CHAPTER 1
CUSTOMS BASICS

The Central Government has been empowered by Entry 83 of Union List of the VII Schedule of the Constitution of India to levy customs duty.

The body of the Customs Law comprises of,-

The Customs Act,1962	It provides for levy of import and export duties of customs on goods imported into or exported from India through sea, air or land. It contains provisions of levy and collection of duty, importation or exportation transit and transhipment, prohibitions, warehousing & duty drawback, appeals, settlement commission advance rulings, offences and prosecution etc.
The Customs Tariff Act,l975	The Customs Tariff Act, 1975 has been enacted for classification of goods. The various types of custom duties to be levied on the importation and exportation of the articles are provided under this Act. It contains two Schedules : (a) The First Schedule is known as, "Import Tariff" and it refers to goods liable to import duties of customs. (b) The Second Schedule is known as, "Export Tariff" and it refers to goods liable to export duties of customs.
Rules	Section 156 of the Customs Act, 1962 empowers the Central Government to make rules. Such rules may provide for matters relating to the manner of determining the value of imported goods/ export goods, duty drawback, baggage etc. The Rules so framed are consistent with the provisions of the Customs Act, 1962.
Regulation	The Central Board of Excise and Customs is empowered under Section 157 of the Customs Act, 1962 to make regulations to carry out the purposes of the Act. The Regulations so framed are consistent with the provisions of the Act as well as the rules framed by Central Government.
Notifications	The Central Government has been empowered to issue notifications under various sections of the Customs Act,7962 for effective implementation of the provisions of the Customs Act, 1962.

ADJUDICATING AUTHORITY [SECTION 2(1)]

Means:-

- Any authority competent to pass any order or decision under this Act,
- But does not include the Board, Commissioner (Appeals) or Appellate Tribunal

The Superintendent, Assistant Commissioner, Deputy Commissioner, Joint Commissioner and Commissioner of Customs are adjudicating authorities.

Adjudicating Authority adjudicates the cases i.e. it issues show cause notices in case of short levy/ non-levy of duty or non-payment/short-payment of any duty and after giving the assessee an opportunity of being heard, passes its decision or order. In case, any person is aggrieved by such decision or order, appeal can be filed to the concerned Appellate authority i.e. Commissioner (Appeals) and Appellate Tribunal. The Board (CBEC) is not an adjudicating authority but is an administrative authority.

BAGGAGE [SECTION 2(3)]:

Baggage includes unaccompanied baggage but does not include motor vehicles.

DUTIABLE GOODS [SECTION 2(14)]

Means:

- any goods which are chargeable to duty and
- on which duty has not been paid.

Therefore, the goods on which no custom duty is payable either due to exemption notification or no duty is specified in tariff, will not be regarded as dutiable goods.

INDIA [SECTION 2(27)]

India includes the territorial waters of India.

Territorial Water extends to 12 nautical miles from the baseline. It also includes any bay, gulf, harbour, creek, or tidal river. The outer boundary of territorial waters is international boundary of India beyond which the high sea lies.

INDIAN CUSTOMS WATERS [SECTION 2(28)]

Indian customs water means the waters extending into the sea up to the limit of contiguous zone of India under section 5 of the Territorial Waters, Continental Shelf, Exclusive Economic Zone and other Maritime Zones Act, 1976, and includes any bay, gulf, harbour, creek or tidal river.

Indian customs waters cover both the Indian territorial waters and contiguous zone as well. Indian territorial waters extend up to 12 nautical miles from the base line whereas contiguous zone extend to a further 12 nautical miles from the outer limit of territorial waters. Therefore, Indian customs waters extend to a total of 24 nautical miles from base line.

PERSON-IN-CHARGE [SECTION 2(31)]

(a) in relation to a vessel, the master of the vessel;
(b) in relation to an aircraft, the commander or pilot-in-charge of the aircraft;
(c) in relation to a railway train, the conductor, guard or other person having the chief direction of the train;
(d) in relation to any other conveyance, the driver or other person-in-charge of the conveyance;

PROHIBITED GOODS [SECTION 2(33)]

Means:

- any goods the import or export of which is subject to any prohibition under this Act or any other law for the time being in force
- but does not include any such goods in respect of which the conditions subject to which the goods are permitted to be imported or exported have been complied with.

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SIGNIFICANCE OF INDIAN CUSTOMS WATERS

(i) Any person who has landed from/about to board/is on board any vessel within Indian customs waters and who has secreted about his person & any goods liable to confiscation or any documents relating thereto may be searched [Section 100];

(ii) Any person within Indian customs waters, who has committed an offe4ce punishable und.er section 132 or 133 or 135 or 135A or 136, may be arrested [Section 104];

(iii) Any vessel within Indian customs waters, which has been, is being, or is about to be, used in the smuggling of any goods or in carriage of any smuggled goods, may be stopped [section 106];

(iv) Any goods which are brought within the Indian customs waters for the purpose of being imported from a place outside India, contrary to any prohibition imposed by or under this Act or any other law for the time being in force, shall be liable to confiscation [Section 111(d)] and

(v) Any vessel which is or has been within Indian customs waters is constructed, adapted, altered or fitted in any manner for concealing goods shall be liable to confiscation [Section 115(1)(a)].

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TAXABLE EVENT

DUTIABLE GOODS [SECTION 12]

(1) The provisions relating to charge of duties of customs are contained in Section 12 of the customs Act, 1962 which is also known as charging section.

(2) Essential ingredients for Charge of custom duty : The charging section provides the following-

- **(a)** The levy of duty is on goods.
- **(b)** The goods must be imported into or exported from India.
- **(c)** The rate at which duty of customs is to be levied is specified in the Customs Tariff Act, 1975 or any other law for the time being in force.
- **(d)** Government goods shall be treated at par with the non-government goods for the Purpose of levy of customs duty. Such levy of duty is subject to the exceptions as provided in this Act or any other law for the time being in force.

Therefore, the importation of goods into India or exportation of goods from India is taxable event in customs.

(3) In case of Importation: The supreme Court has held in Kiran spinning Mills a. Collector that taxable event occurs when the customs barrier is crossed and not on the date when goods had landed in India or had entered the territorial waters of India.

Taxable event is reached when the goods reach the customs barrier and the bill of entry for home consumption is filed.

(4) In case of Exportation: Exportation commences when the shipping bill in respect of such goods is filed but the taxable event is completed when the goods cross the territorial waters of India.

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DATE FOR DETERMINATION OF RATE OF DUTY AND TARIFF VALUATION

❖ **[Section 15]**The provisions relating to date for determination of rate of duty and tariff valuation of **IMPORTED GOODS** are as under -

- **(a)** in the case of goods entered for **home consumption** under section 44
  - **(i)** the **date of presentation of Bill of Entry**; or
  - **(ii)** the **date of entry inwards** of the vessel or the arrival of the aircraft by which the goods are imported, **WHICHEVER IS LATER**.
- **(b)** in the case of goods cleared from a warehouse under section 58, the date of presentation of the Ex-Bond clearance Bill of Entry for home consumption under that section.
- **(c)** in the case of any other goods, the date of payment of duty.
- **(d)** The provisions of **Section 15 shall not apply** to **BAGGAGE AND GOODS IMPORTED BY POST**.

❖ Date for determination of rate of duty and tariff valuation of **EXPORT GOODS [Section 16]**:

(a) According to Section 16 of the Customs Act, 1962, the provisions relating to date for determination of rate of duty and tariff valuation of export goods are as under -

(i) in the case of goods entered for export under section 50, the date on which the proper officer makes an order permitting clearance and loading of the goods for exportation under section 51.

(ii) in the case of any other goods, the date of payment of duty.

(b) The provisions of Section 16 shall not apply to baggage and goods exported by post.

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ASSESSMENT

As per Section 2(2) of the Customs Act 1962, assessment includes provisional assessment, self assessment, reassessment and any assessment in which the duty assessed is 'nil'.

Assessment is procedure adopted for determining the duty liability by correct classification and valuation of goods.

ASSESSMENT OF DUTY [SECTION 17]

(a) **SELF ASSESSMENT** by importer or exporter: An -

(i). **importer** entering any imported goods under section 46 (i.e. Bill of entry is presented by him for clearance of goods), or

(ii). **exporter** entering any export goods under section 50 (i.e. Shipping bill or Bill of export is presented for clearance of export goods),

shall self-assess the duty, if any, leviable on such goods. However, **stores can be warehoused without assessment** as provided in Section 85.

(b) The proper officer may verify the self-assessment of such goods and for this purpose, examine or test any imported goods or export goods or such part thereof as may be necessary.

(c) For verification of self-assessment the proper officer, may require the importer, exporter or any other person to produce any contract, broker's note, insurance policy, catalogue or other document, whereby the duty leviable on the imported goods or export goods, as the case may be, can be ascertained, and to furnish any information required for such ascertainment which is in his power to produce or furnish and thereupon, the importer, exporter or such other person shall produce such document or furnish such information.

(d) **RE-ASSESSMENT** of duty in case of incorrect self assessment: Where it is found on verification, examination or testing of the goods or otherwise that the self-assessment is not done correctly, the proper officer may, re-assess the duty leviable on such goods. However, such re-assessment shall be without prejudice to any other action which may be taken under this Act.

(e) **Reassessment contrary to self-assessment** - Where any re-assessment done is contrary to the self-assessment done by the importer or exporter regarding valuation of goods, classification, exemption or concessions of duty availed consequent to any notification issued under this Act and in cases other than those where the importer or exporter, as the case may be confirms his acceptance of the said re-assessment in writing, the proper officer shall pass a speaking order on the re-assessment. Such speaking order is passed within 15 days from the date of re-assessment of the bill of entry or the shipping bill as the case may be.

(f) Audit by proper officer at his office or premises of importer or exporter.

For carrying out such audit, On-site Post Clearance Audit at the Premises of Imports and Exporters Regulations, 2011 have been framed. According to the said regulations, the proper officer is required to give **not less than 15 days advance notice** to the importer or exporter to conduct audit.

PROVISIONAL ASSESSMENT

Circumstances in which Provisional assessment can be ordered [SECTION 18(1)]:

(1) The provisional assessment can be directed by proper officer in the following circumstances,-
   - (a) where the importer or exporter is unable to make self-assessment under section 17(1) and makes a request in writing to the proper officer for assessment; or
   - (b) where the proper officer deems it necessary to subject any imported goods or export goods to any chemical or other test; or
   - (c) where the importer or exporter has produced all the necessary documents and furnished full information but the proper officer deems it necessary to make further enquiry; or
   - (d) where necessary documents have not been produced or information has not been furnished and the proper officer deems it necessary to make further enquiry.

(2) **Bill of entry to be filed for provisional assessment also**: The provisions of section 18 apply without prejudice to the provisions of Section 46. Hence, the bill of entry is required to be presented in accordance with the provisions of Section 46 even for the purposes of provisional assessment as well.

(3) **Furnishing of security**: The proper officer may direct provisional assessment if the importer or the exporter, as the case may be, furnishes such security as the proper officer deems fit for the payment of the deficiency, if any, between the duty as may be finally assessed or re-assessed (as the case may be), and the duty provisionally assessed.

(4) **Finalisation of assessment**: When the duty leviable on such goods is assessed finally or re-assessed by the proper officer in accordance with the provisions of this Act, then –

   (a) If the goods are cleared for home consumption or exportation, the amount paid shall be adjusted against the duty finally assessed or re-assessed. In case the amount so paid falls short or is in excess of duty finally assessed or re-assessed, the importer or the exporter of the goods shall pay the deficiency or is entitled to a refund.

   (b) If the goods are warehoused and the duty finally assessed or re-assessed is in excess of the provisional duty, the customs officer may require the importer to execute a bond binding himself in a sum equal to twice the amount of the excess duty.

(5) **Interest on demand**: The importer or exporter shall be liable to pay interest, on any amount payable to Central Government, consequent to the final assessment order or re-assessment order, at the rate specified in Section 28AA of the Customs Act, 1962 (i.e. @ 18% p.a.) from the first day of the month in which the duty is provisionally assessed till the date of payment thereof.

(6) **Interest on delayed refund**: If any amount refundable is not refunded within three months from the date of assessment of duty finally or reassessment of duty, as the case may be, there shall be paid an interest on such amount at the rate specified in section 27A of the Customs Act 1962 (i.e @ 6% p.a.) till the date of refund of such amount.

(7) **Circumstances under which refund can be granted**: The amount of duty and the interest shall be credited to Consumer Welfare Fund. However, instead of being credited to Consumer Welfare Fund in the following cases it shall be paid to the importer or the exporter, if such amount is relatable to,-

(a) the duty and interest (if any, paid on such duty) paid by the importer, or the exporter, as the case may be, if he had not passed on the incidence of such duty and interest, to any other person;
(b) duty and interest (if any, paid on such duty) on imports made by an individual for his personal use;
(c) the duty and interest (if any, paid on such duty) borne by the buyer, if he had not passed on the incidence of such duty and interest, to any other person;
(d) the export duty as specified in section 26;
(e) drawback of duty payable under sections 74and75.

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1. **<u>Determination of duty</u>** where **<u>goods</u>** consist of articles leviable to **<u>DIFFERENT RATES OF DUTY [Section 19]</u>**
Except as otherwise provided in any law for the time being in force, where goods consist of a set of articles, duty shall be calculated as follows,-

(a) articles liable to duty with **<u>reference to quantity</u>** shall be chargeable to that duty;
(b) articles liable to duty with **<u>reference to value</u>** shall be chargeable to duty as under,-
- if such articles are with the **<u>same rate of duty</u>** then duty shall be levied at that rate.
- If the articles in the set are liable to **<u>duty at different rates</u>** then duty shall be calculated at the **<u>highest of those rates</u>**.

(c) articles **<u>not liable to duty</u>**, then they shall also be **<u>chargeable to duty at the highest of the rates</u>** specified in (b) above.

2. **<u>Rate of Duty</u>** applicable to **<u>ACCESSORIES, ETC. SUPPLIED WITH IMPORTED ARTICLE</u>** [Accessories (Condition) Rules, 1963]: then such accessories/spare parts and maintenance implements shall be chargeable at the **<u>same rate of duty as that article</u>**, if the **<u>proper officer is satisfied</u>** that in the ordinary course of trade,-
(a) such accessories, parts and implements are **<u>compulsorily supplied</u>** with that article; and
(b) **<u>no separate charge</u>** is made for such supply, their price being included in the price of that article.

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REMISSION/ABATEMENT OF DUTY – PILFERED GOODS, DAMAGED OR DETERIORATED GOODS, LOST OR DESTROYED GOODS

<u>MEANING OF PILFER</u>

The term Pilfer is defined to mean, loss of goods in small quantities by reasons of theft etc. Therefore, the term does not include loss of total package. In order to claim pilferage the following circumstances should exist:
(a) there should be evidence of tampering with the packages;
(b) there should be blank space for the missing articles in the package; and
(c) the missing articles should be unit articles and not part articles.

<u>DUTY ON PILFERED GOODS [SECTION 13]</u> If:
- any imported goods are pilfered;
- after the unloading thereof;
- and before the proper officer has made an order for clearance for home consumption or deposit in a warehouse;
- the importer shall not be liable to pay the duty leviable on such goods;
- except where such goods are restored to the importer after pilferage.

LIABILITY OF DUTY IN CASE OF PILFERED GOODS [SECTION 45(3)]:

- It is important to note that the Port Trust authority is the custodian of imported goods.
- Section 13 disables the Government from collecting the duty on pilfered goods from the importer.
- Section 45 enables the Government to demand the duty from the custodian of cargo.

ABATEMENT OF DUTY

on damaged or deteriorated goods [Section 22]

(1) **Circumstances when abatement is allowed**: Where it is shown to the satisfaction of the Assistant Commissioner of Customs or Deputy Commissioner of Customs,-

(a) that any imported goods had been damaged or had deteriorated at any time before or during the unloading of the goods in India; or

(b) that any imported goods, other than warehoused goods, had been damaged at any time after the unloading thereof in India but before their examination under section 17, on account of any accident not due to any willful act, negligence or default of the importer, his employee or agent or

(c) that any warehoused goods had been damaged at any time before clearance for home consumption on account of any accident not due to any willful act, negligence or default of the owner, his employee or agent.

(2) **Duty liability in case of abatement**: The goods shall be chargeable to duty determined in the following manner:

Duty leviable on such damaged or deteriorated goods	=	$\frac{\text{Duty chargeable on the goods before the damage or deterioration}}{\text{Value of the goods before damage or deterioration}}$	X	Value of the damaged or deteriorated goods
Abatment of duty on damaged or deteriorated goods	=	Duty leviable on the goods before damage	–	Duty leviable on the goods after damage

(3) Valuation of damaged/deteriorated goods : The value of damaged or deteriorated goods may be ascertained by either of the following methods (at the option of the owner),-

(a) The value of such goods may be ascertained by the proper officer; or

(b) Such goods may be sold by proper officer by public auction or by tender or with consent of owner in any other manner and the gross sale proceeds, shall be deemed to be the value of such goods.

REMISSION OF DUTY

Section 23 of the Customs Act 1962, specifically permits remission of duty in the following cases,-

(1) Loss or destruction of goods [Section 23(1)] : In case where it is shown to the satisfaction of Assistant or Deputy Commissioner of Customs -

- that any imported goods have been lost (otherwise than as a result of pilferage) or destroyed,
- at any time before clearance for home consumption, the Assistant Commissioner of Customs shall remit the duty on such goods.

(2) Abandonment or Relinquishment of goods by importer [Section ?JlQr|1zThe owner of the imported goods may at any time before,-

- an order for clearance of goods for home consumption under section 47 or
- an order for permitting the deposit of goods in a warehouse under section 60 has been made,

relinquish his title to the goods and thereupon he shall not be liable to pay the duty thereon.

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DERELICT, FLOATSAM ETC., DENATURED OR MUTILATED GOODS, RE-IMPORTED GOODS

(1) **GOODS DERELICT, WRECK ETC. [SECTION 21]**: All goods derelict, jetsam, flotsam and wreck brought or coming into India, **shall be dealt with as if they were imported into India**, unless it is shown to the satisfaction of the proper officer that they are entitled to be admitted duty-free under this Act.

(2) **POWER TO MAKE RULES FOR DENATURING OR MUTILATION OF GOODS [SECTION 24]**: Section 24 of Customs Act, 1962, provides that an importer can request Central Government to denature or mutilate the imported goods, which are ordinarily used for more than one purpose/ **so as to render them unfit for one or more of such purpose**. If the goods are denatured or mutilated, they are assessed as if the goods were imported in denatured or mutilated form.

RE-IMPORTATION OF GOODS [SECTION 20]: In case if any goods have been imported into India after exportation there from such goods shall be liable to duty and subject to such restrictions and conditions, if any, to which the goods of like kind and value are liable or subject on the importation thereof.
Re-imports are entitled for following concessions as have been notified by the Government:

Condition -	**Importer will be liable pay customs duties equal to -**
Goods exported under claim of drawback or under bond without payment of duty or under claim for rebate and re-imported within 3 years (or extended period if any) without being re-manufactured/ re-processed	The amount of benefit availed on account of duty drawback and excise duty concessions/rebate when the goods were exported.
Goods exported for repairs abroad and re-imported by the same person within 3 years (or extended period, if any) without being re-manufactured/ re-processed	Duty leviable on a value = Fair cost of repairs carried out including cost of materials used in repairs (whether such costs are actually incurred or not) + Insurance and freight charges, both ways.
Goods manufactured in India and re-imported into India - (a) for repairs or re-conditioning within 3 years from the date of exportation (in case of Nepal and Bhutan, such re-importation takes place within 10 years from date of exportation); or (b) for reprocessing or refining; or re-making or other similar process within 1 year from the date of exportation.	NIL, if - (a) such goods are exported within 5 months from the date of their re-importation or such extended period not exceeding a further period of six months as the Commissioner of Customs may allow; and (b) the Assistant Commissioner of Customs is satisfied as regards identity of the goods;

CHAPTER 2

CLASSIFICATION & TYPES

CUSTOMS TARIFF ACT, 1975

- The Customs Tariff Act provides the classification of the goods and rates of duties of customs. It comprises of two schedules:
    1. First Schedule: in this schedule goods chargeable with import duty are listed. It is known as 'import tariff' which consists of 98 chapters grouped under 21 Sections.
    2. Second Schedule: in this schedule goods chargeable with import duty are listed. It is also known as 'import tariff'.
- The Customs Tariff Act, 1975, adopts eight-digit classification code based on Harmonised Commodity Description and Coding System (HSN). The general explanatory notes for interpretation of the tariff and the system of dashes are similar to the central Excise Tariff.
- Rates of Custom Duty: The basic custom duty are 5%, 7.5% & 10%. Highest rate of basic customs duty is 10% for non-agricultural items, with some exceptions. On baggage, the general rate of duty is 35% and no additional duty of customs is leviable on baggage.

PREFERENTIAL RATE OF DUTY

The **Central Government** has the **Power to declare** certain areas as preferential areas, the imports where from are chargeable to preferential rate of duty. **SECTION 4** of the Customs Tariff Act, 1925 makes the following provisions in this behalf,-

(1) Where in respect of any article a preferential rate of revenue duty is specified in the First Schedule, to the Customs Tariff Act, 1975 or a preferential rate is admissible by virtue of an exemption notification, under section 25 of the Customs Act,1962, the duty shall be levied and collected at the preferential rate only if all of the **following conditions are fulfilled**:

- **(a)** at the time of importation **the importer/owner** of the article **must claim** that the article is chargeable with a preferential rate of duty;
- **(b)** the importer/owner must also **claim** that such article has been **produced or manufactured** in a **preferential area**;
- **(c)** such **preferential area**, being a country or territory, must be **notified** as a preferential area by the Central Government; and
- **(d)** the **origin of such article** (i.e. identification whether such article is a produce or manufacture of notified preferential area) **must be determined** in accordance with rules made in this behalf.

(2) **Power to discontinue or amend preferential rate**: In the interests of trade including promotion of exports, the Central Government may direct an amendment of the First Schedule so as to,-

- **(a)** provide for discontinuance of preferential rate; or
- **(b)** increase the preferential rate to a rate not exceeding the standard rate; or
- **(c)** decrease the preferential rate.

ADDITIONAL DUTIES OF CUSTOMS

Levy of additional duty equal to excise duty, sales tax, local taxes and other charges [**Section 3** of the Customs Tariff Act, 1975]: The provisions relating to additional duty of customs are as under--

(1) **<u>Additional duty of customs EQUAL TO EXCISE DUTY (also known as CVD)</u>** [Section 3(1)]: Any article which is imported into India shall be liable to an additional duty of customs equal to the excise duty for the time being leviable on a like article, if produced or manufactured in India.

- In case if a **<u>like article is not so produced or manufactured</u>**, then an additional duty of customs will be leviable **<u>equal to the excise duty</u>** for the time being leviable **<u>on the class or description of articles</u>** to which the imported article belongs, and
- where such duty is **<u>leviable at different rates</u>**, the **<u>highest rate of excise duty shall be taken for calculating additional duty of customs</u>**.

<u>Value for additional duty of customs</u>:
If the excise duty leviable on the **<u>like article</u>** is leviable on percentage of its value, then the **<u>additional duty</u>** to which the imported article shall be so liable will be **<u>calculated at that percentage of the value</u>** of the imported article.
<u>Rate of additional duty on alcoholic liquor</u> for human consumption: In case of any alcoholic liquor for human consumption imported into India the **<u>Central Government may notify</u>** the rate of additional duty,-

(a) having regard to the **<u>excise duty for the time being leviable</u>** on a **<u>like alcoholic liquor</u>** produced or manufactured in different States or,
(b) if a like alcoholic liquor is not produced or manufactured in any State, then having regard to the **<u>excise duty</u>** which would be leviable for the time being **<u>in different States</u>** on the class or description of alcoholic liquor to which such imported alcoholic liquor belongs.

<u>If any article is not subjected to excise duty, then no additional duty of customs can be levied</u>: The Supreme Court in **<u>Hyderabad Industries Ltd. v. UOI</u>**.

(2) **<u>Special additional duty of customs EQUAL TO SALES-TAX/VAT (also known as Special CVD) [Section 3(5)]</u>**: If the Central Government is satisfied that it is necessary in the public interest to levy on any imported article such additional duty as would counter-balance the sales tax, value added tax, local tax or any other charges for the time being leviable on a like article on its sale, purchase or transportation in India then it may, by notification direct that such imported article shall be liable to an **<u>additional duty at a rate not exceeding 4%</u>** of the value of the imported article as specified in that notification.

(3) **<u>Mode of calculation of Additional duty of customs</u>** u/s 3(1) & 3(5): The additional duty of customs u/s 3(1) and 3(5) of the Custom Tariff Act on any imported article shall be calculated as follows –

Assessable value u/s 14(1) or Tariff Value u/ s 14(2) of Customs Act	[A]	XX
Add: Basic duty of customs u/s12 on (I) above and other duties (see Note)	[B]	<u>XX</u>
value for the purposes of levy of additional duty of customs u/s 3(1) [A + B]	[C]	XX
Add: Additional Duty of Customs u/s 3(1) = Excise duty computed on (III) above ***(Excise duty will be exclusive of EC & SHEC on excise duty, as EC & SHEC on said duty have been exempted)***	[D]	XX
Add: EC and SHEC on customs duty [2% + 1% = 3% on {(B) + (D)}]	[E]	<u>XX</u>
value for the purposes of levy of additional duty of customs u/s 3(5) [C + D + E]	[F]	XX
Add: Additional duty of customs u/s 3(5) computed on (F) above	[G]	<u>XX</u>
Total cost of imported goods [F + G]		<u>XX</u>
Total Customs Duty payable = [H – A], or [B + D + E + G]		<u>XX</u>

<u>Note: Non inclusion of Duties:</u>

(a) Additional duty of customs referred to in Section 3(1), 3(3) and 3(5) of the CTA, 1975;
(b) (b) The safeguard duty referred to in sections 8B and 8C of the CTA, 1975;
(c) The countervailing duty referred to in section 9 of the CTA, 1975; and
(d) The anti-dumping duty referred to in section 9A of the CTA, 1975.

GOODS IMPORTED REQUIRING MRP BASED ASSESSMENT UNDER CENTRAL EXCISE

Additional duty leviable on RSP - Abatement:

In case of an article imported into India -

(i) in relation to which it is required, under the provisions of the Legal Metrology- Act, 2009 or the rules made thereunder or under any other law for the time being in force, to declare on the package thereof the retail sale price of such article; and

(ii) where the like article produced or manufactured in India or in case where such like article is not so produced or manufactured, then the class or description of articles to which the imported article belongs, is the goods specified by,-

- **(a)** notification u/ s 4Aof Central Excise Act, 1944, or
- **(b)** notification u/s 3 read with clause (1) of Explanation III of the Schedule to the Medicinal and Toilet Preparations (Excise Duties) Act, 1955,

the value of the imported article shall be deemed to be the:

Retail sale price declared on the imported article;

Less: Abatement, if any, from such retail sale price as allowed in the said notification

Where on any imported article **MORE THAN ONE RETAIL SALE PRICE** is declared, the **MAXIMUM** of such retail sale price shall be **DEEMED** to be the **RETAIL SALE PRICE** for the purposes of this section.

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Article subjected to TARIFF VALUE BASED DUTY in India - Additional duty leviable on Tariff Value

In case if any article is subjected to excise duty on basis of tariff value (i.e. where the Central Government has fixed tariff value for like article produced or manufactured in India under section 3(2) of Central Excise Act, 1944, then for the purpose of calculating additional duty of custom, the assessable value shall be the tariff value of such article.

PROTECTIVE DUTY

The provisions relating to levy of protective duties are as under -

(1) **Power of Central Government to levy protective duties in certain cases [SECTION 6]**: the **Central Government** on the **recommendation of the Tariff Commission** of India levy protective duty for protection of interest of domestic industry established in India.

(2) **Duration of protective duties and power of Central Government to alter them [SECTION 7]**: The duty shall have effect only up to and inclusive of the date, if any, specified in First Schedule. The Central Government has the powers to reduce or increase such duty where it deems fit by a notification in the Official Gazette and get the approval of the same in the Parliament.

Emergency Power of Central Government to INCREASE OR LEVY EXPORT DUTIES [SECTION 8]:

Where the Central Government is satisfied that , in respect of any article, whether included in the Second Schedule or not,

- the export duty leviable thereon should be increased or that an export duty should be levied, and
- circumstances exist which render it necessary to take immediate action,

the Central Government may, by notification in the Official Gazette, direct and amendment of the Second Schedule to be made so as to provide for an increase the export duty on that article.

Emergency power of Central Government to INCREASE IMPORT DUTIES [SECTION 8A]

Where in respect of any article included in the First Schedule, the Central Government is satisfied that –

- import duty leviable thereon u/s 12 of the Customs Act, 1962 should be increased and
- that circumstances exist which render it necessary to take immediate action,

it may, by notification in the Official Gazette direct an amendment of that Schedule to be made so as to provide for an increase in the import duty leviable on such article to such extent as it thinks necessary.

However, the Central Government shall not issue any notification for substituting the rate of, import duty in respect of any article as specified by an earlier notification, unless such earlier notification has been approved with or without modifications.

SAFEGUARD DUTY

The provisions regard to imposition of "Safeguard duty" is as under

(1) Imposition of Safeguard duty: If the Central Government on enquiry finds that the imports in increased quantity

(a) have caused serious injury to domestic industry or,

(b) is threatening to cause serious injury to domestic industry. It can be imposed irrespective of origin of imported goods.

"Serious injury" means an injury causing significant overall impairment in the position of a domestic industry.

"Threat of serious injury" means a clear and imminent danger of serious injury.

(2) **Safeguard duty cannot be imposed on articles originating from developing countries**: In case of articles originating from a developing country (i.e. a country notified by the Government of India for purpose of levy of such duty), this duty cannot be imposed under following circumstances,-

(a) If the **imports** of such article from developing country **does not exceed 3%** of the total imports of that article into India.

(b) Where the article is originating from more than one developing country (each with less than three percent import share), then the aggregate of imports from all such countries taken together does not **exceed nine percent** of the total imports of that article into India.

(3) **Imposition of Provisional Safeguard Duty**: Central Government can impose a provisional safeguard duty in appropriate cases, pending the determination of the issues as to whether the import of the concerned article to India would cause or threaten to cause serious injury to the domestic industry. The duty so collected, shall be refunded if, on a final determination, the Central Government is of opinion that neither any injury has been caused to the domestic industry, nor there is any such threat to cause serious injury.

The provisional safeguard duty **cannot remain in force for more than 200 days** from the date when it was first imposed.

(4) **Period of imposition**: The safeguard duty shall unless it is revoked earlier, **be in force till the expiry of 4 years** from the date of its imposition. However, the **Central Government can extend** the period of imposition but **total period** of imposition (including extension) **cannot be beyond 10 years** from the date of its imposition.

(5) Unless specifically provided, the safeguard duty **shall not be imposed** on goods imported by a **100% EOU or unit located in Free Trade Zone/Special Economic Zone**.

(6) **Applicability of provisions of Customs Act, 1962**: The provisions of Customs Act, 1962 and the rules and regulations made thereunder, including those relating to the date for determination of rate of duty, assessment, non-levy, short levy, refunds, interest, appeals, offences and penalties shall, as far as may be, apply to the duty chargeable under this section as they apply in relation to duties leviable under that Act.

IMPORTS MADE FROM CHINA

(1) Power of Central Government to impose transitional product specific safeguard duty on imports from the People's Republic of China [Section 8C]

(2) **Market disruption** shall be caused whenever imports of a like article or a directly competitive article produced by the domestic industry, increase rapidly, either absolutely or relatively, so as to be a significantly cause of **material injury, or threat of material injury, to the domestic industry**; Threat of market disruption means a clear and imminent danger of market disruption.

(3) The safeguard duty shall, unless it is revoked earlier, **be in force till the expiry of 4 years** from the date of its imposition.

However, if the Central Government if satisfied may **extend the period** of imposition of such safeguard duty for a **period not beyond the period of ten years** from the date on which the safeguard duty was first imposed.

(4) The other provisions relating to this duty are same as that are discussed in safeguard duty under Section 8B.

COUNTERVAILING/ANTI SUBSIDY DUTY

[**Section 9** provides for levy of countervailing duty on subsidized article the relevant provisions are as under -

(1) **Imposition of Countervailing duty**: In case any foreign country or territory gives any subsidy, directly or indirectly, upon the manufacture or production, transportation or exportation of such article into India, then the Central Government on recommendation of anti subsidy authority levy countervailing duty not exceeding the amount of such subsidy. This duty is **also known as anti-subsidy duty.**

(2) **No Countervailing duty to be imposed in certain cases**: The countervailing duty shall not be levied unless it is determined that,-

(a) the subsidy relates to export performance;

(b) the subsidy relates to the use of domestic goods over imported goods in the export article; or

(c) the subsidy has been conferred on a limited number of persons engaged in manufacturing, producing or exporting the article. However, **no countervailing duty shall be imposed** if such subsidy relates to –

- Research activities conducted by or on behalf of persons engaged in the manufacture, production or export;
- assistance to disadvantaged regions within the territory of the exporting country; or
- assistance to promote adaptation of existing facilities to new environmental requirements.

(3) **Provisional duty:** The Central Government pending the determination of the amount of subsidy may impose a provisional countervailing duty not exceeding the amount of such subsidy as provisionally estimated by it. If the provisional countervailing duty exceeds the subsidy as so determine4 then the Central Government shall,-

(a) reduce such countervailing duty as soon as may be; and

(b) refund the countervailing duty collected in excess of such reduced countervailing duty.

(4) **Retrospective levy**: The Central Government has powers to levy countervailing duty retrospectively if massive imports in a relatively short period have caused injury to the domestic industry. Such duty can be imposed retrospectively from a date prior to the date of imposition of provisional countervailing duty but not beyond 90 days from the date of such notification of provisional duty.

(5) **Duration of Levy - 5 years**: The countervailing duty imposed under this section shall, unless revoked earlier, cease to have effect on the expiry of 5 years from the date of such imposition.

The Central Government may extend the period of such imposition for a further period of 5 years, such further period shall commence from the date of order of such extension.

Where a **review initiated** before the expiry of the aforesaid period of five years has not come to a conclusion before such expiry, the countervailing duty may continue to remain in force pending the outcome of such a review for a **further period not exceeding 1year**.

ANTI DUMPING DUTY [Section 9A]

(1) **Power to levy Anti Dumping Duty**: The Central Government has the power to levy anti-dumping duty on dumped articles. Forever, the amount of anti dumping duty cannot exceed the margin of dumping.

Margin of Dumping: Margin of Dumping in relation to an article, means the difference between its export price and its normal value.

Normal Value, in relation to the article/ means,-

(a) Comparable domestic price of the like article, in the ordinary course of trade when destined for consumption in exporting country, as determined in accordance with rules made in this behalf.

(b) In circumstances where there are no sales of the like article in the domestic market of exporting country or the sales are under circumstances which do not permit a proper comparison, the normal value shall be either :

- **(i)** comparable representative price of the like article from the exporting country/territory to an appropriate third country as determined in accordance with rules made in this behalf; or
- **(ii)** cost of production of the said article in the country of origin along with reasonable addition for administrative, selling and general costs, and for profits, as determined in accordance with the rules. However, in case of import of article from a country other than country of origin, the normal value shall be determined with reference to its price in country of origin.

Export Price of the article is the price of the article exported from the exporting country. In case where there is no export price or export price is unreliable, then the export price is determined as follows:

(a) The price at which the imported article is first sold to an independent buyer; and

(b) In case there is no independent buyer or such articles are not resold in the condition in which it was imported, then, the price is determined in accordance with the rules made in this behalf.

Margin of Dumping to be determined as per records maintained by exporter/ producer: The margin of dumping in relation to an article, exported by an exporter or producer, under inquiry under this section, shall be determined on the basis of records concerning normal value and export price maintained, and information provided, by such exporter or producer. However, where an exporter or producer fails to provide such records or information the margin of dumping for such exporter or producer shall be determined on the basis of facts available.

(2) **Anti-dumping duty to be extended on articles imported by altering form/description**: Where the Central Government, on such inquiry as it may consider necessary, is of the opinion that circumvention of antidumping duty has taken place,-

(a) either by altering the description or name or composition of the article subject to such anti dumping duty; or

(b) by import of such article in an unassembled or disassembled form; or

(c) by changing the country of its origin or export or

(d) in any other manner,

Whereby the anti-dumping duty so imposed is rendered ineffective, it may extend the anti-dumping duty to such article or an article originating in or exported from such country, as the case may be.

(3) **Non Imposition of anti dumping duty**: Unless specifically provided anti dumping duty shall not be imposed on goods imported by ,-

- 100%EOU, or
- Unit located in Free Trade Zone/Special Economic Zone.

(4) **<u>Anti dumping duty leviable on goods imported by EOU and cleared to DTA</u>**: If the article imported by a 100% EOU is,-

- Either cleared as such into the domestic tariff area; or
- Used in the manufacture of any goods that is cleared into the domestic tariff area,

Then, in such cases, anti-dumping duty shall be levied on that portion of the article so cleared or so used as was leviable when it was imported into India.

REFUND OF ANTI-DUMPING DUTY Section 9AA

(1) Where upon determination by an officer authorised in this behalf by the Central Government, an **<u>importer proves</u>** to the satisfaction of the Central Government that **<u>he has paid anti-dumping duty</u>** imposed under section 9A(1) on any article, **<u>in excess of the actual margin of dumping</u>** in relation to such article,-

(a) the Central Government shall, as soon as may be, reduce such anti-dumping duty as is in excess of actual margin of dumping so determined, in relation to such article or such importer, and

(b) such importer shall be entitled to refund of such excess duty.

However, the importer will **<u>not be entitled for refund</u>** of **<u>provisional antidumping duty</u>** which is refundable **<u>under section 9A(2)</u>**.

(2) **<u>RULES</u>**: For this purpose refund of Anti-Dumping Duty (Paid in Excess of Actual Margin of Dumping) Rules, 2012, have been framed and relevant provisions ate as under -

(a) **<u>Filing of Application and time limit</u>**: An application for refund is to be made to **<u>AC/DC</u>** of Customs at the port of importation in prescribed form **<u>within 3 months</u>** from date of **<u>publication of notification</u>** issued by Central Government reducing the antidumping duty.

(b) In case where such **<u>duty becomes refundable</u>** as a consequence of **<u>judgment, decree, order or direction</u>** of the Court, Appellate Tribunal or Authority the **<u>application</u>** is to filed **<u>within 3 months</u>** from the date of such judgment, decree, order or direction.

(c) **<u>Deficiency in application filed by importer</u>**: In case of any deficiency in the **<u>application</u>** filed by importer, the same shall be **<u>returned to him within one month</u>** stating the deficiencies. The importer may **<u>re-submit the application</u>** after removing the deficiencies within one month of receipt of deficiency memo.

(d) **<u>Refund of Claim to be made within 90 days</u>**: of the receipt of the application (or application resubmitted after rectification of deficiency), subject to doctrine of unjust enrichment.

SITUATIONS WHEN ANTI-SUBSIDY AND ANTI-DUMPING DUTY CANNOT BE LEVIED [SECTION 9B]

(1) Countervailing duty and antidumping duty shall **<u>not be levied together</u>** on any article to compensate for the same situation of dumping or export subsidization.

(2) The Central Government shall not levy any countervailing duty or antidumping duty **<u>on such or like articles that enjoy exemptions</u>** from duties of taxes or refund of such duties or taxes when meant for consumption in the country of origin or exportation.

(3) The Central Government shall not levy any countervailing duty or antidumping duty **<u>on article imported from specified countries</u>** i.e. the member country of the World Trade Organisation or from a country with whom Government of India has a most favoured nation agreement, unless subsidy or dumping is proved as per the rules framed in that behalf.

(4) The Central Government may not levy any countervailing duty under Section 9, at any time, **<u>upon receipt of satisfactory voluntary undertakings from the Government of the exporting country</u>** or territory agreeing to eliminate or limit the subsidy or take other measures concerning its effect, or the exporter agreeing to revise the price of the article and the Central Government is satisfied that the injurious effect of the subsidy is eliminated thereby.

(5) The Central Government may not levy any anti-dumping duty under Section 9A, at any time, **<u>upon receipt of satisfactory voluntary undertaking from any exporter</u>** to revise its prices or to cease exports to the area in question at dumped price and if the Central Government is satisfied that the injurious effect of dumping is eliminated by such action.

APPEAL AGAINST THE ORDER IMPOSING/REVIEWING ANY ANTI-SUBSIDY DUTY OR ANTI DUMPING DUTY

(1) Appeal [Section 9C], provides that if any person is aggrieved by the order of determination or review thereof regarding the existence, degree and effect of any subsidy or dumping in relation to import of any article, then he can **file an appeal to the Customs, Excise and Service tax Appellate Tribunal (CESTAT)** constituted under section 129 of Customs Act, 1962.

(2) This appeal shall be **heard by special bench** constituted by the President of Appellate Tribunal.

(3) Every appeal shall be **filed within 90 days** of the **date of order** under appeal. The Appellate Tribunal may entertain any appeal after the expiry of the said period of ninety days, if it is satisfied that the appellant was prevented by sufficient cause from filing the appeal in time.

(4) The appeal shall be accompanied by a **fee of Rs. 15,000**. Every application made before the Tribunal for grant of stay or rectification of mistake or for restoration of appeal or application shall be accompanied by a fee of Rs. 500.

(5) After giving the parties to the appeal an **opportunity of being heard**, the Appellate Tribunal may pass such orders thereon as it thinks fit, ***confirming, modifying or annulling*** the order appealed against.

PROJECT TMPORTS AND ELIGIBLE PROJECTS

(1) Setting up of a project in India may require a number of machines and equipments to be imported. This importation may spread over a period of time and thus assigning values and paying heavy customs duty on imported machineries make the initial project a cumbersome and costly process. Hence, concept of 'Project Import' has been introduced under heading 9801 of Customs Tariff Act, 1975.

(2) Scope of Project Import: Machines, instruments, apparatus and appliances for research and development purposes, components of raw material required for manufacture of aforesaid items etc., utilized for initial setting up of project or substantial expansion of the existing project (i.e. increase in installed capacity by more than 25%) are covered under this heading. Spares etc. essential for maintenance of plant or a project are eligible only upto 10% of the value of goods and can be imported under project imports.

(3) Eligible Projects: The eligible projects are –

(a) Industrial plant
(b) Irrigation project
(c) Power project
(d) Mining project
(e) Oil & other mineral exploration project
(f) Other projects as notified by the Central Government.

(4) **Construction equipments required for setup/substantial expansion** are eligible for import under project Imports [Circular No. 49/2011-Cus., dated 04-11-2011]: After completion of intended use of construction equipment, they may be transferred to other registered Project under Tariff heading 9801, on recommendations of sponsoring authority.

CHAPTER 3

VALUATION

SECTION 14 OF THE CUSTOMS ACT, 1962

(1) For the purposes of the Customs Tariff Act, 1975, or any other law for the time being in force, the **value of the IMPORTED GOODS and EXPORT GOODS** shall be the **transaction value** of such goods, that is to say,

- the **price** actually paid or payable for the goods
- when **sold for export to India** for delivery at the time and place of importation,
- or as the case may be, for **export from India** for delivery at the time and place of exportation,
- where the **buyer and seller** of the goods are **not related**
- and **price** is the **sole consideration** for the sale
- subject to such other conditions as may be specified in the rules made in this behalf.

(2) **Inclusions of cost and services in transaction value**: The transaction value in the case of imported goods **shall include** in addition to the price as aforesaid any amount paid or payable for costs and services, including:

- **commissions** and **brokerage**,
- **engineering design work**,
- **royalties** and **licence fee**,
- **costs of transportation** to the place of importation,
- **insurance**,
- **loading unloading** and
- **handling charges** to the extent and in the manner specified in the rules made in this behalf.

(3) **Valuation Rules** The rules made in this behalf may provide for,-

(a) the **circumstances** in which the **buyer** and the **seller** shall be deemed to be **related**;

(b) the manner of **determination of value** in respect of goods when there is **no sale**, or the buyer, and the seller are **related** or price is **not the sole consideration** for the sale, or in any other case;

(c) the manner of acceptance or rejection of value declared by the importer where the proper officer has reason to doubt the truth or accuracy of such value, and determination of value for the purposes, of this section.

(4) **Exchange rate to be taken of the date of bill of entry**: The 'price' referred under section 14(1) is to 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 45.

Exchange rate to be taken of the date of shipping bill: The price referred under Section 14(1) is to be calculated with reference to the rate of exchange as in force on the date on which a shipping bill or bill of export is presented under Section 50.

(5) **IMPORT VALUATION RULES**:

As per Section 14(1), the **value of imported goods shall be transaction value** **subject to** such other conditions as may be specified in the **rules made** in this behalf. For this purpose **Customs Valuation (Determination of Value of Imported Goods) Rules, 2007** have been framed.

According to **Rule 3 purpose Customs Valuation (Determination of Value of Imported Goods) Rules, 2007**, **the value** of imported goods **shall be** the transaction value **adjusted** in accordance, with cost and services of **Rule 10**.

However, where for any reason the **transaction value is not acceptable**, or the same cannot be determined, then the **value shall be** determined proceeding sequentially through **rules 4 to 9** as under,-

(a) Transaction value of Identical goods (Rule 4);

(b) Transaction value of Similar goods (Rule 5);

(c) Deductive value (Rule 7);

(d) Computed value (Rule 8);
(e) Residual Method (Rule 9).

(6) <u>EXPORT VALUATION RULES</u>:

<u>Rule 3 of Customs Valuation (Determination of Value of Export Goods) Rules, 2007</u> of said rules provides that the **<u>value of export goods shall be the transaction value</u>**. However, where for any reason the **<u>transaction value cannot be determined; or the same is not acceptable</u>** for any reason, then the **<u>value shall be determined proceeding sequentially through rules 4 to 6</u>** as under-

(a) Determination of value by comparison (Rule 4);
(b) Computed Value (Rule 5);
(c) Residual Method (Rule 6).

VALUATION OF IMPORTED GOODS

(1) <u>Transaction Value</u>:

As per Rule 3(1), the value of the imported goods shall be the transaction value adjusted in accordance with the provisions of Rule 10.

According to Rule 2(g), transaction value means the value referred to in Section 14(1) of the Act. According to Section 14(1), ***transaction value means the price actually paid or payable for goods when sold for export to India for delivery at the time and place of importation where the buyer and seller of the goods are not related and price is the sole consideration for the sale***.

(2) <u>Conditions subject to which transaction value acceptable [Rule 3(2)]</u>:

(a) ***No Restrictions as to disposition or use of goods*** other than restrictions which
  (i) are imposed or required by law or by the public authorities in India; or
  (ii) limit the geographical area in which the goods may be resold; or
  (iii) do not substantially affect the value of the goods

(b) ***Sale or price*** not subject to condition/consideration;

(c) no ***part of the proceeds*** of any subsequent resale, disposal or use of the goods by the buyer will accrue directly or indirectly to the seller, unless an appropriate adjustment can be made in accordance with the provisions of Rule 10; and

(d) the ***buyer and seller are not related***, or where the buyer and seller are related, that transaction value is acceptable for customs purposes under the provisions of Rule 3(3).

NOTE: ***In case transaction value cannot be determined if the above conditions are not fulfilled. The value shall be determined proceeding sequentially as per Rule 4 to Rule 9.***

<u>RELATED PERSONS [Rule 2(2)]</u>: Persons shall be deemed to be 'related' only if,-

(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 5% or more of the outstanding voting stocks 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.

The term "person" also includes legal persons

<u>Cases where transaction value to be assessable value if GOODS SOLD TO RELATED PERSON [Rule 3(3)]</u>: even if goods are sold to related persons, the transaction value under Rule 3(1) shall be accepted in the following cases,-

(i) If the examination of circumstances of the sale of imported goods indicate that the relationship did not influence the price.

(ii) Whenever the importer demonstrates that the declared value of the goods, being valued closely, approximates to one of the following values ascertained at or about the same time:

(a) transaction value of the identical or similar goods, in sales to unrelated buyers in India;

(b) the deductive value of identical or similar goods; or

(c) the computed value of identical or similar goods.

However, in applying values used for comparisons, due account shall be taken of the demonstrated difference in commercial levels, quantity levels, adjustments in accordance with Rule 10 and cost incurred by the seller in sales in which he and the buyer are not related.

Substitute values shall not be established under the provisions of (b) above.

ADJUSTMENTS FOR COSTS AND SERVICES FOR VALUATION OF IMPORTED GOODS

As per **Rule 10(1),** following shall be added to the price actually paid or payable for imported goods:

(a) **Cost and Service charges**: The following costs and services, to the extent they are ***incurred by the buyer*** but have not been included in the price actually paid or payable for the imported goods-

(i) commission and brokerage, except buying commission;

(ii) ***the cost of containers*** which are treated as being one for customs purposes with the goods in question i.e. cost of containers imported along with the goods;

(iii) cost of packing whether for labour or materials.

(b) **Apportioned value of goods and services SUPPLIED BY THE BUYER free or at concessional rate**: The value, of following goods and services, which are supplied by the buyer free of charge or at reduced costs for use in connection with the production and sale for export of imported goods, to the extent that such value has not been included in the price actually paid or payable, namely –

(i) materials, components, Parts and similar items incorporated in the imported goods;

(ii) tools, dies, moulds and similar items used in the production of the imported goods;

(iii) materials consumed in the production of the imported goods;

(iv) engineering, development, art work, design work, and plans and sketches undertaken elsewhere than in India and necessary for the production of the imported goods.

(c) **Royalties and licence fees payable as condition of sale**

(d) **Subsequent sale proceeds**: The value of any part of the proceeds of any subsequent resale, disposal or use of the imported goods that accrues, directly or indirectly, to the seller.

(e) **Other payments as a condition of sale**: All other payments actually made or to be made as a condition of sale of the imported goods-, by the buyer to the seller, or by the buyer to a third party to satisfy an obligation of the seller, to the extent that such payments are not included in the price actually paid or payable.

(f) **Royalty payment for post importation process includible [Explanation]**: Where the royalty, licence fee or any other payment for a process, is includible under (c) and (e) above, such charges shall be added to the price actually paid or payable for imported goods, even if such goods are subjected to the said process after importation of such goods.

CCEx, v. Living Media India Ltd. [2011]: pre-recorded CD which contains music or song of artists is different from blank audio CD. The royalty is payable towards money to be paid to artists and to the producers who produced such CD's. In this case such royalty becomes due as soon as such CD's are distributed and sold and such royalty is paid as condition of sale. Hence, such royalty is includible in the assessable value of imported Audio CD's. Hence, department is justified in issuing show-cause notice to include such royalty Payments.

Cost of transportation, insurance, and loading unloading and handling charges

According to **Rule 10(2)**, the value of the imported goods shall be the value of such goods, for delivery at the time and place of importation and shall include,-

(a) **COST OF TRANSPORTATION**: Actual cost of transport of the imported goods to the place of importation.

- ***In case cost of transportation is not ascertainable***: shall be **20% of the FOB** value of the goods.
- ***Air freight cannot exceed 20% of FOB value of the goods***: in case of importation of goods by air, even if the actual cost of transport is ascertainable, the same shall not exceed 20% of FOB value of the goods.
- ***Cost of Transportation*** from port of entry to (ICD) inland container depot /(CFS) container freight station ***not includible***.
- ***Ship demurrage charges on charted vessels, lighterage or barge charges – Includible*** [Explanation to Rule 10(2)]

(b) **INSURANCE CHARGES**: Cost of insurance charges ***actually incurred shall be added***. However, in case the cost of insurance is ***not ascertainable*** such ***cost shall be 1.125% of the FOB*** value of the goods.

(c) **LOADING UNLOADING AND HANDLING CHARGES** associated with the delivery of the imported goods at the place of importation in port: They are always ***deemed equal to 1% of [FOB value of the goods + Cost of transport + Cost of insurance]*** i.e. **1% of the CIF** value of the goods irrespective of the actual expenditure incurred.

WHERE FOB VALUE AND COSTS OF INSURANCE & TRANSPORT, NOT ASCERTAINABLE:

Rule 10(2) provides that FOB value of goods and costs of insurance and transport are not ascertainable, then, the costs of transport and insurance shall be computed as follows -

(i). Cost of transport shall be [20% of (FOB Value + Cost of Insurance)] or CIF Value x 20 / 120.

(ii). Cost of insurance shall be [1.125% of (FOB Value + Transport Cost)] or CIF Value x 1.125 / 101.125.

FOB Price (Free on Board)	XXX
Add: Charges for costs and services as per Rule 10(1) (Excluding charges for Post-importation Activities)	XXX
Transaction Value	XXX
Add: The following adjustments [(a) to (c)] under Rule 10(2):	
(a) Actual Cost of transport (in case of air it cannot exceed 20% of FOB value of goods) If unascertainable -20% of the FOB value of goods.	XXX
(b) Actual Cost of insurance If unascertainable - 1.125% of the FOB value of goods.	XXX
CIF value (FOB value + cost of transport + cost of insurance)	XXX
(c) Landing charges i.e. (Loading, unloading and handling charges associated with the delivery of the importe4goods in port) i.e. @ 1% of CIF value	XXX
Assessable Value for the Purpose of calculating duties of custom	XXX

IDENTICAL GOODS [Rule 2(1)(d)]

means imported goods,-

(a) 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 affect the value of goods;

(b) ***produced in the country*** in which the ***goods being valued were produced***; and

(c) ***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;

SIMILAR GOODS [Rule 2(1)(f)]

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.

Transaction value of IDENTICAL GOODS Rule 4(1)

- If the **value** of imported goods **cannot be determine as Per Rule 3** of Customs Valuation (Determination of Value of Imported Goods) Rules, 2007, then, the ***value thereof shall be the transaction value of the identical goods sold*** for export to India and imported at or about the same time as the goods being valued.
- Goods at ***same commercial or quantity level*** to be taken for valuation.
- In case any of the ***above conditions is not fulfilled***, transaction value in a sale of identical goods that takes place under any one of the ***following three circumstances*** may be used :
  - **(a)** sale at the same commercial level but in different quantities;
  - **(b)** sale at a different commercial level but in substantially the same quantities; or
  - **(c)** sale at a different commercial level and in different quantities.

  Having found a sale under any one of these three conditions ***adjustments will then be made***, as the case may be, for:
  - **(a)** quantity factory only;
  - **(b)** commercial level factors only; or
  - **(c)** both commercial level and quantity factory.
- Adjustment for costs and services as referred in Rule 10(2) [Rule 4(2)]
- More than one value is found - Lowest value shall be used [Rule a(3)]

"Valuation of similar goods under RULE 5: same as Identical goods"

DEDUCTIVE VALUE RULE 7

If the ***value*** of imported goods ***cannot be determined*** as per provisions of ***Rule 4 and Rule 5***, then value is to be determined as per Rule 7 i.e. deductive value.

Deductive value is the ***unit price*** at which ***imported goods or identical goods or similar imported goods*** are ***sold in the greatest aggregate quantity***, to persons who are ***not related*** to the sellers in India at the time when declaration for value is presented, after making the ***following deductions*** from unit price-

- **(a)** either the commission usually paid or agreed to be paid or the additions usually made for profits and general expenses in connection with sales in India of imported goods of the same class or kind;
- **(b)** the usual costs of transport and insurance and associated cost incurred within India;
- **(c)** the customs duties and other taxes payable in India by reason of importation or sale of the goods.

Goods not sold at or about the same time of importation: 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 India at the earliest date after importation but before the expiry of 90 days*** after such importation.

Due allowance of value addition if goods are sold after FURTHER PROCESSING: the value shall be based on the unit price at which the imported goods, after further processing, are sold in the greatest aggregate quantity to person who are not related to the seller in India. In such determination deduction shall be made for the value added by processing besides the above deductions.

COMPUTED VALUE [Rule 8]

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 value4 which are made by producers in the country of exportation for export to India;
- (c) the cost or value of all other expenses under Rule 10(2).

RESIDUAL METHOD [Rule 9]

According to residual method, value is to be ***determined using REASONABLE MEANS consistent with the principles and general provisions*** of these Rules and Section 14 and the data available.

However, the ***value so determined shall not exceed the price*** at which ***such or like goods are ordinarily sold*** or offered for sale for delivery ***at the time and place of importation*** in the course of international trade, when the ***seller or buyer*** has ***no interest*** in the business of other and ***price is the sole consideration*** for the sale or offer for sale.

Basis on which value cannot be determined under this rule [Rule 9(2)]: The ***following shall not be considered*** in determining the value under this method,-

- **(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) ***price*** of goods on the ***domestic market*** of the country of exportation.
(iv) the ***cost of production*** other than the computed value of identical goods or similar goods as determined in Rule 8.
(v) the ***price*** of the goods ***for the export*** to a country other than India,
(vi) ***minimum customs values***.
(vii) ***arbitrary or fictitious values***.

DECLARATION to be furnished by importer [RULE 11]

The importer or his agent shall furnish,-
(a) a declaration disclosing full and accurate details relating to the value of imported goods; and
(b) any other statement, information or document as considered necessary by the proper officer for determination of the value of imported goods under these rules. The said statement, information or document includes an invoice of the manufacturer or producer of the imported goods, where the goods are imported from or through a person other than the manufacturer or producer.

The customs officer has the power to satisfy himself as to the truth or accuracy of any statement, information, document or declaration presented for valuation purposes.
The provisions of the Customs Act, 1962 relating to confiscation penalty and prosecution shall apply to cases where wrong declaration, information, statement or documents are furnished under these rules.

Rejection of declared value by customs officer [Rule 12]

(1) When the proper officer has reason to doubt the truth or accuracy of the value declared in relation to any imported goods, he may ask the importer of such goods to furnish further information including documents or other evidence. If, after receiving such further information, or in the absence of a response of such importer, the proper officer still has reasonable doubt about the truth or accuracy of the value so declared then it shall be deemed that the value of such imported goods cannot be determined under the provisions of Rule 3(1).
(2) Reasons to be intimated to importer.
(3) Other provisions [Explanation to Rule 12]:
(a) This rule by itself ***does not provide a method for determination of value***, it provides a mechanism and procedure for rejection of declared value in case where there is reasonable doubt that the declared value does not represent the transaction value; ***where the declared value is rejected, the value shall be determined by proceeding sequentially in accordance with Rules 4 to 9***.
(b) The declared value shall be accepted where the proper officer is satisfied about the truth and accuracy of the declared value after the said enquiry in consultation with the importer.
(c) ***Reasons for which doubt may be raised*** on truth or accuracy of value, may include the,-
(i) significantly higher value at which identical or similar goods, imported at or about the same time in comparable quantities in a comparable commercial transaction, were assessed;
(ii) sale involves an abnormal discount or abnormal reduction from the ordinary competitive price;
(iii) sale involves special discounts limited to exclusive agents;
(iv) mis-declaration of goods in parameters such as description, quality, quantity, country of origin, year of manufacture or production;
(v) non declaration of parameters such as brand, grade, specifications that have relevance to value;
(vi) fraudulent or manipulated documents.

VALUATION OF EXPORT GOODS
Customs (Determination of Value of Export Goods) Rules,2007

(1) **Transaction value**: As per Rule 3(1), the value of the export goods shall be the transaction value. However, such transaction value is subject to the provisions of Rule 8 i.e. the proper officer has a right to reject such transaction value.

According to Section 14(1), transaction value means the "price actually paid or payable" for goods when sold for export to India for delivery at the time and place of importation where the buyer and seller of the goods are not related and price is the sole consideration for the sale.

(2) **Valuation in case of related persons**: The transaction value shall be accepted even where the buyer and seller are related, provided that the relationship has not influenced the price.

(3) **Valuation when transaction value not acceptable**: In case the transaction cannot be determined, then the value shall be determined proceeding sequentially through Rules 4 to 6.

Determination of export value BY COMPARISON [Rule 4]

(1) The value of the export goods shall be based on the transaction value of "goods of like kind and quality" exported at or about the same time to other buyers in the same destination country of importation or, in its absence, another destination country of importation, adjusted in accordance with provisions given below.

(2) Adjustments to be made: In determining the value of export goods as above the proper officer shall make such adjustments as appear to him reasonable, taking into consideration the relevant factors, including -

- **(a)** difference in the dates of exportation,
- **(b)** difference in commercial levels and quantity levels,
- **(c)** difference in composition, quality and design between the goods to be assessed and the goods with which they are being compared,
- **(d)** difference in domestic freight and insurance charges depending on place of exportation.

COMPUTED VALUE [RULE 5]

If the value cannot be determined under Rule 4 it shall be based on a computed value, which shall include the following :

- **(a)** Cost of production, manufacture or processing of export goods;
- **(b)** Charges, rt arrry, for the design or brand;
- **(c)** An amount towards profit.

RESIDUAL METHOD [RULE 6]

Where the value of the export goods cannot be determined under the provisions of Rules 4 and 5, the value shall be determined using reasonable means consistent with the principles and general provisions of these rules. However, local market price of the export goods may not be the only basis for determining the value of export goods.

With effect from 01-01-2009, 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.

CHAPTER 4

IMPORT EXPORT

THE FLOW PATTERN OF IMPORT

(i) The person-in-charge of the vessel or aircraft or any other person notified by Central Government calls on the port and files the arrival report with the Customs Authorities.

(ii) The Customs Authorities check the documents, grant entry inwards to the vessel, assign an Import General Manifest (IGM) number to the manifest, and permit the master of the vessel to land and unload the cargo.

(iii) The vessel discharges the cargo into the custody of the Port Trust Authorities, or any other authority appointed in the particular port to receive the cargo.

(iv) The importer of the goods delivers the negotiable bill of lading received from the shipper of the goods to the master or the steamer agent of the vessel and obtains the delivery order.

(v) The importer makes self assessment and thereafter, presents a bill of entry in prescribed form electronically for clearance of the goods for home-consumption or warehousing.

(vi) In case bill of entry for home consumption is presented and proper self assessment made by importer, the Proper Officer shall make an order of clearance of goods for home consumption only after he is satisfied that such goods are not prohibited goods and import duty has been paid.

(vii) In case bill of entry for warehousing is presented, the importer has to execute double duty bond and on such execution an order for deposit of goods in warehouse shall be made by Proper Officer.

(viii) On showing the customs clearances to Port Trust Authorities or any other Custodian of the cargo, the importer takes delivery of the cargo for home consumption or for deposit in the warehouse.

(ix) For removal of goods from warehouse, the importer files the 'ex-bond bill of entry' for clearance of warehoused goods. Under this bill of entry, duty will be assessed again in terms of Section 15(1)(b) of Customs Act, 1962.

(x) After payment of customs duty so re-determined and other charges payable to the warehouse keeper including rent and interest, the goods are removed for home consumption.

OBLIGATION CAST ON PERSON-IN-CHARGE ON ARRIVAL OF VESSELS OR AIRCRAFTS IN INDIA

(1) Person in charge to call/land conveyance at custom port/airport [Section 29(1)]:

The person-in-charge of a vessel or an aircraft entering India from any place outside India ***shall not cause or permit the vessel or aircraft to call or land*** -

- **(a)** for the first time after arrival in India; or
- **(b)** at any time while it is carrying passengers or cargo brought in that vessel or aircraft

at any place other than a customs port or a customs airport as the case may be, unless permitted by the Board.

(2) Emergency landing of conveyance - Other than Custom port/air port [Section 29(2)]: The above provisions shall not apply in relation to any vessel or aircraft which is compelled by accident, stress of weather or other unavoidable cause to call or land at a place other than a customs port or customs airport but the person-in-charge of any such vessel or aircraft –

- **(a)** shall ***immediately report the arrival*** of the vessel or the ***landing*** of the aircraft to the ***nearest Customs Officer or the officer-in-charge of a police station*** and, shall on demand, produce to him the log book belonging to the vessel or the aircraft;
- **(b)** ***shall not without the consent*** of any such officer permit any ***goods*** carried in the vessel or the aircraft to be ***unloaded from***, or any of the ***crew or passengers to depart*** from the vicinity of, the vessel or the aircraft; and

(c) shall ***comply with any directions*** given by any such officer with respect to any such goods,

and no passenger or member of the crew shall, without the consent of any such officer, leave the immediate vicinity of the vessel or the aircraft.

Passengers or crew members may leave the place for health or safety purposes: However, nothing in this section shall prohibit the ***departure of any crew or passengers*** from the vicinity of, or the removal of goods from, the vessel or aircraft where the departure or removal is necessary for ***reasons of health, safety or the preservation of life or property***.

IMPORT MANIFEST OR IMPORT REPORT SECTION 30

(1) **Import manifest/report**: According to **Section 2(24)** of the Customs Act, 1962, "import manifest" or "import report" means the manifest or report as required to be submitted under section 30 of the Customs Act, 1962.

(2) **Persons required to furnish the manifest/report [Section 30(1)]**: The ***persons in charge of conveyance*** has to present import manifest (in case of vessel or aircraft) or import report (in case of vehicle) in prescribed form. The Central Government can specify other persons who can furnish import manifest in case of vessel or aircraft.

(3) **Time limit for presentation of import manifest of import report**: The import manifest or import report has to be delivered within the following time limits,-

(a) In case of **Vessel or Aircraft**: ***Electronically*** prior to the arrival of the vessel or aircraft at customs station.

(b) In case of **Vehicle**: ***Within twelve hours*** after its arrival in the customs station.

Electronic filing not feasible: The Commissioner of Customs may; in cases where it is not feasible to deliver import manifest by presenting electronically, allow the same to be delivered in any other manners.

(4) **Penalty for non filing the import manifest/report within time limit** - ***Not exceeding Rs. 50,000***.

ENTRY INWARDS

Imported goods not to be unloaded from vessel until entry inwards granted [Section 31]

(a) The master of a vessel shall not permit the unloading of any imported goods until an order has been given by the proper officer granting entry inwards to such vessel.

(b) No order for entry inwards shall be given until an import manifest has been delivered or the proper officer is satisfied that there was sufficient cause for not delivering it.

(c) The provisions of this section shall not apply to the unloading of baggage accompanying a passenger or a member of the crew, mail bags, animals, perishable goods and hazardous goods.

Date of Entry inward: For the purpose of Section 15(1)(a) of the Customs Act, 1962, the date of entry inward is the date recorded in the Customs register and not the date of actual entry of the vessel

BOAT NOTE

Boat Note [Section 35]: In case the ***vessel*** arriving at the port ***does not get a berth***, then, the ***import cargo*** is taken from the ship to the shore and the export cargo is ***taken*** from the shore to the ship, ***in boats***.

No imported goods shall be water-borne for being landed from any vessel and no export goods which are not accompanied by a shipping bill, shall be water borne for being shipped unless the goods are accompanied by a boat-note in prescribed form.

Exemption from Boat Note: The Board may give general permission, and the proper officer may in any particular case give special permission, for any goods or any class of goods to be water-borne without being accompanied by a boat-note.

CONVEYANCES CARRYING IMPORTED GOODS

- **[Section 32]** Imported goods not to be unloaded unless mentioned in import manifest or import report for being unloaded at that customs station.
- **[Section 33]** Unloading and loading of goods at approved places only.
- **[Section 34]** Goods not to be unloaded or loaded on any conveyance except under supervision of customs officer.
- **[Section 36]** Restrictions on unloading and loading of goods on any Sunday or holidays or any other day after the working hours, except:
  - (i) after giving the prescribed notice and
  - (ii) after paying the prescribed fees, if any.

  However, no fees shall be levied for the unloading and loading of baggage accompanying a passenger or a member of the crew, and mail bags.

- **[Section 37]** The proper officer may, at any time, board any conveyance carrying imported goods or export goods.
- **[Section 38]** The proper officer may require production of documents and ask questions.

CUSTODY AND REMOVAL OF IMPORTED GOODS

(1) **Restrictions on custody and removal of imported goods** [Section 45]: All the imported goods that are unloaded in the customs area shall **remain in the custody** of such person as may be ***approved by the Commissioner of Customs*** until they are cleared for home consumption or are warehoused or are transshipped.

(2) ***Duties of Custodian of cargo***:

(a) ***shall keep a record*** of such goods and send a copy thereof to the proper officer;

(b) shall ***not permit such goods to be removed*** from the customs area or otherwise dealt with except under and in accordance with the permission in writing of the proper officer.

(3) Custodian liable to pay duty on pilfered goods: If any imported ***goods are pilfered after unloading*** thereof in the customs area, while in custody of the person as referred above, that ***person will be liable to pay duty*** on such goods at the ***rate prevalent on the date of delivery of import manifest or import report*** to the proper officer for the arrival of the conveyance in which the said goods were carried.

Airport Authority of India v. Deepak Industries Ltd. 2013: The goods of importer were misplaced or stolen when they were warehoused in custody Airports Authority of India. It was held that In case of neglect of duty, whether statutory or otherwise, shelter of the period of limitation in making claim would not be granted to the State or state agency.

FILING OF BILL OF ENTRY

(1) Entry of goods on importation [Section 46]: The importer of any goods,-

(a) other than goods intended for transit or transhipment,

(b) shall make entry thereof by presenting electronically to proper officer a bill of entry in prescribed form for,-

- **(i)** home consumption; or
- **(ii)** warehousing.

For this purpose the CBEC has notified ***Bill of Entry electronic Declaration) Regulation 2011***.

(2) Electronic filing not feasible - Filing may be in other manner.

(3) If the ***importer*** makes and subscribes to a ***declaration*** before the ***proper officer***, to the effect that he is ***unable*** for want of full information to ***furnish all the particulars of the goods*** required above, the ***proper officer may***, pending the production of such information, ***permit him***, previous to the entry thereof -

- **(a)** to examine the goods in the presence of an officer of customs, or
- **(b)** to deposit the goods in a public warehouse appointed u/s 57 without warehousing the same.

(4) Bill of entry to include all goods mentioned in bill of lading.

(5) A bill of entry may be ***presented at any time after the delivery of the import manifest or import report*** as the case may be.

(6) Declaration as to truth of the contents & Submission of Invoice.

(7) Bill of entry to be filed even if goods exempt.

CLEARANCE OF GOODS FOR HOME CONSUMPTION [SECTION 47]

(1) Order permitting clearance of goods for home consumption: Where the proper officer is satisfied that -

- (a) any goods entered for home consumption are not prohibited goods; and
- (b) the importer has paid the import duty, if any, assessed thereon and any charges payable under this Act in respect of the same,

the proper officer may make an order permitting clearance of the goods for home consumption.

(2) **Payment of Duty Electronically**: The Central Government may, by notification in the Official Gazette, specify the class or classes of importers who shall pay such duty electronically.

Following classes of importers are notified who shall pay duty electronically, namely,-

- (a) Importers registered under Accredited Clients Programme.
- (b) Importers paying custom duty of Rs. 1,00,000 or more per bill of entry.

(3) **Interest @15%** on delayed payment of duty: Where –

- The importer ***fails to pay the import duty within 2 days***, excluding holidays.
- From the date on which the bill of entry is returned to him for payment of duty.

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[Section 48] procedure in case of GOODS NOT CLEARED, WAREHOUSED, OR TRANSHIPPED WITHIN 30 DAYS AFTER UNLOADING

(1) **Right of custodians to sell the goods**: If any goods brought into India from a place outside India are ***not cleared for home consumption or warehoused, or transhipped within 30 days*** from the date of the unloading thereof at a customs station or within such further time as the proper officer may allow, or if the title to any imported goods is relinquished, then -

- **(a)** after ***notice to the importer*** and with the permission of the proper officer,
- **(b)** such goods may be ***sold by the person having the custody*** thereof.

(2) However, the above time ***limit of 30 days will not be applicable*** in case of,-

- **(a)** animals, perishable goods and hazardous goods, which may be sold at any time with the permission of the proper officer, and
- **(b)** arms and ammunitions. The same may be sold at such time and place and in such manner as the Central Government may direct.

WAREHOUSING WITHOUT WAREHOUSING

[Section 49]: In case, if the imported goods are entered for home consumption but the importer is unable to clear the goods, then he **may apply to AC/DC of Customs** for ***permitting*** the ***goods to be deposited in a public warehouse for a period not exceeding 30 days***, or in a ***private warehouse*** if facilities for deposit in a public warehouse are not available.

However, such goods shall not be deemed to be warehoused goods, and accordingly the provisions of warehousing shall not apply to such goods.

The Commissioner of Customs may extend the period of storage for a further period not exceeding 30 days at a time.

CC. u. Shreeji Overseas [2013]: ***Thus, if importer does not Present bill of entry within 30 days of unloading of goods at customs station, he will not be liable to penalty under section 117 of Customs Act, 1962***.

FLOW PATTERN OF EXPORT

(1) **Presentation of Shipping Bill** by the exporter and assessment of goods to duty [Shipping bill (Electronic Declaration) Regulations, 2011:

- **(a)** Any exporter who wants to export goods has to present Shipping Bill ***electronically*** i.e. an application for export of goods.
- **(b)** The exporter makes ***self assessment*** under section 17 and determines the export duty. The said export duty, export cess is paid by him.
- **(c)** The shipping bill is deemed to be filed and self assessment of duty completed when, after entry of the electronic declaration (shipping bill) in the Indian Customs Electronic Data Interchange System (ICEDIS), a ***number is generated by the ICEDIS*** for the said declaration. (Regulation 4)
- **(d)** The ***checklist together with supporting export documents and challan*** shall be presented to proper officer of customs for making an order permitting clearance, for loading of goods for exportation, after examination of export goods if, so required. (Regulation 5)
- **(e)** After making aforesaid order, the proper officer shall generate original (customs copy), exporter's copy, exchange control copy and the export promotion copy of shipping bills. (Regulation 5)
- **(f)** The original (customs copy) of the shipping bill and the checklist shall be retained by the proper officer. The exporte{s copy, exchange control copy and the export promotion copy of shipping bill shall after suitable endorsements be handed over to the authorised person.
- **(g)** The export goods along with assessed shipping bill is presented to preventive officers of customs. Permission of loading of goods i.e. 'Let Ship' order is given by preventive officer, if he is satisfied that all the customs checks have been completed.

(2) **Loading of Goods:**

- **(a)** The ***assessed Shipping Bill is presented*** to the master/agent/mate of the vessel, who shall permit loading of goods.
- **(b)** If the vessel is anchored in mid sea, the goods have to be taken to the ship by boats/lighters, and the boat note procedure would be followed.
- **(c)** On receipt of the cargo on board the ship, the ***master/mate/agent*** of the ship ***issues a receipt*** of the quantity and particulars of the cargo loaded on the ship which is endorsed by Customs Officer.

(3) **Notice of Short-Export Rules, 1963**: If any ***goods*** mentioned in a shipping bill or bill of export and cleared for exportation are ***not exported*** the ***exporter*** shall, ***within 7 days***, from the date of departure of the conveyance by which such goods were intended to be exported, -

(a) **furnish information** in writing to proper officer in respect of the goods not so exported :
  (i) Number of Packages,
  (ii) Description of goods,
  (iii) Quantity,
  (iv) Value,
  (v) Country of destination; or

(b) Present the shipping bill or the bill of export for ***cancellation or amendment***.

PENALTY: Any exporter fails to comply with aforesaid provisions shall be liable to penalty ***not exceeding Rs. 100***.

PROCEDURE FOR CLEARANCE OF EXPORT GOODS

(1) **Export goods not to be loaded on vessel until entry-outwards granted** **[Section 39]**: The master of a vessel shall not permit the loading of any export goods, other than baggage and mail bags, until an order has been given by the proper officer granting entry-outwards to such vessel.

(2) **Export goods not to be loaded unless duly passed by proper officer** **[Section 40]** : The person-in-charge of a conveyance shall not permit the loading at a customs station-
  (a) of export goods, other than baggage and mail bags, unless a shipping bill or bill of export or a bill of transhipment duly passed by the proper officer has been handed over to him by exporter;
  (b) of baggage and mail bags, unless their export has been duly permitted by the proper officer.

EXPORT GENERAL MANIFEST

(1) Delivery of export manifest or export report **[Section 41]**: The person-in-charge of a conveyance carrying export goods shall before departure of the conveyance from a customs station deliver to the proper officer
  (a) an export manifest by presenting electronically (in the case of a vessel or aircraft); or
  (b) export report (in the case of a vehicle), in the prescribed form.

(2) Electronic filing not feasible - Commissioner of Customs may allow filing in other manner.

(3) Declaration: The person delivering the export manifest or export report shall at the foot thereof make and subscribe to a declaration as to the truth of its contents.

(4) If the proper officer is satisfied that the export manifest or export report is in any way incorrect or incomplete and that there was no fraudulent intention, he may permit such manifest or report to be amended or supplemented.

[Section 42] ***The conveyances are not allowed to leave India without the written permission from the Customs Authorities***

[Section 43] **Exemption of certain classes of conveyances from certain provisions**:

(a) The provisions of sections 30, 41 and 42 shall not apply to a vehicle, which carries no goods other than luggage of its occupants.

(b) The Central Government may by notification exempt the following classes of conveyances from all or any provisions of section 29 to 42 :
  (i). conveyances belonging to the Government or any Foreign Government
  (ii). vessels and aircraft which temporarily enter India by reason of any emergency.

CLEARING THE EXPORT CARGO

(1) Entry of Goods for Exportation **[Section 50]**: The exporter of goods shall make the entry of such goods by presenting electronically to the proper officer in the prescribed form -

(a) a shipping bill (in case of goods to be exported in a vessel or aircraft); or

(b) a bill of export (in case of goods to be exported by land).

Electronic filing not feasible - Commissioner of Customs may allow filing in other manner.

Declaration as to truth of contents: The exporter of any goods, while presenting a shipping bill or bill of export, shall make and subscribe to a declaration as to the truth of its contents

(2) Clearance of goods for exportation **[Section 51]**: The proper officer may make an order permitting clearance and loading of export goods for exportation only when -

(a) the shipping bill has been presented by the exporter;

(b) the proper officer is satisfied that such goods are not prohibited goods; and

(c) the exporter has paid the duty, if any, assessed on such goods and any charges payable under this Act in respect of the same.

TRANSIT AND TRANSHIPMENT OF GOODS [Sec. 53-56]

Section 52: Sections 53- 56 not to apply to:

- Baggage;
- Goods imported by post, and
- Stores.

TRANSIT OF GOODS (same conveyance)

Section 53 provides that any

- goods imported in a conveyance and
- ***mentioned in the import manifest or the import report,*** as the case may be,
- ***as for transit*** in the ***same conveyance*** to any ***place outside India or any customs station***,
- may be allowed to be so ***transited without payment of duty***.
- However, the goods should not have been prohibited under section 11 of the Customs Act.

TRANSHIPMENT OF GOODS (conveyance changes)

Section 54 This refers to transfer of goods from one conveyance to another. It may be from one customs station to any custom station in India.

- where any goods imported ***into a customs station*** are intended for transhipment,
- the person-in-charge of conveyance will have to present a bill of transhipment to the proper officer in the prescribed form;
- Where any ***goods imported into a customs station*** are mentioned in the import manifest or import report, as ***for transhipment to any place outside India***,
- such goods will be allowed to be so transhipped
- ***without payment of duty***.
- However, the goods should not have been prohibited u/s 11 of the Customs Act.
- Where any ***goods imported into a customs station*** are mentioned in the import manifest or import report
- for ***transhipment to any major port*** (as defined in the Indian Ports Act, 1908) or
- to ***customs airport or customs port*** (as notified by the Board) or
- to any ***other customs station*** and
- the proper officer is satisfied about the bona-fide intention for transhipment of the goods to such customs station,
- the proper officer may allow the goods to be transhipped, ***without payment of duty***.

DUTY LIABILITY ON TRANSIT & TRANSHIPMENT [Section 55]

On the arrival of goods at such customs station-

(i). they shall be liable to duty,
(ii). they shall be entered in the like manner as the goods are entered on the first importation and
(iii). the provisions of this Act and any rules and regulations shall apply in relation to such goods.

Transport of certain classes of goods subject to prescribed conditions [Section 56]

Imported goods may be transported without payment of duty from one land customs station to another, and any goods may be transported ***from one part of India to another part through any foreign territory***, subject to conditions prescribed for the due arrival of such goods at the place of destination.

CHAPTER 5
WAREHOUSING

APPOINTMENT OF PUBLIC WAREHOUSES

- **Section 57** of the Customs Act, 1962
- empowers the **AC/DC** of Customs
- to appoint public warehouse at places notified under the Customs Act, 1962.

LICENSING OF PRIVATE WAREHOUSES [Section 58]

(1) At any warehousing station the **AC/DC** of Customs may licence private warehouses wherein -
   (a) ***dutiable goods*** imported by or on behalf of the licencee, or
   (b) any other imported goods in respect of which ***facilities for deposit*** in a public warehouse are ***not available***,
   may be deposited.

(2) **Cancellation of license** : The **AC/DC** of Customs is competent to cancel the licence in any the following case,-
   (a) by serving **one month's notice**, in writing, to the licensee; or
   (b) if the ***licensee has contravened*** any of the provisions of the Customs Act, 1962 or the Rules and Regulations made thereunder or ***committed breach*** of any of the conditions of the licence.

(3) Licensee to be given opportunity of being heard.

(4) **Suspension of license** : Further, pending an enquiry whether any licence should be cancelled under (b) above or not, the **AC/DC** of Customs may suspend the licence.

WAREHOUSING BOND [Section 59]

(1) The importer of any goods who wants to deposit the goods in a warehouse (i.e. who has presented bill of entry for warehousing) has to ***execute a bond*** binding himself in a ***sum equal to twice the amount*** of the ***duty assessed*** (under section 17 to 18), on such goods -
   (a) ***to observe all the provisions*** of this Act and the rules and regulations in respect of such goods;
   (b) to ***pay on or before*** a date specified in a notice of demand-
      - all ***duties, and interest***, if any, payable under sub-section (2) of section 61;
      - ***rent and charges*** claimable on account of such goods under this Act, together with interest on the same from the date so specified
      - to ***discharge all penalties*** incurred for violation of the provisions of this Act and the rules and regulations in respect of such goods.

(2) **AC/DC** of Customs may permit an importer to enter into a general bond in such amount as may be approved by them in respect of the warehousing of goods to be imported by him within a specified period.

(3) A bond executed by a transferor shall remain in force even if the goods have been transferred to another warehouse or title of the goods has been transferred to another person.

(4) **[Section 60]** After execution of such warehousing bond, the proper officer may make an order permitting deposit of such goods in warehouse.

PERIOD FOR WHICH GOODS MAY REMAIN WAREHOUSED [Section 61(1)]

Any warehoused goods may be left in the warehouse in which they are deposited or in any warehouse to which they may be removed, ***till the expiry of the following periods*** after the date on which the proper officer has made an order under section 60 permitting the deposit of the goods in a warehouse:
   (a) in the case of ***CAPITAL GOODS*** intended for use in any ***100% export oriented undertaking***, till the ***expiry of 5 years***;

(b) in the case of goods ***OTHER THAN CAPITAL GOODS*** intended for ***use in 100% export oriented undertaking*** till the ***expiry of 3 years***; and

(c) in the case of any ***OTHER GOODS***, till the ***expiry of 1 year***.

EXTENSION OF WAREHOUSING PERIOD

In the case of any ***goods not likely to deteriorate***, the period specified above may be extended on sufficient cause being shown -

(a) **Goods meant for 100% EOU**: Extension by the ***Commissioner*** of Customs, for such period as he ***may deem fit*** and

(b) **In any other case**: Extension by the ***Commissioner*** of Customs, for a period **not exceeding 6 months** and by the ***Chief Commissioner*** of Customs for such ***further period as he may deem fit***.

REDUCTION of warehousing period

In case of goods **(**i.e. ***goods other than those meant for 100% EOU*****)** likely to **Deteriorate**, the aforesaid ***period of one year*** may be ***reduced by the Commissioner*** of Customs to such ***shorter period*** as he may deem fit.

Removal of goods from warehouse on cancellation of licence: in case when the licence for any private warehouse is cancelled, the ***owner of any goods warehoused therein***, shall, ***within 7 days*** from the date on which ***notice of such cancellation*** is given, or within such extended period as the proper officer may allow, ***remove the goods*** from such warehouse to ***another warehouse*** or ***clear*** them for ***home consumption*** or ***exportation***.

Interest in respect of warehoused goods [Section 61(2)]

- **In case of goods meant for 100% EOU**: ***@ 15% p.a.*** on the amount of duty payable at the time of clearance of the goods for the period ***from the expiry*** of the said warehousing period ***till the date of payment of duty*** on the warehoused goods.
- **In case of other goods**: ***@ 15% p.a***. on the amount of duty payable at the time of clearance of the goods, for the period ***after the expiry of 90 days*** till the ***date of payment*** of duty on the warehoused goods.
- ***No interest leviable in case of NIL duty.***

[The CBEC vide Circular No. 39/2013 Cus., dated 1-10-2013 has clarified that when the goods deposited in a warehouse remain warehoused beyond a period of 90 days, then the interest starts accruing. In other words, the relevant date when the period of 90 days would commence would be the date of depositing the goods in the warehouse.]

Control over warehoused goods [section 62]

(a) All warehoused goods shall be subject to the ***control of the proper officer***.

(b) ***No person*** shall ***enter*** a warehouse or ***remove*** any goods therefrom ***without permission*** of the proper officer.

(c) The ***proper officer*** may cause any ***warehouse to be locked*** with the lock of the Customs Department and no person shall remove or break such lock.

(d) The ***proper officer shall have access*** to every part of a warehouse and power to examine the goods therein.

Section 63

The owner of the goods is liable

- to pay to the warehouse keeper, **RENT AND WAREHOUSE CHARGES**
- at the rate as fixed under any law for the time being in force or
- where no rates are so fixed, at such rates as may be fixed by the Commissioner of Customs.

- If the rent or warehouse charges are not paid within ten days from the date when they became due,
- the ***warehouse-keeper may***, after notice to the owner of the warehoused goods
- and with the permission of the proper officer,
- cause to be ***sold*** such sufficient portion of the goods
- as the warehouse-keeper may select.

RIGHTS OF THE OWNER OF WAREHOUSED GOODS [Section 64]

The owner of any goods may, either before or after warehousing the same,

(1) Inspect the goods.

(2) Show the goods for sale.

(3) Separate damaged or deteriorated goods from the rest.

(4) Deal with the goods and their containers in such manner as may be necessary to prevent loss or deterioration or damage to the goods.

(5) Sort the goods or change their containers for the purpose of preservation, sale or export or disposal of the goods.

(6) Take samples of goods without entry for home consumption and if the proper officer so permits without payment of duty on such samples.

MANUFACTURING OPERATIONS WAREHOUSED GOODS [Section 65,66]

Manufacture and other operations in relation to goods in a warehouse [Section 65(1)]

With the ***sanction*** of the **AC/DC** of Customs and subject to such conditions and on ***payment of such fees*** as may be prescribed the ***owner*** of any warehoused goods ***may carry on any manufacturing process*** or other operations in the warehouse in relation to such goods.

Duty liability on waste or refuse arising out of manufacturing or other operations [Section 65(2)]

(a) **IN CASE FINISHED GOODS ARE WHOLLY OR PARTLY EXPORTED**: If the whole or any part of the goods resulting from such operations are exported, ***import duty shall be remitted*** on the quantity of the warehoused goods contained in so much of the waste or refuse as has arisen from the operations carried on in relation to the goods exported. However, this ***remission shall be allowed only if*** -

- **(i)** Such ***waste or refuse is destroyed***; or
- **(ii)** ***Duty is paid*** on such waste or refuse, as if it had been imported into India in that form.

(b) **IN CASE FINISHED PRODUCTS ARE WHOLLY OR PARTLY CLEARED FOR HOME CONSUMPTION**: If the whole or any part of the goods resulting from such operations are cleared from the warehouse for home consumption, ***import duty shall be charged*** on the ***quantity of the warehoused goods*** contained ***in*** so much of the ***waste or refuse*** as has ***arisen from*** the ***operations carried*** on in relation to the goods cleared for home consumption.

(c) **Date for determination of rate of duty and tariff valuation** of import material contained in the waste, will be the ***date of actual payment of duty***, since the said goods category are covered by Section 15(1)(c).

(d) **Power to exempt** imported material used in the manufacture of goods in warehouse **[Section 66]**: Central Government, may, by notification in the Official Gazette, exempt the imported materials from the whole or part of the excess rate of duty.

REMOVAL OF GOODS FROM WAREHOUSE [Section 67]

Removal of goods from one warehouse to another [Section 67]:
The owner of any warehoused goods may remove them from one warehouse to another, with the ***permission of the proper officer*** and subject to such conditions as may be prescribed for the due arrival of the warehoused goods at the warehouse to which removal is permitted.

Warehoused Goods (Removal) Regulations, 1963

(a) **TRANSFER OF WAREHOUSED GOODS IN THE SAME TOWN**: Where the goods are to be removed from one warehouse to another in the same town, the ***proper officer may require*** that the **transfer** of the goods between the two warehouses be **under the supervision of an officer of Customs,** the owner meeting the cost of such supervision.
(b) **TRANSFER OF WAREHOUSED GOODS TO ANOTHER TOWN**: Where the goods are to be removed from one warehouse to another in a different town, the ***proper officer*** may require the ***person requesting removal to execute a bond*** in a ***sum equal to the amount of import duty*** leviable on such goods.
(c) If the ***goods are warehoused*** at the destination ***within a period of 3 months*** from their removal or such ***extended time*** as allowed by the proper officer, and ***certificate issued*** in that respect the ***bond shall stand discharged***, ***otherwise*** the bond amount shall stand ***forfeited***.

CLEARANCE OF WAREHOUSED GOODS FOR HOME CONSUMPTION [Section 68]

- Importer of any warehoused goods may clear such goods for home consumption if following conditions are fulfilled,-
  (a) a Bill of Entry (ex-bond bill of entry) for home consumption has been presented in prescribed form;
  (b) the import duty leviable on such goods and all penalties, rent, interest and other charges payable in respect of such goods have been paid; and
  (c) an order for clearance of such goods for home consumption has been made by the proper officer.
- The owner of any warehoused goods may ***relinquish his title*** to such warehoused Goods and on such relinquishment; he shall not be liable to pay duty thereon.
- No relinquishment, if offence committed

CLEARANCE OF WAREHOUSED GOODS FOR EXPORTATION [Section 69]

Any warehoused goods may be exported to a place outside India without payment of import duty, if following conditions are fulfilled-
(a) **a shipping bill or a bill of export in the prescribed form or a label or declaration accompanying the goods as referred to in section 82 has been presented in respect of such goods; *(amendment 2013)***
(b) the export duty, penalties, rent, interest and other charges payable in respect of such goods have been paid; and
(c) an order for clearance of such goods for exportation has been made by the Proper officer.
Central Govt. may direct for ***demand for payment of duty*** or conditions on export goods ***likely to be smuggled back***.

REMISSION OF DUTY IN CASE OF VOLATILE GOODS [Section 70]

The **AC/DC** of Customs is **empowered to remit** the import duty leviable on such ***shortage or deficiency*** of the warehoused goods if following **conditions** are satisfied-
(i) The goods are ***found deficient in quantity*** at the time of ***delivery from the warehouse***.
(ii) This ***shortage is on account of natural loss*** i.e. evaporation etc.
(iii) The ***goods are specified*** by the Central Government, having regard to the ***volatility of the goods*** and the manner of their storage. (For eg. aviation fuel, motor spirit, mineral, turpentine, acetone, menthol, kerosene, high speed diesel oil, wine, spirit and beer kept in casks have been notified by the Central Government).

GOODS IMPROPERLY REMOVED FROM WAREHOUSE [Section 72]

- The goods shall be treated as improperly removed from the warehouse in following cases-
  - **(i)** where any warehoused goods are removed from a warehouse in contravention of Section 71;
  - **(ii)** where any warehoused goods have not been removed from a warehouse at the expiration of the period during which such good: are permitted under section 61 to remain in a warehouse;
  - **(iii)** where any warehoused goods have been taken under section 64 as samples without payment of duty;
  - **(iv)** where any goods in respect of which a bond has been executed under section 59 and which have not been cleared for home consumption or exportation and are not duly accounted for to the satisfaction of the proper officer.
- In case of improper removal of warehoused goods, the proper officer may demand the full amount of import duty chargeable on such goods along with ill penalties, rent, interest and other charges payable in respect of such goods.
- If any owner fails to pay any amount demanded, then the proper officer is authorised to detain and sell such portion of the goods as he may select, after giving notice to the owner.

Raj Exports v. Central Warehousing Corp. [2013]: After expiry of warehousing period, the liability to pay customs duty crystalises - Remission of duty cannot be granted.

CANCELLATION AND RETURN OF WAREHOUSING BOND [Section 73]

When the whole of the goods covered by any bond executed under section 59 have been cleared for home consumption or exported or are otherwise duly accounted for, and when all amounts due on account of such goods have been paid, the Proper officer shall cancel the bond as discharged in full, and shall on demand deliver it, so cancelled, to the person who has executed or is entitled to receive it.

CHAPTER 6
DUTY DRAWBACK

DUTY DRAWBACK

- is an ***export incentive scheme*** where
- the ***duties/taxes paid*** on
- any imported materials or
- excisable materials or
- input services which are
- used in the manufacture/processing/carrying out
- any operations on the goods
- that are exported outside India
- is ***allowed as refund*** to the exporter.

DRAWBACK ALLOWABLE ON RE-EXPORT OF DUTY PAID GOODS [SECTION 74]

Duty drawback is allowed of custom duty paid on goods imported into India and which are subsequently re-exported. The provisions of Section 74 are as follows:

(1) Drawback ***only on duty paid imported goods***.

(2) ***Order for exportation***: The goods so imported must have been entered for exportation either -

(a) under section 51; or

(b) under section 77 as baggage; or

(c) under section 82 by post,

and the ***proper officer*** must have made an ***order for permitting clearance of goods*** for exportation. The goods shall be deemed to have been entered for export on the date with reference to which the rate of duty is calculated under section 16.

(3) Such goods are identified to the satisfaction of the AC/DC as the goods which were imported.

(4) ***98% of the import duty paid is allowed as drawback*** in case the ***GOODS ARE EXPORTED OUT OF INDIA WITHOUT BEING PUT TO USE***. In case the goods are taken into ***use and then exported***, duty drawback shall be allowed at notified ***rates under section 74(2)*** having regard to the duration of use, the depreciation in value and other relevant circumstances.

(5) **Re-export within 2 Years**: The goods must be entered for export within 2 years from the date of payment of duty on the importation thereof. However, extension can be granted by the Board on sufficient cause been shown In the case of goods assessed to duty provisionally under section 18, the date of payment of the provisional duty shall be deemed to be the date of payment of duty.

For the purpose of this section ***Re-export of Imported Goods (Drawback of Customs Duties) Rules, 1995*** has been framed by the Central Government

GOODS ARE USED AFTER IMPORTATION **Section 74(2)**

Central Government is empowered to fix the rate of drawback in case of those goods, which are exported after having been put to use subsequent to their importation, having regard to the duration of use, the depreciation in value and other relevant circumstances,

(1) **Rates of Drawback notified by the Central Government**: The Central Government has notified the drawback rates in respect of goods taken into use after importation:

Length of period between the date of clearance for home consumption and the date when goods are placed under Customs control for export.	% of import duty to be paid as Drawback
<= 3 months	95%
> 3 months but <= 6 months	85%
> 6 months but <= 9 months	75%
> 9 months but <= 12 months	70%
> 12 months but <= 15 months	65%
> 15 months but <= 18 months	60%
> 18 months	NIL

(2) **<u>Goods in respect of which no duty drawback is allowed</u>**: The goods in respect of which no drawback of import duty shall be allowed on export, if they have been used in India after importation, are as follows,-

(a) Wearing apparel.

(b) Tea chests.

(c) Exposed cinematograph film passed by the Board of Film Censors in India.

(d) Unexposed photographic films, paper and plates and X-Ray films.

GOODS IMPORTED FOR PERSONAL USE AND SUBSEQUENTLY RE-EXPORTED

- In respect of a ***motor car or goods*** imported by a person
- for his personal and private use,
- drawback of duty shall be
- equal to the import duty paid in respect of such motor car or goods
- as reduced by 4%, 3%, 2.5% and 2%
- for use for each quarter or part thereof
- during the period of first year, second year, third year, and fourth year respectively.
- Permission by CBEC in case re-export period is more than 2 years
- motor car or goods have been used for more than 4 years, then no drawback be allowed.

RE-EXPORT OF IMPORTED GOODS (DRAWBACK OF CUSTOMS DUTIES) RULES, 1995

[Rule 3] PROCEDURE FOR CLAIMING DRAWBACK ON GOODS EXPORTED BY POST

(1) Where goods are to be exported by post under a claim for drawback under these rules, -

(a) the ***outer packing*** carrying the address of the consignee shall also ***carry in bold letters*** the words ***"DRAWBACK EXPORT"***;

(b) the ***exporter shall deliver*** to the ***competent Postal Authority***, along with the parcel or package, ***a claim*** in the prescribed form ***in quadruplicate***, duly filled in.

(2) The ***date of receipt of the aforesaid claim form*** by the proper officer of customs from the postal authorities shall be ***deemed to be the date of filing of drawback claim*** by the exporter for the purpose of section 75A and an intimation of the same shall be given by the proper officer of customs to the exporter in such form as the Commissioner of Customs may prescribe.

(3) **<u>Deficiency Memo</u>**: In case the aforesaid ***claim form is not complete*** in all respects, the ***exporter shall be informed*** of the deficiencies therein ***within 15 days*** of its receipt from postal authorities by a ***deficiency memo*** in the form prescribed by the Commissioner of Customs, and such claim shall be ***deemed not to have been received*** .

(4) When the ***exporter complies*** with the requirements specified in the ***deficiency memo***, ***within 30 days*** of receipt of the deficiency memo, he shall be issued an ***acknowledgment*** by the proper officer in the form prescribed by the Commissioner of Customs and the ***date of such acknowledgment*** shall be ***deemed*** to be ***date of filing the claim*** for the purpose of Section 75A.

[Rule 4] STATEMENT/DECLARATIONS TO BE MADE ON EXPORTS *OTHER THAN BY POST*

In the case of exports other than by post, the exporter shall, at the time of export of the goods, -

(1) State ***on the shipping bill or bill of export***, the ***description***, ***quantity*** and such ***other particulars*** as are necessary for deciding whether the goods are entitled to drawback under section 74 and make a ***declaration*** on the relevant shipping bill or bill of export that –

- **(a)** the ***export*** is being made ***under a claim*** for drawback under section 74 of the Customs Act
- **(b)** that the ***duties of customs were paid*** on the goods imported;
- **(c)** that the ***imported goods*** were, or were not, ***taken into use after importation***;

However, the ***Commissioner can exempt*** the exporter from compliance of above requirements if the same is beyond his control.

(2) Furnish to the proper officer of customs, a ***copy of the Bill of Entry*** or any other ***prescribed document*** against which goods were cleared on importation, ***import invoice***, ***documentary evidence of payment*** of duty, ***export invoice*** and ***packing list*** and ***permission from Reserve Bank of India*** to re-export the goods, wherever necessary.

[Rule 5]MANNER AND TIME OF CLAIMING DRAWBACK ON GOODS EXPORTED *OTHER THAN BY POST*

(1) A claim for drawback, in case of goods exported other than by post, shall be filed in the specified form within 3 months from the date on which an order permitting clearance and loading of goods for exportation under section 51 is made by proper officer of customs.

Extending authority	**Period of extension, which can be allowed by the authority**	**Fees payable along with the application for grant of extension**
AC/DC	Further 3 months (beyond original period of 3 months)	➢ **1% of the FOB** value of exports; or ➢ Rs. **1,000** ***Whichever is less.***
Commissioner	Further 6 months (beyond original period of 3 months & extension of 3 months by AC/DC)	➢ **2% of the FOB** value; or ➢ **Rs. 2,000** ***Whichever is less***.

(2) <u>**List of documents to be filed**</u> along with duty drawback claim,-

- **(a)** Triplicate copy of the Shipping Bill bearing examination report recorded by the Proper officer of the customs at the time of export;
- **(b)** Copy of Bill of Entry or any other prescribed document against which goods were cleared on importation;
- **(c)** Import invoice;
- **(d)** Evidence of payment of duty paid at the time of importation of the goods;
- **(e)** Permission from Reserve Bank of India for re-export of goods, wherever necessary ;
- **(f)** Export invoice and packing list;
- **(g)** Copy of Bill of lading or Airway bill;
- **(h)** Any other documents as may be specified in the deficiency memo.

(3) <u>**Date of filing claim**</u>: The date of filing of the claim for the purpose of Section 75A shall be the ***date of affixing the Dated Receipt Stamp on the claims***, which are complete in all respects, and for which an acknowledgment shall be issued in the form prescribed by the Commissioner of Customs.

(4) <u>**Deficiency memo**</u>: Any claim which is incomplete in any material particulars or is without the documents specified above, shall not be accepted for the purpose of Section 75A and such claim shall be returned to the claimant with the deficiency memo in the form prescribed by the Commissioner of Customs within fifteen days of submission and shall be deemed not to have been filed. Where exporter complies with requirements specified in deficiency memo within 30 days from the date of receipt of deficiency memo, the same will be treated as a claim filed for the purpose of Section 75A.

(5) Where any order for payment of drawback is made by Commissioner (Appeals), Central Government or any Court against an order of the proper officer of customs, the ***manufacturer exporter may file a claim*** for drawback under this rule ***within 3 months from the date of receipt of the order*** so made.

[Rule 6] PAYMENT OF DRAWBACK AND INTEREST

- The drawback under these rules and interest if any,
- shall be ***paid by the officer of Customs***
- ***to the exporter*** or ***to***
- ***the agent specially authorised by the exporter*** to receive the said amount of drawback and interest.
- The ***date of payment of drawback and interest***
- shall be ***deemed to be***,
- the ***date of issue of cheque***;
- or the ***date of credit in the exporter's account maintained*** with the Custom House, as the case may be.

[Rule 7] REPAYMENT OF ERRONEOUS OR EXCESS PAYMENT OF DRAWBACK AND INTEREST

- Where an amount of drawback and interest, if any,
- has been ***paid erroneously*** or
- the amount so ***paid is in excess*** of what the claimant is entitled to,
- the ***claimant*** shall,
- on demand by an officer of customs
- ***repay the amount*** so paid erroneously or in excess,
- and where the ***claimant fails to repay*** the amount
- it shall be ***recovered*** in the manner laid down in Section 142 of the Customs Act,1962,
- as "***Recovery of sums due to Government***".

DUTY DRAWBACK ON IMPORTED MATERIALS
-----USED IN THE MANUFACTURE OF GOODS ----- WHICH ARE EXPORTED

[Section 75]

The provisions regarding drawback in case of imported materials used in the manufacture of goods, which are exported are as follows,-

(1) Drawback is allowed ***on goods which are NOTIFIED*** by Central Government.

(2) Such goods must either be ***Manufactured Or Processed***, or in respect of which any ***operation*** must have been carried out ***in India***.

(3) Such goods must have been ***entered for exportation*** and the ***order permitting loading*** thereof has been made by proper officer ***u/s 51***, or they must have ***entered for export by post u/s 82*** and in respect of which proper officer has made an order permitting clearance for exportation.

(4) The ***drawback of duties of customs chargeable*** on any imported materials of a class or description; which is used in the manufacture or processing or in carrying out any such operation ***on such goods shall be allowed***.

(5) If the ***export value*** of such goods or class of goods ***is less than the value of the imported materials used*** in the manufacturing & processing of such goods or carrying out any operation on them, ***then, no drawback shall be allowed.***

(6) If the export value of such goods is ***not more than such percentage*** of the value of the imported materials used in their manufacture etc., as specified by the Central Government, ***no drawback*** shall be allowed.

(7) ***Sale proceeds to be realised*** within the ***period*** as specified in ***FEMA***. If such sale proceeds ***are not received within the said time limit***, such ***drawback*** shall (except under such circumstances or such conditions as the Central Government may, by rules, specify) be ***deemed never to have been allbwed*** and procedure for recovery or adjustment of the drawback amount will be initiated.

(8) **Deemed imported material [Section 75(1A)] :** Where it appears to the Central Government that the ***quantity of particular imported material*** into India ***is more than the total quantity of like material used*** in the manufacturing or processing or carrying out any operation on the goods that are exported outside India, then the ***Central Government*** may by notification in Official Gazette, ***declare*** so much of the ***material as is contained in the goods exported*** shall be ***deemed to be imported material*** and the same shall be eligible for drawback.

(9) The ***Central Government*** has ***power*** to give ***drawback with retrospective effect*** from a date not earlier than the date of changes in the rates of duty on inputs used in the export goods.

CUSTOMS, CENTRAL EXCISE DUTIES AND SERVICE TAX DRAWBACK RULES,1995

EXPORT: As per Rule 2(c) means-

(a) taking out of India to a place outside India, or
(b) taking out from a place in Domestic Tariff Area to a Special Economic Zone, and
(c) includes loading of provisions or store or equipment for use on board a vessel or aircraft proceeding to a foreign port.

DRAWBACK in case export goods got *DESTROYED IN TRANSIT*: 'India' includes territorial waters of India.

- When the export goods are destroyed before they cross the territorial waters of India, then the same will not be regarded as 'export', being the goods didn't move out of India.
- In case the goods are destroyed in high seas (i.e. beyond territorial waters of India), then the same shall be eligible for drawback since the export is completed.

ALL INDUSTRY RATES [Rule 3]

(1) The Central Government's Drawback Directorate fixes all industry rates, having regard to the following criteria,-

(a) The average quantity or value of each class or description of the materials from which a particular class of goods is ordinarily produced or manufactured in India;
(b) The average quantity or value of the imported materials or excisable materials used for production or manufacture in India of a particular class of goods;
(c) The average amount of duties paid on imported materials or excisable materials used in the manufacture of semis, components and intermediate products which are used in the manufacture of goods;
(d) The average amount of duties paid on materials wasted in the process of manufacture and catalytic agents;
(e) The average amount of duties paid on imported materials or excisable materials used for containing or, packing the export goods;
(f) The average amount of tax paid on taxable services which are used as input services for the manufacturing or processing or for containing or packing the export goods;
(g) Any other information, which the Central Government considers relevant or useful.

(2) **Reduced drawback to be allowed in certain cases**: In case where any goods are produced or manufactured from imported materials or excisable materials, or by using any taxable service as input services,-

(a) the ***duty or tax chargeable*** on which ***has been paid only on some of such materials or input services*** and not on the rest, or the duty or tax chargeable on which ***has been paid in part***, or
(b) the duty or tax paid has been ***rebated or refunded*** in whole or in part or ***given as credit***, under any of the provisions of the Customs Act, 1962, and the rules made thereunder, or of the Central Excise Act, 1944 and the rules made thereunder or the Finance Act7994 and the rules made thereunder,

the ***drawback admissible*** on the said goods ***shall be reduced*** taking into account the lesser duty or taxes paid or the rebate, refund or credit obtained.

(3) **Cases where no duty drawback is allowed** :

(a) If the ***goods, except tea chests*** used as packing material for export of blended tea, have ***been taken into use after manufacture***;

(b) If the goods are produced or manufactured, ***using imported materials*** or excisable materials or taxable services in respect of which ***duties or taxes have not been paid***.

[Rule 6] PROVISIONAL DUTY DRAWBACK

The exporter may be granted provisional duty drawback when he ***executes a bond*** binding himself to repay the entire or excess amount of drawback.

Where an exporter desires that he may be granted drawback provisionally, he may make an application ***in writing to the Commissioner of Central Excise or Commissioner of Customs and Central Excise*** that a provisional amount be granted to him towards drawback on the export of such goods pending determination of the final amount or drawback.

The manufacturer may be allowed provisional duty drawback of an ***amount not exceeding the amount claimed*** by him in respect of such export.

MINIMUM AND MAXIMUM RATE OR AMOUNT OF DUTY DRAWBACK

(1) **Cases where no amount or rate of drawback is to be determined** **[Rule 8]**: No amount or rate of drawback is to be determined under these rules if,-

(a) The amount of drawback is less than 1% of the FOB value of goods, except where the amount of drawback per shipment exceeds Rs.500.

(b) The above condition is not applicable for export made by post or exports made in discharge of export obligation against an Advance Licence.

(2) No drawback will be allowed under Section 75, if minimum value addition is not achieved i.e. –

(a) The value of export goods is less than the value of imported materials used therein; or

(b) The value of export goods is not more than the value of imported materials by specified percentage.

(3) **Upper limit of drawback money or rate** **[Rule 8A]** : The drawback amount or rate determined under rule 3 (i.e. the all industry nte) shall not exceeil ll3d of the market price of export product.

[Rule 12] STATEMENT / DECLARATION TO BE MADE ON EXPORTS OTHER THAN BY POST

(1) ***Declaration on the shipping bill or bill of export***, the description, quantity and such other particulars as are necessary for deciding whether the goods are entitled to drawback, and if so, at what rate or rates and make a declaration on the relevant shipping bill or bill of export that –

(a) a ***claim for drawback*** under these rules is ***being made***;

(b) in respect of ***duties*** of Customs and Central Excise paid on the ***containers, packing materials*** and ***materials*** and the ***service tax*** paid on the input services used in the manufacture of the export goods on which drawback is being claimed, ***no separate claim for rebate*** of duty or service tax under the Central Excise Rules, 2002 or any other law has been or will be made to the Central Excise authorities.

However, if ***Commissioner*** of Customs is ***satisfied*** that the ***exporter*** or his ***authorised agent*** has, for reasons beyond his control ***failed to comply*** with the above provisions, he may, after considering the representation if any, made by such exporter or his authorised agent, and for reasons to be recorded, ***exempt such exporter*** or his authorised agent from provisions of this clause.

(2) **Documents to furnished**: Furnish to the proper officer of Customs, a ***copy of shipment invoice*** or any other document giving particulars of the description, quantity and value of the goods to be exported.

[Rule 13] MANNER AND TIME for claiming drawback on goods exported OTHER THAN BY POST

(1) Filing of claim for Drawback: ***Triplicate copy of the Shipping Bill for export*** of goods under a claim for drawback shall be ***deemed to be a claim for drawback filed*** on the date on which the proper officer of Customs makes an order permitting clearance and loading of goods for exportation under section 51 and said claim for drawback shall be retained by the proper officer making such order.

Where the exporter has exported the goods under ***electronic shipping bill in Electronic Data Interchange (EDI)*** under the claim of drawback, the electronic shipping bill itself shall he treated as the claim for drawback.

(2) **Documents to be accompanied along with claim**:

(a) copy of export contract or letter of credit, as the case may be,

(b) copy of Packing list

(c) copy of ARE-I, wherever applicable,

(d) insurance certificate, wherever necessary, and

(e) copy of communication regarding rate of drawback where the drawback claim is for a rate determined by the Commissioner of Central Excise or the Commissioner of Customs and Central Excise under rule 5 (Brand Rate) or rule 7 (Special Brand Rate) of these rules.

(3) **Deficient claim** to be returned with Deficiency memo: If the said claim for drawback is incomplete in any material particulars or is without the documents specified above, it ***shall be returned to the claimant*** with a deficiency memo in the form prescribed by the Commissioner of Customs ***within 10 days*** and shall be ***deemed not to have been filed*** for the purpose of Section 75A.

But, where the ***exporter re-submits*** the claim for drawback after complying with the requirements specified in the deficiency memo, the same will be ***treated as a claim filed*** for purpose of Section 75A.

[Rule 14] PAYMENT OF DRAWBACK AND INTEREST

(1) The drawback under these rules and interest, if any, ***shall be paid*** by the proper officer of Customs to the ***exporter or to the agent*** specially authorised by the exporter to receive the said amount of drawback and interest.

(2) The officer of Customs may ***combine one or more claims*** for the purpose of payment of drawback and interest, if any, as well as adjustment of any amount of drawback and interest already paid and may issue a ***consolidated order for payment***.

(3) The ***date of payment*** of drawback and interest (if any) shall be deemed to be:

(a) the date of issue of cheque; or

(b) the date of credit in the exporters account maintained with the Custom House.

[Rule 15] SUPPLEMENTARY CLAIM

- Where any ***exporter*** finds that
- the ***amount of drawback paid*** to him is ***less***
- than what he is ***entitled*** to
- on the basis of the amount or
- rate of drawback determined
- by the Commissioner,
- he may ***prefer*** a ***supplementary claim***.

Time-limit within which supplementary claim to be preferred

case	Claim to be file within 3 months from -
(a) In case of All Industry Rates	the date of determination of such All Industry Rate.
(b) In case of brand rates or special brand rates	the date of communication of the said rate.
(c) In all other cases	the date of payment or settlement of the original drawback claim by the Proper officer.

Extension of time limit of filing form for supplementary claim and fees therefor

Extending authority	Period of extension, which can be allowed by the authority	Fees payable along with the application for grant of extension
AC/DC	Further 9 months (beyond original period of 3 months)	➢ **1% of the FOB** value of exports; or ➢ Rs. **1,000** ***Whichever is less.***
Commissioner	Further 6 months (beyond original period of 3 months & extension of 9 months by AC/DC)	➢ **2% of the FOB** value; or ➢ **Rs. 2,000** ***Whichever is less***.

[Rule 16A] DRAWBACK TO BE RECOVERED IF SALE PROCEEDS NOT REALIZED

(1) Where -

- ➢ An amount of drawback has been paid to the claimant,
- ➢ But the sale proceeds in respect of such export goods have not been realized by or on behalf of the exporter in India within the period allowed under the Foreign Exchange Management Act, 1999, (including extension of such period by RBI),

  then, such drawback shall be recovered in the manner specified in this Rule.

  This time limit shall not be applicable to the goods exported from the DTA to a SEZ.

(2) the AC/DC of Customs shall issue a ***notice to the exporter*** for production of ***evidence of realisation*** of export proceeds within a period of ***30 days*** from the ***date of receipt of such notice***; and where the ***exporter does not produce*** such evidence within 30 days, AC/DC of Customs shall ***pass an order to recover the amount of drawback paid*** to the claimant and the exporter shall ***repay the amount*** so demanded within ***30 days of the receipt of the said order***.

(3) On realisation of sale proceeds, recovered drawback to be re-paid to the exporter.

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PROHIBITION AND REGULATION OF DRAWBACK IN CERTAIN CASES [Section 76]

(1) No drawback shall be allowed in respect of any goods,-

(a) the ***market price of which is less than the amount of drawback*** due thereon;

(b) where the amount of drawback is ***less than Rs. 50***.

[Section 76(1) overrides other provisions of the Act]

(2) If the ***Central Government*** is of the ***opinion*** that goods of any specified description in respect of which drawback is claimed, are likely to be ***smuggled back into India*** it may, by notification in the Official Gazette, direct that -

(a) ***drawback*** shall ***not be allowed*** in respect of such goods; or

(b) may be allowed subject to such restrictions and conditions as may be specified.

CHAPTER 7
BAGGAGE, POSTAL ARTICLES & STORES

THE PROVISIONS RELATING TO BAGGAGE

1. **Baggage [Section 2(3)]**: "Baggage" includes unaccompanied baggage but does not include motor vehicles.
2. **Declaration by owner of baggage [Section 77]:** The owner of any baggage shall, for the purpose of clearing it make a declaration of its contents to the proper officer.
3. **Date for determination of rate of duty and tariff valuation in case of baggage [Section 78]**: The rate of duty and tariff valuation applicable to the baggage shall be the rate of duty and valuation in ***force on the date on which a baggage declaration is made*** under Section 77 to the proper officer.

In case if such ***declaration has been made before the arrival of vessel*** , then same shall be ***deemed to have*** been ***made on the date of arrival of the vessel***.

BONAFIDE BAGGAGE

(1) BONAFIDE BAGGAGE EXEMPTED FROM DUTY [SECTION 79]: The provision relating to duty exemption of baggage is provided under Section 79.The proper officer may, subject to the rules made under section 79(2), pass free of duty,-

(a) any article in the baggage of a passenger or a member of the crew in respect of which the said officer is satisfied that it has been in his use for such minimum period as nury be specified in rules;

(b) any article in the baggage of a passenger in respect of which the said officer is satisfied that it is for the use of the passenger or his family or is a bona fide gift or souvenir, provided the value of each such article and the total value of all such articles does not exceed the limits specified in the rules.

(2) BAGGAGE RULES, 1988: have been framed by the Central Government which specify the period, terms and conditions, value, limits etc. for the above purpose.

(3) Regulations in respect of baggage [Section 81] : The Board may make regulations, in respect of,-

(a) the manner of declaring the contents of any baggage;

(b) the custody, examination assessment to duty and clearance of baggage;

(c) the transit or transhipment of baggage from one customs station to another or to a place outside India.

[SECTION 80] TEMPORARY DETENTION OF BAGGAGE

Where the ***baggage of a passenger contains*** any ***article***

- which is ***dutiable*** or the ***import*** of which is ***prohibited*** and
- in respect of which a ***true declaration has been made*** under section 77,
- the ***proper officer*** may, at the ***request of the passenger***,
- ***detain such article*** for the purpose of being returned to him
- on his leaving India.
- However, if for any reason, the ***passenger*** is
- ***not able to collect*** the article at the time of his leaving India,
- the ***article may be returned to him***
- through any ***other passenger*** authorised by him and leaving India or
- as ***cargo consigned*** in his name

BAGGAGE RULES, 1998

[Rule 3] Passengers returning from countries OTHER THAN *Nepal, Bhutan, Myanmar or China*

In case of an Indian resident or a foreigner residing in India returning from any country other than **N, B, M, C**, the following **articles shall be allowed free of duty** in the baggage

(a) **PERSONAL EFFECTS**: Used personal effects, ***excluding Jewellery***, required for satisfying daily necessities of life; and

(b) **OTHER ARTICLES**: Articles, other than those mentioned in Annexure I, carried on the person or in the accompanied baggage of the passenger upto a value mentioned below,-

Duration of stay abroad	Age of Passenger	
	Upto 10 years	**10 Years or Above**
<= 3 days	Rs.3,000	Rs. 15,000
> 3 days	Rs. 15,000	Rs. 35,000

[RULE 4] PASSENGERS RETURNING FROM - Nepal, Bhutan, Myanmar or China

In case of an Indian resident or a foreigner residing in India returning from,-

(a) Nepal, Bhutan, Myanmar or China other than by land route; or
(b) other countries by land route specified in Annexure IV,

the ***following articles shall be allowed free of duty*** in the baggage -

(1) ***Used personal effects, excluding jewellery***, required for satisfying daily necessities of life; and
(2) Articles, other than those mentioned in Annexure I, carried on the Person or in the accompanied baggage of the passenger ***who stayed abroad for more than 3 days***, upto a value mentioned below-

Age of the passenger	Value upto which articles allowed duty-free
(a) 10 years or above	Rs. 5,000
(b) Upto 10 years	Rs. 1,500

NOTE: The free allowance under this rule shall ***not be allowed to be pooled*** with the free allowance of any other Passenger.

[RULE 2(V)] PROFESSIONAL EQUIPMENTS

Means:

- such ***portable*** equipments, instruments, apparatus and appliances
- as are ***required in his profession***,
- by a ***carpenter***, a ***plumber***, a ***welder***, a ***mason***, and the like
- and shall ***not include*** items of ***common use***
- such as cameras, cassette recorders, dictaphones,
- personal computers, typewriters, and other similar articles.

[RULE 5] DUTY FREE ALLOWANCE TO PROFESSIONALS RETURNING TO INDIA

When an Indian Passenger who was engaged in his profession abroad returns to India, along with the General free allowance (available under rule 3 or 4) he shall also be entitled duty free clearance of his professional equipment in his bona fide baggage to the following extent,-

Class of Indian Passenger	Articles allowed free of duty
Indian passenger returning after ***at least 3 months***.	Used ***household*** articles upto an aggregate value of ***Rs. 12,000*** ***Professional equipment*** upto a value of ***Rs. 20,000***
Indian passenger returning after ***at least 6 months***.	Used ***household*** articles upto an aggregate value of ***Rs. 12,000*** ***Professional equipment*** upto a value of ***Rs. 40,000***
Indian passenger returning after a stay of ***minimum 365 days*** during the ***preceding 2 years*** on **TERMINATION** ***of his work***, and who has ***not availed this concession*** in the preceding three years.	***Used household*** articles and ***personal effects***, which have been ***in the possession and use abroad*** of the passenger or his family ***for at least 6 months***, and which are not mentioned in Annexure I, Annexure II or Annexure III upto an agtregate value of Rs. 75,000.

[RULE 6] DUTY FREE ALLOWANCE IN RESPECT OF JEWELLERY

A passenger returning to India shall be allowed clearance free of duty jewellery in his bonafide baggage to the extent as given below:

Indian Passenger who has been residing abroad ***for over one year***	➢ For a **Gentleman** passenger Jewellery upto an aggregate value of **Rs. 50,000** ➢ For a **lady** passenger: Jewellery upto an aggregate value of **Rs. 1,00,000**

[RULE 2(iii)] "TOURIST"

Means

- a person not normally resident in India,
- who enters India
- for a stay of not more than six months
- in the course of any twelve months period
- for legitimate non-immigrant purposes,
- such as touring, recreation, sports, health, family reasons, study, religious pilgrimage or business.

[Rule 7] A tourist arriving in India shall be allowed clearance free of duty articles in his bona fide baggage to the extent mentioned below:

Class of Tourist	Articles allowed free of duty
(a) Tourists of Indian origin coming to India other than tourists of Indian origin coming by land routes as specified in Annexure IV;	**(i).** ***used personal effects*** and travel souvenirs, if - (a) these goods are for ***personal use*** of the tourist, and (b) these goods, other than those consumed during the stay in India, are ***re-exported*** when the tourist leaves India for a foreign destination. **(ii).** articles as allowed to be cleared under rule 3 or rule 4.
(b) Tourists of foreign origin, other than those of Pakistani origin coming from ***PAKISTAN, coming to India by AIR***.	(i). used ***personal effects*** (ii). articles other than those mentioned in Annexure I upto a value of **RS. 8,000** for personal use of the tourist or as gifts

	and travel souvenirs if these are carried on the person or in the accompanied baggage of the passenger.
(c) Tourists – (i). of ***Pakistani*** origin coming from Pakistan ***other than by land routes***; (ii). of Pakistani origin or foreign tourists coming ***by land routes*** as specified in Annexure IV; (iii). of ***INDIAN ORIGIN*** coming ***by land routes*** as specified in Annexure IV.	(i) used personal effects (ii) articles other than those mentioned in Annexure I upto a value of ***Rs. 6000*** for personal use of the tourist or as gifts and travel souvenirs if these are carried on the person or in the accompanied baggage of the passenger."

[RULE 8] PERSON FOR AVAILING CONCESSIONS ON TRANSFERRING HIS RESIDENCE

He shall be allowed duty free-clearance of articles, in addition to general free allowance allowed under rule 3 and rule 4, to the extent mentioned below,-

- **(a)** Used ***personal and household articles***, other than those listed at Annexure I or Annexure II but including the articles listed at Annexure III; and
- **(b)** ***Jewellery*** upto ***Rs. 50,000*** in case of ***gentleman*** Passenger and upto ***Rs. 1,00,000*** in case of ***lady*** Passenger.

The duty free clearance articles mentioned above is allowed only on fulfillment of following conditions:

Conditions	**Relaxation that may be considered**
(a) Minimum stay of ***2 Years abroad***, immediately preceding the date of his arrival on transfer of residence;	Shortfall upto 2 months can be condoned by Assistant or Deputy Commissioner if the early return is due to- (i) Terminal leave or vacation availed of passenger; or (ii) Any other Special circumstances.
(b) Total stay in India on short visits during 2 preceding Years shouldn't exceed 6 months	Commissioner of Customs may condone such short visits in excess of 6 months in deserving cases.
(c) Passenger has not availed of this concession in the preceding 3 years-	No relaxation

Jewellery taken out earlier by the passenger or by a member of his family from India: The allowance of the said jewellery will be given ***only if Assistant Commissioner*** is ***satisfied*** regarding the jewellery having been taken out earlier from India.

[RULE 9] UNACCOMPANIED BAGGAGE

(1) Provisions of these Rules are also extended to unaccompanied baggage except where they have been specifically excluded.

(2) The unaccompanied baggage ***had been in the possession abroad*** of the passenger and ***is dispatched within one month of his arrival in India*** or within such ***further period allowed by AC/DC of Customs***.

(3) The unaccompanied baggage **may land in India upto 2 months before the arrival of the passenger or** within ***such period, not exceeding one year***, as the ***AC/DC of Customs*** may allow, for reasons to be recorded, if he is ***satisfied*** that the ***passenger was prevented from arriving in India*** within the ***period of two months*** due to circumstances beyond his control such as

- ➢ sudden illness of the passenger or a member of his family, or

- natural calamities or disturbed conditions or
- disruption of the transport or travel arrangements in the country or countries concerned or
- any other reasons, which necessitated a change in the travel schedule of the passenger.

[RULE 10] APPLICABILITY OF BAGGAGE RULES TO MEMBER OF CREW

(1) **Rules applicable to crew members of foreign going VESSEL**: ***duty free allowance*** shall be ***given at the time of final pay off on termination of their engagement.*** However, items like ***chocolates***, ***cheese***, ***cosmetics*** and other ***petty gift items*** for the personal or family use of a crew-member of a vessel are ***allowed*** to be brought ***upto Rs. 1500***.

(2) **Rules applicable to crew members of an AIRCRAFT**: A crew member of an aircraft shall only be allowed to bring items like ***chocolates***, ***cheese***, ***cosmetics*** and other ***petty gift items*** at the time of the returning of the aircraft from foreign journey for their personal or family use not exceeding ***Rs. 1500*** in value.

POSTAL ARTICLES [section 82, 83, 84]

(1) **Label or declaration accompanying goods to be treated as entry [Section 82]**: In the case of goods imported or exported by post, any label or declaration accompanying the goods shall be treated as an entry for the purpose of import or export which contains the description quantity and value thereof.

(2) **Date for Determination of rate of duty and tariff valuation in case of goods imported or exported by post [Section 83]**:

(a) **FOR GOODS IMPORTED BY POST**: The rate of duty and tariff value shall be applicable of the ***date when the postal authorities present to the proper officer a list containing the particulars of such goods*** for purpose of assessing the duty thereon.
However**, if such goods are IMPORTED BY A VESSEL** and the ***list*** was ***presented before the date of the arrival*** of the vessel, then it shall be ***deemed to have been presented on the date of such arrival***.

(b) **FOR GOODS EXPORTED BY POST**: The ***rate of duty and tariff value*** shall be applicable of the ***date when the exporter delivers such goods*** to the postal authorities for exportation.

(3) **Regulations regarding goods imported or to be exported by post [Section 84]**: The Board may make regulations providing for,-

(a) the form and manner of entry to be made in respect of any specified class of goods imported or to be exported by post, other than goods which are accompanied by a label or declaration containing the description, quantity and value thereof;

(b) the examination, assessment to duty, and clearance of goods imported or to be exported by post;

(c) the transit or transhipment of goods imported by post, from one customs station to another or to a place outside India.

STORES [SECTION 85-90]

Stores [Section 2(38)]: means

- goods for use
- in a vessel or aircraft
- and includes fuel and spare Parts
- and other articles of equipment,
- whether or not for immediate fittitg.

Stores may be allowed to be warehoused without assessment of duty [Section 85]

Where any imported goods are entered for warehousing and the importer makes and subscribes to a declaration that the goods are to be supplied as stores to vessels or aircrafts without payment of import duty, the proper officer may permit the goods to be warehoused without being assessed to duty.

Transit and Transhipment of stores [Section 86]

Any stores imported in a vessel or aircraft may, without payment of duty, remain on board such vessel or aircraft while it is in India. Any stores imported in a vessel or aircraft may be transferred to any vessel or aircraft as stores for consumption therein as provided in section 87 or section 90 with the permission of the proper officer.

Imported stores may be consumed on board a foreign going vessel or aircraft [Section 87]

Any imported stores on board of foreign-going vessel or aircraft (other than stores meant for ship of Indian Navy to which Section 90 applies) may be consumed thereon as stores without payment of duty.

Drawback on export of stores [Section 88]

If any stores are "taken on board any foreign-going vessel or aircraft as stores", then the same shall be regarded as export & duty drawback shall be allowed of the import duty so paid. However, in case of fuel and lubricating oil taken onboard any foreign-going aircraft as stores, 100% drawback shall be admissible under section 74.

Stores to be free of export duty [Section 89]

Goods produced or manufactured in India and required as stores on any foreign-going vessel or aircraft may be exported free of duty in such quantities as the proper officer may determine, having regard to the size of the vessel or aircraft, the number of passengers and crew and the length of the voyage or journey on which the vessel or aircraft is about to depart.

Concessions in respect of imported stores for the Navy [Section 90]

Imported stores map without payment of duty, be consumed on board a ship of the Indian Navy.

The stores taken on Board of the ship of Indian Navy will be treated as if they are exported out of India and will be entitled for duty drawback at the rate of 700% of the import duty.

"Stores" means,-

(a) stores for the use of a ship of the Indian Navy;
(b) stores supplied free by the Government for the use of the crew of a ship of the Indian Navy in accordance with their conditions of service.

COASTAL GOODS [Section 91-99]

- Chapter not to apply to baggage and stores **[Section 91]**
- Entry of costal goods **[Section 92]**: consignor of any coastal goods shall make an entry to the Proper officer by presenting a bill of coastal goods also make and subscribe to a declaration as to the truth of the contents of such bill.
- Coastal goods not to be loaded until bill relating thereto is passed by the proper officer. **[Section 93]**
- Clearance of coastal goods at destination **[Section 94]**:
  - **(a)** The master of a vessel carrying any coastal goods shall carry on board the vessel all bills relating to such goods delivered to him under section 93 and shall, immediately on arrival of the vessel at any customs or coastal port, deliver to the proper officer of that port all bills relating to the goods which are to be unloaded at that Port.
  - **(b)** Where any coastal goods are unloaded at any port, the proper officer shall permit clearance thereof if he is satisfied that they are entered in a bill of coastal goods delivered to him by the master.

- Master of a coasting vessel to carry an advice book **[Section 95]**
  - (a) The master of every vessel carrying coastal goods is supplied by the customs authorities with a book called the advice book.
  - (b) The proper officer at each port of call by such vessel; shall make such entries in the advice book as he deems fit, relating to the goods loaded on the vessel at that Port.
  - (c) The master of every such vessel shall carry the advice book on board the vessel and on arrival at each port shall deliver t to the proper officer at that port for his Inspection.
- Loading and unloading of coastal goods at customs port or coastal port only [Section 96]
- No coasting vessel to leave without written order [Section 97]
- Application of Certain provisions of this act to coastal goods [Section 98]
- power to relax [Section 98A]
- power to make rules in respect of coastal goods and coasting vessels [Section 99]