

VALUATION UNDER THE CUSTOMS ACT, 1962

5.1 INTRODUCTION

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

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

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

5.2 CONCEPT OF VALUE

Section 2(41) of the Customs Act, 1962, defines value in relation to any goods as the value thereof determined in accordance with the provisions of sub-section (1) or sub-section (2) of section 14.

Some of the values commonly known to the public are :

- (i) Cost price to the manufacturer: It is the total cost incurred by the manufacturer of an article or product in producing or manufacturing the product.
- (ii) Sale price of the manufacture: It is the price at which the manufacturer is selling the goods to the buyer.
- (iii) There are two sale prices namely
 - (a) a domestic sale price
 - (b) an export price in the course of international trade.
- (iv) In the course of sale, there are two situations namely, wholesale transactions and

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retail trade. Thus we have (a) Whole sale price and (b) retail price

- (v) The sale may be on down right cash basis, or payment on delivery of the goods or the title documents or deferred payment say either on installments or after 30 or 90 days.

These situations give rise to (a) cash price; (b) payment by sight draft; (60 or 90 days draft).

- (vi) There are situations where the manufacturer himself may not be exporting the goods in the course of international trade. This gives rise to the concept of suppliers. As a result we have supplier's price.

- (vii) In the course of international trade, where the buyer is in another country, the seller has often to resort price list or catalogues. This in turn gives rise to list price.

- (viii) There is always a negotiation between the buyer and the seller. The contracted price is arrived at by giving discounts to the list price. Such discounts are given for various considerations. We have therefore terms like

- (i) Trade discount
- (ii) Quantity discount
- (iii) Prompt payment cash discount
- (iv) L/c discount
- (v) Special discount



- (ix) There are situations where the goods are defective, sub – standard or there is a glut of stock and the goods have to be sold at the best price available. This yields disposal price.
- (x) The price may vary from consignment from consignment even though there may not be any underhand dealing in the transaction. Such a price is called transaction value.
- (xi) There may be a clear understanding between the overseas seller and the Indian buyer of the goods. They may have a special relationship, such as, the Indian buyer may be the sole selling agent for the goods of the overseas seller. He may be the sole distributor. He may even be a branch or subsidiary of the seller and the sale may be a stock transfer. In such a situation, the price is known as dealer's price.
- (xii) Lastly, if we have no information of any of the matters relating to the transaction and we have only the commercial invoice used in the transaction, the price is invoice price.

5.3 TERMS USED IN COMMERCIAL PARLANCE

It would be useful to know and understand the terms and contents of documents used in

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the International Trade transactions.

(1) Invoice	This is the basic commercial document showing particulars regarding description of goods - quantity and unit price - discounts and net price - names of consignor and consignee - payment particulars. - Contract or acceptance of order on the basis of which the goods are supplied.
(2) Packing specification	Giving particulars of the contents of each of each of the package in the consignment.
(3) Certificate of Origin	A certificate issued by the competent authority in the country of manufacture giving the extent of the manufacture in that country.
(4) Bill of Lading	A negotiable document given by the carriers of the cargo giving particulars of (a) Port of shipment (b) No. of packages covered by the consignment (c) Marks and numbers on the page (d) Name of the vessel in which the goods have been dispatched (e) Name of the consignee of the goods, (f) whether the freight has been pre-paid or is to be collected at the destination. It is a negotiable document which has to be surrendered to the carrier for getting delivery of the goods.
(5) Air Consignment Note	It is a document corresponding to Bill of Lading, in the case of cargo imported or exported by air.
(6) Indent	It is a document showing the particulars of the consignment for which the buyer has placed an order with the supplier. It normally gives particulars about (i) full description of the goods (ii) unit price (iii) mode of payment (iv) quantity required (v) delivery instructions.
(7) Quotation	It is a document, which indicates the price, the terms and other conditions on which the seller is

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(8) Acceptance	willing to supply goods to the buyer. It refers to the formalisation of the contract of sale between the buyer and the seller. Once the seller of the goods sends his acceptance of the order of the buyer (the indent) the contract is complete. The acceptance will <i>inter alia</i> contain particulars of description of the goods to be supplied, unit price, including discounts and other charges, time and terms of delivery, penal clause for breach of contract, agreed terms of payment.
(9) Letter of Credit	This is an instrument delivered by the bank intimating the seller that the buyer has instructed the bank and the bank will according to these instructions pay the seller of the goods, the bill amount for the supply of the goods on presentation of certain documents evidencing shipment of the goods.
(10) Sight draft	A document evidencing the amount of money paid for the importation.
(11) Delivery Order	An authorisation given by the local agent of the carriers, on surrender of the original negotiable copy of the bill of lading or air consignment note, directing the custodian of the cargo to deliver the consignment to the importer or his agent.
(12) Mate's Receipt	A receipt given by the First mate or First officer or cargo supervisor of the conveyance certifying the total quantity of the consignment received on board the vessel or the aircraft. A bill of lading or air consignment note is issued by the agent of the Carrier Company on surrender of the mate's receipt.
(13) Retirement of documents	The original negotiable copies of the shipment documents like invoice packing specification, certificate of origin.
(14) Non-negotiable documents	Since retirement of the original document takes time, non negotiable documents are given to the

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	importer to facilitate clearance.
(15) Landing charges	The port authorities have to pay for (i) Unloading the cargo from the conveyance; (ii) Light house charges (iii) Forklift, warehouse crane charges if they are used for landing.
(16) Boat/Lighterage Charge	Some times the vessel is unable to get a berth alongside the quay in the harbour. The goods are then transported from the ship to the shore by boats / lighters. The charges paid therefore are called Boat / Lighterage charges.
(17) Custom House Agent	Since the importers / exporters may not be able to devote time and energy to clear imported goods or export goods, and since it involves running about several organisations apart from customs, like Port, Trust, steamer agents, insurance companies, the assistance of agency organisation having adequate technical knowledge and expertise has been provided in the form of custom house agents.
(18) Insurance cover	It is customary to insure all goods in the course of international trade. The general cover relates to risk on account of loss, pilferage, fire, storm etc. However loss of goods on account of seizure of goods due to war, is a separate cover. It is therefore customary to refer to the insurance as marine risk insurance and war risk insurance. The policy and cover of such insurance is a relevant document for valuation.

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5.4 TECHNICAL TERMS RELATING TO VALUE IN THE COURSE OF IMPORT OR EXPORT

(1) Ex-Factory Price	It is the price of the goods as comes out of the factory. It includes cost of production and manufacturer's margin of profit.
(2) F.A.S (Free Alongside)	It is the cost at which the export goods are delivered alongside the ship, ready for shipment. It includes ex-factory +local freight + local taxes.
(3) F.O.B. (Free on Board)	Technically there is not much of a difference between FAS and FOB cost. FOB means the stage at which the goods are placed on board the conveyance carrying the vessel. It can be said to include FAS + loading charges + export duty cess.
(4) C.I.F. (Cost Insurance Freight)	It is the cost at which the goods are delivered at the Indian port. It covers cost of goods. Some times there is referred as CFC also.

5.5 CONCEPT OF INDIRECT TAX AND VALUATION FOR THE SAME

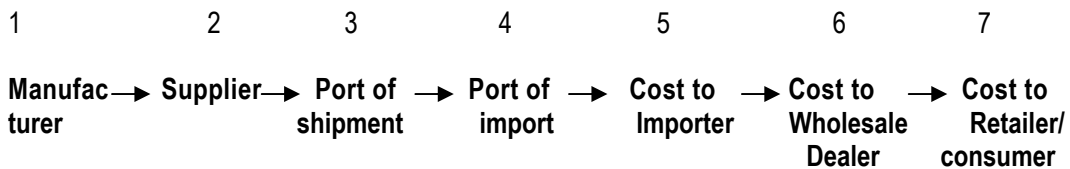
Customs duty is considered to be an indirect tax. It is a tax on the goods and it is not a tax on the person having or owning the goods. The charge of tax attaches to the goods. Unless the tax liability is discharged, the goods are not allowed to proceed further. It becomes therefore necessary for the importer, who desires to take clearance of the goods into town for home consumption, to discharge the duty liability. Similarly in case of baggage the passenger cannot take his goods, unless the duty liability is discharged.

The essence is simple. Like articles in similar situations should attract the same burden. As a corollary it follows that

- (i) There should be uniformity in tax – burden.
- (ii) Since the rate of duty is already fixed for like goods, the value of goods should be uniform for all imports / exports for like good at the same time and place.
- (iii) The value of the goods should be proximate to the point of taxation i.e. in the case of import the value at the point of import is relevant.
- (iv) Variations in the price/agreed in each transaction on account of factors other than in the course of normal international wholesale trade should be adjusted.

5.6 TWO APPROACHES FOR COMPUTING THE ASSESSABLE VALUE

In the course of import, the goods take the following route.



Theoretically the value of the goods at stages (1) (2) (3) (5) (6) (7) is tangible and ascertainable. Furthermore, these values are documented and capable of verification by comparison with corresponding values for such or similar goods. The documents involved in such stages are

- (i) Manufacturer's price list / quotation / sale invoices.
- (ii) Supplier's sale invoices/ market prices
- (iii) Customs approved attested documents showing value adopted for levy of export duty and allied controls.
- (iv) Importer's account books
- (v) Sale invoices issued by importer to the wholesale dealer or the next purchaser. Market trend of the prices of the goods.
- (vi) Sale invoices of wholesale dealers; and trend of prices in the market.

The invoice values normally give GIF or FOB values of the goods. The market value is the wholesale market price at which the importers are regularly selling imported goods. These two are the tangible and readily available data, at the hands of the customs officers to arrive at the "assessable value" a notional deducted value of the goods.

Thus two well accepted approaches have evolved :

- (i) one starting from the actual whole sale market price of the goods in question and giving necessary abatements to adjust the post – importation costs;
- (ii) the second, to take as base, the value given in the invoice and make necessary adjustments for factors influencing the price in individual transactions.

5.7 VALUATION OF GOODS BASED ON SECTION 14

Section 14 of the Customs Act, 1962 prescribes the mode of computing the value of imported or export goods for the purpose of payment of customs duty. Prior to 10.10.2007, the sub-section (1) of old section 14 of the Customs Act, 1962 provided that valuation of goods should be based on the concept of 'deemed value'. However, the Customs Valuation (Determination of Price of Imported Goods) Rules, 1988 provided that the value of the imported goods should

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be based on the concept of transaction value. The Finance Act, 2007 substituted a new section 14 for old section 14 with an aim to rectify this anomaly. New section 14 speaks of transaction value and has become effective from 10.10.2007.

Consequently, the old Customs Valuation (Determination of Imported Goods) Rules, 1988 (relevant for old section 14) have also been replaced by new Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 and Customs Valuation (Determination of Value of Export Goods) Rules, 2007 which are discussed in **points 5.8 and 5.9** below. There are separate rules for valuing imported and export goods under the new dispensation. The provisions of section 14 are discussed below: -

Transaction value

- (i) Sub-section (1) lays down that for the purposes of the Customs Tariff Act, 1975, or any other law for the time being in force, the value of the imported goods and export goods shall be the transaction value of such goods.
- (ii) In case of export goods, the transaction value shall be
 - the price actually paid or payable for the goods
 - when sold for export **from** India
 - for delivery at the time and place of exportation
 - where the buyer and seller of the goods are not related and
 - price is the sole consideration for the sale.

However further conditions may be specified in the rules made in this behalf.

- (iii) In case of imported goods, the transaction value shall be
 - the price actually paid or payable for the goods when sold for export **to** India
 - for delivery at the time and place of importation
 - where the buyer and seller of the goods are not related and
 - price is the sole consideration for the sale.

However, in this case also further conditions may be specified in the rules made in this behalf.

Such transaction value shall also include in addition to the price as aforesaid, any amount paid or payable for costs and services, including:

- commissions and brokerage,
- engineering,
- design work,

- royalties and licence fees,
- costs of transportation to the place of importation,
- insurance
- loading,
- unloading and
- handling charges

to the extent and in manner specified in the rules made in this behalf.

(iv) Such rules may provide for:

- (a) the circumstances in which the buyer and the seller shall be deemed to be related;
- (b) the manner of determination of value in respect of goods when there is no sale, or the buyer and the seller are related, or price is not the sole consideration for the sale or in any other case;
- (c) the manner of acceptance or rejection of value declared by the importer or exporter, as the case may be, where the proper officer has reason to doubt the truth or accuracy of such value, and determination of value for the purposes of this section.

Conversion dates

- (v) For imported goods, the conversion in value shall be done with reference to the rate of exchange prevalent on the date of filing bill of entry under section 46.
- (vi) For export goods, the conversion in value shall be done with reference to the rate of exchange prevalent on the date of filing shipping bill (vessel or aircraft) or bill of export (vehicle) under section 50.

Currency conversion rate

- (vii) The rate of exchange is notified by three agencies- the Central Board of Excise and Customs (Board), the Reserve Bank of India and the Foreign Exchange Dealers' Association of India. For the purpose of customs valuation, "rate of exchange" means the rate of exchange-
 - (i) determined by the Board, or
 - (ii) ascertained in such manner as the Board may direct,for the conversion of Indian currency into foreign currency or foreign currency into Indian currency. Thus, for the purpose of valuation under customs laws, rate notified by CBEC (Board) shall be taken into account.

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The CBEC notifies the rates on a monthly basis applicable from the first day of the month. There are separate rates for imported goods (selling rate) and export goods (buying rate).

- (viii) "Foreign currency" and "Indian currency" have the meanings respectively assigned to them in clause (m) and clause (q) of section 2 of the Foreign Exchange Management Act, 1999.

Tariff value

- (ix) Sub-section (2) provides that the Board may fix tariff values for any class of imported goods or export goods, having regard to the trend of value of such or like goods by notification in the Official Gazette if it is satisfied that it is necessary to do so.
- (x) Where any such tariff values are fixed, the duty shall be chargeable with reference to such tariff value. Provisions of sub-section (2) have an overriding effect on the provisions of sub-section (1).

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

Notification No. 94/2007 Cus. (NT) dated 13.09.2007 has notified Customs Valuation (Determination of Value of Imported Goods) Rules, 2007. They have come into force from 10.10.2007. They apply to imported goods. The rules are given below:

Rule 2 – Definitions : (1) In these rules, unless the context otherwise requires, -

- (a) "computed value" means the value of imported goods determined in accordance with rule 8.
- (b) "deductive value" means the value determined in accordance with rule 7.
- (c) "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.
- (d) "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 affect the value of the goods;
 - (ii) produced in the 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

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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.

- (e) “produced” includes grown, manufactured and mined.
 - (f) “similar goods” means imported goods –
 - (i) 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;
 - (ii) produced in the country in which the goods being valued were produced; and
 - (iii) 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.
 - (g) “transaction value” means the value referred to in sub-section (1) of section 14 of the Customs Act, 1962.
- (2) For the purpose of these rules, persons shall be deemed to be “related” only if –
- (i) they are officers or directors of one another’s businesses;
 - (ii) they are legally recognised partners in business;
 - (iii) they are employer and employee;
 - (iv) any person directly or indirectly owns, controls or holds five per cent or more of the outstanding voting stock or shares of both of them;
 - (v) one of them directly or indirectly controls the other;
 - (vi) both of them are directly or indirectly controlled by a third person;
 - (vii) together they directly or indirectly control a third person; or
 - (viii) they are members of the same family.

Explanation I. – The term “person” also includes legal persons.

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

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Rule 3 – Determination of the method of valuation : (1) Subject to rule 12, the value of imported goods shall be the transaction value adjusted in accordance with provisions of rule 10.

(2) Value of imported goods under sub-rule (1) shall be accepted:

Provided that-

(a) there are no restrictions as to the disposition or use of the goods by the buyer other than restrictions which –

(i) are imposed or required by law or by the public authorities in India; or

(ii) limit the geographical area in which the goods may be resold; or

(iii) do not substantially affect the value of the goods;

(b) the sale or price is not subject to some condition or consideration for which a value cannot be determined in respect of the goods being valued;

(c) no part of the proceeds of any subsequent resale, disposal or use of the goods by the buyer will accrue directly or indirectly to the seller, unless an appropriate adjustment can be made in accordance with the provisions of rule 10 of these rules; and

(d) the buyer and seller are not related, or where the buyer and seller are related, that transaction value is acceptable for customs purposes under the provisions of sub-rule (3) below.

(3) (a) Where the buyer and seller are related, the transaction value shall be accepted provided that the examination of the circumstances of the sale of the imported goods indicate that the relationship did not influence the price.

(b) In a sale between related persons, the transaction value shall be accepted, whenever the importer demonstrates that the declared value of the goods being valued, closely approximates to one of the following values ascertained at or about the same time.

(i) the transaction value of identical goods, or of similar goods, in sales to unrelated buyers in India;

(ii) the deductive value for identical goods or similar goods;

(iii) the computed value for identical goods or similar goods.

Provided that in applying the values used for comparison, due account shall be taken of demonstrated difference in commercial levels, quantity levels, adjustments in accordance with the provisions of rule 10 and cost incurred by the seller in sales in which he and the buyer are not related.

(c) substitute values shall not be established under the provisions of clause (b) of this sub-rule.

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(4) If the value cannot be determined under the provisions of sub-rule (1), the value shall be determined by proceeding sequentially through rule 4 to 9.

Rule 4 – Transaction value of identical goods : (1) (a) 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.

Provided that such transaction value shall not be the value of the goods provisionally assessed under section 18 of the Customs Act, 1962.

(b) In applying this rule, the transaction value of identical goods in a sale at the same commercial level and in substantially the same quantity as the goods being valued shall be used to determine the value of imported goods.

(c) Where no sale referred to in clause (b) of sub-rule (1), is found, the transaction value of identical goods sold at a different commercial level or in different quantities or both, adjusted to take account of the difference attributable to commercial level or to the quantity or both, shall be used, provided that such adjustments shall be made on the basis of demonstrated evidence which clearly establishes the reasonableness and accuracy of the adjustments, whether such adjustment leads to an increase or decrease in the value.

(2) Where the costs and charges referred to in sub-rule (2) of rule 10 of these rules are included in the transaction value of identical goods, an adjustment shall be made, if there are significant differences in such costs and charges between the goods being valued and the identical goods in question arising from differences in distances and means of transport.

(3) In applying this rule, if more than one transaction value of identical goods is found, the lowest such value shall be used to determine the value of imported goods.

Rule 5 – Transaction value of similar goods : (1) Subject to the provisions of rule 3, the value of imported goods shall be the transaction value of similar goods sold for export to India and imported at or about the same time as the goods being valued.

Provided that such transaction value shall not be the value of the goods provisionally assessed under section 18 of the Customs Act, 1962.

(2) The provisions of clauses (b) and (c) of sub-rule (1), sub-rule (2) and sub-rule (3), of rule 4 shall, mutatis mutandis, also apply in respect of similar goods.

Rule 6 – Determination of value where value can not be determined under rules 3, 4 and 5 : If the value of imported goods cannot be determined under the provisions of rules 3, 4 and 5, the value shall be determined under the provisions of rule 7 or, when the value cannot be determined under that rule, under rule 8.

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Provided that at the request of the importer, and with the approval of the proper officer, the order of application of rules 7 and 8 shall be reversed.

Rule 7 – Deductive value : (1) Subject to the provisions of rule 3, if the goods being valued or identical or similar imported goods are sold in India, in the condition as imported at or about the time at which the declaration for determination of value is presented, the value of imported goods shall be based on the unit price at which the imported goods or identical or similar imported goods are sold in the greatest aggregate quantity to persons who are not related to the sellers in India, subject to the following deductions: —

- (i) either the commission usually paid or agreed to be paid or the additions usually made for profits and general expenses in connection with sales in India of imported goods of the same class or kind;
- (ii) the usual costs of transport and insurance and associated costs incurred within India;
- (iii) the customs duties and other taxes payable in India by reason of importation or sale of the goods.

(2) If neither the imported goods nor identical nor similar imported goods are sold at or about the same time of importation of the goods being valued, the value of imported goods shall, subject otherwise to the provisions of sub-rule (1), be based on the unit price at which the imported goods or identical or similar imported goods are sold in India, at the earliest date after importation but before the expiry of ninety days after such importation.

(3) (a) If neither the imported goods nor identical nor similar imported goods are sold in India in the condition as imported, then, the value shall be based on the unit price at which the imported goods, after further processing, are sold in the greatest aggregate quantity to persons who are not related to the seller in India.

(b) In such determination, due allowance shall be made for the value added by processing and the deductions provided for in items (i) to (iii) of sub-rule (1).

Rule 8 – Computed value : 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.

Rule 9 – Residual method : (1) Subject to the provisions of rule 3, where the value of imported goods cannot be determined under the provisions of any of the preceding rules,

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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.

Provided that the value so determined shall not exceed the price at which such or like goods are ordinarily sold or offered for sale for delivery at the time and place of importation in the course of international trade, when the seller or buyer has no interest in the business of other and price is the sole consideration for the sale or offer for sale.

(2) No value shall be determined under the provisions of this rule on the basis of —

- (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 cost of production other than computed values which have been determined for identical or similar goods in accordance with the provisions of rule 8;
- (v) the price of the goods for the export to a country other than India;
- (vi) minimum customs values; or
- (vii) arbitrary or fictitious values.

Rule 10 – Cost and services : (1) In determining the transaction value, there shall be added to the price actually paid or payable for the imported goods:

(a) the following to the extent they are incurred by the buyer but are not included in the price actually paid or payable for the imported goods, namely:-

- (i) commissions and brokerage, except buying commissions;
- (ii) the cost of containers which are treated as being one for customs purposes with the goods in question;
- (iii) the cost of packing whether for labour or materials.

(b) The value, apportioned as appropriate, of the following goods and services where supplied directly or indirectly by the buyer free of charge or at reduced cost for use in connection with the production and sale for export of imported goods, to the extent that such value has not been included in the price actually paid or payable, namely:-

- (i) materials, components, parts and similar items incorporated in the imported goods;
- (ii) tools, dies, moulds and similar items used in the production of the Imported goods;
- (iii) materials consumed in the production of the imported goods;
- (iv) engineering, development, art work, design work, and plans and sketches undertaken elsewhere than in India and necessary for the production of the imported goods.

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- (c) royalties and licence fees related to the imported goods that the buyer is required to pay, directly or indirectly, as a condition of the sale of the goods being valued, to the extent that such royalties and fees are not included in the price actually paid or payable;
- (d) The value of any part of the proceeds of any subsequent resale, disposal or use of the imported goods that accrues, directly or indirectly, to the seller;
- (e) all other payments actually made or to be made as a condition of sale of the imported goods, by the buyer to the seller, or by the buyer to a third party to satisfy an obligation of the seller to the extent that such payments are not included in the price actually paid or payable.

Explanation.- Where the royalty, licence fee or any other payment for a process, whether patented or otherwise, is includible referred to in clauses I and (e), such charges shall be added to the price actually paid or payable for the imported goods, notwithstanding the fact that such goods may be subjected to the said process after importation of such goods.

(2) For the purposes of sub-section (1) of section 14 of the Customs Act, 1962 and these rules, the value of the imported goods shall be the value of such goods, for delivery at the time and place of importation and shall include –

- (a) the cost of transport of the imported goods to the place of importation;
- (b) loading, unloading and handling charges associated with the delivery of the imported goods at the place of importation; and
- (c) the cost of insurance :

Provided that —

- (i) where the cost of transport referred to in clause (a) is not ascertainable, such cost shall be twenty per cent of the free on board value of the goods;
- (ii) the charges referred to in clause (b) shall be one per cent of the free on board value of the goods plus the cost of transport referred to in clause (a) plus the cost of insurance referred to in clause (c);
- (iii) where the cost referred to in clause (c) is not ascertainable, such cost shall be 1.125% of free on board value of the goods;

Provided further that in the case of goods imported by air, where the cost referred to in clause (a) is ascertainable, such cost shall not exceed twenty per cent of free on board value of the goods.

Provided also that where the free on board value of the goods is not ascertainable, the costs referred to in clause (a) shall be twenty per cent of the free on board value of the goods plus cost of insurance for clause (i) above and the cost referred to in clause (c)

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shall be 1.125% of the free on board value of the goods plus cost of transport for clause (iii).

Provided also that in case of goods imported by sea stuffed in a container for clearance at an Inland Container Depot or Container Freight Station, the cost of freight incurred in the movement of container from the port of entry to the Inland Container Depot or Container Freight Station shall not be included in the cost of transport referred to in clause (a).

Explanation.- The cost of transport of the imported goods referred to in clause (a) includes the ship demurrage charges on chartered vessels, lighterage or barge charges.

(3) Additions to the price actually paid or payable shall be made under this rule on the basis of objective and quantifiable data.

(4) No addition shall be made to the price actually paid or payable in determining the value of the imported goods except as provided for in this rule.

Rule 11 – Declaration by the importer : (1) The importer or his agent shall furnish –

(a) a declaration disclosing full and accurate details relating to the value of imported goods; and

(b) any other statement, information or document including an invoice of the manufacturer or producer of the imported goods where the goods are imported from or through a person other than the manufacturer or producer, as considered necessary by the proper officer for determination of the value of imported goods under these rules.

(2) Nothing contained in these rules shall be construed as restricting or calling into question the right of the proper officer of customs to satisfy himself as to the truth or accuracy of any statement, information, document or declaration presented for valuation purposes.

(3) The provisions of the Customs Act, 1962 relating to confiscation, penalty and prosecution shall apply to cases where wrong declaration, information, statement or documents are furnished under these rules.

Rule 12 – Rejection of declared value : (1) When the proper officer has reason to doubt the truth or accuracy of the value declared in relation to any imported goods, he may ask the importer of such goods to furnish further information including documents or other evidence and if, after receiving such further information, or in the absence of a response of such importer, the proper officer still has reasonable doubt about the truth or accuracy of the value so declared, it shall be deemed that the transaction value of such imported goods cannot be determined under the provisions of sub-rule (1) of rule 3.

(2) At the request of an importer, the proper officer, shall intimate the importer in writing the grounds for doubting the truth or accuracy of the value declared in relation to goods

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imported by such importer and provide a reasonable opportunity of being heard, before taking a final decision under sub-rule (1).

Explanation.-(1) For the removal of doubts, it is hereby declared that:-

- (i) This rule by itself does not provide a method for determination of value, it provides a mechanism and procedure for rejection of declared value in cases where there is reasonable doubt that the declared value does not represent the transaction value; where the declared value is rejected, the value shall be determined by proceeding sequentially in accordance with rules 4 to 9.
- (ii) The declared value shall be accepted where the proper officer is satisfied about the truth and accuracy of the declared value after the said enquiry in consultation with the importers.
- (iii) The proper officer shall have the powers to raise doubts on the truth or accuracy of the declared value based on certain reasons which may include –
 - (a) the significantly higher value at which identical or similar goods imported at or about the same time in comparable quantities in a comparable commercial transaction were assessed;
 - (b) the sale involves an abnormal discount or abnormal reduction from the ordinary competitive price;
 - (c) the sale involves special discounts limited to exclusive agents;
 - (d) the misdeclaration of goods in parameters such as description, quality, quantity, country of origin, year of manufacture or production;
 - (e) the non declaration of parameters such as brand, grade, specifications that have relevance to value;
 - (f) the fraudulent or manipulated documents.

Rule 13 – Interpretative notes : The interpretative notes specified in the Schedule to these rules shall apply for the interpretation of these rules.

General Note:

Use of generally accepted accounting principles

1. “Generally accepted accounting principles” refers to the recognized consensus or substantial authoritative support within a country at a particular time as to which economic resources and obligations shall be recorded as assets and liabilities, which changes in assets and liabilities should be recorded, how the assets and liabilities and changes in them should be measured, what information should be disclosed and how it should be disclosed and which financial statements should be prepared. These standards may be broad guidelines of general application as well as detailed practices and procedures.

Notes to rules

Note to rule 2

In rule 2(2)(v), for the purposes of these rules, one person shall be deemed to control another when the former is legally or operationally in a position to exercise restraint or direction over the latter.

Note to rule 3

Price actually paid or payable

The price actually paid or payable is the total payment made or to be made by the buyer to or for the benefit of the seller for the imported goods. The payment need not necessarily take the form of a transfer of money. Payment may be made by way of letters of credit or negotiable instruments. Payment may be made directly or indirectly. An example of an indirect payment would be the settlement by the buyer, whether in whole or in part, of a debt owed by the seller.

Activities undertaken by the buyer on his own account, other than those for which an adjustment is provided in rule 10, are not considered to be an indirect payment to the seller, even though they might be regarded as of benefit to the seller. The costs of such activities shall not, therefore, be added to the price actually paid or payable in determining the value of imported goods.

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

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

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

Rule 3(2)(a) (iii)

Among restrictions which would not render a price actually paid or payable unacceptable are restrictions which do not substantially affect the value of the goods. An example of such restrictions would be the case where a seller requires a buyer of automobiles not to sell or exhibit them prior to a fixed date which represents the beginning of a model year.

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Rule 3(2)(b)

If the sale or price is subject to some condition or consideration for which a value cannot be determined with respect to the goods being valued, the transaction value shall not be acceptable for customs purposes. Some examples of this include-

- (a) The seller establishes the price of the imported goods on condition that the buyer will also buy other goods in specified quantities;
- (b) the price of the imported goods is dependent upon the price or prices at which the buyer of the imported goods sells other goods to the seller of the imported goods;
- (c) the price is established on the basis of a form of payment extraneous to the imported goods, such as where the imported goods are semifinished goods which have been provided by the seller on condition that he will receive a specified quantity of the finished goods.

However, conditions or considerations relating to the production or marketing of the imported goods shall not result in rejection of the transaction value. For example, the fact that the buyer furnishes the seller with engineering and plans undertaken in India shall not result in rejection of the transaction value for the purposes of rule 3. Likewise, if the buyer undertakes on his own account, even though by agreement with the seller, activities relating to the marketing of the imported goods, the value of these activities is not part of the value of imported goods nor shall such activities result in rejection of the transaction value.

Rule 3(3)

1. Rule 3(3)(a) and rule 3(3)(b) provide different means of establishing the acceptability of a transaction value.
2. Rule 3(3)(a) provides that where the buyer and the seller are related, the circumstances surrounding the sale shall be examined and the transaction value shall be accepted as the value of imported goods provided that the relationship did not influence the price. It is not intended that there should be an examination of the circumstances in all cases where the buyer and the seller are related. Such examination will only be required where there are doubts about the acceptability of the price. Where the proper officer of customs has no doubts about the acceptability of the price, it should be accepted without requesting further information from the importer. For example, the proper officer of customs may have previously examined the relationship, or he may already have detailed information concerning the buyer and the seller, and may already be satisfied from such examination or information that the relationship did not influence the price.
3. Where the proper officer of customs is unable to accept the transaction value without further inquiry, he should give the importer an opportunity to supply such further detailed information as may be necessary to enable him to examine the circumstances surrounding

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the sale. In this context, the proper officer of customs should be prepared to examine relevant aspects of the transaction, including the way in which the buyer and seller organize their commercial relations and the way in which the price in question was arrived at, in order to determine whether the relationship influenced the price. Where it can be shown that the buyer and seller, although related under the provisions of rule 2(2), buy from and sell to each other as if they were not related, this would demonstrate that the price had not been influenced by the relationship. As an example of this, if the price had been settled in a manner consistent with the normal pricing practices of the industry in question or with the way the seller settles prices for sales to buyers who are not related to him, this would demonstrate that the price had not been influenced by the relationship. As a further example, where it is shown that the price is adequate to ensure recovery of all costs plus a profit which is representative of the firm's overall profit realized over a representative period of time (e.g. on an annual basis) in sales of goods of the same class or kind, this would demonstrate that the price had not been influenced.

4. Rule 3(3)(b) provides an opportunity for the importer to demonstrate that the transaction value closely approximates to a "test" value previously accepted by the proper officer of customs and is therefore acceptable under the provisions of rule 3. Where a test under rule 3(3)(b) is met, it is not necessary to examine the question of influence under rule 3(3)(a). If the proper officer of customs has already sufficient information to be satisfied, without further detailed inquiries, that one of the tests provided in rule 3(3)(b) has been met, there is no reason for him to require the importer to demonstrate that the test can be met. In rule 3(3)(b) the term "unrelated buyers" means buyers who are not related to the seller in any particular case.

Rule 3(3)(b)

A number of factors must be taken into consideration in determining whether one value "closely approximates" to another value. These factors include the nature of the imported goods, the nature of the industry itself, the season in which the goods are imported, and whether the difference in values is commercially significant. Since these factors may vary from case to case, it would be impossible to apply a uniform standard such as a fixed percentage, in each case. For example, a small difference in value in a case involving one type of goods could be unacceptable while a large difference in a case involving another type of goods might be acceptable in determining whether the transaction value closely approximates to the "test" values set forth in rule 3(3)(b).

Notes to rule 4

1. In applying rule 4, the proper officer of customs shall, wherever possible, use a sale of identical goods at the same commercial level and in substantially the same quantities as the goods being valued. Where no such sale is found, a sale of identical goods that takes place under any one of the following three conditions may be used:

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- (a) a sale at the same commercial level but in different quantities; or
 - (b) a sale at a different commercial level but in substantially the same quantities; or
 - (c) a sale at a different commercial level and in different quantities.
2. Having found a sale under any one of these three conditions adjustments will then be made, as the case may be, for:
- (a) quantity factors only;
 - (b) commercial level factors only; or
 - (c) both commercial level and quantity factors.
3. For the purposes of rule 4, the transaction value of identical imported goods means a value, adjusted as provided for in rule 4(1)(b) and (c) and rule 4(2) which has already been accepted under rule 3.
4. A condition for adjustment because of different commercial levels or different quantities is that such adjustment, whether it leads to an increase or a decrease in the value, be made only on the basis of demonstrated evidence that clearly establishes the reasonableness and accuracy of the adjustment, e.g. valid price lists containing prices referring to different levels or different quantities. As an example of this, if the imported goods being valued consist of a shipment of 10 units and the only identical imported goods for which a transaction value exists involved a sale of 500 units, and it is recognized that the seller grants quantity discounts, the required adjustment may be accomplished by resorting to the seller's price list and using that price applicable to a sale of 10 units. This does not require that a sale had to have been made in quantities of 10 as long as the price list has been established as being bona fide through sales at other quantities. In the absence of such an objective measure, however, the determination of a value under the provisions of rule 4 is not appropriate.

Note to rule 5

1. In applying rule 5, the proper officer of customs shall, wherever possible, use a sale of similar goods at the same commercial level and in substantially the same quantities as the goods being valued. For the purpose of rule 5, the transaction value of similar imported goods means the value of imported goods, adjusted as provided for in rule 5(2) which has already been accepted under rule 3.
2. All other provisions contained in note to rule 4 shall mutatis mutandis also apply in respect of similar goods.

Note to rule 7

1. The term "unit/price at which goods are sold in the greatest aggregate quantity" means the price at which the greatest number of units is sold in sales to persons who are

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not related to the persons from whom they buy such goods at the first commercial level after importation at which such sales take place.

2. As an example of this, goods are sold from a price list which grants favourable unit prices for purchases made in larger quantities.

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

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

3. As another example of this, two sales occur. In the first sale 500 units are sold at a price of 95 currency units each. In the second sale 400 units are sold at a price of 90 currency units each. In this example, the greatest number of units sold at a particular price is 500, therefore, the unit price in the greatest aggregate quantity is 95.

4. A third example would be the following situation where various quantities are sold at various prices.

(a) Sales

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

(b) Totals

Total quantity sold	Unit price
65	90

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50	95
60	100
25	105

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

5. Any sale in India, as described in paragraph 1 above to a person who supplies directly or indirectly free of charge or at reduced cost for use in connection with the production and sale for export of the imported goods any of the elements specified in rule 10(l)(b), should not be taken into account in establishing the unit price for the purposes of rule 7.

6. It should be noted that “profit and general expenses” referred to in rule 7(1) should be taken as a whole. The figure for the purposes of this deduction should be determined on the basis of information supplied by or on behalf of the importer unless his figures are inconsistent with those obtaining in sales in India, of imported goods of the same class or kind. Where the importer’s figures are inconsistent with such figures, the amount for profit and general expenses may be based upon relevant information other than that supplied by or on behalf of the importer.

7. The “general expenses” include the direct and indirect costs of marketing the goods in question.

8. Local taxes payable by reason of the sale of the goods for which a deduction is not made under the provisions of rule 7(1)(iii) shall be deducted under the provisions of rule 7(1)(i).

9. In determining either the commissions or the usual profits and general expenses under the provisions of rule 7(1), the question whether certain goods are “of the same class or kind” as other goods must be determined on a case-by-case basis by reference to the circumstances involved. Sales in India, of the narrowest group or range of imported goods of the same class or kind, which includes the goods being valued, for which the necessary information can be provided, should be examined. For the purposes of rule 7 goods of the same class or kind” includes goods imported from the same country as the goods being valued as well as goods imported from other countries.

10. For the purposes of rule 7(2) the “earliest date” shall be the date by which sales of the imported goods or of identical or similar imported, goods are made in sufficient quantity to establish the unit price.

11. Where the method in rule 7(3) is used, deductions made for the value added by further processing shall be based on objective and quantifiable data relating to the cost of

such work. Accepted industry formulas, recipes, methods of construction, and other industry practices would form the basis of the calculations.

12. It is recognized that the method of valuation provided for in rule 7(3) would normally not be applicable when, as a result of the further processing, the imported goods lose their identity. However there can be instances where, although the identity of the imported goods is lost, the value added by the processing can be determined accurately without unreasonable difficulty. On the other hand, there can also be instances where the imported goods maintain their identity but form such a minor element in the goods sold in the country of importation that the use of this valuation method would be unjustified. In view of the above, each situation of this type must be considered on a case-by-case basis.

Note to rule 8

1. As a general rule, value of imported goods is determined under these rules on the basis of information readily available in India. In order to determine a computed value, however, it may be necessary to examine the costs of producing the goods being valued and other information which has to be obtained from outside India. Furthermore, in most cases, the producer of the goods will be outside the jurisdiction of the proper officer. The use of the computed value method will generally be limited to those cases where the buyer and seller are related, and the producer is prepared to supply to the proper officer the necessary costings and to provide facilities for any subsequent verification which may be necessary.

2. The “cost or value” referred to in clause (a) of rule 8 is to be determined on the basis of information relating to the production of the goods being valued supplied by or on behalf of the producer. It is to be based upon the commercial accounts of the producer, provided that such accounts are consistent with the generally accepted accounting principles applied in the country where the goods are produced.

3. The “cost or value” shall include the cost of elements specified in clauses (1)(a)(ii) and (1)(a)(iii) of rule 10. It shall also include the value, apportioned as appropriate under the provisions of the relevant note to rule 10, of any element specified in rule 10(l)(b) which has been supplied directly or indirectly by the buyer for use in connection with the production of the imported goods. The value of the elements specified in rule 10(l)(b)(iv) which are undertaken in India shall be included only to the extent that such elements are charged to the producer. It is to be understood that no cost or value of the elements referred to in this paragraph shall be counted twice in determining the computed value.

4. The “amount for profit and general expenses” referred to in clause(b) of rule 8 is to be determined on the basis of information supplied by or on behalf of the producer unless the producer’s figures are inconsistent with those usually reflected in sales of goods of the

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same class or kind as the goods being valued which are made by producers in the country of exportation for export to India.

5. It should be noted in this context that the “amount for profit and general expenses” has to be taken as a whole. It follows that if, in any particular case, producer’s profit figure is low and his general expenses are high, the producer’s profit and general expenses taken together may nevertheless be consistent with that usually reflected in sales of goods of the same class or kind. Such a situation might occur, for example, if a product were being launched in India and the producer accepted a nil or low profit to offset high general expenses associated with the launch. Where the producer can demonstrate a low profit on his sales of the imported goods because of particular commercial circumstances, his actual profit figures should be taken into account provided that he has valid commercial reasons to justify them and his pricing policy reflects usual pricing policies in the branch of industry concerned. Such a situation might occur for example, where producers have been forced to lower prices temporarily because of an unforeseeable drop in demand, or where they sell goods to complement a range of goods being produced in India and accept a low profit to maintain competitiveness. Where the producer’s own figures for profit and general expenses are not consistent with those 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, the amount for profit and general expenses may be based upon relevant information other than that supplied by or on behalf of the producer of the goods.

6. The “general expenses” referred to in clause (b) of rule 8 covers the direct and indirect costs of producing and selling the goods for export which are not included under clause (a) of rule 8.

7. Whether certain goods are “of the same class or kind” as other goods must be determined on a case-by-case basis with reference to the circumstances involved. In determining the usual profits and general expenses under the provisions of rule 8, sales for export to India of the narrowest group or range of goods, which includes the goods being valued, for which the necessary information can be provided, should be examined. For the purposes of rule 8 “goods of the same class or kind” must be from the same country as the goods being valued.

Note to rule 9

1. Value of imported goods determined under the provisions of rule 9 should to the greatest extent possible, be based on previously determined customs values.

2. The methods of valuation to be employed under rule 9 may be those laid down in rules 3 to 8, inclusive, but a reasonable flexibility in the application of such methods would be in conformity with the aims and provisions of rule 9.

3. Some examples of reasonable flexibility are as follows:

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(a) Identical goods. – The requirement that the identical goods should be imported at or about the same time as the goods being valued could be flexibly interpreted; identical imported goods produced in a country other than the country of exportation of the goods being valued could be the basis for customs valuation; customs values of identical imported goods already determined under the provisions of rules 7 and 8 could be used.

(b) Similar goods. – The requirement that the similar goods should be imported at or about the same time as the goods being valued could be flexibly interpreted; similar imported goods produced in a country other than the country of exportation of the goods being valued could be the basis for customs valuation; customs values of similar imported goods already determined under the provisions of rules 7 and 8 could be used.

(c) Deductive method. – The requirement that the goods shall have been sold in the “condition as imported” in rule 7(1) could be flexibly interpreted; the ninety days requirement could be administered flexibly.

Note to rule 10

In rule 10(I)(a)(i), the term “buying commissions” means fees paid by an importer to his agent for the service of representing him abroad in the purchase of the goods being valued.

Rule 10(1)(b)(ii)

1. There are two factors involved in the apportionment of the elements specified in rule 10(I)(b)(ii) to the imported goods – the value of the element itself and the way in which that value is to be apportioned to the imported goods. The apportionment of these elements should be made in a reasonable manner appropriate to the circumstances and in accordance with generally accepted accounting principles.

2. Concerning the value of the element, if the importer acquires the element from a seller not related to him at a given cost, the value of the element is that cost. If the element was produced by the importer or by a person related to him, its value would be the cost of producing it. If the element had been previously used by the importer, regardless of whether it had been acquired or produced by such importer, the original cost of acquisition or production would have to be adjusted downward to reflect its use in order to arrive at the value of the element.

3. Once a value has been determined for the element it is necessary to apportion that value to the imported goods. Various possibilities exist. For example, the value might be apportioned to the first shipment if the importer wishes to pay duty on the entire value at one time. As another example, the importer may request that the value be apportioned over the number of units produced up to the time of the first shipment. As a further example, he may request that the value be apportioned over the entire anticipated

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production where contracts or firm commitments exist for that production. The method of apportionment used will depend upon the documentation provided by the importer.

4. As an illustration of the above, an importer provides the producer with a mould to be used in the production of the imported goods and contracts with him to buy 10000 units. By the time of arrival of the first shipment of 1000 units, the producer has already produced 4,000 units. The importer may request the proper officer of customs to apportion the value of the mould over 1,000 units, 4,000 units or 10,000 units.

Rule 10(1)(b)(iv)

1. Additions for the elements specified in rule 10(l)(b)(iv) should be based on objective and quantifiable data. In order to minimize the burden for both the importer and proper officer of customs in determining the values to be added, data readily available in the buyer's commercial record system should be used in so far as possible.

2. For those elements supplied by the buyer which were purchased or leased by the buyer, the addition would be the cost of the purchase or the lease. No addition shall be made for those elements available in the public domain, other than the cost of obtaining copies of them.

3. The case with which it may be possible to calculate the values to be added will depend on a particular firm's structure and management practice, as well as its accounting methods.

4. For example, it is possible that a firm which imports a variety of products from several countries maintains the records of its design centre outside the country of importation in such a way as to show accurately the costs attributable to a given product. In such cases, a direct adjustment may appropriately be made under the provisions of rule 10.

5. In another case, a firm may carry the cost of the design centre outside the country of importation as a general overhead expense without allocation to specific products. In this instance, an appropriate adjustment could be made under the provisions of rule 10 with respect to the imported goods by apportioning total design centre costs over total production benefiting from the design centre and adding such apportioned cost on a unit basis to imports.

6. Variations in the above circumstances will, of course, require different factors to be considered in determining the proper method of allocation.

7. In cases where the production of the element in question involves a number of countries and over a period of time, the adjustment should be limited to the value actually added to that element outside the country of importation.

Rule 10(1)I

1. The royalties and licence fees referred to in rule 10(1)I may include among other things, payments in respect to patents, trademarks and copyrights. However, the charges for the right to reproduce the imported goods in the country of importation shall not be added to the price actually paid or payable for the imported goods in determining the customs value.

2. Payments made by the buyer for the right to distribute or resell the imported goods shall not be added to the price actually paid or payable for the imported goods if such payments are not a condition of the sale for export to the country of importation of the imported goods.

Rule 10(3)

Where objective and quantifiable data do not exist with regard to the additions required to be made under the provisions of rule 10, the transaction value cannot be determined under the provisions of rule 3. As an illustration of this, a royalty is paid on the basis of the price in a sale in the importing country of a litre of a particular product that was imported by the kilogram and made up into a solution after importation. If the royalty is based partially on the imported goods and partially on other factors, which have nothing to do with the imported goods (such as when the imported goods are mixed with domestic ingredients and are no longer separately identifiable, or when the royalty cannot be distinguished from special financial arrangements between the buyer and the seller), it would be inappropriate to attempt to make an addition for the royalty. However, if the amount of this royalty is based only on the imported goods and can be readily quantified, an addition to the price actually paid or payable can be made.

Circular No. 38/2007 Cus. dated 09.10.2007 has been issued to clarify the major changes in the new Import Valuation Rules i.e., Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 notified vide *Notification No 94/2007-Cus (NT) dated 13-9-2007*.

The clarifications are given below for proper application of the Valuation Rules, i.e., Customs Valuation (Determination of Value of Imported Goods) Rules, 2007:-

- (i) Transaction Value has been defined to mean the value referred to in sub-section (1) of section 14 of the Customs Act, 1962.
- (ii) A 'proviso' has been added to Rules 4(1)(a) and 5(1) concerning identical goods and similar goods respectively, to the effect that the value of the goods provisionally assessed under Section 18 of the Customs Act, 1962, shall not be the basis for determining the value of any other goods.
- (iii) In the residual method of Valuation, which has been renumbered as Rule 9 (erstwhile Rule 8), a proviso has been added with a view to keeping Rule 9 in line with Article 7

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of the WTO Valuation Agreement which corresponds to the said Rules and refers to the provisions of Article VII of the GATT.

- (iv) An 'Explanation' has been added to Rule 10(1) [erstwhile Rule 9(1)] to clarify that the royalty, licence fee or any other payment for using a process, when they are otherwise includible in terms of clause I or (e) of Rule 10(1), 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. At times, royalty, license fee or any other payment for a process to be paid by the importer may be linked to post-importation activity like running of the machine/ plant, when the process is put to use. This Explanation has been added in the context of the Supreme Court judgement in the case of J.K. Corporation Ltd. v. Commissioner of Customs (Port) Kolkata 2007 (208) ELT 485 (SC) so as to clarify that such royalty, license fee, etc., if otherwise includible in terms of clauses I or (e) of Rule 10, will be includible in the value of the goods irrespective of the fact that such royalty, licence fee, etc., relates to a process which is made operational during the running of the machines, i.e., after importation of the goods.
- (v) An 'Explanation' has been added to Rule 10(2) clarifying that the cost of transport of the imported goods includes ship demurrage charges on chartered vessels, lighterage charges or barge charges. This Explanation is to take care of cases of imports by time chartered vessels or bulk carriers discharging goods on high seas needing additional expenditure for delivery of the goods at the "Place of Importation" mentioned in Rule 10(2)(a). The 'place of importation', as observed by the Supreme Court in the case of Garden Silk Mills Ltd Versus Union of India 1993 (113) E.L.T. 358 (S.C) means the place where the imported goods reach the landmass of India in the Customs area of the port, airport or land customs station, or if they are consumed before reaching the landmass of India, the place of consumption. Therefore, in cases where ship demurrage charges are paid by the importer for detention of the ship in the harbour before touching the landmass at the docks or at the place of consumption, these charges would be includible in the cost of transportation. Similarly, in cases where the big mother vessels cannot enter the harbour for any reason and goods are brought to the docks by smaller vessels like barges, small boats, etc., the cost incurred by the importer for bringing the goods to the landmass or place of consumption, such as lighterage charges, barge charges will also be included in the cost of transportation.
- (vi) An 'Explanation' has been added to Rule 12 (erstwhile Rule 10A), which relates to rejection of declared value, to bring more clarity and objectivity in exercising the authority for rejection of declared value. The Explanation clarifies that this rule as such does not provide a method for determination of value, and that it merely provides a mechanism and procedure for rejection of declared value in certain cases.

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It also clarifies that where the proper officer is satisfied after consultation with the importer, the declared value shall be accepted. This Explanation also gives certain illustrative reasons which could form the basis for having doubt about the truth or accuracy of the declared value.

5.8.1 Judicial decisions on valuation of imported goods

These decisions were pronounced in the context of old section 14 and old Customs Valuation (Determination of Price of Imported Goods) Rules, 1988. However, they hold good under new section 14 and new Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 as well.

◆ General

Particulars	Citation
1. Before resorting to valuation under residuary Rule 8 (new rule 9), applicability of other rules will have to be exhausted.	<i>Polyvinyl Industrial Corporation vs CC 1994 (74) ELT 426.</i>

◆ Transaction Value (Rule 3)

Particulars	Citation
1. Rule 4 (new rule 3) of the Valuation Rules talks of "the transaction value" and therefore unless that is unacceptable for the reasons set out in section 14, it has to be accepted.	<i>Eicher Tractors Ltd vs CC 2000 (122) ELT 21 (SC).</i>
2. The best evidence of price of imported goods is the manufacturer's invoice.	<i>CC vs Nippon Bearings P.Ltd 1996 (82) ELT 3 (SC).</i> <i>Sai Impex vs CC 1992 (62) ELT 616.</i>
3. Holding subsidiary relationship may not be relevant if transaction value for contemporaneous import of identical goods is the same.	<i>Siemens Ltd vs CC 2000 (126) ELT 1134 (T).</i>
4. Transaction value cannot be rejected based on price list only.	<i>Eicher Tractors Ltd vs CC 2000 (122) ELT 321 (SC).</i>

◆ Transaction value of identical goods (Rule 4)

Particulars	Citation
1. Comparison of goods must be of identical goods at same commercial levels.	<i>Sandip Agarwal vs CC 1992 (62) ELT 528 (Cal).</i>

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2. Branded and unbranded goods could be compared. Comparison of goods from different countries of origin possible only if there is proximate linkage.	<i>CC vs Shibani Engineering Systems</i> 1996 (86) ELT 453 (SC)
3. Where the importer has adduced evidence, department should produce contemporaneous import values at higher prices to discard transaction value.	<i>CC vs Nippon Bearings Ltd.</i> 1996 (82) ELT 3 (SC).
4. Price list is not conclusive as evidence of contemporaneous imports. Discounts beyond the price list can be given.	<i>Eicher Tractors Ltd vs CC</i> 2000 (122) ELT 321 (SC).
5. For ascertaining contemporaneous imports, date of import is relevant and not the date of contract.	<i>Rajkumar Knitting Mills P.Ltd. vs CC</i> 1998 (98) ELT 292 (SC).

◆ Transaction value of similar goods (Rule 5)

Particulars	Citation
1. The word "similar" is more expansive than the word "same". Plywood or veneer panels are similar to laminated wood.	<i>CCE vs Wood Craft Products Ltd</i> 1995 (77) ELT 23 (SC).
2. Enhancing the value of goods imported from Japan on the basis of supplies from France not acceptable. Comparing a quantity of 4986 kgs imported with another import of 360 kgs is not correct.	<i>Nitisoya Diamond Tools vs CC</i> 1994 (74) ELT 49 (T).

◆ Costs and Services (Rule 10)

Particulars	Citation
1. Customs department can add landing charges at actuals or as percentage. But once percentage is used, no further sum can be added in that component.	<i>Coromandal Fertilisers Ltd vs CC</i> 2000 (115) ELT 7 (SC).
2. Separate agreements do not make for	<i>Andhra Petrochemicals vs CC</i> 1997

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separate transactions. Charges paid for design of equipment through separate agreement to be added to value of equipment.	(90) ELT 275 (SC).
3. Cost of dismantling, process licences, consultancy and technical services rendered abroad to make it ready for import into India includible.	CC vs Essar Gujarat Ltd 1996(88) ELT 609 (SC). Bombay Dyeing Co.Ltd vs CC 1997 (90) ELT 276.
4. Cost of product when shown as licence fee – value not deductible. In this case, SBI imported a software worth USD 4084475 and contended that the actual value was USD 401,047 while the balance USD 3683438 represented licence for using the software at multiple locations. The Tribunal held that since SBI paid nothing to the supplier as licence fee for reproduction of software, the entire value was the product value. This decision was affirmed by the Supreme Court.	SBI vs CC 2000 (115) ELT 597 (SC).

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

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

Rule 2 – Definitions : (1) In these rules, unless the context otherwise requires, -

- (a) “goods of like kind and quality” means export goods which are identical or similar in physical characteristics, quality and reputation as the goods being valued, and perform the same functions or are commercially interchangeable with the goods being valued, produced by the same person or a different person; and
- (b) “transaction value” means the value of export goods within the meaning of sub-section (1) of section 14 of the Customs Act, 1962 (52 of 1962).
- (2) For the purposes of these rules, persons shall be deemed to be "related" only if –
 - (i) they are officers or directors of one another's businesses;
 - (ii) they are legally recognised partners in business;
 - (iii) they are employer and employee;

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- (iv) any person directly or indirectly owns, controls or holds five per cent or more of the outstanding voting stock or shares of both of them;
- (v) one of them directly or indirectly controls the other;
- (vi) both of them are directly or indirectly controlled by a third person;
- (vii) together they directly or indirectly control a third person; or
- (viii) they are members of the same family.

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

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

Rule 3 - Determination of the method of valuation : (1) Subject to rule 8, the value of export goods shall be the transaction value.

(2) The transaction value shall be accepted even where the buyer and seller are related, provided that the relationship has not influenced the price.

(3) If the value cannot be determined under the provisions of sub-rule (1) and sub-rule (2), the value shall be determined by proceeding sequentially through rules 4 to 6.

Rule 4 - Determination of export value by comparison : (1) The value of the export goods shall be based on the transaction value of goods of like kind and quality exported at or about the same time to other buyers in the same destination country of importation or in its absence another destination country of importation adjusted in accordance with the provisions of sub-rule (2).

(2) In determining the value of export goods under sub-rule (1), the proper officer shall make such adjustments as appear to him reasonable, taking into consideration the relevant factors, including-

- (i) difference in the dates of exportation,
- (ii) difference in commercial levels and quantity levels,
- (iii) difference in composition, quality and design between the goods to be assessed and the goods with which they are being compared,
- (iv) difference in domestic freight and insurance charges depending on the place of exportation.

Rule 5 - Computed value method : If the value cannot be determined under rule 4, it shall be based on a computed value, which shall include the following:-

- (a) cost of production , manufacture or processing of export goods;

- (b) charges, if any, for the design or brand;
- (c) an amount towards profit.

Rule 6 - Residual method : (1) Subject to the provisions of rule 3, where the value of the export goods cannot be determined under the provisions of rules 4 and 5, the value shall be determined using reasonable means consistent with the principles and general provisions of these rules provided that local market price of the export goods may not be the only basis for determining the value of export goods.

Rule 7 - Declaration by the exporter : The exporter shall furnish a declaration relating to the value of export goods in the manner specified in this behalf.

Rule 8 - Rejection of declared value (1) When the proper officer has reason to doubt the truth or accuracy of the value declared in relation to any export goods, he may ask the exporter of such goods to furnish further information including documents or other evidence and if, after receiving such further information, or in the absence of a response of such exporter, the proper officer still has reasonable doubt about the truth or accuracy of the value so declared, the transaction value shall be deemed to have not been determined in accordance with sub-rule (1) of rule 3.

(2) At the request of an exporter, the proper officer shall intimate the exporter in writing the ground for doubting the truth or accuracy of the value declared in relation to the export goods by such exporter and provide a reasonable opportunity of being heard, before taking a final decision under sub-rule (1).

Explanation - (1) For the removal of doubts, it is hereby declared that-

- (i) This rule by itself does not provide a method for determination of value, it provides a mechanism and procedure for rejection of declared value in cases where there is reasonable doubt that the declared value does not represent the transaction value; where the declared value is rejected, the value shall be determined by proceeding sequentially in accordance with rules 4 to 6.
- (ii) The declared value shall be accepted where the proper officer is satisfied about the truth or accuracy of the declared value after the said enquiry in consultation with the exporter.
- (iii) The proper officer shall have the powers to raise doubts on the declared value based on certain reasons which may include –
 - (a) the significant variation in value at which goods of like kind and quality exported at or about the same time in comparable quantities in a comparable commercial transaction were assessed.
 - (b) the significantly higher value compared to the market value of goods of like kind and quality at the time of export.

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- (c) the misdeclaration of goods in parameters such as description, quality, quantity, year of manufacture or production.

Circular No. 37/2007 Cus. dated 09.10.2007 has been issued regarding the Customs Valuation (Determination of Value of Export Goods) Rules, 2007 notified vide *Notification No 95/2007 Cus. (NT) dated 13.09.2007*. The Customs Valuation (Determination of Value of Export Goods) Rules 2007 have been framed in a format similar to the Valuation Rules for the imported goods. Conceptually also, acceptance of Transaction Value for export goods has been emphasized in the said rules, in as much as Rule 3 specifically provides for it.

Rule 3 of the said rules also stipulates that the Transaction Value for export goods shall be accepted even where buyer and seller are related, provided that the relationship did not influence the price of the goods. Where the relationship is found to influence the price, as determined by the proper officer on receipt of further information from the exporter, the value of the export goods shall be determined by proceeding sequentially through rules 4 to 6 of the said Valuation Rules. The persons who shall be deemed to be 'related' have been specified in Rule 2(2) of the said Valuation Rules, and this provision has been adopted from the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007.

Thus transaction value is the primary basis for valuation of export goods and the method specified under Rule 3 will be applicable in the vast majority of cases of export by acceptance of declared value. In cases where the transaction value is not accepted, the valuation of the export goods shall be done by application of Rules 4 to 6 sequentially.

Acceptance of transaction value is, however, subject to the provision of Rule 8 which provides for rejection of declared value for the export goods in certain exceptional cases. These are situations where the assessing officer has reasons to doubt the truth or accuracy of the declared value and further enquiry or investigation is needed to determine the appropriate value. It is hereby instructed that when an investigation / enquiry is undertaken to determine whether or not the Declared Value should be accepted as Transaction Value, the export consignment shall not be ordinarily detained. Wherever there are doubts about the declared value of the export goods, the proper officer shall retain representative sealed samples, wherever considered necessary and feasible, and allow the goods to be exported after due processing. However, it is clarified that in a situation of serious violation such as outright mis-declaration of goods, attempt to export the goods unauthorisedly, i.e., smuggle the goods out of the country, or where there is forgery or fraudulent documentation, the goods may be detained or seized as required. No export consignment shall be detained for reasons of doubts regarding valuation without the approval of the jurisdictional Commissioner of Customs.

An 'Explanation' relating to rejection of declared value of export goods has been added to Rule 8 to bring clarity and objectivity in exercising the authority for rejection of declared

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value. The Explanation clarifies that this rule as such does not provide a method for determination of value, and that it merely provides a mechanism and procedure for rejection of declared value of export goods in certain cases. It also clarifies that where the proper officer is satisfied after consultation with the exporter, the declared value shall be accepted. This Explanation also gives certain illustrative reasons which could form the basis for having doubt about the truth or accuracy of the declared value.

While raising doubt about truth or accuracy of the declared value in terms of Rule 8, the proper officer shall issue a query memo specifying reasons for such doubt. Meanwhile, the goods will be released for export against a simple undertaking after drawal of representative sample as indicated in para 5. The decision to initiate the process of investigation into valuation aspects, if any, shall be taken at the earliest at the level of Joint /Additional Commissioner.

In a case where transaction value cannot be determined or the declared value is rejected under Rule 8, and export value has to be determined by comparison in terms of Rule 4, the proper officer shall take utmost care in selecting an export product for an in-depth inquiry. The proper officer will make the adjustments objectively on the basis of the relevant factors, some of which have been illustrated at sub rule (2) of Rule 4.

Where the value has to be determined by Computed value method under Rule 5, the proper officer shall give due consideration to the cost-certificate issued by a Cost Accountant or Chartered Accountant or Government approved valuer, as produced by the exporter.

It is clarified that the main purpose of introducing the Export Valuation Rules is to provide for a sound legal basis for the valuation of export goods. It is also expected to check deliberate overvaluation of export goods and mis-utilization of value based export incentive schemes. At the same time due care has to be taken to facilitate the movement of bonafide export goods which is vital for the country's economic growth. The assessing officers shall, therefore, exercise due caution to avoid unnecessary queries regarding truth or accuracy of the declared export value. The Export Valuation Rules are not intended to bring about any significant change in the existing pattern of valuation of export goods. It is the responsibility of the supervisory officers to monitor regularly the export valuation practices, so as to ensure proper implementation of the said Valuation Rules without hindering the flow of bona fide export goods.

Rule 7 of the Export Valuation Rules calls for a declaration relating to the value to be filed by the exporter. A declaration format for this purpose has been designed and the same is enclosed as Annexure-A. Since it may be sometime before the format is notified to the trade by the respective Commissionerates, care should be taken to ensure that no export consignments are held up for want of such declaration which may for the time being be obtained subsequent to exports. The filing of the declaration along with the shipping bill should however be enforced with effect from 12th November 2007.

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5.10 DATE FOR DETERMINATION OF RATE OF DUTY AND TARIFF VALUE

For imported goods [section 15]: Section 15 of the Customs Act, 1962 specifies that the relevant date for determining the rate of duty and tariff valuation of imported goods. They are different for different situations as given below:

- (a) **Goods are entered for home consumption under section 46** – The relevant date for the three modes of transport as laid down by section 15(1)(a) read with proviso would be as follows:
- (i) For goods imported by vehicle at land customs station – the relevant date is the date of filing the B/E under section 46.
 - (ii) For goods imported by a vessel at a customs port – the relevant date is the date of filing the B/E under section 46 or date of entry inwards to vessel under section 31, whichever is later.
 - (iii) For goods imported by aircraft at a customs airport – the relevant date is the date of filing the B/E under section 46 or date of arrival of aircraft, whichever is later.
- (b) **Goods cleared from a warehouse under section 68** – the relevant date is the date on which a bill of entry for home consumption in respect of such goods is presented.
- (c) **In the case of any other goods** – the relevant date is the date of payment of duty.
- These provisions relating to determination of relevant date do not apply to baggage and imports by post, in which sections 78 and 83 apply respectively.

For export goods [section 16]: The relevant date for export goods is determined as per section 16. However, the provisions do not apply to baggage and imports by post.

The provisions are as follows:

- (a) **In case of goods entered for export (irrespective of the mode of transport)** – the relevant date is the date of the 'let export' order of the proper officer permitting export and loading of cargo on board under section 51.
- (b) **In case of any other goods** – the relevant date is the date of payment of duty.

Self-examination questions

1. Differentiate between deductive value and computed value.
2. Can the 'transaction value' be accepted under the Customs Act, 1962 and the Customs Valuation (Determination of Value of Imported goods) Rules, 2007 when the buyer and seller are related persons? Write a brief note.
3. What is residual method of valuation? Discuss with reference to the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007.

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4. Enumerate the various costs and services that are to be added to the "Transaction Value" under rule 10 of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007.
5. 'A' had imported a lift from Finland. Due to safety reasons the lift was not taken to the jetty in the port but was unloaded at the outer anchorage. The charges incurred for such unloading amounted to Rs.18000 and the cost incurred on transport of the lift from outer anchorage to the jetty was Rs.3500.00. 'A' claims that such charges form part of the loading and unloading charges and should be deemed to be included in the addition of 1% of the CIF value of the lift, made under Rule 10(2)(b) of Customs Valuation (Determination of Value of Imported Goods) Rules, 2007. Discuss the tenability of 'A's' claim with reference to recent Circulars, if any.
6. Explain whether the costs and services as given in Rule 10 of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 are to be added to the value of the identical goods or similar imported goods under Rule 4 and 5 respectively.
7. RI is an indenting agent of an Italian company. The agreement provides for payment of 20% commission on the imported equipments supplied by RI to users in India. However in respect of RI's own requirements of the equipment supplied by the Italian company no commission was payable as there was to be no value addition by the indenting agent. The department wants to enhance the value of the imports by 20% as according to them the Indenting Agent is a "Related person".

Examine briefly whether the stand taken by the department is correct with reference to Section 14 of the Customs Act, 1962 and Rule 10 of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 regarding "cost and services" and Rule 2(2) regarding "Related persons".

8. ABC Ltd., manufacturer of fertilizers, imported large quantity of rock phosphate and sulphur. Goods were purchased by ABC Limited on the high seas and responsibility of unloading in India was theirs and they maintained their own wharf at port, unloading equipment and staff for the same. Customs Authorities assessed the landing charges at 1.4% on C.I.F. value thereof and the importer had paid the same as demanded. Later on, Customs Authority claimed that the said 1.4% did not include stevedoring charges and unloading charges. Therefore, they added them separately calculating them upon the basis of inter-alia unloading labour charges, customs staff overtime, post time charges for dining hall, fuel, depreciation, maintenance cost, administrative overheads and notional interest on capital.

State what your advice to the company would be, bearing in mind the provisions on Customs Act and decided cases.

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9. Mysore Textiles Ltd. imported nylon/polyester cloth from Taiwan. Mysore Textiles Ltd. declared US \$ 27800 as the value of the goods. The same value was reflected in the invoice and the bill of entry. However, the Customs Department assessed the import duty on the basis of the Insurance value of US \$ 45600. The Customs Officials claimed that Mysore Textiles Ltd. had undervalued the goods and therefore the insurance value should be adopted for the purpose of valuation. Can insurance value be regarded as the assessable value without making any deductions therefrom? Discuss.
10. Mother Mary Hospital and Research Centre imported a machine from Delta Scientific Equipments, Chicago for in house research. The price of the machine was settled at US \$ 5000. The machine was shipped on 10.01.2009. Meanwhile, the Hospital Authorities negotiated for a reduction in the price. As a result, Delta Scientific Equipments agreed to reduce the price by \$ 850 and sent the revised price of \$ 4150 under a telex dated 15.01.2009. The machine arrived in India on 18.01.2009. The Commissioner of Customs has decided to take the original price as the transaction value of the goods on the ground that the price is reduced only after the goods have been shipped.

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



Answers

5. An 'Explanation' has been added to Rule 10(2) clarifying that the cost of transport of the imported goods includes ship demurrage charges on chartered vessels, lighterage charges or barge charges. This Explanation is to take care of cases of imports by time chartered vessels or bulk carriers discharging goods on high seas needing additional expenditure for delivery of the goods at the "Place of Importation" mentioned in Rule 10(2)(a). The 'place of importation', as observed by the Supreme Court in the case of *Garden Silk Mills Ltd Versus Union of India 1993 (113) E.L.T. 358 (S.C)* means the place where the imported goods reach the landmass of India in the Customs area of the port, airport or land customs station, or if they are consumed before reaching the landmass of India, the place of consumption. Therefore, in cases where ship demurrage charges are paid by the importer for detention of the ship in the harbour before touching the landmass at the docks or at the place of consumption, these charges would be includible in the cost of transportation. Similarly, in cases where the big mother vessels cannot enter the harbour for any reason and goods are brought to the docks by smaller vessels like barges, small boats, etc., the cost incurred by the importer for bringing the goods to the landmass or place of consumption, such as lighterage charges, barge charges will also be included in the cost of transportation. Therefore, 'A's claim is not tenable in law.

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6. As per Rule 4(1)(c) of the Customs Valuation Rules, 1988 where imported goods are being valued as per Rule 4 the value of the identical goods is adjusted to take into account the difference attributable to the commercial level or to the quantity or both. According to Rule 4(2) where costs and charges referred to in Rule 10 are included in the value of identical goods, adjustment has to be made of the difference in such costs and charges between the imported goods and the identical goods.

Therefore, if the value of the identical goods does not include certain specific costs and charges relating to the imported goods these are to be included as per Rule 10.

7. Imported goods are valued to levy customs duty as per Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 and Section 14 of the Customs Act, 1962.

According to Rule 10, the costs of services incurred by the buyer and not included in the price, shall be added to the price paid. Rule 2(2) defines the term 'related person'. According to Rule 3 if the sale is to a related person, then transaction value shall be accepted only if the relationship does not affect the price.

Applying the test laid down in Rule 2(2), it can not be said that indenting agent is a related person. Also, the terms of the agreement provide for the payment of commission only when the agent sells the goods to others and not for the goods which he keeps for himself. Coming to Rule 10, the commission of 20% can not be added to the value of the imported goods as the rule specifically states that only the costs and services which are paid by the buyer, and not included in the price, are to be added to the price paid for the goods.

Accordingly, the action of the department is not correct as it is not consistent with section 14 and Rule 10 of the Rules.

8. The facts of this case relates to the decision given by the Supreme Court in *Coromandal Fertilizers Ltd. vs. Collector of Customs (2000)*. Landing charges are assessed at a percentage of the value of the goods. However, stevedoring or unloading charges are not to be added, when landing charges are assessed on a percentage basis. Therefore, the assessee is not required to pay additional landing charges as claimed by the department.
9. It has been decided by the Tribunal in case of *Nina Chaka Pvt. Ltd. v Commissioner of Customs, New Delhi 2004 (163) E.L.T. 464 (Tri. – Del.)* that the insurance value takes into account not only the Cost Insurance Freight value but also duties and taxes payable on the goods involving transfer from seller's premises to buyer's premises. The

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insurance price as such, therefore, could not form the basis of valuation without making deductions therefrom of taxes and other permissible components.

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

As per section 14 of the Customs Act, the transaction value of the goods is the value at the time and place of importation. It was decided in *Garden Silk Mills v. UOI* that importation is completed only when the goods become part of mass of goods within the country. Since the price of the goods is reduced while they are in transit, it could not be contended that the price was revised after importation took place. Therefore, the goods should be valued as per the reduced price, which was the price at the time of importation. Similar view was adopted in *Gujarat Heavy Chemicals Ltd. v Commissioner of Customs, Ahmedabad 2004 (163) E.L.T. 448 (Tri. – Mumbai)*

