

Types of Duty

Question1

Mention whether Education Cess and Secondary and Higher Education Cess is leviable on the goods imported into India under sub-section (1) of Section 3 of the Customs Tariff Act, 1975.

Answer

Central Government, vide *Notification Nos.13/14-Cus both dated 17.03.2012*, has exempted education cess and secondary and higher education cess leviable on the goods imported under sub-section (1) of section 3 of the Customs Tariff Act, 1975. Hence, no education cess and secondary and higher education cess is leviable under sub-section (1) of section 3 of the Customs Tariff Act, 1975.

Question 2

Explain briefly how additional customs duty has to be determined in respect of goods imported requiring MRP based assessment under the Medicinal and Toilet Preparations (Excise Duties) Act, 1955.

Answer

The first proviso to section 3(2)(ii) of the Customs Tariff Act, 1975 provides that the value of the imported goods for the purpose of charging countervailing duty (CVD) in respect of goods chargeable to excise duty on the basis of Maximum Retail Sales Price under Medical and Toilet Preparation (Excise Duties) Act, 1955 would be deemed to be the retail sale price declared on such imported goods less the amount of abatement, if any, from such retail price as the Central Government may, by notification in the Official Gazette, allow in respect of such like article.

Moreover, where on any imported goods more than one retail price is declared, the maximum of such retail sale price shall deemed to be the retail sale price for the purpose of this section.

Question 3

What will be the dates of commencement of the definitive anti-dumping duty in the following cases under section 9A of the Customs Tariff Act, 1975 and the rules made thereunder:

- (i) where no provisional duty is imposed;*
- (ii) where provisional duty is imposed;*
- (iii) where anti-dumping duty is imposed retrospectively from a date prior to the date of imposition of provisional duty.*

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Answer

The Central Government has power to levy anti-dumping duty on dumped articles in accordance with the provisions of section 9A of the Customs Tariff Act, 1975 and the rules framed thereunder.

- (i) In a case where no provisional duty is imposed, the date of commencement of anti-dumping duty will be **the date of publication of notification**, imposing anti-dumping duty under section 9A(1), in the Official Gazette.
- (ii) In a case where provisional duty is imposed under section 9A(2), **the date of commencement of anti-dumping duty will be the date of publication of notification, imposing provisional duty under section 9A(2)**, in the Official Gazette.
- (iii) In a case where anti-dumping duty is imposed retrospectively under section 9A(3) from a date prior to the date of imposition of provisional duty, the date of commencement of anti-dumping duty will be **such prior date as may be notified in the notification imposing anti-dumping duty retrospectively, but not beyond 90 days from the date of such notification of provisional duty**.

Question 4

State briefly the provisions of refund on anti-dumping duty in certain cases.

Answer

According to the provisions of **section 9AA** of the Customs Tariff Act, 1975, where an importer proves to the satisfaction of the Central Government that he has paid any anti-dumping duty imposed on any article, in excess of the actual margin of dumping in relation to such article, he shall be entitled to refund of such excess duty. However, the importer will not be entitled for **refund of provisional anti-dumping duty** under section 9AA as it is refundable under section 9A(2) of the said Act.

Question 5

What are the ways that would constitute circumvention of antidumping duty imposed on an article that may warrant action by the Central Government based on inquiry as it may consider necessary for purpose of Section 9A(1A) of the Customs Tariff Act, 1975.

Answer

As per section 9A(1A) of the Customs Tariff Act, 1975, following are the ways that would constitute circumvention of antidumping duty imposed on an article that may warrant action by the Central Government:

- (i) altering the description or name or composition of the article subject to such anti-dumping duty,
- (ii) import of such article in an unassembled or disassembled form,
- (iii) changing the country of its origin or export, or

(iv) any other manner, whereby the anti-dumping duty so imposed is rendered ineffective.

Question 6

Write a brief note with reference to the provisions of the customs Act, 1962 on the assessment of "Packaged Software" where affixation of Retail Sale Price (RSP) is : (i) mandatory and (ii) not required under the Legal Metrology Act, 2009.

Answer

- (i) Where the affixation of retail sale price on packaged software is mandatory, (i.e. the software is covered under the provisions of section 4A of the Central Excise Act, 1944), the assessable value for the purpose of charging additional duty of customs leviable under section 3(1) of the Customs Tariff Act, 1975 is deemed to be the retail sale price declared on such packaged software less the amount of abatement, if any, granted by the Central Government under section 4A of the Central Excise Act, 1944.
- (ii) Where the affixation of retail sale price on packaged software is not required under the Legal Metrology Act, 2009, the assessable value for the purpose of charging additional duty of customs leviable under section 3(1) of the Customs Tariff Act, 1975 is the value computed as per the provisions of section 14 of the Customs Act, 1962 less the value representing consideration for transfer of right to use such packaged software.

The affixation of retail sale price will not make any difference in respect of assessment of other duties of customs.

Question 7

Assessable value of certain goods imported from USA is ₹ 10,00,000. The packet contains 10,000 pieces with maximum retail price of ₹ 200 each. The goods are assessable under section 4A of the Central Excise Act, 1944, after allowing an abatement of 40%. The excise duty rate is 12% ad valorem. Calculate the amount of additional duty of customs under section 3(1) of the Customs Tariff Act, 1975 assuming basic customs duty @ 10% ad valorem

Answer

As the goods are assessable under section 4A of the Central Excise Act, 1944, additional duty of customs will be payable on the basis of maximum retail price printed on the packing; less abatement as permissible [proviso to section 3(2) of the Customs Tariff Act.]

	₹
Maximum retail price [10,000 pieces x ₹ 200]	20,00,000
Less : Abatement 40%	<u>8,00,000</u>
Assessable value under section 3(2)	<u>12,00,000</u>
Additional duty of customs @ 12%	<u>1,44,000</u>
Additional customs duty payable	<u>1,44,000</u>

3.4 Customs and Foreign Trade Policy

Question 8

Miss Priya imported certain goods weighing 1,000 kgs. with CIF value US\$ 40,000. Exchange rate was 1 US\$ = ₹ 45 on the date of presentation of bill of entry. Basic customs duty is chargeable @ 10% and education cess as applicable. There is no excise duty payable on these goods, if manufactured in India.

As per Notification issued by the Government of India, anti-dumping duty has been imposed on these goods. The anti-dumping duty will be equal to difference between amount calculated @ US \$ 60 per kg and landed value of goods. You are required to compute custom duty and anti - dumping duty payable by Miss Priya.

Answer

Computation of customs duty payable:-

Particulars	₹
Total CIF value in INR = US \$ 40,000 x ₹ 45	18,00,000
Add: Landing charges @1%	<u>18,000</u>
Assessable value (AV)	<u>18,18,000</u>
Basic customs duty (BCD) @10%	1,81,800
Education cess (EC) @ 2% on BCD	3,636
Secondary and higher education cess (SAHEC) @ 1% on BCD	<u>1,818</u>
Landed value of imported goods	<u>20,05,254</u>
Total customs duty payable (BCD + EC+ SAHEC)	<u>1,87,254</u>

Computation of Anti dumping duty payable:-

Particulars	₹
Value of goods in INR as per Notification = 1,000 Kgs x US \$ 60 x ₹ 45	27,00,000
Less : Landed value of goods	<u>20,05,254</u>
Anti-dumping duty payable	<u>6,94,746</u>

Question 9

M/s Marwar Industries imported finishing agents, dye - carriers, printing paste etc. to be used for manufacture of textile articles. The importer claimed exemption for additional duty of customs (CVD) leviable under section 3 of the Customs Tariff Act, 1975, on the ground that there was an exemption for excise duty in respect of said goods used in the same factory for manufacture of textile articles. The Department contended that CVD is payable on the ground that the goods which were to be used must also be manufactured in the same factory. You are requested to comment upon the contention of Department, with reference to a decided case law, if any.

Answer

The contention of the Department is not valid in law. The Supreme Court in a similar case of **CCus. v. Malwa Industries Ltd. (2009) 235 ELT 214 (SC)** held that **literal meaning should be avoided if it leads to absurdity**. When the goods are imported, obviously, the same would not be manufactured in the same factory and therefore, it would become impossible to apply the provision of **section 3(1)** of the Customs Tariff Act, 1975. It was observed that the object of countervailing duty (CVD) is that importer should not be placed at some more advantageous position vis-a-vis purchaser/manufacturer of similar goods in India.

Considering the purpose of exemption, it was held that same factory means imported goods should be used in factory belonging to importer where manufacturing activity takes place. Hence, the exemption will be available to imported goods also and CVD is not applicable.

Exercise

1. *Differentiate between protective duty and safeguard duty.*
2. *Briefly examine the nature and significance of the levy of anti dumping duty under the Customs Tariff Act, 1975.*
3. *Write a brief note on education cess on customs duty.*
4. *Discuss the provisions governing the levy of additional duty of customs chargeable under section 3(5) of the Customs Act, 1962.*