

CA Final IDT Part II {Custom & FTP} – Updated for May 2019



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14	Miscellaneous Provisions	C	0	0	150
15	Foreign Trade Policy	B	5	7	154
Total			38	85	172

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Study Notes

Chapter 1: - Levy of & Exemptions from Customs Duty

Section 1	Short title, extent and commencement
Section 2	Definitions
Section 3	Classes of Officers of Customs
Section 4	Appointment of officers of customs
Section 5	Powers of officers of customs
Section 6	Entrustment of functions of Board and customs officers on certain other officers
Section 12	Dutiable Goods
Section 15	Date for determining the rate of duty and tariff valuation of imported goods
Section 16	Date for determination of rate of duty and tariff valuation of export goods
Section 17	Assessment of Duty
Section 18	Provisional Assessment of Duty
Section 19	Determination of duty where goods consist of articles liable to different rates of duty
Section 20	Re-importation of Goods
Section 21	Goods derelict, wreck, etc.
Section 13	Duty on pilfered goods
Section 22	Abatement of duty on damaged or deteriorated goods
Section 23	Remission of duty on lost, destroyed or abandoned goods
Section 24	Power to make rules for denaturing or mutilation of goods
Section 25	Exemptions from Duty

Meaning of word “customs”

Customs is a form of indirect tax. Standard English Dictionary defines the term ‘customs’ as duties imposed on imported or less commonly exported goods. [This term is usually applied to those taxes which are payable upon goods merchandise imported or exported.](#)

The power to enact laws relating to duties of customs is vested with the Parliament. This power is derived from Entry 83 of List I of VII Schedule read with Article 246 of the Constitution of India, which reads as:

[83. “Duties of Customs including export duties”](#)

Components of Customs Law

- (a) The Customs Act, 1962;
- (b) The Customs Tariff Act, 1975;
- (c) Rules;
- (d) Regulations;
- (e) Notifications.

Rules V/s Regulations

Aspect	Rules	Regulations
Meaning	<u>Rules made by the Central Government</u> under any provisions of this Act.	<u>Regulations made by CBEC</u> under any provisions of this Act.
Authority	<u>Section 156 empowers the Central Government</u> to make Rules under this Act.	<u>Section 157 empowers CBEC to make Regulations</u> under this Act.
Consistency	Rules framed should be consistent with the provisions of the Act.	Regulations must be consistent with the provisions of the act as well as Rules.

Section 1 - Short title, extent and commencement

- (1) This Act may be called the Customs Act, 1962.
- (2) It extends to the whole of India and, save as otherwise provided in this Act, it applies also to any offence or contravention thereunder committed outside India by any person.

Section 2 - Definitions

- (1) "Adjudicating Authority" means
 - any authority competent to pass any order or decision under this Act,
 - but does not include the Board, Commissioner (Appeals) or Appellate Tribunal;

The Superintendent, Assistant Commissioner, Deputy Commissioner, Joint Commissioner and Principal Commissioner or Commissioner of Customs are adjudicating authorities.
- (1A) "Aircraft" has the same meaning as in the Aircraft Act, 1934 (22 of 1934);
- (1B) "Appellate Tribunal" means the Customs, Excise and Service Tax Appellate Tribunal constituted under section 129;
- (2) "Assessment" means determination of the dutiability of any goods and the amount of duty, tax, cess or any other sum so payable, if any, under this Act or under the Customs Tariff Act, 1975 (hereinafter referred to as the Customs Tariff Act) or under any other law for the time being in force, with reference to—
 - (a) the tariff classification of such goods as determined in accordance with the provisions of the Customs Tariff Act;
 - (b) the value of such goods as determined in accordance with the provisions of this Act and the Customs Tariff Act;
 - (c) exemption or concession of duty, tax, cess or any other sum, consequent upon any notification issued therefor under this Act or under the Customs Tariff Act or under any other law for the time being in force;
 - (d) the quantity, weight, volume, measurement or other specifics where such duty, tax, cess or any other sum is leviable on the basis of the quantity, weight, volume, measurement or other specifics of such goods;
 - (e) the origin of such goods determined in accordance with the provisions of the Customs Tariff Act or the rules made thereunder, if the amount of duty, tax, cess or any other sum is affected by the origin of such goods;
 - (f) any other specific factor which affects the duty, tax, cess or any other sum payable on such goods,

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and includes provisional assessment, self-assessment, re-assessment and any assessment in which the duty assessed is nil;

- (3) "Baggage" includes unaccompanied baggage but does not include motor vehicles;
- (3A) "Beneficial owner" means any person on whose behalf the goods are being imported or exported or who exercises effective control over the goods being imported or exported;
- (4) "Bill of Entry" means a bill of entry referred to in section 46;
- (5) "Bill of Export" means a bill of export referred to in section 50;
- (6) "Board" means the **Central Board of Indirect Taxes and Customs** constituted under the Central Boards of Revenue Act, 1963 (54 of 1963);
- (7) "Coastal goods" means goods, other than imported goods, transported in a vessel from one port in India to another;
- (7A) "Commissioner (Appeals)" means a person appointed to be a Commissioner of Customs (Appeals) under sub-section (1) of section 4;
- (8) "Principal Commissioner of Customs or Commissioner of Customs", except for the purposes of Chapter XV, includes an Additional Commissioner of Customs;
Chapter XV of the Customs Act, 1962, contains the provisions of Appeals and Revisions. For the purpose of said chapter, Additional Commissioner is treated as an authority lower in rank to Principal Commissioner or Commissioner.
- (9) "Conveyance" includes a vessel, an aircraft and a vehicle;
- (10) "Customs airport" means any airport appointed under clause (a) of section 7 to be a customs airport and includes a place appointed under clause (aa) of that section to be an air freight station;
- (11) "Customs area" means the area of a customs station or a warehouse and includes any area in which imported goods or export goods are ordinarily kept before clearance by Customs Authorities;
- (12) "Customs port" means any port appointed under clause (a) of section 7 to be a customs port, and includes a place appointed under clause (aa) of that section to be an inland container depot;
- (13) "Customs station" means any customs port, customs airport, international courier terminal, foreign post office or land customs station;
- (14) "Dutiable goods" means any goods which are chargeable to duty and on which duty has not been paid;
★ **The Goods on which no custom duty is payable either due to exemption notification or no duty is specified in tariff, will not be regarded as dutiable goods (ACC Ltd. V/s CC – Supreme Court). If goods are chargeable with duty and duty has been paid, then after such payment, the goods cease to be dutiable goods.**
- (15) "Duty" means a duty of customs leviable under this Act;
- (16) "Entry" in relation to goods means an entry made in a bill of entry, shipping bill or bill of export and includes the entry made under the regulations made under section 84;
- (17) "Examination", in relation to any goods, includes measurement and weighment thereof;

- (18) "Export", with its grammatical variations and cognate expressions, means taking out of India to a place outside India;
- (19) "Export goods" means any goods which are to be taken out of India to a place outside India;
 The goods intended for export, when brought to the port and shipping bills for export of the same filed, become export goods. But, where the goods had already been exported pursuant to the order made under Section 51 of the Customs Act, 1962, such goods cannot be deemed to be 'export goods' within the meaning of this sub-section.
Export goods V/s. Exported goods: There is a distinction between export goods and exported goods. The former is one, which is to be taken out of India (and not taken out of India) while the latter is one, which has already crossed the territorial waters of India.
- (20) "Exporter", in relation to any goods at any time between their entry for export and the time when they are exported, includes any owner, beneficial owner or any person holding himself out to be the exporter;
- (20A) "Foreign post office" means any post office appointed under clause (e) of sub-section (1) of section 7 to be a foreign post office;
- (21) "Foreign-going vessel or aircraft" means any vessel or aircraft for the time being engaged in the carriage of goods or passengers between any port or airport in India and any port or airport outside India, whether touching any intermediate port or airport in India or not, and includes –
 (i) any naval vessel of a foreign Government taking part in any naval exercises;
 (ii) any vessel engaged in fishing or any other operations outside the territorial waters of India;
 (iii) any vessel or aircraft proceeding to a place outside India for any purpose whatsoever;
- (21A) "Fund" means the Consumer Welfare Fund established under section 12C of the Central Excises and Salt Act, 1944 (1 of 1944);
- (22) "Goods" includes -
 (a) vessels, aircrafts and vehicles;
 (b) stores;
 (c) baggage;
 (d) currency and negotiable instruments; and
 (e) any other kind of movable property;
- (23) "Import", with its grammatical variations and cognate expressions, means bringing into India from a place outside India;
- (24) "Arrival Manifest" or "Import manifest" or "import report" means the manifest or report required to be delivered under section 30;
- (25) "Imported goods" means any goods brought into India from a place outside India but does not include goods which have been cleared for home consumption;
 The warehoused goods under section 59 are imported goods until they are cleared for home consumption from warehouse.
- (26) "Importer", in relation to any goods at any time between their importation and the time when they are cleared for home consumption, includes any owner, beneficial owner or any person holding himself out to be the importer;
 Any person who files the Bill of Entry U/s 46 and pays duty thereon shall be held to be the importer of the goods.

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In case of high sea sales where the original importer transfers the title of goods before the goods cross the customs frontiers, the buyer of goods is required to file the Bill of Entry and clear the goods, then such buyer will be treated as importer (Please co-relate discussion in Chapter 14 of GST).

- (27) "India" includes the territorial waters of India;
- (28) "Indian Customs Waters" means the waters extending into the sea up to the limit of **Exclusive Economic Zone under Section 7** of the Territorial Waters, Continental Shelf, Exclusive Economic Zone and other Maritime Zones Act, 1976, (80 of 1976)] and includes any bay, gulf, harbour, creek or tidal river;
The definition now is in tune with the definition of India in GST.
- (28A) "International courier terminal" means any place appointed under clause (f) of sub-section (1) of section 7 to be an international courier terminal;
- (29) "Land customs station" means any place appointed under clause (b) of section 7 to be a land customs station;
- (30) "Market price", in relation to any goods, means the wholesale price of the goods in the ordinary course of trade in India;
- (30A) "National Tax Tribunal" means the National Tax Tribunal established under section 3 of the National Tax Tribunal Act, 2005 (49 Of 2005);
- (30AA) "Notification" means notification published in the Official Gazette and the expression "notify" with its cognate meaning and grammatical variation shall be construed accordingly;
- (30B) "Passenger name record information" means the records prepared by an operator of any aircraft or vessel or vehicle or his authorised agent for each journey booked by or on behalf of any passenger;
- (31) "Person-in-charge" means, -
 - (a) in relation to a vessel, the master of the vessel;
 - (b) in relation to an aircraft, the commander or pilot-in-charge of the aircraft;
 - (c) in relation to a railway train, the conductor, guard or other person having the chief direction of the train;
 - (d) in relation to any other conveyance, the driver or other person-in-charge of the conveyance;
- (32) "Prescribed" means prescribed by regulations made under this Act;
- (33) "Prohibited goods" means any goods the import or export of which is subject to any prohibition under this Act or any other law for the time being in force but does not include any such goods in respect of which the conditions subject to which the goods are permitted to be imported or exported have been complied with;
- (34) "Proper officer", in relation to any functions to be performed under this Act, means the officer of customs who is assigned those functions by the Board or the Principal Commissioner of Customs or Commissioner of Customs;
- (35) "Regulations" means the regulations made by the Board under any provision of this Act;
- (36) "Rules" means the rules made by the Central Government under any provision of this Act;
- ★ (37) "Shipping bill" means a shipping bill referred to in section 50;

Shipping bill is the basic document for assessment of export duty. The exporter has to present shipping bill for clearance of export goods through vessel or aircraft.

- (38) "Stores" means goods for use in a vessel or aircraft, and includes fuel and spare parts and other articles of equipment, whether or not for immediate fitting;
- (39) "Smuggling", in relation to any goods, means any act or omission which will render such goods liable to confiscation under section 111 (*improper importation*) or section 113 (*improper exportation*);
- (40) "Tariff value", in relation to any goods, means the tariff value fixed in respect thereof under sub-section (2) of section 14;
- (41) "Value", in relation to any goods, means the value thereof determined in accordance with the provisions of sub-section (1) or sub-section (2) of Section 14;
- (42) "Vehicle" means conveyance of any kind used on land and includes a railway vehicle;
- (43) "Warehouse" means a public warehouse licensed under section 57 or a private warehouse licensed under section 58 or a special warehouse licensed under section 58A;
- (44) "Warehoused goods" means goods deposited in a warehouse;

Meaning & Significance of territorial waters of India & Indian Customs Waters [Section 2 (28)]

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.

"Indian Customs Waters" means the waters extending into the sea up to the limit of Exclusive Economic Zone under Section 7 of the Territorial Waters, Continental Shelf, Exclusive Economic Zone and other Maritime Zones Act, 1976, (80 of 1976)] and includes any bay, gulf, harbour, creek or tidal river;

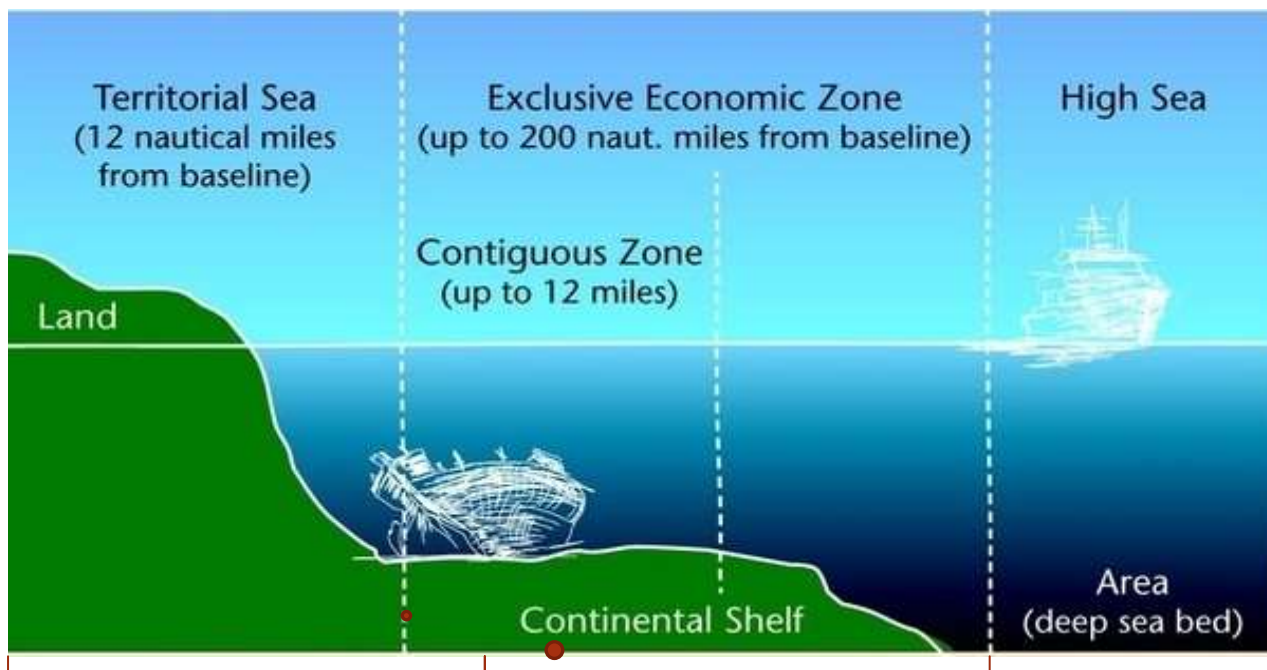
Indian customs waters cover both the Indian territorial waters and exclusive economic zone as well. Indian territorial waters extend up to 12 nautical miles (nm) from the base line Whereas, exclusive economic zone of India is an area beyond the Indian territorial waters. The limit of exclusive economic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

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Indian Customs Waters (200 NM)

This territorial water decide
Export/Import of Goods

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].

Section 3 Classes of Officers of Customs

Section 3 of the Customs Act, specifies the classes of officers of customs namely:

- (a) Principal Chief Commissioner of Customs;
- (b) Chief Commissioners of Customs;
- (c) Principal Commissioner of Customs;
- (d) Commissioners of Customs;
- (e) Commissioners of Customs (Appeals);
- (f) Joint Commissioners of Customs;
- (g) Deputy Commissioners of Customs;
- (h) Assistant Commissioners of Customs; and
- (i) Such other class of officers of customs as may be appointed for the purposes of this Act.

Among the other classes of officers of customs, the more important ones are:

- (a) Appraisers of customs, who do the assessment work of import and export goods, including classification, valuation and examination of the goods; and
- (b) Preventive Officers of Customs, who do the executive duties like
 - (i) Boarding and checking ships and aircrafts;
 - (ii) Clearing passengers and crew and their baggage;
 - (iii) Supervision and control over loading and unloading of cargo;
 - (iv) Preventing smuggling by checking suspects, patrolling the customs area, searching suspected premises, persons and vehicles.
 - (v) Interrogating suspects/witnesses and investigation.
- (c) Ministerial officers who maintain records, keep accounts, etc.
- (d) Chemical examiner, who tests samples of imported/export cargo for determination of true character of the goods for proper classification and value, necessary for determination of customs duty.

Section 4 Appointment of officers of customs

- (1) The Board (CBEC) may appoint such persons as it thinks fit to be officers of customs.
- (2) Without prejudice to the provisions of sub-section (1), Board may authorise a Principal Chief Commissioner of Customs or Chief Commissioner of Customs or a Principal Commissioner of Customs or Commissioner of Customs or a Joint or Assistant or Deputy Commissioner of Customs to appoint officers of customs below the rank of Assistant Commissioner of Customs.

Section 5 Powers of officers of customs

- (1) Subject to such conditions and limitations as the Board may impose, an officer of customs may exercise the powers and discharge the duties conferred or imposed on him under this Act.
- (2) An officer of customs may exercise the powers and discharge the duties conferred or imposed under this Act on any other officer of customs who is subordinate to him.
- (3) Notwithstanding anything contained in this section, a Commissioner (Appeals) shall not exercise the powers and discharge the duties conferred or imposed on an officer of customs other than those specified

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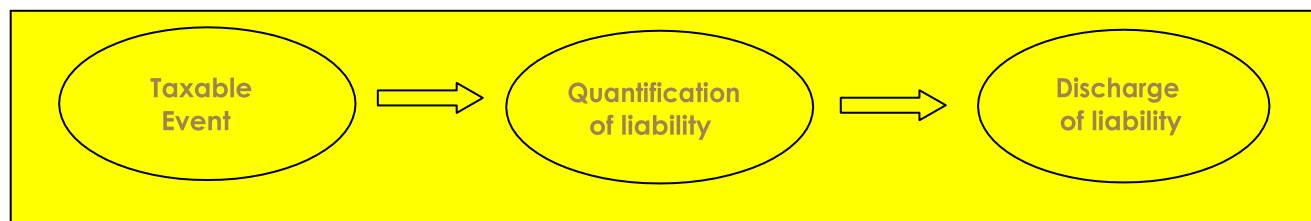
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in Chapter XV (Appeals and Revision) and section 108 (Power to summon persons for giving evidence).

Section 6 Entrustment of functions of Board and customs officers on certain other officers

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 officer of customs under this Act.

Section 12 Dutiable Goods {Charging Section}



The charging section provides the following –

- The levy of duty is on goods.
- The goods must be imported into or exported from India.
- The rate at which duty of customs is to be levied is specified in the Customs Tariff Act, 1975 or any other law for the time being in force.
- Government goods shall be treated at par with the non-government goods for the purpose of levy of customs duty.
- Such levy of duty is subject to the exception of the Act or any other law for the time being in force.

➔ Therefore, the importation of goods into India or exportation of goods from India is taxable event in customs. The customs duty is considered to be levied on the goods and not on the person importing the goods or paying the duty.

In case of Importation, SC has held in Kiran Spinning Mills V/s Collector [1999] that taxable event occurs when the customs barrier is crossed and not on the date when goods had landed in India or had entered the territorial waters of India. In case of warehoused goods, the custom barriers would be crossed when they are sought to be taken out of customs and brought to the mass of goods in the country.

Further the SC in Garden Silk Mills Ltd V/s UOI [1999] has held that importation starts when the vessel carrying goods crosses the territorial waters of India but is completed when such goods becomes part of the mass of the goods within the country. The Taxable event being reached at the time when the goods reach the customs barriers and bill of entry for home consumption is filed.

Export of goods is complete when the goods cross the territorial waters of India.

Distinction between clearance for home consumption and clearance for warehousing

Clearance for home consumption implies that, the customs duty on import of the goods has been discharged and the goods are therefore cleared for utilization or consumption. The goods may instead of

being cleared for home consumption be deposited in warehouse and cleared at a later time. When the goods are deposited in the warehouse the collection of customs duty will be deferred till such goods are cleared for home consumption. The revenue for the Government is safeguarded by the importer executing a bond binding himself in a sum equal to thrice the amount of duty assessed on the goods at the time of import. The importer is also liable to pay interest, rent and charges for storage of goods in warehouse.

Section 15 Date for determining the rate of duty and tariff valuation of imported goods

Section 16 Date for determination of rate of duty and tariff valuation of export goods

Types of Goods	Section	Relevant date
(a) In case of Imported Goods -		
➤ Goods entered for home consumption u/s 46	15(1)(a)	The <u>date of Presentation of Bill of entry or the date of entry inwards of the vessel or the arrival of the aircraft or the vehicle</u> by which the goods are imported, <u>whichever is later</u> .
➤ Goods cleared from a warehouse u/s 68	15(1)(b)	The <u>date of presentation of the Ex-Bond Bill of Entry</u> for home consumption under that Section.
➤ For any other goods	15(1)(c)	On the date of payment of duty.
(b) In case of Export Goods -		
➤ Goods entered for export under section 50	16(1)(a)	<u>On the date on which the proper officer makes an order permitting clearance</u> and loading of the goods for exportation under Section 51.
➤ For any other goods	16(1)(b)	On the date of payment of duty.

Point to remember: The provisions of section 15 and section 16 shall not apply to baggage and goods imported / exported by post.

Example1. Mr. ABC imported certain consignment valuing Rs. 5,00,000. The date of entry inwards of the vessel is 15-7-2018 on which date the rate of customs duty is 12.5% Mr. ABC filed Bill of Entry for home consumption on 31-7-2018, on which date the rate of customs duty has been reduced to 10%. Compute the amount of duty payable Mr. ABC, SWS is 10% and no IGST is leviable. Also compute the total imported cost of the consignment.

A. As per Section 15(1)(a), the relevant date for determination of rate of duty and tariff valuation is date of entry inwards or date of presentation of bill of entry for home consumption, whichever is later. Hence, the relevant date is 31-7-2018 and the rate of duty on that date is 10%.

*Hence, customs duty payable = 10% of Rs. 5,00,000 + 10% (SWS 10%) of 10% of Rs. 5,00,000 = Rs. 55,000.
Total imported cost of the consignment = Rs. 5,00,000 + Rs. 55,000 = Rs. 5,55,000.*

Example 2. What will be your answer in illustration above, if the date of entry inward is 2-8-2018 and on that date an exemption notification was issued exempting goods from basic custom duty in excess of 5%

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A. : In this case, since bill of entry is presented before the date of grant of entry inward to such vessel. Hence, custom duty rate shall be applicable of the date of grant of entry inwards. The custom duty rate on date of grant of entry inwards is 5%. Hence, custom duty payable is 5.50% of Rs. 5,00,000 = Rs. 27,500 Total imported cost = Rs. 5,27,500.

Example 3. An importer, imported consignment of goods, chargeable to duty @ 15% ad valorem. The vessel arrived on 31st July, 2018. A bill of entry for warehousing the goods was completed on 2nd August, 2018 and the goods were duly warehoused. In the meantime, an exemption notification was issued on 15th November, 2018 reducing the effective customs duty to 10% ad valorem. Thereafter, the importer filed a bill of entry for home consumption on 20th November, 2018 claiming 10% duty. The customs Department charged higher rate of duty @ 15% ad valorem. Given you view about the same, discussing the relevant provisions of the Customs Act, 1962.

A. According to section 15(1) (b) of the Customs Act, 1962 the relevant date for determination of rate of duty and tariff value in case of goods cleared from a warehouse is the date on which a bill of entry for home consumption in respect of such goods is presented. Therefore, the relevant date for determining the duty in the given case will be 20th November 2018 (the date on which the bill of entry for home consumption is presented). Therefore, the relevant rate will be 10%.

Example 4. Mr. ABC has exported goods valuing Rs. 8,00,000 to US by a vessel. He filed the shipping bill for export on 28-3-2018 (rate of duty 5%). The order permitting clearance and loading of the goods for exportation was made by the proper officer on 1-4-2018 (rate of duty 15%). The ship left for US on 4-4-2018 (rate of duty 15%) and the ship crossed the territorial waters of India on 8-3-2018 (goods were made exempt from duty). Compute the amount of duty payable by Mr. ABC.

A. As per section 16(1) (a), the relevant date for determination of rate of duty and tariff valuation in case of export goods is the date on which the proper officer makes an order for clearance and loading of the goods for exportation under section 51. Hence, relevant date, in this case, is 1-4-2018 and rate of duty is 15%.

Export duty payable by Mr. ABC = Rs. 8,00,000 X 15% = Rs. 1,20,000.

Section 17 Assessment of Duty

- (1) Importer or exporter shall self-assess the duty. However, stores can be warehoused without assessment as provided in Section 85.
- (2) The proper officer may verify the entries made U/s 46 or U/s 50 and the self-assessment of goods referred to in Section 17 (1) and for this purpose, examine or test any imported goods or export goods or such part thereof as may be necessary.
Provided that the selection of cases for verification shall primarily be on the basis of risk evaluation through appropriate selection criteria.
- (3) For the purpose of verification, the proper officer may require the importer, exporter or any other person to produce any document or information, whereby the duty leviable on the imported goods or export goods can be ascertained and thereupon, such person shall produce such document or furnish such information.
- (4) Where it is found on verification, examination or testing of the goods or otherwise that the self-assessment is not done correctly, the proper officer may, without prejudice to any other action which may be taken under this Act, re-assess the duty leviable on such goods.
- (5) Where any re-assessment done under sub-section (4) is contrary to the self-assessment done by the importer or exporter and in cases other than those where the importer or exporter, as the case may be, confirms his acceptance of the said re- assessment in writing, the proper officer shall pass a speaking

order on the re-assessment, within fifteen days from the date of re-assessment of the bill of entry or the shipping bill, as the case may be.

Section 18 Provisional Assessment of Duty

As per section 18 (1), the provisional assessment can be directed by proper officer in the following circumstances:

- where the importer or exporter is unable to make self-assessment under section 17(1) and makes a request in writing to the proper officer for assessment; or
- where the proper officer deems it necessary to subject any imported goods or exported goods to any chemical or other test; or
- 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
- where necessary documents have not been produced or information has not been furnished and the proper officer deems it necessary to make further enquiry.

Bill of Entry/Shipping bill is required to be filed for provisional assessment also.

As per Section (1A), Where, pursuant to the provisional assessment under sub-section (1), if any document or information is required by the proper officer for final assessment, the importer or exporter, as the case may be, shall submit such document or information within such time, and the proper officer shall finalize the provisional assessment within such time and in such manner, as may be prescribed.

Provisional assessment is allowed both in respect of imports as well as exports.

The proper officer may direct that the duty leviable on such goods be assessed provisionally if the importer or the exporter, as the case may be, furnishes such security as the proper officer deems fit for the payment of the deficiency, if any, between the duty as may be finally assessed or re-assessed as the case may be, and the duty provisionally assessed.

Finalization of Assessment

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

Differential demand is payable by assessee with interest @ 15% p.a. from 1st day of month in which provisional assessment was made.

Refund is granted to assessee with interest @ 6% p.a. after expiry of 3 months from finalization and only after testing "unjust enrichment".

Government has notified Customs (Finalization of Provisional Assessment) Regulations, 2018 wherein it is provided that:

- One month will be allowed for importer/exporter to furnish the deficient information from the date of the provisional assessment order or as requested
- Intimation for furnishing deficient information will be issued to the importer/exporter within fifteen days

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from date of provisional assessment order

- (iii) Extension not exceeding three months will be granted to the importer/ exporter for this purpose. Power to extend by a further three months is available with the Additional Commissioner or Joint Commissioner of Customs and with further powers with Commissioner of Customs
- (iv) Upon receipt of the information, assessment is required to be finalized within two months from the date when the last of the information was furnished by the importer/exporter. Where documents are not furnished, provisional assessment is to be finalized within two months from the end of the time allowed for furnishing the information. This time period of two months may be extended by Commissioner of Customs by additional three months
- (v) Assessment to be finalized as per section 18 and any shortfall in duty paid to be appropriated from the security collected
- (vi) Bond executed at the time of order of provisional assessment may be cancelled on finalization of the assessment
- (vii) Failure to adhere to these Regulations attracts penalty of Rs. 50,000 to importer/exporter and authorized person/ CH Broker.

Example. Compute the amount of interest (Interest @ 6% on refund), if any, under section 18 of the Customs Act, 1962 in the following case –

Mr. X imported a consignment declaring a value of Rs. 10 Lakhs by presenting a bill of entry on 8-4-2018, on which date the rate of duty was 10%. The proper officer decided to subject the goods to chemical examination and assessed the said consignment at a value of Rs. 15 Lakhs and the provisional duty was paid accordingly on that date. Thereafter, on receipt of report of chemical examination, the said goods were finally valued at Rs. 12 Lakhs on 25-5-2018 and the amount of refund was granted to Mr. X on 25-9-2018.

A. The interest, in the aforementioned cases, shall be –

The amount of duty refundable to Mr. X = (Rs. 15 Lakh – Rs. 12 Lakh) X 11% = Rs. 33,000.

No. of days for which interest payable = Date after expiry of 3 months from the date of final assessment to the date of refund = 26-8-2018 to 25-9-2018 = 31 days.

The interest payable to Mr. X on this amount = Rs. 33,000 X 6% X 31 days ÷ 365 = Rs 168.16.

Section 19 Determination of duty where goods consist of articles liable to different rates of duty

Except as otherwise provided in any law for the time being in force, where goods consist of a set of articles, duty shall be calculated as follows :-

- (a) articles liable to duty with reference to quantity shall be chargeable to that duty;
- (b) articles liable to duty with reference to value shall, if they are liable to duty at the same rate, be chargeable to duty at that rate, and if they are liable to duty at different rates, be chargeable to duty at the highest of such rates;
- (c) articles not liable to duty shall be chargeable to duty at the rate at which articles liable to duty with reference to value are liable under clause (b):
Provided that, -
 - (a) accessories of, and spare parts or maintenance and repairing implements for, any article which satisfy the conditions specified in the rules made in this behalf shall be chargeable at the same rate of duty as that article;
 - (b) if the importer produces evidence to the satisfaction of the proper officer or the evidence is available regarding the value of any of the articles liable to different rates of duty, such article shall be chargeable

to duty separately at the rate applicable to it.

Example 1. Mr. A imported certain goods comprising of set of articles at a consolidated price of Rs. 16 Lakhs. Mr. A claims that the value of various articles is as follows (along with rate of duty prevalent on the date of presentation of bill of entry) –

(a) Articles 'X'	Rs. 10 Lakhs	Exempt;
(b) Article 'Y'	Rs. 4 Lakhs	5%
(c) Article 'Z'	Rs. 2 Lakhs	10%

What is the amount of import duty of customs payable by Mr. A if –

- (1) He fails to furnish evidence supporting the aforesaid values?
- (2) He furnishes requisite documents supporting the aforesaid values?

A. The amount of import duty of customs payable –

- (1) If Mr. A fails to furnish evidence supporting the aforesaid values, then, in view of the provisions of section 19, the set of articles shall be chargeable to duty at the highest of the rates. Those articles which are not liable to duty shall also be chargeable at highest of the rates. Therefore, the amount of duty payable by Mr. A = Rs. 16 Lakhs X 11% = Rs. 1,76,000.
- (2) In case Mr. A furnishes evidence supporting the value of individual articles, the duty shall be chargeable on the individual articles at the rates applicable to them. Accordingly, duty payable by Mr. A = Nil on Article 'X' + Rs. 4 Lakh X 5.50% + Rs. 2 Lakh X 11% = Rs. 44,000.

Example 2. Mr. A imported a car (valued Rs. 5 lakh and rate of duty 10%) with accessories (valued Rs. 50,000 and rate of duty 8%). Determine duty payable in following independent cases –

- if accessories are compulsorily sold with car at a single price of Rs. 5,50,000; or
 - if accessories are optionally supplied for a separate price?
- Social Welfare Surcharge is 10% of customs duty.

A. The duty payable as per section 19 is as follows –

- since accessories are compulsorily supplied for a single price, their value will form part of value of car and duty as applicable to car would be levied. Hence, duty (incl. surcharge) = 11% of Rs. 5,50,000 = Rs. 60,500.
- Since accessories are optionally supplied for a separate price, they would be regarded as separate goods. Hence, duty = 11% of Rs. 5,00,000 (car) + 8.8% of Rs. 50,000 (accessories) = Rs. 59,400.

Example 3. Mr. X imports a toy set (separately valued at Rs. 5,000) containing:

- (1) Two soft dolls (separately valued at Rs. 1,000 each),
- (2) Two racing cars (separately valued at Rs. 50 each),
- (3) Four soft teddys (separately valued at Rs. 500 each).

Determine duty payable (Ignore SWS) in the following independent cases –

- (a) The entire set is imported as a single pack and duty is levied at specific rate viz. Rs. 100 per soft doll, Rs. 50 per racing car, Rs. 75 per soft teddy.
- (b) The entire set is imported as a single pack at a single price of Rs. 5,000 (no separate values available) and duty is levied ad valorem. The rate of duty applicable is 10% for soft dolls, 7.5% for racing cars, 0% (Nil) for soft teddys.
- (c) The entire set is imported at a price of Rs. 5,000 and duty is levied ad valorem. The rate of duty applicable is 10% for soft dolls, 7.5% for racing cars, 0% (Nil) for soft teddys. The importer is able to show evidence of separate values.

A. The duty payable as per section 19 is as follows –

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(a) Since duty is leviable on the basis of quantity, the duty shall be calculated as under:

Particulars	Rs
(1) Two soft dolls (Applicable duty Rs. 100 per soft doll) (Rs. 100 X 2)	200
(2) Two racing cars (Applicable duty Rs. 50 per car) (Rs. 50 X 2)	100
(3) Four soft teddys (Applicable duty Rs. 75 per soft teddy) (Rs. 75 X 4)	300
Total duty payable	600

(b) The entire set is imported as a single pack at a single price of Rs. 5,000 (no separate values available) and duty is levied ad valorem. Highest rate of duty shall be applicable on the entire set i.e. Rs. 5,000 X 10% = Rs. 500.

(c) In case importer is able to show evidences of individual value of articles the duty shall be calculate as under:

Particulars	Rs
(1) Two soft dolls (separately valued at Rs1,000 each) (Rs. 1000 X 2 X 10%)	200
(2) Two racing cars (separately valued at Rs500 each) (Rs. 500 X 2 X 7.5%)	75
(3) Four soft teddys (Applicable duty NIL rate)	NIL
Total duty payable	275

Section 20 Re-importation of Goods

If goods are imported into India after exportation therefrom, then, such goods shall be liable to duty and subject to all the conditions and restrictions, if any, to which goods of the like kind and value are liable or subject, on the importation thereof. Thus, re-import is treated just like a normal import.

Exemptions or concessions available in respect of re-import [Notification No. 158/95 and 45/2017]

Case of re-import	Time-limit for re-import	BCD, IGST & GST Cess is exempt and following sum is payable
Goods manufactured in India & exported and re-imported in India for- - Repairs or re-conditioning - Reprocessing/refining/re-making or other similar process	Within 3 years (10 years in case of Nepal & Bhutan) Within 1 year	Duty is fully exempt, if – - Such goods are re-exported within 6 months from date of re-import (extension upto 6 months allowed by Commissioner or Principal Commissioner); and - Assistance Commissioner is satisfied about identity of such goods.
Good re-imported without being subjected to re-manufacturing or reprocessing through melting, recycling or recasting abroad- [A] if exported under following benefit- - Claiming drawback/refund of customs or central excise or state excise, or, IGST; - Under bond without payment of IGST - Under duty exemption scheme	Within 3 years from date of export + 2 years extension Within 3 years from date of export + 2 years extension Within 1 year from	Amount of drawback/refund of customs or central/state excise duty, or, IGST Amount of IGST not paid Amount of IGST and compensation

(DEEC/Advance Authorization/DFIA) or Export Promotion Capital Goods Scheme (EPCG)	date of export + 1 year extension	cess leviable at time and place of import
[B] Re-import of any other Goods (other than above) exported for repairs abroad and there has been no change in ownership of the goods between the time of export of such goods and re-import thereof	Within 3 years from date of export + 2 years extension	Value (for levy of duty) = Fair cost of repairs + Cost of material used in repairs (such cost includible even if not actually incurred)+ insurance and freight (to and from)
[C] Re-import of Any other exported goods	Within 3 years from date of export + 2 years extension	Nil

Example 1 (ICAI Example). A machine was originally imported from Japan at Rs. 250 lakh in July, 20XX on payment of all duties of customs. The said machine was exported (sent-back) to supplier for repairs in December, 20XX and re-imported without any re- manufacturing or re-processing in October next year after repairs. Since the machine was under warranty period, the repairs were carried out free of cost.

However, the fair cost of repairs carried out (including cost of material Rs. 6 lakh) would have been Rs. 9 lakh. Actual insurance and freight charges (to and fro) were Rs. 3 lakh. The rate of basic customs duty is 10% and integrated tax is 12%. Ignore GST compensation cess.

Compute the amount of customs duty payable (if any) on re-import of the machine after repairs. The ownership of the machine has not been changed during the period.

Note: The importer intends to avail exemption, if any, with regard to re- importation of goods which had been exported for repairs abroad.

A.

Value of goods re-imported after exports (Rs. 9 Lakhs + Rs. 3 Lakhs)	12,00,000
Basic Custom Duty @ 10%	1,20,000
Social Welfare Surcharge @ 10% on Rs. 1,20,000	12,000
Total Custom Duty Payable	1,32,000
IGST U/s 3(7) @12% (12,00,000+1,32,000=13,32,000)	1,59,840
Total Import Duties of Customs (BCD+SWS+IGST)	2,91,840

Example 2. Mr. Popular of Varanasi imported a machinery on 1-1-2018 (value Rs. 1 lakh and duty Rs. 10,300) from Mr. B of US. Later, he found that machinery was defective and therefore, he sent back that machinery for repairs, etc. abroad. The cost of insurance and freight from Varanasi to US is Rs. 5,000. Repair work was carried out on machinery by Mr. B and materials worth Rs. 7,500 and Labour, etc. worth Rs.4,000 was borne by Mr. B. The cost of insurance and freight for repaired goods from US to Varanasi is Rs.6,000. Determine the duty payable at the time of re- import on 1-1-2019, if rate of duty is 11% (including SWS). Department claims that machinery is liable to duty on full value of Rs. 1,10,000 (market price on 1-1-2019).

A. In view of section 20, re-import is also liable to duty. However, as per concession granted in this behalf, in case of re-import after repairs abroad, the duty payable would be that on value comprising of 'fair cost of repairs (even if not borne by importer)' plus Insurance/freight (both ways). Hence, duty would be –

- Value = Rs. 5,000 + Rs. 7,500 + Rs. 4,000 + Rs. 6,000 = Rs. 22,500;
- Duty = Rs. 22,500 × 11% (including Social Welfare Surcharge) = Rs. 2,475.

Study Notes

Section 21 Goods derelict, wreck, etc.

Goods derelict, wreck, etc. are liable to customs duty unless they are admitted duty – free under this Act.

Derelict – This refers to any cargo, vessel, etc. abandoned in the sea with no hope of recovery.

Jetsam – This refers to goods jettisoned (thrown with speed) from the vessel to save her from sinking.

Flotsam – Jettisoned goods which continue floating in the sea are called flotsam.

Wreck – This refers to cargo or vessel or any property which are cast ashore by tides after ship wreck.

Distinguish between Jetsam & Flotsam: Jetsam and Flotsam are goods which are jettisoned (i.e. thrown with speed) from the vessel into the sea to reduce weight of vessel to prevent it from sinking. They are not abandoned goods. Jetsam gets sunk whereas Flotsam does not sink but floats. Duty is payable on both unless they are entitled to be admitted free of duty.

Example. A fishing trawler operating in high seas, beyond the territorial waters of India, finds a ship wrecked in mid-sea and brings jetsam and flotsam into India, along with fish caught by it. Discuss the liability of duty on the fish, jetsam and flotsam.

A. Under section 2 (23) of the Customs Act, 1962, the term “import” with its grammatical variations and cognate expressions means “bringing into India from a place outside India”.

“India” has been defined under section 2 (27) of the Customs Act, 1962, to include “Territorial Waters” of India. Therefore, anything brought into India from a place outside India is liable to customs duty irrespective of whether it is merchandise or not, whether it is deliberately brought into India or accidentally comes into India. Section 21 of the Customs Act, 1962 provides that all goods, derelict, jetsam, flotsam and wreck brought or coming into India, shall be dealt with as if they were imported into India, unless it be shown to the satisfaction of the proper officer that they are entitled to be admitted duty – free under this Act. Thus, fish, jetsam, and flotsam brought into India by the fishing trawler would be liable to customs duty.

Section 13 Duty on pilfered goods

If any Imported goods are pilfered after the unloading thereof but before the proper officer has made an order for clearance for home consumption or deposit in a warehouse the importer shall not be liable to pay the duty leviable on such goods. However, where such goods are restored to the importer after pilferage, the importer becomes liable to duty.

Liability of duty in case of pilfered goods: Custodian of cargo shall be liable at the rate prevailing on the date of delivery of an arrival manifest or import manifest / report for the arrival of the conveyance in which the said goods were carried.

The term ‘pilfer’ means “to steal, especially in small quantities, petty theft”. Therefore, the term does not include loss of total package. Section 13, deals with only pilferage. It doesn’t deal with loss/destruction of goods. Provision of Section 13 would not apply if it can be shown that pilferage took place prior to the unloading of goods.

The pilferage of goods would normally be noticed at the time of physical verification of goods by the customs authorities. However, in some circumstances, it may so happen that the pilferage may be observed only at the time of removal of goods by the importer. In such case, the order for clearance, or as

the case may be, for bonding would already have been passed. Therefore, the importer has to ask for survey either by the steamer agents or by the insurance surveyors and the report issued by them would form the basis for claiming remission. As in such the circumstances, the duty would already have been paid, the remission is allowed in the form of a refund.

Section 22 Abatement of duty on damaged or deteriorated goods

Where it is shown to the satisfaction of the AC / DC –

- (a) that any imported goods had been damaged or had deteriorated at any time before or during the unloading of the goods in India; or at any time after the unloading thereof in India but before their examination under section 17; or
- (b) that any warehoused goods had been damaged at any time before clearance for home consumption then, such goods shall be chargeable to duty determined in the following manner –

Duty leviable on such damaged or deteriorated goods =

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

The value of such goods may be ascertained by the proper officer; or such goods may be sold by proper officer by public auction or by tender or with consent of owner in any other manner and the gross sale proceeds shall be deemed to be the value of such goods.

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.

Section 23 Remission of duty on lost, destroyed or abandoned goods

Loss or destruction of goods: AC/ DC is satisfied that any of the imported goods have been lost (otherwise than as result of pilferage) or destroyed, at any time before clearance for home consumption, then he shall remit the duty on such goods;

Abandonment or Relinquishment: Abandonment or Relinquishment of goods by importer before an order for clearance of goods for home consumption under section 47; or warehousing under section 60, he shall not be liable to pay the duty thereon. It is to be noted that any goods in respect of which an offence has been committed under the act cannot be transferred in favour of commissioner.

Example (ICAI Example): What will be the impact on the customs duty if the goods are:-

- (i) damaged inside the warehouse before clearance for home consumption
- (ii) deteriorated inside the warehouse before clearance for home consumption
- (iii) destroyed in the warehouse before clearance for home consumption
- (iv) destroyed on the wharf, before clearance for home consumption

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(v) *destroyed after clearance from warehouse*

A.

- (i) When the goods are damaged inside the warehouse abatement in customs duty, on resultant loss in value, has been provided through Section 22. Section 22 contemplates that for claiming abatement of duty, the damage (not deterioration) should occur at any time before clearance of the imported goods for home consumption from the warehouse. However, the damage should not be attributable to the importer. It should be proved to the satisfaction of Assistant Commissioner or Deputy Commissioner of Customs that the imported goods have actually suffered damages. The claim for abatement is not tenable unless the importer factually proves the damage. The following equation provides the way to calculate the abatement of duty.

Duty leviable on such damaged or deteriorated goods =

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

Abatement of duty on damaged or deteriorated goods = Duty leviable on the goods before damage – Duty leviable on the goods after damage.

- (ii) *As discussed above, in case of warehoused goods, only damages are covered and not deterioration, hence abatement will not be available in this case and full duty will have to be paid. However, as per first proviso to section 68 of Customs Act, 1962, owner of any warehoused goods may, at any time before an order for clearance of goods for home consumption has been made in respect of such goods, relinquish his title to the goods. Upon such relinquishment, duty will not be payable on such goods but rent, interest, other charges and penalties would be payable.*
- (iii) *When the goods are destroyed in the warehouse before clearance for home consumption, customs duty will be remitted as per the provisions of section 23. Section 23(1) applies when the goods have been lost (otherwise than as a result of pilferage) or destroyed in entirety i.e. whole or part of goods is lost once for all. The goods cease to exist and cannot be retrieved. The loss is generally on account of natural causes such as fire, flood etc., and no human element is present as in section 13. The loss or destruction may occur at any time before clearance for home consumption. The loss/destruction has to be proved to the satisfaction of Assistant Commissioner or Deputy Commissioner.*
- (iv) *As all the conditions of section 23 are fulfilled, duty will be remitted in this case also.*
- (v) *As per the discussion made in (iii) above it is clear that remission of duty is possible only when destruction occurs before clearance for home consumption. In case of destruction after clearance from a warehouse, no remission of duty is possible.*

Section 24 Power to make rules for denaturing or mutilation of goods

The Central Government has power to make rules for denaturing or mutilation of goods and in such case, they are assessed as if the goods were imported in denatured or mutilated form.

Section 25 Exemptions from Duty

Article 265 of the Constitution provides that “No tax shall be levied or collected except by authority of law”. The power of the Central Government to alter the duty rate structure is known as delegated legislation and this power is always subject to superintendence and check by Parliament.

- a. **General exemption:** 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.

- b. Special exemption:** 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, one hundred rupees.

Both the above mentioned exemptions may be granted by providing for the levy of duty on such goods at a rate expressed in a form or method different from the form or method in which the statutory duty is leviable.

Further, the duty leviable under such altered form or method shall in no case exceed the statutory duty leviable under the normal form or method.

Interpretation of Exemption Notifications

In *Kasinka Trading v. U.O.I.* 1994 (74) E.L.T. 782, the Supreme Court held that the power to exempt includes the power to modify or withdraw in terms of Section 21 of the General Clauses Act, 1897. It was held that even a time bound exemption notification issued under section 5A of the Central Excise Act, 1944, or section 25 of the Customs Act, 1962 can be modified and revoked if it is in public interest and the doctrine of Promissory Estoppel cannot be invoked since a notification cannot be said to be making a representation or a promise to a party getting benefit thereof.

The Supreme Court has held in *Pankaj Jain Agencies v. U.O.I.* 1994 (72) E.L.T. 805 that a Notification is to take effect from the date of the publication in the Official Gazette. In *ITC Ltd. v. CCE* 1996 (86) E.L.T. 477 the Supreme Court reiterated this view and said that non-availability of the Gazette on the date of issue of the notification will not affect the operativeness and enforceability of the notification particularly when there are radio announcements and press releases explaining the changes on the very day

An exemption notification cannot be withdrawn and duty cannot be demanded with retrospective effect [*Honest Corporation v. State of Tamil Nadu* 1999 STC 113 (HC)].

Effective date: Section 25 of the Act provides that the date of effect of the notification will be the date of its issue.

The following issues need to be kept in mind in case of general exemption.

- (i) Where the exemption notification does not mention the date of its effect, the notification comes into effect from the date of its issue by the Central Government for publication in the Official Gazette.
- (ii) Where the exemption is through a special order, the above rules do not apply. Special orders are issued separately for each case and communicated to the beneficiary directly by the Government. The beneficiary can claim refund for the period reckoned from the date of its issue.

Sub-section 2A empowers the Government to issue clarifications to the notifications within one year from the issue of the notification and such clarifications will have retrospective effect.

Section 25A: Exemption from custom duty on imported goods used for inward processing of goods

Where the Central Government is satisfied that it is necessary in the public interest so to do, it may, by notification, exempt such of the goods which are imported for the purposes of repair, further processing or manufacture, as may be specified therein, from the whole or any part of duty of customs leviable thereon, subject to the following conditions, namely:—

- (a) the goods shall be re-exported after such repair, further processing or manufacture, as the case may be, within a period of one year from the date on which the order for clearance of the imported goods is made;

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- (b) the imported goods are identifiable in the export goods; and
- (c) such other conditions as may be specified in that notification.

Section 25B: Exemption from custom duty on re-imported goods used for outward processing

Notwithstanding anything contained in section 20, where the Central Government is satisfied that it is necessary in the public interest so to do, it may, by notification, exempt such of the goods which are re-imported after being exported for the purposes of repair, further processing or manufacture, as may be specified therein, from the whole or any part of duty of customs leviable thereon, subject to the following conditions, namely :—

- (a) the goods shall be re-imported into India after such repair, further processing or manufacture, as the case may be, within a period of one year from the date on which the order permitting clearance for export is made;
- (b) the exported goods are identifiable in the re-imported goods; and
- (c) such other conditions as may be specified in that notification.

In case of import of crude oil, whether customs duty is payable on the basis of the quantity of oil shown in the bill of lading or on the actual quantity received into shore tanks in India? Mangalore Refinery & Petrochemicals Ltd. v. CC [2015] 323 ELT 433 (SC)	Taxable event occurs only when goods are imported and the levy of duty is only on goods imported into India. The act of importation is complete only after the order for clearance for home consumption is made. Thus, where the quantity of imported crude oil actually received in the shore tank in port in India was lesser than the quantity mentioned in the Bill of lading, duty was leviable only on the goods received in the shore tank. Quantity shown in the Bill of lading cannot form the basis for valuation as it does not reflect the quantity of goods at the time and place of importation.
CCEX. v. Bakelite Hylam Ltd. [2016] 335 ELT 673 (SC)	No customs duty is payable on unsuitable goods rejected as waste including those damaged in transit and not put to further use.

Question & Answer

Q1. State in brief the provisions under the Customs Act, 1962 that seek to prohibit the import of goods infringing intellectual property rights (IPR).

A. 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.

Q2. Discuss with a brief note the distinction between the functioning of Inland Container Depots (ICD) and Container Freight Stations (CFS).

A. :

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.

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Chapter 2: - Types of Duty

Section 12 of The Custom Act & Section 2 of the Customs Tariff Act	Basic Custom Duty
Section 5 (The Customs Tariff Act)	Levy of lower rate of duty under trade agreement
Section 6 & 7 (The Customs Tariff Act)	Power of Central Government to levy protective duties in certain cases & Duration of protective duties and power of Central Government to alter them
Section 8 (The Customs Tariff Act)	Emergency power of Central Government to increase or levy export duties
Section 8A (The Customs Tariff Act)	Emergency power of Central Government to increase import duties
Section 8B (The Customs Tariff Act)	Power of Central Government to Impose Safeguard Duty
Section 9 (The Customs Tariff Act)	Countervailing duty on subsidized articles
Section 9A (The Customs Tariff Act)	Anti-Dumping Duty on dumped articles
Section 9AA (The Customs Tariff Act)	Refund of anti-dumping duty in certain cases
Section 9B (The Customs Tariff Act)	No levy under section 9 or section 9A in certain cases

Basic Customs Duty [Section 12 of The Customs Act & Section 2 of The Customs Tariff Act]

Basic Customs Duty is levied under the provisions of section 12 of the Customs Act and section 2 of the Customs Tariff Act.

- at such rates as may be specified under the Customs Tariff Act, 1975 or any other law for the time being in force
- on goods imported into or exported from India [Section 12 of the Customs Act, 1962]

Rates of basic custom duty: The rates at which duties of customs shall be levied under the Customs Act 1962 are specified in the [First Schedule \(enlists the goods liable to import duty\)](#) and [Second Schedule \(enlists the goods liable to export duty\)](#)

Standard rate of duty: Generally, the rate of duty specified in column (4) is applicable.

Preferential rate of duty: If the goods are imported from the areas notified by the Central Government to be preferential areas, then the rate of duty under column (5) will be applicable.

The Government may by notification under section 25 of the Customs Act prescribe preferential rate of duty in respect of imports from certain preferential areas.

Conditions to be fulfilled for preferential rate of duty: The importer will have to fulfill the following conditions to make the imported goods eligible for preferential rate of duty:-

- At the time of importation, he should make a specific claim for the preferential rate.
- He should also claim that the goods are produced or manufactured in such preferential area.
- The area should be notified under section 4(3) of the Customs Tariff Act to be a preferential area.
- The origin of the goods shall be determined in accordance with the rules made under section 4(2) of the Customs Tariff Act.

If the importer fails to discharge the above duties, the goods shall be liable to standard rate of duty.

Additional Duties of Customs

- Additional customs duty under section 3(1) of the Customs Tariff Act being the equivalent duty on imported goods which would be charged on goods manufactured in India as 'excise duty' only on certain specific goods which have not been brought under GST ambit. If the excise duty is leviable at a percentage of the value of the goods, the additional duty will also be calculated at that percentage of the value of the imported article.

Rate of additional duty in case of alcoholic liquor: In case of any alcoholic liquor for human consumption imported into India, the Central Government may notify the rate of additional duty having regard to the excise duty for the time being leviable on like alcoholic liquor produced or manufactured in different States. In case if the like alcoholic liquor is not produced or manufactured in any State, then, the excise duty which would be leviable for the time being in different States on the class or description of alcoholic liquor to which such imported alcoholic liquor belongs would be the applicable rate.

- Countervailing duty under section 3(3) of the Customs Tariff Act being the duty charged on imported goods to counter-balance the excise duty applicable on raw materials used in the manufacture of identical goods only on certain specific goods which have not been brought under GST ambit.
- Special additional customs duty under section 3(5) of the Customs Tariff Act being the duty charged on imported goods to counter-balance the sales tax or VAT applicable on goods sold into India only on certain specific goods which have not been brought under GST ambit [SAD]. The rate of duty is fixed @ 4%. Credit is available for this duty only to manufacturer.
- Integrated tax under section 3(7) of Customs Tariff Act being the equivalent of integrated tax under the IGST Act, 2017 and
- Cess under section 3(9) of Customs Tariff Act being the equivalent of Compensation Cess under the GST Compensation Cess Act, 2017.

Due to introduction of GST, the applicability of additional duty of customs is very limited. GST is levied on all supplies of goods and / or services except supply of alcoholic liquor for human consumption. Further, GST on the supply of petroleum crude, high speed diesel, motor spirit (commonly known as petrol), natural gas and aviation turbine fuel shall be levied with effect from such date as may be notified by the Government on the recommendations of the Council. Thus, additional duty of customs will be levied only on the few products not leviable to GST.

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IGST [Section 3 (7) of Custom Tariff Act]

Any article which is imported into India shall, in addition, be liable to integrated tax at such rate, not exceeding 40% as is leviable under section 5 of Integrated Goods and Services Tax Act, 2017 on a like article on its supply in India, on the value of the imported article as determined under sub-section (8) or sub-section (8A).

GST Compensation Cess [Section 3(9) of Custom Tariff Act]

Any article which is imported into India shall, in addition, be liable to the goods and services tax compensation cess at such rate, as is leviable under section 8 of the Goods and Services Tax (Compensation to States) Cess Act, 2017 on a like article on its supply in India, on the value of the imported article as determined under sub-section (10) or sub-section (10A).

Goods exempt from BCD would not mean exemption from IGST.

Manner of computing value in case of warehouse goods

Where the goods deposited in a warehouse under the provisions of the Customs Act, 1962 are sold to any person before clearance for home consumption or export under the said Act, the value of such goods for the purpose of calculating the integrated tax under sub-section (7) shall be—

- (a) where the whole of the goods are sold, the value determined under subsection (8) or the transaction value of such goods, whichever is higher; or
- (b) where any part of the goods is sold, the proportionate value of such goods as determined under sub-section (8) or the transaction value of such goods,
whichever is higher.

However, where the whole of the warehoused goods or any part thereof are sold more than once before such clearance for home consumption or export, the transaction value of the last such transaction shall be the transaction value for the purposes of clause (a) or clause (b).

Further, in respect of warehoused goods which remain unsold, the value or the proportionate value, as the case may be, of such goods shall be determined in accordance with the provisions of sub-section (8).

For the purposes of this sub-section, the expression “transaction value”, in relation to warehoused goods, means the amount paid or payable as consideration for the sale of such goods.

The value for levying GST compensation cess in case of warehoused goods is to be computed in the same manner as discussed above. [Section 3(10A) of Customs Tariff Act]

Social Welfare Surcharge

Social welfare surcharge (SWS) is levied @ 10% on the aggregate of duties, taxes and cesses which are levied and collected under Section 12 of Customs Act, 1962 and any sum chargeable on that article under any law for the time being in force as an addition to, and in the same manner as, a duty of customs. However, following duties shall be excluded for computing this cess:

- (a) Safeguard duty under section 8B of the Customs Tariff Act, 1975

SWS is only levied on import

(b) Countervailing duty under section 9 of the Customs Tariff Act, 1975

(c) Anti dumping duty under section 9A of the Customs Tariff Act, 1975

(d) Social welfare surcharge itself on imported goods

SWS is fully exempted on IGST & GST Compensation Cess {Notification No. 13/2018- Customs dated 02.02.2018}.

Road and Infrastructure cess is levied as duty of customs @ Rs. 8 per litre on motor spirit (petrol) and high speed diesel (HSD) imported into India for the purpose of financing infrastructure projects.

Mode of calculation of Additional duty of customs u/s 3(1) & 3(5):

Assessable value u/s 14(1) or Tariff Value u/s 14(2) of Customs Act	[A]	XX
Add: Basic duty of customs u/s 12 on [A] above and other duties	[B]	XX
Value for the purposes for levy of additional duty of customs u/s 3(1) [A + B]	[C]	XX
Add: Additional duty of customs u/s 3(1) = Excise Duty computed on [C] above	[D]	XX
Add: SWS @ 10% on [B+D]	[E]	XX
Value for the purposes of levy of additional duty of customs u/s 3(5) [C+D+E]	[F]	XX
Add: Additional duty of customs u/s 3(5) computed on (F) above	[G]	XX
Total cost of imported goods [F + G]	[H]	XX
Total Customs Duty payable = [B + D + E + G] or [H – A]		XX

Note: Non inclusion of duties: For calculation of value for levy of additional duty of customs, the following duties shall not be included,-

- Additional duty of customs referred to in section 3 (1), (3), (5), (7) and (9) of the CTA,1975;
- The safeguard duty referred to in Section 8B and 8C of the CTA, 1975;
- The countervailing duty referred to in Section 9 of the CTA, 1975; and
- The anti-dumping duty referred to in Section 9A of the CTA, 1975.

Mode of calculation of Integrated Tax u/s 3(7) & GST Compensation Cess 3(9) [Section 3(8) & 3(10) of the Customs Tariff Act]:

Assessable value u/s 14(1) or Tariff Value u/s 14(2) of Customs Act	[A]	XXX
Add: Basic duty of customs u/s 12 on (A) above and any sum chargeable on that article under any law for the time being in force as an addition to, and in the same manner as, a duty of customs	[B]	XXX
Add: SWS @ 10% on [B]	[C]	XXX
Value for the purposes of levy of Integrated Tax u/s 3(7) and GST Compensation Cess u/s 3(9) [A + B + C]	[D]	XXX
Add: Integrated Tax (IT) u/s 3(7) = Applicable Rate of IGST computed on [D] above	[E]	XXX
Add: GST Compensation Cess u/s 3(9) = Applicable Rate of GST compensation cess computed on [D] above	[F]	XXX
Total cost of imported goods [D + E + F]	[G]	XXX
Total Customs Duty payable = [G – A], or [B + C + E + F]		XXX

Example1. The assessable value of imported goods is Rs. 20 Lakhs. The BCD is 10%. Integrated tax leviable U/s 3 (7) of the Customs Tariff Act, 1975 is 12%. GST Compensation Cess is leviable @ 15%. Social Welfare Surcharge @ 10%.

Assessable value u/s 14(1) or Tariff Value u/s 14(2) of Customs Act	[A]	20,00,000
Add: Basic duty of customs u/s 12 on (A) above and any sum chargeable on that article under any law for the time being in force as an addition to, and in the same manner as, a duty of customs	[B]	2,00,000

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Add: Social Welfare Surcharge @ 10% on BCD i.e. (B)	[C]	20,000
Value for the purposes of levy of Integrated Tax u/s 3(7) and GST Compensation Cess u/s 3(9) [A + B + C]	[D]	22,20,000
Add: Integrated Tax (IT) u/s 3(7) = Applicable Rate of IT computed on (D) above	[E]	2,66,400
Add: GST Compensation Cess u/s 3(9) = Applicable Rate of GST compensation cess computed of (D) above	[F]	3,33,000
Total cost of imported goods [D + E + F]	[G]	28,19,400
Total Customs Duty payable = [G – A], or [B + C + E + F]		8,19,400

Example2. The assessable value of imported goods is Rs. 20,00,000. The Basic customs duty is 10%. Integrated tax leviable U/s 3 (7) of the Customs Tariff Act, 1975 is 12%. GST compensation cess : Nil. SWS @ 10%. The goods were deposited in custom bonded warehouse. The goods were sold in warehouse at a transaction value or Rs. 30,00,000 before clearance from warehouse. Compute total customs duty.

Assessable value u/s 14(1) or Tariff Value u/s 14(2) of Customs Act	[A]	20,00,000
Add: Basic duty of customs u/s 12 on (A) above and any sum chargeable on that article under any law for the time being in force as an addition to, and in the same manner as, a duty of customs	[B]	2,00,000
Add: Social Welfare Surcharge @ 10% on BCD i.e. (B)	[C]	20,000
Value for the purposes of levy of Integrated Tax u/s 3(7) [as per provision U/s 3 (8A)]	[D]	30,00,000
Add: Integrated Tax (IT) u/s 3(7) = Applicable Rate of IT computed on (D) above	[E]	3,60,000
Add: GST Compensation Cess u/s 3(9) = Applicable Rate of GST compensation cess computed of (D) above	[F]	Nil
Total Customs Duty payable = [B + C + E + F]		5,80,000

Section 5 (The Customs Tariff Act) Levy of lower rate of duty under trade agreement

In case Central Government has entered into trade agreement with a Government of foreign country or territory for levy of duty at a lower rate, then duty as per the trade agreement shall be levied.

Section 6 (The Customs Tariff Act) Power of Central Government to levy protective duties in certain cases & Section 7 (The Customs Tariff Act) Duration of protective duties and power of Central Government to alter them

It is levied on the recommendation of the Tariff Commission of India for protection of interest of domestic industry established in India. The duty shall have effect only up to and inclusive of the date, if any, specified in First Schedule. The Central Government has the powers to reduce or increase such duty.

Section 8 (The Customs Tariff Act) Emergency power of Central Government to increase or levy export duties

Where, in respect of any article, whether included in the Second Schedule or not, the Central Government is satisfied that the export duty leviable thereon should be increased or that an export duty should be levied, and that circumstances exist which render it necessary to take immediate action, the Central Government may, by notification in the Official Gazette, direct and amendment of the Second Schedule to be made so as to provide for an increase the export duty leviable or, as the case may be, for the levy of an export duty, on that article.

Section 8A (The Customs Tariff Act) Emergency power of Central Government to increase import duties

The Central Government has emergency power to increase import duties by notification of Official Gazette.

Section 8B (The Customs Tariff Act) Power of Central Government to Impose Safeguard Duty

Safeguard duty is imposed to protect domestic industry where increased imports have caused or threaten to cause serious injury to domestic industry. Serious injury means an injury causing significant overall impairment in the position of a domestic industry. Threat of serious injury means a clear and imminent danger of serious injury.

Safeguard duty cannot be imposed on articles originating from developing countries if imports of such article is less than 3% or 9% (more than one developing countries) of total imports of that article into India.

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

Final duty remain in force: 4 years from the date of its imposition. However, Central Government can extend the period of imposition but the total period of imposition cannot be beyond 10 years from the date of its imposition.

Non Imposition of safeguard duty: Safeguard duty shall not apply to articles imported by a 100% EOU/unit in a SEZ unless -

- I. specifically made applicable; or
- II. the article imported is either cleared as such into DTA or used in the manufacture of any goods that are cleared into DTA and 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.

Example 1. 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:

Import of Sodium Nitrite from a developing country from 26-2-18 to 25-2-19 (both days inclusive) :- Rs. 30 Lakh

Share of import of Sodium Nitrite from developing country against total imports of sodium nitrite to India:- 4%

BCD :- 10%, IGST 18%, SWS @ 10%.

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Custom Value	30,00,000
BCD	3,00,000
Safeguard duty @ 30%	9,00,000
SWS @ 10% {No SWS on safeguard duty}	30,000
Total for levy of IGST	42,30,000
IGST @ 18% of Rs. 42,30,000	7,61,400
Total Customs Duty	19,91,400
Credit will be allowed only of IGST	7,61,400

Example 2. Determine the safeguard duty payable by A Ltd., B Ltd., C Ltd. & D Ltd. U/s 8B of the Custom Tariff Act, 1975 from the following:

Import of Sodium Nitrite from developing and developed countries from 26th Feb'18 to 25th Feb'19 (both days inclusive) are as follows:-

Importer	Country of Import	Rs. In crores
A Ltd.	Developing Country	70
B Ltd.	Developing Country	82
C Ltd.	Developing Country	52
D Ltd.	Developing Country	50
Others	Developed Country	2246
Total		2500

Safeguard duty @ 30%.

Importer	Rs. In Crores	% of importers	
A Ltd.	70	2.8%	
B Ltd.	82		3.28%
C Ltd.	52	2.08%	
D Ltd.	50	2%	
Others	2246		
Total	2500	6.88%	3.28%

Safeguard duty is as follows:

Importer	Rs. In Crores	Safeguard Duty	Rs. In Crores
A Ltd.	70	30%	Nil
B Ltd.	82	30%	24.6
C Ltd.	52	30%	Nil
D Ltd.	50	30%	Nil

Section 9 (The Customs Tariff Act) Countervailing duty on subsidized articles or Anti Subsidy Duty

In case any foreign country or territory gives any subsidy, directly or indirectly, upon the manufacture or production, transportation or exportation of such article into India, then the Central Government levy countervailing duty not exceeding the amount of such subsidy. The countervailing duty shall not be levied unless it is determined that, -

- The subsidy relates to export performance;
- The subsidy relates to the use of domestic goods over imported goods in the export article; or
- The subsidy has been conferred on a limited number of persons engaged in the manufacture, production or export of articles.

Period for which duty remains in force: 5 years, extension for a further period of 5 years. Where a review initiated before the expiry of the aforesaid period of five years has not come to a conclusion before such expiry, the countervailing duty may continue to remain in force pending the outcome of such a review for a further period not exceeding one year.

Retrospective levy of Countervailing duty on imports made not beyond 90 days from the date of imposition of provisional duty.

Example. M/s A Ltd. imported flat – rolled products of stainless steel with CIF value US \$ 40,000 from China. Exchange rate was 1 US \$ = Rs. 45 on the date of presentation of bill of entry. Basic customs duty is chargeable @ 10% and social welfare surcharge @ 10%. Said product, if imported from China, is liable to anti – subsidy duty @ 18.95% of landed value. IGST on similar product supplied in India is 18%.

You are given that "landed value" for levy of anti – subsidy duty means customs value plus all duties of customs except duties levied under section 3, 3A, 8B, 9 and 9A of the Customs Tariff Act.

	Duty		Total
	Rate	Rs.	Rs.
CIF Value or Assessable Value [\$ 40,000 x Rs. 45]			18,00,000.00
Add: BCD	10.00%	1,80,000.00	1,80,000.00
Add: SWS @ 10% on BCD [No SWS on Anti-subsidy duty]	10.00%	18,000.00	18,000.00
Landed Value of the goods [Landed value shall not included IGST, which is levied under Section 3 of Customs Tariff Act, 1975]		1,98,000.00	19,98,000.00
Add: Anti-subsidy duty	18.95%	3,78,621.00	3,78,621.00
Value for levy of Integrated Goods and Services Tax (IGST)		5,76,621.00	23,76,621.00
Add: Integrated Goods and Services Tax (IGST)	18.00%	4,27,791.78	4,27,791.78
Total duties payable		10,04,413.00	28,04,413.00

Section 9A (The Customs Tariff Act) Anti-Dumping Duty on dumped articles

If the goods are offered in India at a price below the normal price because of excess production overseas, this is called as dumping. The difference between the normal price and dumping price (export price) is called as dumping margin. As and when the domestic industry brings it to the notice of Central Government,

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immediately this duty is imposed by issue of notification. This duty is initially collected on provisional basis. It means the government may find that there is no dumping or the importer can prove that there was no dumping. Unless specifically provided, anti-dumping duty shall not be imposed on goods imported by a

- 100% EOU; or
- unit located in Free Trade Zone / Special Economic Zone.

Anti-dumping duty is leviable on goods imported by EOU and cleared to DTA.

Example. Mr. ABC imported certain goods weighing 1,000 kg with CIF value US \$ 40,000. Exchange rate was 1 US \$ = Rs. 45 on the date of presentation of bill of entry. BCD is chargeable @ 10% and SWS @ 10%. 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. IGST is 12%. Compute custom duties.

Particulars	Total
CIF Value or Assessable Value [\$ 40,000 * Rs. 45]	18,00,000
Add:- BCD @ 10%	1,80,000
Add:- SWS @ 10%	18,000
Landed Value of the goods {IGST shall not be included}	19,98,000
Amount calculated as per the notification levying anti-dumping duty [US\$ 60 per KG * 1,000 KG * Rs. 45] = Rs. 27,00,000 Anti Dumping Duty [Rs. 27,00,000 – Rs. 19,98,000]	7,02,000
Value for levy of IGST	27,00,000
IGST @ 12%	3,24,000
Total Duties Payable	12,24,000

Section 9AA (The Customs Tariff Act) Refund of anti-dumping duty in certain cases

If an importer proves to the satisfaction of the Central Government that he has paid anti-dumping duty, in excess of the actual margin of dumping in relation to such article. Refund to be made within 90 days of the receipt of the application.

Section 9B (The Customs Tariff Act) No levy under section 9 or section 9A in certain cases

This section provides that, notwithstanding anything contained in section 9 or section 9A,-

- (a) No article shall be subjected to both countervailing and anti-dumping duties to compensate for the same situation of dumping or export subsidization.
- (b) Countervailing and anti-dumping duties shall not be levied just because such articles are exempt from duties or taxes borne by like articles when meant for consumption in the country of origin or exportation or by reasons of refund of such duties or taxes.

- (c) These duties shall not be levied on imports from member country of WTO or from a country with whom the GOI has a most favored nation agreement unless a determination has been made 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.
- (d) The provisional countervailing and anti-dumping duties shall not be levied on any article imported from specified countries unless preliminary findings have been made of subsidy or dumping and consequent injury to domestic industry and a further determination has also been made that a duty is necessary to prevent injury being caused during the investigation

The points (b), (c) and (d) mentioned above shall not be applicable in a case where countervailing or anti-dumping duty has been imposed on any article to prevent injury or threat of an injury to the domestic industry of a third country exporting the like articles to India.

The provisions of section 9C of the Customs Tariff Act enumerate the orders against which an appeal can be preferred to CESTAT. The procedure, time limit and other related matters of filing an appeal are addressed to in this section. An appeal filed under this section shall be accompanied by a fee of fifteen thousand rupees. Every application made before the Appellate Tribunal,—

- (a) in an appeal for grant of stay or for rectification of mistake or for any other purpose; or
- (e) for restoration of an appeal or an application,

shall be accompanied by a fee of five hundred rupees.

UoI Vs M/s Adani Power Ltd 2016 (331) ELT A129 (SC) dated 20.11.2015	When no customs duty is payable on electrical energy imported into India, no duty would be payable on similar goods transferred from SEZ to DTA in view of Section 30 read with Section 51 of the SEZ Act.
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Study Notes

Question & Answer

Q1. 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.)].

Q2. 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.

Q3. 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	Yes, until completion of	Yes, until completion of

	investigation	investigation	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

Q4. 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).

Q5. 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:

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

Study Notes

Chapter 3: - Classification of Imported & Export Goods

Rules of interpretation and explanatory notes
Rules of interpretation of the first schedule to the Customs Tariff Act
Project Imports

In the Tariff Act, the import tariff is enumerated in the First Schedule, which contains XXI Sections, divided into 98 Chapters along with accompanying section and Chapter notes. Similarly, the export Tariff is enumerated in the Second Schedule, which at present has 50 tariff items.

What is the need for appropriate classification?

Let us consider the following illustrations:

- If there is a description in a heading, in the Customs Act, 1975, as "Kitchenware" and in yet another heading as "cookware", where do water filter, knife and spoon get classified?
- Does a heading containing the words "edible nuts" include in its ambit coconut?
- Will "Books for reading" include mathematics text books, accountancy reference books? Will it also include 'film news' magazine or other periodicals?

Classification is necessary to determine the effective rate of duty of particular goods. Exemption and benefits are extended based on the classification of goods under one or the other heading of the Customs Tariff Act or based on description of particular goods. As can be seen from the foregoing illustrations classification can be highly subjective. Correct Classification may be the difference between enjoying an exemption and ruing a show cause notice.

Rules of interpretation and explanatory notes

The Indian Customs Tariff is based upon the Harmonized System of Nomenclature.

The Harmonized Commodity Description and Coding System (HS) of tariff nomenclature generally referred to as "Harmonized System of Nomenclature" is an internationally standardized system of names and numbers for classifying traded products developed and maintained by the World Customs Organization (WCO) (formerly the Customs Co- operation Council), an independent inter-governmental organization.

Along the lines of HSN, the customs tariff has a set of Rules of Interpretation of the First Schedule i.e. Import tariff schedule and General Explanatory notes.

(i) Rules of interpretation:- Six

(ii) General explanatory notes: Three

These rules of interpretation and general explanatory notes are an integral part of the Schedule. The purpose of inclusion of the rules of interpretation and the general explanatory notes as an integral part of the first schedule is to give clear direction as to how the nomenclature in the schedule is to be interpreted and to give statutory force to the interpretative rules and the general explanatory notes.

First Schedule of the Customs Tariff

The First Schedule comprises of 98 chapters grouped under 21 sections.

- (i) **Sections:** A group of Chapters representing a particular class of goods.
- (ii) **Chapters:** Each section is divided into various chapters and sub- chapters. Each chapter contains goods of one class.
- (iii) **Chapter notes:** They are mentioned at the beginning of each chapter. These notes are part of the statute and hence have the legal authority in determining the classification of goods.
- (iv) **Heading:** Each chapter and sub-chapter is further divided into various headings.
- (v) **Sub-heading:** Each heading is further divided into various sub- headings.

General Explanatory Notes

There are three general explanatory notes included in the First Schedule. They are-

(a) Relevance of one dash ["-"] and two dash ["--"]

- "-" denotes that the said article or group of articles shall be taken to be sub-classification of the article or group of article covered by the said heading.
- "--" denotes that the said article or group of articles shall be taken to be sub-classification of the immediately preceding article/group of articles which has "-".

(b) Meaning of abbreviation "%" in relation to the rate of duty

The abbreviation "%" in any column of the Schedule in relation to the rate of duty means that the duty shall be computed at the percentage specified on the value of the goods as defined in section 14 of the Customs Act.

(c) Standard rate of duty applicable if no preferential rate specified

In any entry, if no preferential rate of duty has been notified, the standard rate of duty shall be applicable.

The above general explanatory notes can be understood with the following example:-

Tariff Item	Description of goods	Units	Rate of duty®	
			Standard	Preferential Areas
(1)	(2)	(3)	(4)	(5)
0801	Coconuts, brazil nuts and cashew nuts, fresh or dried, whether or not shelled or peeled			
	- Coconuts:			
0801 11 00	-- Desiccated	Kg.	70%	60%
0801 19	-- Other			
0801 19 10	--- Fresh	Kg.	70%	60%
0801 19 20	--- Dried	Kg.	70%	60%
0801 19 90	--- Other	Kg.	70%	60%

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	- Brazil nuts			
0801 21 00	-- In shell	Kg.	30%	20%
0801 22 00	-- Shelled	Kg.	30%	20%
	- Cashew nuts			
0801 31 00	-- In shell	Kg.	30%	Free
0801 32	- Shelled:			
0801 32 10	-- Cashew kernel, broken	Kg.	70%	20%
0801 32 20	-- Cashew kernel, whole	Kg.	70%	20%
0801 32 90	-- Other	Kg.	70%	20%

In the above entry, following columns are there:-

Column (1): Tariff Item

Column (2): Description of goods

Column (3): Units

Column (4): Standard rate of duty

Column (5): Preferential rate of duty

(a) In the above entry, Coconuts, which is preceded by “-“ is classification of the heading Coconuts, Brazil nuts and Cashew nuts, fresh or dried, whether or not Shelled or peeled.

“- “ is sub-classification of coconut which is preceded by “-“.

(b) The second explanatory note states that the abbreviation “%” stands for specifying that the rate of duty is ad valorem. It means the duty shall be computed at the rates specified in the First Schedule on the value of the goods determined in accordance with section 14 of the Customs Act. In the above entry, the standard rates are 30% or as the case may be, 70%.

Rules of interpretation of the first schedule to the Customs Tariff Act

Another crucial aid for classification of goods under Tariff Act is the General rules for interpretation embedded in the First Schedule of the Customs tariff Act itself. These rules are not applicable to the goods specified in Second Schedule of the tariff Act.

According to rule 1 of these rules:

1. The titles of Sections, Chapters and sub- chapters have no legal standing;
2. Classification should, as far as possible, be according to terms of heading or Section and Chapter notes;
3. These rules are applicable, only when classification is not possible under point 2 above. Therefore, Section and Chapter notes over ride these rules.

ICAI Example

Product: Letter closing and sealing machine

Sub-heading 8422 30 00: Machinery for filling, closing, sealing or labeling bottles, cans, boxes, bags or other containers; machinery for capsuling bottles, jars, tubes and similar containers; machinery for aerating beverages.

Sub-heading 8472 30 00 inter alia covers machines for closing or sealing mails.

Both the headings appear to be relevant for the product in question. However, chapter note 2 to chapter 84 inter alia provides that Heading No. 8422 does not cover office machinery of Heading No. 8472. Therefore, the product in question will be classified under 8472 30 00.

Rule 2(a): Any reference in a heading to an article shall be taken to include a reference to that article incomplete or unfinished, provided that, as presented, the incomplete or unfinished article has the essential character of the complete or finished article. It shall also be taken to include a reference to that article complete or finished (or falling to be classified as complete or finished by virtue of this rule), presented unassembled or disassembled.

Example for the application of this rule would be import of Motor Car in completely knocked down (CKD) condition. Motor Cars are classified under heading 87.03 but individual parts of motor cars i.e. brakes, gear box, drive axles etc. are classifiable under the heading 87.08. By application of rule 2 (a), when imported in CKD condition, motor cars will be classified not under 87.08 as individual parts but under 87.03 as motor car as a whole, as import in CKD condition is nothing but presentation of the motor car itself in unassembled or disassembled form.

Rule 2(b): Any reference in a heading to a material or substance shall be taken to include a reference to mixtures or combinations of that material or substance with other materials or substances. Any reference to goods of a given material or substance shall be taken to include a reference to goods consisting wholly or partly of such material or substance. **The classification of goods consisting of more than one material or substance shall be according to the principles of rule 3.**

If for any reasons, goods are classifiable under 2 or more headings then to resolve such conflicts the following principles, in the order as listed, should be adhered to:

1. The heading which gives a more specific description of the goods being classified, shall be preferred over the heading giving a general description – **Rule 3 (a);**
2. The heading describing material or components which gives the goods under classification its essential character, should be preferred over other material or components contained in the goods under classification – **Rule 3 (b);**

ICAI Example

Lead pencil with rubber. Though the above product is composite goods, the essential character is that it is a pencil and the attachment of eraser at the stub is only for the purpose of adding convenience to the user. Therefore, it shall be classified as a pencil and not as an eraser.

3. The heading which occurs last in numerical order among those which equally merit consideration – **Rule 3 (c);** **Mahindra and Mahindra v. CCE 1999 (109) E.L.T. 739 (Tribunal) [maintained by SC]**

4. When classification fails under the principles mentioned above, goods should be classified under the heading appropriate to the goods which they are most akin – **Rule 4.**

ICAI Example

Product: Plastic films used to filter or remove the glare of the sun light, pasted on car glass windows, window panes etc.

Classification: These goods do not find a specific entry in the tariff schedule. However, heading 3925 30 00 covers Builder's wares of plastic not elsewhere specified – shutters, blinds (including Venetian blinds) and similar articles & parts thereof. Even though the product in question is not a builders ware, they are most akin to plastic blinds and hence it can be classified under 3925 30 00 heading.

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Rule 5 deals with classification of packing materials. The rule specifies that the goods having unique packing like Camera cases, musical instrument cases, gun cases and so on should be classified under the same heading in which the goods they hold are classified.

Rule 6 states that for the purpose of classification, relevant Section notes, Chapter notes and sub-heading notes shall also be referred to.

Project Imports

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. In a project several different items are required, each of which is importable at different rates of customs duties. Hence, it becomes very complicated to make assessment for such project imports. Therefore, one consolidated rate of customs duty has been made applicable for all items imported under a project irrespective of the nature of the goods and their customs classification. 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 include all items of machinery, instruments, apparatus and appliances, components or raw materials etc. for initial setting up of a unit or for substantial expansion of the same. The spare parts, raw material and consumables stores upto 10% of the value of goods can be imported.

This scheme has been made applicable to Industrial Plants, Irrigation Projects, Power Projects, Mining Projects, Projects for Oil or Mineral Exploration and other projects as may be notified by the Central Government.

Saurashtra Chemicals v. CC 1986 (23) ELT 283 (Tri-LB) [approved by SC]	This case brings out the importance of section notes and chapter notes in the classification of goods. The Tribunal observed that Section Notes and Chapter Notes in the Customs Tariff are a part of the statute and thus are relevant in the matter of classification of goods. These notes sometimes restrict and sometimes expand the scope of headings. The scheme of the Customs Tariff is to determine the coverage of headings in the light of section notes and chapter notes. These notes, in this sense have an overriding effect on the headings.
Maestro Motors Ltd. v. CC 2004 (174) E.L.T 289 (S.C.)	In this case, the Court observed that if a tariff heading is specially mentioned in exemption notification, the general interpretative rules would be applicable to such exemption notification. But, if an item is specifically mentioned without any tariff heading, then exemption would be available even though for the purpose of classification, it may be otherwise.
Hewlett Packard India Sales (p) Ltd. v. CC 2007 (215) E.L.T. 484 (S.C.)	In this case the assessee was engaged in the manufacture of, and trading in, computers including Laptops (otherwise called 'Notebooks') falling under Heading 84.71 of the CTA Schedule. They imported Notebooks (Laptops) with Hard Disc Drivers (Hard Discs, for short) preloaded with Operating Software like Windows XP, XP Home etc. These computers were also accompanied by separate Compact Discs (CDs) containing the same software, which were intended to be used in the event of Hard Disc failure. The assessee classified the software separately and claimed exemption. The court held that without operating system like windows, the laptop cannot work. Therefore, the laptop along with software has to be classified as laptop and valuation to be made as one unit.

Where a classification (under a Customs Tariff head) is recognized by the Government in a notification at any point of time, can the same be made applicable in a previous classification in the absence of any conscious modification in the Tariff? Keihin Penalfa Ltd. v. Commissioner of Customs 2012 (278) ELT 578 (SC)	The Apex Court observed that the Central Government had issued an exemption notification dated 1-3-2002 and in the said notification it had classified the Electronic Automatic Regulators under Chapter sub-heading 9032.89. Since the Revenue itself had classified the goods in dispute under Chapter sub-heading 9032.89 from 1-3-2002, the said classification needs to be accepted for the period prior to it.
Whether the mobile battery charger is classifiable as an accessory of the cell phone or as an integral part of the same? State of Punjab v. Nokia India Private Limited 2015 (315) ELT 162 (SC)	The Apex Court held that mobile battery charger is an accessory to mobile phone and not an integral part of it. Further, battery charger cannot be held to be a composite part of the cell phone, but is an independent product which can be sold separately without selling the cell phone. <i>Note: Though the above judgement has been rendered in context of VAT laws, the principle of classification of mobile charger may hold good in case of customs classification matter as well.</i>
Will the description of the goods as per the documents submitted along with the Shipping Bill be a relevant criterion for the purpose of classification, if not otherwise disputed on the basis of any technical opinion or test? (ii) Whether a separate notice is required to be issued for payment of interest which is mandatory and automatically applies for recovery of excess drawback? M/s CPS Textiles P Ltd. v. Joint Secretary 2010 (255) ELT 228 (Mad.)	The High Court held that the description of the goods as per the documents submitted along with the Shipping Bill would be a relevant criterion for the purpose of classification, if not otherwise disputed on the basis of any technical opinion or test. The petitioner could not plead that the exported goods should be classified under different headings contrary to the description given in the invoice and the Shipping Bill which had been assessed and cleared for export. Further, the Court, while interpreting section 75A(2) of the Customs Act, 1962, noted that when the claimant is liable to pay the excess amount of drawback, he is liable to pay interest as well. The section provides for payment of interest automatically along with excess drawback. No notice for the payment of interest need be issued separately as the payment of interest becomes automatic, once it is held that excess drawback has to be repaid.

Study Notes

Chapter 4: - Valuation under the Customs Act, 1962

Section 14	Valuation of Goods
	Customs Valuation (Determination of Value of Imported Goods) Rules, 2007
	Customs Valuation (Determination of Value of Export Goods) Rules, 2007

Terms used in commercial parlance

Invoice	This is the basic commercial document showing particulars regarding description of goods - quantity and unit price - discounts and net price - names of consignor and consignee - payment particulars - Contract or acceptance of order on the basis of which the goods are supplied.
Packing specification	Giving particulars of the contents of each of each of the package in the consignment.
Certificate of Origin	A certificate issued by the competent authority in the country of manufacture giving the extent of the manufacture in that country.
Bill of Lading	A negotiable document given by the carriers of the cargo giving particulars of (a) Port of shipment (b) No. of packages covered by the consignment (c) Marks and numbers on the page (d) Name of the vessel in which the goods have been dispatched (e) Name of the consignee of the goods, (f) whether the freight has been pre- paid or is to be collected at the destination. It is a negotiable document which has to be surrendered to the carrier for getting delivery of the goods.
Air Consignment Note	It is a document corresponding to Bill of Lading, in the case of cargo imported or exported by air.
Indent	It is a document showing the particulars of the consignment for which the buyer has placed an order with the supplier. It normally gives particulars about (i) full description of the goods (ii) unit price (iii) mode of payment (iv) quantity required (v) delivery instructions.
Quotation	It is a document, which indicates the price, the terms and other conditions on which the seller is willing to supply goods to the buyer.
Acceptance	It refers to the formalisation of the contract of sale between the buyer and the seller. Once the seller of the goods sends his acceptance of the order of the buyer (the indent) the contract is complete. The acceptance will inter alia contain particulars of description of the goods to be supplied, unit price, including discounts and other charges, time and terms of delivery, penal clause for breach of contract, agreed terms of payment.

Letter of Credit	This is an instrument delivered by the bank intimating the seller that the buyer has instructed the bank and the bank will according to these instructions pay the seller of the goods, the bill amount for the supply of the goods on presentation of certain documents evidencing shipment of the goods.
Sight draft	A document evidencing the amount of money paid for the importation.
Delivery Order	An authorisation given by the local agent of the carriers, on surrender of the original negotiable copy of the bill of lading or air consignment note, directing the custodian of the cargo to deliver the consignment to the importer or his agent.
Mate's Receipt	A receipt given by the First mate or First officer or cargo supervisor of the conveyance certifying the total quantity of the consignment received on board the vessel or the aircraft. A bill of lading or air consignment note is issued by the agent of the Carrier Company on surrender of the mate's receipt.
Retirement of documents	The original negotiable copies of the shipment documents like invoice, packing specification, certificate of origin.
Non-negotiable documents	Since retirement of the original document takes time, non-negotiable documents are given to the importer to facilitate clearance.
Landing charges	The port authorities have to be paid (i) Unloading the cargo from the conveyance; (ii) Light house charges (iii) Forklift, warehouse crane charges if they are used for landing.
Boat/Lighterage Charge	Sometimes the vessel is unable to get a berth alongside the quay in the harbor. The goods are then transported from the ship to the shore by boats / lighters. The charges paid therefore are called Boat / Lighterage charges.
Customs Broker	Since the importers / exporters may not be able to devote time and energy to clear imported goods or export goods, and since it involves running about to several organizations apart from customs, like Port, Trust, steamer agents, insurance companies, the assistance of agency organisation having adequate technical knowledge and expertise has been provided in the form of customs broker.
Insurance cover	It is customary to insure all goods in the course of international trade. The general cover relates to risk on account of loss, pilferage, fire, storm etc. However loss of goods on account of seizure of goods due to war, is a separate cover. It is therefore customary to refer to the insurance as marine risk insurance and war risk insurance. The policy and cover of such insurance is a relevant document for valuation.

Technical terms relating to value in the course of import or export

Ex-Factory Price	It is the price of the goods as comes out of the factory. It includes cost of production and manufacturer's margin of profit.
F.A.S (Free Alongside)	It is the cost at which the export goods are delivered alongside the ship, ready for shipment. It includes ex-factory +local freight + local taxes.
F.O.B. (Free on Board)	Technically there is not much of a difference between FAS and FOB cost. FOB means the stage at which the goods are placed on board the conveyance

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	carrying the vessel. It can be said to include FAS + loading charges + export duty cess.
C.I.F. (Cost Insurance Freight)	It is the cost at which the goods are delivered at the Indian port. It covers cost of goods. Sometimes there is referred as CFC also.

Section 14 Valuation of Goods

Sub-section (1) of Section 14 is as follows:

- For the purposes of the Customs Tariff Act, 1975 or any other law for the time being in force,
- the value of imported goods and export goods shall be the transaction value of such goods,
- that is to say, the price actually paid or payable for the goods,
- when sold for export to India for delivery at the time and place of importation,
- or for export from India for delivery at the time and place of exportation,
- where the buyer and seller are not related and
- price is the sole consideration for sale.

Such transaction value shall also include in addition to the price as aforesaid, any amount paid or payable for costs and services, including:

- commissions and brokerage,
- engineering,
- design work,
- royalties and licence fees,
- costs of transportation to the place of importation,
- insurance
- loading,
- unloading and
- handling charges

to the extent and in manner specified in the rules made in this behalf.

Conversion Dates

- For imported goods, the conversion in value shall be done with reference to the rate of exchange prevalent on the date of filing bill of entry under section 46.
- For export goods, the conversion in value shall be done with reference to the rate of exchange prevalent on the date of filing shipping bill (vessel or aircraft) or bill of export (vehicle) under section 50.

In case of Samar Timber Corporation v. ACC 1995 (79) E.L.T. 549 (Bom.), it was held that relevant date in respect of rate of duty payable is the date of presentation of Bill of Entry and not date of re-presentation after correction.

Currency Conversion Rate

The rate of exchange is notified by three agencies- the Central Board of Excise and Customs (Board), the Reserve Bank of India and the Foreign Exchange Dealers' Association of India. For the purpose of customs valuation, "rate of exchange" means the rate of exchange-

- determined by the Board, or
- ascertained in such manner as the Board may direct,

for the conversion of Indian currency into foreign currency or foreign currency into Indian currency. Thus, for the purpose of valuation under customs laws, rate notified by CBEC (Board) shall be taken into account.

The CBEC notifies the rates periodically, generally every fortnight. There are separate rates for imported goods (selling rate) and export goods (buying rate).

"Foreign currency" and "Indian currency" have the meanings respectively assigned to them in clause (m) and clause (q) of section 2 of the Foreign Exchange Management Act, 1999.

Valuation in case of sale or purchase on high sea basis

It means sale or purchase of goods, on high sea basis while they are in the seas or while they are pending clearances from customs. Such sale is made by endorsement on documents to title to goods. 'High Sea Sales' is a common trade practice whereby the original importer sells the goods to a third person before the goods are entered for customs clearance. After the High sea sale of the goods, the customs declarations i.e. Bill of entry etc. is filed by the person who buys the goods from the original importer during the said sale.

Price charged for delivery at the time and place of importation into India viz. the transaction value paid by the buyer shall be taken as the value. In case of two or more high sea transactions, the last transaction value shall be taken.

Circular No. 33/2017-Cus. Dated 1-8-2017 {Duty & IGST leviable "only once" on "price paid by final importer"}

- IGST on high sea sale(s) transactions of imported goods, whether one or multiple, shall be levied and collected only at the time of importation i.e. when the import declarations are filed before the Customs authorities for the customs clearance purposes for the first time. Further, value addition accruing in each such high sea sale shall form part of the value on which IGST is collected at the time of clearance. Every high-sea sale would not be regarded as an inter-State transaction so as to attract levy of IGST.
- The importer (last buyer in the chain) would be required to furnish the entire chain of documents, such as original invoice, high-sea-sales-contract, details of service charges/commission paid etc., to establish a link between the first contracted price of the goods and the last transactions. In case of a doubt regarding the truth or accuracy of the declared value, the department may reject the declared transactions value and determination the price of the imported goods as provided in the Customs Valuation Rules.

Tariff value [Section 14(2)]

The CBEC has power to fix tariff values for any class of imported goods or export goods, having regard to the trend of value of such or like goods, and where any such tariff values are fixed, the duty shall be chargeable with reference to such tariff value. At present tariff value has been fixed for some essential edible oils, brass scrap, gold or silver etc.

Rejection of Transaction Value

In case of import, the transaction value will be rejected only under the following situations:

1. *When the buyer and seller are related, except when:*
 - (a) *It can be proved that the relationship did not influence the price; or*
 - (b) *It can be proved that the declared value closely approximates to:*
 - (i) *Value of identical goods in sales to unrelated parties in India; or*
 - (ii) *Value of similar goods in sales to unrelated parties in India; or*
 - (iii) *Deductive value of identical or similar goods; or*
 - (iv) *Computed Value of identical or similar goods.*
2. *When there are restrictions on the buyer as to the disposition or use of goods, other than restrictions:*

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- (a) Which are imposed by law or by public authorities in India; or
 - (b) Which limit the geographical area in which the goods may be resold; or
 - (c) Which do not substantially affect the value of the goods.
3. When the sale or price is subject to some condition or consideration for which a value cannot be determined.
4. When any part of the sale proceeds of any subsequent resale, disposal or use of the goods by the buyer accrues to the seller directly or indirectly.

In case of export the transaction value will be rejected only when the buyer and seller are related and the price is influenced by the relationship or when price is not the sole consideration for sale (as given in section 14 above).

Customs Valuation (Determination of Value of Imported Goods) Rules, 2007

Rule 2 – Definitions

- (1) In these rules, unless the context otherwise requires, -
- (a) “computed value” means the value of imported goods determined in accordance with rule 8.
 - (b) “deductive value” means the value determined in accordance with rule 7.
 - (c) “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.
 - (d) “identical goods” means imported goods –
 - (i) which are same in all respects, including physical characteristics, quality and reputation as the goods being valued except for minor differences in appearance that do not affect the value of the goods;
 - (ii) produced in the country in which the goods being valued were produced; and
 - (iii) produced by the same person who produced the goods, or where no such goods are available, goods produced by a different person, but shall not include imported goods where engineering, development work, art work, design work, plan or sketch undertaken in India were completed directly or indirectly by the buyer on these imported goods free of charge or at a reduced cost for use in connection with the production and sale for export of these imported goods.
 - (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.

The term “place of importation” has been used in the Custom Valuation Rules, 2007; however, the term was not defined. To bring in clarity, the “Place of importation” has been defined. In view of the above definition, the transaction value of the imported goods in terms of section 14 of the Customs Act, 1962 would include the costs incurred up to the place of importation, as defined above.
 - (e) “produced” includes grown, manufactured and mined.
 - (f) “similar goods” means imported goods –
 - (i) which although not alike in all respects, have like characteristics and like component materials which enable them to perform the same functions and to be commercially interchangeable with

the goods being valued having regard to the quality, reputation and the existence of trade mark;

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

(g) "transaction value" means the value referred to in sub-section (1) of section 14 of the Customs Act, 1962.

(2) For the purpose of these rules, persons shall be deemed to be "related" only if –

- (i) they are officers or directors of one another's businesses;
- (ii) they are legally recognized partners in business;
- (iii) they are employer and employee;
- (iv) any person directly or indirectly owns, controls or holds five per cent or more of the outstanding voting stock or shares of both of them;
- (v) one of them directly or indirectly controls the other;
- (vi) both of them are directly or indirectly controlled by a third person;
- (vii) together they directly or indirectly control a third person; or
- (viii) they are members of the same family.

Explanation I. – The term "person" also includes legal persons.

Explanation II. – Persons who are associated in the business of one another in that one is the sole agent or sole distributor or sole concessionaire, howsoever described, of the other shall be deemed to be related for the purpose of these rules, if they fall within the criteria of this sub-rule.

In case of *East African Traders v. CC 2000 (115) E.L.T. 613 (S.C.)*, it was held that Customs authorities and Tribunal can pierce the veil of the respondent company to determine whether or not the buyer and the seller were 'related persons within the scope of rule 2(2) of the erstwhile Customs Valuation (Determination of Price of Imported Goods) Rules, 1988 [now rule 2(2) of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007].

Rule 3 – Determination of the method of valuation

- (1) Subject to rule 12, the value of imported goods shall be the transaction value adjusted in accordance with provisions of rule 10.
- (2) Value of imported goods under sub-rule (1) shall be accepted:
Provided that-
 - (a) there are no restrictions as to the disposition or use of the goods by the buyer other than restrictions which –
 - i. are imposed or required by law or by the public authorities in India; or
 - ii. limit the geographical area in which the goods may be resold; or
 - iii. do not substantially affect the value of the goods;
 - (b) the sale or price is not subject to some condition or consideration for which a value cannot be determined in respect of the goods being valued;
 - (c) no part of the proceeds of any subsequent resale, disposal or use of the goods by the buyer

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will accrue directly or indirectly to the seller, unless an appropriate adjustment can be made in accordance with the provisions of rule 10 of these rules; and

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

(3) (a) Where the buyer and seller are related, the transaction value shall be accepted provided that the examination of the circumstances of the sale of the imported goods indicate that the relationship did not influence the price.

(b) In a sale between related persons, the transaction value shall be accepted, whenever the importer demonstrates that the declared value of the goods being valued, closely approximates to one of the following values ascertained at or about the same time.

- i. the transaction value of identical goods, or of similar goods, in sales to unrelated buyers in India;
- ii. the deductive value for identical goods or similar goods;
- iii. the computed value for identical goods or similar goods.

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

(c) substitute values shall not be established under the provisions of clause (b) of this sub-rule.

(4) If the value cannot be determined under the provisions of sub-rule (1), the value shall be determined by [proceeding sequentially through rule 4 to 9](#).

Rule 4 – Transaction Value of Identical Goods

The value thereof shall be the transaction value of the identical goods sold for export to India and imported at or about the same time as the goods being valued. However, such transaction value shall not be the value of the goods provisionally assessed under Section 18 of the Customs Act, 1962. The Value shall be adjusted for costs and services referred in Rule 10(2).

Rule 5 – Transaction Value of Similar Goods

This rule is similar to rule 4, the difference being the meaning of 'similar goods'.

Rule 6 – Determination of value where value cannot be determined under Rules 3, 4 & 5

If the value of imported goods cannot be determined under the provisions of rules 3, 4 and 5, the value shall be determined under the provisions of rule 7 or, when the value cannot be determined under that rule, under rule 8.

Provided that at the request of the importer, and with the approval of the proper officer, the order of application of rules 7 and 8 shall be reversed.

Rule 7 – Deductive Value

Under this method the transaction value will be as follows:

Particulars	Amount (Rs.)
Sale price of imported goods when sold to unrelated buyers in India	*****
Less:	
(a) Commission paid in India for sale	(***)
(b) Profit on such sale	(***)

General expenses incurred in connection with sale	(***)
(d) Cost of transport and insurance within India	(***)
(e) Customs duty and other taxes payable for importation	(***)
(f) Value addition made by processing	(***)
Transaction Value for the purpose of Customs	*****

If sale price of imported goods are not available then sale price of identical or similar goods can be adopted for the purposes of these rules.

Rule 8 – Computed Value

This rule can be adopted if the cost sheet of the imported goods of the supplier is available. Transaction value under this method will be calculated as follows:

Particulars	Amount (Rs.)
Cost of materials for production of imported goods.	****
(+) Cost of fabrication and other processing charges of imported goods.	****
(+) Amount of profit	****
(+) General expenses normally incurred	****
(+) Value of expenses under rule 10 (2) i.e. cost of transport, insurance, loading, unloading and handling charges	****
Transaction value for the purpose of Customs	****

Rule 9 – Residual Value

According to residual method, value is to be determined using reasonable means consistent with the principles and general provisions of these rules and Section 14 and the data available.

Basis on which value cannot be determined under this rule:

- the selling price in India of the goods produced in India;
- a system which provides for the acceptance for customs purposes of the highest of the two alternative values;
- price of goods on the domestic market of the country of exportation;
- the cost of production other than the computed value of identical goods or similar goods as determined in Rule 8,
- the price of the goods for the export to a country other than India;
- minimum customs values;
- arbitrary or fictitious values.

Rule 10 – Cost & Service

(1) As per Rule 10(1), while determining the transaction value, there shall be added to the price actually paid or payable for imported goods, -

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- (a) (i) commission and brokerage, except buying commission; (ii) the cost of containers which are treated as being one for customs purposes with the goods in question; (iii) cost of packing whether for labour or materials.
- (b) the value, apportioned as appropriate of the following goods and services, which are supplied directly or indirectly by the buyer free of charge or at reduced costs for use in connection with the production and sale for export of imported goods, to the extent that such value has not been included in the price actually paid or payable, namely –
 - (i) materials, components, parts and similar items incorporated in the imported goods;
 - (ii) tools, dies, moulds and similar items used in the production of the imported goods;
 - (iii) materials consumed in the production of the imported goods;
 - (iv) engineering, development, art work, design work, and plans and sketches undertaken elsewhere than in India and necessary for the production of the imported goods.
- (c) royalties and the licence fees related to the imported goods that the buyers is required to pay, directly or indirectly, as a condition of the sale of the goods being valued, to the extent the same is not included in the price actually paid or payable. Royalty payments for post importation process are includible.
- (d) the value of any part of the proceeds of any subsequent resale, disposal or use of the imported goods that accrues, directly or indirectly, to the seller.
- (e) all other payments actually made or to be made as a condition of sale of the imported goods, by the buyer to the seller, or by the buyer to a third party to satisfy an obligation of the seller, to the extent that such payments are not included in the price actually paid or payable.

Adjustments of cost of transportation, loading, unloading and handling charges and Insurance charges [Rule 10(2)] [Inserted by Notification No.91/2017-Cus (NT) dated 26-09-2017 w. e. f. 26-09-2017]: The value of the imported goods shall be the value of such goods, for delivery at the time and place of importation and shall include, -

- (a) Cost of transportation, loading, unloading and handling charges: The cost of transport, loading, unloading and handling charges associated with the delivery of the imported goods to the place of importation.
 - Cost of transportation, loading, unloading and handling charges is not ascertainable [First Proviso to Rule 10(2)]: Where the cost referred to in 10(2) (a) i.e. Cost of transportation, loading, unloading and handling charges associated with the delivery of the imported goods to the place of importation is not ascertainable, such cost shall be 20% of the free on board value of the goods.
 - Cost of transportation, loading, unloading and handling charges when FOB value not ascertainable but FOB value + Cost of Insurance ascertainable [Second Proviso to rule 10 (2)]: Where the FOB value of the goods is not ascertainable but the sum of FOB value of the goods and the cost of insurance to the place of importation is ascertainable, the cost of transportation, loading, unloading and handling charges associated with the delivery of the imported goods to the place of importation shall be 20% of such sum i.e. 20% of [FOB Value + Cost of Insurance].
 - Air freight etc. cannot exceed 20% of FOB value of the goods [Fifth Proviso to Rule 10(2)]: In case of importation of goods by air, even if the actual cost of transport, loading, unloading and handling charges associated with the delivery of the imported goods to the place of importation is ascertainable, the same shall not exceed 20% of FOB value of the goods.
 - Transshipment costs to be excluded [Sixth Proviso to Rule 10(2)]: In the case of goods imported by sea or air and transshipped to another customs station in India, the cost of insurance, transport, loading, unloading, handling charges associated with such transshipment shall be excluded.

- Ship demurrage charges on chartered vessels, lighterage or barge charges – Includible [Explanation to Rule 10(2)]: The cost of transport of the imported goods referred above includes the ship demurrage charges on chartered vessels, lighterage or barge charges.
- (b) Insurance charges: The cost of insurance TO the place of importation.
 - Cost of insurance not ascertainable [Third Proviso to Rule 10(2)]: However, in case the cost of insurance to the place of importation is not ascertainable, such cost shall be 1.125% of the FOB value of the goods.
 - Cost of insurance when FOB value not ascertainable but FOB value + Cost of transportation, loading, unloading and handling charges ascertainable [Fourth Proviso to Rule 10(2)]: Where the FOB value of the goods is not ascertainable but the sum of FOB value of the goods and the cost of transport, loading, unloading and handling charges associated with the delivery of the imported goods to the place of importation is ascertainable, the cost of insurance to the place of importation shall be 1.125% of such sum i.e. 1.125% of [FOB Value + Cost of transport, loading, unloading and handling charges associated with the delivery of the imported goods to the place of importation].

Circular No. 39/2017 Cus. dated 26.09.2017 has been issued to clarify the amendment in Rule 10(2) of Import Valuation Rules i.e., Customs Valuation (Determination of Value of Imported Goods) Rules, 2007[CVR]

The valuation of imported and export goods is governed by the provisions of Section 14 of the Customs Act, 1962 and the rules made thereunder. The Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 (CVR) contain the detailed provisions for arriving at the transaction value of the imported goods, on which the customs duty is levied.

A need had arisen to examine certain provisions of the CVR in light of Supreme Court's ruling in the case of M/s Wipro Ltd. Vs. Assistant Collector of Customs 2015 (319) ELT 177 SC dated 16.04.2015

After examination and public consultations, the Government has amended the CVR vide Notification 91/2017 Customs (N.T) dated 26.09.2017, as explained below:

Definition of the term 'place of importation'

The term "place of importation" has been used in the CVR; however, the term was not defined. To bring in clarity, the "place of importation" has been defined as:

"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"

In view of the above definition, the transaction value of the imported goods in terms of section 14 of the Customs Act, 1962 would include the costs incurred up to the place of importation, as defined above.

Treatment of the loading, unloading and handling charges

The Hon'ble Supreme Court had ruled in the case of M/s Wipro Ltd. Vs Assistant Collector of Customs-2015 (319) ELT 177 (S.C.) dated 16.04.2015 that the landing charges to be added to the value of goods, should be based on actual charges incurred, and not a notional charge of 1% as has been provided in the Rules.

By virtue of the amendment now carried out to the CVR, 2007, the loading, unloading and handling charges associated with the delivery of the imported goods at the place of importation, shall no longer be added to the CIF value of the goods.

The phrase "loading, unloading and handling charges" appearing in the amended rule 10 (2) (a) is to be understood in context of Article 8(2) of the WTO Agreement which reads as "the cost of transport of the imported goods to the port or place of importation". Thus, only charges incurred for delivery of goods "to" the place of importation (such as the loading and handling charges incurred at the load port) shall now be includible in the transaction value.

Computation of freight and insurance

Now, the 2nd and 4th provisos to rule 10 (2) impart more clarity in computation of transport and insurance charges, when actuals of each individual element are not known, but the cumulative value of FOB and freight, or, FOB and insurance charges are known. Treatment of transshipment costs In the erstwhile 4th proviso to rule 10 (2), while the transshipment charges with respect to a container being moved from port to an ICD and CFS were excluded from the transaction value of the goods, there was no mention of a similar treatment to

transshipment of goods by sea or air. Now, by virtue of the 6th proviso to rule 10 (2), costs related to transshipment of goods (from ports to ICDs; port to port, port to CFS, Airport to Airport etc.) within India will be excluded, providing uniform treatment to different modes of transshipment.

Chart showing Determination of assessable value after adjustments under Rule 10 [ICAI Valuation Norms]:

FOB Price (Free on Board)	xxx
Add: Charges for costs and services as per Rule 10(1) (Excluding charges for Post – importation Activities)	xxx
Customs FOB	xxx
Add: The following adjustments [(a) and (b)] under Rule 10(2)-	
(a) Actual cost of transport, loading, unloading and handling charges associated with the delivery of the imported goods to the place of importation (In case of air it cannot exceed 20% of Customs FOB value of goods) If not ascertainable – 20% of the Customs FOB value of goods. In case Customs FOB value is also not ascertainable, then it will be 20% of [Customs FOB value + Cost of Insurance]	xxx
(b) Actual Cost of insurance If not ascertainable – 1.125% of the Customs FOB value of goods. In case Customs FOB value is also not ascertainable then it will be 1.125% of [Customs FOB value + Cost of transport, loading, unloading and handling charges]	xxx
CIF value (Customs FOB value + cost of transport + cost of insurance) being Assessable Value for the Purpose of calculating duties of customs	xxx

Rule 11 – Declaration by the importer

- (1) The importer or his agent shall furnish –
 - (a) a declaration disclosing full and accurate details relating to the value of imported goods; and
 - (b) any other statement, information or document including an invoice of the manufacturer or producer of the imported goods where the goods are imported from or through a person other than the manufacturer or producer, as considered necessary by the proper officer for determination of the value of imported goods under these rules.
- (2) Nothing contained in these rules shall be construed as restricting or calling into question the right of the proper officer of customs to satisfy himself as to the truth or accuracy of any statement, information, document or declaration presented for valuation purposes.
- (3) The provisions of the Customs Act, 1962 relating to confiscation, penalty and prosecution shall apply to cases where wrong declaration, information, statement or documents are furnished under these rules.

Rule 12 – Rejection of Declared Value

- (1) When the proper officer has reason to doubt the truth or accuracy of the value declared in relation to any imported goods, he may ask the importer of such goods to furnish further information including documents or other evidence and 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 transaction value of such imported goods cannot be determined under the provisions of sub-rule (1) of rule 3.
- (2) At the request of an importer, the proper officer, shall intimate the importer in writing the grounds for doubting the truth or accuracy of the value declared in relation to goods imported by such importer and

provide a reasonable opportunity of being heard, before taking a final decision under sub-rule (1).

Explanation.-(1) For the removal of doubts, it is hereby declared that:-

- (i) This rule by itself does not provide a method for determination of value, it provides a mechanism and procedure for rejection of declared value in cases where there is reasonable doubt that the declared value does not represent the transaction value; where the declared value is rejected, the value shall be determined by proceeding sequentially in accordance with rules 4 to 9.
- (ii) The declared value shall be accepted where the proper officer is satisfied about the truth and accuracy of the declared value after the said enquiry in consultation with the importers.
- (iii) The proper officer shall have the powers to raise doubts on the truth or accuracy of the declared value based on certain reasons which may include –
 - (a) the significantly higher value at which identical or similar goods imported at or about the same time in comparable quantities in a comparable commercial transaction were assessed;
 - (b) the sale involves an abnormal discount or abnormal reduction from the ordinary competitive price;
 - (c) the sale involves special discounts limited to exclusive agents;
 - (d) the misdeclaration of goods in parameters such as description, quality, quantity, country of origin, year of manufacture or production;
 - (e) the non-declaration of parameters such as brand, grade, specifications that have relevance to value;
 - (f) the fraudulent or manipulated documents.

Customs Valuation (Determination of Value of Export Goods)

Rules, 2007

Rule 2 – Definitions

- (1) In these rules, unless the context otherwise requires, -
 - (a) "goods of like kind and quality" means export goods which are identical or similar in physical characteristics, quality and reputation as the goods being valued, and perform the same functions or are commercially interchangeable with the goods being valued, produced by the same person or a different person; and
 - (b) "transaction value" means the value of export goods within the meaning of sub-section (1) of section 14 of the Customs Act, 1962 (52 of 1962).
- (2) For the purposes of these rules, persons shall be deemed to be "related" only if –
 - (i) they are officers or directors of one another's businesses;
 - (ii) they are legally recognized partners in business;
 - (iii) they are employer and employee;
 - (iv) any person directly or indirectly owns, controls or holds five per cent or more of the outstanding voting stock or shares of both of them;
 - (v) one of them directly or indirectly controls the other;
 - (vi) both of them are directly or indirectly controlled by a third person;
 - (vii) together they directly or indirectly control a third person; or
 - (viii) they are members of the same family.

Explanation I. - The term "person" also includes legal persons.

Explanation II. - Persons who are associated in the business of one another in that one is the sole agent or sole distributor or sole concessionaire, howsoever described, of the other shall be deemed to be related for the purpose of these rules, if they fall within the criteria of this sub-rule.

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Rule 3 – Determination of the method of valuation

- (1) Subject to rule 8, the value of export goods shall be the transaction value.
- (2) The transaction value shall be accepted even where the buyer and seller are related, provided that the relationship has not influenced the price.
- (3) If the value cannot be determined under the provisions of sub-rule (1) and sub-rule (2), the value shall be determined by proceeding sequentially through rules 4 to 6.

Rule 4 – Determination of export value by comparison

- (1) The value of the export goods shall be based on the transaction value of goods of like kind and quality exported at or about the same time to other buyers in the same destination country of importation or in its absence another destination country of importation adjusted in accordance with the provisions of sub-rule (2).
- (2) In determining the value of export goods under sub-rule (1), the proper officer shall make such adjustments as appear to him reasonable, taking into consideration the relevant factors, including-
 - a. difference in the dates of exportation,
 - b. difference in commercial levels and quantity levels,
 - c. difference in composition, quality and design between the goods to be assessed and the goods with which they are being compared,
 - d. difference in domestic freight and insurance charges depending on the place of exportation.

Rule 5 – Computed Value Method (Parallel to Rule 8 of Import Valuation Rule)

The value of the export goods shall be based on computed value, which include:

- a. cost of production , manufacture or processing of export goods;
- b. charges, if any, for the design or brand;
- c. an amount towards profit.

Rule 6 – Residual Method (Parallel to Rule 9 of Import Valuation Rule)

The value shall be determined using reasonable means consistent with the principles and general provisions of these rules provided that local market price of the export goods may not be the only basis for determining the value of export goods.

Rule 7 – Declaration by the Exporter

The exporter shall furnish a declaration relating to the value of export goods in the manner specified in this behalf.

Rule 8 – Rejection of Declared Value

- (1) When the proper officer has reason to doubt the truth or accuracy of the value declared in relation to any export goods, he may ask the exporter of such goods to furnish further information including documents or other evidence and if, after receiving such further information, or in the absence of a response of such exporter, the proper officer still has reasonable doubt about the truth or accuracy of the value so declared, the transaction value shall be deemed to have not been determined in accordance with sub-rule (1) of rule

3.

- (2) At the request of an exporter, the proper officer shall intimate the exporter in writing the ground for doubting the truth or accuracy of the value declared in relation to the export goods by such exporter and provide a reasonable opportunity of being heard, before taking a final decision under sub-rule (1).

Explanation - (1) For the removal of doubts, it is hereby declared that-

- (i) This rule by itself does not provide a method for determination of value, it provides a mechanism and procedure for rejection of declared value in cases where there is reasonable doubt that the declared value does not represent the transaction value; where the declared value is rejected, the value shall be determined by proceeding sequentially in accordance with rules 4 to 6.
- (ii) The declared value shall be accepted where the proper officer is satisfied about the truth or accuracy of the declared value after the said enquiry in consultation with the exporter.
- (iii) The proper officer shall have the powers to raise doubts on the declared value based on certain reasons which may include –
 - (a) the significant variation in value at which goods of like kind and quality exported at or about the same time in comparable quantities in a comparable commercial transaction were assessed.
 - (b) the significantly higher value compared to the market value of goods of like kind and quality at the time of export.
 - (c) the misdeclaration of goods in parameters such as description, quality, quantity, year of manufacture or production.

Can the value of imported goods be increased if Department fails to provide to the importer, evidence of import of identical goods at higher prices?	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 it should have been given reasonable opportunity to establish that the import transactions were not comparable. Thus, in the given case, the value of imported goods could not be enhanced on the basis of value of identical goods as Department was not able to provide evidence of import of identical goods at higher prices.
Gira Enterprises v. CCus. 2014 (307) ELT 209 (SC)	<i>This case establishes the principle that the onus to prove that identical goods have been imported at a price higher than the value of the goods declared by the importer, lies with the Department.</i>

Question & Answer

Q1. 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.

A. 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

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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.

Q2. 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?

A. 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.

Q3. What shall be the value if there is a price rise between the date of contract and the date of actual importation?

A. 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).

Q4. 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 Chartered 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.

A. 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.

Q5. 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.

A. 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.)

Q6. 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.

A. 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.

Q7. 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.

A. 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

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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..

Q8. 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.

A. 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.
- (ii) 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.
- (iii) 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.

Q9. 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.

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

- (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 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.

Post-importation design and engineering charges – Includible, if related to imported goods and paid as a condition of sale: 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.

- (iii) 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)

Q10. The importer entered into 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, 2017. The period was extended by mutual agreement and goods were shipped on 5th August, 2017 at old agreed price. In the meanwhile, the international prices had gone up due to volatility in market and other imports during August, 2017 were at higher prices. Department sought to increase the assessable value on the basis of the higher prices as contemporaneous imports. Decide whether the contention of the department is correct.

A. The facts of the case are similar to that in case of CC v. Aggarwal Industries Ltd. [2011] 272 ELT 641 (SC). According to Rule 12 of Custom Valuation Rules, 2007, if the proper officer has a reason to doubt the truth or accuracy of the declared value, then he can call for information from importer and if he is still not satisfied, only then such value can be rejected. Merely on basis of suspicion regarding correctness of invoice produced by an importer, the transaction value cannot be rejected.

In the present case, the contract could not be performed in July 2017 and the same was shipped in August 2017. The importer paid contracted price only, though subsequently oil price increased drastically.

There was no collusion between importer and foreign supplier and the transaction so entered was genuine and the condition of Rule 3(2) were also satisfied.

So, merely because there is difference between contract price and price prevalent at the time of importation, the same cannot form the basis of rejection of transaction value. Contract price shall be acceptable. The contention of the Department is not correct.

Q11. 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.

A. 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.

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Q12. 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.

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

- 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.
- 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

Q13. 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:

- CIF value of the consignment – US \$ 35,000
- Quantity imported – 700 Kgs.
- Exchange rate applicable – US \$ 1 = Rs. 62
- Basic Customs Duty (BCD) – 20%
- 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.
- 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.

A. 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

Q14. 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	

A. 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	\$	500.00
[WN -2]		
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.

Q15. 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.

A. 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

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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.

Q16. 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
08-09-2018	20%
Date of Entry Inward	BCD
30-09-2018	30%
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.

A. 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. 14,68,640.63 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

Q17. 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.

A. 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

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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.

Q18. 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.

A. 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)].

Q19. 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.

A. 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).

Q20. 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.

A. 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

Q21. Compute the duty payable under the Customs Act, 1962 for an imported equipment based on the following information:

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- (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.

A. 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

Q22. 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.

A. 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

Q23. Compute the assessable value for purpose of determination of Customs duty from the following date:

Machinery imported from USA by air (FOB price) US \$
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.	

A. 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.

Q24. 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.

A. 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

Q25. 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.

A. 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

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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

Q26. 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:

- Freight from Japan to Indian port: 20,000 Yen
- Insurance paid to Insurer in India : Rs. 10,000
- Designing charges paid to Consultancy firm in Japan : 30,000 yen
- M/s. XYZ Industries had expended Rs. 1,00,000 in India for certain development activities with respect to the imported equipment.
- XYZ Industries Ltd. had incurred road transport cost from Mumbai port to their factory in Karnataka: Rs. 30,000
- 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
- The inter bank exchange rate was 1 yen = Rs. 0.60
- M/s. XYZ Industries had effected payment to the Bank based on exchange rate 1 yen = Rs. 0.6150
- 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.

A. 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:

- 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.
- 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.

Q27. 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.

A. 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.

Q28. 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	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:

- Inter – bank exchange rate as arrived by the authorized dealer: Rs. 98 per U.K. Pound.
 - CBEC had notified for purpose of Section 14 of the Customs Act, 1944, exchange rate of Rs. 100 per U.K. Pound.
 - 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)

A. 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	20,000.00
Commission to the Agent	
[The same is includible in the assessable value as per rule 10(1) (b)]	
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)	2,00,000.00
[The same is includible in the assessable value as per rule 10(1)(c)]	
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

Q29. 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.

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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. Kolkata free of cost and 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 your answer.

Note: Customs duty calculations need not be shown.

A. 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)(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 and 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.

Q30. 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?

A. 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.

Q31. 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.

A. 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,

Study Notes

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.

Q32. 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.

A. 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.

Q33. 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.

A. The facts of the given case are similar to the case of Gira enterprises v. CC [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 not 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.

Q34. M/s. IES Ltd. (assesse) 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 nowhere 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.

Q35. Discuss how the 'value' of imported goods shall be determined in the following cases –

- 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.
- The sale involves special discounts limited to exclusive agents.

A. 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 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).

Q36. 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

A. 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

Q37. 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'.

A. 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

Chapter 5: - Importation, Exportation & Transportation of Goods

Section 7	Appointment of customs ports, airports, etc.
Section 8	Power to approve landing places and specify limits of customs area
Section 29	Arrival of vessels and aircrafts in India
Section 30	Delivery of Arrival Manifest or Import Manifest or Import Report
Section 30A	Passenger and crew arrival manifest and passenger name record information
Section 31	Imported goods not to be unloaded from vessel until entry inwards granted
Section 45	Restrictions on custody and removal of imported goods
Section 46	Entry of goods on importation
Section 47	Clearance of goods for home consumption
Section 48	Procedure for disposal of goods not cleared
Section 49	Storage of Imported Goods in warehouse pending clearance or removal
Section 39	Entry Outwards
Section 40	Export goods not to be loaded unless duly passed by proper officer
Section 41	Delivery of departure manifest or export manifest or export report
Section 41A	Passenger and crew departure manifest and passenger name record information
Section 42	No Conveyance to leave without written order
Section 50	Entry of Goods for Exportation
Section 51	Clearance of Goods for Exportation
Section 51A	Payment of duty, interest, penalty, etc
Section 83	Relevant date for Rate of duty and tariff valuation in respect of goods imported or exported by post or courier
Section 78	Date for determination of rate of duty and tariff valuation
Section 80	Temporary Detention of Baggage
Section 52	Chapter not to apply to baggage, postal articles and store
Section 53	Transit of certain goods without payment of duty
Section 54	Transshipment of certain goods without payment of duty
Section 55	Liability of duty on goods transited under section 53 or transhipped under section 54
Section 56	Transport of certain classes of goods subject to prescribed conditions

Section 7 Appointment of customs ports, airports, etc.

The Board to appoint by notification in the Official Gazette:

- (a) customs ports and customs airports,
- (aa) inland container depots or air freight stations, for the unloading of imported goods and the loading of export goods or any class of such goods,
- (b) land customs stations for the clearance of goods imported or to be exported by land or inland water or any class of such goods,

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- (c) the routes by which alone goods or any class of goods specified in the notification may pass by land or inland water into or out of India, or to or from any land customs station from or to any land frontier,
- (d) the coastal ports for the carrying on of trade in coastal goods or any class of such goods with all or any specified ports in India.
- (e) the foreign post offices for the clearance of imported goods or export goods or any class of such goods;
- (f) the international courier terminals for the clearance of imported goods or export goods or any class of such goods.

Some of the notified customs ports are Port Blair, Vishakhapatnam, Daman and Diu, Panaji Port, Kandla, Porbandar, New Mangalore, Cochin, etc.

Some of the notified customs airports are Port Blair, Hyderabad, Borjhar (Guwahati), Patna, Delhi, Ahmedabad, Srinagar, Bangalore, Cochin, etc.

Some of the Inland Container Depots are at Hyderabad, Tuglakbad (Delhi), Ahmedabad, Baroda, Faridabad, Bangalore Balasore, Amritsar, etc.

Some of the notified Land Custom Stations are Amritsar Railway Station, Delhi Railway Station, Calcutta Jetties No 4 and 6, Howrah Railway Station, Phulbari, Foreign Post Office of Exchange, New Delhi, Sub-foreign Post Office in Special Economic Zone Complex, Cochin, Sub-foreign Post Office in Noida Export Processing Zone, Noida, etc.

Some of the notified foreign post offices are foreign post office Vijayawada, New Delhi, Guwahati, Ludhiana, Jaipur, Kolkata etc.

Section 8 Power to approve landing places and specify limits of customs area

The Principal Commissioner/Commissioner of Customs to:

- (a) approve proper places in any customs port or customs airport or coastal port for the unloading and loading of goods or for any class of goods;
- (b) specify the limits of any customs area.

Import Procedures

Steps	Importer or Customs Broker	Person-in- charge of Conveyance	Customs	Port Authority
1			Customs obtains permission to occupy and manage the export-import activities through that port (being a notified Customs Station)	Government notifies a port for export-import under section 7. Without being notified, export- import cannot be done through all ports

Steps	Importer or Customs Broker	Person-in- charge of Conveyance	Customs	Port Authority
2		Carrier applies for permission to enter port with cargo	Customs issues 'entry inward' permission to the aircraft/vessel	
3		Conveyance (aircraft / vessel) files Import General Manifest (IGM)– which contains full list of all types of cargo to be unloaded or retained to be taken to next port	Takes stock of all cargo, gives permission to store cargo (unloaded) in carrier's warehouse. Goods in this warehouse cannot be taken out without customs permission	
4	Importer or through Customs Broker files import clearance documents with customs (See note 1)		Customs inspects the shipment and assesses the bill of entry. Customs issue demand note for duty amount (See note 2)	
5	Importer pays the duty and returns with proof of payment		Customs issues 'delivery order' (DO) to warehouse where goods are kept	
6	Importer takes DO and collects goods from warehouse	Carrier's warehouse will release goods only against DO issued by customs		
7			Customs issues 'out of customs charge' order. With this, responsibility of cargo is no longer with customs	
8	Delay in customs clearing by more than 3 days (all above steps), demurrage charges apply		Customs collects demurrage charges for delay by importer in completing Procedures	
9		Carrier applies for entry outward' permission to leave the port (this step can take place after step 3 also)	Customs gives this permission after all cargo verified and ship can be allowed to leave	

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Note 1 – Documents for import clearance to be filed by importer are:

- Commercial import invoice and import contract – to know nature and terms of contract
- Product brochure – to verify classification for rate of import duty
- Packing list – to inspect the shipment and verify contents
- Bill of entry – to assess import duties. There are three types of bill of entry:
 - Bill of entry for home consumption – for consumption within India is called 'home consumption'. Customs assessment for duty payment for use of the goods within India is done through this type of bill of entry
 - Into bond bill of entry (Bill of entry for warehouse under Section 46) – where the imported goods are stored in a duty-free warehouse also called 'bonded' warehouse is done through this type of bill of entry. No duty is calculated on this type of bill of entry
 - Ex-bond bill of entry (Bill of entry for home consumption under Section 68) – where the goods kept in a bonded warehouse are taken out for 'home consumption' this bill of entry is prepared. Duty is calculated on this bill of entry
- Certificate of origin – to know which country the goods were actually manufactured and to see if any special import duty rates apply
- Import license, if any – to give the exemption/concession to be given as per import license issued to importer. Or if the goods are restricted – to permit import of such goods after verifying if the special permission to import such type of goods is issued to the importer
- Bill of lading / airway bill – to know the landed value of the goods because invoice may be FOB or CIF. Duty is to be calculated on landed price as per section 14 of Customs Act
- Rate of duty – is known from the date of bill of entry. In case the bill of entry is filed in advance (before ship arrives), the date for the rate of duty is the date of entry inward given to vessel as per step 2 in table above

Note 2 – The import value assessment is called valuation; price charged by the foreign supplier is one aspect but if there are any costs incurred to bring the goods to the import port, all those costs also to be added to arrive at final landed cost of goods. These additional costs may be (a) between exporter-importer like any the cost of designs given free or moulds supplied free (b) between importer and third parties like freight (actual or 20% of FOB price), packing (actual), commission (actual), which shall also be added to arrive at landed price. See chapter on Valuation for details of these adjustments to the transacted price.

Section 29 Arrival of vessels and aircrafts in India

No landing at a place other than custom port/ custom airport aircraft. Statutory obligation of person in charge to report to nearest custom officer / permit not to unload cargo / passenger to depart if vessel or aircraft call or land at a place other than custom port or custom airport unless permitted by the Board.

Any contravention of this provisions will operate as a presumption against the person-in-charge of conveyance or beneficial owner to have an intention to illegally imports goods into India. So, entry (or attempt to enter) goods originating from outside India into any place not notified as a customs station is barred.

Section 30 Delivery of Arrival Manifest or Import Manifest or Import Report

The persons in charge of conveyance carrying imported goods or export goods has to present arrival manifest/import manifest (in case of vessel or aircraft) or import report (in case of vehicle) in such form and manner as may be prescribed.

Goods involved in an export may be carried in the conveyance (vessel or other) without being delivered in India. The IM/IR must also contain details of goods meant for export and carried by the conveyance. Similar provision for including 'import goods' is required by section 41 regarding manifest to be filed for dispatch of goods.

- Time limit for presentation of **arrival manifest** or import manifest or import report:
 - (i) In case of Vessel or Aircraft: Electronically Prior to its arrival at customs station,
 - (ii) In case of Vehicle: Within twelve hours after its arrival in the customs station.

Electronic filing not feasible – Filing in other manner: The Commissioner of Customs may, in cases where it is not feasible to deliver **arrival manifest** or import manifest by presenting electronically, allow the same to be delivered in any other manner.
- Penalty for non-compliance: Not exceeding Rs. 50,000.

Belated filing of IGM: **Arrival Manifest**/Import manifest/Report filed belatedly may also be accepted by the proper officer on valid justified grounds.

Amendment to IGM: If the proper officer is satisfied that the **arrival manifest** or import manifest or import report is in any way incorrect or incomplete and there is no fraudulent intention, he may permit it to be amended or supplemented.

Subsequent amendment of IGM ([please browse google to see format of IGM](#)) relates back to the date of filing of IGM and is not a separate event. By the time supplementary IGM is filed, if entry inward has already been granted, the rate of duty applicable will be as on the date of presentation of bill of entry.

Section 30A Passenger and crew arrival manifest & passenger name record information

- (a) Person-in-charge to file arrival manifest of passenger and crew: The person-in-charge of a conveyance that enters India from any place outside India or any other specified person shall deliver to the proper officer –
 - (i) the passenger and crew arrival manifest before arrival in the case of an aircraft or a vessel and upon arrival in the case of a vehicle; and
 - (ii) the passenger name record information of arriving passengers, in such form, containing such particular, in such manner and within such time, as may be prescribed.
 - (b) Penalty for non-filing of manifest within the time limit – Not exceeding Rs. 50,000: If passenger manifest is not presented within time limit, proper officer may levy penalty not exceeding Rs. 50,000.
- Passenger name record information: It means the records prepared by an operator of any aircraft or vessel or vehicle or his authorized agent for each journey booked by or on behalf of any passenger.

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

1. After submission of IGM, the customs officer may examine the vessels or aircraft before granted of entry inward.

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2. Any of the goods shall not be unloaded unless entry inward has been granted but this does not apply for passengers, baggage, perishable items and import by post.
3. The unloading shall always be under supervision of the customs officer who will ensure that any of the goods which are not to be unloaded in India are not unloaded in India.
4. The unloading shall be in customs area only appointed by commissioner U/s 8 on a working day, during working hours.
5. Where a vessel is parked away from customs port, the goods can be brought to the customs port only through steamer or boat.
6. The goods cannot be unloaded from the ship unless permission is granted by the customs officer.

Other provisions relating to conveyances carrying imported goods

Any of the goods which are not mentioned in the IGM cannot be unloaded (Section 32).

Unloading of the Goods shall take place under supervision of Customs Officer (Section 34), within the Customs areas (Section 34) only on a working (Section 36) day during working hours i.e. not on Sundays or any holidays observed by customs department or any other day after working hours except after giving notice and on payment of fees.

In case the vessel arriving at the port does not get a berth, then the import cargo is taken from the ship to the shore and the export cargo is taken from the shore to the ship, in boats (Section 35).

Section 45 Restrictions on custody and removal of imported goods

All the imported goods that are unloaded in the customs area shall remain in the custody of Port trust authority until they are cleared for home consumption, or are warehoused, or are transhipped. However, the control shall be of proper officer. Custodian liable to pay duty on pilfered goods – at the rate prevalent of the date of delivery of **arrival manifest** or import manifest or import report to the proper officer for the arrival of the conveyance in which the said goods were carried.

The person having custody of any imported goods in a custom area-

- a. Shall keep a record of such goods and send a copy thereof to the proper officer;
- b. Shall not permit such goods to be removed from the customs area or otherwise dealt with, except under and in accordance with the permission in writing of the proper officer **or in such manner as may be prescribed.**

Section 46 Entry of goods on importation

Bill of Entry is the basic document for assessment of custom duty. The importer of any goods, other than goods intended for transit or transshipment, shall make entry thereof by presenting electronically **on the customs automated system** to proper officer a bill of entry **in such form and manner as may be prescribed** for

home consumption or warehousing. The Principal Commissioner/Commissioner of Customs may, allow an entry to be presented in physical form if the same presented electronically.

Time limit of presentation of Bill of Entry: The importer shall present the bill of entry before the end of the next day following the day (excluding holidays) on which the aircraft over vessel or vehicle carrying the goods arrives at a customs station at which such goods are to be cleared for home consumption or warehousing. However, a bill of entry may be presented **at any time not exceeding thirty days prior to** the expected arrival of the aircraft or vessel or vehicle by which the goods have been shipped for importation into India. Where the bill of entry is not presented within the time so specified and the proper officer is satisfied that there was no sufficient cause for such delay, the importer shall pay such charges for late presentation of the bill of entry as may be prescribed.

The importer who presents a bill of entry shall ensure the following, namely:—

- (a) the accuracy and completeness of the information given therein;
- (b) the authenticity and validity of any document supporting it; and
- (c) compliance with the restriction or prohibition, if any, relating to the goods under this Act or under any other law for the time being in force.

Charges for late presentation of Bill of Entry: Rs. 5,000 per day for the initial 3 days of default and @ Rs. 10,000 per day for each day of default thereafter.

Substitution of bill of entry: A bill of entry for home consumption can be substituted for bill of entry for warehousing or vice versa if the interest of revenue are not prejudicial affected and there was no fraudulent intention. Substitution takes place when revised bill of entry is prescribed form is presented.

Amendment of Bill of Entry: Amendment of bill of entry can be made on the basis of documentary evidence which was in existence at the time the goods were cleared or deposited. Amendment relates back to the date of presentation of original bill of entry.

Section 47 Clearance of goods for home consumption

If the importer has paid the import duty, if any, assessed thereon and any charges payable under this Act in respect of the same, the proper officer may make an order permitting clearance of the goods for home consumption.

Such order may also be made electronically through the customs automated system on the basis of risk evaluation through appropriate selection criteria.

The Central Government has notified the following importers to make deferred payment of import duty: Imports certified under Authorized Economic Operator programme as AEO (Tier – Two) and AEO (Tier – Three).

Payment of Duty Electronically: The Central Government has notified the following classes of importers who shall pay duty electronically, namely, -

- (a) Importers registered under Accredited Clients Programme; and
- (b) Importers paying customs duty of Rs. 10,000 or more per bill of entry.

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Time limit for payment of duty and interest @ 15% p.a. on delayed payment of duty: The importer shall pay the import duty –

- on the date of presentation of the bill of entry in the case of self – assessment; or
- within one day (excluding holidays) from the date on which the bill of entry is returned to him by the proper officer for payment of duty in the case of assessment, reassessment of provisional assessment; or
- in the case of deferred payment, from such due date as may be specified by rules made in this behalf,

and where the importer fails to pay the duty within the time so specified, he shall pay interest on the duty not paid or short-paid till the date of its payment, at such rate, not less than 10% but not exceeding 36% p.a., as may be fixed by the Central Government, by notification in the Official Gazette. [At present notified rate is 15% p.a.]

Deferred Payment of Import Duty Rules, 2016

	Particulars	Provisions								
1	Information about intent to avail benefit of notification	(1) An eligible importer who intends to avail the benefit of deferred payment of duty shall intimate to the Principal Commissioner of Customs or the Commissioner of Customs having jurisdiction over the port of clearance, his intention to avail the said benefit. (2) The Principal Commissioner of Customs or the Commissioner of Customs, shall, upon being satisfied with the eligibility of the importer to pay the duty under these rules, allow the eligible importer to pay the duty by due dates as mentioned below.								
2	Payment of duty	The eligible importer shall pay the duty by the dates specified hereunder inclusive of the period (excluding holidays) as mentioned in Section 47(2) of the Act, namely: -<table><tr><td>For goods corresponding to Bill of Entry returned for payment -</td><td>Date for payment of Duty</td></tr><tr><td>⇒ from 1st day to 15th day of any month</td><td>16th day of that month</td></tr><tr><td>⇒ from 16th day till the last day of any month other than March</td><td>1st day of the following month</td></tr><tr><td>⇒ from 16th day till the 31st day of March</td><td>31st March</td></tr></table>	For goods corresponding to Bill of Entry returned for payment -	Date for payment of Duty	⇒ from 1st day to 15th day of any month	16th day of that month	⇒ from 16th day till the last day of any month other than March	1st day of the following month	⇒ from 16th day till the 31st day of March	31st March
For goods corresponding to Bill of Entry returned for payment -	Date for payment of Duty									
⇒ from 1st day to 15th day of any month	16th day of that month									
⇒ from 16th day till the last day of any month other than March	1st day of the following month									
⇒ from 16th day till the 31st day of March	31st March									
3	Manner of payment	The eligible importer shall pay the duty electronically. The AC or the DC may for reasons to be recorded in writing, may allow payment of duty by any mode other than electronic payment.								
4	Deferred payment not apply in certain cases	An eligible importer who fails to pay duty in full by due date more than once in a period of 3 consecutive months shall not be permitted to make deferred payment. The facility of deferred payment shall not be restored unless the eligible importer has paid the duty in full along with the interest.								
5	Exemption in respect of certain goods	Nothing contained in these rules shall apply to the goods which have not been assessed or not declared by the importer in the entry made under the Act.								

Section 48 Procedure for disposal of goods not cleared

Where the importer fails to remove the goods within the prescribed time limit of 30 days and no extension has been allowed, then custodian may dispose off such goods after giving notice to the importer and as per the direction of the proper officer of customs.

Section 49 Storage of Imported Goods in warehouse pending clearance or removal

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.

- Goods deposited under section 49 cannot be deemed as warehoused goods
- It may so happen that an importer has filed the bill of entry for home consumption. He may subsequently find that he is not in a position to pay duty and remove the goods to town. He may seek permission to substitute the bill of entry for home consumption with a bill of entry for warehousing. The reverse proposition is also permissible. In either case, the proper officer of customs has to be satisfied that this request is made on genuine grounds and not a device to avoid duty. In other words, if the rate of duty is high and the importer expects the government to reduce the duty, he cannot seek permission to substitute the bill of entry for home consumption by a bill of entry of warehousing so that he would decide to remove the goods as and when the rate of duty is reduced.

Export Procedures

Steps	Exporter or Customs Broker	Person-in-charge of Conveyance	Customs	Port Authority
1			Customs applies for permission to occupy and manage the export-import activities through that port (being a notified Customs Station).	Government notifies this as a port for export-import under section 7. Without being notified, export-import cannot be done through all ports
2		Carrier applies for permission to enter port with cargo	Customs issues 'entry inward' permission to the aircraft/vessel	
3	Exporter directly Or through Customs Broker Files export		Customs inspects the shipment and assesses the shipping bill	

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	Documents with customs (See note 1)			
4	Exporter pays the duty, if applicable, and returns with proof of payment		Customs issues assessed Shipping Bill	
5		Carrier collects cargo and prepares for departure		
6		Carrier prepares Export Manifest – which contains full list of all types of cargo to be unloaded or retained to be taken to next port	Customs issues 'let export' order. With this, responsibility of cargo is no longer with customs	
7	Delay in customs clearing by more than 3 days (all above steps), demurrage charges are charged		Customs collects demurrage charges for delay by exporter in completing procedures	
8		Carrier applies for 'entry outward' permission to leave the port	Customs gives this permission after all cargo verified and ship can be allowed to leave	

Note 1 – Documentation for export procedures

Zero-rated Supply formalities:

- Zero-rated Supply formalities:
 - LUT for exports 'under bond' (see section 16(3)(a) of IGST Act)
 - IGST payment for exports 'under rebate' (see section 16(3)(b) of IGST Act)
- Customs formalities:
 - Submit tax invoice (foreign currency) and packing list
 - GR form (advisable to refer Master Circular on Export of Goods and Services issued by RBI annually in July 20XX)
 - Export license, if any
 - Shipping bill which are of 5 types:
 - Shipping bill for duty-free goods
 - Shipping bill for dutiable goods
 - Shipping bill for advance authorization / EPCG authorization exports
 - Shipping bill for duty drawback exports
 - Shipping bill for ex-bond exports
 - Export contract and technical brochure about description/classification of export goods
 - Letter of credit and copy of bill of lading/airway bill.

Section 39 Entry Outwards

One of the important requirements in this regard is that the vessel in question should be scheduled to go to the port of consignment. It is therefore, necessary that the vessel or conveyance in question should be cleared to go to on a foreign voyage and the port of destination should be in the vessel's itinerary. This permission to be granted by the Customs authorities is known as "Entry Outwards".

Section 39 stipulates that export goods are not to be loaded on vessel until entry outwards is granted. The master of the vessel shall not permit the loading of any export goods, other than baggage and mail bags, until an order has been given by the proper officer granting entry-outwards to such vessel. This restriction is for vessels and not for aircraft and vehicles. Therefore, for loading of goods for export, the following requirements are to be fulfilled:

- (i) Entry outwards to be granted under section 39.
- (ii) Shipping bill under section 50
- (iii) 'Let-export' order under section 51
- (iv) Boat note under section 35 in case the vessel is anchored away from the wharf and the goods are carried in a boat to the vessel.

Section 40 Export goods not to be loaded unless duly passed by proper officer

This section applies to all types of conveyances. The goods can be taken on board only if they are accompanied by the following documents:

- (i) In case of export goods other than baggage and mail bags, the goods shall be accompanied by
 - Shipping Bill (at seaports/airports)
 - Bill of Export (at Land Customs Station)
 - Bill of Transhipment (for transhipment goods)
 all duly passed by the proper officer.
- (ii) In case of baggage and mail bags – they should be permitted by Customs for export.

Section 41 Export General Manifest

The person-in-charge of conveyance carrying export goods or **imported goods** shall, before departure of the conveyance, deliver to the proper officer an electronically **departure manifest** or export manifest (in the case of a vessel or aircraft) or export report (in the case of a vehicle), in the **such form and manner as may be prescribed and in case, the person-in-charge fails to deliver the departure manifest or export manifest or the export report or any part thereof within such time, and the proper officer is satisfied that there is no sufficient cause for such delay, such person-in-charge shall be liable to pay penalty not exceeding fifty thousand rupees.** The Principal Commissioner or Commissioner of Customs may, in cases where it is not feasible to deliver **departure manifest** or export manifest (**please browse google to see format of EGM**) by presenting electronically, allow the same to be delivered in any other manner. Penalty 50,000 fails to deliver on time with no sufficient cause for such delay. Departure manifest or Export Manifest/report can be amended/supplemented.

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Section 41A Passenger and crew departure manifest and passenger name record information

- (a) Person-in-charge to file departure manifest: the person-in-charge of a conveyance that departs from India to a place outside India or any other person as may be specified by the Central Government by notification in the Official Gazette, shall deliver to the proper officer—
- the passenger and crew departure manifest; and
 - the passenger name record information of departing passengers, in such form, containing such particulars, in such manner and within such time, as may be prescribed.
- (b) If passenger manifest is not presented within time limit, proper officer may levy penalty not exceeding Rs. 50,000.

Section 42 No Conveyance to leave without written order

No such order shall be given by the proper officer until, -

- The person-in-charge has answered the questions put to him under section 38 of the Act.
- The provisions of Section 41 have been complied with;
- The shipping bill or bills of export, the bills of transshipment, if any, and such other documents as the proper officer may require have been delivered to him.
- All duties leviable on any stores consumed in such conveyance, and all charges and penalties due in respect of such conveyance or from the person-in-charge thereof have been paid or the payment secured by such guarantee or deposit of such amount as the proper officer may direct.
- The person-in-charge of the conveyance has satisfied the proper officer that no penalty is leviable on him under section 116 or the same is secured by such guarantee or deposit of such amount as the proper officer may direct.
- In any case, where any export goods have been loaded without payment of export duty or in contravention of any provision of this Act or any other law for the time being in force relating to export of goods, -
 - such goods have been unloaded, or
 - where the Assistant / Deputy Commissioner is satisfied that it is not practicable to unload such goods, person-in-charge of conveyance has given an undertaking, secured by such guarantee or deposit of such amount as proper officer may direct, for bringing back the goods to India.

Section 50 Entry of Goods for Exportation

The exporter of goods shall make the entry of such goods by presenting electronically **on the customs automated system** to the proper officer **in such form and manner as may be prescribed** :

- a shipping bill (in case of goods to be exported in a vessel or aircraft); or
- a bill of export (in case of goods to be exported by land).

In exceptional case, it can be presented in physical form.

The exporter who presents a shipping bill or bill of export under this section shall ensure the following, namely:—

- the accuracy and completeness of the information given therein;**

- (b) the authenticity and validity of any document supporting it; and
- (c) compliance with the restriction or prohibition, if any, relating to the goods under this Act or under any other law for the time being in force.

Section 51 Clearance of Goods for Exportation

After the shipping bill is filed, they are presented for the customs appraisal. Here also there are two parts namely, scrutinizing assessment and physical check of assessment. Since the export regulations are not strict and rigid, these procedures are very simple. After the customs officer is satisfied that the goods are not prohibited and the exporter has paid the duty and other charges payable in respect of same, he makes the order for shipment on the duplicate copy of the shipping bill. This is known as "Let Export" orders.

Such order may also be made electronically through the customs automated system on the basis of risk evaluation through appropriate selection criteria.

However, Central Government may permit certain class of exporters to make deferred payment of said duty or any charges in such manner as may be provided by rules.

Further, in case of deferred payment of duty, where the exporter fails to pay the export duty, either in full or in part, by such due date as may be specified by rules, he will have to pay interest on said duty not paid or short paid till the date of its payment. The Central Government will notify the rate of interest within a range of 5% p.a. to 36% p.a.

According to the Notice of Short Export Rules, 1963, if any goods mentioned in a shipping bill or bill of export and cleared for exportation are not exported, the exporter shall, within seven days, from the date of departure of the conveyance by which such goods were exported, furnish the prescribed information to the proper officer in respect of such goods.

Section 51A Payment of duty, interest, penalty, etc

- (1) Every deposit made towards duty, interest, penalty, fee or any other sum payable by a person under the provisions of this Act or under the Customs Tariff Act, 1975 or under any other law for the time being in force or the rules and regulations made thereunder, using authorised mode of payment shall, subject to such conditions and restrictions, be credited to the electronic cash ledger of such person, to be maintained in such manner, as may be prescribed.
- (2) The amount available in the electronic cash ledger may be used for making any payment towards duty, interest, penalty, fees or any other sum payable under the provisions of this Act or under the Customs Tariff Act, 1975 or under any other law for the time being in force or the rules and regulations made thereunder in such manner and subject to such conditions and within such time as may be prescribed.
- (3) The balance in the electronic cash ledger, after payment of duty, interest, penalty, fee or any other amount payable, may be refunded in such manner as may be prescribed.
- (4) Notwithstanding anything contained in this section, if the Board is satisfied that it is necessary or expedient so to do, it may, by notification, exempt the deposits made by such class of persons or with respect to such categories of goods, as may be specified in the notification, from all or any of the provisions of this section.

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Section 83 Relevant date for Rate of duty and tariff valuation in respect of goods imported or exported by post or courier

- (i) For good imported by post/courier: The date when the postal authorities or the authorized courier present to the proper officer a list containing the particulars of such goods for purpose of assessing the duty thereon. However, if such goods are imported by a vessel and the list was presented before the date of the arrival of the vessel, then it shall be deemed to have been presented on the date of such arrival.
- (ii) For goods exported by post/courier: The date when the exporter delivers such goods to the postal authorities or the authorized courier for Exportation.

Provision related to Stores

It has been found convenient to allow imported ships stores to be kept in a bonded warehouse and thereafter supply it to vessels/aircraft as and when required. Normally when imported goods are allowed to be kept in a warehouse the importer is required to bind him to pay the duty on the imported goods. It is customary to assess the imported goods to determine the amount of duty payable thereon before permitting such imported goods to be warehoused. In the case of ships stores such a detailed procedure is considered to be unnecessary.

Hence section 85 provides for warehousing ship stores without assessment to duty. It provides that "where any imported goods are entered for warehousing and the importer makes and subscribes to a declaration that the goods are to be supplied as stores to vessels or aircraft, without payment of import duty under this chapter the proper officer may permit the goods to be warehoused without the goods assessed to duty."

When a foreign going vessel or aircraft enters territorial water, subsection (i) of section 86 permits the stores on board such vessel or aircraft to remain on board without payment of duty during its stay in Indian waters. Again, in transshipment cases, when such stores are transferred to any foreign going vessel or aircraft or to an Indian naval vessel for consumption, they are permitted to do so without payment of any duty vide subsection (2) of this section.

Section 87 of the Customs Act provides that any imported stores on board a vessel or aircraft (other than stores to which section 90 applies) may, without payment of duty, be consumed during the period such vessel or aircraft is a foreign going vessel or aircraft. This covers the situation between the first Indian port/airport of arrival to the final Indian port/airport of departure to a destination outside India. In other words, no duty is leviable as long as the vessel/aircraft is a foreign going vessel/ aircraft. However, if the vessel/aircraft ceases to be so and converts to a total run/local flight, duty will be chargeable on the stores on board.

In case of imported shipstores, which have been re-exported after the import duties for the same have been paid, the original import duty paid is eligible as drawback. However a special provision has been made in this regard for stores like fuel and lubricants oil taken on board any foreign going aircraft whereby the whole of the import duty paid is eligible as drawback as against 98% eligible for other imported goods. Imported goods can be exported without clearing it for home consumption on payment of duty from the warehouse under Section 69.

Section 89 of the Customs Act covers the case of indigenous goods, which are supplied to a vessel as ship stores. It states that goods produced or manufactured in India and required as stores on any foreign going vessel or aircraft may be exported free of duty in such quantities as the proper officer may determine having regard to the size of the vessel or aircraft, the number of passengers and the crew and the length of the

voyage or journey on which the vessel or aircraft is about to depart. In a nutshell, the duty-free supply of ships stores, should be reasonable and not in commercial quantities.

Following are the special provisions in relation to supply of stores to Naval vessels (Section 90):

- (i) Stores for the use in a ship of the Indian Navy and stores supplied free by the Government for the use of the crew of a ship of the Indian Navy, in accordance with their conditions of service, may be supplied without payment of duty to be consumed on board the ship of Indian Navy.
- (ii) The provisions of section 69 and Chapter X shall apply as they apply to other goods. However, they will be entitled to drawback of the whole of the duty of customs if any paid therein, instead of 98% alone otherwise applicable.

Section 78 Date for determination of rate of duty and tariff valuation

The rate of duty and tariff valuation applicable to the baggage shall be the rate of duty and valuation in force on the date on which a baggage declaration is made under Section 77 to the proper officer. In case if such declaration has been made before the arrival of vessel, then it shall be deemed to have been made on the date of arrival of the vessel.

The rate of duty applicable in respect of baggage is as under –

Description of articles	Rate
Any article the value of which exceeds the duty free allowance admissible to such passenger or member under the Baggage Rules, 2016.	35% ad valorem
On the unaccompanied baggage.	35% ad valorem

Section 80 Temporary Detention of Baggage

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



One laptop computer (notebook computer) is exempted from whole of the duty of Customs when imported by a passenger (other than member of crew) of the age of 18 years or above vide Notification No. 11/2004-Cus., dated 8-1-2004.

Rule 3 Passengers arriving from countries other than Nepal, Bhutan or Myanmar

Passenger shall be allowed clearance free of duty articles in his bona fide baggage, that is to say, -

- (a) used personal effects (i.e. things required for satisfying daily necessities but does not include jewellery) and travel souvenirs; and
- (b) Articles, other than those mentioned in Annexure I, carried on the person or in the accompanied baggage of the passenger upto a value mentioned below –

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Study Notes

Passengers	Duty free allowance
➤ (i) Indian resident; or (ii) Foreigner residing in India; or (iii) Tourist of Indian origin.	Rs.50,000
➤ Tourist of foreign origin	Rs.15,000

Where the passenger is an infant i.e. a child not more than two years of age, only used personal effects shall be allowed duty free.

Jewellery eligible for GFA under Rule 3 and Rule 4: Jewellery has been specifically excluded from personal effects. The same is not eligible for full exemption as applicable in case of used personal effects. Gold or silver in any form other than ornaments is specifically included in Annexure I. Hence, Ornaments becomes eligible for GFA under Rule 3 and 4 within the monetary limits specified in the said Rules. The special provision for jewellery under Rule 5 may be regarded as an additional allowance subject to conditions specified in the said rule.

Rule 4 Passengers arriving from Nepal, Bhutan or Myanmar

Passenger shall be allowed clearance free of duty articles in his bona fide baggage, that is to say, -

- Used personal effects (i.e. things required for satisfying daily necessities but does not include jewellery) and travel souvenirs; and
- Articles, other than those mentioned in Annexure I, carried on the person or in the accompanied baggage of the passenger upto a value mentioned below –

Passengers	Duty free allowance
(i) Indian resident; or (ii) Foreigner residing in India; or (iii) Tourist	Rs.15,000

Where the passenger, is arriving by land, only used personal effects shall be allowed duty free.

Note: Pooling not permissible: The General Free Allowance (GFA) of a passenger under this rule shall not be allowed to be pooled with the free allowance of any other passenger.

Rule 5 Jewellery Allowance

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

Passenger residing abroad for more than one year	➤ Gentleman: Jewellery upto a weight, of <u>20 grams with a value cap of Rs.50,000.</u> ➤ Lady: Jewellery upto a weight, of <u>40 grams with a value cap of Rs.1,00,000.</u>
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Rule 6 Transfer of residence

A person, who is engaged in a profession abroad, or is transferring his residence to India, will be allowed duty free clearance of articles on his return in the manner given in the Appendix below.

This allowance would be in addition to the general duty free baggage allowance under rule 3 or 4, as the case may be.

Duration of stay abroad	Articles allowed free of duty	Conditions	Relaxation
From 3 months upto 6 months	Personal and household articles, other than those mentioned in Annexure I or Annexure II but including articles	Indian passenger	-

Duration of stay abroad	Articles allowed free of duty	Conditions	Relaxation
	mentioned in Annexure III upto an aggregate value of Rs.60,000.		
From 6 months upto 1 year	Personal and household articles, other than those mentioned in other than those mentioned in Annexure I or Annexure II but including articles mentioned in Annexure III, upto an aggregate value of Rs.1,00,000.	Indian passenger	-
Minimum stay of 1 year during the preceding 2 years.	Personal and household articles, other than those mentioned in Annexure I or Annexure II but including articles mentioned in Annexure III upto an aggregate value of Rs.2,00,000.	The Indian passenger should not have availed this concession in the preceding 3 years.	-
Minimum stay of 2 years or more.	Personal and household articles, other than those listed at Annexure I or Annexure II but including articles mentioned in Annexure III, upto an aggregate value of Rs.5,00,000.	(i) Minimum stay of 2 years abroad, immediately preceding the date of his arrival on transfer of residence;	Shortfall upto 2 months in stay abroad can be condoned by Deputy Commissioner of Customs or Assistant Commissioner of Customs if the early return is on account of:- (i) terminal leave or vacation being availed of by the passenger; or (ii) any other special circumstances for reasons to be recorded in writing.
		(ii) Total stay in India on short visit during the 2 preceding years should not exceed 6 months; and	The Principal Commissioner of Customs or Commissioner of Customs may condone short visits in excess of 6 months in special circumstances for reasons to be recorded in writing.
		(iii) Passenger has not availed this concession in the preceding 3 years.	No relaxation.

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Rule 7 Currency

The import and export of currency under these rules will be governed in accordance with the provisions of the Foreign Exchange Management (Export and Import of Currency) Regulations, 2015 and the notifications issued thereunder,

Rule 8 Unaccompanied Baggage

The various provisions in the above rules are also applicable to the unaccompanied baggage, unless specifically excluded, if unaccompanied baggage had been in possession, abroad, of the passenger and is dispatched within 1 month of his arrival in India or such further period as the Deputy/Assistant Commissioner may allow.

The said unaccompanied baggage can also land in India upto 2 months before the arrival of the passenger. However, if the passenger is not able to arrive in India within two months due to circumstances beyond his control like sudden illness to himself or any member of family, natural calamities, disturbed conditions, disruption of the transport or travel arrangements in the country etc., the Deputy/Assistant Commissioner may extend the said period of 2 months upto a maximum of 1 year for reasons to be recorded.

Rule 9 Crew Baggage

These baggage rules are also applicable to the members of the crew engaged in foreign going conveyance for importation of their baggage, when they are finally paid off on termination of their engagement.

However, other crew members of a vessel and aircraft will be allowed to bring items like chocolates, cheese, cosmetics and other petty gift items for their personal or family use for a value not exceeding Rs. 1500.

Note:-

★ Family, under these rules, includes all persons who are residing in the same house and form part of the same domestic establishment.

Goods listed in Annexure I (See Rule 3, 4 & 6)

1. Fire arms.
2. Cartridges of fire arms exceeding 50.
3. Cigarettes exceeding 100 sticks or cigars exceeding 25 or tobacco exceeding 125 gms.
4. Alcoholic liquor or wines in excess of two litres.
5. Gold or silver in any form other than ornaments.
6. Flat Panel (Liquid Crystal Display/Light-Emitting Diode/Plasma) television.

Goods listed in Annexure II (See Rule 6)

1. Colour Television.
2. Video Home Theatre System.
3. Dish Washer.
4. Domestic Refrigerators of capacity above 300 litres or its equivalent.
5. Deep Freezer.
6. Video camera or the combination of any such Video camera with one or more of the following goods,

namely:-

- (a) television receiver;
- (b) sound recording or reproducing apparatus;
- (c) video reproducing apparatus.
7. Cinematographic films of 35 mm and above.
8. Gold or Silver, in any form, other than ornaments.

Goods listed in Annexure III (See Rule 6)

1. Video Cassette Recorder or Video Cassette Player or Video Television Receiver or Video Cassette Disk Player.
2. Digital Video Disc player.
3. Music System.
4. Air-Conditioner.
5. Microwave Oven.
6. Word Processing Machine.
7. Fax Machine.
8. Portable Photocopying Machine.
9. Washing Machine.
10. Electrical or Liquefied Petroleum Gas Cooking Range
11. Personal Computer (Desktop Computer)
12. Laptop Computer (Note book Computer)
13. Domestic Refrigerators of capacity up to 300 liters or its equivalent.

Example 1. Mr. A, an Indian entrepreneur, went to London to explore new business opportunities on 01.04.2016. His wife also joined him in London after three months. The following details are submitted by them with the Customs authorities on their return to India on 15.04.2017:

- (a) used personal effects worth Rs. 80,000,
- (b) 2 music systems each worth Rs. 50,000,
- (c) the Jewellery brought by Mr. A worth Rs. 48,000 [20 grams] and the Jewellery brought by his wife worth Rs. 96,000 [40 grams].

A. There is no duty liability on the Jewellery brought by Mr. A. as he had stayed abroad for period exceeding 1 year and weight of the Jewellery brought by him is 20 grams with a value less than Rs. 50,000.

However, his wife is not eligible for this additional Jewellery allowance as she had stayed abroad for a period of less than a year. Thus, she has to pay customs duty on the entire amount of Jewellery brought by her as she has already exhausted the general duty free baggage allowance of Rs. 50,000 allowed under rule 3.

Example 2. After visiting USA for a month, Mrs. & Mr. X (Indian residents aged 40 and 45 years respectively) brought to India a laptop computer valued at Rs. 80,000, used personal effects valued at Rs. 90,000 and a personal computer for Rs. 52,000. What is the customs duty payable?

A. One laptop computer when imported into India by a passenger of the age of 18 years or above (other than member of crew) is exempt from whole of the customs duty [Notification No. 11/2004 Custom dated 08.01.2004]. Accordingly, there will be no customs duty on used personal effects (worth Rs. 90,000) of Mrs. and Mr. X and laptop computer brought by them will be exempt from duty.

Duty payable on personal computer after exhausting the duty free baggage allowance will be Rs. 52,000 – Rs. 50,000 = Rs. 2,000.

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Effective rate of duty for baggage = 38.50% [including SWS]

Therefore, total customs duty = Rs. 770

Provision related to Transit & Transshipment

Section 52 Chapter not to apply to baggage, postal articles and store

Section 53 Transit of certain goods without payment of duty

Subject to the provisions of section 11, where 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, the proper officer may allow the goods and the conveyance to transit without payment of duty, subject to such conditions, as may be prescribed.

Section 54 Transshipment of goods without payment of duty

- (1) Where any goods imported into a customs station are intended for transshipment, a bill of transshipment shall be presented to the proper officer in the **such form and manner as may be prescribed**. Where the goods are being transferred under an international treaty or bilateral agreement between the Government of India and Government of a foreign country, a declaration for transshipment instead of a bill of transshipment shall be presented to the proper officer in the **such form and manner as may be prescribed**.
- (2) Subject to the provisions of section 11, 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 to any place 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 customs 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 are bona fide intended for transshipment 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.

Basis of difference	Transit	Transshipment
Statutory provision	Section 53 of the Customs Act, 1962 provides for transit of goods.	Section 54 of the Customs Act, 1962 provides for transshipment of goods.
Conveyance	In case of transit of goods, goods are allowed to remain on the same conveyance.	In case of transshipment of goods, the conveyance changes i.e. the goods are unloaded from one conveyance and loaded in another conveyance.

Documentation	In case of transit, the record already made in the ships / aircraft's manifest continues. The imported goods are shown in the manifest as the same bottom cargo. Thus, there is continuity in the records and there is no chance of the control over such transit goods being lost.	In transshipment of goods, continuity in the records is not maintained as the goods are transferred to another conveyance.
Supervision	No supervision is required for transit goods.	Transshipment takes place under the supervision of the proper officer.
Additional Formalities	No additional conditions or formalities are required.	Specific conditions are imposed if the goods are deliverable at Indian port.
Port	Transit is allowed in every port normally.	Transshipment is allowed in specified ports only.

Section 55 Liability of duty on goods transited under section 53 or transhipped under section 54

Where any goods are allowed to be transited under section 53 or transhipped under sub-section (3) of section 54 to any customs station, they shall, on their arrival at such station, be liable to duty and shall be entered in like manner as goods are entered on the first importation thereof and the provisions of this Act and any rules and regulations shall, so far as may be, apply in relation to such goods.

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

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

Coastal Goods

- Goods, other than Imported Goods, transported in a vessel from one port in India to another.
- Loading/Unloading permitted only at Customs Port, along with proper "Bill of Coastal Goods"
- Entries should be made in "Advice Book" supplied to Master of Vessel by Customs Authorities.
- "Advice Book" shall be delivered to Proper Officer at each Port of call, who shall make entries therein relating to Goods unloaded at the Port.
- Departure Permission is given for vessel only on compliance with applicable provisions.

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Can the time-limit prescribed under section 48 of the Customs 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 Act? CCus v. Shreeji Oversees (India) Pvt. Ltd. 2013 (289) ELT 401 (Guj.)	The aforesaid question came up for consideration before the High Court. The High Court noted that though section 46 does not provide for any time-limit for filing a bill of entry by an importer upon arrival of goods, section 48 permits the authorities to sell the goods after following the specified procedure, provided the same are not cleared for home consumption/ warehoused/ transhipped within 30 days of unloading the same at the customs station. The High Court however held that the time-limit prescribed under section 48 for clearance of the goods within 30 days cannot be read into section 46 and it cannot be inferred that section 46 prescribes any time-limit for filing of bill of entry.
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Question & Answer

Q1. 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.

A. As per section 47(2) of Customs Act, interest is 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.

Q2. 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.

A. 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 transhipped 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.

Q3. 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.

A. 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

Q4. 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?

A. 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
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Study Notes

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

Q5. 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	1505-2017
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%

A. 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, -

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

Q6. 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?

A. 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.

Q7. What is the relevant date for determination of rate of duty under the Customs Act, 1962 in the case of clearance of baggage?

A. 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.

Chapter 6: - Warehousing

Section 2 (43)	<u>"Warehouse" means a public warehouse licensed under section 57; or a private warehouse licensed under section 58; or a special warehouse licensed under section 58A.</u>		
Section 57 Licensing of public warehouses	The Principal Commissioner of Customs or Commissioner of Customs may, subject to such conditions as may be prescribed, licence a public warehouse wherein dutiable goods may be deposited.		
Section 58 Licensing of private warehouses	The Principal Commissioner of Customs or Commissioner of Customs may, subject to such conditions as may be prescribed, licence a private warehouse wherein dutiable goods imported by or on behalf of the licensee may be deposited.		
Section 58A Licensing of special warehouses	The Principal Commissioner of Customs or Commissioner of Customs may license special warehouses wherein dutiable goods may be deposited. Such warehouse shall be caused to be locked by the proper officer and no person shall enter the warehouse or remove any goods there from without the permission of the proper officer. Goods to be notified by CBEC can be kept in such warehouse i.e. gold, silver, other precious & semi-precious metals etc.		
Comparison between various warehouses			
	Public Warehouse	Private Warehouse	Special Warehouses
Nature of goods	Any dutiable goods may be stored	Dutiable goods imported by or on behalf of licensee may be deposited	Class of dutiable goods notified by CBEC are deposited in the special warehouse
Control by Customs Act	Only record based control - systems liberalized	Only record-based control - system Liberalized	Customs Lock based control i.e. such warehouse is caused to be locked by proper officer and no person shall enter warehouse or remove any goods therefrom without the permission of the proper officer.
Section 58B Cancellation of license	Cancellation of License by Principal Commissioner of Customs or Commissioner on breach of conditions by the licensee. Opportunity of being heard to license before such cancellation. Suspension of warehousing operations during the pendency of an enquiry under Section 58B(1). No goods to be deposited during suspension period. Goods to be removed within 7 days of cancellation to another warehouse or be cleared for home consumption or export.		
Section 59 Warehousing bond	• An importer desirous of warehousing the goods without paying customs duties needs to execute an indemnity bond to cover the risk to government revenue. • The bond can be executed in respect of a particulars consignment [Consignment Bond] or it can be a General Bond to cover the duty on goods to be imported by the person during a specified period. • In addition to the bond, importer will also be required to furnish security as may be prescribed. • The importers are required to submit bond for an amount equal to thrice the duty amount involved. The rationale being that the importer's potential liability can extend to duty plus a mandatory penalty of 100%, as well as fine and interest.		

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	- When the importer executes a bond in a sum equal to thrice the amount of the duty assessed on such goods, he thereby bind himself— - to comply with all the provisions of the Customs law in respect of such goods; - to pay, on or before the date specified in the notice of demand, all duties and interest payable under section 61(2); and - to pay all penalties and fines incurred for the contravention of the provisions of the customs law, in respect of such goods. - The Assistant/Deputy Commissioner of Customs may permit an importer to execute a general bond in such amount as he may approve in respect of the - The bond amount is determined by AC/DC of Customs having regard to record of past imports warehoused, duty involved and anticipated imports. - The bond will continue to be in force notwithstanding the transfer of the goods to another warehouse. - If the warehoused goods are transferred to another person (either wholly or partially), the transferee will have to execute the bond and furnish prescribed security.
Section 60 Permission for removal of goods for deposit in warehouse	- When the provisions of Section 59 have been complied with in respect of any goods, the proper officer may make an order permitting removal of the goods from a customs station for the purpose of deposit in a warehouse. <i>Provided that such order may also be made electronically through the customs automated system on the basis of risk evaluation through appropriate selection criteria.</i> - Where an order is made under Section 59(1), the goods shall be deposited in a warehouse in such a manner as may be prescribed.

Section 61 Period for which goods may remain warehoused

Time period for which different class of goods may be warehoused and interest provisions are tabulated as under:

	Class of goods	Time for which the goods may remain warehoused	Interest provisions	
(1)	Goods for use in any 100% EOU / EHTP / STP/ warehouse where manufacture or other operations are permitted u/s 65			
	(i) Capital goods	Till the clearance of such goods from warehouse	No interest is payable as goods can remain in the warehouse till their clearance or consumption	
	(ii) Other goods	Till the consumption or clearance of such goods		
(2)	Goods other than (1) above.	Till the expiry of 1 year from the date of order u/s 60(1) permitting removal of goods from a customs station for deposit in warehouse	Interest will be payable if goods remain in the warehouse beyond 90 days from the date on which the order u/s 60(1) is made.	
			Rate of interest	Rate fixed u/s 47 which is 15% p.a.
			Amount on which interest is payable	Duty payable at the time of clearance of the goods.

			Period for which interest is payable	from the expiry of the 90 days till the date of payment of duty on the warehoused goods.
Example 1 (ICAI Examples). 'X', an importer, (other than 100% EOU, STP unit, EHTP unit) imported some goods and deposited them in the warehouse on 12.04.20XX. These goods were re-exported without payment of duty on 15.08.20XX. With reference to the Customs Act, 1962, discuss whether any interest under section 61(2) of the Customs Act, 1962 is payable by 'X'? As per section 61(2) of the Customs Act, 1962, if goods (belonging to importer other than 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 <i>Pratibha Processors v. UOI</i> 1996 (88) ELT 12 (SC), the Apex Court has held that when goods at the time of removal from warehouse are wholly exempted from payment of duty, the liability to pay interest cannot be saddled on a non-existing duty. Liability to pay interest under section 61(2) of the Customs Act is solely dependant upon the exigibility or actual liability to pay duty. In case the liability to pay duty is nil, then, the interest will also be nil. Therefore, since in this case the goods have been re-exported without payment of duty, no interest is payable by 'X'. Example 2 (ICAI Example). The assessee, (other than 100% EOU, STP unit, EHTP unit) imported capital goods and deposited them in the warehouse. The said goods were not removed from the warehouse within the period permitted under section 61(1)(c) i.e., one year. Subsequently, the assessee filed an application for relinquishment of title of such warehoused goods. The Department contended that since the assessee did not file an application for extension of warehousing period before the expiration of period fixed under section 61(1)(c), after expiration of the said period, the goods could no longer be termed as warehoused goods. Therefore, the assessee lost its title to the same and consequently, it lost its right to relinquish its title thereto. It was further claimed that the relinquishment of title to the said goods ought to have been made by the assessee before the expiration of the warehousing period and not thereafter, and therefore, the goods were deemed to have been improperly removed from the warehouse. Consequently, the assessee became liable to pay duty together with interest, fine and penalties payable in respect of such goods, as provided under section 72(1)(b) of the Customs Act, 1962. The facts of the given case are similar to the facts of the case of <i>Commissioner Customs v i2 Technologies Software (P) Ltd.</i> 2007 (217) ELT 176 (Kar.). In the instant case, the High Court rejected the Department's contention that on the expiration of the warehousing period or on the expiration of extended warehousing period, the owner of the goods loses his title in respect of such goods and consequently, also loses his right to relinquish his title to such warehoused goods. The High Court elaborated that on a plain reading of the provisions of section 23(2), 47, 68 and the proviso to section 68 of the Customs Act, 1962, it is clear that the owner of warehoused goods has the right to relinquish his title to goods at any time before an order for clearance of goods for home consumption has been made in respect thereto. There is no prohibition on relinquishing the title to such goods after the expiration of the warehousing period or after the expiration of the extended period. The High Court pointed out that the provisions of section 23(2) and proviso to section 68 make it clear that upon relinquishment of				

his title to any imported goods, including the warehoused goods, the owner of such goods shall not be liable to pay duty thereon and when the owner is not liable to pay duty, the question of paying any interest on the duty and penalty would not arise.

Therefore, in the instant case, the Department's contention is not correct.

Section 64 Owner's right to deal with warehoused goods	The owner of any warehoused goods may, after warehousing the same, - - Inspect the goods; - Deal with their containers to prevent loss or deterioration or damage to the goods; - Sort the goods; or - Show the goods for sale
Section 65 Manufacture and other operations in relation to goods in a warehouse	Owner of goods may manufacture finished goods (FG) using said imported goods: - He has to pay duty levied on imported goods, if FG cleared for home consumption, - If FG is exported, then, no duty levied on imported goods but duty is leviable on waste portion (rate and value of waste) of export goods, if waste is not destroyed. Note: No fees is to be paid to Customs for supervision of manufacturing facilities under Bond. Principal Commissioner or Commissioner is empowered to license facilities.
Section 67 Removal of goods from one warehouse to another	The owner of any warehoused goods may, with the permission of the proper officer, remove them from one warehouse to another, subject to such conditions as may be prescribed for the due arrival of the warehoused goods at the warehouse to which removal is permitted.
Section 68 Clearance of warehoused goods for home consumption	The importer of any warehoused goods may be cleared from the warehouse for home consumption only on the fulfillment of the following conditions: - File an ex-bond bill of entry for home consumption, - The Import duty penalties, interest fine in respect of such goods have been paid; and - The proper officer has made an order for clearance of such goods for home consumption. The order may also be made electronically through the customs automated system on the basis of risk evaluation through appropriate selection criteria. <u>Relinquishment of title:</u> The owner of any warehoused goods may relinquish his title to such warehoused goods only: - At any time before an order for clearance of goods for home consumption has been made, and - Upon payment of penalties, if any, in respect of the goods and on such relinquishment, he shall not be liable to pay duty thereon. <u>No relinquishment in case of offence:</u> The owner of any such warehoused goods shall not be allowed to relinquish his title to such goods regarding which an offence appears to have been committed under this Act or any other law for the time being in force.
Section 69 Clearance of warehoused goods for export	Any warehoused goods may be exported to a place outside India without payment of import duty if - - a shipping bill or a bill of export in the prescribed form or a label or declaration accompanying the goods as referred to in section 82 has been presented in respect of such goods. - the export duty, fine and penalties payable in respect of such goods have been paid; and - an order for clearance of such goods for export has been made by the proper officer.

	The order may also be made electronically through the customs automated system on the basis of risk evaluation through appropriate selection criteria. If Central Government is of the opinion that goods of any specified description are likely to be smuggled back into India, it may, by notification in the Official gazette, direct that such goods shall not be exported to any place outside India without payment of duty or may be allowed to be so exported subject to such restrictions and conditions as may be specified in the notification.
Section 70 Allowance in case of volatile goods	The AC/ DC is empowered to remit the import duty leviable on such shortage or deficiency of the warehoused goods on account of natural losses.
Section 72 Goods improperly removed from warehouse, etc.	i. where any warehoused goods are removed from a warehouse in contravention of Section 71; ii. where any warehoused goods have not been removed from a warehouse at the expiration of the period during which such goods are permitted under section 61 to remain in a warehouse; iii. where any goods in respect of which a bond has been executed u/s 59 and which have not been cleared for home consumption or exportation and are not duly accounted for the satisfaction of the proper officer. In case of improper removal of warehoused goods, the proper officer may demand the full amount of import duty chargeable on such goods along with interest, fine and penalties payable in respect of such goods. If any owner fails to pay any amount demanded then the proper officer is authorized to detain and sell such portion of the goods as he may deem fit.
Section 73 Cancellation & return of warehousing bond	It provides for cancellation of bond in case of transfer of ownership of the goods, and is thus aligned with amended section 59.
Section 73A Custody and removal of warehoused goods	(a) All warehoused goods shall remain in the custody of the person who has been granted a licence U/s 57 or U/s 58 or U/s 58A until they are cleared for home consumption or are transferred to another warehouse or are exported or removed as otherwise provided under this Act. (b) The responsibilities of the person referred above who has custody of the warehoused goods shall be such as may be prescribed. (c) Where any warehoused goods are removed in contravention of Section 71, the licensee shall be liable to pay duty, interest, fine and penalties without prejudice to any other action that may be taken against him under this Act or any other law for the time being in force.

Study Notes

Question & Answer

Q1: Explain briefly the difference between “Public Bonded Warehouse” and “Private Bonded Warehouse” under the Customs Act, 1962.

A. 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.

Q2. 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.

A. 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.

Q3. Consider the following cases and compute the amount of import duty, if any, payable in each case –

- 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.
- What will be your answer if in case (a) above, the entire 19,800 Kgs. of steel spoons is sold in the domestic market.
- What will be your answer if in case (a) above, 50% of the steel spoons are exported out of India and balance are sold in the domestic market.

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

- 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 –
 - the steel waste of 200 Kg. is destroyed; or
 - duty is paid on such steel waste as if it had been imported into India in such waste form.
- 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.
- 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).

Q4. 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.

A. It is assumed that waste and refuse has arisen during the course of manufacture of goods in warehouse. The waste or refuse arising during the course of manufacture under bond may be disposed of by any of the following modes and relevant date for rate of duty can be as given herein below:

- (i) If goods manufactured in bond are exported, import duty on the quantity of the warehoused goods contained in the waste or refuse shall be remitted provided that:
 - Such waste or refuse is either destroyed. (In this case relevant date need not be determined);
 - Duty is paid on such waste or refuse as if it had been imported into India in that form. In such a case date of filing bill of entry for clearing waste / refuse for home consumption will be the basis for determining rate of duty.
- (ii) If goods manufactured in bond are cleared from the warehouse for home consumption, import duty shall be charged on the quantity of the warehoused goods contained in so much of the waste or refuse as has arisen from the operations carried on in relation to the goods cleared for home consumption. The relevant date for rate of duty on waste / refuse would be based on date of filing of bill of entry for clearance of goods manufactured in warehouse as per section 15 of Customs Act, 1962.

Q5. 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.

A. 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.

Q6. 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.

A. 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.

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Study Notes

Q7. 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.

A. 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.

Q8. 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.

A.

- (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.

Q9. 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.

A. 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

Q10. Enumerate the circumstances under which goods are considered to have been removed improperly from a warehouse under the Customs Act.

A. 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:-

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

Q11. "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.

A. The said statement is valid. 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.

Study Notes

Chapter 7: - Duty Drawback

Section 74	Drawback allowable on re-export of duty paid goods
Section 75	Drawback on materials used in the manufacturer of exporter goods
Re-export of imported goods (Drawback of customs duties) Rules, 1995	
Customs & Central Excise Duties Drawback Rules, 2017	
Section 75A	Interest on Drawback
Section 76	Prohibition and Regulation of Drawback

Let us consider an example. A machine, worth Rs.10 Crores was imported into India with payment of customs duty of Rs. 2.5 crores. Upon receipt of the machine into the factory it was realized that the machine was only suitable for working in cold temperature and such conditions did not exist in the factory in which it was to be installed.

In this situation, what is to be done? Does the factory have to bear a loss of Rs. 2.5 crores of Customs duty? The answer lies in application of Section 74(1) of the Customs Act, which enables an importer to claim 98% of the duty as drawback (or refund) provided that:

1. Goods are re-exported;
2. Identity of the goods are established – imported goods are re-exported;
3. Not more than 2 years has elapsed from the date of payment of duty on import

Basis	Drawback allowable on re-export of duty paid goods (Section 74)	Drawback on materials used in the manufacturer of exporter goods (Section 75)
Meaning of drawback	Drawback in relation to any goods exported out of India, means the refund of duty or tax or cess as referred to in the Customs Tariff Act, 1975 and paid on importation of such goods in terms of section 74 of the Customs Act. Accordingly, drawback under section 74 would include refund of integrated tax and compensation cess along with basic customs duty, etc.	“Drawback” in relation to any goods manufactured in India and exported, means the rebate of duty excluding IGST leviable u/s 3(7) and compensation cess leviable u/s 3(9) of the Customs Tariff Act, 1975 chargeable on any imported materials or excisable materials used in the manufacture of such goods. GST has to be taken as credit or refund as per the provisions of CGST Act & rules.
Identity	Identity of goods should be established	No such condition specified.
Eligibility	All goods are eligible.	Only goods specified by Central Government in this behalf are eligible.
Nature of goods exported	The exported goods should have been imported and customs duty be paid thereon.	The goods exported may be manufactured or processed from imported or indigenous inputs or by utilizing input services.
Rate of Duty drawback	Duty drawback is allowed @ 98% of the import duty, if the goods are exported without use and in case if they are taken into use drawback is allowed at notified rate depending upon the period of use.	Duty drawback is allowed as per All Industry Rate notified by the Drawback Directorate. In case if no rate is notified, then the exporter can apply for Brand rate and in case if duty drawback as per All Industry Rate is less than 80% of the duty paid on importation, then the exporter can apply for Special Brand Rate.
Time limit for export	The goods must be exported within 2 years from the date of payment of duty or such extended time as allowed by Board	No time limitation.

Basis	Drawback allowable on re-export of duty paid goods (Section 74)	Drawback on materials used in the manufacturer of exporter goods (Section 75)
Requirement of Value addition	There is no requirement of minimum value addition.	There should not be any negative value addition and minimum value addition must be achieved, if specified.
Use	Imported goods are taken into use and then exported – Duty Drawback allowed.	If the goods manufactured from imported material are used in India and subsequently exported then no duty drawback shall be allowed (subject to certain exceptions).
Realization in convertible foreign exchange	There is no condition as to realization in foreign exchange.	Realization in foreign exchange is must. If exporter fails to realize in foreign exchange, then drawback paid becomes recoverable with interest.
Rules framed	Re-export of Imported goods (Drawback of Customs Duties) Rules, 1995.	Customs and Central Excise Duties Drawback Rules, 2017.
Export in form of Baggage	The goods can be exported as Baggage.	The goods cannot be exported as Baggage.
Entered for exportation	The goods so imported must have been entered for exportation either- (a) Under Section 51; or (b) Under Section 77 as baggage; or (c) Under Section 84 (a) by post, And the proper officer must have made an order for permitting clearance of goods for exportation.	The goods must have been entered for exportation either- (a) Under Section 51; or (b) Under Section 84 (a) by post, And the proper officer must have made an order for permitting clearance of goods for exportation.

CBIC has clarified that safeguard duties, anti-dumping duties and countervailing duties are rebatable as drawback in terms of section 75 of the Customs Act.

Following percentages have been fixed as the rates at which drawback of import duty shall be allowed in respect of goods which were used after their importation (Section 74) 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

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Having regard to the international practice, a different percentage of import duty to be paid as drawback has been prescribed in the case of motor vehicles and goods imported by the person for his personal and private use.

In respect of a motor car or goods imported by 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.

Example (ICAI). Spatial Wireless Pvt. Ltd. imported five mainframe computer systems from Flexsonics Computers, USA on 31.01.20XX paying customs duty of Rs. 30.45 lakhs. The computers worked for some time but in June 20XX some technical faults developed in the systems resulting in complete closure of work. On being informed about the problem, Flexsonics Computers sent his technicians from USA, to repair the systems in June 20XX itself. However since no solution was found, the Management of Spatial Wireless Pvt. Ltd re-shipped/returned the goods to Flexsonics Computers, USA on 31.12.20XX.

You are the CFO of the Spatial Wireless Pvt. Ltd. Board of Directors has approached you for advising whether import duty paid can be taken back from the Central Government when goods are sent back. Advise, in the light of the provisions of Customs Act, 1962.

A. Yes, the import duty already paid can be claimed back on five mainframe computer systems imported by Spatial Wireless Pvt. Ltd. in accordance with the provision of section 74 of Customs Act.

Under this section, it is provided that when goods capable of being easily identified, which have been imported into India and upon which duty has been paid on importation are entered for export and the proper officer makes an order permitting clearance and loading of the goods for exportation, 98% of such duty shall be paid back as drawback. However, the goods should be identified to the satisfaction of Assistant Commissioner of Customs as the goods that were imported and the goods should have entered for export within two years from the date of payment of duty on the importation thereof.

Further, it is provided in the section that 98% of drawback shall be allowed only in those cases where the goods have not been used at all after the importation. Various percentages have been fixed by the Government as the amount of drawback payable in respect of goods that are used after their importation.

In the instant case, all the conditions specified in provisions of section 74 are satisfied. The goods are identifiable, import duty has been paid and they are scheduled to be exported within the prescribed time limit. However, the goods have been used for some time. Here, the period between the date of clearance for home consumption and the date when the goods are placed under the customs control for export is more than 9 months, but not more than 12 months. Therefore, Spatial Wireless Pvt. Ltd will be eligible for the drawback claim at the rate of 70% (rate notified by the Government in such case) of the import duty paid.

Re-export of imported goods (Drawback of customs duties)

Rules, 1995

Rule 3 Procedure for claiming drawback on goods exported by post

Goods exported by post

- the outer packing shall carry the words "DRAWBACK EXPORT". The exporter shall deliver to the competent Postal Authority a claim in the prescribed form.
- In case of export by post, the date of filing of drawback claim for the purpose of section 75A would be the date on which the aforesaid claim form is received by the proper officer of customs from the

postal authorities.

- In case the aforesaid claim form is not complete in all respects, the exporter shall be informed of the deficiencies therein within 15 days by a deficiency memo and such claim shall be deemed not to have been received. When the exporter complies with the requirements specified in deficiency memo within 30 days, he shall be issued an acknowledgement. The date of such acknowledgement shall be deemed to be date of filing the claim for the purpose of section 75A.

Rule 4 Statements/Declarations to be made on exports other than by post

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

- state on the shipping bill or bill of export, the description, quantity and such other particulars as are necessary for deciding whether the goods are entitled to drawback under section 74 and make a declaration on the relevant shipping bill or bill of export that-
 - the export is being made under a claim for drawback under section 74 of the Customs Act;
 - that the duties of customs were paid on the goods imported;
 - that the goods imported were not taken into use after importation;

or

 - that the goods were taken in use :

However, the Principal Commissioner/Commissioner of Customs may exempt the exporter or his authorized agent from the provisions of this clause if he is satisfied that failure to comply with the said provisions is due to the reasons beyond his (exporter/authorized agent) control.
- furnish to the proper officer of customs, copy of the Bill of Entry or any other prescribed document against which goods were cleared on importation, import invoice, documentary evidence of payment of duty, export invoice and packing list and permission from Reserve Bank of India to re-export the goods, wherever necessary.

Rule 5 Manner and time of claiming drawback on goods exported other than by post

A claim for drawback under these rules shall be filed:-

- in the prescribed form
- within three months (extendable by another three months)

from the date on which an order permitting clearance and loading of goods for exportation under section 51 is made by proper officer of customs. Extension of the aforesaid time-limit can be done by AC and DC (Custom) – 3 months & Commissioner and Principal Commissioner of Customs and Central Excise by 6 months, subject to prescribed application fee payment.

Documents to be filed along with drawback claim: The claim shall be filed along with the following documents, namely:-

- Triplicate copy of the Shipping Bill bearing examination report recorded by the proper officer of the customs at the time of export.
- Copy of Bill of Entry or any other prescribed document against which goods were cleared on importation.
- Import invoice.
- Evidence of payment of duty paid at the time of importation of the goods.
- Permission from Reserve Bank of India for re-export of goods, wherever necessary.

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- (f) Export invoice and packing list.
- (g) Copy of Bill of lading or Airway bill.
- (h) Any other documents as may be specified in the deficiency memo.

Date of filing of the claim for the purpose of section 75A: The date of filing of the claim for the purpose of section 75A shall be the date of affixing the Dated Receipt Stamp on the claims.

Deficiencies in the claim: In case of incomplete claim/claim without the specified documents, such claim shall be returned to the claimant with the deficiency memo within 15 days of submission and shall be deemed not to have been filed.

Where exporter complies with requirements specified in deficiency memo within thirty days from the date of receipt of deficiency memo, the same will be treated as a claim filed under sub-rule (1).

Customs & Central Excise Duties Drawback Rules, 2017

Rule 2(c)	“Export” means • Taking out of India to a place outside India or • Taking out from a place in Domestic Tariff Area (DTA) to a SEZ and includes supply of stores for use on board a vessel or aircraft proceeding to a foreign port or airport.																								
Rule 3	Drawback may be allowed on the <u>export of goods at such amount, or at such rates, as may be determined by the Central Government i.e. Drawback rate on ‘X’ goods 10%. This apply to all exporters manufacturing ‘X’ goods and this called {All Industry Rate (AIR)}.</u> <u>Drawback is limited to incidence of duties of Customs on inputs used and remnant Central Excise Duty on specified petroleum products used for generation of captive power for manufacture or processing of export goods.</u> Where any goods are produced or manufactured from imported materials or excisable materials, on some of which only the duty chargeable thereon has been paid and not on the rest, or only a part of the duty chargeable has been paid; or the duty paid has been rebated or refunded in whole or in part or given as credit, under any of the provisions of the Customs Act, 1962 and the rules made thereunder, or of the Central Excise Act, 1944 and the rules made thereunder, the drawback admissible on the said goods shall be reduced taking into account the lesser duty paid or the rebate, refund or credit obtained. <i>‘A’ has exported under – mentioned goods under drawback claim –</i> <table><tr><th><i>Description of goods & quantity exported</i></th><th><i>FOB value Rs.</i></th><th><i>Drawback rate (AIR)</i></th></tr><tr><td><i>Leather footwear Boots 200 pairs @ Rs.1,000 per pair</i></td><td><i>2,00,000</i></td><td><i>11% of FOB subject to maximum of Rs. 85 per pair</i></td></tr><tr><td><i>Leather chappals 2000 pairs @ 50 per pair</i></td><td><i>1,00,000</i></td><td><i>3% of FOB subject to maximum of Rs.5 per pair</i></td></tr><tr><td><i>Plastic bangles with embellishment 200 kgs @ Rs.100 per kg</i></td><td><i>20,000</i></td><td><i>Rs.5.00 per kg of plastic content</i></td></tr></table> <i>On examination it is found plastic bangles contents is 50% but the total weight comes to 190 kgs only. Compute drawback on each item and total drawback.</i> <table><tr><th><i>Description</i></th><th><i>FOB Value</i></th><th><i>Rate of Drawback</i></th><th><i>Drawback in Rs.</i></th></tr><tr><td><i>Leather footwear Boots – 200 pairs @ Rs.1,000 per pair</i></td><td><i>2,00,000</i></td><td><i>11% of FOB subject to max of Rs.85 per pair</i></td><td><i>17,000</i></td></tr><tr><td><i>Leather chappals – 2,000 pairs @ Rs.50 per pair</i></td><td><i>1,00,000</i></td><td><i>3% of FOB subject to max Rs. 5 per pair</i></td><td><i>3,000</i></td></tr></table>	<i>Description of goods & quantity exported</i>	<i>FOB value Rs.</i>	<i>Drawback rate (AIR)</i>	<i>Leather footwear Boots 200 pairs @ Rs.1,000 per pair</i>	<i>2,00,000</i>	<i>11% of FOB subject to maximum of Rs. 85 per pair</i>	<i>Leather chappals 2000 pairs @ 50 per pair</i>	<i>1,00,000</i>	<i>3% of FOB subject to maximum of Rs.5 per pair</i>	<i>Plastic bangles with embellishment 200 kgs @ Rs.100 per kg</i>	<i>20,000</i>	<i>Rs.5.00 per kg of plastic content</i>	<i>Description</i>	<i>FOB Value</i>	<i>Rate of Drawback</i>	<i>Drawback in Rs.</i>	<i>Leather footwear Boots – 200 pairs @ Rs.1,000 per pair</i>	<i>2,00,000</i>	<i>11% of FOB subject to max of Rs.85 per pair</i>	<i>17,000</i>	<i>Leather chappals – 2,000 pairs @ Rs.50 per pair</i>	<i>1,00,000</i>	<i>3% of FOB subject to max Rs. 5 per pair</i>	<i>3,000</i>
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	Plastic bangles with embellishment 200 Kgs – Plastic content 50%. Actual weight 190 Kgs only	19,000	Rs. 5 Per Kg of plastic content	475
	Total duty Drawback			20,475
Rule 4	The Central Government may revise amount or rates determined under rule 3.			
Rule 5	As per Rule 5 (3), the provisions of section 16, or sub-section (2) of section 83, of the Customs Act, 1962, shall determine the amount or rate of drawback applicable to any goods exported under these rules. Relevant date shall be:- • Goods exported by filing Bill of Export/Shipping Bill – Date of issuance of “Let Export order/Let Ship Order” • Goods exported by post – Date of delivery of Export Goods to the Postal Authority			
Rule 6	Cases where AIR has not been determined (concept of Brand Rate) Where no amount or rate of drawback has been determined in respect of any goods, any exporter of such goods may, within three months from the date relevant for the applicability of the amount or rate of drawback in terms of sub-rule (3) of rule 5, apply to the Principal Commissioner of Customs or Commissioner of Customs, as the case may be, having jurisdiction over the place of export, for determination of the amount or rate of drawback thereof stating all the relevant facts including the proportion in which the materials or components are used in the production or manufacture of goods and the duties paid on such materials or components. <u>Provisional Drawback</u> Where an exporter desires that he may be granted drawback provisionally, he shall specifically mention in the application his request for allowance of provisional duty drawback. The concerned officer may allow provisionally payment of an amount not exceeding the amount claimed by the exporter. He may require exporter to submit a bond.			
Rule 7	Cases where AIR fixed is low (concept of Special Brand Rate) Where, in respect of any goods, the exporter finds that the amount or rate of drawback determined under rule 3 or, as the case may be, revised under rule 4, for the class of goods is less than 80% of the duties paid on the materials or components used in the production or manufacture of the said goods, he may within three months from the date relevant for the applicability of the amount or rate of drawback in terms of sub-rule (3) of rule 5, make an application to the Principal Commissioner of Customs or Commissioner of Customs, as the case may be, having jurisdiction over the place of export, for determination of the amount or rate of drawback thereof stating all relevant facts including the proportion in which the materials or components are used in the production or manufacture of goods and the duties paid on such materials or components. However, no such application can be made where a claim for drawback under rule 3 or 4 has been made. Procedure for claim of provisional drawback is discussed in Rule 6 above.			
Rule 8	Cases where no amount or rate of drawback is to be determined (whether Brand Rate/Special Brand Rate) 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 If the export value 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.			
Rule 9	The drawback amount or rate determined under rule 3 shall not exceed one third (1/3) of the market price of the export product. Let say Export Price Rs. 2,00,000			

	Indian Market Price	DBK as per AIR (30% of FOB)	DBK Allowed															
	Rs. 50,000	Rs. 60,000 (2,00,000*30%)	Not admissible (Sec. 76)															
	Rs. 90,000	Rs. 60,000 (2,00,000*30%)	Rs. 30,000															
Rule 16	<u>Supplementary Claim</u> Where an exporter finds that the amount of drawback paid to him is less than what he is entitled to on the basis of the amount or rate of drawback determined by the Principal Commissioner/Commissioner, he may prefer a supplementary claim. Time – limit for preferring supplementary claim: <table><tr><th>Case</th><th>Claim to be file within 3 months from -</th></tr><tr><td>(a) In case of All Industry Rates</td><td>The date of publication of such All Industry Rate.</td></tr><tr><td>(b) In case of brand rates or special brand rates</td><td>The date of communication of the said rate.</td></tr></table> Extension of due date of filing the form & fees there for: <table><tr><th>Extending authority</th><th>Period of extension, which can be allowed by the authority</th><th>Fees payable along with the application for grant of extension</th></tr><tr><td>Assistant / Deputy Commissioner</td><td>Further 9 months (beyond original period of 3 months)</td><td>(A) 1% of the FOB value of exports; or (B) Rs. 1000. Whichever is less.</td></tr><tr><td>Principal Commissioner/ Commissioner</td><td>Further 6 months (beyond original period of 3 months & extension of 9 months by AC/ DC)</td><td>(A) 2% of the FOB value; Or (B) Rs.2000 Whichever is less.</td></tr></table>			Case	Claim to be file within 3 months from -	(a) In case of All Industry Rates	The date of publication of such All Industry Rate.	(b) In case of brand rates or special brand rates	The date of communication of the said rate.	Extending authority	Period of extension, which can be allowed by the authority	Fees payable along with the application for grant of extension	Assistant / Deputy Commissioner	Further 9 months (beyond original period of 3 months)	(A) 1% of the FOB value of exports; or (B) Rs. 1000. Whichever is less.	Principal Commissioner/ Commissioner	Further 6 months (beyond original period of 3 months & extension of 9 months by AC/ DC)	(A) 2% of the FOB value; Or (B) Rs.2000 Whichever is less.
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Rule 18	<u>Recovery of amount of drawback where export proceeds are not realized</u> Drawback shall be recovered if sale proceeds not realized within the time limit under FEMA. <u>No recovery of drawback</u> if sale proceeds compensated by ECGC and collection waived by RBI and exporter produces a certificate from the concerned Foreign Mission of India about the fact of non – recovery of sale proceeds from the buyer – Amount of drawback to be recovered where only part of sale proceeds is realized: Amount of drawback to be recovered = $\frac{\text{Sale proceeds not realized}}{\text{Total amount of sale proceeds}} \times \text{Amount of Drawback Paid}$ <u>Realization of export proceeds post-recovery of drawback</u> Where the sale proceeds are realized by the exporter after the amount of drawback has been recovered from him and he produces evidence about such realization <u>within a period of 3 months from the date of realization of sale proceeds</u>, the amount of drawback so recovered shall be repaid. The above stated period of 3 months may be extended for another 9 months by Principal Commissioner/Commissioner, provided the sale proceeds have been realized within the period permitted by the RBI.																	

Section 75A Interest on Drawback

- (a) Accordingly, 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, there shall be paid

to the claimant, in addition to the amount of drawback, interest at the rate fixed under section 27A from the date after the expiry of the said period of one month till the date of payment of such drawback (Interest 6%).

- (b) Where any drawback has been paid to the claimant erroneously or it becomes otherwise recoverable under this Act or the Rules, the claimant shall within a period of 2 months from the date of demand, pay in addition to the said amount of drawback, interest at the rate fixed under section 28AA 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 (Interest 15%).

Example (ICAI). Answer the following with reference to the provisions of the Customs Act, 1962 and rules made thereunder:

(1) Mr. A filed a claim for payment of duty drawback amounting to Rs. 50,000 on 30.07.20XX. However, the amount was received on 28.10.20XX. You are required to calculate the amount of interest payable to Mr. A on the amount of duty drawback claimed.

(2) Mr. X was erroneously refunded a sum of Rs. 20,000 in excess of actual drawback on 20.06.20XX. A demand for recovery of the same was issued by the Department on 28.08.20XX. Mr. X returned the erroneous refund to the Department on 20.10.20XX. You are required to calculate the amount of interest chargeable from Mr. X. Provide brief reasons for your answer.

Answer:

- (1) *Computation of interest payable to Mr. A on duty drawback claimed*

Particulars	Amount
Duty drawback claimed	50,000
No. of days of delay [31.08.20XX to 28.10.20XX]	59 days
Rate of Interest	6%
Quantum of interest (rounded off) [Rs. 50,000 x 59/365 x 6/100]	485

Note: Since the claim of duty drawback is not paid to claimant within 1 month from the date of filing such claim, interest @ 6% per annum is payable from the date after the expiry of the said 1 month period till the date of payment of such drawback [Section 75A(1) of the Customs Act, 1962].

- (2) *Computation of interest chargeable from Mr. X on excess duty drawback paid*

Particulars	Amount
Duty drawback erroneously refunded	20,000
No. of days of delay [21.06.20XX to 20.10.20XX]	122 days
Rate of Interest	15%
Quantum of interest (rounded off) [20,000 x 122/365 x 15/100]	1,003

Note: Interest is payable by the claimant on erroneous refund of duty drawback @ 15% per annum 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) of the Customs Act, 1962].

Section 76 Prohibition and Regulation of Drawback

- (a) Notwithstanding anything herein before contained, no drawback shall be allowed
(i) in respect of any goods, the market price of which is less than the amount of drawback due thereon, {See example on Page No. 111 in Rule 9} ★

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(ii) where the amount of drawback in respect of any goods is less than fifty rupees.

- (b) Without prejudice to the provision of sub- section (I) if the Central Government is of the opinion that goods of any specified description in respect of which drawback is claimed under this chapter are likely to be smuggled back into India, it may by notification in the Official Gazette, direct that drawback shall not be allowed in respect of such goods or may be allowed subject to such restrictions and conditions as may be specified in the notification.

The market price is as prevailing in India and not the price which exporter expects to receive from the foreign customer [Om prakash Bhatia v. CC 2003 ELT 423 (SC)].

ABC India v. Union of India 1992 (61) E.L.T. 205 (Del.) [maintained by Supreme Court]	There is distinction between section 74 and 75 of the Customs Act- section 74 of the Customs Act comes into operation when articles are imported and thereupon exported, such articles being easily identifiable; and section 75 comes into operation when imported materials are used in the manufacture of goods which are exported.
Commissioner of Customs v. India Steel Industries 1993 (67) E.L.T. 760 (G.O.I.)	Rule of interpretation in tariff need not be extended to interpretation of classification under the Drawback Rules.

Question & Answer

Q1. 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.

A. 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).

Q2. Calculate the amount of duty drawback allowable under the Customs Act, 1962 and the rules made thereunder in the following independent cases –

- A Ltd. has exported goods worth Rs. 80,000 (FOB value). Rate of duty drawback on such export of goods in 0.8%
- 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)

A.

- 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).
- 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.

Q3. 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.

A. 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.

Q4. XYZ Company Limited exported a consignment of manufactured goods. The company has paid import duty and Central Excise duty on the components used in the manufacturer. A duty drawback rate has been fixed for these goods. The ship carrying the consignment runs into trouble and sinks in the Indian territorial waters. The Customs Department has refused to grant drawback for the reason that the goods have not reached their destination. As a consultation for M/s. XYZ Limited, prepare a brief note with reasons whether the stand taken by Customs Department is correct in law.

A. The Customs and Central Excise Duties Drawback Rules, 2017 provides that "drawback", in relation to any goods manufactured in India, and exported, means the rebate of duty chargeable on any imported materials or excisable materials used in the manufacture of such goods. As per the said Rules "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 Sun Industries c. CC [1988] 35 ELT 241 (SC), the Supreme Court held that the expression "taking out 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 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.

Q5. 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.

A. 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.

Q6. 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

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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.

A. 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.).

Q7. Calculate the amount of duty drawback allowable under the Customs Act, 1962 in the following cases:

- 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.
- 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.
- 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).

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.
- 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.
- 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. is not entitled to claim duty drawback in this case.

Q8. 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 Horizon Exporters is entitled to duty drawback and if yes, what is the quantum of such duty drawback?

A. 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.

Chapter 8: - Demand & Recovery

Section 28	Recovery of duties not levied or not paid or short levied or short paid or erroneously refunded
Section 28AA	Interest on delayed payment of duty
Section 28AAA	Recovery of duties in certain cases
Section 28A	Power not to recover duties not levied or short-levied as a result of general practice
Section 28B	Duties collected from the buyer to be deposited with the Central Government
Section 28BA	Provisional attachment to protect revenue in certain cases

Section 28 Recovery of Duties not levied or not paid or short levied or short paid or erroneously refunded

Non Evasion Cases

- Notice may be issued within 2 years from relevant date for payment of duty with interest;
- Penalty U/s 28 is payable as follows:-

(A) if dues (duty & interest) are paid before issuance of SCN with intimation to department	Penalty = NIL and no SCN would be issued in respect of said amount, SCN notice may be issued for balance amount, if any, within 2 years from date of intimation to department.
(B) if dues (duty & interest) are paid within 28 days of receipt of SCN	Penalty = NIL and all proceedings shall be deemed to be concluded** in respect of said amount.
It is worthwhile to note that penalty doesn't appear to be <u>mandatory</u> because of <u>use of words 'may' and 'upto'</u> . Hence, in an eligible case, penalty may not be levied at all. However, once levied, payment cannot be waived.	

However, before issuing notice, the proper officer shall hold pre-notice consultation with the person chargeable with duty or interest in the prescribed manner.

Supplementary Notice: The proper officer may issue a supplementary notice under the prescribed circumstances and in prescribed manner, and the provisions of this section shall apply to such supplementary notice as if it was issued under the said sub-section (1) [Sub-section (7A)].

Evasion Cases (Collusion, willful misstatement and suppression of facts)

- Notice may be issued within 5 years from relevant date for recovery of duty along with interest and penalty (called as "extended period of limitation");
- Penalty U/s 28 read with 114A is payable as follows:

(A) if dues (duty, interest & penalty) are paid before issuance of SCN or within 30 days of receipt of SCN	Penalty=15% of duty and all proceedings shall be deemed to be concluded** in respect of said demand.
(B) if dues are paid along with interest and penalty within 30 days from receipt of adjudication order	Penalty = 25% of duty

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(C) in any other case	Penalty = 100% of duty
Above penalty is mandatory and cannot be reduced/waived.	
**Closure of proceedings against "other persons" (co-noticees) under Customs Act 28 (2) and 28 (6) [Circular No. 11/2016-Cus. Dated 15-3-2016]	
i. Other person : Other persons who happen to be co-noticees in SCN for their acts of commission or omission other than demand of duty would be benefited by deemed closure in case of payment by main notice to whom a demand of duty has been issued.	
Seizure/Confiscation matters – Not covered by this Circular: Cases involving seizure of goods u/s 110 of Customs Act, or cases where confiscation provisions under sections 111, 113, 115, 118, 119, 120 and 121 are invoked, would be out of purview of this Circular.	

Supplementary Notice: The proper officer may issue a supplementary notice under the prescribed circumstances and in prescribed manner, and the provisions of this section shall apply to such supplementary notice as if it was issued under the said sub-section (4) [Sub-section (7A)].

- In case of increase in duty, penalty would increase and 30 days for incremental penalty would be counted from date of appellate order.
- Relevant date:

Duty is not levied, or interest is not charged.	Date on which proper officer makes an order for clearance of goods;
Duty is provisionally assessed U/s 18	Date of adjustment of duty after final assessment thereof or re-assessment;
Duty or interest has been erroneously refunded.	Date of refund;
In any other case,	Date of payment of duty or interest.

- Time-limit for determination of amount of duty: The proper officer shall determine the amount of duty/interest under sub-section (8) as per the time schedule given below:-

Particulars	Time Limit (from the date of notice)
Cases involving willful suppression etc	One Year
Cases other than the above	Six Months

Where the proper officer fails to so determine within the specified period, any officer senior in rank to the proper officer may, having regard to the circumstances under which the proper officer was prevented from determining the amount of duty or interest under sub-section (8), extend the period in cases involving willful suppression etc. to a further period of one year, and in other cases to six months.

However, where the proper officer fails to determine within such extended period, such proceeding shall be deemed to have concluded as if no notice had been issued

Non-determination of amount of duty or interest: Notwithstanding anything contained in sub-section (9), where the proper officer is unable to determine the amount of duty or interest under subsection (8) for the reason that:-

- an appeal in a similar matter of the same person or any other person is pending before the Appellate Tribunal or the High Court or the Supreme Court; or
- an interim order of stay has been issued by the Appellate Tribunal or the High Court or the Supreme Court; or
- the Board has, in a similar matter, issued specific direction or order to keep such matter pending; or
- the Settlement Commission has admitted an application made by the person concerned,

the proper officer shall inform the person concerned the reason for non-determination of the amount of duty or interest under subsection (8) and in such case, the time specified in sub-section (9) shall apply not from the date of notice, but from the date when such reason ceases to exist [Sub-section (9A)].

- Interest is payable even if not quantified in order and if duty is modified by superior authorities, interest and penalty would also be modified.
- Where an order for refund under section 27(2) is modified in any appeal and the amount of refund so determined is less than the amount refunded under said sub-section, the excess amount so refunded shall be recovered along with interest thereon at the rate fixed by the Central Government under section 28AA, from the date of refund up to the date of recovery, as a sum due to the Government.
- A notice issued under sub-section (4), [i.e. for cases of collusion etc.] shall be deemed to have been issued under sub-section (1)[i.e. for cases other than collusion etc.], if such notice demanding duty is held not sustainable in any proceeding under this Act, including at any stage of appeal, for the reason that the charges of collusion or any wilful mis-statement or suppression of facts to evade duty has not been established against the person to whom such notice was issued and the amount of duty and the interest thereon shall be computed accordingly.
- No SCN if amount is less than Rs. 100.
- Like GST law, period of stay to be excluded.

Adjudication of cases where show cause notices are issued under section 28

Level of Adjudication officer	Nature of cases	Amount of duty involved
Customs Principal Commissioner/Commissioner	All Cases	Without limit
Additional Commissioner/Joint Commissioner	All Cases	Upto Rs. 50 Lakhs
Assistant Commissioner/Deputy Commissioner	All Cases	Upto Rs. 5 Lakhs

Section 28AA Interest on delayed payment of duty

Interest @ 15% p.a. {Notification NO. 33/2016-Cus. (NT) dated 01.03.2016}. Interest shall be calculated from first day of month succeeding the month in which duty ought to have been paid or from the date of such erroneous refund, as the case may be, upto the date of actual payment of the amount due. No interest is payable if duty becomes payable consequent to issue of an order, instruction or direction by the Board U/s 151A and is paid within 45 days without reserving right of appeal.

Section 28AAA Recovery of duties in certain cases

Recovery if bogus license/scrip relating to import/export is utilized by some other person.

Let Say, if an exporter was found to have obtained, say, a DEPB scrip, by means of collusion or willful misstatement or suppression of facts, then import duties related to us of that scrip by a transferee can be demanded from this original holder. At the same time, demand can also be raised under section 28 against the importer who used the scrip.

Section 28A Power not to recover duties not levied or short-levied as a result of general practice

If duty was not being levied or short-levied as a result of general practice, then, Central Government may provide for non-recovery of such non-levy or short-levy. Duty already paid by other persons is refunded, if applied for within 6 months from notification.

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Section 28B Duties collected from the buyer to be deposited with the Central Government

- a. If any sum is collected in name of duty in excess of that leviable, then, -
 - Such excess has to be paid to Central Government
 - Without any interest and penalty U/s 114 A [penalty u/s 114 A is leviable only if demand is confirmed and payable by adjudication order issued U/s 28]
- b. Time-limit of section 28 does not apply.

Section 28BA Provisional attachment to protect revenue in certain cases

- During pendency of any proceedings, proper officer may, with previous approval of Principal Commissioner or Commissioner, to safeguard revenue, provisionally attach immovable property (movable property, if immovable is insufficient)
- Attachment is valid for 6 months + Extension of upto 2 years by Principal Chief Commissioner or Chief Commissioner.

Is the adjudicating authority required to supply to the assessee copies of the documents on which it proposes to place reliance for the purpose of re-quantification of short-levy of customs duty? Kemtech International Pvt. Ltd. v. CCus. 2013 (292) ELT 321 (SC)	The Apex Court held that for the purpose of re- quantification of short-levy of customs duty, the adjudicating authority, following the principles of natural justice, should supply to the assessee all the documents on which it proposed to place reliance. Thereafter the assessee might furnish their explanation thereon and might provide additional evidence, in support of their claim.
Whether extended period of limitation for demand of customs duty can be invoked in a case where the assessee had sought a clarification about exemption from a wrong authority? Uniworth Textiles Ltd. vs. CCEx. 2013 (288) ELT 161 (SC)	The Supreme Court held that mere non- payment of duties could not be equated with collusion or willful misstatement or suppression of facts as then there would be no form of non-payment which would amount to ordinary default. The Apex Court opined that something more must be shown to construe the acts of the assessee as fit for the applicability of the proviso. Section 28 of the Customs Act, 1962 as stated in the above case is based on the old provisions of law. As per the amended section 28, the time limit for issuing a demand notice in case of inadvertent non-payment of duty is two years from the relevant date and such provisions find place in sub-section (1) of section 28. Issue of demand notice by invoking the extended period of limitation (five years from the relevant date) in case of deliberate default is covered under sub- section (4) of section 28. However, it may be noted that the principle enunciated in the above case will hold good even after the amendment made in section 28.
Can customs duty 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? CCus. v. Dinesh Chhajer 2014 (300) ELT 498 (Kar.)	The High Court held that Tribunal was justified in holding that no duty is leviable against the assessee as he is neither the importer nor the owner of the goods or was in possession of any goods.

Chapter 9: - Refund

Section 27	Application for refund of import duty or interest
Section 27 (2)	Processing of refund claim
Section 27 A	Interest on delayed refund
Section 26	Refund of export duty in certain cases
Section 26 A	Refund of import duty in certain cases

Section 27 Application for refund of import duty or interest

- The claim for refund of duty or interest can be made by (i) the person who paid the duty or interest in excess; or (ii) the person who borne the incidence of such duty or interest.
- Application for refund to be made in proper form and manner.
- A claim by the importer / exporter for refund of duty / interest, must be made before the expiry of one year from the date of payment of such duty or interest [Section 27(1)].
- A claim by another person, from whom duty was collected, must be made before expiry of one year from the date of purchase of the goods [Explanation to Section 27(1)].
- Other situations require computation of one year as follows:

Event	Limitation of one year to be computed from the
Exemption of duty by a special order issued under section 25(2)	Date of issue of such order
Refund of duty arising as a consequence of any judgment, decree, order or direction of the appellate authority, Appellate Tribunal or any court	Date of such judgment, decree, order or direction
Provisional payment of duty under section 18	Date of adjustment of duty after the final assessment, or in case of re-assessment, from the date of such re-assessment
In any other case	Date of payment of such duty or interest

- No limitation in case of duty paid under protest
- Where the amount claimed is less than Rs.100, it will not be refunded. Principle of Unjust enrichment applies. It must be noted that section 28D creates a statutory presumption that the incidence of duty has been passed on to the buyer, unless the contrary is proved.

Section 27 (2) Processing of refund claim

The application of refund, if found to be complete in all respects by Customs, is processed to see if the whole or any part of the duty and interest paid by the applicant is refundable. In case the whole or any part of the duty and interest is found to be refundable, an order for refund is passed. However, in view of the provisions of unjust enrichment enshrined in the Customs Act, the amount found refundable has to be transferred/credited to the Consumer Welfare Fund. Only in following situations, the amount of duty and interest found refundable, instead of being credited to the Consumer Welfare Fund, is to be paid to the applicant:

- if the importer has not passed on the incidence of such duty and interest to any other person;

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- b. if imports were made by an individual for his personal use;
- c. if the buyer who has borne the duty and interest, has not passed on the incidence of such duty and interest to any other person;
- d. if amount found refundable relates to export duty paid on goods which has returned to exporter as specified in section 26;
- e. if amount relates to drawback of duty payable under section 74 and 75;
- f. if the duty or interest was borne by a class of applicants which has been notified for such purpose in the Official Gazette by the Central Government.
- g. if the duty paid in excess by the importer before an order permitting clearance of goods for home consumption is made where—
 - such excess payment of duty is evident from the bill of entry in the case of self-assessed bill of entry; or
 - the duty actually payable is reflected in the reassessed bill of entry in the case of reassessment.

Section 27A Interest on delayed refund

If refund-

- arises whether by adjudication order or in appeal, and
- refund is not paid within 3 months from date of valid application,

then interest @ 6% p.a. is paid after expiry of 3 months from valid application.

Example. M/s Export & Sons filed a claim for refund of customs duty on 1-4-2017. The Assistant Commissioner, vide order dated 23-6-2017 rejected the claim. On appeal the Commissioner (Appeals) allowed the refund claims vide order dated 30-09-2018. The refund claims were sanctioned to M/s. Export & Sons within three months of receipt of order of the Commissioner (Appeals). The Assistant Commissioner relying upon the explanation to section 27A rejected the claim for interest filed by M/s. Export & Sons. Examine with the help of decided case whether the rejection of interest for delayed sanction of refund claims is justified.

A. In this case, AC had passed order U/s 27 denying refund. Commissioner (Appeals) passed an order against such order of AC and allowed refund claim. Hence, such order of Commissioner (Appeals) shall be deemed to be an order U/s 27, and accordingly, any delayed refund is eligible for interest U/s 27A. As per section 11BB, whenever interest is to be allowed on passing of order of Commissioner (Appeals), interest is to be allowed from expiry of 3 months from "date of receipt of application". Assessee is eligible for interest after expiry of 3 months from 1-4-2017. It is incorrect to say that interest is payable only after expiry of 3 months from date of appellate order. {Ranbaxy Laboratories Ltd. V/s UOI (2011) 33 STT 326 (SC)}

Section 26 Refund of export duty in certain cases

Where export duty has been paid on the exportation of any goods, upon return of the goods such duty shall be refunded to the person by whom or on whose behalf it was paid, if -

- a. the goods are returned to such person otherwise than by way of re-sale;
- b. the goods are re-imported within one year from the date of exportation; and
- c. an application for refund of such duty is made before the expiry of six months from the date on which the proper officer makes an order for the clearance of the goods.

This provision compensates the export duty in a situation where the goods which are exported are rejected and returned by the buyer.

Section 26A Refund of import duty in certain cases

- 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;
- the goods have not been worked, repaired or used after importation;
- the goods are identified to the satisfaction of Assistant Commissioner / Deputy Commissioner;
- no duty drawback claimed; and
- the goods are exported or the importer relinquishes his title or such goods are destroyed / rendered commercially valueless.

It may be noted that the provisions of this section do not apply to the goods regarding which an offence appears to have been committed under this Act or any other law for the time being in force.

In respect of perishable goods and goods which have exceeded their shelf life or their recommended storage-before- use period, the refund shall not be allowed [Sub-section (3)].

An application for refund of duty shall be made before the expiry of 6 months from the relevant date in such form and in such manner as may be prescribed [sub-section 2]:-

S.No.	Case	Relevant date
1.	In case the goods are exported out of India	Date on which the proper officer makes an order permitting clearance and loading of goods for exportation under section 51
2.	In case of relinquishment of title to the goods	Date of such relinquishment
3.	In case of goods being destroyed or rendered commercially valueless	Date of such destruction or rendering of goods commercially valueless

The Customs Act has separate provisions and timelines for filing appeal against an order passed by a customs officer. Appeal to the Commissioner (Appeals) is to be made within 60 days of receipt of the order against which the person is aggrieved. On the other hand, a refund claim can be filed within one year from the date of payment of duty or clearance of goods or such other event as specified in section 27. However a refund claim cannot be a substitute for an appeal.

In the case of Priya Blue Industries Limited, 2004 (172) ELT 145 (SC), duty was assessed on the imported item and the importer paid the duty under protest. Thereafter, the importer filed a claim for refund of the duty. In this matter the Supreme Court ruled that, "Once an Order of Assessment is passed the duty would be payable as per that order. Unless that order of assessment has been reviewed under Section 28 and/or modified in an Appeal that Order stands. So long as the Order of Assessment stands the duty would be payable as per that Order of Assessment. A refund claim is not an Appeal proceeding. The Officer considering a refund claim cannot sit in Appeal over an assessment made by a competent Officer. The Officer considering the refund claim cannot also review an assessment order."

In view of the above ruling of the Supreme Court, refund claims based on challenge to an order of assessment are liable to be rejected.

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Corporation Bank v. Saraswati Abharansala 2009 (233) ELT 3 (SC)	If excess tax is paid, except cases involving the principles of unjust enrichment, the excess tax must be refunded
Jaswant b. Shah v. CC 1996 (81) E.L.T. 669 (Tribunal)	Refund claim cannot be filed by the CH agent in his own name, without power of attorney
Banmore Foam v. CCE 2006 (193) ELT 112	Burden of proof that incidence of duty has not been passed on to consumers is on assessee.
CCus. v Consolidated Solvents and Chemical Corporation (2009) 243 ELT 625 (Tri.)	Interest on delayed refund is payable at the rates as applicable time to time and not at the rate applicable on day when refund was due.
Whether interest is liable to be paid on delayed refund of special CVD arising in pursuance of the exemption granted vide Notification No. 102/2007 Cus dated 14.09.2007? KSJ Metal Impex (P) Ltd. v. Under Secretary (Cus.) M.F. (D.R.) 2013 (294) ELT 211 (Mad.)	The High Court, therefore, held that : I. It would be a misconception of the provisions of the Customs Act, 1962 to state that notification issued under section 25 of the Customs Act, 1962 does not have any specific provision for interest on delayed payment of refund. II. When section 27 of the Customs Act, 1962 provides for refund of duty and section 27A of the Customs Act, 1962 provides for interest on delayed refunds, the Department cannot override the said provisions by a Circular and deny the right which is granted by the provisions of the Customs Act, 1962 and CETA. III. Paragraph 4.3 of the Circular No. 6/2008 Cus. dated 28.04.2008 being contrary to the statute has to be struck down as bad.
Is limitation period of one year applicable for claiming the refund of amount paid on account of wrong classification of the imported goods? Parimal Ray v. CCus. 2015 (318) ELT 379 (Cal.)	The High Court observed that the provisions of section 27 apply only when there is over payment of duty or interest under the Customs Act, 1962. When the petitioners' case is that tunnel boring machines imported by it were not eligible to any duty, any sum paid into the exchequer by them was not duty or excess duty but simply money paid into the Government account. The Government could not have claimed or appropriated any part of this as duty or interest. Therefore, there was no question of refund of any duty by the Government. The money received by Government could more appropriately be called money paid by mistake by one person to another, which the other person is under obligation to repay under section 72 of the Indian Contract Act, 1872. A person to whom money has been paid by mistake by another person becomes at common law a trustee for that other person with an obligation to repay the sum received. This is the equitable principle on which section 72 of the Contract Act, 1872 has been enacted. Therefore, the person who is entitled to the money is the beneficiary or cesti qui trust*. When the said amount was paid by mistake by the petitioner to the Government of India, the latter instantly became a trustee to repay that amount to the petitioner. The obligation was a continuing obligation. When a wrong is continuing there is no limitation for instituting a suit complaining about it. The High Court, therefore, allowed the writ application and directed the respondents (Department) to refund the said sum to the petitioner.

Question & Answer

Q1. 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".

A. 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*)

Q2. 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? Discuss.

A. 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.

Q3. What is the difference between short levy and short payment?

A. 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.

Study Notes

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

Section 11 Power to prohibit importation & exportation of goods

The Central Government has been empowered to prohibit import or export of certain goods and they are referred as prohibited goods. By issuing a notification, the Central Government may prohibit import/export of customs goods. The prohibition may be absolute or conditional. Such Prohibition may be based on any of the following:

- Protection to Domestic industry
- Any international agreement
- Protection of patent, copyrights and Trade marks
- Establishment of any industry
- Preventing of smuggling
- Prevention of deceptive practices
- Protection of national treasures of artistic, historic or archaeological value
- Prevention of the contravention of any law
- Implementation of any treaty, agreement or convention with any country
- Conservation of foreign exchange and safeguarding of balance of payment
- Prevention of surplus of any agricultural product or the product of fisheries.

Any prohibition or restriction or obligation relating to import or export of any goods or class of goods or clearance thereof provided in any other law for the time being in force, or any rule or regulation made or any order or notification issued thereunder, shall be executed under the provisions of that Act only if such prohibition or restriction or obligation is notified under the provisions of this Act, subject to such exceptions, modifications or adaptations as the Central Government deems fit. (To be notified)

Section 11A to 11G Detection of illegally imported goods & prevention of the disposal

- Provision regarding notified goods are applicable throughout the country.
- These are the goods declared by the Central Government as likely goods to be smuggled to India.
- From the date of issue of notification any person having possession of such notified goods for commercial purpose is required to intimate the description of quantity, address where the goods are stored to the customs officer within next 7 days.
- If any person acquired such goods he shall have a record of the source person and the quantity of the goods acquired.
- Such goods can be issued only under a cover of invoice: Containing name, and address of the seller as well as buyer. The seller should also comply with maintenance of record of customers.

- If those goods are shifted from one place to another then during the course of transit, the goods shall be complied with either an invoice or challan.

Note: These provisions are not applicable if the goods are held by a person in the residential premises for personal use but he should have documentary evidence that the goods have not been smuggled in India.

Section 11H to 11M Prevention or detection of illegal export of goods

- "Illegal export" means the export of any goods in contravention of the provisions of this Act or any other law in force for the time being. The Central Government may specify certain goods by issuing a notification which are likely to be smuggled out of India.
- The Central Government may declare certain goods as specified goods if those are likely to be smuggled out of India.
- Provision regarding specified goods are applicable only within 100 km belt across the coastline of India.
- Provisions are not applicable unless the value of such goods exceeds Rs. 15,000.

Important points to be noted:

During the course of transportation, the goods shall be accompanied with an Invoice of the seller or challan of the owner.

- The aforesaid restrictions shall not apply to a petty sale of goods whose market price in a day does not exceed Rs. 2,500.

Section 100 to 110A Search, Seizure and Arrest

	Section 100 Power to search suspected persons entering or leaving India, etc.	Section 101 Power to search suspected persons in certain other cases.
Officer empowered to search	Proper Officer is empowered to search the person.	Officer of Customs empowered by Principal Commissioner/Commissioner is authorized to conduct the search.
Persons to whom it applies	This section applies to the following persons,: (i) any person who has landed from or is about to board or is on board of: - any vessel within Indian Customs Waters; or - foreign going aircraft; - vehicle coming from, or proceeding to, any place outside India; (ii) any person who has entered, or is about to leave, India (other than those mentioned above);	Under this section, the proper officer can search any suspected person with no restriction on the place and person to be searched.

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	(iii) any person in customs area.	
Goods for which search can be conducted	Search can be conducted for any goods where proper officer has reason to believe that the person has secreted about his person, any goods liable to confiscation or any documents relating thereto.	Search can be conducted only in the case of specified goods, - (i) gold, (ii) diamonds, (iii) manufactures of gold or diamonds, (iv) watches, (v) any other class of notified goods, where there is reason to believe that the person has secreted about his person, any such goods liable to confiscation or any documents relating thereto.

Section 102 provides that the persons to be searched may require to be taken before gazetted officer of customs or magistrate. Gazetted Officer/Magistrate may discharge the person. Two or more persons to attend and witness search. Female to be searched only by a female.

Section 103 provides that Custom authorities have Power to screen or X – ray bodies of suspected persons for detecting secreted goods.

Section 104 empowers the Custom authorities to arrest any person if they have a reason to believe that any person in India or within Indian customs waters, has committed an offence punishable under section 132 or section 133 or section 135A or Section 136.

any offence relating to:

- (a) prohibited goods; or
- (b) evasion or attempted evasion of duty exceeding Rs. 50 lakhs, shall be cognizable (arrest can be made without arrest warrant).

Certain Offences to be non bailable: an offence punishable under section 135 relating to:

- (i) evasion or attempted evasion of duty exceeding Rs. 50 lakh; or
- (ii) prohibited goods notified under section 11 which are also notified under section 135(1)(i)(c); or
- (iii) import or export of any goods which have not been declared in accordance with the provisions of this Act and the market price of which exceeds Rs.1 crore; or
- (iv) fraudulently availing of or attempt to avail of drawback or any exemption from duty provided under this Act, if the amount of drawback or exemption from duty exceeds Rs.50 lakhs, shall be non – bailable.

All other offences under this Act shall be bailable.

Section 105 provides that if the Assistant/Deputy Commissioner of Customs or in any area adjoining the land frontier or the coast of India an officer of customs specially empowered by name in this behalf by the Board, has reason to believe that any goods liable to confiscation, or any documents or things which in his opinion will be useful for or relevant to any proceeding under this Act, are secreted in any place, he may authorise any officer of customs to search or may himself search for such goods, documents or things.

Section 106 empowers the Custom authorities to stop and search conveyances if the same is used in smuggling of any goods or in the carriage of smuggled goods.

Section 106A Any proper officer authorised in this behalf by the Principal Commissioner/Commissioner of Customs may, for the purpose of ascertaining whether or not the requirements of this Act have been complied with, at any reasonable time, enter any place intimated under Chapter IVA or Chapter IVB, as the case may

be, and inspect the goods kept or stored therein and require any person found therein, who is for the time being in charge thereof, to produce to him for his inspection the accounts maintained under the said Chapter IVA or Chapter IVB, as the case may be, and to furnish to him such other information as he may reasonably require for the purpose of ascertaining whether or not such goods have been illegally imported, exported or are likely to be illegally exported.

Section 107 empowers the officer of customs to examine persons during the course of any enquiry in connection with the smuggling of any goods.

Section 108 empowers any Gazetted Officer of Customs shall have power to summon any person whose attendance he considers necessary either to give evidence or to produce a document or any other thing in any inquiry which such officer is making under this Act.

Section 108A Any specified person who is responsible for maintaining record of registration or statement of accounts or holding any other information under any of the Acts which is considered relevant, shall furnish such information to the proper officer in such manner as may be prescribed by rules.

Section 108B If the person who is required to furnish information under section 108A fails to do so within the period specified in the notice, the proper officer may direct such person to pay, by way of penalty, a sum of one hundred rupees for each day of the period during which such failure continues.

Section 109 Any officer of customs appointed for any area adjoining the land frontier of India and empowered in this behalf by general or special order of the Board, may require any person in possession of any goods which such officer has reason to believe to have been imported into India by land, to produce the order made U/s 47 permitting clearance of the goods: However, this section shall not apply to any imported goods passing from a land frontier to a land customs station by a route appointed under clause (c) of section 7.

Section 109A The proper officer or any other officer authorised by him in this behalf, may undertake controlled delivery of any consignment of such goods in the prescribed manner, to —

(a) any destination in India; or

(b) a foreign country, in consultation with the competent authority of such country to which such consignment is destined.

“Controlled delivery” means the procedure of allowing consignment of such goods to pass out of, or into, the territory of India with the knowledge and under the supervision of proper officer for identifying the persons involved in the commission of an offence or contravention under this Act.

Section 110 If the proper officer has reason to believe that any goods are liable to confiscation under this Act, he may seize such goods. He can also pass restraint order. In case the goods are seized as per the aforesaid provisions but no notice is given under Section 124 within 6 months from the date of such seizure, then, the goods shall be returned to the person from whose possession they were seized. **Extension by Principal Commissioner or Commissioner of Customs for a further period of 6 months.**

Where any order for provisional release of seized goods has been passed under section 110A, the specified period of 6 months shall not apply.

[recollect discussion (in GST) of perishable and hazardous nature etc. remain same provision]

Section 110A Any goods, documents or things seized under section 110, may, pending the order of the adjudicating authority, be released to the owner. Such release shall be made when the owner executes a

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bond in the proper form with such security and conditions as the adjudicating authority may require. The person from whom the goods are seized is issued a show cause notice, usually within six months, irrespective of the fact whether goods remain seized or are provisionally released. However, the Principal Commissioner/ Commissioner of Customs, on sufficient cause being shown, can extend the time period for issue of Show cause notice, by a further six months.

Section 111 to 127 Confiscation & Penalties

Section 111 provides for confiscation of illegal import: (i) prohibited goods; (ii) undervalued; (iii) not declared or mis declared; (iv) unloading at unapproved place.

In this case, penalty is levied as per Section 112 on importer as well as persons (director/partner/agent) helping him in illegal import.

Section 112

Goods	Quantum of Penalty, cannot exceed:
In the case of prohibited goods	(i) Value of goods; or (ii) Rs.5,000 Whichever is higher
In the case of Dutiable goods other than prohibited goods	(i) 10% of the duty sought to be evaded; or (ii) Rs.5,000 Whichever is higher. If duty as determined u/s 28(8) and interest payable thereon communication of the order of the proper officer determining such duty, Penalty = 25% of penalty so determined.
Goods for which value stated in Bill of Entry or baggage declaration is greater than actual value.	(i) Declared Value – Actual Value, or (ii) Rs. 5,000 Whichever is the highest
In case the goods are prohibited and value is mis-declared	(i) Actual value of the goods, or (ii) Declared value – actual value, or (iii) Rs. 5,000 Whichever is highest
In case the goods are dutiable (other than prohibited goods), and the value is mis-declared	(i) Duty sought to be evaded, or (ii) Declared value – actual value, or (iii) Rs.5,000 Whichever is the highest.

Section 113 provides for confiscation of goods attempted to be illegally exported i.e. any goods attempted to be exported by sea or air from any place other than a custom port or a custom airport appointed for the loading of such goods.

Section 114 Penalty for attempt to export goods improperly, etc.

Goods	Quantum of penalty, cannot exceed
In case of prohibited goods	Three times the value of the goods as declared by the exporter; or the value as determined under this Act, whichever is greater.

In case of dutiable goods, other than prohibited goods	(i) 10% of the duty sought to be evaded; or (ii) Rs.5,000 Whichever is higher If duty as determined under section 28(8) and 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, Penalty = 25% of penalty so determined.
In case of any other goods	(i) Value of the goods as declared by the exporter, or (ii) The value as determined under this Act, Whichever is greater

Section 114A In cases of non-levy or short levy of duty or where the interest has not been charged or paid or has been part paid or the duty or interest has been erroneously refunded by reason of:-

- (i) collusion or
- (ii) any wilful mis-statement or
- (iii) suppression of facts person who is liable to pay the duty or interest, as the case may be, as determined under sub-section (8) of section 28 shall also be liable to pay a penalty.

Amount of penalty shall be equal to the duty or interest so determined.

Where such duty or interest, as the case may be, and the interest on delayed payment of duty, is paid within thirty days from the date of the communication of the order, the amount of penalty to be paid shall be reduced to 25% of the duty or interest. However, aforementioned benefit of reduced penalty is available only if the amount of penalty so determined has also been paid within the said period of thirty days.

Where any penalty has been levied under this section, no penalty shall be levied under section 112 or section 114.

Section 114AA if a person knowingly or intentionally:-

• makes, • signs or uses, or • causes to be made, • signed or used, any declaration, statement or document which is false or incorrect in any material particular, in the transaction of any business for the purposes of the Customs Act, shall be liable to a penalty. Maximum penalty: Penalty shall not exceed 5 times the value of goods.

Section 115 Conveyance used for smuggling (cases falling U/s 111 or 113) also liable to confiscation, except if owner proves that he was not aware/involved.

Section 116 Penalty for not accounting for goods, then person in charge of such conveyance shall be liable to penalty as follows

In Case of	Quantum of penalty, cannot exceed
Goods loaded in a conveyance for importation into India or goods transhipped under the provisions of this Act	Twice the amount of duty that would have been chargeable on the goods not unloaded or the deficient goods, had such goods been imported.
Coastal goods	Twice the amount of export duty that would have been chargeable on the goods not unloaded or the deficient goods, had such goods been exported.

Section 117 Any person who contravenes any provision of this Act or abets any such contravention or who fails to comply with any provision of this Act with which it was his duty to comply, where no express penalty is elsewhere provided for such contravention or failure, shall be liable to a penalty not exceeding Rs. 1,00,000.

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Section 118 (a) Confiscation of goods imported in a package: Where any goods imported in a package are liable to confiscation, the package and any other goods imported in that package shall also be liable to confiscation [Clause (a)].

(b) Confiscation of goods attempted to be exported in package: Where any goods are brought in a package within the limits of a customs area for the purpose of exportation and are liable to confiscation, the package and any other goods contained therein shall also be liable to confiscation [Clause (b)].

Section 119 As per this section, any goods* used for concealing smuggled goods shall also be liable to confiscation.

*In this section, "goods" does not include a conveyance used as a means of transport.

Section 120-121

- Change in the physical form or characteristics of smuggled goods: Smuggled goods are liable to confiscation even if after smuggling there is a change in their physical form or characteristics.
- Smuggled goods mixed with other goods in inseparable manner: Where smuggled goods are mixed with other goods in such manner that the smuggled goods cannot be separated from such other goods, the whole of the goods shall be liable to confiscation.
- Confiscation of sale-proceeds of smuggled goods: Where any smuggled goods are sold by a person having knowledge/reason to believe that the goods are smuggled goods, the sale-proceeds thereof shall be liable to confiscation.

Section 122 Anything is liable to confiscation or any person is liable to a penalty, such confiscation or penalty may be adjudged,-

(a) without limit by a Principal Commissioner of Customs or Commissioner of Customs or a Joint Commissioner of Customs

(b) up to such limit, by such officers, as the Board may, by notification, specify

Powers of adjudication of the officers of Customs [Notification No. 50/2018-Cus (N.T.) date 08-06-2018]

Customs Officer	Value of goods liable for confiscation
Assistant Commissioner of Customs or Deputy Commissioner of Customs	Above Rs. 1 lakh but not exceeding Rs. 10 Lakhs
A Gazetted Officer of Customs lower in rank than an Assistant Commissioner of Customs or Deputy Commissioner of Customs	Not exceeding Rs. 1 Lakh

Section 123 In case of notified goods i.e. silver bullion, cigarettes etc., the burden to prove that they are not smuggled goods vests with the person who claims to be the owner of goods and the person from whose possession the goods are seized.

Section 124 Issue of SCN before confiscation of goods etc No order confiscating any goods or imposing any penalty on any person shall be made under this Chapter unless following conditions are satisfied-

Issue of SCN: The owner of the goods or such person is given a notice in writing with the prior approval of the officer of customs not below the rank of Assistant Commissioner of Customs informing him of the grounds on which it is proposed to confiscate the goods or to impose a penalty.

Opportunity of making presentation: The owner of the goods or such person is given an opportunity of making a representation in writing within such reasonable time as may be specified in the notice against the grounds of confiscation or imposition of penalty mentioned therein; and

Opportunity of being heard: The owner of the goods or such person is given a reasonable opportunity of being heard in the matter.

Waiver of show cause notice and representation: The notice referred to in clause (a) and the representation referred to in clause (b) may, at the request of the person concerned be oral.

Supplementary Notice: Notwithstanding issue of notice under this section, the proper officer may issue a supplementary notice under such circumstances and in such manner as may be prescribed.

Section 125 Option to pay fine in lieu of confiscation

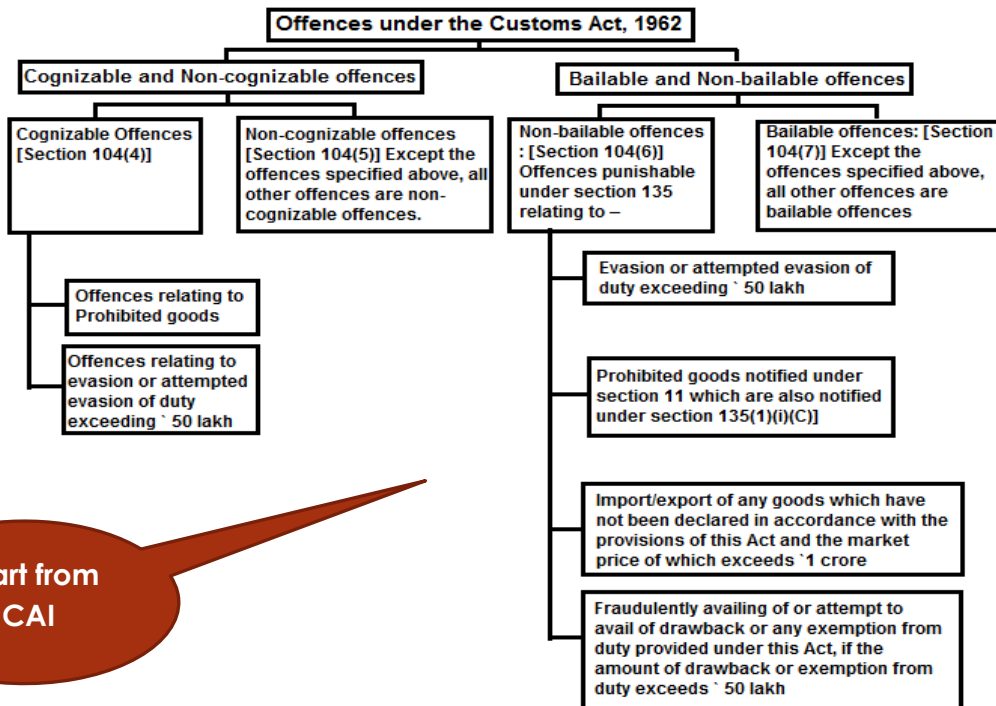
- **Redemption fine:** The proper officer may in case of prohibited goods or shall in case of other goods, give an option to the owner of such goods to pay such redemption fine.
- **Maximum amount of Redemption fine:** The market price of the confiscated goods less the import duty chargeable thereon. Redemption fine to be refunded on relinquishment of title of goods.
- **Non applicability:** Where the proceedings are deemed to be concluded under the proviso to Section 28 (2) or U/s 28 (6) (i) in respect of goods which are not prohibited or restricted, the provisions of this section shall not supply.
- **Option to be void if fine not paid within 120 days:** Where the fine imposed, is not paid within a period of one hundred and twenty days from the date of option given thereunder, such option shall become void, unless an appeal against such order is pending.

Section 126 On confiscation, property to vest in Central Government

Section 127 Award of confiscation or penalty by customs officers not to interfere with other punishments

Study Notes

Offences and Prosecution



Section 135 Evasion of Duty or Prohibitions

If any person—

- is in relation to any goods in any way knowingly concerned in misdeclaration of value or in any fraudulent evasion or attempt at evasion of any duty chargeable thereon or of any prohibition for the time being imposed under this Act or any other law for the time being in force with respect to such goods; or
- acquires possession of or is in any way concerned in carrying, removing, depositing, harbouring, keeping, concealing, selling or purchasing or in any other manner dealing with any goods which he knows or has reason to believe are liable to confiscation under section 111 or section 113, as the case may be; or
- attempts to export any goods which he knows or has reason to believe are liable to confiscation under section 113; or
- fraudulently avails of or attempts to avail of drawback or any exemption from duty provided under this Act in connection with export of goods,

Punishment for the said offences:

Offence	Punishment
In case of offence relating to –	
(i) Any goods the market price of which exceeds one crore of rupees; or	Imprisonment for a term which may extend to 7 years and with fine. (Unless special and adequate reasons to the contrary are recorded in the judgment of the court, such punishment shall not be for less than 1 year)
(ii) The evasion or attempted evasion of duty exceeding Rs. 50 lakhs; or	
(iii) Such categories of prohibited goods as notified by Central Government; or	
(iv) Fraudulently availing of or attempting to avail of drawback or any exemption from duty, if amount of such drawback or exemption exceeds Rs. 50 lakh	

In any other case	Imprisonment for a term, which may extend to 3 years or with fine or with both.
-------------------	---

In case of second and subsequent offence: Imprisonment upto 7 years and with fine. However, in absence of special and adequate reasons, such imprisonment cannot be for less than 1 year.

Offences and prosecution in certain cases:-

Section	Offence	Prosecution
132	False declaration, false documents etc.	Imprisonment upto 2 years or with fine or with both.
133	Obstructing Officer of Customs in exercising his powers	Imprisonment upto 2 years or with fine or with both.
134	Refusal to be X-rayed	Imprisonment upto 6 months or with fine or with both.
135A	Preparation to export any goods in contravention of the provisions of this Act	Imprisonment upto 3 years or with fine or with both.

Section 135B Power of court to publish name, place of business, etc., of persons convicted under the act

Where any person is convicted under this Act for contravention of any of the provisions thereof, it shall be competent for the Court convicting the person to cause the name and place of business or residence of such person, nature of contravention, the fact that the person has been so convicted, and such other particulars as the Court may consider to be appropriate in the circumstances of the case, to be published at the expense of such person, in such newspapers or in such manner as the Court may direct.

No publication shall be made till appeal disposed of or time limit for filing appeal not expired.

Section 136 Offences by officers of customs

Offence	Prosecution
If a customs officer enters into or acquiesces in any agreement to do, abstains from doing, permits, conceals or connives at any act or thing whereby any fraudulent export is effected or any duty of customs leviable on goods [or any prohibition for the time being in force under this Act or any other law for the time being in force with respect to any goods] is or may be evaded,	Imprisonment upto 3 years or with fine or with both
- If a customs officer requires any person to be searched for goods liable to confiscation or any document relating thereto, without having reason to believe that he has such goods or document secreted about his person - If a customs officer arrests any person without having reason to believe that he has been guilty of an offence punishable under section 135, he may be punishable - If a customs officer searches or authorises any other officer of customs to search any place without having reason to believe that any goods, documents or things of the nature referred to in section 105 are secreted in that place	Imprisonment upto 6 months or with fine upto Rs.1,000 or with both

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- If any officer of customs, except in the discharge in good faith of his duty as such officer or in compliance with any requisition made under any law for the time being in force, discloses any particulars learnt by him in his official capacity in respect of any goods

Section 138A Presumption of culpable mental state

Culpable mental state includes intention, motive, knowledge of a fact, and belief in, or reason to believe, a fact. In any prosecution for an offence, the Court shall presume the existence of culpable mental state but it shall be a defense for the accused to prove the fact that he had no such mental state. A fact is said to be proved only when the Court believes it to exist beyond reasonable doubt and not merely when its existence is established by a preponderance of probability.

Section 140 Offences by company

Every person who was in charge of or was responsible to the company at the time of commission of offence; and company.

However, such person shall not be liable if he proves that the offence was committed without his knowledge or he had exercised all due diligence to prevent commission of such offence.

Whether the benefit of exemption meant for imported goods can also be given to the smuggled goods? CCus. (Prev.), Mumbai v. M. Ambalal & Co. 2010 (260) ELT 487 (SC)	The question which arose before the Apex Court for consideration was whether goods that were smuggled into the country could be considered as 'imported goods' for the purpose of granting the benefit of the exemption notification. 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 in the economy. <u>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.</u>
Is it mandatory for the Revenue officers to make available the copies of the seized documents to the person from whose custody such documents were seized? Manish Lalit Kumar Bavishi v. Addl. DIR. General, DRI 2011 (272) ELT 42 (Bom.)	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 copies asked for. It was the party concerned who had the choice of either asking for the document or seeking extract, and not the officer. If any document was seized during the course of any action by an officer and relatable to the provisions of the Customs Act, that officer was bound to make available copies of those documents. The denial by the Revenue to make the documents available was clearly an act without jurisdiction. The High Court directed the Revenue to make available the copies of the documents asked for by the assessee which were seized during the course of the seizure action.
Whether the smuggled goods can be re-exported from the customs area without formally getting	<u>Revisionary Authority's Decision:</u> The Government noted that the passenger had grossly mis-declared the goods with intention to evade duty and to smuggle the goods into India. As per the provisions of section 80 of the Customs Act, 1962 when the baggage of the passenger contains article

them released from confiscation? In Re: Hemal K. Shah 2012 (275) ELT 266 (GOI)	which is dutiable or prohibited and in respect of which the declaration is made under section 77, the proper officer on request of passenger can detain such article for the purpose of being returned to him on his leaving India. Since passenger neither made true declaration nor requested for detention of goods for re-export, before customs authorities at the time of his arrival at airport, the re-export of said goods could not be allowed under section 80 of the Customs Act.
Can penalty for short-landing of goods be imposed on the steamer agent of a vessel if he files the Import General Manifest, deals with the goods at different stages of shipment and conducts all affairs in compliance with the provisions of the Customs Act, 1962? Caravel Logistics Pvt. Ltd. v. Joint Secretary (RA) 2013 (293) ELT 342 (Mad.)	The High Court held that conjoint reading of sections 2(31), 116 and 148 of Customs Act, 1962 makes it clear that in case of short-landing 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. Hence, duly appointed steamer agent of a vessel, would be liable to penalty. However, steamer agent, if innocent, could work out his remedy against the shipper for short-landing. The High Court also clarified that in view of section 42 under which no conveyance can leave without written order, there is an automatic penalty for not accounting of goods which have been shown as loaded on vessel in terms of Import General Manifest. There is no requirement of proving <i>mens rea</i> (the intention or knowledge of wrongdoing that constitutes part of a crime) on part of person-in-charge of conveyance to fall within the mischief of section 116 of the Customs Act.
Where goods have been ordered to be released provisionally under section 110A of the Customs Act, 1962, can release of goods be claimed under section 110(2) of the Customs Act, 1962? Akanksha Syntex (P) Ltd. v Union of India 2014 (300) ELT 49 (P&H)	The remedy of provisional release is independent of remedy of claiming unconditional release in the absence of issuance of any valid show cause notice during the period of limitation or extended limitation prescribed under section 110(2) of the Customs Act, 1962.

Study Notes

Chapter 11: - Appeals & Revision

The Constitutional framework in India provides for three organs of the State, namely:

- Legislature – which enacts laws
- Executive – which implements those laws
- Judiciary – which interprets the laws

Section 128 Appeals to Commissioner (Appeals)

Criteria	Appeal by Assessee	Appeal by Department
Orders for appeal	Adjudication orders passed by any Customs officer lower in rank than a 'Commissioner'	Such orders if found (within 3 months) by the Commissioner of Customs to be wanting on 'legality or propriety' (sec 129D(2))
Appellant	A person who is not a party to the original proceeding cannot file an appeal. He is not an aggrieved person as none of his legal rights are affected. Custom House Agent (CHA) can't file appeal.	Officer directed to file the appeal by the Commissioner of Customs
Time limit	60 days from date of 'service' of adjudication order and can condone a delay of upto 30 days if 'sufficient cause' is shown	Within 1 month from the date of 'service' of the order of Commissioner of Customs to so file the appeal
Interim compliance	Mandatory pre-deposit of 7.5% of duty demanded (where duty and penalty is in dispute) or penalty imposed (where only penalty is in dispute)	Not applicable
Interim relief	'Stay' from recovery of amounts in excess of 7.5% deposited as mandatory pre-deposit	Not applicable
Proceeding	Appeal to be filed in the manner prescribed and verified	
Adjournment	No more than 3 adjournments may be granted 'during hearing' of the appeal	
Relief allowable	a) 'Confirm', 'modify' or 'annul' the order appealed against, or b) referring the matter back to the adjudicating authority with directions for fresh adjudication or decision, as the case may be, in the following cases, namely:— (i) where an order or decision has been passed without following the principles of natural justice; or (ii) where no order or decision has been passed after re-assessment under section 17; or (iii) where an order of refund under section 27 has been issued by	

	crediting the amount to Fund without recording any finding on the evidence produced by the applicant.
Scope	To address only those issues raised in appeal as 'grounds'
Inquiry	Empowered to make further inquiry or entertain new grounds if such omission is not willful or negligent
Orders	Written order to be passed stating the (a) points for determination (b) decision thereon and (c) reasons therefor

Section 129 Appellate Tribunal

The Central Government shall constitute an Appellate Tribunal to be called the Customs, Excise and Service Tax Appellate Tribunal (CESTAT) consisting of as many judicial and technical members as it thinks fit to exercise the powers and discharge the functions conferred on the Appellate Tribunal by this Act.

Criteria	Appeal by Assessee	Appeal by Department
Orders for appeal	Adjudication orders passed by Commissioner of Customs or Commissioner (Appeals)	Such orders of Commissioner of Customs are found (within 3 months) by the Committee of Chief Commissioners of Customs to be wanting on 'legality or propriety' (sec 129D(2))
Orders not Appealable to Tribunal	Orders relating to (a) import/export of baggage (b) import of goods not landed or short landed and (c) drawback. Appeal in these cases lie before the Revision Authority instead of Tribunal	
Orders that may be refused on appeal	When amount involved in the adjudication order is less than Rs. 2 lacs unless it relates to an interpretation involving classification or valuation	
Appellant	Assessee if 'aggrieved' only	Officer directed to file the appeal by the Commissioner of Customs
Time limit	3 months from the date of 'service' of adjudication order and can condone any extent of delay if 'sufficient cause' is shown	Within 1 month from the date of 'service' of the order of Commissioner of Customs to so file the appeal
'Notice' of filing appeal to respondent	Upon receipt of such notice, file cross-objections within 45 days which would be treated as appeal itself	
Interim compliance*	Mandatory pre-deposit of 7.5% at first stage or 10% at second stage of duty demanded (where duty and penalty is in dispute) or penalty imposed (where only penalty is in dispute)	Not applicable
Interim relief	'Stay' from recovery of amounts in excess of 7.5% / 10% deposited as mandatory pre-deposit	Not applicable

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Procedure by CESTAT	• CESTAT shall give opportunity of being heard to the Parties. • The time for disposal of appeal by CESTAT shall be 3 years from the date of application. • CESTAT is the Final Fact-Finding Authority. • An appeal against CESTAT order can be made only if it involves a substantial question of law. • Sum due to the Government as a result of CESTAT Orders shall be payable notwithstanding appeal/reference to High Court/Supreme Court. • CESTAT has powers to (a) refuse appeal at its discretion, (b) condone delay in filing appeal, (c) grant 3 adjournments, (d) rectify mistake apparent from the record, (e) grant stay, (f) regulate its own procedure, (g) powers of Civil Court, (h) reduce penalty subject to conditions.
Relief allowable	‘Confirm’, ‘modify’ or ‘annul’ the order appealed against or ‘remand’ the matter back to the original authority with suitable directions for fresh adjudication
Scope	To address only those issues raised in appeal as ‘grounds’
Inquiry	Empowered to make further inquiry or entertain new grounds if such omission is not willful or negligent
Orders	Written order to be passed stating the (a) points for determination (b) decision thereon and (c) reasons therefor
Rectification of mistake in order	Within 6 months from date of order pass another ‘order’ to so rectify

*LB of Tribunal had ruled that the pre-deposit of 10% for second appeal is in addition to the pre-deposit of 7.5% made at the time of first appeal in re. Quantum of Mandatory Deposit (2017-TIOL-1414-CESTAT-DEL-LB). This decision came to be stayed by Hon'ble High Court of Delhi in WP 4551/2017 vide interim order on 23 May 2017. Accordingly, Tribunal issued circular F No. 01/05/Circular/CESTAT/2015 dated 11 July 2017 that insisting on a further deposit of 10% for acceptance of second appeal be kept in abeyance.

Recap of Pre-deposit

Stage of appeal	Appellate Authority	Amount of pre – deposit
First Appeal	Commissioner (Appeals) or CESTAT	- 7.5% of the duty, in case where duty or both duty and penalty are in dispute; OR - 7.5% of penalty, where such penalty is in dispute
Second Appeal	CESTAT	- 10% of the duty, in case where duty or both duty and penalty are in dispute; or - 10% of penalty, where such penalty is in dispute.
The amount required to be deposited under this section shall not exceed Rs.10 crores.		

Appeal to High Court

An aggrieved party to an order of the Tribunal (except on a matter involving rate of duty or valuation) may prefer an appeal to the High Court within 180 days from the date of ‘service’ of the Tribunal’s order. The High Court will attend to matters involving a substantial question of law. And after formulating this question and pass suitable orders thereon. If any statements in a case are insufficient to answer the question formulated, the same can be sent back to the Tribunal to provide the same.

Appeal to Supreme Court

An aggrieved party to an order of the High Court (certified to be fit for appeal) or of the Tribunal on a matter involving rate of duty or valuation may prefer an appeal to the Supreme Court within 60 days (90 days for Special Leave Petition).

Orders of the High Court or Supreme Court will provide interpretation to the question of law that was formulated earlier. Upon receipt of a certified copy of this order providing the interpretation to the question of law formulated, the Tribunal will pass operative orders (sec 130D).

Fees for filing an appeal to –

(i) Appellate Tribunal:

(A) Where the amount of duty and interest demanded and penalty levied by any officer of Customs in the case to which the appeal relates is –	
(i) Does not exceed Rs.5,00,000	Rs.1,000
(ii) Exceeds Rs.5,00,000 but does not exceed Rs.50,00,000	Rs.5,000
(iii) Exceeds Rs.50,00,000	Rs.10,000
(B) Every application made before the Appellate Tribunal –	Rs.500
(i) In an appeal for rectification of mistake or for any other purpose; or	
(ii) For restoration of an appeal or an application	

However, no fees shall be payable in case an appeal is filed by the department or in case of a memorandum of cross – objections; or in case of rectification application filed by or on behalf of the Commissioner of Customs.

(ii) High court: Rs.200

Brief chart showing Revisionary Powers under indirect taxes:

Review Authority	Order which can be revised	Time limit of revision	Review order
Commissioner	Adjudication order passed by authorities below rank of Commissioner	3 Months. Extension for further period of 30 days.	To file appeal to Commissioner (Appeal) within 1 month
Committee of Chief Commissioners	Adjudication order passed by Commissioner	3 Months. Extension for further period of 30 days	To file appeal to CESTAT within 1 month review order
Central Government (Revisionary Authority)	Matters where no second appeal lies to CESTAT	3 Months (Condonation of delay for further 3 months)	Central Government can pass such order as it thinks fit

Notes

- Period of computation of timing: In computing the period of limitation of filing appeal or application under the Act, the first day is to be excluded while the last day is to be included.
- Exclusion of time taken for copy (Section 131A): In computing the period of limitation prescribed for an appeal or application, the following shall be excluded –

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- The day on which the order complained of was served, and
- If the party preferring appeal or application was not furnished with a copy of the order when the notice of the order was served upon him, the time requisite for obtaining a copy of such order.

Where an amount deposited by the appellant under section 129E is required to be refunded consequent upon the order of the appellate authority, there shall be paid to the appellant interest @ 6% per annum on such amount from the date of payment of amount till, the date of refund of such amount.

Can Tribunal condone the delay in filing of an application consequent to review by the Committee of Chief Commissioners if it is satisfied that there was sufficient cause for not presenting the application within the prescribed period? Thakker Shipping P. Ltd. v. CCus. (General) 2012 (285) ELT 321 (SC)	In light of the above discussion, the High Court ruled that the Tribunal was competent to invoke section 129A(5) where an application under section 129D(4) had not been made within the prescribed time and condone the delay in making such application if it was satisfied that there was sufficient cause for not presenting it within that period.
Can a writ petition be filed before a High Court which does not have territorial jurisdiction over the matter? Neeraj Jhanji v. CCE & Cus. 2014 (308) ELT 3 (SC)	The Supreme Court observed that the very filing of writ petition by the petitioner in Delhi High Court against the order in original passed by the Commissioner of Customs, Kanpur indicated that the petitioner had taken chance in approaching the High Court at Delhi which had no territorial jurisdiction in the matter. The filing of the writ petition before Delhi High Court was not at all bona fide.
Can delay in filing appeal to CESTAT due to the mistake of the counsel of the appellant, be condoned? Margara Industries Ltd. v. Commr. of C. Ex. & Cus. (Appeals) 2013 (293) ELT 24 (All.)	The High Court held that the Tribunal ought to have taken a lenient view in this matter as the appellant was not going to gain anything by not filing the appeal and the reason for delay in filing appeal as given by the appellant was the mistake of its counsel who had also filed his personal affidavit.
Can a writ petition be filed against an order passed by the CESTAT under section 9C of the Customs Tariff Act, 1975? Rishiroop Polymers Pvt. Ltd. v. Designated Authority 2013 (294) ELT 547 (Bom.)	The High Court, therefore, held that it would not be appropriate for it to exercise the jurisdiction under Article 226 of the Constitution, since an alternate remedy by way of an appeal was available in accordance with law. The High Court thus, dismissed the petition leaving it open to the assessee to take recourse to the appellate remedy.

Question & Answer

Q1. 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.

A. 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.

Q2. 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.

A.

(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) CBEC 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.

Q3. 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

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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.

A.

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

Q4. 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.

A. 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, writ 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.

Q5. 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

In order to provide for speedy resolution of disputes, the Settlement Commission has been constituted under the Customs Act (Sections 127A to 127N). The following Table gives the provisions at a glance.

Constitution	1. Settlement Commission constituted by Central Government, with Chairman, Vice-Chairman, & Other Members. 2. Members of CBEC are not eligible to be Member of the Settlement Commission. 3. Settlement Commission operates through Benches, i.e. Presiding Officer + 2 Other Members 4. Type of Benches: (a) Principal Bench: Presided by Chairman. (b) Other Benches, (c) Special Benches – with more than 3 Members. (d) Decision of Benches by Majority Rule.
Key Aspect	"Case" is any proceeding pending for 'levy', 'assessment' or 'collection' of customs duty before an adjudicating authority (excluding in a de novo proceeding)
Disqualification	Case pending in appeal before the Appellate Tribunal or any court
Applicant	Any importer or exporter or any other person
Relief	Immunity from prosecution, penalty (not initiated) and fine
Admission	a) Admission of wrong-doing with full and true disclosure (b) admitted liability more than Rs.3 lacs (c) admitted liability paid with applicable interest
Additional conditions	In case of seizure, 180 has lapsed from date of seizure
Processing	(a) Within 7 days issue notice to applicant (b) Within 14 days from notice pass order allowing the application
Type of inquiry	Without circulating the application, call upon the Commissioner of Customs to furnish his report within 30 days based on facts
Interim orders	Authorized to (a) order provisional attachment of property to protect interest of revenue (b) reopen concluded proceedings that have a bearing on the application and pass suitable on the reopened proceedings
Final orders on application	Final orders as deemed fit to be passed within 9 months (extendable by further 3 months) from last day of the month in which the application was made
Effect	Final Orders passed will be conclusive and the matters covered by the orders will not be reopened
Settlement dues	To be paid within 30 days of order
Annulment	Immunity granted will be withdrawn if (a) conditions of settlement are not fulfilled (b) settlement was obtained by concealment or furnishing false evidence and all 'cases' will be reopened and time lapse before Settlement Commission will be excluded
Rejection of application	Application that is allowed may be rejected for reasons to be recorded in the Final Order

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Effect of rejection	Rejection of application will render application 'void' and revive the adjudication proceedings previously underway and required to be concluded within 2 years from date of communication that settlement became void
Bar from future applications	a) applicant found to have concealed full duty liability (b) after settlement, applicant convicted of offence (pending before application) (c) case of non-cooperation by applicant

In case of a Settlement Commission's order, can the assessee be permitted to accept what is favourable to them and reject what is not? Sanghvi Reconditioners Pvt. Ltd. V. UOI 2010 (251) ELT 3 (SC)	The Apex Court held that the application under section 127B of the Customs Act, 1962 is maintainable only if the duty liability is disclosed. The disclosure contemplated is in the nature of voluntary disclosure of concealed additional customs duty. The Court further opined that having opted to get their customs duty liability settled by the Settlement Commission, the appellant could not be permitted to dissect the Settlement Commission's order with a view to accept what is favourable to them and reject what is not.
Is judicial review of the order of the Settlement Commission by the High Court or Supreme Court under writ petition/special leave petition, permissible? Saurashtra Cement Ltd. v. CCus. 2013 (292) ELT 486 (Guj)	While examining the scope of judicial review in relation to a decision of Settlement Commission, the High Court noted that although the decision of Settlement Commission is final, finality clause would not exclude the jurisdiction of the High Court under Article 226 of the Constitution (writ petition to a High Court) or that of the Supreme Court under Articles 32 or 136 of the Constitution (writ petition or special leave petition to Supreme Court). The Court would ordinarily interfere if the Settlement Commission has acted without jurisdiction vested in it or its decision is wholly arbitrary or perverse or mala fide or is against the principles of natural justice or when such decision is ultra vires the Act or the same is based on irrelevant considerations. The Court, however, pronounced that the scope of court's inquiry against the decision of the Settlement Commission is very narrow, i.e. judicial review is concerned with the decision-making process and not with the decision of the Settlement Commission.
Does the Settlement Commission have jurisdiction to settle cases relating to the recovery of drawback erroneously paid by the Revenue? Union of India v. Cus. & C. Ex. Settlement Commission 2010 (258) ELT 476 (Bom.)	The High Court, thus, concluded that the duty drawback or claim for duty drawback is nothing but a claim for refund of duty as per the statutory scheme framed by the Government of India or in exercise of statutory powers under the provisions of the Act. Thus, the High Court held that the Settlement Commission has jurisdiction to deal with the question relating to the recovery of drawback erroneously paid by the Revenue.

Chapter 13: - Advance Ruling

Parameter	Advance Ruling
Advance Ruling	A written decision on any of the questions referred to in Section 28H raised by applicant in his application in respect of any goods prior to its importation or exportation {Section 28 E (b)}
Authority	The custom authority for advance rulings appointed U/s 28 EA
Appellate Authority	The authority of Advance Rulings constituted U/s 245-O of the Income Tax Act, 1961 to act as Appellate Authority
Applicant	"Applicant" means (i) holding a valid IEC Number granted under section 7 of the FT (DR) Act, 1992; or (ii) exporting any goods to India; or (iii) with a justifiable cause to the satisfaction of the Authority who makes an application for advance ruling U/s 28 H
Application not to be allowed in pending cases or already decided matters	(a) where the questions raised in the application is already pending before any officer of Customs, the Appellate Authority or any Court; or (b) where the question raised is the same as in a matter already decided by any Appellate Tribunal or any Court.
AAR to be of the rank of	Principal Commissioner of Customs or Commissioner of Customs to function as a Customs Authority for Advance Rulings
Scope of Application	(a) classification of goods (b) applicability of exemption notification (c) applicability of valuation principles (d) applicability of notifications issued in respect of tax or duties under this Act or the Customs Tariff Act, 1975 or any tax or duty chargeable under any other law for the time being in force in the same manner as duty of customs leviable under this Act or the Customs Tariff Act; (e) determination of 'origin' of goods (f) any other matter as the Central Government may, by notification, specify.
Admission of application	Examine nature of application to conform to the scope of AAR and order to allow / reject will be passed
Resident Representative	The applicant may be represented by any person resident in India who is authorized in this behalf.
Type of inquiry	Send copy of application to Principal Commissioner or Commissioner of Customs to furnish records
Final orders	Final orders are binding on applicant and Department provided the facts or law does not undergo a change at the time of implementation of the transaction covered by the Ruling
Effect	Final Orders passed will be conclusive and binding on the applicant, the questions covered in the Ruling, Commissioner of Customs and all his subordinate officers
Advance ruling to be void in certain circumstances	Where the authority finds, on a representation made to it by the Principal Commissioner/Commissioner of Customs or otherwise, that an advance ruling has been obtained by the applicant by fraud or misrepresentations of

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	facts, it may, by order, declare such ruling to be void ab initio and thereupon all the provisions of this Act shall apply to the applicant as if such advance ruling had never been made. Further, in computing the period of 2 years or 5 years thereof, for service of notice for recovery of any duty not levied, short levied, not paid or short-paid on account of advance ruling, the period beginning with the date of such advance ruling and ending with the date of the order shall be excluded. A copy of the order made shall be sent to the applicant and the Principal Commissioner/Commissioner of Customs.
Appeal	Any officer authorized by the Board, by notification, or the applicant may file an appeal to the Appellate Authority against any ruling or order passed by the Authority, within 60 days from the date of the communication of such ruling or order, in such form and manner as may be prescribed. Condonation of delay – 30 days.
Fees & Time Limit	An applicant has to file an application accompanied by a fee of Rs.10,000 and he may withdraw the application within 30 days from the date of making such application. The Authority has to be pronounce the final order within 3 months of receipt of application.
Powers of Authority	The Authority or Appellate Authority shall, for the purpose of exercising its powers regarding - discovery and inspection, - enforcing the attendance of any person and examining him on oath, - issuing commissions and compelling production of books of account and other records, have all the powers of a civil court under the Code of Civil Procedure, 1908. and every proceeding before the Authority or Appellate Authority shall be deemed to be a judicial proceeding.
Procedure	The procedure for Customs Authority for Advance Rulings may be provided by regulations by the Board. The Appellate Authority shall regulate its own procedure for the purpose of conducting its proceedings.

Chapter 14: - Miscellaneous Provisions

Section 99A Custom Audit	In supersession of On-site Post Clearance Audit at Premises of Importer and Exporter Regulations, 2011, Government has notified Customs Audit Regulations, 2018. For this reason, a separate section 99A is introduced authorizing the proper officer to audit of assessment that has already been conducted at the time of customs clearance. Such audit is permitted to be carried out swiftly either at the premises of the auditee or at the office of the proper officer. It may be noted that 'auditee' is defined in this section to include not only the principal (importer or exporter) but also persons concerning themselves with dealing with goods attracting section 12 of Customs Act. Pursuant to these regulations, 'auditee' is defined in 2(c) to mean "a person who is subject to an audit under section 99A of the Act and includes an importer or exporter or custodian approved under section 45 or licensee of a warehouse and any other person concerned directly or indirectly in clearing, forwarding, stocking, carrying, selling or purchasing of imported goods or export goods or dutiable goods" Salient feature of this audit procedure are as follows: - Auditee is to preserve records for conduct of this audit for a period of five years - Risk based assessment will identify persons to be audited - Audit will be conducted at the premises of the auditee by the authorized officers who will intimate fifteen days in advance of their schedule visit - Based on the findings, auditee may accept the liabilities and voluntarily discharge the duty, interest and penalty, as applicable - Assistance of experts can be availed for conducting this audit such as CA, CWA or IT professionals with permission of Principal Commissioner/ Commissioner of Customs - Contravention of these Regulations attracts penalty of Rs. 50,000
Section 141 Conveyance & Goods in a custom area subject to control of officers of custom	All the conveyances and goods in a customs area shall be subject to the control of officers of customs, for the purpose of enforcing the provisions of this Act.
Section 142 Recovery of sums due to Government	<u>Manner of recovery:</u> The proper officer may deduct or may require any other officer of customs to deduct the amount so payable from any money owing to such person which may be under the control of the proper officer or such other officer of customs. <u>Detention and sale of goods lying under the control of Department:</u> The dues can be recovered by detaining and selling any goods belonging to such person, which are under the control of the Department. <u>Certification Action:</u> If the dues cannot be recovered in the mode specified above, then, the proper officer may prepare a certificate signed by him specifying the amount due from the person liable to pay the same and send it to Collector of the district in which such person resides or conducts his business. On receipt of such certificate, the said Collector shall proceed to recover from the said person, the amount specified therein as if it were an arrear of land revenue.

	iv. <u>Recovery from the successor of business or trade:</u> with previous approval of Commissioner. v. <u>Garnishee proceedings:</u> Issuance of the notice for recovery to any person other than from whom money is due. Garnishee is bound to comply with the notice. In case of failure to make the payment, the garnishee deemed to be liable for payment of the dues.
Section 142A Liability under the Customs Act, 1962 to be first charge	Notwithstanding anything to the contrary contained in any Central Act or State Act, any amount of duty, penalty, interest or any other sum payable by an assessee or any other person under this Act, shall, save as otherwise provided in section 529A of the Companies Act, 1956, the Recovery of Debts Due to Banks and the Financial Institutions Act, 1993 and the Securitisation and Reconstruction of Financial Assets and the Enforcement of Security Interest Act, 2002, be the first charge on the property of the assessee or the person, as the case may be.
Section 143 Power to allow import or export on execution of bonds in certain cases	If the importer or exporter is unable to fulfil the conditions for import/export, the Assistant or the Deputy Commissioner of Customs can permit clearance of imported goods/or export, subject to the following: (a) The Assistant or Deputy Commissioner of Customs can grant leave for such import/or export or clearance of goods only if he is satisfied that having regard to the circumstances of the case the leave can be granted. (b) A bond in such amount, with such surety or security and subject to such conditions as the Asst or Deputy Commissioner approves.
Section 143AA Power to simplify or provide different procedure, etc., to facilitate trade.	Notwithstanding anything contained in any other provision of this Act, the Board may, for the purposes of facilitation of trade, take such measures or prescribe separate procedure or documentation for a class of importers or exporters or for categories of goods or on the basis of the modes of transport of goods, in order to,— (a) maintain transparency in the import and export documentation; or (b) expedite clearance or release of goods entered for import or export; or (c) reduce the transaction cost of clearance of importing or exporting goods; or (d) maintain balance between customs control and facilitation of legitimate trade.
Section 144 Power to take samples	This section provides the necessary power to the customs authorities to draw adequate samples of such goods in the presence of the owner of the goods.
Section 146 Customs brokers to be licensed	Person to hold license to carry on business as a customs broker. Power of board to make regulations in respect of such customs brokers. Section 147 provides for liability of principal and agent.
Section 146A Appearance by authorized representative	Any person who is entitled or required to appear before an officer of customs or the Appellate Tribunal in connection with any proceedings under this Act, otherwise than when required under section 108 to attend personally for examination on oath or affirmation, may, subject to the other provisions of this section, appear by an authorised representative. For the purposes of this section, "authorised representative" means a person authorised by the person referred to in sub-section (1) to appear on his behalf, being - (a) his relative or regular employee; or (b) a customs broker licensed under section 146; or (c) any legal practitioner who is entitled to practise in any civil court in India; or (d) any person who has acquired such qualifications as the Central Government may specify by rules made in this behalf.[Sub-section (2)] The following persons shall be disqualified to represent any person under sub-section (1)— (a) who has been dismissed or removed from Government service; or (b) who is convicted of an offence connected with any proceeding under this Act, the

	Central Excise Act ,1944, or the Gold (Control) Act, 1968; or the Finance Act, 1994; or (c) who has become an insolvent,
Section 147 Liability of Principal and Agent	Section 147 stipulates that anything required to be done by the owner/importer/exporter of any goods can be done by his agent. However, the owner/importer/exporter shall be liable for all the acts of his agent.
Section 150 Procedure for sale of goods and application of sale proceeds	The proceeds of any such sale shall be applied in the following manner – (i) Firstly, to the payment of the expenses of the sale, (ii) Next, to the payment of freight and other charges payable in respect of the goods sold, to the carrier, if notice of such charges has been given to the person having custody of the goods, (iii) Next, to the payment of the duty on the goods sold, (iv) Next, to the payment of the charges in respect of the goods sold due to the person having the custody of the goods, (v) Next, to the payment of any amount due from the owner of the goods to the Central Government under the provisions of this Act or any other law relating to customs, and the balance, if any, shall be paid to the owner of the goods. However, if it is not possible to pay the balance of sale proceeds, if any, to the owner of the goods within a period of 6 months from the date of sale of such goods or such further period as the Commissioner of Customs may allow, such balance of sale proceeds shall be paid to the Central Government.
Section 151A Instructions to officers of custom (Board Circular)	The CBIC has been empowered to issue such orders, instructions and directions to officers of custom in order to ensure - uniformity in the classification of goods; or - with respect to the levy of duty thereon - the implementation of any other provisions of the Customs Act or of any other law for the time being in force, in so far as they relate to any prohibition, restriction or procedure for import or export of goods. Such orders, instructions and directions may be issued to officers of customs as the board may deem fit and such officers of customs and all other persons employed in the execution of the Act shall observe and follow such orders, instructions and directions of the Board. No such orders, instructions or directions shall be issued (a) so as to require any such officer of customs to make a particular assessment or to dispose of a particular case in a particular manner; or (b) so as to interfere with the discretion of the Commissioner of Customs (Appeals) in the exercise of his appellate functions.
Section 151B Reciprocal arrangement for exchange of information facilitating trade	The Central Government is authorized to enter into an agreement or any other arrangement with the Government of any country outside India or with such competent authorities of that country, as it deems fit, for facilitation of trade, enforcing the provisions of Customs Act and exchange of information for trade facilitation, effective risk analysis, verification of compliance and prevention, combating and investigation of offences under the provisions of this Act or under the corresponding laws in force in that country. The information so received may also be utilized as evidence in investigations and proceedings under this Act.
Section 153 Modes for service of notice, order etc.	(1) 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. (2) 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 manner provided in sub-section (1). (3) 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.
Section 154A Rounding Off of Duty, etc.	This section provides for the rounding off of the duty or any other sum payable under this Act. This provision is invariably found in all tax laws. The section is reproduced below: The amount of duty, interest, penalty, fine or any other sum payable, and the amount of refund, drawback or any other sum due, under the provisions of this Act shall be rounded off to the nearest rupee and, for this purpose, where such amount contains a part of a rupee consisting of paise then, if such part is fifty paise or more, it shall be increased to one rupee and if such part is less than fifty paise it shall be ignored.

Whether any interest is payable on delayed refund of sale proceeds of auction of seized goods after adjustment of expenses and charges in terms of section 150 of the Customs Act, 1962? Vishnu M Harlalka v. Union of India 2013 (294) ELT 5 (Bom)	The High Court held that 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. The High Court directed the Department to pay interest from the date of approval of proposal for sanctioning the refund.
Can a former director of a company be held liable for the recovery of the customs dues of such company? Anita Grover v. CCEx. 2013 (288) ELT 63 (Del.)	The Court held that since the company was not being wound up, the juristic personality the company and its former director would certainly be separate and the dues recoverable from the former could not, in the absence of a statutory provision, be recovered from the latter. There was no provision in the Customs Act, 1962 corresponding to section 179 of the Income-tax Act, 1961 or section 18 of the Central Sales Tax Act, 1956 (refer note below) which might enable the Revenue authorities to proceed against directors of companies who were not the defaulters.

Chapter 15 : - Foreign Trade Policy

FTP (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. Its primary purpose is not merely to earn foreign exchange but also to stimulate greater economic activity. FTP was earlier called as EXIM policy.

The Foreign Trade Policy is closely knit with the Customs, GST Laws and Excise 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., Customs Tariff Act). 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).

Objective of FTP 2015-20

- Stable and sustainable policy environment for foreign trade;
- Export Promotion Mission;
- Diversification of India's export;
- Expansion and integration of export market;
- Creating favorable balance of payment

Coverage of FTP

The FTP covers the policies and regulations with respect to the following matters –

- Policy for regulating import and export of goods and services;
- Exports from India Scheme;
- Duty Remission and Duty Exemption Scheme for promotion of exports;
- Export Promotion Capital Goods (EPCG) Scheme;
- Export Oriented Undertakings (EOU) / Electronic Hardware Technology Park (EHTP)/ Software Technology Park (STP) and Bio Technology Parks (BTU) Schemes;
- Special Economic Zones;
- Deemed Exports.

Guiding Principles

Principles	Initiatives
• Make in India • Ease of doing business • E-Commerce Exports • SEZ, EOU, STP, EHTP & BTP • Duty Credit Scrips • Resolve quality Complaints & Trade Disputes	• Only 3 mandatory documents for Import/Export • 24*7 Customs clearance facility • Single window scheme • EDI Initiatives

Administration of FTP

- **Authority:** Director General of Foreign Trade (DGFT) **Others:** CBEC, RBI, VAT, BOT
- **Powers of DGFT:**
 - a. To issue authorization,

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- b. To decide on interpretation,
- c. To specify procedure,
- d. To grant exemption from policy/procedure,
- e. To enforce protection measures,
- f. To frame schemes for trade with neighboring countries.

Trade facilitations through EDI Initiatives

DGFT has set up a secured EDI message exchange system for various documentation related import and export. E.g. Import, Export Authorisation, Bills of Shipment, BOE etc. These has reduced the physical interface of export and import with the govt. depart and is a signs.

General provisions applicable to import and export of goods

- Exports and imports are free unless regulated.
- Imports have to comply with Domestic Laws
- **PAN is IEC w.e.f. 1-7-2017.** It is a unique 10 digit code issued by DGFT to a person. IEC is mandatory to export any goods out of India or to import any goods into India unless specifically exempt. Permanent Account Number (PAN) is pre-requisite for grant of an IEC. Only one IEC can be issued against a single PAN.

DGFT has decided to use income tax PAN as IEC number i.e., IEC will be issued by DGFT with the difference that it will be alpha numeric (instead of 10 digit numeric at present) and will be same as PAN of an entity.

With the introduction of GST, GSTIN would be used for purposes of

- (i) credit flow of IGST on import of goods, and
- (ii) refund or rebate of IGST related to export of goods.

In view of this, it has been decided that importer/exporter would need to declare only GSTIN (wherever registered with GSTN) at the time of import and export of goods. For residuary categories, UIN issued by GSTN and authenticated by DGFT will be used. For others, common number will be notified by DGFT.

- Every exporter and importer shall comply with the provisions of the foreign trade development and regulation act. All imported goods shall also be subject to domestic laws.
- **DGFT decision is final decision.**
- Exemption from policy/procedures.
- Principles of restrictions: DGFT may, through a notification, adopt and enforce any measures necessary for **Protection of**
 - ✓ Public morals
 - ✓ Human, animal or plant life or health
 - ✓ Patents, trade mark and copyrights
 - ✓ National treasures of artistic, historic and archaeological value
 - ✓ Trade of fissionable material

Conservation of exhaustible natural resource

Prevention of traffic in arms, ammusim and implements of war and use of prison labour. Minimum export import price.

- No person may claim an authorisation as a right and DGFT shall have power to refuse to grant or renew the same in accordance with provisions of FT Development and Regulation Act (FT (DAR) Act].
- Mandatory documents for export/import of goods from/into India
 - ✓ Bill of lading/airway bill
 - ✓ Commercial invoice cum packing list
 - ✓ For export - Shipping bill/Bill of export
 - ✓ For import - BOE

Import of Specific Categories of Goods

- ✓ Goods which are importable without any restriction, may be imported by any person. However if such imports require an Authorization, actual user alone may import such goods unless actual user condition is specifically dispensed with by DGFT.
- ✓ Capital goods, equipments, components, parts & accessories, whether imported or indigenous, except those restricted, may be sent abroad for repairs, testing, quality improvement or upgradation or standardization of technology and re-imported without an Authorization.
- ✓ Import of second hand capital goods, including refurbished/re-conditioned spares shall be allowed freely. However, second hand personal computers/laptops, photocopier machines, ac/ diesel generating sets will only be allowed against authorization. Second hand (used) goods, [except second hand capital goods], shall be restricted for imports and may be imported only against authorization.
- ✓ A SEZ unit/Developer/Co-developer may dispose of in DTA any waste or scrap, generated during manufacturing or processing activity, without authorization, on payment of applicable Customs Duty.
- ✓ Import of gifts shall be 'free', if such goods are otherwise freely importable. In other cases, such imports shall be permitted against an authorisation issued by DGFT.

CIF value of import of consumer electronic items as anyone time by any person through post or otherwise for personal use is Rs. 50,000.

Export related general provisions

- ✓ All goods may be exported without any restriction except to the extent regulated.
- ✓ For any benefit to accrue to the supporting manufacturer, the names of both supporting manufacturer as well as the merchant exporter must figure in the concerned export documents, especially in ARE-1/ARE-3/Shipping Bill/Bill of export/Airway Bill.
- ✓ Third-party exports means exports made by an exporter or manufacturer on behalf of another exporter. In such cases, export documents such as shipping bills shall indicate name of both manufacturing exporter/manufacturer and third party exporter. BRC, GR declaration, export order and invoice should be in the name of third party exporter. Such third party exports shall be allowed under FTP.
- ✓ Goods including edible items, of value not exceeding Rs. 5,00,000 in a licensing year, may be exported as a gift. However, items mentioned as restricted for exports in ITC (HS) shall not be exported as a gift, without an authorization.
- ✓ Goods imported, in accordance with FTP, may be exported in same form without an Authorization provided item is not restricted. Capital goods, which are freely importable and freely exportable, may be imported for export on execution of LUT/BG with Customs Authority. Goods imported against payment in freely convertible currency would be permitted for export only against payment in freely convertible currency, unless otherwise notified by DGFT.
- ✓ Goods or parts thereof on being exported and found defective/damaged or otherwise unfit for use may be replaced free of charge by the exporter.
- ✓ Export of repaired goods: Allowed without authorization and in accordance with customs notification. Re-export not mandatory if defective parts imported for testing/evaluation of defects.
- ✓ Warranty spares [except those restricted] may be exported along with main equipment or subsequently but within contracted warranty period of such goods, subject to approval of RBI.
- ✓ All export contracts and invoices shall be denominated either in freely convertible currency or Indian rupees but export proceeds shall be realized in freely convertible currency.
- ✓ In case of non-realization of exports, benefits to be returned along with other actions, except in case of insurance cover.

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- ✓ Provisions have been made for regularization of Export Obligation default and settlement of Customs duty and interest through Settlement Commission.

Export Promotion Schemes

1. **Duty Exemption Schemes:-** (a) Advance Authorization Scheme, and (b) Duty Free Import Authorization (DFIA) Scheme. [Inputs can be imported **without duty**, if used in export product.]
2. **Duty Remission Schemes:-** (a) Duty Drawback Scheme (b) ITC Scheme, and (c) Rules 18 & 19 of CER.
3. **Reward Schemes:-** (a) Merchandise Exports from India Scheme (MEIS) & (b) Service Exports from India Scheme (SEIS)
4. **Export Promotion Capital Goods (EPCG) Schemes**
5. **SEZ Schemes**
6. **Deemed Exports**
7. **EOU, EHTP, STP, BTP Schemes**

Advance authorization and Duty free import authorization scheme

Parameter	Advance Authorization	Duty Free Import Authorization Scheme
Advantage	Inputs which are used in the export product can be imported without payment of customs duty. The goods imported are exempt from basic customs duty, additional customs duty, education cess, anti-dumping duty and safeguard duty, unless otherwise specified. IGST and GST Compensation Cess have been exempted upto 31.03.2019 on imports under Advance Authorisation for physical exports.	Inputs which are used in the export product can be imported without payment of customs duty. The goods imported are exempt only from BCD. IGST will be payable on imports
Items allowed to be Imported	(a) Inputs, which are physically incorporated in export product (b) Input, fuel, oil, catalyst which are used in exported Goods. (c) Mandatory spares which are required to be exported/supplied with resultant product permitted upto 10% of CIF value of Authorization. (d) Specified spices only when used for activities like crushing/grinding/-sterilization/manufacture of oils or oleoresins and not for simply cleaning, grading, re-packing etc.	DFIA is issued to allow duty free import of inputs. In addition, import of oil and catalyst which is consumed/utilised in the process of production of export product, may also be allowed. Provisions applicable to Advanced Authorization are broadly applicable in case of DFIA. DFIA scheme shall not be available for import of raw sugar.
Items not allowed to be imported	Prohibited Goods mentioned in Indian Trade Clarification (ITC), Energy and	

	items reserved for imports by State trading enterprises	
Actual user condition	Advance Authorisation and/ or materials imported thereunder will be with actual user condition. It will not be transferable even after completion of export obligation. However, Authorisation holder will have an option to dispose off product manufactured out of duty free inputs once export obligation is completed. In case where CENVAT credit facility on inputs has been availed for the exported goods, even after completion of export obligations, the goods imported against Advance Authorisation shall be utilized only in the manufacture of dutiable goods whether within the same factory or outside (by supporting manufacturer). Waste/scrap arising out of manufacturing process, as allowed, can be disposed off on payment of applicable duty even before fulfilment of export obligation.	These authorization shall be issued only for products for which SION have been notified. No DFIA shall be issued for an export product where SION prescribes 'Actual User' condition for any input. After completion of exports and realization of export proceeds, request for issuance of transferable DFIA may be made to concerned RA within a period of: (a) 12 months from the date of export or (b) 6 months (or additional time allowed by RBI for realization) from the date of realization of export proceeds, whichever is later. RA shall issue transferable DFIA with a validity of 12 months from the date of issue.
Basis of issue of advance authorization	(i) as per SION notified; or (ii) on the basis of self-declaration as per paragraph 4.07 of handbook of procedures; or (iii) Applicant specific prior fixation of norm by the Norms Committee; or (iv) On the basis of Self Ratification Scheme	
Minimum Value Addition	15% of import value (in case of tea 50%) *If inputs are supplied free of Cost by foreign buyer in such case for calculation of value addition, notional value shall be taken i.e. 15% of market value	20% of import value
Eligible Person	(a) Manufacturer (b) Merchant Exporter (c) For pharma product – only manufacturer exporter eligible (d) Physical or deemed exports – Both eligible – (i) physical export (including export to SEZ) (ii) Intermediate supply; and/or (iii) supplies made to specified categories of deemed exports (iv) Supply of 'stores' on board of foreign going vessel/aircraft, subject to condition that there is specific SION in respect of item supplied.	DFIA shall be issued on post export basis for products for which SION have been notified. The applicant shall file an online application to RA concerned before starting exports under DFIA. Export shall be completed within 12 months from the date of online filing of application and generation of file number. While doing export/supply, applicant shall indicate file number on the export documents.

Study Notes

Domestic Sourcing of Inputs	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 advance authorization holder may obtain supplies from EOU/EHTP/BTP/STP/SEZ units, without obtaining ARO or Invalidation letter	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. DFIA holder may obtain supplies from EOU/EHTP/BTP/STP/SEZ units, without obtaining ARO or Invalidation letter.
Standard Input Output Norms	The import of raw material is on the basis of standard input – output Norms. Advance authorization can be issued even if SION for that product is not fixed.	The import of raw material is on the basis of standard input – output Norms. DFIA can be issued only if SION has been fixed for that product to be exported.
Annual Authorization	(a) Status Certificate Holders (b) All other categories of exporter having past export Performance (In preceding 2 years) (c) Authorization for Annual requirements shall be issued only where SIONs or valid adhoc norms exists on the date of authorization. It is not available on self-declaration basis.	
Limit of Annual advance authorization	300% of FOB value of physical export & / or FOR value of deemed export in preceding financial year. OR Rs 1 Crore WHICH EVER IS HIGHER	
Validity period of imports	(a) 12 months from the date of issue of authorization. (b) Advance authorization for deemed export shall be coterminous with contracted duration of project execution or 12 months from the date of issue of authorization, whichever is more.	Applicant shall file online application to Regional Authority concerned before starting export under DFIA
Export Obligation	18 months from the date of issue of authorization or notified by DGFT Note: In case of items falling in categories of defense, military store, aerospace and nuclear energy 24 months. Exports proceeds shall be realized in freely convertible currency except otherwise specified.	Export shall be completed within 12 months from the date of online filing of application. Exports proceeds shall be realized in freely convertible currency except otherwise specified.
Drawback	Drawback as per rate determined and fixed by Custom authority shall be available for duty paid inputs (both imported and indigenous) used in the export product.	Drawback as per rate determined and fixed by Custom authority shall be available for duty paid inputs (both imported and indigenous) used in the export product.

Answer the following questions with reference to the provisions of Foreign Trade Policy (ICAI example):

- i. Flintex Manufacturers manufactures goods by using imported inputs and supplies the same under Aid Programme of the United Nations. The payment for such supply is received in free foreign exchange. Can Flintex Manufacturers seek Advance Authorization for the supplies made by it?
 - ii. XYZ Ltd. has imported inputs without payment of duty under Advance Authorization. The CIF value of such inputs is ₹ 10,00,000. 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?
 - iii. 'A' has used some duty paid inputs in its export products. However, for the rest of the inputs, he wants to apply for the Advance Authorization. Can he do so? Explain.
- i. Supply to goods to UN or international organisation for their official use or supplied to projects financed by them are 'deemed exports'. Advance Authorization can be issued for supplies made to such 'deemed exports'. Therefore, Flintex Manufacturers can seek an Advance Authorization for the supplies made by it.
 - ii. Advance Authorization necessitates exports with a minimum of 15% value addition (VA).

$$VA = [(A - B)/B \times 100]$$

A = FOB value of export realized, B = CIF value of inputs covered by authorization.
Therefore, the minimum FOB value of the exports made by XYZ Ltd. should be ₹ 11,50,000.
 - iii. Yes, 'A' can do so. In case of part duty free and part duty paid imports, both Advance Authorization and drawback will be available. Drawback can be obtained for any duty paid material, whether imported or indigenous, used in goods exported, as per drawback rate fixed by DoR, Ministry of Finance (Directorate of Drawback). Advance Authorization can be used for importing duty free material. Drawback allowed must be mentioned in the application for Advance Authorization. In such case, All Industry Brand Rates are not applicable. The manufacturer has to get specific brand rate fixed from Commissioner for these exported goods.

Duty Remission Scheme

Reward Schemes

Merchandise exports from India Scheme (MEIS)

Objective	The objective of MEIS scheme is to compensate infrastructural inefficiencies and associated costs involved in export of goods/products, which are produced/manufactured in India, especially goods having high export intensity, employment potential and thereby enhancing India's export competitiveness.
Basis of Calculation of Reward	The basis of calculation of rewards would be – (i) On realized 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.
Export of goods through courier or	Exports of handicraft items, handloom products, books/periodicals, leather footwear, toys and tailor made fashion garments through courier or foreign post office using e-

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Study Notes

foreign post offices using e – Commerce	commerce of FOB value upto Rs. 25,000 per consignment shall be entitled for rewards under MEIS.
Ineligible categories under MEIS	Some exports categories/sectors ineligible for Duty Credit Scrip entitlement under MEIS are listed below: ☐ Supplies made from DTA units to SEZ units ☐ Exports through trans-shipment, i.e., exports that are originating in third country but trans-shipped through India ☐ Deemed Exports ☐ SEZ/EOU/EHTP/BPT/FTWZ products exported through DTA units ☐ Export products which are subject to Minimum export price or export duty ☐ Exports made by units in FTWZ.

Service exports from India Scheme (SEIS)

Objective	The objective of SEIS scheme is to encourage export of notified services from India. The scheme applies to export of services made on or after 01.04.2015.
Basis of Calculation of Reward	i. Minimum NFE earnings – US \$ 15,000 (US \$ 10,000 for individual service providers) in preceding FY. Net Foreign Exchange = Gross Earnings of Foreign Exchange - Total expenses / payment / remittances of Foreign Exchange by the IEC holder, relating to service sector in the Financial year. Free Foreign Exchange earned through international credit cards and other instruments, as permitted by RBI shall also be taken into account for computation of value of exports. ii. NFE of services only to be taken into account for person who is manufacturer as well as service provider. iii. Service provider must have active IEC to claim rewards. 'Service Provider' means a person providing: i. Supply of a 'service' from India to any other country; (Mode 1 – Cross border trade) ii. Supply of a 'service' from India to service consumer(s) of any other country in India; (Mode 2 – Consumption abroad) iii. Supply of a 'service' from India through commercial presence in any other country. (Mode 3 – Commercial Presence) – Not Eligible iv. Supply of a 'service' from India through the presence of natural persons in any other country (Mode 4 – Presence of natural persons). – Not Eligible
Ineligible categories under SEIS	Following shall not be taken into account for calculation of entitlement under the scheme: Remittance related to Financial Services Sectors, Raising of all types of foreign currency Loans; Export proceeds realization of clients; Issuance of Foreign Equity through ADRs / GDRs or other similar instruments; Issuance of foreign currency Bonds; Sale of securities and other financial instruments; etc. Payments for services received from EEFC Account; Exports of Goods; Export turnover relating to services of units operating under SEZ / EOU / EHTP / STPI / BTP Schemes or supplies of services made to such units; Service providers in Telecom Sector.

Common Provisions for Exports from India Schemes (MEIS and SEIS)

- (i) **Drawback:**
- Basic Custom duty paid in cash or through debit under Duty Credit scrip shall be adjusted for Duty Drawback as per DoR rules or notifications.

- Duty credit scrip shall be permitted to be utilized for payment of duty in case of import of capital goods under lease financing.
- (ii) **Transfer of export performance:** Transfer of export performance from one IEC holder to another IEC holder shall not be permitted. Thus, a shipping bill containing name of applicant shall be counted in export performance / turnover of applicant only if export proceeds from overseas are realized in applicant's bank account and this shall be evidenced from e - BRC / FIRC.
However, MEIS rewards can be claimed either by the supporting manufacturer (along with disclaimer from the company / firm who has realized the foreign exchange directly from overseas) or by the company/ firm who has realized the foreign exchange directly from overseas.
- (iii) Incentives of MEIS & SEIS are available to units located in SEZs also.

ICAI Example

Examine whether benefit of Service Exports from India Scheme (SEIS) can be availed with respect to notified services provided by service providers located in India in the current financial year in the following independent cases:

- i. *Net Foreign exchange earned by Mr. Aniket, a service provider, in the preceding financial year is USD 3,000.*
- ii. *X and Y Brothers, a firm of service providers, has earned net foreign exchange to the tune of USD 16,500 in the preceding financial year.*
- iii. *Mr. Ishaan, a service provider, has earned net foreign exchange of USD 12,000 in the preceding financial year. Out of this, USD 3,000 has been paid to Mr. Ishaan through the credit card of the foreign client.*

In order to be eligible for duty credit scrip entitlement under SEIS:-

- (a) *Service provider must be located in India.*
- (b) *It must provide only notified services in specified manner.*
- (c) *It must have an active IEC at the time of rendering such services for which rewards are claimed.*
- (d) *An individual service provider/Sole-proprietorship should have minimum net foreign exchange earnings of USD 10,000 and a service provider other than individual/Sole-proprietorship should have minimum NFE of USD 15,000, in preceding financial year.*

Free foreign exchange earned through International Credit Cards and other instruments as permitted by RBI for rendering of service are also be taken into account for computation of NFE.

In the light of the above provisions, the cases are examined as under:

- (i) *Mr. Aniket is not eligible for SEIS Scheme as his net foreign exchange earnings are less than USD 10,000 (minimum limit for individuals).*
- (ii) *X and Y Brothers are eligible for the Scheme as their net foreign exchange earnings exceed the limit of USD 15,000 (minimum limit for firms).*
- (iii) *Foreign exchange earned through credit cards is counted for the purpose of computing the limit of minimum net foreign exchange required for being eligible to SEIS Scheme. Thus, Mr. Ishaan is eligible for SEIS Scheme.*

Status Holder

Status Holder 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 will depend on export performance.

An applicant shall be categorized as status holder on achieving export performance during the current and previous three financial years (for Gems & Jewellery Sector the performance during the current and previous two financial years shall be considered for recognition as status holder) as indicated below. The export performance will be counted on the basis of FOB of export earning in free foreign exchange. For deemed export, FOR value of exports in Indian Rupees shall be converted in US \$ at the exchange rate notified by CBEC, as applicable on 1st April of each Financial Year. For granting status, export performance is necessary in at least two out of three years.

S.No	Status Category	Export FOB (in US \$ Million)
1	One Star Export House	3
2	Two Star Export House	25
3	Three Star Export House	100
4	Four Star Export House	500
5	Five Star Export House	2000

Privileges of Status Holder

- Authorization and Customs Clearances for both imports and exports may be granted on self – declaration basis;
- Fixation of Input – Output norms on priority, within 60 days by the Norms Committee;
- MSME, Manufacturing units having ISO/BIS, Units located at Northern Eastern States including Sikkim and J & K, Units located in Agri Export Zones will be granted double weightage for calculation of export performance for grant of state. (only for one star category)
- Exemption from furnishing of Bank Guarantee
- Exemption from compulsory negotiation of documents through banks. The remittance receipts, however, would continue to be received through banking channels.
- Two star and above Export houses shall be permitted to establish Export Warehouses as per Department of Revenue guidelines.
- Three Star and above Export House shall be entitled to get benefit of Accredited Clients Programme (ACP) as per the guidelines of CBEC.
- Status holders shall be entitled to export freely exportable items on free of cost basis for export promotion subject to an annual limit of –

Export of -	Annual limit for export promotion
Gems and Jewellery, Articles of Gold & precious metals	Nil
Export of pharma products by pharmaceutical companies	2% of average annual export realization during preceding three licensing years

Supplies of pharma products, vaccines and lifesaving drugs to health programmes of international agencies i.e. UN, WHO etc.	8% of average annual export realization during preceding three licensing years.
Any other case	➤ Rs.1 crore; or ➤ 2% of average annual export realization during preceding three licensing years, Whichever is lower.
<u>No export incentive:</u> Such free of cost supplies shall not be entitled to Duty Drawback or any other export incentive under any export promotions scheme.	

Example: ABC Ltd. a medium enterprise, covered under MSMED Act has made exports worth US \$ 25 Lakhs per annum (on an average) during last 3 years. It wants to export certain goods for export promotion on Free of Cost basis, which are worth Rs. 32 Lakh. Can it do so, given that 1\$ = Rs. 60. A. Exports by MSMEs are given double weightage for determination of one-star status. Hence, for said purpose, exports are worth = \$ 25 Lakh x 2 = \$ 50 Lakh = \$ 5 Million. Therefore ABC Ltd. is eligible for status of One Star Export House. (i) A status holder can export goods free of cost for export promotion as follows:

a. Rs. 1 Crore; or

b. 2% of average exports of last 3 years i.e. 2% of \$ 25 Lakh x Rs. 60 per \$ = Rs. 30 Lakh.

Whichever is lower.

Hence it can export freely export promotion material upto Rs. 30 Lakh

Export Promotion Capital Goods Scheme (EPCG)

Export Promotion Capital Goods Scheme (EPCG) permits exporters to import capital goods for pre-production, production and post-production at zero customs duty or procure them indigenously without paying duty in the prescribed manner. In return, exporter is under an obligation to fulfill the export obligation. Import under EPCG scheme shall be subject to an export obligation equivalent to 6 times of duty saved on capital goods to be fulfilled in 6 years reckoned from the date of issue of authorization.

Indigenous Sourcing of Capital Goods and benefits to Domestic Supplier: A person holding an EPCG authorisation may source capital goods from a domestic manufacturer. Such domestic manufacturer shall be eligible for deemed export benefits under FTP and as may be provided under GST Rules under the category of deemed exports. Such domestic sourcing shall also be permitted from EOUs and these supplies shall be counted for purpose of fulfilment of positive NFE by said EOU.

Capital goods for the purpose of the EPCG scheme shall include –

- Capital Goods include those in CKD / SKD condition, computer software systems; or spares, moulds, dyes, jigs, fixtures, tools & refractories for initial lining and spare refractories; and catalysts for initial charge plus one subsequent charge.
- EO equivalent to 6 times of duty saved on capital goods – Time limit of 6 years.
- Authorization validity – 18 months.
- IGST & GST Cess exempt on imports: Capital goods imported under EPCG scheme for physical exports are exempt from IGST and GST Compensation Cess (upto 31.03.2019)
- Second hand capital goods – Not eligible.

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- (f) Ineligible capital goods: Authorization under EPCG Scheme shall not be issued for import of any Capital Goods for generation / transmission of power (including Captive plants and Power Generator Sets of any kind) for –
- Export of electrical energy (power);
 - Supply of electrical energy (power) under deemed exports;
 - Supply of power (energy) in their own unit; and
 - Supply of electricity transmission services.
- (g) Import of Restricted items permissible only after approval.
- (h) Goods restricted for export – EPCG authorization only after approval.
- (i) Manufacturer exporters / Merchant exporters / Service providers eligible.
- (j) Common Service Provider (CSP) also eligible.
- (k) Actual User Condition till export obligation fulfilled.

Export Obligation (EO) Conditions: 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. Export obligation consists of average export obligation and specific export obligation. Following Conditions:-

- Over and above the average level of exports achieved in the preceding 3 licensing years.
- 25% less EO in case of ingeniousness sourcing of capital goods.
- Shipments under Advance Authorisation, DFIA, Drawback scheme, or reward schemes; would also be counted for fulfilment of EO under EPCG Scheme.
- Both physical exports as well as specified deemed exports shall also be counted towards fulfilment of export obligation.
- Payment received in rupee terms for such Services as notified in Appendix 5D shall also be counted towards discharge of export obligation under the EPCG scheme.

EOU, EHTP, STP & BTP Schemes

Units under Export Oriented Unit (EOU) Scheme, Electronics Hardware Technology Park (EHTP) Scheme, Software Technology Park (STP) Scheme or Bio-Technology Park (BTP) Scheme export their entire production of goods and services (except permissible sales in DTA). They can import inputs and capital goods without payment of customs duty.

All goods including capital goods may be imported / procured from DTA [Amended by Notification No. 33/2015-2020 dated 13-10-2017]: An EOU / EHTP / STP/ BTP unit may import / procure all types of goods, including capital goods, required for its activities, provided they are not prohibited items of import in the ITC (HS) as follows –

Procurement Mode	Duty exemption
(a) Import, (b) Procure from bonded warehouses in DTA, and (c) Procure from international exhibition held in India	Without payment of – ➤ Basic customs duty ➤ Additional duty of Customs (CVD or Special CVD) ➤ IGST leviable u/s 3(7) of Customs Tariff Act, 1975 ➤ GST, Compensation Cess leviable u/s 3(9) of Customs Tariff Act, 1975, As per notification issued by the Department of Revenue.
Procurement from DTA	➤ GST payable: Procurement of GST goods from DTA would be on payment of applicable GST taxes. The

	refund of GST taxes for supply from DTA to EOU would be available to supplier as provided under GST rules subject to such conditions and documentations as specified there is under GST rules. ➤ Excise duty not payable: EOU's can procure excisable goods, falling in Fourth Schedule of Central Excise Act, from DTA without payment of excise duty.
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Export of spares and components upto 5% of FOB value of exports: Procurement and export of spares or components, upto 5% of FOB value of exports, may be allowed to same consignee / buyer of the export article, subject to the condition that it shall not count for NFE and direct tax benefits.

Positive NFE: NFE earnings shall be calculated cumulatively in blocks of 5 years, from commencement of production. 5 year period may be extended by BOA:

- Extension in case of NFE could not be achieved due to prohibition/restriction;
- Extension by upto 1 year, if NFE could not be achieved due to adverse market condition.

Investment Criteria – minimum investment Rs.1 crore: Not applicable to units in EHTP / STP / BTP, Handicrafts / Agriculture / Floriculture / Aquaculture / Animal Husbandry / Information Technology, Services, Brass Hardware and Handmade jewellery sectors.

DTA Sale of Finished Products / Rejects / Waste / Scrap / Remnants and By – products: DTA sales – 50% of FOB value of exports.

- DTA sale by units manufacturing and exporting more than one product – upto 90% of FOB value of export of the specific products, subject to the condition that total DTA sale does not exceed the overall entitlement of 50% of FOB value of exports for the unit, as stipulated above.
- DTA sale of Rejects within an overall limit of 50% may be sold in DTA on payment of duties. Sale of rejects upto 5% of FOB value of exports shall not be subject to achievement of NFE.

Deemed Exports: Supplies from DTA to EOU / EHTP / STP / BTP units will be regarded as “deemed exports” and DTA supplier shall be eligible for relevant entitlements as per FTP, besides discharge of export obligation, if any, on the supplier.

Additional benefits to EOU: (i) Exports proceeds may be realized within 9 months; (ii) 100% in EEFC account; (iii) No bank guarantee in certain cases; (iv) Sharing of infrastructure subject to approval of UAC & 100% FDI.

Inter Unit Transfer: The provisions of inter unit transfer in case of EOU / EHTP / STP / BTP. Prior intimation to concerned DC is to be given. Transfer of capital goods is also allowed.

Sub-contracting by EOU / EHTP / STP / BTP units: EOU may grant job-work in DTA upto 50% of last year's turnover. EOU may also undertake job-work for DTA exporter/foreign supplier.

Sale of Unutilized Material: In case an EOU / EHTP / STP / BTP unit is unable to utilize goods and services, imported or procured from DTA, it may be –

- Transferred to another EOU / EHTP / STP / BTP / SEZ unit;
- Disposed off in DTA with approval of Customs authorities on payment of applicable duties and submission of import authorization; or

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(iii) Exported.

Exit from EOU Scheme: With approval of DC, an EOU may opt out of scheme. Such exit shall be subject to payment of Excise and Customs duties and industrial policy in force.

Conversion: Existing DTA units may also apply for conversion into an EOU / EHTP / STP / BTP unit. Existing EHTP / STP units may also apply for conversion / merger to EOU unit and vice – versa. In such cases, units will remain in bond and avail exemptions in duties and taxes as applicable.

Deemed Export

Transactions where the goods do not leave the country, payment is received in Indian Rupees or in foreign exchange and are regarded for limited purposes of FTP to be similar to exports. This is a fiction that cannot be extended beyond the purview of FTP.

Specified supplies are treated as 'deemed' exports and are eligible for certain benefits:

Supply by Manufacturer	Supply by Contractor / Sub-contractor
Sale of excisable goods to license holders (Advance Authorization or DFIA)	Supply to projects funded by notified Agencies / Funds (i) on duty-free supply terms of tender (ii) involving imported goods on 'delivered duty-paid' terms (iii) under international competitive bidding basis (iv) to specified agencies in App.7A
Sale of excisable goods to EOUs (all types)	Supply to projects (i) eligible to zero-duty supply u/n 12/2012-Cus. (ii) mega power projects u/n 12/2012-Cus. (iii) mega power projects on tariff based competitive bidding
Sale of capital goods to EPCG license holders	Supply to UN organization u/n 108/95-CE
Sale by freight container manufacturers	Supply to nuclear power projects (i) as per list 33/511 for setting-up u/n 12/2012 (ii) of >440 MW capacity (iii) certified by DoAE (iv) under national or international competitive bidding process

Benefits available are as follows:

- Advance authorization or DFIA
- Deemed export drawback
- Terminal excise duty refund (on applicable goods).

Effect of GST

With the introduction of GST, except for the list of articles that continue to be liable to Central Excise duty, deemed export benefits have been realigned to be in harmony with incentives/duty neutralization measures in GST. Deemed exports as defined in FTP are not exactly same as deemed exports notified under section 147 of CGST Act (refer 48/2017-CT dated 18 October 2017).

Pursuant to this notification, various concessions are allowed, namely:

Notification	Nature of GST Concession	Condition
48/2017-CT	Notifies deemed exports	Supplier to claim refund due to 'rate inversion' in his hands. As no refundable taxes paid by deemed-exporter, no refund remains to be availed
40/2017-CT (R)	Specifies CGST of 0.05% on supply to deemed exports	
41/2017-Int. (R)	Specifies IGST of 0.1% on supply to deemed exports	
78/2017-Cus.	Exempts IGST on imports	No refund since no IGST paid
79/2017-Cus.	Exempts IGST on imports	

Where the rate of GST has been reduced to 0.05% CGST for supplies by any Supplier where the Recipient and the Supply is included in as a deemed export under GST. With this measure, the Supplier would be liable to charge 0.1% IGST or 0.05%+0.05% CGST-SGST though much higher rate of tax may have been paid on this Supplier's inputs. This results in an 'inverted rate' situation for the Supplier who is entitled to claim refund under section 54(3) of CGST Act. Please note that this reduced rate of GST paid by the Recipient will be available as credit albeit for the nominal amount paid (refer para 13.2 of Circular 37/11/2018-GST dated 15 March 2018).

Special Economic Zone

Special Economic Zones Act, 2005 was introduced to:

- facilitate development of zones in areas deficient in industrial growth
- attract industries with minimal oversight of regulator and additional tax incentives
- continue to provide operational flexibility to transactions in DTA

The main objectives of the SEZ Act are:

- Export of goods and services without taxes
- Generation of additional economic activity
- Promotion of exports of goods and services
- Promotion of investment from domestic and foreign sources
- Creation of employment opportunities
- Development of infrastructure facilities
- Providing exemption from duties and taxes on procurement
- Single window clearance: It is expected that this will trigger a large flow of foreign and domestic investment in SEZs, in infrastructure and productive capacity, leading to generation of additional economic activity and creation of employment opportunities.

The Board of Approvals approves proposals for setting-up SEZs. Minimum acreage for each industry-type of zone and extent of development into producing and non-producing areas in the zone are specified. With this, development and maintenance of attractions in the zone based on infrastructural facilities is left with the developer of the zone. Land in the zone cannot be sold to units occupying the zone so that the developer continues to be responsible for the maintenance and growth of the zone.

Unit Approval Committee (UAC) approves applications for setting-up units within the SEZ. As the zone area, for purposes of statutes listed in Schedule I to the SEZ Act, are regarded as being a foreign territory, for purposes of Customs Act we may view SEZ area as being equivalent to some foreign country. In other words,

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all supplies to the zone will be equal to 'export' and the supplier will file a shipping bill and carry out all export procedures discussed earlier. Similarly, all procurement from the zone will constitute to 'import' and the procurer will file a bill of entry and carry out all import procedures discussed earlier.

SEZ units are permitted to sub-contract processing activities to DTA units as well as sell their finished products in DTA subject, of course, to export performance criteria. Goods removed from SEZ unit to DTA will be assessed as imports as per provisions discussed earlier.

SEZ units are required to be 'positive forex' earners and they are extended complete neutralization from taxes and duties. Sparse monitoring is involved with only annual reporting of performance. This oversight and monitoring is with Development Commissioner of the concerned SEZ and physical movement of goods into/out of zone is monitored by Customs (like in the case of any other normal port operations).

It is very important to call to attention, the following provision from SEZ Act:

"53. A Special Economic Zone shall, on and from the appointed day, be deemed to be a territory outside the customs territory of India for the purposes of undertaking the authorized operations."

From the above, it can be noted that supplies from domestic tariff area (DTA) to SEZ is treated as export by the DTA unit and the converse as import.

With the introduction of GST, supplies 'to or by' SEZs are always inter-State supply. And supplies 'to' SEZs are eligible for benefit of zero-rated supply.

Penalties

In case any exporter or importer in the country violates any provision of the Foreign Trade Policy or for that matter any other law in force, like Central Excise or Customs or Foreign Exchange, his IEC number can be cancelled by the office of DGFT and thereupon that exporter or importer would not be able to transact any business in export or import. The premises where any violation of the provisions of FTP has taken place or is expected to take place can be searched and the suspicious material seized.

Violations would cover situations when import or export has been made by unauthorized persons who are not legally allowed to carry out import or export or when any person carries out or admits to carry out any import or export in contravention of the basic FTP.

Question & Answer

Q1. 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%

A. 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

Q2. 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.

A. 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.

Q3. 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?

A. 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.

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Q4. 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. 30,000.
- (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

A. 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. 30,000 (For MEIS computation, value is to be limited to Rs.25,000)	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. 25,000)	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

Q5. 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?

A. 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.

Q6. 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).

A. 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.

Q7. Explain the conditions for redeeming authorization under duty free import authorization scheme as per Foreign Trade Policy 2015-2020.

A. 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.

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