VALUATION OF IMPORTED GOODS

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<tr><th>SECTION 14(1)</th><th>SECTION 14(2)</th></tr>
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➢ **Assessable Value of Imported Goods** = *TV of such goods after adjusting **COSTS AND SERVICES*** (As per Rule 10)

➢ **Assessable Value of Exported Goods** = *TV of such goods*

Transaction value (TV) = Price actually paid or payable for the goods
- When ***sold***
- For ***delivery at place of importation*** (in case of import)
- For ***delivery at place of exportation*** (in case of export)
- Where the ***buyer and seller*** of the goods are ***not related***, and
- ***Price is the sole consideration*** for the sale

Subject to such other conditions as given under rules

➢ Such price shall be calculated with reference to the **Rate of Exchange** **(determined by CBEC)** as in force on the date on which
- B/E is presented u/s 46 (not u/s 68), or
- Shipping Bill/Bill of Export is presented u/s 50

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➢ **Assessable value** shall be the **TARIFF VALUE** fixed by **CBEC** for ***any*** *imported goods or export goods*.

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

Rule 3(1) - In general Assessable value of Imported goods **=** TV of such goods *after adjusting **COSTS AND SERVICES*** (As per Rule 10)

However the above value shall not be accepted in the following cases
- If PO has **any doubt as to the truth or accuracy** of Declared Value **(Rule 12)**

> As per **Rule 12** when the PO doubts as to the truth or accuracy of a declared value
> - importers should have a right to provide an explanation, including documents or other evidence to prove that the value declared by them reflects the correct value of the imported goods
> - Thereafter, where PO is not satisfied with the explanations given, importers should have a right to ask PO to communicate to them in writing its reasons for doubting the truth or accuracy of the declared value.
>
> This provision is intended to safeguard the interests of importers, by giving them the right to appeal against the decision to higher authorities and, if necessary, to a tribunal or other independent body, within the customs administration

Rule 3(2)
- When there is **no sale**.
- When there are **restrictions on the disposition or use of the goods** by the buyer. The transaction value need not be accepted if the sales contract imposes some restrictions on the use or disposition of goods **except where**:
  - The restriction is imposed by law (e.g. packaging requirements);
  - The restrictions limit the geographical area in which the goods may be sold (e.g. distribution contract which limits sales to European countries);
  - The restrictions do not affect the value of goods (e.g. the new model imported should not be sold before a particular date)
- When the **sale** or price **is subject to some conditions for which the value cannot be determined** (e.g. the seller establishes the price of the imported goods on condition that the buyer also buys other goods in specified quantities)
- When **part of the proceeds of any subsequent resale, disposal, or use of goods** by the buyer accrues directly/indirectly to the seller **for which the appropriate adjustments could not be made with the provisions of Rule 10**. [See 10(1)(d) also]
- Where the **buyer and seller are related** and if the price is influenced by the relationship. However **if the importer demonstrates that the Declared value closely approximates to one of the following values (ascertained at or about the same time)**
  - TV of Identical Goods / Similar Goods in sales to unrelated buyers
  - Deductive Value (as determined under rule 7)
  - Computed Value (as determined under rule 8)

  In that case Declared Value can be accepted

In applying values used for comparison due account shall be taken of **demonstrated difference** in *commercial levels*, *quantity levels*, *adjustments as per rule 10*

When PO decides to reject the transaction value declared by the importer than the value shall be determined on the basis of following rules SEQUENTIALLY:

Rule 4 - Value of Imported Goods = - **TV of IDENTICAL GOODS** (means value already determined under Rule 3, but not the value which was provisionally assessed u/s 18)
- **Imported** into India
- **At or about the same time** as the goods being valued

Rule 5 - Value of Imported Goods = - **TV of SIMILAR GOODS** (means value already determined under Rule 3, but not the value which was provisionally assessed u/s 18)
- **Imported** into India
- **At or about the same time** as the goods being valued

Other Points Related to RULE 4 and RULE 5

- **Identical goods / Similar Goods** sold at the **SAME COMMERCIAL LEVEL** and in **SUBSTANTIALLY THE SAME QUANTITY** as the goods being value **shall be used**
- If **no sale at same commercial level and same quantity is found** than Identical goods / similar goods **sold at different commercial level** or in different quantity or both shall be used **after necessary adjustments** in respect of commercial level, quantity or both, irrespective of the fact that such adjustments lead to increase or decrease in value.
- Adjustments should be made related to **Costs and Charges referred under Rule 10(2)** which is included in the TV of Identical goods / similar goods due to reason of difference in distance and means of transport. (e.g. Identical goods / Similar goods includes air freight, however goods being valued are transported through vessel)
- If more than one TV of Identical goods / Similar Goods are found, than take the **LOWEST ONE**.

Rule 2(1)(d) – Identical Goods
Rule 2(1)(e) – Similar Goods

IDENTICAL GOODS – Goods **SAME IN ALL RESPECTS** including physical characteristics *except for minor differences in appearance that do not affect the value of goods*.

SIMILAR GOODS - Goods **although not same in all respects**, but have **like characteristics and like component materials** which enable them to be
- Capable of perform same functions and
- commercially interchangeable

In addition, in order to be treated as identical or similar, the goods must have been produced:
– in the **SAME COUNTRY**
– and by the **SAME PRODUCER**
as the goods being valued.
Where, however, no such goods are available, goods produced by a **DIFFERENT PRODUCER** in the **SAME COUNTRY** must be taken into account.

Identical goods / Similar Goods **shall not include** imported goods where engineering, development work, art work, design work, plan or sketch undertaken **in India** [Also See Rule 10(1)(b)]

Now as per Rule 6 if value cannot be determined under rule 3, 4, and 5 than value shall be determined under rule 7 and rule 8 sequentially
However, at the request of the importer and with the approval of the PO, Rule 8 can be used before Rule 7

Rule 7 - Value of Imported goods = **DEDUCTIVE VALUE**

Identical / Similar goods	**7(1)**	**7(2)**	**7(3)**
Sold after Importation into India	Yes	Yes	Yes
Sold to unrelated person	Yes	Yes	Yes
Sold at/about the time of filing Valuation Declaration under Rule 11	Yes	No	Yes
Sold as such	Yes	Yes	No
Assessable Value	S.P. at which Greatest Aggregate Quantity sold Less: 3 Deductions	Sales Transactions after importation but up to 90 days can be considered for calculating S.P. at which Greatest Aggregate Quantity sold Less: 3 Deductions	S.P. at which Greatest Aggregate Quantity sold Less: 3 Deductions Less: Value addition done by further processing

It is recognized that the method of valuation provided for in **Rule 7(3)** would normally not applicable when, as a result of further processing, the imported goods lose their identity.
E.g. If fabric was imported into India and than shirt was manufactured with the help of fabric, in that case Rule 7(3) shall not apply, and valuation shall be done in terms of either **Rule 8 or Rule 9**

3 Deductions:

1. Sales Commission, General Expenses and Selling Profits
2. Transport, Insurance and associated costs incurred within India
3. Customs duties and other taxes payable in India

<u>Rule 8</u> - Value of Imported goods = **COMPUTED VALUE**

COMPUTED VALUE means **SUM** of

- **Cost of Production** - Cost of Materials, Fabrication or other processing employed in producing the goods being valued *(Not Identical Goods / Similar Goods)*
- **Profit and General Expenses** (equivalent to the amount that is 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)
- All other **expenses under Rule 10**

<u>Other Points</u>

- Rule 8 is generally used in case of "related party transactions"
- Cost data of "identical / similar goods" shall not be used in Rule 8. However, if cost data of goods being valued is not available, then the cost data of identical / similar goods can be used under Rule 9

<u>Rule 9</u> - **Residual Method / Best Judgment Method / Fall Back method**

- Where value cannot be determined by any of the methods described above, it can be determined by **using any of the previous methods in a reasonable manner**.

- The value so fixed **should not**, however, exceed the **price at which such/like goods are sold or offered for sale in India at the time at which the goods being valued has arrived at Indian Port**.
  <u>Example:</u> Mr. A has imported 2nd hand Mercedes and declared a value of Rs.50000 only. Proper officer is considering the valuation in terms of Rule 9 (as all other valuation rules have been found inapplicable). Officer can take any reasonable value, however that reasonable value shall not exceed the price at which same/similar 2nd hand Mercedes is offered for sale in India at the time at which the said Mercedes (whose valuation is under consideration) has arrived at the Indian Port.

- Value under this rule shall not be determined on the basis of:
  - S.P. in India of the goods produced in India
  - S.P. of goods on domestic market of the country of exportation (say USA)
  - S.P. of the goods for export to a country other than India
  - Cost of Production of Identical / Similar Goods if that cost of production is not computed as per provisions of Rule 8
    - Therefore, if the Cost of Production of Identical / Similar goods covers all the elements given in Rule 8, than such cost can be considered.
  - A system which provides for the acceptance for custom purposes of the **highest of two alternative values**
  - Minimum Custom Values
  - Arbitrary or fictitious values.

<u>VALUATION OF SECOND HAND MACHINERY (Imp)</u>

<u>TOLIN RUBBERS (P) LTD. [SC]</u>
Prior to this case, it was a settled practice in customs to value "second hand machinery" at depreciated value (computed after allowing standard depreciation rates from the actual cost of the asset) and for that Rule 9 used to be invoked directly, **<u>without referring to any reasons for rejection of "transaction value" as referred in Rule 3</u>**. In this landmark case, the apex court held that the value of imported goods first be determined under Rule 3(1) and its only when that there exists any exceptional circumstances as specified in Rule 3(2) that transaction value shall be rejected and further valuation rules shall be considered for valuation purposes.
<u>Important Observation of SC in the above Decision:</u> *"A long standing practice is no ground to adopt a method of valuation contrary to the specific provisions of the Statute"*

<u>CBEC CIRCULAR</u>
If all conditions of Section 14(1) are satisfied than AV = Declared TV.
However if TV is rejected, than valuation of second hand machinery can be done under Rule 9 on the basis of VALUE OF NEW MACHINERY (as certified by Chartered Engg.), by allowing depreciation commensurate with the period of usage.

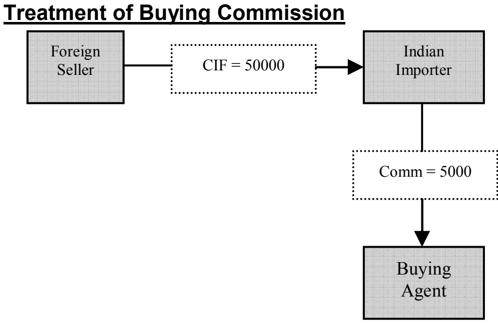
Rule 10 - In order to arrive at the transaction value payment made for the following **COST AND SERVICES** can be added (if not already included) to the price actually paid or payable by the importer for the imported goods:

Rule 10(1)

Rule 10(1)(a) Commissions and Brokerage *(Except Buying Commission)*
Cost of Containers (If goods are to be removed along with container)
Cost of Packing

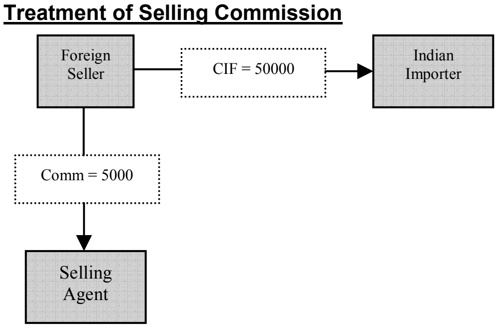
Buying Commission means fees paid by importer to his agent for the service of representing him abroad in the purchase of the goods being valued

Treatment of Buying Commission



A.V. = 50000 + 1% (Landing Charges)

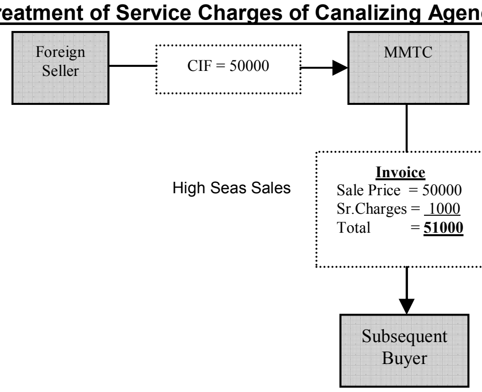
Treatment of Selling Commission



Case A: Seller's price of Rs.50000 covers commission payable by him to his agent
A.V. = 50000 + 1% (Landing Charges)

Case B: Seller Price of Rs.50000 is exclusive of commission to his agent. Under contract, importer is liable to pay Rs.5000 additionally to the selling agent.
A.V. = (50000+5000) + 1% (Landing Charges)

Treatment of Service Charges of Canalizing Agency



A.V. = 51000 + 1% (Landing Charges)

Hyderabad Industries Ltd. (SC)

- Service Charges paid to the MMTC cannot be equated with "buying commission", since MMTC is not acting as an agent of subsequent buyer.
- Thus the services charges paid to MMTC are includible in the assessable value of the imported goods and form part of the sale consideration.

Rule 10(1)(b) Apportioned Value of following goods and services

- Materials, components, parts etc
- Tools, dies, moulds etc.
- Materials consumed
- **Engineering, development, art work, design work, plans and sketches undertaken elsewhere than in India**

Provided these are

- supplied by the buyer whether free of cost or at reduced price
- for use in connection with production and sale

Method of Apportionment – Following are the three methods **as opted for by the importer**

Method 1 – Value might be **apportioned to the first shipment** if the importer so wishes to pay duty on the entire value at one time.

Method 2 – Value might be **apportioned over the number of units produced upto the time of first shipment.**

Method 3 – Value might be **apportioned over the entire anticipated production covered in the contract**

Example: - Value of Mould = Rs.200000
First Shipment on 31.3.2006 = 1000 units
Total number of units produced upto 31.3.2006 = 4000 units
Total no. of units contracted to be imported over a period of 6 months = 10000 units
CIF contracted per unit = Rs.50 p.u.

	Method 1	**Method 2**	**Method 3**
TV of Imported goods (the shipment imported = 1000)	50000	50000	50000
Apportioned value of Moulds (Assist)	200000 [200000 x 1000/1000]	50000 [200000 x 1000/4000]	20000 [200000 x 1000/10000]
AV	**250000 + 1%**	**100000 + 1%**	**70000 + 1%**
	No addition shall be made upon subsequent imports of 9000 units	**Similar addition shall be made upon subsequent imports of 3000 units**	**Similar addition shall be made upon subsequent impost of 9000 units**

Rule 10(1)(c) Royalties and License Fees **related to imported goods**. These shall be payable by the buyer **as a condition for sale of goods.**
Charges for **RIGHT OF REPRODUCTION** shall not be includible

Rule 10(1)(d) Sale Proceeds of any subsequent resale / disposal / use of imported goods **accrue** directly or indirectly **to the seller**
DIVIDEND PAYMENTS by importing company to Exporting company cannot be considered to be "sale proceeds" and hence, **need not to be added.**

Rule 10(1)(e) **All other payments** provided

- Payment made is **condition for sale**
- Payment shall be made either by **buyer to seller** or by **buyer to 3rd person to satisfy an obligation of seller**

Value of imported goods **shall not include the following charges:**

- Cost of transport after importation
- Cost of construction, erection, assembly, maintenance or technical assistance occurring after importation
- Duties and taxes of the importing country.

CBEC Circular
Interest charges on deferred payment shall not be included in the AV if

- charges are clearly distinguished fro the price actually paid/payable for goods
- the financing agreement is in writing
- price has not been influenced on account of interest charges

Rule 10(2) – The value of imported goods shall also include

	Actual Ascertainable	**Actual NOT ascertainable**
Cost of Transport upto the place of importation **(Includes Ship Demurrage Charges and Lighterage or Barge Charges)**	**Actual** [In case of import by AIR – maximum addition shall be restricted to 20% of FOB]	**20% of FOB**
Cost of Insurance	**Actual**	**1.125% of FOB**
Loading, Unloading and Handling Charges at the place of importation	**1% of CIF**	**1% of CIF**

COROMANDAL FERTILIZERS LTD. [SC]
1% covers up all aspects of landing charges

Cost of Transport **from "Port of Entry" to** Inland Container Depot **(ICD)** or Container Freight Station **(CFS) shall not be includible in AV**

Misc. Provisions

RULE 2(2) – RELATED PERSONS
Persons shall be deemed to be "related" only if –

They are - Officers or directors of ***one another's businesses***
- Legally recognized **partners in business**
- **Employer and Employee**
- **Members of the same family**

Both of them - Are **controlled by a third person** (directly/indirectly)
- **control a third person** (directly/indirectly)

One of Them - **controls the other** (directly/indirectly)
[One person shall be deemed to control another when former is **legally or operationally** in a position to exercise direction over the latter]

Any Person - Owns, controls or **holds** (directly/indirectly) **5% or more of shares of both of them**

Explanation: - Persons who are associated in the business of one another in such a way that **one is sole agent or sole distributor** of the other shall be **deemed to be related if they fall within the criteria of this sub-rule**
[**Imp** – **Sole Selling agent / distributor** shall not be treated as "related persons" just on account of their special position. They **shall be treated as "Related Person" only if it can be established that they are falling under any of the criteria as laid down in the definition of Related Persons**]

RULE 11 – VALUATION DECLARATION
Importer or his agent (CHA) is required to furnish valuation declaration and any other statement, information or document as required by PO.

VALUATION OF EXPORTED GOODS

Rule 3(1) - In general Assessable value of Exported goods **= TV of such goods**
However the above value shall not be accepted in the following cases
- If PO has **any doubt as to the truth or accuracy** of Declared Value **(Rule 8)**

> As per **Rule 8** when the PO doubts as to the truth or accuracy of a declared value
> - exporters should have a right to provide an explanation, including documents or other evidence to prove that the value declared by them reflects the correct value of the exported goods
> - Thereafter, where PO is not satisfied with the explanations given, exporters should have a right to ask PO to communicate to them in writing its reasons for doubting the truth or accuracy of the declared value.
>
> This provision is intended to safeguard the interests of exporters, by giving them the right to appeal against the decision to higher authorities and, if necessary, to a tribunal or other independent body, within the customs administration

Rule 3(2) - Where the **buyer and seller are related** and if the price is influenced by the relationship.

When PO decides to reject the transaction value declared by the exporter than the value shall be determined on the basis of following rules SEQUENTIALLY:

Rule 4 - Value of Exported Goods = - **TV of GOODS OF LIKE KIND AND QUALITY**
- **Exported**
- **At or about the same time**
- **to other buyers in the same destination country of importation**
(In absence of same destination country, another destination country can be considered)

Other Points Related to RULE 4
- Adjustments should be made related to
  - Difference in the dates of exportation
  - Difference in Commercial level and quantity level

- Difference in distance and means of transport
- Difference of Insurance Charges
- Difference in design, quality and composition

Rule 2(1)(a) **GOODS OF LIKE KIND AND QUALITY** – Goods **IDENTICAL OR SIMILAR** in physical characteristics, quality and reputation and o Capable of perform same functions and o commercially interchangeable Produced by - **SAME PRODUCER** - **or DIFFERENT PRODUCER**

Rule 5 - Value of Exported goods = **COMPUTED VALUE**

COMPUTED VALUE means **SUM** of

- **Cost of Production. Manufacture or processing**
- **Charges for the design and brand (if any)**
- **Profit**

Rule 6 - **Residual Method**

- Where value cannot be determined by any of the methods described above, it can be determined by **using any of the previous methods in a reasonable manner**.
- However, in any case **sale price in India shall not be taken as assessable value under Rule 6**

Misc. Provisions

RULE 2(2) – RELATED PERSONS – Same as in case of import

RULE 7 – VALUATION DECLARATION

Exporter is required to furnish valuation declaration in the manner specified.