

Chapter 3: Types of Duties

SYNOPSIS

3.1	Introduction	746
3.2	Types of Duties	746
3.2.1	Basic customs duty	749
3.2.2	Integrated Goods and Services Tax (IGST)	750
3.2.3	GST Compensation cess	755
3.2.4	Protective duties (Section 6(1) of the Customs Tariff Act, 1975)	757
3.2.5	Safeguard duty (Section 8B(1) of the Customs Tariff Act, 1975)	757
3.2.6	Countervailing Duty on Subsidized articles (Section 9 of the Customs Tariff Act, 1975)	759
3.2.7	Anti-dumping duty (Section 9A of the Customs Tariff Act, 1975)	760
3.3	When can provisional measures imposed	760
3.4	Refund on anti-dumping duty	760
3.5	Deferred Payment of Import Duty Rules, 2016 (w.e.f. 16.11.2016)	761
3.6	Imports and Input Tax Credit (ITC)	762
	Multiple Choice Questions (MCQs)	762
	Self-Examination Questions	763
1.	Theory Questions with Answers	763
2.	Practical Problems with Answers	763

Learning objectives

Various types of duties under Customs

Manner of calculation of various types of duties

3.1 Introduction

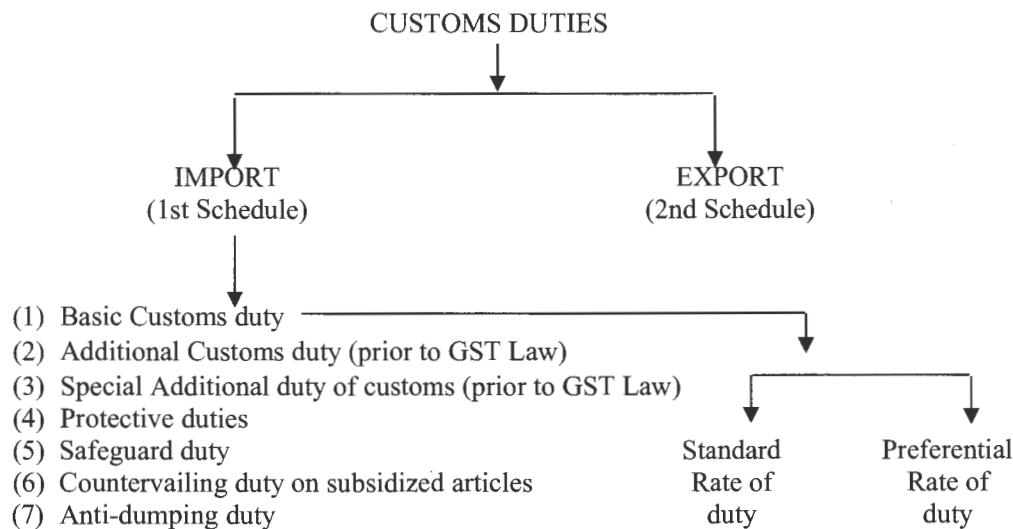
Under the Customs Act, 1962 import duty can be levied on almost all imports, whereas only few goods export duty levied. However, it is important to understand various types of duties under Customs Law, for the purpose of import and export of goods.

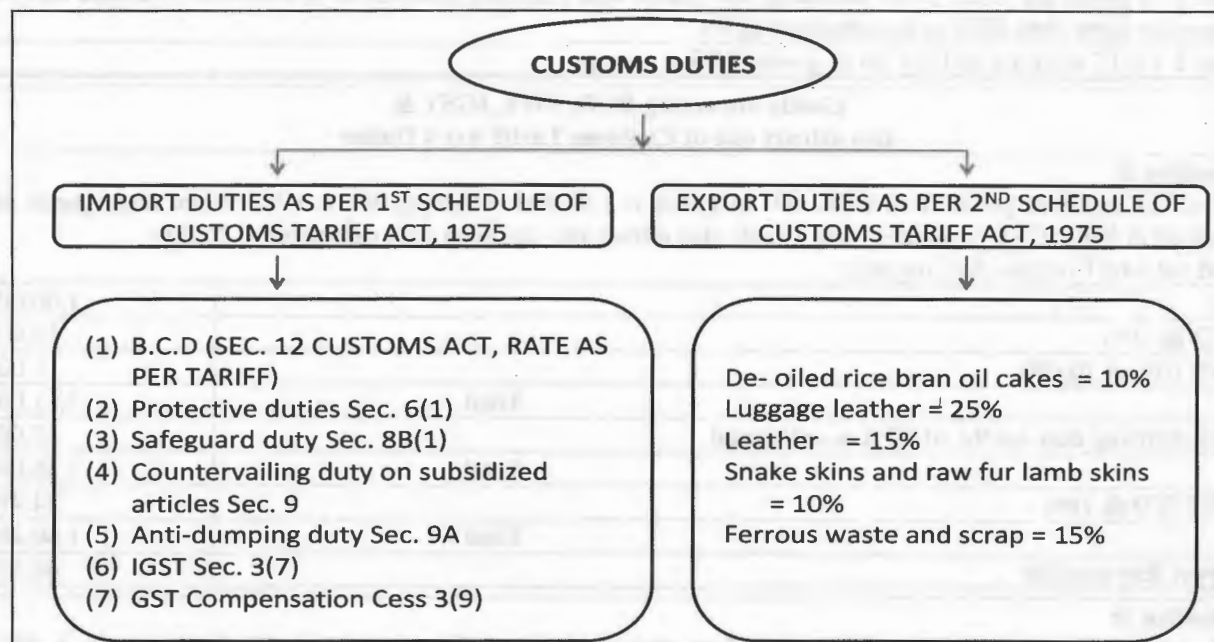
As per section 12 of Customs Act, 1962, Basic Customs Duty [BCD] can be levied on the value of goods. Section 2 of the Customs Tariff Act, 1975 provides the rate of duty to be applied on the value of goods. Basically section 2 of the Customs Tariff Act, 1975 provides following:

- First Schedule - Goods liable for import duty
- Second Schedule - Goods liable for export duty

3.2 Types of Duties

The following duties are leviable by the customs department as per the Customs Tariff Act, 1975



After GST Law:**Social Welfare Surcharge (w.e.f. 2nd February, 2018):**

Social Welfare Surcharge @ 10% on the aggregate duties of customs levied at the time of import.

If goods are Gold, silver including that plated with platinum unworth or in semi-manufactured form or in powder form, then SWS to be calculated @3%.

The Social Welfare Surcharge shall be calculated at the rate of 10% on the aggregate of duties and taxes and cesses which are levied and collected by the Central Government in Ministry of Finance (Department of Revenue) under Section 12 of the Customs Act, 1962.

The following are excluded while calculating the Social Welfare Surcharge:

- The Safeguard duty section 8B and 8C of the Customs Tariff Act,
- The Countervailing duty on subsidized articles Sec 9 of the Customs Tariff Act,
- The Anti-dumping duty section 9A of the Customs Tariff Act,
- The IGST section 3(7) of the Customs Tariff Act,
- The Compensation Cess to States section 3(9) of the Customs Tariff Act,

Levy and collection of Social Welfare Surcharge (SWS) on imports under various schemes such as Merchandise Exports from India Scheme (MEIS), Services Exports from India Scheme (SEIS) etc. vide CBIC Circular No. 02/2020-Customs, dated 10th January 2020:

Social Welfare Surcharge (SWS) cannot be debited through duty credit scrips and therefore has to be paid by the importer in cash.

Road and Infrastructure Cess (w.e.f. 2nd February, 2018):

Road and Infrastructure Cess @ INR 8/liter on domestically produced petrol and High Speed diesel.

This cess will be collected on imported goods and on excisable goods.

Goods attracting BCD, SWS & IGST**Question 1:**

A Ltd has imported goods from USA. AV of goods is 1,00,000. BCD payable is 10%. When same goods are supplied in India IGST payable is 18%.

Find out total Customs duty payable.

AV	1,00,000
BCD @ 10%	10,000
SWS 10% of 10,000	1,000
Total	1,11,000
IGST 3(7) @ 18%	19,980
Total	1,30,980
Import duty payable	30,980

Note 1: If goods are Gold, silver including that plated with platinum unworth or in semi-manufactured form or in powder form, then SWS to be calculated @3%.

Note 2: On IT software and big list of goods SWS is exempt

**Goods attracting BCD, SWS, IGST &
also attract one of Customs Tariff Act 4 Duties**

Question 2:

A Ltd has imported goods from USA. AV of goods is 1,00,000. BCD payable is 10%. When same goods are supplied in India IGST payable is 18%. Goods also attract anti-dumping duty calculated at 25,000

Find out total Customs duty payable.

AV	1,00,000
BCD @ 10%	10,000
SWS 10% of 10,000	1,000
Total	1,11,000
Anti-dumping duty u/s 9A of CTA as calculated	25,000
Total	1,36,000
IGST 3(7) @ 18%	24,480
Total	1,60,480
Import duty payable	60,480

Question 3:

A Ltd has imported goods from USA. AV of goods is 1,00,000. BCD payable is 10%. CVD payable is 12%. When same goods are supplied in India IGST payable is 18%. Goods also attract anti-dumping duty calculated at 25,000

Find out total Customs duty payable.

AV	1,00,000
BCD @ 10%	10,000
Total	1,10,000
CVD @ 12%	13,200
Total	1,23,200
SWS 10% of 23,200	2,320
Total	1,25,520
Anti-dumping duty u/s 9A of CTA as calculated	25,000
Total	1,50,520
IGST 3(7) @ 18%	27,094
Total	1,77,614
Import duty payable	77,614

**Goods attracting BCD, SWS, CVD, Special CVD &
also attract one of Customs Tariff Act 4 Duties**

Question:

A Ltd has imported goods from USA. AV of goods is 1,00,000. BCD payable is 10%. CVD payable is 12%. Special CVD payable is 4%. Goods also attract anti-dumping duty calculated at 25,000

Find out total Customs duty payable.

AV	1,00,000
BCD @ 10%	10,000
Total	1,10,000
CVD @ 12%	13,200
Total	1,23,200
Special CVD @ 4%	4,928
Total	1,28,128
SWS 10% of 28,128	2,813
Total	1,30,941
Anti-dumping duty u/s 9A of CTA as calculated	25,000
Total	1,55,941
Import duty payable	55,941

**Goods attracting BCD, SWS, CVD, Special CVD, RIC &
also attract one of Customs Tariff Act 4 Duties**

Question:

A Ltd has imported goods from USA. AV of goods is 1,00,000. BCD payable is 10%. CVD payable is 12%. Special CVD payable is 4%. Goods also attract anti-dumping duty calculated at 25,000. It is 1,000 litre of High speed diesel oil. Find out total Customs duty payable.

AV	1,00,000
BCD @ 10%	10,000
Total	1,10,000
CVD @ 12%	13,200
Total	1,23,200
Special CVD @ 4%	4,928
Total	1,28,128
SWS 10% of 28,128	2,813
Total	1,30,941
Anti-dumping duty u/s 9A of CTA as calculated	25,000
RIC 1,000 litre @ ₹8 per litre	8,000
Total	1,63,941
Import duty payable	63,941

3.2.1 Basic customs duty

The Basic Customs Duty is levied under section 12 of the Customs Act, 1962. As per section 2 of the Customs Tariff Act, 1975 preferential rate of duty is always lesser than standard rate of duty. The importer has to satisfy certain conditions to avail the preferential rate of duty on imported goods.

► **Example 1:** Mr. X imported Cashewnuts shelled then the import duty will be as follows:

- Standard rate of duty @30%
- Preferential rate of duty @20%

“*Preferential area*” means any country or territory which the Central Government may, by notification in the Official Gazette, declare to be such area.

If Mr. X wants to avail the preferential rate of duty, he has to satisfy the following conditions as otherwise the generally standard rate of duty is applicable.

- Specific claim for the preferential rate must made by the importer
- The import must be from the preferential area.
- The area must be notified by the Customs Tariff Act, 1975 to be a preferential area.
- The goods are produced or manufactured in such preferential area.

► **Example 2:** Mr. X imported the goods from China worth USD 6250. The Basic Customs Duty @12%, Social Welfare Surcharge 10%. The exchange rate was 1 US \$ = ₹77.76 on date of presentation of Bill of Entry. Find the total Customs Duty.

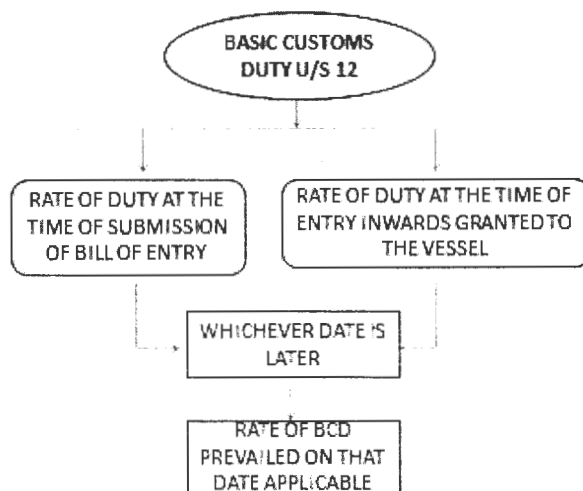
Answer:

The assessable value of Imported Goods	= ₹	4,86,000
[US \$ 6250 x ₹77.76]		
Basic Customs Duty 12%	= ₹	58,320
Social welfare surcharge 10%	= ₹	5,832
Total value of imported goods	= ₹	5,50,152

Therefore, the total value of customs duty = ₹ 64,152

Note: (1) Importer imports machinery as well as accessories which are classifiable under two different headings of Customs Tariff Act with different rate of duties. If so, the accessories are essential for machinery then the rate of duty applicable for machinery is also applicable for accessories.

(2) If the accessories are not essential for operation of machinery then rate of duties as applicable for machinery as well as accessories will apply separately. Hence, the common expenditure of packing charges, freight charges, insurance charges etc., will be apportioned in the ratio of the value of accessories and machinery.



3.2.2 Integrated Goods and Services Tax (IGST)

IGST (Integrated Goods and Services Tax) is a component under GST law, which is levied on goods being imported into India from other country. It has been subsumed various customs duties including Countervailing Duty (CVD) and Special Additional Duty of Customs (SAD).

In the GST regime, IGST will be levied on imports by virtue of sub-section (7) of Section 3 of the Customs Tariff Act, 1975. IGST wherever applicable, would be levied on cargo that would arrive on or after 1st July 2017. It may also be noted that IGST would also be levied on cargo, which has arrived prior to 1st July, but a bill of entry is filed on or after 1st July 2017.

Similarly, ex - bond bill of entry filed on or after 1st July 2017 would attract IGST, as applicable. In the case where cargo arrival is after 1st July and an advance bill of entry was filed before 1st July along with the payment of duty, the bill of entry may be recalled and reassessed by the proper officer for levy of IGST as applicable.

Note: The inclusion of anti-dumping duties and safeguard duty in the value for levy of IGST and Compensation Cess is an important change. These were not hitherto included in the value for the levy of additional duty of customs (CVD) or Special Additional Duty (SAD). The IGST paid shall not be added to the value for the purpose of calculating Compensation Cess.

Clarification regarding levability of IGST on High Sea Sales of imported goods and point of collection thereof:

GST council has deliberated the levy of Integrated Goods and Services Tax on high sea sales in the case of imported goods. The council has decided that 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.

Example: Ram Ltd. imported goods from USA at CIF value of ₹1,00,000. Before clearance these goods are sold by Ram Ltd. to Lakshman Ltd. for ₹1,50,000 by transferring bill of entry. Subsequently, Lakshman Ltd. sold these goods to Hanuman Ltd. for ₹1,75,000. Finally, Hanuman Ltd. wants to clear goods by submitting the Bill of Entry.

- What is point of collection of duty?
- Total the Customs duty?
- Total IGST under the GST Law?
- Net GST liability to Central Tax Department?

Applicable rate of BCD is nil, GST @18%.

Answer:

- Date of submission of Bill of entry or entry inwards granted to the conveyance whichever is later.
- Hanuman Ltd. is liable to pay total customs duty is ₹18,000 (i.e. ₹1,00,000 x 18%) under the Customs Law.
- Hanuman Ltd. is liable to pay IGST ₹31,500 (i.e. ₹1,75,000 x 18%) under the GST Law.
- Hanuman Ltd. is liable to pay Net IGST ₹13,500 [31,500 (i.e. ₹1,75,000 x 18%) less ₹18,000] under the GST Law.

Note: Hanuman Ltd. is eligible to avail ITC of IGST (i.e. ₹18,000) provided that the same is used in the course of furtherance of business.

Note: The importer (last buyer in the chain) would be required to furnish the entire chain of documents, such as original Invoice, high-seas-sales-contract, details of service charges/commission paid etc, to establish a link

between the first contracted price of the goods and the last transaction. In case of a doubt regarding the truth or accuracy of the declared value, the department may reject the declared transaction value and determination the price of the imported goods as provided in the Customs Valuation rules.

Circular No. 46/2017-Customs, dated 24.11.2017:

Applicability of IGST/GST on goods transferred/sold while being deposited in a warehouse:

Example 2: X Ltd imported a machine from Germany at FOB US\$ 1,00,000. This machine subsequently cleared from docks for warehousing on 1st January 20XX.

X Ltd sold this machine to Y Ltd on 15th June 20XX by transferring documents of title on the goods.

Y Ltd cleared goods from warehouse on 15th July 20XX after payment of duty and interest.

	1st January 20XX	15th June 20XX	15th July 20XX
BCD	10%	8%	12%
IGST	12%	12%	18%
Exchange rate of CBIC	₹68/USD	₹68.25/USD	₹68.50/USD

You are required to answer the following:

- Who is liable to pay duties to the Customs department?
- Total customs duty.
- IGST payable under GST Law.

Note: warehousing charges is ₹15,000/-.

Answer:

Statement showing value for Customs Duty:		₹
FOB	INR	= 68,00,000
Add: Insurance 1.125%		76500
Add: Freight 20%		= 1360000
CIF (i.e. AV)		= 82,36,500
BCD with SWS:		
82,36,500 x 13.2%		= 10,87,218
sub-total		= 93,23,718
IGST	18%	= 16,78,269
Total Customs Duty	=	27,65,487
w.e.f. 1-2-2019, Schedule III of CGST Act, 2017:		
supply excludes Supply of warehoused goods to any person before clearance for home consumption.		
Therefore, there is no IGST under GST Law.		

Case law

CVD (now called as IGST) on an imported product be exempted if the Indirect Taxes duty (now GST) on a like article produced or manufactured (now called as supply) in India is exempt?

Aidek Tourism Services Pvt. Ltd. v CCus. 2015 (318) ELT 3 (SC)

Decision: Supreme Court held that rate of additional duty leviable under section 3(1) of the Customs Tariff Act, 1975 would be only that which is payable under the Central Excise Act, 1944 on a like article. Therefore, the importer would be entitled to payment of concessional/reduced or nil rate of countervailing duty if any notification is issued providing exemption/remission of excise duty with respect to a like article if produced/manufactured in India.

w.e.f. 1-10-2019 Clarification regarding taxability of goods imported under lease (vide Notification No. 34/2019 Customs, dated 30-09-2019)

In respect of goods imported on temporary basis, aircrafts, aircraft engines and other aircraft parts imported into India under a transaction covered by item 1(b) or 5(f) of Schedule II of the CGST Act, 2019 are exempted from IGST under Customs Act, 1962.

Similarly, rigs and ancillary items imported for oil or gas exploration and production taken on lease by the importer for use after import have also been exempted from IGST. Subsequently, all goods vessels, ships (other than motor vehicles) imported under lease, by the importer for use after importation, were also exempted from IGST.

This exemption is available only if the importer, by the execution of bond, in such form and for such sum as may be specified by the Commissioner of Customs, binds himself:

- (a) to pay IGST under section 5(1) of the IGST Act, 2017 on supply of service covered by item 1(b) or 5(f) of Schedule II of the CGST Act, 2017;
- (b) not to sell or part with the goods, without the prior permission of the Commissioner of Customs of the port of importation;
- (c) to re-export the goods within 3 months of the expiry of the period for which they were supplied under a transaction covered by item 1(b) or 5(f) of Schedule II of CGST Act, 2017
- (d) to pay on demand an amount equal to the IGST payable on the said goods but for the exemption under this Notification in the event of violation of any of the above conditions.

Example 4: Compute the duty payable under the Customs Act, 1962 for an imported equipment based on the following information:

- (i) Assessable value of the imported equipment US \$10,100.
- (ii) Date of Bill of Entry 25.4.2019 basic customs duty on this date 12% and exchange rate notified by the Central Board of Indirect Taxes and Customs US \$ 1 = ₹65.
- (iii) Date of Entry inwards 21.4.2019 Basic customs duty on this date 16% and exchange rate notified by the Central Board of Indirect Taxes and Customs US \$ 1 = ₹60.
- (iv) IGST u/s 3(7) of the Customs Tariff Act, 1975: 12%.
- (v) Social Welfare Surcharge (SWS) @10% is applicable.

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

Answer:

	₹	
Assessable value	6,56,500.00	(10,100 x 65)
ADD: BCD 12% ON 6,56,500	78,780.00	
ADD: SWS	7,878.00	(78,780x 10%)
Transaction value	7,43,158.00	
ADD: IGST 12% ON 7,43,158	89,179.00	
VALUE OF IMPORTED GOODS	8,32,337.00	
CUSTOMS DUTY	1,75,837.00	
(8,32,337 - 6,56,500)		

Example 5: Compute the assessable value and Customs duty payable from the following information:

- (i) F.O.B value of machine 8,000 UK Pounds
- (ii) Freight paid (air) 2,500 UK Pounds
- (iii) Design and development charges paid in UK 500 UK Pounds
- (iv) Commission payable to local agents @ 2% of F.O.B in Indian Rupees
- (v) Date of bill of entry 24.10.2018
(Rate BCD 12%; Exchange rate as notified by CBIC ₹ 68 per UK Pound)
- (vi) Date of entry inward 20.10.2018
(Rate of BCD 18%; Exchange rate as notified by CBIC ₹ 70 per UK Pound).
- (vii) IGST payable 18%.
- (viii) Insurance charges actually paid but details not available.
- (ix) Social Welfare Surcharge (SWS) 10%.

(CA Final June 2009 old)

Answer:

	UK Pounds
FOB value	= 8,000
Add: Design and Development (paid in UK)	= 500
Add: Commission to local agent (2% on 8,000 UKP)	= 160
FOB value as per customs	= 8,660
Add: Air freight (8,660 x 20% is maximum)	= 1,732
Add: Insurance (8,660 x 1.125%)	= 97.425
CIF value (i.e. Assessable value in UK Pounds)	= 10,489.425
Assessable value (10,489.425 x ₹68)	= 7,13,281

Statement showing customs duties

Particulars	Value ₹	Working note
Assessable value	7,13,281	
Add: BCD	85,594	(7,13,281 x 12%)
Add: SWS	8,559	(85,594 x 10%)
Balance	8,07,434	
Add: IGST	1,45,338	(8,07,434 x 18%)
Landed value	9,52,772	
Total Customs duties	2,39,491	(9,52,772 - 7,13,281)

Example 6: Liberty International Group has imported a machine by air from United States. Bill of entry is presented on 18.07.2018. However, entry inwards is granted on 7.08.2018.

The relevant details of the transaction are provided as follows:

CIF value of the machine imported	\$ 13,000
Airfreight paid	\$ 2,800
Insurance charges paid	\$ 200

Rate of exchange as

Announced by	As on 18.07.2018	As on 7.08.2018
CBIC	1 US \$ = ₹66	1 US \$ = ₹65.80
RBI	1 US \$ = ₹66.10	1 US \$ = ₹66.10

Calculate the assessable value (in rupees) for the purposes of levy of customs duty as well as total customs duty.

BCD = Nil. Social Welfare Surcharge (SWS) @10%.

IGST = 18%

Make suitable assumptions wherever necessary.

Answer:

Particulars	Amount in US\$	Remarks	Workings
CIF value	13,000		
Less: Air freight	2,800	Air freight should not be more than 20% on FOB	
Less: insurance	200		
F O B value	10,000		
Add: Air freight	2,000	Air freight restricted to 20% on the F O B value	10,000 x 20% = 2,000
Add: Insurance	200		
Assessable value (i.e. C I F value)	12,200		US\$ (10,000 + 2,000 + 200)
	Amount in ₹		
Assessable value	8,05,200	CBIC exchange rate as on the date of submission of bill of entry is relevant.	US\$12,200 x 66 = ₹8,05,200
Add: BCD	Nil		
Add: SWS 10%	Nil		
Balance	8,05,200		
Add: IGST	1,44,936		(8,05,200 x 18%)
Landed value	9,50,136		

Example 7: Compute the assessable value and total customs duty payable under the Customs Act, 1962 for an imported machine, based on the following information:

	US \$
(i) Cost of the machine at the factory of the exporter	20,000
(ii) Transport charges from the factory of exporter to the port for shipment	800
(iii) Handling charges paid for loading the machine in the ship	50
(iv) Buying commission paid by the importer	100
(v) Lighterage charges paid by the importer	200
(vi) Freight incurred from port of entry to Inland Container depot	1,000
(vii) Ship demurrage charges	400
(viii) Freight charges from exporting country to India	5,000

Date of bill of entry

20.03.2018 (Rate BCD 20%;

Exchange rate as notified by CBIC ₹60 per US \$)

Date of entry inward

25.02.2018 (Rate of BCD 12%;

Exchange rate as notified by CBIC ₹65 per US \$)

12%

IGST payable under section 3(7) of the Customs Tariff Act, 1975

Social Welfare Surcharge (SWS) @10% is applicable.

Also find the eligible input tax credit to the importer.

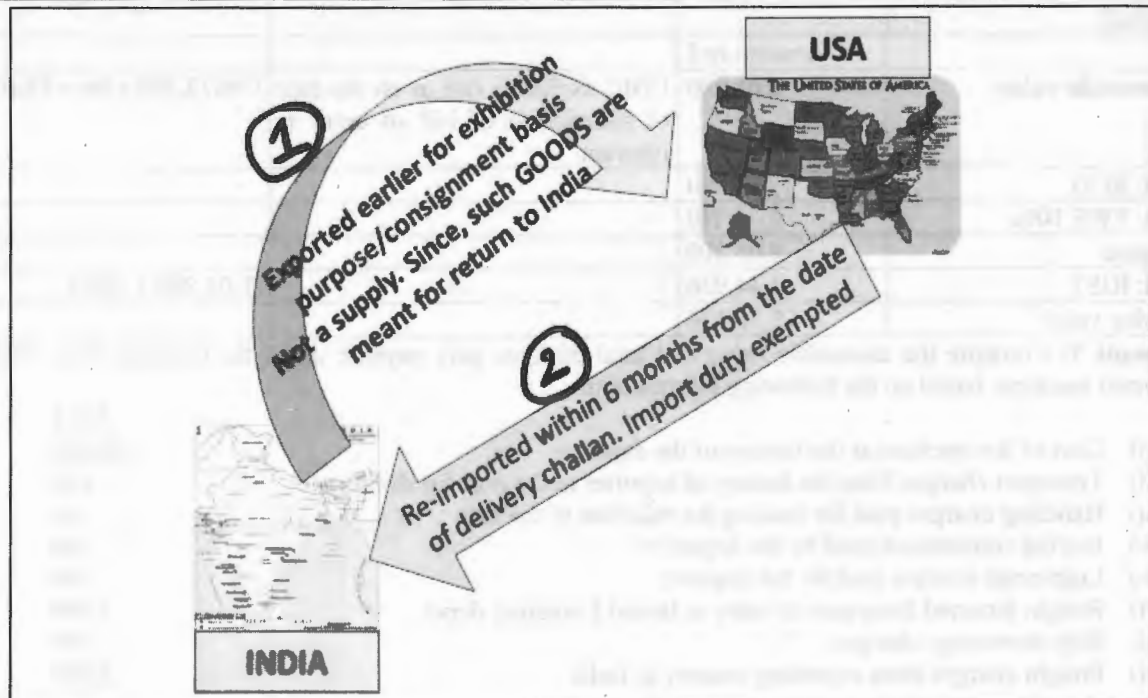
(CA Final RTP Nov., 2014 & RTP May 2016 model)

Answer: Statement showing Assessable and customs duty:

Particulars	US \$	Remarks
Cost of the machine	20,000	
Add: transport charges from factory of exporter to the port for shipment	800	
Add: handling charges	50	
FOB value of exporter	20,850	
Add: buying commission	Nil	Not addable
FOB of the Customs	20,850	
Add: Insurance	234.5625	20,850 x 1.125%
Add: Freight	5,000	
Add: Lighterage charges	200	
Add: Ship demurrage	400	
Assessable Value (i.e. CIF Value)	26,684.5625	
	₹	
Assessable Value	16,01,074	26,684.5625 USD x ₹60
Add: BCD 20%	3,20,215	₹16,01,074 x 20%
Add: SWS	32,022	(3,20,215 x 10%)
Balance	19,53,311	
Add: IGST	2,34,397	₹19,53,311 x 12%
Landed value of imported goods	21,87,708	
Total customs duty	5,86,634	

Note: Importer is eligible to avail input tax credit of IGST portion (i.e. ₹2,34,397) under GST Law provided he is using these goods in the course or furtherance of his business.

Goods which were exported earlier for exhibition purpose/consignment basis [Circular No. 21/2019-Cus., dated 24.07.2019]



3.2.3 GST Compensation cess:

Under GST regime, Compensation Cess will be charged on luxury products like high-end cars and demerit commodities like pan masala, tobacco and aerated drinks for the period of 5 years in order to compensate states for loss of revenue.

In the GST regime, IGST will be levied on imports by virtue of sub-section (9) of Section 3 of the Customs Tariff Act, 1975.

GST Compensation cess, wherever applicable, would be levied on cargo that would arrive on or after 1st July 2017. Similarly, ex-bond bill of entry filed on or after 1st July, 2017 would attract GST Compensation cess, as applicable. In the case where cargo arrival is after 1st July and an advance bill of entry was filed before 1st July along with the payment of duty, the bill of entry may be recalled and reassessed by the proper officer for levy of GST compensation Cess, as applicable.

The value of the imported article for the purpose of levying GST Compensation cess shall be, assessable value plus Basic Customs Duty levied under the Act, and any sum chargeable on the goods under any law for the time being in force, as an addition to, and in the same manner as, a duty of customs. These would include social welfare surcharge as well as anti-dumping and safeguard duties.

GST Compensation Cess applicable goods:

GST Cess will be levied on supply of certain notified goods – mostly belonging to the luxury and demerit category.

Items	GST Rate Applicable	GST Cess Range	GST Cess Ceiling
Coal	5%	INR 400/tonne	INR 400/tonne
Pan Masala	28%	60%	135%
Tobacco	28%	61% – 204%	INR 4170/thousand
Aerated Drinks	28%	12%	15%
Motor Vehicles	28%	1% – 22%	22%

Input tax credit be availed on GST Compensation Cess paid on inward supplies:

Yes, input tax credit can be availed on GST Compensation Cess paid on inward supplies of the above-mentioned notified goods. However, the credit of GST Compensation Cess paid can be utilized only towards payment of the GST Compensation Cess liability.

Example:

X Transport company imported Rolls Royce car for the purpose of providing output services by way of transportation of passengers. Following are the cost & other details—

Particulars	Amount(INR)
Cost of vehicle (Assessable value)	300,00,000
Custom duty	10%
Social Welfare Surcharge (SWS) is applicable.	10%
IGST	28%
Compensation cess	20%

X Transport company is eligible to take Input tax credit and have output IGST liability of INR 120 Lakh. Calculate tax liability towards Custom duty & GST liability?

Answer:

Particulars	Calculation	Amount(INR)
Cost of Vehicle-(A)		300,00,000
Custom duty-(B)	10%	30,00,000
SWS (C)	10% on (B)	3,00,000
Total Cost after Custom duty-(E)	(A+B+C)	333,00,000
IGST-(F)	28% on (E)	93,24,000
Compensation cess-(G)	20% on (E)	66,60,000
Total cost-(H)	(E + F + G)	492,84,000

- Input tax credit available to set off against output IGST is INR 93,24,000.
- Compensation cess paid cannot be set off against output tax liability of IGST
- Total tax payable by X Ltd after adjusting IGST ITC is INR 26,76,000 (120,00,000-93,24,000)

Prior to GST Law**Additional Duty of Customs or Countervailing Duty (CVD)**

As per section 3(1) of the Customs Tariff Act, 1975, any article which is imported into India is subject to liable to duty (in addition to BCD) equal to the excise duty for the time being leviable on a like article if produced or manufactured in India.

This duty can be levied only if the article is such that, it could be manufactured or produced in India.

As held by the Honorable Supreme Court of India in the case of *Hyderabad Industries Ltd. v Union of India* (1999) (SC), in order to attract additional duty of customs it is not necessary that the like goods should have been manufactured in India and so long as the imported goods are the one capable of manufactured or produced, it attracts additional duty of customs even it is not actually manufactured in India.

CVD cannot be levied, if exemption from central excise duty is based on goods manufactured by SSI unit or goods manufactured without aid of power *CC v Malwa Industries* (2009) 235 ELT 214 (SC)

However, if goods manufactured in India are exempt from excise duty, then there is no Additional Duty of Customs. [*CCE v J K Synthetics* (2000) (SC)]

W.E.F 17-3-2012, CVD IS EQUAL TO BASIC EXCISE DUTY (EXCLUDING CESS).

If imported goods attract excise duty in India as per Section 4A of the Central Excise Act, then the CVD will be calculated as per the MRP basis only.

The following points are important to note:

(A) CVD will be calculated on the value of goods is as follows:

		₹
Value of goods Imported (Assessable Value)	=	XXXX
Add: Basic Customs Duty	=	XXXX
Add: National Calamity Contingent Duty [NCCD]	=	XXXX
Balance	=	XXXX
Add: Additional Customs Duty (CVD) On the above Balance	=	XXXX
Balance	=	XXXX
Add: Education Cess 2% on BCD + NCCD + CVD	=	XXXX
Add: Secondary and Education Cess 1% on BCD + NCCD + CVD	=	XXXX
Value of Imported Goods	=	XXXX

Note:

- (i) NCCD of Customs is levied on imports of Pan Masala, chewing tobacco and cigarettes. Subsequently 1% NCCD has been imposed on PFY, motor cars, multi utility vehicles and two wheelers and ₹50 per ton on crude oil vide section 169 of Finance Act, 2003.
- (ii) The payment for post importation process is includible in the value of the imported goods if the same is related to such imported goods and is a condition of the sale thereof.
- (iii) The excise exemption notification provided that exemption will be available if the goods are used in 'same factory'. Hence, the imported goods are used by the importer in the same factory or factory belonging to the importer, then no CVD attracted on such imported goods. *CC v Malwa Industries* (2009) 235 ELT 214 (SC).

Case law

M/s Bharti Telemedia Ltd. v Commissioner of Customs (Import), Nhava Sheva 2016 (331) ELT 138 (Tri-Mumbai):

Issue: Set top boxes (STBs) are imported by a Direct to Home (DTH) broadcasting service provider and provided free of cost to the consumers of DTH service.

The issue is whether, in such conditions, the value for the purposes of calculation of CVD be determined on the basis of retail sale price (RSP) in terms of proviso to section 3(2) of the Customs Tariff Act, 1975?

Note: Set top boxes abatement 22%.

Decision: Hon'ble Tribunal has been held that one of the conditions to be met for CVD to be levied on retail sale price is that under the Legal Metrology Act, there should be requirement to declare on the package, the retail sale price (RSP) of the goods.

There appears to be no sale in the use of the set top box by the ultimate consumer. After detailed analysis, the Tribunal held that in the given circumstances CVD would not be leviable on the basis of retail sale price.

Therefore, imported set top boxes to be valued under section 4 of the Central Excise Act, 1944 for the purpose of computing CVD.

Prior to GST Law:

Special additional customs duty (Under section 3(5) Customs Tariff Act)

The imported goods shall in addition to basic customs duty and additional duty shall also be liable to special additional duty, which shall be levied at a rate to be specified by the Central Government. Such rate shall be notified by the central govt. having regard to the maximum sales tax, local tax or any other charge. At present the special CVD rate is 4%.

For a trader Spl. CVD is allowed as refund provided if he suffered VAT in the state on these goods.

In respect of the following imported goods Spl. CVD under Section 3(5) of the Customs Tariff Act, 1975 is fully exempted:

- (i) Goods packed for retail sales covered under Standards of Weights and Measurement Act.
- (ii) Wrist watches and pocket watches
- (iii) Telephones for cellular networks
- (iv) Articles of apparel excluding parts of made-up clothing accessories.

3.2.4 Protective duties (Section 6(1) of the Customs Tariff Act, 1975)

Protective duties are levied by the central govt. upon the recommendation made by the Tariff Committee and upon it being satisfied that circumstances exist which render it necessary to take immediate action to provide protection to any INDUSTRY established in India. While calculating protective duties we should not calculate the social welfare surcharge. As per WTO, protective duty is not supposed to be levied, hence, at present this duty is not in force.

3.2.5 Safeguard duty (Section 8B(1) of the Customs Tariff Act, 1975)

Safeguard duty is imposed for the purpose of protecting the interests of any domestic industry in India. It is product specific. While calculating *Safeguard duty* we should not calculate the social welfare surcharge. The Central Government of India can impose provisional safeguard duty, pending final determination upto 200 days.

The duty imposed under this section shall be in force for a period of 4 years from the date of its imposition and can be extended with the total period of levy not exceeding 10 years.

w.e.f. 6-8-2014 if imported goods are cleared in DTA, then safeguard duty will be payable.

Provisional Safeguard duty:

The Central Government may, pending the determination under sub-section (1) of Section 8B, impose a provisional safeguard duty under this sub-section on the basis of a preliminary determination that increased imports have caused or threatened to cause serious injury to a domestic industry;

Provided that where, on final determination, the Central Government is of the opinion that increased imports have not caused or threatened to cause serious injury to a domestic industry, it shall refund the duty so collected;

Provided further that the provisional safeguard duty shall not remain in force for more than two hundred days from the date on which it was imposed.

Question: When shall the safeguard duty under section 8B of the Customs Tariff Act, 1975 be not imposed?

Discuss briefly.

(CA Final Mock Test May 2015)

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

- (i) Articles originating from a developing country, so long as the share of imports of that article from that country does not exceed 3% of the total imports of that article into India;
- (ii) Articles originating from more than one developing country, so long as the aggregate of imports from developing countries each with less than 3% import share taken together does not exceed 9% of the total imports of that article into India;
- (iii) Articles imported by a 100% EOU or units in a Free Trade Zone or Special Economic Zone unless the duty is specifically made applicable on them.

Note: "developing country" means a country notified by the Central Government in the Official Gazette for the purposes of this section.

Example 1: Determine the safeguard duty payable by X Ltd., under section 8B of the Customs Tariff Act, 1975 from the following:

X Ltd imported Sodium Nitrite from a developing country from 26th February 2015 to 25th February 2016 (both days inclusive) ₹50 crores.

Total imports of Sodium Nitrite (including developing country) is ₹2,500 crores.

Note: Safeguard duty is @ 30%.

Whether your answer is different in case of import of Sodium Nitrite from a developing country ₹80 crores?

Answer:

Since, import from a developing country does not exceed 3% (i.e. 2% only) of total import of that article in to India, Safeguard duty is Nil.

In the given case safeguard duty will be payable by X Ltd.

Safeguard duty = ₹24 crores (i.e. ₹80 crores x 30%)

Since, import from a developing country exceeds 3% (i.e. 3.2%)

Example 2: Determine the safeguard duty payable by X Ltd., Y Ltd., Z Ltd. and A Ltd. under section 8B of the Customs Tariff Act, 1975 from the following:

Import of Sodium Nitrite from developing and developed countries from 26th February 2015 to 25th February, 2016 (both days inclusive) are as follows:

Importer	Country of import	Rs. in crores
X Ltd	Developing country	70
Y Ltd	Developing country	72
Z Ltd	Developing country	52
A Ltd	Developing country	50
Others	Developed country	2,256
	Total	2,500

Note: Safeguard duty 30%

Answer:			
Importer	Country of import	Rs in crores	% of imports
X Ltd	Developing country	70	2.8%
Y Ltd	Developing country	72	2.88%
Z Ltd	Developing country	52	2.08%
A Ltd	Developing country	50	2%
Others	Developed country	2,256	
	total	2,500	9.76%
Safeguard duty is as follows:			
X Ltd		21	70 x 30%
Y Ltd		21.60	72 x 30%
Z Ltd		15.60	52 x 30%
A Ltd		15	50 x 30%
Articles originating from more than one developing countries and imports from each developing country is less than 3%, safeguard duty can be imposed if imports from all all such developing countries taken together exceeds 9% of total imports of that article in India.			

Example 3: Determine the safeguard duty payable by X Ltd., Y Ltd., and Z Ltd., and A Ltd. under section 8B of the Customs Tariff Act, 1975 from the following:

Import of Sodium Nitrite from developing and developed countries from 26th February 2015 to 25th February 2016 (both days inclusive) are as follows:

Importer	Country of import	Rs. in crores
X Ltd	Developing country	70
Y Ltd	Developing country	82
Z Ltd	Developing country	52
A Ltd	Developing country	50
Others	Developed country	2,246
	Total	2,500

Note: Safeguard duty 30%.

Answer:				
Importer	Country of import	Rs in crores	% of imports	
X Ltd	Developing country	70	2.8%	
Y Ltd	Developing country	82		3.28%
Z Ltd	Developing country	52	2.08%	
A Ltd	Developing country	50	2%	
Others	Developed country	2,246		
	total	2,500	6.88%	3.28%
Safeguard duty is as follows:				
X Ltd		Nil	70 x 30%	
Y Ltd		24.60	82 x 30%	
Z Ltd		Nil	52 x 30%	
A Ltd		Nil	50 x 30%	
Articles originating from more than one developing countries (each with less than 3% import share), then the aggregate of imports from all such countries taken together does not exceed 9% (i.e. in the given case 6.88%) of the total imports of that article into India. Therefore, Safeguard duty is not applicable to X Ltd., Z Ltd., and A Ltd.				

Circular No. 23/2015-Cus, dated 29.09.2015]**Safeguard duties are rebatable as duty drawback (section 75 of the Customs Act).**

Since safeguard duties are not taken into consideration while fixing All Industry Rates of drawback, the drawback of the same can be claimed under an application for Brand Rate under rule 6 or rule 7 of the Customs, Central Excise Duties and Service Tax Drawback Rules, 1995.

This implies that drawback shall be admissible only where the inputs which suffered safeguard duties were actually used in the goods exported as confirmed by the verification conducted for fixation of Brand Rate.

Further, where imported goods subject to safeguard duties are exported out of the country as such, then the drawback payable under section 74 of the Customs Act would also include the incidence of safeguard duties as part of total duties paid, subject to fulfilment of other conditions.

Refund of drawback of basic customs duty paid on inputs for deemed exports also allowed on "All Industry Rate" basis [Notification No. 28/2015-2020, dated 31.10.2019]

DGFT vide Notification No. 28/2015-20 dated 31st October 2019 has amended the said provision and provided that refund of drawback on the inputs used in manufacture and supply under the deemed exports category can be claimed on 'All Industry Rate' of Duty Drawback Schedule notified by Department of Revenue from time to time provided no CENVAT credit has been availed by supplier of goods on excisable inputs or on 'Brand rate basis' upon submission of documents evidencing actual payment of basic custom duties. Accordingly, the refund of drawback of duty paid on inputs is also allowed on All Industry Rate basis.

Note: Earlier, the refund of drawback in the form of Basic Customs duty of the inputs used in manufacture and supply under the deemed exports category was given on brand rate basis upon submission of documents evidencing actual payment of basic custom duties.

Clarification regarding duty drawback allowed in cases of short realisation of export proceeds due to bank charges deducted by foreign banks. Circular No. 33/2019-Customs dated 19th September 2019:

In view of the above, it is clarified that duty drawback may be permitted on FoB value without deducting foreign bank charges. It is further clarified that since agency commission up to the limit of 12.5% of the FoB value has been allowed, such deduction on account of foreign bank charges is allowed within this overall limit of 12.5% of the FoB value. From the average rates of agency commission and foreign bank charges in respect of export shipments, it is seen that these deductions fall within the aforesaid overall limit of 12.5% of FoB value allowed by the Board. Agency commission and foreign bank charges, separately or jointly, exceeding this limit should be deducted from the FoB value for granting duty drawback.

3.2.6 Countervailing Duty on Subsidized articles (Section 9 of the Customs Tariff Act, 1975)

Duty levied if the articles are imported into India by getting the subsidies from other country. While calculating Countervailing Duty on Subsidized articles we should not calculate the social welfare surcharge.

It shall be in force for a period of 5 years from the date of its imposition and can be extended for a further period of 5 years.

3.2.7 Anti-dumping duty (Section 9A of the Customs Tariff Act, 1975)

This duty is country specific. It is imposed on imports of a particular country. Dumping exists when a product is exported from one country to another country at an export price which is less than its normal value prevailing in the exporting country. The difference between the normal value and the export price is the dumping margin based on which the Anti Dumping Duty is imposed. While calculating *Anti-dumping duty* we should not calculate the social welfare surcharge.

Example: A commodity is imported into India from a country covered by a notification issued by the Central Government under section 9A of the Customs Tariff Act, 1975. Following particulars are made available:

CIF value of the consignment: US\$25,000

Quantity imported: 500 kgs.

Exchange rate applicable: ₹60=US\$1

Basic customs duty: 12%

social welfare surcharge @10% is applicable.

As per the notification, the anti-dumping duty will be equal to the difference between the cost of commodity calculated @ US\$70 per kg. and the landed value of the commodity as imported.

Appraise the liability on account of normal duties, cess and the anti-dumping duty.

Assume that only 'basic customs duty' (BCD) and social welfare surcharge are payable. IGST @12% is also applicable. (CS Final Dec 2009 new syl. model)

Answer: Statement showing land value of imported goods and customs duties:

Particulars	US \$
CIF value	25,000
Assessable value	25,000
	Value in ₹
Assessable value (i.e. 25,000 x ₹60)	15,00,000
Add: BCD + SWS 13.20% on Assessable value	1,98,000
Landed value (or value of imported goods)	16,98,000
Anti-dumping duty (21,00,000 – 16,98,000)	₹4,02,000
Market value of imported goods (500 kgs x ₹60 x US \$70) = 21,00,000	
Open Market Value	₹21,00,000
Add: IGST @12% on ₹21,00,000	₹2,52,000
Total	₹23,52,000

Total customs duty payable is ₹8,52,000 (i.e. 1,98,000 + 4,02,000 + 2,52,000)

Note: In cases where imported goods are liable to Anti - Dumping Duty or Safeguard Duty, calculation of Anti - Dumping Duty or Safeguard duty would be as per the respective notification issued for levy of such duty. It is also clarified that value for calculation of IGST as well as Compensation Cess shall also include Anti - Dumping Duty amount and Safeguard duty amount.

3.3 When can provisional measures imposed

Provisional Anti Dumping Measures can be imposed only after 60 days from the date of the intimation of anti dumping investigation namely The Directorate General of Anti Dumping and Allied Duties (DGAD).

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 thereunder. In a case where provisional duty is imposed under section 9A(2), the date of commencement of anti-dumping duty will be the date of publication of notification, imposing provisional duty under section 9A(2), in the Official Gazette. In a case where no provisional duty is imposed, the date of commencement of antidumping duty will be the date of publication of notification, imposing anti-dumping duty under section 9A(1), in the Official Gazette.

Where anti-dumping duty is imposed retrospectively under section 9A(3) from a date prior to the date of imposition of provisional duty, the date of commencement of anti-dumping duty will be such prior date 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.

3.4 Refund on anti-dumping duty

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 antidumping 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 it is refundable under section 9A(2) of the said Act.

► **Example:**

Mr. X an importer imported certain goods CIF value was US \$ 20,000 and quantity 1,000 Kgs. Exchange rate was 1 US \$ = ₹50 on date of presentation of Bill of Entry. Customs Duty rates are— (i) Basic Customs Duty 12% (ii) Social Welfare Surcharge 10%. There is no excise duty payable on these goods if manufactured in India. 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 \$ 30 per kg and 'landed value' of goods. Compute Customs Duty liability and anti-dumping liability.

Answer

Part I

Total CIF Price US \$ 20,000 x ₹50	=	₹ 10,00,000
Assessable Value	=	10,00,000
Basic duty @ 12%	=	1,20,000
Sub-total	=	11,20,000
Add: Social Welfare Surcharge 10% on ₹1,20,000	=	12,000
Value of imported goods	=	11,32,000

Customs Duty payable is ₹1,32,600

Part II

Rate as per Anti-Dumping Notification is ₹15,00,000
[US \$ 30 per kg x 1,000 Kgs x ₹50]

Part III

Computation of anti-dumping duty		
Rate as per Anti-Dumping Notification	= ₹	15,00,000
Less: Value of imported goods as computed above	= ₹	(11,32,000)
Anti Dumping Duty payable	= ₹	3,68,000

Total customs duties = ₹5,00,000 (i.e. ₹1,32,000 + ₹3,68,000)

3.5 Deferred Payment of Import Duty Rules, 2016 (w.e.f. 16.11.2016)

Notification No. 134/2016 Customs (NT), dated 02.11.2016

It is based on the principle 'Clear first-Pay later'. As a part of the ease of doing business focus of the Government of India, the Central Board of Indirect Taxes and Customs (CBIC) has rolled out the AEO (AUTHORIZED ECONOMIC OPERATOR) programme. This scheme is in force w.e.f. 16 Nov 2016. AEO means Authorised Economic Operator certified by the Directorate General of Performance Management under CBIC.

Eligible importers:

This benefit is currently being extended to importers holding AEO T-2 or T-3 status.

AEO-T2 CERTIFICATE: This certificate may be granted only to an importer or to an exporter. For the purpose of this certificate, the economic operator should fulfil the criteria set out by the Board.

AEO-T3 CERTIFICATE: This certificate may be granted only to an importer or to an exporter. For the purpose of this certificate, the economic operator must have continuously enjoyed the status of AEO-T2 for at-least a period of two years preceding the date of application for grant of AEO-T3 status or the economic operator must be an AEO-T2 certificate holder, and its other business partners namely importers or exporters, Logistics service providers, Custodians/Terminal operators, Customs Brokers and Warehouse operators are holders of AEO-T2 or AEO-LO certificate or any other equivalent AEO certificate granted by a foreign Customs.

Note: For the economic operators other than importers and the exporters, the new programme offers only one tier of certification (i.e. AEO-LO) whereas for the importers and the exporters, there will be three tiers of certification (i.e. AEO-T1, AEO-T2 and AEO-T3).

Intimation about intent to avail benefit of notification:

An eligible importer who intends to avail the benefit of deferred payment shall intimate to the Principal Commissioner of Customs or the Commissioner of Customs, as the case may be, having jurisdiction over the port of clearance, his intention to avail the said benefit.

Once, Customs Authority satisfied with the eligibility of the importer allow him to pay the duty by due dates.

Registration to pay duty under deferred payment scheme:

Every importer certified as AEO-T2/AEO-T3 shall obtain ICE GATE (Indian Customs Electronic Commerce/Electronic Data interchange (EC/EDI) Gateway) Login which is essential to avail benefits envisaged in the Duty Deferment Scheme.

Electronic payment of duty:

The eligible importer shall pay the duty electronically: However, the Assistant/Deputy Commissioner of Customs may for reasons to be recorded in writing, allow payment of duty by any mode other than electronic payment.

Deferred payment not to apply in certain cases:

If there is default in payment of duty by due date more than once in three consecutive months, this facility of deferred payment will not be allowed unless the duty with interest has been paid in full.

The benefit of deferred payment of duty will not be available in respect of the goods which have not been assessed or not declared by the importer in the bill of entry.

Due dates for payment of duty:

The eligible importer has to pay the duty by the dates mentioned below inclusive of the period (excluding holidays) as mentioned in section 47(1):—

For the period from 16.11.2016 to 30.03.2017	
For goods corresponding to bill of entry returned for payment from	Duty to be paid by
1st to 15th day of any month	17th day of that month
16th day till the last day of any month other than March	2nd day of the following month
16th day till the 29th day of March	31st March
30th March to 31st March	2nd April
For the period From 31.03.2017	
1st to 15th day of any month	16th day of that month
16th day till the last day of any month other than March	1st day of the following month
16th day till the 31st day of March	31st March

3.6 Imports and Input Tax Credit (ITC):

In GST regime, input tax credit of the integrated tax (IGST) and GST Compensation Cess shall be available to the importer and later to the recipients in the supply chain, however the credit of basic customs duty (BCD) would not be available. In order to avail ITC of IGST and GST Compensation Cess, an importer has to mandatorily declare GST Registration number (GSTIN) in the Bill of Entry. Provisional IDs issued by GSTN can be declared during the transition period.

However, importers are advised to complete their registration process for GSTIN as ITC of IGST would be available based on GSTIN declared in the Bill of Entry. Input tax credit shall be availed by a registered person only if all the applicable particulars as prescribed in the Invoice Rules are contained in the said document, and the relevant information, as contained in the said document, is furnished in FORM GSTR-2 by such person.

Customs EDI system would be interconnected with GSTN for validation of ITC. Further, Bill of Entry data in non-EDI locations would be digitized and used for validation of input tax credit provided by GSTN.