CHAPTER 1

BASIC CONCEPTS

Question 1

Explain briefly, with reference to the provisions of the Customs Act, 1962, the following:

(i) Bill of export

(ii) Import report

Answer

(i) As per **section 2(5)** of the Customs Act, 1962, bill of export means a bill of export referred to in section 50. **Section 50** *inter alia* provides that the exporter of any goods shall make entry thereof by presenting to the proper officer in the case of goods to be exported by land, a bill of export in the prescribed form.

(ii) As per **section 2(24)** of the Customs Act, 1962, import report means the report required to be delivered under section 30. **Section 30** *inter alia* provides that the person-in-charge of a vehicle carrying imported goods or any other person as may be notified by the Central Government shall, in the case of a vehicle, deliver to the proper officer an import report within twelve hours after its arrival in the customs station, in the prescribed form.

Question 2

Explain briefly the following with reference to the Customs Act, 1962:

(i) Assessment

(ii) Imported goods

Answer

(i) As per **section 2(2)** of the Customs Act, 1962, the term **"assessment"** is defined to include provisional assessment, reassessment and any order of assessment in which the duty assessed is nil.

Assessment is the name given to the **process of determining the tax liability** in accordance with the provisions of this Act.

(ii) The term **"imported goods"** has been defined in **section 2(25)** of the Customs Act, 1962 to mean any goods brought into India from a place outside India but does not include goods which have been cleared for home consumption.

Question 3

Briefly explain with reference to the provisions of the Customs Act any two of the following:

(i) Entry

(ii) Prohibited goods

(iii) Warehouses.

Answer

(i) As per **section 2(16**) of the Customs Act, 1962 **entry** in relation to goods means an entry made in a bill of entry, shipping bill or bill of export and includes in the case of goods imported or to be exported by post, the entry referred to in section 82 or the entry made under the regulations made under section 84.

(ii) As per **section 2(33)** of the Customs Act, 1962 **prohibited goods** means any goods the import or export of which is subject to any prohibition under the Customs Act or any other law for the time being in force but does not include any such goods in respect of which the conditions subject to which the goods are permitted to be imported or exported have been complied with.

(iii) As per **section 2(43)** of the Customs Act, 1962, **warehouse means a public warehouse** appointed under section 57 or **a private warehouse** licensed under section 58. A warehouse is a place where goods after landing are permitted to be removed without payment of duty. Duty is collected at the time of clearance from the warehouse. A public warehouse is owned and managed by a Government body like Central Warehousing Corporation. A private warehouse is licensed in a place where there is no public bonded warehouse.

Question 4

Explain briefly the following with reference to the provisions of the Customs Act, 1962:

(i) Customs port

(ii) Goods

(iii) Stores.

Answer

(i) As per **section 2(12)** of the Customs Act, 1962, **'customs port'** means any port appointed under clause (a) of section 7 to be a customs port and includes a place appointed under clause (aa) of that section to be an inland container depot.

As per clause (a) and (aa) of section 7(1) of the Customs Act, the Board may, by notification in the Official Gazette, appoint the ports and airports and the places which alone shall be customs ports or customs airports and the inland container depots for the unloading of imported goods and the loading of export goods or any class of such goods.

(ii) According to **section 2(22)** of the Customs Act, 1962, **'goods'** includes –

(a) vessels, aircrafts and vehicles;

(b) stores;

(c) baggage;

(d) currency and negotiable instruments and

(e) any other kind of movable property.

(iii) As per **section 2(38)** of the Customs Act, 1962, **'stores'** means goods for use in a vessel or aircraft and includes fuel and spare parts and other articles of equipment, whether or not for immediate fitting.

Stores are also goods but are covered by special provisions in sections 85 to 90. **The definition does not cover goods for use in a vehicle.**

Question 5

Explain briefly with reference to the provisions of the Customs Act, 1962 any ***two*** *of the following:*

(i) Conveyance

(ii) Dutiable goods

(iii) India

Answer

(i) As per **section 2(9)** of the Customs Act, 1962, **conveyance** is defined to include vessel, an aircraft and a vehicle. As the Customs Act seeks to consolidate the laws relating to levy of duties on import and export of goods, it is necessary to cover all the modes of transport. Therefore, the Act uses the term "conveyance" with an inclusive definition covering all the 3 modes of transport i.e. water, air and land. The specific terms are vessel (by sea), aircraft (by air) and vehicle (by land).

(ii) As per **section 2(14)** of the Customs Act, 1962, **dutiable goods** is defined to mean any goods which are chargeable to duty and on which duty has not been paid. In order to be dutiable, any article should be within the ambit of the word goods as defined under section 2(22) and should find a mention in the Custom tariff.

(iii) As per **section 2(27)** of the Customs Act, 1962, **India** includes the territorial waters of India. Territorial waters of India extend to 12 nautical miles into sea from the appropriate base line. Goods are deemed to have been imported if the vessel enters the **imaginary line** on the sea at the 12^{th} nautical mile i.e., if the vessel enters the territorial waters of India. **India includes not only the surface of sea in the territorial waters but also the air space above and the ground at the bottom of the sea.**

Question 6

Write short note on "Rules & Regulations" with reference to the Customs Act, 1962.

Answer

According to **section 2(36)** of the Act, **'rules'** means the **rules made by the Central Government** under any provision of this Act. **Section 156** of the Act gives the Central Government the general power to make rules.

As per **section 2(35)** of the Customs Act, 1962, **'regulations'** means the **regulations made by the Central Board of Excise and Customs (CBEC)** under any provision of this Act. The Board gets the authority to make regulations under **section 157** of the Customs Act, 1962.

While the rules are to be framed in consistence with the provisions of the Act, the regulations are subject to an additional limitation, i.e. they should not be contrary to the rules also.

Rules have to be placed before the Parliament, while regulations framed by CBEC are not required to be placed before the Parliament. However, both are 'subordinate legislations' and are legally valid and enforceable.

Question 7

Explain briefly the expression 'person-in-charge' under the Customs Act, 1962.

Answer

Section 2(31) provides that **'person in charge'** means:

(a) in relation to a vessel, the master of the vessel.

(b) in relation to an aircraft, the commander or the pilot in charge of the aircraft.

(c) in relation to a railway train, the conductor, guard or other person having the chief direction of the train.

(d) in relation to any other conveyance, the driver or other person in charge of the conveyance.

The importance of 'person in charge' is multidimensional. For instance, he is responsible for submitting Import Manifest and Export Manifest. He is also responsible for ensuring that the conveyance comes through approved route and lands at approved places only. He has also to ensure that goods are unloaded after written order, at proper place. Likewise, he has also to ensure that goods are loaded only after proper permission.

Question 8

Explain briefly with reference to the provisions of the Customs Act, 1962 any ***two*** *of the following:*

(i) Adjudicating Authority

(ii) Customs Area

(iii) Smuggling.

Answer

(i) As per **section 2(1)** of the Customs Act, 1962, **'adjudicating authority'** means any authority competent to pass any order or decision under this Act, but does not include the Board, Commissioner (Appeals) or Appellate Tribunal.

(ii) As per **section 2(11)** of the Customs Act, 1962, **'customs area'** means the area of a customs station and includes any area in which imported goods or export goods are ordinarily kept before clearance by Customs Authorities.

(iii) As per **section 2(39)** of the Customs Act, 1962, **'smuggling',** in relation to any goods, means any act or omission which will render such goods liable to confiscation under section 111 or section 113.

Question 9

Briefly explain the following with reference to the provisions of the Customs Ac 1962:

(i) Indian customs waters

(ii) Foreign going vessel or aircraft

Answer

(i) As defined by **section 2(28)** of the Customs Act,1962, **'Indian customs waters'** means the waters extending into the sea up to the limit of **contiguous zone of India**(hereinafter abbreviated as **'CZI')** under section 5 of the Territorial waters, Continental Shelf, Exclusive Economic Zone and other Maritime Zones Act, 1976, and includes any bay, gulf, harbour, creek or tidal river. According to foregoing Act of 1976 CZI comes immediately after territorial waters. The outer limit of continuous zone is 24 nautical miles from the nearest point of base line. Therefore, area beyond 12 nautical miles & upto 24 nautical miles is CZI. Looking from another perspective, 'Indian Customs Waters' extend upto 12 nautical miles beyond territorial waters. **The significance of 'Indian Customs Waters' lies in the fact that customs officers can exercise certain powers [for instance under section 100(2)(a), 104, 106, 111(d), 115(1)(a) & 115(1)(c)] within 'Indian Customs Waters.'**

(ii) As per **section 2(21)** of the Customs Act, 1962, **foreign going vessel or aircraft** means any vessel or aircraft for the time being engaged in the carriage of goods or passengers between any port or airport in India and any port or airport outside India, whether touching any intermediate port or airport in India or not, and includes-

(a) any naval vessel of any foreign Government taking part in any naval exercises;

(b) any vessel engaged in fishing or any other operations outside the territorial waters of India;

(c) any vessel or aircraft proceeding to a place outside India for any purpose whatsoever.

The significance of foreign going vessel lies in the fact that stores supplied to foreign going vessel is treated as 'export' as per provisions of section 89. Thus, duty drawback is available on such stores. Further, imported stores may be consumed on foreign going vessel without payment of duty as per section 87.

Question 10

Explain in detail, the significance of Indian customs waters under the Customs Act, 1962.

Answer

Significance of Indian customs waters is as follows-

(i) If an officer of Customs has reason to believe that any person in India or within the Indian customs waters has committed an offence punishable under section 132 or section 133 or section 135 or section 135A or section 136, he **may arrest such person** informing him of the grounds for such arrest [**Section 104** of the Customs Act, 1962].

(ii) Where the proper officer has reason to believe that any vessel in India or within the Indian customs waters has been, is being, or is about to be, used in the smuggling of any goods or in the carriage of any smuggled goods, he may stop any such vehicle, animal or vessel or, in case of an aircraft, compel it to land [**Section 106** of the Customs Act, 1962].

(iii) **Any vessel** which is or has been within the Indian customs waters is constructed, adapted, altered or fitted in any manner for the purpose of concealing goods shall be **liable to confiscation** [**Section 115(1)(a)** of the Customs Act, 1962].

(iv) Customs officer has the **power to search any person** who has landed from/about to board/is on board any vessel within Indian customs waters and who has secreted about his person, any goods liable to confiscation or any documents relating thereto [**Section 100(2)(a)** of the Customs Act, 1962].

(v) **Any goods** which are brought within the Indian customs waters for the purpose of being imported from a place outside India, contrary to any prohibition imposed by or under this Act or any other law for the time being in force, shall be **liable to confiscation [Section 111(d)** of the Customs Act, 1962].

Question 11

Explain briefly the following with reference to the provisions of the Customs Act, 1962 :

(i) "Import" and "Importer"

(ii) Meaning of "Assessment"

(iii) "Clearance for home consumption" and "Clearance for warehousing"

Answer

(i) The term import under **section 2(23)** of the Customs Act, 1962 refers to bringing into India from a place outside India. Import of goods into India commences when the goods enter the territorial waters of India, but gets completed only when the goods become part of the mass of goods within the country.

As per **section 2(26)** of the Customs Act, 1962 **importer,** in relation to any goods at any time between their importation and the time when they are cleared for home consumption, includes any owner or any person holding himself out to be the importer.

(ii) In the context of customs duty, the term **"assessment"** means quantification of the amount of duty payable. The process of assessment involves determining:

(i) the quantity and total value of the consignment

(ii) the proper tariff classification of the goods

(iii) the appropriate rate of duty after all abatements

(iv) whether the goods are to be cleared for home consumption or for warehousing.

(iii) **Clearance for home consumption** implies that the customs duty on the imported goods has been discharged and goods are cleared for utilization. **Clearance for warehousing** implies that the goods may, instead of being cleared for home consumption, be deposited in a warehouse and cleared later. When the goods are deposited in a warehouse the collection of duty is deferred till the time such goods are cleared for home consumption. However, the importer has to **execute a bond up to a sum equal to twice** the amount of duty assessed on the goods at the time of import.

CHAPTER 2

LEVY AND EXEMPTIONS FROM CUSTOMS DUTY

Question 1

Referring to section 25 of the Customs Act, 1962, discuss the following:

(i) General exemption

(ii) Special exemption

Answer

(i) Special Exemption : As per section 25 of the Customs Act, 1962:

If the Central Government is satisfied that it is necessary in the public interest so to do, it may, **by special order** in each case, exempt from payment of duty, any goods on which duty is leviable only under **circumstances of an exceptional nature** to be stated in such order. Further, no duty shall be collected if the amount of duty leviable is equal to, or less than, one hundred rupees.

(ii) General Exemption: As per section 25 of the Customs Act, 1962:

If the Central Government is satisfied that it is necessary in the public interest so to do, it may, **by notification in the Official Gazette,** exempt **generally** either absolutely or subject to such conditions (to be fulfilled before or after clearance) as may be specified in the notification, goods of any specified description from the whole or any part of duty of customs leviable thereon.

Question 2

An importer imported certain inputs for manufacture of final product. A small portion of the imported inputs were damaged in transit and could not be used in the manufacture of the final product. An exemption notification was in force providing exemption in respect of specified raw materials imported into India for use in manufacture of specified goods, which was applicable to the imports made by the importer in the present case. Briefly examine whether the importer could claim the benefit of the aforesaid notification in respect of the entire lot of the inputs imported including those that were damaged in transit.

Answer

The facts of the case are similar to the case of ***BPL Display Devices Ltd. v. CCEx., Ghaziabad (2004) 174 ELT 5 (SC)*** wherein the Supreme Court has held that the benefit of the notifications cant be denied in respect of goods which are intended for use for manufacture of the final product but cannot be so used due to shortage or leakage.

The Apex Court has held that no material distinction can be drawn between loss on account of leakage and loss on account of damage. The benefit of said exemption cannot be denied as inputs were **'intended for use'** in the manufacture of final product but could not be so used due to shortage/leakage/damage. It has been clarified by the Supreme Court that words "**for use"** have to be construed to mean "**intended for use**".

Therefore, the **importer can claim the benefit of the notification in respect of the entire lot** of the inputs imported including those that were damaged in transit.

Question 3

M/s. Pure Energy Ltd. is engaged in oil exploration and has imported software containing seismic data. The importer is entitled to exemption from customs duty subject to the condition that an "essentiality certificate" granted by the Director General of Hydrocarbons is produced at the time of importation of the goods. The certificate was not made available to the importer within a reasonable time by the Director General of Hydrocarbons. The customs department rejected the importers' claim for exemption. Examine briefly whether the department's action is sustainable in law.

Answer

This issue has been addressed to by the Supreme Court in the case of **Commissioner of Customs v. Tullow India Operations Ltd. (2005) 189 ELT 401 (SC). The Apex Court has observed that if a condition is not within the power and control of the importer and depends upon the acts of public functionaries,** non-compliance of such a condition, subject to just exceptions cannot be held to be a condition precedent which would disable it from obtaining the benefit for all times to come.

In the given case also the certificate has not been granted within a reasonable time. Therefore, in view of the above-mentioned judgement, the importer M/s Pure Energy Ltd. cannot be blamed for the lapse by the authorities. The Directorate General of Hydrocarbons is under the Ministry of Petroleum and Natural Gas and such a public functionary is supposed to grant the essentiality certificate within a reasonable time so as to enable the importer to avail of the benefits under the notification.

Question 4

M/s Marwar Industries imported finishing agents, dye - carriers, printing paste etc. to be used for manufacture of textile articles. The importer claimed exemption for additional duty of customs (CVD) leviable under section 3 of the Customs Tariff Act, 1975, on the ground that there was an exemption for excise duty in respect of said goods used in the 'same factory' for manufacture of textile articles. The Department contended that CVD is payable on the ground that the goods which were to be used must also be manufactured in the 'same factory'. You are requested to comment upon the contention of Department, with reference to a decided case law, if any.

Answer

The contention of the Department is not valid in law. The Supreme Court in a similar case of ***CCus. v. Malwa Industries Ltd. (2009) 235 ELT 214 (SC)*** held that **literal meaning should be avoided if it leads to absurdity.** When the goods are imported, obviously, the same would not be manufactured in the same factory and therefore, it would become impossible to apply the provision of **section 3(1)** of the Customs Tariff Act, 1975. It was observed that the object of countervailing duty (CVD) is that importer should not be placed at some more advantageous position vis-a-vis purchaser/manufacturer of similar goods in India.

Considering the purpose of exemption, it was held that 'same factory' means imported goods should be used in factory belonging to importer where manufacturing activity takes place. Hence, the exemption will be available to imported goods also and CVD is not applicable.

Question 5

Write a brief note on the following with reference to the Customs Act, 1962:

(i) Remission of duty on imported goods lost

(ii) Pilfered goods

Answer

(i) Remission of duty on imported goods lost

Section 23(1) of the Customs Act, 1962 provides for remission of duty on imported goods lost (otherwise than as a result of pilferage) or destroyed, if such loss or destruction is **at any time before clearance for home consumption.** Such loss or destruction covers loss by leakage. Duty is payable under this section but it is remitted by Assistant/Deputy Commissioner of Customs if the importer is able to prove the loss or destruction. Thus, unless remitted, duty has to be paid and burden of proof is on the importer. **Remission is at the discretion of Customs authorities.** The provisions of this section are applicable for warehoused goods also.

(ii) Pilfered goods

Section 13 provides that if imported goods are pilfered after unloading thereof but **before the proper officer has made an order for clearance for home consumption** or deposit in a warehouse, no duty is payable on the goods, unless the pilfered goods are restored to importer. In such a case, **duty on pilfered goods is payable by the Port authorities**. Also, the importer does not have to prove pilferage. However, the loss must be only due to pilferage. **Section 13 is not applicable for warehoused goods.**

Question 6

Goods manufactured or produced in India, which were earlier exported and thereafter imported into India will be treated at par with other goods imported into India. Is the proposition correct or any concession is provided on such import? Discuss briefly.

Answer

The given proposition is correct i.e., goods produced in India, which were earlier exported and thereafter imported into India will be treated at par with other goods imported into India [**Section 20** of the Customs Act, 1962]. However, the following notifications have provided certain concessions in this regard:

(i) Concessional duty payable in case of re-importation of goods exported for repairs or exported under duty drawback, rebate etc.

S.No.	**Description of goods exported**	**Amount of import duty payable if re-imported**
1.	Goods exported under claim for duty drawback, rebate of excise duty, bond without payment of duty, etc.	Amount of incentive availed of at the time of export
2*.	Goods exported for repairs abroad	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.

Conditions to be satisfied for claiming the above two concession/exemptions:-

(a) Time-limit for re-importation

The time limit for re-importation is 3 years. This is extendable to 5 years.

(b) Same goods

The exported goods and the re-imported goods must be the same.

(c) No change in ownership

In case of point (2*.), the ownership of the goods should also not have changed.

[Notification no. 94/96 Cus. dated 16.12.1996]

(ii) Exemption to re-import of goods and parts thereof for repairs, reconditioning, reprocessing, remaking or similar other process

S.No.	**Goods manufactured in India and re-imported for**	**Time-limit for re-importation from the date of exportation**	**Other conditions to e satisfied**
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-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.
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	

[Notification no.158/95 Cus. dated 14.11.1995]

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.

CHAPTER 3

TYPES OF DUTY

Question 1

Under Customs Act 1962, who has the powers to :-

(i) appoint inland container depots;

(ii) appoint land customs stations;

(iii) specify limits of customs area;

Answer

(i) **Section 7** of the Customs Act, 1962 **empowers the Central Board of Excise and Customs** to appoint inland container depots.

(ii) **Section 7** of the Customs Act, 1962 **empowers the Central Board of Excise and Customs** to appoint land customs stations.

(iii) **Section 8** of the Customs Act, 1962 **empowers the Commissioner of Customs** to specify limits of customs area.

Question 2

Assessable value of certain goods imported from USA is Rs.10,00,000. The packet contains 10,000 pieces with maximum retail price of Rs.200 each. The goods are assessable under section 4A of the Central Excise Act, 1944, after allowing an abatement of 40%. The excise duty rate is 10% ad valorem. Calculate the amount of additional duty of customs under section 3(1) of the Customs Tariff Act, 1975 assuming basic customs duty @ 10% ad valorem.

Answer

As the goods are assessable under section 4A of the Central Excise Act, 1944, additional duty of customs will be payable on the basis of maximum retail price printed on the packing; less abatement as permissible **[Proviso to section 3(2) of the Customs Tariff Act.]**

Computation of amount of additional duty of customs:

	Rs.
Maximum retail price [10,000 pieces x Rs. 200]	20,00,000
Less : Abatement @ 40%	8,00,000
Assessable value under section 3(2)	12,00,000

Additional duty of customs @ 10%	1,20,000
Add : Education Cess @ 2% on Additional Duty of Customs	2,400
Secondary and Higher Education Cess @ 1% on Adl. Duty.	1,200
Additional customs duty payable	1,23,600

Question 3

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;*

(iii) *where anti-dumping duty is imposed retrospectively from a date prior to the date of imposition of 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.**

Question 4

State briefly the provisions of refund on anti-dumping duty in certain cases.

Answer

According to the provisions of **section 9AA** of the Customs Tariff Act, 1975, where an importer proves to the satisfaction of the Central Government that he has paid any anti-dumping duty imposed on any article, in excess of the actual margin of dumping in relation to such article, he shall be entitled to refund of such excess duty. However, the importer will not be entitled for **refund of provisional anti-dumping duty** under section 9AA as it is refundable under section 9A(2) of the said Act.

Question 5

Miss Priya imported certain goods weighing 1,000 kgs. with CIF value US $ 40,000. Exchange rate was 1 US $ = Rs. 45 on the date of presentation of bill of entry. Basic customs duty is chargeable @ 10% and education cess as applicable. There is no excise duty payable on these goods, if manufactured in India.

As per Notification issued by the Government of India, anti-dumping duty has been imposed on these goods. The anti-dumping duty will be equal to difference between amount calculated @ US $ 60 per kg and 'landed value' of goods. You are required to compute custom duty and anti - dumping duty payable by Miss Priya.

Answer

Computation of customs duty payable:-

Particulars	**Rs.**
Total CIF value in INR = US $ 40,000 x Rs. 45	18,00,000
Add: Landing charges @1%	18,000
Assessable value (AV)	18,18,000
Basic customs duty (BCD) @10%	1,81,800
Education cess (EC) @ 2% on BCD	3,636
Secondary and higher education cess (SAHEC) @ 1% on BCD	1,818
Landed value of imported goods	20,05,254
Total customs duty payable (BCD + EC+ SAHEC)	1,87,254

Computation of Anti dumping duty payable:-

Particulars	**Rs.**
Value of goods in INR as per Notification = 1,000 Kgs x US $ 60 x Rs. 45	27,00,000
Less : Landed value of goods	20,05,254
Anti-dumping duty payable	6,94,746

CHAPTER 4

CLASSIFICATION OF GOODS

Question 1

What is the purpose of interpretation rules regarding Customs Tariff? Do they form part of the tariff schedule? Explain the 'Akin Rule' of interpretation.

Answer

The Customs Tariff has a **set of six rules for interpretation** of the tariff schedule and two general explanatory notes. The six rules of interpretation and three general explanatory notes are integral part of the schedule. The **purpose of their inclusion** is:

(i) to give clear direction as to how the nomenclature in the schedule is to be interpreted and

(ii) to give statutory force to the interpretation rules and the general explanatory notes.

Akin rule

Rule 4 of the rules of interpretation is called as **akin rule**. This rule lays down that goods which cannot be classified in accordance with rules 1, 2 and 3 of the rules of interpretation shall be classified under the heading appropriate to the goods **to which they are most akin.**

Question 2

Tony India imported various components in different consignments separately on the basis of valid import licences. The Department has taken a stand that in view of the provision in Rule 2(a) of the Interpretative Rules, the goods will attract import duty as if they were finished goods and the benefit of an exemption notification exempting only the components will not be available. Write a brief note with reference to decided case law whether the stand taken by the Department is correct in law.

Answer

No, the stand taken by the Department is not correct in law. **Rule 2(a)** of the Interpretative Rules applies when all the components are imported at the same time and when a simple process is required for assembly. This view was also confirmed by the Supreme Court in ***CC v. Sony India (2008) 231 ELT 385 (SC)***, wherein it has been held that **rule 2(a) applies only if all the components are presented at the same time for custom clearance.**

In the given case, since the various components are imported in different consignments separately at different points of time, rule 2(a) will not apply. Therefore, import of components will be treated as import of components and not of finished goods for the purpose of benefit of exemption notification.

Question 3

Briefly explain "standard unit of quantity" with reference to the First Schedule to the Customs Tariff Act, 1975.

Answer

Standard Unit of Quantity' is a unit of measure. It has been prescribed in column 3 of the First Schedule to the Customs Tariff for each tariff item to facilitate the collection, comparison and analysis of trade statistics. The unit of measure is indicated by abbreviations. Some abbreviations are cc-cubic centimeter, cm-centimetre(s), g-gram(s), mt- Metric Tonne.

Board's Circular No.51/2003 dated 18.06.2003 provides that an importer should use single standard unit of quantity. Usage of single standard unit of quantity has been again emphasized vide Directorate General of Valuation, *CBEC Letter No. F VAL/217/2001 dated 9.11.2005*.

Use of different units of quantity for the same goods has been causing serious problems in data analysis for National Import Data Base. Unacceptable units like sacks, cartons, bundles are often used in respect of certain goods. These practices make it difficult to do value comparison for such kind of goods. Data analysis and Risk Management also will run into difficulties due to such inconsistent use of units of quantity.

Question 4

India Car Co. is manufacturing passenger cars and has entered into a joint venture agreement and collaboration with Videshi Car Co. India Car Co. imported from Videshi Car Co. a shipment of 24 CKD packs (completely knocked down condition) of passenger car components. They filed Bill of Entry for clearing the goods, which were claimed to be components of motor cars. They also claimed benefit of a Notification exempting components, including components of motor cars in semi-knocked down packs and completely knocked down packs.

The Adjudicating Authority held that the imported components being complete cars in CKD packs, had the essential character of the finished product and as such the consignment were to be treated as motor cars and not components. It was also held that India Car Co. was not entitled to the benefit of the notification as the notification was only for components.

The questions for consideration are:

(i) Whether the CKD packs imported into the country could be considered to be motor cars for the purpose of classification and clearance?

(ii) Whether India Car Co. is entitled to the benefit of exemption notification?

Answer

The facts of the given case are similar to the facts of the case of ***CC, Bangalore v. Maestro Motors Ltd. 2004 (174) ELT 289 (SC)*** decided by the Apex Court.

(i) As per interpretative **Rule 2(a) of the General Rules of Interpretation of Customs Tariff**, any reference in a heading to an article shall be taken to include a reference to that article incomplete or unfinished, provided that, as presented, the incomplete or unfinished article has the essential character of the complete or finished article. It shall also be taken to include a reference to that article complete or finished (or falling to be classified as complete or finished by virtue of this rule), presented unassembled or dis-assembled. This rule lays **emphasis on the essential character of the goods.** Thus **goods which have the essential characteristics of finished goods will be classified under the same heading in which the final product has to be classified.**

In the ***Maestro Motors*** **case,** the passenger car components were imported in CKD packs. Thus, what was imported was completely knocked down cars. The components imported had the essential character of a complete car even though presented in unassembled form. Thus, in view of Rule 2(a) of the General Rules of Interpretation of Customs Tariff, the Supreme Court held that the components in CKD packs would be classified as motor car.

Therefore, in case of India Car Co. also, the CKD packs should be classified as cars for the purpose of classification and clearance.

(ii) In the *Maestro Motors* case, it was observed by the Supreme Court that a **notification has to be interpreted in terms of its language.** If in the notification, exemption is granted with reference to tariff items in the First Schedule to the Customs Tariff Act, 1975, then the Rules of Interpretation must apply. In that case even for the purposes of the notification, the goods will be classified in the same manner as they are classified for purposes of payment of customs duty. However, where the language of the notification is plain and clear effect must be given to it.

In this case, the notification exempted components including components of fuel efficient motor cars in semi-knocked down packs and completely knocked down packs. The Apex Court held that for purposes of levy of customs duty, by virtue of interpretative Rule 2(a) of the General Rules of Interpretation of Customs Tariff, the components in a completely knocked down pack would be considered to be cars. However, **in view of the clear language of the Notification, the components including components in completely knocked down packs would be exempted.**

Thus, in view of the abovementioned judgment, the **components in CKD packs imported by India Car Co. would get the exemption under the Notification,** even though for purposes of classification and clearance they may be considered to be motor cars.

Question 5

M/s Hind IT Co. imported laptops with Hard Disc Drives (HDD) preloaded with operating software like Windows XP, XP home etc. The department has claimed that the said laptop along with the operating software was classifiable and assessable as a single unit. It is the claim of the assessee that the software loaded HDD should be classified and assessed separately as an exemption is available as per notification issued under section 25(1) of the Customs Act, 1962. Decide with a brief note whether the action proposed by the department is correct in law.

Answer

The action proposed by the Department is correct in law. The facts of the case are similar to ***CCus. v. Hewlett Packard India Sales (P) Ltd. (2007) 215 ELT 484 (SC).***

In this case, the Supreme Court observed that the pre-loaded operating system recorded in HDD in the laptop (item of import) forms an integral part of the laptop as the laptop cannot work without the operating system. A laptop without an operating system is like an empty building. Hence, laptop should be treated as one single unit and assessed accordingly.

However, if the operating system had been imported as **packaged software like an accessory**, then the benefit of exemption notification would have been available on it.

Question 6

XYZ Ice Cream Company imported cone containers made from printed aluminium foils which according to the assessee were classifiable under Chapter 76: "Aluminium and Articles thereof" in section XV of the first schedule to the Customs Tariff Act, 1975. According to the Revenue, these were classifiable under Chapter 48: "Paper and Paperboard; articles of paperpulp, of paper or paperboard". The revenue's view was that where composite goods are made of different components and cannot be classified by reference to Rule 2 of the Interpretative Rules, then the classification has to be according to the principles contained in Rule 3. The classification has to be as if the goods consists of the material or components which give them their essential character. Since the contents of the material in this case was 70.7% paper, that was the essential component of the cone containers for ice cream and merit classification under Chapter 48.

The chapter notes to Chapter 48 read as follows:

Notes :

1.

2. This chapter does not cover;

(a) ……………………………………

……………………………………

(n) metal foil backed with paper or paper board (Section XV)

Discuss briefly whether the action proposed by the Revenue is correct is law.

Answer

In the given case, the Chapter Note 2(n) specifically excludes metal foil backed with paper or paperboard from the purview of Chapter 48. The aluminium cone foil containers made up of 70.7% paper cannot be included under Chapter 48 by mere reference to the title of the Chapter 48: "Paper and Paperboard; articles of paper pulp, of paper or paperboard". The contention of the Revenue that the Chapter Note will not apply because of Rule 3(b) of the Interpretative Rules, is not correct as it has been specifically provided in Rule 1 of the Interpretative Rules that "the titles of sections and Chapters are provided for ease of reference only; for legal purposes classification shall be determined according to the terms of the headings and any relative section or Chapter Notes and, provided such headings or Notes do not otherwise require, according to the provisions hereinafter contained".

Therefore, only **if there is no specific Chapter Note requiring otherwise**, the subsequent rules i.e., rule 2 onwards, including rule 3(b) of the Rules for Interpretation, can be invoked. However, in the present case, **Chapter 48 – Note – 2(n) is very specific leaving no option to resort to Rule 3(b).**

The argument that the Interpretative Rules override the Chapter Note is not acceptable in view of the specific enumeration that the rules do not have any other purpose other than ease of reference.

Hence, the Revenue's contention, that the cone containers should be classified under Chapter 48, is not correct.

Question 7

Explain, with a brief note, how the duty is arrived under the Customs Act, 1962 where the imported goods consist of articles liable to different rates of duty.

Answer

Where goods consist of a set of articles, duty shall be calculated as follows as per **section 19** of the Customs Act, 1962:

(a) articles liable to duty with reference to quantity shall be chargeable to that duty;

(b) articles liable to duty with reference to value shall, if they are liable to duty at the same rate, be chargeable to duty at that rate, and if they are liable to duty at different rates, be chargeable to duty at the highest of such rates;

(c) articles not liable to duty shall be chargeable to duty at the rate at which articles liable to duty with reference to value are liable under clause (b).

CHAPTER 5

VALUATION UNDER THE CUSTOMS ACT 1962

Question 1

Briefly explain the following with reference to the Customs (Determination of Value of Imported Goods) Rules, 2007:

(i) Goods of the same class or kind

(ii) Computed value

Answer

(i) As per **rule 2(1)(c) of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007,** goods of the same class or kind, means imported goods that are within a group or range of imported goods produced by a particular industry or industrial sector and includes identical goods or similar goods.

(ii) As per **rule 2(1)(a)** of the said rules, **computed value** means the value of imported goods determined in accordance with **Rule 8.**

As per rule 8, subject to the provisions of **rule 3,** the value of imported goods shall be based on a computed value, which shall consist of the sum of –

(a) the cost or value of materials and fabrication or other processing employed in producing the imported goods;

(b) an amount for profit and general expenses equal to that usually reflected in sales of goods of the same class or kind as the goods being valued which are made by producers in the country of exportation for export to India;

(c) the cost or value of all other expenses under sub-rule (2) of Rule 10.

Question 2

Briefly explain the methodology for calculation of export duty after the introduction of the 'transaction value' concept under section 14 of the Customs Act, 1962.

Answer

With effect from 01.01.2009, for the purpose of calculation of export duty, the transaction value, that is to say the price actually paid or payable for the goods for delivery at the time and place of exportation under section 14 shall be the **FOB price** and the export duty shall be charged as a **percentage of FOB price.**

In case the transaction is on **CIF basis**, the **FOB price may be deduced from the CIF value** and then the export duty may be calculated as percentage of such FOB price.

Question 3

In the context of the Customs Valuation (Determination of Price of Imported Goods) Rules, 2007, explain the meaning of:-

(i) Similar goods

(ii) Identical goods

Answer

(i) As per **rule 2(1)(f)** of the Customs Valuation (Determination of Price of Imported Goods) Rules, 2007, **similar goods** means imported goods

(a) which although not alike in all respects, **have like characteristics and like component materials** which enable them to perform the same functions and to be commercially interchangeable with the goods being valued having regard to the quality, reputation and the existence of trade mark;

(b) produced in the country in which the goods being valued were produced; and

(c) produced by the same person who produced the goods being valued, or where no such goods are available, goods produced by a different person,

but **shall not include** imported goods where engineering, development work, art work, design work, plan or sketch undertaken in India were completed directly or indirectly by the buyer on these imported goods free of charge or at a reduced cost for use in connection with the production and sale for export of these imported goods.

(ii) As per **rule 2(1)(d)** of the Customs Valuation (Determination of Price of Imported Goods) Rules, 2007, **identical goods** means imported goods-

(i) which 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 effect the value of the goods;

(ii) produced in the same **country** in which the goods being valued were produced; and

(iii) **produced by the same person** who produced the goods, or where no such goods are available, goods produced by a different person,

but **shall not include** imported goods where engineering, development work, art work, design work, plan or sketch undertaken in India were completed directly or indirectly by the buyer on these imported goods free of charge or at a reduced cost for use in connection with the production and sale for export of these imported goods.

A careful perusal of above definitions of similar goods and identical goods reveals that the major difference between the two classes of goods is that whereas ‘identical goods’ should be same in all respects, except for minor differences, while in case of ‘similar goods’ it is sufficient if they have like characteristics and like components and perform the same functions

Question 4

What is residual method of valuation? Bring out your answer with reference to the Customs Valuation (Determination of Price of Imported Goods) Rules, 2007.

Answer

Rule 9(1) of the Customs Valuation (Determination of Price of Imported Goods) Rules, 2007 provides the **residual method of valuation**. This method is popularly called “fallback method.” According to this rule, where the value of imported goods cannot be determined under the provisions of any of the preceding rules, the value should be determined using reasonable means consistent with the principles and general provisions of these rules and sub-section (1) of Section 14 of the Customs Act, 1962 and on the basis of data available in India.

In order to arrive at ‘best judgment price’ some assumptions, extrapolations and estimations are to be necessarily applied. However, rule 9(2) of the Customs Valuation (Determination of Price of Imported Goods) Rules, 2007 expressly prohibits use of any of following for determining assessable value:-

(i) the selling price in India of the goods produced in India;

(ii) a system which provides for the acceptance for customs purposes of the highest of the two alternative values;

(iii) the price of the goods on the domestic market of the country of exportation;

(iv) the price of the goods for export to a country other than India;

(v) minimum customs values; or

(vi) arbitrary or fictitious values.

Question 5

State the requirements to be satisfied to accept ‘transaction value’ under rule 3(2) of the Customs Valuation (Determination of Price of Imported Goods) Rules, 2007.

Answer

The transaction value can be accepted under rule 3(2) of the Customs Valuation (Determination of Price of Imported Goods) Rules, 2007 when:

(i) No restriction on buyer for disposal of goods:-Barring the following there are no restrictions on buyer on disposal or use of goods:-

(a) Restrictions which are imposed or required by law or by the public authorities in India; or

(b) Restrictions on the geographical area in which the goods may be resold; or

(c) Restriction that does not substantially affect the value of the goods **[Rule 3(2)(a)]**;

(ii) Sale not subject to conditions of which value cannot be determined:-The sale or price should not be subject to a condition or consideration for which value cannot be determined. Following examples are given in interpretative note to rule 3(2)(b):-

(a) Price is subject to condition that buyer buys some other goods in specified quantities from seller.

(b) Price is dependent on price at which buyer of imported goods sells other goods to seller.

(c) Price is based on form of payment extraneous the imported goods.

However,

(a) Buyer furnishing engineering and plans undertaken in India to seller

(b) Buyer undertaking activities of marketing of imported goods in India

will not form part of value of imported goods. **[Rule 3(2)(b)]**

(iii) No further consideration to seller of which cannot be made:-Seller should not be entitled to further consideration like part of subsequent resale, disposal or use of goods by the buyer will accrue directly or indirectly to seller, unless proper adjustment in value terms can be made as per rule 10 for instance if the importer happens to be a trader and the condition attached is that after sale of goods in India, the concerned foreign exporter will get a fixed amount after the aforementioned sale, then the extra amount can be added for Customs Valuation **[Rule 3(2)(c)]**

(iv) Unrelated buyer and seller, except when price acceptable under rule 3(3):-Buyer & seller are not related unless the transaction value is acceptable under rule 3(3) [**Rule 3(2)(d)]**.

Question 6

Compute the assessable value and customs duty payable from the following information:

(i)	*F.O.B. 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 F.O.B., in Indian Rupees

(v) Date of bill of entry — *24.10.2010. (Rate BCD 20%; Exchange rate as notified by CBEC is Rs.68 per UK Pound)*

(vi) Date of entry inward — *20.10.2010 (Rate of BCD 18%; Exchange rate as notified by CBEC is Rs.70 per UK Pound)*

(vii) C.V.D. is payable @ 10% plus education cess as applicable

(viii) Special C.V.D. – as applicable

(ix) Insurance charges have been actually paid but details are not available.

Answer

Computation of assessable value and duty thereon:

FOB value	8,000 UK pounds
Add: Design and development charges	500 UK pounds
Add: Freight (air) (Note-3)	1,600 UK pounds
Add: Insurance 1.125% of FOB (Note-4)	90 UK pounds
Total	10,190 UK pounds
Total in Rupees @ Rs. 68 per pound (Note-1)	Rs. 6,92,920
Add: Local agency commission	
(2% of 8000 UK pounds)= 160 UK pounds × Rs. 68	Rs. 10,880
C.I.F value	Rs. 7,03,800
Add: Landing charges @1%of CIF value	Rs. 7,038
Assessable value	**Rs. 7,10,838**
Add: Basic custom duty @ 20% (Note-2)	Rs. 1,42,167.60
Total	Rs. 8,53,005.60
Add: CVD @10.30%	Rs.87,859.58
Add: Education cess (3% of custom duty) = 3% of (Rs. 1,42,167.60+ Rs. 87,859.58)=Rs. 2,30,026.88	Rs. 6,900.81
Total for Special CVD Special CVD @4%	Rs. 9,43,500.96 Rs. 37,740.04

Total duty payable:	Rs. 1,42,167.60
	Rs. 87,859.58
	Rs. 6,900.81
	Rs. 37,740.04
	Rs. 2,74,667.72

or **Rs. 2,74,668 (Rounded off)**

Notes:

1. Exchange rate =Rs. 68 per UK pound (date of presentation of bill of entry)

2. **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 entry inward whichever is **later.**

3. The **air freight should not exceed 20% of FOB value**. Hence, actual air freight of 2500 pounds has been restricted to 1600 pounds (8000 x 20%).

4. Where the **insurance charges are not ascertainable**, such cost shall be 1.125% of FOB value of the goods.

Question 7

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:

S. 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. 43.00 and the rate of basic customs duty was 15% ad valorem. There is no countervailing duty or special additional duty.

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. It may be presumed that they were produced by the same person. Even otherwise, such consignments can be accepted as identical goods.
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. Rules 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 shall 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.43

CIF Value (in Rupees)	=	Rs.55,04,000
Add: Landing Charges at 1%	=	Rs. 55,000
	=	Rs.55,59,040
15% of Ad Valorem duty on Rs.55,59,040	=	Rs.8,33,856
Add: Education cess @ 2% (rounded off)	=	Rs.16,677
Add: Secondary and higher education cess @ 1% (rounded off)	=	Rs.8,339
Total custom duty payable	**=**	**Rs.8,58,872**

Question 8

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, viz transaction value of identical goods. State briefly, whether the Department's action is sustainable in law, with reference to decided cases, if any.

Answer

No, the Department's action is not sustainable in law. Rule 2(2) of the 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 the common parlance, the 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 a 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 could be **inferred** that Department's action is not sustainable in law.

Question 9

Section 14 of the Customs Act, 1962, with effect from 10.10.2007, and the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 are fully compatible. Explain with a brief note.

Answer

As per erstwhile section 14 of the Customs Act, 1962, the 'Customs value' was 'deemed value'. However, the Customs Valuation (Determination of Price of Imported Goods) Rules, 1988 provided that the value of the imported goods should be based on the concept of 'transaction value' according to WTO Valuation Agreement. The Finance Act, 2007 has substituted a new section 14 for the earlier section 14 with an aim to rectify this anomaly. New section 14 speaks of transaction value. Consequently, the existing valuation rules have also been replaced by new valuation rules, separately for imported goods and export goods. Hence, now there is no inconsistency between the section and rules and these are now fully compatible.

Question 10

Examine the validity of the following statements with reference to the Customs Act, 1962 giving brief reasons.

(i) Service charges paid to canalizing agent are not includible in the assessable value of imports.

(ii) Design and engineering charges are includible in the assessable value of the imported goods only if the goods imported are specifically manufactured on the basis of the design and engineering specifications provided by the importer.

(iii) Inspection charges are not includible in the assessable value of the imported goods if contract does not specify for certification by an independent agency.

(iv) Goods exempt from basic customs duty would automatically be exempt from additional duty of customs.

Answer

(i) **The statement is not correct.** Since the canalizing agent is not the agent of the importer nor does he represent the importer abroad, purchases by canalizing agency from foreign seller and subsequent sale by it to Indian importer are independent of each other. Hence, the commission **or service charges paid to the canalizing agent are includible** in the assessable value as these cannot be termed as buying commission ***[Hyderabad Industries Ltd. v. UOI 2000 (115) ELT 593 (SC)]***.

(ii) **The statement is correct. Explanation to rule 10(1) of the Customs Valuation (Determination Imported Goods) Rules 2007** clarifies that the royalty, licence fee or any other payment for using a process shall be added to the price actually paid or payable, notwithstanding the fact that such goods may be subjected to the said process **after their importation if such payments are related to imported goods and are a condition** of the sale of imported goods.

Further, the Supreme Court in the case of ***TISCO Ltd. v. CCEx. & Cus. 2000 (116) ELT 422 (SC)*** has held that design and engineering charges paid for use during construction, erection, assembly etc. of imported goods, being relatable to post import activity, are **not includible** in the value. Thus, the design and engineering charges which relate to pre-importation activity are only includible in the value. Since, in this case the design and engineering charges are paid for manufacturing the imported product, i.e., they relate to pre-importation activity, the same are includible in the value.

(iii) **The statement is correct.** Where there is no requirement in the contract for independent inspection and the inspection is carried out by foreign supplier on his own and is not required for the purpose of fulfilling the condition of the contract, then such charges incurred on inspection are not includible in assessable value ***[Bombay Dyeing & Mfg. v. CC 1997 (90) ELT 276 (SC)].***

(iv) **The statement is not correct.** Exemption from basic customs duty would not mean exemption from additional duty. When goods are exempted from basic customs duty in terms of section 12 of the Customs Act, 1962 it would not mean that they are exempted from additional duty of customs also, as basic customs duty is leviable by virtue of section 12 of the Customs Act, 1962 while additional customs duty is leviable under section 3 of the Customs Tariff Act, 1975 ***[Kaur Sarin Traders v. Union of India 2006 (199) ELT 224 (Pat.)].***

Question 11

As per section 15 of the Customs Act, 1962, briefly discuss the date for determining the rate of duty and tariff valuation of imported goods.

Answer

Section 15 of the Customs Act 1962 provides that the rate of duty and tariff valuation, if any, applicable to any imported goods, shall be the rate and valuation in force-

(a) in the case of goods entered for home consumption under **section 46,** on the date on which a **bill of entry** in respect of such goods is **presented** under that section.;

(b) in the case of goods cleared from a warehouse under **section 68**, on the date on which a **bill of entry** for home consumption in respect of such goods is **presented** under that section;

(c) in the case of any other goods, on the **date of payment of duty**

Question 12

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.45 per dollar. Central Board of Excise and Customs notified the exchange rate as Rs.44.50 per US $. Find the value of the material for the purpose of levying duty.

Answer

CIF value	5,000 US $
Less: Freight	1,500 US $
Less: Insurance	500 US $
Therefore, FOB value	3,000 US $
Assessable value for Customs purpose:	
FOB value	3,000 US $
Add: Freight (20% of FOB value)	600 US $
Add: Insurance (actual)	500 US $
CIF for customs purpose	4,100 US $
Add: 1% for landing charges	41 US $
Value for Customs purpose	4,141 US $
Exchange rate as per CBEC	Rs. 44.50 per US $
Assessable value	**= Rs. 44.50 x 4,141 US $**
	= Rs. 1,84,274.50

Question 13

Compute the duty payable under the Customs Act, 1962 for an imported equipment based on the following information:

(i) Assessable value of the imported equipment US $ 10,100.

(ii) Date of bill of entry is 25.4.2009. Basic customs duty on this date is 20% and exchange rate notified by CBEC is US $ 1 = Rs. 65.

(iii) Date of entry inwards is 21.4.2010. Basic customs duty on this date is 16% and exchange rate notified by the Central Board of Excise and Customs is US $ 1 = Rs. 50.

(iv) Additional duty payable under section 3(1) of the Customs Tariff Act, 1975: 10%

(v) Additional duty under section 3(5) of the Customs Tariff Act, 1975: 4%.

(vi) Educational cess @ 2% in terms of the Finance Act (No.2), 2004 and secondary and higher educational cess @ 1% in terms of the Finance Act, 2007.

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

Answer

Computation of custom duty payable:

Particulars	**Rs.**
Assessable value (10,100 x 65)	6,56,500
Add: Basic custom duty @ 20%	1,31,300
Total	7,87,800
Add : CVD @ 10.30%	81,143.40
Total	8,68,943.40
Add : Education Cess (1,31,300 + 81,143.40) x 3%	6,373.30
Total	8,75,316.70
Additional duty u/s 3(5) @ 4%	35,012.67
Total Custom Duty Payable (1,31,300 + 81,143.40 + 6,373.30 + 35,012.67)	2,53,829.37
Custom Duty (rounded off to nearest rupee)	2,53,829

Notes:

1. Since bill of entry was presented after grant of entry inwards, exchange rate Rs.65 per USD is applicable as it is the rate notified by CBEC on the date of presentation of Bill of Entry.

2. Basic customs duty @ 20% is applicable as it is prevalent on the date of presentation of bill of entry (**Section 15** of the Custom Act, 1962).

Question 14

Assessable value of an item imported is Rs.1,00,000. Basic customs duty is 20%, additional duty of customs is 10%, and education cess is 3% on duty. Compute the amount of total customs duty payable. Also, state the amount of credit available to the importer and how it can be utilised by him.

Answer

Computation of customs duty payable

	Particulars	**Rs.**
1.	Assessable Value	1,00,000
2.	Basic Customs Duty @ 20%	20,000
3.	Sub-Total	1,20,000
4.	Additional Duty of Customs (CVD)	
	@ 10.30% of Rs.1,20,000 i.e. (Rs.12,000 + Rs. 360)	12,360
	(10% + 3% Education cess on 10%)	
5.	Education Cess 3% on Rs.32,360 [(2) + (4)]	970.80
6.	Total Customs Duty Payable	
	[(2) + (4) + (5)] Rounded off	33,330.80

Credit of total CVD of Rs.12,360 will be available to the importer. The cess component of Rs. 360 included in Rs.12,360 will be available as CENVAT credit only for paying education cess on final products or taxable services. The balance Rs.12,000 will be available as CENVAT credit for payment of excise duty or service tax as provided in CENVAT Credit Rules, 2004. Education cess of Rs. 970.80 paid on imported goods will not be available as CENVAT credit.

Question 15

XYZ Industries Ltd. has imported certain equipment from Japan at an FOB cost of 2,00,000 Yen (Japanese). The other expenses incurred by M/s. XYZ Industries in this connection are as follows:

(i)	*Freight from Japan to India Port*	*20,000 Yen*
(ii)	*Insurance paid to Insurer in India*	*Rs.10,000*
(iii)	*Designing charges paid to Consultancy firm in Japan*	*30,000 Yen*
(iv)	*M/s. XYZ Industries had expended Rs.1,00,000 in India for certain development activities with respect to the imported equipment*	
(v)	*XYZ Industries had incurred road transport cost from Mumbai port to their factory in Karnataka*	*Rs. 30,000*
(vi)	*The Central Board of Excise and Customs had notified for purpose of section 14(3) of the Customs Act, 1962 exchange rate of 1 Yen = Rs.0.3948. The inter bank rate was 1 Yen = Rs.0.40*	

(viii) M/s XYZ Industries had effected payment to the Bank based on exchange rate 1 Yen = Rs. 0.4150

(viii) The commission payable to the agent in India was 5% of FOB cost of the equipment in Indian Rupees

Arrive at the assessable value for purposes of customs duty under the Customs Act, 1962 providing brief notes wherever required with appropriate assumptions.

Answer

FOB value	2,00,000.00
Add: Ocean freight	20,000.00
Add: Designing charges paid in Japan	30,000.00
Total	2,50,000.00
Total value in Indian rupees	
2,50,000 × 0.3948	Rs.98,700.00
(Rate of 1 yen = Rs.0.3948)	
Add: Insurance	Rs.10,000.00
Add: Agent's commission at 5% FOB value	Rs. 3,948.00
(5% of 2,00,000 Yen x 0.3948)	
Total CIF price	Rs.1,12,648.00
Add: Landing charges @ 1%	Rs. 1,126.48
(1% of 1,12,648)	
Assessable value for the purposes of customs duty	Rs.1,13,774.48
Assessable Value (Rounded off)	Rs.1,13,774.00

Notes:

(i) **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 paid for work done *in India* have not been included for the purposes of arriving at the assessable value.

(ii) As per **rule 10(2)(a)** of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007, the cost of transport of the imported goods *up to the place of importation* is includible for the purpose of valuation. Thus, transport cost from Mumbai port (place of importation) to the factory in Karnataka has not been considered for the purpose of customs valuation.

(iii) Insurance has been assumed to be in respect of the cost of the equipment till the place of importation and is thus, includible [**Rule 10(2)(c)** of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007].

(iv) As per **rule 10(1)(a)(i)** of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007, buying commission is not includible in the value of the imported goods. Since the agent's commission does not represent buying commission, hence, it is includible.

(v) Landing charges have been considered as per clause (ii) of the **proviso to rule 10(2)** of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007.

(vi) The rate of exchange notified by the CBEC has been considered **[Clause (a) of the explanation to section 14 of the Customs Act, 1962]**.

Question 16

Compute the assessable value for purpose of determination of customs duty from the following data:

Particulars	*US $*
Machinery imported from USA by air (FOB price)	*4,000*
Accessories compulsorily alongwith the machinery	*1,000*
Air freight	*1,200*
Insurance charges	*Actuals not available*
Local agent's commission to be paid in Indian currency	*Rs. 9,300*
Transportation from Indian airport to factory	*Rs. 4,000*

Exchange rate US $ 1 = Rs. 48

Provide explanations where necessary.

Answer

Computation of assessable value of machinery and accessories

Particulars	**Accessories**	**Machinery**
	US $	**US $**
FOB price	1,000.00	4,000.00
Add : Air Freight (restricted to 20% of FOB price) [Note 2]	200.00	800.00
Add : Insurance charges (1.125% of FOB price) [Note 3]	11.25	45.00

Total CIF price excluding agent's commission	1,211.25	4,845.00
Exchange rate 1US $ = Rs. 48		
	Rs.	**Rs.**
Total in Indian currency	58,140.00	2,32,560.00
Add : Local agent's commission (allocated on *pro-rata* basis) [Note 4]	1,860.00	7,440.00
CIF value	60,000.00	2,40,000.00
Add : Landing charges @1% of CIF value (Note 5)	600.00	2,400.00
Assessable value	60,600.00	2,42,400.00

Notes :

(1) Since the price of the accessories is not included in the price of the machinery and is charged separately, the accessories will not be charged at the same rate as applicable to the machinery. Hence, separate assessable values for the machinery and accessories have been computed [**Proviso (a) to section 19** of the Customs Act, read with Accessories (Condition) Rules, 1963]

(2) If the goods are imported by air, the freight cannot exceed 20% of FOB price [**Second proviso to rule 10(2)** of the Customs (Determination of Value of Imported Goods) Rules, 2007].

(3) Insurance charges are taken as 1.125% of FOB price if actual charges are not known [**Clause (iii) of first proviso to rule 10(2)** of the Customs (Determination of Value of Imported Goods) Rules, 2007].

(4) The commission paid to local agent is includible as it is not a buying commission [**Rule 10(1)(a)(i)]**.

(5) Even if there is no information regarding **landing charges,** still they are charged @ 1% of CIF value [**Clause (ii) of first proviso to rule 10(2)** of the Customs (Determination of Value of Imported Goods) Rules, 2007].

(6) Transportation charges from Indian airport to factory of importer are not includible in the assessable value.

Question 17

Write a brief note on the 'residual method' of determination of value of imported goods under the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007.

Answer

Residual Method under r**ule 9** of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007:

Subject to the provision of **Rule 3** of the aforesaid rules, where the value of imported goods cannot be determined under the provisions of any of the preceding rules, the value shall be determined using reasonable means consistent with the principles and general provisions of these rules and on the basis of data available in India subject to the conditions laid down in r**ule 9(2)** of the aforesaid rules.

Question 18

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 between the date of contract and the date of actual importation?

(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) As per the section 14(1) of the Customs Act, 1962 w.e.f. 10-10-2007 the value of imported or export goods shall be their **transaction value.** Accordingly, the value of the goods shall be the price of contract (i.e., the transaction value), even if there is price rise subsequently.

(ii) On account of insertion of explanation to r**ule 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.

Question 19

Explain briefly with reference to the provisions of the Customs Act, 1962 regarding Tariff Value.

Answer

As per **section 2(40)** of the Customs Act, **'tariff value'** in relation to any goods, means the tariff value fixed in respect thereof under **section 14(2).**

As per **section 14(2)** of the Act, notwithstanding anything contained in section 14(1), 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.

Question 20

What is the crucial/relevant date for determination of rate of duty under the Customs Act in the following cases?

(i) Clearance of baggage

(ii) Goods cleared for home consumption from a warehouse under section 68 of the Customs Act

(iii) Goods entered for export under section 50.

Answer

(i) 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.

(ii) As per **section 15(1)(b)** of the Customs Act, 1962, the relevant date for determination of rate of duty in case of goods cleared from a warehouse under **section 68** is the **date on which a bill of entry for home consumption** in respect of such goods is presented under that section.

(iii) The relevant date for determination of rate of duty in case of goods entered for export under section 50 is the date on which the proper officer makes an order permitting clearance and loading of the goods for exportation under section 51 - **Section 16(1)(a**) of the Customs Act.

Question 21

The assessee M Ltd. entered into a joint venture with a foreign collaborator N for promotion and selling antennas, accessories and other communication equipments. The agreement between them indicates that N owned majority of equity shares in M Ltd. Technical services were provided by N to M Ltd. for various functions that were carried out in respect of manufacture of antenna system in India, for which technical services fee was paid to N by M Ltd. Based on the above facts, the department opined that both M Ltd. and N were related persons in terms of explanation to rule 10(1) of the Customs Valuation (Determination of Price of Imported Goods) Rules, 2007 and that the technical fee paid by M Ltd. was includible in the assessable value of the imported components in terms of aforementioned Rules. Decide referring to decided case law, if any.

Answer

According to **explanation to rule 10(1) of the Customs Valuation (Determination of Price of Imported Goods) Rules, 2007** any royalty or licence fee or any other payment made for a process, which is carried out on the imported goods after importation thereof, shall be included in the assessable value of imported goods if the same is related to the imported goods and is paid as a condition of sale. In the present case, M Ltd had imported antenna parts from N and has paid technical fees to N for various functions to be carried out on such imported antenna parts for manufacture of antenna system in India. Although the aforementioned technical fees related to post importation activity, yet the same is includible in assessable value of imported antenna parts owing to express provisions of Explanation to Rule 10(1). Consequently, the stand taken by the Department is correct in law.

Question 22

From the following particulars, calculate assessable value and total custom duty payable:

(i) Date of presentation of bill of entry : 20.6.2010 [Rate of BCD 25%; Exchange Rate : Rs.43.60 and rate notified by CBEC Rs.43.80].

(ii) Date of arrival of goods in India : 30.6.2010 [Rate of BCD 20%; Exchange Rate: Rs.43.90 and rate notified by CBEC Rs.44.00].

(iii) Rate of Additional Customs Duty : 10%.

(iv) CIF value 2,000 US Dollars; Air Freight 500 US Dollars, Insurance cost 100 US Dollars [Landing charges not ascertainable].

(v) Education Cess 2% & Secondary & Higher Education Cess 1%

(vi) Assume that there is no special CVD.

Answer

CIF value		2000 US Dollars
Less : Freight	500	
Insurance	100	600 US Dollars
FOB Value		1400 US Dollars
Add: Air Freight @ 20% of FOB Value	280	
Insurance (actual amount)	100	380 US Dollars
		1780 US Dollars
		Rs.
Value @ 43.80/-		77964.00
Add: 1% for landing charges		779.64

Assessable Value	78743.64
Basic Custom Duty @ 20% (a)	15,748.73
	94,492. 37
Additional Custom Duty (b)	_ 9,732.71
(@ 10% + 3% cess on 10% = 10.30% on Rs.94,492.37)	
Total of Basic Duty + Additional Duty (c) = (a) + (b)	25,481.44
Education Cess @ 2% & SAH Education Cess @ 1%on Rs.25,481.44 (d)	764.44
Total Duty [(c) + (d)]	**26,245.89**

Notes:

(i) Rate of exchange notified by CBEC on the date of presentation of bill of entry has been considered.

(ii) Rate of duty as applicable on the date of the arrival of aircraft which is later than the date of submission of the bill of entry has been considered.

CHAPTER 6

ADMINISTRATIVE ASPECTS OF CUSTOMS ACT 1962

Question 1

Explain briefly with reference to the provisions of the Customs Act, 1962 regarding appointment of officers of customs

Answer

Section 4(1) of the Customs Act, 1962 empowers the Central Board of Excise and Customs (CBEC) to appoint such persons as it thinks fit to be officers of customs.

Without prejudice to the provisions of sub-section (1), the Board may authorize a Chief Commissioner of Customs or a Commissioner of Customs or a Joint or Assistant Commissioner of Customs or Deputy Commissioner of Customs to appoint officers of customs below the rank of Assistant Commissioner of Customs. [**Section 4(2)** of the Customs Act, 1962].

CHAPTER 7

IMPORTATION, EXPORTATION AND TRANSPORTATION OF GOODS

Question 1

State briefly the provisions of section 17 of the Customs Act, 1962 relating to assessment of goods.

Answer

Sub-section (1) of section 17 lays down that after an importer has entered any imported goods or an exporter has entered any export goods the imported goods or the export goods, without undue delay, be **examined and tested** by the proper officer.

Sub-section (2) provides that after such examination and testing, **the duty**, if any, leviable on such goods shall be **assessed.**

Sub-section (3) lays down that for the purpose of assessing duty under sub-section (2), the proper officer may **require the importer, exporter or any other person to produce any contract, broker's note, policy of insurance, catalogue** or other document whereby the duty leviable on the imported goods or export goods can be ascertained. The proper officer may also require the importer/exporter to furnish any information required for such ascertainment which is in his power to produce or furnish.

Sub-section (4) provides that imported goods or export goods may, prior to the examination or testing thereof, be permitted by the proper officer to be **assessed to duty on the basis of the statements made in the entry** relating thereto and the documents produced and the information furnished under sub-section (3). However, if it is found subsequently on examination or testing of the goods or otherwise that any statement in such entry or document or any information so furnished is not true in respect of any matter relevant to the assessment, the goods may, without prejudice to any other action which may be taken under this Act, be **re-assessed to duty.**

Question 2

(i) Briefly explain the powers of officers of Customs under section 5 of the Custom Act, 1962.

(ii) With reference to section 6 of the Customs Act, 1962, examine briefly whether the Central Government could entrust any functions of the Central Board of Excise and Customs or any officer of Customs to any officer of any other Department.

Answer

(i) An officer of customs may exercise the powers and discharge the duties conferred or imposed on him under this Act subject to such conditions and limitations as the Board may impose. He may also exercise the powers and discharge the duties conferred or imposed under this Act on any other officer of customs who is subordinate to him. However, a **Commissioner (Appeals) shall not exercise** the powers and discharge the duties conferred or imposed on an officer of customs other than those specified in Chapter XV (Appeals and Revision) and section 108 (power to summon persons for giving evidence).

(ii) As per **section 6** of the Customs Act, 1962, the **Central Government may,** by notification in the Official Gazette, **entrust either conditionally or unconditionally to any officer of the Central or the State Government or a local authority** any functions of the Board or any officers of customs under this Act.

Question 3

What do you understand by first appraisement and second appraisement systems under the Customs Act, 1962?

Answer

Section 17 of the Customs Act, 1962 stipulates that after bill of entry or shipping bill has been presented, the proper officer may examine and test the goods. After such examination and testing, the proper officer assesses the duty leviable on such goods.

Under the **first appraisement system**, the **goods are examined first and then they are assessed.** The appraiser normally resorts to this method if he is not able to make assessment on the basis of declaration made in the bill of entry or shipping bill and the documents submitted along with them and deems that inspection is necessary. The importer himself may also request **'first check procedure',** if he cannot give all required details regarding description/value of goods. He has to make request for first check examination at the time of filing of bill of entry.

Under the **second appraisement system**, the information and documents furnished by the importer are adequate to determine the correct tariff nomenclature, tariff classification and valuation of the goods for purposes of assessment. In such a situation, physical examination of the goods or their weighment or testing is only a confirmatory check. Under this system, **such an examination is carried out after assessment and collection of duty.**

Question 4

Discuss the provisions regarding 'transit of goods' and 'transhipment of goods' without payment of duty under the Customs Act.

Answer

Transit of goods: Section 53 provides that any goods imported in a conveyance and mentioned in the import manifest or the import report, as the case may be, as **for transit in the same conveyance** to any place outside India or any customs station, may be allowed to be so transited **without payment of duty**. However, the goods should not have been prohibited under section 11 of the Customs Act.

Transhipment of goods: This refers to **transfer of goods from one conveyance to another**. It may be from one port to any other major port or airport in India.

Section 54 provides that:

(1) where any goods imported into a customs station are intended for transhipment, the person-in-charge of conveyance will have to present a bill of transhipment to the proper officer in the prescribed form;

(2) where any goods imported in to a customs station are mentioned in the import manifest or import report, as for transhipment to any place outside India, such goods will be allowed to be so transhipped without payment of duty. However, the goods should not have been prohibited under section 11 of the Customs Act.

(3) where any goods imported into a customs station are mentioned in the import manifest or import report for transhipment to any major port (as defined in the Indian Ports Act, 1908) or to customs airport or customs port (as notified by the Board) or to any other customs station and the proper officer is satisfied about the bona-fide intention for transhipment of the goods to such customs station, the proper officer may allow the goods to be **transhipped, without payment of duty.**

Question 5

State the difference between transit and transhipment of goods under the provisions of the Customs Act.

Answer

Differences between transit and transhipment have been summarized in the table hereunder:-

	Transit		Transhipment
(i)	Section 53 of the Customs Act, 1962 provides for transit of goods.	(i)	Section 54 of the Customs Act, 1962 provides for transhipment of goods.
(ii)	In case of transit of goods, goods are	(ii)	In case of transhipment of goods, the

allowed to remain on the same conveyance.	conveyance changes i.e., the goods are unloaded from one conveyance and loaded in another conveyance.
(iii) In case of transit of goods the control over such transit goods being lost.	(iii) In transhipment of goods, **continuity in the records is not maintained** as the goods are transferred to another conveyance.

Question 6

Write a brief note on "remission of duty in case of volatile goods" under section 70 of the Customs Act, 1962.

Answer

Section 70 of the Customs Act provides for the remission of duty in case of shortage of the **volatile goods**, which are warehoused. The Assistant or Deputy Commissioner of Customs is empowered to remit the duty leviable on such deficiency, if following conditions are satisfied:

(i) The goods should be found **deficient in quantity at the time of removal** from the warehouse;

(ii) The **deficiency should be on account of natural loss,** i.e. evaporation etc.

These provisions are applicable only to such warehoused goods as the Central Government, having regard to the volatility of the goods and the manner of their storage, may, by notification in the Official Gazette, specify.

Question 7

After visiting USA, Mrs. & Mr. X brought to India a lap-top 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?

Answer

As per the baggage provisions:

(i) personal effects and one laptop are exempt from customs duty.

(ii) general free allowance is Rs.25,000

Hence, duty shall be payable on Rs.52,000 – Rs.25,000 = Rs.27,000.

(iii) **Effective rate of duty for baggage = 36.05%[35% + 2% primary education cess & 1% secondary & higher education cess]**

Therefore, duty payable = Rs.9,450 + Rs.284

Total customs duty = Rs.9,734

Question 8

Explain in brief the duty exemption to baggages under section 79(1) of the Customs Act, 1962.

Answer

Section 79(1) of the Customs Act, 1961 exempts the bona fide baggage of the passengers. Following baggage is passed free of duty-

(i) articles in use by passenger/crew for the minimum period prescribed by the Baggage Rules, 1998. These Rules, as on date, do not prescribe any minimum period for use of articles by the passenger/crew. However, totally unused articles may not be held as bona fide baggage.

(ii) articles for use by passenger or his family or bona fide gifts or souvenirs within the limits prescribed in the aforesaid Baggage rules.

Question 9

State the procedure for clearance of goods imported by post.

Answer

Clearance of goods imported by post is governed by **sections 82 to 84** of the Customs Act, 1962. Any label or declaration accompanying the goods showing the description, quantity and value thereof, shall be treated as "an entry for import" under the Customs Act. **The rate of duty and tariff value applicable to goods imported by post** shall be the rate and valuation in force on the date on which the postal authorities present to the proper officer a list containing the particulars of such goods for the purpose of assessment of duty. In case the goods are imported by a vessel and the list of the goods containing the particulars is presented before the date of the arrival of the vessel, the crucial date shall be the date of arrival of the vessel.

The **procedure for clearance of imported goods by post** is as under:

(i) Post parcels are allowed to pass from port/airport to Foreign Parcel Department of Government Post Offices without payment of customs duty. The Postmaster hands over to Principal Appraiser of Customs the memo showing total number of parcels from each country of origin, parcel bills or senders' declaration, customs declaration and despatch notes, and other information that may be required.

(ii) The mail bags are opened and scrutinised by Postmaster under supervision of Principal Postal Appraiser of Customs. Packets suspected of containing dutiable goods are separated and presented to Customs Appraiser with letter mail bill and assessment memos.

(iii) The Customs Appraiser marks the parcels which are required to be detained as (a) necessary particulars are not available or (b) mis-declaration or under-valuation is suspected or (c) goods are prohibited for import. Other parcels are assessed without opening, on the basis of details given in parcel bill or dispatch notes. The duty is assessed and is entered on parcel bill. These are then audited and returned to Postmaster. Postmaster will hand over parcel to addressee only after collecting the customs duty.

(iv) Parcels selected by Appraiser for examination are opened and examined. If required, details are called from addressee. After inspection, the parcels are sealed with a distinctive seal. If mis-declaration or under-valuation is noted or goods are prohibited goods for imports these will be detained and reported to Customs Commissioner. After assessment, these will be handed over to Post Master, who will hand over to addressee on receipt of payment of customs duty.

Question 10

Briefly explain the provisions of section 89 of the Customs Act, 1962 with regard to supply of ship stores.

Answer

Section 89 of the Customs Act, 1962 covers the case of indigenous goods, which are supplied to a vessel as ship stores. Goods produced or manufactured in India and required as stores on a 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 the aircraft, the number of passengers and the crew and the length of voyage or journey on which the vessel or aircraft is about to depart. In other words, the **duty free supply of ship stores should be reasonable** and not in commercial quantities.

Question 11

What are the conditions required to be fulfilled by the importer to make the imported goods eligible for preferential rate of duty prescribed by the Central Government by notification under section 25 of the Customs Act, 1962?

Answer

The Government may by notification under **section 25** of the Customs Act, 1962 prescribe preferential rate of duty in respect of imports from certain preferential areas. The importer will have to fulfill the following conditions to make the imported goods eligible for preferential rate of duty:

(i) At the time of importation, he should make a **specific claim** for the preferential rate.

(ii) He should also claim that the **goods are produced or manufactured in such preferential area**.

(iii) The **area** should be **notified under section 4(3)** of the Customs Tariff Act, 1975 to be a preferential area.

(iv) The **origin of the goods shall be determined** in accordance with the rules made under section 4(2) of the Customs Tariff Act, 1975.

Question 12

Explain the obligation cast on person-in-charge on arrival of vessels or aircrafts in India under section 29 of the Customs Act, 1962.

Answer

Section 29(1) of the Customs Act, 1962 provides that the person-in-charge of a vessel or an aircraft entering India from any place outside India shall not cause or permit the vessel or aircraft **to call or land**:

(i) for the first time after arrival in India; or

(ii) at any time while it is carrying passengers or cargo brought in that vessel or aircraft

at any place other than a customs port or a custom airport, as the case may be.

Exception:-Section 29(2) provides that the above provisions are **not applicable** in relation to any vessel or aircraft, which is **compelled by accident, stress of weather or other unavoidable cause to call or land at a place other than a customs port or customs airport.** However, in such a case the person-in-charge of such vessel or aircraft has the following obligations cast on him:

(i) He shall have **to report the arrival** of the vessel/landing of the aircraft to the nearest customs officer or the officer-in-charge of a police station and shall produce the log book belonging to the vessel or the aircraft if demanded.

(ii) He shall not without the consent of any such officer permit any goods carried in the vessel or the aircraft to be unloaded from, or any of the crew or passengers to depart from the vicinity of, the vessel or the aircraft. However, passengers and crew can be allowed to depart from the vicinity of, or the goods can be removed from, the vessel/aircraft if the same is necessary for r**eason of health, safety or preservation of life or property.**

(iii) He shall **comply with any directions** given by any such officer with respect to any such goods.

Question 13

What is meant by 'boat notes'?

Answer

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. **Section 35** of the Customs Act, 1962 stipulates that no imported goods shall be water borne for being loaded in any vessel, and no export goods which are not accompanied by a shipping bill, shall be water borne for being shipped unless the goods are accompanied by a **'boat note'** in the prescribed form. Boat Note Regulations provide that boat notes are to be issued in duplicate by a customs officer & these must be serially numbered.

Question 14

What do you mean by assessment of goods under the Customs Act, 1962?

Answer

The provisions regarding assessment of goods are contained in section 17 of the Customs Act. After the bill of entry is filed, it is assessed by the appraisers of the customs department. There are **two systems of assessment**:

(i) **First appraisement system or first check procedure:** In this type of assessment, goods are examined first and then assessed [**Section 17(2)]**.

(ii) **Second system of assessment or second check procedure:** In this type of assessment, goods are assessed first and then examined [**Section 17(4)]**.

Question 15

State briefly the provisions of the Customs Act, 1962 relating to payment of interest in case of provisional assessment.

Answer

Payment of Interest in case of Provisional Assessment:-Section 18 of the Customs Act, 1962 provides for provisional assessment. Duty is paid in two stages in case of provisional assessment; firstly, at the time of provisional assessment and another at the stage of finalization of assessment. **Section 18(3)** of the Customs Act provides that –

(i) the importer or exporter shall be liable to pay interest, if differential amount is found to be payable.

(ii) the interest shall be payable at the rate prescribed under **section 28AB** of the Customs Act, 1962 (presently 13%).

(iii) the interest shall be payable from the first day of the month in which the duty is provisionally assessed till the date of payment thereof.

Similarly, **section 18(4)** of the Customs Act, 1962 provides that –

(i) if any amount is refundable after final assessment (subject to doctrine of unjust enrichment), interest shall be payable to the assessee.

(ii) interest shall be payable at the rate specified (6% presently) under section 27A of the Customs Act, 1962.

(iii) interest shall be granted if refund is not made within 3 months from the date of final assessment of duty.

Question 16

Discuss with a brief note the distinction between the functioning of Inland Container Depots (ICD) and Container Freight Stations (CFS).

Answer

The differences between the functioning of Inland Container Depot (ICD) and Container Freight Station (CFS) are:

(i) Meaning:-An ICD is a place where containers are aggregated for onward movement to or from the ports whereas CFS is a place where containers are stuffed, unstuffed and aggregation/segregation of cargo takes place.

(ii) Location:-ICDs are normally **located** outside the port towns whereas no site restrictions apply to CFS.

(iii) Attachment / Extension:-An ICD may have a CFS **attached** to it and CFS is treated as an extension of a port/ICD/air cargo complex.

CHAPTER 8

WAREHOUSING

Question 1

Briefly examine with a note, the correctness of the following statement with reference to the Customs Act, 1962:

"Interest under section 47 is chargeable only after the expiry of warehousing period specified under section 61(1) of the Customs Act, 1962".

Answer

No, it is not always correct to say that interest at the rate specified under section 47 of the Customs Act, 1962 is chargeable only after the expiry of warehousing period specified in section 61(1) of the Customs Act, 1962 as interest under section 47 is payable even if the goods have not been put in a warehouse. Interest under section 47 becomes payable when the importer fails to pay the import duty assessed on the bill of entry under section 47(1) within 5 days from the date on which bill of entry is returned to him for payment of duty.

Moreover, even in the case of warehoused goods, this statement is not absolutely correct. It is correct only in case of goods intended for use in 100% EOU as in this case, interest is chargeable after the expiry of five years or three years which are the permissible warehousing periods for capital goods and other goods respectively. However, in case of **other goods** this statement is not correct as **interest is chargeable after the expiry of ninety days,** though the permissible warehousing period for such goods is one year.

Question 2

(a) *Briefly explain the law relating to private warehouses. What are the guidelines for storage of sensitive goods in such warehouses?*

(b) *Who has the powers to appoint public warehouse at places notified under the Customs Act, 1962?*

Answer

(a) According to **section 58** of the Customs Act, 1962, at any warehousing station, the Assistant/Deputy Commissioner may licence private warehouses where dutiable goods or any other imported goods may be deposited. However, where public warehouses are available, private warehouses are not permitted.

The Assistant Commissioner may cancel the licence by giving one month notice in writing to the licencee or if the licencee has contravened any provisions of the Customs Act, 1962 or any of the conditions of the licence. However, the cancellation of the licence in the latter case can be done only by giving the licencee a **reasonable opportunity** of being heard.

In case of sensitive items, the **following guidelines** are to be observed:

(i) Applicants should produce a **Solvency Certificate** from a Scheduled Bank of repute for a value not less than Rs.50 lakhs;

(ii) Such warehouses should **not be located in residential areas;**

(iii) The premises should be **secure, possess fire-fighting provisions and be easily accessible** to the customs officers;

(iv) Goods deposited should be **fully insured** for a value at least equal to the customs duty;

(v) The proprietor/partner/director must **not be involved in any customs or excise offence;**

(vi) A **cash deposit/ bank guarantee equal to 25% of the duty liability** (effective duty foregone) will be taken for each consignment.

(b) **Section 57** of the Customs Act, 1962 empowers the Assistant/Deputy Commissioner of Customs to appoint public warehouse at places notified under the Customs Act, 1962.

Question 3

Write a note on warehousing period under section 61 of the Customs Act, 1962.

Answer

Section 61(1) of the Customs Act, 1962 provides that any warehoused goods may be left in the warehouse in which they were deposited or in any warehouse to which they may be removed-

(a) in the case of capital goods intended for use in any hundred percent export oriented undertaking, **till the expiry of five years;**

(b) in the case of goods other than capital goods, intended for use in any hundred per cent export-oriented undertaking, **till the expiry of three years;** and

(c) in the case of any other goods, **till the expiry of one year,**

after the date on which the proper officer has made an order under section 60 permitting the deposit of the goods in a warehouse.

However,

(i) in the case of any **goods which are not likely to deteriorate**, the period specified in clause (a) or clause (b) or clause (c) may, on sufficient cause being shown, **be extended-**

(A) in the case of such goods intended for use in any hundred percent export oriented undertaking, by the Commissioner of Customs, for such period as he may deem fit, and

(B) in any other case, by the Commissioner of Customs, **for a period not exceeding six months** and by the Chief Commissioner of Customs for such further period as he may deem fit;

(ii) in the case of any goods referred to in clause (c) if they are **likely to deteriorate,** the Commissioner of Customs may reduce the aforesaid period of one year to such shorter period as he may deem fit.

Question 4

What are the provisions made under the Customs Act, 1962 regarding control of customs over the warehoused goods?

Answer

Section 62 of the Customs Act, 1962 provides for the control of customs over the warehoused goods. The provisions are discussed as follows:

(i) All warehoused goods shall be subject to the control of the proper officer.

(ii) No person shall enter a warehouse or remove any goods therefrom without the permission of the proper officer.

(iii) The proper officer may cause any warehouse to be locked with the lock of the customs department and no person shall remove or break such lock.

(iv) The proper officer shall have access to every part of a warehouse and power to examine the goods therein.

Question 5

Briefly state the rights of the owner of warehoused goods under the Customs Act, 1962.

Answer

According to provisions of Section 64 of Customs Act 1962 with the sanction of the proper officer, and on payment of the prescribed fees, the owner of any goods either before or after warehousing the same -

(a) inspect the goods;

(b) separate damaged or deteriorated goods from the rest;

(c) sort the goods or change the containers for the preservation, sale, export or disposal of the goods;

(d) deal with the goods & their containers in such manner as may be necessary to prevent loss, deterioration or damage to the goods;

(e) show the goods for sale;

(f) take samples of the goods without entry for home consumption, if the proper officer so permits, without payment of duty on such samples.

Question 6

Explain briefly with reference to the provisions of the Customs Act, 1962 whether the owner of the warehoused goods has the right to relinquish his title to such goods after the expiration of the warehousing period or the extended warehousing period, as the case may be, and also state whether any charges shall become payable upon such relinquishment.

Answer

Right to relinquish title to warehoused goods:-Yes, the owner of the warehoused goods has the right to relinquish his title to such goods after the expiration of warehousing period/extended warehousing period.

Proviso to section 68 of the Customs Act, 1962, provides that the owner of the warehoused goods can relinquish his title to such goods any time before an order for clearance of goods for home consumption has been made in respect of such goods. Similar view was expressed in the case of ***CCus. v. i2 Technologies Software (P) Ltd. 2007 (217) ELT 176 (Kar.)***

However, 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.

On relinquishment of title to such goods, the owner of goods will be required **to pay rent, interest, other charges and penalties** that may be payable. However, duty will not be payable on relinquishmen

Question 7

Clearly mention the relevant date in the following cases of goods warehoused under bond:

(i) Rate of exchange, when goods are removed for home consumption.

(ii) Rate of duty, when goods are removed for home consumption.

(iii) Rate of duty if the goods are not removed from warehouse within the permissible period.

Answer

(i) The **relevant date for rate of exchange** is the date on which the bill of entry is presented for warehousing **under section 46** of the Customs Act, 1962 and not when bill of entry is presented under section 68 for clearance from warehouse.

(ii) As per **section 15(1)(b)** of the Customs Act, 1962 rate of duty as prevalent on date of presentation of bill of entry for home consumption **for clearance from warehouse** is applicable and not the rate prevalent when goods were removed from customs port.

(iii) Goods which are not removed 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 relevant** and not the date on which the goods were actually removed.

Question 8

BL Ltd. imported Super Kerosene Oil (SKO) and stored it in a warehouse. An ex-bond bill of entry for home consumption was filed and duty was paid as per rate prevalent on the date of presentation of such bill of entry; and the order for clearance for home consumption was passed. On account of highly combustible nature of SKO, the importer made an application to permit the storage of such kerosene oil in the same warehouse until actual clearance for sale/use. The application was allowed. When the goods were actually removed from the warehouse, the rate of duty got increased. The department demanded the differential duty. They company challenged the demand. Whether it will succeed? Discuss briefly taking support of decided case law(s), if any.

Answer

Yes, the company will succeed. The facts of the given situation are similar to the case of ***CCus vs. Biecco Lawrie Ltd. 2008 (223) ELT 3 (SC)*** wherein the Supreme Court has held that where duty on the warehoused goods is paid and out of charge order for home consumption is made by the proper officer in compliance of the provisions of section 68, the goods removed in smaller lots have to be treated as cleared for home consumption and importer would not be required to pay anything more.

Further, **section 49** of the Customs Act, 1962 *inter alia* also provides that imported goods entered for home consumption if stored in a public warehouse, or in a private warehouse on the application of the importer that the same **cannot be cleared within a reasonable time shall not be deemed to be warehoused goods** for the purposes of this Act, and accordingly the provisions of Chapter IX shall not apply to such goods.

Question 9

Mention the circumstances under which goods are considered to have been removed improperly from a warehouse under the Customs Act.

Answer

Section 72 of the Customs Act provides that in any of the following circumstances the goods shall be considered to have been removed improperly from a warehouse –

(a) where any warehoused goods are removed from a warehouse in contravention of **section 71** of the Customs Act;

(b) where any warehoused goods have not been removed from a warehouse at the expiration of the period during which such goods are permitted under **section 61** to remain in a warehouse;

(c) where any warehoused good have been taken under **section 64** as **samples without payment of duty**;

(d) where any goods in respect of which a **bond has been executed under section 59** and which have not been cleared for home consumption or exportation are not duly accounted for to the satisfaction of the proper officer.

Question 10

In the context of section 65 of the Customs Act, 1962 dealing with waster or refuse arising during the manufacturing operations or other processes done in the warehouse:

(i) Examine the validity of the following statement with brief reasons:

"If finished products are cleared for home consumption on payment of appropriate import duty of customs, then appropriate duty of customs should be levied on the imported goods content in the waste or refuse."

(ii) Explain briefly the "relevant date" for determination of rate of duty leviable on the imported material content in the waste or refuse.

Answer

(i) Section 65(2)(b) of the Customs Act, 1962 deals with the question whether import duty should be levied on imported goods content in the waste and scrap when finished products are cleared for home consumption. The said section lays down that if the finished products are cleared for home consumption on payment of appropriate duty of customs, then appropriate duty of customs should be levied on the imported goods content in the waste or refuse.

(ii) The relevant date for determination of rate of duty leviable on the imported material content in the waste or refuse shall be decided as per the provisions of section 15(1) of the Customs Act, 1962. In the given case, the goods are not:-

(a) cleared for home consumption on a bill of entry filed under section 46; or

(b) cleared from the warehouse, where the date of filing bill of entry for home consumption is relevant.

Hence, in this case the third alternative namely the "date of payment of duty" under section 15(1)(c) shall apply.

Thus, in collecting the import duty on the imported material content in the waste or refuse, **the rate of duty prevalent on the date of payment of duty** shall apply

Question 11

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. five 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 its title to the same and consequently, it 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

Answer

The facts of the given case are similar to the facts of the case of ***Commissioner Customs v i2 Technologies Software (P) Ltd. 2007 (217) ELT 176 (Kar.)***

The High Court, while dismissing the Department's appeal observed that the owner of the goods (importer) though **loses control over the goods** when he deposits them in the warehouse, but **he does not lose his title or ownership to such goods** so long as they remain in the warehouse either during the continuance of the warehousing period or even after its expiration. Therefore, the High Court rejected the Department's contention that on the expiration of the warehousing period or on the expiration of extended warehousing period, the owner of the goods loses his title in respect of such goods and consequently, also loses his right to relinquish his title to such warehoused goods.

The High Court elaborated that on **a plain reading** of the provisions of section 23(2), 47, 68 and the proviso to section 68 of the Customs Act, 1962, it is clear that the owner of warehoused goods has the right to relinquish his title to goods 'at any time before an order for clearance of goods for home consumption has been made in respect thereto'. There is **no prohibition on relinquishing the title to such goods after the expiration** of the warehousing period or after the expiration of the extended period. The High Court pointed out that the provisions of section 23(2) and proviso to section 68 make it clear that upon relinquishment of his title to any imported goods, including the warehoused goods, the owner of such goods **shall not be liable to pay duty** thereon and when the owner is not liable to pay duty, the question of paying any interest on the duty and penalty would not arise.

Therefore, in the instant case, the **Department's contention is not correct.**

Question 12

Can warehoused goods be transferred from one warehouse to another under the Customs Act, 1962?

Answer

Yes, section 67 of the Customs Act, 1962 permits removal of warehoused goods to other warehouse under bond, with the permission of the proper officer. For this purpose Transit

Bond f\or concerned customs duty together with Bank Guarantee is required to be submitted. However, the aforementioned Bank Guarantee is not to be submitted by an EOU.

Question 13

Write a note on "Project Imports" under the Customs Tariff Act, 1975 enumerating the eligible projects and the minimum investment criteria, if any.

Answer

Project Imports:-Setting up of a project in India may require a number of machines and equipments to be imported. This importation may spread over a period of time and thus assigning values and paying heavy customs duty on imported machineries make the initial project a cumbersome and costly process. Hence, concept of 'project import' has been introduced under heading 9801 of Customs Tariff to cover all machinery, instruments, apparatus and appliances, components or raw materials for initial setting up of a unit or substantial expansion of the existing project. The spare parts, raw material and consumables stores upto 10% of value of goods can be imported.

The **eligible projects** are:

(i) Industrial plant

(ii) Irrigation project

(iii) Power project

(iv) Mining project

(v) Oil & other mineral exploration project

(vi) Other projects as notified by the Central Government

Earlier, there was a condition that investment in plant and machinery should be at least Rs.5 crore. This condition has been waived with effect from 22.01.2007.

CHAPTER 9

DEMANDS AND APPEALS

Question 1

Explain briefly the provisions of section 28(1A) of the Customs Act, 1962 in respect of a person who voluntarily deposits full duty demanded along with interest and applicable penalty.

Answer

Section 28(1) prescribes the condition and time limit within which a show cause notice has to be served for recovery of customs duties. **Section 28(1A)** provides an **option** to the importer or the exporter or the agent or employee of the importer or exporter to whom a notice has been served by the proper officer for short/non levy or non charging or short payment of interest or erroneous refund of duty and interest by reason of fraud, collusion or any willful mis-statement or suppression of facts.

Such a person may pay the duty in full or in part as may be accepted by him including the interest payable thereon under section 28AB and **penalty equal to 25% of the duty specified within 30 days of the receipt of the notice.**

Where duty is paid in full together with the interest and penalty under sub-section (1A), the **proceedings** in respect of such persons to whom notices have been issued shall be **deemed to have been concluded** in respect of the matters stated therein. Where the duty has been **paid in part along with interest** and penalty, the proper officer shall determine the amount of duty or interest which will not exceed the amount partly due from such person.

Question 2

Write a brief note on the provisions of section 28BA of the Customs Act, 1962 regarding property that may be attached provisionally to protect the interest of revenue in certain cases.

Answer

Section 28BA provides that during the pendency of any proceeding under section 28 or section 28B, the proper officer may provisionally attach any property belonging to the person on whom notice has been served under section 28(1) or section 28B(2), in accordance with **section 142** of the Customs Act and the Rules made thereunder. This action requires **prior approval of the Commissioner** of Customs and must be necessary for protecting the interest of Revenue.

Such an **attachment could be effected for a period of 6 months** which shall commence from the date of the order of the Commissioner permitting such provisional attachment. **This**

period may be extended by the Chief Commissioner of Customs by such further period or periods as may be determined by him. The reasons for such extension should be recorded in writing and the **total period should not exceed 2 years.**

If an application for the settlement of the case is made under **section 127B,** the period commencing from the date on which such an application is made and ending with the date on which order under **section 127C(1**) is made shall be excluded from the period of 2 years mentioned above.

Question 3

State the situations in which the proper officer is authorized to issue show-cause notice under section 28 of the Customs Act, 1962 and also the time limit.

Answer

As per **section 28** of the Customs Act, 1962, the proper officer is authorized to issue show cause notice in the following situations:

(i) when duty has not been levied

(ii) when duty has been short-levied

(iii) when duty has been erroneously refunded

(iv) when interest payable has not been paid

(v) when interest payable has been part paid

(vi) when interest has been erroneously refunded

Time Limit for issue of show-cause notice

(a) In case of any import made by an individual for his personal use or by the Government or by any educational, research or charitable institution or hospital – **within one year from the relevant date**

(b) In any other case – **within six months from the relevant date**

(c) In the case of collusion or any willful mis-statement or suppression of facts by the importer or the exporter or the agent or employee of the importer or exporter-**within five years from the relevant date.**

Note: Relevant date is defined in sub-section (3) of section 28 of the Customs Act, 1962.

Question 4

Examine briefly the powers of the department, if it is not satisfied with an order made under section 47 of the Customs Act, 1962 pursuant to which goods have been cleared.

Answer

Goods are cleared from customs after proper officer makes an order permitting clearance of the same for home consumption under section 47 of the Customs Act. Once goods are cleared after issue of such order but the department is not satisfied with the order, following action can be taken:

(i) Department can file a **review application** under section 129D(2) of the Customs Act against the order of the proper officer with the **Commissioner (Appeals);** or

(ii) Action can be taken under section 28 of the Customs Act, by **issuing a show cause notice.**

It *has been held by the Supreme Court in* ***UOI v. Jain Shudh Vanaspati Ltd. (1996) 86 ELT 460 (SC)*** that action can be taken under section 28 of the Customs Act, even after goods are released from Customs by issuing a show cause notice etc.

Question 5

A show cause notice demanding customs duty was issued in case of clearances made by 100% Export Oriented Undertaking (EOU) to Domestic Tariff Area (DTA). Is the show-cause notice defective in law?

Answer

Yes, the show cause notice issued is defective in law as in respect of clearances made by a 100% export oriented undertaking (EOU) to domestic tariff area, the duty to be paid by the 100% EOU is **the duty of excise and not customs duty**. Therefore, show cause notice using the word 'customs duty' instead of 'central excise duty' is not maintainable. Similar view was expressed in the case of ***CCE v. Suresh Synthetics (2007) 216 ELT 662 (SC).***

Question 6

State the circumstances under which a revision petition can be filed before the Central Government under the Customs Act.

Answer

The first proviso to section 129A of the Customs Act, 1962 provides that the Appellate Tribunal shall not have jurisdiction to decide any appeal in respect of any order passed by Commissioner (Appeals) if such order relates to, -

(a) any goods imported or exported as baggage;

(b) any goods loaded in a conveyance for importation into India, but which are not unloaded at their place of destination in India, or which are short landed at that destination;

(c) payment of drawback as provided in Chapter X, and the rules made thereunder.

In such cases, redressal lies with the Central Government. Section 129DD(1) enables the appellant to get the orders of Appellate Commissioner (on these three aspects) annulled or modified by the Central Government.

Sub-section 1A of section 129DD enables the Commissioner of Customs to direct the proper officer to make an application on his behalf to the Central Government for

revision of an order. However, such application can be made only if the Commissioner is of the opinion that the order passed by the Commissioner (Appeals) under section 128A is not legal or proper.

Question 7

The Committee of Commissioners of Customs is empowered under the Customs Act, 1962 to direct the filing of an appeal before the Appellate Tribunal in certain cases while in certain others, it may direct an application to be filed before the Appellate Tribunal for determination of such points arising out of the decision or order as may be specified by the said committee. Write a brief note on the powers of the Committee of Commissioners of Customs bringing out the difference in the exercise of such powers.

**Note: The power to direct an application to be filed before the Appellate Tribunal for determination of such points arising out of the decision or order as may be specified by the Committee vests with the Committee of Chief Commissioner.*

Answer

Under **section 129A(2)** of the Customs Act, 1962, the **Committee of Commissioners of Customs** may direct the proper officer to file appeal on its behalf to the Appellate Tribunal against the order of Commissioner (Appeals), if it is of the opinion that the order is not legal or proper.

Under **section 129D(1)** of the Customs Act, 1962, the **Committee of Chief Commissioners of Customs** may, of its own motion, call for and examine the record of any proceedings in which a Commissioner of Customs has passed any decision or order under this Act for the purpose of satisfying itself as to the legality or propriety of any such decision or order and may, by order, direct such Commissioner or any other Commissioner to apply to the Appellate Tribunal for the determination of such points arising out of the decision or order as may be specified by the Committee of Chief Commissioners of Customs in its order.

Therefore, **difference** in two cases mentioned above is that in the former case the Department has to file a **regular appeal** with the Tribunal while in the latter case a **review application** is filed with the Tribunal. It may also be noted here that the review application is treated as appeal filed against the decision or order of the adjudicating authority vide section 129D(4) of the Customs Act, 1962.

Further, in the former case an appeal has to be filed **within three months** as specified in section 129A(3) of the Customs Act, 1962 while in the latter case application for review can be filed **within four months;** three months for the Committee of Chief Commissioner of Customs to issue order for review and further one month to the Commissioner to file an application .

Question 8

K imported some old machinery from London claiming that the machinery was fully exempted from customs duty under a notification. Assistant Commissioner of Customs, the authority in *original, differed and held that the machinery so imported was covered under a different heading and attracted customs duty. Therefore, K had to furnish bank guarantee for duty payable for release of machine.*

Subsequently, the Assistant Commissioner of Customs ordered to encash the bank guarantee to realize the duty. This order was issued to K and immediately thereafter, the Customs Department invoked bank guarantee by sending request to bank for making payment to them. K contended that order of the Assistant Commissioner was appealable and the period of filing appeal was yet to expire. Hence the action of the Department was not correct. You are required to comment whether the action of customs Department is correct in law based on decided case law, if any.

Answer

Bombay High Court, in the case of ***Ocean Driving Centre Ltd. v. Union of India 2005 (180) E.L.T 313,*** had an opportunity to address the similar situation. In that case, the petitioner contended that he had a statutory right of appeal before the Appellate Authority and also he had a right to move an application to get the pre-deposit waived in terms of section 129E of the Customs Act, 1962. He further submitted that he had an arguable case on classification. The debatable question had resulted in release of goods subject to furnishing bank guarantee at the **stage of provisional assessment.** Had it not been a debatable issue, he would not have been allowed to claim release of goods on furnishing the bank guarantee, which was furnished to secure the dues of Department. The same was valid and should have been kept alive **till the dispute was finally resolved.** According to them, the order of assessment was not final and conclusive.

The High Court observed that it was not in dispute that the appeal period was yet to expire and that the order was an appealable order as per the Departmental circular no. 396/29/98-C.E dated 2nd June, 1998, the Department was expected not to resort to coercive action so long as the appeal period was not over. Hence, the Departmental action was contrary to their own policy. According to the High Court, it was not proper on the part of Department to encash the bank guarantee before the expiry of statutory period provided for filing appeal.

Thus, the **stand taken by the Department was not tenable** in law.

Question 9

What are the orders of Commissioner (Appeals) not appealable to Appellate Tribunal as per section 129A of the Customs Act, 1962?

Answer

No appeal shall lie to the Appellate Tribunal and the Appellate Tribunal shall have no jurisdiction to decide any appeal in respect of any order passed by the Commissioner of Appeals under **section 129A,** if such order relates to:

(i) any goods imported or exported **as baggage;**

(ii) any goods loaded in conveyance for importation into India, but **which are not unloaded** at their place of destination in India, or so much of the quantity of such goods as has not been unloaded at any such destination, if goods unloaded at such destination are short of the quantity required to be unloaded at that destination.

(iii) **payment of drawback** as provided in Chapter X and the rules made there under.

Question 10

What are the orders that are appealable to the High Court under the Customs Act, 1962? Can the delay in filing an appeal be condoned by the High Court?

Answer

As per **section 130(1) of the Customs Act, 1962,** an appeal can be made to the High Court against the order of the Tribunal if the case involves substantial question of law, except in cases relating to rate of duty and valuation.

Sub-section (2) of section 130 inter alia lays down that an appeal can be made to the High Court **within 180 days** from the date on which the order appealed against is received by the Commissioner of Customs or the other party. There is no provision in the Act to condone the delay in filling an appeal. This view has been confirmed in ***CC v. Hongo India (2009) 236 ELT 417 (SC 3 member bench)***. Hence, the High Court cannot condone the delay in filing an appeal.

Question 11

Mention the orders against which appeal lies to the Supreme Court under Section 130E of the Customs Act.

Answer

As per **section 130E** of the Customs Act, an appeal shall lie to the Supreme Court from-

(a) any judgment of High Court delivered

- (i) in an appeal made under section 130, or
- (ii) on a reference made under section 130 by the Appellate Tribunal before 01.07.2003, or
- (iii) on a reference made u/s 130 A,

  if the High Court certifies the case to be fit for appeal to the Supreme Court. Such certification can be done by the High Court on its own motion or on an oral application made by or on behalf of the aggrieved party, immediately after passing of the judgement.

(b) any order of the Appellate Tribunal **having relation to the determination of rate of customs duty or value of goods,** among other things.

Question 12

Briefly explain the time limit for issuing show cause notice for demanding customs duty short paid.

Answer

Section 28 of the Customs Act, 1962 provides that where the customs duty has been short paid, a show cause notice shall be issued-

(i) **within one year from the relevant date** in the case of any import made by any individual for his personal use or by Government or by any educational, research or charitable institution or hospital;

(ii) **within six months from the relevant date** in any other case.

However, if the customs duty has been short paid by reason of collusion or any willful mis-statement or suppression of facts by the importer or the exporter or their agent or employee, the show cause notice can be issued **within five years from the relevant date.**

Relevant date means –

(i) in a case where duty is not levied, the date on which the proper officer makes an order for the clearance of goods;

(ii) in the case of provisional assessment, the date of adjustment of duty after the final assessment;

(iii) in any other case, the date of payment of duty.

Question 13

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?

Answer

D.G. Sets, spare parts of D.G. Sets and consumables, such as furnace oil/lubricating oil/HSD are exempt from duty if used in connection with the production of goods meant for export by a 100% EOU vide *Notification Nos. 13/81-Cus., 53/91-Cus. and 1/95-Cus.* In ***Commissioner v. Hanil Era Textile Ltd. - 2005 (180) E.L.T. A044 (S.C.),*** the Supreme Court agreed to the view taken by the Tribunal that **in the absence of a restrictive clause in the notifications** that imported goods are to be solely or exclusively used for manufacture of goods for export, there is no violation of any condition of notification if surplus power generated due to unforeseen exigencies is sold in domestic tariff area.

Therefore, **no duty can be demanded** from M/s XYZ for selling the surplus power in domestic tariff area **for the following reasons:**

(i) They have used the DG sets and furnace oil imported duty free for generation of power, and

(ii) such power generated has been used for manufacturing goods for export, and

(iii) only the surplus power has been sold, as power cannot be stored.

CHAPTER 10

REFUND

Question 1

The assessee had imported capital goods under a licence with a condition to fulfill an export obligation within a certain time limit. The assessee failed to discharge the export obligation within the said time limit. Consequently, the Department invoked the bank guarantee and realized the amount. However, subsequently the assessee was able to fulfill the export obligation and the Department cancelled the bank guarantee. The assessee thereafter filed a refund claim for the amount realized by invocation of the bank guarantee by the Department. The Department rejected the refund claim on the ground that it was barred in terms of section 27(1)(b) of the Customs Act, 1962 as the assessee had not been able to establish that the incidence of duty had not been passed on by him to any other person. Examine briefly, with the help of any decided case law, whether the stand taken by the Department is correct in law.

Answer

In ***CCus. (Exports) v. Jraj Exports (P) Ltd. 2007 (217) ELT 504 (Mad.)***, the High Court observed that when the Department had accepted the fulfillment of export obligation, there was no need to invoke the bank guarantee and retain the amount. The High Court opined that the Department's claim that refund had been time barred was not sustainable as **furnishing of bank guarantee** in order to fulfill the export obligation **could not be regarded as payment of duty.** On the same issue in **Somaiya Organics v State of U.P. 2001 (130) ELT 3** it was held that a bank guarantee can not be regarded as payment of duty which the Government is entitled to retain.

The High Court relied on the Supreme Court's ruling in the case of ***Oswal Agro Mills Ltd. and Another v. Asstt. Collector of Central Excise 1994 (70) ELT 48 (SC)***, wherein it was held that furnishing of bank guarantee pursuant to an order of the Court would not be equivalent to payment of excise duty. The furnishing of bank guarantee is only a security to safeguard the interest of the Revenue. Applying the principle laid down in this case, the Court stated that the requirement to establish that the duty incidence had not been passed on by the assessee to any other person would also not get attracted since section 27 has no application to this case. Therefore, the stand of the Revenue is not correct in law.

Question 2

M/s. XYZ Ltd. were liable for the duty assessed and payable on certain import which, it paid under protest and filed a claim for refund of duty on the ground that duty had been wrongly levied. On rejection of claim for refunds, the assessee filed an appeal before Tribunal which *was also dismissed on the ground that as no appeal had been filed against the assessment order, the refund claim was not maintainable. Assessee seeks your advice for remedy. Discuss whether the stand taken by the Tribunal is correct.*

Answer

The facts of the case are similar to the case of ***Priya Blue Industries Ltd. v. CCus., 2004 (172) ELT 145 (SC).*** The Supreme Court has held in this case that refund claim under section 27 of the Customs Act, 1962 can be made by any person who has paid duty in pursuance of an assessment order. However, such a claim for refund cannot be made without challenging the order of assessment in appeal. It cannot be inferred that if the assessment is not correct, a party can file a claim for refund and the correctness of the assessment order can be examined while considering the claim for refund.

So long as the order of assessment stands the duty would be payable as per that order. Unless that order is modified in appeal or has been reviewed, the order of assessment stands and thus, a claim for refund contrary to such an order cannot be maintained.

A refund claim is not an appeal proceeding. The officer considering refund claim cannot sit in appeal over an assessment made by a competent officer.

Thus, in view of the abovementioned decision the stand taken by the Tribunal is correct.

Question 3

State briefly with reference to the provisions of section 27 of the Customs Act, 1962 whether the principle of "unjust enrichment" will apply in the following cases:

(i) refund of wrongly encashed bank guarantee

(ii) refund of excess interest paid by the assessee

(iii) refund of duty on car imported for personal use.

Answer

The bar of unjust enrichment applies in case of refund of customs duty under **section 27(2)** of the Customs Act, 1962. In the given cases, the applicability of the doctrine has been examined as under –

(i) The provisions of section 27(2) apply when an assessee claims refund of *duty,* hence, **bar of unjust enrichment will not apply to refund of wrongly encashed *bank guarantee.*** An amount secured by bank guarantee cannot be held to be paid to the Revenue as duty. Hence, the Revenue will have to pay back the amount of bank guarantee (encashed wrongly), if the case is finally decided in favour of assessee – ***Oswal Agro Mills Ltd. v. ACCE (1994) 70 ELT 48 (SC).***

(ii) The bar of unjust enrichment **will apply in case of excess interest paid** by the assessee as the words used under section 27(1) and 27(2) are "duty and interest, if any, paid on such duty". The payment of interest is inextricably laced with payment of duty.

Thus, the excess amount of interest paid by the assessee will be refunded to him only if he does not pass on the incidence of such interest to any other person.

(iii) The principle of unjust enrichment **will not apply to refund of duty on car imported for personal use**, as clause (b) of the proviso to sub-section (2) of section 27 of the Customs Act, 1962 stipulates that in case of imports made by an individual for his personal use, the refund should not be credited to consumer welfare fund, but shall be paid to the applicant.

Question 4

Explain the doctrine of unjust enrichment with respect to refund of duty. Are there any exceptions to it and if so enumerate them.

Answer

When an importer imports goods, he has to pay the customs duty on such goods. This duty is recovered from the purchasers when these goods are sold by the importer. In other words, the burden of duty is passed on to the purchaser. Subsequently, if the importer makes a claim for refund of duty and on acceptance of such claim **if he retains the amount of refund with himself without passing it to the purchaser, then this would be called as unjust enrichment.**

Therefore, wherever there is an over assessment or excess collection of duty, the refund shall be given only to the person who at the material time of grant of refund, bears the burden of duty and interest, if any. When the person who bears the burden of duty refunded is not identifiable or has not come forward to claim the refund, the refund shall be paid into a fund called 'Consumer Welfare Fund'. The importer or the clearing agent has to prove that he has not passed the burden of duty, in order to claim refund of duty.

Section 28D provides that every person who has paid duty under the Customs Act, unless the contrary is proved by him, s**hall be deemed to have passed the full incidence of such duty to the buyer.**

The **doctrine of unjust enrichment does not apply** to the refund of duty and interest, if any, paid on such duty if such amount is relatable to:

(i) drawback of duty payable under sections 74 and 75;

(ii) export duty as specified in section 26;

(iii) the duty and interest, if any, paid on such duty paid by the importer or the exporter, as the case may be, if he had not passed on the incidence of such duty and interest to any other person;

(iv) the duty and interest on imports made by an individual for his personal use;

(v) the duty and interest borne by the buyer, if he had not passed on the incidence of such duty and interest to any other person;

(vi) the duty and interest borne by any other such class of applicants as the Central Government may, by notification in the Official Gazette, specify. However, no notification under this clause shall be issued unless in the opinion of the Central Government the incidence of duty and interest has not been passed on by the persons concerned to any other person.

Question 5

Write detailed note on "relevant dates for submission of refund application" with reference to the provisions of the Customs Act, 1962

Answer

According to **section 27** of the Customs Act, 1962, a refund claim should be lodged before the expiry of **six months.** However, in case of imports made by individual for personal use or by Government or by any educational, research or charitable institution or hospital, the refund claim should be filed before the expiry of **one year**. Following are the relevant dates to calculate the time limit of six months or one year for the purpose of submission of refund application:

(a) If the refund claim is lodged by the importer, the time limit should be calculated from the date of payment of duty.

(b) If the refund claim is lodged by the buyer of imported goods, the time limit should be calculated from the date of purchase.

(c) In case of goods which are exempt from payment of duty by an ad-hoc exemption, the limitation of one year or six months, as the case may be, should be computed from the date of issue of such exemption order.

(d) Where any duty is paid provisionally, the time limit should be computed from the date of adjustment of duty after the final assessment thereof.

The time limit of six months or one year would not be applicable if duty is paid under protest as per proviso to section 27(1).Finally, it is worth mentioning that above provisions regarding time limits are mandatory and customs authorities cannot grant a refund which is filed beyond the maximum permissible period.

Question 6

M/s. HIL imports copper concentrate from different suppliers. At the time of import, the seller issues a provisional invoice and the goods are provisionally assessed under section 18 of the Customs Act, 1962 based on the invoice. When the final invoice is raised, based on the price prevalent in the London Metal Exchange on a predetermined date based on the covenant in the contract between the buyer and seller, the assessments are finalized on such invoices. M/s HIL had filed a refund claim arising out of the finalization of the bill of entry by the authorities on 01.10.2010. The Department, however, rejected the refund claim. Discuss whether the action of the department is correct in law?

Answer

Section 18 (dealing with provisional assessment) has been amended w.e.f. 13-07-2006 so as to **incorporate the principle of unjust enrichment in case of refund arising out of finalization of provisional assessment.** In the instant case, since the finalization of the bills of entry has taken place on 01.10.2010 refund claim arising out of the same would be governed by the provisions as are incorporated on 13.07.2006. Therefore in the instant case, the assessee M/s HIL is required to adduce proof that in respect of the bills of entry finalized on 01.1.0.2010 it has not passed on the incidence of such duty to their customers. Accordingly, it the instant case the department has rightly rejected the refund claim of HIL.

CHAPTER 11

DUTY DRAWBACK

Question 1

Write short notes on "prohibition and regulation of drawback" with reference to the provisions of the Customs Act, 1962:

Answer

Section 76 of the Customs Act, 1962 contains the provisions in respect of prohibition and regulation of drawback. The provisions are:

(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 Rs.50.

(b) Without prejudice to the provisions of sub-section (1), if 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.

Question 2

Briefly explain the term 'export' for the purpose of duty drawback under section 75 of the Customs Act, 1962. Is duty drawback available if the goods do not reach the destination?

Answer

As per **rule 2(c)** of the **Customs, Central Excise Duties and Service Tax Drawback Rules, 1995,** '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 (SEZ), and

(iii) loading of provisions or store or equipment for use on board a vessel or aircraft proceeding to a foreign port.

Export is defined as taking out of India to a place out of India and India includes Indian

Territorial Waters. Hence, **export is complete when goods leave territorial waters of India.** Drawback is available once 'export' is complete i.e., the goods cross the territorial waters even if they do not reach the destination or they are destroyed. However, if goods are destroyed in territorial waters of India, drawback will not be available as the export is not complete ***[UOI v. Rajindra Dyeing and Printing Mills (2005) 180 ELT 433(SC)]***.

Question 3

Your client loaded a machine on the vessel for export. He has paid import duty and central excise duty on the components used in the manufacture. The vessel set sail from Mumbai, but runs into trouble and sinks in the Indian territorial waters. The Customs Department refuses to grant duty drawback for the reason that the goods have not reached their destination. Advise your client citing case law, if any.

Answer

Rule 2(a) of the Customs, Central Excise Duties & Service Tax Drawback Rules, 1995 provides that "**drawback"**, in relation to any goods manufactured in India, and exported, **means** the rebate of duty or tax, as the case may be, chargeable on any imported materials or excisable materials used or taxable services used as input services in the manufacture of such goods. **Rule 2(c)** of the said Drawback rules *inter alia* provides that **"export" means** "taking out of India to a place outside India". Section **2(27)** of the Customs Act, 1962 provides that 'India includes the territorial waters of India'.

In case of ***CC v. Sun Industries 1988 (35) ELT (241)*,** the Supreme Court held that the expression "taking out to a place outside India" would also mean a place in high seas, if **that place is beyond territorial waters of India.** Therefore, the goods taken out to the high seas outside territorial waters of India would come within the ambit of expression "taking out to a place outside India".

The emphasis in the aforementioned judgment was on the movement of the goods outside the territorial waters of India. It is then that an export may be said to have been taken place. In the instant case, the vessel sunk within territorial waters of India and therefore, there is no export. Accordingly, no duty drawback shall be available in this case. Similar decision was given by the Supreme Court in the case of ***UOI v. Rajindra Dyeing & Printing Mills Ltd. 2005 (180) ELT 433 (SC).***

Question 4

Explain briefly the provisions regarding drawback allowable on re-export of duty paid goods as such.

Answer

For allowing duty draw back on re-export of duty paid goods, **sub-section (1) of section 74** of the Customs Act, 1962 provides that:

(i) the goods should have been imported into India;

(ii) the import duty should have been paid thereon;

(iii) the goods should be capable of being easily identified as the goods, which were originally imported;

(iv) the goods should have been entered for export either on a shipping bill through sea or air or on a bill of export through land, or as baggage, or through post and the proper officer, after proper examination of the goods and after ensuring that there is no prohibition or restriction on their export, should have permitted clearance of such goods for export;

(v) the goods should have been identified to the satisfaction of the Assistant or Deputy Commissioner of Customs as the goods, which were imported, and

(vi) the goods should have been entered for export **within two years from the date of payment of duty** on the importation thereof.

However, in any particular case, the aforesaid period of two years may, on sufficient cause being shown, be extended by the Board by such further period, as it may deem fit. Once these conditions are satisfied, then 98% of the import duty paid on such goods at the time of importation shall be repaid as drawback.

Question 5

Ascertain whether the exporter is entitled to duty drawback in the following independent cases and if yes, what the quantum of such duty drawback is:

(i) FOB value of goods exported is Rs.50,000. Rate of duty drawback on such export of goods is 1%.

(ii) FOB value of 2,000 kgs goods exported is Rs.2,00,000. Rate of duty drawback on such export is Rs.30 per kg. Market price of goods is Rs.50,000 (in wholesale market)

Answer

(i) As per r**ule 8(1) of the Customs, Central Excise Duties and Service Tax Drawback Rules, 1995,** no amount of drawback shall be allowed if the rate of drawback is less than 1% of the FOB value, except where the amount of drawback per shipment exceeds Rs.500. Further, as per **section 76(1)(c) of the Customs Act,** 1962 drawback is not allowed where the drawback due in respect of any goods is less than Rs.50.

In the given case, since the rate of duty drawback is not less than 1% and drawback due is Rs.500 (1% of FOB value) which is more than Rs.50, duty drawback shall be allowed.

(ii) Section 76(1)(b) of the Customs Act, 1962 *inter alia* provides that no drawback shall be allowed in respect of any goods, the market price of which is less than the amount of drawback due thereon. In this case, the market price of the goods is Rs.50,000, which is less than the amount of duty drawback, i.e. 2,000 kgs x Rs.30 = Rs.60,000. Hence, no drawback shall be allowed.

Question 6

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 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.

Answer

Clause (ii) of second proviso to rule 3 of the Customs and Central Excise Duties Drawback Rules, 1995 *inter alia* 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 the given case, there was no duty incidence on 97% of the inputs of the export product except the duty incidence on remaining 3% of the inputs, which was insignificant. All Industry Rates fixed for particular export products are applicable to all exporters who export the same. However, in a case where there is clear evidence, as in the present one, that the inputs of such export products have not suffered any duty, no drawback can be claimed. Same view was expressed by the Tribunal in the case of ***Rubfila International Ltd. v. CCus. Cochin 2005 (190) ELT 485 (Tri.-Bang.).***

Note: Circular No. 19/2005 Cus. dated 21.03.2005 clarifies that All Industry Rates of Duty Drawback shall be allowed on export goods manufactured partly of non-duty paid inputs. However, in the given case the said Circular shall not apply as almost whole of the inputs have not suffered duty at all.

Question 7

Can the rate of drawback be determined provisionally by the exporter? Briefly explain.

Answer

The exporter may be granted provisional duty drawback when he executes a bond binding himself to repay the entire or excess amount of drawback. Where an **exporter desires that he may be granted drawback provisionally,** he may make an application in writing to the Commissioner of Central Excise or Commissioner of Customs and Central Excise that a provisional amount be granted to him towards drawback on the export of such goods pending determination of the final amount or drawback. The manufacturer may be allowed provisional duty drawback of an amount not exceeding the amount claimed by him in respect of such export.

Question 8

Write short note on" Interest on drawback" with reference to the Customs Act, 1962:

Answer

Interest on drawback

Section 75A of the Customs Act provides for payment of interest on delayed payment of drawback. Where any drawback payable to a claimant under section 74 or 75 is not paid within a period of one month from the date of filing a claim for payment of such drawback, **interest @ 6% p.a.** shall be paid along with the amount of drawback. Such interest shall be paid from the date after the expiry of the said period of one month till the date of payment of such drawback [Section 75A(1)].

Similarly, if the drawback has been paid to a **claimant erroneously**, the claimant is required to repay the amount of drawback within a period of two months from the date of such demand. If he fails to do so, he shall have to **pay interest @ 15% p.a.** along with the amount of drawback. Such interest shall be paid from the date after the expiry of the said period of two months till the date of recovery of such drawback **[Section 75A(2)]**.

Question 9

What is the minimum and maximum rate or amount of duty drawback prescribed under the Customs, Central Excise Duties and Service Tax Drawback Rules, 1995 made under section 75 of the Customs Act, 1962? Explain with a brief note.

Answer

Minimum rate of duty drawback - **Rule 8(1)** of Customs, Central Excise Duties and Service Tax Drawback Rules, 1995 provides that no amount or rate of drawback shall be determined in respect of any goods, the amount or rate of drawback of which would be less than one per cent of the F.O.B. value thereof, except where the amount of drawback per shipment exceeds five hundred rupees.

Maximum rate of duty drawback - **Rule 8A** of Customs, Central Excise Duties and Service Tax Drawback Rules, 1995 provides that the drawback amount or rate shall not exceed one third of the market price of the export product.

CHAPTER 12

PROVISIONS RELATION TO ILLEGAL IMPORT, ILLEGAL EXPORT, CONFISCATION, PENALTY AND ALLIED PROVISIONS

Question 1

Write short note on power to search persons under sections 100 & 101 of the Customs Act 1962.

Answer

Search under section 100 is conducted by the proper officer of the customs, whereas search under section 101 is conducted by the officer of customs empowered by the Commissioner of Customs**.**

A person can be searched under section 100 if the proper officer has reason to believe that any goods liable to confiscation or documents relating thereto are secreted in his possession. However, a person can be searched under section 101 only for **certain specified goods** which are liable to confiscation or documents relating thereto. The specified goods are gold, diamonds, manufactures of gold or diamonds, watches, and any other notified goods.

Section 100 applies to only the persons specified therein e.g. any person in a customs area. However, for search under section 101, there is **no restriction regarding place of such person.**

Question 2

Mr. Vasu, the assessee, was summoned under section 108 of the Customs Act, 1962, to give his statement in an inquiry. He filed the application for anticipatory bail in the District and Sessions Court which was disposed on the ground of being premature. However, he later moved to the High Court, which granted him anticipatory bail with a direction to the authorities that he should not be arrested without giving a seven day's prior notice to him. The Revenue contended that the order passed by the High Court was illegal and erroneous. Explain, with the help of a decided case law, if any, whether the stand taken by the Revenue is sustainable in law?

Answer

The stand taken by the Revenue is valid. A similar issue has been dealt by the Supreme Court in the case of ***Union of India v. Padam Narain Aggarwal 2008 (231) ELT 397,*** wherein the Apex Court has observed that the power to arrest by a Custom Officer under section 104 of the Customs Act, 1962 is statutory in character and cannot be interfered with.

Supreme Court pronounced that the direction to issue 10 days prior notice before arrest even in case of a non-bailable offence could not be said to be legal or in consonance with law owing to **two reasons. Firstly**, the **order** passed by the High Court was a **blanket** one and granted protection to respondents in respect of any non- bailable offence. **Secondly**, it **illegally obstructed, interfered and curtailed the authority** of Custom Officers from exercising statutory power of arresting a person said to have committed a non-bailable offence by imposing a condition of giving 10 days' prior notice, a condition not warranted by law. Hence, the order of the High Court was set aside.

Therefore, in the given case, it can be concluded that the stand taken by the revenue is sustainable in law.

Question 3

Briefly explain the provisions of section 28BA of the Customs Act, 1962 regarding provisional attachment of property pending adjudication.

Answer

Section 28BA of the Customs Act, 1962 provides for **provisional attachment of property** pending adjudication as under:

(1) During the pendency of any proceeding under section 28 or 28B, the proper officer may provisionally attach any property belonging to the person to whom notice is served under section 28(1) or 28(B)(2), as the case may be, in accordance with the rules made under section 142 in this respect.

(2) When proper officer is of the **opinion** that the attachment is necessary for the **purpose of protecting revenue interest,** only then he can do so but before that the permission in writing from the Commissioner of Customs must be obtained.

(3) Such an attachment can be done for a **period of six months** from the date of order of Commissioner of Customs permitting for such an attachment.

(4) The **period may be extended** by Chief Commissioner of Customs for a further period or periods as he may deem fit. The reasons of such an extension shall be recorded in writing. The total period of extension in any case shall not exceed two years.

(5) If an application for settlement of a case is made to the Settlement Commission, period from the date of making the application to the date of an order passed by the Commission under section 127C(1) shall be excluded from the extended period mentioned in point (4) above.

Question 4

Write short note on fine and penalty under Customs Act.

Answer

Section 125 of the Customs Act provides for the power of the customs officer to give an option to the owner of the goods or, where such owner is not known, the person from whose possession or custody the offending goods have been seized to pay **'fine'** in lieu of confiscation of such offending goods. The provisions in this regard are as follows:

(i) The customs officer **may** give an option to pay a fine in lieu of confiscation (Redemption Fine) in case of **prohibited goods**.

(ii) In case of **other goods**, the customs officer **shall** give an option of payment of redemption fine.

(iii) The amount of such fine cannot exceed the market price of the confiscated goods less the duty paid thereon.

(iv) Where any fine in lieu of confiscation of goods is imposed, the owner of goods or the person from whom the goods were seized, shall in addition be liable to pay duty and charges payable in respect of such goods.

The word **'penalty' means punishment under the law, i.e. such punishment as is provided in penal laws.** It also means the sum payable as a punishment for a default. Penalty provisions under the Customs Act are for improper importation/exportation of goods, short-levy or non-levy of duty in certain cases, non accounting for goods and contravention etc. not expressly mentioned.

Question 5

Briefly write a note on whether an exporter who has been held guilty of exporting 'prohibited goods' is entitled to an option to pay fine in lieu of confiscation under section 125 of the Customs Act, 1962.

Answer

As per **section 125** of the Customs Act, 1962, whenever confiscation is ordered, the adjudicating officer ***may*** provide an option to the owner of the goods **to pay redemption fine in lieu of confiscation** if the importation or exportation of goods is prohibited. However, if importation or exportation of goods is not prohibited, the option to pay redemption fine ***shall*** be given to the owner of goods.

Therefore, an exporter guilty of exporting prohibited goods is **not *entitled as such*** to an option to pay fine in lieu of confiscation under section 125 of the Customs Act, 1962. It is at **the discretion of the adjudicating officer** to give or not to give such an option to the exporter guilty of exporting prohibited goods. However, the owner of the goods importing or exporting non-prohibited goods shall be entitled to such an option.

Question 6

Enumerate the penalties in respect of improper exportation of goods under section 114 of the Customs Act.

Answer

Section 114 of the Customs Act, 1962 provides that any person who, in relation to any goods, does or omits to do any act which act or omission would render such goods liable to confiscation under section 113, or abets the doing or omission of such an act, shall be liable:

(i) in the case of goods in respect of which any **prohibition** is in force under this Act or any other law for the time being in force, to a penalty not exceeding the value of the goods or Rs. 5,000 whichever is higher;

(ii) in the case of **dutiable goods, other than prohibited goods,** to a penalty not exceeding the duty sought to be evaded or five thousand rupees, whichever is the greater;

(iii) in the case of **any other goods,** to a penalty not exceeding the value of the goods, as declared by the exporter or the value as determined under this Act, whichever is the greater.

Question 7

When the ship on its arrival from Dubai was searched by the Customs Officers, 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 alongwith Chief Engineer and Chief Officer had inspected the vessel for contraband goods 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 Customs Act.

Answer

Section 115(2) of the Customs Act, 1962 *inter alia* provides that any conveyance used as a means of transport in the smuggling of any goods or in the carriage of any smuggled goods shall be liable to confiscation. However, if the owner of the conveyance proves that the conveyance was so used without the knowledge and connivance of the owner himself, his agent, and the person in charge of the conveyance, the conveyance shall not be liable to confiscation. As per section 2(31)(a) of the Customs Act, in case of a vessel, the master of the vessel is the person-in-charge.

Since, in the problem there is no evidence that the captain of the ship i.e., the master of the vessel had any knowledge about the smuggling of the gold or he had connived in the smuggling of gold, **the ship shall not be liable to be confiscated.**

In a similar situation, the Supreme Court has set aside the order of confiscation of a truck carrying forest produce in contravention of the provisions of the Forest Act as the authorities failed to establish that the owner of the truck had any knowledge about the truck being so used. ***[Forest Conservator v. Sharad Ramachandar Kale 2000 (121) E.L.T. 14 (S.C.)]***

Question 8

State the ingredients in the case of seizure under section 110 of the Customs Act

Answer

The provisions of section 110 dealing with seizure are as follows:

An Officer of Customs can **seize any goods,** if he has **reason to believe** that the same are liable to confiscation, under the Customs Act. However, if the goods are bulky, they can be kept in possession of the owner himself and a notice be served on him that he should not remove or in any way deal with the goods as per proviso to section 110(1) of Customs Act. The proper officer may also seize **any document or things** that may be relevant to any proceedings under the Customs Act. However, the person from whom these documents are seized is entitled to make copies of the same.

The person from whom the goods are seized is **issued a show cause notice**, usually within six months. If the notice is not issued within six months, the seized goods are returned to the person from whom they were seized. However, the Commissioner of Customs, on sufficient cause being shown, can extend the time period for issue of show cause notice, by a further period of six months.

If the seized goods are **perishable or hazardous in nature** or are **prone to depreciate** in value over time or there is constraint in storage space, the Government may notify such goods and the same can be **disposed off** before the conclusion of the proceedings.

Question 9

Briefly discuss, the procedure for confiscation of goods or imposition of penalty under section 124 of the Customs Act, 1962

Answer

Section 124 of the Customs Act, 1962 provides that before confiscating goods or imposing any penalty on any person, a **show cause notice [SCN]** must be issued to the owner of goods giving grounds for confiscation or imposition of penalty and he should be given an opportunity to make representation and being heard. The show cause notice can be issued only with the prior approval of the officer of customs not below the rank of Deputy Commissioner of Customs.

The notice and the representation, at the request of the person concerned, can be oral.

Question 10

When is redemption fine imposed? Whether this fine under section 125 of the Customs Act, once paid, be claimed as refund, in case the importer decides to abandon the goods?

Answer

Section 125 of the Customs Act empowers a Customs Officer adjudging the confiscation to give an option to the owner of the goods or where such owner is not known, the person from whose possession or custody such goods have been seized to pay a fine as the said officer thinks fit, in lieu of confiscation of the imported goods. The provisions in this regard are as follows:

(a) in case of prohibited goods, the proper officer **may** give an option to pay a fine in lieu of confiscation;

(b) in case of other goods, the proper officer **shall** give an option of payment of fine, in lieu of confiscation;

(c) the amount of such fine cannot exceed the market price of the goods confiscated less import duty chargeable (in the case of imported goods) thereon;

(d) the assessee shall also be liable to pay any duty and charges payable in respect of such goods.

The provisions of section 125 give the importer an option to either allow the goods to be confiscated or pay redemption fine in lieu of confiscation. Hence, **the redemption fine becomes liable only in lieu of confiscation.**

However, where the importer has abandoned the goods, the scope for payment of any fine in lieu of confiscation comes to an end. Hence, the redemption fine, if already paid shall be liable to be refunded. The same decision was given by the Madras High Court in the case of ***Purfina Chemicals Pvt. Ltd v CEGAT, Madras (2004) (167) E.L.T. 145 (Mad.).***

Question 11

What is 'redemption fine' in lieu of confiscation? What is the limit for imposing redemption fine under section 125(1) of the Customs Act, 1962?

Answer

Redemption fine in lieu of confiscation:

Section 125 (1) of the Custom Act, 1962 provides that whenever confiscation of goods is ordered, the adjudicating officer **may give** option to the owner of the goods to pay fine in lieu of confiscation, if the **importation or exportation of goods was prohibited** under the Act or any other law for the time being in force.

However, if importation or exportation of goods **was not prohibited,** the option to pay redemption fine **shall** be given to owner of the goods. This is called **'redemption fine'**. After payment of redemption fine, the goods are returned to the owner of goods. Section **125(2)** of the Custom Act makes it clear that where any fine in lieu of confiscation of goods is imposed, the owner of goods or the person from whom the goods were seized, is liable to **pay duty and charges in respect of such goods**, in addition to the fine.

Limit for imposing the redemption fine

As per proviso to section 125(1) of the Customs Act, 1962, redemption fine up to market price of goods less duty chargeable thereon can be imposed. In addition, duty and other charges in respect of such goods are also payable.

Question 12

Write short note on "power to arrest" with reference to the Customs Act

Answer

Power to arrest

Section 104 of the Customs Act, 1962 empowers a proper officer (who is empowered by general or special order of Commissioner of Customs) to arrest any person in India or within Indian customs waters, if the official has **reason to believe that the person is guilty of an offence** punishable under section 135.

Such a person should be informed of the grounds of his arrest and taken to the nearest Magistrate immediately. The Customs Officer is vested with the powers of an Officer-in-charge of a police station for the purpose of releasing any person on bail or otherwise. The offences under this Act shall not be cognizable. An arrest can be made **only as per the provisions of section 46 of the Criminal Procedure Code.**

CHAPTER 13

SETTLEMENT COMMISSION

Question 1

Explain with reference to the Customs Act conditions for filing application to Settlement Commission.

Answer

According to section 127B of the Customs Act 1962, the following conditions are to be fulfilled for filing an application for settlement of cases.

(i) the additional duty accepted is more than Rs 2 lakhs.

(ii) the case is not pending with CESTAT or any Court.

(iii) the application does not relate to goods to which section 123 applies or to goods in relation to which any offence under the Narcotic Drugs and Psychotropic Substances Act, 1985 has been committed.

(iv) the application is not for the interpretation of the classification of the goods under the Customs Tariff Act, 1975

Question 2

Can an application for settlement be withdrawn? If yes, state the time limit for withdrawal of such application?

Answer

Application once made cannot be withdrawn in case of settlement **[Section 127B(4) of the Customs Act, 1962].**

CHAPTER 14

ADVANCE RULING

Question 1

Can an application for advance ruling be withdrawn? If yes, state the time limit for withdrawal of such application?

Answer

Yes, application for advance ruling can be withdrawn within 30 days from the date of application **[Section 28H(4) of the Customs Act, 1962].**

Question 2

Explain the term "joint venture in India' under the explanation to section 28E(c) of the Customs Act, 1962 for the purpose of advance ruling.

Answer

As per Explanation to section **28E(c)** of the Customs Act, 1962 the term **'joint venture in India'** means a venture in which at least one of the participants, partners or equity-holders is non-resident having substantial interest in the joint-venture and exercising joint control over it.

Question 3

Explain briefly if the Authority for Advance Rulings could entertain applications from residents with specific reference to section 28E(c) of the Customs Act, 1962.

Answer

Yes, the Authority for Advance Rulings (AAR) can entertain applications from residents also. Section 28E(c) of the Customs Act, 1962 has been amended by the Finance Act, 2005 so as to include the following within the definition of an applicant:

(i) a joint venture in India, and

(ii) a resident falling within any such class or category of persons as the Central Government may by notification in the Official Gazette specify in this behalf. A Public Sector Company [excepting Government Departments] and Resident importing goods under Project Import Scheme have been notified so far in pursuance of aforementioned power.

For the said purpose, Central Government has specified the following:-

(a) a public sector company

(b) a resident who proposes to import goods claiming for assessment under heading 9801 (items eligible for project import) of the First Schedule to the Customs Tariff Act, 1975

Meaning of public sector company

A public sector company shall have the same meaning as is assigned to it in section 2(36A) of the Income Tax Act, 1961.

Meaning of resident

Resident shall have the same meaning as is assigned to it in section 2(42) of the Income Tax Act, 1961.

Question 4

Briefly discuss the provisions of the Customs Act, 1962 regarding rejection of an application for advance ruling.

Answer

Under section 28-I(2) of the Customs Act, an application for advance ruling may be rejected on the following grounds:

(i) if the question raised is **already pending** before a customs officer, Appellate Tribunal or any Court.

(ii) if the question raised is the same as in a matter **already decided** by the Appellate Tribunal or any Court.

No application shall be rejected without giving an opportunity to the applicant of being heard. On rejection, reasons for such rejection shall be given in the order.

Question 5

What are the provisions made under the Customs Act, 1962, regarding personal hearing and order under advance ruling?

Answer

The provisions regarding personal hearing and order under advance ruling are contained in section 28-I of the Customs Act, 1962. Section 28-I *inter alia* provides that if an application for advance ruling is received, the authority of advance ruling will examine the material submitted by the applicant or obtained by the authority and issue an order either allowing or rejecting the application. However, no application shall be rejected unless an opportunity has been given to the applicant of being heard.

Where an application is allowed, personal hearing can be given before the pronouncement of the advance ruling, if requested by the applicant. Such hearing can be given to the applicant himself or to his duly authorised representative.

Authority then pronounces its advance ruling within ninety days of the receipt of the application. Copy of the order, signed by members of authority and certified in the prescribed manner is sent to the applicant and the Commissioner.

CHAPTER 15

MISCELLANEOUS PROVISIONS

Question 1

Explain briefly the provisions of the Customs Act, 1962 relating to the powers vested in the customs officers to take samples.

Answer

As per the provisions of **section 144** of the Customs Act, the proper officer may, on the entry or clearance of any goods or at any time while such goods are being passed through the customs area, take samples of such goods in the presence of the owner thereof, for:

(a) examination or testing or,

(b) ascertaining the value thereof, or

(c) any other purposes of this Act

Question 2

Explain the provisions of section 146 of the Customs Act, 1962 regarding licensing of customs house agents.

Answer

Since it is practically not feasible for any importer/exporter or his employee to duly comply all the customs formalities, appointment of Customs House Agent (CHA) becomes quite essential. In this background, with a view to ensure that only authorised persons function as CHA, section **146** of the Customs Act 1962 stipulates that no person shall carry on the business as an agent relating to the entry or departure of a conveyance or the import or export of goods at any customs station **unless such person holds a licence granted** in this behalf in accordance with the **regulations** made by Board. Consequently, 'Customs House Agents Licensing Regulations 2004' have been made.

In terms of above Regulations, main duties of CHA are as under:-

1. To transact business personally or through authorised employee.

2. To properly advise concerned clients and exercise due diligence.

3. To discharge duties of CHA with speed and efficiency.

To verify antecedent, correctness of IEC Code, Identity of client, address of client by using reliable, independent, authentic data or information

Question 3

Whether the right of warehouse-keeper to recover the warehousing charges from the sale proceeds of the goods kept therein is superior to the right of the Revenue to recover custom duty? Answer briefly, by referring to section 150(2)(b) of the Customs Act, 1962.

Answer

In the case of ***Associated Container Terminals Ltd. v. Union of India 2008 (226) E.L.T 169,*** Delhi High Court held that as per the words used in section 150(2)(b), the right of warehouse keeper to recover the warehousing charges from the sale proceeds appeared to be superior to the right of the Revenue to recover customs duty. The Court noted the following words used in section 150(2)(b):

"-----------and other charges ,if any, payable in respect of goods sold ,to the carrier, if notice of such charges has been given to the person having custody of the goods".

High Court observed that these words make it clear that it does not pertain to custom duty and refers to the payment of warehousing charges. So, **it takes precedence over recovery of custom duty** which is relatable to section 150(2)(e) of the Customs Act, 1962.

Question 4

Explain with reference to the Customs Act, service of order etc. under section 153 of the Customs Act.

Answer

According to section 153 of the Customs Act 1962, order or decision passed or any summons or notice issued under the Customs Act, shall be served by tendering the order, decision, summons or notice or sending it by registered post to the person for whom it is intended or to his agent. In case if this is not possible, the order, decision, summons or notice shall be affixed on the notice board of the customs house.

Question 5

If any duty demanded or drawback paid is recoverable from a person, what is the procedure envisaged under section 142 of the Customs Act, 1962?

Answer

Section 142 of the Customs Act provides following procedure for recovery of duty demanded or drawback paid:

a. Deducting from any amount payable by any Customs Officer to such person.

b. Detaining and selling goods belonging to such person, which are under control of customs authorities;

c. Issuing a certificate to District Collector in whose district any property of the person is situated or where he carries on business.

d. Distraining and detaining any property belonging to the person and selling the same.

e. Recovering from successor by attaching goods, materials, machinery, plant etc. transferred to successor in trade or business.

f. Enforcing a bond executed under the Act.

CHAPTER 16

INTER-RELATIONSHIP OF ACCOUNTING WITH EXCISE, CUSTOMS AND SERVICE TAX

Question 1

M/s Royal Industries started its production activities on 15th March, 2010. In the month of March, 2010, 1,000 units of raw material were purchased at Rs.150 per unit, paying excise duty @ 8%. 800 units of raw material were consumed in manufacturing process and finished output was sold for Rs.1,40,000 (excluding excise duty @ 8%). For simplification, you may ignore the conversion cost and assume the rates of excise duty to be inclusive of education cess

Pass the Journal entries in the books of the assessee and show the balances in Balance Sheet as on 31.3.2010

Answer

Journal entries in the books of M/s. Royal Industries:-

On the date of purchase	Purchases A/c Dr.	1,50,000	
	CENVAT Credit Receivable A/c Dr.	12,000	
	To Sundry Creditors A/c		1,62,000
	(Purchase of 1,000 units of raw material & CENVAT credit receivable on it)		
At the time of sale	Sundry Debtors A/c Dr.	1,51,200	
	To Sales A/c		1,40,000
	To Excise Duty A/c		11,200
	(Sold goods & excise duty payable on it)		
On payment of duty	Excise Duty A/c Dr.	11,200	
	To CENVAT Credit Receivable A/c		11,200
	(Excise duty paid out of CENVAT credit available)		

Balance sheet as on 31st March, 2010
(Relevant portion of Assets side only)

Current Assets, Loans and Advances		Amount (Rs.)
(A)	Current Assets	
	Inventory of raw material	30,000
(B)	Loans and Advances	
	CENVAT Credit Receivable	800

Note: Other balances are not shown here