

Chapter – II

Customs

As amended by FA 2010 and included notifications and circulars
up to 30.06.2011

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Chapter 2 Customs

Customs Basics

- Customs duty is an indirect tax and it is levied on import into India and export out of India, as per entry list No. 83 List I of Indian Constitution.

Customs is governed by

- Customs Act
- Customs Tariff Act
- Customs Rules
- Customs Notifications and Circulars and
- Customs Manual.

Purpose of Customs Act, 1962 is

- to Regulate imports and exports
- to Protect Indian industry from dumping
- To collect revenue of customs duty.

Customs Tariff Act, 1975

- Consists of Two schedules
- Schedule 1 gives classification and rate of duties for imports,
- Schedule 2 gives classification and rates of duties for exports.
- In addition, the CTA makes certain provisions for levy of duties like additional duty (CVD), preferential duty, anti-dumping duty, protective duties etc.

Rules under Customs Act –

- Section 156 of Customs Act, 1962 provides C.G has been empowered to make rules, consistent with provisions of the Act, to carry out the purposes of the Act.

Major rules among those are

- Customs Valuation Rules, 1988:
- Customs and Central Excise Duties Drawback Rules, 1995:
- Baggage Rules, 1998:
- Regulations under Customs Act –
- Section 157 of Customs Act, 1962, provides Board (CBE&C) has been empowered to make regulations,

Major Regulations among these are:

- Project Import Regulations, 1986:
- Customs House Agents Licensing Regulations, 1984:
- Import export thorough courier regulations

Customs Manual, 2001

- The Manual gives an overview of Customs Law and Procedures.
- Instructions in Manual should be followed.

Public Notices

- Commissioners of Customs issue Public Notices.
- Public notices for local requirements are also issued.

Notifications under Customs Act

Central Government has got power to issue notifications. Example

- Section 25(1) to grant partial or full exemption from duty
- Section 11 to prohibit import or export of goods.

Board Circulars–

- CBE&C is empowered u/s 151A of customs Act to issue circulars, CBE&C issues circulars giving various instructions / prescribing various procedures etc.
- These instructions should be followed.

Similarities in excise and customs

- Both are central Acts, Derive from the constitution

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- Both are performed under C B E C
- Organizational hierarchy is same from top to AC/DC
- Both tariffs are based on HSN and Classification rules are same.
- Principle of determining Assessable value (Transaction value) are same
- Provisions of Refunds, demand, exemption from duty, search, confiscation, authority for advance ruling, settlement commission, Appeals are same

Important Definitions

Export: section 2(18),

- Taking out of India to a place outside India.

Import: section 2(23)

- Bringing into India from a place outside India.

India: Section 2(27)

- 'India' as inclusive of territorial waters.

Territorial Waters of India

- A portion of sea, which is adjacent to the shores of a country, 12 nautical miles from the base line. (1 nautical mile = 1.853 Kms)
- 'Import' is complete as soon as goods enter territorial water. Similarly, export is complete only when goods cross territorial waters.

Indian Customs Waters

- Area beyond 12 nautical miles and up to 24 nautical miles from base line of India'.
- The C G has got powers to take measures in this area for security of India and immigration,

Significance and importance of 'Indian Customs Waters'

- Customs officer has power to arrest a person in India or within Indian customs waters.
- To stop and search any vessel in India or within the Indian Customs waters.
- If such vessel does not stop, it can be/confiscated/ fired upon.

Exclusive economic zone'

- Area extends to 200 nautical miles from the base line.
- In this zone, the coastal State has exclusive rights to exploit it for economic purposes like constructing artificial islands (for oil exploration, power generation etc.),
- fishing, mineral resources and scientific research
- Beyond 200 nautical miles, the area is 'High Seas', where all countries have equal rights.
- These high seas are reserved for peaceful purposes.

Goods' Sec 2(22)

'Goods' includes

- vessels,
- aircrafts
- vehicles
- Stores,
- baggage,
- currency
- negotiable instruments and
- Any other kind of movable property.
- The duty is payable on goods belonging to government also

Imported Goods - Section 2(25)

- any goods brought in India from a place outside India,
- And does not include goods which have been cleared for home consumption.

Export Goods –Sec 2(19)

- Any goods, which are to be taken out of India to a place outside India. &
- Goods brought near customs area for export purpose.

Dutiable Goods - Section 2(14)

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- Any goods which are chargeable to duty and on which duty has not been paid.
- Goods continue to be 'dutiabale' till they are not cleared from the port.
- Once goods are assessed at 'Nil' rate of duty, they no more remain 'dutiabale goods'.

Foreign-going vessel or aircraft

- Vessel/Aircraft engaged in the carriage of goods or passengers between any port or airport in India and outside India, whether touching any intermediate port or airport in India or not, and includes—
- Any naval vessel of a foreign Government taking part in any naval exercises;
- Any vessel engaged in fishing/ other operations outside the territorial waters of India;
- Any vessel or aircraft proceeding to a place outside India for any purpose whatsoever;

Nature of Customs Duty and taxable event

Charging section, Sec.12

- Duties of customs shall be levied at such rates as may be specified under 'The Customs Tariff Act, 1975', on goods imported into, or exported from, India.
Thus Goods become liable to import duty or export duty when there is 'import into, or export from India'.

Taxable event for imports

- Import is completed only when goods cross the customs barrier.
- The taxable event is the day of crossing of customs barrier
- The date when goods landed in India or had entered territorial waters is not relevant for taxability
- The taxable event is reached at the time when the goods reach customs barrier and bill of entry for home consumption is filed.
- This view was held in Kiran Spinning Mills v. CC 1999 (SC) / Garden Silk Mills Ltd. v. UOI 1999 (SC)

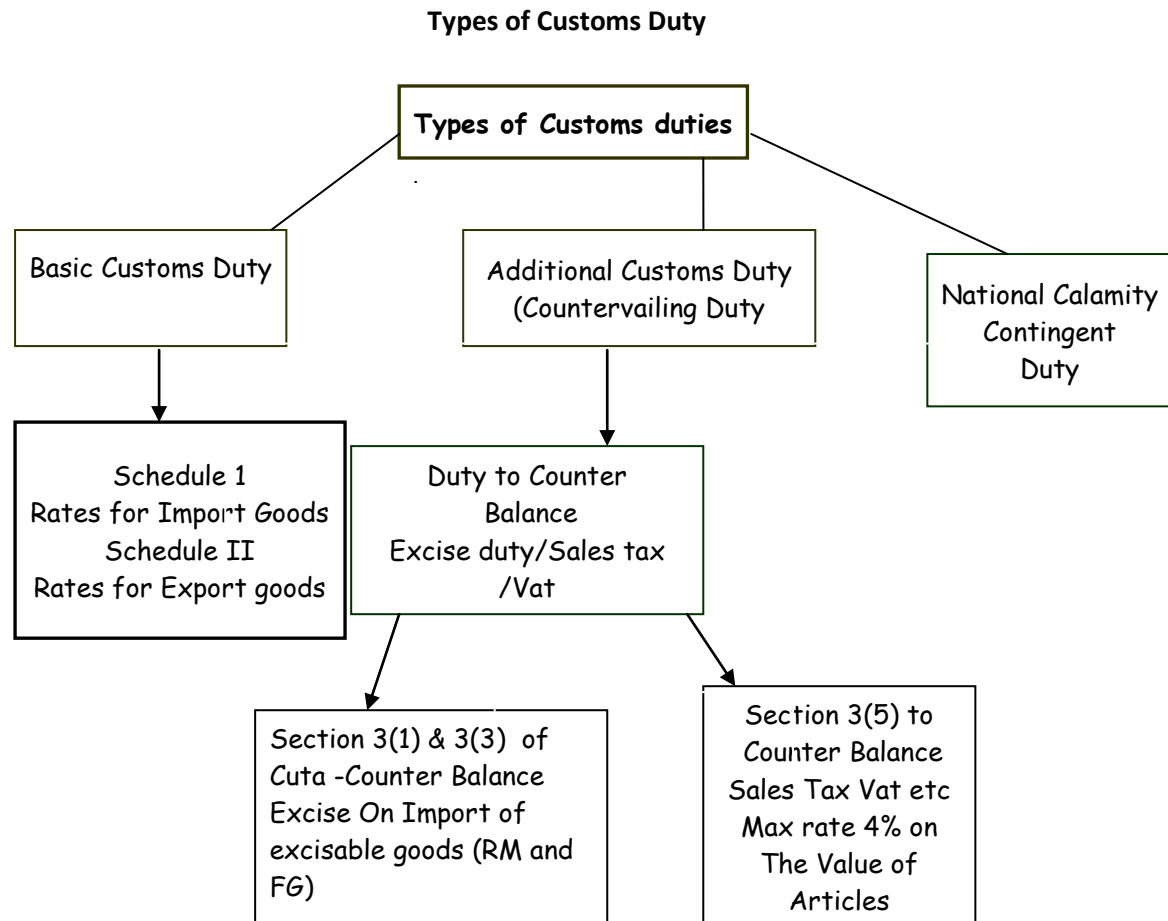
Taxable event for exports

- export commences when goods cross customs barrier,
- export is completed only when it crosses territorial waters
- Taxable event occurs only when goods cross territorial waters.

Taxable event in case of ware house goods

- In case of warehoused goods, the goods continue to be in customs bond.
- 'Import' takes place only when goods are cleared from the warehouse.
- Where it was held that taxable event occurs when goods cross customs barrier and not when goods land in India or enter territorial waters.

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Basic Customs Duty

Levied under section 12 of Customs Act

- Levied as a percentage of Value as determined under section 14(1).
- The rates vary for different items ex 5%, 12.5% 15%, 25% and 30%
- Normal rate (peak rate) 10%

Additional Customs Duty (CVD) Sec 3(1)

- Also Called 'Countervailing Duty' (CVD).
- Duty is equal to excise duty levied on a like product manufactured or produced in India.
- If like article is not produced or manufactured in India, the excise duty that would be leviable on that article had it been produced in India is the base.
- If the product is leviable with different rates, then highest rate among those rates is to be considered.
- In the case of an article imported into India, where the Central Government has fixed a tariff value for the like article produced or manufactured in India under section 3(2) of the Central Excise Act, 1944, the value of the imported article shall be deemed to be such tariff value. Finance Act 2009 (*Effective from 19.08.2009*)

- The duty is leviable on Value of goods plus basic customs duty and NCCD payable.

- CVD Payable at effective rate of Excise duty

- CVD payable even if similar goods not produced in India

Additional Customs duty u/s 3(3) C V D

- To counter Balance excise duty on raw material, components etc
- After extension of cenvat on inputs there is no need to counter balance duty on inputs

Calculation of CVD

- ❖ CVD is payable on Av+Basic Customs Duty+NCCD

- ❖ Av will be as per Customs Act/rules

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- ❖ In case of Where Excise payable on MRP Av will be MRP less abatement
- ❖ When goods are subject to different excise duties CVD is also payable for all the corresponding duties.

Example on Calculation of CVD and Education Cess

- Mode of calculation of education cess has been illustrated in Ministry of Finance letter No. D.O.F. 34/3/2004-TRU dated 8-7-2004, as follows -
- Assuming that value of an item is Rs. 1000, customs duty is 20% and excise duty (CVD) is 16%, the calculation will be as follows - The duty will be worked out as under:

(A) Assessable Value	Rs. 1,000.00
(B) Customs Duty @20%	Rs. 200.00
(C) Sub-Total for calculating CVD (A+B)	Rs. 1,200.00
(D) CVD @16.48 % of Rs 1,200 (16%+3% E.Cess)	Rs. 197.76
(E) Sub-Total for calculating Cess (B+D)	Rs. 397.76
(F) Education Cess @ 3% of Rs 397.76	Rs 11.94

However, while calculating CVD, following duties are not to be considered - * Special Additional Duty payable u/s 3A of Customs Tariff Act * Safeguard duty u/ss 8B and 8C of Customs Tariff Act * Countervailing duty, if any, u/s 9 of Customs Tariff Act * Anti-dumping duty payable u/s 9A of Customs Tariff Act * CVD itself which is payable u/s 3(1). [Section 3(2) of Customs Tariff Act].

Where the Central Government has notified Tariff Value for similar products manufactured in India, the same value shall be considered for imported goods for computation of ACD. (Sec.3 of CETA)

Countervailing duty u/s 3(5) of Customs tariff Act

- It is duty levied on imports to counter balance sales tax and vat in India
- Maximum rate leviable is 4% on the total value of article
- Total value includes CIF price plus all customs duty excluding duties to protect Indian Industry.

NCCD of customs

- Duty imposed vide section 129 of Finance Act, 2001
- This duty is imposed on pan masala, chewing tobacco and cigarettes. Polyester yarn
- It varies from 1% to 45%. –

Examples

- 1% was imposed on PFY, motor cars, multi utility vehicles and two wheelers
- Rs 50 per ton on domestic crude oil,

Export duty –

Levied only on few products

At present, Export Duty is levied only on

- hides, skins and leather,
- Snake skins hides, and fur lamb skins.

There is no export duty on any other product.

Education Cess

2% education cess and 1% higher secondary education cess total 3% on all duties will be levied by government and should be payable.

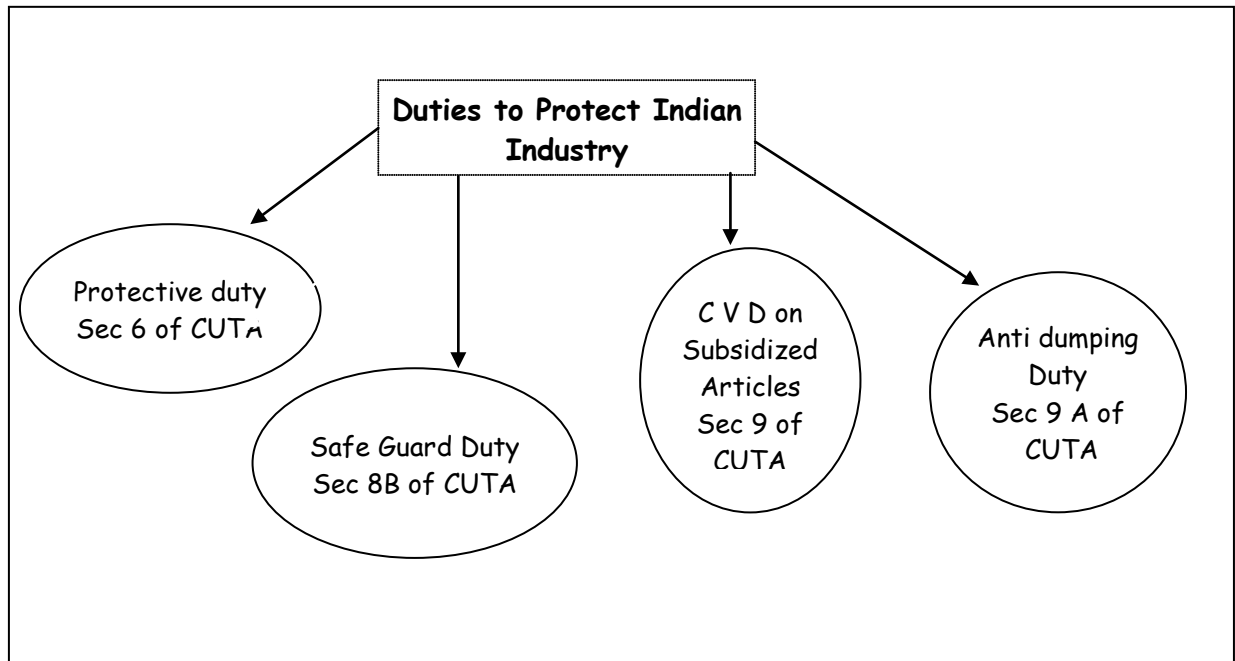
A secondary and higher education cess @ 1% has been imposed on imported goods. The Proceeds from this cess will be utilized to finance secondary and higher education. It shall be chargeable on the aggregate duties of customs. However, following duties shall be excluded for computing this cess:–

- (a) The additional duty leviable under section 3(5) of the Customs Tariff Act, 1975;

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- (b) The safeguard duty referred to in sections 8B and 8C of the Customs Tariff Act, 1975;
- (c) The countervailing duty & anti-dumping duty leviable under section 9 & 9 A of the Customs Tariff Act, 1975;

Import duties to protect Indian Industry



Protective Duties Section 6 CUTA

If C G is satisfied that immediate action is necessary to protect interests of Indian industry;

- Rate of duty is as per recommendation of Tariff Commission
- Notification for levy should be introduced in Parliament
- If Parliament not in session, introduced in next session by way of a Bill.
- Notification should Pass in parliament with in 6 months,
- If not passed the notification ceases to have force, but action already taken remains valid.
- The protective duty will be valid till the date prescribed in the notification.
- The protective duty can be rescinded, reduced or increased by a notification.
- Such notification should also be placed before Parliament for approval in next session.

Safeguard duty Section 8 B of CUTA

Circumstances to Impose

- When the goods are being imported in large quantities
- That they are causing or threatening to cause serious injury to domestic industry.

Procedure for Levy

- CG is empowered to impose 'safeguard duty' on specified imported goods
- Such duty is permissible under WTO agreement.
- Government has to conduct an enquiry and then issue a notification.
- In case of imports from developing countries, such safeguard duty can be imposed only if import of that article from that country is more than 3% of total imports of that article in India. so long as the aggregate of the imports from "developing countries each with less than 3% import share" taken together does not exceed 9% of the total imports of that article into India.

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- Central Government can impose provisional safeguard duty, pending final determination up to 200 days.
- The duty is in addition to any other customs duty being imposed on the goods. .
- The duty, once imposed, is valid for four years, unless revoked earlier.
- This can be extended by Central Government,
- Total period of 'safeguard duty' cannot be more than ten years.
- No safe guard duty in case of EOU/SEZ unless specified in notification
- Special provision for imports from China in similar lines above provided in section 8 C

C V D on subsidized goods Sec 9 of CUTA

If a country pays any subsidy (directly or indirectly) to its exporters for exporting goods to India,

- CG can impose Countervailing duty up to the amount equal to such subsidy
- If the amount of subsidy cannot be ascertained, provisional duty can be levied
- After final determination, difference may be refunded.
- Such imposition should be by way of a notification.

Anti dumping duty Sec 9 A of CUTA

Circumstances to impose

- When large manufacturer from abroad may export goods to India at very low prices compared to prices in his domestic market.
- Such dumping may be with intention to cripple domestic industry or to dispose of their excess stock.
- In order to avoid such dumping, C G can impose, anti-dumping duty up to margin of dumping on such articles,

Procedure

- This duty is permissible as per WTO agreement
- Duty can be levied only when there is an Indian industry producing 'like articles'.
- If it is a pending in determination of margin of dumping, duty can be imposed on provisional basis.
- After dumping duty is finally determined, C G can reduce such duty and refund duty extra collected than that finally calculated
- Margin of dumping' means the difference between normal value and export price
- 'Normal Value' means comparable price in the exporting country
- Margin of dumping is determined on basis of *records concerning normal value and export value maintained and informed by the exporter or producer (WEF FA 2009)*
- Export Price' means the price at which goods are exported.

Quantum of dumping duty

- The anti-dumping duty will be dumping margin or injury margin, *whichever is lower.*

Injury margin' means

- Difference between fair selling price of domestic industry and landed cost of imported product.

Applicability of rules and Regulations to duties under Customs tariff Act (FA 2009)

The rules regulations made under customs Act with regard to, demand, refund, assessment, interest, penalty, Offences and Appeals will also applicable to duties levied under Customs tariff Act such as safe guard duty, protective duty, duty on subsidized articles and antidumping duty (Amended by Finance Act 2009 retrospectively)

Prohibition of Importation/ exportation of goods sec 11
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- The C G has powers to prohibit
- either absolutely or
- subject to such conditions (to be fulfilled before or after clearance)
- the import or export of goods

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- Of any specified description.
- Official gazette should notify the prohibitions.

Purposes where prohibition should be made.

The maintenance of public order and standards of decency or morality;

- The prevention of smuggling/ Shortage of goods;
- The conservation of foreign exchange and the safeguarding of balance of payments;
- The prevention of injury to the economy of the country by the uncontrolled import or export of gold or silver;
- The prevention of surplus of any agricultural product or the product of fisheries;
- The maintenance of standards for the classification, grading or marketing of goods in international trade;
- The establishment of any industry;
- The prevention of serious injury to domestic production of goods of any description
- The protection of human, animal or plant life or health;
- The protection of national treasures of artistic, historic or archaeological value ;
- The conservation of exhaustible natural resources;
- The protection of patents, trademarks and copyrights;
- The prevention of deceptive practices;
- The fulfillment of obligations under the Charter of the United Nations for the maintenance of international peace and security;
- The implementation of any treaty, agreement or convention with any country
- The compliance of imported goods with any laws, which are applicable to similar goods produced or manufactured in India;
- The prevention of dissemination of documents containing any matter which is likely to prejudicially affect friendly relations with any foreign State or is derogatory to national prestige;
- The prevention of the contravention of any law for the time being in force; and
- Any other purpose conducive to the interests of the general public.

Duties of Person possessing specified goods

Duties of Person who owns, possesses or controls, specified goods, the value exceeds Rs.15000

- Inform the proper officer about the particulars of the place where such goods are kept.
- Before acquires intimate to the proper officer containing goods where such goods are to be stored after such acquisition:
- In case of shift, intimate the place to which such goods are proposed to be shifted.
- No person shall, after the expiry of seven days from the specified date, keep or store any specified goods at any place other than the intimated place.

Other Points

- Shifting and transport of specified goods should be covered by voucher
- Persons possessing specified goods to maintain accounts with regard to acquisition usage and balance.
- Difference between record and physical stock. if any unless proved contrary deemed illegally exported
- Person selling or transferring any specified goods For cash exceeding Rs. 2500/per day - should mention full address of buyer

Customs Classification

Similar to that of excise except Customs Tariff contains only two schedules and tariff contains two rates of duty viz., standard rate and preferential rate. If no rate is mentioned in the column 'Rate for Preferential Area', then Standard rate is applicable.

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Clarification regarding classification of paper licenses of software and PUK cards- Circular No. 15/2011-Cus. dated 18.03.2011

Issue: Whether documents of title for IT software/documents that enable the transfer of the right to use such software at the time of its sale i.e. paper licenses of software and PUK cards, when imported without the packaged software should be classified under Customs Tariff Heading 8523 i.e. the heading applicable to IT software?

Clarification: The documents conveying the right to use software by themselves do not satisfy the definition of information technology software provided in the supplementary note to Chapter 85 and therefore, do not qualify for classification under this tariff item because they do not contain any representation of instructions, data, sound or image recorded in a machine readable form, which is capable of being manipulated or providing interactivity to a user.

Classification of paper licenses of software

On the other hand, tariff item 49070030 of heading 4907 refers directly to “Documents of title conveying the right to use Information Technology software”. Hence, as per rule 1 of the Rules for the interpretation of the Tariff Schedule, such paper licenses which are essentially documents conveying the right to use such IT software, merit classification under CTH 49070030.

Classification of PUK cards

PUK cards are not documents of title conveying the right to use Information Technology software per se, but are actually printed matter containing numbers which when entered; enable the importer to access right to use such IT software. Hence, they are liable to be classified under CTH 4911 as “other printed matter”.

Documents of title for IT software/documents that enable the transfer of the right to use such software at the time of its sale

There are frequent imports of such documents without any accompanying software. Such packages do not contain software, but consist of paper licenses or PUK (Personal Unlocking Key, usually in the form of a scratch card of paper board or plastic) that are used to convey the right to use such IT software. The software in these cases could be freely downloadable or loaded by the OEM supplier under an arrangement with the software company as pre-loaded. trial version of software on the computer system requiring the customer to purchase license or PUK after the trial period. Typically, these licenses are used either to authorize additional uses against a sale of IT software that has already taken place in the past or to service transactions where the connected software is downloaded electronically by the customer

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Customs Valuation

- Customs duty is payable as a percentage of 'Value' called 'Assessable Value'
- The Value may be either
- Transaction Value' as per Section 14 (1) or
- Tariff value prescribed as per 14 (2).

Tariff Value Sec 14 (2)

- Tariff Value can be fixed by CBE&C (Board)
- Government should consider trend of value of such or like goods
- Once T V fixed, duty is payable as percentage of this value.
- The percentage applicable is as per Customs Tariff Act
- Example for tariff value fixed were crude palm oil; RBD Palmolein and palm oil

Transaction value as per section 14 (1)

Transaction value Requirements

- The price actually paid or payable for the goods
- The price shall be for delivery at the time and place of importation or exportation,
- the seller and the buyer are not related
- price is the sole consideration for the sale e:

Price should be for delivery at the place of importation/exportation

In case of import

- All expenses up to the destination port, including freight, transit insurance, unloading and handling charges are to be included.
- In case of export all expense up to Indian port/airport to be included

Price should be for delivery at the time of importation –

- Time of importation means price ruling when the goods were imported is relevant.
- price prevalent on date of contract not relevant

● Buyer or Seller should be treated as relatives in the following circumstances

- They are officers or directors of one another's businesses;
- they are legally recognized partners in business;
- they are employer and employee;
- any person directly or indirectly owns, controls or holds 5 per cent or more of the outstanding voting stock or shares of both of them;
- one of them directly or indirectly controls the other;
- both of them are directly or indirectly controlled by a third person;
- together they directly or indirectly control a third person; or
- They are members of the same family.
- Person includes legal person
- 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.

Price must be the sole consideration

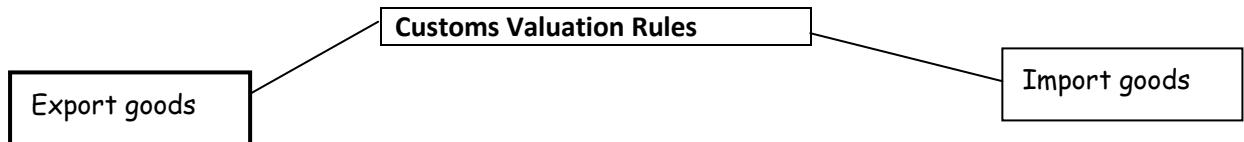
- Price should be sole consideration for sale.
- If there is other consideration, it should be added to the transaction value.

For import goods price also include

- commissions and brokerage,
- engineering, design work,
- royalties and licence fees,
- costs of transportation to the place of importation,
- Insurance
- loading, unloading and handling charges

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- The price of goods for valuation shall be calculated with reference to the rate of exchange as in force on the date on which a bill of entry is presented in case of imported goods and as a shipping bill or bill of export,
- The rate of exchange is notified by CBEC is to be considered for valuation.
- The valuation rules provide to determine the value if the above conditions are not satisfied. For Example if there is no sale, buyer and seller are relatives and when price is not sole consideration.



Export goods valuation Rules (new rules comes to effect from 10.10.2007)

Transaction value Rule 3

The values will transaction value as per sec 14. The transaction value will be accepted even buyer and seller are relatives, if the price is not influenced

Determination of export value by comparison. Rule 4

If the value cannot be determined as per rule 3 value can be determined as per Rule 4 as below.

- The value of the export goods shall be based on the transaction value of goods of like kind and quality goods
- The price of such goods should be at the same time and same country and same manufacturer.

If the above are not fulfilled the value to be determined by proper officer as it appears reasonable by adjusting with respect to

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

Computed value method Rule 5

If the value cannot be determined as per rule 4 the value will be determined as per rule 5 by computed value method which include following

- cost of production , manufacture or processing of export goods;
- charges, if any, for the design or brand;
- an amount towards profit.

Residual method Rule 6

Where the value of the export goods cannot be determined as per rule 4 and 5, the value shall be determined with respect to general provisions of these rules. The local market of export goods not only the basis and other factors will be considered,

Declaration of value by exporter Rule 7

The exporter shall furnish a declaration relating to the value of export goods in the specified manner.

Rejection of declared value Rule 8

- When the proper officer has reason to doubt the truth or accuracy of the value declared for export goods, he may ask the exporter to furnish information, documents or other evidence,

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- 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, it is deemed that transaction value not determined properly.
- At the request of an exporter, the proper officer should inform in writing and should give reasonable opportunity to exporter, before taking final decision.

Explanation to rule 8

- This rule by itself does not provide a method for determination of value.
- This rule provide mechanism and procedure for rejection of declared value in the case of doubt on truth and accuracy
- Where the value transaction value rejected under this rule, value will be determined sequentially following Rule 4 to 6
- Declared value shall be accepted where the proper officer is satisfied about the truth or accuracy after the said enquiry in consultation with the exporter.

Reasons where Proper officer will get doubt about truth and accuracy

- 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.
- The significantly higher value compared to the market value of goods of like kind and quality at the time of export.
- The misdeclaration of goods in parameters such as description, quality, quantity, year of manufacture or production.

Import goods valuation Rules (new rules comes to effect from 10.10.2007)

Determination of the method of valuation. Rule 3

The value of the imported goods is the transaction value as per sec 14 adjusted with the cost and services as per rule 10

The transaction value will be accepted under the following conditions

- 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;
- 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;
- 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
- the buyer and seller are not related,

Inclusions of costs and services in transaction value Rule 10

The following will be included if the following are not included in the price

- Commission and Brokerage paid to local agent in India

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- Service charges paid to canalizing agency: when canalizing agency makes imports, goods are sold to Indian buyer on 'high sea sale' basis. Indian buyer clears the imported goods. In such cases, 'service charges' payable to the canalizing agency to be included
- Packing cost labour and material
- Cost of containers
- Value of Goods supplied by buyer at free/concessional rate

Cost of tooling:

- If purchased the cost of tooling, if manufactured production cost
- If previously used the tooling, its original cost less depreciation.
- Apportioning of Cost of Tools to the value - apportioned over the quantity produced.
- Such apportionment should be made on basis of documentation provided by importer.
- engineering, development, art work, design work, and plans and sketches undertaken work undertaken outside India necessary for the production of the imported goods;
- materials, components, parts and similar items incorporated in the imported goods;
- 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;
- 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.

Royalty and license fees

- Royalties and license fees related to imported goods that the buyer is required to pay, directly or indirectly, as a condition of sale of the goods are not included in the price

The following types of royalty not includable

- Royalty payment to collaborators un-connected with imported goods
- charges for the right to reproduce the goods in India
- payments made by buyer (importer) for right to distribute or resale the imported goods
- Charges for reproduction of software in India

Other inclusions in Valuations

- Freight Actual, if actual data not available 20% of FOB
- In case of Air. actual freight or 20% of FOB w e l
- Insurance actual, If actual data not given 1.125% of FOB
- Handling/Landing Charges 1% on CIF

Exclusions from Customs valuation

- ❖ Charges of purchasing agent abroad
- ❖ Cost of durable and re-usable containers, if importer agrees to execute a bond to re-export the containers within six months.
- ❖ Charges for construction, erection, maintenance, installation etc, after importation of machinery, equipment
- ❖ Transport insurance after import (transport from port/airport to factory)
- ❖ Local taxes in India
- ❖ Demurrage charges for later clearance of goods.
- ❖ Bank charges paid to banker for services rendered by them

Valuation when import from relative

Where the buyer and seller are related, the transaction value shall be accepted when

- That the relationship did not influence the price.
- 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—
- the transaction value of identical goods, or of similar goods, in sales to unrelated buyers in India;
- the deductive value for identical goods or similar goods;

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- the computed value for identical goods or similar goods
- in applying the values used for comparison, Rule 10 additions of costs to be considered

Transaction value of identical goods Rule 4

If transaction value of same goods not available because of

- ❖ abnormal discount, unconditional sale,
- ❖ sale not in competitive conditions,
- ❖ No sale because lease, hire, gift and sample
- ❖ In such cases transaction value of identical goods will be considered

Meaning of identical goods

Goods should be the same in all respects, including physical characteristics, quality and reputation; except for minor differences in appearance

When applying the value of identical goods the following should be considered

- Goods have been produced in the same country
- They should be produced by same manufacturer, if same manufacturer not available price of goods produced by another manufacturer in the same country. However brand reputation and quality of other manufacturer should be comparable.
- Imported at or around about same time
- Adjustment for distances and transport costs if any required to be considered
- Costs and services as per rule 10 are required to add.
- If more than one value of identical goods is available, lowest of such value should be taken.

Transaction value of similar goods Rule 5

- If Transaction value of identical goods cannot be used, valuation is to be done based on Transaction value of similar goods
- Similar goods are same as with identical goods additional requirement is that performing same function and commercially inter-changeable
- When applying the value of similar goods consideration should be governed will be the same as identical goods
- Value adopted under provisional assessment cannot be considered for valuing under rule 4 and rule 5

Value When value cannot be determined under Rule 3 4 and 5

Rule 6

When Value cannot be determined under Rule 3, 4 and 5, the value can be determined under deductive value method (rule 7) or computed value method (rule 8.)

Deductive Value method

Rule 7.

- If T V of identical & similar goods is not available then deductive value method is used.
- When same, identical or similar imported goods are sold in India and price in India is available and the sale should be in the same condition as they are imported.
- Assessable Value is calculated by reducing post-importation costs and expenses from this selling price.

Deductions

- Selling Expenses (commission etc,) and selling profits
- Direct and indirect cost of marketing the goods in India.
- Transport, insurance and associated costs within India
- Customs duties, sales tax and other taxes levied in India.

The price will be Unit price sold in greatest numbers of quantity to be considered for valuation

If the imported goods, identical similar imported goods are not sold at or about the same time of importation of the goods being valued, the valuation will be unit price at the earliest date after importation but before the expiry of ninety days after such importation.

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If the imported goods, identical similar imported goods are not sold, but goods sold after processing, adjustments should be made for processing cost if any

Computed Value Rule 8

- If valuation is not possible by deductive method, computing the value can be used.
- This method can be used before deductive value method If Customs Officer approves
- In this method, value is the sum of
- Cost of value of materials, labour and processing charges for producing the imported goods
- amount General expenses and profit
- The cost or value of all other expenses under rule 10 transport, insurance, loading, unloading and handling charges.

Residual Method Rule 9

- ❖ similar to 'best judgment method'
- ❖ This method can be considered if valuation is not possible by rule 3 to 8
- ❖ Mix of the all other rules and general provisions of all rules.
- ❖ Assessment will be done based on with available data in India.

Residual value cannot be determined on the basis of

- the selling price in India of the goods produced in India;
- a system which provides for the acceptance for customs purposes of the highest of the two alternative values;
- the price of the goods on the domestic market of the country of exportation;
- 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;
- the price of the goods for the export to a country other than India;
- minimum customs values; or
- Arbitrary or fictitious values.

Declaration by the importer. Rule 11

The importer or his agent shall furnish -

- a declaration disclosing full and accurate details relating to the value of imported goods; and
- any other statement, information or document including an invoice necessary for determining the value of imported goods
- proper officer of customs can ask any document to verify the truth and accuracy of value of imported goods

If the importer furnishes wrong declaration, submit wrong information, the provisions of Customs Act with regard to confiscation and penalty will apply.

Rejection of declared value. Rule 12

- When the proper officer has reason to doubt the truth or accuracy of the value declared for imported goods, he may ask the exporter to furnish information, documents or other evidence,
- 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, it is deemed that transaction value not determined properly.
- At the request of an exporter, the proper officer should inform in writing and should give reasonable opportunity to importer, before taking final decision.

Explanation to rule 12

- This rule by itself does not provide a method for determination of value.

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- This rule provide mechanism and procedure for rejection of declared value in the case of doubt on truth and accuracy
- Where the value transaction value rejected under this rule, value will be determined sequentially following Rule 4 to 9
- Declared value shall be accepted where the proper officer is satisfied about the truth or accuracy after the said enquiry in consultation with the importer.

Reasons where Proper officer will get doubt about truth and accuracy

- 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;
- the sale involves an abnormal discount or abnormal reduction from the ordinary competitive price;
- the sale involves special discounts limited to exclusive agents;
- the misdeclaration of goods in parameters such as description, quality, quantity, country of origin, year of manufacture or production;
- the non declaration of parameters such as brand, grade, specifications that have relevance to value;
- The fraudulent or manipulated documents.

Goods cleared from an EOU for sale in DTA, when actual sale transaction does not take place at the time of clearance but on a subsequent date, to be valued by sequential application of Rules 3 to 9 of the Customs Valuation Rules (Determination of Price of Imported Goods), 2007

The value of goods cleared from a 100% Export Oriented Undertaking to a depot from where the sale thereof to Domestic Tariff Area is effected through consignment agents will have to be determined by sequential application of Rules 3 to 9 of the Customs Valuation Rules (Determination of Price of Imported Goods), 2007.

Circular No. 933/23/2010 CX dated 16.08.2010

Valuation of old machinery/cars

- The concept of transaction value is applicable to second hand machinery also,
- When exactly comparable imports can be found or exist.
- Invoice value of second hand machine supported by Chartered Engineer's certificate is acceptable
- Depreciation will be allowed on value of old machinery on following scale:
 - for every quarter in 1st year: 4%
 - for every quarter in 2nd year: 3%
 - for every quarter in 3rd year 2.5%
 - for every quarter in 4th and
 - Subsequent year : 2%
- Maximum: 70% [Vadodara Commissionerate No. Cus/t/93 dated 15-6-1993].
- Same depreciation rate applied for old cars also.

Customs Valuation Format for solving numerical problems (Imported Goods)

FOB (Free on board) Value	XXXXXXXXXX
Add: Freight – Actual freight ,If actual is not given 20% of F O B Note; In case of air, 20% of F O B or actual air freight which ever is less has to consider	XXXXXXXXXX
Add: Insurance- Actual insurance, if actual is not given 1.125% of FOB	XXXXXXXXXX
Add: Inclusions in valuation if not included in price (rule 10)	XXXXXXXXXX

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Less: deductions if any not includable (if included in price)	XXXXXXXXXXXX
C I F (Cost insurance and freight) value	XXXXXXXXXXXX
Convert the C I F value in to Indian rupees as per rate of exchange announced by CBEC/Central government Note: Do not consider rate announced by R B I, Banks, FEDAI	XXXXXXXXXXXX
Add: 1% towards handling charges	XXXXXXXXXXXX
Total C I F Value (Assessable value for the purpose of duty payment)	XXXXXXXXXXXX

Import and Export Procedures

Customs Import procedures

- Goods are imported in India or exported from India through sea, air or land.
- Goods can come through post parcel or as baggage with passengers.
- Procedures naturally vary depending on mode of import or export.

This topic covers import procedure through sea, air or land,

Important Definitions

Entry: Section 2(16)

- Entry' in relation to goods means an entry made in a Bill of Entry, Shipping Bill or Bill of Export and includes
- label or declaration accompanying the goods which contains description, quantity and value of the goods, in case of postal articles or
- Entry to be made in case of goods to be exported
- Entry in respect of goods imported which are not accompanied by label or declaration made as per provisions of section 84. .

Customs stations/Customs areas

Section 7 of Customs Act provides CBEC (Board) to appoint by notification
Customs ports
Customs airports
Places for inland container depots
Coastal ports. - Where the goods can be transported

Section 8 authorizes Commissioner of Customs

- Approve proper places in any customs port,
- Customs airport or costal port for unloading and loading of goods and specify the limits of customs area.
- Place (city / town / village etc.) is approved by CBEC,
- While exact location within that city / town / village is approved by Commissioner.

Person in charge means

- In case of vessel - its master
- In case of aircraft - its commander or pilot-in-charge
- In case of train - its conductor or guard and
- In case of vehicle or other conveyance - its driver or other person in charge

Duties and responsibilities of Person in charge

- He is responsible for submitting Import Manifest and Export Manifest
- He is responsible to ensure that the conveyance comes through approved route and lands at approved place only.
- He has to ensure that goods are unloaded after written order, at proper place. Loading also has to be only after permission.
- He has to ensure that conveyance does not leave without written order of Customs authorities.

He can be penalized for

- (a) Giving false declaration and statement
- (b) shortages or non-accounting of goods in conveyance

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Procedure to be followed by the Carrier in case of import

1. Arrival at Vessel/aircraft at customs port/airport only Sec 29

- Person-in-charge entering India shall call or land at customs port or customs airport only.
- While arriving by land route, the vehicle should come by approved route to 'land customs station' only.
- It can land at other place only if compelled by accident, stress of weather or other unavoidable cause.
- In such case, he should report to nearest police station or Customs Officer.
- Person in charge without the consent of officer permits any goods to be unloaded from, or any of the crew or passengers to depart from the vicinity.
- Where the departure or removal is necessary for reasons of health, safety or the preservation of life or property it can be carried on.

2. Delivery of Import Manifest / Report- Section 30

- Person-in-charge has to submit IMF /import report prior to arrival of a vessel or aircraft.
- Import report (in case of vehicle) has to be submitted within 12 hours of arrival at the customs station.
- If the report / manifest could not be submitted within prescribed time, person-in-charge liable to penalty up to Rs 50,000
- Such penalty will not be imposed if the Proper officer is satisfied that there was sufficient cause for the delay. .

Procedure to be followed by Importer

1. filing of Bill of entry
2. Filing of other documents for assessment

1. Filing of Bill of Entry by importer Section 46

The Bill of Entry should be in prescribed form, in quadruplicate

- Original and duplicate for customs,
- triplicate for the importer
- Fourth copy is meant for bank for making remittances.
- Importer to present bill of entry up to 30 days before expected date of arrival of vessel/aircraft

Types of Bill of Entry

Bill of Entry for Home Consumption

- This form is used when the imported goods are to be cleared on payment of full duty. It is white color
- Home consumption means use within India.

Bill of Entry for warehousing –

- It is also called 'Into Bond Bill of Entry' as bond is executed for transfer of goods in warehouse without payment of duty.
- If the imported goods are not required immediately, He can store to store the goods in a warehouse without payment of duty under a bond
- This Bill of Entry is printed on yellow paper

Bill of Entry for ex-bond clearance

- This is used for clearance from the warehouse on payment of duty
- It is printed on green paper.
- The goods are classified and value is assessed at the time of clearance from customs port.
- Value and classification is not required to be determined in this bill of entry.
- Declaration by importer is not required as the goods are already assessed.

Noting of Bill of Entry –

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- Bill of Entry submitted by importer or Customs House Agent is cross-checked with 'Import Manifest' submitted by person in charge of vessel / carrier
- It is noted if the description tallies. 'Noting' really means taking on record by customs officer. This date is relevant for determining rate of customs duty.
- Thoka number (serial number) is given in the import section. Otherwise, it is returned for clarifications.
- In case of EDI system, noting is done by the system itself, which also generates bill of entry number.

2. Documents to be submitted by Importer

Documents are required for purpose of to check the goods and for

- Decide value and classification of goods and
- To ensure that the import is legally permitted.

The documents that are essentially required are:

- Invoice, Packing List, Bill of Lading, Delivery Order
- GATT declaration form duly filled in by Importers /
- CHAs declaration duly signed
- Import License or attested photocopy when clearance is under licence
- Letter of Credit / Bank Draft wherever necessary
- Insurance memo or insurance policy
- Industrial License if required
- Certificate of country of origin, if preferential rate is claimed.
- Technical literature of product & Test report in case of chemicals
- Advance License / DEPB in original, where applicable
- Split up of value of spares, components and machinery
- No commission declaration. – A declaration in prescribed form about correctness of information should be submitted.

Amendment to documents Section 149

BoE, IMF, EGM can be amended by person who files with the permission of Customs authorities

- Amendment may be due to change in classification, clerical mistake in document, change in unloading / loading plan of vessel etc.
- Such permission can be given if there are no fraudulent intentions.
- In case of bill of entry, shipping bill or bill of export, it can be amended after clearance only on the basis of documentary evidence, which was in existence at the time the goods were cleared, warehoused or exported, and not on basis of any subsequent document.

Grant of Entry Inwards by Customs Officer

Imported goods not to be unloaded from vessel until entry inwards granted. Sec 31:

- Goods to be unloaded only at the place specified in IMF/report.
- Unloading only with the supervision of the proper officer:
- Board may, by notification relax these conditions or any class of goods. (Section 34)
- No unloading on any Sunday or on any holiday or after working hours
- Person in charge has to give notice and has to pay the prescribed fees, if he wants to unloading at Sundays/holidays (Section 36)
-

Carrier responsible for shortages during unloading

- If the goods are short landed, the carrier is liable to pay penalty up to twice the amount of duty payable on such short landed goods.

Restrictions on custody and removal of imported goods. Section 45

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All imported goods unloaded in a customs area shall remain in the custody of Port/airport authorities until they are cleared

- The person having custody of any imported goods in a customs area, shall keep a record of such goods and send a copy thereof to the proper officer;
- Shall not permit such goods to be removed from the customs area without written permission of the proper officer.
- If any imported goods are pilfered after unloading thereof in a customs area port authorities are liable to pay duty.

Storage of imported goods in warehouse pending clearance. Sec 49

Any imported goods, whether dutiable or not, entered for home consumption, the AC/DC is satisfied on the application of the importer that the goods cannot be cleared within a reasonable time, the goods may, pending clearance, be permitted to be stored in a warehouse, but such goods shall not be deemed to be warehoused goods This is also known as warehouse without warehousing

Disposal if goods are not cleared within 30 days section 48

- Goods must be cleared within 30 days after unloading.
- Customs Officer can grant extension.
- If not cleared goods can be sold after giving notice to importer.
- Animals, perishable goods and hazardous goods no time limit
- Arms & ammunition can be sold only with permission of CG.

Rate of duty and tariff valuation sec 15

- If the goods are entered for home consumption, Rate on the date on which bill of entry is presented or rate on the date of entry inward grants which ever is later
- In case of warehoused goods, rate on date of clearance from warehouse and
- In other cases, date of payment of duty.

Assessment of Customs duty sec.17

- Assessment of goods will be made after Bill of Entry is filed.
- Date stamp of receipt is put on the 'Bill of Entry' and then it is sent to appraising department.
- Various Appraising groups for different Chapter headings. Each group is under an AC/DC

Appraiser has to

- correctly classify the goods
- decide the Value for purpose of Customs duty
- find out rate of duty applicable as per any exemption notification and
- Verify that goods are not imported in violation of any law.
- He can call for any further documents that may be required for assessment .

Types of Assessment

- Two types
- First Appraisement system/First check procedure sec 17(2)
- Second Appraisement system/Second check procedure sec 17(4)

First appraisement system" or 'first check procedure

- When the appraiser is not able to make assessment on the basis of documents submitted and deems that inspection is necessary.
- Goods are examined first and then these are assessed.
- The importer himself may also request 'first check procedure',
- Request at the time of filing of Bill of entry
- Request can be made only if he cannot give all required details regarding description / value of goods.
- He has to give reason for seeking first appraisement.
- The examination order is recorded on Bill of Entry and then returned to importer

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First appraisalment is generally carried out in following cases –

- If complete documents are not submitted
- Goods are to be tested for correct classification*
- Goods are re-imported
- Goods are damaged or deteriorated and abatement is claimed
- Goods are abandoned and remission of duty is applied for
- When goods are provisionally assessed
- When importer himself requests for examination of goods before payment of duty.

Examination of Goods

- Examiners carry out physical examination and quantitative checking like weighing, measuring etc.
- Selected packages are opened and examined on sample basis in 'Customs Examination Yard'. The examiner prepares examination report.

Second Appraisalment/Second Check/ Risk Assessment

- In second Appraisalment Assessment is done on basis of documents submitted by importer and then goods are examined.
- Such examination is not mandatory.
- It is done on selective basis on the basis of 'risk assessment' or specific information
- Initially assessment is done on basis of documents,
- Re-assessment can be done after examination or testing of goods or otherwise, if it is found any information supplied is not true

Speaking Order in case of Assessment Contrary to claim of importer/Exporter sec 17(5)

It is mandatory for issuance of separate assessment order in case the assessment done by Customs Office is contrary to what is claimed by the importer in Bill of Entry or Shipping Bill. Such an order shall be passed within 15 days of filing of Bill of Entry or Shipping Bill. It shall be a speaking order (i.e., shall give the reasons on which findings in the orders are based.)

Payment of Customs Duty

- Regular importers and Custom House Agents through current account with Customs department. or
- Duty can be paid in cash/DD through GAR 7 challan in designated banks.
- After payment of duty, delivery of goods can be taken from custodians (port trust) after paying their dues.
- Interest @15% p .a. if duty was not paid within 5 working days after B O E returned for payment

Provisional Assessment Sec 18

Provisional assessment can be done in following cases

- When Customs Officer is satisfied that importer or exporter is unable to produce document or furnish information required for assessment
- It is deemed necessary to carry out chemical or other tests of goods
- When importer/exporter has produced all documents, but Customs Officer still deems it necessary to make further enquiry.
- The importer/exporter has to furnish bond/ guarantee/security for payment of difference if any.
- Goods can be cleared after payment of duty provisionally assessed and after providing the security.
- After final assessment, difference is to be paid/refunded.
- In case of goods were warehoused bond to execute for twice the difference in duty,

Interest in case of provisional Assessment

- Recovery of interest from importer/exporter @ 18% p.a. in cases where finally assessed duty is more than the provisionally assessed duty. The interest is payable

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from the first day of the month which duty was provisionally assessed till the date of payment.

- Payment of interest to importer/exporter @ 6% p.a. to assessee in cases where finally assessed duty is less than the provisionally assessed duty. The interest is payable if the refund is not sanctioned within 3 months from the date of final assessment of duty till the date of payment of duty. For refund of duty provisions of doctrine of unjust enrichment will apply.

Export Procedure

Procedure to be followed by 'person in charge'

✓ Person in charge should file Export Manifest/Export Report in prescribed form before departure.

✓ Person in charge should declare that contents in EMF are true

Procedures to be followed by Exporter

- Exporter should obtain IEC CODE from DGFT. It is a PAN based number
- Exporter should Open current account with designated bank for credit of duty drawback claims
- Register licenses / advance license / DEPB etc. at the customs station is required, if exports are under Export Promotion Schemes
- Exporter has to submit 'shipping bill' for export by sea or air and 'bill of export' for export by road. (Sec 50)s
- Shipping bill should be submitted in quadruplicate. If drawback claim is to be made, 5 copies

Types of Shipping Bill

for export of goods under claim for duty drawback - Green color

- for export of dutiable goods -yellow color
- for export of duty free goods -white color
- for export of duty free goods ex-bond - i.e. from bonded store room - pink color
- For export under DEPB scheme - Blue color.

Customs authorities give serial number (called '*Thoka Number*') to shipping bill, when it is presented

■ After shipping bill is passed by export department, Goods are presented to shed appraiser (exports) in dock for examination.

■ Goods will be examined by examiner.

Inspection of goods is necessary

- to ensure that prohibited goods are not exported
- goods tally with description and invoice
- duty drawback, where applicable, is correctly claimed

Let Export Order Sec 51, the customs officer will

- will verify the contents
- to Satisfy that goods are not prohibited for exports
- Ensure applicable duty if any is paid,
- Will permit clearance by giving 'let ship' or 'let export' order.

Entry Outward – Sec 39

the vessel should be granted 'Entry Outward'.

- Loading can start only after entry outward is granted.
- Loading should be done with permission of proper officer
- Export goods can be loaded only after Shipping Bill or Bill of Export, duly passed
- Shipping bill is handover by Exporter to the person-in-charge of conveyance.

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- In case of baggage and mailbags, shipping bill is not necessary, but permission of Customs Officer is required (section 40).

.Conveyance to leave on written order section 42 –

- The vessel or aircraft, which has brought imported goods, which carry export goods cannot leave that customs station unless Customs Officer gives a written order
- Such order is given only after export manifest is submitted
- Shipping bills or bills of export, bills of transshipment etc. are submitted
- Duties on stores consumed are paid or payment of the same is secured
- No penalty is leviable, export duty, if applicable, is paid. –
- Such permission is not required if the conveyance is carrying only luggage of occupants

Re-importation of goods. Sec 20

- If goods are imported into India after exportation there from, such goods shall be liable to duty and be subject to all the conditions and restrictions, if any, which goods of the like kind and value are liable or subject, on the importation thereof. -Tata tea (SC)/Super cassettes (SC)

Re-import within 3 years: If the same goods which are exported earlier were re-imported by same person within 3 years, No customs duty and No CVD payable. At the time export if any drawback amount is claimed, it is payable. The exemption of duty not applicable to EOUs Notification No 94/1996 dated 16.12.1996

Imported for repair/Rectification etc: No duty payable if re-export within 6 months. Bond to be executed. Notification No 158/1995 dated 15.11.1995

Imported goods re-exported for repairs and importing after repairs: duty payable on the values of repairs charges + freight and insurance on both ways. Notification No 94/1996 dated 16.12.1996

Rate of duty and tariff valuation in case of export goods Sec 16

- in the case of goods entered for export under section 50, on the date of let export order
- In the case of any other goods, on the date of payment of duty.
- The provisions of this section shall not apply to baggage and goods exported by post.

Customs Other Procedures

Boat Notes/ Restrictions on goods being water-borne. Section 35

- If the vessel has to unload only a small cargo, it may not spend time in having berth in the port.
- If the small cargo is to be sent to shore, it may be loaded in a small boat and sent to shore.
- As per section 35, such small boat must be accompanied by a 'Boat Note'.
- Boat Notes Regulations provide that Customs Officer will issue such Boat Notes.
- It will be maintained in duplicate and should be serially numbered.
- Boat Note should be in prescribed form.
- Loading in to small boat from ship should be done only when such small boat accompany boat note
- Unloading from small boat to ship for export should not require boat note, when small boat carrying shipping bill. Otherwise boat note is required
- Board may, by notification relax these conditions to any class of goods,
- Boat Note is also required for transshipment of cargo, i.e. transfer from one ship to another or for re-shipment.

Transit and transshipment of goods Sec 53 & Sec 54

Transit Goods - Section 53

- Any goods imported in any conveyance will be allowed to remain on the conveyance and to be transited without payment of customs duty, to any place out of India or any customs

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station. All these goods must be mentioned in import manifest or import report. Such goods should not be 'prohibited goods' under section 11 of Customs Act. The conveyance may be vehicle, ship or aircraft after transit, the goods may go to another customs station.

Transshipment of goods sec 54

- Transshipment means transfer from one conveyance to another.
- Goods imported in any customs station can be transshipped without payment of duty,
- The conveyance may be vehicle, ship or aircraft
- Such transshipment may be to any major port or airport in India
- The goods can be transshipped to any other customs station in India if customs officer is satisfied that the goods are *Bonafide* intended for transshipment to any customs station.
- The facility is available at all customs ports and Inland Container Depots (ICDs)..
- Goods to be transshipped must be specified in Import Manifest
- Bill of Transshipment' should be submitted to Customs Officer.
- Such goods should not be 'prohibited goods' under section 11 of Customs Act
- If so Customs officer should seal the goods during transshipment.
- A bond has to be executed for the purpose.
- After execution of bond, a certificate from customs officer has to be submitted within one month that goods have been properly transferred..

Distinction between Transit and Transshipment –

- In 'transit' goods continue to be on same vessel, while in transshipment, goods are transferred to another vessel / vehicle. Hence, procedures are also different.

Liability of duty on goods transited under transit and transshipment section 55.

- Where any goods are allowed to be transited or transshipped to any customs station, On their arrival at such station, goods shall be liable to duty as if first import,.

Coastal goods Section 91 to 99

- Coastal goods means goods transported from one port in India to another port in India,
- Coastal goods do not include imported goods.
- No export or import is involved, but Control is necessary to ensure that coastal goods are not illegally diverted for export. Coastal goods can leave only after obtaining written order from Customs Officer

Loading of Coastal goods –

- The Consignor should submit bill of coastal goods to Customs Officer (section 93).
- Form of the bill has been prescribed.
- Master of vessel only will load these after 'bill of coastal goods' is passed (section 93).
- Master of Vessel will carry an 'Advice Book' where Customs Officer will make entries.
- This 'Advice Book' has to be presented for inspection of Customs Officers, if called for after loading, the vessel

No coasting vessel to leave without written order.

- The master of a vessel which carrying coastal goods shall not to depart from such port until a written order to that effect has been given by the proper officer.

No such order shall be given until—

- The master of the vessel has answered the questions put to him under section 38;
- All charges and penalties due in respect of that vessel or from the master thereof have been paid or the payment secured by guarantee
- The master of the vessel has satisfied the proper officer that no penalty is leviable or the payment of any penalty has been secured by guarantee or deposit of such amount as the proper officer may direct;

Unloading of coastal goods –

- Unloading of coastal goods should be done only at Customs Port or coastal port appointed by CBEC under section 7 of Customs Act.

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- On arrival, all bills relating to goods which are to be unloaded will be delivered to Customs Officer
- Unloading can be done only after obtaining permission from Customs Officer.
- Customs Officer can inspect goods and ask for questions and documents relating to goods.
- Goods will be unloaded at approved place under supervision of Customs Officer.

Determination of duty where goods consist of articles liable to different rates of duty sec 19

- Where goods consist of a set of articles, duty shall be calculated as follows: —
- Articles liable to duty with reference to quantity shall be chargeable to that duty;
- Articles liable to duty with reference to value shall, if they are liable to duty at the same rate, be chargeable to duty at that rate, and if they are liable to duty at different rates, be chargeable to duty at the highest of such rates;
 - Articles not liable to duty shall be chargeable to duty at the rate at which articles liable to duty with reference to value are liable under clause (b):

Provided that, —

- Accessories of, and spare parts or maintenance and repairing implements for, any article which satisfy the conditions specified in the rules made in this behalf shall be chargeable at the same rate of duty as that article;
- If the importer produces evidence to the satisfaction of the proper officer regarding the value of any of the articles liable to different rates of duty, such article shall be chargeable to duty separately at the rate applicable to it.

Warehousing

section 57 to 73

- After the goods are imported, the importer can keep the goods in warehouse without payment of customs duty.
- He can pay customs duty and clear imported goods from the warehouse as and when needed.
- This facility is available to exporters/manufacturers as well as direct importers.

Appointing of public warehouses. Section 57A

- At any warehousing station, the AC/DC may appoint public warehouses where in dutiable goods may be deposited.

Licensing of private warehouses. Sec 58

- Warehouses can be public or private
- At any warehousing station, where which facilities for deposit in a public warehouse are not available, AC/DC may license private warehouses wherein dutiable imported goods are stored.

The AC/DC of Customs may cancel a license

- (a) By giving one month's notice in writing to the licensee; or
- (b) If the licensee has contravened any provision of this Act or the rules or regulations or committed breach of any of the conditions of the license:
- Before any license is cancelled, the licensee shall be given a reasonable opportunity of being heard. License can also suspended, pending enquiry

Warehousing bond. Sec 59

- The importer of in respect of warehoused goods and assessed to duty shall execute a bond in a sum equal to twice the amount of the duty—
- To observe all the provisions of this Act and the rules and regulations in respect of such goods;
- To pay on or before a date specified in a notice of demand, —
- All duties, and interest, penalties for violation of act or rules ;

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- Rent and other with interest
- The AC/DC may permit an importer submit a general bond for specified amount for specified period.
- Where the whole of the goods or any part thereof are transferred to another person, the proper officer may accept a fresh bond from the transferee

Period for which goods may remain warehoused. Sec 61

In case of 100% E O U

- (a) Capital goods till the expiry of 5 years from the date of deposit
- (b) Other goods till the expiry of 3 years from the date of deposit
- In case of other persons till the expiry of one year,

The above period may be extended by Commissioner in case of goods which are not in the nature of deteriorate

- In case of E O U the period a may think fit
- In case of other persons a period of 6 months
- In case of goods, which are likely to deteriorate, the period of one year may be reduced
- When the license for any private warehouse is cancelled, the owner of goods shall transfer to another warehouse within seven days or within such extended period as the proper officer may allow,

Interest payable beyond warehousing period

- In case of EOU, beyond 3 years /5 years
- In case of other than EO U beyond 90 days
- Rate of Interest 15%
- Interest should be payable up to *and including* the date of payment of duty. –
- Board may, if it considers it necessary so to do in the public interest, waive whole or part of interest.

Control over warehoused goods. Sec 62

- All warehoused goods shall be subject to the control of the proper officer.
- No person shall enter a warehouse or remove any goods there from without the permission of the proper officer.
- The proper officer may cause any warehouse to be locked with the lock of the Customs Department and no person shall remove or break such lock.
- The proper officer shall have access to every part of a warehouse and power to examine the goods therein.

Payment of rent and warehouse charges. Sec 63

- The owner of any warehoused goods shall pay to the warehouse-keeper rent and warehouse charges.
- If any rent or warehouse charges are not paid within ten days from the date when they became due,
- The warehouse-keeper may, after notice to the owner of the warehoused goods and with the permission of the proper officer caused to be sold

Owner's right to deal with warehoused goods. Section 64

With the sanction of the proper officer and on payment of the prescribed fees, the owner of any goods may either before or after warehousing the same—

- Inspect the goods;
- Separate damaged or deteriorated goods from the rest;
- Sort the goods or change their containers for the purpose of preservation, sale, export or disposal of the goods;

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- Deal with the goods and their containers in such manner as may be necessary to prevent loss or deterioration or damage to the goods;
- Show the goods for sale; or
- Take samples of goods without entry for home consumption, and if the proper officer so permits, without payment of duty on such samples.

Manufacture and other operations in relation to goods in a warehouse Section 65

- With the sanction of the AC/DC and subject to such conditions, the owner of any warehoused goods may carry on any manufacturing process or other operations in the warehouse.
- Prescribed conditions may include bond, fees for supervision, maintaining accounts, order of special audit by cost accountant etc.,

Duty liability on imported goods present in the waste/Final product:

- If waste generated when the waste was exported/or waste destroyed no duty payable
- If the waste cleared for Home consumption import duty payable on the waste as if the waste was imported
- If final product is exported no duty payable
- If final product cleared for home consumption, duty is payable on the imported material present the final product

Exemption from excess duty Sec 66:

- If any imported materials are used manufacturing operations in warehouse
- And the rate of duty leviable on the imported materials exceeds the rate of duty leviable on such goods, t
- CG if satisfied that in the interests of the establishment or development of any domestic industry it is necessary so to do, may, by notification in the Official Gazette,
- Exempt the imported materials from the whole or part of the excess rate of duty.

Clearance of goods from bonded warehouse

Clearance from warehouse can be any of the following

- Transfer to other bonded warehouse Sec 67
- Clearance to Home consumption sec 68
- Clearance for export- sec 69

Transfer to other bonded warehouse

- Transit bond for customs duty involved backed by bank guarantee / security should be furnished
- In the case of EOU, bank guarantee for transfer of goods is not required. –

Removal for home consumption –

- Importer has to submit bill of entry in prescribed form.
- Duty, penalties, rent and interest is payable as per rules.
- Goods are then allowed to be cleared by Customs Officer.
- Rate of duty as prevalent on date of presentation of Bill of Entry for clearance from warehouse. –

Clearance for export –

- Warehoused goods can be exported without payment of duty,
- A shipping bill has to be presented.
- Export duty, penalties, rent, interest etc. is payable as applicable
- And then goods are allowed to be exported.
- There is no assessment at warehouse

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- Assessment will be done at the time of filing of bill of entry for warehousing

Allowance in case of volatile goods. Sec 70

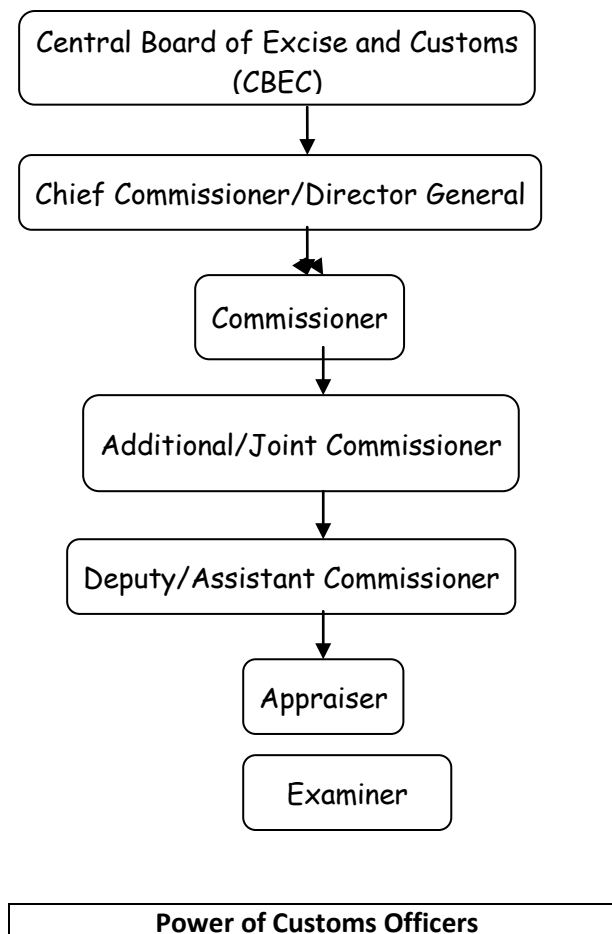
- Any warehoused goods at the time of delivery from a warehouse found to be deficient in quantity on account of natural loss,
- The AC/DC may remit the duty on such deficiency.

Warehouse without warehousing/ Storage without warehousing

- Warehouse goods means goods assessed for duty and stored in ware house
- When assessment was not made at the time of import because of want of some clarification/reports –
- If assessment is likely to be delayed, section 49 allows that goods can be stored in public warehouse.
- However, such goods are not to be treated as 'warehoused goods' for purposes of Customs Act as the goods are not assessed. Hence, it is called 'storage without
- The goods are cleared from the warehouse after duty is assessed and paid.

Hierarchy of Customs

Organization hierarchy of Customs department



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Power of Customs Officers to inspect sec 106 A

- Customs officers have powers to inspect the storage premises notified/specified goods the inspection can be at any reasonable time, with or without notice.
- The officers can check the records and inspect the goods.
- The person in charge of premises is required to produce accounts records

Power to stop and inspect conveyance sec 106

- Customs Officer is empowered to stop any aircraft, vessel, vehicle to examine and search the aircraft, vehicle or vessel.
- He can break open any lock of door or package, if key is withheld.
- If the vessel, aircraft etc. does not stop or land after giving signals, it may be chased
- If it refuses to stop after firing a signal, the vehicle may be fired upon. s

Power to search other persons sec 101

- An Officer of Customs empowered by special order of Commissioner of Customs can search any person (anywhere in India),
- If he has reason to believe that such person is carrying gold, diamonds, manufacture of gold and diamonds or watches, *which are liable to confiscation*.

Search of premises -section 105

- AC, who has reasons to believe that any goods liable to confiscation or
- Any document or thing are secreted in any place,
- Can authorize any Customs Officer he may himself search for such goods, documents or things.
- Search should be as per provisions of Criminal Procedure Code,
- Report of search is to be submitted to Commissioner of Customs.

Vexatious search/arrest by Customs Officer - Section 136

Vexatious search means

- Searching a person or place/arresting a person without any 'reason to believe'
- Officer is punishable with imprisonment up to six months or fine up to Rs. 1,000 or both.
- This punishment can be imposed only by Court of Law.

Seizure by Customs Officers – Sec 110

- During search, some goods are found, Customs Officers can seize if he reason to believe the goods are liable for confiscation,
- If the goods are bulky, they can be kept in possession of the owner himself
- A notice is served on him that he should not remove or in any way deal with the goods. s

Immediate sale of seized goods section 110(1A),

- If the goods are perishable or hazardous or if storage space is not adequate or if the goods depreciate fast., Customs Officers can dispose of such goods immediately
- Before disposing them of, full inventory will be taken and application will be made by Customs Officer to Magistrate to
- Certify correctness of inventory
 - Certify photographs of goods
 - Take samples and certify its correctness.

The goods covered under this section are:

- Liquor, photographic films, medicines, wrist watches, electronic goods, Gold, Silver, dangerous drugs, vehicles, etc.
- If the goods are not confiscated or if the confiscation is set aside by appellate authority, sale proceeds must be refunded to owner of goods.

Return of seized goods within 6 months if no SCN

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- If seized goods are felt to be liable for confiscation, a show cause notice has to be served giving him grounds for confiscation,
- Asking his representation and giving him opportunity of personal hearing as per section 124 of Customs Act.
- If no show cause notice is issued within six months of seizure,
- the goods shall be returned to person from whose possession they were seized

Seizure of documents [section 110(4)].

- Documents relevant to proceedings under the Customs Act can also be seized.
- The person from whom the documents are seized is entitled to take copies in presence of Customs Officer

Power of Customs Officers to X ray bodies Sec 103

- If Customs Officer has reasons to believe That any person coming to India or leaving from India or Any person in customs area has secreted inside his body any goods liable to confiscation,
- He can detain and take him to nearest magistrate.
- If the Magistrate is satisfied that reasonable grounds exist, he can order that body of such person may be X-rayed.
- A qualified radiologist will take the X-rays and his report may be given to Magistrate. If the report indicates that goods are secreted inside, he may direct that suitable action may be taken to take out goods as per advice of qualified doctor.
- Magistrate can order that the person may be kept in custody.
- If the person himself admits that the goods are secreted inside his body and voluntarily submit for action to bringing out the goods, X-ray etc. may not be taken.

Power to call for documents and examine a person - section 107,

- An officer of Customs, empowered by Commissioner, During enquiry in connection with smuggled goods,
- May require any person to produce relevant document or examine any person acquainted with the facts of the case.

Power to summons Sec 108

- All Gazetted Officers of customs to issue summons to any person for inquiry in connection with any provisions under customs Act.
- He can require a person to produce any document relevant to enquiry and examine a person.

Power to arrest Sec 104-

An officer of customs who has been empowered by Commissioner of Customs by general or special order,

- Can arrest a person whom they have 'reason to believe' indulge for evasion of duty or importing prohibited goods or dealing in goods liable to confiscation
- The officer can arrest him and inform him ground of arrest.
- The person arrested has to be forwarded to the Magistrate.
- He must be produced before a magistrate within 24 hours.
- The magistrate may grant the bail on bond or refuse the bail and remand him to custody. .

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Powers of adjudication of customs officers

Competent Authority	Powers of Adjudication	
	Cases involving suppression of facts	Other Cases
Inspector	No power	No power
Superintendent	No power	No Power
Asst. / Dy. Commissioner	Value of goods up to Rs.2 Lakhs	Value of goods up to Rs.2 Lakhs
Addl. Commissioner/ Joint	Duty amount involved up to Rs.50 Lakhs	Value of goods upto Rs.50 Lakhs
Commissioner	Without limit	Without limit

Import and export through Courier

- Import/Export through courier is permitted only through Mumbai, Delhi, Calcutta, Chennai, Bangalore, Hyderabad, Ahmedabad, Jaipur, Trivandrum and land customs station
- Courier Agency should register with Commissioner of customs and should financially viable.
- Courier Agency should execute bond/security if any
- Registration can be cancelled for misconduct or failure to comply with regulations.
- Agency should advise the client about rule and regulations
- Agency should disclose all the information to assessing officer
- It is not necessary the goods should carry by courier agency itself. Person in charge can carry the goods
- Some goods like animals, pets, maps perishables, chemicals, depicting boundaries etc should not be imported./exported
- Weight of each pocket in courier should not exceed 70 kgs.
- All goods should be classified in to documents, free gifts, samples and dutiable goods
- Authorized Courier also has to file 'Courier Bill of Entry'/Courier Shipping bill in prescribed form.
- The courier bags should be kept separately and shall be dealt with only as per directions of Commissioner of Customs.
- Dutiable goods should be packed separately with appropriate labels.
- These goods must be accompanied by a declaration by sender in respect of contents of the package and its value.
- Free gifts and samples up to Rs. 10,000 (exclusive of freight and insurance) can be imported per consignment in case of Exports free gifts 25000/ samples Rs. 50000
- Import/export of jewellery /diamond, each consignment does not exceed Rs. 25 lakhs.
- Authorized Courier has to submit declaration in prescribed form.
- If imported goods are not cleared within 30 days, these will be disposed of.
- Goods brought in customs area must be exported within 7 days
- If not exported within 7 days, these will be disposed of. The period can be extended by Assistant Commissioner in deserving cases

Import and export through post

- Separate provisions for import/export through post
- Label and declaration is the Entry for purpose of postal articles Sec 82
- Filing of separate Bill of Entry or Shipping Bill is not necessary for import/export

Regulations for import / export by Post - Section 84

- Board makes regulations for procedures for examination and assessment of duty and transit/transshipment of goods imported by post.

Accordingly, CBEC have made rules as below

The parcel bill/letter mail bill will show details like

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- Serial number assigned by office of posting, Name of office of posting
- Destination, weight, local number, Contents as ascertained by Customs
- Declared value in foreign currency, Rupee Value, Rate of duty, Amount of duty and Remarks.
- Postal parcels will be allowed to pass from port/airport to Foreign Parcel Department of Post Offices without payment of customs duty.
- Postmaster will hand over packets to Principal Appraiser;
- The mailbag will be opened and scrutinized by Postmaster under supervision of Principal Postal Appraiser of Customs
- Customs Appraiser will mark the parcels which are required to be detained as
 - Necessary particulars are not available or
 - Mis-declaration or under-valuation is suspected or
 - Goods are prohibited for import.
 - Other parcels will be assessed without opening, on the basis of details given in parcel bill or despatch notes.
 - The duty will be assessed and will be entered on parcel bill.
 - These will be audited and returned to Postmaster.
 - Postmaster will hand over parcel to addressee only after collecting the customs duty.
 - Customs duty collected by postal department will be periodical credited to Customs department

Rate of duty tariff value for post

➤ A. In Case of Imports

1	In Case of Goods arrived by air/ road	The rate of duty and valuation as on date on which postal authorities submit the list to Customs Officer
2	In Case of Goods arrived by Vessel	The rate of duty and valuation as on date on which postal authorities submit the list to Customs Officer or date of arrival of vessel which ever is latter.

B. In Case of Exports: *The rate and tariff valuation as applicable on date on which exporter handed over goods to postal authorities for verification will be considered.*

Exemptions to post parcels

- Post Parcel where customs duty payable is less than Rs. 100 are fully exempt from duty
- Gifts from abroad up to Rs. 10,000 of goods, are duty free if sent by post or through courier
- If the value exceeds Rs 10,000, customs duty is payable on whole value even if gift was received unsolicited.

Export by post

- Export must be declared in exchange control form PP.
- Indian and foreign currency, bank drafts, cheque, NSC are not allowed unless accompanied by permit issued by RBI,
- Goods up to Rs 25,000 can be exported as gifts.
- Export of purchases made by foreign tourists is permitted on submission of proof that payment was received in foreign exchange.

Provisions relating to Stores (Sec 85 to 90)

Meaning of Stores: Sec 2(38)

- Goods for use in a vessel or aircraft and include diesel and spare parts and other articles of equipment, whether or not they are required for immediate fitting.

Examples

- Food, Beverages, crockery cutlery, fuel
- Consumables, Tools, Equipments, Spare parts

Provisions relating to Stores (Sec 85 to 90)

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- Imported stores on board a vessel or aircraft can be consumed as stores without payment of customs duty, as long as the vessel or aircraft is a foreign going vessel or aircraft.
- The stores can be removed from warehouse without payment of duty to be taken back on foreign going vessel. A 'shipping bill' has to be submitted
- Warehouse rent and other penalties etc. if applicable, are payable before removal of stores.
- Imported stores can be kept in warehouse without assessment/without payment of duty for supply to ships / aircrafts. –
- Stores can remain on Board of vessel or aircraft while in India.
- Imported can be transferred to another vessel or aircraft with permission of Customs officer, without payment of duty, if the vessel is a foreign going vessel. –
- If stores are to be removed for home consumption, Bill of Entry has to be filed duty, penalties, rent and interest as may be payable.
- Imported duty paid stores can be supplied as 'stores' to foreign going vessel. Drawback can be claimed
- Stores manufactured or produced in India may be exported without payment of export duty, as stores on any foreign going vessel with permission of Customs Officer,
- Customs Officer will determine the requirement based on size of vessel or aircraft, length of journey etc.- Since the supply is treated as 'export' it will be eligible for duty drawback.
- The provisions with regard to stores regarding supply to foreign going vessel drawback provisions will also apply to stores supplied to for Indian Navy Vessel

Baggage

Meaning of baggage

- Baggage means all dutiable articles, imported by passenger or a member of a crew in his baggage
- Un-accompanied baggage, if dispatched previously or subsequently within prescribed period is also covered
- Baggage does not include motor vehicles, alcoholic drinks and goods imported through courier, articles imported under an import license for his own use or on behalf of others.

Declaration of Baggage

- The owner has to make Declaration about the contents of baggage- Sec 77 -
- Rate of duty and tariff valuation in case of baggage shall be the rate and valuation in force on the date of declaration. (Sec 78)
- Bona fide Baggage Exempt from duty as per baggage rules. Sec 79

Clearance procedure of baggage

Green Channel

- Passenger who has nothing to declare can simply walk through green channel with baggage on basis of oral declaration
- Declaration should be made on their disembarkation cards at time of incoming
- Customs Officer can also stop and check
- Any passenger found walking through green channel with dutiable or prohibited goods is liable to strict penal action of seizure and confiscation.
- He can even be arrest / prosecuted.

Red Channel –

- Person carrying dutiable goods should pass through red channel and should submit declaration.
- The declaration of goods and value as given by passenger in disembarkation card is generally accepted, but customs officer can inspect baggage.

Exemptions/Remissions of duty

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Exemptions of Customs duty by Notification Sec 25 – This provision is similar to sec 5A for exemption of Central Excise

Demands and Refunds

Demand of Customs Duty

➤ When duty is not levied or short levied or erroneously refunded, Customs officer can raise a show cause notice [section 28].

Time limit for issue SCN

- Within six months from relevant date.
- In Case of import for personal use, or import by hospitals, Govt., Charitable inst one year from relevant date
- 5 years in case of due to collusion, willful mis-statement, and suppression of facts or fraud

Relevant Date

- If duty or interest was not levied, date of order of clearance of goods
- if the duty was provisionally assessed, then date when it was adjusted after final assessment
- if duty or interest was erroneously refunded - date of refund
- If duty was paid or interest levied - date of payment of duty or interest.
- In case of Tribunal/ court order – date of order.

Refund of Duty

- Importer/buyer CHA with POA can apply for refund
- Time Limit 6 months from the date of payment of duty
- In case of personal use, or import by hospitals, Govt., Charitable inst. one year
- If duty was paid on provisional basis, period of 6 months / one year will be calculated from the date of adjustment of duty after final assessment
- If duty was paid under protest, time limit of 6 months / one year is not applicable.
- The Provisions of doctrine of unjust enrichment will apply for refund of duty

Refund of customs duty/interest can be made to importer/buyer only in following cases:

- If importer/buyer not passed on incidence to customer
- If importer/buyer used goods for personal purpose
- In case of Refund of export duty,/duty drawback if any

Section 26A of Customs Act 1962 – Refund of duty for defective goods Inserted by Finance Act 2009

Where on importation of goods, any duty has been paid on clearance of such goods for Home consumption such duty shall be refunded to the person by whom it was paid if (a) the goods are found to be defective or not in conformity with the specifications agreed upon between the importer and supplier of the goods

Provided that the goods have not been worked, repaired or used after importation except where such use was indispensable to discover the defects or non- conformity with specifications.

(b) the goods are satisfied to the satisfaction of the AC or DC as the goods which were imported.

(c) the importer does not claim drawback and the goods are exported or importer relinquishes his title to the goods and abandons them to the customs or such goods are destroyed or rendered commercially valueless in the presence of the proper officer. in such manner as may be prescribed, within a period of 30 days from the date on which order for Home consumption was made. The period of 30 days may be extended by Commissioner for a period not exceeding 3 months.

(d) No refund shall not be allowed if any offence has been committed.

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(e) An application for refund shall be made before the expiry of 6 months from the relevant date as below

If goods are exported out of India	Date on which proper officer makes an order permitting clearance and loading of goods for exportation
Title to goods is relinquished	Date of relinquishment
If goods are destroyed or rendered commercially valueless	The date of such destruction or rendering of goods valueless

(f) No refund shall be allowed in respect of perishable goods or goods which have exceeded their shelf life.

(g) CBEC may specify any other conditions subject to which refund shall be allowed.

Exemption of Duty on pilfered goods. Sec 13

- If any imported goods are pilfered after the unloading
- Before the proper officer has made an order for clearance for home consumption or deposit in a warehouse,
- The importer shall not be liable to pay the duty leviable on such goods except where such goods are restored to the importer after pilferage.
- There is no remedy if goods are pilfered after the order for clearance is made but before the goods are actually cleared.

Duty on pilfered goods is payable by port/Airport authorities

- They are in position of 'bailee'
- The customs duty is payable by port trust authorities or airport authorities under whose custody the goods were lying [section 45(3)].

Remission of duty on lost destroyed or abandoned goods. Sec 23

- If AC/DC satisfied that any imported goods have been lost (otherwise than as a result of pilferage) or destroyed,
- At any time before clearance for home consumption, remission will be granted

Relinquishment of title of goods by Importer

- Importer can relinquish title of goods before an order for clearance of the goods for home consumption or to deposit in warehouse.
- Even if goods are warehoused, the owner of warehoused goods can relinquish the title of goods any time before order for home clearance is made.

Reasons for relinquishment –

- The goods are in much deteriorated condition and it is not worthwhile to pay duty
- The assessment of duty is done on much higher side than expected
- If the importer decides to abandon the goods, he shall not be liable to pay any duty [section 23 (2) of Customs Act]
- In case of relinquishment of warehouse goods he will be required to pay rent, interest, other charges and penalties that may be payable, but duty will not be payable

Abatement of duty on damaged goods - Sec 22

Reduction in duty will be allowed, if goods are damaged or deteriorated in any of the following cases

- Damaged before or during unloading in India
- Damaged by accident after unloading but before examination of goods for assessment by Customs Officer –
- Damaged by accident in warehouse before clearance of goods –
- The accident is not due to willful act, negligence or default of importer, his employee or agent
- The customs duty chargeable will be in proportion to the value of damaged good to value of goods before damage or deterioration

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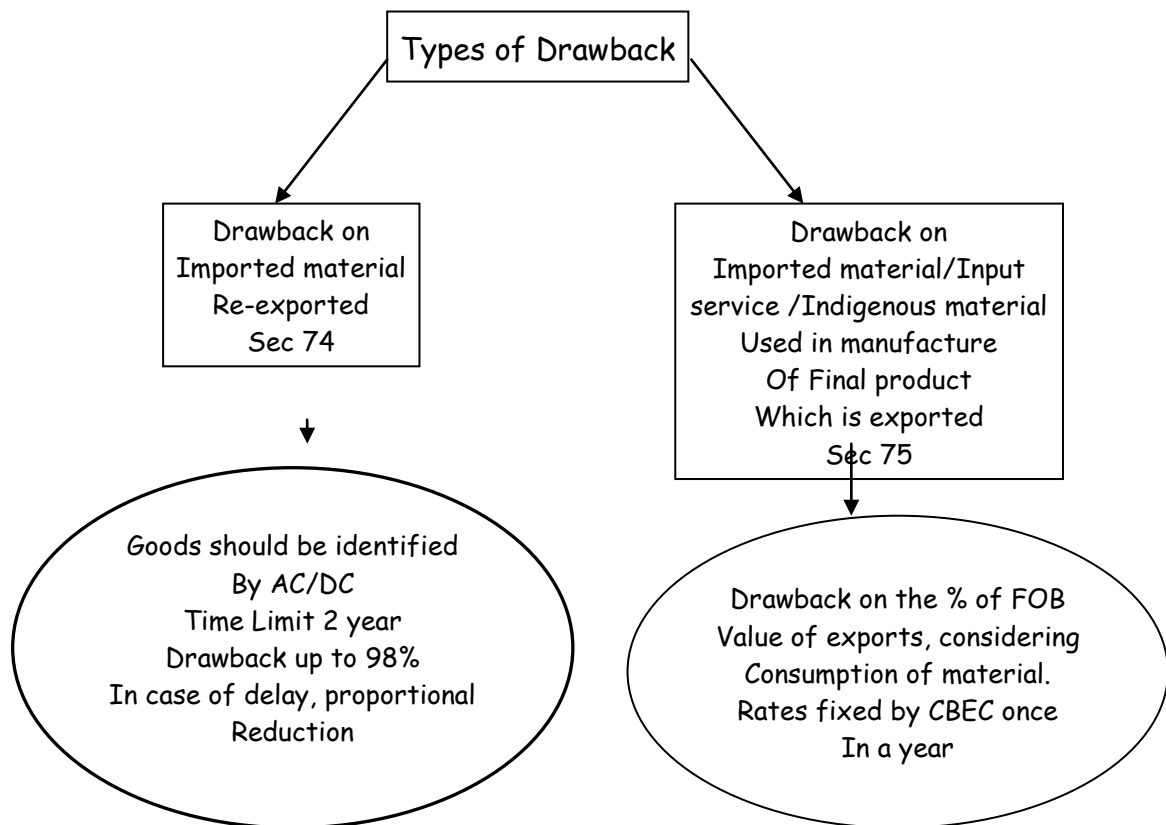
■ AC may decide the value of damaged goods, or if the owner agrees, the damaged goods may be sold by auction and gross sale proceeds of the auction will be deemed to be the value of goods.

Import for repairs, reconditioning etc

- Goods can be imported for repairs, reconditioning or re-engineering.
- These have to be re-exported within three years of imports.
- After imports, the repairs, reconditioning or re-engineering has to be in a bonded warehouse under customs bond.
- It is not necessary that goods must have been manufactured in India

Duty Drawback Sec 74 and Sec 75

- Drawback means refund of excise duty and customs duty paid on inputs to the exporter.
- Drawback provisions covered in section 74 & 75 of Customs Act.



- Sec 74 is applicable when imported goods are re-exported as it is an article is easily identifiable.
- Where section 75 is deals with when imported materials & indigenous material/ Input service are used in the manufacture of goods, which are then exported,
- Duty Drawback is equal to (a) customs duty paid on imported inputs and excise duty paid on indigenous inputs. And (c) Service tax paid on input services used in the manufacture of final product.
- Duty paid on packing material is also eligible.
- No drawback is available on other taxes like sales tax and octroi.

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■ Drawback also will be paid when the goods supplied from DTA to SEZ.

Eligibility for draw back on duty paid

1	In case of Entered for export	Proper officer made order for clearance for loading /exportation U/s 51
2	Are to be exported as baggage	When Owner makes a declaration of its contents to the proper officer u/s 77
3	Are entered for export by post	Proper officer makes an order permitting clearance of the goods for exportation, U/s 81

Quantum of Drawback

- In case of sec 74 drawback up to 98%
- In case of goods exported after some time or usage the drawback will be allowed as below

Goods meant not for personal and not for private use – Notification No 23/2008 dt 1.03.2008

Period between date of clearance for home consumption and date when goods are placed under Customs Control for export	Percentage of import duty to be paid as drawback.
< 3 months	95%
>3 months < 6 months	85%
>6 months < 9 months	75%
>9 months < 12 months	70%
>12 months < 15 months	65%
>15 months <18 months	60%
> 18 months	NIL

Goods for personal and private use –

■ If the goods (including motor car) were imported for personal use, the reduction in import duty refundable is as below

- First year of use ----- 4% per quarter
- Second year of use ----- 3% per quarter
- Third year of use ----- 2.5% per quarter *
- Fourth year of use ----- 2% per quarter *
- * Eligibility is subject to Approval of Commissioner

For example a motorcar was used for 2 years

The drawback will be allowed as below

- For first year of use (4 x 4 %) and
- For second year of use (4 x 3%),
- Total 28%. -- The drawback will be paid 100-28% = 72%

Negative list:

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■The following goods are not eligible for drawback: Wearing apparel, tea chest, exposed cinematographic films passed by censor board, un exposed cinematographic films, X-ray films, paper and plates.

Drawback u/s 75

■Drawback will be paid based on % of F O B as per on All Industry rates notified by C B E C.

All Industry rates (Rule No 3)

■Fixed considering average quantity and value of each class of inputs imported or manufactured in India.

■Average amount of duties paid/Service tax paid on input service is considered.

■ These rates are fixed for broad categories of products. The rates include drawback on packing materials.

■The C G will revise these rates and specify the period in which the rates will be in force (Rule 4 and 5)

Non-applicability of All Industry rates -

■Goods manufactured in customs bonded warehouse

■Manufactured and exported as per export incentive schemes

■Exports by EOU or SEZ unit

■Goods exported after obtaining rebate of excise duty on inputs under rule 18 of Central Excise

■Goods exported without payment of duty under rule 19(2) [However, customs portion of duty drawback rate will be allowable

Brand Rate (Rule 6): -

■Brand rate is fixed if it is not possible to fix All Industry Rate in case of some special products,

■The manufacturer has to submit application with all details to Commissioner, Central Excise.

■Such application must be made within 90 days of export. Extension 90 days + another 90 days by CC

■There should not be '*negative value addition*'.

Special Brand Rate (Rule 7)

■ All Industry rate is fixed on average basis.

■A particular manufacturer may find that the actual duty paid on inputs is higher than All Industry Rate fixed for his product.

■In such case, he can apply for fixation of Special Brand Rate, within 90 days from export. + extension 30 days

■The conditions of eligibility are The all Industry rate fixed should be less than 80% of the duties paid by him

Access to Officers and Information: (Rule 9 & 10):

■Manufacturer and exporter has to submit information to officers sent by AC/DC with regard to class of material, correctness of data, duty paid etc.,

■Officers authorized by AC/DC should be allowed to access factory, examine the process of manufacture, entitlement of drawback.

Drawback claim procedure (Rule 11 to 13)

■Application with Covering Letter along with DB K Statement within three months from the date on which an order permitting clearance and loading of goods for exportation is made by proper officer of customs.

■The said period of three months may be extended by a period of three months by Assistant/Deputy Commissioner on an application accompanied with a fees of 1% of the FOB value of exports or ` 1000/- whichever is less and a further period of six months by Commissioner of Customs/Commissioner of Customs and Central Excise on an application accompanied with a fees of 2% of the FOB value or ` 2000/- whichever is less –Notification No.48/2010 dt 17.06.2010

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- All these statements are to be certified by the manufacturer and/CE by CA/CWA.

Enclosures

- The triplicate copy of shipping bill, Let Export' order, copy of export contract,
- Copy of packing list, Export Invoice, Copy of ARE-1, insurance certificate,
- Copy of communication regarding rate of drawback. In case of brand rates,
- Import Invoice, Evidence for payment of duty,
- RBI permission for re-export (If required), Export Invoice and packing list, and Copy of Bill of Lading
- Declaration by Exporter that duty paid, No rebate claimed,
- Declaration of availment or non availment of cenvat credit
- The claim is scrutinized. After claim is found to be complete, a dated acknowledgement is given.
- Commissioner can also pay drawback on provisional basis, on execution of a bond.
- Appraiser can sanction drawback claim up to Rs. one lakh.
- Assistant Commissioner Sanctions claim above Rs. one lakh.

When drawback not eligible

- If sale proceeds of export goods are not received within time stipulated by RBI/FEMA [This provision does not apply to goods supplied from DTA unit to SEZ unit]
- If no customs/excise duty is paid on the inputs
- If imported inputs were obtained under export promotions schemes without payment of duties
- If Cenvat was claimed on indigenous inputs. [In such case, excise portion of duty drawback will not be available].
- In case of negative value addition - i.e. selling price of exported goods is less than value of imported goods.
- Where specific rates are provided, drawback will not be paid if it is less than 1% of FOB Value of the product,
- Exports to Nepal/Bhutan. If payment received in INR
- No drawback of sales tax, octroi or other taxes
- If drawback is less than Rs. 50.

Interest payment if drawback paid late Sec 75 A-

- Duty drawback must be paid within one month.
- If not so paid, interest is payable to the claimant @ 8%
- If the drawback claim is deficient, the interest will commence only after all required papers are submitted.
- Where any drawback has been paid to the claimant erroneously, demand can be raised and interest is payable by exporter @ 18% from the date after expiry of 2 months from the date of demand till the payment of duty.

Non-realization of sale proceeds within prescribed time, drawback not to be recovered under specified circumstances/conditions [Rule 16A]- Notification No. 30/2011-Cus. (N.T.) dated 11-4-2011

Where sale proceeds are not realised by an exporter within the period allowed under the Foreign Exchange Management Act, 1999, but such non-realisation of sale proceeds is compensated by the Export Credit Guarantee Corporation of India Ltd. under an insurance cover and the Reserve Bank of India writes off the requirement of realisation of sale proceeds on merits and the exporter produces a certificate from the concerned Foreign Mission of India about the fact of non-recovery of sale proceeds from the buyer, the amount of drawback paid to the exporter or the claimant shall not be recovered

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Distinction between drawback under 74 and 75

S No	Drawback u/s 74	Drawback u/s 75
1	It is applicable when imported goods are re-exported as it is and article is easily identifiable,	It is applicable when imported materials are used in the manufacture of goods which are then exported
2	Available for all goods	Available for only notified goods
3	Rules Cover Customs Duty only	Rules Cover Customs and excise Duty
4	Based on Import duty actual paid	Based on Import duty on average Consumption
5	Goods should be easily identifiable	No such condition
6	There is no manufacturing	Manufacturing and process is must.
7	There is a time limit for export	No time limit for export
8	There is uniform rate of drawback (98%)	Different rates of drawback, Brand rate, All industry rate and Special brand rate etc

Export Incentives

The export promotion scheme normally consists of Duty Exemption Scheme and duty remission scheme.

Advance Licence

- Advance Licences are issued under Duty Exemption Scheme to allow import of inputs, and consumables without payment of duty,
- Advance Licences' are issued by Government of India (Director General of Foreign trade-DGFT) for Physical exports, Intermediate supplies and Deemed exports in accordance with Exim policy
- The Advance Licence holder fulfils export obligation by exporting the resultant product specified in the Advance Licence upto specified quantity/value.
- Advance licence specifies the Value and quantity of each item permitted duty free import
- In order to ensure fulfillment of such export obligation, the Advance Licence holder executes a bond with or without Bank Guarantee (B.G) with Customs undertaking to fulfill the specified export obligation.
- Advance Licences are also issued on the basis of annual requirement for exports /supplies. This enables the exporter to plan out his manufacturing/export programme on long term basis.
- Advance Licences for deemed exports are issued to (i) manufacturer exporter or main contractor in case of deemed exports, and (ii) Merchant exporter having supporting manufacturer.
- All Advance Licences and/or materials, imported there under are not transferable even after completion of export obligation.
- Advance Licences are issued with a positive value addition stipulation.

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- All Advance Licences are normally valid for import of goods upto 18 months from the date of issue. Extension can be granted by DGFT.
- No duty drawback is normally admissible to an Advance Licence holder. However the licence holder is entitled to claim brand rate of duty drawback in respect of inputs which are not imported against the advance licence and on which Customs/excise duty has been paid.
- Duty Entitlement Exemption Certificate (DEEC) Book is issued alongwith the Advance Licence to monitor and utilisation of inputs imported against Advance Licences (except Advance Licence for deemed exports), At the time of import and export against Advance Licence, entries are made in the DEEC Book by Customs to keep record of the import/export made against it.
- After completion of export obligation and imports against the Advance Licence, the DEEC book, along with documents will be submitted to DGFT for issue of export obligation (EO) discharge certificate. On the basis of EO discharge certificate issued by DGFT, redemption of bond/B.G. filed by the Advance Licence holder with Customs is allowed.

Duty Remission Scheme:

Duty Remission Scheme consists of;

Duty Free Replenishment Certificate and

Duty Entitlement Passbook Scheme.

Duty free Replenishment certificate

- It is an export promotion scheme under which DFRC licences are issued permitting duty free import of inputs which were used in the manufacture of export product on post export basis as replenishment.
- (DFRC) Licence is issued to a merchant-exporter or manufacturer-exporter.
- DFRC licensees are issued only in respect of export products covered under the Standard Input Output Norms (SION) as notified by DGFT.
- The validity of such licence is normally 18 months and relevant DGFT authority (who issues the licence) is competent to grant extension of validity period.
- DFRC licence and or the material(s) imported against it are freely transferable.
- Exporters operating under DFRC Scheme are entitled for availing AIR of duty drawback in respect of that duty paid materials, whether imported or indigenous, used in the export product, which are not specified in the DFRC licence. Brand rate of duty drawback can also be availed in respect of such inputs.

Duty Entitlement Pass Book (DEPB) Scheme:

- It is an export promotion scheme and envisages grant of DEPB Credit Entitlement to an exporter at the time of export at an ad-valorem rate notified by DGFT, in relation to FOB value of the export product.
- The DGFT have so far notified DEPB rates for nearly 2000 export products. These rates are based on the computation of Basic Customs Duty suffered by the exporters on the inputs listed in the Standard Input-Output Norms (SION) applicable to the export product.
- The normal validity period of a DEPB Scrip is 12 months and DGFT authority (who issues the scrip) is empowered to grant revalidation.
- This scrip are for a certain amount of DEPB credit and can be utilised for adjusting Customs Duties (Basic or CVD) against import of any products into India, without the necessity of any co-relation between the export product and the import goods, i.e. it is not necessary to import only the relevant inputs corresponding to the export product.
- No duty drawback is allowed on exports made under DEPB Scheme. However, in cases where CVD is paid in cash on imported inputs, or where indigenous duty paid

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inputs, not specified in SION, are used in the manufacture of export product, drawback is allowed at brand rate.

Export Promotion capital Goods (EPCG) Scheme:

- Under EPCG Scheme import of capital goods which are required for the manufacture of resultant export product specified in the EPCG Licence is permitted at concessional rate of Customs duty.
- This Scheme also enables up gradation of technology of the indigenous industry. For this purpose
- EPCG Licences are issued on the basis of approval granted by EPCG Committee. The EPCG Committee comprises of officers from DGFT, MOF and concerned Administrative Ministry
- At present the EPCG licence holder is permitted to import capital goods at 5% or 10% Customs duty. EPCG Scheme the licence holder is required to undertake to fulfill export obligation. They have to submit bond/bank guarantee where ever required.
- EPCG licenses are issued to manufacturer exporters and merchant exporter with or without supporting manufacturer, and service providers.
- Capital goods imported under EPCG Scheme are subject to actual user condition and the same cannot be transferred/sold till the fulfillment of export obligation specified in the licence.
- The licence holder is required to produce certificate from the jurisdictional Central Excise Authority (CEA) or Chartered Engineer (CE) confirming installation of such capital goods in the declared premises. This is to ensure the the capital goods imported under EPCG Scheme are utilized in the manufacture of resultant export product
- The normal validity period of EPCG licence is 24 months and DGFT authority (who issues the licence) is empowered to grant further revalidation.
- After fulfillment of specified export obligation, the licence holder submits relevant export documents alongwith EPCG licence to the DGFT authorities for the purpose of obtaining EO discharge certificate. After obtaining EO discharge certificate from DGFT, the licence holder produces the same before Customs for the purpose of obtaining redemption of bond/B.G. filed by him.

In addition to the above incentives, duty draw back also provide for refund of duty paid on inputs

Penalties and Confiscation

Provisions of penalties and offences are quite similar to Excise Law. Like Excise, Customs Law envisages two types of punishments

- (a) **Civil Liability:** Penalty for violation of statutory provisions involving a penalty of money and confiscation of goods.
- (b) **Criminal Liability:** Criminal punishment is of imprisonment and fine; which can be granted only in a criminal court after prosecution. Both penalty and punishment can be imposed for same offence.

Some important definitions

Smuggling - Smuggling, in relation to any goods, means any act or omission, which will render such goods liable for confiscation under section 111 or 113. [Section 2(39)]. Thus, improper importation attempting improper importation or * attempting improper export will amount to 'smuggling'. *'Smuggling' is much broader term than we normally understand.*

Prohibited goods - Section 2(33) of Customs Act defines - 'prohibited goods means any goods the import or export of which is prohibited under Customs Act or any other law for the time being in force, but does not include any such goods in respect of which the conditions subject to which the goods are permitted to be imported or exported have been complied with.

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Penalties

Customs authorities are empowered to impose (a) monetary penalty (b) confiscation of goods, conveyance etc. When a person is not traceable, it is not possible to impose penalty, but goods can be confiscated. Penalty can be imposed for improper import as well as attempt to improperly export.

Penalty for Improper Import - Section 112 of Customs Act provide that penalty can be imposed on any person: (a) who does or omits to do any act which act or omission would render such goods liable for confiscation under section 111 of Customs Act or who abets in doing or omission of such act (b) who acquires possession of or is in any way concerned in carrying, removing, depositing, harbouring, keeping, concealing, selling or purchasing, or in any other manner dealing with any goods which he knows or has reason to believe are liable to confiscation under section 111.

Quantum of Penalty leviable for improper imports

Section 112 provides monetary penalties for improper imports as below:

S No	Nature of goods	Quantum of Penalty
1	Prohibited for imports under Customs Act or any other law	Value of goods or Rs 5,000 whichever is greater,
2	Dutiable goods, which are not prohibited goods	Duty sought to be evaded in case of or Rs 5,000 whichever is greater
3	Actual value is higher value than Declared value of Bill of entry	Difference in actual value and declared value or Rs 5,000 whichever is greater
4	If the goods are prohibited and the value is mis-declared	Difference in actual value and declared value or Rs 5,000 whichever is greater
5	If the goods are not prohibited but duty is sought to be evaded and the value is mis-declared,	Difference in actual value and declared value or Rs 5,000 whichever is greater

Quantum of Penalty leviable for Attempt to improperly export

S No	Nature of goods	Quantum of Penalty
1	Prohibited Goods under Customs Act or any other law	Value of goods or Rs 5,000 whichever is greater,
2	Dutiable goods, which are not prohibited goods	Duty sought to be evaded in case of or Rs 5,000 whichever is greater
3	In case of Other goods (inflation value etc)	Value of goods, as declared by exporter, or as value determined under Customs Act, whichever is greater.

Liability of Ship Owner/Airlines

If goods are unloaded without including in 'Import manifest' or loaded without entering in 'export manifest', the shipper is liable. When Ten packages were sent to London without entering in 'Export manifest', penalty was imposed on Air India'.

Penalty upon any person Sec 114 A

Any person who willfully / intentionally makes/signs/uses any Declaration, Statement or Document which is false or incorrect in any material particular in any transaction of business for the purpose of this Act. The maximum penalty leviable is "5 times the value of goods".

Residual Penalty

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Section 117 of Customs Act provide general penalty to a person who contravenes any provision of the Act or abets in contravention and *if no penalty has been prescribed*, the penalty would be upto Rs. 10,000.

Procedure for imposing penalty

Section 124 of Customs Act provide that before imposing a penalty, show cause notice must be issued to the person, informing grounds for confiscation and he should be given opportunity to make representation and being heard. *Such notice and representation can be oral at the request of the person concerned.* It is obligatory for such officer to obtain prior approval of Customs Officer not below the rank of DC before issuing SCN

Penalty for short landing Sec 116

If the goods were loaded for importation in India, but they were not unloaded in India - partly or fully - the Shipping Agent must explain the reason for deficiency. If it is not satisfactorily explained, Assistant Commissioner can impose penalty up to twice the amount of duty normally payable on the imported goods, The penalty is payable by the 'person in charge of conveyance' i.e. carrier of goods. This provision is to make sure that carrier unloads goods at authorised places only and that there is no smuggling with connivance of the carrier.

Confiscation of Goods

In addition to penalty on the person liable, some goods can be confiscated. 'Confiscation' means the goods become property of Government and Government can deal with it as it wants. On the other hand 'seizure' means goods are in custody of Government, but the property of goods remains with the owner.

Goods that can be confiscated

Goods improperly imported (-section 111) and goods attempted to be improperly exported (section 113) can be confiscated. In addition, following can be confiscated - * conveyance for transport of smuggled goods * packages * Goods used for concealing * The Procedure for confiscation, effect of wrong confiscation and provisions of redemption fine in lieu of confiscation are identical to provisions under Central Excise Act.

Confiscation of goods after clearance from port

It is permissible to take action under section 28 of Customs Act and confiscate the goods, even after goods are cleared from customs. This can be done by issuing a show cause notice cum demand.

Re-export of offending goods

Often it is found that goods are not eligible for import as per Import Policy. In such cases, re-export of such goods is permitted as per EXIM Policy. However, in such cases, penalty and redemption fine is payable.

Provisions for release of goods seized on provisional basis. Sec 110 A

The officer adjudging confiscation may permit release of seized goods to the owner upon execution of bond by the owner. The bond for this purpose shall be executed before the CC.

Prosecution for Offences

Who can be punished

The punishment is imposable on a person (a) who is knowingly concerned in mis-declaration of value or in any fraudulent evasion or attempt to evasion of duty *or* of any prohibition imposed on the imports/export of such goods (b) who acquires possession or is any way concerned with carrying, harbouring, keeping, concealing, selling or purchasing, or otherwise dealing with goods which he knows or has reason to believe are liable to confiscation under section 111 i.e. improper imports or under section 113 i.e. attempt to improperly export (c) who attempts to export any goods which he knows or has reason to believe are liable to confiscation u/s 113. [Section 135(1)]

Punishment that can be imposed

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Punishment imposable is in case of goods covered under section 123 (i.e. gold, watches, synthetic yarn and metallised yarn, fabrics of synthetic yarn, electronic calculators, zip fasteners and silver bullion): imprisonment upto seven years and fine (without limit) except in exceptional cases, the imprisonment cannot be less than three years (b) In other cases : three years or with fine or both [second part of section 135(1)] (c) repeat conviction : a person already convicted for offence under Customs Act is convicted again, the imprisonment punishment can be seven years and fine and in absence of special and adequate reasons, the punishment shall not be less than one year. [Section 135(2)]

Publication of Name

If a person is convicted under this Act, Court can order publication of names, place of business or residence, nature of contravention etc., under section 135B. Such publication will be at the cost of accused and in newspaper or otherwise as directed by Court.

Other Offences

False declaration

Person making, signing or using any statement, declaration or document knowing or having reason to believe that such statement, declaration or document is false in any material particular, shall be punishable with imprisonment upto 2 years or fine or both (section 132 of Customs Act).

Obstruction of officers of customs

Punishable with imprisonment up to two years or fine or both (section 133 of Customs Act).

Refusal to be X-rayed

Punishable with imprisonment upto six months or fine or both (section 134 of Customs Act). This provision is mainly in respect of persons smuggling goods by hiding the same in their body.

Preparation for improper export

Attempting to make exports in contravention of Customs Act is punishable with imprisonment up to three years or fine or both.

Offence In Case Of Company

Penalties *can be imposed on* person who was in-charge of or was responsible to affairs of the Company/firm such as *employee, partner and Director of the company*. *Person will be relived from penalties if he prove that offence was committed without his knowledge or he had taken due care to prevent the offence.*

Offence by Officers of Customs

If an Officer of Customs enters into any agreement to do or abstains from doing or permits any act whereby any fraudulent export is effected, or by which duty of customs is evaded or prohibited goods are allowed to enter India or go out of India, he shall be punishable with imprisonment up to a term of three years or with fine, or both. [Section 136(1)].

If any customs officer (a) requires a person to be searched for goods without any reason to believe that he has such goods (b) Arrests a person without any reason to believe that he has committed an offence u/s 135 or (c) Searches or authorises search without any reason to believe that any goods, documents or things are secreted in the place; he shall be punishable with imprisonment upto 6 months or fine upto Rs 1,000 or both. [Section 136(2)].

If an officer of customs discloses any information obtained by him in official capacity, he shall be punishable with imprisonment upto 6 months or fine upto Rs 1,000 or both. Of course, he can disclose the information in discharge of his duties on in compliance with any law in force. [Section 136(3)].

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The prosecution can be launched in Court only with previous sanction of Central Government in case of prosecution against officer of rank of Assistant Commissioner and above. In lower ranks, previous sanction of Commissioner is required. [Section 137(2)]

End of customs

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A Comparison of similar provisions in Excise, customs and Service tax

Comparison of Classification Excise, Customs and Service tax

	Excise	Customs	Service tax
Classification rules	Rules under CETA 1985 Rule 1 to 6	Rules under CETA 1985 1to 6 repeated under CUTA	Only 3 1.Essential character Classification- same as excise 2.Prefer specific definition, than general definition If not possible under 1 or 2, Classify under first sub clause- In Excise- Classify under last
Tariff headings HSN, tariff Nos	Similar in excise & customs Ex: Chapter 39- Plastics	Similar in excise and customs Ex: Chapter 39- Plastics	N/A

Comparison of Valuation Excise Customs

	Excise	Customs
Tariff valuation	Sec 3(2) Similar	Sec 14 (2) Similar
MRP, Annual Capacity Production, Compound levy scheme	Sec 4A, Sec 3A, Rule 15	No such valuations in customs. MRP Valuation will be considered for CVD payment.
Transaction value	Sec 4 1.Price of goods sold at the time and place of removal 2.Buyer and seller not related to each other (Relative means- list 4 persons) 3. Price is sole consideration for sale	Sec 14(1) and Valuation rules 1.Price of goods sold at the time and place of Importation/exportation 2.Buyer and seller not related to each other (Relative means- list 8 persons Ex: Employee-, Employer, director, 5% share etc. (these persons are not relatives under excise) 3. Price is sole consideration for sale
Inclusions and exclusions in Transaction value	More or less same Ex Packing, design etc Installation, discount, local taxes	More or less same Ex Packing, design etc Installation, discount, local taxes
Valuation Rules	Applicable when value cannot determined	Transaction value determined as per Sec

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	under transaction value Sec 4	14 (1) read with valuation rules.
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Comparison of demand, recovery of duty and tax in case of excise, customs and service tax

	Excise	Customs	Service tax
I Demand	Sec 11 A : Not levied, Not paid, Short Levied, Short paid Erroneously Refunded	Sec 28 : Not levied, Not paid, Short Levied, Short paid Erroneously Refunded	Sec 73 of FA 1994 Similar to Sec 11 A of CE Act
Relevant date	Return filed: Date of filing Return not filed: Last Date of Filing Provisional assessment: date of Final assessment. Erroneous refund: Date of refund Other cases: Date of payment Time Limit: Normal: 1 Year Extended (Fraud cases): 5 years	Non-levy: Date of clearance order Short-levy: Date of payment Provisional assessment: date of Final assessment. Erroneous refund: Date of refund Other cases: Date of payment Time Limit: Normal: In case of imports made by Any Individual for his personal use, or Govt. // Educational, Research or Charitable (ERC) Institution or Hospital :--- 1 Year In any other case :--- 6 months Extended (Fraud cases): 5 years	Same as under Excise Same as under excise
Levy of interest on recovered duty/tax)	Sec 11-AB (@13% p.a.)	Sec 28-AB (@13% p.a.)	Sec 73 (@13% p.a.)
Penalty in fraud cases	Sec 11-AC Similar	Sec 114-A Similar	Similar
Deposit Amount collected in excess from buyer /customer	Sec 11-D Similar	Sec 28-B of Similar	Sec 73 A Similar
Interest leivable on amount collected in excess	Sec 11-DD (@13% p.a.)	No Corresponding provision No interest liability will arise under Customs	Sec 73 Similar to excise
Provisional attachment of property	Sec 11-DDA Similar	Sec 28-BA Similar	Sec 73 C Similar

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Publication of name of persons	Sec 9 B, Sec 37 E	Sec 135 B, 154 B	Sec 73 D
II Recovery of amount due to government	Sec 11 1. Adjustment ag., Refund 2. Attachment of movable immovable property 3. Certificate recovery 4. Recovery from successor	Sec 142 Same as excise	Sec 87 Same as excise
III Power to Grant exemption in public Interest	Sec 5 A Similar	Sec 25 Similar	Sec 93 Similar

Comparison on refunds under Excise, Customs and Service tax

	Excise	Customs	Service tax
Refund	Sec 11 B Time limit: "1 Year from Relevant date" Exceptions to Doctrine of Unjust Enrich: (a) Rebate on export of goods (b) Refund of Cenvat Credit; (c) Unspent balance of PLA; (d) ED paid and borne by manufacturer; (Cum duty price) (e) ED paid and borne by	Sec 27 Time limit: 2 time limits (a) In the case of any import made - by any Individual for his personal use or - by Government or - by any Educational, Research or charitable institution or hospital, -- 1 year from relevant date; (b) Other Cases: - 6 months from relevant date Exceptions to Doctrine of Unjust Enrich: (a) Duty Drawback on export of goods; (b) CD paid and borne by importer/exporter; (c) CD paid and borne by buyer (d) CD paid and borne by notified persons (e) CD paid on imports made by an individual for his personal	Sec 83 of FA 1994 - Provides Sec 11 B of CE Act will apply

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	buyer (f) ED paid and borne by notified persons	(f) Refund of Export duty on re-import of goods (in situation covered in section 26);	
Interest on delayed refund	Sec 11-BB	Sec 27-A.	Sec 83 of FA 1994 provides Sec 11 BB of CE Act will apply
ED/ST to be shown separately on invoice	Sec 12-A	Sec 28-C (Though provision says, Customs duty will not be shown and charge in invoice like excise, service tax.	Sec 83 of FA 1994- provides Sec 12 A of CE Act will apply
Presumption that duty burden passed on Consumer	Sec 12-B	Sec 28-D	Sec 83 of FA 1994 provides Sec 12 B of CE Act will apply

Comparison of Admin and Appeals Excise Customs and Service tax

	Excise	Customs	Service tax
Admin Hierarchy	CBEC To Inspector	CBEC to DC/AC same as excise No Supt/Inspector- Instead Appraiser/Examiner	Excise Dept will administer Service tax
Appeal Hierarchy	CESTAT and Commissioner	CESTAT and Commissioner	CESTAT and Commissioner
Appeal to Commissioner	Sec 35 and Sec 35 A Form EA1 & EA2 (Dept)	Sec 128, Sec 128 A Form CA1 & CA2 (Dept)	Sec 85 Form ST 4
Appeals to CESTAT	Sec 35B, 35 C and Sec 35 D Form EA 3, EA 4, EA 5 Exception : : Order of 1. Goods lost in transit 2. Rebate on exports 3. Export payment of duty 4. Admissibility of Cenvat credit Revisionary Application to C G- Form EA 8	Sec 129 A, 129 B and 129 C Form CA 3, CA 4, CA 5 Exception : : Order of 1. duty drawback 2. baggage 3. short landing of goods Above cases Revisionary Application to C G- form CA 8	Sec 86 Form ST 5, ST 6, ST 7 Exception : : Order of No corresponding provision.

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Comparison on settlement Commission

Particulars	EXCISE	CUSTOMS	SERVICE TAX
Case	Sec 31 Case- means pending adjudication proceedings before CEO When a tribunal, court, or any authority sent back proceedings to Adj. authority it is not a case	Sec 127A Case- means pending adjudication proceedings before Proper Officer. When a tribunal, court, or any authority sent back proceedings to Adj. authority it is not a case	Settlement facility is not available in Service Tax. Since there is no prosecution in service tax
Conditions for Admissibility of Settlement Application	Sec 32-E (a) Applicant has filed returns showing production, clearance and duty paid; (b) SCN for recovery of duty has been issued by CEO; (c) Additional ED accepted by the applicant in his application should exceed Rs 3,00,000/-. (d) Additional ED accepted has been deposited along with interest @13%; (e) Question involved is not to be related to "Classification of Goods"; (f) When the case is pending before tribunal/court- Application will not be accepted (g) Where seizure operation has been carried out & Excisable Goods/Books of Accounts/ other documents have been seized --- Settlement Application shall be admissible only when made after expiry of 180 days of seizure	Sec 127-B (a) Applicant has filed Bill of Entry // Shipping Bill (b) A SCN has been issued by PO; (c) Additional customs duty accepted by the applicant in his application should exceeds Rs 3,00,000/-. (d) Additional ED accepted has been deposited along with interest @13%; (e) Question involved is not to be related to "Classification of Goods"; (f) When the case is pending before tribunal/court- Application will not be accepted (g) Where seizure operation has been carried out & Goods/Books of Accounts/ other documents have been seized --- Settlement Application shall be admissible only when made after expiry of 180	

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		days of seizure No settlement is possible in relation to : Sec 123 Goods (smuggled goods) Goods in relation to which offence under NDPS (Narcotics Drugs & Psychotropic Substances) Act has been committed	
Procedure after Receipt Of Application	Sec 32-F Similar	Sec 127-C Similar	
Powers of Settlement Commission	Sec 32-G to 32-L Similar	Sec 127-D to 127-I Similar	
Order of settlement	Sec 32-M Similar	Sec 127-J Similar	

Comparison on Authority for Advance Ruling

	EXCISE	CUSTOMS	SERVICE TAX
Activity	Sec 23-A “Activity” means production or manufacture of goods.	Sec 28-E “Activity” means Import or Export.	Sec 96-A “Activity” means provisioning of service.

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Applicat ion For Advance Ruling	Sec 23-C Eligible Issues on which Advance Ruling can be sought: (a) Valuation of goods; (b) Classification of goods; (c) Applicability of Exemption notification; (d) Applicability of Other Notifications; (e) Admissibility of Cenvat Credit. (f) Determination of liability to pay ED	Sec 28-H Eligible Issues on which Advance Ruling can be sought: (a) Valuation of goods; (b) Classification of goods; (c) Applicability of Exemption notification; (d) Applicability of Other Notifications; (e) Determination of liability to pay Customs Duty (f) Determination of origin of the goods in terms of rules notified under CTA, 1975; (Admissibility of Cenvat Credit not applicable)	Sec 96-C Eligible Issues on which Advance Ruling can be sought: (a)Valuation of services; (b) Classification of services; (c) Applicability of Exemption notification; (d) Applicability of Other Notifications; (e) Admissibility of Cenvat Credit. (f) Determination of liability to pay Service Tax
Procedu re On Receipt Of Applicat ion	Sec 23-D Similar	Sec 28-I Similar	Sec 96-D Similar
Applicab ility Of Advance Ruling.	Sec 23-E Similar	Sec 28-J Similar	Sec 96-E Similar
Advance Ruling To Be Void In Certain Circums tances	Sec 23-F Similar	Sec 28-K Similar	Sec 96-F Similar

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Excise Provisions Applicable to Service tax

As per Section 83 of the Finance Act, 1994, provisions of the following sections of the Central Excise Act, 1944 have been made applicable to service tax

Excise Section No.	Contents of the Section	Parallel Custom Section No. for reference
9C	Presumption of culpable mental state	138A
9D	Relevancy of statements under certain circumstances	138B
11B	Claim for refund of duty	27
11BB	Interest on delayed refunds	27A
11C	Power not to recover duty of excise not levied or short levied as a result of general practice	28A
12	Application of the provisions of Act No. 52 of 1962 to Central Excise Duties	N.A.
12A	Price of goods to indicate the amount of duty paid thereon	28C
12B	Presumption that the incidence of duty has been passed on to the buyer	28D
12C	Consumer Welfare Fund	2(21A)
12D	Utilization of the Fund	N.A.
12E	Powers of Central Excise Officers	5
14	Power to summon persons to give evidence and produce documents in inquiries under this Act	108
14AA	Audit of CENVAT records by CA/cost accountant	Special Audit of Warehouse

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15	Officers required to assist Central Excise Officers	151
33A	Adjudication procedure	122A
35F	Deposit, pending appeals, of duty demanded or penalty levied	129E
35FF	Interest on refund of pre-deposit if delayed beyond three months [section inserted vide Finance Act, 2008]	129EE
35G	Appeal to High Court	130
35H	Application to High Court	130A
35I	Power of High Court or Supreme Court to require statement to be amended	130B
35J	Case before High Court to be heard by not less than two judges	130C
35K	Decision of High Court or Supreme Court on the case stated	130D
35L	Appeal to the Supreme Court	130E
35M	Hearing before Supreme Court	130F
35N	Sums due to be paid notwithstanding reference, etc.	131
35O	Exclusion of time taken for copy	131A
35Q	Appearance by authorized representative	146A
36	Definitions	131C
36A	Presumption as to documents in certain cases	139(i)
36B	Admissibility of micro films, facsimile copies of documents and computer print outs as documents and as evidence	138C
37A	Delegation of Power	152
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Customs sections Applicable to Excise

Section 12 of CEA authorizes Central Government to apply provisions of Customs Act these are

	Section	Content of Section
(a)	105(1)	Powers of search
(b)	110	seizure of goods, documents and things
(c)	115	confiscation of conveyances
(d)	118(a)	confiscation of packages containing goods
(e)	119	confiscation of goods for concealing goods
(f)	120	confiscation of goods even if form changes
(g)	121	confiscation of sale proceeds of contravening goods
(h)	124	issue of show cause notice before confiscation of goods
(i)	142(1)(b) and 142(1)(c)(ii)	Recovery of duty
(j)	150	Procedure for sale of goods.

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