

Valuation

$$\text{Import duty (BCD)} = \text{AV (INR.)} \times \text{ROD}$$

AV is either transaction value [TV] as per S.14(1) **or** tariff value prescribed as per S.14(2)

What do you understand by "transaction value"?

Transaction value as per Sec.14(1)-

- ✓ **TV**=Price actually paid or payable for the goods (to seller or on behalf of seller)
 - when sold for export **from** India for delivery **At** the time and place of *exportation*[Indian Port] **OR**
 - when sold for export **to** India for delivery **At** the time and place of *importation*[Indian Port]

where

- Buyer and seller of the goods are not related and
- Price is the sole consideration for the sale.

Subject to such conditions as may be prescribed.

- ✓ TV i.r.o imported goods shall also include costs & expenses specified in rule 10(1) & 10(2).

Crux:-**For IGs Include all PRE-LANDING CHRGS & exclude all POST-LANDING CHRGS (expenses incurred **after** the time and place of *importation*).

Rate of duty & tariff valuation :-**Sec-15**

In case of direct clearance	• Vessel:B/E for HC (<i>actual</i>) or Entry inward-Later • Aircraft:B/E for HC (actual) or Arrival-later • Vehicle:B/E for HC(<i>actual</i>)
In case of indirect clearance	B/E for HC (<i>actual</i>) u/s 68
Other case(Eg-smuggled goods;duty on waste Content u/s 65)	Date of payment of duty

Note:-If any imported goods are **pilfered** after unloading while in the custody the custodian, he shall be liable to pay duty on such goods @ prevailing on the day of delivery of the IGM/IR.[**SEC.15**]

ROE(determined by board)-:**Proviso to S.14**-Date on which B/E is presented u/s 46.

Custom Valuation (Determination of price of imported goods) Rules, 2007

Rule 1- These rules apply to imported goods where ID is charged ad- valorem.

Rule 3

- **Rule -3(1)** AV=TV & adjusted in accordance with rule 10.

- **Rule-3(2):** TV=AV; if following conditions are satisfied:-

1.No **restrictions** as to the disposition or use of the goods by the buyer except **A.G.M.**

2.SALE or price is not subject to some condition or consideration for which a value cannot be determined.

Interpretative notes:- Conditions or considerations relating to the production or marketing of the imported goods shall not result in rejection of the transaction value.

3.No **further consideration** to seller of which adjustment cannot be made u/r 10.4.Buyer & seller are not **related**.

Rule 3(3)- TV=AV, even if buyer & seller are related, if it is shown that relationship does not affect price.

Rule 3(4)- If value cannot be determined u/r 3(1): Follow Rule 4-9 *sequentially*

- **Note:-**

1.Dividend paid by importing co. to exporting co **cannot** be considered as "sale proceeds". It does not relate to imported goods. Hence, not includible in AV. Dividends from buyer to seller do not relate to imported goods

2.Activities undertaken by buyer on his own account are not considered to be an indirect payment to seller (Eg- Expenses on test run of machine by buyer on his own in foreign country). Hence, not includible in AV.

3.Value of imported goods shall not include:-

(a) Charges for construction, erection, assembly, maintenance or technical assistance, undertaken after importation such as industrial plant, machinery or equipment; (b) COT after importation; (c) Duties and taxes in India. (d) Intt. on delayed payments (Conditions- Separately shown; financing agreement is in writing; buyer can demonstrate-price declared as price actually paid/payable). However if intt has influenced SP-include in AV.

Rule 10

10(1)-Value of IGs shall include- (a) Value of specified costs & services. (b) Apportioned value of specified goods & services. (c) Royalties & license fees. (d) Any part of sale proceeds of any subsequent **resale/disposal/use of imported goods**. (e) All other payments.

10(1)(a):-** Value of IGs shall include following costs & services if these are incurred by buyer & already not included in the price actually paid/payable:

- Commission & brokerage (**except Buying comm.**)
- COST OF CONTAINERS (*NON RETURNABLE BASIS*)

Cost of **durable, reusable & returnable containers** shall not be added if importer executes bond to re-export the container within 6m.

- ✓ COST OF PACKING (whether for labour or material).

Note:-

- ✓ Buying comm..means fees paid by importer to **his** agent for representing him abroad in purchase of goods being valued.
- ✓ Commission to local agent (agent of exporter in india to promote sales) is includible in AV.
- ✓ Cost of packing treated as a part of goods for custom purposes is includible in AV.(eg.bboxes for necklaces)

10(1)(b)-: Value of IGs shall include apportioned value of following goods & services if these are supplied directly or indirectly by buyer free/at reduced price & value not included in the price actually paid or payable:-

- ✓ Materials, components, parts & similar items incorporated in IGs.
- ✓ Materials **consumed** in prdtn of IGs.
- ✓ **Tools**, dies, moulds etc used in prodn. of IGs.

Interpretative notes:- **Ascertaining cost of tooling-**

If purchased from unrelated seller:- Purchase cost; If manufactured himself or related person-COP; If tooling previously used by importer-Org. cost-Depn.

Basically tools, dies etc (tooling cost) are not consumed immediately but are consumed over a period of time, so cost of tooling should be apportioned. It can be done in any of following ways-

1. Full cost of tooling might be apportioned to the first shipment; or
2. Value may be apportioned over the number of units produced **up to** the time of the first shipment; or
3. Value may be apportioned over the entire contracted production.

Engineering, design, development, artwork, plans, sketches etc undertaken **elsewhere than in india** used in prodn of IGs.

Interpretative notes:- Cost of engg, ...etc = Purchase or lease cost OR cost of provisioning abroad.

Apportioned value is taken if same development work etc is used for more than one job.

*Note:- If undertaken in India or these expenses are incurred in india-then **exclude** from TV.*

Crux:- TV	XXX
Add-Addl. consideration (Full/proportionate)	XXX
AV	XXX

10(1)(c)** Value of IGs shall include Royalties & license fees:-

Payments i.r.o patents, trademarks or copyright is includible.

Provided,

- ✓ These relate to **imported goods**.
- ✓ Payable by buyer as **condition** for sale.
- ✓ Value not included in the price actually paid or payable.

Interpretative notes:- However, Charges for “**right of reproduction**” of **imported goods** in India shall **not** be included in AV.***

Note:-

- ✓ License fee payable for countrywide use is not right to reproduce-Include in AV.
- ✓ Interpretative notes:- * Payment by importer for right to distribute or resale shall not be included in AV if such payments are not a condition of the sale.
- * Royalty, licence fee or any other payment for using a process, will be includible in the value of the goods irrespective of the fact that it relates to a process which is made operational after importation of the goods.

10(1)(d)-Value of IGs shall include any part of sale proceeds of any subsequent **resale/disposal/use of imported goods** provided sale proceeds accrue to seller, directly or indirectly.

Crux:-Subsequent outflow: Ascertainable-Incl. in AV
:Not ascertainable-TV=AV (Goto valuation rules)

10(1)(e)-Value of IGs shall include any other payments(*Eg-rent of containers*)**provided**

- ✓ Payment is made as a condition for sale of IGs
- ✓ Payment made by buyer to seller or 3rd party to satisfy obligation of seller (eg-payment made *creditor of seller*)

Rule 10(2)-Value of IGs shall include-

Particulars	Actual charges/cost ascertainable	Actual charges/cost NOT ascertainable
COT to place of importation (For clearance at ICD or CFS, cost of freight incurred from port of entry to ICD or CFS shall not be included in COT.)	Actual charges (in case of import by Air -. <i>actual freight or 20% of FOB-[L]</i>)	20% of FOB
COI	Actual charges	1.125% of FOB
Landing charges (loading, unloading and handling charges associated with the delivery of the imported goods at the place of importation)	1% of CIF	1% of CIF

- Expln. to Rule 10(2):-COT of imported goods includes ship demurrage charges, lighterage charges or barge charges.
- Coromandal Fertilisers Ltd(SC):-No further sum can be added in notional 1%.it covers all aspects of landing charges.

Rule 4-TV of identical goods-

“@”-AV OF “GOODS IN QUES” shall be **Adjusted Transaction value** of identical goods(imported at or about the same time)-

- 1.At the same commercial level and in substantially the same quantity ;OR
- 2.At a different commercial level or in different quantities or both, (**subject to adjustments** such as adjustments w.r.t corporate discount or bulk discount)

If more than one transaction value of identical goods is found-Take lowest of such values.

Rule 5 – TV of similar goods-Replace the word “**identical**” with “**similar**” in rule 4.

Rule 6- “Agr 3,4,5 se kaam nhi bna to 7 aur 8 lagao sequentially par importer request kr skta h k ‘7 se phle 8 lagao’.”

Rule 7 – Deductive value :

(1 “@”, if the goods being valued or identical or similar imported goods are sold in India, at or about the time at which goods in ques. Are being valued, the value of imported goods shall be based on the **unit price** at which the imported goods or identical or similar imported goods are sold in the **greatest aggregate quantity** to persons who are not related to the sellers in India

Subject To The Following Deductions: —

(i)sales comm. , general expenses & selling profits in connection with **sales in India** (ii) COT and associated costs incurred **within India**;(iii) the customs duties and other taxes payable in India by reason of importation or sale of the goods.(iv)Value added by processing.

(2) If neither the imported goods nor identical nor similar imported goods are sold at or about the same time value of imported goods shall,be based on the unit price at which the imported goods or identical or similar imported goods are sold in India, at the earliest date after importation but before the expiry of 90 days after such importation after adjustment of sub-rule 1.

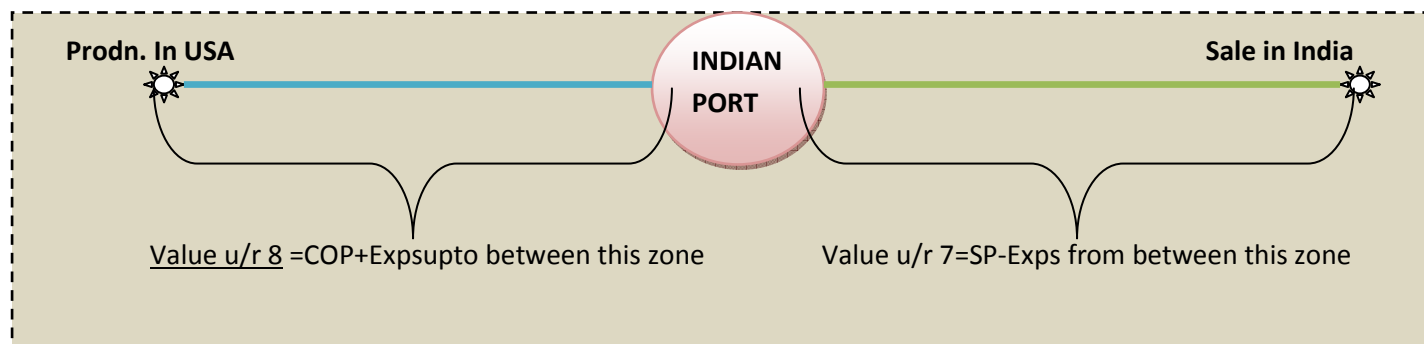
Crux:- “Imported goods ki SP mein se port se lane se sale tak saare expense minus krdo to value at port aa jayegi”

Rule 8 – Computed value : “@”, 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 are made by producers in the country of exportation for export to India;
- (c) the cost or value of all other expenses u/r 10(2).

Crux:- “Imported goods ko entry port tak lane k samay unki jo value thi,wo hogi AV”

Rule 7 Vs. Rule 8:-



Rule 9 – Residual method:- “Agr rule 3 to 8 as it is nahi lag pa rahe to unko thoda flexible kr k lagao aur valuation kro”

“@”, where the value of imported goods cannot be determined under the provisions of any of the preceding rules, the value shall be determined **using reasonable means consistent with** the principles and general provisions of these rules and S.14(1) of CA,62.*

Note- “@” means ‘Subject to rule 3’.

Rule 11 – Declaration by the importer : A valuation declaration shall be filled by importer or his agent regarding *Value of goods *Qty. of goods *etc (Along with other clearance documents)

Rule 12 – Rejection of declared value : PO may reject declaration made u/r 11 if he has reason to **doubt the truth (OR) accuracy** of value declared.

Sec 14(2)-:Tariff value: Board may fix tariff values for any class of **imported goods or export goods**, and where any such tariff values are fixed, the duty shall be chargeable with reference to such tariff value& not the declared value of goods.

Sec.19-Determination of duty in case of import of articles in set-

Where articles in set are liable to duty	Charge of duty on set
1. Based on qty	On whole qty, at applicable rate
2. Based on value (ad valorem)	
A. Same rate for all articles	A. On all articles, at applicable rate
B. Different rates for different articles	B. On all articles, at HIGHEST rate
In situation B- Even if some articles are not liable to duty, duty shall be levied at highest rate.	

Exception:- If PO is satisfied regarding value of any of articles liable to different rates of duty, such articles shall be chargeable to duty separately at rate applicable.

Accessories, spares: They get classification of main item. If:- Supplied with main item; No separate charge; Price included in price of main item

“IDENTICAL GOODS” means imported goods –(i) which are same in all respects, (except minor differences in appearance); (ii) produced in the same country; and (iii) produced by the same person or different person **but shall not Hybrid goods**.

"SIMILAR GOODS" means imported goods –(i) which although not alike in all respects, have like characteristics and like component materials which enable them to perform the **same functions** and to **be commercially interchangeable** with the goods being valued having regard to the quality, reputation and the existence of trade mark;(ii) produced in the country in which the goods being valued were produced; and(iii) produced by the same person or different person **#but shall not include Hybrid goods.**

RELATED PERSONS-(i)they are officers or directors of one another's businesses;(ii) they are legally recognised partners in business;(iii) they are employer and employee;(iv) any person directly or indirectly owns, controls or holds five per cent or more of the outstanding voting stock or shares of both of them;(v) one of them directly or indirectly controls the other;(vi) both of them are directly or indirectly controlled by a third person;(vii) together they directly or indirectly control a third person; or (viii) they are members of the same family.

Note-: "Person" also includes legal persons.Deemed realated persons-sole agent or sole distributor or sole concessionaire.