

Valuation Under The Customs Act, 1962

Question 1

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 deduced from the CIF value** and then the export duty may be calculated as percentage of such FOB price.

Question 2

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. 2013. Will you apply the exchange rate notified by the Central Board of Excise and Customs on 25.9.2013 or notified on 25.10.2013?*

Answer

- (i) The value of the imported goods or export goods is its transaction value, which means the price actually paid or payable for the goods. Where a contract has been entered into, the transaction value shall be the price stated in the contract, unless it is not acceptable.
Price rise between date of contract and date of actual import is irrelevant, as the price actually paid or payable shall be taken to be the value. Thus, price stated in the contract (unless unacceptable) shall be taken.
- (ii) As per 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 25.09.2013 will apply for the bill of entry filed on 27.10.2013.

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 3

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

- (i) Goods cleared for home consumption from a warehouse under section 68 of the Customs Act
- (ii) Goods entered for export under section 50.

Answer

- (i) 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.
- (ii) 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 4

Whether the assessable value of the warehoused goods which are sold before being cleared for home consumption, should be taken as the price at which the original importer has sold the goods?

Answer

Section 14 of the Customs Act provides that the value of the imported goods shall be the transaction value of goods which is the price actually paid or payable for the goods *when sold for export to India* for delivery at the time and place of importation. The sale of goods after warehousing them in India cannot be considered a sale for export to India. It cannot be stated that the export of goods is not complete even after the imported goods were cleared for warehousing in the country of import. Hence, the price at which the imported goods are sold after warehousing them in India does not qualify to be the transaction value as per section 14. This has been clarified vide *circular No. 11/2010 dated 03.06.2010*.

5.3 Customs and Foreign Trade Policy

Question 5

Explain with a brief note with reference to the Customs Act, 1962 how duty ought to be determined where the imported goods consist of articles liable to different rates of duty and imported as a "set of articles".

Answer

The provisions relating to calculation of duty in case of goods imported as 'set of articles' are contained in section 19 of the Customs Act, 1962. As per section 19, if the articles in the set are liable to duty at different rates, duty will be charged at the highest rate. Even articles not liable to duty would be chargeable to such highest rate.

However, if the importer is able to produce evidence regarding the value of any of the articles liable to different rates of duty, the article would be charged to duty separately at the rate applicable to it. Further, if accessories/spare parts/maintenance and repairing implements of any article are compulsorily supplied with the article and if no separate charge is made for such supply, they would be chargeable at the same rate of duty as that of the article.

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 under Rule 4.

Answer

As per Rule 4(1)(c) of the Customs Valuation (Determination of value of Imported Goods Rules, 2007) 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 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 as per Section 14 of the Customs Act, 1962 and Customs Valuation (Determination of Value of Imported Goods) Rules, 2007.

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 cannot 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% cannot 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.

Question 8

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 10.01.2013. 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 15.01.2013. The machine arrived in India on 18.01.2013. 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 price actually paid or payable for the goods at the time and place of importation. Further, the Supreme Court in the case *Garden Silk Mills v. UOI* has held that importation gets complete only when the goods become part of mass of goods within the country. Therefore, since in the instant case the price of the goods was reduced while they are in transit, it could not be contended that the price was revised after importation took place. Hence, the goods should be valued as per the reduced price, which was the price actually paid at the time of importation.

5.5 Customs and Foreign Trade Policy

Question 9

'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.

Answer

The 'Explanation' to Rule 10(2) clarifies 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 10

The assessee M Ltd. enter into a joint venture with a foreign collaborator N for promotion and selling antennas, accessories and other communication equipments. As per the agreement, M Ltd would assemble and test the antenna parts provided by N. The agreement between them indicated that N owned majority of equity shares in M Ltd. Further, 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 11

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 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. 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 can be inferred that Department's action is not sustainable in law.

5.7 Customs and Foreign Trade Policy

Question 12

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 \$ = ₹ 60.00 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 = ₹ 60

CIF Value (in Rupees)	= ₹ 76,80,000
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Add: Landing Charges at 1%

[As per rule 10(2) of customs valuation (DVIG) Rules, 2007	= ₹ 76,800
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Landing charges @ 1% are to be compulsorily added to

CIF value to arrive at the assessable value]	= ₹ 77,56,800
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10% of Ad Valorem duty on ₹ 77,56,800	= ₹ 7,75,680
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Add: Education cess @ 2% (rounded off)	= ₹ 15,514
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Add: Secondary and higher education cess @ 1% (rounded off)	= ₹ 7,757
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Total custom duty payable	= ₹ 7,98,951
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Question 13

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 valid.** Since the canalizing agent is not the agent of the importer nor does he represent the importer abroad, purchases in bulk by canalizing agency from foreign seller and subsequent sale by it to Indian importer on high seas sale basis 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. CCEs. & 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 of 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 valid.** As per rule 10(1)(e) of the Customs (Determination of Value of Imported Goods) Rules, 2007, only the payments actually made as a condition of sale of the imported goods by the buyer to the seller are includible in the assessable value.

Thus, if there is no requirement in the contract for independent inspection and the inspection is carried out by foreign supplier on its own and is not required for the purpose of fulfilling the condition of the contract, then charges incurred on such inspection are not includible in assessable value [*Bombay Dyeing & Mfg. v. CC 1997 (90) ELT 276 (SC)*].

- (iv) **The statement is not valid.** 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 14

An importer entered into a contract for supply of crude sunflower seed oil @ U.S. \$ 435 C.I.F./Metric ton. Under the contract, the consignment was to be shipped in the month of July, 2013. The period was extended by mutual agreement and goods were shipped on 5th August,

2013 at old prices.

In the meanwhile, the international prices had gone up due to volatility in market and other imports during August, 2013 were at higher prices. Department sought to increase the assessable value on the basis of the higher prices of contemporaneous imports.

Decide whether the contention of the department is correct. You may refer to decided case law, if any, for your decision.

Answer

No, the contention of the Department is not correct.

The facts of the given case are similar to the case of *CCus., Vishakhapatnam v. Aggarwal Industries Ltd. 2011 (272) E.L.T. 641 (S.C.)*. The Supreme Court, in the instant case, observed that since the contract entered into for supply of crude sunflower seed oil @ US \$ 435 CIF/metric ton could not be performed on time, the extension of time for shipment was agreed upon by the contracting parties.

The Supreme Court pointed out that the commodity involved had volatile fluctuations in its price in the international market, but having delayed the shipment; the supplier did not increase the price of the commodity even after the increase in its price in the international market.

Further, there was no allegation regarding the supplier and importer being in collusion. Thus, the appeal was allowed in the favour of the assessee and the contract price was accepted as the 'transaction value'.

Question 15

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 ₹ 61 per dollar. Central Board of Excise and Customs notified the exchange rate as ₹ 60 per US\$. Find the value of the material for the purpose of levying duty.

Answer

Computation of assessable value

Particulars	Amount
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) [Note 1]	600 US \$
Add: Insurance (actual)	<u>500 US \$</u>

5.11 Customs and Foreign Trade Policy

CIF for customs purpose	4100 US \$
Add: 1% for landing charges [Note 2]	<u>41 US\$</u>
Value for customs purpose	4141 US \$
Exchange rate as per CBEC [Note 3]	₹ 60 per US \$
Assessable value	₹ 60 x 4141 US \$
	₹ 2,48,460

Notes:

1. 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].
2. 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].
3. Rate of exchange determined by CBEC is considered [clause (a) of the explanation to section 14 of the Customs Act, 1962].

Question 16

M/s. Foreign Trade International Ltd. have imported one machine from England. They have given the following particulars:

(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	24.10.2013 (Rate BCD 10%; Exchange rate as notified by CBEC ₹100 per UK Pound)
(vi)	Date of entry inward	20.10.2013 (Rate of BCD 20%; Exchange rate as notified by CBEC ₹98 per UK Pound)
(vii)	C.V.D. is payable @ 12%	
(viii)	Special C.V.D. – as applicable	
(ix)	Insurance charges have been actually paid but details are not available.	

Compute the assessable value of the machine and the customs duty payable by M/s. Foreign Trade International Ltd.

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

Particular	Amount
FOB value	8,000 UK pounds
Add: Design and development charges	500 UK pounds
Add: Air freight (8,000 x 20%) (Note-1)	1,600 UK pounds
Add: Insurance 1.125% of FOB (Note-2)	<u>90 UK pounds</u>
Total	<u>10,190 UK pounds</u>
Total in Rupees @ ₹ 100 per pound (Note-3)	₹ 10,19,000
Add: Local agency commission	
(2% of 8000 UK pounds)= 160 UK pounds × ₹ 100	<u>₹ 16,000</u>
C.I.F value	₹ 10,35,000
Add: Landing charges @ 1% of CIF value (Note 4)	<u>₹ 10,350</u>
Assessable value	₹ 10,45,350
Add: Basic custom duty @10% (Note-5)	<u>₹ 1,04,535</u>
Total	₹ 11,49,885
Add: CVD @12%	₹ 1,37,986.20
Add: Education cess (3% of custom duty) = 3% of (₹ 1,04,535 + ₹ 1,37,986.20)= ₹ 2,42,521.20	<u>₹ 7,275.64</u>
Total for Special CVD	₹12,95,146.84
Special CVD payable @ 4% (Note 6)	₹ 51,805.88
Total duty payable	₹ 3,01,602.72
(₹ 1,04,535+₹ 1,37,986.20+₹ 7,275.64+₹ 51,805.88)	₹ 3,01,603 (Rounded off)

Notes:

1. 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].
2. Where the insurance charges are not ascertainable, such cost is taken as 1.125% of FOB value of the goods [Clause (iii) of the first proviso to Rule 10(2) of the Customs (Determination of value of Imported Goods) Rules, 2007].
3. The rate of exchange notified by the CBEC on the date of presentation of bill of entry has been considered [Section 14 of the Customs Act, 1962].
4. 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].

5.13 Customs and Foreign Trade Policy

5. 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.
6. Special CVD is charged @ 4% of the value of the imported article. (Section 3(5) of the Customs Tariff Act, 1975)

Question 17

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 25.4.2013. 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 21.4.2013. Basic customs duty on this date is 20% and exchange rate notified by the Central Board of Excise and Customs is US \$ 1 = ₹ 60.
- (iv) Additional duty payable under section 3(1) of the Customs Tariff Act, 1975: 12%
- (v) Additional duty under section 3(5) of the Customs Tariff Act, 1975: 4%.
- (vi) Educational cess @ 2 and secondary and higher educational cess @ 1%.

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 @ 12%	<u>86,658</u>
Total	8,08,808
Add : Education Cesses (65,650+86,658) x 3%	<u>4,569.24</u>
Total	<u>8,13,377.24</u>
Additional duty u/s 3(5) @ 4%	32,535.09
Total custom duty payable (65,650+86,658+4,569.24+32,535.09)	1,89,412.33
custom duty payable (rounded off to nearest rupee)	1,89,412

1. Rate of exchange notified by CBEC as prevalent on the date of filing of bill of entry would be the applicable rate [Proviso to section 14(1) 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. [Proviso to section 15 of the Customs Act, 1962].

Question 18

Assessable value of an item imported is ₹ 1,00,000. Basic customs duty is 10%, additional duty of customs is 12%, and education cesses are 3% on duty. Compute the amount of total customs duty payable. Also, state the amount of CENVAT credit available to the importer and how it can be utilised by him.

Answer**Computation of customs duty payable**

	Particulars	₹
1.	Assessable Value	1,00,000
2.	Basic customs duty @ 10%	<u>10,000</u>
3.	Sub-Total	1,10,000
4.	Additional duty of customs (CVD) @ 12% of ₹ 1,10,000 i.e. (₹ 13,200)	13,200
5.	Education cesses 3% on ₹ 23,200 [(2) + (4)]	696
6.	Total customs duty payable [(2) + (4) + (5)]	23,896

CENVAT credit of CVD of ₹ 13,200 will be available to the importer. The CVD of ₹ 13,200 will be available as CENVAT credit for payment of excise duty or service tax as provided in CENVAT Credit Rules, 2004. Education cesses of ₹ 696 paid on imported goods will not be available as CENVAT credit.

Question 19

XYZ Industries Ltd., has imported certain equipment from Japan at an FOB value 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 Indian 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

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(vi) The Central Board of Excise and Customs had notified for purpose of section 14 of the Customs Act, 1962 exchange rate of 1 Yen = ₹ 0.63. The inter bank rate was 1 Yen = ₹ 0.65	
(vii) M/s XYZ Industries had effected payment to the Bank based on exchange rate 1 Yen = ₹ 0.66	
(viii) The commission payable to the agent in India was 5% of FOB value 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

Computation of assessable value

Particulars	Amount
FOB value	2,00,000.00 Yen
Add: Ocean freight	20,000.00 Yen
Add: Designing charges paid in Japan	<u>30,000.00 Yen</u>
Total	<u>2,50,000.00 Yen</u>
Total value in Indian rupees	
2,50,000 × 0.63 [Note 1]	₹ 1,57,500
Add: Insurance [Note 2]	₹ 10,000.00
Add: Agent's commission at 5% of FOB value (5% of 2,00,000 Yen x 0.63)	<u>₹ 6,300.00</u>
Total CIF price	₹ 1,73,800
Add: Landing charges @ 1% (1% of 1,73,800) [Note 3]	₹ 1,738
Assessable value for the purposes of customs duty	₹ 1,75,538
Assessable value (Rounded off)	₹ 1,75,538.00

Notes:

- (1) The rate of exchange notified by the CBEC has been considered [Clause (a) of the explanation to section 14 of the Customs Act, 1962].
- (2) 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].
- (3) 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
- (4) 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.

- (5) 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.

Question 20

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

	US \$
Machinery imported from USA by air (FOB price)	4,000
Accessories compulsorily supplied 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 = ₹ 60

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 [Note 2]	200.00	800.00
Add : Insurance charges [Note 3]	11.25	45.00
Total CIF price excluding agent's commission	1,211.25	4,845.00
Exchange rate 1US \$ = ₹ 60		
	₹	₹
Total in Indian currency	72,675.00	2,90,700.00
Add : Local agent's commission (allocated on <i>pro-rata</i> basis)	<u>1,860.00</u>	<u>7,440.00</u>
CIF value	74,535.00	2,98,140.00
Add : Landing charges @1% of CIF value (Note 4)	<u>745.35</u>	<u>2,981.40</u>
Assessable value	75,280.35	3,01,121.40

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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) 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].
- (5) Transportation charges from Indian airport to factory of importer are not includible in the assessable value.

Question 21

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

- (i) Date of presentation of bill of entry: 20.6.2013 [Rate of BCD 20%; Exchange Rate: ₹ 61.60 and rate notified by CBEC ₹ 62].
- (ii) Date of arrival of goods in India : 30.6.2013 [Rate of BCD 10%; Exchange Rate: ₹ 61.80 and rate notified by CBEC ₹ 63.00].
- (iii) Rate of Additional Customs Duty : 12%.
- (iv) CIF value 2,000 US Dollars; Air Freight 500 US Dollars, Insurance cost 100 US Dollars [Landing charges not ascertainable].
- (v) Education Cess 2% & Secondary & Higher Education Cess 1%
- (vi) Assume there is no special CVD.

Answer

Computation of assessable value and customs duty payable

Particulars		Amount
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 [Note 1]	280	
Insurance (actual amount)	<u>100</u>	<u>380</u> US Dollars
		1780 US Dollars
		₹
Value @ 62.00 [Note 2]		1,10,360.00
Add: 1% for landing charges [Note 3]		<u>1,103.60</u>
Assessable Value		1,11,463.60
Basic Custom Duty @ 10% (a) [Note 4]		<u>11,146.36</u>
		1,22,609.96
Additional Custom Duty (b)		14,713.20
(12% on ₹1,22,609.96)		
Total of Basic Duty + Additional Duty (c) = (a + b)		25,859.56
Primary Education Cess @ 2% & SAH Education Cess @ 1% on ₹ 25,859.56 (d)		<u>775.79</u>
Total Duty (c + d)		<u>26,635.35</u>

Notes:

- (1) 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].
- (2) Rate of exchange notified by CBEC on the date of presentation of bill of entry would be the applicable rate. [Proviso to Section 14(1) of the Customs Act, 1962].
- (3) 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].
- (4) Rate of duty would be the rate as prevalent on the date of filing of bill of entry or arrival of aircraft, whichever is later [proviso to section 15 of the Customs Act, 1962].

Question 22

From the particulars given below, find out the assessable value of the imported goods under the Customs Act, 1962:

	US \$
(i) Cost of the machine at the factory of the exporting country	10,000
(ii) Transport charges from the factory of exporter to the port for shipment	500
(iii) Handling charges paid for loading the machine in the ship	50
(iv) Buying commission paid by the importer	50

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(v) Freight charges from exporting country to India 1,000

(vi) Exchange rate to be considered : 1\$ = ₹ 60

Answer

Computation of Assessable Value of the Imported Goods

		US \$
(i)	Cost of the machine at the factory	10,000
(ii)	Transport charges upto port	500
(iii)	Handling charges at the port	50
	F.O.B.	10,550
(iv)	Freight charges upto India	1,000
(v)	Insurance charges @ 1.125% of F.O.B. [Note 1]	118.69
	C.I.F.	11,668.69
	C.I.F. in Indian rupees @ ₹ 60/- per \$	₹ 7,00,121.40
(vi)	Add: Landing charges @ 1% of CIF [Note 1]	₹ 7,001.21
	Assessable Value	₹ 7,07,122.61

Notes:

- (1) Insurance charges and landing charges have been included @ 1.125% of FOB value of goods and 1% of CIF value of goods respectively [First proviso to rule 10(2) of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007].
- (2) Buying commission is not included in the assessable value [Rule 10(1)(a)(i) of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007].

Question 23

Jagat Corporation Limited imported some goods from US .The details of the transaction are as follows:-

Authority	Rate of exchange
CBEC	1 US \$= ₹ 62
RBI	1 US \$= ₹ 61

CIF value of the goods is \$ 1,50,000

Rate of basic custom duty is 10%

Rate of education cess is 2%

Rate of secondary and higher education cess is 1%

If similar goods were manufactured in India, excise duty payable as per Tariff is 12%.

Calculate assessable value and total duty payable thereon.

Answer

Computation of assessable value and total custom duty payable

Particulars	Amount
CIF Value	\$ 1,50,000
Add : Landing charges @ 1% of CIF value (Note – 1)	<u>\$ 1,500</u>
	<u>\$ 1,51,500</u>
Assessable value (in ₹) = \$1,51,500 × ₹62 (Note -2)	₹ 93,93,000
Add : Basic custom duty @ 10% (₹93,93,000 × 10%)	<u>₹ 9,39,300</u>
	₹ 1,03,32,300
Add : Countervailing duty (₹1,03,32,300 × 12%)	<u>₹ 12,39,876</u>
	₹ 1,15,72,176
Education cess [(₹9,39,300 + ₹ 12,39,876) × 2%]	₹ 43,583.52
Secondary and Higher Education Cess[(₹9,39,300 + ₹12,39,876) × 1%]	<u>₹ 21,791.76</u>
Total custom duty payable (₹ 9,39,300 + ₹ 12,39,876 + ₹ 43,583.52 + ₹ 21,791.76)	<u>₹ 22,44,551.28</u>

Notes :-

- (1) Landing charges at the rate of 1% of the CIF value of the imported goods, shall be added, whether ascertainable or not [First proviso to rule 10(2) of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007].
- (2) The applicable exchange rate is the rate notified by CBEC. [Explanation to section 14(1) of the customs Act, 1962].

Question 24

BSA & Company Ltd. has imported a machine from U.K. From the following particulars furnished by it, arrive at the assessable value for the purpose of customs duty payable.

	Particulars	Amount
(i)	F.O.B cost of the machine	10,000 U.K. Pounds
(ii)	Freight (air)	3,000 U.K. Pounds
(iii)	Engineering and design charges paid to a firm in U.K.	500 U.K. Pounds
(iv)	License fee relating to imported goods payable by the buyer as a condition of sale	20% of F.O.B. cost
(v)	Materials and components supplied by the buyer free of cost valued	₹ 20,000

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(vi)	Insurance paid to the insurer in India	₹ 6,000
(vii)	Buying commission paid by the buyer to his agent in U.K.	100 U.K. Pounds

Other particulars:

- Inter-bank exchange rate as arrived by the authorized dealer : ₹ 98 per U.K. Pound.
- CBEC had notified for purpose of section 14 of the Customs Act, 1962, exchange rate of ₹ 100 per U.K. Pound.
- Importer paid ₹ 5,000 towards demurrage charges for delay in clearing the machine from the Airport.

(Make suitable assumptions wherever required and show workings with explanations)

Answer

Computation of assessable value of machine imported by BSA & Co.

Particulars	Amount (£)
FOB cost of the machine	10,000
Add: Freight [Note 1]	2,000
Engineering and design charges paid in UK [Note 2]	500
Licence fee relating to imported goods payable by the buyer as a condition of sale (20% of FOB) [Note 2]	<u>2,000</u>
	<u>14,500</u>
	Amount (₹)
Value in Indian currency [£14,500 x ₹100] [Note 2]	14,50,000
Add: Materials and components supplied by the buyer free of cost [Note 2]	20,000
Insurance paid to the insurer in India [Note 2]	<u>6,000</u>
	14,76,000
CIF value	
Add: Landing charges @ 1% [Note 1]	<u>14,760.00</u>
Assessable value (rounded off)	<u>14,90,760</u>

Notes:

- 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].
- Engineering and design charges paid in UK, licence fee relating to imported goods payable by the buyer as a condition of sale, materials and components supplied by the buyer free of cost and actual insurance charges paid are all includible in the assessable value. [Rule 10 of the Customs (Determination of Value of Imported Goods) Rules, 2007].
- Buying commission is not included in the assessable value. [Rule 10(1)(a) of the Customs (Determination of Value of Imported Goods) Rules, 2007].

4. Only ship demurrage charges on chartered vessels are included in the cost of transport of the imported goods. Thus, demurrage charges for delay in clearing the machine from the Airport will not be includible in the assessable value. [Explanation to Rule 10(2) of the Customs (Determination of Value of Imported Goods) Rules, 2007].
5. Landing charges @ 1% of the CIF value are includible in the assessable value, whether actually incurred or not. [Clause (ii) of first proviso to rule 10(2) of the Customs (Determination of Value of Imported Goods) Rules, 2007].
6. As per Explanation to section 14(1) of the Customs Act, 1962, assessable value should be calculated with reference to the rate of exchange notified by the CBEC.

Exercise

1. *Differentiate between deductive value and computed value.*
2. *Can the 'transaction value' be accepted under the Customs Act, 1962 and the Customs Valuation (Determination of Value of Imported goods) Rules, 2007 when the buyer and seller are related persons? Write a brief note.*
3. *What is residual method of valuation? Discuss with reference to the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007.*
4. *Enumerate the various costs and services that are to be added to the "Transaction Value" under rule 10 of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007.*
5. *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*
6. *In the context of Customs Valuation (Determination of Price of Imported Goods) Rules, 2007, explain the meaning of:*
 - (i) *Similar goods*
 - (ii) *Identical goods*
7. *Explain briefly with reference to the provisions of the Customs Act, 1962 regarding Tariff Value.*
8. *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.*
9. *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.*
10. *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.*