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Additional Questions & Answers

These are apart from Examples and Q & A in main book

Chapter 1: - Levy of & Exemptions from Custom Duty

This chapter includes "2 Q & A" from Custom main book. Do refer important "12 examples from Custom Main Book".

ICAI Test your knowledge

Q1. What are the provisions relating to effective date of notifications issued under section 25 of the Customs Act, 1962?

Ans. Date of effect of every notification issued will be the date of its issue by the Central Government for publication in the Official Gazette, unless provided otherwise in the notification. Issue means signed by competent authority and sent for publication to Government press.

The provision is made as there may be delay of one or two days in publishing in Gazette e.g. if the notification is issued on 2nd November and published in Official Gazette on 4th November, the notification will be effective from 2nd November.

The above rules do not apply to exemptions granted through special orders. Special orders are issued separately for each case and communicated to the beneficiary directly by the Government.

Q2. ASC Ltd. entered in to technical collaboration with MSC Ltd. of Netherlands and imported drawings and designs in paper form through professional courier and post parcels. ASC Ltd. declared the value of these drawings and designs at a very nominal value. However, the Assistant Commissioner of Customs valued these drawings and designs at intrinsic value and levied duty on them. ASC Ltd. contended that customs duty cannot be levied on drawings and designs as they do not fall in the definition of goods under the Customs Act, 1962.

Do you feel the stand taken by the ASC Ltd. is tenable in law? Support your answer with a decided case law, if any.

Ans. This issue has been settled by the Supreme Court in the case of Associated Cement Companies Ltd. v. CC 2001 (128) ELT 21 (SC). The Apex Court observed that though technical advice or information technology are intangible assets, but the moment they are put on a media, whether paper or cassettes or diskettes or any other thing, they become movable and are thus, goods. Therefore, the Supreme Court held that drawings, designs, manuals and technical material are goods liable to customs duty.

Therefore, the stand taken by the ASC Ltd. is not correct in law.

Note: At present, drawings fall under heading under 4906 and 4911 and are exempt as per Sr No. 275 of Notification No. 12/2012 Cus dated 17.03.2012.

Q3. An importer imported certain inputs for manufacture of final product. A small portion of the imported inputs were damaged in transit and could not be used in the manufacture of the final product. An exemption notification was in force providing exemption in respect of specified raw materials imported into India for use in manufacture of specified goods, which was applicable to the imports made by the importer in the present case.

Briefly examine whether the importer could claim the benefit of the aforesaid notification in respect of the entire lot of the inputs imported including those that were damaged in transit.

Ans. The facts of the case are similar to the case of BPL Display Devices Ltd. v. CCEx., Ghaziabad (2004) 174 ELT 5 (SC) wherein the Supreme Court has held that the benefit of the notifications cannot be denied in respect of goods which are intended for use for manufacture of the final product but cannot be so used due to shortage or leakage.

The Apex Court has held that no material distinction can be drawn between loss on account of leakage and loss on account of damage. The benefit of said exemption cannot be denied as inputs were intended for use in the manufacture of final product but could not be so used due to shortage/leakage/damage. It has been clarified by the Supreme Court that words "for use" have to be construed to mean "intended for use".

Therefore, the importer can claim the benefit of the notification in respect of the entire lot of the inputs imported including those that were damaged in transit.

Q4. M/s. Pure Energy Ltd. is engaged in oil exploration and has imported software containing seismic data. The importer is entitled to exemption from customs duty subject to the condition that an "essentiality certificate" granted by the Director General of Hydrocarbons is produced at the time of importation of the goods. Though the importer applied for the certificate within the statutory time limit prescribed for the same, the certificate was not made available to the importer within a reasonable time by the Director General of Hydrocarbons. The customs department rejected the importer's claim for exemption.
Examine briefly whether the department's action is sustainable in law.
Ans. This issue has been addressed by the Supreme Court in the case of Commissioner of Customs v. Tullow India Operations Ltd. (2005) 189 ELT 401 (SC). The Apex Court has observed that if a condition is not within the power and control of the importer and depends upon the acts of public functionaries, non-compliance of such a condition, subject to just exceptions cannot be held to be a condition precedent which would disable it from obtaining the benefit for all times to come.
In the given case also the certificate has not been granted within a reasonable time. Therefore, in view of the above-mentioned judgement, the importer M/s Pure Energy Ltd. cannot be blamed for the lapse by the authorities. The Directorate General of Hydrocarbons is under the Ministry of Petroleum and Natural Gas and such a public functionary is supposed to grant the essentiality certificate within a reasonable time so as to enable the importer to avail of the benefits under the notification.

Q5. Lucrative Laminates imported resin impregnated paper and plywood for the purpose of manufacture of furniture. The said goods were warehoused from the date of its import. Lucrative Laminates sought an extension of the warehousing period which was granted by the authorities. However, even after the expiry of the said date, it did not remove the goods from the warehouse. Subsequently, Lucrative Laminates applied for remission of duty under section 23 of the Customs Act, 1962 on the ground that the said goods had lost their shelf life and had become unfit for use on account of non-availability of orders for clearance.
Explain, with the help of a decided case law, if any, whether the application for remission of duty filed by the Lucrative Laminates is valid in law?
Ans. No, the application for remission of duty filed by the Lucrative Laminates is not valid in law.
The facts of the given case are similar to the case of CCE v. Decorative Laminates (I) Pvt. Ltd. 2010 (257) E.L.T. 61 (Kar.). The High Court, while interpreting section 23, stipulated that section 23 states that only when the imported goods have been lost or destroyed at any time before clearance for home consumption, the application for remission of duty can be considered. Further, even before an order for clearance of goods for home consumption is made, relinquishing of title to the goods can be made; in such event also, an importer would not be liable to pay duty.
Therefore, the expression "at any time before clearance for home consumption" would mean the time period as per the initial order during which the goods are warehoused or before the expiry of the extended date for clearance and not any period after the lapse of the aforesaid periods. The said expression cannot extend to a period after the lapse of the extended period merely because the licence holder has not cleared the goods within the stipulated time.
Moreover, since in the given case, the goods continued to be in the warehouse, even after the expiry of the warehousing period, it would be a case of goods improperly removed from the warehouse as per section 72(1)(b) read with section 71.
The High Court, overruling the decision of the Tribunal, held that the circumstances made out under section 23 were not applicable to the present case since the destruction of the goods or loss of the goods had not occurred before the clearance for home consumption within the meaning of that section. When the goods are not cleared within the period or extended period as given by the authorities, their continuance in the warehouse will not attract section 23 of the Act.

Further, in Kesoram Rayon v. CC 1996 (86) ELT 464, the Supreme Court has held that goods which are not removed from warehouse within the permissible period, are deemed to be improperly removed on the day they ought to have been removed. In view of this decision, goods would be deemed to have been removed when licensing period was over. Hence, section 23 would not be applicable as such loss occurred after 'deemed removal' of goods.

Q6. Explain, with reference to decided case law, whether clearances from Domestic Tariff Area (DTA) to Special Economic Zone is chargeable to export duty under the SEZ Act, 2005 or the Customs Act, 1962.

Ans. In the case of Tirupati Udyog Ltd. v. UOI 2011 (272) E.L.T. 209 (A.P.), it is held that the clearances of goods from DTA to Special Economic Zone are not chargeable to export duty either under the SEZ Act, 2005 or under the Customs Act, 1962 on the basis of the following observations:-

- The charging section needs to be construed strictly. If a person is not expressly brought within the scope of the charging section, he cannot be taxed at all.
- SEZ Act does not contain any provision for levy and collection of export duty on goods supplied by a DTA unit to a Unit in a Special Economic Zone for its authorised operations. Since there is no charging provision in the SEZ Act providing for the levy of customs duty on such goods, export duty cannot be levied on the DTA supplier.
- Reading section 12(1) of the Customs Act, 1962 along with sections 2(18), 2(23) and 2(27) makes it apparent that customs duty can be levied only on goods imported into or exported beyond the territorial waters of India.

Since both the SEZ unit and the DTA unit are located within the territorial waters of India, supplies from DTA to SEZ would not attract section 12(1) [charging section for customs duty].

The above view has also been confirmed in Essar Steel v. UOI 2010 (249) ELT 3 (Guj.) wherein the Departmental appeal has been dismissed by Supreme Court on 12.07.2010 - 2010 (255) ELT A115.

Q7. M/s. XYZ, a 100% export oriented undertaking (100% E.O.U. in short) imported DG sets and furnace oil duty free for setting up captive power plant for its power requirements for export production. This benefit was available vide an exemptions notification. They used the power so generated for export production but sold surplus power in domestic tariff area.

Customs Department has demanded duty on DG sets and furnace oil as surplus power has been sold in domestic tariff area. The notification does not specifically restrict the use of imported goods for manufacture of export goods.

Do you think the demand of the Customs Department is valid in law.

Ans. The facts of the case are similar to the case of Commissioner v. Hanil Era Textile Ltd. 2005 (180) ELT A044 (SC) wherein the Supreme Court agreed to the view taken by the Tribunal that in the absence of a restrictive clause in the notifications that imported goods are to be solely or exclusively used for manufacture of goods for export, there is no violation of any condition of notification, if surplus power generated due to unforeseen exigencies is sold in domestic tariff area. Therefore, no duty can be demanded from M/s XYZ for selling the surplus power in domestic tariff area for the following reasons:

(i) They have used the DG sets and furnace oil imported duty free for generation of power, and
(ii) such power generated has been used for manufacturing goods for export, and
(iii) only the surplus power has been sold, as power cannot be stored.

Q8. Referring to section 25 of the Customs Act, 1962, discuss the following:

(i) Special exemption
(ii) General exemption

Ans.

(i) <u>Special Exemption:</u> As per section 25(2) of the Customs Act, 1962, if the Central Government is satisfied that it is necessary in the public interest so to do, it may, by special order in each case, exempt from payment of duty, any goods on which duty is leviable only under circumstances of an exceptional nature to be stated in such order. Further, no duty shall be collected if the amount of duty leviable is equal to, or less than, Rs. 100. This type of exemption is called as ad hoc exemption. Order under section 25(2) is not required to be published in the Official Gazette.

(ii) General Exemption: As per section 25(1) of the Customs Act, 1962, if the Central Government is satisfied that it is necessary in the public interest so to do, it may, by notification in the Official Gazette, exempt generally either absolutely or subject to such conditions (to be fulfilled before or after clearance) as may be specified in the notification, goods of any specified description from the whole or any part of duty of customs leviable thereon. Further, this exemption applies to all importers while exemption under section 25(2) is for specific importer and specific goods under import.

Q9. Write a brief note on the following with reference to the Customs Act, 1962:

(i) Remission of duty on imported goods lost

(ii) Pilfered goods

Ans.

(i) Remission of duty on imported goods lost: Section 23(1) of the Customs Act, 1962 provides for remission of duty on imported goods lost (otherwise than as a result of pilferage) or destroyed, if such loss or destruction is at any time before clearance for home consumption. Such loss or destruction covers loss by leakage. Duty is payable under this section but it is remitted by Assistant/Deputy Commissioner of Customs if the importer is able to prove the loss or destruction. Thus, unless remitted, duty has to be paid and burden of proof is on the importer. The provisions of this section are applicable for warehoused goods also.

(ii) Pilfered goods: Section 13 provides that if imported goods are pilfered after unloading thereof but before the proper officer has made an order for clearance for home consumption or deposit in a warehouse, no duty is payable on the goods, unless the pilfered goods are restored to importer. In such a case, duty on pilfered goods is payable by the Port authorities. Also, the importer does not have to prove pilferage. However, the loss must be only due to pilferage. Section 13 is not applicable for warehoused goods.

Q10. Distinguish between Pilfered goods and Lost/destroyed goods .

Ans.

Sr. No.	Pilfered Goods	Lost/destroyed Goods
1	Covered by section 13	Covered by section 23(1)
2	No duty payable on such goods	Duty paid on such goods to be remitted
3	Department gets compensation from the custodian [Section 45(3)]	No such compensation
4	Petty theft by human being	Loss/Destruction by fire, flood etc (Act of God)
5	Restoration possible	Restoration is not possible
6	Occurrence is after unloading and before Customs clearance order for home consumption or warehousing	Occurrence may be at any time before clearance for home consumption
7	Occurrence in warehouse not recognized	Occurrence in warehouse is recognized
8	Duty need not be calculated	Duty should be calculated for determining the remission amount
9	No need to prove pilferage. It is quite obvious	Should be proved and remission sought for

Additional Questions & Answers

These are apart from Examples and Q & A in main book

Q11. Goods manufactured or produced in India, which were earlier exported and thereafter imported into India will be treated at par with other goods imported into India. Is the proposition correct or any concession is provided on such import? Discuss briefly.

Ans. The given proposition is correct i.e., goods produced in India, which were earlier exported and thereafter imported into India will be treated at par with other goods imported into India [Section 20 of the Customs Act, 1962]. However, the following concessions are being provided in this regard:

(i) Maximum import duty will be restricted to duty drawback or rebate availed or central excise duty not paid at the time of export.

(ii) Where the goods were originally exported for repairs, the duty on reimportation is restricted to the fair cost of repairs including cost of materials used in repairs whether such costs are actually incurred or not, insurance and freight charges, both ways done abroad.

The above two concessions are given subject to the condition that:

(a) the re-importation is done within 3 years or 5 years if time is extended.

(b) the exported goods and re-imported goods must be the same.

In case of point (ii) above, the ownership of the goods should also not have changed.

However, these concessions would not be applicable if-

- re-imported goods had been exported by EOU
- re-imported goods had been exported from a public/private warehouse
- the process of repairs to which the re-imported goods had been subjected to abroad amounts to manufacture

[Notification No. 46/2017 Cus dated 30.06.2017]

(iii) When exported goods come back for repairs and re-export, the reimported goods can avail exemption from paying of import duty subject to the following conditions:

(i) the re-importation is for repairs only

(ii) the time limit is 3 years. In case of Nepal, such time-limit is 10 years.

(iii) the goods must be re-exported after repairs

(iv) the time limit for export is 6 months (extendable to one year).

[Notification No. 158/95 Cus. dated 14.11.1995]

Q12. Explain briefly with reference to the provisions of the Customs Act, 1962 regarding appointment of officers of customs.

Ans. Appointment of officers of customs:- Section 4(1) of the Customs Act, 1962 empowers the Central Board of Excise and Customs (CBIC) to appoint such persons as it thinks fit to be officers of customs.

Without prejudice to the provisions of sub-section (1), the Board may authorize a Principal Chief Commissioner/ Chief Commissioner of Customs or a Principal Commissioner/ Commissioner of Customs or a Joint or Assistant Commissioner of Customs or Deputy Commissioner of Customs to appoint officers of customs below the rank of Assistant Commissioner of Customs [Section 4(2) of the Customs Act, 1962].

Q13. Briefly explain the powers of officers of Customs under section 5 of the Custom Act, 1962.

Ans. An officer of customs may exercise the powers and discharge the duties conferred or imposed on him under this Act subject to such conditions and limitations as the Board may impose. He may also exercise the powers and discharge the duties conferred or imposed under this Act on any other officer of customs who is subordinate to him. However, a Commissioner (Appeals) shall not exercise the powers and discharge the duties conferred or imposed on an officer of customs other than those specified in Chapter XV (Appeals and Revision) and section 108 (power to summon persons for giving evidence).

Q14. With reference to section 6 of the Customs Act, 1962, examine briefly whether the Central Government could entrust any functions of the Central Board of Excise and Customs or any officer of Customs to any officer of any other department.
Ans. As per section 6 of the Customs Act, 1962, the Central Government may, by notification in the Official Gazette, entrust either conditionally or unconditionally to any officer of the Central or the State Government or a local authority any functions of the Board or any officers of customs under this Act.

Q15. Write a brief note on stages of imposition of taxes and duties.
Ans. Three stages of imposition of taxes and duties All taxes and duties are imposed in three stages, which are levy, assessment and collection: -

a. Levy is the stage where the declaration of liability is made and the persons or the properties in respect of which the tax or duty is to be levied is identified and charged.
b. Assessment is the procedure of quantifying the amount of liability. The liability to tax or duty does not depend upon assessment.
c. The final stage is where the tax or duty is actually collected. The collection of tax or duty may for administrative or other reasons be postponed to a later time as done in the case of excise duty, wherein the liability towards duty arises upon manufacture of excisable goods, the duty is collected only upon removal of goods from the factory.

Q16. Discuss the provisions relating to denaturing or mutilation of goods.
Ans. Section 24 of the Customs Act, 1962 provides that an importer can request Central Government to make rules for permitting to denature/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 any imported goods can be used for more than one purpose and duty is leviable on the basis of its purpose of utilisation, than denaturing or mutilation of such goods is useful. By denaturing, goods are made unfit for other purposes. After denaturing process, goods can be used only for one purpose and accordingly duty can be levied.
Example: you may import pure ethyl alcohol attracting 150% of BCD and you may denature it by adding copper sulphate. Then after denaturing it is classified as denatured ethyl alcohol which attracts only 5% BCD.

Q17. Briefly explain the provisions relating to abatement of duty on damaged or deteriorated goods under section 22 of the Customs Act, 1962.
Ans. According to Section 22, abatement is available if the goods are damaged/deteriorated under any of the following circumstances:

before or during unloading	
by accident after unloading but before examination for assessment by the customs authorities	Provided such accident is not due to any wilful act, negligence or default of the importer, his employee or agent
by accident in warehouse before their actual clearance from such warehouse	

The term 'damage' denotes physical damage to the goods. This implies that the goods are not fit to be used for the purpose for which they are meant.
Deterioration is reduction in quality of goods due to natural causes.

Duty leviable on such damaged or deteriorated goods =

$$\frac{\text{Duty chargeable on the goods before the damage or detrioration}}{\text{Value of the goods before damage or deterioration}} \times \text{Value of the damaged or deteriorated goods}$$

The value shall be:-
(a) Value ascertained by the proper officer
or
(b) The proper officer may sell such goods by public auction/tender or if the importer agrees, in any other manner and the gross sale proceeds shall be deemed to be the value of such goods.

Example: If the value of goods is Rs. 10,000 and after damage the value is Rs. 2,000 then duty payable on Rs. 10,000/- should be appropriately reduced to 20% (proportion of 2000 to 10000).

Q18. Explain in detail, the significance of Indian customs waters under the Customs Act, 1962.
Ans. Indian customs waters cover both the Indian territorial waters and exclusive economic zone as well. Indian territorial waters extend up to 12 nautical miles (nm) from the base line Whereas, exclusive economic zone of India is an area beyond the Indian territorial waters. The limit of exclusive economic zone is 200 nautical miles from the nearest point of the baseline. Therefore, Indian customs waters extend to a total of 200 nm from base line.

Significance of Indian customs waters

(i) If an officer of Customs has reason to believe that any person in India or within the Indian customs waters has committed an offence punishable under section 132/133/135/135A/136, he may arrest such person informing him of the grounds for such arrest [Section 104 of the Customs Act, 1962].
(ii) Where the proper officer has reason to believe that any vessel in India or within the Indian customs waters has been, is being, or is about to be, used in the smuggling of any goods or in the carriage of any smuggled goods, he may stop any such vehicle, animal or vessel or, in case of an aircraft, compel it to land [Section 106 of the Customs Act, 1962].
(iii) Any vessel which is or has been within the Indian customs waters is constructed, adapted, altered or fitted in any manner for the purpose of concealing goods shall be liable to confiscation [Section 115(1)(a) of the Customs Act, 1962].
(iv) Customs officer has the power to search 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 [Section 100 of the Customs Act, 1962].
(v) 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) of the Customs Act, 1962].

Q19. Briefly explain the following with reference to the provisions of the Customs Act, 1962:
(i) Indian customs waters
(ii) India
Ans.
(i) Please refer Q18 for provision related to Indian Customs Water
(ii) India: "India" includes the territorial waters of India.
Territorial waters of India extend to 12 nautical miles into sea from the appropriate base line. Goods are deemed to have been imported if the vessel enters the imaginary line on the sea at the 12th nautical mile i.e. if the vessel enters the territorial waters of India. Therefore, a vessel not bound to India should not enter these waters. India includes not only the surface of sea in the territorial waters, but also the air space above and the ground at the bottom of the sea.

Q20. Distinguish between Indian territorial waters and Indian custom waters.

Ans. Territorial waters of India extend to 12 nautical miles into sea from the appropriate base line. Goods are deemed to have been imported if the vessel enters the imaginary line on the sea at the 12th nautical mile i.e. if the vessel enters the territorial waters of India.

Indian customs waters cover both the Indian territorial waters and exclusive economic zone as well. Indian territorial waters extend up to 12 nautical miles (nm) from the base line Whereas, exclusive economic zone of India is an area beyond the Indian territorial waters. The limit of exclusive economic zone is 200 nautical miles from the nearest point of the baseline. Therefore, Indian customs waters extend to a total of 200 nm from base line.

Q21. Write a brief note on the constitutional provisions governing the levy of customs duties.

Ans. All the enactments enacted by the Parliament should have its source in the Constitution of India. The power for enacting the laws is conferred on the Parliament and on the legislature of a State by Article 245 of the Constitution. The said Article states:

Subject to the provisions of this Constitution, Parliament may make laws for the whole or any part of the territory of India, and the legislature of a State may make laws for the whole or any part of the state. No law made by the Parliament shall be deemed to be invalid on the ground that it would have extra-territorial operation.

Article 246 governs the subject matter of the laws made by the Parliament and by the legislature of states. The matters are listed in the seventh schedule to the Constitution.

The seventh schedule is classified into three lists as follows:

List I [referred as Union List]

This list enumerates the matters in respect of which the Parliament has an exclusive right to make laws. Entry 83 of Union List has given the power to Central Government to levy duties of Customs including export duties.

List II [referred as State List]

This list enumerates the matters in respect of which the legislature of any state has an exclusive right to make laws.

List III [referred as the concurrent list

This list enumerates the matters in respect of which both the Parliament and, subject to List I, legislature of any state, have powers to make laws.

Parliament has a further power to make any law for any part of India not comprised in a state, notwithstanding that such matter is included in the state list.

Q22. 'Queen Marry', a vessel containing the goods imported by XML Ltd. entered the Indian Territorial waters on 24.05.20XX. It arrived at the customs port on 26.05.20XX and the Arrival manifest or import manifest was submitted on 29.05.20XX. However, the entry inwards were given to the vessel on 04.06.20XX. An 'Into Bond' Bill of Entry was presented by XML Ltd. on 06.06.20XX and thus, the goods were classified, valued and stored in the bonded warehouse.

XML Ltd. presented the 'Ex-Bond' Bill of Entry in respect of such goods on 01.07.20XX and cleared the goods from the bonded warehouse on 05.07.20XX. The rate of customs duty was increased from 8% to 10% on 04.07.20XX.

At what rate should XML Ltd. pay the customs duty on the goods imported by it?

Ans. As per section 15(1)(b) of the Customs Act 1962, the relevant date for determination of rate of duty and tariff valuation in case of warehoused goods is the date when a bill of entry for home consumption (or ex-bond bill of entry, if goods were warehoused after entry into India) in respect of such goods has been presented under section 68 of the Customs Act, 1962. Therefore, in the given problem, the relevant date for determination of rate of duty is 01.07.20XX (date of presentation of ex-bond bill of entry) and not 05.07.20XX when the goods are actually removed from the warehouse. Thus, the customs duty will be payable at 8% and not 10%.

Q23. Write a brief note on self-assessment in customs under the Customs Act, 1962.

Ans. The provisions relating to self-assessment of duty, contained in the section 17 of the Customs Act, 1962, are as follows:

(i) The importer or the exporter has to self-assess the duty leviable on goods imported or exported.

(ii) The proper officer may verify the entries made under section 46 or section 50 and the self-assessment of goods and for this purpose, examine or test any imported goods or export goods or such part thereof as may be necessary. Further, the selection of cases for verification shall primarily be on the basis of risk evaluation through appropriate selection criteria.

(iii) After verification, if it is found that the self-assessment has not been done correctly, the proper officer may re-assess the duty leviable on such goods.

(iv) If the order of the reassessment is contrary to the self-assessment, the proper officer should pass a speaking order on the re-assessment within 15 days from the date of reassessment.

Q24. State briefly the provisions of the Customs Act, 1962 relating to payment of interest in case of provisional assessment.

Ans. The provisions of the Customs Act, 1962 relating to payment of interest in case of provisional assessment are as under:

(I) Interest payable by the importer/exporter on amount payable to the Central Government, consequent to the final assessment/reassessment:

(i) The importer or exporter shall be liable to pay interest, on any amount payable to the Central Government, consequent to the final assessment order/re-assessment order under section 18(2).

(ii) The interest shall be payable at the rate prescribed under section 28AA of the Customs Act, 1962. Presently, the rate of interest has been fixed @ 15% p.a.

(iii) The interest shall be payable from the first day of the month in which the duty is provisionally assessed till the date of payment thereof.

It is different from GST.

(II) Interest payable by the Central Government to the importer/exporter on amount refundable to the importer/exporter on final assessment of duty/re-assessment of duty:

(i) Subject to the provisions of unjust enrichment, if any refundable amount is not refunded to the importer/exporter on final assessment of duty or re-assessment of duty, within three months from the date of final assessment of duty or reassessment of duty.

(ii) The interest shall be payable at the rate prescribed under section 27A of the Customs Act, 1962. Presently, the rate of interest has been fixed @ 6% p.a.

(iii) The interest shall be payable from the first day immediately succeeding the period of three months from the date of assessment of duty finally or re-assessment of duty till the date of refund of such amount.

Q25. ONGC oil rig and a foreign oil rig are drilling oil beyond 12 nautical miles in the sea in the Exclusive Economic Zone of India. Which of the two is a foreign going vessel? Explain.

Ans. Foreign going vessel or aircraft is one that carries passengers and (or) goods between ports/airports in India and out of India. It does not matter if it touches any intermediate port/airport in India. The following are also included in the definition:

(a) A foreign naval vessel doing naval exercises in Indian waters.

(b) A vessel engaged in fishing or any other operation (like oil drilling by O.N.G.C. oil rig) outside territorial waters.

(c) A vessel or aircraft going to a place outside India for any purpose whatsoever [section 2(21)].

However, it is to be noted that Customs Act, 1962 has been extended to the Continental Shelf and Exclusive Economic Zone of India for the purposes of extraction or production of mineral oils and

supply of any goods as defined in section 2(22) of the Customs Act in connection with such activities vide Notification No. SO 189(E) dated 07.02.2002.
Further, In Aban Loyd Chiles v. UOI (2008) 227 ELT 24 (SC), it was held that oil rigs located beyond territorial waters of country but within exclusive economic zone are deemed to be in Indian territory and not a foreign going vessel as in that zone/area country's fiscal laws are applicable.
Hence, both the ONGC oil rig and the foreign oil rig will not be 'foreign going vessel'.

Q26. What are the circumstances under which assessment is done provisionally under section 18?
Ans. Provisional assessment can be resorted to in the following circumstances:

(a) where the importer or exporter is unable to make self-assessment under sub-section (1) of section 17 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.

Other Questions

Q27. Peerless Scraps, imported during August 20XX, by sea, a consignment of metal scrap weighing 6,000 M.T. (metric tonnes) from U.S.A. They filed a bill of entry for home consumption. The Assistant Commissioner passed an order for clearance of goods and applicable duty was paid by them. Peerless Scraps thereafter found, on taking delivery from the Port Trust Authorities (i.e., before the clearance for home consumption), that only 5,500 M.T. of scrap were available at the docks although they had paid duty for the entire 6,000 M.T., since there was no short-landing of cargo. The short-delivery of 500 M.T. was also substantiated by the Port-Trust Authorities, who gave a "weighment certificate" to Peerless Scraps. On filing a representation to the Customs Department, Peerless Scraps has been directed in writing to justify as to which provision of the Customs Act, 1962 governs their claim for remission of duty on the 500 M.T. not delivered by the Port-Trust. You are approached by Peerless Scraps as "Counsel" for an opinion/advice. Examine the issues and tender your opinion as per law, giving reasons. (ICAI Example)
Ans. As per provisions of section 23, where it is shown to the satisfaction of Assistant or Deputy Commissioner that any imported goods have been lost or destroyed, otherwise than as a result of pilferage at any time before clearance for home consumption, the Assistant or Deputy Commissioner shall remit the duty on such goods. Therefore, duty shall be remitted only if loss has occurred before clearance for home consumption.
In the given case, it is apparent from the facts that quantity of scrap received in India was 6000 metric tonnes and 500 metric tonnes thereof was lost when it was in custody of Port Authorities i.e. before clearance for home consumption was made. Also, the loss of 500 MT of scrap cannot be construed to be pilferage, as loss of such huge quantity cannot be treated as "Petty Theft".
Hence, Peerless Scraps may take shelter under section 23 justifying his claim for remission of duty.

Q28. Mr. Krishna Bhansali, has imported some garments from Paris. He is unable to make self-assessment under section 17(1) of the Customs Act, 1962 and hence has made a request in writing to the proper officer for provisional assessment. Can he apply for provisional assessment? Discuss.
Ans Yes, Mr. Krishna Bhansali can apply for provisional assessment under section 18 of the Customs Act, 1962. Section 18(1) provides that provisional assessment can be resorted to, inter alia, where the importer or exporter is unable to make self assessment under sub-section (1) of section 17 and makes a request in writing to the proper officer for assessment. Please note that

'unable' is not about willingness but deficiency of information to make an accurate determination of the liability. Information relevant for assessment could be technical test or analysis report to determine classification which is required for the rate of duty. It could also be a comparative valuation exercise to determine correctness of the declared value.

In such a circumstance, the proper officer may order for provisional assessment of duty if the importer/exporter, furnishes such security as the proper officer deems fit for the payment of the deficiency, if any, between the final re-assessed duty and the provisionally assessed duty. After the finalization of assessment, if the importer/exporter is entitled to refund of duty, such refund shall be subject to doctrine of unjust enrichment.

Q29. Moris Lal has imported goods from Germany and is finally re-assessed u/s 18(2) of the Customs Act, 1962 for two such consignments. Particulars are as follows:

Date of provisional assessment	12th December, 2017
Date of final re-assessment	2nd February, 2018
Duty demand for 1st consignment	Rs. 1,80,000
Refund for the 2nd consignment	Rs. 4,20,000
Date of refund made by the department	28^{th} April 2018
Date of payment of duty demanded	5^{th} February 2018

Determine the interest payable and receivable, if any, by Moris Lal on the final reassessment of the two consignments, with suitable notes thereon. (May 2018 Old)

Ans. As per section 18(3) of the Customs Act, 1962, an importer is liable to pay interest at the rate of 15% p.a. (Notification No. 33/2016-Cus. (NT) dated 01.03.2016), on any amount payable consequent to the re-assessment order from the first day of the month in which the duty is provisionally assessed till the date of payment.

Therefore, in the given case, Moris Lal is liable to pay following interest in respect of 1st consignment:

= Rs. 1,80,000 × 15% × 67/365

= Rs. 4,956 (rounded off)

If any amount refundable consequent to the re-assessment order is not refunded within 3 months from date of re-assessment of duty, interest is payable to importer on unrefunded amount at the specified rate till the date of refund of such amount in terms of section 18(4) of the Customs Act, 1962.

Since in the given case, refund has been made (28.04.2018) within 3 months from the date of re-assessment of duty (02.02.2018), interest is not payable to Moris Lal on duty refunded in respect of 2nd consignment.

Q30. Ramdev manufactured as specified in Annexure and exported goods worth Rs. 10,00,000 to Vishwanath of Australia on 1^{st} January 2018 and availed duty drawback of Rs. 15,000. Ramdev imported the same goods on 8^{th} February 2018. What will be the customs duty payable by Ramdev, if rate of BCD is 10% and goods are exempt from IGST and GST Cess?

Ans. Since exported goods have been re-imported within 3 years from date of export, hence, as per exemption issued by the Central Government, the duty payable = Export Incentive viz. Duty Drawback claimed at the time of export. Therefore, duty payable = Rs. 15,000. It is assumed that the goods are re-imported without any re-manufacturing or re-processing {Section 20 of CGST Act, 1962}.

Questions from Custom Main Book

Q31. State in brief the provisions under the Customs Act, 1962 that seek to prohibit the import of goods infringing intellectual property rights (IPR).

Ans. The Government of India has an international obligation to protect Intellectual Property Rights (IPR) at the stage of import in terms of an agreement arrived at the WTO. Under clauses (n), (o) and (u) of section 11 of the Customs Act, 1962 the Government has been empowered to prohibit, absolutely or conditionally, import or export of goods for the purpose of patent protection, trademarks or copyrights or for prevention of deceptive practices. For this purpose, Intellectual Property Rights (Imported Goods) Enforcement Rules, 2007 have been notified.

The said rules provide that in case of goods infringing such IPRs, as are registered with the Commissioner of Customs, their import shall be prohibited. The import clearances of goods, which appear to be infringing goods, shall be suspended and the goods will be detained pending complete inquiry and examination. The goods ultimately found to be infringing goods are either to be destroyed or to be disposed of outside normal channels of commerce. The infringing goods cannot be re-exported.

Q32. Discuss with a brief note the distinction between the functioning of Inland Container Depots (ICD) and Container Fright Stations (CFS).

Ans.

S. No.	Basis of difference	Inland Container Depot (ICD)	Container Freight Station (CFS)
(1)	Meaning	An ICD is a place where containers are aggregated for onward movement to or from the ports.	CFS is a place where containers are stuffed, unstuffed and aggregation / segregation of cargo takes place.
(2)	Location	ICDs are normally located outside the port towns.	No site restrictions apply to CFS.
(3)	Attachment	An ICD may have a CFS attached to it.	CFS is treated as an extension of a port / ICD / air cargo complex.
(4)	Appointment	ICD is appointed by Board under section 7 of Customs Act, 1962.	CFS is specified under section 8 (b) by the Principal Commissioner or Commissioner of Customs within his jurisdiction.
(5)	Equivalent status	ICD is at par with other customs port / airport / Land Customs Station.	CFS is specified as customs area.

Additional Questions & Answers

These are apart from Examples and Q & A in main bo

This chapter includes "5 Q & A" from Custom main book. *Do refer examples "6 examples" in Custom main book .*

Chapter 2: - Types of Duty

ICAI Test your knowledge

Q1. When shall the safeguard duty under section 8B of the Customs Tariff Act, 1975 be not imposed? Discuss briefly.

Ans. The safeguard duty under section 8B of the Customs Tariff Act, 1975 is not imposed on the import of the following types of articles:

(i) Articles originating from a developing country, so long as the share of imports of that article from that country does not exceed 3% of the total imports of that article into India;

(ii) Articles originating from more than one developing country, so long as the aggregate of imports from developing countries each with less than 3% import share taken together does not exceed 9% of the total imports of that article into India;

(iii) Articles imported by a 100% EOU or units in a Special Economic Zone unless the duty is specifically made applicable on them or the article imported is either cleared as such into DTA or used in the manufacture of any goods that are cleared into DTA. In such cases, safeguard duty shall be levied on that portion of the article so cleared or so used as was leviable when it was imported into India.

Export will become competitive

Q2. What are the conditions required to be fulfilled by the importer to make the imported goods eligible for preferential rate of duty prescribed by the Central Government by notification under section 25 of the Customs Act, 1962?

Ans. The Government may by notification under section 25 of the Customs Act, 1962 prescribe preferential rate of duty in respect of imports from certain preferential areas. The importer will have to fulfill the following conditions to make the imported goods eligible for preferential rate of duty:

(i) At the time of importation, he should make a specific claim for the preferential rate.

(ii) He should also claim that the goods are produced or manufactured in such preferential area.

(iii) The area should be notified under section 4(3) of the Customs Tariff Act, 1975 to be a preferential area.

(iv) The origin of the goods shall be determined in accordance with the rules made under section 4(2) of the Customs Tariff Act, 1975.

Determination of Origin' is important to allow concessional rate of customs duty. Generally, as per the rules (a) if the goods are un-manufactured, it should be grown or produced in that area (b) If it is fully manufactured in that country, it should be manufactured from material produced or with un-manufactured materials from that country. (c) if it is partially manufactured in that country, final process should be completed in that country and at least specified percentage of expenditure on material or labour should be in that country.

Q3. Write a note on "Emergency power to impose or enhance import duties under section 8A of the Customs Tariff Act, 1975".

Ans. Section 8A of Customs Tariff Act, 1975 provides that the where the Central Government is satisfied that the basic customs duty leviable on any article should be increased and that circumstances exist which render it necessary to take immediate action, it may, by notification amend the First Schedule of the Customs Tariff to increase the import duty leviable on such article to such extent as it thinks necessary.

Q4. Determine the customs duty payable under the Customs Tariff Act, 1975 including the safeguard duty of 30% under section 8B of the said Act with the following details available on hand:

Assessable value (including landing charges) of Sodium Nitrite imported from a developing country from 26th February, 2017 to 25th February, 2018 (both days inclusive)	Rs. 30,00,000
Share of imports of Sodium Nitrite from the developing country against total imports of Sodium Nitrite to India	4%
Basic custom duty	10%
Integrated tax under section 3(7) of the Customs Tariff Act, 1975	12%
Social welfare surcharge	10%

Ans.

Computation of customs duty and integrated tax payable thereon

Particular	Amount in INR
Assessable value of sodium nitrite imported	30,00,000
Add: Basic custom duty @ 10% (Rs. 30,00,000 × 10%)	3,00,000
Safeguard duty @ 30% on Rs. 30,00,000 [Safeguard duty is imposable in the given case since share of imports of sodium nitrite from the developing country is more than 3% of the total imports of sodium nitrite into India (Proviso to section 8B(1) of the Customs Tariff Act, 1975)]	9,00,000
Social welfare surcharge @ 10% x Rs. 3,00,000	30,000
Total	42,30,000
Integrated tax leviable under section 3(7) of Customs Tariff Act (` 42,30,000 × 12%) [Note]	5,07,600
Total customs duty payable (Rs. 3,00,000 + Rs. 9,00,000+ Rs. 30,000+ Rs. 5,07,600)	17,37,600

Note: It has been clarified by DGFT vide Guidance note that value for calculation of integrated tax shall also include safeguard duty amount.

Other Questions

Q5. With reference to the Customs Tariff Act, 1975, discuss the validity of the imposition of customs duties in the following cases:-

(a) Both countervailing duty and anti-dumping duty have been imposed on an article to compensate for the same situation of dumping.

(b) Countervailing duty has been levied on an article for the reason that the same is exempt from duty borne by a like article when meant for consumption in the country of origin.

(c) Definitive anti-dumping duty has been levied on articles imported from a member country of World Trade Organization as a determination has been made in the prescribed manner that import of such article into India threatens material injury to the indigenous industry.

Ans.

(a) **Not valid**. As per section 9B of the Customs Tariff Act, 1975, no article shall be subjected to both countervailing and anti-dumping duties to compensate for the same situation of dumping or export subsidization.

(b) **Not valid**. As per section 9B of the Customs Tariff Act, 1975, countervailing or anti-dumping duties shall not be levied by reasons of exemption of such articles from duties or taxes borne by the like articles when meant for consumption in the country of origin or exportation or by reasons of refund of such duties or taxes.

(c) **Valid.** As per section 9B of the Customs Tariff Act, 1975, no definitive countervailing duty or anti-dumping duty shall be levied on the import into India of any article from a member country of the World Trade Organisation or from a country with whom Government of India has a most favoured nation agreement, unless a determination has been made in the prescribed manner that import of such article into India causes or threatens material injury to any established industry in India or materially retards the establishment of any industry in India.

Additional Questions & Answers

These are apart from Examples and Q & A in main book

Q6. Marwar Industries imported finishing agents, dye - carriers, printing paste etc. to be used for manufacture of textile articles. The importer claimed exemption for additional duty of customs (CVD) leviable under section 3 of the Customs Tariff Act, 1975, on the ground that there was an exemption for excise duty in respect of said goods used in the 'same factory' for manufacture of textile articles. The Department contended that CVD is payable on the ground that the goods which were to be used must also be manufactured in the 'same factory'. You are requested to comment upon the contention of Department, with reference to a decided case law, if any.

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

Questions from Custom Main Book

Q7. Examine the validity of the following statements with reference to the Customs Act, 1962 giving brief reasons. Goods exempt from basic customs duty would automatically be exempt from additional duty of customs.

A. The statement is not correct. Exemption from basic customs duty would not mean exemption from additional duty. When goods are exempted from basic customs duty in terms of section 12 of the Customs Act, 1962 it would not mean that they are exempted from additional duty of customs also, as basic customs duty is leviable by virtue of section 12 of the Customs Act, 1962 while additional customs duty is leviable under section 3 of the Customs Tariff Act, 1975 [Kaur Sarin Traders v. UOI [2006] 199 ELT 224 (Pat.)].

Q8. What will be the dates of commencement of the definitive anti–dumping duty in the following cases under section 9A of the Customs Tariff Act, 1975 and the Rules made there under –

(i) Where no provisional duty is imposed;

(ii) Where provisional duty is imposed;

(iii) Where anti – dumping duty is imposed retrospectively from a date prior to the date of imposition of provisional duty.

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

I. In a case where no provisional duty is imposed, the date of commencement of anti-dumping duty will be the date of publication of notification, imposing anti–dumping duty, in the Official Gazette.

II. In a case where provisional duty is imposed, the date of commencement of anti–dumping duty will be the date of publication of notification, imposing provisional duty, in the Official Gazette.

III. In a case where anti–dumping duty is imposed retrospectively from a date prior to the date of imposition of provisional duty, the date of commencement of anti–dumping duty will be such prior as may be notified in the notification imposing anti – dumping duty retrospectively, but not beyond 90 days from the date of such notification of provisional duty.

Q9. Please provide comparative outlook of Safeguard Duty, Countervailing Duty & Anti-Dumping Duty.

A.

Criteria	Safeguard duty	Countervailing duty	Anti-dumping duty
Notified	Suo moto or upon receipt of complaint / information	Suo moto or upon receipt of complaint / information	Suo moto or upon receipt of complaint / information
Relief against	Serious injury to domestic industry	Subsidy enjoyed in export pricing	Dumping in price or quantity of goods
Extent of relief	To the extent adequate to prevent or remedy	To the full extent of subsidy allowed in the export price	To the full extent of the 'margin of dumping'
Investigation	Required	Required	Required
Injury determination	To be investigated	To be investigated	To be investigated
Provisional duty	Yes, until completion of investigation	Yes, until completion of investigation	Yes, until completion of investigation
Final findings	Within 8 months from start of investigations	Within 1 year from start of investigations	Within 1 year from start of investigations
Excess duty	Refund allowed	Refund allowed	Refund allowed
Duration of duty levy	4 years. Total 10 years	5 years + 5 years extension	Perpetual, subject to periodic review

Q10. With reference to section 9AA of Customs Tariff Act, 1975, state briefly the provisions of refund of anti-dumping duty.

A. According to the provisions of section 9AA of the Customs Tariff Act, 1975, where an importer proves to the satisfaction of the Central Government that he has paid any anti-dumping duty imposed on any article, in excess of the actual margin of dumping in relation to such article, he shall be entitled to refund of such excess duty. However, the importer will not be entitled for refund of provisional anti-dumping duty under section 9AA as the same is refundable under section 9A(2) of the said Act. Refund of excess anti-dumping duty paid is subject to provisions of unjust enrichment – Automotive Tyre Manufacturers Association v. Designated Authority 2011 (263) ELT 481 (SC).

Q11. With reference to section 9A(1A) of the Customs Tariff Act, 1975, mention the ways that constitute circumvention of antidumping duty imposed on an article which may warrant action by the Central Government.

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

(i) altering the description or name or composition of the article subject to such anti-dumping duty,

(ii) import of such article in an unassembled or disassembled form,

(iii) changing the country of its origin or export, or

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

In such cases, investigation can be carried out by Central Government and then anti-dumping can be imposed on such articles

Additional Questions & Answers

These are apart from Examples and Q & A in main book

Chapter 3: - Classification of Imported & Export Goods

Do refer important "5 examples from Custom Main Book".

ICAI Test your knowledge

Q1. What is the purpose of including Interpretation Rules in Customs Tariff? Do they form part of the Tariff Schedule? Explain the Akin Rule of interpretation.

Ans. The Customs Tariff has a set of six Rules for Interpretation of the Tariff Schedule and three General Explanatory Notes. The six Rules of Interpretation and three General Explanatory Notes are integral part of the Tariff Schedule. The purpose of their inclusion in Customs Tariff is to standardize the manner in which the nomenclature in the schedule is to be interpreted so as to reduce classification disputes.

Rule 4 of the Rules of Interpretation is called as akin rule. This rule lays down that goods which cannot be classified in accordance with rules 1, 2 and 3 of the Rules of Interpretation shall be classified under the heading appropriate to the goods to which they are most akin. In other words, akin rule' is a residual rule which is to be applied when classification is not possible by applying any of the earlier rules. It is a rule of last resort.

Q2. Write a note on "Project Imports" under the Customs Tariff Act, 1975.

Ans. Project Imports are the imports of machinery, instruments, and apparatus etc., falling under different classifications, required for initial set up of a unit or for substantial expansion of an existing unit.

Heavy customs duty on imported machinery for projects make the initial project cost very high and project may become unviable. Hence, concept of 'project import' is introduced to bring machinery etc. required for initial setup or substantial exemption at concessional customs duty.

In a project several different items are required, each of which is importable at different rates of customs duties. Thus, this simple method is adopted, as otherwise, classifying each machinery and its parts in different heads and valuing them would have been cumbersome and would have delayed clearances, which would cause demurrages. Further, individual exemption notification will apply even for items grouped under the said heading of the customs tariff liable to duty at the project rate as per recent Supreme Court judgement.

The items eligible for project import are specified in Heading 9801 of the Customs Tariff Act, 1975. These are: all items of machinery including prime movers, instruments, apparatus and appliances, control gear and transmission equipment, auxiliary equipment (including those for research and development, testing and quality control); as well as components or raw materials for manufacture of these items and their components; required for initial setting up of a unit or substantial expansion of a specified (1) industrial project (2) Irrigation project (3) Power projects (4) Mining project (5) Project for exploration of oils or other minerals and (6) Other projects as may be notified by Central Government.

The spare parts, raw material and consumables stores upto 10% of the value of goods can be imported. Few of the eligible projects are:

(i) Industrial plant
(ii) Irrigation project
(iii) Power project
(iv) Mining project
(v) Oil & mineral exploration project
(vi) Other projects as notified by the Central Government

Q3. Explain rule 3 of the rules for Interpretation of the Customs Tariff.

Ans. Rule 3 – Classification in case goods are classifiable under two or more headings: The application of this rule arises when the goods consist of more than one material or substance.

When by application of rule 2(b) or for any other reason, goods are, prima facie, classifiable under two or more headings, classification shall be affected as follows:

Rule 3(a) – Specific over general

i. The heading which provides the most specific description shall be preferred to headings providing a more general description.
ii. However, when two or more headings each refer to part only of the materials or substances contained in mixed or composite goods or to part only of the items in a set up for retail sale, those headings are to be regarded as equally specific in relation to those goods, even if one of them gives a more complete or precise description of the goods.

Rule 3(b) – Essential character principle:

Mixtures, composite goods consisting of different materials or made up of different components, and goods put up in sets for retail sale, which cannot be classified with reference to (a), shall be classified as if they consisted of material which gives them their essential character, in so far as this criterion is applicable.

Rule 3(c) – Latter the better:

When goods cannot be classified by reference to (a) or (b), they shall be classified under the heading which occurs last in numerical order among those which equally merit consideration.

Other Questions

Q4. Write a brief note on rule 1 of the Rules of Interpretation of the First Schedule to Customs Tariff Act, 1975.

Ans. Rule 1 of the general rules for interpretation states that the titles of sections, chapters and sub-chapters in the First Schedule to the Customs Tariff Act, 1975 are provided for ease of reference only. For legal purposes, classification shall be determined according to the terms of the headings and any relative section or chapter notes and provided such headings or chapter notes do not otherwise require, according to the subsequent rules.

Thus, the tiles of sections, chapters and sub-chapters cannot be used to determine classification of a product.

Additional Questions & Answers

These are apart from Examples and Q & A in main book

Chapter 4: - Valuation under the Custom Act, 1962

This chapter includes "37 Q & A" from Custom main book

ICAI Test your knowledge

Q1. 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

Ans.

(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.

Q2. 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?

Ans. 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.

Q3. 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.

Ans. 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.

Q4. 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.

Ans.

(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)].

Q5. 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.

Ans. 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 the favour of the assessee and the contract price was accepted as the 'transaction value'.

Q6. 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 and design charges paid to a firm in U.K.	500 U.K. Pounds
(iv)	License fee relating to imported goods payable by the buyer as a condition of sale	20% of 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 the 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) CBIC 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)

Ans.

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

Particulars	**Amount (In Pound)**
Price of the machine	10,000
Add: Engineering and design charges paid in UK [Note 1]	500
License 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 (In INR)
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
Assessable value (rounded off)	15,30,000

Notes:

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 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 CBIC.
3. If the goods are imported by air, the freight cannot exceed 20% of FOB price [Fifth proviso to rule 10(2) of the Customs (Determination of Value of Imported Goods) Rules, 2007].
4. Buying commission is not included in the assessable value [Rule 10(1)(a) of the Customs (Determination of Value of Imported Goods) Rules, 2007].
5. 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].

Q7. 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.

Ans. 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.

Q8. 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.
Ans. 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:-

i. 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;
ii. the sale involves an abnormal discount or abnormal reduction from the ordinary competitive price;
iii. the sale involves special discounts limited to exclusive agents;
iv. the misdeclaration of goods in parameters such as description, quality, quantity, country of origin, year of manufacture or production;
v. the non-declaration of parameters such as brand, grade, specifications that have relevance to value;
vi. the fraudulent or manipulated documents.

Q9. Jagat Corporation Limited imported some goods from US. The details of the transaction are as follows:-

Authority	Rate of Exchange
CBIC	1 US $=Rs. 70
RBI	1 US $=Rs. 71

CIF value of the goods is $ 1,50,000
Rate of basic custom duty is 10%
Rate of social welfare surcharge is 10%
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.
Ans.

Computation of total custom duty and integrated tax payable

Particulars	Amount
CIF Value	$ 1,50,000.00
Assessable value (in Rs.) =$1,50,000 × Rs. 70 (Note -1)	Rs. 1,05,00,000.00
Add: Basic custom duty @ 10% (Rs. 1,05,00,000 × 10%)	Rs. 10,50,000.00
Add: Social Welfare surcharge [Rs. 10,50,000 × 10%]	Rs. 1,05,000
Sub-total	1,16,55,000.00
Add: Integrated tax leviable under section 3(7) of Customs Tariff Act (Rs. 1,16,55,000 × 18%) (Note-3)	Rs. 20,97,900
Total custom duty and integrated tax payable (rounded off)	Rs. 32,52.900

Notes:-

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

(2) 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 social welfare surcharge.

Q10. 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. 70 per US$ while rate of exchange notified by RBI is Rs. 72 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 social welfare surcharge is 10% 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.

Ans.

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 $
Exchange rate as per CBIC [Note 3]	Rs. 70 per US $
Assessable value = Rs. 70 x 5,400 US $	Rs. 3,78,000
Add: Basic customs duty @ 10%	Rs. 37,800
Add: Social Welfare Surcharge @ 10%	Rs. 3,780
Sub-total	Rs. 4,19,580
Integrated tax u/s 3(7) of the Customs Tariff Act @ 12% of Rs. 4,19,580 [Note 5]	Rs. 50,349.60
Total customs duty and integrated tax payable [Rs. 37,800 + Rs. 3,780 + Rs. 50,349.60]	Rs. 91,929.60
Total customs duty and integrated tax payable (rounded off)	**Rs. 91,930**

Notes:

1. If the goods are imported by air, the freight cannot exceed 20% of FOB price [Fifth proviso to rule 10(2) of the Customs (Determination of Value of Imported Goods) Rules, 2007].
2. Rate of exchange determined by CBIC is considered [Clause (a) of the explanation to section 14 of the Customs Act, 1962].
3. 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.
4. 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 social welfare surcharge.

Q11. Compute the total customs duty and integrated tax payable under Customs law on an imported machine, based on the following information:

		US$
(i)	Cost of the machine at the factory of the exporter	20,000
(ii)	Transport charges from the factory of exporter to the 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
(vi)		Rs.
(vii)	Lighterage charges paid by the importer at port of importation	12,000
(viii)	Freight incurred from port of entry to Inland Container depot	60,000
(ix)	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 CBIC Rs. 70 per US $)
Date of entry inward	25.03.20XX (Rate of BCD 10%; Exchange rate as notified by CBIC Rs. 75 per US $)
Integrated tax payable under section 3(7) of the Customs Tariff Act, 1975	12%

Ans.

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 value	20,850
FOB value in Indian rupees @ Rs. 70/- per $ [Note 1]	14,59,500
Freight charges up to India [US $ 5,000 x Rs. 70]	3,50,000
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]	16,419.38
CIF	18,61,919.38
Add: Basic customs duty @ 10% [Note 4] [a]	1,86,192
Add: Social Welfare surcharge @ 10% [b]	18,619.20
Total	20,66,730.58
Add: Integrated tax @ 12% of Rs. 20,66,730.58 [c] [Note 5]	2,48,007.67
Total custom duty and integrated tax payable [(a) +(b) + (c)] rounded off	**4,52,819**

Notes:

1. Rate of exchange notified by CBIC on the date of presentation of bill of entry is considered [Explanation to section 14 of the Customs Act, 1962].
2. 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].
3. Insurance charges is included @ 1.125% of FOB value of goods [Third proviso to rule 10(2) of Customs Valuation (Determination of Value of Imported Goods) Rules, 2007].
4. 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].
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 Social welfare surcharge.
6. 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].

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

Q12. 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.
Ans. 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.

Q13. 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?

Ans.

(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 CBIC 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.

Other Questions

Q14. 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?

Ans.

(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.

Q15. 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.

Ans. 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. into, the transaction value shall be the price stated in the contract, unless it is not legally acceptable.

Q16. '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 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.

Additional Questions & Answers

These are apart from Examples and Q & A in main book

Ans. As per Rule 2(da), "place of importation" means the customs station, where the goods are brought for being cleared for home consumption or for being removed for deposit in a warehouse. Therefore, the outer anchorage where the goods are unloaded would not be the place of importation. 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 and shall include, the cost of transport, loading, unloading and handling charges associated with the delivery of the imported goods to the place of importation.

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.

Q17. 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:

	Rate of Exchange	Rate of Export Duty
On 26.04.20XX	1 US $ = Rs. 70	10%
On 04.05.20XX	1 US $ = Rs. 72	8%

(v) Rate of exchange is notified for export by Central Board of Excise and Customs. (Make suitable assumptions wherever required and show the workings.)

Ans.

Particulars	Amount (US $)
FOB price of goods [Note 1]	1,00,000
	Amount (Rs.)
Value in Indian currency (US $ 1,00,000 x Rs. 70) [Note 2]	70,00,000
Export duty @ 8% [Note 3]	5,60,000

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 CBIC 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.

Q18. A consignment of 800 metric tonnes of edible oil of Malaysian origin was imported by a charitable organization in India for free distribution to below poverty line citizens in a backward area under the scheme designed by the Food and Agricultural Organization. This being a special transaction, a nominal price of US$ 10 per metric tonne was charged for the consignment to cover the freight and insurance charges. The Customs House found out that at or about the time of importation of this gift consignment there were following imports of edible oil of Malaysian origin:

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

The rate of exchange on the relevant date was 1 US $ = Rs. 70.00 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.

Ans.

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. 70
   CIF Value (in Rupees) = Rs. 89,60,000
   Assessable Value = Rs. 89,60,000
   10% of Ad Valorem duty on Rs. 89,60,000 = Rs. 8,96,000
   Add: Social Welfare Surcharge @ 10% (rounded off) = Rs. 89,600
   Total custom duty payable = Rs. 9,85,600

Q19. 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 CBIC Rs. 70].
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 CBIC Rs. 73.00].
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. Social Welfare Surcharge 10%

Ans.

Computation of total customs duty and integrated tax payable

Particulars		Amount
CIF Value		2000 US Dollars
Less: Freight	500	
Insurance	100	
FOB Value		1400 US Dollars
Add: Air Freight [Note1]	280	
Insurance (actual amount)	100	380 US Dollars
		1780 US Dollars
		Amount in Rs.
Value @ Rs. 70.00 [Note 2]		1,24,600.00
Assessable Value		1,24,600.00
Basic Custom Duty @ 10% (a) [Note 3]		12,460.00
Add: Social Welfare Surcharge @ 10% on 1,24,600 (b)		1,246.00
Sub-total		1,38,306.00
Integrated tax under section 3(7) (12% on Rs. 1,38,306) (c) [Note 4]		16,596.72
Total duty and integrated tax (a +b + c) (rounded off)		30,303.00

Notes:

(1) If the goods are imported by air, the freight cannot exceed 20% of FOB price [Fifth proviso to Rule 10(2) of the Customs (Determination of Value of Imported Goods) Rules, 2007].

(2) Rate of exchange notified by CBIC 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) 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].

(4) 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 social welfare surcharge.

Q20. 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 CBIC 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 CBIC 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.

Ans.

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

Particulars	Amount (in UK Pound)
FOB value	10,000
Add: License fee required to be paid in UK [Note – 1]	400
Customs FOB value	10,400
Exchange rate is Rs. 99 per £ [Note – 2]	
	Amount in INR
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]	---
CIF Value	12,47,103.00
Assessable value	12,47,103.00
Rate of duty is 10% [Note – 6]	
Add: Basic custom duty @ 10% (Rs. 12,47,103 × 10%) – rounded off (A)	1,24,710.00
Add: Social Welfare Surcharge (10% of Rs. 1,24,710) [rounded off] (B)	12,471.00
Value for integrated tax under section 3(7) of the Customs Tariff Act, 1975	13,84,284.00
Add: Integrated tax under section 3(7) @ 12% - rounded off (C) [Note – 7]	1,66,115.00
Total customs duty and integrated tax payable [(A) + (B) + (C)]	3,03,295.00

Notes:

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 CBIC 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 [Fifth 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 [Third 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. 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].
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 social welfare surcharge.

Q21. Niketan Industries Ltd., New Delhi has imported certain machine (by sea) from Japan. From the following particulars furnished by it, work out the assessable value of the machine and customs duty payable by Niketan Industries Ltd. with appropriate working notes:

Sr. No.	Particulars	Amount in INR
i.	CIF value of the machine	4,23,379.69
ii.	Freight incurred from port of entry to Inland Container depot	25,000.00
iii.	Unloading and handling charges paid at the place of importation	40,000.00
iv.	Designing charges paid to Consultancy firm in Mumbai	10,000.00

1.	Basic Customs Duty leviable	10% advalorem
2.	Integrated tax leviable under section 3(7) of the Customs Tariff Act, 1975 is 18%.	
3.	Note: Ignore GST Compensation Cess.	

Ans.

Computation of assessable value and customs duty payable

Particulars	Amount in INR
CIF value of machine	4,23,379.69
Unloading and handling charges at the place of importation [Note-1]	Nil
Freight from port of entry to ICD [Note-2]	Nil
Designing charges paid to consultancy firm in Mumbai [Note-3]	Nil
Assessable Value	4,23,379.69
Add: Basic customs duty (BCD) @10% (rounded off)	42,338
Add: Education cesses @3% of BCD (rounded off)	1,270
Value for computing IGST	4,66,987.69
IGST @ 18% (rounded off)	84,058
Total duty and tax payable = [Rs. 42,338 + Rs. 1,270 + Rs. 84,058]	1,27,666

Notes:-

1. Only charges incurred for delivery of goods "to" the place of importation are includible in the transaction value vide rule 10(2)(a) of Customs Valuation (Determination of Value of Imported Goods) Rules, 2007. 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.
2. In case of goods imported by sea and transshipped to another custom station in India, the cost of transport associated with such transshipment is excluded in terms of sixth proviso to rule 10(2) of Customs Valuation (Determination of Value of Imported Goods) Rules, 2007.
3. Rule 10(1)(b)(iv) of Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 provides that only the design and engineering work undertaken elsewhere than in India is includible in the assessable value.

Questions from Custom Main Book

Q22. XYZ Co. has claimed before the Customs Authority that since the exports of goods in its case attracted no duty, the value for purposes of Customs Act, 1962 to be declared shall be the value of the goods, which he expects to receive on sale of goods in the overseas market. Discuss whether the stand taken by XYZ Co. is correct.

Ans. The facts of the case are similar to the Supreme Court judgment in the case of M/s. Om Prakash Bhatia v. CC [2003] 155 ELT 423. The Apex Court observed that for finding the true export value of the goods, section 14 of the Customs Act, 1962 has to be read along with section 2(41) which defines the word 'value'. Value in relation to any goods means the value thereof determined in accordance with the provisions of section 14(1). Section 14 specifically provides that in case of assessing the value of purpose of export, value is to be determined at the price at which such or like goods are ordinarily sold or offered for sale at the place of exportation in the course of international trade where the seller and buyer have no interest in the business of each other and the price is the sole consideration for the sale. Therefore, for determining the export value of the goods, the method of determining the value under section 14 has to be followed even if no duty is leviable on the export of goods. Hence, the contention of XYZ Co. in the instant case will be rejected.

Q23. Bill of entry was filed on 27-10-2017. Will you apply exchange rate notified by the Central Board of Excise and Customs on 25-9-2017 or notified on 25-10-2017?

Ans. According to Section 14, the value shall be calculated with reference to the rate of exchange as in force on the date on which a bill of entry is presented under section 46. The rates of exchange are notified by the Board in every week or at other intervals and such rates continue to be in force unless new rates are notified. Hence, for the bill of entry filed on 27-10-2017, the latest exchange rate notified by Board on 25-10-2017 will be applicable.

Q24. What shall be the value if there is a price rise between the date of contract and the date of actual importation?

Ans. As per the amended section 14(1) of the Customs Act, 1962, the value of imported or export goods shall be their transaction value. Accordingly, the value of the goods shall be the price of contract (i.e., the transaction value), even if there is price rise subsequently. Therefore, in case there is price rise between the date of contract and the date of actual importation or exportation, then, in that case too, the transaction value i.e. price determined on the date of contract shall be taken, provided that such transaction value is the sole consideration for the sale and is acceptable. - CCv. Aggarwal Industries Ltd. [2011] 272 ELT 641 (SC).

Q25. C & Co. imported a second – hand machinery and declared transaction value in the Bill of Entry filed for the purposes of assessment of duty. The Assistant Commissioner ignored the transaction value and based on the Charted Engineer's certificate showing that the machinery was in a working condition and had a residual life of 10 years he completed the assessment under Rule 9 of the Customs Import Valuation Rules, 2007 after allowing maximum depreciation of 70%. Discuss whether the action of the Assistant Commissioner is valid.

Ans. The facts in this case are similar to the facts in Tolin Rubbers Pvt. Ltd. v. CC [2004] 163 ELT 289 (SC). In this case, the Supreme Court stated that the value of the goods has to be determined as per Rule 3(1) of the Customs Valuation Rules, 1988 and only in circumstances specified under Rule 3(2) the transaction value as per Rule 3(1) has to be rejected and further determination has to be made as per Rule 9. The assessing authority had not provided any reasons for rejecting the transaction value.

Hence, the Bill of Entry made by the company and the transaction value as declared by it had to be accepted by the Department. Applying the same, it could be said that the action of the Assistant Commissioner in the instant case is not valid in law.

Q26. RI is an indenting agent of an Italian company. The agreement provides for payment of 20% commission on imported equipments supplied by RI to users in India. However, in respect of RI's own requirements of the equipment supplied by the Italian company no commission was payable as there was to be no value addition by the indenting agent. The department wants to enhance the value of the imports by 20% as according to them the Indenting Agent is a 'Related person'. Examine briefly whether the stand taken by the Department is correct.

Ans. The agent M/s. RI gets 20% commission for sale effected through him, but no commission is allowable in case of imports made by it. The Customs authorities want to load the value of imports made by M/s. RI by such 20%. The Customs authorities cannot enhance the value of imports by 20% due to the following reasons: –

(a) Related person: A mere indenting agent doesn't fall within the definition of 'related person' given under rule 2 (2) of the valuation rules.

(b) Rule 10(1): According to Rule 10(1), cost and services incurred by the buyer, value of any proceeds of subsequent sale or use of imported goods that flows directly and indirectly to the seller and also for any payment made by the buyer to the exporter as a condition of sale shall be added to the price actually paid or payable for imported goods.

In this case, the importer – buyer is RI. The 20% commission is receivable by RI on sales effected through it, it is neither incurred by RI nor it is paid by RI to the exporter – Italian company. Further, there is no allegation that any part of the proceeds of subsequent sale or use of imported equipments flows directly and indirectly to the exporter – company.
The same view has been upheld by tribunal in Mittal International v. CC [2002] 145 ELT 667 (Tri. – Del.)

Q27. The assessee M Ltd. entered into a joint venture with a foreign collaborator 'N' for promotion and selling antennas, accessories and other communication equipment. The agreement between them indicates that 'N' owned majority of equity shares in M Ltd. Technical services were provided by 'N' to M Ltd. for various functions that were carried out in respect of manufacturer of antenna system in India, for which technical service fee was paid to 'N' by M Ltd. Based on the above facts, the department opined that both M Ltd. and 'N' were related person in terms of Rules 2(2) (i) and 2(2)(iv) of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 and that the technical fee paid by M Ltd was includible in the assessable value of the imported components in terms of Rule 10(1)(c) of the Rules. Decide referring to decided case law.

Ans. The Department was not able to prove that the relationship between the assessee and the foreign collaborator had influenced the value of the imported goods.

As per the Explanation to Rule 10(1) of the Customs Import Valuation Rules, 2007, any royalty or licence fee or any other payment made for a process, which is carried out on the imported goods after importation thereof, shall be included in the assessable value of imported goods, if the same is related to the imported goods and is paid as a condition of sale.

In this case, M Ld. had imported antenna parts from N and has paid technical fees to N for various functions to be carried out on such imported antenna parts for manufacturer of antenna system in India. Though this technical fees relates to a post importation activity, the same is includible in assessable value of imported antenna parts in view of express provisions of the said explanation.

Q28. Discuss includability to assessable value under Customs Act, 1962 of the following payments made by an importer to the overseas supplier of a second hand plant in India:

(i) Dismantling charges for removing the second hand plant at the supplier's place and shipping to the Indian importer.
(ii) Fees for supervision of erection and commissioning of plant in India. For this purpose, the foreign supplier deputed their technicians in India.
(iii) Payments for tools, dies and moulds (imported along with the plant) for use in connection with the manufacture of excisable goods on successful commissioning of the plant.
(iv) Lumpsum payment and annual royalty for transfer of technical knowhow for manufacturing goods.

Ans. For computing assessable value under Customs Act, 1962 –

(i) Dismantling charges for removing the second hand plant at the supplier's place and then exporting to India is a payment which can be linked to the import of plant and such payment appears to be a payment as a condition of sale of the imported plant. Therefore such payment shall be included in arriving at value of second hand plant for customs duty purposes.
(ii) The payment of fee for supervision of erection and commissioning of the plant in India is in the nature of post import and has nothing to do with the activity of import of second hand plant and the same is not again liable to customs duty. However, if the same is a condition of sale, then the same shall form part of the transaction value.
(iii) Such payment will be included in the assessable value of goods. The purpose behind import of such tools, dies, etc. is irrelevant here.
(iv) The royalty doesn't relate to imported goods being plant, it relates to manufacture of goods in India. Hence, the same is not includible..

Q29. Discuss the includability or otherwise of the following payments made by an importer to the overseas supplier of an imported machine / equipment, to the assessable value of goods imported.

(i) Process licence fee and technology transfer fees.
(ii) Dismantling charges for removing the machine (before shipment to India) at the foreign supplier's site.

(iii) Training charges paid to supplier, for imparting training to the Indian company's personnel, on how to use the equipment. Your answer shall be with reference to Section 14 of the Customs Act, 1962.

Ans. In view of CC v. Essar Gujarat Ltd. [1996] 88 ELT 609 (SC) –

(i) Process licence fee and technology transfer fees is includible, as the same is related to imported goods / machine and is payable as a condition of sale of the imported goods, being machine.

(i) Dismantling charges for removing the second hand plant at the supplier's place and then exporting to India is a payment which can be linked to the import of plant and such payment appears to be a payment as a condition of sale of the imported plant. Therefore, such payment shall be included in arriving at value of second hand plant for customs duty purposes.

(ii) Training charges paid to supplier, for imparting training to the Indian company's personnel, or how to use the equipment is not includible, as the same is a post importation activity. However, if the same is a condition of sale, the same will form part of the transaction value under rule 10 in view of Explanation to Rule 10.

Q30. Examine the validity of the following statements with reference to the Customs Act, 1962 giving brief reasons:

(i) Service charges paid to canalizing agent are not includible in the assessable value of imports.

(ii) Design and engineering charges are includible in the assessable value of the imported goods only if the goods imported are specifically manufactured on the basis of the design and engineering specification provided by the importer.

(iii) Inspection charges are not includible in the assessable value of the imported goods, if contract does not specify for certification by an independent agency.

Ans. With reference to the Customs Act, 1962, the validity of the statements are –

(i) <u>The statement is not valid:</u> Since the canalizing agent is not the agent of the importer nor does he represent the importer abroad, purchases by canalizing agency from foreign seller and subsequent sale by it to Indian importer are independent of each other. Hence, the commission or service charges paid to the canalizing agent are includible in the assessable value as these cannot be termed as buying commission.

- Hyderabad Industries Ltd. v.UOI [2000]115 ELT 593 (SC)

(ii) The Supreme Court in Andhra Petro chemical v. CC [1997] 90 ELT 275 (SC) has held that, Design and engineering charges are includible in the assessable value when goods imported are specially manufactured on the basis of design and engineering specifications.

<u>Post-importation design and engineering charges – Includible, if related to imported goods and paid as a condition of sale:</u> Designing and engineering charges which have gone into erection, commissioning and supervision or short – term and long-term tests of machinery/ equipments in India or the value of the drawings and documents for use during construction, erection, assembly etc. of imported goods, which is relatable to post import activity, will be includible in the value of imported goods if the same is paid as condition of sale of imported goods.

(i) The statement is valid. Where there is no requirement in the contract for independent inspection and the inspection is carried out by foreign supplier on his own and is not required for the purpose of fulfilling the condition of the contract, then such charges incurred on inspection are not includible in assessable value.

- Bombay Dyeing & Mfg. v. CC [1997] 90 ELT 276 (SC)

Q31. M/s. Hind IT Co. imported laptops with Hard Disc Drivers (HDD) preloaded with operating software like Windows XP, XP home etc. The department has claimed that the said laptop along with the operating software was classifiable and assessable as a single unit. It is the claim of the assessee that the software loaded HDD should be classified and assessed separately as an exemption is available as per notification issued under section 25(1) of the Customs Act, 1962. Decide with a brief not whether the action proposed by the department is correct in law.

Ans. The action proposed by the Department is correct in law. The facts of the case are similar to CC v. Hewlett Packard India Sales (P) Ltd. [2007] 215 ELT 484 (SC). In this case, the Supreme Court observed that the pre – loaded operating system recorded in HDD in the laptop (item of import) forms an integral part of the laptop as the laptop cannot work without the operating system. A laptop without an operating system is like an empty building. Hence, laptop should be treated as one single unit and assessed accordingly. However, if the operating system had been imported as packaged software like an accessory, then the benefit of exemption notification would have been available on it.

Q32. Miss Priya imported certain goods weighing 1,000 Kgs. with CIF value US $ 45,000. Exchange rate was 1 US $ = Rs.65 on the date of presentation of bill of entry. Basic customs duty is chargeable @ 10% and SWS is applicable. IGST is 18% and GST compensation cess in NIL. As per Notification issued by the Government of India, anti – dumping duty has been imposed on these goods. The anti – dumping duty will be equal to difference between amount calculated @ US $ 60 per kg. and 'landed value' of goods. You are required to compute custom duty and anti – dumping duty payable by Miss Priya.

Ans. The following points are to be taken note of –

(i) For the purposes of the notifications imposing anti – dumping duty, "landed value" means the assessable value as determined under the Customs act, 1962 and includes all duties of customs except duties levied u/s 3, 8B, 9 and 9A of the said Customs Tariff Act, 1975.

(ii) No SWS is imposable on anti – dumping duty.

CIF Value of the consignment (in Rs.) [US $ 45000 X 65] [Assessable Value]	29,25,000
Add: Basic Customs Duty @ 10%	2,92,500
Add: SWS @ 10% on Basic Customs Duty	29,250
Landed Value / Cost of the goods	32,46,750
Add: Anti-dumping duty [Cost of commodity for the purposes of anti – dumping notification] [1000Kg. X US $ 60 per Kg. X Rs. 65 per dollar – Landed Value – Rs. 32,46,750]	6,53,250
Value for purpose of IGST	39,00,000
Add: IGST u/s 3(7) of the CTA, 1975 [18/% of Rs. 39,00,000]	7,02,000
Total duties payable [Rs. 2,92,500 + Rs. 29,250 + Rs. 6,73,725, + Rs. 7,02,000]	16,97,475

Q33. Ganga Ltd., an Indian company located at Jaipur, imported into Indian certain commodities in July, 2018 from a country which is covered by a Notification issued under Section 9A of the Customs Tariff Act, 1975. The relevant particulars relating to import are as follows:

(i) CIF value of the consignment – US $ 35,000

(ii) Quantity imported – 700 Kgs.

(iii) Exchange rate applicable – US $ 1 = Rs. 62

(iv) Basic Customs Duty (BCD) – 20%

(v) As per the Notification, the anti – dumping duty leviable will be 75% of the difference between the cost of the commodity calculated @ US $ 80 per kg. and the landed value of the commodity as imported.

(vi) IGST is 12% and GST compensation cess is NIL.

You are required to calculate the amount of total Customs duty (including anti – dumping duty) payable by Ganga Ltd.

Note: SWS may be adopted, wherever applicable. Working notes with brief reasons should form part of the answer.

Ans. Computation of total customs duty payable (amount in Rs.):

Computation of Landed Value:	
Total CIF value in INR = US $ 35,000 x Rs. 62 being Assessable Value [A]	21,70,000
Basic customs duty (BCD) @ 20% [B]	4,34,000
SWS @ 10% on BCD (rounded off) [C]	43,400
Landed Value / Cost of the goods [D]	26,47,400
Add: Anti-dumping duty (See Note) [E]	6,18,450
Value for purpose of IGST [F]	32,65,850
Add: IGST u/s 3(7) of the CTA, 1975 [12% of Rs 32,65,850] [G]	3,91,902
Total customs duty payable [(B) + (C) + (D) + (E) + (G)]	14,87,752
Note: Computation of Anti – dumping duty payable:	
Cost of commodity = 700Kg X US $ 80 X Rs. 62	34,72,000
Less: Landed value of goods	26,47,400
Difference [D]	8,24,600
Anti – dumping duty (rounded off) [(E) = 75% of (D)]	6,18,450

Q34. From the particulars given below, find out the assessable value of the imported goods under the Customs Act, 1962:

Particulars	US $
(1) Cost of the machine at the factory of the exporting country	10,000
(2) Transport charges incurred by the exporter from his factory to the port for shipment	500
(3) Handling charges paid for loading the machine in the ship	50
(4) Buying commission paid by the importer	50
(5) Freight charges from exporting country to India	1,000
(6) Exchange rate to be considered: 1 $ = Rs60	

Ans. Computation of Assessable Value of the Imported Goods –

Cost of the machine at the factory of the exporting country	$	10,000.00
Transport charges incurred by the exporter from his factory to the port for shipment [WN -2]	$	500.00
Handling charges paid for loading machine in ship	$	50.00
FOB Value	$	10,550.00
Buying commission paid by the importer [WN – 1]	$	Nil
Freight charges from exporting country to India	$	1,000.00
Insurance Charges @ 1.125% of FOB [WN-3]	$	118.69
CIF Value	$	11,668.69
CIF Value in Indian Rs. (CIF Value x Rs.60) being Assessable Value (Rounded off)	Rs.	7,00,121.00

Working Notes:

(1) Buying commission is not included in the assessable value as per Rule 10(1)(a) (i) of the Customs Valuation Rules, 2007.

(2) Transport charges incurred by the exporter from his factory to the port for shipment have been included as it is logical to presume that the same have been recovered separately from the importer.

(3) Insurance charges have been included @ 1.125% of FOB value of goods.

Q35. Computation of assessable value & customs duty:

(1) Vishal Industries imported goods from U.S.A., CIF Value bearing US $ 2600. Air freight 500 US $, insurance cost 100 US $, landing charges are not ascertainable.

(2) Date of bill of entry is 25-09-2018 and basic custom duty on this date is 10% and exchange rate notified by Central Board of Excise and Customs in US $ = Rs. 62.

(3) Date of entry inward is 21-10-2018. Basic customs duty on this date is 20% and exchange rate notified by Central Board of Excise and Customs in US $ 1= Rs. 60.

(4) Integrated tax under section 3 (7) of the Customs Tariff Act is 12%. Compute the assessable value and amount of total customs duty payable under the Customs Act, 1962. Make suitable assumptions, where required. Working notes should form part of your answer.

Ans. Computation of Assessable value and customs duty payable thereon:

CIF Value	$	2,600
Less: Air freight	$	500
Less: Insurance	$	100
FOB	$	2,000
Add: Air freight (2,000 X 20%) [WN – 1]	$	400
Add: Insurance (Actual)	$	100
CIF value being Assessable Value for customs purposes	$	2,500
Exchange rate [WN -2]	Rs.	62
Assessable value in Indian Rupees = US $ 2,500 X Rs. 62	Rs.	1,55,000
Add: Basic custom duty @ 20% (Rs. 1,55,000 X 20%) [WN – 3]	Rs.	31,000
Add: SWS @ 10% of BCD		3,100
Total for Integrated Tax	Rs.	1,89,100
Add: Integrated tax leviable u/s 3(7) @ 12% (Rs. 1,89,100 X 12%)	Rs.	22,692
Total customs duty payable (Rs. 31,000 + Rs. 3,100 + Rs. 22,692) (rounded off)	Rs.	56,792

Working Notes:

(1) In case of goods imported by air, freight cannot exceed 20% of FOB price – Rule 10 of Customs Valuation Rules.

(2) Rate of exchange notified by CBFC on the date of filing of bill of entry to be considered – Section 14 of the Customs Act, 1962.

(3) Rate of duty will be rate in force on the date of presentation of bill of entry or on the date of arrival of the aircraft, whichever is later – Section 15 of the Customs Act, 1962.

Q36. 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 US $ 20,000 (including design and development charges), which was accepted by the Trust. Other details obtained were as follows:

Particulars			Amount
Freight paid (air) (in USD)			4,500
Design & Development charges paid in USA (in USD)			2,500
Commission payable to an agent in India (in Rs.)			12,500
Exchange rate and rate of basic duty notified by CBEC is as follows:			
Date of Bill of Entry	BCD	Exchange Rat in Rs.	
08-09-2018	20%	60	
Date of Entry Inward	BCD	Exchange Rate in Rs.	
30-09-2018	30%	62	
While the inter – bank rate was 1 USD = Rs. 63			
Integrated Tax payable u/s 3(7) of the Customs Tariff Act, 1975			12%
SWS as applicable			

Compute the Assessable value and amount of total customs duty payable under the Customs Act, 1962. Make suitable assumptions where required. Working notes should form part of your answer.

Ans. Computation of assessable value and customs duty payable thereon –

Particulars	Amount
FOB value computed by Customs Officer (including design and development charges) (in US $)	20,000.00
Exchange rate (for 1 US $) [Rate of exchange notified by CBFC on the date of filing of bill of entry to be considered – Section 14 of the Customs Act, 1962]	60.00
FOB Value in Indian Rupees	12,00,000.00
Add: Commission payable to agent in India	12,500.00
Customs FOB Value	12,12,500.00
Add: Air freight (Rs. 12,12,500 X 20%) [In case of goods imported by air, freight cannot exceed 20% of Customs FOB value – Rule 10 Customs Valuation Rules]	2,42,500.00

Add: Insurance (1.125% of Rs. 12,12,500) [Insurance charges, when not ascertainable, have to be included @ 1.125% of Customs FOB value of goods – Rule 10 of Customs Valuation Rules]	13,640.63
CIF value for customs purposes being Assessable Value	14,68,640.63
Add: Basic custom duty @ 30% (Rs. 14,68,640. 633 X 30%) [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 – Section 15 of the Customs Act, 1962] [A]	4,40,592.19
Add: SWS @ 10% of Rs. 4,40,592.19 [B]	44,059.21
Total for Integrated Tax	19,53,292.03
Add: Integrated tax leviable u/s 3(7) of Customs Tariff Act (CTA) @ 12% (Rs. 19,53,292.03 x 12%) [C]	2,34,395.04
Total customs duty payable (Rs. 4,40,592.19 + Rs. 44,059.21 + Rs. 2,34,395.04) [A + B + C] (rounded off)	7,19,046.44

Q37. Mr. Backpack imported goods from 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	5,000	5,800	5,500
Air Freight	300	600	500
Insurance	500	650	600

Other details for computing assessable value and duty payable are as tabled below:

Particulars	Amount (£)
Vendor inspection charges (not required for making the goods ready for shipment)	600
Commission payable to local agent 1% of FOB in local currency	

Date of Bill of Entry	Basic Customs Duty	Exchange rate in Rs. (notified by CBEC)
18-02-2018	10%	102
Date of arrival of aircraft	Basic Customs Duty	Exchange rate in Rs. (notified by CBEC)
15-02-2018	15%	98

*Inter – bank rate 1 UK Pound = Rs. 106

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

Ans. Computation of assessable value and calculate basic customs duty payable –

CIF value (negotiated price) [WN -1]	£	5,500.00
Less: Air freight	£	500.00
Less: Insurance	£	600.00
FOB Value	£	4,400.00
Add: Vendor inspection charges [WN -2]	£	-
Freight [WN – 3]	£	500.00
Insurance – Actual	£	600.00
	£	5,500.00
Exchange rate is Rs. 102 per £ [SN-4]		
Value in Rupees	Rs.	5,61,000.00
Add: Commission payable to local agent [1% of FOB] = (US $ 4,400 X Rs. 102) x 1% [WN-5]	Rs.	4,488.00
CIF Value being Assessable Value	Rs.	5,65,488.00
Add: Basic custom duty @ 10% (Rs. 5,65,488 x 10% [WN-6]	Rs.	56,548.80
Add: SWS (10% of Rs. 56,548.80)	Rs.	5,654.88
Customs duty payable [rounded off]	Rs.	62,203.68

Working Notes:

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

(3) In case of goods imported by air, freight cannot exceed 20% of FOB price. Since actual freight is not more than 20% of FOB value, actual air freight is considered as per Rule 10(2) of Customs Valuation Rules.

(4) Rate of exchange notified by CBEC on the date of filing of entry to be considered – Section 14 of the Customs Act, 1962.

(5) Local agent's commission is includible in the assessable value as per Rule 10(1)(a)(i).

(6) Rate of duty will be the rate of force on the date of presentation of bill of entry or on the date of arrival of the aircraft, whichever is later – Section 15 of the Customs Act, 1962.

Q38. Compute the assessable value of the machine imported by M/s. Exports India Pvt. Ltd. under the Customs Act, 1962.

FOB price of the machine [US $]	10,000
Air freight paid [US $]	2,500
Insurance for transit of machine	Not Ascertainable
Cost of development work in India (Rs.)	40,000
Local agent's commission (Rs.)	10,000
Cost of local transport (Rs.)	5,000

Exchange rate applicable US $ 1 = Rs. 60. Provide explanation for your answer.

Ans. Computation of Assessable Value –

FOB price of the machine	$	10,000.00
Exchange rate to be applied in 1 US $ = Rs. 60, as notified by CBFC	Rs.	60.00
FOB price in Indian Rupees	Rs.	6,00,000.00
Add: Commission to the Agent (since not buying commission, hence includible)	Rs.	10,000.00
Customs FOB Value	Rs.	6,10,000.00
Add: Air freight (Actual Air freight i.e. Rs. 2,500 x 60 = Rs. 1,50,000 cannot exceed 20% of Customs FOB value of the goods.)	Rs.	1,22,000.00
Add: Insurance charges @ 1.125% of the Customs FOB Value	Rs.	6,862.50
Total CIF Value being Assessable Value	Rs.	7,38,862.50

Working Notes:

(1) Cost of local transport is not includible in assessable value as it is a post important activity.

(2) Cost of development work in India is not includible in the assessable value [Rule 10(1)(b)].

Q39. Determine the assessable value for the purpose of Customs Act, 1962 from the following information in respect of import of a machine from UK:

FOB Value	£ 6,000
Air Freight	£ 1,500
Design and development charges paid in UK	£ 500
Design and development charges paid in India	£ 10,000

Commission paid to local agent 1% of FOB Value

Date of Bill of Entry 10-4-2018 (Exchange rate notified by CBEC £ 1 = Rs. 100)

Date of Entry Inward 20-4-2018 (Exchange rate notified by CBEC £ 1 = Rs. 95)

Insurance charges are not ascertainable. Make assumptions where required and provide suitable explanations.

Ans. Computation of Assessable Value under the Customs Act, 1962 –

FOB Value	£	6,000.00
Add: Design and development charges paid in UK [WN -1]	£	500.00
Add: Commission to the Agent @ 1% of FOB Value [WN – 2]	£	60.00
Customs FOB value		6,560.00
Add: Air freight (restricted to 20% of Customs FOB value of goods)	£	1,312.00

Add: Insurance charges (1.125% of Customs FOB) (since not ascertainable)	£	73.80
CIF value	£	7,945.80
Exchange rate to be applied is 1 Pound = Rs. 100, prevalent on date of bill of entry	Rs.	100
Total CIF value in Indian Rs. Being Assessable Value	Rs.	7,94,580.00

Working Notes:

(1) Design & development charges paid in India have not been considered on the presumption that the same have been paid for design & development work undertaken in India. Rule 10(1)(b) of the Customs Valuation Rules provides for inclusion of only those design & development charges which have been paid for design & development work undertaken elsewhere than in India.

(2) Local agent's commission is includible in the assessable value as per Rule 10(1)(a)(i).

Q40. Compute the assessable value and Custom duty payable from the following information

(i) FOB value of machine – 8,000 UK Pounds
(ii) Freight paid (air) – 2,500 UK Pounds
(iii) Design and development charges paid in UK – 500 UK Pounds
(iv) Commission payable to local agent @ 2% of FOB in India Rs.
(v) Date of bill of entry – 24-10-2018 (Rate BCD 20%, Exchange rate as notified by CBEC Rs. 100 per UK Pound)
(vi) Date of entry inward – 20-10-2018 (Rate BCD 18%, Exchange rate as notified by CBEC Rs. 95 per UK Pound)
(vii) Integrated tax payable @ 12%
(viii) GST Compensation cess – NIL
(ix) Insurance charges actually paid but details not available.

Ans. Computation of Assessable value & customs duty –

FOB cost	£	8,000
Add: Design and development charges paid in UK	£	500
Total	£	8,500
Exchange rate to be applied is 1 £ (Pound) = Rs. 100, as notified by CBEC	Rs.	100
Total sum in Indian Rs.	Rs.	8,50,000
Add: Commission to the Agent @ 2% of FOB cost x Rs. 100 per pound	Rs.	16,000
FOB Value as per customers	Rs.	8,66,000
Add: Insurance charges (1.125% of customs FOB)	Rs.	9,742.50
Add: Air freight (20% of customs FOB)	Rs.	1,73,200.00
Total CIF Value being Assessable Value	Rs.	10,48,942.50
Add: Basic Customs duty @ 20% [1]	Rs.	2,09,788.50
Add: SWS @ 10% [2]		20,978.85
Total for Integrated tax leviable u/s 3(7)	Rs.	12,79,709.85
Add: Integrated tax u/s 3(7) @ 12% [3]	Rs.	1,53,565.18
Total imported cost (rounded off)	Rs.	14,33,275,03
Total customs duty payable – [1] + [2] + [3] (rounded off)	Rs.	3,84,332.53

Q41. Compute the duty payable under the Customs Act, 1962 for an imported equipment based on the following information:

(i) Assessable value of the imported equipments US $ 10,100.
(ii) Date of Bill of Entry 25-4-2018 basic customs duty on this date 20% and exchange rate notified by the Central Board of Excise and Customs US $ 1 = Rs. 65.
(iii) Date of Entry inwards 21-4-2018 Basic customs duty on this date 16% and exchange rate notified by the Central Board of Excise and Customs U $ 1 = Rs. 50.
(iv) Integrated tax payable under Section 3(7) of the Customs Tariff Act, 1975: 12%.
(v) GST Compensation Cess: NIL
(vi) SWS @ 10%.

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

Ans. The relevant computations are shown below –

Assessable Value	$	10,100
Exchange rate to be applied is 1 Pound = Rs. 65, as notified by CBEC	Rs.	65
Assessable value	Rs.	6,65,500.00
Add: Basic Customs duty @ 20% [1]	Rs.	1,33,100.00
Add: SWS @ 10% [2]		13,310.00
Total for Integrated tax leviable under section 3(7)	Rs.	8,11,910.00
Add: Integrated tax u/s 3(7) @ 12% [3]	Rs.	97,429.20
Total imported cost (rounded off)	Rs.	9,09,339.20
Total customs duty payable = [1] + [2] + [3] (rounded off)	Rs.	2,43,839.20

Q42. Infotech limited has imported a machine from Japan at an FOB cost of 50,000 yen (Japanese). The other expenses incurred are as follows:

(i) Freight from Japan to Indian Port 5,000 yen;
(ii) Insurance paid to insurer in India Rs. 2,500;
(iii) Designing charges paid to consultancy firm in Japan 7,500 yen;
(iv) M/s. Infotech spent Rs. 25,000 in India for development work connected with the machine;
(v) Transportation cost from India Port to Factory Rs. 7,500;
(vi) CBEC had announced exchange rate of 1 yen = Rs. 0.60 by Notification under Section 14(3) of the Customs Act, 1962. The exchange rate prevailing on that day in the market was = Rs. 0.61;
(vii) M/s. Infotech made payment to the Bank based on an exchange rate of 1 yen = Rs. 0.62;
(viii) The commission payable to the agent in India was at 5% of the FOB price in Indian Rs.

Clearly showing your workings to arrive at the total Assessable value in Rs. For purposes of levy of customs duty.

Ans. Computation of assessable value –

FOB cost	Yen	50,000
Add: Design charges	Yen	7,500
Add: Freight	Yen	5,000
Total	Yen	62,500
Exchange rate to be applied is 1 yen = Rs. 0.60, as notified by CBEC	Rs.	0.6
Total sum in Indian Rs.	Rs.	37,500.00
Add: Commission to the Agent [5% of FOB value of good] i.e. [5% of (50,000X0.6)]	Rs.	1,500.00
Add: Insurance charges	Rs.	2,500.00
Total CIF Value being Assessable value	Rs.	41,500.00

Q43. Compute the assessable value for purpose of determination of Customs duty from the following date:

	US $
Machinery imported from USA by air (FOB price)	4,000
Accessories compulsorily supplied along with the machinery	1,000
Air freight	1,200
Insurance charges	Actual not available
Local agent's commission to be paid in Indian Currency	Rs. 9,300
Transportation from Indian Airport to factory	Rs. 4,000

Exchange rate US $ 1 = Rs. 60. Provide explanation where necessary.

Ans. Computation of Assessable Value of Machinery and Accessories –

Particulars	Accessories US $	Machinery US $
FOB price	1,000.00	4,000.00
Exchange rate to be applied is 1 $ = Rs. 60, as notified by CBEC	Rs.	Rs.
Total sum in Indian Rs.	60,000.00	2,40,000.00
Add: Commission to the Agent [Allocated on pro rate basis = 60,000 : 2,40,000]	1,860.00	7,440.00

Customs FOB value in Indian Rupees	61,860.00	2,47,440.00
Add: Air freight (restricted to 20% of Customs FOB value of goods)	12,372.00	49,488.00
Add: Insurance charges @ 1.125% of the Customs FOB Value	695.93	2,783.70
Total CIF Value being Assessable Value	74,927.93	2,99,711.70

Working Notes:

(1) Since the price of the accessories is not included in the price of the machinery and is charged separately, the accessories will not be charged at the same rate as applicable to the machinery. Hence, separate assessable values for the machinery and accessories have been computed.

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

Q44. 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.

Ans. Computation of assessable value –

CIF value	US $	5,000.0
Less: Air freight	US $	1,500.0
Insurance charges	US $	500.0
FOB value	US $	3,000.0
Add: Air Freight restricted to 20% of FOB value	US $	600.0
Insurance charges (actual)	US $	500.0
CIF value (for customs purposes)	US $	4,100.0
CIF Value in Indian Rs. (CIF Value in US $ x Rs. 60 per US $) being Assessable Value	Rs.	2,46,000.0

Q45. An importer imported some goods for subsequent sale in India at $ 12,000 on CIF basis. Relevant exchange rate as notified by the Central Government / CBEC and RBI was Rs. 60 and Rs. 60.50 respectively. The item imported attracts basic duty at 10%. Integrated tax @ 12%. GST compensation cess – Nil. Arrive at the Assessable value and the total duty payable thereon.

Ans. The solution is as follows:

CIF Value	$	12,000
Exchange rate to be applied is 1 $ (Dollar) = Rs.60, as notified by CBEC	Rs.	60
Total CIF Value in Indian Rs. Being Assessable value	Rs.	7,20,000.00
Add: Basic Customs duty @ 10% [1]	Rs.	72,000.00
Add: SWS @ 10% [2]	Rs.	7,200.00
Total for Integrated tax leviable u/s 3(7)	Rs.	7,99,200.00
Add: Integrated tax u/s 3(7) @ 12% [3]	Rs.	95,904.00
Total imported cost (rounded off)	Rs	8,95,104.00
Total customs duty payable = [1] + [2] + [3] (rounded off)	Rs.	1,75,104.00

Q46. XYZ Industries Ltd., has imported certain equipment from Japan at an FOB cost of 2,00,000 Yen (Japanese). The other expenses incurred by M/s. XYZ Industries in this connection are as follows:

(i) Freight from Japan to Indian port: 20,000 Yen

(ii) Insurance paid to Insurer in India : Rs. 10,000

(iii) Designing charges paid to Consultancy firm in Japan : 30,000 yen

(iv) M/s. XYZ Industries had expended Rs. 1,00,000 in India for certain development activities with respect to the imported equipment.

(v) XYZ Industries Ltd. had incurred road transport cost from Mumbai port to their factory in Karnataka: Rs. 30,000

(vi) The Central Board of Excise and Customs had notified for purpose of Section 14(3) of the Customs Act, 1962 exchange rate of 1 yen = Rs. 0.6948

(vii) The inter bank exchange rate was 1 yen = Rs. 0.60
(viii) M/s. XYZ Industries had effected payment to the Bank based on exchange rate 1 yen = Rs. 0.6150
(ix) The commission payable to the agent in India was 5% of FOB cost of the equipment in Indian Rs.

Arrive at the assessable value for the purposes of Customs duty under the customs Act, 1962 providing brief notes wherever required with appropriate assumptions.

Ans. Computation of assessable value –

FOB cost	Yen	2,00,000
Add: Freight from japan to Indian port	Yen	20,000
Add: Design charges paid to Consultancy firm in Japan	Yen	30,000
Total	Yen	2,50,000
Exchange rate to be applied is 1 Japanese yen = Rs0.6948, as notified by CBEC	Rs.	0.6948
Total sum in Indian Rs.	Rs.	1,73,700.00
Add: Insurance charges paid in Indian Rs.	Rs.	10,000.00
Add: Commission to the Agent @ 5% of FOB value (5% of 200,000.00 x 0.6948)	Rs.	6,948.00
Total CIF Value being Assessable Value	Rs.	1,90,648.00

Working Notes:

(1) Rule 10(1) (b)(iv) of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 inter alia provides that value of development work undertaken elsewhere than in India is includible in the value of the imported goods. Thus, development charges paid for work done in India have not been included for the purposes of arriving at the assessable value.

(2) As per Rule 10(2)(a) of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007, the cost of transport of the imported goods up to the place of importation is includible for the purpose of valuation. Thus, transport cost from Mumbai port (place of importation) to the factory in Karnataka has not been considered for the purpose of customs valuation.

Q47. Assessable value of an item imported is Rs.1,00,000. Basic customs duty is 20%, Integrated tax is 12%, SWS is 10% on customs duty. No GST compensation Cess is leviable. Compute the amount of total customs duty payable. Also, state the amount of credit available to the importer and how it can be utilized by him.

Ans. Computation of total amount of customs duty payable (amount in Rs.) –

Assessable Value	1,00,000
Basic Customs Duty (BCD) @ 20% [1]	20,000
Add: SWS @ 10% [2]	2,000
Total for Integrated tax leviable u/s 3(7)	1,22,000
Add: Integrated tax u/s 3(7) @ 12% [3]	14,640
Total imported cost (rounded off)	1,36,640
Total customs duty payable = [1] + [2] + [3] (rounded off)	36,640

Total credit available to the importer shall be equal to the Integrated tax leviable under Section 3(7) of the Custom Tariff Act i.e. Rs. 14,640. It can be utilized for the payment of GST.

Q48. BSA & Company Ltd. have imported a machine from U.K. from the following particulars furnished by them, arrive at the assessable value for the purpose of customs duty payable:

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

(vii)	Buying commission paid by the buyer to his agent in U.K.	Rs. 6,000 100 U.K. Pounds

Other particulars:

(i) Inter – bank exchange rate as arrived by the authorized dealer: Rs. 98 per U.K. Pound.

(ii) CBEC had notified for purpose of Section 14 of the Customs Act, 1944, 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)

Ans. Computation of assessable value –

Particulars	UK Pound
FOB cost of the machine	10,000.00
Exchange rate to be applied is 1 UK Pound = Rs.100, as notified by CBEC	Rs.
FOB Cost of the machine in INR	10,00,000.00
Add: Materials and components supplied by the supplied by the buyer free of cost valued Commission to the Agent [The same is includible in the assessable value as per rule 10(1) (b)]	20,000.00
Add: Engineering and design charges paid to a firm in U.K. (includible as per Rule 10(1)(b))	50,000.00
Add: Licence fees relatable to imported goods paid as a condition of sale (20% of FOB value of goods) [The same is includible in the assessable value as per rule 10(1)(c)]	2,00,000.00
Customs FOB value in INR	12,70,000.00
Add: Air freight actual Rs. 3,00,000 restricted to 20% of customs FOB value	2,54,000.00
Add: Insurance paid to insurers in India [The same is includible in the assessable value as per rule 10(2)(c)]	6,000.00
Total CIF Value being Assessable Value	15,30,000.00

Q49. M/s. AMTL Ltd., Kolkata imported CNC Grinding machine from Catalyst Inc. USA, complete with accessories and spares in October 2017 for use in the manufacture of high precision micro tools.

Basic cost of machine with accessories US $ F.O.B. 50,000. Catalyst Inc. supplied one extra set of accessories valued at US $ 2,000 free of cost to cover for transit damage.

Other details available were as follows:

	Particulars		Amount
1.	Warranty Cost Payable to Catalyst Inc. (Not included in the cost of the Machine i.e. US $ 50000)	$	4,500
2.	Design & Development charges paid in USA (Not included in the cost of the Machine i.e. U.S. $ 50000)	$	6,000
3.	Licence Fee, AMTL is required to pay in USA	$	1,000
4.	Value of Drawings supplied by AMTL Ltd. Kolkta free of cost an is necessary for customizing machine to the needs of AMTL Ltd. Kolkata	$	1,000
5.	Freight by AIR	$	15,000
6.	Buying Commission paid to Indian Agent in India	Rs.	30,000

Bill of Entry presented on 10-11-2017 and the rate of exchange notified by CBEC on this date was Rs. 66.25 per US $ and rate of BCD was 7.5%.

Date of arrival of aircraft was 06-11-2017 and rate of exchange notified by CBEC on this date was Rs. 66.50 per US $ and rate of BCD was 7.5%.

Integrated Tax leviable @ 12%. GST compensation cess: Nil

Machine was insured but Insurance premium was not shown / available in / from the invoice.

From the above particulars, compute the assessable value for purpose of customs duty payable.

Make suitable assumptions wherever required.

Working notes should form part of you answer.

Note: Customs duty calculations need not be shown.

Ans. Computation of Assessable value:

Particulars		Amount
FOB value of machine with accessories	$	50,000.00
Add: Extra set of accessories supplied free of cost to cover for transit damage [WN -1]	$	Nil
Buying commission [WN-2]	$	Nil
Warranty cost [WN-3]	$	4,500.00
Design and development charges [WN-4]	$	6,000.00
License fee [WN-5]	$	1,000.00
Value of drawings supplied by AMTL Ltd. [WN-6]	$	1,000.00
Customs FOB Value	$	62,500.00
Add: Air freight i.e. 20% of US $ 62,500 [WN-7]	$	12,500.00
Insurance @ 1.125% of US $ 62,500 [WN-8]	$	703.13
CIF Value	$	75,703.13
Exchange rate is Rs. 66.25 per $ [WN-9]	Rs.	66.25
Assessable value in Rupees	Rs.	50,15,332.03

Working Notes:

(1) Sale price of machine is deemed to include the value of such accessories.

(2) Buying commission is not included in the assessable value as per Rule 10(1)(a)(i) of the Customs Valuation Rules, 2007.

(3) Warranty costs is includible, as the same is related to imported machine and is payable as a consideration of sale of the imported goods, being machine.

(4) Rule 10(1)(1)(b) of the Customs Valuation Rules provides for inclusion of only those design & development charges which have been paid for design & development work undertaken elsewhere than in India.

(5) License fees is includible in the assessable value as per rule 10(1)(c) of the Customs Valuation Rules.

(6) Value of Drawings supplied by the buyer free of cost an is necessary for customizing machine to the needs of buyer, hence will be included in the assessable value as per Rule 10(1)(b) of Custom Valuation Rules. However, if the same is undertaken in India, then the same shall not form part of Assessable Value.

(7) In case of goods imported by air, freight cannot exceed 20% of Customs FOB value as per Rule 10(2) of Customs Valuation Rules.

(8) Insurance charges not ascertainable are to be added @ 1.125% of customs FOB value in terms of rule 10 of Customs Valuation Rules.

(9) Rate of exchange notified by CBEC on the date of filing of bill of entry is to be considered as per Section 14 of the Customs Act, 1962.

Q50. M/s. S.A.S. imported 10,000 citizen calculators model no. CT 500 of Chinese origin from Singapore and declared value to be US $ 0.90 per piece in the Bill of Entry. The Customs authorities enhanced the value to be US $ 1.80 per piece on basis of price list of citizen calculator and contemporaneous imports at the same value is the action of Customs authorities justified?

Ans. The customs authorities have enhanced the value of the goods on the basis of price lists of contemporaneous imports of identical goods. The burden now vests with the importer to prove that the price at which the said goods are imported is genuine and is not influenced by any relationship.

The facts of the case are similar to that in SAS Impex v. CC [2002] 144 ELT 215 (T), in which the Tribunal held that enhancement of value on the basis of contemporaneous imports is sustainable in absence of any evidence from the assessee that the price so declared in the bill of entry is genuine.

Thus, in view of the aforesaid decision, the action of the Customs authorities is justified.

Q51. Gujarat Dry Fruits Ltd., imported dry fruits and declared the value as under –

Date of Imports	Quantity	Value declared	Country of Import
November 2018	250 MT	Rs. 25,000 per MT	Egypt
November 2018	150 MT	Rs. 25,000 per MT	Egypt

It was found that imports were also made by some other dealers as indicated below –

Date of Imports	Quantity	Value declared	Country of Import
September 2018, By importer Mumbai International	50 MT	Rs. 35,000 per MT	Dubai
October 2018, By importer Chennai Fruits Ltd.	20 MT	Rs. 40,000 per MT	Persia

The Customs Department has sought to assess the imports made by Gujarat Dry Fruits Ltd., as "contemporaneous imports" under section 14 read with Rule 4 of the Customs Import Valuation Rules, 2007. Briefly examine whether the action proposed by the department is correct.

Ans. In the given case, the Department wants to value the imported goods as per section 14 read with Rule 4. None of the conditions of Rule 4 are satisfied i.e. Sale of the goods does not appear to be at the same commercial level and the quantity of the goods is not same. As per the definition of identical goods given in Rule 2(1)(d), the goods must be produced in the same country in which the goods being valued were produced. In the given question the goods were imported from Egypt but the other imports were from Dubai and Persia. Hence, country of importation was not same. Moreover, the Department does not seem to have any objective reason and strong evidence for not treating the declared value of the imported goods as bona fide. Hence, department's action to enhance the value is not correct according to the provisions of section 14 read with the Customs Import Valuation Rules, 2007.

Q52. When are the customs authorities precluded from enhancing the value on the basis of contemporaneous imports at higher price invoking Rule 4 of the Customs Import Valuation Rules, 2007 read with Section 14 of the Customs Act, 1962.

Ans. The customs authorities are precluded from enhancing the value of the goods imported on basis of contemporaneous imports when they do not follow the methodology provided in Rule 3. The customs authorities can reject the transaction value if the conditions as provided in Rule 3 are not fulfilled. In such a case, the value will be determined proceeding sequentially through Rules 4 to 9. The value can be enhanced on the basis of identical goods or similar goods imported at or about the same time as the goods are being valued. Once the contemporaneous import does not satisfy the criteria of the identical goods or similar goods, then, the value cannot be enhanced by the customs authorities.

Q53. 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, viz transaction value of identical goods. State briefly, whether the Department's action is sustainable in law, with reference to decided cases, if any.

Ans: 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 no where been defined under the said rules. As per the common parlance, the 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 a 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. The same has been judicially decided by Supreme Court in CC v. Initiating Explosives Systems (I) Ltd. [2008] 224 ELT 343 (SC), In the light of foregoing discussion, it could be inferred that Department's action is not sustainable in law.

Q54. Discuss how the 'value' of imported goods shall be determined in the following cases –

(a) Goods are offered at specially reduced price to buyer and the buyer is asked not to disclose the specially reduced price to any other party in India.

(b) The sale involves special discounts limited to exclusive agents.

Ans. The value of imported goods shall be determined in the following cases as under –

(a) As per Section 14, (1), the value of imported goods shall be its transaction value i.e. price actually paid or payable. Hence, even if the goods are sold at specially reduced price to a buyer, the value at which such goods are sold shall be taken to be the customs value of such goods. However, the proper officer may invoke Explanation to Rule 12, where goods offered at specially reduced price to buyer forms basis to doubt the truth or accuracy of the value.

Accordingly, the proper officer 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, it shall be deemed that the value of such imported goods cannot be determined under Rule 3(1).

(b) Even if the sale involved special discounts limited to exclusive agents, the value at which such goods are sold shall be taken to be the customs value of such goods. However, the proper officer may invoke Explanation to Rule 12, where the sale involves special discounts limited to exclusive agents forms basis to doubt the truth of accuracy of the value.

Accordingly, the proper officer 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, it shall be deemed that the value of such imported goods cannot be determined under Rule 3(1).

Q55. T Ltd. imported some goods from LMP Inc. of United States by air. You are required to compute the value for purposes of customs duty under the Customs Act, 1962 from the following particulars:
GIF Value US $ 6,000; Freight & Handling paid US $ 2,000; Insurance Cost US $ 700
The bank had received payment from the importer at the exchange rate of US $ 1 = Rs. 46 while the CBIC notified exchange rate on the relevant date was US $ 1 = Rs. 45.5

Ans. The answer is as follows –

FOB Price [CIF $ 6000 – Freight & Handling $ 2000 – Insurance $ 700]	$3,300.00
Exchange rate notified by the CBIC (in force on date of presentation of bill of entry)	Rs. 45.50
Customs FoB price in Indian Rs.	1,50,150.00
Add: Cost of transport/ handling under Rule 10(2) (a) @ 20% of FoB [Actual is 2,000 $; while in case of import by air, it cannot exceed 20% of FoB i.e. 20% of 3,300 = 660 x Rs. 45.5]	30,030.00
Add: Insurance under Rule 10(2) (b) [Actual viz. 700 $ x 45.5]	31,850,00
CIF or Assessable Value	2,12,030.00

Q56. Product 'Z' was imported by Mr. X by air. The details of transactions are:

Particulars	Amount $
Price of 'Z' at exporter's factory	8,500
Freight from factory of the exporter to load airport (airport in the country of exporter)	250

Loading and handling charges at the load airport	250
Freight from load airport to the airport of importation in India	4,500
Insurance charges	2,000

Compute value of product 'Z'.

Ans. Computation of Customs Value as per Approach 1

FOB Value	$9,000
[Factory price + Freight from factory to foreign airport Loading at foreign airport	
[All this shall form part of FoB means price upto loading at foreign port / airport]	
Add: Cost of transport under Rule 10(2)(a) = Actual 4,500$ but it cannot exceed 20% of FOB; hence 20% of FOB $9,000 = $1,800	$1,800
Add: Insurance cost on actual basis under Rule 10(2)(b)	$2,000
CIF Value of Assessable Value	$12,800
Value = $12,800 x Rs. 60 [As per Section. 46, CBIC exchange rate on date of filing B/E is used/	Rs.7,68,000

Computation of Customs Value as per Approach 2 (used by ICAI in RTP May 2018]

The approach used by the RTP May 2018 is that –

- Rule 10(2) (a) covers freight/ handling in foreign country: total of all freight and handling cost (including that incurred at the foreign port of export or foreign country) shall be addable as per provisions of Rule 10(2) (a) and in case of import by air, said total cannot exceed 20% of FoB.
- FoB: FoB for this purpose shall include the freight and handling cost at foreign port.

The revised calculation is given below –

	Details	Final
Price of 'Z' at exporter's factory	$8,500	$8,500
Freight from factory of exporter to load airport (airport in country of exporter)	$250	
Loading and handling charges at the load airport	$250	
FoB	$9,000	
Add: Cost of transport & handling upto place of import under Rule 10(2)(a		$1,800
Freight from factory of the exporter to load airport (airport in the country of exporter) — $250		
Loading and handling charges at the load airport — $250		
Freight from load airport to the airport of importation in India — $4,500		
Total Actual Transport/ Handling / Unloading cost — $5,000		
It cannot exceed 20% of FoB as above — $1,800		
Add: Insurance cost on actual basis under Rule 10(2)(b)		$2,000
CIF Value or Assessable Value		$12,300
Value = $ 12,300 x Rs. 60 [As per Section. 46, CBIC exchange rate on date of filing B/E applies]		Rs. 7,38,000

Additional Questions & Answers

These are apart from Examples and Q & A in main book

This chapter includes "7 Q & A" from Custom main book. Do refer important "2 examples from Custom Main Book".

Chapter 5: - Importation, Exportation and Transportation of Goods

ICAI Test your knowledge

Q1. What is meant by 'boat notes'?

Ans. In certain specified customs ports, ships cannot come to the shore for unloading or loading, while in other ports, it is possible that not all ships arriving in the port get a berth. Further, sometimes, small import cargo is to be unloaded from a ship or small export cargo is to be loaded on a ship.

In all the aforesaid cases, 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.

Section 35 of the Customs Act stipulates that no imported goods shall be water borne for being loaded in 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 the prescribed form.

However, the CBIC may, by notification 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.

Q2. Discuss the provisions regarding transit of goods and transhipment of goods without payment of duty under the Customs Act.

Ans. Section 53 provides that any goods imported in a conveyance and mentioned in the arrival manifest or import manifest or the import report, as the case may be, as for transit in the same conveyance to any place outside India or to any customs station, may be allowed by the proper officer to be so transited without payment of duty subject to such conditions, as may be prescribed. However, the goods should not have been prohibited under section 11 of the Customs Act.

Transshipment of goods refers to transfer of goods from one conveyance to another. It may be from one port to any other major port or airport in India. Section 54 provides that:

(1) 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;

(2) where any goods imported into a customs station are mentioned in the arrival manifest or 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 under section 11 of the Customs Act.

(3) where any goods imported into a customs station are mentioned in the arrival manifest or 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.

Q3. Explain in brief the duty exemption to baggage under section 79(1) of the Customs Act, 1962.

Ans. Section 79(1) of the Customs Act, 1961 exempts the bona fide baggage of the passengers. Following baggage is passed free of duty-

(i) articles in the baggage of a passenger/crew that have been in their use for such minimum period as may be prescribed by the Baggage Rules, 2016.

(ii) articles for use by passenger or his family or bona fide gifts or souvenir, provided that the value of each such article and the total value of all such articles does not exceed the limits prescribed in the aforesaid Baggage Rules.

Q4. What is the relevant date for determining the rate of duty and tariff valuation in respect of goods imported/exported by post?

Ans. Section 83 of the Customs Act, 1962 provides the relevant date for rate of duty and tariff valuation in respect of goods imported/exported by post as under:

Sr. No.	Particulars	Relevant date for determining rate of duty and tariff valuation
1.	Goods imported by post or courier	Date on which postal authorities or the authorized courier present to the proper officer a list containing the particulars of such goods for the purpose of assessing the duty thereon.
		or
		Date of arrival of vessel or date of presentation of list to the proper officer, whichever is later (in case of imports by vessel).
2,	Goods exported by post or courier	Date on which the exporter delivers such goods to the postal authorities or the authorized courier for exportation.

Q5. Explain the obligation cast on person-in-charge on arrival of vessels or aircrafts in India under section 29 of the Customs Act, 1962.

Ans. Section 29(1) of the Customs Act, 1962 provides that 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:

(i) for the first time after arrival in India; or

(ii) 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 custom airport, as the case may be, unless permitted by the Board.

Exception:-Section 29(2) provides that the above provisions are not applicable 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. However, in such a case the person-in-charge of such vessel or aircraft has the following obligations cast on him:

(i) He shall have to report the arrival of the vessel/landing of the aircraft to the nearest customs officer or the officer-in-charge of a police station and shall produce the log book belonging to the vessel or the aircraft if demanded.

(ii) He 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. However, passengers and crew can be allowed to depart from the vicinity of, or the goods can be removed from, the vessel/aircraft if the same is necessary for reason of health, safety or preservation of life or property.

(iii) He shall comply with any directions given by any such officer with respect to any such goods.

Q6. Explain briefly the meaning of entry inwards and entry outwards with reference to the customs law.

Ans. Entry inwards is a permission granted by the proper officer to a vessel after which the master of the vessel permits unloading of the imported goods. Such entry inwards is granted only after master of the vessel delivers import general manifest to the proper officer or the proper officer is satisfied that there was sufficient cause for not delivering it. Entry inwards, however, is not required for unloading of baggage accompanying a passenger or a member of the crew, mail bags, animals, perishable goods and hazardous goods [Section 31 of the Customs Act, 1962].

Entry outwards is a permission granted by the proper officer to a vessel to go on a foreign voyage to the port of consignment. The master of the vessel permits loading of export goods only after the proper officer grants entry outwards to the vessel. However, entry outwards is not required for loading of baggage and mail bags [Section 39 of the Customs Act, 1962].

Additional Questions & Answers

These are apart from Examples and Q & A in main book

Q7. Which class of importers is required to pay customs duty electronically? Name the dedicated payment gateway set up by the Board (CBIC) to use e-payment facility easily by an importer.

Ans. E-payment of customs duty is mandatory for-

(i) Importers paying customs duty of Rs. 1,00,000 or more per bill of entry

(ii) Importers registered under Accredited Client Programme

The dedicated payment gateway set up by the Board is called 'ICEGATE' [Indian Customs Electronic Commerce/Electronic Data interchange (EC/EDI) Gateway].

Q8. Mr. Anil and his wife (non-tourist Indian passengers) are returning from Dubai to India after staying there for a period of two years. They wish to bring gold jewellery purchased from Dubai. Please enumerate provisions of customs laws for jewellery allowance in their case.

Ans. As per rule 5 of the Baggage Rules, 2016, a passenger who has been residing abroad for more than one year and returns to India shall be allowed duty free clearance of jewellery in bona fide baggage as under:

- Jewellery upto a weight of 20 grams with a value cap of Rs. 50,000 for a gentlemen passenger
- Jewellery upto a weight of 40 grams with a value cap of Rs. 1,00,000 for a lady passenger

Thus, in the given case, Mr. Anil would be allowed duty free jewellery upto a weight of 20 grams with a value cap of Rs. 50,000 and his wife would be allowed duty free jewellery upto a weight of 40 grams with a value cap of Rs. 1,00,000.

Further, in addition to the jewellery allowance, Mr. Anil and his wife would also be allowed duty free clearance of jewellery worth Rs. 1,00,000 (Rs. 50,000 per person) as part of free baggage allowance.

Q9. What is the new name of Customs House Agent?

Ans. Customs House Agents are now known as "Customs Brokers" in accordance with the global practice and internationally accepted nomenclature.

Q10. Differentiate between Inland Container Depots (ICD) and Container Freight Stations (CFS).

Ans.

Inland Container Depot (ICD)	Container Freight Station(CFS)
(i) ICD is a customs station like a port or air cargo unit for the purpose of unloading of imported goods and loading of export goods or any class of such goods.	(i) CFS is only a custom area located in the jurisdiction of a Principal Commissioner/ Commissioner of Customs exercising control over a specified custom port, airport, land customs station/ICD. It is an extension of a customs station set up with the main objective of decongesting the ports.
(ii) ICD can have an independent existence as it is a 'self contained customs station'.	(ii) CFS by itself cannot have an independent existence; it has to be linked to a customs station within the jurisdiction of the Principal Commissioner/ Commissioner of Customs.
(iii) Customs manifests, bills of entry, shipping bills and other declarations are filed in an ICD. Further, assessment and all the activities related to clearance of goods for home use, warehousing, temporary admissions, re-export, temporary storage for onward transit and outright export, transhipment, etc. take place in an ICD.	(iii) In CFS, only a part of the customs process-mainly the examination of goods-is normally carried out and goods are stuffed into containers and de-stuffed therefrom. Aggregation/ segregation of cargo also takes place at CFS.

Q11. State the provisions of transhipment of goods without payment of duty under section 54 of the Customs Act, 1962.

Ans. Provisions relating to transhipment of goods without payment of duty under section 54 of the Customs Act, 1962 are as follows: -

1. Where any goods imported into a customs station are intended for transhipment, a bill of transhipment shall be presented to the proper officer in the prescribed form. Where the goods are being transhipped under an international treaty or bilateral agreement between the Government of India and Government of a foreign country, a declaration for transhipment instead of a bill of transhipment shall be presented to the proper officer in prescribed form.
2. Subject to the provisions of section 11, where any goods imported into a customs station are mentioned in the import manifest or the import report, as the case may be, as for transhipment to anyplace outside India, such goods may be allowed to be so transhipped without payment of duty.
3. Where any goods imported into a customs station are mentioned in the arrival manifest or import manifest or the Import report, as the case may be, as for transshipment:-
    a. to any major port as defined in the Indian Ports Act, 1908 (15 of 1908), or the customs airport at Mumbai, Calcutta, Delhi, or Chennai or any other custom port or customs airport which the board may, by notification in the Official Gazette, specify in this behalf, or
    b. to any other customs station and the proper officer is satisfied that the goods bonafide intended for transhipment to such customs station, the proper officer may allow the goods to be transhipped without payment of duty, subject to such conditions as may be prescribed for the due arrival of such goods at the customs station to which transshipment is allowed.

Q12. Explain the procedure prescribed in Customs Act, 1962 in case of goods not cleared, warehoused or transhipped within 30 days after unloading.
Ans. If there are any goods imported from a place outside India, which are not cleared within 30 days from the date of unloading, the custodian of the cargo is unnecessarily burdened with the custody of the goods. It also deprives the customs department of its legitimate revenue in the form of customs duty. The 30 days have been considered to be sufficient time for any importer to make up his mind whether the goods should be cleared into town on payment of duty or whether they should be transhipped or whether they should be deposited in a warehouse. If such imported goods are not cleared either for home consumption or for warehouse within 30 days or within such further time as the proper officer may allow or if the title to any imported goods is relinquished, the custodian of the goods is permitted, with the approval of the customs department and after giving notice to the importer, to sell the goods by auction.
In the case of sensitive goods like animals, foodstuffs and hazardous goods etc. the custodian with the approval of the proper officer can sell the goods even before the expiry of the 30 days limit. Similarly, in the case of arms or ammunition, which cannot be sold in public auction, the disposal is regulated by the rules made in this regard.

Other Questions

Q13. M/s Pipli Imports Ltd. imported certain goods, which were unloaded in the customs area on 01.10.20XX. When order for clearance was passed by proper officer on 05.10.20XX, it was found that there was some pilferage of such goods. As the imported goods were in the custody of Port Trust, the Department demanded duty from the custodian under section 45(3) of the Customs Act, 1962, on such pilferage. The Port Trust denied such demand contending that it was not an approved custodian falling under section 45 and possession of goods by it was by virtue of powers conferred under the Major Port Trust Act, 1963. Hence, it is not liable for customs duty on pilfered goods. M/s Pipli Imports Ltd. has also asked the Port Trust to make good the loss of goods. Examine, whether the demands made by the Department and M/s Pipli Imports Ltd. are justified in law, referring to decided case law.

Ans The facts of the case are similar to the case of Board of Trustees v. UOI (2009) 241 ELT 513 (Bom HC DB), wherein the High Court held that considering the language of section 45(3), the liability to pay duty is of the person, in whose custody the goods remain as an approved person under section 45 of the Act. Therefore, section 45(3) applies only to the private custodians who are required to be approved by Principal Commissioner/ Commissioner of Customs under section 45(1). Accordingly, the major ports and airports covered under Major Port Trust Act, 1963 who do not require any approval under section 45(1), are not covered by section 45(3). Thus, the Department cannot demand duty from Port Trust on the pilferage under section 45(3) of the Customs Act, 1962. Section 45(3) of the Customs Act, 1962 holds the custodian responsible only in respect of the customs duty in respect of pilfered goods. It does not extend to the value of goods lost. However, the Port Trust, as bailee of the goods, is liable for value of the goods to the importer.

Q14. State the difference between transit and transhipment of goods under the provisions of the Customs Act.
Ans.

Transit	Transshipment
(i) Section 53 of the Customs Act, 1962 provides for transit of goods.	(i) Section 54 of the Customs Act, 1962 provides for transshipment of goods.
(ii) In case of transit of goods, goods are allowed to remain on the same conveyance.	(ii) In case of transshipment of goods, the conveyance changes i.e., the goods are unloaded from one conveyance and loaded in another conveyance.
(iii) In case of transit of goods, there is continuity of records.	(iii) In transshipment of goods, continuity in the records is not maintained as the goods are transferred to another conveyance.

Q15. An importer imports goods from USA, but does not clear such goods from the port within the prescribed period of 30 days. Resultantly, the imported goods are sold under the Customs Act, 1962 and sale proceeds applied for specified purposes as per Sec 150 of the customs Act. Explain how will the balance of sale proceeds (left after being applied for the specified purposes) be disposed?
Ans. The balance sale proceeds left after being applied for the purposes specified U/s 150 shall be paid to the owner of the goods. However, where it is not possible to pay the balance of sale proceeds, if any, to the owner of the goods within 6 months from the date of sale of such goods or such further period as the Principal Commissioner of Customs or Commissioner of Customs may allow, such balance of sale proceeds shall be paid to the Central Government.

Q16. Write short note on warehousing without warehousing (Section 49 of the Custom Act, 1962).
Ans. Where the Assistant Commissioner/Deputy Commissioner of Customs is satisfied on the application of the importer that—

(a) the goods cannot be cleared within a reasonable time in the case of imported goods, whether dutiable or not, entered for home consumption.
(b) the goods cannot be removed for deposit in a warehouse within a reasonable time in the case of any imported dutiable goods, entered for warehousing.

then in such cases, goods can be stored in a public warehouse for a period not exceeding 30 days. Such goods deposited under public warehouse will not be covered under Chapter IX of the Act. However, the Principal Commissioner/Commissioner of Customs may extend such period of storage for further 30 days at a time.

Q17. Gregory Peg of foreign origin has come on travel visa, to tour in India. He carries with him, as part of baggage, the following:

Particulars	Amount in INR
Travel Souvenir	85,000
Other articles carried on in person	1,50,000
120 sticks of cigarettes of Rs. 100 each	12,000

Fire arm with 100 cartridges (value includes the value of cartridges at @ Rs. 500 per cartridge)	1,00,000

Determine customs duty payable, if the effective rate of customs duty is 38.50% inclusive of SWS, with short explanations where required. (CA Final May 18 Old)

Ans. As per rule 3 of Baggage Rules, 2016, tourist of foreign origin excluding infant is allowed duty free clearance of

(i) travel souvenirs; and

(ii) Articles up to the value of Rs. 15,000 (excluding inter alia fire arms, cartridges of fire arms exceeding 50 and cigarettes exceeding 100 sticks), if carried on in person.

Particulars	Duty Free Allowance in INR	Non Duty Free Allowance in INR
Travel souvenir	Nil	-
Other articles carried on in person	1,50,000	-
Cigarettes [100 sticks can be accommodated in General Free Allowance (GFA)]	10,000	2,000
Fire arms cartridge (50 cartridges can be accommodated in GFA)	25,000	25,000
Fire Arms (Rs. 1,00,000-Rs. 50,000)		50,000
Baggage than can be accommodated in GFA	1,85,000	-
Less: GFA	15,000	-
Baggage on which duty is payable	1,70,000	77,000
Duty Rate	38.5%	110%
Duty Payable	65,450	84,700

Note: Fire arms, cartridges of firearms exceeding 50 and cigarettes exceeding 100 sticks are not chargeable to rate applicable to baggage [Notification No. 26/2016 Cus. dated 31.03.2016]. These items are charged @ 100% applicable to baggage under Heading 9803 of the Customs Tariff.

Questions from Custom Main Book

Q18. ITDC as a canalizing agent imported certain goods and stored them in a bonded warehouse. A private party obtained an import licence and approached ITDC for clearance of these goods. ITDC filed ex-bond Bill of Entry on 29th January. This was returned by customs authorities to ITDC, after due processing, for payment of duty. The private party, in the meantime, changed his mind and decided not to clear the goods and informed ITDC accordingly who in turn, by their requested the Customs Department to cancel the Bill of Entry. This was done. Subsequently, the Customs Department demanded interest since the duty had not been paid within one day of assessment of the Bill of Entry as stipulated by Section 47 of the Customs Act. Do you think that the demand for interest is sustainable? Discuss.

Ans. As per section 47(2) of Customs Act, interest in payable on customs duty till date of payment of duty, if duty is not paid within one working day after Bill of Entry is returned. In this case, no customs duty was payable, since Bill of Entry was cancelled. Hence, no interest is payable, since duty itself was not payable on the Bill of Entry which was returned after assessment. Hence, the demand for interest is not sustainable in law.

Q19. Can the time –limit prescribed under section 48 of the Custom Act, 1962 for clearance of the goods within 30 days be read as time –limit for filing of bill of entry under section 46 of the Customs Act, 1962? You may take the help of case law, if any, for you decision.

Ans. The Gujarat High Court in CC. v. Shreeji Overseas (India) Pvt. Ltd. [2013] 289 ELT 401 (Guj.) has held that, there is no limit prescribed u/s 46 for filing of bill of entry. Section 48 which authorizes the customs authorities to sell goods if they are not cleared for home consumption or warehoused or transshipped within 30 days after unloading thereof at customs station cannot be treated as time limit for filing bill of entry. 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 u/s 117 of Customs Act, 1962.

Additional Questions & Answers

These are apart from Examples and Q & A in main book

Q20. Mr. Devendra, an Indian Entrepreneur, went to China to explore new business opportunities on 5.4.2018. The following details regarding imports are submitted by him with the Customs authorities on return to India on 20.01.2019.

(a) 2 Music systems each worth Rs.23,000.

(b) Jewellery brought by Mr. Devendra worth Rs.49,000. (18 Grams)

Write a brief note on his eligibility with regard to duty free baggage allowances as per the Baggage Rules, 2016.

Ans. An Indian resident arriving from any country other than Nepal, Bhutan or Myanmar, shall be allowed clearance free of duty articles in his bona fide baggage,:

(i) Used personal effects, travel souvenirs; and

(ii) Articles other than those mentioned in Annexure I, upto the value of Rs.50,000 if these are carried on the person or in the accompanied baggage of the passenger.

However, since his period of stay abroad does not exceed 1 year, he will not be eligible for additional allowance in respect of jewellery.

Computation of Custom duty payable by Mr. Devendra

	(amount in Rs.)
(1) 2 Music systems each worth Rs.23,000	46,000
(2) Jewellery brought by Mr. Devendra (can be accommodated in General Free Allowance)	49,000
Total dutiable goods imported	95,000
Less: General Free Allowance under Rule 3	50,000
Balance Goods on which duty is payable	45,000
Customs Duty payable @ 38.50%	17,325

Q21. Mrs. and Mr. Kapoor visited Germany and brought following goods while returning to India on 18.4.2018:

Their personal effects like clothes, etc., valued at Rs.35,000.

A personal computer bought for Rs.52,000

A laptop computer bought for Rs.95,000

Two liters of liquor bought for Rs.3,000

A new camera bought for Rs.47,400

What is the amount of customs duty payable?

Ans. In this question, Mrs. and Mr. Kapoor have brought certain goods while returning to India. The question doesn't mention whether the same have brought through separate baggage or through a single baggage. If the goods have been brought in a single baggage, the same would be supported by a single baggage declaration form and, in that event, the general free allowance will be available only once and the same cannot be pooled in respect of Mr. Kapoor and Mrs. Kapoor separately.

However, if the goods are brought in separate baggage's support by two separate baggage declaration forms, the general free allowance will be available separately to Mrs. And Mr. Kapoor.

It has been assumed that Mrs. and Mr. Kapoor have brought two separate baggage in a manner so as to lower the incidence of customs duty. Accordingly,:

Particulars	Mrs. Kapoor
Personal effects like clothes, etc.	Exempt
Laptop computer	Exempt
Personal computer (assumed that it has been brought on account of Mrs. Kapoor)	52,000
Total	52,000
Less: General Free Allowance under Rule 3 (Since both have filled separate baggage declaration forms, hence, they will be eligible for GFA separately)	50,000
Assessable Value	2,000
Customs Duty @ 38.50%	770

Particulars	Mr. Kapoor
Two litres of liquor (assumed that it has been brought on account of Mr. Kapoor)	3,000

New camera (assumed that it has been brought on account of Mr. Kapoor)	47,400
Less: General Free Allowance under Rule 3 (Since both have filled separate baggage declaration forms, hence, they will be eligible for GFA separately)	50,000
Assessable Value	400
Customs Duty @ 38.50%	154

Hence, total customs duty payable = Rs. 924

In case only one baggage declaration form is given by Mr. & Mrs. Kapoor than duty free allowance shall be worked out as under: (Amount in Rs.)

Particulars	Mrs. Kapoor
Personal effects like clothes, etc.	Exempt
Laptop computer	Exempt
Personal computer (assumed that it has been brought on account of Mrs. Kapoor)	52,000
Two litres of liquor	3,000
New camera	47,400
Total	1,02,400
Less: General Free Allowance under Rule 3 (Since both have filled separate baggage declaration forms, hence, they will be eligible for GFA separately)	50,000
Assessable Value	52,400
Customs Duty @ 38.50%	20,174

Q22. M/s. XYZ Ltd. imported certain goods valuing Rs. 30 Lakhs (assessable value) from America by post. Compute the amount of duty payable by the importer in the light of the following information:

Date of presentation of a list containing particulars of said goods to proper officer of customs	15-05-2017
Rate of duty prevalent on the date of such presentation	10%
Date of arrival of vessel through which the packet containing the said goods was imported	20-05-2017
Rate of duty prevalent on the date of such arrival	7.50%

Ans. As per Section 83 of the Customs Act, 1962, in case of importation of goods by post, the date for determination of rate of duty shall be, -

(a) the date on which postal authorities present a list containing particulars of the said goods to the proper officer of customs; or

(b) if such goods are imported by a vessel, the date of arrival of the vessel, whichever is later. In this case, the date of arrival of vessel, being later in time, shall be the relevant date and the rate of duty prevalent on that date shall be applicable.

Therefore, duty payable will be 7.5% as increased by SWS @ 10% = 8.25% of Rs. 30 Lakhs = Rs 2,47,500.

Q23. On 15-6-2018 M/s. XYZ Ltd. delivered goods valuing Rs. 20 Lakhs (assessable value) to the postal authorities for the purpose of export by post to Germany. The order for clearance of such goods for export was made on 29-6-2018, but the goods could actually be exported on 01-07-2017. The rates of duty prevalent on the said dates were 10%, 15% and 20% respectively. Determine the amount of customs duty payable?

Ans. As per section 83, in the case of goods exported by post, the relevant date for determination of rate of duty shall be the date on which the exporter delivers such goods to the postal authorities i.e. 15-06-2018. Hence, the amount of customs duty payable =10% of Rs. 20 Lakhs = Rs. 2,00,000.

Q24. What is the relevant date for determination of rate of duty under the Customs Act, 1962 in the case of clearance of baggage?

Ans. As per section 78 of the Customs Act, 1962, the relevant date for determination of rate of duty in case of clearance of baggage is the date on which a declaration is made in respect of such baggage under section 77.

Additional Questions & Answers

These are apart from Examples and Q & A in main book

Chapter 6: - Warehousing

This chapter includes "11 Q & A" from Custom main book. *Do refer important "2 examples from Custom Main Book".*

ICAI Test your knowledge

Q1. Explain the power of the Central Government to exempt imported material used in the manufacture of goods in a warehouse with reference to the provisions of the Customs Act, 1962.

Ans. The policy of the Government in permitting manufacture in bond had been to encourage growth of Indian industry. Thus, instead of attaching the difference in duty, that is lost in the process of manufacture in bond, the Government is prepared to forego it totally or partially. Section 66 of the Customs Act deals with this power. The main conditions of section 66 are:

- imported materials are used in the manufacture of any goods in accordance with the provisions of section 65
- the import duty leviable on the imported materials exceeds the rate of duty leviable on the finished products
- the Central Government is satisfied that in the interest of establishment or development of a domestic industry, it is necessary to give protection to the finished products. Then, the Central Government may by an official notification in the Gazette, exempt the imported material, from the whole or part of excess duty.

Other Questions

Q2. Comment on the validity of the following statements:

(a) Goods, other than capital goods, intended for use in any hundred per cent exportoriented undertaking, can be warehoused till the expiry of five years.

(b) Interest free period of ninety (90) days under section 61(2) in respect of warehoused goods (not intended for being used in 100% EOU) commences from the date on which an into-bond bill of entry in respect of such goods is presented.

Ans.

(a) Invalid. Goods, other than capital goods, intended to be used in a 100% EOU/ STP unit/ EHTP unit can be warehoused till the consumption or clearance of such goods from the warehouse. Further, capital goods intended to be used in a 100% EOU can also be warehoused till the clearance of such goods from the warehouse.

(b) Invalid. As per section 61(2) of the Customs Act, 1962, if goods (not intended for being used in 100% EOU, STP unit, EHTP unit) remain in a warehouse beyond a period of 90 days from the date on which the order under section 60(1) is made, interest is payable @ 15% on the amount of duty payable at the time of clearance of the goods, for the period from the expiry of the said 90 days till the date of payment of duty on the warehoused goods.

In other words, the relevant date for determining the commencement of the period of 90 days is the date of order made under section 60(1) permitting removal of goods from the customs station for deposit in a warehouse, and not the date on which into-bond bill of entry in respect of such goods is presented.

Q3. Please provide examples to explain Section 65 (Manufacutre and other operations in relation to goods in a warehouse) of Custom Act, 1962.

Ans.

Example 1:

Let us take the case of cutlery manufactured out of imported high speed cutting steel strips. Locally procured plastic is used for providing handles to the cutlery i.e. knife, fork, etc. In a batch process 200 kg imported steel strips and 100 kg plastic is issued for the manufacture of the cutlery items. 400 gross knives are manufactured and they are cleared for home consumption. The steel strip content in the above knives is 178 kg. The weight of the plastic handles is 85 kg. The waste is in the form of shaving etc. The total weight of the waste is [(200+100)(178+85)=37kg]. The steel content of the waste is 22 kg. So import duty of customs at the rate applicable to steel strips should be collected on the waste. The other alternative is where the finished goods are exported out of the country. Take the same example. In this case the manufacturer has two options. He can destroy the waste. Then he will not be required to pay duty on the steel strip content in the waste. If he does not choose to destroy the waste, then he has to pay duty on the steel strip content in the waste. Remission of duty on the imported material content in the waste or refuse is allowed only when the final product concerned is exported out of India and the waste is destroyed.

Example 2:

Let us now take an example where the final products are both exported and cleared for home consumption. The question of appropriating the waste will have to be decided first. The imported raw material is rubber. The end product is motor vehicle tyre. The additional materials used are (1) beading wire, (2) tyre cord warp sheet (3) chemicals and (4) mineral oil.

Total quantity of rubber issued	1500 kg
Weight of beadwire used	10 kg
Weight of tyre chord warp sheet used	180 kg
Weight of chemical used	4 kg
Weight of mineral oil used	16 kg
Total weight of raw materials issued	1710 kg
Total no. of tyres manufactured 100pcs Weight per tyre	16.5 kg
Thus total weight 100 tyres	1650 kg
Wastage	60 kg
Total no. of tyres cleared for home consumption	25 pcs
Total no. of tyres exported	75 pcs

Wastage relatable to tyres exported 60 kg × 75/100 = 45

Imported rubber content in the waste relatable to the exported tyres = 45 × 1500/1710 = 39.5 kg(appx)

Import duty leviable on the import rubber content in the waste can be remitted if 45 kgs of the waste are destroyed.

Weight of waste relatable to tyres cleared for home consumption = 15 kg
Imported rubber content in the waste = 13.2 kg
Import duty is compulsorily leviable on this quantity of import rubber.

Questions from Custom Main Book

Q4. Explain briefly the difference between "Public Bonded Warehouse" and "Private Bonded Warehouse" under the Customs Act, 1962.

Ans. The following are major points of difference –

Basis	Public Bonded Warehouses	Private Bonded Warehouses
Section	The provisions of Section 57 are applicable in case of public warehouses.	The provisions of Section 58 are applicable in case of private warehouses.
Goods that can be deposited	Public warehouse is licensed by Principal Commissioner of Customs or Commissioner of Customs wherein dutiable goods may be deposited.	Private warehouse is licensed by Principal Commissioner of Customs or Commissioner of Customs wherein dutiable goods imported by or on behalf of the licensee may be deposited.

Additional Questions & Answers

These are apart from Examples and Q & A in main book

Q5. Write a brief note on the changes made by Finance Act, 2016 with reference to amount of Warehousing Bond and Security Under Section 59 of Customs Act, 1962.

Ans. The Finance Act, 2016 has enhanced the amount of warehousing bond executed under section 59 of the Customs Act, 1962 from twice the amount of the duty involved to thrice the amount of duty amount involved. Further, in addition to the bond, importer will also be required to furnish security as may be prescribed.

Q6. Consider the following cases and compute the amount of import duty, if any, payable in each case-

(a) 20,000 Kgs. of steel was imported and was deposited in warehouse. The said steel was used in manufacture of steel spoons. 19,800 Kgs. of steel spoons manufactured and 200 Kgs. of steel waste has arisen during manufacture. The said 19,800 Kgs. of steel spoons is exported out of India.

(b) What will be your answer if in case (a) above, the entire 19,800 Kgs. of steel spoons is sold in the domestic market.

(c) What will be you answer if in case (a) above, 50% of the steel spoons are exported out of India and balance are sold in the domestic market.

Ans. The computation of import duty payable in the aforesaid cases is as follows –

(a) Since the whole of the quantity of steel spoons manufactured out of imported steel has been exported out of India, hence, the import duty payable on the import of steel shall be remitted. However, such remission shall be granted only, if –

   (i) the steel waste of 200 Kg. is destroyed; or

   (ii) duty is paid on such steel waste as if it had been imported into India in such waste form.

(b) Since the entire quantity of steel spoons has been sold in the domestic market, hence, the import duty will be levied on entire 20,000 Kgs. of steel.

(c) Since 50% of the steel spoons have been exported out of India, hence, duty payable on 9,900 Kgs. of steel imported in India shall be remitted, if the proportionate waste of 100 Kg. is destroyed or duty is paid thereon as if the same was imported in waste form. Regarding the 50% steel spoons, which have been sold in the domestic market, the import duty of steel shall be payable on the entire 10,000 Kgs. of steel pertaining to such steel (along with the waste relating to such 50% steel spoons i.e. 100 Kg. Waste).

Q7. With reference to Customs Act, 1962, explain briefly the "relevant date" for determination of rate of duty leviable on the imported material content in the waste or refuse. (CA Final May 2017)

Ans. Section 65 of the Customs Act, 1962 provides that:-

i. if the finished goods manufactured in warehouse are exported, import duty shall be remitted on the quantity of the warehoused goods contained in so much of the waste/refuse as has arisen from the operations carried on in relation to the goods exported if such waste or refuse is either destroyed or duty is paid on such waste/refuse as if it had been imported into India in that form.

ii. if the finished goods manufactured in warehouse are cleared for home consumption, import duty will be charged on the quantity of the imported material contained in the waste or refuse.

Section 15(1) of the Customs Act, 1962 lays down that the rate of duty applicable to any imported goods, is the rate in force on the date of –

(a) presentation of bill of entry or the date of entry inwards of the vessel/arrival of the aircraft, whichever is later, in case of goods entered for home consumption under section 46 of the Customs Act, 1962,

(b) presentation of bill of entry for home consumption in case of goods cleared from a warehouse under section 68 of the Customs Act, 1962,

(c) payment of duty in case of any other goods.

Therefore, the relevant date for rate of duty leviable on the imported material content in the waste or refuse would be the date of filing of ex-bond bill of entry or date of payment.

This is ICAI May 17's suggested answer. Although it may be date of payment.

Q8. BL Ltd. imported Super Kerosene Oil (SKO) and stored in a warehouse. An ex – bond bill of entry for home consumption was filed and duty was paid as per rate prevalent as on the date of presentation of such bill of entry; and the order for clearance for home consumption was passed. On account of highly combustible nature of SKO, the importer made an application to permit the storage of such kerosene oil in the same warehouse until actual clearance for sale / use and the application was allowed. When the goods were actually removed from the warehouse, the rate of duty got increased. The department demanded the differential duty. The company challenged the demand. Whether it will succeed? Discuss briefly taking support of decided case law(s), if any.

Ans. Yes, the company will succeed. The facts of the given situation are similar to the case of CC v. Biecco Lawrie Ltd. [2008] 223 ELT 3 (SC) wherein the Supreme Court has held that where duty on the warehoused goods is paid and out of charge order for home consumption is made by the proper officer in compliance of the provisions of section 68, the goods removed in smaller lots have to be treated as cleared for home consumption and importer would not be required to pay anything more. Further section 49 of the Customs Act, 1962 inter alia also provides that imported goods entered for home consumption if stored in a public warehouse, or in private warehouse on the application of the importer that the same cannot be cleared within a reasonable time shall not be deemed to be warehoused goods for the purposes of this Act, and accordingly the provisions of Chapter IX shall not apply to such goods.

Q9. An importer, having received 100 casks of whisky from Scotland by a vessel, warehouses them in a bonded place. Each cask is reported to contain 1,000 liters. At the time of removal of goods, it is found that 50 cases contained only 980 liters each. The importer claims that there has been a loss in storage and hence no duty can be levied on the shortage. Explain the relevant provisions of the Customs Act, 1962 regarding shortage of volatile goods and state, with reasons, how would you decide the case.

Ans. Section 70 provides for the remission of duty in case of shortage of the volatile goods, which are warehoused. The Assistant Commissioner or the Deputy Commissioner of Customs are empowered to remit the import duty leviable on such deficiency if following conditions are satisfied:

- The goods should be found deficient in quantity at the time of removal from the bonded warehouse.
- This deficiency should be on account of natural loss i.e. evaporation etc.
- These provisions are applicable only to such goods as are notified by the Central Government. For Example – 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.

Hence, in the present case all the conditions as listed out in Section 70 are fulfilled. The loss of 2% is minimal in nature which can be justified to be on account of natural causes. Hence, the importer will be able to claim remission of duty on such goods.

Q10. Clearly mention the relevant date in the following cases of goods warehoused under bond:

(i) Rate of exchange, when goods are removed for home consumption.
(ii) Rate of duty, when goods are removed for home consumption.
(iii) Rate of duty, if the goods are not removed from warehouse within the permissible period.

Ans. Relevant date in the following cases of goods warehoused under bond –

(i) The relevant date for rate of exchange is the date on which the bill of entry is presented for warehousing under section 46 of the Customs Act, 1962 and not when bill of entry is presented under section 68 for clearance from warehouse.

(ii) As per section 15(1) (b) of the Customs Act, 1962 rate of duty as prevalent on date of presentation of bill of entry for home consumption for clearance from warehouse is applicable and to the rate prevalent when goods were removed from customs port.

(iii) Goods which are not removed within the permissible period are deemed to be improperly removed on the day it should have been removed. Thus, duty applicable on such date i.e. last date on which the goods should have been removed in relevant and not the date on which the goods were actually removed.

Additional Questions & Answers

These are apart from Examples and Q & A in main book

Q11. M/s. Impex imported some consignment of goods on 1-6-2017. A bill of entry for warehousing of goods was presented on 5-6-2017 and the materials were duly warehoused. The goods were subject to duty @ 50% advalorem. In the meanwhile on 1-7-2017 an exemption notification was issued reducing the effective customs duty @ 30%, advalorem. M/s. Impex filed their bill of entry for home consumption on 1-8-2017 claiming duty @ 30% advalorem. However, customs department charged duty @ 50% advalorem being the rate on the date of clearance into the warehouse.
Explain with reference to the provisions of the Customs Act, 1962:

(a) The rate of duty applicable for clearance for home consumption in this case.
(b) Whether the rate of exchange on 1-8-2017 could be adopted for purpose of conversion of foreign currency into local currency.

Ans.

(a) Section 15 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 Ex – bond clearance 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 01-08-2017, rate of duty is the rate prevalent on the said date viz. 30%.

(b) 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., 05-06-2017 and not the one prevalent on date of presentation of bill of entry for home consumption i.e., 01-08-2017, would be adopted.

Q12. Vipul imported certain goods in December, 2017. An 'into Bond' bill of entry was presented on 14th December, 2017 and goods were cleared from the port for warehousing. Assessable value on that date US $ 1,00,000. The order permitting the deposit of goods in warehouse for four months was issued on 21st December, 2017. Vipul deposited the goods in warehouse on the same day but did not clear the imported goods even after the warehousing period got over on 20th April, 2018.
A notice was issued under section 72 of the Customs Act, 1962, demanding duty, interest and other charges. Vipul cleared the goods on 14th May, 2018. Compute the amount of duty and interest payable by Vipul while removing the goods on the basis of following information:

Particulars	14-12-2018	20-04-2019	14-05-2019
Rate of exchange per US $ (as notified by Central Board of Excise & Customs)	Rs. 65.20	Rs.65.40	Rs. 65.0
Basic Customs Duty	15%	10%	12%

No other customs duty is payable except basic customs duty.

Ans. Computation of customs duty payable by Vipul:

Particulars	Amount
Assessable value US $ 1,00,000 X Rs.65.20 [WN -1]	65,20,000
Basic Customs duty @ 11% [WN -2]	7,17,200

Working Notes:

(1) As per Section 14, the exchange rate for converting foreign currency into Indian currency shall be taken of the date of presentation of Bill of Entry. In this case it will be taken as on 14-12-2018.
(2) The rate of duty shall be applicable of the date when the warehousing period expires, as on that date goods shall be deemed to have been removed from warehouse. Since warehousing period comes to an end on 20th April 2019, the rate of duty of the said date shall be taken.

Computation of interest payable: In case of warehoused goods, if the same remain in warehouse beyond a period of 90 days from the date of order for deposit of goods in warehouse, interest shall be payable @ 15% p.a. on the amount of duty for the period after expiry of 90 days till the date of actual payment of duty.

Accordingly, the interest payable by Vipul u/s 61(2) is computed as follows –

Date of deposit of goods in warehouse [A]	21-12-2018

Period of 90 days referred to in section 61(2) expires on [B]	21-03-2019
Date of actual payment of duty [C]	14-05-2019
No. of days from date referred to in [B] above to date referred to in [C] above [D]	54
Duty payable	7,17,200
Interest u/s 61(2) [E x 15% x D ÷ 365 days]	15,916

Q13. Enumerate the circumstances under which goods are considered to have been removed improperly from a warehouse under the Customs Act.

Ans. Section 72 of the Customs Act provides that in any of the following circumstances the goods shall be considered to have been removed improperly from a warehouse:-

(a) where any warehoused goods are removed from a warehouse in contravention of section 71 of the Customs Act;

(b) where any warehoused goods have not been removed from a warehouse at the expiration of the period during which such goods are permitted under section 61 to remain in a warehouse;

(c) 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 export are not duly accounted for to the satisfaction of the proper officer.

Q14. "If manufacturing operations are carried out on warehoused goods and finished products are cleared for home consumption, then appropriate duty of customs should be levied on the quantity of the warehoused goods contained in the waste or refuse arising out of such manufacturing process."
Examine the validity of the said statement in the context of section 65 of the Customs Act, 1962 dealing with manufacture and other operations in relation to warehoused goods.

Ans. <u>The said statement is valid.</u> Section 65(2)(b) of the Customs Act, 1962 lays down that if the finished products arising as a result of operations carried out in the warehouse are cleared for home consumption, import duty would be charged on the quantity of the warehoused goods contained in the waste or refuse arising from such operations.

Additional Questions & Answers

These are apart from Examples and Q & A in main book

This chapter includes "8 Q & A" from Custom main book. Do refer important "4 examples from Custom Main Book".

Chapter 7: - Duty Drawback

ICAI Test your knowledge

Q1. Write a short note on "prohibition and regulation of drawback" with reference to the provisions of section 76 of the Customs Act, 1962.

Ans. The provisions in respect of prohibition and regulation of drawback as contained in section 76 of the Customs Act, 1962 are explained hereunder:

(1) No drawback is allowed in respect of any goods, the market price of which is less than the amount of drawback due thereon. This provision has been made to prohibit export of cheap goods at inflated price to get benefit of higher duty drawback. Further, drawback is also not allowed where the amount of drawback in respect of any goods is less than Rs. 50.

(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, not allow drawback in respect of such goods or alternatively allow the drawback subject to certain restrictions and conditions.

Q2. Explain briefly the provisions relating to drawback allowable on re-export of duty paid imported goods when:

i. Duty paid imported goods are re-exported as such
ii. Duty paid imported goods are used before being re-exported

Ans.

i. Duty paid imported goods re-exported as such: When duty paid goods are re-exported as such, drawback is allowed under the provisions of section 74(1) of the Customs Act, 1962. Subsection (1) of section 74 of the Customs Act, 1962 provides that following conditions need to be satisfied before claiming drawback:
   (i) the goods should have been imported into India;
   (ii) the import duty should have been paid thereon;
   (iii) the goods should be capable of being easily identified as the goods, which were originally imported;
   (iv) the goods should have been entered for export either on a shipping bill through sea or air or on a bill of export through land, or as baggage, or through post and the proper officer, after proper examination of the goods and after ensuring that there is no prohibition or restriction on their export, should have permitted clearance of such goods for export;
   (v) the goods should have been identified to the satisfaction of the Assistant or Deputy Commissioner of Customs as the goods, which were imported, and
   (vi) the goods should have been entered for export within two years - which can be extended further by Board on sufficient cause being shown - from the date of payment of duty on the importation thereof.

   Once these conditions are satisfied, then 98% of the import duty paid on such goods at the time of importation shall be repaid as drawback.

ii. Duty paid imported goods re-exported after being used: When duty paid imported goods are used before re-export, drawback is allowed under the provisions of section 74(2) of the Customs Act, 1962. If the imported goods are used after importation, the drawback is allowed at reduced rates as fixed by the Central Government having regard to the duration of use, depreciation in value and other relevant circumstances prescribed by a Notification. If the goods were in possession of the importer, they are treated as used by the importer. Following percentages have been fixed vide Notification No. 19/65-Cus dated 6-2-1965 as amended as the rates at which drawback of import duty shall be allowed in respect of goods which were used after their importation and which have been out of Customs control:

Length of period between the date of clearance for home consumption and the date when the goods are placed under Customs control for export	Percentage of import duty to be paid as Drawback
Not more than three months	95%
More than three months but not more than six months	85%
More than six months but not more than nine months	75%
More than nine months but not more than twelve months	70%
More than twelve months but not more than fifteen months	65%
More than 15 months but not more than 18 months	60%
More than 18 months	Nil

Q3. Can the rate of drawback be granted provisionally to the exporter where amount or rate of drawback has not been determined? Briefly explain.
Ans. 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 Principal Commissioner of Central Excise or Commissioner of Central Excise, as the case may be or the Principal Commissioner 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 of drawback. The exporter may be allowed provisional duty drawback of an amount not exceeding the amount claimed by him in respect of such export.
However, it is to be noted that rate of drawback is determined provisionally only when exporter intends to get Brand Rate of duty drawback for his exports. The provision has no applicability when exporter intends to get duty drawback on the basis of All Industry Drawback Rates.

Q4. Write a short note on "interest on drawback" with reference to section 75A of the Customs Act .
Ans. Section 75A of the Customs Act provides for payment of interest on delayed payment of drawback. Where any drawback payable to a claimant under section 74 or 75 is not paid within a period of one month from the date of filing a claim for payment of such drawback, interest @ 6% p.a. shall be paid along with the amount of drawback. Such interest shall be paid from the date after the expiry of the said period of one month till the date of payment of such drawback [Section 75A(1)].
Where any drawback has been paid to the claimant erroneously or it becomes otherwise recoverable under the Customs Act or the rules made thereunder, the claimant shall, within a period of two months from the date of demand, pay in addition to the said amount of drawback, interest at the rate fixed under section 28AA [presently such interest has been fixed @ 15% p.a.] and the amount of interest shall be calculated for the period beginning from the date of payment of such drawback to the claimant till the date of recovery of such drawback. . [Section 75A(2)].

Q5. What is the minimum and maximum rate or amount of duty drawback prescribed under the Customs & Central Excise Duties Drawback Rules, 2017? Explain with a brief note.
Ans. Minimum rate of duty drawback - Rule 8 of Customs and Central Excise Duties Drawback Rules, 2017 provides that no amount or rate of drawback shall be determined in respect of any goods or class of goods under rule 6 or rule 7, as the case may be, if the export value of each of such goods or class of goods in the bill of export or shipping bill is less than the value of the imported materials used in the manufacture of such goods or class of goods, or is not more than such percentage of the value of the imported materials used in the manufacture of such goods or class of goods as the Central Government may, by notification in the Official Gazette, specify in this behalf.
Maximum rate of duty drawback - Rule 9 of Customs and Central Excise Duties Drawback Rules, 2017 provides that the drawback amount or rate shall not exceed one third of the market price of the export product. This provision has been made to avoid over invoicing of export goods.

Q6. Your client loaded a machine on the vessel for export. He has paid import duty and central excise duty on the components used in the manufacture. The vessel set sail from Mumbai, but runs into trouble and sinks in the Indian territorial waters. The customs department refuses to grant duty drawback for the reason that the goods have not reached their destination. Advise your client citing case law, if any.

Ans. Rule 2(c) of the Customs and Central Excise Duties Drawback Rules, 2017 inter alia provides that "export" means "taking out of India to a place outside India". Section 2(27) of the Customs Act, 1962 provides that India includes the territorial waters of India.

In case of CC v. Sun Industries 1988 (35) ELT (241), the Supreme Court held that the expression "taking out of India to a place outside India" would also mean a place in high seas, if that place is beyond territorial waters of India. Therefore, the goods taken out to the high seas outside territorial waters of India would come within the ambit of expression "taking out of India to a place outside India". The emphasis in the aforementioned judgment was on the movement of the goods outside the territorial waters of India. It is then that an export may be said to have been taken place.

In the instant case, the vessel sunk within territorial waters of India and therefore, there is no export. Accordingly, no duty drawback shall be available in this case. Similar decision was given by the Supreme Court in the case of UOI v. Rajindra Dyeing & Printing Mills Ltd. 2005 (180) ELT 433 (SC).

In other words, if the goods cross the territorial waters, drawback will be available even if they do not reach the destination or are destroyed provided the payment for the goods is received in convertible foreign exchange. Para 2.85.2 of HBP Vol. 1 2015-20 states that payment through insurance cover from General Insurance and approved Insurance Companies would be treated as payment realised for exports under various export promotion schemes.

Q7. With reference to drawback on re-export of duty paid imported goods under section 74 of the Customs Act, 1962, answer in brief the following questions:

(i) What is the time limit for re-exportation of goods as such?

(ii) What is the rate of duty drawback if the goods are exported without use?

(iii) Is duty drawback allowed on re-export of wearing apparel without use?

Ans.

(i) As per section 74 of the Customs Act, 1962, the duty paid imported goods are required to be entered for export within two years from the date of payment of duty on the importation. This period can be extended by CBIC if the importer shows sufficient reason for not exporting the goods within two years.

(ii) If duty paid imported goods are exported without use, then 98% of such duty is re-paid as drawback.

(i) Yes, duty drawback is allowed when wearing apparels are re-exported without being used. However, Notification No. 19/65 Cus dated 06.02.1965 as amended provides that if wearing apparels have been used after their importation into India, drawback of import duty paid thereon shall not be allowed when they are exported out of India.

Q8. With reference to the Customs & Central Excise Duties Drawback Rules, 2017, briefly state whether an exporter who has already filed a duty draw back claim under All Industry Rates, can file an application for fixation on special brand rate.

Ans. Rule 7 of the Customs and Central Excise Duties Drawback Rules, 2017 provides that application for Special Brand Rate cannot be made where a claim for drawback under rule 3 or rule 4 has been made.

In other words, where the exporter has already filed a duty drawback claim under All Industry Rates (AIR) Schedule, he cannot request for fixation of Special Brand Rate of drawback. Thus, the exporter should determine prior to export of goods, whether to claim drawback under AIR or Special Brand Rate.

Questions from Custom Main Book

Q9. Sulabh Ltd has imported 5 mainframe computer systems form USA in December 2015 paying customs duty of Rs.60 lakhs. Due to some technical snags that developed in the system in March 2016 the supplier sent his technicians from USA to repair / solve the snag. No solution was found, as a result of which in July 2017 Sulabh Ltd. decided to re-ship/ return the goods to foreign supplier. You are the Finance Manager of Sulabh Ltd. and have been approached by the Board of Directors to examine and advice whether import duty already paid can be got back from the Central Government, when the goods are sent back. Examine and advise in light of provisions of Customs Act, 1962.

Ans. It is evident from the question that the goods were imported in December, 2015 from USA on payment of applicable customs duty Rs. 60 Lakhs. The same goods are proposed to be again exported back to the country of their origin. If the goods are entered for export before December 2015 (2 years from the date of payment of duty), the company will be eligible for the drawback claim under Section 74 either at industry rates (in case the goods are put to any use) or at the rate of 98% of the duty (where the goods are not put to use).

Q10. Calculate the amount of duty drawback allowable under the Customs Act, 1962 and the rules made thereunder in the following independent cases –

i. A Ltd. has exported goods worth Rs. 80,000 (FOB value). Rate of duty drawback on such export of goods in 0.8%
ii. B Ltd. Exported 1000 Kgs. Of goods of FOB value of Rs. 1,50,000. Rate of duty drawback on such export is Rs. 50 per kg. Market price of goods is Rs. 48,000 (in wholesale market)

Ans.

i. Duty drawback – Rs. 640 (0.8% of Rs. 80,000) [As per section 76 of the Custom Act, 1962, no drawback shall be allowed if the amount of drawback is less than Rs. 50. Since drawback amount is Rs. 640 the same shall be admissible].
ii. Duty drawback @ 50 per Kg = 50,000. However, as per section 76 (1) (b) of Customs Act, Duty drawback shall not be allowed in respect of any goods, the market price of which is less than the amount of drawback due thereon. Hence, no duty drawback is allowable.

Q11. R & Co., sent certain goods by ship from Calcutta to Colombo in Sri Lanka. After the ship set sail, it developed engine trouble and while going to the nearest port, ran aground in the Indian Territorial Waters, ultimately reaching Paradeep Port. The fillings, stores and cargo were salvaged, R & Co., applied for drawback of duty under Section 75 of Customs Act, 1962, in respect of the goods. The application was rejected by the Assistant Commissioner of Customs, holding that there was no "export" of goods under the Customs Act, by R & Co. You are retained as Counsel by Rs & Co., to advise them on the admissibility of the drawback claim. Examine the relevant issues and advise.

Ans. The facts are similar to that of Sun Industries, v. CC [1988] 35 ELT 241 (SC), wherein the Apex Court held that export is complete on loading after clearance and accordingly allowed the drawback claim where the ship carrying goods ran aground after crossing territorial waters due to engine trouble and the goods in question were neither salvaged nor re-landed; further held that off-loading of goods at foreign port is not an essential requirement for export to take place. Applying the said case to the present case, M/s. R & Co. is eligible for drawback claim.

Q12. An exporter obtained inputs on payment of Customs duty and has availed Input tax credit. Advise whether he could avail Duty Drawback also under Section 75 of the Customs Act, 1962, if imported inputs are used in the manufacture of goods, which are then exported.

Ans. Yes, he can avail duty drawback under section 75 of Customs Act, even if he has availed Input tax credit. Input tax credit can be availed only in respect of IGST and GST compensation cess leviable under section 3 of the Customs Tariff Act, paid on imported inputs. Duty drawback of customs portion, i.e. customs duties other than IGST is allowed even after availing Input tax it on inputs used in the manufacture of goods that are exported.

Q13. M/s. RIL Ltd. claimed duty drawback in respect of its export products. Over 97% of the inputs by weight of the product were procured indigenously and were not excisable. All industry rates under the Customs and Central Excise Duties Drawback Rules, 2017 were fixed taking into account the incidence of customs duty on imported product inputs. Explain briefly with reference to Rule 3(1) (ii) of the said rules whether the claim of M/s. RIL will merit consideration by the authorities.

Ans. Rule 3 of the Customs and Central Excise Duties Drawback Rules, 2017 inter alia provides that no drawback shall be allowed if the exported goods have been produced or manufactured using imported materials or excisable materials on which duties have not been paid.

In the given case, there was no duty incidence on 97% of the inputs of the export product except the duty incidence on remaining 3% of the inputs, which was insignificant. All Industry Rates fixed for particular export products are applicable to all exports who export the same. However, in case where there is clear evidence, as in the present one, that the inputs of such export products have not suffered any duty, no drawback can be claimed. Same view was expressed by the Tribunal in the case of Rubfila International Ltd. v. CCus. Cochin [2005] 190 ELT 485 (Tri.-Bang.).

Q14. Calculate the amount of duty drawback allowable under the Customs Act, 1962 in the following cases:

a) Jaggi Mehta imported a car from U.K. for his personal use and paid Rs.4,50,000 as import duty. However, the car is re-exported immediately without bringing it into use.
b) Meenakshi imported a music player from Dubai and paid Rs.12,000 as import duty. She used it for four months but re-exports the same after four months.
c) XYZ Ltd. exported 1000 kgs of metal of FOB value of Rs.1,00,000. Rate of duty drawback on such export is Rs.60 per kg. Market price of goods is Rs.40,000 (in wholesale market).

Ans.

a) As per Section 74 of the Customs Act, 1962, when any identifiable imported goods are re-exported, 98% of the import duty is re-paid as drawback provided the goods are identified to satisfaction of the Assistant / Deputy Commissioner of Customs as the goods which were imported and the same are entered for export within two years from the date of payment of the import duty. Thus, Jaggi Mehta can claim duty drawback of Rs. 4,41,000 (98% of Rs.4,50,000) on the presumption that the car has been identified to the satisfaction of the Assistant / Deputy Commissioner of Customs as the one which was imported.
b) As per Section 74 of the Customs Act, 1962, 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. Hence, Meenakshi can claim duty drawback of 92% i.e. Rs.11,040.
c) As per Section 76 of the Customs Act, 1962 no drawback is allowed in respect of any goods, the market price of which is less than the amount of drawback due thereon. In this case, the market price of the goods is Rs. 40,000, which is less than the amount of duty drawback, i.e. 1,000 kgs x Rs. 60 = Rs. 60,000. Hence, XYZ Ltd. isn't entitled to claim duty drawback in this case.

Q15. New Horizon Exporters have exported some goods outside India. FOB value of 1,000 kg of goods exported is Rs. 2,30,000. Rate of duty drawback on such export is Rs. 100 per kg. Market price of goods is Rs. 75,000 (in wholesale market). You are required to ascertain whether New Horizone Exporters is entitled to duty drawback and if yes, what is the quantum of such duty drawback?

Ans. Section 76(1)(b) of the Customs Act, 1962 provides that no drawback shall be allowed in respect of any goods, the market price of which is less than the amount of drawback due thereon. In this case, the market price of the goods is Rs. 75,000, which is less than the amount of duty drawback, i.e. 1,000 Kg. x Rs.1,00,000. Hence, no duty drawback shall be allowed in this case.

Do refer important "1 example from Custom Main Book".

Chapter 8: - Demand & Recovery

ICAI Test your knowledge

Q1. State the situations in which the proper officer can issue a show-cause notice under section 28 of the Customs Act, 1962 and also the time limit for such issuance.

Ans. As per section 28(1) of the Customs Act, 1962, the proper officer can issue show cause notice in the following situations:

(i) when duty has not been levied
(ii) when duty has been short-levied
(iii) when duty has been short paid
(iv) when duty has not been paid
(v) when duty has been erroneously refunded
(vi) when interest payable has not been paid
(vii) when interest payable has been part paid
(viii) when interest payable has been erroneously refunded

Time Limit for issue of show-cause notice

(a) For any reason other than the reasons of collusion or any willful misstatement or suppression of facts– within two years from the relevant date [section 28(1)]. However, before issuing notice, the proper officer shall hold prenotice consultation with the person chargeable with duty or interest in the prescribed manner.

(b) In the case of collusion or any willful mis-statement or suppression of facts by the importer or the exporter or the agent or employee of the importer or exporter-within five years from the relevant date [section 28(4)].

Relevant date means –

(i) in a case where duty is not levied or interest is not charged, the date on which the proper officer makes an order for the clearance of goods;
(ii) in the case of provisional assessment, the date of adjustment of duty after the final assessment;
(iii) in case of erroneous refund of duty or interest, the date of refund
(iv) in any other case, the date of payment of duty or interest.

Q2. Explain briefly the option available to an importer or exporter or their agent or employee under sub-section (5) of section 28 of the Customs Act, 1962.

Ans. Section 28(5) of the Customs Act provides an option to an importer or an exporter or the agent or employee of the importer or exporter to whom a notice has been served by the proper officer for short/non levy or short/non payment of duty or non charging/part payment of interest or erroneous refund of duty and interest by reason of collusion or any willful mis-statement or suppression of facts.

If such a person pays the duty in full or in part as may be accepted by him including the interest payable thereon under section 28AA and penalty within 30 days of the receipt of the notice, the penalty will be reduced to 15% of the duty specified in the notice or the duty so accepted by that person. The person should also inform the proper officer about such payment in writing.

According to provisions of section 28(6), where in the opinion of the proper officer duty is paid in full together with the interest and penalty under sub-section (5), the proceedings in respect of such persons to whom notice is served shall be deemed to have been concluded in respect of the matters stated therein. On the other hand, where in the opinion of the proper officer the duty with interest and penalty that has been paid falls short of the amount actually payable, then, the proper officer shall proceed to issue the notice as provided in section 28(1)(a) in respect of such amount which

falls short of the amount actually payable within two years from the date of receipt of information under section 28(5).
Relief from penalty is provided to facilitate early closure of dispute which will, in turn, reduce litigation.

Q3. A show cause notice demanding customs duty was issued in case of clearances made by 100% Export Oriented Undertaking (EOU) to Domestic Tariff Area (DTA). Is the show-cause notice defective in law?
Ans. Yes, the show cause notice issued is defective in law because in respect of clearances made by a 100% Export Oriented Undertaking (EOU) to Domestic Tariff Area, the duty to be paid by the 100% EOU is the duty of excise and not customs duty. Therefore, show cause notice using the word customs duty instead of central excise duty is not maintainable.
Similar view was expressed in the case of CCE v. Suresh Synthetics (2007) 216 ELT 662 (SC). It may be noted that excise duty chargeable on goods cleared by 100% EOUs in DTA, is equivalent to the aggregate of the customs duties which would be leviable under the Customs Act or any other law for the time being in force on like goods manufactured outside India if imported into India.
Note: The above case law may hold good even after the introduction of GST as GST[(CGST+SGST)/IGST] and customs duties are different.

Q4. M/s. Vijay Exports, an EOU, is purchasing electricity generated by the captive power plant of its sister unit. The furnace oil required for running the captive power plant was imported by the assessee (M/s. Vijay Exports) and supplied to sister unit for generation of electricity. The assessee claimed exemption on import of furnace oil under the relevant exemption notification.
The assessee had sought a clarification from the Development Commissioner seeking as to whether import of furnace oil and receipt of electricity would be liable to duty. The Development Commissioner replied in favour of the assessee and thereafter, the assessee claimed the exemption.
A show cause notice demanding duty was issued on the assessee invoking extended period of limitation of 5 years on grounds that the entitlement of duty free import of fuel for its captive power plant lies with the owner of the captive power plant, and not with the consumer of electricity generated from that power plant.
Is the action of the Department in invoking the extended period of limitation justified in light of the provisions of the Customs Act, 1962? Discuss with the help of a decided case law
Ans. The facts of the given case are similar to the case of Uniworth Textiles Ltd. vs. CCEx. 2013 (288) ELT 161 (SC), wherein the Supreme Court noted that section 28 of the Customs Act, 1962 clearly contemplates that for invoking extended period of limitation, the intention to deliberately default is a mandatory pre-requisite.
However, the assessee acted bona fide and claimed exemption by seeking clarification from the Development Commissioner. Hence, it could be inferred that assessee made efforts to adhere to the law rather than its breach.
The Apex Court held that mere non-payment of duties could not be equated with collusion or wilful misstatement or suppression of facts as then there would be no form of non-payment which would amount to ordinary default. Something more must be shown to construe the acts of the assessee as fit for applicability of extended period of limitation.
Therefore, in view of the above-mentioned ruling of the Supreme Court, the action of the Department of invoking extended period of limitation is not justified in the light of the provisions of the Customs Act, 1962.

Q5. Mr. X, an importer, imported certain goods on 20.04.20XX and paid custom duty by understating the value of goods imported. A show cause notice was issued on Mr. X by the proper officer on 19.08.20XX demanding duty along with interest and penalty on the value of the goods understated.

The said notice was received by Mr. X on 24.08.20XX. Mr. X deposited the amount of duty and interest along with penalty that should be payable as per provisions of law on 20.09.20XX.
With reference to section 28 of the Customs Act, 1962, compute the penalty imposable, if any. Provide reasons for your answer.

Ans. The proviso to section 28(2) of the Customs Act, 1962 lays down that where notice under section 28(1)(a) has been served for short/non levy or erroneous refund of duty or interest, for reason other than the reasons of collusion or any wilful mis-statement or suppression of facts; penalty will not be imposed if the proper officer is of the opinion that amount of duty along with interest leviable under section 28AA or the amount of interest, as the case may be, as specified in the notice, has been paid in full within 30 days from the date of receipt of the notice. The proceedings in respect of such person or other persons to whom the notice is served will be deemed to be concluded.

Further, section 28(5) of the Customs Act, 1962 provides that when a notice is served in respect of cases involving fraud etc., if the noticee pays the duty in full or in part, as may be accepted by him, and the applicable interest within 30 days of the receipt of the notice and inform the proper officer of such payment in writing, the penalty would be reduced to 15% of the duty specified in the notice or the duty so accepted by him provided such reduced penalty is also paid by him along with the duty and interest.

In the given case, SCN was received by him on 24.08.20XX and he paid the duty, interest and the applicable penalty on 20.09.20XX, which is within 30 days of the receipt of the notice. Therefore, if Mr. X has understated the value of imported goods with a fraudulent intention and has informed the proper officer of the payment made by him, in writing, in view of the above-mentioned provisions, penalty leviable on Mr. X will be 15% of the duty specified in the notice. However, if Mr. X has understated the value of imported goods on account of bona fide reasons, no penalty will be imposable on him.

Additional Questions & Answers

These are apart from Examples and Q & A in main book

This chapter includes "3 Q & A" from Custom main book. Do refer important "1 example from Custom Main

Chapter 9: - Refund

ICAI Test your knowledge

Q1. Explain the provisions of Customs Act, 1962 relating to computation of limitation for submission of refund application.

Ans. According to section 27(1) of the Customs Act, 1962, a refund claim should be lodged before the expiry of one year from the date of payment of such duty or interest. The period of limitation of one year should be computed in the following manner:

a. If the refund claim is lodged by the importer, the time limit should be calculated from the date of payment of duty.
b. If the refund claim is lodged by the buyer of imported goods, the time limit should be calculated from the date of purchase of goods.
c. In case of goods which are exempt from payment of duty by an ad-hoc exemption, the limitation of one year should be computed from the date of issue of such exemption order.
d. Where any duty is paid provisionally, the time limit should be computed from the date of adjustment of duty after the final assessment thereof or in case of re-assessment, from the date of such re-assessment.
e. Where the refund arises as a result of any judgement/decree/order/direction of the Appellate Authority/ Appellate Tribunal/Court, the time limit should be calculated from the date of such judgement/decree/order/direction.

The time limit of one year is not applicable if duty is paid under protest. Finally, it is worth mentioning that above provisions regarding time limit are mandatory and customs authorities cannot grant a refund which is filed beyond the maximum permissible period.

Q2. The assessee furnished bank guarantee to the department as required, and imported capital goods at concessional rate of duty under an authorisation with export obligation, but failed to complete the export obligation within the prescribed time. Consequently, the Department invoked the bank guarantee and realized the amount of duty foregone. Subsequently the assessee fulfilled the export obligation and the same was also accepted by the Department. The assessee filed a refund claim for the amount realized by the Department under the bank guarantee. The Department rejected the refund claim on the ground that it was time barred in terms of section 27 of the Customs Act, 1962.

Was the stand taken by the Department correct in law? Examine with the support of case law on the issue.

Ans. In this case the bank guarantee was for the purpose of security for fulfilment of export obligation. It cannot be construed as payment of 'duty'. As section 27 applies only to refund of duty and not to refund of other amounts, the time bar under the said section cannot be invoked to deny the refund.

The facts of given case are similar to the facts of CCus. (Exports) v. Jraj Exports (P) Ltd. 2007 (217) ELT 504 (Mad.). The High Court, in the instant case, held that furnishing of bank guarantee for export obligation could not be regarded as payment of duty; therefore time-bar was not applicable for its return.

The High Court relied on the Supreme Court's ruling in the case of Oswal Agro Mills Ltd. and Another v. Asstt. Collector of Central Excise 1994 (70) ELT 48 (SC), wherein it was held that furnishing of bank guarantee pursuant to an order of the Court would not be equivalent to payment of excise duty. The furnishing of bank guarantee is only a security to safeguard the interest of the Revenue. Since section 27 governs the refund of 'duty', and the bank guarantee is not 'duty', the limitation prescribed therein for refund of duty would not apply to refund of a bank guarantee.

Applying the principle laid down in the abovesaid case, the High Court stated that the requirement to establish that the duty incidence had not been passed on by the assessee to any other person would also not get attracted since section 27 has no application to this case. Therefore, the stand of the Department is not correct in law.

Q3. M/s. HIL imports copper concentrate from different suppliers. At the time of import, the seller issues a provisional invoice and the goods are provisionally assessed under section 18 of the Customs Act, 1962 based on the invoice. When the final invoice is raised, based on the price prevalent in the London Metal Exchange on a predetermined date as agreed in the contract between the buyer and seller, the assessments are finalized on the basis of the price in such invoices.
M/s HIL has filed a refund claim arising out of the finalization of the bill of entry by the authorities. The Department, however, has rejected the refund claim on the grounds of unjust enrichment. Discuss whether the action of the department is correct in law?
Ans. Section 18 (dealing with provisional assessment) incorporates the principle of unjust enrichment in case of refund arising out of finalization of provisional assessment. Sub-section (5) of section 18 of Customs Act, 1962 provides that if any amount is found to be refundable after finalisation of provisional assessment, such refund will be subject to doctrine of unjust enrichment. Further, section 28D places the onus on the person who has paid duty to prove that he has not passed on the incidence of such duty. In the absence of any proof from such person, section 28D deems that the burden of duty has been passed on to the buyer.
Therefore, in the given case, the Department's action will be correct if M/s HIL does not produce any evidence of bearing the burden of duty.

Q4. XYZ Ltd imported capital goods and used them in its factory to produce goods for sale. Upon discovery of an error by which excess import duty had been paid on the said capital goods, it filed a claim for refund. As regards unjust enrichment, it contended -

- that the capital goods were not sold and hence the principle of unjust enrichment will not apply to the refund of import duty paid on capital goods; and
- that in any case the price of the finished goods manufactured in the factory remained the same before and after the import and installation of the capital goods, which is sufficient proof to establish that duty burden has not been passed on.

Examine the merits of these contentions, with the support of case law, if any.
Ans. The incidence of duty can be passed directly or indirectly. Where the capital goods are used for manufacture, the duty paid on their import will go into the costing of the goods manufactured and sold, and can thus be passed on to the buyers. The Large Bench of the Tribunal in the case of SRF Ltd. v. CCus. Chennai 2006 (193) ELT 186 (Tri. - LB) has held that the doctrine of unjust enrichment would be applicable in case of imported capital goods used captively for manufacture of excisable goods. As regards the relevance of the fact that price remained the same before and after the capital goods were imported,the Larger Bench also clarified that uniformity in price before and after assessment does not lead to inevitable conclusion that duty burden has not been passed, as such uniformity may be due to various reasons. In view of this, the contentions of XYZ Ltd are liable to be rejected.

Q5. Section 26A of Customs Act, 1962 provides for refund of import duty paid if goods are found defective or not as per specifications. Discuss the conditions governing such refund in brief.
Ans. Often, goods imported are found to be defective or not according to specifications. In such cases, earlier, the refund of customs duty paid at the time of import could be obtained only if the imported goods were physically returned to foreign supplier. Generally, cost of return of the rejected goods is heavy and it is economical to dispose of the goods in India itself. Realising this practical difficulty, section 26A of Customs Act makes provision for refund of import duty paid if goods are found defective or not as per specifications. The refund is admissible if goods are re-exported or relinquished and abandoned to the customs authorities or destroyed. Thus, refund is possible even if goods are destroyed or relinquished in India without re-exporting the same. The section stipulates the following conditions for the refund:

(i) the goods are found to be defective or otherwise not in conformity with the specification agreed upon between the importer and the supplier of goods;
(ii) the goods have not been worked, repaired or used after importation except where such use was indispensable to discover the defects or non-conformity with the specifications;
(iii) the goods are identified to the satisfaction of Assistant/Deputy Commissioner of Customs as the goods which were imported;
(iv) the importer does not claim drawback under any other provision of this Act; and
(v) the goods are exported or the importer relinquishes his title to the goods and abandons them to customs or such goods are destroyed/rendered commercially valueless in the presence of proper officer in prescribed manner within 30 days from the date on which the order of clearance of imported goods for home consumption is made by the proper officer. This period of 30 days can be extended up to 3 months.
(vi) An application for refund of duty shall be made before the expiry of 6 months from the relevant date in prescribed form and manner.
(vii) Imported goods should not be such regarding which an offence appears to have been committed under this Act or any other law.
(viii) Imported goods should not be perishable goods and goods which have exceeded their shelf life or their recommended storage before use period.

Q6. What is the minimum monetary limit prescribed in the Customs law below which no refund shall be granted?
Ans. As per third proviso to section 27(1) of the Customs Act, 1962, the minimum monetary limit below which refund cannot be granted is Rs. 100.

Q7. Explain the doctrine of unjust enrichment with respect to refund of duty.
Ans. When an importer imports goods, he has to pay the customs duty on such goods. This duty is recovered from the purchaser when these goods are sold by the importer. In other words, the burden of duty is passed on to the purchaser. Subsequently, if the importer is refunded the duty by the government, this double benefit would be called as unjust enrichment, because he recovers the duty from customer and again gets the said amount from Government as refund. The same applies to a buyer who again passes on the incidence of duty to another person.
Therefore, wherever there is excess payment or collection of duty, the refund is given only to the person who bears the burden of duty and interest, if any. If the person who claims the refund is not the person who bore the burden, the refund is paid into a fund called Consumer Welfare Fund. Therefore, even if the duty / interest is refundable on merits, it is important for the applicant for a refund to prove that he has not passed the burden of duty, in order to succeed in getting refund of duty.
Section 28D provides that every person who has paid duty under the Customs Act, unless the contrary is proved by him, shall be deemed to have passed the full incidence of such duty to the buyer; hence the applicant for refund has to refute the presumption of passing on the incidence of duty.

Q8. Acme Sales' imports were being provisionally assessed pending a verification that the department was carrying out. Upon completion of the verification, the assessments were finalized, and Acme Sales was asked to pay Rs. 12 lakhs, which it paid. After six months, upon detailed scrutiny of the verification report and taking legal opinion on it, Acme Sales filed a claim for refund of Rs. 8 lakhs on the ground that the differential amount should be Rs. 4 lakhs only and that there were factual errors in the verification report. Was this the correct mode of redressal for Acme Sales? What will be likely outcome of the claim? Discuss on the basis of case law on the subject.
Ans. Acme Sales received an order finalizing provisional assessment on the basis of a verification report, and requiring payment of Rs. 12 Lakhs. They did not contest this order, but made the payment, and allowed the appeal period of sixty days to lapse. After appeal became time-barred

they filed a claim for refund in which they challenged the order. This was a backdoor method of seeking relief against the order; it also asked an officer of the same rank to review the order passed; and it sought to bypass the time limitation for appeal by presenting the appeal as a claim for refund. The Supreme Court has held, in the case of Priya Blue Industries Limited, 2004 (172) ELT 145 (SC), that such a refund claim is not permissible for all these reasons. A person who is aggrieved with an assessment order cannot seek refund without filing an appeal against the assessment order.

Q9. Mr. N has, over three consignments of 200, 400 and 400 units, imported a total of 1000 units of an article "ZEP", which has been valued at Rs. 1,150 per unit. The customs duty on this article has been assessed Rs. 250 per unit. He adds his profit margin Rs. 350 per unit and sells the article for Rs. 1,750 per unit.
After one month of selling the entire consignment of article "ZEP", Mr. N found that there had been an error in payment of amount of duty, in which duty for the consignment of 200 units was paid as if it was 400 units, resulting in excess payment of duty. Mr. N files an application for refund for ` 50,000 (200 X 250). Is the bar of unjust enrichment attracted?
Ans. Mr. N's invoices show that he collected duty of Rs. 250 per unit on 1,000 items. However he paid duty on 200 items more. This payment, in the normal course, was made before the order permitting the clearance of the goods. It would be evident from the bill of entry that the amount paid was more than the amount of duty assessed. Thus Mr N's case falls within the exception to unjust enrichment listed at clause (g) of the first proviso to section 27(2). He will be able to refute the charge of unjust enrichment. Furthermore, clause (a) of the same sub-section provides that the doctrine of unjust enrichment will not apply to the refund of duty and interest, if any, paid on such duty if such amount is relatable to the duty and interest paid by the importer/exporter, if he had not passed on the incidence of such duty and interest to any other person. Mr N's invoices will show how much duty he collected from his customers, hence he may be covered by this clause also to escape the bar of unjust enrichment.

Q10. Explain the relevant dates as provided in section 26A(2) of the Customs Act, 1962 for purpose of refund of duty under specified circumstances, namely:
(i) goods exported out of India
(ii) relinquishment of title to goods
(iii) goods destroyed or rendered valueless.
Ans. The relevant dates provided under Explanation to section 26A(2) of the Customs Act, 1962 for purpose of refund of duty under specified circumstances are as follows:-

Goods exported out of India	Date on which the proper officer makes an order permitting clearance and loading of goods for exportation
Relinquishment of title to the goods	Date of such relinquishment
Goods being destroyed or rendered valueless	Date of such destruction or rendering of goods commercially valueless

Other Questions

Q11. The importer has imported an article, which has been valued at Rs. 1000/-. The customs duty on this article comes to Rs. 250/-. Now the importer adds his profit margin of say Rs. 250/- and sells the article for Rs. 1500/-. Now the price charged by the importer consists of the duty element which has been passed on to the buyer. If later on it is found that there was an error resulting in excess payment of duty, such excess duty is liable to be refunded. But as may be seen above, the importer has already collected the duty from the purchaser and if any refund is granted to him, it would confer on him a double benefit to which he does not have a valid right. Therefore in such cases the refund is credited to the "Consumer Welfare Fund".

Ans. The landmark judgment on refund is by a Nine Member Bench of the Supreme Court in Mafatlal Industries Ltd. v. U.O.I.- 1997 (89) E.L.T. 247. The salient features of this judgment can be summarised as under:

a. The theory of unjust enrichment is valid and constitutional. However, the theory that, conversely, the manufacturer would be unjustly impoverished in case of demands has not been agreed to.
b. Section 27 (Customs Act) is self contained code for refunds; resort to civil suits or writs is not permissible unless the taxing provision is struck down as unconstitutional. The general theory laid down in certain judgments of both the Supreme Court and High Courts that refund could be claimed within three years of discovery of mistake has been disapproved.
c. Unless the levy is struck down as unconstitutional, all Courts must exercise jurisdiction in terms of section 11B and refuse to grant relief if the incidence of tax has been passed on.
d. Whatever amount is collected as duty will have to paid to the Government. If excess is collected than that payable, it would be credited to the Consumer Welfare Fund or given as refund to the person who has borne the incidence of duty.

The Supreme Court has held in Solar Pesticides case 2000 (116) ELT 401 that the bar of unjust enrichment will apply to refunds even in case of captive consumption of inputs by the importer, as the incidence of duty paid on the inputs are passed on to the customers.

Further, the Supreme Court in the case of CCE v. Allied Photographics 2004 (166) ELT 3 has held that doctrine of unjust enrichment applies even when duty is paid under protest. It has been held that even if there is no change in price before and after assessment (i.e. before and after imposition of duty), it does not lead to the inevitable conclusion that incidence of duty has been passed on to the buyer, as such uniformity may be due to various factors.

The principle of unjust enrichment applies in case of refund after provisional assessment as what is paid at the time of provisional assessment is customs duty and not only deposit [Bussa Overseas v. UOI 2003 (158) ELT 135(Bom.)]. As per CBIC Circular No. 40/2002-Cus. dated 17.07.2002, unjust enrichment provisions apply to provisional assessment also.

Q12. State briefly with reference to the provisions of section 27 of the Customs Act, 1962 whether the principle of "unjust enrichment" will apply in case of refund of excess duty paid on car imported for personal use?

Ans. The bar of unjust enrichment applies in case of refund of customs duty under section 27(2) of the Customs Act, 1962.

The principle of unjust enrichment will not apply to refund of duty on car imported for personal use, as clause (b) of the proviso to sub-section (2) of section 27 of the Customs Act, 1962 stipulates that in case of imports made by an individual for his personal use, the refund should not be credited to consumer welfare fund, but shall be paid to the applicant.

Questions from Custom Main Book

Q13. Discuss briefly whether refund effected by the Department pursuant to orders of court in respect of a bank guarantee towards disputed duty encashed by department, would be subject section 27 of Customs Act relating to "unjust enrichment".

Ans. It was held in Oswal Agro Mills Ltd. v/s CCex that –

1. Bank guarantee is merely a security to Department so that revenue would be collected if assessee loses;
2. Furnishing of bank guarantee is not a payment of duty;
3. Section 27 applies to refund of "duty paid" earlier;
4. Since furnishing of bank guarantee or encashment thereof doesn't amount to "duty paid", hence, there is no question of any "refund", because there is no "duty paid" earlier,
5. Hence section 27 doesn't apply to refund of bank guarantee encashed by department and, accordingly, the principle of unjust enrichment is also not applicable.

There is no provision for interest on delayed refund of wrongly encashed bank guarantee; however assessee may be granted compensation by courts (Faro Marine Co. Ltd. V CC – 2014).
Aforesaid judgement in Oswal Agro's case would apply only to a pre-deposit made as per interim orders of order i.e. when demand itself is stayed and only a security if furnished. When stay on demand is vacated i.e. when there is no stay, amount recovered by department by encashment of bank guarantee would have character of duty and same would be subject to unjust enrichment principle. (DCW Ltd. V/s UOI 2015)

Q14. A manufacturer of excisable goods imported epoxy resin under bill of entry dated 28th March, 1992 and put them in bonded warehouse. He later on cleared it on payment of duty. Subsequently, he realized that there was an excess payment of duty and put in a refund claim. He used the imported goods in the manufacture of other goods and the burden of duty had not been passed on. The imported goods were not sold to any other buyer. The Customs Department refused the claim to refund on the ground of unjust enrichment. Was the decision justified? Disucss.
Ans. It was held in UOI v Solar Pesticides (P) Ltd. [2000] that-

- Unjust enrichment applies if incidence/burden of duty is passed on to buyer;
- Such incidence/burden may be passed on indirectly by using such goods in manufacture of other goods and selling such finished goods to another person (the value of such finished goods shall include the amount of duty paid on imported raw material);
- Hence, when imported raw materials are captively consumed in manufacture of finished products, which are sold, duty on such materials is presumed to have been passed on to buyer;
- Therefore, the principle of unjust enrichment applies in such cases as well and accordingly, the customs department is right in denying refund on such ground.

Q15. What is the difference between short levy and short payment?
Ans. Short levy: Short levy arises when the charge itself is done at a lower rate than what is payable. In such a case, the price recovered by the assessee is assumed to be cum duty and actual duty is arrived at making back / reverse calculations. Short levy may arise on account of wrong classification.
Short payment: Short payment is a case of less payment of customs duty than what is due. It arises out of a short levy or a short payment of a correct levy. The assessee is liable to pay such shortfall.

Chapter 10: - Provisions relating to illegal import, illegal export, confiscation, penalty & allied provisions

ICAI Test your knowledge

Q1. Mr. Vasu, the assessee, was summoned under section 108 of the Customs Act, 1962, to give his statement in an inquiry. Mr. Vasu, however, did not appear before the concerned authorities. Instead, he filed the application for anticipatory bail in the District and Sessions Court which was disposed on the ground of being premature.
Mr. Vasu later moved to the High Court, which granted him anticipatory bail with a direction to the authorities that even if the Custom Authorities find any non-bailable offence against Mr. Vasu, he shall not be arrested “without ten days prior notice to him”. The Revenue contended that the order passed by the High Court was illegal and erroneous.
Explain, with the help of a decided case law, if any, whether the stand taken by the Revenue is sustainable in law?
Ans. The stand taken by the Revenue is valid. A similar issue has been dealt by the Supreme Court in the case of Union of India v. Padam Narain Aggarwal 2008 (231) ELT 397 wherein the Apex Court has observed that the power to arrest by a Custom Officer under section 104 of the Customs Act, 1962 is statutory in character and cannot be interfered with.
Supreme Court pronounced that the direction to issue 10 days prior notice before arrest even in case of a non-bailable offence could not be said to be legal or in consonance with law owing to two reasons. Firstly, the order passed by the High Court was a blanket one and granted protection to respondents in respect of any non- bailable offence. Secondly, it illegally obstructed, interfered and curtailed the authority of Custom Officers from exercising statutory power of arresting a person said to have committed a non-bailable offence by imposing a condition of giving 10 days prior notice, a condition not warranted by law. Hence, the order of the High Court was set aside.
Therefore, in the given case, it can be concluded that the stand taken by the revenue is sustainable in law.

Q2. When a ship on its arrival from Dubai was searched by the Customs Officers, they found 2,000 biscuits of gold kept concealed in the ceiling of one of the unoccupied cabin. The Chief Cook of the ship admitted the concealing of the gold. The Captain of the ship deposed in his statement that he alongwith Chief Engineer and Chief Officer had inspected the vessel for contraband goods and inspection did not reveal anything. No evidence was also found that Captain was involved in the smuggling of gold.
Discuss whether the ship is liable to confiscation under the Customs Act.
Ans. Section 115(2) of the Customs Act, 1962 inter alia provides that any conveyance used as a means of transport in the smuggling of any goods or in the carriage of any smuggled goods shall be liable to confiscation. However, if the owner of the conveyance proves that the conveyance was so used without the knowledge and connivance of the owner himself, his agent, and the person in charge of the conveyance, the conveyance shall not be liable to confiscation. As per section 2(31)(a) of the Customs Act, in case of a vessel, the master of the vessel is the person-in-charge. Since, in the problem there is no evidence that the Captain of the ship i.e., the master of the vessel had any knowledge about the smuggling of the gold or he had connived in the smuggling of gold, the ship would not be liable to confiscation.
In a similar situation, the Supreme Court has set aside the order of confiscation of a truck carrying forest produce in contravention of the provisions of the Forest Act as the authorities failed to

establish that the owner of the truck had any knowledge about the truck being so used [Forest Conservator v. Sharad Ramachandar Kale 2000 (121) E.L.T. 14 (S.C.)].
Further, in AP Moller Singapore Pvt. Ltd. v. Assistant Director, DRI 2004 (174) ELT 156 (Bom), the High Court has held that if owner, agent or captain is not involved in smuggling of goods, the vessel cannot be confiscated, even if the master of vessel was negligent.

Q3. When is redemption fine imposed? Whether a refund of redemption fine can be claimed if the importer decides to abandon the goods after paying such fine?
Ans. After goods are confiscated, they become property of Central Government and Government can sell/auction the goods. However, in some cases, the person from whom goods have been seized can get them back on payment of a prescribed fine. This fine is termed as 'redemption fine'.
Section 125 of the Customs Act, 1962 empowers a Customs Officer adjudging the confiscation to give an option to the owner of the goods or where such owner is not known, the person from whose possession or custody such goods have been seized to pay a fine as the said officer thinks fit, in lieu of confiscation of the imported goods. The provisions in this regard are as follows:

(a) in case of prohibited goods, the proper officer may give an option to pay a fine in lieu of confiscation;
(b) in case of other goods, the proper officer shall give an option of payment of fine, in lieu of confiscation;
(c) Where the proceedings are deemed to be concluded under section 28(2) or section 28(6) in respect of the goods which are not prohibited or restricted, the provisions of this section shall not apply.
(d) the amount of such fine cannot exceed the market price of the goods confiscated less import duty chargeable (in the case of imported goods) thereon;
(e) in addition to the fine imposed, duty and charges would also be payable in respect of such goods.
(f) Where the fine is not paid within a period of 120 days from the date of option, such option shall become void, unless an appeal against such order is pending.

The provisions of section 125 give the importer an option to either allow the goods to be confiscated or pay redemption fine in lieu of confiscation. Hence, the redemption fine becomes liable only in lieu of confiscation.
However, where the importer has abandoned the goods, the scope for payment of any fine in lieu of confiscation comes to an end. Hence, the redemption fine, if already paid shall be liable to be refunded. This view has been upheld by the Madras High Court in the case of Purfina Chemicals Pvt. Ltd v CEGAT, Madras (2004) (167) E.L.T. 145 (Mad.)

Q4. M/s SRT Ltd. had imported certain goods and got them cleared for home consumption. Later the Customs Department found that the goods have been improperly imported and are liable for confiscation under section 111 of the Customs Act, 1962 even though the same are cleared and not available for the seizure. The Customs Department has imposed penalty under section 112 and redemption fine under section 125 of the Customs Act, 1962.
Discuss with a brief note whether the penal action and redemption fine can be legally upheld in the facts of the case.
Ans. The High Court in the case of CCus. (Imports) v. Finesse Creation Inc. 2009 (248) ELT 122 (Bom.) [maintained in Commissioner v. Finesse Creation Inc. - 2010 (255) E.L.T. A120 (S.C.)] has held that redemption fine can only be imposed when the goods are available and can be redeemed. The High Court has explained that if the goods are not available, they cannot be confiscated and consequently, cannot be redeemed. Once goods cannot be redeemed, redemption fine cannot be imposed.
Therefore, the imposition of redemption fine is not legally correct in the instant case.
Penalty under section 112 can be imposed inter alia when a person omits to do any act which would render such goods liable for confiscation under section 111. Therefore, penalty can be imposed in the given case.

Q5. Importer BOPP Ltd. imported two consignments of ethyl alcohol which were allowed to be cleared for home consumption on execution of a bond undertaking to produce licence within a month. Since appellants failed to fulfill the obligation, proceedings were initiated which culminated in confiscation of the goods under section 111(d) of the Customs Act, 1962 and imposition of penalty on the importer under section 112(a) of Customs Act, 1962.
Examine whether provisionally released goods can be confiscated and penalty imposed thereupon.
Ans. When goods are confiscated, ownership of the goods vests in the Government. Therefore, if goods are not in possession of the importer or with Government, confiscation will have no meaning. However, when goods have been provisionally released, confiscation would be possible since release is provisional and importer gets conditional possession. The Supreme Court in the case of Weston Components Ltd. v. CC 2000 115 ELT 278 has also held that goods released under bond can be confiscated and redemption fine can be imposed. Thus, confiscation of goods imported by BOPP Ltd. is in consonance with the provisions of the Customs Act, 1962.
Penalty under section 112 can be imposed inter alia when a person omits to do any act which would render such goods liable for confiscation under section 111. Thus, penalty can also be imposed on BOPP Ltd. as the confiscation of goods is justifiable.

Q6. On the package, received as a post parcel from abroad, contents are indicated as calculators valued at Rs. 1,000. However, when the parcel was opened, it was found to contain ten mobile phones valued at Rs. 2,50,000. A show cause notice has been issued to the importer proposing to confiscate the goods and impose penalty on the importer.
Examine the legality of action proposed in terms of statutory provisions under Customs Act, 1962.
Ans. The proposed action is legal. Dutiable goods which are not included in the entry are liable to confiscation under section 111(l) of the Customs Act, 1962 and as per section 82, in the case of a post parcel, any label or declaration accompanying the goods which contains description, quantity and value is deemed to be an entry for import.
Therefore in this case, goods become liable to confiscation under section 111 (l) of Customs Act, 1962 since they are not covered by the entry for import. Penalty under section 112(a) can be imposed inter alia when a person omits to do any act which would render such goods liable to confiscation under section 111. Thus, penalty can also be imposed (as the confiscation is justifiable) unless importer is able to show that he was not responsible for import.

Q7. Mr. Henry was the managing director of a company, which had set up a unit in the Cochin Export Processing Zone for manufacture of certain equipments for cent percent export. On the basis of the relevant notifications, the company was entitled to import capital goods and claim benefit of duty exemption on proof of total export.
With the passage of time, the business of the company fell and it went into liquidation. In the meanwhile, the customs authorities confiscated the capital goods in terms of section 111(o) of the Customs Act, 1962, and imposed penalty on the company. Penalty under section 112(a)(ii) was also imposed on Mr. Henry without stating any reasons as he was in control of the affairs of the company. This was done as the Assistant Commissioner of Customs found that neither the capital goods nor the raw materials and other goods were used in the production of goods for export in terms of the relevant notification.
Briefly discuss, with reference to case law, whether the show cause notice imposing penalty on Mr. Henry under section 112(a)(ii) is sustainable in law.
Ans. No, the show cause notice imposing penalty on Mr. Henry under section 112(a)(ii) of the Customs Act, 1962 is not sustainable in law. The facts of the given case are similar to case of O.T. Enasu v. UOI 2011 (272) E.L.T. 51 (Ker.).
The High Court stated that the non-observance of the conditions of import of the goods in question gives the jurisdiction to impose an order of confiscation in terms of Section 111(o) of the Act. However, while considering the question as to whether penalty has to be imposed on any person for any commission or omission, which has rendered the goods liable for confiscation under Section

111(o), it has to be decided as to whether the goods became liable for confiscation on account of any act of omission or commission attributable to the person in question. Merely because a person is the Managing Director of a company, he would not be fastened with penalty, unless it is shown that he had, by his commissions or omissions, led the goods to be liable for confiscation.
The High Court noted that under sub-clause (ii) of clause (a) of section 112, the liability to penalty is determined on the basis of duty sought to be evaded. Therefore, the jurisdictional fact to impose a penalty in terms of section 112(a)(ii) includes the essential ingredient that "duty was sought to be evaded". The concept of evading involves a conscious exercise by the person who evades. Therefore, the process of "seeking to evade" essentially involves a mental element and the concept of the status "sought to be evaded" is arrived at only by a conscious attempt to evade. The High Court, therefore, inferred that unless it is established that a person has, by his omissions or commissions, led to a situation where duty is sought to be evaded, there cannot be an imposition of penalty in terms of section 112(a)(ii) of the Act.
The High Court, therefore held that since penalty had been imposed on the managing director without stating any reasons and without any finding that he was guilty of omissions or commission and had "sought to evade duty", the same could not be upheld.

Q8. M/s. Shree Ram Traders had imported certain goods and got them cleared for home consumption. Later, the Department found that the goods had been imported in contravention of the relevant law governing import & export of the goods as applicable at that point of time. Consequently, the goods were confiscated under section 111(d) of the Customs Act and a penalty under section 112 of the Act was levied.
You are required to examine the case and offer your views.
Ans. The facts of the case are similar to the case of Bussa Overseas & Properties P. Ltd. v C.L. Mahar, Asstt. C.C., Bombay 2004 (163) E.L.T. 304 (Bom.) wherein the Bombay High Court observed that once goods are cleared for home consumption they cease to be imported goods as defined in section 2(25) of the Customs Act and as per section 111(d) only 'imported' goods could be confiscated. Hence, power to confiscate the goods, after their clearance for home consumption, could be exercised only in cases where the order of clearance is revised and cancelled.
Therefore, in the given case the confiscation of the goods by the Department is illegal.
Section 112 (a) provides that any person who in relation to any goods, does or omits to do any act which act or omission would render such goods liable to confiscation under section 111, or abets the doing or omission of such act, is liable to a penalty. The High Court held that the power to impose penalty could be exercised not only when the goods are available for confiscation but when such goods are liable to confiscation. The Court held that the expression 'liable to confiscation' clearly indicates that the power to impose penalty can be exercised even if the goods are not available for confiscation. The mere fact that the importers secured such clearance and disposed of the goods and thereafter goods are not available for confiscation cannot divest Customs Authorities of the powers to levy penalty under section 112 of the Act.
Following the judgment of the High Court, penalty levied by the Department in the given case is correct in law.
Note: This ruling has been maintained by the Supreme Court in Asstt Collector v. Bussa Overseas & Properties P. Ltd. 2004(163) ELT A160 (SC).

Q9. Two trucks are intercepted by the Customs Department. The officers of the Customs Department conduct search of the vehicle in the presence of witnesses and it is found that one of the trucks has a secret compartment and 175 Kgs. of heroine and 39 Kgs. of opium of foreign origin are concealed in that chamber. During the course of investigation, the statement of 'P', the registered owner of the vehicle, is taken under section 108 of the Customs Act and 15 witnesses are examined. However, 'P' completely denies his culpability in the crime. He contends that though the vehicle is registered in his name but he has sold the truck much before the contraband goods are recovered therefrom.

Additional Questions & Answers

These are apart from Examples and Q & A in main book

You are required to examine the situation with the help of case law, if any.
Ans. The facts of the case are similar to the case of Balwinder Singh v. Asstt. Commissioner, Customs & Central Excise 2005 (181) E.L.T. 203 (S.C.). In this case, the Supreme Court stated that the registered owner of the vehicle was convicted solely for the reason that he was the registered owner of the vehicle. There was no evidence to prove that he knowingly allowed any person to use the vehicle for any illegal purpose. There was also no evidence to prove the conspiracy set up by the prosecution. The Apex Court held that though the articles were recovered from the truck, there was no evidence to show that the appellant had any control over the vehicle nor was he in possession of those drugs. Therefore, the registered owner of the vehicle was acquitted of all charges framed against him.
In the given case also, there is no evidence against 'P', the registered owner of the vehicle, and thus he shall not be prosecuted.

Q10. Champalal & Co. had smuggled rough diamonds into the country clandestinely without payment of duty. The Department issued a notice to Champalal & Co. proposing confiscation of the diamonds under clause (d) of section 111 of the Customs Act, 1962 and imposing penalties on various persons concerned.
However, the said goods were unconditionally exempted from payment of import duty vide an exemption notification. So, Champalal & Co. claimed the benefit of the said exemption notification. The Department, however, refused to grant the benefit of exemption meant for imported goods to smuggled goods.
Do you think that Department's action is valid in law?
Ans. Yes, the Department's action is valid in law. The facts of the given case are similar to the case of CCus. (Prev.), Mumbai v. M. Ambalal & Co. 2010 (260) ELT 487 (SC), wherein the Apex Court held that the smuggled goods could not be considered as 'imported goods' for the purpose of benefit of the exemption notification. It opined that if the smuggled goods and imported goods were to be treated as the same, then there would have been no need for two different definitions under the Customs Act, 1962.
The Court observed that one of the principal functions of the Customs Act was to curb the ills of smuggling on the economy. Hence, it held that it would be contrary to the purpose of exemption notifications to give the benefit meant for imported goods to smuggled goods.

Q11. Write a short note on applicability of penal provisions in customs law on attempt to export goods improperly.
Ans. As per section 113 of the Customs Act, 1962, goods attempted to be exported improperly are liable to confiscation. Further, section 114 stipulates that any person who, in relation to any goods, does or omits to do any act, which act, or omission would render such goods liable to confiscation under section 113, or abets the doing or omission of such an act, shall be liable to penalty as under:

Sr. No.	Goods	Maximum Penalty
1.	In case of prohibited goods	(a) Three times the value of the goods declared by the exporter or (b) Three times the value as determined under the Customs Act, whichever is greater
2.	In case of dutiable goods, other than prohibited goods	(a) upto 10% of the duty sought to be evaded on such goods or (b) Rs. 5,000, whichever is greater Further, such penalty will be subject to the provisions of section 114A. However, where such duty as determined under section 28(8) and the interest payable thereon under

		section 28AA is paid within 30 days from the date of communication of the order of the proper officer determining such duty, the amount of penalty liable to be paid by such person under this section shall be 25% of the penalty so determined.
3.	In case of any other goods	(a) Value of the goods declared by the exporter or (b) Value as determined under the Customs Act, whichever is greater.

Q12. Mr. X is a dealer of smuggled goods. However, he himself does not import the goods. Duty has been demanded from Mr. X under sections 28 and 125(2) of the Customs Act, 1962 although no smuggled goods have been seized from him.
Discuss, with the help of a decided case law, if any whether such demand of duty is valid in law.
Ans. The issue involved in the given case is whether customs duty can be demanded under section 28 and/or section 125(2) of the Customs Act, 1962 from a person dealing in smuggled goods when no such goods are seized from him. Recently, the Karnataka High Court addressed this issue in the case of CCus. v. Dinesh Chhajer 2014 (300) ELT 498 (Kar.). In the instant case, the High Court made the following significant observations:-

(i) Section 28 applies to a case where the goods are imported by an importer and the duty is not paid in accordance with law, for which a notice of demand is issued on the person. In case of notice demanding duty under section 125(2), firstly the goods should have been confiscated and the duty demandable is in addition to the fine payable under section 125(1) in respect of confiscated goods. Thus, notices issued under sections 28 and 125(2) are not identical and fall into completely different areas.
(ii) The material on record disclosed that the assessee did not import the goods but was only a dealer of the smuggled goods. Therefore, there was no obligation cast on him under the Act to pay duty. Thus, the notice issued under section 28 of the Act to the assessee is unsustainable as he is not the person who is chargeable to duty under the Act.
(iii) Since no goods were seized, there could not be any confiscation and in the absence of a confiscation, question of payment of duty by the person who is the owner of the goods or from whose possession the goods are seized, does not arise. Based on the above observations, the High Court held that no duty is leviable against the assessee as he is neither the importer of the goods nor was in possession of any goods.

In the given case, Mr. X is only a dealer of smuggled goods; he is not the importer of these goods and also no such goods have been seized from him. Therefore, applying the ratio of the above mentioned decision to the given situation, it can be concluded that customs duty under section 28 and/or section 125(2) of the Customs Act, 1962 cannot be demanded from Mr. X.

Q13. Cargo Logistics Pvt. Ltd. (Cargo Logistics) is a duly appointed steamer agent of the vessel Queen Mary Utah. 110 containers of MS Scrap were imported in the said vessel by an Indian importer. Cargo Logistics had affixed the seal on the said containers after stuffing and took charge of the sealed containers. On the entry of the Vessel in India, Cargo Logistics filed the Import General Manifest and also dealt with the Customs Department for appropriate orders that had to be passed in terms of section 42 of the Customs Act, 1962. Section 42 prescribes that no conveyance can leave without a written order. Customs Department, on finding that 40 of the said containers were empty, levied a penalty on Cargo Logistics under section 116 of the Customs Act, 1962 for short landing of the goods. Cargo Logistics is of the view that penalty for short landing of the goods can only be imposed on the person-in charge of the vessel and not on a steamer agent.
Discuss with the help of a decided case law, if any, whether penalty for short landing of goods can be imposed on the steamer agent of a vessel.
Ans. Section 116 of the Customs Act, 1962 imposes a penalty on the person-in charge of the conveyance inter alia for short-landing of the goods at the place of destination and if the deficiency is

not accounted for to the satisfaction of the Customs Authorities. Section 2(31) of the Act defines "person-in-charge" to inter alia mean in relation to a vessel, the master of the vessel. Section 148 of the Act provides that the agent appointed by the person-in-charge of the conveyance and any person who represents himself to any officer of customs as an agent of any such person-in-charge is held to be liable for fulfillment in respect of the matter in question of all obligations imposed on such person-in-charge by or under this Act and to penalties and confiscation which may be incurred in respect of that matter.

The High Court in the case of Caravel Logistics Pvt. Ltd. v. Joint Secretary (RA) 2013 (293) ELT 342 (Mad.) has held that conjoint reading of sections 2(31), 116 and 148 of Customs Act, 1962 makes it clear that in case of shortlanding of goods, if penalty is to be imposed on person-in-charge of conveyance/vessel, it can also be imposed on the agent appointed by him. The High Court observed that if the assessee affixed seal on containers after stuffing and took their charge, he stepped into shoes of/acted on behalf of master of vessel (the person-in-charge).

Therefore, in the given case also penalty for short landing of goods can be imposed on Cargo Logistics Pvt. Ltd., the steamer agent of the vessel, Queen Mary Utah.

Q14. Duplicate Photocopier Ltd. imported old and used main frames of digital copy printers assemblies. The Commissioner assessed the goods and imposed penalty and redemption fine. The importer got the goods released by depositing the amount of duty, fine and penalty with a view to save cost of detention and demurrage as also to save goods from deterioration in value and quality. However, subsequent to the release of the goods, the importer filed an appeal with the CESTAT to reduce the quantum of fine and penalty. The CESTAT dismissed the appeal, on the ground that the importer had already got the goods released on payment of redemption fine and penalty.

Discuss, whether the CESTAT was justified in dismissing the appeal with the help of a decided case law (if any).

Ans. No, the CESTAT was not justified in dismissing the appeal in the given case.

The facts of the given case are similar to B. E. Office Automation Products Ltd. v. CCEx. 2014 (300) ELT 486 (P & H) decided by High Court wherein it was held that mere payment of redemption fine in no way shrinks the right of the appellant to challenge not only confiscation but also imposition of redemption fine and final penalty.

Further, payment of redemption fine by the importer for release of goods at the earliest in order to save cost of detention and demurrage as also to avoid further deterioration in value and quality of goods, cannot be said to be bad or improper.

Q15. Differentiate between power to search persons under section 100 and 101 of Customs Act 1962.

Ans. Section 100 sets out the provisions in respect of power to search suspected persons entering or leaving India etc. whereas, section 101 contains the provisions in respect of power to search suspected persons in certain other cases. Search under section 100 is conducted by the proper officer of the customs, whereas search under section 101 is conducted by the officer of customs empowered by the Principal Commissioner of Customs or Commissioner of Customs.

A person can be searched under section 100 if the proper officer has reason to believe that any goods liable to confiscation or documents relating thereto are secreted in his possession. However, a person can be searched under section 101 only for certain specified goods which are liable to confiscation or documents relating thereto. The specified goods are gold, diamonds, manufactures of gold or diamonds, watches and any other notified goods.

Section 100 applies to only the persons specified therein e.g. any person in a customs area. However, for search under section 101, there is no restriction regarding place of such person.

Q16. Write a short note on "power to arrest" with reference to the Customs Act, 1962.

Ans. Section 104 of the Customs Act, 1962 empowers a proper officer (who is empowered by general or special order of Principal Commissioner of Customs or Commissioner of Customs) to

arrest any person in India or within Indian customs waters, if the official has reason to believe that the person is guilty of an offence punishable under section 132 or section 133 or section 135 or section 135A or section 136 of the Customs Act.
Such a person should be informed of the grounds of his arrest and taken to the nearest Magistrate immediately. The Customs Officer is vested with the powers of an Officer-in-charge of a police station for the purpose of releasing any person on bail or otherwise.

Q17. A person makes an unauthorised import of goods liable to confiscation. After adjudication, Assistant Commissioner provides an option to the importer to pay fine in lieu of confiscation. It is proposed to impose fine (in lieu of confiscation) equal to 50% of margin of profit. The following particulars are made available:

- Assessable value Rs. 3,00,000
- Total duty payable Rs. 1,20,000
- Market value Rs. 5,00,000

You are required to calculate amount of fine and total payment to be made by importer to clear the consignment.
Ans.
Computation of amount of redemption fine and total payment to be made by the importer
Margin of profit = Market value – Total cost of the goods to importer
= Rs. 5,00,000 – (Rs. 3,00,000 + Rs. 1,20,000) = Rs. 80,000
Proposed amount of fine = 50% of Margin of profit
= Rs. 80,000 × 50% = Rs. 40,000
As per proviso to sub-section (1) of section 125 of the Customs Act, 1962, redemption fine should not exceed the market price of the goods confiscated minus the duty chargeable thereon.
Maximum redemption fine = Market price of goods confiscated- Duty chargeable
= Rs. 5,00,000 – Rs. 1,20,000 = Rs. 3,80,000
Since the proposed amount of fine is less than the maximum amount of fine permissible under section 125, the redemption fine payable by the importer would be Rs. 40,000.
Total payment to be made by the importer to clear the consignment:
= [Total duty payable + Amount of fine]
= Rs. 1,20,000+ Rs. 40,000 = Rs. 1,60,000

Q18. Write a brief note with respect to levy of penalty under the Customs Act for improper exportation of non-prohibited dutiable goods.
Ans. Provisions relating to penalty for improper exportation of non-prohibited dutiable goods etc. provides for a penalty not exceeding 10% of the duty sought to be evaded or Rs. 5,000, whichever is higher. Further, such penalty will be subject to the provisions of section 114A of the Customs Act, 1962.
Also, where the duty and the interest are paid within 30 days from the date of communication of the order, the amount of penalty will be reduced to 25% of the penalty so determined [Proviso to clause (ii) of section 114 of the Customs Act, 1962].

Other Questions

Q19. Examine, with the help of a decided case law, whether it is mandatory for the Customs Officers to make available the seized documents to the person (from whose custody such documents were seized) for making copies thereof.
Ans. Section 110(4) of the Customs Act, 1962 provides that the person from whose custody any documents are seized under sub-section (3) shall be entitled to make copies thereof or take extract therefrom in the presence of a officer of Customs. Thus, Customs Officers are required to make

available the seized documents to the person from whose custody such documents were seized, if such person wants to make copies thereof.
The above mentioned issue came up for consideration before the Bombay High Court in case of Manish Lalit Kumar Bavishi v. Addl. Dir. General, DRI 2011 (272) E.L.T. 42. The High Court held that from the language of section 110(4), it was apparent that the Customs officers were mandatorily required to make available the documents asked for. It was the party concerned who had the choice of either asking for the document or seeking extract.
If any document was seized during the course of any action by an officer under the provisions of the Customs Act, that officer was bound to make available those documents. The denial by the Revenue to make the documents available was clearly an act without jurisdiction.

Q20. A Customs Officer has issued an order for confiscation of goods. However, the owner of the goods alleges that the order is not valid as no show cause notice has been issued.
Examine the situation with reference to section 124 of the Customs Act, 1962.
Ans. Section 124 of the Customs Act, 1962 provides that before confiscating goods or imposing any penalty on any person, a show cause notice [SCN] must be issued to the owner of goods giving grounds for confiscation or imposition of penalty and he should be given an opportunity to make representation and being heard. The show cause notice can be issued only with the prior approval of the officer of customs not below the rank of Assistant Commissioner of Customs. The notice and the representation, at the request of the person concerned, can be oral.
Therefore, since no show cause notice has been issued, the order of confiscation of goods is not valid.

Q21. A person attempts to illegally export an antique sculpture which is banned for export. In adjudication he contends that under law the item must be released to him on fine in lieu of confiscation.
Is the contention correct?
Ans. The contention is not correct. The adjudicating officer in this case is not bound to accede to his request as the case falls under the category where the officer 'may' release the goods on payment of fine and is not bound to do so. The adjudicating officer will take a view on the matter and decide whether to release the goods or to confiscate them.

Q22. Briefly write a note on whether an exporter who has been held guilty of exporting 'prohibited goods' is entitled to an option to pay fine in lieu of confiscation under section 125 of the Customs Act, 1962.
Ans. As per section 125 of the Customs Act, 1962, whenever confiscation is ordered, the adjudicating officer may provide an option to the owner of the goods to pay redemption fine in lieu of confiscation if the importation or exportation of goods is prohibited. However, if importation or exportation of goods is not prohibited, the option to pay redemption fine shall be given to the owner of goods.
Therefore, an exporter guilty of exporting prohibited goods is not entitled as such to an option to pay fine in lieu of confiscation under section 125 of the Customs Act, 1962. It is at the discretion of the adjudicating officer to give or not to give such an option to the exporter guilty of exporting prohibited goods. However, the owner of the goods importing or exporting non-prohibited goods shall be entitled to such an option.

Q23. Explain briefly the offences which are cognizable and bailable under section 104 of the Custom Act, 1962.
Ans. As per section 104(4) of the Customs Act, 1962, following offences are cognizable offences:
(a) offences relating to prohibited goods; or
(b) offences relating to evasion or attempted evasion of duty exceeding Rs. 50 lakh.
As per section 104(6) of the Customs Act, 1962, all offences under the Customs Act, 1962 are bailable offences.

Chapter 11: - Appeals & Revision

This chapter includes "5 Q & A" from Custom main book.

ICAI Test your knowledge

Q1. Which orders of Commissioner (Appeals) are not appealable to Appellate Tribunal under section 129A of the Customs Act, 1962?

Ans. No appeal shall lie to the Appellate Tribunal and the Appellate Tribunal shall have no jurisdiction to decide any appeal in respect of any order passed by the Commissioner (Appeals) under section 129A, if such order relates to:

i. any goods imported or exported as baggage;
ii. any goods loaded in conveyance for importation into India, but which are not unloaded at their place of destination in India, or so much of the quantity of such goods as has not been unloaded at any such destination, if goods unloaded at such destination are short of the quantity required to be unloaded at that destination.
iii. payment of drawback as provided in Chapter X and the rules made there under.

In these cases, revision lies with the Central Government.

Q2. The Committee of Principal Commissioners/Commissioners of Customs is empowered under the Customs Act, 1962 to direct the filing of an appeal before the Appellate Tribunal in certain cases while in certain others, the Committee of Principal Chief Commissioners/ Chief Commissioners may direct an application to be filed before the Appellate Tribunal for determination of such points arising out of the decision or order as may be specified by the said Committee.

Write a brief note on the powers of the Committee of Principal Commissioners/Commissioners and Committee of Principal Chief Commissioners/Chief Commissioners of Customs bringing out the difference in the exercise of such powers.

Ans. Under section 129A(2) of the Customs Act, 1962, the Committee of Principal Commissioner/Commissioners of Customs may direct the proper officer to file appeal on its behalf to the Appellate Tribunal against the order of Commissioner (Appeals), if it is of the opinion that the order is not legal or proper. Under section 129D(1) of the Customs Act, 1962, the Committee of Principal Chief Commissioners of Customs or Chief Commissioners of Customs may, of its own motion, call for and examine the record of any proceedings in which a Principal Commissioner of Customs or Commissioner of Customs has passed any decision or order under this Act for the purpose of satisfying itself as to the legality or propriety of any such decision or order and may, by order, direct such Principal Commissioner/Commissioner or any other Principal Commissioner/Commissioner to apply to the Appellate Tribunal for the determination of such points arising out of the decision or order as may be specified by the Committee of Principal Chief Commissioner of Customs or Chief Commissioners of Customs in its order.

Therefore, differences in two cases mentioned above can be tabulated as under:

Committee of Principal Commissioners/Commissioners of Customs	**Commissioners/Commissioners of Customs Committee of Principal Chief Commissioners/Chief Commissioners of Customs**
Can direct to file an appeal against order of Commissioner (Appeals) who passes order in appeals filed against orders passed by any officer lower in rank than Principal Commissioner/Commissioner of Customs.	Can direct to file a review petition against order of Principal Commissioner/ Commissioner of Customs who passes order as an adjudicating authority.
Regular appeal filed with the Tribunal.	Review application filed with the Tribunal. [Review application treated as appeal filed against the order of the adjudicating authority - section 129D(4) of the Customs Act, 1962.]

Appeal to be filed within three months as specified in section 129A(3) of the Customs Act, 1962.	Review application can be filed within four months; three months for the Committee to issue order for review [delay in filing upto 30 days can be condoned by the Board] and further one month to the Principal Commissioner/ Commissioner to file an application.

Q3. Explain briefly the powers of review of the Principal Commissioner or Commissioner of Customs under section 129D(2) of the Customs Act, 1962 in respect of decisions taken by adjudicating authority subordinate to him.

Ans. Section 129D(2) empowers the Principal Commissioner of Customs or Commissioner of Customs to review any decision taken by the adjudicating authority subordinate to him. For this purpose, he may, of his own motion, call for and examine the record of any proceeding in which an adjudicating authority subordinate to him has passed any decision or order under the Act for the purpose of satisfying himself as to the legality or propriety of any such decision or order. Thereafter, the Principal Commissioner of Customs or Commissioner of Customs may, by order, direct such authority or any officer of Customs subordinate to him to apply to the Commissioner (Appeals) for the determination of such points arising out of the decision or order as may be specified by him in his order.

Such review application is treated as Departmental appeal against order of adjudicating authority lower in rank than Principal Commissioner/ Commissioner of Customs like Additional/Joint/Deputy/ Assistant Commissioner.

Q4. Briefly explain the powers of CBIC to issue instructions regarding non-filing of appeal in certain cases under the Customs Act, 1962.

Ans. Section 131BA of Customs Act, 1962 empowers the CBIC to issue instructions regarding non-filing of appeal in certain cases as under:

(i) The Board may issue instructions fixing such monetary limits for the purposes of regulating the filing of appeal/ application/ revision/ reference by the Principal Commissioner of Customs or Commissioner of Customs.

(ii) Where the Principal Commissioner of Customs or Commissioner of Customs has not filed an appeal/ application/ revision/ reference against any decision or order passed under the provisions of this Act in pursuance of such an instruction, he shall not be precluded from filing any appeal etc. in any other case involving the same or similar issues or questions of law.

(iii) Non-filing of appeal, application etc. by Principal Commissioner of Customs or Commissioner of Customs cannot be considered to be his acquiescence in the decision on disputed issue. Further, the Commissioner (Appeals) or Appellate Tribunal or court must have regard to the circumstances for non-filing of appeal etc.

Following monetary limits have been fixed by CBIC vide its Instruction F No. 390/Misc/163/2010 JC dated 17.08.2011 as amended by Instruction F.No.390/Misc./163/2010 JC dated 17.12.2015 below which an appeal shall not be filed by the Department in CESTAT, High Court and Supreme Court:-

Sr. No.	Appellate Forum	Monetary limit
1.	CESTAT	Rs. 10,00,000/-
2.	High Courts	Rs. 15,00,000/-
3.	Supreme Court	Rs. 25,00,000/-

For ascertaining whether a matter would be covered within or without the aforementioned limits, the determinative element would be duty under dispute e.g., in a case involving duty of Rs. 10 lakhs or below with equal penalty and interest, as the case may be, no appeal shall be filed in the Tribunal. Similarly, no appeal shall be filed in the High Courts if the duty involved does not exceed Rs. 15 lakhs with or without penalty and interest. However, where the imposition of penalty or interest is the subject matter of dispute and the said penalty or interest exceeds the limit prescribed, then the matter could be litigated further.

It has also been clarified that the adverse judgements relating to the following would be contested irrespective of the amount involved:

(a) where the constitutional validity of the provisions of an Act or Rule is under challenge; or
(b) where Notification/ Instruction/ Order or Circular has been held illegal or ultra vires.
(c) classification and refund issues which are of legal and/or recurring nature

It has been clarified vide Circular No. 390/Misc/163/2010 JC dated 03.06.2013 that the said limits as applicable to penalty are applicable for redemption fine also. Where both penalty and redemption fine are imposed, the limit should be calculated taking these together. Further, such limits apply to refunds also, but not to application filed before Joint Secretary (Revision Application).

Q5. Discuss with a brief note on the provisions of section 129E of the Customs Act, 1962 regarding deposit of certain percentage of duty demanded or penalty imposed before filing appeal.

Ans. Section 129E of the Customs Act, 1962 provides as under:

(i) (The Commissioner (Appeals) shall not entertain any appeal under section 128(1), unless the appellant has deposited 7.5% of the duty, in case where duty or duty and penalty are in dispute, or penalty, where such penalty is in dispute, in pursuance of a decision or an order passed by an officer of customs lower in rank than the Principal Commissioner of Customs or Commissioner of Customs.
The appeal under section 128(1) is the first appeal before Commissioner (Appeals) against order of officers lower in rank than Principal Commissioner/Commissioner of Customs e.g. Additional Commissioner, Joint Commissioner, Deputy Commissioner or Assistant Commissioner.

(ii) The Tribunal shall not entertain any appeal against the decision or order passed by Principal Commissioner of Customs/Commissioner of Customs under section 129A(1)(a), unless the appellant has deposited 7.5% of the duty, in case where duty or duty and penalty are in dispute, or penalty, where such penalty is in dispute, in pursuance of the decision or order appealed against.
The appeal under section 129A(1)(a) is the first appeal before Tribunal against an order passed by Principal Commissioner/Commissioner of Customs as an adjudicating authority.

(iii) The Tribunal shall not entertain any appeal against the decision or order passed by Commissioner (Appeals) under section 129A(1)(b), unless the appellant has deposited 10% of the duty, in case where duty or duty and penalty are in dispute, or penalty, where such penalty is in dispute, in pursuance of the decision or order appealed against.
Appeal under section 129A(1)(b) is second appeal before Tribunal against an order passed by Commissioner (Appeals).

(iv) The amount of pre-deposit shall not exceed Rs. 10 crores.

Other Questions

Q6. State the circumstances under which a revision petition can be filed before the Central Government under the Customs Act.

Ans. The first proviso to section 129A of the Customs Act, 1962 provides that the Appellate Tribunal shall not have jurisdiction to decide any appeal in respect of any order passed by Commissioner (Appeals) if such order relates to, -

(a) any goods imported or exported as baggage;
(b) any goods loaded in a conveyance for importation into India, but which are not unloaded at their place of destination in India, or which are short landed at that destination;
(c) payment of drawback as provided in Chapter X, and the rules made thereunder.

In such cases, redressal lies with the Central Government. Section 129DD(1) enables the appellant to get the orders of Appellate Commissioner (on these three aspects) annulled or modified by the Central Government.
By virtue of section 129DD(1A) the Principal Commissioner of Customs or Commissioner of Customs may direct the proper officer to make an application on his behalf to the Central Government for revision of an order. However, such application can be made only if the Principal Commissioner of Customs or Commissioner of Customs is of the opinion that the order passed by the Commissioner (Appeals) under section 128A is not legal or proper.
Therefore, while an importer or exporter (i.e., an assessee) can file a review application against the orders of Commissioner (Appeals) under section 129DD(1), the departmental review application is filed under section 129DD(1A).

Q7. Which orders are appealable to the High Court under the Customs Act, 1962? Can the delay in filing an appeal be condoned by the High Court?
Ans. As per section 130(1) of the Customs Act, 1962, an appeal can be made to the High Court against the order of the Tribunal if the case involves substantial question of law, except in cases relating to rate of customs duty and valuation of goods. If the issue relates to rate of customs duty or valuation of goods, appeal lies directly to Supreme Court.
Sub-section (2) of section 130 inter alia lays down that an appeal can be made to the High Court within 180 days from the date on which the order appealed against is received by the Principal Commissioner of Customs or Commissioner of Customs or the other party.
The High Court has power to condone the delay and admit an appeal after the expiry of the period of 180 days referred to in sub-section (2), if it is satisfied that there was sufficient cause for not filing the same within that period [subsection (2A)].

Q8. Mention the orders against which appeal lies to the Supreme Court under section 130E of the Customs Act.
Ans. As per section 130E of the Customs Act, an appeal shall lie to the Supreme Court from-

(a) any judgment of High Court delivered in an appeal made under section 130, if the High Court certifies the case to be fit for appeal to the Supreme Court. Such certification can be done by the High Court on its own motion or on an oral application made by or on behalf of the aggrieved party, immediately after passing of the judgement.
(b) any order of the Appellate Tribunal having relation to the determination of rate of customs duty or value of goods, among other things.

Under section 130E(a), an appeal is filed before Supreme Court against the orders of High Court on matters other than those relating to determination of rate of customs duty or value of goods.

Questions from Custom Main Book

Q9. An assessee received an order of the Assistant Commissioner dated 20.11.2017 in relation to adjudication of a demand on 27.11.2017. However, he was aggrieved by the said order, hence he filed an appeal to Commissioner (Appeals) on 27.1.2018. The Commissioner (Appeals), in response, rejected the appeal as he was of the opinion that it was time barred. Discuss.
Ans. Section 128 of the Customs Act, 1962 provides that an assessee aggrieved by the order of adjudicating authority below the rank of Commissioner may appeal to the Commissioner (Appeals) within 60 days from the date of the communication to him of such decision or order.
In the given case, the assessee received the order of Assistant Commissioner on 27.11.2017, hence he could file the appeal to Commissioner (Appeals) within 60 days from the said date which expires on 26.1.2018. however, 26th January is a gazette national holiday, hence, the due date shall be the next working day i.e. 27.1.2018.
Therefore, the assessee has made the appeal within time.

Q10. Compute the quantum of pre – deposit required to be made under section 129E of the Customs Act, 1962 in each of the following independent cases:

(1) In an order dated 18.10.2017 issued to M/s. RR Ltd., the Joint Commissioner of customs has confirmed a duty demand of Rs.16,00,000 and imposed a penalty of Rs.5,00,000. M/s. RR Ltd. intends to file an appeal with the Commissioner (Appeals) against the duty and penalty imposed.
(2) M/s. KK Ltd. intends to file an appeal with CESTAT against the order of Commissioner (Appeals) which confirmed a duty demand of Rs. 24,00,000 and imposed a penalty of Rs. 6,00,000.
(3) LKS Ltd. intends to file an appeal with CESTAT against the order of Principal Commissioner which confirmed a duty demand of Rs.36,00,000 and imposed a penalty of Rs.8,00,000.
(4) MNM Ltd. intends to prefer an appeal before the Joint Secretary (Revision Application) relating to drawback case under section 129DD against the order of Commissioner (Appeals) which confirmed a duty demand of Rs.10,00,000.

Ans.

(1) As per Section 129E, while filing an appeal with Commissioner (Appeals), quantum of pre – deposit will be 7.5% of the disputed duty amount in case where both duty and penalty are in dispute. Thus, in the given case quantum of pre – deposit will be 7.5% of Rs. 16,00,000 which is Rs.1,20,000.
(2) As per Section 129E, while filing an appeal with CESTAT against an order passed by Commissioner (Appeals) i.e., a second appeal, quantum of pre – deposit will be 10% of the disputed duty amount in case where both duty and penalty are in dispute. Thus, in the given case quantum of pre – deposit will be 10% of Rs. 24,00,000 which is Rs. 2,40,000.
(3) As per section 129E, while filing an appeal with CESTAT against an order passed by Principal Commissioner i.e., a first appeal, quantum of pre – deposit will be 7.5% of the disputed duty amount in case where both duty and penalty are in dispute. Thus, in the given case, quantum of pre – deposit will be 7.5% of Rs. 36,00,000 which is Rs. 2,70,000.
(4) CBIC has clarified that ambit of section 129E does not extend to appeals under section 129DD before Joint Secretary (Revision Application) [JS(RA)]. Therefore, MNM Ltd. is not required to pay mandatory pre – deposit while filing appeal before the JS (RA) relating to drawback.

Q11. AK & Co. deposits the required amount of Rs.1,00,000 as pre – deposit on 30.9.2017 and files an appeal before the CESTAT. The said appeal is decided in favour of AK & Co. on 30.11.2017. AK & Co. forwards a letter seeking refund of pre – deposit on 7.12.2017 and the same was refunded on 15.12.2017. explain whether AK & Co. is entitled to payment of interest and compute the amount of interest payable on refund of such pre – deposit.

Ans. The relevant section to provide for payment of interest @ 6% per annum on the delayed refund of pre – deposit from the date of the payment of pre – deposit to the date of its refund.

Therefore, AK & Co. will be entitled to payment of interest on such delayed refund of pre – deposit as under:

	Amt. in Rs.
Amount of pre – deposit	1,00,000
Date of payment of pre – deposit	30.9.2017
Date of refund of pre deposit	15.12.2017
No. of days of delay (1.10.2016 to 15.12.2016)	76 days
Rate of interest	6%
Amount of interest (rounded off) (Rs.1,00,000 x 76 ÷ 365 x 6%)	1,249

Additional Questions & Answers

These are apart from Examples and Q & A in main book

Q12. Assistance Commissioner exercise his power delegated to him under notification and the assessee is aggrieved and challenges the same through a writ petition. Explain whether the petition is made will be successful.

Ans. Normally, writ is not maintained if there is effective alternate remedy of appeal. In this case, order of AC can be challenged in appeal before Commissioner (Appeals) and therefore, write petition cannot be entertained. However, despite alternate remedy, writ petition can be entertained if:

(a) there is violation of principles of natural justice by AC (opportunity not provided for being heard etc.);or
(b) notification under which order is passed is challenged as invalid or ultra vires or unconstitutional.

Q13. Commissioner (Appeals) has taken additional evidence from the assessee, without providing reasonable opportunity to the adjudicating authority or an officer authorized in this behalf as the said authority. What opportunity had to be provided as per law?

A. Commissioner (Appeals) has to record reasons in writing and allow opportunity to adjudicating authority to:-

(a) examine evidence or cross-examine witness; and
(b) produce evidence or witness to rebut/contradict evidence/witness produced by assessee.

Chapter 12: - Settlement Commission

ICAI Test your knowledge

Q1. Rs. 50 lakh drawback was paid to M/s. Sun Export Ltd. Subsequently the Commissioner of Customs issued a show cause notice for recovery of the erroneously paid drawback. M/s. Sun Export Ltd. filed an application for settlement of case before the Settlement Commission. The Department disputed the jurisdiction of the Settlement Commission by contending that recovery of drawback did not involve levy, assessment and collection of customs duty as envisaged under section 127A(b) of the Customs Act. Discuss with the help of decided case whether the stand taken by the Commissioner is correct.

Ans. No, the stand taken by the Commissioner is not correct. The High Court, in case of Union of India v. Cus. & C. Ex. Settlement Commission 2010 (258) ELT 476 (Bom.), has concluded that the duty drawback or claim for duty drawback is nothing but a claim for refund of duty may be as per the statutory scheme framed by the Government of India or in exercise of statutory powers under the provisions of the Act. Hence, the Settlement Commission has jurisdiction to deal with the question relating to the recovery of drawback erroneously paid by the Revenue.

Q2. Can the Settlement Commission entertain applications involving evasion of duty by fraudulent means and mis-declaration? Discuss.

Ans. This issue has been addressed to by the High Court in the case of Tata Teleservices (Maharashtra) Ltd. v. Union of India 2006 (201) ELT 529 (Bom.). In this case the assessee had evaded duty and had applied for settlement in the Settlement Commission. The contention of the Department was that the companies or the persons, who evaded the customs duty fraudulently, could not avail of the benefit of approaching the Settlement Commission. It was submitted by the Department that the Settlement Commission had a limited jurisdiction of accepting only the cases of short levy on account of misclassification or otherwise and not other cases.

The High Court observed that the Settlement Commission had wide jurisdiction to entertain all kinds of settlement claim applications, with liberty to reject the same even at preliminary stage, depending upon the nature, circumstances and complexity of a case. However, a case would be accepted by the Settlement Commission only if the mandatory requirements of:

(i) filing Bill of Entry/Shipping Bill or a bill of export, or a baggage declaration, or a label or declaration accompanying the goods imported or exported through post or courier, as the case may be and issuance of a show cause notice in relation to such such document or documents.

(ii) making a full and true disclosure of duty liability which was not disclosed earlier before the proper officer and the manner in which such liability had been incurred and additional amount of customs duty accepted to be payable by the assessee and

(iii) furnishing such other particulars as may be specified by the rules including the particulars of such dutiable goods in respect of which the assessee admits short levy on account of misclassification or otherwise of goods have been fulfilled.

The High Court observed that the jurisdiction of the Settlement Commission was not restricted only to cases of short levy on account of misclassification or otherwise. The object of introducing Chapter XIVA to the Customs Act, 1962 was to resolve all disputes so as to collect revenue for the department. The High Court held that if interpretation of section 127B was restricted to mean only bona fide cases, then there would be no scope of unearthing revenue. It was pointed out by the High Court that earlier part of section 127B ibid laid down the jurisdiction and only the latter part dealt with the rules whereby certain details were to be provided. Therefore, it was held by the High Court that the argument with regard to short levy due to misclassification or otherwise was purely a procedural one and there was no need to decide the same.

Additional Questions & Answers

These are apart from Examples and Q & A in main book

Note: This ruling has been maintained in Union of India vs. Bipin H Badani 2015 (326) ELT 25 by the Supreme Court and affirmed in Union of India vs. Bipin H Badani 2017 (51) STR 226 by the Supreme Court.

Q3. Explain with reference to the Customs Act, 1962, the conditions to be fulfilled for filing application to Settlement Commission.
Ans. According to section 127B of the Customs Act 1962, the following conditions are to be fulfilled for filing an application for settlement of cases:

(i) the applicant has filed a bill of entry, or a shipping bill, or a bill of export, or made a baggage declaration, or a label or declaration accompanying the goods imported or exported through post or courier, as the case may be, and in relation to such document or documents, a show cause notice has been issued to him by the proper officer.
(ii) the additional duty accepted is more than Rs. 3 lakhs.
(iii) the applicant has paid the additional amount of customs duty accepted by him alongwith interest due under section 28AA.
(iv) the case is not pending with CESTAT or any Court.
(v) the application does not relate to goods to which section 123 applies or to goods in relation to which any offence under the Narcotic Drugs and Psychotropic Substances Act, 1985 has been committed.
(vi) the application is not for the interpretation of the classification of the goods under the Customs Tariff Act, 1975

Further, application before Settlement Commission can be made only when adjudication is pending.

Q4. Settlement Commission passed an order for release of seized goods of Mr. Banerjee. Since the goods were subject to deterioration, the Revenue informed the Commission that the seized goods had already been auctioned. The Commission, therefore, directed the Revenue to refund the amount remaining in balance after the application of sale proceeds as provided under section 150(2) of the Customs Act, 1962. The Revenue refunded the principal amount of the sale proceeds without payment of interest for the delay, on the premise that it did not represent duty or interest as contemplated under section 27 and 27-A of the Customs Act. Reason out the action of the Revenue by supporting with a case law.
Ans. The action of the Revenue is not justified in law. The High Court in a similar case of Vishnu M Harlalka v. Union of India 2013 (294) ELT 5 (Bom) directed the Department to pay interest on the balance of the sale proceeds.
The High Court observed that inordinate delay in payment of balance sale proceeds by the Department is not justifiable. The Department cannot plead that the Customs Act, 1962 provides for the payment of interest only in respect of refund of duty and interest and hence, the assessee would not be entitled to interest on the balance of the sale proceeds which were directed to be paid by the Settlement Commission.
The High Court clarified that acceptance of such a submission would mean that despite an order of the competent authority directing the Department to grant a refund; the Department can wait for an inordinately long period to grant the refund.

Other Questions

Q5. Can an application for settlement be withdrawn?
Ans. Application once made cannot be withdrawn in case of settlement [Section 127B(4) of the Customs Act, 1962].

Chapter 13: - Advance Ruling

ICAI Test your knowledge

Q1. Briefly discuss the provisions of the Customs Act, 1962 regarding rejection of an application for advance ruling.

Ans. Under section 28-I(2) of the Customs Act, an application for advance ruling may be rejected on the following grounds:

(i) if the question raised is already pending in the applicant's case before a customs officer, Appellate Tribunal or any Court.

(ii) if the question raised is the same as in a matter already decided by the Appellate Tribunal or any Court.

No application shall be rejected without giving an opportunity to the applicant of being heard. On rejection, reasons for such rejection shall be given in the order.

Q2. What are the provisions made under the Customs Act, 1962, regarding personal hearing and order under advance ruling?

Ans. The provisions regarding personal hearing and order under advance ruling are contained in section 28-I of the Customs Act, 1962. Section 28-I inter alia provides that if an application for advance ruling is received, the authority of advance ruling will examine the material submitted by the applicant or obtained by the authority and issue an order either allowing or rejecting the application. However, no application shall be rejected unless an opportunity has been given to the applicant of being heard.

Where an application is allowed, personal hearing can be given before the pronouncement of the advance ruling, if requested by the applicant. Such hearing can be given to the applicant himself or to his duly authorised representative.

Authority then pronounces its advance ruling within three months of the receipt of the application. Copy of the order, signed by members of authority and certified in the prescribed manner is sent to the applicant and the Principal Commissioner of Customs or Commissioner of Customs.

Q3. Vaikunth, a non-resident holding a valid importer-exporter code number intends to import certain goods, but has entertained some doubts about their classification. Vaidehi, Vaikunth's friend, has obtained an 'Advance Ruling' under Chapter VB of the Customs Act, 1962 from the Authority for Advance Rulings on an identical point. Vaikunth proposes to follow the same ruling in his case. Vaikunth has sought your advice as his consultant whether he could follow the ruling given in the case of Vaidehi.

Explain with reasons.

Ans. According to section 28J of the Customs Act, 1962, the advance ruling shall be binding only on the applicant who has sought it.

In the given problem, in view of the aforesaid provision, Vaikunth cannot make use of the advance ruling pronounced in the identical case of his friend, Vaidehi. Vaikunth should obtain a ruling from the Authority of Advance Ruling by making an application under section 28H along with a fee of Rs. 10,000.

Other Questions

Q4. Can an application for advance ruling be withdrawn? If yes, state the time limit for withdrawal of such application?

Ans. Yes, application for advance ruling can be withdrawn within 30 days from the date of application [Section 28H(4) of the Customs Act, 1962].

Additional Questions & Answers

These are apart from Examples and Q & A in main book

Chapter 14: - Miscellaneous Provisions

ICAI Test your knowledge

Q1. Explain briefly the provisions of the Customs Act, 1962 relating to the powers vested in the customs officers to take samples.

Ans. As per the provisions of section 144 of the Customs Act, the proper officer may, on the entry or clearance of any goods or at any time while such goods are being passed through the customs area, take samples of such goods in the presence of the owner thereof, for:

(a) examination or testing or,
(b) ascertaining the value thereof, or
(c) any other purposes of this Act

After the purpose for which a sample was taken is carried out, such sample shall, if practicable, be restored to the owner, but if the owner fails to take delivery of the sample within 3 months of the date on which the sample was taken, it may be disposed of in such manner as the Principal Commissioner of Customs or Commissioner of Customs may direct. No duty shall be chargeable on any sample of goods taken under this section which is consumed or destroyed during the course of any test or examination thereof.

The purpose of taking samples is to determine correct classification of product and also to determine whether it is freely importable under Foreign Trade Policy or whether authorization is required for importing those goods.

Q2. Explain the provisions relating to “service of order etc.” under section 153 of the Customs Act.

Ans. The date of service of an order or a communication containing a decision is of vital importance, in case the aggrieved party desires to file an appeal. The time limit allowed for appeal normally runs from the date of receipt of the communication containing the impugned decision by the aggrieved person. There are circumstances where it is not effectively possible to ensure that such communications are received by the concerned party. There are other circumstances where disputes arise about the actual date of the receipt of communication. These two problems have necessitated a uniform procedure for dispatch and service of orders, decisions, summons and other communications issued under the Customs Act. Section 153 provides the specific mode of service in this regard which is reproduced below.

An order, decision, summons, notice or any other communication under this Act or the rules made thereunder may be served in any of the following modes, namely: —

a. by giving or tendering it directly to the addressee or importer or exporter or his customs broker or his authorised representative including employee, advocate or any other person or to any adult member of his family residing with him;
b. by a registered post or speed post or courier with acknowledgement due, delivered to the person for whom it is issued or to his authorised representative, if any, at his last known place of business or residence;
c. by sending it to the e-mail address as provided by the person to whom it is issued, or to the e-mail address available in any official correspondence of such person;
d. by publishing it in a newspaper widely circulated in the locality in which the person to whom it is issued is last known to have resided or carried on business; or
e. by affixing it in some conspicuous place at the last known place of business or residence of the person to whom it is issued and if such mode is not practicable for any reason, then, by affixing a copy thereof on the notice board of the office or uploading on the official website, if any.

Every order, decision, summons, notice or any communication shall be deemed to have been served on the date on which it is tendered or published or a copy thereof is affixed or uploaded in the prescribed manner.

Further, when such order, decision, summons, notice or any communication is sent by registered post or speed post, it shall be deemed to have been received by the addressee at the expiry of the period normally taken by such post in transit unless the contrary is proved.

Q3. Briefly explain the provisions relating to creation of first charge on the property of the assessee, as provided under section 142A of the Customs Act, 1962.

Ans. Section 142A of the Customs Act, 1962 provides that any amount of duty, penalty, interest or any other sum payable under the Customs Act has a first charge on the property of the assessee or the person in default, save as otherwise provided in the following:-

(i) Any sum payable under section 529A of the Companies Act, 1956.
(ii) Any sum payable under Recovery of Debts Due to Banks and the Financial Institutions Act, 1993
(iii) Any sum payable under the Securitization and Reconstruction of Financial Assets and the Enforcement of Security Interest Act, 2002.

Q4. Differentiate between rules and regulations.

Ans:

According to section 2(36) of the Act, "rules" means the rules made by the Central Government under any provision of this Act. Section 156 of the Act gives the Central Government the general power to make rules.

As per section 2(35) of the Customs Act, 1962, "regulations" means the regulations made by the Central Board of Excise and Customs (CBIC) under any provision of this Act. The Board gets the authority to make regulations under section 157 of the Customs Act, 1962. \

While the rules are to be framed in consistence with the provisions of the Act, the regulations are subject to an additional limitation, i.e. they should not be contrary to the rules also.

Rules have to be placed before the Parliament, while regulations framed by CBIC are not required to be placed before the Parliament. However, both are "subordinate legislations" and are legally valid and enforceable.

Q5. Briefly explain the provisions of Section 147 of the Customs Act, 1962 relating to liability of principal and agent.

Ans: Section 147 stipulates that anything required to be done by the owner/importer/exporter of any goods can be done by his agent [Sub-section 1].

However, the owner/importer/exporter shall be liable for all the acts of his agent [Sub-section 2]. Further, such authorized agent will, without prejudice to the liability of the owner/ importer/ exporter be deemed to be the owner/importer/exporter of such goods for such purposes including liability therefor under this Act [Sub-section 3]. However, where any duty is not/short levied or erroneously refunded on account of reasons not involving any wilful act, negligence or default of the agent, such duty will not be recovered from the agent unless the same cannot be recovered from the owner/importer/exporter.

Other Questions

Q6. What are the different ways prescribed under section 142 of the Customs Act, 1962 in which the sums due to the Government can be recovered from any person?

Ans. The sums due to the Government can be recovered from any person in any of the following two ways:

a. Deducting the amount payable from any money owing to the defaulter which may be under the control of any Customs Officer.
b. Detaining and selling goods belonging to such person, which are under the control of customs authorities;

If amount cannot be recovered from such person in the manner provided in clause (a) and (b) above, recovery can be made in either of the following ways:-

c. Issuing a certificate to District Collector in whose district any property of the person is situated or where he resides or carries on his business.
d. Distraining and detaining any property (movable/immovable) belonging to the person and selling the same.
e. Recovering from successor by attaching and selling goods, materials, machinery, plant etc. transferred to successor in trade or business.
f. Recovering from a person other than from whom money is due, if that other person holds money for/on account of the first person.

Q7. An importer imports goods from USA, but does not clear such goods from the port within the prescribed period of 30 days. Resultantly, the imported goods are sold under the Customs Act, 1962 and sale proceeds applied for specified purposes as per section 150 of the Customs Act. Explain how will the balance of sale proceeds (left after being applied for the specified purposes) be disposed?

Ans. The balance sale proceeds left after being applied for the purposes specified under section 150(2) shall be paid to the owner of the goods. However, where it is not possible to pay the balance of sale proceeds, if any, to the owner of the goods within a period of six months from the date of sale of such goods or such further period as the Principal Commissioner of Customs or Commissioner of Customs may allow, such balance of sale proceeds shall be paid to the Central Government.

Chapter 15: - Foreign Trade Policy

ICAI Test your knowledge

Q1. What do you understand by the term 'Foreign Trade Policy' (FTP)? Which is the governing legislation for FTP? Which Government authorities administer FTP in India?

Ans. Foreign Trade Policy is a set of guidelines or instructions issued by the Central Government in matters related to import and export of goods in India viz., foreign trade. The FTP, in general, aims at developing export potential, improving export performance, encouraging foreign trade and creating favorable balance of payments position.

In India, Ministry of Commerce and Industry governs the affairs relating to the promotion and regulation of foreign trade. The main legislation concerning foreign trade is the Foreign Trade (Development and Regulation) Act, 1992 FT (D&R) Act.

In exercise of the powers conferred by the FT (D&R) Act, the Union Ministry of Commerce and Industry, Government of India announces the integrated Foreign Trade Policy (FTP) in every five years with certain underlined objectives. This policy is generally updated every year in April, in addition to changes that are made throughout the year.

The FTP is formulated, controlled and supervised by the office of the Director General of Foreign Trade (DGFT), an attached office of the Ministry of Commerce & Industry, Government of India. DGFT has several offices in various parts of the country which work on the basis of the policy formed by the headquarters at Delhi.

Though the FTP is formulated by DGFT, it is administered in close coordination with other agencies. Other important authorities dealing with FTP are:

(i) Central Board of Indirect Taxes and Customs (CBIC)
(ii) Reserve Bank of India (RBI)
(iii) State VAT Departments

Q2. Briefly explain as to how FTP is linked with customs laws.

Ans. The Foreign Trade Policy is closely knit with the Customs laws of India. However, the policy provisions per-se do not override tax laws. The exemptions extended by FTP are given effect to by issue of notifications under respective tax laws (e.g., IGST Act, CGST Act, SGST/UTGST Act, Customs Tariff Act, 1975, Central Excise Act, 1944, Customs Act, 1962 etc.). Thus, actual benefit of the exemption depends on the language of exemption notifications issued by the CBIC.

In most of the cases the exemption notifications refer to policy provisions for detailed conditions.

Ministry of Finance/ Tax Authorities cannot question the decision of authorities under the Ministry of Commerce (so far as the issue of authorization etc. is concerned).

Decision of Director General of Foreign Trade (DGFT) is final and binding in respect of (a) Interpretation of any provision of foreign trade policy or provision of Handbook of Procedures, Appendices, Aayat Niryat Forms (b) Classification of any item in ITC(HS).

Q3. Enumerate the various matters in respect of which policies and regulations are framed under FTP.

Ans. Following issues are covered under FTP 2015-2020 –

- General provisions regarding import and export of goods – Chapter 2 of FTP 2015-2020.
- Export From India Scheme [MEIS and SEIS] to encourage exports of specified goods to specified countries and also export of services – Chapter 3 of FTP 2015-2020.
- Duty Exemption and Remission Schemes [Advance Authorisation, DFIA and Duty Drawback Scheme and duty remissions schemes under GST law] to enable exporters to import inputs without payment of customs duty – Chapter 4 of FTP 2015-2020.
- Export Promotion Capital Goods (EPCG) scheme [to obtain capital goods without payment of customs duty] – Chapter 5 of FTP 20152020.

- EOU/EHTP/STP and BTP schemes – Chapter 6 of FTP 2015-2020.
- Deemed Exports – Chapter 7 of FTP 2015-2020.
- Quality Complaints and Trade Disputes – Chapter 8 of FTP 2015-2020.

Policy in respect of Special Economic Zones [SEZ] is contained in SEZ Act, 2005 and Rules.

Q4. With reference to the provisions of FTP 2015-2020, discuss giving reasons whether the following statements are true or false:

(i) If any doubt arises in respect of interpretation of any provision of FTP, the said doubt should be forwarded to CBIC, whose decision thereon would be final and binding.
(ii) Authorization once claimed by an importer cannot be refused by DGFT.
(iii) IEC is a unique 12 digit PAN based alphanumeric code allotted to a person for undertaking any export/ import activities.
(iv) Waste generated during manufacture in an SEZ Unit can be freely disposed in DTA on payment of applicable customs duty, without any authorization.
(v) A Customs Clearance Permit (CCP) is required from DGFT in certain specific cases of import of gifts.

Ans.

(i) False. If any question or doubt arises in respect of interpretation of any provision of the FTP, said question or doubt ought to be referred to DGFT whose decision thereon would be final and binding.
(ii) False. No person may claim an Authorization as a right and DGFT shall have power to refuse to grant or renew the same in accordance with provisions of FT(D&R) Act, rules made thereunder and FTP.
(iii) False. IEC is a unique 10 digit code allotted to a person for undertaking export/ import activities.
(iv) True. Any waste or scrap or remnant including any form of metallic waste & scrap generated during manufacturing or processing activities of an SEZ Unit/ Developer/ Co-developer are allowed to be disposed in DTA freely, without any authorization, subject to payment of applicable customs duty.
(v) True. A Customs Clearance Permit (CCP) for import of gifts is not required from DGFT if such goods are otherwise freely importable under ITC(HS). Thus, only when the goods imported as gifts are not freely importable under ITC(HS), a CCP is required.

Q5. Mr. A wants to import by air a laptop from USA. Such laptop has been used by Mr. B - the seller for few months there. Mr. A contends that he can freely import such laptop without any restriction/ authorization. Examine the correctness of Mr. A's claim in the light of the provisions of FTP 2015-2020.

Ans. Import of one laptop computer (notebook computer) is exempt from whole of the customs duty. Further, Foreign Trade Policy 2015-2020 provides that import of second hand laptop requires authorization.

In view of above, Mr. A's claim is not correct as second hand laptops can be imported only against an authorization.

Q6. State in brief policy for import of samples.

Ans. No authorisation is required for import of bona fide technical and trade samples. These are importable freely. Samples upto Rs. 3,00,000 can be imported by all exporters without duty. Authorisation for import of samples is required only in case of vegetable seeds, bees and new drugs. Samples of tea upto Rs. 2,000 (CIF) per consignment will be allowed without authorization.

Q7. State salient aspects of Advance authorisation for annual requirements to exporters.

Ans. Annual Advance authorisation would be issued to exporters having past export performance for at least two financial years, to enable them to import the inputs required by them on annual basis.

Advance authorization for Annual Basis can be only on basis of prescribed manner and not on basis of ad hoc norms.
Annual Advance Authorisation in terms of CIF value of imports will be granted upto 300% of FOB value of physical exports in preceding financial year and/or FOR value of deemed exports in preceding year or Rs. 1 crore, whichever is higher.

Q8. What are the salient features of Duty-Free Import Authorization Scheme (DFIA)? Which duties are exempted under this scheme?
Ans. DFIA is issued to allow duty free import of inputs, oil and catalyst which are required for production of export product. The goods imported are exempt ONLY from basic customs duty.
DFIA shall be issued on post export basis for products for which SION have been notified. Separate DFIA shall be issued for each SION and each port.
No DFIA shall be issued for an export product where SION prescribes 'Actual User' condition for any input.
Holder of DFIA has an option to procure the materials/ inputs from indigenous manufacturer/STE in lieu of direct import against Advance Release Order (ARO)/ Invalidation letter/ Back to Back Inland Letter of Credit. However, DFIA holder may obtain supplies from EOU/EHTP/BTP/STP/SEZ units, without obtaining ARO or Invalidation letter.
Drawback as per rate determined and fixed by Customs authority shall be available for duty paid inputs, whether imported or indigenous, used in the export product.
DFIA or the inputs imported against it can be transferred after the fulfillment of the export obligation.
A minimum 20% value addition is required for issuance of DFIA except for items in gems and jewellery sector.

Q9. Answer the following questions with reference to the provisions of Duty Credit Scrips under Export from India Schemes under FTP 2015-2020.
(i) Rishita provides services eligible for SEIS Scheme. She wants to sell SEIS scrips earned by her. Can she do so?
(ii) Can a manufacturer, instead of importing the inputs, source the same indigenously without payment of GST?
(iii) An exporter was issued duty credit scrip dated 15.07.2015. What is the period within which he must utilize the scrip?
(iv) An exporter exported leather footwears through courier using ecommerce of value of Rs. 24,000. Can he apply for duty credit scrips under Merchandise Exports from India Scheme (MEIS)?

Ans.
(i) Yes. The duty credit scrips and goods imported or domestically procured against them are freely transferable.
(ii) No. Utilization of duty credit scrip is not permitted for payment of GST for procurement from domestic sources.
(iii) The duty credit scrip will be valid for 18 months from date of issue.
(iv) Yes. Exports of leather footwears through courier using e-commerce of FOB value of Rs. 5,00,000 per consignment are eligible for MEIS.

Q10. Mention the reward scheme provided under FTP which aims to promote the manufacture and export of notified goods/ products. Discuss the basis of computation of reward under said scheme. How can the duty scrips issued under the Scheme be utilized?
Ans. The scheme is known as Merchandise Exports from India Scheme (MEIS).
The objective of MEIS scheme is to promote the manufacture and export of notified goods/ products.
Under MEIS, exports of notified goods/products to notified markets shall be eligible for reward at the specified rate(s). Unless otherwise specified, the basis of calculation of reward would be:
(i) on realised FOB value of exports in free foreign exchange,
or

(ii) on FOB value of exports as given in the Shipping Bills in free foreign exchange, whichever is less.
These scrips can be used for payment of customs duties on import of inputs/goods including notified capital goods.

Q11. Explain salient features of post export EPCG scheme.
Ans. In EPCG scheme, first capital goods are imported without payment of customs duty and then export obligation is fulfilled.
In case of post export EPCG scheme, the capital goods are imported on full payment of applicable duties in cash. Later, basic customs duty paid on Capital Goods shall be remitted in the form of freely transferable duty credit scrips. Capital goods imported under EPCG Authorisation for physical exports are also exempt from IGST and Compensation Cess upto 31.03.2019.
In case integrated tax and compensation cess are paid in cash on imports under EPCG, incidence of the said integrated tax and compensation cess would not be taken for computation of net duty saved provided input tax credit is not availed.
These Duty Credit Scrips can be used for payment of applicable custom duties for imports. All other provisions of EPCG Scheme apply to post export EPCG scheme also.
Specific Export Obligation under this Scheme shall be 85% of the applicable specific EO [6 times of duties, taxes and cess saved on capital goods imported under EPCG scheme to be fulfilled in 6 years reckoned from authorization issue date]. Average EO remains unchanged.
Duty remission shall be in proportion to the Export Obligation fulfilled.
The advantage of the scheme is that the exporter does not have any specific export obligation when he imports capital goods on payment of full customs duty. Later, he gets remission on the basis of exports made by him.

Q12. With reference to the provisions relating to EOU, EHTP, STP, BTP & SEZ Schemes as contained in FTP, answer the following questions:
(i) A unit intending to trade in handicrafts wants to set up an EOU. Is it allowed?
(ii) An EOU has started production after 4 years 10 months from the date of grant of Letter of Permission (LoP)/ Letter of Intent (LoI). Is it correct?
(iii) A EOU wants to import a second hand capital goods which is prohibited under ITC (HS). Can it do so?

Ans.
(i) No. Units undertaking to export their entire production of goods and services (except permissible sales in DTA), may be set up under the Export Oriented Unit (EOU) Scheme, Electronics Hardware Technology Park (EHTP) Scheme, Software Technology Park (STP) Scheme or BioTechnology Park (BTP) Scheme for manufacture of goods, including repair, re- making, reconditioning, re-engineering and rendering of services. Trading units are not covered under these schemes.
(ii) No. EOU/ BTP/ EHTP/ STPs should start production within 2 years from the date of grant of Letter of Permission (LoP)/ Letter of Intent (LoI). In other words, LoP/ LoI have an initial validity of 2 years, by which time unit should have commenced production. Its validity may be extended further up to 2 years by competent authority. However, proposals for extension beyond four years shall be considered in exceptional circumstances, on a case to case basis by BoA.
(iii) No. Though an EOU is permitted to import duty free second hand capital goods, without any age limit, it cannot import capital goods that are prohibited items of import in the ITC(HS).

Q13. List some supplies which are 'deemed exports' for purpose of benefits under Foreign Trade Policy 2015-2020.
Ans. As per FTP 2015-2020, following are treated as deemed exports:
♦ Supplies against Advance Authorisation/DFIA

- ♦ Supplies to EOU/STP/EHTP/BTP
- ♦ Supplies against EPCG authorization
- ♦ Supply of marine freight containers by 100% EOU
- ♦ Supplies to projects against International Competitive Bidding
- ♦ Supplies to projects where imports permitted at zero customs duty
- ♦ Supply to mega power projects
- ♦ Supplies to UN or International Organizations for their official use.
- ♦ Supplies to nuclear projects

Other Questions

Q14. CD Corporation, a merchant exporter, procured order of goods from a customer in USA. It approached AB Corporation, a manufacturer, for execution of the said order. The shipping bills relating to the consignment bear the name of CD Corporation. Bank Realization Certificate, export order and invoice are also in the name of CD Corporation. Comment whether AB Corporation would be deemed as the exporter under FTP.

Ans. The given scenario is a case of third-party exports.

Third-party exports means exports made by an exporter or manufacturer on behalf of another exporter(s). The conditions for being allowed as third-party exports under FTP are:

(i) Export documents such as shipping bills shall indicate name of both manufacturing exporter/manufacturer and third party exporter(s).

(ii) BRC, export order and invoice should be in the name of third party exporter.

In the above case, though BRC, export order and invoice are in the name of CD Corporation (third party exporter), the shipping bill does not have the name of AB Corporation (manufacturer). Therefore, AB Corporation will not be treated as the exporter in this case*.

* However, AB Corporation can supply goods without payment of GST under bond of Merchant Exporter.

Q15. Discuss the similarities and differences between Advance Authorization and DFIA (Duty Free Import Authorization) schemes.

Ans. In both DFIA and Advance Authorization schemes, import of inputs, oil and catalyst which are required for export products are permitted without payment of customs duty.

The differences between DFIA and Advance Authorisation schemes are as follows –

i. 'Advance Authorisation' is not transferable. DFIA is transferable after export obligation is fulfilled.

ii. Advance Authorisation scheme requires 15% value addition, while in case of DFIA, minimum 20% value addition is required.

iii. Advance Authorisation scheme is available to gem and jewellery sector but not DFIA.

iv. DFIA cannot be issued where SION (Standard Input Output Norms) prescribes actual user condition [as the material is transferable after fulfilment of export obligation].

v. Advance Authorisation can be issued even if SION for that product is not fixed. DFIA can be issued only if SION has been fixed for that product to be exported.

vi. IGST has been exempted on imports under Advance Authorisation scheme upto 31-03-2019, but there is no such exemption available if imports are under DFIA scheme.

Q16. Two exporters namely, Red Sky Pvt. Ltd. and Black Night Pvt. Ltd. have achieved the status of Status Holders (One Star Export House) in the current financial year. Both the exporters have been regularly exporting goods (other than Gems and Jewellery) every year. What would have been the minimum export performance of the two exporters to achieve such status?

Both the exporters want to establish export warehouses in accordance with the applicable guidelines. What should be their export turnover to enable them to establish export warehouses?

Ans. Status Holders are business leaders who have excelled in international trade and have successfully contributed to country's foreign trade. All exporters of goods, services and technology having an import-export code (IEC) number shall be eligible for recognition as a status holder. Status recognition depends upon export performance.

In order to be categorized as One Star Export House, an exporter needs to achieve the export performance of 3 million US $ million [FOB/ FOR (as converted)] during current and previous three financial years. Thus, export performance of Red Sky Pvt. Ltd. and Black Night Pvt. Ltd. would have been at least 3 million US $ million [FOB/ FOR (as converted)] during current and previous three financial years.

Further, Two Star Export Houses and above are permitted to establish export warehouses. Therefore, Red Sky Pvt. Ltd. and Black Night Pvt. Ltd. can establish export warehouses in India only if they achieve the status of Two Star Export House and above. In order to achieve said status, export performance of the exporters during current and previous three financial years should be as indicated below:

Status Category	**Export Performance [FOB/FOR (as converted) value on US $ million**
Two Star Export House	25
Three Star Export House	100
Four Star Export House	500
Five Star Export House	2000

Q17. XP Pvt. Ltd., a manufacturer, wants to import capital goods in CKD condition from a foreign country and assemble the same in India. The import of the capital goods will be under notified Project Imports. The capital goods will be used for pre-production processes. The final products of XP Pvt. Ltd. would be supplied in SEZ. XP Pvt. Ltd. wishes to sell the capital goods imported by it as soon as the production process starts.

XP Pvt. Ltd. seeks your advice whether it can avail the benefit of EPCG Scheme for importing the intended capital goods.

Note – Base your opinion on the facts given above assuming that all other conditions required for being eligible to the EPCG Scheme are fulfilled in the above case.

Ans. Export Promotion Capital Goods Scheme (EPCG) permits exporters to import capital goods at zero customs duty or procure them indigenously without paying duty in prescribed manner.

In return, exporter is under an obligation to fulfill the export obligation. Export obligation means obligation to export product(s) covered by Authorisation/permission in terms of quantity or value or both, as may be prescribed/specified by Regional or competent authority. Exports to SEZ unit/developer/co-developer will be considered for discharge of export obligation of EPCG Authorization, irrespective of currency.

The authorisation holder can either procure the capital goods (whether used for pre-production, production or post-production) from global market or domestic market. The capital goods can also be imported in CKD/ SKD to be assembled in India.

An EPCG Authorization can also be issued for import of capital goods under Scheme for Project Imports notified by CBIC. Export obligation for such EPCG Authorizations would be 6 times of duty saved.

However, import of capital goods is subject to 'Actual User' condition till export obligation is completed. After export obligation is completed, capital goods can be sold or transferred.

Therefore, based on the above discussion, XP Pvt. Ltd. can import the capital goods under EPCG Scheme. However, it has to make sure that it does not sell the capital goods till the export obligation is completed.

Questions from Custom Main Book

Q18. ABC Ltd. A service exporter of specified service is having net free foreign earnings of US $ 20,000 during preceding financial year, requires you to compute its duty credit scrip entitlement for the current financial year under the SEIS.
The company has provided/supplied specified service during current year as follows:
1. Supply from India to US - $ 30,000
2. Supply from India to Service Consumer of US in India - $ 12,000
3. Supply from India through commercial branch in a city of US - $ 8,000
4. Supply from India through presence of employees in another city of US - $ 6,500

The total expenses/payments of ABC Ltd. Relating to aforesaid supplies are:
- 5% of gross receipts in foreign exchange, and
- Another 10% of gross receipts in Indian Rupees.

ABC Ltd. also informs that it has received –
- Loans of $ 5,000 from US
- Another amount of $ 6,000 (net of expenses) from EEFC Account towards services export; and
- Another amount of $ 2,500 (net of expenses) on behalf of a client, who is also and export of specified services.

Notified rate for service provided by ABC Ltd. Is 5%
Ans. ABC Ltd. Is eligible for SEIS benefit, as its NFE (Net free foreign exchange earnings) during the preceding financial year was USD $ 20,000. The SEIS benefit is computed below:

	Gross ($)	Expenses in Foreign Exchange ($)	NFE of Current Year ($)
Supply from India to US – Eligible	30,000	5% i.e. 1,500	28,500
Supply from India to service consumer of US in India –Eligible	12,000	5% i.e. 600	11,400
Total	42,000	2,100	39,900
Credit scrip entitled @ 5% of $ 39,900			1,995

Q19. X Ltd. has imported capital good under EPCG scheme. The total amount of duty saved amounted Rs.2,00,000. Discuss its export obligation and the time limit to achieve the same.
Ans. The benefit under EPCG is subject to the condition that export obligation equivalent to 6 times of duty saved on capital goods imported under EPCG scheme is to be fulfilled in 6 years reckoned from Authorization issue – date. Thus, X Ltd. has to fulfill export obligation amounting Rs.12,00,000 and the same must be achieved in 6 years.

Q20. XYZ Ltd. has imported inputs without payment of duty under DFIA. The CIF value of such inputs is Rs.15,00,000. The inputs are processed and the final product is exported. The exports made by XYZ Ltd. are subject to general rate of value addition prescribed under Advance Authorization Scheme. No other input is being used by XYZ Ltd. in the processing. What should be the minimum FOB value of the exports made by the XYZ Ltd. As per the provisions of Advance Authorization?
Ans. DFIA necessitates exports with a minimum value additional of 20% value addition (VA). Therefore, the minimum FOB value of the exports made by XYZ Ltd. should be Rs.18,00,000.

Q21. Determine reward under Merchandise Exports from India Scheme (MEIS) from the following particulars (rate of reward may be taken to be 5%):
(1) Goods X – FOB Value declared in shipping bill is Rs.10,00,000. FOB value realized due to exchange gains: Rs.10,20,000.
(2) Goods Y – Fob Value declared in shipping bill is Rs.4,00,000. FOB value realized due to exchange loss: Rs.3,96,000.

(3) Exports of Product 'X' through e-commerce Platform – FOB Value Rs. 25,000.
(4) Exports of Product 'Y' though e-commerce Platform – FOB Value Rs. 22,000.
(5) Supplies of goods made to SEZ units: Rs. 50,000
(6) Export of sugar : OB Value Rs.1,75,000

Ans. The MEIS reward is computed below – (amount in Rs.)

Goods X (FOB Value realized or FOB value in shipping bill, whichever is lower is to be taken)	10,00,000
Goods Y (FOB value realized or FOB value in shipping bill, whichever is lower is to be taken)	3,96,000
Exports of Product 'X' through e-commerce Platform – FOB Value Rs. 25,000 (For MEIS computation, value is to be limited to Rs. 5,00,000)	25,000
Exports of Product 'Y' through e-commerce Platform with FOB value Rs. 22,000 (For MEIS computation, value is to be limited to Rs. 5,00,000)	22,000
Supplies of goods made to SEZ units: Rs. 50,000 (Not eligible for MEIS)	Ineligible
Export of sugar FOB Value Rs.1,75,000 (Not eligible for MEIS)	Ineligible
Total	14,43,000
MEIS reward @ 5%	72,150

Q22. Mr. Mukul, a Chartered Accountant received US $12,000 (net) during the financial year 2016-17 from M/s. Carter & Company of USA for providing auditing services. Out of this, Rs.1,20,000 equivalent to US $2,000 was received in India Rupees and US $ 2,000 was received through the credit card of Mr. Romeo, who is the partner of M/s. Carter & Company.
Explain with reference to provisions of new Service Export from India Scheme (SEIS) as provided in new Foreign Trade Policy 2015-2020 whether Mr. Mukul is entitled to avail benefit under SEIS Scheme?

Ans. In the given case, the auditing services provided by Mr. Mukul are the notified services provided in the specified manner. Further, the NFE of Mr. Mukul in preceding financial year 2016-17 is US $12,000 [including US $2,000 received in Indian rupees and US $ 2,000 received through credit card of Mr. Romeo, partner in M/s. Carter & Company] Consequently, Mr. Mukul is eligible for duty credit scrip entitlement under SEIS.

Q23. Compute entitlement advance authorization for annual requirement for an export performance in past 5 years and last financial year's details being:
(i) Physical export (FOB Rs. 50 lakh);
(ii) Deemed Exports (FOR Rs. 5 lakhs).

Ans. Since exporter has export performance in at least past 2 years, it is eligible for advance authorization for annual requirement.
The Entitlement would be:
300% of the (Rs.50 lakh + 5 lakh) = Rs.165 lakhs; or
Rs. 1 crore,
Whichever is higher i.e., Rs.165 lakh.

Q24. Explain the conditions for redeeming authorization under duty free import authorization scheme as per Foreign Trade Policy 2015-2020.

Ans. The conditions for redeeming authorization under Duty Free Import Authorization scheme (DFIA) as per Foreign Trade Policy 2015-2020 are as follows : -

- It is necessary to establish that inputs actually used in manufacture of the export product should only be imported under the authorization and inputs actually imported must be used in the export product, for redeeming the DFIA. The name / description of the input in the DFIA must match exactly with the name / description endorsed in the shipping bill.
- Further, quantity of input to be allowed under DFIA shall be in proportion to the quantity of input actually used / consumed in production.
- Aforesaid provisions will also be applicable for supplies to SEZs and supplies made under deemed exports.