REVISED PROBLEMS

Illustration 1

M/s IES Ltd. (assessee) imported certain goods at US $ 20 per unit from an exporter who was holding 30% equity in the share capital of the importer company. Subsequently, the assessee entered into an agreement with the same exporter to import the said goods in bulk at US $ 14 per unit. When imports at the reduced price were effected pursuant to this agreement, the Department rejected the transaction value stating that the price was influenced by the relationship and completed the assessment on the basis of transaction value of the earlier imports i.e., at US $20 per unit under rule 4 of the Customs Valuation (Determination of Value of Imported Goods) Rules 2007.

State briefly, whether the Department's action is sustainable in law, with reference to decided cases, if any.

Answer

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

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

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

Illustration 2

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

(i) What shall be the value, if there is a price rise of the imported goods in international market between the date of contract and the date of actual importation but the importer

pays the contract price?

(ii) Whether the payment for post-importation process is includible in the value if the same is related to imported goods and is a condition of the sale of the imported goods?

Answer

(i) The value of the imported goods or export goods is its transaction value, which means the price actually paid or payable for the goods. Where a contract has been entered into, the transaction value shall be the price stated in the contract, unless it is not legally acceptable.

Price rise between date of contract and date of actual import is irrelevant, as the price actually paid or payable shall be taken to be the value. Thus, price stated in the contract (unless unacceptable) shall be taken.

(ii) As per explanation to Rule 10(1) of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007, the payment for post-importation process is **includible** in the value of the imported goods if the same is related to such imported goods and is a condition of the sale thereof.

Illustration 3

Mother Mary Hospital and Research Centre imported a machine from Delta Scientific Equipments, Chicago for in house research. The price of the machine was settled at US $ 5,000. The machine was shipped on 10.04.20XX. Meanwhile, the Hospital Authorities negotiated for a reduction in the price. As a result, Delta Scientific Equipments agreed to reduce the price by $ 850 and sent the revised price of $ 4,150 under a telex dated 15.04.20XX. The machine arrived in India on 18.04.20XX. The Commissioner of Customs has decided to take the original price as the transaction value of the goods on the ground that the price is reduced only after the goods have been shipped.

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

Answer

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

As per section 14 of the Customs Act, the transaction value of the goods is the price actually paid or payable for the goods at the time and place of importation. Further, the

Supreme Court in the case *Garden Silk Mills v. UOI* has held that importation gets complete only when the goods become part of mass of goods within the country. Therefore, since in the instant case the price of the goods was reduced while they were in transit, it could not be contended that the price was revised after importation took place. Hence, the goods should be valued as per the reduced price, which was the price actually paid at the time of importation.

Illustration 4

'A' had imported goods from Finland. Due to deep draught at the port, such goods were not taken to the jetty in the port but were unloaded at the outer anchorage. The charges incurred for such unloading and transport of the goods from outer anchorage to the jetty in barges (small boats) were Rs. 1,35,000. 'A' claims that such charges form part of the loading and unloading charges and should be deemed to be included in the addition of 1% of the CIF value of such goods, made under rule 10(2)(b) of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007.

Discuss the tenability of 'A's' claim.

Answer

Rule 10(2)(a) stipulates that for the purposes of section 14(1) of the Customs Act, 1962 and Valuation rules, value of imported goods shall be the value of such goods, for delivery at the time and place of importation and shall include the cost of transport of the imported goods to the place of importation. The 'place of importation', as observed by the Supreme Court in the case of *Garden Silk Mills Ltd Versus UOI 1993 (113) E.L.T. 358 (SC)* means the place where the imported goods reach the landmass of India in the customs area of the port, airport or land customs station, or if they are consumed before reaching the landmass of India, the place of consumption.

Further, 'Explanation' to rule 10(2) clarifies that the cost of transport of the imported goods includes, *inter alia*, barge charges. This Explanation is to take care of cases of imports by time chartered vessels or bulk carriers discharging goods on high seas needing additional expenditure for delivery of the goods at the 'place of importation' mentioned in rule 10(2)(a) above.

Therefore, in cases where the big mother vessels cannot enter the harbour for any reason and goods are brought to the docks by smaller vessels like barges, the cost incurred by the importer for bringing the goods to the landmass or place of consumption, such as barge charges will also be included in the cost of transportation. Therefore, 'A's claim is not tenable in law.

Illustration 5

A material was imported by air at CIF price of 5,000 US$. Freight paid was 1,500 US$ and insurance cost was 500 US$. The banker realized the payment from importer at the exchange rate of Rs. 61 per dollar. Central Board of Excise and Customs notified the exchange rate as Rs. 60 per US$. Find the value of the material for the purpose of levying duty.

Answer

Computation of assessable value

Particulars	Amount
CIF value	5000 US $
Less: Freight	1500 US $
Less: Insurance	500 US $
Therefore, FOB value	**3000 US $**
Assessable value for Customs purpose	
FOB value	3000 US $
Add: Freight (20% of FOB value) [Note 1]	600 US $
Add: Insurance (actual)	500 US $
CIF for customs purpose	**4100 US $**
Add: Landing charges [Note 2]	-
Value for customs purpose	**4100 US $**
Exchange rate as per CBEC [Note 3]	Rs. 60 per US $
Assessable value (Rs. 60 x 4141 US $)	**Rs. 2,46,000**

Notes:

1. If the goods are imported by air, the freight cannot exceed 20% of FOB price [Second proviso to rule 10(2) of the Customs (Determination of Value of Imported Goods) Rules, 2007].
2. By virtue of the amendment carried out in rule 10(2) of the CVR vide Notification No. 91/2017Cus. (NT) dated 26.09.2017, only charges incurred for delivery of goods "to" the place of importation are includible in the transaction value.

The loading, unloading and handling charges associated with the delivery of the imported goods at the place of importation are not to be added to the CIF value of the goods. [Circular No. 39 / 2017 Cus. dated 26.09.2017].

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

By virtue of the amendment carried out in rule 10(2) of the CVR vide Notification No. 91/2017Cus. (NT) dated 26.09.2017, only charges incurred for delivery of goods "to" the place of importation are includible in the transaction value.

The loading, unloading and handling charges associated with the delivery of the imported goods at the place of importation are not to be added to the CIF value of the goods. [Circular No. 39 / 2017 Cus. dated 26.09.2017].

Illustration 6

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

	Particulars	***US $***
(i)	*Cost of the machine at the factory of the exporter*	*10,000*
(ii)	*Transport charges from the factory of exporter to the port for shipment*	*500*
(iii)	*Handling charges paid for loading the machine in the ship*	*50*
(iv)	*Buying commission paid by the importer*	*50*
(v)	*Freight charges from exporting country to India*	*1,000*
(vi)	*Exchange rate to be considered: 1$ = Rs. 60*	
(vii)	*Actual insurance charges paid are not ascertainable*	

Answer

Computation of assessable value of the imported goods

Particulars	**Amount**
Cost of the machine at the factory	10,000.00
Transport charges up to port	500
Handling charges at the port	50
FOB	**10,550.00**
Freight charges up to India	1,000.00
Insurance charges @ 1.125% of FOB [Note 1]	118.69

CIF	**11,668.69**
CIF in Indian rupees @ Rs. 60/ per $	Rs. 7,00,121.40
Add: Landing charges [Note 3]	-
Assessable Value	Rs. 7,00,121.40
Assessable Value (rounded off)	**Rs. 7,00,121**

Notes:

1. Insurance charges and landing charges have been included @ 1.125% of FOB value of goods and 1% of CIF value of goods respectively [First proviso to rule 10(2) of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007].
2. Buying commission is not included in the assessable value [Rule 10(1)(a)(i) of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007].
3. By virtue of the amendment carried out in rule 10(2) of the CVR vide Notification No. 91/2017Cus. (NT) dated 26.09.2017, only charges incurred for delivery of goods "to" the place of importation are includible in the transaction value.

   The loading, unloading and handling charges associated with the delivery of the imported goods at the place of importation are not to be added to the CIF value of the goods. [Circular No. 39 / 2017 Cus. dated 26.09.2017].

Illustration 7

Compute export duty from the following data:

(i) FOB price of goods: US $ 1,00,000.

(ii) Shipping bill presented electronically on 26.04.20XX.

(iii) Proper officer passed order permitting clearance and loading of goods for export (Let Export Order) on 04.05.20XX.

(iv) Rate of exchange and rate of export duty are as under:

Date	Rate of Exchange	Rate of Export Duty
On 26.04.20XX	1 US $ = Rs. 55	10%
On 04.05.20XX	1 US $ = Rs. 56	8%

Rate of exchange is notified for export by Central Board of Excise and Customs.

(Make suitable assumptions wherever required and show the workings.)

Answer

Computation of export duty

Particulars	Amount (US $)
FOB price of goods [Note 1]	1,00,000
Value in Indian currency (US $ 1,00,000 x Rs. 55) [Note 2]	55,00,000
Export duty @ 8% [Note 3]	4,40,000

Notes:

1. As per section 14(1) of the Customs Act, 1962, assessable value of the export goods is the transaction value of such goods which is the price actually paid or payable for the goods when sold for export from India for delivery at the time and place of exportation.
2. As per third proviso to section 14(1) of the Customs Act, 1962, assessable value has to be calculated with reference to the rate of exchange notified by the CBEC on the date of presentation of shipping bill of export.
3. As per section 16(1)(a) of the Customs Act, 1962, in case of goods entered for export, the rate of duty prevalent on the date on which the proper officer makes an order permitting clearance and loading of the goods for exportation, is considered.

Illustration 8

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

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

The rate of exchange on the relevant date was 1 US $ = Rs. 60.00 and the rate of basic customs duty was 10% ad valorem. Ignore Integrated tax and GST Compensation Cess.

Calculate the amount of duty leviable on the consignment under the Customs Act, 1962 with appropriate assumptions and explanations, where required.

Answer

Determination of transaction value of the subject goods:-

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

1. In the given case, US $10 per metric tonne has been paid only towards freight and insurance charges and no amount has been paid or payable towards the cost of goods. Thus, there is no transaction value for the subject goods. Consequently, we have to look for transaction value of identical goods under rule 4 of Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 [Customs Valuation (DVIG) Rules, 2007].
2. Rule 4(1)(a) of the aforementioned rules provides that subject to the provisions of rule 3, the value of imported goods shall be the transaction value of identical goods sold for export to India and imported at or about the same time as the goods being valued. In the six imports given during the relevant time, the goods are identical in description and of the same country of origin.
3. Further, clause (b) of rule 4(1) of the said rules requires that the comparable import should be at the same commercial level and in substantially same quantity as the goods being valued. Since, nothing is known about the level of the transactions of the comparable consignments, it is assumed to be at the same commercial level.
4. As far as the quantities are concerned, the consignments of 20 and 100 metric tonnes cannot be considered to be of substantially the same quantity. Hence, remaining 4 consignments are left for our consideration.
5. However, the unit prices in these 4 consignments are different. Rule 4(3) of Customs Valuation (DVIG) Rules, 2007 stipulates that in applying rule 4 of the said rules, if more than one transaction value of identical goods is found, the lowest of such value shall be used to determine the value of imported goods. Accordingly, the unit price of the consignment under valuation would be US $ 160 per metric tonne.

Computation of amount of duty payable

CIF value of 800 metric tonnes (800 x 160)	US $ 1,28,000

At the exchange rate of $ 1 = Rs. 60	
CIF Value (in Rupees)	Rs. 76,80,000
Add**:** Landing Charges at 1% [Note 1]	Rs. 76,800
Assessable Value	Rs. 77,56,800
10% of Ad Valorem duty on Rs. 77,56,800	Rs. 7,75,680
Add: Education cess @ 2% (rounded off)	Rs. 15,514
Add: Secondary and higher education cess @ 1% (rounded off)	Rs. 7,757
Total custom duty payable	**Rs. 7,98,951**

Illustration 9

Foreign Trade International Ltd. has imported one machine from England. It has given the following particulars:

(i)	*Price of machine*	*8,000 UK Pounds*
(ii)	*Freight paid (air)*	*2,500 UK Pounds*
(iii)	*Design and development charges paid in UK*	*500 UK Pounds*
(iv)	*Commission payable to local agent of exporter @ 2% of price of machine, in (Rs.)*	
(v)	*Date of bill of entry*	*24.10.20XX (Rate BCD 10%; Exchange rate as notified by CBEC Rs. 100 per UK Pound)*
(vi)	*Date of arrival of aircraft*	*20.10.20XX (Rate of BCD 20%; Exchange rate as notified by CBEC Rs. 98 per UK Pound)*
(vii)	*IGST leviable under section 3(7) of the Customs Tariff Act, 1975 is 12%*	
(viii)	*Insurance charges have been actually paid but details are not available.*	

Compute the total customs duty and integrated tax payable by Foreign Trade International Ltd.

Note: Ignore GST Compensation Cess.

Answer

Computation of total duty and integrated tax payable

Particular	Amount
Price of machine	8,000 UK pounds
Add: Design and development charges [Note 1]	500 UK pounds

Total	**8,500 UK pounds**
	(Rs.)
Total in rupees @ Rs. 100 per pound [Note 2]	Rs. 8,50,000.00
Add: Local agency commission [Note 1]	
(2% of 8000 UK pounds) = 160 UK pounds × Rs. 100	Rs. 16,000.00
FOB value	**8,66,000.00**
Add: Air freight (8,66,000 x 20%) [Note 3]	1,73,200.00
Add: Insurance @ 1.125% of customs FOB [Note 4]	9,742.50
CIF Value	**10,48,942.50**
Add: Landing charges [Note 5]	-
Assessable value (rounded off)	10,48,943
Add: Basic custom duty @ 10% [Note 6]	1,04,894.30
Add: Education Cess @ 2% & SAH Education Cess @ 1% on Rs. 1,04,849.30	3,146.83
Total	**11,56,984.13**
Add: Integrated tax leviable under section 3(7) @ 12% [Note 7]	1,38,838.10
Total duty and integrated tax payable (Rounded off) (Rs. 1,04,894.30 + Rs. 3,146.83 + Rs. 1,38,838.10)	**2,46,879.23**

Notes:

1. Design and development charges paid in UK and commission paid to local agent (since it is not buying commission) are includible in the assessable value [Rule 10 of the Customs (Determination of Value of Imported Goods) Rules, 2007]
2. The rate of exchange notified by the CBEC on the date of presentation of bill of entry has been considered [Section 14 of the Customs Act, 1962].
3. If the goods are imported by air, the freight cannot exceed 20% of FOB price [Second proviso to rule 10(2) of the Customs (Determination of Value of Imported Goods) Rules, 2007].
4. Where the insurance charges are not ascertainable, such cost is taken as 1.125% of FOB value of the goods [Clause (iii) of the first proviso to Rule 10(2) of the Customs (Determination of value of Imported Goods) Rules, 2007].
5. By virtue of the amendment carried out in rule 10(2) of the CVR vide Notification No. 91/2017Cus. (NT) dated 26.09.2017, only charges incurred for delivery of goods "to"

the place of importation are includible in the transaction value.

The loading, unloading and handling charges associated with the delivery of the imported goods at the place of importation are not to be added to the CIF value of the goods. [Circular No. 39 / 2017 Cus. dated 26.09.2017].

6. Section 15 of the Customs Act, 1962 provides that rate of duty shall be the rate in force on the date of presentation of bill of entry or the rate in force on the date of arrival of aircraft, whichever is later.
7. Integrated tax leviable under section 3(7) of the Customs Tariff Act, 1975 is levied on the sum total of the assessable value of the imported goods, customs duties and applicable education cess and secondary and higher education cess.

Illustration 10

Compute the total duty and integrated tax payable under the Customs Law on an imported equipment based on the following information:

(i) Assessable value of the imported equipment US $ 10,100

(ii) Date of bill of entry is 25.4.20XX. Basic customs duty on this date is 10% and exchange rate notified by the Central Board of Excise and Customs is US $ 1 = Rs. 65.

(iii) Date of entry inwards is 21.4.20XX. Basic customs duty on this date is 20% and exchange rate notified by the Central Board of Excise and Customs is US $ 1 = Rs. 60.

(iv) Integrated tax payable under section 3(7) of the Customs Tariff Act, 1975: 12%

(v) Educational cess @ 2% and secondary and higher educational cess @ 1%.

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

Note: Ignore GST Compensation Cess.

Answer

Computation of total customs duty and integrated tax payable

Particulars	Rs.
Assessable value ($ 10,100 x 65) [Note-1]	6,56,500
Add: Basic custom duty @ 10% [Note-2]	65,650.00

Add: Education Cess @ 2% & SAH Education Cess @ 1% on Rs. 65,650	1,969.50
Total	**7,24,120**
Add: Integrated tax under section 3(7) @ 12% [Note-3]	86,894.34
Total Customs duty and integrated tax payable (rounded off to nearest rupee) (65,650+ 1,969.50+ 86,894.34)	**1,54,514**

Notes:

1. Rate of exchange notified by CBEC as prevalent on the date of filing of bill of entry would be the applicable rate [Proviso to section 14(1) of Customs Act,1962].
2. Rate of duty would be the rate as prevalent on the date of filing of bill of entry or entry inwards whichever is later. [Proviso to section 15 of the Customs Act, 1962].
3. Integrated tax leviable under section 3(7) of the Customs Tariff Act, 1975 is levied on the sum total of the assessable value of the imported goods, customs duties and applicable education cess and secondary and higher education cess.

Illustration 11

Assessable value of an item imported is Rs. 1,00,000. Basic customs duty is 10%, integrated tax leviable under section 3(7) of the Customs Tariff Act is 12%, and education cesses are 3% on duty. Compute the amount of total customs duty and integrated tax payable.

Note: Ignore GST Compensation Cess.

Answer

Computation of total customs duty and integrated tax payable

Sl.No	Particulars	Rs.
(1)	Assessable Value	1,00,000
(2)	Basic customs duty @ 10%	10,000.00
(3)	Add: Education Cess @ 2% & SAH Education Cess @ 1% on Rs. 10,000	300.00
(4)	**Sub-total**	**1,10,300.00**
(5)	Integrated tax u/s 3(7) of the Customs Tariff Act @ 12% of Rs. 1,10,300	13,236.00
(6)	**Total customs duty and integrated tax payable [(2) + (3) + (5)]**	**23,536**

Illustration 12

From the following particulars, calculate total customs duty and integrated tax payable:

(i) Date of presentation of bill of entry: 20.6.20XX [Rate of BCD 20%; Inter-bank exchange rate: Rs. 61.60 and rate notified by CBEC Rs. 62].

(ii) Date of arrival of aircraft in India: 30.6.20XX [Rate of BCD 10%; Inter-bank exchange rate: Rs. 61.80 and rate notified by CBEC Rs. 63.00].

(iii) Rate of Integrated tax leviable under section 3(7) of the Customs Tariff Act: 12%. Ignore GST Compensation Cess.

(iv) CIF value 2,000 US Dollars; Air freight 500 US Dollars, Insurance cost 100 US Dollars [Landing charges not ascertainable].

(v) Education Cess 2% & Secondary & Higher Education Cess 1%

Answer

Computation of total customs duty and integrated tax payable

Particulars		**Amount**
CIF value		2000 US Dollars
Less: Freight	(500)	
Insurance	(100)	(600 US Dollars)
FOB Value		**1400 US Dollars**
Add: Air Freight [Note1]	280	
Insurance (actual amount)	100	380 US Dollars
Total		**1780 US Dollars**
		Rs.
Value @ Rs. 62.00 [Note 2] (1780*62)		1,10,360.00
Add: 1% for landing charges [Note 3]		-
Assessable Value		1,10,360.00
Basic Custom Duty @ 10% (a) [Note 4]		11,036.00
Add: Education Cess @ 2% & S&H Education Cess @ 1% on Rs. 11,036.00 (b)		331.08
Sub-total		**1,21,727.08**
IGST under section 3(7) (12% on Rs. 1,21,727.08) (c) [Note 5]		14,607.25

Total duty and integrated tax (a +b + c) (rounded off)		**25,974**

Notes:

1. If the goods are imported by air, the freight cannot exceed 20% of FOB price [Second proviso to rule 10(2) of the Customs (Determination of Value of Imported Goods) Rules, 2007].
2. Rate of exchange notified by CBEC on the date of presentation of bill of entry would be the applicate rate. [Proviso to Section 14(1) of the Customs Act, 1962].
3. By virtue of the amendment carried out in rule 10(2) of the CVR vide Notification No. 91/2017Cus. (NT) dated 26.09.2017, only charges incurred for delivery of goods "to" the place of importation are includible in the transaction value.

   The loading, unloading and handling charges associated with the delivery of the imported goods at the place of importation are not to be added to the CIF value of the goods. [Circular No. 39 / 2017 Cus. dated 26.09.2017].
4. Rate of duty would be the rate as prevalent on the date of filing of bill of entry or arrival of aircraft, whichever is later [proviso to section 15 of the Customs Act, 1962].
5. Integrated tax leviable under section 3(7) of the Customs Tariff Act, 1975 is levied on the sum total of the assessable value of the imported goods, customs duties and applicable education cess and secondary and higher education cess.

Illustration 13

15000 chalices were imported for charitable distribution in India by XY Charitable Trust. The Trust did not pay either for the cost of goods or for the design and development charges, which was borne by the supplier. Customs officer computed its FOB value at USD 20,000 (including design and development charges), which was accepted by the Trust. Other details obtained were as follows:

Sl. No.	***Particulars***	***Amount***
1	*Freight paid (air) (in USD)*	*4,500*
2	*Design & development charges paid in USA (in USD)*	*2,500*
3	*Commission payable to an agent in India (in Rs.)*	*12,500*
4	*Integrated tax payable u/s 3(7) of the Customs Tariff Act, 1975*	*12%*

5	*Education cess and SAH education cess as applicable*	

Exchange rate notified by CBEC and rate of basic duty is as follows:

Date of Bill of Entry	***BCD***	***Exchange Rate in Rs.***
08.09.20XX	*20%*	*60*
Date of arrival of aircraft	***BCD***	***Exchange Rate in Rs.***
30.09.20XX	*10%*	*62*
The inter-bank rate was 1 USD = Rs. 63		

Compute the amount of total customs duty and integrated tax payable on importation of chalices. Make suitable assumptions where required. Working notes should form part of your answer. Note: Ignore GST Compensation Cess.

Answer

Computation of total customs duty and integrated tax payable

Particulars	**Amount**
FOB value computed (including design & development charges)	20,000 US $
Exchange rate [Note 1]	Rs. 60 per $
	Rs.
FOB value computed by Customs Officer (in rupees)	12,00,000.00
Add: Commission payable to agent in India	12,500.00
FOB value as per customs	**12,12,500.00**
Add: Air freight (Rs. 12,12,500 × 20%) [Note 2]	2,42,500.00
Add: Insurance (1.125% of Rs. 12,12,500) [Note 3]	13,640.63
CIF value for customs purposes	**14,68,640.63**
Add: Landing charges @ 1% of CIF value [Note 4]	-
Assessable value	**14,68,640.63**
Add: Basic custom duty @ 10% (Rs. 14,68,640.63 × 10%) – rounded off [Note 5]	1,46,864
Add: Education Cess @ 2% & SAH Education Cess @ 1% on Rs. 1,46,864-rounded off	4,406
Total	**16,19,911**
Integrated tax leviable under section 3(7) of Customs Tariff Act, 1975 @ 12% (Rs. 16,19,911 × 12%) [Rounded off] [Note 6]	1,94,389
Total customs duty and integrated tax payable (Rs. 1,46,864 + Rs.	**3,45,659**

4,406 + Rs. 1,94,389)	

Note:

1. Rate of exchange notified by CBEC on the date of filing of bill of entry has to be considered [Third proviso to section 14 of the Customs Act, 1962].
2. In case of goods imported by air, freight cannot exceed 20% of FOB value [Second proviso to rule 10(2) of the Customs (Determination of Value of Imported Goods) Rules, 2007].
3. Insurance charges, when not ascertainable, have to be included @ 1.125% of FOB value of goods [Clause (iii) of first proviso to rule 10(2) of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007].
4. By virtue of the amendment carried out in rule 10(2) of the CVR vide Notification No. 91/2017Cus. (NT) dated 26.09.2017, only charges incurred for delivery of goods "to" the place of importation are includible in the transaction value.

   The loading, unloading and handling charges associated with the delivery of the imported goods at the place of importation are not to be added to the CIF value of the goods. [Circular No. 39 / 2017 Cus. dated 26.09.2017].
5. Rate of duty will be the rate in force on the date of presentation of bill of entry or on the date of arrival of the aircraft, whichever is later [Proviso to section 15 of the Customs Act, 1962].
6. Integrated tax leviable under section 3(7) of the Customs Tariff Act, 1975 is levied on the sum total of the assessable value of the imported goods, customs duties and applicable education cess and secondary and higher education cess.

Illustration 14

Mr. Backpack imported second-hand goods from a UK supplier by air, which was contracted on CIF basis. However, there were changes in prices in the international market between the date of contract and actual importation. As a result of several negotiations, the parties agreed for a negotiated price payable as follows:

Particulars	***Contract Price (£)***	***Changed Price (£)***	***Negotiated Price (£)***
CIF Value	*5000*	*5800*	*5500*
Air Freight	*300*	*600*	*500*
Insurance	*500*	*650*	*600*

Particulars	*Amount*
Vendor inspection charges (inspection carried out by foreign supplier on his own, not required under contract or for making the goods ready for shipment)	*£ 600*
Commission payable to local agent @ 1% of FOB in local currency	

Date of bill of entry	*BCD*	*Exchange rate in Rs. (CBEC)*
18.02.20XX	*10%*	*102*
Date of arrival of aircraft	***BCD***	***Exchange rate in Rs.(CBEC)***
15.02.20XX	*15%*	*98*

Inter-bank rate 1 UK Pound = Rs. 106

Compute the assessable value and calculate basic customs duty payable by Mr. Backpack.

Answer

Computation of custom duty payable

Particulars	Amount (£)
CIF value (negotiated price) [Note-1]	5,500
Less: Air freight	500
Less: Insurance	600
FOB value	**4,400**
Add: Vendor inspection charges [Note-2]	Nil
Freight [Note-3]	500
Insurance [Note-4]	600
	5,500
Exchange rate is Rs. 102 per £ [Note-5]	**Rs.**
Value in rupees	5,61,000.00
Add: Commission payable to local agent [1% of FOB value] [Note-6] = (US $ 4,400 × Rs. 102) × 1%	4,488.00
Total	**5,65,488.00**
Add: Landing charges @ 1% [Note-7]	-
Assessable value	**5,65,488.00**
Add: Basic custom duty @ 10% [Note-8] – rounded off	56,549
EC and SHEC (3% of Rs. 56,549) [rounded off]	1,696

Customs duty payable [rounded off]	**58,245**

Notes:

1. As per Section 14 of the Customs Act, 1962, the value of the imported goods is the transaction value, which means the price actually paid or payable for the goods. In this case, since the contract was re-negotiated and the importer paid the re-negotiated price, the transaction value would be such re-negotiated price and not the contract price.
2. Only the payments actually made as a condition of sale of the imported goods by the buyer to the seller are includible in the assessable value under rule 10(1)(e) of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007. Charges of vendor inspection on the goods carried out by foreign supplier on his own and not required for making the goods ready for shipment, are not includible in the assessable value of the imported goods [*Bombay Dyeing & Mfg. v. CC 1997 (90) ELT 276 (SC)]*.
3. Actual amount incurred towards freight will be considered since freight is not more than 20% of FOB value [Second proviso to rule 10(2) of Customs Valuation Rules].
4. Actual insurance charges paid are includible in the assessable value as per rule 10(2)(c) of the Customs Valuation Rules.
5. Rate of exchange notified by CBEC on the date of filing of bill of entry will be considered as per third proviso to section 14 of the Customs Act, 1962.
6. Commission paid to local agent (since it is not buying commission) is includible in the assessable value on the presumption that local agent has been appointed by the exporter [Rule 10(1)(a)(i) of the Customs Valuation Rules].
7. By virtue of the amendment carried out in rule 10(2) of the CVR vide Notification No. 91/2017Cus. (NT) dated 26.09.2017, only charges incurred for delivery of goods "to" the place of importation are includible in the transaction value.

   The loading, unloading and handling charges associated with the delivery of the imported goods at the place of importation are not to be added to the CIF value of the goods. [Circular No. 39 / 2017 Cus. dated 26.09.2017].
8. As per proviso to section 15 of the Customs Act, 1962, rate of duty will be the rate in force on the date of presentation of bill of entry or on the date of arrival of the

aircraft, whichever is later.

Illustration 15

F. Ltd. imported a machine from UK in May, 20XX. The details in this regard are as under:

(i) FOB value of the machine: 10,000 UK Pound

(ii) Freight (Air): 3000 UK Pound

(iii) Licence fee, the buyer was required to pay in UK: 400 UK Pound

(iv) Buying commission paid in India Rs. 20,000

(v) Date of bill of entry was 20.05.20XX and the rate of exchange notified by CBEC on this date was Rs. 99.00 per one pound. Rate of BCD was 7.5%.

(vi) Date of arrival of aircraft was 25.05.20XX and the rate of exchange notified by CBEC on this date was Rs. 98.50 per pound and rate of BCD was 10%.

(vii) Integrated tax under section 3(7) of Customs Tariff Act was 12% and ignore GST Compensation Cess.

(viii) Insurance premium details were not available.

You are required to compute the total customs duty and integrated tax payable on the importation of machine. You may make suitable assumptions wherever required.

Answer

Computation of assessable value and total customs duty and integrated tax payable by F Ltd.

Particular	Amount (£)
FOB value	10,000
Add: Licence fee required to be paid in UK [Note – 1]	400
Customs FOB value	**10,400**
Exchange rate is Rs. 99 per £ [Note – 2]	
	Rs.
Value in rupees	10,29,600.00
Add: Air freight [Restricted to 20% of Rs. 10,29,600 (customs FOB value)] [Note – 3]	2,05,920.00
Insurance @ 1.125% of Rs. 10,29,600 [Note – 4]	11,583.00

Buying commission is not includible in the assessable value [Note – 5]	-
Sub-total	**12,47,103.00**
Add: Landing charges [Note – 6]	-
Assessable value	**12,47,103.00**
Rate of duty is 10% [Note – 7]	
Add: Basic custom duty @ 10% (Rs. 12,47,103.00 × 10%) – rounded off (A)	1,24,710
Add: Education Cess and secondary and Higher Education Cess (3% of Rs. 1,24,710) [rounded off] (B)	3,741
Value for integrated tax under section 3(7) of the Customs Tariff Act, 1975	**13,75,554**
Add: Integrated tax under section 3(7) @ 12% - rounded off (C) [Note – 8]	1,65,067
Total customs duty and integrated tax payable [(A) + (B) + (C)]	**2,93,518**

Note:

1. Engineering and design charges paid in UK, licence fee relating to imported goods payable by the buyer as a condition of sale, materials and components supplied by the buyer free of cost and actual insurance charges paid are all includible in the assessable value - Rule 10(1)(c) of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 [hereinafter referred to as Customs Valuation Rules].
2. Rate of exchange notified by CBEC on the date of filing of bill of entry has to be considered [Third proviso to section 14 of the Customs Act, 1962].
3. In case of goods imported by air, freight cannot exceed 20% of FOB value [Second proviso to rule 10(2) of the Customs Valuation Rules].
4. Insurance charges, when not ascertainable, have to be included @ 1.125% of FOB value of goods [Clause (iii) of first proviso to rule 10(2) of the Customs Valuation Rules].
5. Buying commission is not included in the assessable value [Clause (a)(i) of sub-rule (1) of rule 10 of the Customs Valuation Rules].
6. By virtue of the amendment carried out in rule 10(2) of the CVR vide Notification No. 91/2017Cus. (NT) dated 26.09.2017, only charges incurred for delivery of goods “to”

the place of importation are includible in the transaction value.

The loading, unloading and handling charges associated with the delivery of the imported goods at the place of importation are not to be added to the CIF value of the goods. [Circular No. 39 / 2017 Cus. dated 26.09.2017].

7. Rate of duty will be the rate in force on the date of presentation of bill of entry or on the date of arrival of the aircraft, whichever is later [Proviso to section 15 of the Customs Act, 1962].
8. Integrated tax leviable under section 3(7) of the Customs Tariff Act, 1975 is levied on the sum total of the assessable value of the imported goods, customs duties and applicable education cess and secondary and higher education cess.

TEST YOUR KNOWLEDGE

Problem 1

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

(i) Goods of the same class or kind

(ii) Computed value

Answer

(i) As per rule 2(1)(c) of Customs Valuation (Determination of Value of Imported Goods) Rules, 2007, goods of the same class or kind, means imported goods that are within a group or range of imported goods produced by a particular industry or industrial sector and includes identical goods or similar goods.

(ii) As per rule 2(1)(a) of the said rules, computed value means the value of imported goods determined in accordance with rule 8. The value of imported goods is taken as computed value when valuation is not possible as per any of rules earlier than rule 8 and cost is ascertainable.

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

(a) the cost or value of materials and fabrication or other processing employed in producing the imported goods;

(b) an amount for profit and general expenses equal to that usually reflected in sales of goods of the same class or kind as the goods being valued which are made by producers in the country of exportation for export to India;

(c) the cost or value of all other expenses under sub-rule (2) of rule 10.

Problem 2

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

Answer

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

Problem 3

Explain when are the costs and services as given in rule 10 of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 be added to the value of the identical goods under rule 4.

Answer

As per rule 4(1)(c) of the Customs Valuation (Determination of Value of Imported Goods Rules, 2007) where imported goods are being valued as per rule 4, the value of the identical goods is adjusted to take into account the difference attributable to the commercial level or to the quantity or both.

According to rule 4(2) where costs and charges referred to in rule 10 are included in the value of identical goods, adjustment has to be made of the difference in such costs and charges between the imported goods and the identical goods.

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

Problem 4

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

(i) Service charges paid to canalizing agent are not includible in the assessable value of imports. Such agent imports the goods from foreign sellers and enters into an agreement to sell such goods with buyers in India in high seas.

(ii) Charges for "vendor inspection" on the second hand goods carried out by foreign supplier on his own and not required for making the goods ready for shipment, are not includible in the assessable value of the imported goods.

Answer

(i) The statement is not valid. Since the canalizing agent is not the agent of the importer nor does he represent the importer abroad, purchases in bulk by canalizing agency from foreign seller and subsequent sale by it to Indian importer on high seas sale basis are independent of each other. Hence, the commission or service charges paid to the canalizing agent are includible in the assessable value as these cannot be termed as buying commission [Hyderabad Industries Ltd. v. UOI 2000 (115) ELT 593 (SC)].

(ii) The statement is valid. As per rule 10(1)(e) of the Customs (Determination of Value of Imported Goods) Rules, 2007, only the payments actually made as a condition of sale of the imported goods by the buyer to the seller are includible in the assessable value.

Thus, charges of vendor inspection on the goods carried out by foreign supplier on his own and not required for making the goods ready for shipment, are not includible in the assessable value of the imported goods [Bombay Dyeing & Mfg. v. CC 1997 (90) ELT 276 (SC)].

Problem 5

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

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

Decide whether the contention of the Department is correct, with reference to a decided case law, if any.

Answer

No, the contention of the Department is not correct.

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

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

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

Problem 6

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

	Particulars	***Amount***
(i)	*Price of the machine*	*10,000 U.K. Pounds*
(ii)	*Freight (air)*	*3,000 U.K. Pounds*
(iii)	*Engineering & design charges paid to a firm in U.K.*	*500 U.K. Pounds*
(iv)	*License fee relating to imported goods payable by the buyer as a condition of sale*	*20% of Price of machine*

(v)	*Materials and components supplied in UK by the buyer free of cost valued at*	*Rs. 20,000*
(vi)	*Insurance paid to the insurer in India*	*Rs. 6,000*
(vii)	*Buying commission paid by buyer to his agent in U.K.*	*100 U.K. Pounds*

Other particulars:

(i) Inter-bank exchange rate: ***Rs.*** *98 per U.K. Pound.*

(ii) CBEC had notified for purpose of section 14 of the Customs Act, 1962, exchange rate of ***Rs.*** *100 per U.K. Pound.*

(iii) Importer paid ***Rs.*** *5,000 towards demurrage charges for delay in clearing the machine from the Airport.*

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

Answer

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

Particulars	**Amount (£)**
Price of the machine	10,000
Add: Engineering and design charges paid in UK [Note 1]	500
Licence fee relating to imported goods payable by the buyer as a condition of sale (20% of Price of machine) [Note 1]	2,000
Total	**12,500**
	Amount (Rs.)
Value in Indian currency [£12,500 x Rs.100] [Note 2]	12,50,000
Add: Materials and components supplied by the buyer free of cost [Note 1]	20,000
FOB	**12,70,000**
Add: Freight [Note 3]	2,54,000
Insurance paid to the insurer in India [Note 1]	6,000
CIF value	**15,30,000**
Add: Landing charges @ 1% [Note 4]	-
Assessable value (rounded off)	**15,30,000**

Notes:

1. Engineering and design charges paid in UK, license fee relating to imported goods payable by the buyer as a condition of sale, materials and components supplied by the buyer free of cost and actual insurance charges paid are all includible in the assessable value [Rule 10 of the Customs (Determination of Value of Imported Goods)

Rules, 2007].

2. As per Explanation to section 14(1) of the Customs Act, 1962, assessable value should be calculated with reference to the rate of exchange notified by the CBEC.
3. If the goods are imported by air, the freight cannot exceed 20% of FOB price [Second proviso to rule 10(2) of the Customs (Determination of Value of Imported Goods) Rules, 2007].
4. By virtue of the amendment carried out in rule 10(2) of the CVR vide Notification No. 91/2017Cus. (NT) dated 26.09.2017, only charges incurred for delivery of goods "to" the place of importation are includible in the transaction value.

   The loading, unloading and handling charges associated with the delivery of the imported goods at the place of importation are not to be added to the CIF value of the goods. [Circular No. 39 / 2017 Cus. dated 26.09.2017].
5. Buying commission is not included in the assessable value [Rule 10(1)(a) of the Customs (Determination of Value of Imported Goods) Rules, 2007].
6. Only ship demurrage charges on chartered vessels are included in the cost of transport of the imported goods. Thus, demurrage charges for delay in clearing the machine from the Airport will not be includible in the assessable value [Explanation to Rule 10(2) of the Customs (Determination of Value of Imported Goods) Rules, 2007].

Problem 7

Briefly explain with reference to the provisions of the Customs Act, the relevant date for determination of rate of duty and tariff valuation for imports through a vehicle where bill of entry is filed prior to the arrival of the vehicle.

Answer

As per section 15(1) of the Customs Act, 1962, the relevant date for determination of rate of duty and tariff valuation of goods entered for imports through a vehicle is the date of presentation of bill of entry OR date of arrival of the vehicle, whichever is later.

Therefore, the relevant date for determination of rate of duty and tariff valuation for imports through a vehicle where bill of entry is filed prior to the arrival of the vehicle will be the date of the arrival of the vehicle.

Problem 8

With reference to the provisions of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007, explain briefly the chief reasons on the basis of which the proper officer can raise doubts on the truth or accuracy of the declared value.

Answer

As per explanation to rule 12 of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007, the chief reasons on the basis of which the proper officer can raise doubts on the truth or accuracy of the declared value may include:-

a. the 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;
b. the sale involves an abnormal discount or abnormal reduction from the ordinary competitive price;
c. the sale involves special discounts limited to exclusive agents;
d. the misdeclaration of goods in parameters such as description, quality, quantity, country of origin, year of manufacture or production;
e. the non declaration of parameters such as brand, grade, specifications that have relevance to value;
f. the fraudulent or manipulated documents.

Problem 9

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

Authority	***Rate of exchange***
CBEC	*1 US $=Rs. 62*
RBI	*1 US $=Rs. 61*

CIF value of the goods is $ 1,50,000 Rate of basic custom duty is 10%

Rate of education CESS is 2%

Rate of secondary and higher education CESS is 1%

Integrated tax leviable under section 3(7) of Customs Tariff Act,1975 is 18%. Ignore GST Compensation CESS.

Calculate total customs duty and integrated tax payable thereon.

Answer

Computation of total custom duty and integrated tax payable

Particulars	**Amount**
CIF Value	$1,50,000.00
Add: Landing charges @ 1% of CIF value (Note – 1) on $151500	-
Assessable value (in Rs.) =$1,50,000 × Rs. 62 (Note -2)	**93,00,000.00**

Add: Basic custom duty @ 10% (Rs. 93,00,000 × 10%)	Rs. 9,30,000.00
Add: Education cess [Rs.9,30,000 × 2%]	Rs. 18,600
Add: Secondary and Higher Education Cess [Rs. 9,30,000 x 1%]	Rs. 9,300
Sub-total	**Rs. 1,02,57,900**
Add: Integrated tax leviable under section 3(7) of Customs Tariff Act (Rs. 1,02,57,900 × 18%) (Note-3)	Rs. 18,46,422.00
Total custom duty and integrated tax payable (Rs. 9,30,000+ Rs. 18,600 +Rs. 9,300+ Rs. 18,46,422)	Rs. 18,74,322.00
Total custom duty and integrated tax payable (Rounded off)	Rs. 18,74,322

Notes:-

(1) By virtue of the amendment carried out in rule 10(2) of the CVR vide Notification No. 91/2017Cus. (NT) dated 26.09.2017, only charges incurred for delivery of goods "to" the place of importation are includible in the transaction value.

The loading, unloading and handling charges associated with the delivery of the imported goods at the place of importation are not to be added to the CIF value of the goods. [Circular No. 39 / 2017 Cus. dated 26.09.2017].

(2) The applicable exchange rate is the rate notified by CBEC [Explanation to section 14(1) of the customs Act, 1962].

(3) Integrated tax leviable under section 3(7) of the Customs Tariff Act, 1975 is levied on the sum total of the assessable value of the imported goods, customs duties and applicable education cess and secondary and higher education cess.

Problem 10

ABC Industries Ltd. imports an equipment by air. CIF price of the equipment is 6,000 US$, freight paid is 1,200 US$ and insurance cost is 1,800 US$. The banker realizes the payment from importer at the exchange rate of Rs. *61 per US$. Central Board of Excise and Customs notifies the exchange rate as* Rs. *60 per US$ while rate of exchange notified by RBI is* Rs. *62 per US$. ABC Industries Ltd. expends* Rs. *56,000 in India for certain development activities with respect to the imported equipment.*

Basic customs duty is 10%, Integrated tax u/s 3(7) of the Customs Tariff Act is leviable @ 12% and education cesses are 3% on duty. Ignore GST Compensation Cess.

You are required to compute the amount of total duty and integrated tax payable by ABC

Industries Ltd. under Customs law.

Answer

Computation of customs duty and integrated tax payable by ABC Industries Ltd.

Particulars	**Amount**
CIF value	6,000 US $
Less: Freight	1,200 US $
Less: Insurance	1,800 US $
FOB value	**3,000 US $**
Add: Freight (20% of FOB value) [Note 1]	600 US $
Add: Insurance (actual)	1,800 US $
CIF	**5,400 US $**
Add: 1% for landing charges [Note 2]	-
Value in dollars	**5,400 US $**
Exchange rate as per CBEC [Note 3] Rs. 60 per US $	
Assessable value = Rs. 60 x 5,400 US $	Rs. 3,24,000
Add: Basic customs duty @ 10%	Rs. 32,400
Add: Education Cess @ 2% & SAH Education Cess @ 1% on Rs. 32,400	Rs. 972
Sub-total	**Rs. 3,57,372**
Integrated tax u/s 3(7) of the Customs Tariff Act @ 12% of Rs. 3,57,372[Note 5]	Rs. 42,884.64
Total customs duty and integrated tax payable [Rs.32,400 + Rs. 972 + Rs. 42,884.64]	Rs. 76,256.64
Total customs duty and integrated tax payable (rounded off)	**Rs. 76,257**

Notes:

1. If the goods are imported by air, the freight cannot exceed 20% of FOB price [Second proviso to rule 10(2) of the Customs (Determination of Value of Imported Goods) Rules, 2007].
2. By virtue of the amendment carried out in rule 10(2) of the CVR vide Notification No. 91/2017Cus. (NT) dated 26.09.2017, only charges incurred for delivery of goods “to” the place of importation are includible in the transaction value.

   The loading, unloading and handling charges associated with the delivery of the imported goods at the place of importation are not to be added to the CIF value of the goods. [Circular No. 39 / 2017 Cus. dated 26.09.2017].

3. Rate of exchange determined by CBEC is considered [Clause (a) of the explanation to section 14 of the Customs Act, 1962].
4. Rule 10(1)(b)(iv) of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 inter alia provides that value of development work undertaken elsewhere than in India is includible in the value of the imported goods. Thus, development charges of Rs. 56,000 paid for work done in India have not been included for the purposes of arriving at the assessable value.
5. Integrated tax leviable under section 3(7) of the Customs Tariff Act, 1975 is levied on the sum total of the assessable value of the imported goods, customs duties and applicable education cess and secondary and higher education cess.

Problem 11

Compute the total customs duty and integrated tax payable under Customs law on an imported machine, based on the following information:

(i)	*Cost of the machine at the factory of the exporter*	*20,000*
(ii)	*Transport charges from factory of exporter to port for shipment*	*800*
(iii)	*Handling charges paid for loading the machine in the ship*	*50*
(iv)	*Freight charges from exporting country to India*	*5,000*
(v)	*Buying commission paid by the importer*	*100*
		(Rs.)
(vi)	*Lighterage charges paid by the importer at port of importation*	*12000*
(vii)	*Freight incurred from port of entry to Inland Container depot*	*60,000*
(viii)	*Ship demurrage charges paid at port of importation*	*24,000*

Date of bill of entry	*20.01.20XX (Rate BCD 20%; Exchange rate as notified by CBEC Rs. 60 per US $)*
Date of entry inward	*25.03.20XX (Rate of BCD 10%; Exchange rate as notified by CBEC Rs. 65 per US $)*
Integrated tax payable under section 3(7) of the Customs Tariff Act, 1975	*12%*

Note: Ignore GST Compensation CESS.

Answer

Computation of customs duty and integrated tax payable on the imported goods

Particulars	US $
Cost of the machine at the factory	20,000
Transport charges up to port	800
Handling charges at the port	50
FOB	**20,850**
FOB value in Indian rupees @ Rs. 60/- per $ [Note 1]	12,51,000
Freight charges up to India [US $ 5,000 x Rs. 60]	3,00,000
Lighterage charges paid by the importer [Note 2]	12,000
Ship demurrage charges on chartered vessels [Note 2]	24,000
Insurance charges @ 1.125% of FOB [Note 3]	14,073.75
CIF	**16,01,073.75**
Add: Landing charges @ 1% of CIF [Note 3]	-
Assessable value	**16,01,073.75**
Add: Basic customs duty @ 10% [Note 4] [a]	1,60,107.38
Add: Education cesses @ 3% of (a) [2% education cess +1% secondary and higher education cess] [b]	4,803.22
Total	**17,65,984.35**
Add: Integrated tax @ 12% of Rs. 17,65,984.35 [c] [Note 5]	2,11,918.12
Total custom duty and integrated tax payable [(a) +(b)+ (c)]	**3,76,829**

Notes:

i. Rate of exchange notified by CBEC on the date of presentation of bill of entry is considered [Explanation to section 14 of the Customs Act, 1962].

ii. Cost of transport of the imported goods includes ship demurrage charges and lighterage charges [Explanation to Rule 10(2) of Customs Valuation (Determination of Value of Imported Goods) Rules, 2007].

iii. Insurance charges are included @ 1.125% of FOB value of goods [Clauses (iii) of first proviso to rule 10(2) of Customs Valuation (Determination of Value of Imported Goods) Rules, 2007].

Landing Charges: By virtue of the amendment carried out in rule 10(2) of the CVR vide Notification No. 91/2017Cus. (NT) dated 26.09.2017, only charges incurred for delivery of goods “to” the place of importation are includible in the transaction value.

The loading, unloading and handling charges associated with the delivery of the imported goods at the place of importation are not to be added to the CIF value of the goods. [Circular No. 39 / 2017 Cus. dated 26.09.2017].

iv. Rate of duty is the rate prevalent on the date of presentation of bill of entry or the rate prevalent on the date of entry inwards, whichever is later [Section 15 of the Customs Act, 1962].

v. Integrated tax leviable under section 3(7) of the Customs Tariff Act, 1975 is levied on the sum total of the assessable value of the imported goods, customs duties and applicable education cess and secondary and higher education cess.

vi. Buying commission is not included in the assessable value [Rule 10(1)(a)(i) of Customs Valuation (Determination of Value of Imported Goods) Rules, 2007].

vii. Freight incurred from port of entry to Inland Container depot is not includible in assessable value [Fourth proviso to rule 10(2) of Customs Valuation (Determination of Value of Imported Goods) Rules, 2007].

Problem 12

Kaveri Enterprises imported some goods from Italy. On the basis of certain information obtained through computer printouts from the Customs House, Department alleged that during the period in question, large number of consignments of such goods were imported at a much higher price than the price declared by Kaveri Enterprises. Therefore, Department valued such goods on the basis of transaction value of identical goods as per rule 4 of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 and demanded the differential duty along with penalty and interest from the Kaveri Enterprises. However, Department did not provide these printouts to Kaveri Enterprises.

Kaveri Enterprises contended that Department's demand was without any basis in law, without any legally admissible evidence and opposed to the principles of natural justice as the computer printouts which formed the basis of such demand had not been supplied to them. Resultantly, they had no means of knowing as to whether any imports of comparable nature were made at the relevant point of time.

You are required to examine the contention of Kaveri Enterprises, with the help of a decided case law, if any.

Answer

The facts of the given case are similar to the case of Gira Enterprises v. CCus. 2014 (307) ELT 209 (SC) decided by the Supreme Court. In the instant case, the Supreme Court observed that since Revenue did not supply the copy of the computer printout, which formed the basis of the conclusion that the appellants under-valued the imported goods, the appellants obviously could not and did not have any opportunity to demonstrate that the transactions relied upon by the Revenue were not comparable transactions.

The Supreme Court held that mere existence of alleged computer printout was not proof of existence of comparable imports. Even if assumed that such printout did exist and content thereof were true, such printout must have been supplied to the appellant and they should have been given reasonable opportunity to establish that the import transactions were not comparable.

In view of the above-mentioned judgment, contention of Kaveri Enterprises is correct.

Problem 13

M/s Impex imported some consignment of goods on 01.6.20XX. A bill of entry for warehousing of goods was presented on 05.6.20XX and the materials were duly warehoused. The goods were subject to duty @ 50% ad valorem. In the meanwhile, on 01.07.20XX, an exemption notification was issued reducing the effecting customs duty @ 30%, ad valorem. M/s Impex filed their bill of entry for home consumption on 01.08.20XX claiming duty @ 30% ad valorem. However, Customs Department charged duty @ 50% ad valorem being the rate on the date of clearance into the warehouse.

Explain with reference to the provisions of the Customs Act, 1962:

(i) the rate of duty applicable for clearance for home consumption in this case.

(ii) whether the rate of exchange on 01.08.20XX could be adopted for purpose of conversion of foreign currency into local currency?

Answer

(i) Section 15(1)(b) of the Customs Act, 1962 provides that in the case of goods cleared from a warehouse, rate of duty applicable is the rate of duty in force on the date on which a bill of entry for home consumption in respect of such goods is presented. In the given case, since M/s Impex has filed the bill of entry for home consumption on 01.08.20XX, rate of duty is the rate prevalent on the said date viz. 30%.

(ii) Third proviso to section 14 of the Customs Act, 1962 provides that the rate of exchange notified by the CBEC as prevalent on the date of presentation of bill of entry for warehousing is the applicable rate of exchange for conversion of foreign currency into local currency.

Therefore, in the given case, rate of exchange that would be prevalent on date of presentation of bill of entry for warehousing i.e. 05.06.20XX and not the one prevalent on date of presentation of bill of entry for home consumption i.e., 01.08.20XX, would be adopted.

Problem 14

Differentiate between deductive value and computed value.

Answer

RULE 7 – DEDUCTIVE VALUE

(1) Subject to the provisions of rule 3, if the goods being valued or identical or similar imported goods are sold in India, in the condition as imported at or about the time at which the declaration for determination of value is presented, the value of imported goods shall be based on the unit price at which the imported goods or identical or similar imported goods are sold in the greatest aggregate quantity to persons who are not related to the sellers in India, subject to the following deductions: —

(i) 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;

(ii) the usual costs of transport and insurance and associated costs incurred within India;

(iii) the customs duties and other taxes payable in India by reason of importation or sale of the goods.

(2) If neither the imported goods nor identical nor similar imported goods are sold at or about the same time of importation of the goods being valued, the value of imported goods shall, subject otherwise to the provisions of sub-rule (1), 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 ninety days after such importation.

(3)

a. If neither the imported goods nor identical nor similar imported goods are sold in India in the condition as imported, then, 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 persons who are not related to the seller in India.
b. In such determination, due allowance shall be made for the value added by processing and the deductions provided for in items (i) to (iii) of sub rule (1).

RULE 8 – COMPUTED VALUE

Subject to the provisions of rule 3, the value of imported goods shall be based on a computed value, which shall consist of the sum of:-

a. the cost or value of materials and fabrication or other processing employed in producing the imported goods;

b. an amount for profit and general expenses equal to that usually reflected in sales of goods of the same class or kind as the goods being valued which are made by producers in the country of exportation for export to India;

c. the cost or value of all other expenses under sub-rule (2) of rule 10.

Problem 15

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

Answer

RULE 9 – RESIDUAL METHOD

(1) Subject to the provisions of rule 3, where the value of imported goods cannot be determined under the provisions of any of the preceding rules, the value shall be determined using reasonable means consistent with the principles and general provisions of these rules and on the basis of data available in India.

Provided that 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.

(2) No value shall be determined under the provisions of' this rule on the basis of—

(i) the selling price in India of the goods produced in India;

(ii) a system which provides for the acceptance for customs purposes of the highest of the two alternative values;

(iii) the price of the goods on the domestic market of the country of exportation;

(iv) the cost of production other than computed values which have been determined for identical or similar goods in accordance with the provisions of rule 8;

(v) the price of the goods for the export to a country other than India;

(vi) minimum customs values; or

(vii) arbitrary or fictitious values.

The residuary method can be considered if valuation is not possible by any other method. [Sanjay Chandiram v. CC 1995 (77) E.L.T. 241 (S.C.)]

Problem 16

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

Answer

RULE 10 – COST AND SERVICES

(1) In determining the transaction value, there shall be added to the price actually paid or payable for the imported goods:

(a) the following to the extent they are incurred by the buyer but are not included in the price actually paid or payable for the imported goods, namely:-

(i) commissions and brokerage, except buying commissions;

(ii) the cost of containers which are treated as being one for customs purposes with the goods in question;

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

(b) The value, apportioned as appropriate, of the following goods and services where supplied directly or indirectly by the buyer free of charge or at reduced cost 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 related to the imported goods that the buyer is required to pay, directly or indirectly, as a condition of the sale of the goods being valued, to the extent that such royalties and fees are not included in the price actually paid or payable;

(d) 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) 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.

Explanation.- Where the royalty, licence fee or any other payment for a process, whether patented or otherwise, is includible referred to in clauses (c) and (e), such charges shall be added to the price actually paid or payable for the imported goods, notwithstanding the fact that such goods may be subjected to the said process after importation of such goods.

Problem 17

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

(i) Goods of the same class or kind

(ii) Computed value

Answer

(i) Goods of the same class or kind

"goods of the same class or kind", means imported goods that are within a group or range of imported goods produced by a particular industry or industrial sector and includes identical goods or similar goods.

(ii) Computed value

Subject to the provisions of rule 3, the value of imported goods shall be based on a computed value, which shall consist of the sum of:-

a. the cost or value of materials and fabrication or other processing employed in producing the imported goods;

b. an amount for profit and general expenses equal to that usually reflected in sales of goods of the same class or kind as the goods being valued which are made by producers in the country of exportation for export to India;

c. the cost or value of all other expenses under sub-rule (2) of rule 10.

Problem 18

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

(i) Similar goods

(ii) Identical goods

Answer

"**similar goods**" means imported goods –

(i) which although not alike in all respects, have like characteristics and like component materials which enable them to perform the same functions and to be commercially interchangeable with the goods being valued having regard to the quality, reputation and the existence of trade mark;

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

(iii) produced by the same person 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.

"**identical goods**" means imported goods –

(i) which are same in all respects, including physical characteristics, quality and reputation as the goods being valued except for minor differences in appearance that do not affect the value of the goods;

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

(iii) produced by the same person who produced the goods, or where no such goods are available, goods produced by a different person, but shall not include imported goods where engineering, development work, art work, design work, plan or sketch undertaken in India were completed directly or indirectly by the buyer on these imported goods free of charge or at a reduced cost for use in connection with the production and sale for export of these imported goods.

Problem 19

Briefly discuss the provisions relating to date for determining the rate of duty and tariff valuation of imported goods.

Answer

FOR IMPORTED GOODS [SECTION 15]

Section 15 of the Customs Act, 1962 specifies that the relevant date for determining the rate of duty and tariff valuation of imported goods. They are different for different situations as given below:

(a) Goods are entered for home consumption under section 46 – The relevant date for the three modes of transport as laid down by section 15(1)(a) read with proviso would be as follows:

(i) For goods imported by vehicle at land customs station – the relevant date is the date of filing the B/E under section 46 or date of arrival of vehicle, whichever is later.

(ii) For goods imported by a vessel at a customs port – the relevant date is the date of filing the B/E under section 46 or date of entry inwards to vessel under section 31, whichever is later.

(iii) For goods imported by aircraft at a customs airport – the relevant date is the date of filing the B/E under section 46 or date of arrival of aircraft, whichever is later.

(b) Goods cleared from a warehouse under section 68 – the relevant date is the date on which a bill of entry for home consumption in respect of such goods is presented.

(c) In the case of any other goods – the relevant date is the date of payment of duty.

These provisions relating to determination of relevant date do not apply to baggage and imports by post, in which sections 78 and 83 apply respectively.