are similar to that **of the case of Slate *Bank of India v. C.C, Bombay***

2000 (115) ELT 597 (SC). The Supreme Court held that the license **for country** wide use cannot be considered **as** the **charges for** the right to reproduce the imported **goods as envisaged in** the interpretative **Note** to Rule 9(1)(c) **of the** Valuation Rules. Therefore, **total cost incurred** in transaction value on which custom duty has to be paid and total **cost for the purpose of** assessment of custom duty would **include** single site licence fee as well **as country wide** licence fee.

Since software cannot be used **at multiple location** unless **licence** fee is paid **for such use,** it becomes a part of the software **and therefore** contention of M/s HRC **is** not **correct.**

17. Rl is an indenting agent of an Italian Company. The agreement provides for payment of 20% commission on the Imported equipments supplied by Rl to users in India. However, in respect of Rl's own requirement of equipments supplied by the Italian company no commission was payable as there was to be no value addition by the indenting agent. The department wants to enhance the value of import by 20% as according to them the indenting agent is a 'Related Person'. Examine briefly whether the stand taken by the department is correct with reference to Section 14 of the Customs Act, 1963 and Rule 9 of the Customs Valuation Rules, 1989 regarding "cost and services" and Rule 2(2) regarding "Related Persons".

Answer : Valuation of imported **goods** has to be done in accordance with the provisions of section 14 of the **Customs Act, 1963** read with the **Customs** Valuation Rules, **1989** for the **purpose of charging** custom **duty.**

Rule of **9** of the aforesaid Rules provide **that the value** of **the** services paid by importer **but** not **included** in the value of goods **shall be added.** 'Related person' has been defined **under** Rule **2(2). Rule** 4 provides that when **sale** is **to a** related person, the transaction value may be accepted if the relationship **has** not **affected the** price in any way.

Going by the definition of Rule 2(2) **the indenting** agent cannot **be treated as a related. As per** rule 9 only the cost **of services** paid by the importer is **to be** included in the value **of goods. In** the instant case the commission of 20% cannot be added. Therefore, contention **of the** department **is not** correct.

18: Discuss briefly with reference to decided case laws as to how the 'value' shall be determined under section 14 of the Customs Act, 1963 read with the Customs Valuation Rules, 1989 in the following cases —

(i) Goods are offered at specially reduced price to buyer and buyer is asked not to disclose specially reduced price to any other party In India.

(ii) There has been a price rise between the date of contract and the date of importation. The contract was over 6 months before the date of shipment.

(iii) The sale involves special discounts limited to exclusive agents.

(iv) The goods are purchased on high seas.

Answer :

(i) Where sale is made at a specially reduced price then such price cannot be said to be the ordinary price. In the case of Padia Sales Corporation V. Collector of Customs [1994] 66 ELT 35 (SC) the Supreme Court has stated that where goods are offered to the buyers at specially reduced price and the buyer has been asked not to disclose this to any other party, then the discounted price will not be acceptable.

(ii) The value of imported goods is to be determined at the time of importation thereof. Therefore, where there has been a price rise between the date of contract and the date of actual importation then value at the time of actual importation i.e. after price hike, is to be considered for the purpose of levy of custom duty. Rajkumar Knitting Mills Pvt. Ltd. V. Collector of Customs [1999] 98 ELT (SC).

(iii) In the case of Eicher Tractors Ltd. V. Commissioner of Customs, Mumbai [2001] 122 ELT 321 (SC), the Supreme Court observed that the price paid by the importer to the vendor in the ordinary course of commerce shall be taken to be the value of imported goods. Therefore, where seller and buyer are not related person and sale price is the genuine price, it shall be accepted for the purpose of custom duty. But according to revised rules, where special discounts are offered to the exclusive agents such discounted price shall not be accepted as the assessable value.

(iv) In the case of Godavari **Fertilizers V. C.C.Ex** [1997] 81 ELT 535(T*)* the Tribunal observed that in case of high seas sales the price charged from the assessee will be value of the imported goods.

19. M/s Agrawal Industries imported by Air from USA certain goods on CIF value $ 6,500. Air freight US$ 1,400 and insurance charges US$ 100 were also paid. Bill of entry was presented on 28.02.09 but the Entry Inward was granted on 10.3.09. Other relevant information is as follows

	As on 28.02.09	As on 10.03.08
Rate of exchange		
As announced by CBEC US$ 1	Rs. 46.80	Rs. 46.70
As announced by RBI US$ 1	Rs. 46.60	Rs. 46.50
Rates of custom duty		
Basic Custom Duty	25%	16%
Additional Custom Duty	20%	16%

The same goods are exempt from Excise duty in India, if manufactured without the aid of power.

Compute the assessable value and give the rates of basic and additional custom .duty to be adopted in this case, as also the basis for arriving at the Basic and Additional custom duty (actual duty calculation need not be given.

Answer : When import is by air, the cost of air freight should not exceed 20% of FOB value, hence the FOB value is as under —

CIF Value	US$ 6,500
Less: Air freight	US$ 1,400
Insurance	US$ 100
FOB Value of imports	US$ 5,000
Add: Air freight 20% of	
Assessable value	US$1,000
Insurance	US$ 100
TOTAL	US$ 6,100

CIF Value in Indian Rupees US$ 1 = Rs. 46.80

US$ 6,100 × 46.80	Rs.2,85,480.00
Add : 1% of GIF value towards handling charges	Rs. 2.854.80
Assessable Value	Rs. 2,88,334.80

20. Infotech Limited has imported a machine from Japan at FOB cost of 50,000 Yen (Japanese). The other expenses incurred are as follows —

(i) Freight from Japan to Indian port 5000 yen.

(ii) Insurance paid to insurer in India Rs. 2500

(iii) Designing charges paid to consultancy firm in Japan 7500 yen

(iv) M/s Infotech spent Rs. 25,000 in India for development work connected with the machine.

(v) Transportation cost from Indian port to factory Rs. 7500.

(vi) Central Government has announced exchange rate of 1 yen = Rs. 0.40 by notification under section 14(3) of the Customs Act, 1962. The exchange rate prevailing on that day in the market was 1 yen = Rs. 0.4052.

(vii) M/s Infotech made payment to the bank based on the exchange rate of 1 yen = Rs. 0.4150.

(viii) The commission payable to the agent in India was at 5% of the FOB price in Indian rupees.

The rate of custom duty is 35%. Similar goods are subject to 15% excise duty in India.

Clearly show your working to arrive at the total assessable value in rupees for purposes of Ivey of custom duty.

Ans. **Computation of Assessable Value**

FOB Value	50,000	
Freight	5,000	
Designing charges paid in Japan	7,500	
Total	62,500 yen	
FOB value in Indian rupees = 62,50 × 0.40		Rs. 25,000
Add:		
Insurance		Rs. 2,500
Agents Commission @ 5% of 50,000 yen × 0.40		Rs. 1,000
Total CIF value		**Rs. 28,500**
Add: 1% of CIF value as handling charges		Rs. 285
Assessable value		**Rs. 28,785**

Notes :

- Designing charges paid in India have not been included in assessable value.
- Transportation charges paid in India for transportation from port to factory have not been included in the assessable value as this is post importation expenditure.

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

Answer. In Garden Silk Mills Ltd. V. UOI [1999] 113 ELT 358 (SC) the Supreme Court held **that** in determining the deemed price **in international** trade the element of port charges, which are borne by the importer, have **to** be **added** in the assessable value.

As per the Customs Valuation Rules, 1988, handling charges are added in the CIF value @ 1% of GIF value irrespective of the actual **amount of** landing charges.

22. Discuss the Includibility or otherwise to the assessable value under the Customs Ac 1962 of the following payments made by the importer to the overseas supplier of second hand plant in India:

(i) Dismantling charges for removing the second hand plant at the supplier's place an shipping to Indian importer.

(ii) Fees for supervision of erection and commissioning of plant in India. For this purpose the foreign supplier deputed their technician in India.

(iii) Payments for tools, dies and moulds (imported along with plant) for use in connection with the manufacture of excisable goods on successful commissioning of the plant.

(iv) Lump sum payment and annual royalty for transfer of technical know-how for manufacturing goods.

Answer:

(i) Dismantling charges - According to Rule 9 of the Custom Valuation Rules, **1989.** a payments actually made or payable by the importer in connection with the import c goods, to the extent not included in the **price** of the goods are to be included. In the **give** case payment of dismantling charges is certainly incidental and essential for import c machine. Therefore, **it** is to be **included** in the assessable value.

(ii) Fees for supervision of erection and commissioning – The activity of **erection an** commissioning is post import activity and thus, any amount of supervision for the same are not includible in the **assessable value. It** is also to be noted that **such cost is not included** in price of the plant at **the time** of importation into India, as required under section 14 of the Customs Act, **1963.**

(iii) Payments for tools, dies and moulds (imported along with plant) - If the tools, **die and** moulds etc imported along with the plant are to be used with the **same plant the** value thereof is **to be** included in **the assessable value of** the plant otherwise not.

(iv) Lump sum payment and annual royalty for transfer of technical know-how - As per **rule 9 of** the Customs Valuation **Rules. 1989,** the transaction value is inflated by **cost c** services and expenses as specified. **Under** rule 9(1)(c) royalties and licence fee **related t** the imported **goods that** the buyer **is required to** pay **as a condition** of sale of **goods being valued, is added to the transaction price. It is** to be noted that **only** such amount c royalties and licence fee which **relate to the** imported goods is to be added **back. In this case** the lump sum payment and annual **royalty** are related to the manufacture **of good and** do not **relate to** the imported **goods.** Hence, this amount is not includible in this **assessable** value.

23. Discuss the Includibility of the following payments made by an importer to the overseas supplier of an imported machine/equipment, to the assessable value of imported machine:

(a) Process licence fee and technology transfer fee

(b) Dismantling charges for removing the machine before shipment to India at the foreign supplier's site

(c) Training charges paid to supplier, for imparting training to Indian company's personnel, on how to use the equipment.

Your answer shall be with reference to section 14 of the Customs Act, 1962. You may draw support from decided cases.

Answer: According to section 14, the value shall be the price at which **goods** are ordinarily **sold** in the course of international trade.

(a) **Process licence fee and technology transfer fee - In *Collector V. Essar Gujarat Ltd.*** *[1997] 88 ELT 609,* the Supreme **Court held** that process licence **fees, cost of** technical services paid are inciudible in **the assessable** value vide section **14 of the Customs Act, 1963** read with rule **9** of the **Customs Valuation** Rules, **1989.**

(b) **Dismantling charges -** According to Rule 9 of the Custom Valuation Rules, **1989, all** payments actually made or **payable by** the importer in connection with **the import of** goods, to the **extent** not included in the price of the goods are to be included. **In the** given **case** payment of dismantling charges is **certainly** incidental and essential for **import of** machine. Therefore, it is **to be** included in the assessable value.

(c) **Training charges** - Training **charges are** not includible in the assessable value because it is a **cost** to be **incurred after the** arrival of goods in India and **not** at **the time of** importation. **Collector V. Essar Gujarat Ltd.** [1997] 88 ELT 609 (SC)

24. Explain briefly, how the following would be treated for purposes of valuation under section 14 of the Customs Act, 1963 and the Customs Valuation Rules, 1989 —

- Dismantling charges paid by the importer of a machine to the foreign supplier for removal of the machine before shipment at the foreign supplier's place
- Demurrage charges actually incurred by the importer of goods.

Answer: According to Rule 9 of the Custom Valuation Rules, 1989, all payments actually **made** or payable by the importer in connection **with the** import of goods, to the **extent not included** in the price of the goods are to be included. In the given **case** payment of dismantling **charges** is certainly incidental and essential for import of machine. Therefore, it is to be included **in the** assessable value.

Demurrage charges are the **charges** which are payable by the importer for failure to remove the goods from the port within the permitted time limit. **Rule 9(4) provides that any cost incurred in connection with the import but not provided in the rule shall not be included in the assessable value.** Therefore, **demurrage** charges are not to be included therein. Moreover, according to section **14, the value** shall be the price at which goods are ordinarily sold in the course of international trade. Payment of demurrage is not an **ordinary** situation. Therefore, it is not inciudible in the **assessable** value.

25. ABC Ltd. a manufacturer of fertilizers, imported large quantity of rock phosphate and sulphur. Goods were purchased by ABC Ltd. on high seas and the responsibility of unloading in India was theirs and they maintained their own wharf at port unloading equipment and staff for the same. Custom authorities assessed the landing charges at 1.4% on CIF value thereof (then assessed rate) and the importer had paid the same as demanded. Later on, custom authorities claimed that the said 1.4% did not include stevedoring charges or unloading charges and therefore they added them separately calculating them upon the basis of inter-alia unloading labour charges, custom staff over time, post-hire charges for dining hall, fuel, electricity, depreciation, maintenance cost, administrative over-heads and notional interest on capital.

State what your advise to the company would be, bearing in mind the provisions of the' Customs Act, 1963 and decided cases.

Answer: The main issue in the question **is 'landing charges**'. Custom authorities **are** within **the powers to** charge landing charges at **a percentage** basis **or on actual basis. In the given case though the** entire work of unloading is done by **the assessee** himself, the department **added** 1.4% **of** the CIF value as landing charges which are paid by the **assessee.** Later **on department has** claimed additional amount. The facts **of the** case are similar to that **of Coromondal Fertilizers** Ltd.V. Collector of Customs in which the **Supreme** Court observed that:

(a) 'Landing charges' means the **expenditure incurred by the importer** for bringing **goods on board** the ship to land. Landing **charges, if any, in law, must be assessed on actuals, but as a matter of practice,** particularly to facilitate expeditious **clearance, landing charges are** issued at a percentage of the value **of goods and such assessment is accepted. When so** assessed, **landing** charges cover the totality of all that an importer **spends to bring the** imported goods to land.

(b) Stevedoring charges or unloading charges are not to be added **when** landing **charges are** assessed on percentage basis.

Thus, assessee is not required to **pay any** additional duty as **demanded by the custom** authorities.

26. M/s XYZ, a 100% Export Oriented Undertaking 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 custom department justified In demanding duty on DG sets and furnace oil as surplus power has been sold in domestic tariff area.

Answer: No. the department cannot demand duty on DG set and furnace oil because the 100% EOU has already used power for production of export goods and it is only the surplus that has been sold in the domestic tariff area. CCE&CV. Hanil Era Textiles Ltd. [2005] 180 ELT A 44 (SC)

27. An importer has imported certain goods and while determining the assessable value, landing charges @ 1% of CIF value were added. The importer has claimed that actual landing charges are much lower than 1% of the CIF value in his case. You have been asked to advise whether the importer can file a bill of entry by adding actual landing charges instead of notional 1% of CIF value or not.

Answer : The importer cannot file Bill of **Entry by** adding actual landing charges. Rule 3(2)(b) of Customs Valuation Rules, 1989 has statutorily laid down **a fixed 1% charge on free on** board value (F.O.B **Value)** of the **goods** plus the cost of transport plus the **cost of** insurance.

In *Wipro Ltd. Vs ACC,* it **was** held **that** handling charges of 1% of **CIF** Value, which is very nominal, are not arbitrary. It **has been** fixed under the power **conferred by the** Parliament on the rule making authority and such an act cannot be **considered beyond** the power conferred by **Section** 14(1) or Section **156** of the **Customs Act.** 1963.

Accordingly, the importer should have filed Bill of Entry by adding the **statutorily fixed** 1% charges in the CIF value regardless **of the** actual handling charges being much lower in the present case.

28. A consignment of 20 tonnes of chemicals produced by Company A in Berlin, West Germany is imported by Company B at $ 20 per kg., C.I.F. Mumbai. At about the same time a consignment of 16 tonnes of same chemical manufactured by same company viz., Company A in Berlin, is imported by Company C at Mumbai; for their principals at $ 16 per kg., C.I.F., Mumbai. What value should be taken for assessment of consignments of both the importers i.e. Company B and C? Give reaso in support of your determination of value. Quote relevant sections of Customs Act, 1963.

Answer : The value is determined **as per Section** 14(1) of the Customs **Act.**

- **It** is **clear** from the **given** problem **that** the same **exporter** has supplied the goods, almost at the same time but quoting two different **rates** based **on** the **quantity.**
- A show cause notice **has** to be **issued to** importer for the lower **price of goods.**
- If the explanation **provided** by the importer **is not** satisfactory, then the customs officer can **finalise the** assessment on the basis of $20 per kg.

29. What would be the value for the purpose of customs, If a consignment imported by air has a GIF price of US $ 2,500 including freight US $700 and insurance US $ 90? The exchange rate notified by the Government of India under section 14(3)(a)(i) of the Customs Act, 1963 is Rs.42.50.

Computation of Assessable Value

Particulars	Amount (in US $)	Amount (in Rs.)
CIF Value		$2,500
Less : Freight		$700
Less : Insurance Cost		$90
FOB Value		**$1,710**
Computation of Assessable Value:		
FOB Value as computed above		$1,710
Add : Freight (restricted to 20% of FOB Value)		$342
Add : Insurance Cost		$90
CIF Value		**$2,142**
Exchange rate		1$ = Rs.42.50
Total CIF in Rs. ($12,000 × Rs.42.50)	A	91,035
Add : Landing Charges @ 1% of 'CIF value'	B	910
Assessable Value	**(A+B)**	**91,945**

30. A consignment is imported by air. CIF price is US$ 12,500. Freight is US$ 2,450 and insurance cost is US$ 300. On the date of presentation of bill of entry, RBI floor rate was US$ = Rs.42.80 and rate notified by Government of India was Rs.41.75. Find the value of the consignment for customs purposes.

Computation of Assessable Value

Particulars	Amount (in USD)	Amount (in Rs.)
CIF Value		$12,500
Less : Freight		$2,450
Less : Insurance Cost		$300
FOB Value		**$9,750**
Computation of Assessable Value :		
FOB Value as computed above		$9,750
Add : Freight (restricted to 20% of FOB Value)		$1,950
Add : Insurance Cost		$300
CIF Value		**$12,000**
Exchange rate		1$ = Rs.41.75
Total CIF in Rs. ($12,000 X Rs.41.75)	A	5,01,000
Add : Landing Charges @ 1% of 'CIF value'	B	5,010
Assessable Value	**(A+B)**	**5,06,010**

31. An importer in India imported raw materials @ US $ 25,000 FOB. The goods were packed for which US $ 600 were charged extra. The goods were stuffed in Container, the price of which was US $ 2,000. Insurance charges and ocean freight of US $ 250 and 800 respectively were paid. A commission of US $ 500 had to be paid to a broker for arranging the deal:

1 US $ = Rs.41.38 ; Customs Duty is 30%; Excise duty on similar goods in India is 14%.

Determine the duty payable.

Computation of Assessable Value and Customs Duty Payable

Particulars	Amount (in USD)	Amount (in Rs.)
FOB Value	$25,000	
Add: Packing Charges at USA	$600	
Add: Freight charges (20% of FOB value or actual whichever is less)	$800	
Add: Commission to broker who made necessary arrangement at USA	$500	
Add: Insurance Charge	$250	
CIF Value	**$27,150**	
Exchange rate	$1=Rs.41.38	
Total CIF Value in Rs.	A	11,23,467
Add: Landing Charges @ 1 % of 'CIF value'	B	11,235
Assessable Value	**(A+B)**	**11,34,702**
Duty on Assessable Value :		
Basic Customs Duty (BCD) @ 30% of AV (11,34,702 × 30/100)		3,40,411
Countervailing Duty (CVD) @ 14% is payable on (AV + BCD) [11,34,702 + 3,40,411] = (14,75,113 × 14/100)		2,06,516
Total (BCD+CVD)		5,46,927
Education Cess @ 2% on (BCD + CVD)		10,939
SHEC@1%on (BCD+CVD)		5,469
Total Duty Payable (BCD + CVD + Education Cess + SHEC)		**5,63,335**

Notes :

1. Container is durable and returnable, so no Customs Duty is charged on the cost of containers.
2. Any expenses incurred outside India and any expenses committed outside India but paid in India shall be included to consider or calculate GIF Value, duty.

32. A consignment is imported by air.

- CIF price is 2,000 Euro.
- Air freight is 550 Euro.
- Insurance cost is Euro 50.
- Exchange rate announced by CBE&C as per customs notification is 1 Euro = Rs.67.10.
- Basic Customs duty payable is 30%.
- Excise duty on similar goods produced in India is 14%.

Find Value for customs purposes and total customs duty payable.

Computation of Assessable Value and Customs Duty Payable

Particulars	Amount (in Euro)	Amount (in Rs.)
FOB Value (Refer Note 1)	1,400	
Add: Freight (Refer Note 2)	240	
Add: Insurance	50	
CIF Value	1,730	
Value as landing charges (1% of GIF Value)	17	
Assessable Value	1,747	
Exchange Rate	1Euro = Rs.67.10	
Assessable Value in Indian currency		**1,17,224**
Duty on above		
Basic Customs Duty (BCD) @ 30% of AV		35,167
Countervailing Duty (CVD) @14% is payable on (AV + BCD) [1,17,224 + 35,167}]		21,335
Total [BCD + CVD]		56,502
Add: Education Cess @ 2% on (BCD+CVD) (56,502 × 2/100)		1,103
Add: SHEC @ 1% on (BCD + CVD)		565
Total Customs Duty Payable (BCD + CVD + Education Cess + SHEC)		**58,170**

Notes :

1. FOB Price of consignment is 1,400 Euro [2,000-550-50].
2. Air freight is to be restricted to 20% of FOB Value for purpose of customs valuation. Hence, freight will be considered as 20% of 1,400 i.e. 280 Euro for purpose of valuation.

33. Determine the total Customs Duty payable from the following data —

- Quantity imported : 100 MTs
- FOB value : Swiss Franc 10000
- AIR Fright: Swiss Franc 2500
- Insurance : Data not available
- Exchange rate : 1 Swiss Franc = Rs.34
- Rate of BCD - 30%
- Rate of CENVAT under First Schedule to CETA : 14%
- Rate of SED under Second Schedule to CETA : 14%
- Rate of AED(GSI) under Additional Duties of Excise (GSI) Act: Rs.10/kg,
- Rate of NCCD 1%.

Ans : **Computation of Assessable Value and Customs Duty Payable**

Particulars	Computation	Amount
FOB Value - Swiss Francs		10,000
Freight @ 20% of FOB	10,000×20% =	2,000
Insurance @ 1.125% of FOB	10,000 × 1.125%=	113
CIF Value		**12,113**

Add: Landing Charges @ 1% of CIF	12,112 × 1%=	121
Total Assessable Value in Swiss Francs		12,234
Total Assessable Value (in Rupees)	2,234 × 34 =	**4,15,956**
Duty on above :		
Basic Customs Duty (BCD) @ 30%	Rs.4,15,956 × 30% =	Rs. 1, 24,787
NCCD (1% of Assessable Value)	Rs.4, 15,956 × 1%	Rs. 4,160
CVD @ 28% of (AV + BCD + NCCD)	Rs.5,44,885 ×28%	Rs. 1,52,568
AED (GSI) Rs.10 per Kg.		
Hence for 100 MT	10,000x10 =	Rs.10,00,000
Education Cess @ 2% on [BCD + NCCD + CVD + AED (GSI)]	= Rs.12,81,515 ×2% =	Rs.25,630
SHEC@1%on[BCD+NCCD+CVD+AED(GSI)]	= Rs.12,81,515 ×1% =	Rs.12,815
Total Customs Duty Payable = (BCD +NCCD + CVD + AED +Education Cess + SHEC)		**Rs.13,19,960**

Notes:

1. Since air freight is more than 20% of FOB, freight is required to be limited to 20% of FOB i.e. 2,000 SF (Swiss Francs).
2. Since insurance data is not available, insurance cost is to be taken @ 1.125% on FOB, i.e. 113 SF (Approximately).
3. Basic Excise Duty (Cenvat) is 14% and Special Excise Duty (SED) is 14%. Hence, CVD, which is equal to excise duty will be 28%.

34. 'A' imports by air from USA a Gear cutting machine complete with accessories and spares. Its HS classification is 84.6140 and Value US $ FOB 20,000.

Other relevant date/information:

(1) At the request of importer, US $ 1,000 have been incurred for improving the design, etc. of machine, but is not reflected in the invoice, but will be paid by the party.

(2) Freight - US $ 6,000.

(3) Goods are insured but premium is not shown/available in invoice.

(4) Commission to be paid to local agent in India Rs.4,500.

(5) Freight and insurance from airport to factory is Rs.4,500.

(6) Exchange rate is US $ 1 = Rs.42.

(7) Duties of Customs: Basic - 30% CVD - 14%.

Compute (i) Assessable value (ii) Customs duty.

Computation of Assessable Value and Customs Duty Payable

Particulars	Amount (in $)	Amount (in **Rs.**)
FOB Value of Machine	20,000	
Add: Expenditure for improving design	1,000	
Add: Freight limited to 20% of FOB [Rule 9 (2)]	4,000	
Insurance @ 1.125% of FOB [Rule 9(2)(c)(iii)]	225	
Sub-Total	25,225	
Sub-Total In Rs. [@ Rs. 42 per $]		10,59,450
Add: Agents Commission [Rule 9(1)(i)]		4,500

Total CIF Value	**10,63,950**
Add: Landing charges 1% of CIF	10,640
Assessable Value(A.V)	**10,74,590**
Duty on above	
Basic Customs Duty (BCD) @ 30% of A.V	3,22,377
Countervailing Duty (CVD) @14% on (A.V + BCD) [10,74,590+3,22,377)	1,95,575
Education Cess @ 2% on (BCD + CVD) [3,22,377+1,95,575]	10,359
SHEC @ 1% on (BCD + CVD)	5,180
Total Customs Duty Payable (BCD + CVD + Education Cess + SHEC)	**5,33,491**

35. Determine the assessable value and customs duty amount from the following data:

1.	Name of the raw material:	XL-105
2.	FOB value:	Euro 1 million
3.	Ocean freight:	Actual data not available
4.	Ocean Insurance:	Actual data not available
5.	Freight from sea port to godown paid in India:	Rs.10,000
6.	Transit insurance in India:	Rs.2,000
7.	Selling commission paid to agent in India:	5%
8.	Royalty on manufacture and sale of final product payable to foreign collaborator:	5%
9.	Interest payable on raw material imported at 180 days credit (on FOB value):	12% p.a.
10.	Dividend paid to the foreign supplier of raw material: on their equity participation for the year 08-09	Rs.2 per share on 1 million shares of face value Rs.10/ share.

- Importer supplied design and drawings worth Euro 10,000 to the foreign raw material supplier.
- Landing charges as per Customs provisions
- Customs duty rates: BCD - 30%, CVD - 14%
- Exchange rate: 1 Euro = Rs.68.

Ans. : **Computation of Assessable Value and Customs Duty Payable**

Particulars	Amount in Euro	Amount in Rs.
FOB Value	10,00,000	
Add: Freight @ 20% of FOB	2,00,000	
Add: Insurance @ 1.125% of FOB	11,250	
Total 12,11,250		
Add: Designing and drawing charges	10,000	
Total CIF Value	**12,21,250**	
CIF Value in Rs.@ Rs.68.00	8,30,45,000	
Add: Local Agency Commission @ 5%	41,52,250	
Total Value	(A)	8,71,97,250

Add: Landing Charges @ 1% of (A)	(B)	8,71,972
Assessable Value	**(A+B)**	**8,80,69,222**
Duty on above		
Basic Customs Duty (BCD) @ 30% of AV		2,64,20,767
CVD @ 14% is payable on (AV+BCD) [8,80,69,222+2,64,20,767]		1,60,28,598
Education Cess @ 2% on (BCD + CVD) [2,64,20,767 + 1,60,28,598]		8,48,987
SHEC @ 1% on [2,64,20,767 + 1,60,28,598]		4,24,494
Total Customs Duty Payable (BCD + CVD + Education Cess +SHEC)		**4,37,22,846**

Notes :

1) Since ocean freight is not available, it has to be taken at 20% of FOB.
2) Insurance is taken @ 1.125% of FOB Value.
3) Landing charges will be 1% of GIF Value, as per Customs Valuation Rules.
4) It is assumed that selling commission to selling agent in India is payable on basis of GIF Value of goods including cost of drawings supplied by buyer.
5) Royalty on manufacture and sale of final products payable to foreign collaborators has no relation to goods imported. Hence, it is not includible in Assessable Value for customs.
6) Dividend paid to foreign supplier has no relation with supply of raw materials. It is not includible in Assessable Value.
7) Interest payable for credit is not includible in assessable value for customs purposes, as it is not part of 'transaction value".
8) Freight from seaport to godown and transit insurance in India are post-importation costs and are not includible.
9) As per rule 9(1)(b)(iv) of Customs Valuation Rules, cost of engineering drawings is includible only if work was undertaken outside India. Since, payment has been made in Euro; it is assumed that the design and drawing work was done outside India.