

Valuation Under The Customs Act 1962

Question 1

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

- (i) Goods of the same class or kind
- (ii) Computed value

Answer

- (i) As per **Rule 2(1)(c) of Customs Valuation (Determination of Value of Imported Goods) Rules, 2007**, goods of the same class or kind, means imported goods that are within a group or range of imported goods produced by a particular industry or industrial sector and includes identical goods or similar goods.
- (ii) As per **Rule 2(1)(a)** of the said rules, computed value means the value of imported goods determined in accordance with **Rule 8**.

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

- (a) the cost or value of materials and fabrication or other processing employed in producing the imported goods;
- (b) an amount for profit and general expenses equal to that usually reflected in sales of goods of the same class or kind as the goods being valued which are made by producers in the country of exportation for export to India;
- (c) the cost or value of all other expenses under sub-rule (2) of Rule 10.

Question 2

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

Answer

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

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

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Question 3

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

- (i) *Similar goods*
- (ii) *Identical goods*

Answer

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

- (a) which although not alike in all respects, have like characteristics and like component materials which enable them to perform the same functions and to be commercially interchangeable with the goods being valued having regard to the quality, reputation and the existence of trade mark;
- (b) produced in the country in which the goods being valued were produced; and
- (c) produced by the same person who produced the goods being valued, or where no such goods are available, goods produced by a different person,

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

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

- (i) which are same in all respects, including physical characteristics, quality and reputation as the goods being valued except for minor differences in appearance that do not effect the value of the goods;
- (ii) produced in the same country in which the goods being valued were produced; and
- (iii) produced by the same person who produced the goods, or where no such goods are available, goods produced by a different person,

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

A careful perusal of above definitions of similar goods and identical goods reveals that the major difference between the two classes of goods is that whereas identical goods should be same in all respects, except for minor differences, while in case of similar

goods it is sufficient if they have like characteristics and like components and perform the same functions

Question 4

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

Answer

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

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

- (i) the selling price in India of the goods produced in India;
- (ii) a system which provides for the acceptance for customs purposes of the highest of the two alternative values;
- (iii) the price of the goods on the domestic market of the country of exportation;
- (iv) the cost of production other than computed values which have been determined for identical or similar goods in accordance with the provisions of rule 8;
- (v) the price of the goods for export to a country other than India;
- (vi) minimum customs values; or
- (vii) arbitrary or fictitious values.

Question 5

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

Answer

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

- (i) There are no restrictions on buyer for disposal of goods:-Barring the following there are no restrictions on buyer on disposal or use of goods:-
 - (a) Restrictions which are imposed or required by law or by the public authorities in India; or

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- (b) Restrictions on the geographical area in which the goods may be resold; or
- (c) Restriction that does not substantially affect the value of the goods [Rule 3(2)(a)];
- (ii) Sale not subject to conditions of which value cannot be determined:-The sale or price should not be subject to a condition or consideration for which value cannot be determined. Following Examples are given in interpretative note to rule 3(2)(b):-
 - (a) Price is subject to condition that buyer buys some other goods in specified quantities from seller.
 - (b) Price is dependent on price at which buyer of imported goods sells other goods to seller.
 - (c) Price is based on form of payment extraneous the imported goods.However,
 - (a) Buyer furnishing engineering and plans undertaken in India to seller
 - (b) Buyer undertaking activities of marketing of imported goods in India will not form part of value of imported goods. [Rule 3(2)(b)]
- (iii) Seller should not be entitled to further consideration like part of subsequent resale, disposal or use of goods by the buyer accruing directly or indirectly to seller, unless proper adjustment in value terms can be made as per rule 10 .For instance if the importer happens to be a trader and the condition attached is that after sale of goods in India, the concerned foreign exporter will get a fixed amount after the aforementioned sale, then the extra amount will be added for the purposes of customs valuation [Rule 3(2)(c)]
- (iv) Unrelated buyer and seller, except when price acceptable under rule 3(3):-Buyer & seller are not related unless the transaction value is acceptable under rule 3(3)[Rule 3(2)(d)].

Question 6

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

(i)	F.O.B. value of machine	8,000 UK Pounds
(ii)	Freight paid (air)	2,500 UK Pounds
(iii)	Design and development charges paid in UK	500 UK Pounds
(iv)	Commission payable to local agent @ 2% of F.O.B., in Indian Rupees	
(v)	Date of bill of entry	24.10.2007 (Rate BCD 20%; Exchange rate as notified by CBEC ₹ 68 per UK Pound)
(vi)	Date of entry inward	20.10.2007 (Rate of BCD 18%; Exchange rate

		as notified by CBEC ₹ 70 per cent UK Pound)
(vii)	C.V.D. is payable @ 10% plus education cess as applicable	
(viii)	Special C.V.D. – as applicable	
(ix)	Insurance charges have been actually paid but details are not available.	

Answer**Computation of assessable value and duty thereon:**

FOB value	8,000 UK pounds
Add: Design and development charges	500 UK pounds
Add: Freight (air) (Note-3)	1,600 UK pounds
Add: Insurance 1.125% of FOB (Note-4)	<u>90 UK pounds</u>
Total	<u>10,190 UK pounds</u>
Total in Rupees @ ₹ 68 per pound (Note-1)	₹ 6,92,920
Add: Local agency commission	
(2% of 8000 UK pounds)= 160 UK pounds × ₹ 68	₹ <u>10,880</u>
C.I.F value	₹ 7,03,800
Add: Landing charges @1%of CIF value	₹ <u>7,038</u>
Assessable value	₹ 7,10,838
Add: Basic custom duty @ 20% (Note-2)	₹ <u>1,42,167.60</u>
Total	₹ 8,53,005.60
Add: CVD @10.30%	₹ 87,859.58
Add: Education cess (3% of custom duty) = 3% of (₹ 1,42,167.60+ ₹ 87,859.58)=₹ 2,30,027.18	₹ <u>6,900.82</u>
Total for Special CVD	₹ 9,47,766
Special CVD @4%	₹ 37,910.64
Total duty payable:	₹ 1,42,167.60
	₹ 87,859.58
	₹ 6,900.82
	<u>Rs 37,910.64</u>
	<u>₹ 2,74,838.64</u>
or	₹ 2,74,839(Rounded off)

Notes:

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

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2. Section 15 of the Customs Act, 1962 provides that rate of duty shall be :-
the rate in force on the date of presentation of bill of entry
or
the rate in force on the date of entry inward
whichever is later.
3. The air freight should not exceed 20% of FOB value. Hence actual air freight of 2500 pounds has been restricted to 1600 pounds. (8000 x 20%)
4. Where the insurance charges are not ascertainable, such cost shall be 1.125% of FOB value of the goods.

Question 7:

A consignment of 800 metric tonnes of edible oil of Malaysian origin was imported by a charitable organization in India for free distribution to below poverty line citizens in a backward area under the scheme designed by the Food and Agricultural Organization. This being a special transaction, a nominal price of US\$ 10 per metric tonne was charged for the consignment to cover the freight and insurance charges. The Customs House found out that at or about the time of importation of this gift consignment there were following imports of edible oil of Malaysian origin:

S. No.	Quantity imported in metric tonnes	Unit price in US \$ (CIF)
1.	20	260
2.	100	220
3.	500	200
4.	900	175
5.	400	180
6.	780	160

The rate of exchange on the relevant date was 1 US \$ = ₹ 43.00 and the rate of basic customs duty was 10% ad valorem. There is no countervailing duty or special additional duty. Calculate the amount of duty leviable on the consignment under the Customs Act, 1962 with appropriate assumptions and explanations, where required.

Answer

Determination of transaction value of the subject goods:-

In the instant case, while determining the transaction value of the goods, following factors need consideration:-

1. In the given case, US \$10 per metric tonne has been paid only towards freight and insurance charges and no amount has been paid or payable towards the cost of goods. Thus, there is no transaction value for the subject goods. Consequently, we have to look

for transaction value of identical goods under rule 4 of Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 [Customs Valuation (DVIG) Rules, 2007].

2. Rule 4(1)(a) of the aforementioned rules provides that subject to the provisions of rule 3, the value of imported goods shall be the transaction value of identical goods sold for export to India and imported at or about the same time as the goods being valued. In the six imports given during the relevant time, the goods are identical in description and of the same country of origin.
3. Further, clause (b) of rule 4(1) of the said rules requires that the comparable import should be at the same commercial level and in substantially same quantity as the goods being valued. Since, nothing is known about the level of the transactions of the comparable consignments, it is assumed to be at the same commercial level.
4. As far as the quantities are concerned, the consignments of 20 and 100 metric tonnes cannot be considered to be of substantially the same quantity. Hence, remaining 4 consignments are left for our consideration.
5. However, the unit prices in these 4 consignments are different. Rule 4(3) of Customs Valuation (DVIG) Rules, 2007 stipulates that in applying rule 4 of the said rules, if more than one transaction value of identical goods is found, the lowest of such value shall be used to determine the value of imported goods. Accordingly, the unit price of the consignment under valuation would be US \$ 160 per metric tonne.

Computation of amount of duty payable:-

CIF value of 800 metric tonnes:

$$= 800 \times 160 = \text{US \$ } 1,28,000$$

At the exchange rate of \$ 1 = ₹ 43

CIF Value (in Rupees)	=	₹ 55,04,000
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Add: Landing Charges at 1%	=	₹ 55,000
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	=	<u>₹ 55,59,040</u>
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10% of Ad Valorem duty

on ₹ 55,59,040	=	₹ 5,55,904
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Add: Education cess @ 2% (rounded off)	=	₹ 11,118
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Add: Secondary and higher education cess @ 1% (rounded off)	=	₹ 5,559
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Total custom duty payable	=	₹ 5,72,581
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Question 8

M/s IES Ltd. (assessee) imported certain goods at US \$ 20 per unit from an exporter who was holding 30% equity in the share capital of the importer company. Subsequently, the assessee entered into an agreement with the same exporter to import the said goods in bulk at US \$ 14

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per unit. When imports at the reduced price were effected pursuant to this agreement, the Department rejected the transaction value stating that the price was influenced by the relationship and completed the assessment on the basis of transaction value of the earlier imports i.e., at US \$20 per unit under rule 4 of the Customs Valuation (Determination of Value of Imported Goods) Rules 2007, viz transaction value of identical goods. State briefly, whether the Department's action is sustainable in law, with reference to decided cases, if any.

Answer

No, the Department's action is not sustainable in law. Rule 2(2) of Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 inter alia provides that persons shall be deemed to be "related" if one of them directly or indirectly controls the other. The word "control" has not been defined under the said rules. As per common parlance, control is established when one enterprise holds at least 51% of the equity shareholding of the other company. However, in the instant case, the exporter company held only 30% of shareholding of the assessee. Thus, Exporter Company did not exercise control over the assessee. So, the two parties cannot be said to be related.

The fact that assessee had made bulk imports could be a reason for reduction of import price. The burden to prove under valuation lies on the Revenue and in absence of any evidence from the Department to prove under-valuation, the price declared by the assessee is acceptable.

In the light of foregoing discussion, it could be inferred that Department's action is not sustainable in law.

Question 9

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

- (i) *Service charges paid to canalizing agent are not includible in the assessable value of imports.*
- (ii) *Design and engineering charges are includible in the assessable value of the imported goods only if the goods imported are specifically manufactured on the basis of the design and engineering specifications provided by the importer.*
- (iii) *Inspection charges are not includible in the assessable value of the imported goods if contract does not specify for certification by an independent agency.*
- (iv) *Goods exempt from basic customs duty would automatically be exempt from additional duty of customs.*

Answer

- (i) The statement is not correct. Since the canalizing agent is not the agent of the importer nor does he represent the importer abroad, purchases by canalizing agency from foreign seller and subsequent sale by it to Indian importer are independent of each other. Hence, the commission or service charges paid to the canalizing agent are includible in

the assessable value as these cannot be termed as buying commission [*Hyderabad Industries Ltd. v. UOI 2000 (115) ELT 593 (SC)*].

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

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

- (iii) **The statement is correct.** Where there is no requirement in the contract for independent inspection and the inspection is carried out by foreign supplier on his own and is not required for the purpose of fulfilling the condition of the contract, then such charges incurred on inspection are not includible in assessable value [*Bombay Dyeing & Mfg. v. CC 1997 (90) ELT 276 (SC)*].
- (iv) **The statement is not correct.** Exemption from basic customs duty would not mean exemption from additional duty. When goods are exempted from basic customs duty in terms of section 12 of the Customs Act, 1962 it would not mean that they are exempted from additional duty of customs also, as basic customs duty is leviable by virtue of section 12 of the Customs Act, 1962 while additional customs duty is leviable under section 3 of the Customs Tariff Act, 1975 [*Kaur Sarin Traders v. Union of India 2006 (199) ELT 224 (Pat.)*].

Question 10

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

Answer

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

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

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

Question 11

A material was imported by air at CIF price of 5,000 US\$. Freight paid was 1,500 US\$ and insurance cost was 500 US\$. The banker realized the payment from importer at the exchange rate of ₹ 45 per dollar. Central Board of Excise and Customs notified the exchange rate as ₹ 44.50 per US\$. Find the value of the material for the purpose of levying duty.

Answer

CIF value	5000 US \$
Less: Freight	1500 US \$
Less: Insurance	<u>500 US \$</u>
Therefore, FOB value	<u>3000 US \$</u>
Assessable value for Customs purpose:	
FOB value	3000 US \$
Add: Freight (20% of FOB value)	600 US \$
Add: Insurance (actual)	<u>500 US \$</u>
CIF for Customs purpose	4100 US \$
Add: 1% for landing charges	<u>41 US \$</u>
Value for Customs purpose	4141 US \$
Exchange rate as per CBEC	₹ 44.50 per US \$
Assessable value	₹ 44.50 x 4141 US \$
	₹ 184274.50

Question 12

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

- (i) Assessable value of the imported equipment US \$ 10,100
- (ii) Date of bill of entry is 25.4.2010. Basic customs duty on this date is 10% and exchange rate notified by the Central Board of Excise and Customs is US \$ 1 = ₹ 65.
- (iii) Date of entry inwards is 21.4.2010. Basic customs duty on this date is 16% and exchange rate notified by the Central Board of Excise and Customs is US \$ 1 = ₹ 50.
- (iv) Additional duty payable under section 3(1) and (2) of the Customs Tariff Act, 1975: 15%
- (v) Additional duty under section 3(5) of the Customs Tariff Act, 1975: 4%.

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

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

Answer

Computation of custom duty payable

Particulars	₹
Assessable value (10,100 x 65)	6,56,500
Add: Basic custom duty @ 10%	<u>65,650</u>
Total	7,22,150
Add : CVD @ 15.45%	<u>1,11,572.18</u>
Total	8,33,722.18
Add : Education Cess (65,650+1,11,572.18) x 3%	<u>5,316.67</u>
Total	<u>8,39,038.85</u>
Additional duty u/s 3(5) @ 4%	33,561.55
Total Custom Duty Payable (65,650+1,11,572.18+5,316.67+33,561.55)	2,16,100.4
Custom Duty (rounded off to nearest rupee)	2,16,100

1. Rate of exchange notified by CBEC as prevalent on the date of filing of bill of entry would be the applicable rate.[Section 14 of Customs Act,1962]
2. Rate of duty would be the rate as prevalent on the date of filing of bill of entry or entry inwards whichever is later i.e , 10%.

Question 13

Write a detailed note on filing of bill of entry on importation in accordance with provisions of Section 46 of Customs Act, 1962.

Answer

Following are the provisions relating to filing of bill of entry on importation as per amended [w.e.f 08.04.2011] Section 46 of Customs Act, 1962:

Relevant Section & sub-section	Heading	Relevant Provisions
46(1)	Presentation of Bill of Entry electronically or in any other manner	W.E.F. 08.04.2011 the importer of any goods [other than goods intended for Transit or Transshipment] has to make entry thereof by presenting electronically to the proper officer a bill of entry either for home consumption or warehouse in the prescribed form.

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		However, where it is not feasible to make entry by presenting electronically, the Commissioner of Customs may allow an entry to be presented in any other manner. Further, where the importer makes and subscribes to a declaration that he is unable to file Bill of Entry owing to lack of full information, the proper officer may permit him in respect of the following: (i) To Examine the goods in the presence of an officer of customs; or (ii) To Deposit the goods in a public warehouse without warehousing the same.
46(2)	Scope of Bill of Entry	A Bill of Entry shall include all the goods mentioned in the bill of lading or other receipt given by the carrier to the consignor, unless otherwise permitted by the proper officer
46(3)	Time of presentation of Bill of Entry	A Bill of Entry may be presented at any time after the delivery of the Import Manifest/Import Report . However, in special circumstances the Commissioner of Customs may permit a Bill of Entry to be presented before the delivery of Import Report. Further, a Bill of Entry may be presented even before the delivery of Import Manifest if the vessel or the aircraft by which the goods have been shipped for importation into India is expected to arrive within 30 days from the date of such presentation.
46(4)	Making a Declaration regarding the truth of the contents of Bill of Entry	At the time of presenting a Bill of Entry the importer has to make a Declaration regarding the truth of the contents of Bill of Entry. Besides, he has to produce the invoice , if any, relating to the imported goods in support of foregoing Declaration.
46(5)	Permitting substitution of a Bill of Entry for Home Consumption for a Bill of Entry for Warehousing or vice-versa	If the proper officer is satisfied that the interests of revenue are not prejudicially affected and there was no fraudulent intention, he may permit substitution of a Bill of Entry for Home Consumption for a Bill of Entry for Warehousing or vice-versa.

Question 14

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

Answer**Computation of customs duty payable**

		₹
1.	Assessable Value	1,00,000
2.	Basic Customs Duty @ 20%	<u>20,000</u>
3.	Sub-Total	1,20,000
4.	Additional Duty of Customs (CVD) @ 10.30% of ₹ 1,20,000 i.e. (₹ 12000+360) (10% + 3% Education cess on 10%)	<u>12,360</u>
5.	Education Cess 3% on ₹ 32,360 [(2) + (4)]	971
6.	Total Customs Duty Payable [(2) + (4) + (5)] Rounded off	33,331

Credit of total CVD of ₹ 12,360 will be available to the importer. The cess component of ₹ 360 included in ₹ 12,360 will be available as CENVAT credit only for paying education cess on final products or taxable services. The balance ₹ 12,000 will be available as CENVAT credit for payment of excise duty or service tax as provided in CENVAT Credit Rules, 2004. Education cess of ₹ 971 paid on imported goods will not be available as CENVAT credit.

Question 15

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

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

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= ₹0.3948. The inter bank rate was 1 Yen = ₹0.40	
(vii) M/s XYZ Industries had effected payment to the Bank based on exchange rate 1 Yen = ₹ 0.4150	
(viii) The commission payable to the agent in India was 5% of FOB cost of the equipment in Indian Rupees	

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

Answer

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

Notes:

- (i) **Rule 10(1)(b)(iv) of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007** *inter alia* provides that value of development work undertaken elsewhere than in India is includible in the value of the imported goods. Thus, development charges paid for work done in India have not been included for the purposes of arriving at the assessable value.
- (ii) As per **rule 10(2)(a)** of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007, the cost of transport of the imported goods up to the place of importation is includible for the purpose of valuation. Thus, transport cost from Mumbai port (place of importation) to the factory in Karnataka has not been considered for the

purpose of customs valuation.

- (iii) Insurance has been assumed to be in respect of the cost of the equipment till the place of importation and is thus, includible [**Rule 10(2)(c)** of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007].
- (iv) As per **rule 10(1)(a)(i)** of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007, buying commission is not includible in the value of the imported goods. Since the agent's commission does not represent buying commission, hence, it is includible.
- (v) Landing charges have been considered as per clause (ii) of the **proviso to rule 10(2)** of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007.
- (vi) The rate of exchange notified by the CBEC has been considered [Clause (a) of the explanation to section 14 of the Customs Act, 1962].

Question 16

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

Answer

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

- (a) articles liable to duty with reference to **quantity** shall be chargeable to that duty;
- (b) articles liable to duty with reference to **value** shall, if they are liable to duty at the same rate, be chargeable to duty at that rate, and if they are liable to duty at different rates, be chargeable to duty at the highest of such rates;
- (c) articles **not liable to duty** shall be chargeable to duty at the rate at which articles liable to duty with reference to value are liable under clause (b).

Further, proviso to Section 19 provides as under:

S. No.	Brief Heading	Relevant Details
(a)	Rate of duty on accessories, spare parts, repairing and maintenance implements for any article	Accessories/Spare Parts/ Repairing and Maintenance Implements for any article which satisfy the specified conditions shall be chargeable at the same rate of duty as that article.
(b)	Separate rate to be applied in specified situations	If the importer produces evidence to the satisfaction of the proper officer or the evidence is available 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

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Question 17

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

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

Exchange rate US \$ 1 = ₹ 48

Provide explanations where necessary.

Answer

Computation of Assessable Value of Machinery and Accessories

	Accessories US \$	Machinery US \$
FOB price	1,000.00	4,000.00
Add : Air Freight (restricted to 20% of FOB price) [Note 2]	200.00	800.00
Add : Insurance charges (1.125% of FOB price) [Note 3]	11.25	45.00
Total CIF price excluding agent's commission	1,211.25	4,845.00
Exchange rate 1US \$ = ₹ 48		
	₹	₹
Total in Indian currency	58,140.00	2,32,560.00
Add : Local agent's commission (allocated on <i>pro-rata</i> basis) [Note 4]	<u>1,860.00</u>	<u>7,440.00</u>
CIF value	60,000.00	2,40,000.00
Add : Landing charges @1% of CIF value (Note 5)	<u>600.00</u>	<u>2,400.00</u>
Assessable value	60,600.00	2,42,400.00

Notes :

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

- (2) If the goods are imported by air, the freight cannot exceed 20% of FOB price [Second proviso to rule 10(2) of the Customs (Determination of Value of Imported Goods) Rules, 2007].
- (3) Insurance charges are taken as 1.125% of FOB price if actual charges are not known [**Clause (iii) of first proviso to rule 10(2)** of the Customs (Determination of Value of Imported Goods) Rules, 2007].
- (4) The commission paid to local agent is includible as it is not a buying commission [**Rule 10(1)(a)(i)**].
- (5) Even if there is no information regarding **landing charges**, still they are charged @ 1% of CIF value [**Clause (ii) of first proviso to rule 10(2)** of the Customs (Determination of Value of Imported Goods) Rules, 2007].
- (6) Transportation charges from Indian airport to factory of importer are not includible in the assessable value.

Question 18

Answer the following with reference to the provisions of section 14 of the Customs Act, 1962 and the rules made thereunder:

- (i) *What shall be the value, if there is a price rise between the date of contract and the date of actual importation?*
- (ii) *Whether the payment for post-importation process is includible in the value if the same is related to imported goods and is a condition of the sale of the imported goods?*
- (iii) *Bill of entry was filed on 27.10.2010. Will you apply the exchange rate notified by the Central Board of Excise and Customs on 25.9.2010 or notified on 25.10.2010?*

Answer

- (i) As per the section 14(1) of the Customs Act, 1962 the value of imported or export goods shall be their **transaction value**. Accordingly, the value of the goods shall be the price of contract (i.e., the transaction value), even if there is price rise subsequently.
- (ii) On account of insertion of explanation to **Rule 10(1) of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007**, the payment for post-importation process is **includible** in the value of the imported goods if the same is related to such imported goods and is a condition of the sale thereof.
- (iii) The **third proviso to section 14(1)** of the Customs Act, 1962 inter alia provides that for imported goods, value under section 14(1) shall be calculated with reference to the rate of exchange as in force on the date on which a bill of entry is presented under section 46. The rate of exchange applicable for a month is **generally notified by the Board in the preceding month**. Hence, the rate notified on 25.09.2010 will apply for the bill of entry filed on 27.10.2010.

However, it may be noted that the rate of exchange is **not notified during the preceding**

month as a rule as the power to determine the rate of exchange given to the Board vide clause (a) of the explanation to section 14 of the Customs Act, 1962 is **open ended**.

Question 19

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

Answer

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

As per **section 14(2)** of the Act, notwithstanding anything contained in section 14(1), if the Board is satisfied that it is necessary or expedient so to do, it may, by notification in the Official Gazette, **fix tariff values for any class of imported goods or export goods**, having regard to the trend of value of such or like goods, and where any such tariff values are fixed, the duty shall be chargeable with reference to such tariff value.

Question 20

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

- (i) *Clearance of Baggage*
- (ii) *Goods cleared for home consumption from a warehouse under Section 68 of the Customs Act*
- (iii) *Goods entered for export under Section 50.*

Answer

- (i) As per **section 78** of the Customs Act, 1962, the relevant date for determination of rate of duty in case of clearance of baggage is the date on which a declaration is made in respect of such baggage under section 77.
- (ii) As per **section 15(1)(b)** of the Customs Act, 1962, the relevant date for determination of rate of duty in case of goods cleared from a warehouse under **section 68** is the **date on which a bill of entry for home consumption** in respect of such goods is presented under that section.
- (iii) The relevant date for determination of rate of duty in case of goods entered for export under section 50 is the date on which the proper officer makes an order permitting clearance and loading of the goods for exportation under section 51 - **Section 16(1)(a)** of the Customs Act.

Question 21

The assessee M Ltd. entered into a joint venture with a foreign collaborator N for promotion and selling antennas, accessories and other communication equipments. The agreement between them indicates that N owned majority of equity shares in M Ltd. Technical services

were provided by N to M Ltd. for various functions that were carried out in respect of manufacture of antenna system in India, for which technical services fee was paid to N by M Ltd. Based on the above facts, the department opined that both M Ltd. and N were related persons in terms of explanation to Rule 10(1) of the Customs Valuation (Determination of Price of Imported Goods) Rules, 2007 and that the technical fee paid by M Ltd. was includible in the assessable value of the imported components in terms of aforementioned Rules. Decide referring to decided case law, if any.

Answer

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

Question 22

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

- (i) Date of presentation of bill of entry : 20.6.2010 [Rate of BCD 25%; Exchange Rate : ₹ 43.60 and rate notified by CBEC ₹ 43.80].
- (ii) Date of arrival of goods in India : 30.6.2010 [Rate of BCD 20%; Exchange Rate: ₹ 43.90 and rate notified by CBEC ₹ 44.00].
- (iii) Rate of Additional Customs Duty : 10%.
- (iv) CIF value 2,000 US Dollars; Air Freight 500 US Dollars, Insurance cost 100 US Dollars [Landing charges not ascertainable].
- (v) Primary Education Cess 2% & Secondary & Higher Education Cess 1%
- (vi) Assume there is no special CVD.

Answer

CIF value		2000 US Dollars
Less : Freight	500	
Insurance	<u>100</u>	<u>600</u> US Dollars
FOB Value		1400 US Dollars
Add: Air Freight @ 20% of FOB Value	280	
Insurance (actual amount)	<u>100</u>	<u>380</u> US Dollars

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		1780 US Dollars
		₹
Value @ 43.80/-		77964.00
Add: 1% for landing charges		<u>779.64</u>
Assessable Value		78743.64
Basic Custom Duty @ 20% (a)		<u>15,748.73</u>
		94,492.37
Additional Custom Duty (b)		9,732.71
(@ 10% + 3% cess on 10% = 10.30% on ₹ 94,492.37)		
Total of Basic Duty + Additional Duty (c) = (a + b)		25,481.44
Primary Education Cess @ 2% & SAH Education Cess @ 1% on ₹ 25,481.44(d)		764.44
Total Duty (c + d)		<u>26,245.88</u>

Notes:

- Rate of exchange notified by CBEC on the date of presentation of bill of entry has been considered.
- Rate of duty as applicable on the date of the arrival of aircraft which is later than the date of submission of the bill of entry has been considered.

Self-examination questions

Question 1

Differentiate between deductive value and computed value.

Question 2

Can the 'transaction value' be accepted under the Customs Act, 1962 and the Customs Valuation (Determination of Value of Imported goods) Rules, 2007 when the buyer and seller are related persons? Write a brief note.

Question 3

What is residual method of valuation? Discuss with reference to the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007.

Question 4

Enumerate the various costs and services that are to be added to the "Transaction Value" under rule 10 of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007.

Question 5

'A' had imported a lift from Finland. Due to safety reasons the lift was not taken to the jetty in the port but was unloaded at the outer anchorage. The charges incurred for such unloading

amounted to ₹ 18000 and the cost incurred on transport of the lift from outer anchorage to the jetty was ₹ 3500.00. 'A' claims that such charges form part of the loading and unloading charges and should be deemed to be included in the addition of 1% of the CIF value of the lift, made under Rule 10(2)(b) of Customs Valuation (Determination of Value of Imported Goods) Rules, 2007. Discuss the tenability of 'A's' claim with reference to recent Circulars, if any.

Answer

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

Question 6

Explain whether the costs and services as given in Rule 10 of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 are to be added to the value of the identical goods or similar imported goods under Rule 4 and 5 respectively.

Answer

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

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

Question 7

RI is an indenting agent of an Italian company. The agreement provides for payment of 20% commission on the imported equipments supplied by RI to users in India. However in respect of RI's own requirements of the equipment supplied by the Italian company no commission was payable as

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there was to be no value addition by the indenting agent. The department wants to enhance the value of the imports by 20% as according to them the Indenting Agent is a "Related person".

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

Answer

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

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

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

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

Question 8

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

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

Answer

The facts of this case relates to the decision given by the Supreme Court in **Coromandal Fertilizers Ltd. vs. Collector of Customs (2000)**. Landing charges are assessed at a percentage of the value of the goods. However, stevedoring or unloading charges are not to

be added, when landing charges are assessed on a percentage basis. Therefore, the assessee is not required to pay additional landing charges as claimed by the department.

Question 9

Mysore Textiles Ltd. imported nylon/polyester cloth from Taiwan. Mysore Textiles Ltd. declared US \$ 27800 as the value of the goods. The same value was reflected in the invoice and the bill of entry. However, the Customs Department assessed the import duty on the basis of the Insurance value of US \$ 45600. The Customs Officials claimed that Mysore Textiles Ltd. had undervalued the goods and therefore the insurance value should be adopted for the purpose of valuation. Can insurance value be regarded as the assessable value without making any deductions therefrom? Discuss.

Answer

It has been decided by the Tribunal in case of *Nina Chaka Pvt. Ltd. v Commissioner of Customs, New Delhi 2004 (163) E.L.T. 464 (Tri. – Del.)* that the insurance value takes into account not only the Cost Insurance Freight value but also duties and taxes payable on the goods involving transfer from seller's premises to buyer's premises. The insurance price as such, therefore, could not form the basis of valuation without making deductions therefrom of taxes and other permissible components.

Question 10

Mother Mary Hospital and Research Centre imported a machine from Delta Scientific Equipments, Chicago for in house research. The price of the machine was settled at US \$ 5000. The machine was shipped on 10.01.2010. Meanwhile, the Hospital Authorities negotiated for a reduction in the price. As a result, Delta Scientific Equipments agreed to reduce the price by \$ 850 and sent the revised price of \$ 4150 under a telex dated 15.01.2010. The machine arrived in India on 18.01.2010. The Commissioner of Customs has decided to take the original price as the transaction value of the goods on the ground that the price is reduced only after the goods have been shipped.

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

Answer

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

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