

Final Course

Study Material

(Modules 1 to 4)

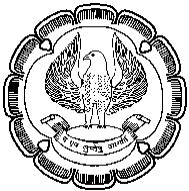
Paper 5

Indirect Tax Laws

Part – II: Customs and FTP

Module – 4

**(Relevant for May 2026, September 2026 and
January 2027 examinations)**



BOARD OF STUDIES
THE INSTITUTE OF CHARTERED ACCOUNTANTS OF INDIA

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LEVY OF AND EXEMPTIONS FROM CUSTOMS DUTY



LEARNING OUTCOMES

After studying this chapter, you would be able to:

- comprehend the basic concepts of customs law.
- gather knowledge of Constitutional provisions behind customs law.
- understand the broad provisions relating to customs law.
- analysis of determining factors to levy customs duty.
- identify the points & circumstances of levy of customs duty.
- analysis and application of procedure for assessment of duty.
- analyse and apply provisions pertaining to remission, abatement and exemptions under customs law.

CHAPTER OVERVIEW



Basic Concepts

Constitutional Provisions

Overview of Customs law

Point and circumstances of levy

Remission, Abatement and Exemptions

UNIT – I: INTRODUCTION TO CUSTOMS LAW



1. BASIC CONCEPTS

Meaning of word “customs”

Customs is a form of indirect tax. Standard English dictionary defines the term '**customs**' as duties imposed on imported/exported goods. This term is usually applied to those taxes which are payable upon goods or merchandise imported or exported.

Historical Background

The term '**customs**' derives its colour and essence from the term 'custom', which means a habitual practice or course of action that characteristically is repeated in

like circumstances. Duties on import and export of goods have been levied from time immemorial by all the countries. In the times, when the predominant system of governance was monarchy, it was customary for a trader bringing the goods to a particular kingdom to offer certain offerings as gifts to the King for allowing him to sell his goods in that kingdom. Over a period of time, the system of governance took a paradigm shift from monarchy in favour of democracy.



Kautiliya's Arthashastra also refers to shulka (Customs Duty) consisting of import duty and export duty to be collected at the city gates on both goods coming in and going out. Subsequently, the levy of tax on goods imported into the country was organised through legislation during the British period.

The Customs Act was passed and promulgated in India by the Parliament in the year 1962 which replaced the erstwhile Sea Customs Act, 1878. Further, the Customs Tariff Act was passed in the year 1975 to replace the Indian Tariff Act, 1934. The Customs Tariff Act was amended in the year 1985 to move in times with and to deal with the complexities resulting from the rapid development in science and technology and consequent industrial development and expansion of manufacturing and trading activities.

Customs Act, 1962

Customs Tariff Act, 1975

The Customs Act, as it stands now, consolidates the entire law on the subject of import and export duties, which were earlier contained in various enactments like the Sea Customs Act, 1878, Inland Bonded Warehouses Act, 1896 and the Land Customs Act, 1924. Thus, now the Customs Act and Customs Tariff Act stand as a complete code in itself as to the levy and collection of duties on import and export of goods.



2. CONSTITUTIONAL PROVISIONS

Article 265 of the Constitution provides that "No tax shall be levied or collected except by authority of law". All the enactments enacted by the Parliament should have its source in the Constitution of India. The power for enacting the laws is conferred on the Parliament and on the legislature of a State by Article 245 of the Constitution. The said Article provides:

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

Article 246 governs the subject matter of the laws made by the Parliament and by the legislature of a State. The matters are listed in the Seventh Schedule to the Constitution.

The seventh schedule is classified into three lists as follows:

List I [referred as Union List]

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



List II [referred as State List]

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

List III [referred as the concurrent list]

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

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

Article 286 of the Constitution provides for restrictions as to imposition of tax on certain supply of goods or services or both. The said Article provides as follows-

No law of a State shall impose, or authorise the imposition of, a tax on the supply of goods or services or both, where such supply takes place-

- (a) outside the State; or
- (b) in the course of the import of the goods or services or both into, or export of the goods or services or both out of, territory of India.

Further, the said Article provides that Parliament may by law formulate principles for determining when a supply becomes, import or export.

Thus, the power to levy customs duties on import/export, as well as the power to legislate the principles to determine whether a transaction qualifies as import/export, lies solely with the Union i.e. the Parliament of India.



3. OVERVIEW OF CUSTOMS LAW

The Customs Act, 1962 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. The entire gamut of the Act is grouped into 17 chapters.

□ SOME IMPORTANT DEFINITIONS

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 **[Section 2(3A)]**.

Board means the Central Board of Indirect Taxes and Customs constituted under the Central Boards of Revenue Act, 1963 **[Section 2(6)]**.

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 **[Section 2(11)]**.

Customs Station means any customs port, customs airport, international courier terminal, foreign post office, or land customs station **[Section 2(13)]**.

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 **[Section 2(43)]**.

Export with its grammatical variations and cognate expressions, means taking out of India to a place outside India **[Section 2(18)]**.

Import with its grammatical variations and cognate expressions means bringing into India from a place outside India **[Section 2(23)]**.

India includes the territorial waters of India **[Section 2(27)]**.

Meaning and significance of territorial waters of India

As per Territorial Waters, Continental Shelf, Exclusive Economic Zone and other Maritime Zones Act, 1976, territorial waters of India extend to 12 nautical miles into sea from the appropriate base line.

12 Nautical miles

Goods are deemed to have been imported if the vessel enters the imaginary line on the sea at the 12th nautical mile i.e. if the vessel enters the territorial waters of India. Therefore, a vessel not bound to India should not enter these waters.

India includes not only the surface of sea in the territorial waters, but also the air space above and the ground at the bottom of the sea.

Indian customs waters [Section 2(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 and includes any bay, gulf, harbour, creek or tidal river.

If a person has committed any offence punishable under customs law within the Indian customs waters, he may be arrested. Also, goods may be confiscated and vessel be stopped in the Indian customs waters if the same is found to be used in the smuggling. Further, prohibited goods can also be confiscated if brought within the Indian customs waters.



ANALYSIS

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.

Note: 1 nautical mile = 1.1508 land-measured (or statute) miles or 1.852 kilometers

Few other important terms

1. Baseline

It is the lower water mark along the coast.

2. Continental Shelf of India

Continental shelf is the part of the sea floor adjoining a land mass where the depth gradually increases before it plunges into the ocean deeps. The maximum depth of sea water in the continental shelf is 200 meters. Continental shelf of India extends beyond the limit of its territorial waters throughout the natural prolongation of its land territory to the outer edge of the continental margin or to a distance of 200 nautical miles from the baseline.

UNIT – II : LEVY AND EXEMPTIONS



1. DETERMINING FACTORS

Three stages of imposition of taxes and duties

All taxes and duties are imposed in three stages, which are levy, assessment and collection:-

- (a) **Levy** is the stage where the declaration of liability is made and the persons or the properties in respect of which the tax or duty is to be levied is identified and charged.
- (b) **Assessment** is the procedure of quantifying the amount of liability. The liability to pay tax or duty does not depend upon assessment.
- (c) The final stage is where the tax or duty is actually collected. The **collection of tax or duty** may for administrative or other reasons be postponed to a later time.

The liability towards customs duty is broadly based upon the following 3 factors:

1. the goods, the point and the circumstances under which the customs duty becomes leviable;
2. the procedure, the mechanism and the organization for determining the amount of customs duty and collection thereof;
3. the exemption to the levy based on public interest or as a result of the discretionary powers vested in the Government as a tool for planning tax structure and control of economic growth of the country.

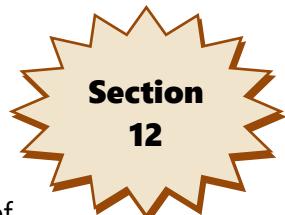
The customs duty is considered to be levied on the goods and not on the person importing the goods or paying the duty. Equitability requires charging of duty at the same level if the circumstances of importation are similar. This has given rise to a deemed provision under section 12 of the Customs Act to provide that customs duty shall be leviable in the same manner on goods belonging to Government as they apply in respect of goods not belonging to Government.



2. POINT AND CIRCUMSTANCES OF LEVY

CHARGING SECTION [SECTION 12]

1. This section is the charging section of the Act. Except as provided in this Act, or any other law for the time being in force, duties of customs shall be levied 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 [Sub-section (1)].
2. The provisions of sub-section (1) shall apply in respect of all goods belonging to Government as they apply in respect of goods not belonging to Government [Sub-section (2)].



Hence, there is no general exemption to goods imported by Government. But imports by Indian Navy, specific equipment required by police, Ministry of Defence, Costal Guard etc. are fully exempt from customs duty by virtue of specific notifications subject to fulfillment of conditions and/or procedure set out in the notification.

The following propositions arise from the above provisions: -

1. Duties of customs shall be levied on import or export of goods. In other words, the **taxable event is import or export of goods**.
2. However, it may be noted that this levy is subject to other sections in the Act. For instance:
 - Section 13 – duty on pilfered goods.
 - Section 22 – abatement of duty on damaged/deteriorated goods.
 - Section 23 – remission of duty on lost/destroyed/abandoned goods.
3. The duty shall be charged at such rates as may be specified under the Customs Tariff Act, 1975.
4. Government goods shall be treated at par with non-Governmental goods for the purposes of levy of customs duty.



ANALYSIS OF SECTION 12

(a) Charge on goods

The charge of customs duty is considered to be on the goods and not on the person importing them or paying the duty. Being such, it is expected to be passed on to the buyer.

(b) Taxable event-Import of goods into India/export of goods from India

Section 12 makes it abundantly clear that importation or exportation of goods into or out of India is the taxable event for payment of the duty of customs.

Earlier, a lot of problems were faced in determining the point at which importation or exportation takes place. The root cause of the problem was the definition of "India" given by section 2(27). Under the said section, India includes territorial waters of India. Consequently, even an innocent entry of a vessel into the territorial waters of India would result in import of goods. Further, it was almost impossible to determine when exactly the vessel crossed the territorial waters limit. But this matter is no longer *res integra*.

Import/Export of Goods

Relevant judgments regarding the determination of taxable event

The main test for determining the taxable event is the happening of the event on which the charge is affixed.

I. Imports

(a) In case of goods cleared for home consumption

The Supreme Court observed that import of goods commences when they cross the territorial waters, but continues and is completed when they become part of the mass of 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 [*Garden Silk Mills v. UOI 1999 (113) E.L.T. 358 (S.C.)*]

(b) In case of goods cleared for warehousing

In the case of warehoused goods, the goods continue to be in the customs bond. Hence, import takes place only when the goods are cleared from the warehouse. The taxable event occurs when goods cross customs barriers and not when goods land in India or enter territorial waters [*UOI v. Apar Ltd.* 1999 (112) E.L.T. 3 (S.C.) and *Kiran Spinning Mills v. Collector of Customs* 1999 (113) E.L.T. 753 (S.C.)]

II. Exports

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 by 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.

DUTY LIABILITY IN CERTAIN SPECIAL CIRCUMSTANCES**(A) Re-importation of goods [Section 20]**

If goods are imported into India after exportation therefrom, such goods shall be liable to duty and be 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.

CONCESSIONS IN THIS REGARD

However, the following notifications have provided certain concessions in this regard:

(i) Concessional duty payable in case of re-importation of goods which are exported under duty drawback, exported for repairs, etc.

S.No.	Description of goods exported	Amount of import duty payable if re-imported
1.	Goods exported- <ul style="list-style-type: none"> (i) under claim for duty drawback¹; (ii) under claim for refund of integrated tax paid on export goods; (iii) under bond without payment of integrated tax (iv) under duty exemption scheme (DEEC/ Advance Authorisation/ DFIA) or Export Promotion Capital Goods Scheme (EPCG) (v) under claim for RoDTEP (vi) under claim for RoSCTL 	Amount of incentive availed of at the time of export subject to specified conditions. In case of point (iv) amount of IGST and compensation cess leviable at the time and place of importation of goods subject to specified conditions.
2.	Goods other than those falling under S. No. 1 exported for repairs abroad	Basic customs duty, IGST or GST compensation cess which would be leviable

¹Various schemes like EOU, SEZ, DFIA, Advance Authorisation, manufacture under bond etc. are available to obtain inputs without payment of customs duty or obtain refund of duty paid on inputs. Suppliers who are unable to avail any of these schemes can avail "duty drawback". Here, the customs duty paid on inputs is given back to the exporter of the finished product by way of "duty drawback". Duty drawback is granted when imported materials are used in the manufacture of goods which are then exported as well as when imported goods are re-exported as it is, and article is easily identifiable.

		if the value of re-imported goods after repairs were made up of the fair cost of repairs carried out including cost of materials used in repairs (whether such costs are actually incurred or not), insurance and freight charges, both ways.
3.	Goods other than falling under S. No. 1 & 2 above ²	NIL

Conditions to be satisfied for claiming the above two concession/exemptions:-

(a) Time-limit for re-importation

The time limit for re-importation is **5 years** which can be extended further for a period up to 2 years. In case of Bhutan, time limit is 7 years which can be extended further for a period up to 3 years for machinery and equipment exported.

5 Years

² Notification also provides that in case where cut and polished precious and semi-precious stones exported for specified treatment abroad are re-imported, amount of import duty payable is basic customs duty, IGST or GST compensation cess which would be leviable if the value of re-imported precious and semiprecious stones after treatment were made up of the fair cost of treatment carried out including cost of materials used in such treatment, whether such costs are actually incurred for not, insurance and freight charges, both ways. On parts, components of aircraft replaced or removed during the course of maintenance, repair or overhaul of the aircraft in a Special Economic Zone and brought to any other place in India, (ii) lubricating oil imported in the engines of any aircraft registered in India or of any aircraft of the Indian Air Force and (iii) fuel other than Aviation Turbine Fuel in the tanks of the aircrafts of an Indian Airline or of the Indian Air Force, amount of basic customs duty, IGST and cess payable is nil subject to specified conditions. This is only for information of the students and not relevant for the examination purposes.

In case of goods exported under DEEC/Advance Authorisation/DFIA or EPCG or Duty Entitlement Passbook Scheme (DEPB) or **any scheme of Chapter 4 of Foreign Trade Policy 2023**, such time limit is 1 year which can be extended further for a period upto 1 year.

(b) Same goods

The exported goods and the re-imported goods must be the same. The goods shall not be deemed to be the same if these are re-imported after being subjected to re-manufacturing or reprocessing through melting, recycling or recasting abroad.

(c) No change in ownership

In case of goods at S. No. 2 in the above table, the ownership of the goods should not have changed.

However, these concessions would not be applicable if-

- re-imported goods had been exported by 100% Export Oriented Undertaking (EOU) or a unit in Free Trade Zone (FTZ).
- re-imported goods had been exported from a public/private warehouse.
- re-imported goods which fall under Fourth schedule to the Central Excise Act, 1944 (tobacco products and petroleum products)

[Notification No. 45/2017 Cus. dated 30.06.2017 as amended]

Clarification regarding applicability of Notification No. 45/2017 Cus dated 30.06.2017 on goods which were exported earlier for exhibition purpose/consignment basis

CBIC has clarified vide Circular No. 108/27/2019 GST dated 18.07.2019³ that the activity of sending / taking the specified goods (i.e. goods sent / taken out of India for exhibition or on consignment basis for export promotion except the activities satisfying the tests laid down in Schedule I of the CGST Act, 2017) out of India do not constitute supply

³The same has already been discussed in Chapter-14 – Import and Export under GST of Module 3 of this Study Material.

within the scope of Section 7 of the CGST Act as there is no consideration at that point in time. Since such activity is not a supply, the same cannot be considered as 'zero rated supply' as per the provisions contained in Section 16 of the IGST Act, 2017. Also, there is no requirement of filing any LUT/bond as required under section 16 of IGST Act, 2017 for such activity of taking specified goods out of India.

Therefore, no integrated tax is required to be paid for specified goods at the time of taking these out of India, the activity being not a supply, hence the situation of *Notification No. 45/2017-Customs dated 30.06.2017* (goods exported under bond without payment of integrated tax) requiring payment of integrated tax at the time of re-import of specified goods in such cases is not applicable.

It is clarified that such cases will fall more appropriately under residuary entry⁴ of the said Notification and thus the exemption is available.

Further, this clarification is also applicable to cases where exports have been made to related or distinct persons or to principals or agents, as the case may be, for participation in exhibition or on consignment basis, but, such goods exported are returned after participation in exhibition or the goods are returned by such consignees without approval or acceptance, as the case may be, the basic requirement of 'supply' as defined cannot be said to be met as there has been no acceptance of the goods by the consignees. Hence, re import of such goods after return from such exhibition or from such consignees will be covered under the residual entry of the *Notification No. 45/2017 dated 30.06.2017*, provided re-import happens before 6 months from the date of delivery challan.

[Circular No. 21/2019 Cus dated 24.07.2019]

⁴S.No. 3 of above table. Thus, no customs duty, IGST and GST compensation cess is payable on re-import.

(ii) Exemption to re-import of goods and parts thereof for repairs, reconditioning, reprocessing, remaking or similar other process

Notification No.158/95 Cus. exempts the goods re-imported into India for the purpose specified in Column (2) of below table from the whole of the basic customs duty and IGST subject to the conditions laid down in Column (3):

S. No.	Particulars	Time-limit for re-importation from the date of exportation	Other conditions to be satisfied
1.	Goods manufactured in India and re-imported for repairs or for reconditioning other than the specified goods	3 years In case of Nepal & Bhutan, such time-limit is 10 years.	(a) Goods must be re-exported within six months (extendable till one year) of the date of re-importation. (b) The Assistant Commissioner/Deputy Commissioner of Customs is satisfied as regards identity of the goods.
2*.	Goods manufactured in India and re-imported for (a) Reprocessing (b) Refining (c) Re-making (d) Subject to any process similar to the processes referred to in clauses (a) to (c) above.	1 year	(c) The importer at the time of importation executes a bond.

3.	Specified goods ⁵ manufactured in India and re-imported into India for repairs or for reconditioning	7 years (10 years in case of Nepal and Bhutan)	<ul style="list-style-type: none"> (a) Goods must be re-exported within one year of the date of re-importation. (b) The Assistant Commissioner/Deputy Commissioner of Customs is satisfied as regards identity of the goods. (c) The importer at the time of importation executes a bond.
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[Notification No. 158/95 Cus. dated 14.11.1995 as amended]

Note: In 2* above, if any loss of imported goods is noticed during such operations, such loss shall be exempted from whole of the custom duties subject to the satisfaction of Assistant/ Deputy Commissioner of Customs.

Illustration 1

A machine was originally imported from Japan at ₹250 lakh in July on payment of all duties of customs. The said machine was exported (sent-back) to supplier for repairs in December 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 ₹ 6 lakh) would have been ₹ 9 lakh. Actual insurance and freight charges (to

⁵ Some of the examples of specified goods are automatic data processing machines and units thereof; magnetic or optical readers, automatic bank note dispensers, static converters, audio-frequency electric amplifiers, telephone sets, projectors, colour TVs, electro-cardiographs, hearing aids. These examples are only for the sake of knowledge of the students and are not expected from the students in examination.

and from) were ₹3 lakh. The rate of basic customs duty is 10% and integrated tax is 12%. Ignore GST compensation cess & Agriculture infrastructure and development 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.

Answer

As per Notification No. 45/2017 Cus. dated 30.06.2017, duty payable on re-importation of goods which had been exported for repairs abroad is the duty of customs which would be leviable if the value of re-imported goods after repairs were made up of the fair cost of repairs carried out including cost of materials used in repairs (whether such costs are actually incurred or not), insurance and freight charges, both ways. However, following conditions need to be satisfied for availing this concession:

- (a) goods must be re-imported within 5 years, extendable by further 2 years, after their exportation;
- (b) exported goods and the re-imported goods must be the same;
- (c) ownership of the goods should not change.

Since all the conditions specified above are fulfilled in the given case, the customs duty payable on re-imported goods will be computed as under:

Particulars	₹
Value of goods re-imported after exports [₹ 9 lakh (including cost of materials) + ₹ 3 lakh]	12,00,000
Add: Basic customs duty @ 10% (A)	1,20,000
Add: Social Welfare Surcharge @ 10% on ₹1,20,000 (B)	12,000
Value for computing integrated tax	13,32,000
Integrated tax @ 12% (₹ 13,32,000 x 12%) - (C)	1,59,840
Customs duty and integrated tax payable [(A) + (B) + (C)]	2,91,840

(B) Goods derelict, wreck etc. [Section 21]

All goods, derelict, jetsam, flotsam and wreck brought or coming into India, shall be dealt with as if they were imported into India, unless it be shown to the satisfaction of the proper officer that they are entitled to be admitted duty-free under this Act.



ANALYSIS OF SECTION 21

The concept of 'goods brought into India' is not confined to goods which are intentionally brought into India, but also extends to derelict, jetsam, flotsam and wreck brought or coming into India. This implies that apart from goods which are normally imported in the course of international trade, flotsam, and jetsam, which are washed ashore and derelict and wreck brought into India out of compulsion are also treated on par with trade goods.

Treated like imported goods

Meaning of the various terms

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

Jetsam – This refers to goods jettisoned 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.

Illustration 2

Distinguish between Jetsam and Flotsam

Answer

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.

(C) Customs (Import of Goods at Concessional Rate of Duty or for Specified End Use) Rules, 2022 amended

The salient features of the rules are discussed hereunder:

1. Application [Rule 2]:

These rules **shall apply** where:

- (a) a notification provides for the observance of these rules;
- (b) an importer intends to avail the benefit of any notification and such benefit is dependent upon the use of the goods imported being covered by that notification for the manufacture of any commodity or provision of output service or being put to a specified end use.

2. Definition [Rule 3]: In these rules, unless the context otherwise requires, -

- (a) **“Act”** means the Customs Act, 1962.
- (b) **“capital goods”** means goods, the value of which is capitalized in the books of account of the importer;
- (c) **“customs automated system”** means the Indian Customs Electronic Data Interchange System;
- (d) **“date of import”** means the date of the order made by the proper officer under section 47, permitting clearance of the goods;
- (e) **“Form”** means a form annexed to these rules;
- (f) **“information”** means the information provided by the importer who intends to avail the benefit of a notification;
- (g) **“job work”** means any treatment, process or manufacture, consistent with the notification undertaken by a person on goods belonging to the importer except gold, jewellery and articles

thereof, and other precious metals or stones and the term "**job worker**" shall be construed accordingly;

- (h) "**jurisdictional Custom Officer**" means an officer of Customs of a rank equivalent to the rank of Superintendent or Appraiser exercising jurisdiction over –
 - a. the premises where either the goods imported shall be put to use for manufacture or for rendering output services;
 - b. the primary address specified in the Importer Exporter Code issued by Directorate General of Foreign Trade in other cases;
- (i) "**manufacture**" means the processing of raw materials or inputs by the importer in any manner that results in emergence of a new product having a distinct nature or character or use or name; and the term "manufacturer" shall be construed accordingly;
- (j) "**notification**" includes any notification issued under sub-section (1) of section 25 and section 11 of the Act;
- (k) "**output service**" means supply of service excluding after-sales service, utilising imported goods.
- (ka) "**Quarter**" means a period comprising any three consecutive calendar months ending on the last day of March, June, September or December of a calendar year.
- (l) "**section**" means a section of the Customs Act.
- (m) "**specified end use**" means dealing with the goods imported in a manner specified in the notification and includes supply to the intended person and the term "**end use recipient**" shall be construed accordingly.

Note – The words and expressions used in these rules and not defined but defined in the Customs Act shall have the same meanings as assigned to them in the Customs Act.

3. Importer to give one-time prior information [Rule 4]

- (1) The importer shall provide one-time prior information on the common portal, in prescribed form containing the following particulars, namely:—
 - i. the name and address of the importer and his job worker, if any;
 - ii. the goods produced or process undertaken at the manufacturing facility of the importer or his job worker, if any, or both;
 - iii. the nature and description of goods imported used in the manufacture of goods at the premises of the importer or the job worker, if any;
 - iv. particulars of the notification applicable on such import;
 - v. nature of output service rendered utilising the goods imported;
 - vi. particulars of premises intended to be used in case of unit transfer;
 - vii. details of the end use recipient in cases where goods imported are supplied for specified end use; and
 - viii. the intended ports of import.
- (2) On acceptance of the information, an Import of Goods at Concessional Rate of Duty (IGCR) Identification Number (IIN) shall be generated against such information.

However, such information may be updated on the common portal in case of a change in the details furnished in prescribed form.
- (3) The importer who intends to avail the benefit of a notification shall submit a continuity bond with such surety or security as deemed appropriate by the Deputy Commissioner/Assistant Commissioner of Customs having jurisdiction over the premises where the goods imported shall be put to use for manufacture of goods or for rendering output service or being put to use for a specified end use, with an undertaking to pay-
 - a. in case of a notification that provides a duty exemption, the amount equal to the difference between the duty leviable on

inputs but for the exemption and that already paid, if any, at the time of import, along with applicable interest, for the period starting from the date of import of the goods on which the exemption was availed and ending with the date of actual payment of the entire amount of the difference of duty that he is liable to pay;

- b. in all cases where the notification is other than one that provides an exemption benefit, the amount equal to the assessable value of the goods being imported.

4. Procedure to be followed [Rule 5]

- (1) The importer who intends to avail the benefit of a notification shall be required to mention the IIN (referred to in sub-rule (2) of Rule 4) and continuity bond number and details while filing the Bill of Entry.
- (2) The Deputy Commissioner/Assistant Commissioner of Customs at the custom station of importation shall allow the benefit of the notification to the importer.
- (3) Where a Bill of Entry is cleared for home consumption, the bond submitted by the importer gets debited automatically in the customs automated system and the details shall be made available electronically to the jurisdictional Customs Officer.

5. Importer to maintain records [Rule 6]

- (1) The importer shall maintain an account so as to clearly indicate -
 - i. quantity and value of goods imported;
 - ii. quantity and date of receipt of the goods imported in the relevant premises;
 - iii. quantity of such goods consumed including the quantity used domestically for manufacture, quantity exported, if any, to fulfil the intended purpose and quantity of goods sent to an end use recipient;
 - iv. quantity of goods sent for job work and the nature of job work carried out;
 - v. quantity of goods received after job work;

vi. quantity of goods re-exported, if any, under rule 10; and
 vii. quantity remaining in stock, according to bills of entry,
 and shall produce the said account as and when required by the Deputy Commissioner/Assistant Commissioner of Customs having jurisdiction over the premises or where the goods imported shall be put to use for manufacture of goods or for rendering output service.

However, in case of non-receipt or short receipt of goods imported in the relevant premises, the importer shall intimate such non-receipt or short receipt immediately on the common portal in the prescribed form.

- (2) The importer shall submit a **quarterly** statement on the common portal in the prescribed form by 10th day of the following **quarter**;

However, the importer may submit details of goods consumed in the prescribed form at any point of time, for immediate recredit of the bond which shall become a part of the **quarterly** statement of the subsequent **quarter**.

6. Procedure for allowing imported goods for job work [Rule 7]

- (1) The importer shall maintain a record of the goods sent for job work during the month and mention the same in the **quarterly** statement referred to in sub-rule (2) of rule 6.
- (2) The importer shall send the goods to the premises of the job worker under an invoice or wherever applicable, through an electronic-way bill, as specified in the CGST Act, 2017, mentioning the description and quantity of the goods.
- (3) The maximum period for which the goods can be sent to the job worker shall be **one year** from the date of invoice or electronic way bill referred to in sub-rule (2).
- (4) In case the importer is unable to establish that the goods sent for job work have been used as per the particulars mentioned under rule 4, the jurisdictional Customs Officer shall take necessary action against the importer under rule 11 and 12.

(5) The job worker shall,-

- i. maintain an account of receipt of goods, manufacturing process undertaken thereon and the waste generated, if any, during such process;
- ii. produce the account details before the jurisdictional Customs Officer as and when required by the said officer;
- iii. after completion of the job work send the processed goods to the importer or to another job worker as directed by the importer for carrying out the remaining processes, if any, under the cover of an invoice or electronic way bill.

7. Procedure for allowing imported goods for unit transfer [Rule 8]

- (1) The importer shall maintain a record of the goods sent for unit transfer during the month and mention the same in the ***quarterly*** statement referred to in sub-rule (2) of rule 6.
- (2) The importer shall send the goods under an invoice or wherever applicable, through an e-way bill, as specified in the CGST Act, 2017, mentioning the description and quantity of the goods.
- (3) The importer shall in relation to transfer of goods to another unit,-
 - i. maintain an account of receipt of goods, manufacturing process undertaken thereon and the waste generated, if any, during such process;
 - ii. produce the account details before the jurisdictional Customs Officer as and when required by the said officer;
 - iii. after completion of the said process, send the processed goods back to the premises of the importer from where the goods were received or to a job worker for carrying out the remaining processes, if any, under the cover of an invoice or electronic way bill.

8. Procedure for supplying imported goods to the end use recipient [Rule 9]

- (1) The importer shall maintain a record of the goods supplied to the end use recipient during the month and mention the same in the ***quarterly*** statement referred to in sub-rule (2) of rule 6.

- (2) The importer shall send the goods under an invoice or wherever applicable, through an electronic way bill, as specified in the CGST, 2017, mentioning the description and quantity of the goods.
- (3) In case of supply for replenishment or export against supply, the end use recipient shall,-
 - i. maintain an account of receipt of goods, manufacturing process undertaken thereon and the waste generated, if any, during such process;
 - ii. produce the account details before the jurisdictional Customs Officer as and when required by the said officer;
 - iii. produce the relevant details to the importer for fulfilment of the benefit under the notification.

9. Re-export or clearance of unutilised or defective goods [Rule 10]

- (1) The importer who has availed the benefit of a notification shall use the goods imported in accordance with the conditions mentioned in the concerned notification within the period and with respect to unutilised or defective goods, so imported, the importer shall have an option to either re-export or clear the same for home consumption, within the said period, namely –
 - (i) within the period specified in the notification;
 - (ii) within **one year** from the date of import, where the time period is not specified in the notification:

However, the said period of **one year** can be further extended by the jurisdictional Commissioner for a period not exceeding 3 months, if sufficient reason is shown that the causes for not conforming to the time period were beyond the importer's control.

- (2) Any re-export of the unutilised or defective goods referred to in sub rule (1) shall be recorded by the importer in the **quarterly** statement by providing the details of necessary export documents:

However, the value of such goods for re-export shall not be less than the value of the said goods at the time of import.

- (3) The importer who intends to clear unutilised or defective goods for home consumption shall have an option of voluntary payment of applicable duty along with interest on the common portal and the particulars of such clearance and the duty payment shall be recorded by the importer in the ***quarterly*** statement.
- (4) The importer shall have an option to clear the capital goods imported, after having been used for the specified purpose, on payment of duty equal to the difference between the duty leviable on such goods but for the exemption availed and that already paid, if any, at the time of importation, along with applicable interest, on the depreciated value allowed in straight line method as under —

i.	for every quarter in the first year	@ 4%;
ii.	for every quarter in the second year	@ 3%;
iii.	for every quarter in the third year	@ 3%;
iv.	for every quarter in the fourth and fifth year	@ 2.5%;
v.	and thereafter for every quarter	@ 2%;

Explanation. –

- (1) For the purpose of computing rate of depreciation under this rule for any part of a quarter, a full quarter shall be taken into account.
- (2) The depreciation shall be allowed from the date when the capital goods imported have come into use for the purpose as laid down in the notification, upto the date of its clearance.
- (5) The importer shall have the option of voluntary payment of the duty along with interest, through the common portal and the particulars of such clearance and the duty payment shall be recorded by the importer in the ***quarterly*** statement.

10. Recovery of duty in certain case [Rule 11]

- (1) In the event of any failure on the part of the importer to comply with the conditions mentioned in sub-rule (1) of rule 10 or where the payment referred in sub-rules (3) and (4) of rule 10 is not paid or short paid, the Deputy Commissioner of Customs or, as the case may be,

Assistant Commissioner of Customs having jurisdiction over the premises where the imported goods shall be put to use for manufacture of goods or for specified end use or for rendering output service shall take action by invoking the Bond to initiate the recovery proceedings of an amount as under -

- a. in case of a notification that provides a duty exemption, equal to the difference between the duty leviable on such goods but for the exemption and that already paid, if any, at the time of importation, along with interest⁶, for the period starting from the date of import of the goods on which the exemption was availed and ending with the date of actual payment of the entire amount of the difference of duty that he is liable to pay;
 - b. in cases where the notification is other than one that provides an exemption benefit, an amount equal to the assessable value of the goods being imported.
- (2) Notwithstanding anything contained in these rules in relation to removal and processing of imported goods for job-work, the importer shall be responsible for ensuring that the said goods are used in accordance with the purposes provided in the notification and in the event of failure to do so, the Deputy Commissioner of Customs, or, as the case may be, the Assistant Commissioner of Customs having jurisdiction over the premises where the imported goods shall be put to use for manufacture of goods or for specified end use or for rendering output service shall take action in accordance with these rules, without prejudice to any other action which may be taken under the Act, rules or regulations made thereunder or under any other law for the time being in force.

⁶ Interest is to be computed at the rate fixed by notification issued under section 28AA. However, provisions of section 28AA relating to Interest on delayed payment of duty are outside the purview of the syllabus of Paper 5 – Indirect Tax Laws.

11. Penalty [Rule 12]

The importer or a job worker who contravenes any of the provisions of these rules or abets such contravention shall be liable to a specified penalty⁷ without prejudice to any other action which may be taken under the Act, rules or regulations made thereunder or under any other law for the time being in force.



3. PROCEDURE, MECHANISM AND ORGANISATION FOR ASSESSMENT OF DUTY

MEANING OF ASSESSMENT

In the context of the customs duty, the term assessment means quantification of the amount of duty payable. The process of assessment involves the following stages.

- a. Determination of the quantity and total value of the consignment.
- b. Determination of the proper tariff classification of the goods.
- c. Determination of the appropriate rate of duty after considering the various exemptions, abatements, remissions.
- d. Determining whether the goods are to be cleared for home consumption or to be deposited in the warehouse.

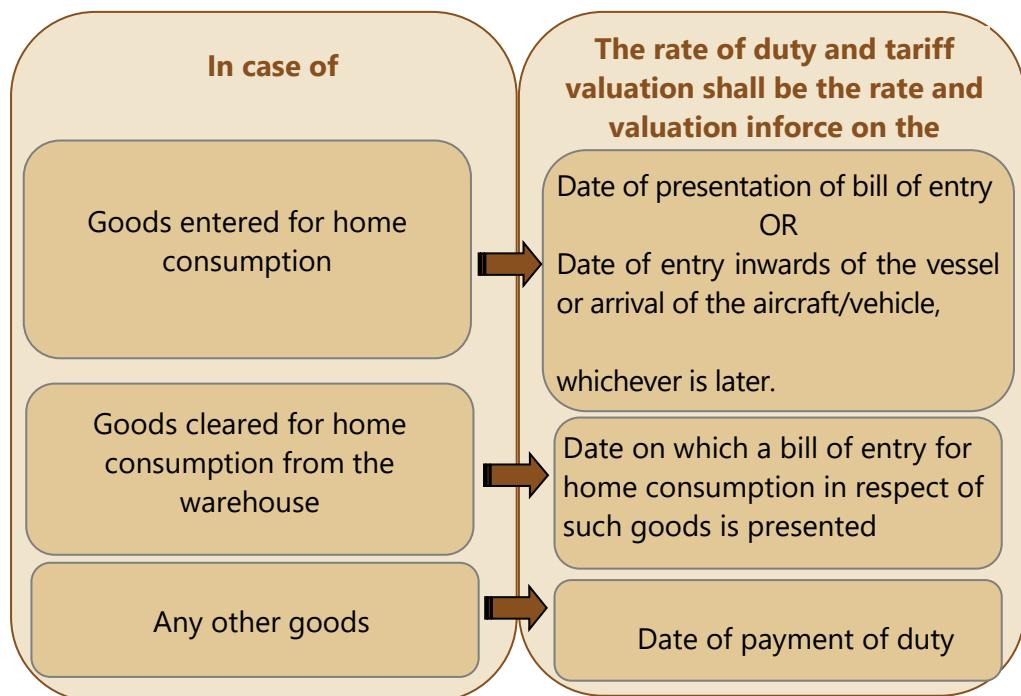
VALUATION OF GOODS [SECTION 14]

The method of valuation has been explained in detail in chapter 4.

DATE FOR DETERMINING THE RATE OF DUTY AND TARIFF VALUATION OF IMPORTED GOODS [SECTION 15]

Section 15 prescribes the relevant date for determining the rate of duty and tariff valuation, if any, applicable to any imported goods in the following manner:

⁷ penalty to an extent of the amount specified under clause (ii) of sub-section (2) of section 158 of the Customs Act. Provisions of section 158 are outside the purview of syllabus of Paper 5 - Indirect tax laws.



(1) Bill of entry is presented on 1st January, the vessel arrives on 3rd January. In this situation, relevant date for determination of the rate of import duty is 3rd January, because though for procedural purposes, the Bill of Entry was filed on 1st January but for the purpose of determining the rate of duty and tariff valuation of such goods Bill of Entry will be deemed to have been filed on 3rd January.

It is also relevant to note that section 15 deals with only the determination of rate of duty and tariff valuation of imported goods and not the valuation of goods as prescribed under section 14.

Illustration 3

An importer imported consignment of goods chargeable to duty @ 40% ad valorem. The vessel arrived on 31st May. A bill of entry for warehousing the goods was presented on 2nd June and the goods were duly warehoused. In the meantime, an exemption notification was issued on 15th October reducing the effective customs duty to 25% ad valorem.

Thereafter, the importer filed a bill of entry for home consumption on 20th October claiming 25% duty. The customs Department charged higher rate of duty @ 40% ad valorem. Give your views on the same, discussing the relevant provisions of the Customs Act, 1962.

Answer

According to section 15(1)(b) of the Customs Act, 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 October (the date on which the bill of entry for home consumption is presented) and thus, the relevant rate of duty will be 25%.



4. REMISSION, ABATEMENT AND EXEMPTIONS

The Customs Act provides for remission, abatement and exemptions from customs duty in certain circumstances. These provisions are discussed in the subsequent paragraphs.

DUTY ON PILFERED GOODS [SECTION 13]

If any imported goods are pilfered after the unloading thereof and before the proper officer has made an order for clearance for home consumption or deposit in a warehouse, the importer shall not be liable to pay the duty leviable on such goods except where such goods are restored to the importer after pilferage. However, the custodian of the goods is liable to pay the duty in terms of section 46 of the Customs Act, 1962.



ANALYSIS

The logic behind this section is that when the goods are not under the control of the importer, he should not be required to pay duty on such goods.

(a) Conditions to be satisfied

- a. The imported goods should have been pilfered.

- b. The pilferage should have occurred after the goods are unloaded, but before the proper officer makes the order of clearance for home consumption or for deposit into warehouse.
- c. The pilfered goods should not have been restored back to the importer.

The term '**pilfer**' means "to steal, especially in small quantities; petty theft". Therefore, the term does not include loss of total package.

(b) Circumstances in which pilferage can be claimed

In order to claim pilferage the following circumstances should exist:

- a. there should be evidence of tampering with the packages;
- b. there should be blank space for the missing articles in the package; and
- c. the missing articles should be unit article

(c) Pilferage noticed at the time of removal of goods by the importer

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. In such circumstances, the duty would already have been paid, the remission is allowed in the form of a refund.

(d) Following points merit consideration

1. If goods are pilfered after the order of clearance is made but before the goods are actually cleared, duty is leviable.
2. Section 13 deals with only pilferage. It does not deal with loss/destruction of goods.
3. Provisions of section 13 would not apply if it can be shown that pilferage took place prior to the unloading of goods.
4. In case of pilferage, only section 13 applies and claim of refund under section 23(1) is not permissible.

5. Section 13 applies to the goods which are under the custody of the custodian under section 45. Duty on any pilferage from the custody of the custodian is payable by the custodian.

REMISSION OF DUTY ON GOODS LOST, DESTROYED OR ABANDONED [SECTION 23]

(a) Remission of duty

Without prejudice to the provisions of section 13, where it is shown to the satisfaction of the Assistant Commissioner of Customs or Deputy Commissioner of Customs that any imported goods have been lost (otherwise than as a result of pilferage) or destroyed, at any time before clearance for home consumption, the Assistant Commissioner of Customs or Deputy Commissioner of Customs shall remit the duty on such goods. [Sub-section (1)].

Remission



ANALYSIS

1. An analysis of section 23 shows that it comes into play after the duty has been paid and even after an order for home consumption has been passed, but before the goods are actually cleared, and then it is found that they have been lost/destroyed. In such case the provision does not provide that goods will not be liable to duty, but duty paid on such goods shall be remitted by the Assistant/Deputy Commissioner of Customs.
2. In respect of the goods which have been pilfered after they have been unloaded but before the goods are cleared for home consumption or for deposit in a warehouse, section 13 would apply and the importer would not be liable to pay the duty. In cases where section 23 is attracted, the importer is entitled to remission of duty.

Before clearance for Home Consumption

3. The remission of duty is permissible only in the case of total loss of goods. This implies that the loss is forever and beyond recovery. The loss referred to in this section is generally due to natural causes like fire, flood, etc.
4. The loss referred to in sub-section (1) may be at the warehouse also.
5. In the above situation, the loss/ destruction have to be proved to the satisfaction of the Assistant Commissioner or Deputy Commissioner. Thereupon, he may pass remission orders canceling the payment of duty. In case duty has already been paid, refund can be obtained after getting the remission orders.

(b) Right to relinquish the title to the goods-abandonment of goods

The owner of any imported goods may, at any time before an order for clearance of goods for home consumption under section 47 or an order for permitting the deposit of goods in a warehouse under section 60 has been made, relinquish his title to the goods and thereupon he shall not be liable to pay the duty thereon.

However, the owner of any such imported 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 [Sub-section (2)].



ANALYSIS

1. **“Relinquish”** means to give over the possession or control of, to leave off.
2. The aforementioned right can be exercised at any time before the passing of the order for clearance for home consumption or an order permitting the deposit of goods in a warehouse. Before that date, it is open to the importer to relinquish the title to the goods.

3. Goods abandoned by importers

Sometimes, it may so happen that the importer is unwilling or unable to take delivery of the imported goods. Some of the likely causes may be:

- (i) the goods may not be according to the specifications;
- (ii) the goods may have been damaged or deteriorated during voyage and as such may not be useful to the importer;
- (iii) there might have been breach of contract and, therefore, the importer may be unwilling to take delivery of the goods.

In all the above cases, the goods having been imported, the liability to customs duty is imposed and, therefore, the importer has to relinquish his title to the goods unconditionally and abandon them. Relinquishment is done by endorsing the document of title, viz. Bill of Lading, Airway Bill, etc. in favour of the Principal Commissioner/Commissioner of Customs along with the invoice. If the importer does so, he will not be required to pay the duty amount.

However, the owner of any such imported 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.

(c) Distinction between section 13 and section 23

The provisions of section 13 and section 23 can be better appreciated after going through the following points of distinction:-

Basis	Pilferage of goods under section 13	Loss or destruction of goods under section 23
Meaning	The word 'pilfer' means to steal, especially in small quantities; petty theft.	The word 'lost' or 'destroyed' refers to total loss of goods i.e. loss is forever and beyond recovery. Abandonment of

		goods is possible where the importer is unwilling/unable to take the delivery of the imported goods.
Duty on goods	The importer shall not be liable to pay the duty leviable on such goods.	The duty paid on such goods shall be remitted to the importer.
Subsequent restoration of goods	Where the pilfered goods are restored to the importer after pilferage, the importer becomes liable to duty.	In case of destruction of goods, the restoration is not possible.
Warehoused goods	Provisions of section 13 are not applicable to warehoused goods.	Provisions of section 23 apply to warehoused goods also.
Onus to prove the pilferage/ destruction or loss of goods	The onus to prove the pilferage does not lie on the importer as it is obvious at the time of examination by the proper officer.	The importer has to prove the loss/destruction to the satisfaction of the Assistant/Deputy Commissioner of Customs.
Time of occurrence of pilferage or loss/destruction	The imported goods must have been pilfered after the unloading thereof and before the proper officer has made an order for clearance for home consumption or deposit in a warehouse.	The imported goods must have been lost/destroyed at any time before clearance for home consumption under section 47.

ABATEMENT OF DUTY ON DAMAGED OR DETERIORATED GOODS [SECTION 22]

Where it is shown to the satisfaction of the Assistant Commissioner of Customs or Deputy Commissioner of Customs -

- (a) that any imported goods had been **damaged or had deteriorated** at any time before or during the unloading of the goods in India; or
- (b) that any imported goods, other than warehoused goods, had been **damaged** at any time **after the unloading** thereof in India but before their examination under section 17, on account of any accident not due to any wilful act, negligence or default of the importer, his employee or agent; or
- (c) that any warehoused goods had been **damaged** at any time **before clearance for home consumption** on account of any accident not due to any wilful act, negligence or default of the owner, his employee or agent, such goods shall be chargeable to duty in accordance with the provisions of sub-section (2) [Sub-section (1)].

Abatement

The duty to be charged on the goods referred to in sub-section (1) shall bear the same proportion to the duty chargeable on the goods before the damage or deterioration which the value of the damaged or deteriorated goods bears to the value of the goods before the damage or deterioration [Sub-section (2)].

For the purposes of this section, the value of damaged or deteriorated goods may be ascertained by either of the following methods at the option of the owner:-

- (a) the value of such goods may be ascertained by the proper officer, or
- (b) such goods may be sold by the proper officer by public auction or by tender, or with the consent of the owner in any other manner, and the gross sale proceeds shall be deemed to be the value of such goods [Sub-section (3)].



ANALYSIS

(a) Cases where the abatement is available

Abatement is available if the goods are damaged/deteriorated under any of the following circumstances:

S.No.	Goods damaged/ deteriorated	Condition
1.	before or during unloading	
2.	by accident after unloading but before examination for assessment by the customs authorities	Provided such accident is not due to any wilful act, negligence or default of the importer, his employee or agent
3.	by accident in warehouse before their actual clearance from such warehouse.	

Meaning of damage

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.

Meaning of deterioration

'**Deterioration**' is reduction in quality of goods due to natural causes.

(b) Amount of duty chargeable after abatement

$$= \text{Duty on goods before damage / deterioration} \times \frac{\text{Value of damaged / deteriorated goods} *}{\text{Value of goods before damage / deterioration}}$$

Illustration 4

If the value of goods is ₹ 10,000 and after damage the value is ₹ 2,000 and the duty payable on ₹ 10,000 is ₹ 1,000 then duty payable on damaged goods should be appropriately reduced to ₹ 200.

(c) *Valuation of the damaged or deteriorated goods

The value of damaged or deteriorated goods may be ascertained by either of the following methods at the option of the owner:

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

Illustration 5

Peerless Scraps, imported during August, by sea, a consignment of metal scrap weighing 6,000 M.T. (metric tons) from U.S.A. They filed a bill of entry for home consumption. The Assistant Commissioner passed an order for clearance of goods and applicable duty was paid by them. Peerless Scraps thereafter found, on taking delivery from the Port Trust Authorities (i.e., before the clearance for home consumption), that only 5,500 M.T. of scrap were available at the docks although they had paid duty for the entire 6,000 M.T., since there was no short-landing of cargo. The short-delivery of 500 M.T. was also substantiated by the Port-Trust Authorities, who gave a "weighment certificate" to Peerless Scraps.

On filing a representation to the Customs Department, Peerless Scraps has been directed in writing to justify as to which provision of the Customs Act, 1962 governs their claim for remission of duty on the 500 M.T. not delivered by the Port-Trust.

You are approached by Peerless Scraps as "Counsel" for an opinion/advice. Examine the issues and tender your opinion as per law, giving reasons.

Answer

As per provisions of section 23, where it is shown to the satisfaction of Assistant or Deputy Commissioner that any imported goods have been lost or destroyed, otherwise than as a result of pilferage at any time before clearance for home consumption, the Assistant or Deputy Commissioner shall remit the duty on such goods. Therefore, duty shall be remitted only if loss has occurred before clearance for home consumption.

In the given case, it is apparent from the facts that quantity of scrap received in India was 6,000 metric tonnes and 500 metric tonnes thereof was lost when it was in custody of Port Authorities i.e. before clearance for home consumption was made. Also, the loss of 500 MT of scrap cannot be construed to be pilferage, as loss of such huge quantity cannot be treated as "Petty Theft".

Hence, Peerless Scraps may take shelter under section 23 justifying its claim for remission of duty.

DENATURING OR MUTILATION OF GOODS [SECTION 24]

Section 24 of the Customs Act, 1962 empowers Central Government to make rules for permitting at the request of the owner the denaturing or mutilation of imported goods which are ordinarily used for more than one purpose so as to render them unfit for one or more of such purposes; and where any goods are so denatured or mutilated they shall be chargeable to duty at such rate as would be applicable if the goods had been imported in the denatured or mutilated form.

If any imported goods can be used for more than one purpose and duty is leviable on the basis of its purpose of utilisation, then denaturing or mutilation of such goods is useful. By denaturing, goods are made unfit for other purposes. After denaturing process, goods can be used only for one purpose and accordingly duty can be levied. Denaturing of Spirit Rules, 1972 specify procedure for denaturing spirit.

**Goods made
unfit for other
purposes**



(2) Ethyl Alcohol which is not denatured attracts a higher rate of customs duty as it can be used for industrial as well as human consumption purposes whereas, denatured ethyl alcohol can only be used for industrial purposes and hence attracts lower rate of duty. Assuming un-denatured ethyl alcohol is imported, which is to be used by the importer for industrial purposes only, then importer may make a request for denaturing of Ethyl Alcohol. Denaturants can be added to denature the spirits as per the above rules⁸ and once they are denatured, they attract the lower rate of duty subject to the provisions of said rules.

⁸ Denaturing of Spirit Rules, 1972

EXEMPTION FROM CUSTOMS DUTY [SECTION 25]

Central Government's power to grant exemption

The power to grant exemption from payment of customs duty is given to Central Government. The power of the Central Government to alter the duty rate structure is known as delegated legislation. The reason for calling it delegated legislation is because the power is delegated by the Parliament to the Central Government. 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.



Where any exemption is granted subject to any condition, such exemption shall, unless otherwise specified or varied or rescinded, be valid up to 31st day of March falling immediately after two years from the date of such grant or variation.

However limited period of validity shall not apply to any such exemption granted to, or in relation to,—

- (a) any multilateral or bilateral trade agreement;
- (b) obligations under international agreements, treaties, conventions or such other obligations including with respect to United Nations agencies, diplomats and international organisations;
- (c) privileges of constitutional authorities;
- (d) schemes under the Foreign Trade Policy;
- (e) the Central Government schemes having validity of more than two years;
- (f) re-imports, temporary imports, goods imported as gifts or personal baggage;

- (g) any duty of customs under any law for the time being in force, including integrated tax leviable under sub-section (7) of section 3 of the Customs Tariff Act, 1975, other than duty of customs leviable under section 12.
- 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.

RATIONALE FOR GRANT OF EXEMPTION

The power for grant of exemption vests with the Central Government subject to the overall control of the Parliament. The Government on a rational basis may discretely use this power and the exemptions may be based on any of the following factors:

- a. Moral grounds, where the duty should not be levied at all. Some of the instances, which may be given, are:
 - (i) Where the goods do not reach the Indian soil at all.
 - (ii) Where the goods have reached the Indian soil but are not available for consumption.
 - (iii) Where the goods get damaged or deteriorated in transit.
- b. Discretionary provision, where the exemption is used for controlling the economy and industrial growth of the country.

Can exemption notification be modified or withdrawn?

As seen earlier, the liability to pay customs duty or additional duty under the Customs Act, 1962 arises when the taxable event occurs. **The power to grant**

exemption from payment of duty, additional duty etc. flows from the provisions of section 25(1). An exemption notification so issued has the effect of suspending the collection of customs duty. It does not make items which are subject to levy of customs duty etc. as items not leviable to such duty. It only suspends the levy and collection of customs duty etc., wholly or partially and subject to such conditions as may be laid down in the notification by the Government in "public interest". Such an exemption by its very nature is susceptible of being revoked or modified or subjected to other conditions. **Thus, the power to exempt includes the power to modify or withdraw the same.**

Under the General Clauses Act, 1897, an authority which has the power to issue a notification has the undoubted power to rescind or modify the notification in a like manner. **Where the Government on the basis of the material available before it, *bona fide*, is satisfied that the "public interest" would be served by either granting exemption or by withdrawing, modifying or rescinding an exemption already granted, it should be allowed a free hand to do so.** *[Kasinka Trading v. U.O.I. 1994 (74) E.L.T. 782 (SC)]*

The Supreme Court has held in *Pankaj Jain Agencies v. U.O.I. 1994 (72) E.L.T. 805* that a notification under section 25 of the Customs Act would come into operation as soon as it is published in the Gazette of India i.e. the date of publication of the Gazette.

In *Ruchi Soya Industries Ltd. v. UOI 2021 (375) E.L.T. 497*, the Gujarat High Court held that section 25(4) of Customs Act, 1962 stipulating that notification issued under sections 25(1) and 25(2A) would become effective on the date of its issue by the Central Government for publication in the Gazette is arbitrary and *ultra vires* the aforesaid sections as publication of gazette is essential.

Effective date: Section 25 of the Act provides that the date of effect of the notification will be the date of its issue for publication in the Official Gazette.

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.

EXEMPTION FROM CUSTOMS DUTY ON IMPORTED GOODS USED FOR INWARD PROCESSING OF GOODS [SECTION 25A]

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

EXEMPTION FROM CUSTOMS DUTY ON RE-IMPORTED GOODS USED FOR OUTWARD PROCESSING [SECTION 25B]

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.

1 Year

LIST OF IMPORTANT JUDICIAL DECISIONS ON SCOPE OF EXEMPTION NOTIFICATIONS

Particulars	Citation
1. Exemption Notifications are part and parcel of an enactment and are supposed to be employed to further the objects of enactment provided it is not ultra vires the Act, and/or Article 14 of the Constitution of India.	<i>U.O.I. v. Paliwal Electricals P. Ltd</i> 1996 (83) E.L.T. 241 (S.C.)
2. A person who claims exemption or concession has to establish that he is entitled to that exemption or concession. Further, some of the provisions of an exemption notification may be directory in nature and some are of mandatory in nature. An eligibility criterion deserves a strict construction , although construction of a condition thereof may be given a liberal meaning if the same is directory in nature.	<i>CCE v. Hari Chand Shri Gopal</i> 2010 (260) E.L.T. 3 (S.C.)
3. If an applicant does not claim benefit under a particular exemption notification at the initial stage, he is not debarred, prohibited or estopped from claiming such benefit at a later stage.	<i>Share Medical Care v. UOI</i> 2007 (209) E.L.T. 321 (S.C.)
4. For purpose of claiming exemption from payment of tax applicable to a commodity, assessee must bring on record sufficient materials to show that it comes within the purview of notification.	<i>BoC India Ltd. v. State of Jharkhand & Ors.</i> 2009 (237) E.L.T. 7 (S.C.)
5. Section 25 of the Customs Act, 1962 is an enabling provision to exempt an item, otherwise liable to duty from payment thereof. It empowers the Government to grant such an exemption, if it is in "public interest". The word "public interest" here means the act beneficial to general public. It means action necessarily taken for public purpose. The word "public" means	<i>M. J. Exports v. Collector of Customs</i> 1992 (59) E.L.T. 112 (T) [approved by SC]

<p>Indian Public, unless contrary is provided.</p> <p>Thus, whatever exemptions are given by virtue of section 25(1) of the Customs Act, 1962, they have to be interpreted as the one meant to benefit Indian Public.</p>	
<p>6. No extended meaning can be given to the exempted item to enlarge the scope of exemption granted by the notification.</p>	<p><i>Rajasthan Spg. & Wvg. Mills Ltd. v. CCE 1995 (77) E.L.T. 474 (S.C.)</i></p>
<p>7. The choice between a strict and a liberal construction arises only in case of doubt in regard to the intention of the legislature manifest on the statutory language. Indeed, the need to resort to any interpretative process arises only where the meaning is not manifest on the plain words of the statute. If the words are plain and clear and directly convey the meaning, there is no need for any interpretation.</p>	<p><i>Novapan India Ltd. v. CCE 1994 (73) E.L.T. 769 (S.C.)</i></p>
<p>8. Liberal and strict construction of an exemption provision are to be invoked at different stages of interpreting it. When the question is whether a subject falls in the notification or in the exemption clause then it being in nature of exception is to be construed strictly and against the subject but once ambiguity or doubt about applicability is lifted and the subject falls in the notification, then full play should be given to it and it calls for a wider and liberal construction.</p>	<p><i>Union of India v. Wood Papers Ltd. 1990 4 SCC 256</i></p>
<p>9. Burden to prove eligibility to exemption notification is on the party who claims exemption.</p>	<p><i>Mysore Metal Industries v. CC 1988 (36) E.L.T. 369 (S.C.); Motiram Tolaram v. U.O.I. 1999 (112) E.L.T. 749 (SC)</i></p>

10. When two notifications are applicable, assessee can opt for that notification which is more beneficial.

CCE v. Indian Petro Chemicals 1997 (92) E.L.T. 13 (SC)

11. Exemption notification to be read as an ordinary man would read it.

Collector of Customs v. Shibani Engineering Systems 1996 (86) E.L.T. 453 (S.C.)

12. Expressions used in the Act should be understood in the same sense if used in Rules and notifications. Once an expression is defined in the Act, that expression wherever it occurs in the Act, Rules or Notifications issued thereunder, should be understood in the same sense.

Prestige Engg. India Ltd. v. CCE 1994 (73) E.L.T. 497 (S.C.)

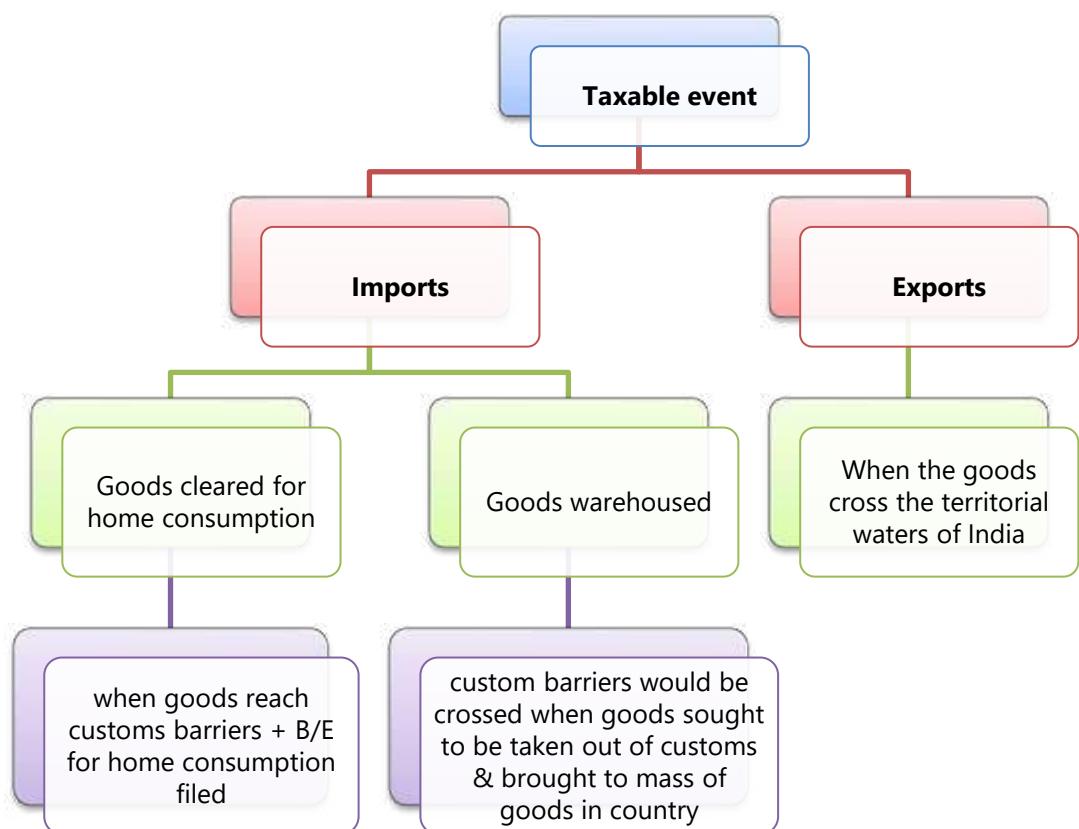


LET US RECAPITULATE

Charging Section [Section 12]



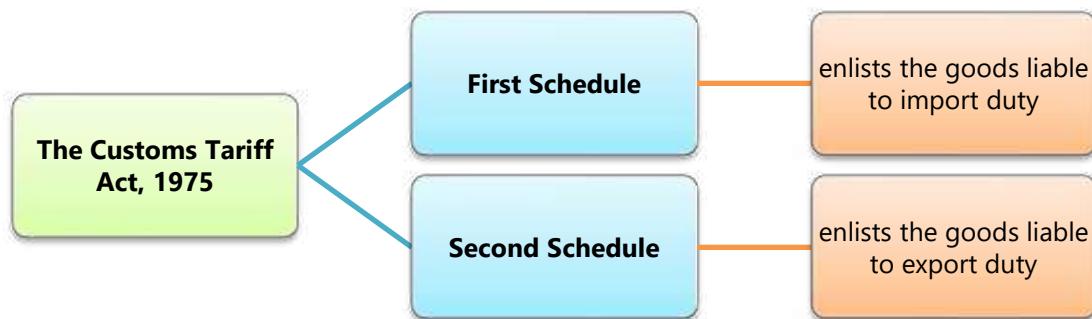
Taxable event



Important Terms

- **Indian Customs waters** – means waters extending into the sea up to the limit of EEZ &**includes** any bay, gulf, harbour, creek or tidal river. Powers of customs officers extend upto Indian Customs Waters.
- **Territorial Waters of India (TWI)**- extends upto 12 nautical miles (nm) into sea from baseline.
- **Exclusive Economic Zone (EEZ)** - area beyond TWI. The limit of EEZ is 200 nm from the nearest point of the baseline. Area beyond that is '**high seas**'

Schedules of the Customs Tariff Act,1975



Duty liability in special circumstances

(A) Re-importation of goods

- (i) **Re-importation of goods exported under duty drawback, exported for repairs, etc. - Concessional duty payable**

S. No.	Description of goods exported	Amount of import duty payable if re-imported
1.	Goods exported- <ul style="list-style-type: none"> (i) under claim for duty drawback; (ii) under claim for refund of integrated tax paid on export goods; 	Amount of incentive availed of at the time of export subject to specified conditions

	(iii) under bond without payment of integrated tax (iv) under duty exemption scheme (Advance Authorisation/ DFIA or EPCG) (v) under claim for RoDTEP (vi) under claim for RoSCTL	In case of point (iv), amount of IGST and compensation cess leviable at the time and place of importation of goods subject to specified conditions.
2.	Goods other than those falling under S. No. 1 exported for repairs abroad	BCD, IGST and GST compensation cess on value: =Fair cost of repairs including cost of materials (actually incurred or not), used in repairs + insurance and freight charges, both ways.
3.	Goods other than falling under S. No. 1 & 2 above	NIL

Conditions to be satisfied for claiming the above two concession/exemptions

Time-limit for re-importation

- 5 years further extendable for a period up to 2 years.
- 7 years further extendable for a period up to 3 years in case of Bhutan for machinery and equipment.
- In case of goods exported under AA/DFIA or EPCG etc - 1 year further extendable for a period upto 1 year

Same goods

No change in ownership

- (ii) Exemption to re-import of goods and parts thereof for repairs/reconditioning/reprocessing/remaking or similar other process

S. Particulars No.	Time-limit for Other conditions re-importation to be satisfied from the date of exportation
1. Goods manufactured in India and re-imported for repairs/ reconditioning other than specified goods	3 years Export to Nepal & Bhutan - 10 years.
2. Goods manufactured in India and re-imported for Reprocessing/Refining/Re-making/any other similar process	1 year

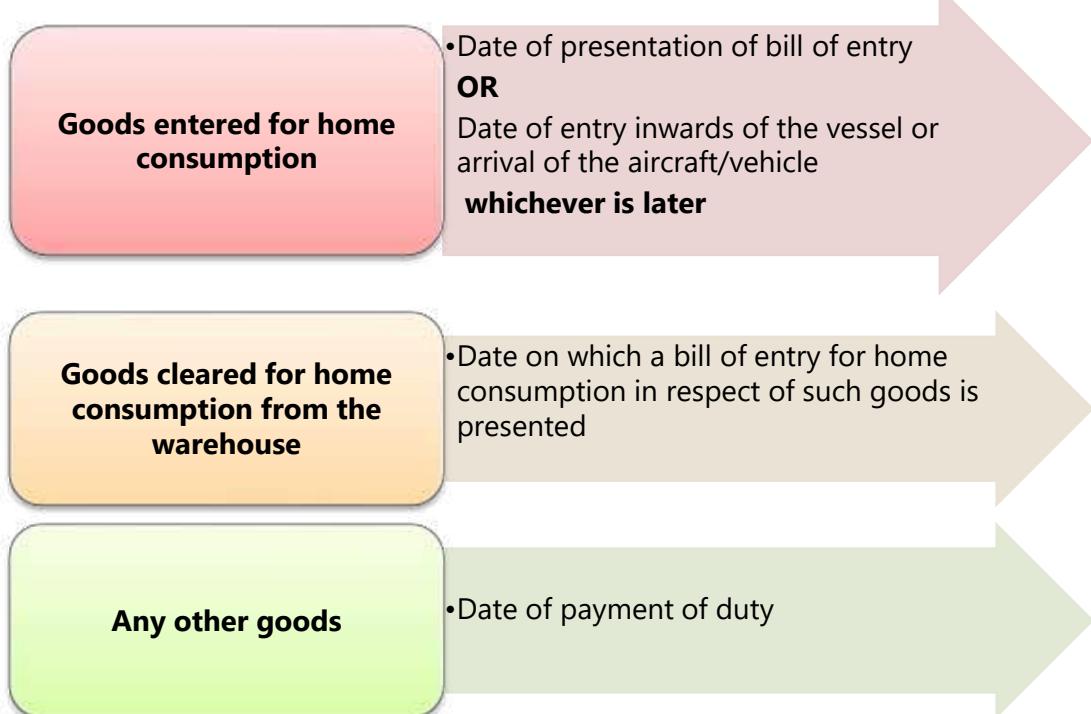
(B) Goods derelict, wreck etc. [Section 21]

All goods, derelict, jetsam, flotsam and wreck brought or coming into India

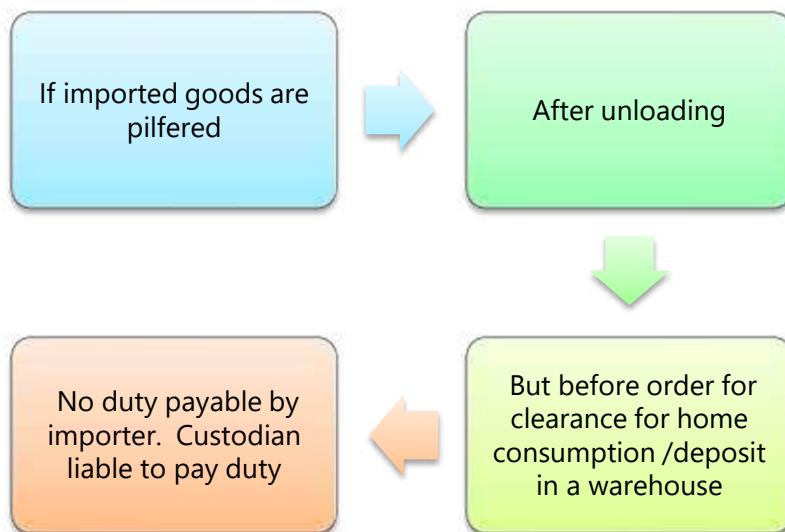
treated like imported goods

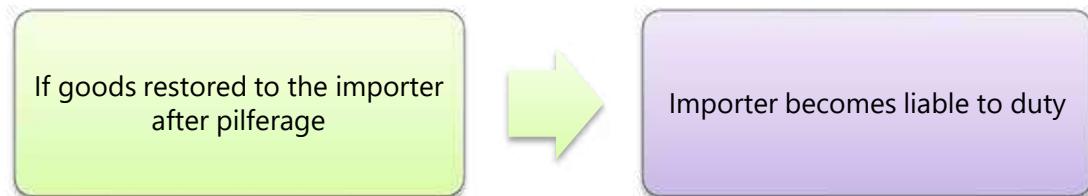
Unless it be shown to the satisfaction of the proper officer that they are entitled to be admitted duty-free under this Act.

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

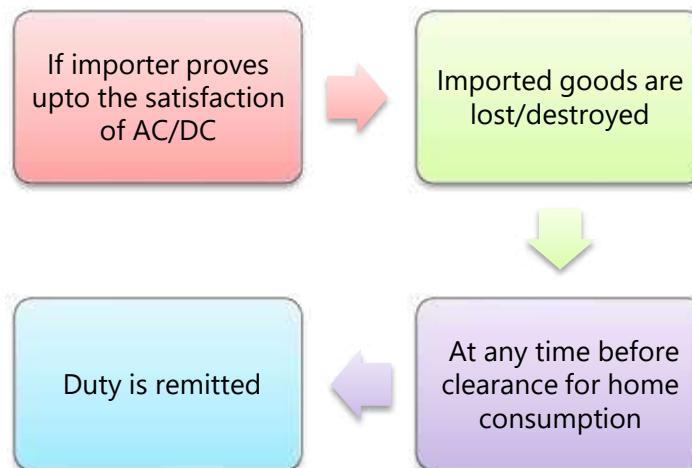


Duty on Pilfered goods [Section 13]





Remission of duty on goods lost, destroyed or abandoned [Section 23(1)]



Right to relinquish the title to the goods-abandonment of goods [Section 23(2)]



Abatement of duty on damaged or deteriorated goods [Section 22]

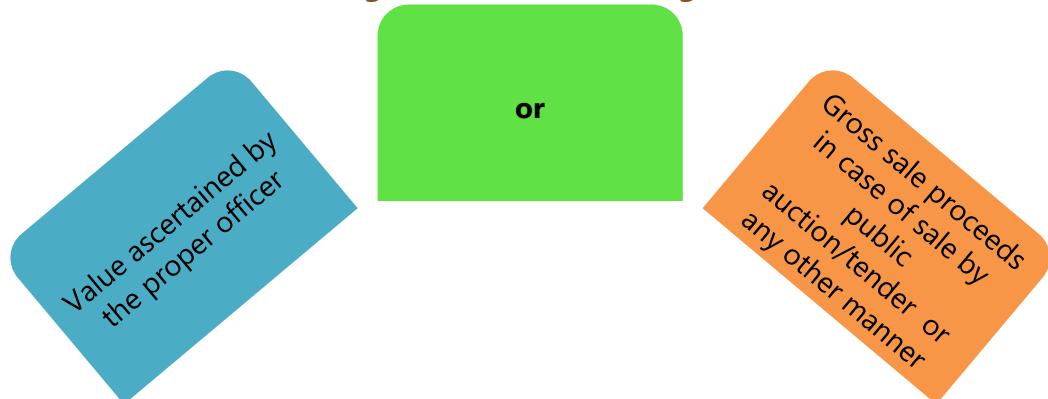
Cases where the abatement is available

Goods	Damaged/deteriorated upto the satisfaction of AC/DC	Condition
Any imported goods	before or during unloading	
Any imported goods, other than warehoused goods	by accident after unloading but before examination for assessment by the customs authorities	Provided such accident is not due to any wilful act, negligence or default of the importer, his employee or agent
Any warehoused goods	by accident in warehouse before their actual clearance from such warehouse	

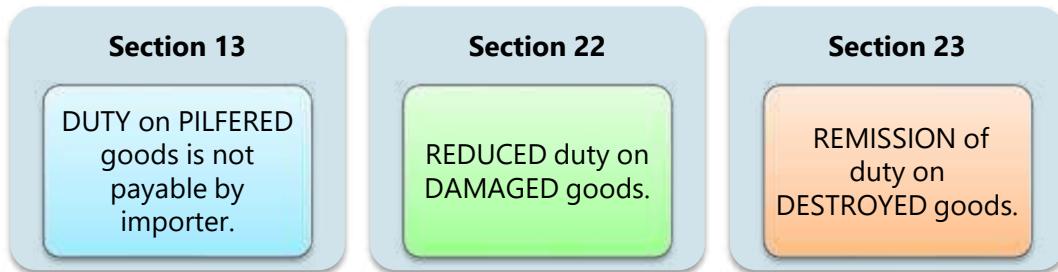
Amount of duty chargeable after abatement

$$= \text{Duty on goods before damage / deterioration} \times \frac{\text{Value of damaged / deteriorated goods} *}{\text{Value of goods before damage / deterioration}}$$

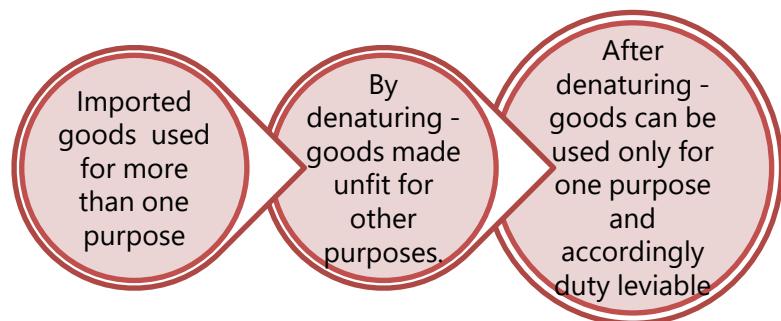
*Valuation of the damaged or deteriorated goods



Difference between section 13, 22 and 23 of the Customs Act, 1962



Denaturing or mutilation of goods [Section 24]



Exemption from customs duty [Section 25]

General Exemption



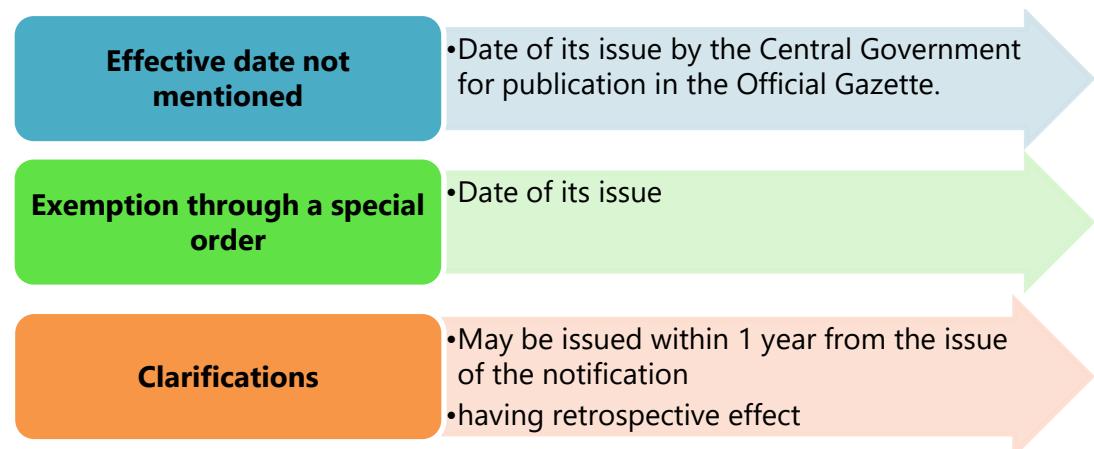
- Central Government in public interest
- by notification in the Official Gazette
- exempt generally either absolutely or conditional exemption
- conditional exemption-valid upto 31st day of March falling immediately after 2 years from the date of such grant/variation **in other than specified cases**

Special Exemption

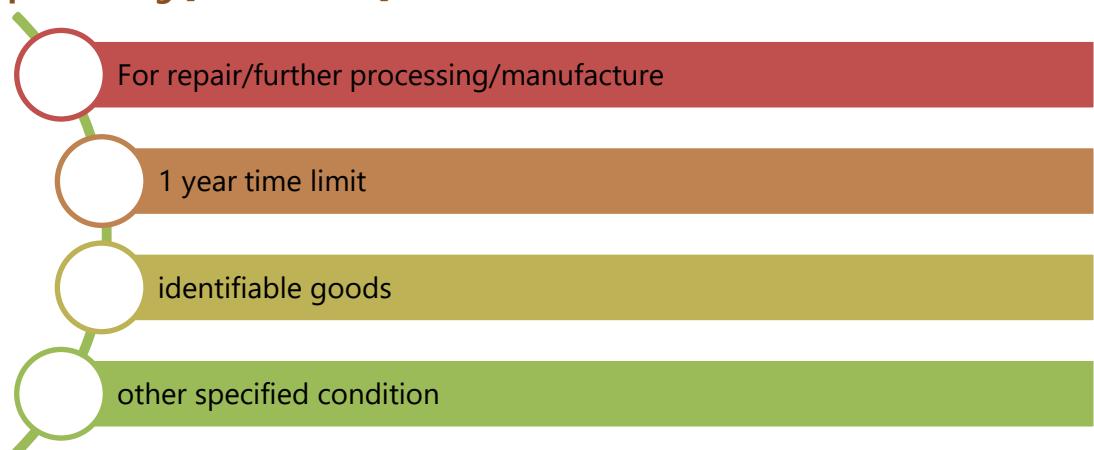


- Central Government in public interest
- by special order in each case
- exempt from payment of duty
- only under circumstances - exceptional nature
- No duty - if the amount of duty leviable is equal to or less than ₹ 100.

Effective date of notification



Exemption from customs duty on imported goods used for inward processing of goods [Section 25A]/re-imported goods used for outward processing [Section 25B]





TEST YOUR KNOWLEDGE

1. *What are the provisions relating to effective date of notifications issued under section 25 of the Customs Act, 1962?*
2. *M/s. XYZ, a 100% export oriented undertaking (100% E.O.U. in short) imported DG sets and furnace oil duty free for setting up captive power plant for its power requirements for export production. This benefit was available vide an exemption notification. They used the power so generated for export production but sold surplus power in domestic tariff area as power could not be stored.*

Customs Department has demanded duty on DG sets and furnace oil as surplus power has been sold in domestic tariff area. The notification does not contain specific restriction that the imported goods can only be used for manufacture of export goods.

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

3. *Referring to section 25 of the Customs Act, 1962, discuss the following:*
 - Special exemption*
 - General exemption*
4. *Write a brief note on the following with reference to the Customs Act, 1962:*
 - Remission of duty on imported goods lost*
 - Pilfered goods*
5. *Distinguish between pilfered goods and lost/destroyed goods*
6. *Goods manufactured or produced in India, which were earlier exported and thereafter imported into India will be treated at par with other goods imported into India. Is the proposition correct or any concession is provided on such import? Discuss briefly.*
7. *Write a brief note on stages of imposition of taxes and duties.*
8. *Discuss the provisions relating to denaturing or mutilation of goods.*
9. *Briefly explain the provisions relating to abatement of duty on damaged or deteriorated goods under section 22 of the Customs Act, 1962.*

10. *Briefly explain the following with reference to the provisions of the Customs Act, 1962:*
 - (i) *Indian customs waters*
 - (ii) *India*
11. *Distinguish between Indian territorial waters and Indian custom waters.*
12. *Write a brief note on the constitutional provisions governing the levy of customs duties.*
13. *Examine the validity of the following statements:*
 - (a) *A beneficial owner of imported goods is a person on whose behalf the goods are being imported.*
 - (b) *Customs area does not include a warehouse.*
 - (c) *Customs station includes international courier terminal.*
14. *Rock & Rock India Ltd. imported a consignment from U.S.A (by sea). The value of consignment was ₹ 7,50,000 and total duty payable was ₹ 1,50,000.*

Company filed bill of entry for home consumption but before inspection and clearance for home consumption it found that the goods were damaged.

On filing a representation to the Customs Department, the proper officer refused the claim for abatement because goods were already unloaded. The proper officer is in agreement with the claim that the value of goods has come down to only ₹ 1,50,000.

Examine the issue with reference to the relevant statutory provisions and calculate the amount of total duty payable:

Would your answer be different in the above case if the goods get deteriorated after unloading and examination but before clearance for home consumption, and value comes down to ₹ 7,00,000 ?



ANSWERS/HINTS

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

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

However, where any exemption is granted subject to any condition, such exemption shall, unless otherwise specified or varied or rescinded, be valid up to 31st day of March falling immediately after two years from the date of such grant or variation.

Further, such limited period of validity shall not apply to any such exemption granted to, or in relation to,—

- (a) any multilateral or bilateral trade agreement;
- (b) obligations under international agreements, treaties, conventions or such other obligations including with respect to United Nations agencies, diplomats and international organisations;
- (c) privileges of constitutional authorities;
- (d) schemes under the Foreign Trade Policy;
- (e) the Central Government schemes having validity of more than two years;
- (f) re-imports, temporary imports, goods imported as gifts or personal baggage;
- (g) any duty of customs under any law for the time being in force, including integrated tax leviable under sub-section (7) of section 3 of the Customs Tariff Act, 1975, other than duty of customs leviable under section 12.

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

2. The facts of the case are similar to the case of *Commissioner v. Hanil Era Textile Ltd. 2005 (180) ELT A44 (SC)* wherein the Supreme Court agreed to the view taken by the Tribunal that in the absence of a restrictive clause in the notifications that imported goods are to be solely or exclusively used for manufacture of goods for export, there is no violation of any condition of notification, if surplus power generated due to unforeseen exigencies is sold in domestic tariff area.

Therefore, no duty can be demanded from M/s XYZ for selling the surplus power in domestic tariff area for the following reasons:

- (i) They have used the DG sets and furnace oil imported duty free for generation of power, and
 - (ii) such power generated has been used for manufacturing goods for export, and
 - (iii) only the surplus power has been sold, as power cannot be stored.
3. (i) **Special Exemption:** As per section 25(2) of the Customs Act, 1962, if the Central Government is satisfied that it is necessary in the public interest so to do, it may, by special order in each case, exempt from payment of duty, any goods on which duty is leviable only under circumstances of an exceptional nature to be stated in such order. Further, no duty shall be collected if the amount of duty leviable is equal to, or less than, ₹ 100. This type of exemption is called as *ad hoc* exemption. Order under section 25(2) is not required to be published in the Official Gazette.
- (ii) **General Exemption:** As per section 25(1) of the Customs Act, 1962, if the Central Government is satisfied that it is necessary in the public interest so to do, it may, by notification in the Official Gazette, exempt generally either absolutely or subject to such conditions (to be fulfilled before or after clearance) as may be specified in the notification, goods of any specified description from the whole or any part of duty of customs leviable thereon.

However, where any exemption is granted subject to any condition, such exemption shall, unless otherwise specified or varied or rescinded, be

valid up to 31st day of March falling immediately after two years from the date of such grant or variation.

Further, limited period of validity shall not apply to any such exemption granted to, or in relation to,—

- (a) any multilateral or bilateral trade agreement;
- (b) obligations under international agreements, treaties, conventions or such other obligations including with respect to United Nations agencies, diplomats and international organisations;
- (c) privileges of constitutional authorities;
- (d) schemes under the Foreign Trade Policy;
- (e) the Central Government schemes having validity of more than two years;
- (f) re-imports, temporary imports, goods imported as gifts or personal baggage;
- (g) any duty of customs under any law for the time being in force, including integrated tax leviable under sub-section (7) of section 3 of the Customs Tariff Act, 1975, other than duty of customs leviable under section 12.

Further, this exemption applies to all importers while exemption under section 25(2) is for specific importer and specific goods under import.

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

(ii) **Pilfered goods:** Section 13 provides that if imported goods are pilfered after unloading thereof but before the proper officer has made an order for clearance for home consumption or deposit in a warehouse, the importer is not liable to pay the duty on the said pilfered goods unless the pilfered goods are restored to importer. In such a case, duty on pilfered goods is payable by the Port authorities. Also, the importer does not have to prove pilferage. However, the loss must be only due to pilferage. Section 13 is not applicable for warehoused goods.

5.

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

6. The given proposition is correct i.e., goods produced in India, which were earlier exported and thereafter imported into India will be treated at par with

other goods imported into India [Section 20 of the Customs Act, 1962]. However, the following concessions are being provided in this regard:

- (i) Maximum import duty will be restricted to duty drawback or refund availed or integrated tax not paid at the time of export.
- (ii) Where the goods were originally exported for repairs, the duty on re-importation is restricted to the fair cost of repairs including cost of materials used in repairs whether such costs are actually incurred or not, insurance and freight charges, both ways done abroad.

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

- (a) the re-importation is done within 5 years or 7 years if time is extended.
- (b) the exported goods and re-imported goods must be the same.

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

However, these concessions would not be applicable if-

- re-imported goods had been exported by EOU or a unit in FTP
- re-imported goods had been exported from a public/private warehouse
- re-imported goods which fall under Fourth schedule to the Central Excise Act, 1944.

[Notification No. 45/2017 Cus dated 30.06.2017]

- (iii) When exported goods come back for repairs and are re-exported, the re-imported goods other than the specified good can avail exemption from paying of import duty subject to the following conditions:
 - (i) the re-importation is for repairs only
 - (ii) the time limit is 3 years. In case of Nepal & Bhutan, such time-limit is 10 years.
 - (iii) the goods must be re-exported after repairs
 - (iv) the time limit for export is 6 months (extendable to one year).

- (v) certain goods, listed in the notification, are not covered by this exemption.

[Notification No. 158/95 Cus. dated 14.11.1995 as amended vide Notification No. 60/2018 Cus dated 11.09.2018]

7. [Refer para 1-Unit II]
 8. [Refer para 4 -Unit II]
 9. [Refer para 4 -Unit II]
 10. [Refer para 3 -Unit I]
 11. [Refer para 3 -Unit I]
 12. [Refer para 2 -Unit I]
 13. (a) **The statement is valid.** Section 2(3A) defines beneficial owner to mean any person on whose behalf the goods are being imported or exported or who exercises effective control over the goods being imported or exported.
 - (b) **The statement is not valid.** The definition of customs area includes within its ambit a warehouse too.
The customs area is defined to mean 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.
 - (c) **The statement is valid.** International courier terminal and foreign post office are included within the scope of customs station as defined under section 2(13) of the Customs Act, 1962.
As per section 2(13), a customs station means any customs port, customs airport, international courier terminal, foreign post office or land customs station.
14. The situations covered in the question are -

- (i) **Damage after unloading**

The abatement of duty is allowed **under section 22(b)** where it is shown to the satisfaction of the Assistant/Deputy Commissioner of Customs that, *inter alia*, any imported goods, other than warehoused

goods, had been damaged at any time after the unloading thereof in India but before their examination, on account of any accident not due to any wilful act, negligence or default of the importer.

Thus, in view of the above-mentioned provisions, the stand taken by the proper officer of refusing the claim for abatement is not valid in law.

The duty to be charged on the damaged goods shall be reduced in proportion to the reduction in the value of goods on account of damage.

Thus, in the given case, the amount of total

$$= [\text{₹ } 1,50,000 / \text{₹ } 7,50,000] \times \text{₹ } 1,50,000 = \text{₹ } 30,000$$

(ii) Deterioration after unloading

The abatement of duty is allowed in case of deterioration only if such deterioration occurs before or during the unloading of goods. Since in this case, imported goods have deteriorated before clearance for home consumption but after unloading, abatement of duty will not be allowed and full duty will have to be paid.

TYPES OF DUTY



For the sake of brevity "Goods and Services Tax Compensation Cess" has been referred to as "GST compensation cess".

LEARNING OUTCOMES

After studying this chapter, you would be able to:

- comprehend various types of duties/taxes leviable under Customs law.
- analyse and apply basic customs duty, integrated tax, goods and services tax, GST compensation cess, social welfare surcharge and agriculture infrastructure and development cess on importation.
- analyse and apply safeguard duty, countervailing duty on subsidized articles, and anti-dumping duty.
- appreciate the emergency power of Central Government to impose or enhance import and export duties.
- identify the cases where countervailing duty on subsidized articles and anti-dumping duty will not be levied.

CHAPTER OVERVIEW



1. **BASIC CUSTOMS DUTY (BCD) [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.

Charging section [Section 12 of the Customs Act]: The duties of customs shall be levied

- ◆ 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



***Rates of Basic Custom Duty [Section 2 of the Customs Tariff Act]:** The rates at which duties of customs shall be levied under the Customs Act 1962 are specified in the First and Second Schedules.

India being a member of WTO, the First Schedule of Customs Tariff Act specifying basic customs duty on import of goods, is aligned with Harmonised System of Nomenclature (HSN) at the 6 digit level. The Harmonized System is an international nomenclature for the classification of products. It allows participating countries to classify traded goods on a common basis for customs purposes. At the international level, the Harmonized System (HS) for classifying goods is a six-digit code system. In India, the First Schedule classifies goods at 8 digit level.

First schedule-Rate of duty on Import of goods

First Schedule has five columns, the first one being for HSN, second for description, third for the unit, and fourth and fifth for rate of duty. The fourth column provides standard rate of BCD and fifth column provides for preferential rate of BCD.

Standard rate of duty: Generally, the standard rate of BCD is applicable. Normal rate of customs duty on imports of non-agricultural goods is 10%, though there are wide variations.

Preferential rate of duty: If the goods are imported from the areas notified by the Central Government to be preferential areas, then lower preferential rate of BCD will be applicable. Preferential Rates of Duty are reduced tariff rates levied on the basis of trade agreements between two or more countries. These rates are usually substantially lower than the normal tariff rates.

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:-

- (a) At the time of importation, he should make a specific claim for the preferential rate.
- (b) He should also claim that the goods are produced or manufactured in such preferential area.
- (c) The area should be notified under section 4(3) of the Customs Tariff Act to be a preferential area.
- (d) 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, the goods shall be liable to standard rate of duty.

Second Schedule to the Customs Tariff Act provides for rate of export duty on goods exported out of India. As per Foreign Trade Policy adopted by India, goods are to be exported and not the taxes. Hence, generally there are no export duties on goods exported out of India. However, still there is a small list of goods on which export duty is leviable as a policy adopted by the Ministry on time to time basis.

**Second schedule-
Rate of duty on
Export of goods**



2. INTEGRATED TAX [SECTION 3(7) OF THE CUSTOMS TARIFF ACT]

In addition to BCD, import of goods is also leviable to GST (Integrated GST).

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), as the case may be.

Maximum-40%

IGST shall be applicable at the same rate as is applicable on goods supplied in India. The rate notification for determining the IGST rate on import of goods would

be general IGST rate notification and exemption notification, i.e. *01/2017 IT(R) and 02/2017 IT(R)* respectively.

General rate of IGST is 18%. IGST is payable on Social Welfare Cess (discussed subsequently). Importers who are registered under GST and are importing goods for manufacture or trading can avail input tax credit under GST law of IGST and GST compensation cess (discussed subsequently) paid on the goods at the time of import.

Taxability of goods imported by SEZ

Goods imported by a unit or a developer in the Special Economic Zone (SEZ) for authorised operations are exempted from the whole of IGST leviable under section 3(7) of the Customs Tariff Act, 1975 vide *Notification No. 64/2017 Cus dated 05.07.2017*.

Taxability of goods imported by EOU

Goods imported by Export Oriented Undertaking (EOU) attract liability to customs duty. Import of goods by 100% EOU's are governed by *Notification No. 52/2003 Cus* as amended. EOU's are allowed duty free import of goods (exempt from Customs duties, IGST & GST Compensation Cess) under the said notifications. However, exemption from IGST will be subject to fulfilment of specified conditions.



3. GOODS AND SERVICES TAX COMPENSATION CESS [SECTION 3(9) OF THE CUSTOMS TARIFF ACT]

GST compensation cess is a compensation cess levied under section 8 of the Goods and Services Tax (Compensation to States) Act, 2017. GST compensation cess is levied on intra-state supply of goods or services and inter-state supply of goods or services to provide compensation to the States for loss of revenue due to implementation of GST in India. The levy and collection of CGST compensation cess is extended till 31st March, 2026.

It may be noted that GST compensation cess would be applicable only on those supply of goods or services that have been notified by the Central Government. As of now, GST compensation cess is levied on luxury and sin goods like pan masala, tobacco etc.

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)¹.



4. MANNER OF COMPUTING ASSESSABLE VALUE FOR LEVYING INTEGRATED TAX [SECTION 3(8) OF THE CUSTOMS TARIFF ACT]

For the purposes of calculating the integrated tax on any imported article where such tax is leviable at any percentage of its value, the value of the imported article shall, notwithstanding anything contained in section 14 of the Customs Act, 1962, be the aggregate of—

- (a) the value of the imported article determined under sub-section (1) of section 14 of the Customs Act, 1962 or the tariff value of such article fixed under sub-section (2) of that section, as the case may be; and
- (b) any duty of customs chargeable on that article under section 12 of the 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, but does not include the integrated tax referred to in section 3(7) of the Customs Tariff Act, 1975 or the goods and services tax compensation cess referred to in section 3(9) of the Customs Tariff Act, 1975.

Exclude IGST and GST Compensation Cess

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

¹ It may be noted that all goods imported by a unit or a developer in the Special Economic Zone for authorised operations, are exempted from the whole of goods and service tax compensation cess leviable thereon under section 3(9) of Customs Tariff Act, 1975 read with section 8(2) of the Goods and Services Tax (Compensation to States) Act, 2017. This is only for the purpose of information and not relevant from examination point of view.

The provisions of the Customs Act, 1962 and all rules and regulations made thereunder, including but not limited to those relating to the date for determination of rate of duty, assessment, non-levy, short-levy, refunds, exemptions, interest, recovery, appeals, offences and penalties shall, as far as may be, apply to the duty or tax or cess, as the case may be, chargeable under this section as they apply in relation to duties leviable under that Act or all rules or regulations made thereunder, as the case may be.[Section 3(12) of the Customs Tariff Act]

The duty or tax or cess chargeable under this section shall be in addition to any other duty or tax or cess, imposed under this Act or under any other law for the time being in force.**[Section 3(11) of the Customs Tariff Act]**

Point which merit consideration:-

Following tax/cess would not be included while computing the assessable value for computation of Integrated tax and GST compensation cess:-

- (a) Integrated tax [Section 3(7)]
- (b) Goods and Services Tax compensation cess [Sections 3(9)]



5. MANNER OF COMPUTING VALUE IN CASE OF WAREHOUSED GOODS [SECTION 3(8A) OF THE CUSTOMS TARIFF ACT]

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 sub-section (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.

Higher of the two

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].

Tariff value: [Section 2(40)]

"**Tariff value**", in relation to any goods, means the tariff value fixed in respect thereof under sub-section (2) of section 14.

Value: [Section 2(41)]

"**Value**", in relation to any goods, means the value thereof determined in accordance with the provisions of sub-section (1) or sub-section (3) of section 14.



6. ADDITIONAL DUTY OF CUSTOMS UNDER SECTION 3 OF CUSTOMS TARIFF ACT

1. Additional duty under section 3(1): Any article which is imported into India is also liable to a duty equal to the excise duty for the time being leviable on a like article if produced or manufactured in India. This duty is called as additional duty. If the excise duty is leviable as a percentage of the value of goods, the additional duty will also be calculated at that percentage of the value of the imported article.

Note: After introduction of GST, excise duty has been restricted to few goods such as petroleum products (crude, diesel, petrol, ATF, natural gas) and tobacco products, the above said additional duty is also restricted to the above products

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 State Excise duty for the time being leivable 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 leivable 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.

2. **Countervailing duty under section 3(3):** Special additional duty under sub-section (3) is levied to counter balance the excise duty leivable on raw materials, components and ingredients of the same nature as, or similar to those, used in the production or manufacture of the imported article. The Central Government can levy such duty if it is satisfied that it is necessary in the public interest to do so even if such article is liable to additional duty leivable under sub-section (1).

This provision is to empower the Central Government to levy duty of customs on goods which are otherwise not leivable to additional duty under sub-section (1) on account of there being no excise duty on said goods when manufactured in India. In order to ensure that domestic manufacturers are at par with foreign manufacturers this duty is levied, as domestic manufacturers would have incurred tax cost as excise duty on raw materials, components used to manufacture goods which are not liable to excise duty. For example, a manufacturer of grease or a lubricating oil procures petroleum products as raw material which suffer excise duty on the raw material purchased.

3. **Levy of special additional duty under section 3(5):** If the Central Government is satisfied that it is necessary in the public interest to levy on any imported article [whether on such article duty is leivable under sub-section (1) or, as the case may be, sub-section (3) or not] such additional duty as would counter-balance the sales tax, value added tax, local tax or any other charges for the time being leivable on a like article on its sale, purchase or transportation in India, it may, by notification in the Official Gazette, direct that such imported article shall, in addition, be liable to an additional duty at a rate not exceeding 4% of the value of the imported article as specified in that notification.

Note: 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.



7. EMERGENCY POWER TO IMPOSE OR ENHANCE EXPORT DUTIES [SECTION 8 OF THE CUSTOMS TARIFF ACT]

Central Government empowered to impose/enhance the export duties: The Central Government may impose or enhance export duties by making amendment to the Second Schedule by issue of a notification in the Official Gazette.

Central Government

Conditions to be satisfied

- The goods may or may not be specified in the Second Schedule.
- The Central Government is satisfied that circumstances exist, which render it necessary for the imposition or enhancement of export duties.

If the above conditions are satisfied, the Central Government may impose or enhance export duties.



1 Generally, in summer season, the production of milk becomes low as compared with other seasons. If the available milk is not able to meet the requirements of the people, the Government may impose or enhance the duty on exports of milk powder or stop the exports of milk powder.



8. EMERGENCY POWER TO IMPOSE OR ENHANCE IMPORT DUTIES [SECTION 8A OF THE CUSTOMS TARIFF ACT]

Central Government empowered to impose/enhance the import duties: The Central Government may impose or enhance import duties by making amendment to the First Schedule by issue of a notification in the Official Gazette.

Central Government

Conditions to be satisfied: If the following conditions are satisfied, the Central Government may provide for the enhancement of the import duty.

- The goods should be specified in the First Schedule.
- The Central Government is satisfied that circumstances exist, which render it necessary for the enhancement of import duties.

Proviso to sub-section (1) provides that the Central Government shall not issue any notification under this section unless the earlier notification amending the rate of duty has been placed before the Parliament and the same has been passed with or without modifications.



9. POWER OF CENTRAL GOVERNMENT TO APPLY SAFEGUARD MEASURES [SECTION 8B OF THE CUSTOMS TARIFF ACT]

Circumstances in which safeguard measures can be imposed: Central Government after conducting enquiry can impose the safeguard measures if it is satisfied that,

- Any article is imported into India in increased quantities; and
- Such increased importation is causing or threatening to cause serious injury to domestic industry.

The measures are imposed by issuing a notification in the Official Gazette.

Meaning of important terms

- (a) "Domestic industry"** means the producers—
 - (i) as a whole of the like article or a directly competitive article in India; or
 - (ii) whose collective output of the like article or a directly competitive article in India constitutes a major share of the total production of the said article in India
- (b) "Serious injury"** means an injury causing significant overall impairment in the position of a domestic industry;
- (c) "Threat of serious injury"** means a clear and imminent danger of serious injury.
- (d) "Developing country"** means a country notified by the Central Government in the Official Gazette;

Objective of safeguard measures: The safeguard measures are imposed for the purpose of protecting the interests of any domestic industry in India aiming to make it more competitive.

Modes of safeguard measures: The Central Government may impose following safeguard measures to curb the increased quantity of imports of an article for preventing serious injury to domestic industry:

- (a) imposition of safeguard duty; or
- (b) application of tariff-rate quota; or
- (c) other measures as the Central Government deems appropriate.

Points which merit consideration

1. The Central Government may allocate tariff-rate quota to supplying countries having a substantial interest in supplying the article in the prescribed manner.
2. The safeguard duty is in addition to any other duty in respect of such goods levied under this Act or any other law for the time being in force.
3. The Central Government may, by notification in the Official Gazette, exempt such quantity of any article as it may specify in the notification, when

imported from any country/territory into India, from payment of the whole/part of the safeguard duty leviable thereon.

Minimum level of tariff rate quota: Average level of imports in the last three representative years for which statistics are available, unless a different level is deemed necessary to prevent/remedy serious injury.

Duration of safeguard measures: The measures imposed under this section shall be in force for a period of 4 years from the date of its imposition.

**Duration – 4 years
After extension-10
years**

Extension of period: The Central Government may extend the period of such imposition from the date of first imposition provided it is of the opinion that:-

- (a) Domestic industry has taken measures to adjust to such injury or as the case may be to such threat and
- (b) It is necessary that the safeguard measures should continue to be imposed.

However, the total period of levy of safeguard measures is restricted to 10 years.

Applicability of all machinery provisions of the Customs Act, 1962: The provisions of the Customs Act, 1962 and all rules and regulations made thereunder, including but not limited to those relating to the date for determination of rate of duty, assessment, non-levy, short-levy, refunds, exemptions, interest, recovery, appeals, offences and penalties shall, as far as may be, apply to the duty chargeable under this section as they apply in relation to duties leviable under that Act or all rules or regulations made thereunder, as the case may be.

Exemptions from safeguard measures

- (a) **Articles from developing country:** Articles originating from 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.
- (b) **Articles originating from more than one developing country:** 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.

- (c) Imports by 100% EOU or units in a Special Economic Zone:** Safeguard measures shall not apply to articles imported by a 100% EOU/SEZ unit 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 measures shall be applied on that portion of the article so cleared or so used as was leviable when it was imported into India.

Provisional Assessment

- (a) The Central Government is also empowered to impose provisional safeguard measures.
- (b) This provisional safeguard measures may be imposed on the basis of preliminary determination that increased imports have caused or threatened to cause serious injury to a domestic industry.
- (c) The provisional safeguard measures shall be in force for a maximum period of 200 days from the date of its imposition.
- (d) If upon final determination, the Central Government is of the opinion that the increased imports have not caused or threatened to cause serious injury to a domestic industry, the safeguard duty collected shall be refunded.

Duration – Maximum 200 days

Modification of notification issued under section 8B: Every notification issued under this section shall be laid after issuance before each House of Parliament, while it is in session, for a total period of 30 days which may be comprised in one session or in two or more successive sessions.

In case before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the notification or both Houses agree that the notification should not be issued, the notification be effective only in such modified form or be of no effect, as the case may be.

However, any such modification/annulment shall not affect the validity of anything previously done under that notification.

Illustration 1

Write a short note on the applicability of safeguard measures under the Customs Tariff Act, 1975 on articles imported by EOU/SEZ unit and cleared as such into domestic tariff area (DTA).

Answer

Section 8B of Customs Tariff Act, 1975, provides for levy of safeguard measures on articles imported by an 100% EOU/unit in a SEZ that are cleared as such into DTA. In such cases, safeguard measures shall be applied on that portion of the article so cleared as was leviable when it was imported into India.



10. COUNTERVAILING DUTY ON SUBSIDIZED ARTICLES [SECTION 9 OF THE CUSTOMS TARIFF ACT]

Conditions to be satisfied: The countervailing duty on subsidized articles is imposed if the following conditions are satisfied.

- (a) Any country or territory, directly or indirectly, pays or bestows subsidy upon the manufacture or production or exportation of any article. Such subsidy includes subsidy on transportation of such article.
- (b) Such articles are imported into India.
- (c) The importation may/may not directly be from the country of manufacture/production.
- (d) The article, may be in the same condition as when exported from the country of manufacture or production or may be changed in condition by manufacture, production or otherwise.

Subsidy shall be deemed to exist if-

- (a) There is financial contribution by the Government or any public body in the exporting or producing country or territory. Such contribution may include direct transfer of funds like grants, loans etc., waiver of revenue due to the Government etc.

- (b) There is any form of income or price support granted or maintained by the Government, which results in increased export of such article or reduced import of any article into that country.
- (c) A Government makes payments to a funding mechanism, or entrusts or directs a private body to carry out one or more of the type of functions specified above which would normally be vested in the Government and the practice in, no real sense, differs from practices normally followed by Governments.

Anti-circumvention measure in respect of countervailing duty on subsidized articles: Where the Central Government, on such inquiry as it considers necessary, is of the opinion that circumvention of countervailing duty has taken place, by either of the following ways:-

- (i) by **altering the description or name** or composition of the article on which such duty has been imposed
- (ii) by import of such article in an **unassembled or disassembled form**
- (iii) by **changing the country** of its origin or export or
- (iv) in any other manner, whereby the countervailing duty so imposed is rendered **ineffective**

it may extend the countervailing duty to such other article also from such date, not earlier than the date of initiation of the inquiry, as the Central Government may, by notification in the Official Gazette, specify.

Absorption of countervailing duty:

Absorption of countervailing duty is said to have taken place,—

- (a) if there is a decrease in the export price of an article without any commensurate change in the resale price in India of such article imported from the exporting country or territory; or
- (b) under such other circumstances as may be provided by rules.

Where the Central Government, on such inquiry as it considers necessary, is of the opinion that absorption of countervailing duty has taken place whereby the countervailing duty so imposed is rendered ineffective, it may modify such duty to

counter the effect of such absorption, from such date, not earlier than the date of initiation of the inquiry, as may be specified by the Central Government by way of notification in the Official Gazette.

Non-applicability of countervailing duty: Countervailing duty shall not apply to article imported by a 100% EOU or a unit in SEZ, unless,-

- (i) it is specifically made applicable in such notification or to such undertaking or unit; or
- (ii) such article is either cleared as such into the domestic tariff area or used in the manufacture of any goods that are cleared into the domestic tariff area, in which case, countervailing duty shall be imposed on that portion of the article so cleared or used, as was applicable when it was imported into India.

Amount of countervailing duty on subsidized articles: The amount of countervailing duty shall not exceed the amount of subsidy paid or bestowed as aforesaid.

Points which merit consideration

- (a) This duty is in addition to any other duty chargeable under this Act or any other law for the time being in force.
- (b) Countervailing duty shall not be levied unless it is determined that -
 - (i) The subsidy relates to export performance;
 - (ii) The subsidy relates to the use of domestic goods over imported goods in the export article; or
 - (iii) The subsidy has been conferred on a limited number of persons engaged in the manufacture, production or export of articles.

Duration of countervailing duty on subsidized articles: Unless revoked earlier, the duty imposed under this section shall be in force for a period of 5 years from the date of its imposition.

Duration – 5 years
Extension – up to 5 years

Extension of period: Central Government may extend the period of such imposition from the date of such extension provided it, in a review, is of the opinion that such cessation is likely to lead to continuation or recurrence of such subsidization and injury.

However, the extension can be for a maximum period up to 5 years.

If the review is not completed before the expiry of the period of imposition then the duty may continue to remain in force pending the outcome of such review for a further period not exceeding 1 year.

However, if the said duty is revoked temporarily, the period of such revocation shall not exceed one year at a time.

Provisional countervailing duty on subsidized articles

- (a) When the determination of the amount of subsidy is pending, the Central Government may impose a provisional countervailing duty not exceeding the amount of such subsidy as provisionally estimated by it.
- (b) If the final subsidy determined is less than the subsidy provisionally determined, then the Central Government shall reduce such duty and also refund the excess duty collected.

Retrospective imposition of countervailing duty

Conditions to be satisfied: The following conditions should be satisfied for imposition of countervailing duty with retrospective effect.

- (a) The injury to domestic industry, which is difficult to repair, is caused by massive imports in a relatively short period, of the articles benefiting from subsidies.
- (b) In order to preclude recurrence of such injury, it is necessary to levy countervailing duty retrospectively.

Note: The retrospective date from which the duty is payable shall not be beyond 90 days from the date of notification.

Rules relating to countervailing duty: The amount of any such subsidy shall, from time to time, be ascertained by the Central Government, after such inquiry as it may consider necessary and the Central Government may, by notification in the Official Gazette, make rules for the identification of such article and for the assessment and collection of any countervailing duty imposed upon the importation thereof under this section.

Applicability of all machinery provisions of Customs Act, 1962: The provisions of the Customs Act, 1962 and all rules and regulations made thereunder, including but not limited to those relating to the date for determination of rate of duty,

assessment, non-levy, short-levy, refunds, exemptions, interest, recovery, appeals, offences and penalties shall, as far as may be, apply to the duty chargeable under this section as they apply in relation to duties leviable under that Act or all rules or regulations made thereunder, as the case maybe.



11. ANTI-DUMPING DUTY [SECTION 9A OF THE CUSTOMS TARIFF ACT]

When the export price of a product imported into India is less than the Normal Value of 'like articles' sold in the domestic market of the exporter, it is known as dumping. Although there is nothing inherently illegal or immoral in exporter charging a price less than the price prevailing in its domestic market, Designated Authority can initiate necessary action for investigations and subsequent imposition of anti-dumping duties, if such dumping causes or threatens to cause material injury to the domestic industry of India.

Anti-dumping action can be taken only when there is an Indian industry which produces "like articles" when compared to the allegedly dumped imported goods. Further, this duty is country specific i.e. it is imposed on imports from a particular country.

Dumping is

Normal value in the
exporting market



Export price

Under the General Agreement on Tariffs and Trade (GATT) provisions, anti-dumping duties higher than the margin of dumping cannot be imposed. However, a lesser duty which is adequate to remove the injury to the domestic industry, is permissible. In India, the Government is obliged to restrict the anti-dumping duty to the lower of the two i.e., dumping margin and the injury margin.

Section 9A(1) of the Customs Tariff Act, 1975 provides that where any article is exported by an exporter or producer from any country or territory (hereinafter in this section referred to as the exporting country or territory) to India at less than its normal value, then, upon the importation of such article into India, the Central

Government may, by notification in the Official Gazette, impose an anti-dumping duty not exceeding the margin of dumping in relation to such article.

Every notification issued under this section shall as soon as may be after it is issued, be laid before each House of Parliament [Sub-section (7)]. The provisions of the Customs Act, 1962 (52 of 1962) and all rules and regulations made thereunder, including but not limited to those relating to the date for determination of rate of duty, assessment, non-levy, short-levy, refunds, exemptions, interest, recovery, appeals, offences and penalties shall, as far as may be, apply to the duty chargeable under this section as they apply in relation to duties leviable under that Act or all rules or regulations made thereunder, as the case may be. [Sub-section (8)].

Computation of anti-dumping duty: Anti-dumping duty is:

(i) Margin of dumping

or

(ii) Injury margin

whichever is lower.

The anti-dumping duty chargeable under this section is in addition to any other duty imposed under this Act or any other law for the time being in force.

(a) Margin of dumping: In relation to an article, it means the difference between its export price and normal value. It is generally expressed as a percentage of the export price.

(b) Export price: in relation to an article, means the price of an article exported from the exporting country or territory.

Constructed export price: in cases where there is no export price or the export price is unreliable because of association or a compensatory arrangement between the exporter and the importer or a third party, the export price may be constructed at the price at which the imported articles are first resold to an independent buyer.

In case where the article is not resold to an independent buyer or not resold in the condition as imported, the export price shall be constructed on such reasonable basis as may be determined in accordance with the rules made.

- (c) Normal value:** in relation to an article, means comparable price, in the ordinary course of trade, for the like article when destined for consumption in the exporting country or territory as determined in accordance with the rules.

When there are no sales of the like article in the ordinary course of trade in the domestic market of the exporting country or territory, or when because of the particular market situation or low volume of sales in the domestic market of the exporting country or territory, such sales do not permit a proper comparison, the normal value shall be either-

- (i) Comparable representative price of the like article when exported from the exporting country or territory or an appropriate third country as determined in accordance with the rules made; or
- (ii) The cost of production of the said article in the country of origin along with reasonable addition for administrative, selling and general costs, and for profits, as determined in accordance with the rules made.

However, in case the article is imported from a country other than the country of origin or where the article has merely been transshipped through the country of export or such article is not produced in the country of export or there is no comparable price in the country of export, the normal value shall be determined with reference to its price in the country of origin.

- (d) Injury margin:** Injury margin is the margin adequate to remove the injury to the domestic industry. It is the difference between the Fair Selling Price [Non-Injurious Price (NIP)] due to the Domestic Industry and the Landed Value of the dumped imports.

- (e) Fair Selling Price (FSP) [Non-Injurious Price]:** is that level of price, which the industry is, expected to have charged under normal circumstances in the Indian market during the period defined. This price would have enabled reasonable recovery of cost of production and profit after nullifying adverse impact of those factors of production which could have adversely affected the company and for which dumped imports can't be held responsible. In other words, it is the fair selling price of a product for the domestic industry.

There would be a single Non-Injurious Price for a product and not several Non-Injurious Price for the same product [*Reliance Industries Ltd. v. Designated Authority 2006 (202) E.L.T. 23 (S.C.)*].

- (f) **Landed Value:** is taken as the assessable value under the Customs Act and the applicable basic customs duties except CVD, SAD and special duties.

In case of circumvention of anti-dumping duty imposed on an article, Central Government may extend the anti-dumping duty to such article or an article originating in/exported from such country: Where the Central Government, on such inquiry as it may consider necessary, is of the opinion that circumvention of anti-dumping duty has taken place, by either of the following ways:-

- (i) by **altering the description or name** or composition of the article subject to such anti-dumping duty
- (ii) by import of such article in an **unassembled or disassembled form**
- (iii) by **changing the country** of its origin or export or
- (iv) in any other manner, whereby the anti-dumping duty so imposed is rendered **ineffective**

it may extend the anti-dumping duty to such article or an article originating in or exported from such country, as the case may be from such date, not earlier than the date of initiation of the inquiry, as may be specified by the Central Government by notification in the Official Gazette. [Sub-section (1A)].

Absorption of Anti-dumping duty:

Absorption of anti-dumping duty is said to have taken place,—

- (a) if there is a decrease in the export price of an article without any commensurate change in the cost of production of such article or export price of such article to countries other than India or resale price in India of such article imported from the exporting country or territory; or
- (b) under such other circumstances as may be provided by rules.

Where the Central Government, on such inquiry as it considers necessary, is of the opinion that absorption of anti-dumping duty has taken place whereby the anti-dumping duty so imposed is rendered ineffective, it may modify such duty to counter the effect of such absorption, from such date, not earlier than the date of initiation of the inquiry, as may be specified by the Central Government by way of notification in the Official Gazette.

Provisional anti-dumping duty: When determination of the normal value and margin of dumping in relation to any article in accordance with this section and rules made there under is pending, the Central Government may impose anti-dumping duty on the basis of provisional estimate of such value and margin. If the provisional duty is higher than the margin finally determined, then the Central Government shall reduce the anti-dumping duty and shall also refund the excess duty collected [Sub-section (2)].

Non-applicability of anti-dumping duty: Anti-dumping duty shall not apply to articles imported by a 100% EOU or a unit in SEZ, unless,-

- (i) it is specifically made applicable in such notification or to such undertaking or unit; or
- (ii) such article is either cleared as such into the DTA or used in the manufacture of any goods that are cleared into the DTA, in which case, anti-dumping duty shall be imposed on that portion of the article so cleared or used, as was applicable when it was imported into India.

For the purposes of this sub-section, the expression "100% EOU" shall have the same meaning as assigned to it in clause (i) of Explanation 2 to sub-section (1) of section 3 of the Central Excise Act, 1944. The expression "special economic zone" shall have the same meaning as assigned to it in clause (za) of section 2 of the Special Economic Zones Act, 2005.

Imposition of duty with retrospective effect: If the following conditions are satisfied, then the Central Government may by notification in the Official Gazette levy anti-dumping duty retrospectively from a date prior to the date of imposition of anti-dumping duty. Notwithstanding anything contained in any law for the time being in force, such duty shall be payable at such rate and from such date as may be specified in the notification. The retrospective date from which the duty is payable shall not be beyond 90 days from the date of such notification.

- (a) There is a history of dumping which caused injury or that the importer was, or should have been, aware that the exporter practices dumping and that such dumping would cause injury; and
- (b) The injury is caused by massive dumping of an article imported in a relatively short time which in the light of the timing and the volume of the imported article dumped and other circumstances is likely to seriously undermine the remedial effect of the anti-dumping duty liable to be levied.

Duty ceases to have effect on expiry of 5 years: The anti-dumping duty imposed under this section shall, unless revoked earlier, cease to have effect on the expiry of five years from the date of such imposition

Duration – 5 years
Extension – up to
5 years

However, if the Central Government, in a review, is of the opinion that the cessation of such duty is likely to lead to continuation or recurrence of dumping and injury, it may, from time to time, extend the period of such imposition for a further period upto 5 years and such further period shall commence from the date of order of such extension.

Further, where a review initiated before the expiry of the aforesaid period of 5 years has not come to a conclusion before such expiry, the anti-dumping duty may continue to remain in force pending the outcome of such a review for a further period not exceeding 1 year.

However, if the said duty is revoked temporarily, the period of such revocation shall not exceed one year at a time.

Rules relating to anti-dumping duty: The Central Government will determine and ascertain the margin of dumping as referred to in sub-section (1) or sub-section (2) from time to time after carrying out necessary inquiry. Central Government, by notification in the Official Gazette, make rules for the purposes of this section, and without prejudice to the generality of the foregoing, such rules may provide for the manner:

- (i) in which articles liable for anti-dumping duty may be identified,
- (ii) in which the export price, the normal value, the margin of dumping in relation to such articles may be determined and
- (iii) for the assessment and collection of such anti-dumping duty [sub-section (6)].

Records to be furnished for determination of margin of dumping: The margin of dumping in relation to an article, exported by an exporter or producer, under inquiry under sub-section (6) shall be determined on the basis of records concerning normal value and export price maintained, and information provided, by such exporter or producer.

However, where an exporter or producer fails to provide such records or information, the margin of dumping for such exporter or producer shall be determined on the basis of facts available.

Refund of anti-dumping duty: Section 9AA provides that where upon determination by an officer authorised in this behalf by the Central Government under clause (ii) of sub-section (2), an importer proves to the satisfaction of the Central Government that he has paid anti-dumping duty imposed under sub-section (1) of section 9A on any article, in excess of the actual margin of dumping in relation to such article, the Central Government shall, as soon as may be, reduce such anti-dumping duty as is in excess of actual margin of dumping so determined, in relation to such article or such importer, and such importer shall be entitled to refund of such excess duty.

Illustration 2

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 thereunder:

- (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.*

Answer

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.

- (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 under section 9A(1), in the Official Gazette.
- (ii) 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.
- (iii) In a case 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.



12. NO LEVY UNDER SECTION 9 OR SECTION 9A IN CERTAIN CASES [SECTION 9B OF THE CUSTOMS TARIFF ACT]

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.

Illustration 3

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

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

- (b) *Countervailing duty has been levied on an article for the reason that the same is exempt from duty borne by a like article when meant for consumption in the country of origin.*
- (c) *Definitive anti-dumping duty has been levied on articles imported from a member country of World Trade Organization as a determination has been made in the prescribed manner that import of such article into India threatens material injury to the indigenous industry.*

Answer

- (a) **Not valid.** As per section 9B of the Customs Tariff Act, 1975, no article shall be subjected to both countervailing and anti-dumping duties to compensate for the same situation of dumping or export subsidization.
- (b) **Not valid.** As per section 9B of the Customs Tariff Act, 1975, countervailing or anti-dumping duties shall not be levied by reasons of exemption of such articles from duties or taxes borne by the like articles when meant for consumption in the country of origin or exportation or by reasons of refund of such duties or taxes.
- (c) **Valid.** As per section 9B of the Customs Tariff Act, 1975, no definitive countervailing duty or anti-dumping duty shall be levied on the import into India of any article from a member country of the World Trade Organisation or from a country with whom Government of India has a most favored nation agreement, unless a determination has been made in the prescribed manner that import of such article into India causes or threatens material injury to any established industry in India or materially retards the establishment of any industry in India.



13. APPEAL [SECTION 9C OF THE CUSTOMS TARIFF ACT]

The provisions of section 9C of the Customs Tariff Act enumerate the orders against which an appeal can be preferred to Customs, Excise and Service Tax Appellate Tribunal (CESTAT). The procedure, time limit and other related matters of filing an appeal are addressed to in this section.

CESTAT

An appeal against the order of determination or review thereof shall lie to the CESTAT constituted under section 129 of the Customs Act, 1962 in respect of the existence, degree and effect of—

- (i) any subsidy or dumping in relation to import of any article; or
- (ii) import of any article into India in such increased quantities and under such condition so as to cause or threatening to cause serious injury to domestic industry requiring imposition of safeguard duty in relation to import of that article.

An appeal filed under this section shall be accompanied by a fee of ₹ 15,000. Every application made before the CESTAT,—

- (a) in an appeal for grant of stay or for rectification of mistake or for any other purpose; or
- (b) for restoration of an appeal or an application, shall be accompanied by a fee of ₹ 500.

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

Duration – 90 days

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



14. SOCIAL WELFARE SURCHARGE ON IMPORTED GOODS

Social welfare surcharge(SWS) @ 10% is levied in lieu of education cesses for providing and financing education, health and social security.

SWS is leviable on the aggregate of duties, taxes and cesses leviable on such goods under section 12 of the 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:

10% of BCD

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

The SWS on imported goods are in addition to any other duties of customs or tax or cess chargeable on such goods, under the Customs Act, 1962 or any other law for the time being in force.

The provisions of the Customs Act, 1962 and the rules and regulations made thereunder, including those relating to assessment, non-levy, short-levy, refunds, exemptions, interest, appeals, offences and penalties shall apply in relation to the levy and collection of social welfare surcharge on imported goods as they apply in relation to the levy and collection of the duties of customs on such goods.

In simpler terms, SWS is capped at 10% of the BCD levied and collected on goods imported into India.

Social welfare surcharge leviable on integrated tax and goods and services tax compensation cess has been exempted vide *Notification No. 13/2018-Cus dated 02.02.2018*.



15. AGRICULTURE INFRASTRUCTURE AND DEVELOPMENT CESS ON IMPORT OF CERTAIN ITEMS

An Agriculture Infrastructure and Development Cess (AIDC) has been levied on import of specified goods at the notified rate.

For instance, some of the notified goods² are apples, kabuli chana, various types of coal, urea, silver (including imports by eligible passengers), Silver Dore, Gold (including imports by eligible passengers), Gold Dore etc. This cess is used to finance the improvement of agriculture infrastructure and other development expenditure.

Where the duty is leviable on the goods at any percentage of its value, then, for

Levied on specified goods

² Examples of goods on which AIDC has been imposed have been given hereunder only for the knowledge of the students. These are not relevant for examination purposes.

the purposes of calculating the AIDC, the value of such goods is calculated in the same manner as the value of goods is calculated for the purpose of customs duty under section 14 of the Customs Act, 1962.

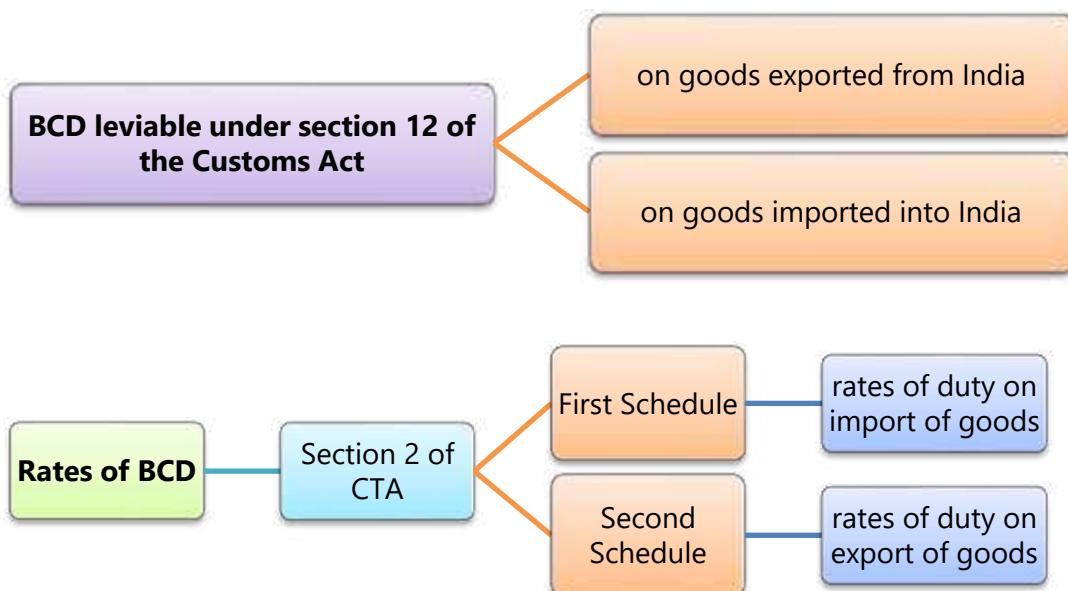
The AIDC on imported goods is in addition to any other duties of customs chargeable on such goods, under the Customs Act, 1962 or any other law for the time being in force.

The provisions of the Customs Act, 1962 and the rules and regulations made thereunder, including those relating to assessment, non-levy, short-levy, refund, exemptions, interest, appeals, offences and penalties shall apply in relation to the levy and collection of the AIDC on imported goods as they apply in relation to the levy and collection of duties of customs on such goods under the said Act, or the rules or regulations, as the case may be.



LET US RECAPITULATE

Basic Customs duty (BCD) [Section 12 of the Customs Act & Section 2 of the Customs Tariff Act (CTA)]



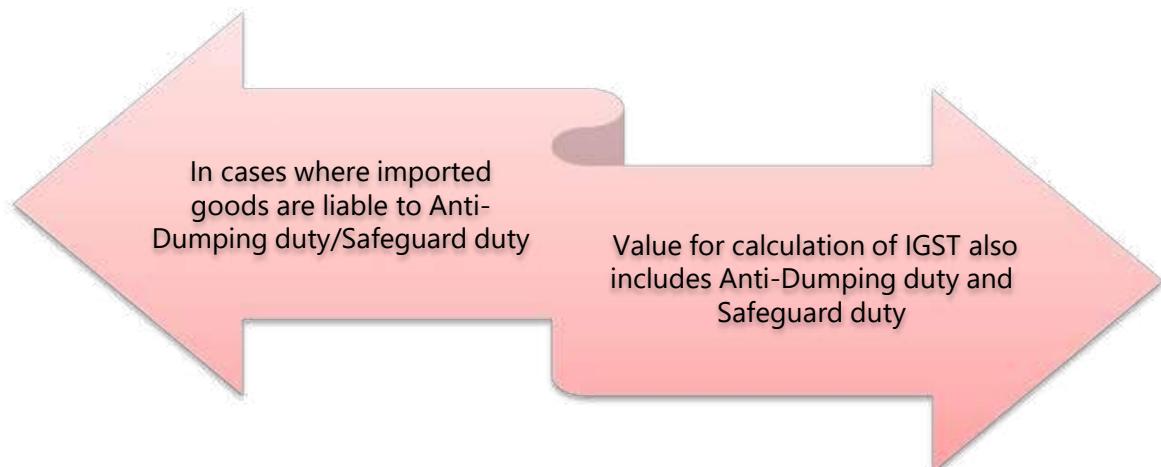
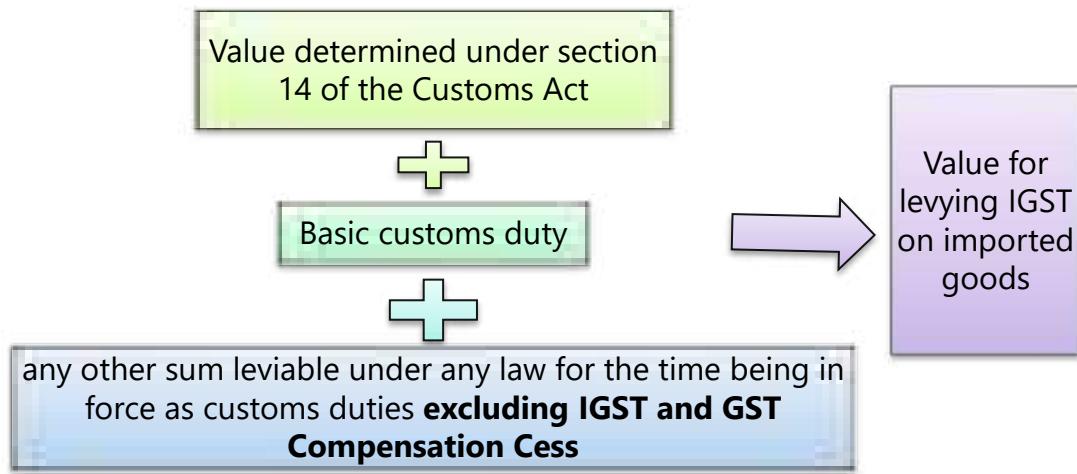
Integrated tax [Section 3(7) of the Customs Tariff Act]

Integrated GST [IGST]- leviable on goods imported into India under section 5 of the IGST Act

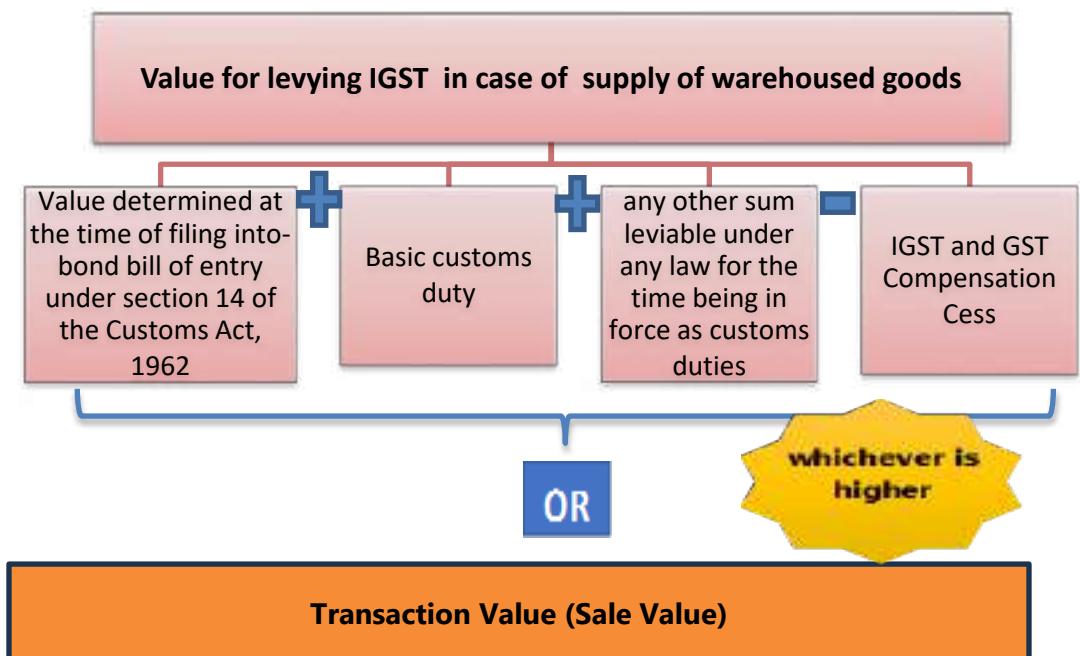
IGST is collected under section 3(7) of the CTA

IGST is levied at such rate not exceeding 40% on the value of the imported article

Manner of computing assessable value for levying Integrated tax



Manner of computing value in case of warehoused goods



Social welfare surcharge (SWS) on imported goods

Rate	Duties Excluded	Exempted
<ul style="list-style-type: none"> • 10% of BCD • levied & collected on goods imported into India 	<ul style="list-style-type: none"> • Safeguard measures • Countervailing duty • Anti-dumping duty • SWS 	<ul style="list-style-type: none"> • Integrated tax • GST compensation cess

Emergency power to impose or enhance export duties [Section 8 of the Customs Tariff Act]

Central Government empowered by amendment to the second schedule by notification

Conditions

Goods may/may not be specified in second schedule

Necessary circumstances exist

Emergency power to impose or enhance import duties [Section 8A of the Customs Tariff Act]

Central Government empowered by amendment to the first schedule by notification

Conditions

Goods should be specified in first schedule

Necessary circumstances exist

Power of Central Government (CG) to apply Safeguard measures [Section 8B of the Customs Tariff Act]

Any article imported into India in increased quantities



It is causing / threatening to cause serious injury to domestic industry

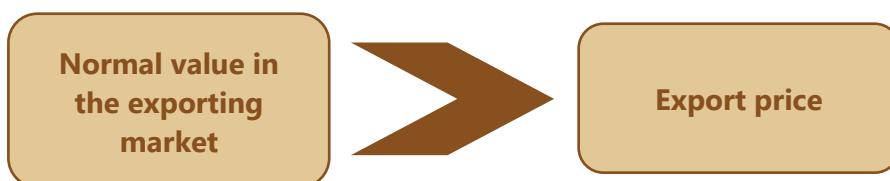
CG after enquiry can impose safeguard measures by issuing a notification in the Official Gazette

Safeguard measures

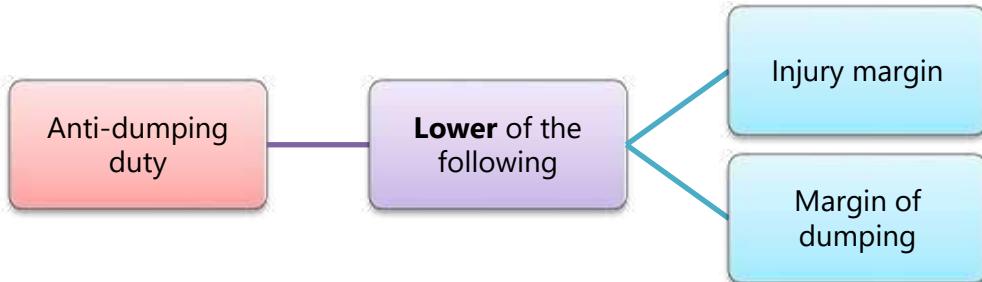
Modes of safeguard measures	Duration	Exemption from safeguard measures
<ul style="list-style-type: none"> • imposition of safeguard duty or • application of tariff-rate quota or • other measures as the CG deems appropriate. 	<ul style="list-style-type: none"> • 4 years • May be extended by CG- total period of levy of safeguard measures-10 years • Provisional safeguard measures-maximum period of 200 days 	<ul style="list-style-type: none"> • Articles from developing country-share of imports does not exceed 3% of total imports • Articles originating from more than one developing country-aggregate of imports from developing countries each with less than 3 % import share taken together does not exceed 9% of total imports. • Imports by 100% EOU or units in a SEZ except in specified cases

Anti-dumping duty [Section 9A of the Customs Tariff Act]

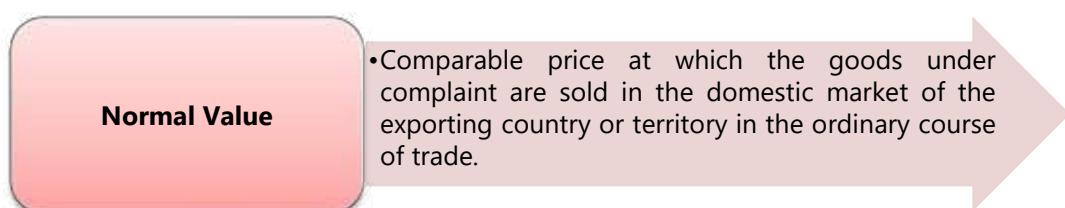
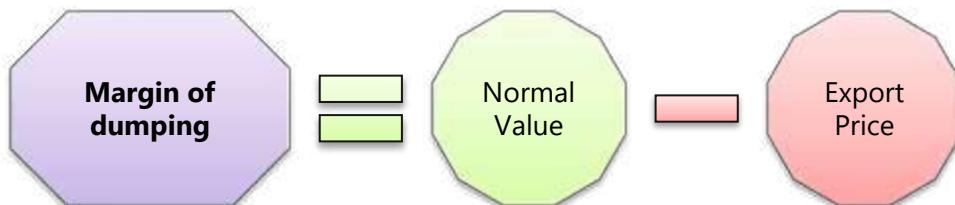
Dumping is



Computation of anti-dumping duty

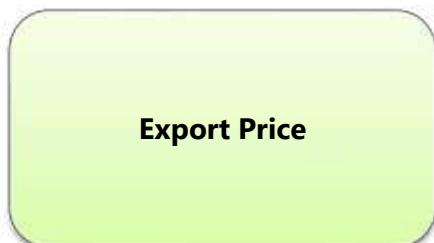


Margin of Dumping

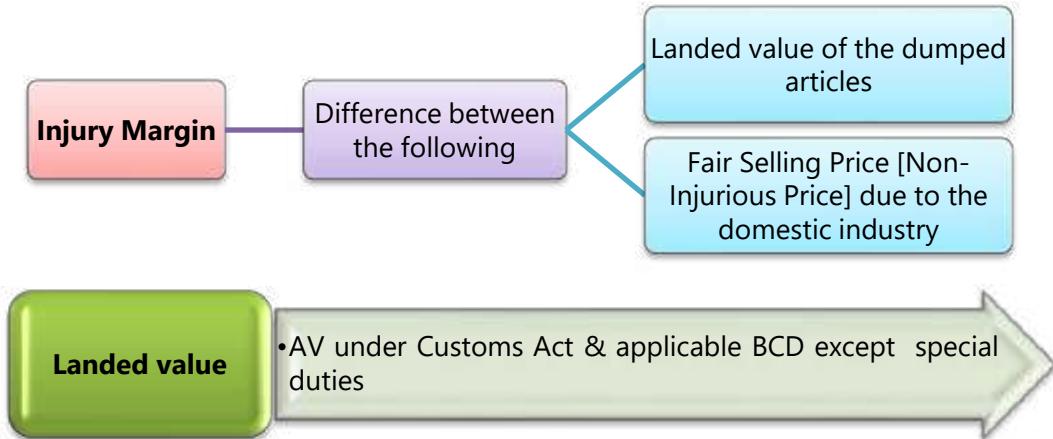


If the normal value cannot be determined as per the sales in the domestic market of exporting country, normal value shall be

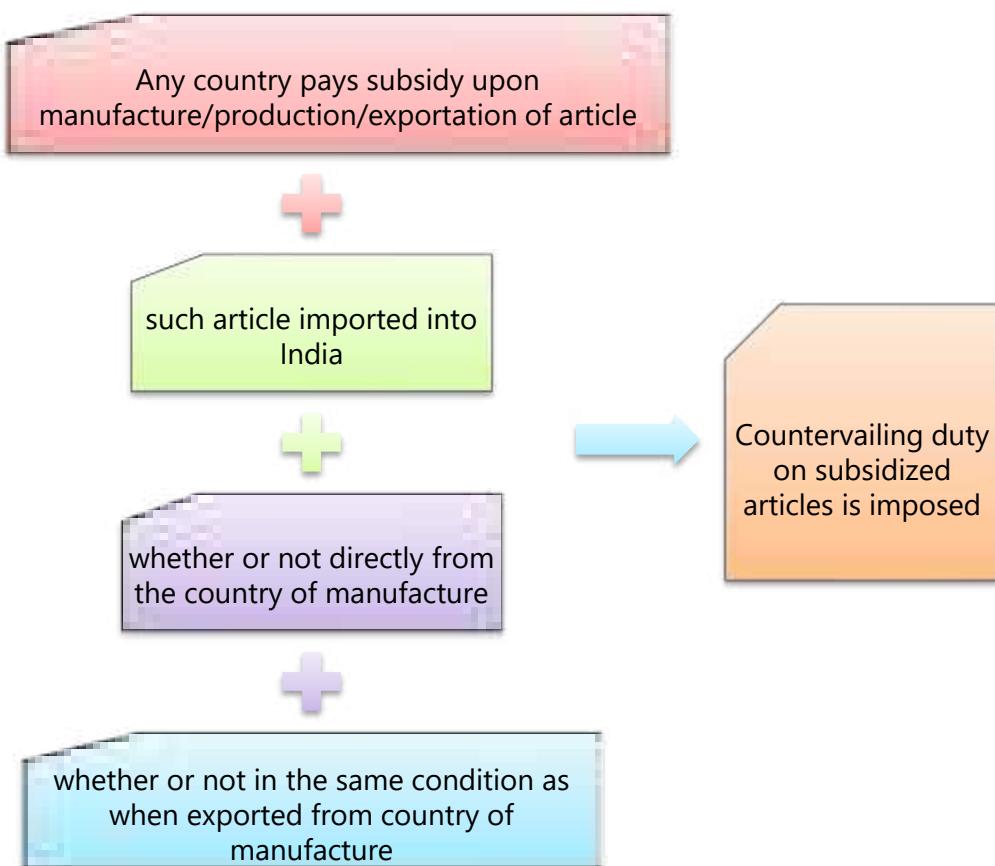
- Comparable representative export price to an appropriate third country, or
- Cost of production in the country of origin + Administrative, selling and general costs, profits.



Computation of Injury Margin

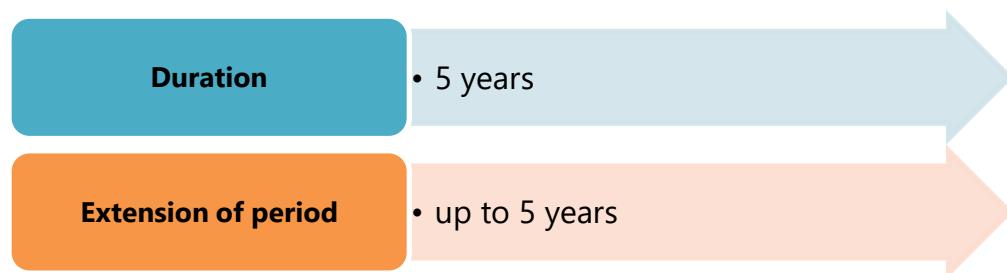


Countervailing duty on subsidized articles [Section 9 of the Customs Tariff Act]





Common provisions for Countervailing duty on subsidized articles & Anti dumping duty



Circumvention of duty	Absorption of duty	Non-applicability of duty
<ul style="list-style-type: none"> • by altering the description/ name/composition of the article • by import of such article in an unassembled/ disassembled form • by changing the country of its origin/export or • in any other manner, whereby the duty so imposed is rendered ineffective. 	<ul style="list-style-type: none"> • if there is a decrease in the export price of an article without any commensurate change in the cost of production/export price/ resale price in India of such article as the case may be • other specified circumstances 	<ul style="list-style-type: none"> • Duty shall not apply to article imported by a 100% EOU or a unit in SEZ , unless,- <ul style="list-style-type: none"> •(i) it is specifically made applicable in such notification/ to such undertaking/unit; or •(ii) such article is either cleared as such into the DTA/ or used in the manufacture of any goods that are cleared into the DTA on the portion of the article so cleared or used.

In case of circumvention or absorption of duty

Duty may be extended/modified from such date, not earlier than the date of initiation of the inquiry.

No levy under Section 9 or Section 9A in certain cases [Section 9B of the Customs Tariff Act]

Both countervailing and anti-dumping duties not leviable for **same situation**

Both duties not leviable if articles are **exempt** [sole reason]

Both duties not leviable on **imports from member country of WTO**/country with whom GOI has a most favored nation agreement

Provisional countervailing and anti-dumping duties not to be levied on article imported from **specified countries**

Appeal [Section 9C of the Customs Tariff Act]**Authority**

CESTAT

Time limit

within 90 days of the date of order under appeal

Computation of Customs duty and integrated tax payable thereon

Particulars	Amount (₹)
Assessable value (AV)	xxx
Add: Basic custom duty @ X% (AV x X%) [A]	xxx
Add: Social welfare surcharge @ 10% x BCD [B]	xxx
Value for computing integrated tax- (1)	xxx
Add: Integrated tax (1 x Y%) [C]	xxx
Total customs duty payable [(A) + (B) + (C)]	xxx

Goods and Services tax Compensation cess [Section 3(9) of the Customs Tariff Act]

GST compensation cess levied on inter/intra State supply of goods and/or services - to provide compensation to States for loss of revenue due to GST implementation

applicable only on goods and/or services notified by Central Government

currently levied on luxury and sin goods like pan masala, tobacco etc

Agriculture Infrastructure and Development Cess (AIDC) on import of certain items

Levied on import of specified goods at notified rate

example-apples, kabuli chana, urea etc



TEST YOUR KNOWLEDGE

1. *With reference to section 9AA of Customs Tariff Act, 1975, state briefly the provisions of refund of anti-dumping duty.*
2. *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.*
3. *When shall the safeguard measures under section 8B of the Customs Tariff Act, 1975 be not imposed? Discuss briefly.*
4. *What are the conditions required to be fulfilled by the importer to make the imported goods eligible for preferential rate of duty prescribed by the Central Government by notification under section 25 of the Customs Act, 1962?*
5. *Write a note on "Emergency power to impose or enhance import duties under section 8A of the Customs Tariff Act, 1975".*
6. *Determine the customs duty payable under the Customs Tariff Act, 1975 including the safeguard duty of 30% under section 8B of the said Act with the following details available on hand:*

Assessable value of Sodium Nitrite imported from a developing country from 26 th August, 2023 to 25 th August, 2024 (both days inclusive)	₹30,00,000
Share of imports of Sodium Nitrite from the developing country against total imports of Sodium Nitrite to India	4%
Basic custom duty	10%
Integrated tax	12%
Social welfare surcharge	10%

Note: Ignore GST compensation cess and Agriculture infrastructure and development cess.

7. *Briefly examine the nature and significance of the levy of anti-dumping duty under the Customs Tariff Act, 1975.*
8. *Chaintop Industries has challenged the imposition of anti-dumping duty retrospectively on the grounds that it is unconstitutional. Explain whether it would succeed in its contention.*
9. *Determine the total duties payable under Customs Act if Mr. Rao imported rubber from Malaysia at landed price (exclusive of duties) of ₹25 lakh. It has been notified by the Central Government that share of imports of rubber from the developing country against total imports to India exceeds 5%. Safeguard duty notified on this product is 30%, IGST u/s 3(7) is 12% and BCD is 10%. Ignore agriculture infrastructure and development cess.*
10. *During the year 2024, the customs authorities have noticed that there is an increased quantity of Product XYZ being imported into the country. Determine whether the Central Government should consider levying safeguard duty or anti-dumping duty with appropriate reasons. Also enumerate any exemptions/reliefs available from such duty.*



ANSWERS/HINTS

1. 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.
2. As per section 9A(1A) of the Customs Tariff Act, 1975, following are the ways that would constitute circumvention (avoiding levy of duty by unscrupulous means) of antidumping duty imposed on an article that may warrant action by the Central Government:
 - (i) altering the description or name or composition of the article subject to such anti-dumping duty,
 - (ii) import of such article in an unassembled or disassembled form,

- (iii) changing the country of its origin or export, or
- (iv) any other manner, whereby the anti-dumping duty so imposed is rendered ineffective.

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

3. The safeguard measures under section 8B of the Customs Tariff Act, 1975 is not imposed on the import of the following types of articles:
 - (i) Articles originating from a developing country, so long as the share of imports of that article from that country does not exceed 3% of the total imports of that article into India;
 - (ii) Articles originating from more than one developing country, so long as the aggregate of imports from developing countries each with less than 3% import share taken together does not exceed 9% of the total imports of that article into India;
 - (iii) Articles imported by a 100% EOU or units in a Special Economic Zone unless it is specifically made applicable on them or the article imported is either cleared as such into DTA or used in the manufacture of any goods that are cleared into DTA. In such cases, safeguard measures shall be applied on that portion of the article so cleared or so used as was leviable when it was imported into India.
4. The Government may by notification under section 25 of the Customs Act, 1962 prescribe preferential rate of duty in respect of imports from certain preferential areas. The importer will have to fulfill the following conditions to make the imported goods eligible for preferential rate of duty:
 - (i) At the time of importation, he should make a specific claim for the preferential rate.
 - (ii) He should also claim that the goods are produced or manufactured in such preferential area.
 - (iii) The area should be notified under section 4(3) of the Customs Tariff Act, 1975 to be a preferential area.

- (iv) The origin of the goods shall be determined in accordance with the rules made under section 4(2) of the Customs Tariff Act, 1975.
5. Section 8A of Customs Tariff Act, 1975 provides that where the Central Government is satisfied that the basic customs duty leviable on any article should be increased and that circumstances exist which render it necessary to take immediate action, it may, by notification amend the First Schedule of the Customs Tariff to increase the import duty leviable on such article to such extent as it thinks necessary.

6. Computation of customs duty and integrated tax payable thereon

Particular	Amount(₹)
Assessable value of sodium nitrite imported	30,00,000
Add: Basic custom duty @ 10% ($\text{₹ } 30,00,000 \times 10\%$)	3,00,000
Safeguard duty @ 30% on ₹30,00,000 [Safeguard duty is imposable in the given case since share of imports of sodium nitrite from the developing country is more than 3% of the total imports of sodium nitrite into India (Proviso to section 8B(2) of the Customs Tariff Act, 1975)]	9,00,000
Social welfare surcharge @ 10% x ₹3,00,000	30,000
Total	42,30,000
Integrated tax ($\text{₹ } 42,30,000 \times 12\%$) [Note]	5,07,600
Total customs duty payable (₹3,00,000 + ₹9,00,000 + ₹30,000 + ₹5,07,600)	17,37,600

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

7. [Refer para 11]

8. Section 9A(3) of the Customs Tariff Act, 1975 provides that the anti-dumping duty can be imposed with retrospective effect provided the Government is of the opinion that:-

- (a) there is a history of dumping which caused injury or that the importer was, or should have been, aware that the exporter practices dumping and that such dumping would cause injury, and
- (b) the injury is caused by massive dumping of an article imported in a relatively short time, which in the light of timing and volume of the imported article dumped and other circumstances is likely to seriously undermine the remedial effect of the anti-dumping duty liable to be levied.

The duty can be levied retrospectively by issuing a notification but not beyond 90 days from the date of notification.

Thus, Chaintop Industries would succeed in its contention only if all of the above conditions are not satisfied.

9. Computation of total duties payable under the Customs Act

S. No.	Particulars	(₹)
1	Landed price	25,00,000
2	Add: Basic customs duty @ 10%	2,50,000
3	Add: Safeguard duty @ 30% on ₹ 25,00,000	7,50,000
4	Add: Social welfare surcharge (SWS) @ 10 % on ₹ 2,50,000 [While calculating SWS, safeguard duty is excluded]	25,000
5	Add: Integrated tax 12% of ₹ 35,25,000 (₹ 25,00,000 + ₹ 2,50,000 + ₹ 7,50,000 + ₹ 25,000) [Integrated tax is levied on the sum total of the assessable value of the imported goods, customs duties and applicable SWS]	4,23,000
6	Total customs duties and tax payable [₹ 2,50,000 + ₹ 7,50,000 + ₹ 25,000 + ₹ 4,23,000]	14,48,000

- 10.** In the given case, since Product XYZ is being imported into the country in increased quantity, Central Government should consider levying safeguard Duty and not anti-dumping duty.

Anti-dumping duty is imposed when any article is exported from any country to India at less than its normal value, which is not the case here.

However, safeguard duty can be imposed only when Central Government is satisfied that such increased importation is causing/threatening to cause serious injury to the domestic industry.

Exemptions/reliefs:

- (a) Safeguard duty shall not be imposed on articles originating from developing country if the share of imports of that article from that country \leq 3% of the total imports of that article into India.
- (b) Safeguard duty shall not be imposed on articles originating from more than one developing country if the aggregate of imports from developing countries each with less than 3% import share taken together \leq 9% of the total imports of that article into India.
- (c) Safeguard duty shall not be applicable on articles imported by a 100% EOU/ SEZ unit unless specifically made applicable;
- (d) Safeguard duty shall not be applicable on articles imported by a 100% EOU/ SEZ unit unless the article imported is either cleared as such/ used in the manufacture of any goods that are cleared, into DTA.
- (e) Central Government may exempt notified quantity of any article, when imported from any country into India, from whole/part of the safeguard duty.

AMENDMENTS MADE VIDE THE FINANCE ACT, 2023

Few amendments made in the Customs Act, 1962 and Customs Tariff Act, 1975 vide the Finance Act, 2023 would become effective only from a date to be notified by the Central Government in the Official Gazette. Such a notification has not been issued till 30.04.2025. Therefore, the applicability or otherwise of such amendment for May 2026, September 2026 and/or, January 2027 examinations shall be informed by the ICAI by way of an announcement.

In the table given below, the existing provisions of sections 9, 9A and 9C of the Customs Tariff Act are compared with the provisions as amended by the Finance Act, 2023.

Once the announcement for applicability of such amendments for examination(s) is made by the ICAI, students should read the amended provisions given hereunder in place of the related provisions discussed in the Chapter.

Section No.	Existing provisions	Provisions as amended by the Finance Act, 2023 ³	Remarks
9	Sub-Section (6) Provided that if the Central Government, in a review , is of the opinion.....from the date of order of such extension:	Sub-Section (6) Provided that if the Central Government, on consideration of a review , is of the opinion.....from the date of order of such extension:	Sections 9, 9A and 9C of the Customs Tariff Act to be amended so as to omit certain words therein and to clarify that the determination or review of safeguard duty or of countervailing duty or of anti-dumping duty are to be done by an authority in such manner as may be specified in the rules made under sections 8B, 9, 9A
	Sub-Section (7) The amount of any such subsidy as referred to in sub-section (1) or sub-section (2) shall, from time to time, be	Sub-Section (7) The amount of any such subsidy as referred to in sub-section (1) or sub-section (2) shall, from time to time, be	

³ All amendments given in the table would be effective retrospectively, w.e.f. 01.01.1995.

	<p>referred to in sub-section (1) or sub-section (2) shall, from time to time, be ascertained and determined by the Central Government,under this section.</p>	<p>ascertained by the Central Government.....under this section.</p>	<p>and 9B of the said Act.</p>
<p>9A</p>	<p><u>Sub-Section (5)</u> Provided that if the Central Government, in a review, is of the opinion that the cessation of such duty.....date of order of such extension :</p>	<p><u>Sub-Section (5)</u> Provided that if the Central Government, on consideration of a review, is of the opinion that the cessation of such duty.....date of order of such extension :</p>	
	<p><u>Sub-Section (6)</u> The margin of dumping as referred to in sub-section (1) or sub-section (2) shall, from time to time, be ascertained by the Central Government, after such inquirysuch anti-dumping duty.</p>	<p><u>Sub-Section (6)</u> The margin of dumping as referred to in sub-section (1) or sub-section (2) shall, from time to time, be ascertained by the Central Government, after such inquirysuch anti-dumping duty.</p>	

	<p>time to time, be ascertained and determined by the Central Government, after such inquiry..... such anti- dumping duty.</p>		
<p>9C</p>	<p><u>Sub-Section (1)</u> An appeal against the determination or reviewthat article.</p>	<p><u>Sub-Section (1)</u> An appeal against the determination or reviewthat article.</p>	
	<p><u>Sub-Section (2)</u> Every appeal under this section shall be filed within ninety days of the date of determination or review under appeal:</p>	<p><u>Sub-Section (2)</u> Every appeal under this section shall be filed within ninety days of the date of determination or review under appeal:</p>	
	<p><u>Sub-Section (3)</u> The Appellate Tribunal may, after giving</p>	<p><u>Sub-Section (3)</u> The Appellate Tribunal may, after giving the parties to the appeal, an opportunity of being heard, pass such orders</p>	

	<p>the parties to the appeal, an opportunity of being heard, pass such orders thereon as it thinks fit, confirming, modifying or annulling the order appealed against.</p>	<p>thereon as it thinks fit, confirming, modifying or annulling the determination or review appealed against.</p>	
	<p><u>Sub-Section (5)</u> Every appeal under sub-section (1) shall be heard by a Special Bench.....technical member.</p>	<p><u>Sub-Section (5)</u> Every appeal under sub-section (1) shall be heard by a Special Bench....technical member.</p> <p><u>Explanation</u> <i>For the purposes of this section, "determination" or "review" means the determination or review done in such manner as may be specified in the rules made under sections 8B,9,9A and 9B.</i></p>	

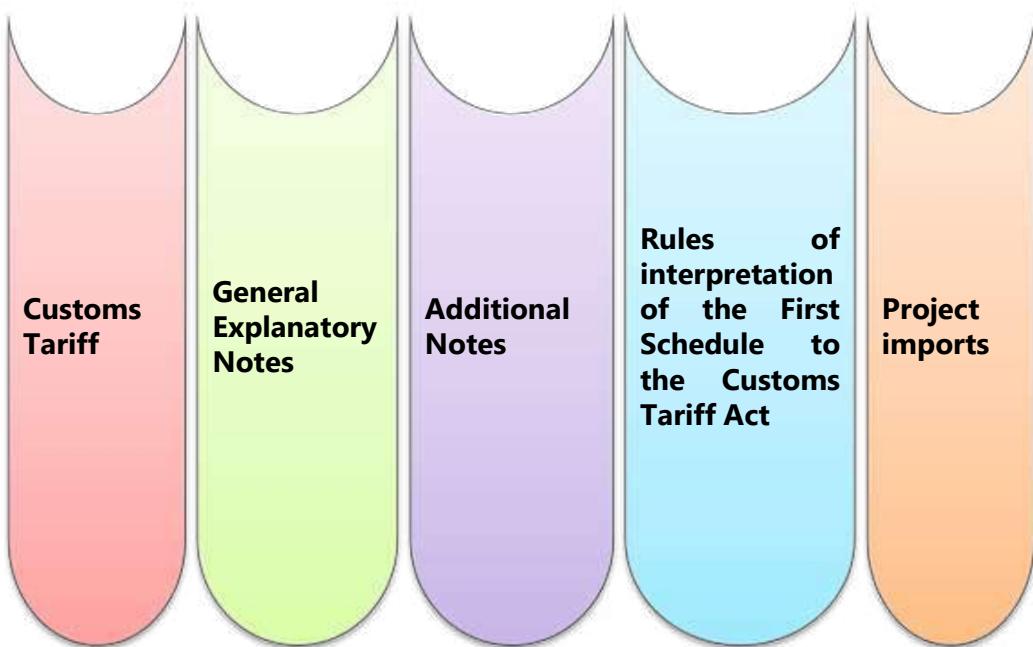
CLASSIFICATION OF IMPORTED AND EXPORT GOODS

LEARNING OUTCOMES

After studying this chapter, you would be able to:

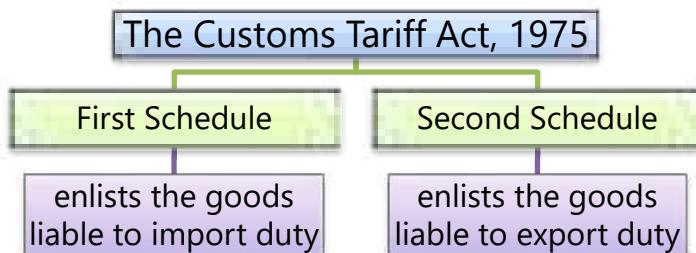
- understand the need for classification of goods and appreciate the various rules of classification
- understand the HSN based classification system along with explanatory notes of the First Schedule to the Customs Tariff Act, 1975.
- understand the concept of project imports.

CHAPTER OVERVIEW



1. CUSTOMS TARIFF

- ❖ **Need for classification of goods:** One of the important steps in assessing the amount of duty payable is classification of the goods with reference to HSN system specified under Customs Tariff Act, 1975. The correct classification of goods is necessary to ascertain the rate of custom duty.
- ❖ **The Customs Tariff Act, 1975**
 - (a) **Schedules to tariff**



(b) Rules of interpretation and explanatory notes

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

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.

Rules of Interpretation

Eight digit classification in Customs: All goods are classified using 4 digit system. These are called 'headings'. Further 2 digits are added for sub-classification, which are termed as 'sub-headings'. Further 2 digits

are added for sub-sub-classification, which is termed as 'tariff item'. Rate of customs duty is indicated against each 'tariff item' and not against heading or sub-heading.

Along the lines of HSN, the Customs Tariff Act, 1975 has a set of General Rules of

Interpretation of the First Schedule i.e. Import tariff schedule which *inter alia* contains 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.

Rules to be applied sequentially: The Rules are to be applied sequentially. Rule 1 gives precedence to Section Notes/Chapter Notes while classifying a product.

Classification is to be first tested in light of Rule 1. Only when it is not possible to resolve the issue by applying this rule, recourse is taken to Rules 2, 3 and 4 in seriatim.

(c) First Schedule of the Customs Tariff

The First Schedule of the Customs Tariff Act, 1975 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 usually contains goods of a particular 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.



2. GENERAL EXPLANATORY NOTES

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

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

- the description of an article or group of articles under a 'heading' is preceded by "-". It 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.

Explanatory Notes

- "--" 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 "-".
- " ---" or "----" denotes that the said article or group of articles shall be taken to be a sub-classification of the immediately preceding description of the article or group of articles which has "-" or "--"

(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.



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

Chapter No. 08

Edible fruit and nuts; peel of citrus fruit or melons

Chapter Notes:

1. This Chapter does not cover inedible nuts or fruits.
2. Chilled fruits and nuts are to be classified in the same headings as the corresponding fresh fruits and nuts.
3. Dried fruit or dried nuts of this Chapter may be partially rehydrated, or treated for the following purposes:
 - (a) for additional preservation or stabilisation (for example, by moderate heat treatment, sulphuring, the addition of sorbic acid or potassium sorbate);
 - (b) to improve or maintain their appearance (for example by the addition of vegetable oil or small quantities of glucose syrup), provided that they retain the character of dried fruit or dried nuts.

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			
	- <i>Coconuts:</i>			
0801 11 00	- - Desiccated	Kg.	70%	60%
0801 12	- - <i>In the inner shell (endocarp):</i>			
0801 12 10	- - - Fresh	Kg.	70%	60%
0801 12 20	- - - Dried	Kg.	70%	60%
0801 12 90	- - - Other	Kg.	70%	60%
0801 19	- - <i>Other:</i>			
0801 19 10	- - - Fresh	Kg.	70%	60%
0801 19 20	- - - Dried	Kg.	70%	60%
0801 19 90	- - - Other	Kg.	70%	60%
	- <i>Brazil nuts:</i>			
0801 21 00	- - <i>In shell</i>	Kg.	30%	20%
0801 22 00	- - <i>Shelled</i>	Kg.	30%	20%
	- <i>Cashew nuts:</i>			
0801 31 00	- - <i>In shell</i>	Kg.	30%	Free
0801 32	- - <i>Shelled:</i>			

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%.

Illustration 1

Briefly explain “standard unit of quantity” with reference to the First Schedule to the Customs Tariff Act, 1975.

Answer

Standard Unit of Quantity is a unit of measure. It has been prescribed in column 3 of the First Schedule to the Customs Tariff for each tariff item to facilitate the collection, comparison and analysis of trade statistics. The unit of measure is indicated by abbreviations. Some abbreviations are cc-cubic centimeter, cm-centimetre(s), g-gram(s), mt-metric tonne.



3. ADDITIONAL NOTES

Apart from the General Explanatory Notes, there are certain Additional Notes as well which state that:

- (1) (a) "heading", in respect of goods, means a description in list of tariff provisions accompanied by a four-digit number and includes all sub-headings of tariff items the first four-digits of which correspond to that number;
- (b) "sub-heading", in respect of goods, means a description in the list of tariff provisions accompanied by a six-digit number and includes all tariff items the first six-digits of which correspond to that number;
- (c) "tariff item" means a description of goods in the list of tariff provisions accompanying eight-digit number and the rate of customs duty;
- (2) the list of tariff provisions is divided into Sections, Chapters and Sub-Chapters;
- (3) in column (3), the standard unit of quantity is specified for each tariff item to facilitate the collection, comparison and analysis of trade statistics.

Additional Notes



4. RULES OF INTERPRETATION OF THE FIRST SCHEDULE TO THE CUSTOMS TARIFF ACT

- ❖ **Rule 1 – General Rule of Classification:** The titles of sections, chapters and sub-chapters are provided for ease of reference only; for legal purposes, classification shall be determined according to the terms of the headings and any relative section or chapter notes and provided such headings or notes do not otherwise require, according to the subsequent rules [i.e. rule 2 to 6].



ANALYSIS

The above rule lays down the following propositions:-

- (a) The titles of sections, chapters and sub-chapters do not have any legal force.

- (b) Terms of headings read with relative section and chapter notes are legally relevant for the purpose of classification.
- (c) The rules of interpretation need not be resorted to when classification is possible on the basis of description in heading, sub-heading, chapter notes and section notes.
- (d) Notes of one chapter or section cannot be applied for interpreting entries in other chapters or sections.



Rule 1



(2) Product: Letter closing and sealing machine

Sub-heading 842230 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 847230 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 847230 00.

Illustration 2

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

Answer

Rule 1 of the general rules for interpretation states that the titles of sections, chapters and sub-chapters in the First Schedule to the Customs Tariff Act, 1975 are provided for ease of reference only. For legal purposes, classification shall be determined according to the terms of the headings and any relative section or chapter notes and provided such headings or chapter notes do not otherwise require, according to the rule 2 to 6.

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

❖ **Rule 2(a) Classification of Incomplete/Unfinished Articles**

- (i) 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.
- (ii) 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 dis-assembled.



Rule 2(a)



ANALYSIS

- (i) If any particular heading refers to a finished/complete article, the incomplete/unfinished form of that article shall also be classified under the same heading provided the incomplete/unfinished goods have the essential characteristics of the finished goods.
 - (ii) If any particular heading refers to a finished/complete article, the unassembled/dis-assembled form of that article shall also be classified under the same heading provided the unassembled/dis-assembled goods have the essential characteristics of the finished goods.
- (3)** (a) Railway coaches removed without seats would still be railway coaches.
- (b) A car without seats would still be classified as car.



Only goods requiring minor adjustments can be construed as having the essential character

Only goods requiring minor adjustments would be construed as having the essential character. Those requiring major processes like turning, grinding, broaching, groove cutting, heat treatment, surface treatment etc., cannot be construed as having the essential character of complete and finished articles and cannot fall within the scope of rule 2(a) of the General Interpretative Rules.

❖ **Rule 2(b) – Classification of Mixtures/Combinations of a Material/Substance with Other Materials/Substances**

- (i) 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.
- (ii) 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.
- (iii) The classification of goods consisting of more than one material or substance shall be according to the principles of Rule 3.



Rule 2(b)



ANALYSIS

The following propositions are laid out by the above rule.

- (a) Any reference to a material or substance would refer to mixture or combination of that material or substance.
- (b) Any reference to goods containing a particular material or substance would include a reference to goods consisting wholly or partly of such specified material or substance.



- (4)(a) The term coffee will include coffee mixed with chicory.
- (b) Natural rubber will cover a mixture of natural and synthetic rubber.

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



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

❖ **Rule 3(a) – Specific over general**

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



Rule 3(a)



ANALYSIS

The heading that provides a more specific description should be preferred over the heading that provides a general description.

Relevant case law: Electric shaving machine was classifiable under following two headings:-

- (i) **Heading No. 8510:** Shavers and hair clippers with self-contained electric motors
- (ii) **Heading No. 8509:** Electro-mechanical domestic appliances with self-contained electric motor

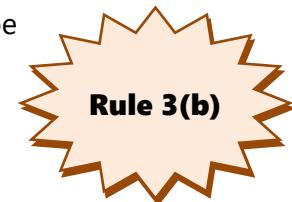
The said product in the above instance would be classifiable under heading No. 8510 as heading No. 8510 is more specific as compared to heading No. 8509.

❖ **Rule 3(b) – Essential character principle:** Mixtures, composite goods consisting of different materials or made up of different components, and goods put up in sets for retail sale, which cannot be classified with reference to (a), shall be classified as if they consisted of material which gives them their essential character, in so far as this criterion is applicable.



ANALYSIS

Sub-rule (b) would apply only if the goods cannot be classified under sub-rule (a). This sub-rule provides that composite goods should be classified on the basis of that material or substance that gives it its essential character.



In order to find out whether the incomplete article as imported has the essential character of the completed article, the tests to be applied would be whether the imported article has attained the approximate shape or outline of the finished article or part and whether it can only be used for completion into the particular finished article.



(5) Product: Lead pencil with an eraser at the back.

Classification: 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.

- ❖ **Rule 3(c) – Latter the better:** When goods cannot be classified by reference to (a) or (b), they shall be classified under the heading which occurs last in numerical order among those which equally merit consideration.



ANALYSIS

If both sub-rules (a) and (b) fails to classify the goods in question, then resort may be made to sub-rule (c), which provides that composite goods shall be classified on the basis of the heading that occurs last in numerical order.

Relevant case law:-

Mahindra and Mahindra v. CCE [1999 (109) E.L.T. 739 (Tribunal)][maintained by SC]

When the goods cleared by assessee were equally classifiable under the following two headings:-

- (i) **Heading No. 8703**:-Motor cars and other vehicles principally designed for the transport of persons.
- (ii) **Heading No. 8704**: Motor vehicles meant for transport of goods.

It was held that heading 8704 occurs last and as both the headings equally merit classification, goods shall be classified under 8704 applying the interpretative Rule 3(c).

- ❖ **Rule 4 – Akin Rule:** Goods which cannot be classified in accordance with the above rules shall be classified under the heading appropriate to the goods to which they are most akin.



ANALYSIS

This rule is popularly referred to as **Akin rule**. This rule specifies that if the goods cannot be classified in accordance with the earlier rules, they shall be classified under the heading in which the most akin goods are classified.

Rule 4



(6) 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 392530 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 392530 00 heading.

- ❖ **Rule 5:** In addition to the foregoing provisions, the following rules shall apply in respect of goods referred to therein:

(a) Classification of cases/containers used for packaging of goods:

Camera cases, musical instrument cases, gun cases, drawing instrument cases, necklace cases and similar containers shall be classified with a specific article or a set of articles when of a kind normally sold therewith.



Rule 5

Conditions to be fulfilled:-

- (i) These cases/containers are specially shaped or fitted to contain a specific article or a set of articles.
- (ii) These cases/containers are suitable for long term use and presented with the articles for which they are intended.

This rule does not, however, apply to containers which give the whole its essential character.

(b) Classification of packing materials and packing containers: Subject to the provisions of (a) above, packing materials and packing containers presented with the goods therein shall be classified with the goods, if they are of a kind normally used for packing such goods.

However, **this provision does not apply** when such packing material or packing containers are clearly suitable for repetitive use.



ANALYSIS

This rule lays down that:-

- (i) Cases which are specially designed or fitted to contain a specific article and given with the articles for which they are intended shall follow the classification of the items which are packed.
- (ii) The packing materials and containers cleared along with the goods are classifiable with the goods.



(7) Leather cases, which are normally supplied along with the goods, however costly they may be, need not be treated separately for the purpose of classification.

Exceptions to rule 5

- (a) Durable containers capable of repetitive use should be classified separately.



(8) Gas cylinders are meant for repetitive use and therefore cannot be classifiable along with gas.

- (b) When packing material itself gives the essential character as a whole.

❖ **Rule 6: Only Sub-Headings at the Same Level are Comparable**

- (i) For legal purposes, the classification of goods in the sub-headings of a heading shall be determined according to the terms of those sub-headings and any related sub-heading notes and, *mutatis mutandis*, to the above rules, on the understanding that only sub-headings at the same level are comparable.
- (ii) For the purposes of this rule the relative section and chapter notes also apply, unless the context otherwise requires.



The main proposition laid down by this rule is that sub-heading at the same level are comparable. This implies that a sub-heading can be compared only with another sub-heading within the same heading.

Classification of Parts

Classification of parts is subject to notes in Sections and Chapters. Question of classification of parts is relevant for parts of machinery, electrical equipment, vehicles, instruments, arms, furniture and toys.

Broadly, parts suitable solely for a particular machine generally fall in the same heading number in which main item falls. However, there are many exceptions –

- Parts of general use are not to be classified as part of any particular machine. 'Parts of General Use' are to be classified in their respective specified heads and not to be classified under the heading of the machine where they are used.
- Parts are to be classified as parts if separate heading is available for parts, (e.g. there is separate heading for parts of engine).



5. PROJECT IMPORTS

While the HSN system contains only 97 chapters, the Indian tariff has incorporated within itself Chapter 98 which pertains 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.

Usually when in a project, where several different items are required and each of them is importable at different rates of customs duties, it becomes very complicated to make assessment of each item separately as per their individual classification. Therefore, for such project imports 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.

Project Imports

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.

❖ Some judgements on classification

1. *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.

2. *CC v. Maestro Motors Ltd. 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.

3. *CC v. Hewlett Packard India Sales (p) Ltd. 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.

Illustration 3

Your client manufactures Almond Milk which is an almond based drink.

The manufacturing process of almond milk is as follows:

- *Selection of high quality California almonds;*
- *Blanching of almonds, roasting, and grinding into a paste*
- *Almond paste is blended with other ingredients like RO water, salt, vitamins and minerals.*
- *Sterilization of mixture by ultra-high temperature processing*

- *Homogenization*
- *Packaging in a septic package*

As per the Rate Notification for goods issued under GST, following entries are relevant:

Rate: 12%

Entry 41 – 2009 - *Fruit juices (including grape must) and vegetable juices, unfermented and not containing added spirit, whether or not containing added sugar or other sweetening matter*

Entry 48 – 2202 9920 – *Fruit pulp or fruit juice based drinks*

Entry 50 – 2202 9930 – *Beverages containing milk*

Rate: 18%

Entry 24A – 2202 9100 or 2202 99 90 - *Other non-alcoholic beverages other than tender coconut water*

Your client is confused with the correct classification of Almond Milk under GST. He has approached you for your opinion so as to enable him to discharge the tax correctly.

Following additional information may be relevant:

As per First Schedule to the Customs Tariff Act, 1975, the following entries of Chapter 20, 22 and 8 are relevant:

Chapter 20 - Preparations of vegetables, fruit, nuts or other parts of plants

Tariff Item		Description of goods
2009		<i>Fruit juices (including grape must) and vegetable juices, unfermented and not containing added spirit, whether or not containing added sugar or other sweetening matter</i>
	-	<i>Juice of any other single fruit or vegetable :</i>

2009 8100	--	Cranberry (<i>Vaccinium macrocarpon, Vaccinium, Oxycoccus, Vaccinium vitis-idaea</i>) juice
2009 89	--	Other
2009 89 10	---	Mango
2009 89 90	---	Other
2009 90 00	-	Mixtures of juices

Chapter 22 - Beverages, spirits and vinegar

Tariff Item		Description of goods
2202	-	Waters, including mineral waters and aerated waters, containing added sugar or other sweetening matter or flavoured, section-iv 172 chapter-22 and other non-alcoholic beverages, not including fruit or vegetable juices of heading 2009
2202 10 10	---	Aerated Waters
2202 10 20	---	Lemonade
2202 10 90	---	Other
	-	Other
2202 91 00	--	Other Non-alcoholic Beer
2202 99	--	Other
2202 99 10	---	Soya milk drinks, whether or not sweetened or flavored
2202 99 20	---	Fruit pulp or fruit juice based drink
2202 99 30	---	Beverages containing milk
2202 99 90	---	Other

Chapter 8 - Edible fruit and nuts; peel of citrus fruit or melons

Tariff Item		Description of goods
0802		Other nuts, fresh or dried, whether or not shelled or peeled
	-	Almonds:
0802 11 00	-	In Shell
0802 12 00	-	Shelled

Further, explanatory notes to Chapter 20 specify that:

The fruit and vegetable juices of this heading are generally obtained by pressing fresh, healthy and ripe fruit or vegetables. This may be done (as in the case of citrus fruits) by means of "mechanical extractors" operating on the same principle as the household lemon-squeezer, or by pressing which may or may not be preceded either by crushing or grinding (for apples in particular) or by treatment with cold or hot water or with steam (e.g., tomatoes, black currants and certain vegetables such as carrots and celery).

Answer

The first step in the classification of Almond Milk is to determine if the same would fall under Chapter 20 or 22 of the First Schedule of Customs Tariff Act, 1975. On a plain reading of Heading of Chapter 20 along with Explanatory Notes, it emerges that Chapter 20 is applicable to juices of ripe fruits and vegetables. Therefore, it is important to determine if the "almond" qualifies to be a fruit or not.

While in common parlance, we refer 'almonds' as dry fruits, however if we analyze Chapter 8 of the First Schedule of Customs Tariff Act, 1975, it appears that 'almonds' are referred to as 'nuts' under sub-heading 0802.

Therefore, the 'almonds' do not classify as 'fruit' for the purpose of classification under the HSN system.

Accordingly, the classification under Chapter 20 is completely ruled out.

Now, the 3 entries relevant under Chapter 22 are:

- (a) 2202 99 20 – Fruit pulp or fruit juice based drink – As stated above, since almond is not a fruit but a nut for the purpose of classification, this entry is ruled out.
- (b) 2202 99 30 – Beverages containing milk – Admittedly, as per the process specified above, the Almond Milk does not contain any milk. Therefore, this entry is also ruled out.
- (c) 2202 9100 or 2202 99 90 - Other non-alcoholic beverages other than tender coconut water – The Almond milk will be classifiable under 2202 99 90 as Others.

Therefore, the Almond Milk will be chargeable to 18% GST.

This view is also supported by CBIC's *Circular No. 113/32/2019 GST dated 11.10.2019* which states that:

"Almond Milk is made by pulverizing almonds in a blender with water and is then strained. As such almond milk neither constitutes any fruit pulp or fruit juice. Therefore, it is not classifiable under tariff item 2202 99 20.

Almond milk is classified under the residual entry in the tariff item 2202 99 90 and attract GST rate of 18%."

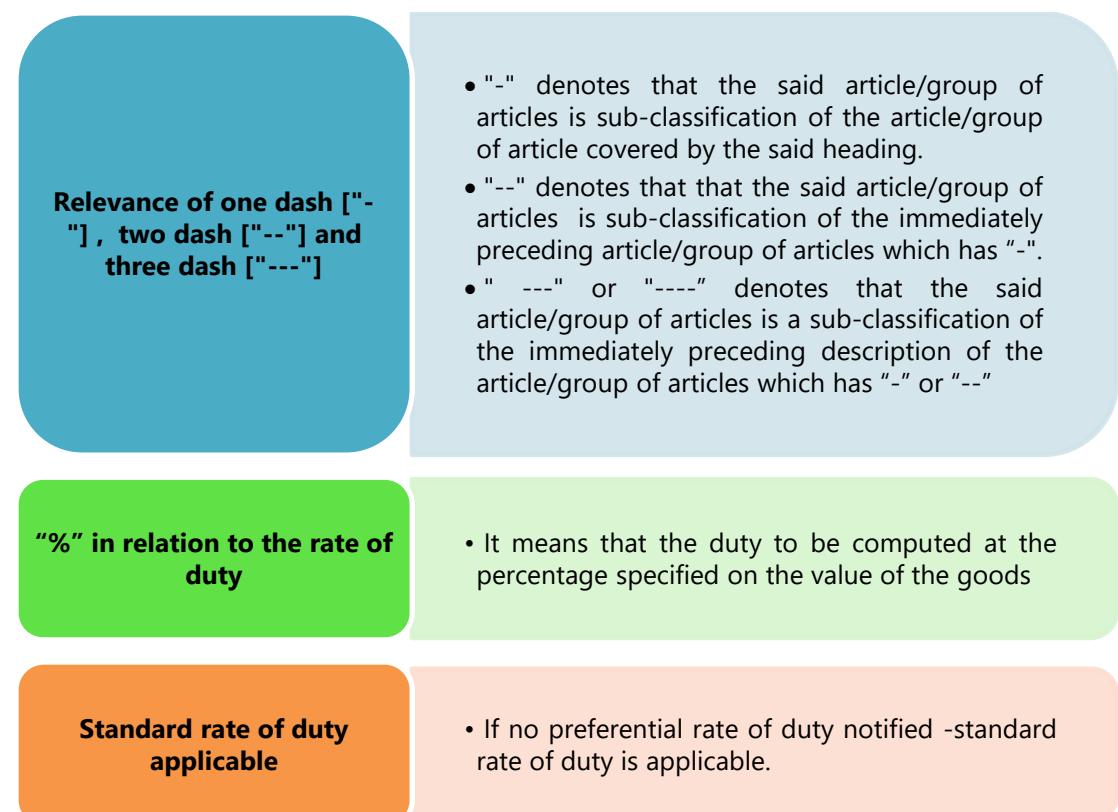


LET US RECAPITULATE

Rules of interpretation and explanatory notes



General Explanatory Notes



Rules of interpretation of the First Schedule to the Customs Tariff Act

- 1 •General rule of classification
- 2(a) •Classification of incomplete/unfinished articles
- 2(b) •Classification of mixtures/combinations of a material/substance with other materials/substances
- 3 •Classification in case goods are classifiable under two or more headings
- 4 •Akin rule
- 5 •Classification of cases/containers used for packaging of goods and packing materials/packing containers
- 6 •Only sub-headings at the same level are comparable

Rules of Interpretation

Rule 1

Rule 1 General Rule

- Titles of sections/chapters/sub-chapters - ease of reference only
- Terms of headings read with relative section/chapter notes - legally relevant

Rule 2

Rule 2(a) Classification of Incomplete/Unfinished Articles

If any particular heading refers to a finished/complete article - incomplete/unfinished/unassembled/dis-assembled form of that article also classified under same heading

If it has essential characteristics of finished goods

Rule 2(b) Classification of Mixtures/Combinations of a Material/Substance with Other Materials/Substances

Reference to a material/substance would refer to mixture/combination of that material/substance

Reference to a material/substance would include reference to goods consisting wholly/partly of such material/substance

Rule 3- Classification in case goods are classifiable under two or more headings

Rule 3(a)-Specific over general

- Heading providing a more specific description should be preferred over heading providing a general description.

Rule 3(b) – Essential character principle

- If goods cannot be classified under rule 3(a).
- composite goods should be classified on the basis of that material/substance that gives it its essential character

Rule 3(c) – Latter the better

- If goods cannot be classified by reference to rule 3(a)/3(b).
- To be classified under heading which occurs last in numerical order

Rule 4**Rule 4
Akin Rule**

- If goods cannot be classified in accordance with the earlier rules
- to be classified under the heading in which the most akin goods are classified.

Rule 5**Rule 5(a)-Classification of cases/containers used for packaging of goods**

- Camera cases, musical instrument cases etc and similar containers - to be classified with a specific article/set of articles when of a kind normally sold therewith.
- Exception-When packing material itself gives the essential character as a whole

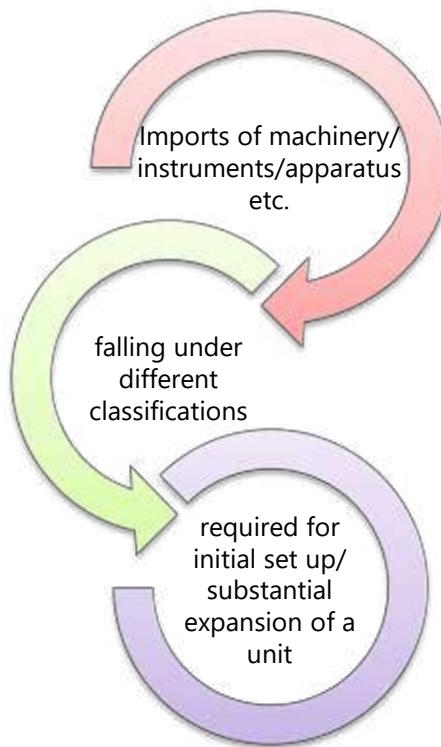
Rule 5(b) – Classification of packing materials & packing containers

- Packing materials & packing containers presented with the goods therein to be classified with the goods, if they are of a kind normally used for packing such goods.
- Exception-Durable containers capable of repetitive use - to be classified separately.

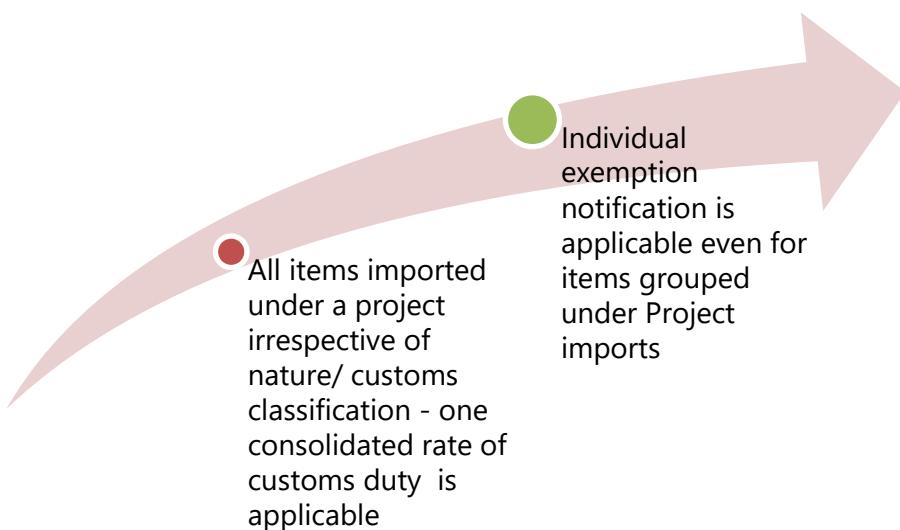
Rule 6**Rule 6
Only Sub-Headings at the Same level are comparable**

- A sub-heading can be compared only with another sub-heading within the same heading.

Project Imports



Classification of Project Imports





TEST YOUR KNOWLEDGE

1. *Briefly explain the provisions of rule 2(a) of Rules of Interpretation of the First Schedule to the Customs Tariff Act, 1975 on classification of incomplete/unfinished articles.*
2. *What is the purpose of including General Rules of Interpretation of First Schedule in Customs Tariff? Do they form part of the Tariff Schedule? Explain the Akin Rule of interpretation.*
3. *Write a note on "Project Imports" under the Customs Tariff Act, 1975.*
4. *Explain rule 3 of the rules for Interpretation of the Customs Tariff.*
5. *Briefly explain the meaning of abbreviation "%" in relation to the rate of duty*



ANSWERS/HINTS

1. The provisions of rule 2(a) of Rules of Interpretation of the First Schedule to the Customs Tariff Act, 1975 on classification of incomplete/unfinished articles are as under:-

If any particular heading refers to a finished/complete article, the incomplete/unfinished form of that article shall also be classified under the same heading provided the incomplete/unfinished goods have the essential characteristics of the finished goods.

Reference to an article will also include the article complete or finished (or failing to be classified as complete or finished) presented un-assembled or dis-assembled.

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

Rule 4 of the Rules of Interpretation is called as akin rule. This rule lays down that goods which cannot be classified in accordance with rules 1, 2 and 3 of

the Rules of Interpretation shall be classified under the heading appropriate to the goods to which they are most akin. In other words, 'akin rule' is a residual rule which is to be applied when classification is not possible by applying any of the earlier rules. It is a rule of last resort.

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

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

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

The items eligible for project import are specified in Heading 9801 of the Customs Tariff Act, 1975.

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

Few of the eligible projects are:

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

4. The application of this rule arises when the goods consists of more than one material or substance.

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

Rule 3(a) – Specific over general

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

Rule 3(b) – Essential character principle: Mixtures, composite goods consisting of different materials or made up of different components, and goods put up in sets for retail sale, which cannot be classified with reference to (a), shall be classified as if they consisted of material which gives them their essential character, in so far as this criterion is applicable.

Rule 3(c) – Latter the better: When goods cannot be classified by reference to (a) or (b), they shall be classified under the heading which occurs last in numerical order among those which equally merit consideration.

5. 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.

VALUATION UNDER THE CUSTOMS ACT, 1962



For the sake of brevity "Goods and Services Tax Compensation Cess" has been referred to as "GST compensation cess" respectively. It may be noted that while computing customs duty payable in all the Illustrations and Questions, GST compensation cess and agriculture infrastructure and development cess have been ignored.

LEARNING OUTCOMES

After studying this chapter, you would be able to:

- comprehend the concept of value in relation to import or export
- analyse and apply the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 and Customs Valuation (Determination of Value of Export Goods) Rules, 2007
- identify the date for determination of rate of duty and tariff value.
- analyse and apply the special provisions for classification of sets of articles and accessories.
- synthesis of the above provisions to determine the assessable value of imported/export goods and total customs duty and integrated tax payable on importation.

CHAPTER OVERVIEW



Valuation of goods based on section 14

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

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

Date for determination of rate of duty and tariff valuation

Special provisions for classification of sets of article and accessories



1. INTRODUCTION

The manner in which customs duty is charged on goods imported into India (import duty) or goods exported from India (export duty) is either by way of –

- Specific duty** where the duty is charged based on the quantity, weight or volume of the goods, rather than their value. For example, specific duty of ₹ 658 per 10 grams of gold; or
- Ad valorem duty**, expressed as percentage of the value of the goods. For example, 10% ad valorem duty etc.

India, like many countries, continues to levy both specific and *ad valorem* duties depending on the product and the policy objectives. In order to determine the customs duty payable on *ad valorem* basis, we need to ascertain the value of goods often called "assessable value".

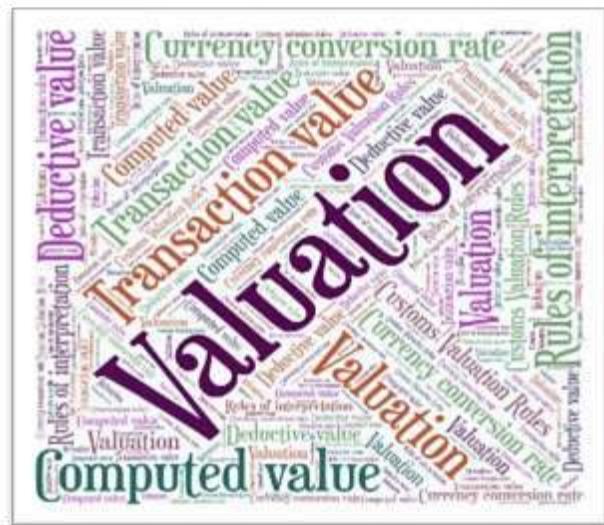
Section 2(41) of the Customs Act, 1962 defines value in relation to any goods as the value thereof determined in accordance with the provisions of sub-section (1) or sub-section (2) of section 14.

The value may be either be:

- (i) **Transaction value** under section 14(1) of the Customs Act, 1962, or
- (ii) **Tariff Value** under section 14(2) of the Customs Act, 1962.

The provisions of these sections alongwith relevant rules have been discussed in detail in the subsequent paras.

Before that, let us first get conversant with the technical terms relating to value in the course of import or export – International Commercial (INCO) Terms are as follows:



Ex-Factory Price	F.A.S. (Free Alongside)	F.O.B. (Free on Board)	C.I.F. (Cost Insurance Freight)
<p>•It is the price of the goods at the factory gate. It includes cost of production and manufacturer's margin of profit without cost of freight for outward delivery of goods.</p>	<p>•It is the cost at which the export goods are delivered by the seller to the port of shipment, but not on board. The buyer assumes the costs and risks from that point onwards, including loading the goods onto the ship, transit freight, insurance and further transportation.</p> <p>•It includes ex-factory price + local freight + local taxes.</p>	<p>•FOB means the stage at which the goods are placed on board vessel at the port of shipment. Once the goods are on board, the buyer assumes responsibility for freight, insurance and any other costs related to the transportation.</p> <p>•It can be said to include FAS + loading charges + export duty/cess.</p>	<p>•It is the cost at which the goods are delivered at the Indian port (F.O.B. + Insurance + Freight).</p>



2. VALUATION OF GOODS BASED ON SECTION 14

Section 14 of the Customs Act, 1962 prescribes the mode of identifying the value of imported or export goods for the purpose of payment of customs duty. The provisions of section 14 are discussed below: -

TRANSACTION VALUE

- (i) Sub-section (1) lays down that for the purposes of the Customs Tariff Act, 1975, or any other law for the time being in force, the value of the imported goods and export goods shall be the 'transaction value' of such goods.

(ii) In case of export goods, the transaction value shall be:

- the price actually paid or payable for the goods
- when sold for export **from** India
- for delivery at the time and place of exportation
- where the buyer and seller of the goods are not related and
- price is the sole consideration for the sale.

However, further conditions may be specified in the rules made in this behalf.

(iii) In case of imported goods, the transaction value shall be:

- the price actually paid or payable for the goods when sold for export **to** India
- for delivery at the time and place of importation
- where the buyer and seller of the goods are not related and
- price is the sole consideration for the sale.

Transaction Value

However, in this case also, further conditions may be specified in the rules made in this behalf.

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.

- (iv) Such rules may provide for:
- (a) the circumstances in which the buyer and the seller shall be deemed to be related;
 - (b) the manner of determination of value in respect of goods when there is no sale, or the buyer and the seller are related, or price is not the sole consideration for the sale, or in any other case;
 - (c) the manner of acceptance or rejection of value declared by the importer or exporter, as the case may be, where the proper officer has reason to doubt the truth or accuracy of such value, and determination of value for the purposes of this section.
 - (d) the additional obligations of the importer in respect of any class of imported goods and the checks to be exercised, including the circumstances and manner of exercising thereof, as the Board may specify, where, the Board has reason to believe that the value of such goods may not be declared truthfully or accurately, having regard to the trend of declared value of such goods or any other relevant criteria.



In this regard, the **Customs (Assistance in Value Declaration of Identified Imported Goods) Rules, 2023** have been issued which aim to address issues of undervaluation in imports by defining procedures and obligations for importers of specific goods. These rules enable the Central Board of Indirect Taxes and Customs (CBIC) to classify goods that are suspected of undervaluation as "identified goods".

Importers of such goods must provide detailed declarations while filing the bill of entry and adhere to additional obligations, if prompted by the Customs Automated System. If doubts persist about the declared value, the matter is resolved as per rule 12 of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 (*discussed subsequently in this chapter*).

Before applying these rules, the Board must thoroughly examine a report from the Screening and Evaluation Committees. Exceptions to these rules include duty-exempt imports, tariff-valued goods, specific-rate duty goods, project imports, government imports, and imports for re-export. These procedures aim to prevent undervaluation and protect revenue, ensuring truthful import declarations.

CONVERSION DATES

- (i) For imported goods, the conversion to Rupees shall be done with reference to the rate of exchange prevalent on the date of filing bill of entry under section 46.
- (ii) 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.

Conversion Dates

CURRENCY CONVERSION RATE

- (i) A rate of exchange is notified by three agencies- the Central Board of Indirect taxes 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-
 - (i) determined by the Board, or
 - (ii) 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 CBIC (Board) shall be taken into account¹.



¹ Board notifies the exchange rates twice a month, i.e. every 1st and 3rd Thursdays. These notified exchange rates become effective from midnight of the following day. Where a due date, i.e. 1st or 3rd Thursday, falls on a holiday, the rates are notified on the previous working day. These notifications are based on the rates obtained from the State Bank of India (SBI) on a daily basis. Earlier, notified exchange rates were manually incorporated in the Indian Customs EDI System (ICES) by an officer designated for this purpose.

This process has now been automated. SBI forwards the exchange rate data to ICEGATE. The exchange rates received from SBI are adjusted to the nearest 5 paise and integrated with ICES. These exchange rates are published on ICEGATE website at 6:00 p.m. of every 1st and 3rd Thursdays on Exchange Rate Automation Module (ERAM) and are accessible for public viewing on ICEGATE website i.e. <https://www.icegate.gov.in>. These rates, so published online, come into effect from midnight of the following day.

- (ii) "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.

TARIFF VALUE

- (i) Sub-section (2) of section 14 provides that the Board may fix tariff values for any class of imported goods or export goods, having regard to the trend of value of such or like goods, by notification in the Official Gazette if it is satisfied that it is necessary to do so.
- (ii) Where any such tariff values are fixed, the duty shall be chargeable with reference to such tariff value. Provisions of sub-section (2) have an overriding effect on the provisions of sub-section (1) providing for transaction value.

Tariff Value



3. CUSTOMS VALUATION (DETERMINATION OF VALUE OF IMPORTED GOODS) RULES, 2007

Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 apply to imported goods. The rules are given below:

Rule Nos	Valuation Rules for Imports
2	Definitions
3	Determination of the method of valuation
4	Transaction value of identical goods
5	Transaction value of similar goods
6	Determination of value where value cannot be determined under rules 3, 4 and 5
7	Deductive value
8	Computed value
9	Residual Method

10	Cost and services
11	Declaration by the Importer
12	Rejection of declared value
13	Interpretative notes

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.



Rule 2



IDENTICAL 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
 - (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 recognised 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;

SIMILAR GOODS

RELATED PERSONS

- (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.

Illustration 1

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

State briefly, whether the Department's action is sustainable in law?

Answer

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

The fact that assessee had made bulk imports could be a reason for reduction of import price. The burden to prove under-valuation lies on the Revenue and

in absence of any evidence from the Department to prove under-valuation, the price declared by the assessee is acceptable.

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

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 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.



Rule 3

- (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

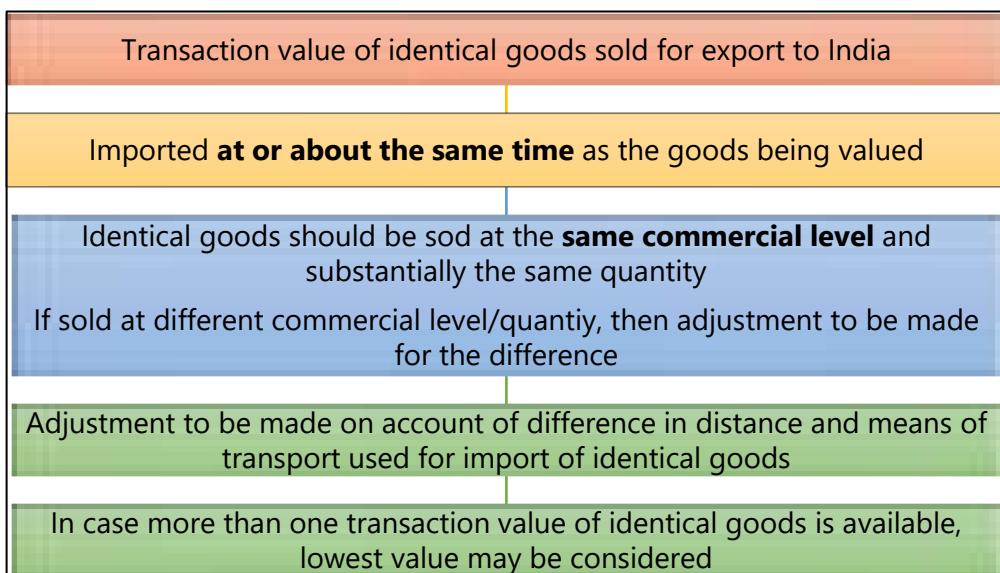
- (1) (a) Subject to the provisions of rule 3, the value of imported goods shall be the transaction value of identical goods sold for export to India and imported at or about the same time as the goods being valued.
- Provided that such transaction value shall not be the value of the goods provisionally assessed under section 18 of the Customs Act, 1962.
- (b) In applying this rule, the transaction value of identical goods in a sale at the same commercial level and in substantially the same quantity as the goods being valued shall be used to determine the value of imported goods.
 - (c) Where no sale referred to in clause (b) of sub-rule (1), is found, the transaction value of identical goods sold at a different commercial level or in different quantities or both, adjusted to take account of the



Rule 4

difference attributable to commercial level or to the quantity or both, shall be used, provided that such adjustments shall be made on the basis of demonstrated evidence which clearly establishes the reasonableness and accuracy of the adjustments, whether such adjustment leads to an increase or decrease in the value.

- (2) Where the costs and charges referred to in sub-rule (2) of rule 10 of these rules are included in the transaction value of identical goods, an adjustment shall be made, if there are significant differences in such costs and charges between the goods being valued and the identical goods in question arising from differences in distances and means of transport.
- (3) In applying this rule, if more than one transaction value of identical goods is found, the lowest such value shall be used to determine the value of imported goods.



RULE 5 – TRANSACTION VALUE OF SIMILAR GOODS

- (1) Subject to the provisions of rule 3, the value of imported goods shall be the transaction value of similar goods sold for export to India and imported at or about the same time as the goods being valued.



Provided that such transaction value shall not be the value of the goods provisionally assessed under section 18 of the Customs Act, 1962.

- (2) The provisions of clauses (b) and (c) of sub-rule (1), sub-rule (2) and sub-rule (3), of rule 4 shall, mutatis mutandis, also apply in respect of similar goods.

RULE 6 – DETERMINATION OF VALUE WHERE VALUE CAN NOT BE DETERMINED UNDER RULES 3, 4 AND 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

- (1) Subject to the provisions of rule 3, if the goods being valued or identical or similar imported goods are sold in India, in the condition as imported at or about the time at which the declaration for determination of value is presented, the value of imported goods shall be based on the unit price at which the imported goods or identical or similar imported goods are sold in the greatest aggregate quantity to persons who are not related to the sellers in India, subject to the following deductions: —
- (i) either the commission usually paid or agreed to be paid or the additions usually made for profits and general expenses in connection with sales in India of imported goods of the same class or kind;
 - (ii) the usual costs of transport and insurance and associated costs incurred within India;
 - (iii) the customs duties and other taxes payable in India by reason of importation or sale of the goods.



Rule 6



Rule 7

- (2) If neither the imported goods nor identical nor similar imported goods are sold at or about the same time of importation of the goods being valued, the value of imported goods shall, subject otherwise to the provisions of sub-rule (1), be based on the unit price at which the imported goods or identical or similar imported goods are sold in India, at the earliest date after importation but before the expiry of ninety days after such importation.
- (3) (a) If neither the imported goods nor identical nor similar imported goods are sold in India in the condition as imported, then, the value shall be based on the unit price at which the imported goods, after further processing, are sold in the greatest aggregate quantity to persons who are not related to the seller in India.
- (b) In such determination, due allowance shall be made for the value added by processing and the deductions provided for in items (i) to (iii) of sub-rule (1).

RULE 8 – COMPUTED VALUE

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

- (a) the cost or value of materials and fabrication or other processing employed in producing the imported goods;
- (b) an amount for profit and general expenses equal to that usually reflected in sales of goods of the same class or kind as the goods being valued which are made by producers in the country of exportation for export to India;
- (c) the cost or value of all other expenses under sub-rule (2) of rule 10.

Rule 8

Computed Value

RULE 9 – RESIDUAL METHOD

- (1) Subject to the provisions of rule 3, where the value of imported goods cannot be determined under the provisions of any of the preceding rules, the value shall be determined using reasonable means consistent with the principles

and general provisions of these rules and on the basis of data available in India.

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



- (2) No value shall be determined under the provisions of this rule on the basis of—
- (i) the selling price in India of the goods produced in India;
 - (ii) a system which provides for the acceptance for customs purposes of the highest of the two alternative values;
 - (iii) the price of the goods on the domestic market of the country of exportation;
 - (iv) the cost of production other than computed values which have been determined for identical or similar goods in accordance with the provisions of rule 8;
 - (v) the price of the goods for the export to a country other than India;
 - (vi) minimum customs values; or
 - (vii) arbitrary or fictitious values.

Residual Method

RULE 10 – COST AND SERVICES

- (1) In determining the transaction value, there shall be added to the price actually paid or payable for the imported goods:
- (a) the following to the extent they are incurred by the buyer but are not included in the price actually paid or payable for the imported goods, namely:—
 - (i) commissions and brokerage, except buying commissions;

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

**Rule 10**

Explanation.- Where the royalty, licence fee or any other payment for a process, whether patented or otherwise, is includable referred to in clauses (c) and (e), such charges shall be added to the price actually paid or payable for

the imported goods, notwithstanding the fact that such goods may be subjected to the said process after importation of such goods.

- (2) For the purposes of sub-section (1) of section 14 of the Customs Act, 1962 and these rules, the value of the imported goods shall be the value of such goods, and shall include –

- (a) the cost of transport, loading, unloading and handling charges associated with the delivery of the imported goods to the place of importation;
- (b) the cost of insurance to the place of importation:

Transport & Insurance Cost

However, where the cost referred to in clause (a) is not ascertainable, such cost shall be 20% of the free on board value of the goods:

Further that where the free on board value of the goods is not ascertainable but the sum of free on board value of the goods and the cost referred to in clause (b) is ascertainable, the cost referred to in clause (a) shall be 20% of such sum:

Where the cost referred to in clause (b) is not ascertainable, such cost shall be 1.125% of free on board value of the goods:

Where the free on board value of the goods is not ascertainable but the sum of free on board value of the goods and the cost referred to in clause (a) is ascertainable, the cost referred to in clause (b) shall be 1.125% of such sum:

In the case of goods imported by air, where the cost referred to in clause (a) is ascertainable, such cost shall not exceed 20% of free on board value of the goods:

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.

Explanation-

The cost of transport of the imported goods referred to in clause (a) includes the ship demurrage charges on charted vessels, lighterage or barge charges.

Illustration 2

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

- (i) *What shall be the value, if there is a price rise of the imported goods in international market between the date of contract and the date of actual importation but the importer pays the contract price?*
- (ii) *Whether the payment for post-importation process is includible in the value if the same is related to imported goods and is a condition of the sale of the imported goods?*

Answer

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

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

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

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.



Rule 11

- (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.

Rejection of Declared Value

- (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.

RULE 13 – INTERPRETATIVE NOTES

The interpretative notes specified in the Schedule to these rules shall apply for the interpretation of these rules.



Rule 13

INTERPRETATIVE NOTES

General Note:

Use of generally accepted accounting principles

“Generally accepted accounting principles” refers to the recognized consensus or substantial authoritative support within a country at a particular time as to which economic resources and obligations shall be recorded as assets and liabilities, which changes in assets and liabilities should be recorded, how the assets and liabilities and changes in them should be measured, what information should be disclosed and how it should be disclosed and which financial statements should be prepared. These standards may be broad guidelines of general application as well as detailed practices and procedures.

NOTES TO RULES

Note to rule 2

In rule 2(2)(v), for the purposes of these rules, one person shall be deemed to control another when the former is legally or operationally in a position to exercise restraint or direction over the latter.

Note to rule 3

Price actually paid or payable

The price actually paid or payable is the total payment made or to be made by the buyer to or for the benefit of the seller for the imported goods. The payment need not necessarily take the form of a transfer of money. Payment may be made by way of letters of credit or negotiable instruments. Payment may be made directly or indirectly. An example of an indirect payment would be the settlement by the buyer, whether in whole or in part, of a debt owed by the seller.

Interpretative Notes

Activities undertaken by the buyer on his own account, other than those for which an adjustment is provided in rule 10, are not considered to be an indirect payment to the seller, even though they might be regarded as of benefit to the seller. The costs of such activities shall not, therefore, be added to the price actually paid or payable in determining the value of imported goods.

The value of imported goods shall not include the following charges or costs, provided that they are distinguished from the price actually paid or payable for the imported goods:

- (a) Charges for construction, erection, assembly, maintenance or technical assistance, undertaken after importation on imported goods such as industrial plant, machinery or equipment;
- (b) The cost of transport after importation;
- (c) Duties and taxes in India.

The price actually paid or payable refers to the price for the imported goods. Thus the flow of dividends or other payments from the buyer to the seller that do not relate to the imported goods are not part of the customs value.

Rule 3(2)(a)(iii): Among restrictions which would not render a price actually paid or payable unacceptable are restrictions which do not substantially affect the value of the goods. An example of such restrictions would be the case where a seller requires a buyer of automobiles not to sell or exhibit them prior to a fixed date which represents the beginning of a model year.

Interpretative Notes

Rule 3(2)(b): If the sale or price is subject to some condition or consideration for which a value cannot be determined with respect to the goods being valued, the transaction value shall not be acceptable for customs purposes. Some examples of this include-

- (a) The seller establishes the price of the imported goods on condition that the buyer will also buy other goods in specified quantities;
- (b) the price of the imported goods is dependent upon the price or prices at which the buyer of the imported goods sells other goods to the seller of the imported goods;
- (c) the price is established on the basis of a form of payment extraneous to the imported goods, such as where the imported goods are semifinished goods which have been provided by the seller on condition that he will receive a specified quantity of the finished goods.

However, conditions or considerations relating to the production or marketing of the imported goods shall not result in rejection of the transaction value. For example, the fact that the buyer furnishes the seller with engineering and plans undertaken in India shall not result in rejection of the transaction value for the purposes of rule 3. Likewise, if the buyer undertakes on his own account, even though by agreement with the seller, activities relating to the marketing of the imported goods, the value of these activities is not part of the value of imported goods nor shall such activities result in rejection of the transaction value.

Rule 3(3)

1. Rule 3(3)(a) and rule 3(3)(b) provide different means of establishing the acceptability of a transaction value.
2. Rule 3(3)(a) provides that where the buyer and the seller are related, the circumstances surrounding the sale shall be examined and the transaction value shall be accepted as the value of imported goods provided that the relationship did not influence the price. It is not intended that there should be an examination of the circumstances in all cases where the buyer and the seller are related.

Such examination will only be required where there are doubts about the acceptability of the price. Where the proper officer of customs has no doubts about the acceptability of the price, it should be accepted without requesting further information from the importer.

For example, the proper officer of customs may have previously examined the relationship, or he may already have detailed information concerning the buyer and the seller, and may already be satisfied from such examination or information that the relationship did not influence the price.

3. Where the proper officer of customs is unable to accept the transaction value without further inquiry, he should give the importer an opportunity to supply such further detailed information as may be necessary to enable him to examine the circumstances surrounding the sale. In this context, the proper officer of customs should be prepared to examine relevant aspects of the transaction, including the way in which the buyer and seller organize their commercial relations and the way in which the price in question was arrived at, in order to determine whether the relationship influenced the price. Where it can be shown that the buyer and seller, although related under the provisions of rule 2(2), buy from and sell to each other as if they were not related, this would demonstrate that the price had not been influenced by the relationship. As an example of this, if the price had been settled in a manner consistent with the normal pricing practices of the industry in question or with the way the seller settles prices for sales to buyers who are not related to him, this would demonstrate that the price had not

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been influenced by the relationship. As a further example, where it is shown that the price is adequate to ensure recovery of all costs plus a profit which is representative of the firm's overall profit realized over a representative period of time (e.g. on an annual basis) in sales of goods of the same class or kind, this would demonstrate that the price had not been influenced.

4. Rule 3(3)(b) provides an opportunity for the importer to demonstrate that the transaction value closely approximates to a "test" value previously accepted by the proper officer of customs and is therefore acceptable under the provisions of rule 3. Where a test under rule 3(3)(b) is met, it is not necessary to examine the question of influence under rule 3(3)(a). If the proper officer of customs has already sufficient information to be satisfied, without further detailed inquiries, that one of the tests provided in rule 3(3)(b) has been met, there is no reason for him to require the importer to demonstrate that the test can be met. In rule 3(3)(b) the term "unrelated buyers" means buyers who are not related to the seller in any particular case.

Rule 3(3)(b): A number of factors must be taken into consideration in determining whether one value "closely approximates" to another value. These factors include the nature of the imported goods, the nature of the industry itself, the season in which the goods are imported, and whether the difference in values is commercially significant. Since these factors may vary from case to case, it would be impossible to apply a uniform standard such as a fixed percentage, in each case. For example, a small difference in value in a case involving one type of goods could be unacceptable while a large difference in a case involving another type of goods might be acceptable in determining whether the transaction value closely approximates to the "test" values set forth in rule 3(3)(b).

Notes to rule 4

1. In applying rule 4, the proper officer of customs shall, wherever possible, use a sale of identical goods at the same commercial level and in substantially the same quantities as the goods being valued. Where no such sale is found, a sale of identical goods that takes place under any one of the following three conditions may be used:

- (a) a sale at the same commercial level but in different quantities; or
 - (b) a sale at a different commercial level but in substantially the same quantities; or
 - (c) a sale at a different commercial level and in different quantities.
2. Having found a sale under any one of these three conditions adjustments will then be made, as the case may be, for:
- (a) quantity factors only;
 - (b) commercial level factors only; or
 - (c) both commercial level and quantity factors.
3. For the purposes of rule 4, the transaction value of identical imported goods means a value, adjusted as provided for in rule 4(1)(b) and (c) and rule 4(2) which has already been accepted under rule 3.
4. A condition for adjustment because of different commercial levels or different quantities is that such adjustment, whether it leads to an increase or a decrease in the value, be made only on the basis of demonstrated evidence that clearly establishes the reasonableness and accuracy of the adjustment, e.g. valid price lists containing prices referring to different levels or different quantities. As an example of this, if the imported goods being valued consist of a shipment of 10 units and the only identical imported goods for which a transaction value exists involved a sale of 500 units, and it is recognized that the seller grants quantity discounts, the required adjustment may be accomplished by resorting to the seller's price list and using that price applicable to a sale of 10 units. This does not require that a sale had to have been made in quantities of 10 as long as the price list has been established as being bona fide through sales at other quantities. In the absence of such an objective measure, however, the determination of a value under the provisions of rule 4 is not appropriate.

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Note to rule 5

1. In applying rule 5, the proper officer of customs shall, wherever possible, use a sale of similar goods at the same commercial level and in substantially the same quantities as the goods being valued. For the purpose of rule 5, the transaction value of similar imported goods means the value of imported goods, adjusted as provided for in rule 5(2) which has already been accepted under rule 3.
2. All other provisions contained in note to rule 4 shall mutatis mutandis also apply in respect of similar goods.

Interpretative Notes**Note to rule 7**

1. The term "unit/price at which goods are sold in the greatest aggregate quantity" means the price at which the greatest number of units is sold in sales to persons who are not related to the persons from whom they buy such goods at the first commercial level after importation at which such sales take place.
2. As an example of this, goods are sold from a price list which grants favourable unit prices for purchases made in larger quantities.

Sale quantity	Unit price	Number of sales	Total quantity sold at each price
1 -10 units	100	10 sales of 5 units 5 sales of 3 units	65
11-25 units	95	5 sales of 11 units	55
Over 25 units	90	1 sale of 30 units 1 sale of 50 units	80

The greatest number of units sold at a price is 80, therefore, the unit price in the greatest aggregate quantity is 90.

3. As another example of this, two sales occur. In the first sale 500 units are sold at a price of 95 currency units each. In the second sale 400 units are sold at a

price of 90 currency units each. In this example, the greatest number of units sold at a particular price is 500, therefore, the unit price in the greatest aggregate quantity is 95.

4. A third example would be the following situation where various quantities are sold at various prices.

(a) Sales

Sale quantity	Unit price
40 units	100
30 units	90
15 units	100
50 units	95
25 units	105
35 units	90
5 units	100

(b) Totals

Total quantity sold	Unit price
65	90
50	95
60	100
25	105

In this example, the greatest number of units sold at a particular price is 65, therefore, the unit price in the greatest aggregate quantity is 90.

5. Any sale in India, as described in paragraph 1 above to a person who supplies directly or indirectly free of charge or at reduced cost for use in connection with the production and sale for export of the imported goods any of the elements specified in rule 10 (l)(b), should not be taken into account in establishing the unit price for the purposes of rule 7.

6. It should be noted that "**profit and general expenses**" referred to in rule 7(1) should be taken as a whole. The figure for the purposes of this deduction should be determined on the basis of information supplied by or on behalf of the importer unless his figures are inconsistent with those obtaining in sales in India, of imported goods of the same class or kind. Where the importer's figures are inconsistent with such figures, the amount for profit and general expenses may be based upon relevant information other than that supplied by or on behalf of the importer.
7. The "**general expenses**" include the direct and indirect costs of marketing the goods in question.
8. Local taxes payable by reason of the sale of the goods for which a deduction is not made under the provisions of rule 7(1)(iii) shall be deducted under the provisions of rule 7(1)(i).
9. In determining either the commissions or the usual profits and general expenses under the provisions of rule 7(1), the question whether certain **goods are "of the same class or kind"** as other goods must be determined on a case-by-case basis by reference to the circumstances involved. Sales in India, of the narrowest group or range of imported goods of the same class or kind, which includes the goods being valued, for which the necessary information can be provided, should be examined. For the purposes of rule 7 "goods of the same class or kind" includes goods imported from the same country as the goods being valued as well as goods imported from other countries.
10. For the purposes of rule 7(2) the "**earliest date**" shall be the date by which sales of the imported goods or of identical or similar imported, goods are made in sufficient quantity to establish the unit price.
11. Where the method in rule 7(3) is used, deductions made for the value added by further processing shall be based on objective and quantifiable data relating to the cost of such work. Accepted industry formulas, recipes, methods of construction, and other industry practices would form the basis of the calculations.

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12. It is recognized that the method of valuation provided for in rule 7(3) would normally not be applicable when, as a result of the further processing, the imported goods lose their identity. However, there can be instances where, although the identity of the imported goods is lost, the value added by the processing can be determined accurately without unreasonable difficulty. On the other hand, there can also be instances where the imported goods maintain their identity but form such a minor element in the goods sold in the country of importation that the use of this valuation method would be unjustified. In view of the above, each situation of this type must be considered on a case-by-case basis.

Note to rule 8

1. As a general rule, value of imported goods is determined under these rules on the basis of information readily available in India. In order to determine a computed value, however, it may be necessary to examine the costs of producing the goods being valued and other information which has to be obtained from outside India. Furthermore, in most cases, the producer of the goods will be outside the jurisdiction of the proper officer. The use of the computed value method will generally be limited to those cases where the buyer and seller are related, and the producer is prepared to supply to the proper officer the necessary costings and to provide facilities for any subsequent verification which may be necessary.
2. The “**cost or value**” referred to in clause (a) of rule 8 is to be determined on the basis of information relating to the production of the goods being valued supplied by or on behalf of the producer. It is to be based upon the commercial accounts of the producer, provided that such accounts are consistent with the generally accepted accounting principles applied in the country where the goods are produced.
3. The “**cost or value**” shall include the cost of elements specified in clauses (1)(a)(ii) and (1)(a)(iii) of rule 10. It shall also include the value, apportioned as appropriate under the provisions of the relevant note to rule 10, of any element specified in rule 10(l)(b)

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which has been supplied directly or indirectly by the buyer for use in connection with the production of the imported goods. The value of the elements specified in rule 10(l)(b)(iv) which are undertaken in India shall be included only to the extent that such elements are charged to the producer. It is to be understood that no cost or value of the elements referred to in this paragraph shall be counted twice in determining the computed value.

4. The "**amount for profit and general expenses**" referred to in clause(b) of rule 8 is to be determined on the basis of information supplied by or on behalf of the producer unless the producer's figures are inconsistent with those usually reflected in sales of goods of the same class or kind as the goods being valued which are made by producers in the country of exportation for export to India.
5. It should be noted in this context that the "**amount for profit and general expenses**" has to be taken as a whole. It follows that if, in any particular case, producer's profit figure is low and his general expenses are high, the producer's profit and general expenses taken together may nevertheless be consistent with that usually reflected in sales of goods of the same class or kind.

Such a situation might occur, for example, if a product were being launched in India and the producer accepted a nil or low profit to offset high general expenses associated with the launch. Where the producer can demonstrate a low profit on his sales of the imported goods because of particular commercial circumstances, his actual profit figures should be taken into account provided that he has valid commercial reasons to justify them and his pricing policy reflects usual pricing policies in the branch of industry concerned.

Such a situation might occur for example, where producers have been forced to lower prices temporarily because of an unforeseeable drop in demand, or where they sell goods to complement a range of goods being produced in India and accept a low profit to maintain competitiveness. Where the producer's own figures for profit and general expenses are not consistent with those usually reflected in sales of goods of the same class or kind as the goods being valued which are made by producers in the country of exportation for export to India, the amount for profit and general expenses may be based

upon relevant information other than that supplied by or on behalf of the producer of the goods.

6. The “**general expenses**” referred to in clause (b) of rule 8 covers the direct and indirect costs of producing and selling the goods for export which are not included under clause (a) of rule 8.
7. Whether certain **goods are “of the same class or kind”** as other goods must be determined on a case-by-case basis with reference to the circumstances involved. In determining the usual profits and general expenses under the provisions of rule 8, sales for export to India of the narrowest group or range of goods, which includes the goods being valued, for which the necessary information can be provided, should be examined. For the purposes of rule 8 “goods of the same class or kind” must be from the same country as the goods being valued.

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Note to rule 9

1. Value of imported goods determined under the provisions of rule 9 should to the greatest extent possible, be based on previously determined customs values.
2. The methods of valuation to be employed under rule 9 may be those laid down in rules 3 to 8, inclusive, but a reasonable flexibility in the application of such methods would be in conformity with the aims and provisions of rule 9.
3. Some examples of reasonable flexibility are as follows:
 - (a) **Identical goods.** The requirement that the identical goods should be imported at or about the same time as the goods being valued could be flexibly interpreted; identical imported goods produced in a country other than the country of exportation of the goods being valued could be the basis for customs valuation; customs values of identical imported goods already determined under the provisions of rules 7 and 8 could be used.

- (b) **Similar goods.** The requirement that the similar goods should be imported at or about the same time as the goods being valued could be flexibly interpreted; similar imported goods produced in a country other than the country of exportation of the goods being valued could be the basis for customs valuation; customs values of similar imported goods already determined under the provisions of rules 7 and 8 could be used.
- (c) **Deductive method.** The requirement that the goods shall have been sold in the "condition as imported" in rule 7(1) could be flexibly interpreted; the ninety days requirement could be administered flexibly.

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Note to rule 10

In rule 10(l)(a)(i), the term "**buying commissions**" means fees paid by an importer to his agent for the service of representing him abroad in the purchase of the goods being valued.

Rule 10(1)(b)(ii)

1. There are two factors involved in the apportionment of the elements specified in rule 10(l)(b)(ii) to the imported goods – the value of the element itself and the way in which that value is to be apportioned to the imported goods. The apportionment of these elements should be made in a reasonable manner appropriate to the circumstances and in accordance with generally accepted accounting principles.
2. Concerning the value of the element, if the importer acquires the element from a seller not related to him at a given cost, the value of the element is that cost. If the element was produced by the importer or by a person related to him, its value would be the cost of producing it. If the element had been previously used by the importer, regardless of whether it had been acquired or produced by such importer, the original cost of acquisition or production would have to be adjusted downward to reflect its use in order to arrive at the value of the element.

3. Once a value has been determined for the element it is necessary to apportion that value to the imported goods. Various possibilities exist. For example, the value might be apportioned to the first shipment if the importer wishes to pay duty on the entire value at one time.

As another example, the importer may request that the value be apportioned over the number of units produced up to the time of the first shipment.

As a further example, he may request that the value be apportioned over the entire anticipated production where contracts or firm commitments exist for that production. The method of apportionment used will depend upon the documentation provided by the importer.

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4. As an illustration of the above, an importer provides the producer with a mould to be used in the production of the imported goods and contracts with him to buy 10,000 units. By the time of arrival of the first shipment of 1,000 units, the producer has already produced 4,000 units. The importer may request the proper officer of customs to apportion the value of the mould over 1,000 units, 4,000 units or 10,000 units.

Rule 10(1)(b)(iv)

1. Additions for the elements specified in rule 10(1)(b)(iv) should be based on objective and quantifiable data. In order to minimize the burden for both the importer and proper officer of customs in determining the values to be added, data readily available in the buyer's commercial record system should be used in so far as possible.
2. For those elements supplied by the buyer which were purchased or leased by the buyer, the addition would be the cost of the purchase or the lease. No addition shall be made for those elements available in the public domain, other than the cost of obtaining copies of them.
3. The ease with which it may be possible to calculate the values to be added will depend on a particular firm's structure and management practice, as well as its accounting methods.
4. For example, it is possible that a firm which imports a variety of products from several countries maintains the records of its design centre outside the

country of importation in such a way as to show accurately the costs attributable to a given product. In such cases, a direct adjustment may appropriately be made under the provisions of rule 10.

5. In another case, a firm may carry the cost of the design centre outside the country of importation as a general overhead expense without allocation to specific products. In this instance, an appropriate adjustment could be made under the provisions of rule 10 with respect to the imported goods by apportioning total design centre costs over total production benefiting from the design centre and adding such apportioned cost on a unit basis to imports.
6. Variations in the above circumstances will, of course, require different factors to be considered in determining the proper method of allocation.
7. In cases where the production of the element in question involves a number of countries and over a period of time, the adjustment should be limited to the value actually added to that element outside the country of importation.

Rule 10(1)(c)

1. The royalties and licence fees referred to in rule 10(1)(c) may include among other things, payments in respect to patents, trademarks and copyrights. However, the charges for the right to reproduce the imported goods in the country of importation shall not be added to the price actually paid or payable for the imported goods in determining the customs value.
2. Payments made by the buyer for the right to distribute or resell the imported goods shall not be added to the price actually paid or payable for the imported goods if such payments are not a condition of the sale for export to the country of importation of the imported goods.

Rule 10(3)

Where objective and quantifiable data do not exist with regard to the additions required to be made under the provisions of rule 10, the transaction value cannot be determined under the provisions of

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rule 3. As an illustration of this, a royalty is paid on the basis of the price in a sale in the importing country of a litre of a particular product that was imported by the kilogram and made up into a solution after importation.

If the royalty is based partially on the imported goods and partially on other factors, which have nothing to do with the imported goods (such as when the imported goods are mixed with domestic ingredients and are no longer separately identifiable, or when the royalty cannot be distinguished from special financial arrangements between the buyer and the seller), it would be inappropriate to attempt to make an addition for the royalty.

However, if the amount of this royalty is based only on the imported goods and can be readily quantified, an addition to the price actually paid or payable can be made.

Circular No. 38/2007 Cus. dated 09.10.2007 has been issued to clarify the major changes in the new Import Valuation Rules .

The clarifications are given below for proper application of the Valuation Rules 2007-

- (i) Transaction Value has been defined to mean the value referred to in sub-section (1) of section 14 of the Customs Act, 1962.
- (ii) A '**proviso**' has been added to rules 4(1)(a) and 5(1) concerning identical goods and similar goods respectively, to the effect that the value of the goods provisionally assessed under section 18 of the Customs Act, 1962, shall not be the basis for determining the value of any other goods.
- (iii) An '**Explanation**' has been added to Rule 10(1) to clarify that the royalty, licence fee or any other payment for using a process, when they are otherwise includable in terms of clause (c) or (e) of Rule 10(1), shall be added to the price actually paid or payable, notwithstanding the fact that such goods may be subjected to the said process after their importation. At times, royalty, license fee or any other payment for a process to be paid by the importer may be linked to post-importation activity like running of the machine/ plant, when the process is put to use.

- (iv) An '**Explanation**' has been added to rule 10(2) clarifying that the cost of transport of the imported goods includes ship demurrage charges on chartered vessels, lighterage charges or barge charges. This Explanation is to take care of cases of imports by time-chartered vessels or bulk carriers discharging goods on high seas needing additional expenditure for delivery of the goods at the "Place of Importation" mentioned in Rule 10(2)(a).

The '**place of importation**', as observed by the Supreme Court in the case of *Garden Silk Mills Ltd v. Union of India 1999 (113) E.L.T. 358 (S.C)* means the place where the imported goods reach the landmass of India in the Customs area of the port, airport or land customs station, or if they are consumed before reaching the landmass of India, the place of consumption. Therefore, in cases where ship demurrage charges are paid by the importer for detention of the ship in the harbour before touching the landmass at the docks or at the place of consumption, these charges would be includable in the cost of transportation.

Similarly, in cases where the big mother vessels cannot enter the harbour for any reason and goods are brought to the docks by smaller vessels like barges, small boats, etc., the cost incurred by the importer for bringing the goods to the landmass or place of consumption, such as lighterage charges, barge charges will also be included in the cost of transportation.

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- (v) An '**Explanation**' has been added to Rule 12 which relates to rejection of declared value, to bring more clarity and objectivity in exercising the authority for rejection of declared value. The Explanation clarifies that this rule as such does not provide a method for determination of value, and that it merely provides a mechanism and procedure for rejection of declared value in certain cases.

It also clarifies that where the proper officer is satisfied after consultation with the importer, the declared value shall be accepted. This Explanation also gives certain illustrative reasons which could form the basis for having doubt about the truth or accuracy of the declared value.

Circular No. 39/2017 Cus. dated 26.09.2017 clarifies the amendment in Rule 10(2) of Import Valuation Rules 2007. Circular clarifies as follows-

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.

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.

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

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.

Inland Container Depots (ICDs) and Container Freight Stations (CFSs) handle all customs formalities related to import and export of goods.

The primary functions of ICD/CFS are receipt and dispatch/delivery of cargo, stuffing and stripping of containers, customs clearance, temporary storage of cargo and containers, maintenance and repair of container units etc.

The key differences between ICD and CFS are as under:-

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

Air Freight Station (AFS) - An off-airport common user facility equipped with fixed installations of minimum requirement and offering services for handling and temporary storage of import and export cargo etc. While CFS handles maritime cargo, an AFS is meant to handle air cargo.

Levy of Social Welfare Surcharge on imported goods:

Social welfare surcharge @ 10% has been levied on imported goods. [For detailed discussion, refer para 15 of Chapter-2.]

Levy of Agriculture Infrastructure and Development Cess on imported goods:

Agriculture infrastructure and development cess has been levied on notified imported goods at a specified rate. [For detailed discussion, refer para 16 of Chapter-2.]

Valuation of goods cleared from a 100% EOU to a depot from where the sale to DTA is effected through consignment agents: Circular No. 933/23/2010 CX dated 16.08.2010 clarifies that the value of goods cleared from a 100% Export Oriented Undertaking to a depot from where the sale thereof to Domestic Tariff Area is effected through consignment agents will have to be determined by sequential application of Rules 3 to 9 of the Customs Valuation (Determination of Value of Imported Goods), 2007.

Illustration 3

Mother Mary Hospital and Research Centre imported a machine from Delta Scientific Equipments, Chicago for in house research. The price of the machine was settled at US \$ 5,000. The machine was shipped on 10th April. Meanwhile, the Hospital Authorities negotiated for a reduction in the price.

As a result, Delta Scientific Equipments agreed to reduce the price by \$ 850 and sent the revised price of \$ 4,150 under a telex dated 15th April. The machine arrived in India on 18th April.

The Commissioner of Customs has decided to take the original price as the transaction value of the goods on the ground that the price is reduced only after the goods have been shipped.

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

Answer

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

As per section 14 of the Customs Act, the transaction value of the goods is the price actually paid or payable for the goods at the time and place of importation. Further, the Supreme Court in the case *Garden Silk Mills v. UOI* has held that importation gets complete only when the goods become part of mass of goods

within the country. Therefore, since in the instant case the price of the goods was reduced while they were in transit, it could not be contended that the price was revised after importation took place. Hence, the goods should be valued as per the reduced price, which was the price actually paid at the time of importation.

Illustration 4

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

Discuss the tenability of 'A's' claim.

Answer

As per Rule 2(da), "place of importation" means the customs station, where the goods are brought for being cleared for home consumption or for being removed for deposit in a warehouse. Therefore, the outer anchorage where the goods are unloaded would not be the place of importation. Rule 10(2)(a) stipulates that for the purposes of section 14(1) of the Customs Act, 1962 and Valuation rules, value of imported goods shall be the value of such goods and shall include, the cost of transport, loading, unloading and handling charges associated with the delivery of the imported goods to the place of importation.

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



4. CUSTOMS VALUATION (DETERMINATION OF VALUE OF EXPORT GOODS) RULES, 2007

Notification No. 95/2007 Cus. (NT) dated 13.09.2007 has notified Customs Valuation (Determination of Value of Export Goods) Rules, 2007. They shall apply to the export goods. The rules are given below:-

Rule No.	Valuation Rules for Exports
2	Definitions
3	Determination of the method of valuation
4	Determination of export value by comparison
5	Computed value method
6	Residual Method
7	Declaration by the Exporter
8	Rejection of declared value

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 recognised 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.

Related Persons

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.

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



Rule 4

RULE 5 - COMPUTED VALUE METHOD

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

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



Rule 5

RULE 6 - RESIDUAL METHOD

Subject to the provisions of rule 3, where the value of the export goods cannot be determined under the provisions of rules 4 and 5, the value shall be determined using reasonable means consistent with the principles and general provisions of these rules provided that local market price of the export goods may not be the only basis for determining the value of export goods.



Rule 6

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 7****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.

Analysis: *Circular No. 37/2007 Cus. dated 09.10.2007* has been issued regarding the Customs Valuation (Determination of Value of Export Goods) Rules, 2007. Valuation Rules for export goods have been framed in a format similar to the Valuation Rules for the imported goods. Conceptually also, acceptance of Transaction Value for export goods has been emphasized in the said rules, in as much as Rule 3 specifically provides for it.

Rule 3 of the said rules also stipulates that the Transaction Value for export goods shall be accepted even where buyer and seller are related, provided that the relationship did not influence the price of the goods. Where the relationship is found to influence the price, as determined by the proper officer on receipt of further information from the exporter, the value of the export goods shall be determined by proceeding sequentially through rules 4 to 6 of the said Valuation Rules.

The persons who shall be deemed to be 'related' have been specified in Rule 2(2) of the said Valuation Rules, and this provision has been adopted from the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007.

Thus, transaction value is the primary basis for valuation of export goods and the method specified under Rule 3 will be applicable in the vast majority of cases of export by acceptance of declared value. In cases where the transaction value is not accepted, the valuation of the export goods shall be done by application of Rules 4 to 6 sequentially.

Acceptance of transaction value is, however, subject to the provision of Rule 8 which provides for rejection of declared value for the export goods in certain exceptional cases. These are situations where the assessing officer has reasons to doubt the truth or accuracy of the declared value and further enquiry or investigation is needed to determine the appropriate value. It is hereby instructed that when an investigation/enquiry is undertaken to determine whether or not the Declared Value should be accepted as Transaction Value, the export consignment shall not be ordinarily detained. Wherever there are doubts

about the declared value of the export goods, the proper officer shall retain representative sealed samples, wherever considered necessary and feasible, and allow the goods to be exported after due processing.

However, it is clarified that in a situation of serious violation such as outright mis-declaration of goods, attempt to export the goods unauthorisedly, i.e., smuggle the goods out of the country, or where there is forgery or fraudulent documentation, the goods may be detained or seized as required. No export consignment shall be detained for reasons of doubts regarding valuation without the approval of the jurisdictional Principal Commissioner/Commissioner of Customs.

An 'Explanation' relating to rejection of declared value of export goods has been added to Rule 8 to bring clarity and objectivity in exercising the authority for rejection of declared value. The Explanation clarifies that this rule as such does not provide a method for determination of value, and that it merely provides a mechanism and procedure for rejection of declared value of export goods in certain cases. It also clarifies that where the proper officer is satisfied after consultation with the exporter, the declared value shall be accepted. This Explanation also gives certain illustrative reasons which could form the basis for having doubt about the truth or accuracy of the declared value.

While raising doubt about truth or accuracy of the declared value in terms of rule 8, the proper officer shall issue a query memo specifying reasons for such doubt. Meanwhile, the goods will be released for export against a simple undertaking after drawal of representative sample as indicated in para 5. The decision to initiate the process of investigation into valuation aspects, if any, shall be taken at the earliest at the level of Joint /Additional Commissioner.

In a case where transaction value cannot be determined or the declared value is rejected under rule 8, and export value has to be determined by comparison in terms of rule 4, the proper officer shall take utmost care in selecting an export product for an in-depth inquiry. The proper officer will make the adjustments objectively on the basis of the relevant factors, some of which have been illustrated at sub rule (2) of rule 4.

Where the value has to be determined by Computed value method under rule 5, the proper officer shall give due consideration to the cost-certificate

issued by a Cost Accountant or Chartered Accountant or Government approved valuer, as produced by the exporter.

It is clarified that the main purpose of introducing the Export Valuation Rules is to provide for a sound legal basis for the valuation of export goods. It is also expected to check deliberate overvaluation of export goods and mis-utilization of value based export incentive schemes. At the same time, due care has to be taken to facilitate the movement of bonafide export goods which is vital for the country's economic growth.

The assessing officers shall, therefore, exercise due caution to avoid unnecessary queries regarding truth or accuracy of the declared export value. The Export Valuation Rules are not intended to bring about any significant change in the existing pattern of valuation of export goods. It is the responsibility of the supervisory officers to monitor regularly the export valuation practices, so as to ensure proper implementation of the said Valuation Rules without hindering the flow of bona fide export goods.

Rule 7 of the Export Valuation Rules calls for a declaration relating to the value to be filed by the exporter.



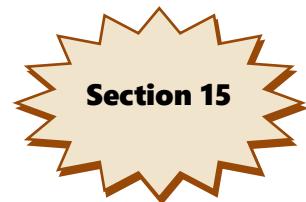
5. DATE FOR DETERMINATION OF RATE OF DUTY AND TARIFF VALUATION

FOR IMPORTED GOODS [SECTION 15]

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

- (a) **Goods are entered for home consumption under section 46** – The relevant date for the three modes of transport as laid down by section 15(1)(a) read with proviso would be as follows:
 - (i) **For goods imported by vehicle at land customs station** – the relevant date is the date of filing the B/E under section 46 or date of arrival of vehicle, whichever is later.

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



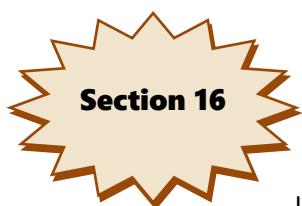
- (b) **Goods cleared from a warehouse under section 68** – the relevant date is the date on which a bill of entry for home consumption in respect of such goods is presented.
- (c) **In the case of any other goods** – the relevant date is the date of payment of duty.

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

FOR EXPORT GOODS [SECTION 16]

The relevant date for export goods is determined as per section 16. However, the provisions do not apply to baggage and imports by post.

The provisions are as follows:



- (a) **In case of goods entered for export under Section 50 (irrespective of the mode of transport)** – the relevant date is the date of the 'let export' order of the proper officer permitting export and loading of cargo on board under section 51.
- (b) **In case of any other goods** – the relevant date is the date of payment of duty.

Illustration 5

A material was imported by air at CIF price of 5,000 US\$. Freight paid was 1,500 US\$ and insurance cost was 500 US\$. The banker realized the payment from importer at the exchange rate of ₹ 71 per dollar. Central Board of Indirect taxes and Customs notified the exchange rate as ₹ 70 per US\$. Find the value of the material for the purpose of levying duty.

Answer**Computation of assessable value**

Particulars	Amount
CIF value	5000 US \$
Less: Freight	1500 US \$
Less: Insurance	500 US \$
Therefore, FOB value	3000 US \$
Assessable value for Customs purpose	
FOB value	3000 US \$
Add: Freight (20% of FOB value) [Note 1]	600 US \$
Add: Insurance (actual)	500 US \$
CIF for customs purpose	4100 US \$
Exchange rate as per CBIC [Note 2]	₹ 70 per US \$
Assessable value (₹ 70 x 4100 US \$)	₹ 2,87,000

Notes:

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

Illustration 6

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

	US \$
(i) Cost of the machine at the factory of the exporter	10,000
(ii) Transport charges from the factory of exporter to the port for shipment	500

(iii)	<i>Handling charges paid for loading the machine in the ship</i>	50
(iv)	<i>Buying commission paid by the importer</i>	50
(v)	<i>Freight charges from exporting country to India</i>	1,000
(vi)	<i>Exchange rate to be considered: 1\$ = ₹ 70</i>	
(vii)	<i>Actual insurance charges paid are not ascertainable</i>	

Answer

Computation of assessable value of the imported goods

		US \$
(i)	Cost of the machine at the factory	10,000.00
(ii)	Transport charges up to port	500.00
(iii)	Handling charges at the port	50.00
	FOB	10,550.00
(iv)	Freight charges up to India	1,000.00
(v)	Insurance charges @ 1.125% of FOB [Note 1]	118.69
	CIF	11,668.69
		₹
	CIF in Indian rupees @ ₹ 70/ per \$	₹ 8,16,808.30
	Assessable Value	₹ 8,16,808.30
	Assessable Value (rounded off)	8,16,808

Notes:

- (1) Insurance charges have been included @ 1.125% of FOB value of goods [Third proviso to rule 10(2) of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007].
- (2) Buying commission is not included in the assessable value [Rule 10(1)(a)(i) of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007].

Illustration 7

Compute export duty from the following data:

- (i) FOB price of goods: US \$ 1,00,000.
- (ii) Shipping bill presented electronically on 26th April.
- (iii) Proper officer passed order permitting clearance and loading of goods for export (Let Export Order) on 4th May.
- (iv) Rate of exchange and rate of export duty are as under:

	Rate of Exchange	Rate of Export Duty
On 26 th April	1 US \$ = ₹ 70	10%
On 4 th May	1 US \$ = ₹ 72	8%

- (v) Rate of exchange is notified for export by Central Board of Indirect taxes and Customs.

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

Answer**Computation of export duty**

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

Notes:

1. As per section 14(1) of the Customs Act, 1962, assessable value of the export goods is the transaction value of such goods which is the price actually paid or payable for the goods when sold for export from India for delivery at the time and place of exportation.

2. As per third proviso to section 14(1) of the Customs Act, 1962, assessable value has to be calculated with reference to the rate of exchange notified by the CBIC on the date of presentation of shipping bill of export.
3. As per section 16(1)(a) of the Customs Act, 1962, in case of goods entered for export, the rate of duty prevalent on the date on which the proper officer makes an order permitting clearance and loading of the goods for exportation, is considered.

Illustration 8

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

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

The rate of exchange on the relevant date was 1 US \$ = ₹70 and the rate of basic customs duty was 10% ad valorem. Ignore Integrated tax and GST Compensation Cess. Calculate the amount of duty leviable on the consignment under the Customs Act, 1962 with appropriate assumptions and explanations, where required.

Answer**Determination of transaction value of the subject goods:-**

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

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

Computation of amount of duty payable

CIF value of 800 metric tonnes:

$$= 800 \times 160 = \text{US \$ } 1,28,000$$

At the exchange rate of \$ 1 = ₹ 70

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

Illustration 9

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

(i)	Price of machine	8,000 UK Pounds
(ii)	Freight paid (air)	2,500 UK Pounds
(iii)	Design and development charges paid in UK	500 UK Pounds
(iv)	Commission payable to local agent of exporter @ 2% of price of machine, in Indian Rupees	
(v)	Date of bill of entry	24 th October (Rate BCD 10%; Exchange rate as notified by CBIC ₹ 100 per UK Pound)
(vi)	Date of arrival of aircraft	20 th October (Rate of BCD 20%; Exchange rate as notified by CBIC ₹ 98 per UK Pound)
(vii)	Integrated tax is 12%	
(viii)	Insurance charges have been actually paid but details are not available.	

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

Note: Ignore GST Compensation Cess.

Answer**Computation of total duty and integrated tax payable**

Particular	Amount
Price of machine	8,000 UK pounds
Add: Design and development charges [Note 1]	500 UK pounds
Total	8,500 UK pounds
	(₹)
Total in rupees @ ₹ 100 per pound [Note 2]	₹ 8,50,000.00
Add: Local agency commission [Note 1] (2% of 8000 UK pounds) = 160 UK pounds × ₹ 100	₹ 16,000.00
FOB value as per Customs	8,66,000.00
Add: Air freight (8,66,000 × 20%) [Note 3]	1,73,200.00
Add: Insurance @ 1.125% of customs FOB [Note 4]	9,742.50
CIF Value	10,48,942.50
Assessable value (rounded off)	10,48,942.00
Add: Basic custom duty @ 10% [Note 5]	1,04,894.20
Add: Social Welfare Surcharge @ 10% on ₹ 1,04,894.20	10,489.42
Total	11,64,325.62
Add: Integrated tax @ 12% [Note 7]	1,39,719.07
Total duty and integrated tax payable (Rounded off) (₹ 1,04,894.20 + ₹ 10,489.42 + ₹ 1,39,719.07)	2,55,102

Notes:

1. Design and development charges paid in UK and commission paid to local agent (since it is not buying commission) are includable in the assessable

- value [Rule 10 of the Customs (Determination of Value of Imported Goods) Rules, 2007]
2. The rate of exchange notified by the CBIC on the date of presentation of bill of entry has been considered [Section 14 of the Customs Act, 1962].
 3. If the goods are imported by air, the freight cannot exceed 20% of FOB price [Fifth proviso to rule 10(2) of the Customs (Determination of Value of Imported Goods) Rules, 2007].
 4. Where the insurance charges are not ascertainable, such cost is taken as 1.125% of FOB value of the goods [Third proviso to Rule 10(2) of the Customs (Determination of value of Imported Goods) Rules, 2007].
 5. Section 15 of the Customs Act, 1962 provides that rate of duty shall be the rate in force on the date of presentation of bill of entry or the rate in force on the date of arrival of aircraft, whichever is later.
 6. Integrated tax is levied on the sum total of the assessable value of the imported goods, customs duties and applicable social welfare surcharge.

Illustration 10

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

- (i) *Assessable value of the imported equipment US \$ 10,100*
- (ii) *Date of bill of entry is 25th April. Basic customs duty on this date is 10% and exchange rate notified by the Central Board of Indirect taxes and Customs is US \$ 1 = ₹65.*
- (iii) *Date of entry inwards is 21st April. Basic customs duty on this date is 20% and exchange rate notified by the Central Board of Indirect taxes and Customs is US \$ 1 = ₹70.*
- (iv) *Integrated tax: 12%*
- (v) *Social Welfare surcharge 10%*

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

Note: Ignore GST Compensation Cess.

Answer**Computation of total customs duty and integrated tax payable**

Particulars	₹
Assessable value (\$ 10,100 x 65) [Note-1]	6,56,500.00
Add: Basic custom duty @ 10% [Note-2]	65,650.00
Add: Social Welfare Surcharge @ 10% on ₹ 65,650	6,565.00
Total	7,28,715.00
Add: Integrated tax @ 12% [Note-3]	87,445.80
Total Customs duty and integrated tax payable (rounded off to nearest rupee)	1,59,660

Notes:

1. Rate of exchange notified by CBIC as prevalent on the date of filing of bill of entry would be the applicable rate [Proviso to section 14(1) of Customs Act,1962].
2. Rate of duty would be the rate as prevalent on the date of filing of bill of entry or entry inwards whichever is later. [Proviso to section 15 of the Customs Act, 1962].
3. Integrated tax is levied on the sum total of the assessable value of the imported goods, customs duties and applicable social welfare surcharge.

Illustration 11

Assessable value of an item imported is ₹ 1,00,000. Basic customs duty is 10%, integrated tax is 12%, and social welfare surcharge is 10% on duty. Compute the amount of total customs duty and integrated tax payable.

Note: Ignore GST Compensation Cess.

Answer**Computation of total customs duty and integrated tax payable**

	Particulars	₹
1.	Assessable Value	1,00,000
2.	Basic customs duty @ 10%	10,000
3.	Add: Social Welfare surcharge* @ 10% on ₹ 10,000	1000
4.	Sub-total	1,11,000
5.	Integrated tax @ 12% of ₹ 1,11,000	13,320
6.	Total customs duty and integrated tax payable [(2) + (3) + (5)]	24,320

*Social Welfare surcharge is presently exempt on IGST and GST compensation cess

Illustration 12

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

- (i) Date of presentation of bill of entry: 20th June [Rate of BCD 20%; Inter-bank exchange rate: ₹ 61.60 and rate notified by CBIC ₹ 70].
- (ii) Date of arrival of aircraft in India: 30th June [Rate of BCD 10%; Inter-bank exchange rate: ₹ 61.80 and rate notified by CBIC ₹ 73.00].
- (iii) Rate of Integrated tax: 12%. Ignore GST Compensation Cess.
- (iv) CIF value 2,000 US Dollars; Air freight 500 US Dollars, Insurance cost 100 US Dollars.
- (v) Social Welfare Surcharge 10%

Answer**Computation of total customs duty and integrated tax payable**

Particulars		Amount
CIF value		2000 US Dollars
Less: Freight	500	
Insurance	100	600 US Dollars
FOB Value		1400 US Dollars
Add: Air Freight [Note1]	280	
Insurance (actual amount)	100	380 US Dollars
		1780 US Dollars
		₹
Value @ ₹ 70.00 [Note 2]		1,24,600.00
Assessable Value		1,24,600.00
Basic Custom Duty @ 10% (a) [Note 3]		12,460.00
Add: Social Welfare Surcharge @ 10% on 12,460 (b)		1,246.00
Sub-total		1,38,306.00
Integrated tax (12% on ₹ 1,38,306) (c) [Note 4]		16,596.72
Total duty and integrated tax (a + b + c) (rounded off)		30,303

Notes:

- (1) If the goods are imported by air, the freight cannot exceed 20% of FOB price [Fifth proviso to Rule 10(2) of the Customs (Determination of Value of Imported Goods) Rules, 2007].
- (2) Rate of exchange notified by CBIC on the date of presentation of bill of entry would be the applicable rate. [Proviso to Section 14(1) of the Customs Act, 1962].

- (3) Rate of duty would be the rate as prevalent on the date of filing of bill of entry or arrival of aircraft, whichever is later [proviso to section 15 of the Customs Act, 1962].
- (4) Integrated tax is levied on the sum total of the assessable value of the imported goods, customs duties and applicable social welfare surcharge.

Illustration 13

15,000 chalices were imported for charitable distribution in India by XY Charitable Trust. The Trust did not pay either for the cost of goods or for the design and development charges, which was borne by the supplier. Customs officer computed its FOB value at USD 20,000 (including design and development charges), which was accepted by the Trust. Other details obtained were as follows:

Sl. No.	Particulars	Amount												
1.	Freight paid (air) (in USD)	4,500												
2.	Design & development charges paid in USA (in USD)	2,500												
3.	Commission payable to an agent in India (in ₹)	12,500												
4.	<p>Exchange rate notified by CBIC and rate of basic duty is as follows:</p> <table> <tr> <td>Date of Bill of Entry</td> <td>BCD</td> <td>Exchange Rate in</td> </tr> <tr> <td>8th September</td> <td>20%</td> <td>₹ 70</td> </tr> <tr> <td>Date of arrival of aircraft</td> <td>BCD</td> <td>Exchange Rate in</td> </tr> <tr> <td>30th September</td> <td>10%</td> <td>₹ 72</td> </tr> </table> <p>The inter-bank rate was 1 USD = ₹ 73</p>	Date of Bill of Entry	BCD	Exchange Rate in	8 th September	20%	₹ 70	Date of arrival of aircraft	BCD	Exchange Rate in	30 th September	10%	₹ 72	
Date of Bill of Entry	BCD	Exchange Rate in												
8 th September	20%	₹ 70												
Date of arrival of aircraft	BCD	Exchange Rate in												
30 th September	10%	₹ 72												
5.	Integrated tax	12%												
6.	Social Welfare surcharge as applicable													

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

Note: Ignore GST Compensation Cess.

Answer**Computation of total customs duty and integrated tax payable**

Particulars	Amount
FOB value computed by Customs Officer (including design and development charges)	20,000 US \$
Exchange rate [Note 1]	₹ 70 per \$
	₹
FOB value computed by Customs Officer (in rupees)	14,00,000.00
Add: Commission payable to agent in India	12,500.00
FOB value as per Customs	14,12,500.00
Add: Air freight ($₹ 14,12,500 \times 20\%$) [Note 2]	2,82,500.00
Add: Insurance (1.125% of ₹ 14,12,500) [Note 3]	15,890.63
CIF value for customs purposes	17,10,890.63
Assessable value	17,10,890.63
Add: Basic custom duty @ 10% ($₹ 17,10,890.63 \times 10\%$) – rounded off [Note 4]	1,71,089
Add: Social Welfare surcharge @ 10% on ₹ 1,71,089 rounded off	17,109
Total	18,99,089
Integrated tax @ 12% ($₹ 18,99,089 \times 12\%$) [Rounded off] [Note 5]	2,27,890
Total customs duty and integrated tax payable (₹ 1,71,089 + ₹ 17,109 + ₹ 2,27,890)	4,16,088

Note:

1. Rate of exchange notified by CBIC on the date of filing of bill of entry has to be considered [Third proviso to section 14 of the Customs Act, 1962].

2. In case of goods imported by air, freight cannot exceed 20% of FOB value [fifth proviso to rule 10(2) of the Customs (Determination of Value of Imported Goods) Rules, 2007].
3. Insurance charges, when not ascertainable, have to be included @ 1.125% of FOB value of goods [Third proviso to rule 10(2) of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007].
4. Rate of duty will be the rate in force on the date of presentation of bill of entry or on the date of arrival of the aircraft, whichever is later [Proviso to section 15 of the Customs Act, 1962].
5. Integrated tax is levied on the sum total of the assessable value of the imported goods, customs duties and applicable social welfare surcharge.

Illustration 14

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

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

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

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

Date of bill of entry	Basic customs duty	Exchange rate in ₹ (notified by CBIC)
18 th February	10%	102
Date of arrival of aircraft	Basic custom duty	Exchange rate in ₹ (notified by CBIC)
15 th February	15%	98

Inter-bank rate 1 UK Pound = ₹ 106

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

Answer

Computation of custom duty payable

Particulars	Amount
CIF value (negotiated price) [Note-1]	5,500 ₹
Less: Air freight	500 ₹
Less: Insurance	600 ₹
FOB value	4,400 ₹
	₹
FOB Value (in ₹) [4,400 ₹ x ₹ 102] [Note-2]	4,48,800
Add: Vendor inspection charges [Note-3]	Nil
Add: Commission payable to local agent [1% of FOB value] [Note-4] = (US \$ 4,400 × ₹ 102) × 1%	4,488
FOB value as per Customs	4,53,288
Freight [Note-5] [500 ₹ x ₹ 102]	51,000
Insurance [Note-6] [600 ₹ x ₹ 102]	61,200
Assessable value	5,65,488

Add: Basic custom duty @ 10% [Note-7] – rounded off	56,548.80
Social Welfare Surcharge (10% of ₹ 56,548.80) [rounded off]	5,655
Customs duty payable [rounded off]	62,204

Notes:

1. As per Section 14 of the Customs Act, 1962, the value of the imported goods is the transaction value, which means the price actually paid or payable for the goods. In this case, since the contract was re-negotiated and the importer paid the re-negotiated price, the transaction value would be such re-negotiated price and not the contract price.
2. Rate of exchange notified by CBIC on the date of filing of bill of entry will be considered as per third proviso to section 14 of the Customs Act, 1962.
3. Only the payments actually made as a condition of sale of the imported goods by the buyer to the seller are includable in the assessable value under rule 10(1)(e) of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007. Charges of vendor inspection on the goods carried out by foreign supplier on his own and not required for making the goods ready for shipment, are not includable in the assessable value of the imported goods [*Bombay Dyeing & Mfg. v. CC 1997 (90) ELT 276 (SC)*].
4. Commission paid to local agent (since it is not buying commission) is includable in the assessable value on the presumption that local agent has been appointed by the exporter [Rule 10(1)(a)(i) of the Customs Valuation Rules].
5. Actual amount incurred towards freight will be considered since freight is not more than 20% of FOB value [Fifth proviso to rule 10(2) of Customs Valuation Rules].
6. Actual insurance charges paid are includable in the assessable value as per rule 10(2)(b) of the Customs Valuation Rules.
7. As per proviso to section 15 of the Customs Act, 1962, rate of duty will be the rate in force on the date of presentation of bill of entry or on the date of arrival of the aircraft, whichever is later.

Illustration 15

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

- (i) *FOB value of the machine: 10,000 UK Pound*
- (ii) *Freight (Air): 3,000 UK Pound*
- (iii) *Licence fee, the buyer was required to pay in UK: 400 UK Pound*
- (iv) *Buying commission paid in India ₹ 20,000*
- (v) *Date of bill of entry was 20th May and the rate of exchange notified by CBIC on this date was ₹ 99.00 per one pound. Rate of BCD was 7.5%.*
- (vi) *Date of arrival of aircraft was 25th May and the rate of exchange notified by CBIC on this date was ₹ 98.50 per pound and rate of BCD was 10%.*
- (vii) *Integrated tax was 12% and ignore GST Compensation Cess.*
- (viii) *Insurance premium details were not available.*

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

Answer

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

Particular	Amount (£)
FOB value	10,000
Add: License fee required to be paid in UK [Note – 1]	400
Customs FOB value	10,400
Exchange rate is ₹ 99 per £ [Note – 2]	
	₹
Value in rupees	10,29,600.00
Add: Air freight [Restricted to 20% of ₹ 10,29,600 (customs FOB value)] [Note – 3]	2,05,920.00

Insurance @ 1.125% of ₹ 10,29,600 [Note – 4]	11,583.00
Buying commission is not includable in the assessable value [Note – 5]	–
CIF Value	12,47,103.00
Assessable value	12,47,103.00
Rate of duty is 10% [Note – 6]	
Add: Basic custom duty @ 10% ($\text{₹ } 12,47,103 \times 10\%$) – rounded off (A)	1,24,710
Add: Social Welfare Surcharge (10% of ₹ 1,24,710) [rounded off] (B)	12,471
Value for integrated tax	13,84,284
Add: Integrated tax @ 12% -rounded off (C) [Note – 7]	1,66,114
Total customs duty and integrated tax payable [(A) + (B) + (C)]	3,03,295

Note:

1. Licence fee relating to imported goods payable by the buyer as a condition of sale is includable in the assessable value - Rule 10(1)(c) of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 [hereinafter referred to as Customs Valuation Rules].
2. Rate of exchange notified by CBIC on the date of filing of bill of entry has to be considered [Third proviso to section 14 of the Customs Act, 1962].
3. In case of goods imported by air, freight cannot exceed 20% of FOB value [Fifth proviso to rule 10(2) of the Customs Valuation Rules].
4. Insurance charges, when not ascertainable, have to be included @ 1.125% of FOB value of goods [Third proviso to rule 10(2) of the Customs Valuation Rules].
5. Buying commission is not included in the assessable value [Clause (a)(i) of sub-rule (1) of rule 10 of the Customs Valuation Rules].

6. Rate of duty will be the rate in force on the date of presentation of bill of entry or on the date of arrival of the aircraft, whichever is later [Proviso to section 15 of the Customs Act, 1962].
7. Integrated tax is levied on the sum total of the assessable value of the imported goods, customs duties and applicable social welfare surcharge.



6. SPECIAL PROVISIONS FOR CLASSIFICATION OF SETS OF ARTICLES AND ACCESSORIES

Section 19 of the Customs Act provides that:

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).

However, -

- (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.

As per the Accessories (Conditions) Rules, 1963, accessories of and spare parts and maintenance or repairing implements for, any article when imported along with that article shall be chargeable at the same rate of duty as that article, if the proper officer is satisfied that in the ordinary course of trade such accessories, parts and implements are compulsorily supplied along with that article and no separate charge is made for such supply and their price being included in the price of the relevant article.

TERMS USED IN COMMERCIAL PARLANCE

Students may refer the terms and contents of documents used in the International Trade transactions.

(1) Invoice	<p>This is the basic commercial document showing particulars regarding description of goods</p> <ul style="list-style-type: none"> - 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.
(2) Packing specification	Giving particulars of the contents of each package in the consignment.
(3) Certificate of Origin	A certificate issued by the competent authority in the country of manufacture giving the extent of the manufacture/value addition in that country.
(4) Bill of Lading	<p>A negotiable document given by the carriers of the cargo giving particulars of</p> <ul style="list-style-type: none"> (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. <p>It is a negotiable document which has to be surrendered to the carrier for getting delivery of the goods.</p>
(5) Air Consignment Note	It is a document corresponding to Bill of Lading, in the case of cargo imported or exported by air.
(6) 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.

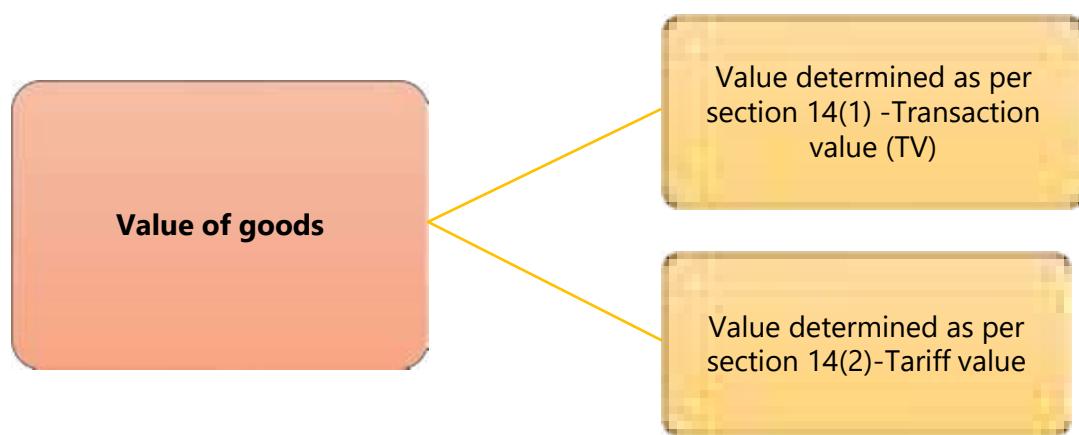
(7) Quotation	It is a document, which indicates the price, the terms and other conditions on which the seller is willing to supply goods to the buyer.
(8) Acceptance	It refers to the formalisation of the contract of sale between the buyer and the seller. Once the seller of the goods sends his acceptance of the order of the buyer (the indent) the contract is complete. The acceptance will <i>inter alia</i> 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.
(9) 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.
(10) Sight draft	A documentary bill of exchange between importer and exporter, promising payment to exporter immediately on delivery of original negotiable documents to the importer through banking channel. It is in contrast to time draft, where importer gets fixed time for making payment after delivery of original negotiable documents to importer.
(11) 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.
(12) 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.

(13) Retirement of documents	The process of handing over of original negotiable copies of the shipment documents like invoice, packing specification, certificate of origin, by the exporter to importer generally through a banker.
(14) Non-negotiable documents	<p>Since retirement of the original document takes time, non-negotiable documents are given to the importer to facilitate clearance.</p> <p>Negotiable documents require original bill of lading/airway bill to be shown for taking delivery of the cargo. However, non-negotiable bill of lading/airway bill does not require original to be shown by the buyer. Delivery can be given upon authentication of consignee coordinates.</p>
(15) Boat/Lighterage Charge	Sometimes the vessel is unable to get a berth alongside the quay in the harbour. The goods are then transported from the ship to the shore by boats / lighters. The charges paid therefore are called Boat / Lighterage charges.
(16) 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 organisations 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.
(17) Insurance cover	It is customary to insure all goods which are traded 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.



LET US RECAPITULATE

Value of goods [Section 2(41) of the Customs Act]



Technical terms relating to value in the course of Import or Export – International Commercial (INCO) Terms

Ex-Factory Price	• Price of the goods at the factory gate
F.O.B.	• Cost of the goods as placed on board vessel at the port of shipment
C.I.F	• Cost at which the goods are delivered at the Indian port

Default mode of valuation = Declared transaction value + Elements that are to be added under law

Valuation of goods based on Section 14

Modes of identifying the value of imported/export goods for the purpose of payment of customs duty

Transaction Value [Section 14(1)]

Price actually paid/payable for goods when sold for export to/from India

for delivery at time & place of importation/ exportation

Buyer & seller not related

Price sole consideration for sale

additional obligations of the importer where Board has reason to believe that the value of such goods may not be declared truthfully

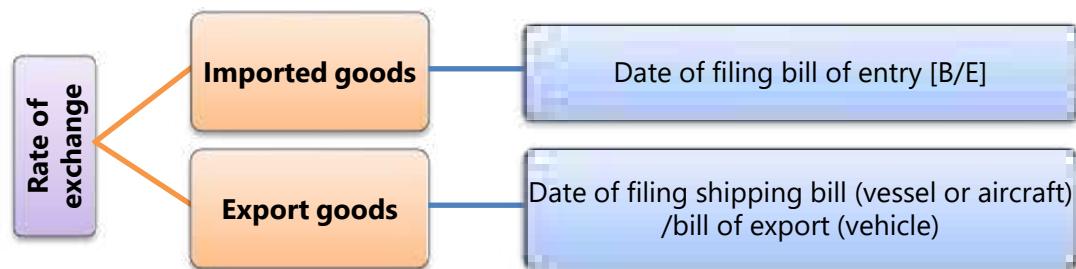
Tariff Value [Section 14(2)]

CBIC may notify Tariff values for any class of imported/ export goods

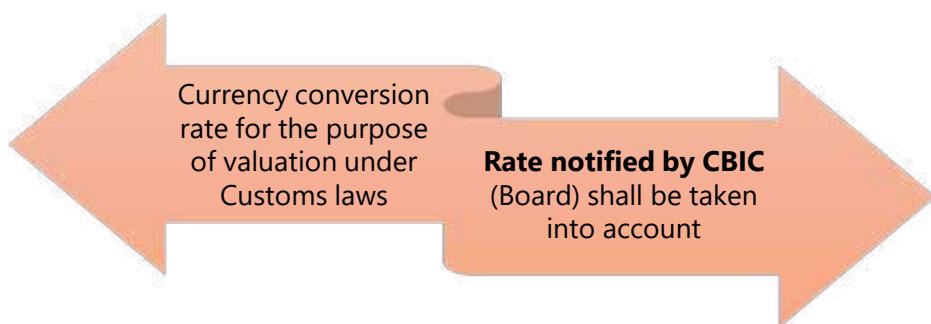
Where tariff values are fixed, then duty to be chargeable w.r.t. to such tariff value.

Section 14(2) has an overriding effect on section 14(1)

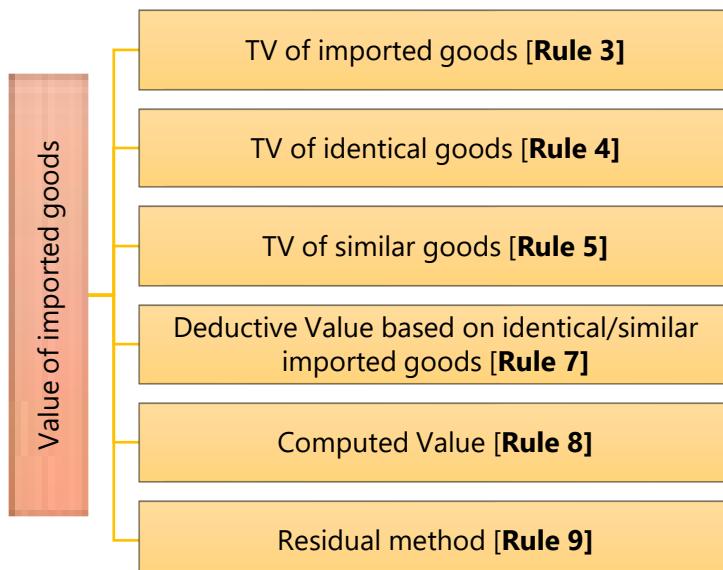
Conversion Dates



Currency conversion rate



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

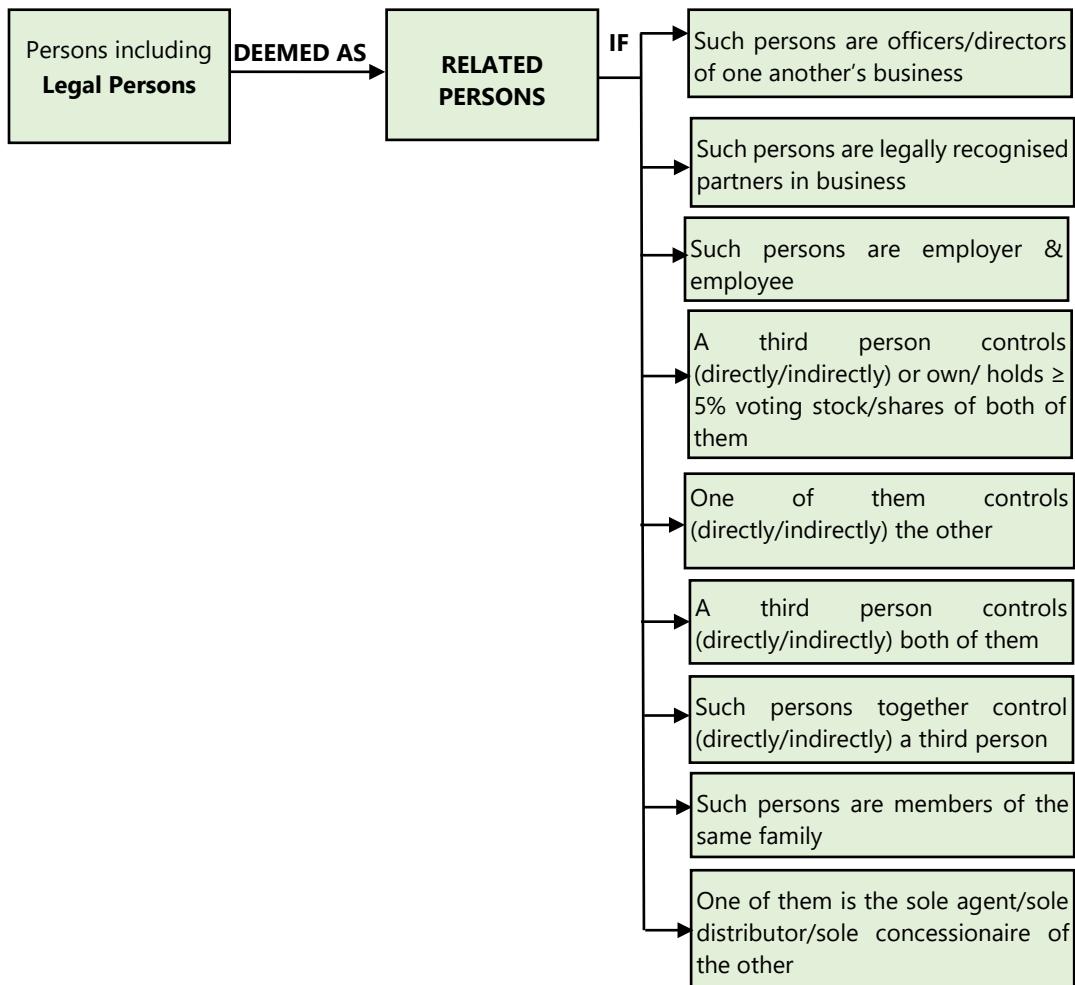


Rule2 – Definitions

Place of Importation



Related Persons [Rule 2(2)]



Rule 3 – Determination of the method of valuation

Value of imported goods under rule 3(1)

TV adjusted as per rule 10, subject to rule 12 (i.e. right of rejection by Proper Officer)

Such TV shall be accepted provided that -

- No restriction on buyer for disposal of goods
- Sale/Price is not subject to conditions/consideration for which value cannot be determined
- No further consideration will accrue to seller which is not adjustable as per rule 10
- Buyer & seller are unrelated

If buyer & seller are related, then also TV is accepted

- When relationship didn't influence price &
- Importer proves that price is close to TV of identical/ similar goods, in sales to unrelated buyers; deductive/ computed value of identical/similar goods

Rule 4 – Transaction value of identical goods

Transaction value of identical goods sold for export to India

Imported at or about the same time as the goods being valued

Sold at the same commercial level & substantially the same quantity

If sold at different commercial level/quantity, then adjustment to be made for the difference

Adjustment to be made on account of difference in distance and means of transport

In case more than one transaction value of identical goods is available, lowest value to be considered

Rule 5 – Transaction value of similar goods

The principles of valuation of identical goods also apply to valuation of similar goods

Rule 6 – Determination of value where value cannot be determined under rules 3, 4 and 5

Value to be determined under rule 7

Rule 8-when the value cannot be determined under rule 7

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

Rule 7 – Deductive value



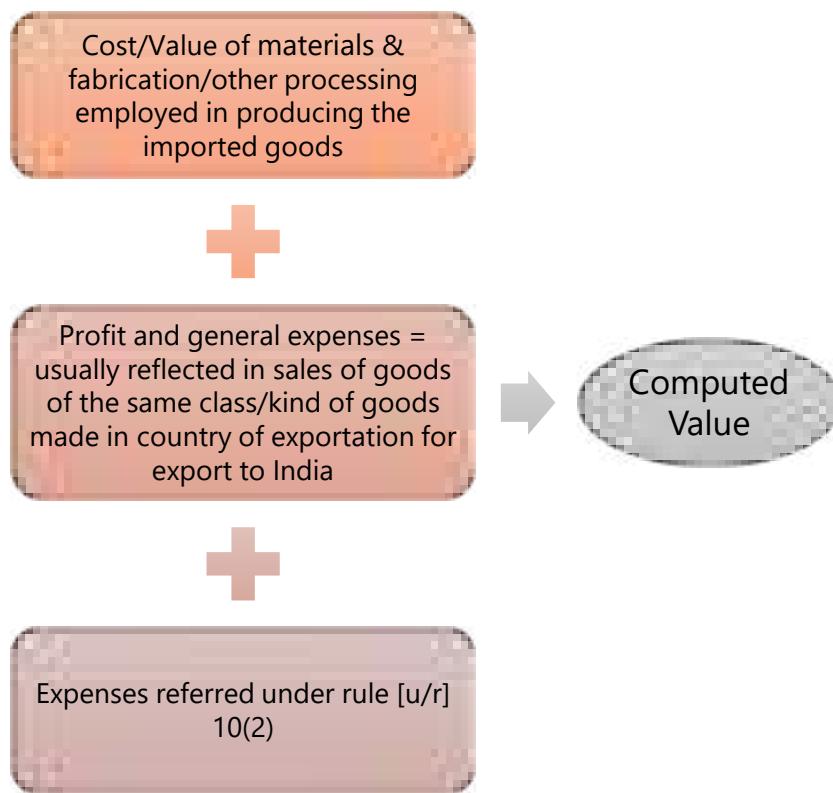
Unit price at which imported/identical/similar imported goods are sold in greatest aggregate quantity to unrelated persons in India.

Commission, profit & general sales expenses

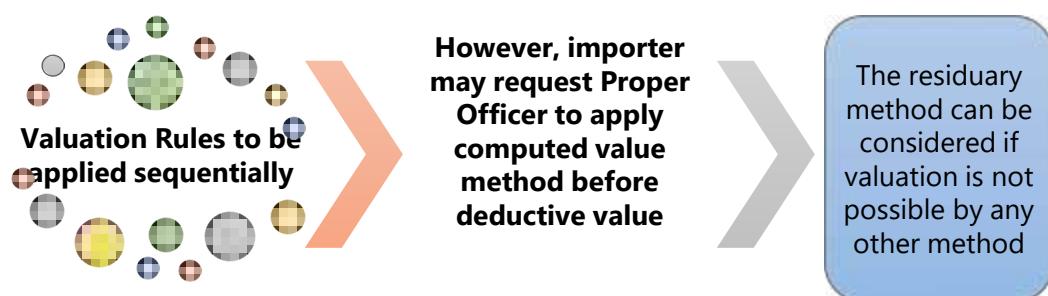
Transport, insurance costs & associated costs within India

Customs duties & other taxes payable in India

Rule 8 – Computed value



Method of application of valuation rules



Rule 9 – Residual method



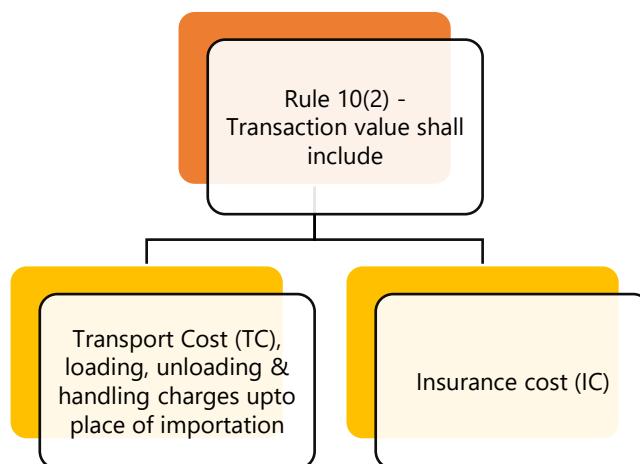
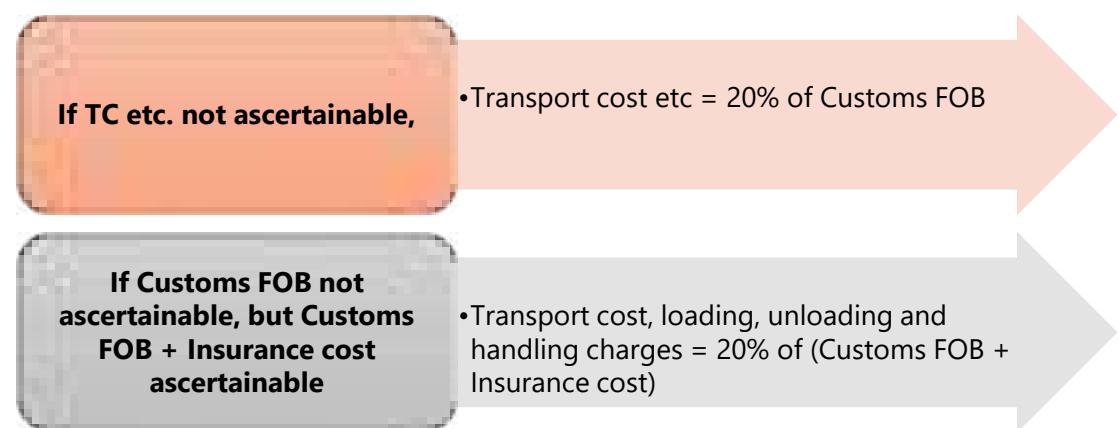
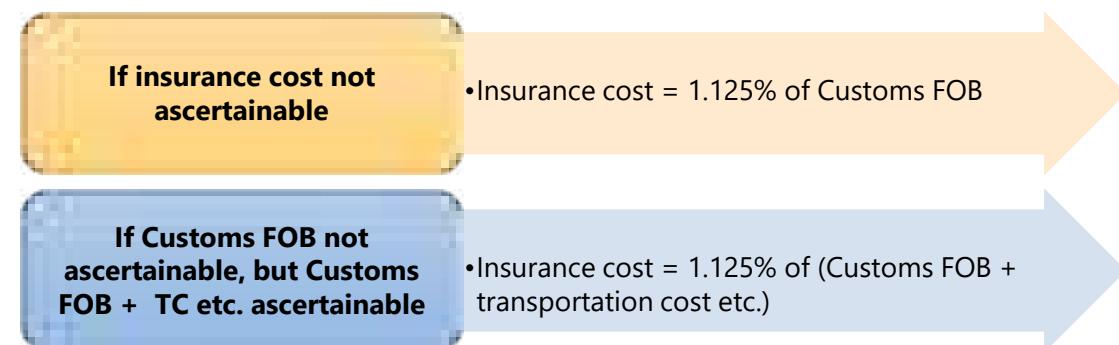
Residuary method shall not be used for valuation on the basis of—

- (i) Selling price in India of the goods produced in India;
- (ii) a system which provides for the acceptance for customs purposes of the highest of the 2 alternative values;
- (iii) the price of the goods on the domestic market of the country of exportation;
- (iv) the cost of production other than computed values which have been determined for identical/similar goods as per rule 8;
- (v) the price of the goods for the export to a country other than India;
- (vi) minimum customs values; or
- (vii) arbitrary or fictitious values.

Rule10 – Cost and Services

Rule 10(1) - Costs to be added if not included:

- i) commissions etc. **except buying commissions**, cost of containers/ packing
- ii) engineering, design work etc. **undertaken elsewhere than in India**, materials, tools, dies, consumables etc. used in production of imported goods - supplied free of charge/ at reduced cost
- iii) royalties & license fees as condition of sale
- iv) Proceeds of any subsequent sale accruing to seller
- v) all other payments as condition of sale

Rule 10(2)**Transport cost [TC]****Insurance cost**

Key points regarding Transportation cost

In case of goods imported by **air**, where transport, loading, unloading and handling charges is ascertainable

- such cost shall not exceed 20% of FOB value

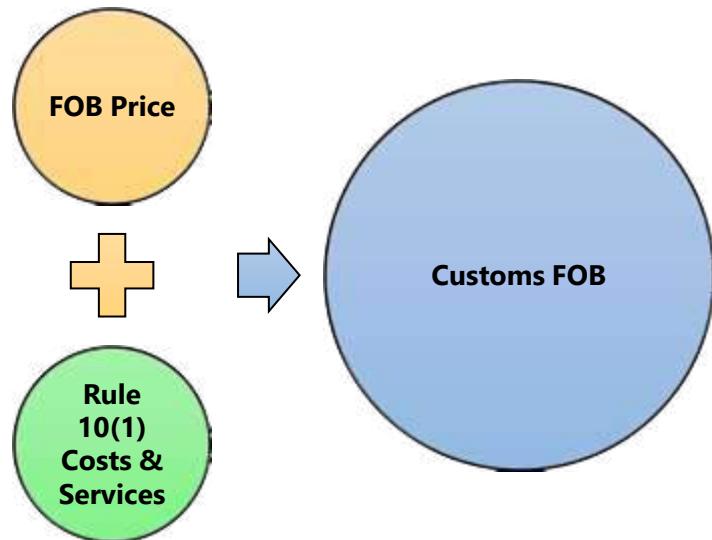
In case of goods imported by sea or air and **transshipped** to another customs station in India

- the cost of insurance, transport, loading, unloading, handling charges associated with such transshipment shall be excluded.
- TC does not include freight from port to ICD/CFS

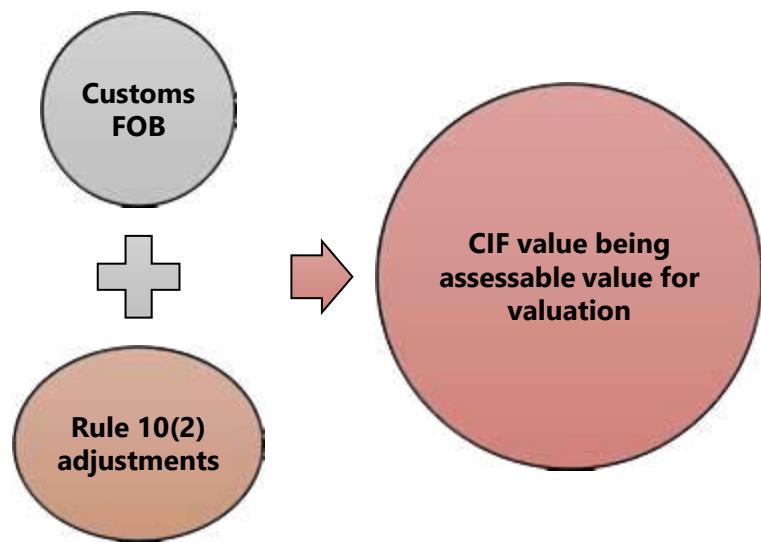
Cost of transport of the imported goods

- includes the ship demurrage charges on chartered vessels, lighterage/barge charges.

Customs FOB



Assessable value



Rule 11 – Declaration by the Importer



Rule 12 – Rejection of declared value

Proper Officer to reject value of imported goods declared by importer

If he has reason to doubt the truth or accuracy of such value

It shall be deemed that the transaction value of such imported goods cannot be determined u/r 3(1)

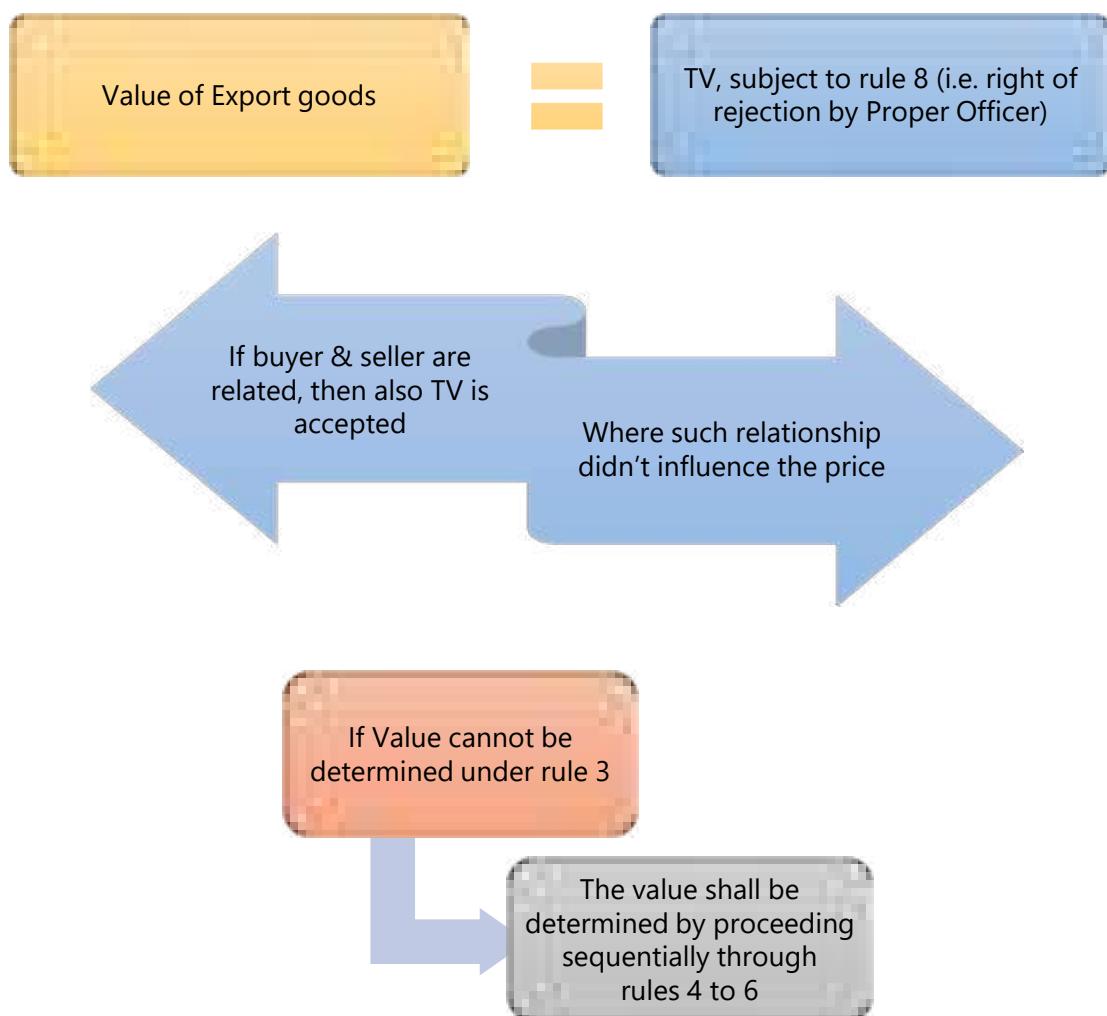
Customs Valuation (Determination of value of Export goods) Rules, 2007

Rule 2 – Definitions

Goods of like kind and quality [Rule 2(1)(a)] Export goods which are identical/similar in physical characteristics, quality & reputation as the goods being valued and;

Perform the same functions/are commercially interchangeable with the goods being valued, produced by the same person/a different person

Rule 3 - Determination of the method of valuation

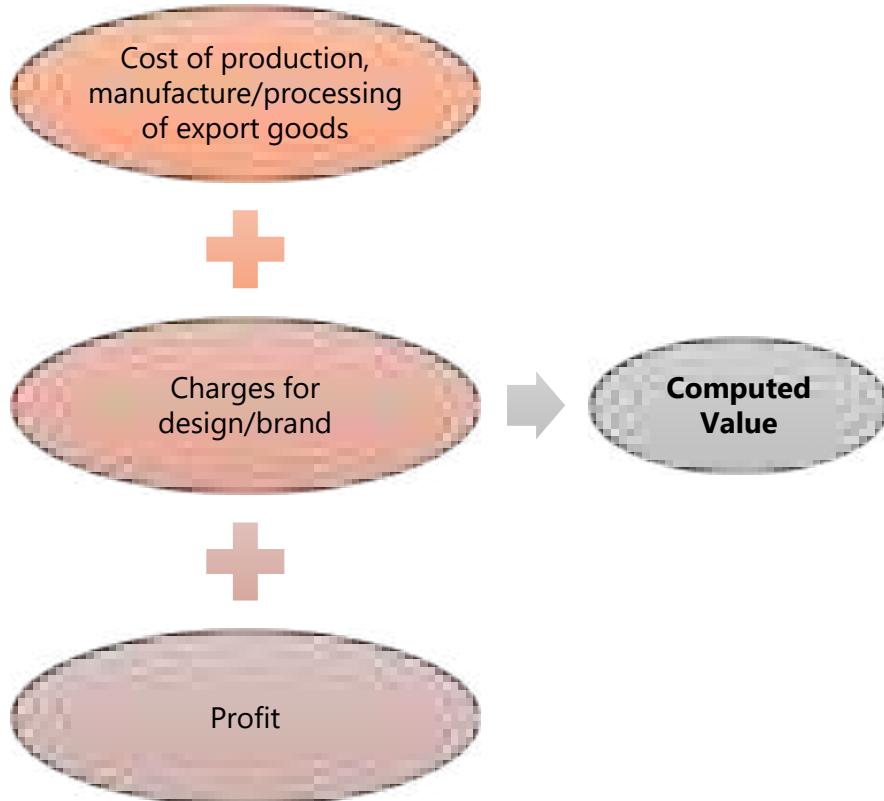


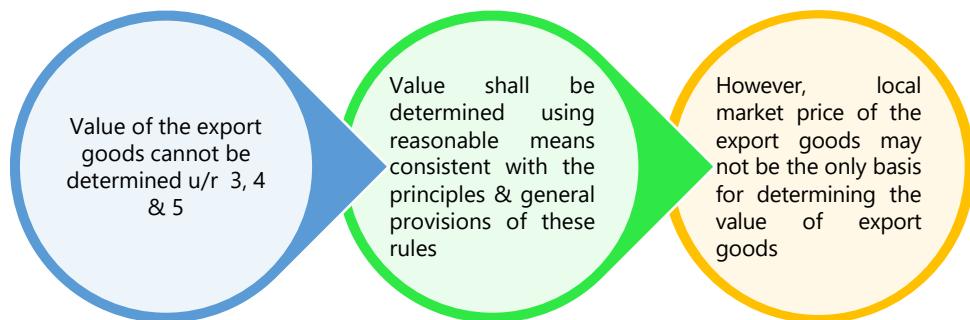
Rule 4 - Determination of export value by comparison

Value = Transaction value of "**goods of like kind and quality**" exported at/about the same time to other buyers in the same destination country of importation/in its absence another destination country of importation adjusted by proper officer considering relevant factors, including -

- (i) difference in the dates of exportation
- (ii) difference in commercial levels & quantity levels
- (iii) difference in composition, quality & design
- (iv) difference in domestic freight & insurance charges

Rule 5 - Computed value method



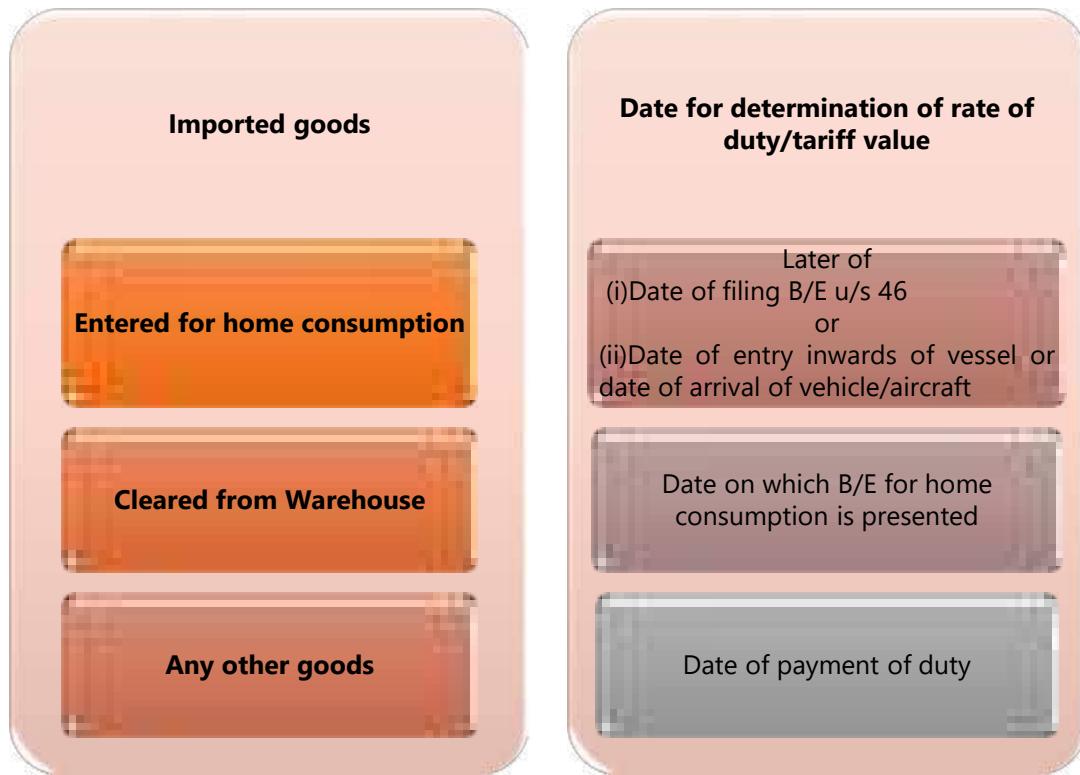
Rule 6 - Residual method**Rule 7 - Declaration by the exporter****Rule 8 - Rejection of declared value**

Proper Officer to reject value of export goods declared by exporter

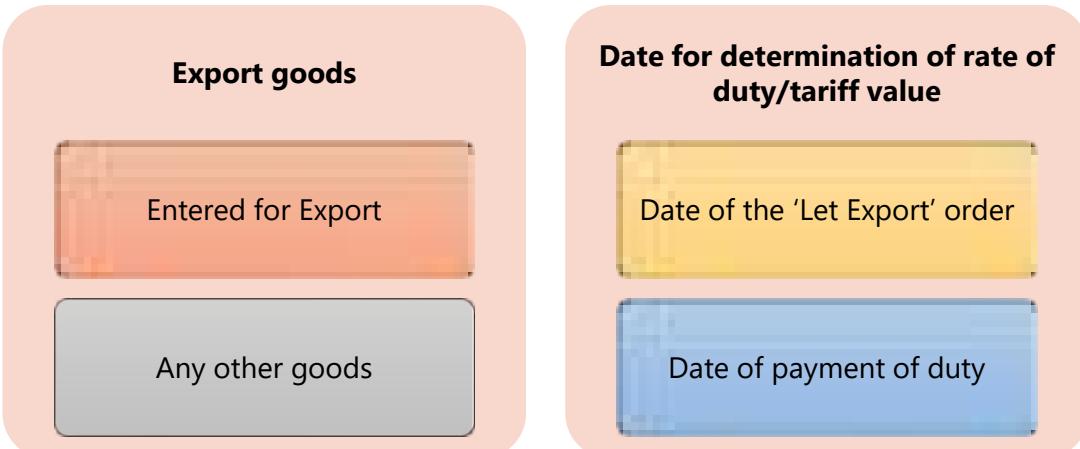
If he has reason to doubt the truth/accuracy of such value

It shall be deemed that the transaction value of such export goods cannot be determined under rule 3(1)

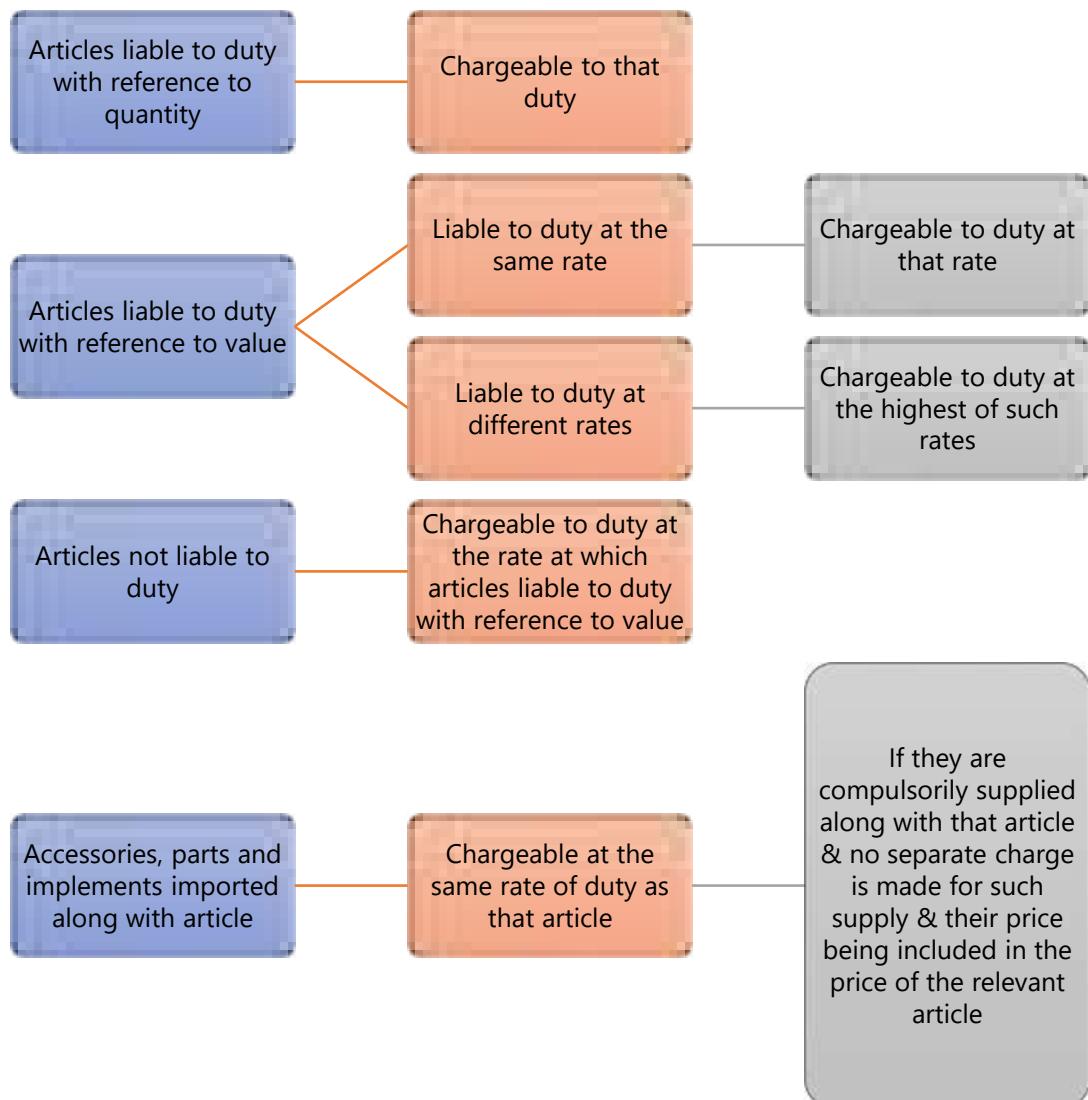
Date for determination of rate of duty & tariff valuation of imported goods [Section 15]



Date for determination of rate of duty & tariff valuation of export goods [Section 16]



Determination of duty where goods consist of a set of articles liable to different rates of duty [Section 19]





TEST YOUR KNOWLEDGE

1. *Briefly explain the following with reference to the Customs (Determination of Value of Imported Goods) Rules, 2007:*
 - (i) *Goods of the same class or kind*
 - (ii) *Computed value*
2. *Explain when the costs and services as given in rule 10 of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 are to be added to the value of the identical goods under rule 4.*
3. *Examine the validity of the following statements with reference to the Customs Act, 1962 giving brief reasons:*
 - (i) *Service charges paid to canalizing agent² are not includible in the assessable value of imports. Such agent imports the goods from foreign sellers and enters into an agreement to sell such goods with buyers in India in high seas.*
 - (ii) *Charges for "vendor inspection" on the second hand goods carried out by foreign supplier on his own and not required for making the goods ready for shipment, are not includible in the assessable value of the imported goods.*
4. *BSA & Company Ltd. has imported a machine from U.K. From the following particulars furnished by it, arrive at the assessable value for the purpose of customs duty payable.*

	Particulars	Amount
(i)	<i>Price of the machine</i>	<i>10,000 U.K. Pounds</i>

² A canalising agent refers to a government-authorized organization or entity that has exclusive or special rights to import or export certain goods or commodities of strategic significance. The canalizing agent imports the specified strategic goods in bulk from the foreign sellers and then enters into sale agreement with the various producers or buyers in India. The consideration charged by the canalizing agent includes service charges apart from the purchase value.

(ii)	<i>Freight (air)</i>	3,000 U.K. Pounds
(iii)	<i>Engineering and design charges paid to a firm in U.K.</i>	500 U.K. Pounds
(iv)	<i>License fee relating to imported goods payable by the buyer as a condition of sale</i>	20% of Price of machine
(v)	<i>Materials and components supplied in UK by the buyer free of cost valued at ₹ 20,000</i>	
(vi)	<i>Insurance paid to the insurer in India</i>	₹ 6,000
(vii)	<i>Buying commission paid by the buyer to his agent in U.K.</i>	100 U.K. Pounds

Other particulars:

- (i) *Inter-bank exchange rate: ₹ 98 per U.K. Pound.*
- (ii) *CBIC had notified for purpose of section 14 of the Customs Act, 1962, exchange rate of ₹ 100 per U.K. Pound.*
- (iii) *Importer paid ₹ 5,000 towards demurrage charges for delay in clearing the machine from the Airport.*

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

5. *Briefly explain with reference to the provisions of the Customs Act, the relevant date for determination of rate of duty and tariff valuation for imports through a vehicle where bill of entry is filed prior to the arrival of the vehicle.*
6. *With reference to the provisions of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007, explain briefly the chief reasons on the basis of which the proper officer can raise doubts on the truth or accuracy of the declared value.*
7. *Jagat Corporation Limited imported some goods from US. The details of the transaction are as follows:-*

Authority	Rate of exchange
CBIC	1 US \$ = ₹ 70
RBI	1 US \$ = ₹ 71

CIF value of the goods is \$ 1,50,000

Rate of basic custom duty is 10%

Rate of social welfare surcharge is 10%

Integrated tax is 18%. Ignore GST Compensation Cess.

Calculate total customs duty and integrated tax payable thereon.

8. *ABC Industries Ltd. imports an equipment by air. CIF price of the equipment is 6,000 US\$, freight paid is 1,200 US\$ and insurance cost is 1,800 US\$. The banker realizes the payment from importer at the exchange rate of ₹ 61 per US\$. Central Board of Indirect taxes and Customs notifies the exchange rate as ₹ 70 per US\$ while rate of exchange notified by RBI is ₹ 72 per US\$. ABC Industries Ltd. expends ₹ 56,000 in India for certain development activities with respect to the imported equipment.*

Basic customs duty is 10%, Integrated tax is leviable @ 12% and social welfare surcharge is 10% on duty. Ignore GST Compensation Cess.

You are required to compute the amount of total duty and integrated tax payable by ABC Industries Ltd. under Customs law.

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

		US \$
(i)	<i>Cost of the machine at the factory of the exporter</i>	20,000
(ii)	<i>Transport charges from the factory of exporter to the port for shipment</i>	800
(iii)	<i>Handling charges paid for loading the machine in the ship</i>	50
(iv)	<i>Freight charges from exporting country to India</i>	5,000

(v)	<i>Buying commission paid by the importer</i>	100
		(₹)
(vi)	<i>Lighterage charges paid by the importer at port of importation</i>	12,000
(vii)	<i>Freight incurred from port of entry to Inland Container depot</i>	60,000
(viii)	<i>Ship demurrage charges paid at port of importation</i>	24,000
	<i>Date of bill of entry</i>	<i>20th January (Rate BCD 20%; Exchange rate as notified by CBIC ₹70 per US \$)</i>
	<i>Date of entry inward</i>	<i>25th March (Rate of BCD 10%; Exchange rate as notified by CBIC ₹75 per US \$)</i>
	<i>Integrated tax</i>	12%

Note: Ignore GST Compensation Cess.

10. *M/s Impex imported some consignment of goods on 1st June. A bill of entry for warehousing of goods was presented on 5th June and the materials were duly warehoused. The goods were subject to duty @ 50% ad valorem. In the meanwhile, on 1st July, an exemption notification was issued reducing the effecting customs duty @ 30%, ad valorem. M/s Impex filed their bill of entry for home consumption on 1st August claiming duty @ 30% ad valorem. However, Customs Department charged duty @ 50% ad valorem being the rate on the date of clearance into the warehouse.*

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

- (i) *the rate of duty applicable for clearance for home consumption in this case.*
- (ii) *whether the rate of exchange on 1st August could be adopted for purpose of conversion of foreign currency into local currency?*

11. *Differentiate between deductive value and computed value.*
12. *What is residual method of valuation? Discuss with reference to the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007.*

13. Enumerate the various costs and services that are to be added under rule 10 of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 to arrive at the "transaction value".
14. In the context of Customs Valuation (Determination of Price of Imported Goods) Rules, 2007, explain the meaning of:
 - (i) Similar goods
 - (ii) Identical goods
15. Briefly discuss the provisions relating to date for determining the rate of duty and tariff valuation of imported goods.
16. Product 'Z' was imported by Mr. X by air. The details of the import transaction are as follows:

Particulars	US \$
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

Though the aircraft arrived on 22nd August, the bill of entry for home consumption was presented by Mr. X on 20th August.

The other details furnished by Mr. X are:

	20th August	22nd August
Rate of basic customs duty	20%	10%
Exchange rate notified by CBIC	₹ 70 per US\$	₹ 72 per US\$
Exchange rate prescribed by RBI	₹ 71 per US\$	₹ 72 per US\$
Integrated tax leviable under section 3(7) of the Customs Tariff Act, 1975	18%	12%

Compute-

- (i) value of product 'Z' for the purpose of levying customs duty
- (ii) customs duty and tax payable

17. An importer from Cochin imports goods from an exporter in US. The vessel carrying the goods reaches Mumbai port first and from there goods are transshipped to Cochin port.

Determine the assessable value of the imported goods under the Customs Act, 1962 from the following particulars:

S.No.	Particulars	Amount
(i)	Cost of the machine at the factory of the exporter	US \$ 20,000
(ii)	Transport charges from the factory of exporter to the port for shipment	US \$ 1,000
(iii)	Handling charges paid for loading the machine in the ship	US \$ 100
(iv)	Buying commission paid by the importer	US \$ 100
(v)	Freight charges from exporting country to India	US \$ 2,000
(vi)	Actual insurance charges paid are not ascertainable	---
(vii)	Charges for design and engineering work undertaken for the machine in US	US \$ 5,000
(viii)	Unloading and handling charges paid at the place of importation	₹ 1,500
(ix)	Transport charges from Mumbai to Cochin port	₹ 25,000
(x)	Exchange rate to be considered: 1\$ = ₹ 70	

18. ABC Industries Ltd. of Mumbai imported one machine through vessel from Japan, in the month of November.

The following particulars are made available:

S. No.	Particulars	Amount in Japanese Yen (¥)
(i)	Cost upto port of exportation incurred by exporter	6,00,000
(ii)	Loading charges at port of exportation	25,000
(iii)	Freight charges from port of export to port of import in India.	1,00,000

Following additional amounts paid by ABC Industries Ltd:-

S. No.	Particulars	Amount in Indian rupees (₹)
(i)	Designing charges, necessary for such machine, paid to consultancy firm in New Delhi	8,00,000
(ii)	Commission paid (not the buying commission) to local agent of exporter.	1,25,000
(iii)	Actual insurance charges paid to the place of importation are not ascertainable.	-
(iv)	Lighterage charges paid at the port of importation	20,000

Other Information :

- (i) Rate of basic customs duty is 10%
- (ii) Rate of social welfare surcharge is 10%
- (iii) Integrated tax leviable under section 3(7) of Customs Tariff Act, 1975 is 12%.
- (iv) Ignore GST compensation cess.
- (v) Rate of exchange to be taken is 1 Japanese Yen (¥) = ₹ 0.71

Arrive at the total customs duty, including integrated tax payable under section 3(7) of the Customs Tariff Act, 1975 with appropriate working notes.

19. *Mr. X imported certain goods from a related person Mr. Q of US and transaction value has been rejected. Rules 4 and 5 of the Import Valuation Rules are found inapplicable as no similar/ identical goods are imported in India. Mr. X furnishes cost related data of imports and requests customs authorities to determine value accordingly as per rule 8. The relevant data are*
1. *Cost of materials incurred by Mr. Q \$ 2000*
 2. *Fabrication charges incurred by Mr. Q \$ 1000*
 3. *Other chargeable expenses incurred by Mr. Q \$ 400*
 4. *Other indirect costs incurred by Mr. Q \$ 250*
 5. *Freight from Mr. Q 's factory to US port \$ 250*
 6. *Loading charges at US port \$ 100*
 7. *Normal net profit margin of Mr. Q is 20% of FOB*
 8. *Air freight from US port to Indian port \$ 1,500*
 9. *Insurance from US port to Indian port \$ 50*
 10. *Exchange rate ₹ 70 per \$*

The customs authorities are of the opinion that since value as per rule 7 can be determined at ₹4,00,000, there is no need to apply rule 8.

Can the request of Mr. X be legally acceptable? If so, compute the assessable value under the Customs Act, 1962.



ANSWERS/HINTS

1. (i) As per rule 2(1)(c) of Customs Valuation (Determination of Value of Imported Goods) Rules, 2007, goods of the same class or kind, means imported goods that are within a group or range of imported goods produced by a particular industry or industrial sector and includes identical goods or similar goods.
- (ii) As per rule 2(1)(a) of the said rules, computed value means the value of imported goods determined in accordance with rule 8. The value of

imported goods is taken as computed value when valuation is not possible as per any of rules earlier than rule 8 and cost is ascertainable.

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

- (a) the cost or value of materials and fabrication or other processing employed in producing the imported goods;
 - (b) an amount for profit and general expenses equal to that usually reflected in sales of goods of the same class or kind as the goods being valued which are made by producers in the country of exportation for export to India;
 - (c) the cost or value of all other expenses under sub-rule (2) of rule 10.
2. As per rule 4(1)(c) of the Customs Valuation (Determination of Value of Imported Goods Rules, 2007) where imported goods are being valued as per rule 4, the value of the identical goods is adjusted to take into account the difference attributable to the commercial level or to the quantity or both. According to rule 4(2) where costs and charges referred to in rule 10 are included in the value of identical goods, adjustment has to be made of the difference in such costs and charges between the imported goods and the identical goods.
- Therefore, if the value of the identical goods does not include certain specific costs and charges relating to the imported goods, these are to be included as per rule 10.
3. (i) The statement is not valid. Since the canalizing agent is not the agent of the importer nor does he represent the importer abroad, purchases in bulk by canalizing agency from foreign seller and subsequent sale by it to Indian importer on high seas sale basis are independent of each other. Hence, the commission or service charges paid to the canalizing agent are includable in the assessable value as these cannot be termed as buying commission [*Hyderabad Industries Ltd. v. UOI 2000 (115) ELT 593 (SC)*].

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

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

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

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

Notes:

- Engineering and design charges paid in UK, licence fee relating to imported goods payable by the buyer as a condition of sale, materials

and components supplied by the buyer free of cost and actual insurance charges paid are all includable in the assessable value [Rule 10 of the Customs (Determination of Value of Imported Goods) Rules, 2007].

2. As per Explanation to section 14(1) of the Customs Act, 1962, assessable value should be calculated with reference to the rate of exchange notified by the CBIC.
3. If the goods are imported by air, the freight cannot exceed 20% of FOB price [Fifth proviso to rule 10(2) of the Customs (Determination of Value of Imported Goods) Rules, 2007].
4. Buying commission is not included in the assessable value [Rule 10(1)(a) of the Customs (Determination of Value of Imported Goods) Rules, 2007].
5. Only ship demurrage charges on chartered vessels are included in the cost of transport of the imported goods. Thus, demurrage charges for delay in clearing the machine from the Airport will not be includable in the assessable value [Explanation to Rule 10(2) of the Customs (Determination of Value of Imported Goods) Rules, 2007].
5. As per section 15(1) of the Customs Act, 1962, the relevant date for determination of rate of duty and tariff valuation of goods entered for imports through a vehicle is the date of presentation of bill of entry OR date of arrival of the vehicle, whichever is later.

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

6. As per explanation to rule 12 of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007, the chief reasons on the basis of which the proper officer can raise doubts on the truth or accuracy of the declared value may include:-
 - (a) the significantly higher value at which identical or similar goods imported at or about the same time in comparable quantities in a comparable commercial transaction were assessed;
 - (b) the sale involves an abnormal discount or abnormal reduction from the ordinary competitive price;
 - (c) the sale involves special discounts limited to exclusive agents;

- (d) the misdeclaration of goods in parameters such as description, quality, quantity, country of origin, year of manufacture or production;
- (e) the non declaration of parameters such as brand, grade, specifications that have relevance to value;
- (f) the fraudulent or manipulated documents.

7. Computation of total custom duty and integrated tax payable

Particulars	Amount
CIF Value	\$ 1,50,000.00
Assessable value (in ₹) = \$1,50,000 × ₹ 70 (Note -1)	₹ 1,05,00,000.00
Add: Basic custom duty @ 10% (₹ 1,05,00,000 × 10%)	₹ 10,50,000.00
Add: Social Welfare surcharge [₹10,50,000 × 10%]	₹ 1,05,000
Sub-total	1,16,55,000.00
Add: Integrated tax (₹ 1,16,55,000 × 18%) (Note-2)	₹ 20,97,900.00
Total custom duty and integrated tax payable (rounded off)	₹ 32,52,900

Notes:-

- (1) The applicable exchange rate is the rate notified by CBIC [Explanation to section 14(1) of the customs Act, 1962].
- (2) Integrated tax is levied on the sum total of the assessable value of the imported goods, customs duties and applicable social welfare surcharge.

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

Particulars	Amount
CIF value	6,000 US \$
Less: Freight	1,200 US \$

Less: Insurance	1,800 US \$
FOB value	3,000 US \$
Add: Freight (20% of FOB value) [Note 1]	600 US \$
Add: Insurance (actual)	1,800 US \$
CIF	5,400 US \$
Exchange rate as per CBIC [Note 3]	₹ 70 per US \$
Assessable value = ₹ 70 x 5,400 US \$	₹ 3,78,000
Add: Basic customs duty @ 10%	₹ 37,800
Add: Social Welfare Surcharge @ 10%	₹ 3,780
Sub-total	₹ 4,19,580
Integrated tax @ 12% of ₹ 4,19,580 [Note 5]	₹ 50,349.60
Total customs duty and integrated tax payable [₹ 37,800 + ₹ 3,780 + ₹ 50,349.60]	₹ 91,929.60
Total customs duty and integrated tax payable (rounded off)	₹ 91,930

Notes:

1. If the goods are imported by air, the freight cannot exceed 20% of FOB price [Fifth proviso to rule 10(2) of the Customs (Determination of Value of Imported Goods) Rules, 2007].
2. Rate of exchange determined by CBIC is considered [Clause (a) of the explanation to section 14 of the Customs Act, 1962].
3. Rule 10(1)(b)(iv) of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 *inter alia* provides that value of development work undertaken elsewhere than in India is includable in the value of the imported goods. Thus, development charges of ₹ 56,000 paid for work done in India have not been included for the purposes of arriving at the assessable value.
4. Integrated tax is levied on the sum total of the assessable value of the imported goods, customs duties and applicable social welfare surcharge.

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

Particulars	US \$
Cost of the machine at the factory	20,000
Transport charges up to port	800
Handling charges at the port	50
FOB	<u>20,850</u>
FOB value in Indian rupees @ ₹ 70/- per \$ [Note 1]	14,59,500
Freight charges up to India [US \$ 5,000 x ₹ 70]	3,50,000
Lighterage charges paid by the importer [Note 2]	12,000
Ship demurrage charges on chartered vessels [Note 2]	24,000
Insurance charges @ 1.125% of FOB [Note 3]	<u>16,419.38</u>
CIF	18,61,919.38
<i>Add: Basic customs duty @ 10% [Note 4] [a]</i>	1,86,192
<i>Add: Social Welfare surcharge @ 10% [b]</i>	<u>18,619.20</u>
Total	20,66,730.58
<i>Add: Integrated tax @ 12% of ₹ 20,66,730.58 [c] [Note 5]</i>	2,48,007.67
Total custom duty and integrated tax payable [(a) +(b) + (c)] rounded off	4,52,819

Notes:

- (1) Rate of exchange notified by CBIC on the date of presentation of bill of entry is considered [Explanation to section 14 of the Customs Act, 1962].

- (2) Cost of transport of the imported goods includes ship demurrage charges and lighterage charges [Explanation to Rule 10(2) of Customs Valuation (Determination of Value of Imported Goods) Rules, 2007].
 - (3) Insurance charges is included @ 1.125% of FOB value of goods [Third proviso to rule 10(2) of Customs Valuation (Determination of Value of Imported Goods) Rules, 2007].
 - (4) Rate of duty is the rate prevalent on the date of presentation of bill of entry or the rate prevalent on the date of entry inwards, whichever is later [Section 15 of the Customs Act, 1962].
 - (5) Integrated tax is levied on the sum total of the assessable value of the imported goods, customs duties and applicable Social welfare surcharge.
 - (6) Buying commission is not included in the assessable value [Rule 10(1)(a)(i) of Customs Valuation (Determination of Value of Imported Goods) Rules, 2007].
 - (7) Freight incurred from port of entry to Inland Container depot is not includable in assessable value [Rule 10(2)(a) of Customs Valuation (Determination of Value of Imported Goods) Rules, 2007].
- 10. (i)** Section 15(1)(b) of the Customs Act, 1962 provides that in the case of goods cleared from a warehouse, rate of duty applicable is the rate of duty in force on the date on which a bill of entry for home consumption in respect of such goods is presented.
- In the given case, since M/s Impex has filed the bill of entry for home consumption on 1st August, rate of duty is the rate prevalent on the said date viz. 30%.
- (ii)** Third proviso to section 14 of the Customs Act, 1962 provides that the rate of exchange notified by the CBIC as prevalent on the date of presentation of bill of entry for warehousing is the applicable rate of exchange for conversion of foreign currency into local currency.
- Therefore, in the given case, rate of exchange that would be prevalent on date of presentation of bill of entry for warehousing i.e. 5th June and

not the one prevalent on date of presentation of bill of entry for home consumption i.e., 1st August, would be adopted.

11. [Refer Para 7]
12. [Refer Para 7]
13. [Refer Para 7]
14. [Refer Para 7]
15. [Refer Para 9]
16. **Computation of assessable value of product 'Z'**

Particulars	Amount
Ex-factory price of the goods	8,500 US \$
Freight from factory of the exporter to load airport (airport in the country of exporter)	250 US \$
Loading and handling charges at the load airport	250 US \$
Freight from load airport to the airport of importation in India	<u>4,500 US \$</u>
Total cost of transport, loading and handling charges associated with the delivery of the imported goods to the place of importation	5,000 US \$
<i>Add: Cost of transport, loading, unloading and handling charges associated with the delivery of the imported goods to the place of importation (restricted to 20% of FOB value) [Note 1]</i>	1,800 US \$
Insurance (actual)	<u>2,000 US \$</u>
CIF for customs purpose	12,300 US \$
Value for customs purpose	12,300 US \$
Exchange rate as per CBIC [Note 2]	₹ 70 per US \$

	Amount (₹)
Assessable value (₹ 70 x 12,300 US \$)	8,61,000
<i>Add: Basic customs duty @ 10% [Note 3]</i>	<i>86,100</i>
<i>Add: SWS @ 10%</i>	<i>8,610</i>
<i>Value for the purpose of levying integrated tax [Note 4]</i>	<i>9,55,710</i>
<i>Add: Integrated tax @ 12%</i>	<i>1,14,685.2</i>
Total duty & tax payable (rounded off)	2,09,395

Notes:

- (1) In the case of goods imported by air, the cost of transport, loading, unloading and handling charges associated with the delivery of the imported goods to the place of importation shall not exceed 20% of the FOB value of the goods. [Fifth proviso to rule 10(2) of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 (CVR)].
FOB value in this case is the ex-factory price of the goods (8,500 US \$) plus the cost of transport from factory to load airport (250 US \$) plus loading and handling charges at the load airport (250 US \$) which is 9,000 US \$.
- (2) Rate of exchange determined by CBIC is to be considered [Clause (a) of the explanation to section 14 of the Customs Act, 1962].
- (3) Section 15 of the Customs Act, 1962 provides that rate of duty shall be the rate in force on the date of presentation of bill of entry or the rate in force on the date of arrival of aircraft, whichever is later.
- (4) Integrated tax is levied on the sum total of the assessable value of the imported goods and customs duties [Section 3(8) of the Customs Tariff Act, 1962]. SWS leviable on integrated tax have been exempted.

17. Computation of assessable value of imported goods

Particulars	Amount (US \$)
Price of the machine at the factory of the exporter	20,000
<i>Add:</i> Transport charges up to the port in the country of the exporter [Note 1]	1,000
Handling charges at the port in the country of the exporter [Note 1]	100
Charges for design and engineering work undertaken for the machine in US [Note 2]	5,000
Buying commission [Note 3]	Nil
FOB value	26,100.00
<i>Add:</i> Freight charges up to India	2,000.00
Insurance charges @ 1.125% of FOB [Note 4]	293.63
Transport charges from Mumbai to Cochin port [Note 5]	Nil
CIF value	28,393.63
<i>Add:</i> Unloading and handling charges paid at the place of importation [Note 6]	Nil
Assessable value	28,393.63
Assessable value in Indian rupees @ ₹ 70/ per \$	₹19,87,554.10
Assessable value (rounded off)	₹ 19,87,554

Notes:

- (1) The cost of transport, loading, unloading and handling charges associated with the delivery of the imported goods to the place of importation are includable in the assessable value [Rule 10(2)(a) of the

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

- (2) Design and engineering work undertaken elsewhere than in India and necessary for the production of the imported goods is includable in the assessable value [Rule 10(1)(b)(iv) of the CVR].
- (3) Buying commission is not included in the assessable value [Rule 10(1)(a)(i) of the CVR].
- (4) If insurance cost is not ascertainable, the same shall be added @ 1.125% of FOB value of the goods [Third proviso to rule 10(2) of the CVR].
- (5) Cost of insurance, transport, loading, unloading, handling charges associated with transshipment of imported goods to another customs station in India is not included in the assessable value [Sixth proviso to rule 10(2) of the CVR].
- (6) As per rule 10(2) of the CVR, only charges incurred for delivery of goods "to" the place of importation are includable in the transaction value.

The loading, unloading and handling charges associated with the delivery of the imported goods at the place of importation are not to be added to the CIF value of the goods.

18. Computation of assessable value of the imported goods

	Japanese Yen
Cost upto port of exportation	6,00,000
Add: Loading charges at the port of exportation [Note-1]	25,000
Total in Japanese Yen	6,25,000
	₹
Total in Indian rupees @ ₹ 0.71 per Japanese Yen	4,43,750.00
Add: Commission paid to local agent of exporter [Note-3]	1,25,000.00
FOB value as per customs	5,68,750.00

Add: Freight charges from port of export to port of import in India [Note-1] [1,00,000 Japanese Yen × 0.71 = ₹ 71,000]	71,000.00
Add: Lighterage charges paid by the importer at port of importation [Note-1]	20,000
Add: Insurance charges @ 1.125% of FOB [₹ 5,68,750 × 1.125%] [Note-4]	6,398.43
CIF value	6,66,148.43
Assessable Value (rounded off)	6,66,148
Add: Basic customs duty @ 10% of ₹ 6,66,148 (rounded off) (A)	66,615
Add: Social welfare surcharge @ 10% of ₹ 66,615 (rounded off) (B)	6,662
Total	7,39,425
Add: Integrated tax @ 12% of ₹ 7,39,425 (rounded off) (C)	88,731
Total custom duty and integrated tax payable [(A) +(B) + (C)] (rounded off)	1,62,008

Notes:

- (1) The cost of transport, loading, unloading and handling charges associated with the delivery of the imported goods to the place of importation are includable in the assessable value [Rule 10(2) of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 (CVR)]. Further, explanation to rule 10(2), *inter alia*, clarifies that cost of transport of the imported goods includes lighterage charges.
- (2) Design and engineering work is includable in the assessable value only when the same is undertaken elsewhere than in India and necessary for the production of the imported goods [Rule 10(1) of the CVR].
- (3) Buying commission is not included in the assessable value [Rule 10(1) of the CVR]. Commission paid to local agent of exporter is includable in the assessable value since it is not buying commission.

- (4) If insurance cost is not ascertainable, the same shall be added @ 1.125% of FOB value of the goods [Rule 10(2) of the CVR].
 - (5) Cost of insurance, transport, loading, unloading, handling charges associated with transshipment of imported goods to another customs station in India is not included in the assessable value [Rule 10(2) of the CVR].
- 19.** The value of the imported goods is determined under rule 8 of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 (hereinafter referred to as Import Valuation Rules) if the same cannot be determined under the earlier rules. However, the order of application of rules 7 and 8 can be reversed at the request of the importer and with the approval of the proper officer.

Thus, request of Mr. X for determination of value under rule 8 is legally acceptable, if the same is also approved by the proper officer.

Assuming that the request of Mr. X has been approved by the proper officer, the assessable value of the imported goods under rule 8 will be the sum of-

- (a) the cost of materials and fabrication or other processing;
- (b) an amount for profit and general expenses
- (c) the cost or value of all other expenses under rule 10(2) of the said rules.

Computation of assessable value

Particulars	Amount (\$)
Cost of materials	2,000
<i>Add:</i> Fabrication charges	1,000
Other chargeable expenses	400
Other indirect costs	250
Cost of the goods at Mr. Q's factory	3,650
<i>Add:</i> Net profit margin @ 20% of FOB, i.e. 25% of total cost	1,000

Total cost till US port = Cost of the goods at factory + Freight from factory to US port and loading charges at US port = \$ 4,000 [\$ 3,650 + \$ 250 + \$ 100] FOB value = Total cost till port + profit = \$ 5,000 (\$ 4,000 +\$ 1,000)	
<i>Add:</i> Freight & loading/unloading charges [In case of import by air, the cost of transport, loading, unloading and handling charges associated with the delivery of the imported goods to the place of importation are restricted to 20% of FOB value]	1,000
Insurance charges	50
Assessable value	5,700
Assessable value in Indian Rupees (Exchange rate - ₹ 70 per \$)	3,99,000

SIGNIFICANT SELECT CASES

1. 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. CCus. 2015 (323) ELT 433 (SC)

Facts of the Case: The assessee imported crude oil. On account of ocean loss, the quantity of crude oil shown in the bill of lading was higher than the actual quantity received into the shore tanks in India. The assessee paid the customs duty on the actual quantity received into the shore tanks.

Point of Dispute: The Department contended that the quantity of crude oil mentioned in the various bills of lading should be the basis for payment of duty, and not the quantity actually received into the shore tanks in India. This was stated on the basis that duty was levied on an *ad valorem* basis and not on a specific rate. The assessee contended that it makes no difference as to whether the basis for customs duty is at a specific rate or is *ad valorem*, in as much as the quantity of goods at the time of import alone is to be looked at.

Tribunal's Observations: The Tribunal accepted the Department's contentions on the basis of the following reasons:

- (i) Duty ought to be levied on the total payment made by the assessee irrespective of the quantity received.
- (ii) An *ad valorem* duty would necessarily lead to this result but duty levied at the specific rate would not. The quantity of goods to be considered in the latter case will only be the quantity of crude oil received in the shore tank.
- (iii) Section 14 of the Customs Act, 1962 kicks in when the duty is on an *ad valorem* basis and sections 13 and 23 of the Act do not stand in the way because it is not the question of demanding duty on goods not received, but it is the demand of duty on the transaction value. In spite of the "ocean loss", the assessee has to make payment on the basis of the bill of lading quantity.

Supreme Court's Observations: The assessee raised the issue before the Supreme Court. The Apex Court noted the following:

- (i) The levy of customs duty under section 12 of the Act is only on goods imported into India. Goods are said to be imported into India when they are brought into India from a place outside India. Unless such goods are brought into India, the act of importation which triggers the levy does not take place.
- (ii) If the goods are pilfered after they are unloaded or lost or destroyed at any time before clearance for home consumption or deposit in a warehouse, the importer is not liable to pay the duty leviable on such goods. This is for the reason that the import of goods does not take place until they become part of the land mass of India and until the act of importation is complete which under sections 13 and 23 happen only after an order for clearance for home consumption is made and/or an order permitting the deposit of goods in a warehouse is made.
- (iii) Under section 23(2), the owner of the imported goods may also at any time before such orders have been made relinquish his title to the goods and shall not be liable to pay any duty thereon. In short, he may abandon the said goods even after they have physically landed at any port in India but before any of the aforesaid orders have been made. This again is for the good reason that the act of importation gets complete when goods are in the hands of the importer after they have been cleared either for home consumption or for deposit in a warehouse.
- (iv) Further, as per section 47 of the Customs Act, the importer has to pay import duty only on goods that are entered for home consumption. Obviously, the quantity of goods imported will be the quantity of goods at the time they are entered for home consumption.

The Supreme Court stated that Tribunal's reasoning for concluding that the bill of lading quantity alone should be considered for the purpose of valuing the imported goods is incorrect in law. The Apex Court examined each of the reasons given by the Tribunal as under:

- (i) The Tribunal lost sight of the fact that a levy in the context of import duty can only be on imported goods, that is, on goods brought into India from a place outside of India. Till that is done, there is no charge to tax.

- (ii) The taxable event in the case of imported goods is "import". The taxable event in the case of a purchase tax is the purchase of goods. The quantity of goods stated in a bill of lading would perhaps reflect the quantity of goods in the purchase transaction between the parties, but would not reflect the quantity of goods at the time and place of importation. A bill of lading quantity, therefore, could only be validly looked at in the case of a purchase tax but not in the case of an import duty.
- (iii) The Tribunal wholly lost sight of sections 13 and 23 of the Act. Where goods which are imported are lost, pilfered or destroyed, no import duty is leviable thereon until they are out of customs and come into the hands of the importer. It is clear, therefore, that it is only at this stage that the quantity of the goods imported is to be looked at for the purposes of valuation.
- (iv) The basis of the judgment of the Tribunal is on a complete misreading of section 14 of the Customs Act. First and foremost, the said section is a section which affords the measure for the levy of customs duty which is to be found in section 12 of the said Act. Even when the measure talks of value of imported goods, it does so at the time and place of importation, which again is lost sight of by the Tribunal.
- (v) The Tribunal's reasoning that somehow when customs duty is *ad valorem* the basis for arriving at the quantity of goods imported changes, is wholly unsustainable. Whether customs duty is at a specific rate or is *ad valorem* does not make the least difference to the statutory scheme. Customs duty whether at a specific rate or *ad valorem* is not leviable on goods that are pilfered, lost or destroyed until a bill of entry for home consumption is made or an order to warehouse the goods is made. This is for the reason that the import is not complete until what has been stated above has happened.

Supreme Court's Decision: The Supreme Court set aside the Tribunal's judgment and declared that the quantity of crude oil actually received into a shore tank in a port in India should be the basis for payment of customs duty.

2. Whether the marketing, advertising, sponsorship and promotional expenses/payments should be includable in assessable value of imported goods as per rule 10(1)(e) of Customs Valuation Rules?

The Commissioner of Customs v. M/s Indo Rubber and Plastic Works 2021 (378) ELT A141(SC)

Facts of the Case: The assessee entered into distribution agreement with the exporter for the purpose of import and sale of 'Li Ning' branded sports goods within India.

Point of Dispute: The Department alleged that marketing, advertising, sponsorship and promotional expenses/ payments made by the assessee to promote the 'Li Ning' brand was a condition of sale and consequently, such amount was liable to be included in the value of the imported goods in terms of rule 10(1)(e) of the Customs Valuation Rules.

Tribunal's observation: The Tribunal rejected the Department's contentions on the basis of the following reasons:-

- i. There was nothing in the agreement that a fixed amount or fixed percentage of the invoice value of the imported goods, was obliged to be spent by the assessee towards sales promotion/ advertisement, **as a condition of sale/ import.**
- ii. The activity of **advertisement and sales promotion was a post import activity** incurred by the assessee on its own account and not for discharge for any obligation of the seller under the terms of sale.
- iii. The assessee **importer was not obliged to give any account of expenditure incurred by it to the exporter**, unless such expenditure was incurred at the instance of the exporter under stipulation of reimbursement.

Supreme Court's Decision: The Apex Court upheld the tribunal's decision, rejecting the Department's claim, by holding that the **marketing, advertising, sponsorship and promotional expenses/payments made by the assessee for promotion of brand is not includable in assessable of imported goods** and thus, rule 10(1)(e) of the Customs Valuation Rules is not invokable.

IMPORTATION AND EXPORTATION OF GOODS



LEARNING OUTCOMES

After studying this chapter, you would be able to:

- comprehend the statutory provisions pertaining to importation and exportation.
- comprehend the duties and obligations of a person-in-charge of a conveyance bringing goods into or taking goods out of India.
- understand and apply the procedure for clearance of imported goods and export goods.
- understand the provisions relating to postal articles and stores.
- Understand and apply the procedures relating to clearance of baggage.
- analyse the statutory provisions pertaining to transit and transhipment and appreciate the difference between the two.

CHAPTER OVERVIEW



Importation

Statutory Provisions

Procedure for clearance of imported goods

Exportation

Procedure for clearance of export goods

Procedure for postal articles

Special provisions relating to stores

Special procedures relating to clearance of baggage

Transit and Transhipment



1. INTRODUCTION

The principles governing levy and exemption from customs duties have already been discussed in the previous chapters. There are various procedures under the Customs Act which govern assessment, collection, transportation and other important aspects. The procedures relating to assessment and collection of customs duty are discussed in this chapter.

The provisions relating to transportation are well understood when studied with the importation and exportation procedures since both chapters are governed by the same legal provisions. Hence the procedures relating to transportation have been covered in the current chapter under the relevant headings.





2. IMPORTATION

In this chapter, we will consider the procedure for assessment and collection of customs duty in respect of the following six situations of imports:

1. Goods imported by Sea
2. Goods imported by Air
3. Goods imported by Land
4. Goods imported by Post
5. Goods imported by passengers as their baggage
6. Ship stores considered to be imported and charged to customs duty

IMPORTATION

Special provisions have been made in respect of the latter three kinds of imports though they will necessarily be covered in one of the three earlier categories.



3. DEFINITIONS OF IMPORTANT TERMS



Adjudicating authority [Section 2(1):] means any authority competent to pass any order or decision under this Act, but does not include the Board, Commissioner (Appeals) or Appellate Tribunal. The adjudicating authority can adjudicate demand of customs duty, confiscation and penalties under Customs Act.



Assessment [Section 2(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,

and includes provisional assessment, self-assessment, reassessment and any assessment in which the duty assessed is nil.

-  **Baggage [Section 2(3)]:** includes unaccompanied baggage but does not include motor vehicles.
-  **Beneficial owner[Section 2(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.
-  **Bill of entry [Section 2(4)]:** means a bill of entry referred to in section 46, to be filed when goods are imported by sea or air. This is not to be confused with bill of lading, which is a receipt issued by the carrier to the consignor for the goods.
-  **Bill of export [Section 2(5)]:** means a bill of export referred to in section 50 to be filed when goods are exported via land route.
-  **Coastal goods [Section 2(7)]:** means goods, other than imported goods, transported in a vessel from one port in India to another.
-  **Conveyance [Section 2(9)]:** includes a vessel, an aircraft and a vehicle.
-  **Customs airport [Section 2(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.

Customs area [Section 2(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.

Customs port [Section 2(12)]: 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.

Customs Station [Section 2(13)]: means any customs port, customs airport, international courier terminal, foreign post office or land customs station.

Dutiable goods: [Section 2(14)]: means any goods:-

- (a) which are chargeable to duty and
- (b) on which duty has not been paid.

In order to be dutiable, any article must first satisfy both the following conditions:-

- (i) The article should fall within the ambit of the word goods [defined under sec 2(22)].
- (ii) The article should find a mention in the Customs Tariff.

Entry [Section 2(16)]: 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.

Exporter [Section 2(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.

Foreign Post Office [Section 2(20A)]: means any post office appointed under clause (e) of sub-section (1) of section 7 to be a foreign post office.

Foreign going vessel or aircraft: [Section 2(21)]: 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

includes-

- any naval vessel of any foreign Government taking part in any naval exercise;
- any vessel engaged in fishing or any other operations outside the territorial waters of India;
- any vessel or aircraft proceeding to a place outside India for any purpose whatsoever.

Hence, the definition consists of two limbs:-

- (a) The first limb applies to the vessel/aircraft for the time being engaged in the carriage of passengers/goods between any port/airport in India and any port/airport outside India.
- (b) The second limb covers other vessels which are which are proceeding to a place outside India or engaged in activities outside the territorial waters of India or which are foreign naval vessels taking part in a naval exercise.



Goods: [Section 2(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.



Import: [Section 2(23)] with its grammatical variations and cognate expressions, means bringing into India from a place outside India.

The definition of imports is not restricted only to commercial imports. It only means bringing of goods from any place outside India into India.

The meaning of import has been one of the most contentious issues in Customs. There are two school of thoughts. One school of thought is that import gets completed when the vessel carrying goods crosses the territorial

waters of India. The other school of thought is that the import is complete only when the goods mingle with the landmass of India. Now the settled law is in favour of second school of thought. It has been held in *Garden Silk Mills v. UOI* 1999 (113) ELT 358 (SC) that import of goods into India commences when the goods enter the territorial waters of India, but continue and complete only when the goods become part of mass of goods within the country. The taxable event occurs only when the goods reaches the customs barrier and the bill of entry for home consumption is filed.

-  **Arrival manifest or Import manifest or Import report [Section 2(24)]:** means the report required to be delivered under section 30. It may be noted that import report is required only when goods are imported *via* land route.
-  **Imported Goods: [Section 2(25)]** means any goods brought into India from a place outside India but does not include goods, which have been cleared for home consumption.
-  **Importer: [Section 2(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.

The definition of importer includes not only the owner but also any other person holding out to be an importer. Owner is a person who is holding the documents of title to the goods. This will include a high sea buyer.

IMPORTER

However, importer also includes any person holding himself to be the importer for purpose of clearance of goods. This is the person who files the import documents.

-  **India: [Section 2(27)]** includes the territorial waters of India. The definition of India is an inclusive definition and includes not only the land mass of India but also the territorial waters of India. The territorial waters extend to 12 nautical miles into the sea from the appropriate base line.
-  **International Courier Terminal [Section 2(28A)]:** means any place appointed under clause (f) of sub-section (1) of section 7 to be an international courier terminal.

**Person-in-charge: [Section 2(31)]**

S.No.	In relation to	Person-in-charge means
1.	vessel	the master of the vessel
2.	aircraft	the commander or the pilot-in-charge of the aircraft
3.	railway train	the conductor, guard or other person having the chief direction of the train
4.	any other conveyance	the driver or other person-in-charge of the conveyance



Prohibited goods [Section 2(33)]: means any goods the import or export of which is subject to any prohibition under the Customs 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.



Stores [Section 2(38)]: means goods for use in a vessel or aircraft and includes fuel and spare parts and other articles of equipment, whether or not for immediate fitting.

The definition does not cover goods for use in a vehicle.



Vehicle [Section 2(42)]: means conveyance of any kind used on land and includes a railway vehicle.



4. STATUTORY PROVISIONS

From the above, it is seen that import is an act of bringing anything into India from a place outside India and it gets completed once the goods culminate with the land mass of India. Also, goods include Vessels, Aircrafts, Vehicles, Stores, Baggage, Currency, and other movable property. The provisions of procedure for importation of goods are given in section 29 to 38 and 45 to 49 of Customs Act, 1962. The same has been discussed in detail in the subsequent paragraphs.

ARRIVAL OF VESSELS AND AIRCRAFTS IN INDIA [SECTION 29]

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

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

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

In other words, vessels or aircrafts entering India from outside India can only call or land at a customs port or a customs airport. However, the Central Board of Indirect taxes and Customs can permit calling/landing of vessels and aircrafts at any place other than customs port or customs airport. Any contravention of this provision will operate as a presumption against the person-in-charge of conveyance or beneficial owner to have an intention to illegally import goods into India. So, entry of (or attempt to enter) any goods originating from outside India into any place other than customs airport or customs seaport, is barred.

Exception: The above provision is not applicable in relation to any vessel or aircraft, which is compelled by accident, stress of weather or other unavoidable cause to call or land at a place other than a customs port or customs airport. However, the person-in-charge of the vessel has the following obligation cast on him:

1. He will have to report the arrival of the vessel or the landing of the aircraft to the nearest customs officer or officer in charge of police station and produce the log book if demanded.
2. He should not allow any unloading of goods without permission and should not allow any passengers or crews to leave the immediate vicinity of the vessel or aircraft. However, the goods can be removed, or the passengers and crews can be allowed to depart if the same is necessary for reason of health, safety or preservation of life or property.
3. He should comply with all the directions given by such officers with respect to any such goods.

DELIVERY OF ARRIVAL MANIFEST OR IMPORT MANIFEST OR IMPORT REPORT [SECTION 30]

After ensuring that the vessels or aircraft are landed only in approved customs port or airport, further duty is cast upon the person in charge of the vessel to deliver the arrival manifest or import manifest.

Arrival manifest or import manifest or import report is a detailed information to customs about goods in the vessels/aircrafts which have been brought in at any port/airport for unloading at that particular port/international airport as also that which would be carried further for other ports/airports. Declarations of such cargo has to be made in a prescribed form (which is termed 'Import General Manifest' or IGM) and in prescribed manner. Imports via land route require filing of declaration (called 'Import Report').

IMPORT MANIFEST

Goods involved in an export may also be carried in the import conveyance (vessel or other), without such goods 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 details of 'imported goods' is required by section 41 in export manifest to be filed by person-in-charge of a conveyance carrying export goods before departure of conveyance.

Time limit for delivery of IGM/IR: The person-in-charge of a vessel, or an aircraft, or a vehicle, carrying imported goods or any other person as may be specified by the Central Government, by notification in the Official Gazette, in this behalf shall, in the case of a vessel or an aircraft, deliver to the proper officer an arrival manifest or import manifest by presenting electronically prior to the arrival of the vessel or the aircraft, as the case may be, and in the case of a vehicle, an import report within twelve hours after its arrival in the customs station, in the prescribed form.

Particulars	Import Document	Time limit for presentation of IM/IR	Mode of presentation
Where the imported goods are brought in a vessel	Arrival manifest or import manifest	Any time prior to the arrival of the vessel/aircraft	Electronic filing*

Where the imported goods are brought in an aircraft			Electronic filing*
Where the imported goods are brought in a vehicle	Import Report	Within twelve hours after its arrival in the customs station	Prescribed manner

*Note: In cases where it is not feasible to deliver arrival manifest or import manifest by presenting them electronically, the Principal Commissioner/ Commissioner of Customs may, allow the same to be delivered in any other manner.

If the arrival manifest or import manifest or the import report or any part thereof, is not delivered to the proper officer within the specified time and if the proper officer is satisfied that there was no sufficient cause for such delay, the person-in-charge would be **liable to a penalty up to ₹ 50,000**. The person delivering the arrival manifest or import manifest or import report shall make and subscribe a declaration as to the truth of its contents as a footnote thereof.

Belated filing of IGM: Arrival manifest or import manifest or import 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. [Section 30(3)].

Subsequent amendment of IGM will not be treated as late filing. [CBIC's Customs Manual 2015, Chapter 2] However, the CBIC has cautioned (*circular supra*) that this should not be used to circumvent the penal provisions for late filing.

PASSENGER AND CREW ARRIVAL MANIFEST AND PASSENGER NAME RECORD INFORMATION. [SECTION 30A]

The person-in-charge of a conveyance that enters India from any place outside India or any other person as may be specified, 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 particulars, in such manner and within such time, as may be prescribed.

Where the passenger and crew arrival manifest or the passenger name record information or any part thereof is not delivered to the proper officer within the prescribed time and if the proper officer is satisfied that there was no sufficient cause for such delay, the person-in-charge or the other specified person shall be liable to such penalty, not exceeding ₹ 50,000, as may be prescribed.

***Passenger name record information [Section 2(30B)]:** 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.

IMPORTED GOODS NOT TO BE UNLOADED FROM VESSEL UNTIL ENTRY INWARDS GRANTED [SECTION 31]

This section provides that the master of a vessel shall not permit the unloading of any goods until an order has been given by the proper officer granting ENTRY INWARDS to such vessels. This is specified only for vessels and not for aircrafts or vehicles. Application for entry inward has to be submitted along with the import manifest in the prescribed form and will be allowed by the proper officer of customs upon verification. The date of entry inward is entered in the customs record maintained for the purpose.



Section 31(2) provides that Entry Inwards shall not be given until the arrival manifest or import manifest has been delivered or the proper officer is satisfied that a valid reason is given for not delivering it within prescribed time. Grant of Entry Inwards is an acknowledgement of the fact that Customs Department is ready to supervise the unloading of the cargo, and is prepared to assess the goods to duty.

Entry inwards date is crucial for the calculation of applicable rate of duty whenever bill of entry has been filed in advance. In case Bill of entry is filed before arrival of aircraft or vehicle or before entry inward for vessel, the relevant date of determination of rate of duty and tariff valuation shall be date of arrival or entry inward as the case may be. (Refer Section 15 of the Customs Act).

Section 31(3) excludes certain items from the scope of the section. It provides that the provisions of the section will not apply to the unloading of baggage accompanying a passenger or a member of the crew, mail bags, animals, perishable goods and hazardous goods.

IMPORTED GOODS NOT TO BE UNLOADED UNLESS MENTIONED IN ARRIVAL MANIFEST OR IMPORT MANIFEST OR IMPORT REPORT [SECTION 32]

Without the permission of the proper officer, the imported goods cannot be unloaded, unless they are mentioned in the Import General Manifest for being unloaded in that customs station.

LOADING AND UNLOADING OF GOODS AT APPROVED PLACES ONLY [SECTION 33]

Section 33 provides that loading and unloading of goods are to be undertaken only at places approved under section 8(a) of the Customs Act, 1962. Section 8(a) provides proper places in any customs port, customs airport, or coastal port for loading and unloading of goods.

GOODS NOT TO BE LOADED OR UNLOADED EXCEPT UNDER THE SUPERVISION OF CUSTOMS OFFICER [SECTION 34]

Section 34 provides that loading and unloading of goods should be done under the supervision of the proper officer.

However, the Board may, by notification in the Official Gazette, give general permission and the proper officer may in any particular case, give special permission for any goods or class of goods to be unloaded or loaded without the supervision of the proper officer.

In almost all major ports, customs officers are deployed at the wharfs and berths where the goods are imported or exported. These officers supervise all loading and unloading, and shipping operations.

RESTRICTIONS ON GOODS BEING WATER-BORNE [SECTION 35]

In certain circumstances (like size of vessel, hazardous nature of cargo, etc.) the vessel cannot be berthed at the port. The cargo is ferried from or to the ships anchored at mid-sea to the port in boats, otherwise known as lighters.

Section 35 of the Customs Act stipulates that no imported goods shall be water borne for being loaded in any vessel, and no export goods which are not accompanied by a shipping bill, shall be water borne for being shipped unless the goods are accompanied by a boat note in the prescribed form. The Boat Notes Regulations 1976 prescribe the form and manner of issue of boat notes.

However, the board may, by notification give general permission and the proper officer may in any particular case, give special permission, for any goods or any class of goods to be water borne without being accompanied by a boat-note.

Other Controls

The following are further controls exercised on the conveyances and the loading/unloading of goods.

1. The goods cannot be loaded and unloaded on Sundays or other holidays observed by the Customs Department, or on any other day after the working hours unless the prescribed notice and the prescribed fee are paid. [Section 36]
2. The proper officer may, at any time, board any conveyance carrying imported goods or export goods and may remain on such conveyance for such period, as he considers necessary. [Section 37]
3. The proper officer may require the person in charge of any conveyance to produce any document or answer any questions and such person shall be bound to comply with the same. [Section 38]



5. PROCEDURE FOR CLEARANCE OF IMPORTED GOODS

The procedures for clearance of imported goods are contained in Section 45 to Section 49 of the Customs Act. These procedures are not applicable to baggage and goods imported or to be exported by post.

RESTRICTIONS ON CUSTODY AND REMOVAL OF IMPORTED GOODS [SECTION 45]

Once the imported goods have entered the Customs area, there arises the question of who is responsible for the safe custody of goods.

This section requires that until the imported goods are cleared for home consumption or are warehoused or are exported for transhipment, they shall remain in the custody of such person as may be approved by the Principal Commissioner/Commissioner of Customs [Section 45(1)]. This person is called the custodian. The responsibility of the custodian commences in respect of imported goods the moment the ship is berthed in the harbour or the goods are ready for unloading from the aircraft. In major ports, the Port Trust is the custodian. In Inland Container Depots, the Container Corporation of India, which operates the Container Freight Station (CFS) is the custodian of the imported cargo. In case of air cargo, the Airport Authority of India is the custodian in most airports. For goods brought by rail, the custodian is the Station Master.

SECTION 45

Responsibility of Custodian of goods: During the time the goods are in the custody of the custodians, they have the following responsibilities [Section 45(2)].

1. Maintain a proper record of goods received from the carriers and send a copy of the record to the proper officer.
2. Not to permit such goods to be removed from the customs area or allow them to be dealt with otherwise except under the specific permission in writing of the proper officer or in accordance with a general procedure that may be prescribed that avoid subjectivity of the officer as to the manner of removal of such goods.

In pursuance to this responsibility, the custodian is required to tally the particulars of the goods landed by a vessel, and send a report known as **out turn statement** to the customs authorities. This enables the customs authorities to check whether all goods manifested in the import general manifest for landing in a particular place have actually been landed. In case the goods are not so landed, action is taken against the carriers.

Liability of the Custodians [Section 45(3)]

This provision provides that notwithstanding anything contained in any law for the time being in force, if any imported goods are pilfered after unloading in any customs area, while in the custody of the custodian, such custodian shall be liable to pay duty on such goods. Therefore, in respect of pilfered goods covered by section 13, the loss of revenue is compensated by the custodian. The duty shall be

paid at the rate prevailing on the day of delivery of the arrival manifest or import manifest or as the case may be, an import report to the proper officer under section 30 for the arrival of the conveyance in which such goods were carried.

This provision is intended to make the custodian of the imported goods lying in customs area liable for duty even if they are pilfered when they were in their custody. Earlier, in the matter of pilfered goods, the government has been losing the revenue, while the importer's interest was protected.

Illustration 1

M/s Pipli Imports Ltd. imported certain goods, which were unloaded in the customs area on 1st October. When order for clearance was passed by proper officer on 5th October, it was found that there was some pilferage of such goods. As the imported goods were in the custody of Port Trust, the Department demanded duty from the custodian under section 45(3) of the Customs Act, 1962, on such pilferage. The Port Trust denied such demand contending that it was not an approved custodian falling under section 45 and possession of goods by it was by virtue of powers conferred under the Major Port Trust Act, 1963. Hence, it is not liable for customs duty on pilfered goods.

M/s Pipli Imports Ltd. has also asked the Port Trust to make good the loss of goods. Examine, whether the demands made by the Department and M/s Pipli Imports Ltd. are justified in law, referring to decided case law.

Answer

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

Section 45(3) of the Customs Act, 1962 holds the custodian responsible only in respect of the customs duty in respect of pilfered goods. It does not extend to the

value of goods lost. However, the Port Trust, as bailee of the goods, is liable for value of the goods to the importer.

FILING OF IMPORT BILL OF ENTRY [SECTION 46]

Filing of Import Bill of Entry is not required for goods intended for transit or transhipment.

It is the duty of the importer of any goods to make an application electronically on the customs automated system to the proper officer for clearance of the goods. The importer is required to make an electronic integrated declaration to the Customs Computer Systems through network facility. The Bill of Entry (Electronic Integrated Declaration and Paperless Processing) Regulations, 2018 provides the detailed provisions in this regard.



Integrated Declaration exists in Customs law under 'Indian Customs Single Window Project'. Under this system, a common, seamlessly integrated IT systems is there which is utilized by all regulatory agencies, logistics service providers and the importers/exporters. The 'Single Window' provides the importers/exporters a single point interface for clearance of import and export goods. The Customs broker/importer shall submit the "Integrated Declaration" electronically to a single entry point, i.e. the Customs Gateway (ICEGATE).

SECTION 46

CBIC has introduced 'eSanchit' for paperless transaction. The importers are required to upload the required documents online through www.icegate.gov.in while filling the Bill of Entry instead of submitting the physical papers. Reply to queries raised by Customs Officers can be submitted online by uploading the documents.

Bill of Entry is a document of assessment and when assessed becomes an assessment order.

The Principal Commissioner/Commissioner of Customs may, in cases where it is not feasible to make entry by presenting electronically on the customs automated system, allow an entry to be presented in the prescribed manner and form.

The goods may be cleared for home consumption or for deposit in a warehouse or for transit or transhipment. Therefore, there are three types of Bills of Entries prescribed for these three different purposes.

Form I (White) – for home consumption.

Form II (Yellow) – for warehousing (into bond).

Form III (Green) – for clearance of warehoused goods for home consumption (ex-bond).

The importer is required to declare in the Bill of Entry amongst other things the particulars of packages, the descriptions of the goods, in terms of the description given in the Customs Tariff to enable proper classification of the goods and the correct value of the goods for the determining the amount of duty.

Bill of Entry

The Bill of Entry shall be supported with invoice and such other documents as may be prescribed.

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

- the accuracy and completeness of the information given therein;
- the authenticity and validity of any document supporting it; and
- 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.

Importer unable to furnish details: If for any reason the importer is unable to furnish these details, he may request the customs officials to examine the goods in his presence to enable him to ascertain the necessary details for making a proper declaration in the bill of entry. Alternatively, he can seek permission to deposit the goods in a public bonded warehouse appointed under section 57 pending receipt of the necessary information and the supporting documents under section 49. This is also called **warehousing without warehousing**.

Such goods shall not be deemed to be warehoused goods for the purpose of the Act and accordingly warehousing provisions shall not apply to such goods.

Bill of entry shall include all the goods mentioned in the bill of lading or other similar document.

Time limit for filing: According to section 46(3), the importer shall present the bill of entry before the end of the day (including holidays) preceding the day on which the aircraft/vessel/vehicle carrying the goods arrives at a customs station at which such goods are to be cleared for home consumption or warehousing. The proviso to section 46(3) provides that the Board may, in such cases as it may deem fit, prescribe different time limits for presentation of the bill of entry, which shall not be later than the end of the day of such arrival.

Further, a bill of entry may be presented at any time not exceeding thirty days prior to the expected arrival of the aircraft/vessel/vehicle by which the goods have been shipped for importation into India.

However, 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 prescribed charges for late presentation of the bill of entry.

ASSESSMENT OF GOODS [SECTION 17]

(a) Duty to be self-assessed by the importer/exporter: An importer entering any imported goods under section 46, or an exporter entering any export goods under section 50, shall, save as otherwise provided in section 85 (i.e. stores allowed to be warehoused without assessment of duty), self-assess the duty, if any, leviable on such goods.

SECTION 17

(b) Verification by proper officer: The proper officer may verify the entries made under section 46 or section 50 and the self-assessment of goods and for this purpose, examine or test any imported goods or export goods or such part thereof as may be necessary.

Further, the selection of cases for verification shall primarily be on the basis of risk evaluation through appropriate selection criteria.

For the purposes 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, as the case may be, can be ascertained and thereupon, the importer, exporter or such other person shall produce such document or furnish such information.

Assessment of Goods

Some major importers have been given the green channel clearance facility. It means clearance of goods is done without routine examination of the goods. They have to make a declaration in the declaration form at the time of filing of bill of entry. The appraisement is done as per normal procedure except that there would be no physical examination of the goods. Only marks and number are to be checked in such cases. However, in rare cases, if there are specific doubts regarding description or quantity of the goods, physical examination may be ordered by the senior officers/investigation wing like Special Intelligence and Investigation Branch (SIIB).

- (c) Reassessment of duty by the proper officer if self-assessment not done correctly:** 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.
- (d) Speaking order for re-assessment to be passed unless the importer agrees with the reassessment:** Where any re-assessment done 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 15 days from the date of re-assessment of the bill of entry or the shipping bill, as the case may be.

PROVISIONAL ASSESSMENT OF DUTY [SECTION 18]

Provisional assessment can be resorted to in the following circumstances:

- (a) where the importer or exporter is unable to make self-assessment under sub-section (1) of section 17 and makes a request in writing to the proper officer for assessment; or

- (b) where the proper officer deems it necessary to subject any imported goods or export goods to any chemical or other test; or
- (c) where the importer or exporter has produced all the necessary documents and furnished full information, but the proper officer deems it necessary to make further enquiry; or
- (d) where necessary documents have not been produced or information has not been furnished and the proper officer deems it necessary to make further enquiry.

Provisional Assessment

In any of the above cases, ***the proper officer may assess the duty leviable on such goods, 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[Sub-section(1)].

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 prescribed time, and the proper officer shall finalise the provisional assessment ***in such manner*** as may be prescribed. [Sub-section (1A)].

The proper officer shall finalise the duty provisionally assessed, within 2 years from the date of such assessment under sub-section (1). However, the Principal Commissioner of Customs or the Commissioner of Customs may, on sufficient cause being shown and for reasons to be recorded in writing, extend the said period to a further period of 1 year. [Sub-section (1B)].

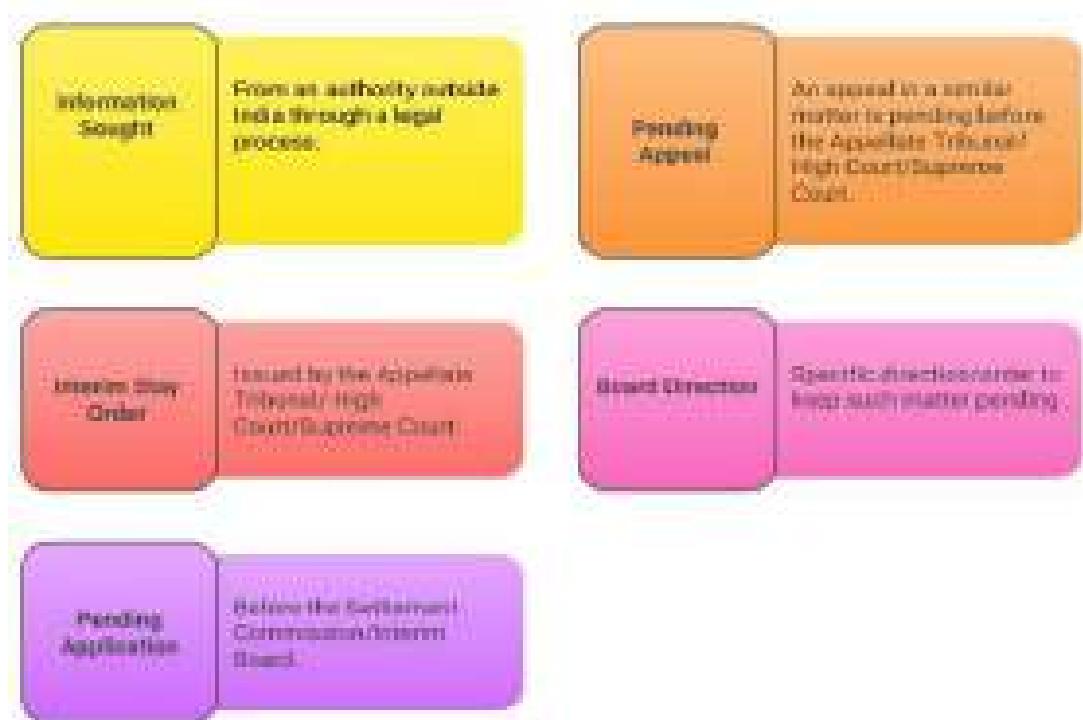


Where the proper officer is unable to assess the duty finally within the specified time for the reason that—

- (a) ***an information is being sought from an authority outside India through a legal process; or***
- (b) ***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***

- (c) *an interim order of stay has been issued by the Appellate Tribunal or the High Court or the Supreme Court; or*
- (d) *the Board has, in a similar matter, issued specific direction or order to keep such matter pending; or*
- (e) *the importer or exporter has a pending application before the Settlement Commission or the Interim Board¹, the proper officer shall inform the importer or exporter concerned, the reason for non-finalisation of the provisional assessment and in such case, the time specified in sub-section (1B) shall apply not from the date of the provisional assessment but from the date when such reason ceases to exist. [Sub-section (1C)].*

Reasons for Non-Finalisation



¹ Settlement Commission/ Interim Board provides the taxpayers a one-time opportunity to settle pending disputes related to customs duties in a speedy manner and avoid prolonged litigation. Said provisions are outside the scope of syllabus of Paper 5 -Indirect Tax Laws.

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

When the duty leviable on such goods is assessed finally or re-assessed by the proper officer in accordance with the provisions of this Act, then, -

- (i) in the case of goods cleared for home consumption or exportation, the amount paid shall be adjusted against the duty finally assessed or re-assessed, as the case may be, and if the amount so paid falls short of, or is in excess of the duty finally assessed or re-assessed, as the case may be, the importer or the exporter of the goods shall pay the deficiency or be entitled to a refund, as the case may be;
- (ii) in the case of warehoused goods, the proper officer may, where the duty finally assessed or re-assessed, as the case may be, is in excess of the duty provisionally assessed, require the importer to execute a bond, binding himself in a sum equal to twice the amount of the excess duty [Sub-section (2)].

The importer or exporter shall be liable to pay interest, on any amount payable to the Central Government, consequent to the final assessment order or re-assessment order. The interest shall be payable at the rate fixed by the Central Government under section 28AA². This interest shall be payable from the first day of the month in which the duty is provisionally assessed till the date of payment thereof [Sub-section 3].

Subject to sub-section (5), if any refundable amount referred to in clause (a) of sub-section (2) is not refunded under that sub-section within three months from the date of assessment of duty finally or re-assessment of duty, as the case may be, there shall be paid an interest on such unrefunded amount at such rate fixed by the Central Government under section 27A³ till the date of refund of such amount[Sub-section 4].

The refund of duty and interest thereon is subject to the principle of unjust enrichment. (Refer Chapter 7: Refund of Customs Duty for detailed provisions in

² Interest is to be computed at the rate fixed by notification issued under section 28AA. However, provisions of section 28AA relating to Interest on delayed payment of duty are outside the purview of the syllabus of Paper 5 – Indirect Tax Laws.

³ The detailed provisions pertaining to section 27A have been discussed in detail in Chapter-7 of this module of the Study material.

this regard) and shall be paid to the importer or the exporter, as the case may be, only if such amount is relatable to:

- (a) the duty and interest, if any, paid on such duty paid by the importer, or the exporter, as the case may be, if he had not passed on the incidence of such duty and interest, if any, paid on such duty to any other person;
- (b) the duty and interest, if any, paid on such duty on imports made by an individual for his personal use;
- (c) the duty and interest, if any, paid on such duty borne by the buyer, if he had not passed on the incidence of such duty and interest, if any, paid on such duty to any other person;
- (d) the export duty as specified in section 26;
- (e) drawback of duty payable under sections 74 and 75.

In all other cases, the amount of such refund and interest shall be credited to the Consumer Welfare Fund [Sub-section 5].

Further, CBIC has issued following guidelines for provisional assessment vide *Circular No. 38/2016 Cus. dated 22.08.2016*:

Wherever, duty is to be assessed provisionally, the importer shall:

- (a) execute a bond in the prescribed form, for the purposes of undertaking to pay on demand the deficiency, if any, between the duty as may be finally assessed and the duty provisionally assessed; and
- (b) furnish prescribed amount of security for the payment of the duty deficiency. No sureties shall be obtained. The security to be obtained shall be in the form of a bank guarantee or a cash deposit, as convenient to the importer.

VOLUNTARY REVISION OF ENTRY POST CLEARANCE [SECTION 18A]

- (a) Option to Revise:** *After goods have been cleared, an importer or exporter can change (revise) the details they had already filed (called "entry") about those goods. This revision must be done in the prescribed form, manner, and time, and subject to certain conditions.*
- (b) Self-Assessment:** *When revising the entry, the importer or exporter must recalculate (self-assess) the duty payable on the goods.*

(c) Impact of Revision: If the revised entry shows that less duty was paid earlier (short-paid, underpaid, or not paid at all), the importer or exporter can pay the difference voluntarily along with interest as per Section 28AA⁴.

If the revised entry shows that excess duty was paid (or the whole duty was wrongly paid), the revised entry itself will be treated as a refund claim under Section 27.



(d) Verification and Re-assessment by Proper Officer: The proper officer may

- verify the revised entry and self-assessment in cases selected primarily based on risk evaluation through appropriate selection criteria.
- re-assess the duty if the self-assessment is found incorrect.

(e) Cases where Revision is not allowed: Revision of entry is not allowed in the following cases:-

- An audit, or search/seizure/summons action has already been initiated and the importer or exporter has been intimated.
- Cases requiring refund where proper officer has re-assessed the duty under section 17 or assessed the duty under section 18 (Provisional assessment of duty) or under section 84 (goods imported/exported by post or courier).
- Any other situations notified by the Board (CBIC).

CUSTOMS (FINALISATION OF PROVISIONAL ASSESSMENT) REGULATIONS

CBIC vide Notification No. 73/2018 Cus (NT) dated 14.08.2018 has prescribed Customs (Finalisation of Provisional Assessment) Regulations, 2018.

⁴ Interest is to be computed at the rate fixed by notification issued under section 28AA. However, provisions of section 28AA relating to Interest on delayed payment of duty are outside the purview of the syllabus of Paper 5 – Indirect Tax Laws.

The significant provisions contained in said regulations are discussed as under:

 **Time-limit and manner for submission of documents or information by importer/exporter for the purpose of finalisation of provisional assessment**

- (a) Reasons for Provisional Assessment:
- (i) the necessary documents have not been produced or information has not been furnished
 - (ii) the proper officer requires the importer or the exporter to produce any additional documents or information
- Such information or documents would be made available by the importer/exporter within 1 month from the date of such order of provisional assessment or the date of such requisition by the proper officer.
- (b) The proper officer would inform the importer or the exporter, in writing, the specific details of the information to be furnished or the documents to be produced within 15 days from the date of such order of provisional assessment. If the document/information is not made available within 15 days, this period may, for reasons recorded in writing, be further extended by proper officer for 3 months on his own or at the request of the importer or the exporter.
- (c) The Additional Commissioner/Joint Commissioner of Customs may further extend the time period referred for another 3 months, in case the documents or the information required to be submitted by the importer or the exporter or requisitioned by the proper officer have not been made available within prescribed time limit.
- (d) If the aforesaid time limits don't suffice, the Commissioner of Customs, may extend the time period further as deemed fit.
- (e) All the requisite information/ documents need to be submitted in one instance by importer/ exporter and importer/exporter themselves or his authorised representative or Customs Broker shall inform the proper officer in writing that he has submitted all the documents or information to be furnished or requisitioned.

- (f) For the purpose of these regulations, each Bill of Entry or Shipping Bill, as the case may be, that has been assessed provisionally shall be treated as a separate case of provisional assessment.

Time-limit for finalisation of provisional assessment

The proper officer will finalise the provisional assessment within 2 months of receipt of:

- (a) an intimation from the importer or the exporter or his authorised representative or Customs Broker or
- (b) a chemical or other test report, where the provisional assessment was ordered for that reason; or
- (c) an enquiry or investigation or verification report, where the provisional assessment was ordered for that reason.

However, where the documents or information required to be furnished by the importer or the exporter or requisitioned by the proper officer are made available intermittently, the time period of 2 months shall be reckoned from the date of last intimation.

Further, where the documents or information required to be furnished by the importer or exporter, as the case may be, or requisitioned by the proper officer are not made available or made partly available and no further extension of time has been allowed, the proper officer shall proceed to finalise the provisional assessment within 2 months of the expiry of the time allowed for submission of the said documents or information.

- (d) The Commissioner of Customs concerned may allow, for reasons to be recorded in writing, a further time period of 3 months in case the proper officer is not able to finalise the provisional assessment within the period of 2 months.
- (e) This regulation would not apply to such cases of provisional assessments, where Board has issued directions to keep that pending.

Manner of finalisation of provisional assessment

- (a) The provisional assessment will be finalised as per the provisions of section 18 of the Act.

However, if the amount so paid at the time of provisional assessment or after adjustment under section 18(2)(a) of the Act, falls short of the duty finally assessed or re-assessed, as the case may be, and the importer or the exporter has not paid the deficiency, the shortfall will be adjusted from the security, if any, obtained at the time of provisional assessment, under intimation to the importer or the exporter,

However, if the amount so adjusted or paid falls short of the duty finally assessed or re-assessed, as the case may be, the importer or exporter of the goods would pay the shortfall in terms of the provisions of section 18.

- (b) The Bond executed at the time of provisional assessment with security, if any, will be cancelled after finalisation of provisional assessment and the security shall also be returned, if there are no pending dues.
- (c) Where the final assessment is contrary to the provisional assessment, the proper officer will pass a speaking order following principles of natural justice.
- (d) Where the final assessment confirms the provisional assessment, the proper officer will finalise the same after ascertaining the acceptance of such finalisation from the importer or the exporter on record and inform the importer or exporter in writing of the date of such finalisation.
- (e) Where a Bill of Entry or Shipping Bill is presented electronically on the Customs Automated system and is ordered to be provisionally assessed, the proper officer will finalise the provisional assessment on the system also consequent to the procedure prescribed in these regulations.

Penalty

If any importer or exporter or his authorised representative or Customs Broker contravenes any provision of these regulations or abets such contravention, or fails to comply with any provision of these regulations, he shall be liable to a penalty which may extend to ₹ 50,000.

Illustration 2

Mr. Krishna Bhansali, has imported some garments from Paris. He is unable to make self-assessment under section 17(1) of the Customs Act, 1962 because of differential rates for different kinds of material and hence has made a request in writing to the proper officer for provisional assessment pending technical testing. Is he eligible to apply for provisional assessment? Discuss.

Answer

Yes, Mr. Krishna Bhansali can apply for provisional assessment under section 18 of the Customs Act, 1962. Section 18(1) provides that provisional assessment can be resorted to, *inter alia*, where the importer or exporter is unable to make self-assessment under sub-section (1) of section 17 and makes a request in writing to the proper officer for assessment. While 'unable' is not about willingness but deficiency of information to make an accurate determination of the liability, in this case Mr. Bhansali satisfies the criterion because he lacks the information necessary to classify the goods pending technical testing.

Illustration 3

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

<i>Date of provisional assessment</i>	<i>12th December, 2024</i>
<i>Date of final re-assessment</i>	<i>2nd February, 2025</i>
<i>Duty demand for 1st consignment</i>	<i>₹ 1,80,000</i>
<i>Refund for the 2nd consignment</i>	<i>₹ 4,20,000</i>
<i>Date of refund made by the department</i>	<i>28th April, 2025</i>
<i>Date of payment of duty demanded</i>	<i>5th February, 2025</i>

Determine the interest payable and receivable, if any, by Moris Lal on the final re-assessment of the two consignments, with suitable notes thereon.

Answer

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

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

$$= ₹ 1,80,000 \times 15\% \times 67/365$$

$$= ₹ 4,956 \text{ (rounded off)}$$

If any amount refundable consequent to the re-assessment order is not refunded within 3 months from date of re-assessment of duty, interest is payable to importer

on unrefunded amount at the specified rate till the date of refund of such amount in terms of section 18(4) of the Customs Act, 1962.

Since in the given case, refund has been made (28.04.2025) within 3 months from the date of re-assessment of duty (02.02.2025), interest is not payable to Moris Lal on duty refunded in respect of 2nd consignment.

CUSTOMS AUDIT [SECTION 99A]

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 the 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 dealing with goods attracting section 12 of Customs Act.

In the 2018 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:

- (i) Auditee is to preserve records for conduct of this audit for a period of five years
- (ii) Risk based assessment will identify persons to be audited
- (iii) 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
- (iv) Based on the findings, auditee may accept the liabilities and voluntarily discharge the duty, interest and penalty, as applicable

- (v) 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
- (vi) Contravention of these Regulations attracts penalty of ` 50,000

TYPES OF AUDIT-TRANSACTION BASED AUDIT (TBA) AND PREMISE BASED AUDIT (PBA)

Under the new scheme, Transaction based audit (TBA) and Premises based audit (PBA) have been prescribed.

- **TBA (audit of transactions):** Under TBA, transactions are audited. It may be noted that a TBA may subsequently be converted into a Premises based Audit (PBA).
- **PBA (audit at the premises):** The new provision on Customs Audit under section 99A of the Customs Act, 1962 has extended the scope of Premises Based Audit by including other entities who are concerned with imports or exports. In PBA, customs would review the import and export over a given period and check all relevant commercial records, including financial statements and contracts to verify the particulars given in a goods declaration. PBA would enable the department to bridge the communication divide and usher in a new era of partnership with trade. Further, Board may also select any criteria or theme for the audit.

Selection criteria for audit:

Directorate General of Analysis and Risk Management has been entrusted the responsibility of identifying the potential focus areas and entities for various types of audit.

Executive Commissionerates to assist Audit Commissionerates

The executive Customs Commissionerates shall also assist Audit Commissionerates in the conduct of Transaction Based Audit and Premises Based Audit.

The Chief Commissioners shall put in place a suitable monitoring arrangement to review the progress and performance of audit. Apart from overall supervision, Chief Commissioner shall examine on a selective basis, 5% of the Audit reports, selected

randomly based on the quarterly reports submitted by Audit Commissionerates to ensure that audit has been conducted as per prescribed procedures.

[Circular No. 02/2019-Cus dated 08.01.2019]

CLEARANCE OF GOODS [SECTION 47]

Once the customs check and payment of duty is completed, the customs officers allow clearance of the goods. Section 47 provides that where the proper officer is satisfied that the goods entered for home consumption are not prohibited and the appropriate import duty and any charges payable thereon has been paid, he can 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. However, Central Government may permit certain class of importers to make deferred payment of said duty or any charges in such manner as may be provided by rules.

SECTION 47

In this respect, Central Government has permitted the following class of importers to make deferred payment of import duty:-

- (i) Importers certified under Authorized Economic Operator programme as AEO (Tier-Two) and AEO (Tier-Three)
- (ii) Authorised Public Undertaking

AEO means Authorised Economic Operator approved by the Directorate of International Customs under the CBIC. Authorised Public Undertaking means Authorised Public Undertaking approved by the Directorate of International Customs under the CBIC.

On making clearance order, which is popularly known as "pass out of customs charge order" the bill of entry (duplicate) copy is produced to the custodian who delivers the goods to the importer. These orders will be passed on the CAS (customs automated system) on the basis of risk evaluation through appropriate selection criteria as a trade facilitation measure to improve efficiency in custom clearance.

Time limit for payment of import duty: The importer shall pay the import duty—

- (a) on the date of presentation of the bill of entry in the case of self-assessment; or
- (b) 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 or provisional assessment; or
- (c) in the case of deferred payment, from such due date as may be specified by rules made in this behalf, and if he fails to pay the duty either in full or in part within the time so specified, he shall pay interest on the duty not paid or short-paid till the date of its payment.

Time limit for payment of Import duty

The rate of interest shall be not below 10% and not exceeding 36% per annum and shall be fixed by the central government. However, the interest may be waived by the CBIC in public interest. [Section 47(2)]

Deferred Payment of Import Duty Rules, 2016 read with Circular No. 52/2016-Cus dated 15.11.2016:

 **Information about intent to avail benefit of notification:** An eligible importer intending to avail the benefit of deferred payment shall intimate to the Principal Commissioner/Commissioner of Customs, having jurisdiction over the port of clearance, his intention to avail the said benefit who on being satisfied with the eligibility of the importer allow him to pay the duty by due dates as given below.

 **Due dates for deferred payment of import duty—**

S. No.	Goods corresponding to Bill of Entry returned for payment from	Due date of payment of duty, inclusive of the period (excluding holidays) as mentioned in section 47(2)
1.	1 st day to 15 th day of any month	16 th day of that month

2.	16 th day till the last day of any month other than March	1 st day of the following month
3.	16 th day till the 31 st day of March,	31 st March

Further, where the Central Government considers it necessary and expedient, it may, under exceptional circumstances, and for reasons to be recorded in writing, allow payment to be made on a different due date.



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.

Further, the eligible importer shall be permitted to make the deferred payment if he has—

- (i) paid the duty for a bill of entry within due date and
- (ii) paid the differential duty for the same bill of entry along with the interest on account of reassessment within one day (excluding holidays).

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 entry.

MANDATORY ELECTRONIC PAYMENT OF DUTY

The Central Government has notified the following classes of importers who have to pay customs duty electronically, namely:-

- (i) Importers registered under Authorized Economic Operator;
- (ii) Importers paying customs duty of ₹10,000 or more per bill of entry

The Board has set up a dedicated payment gateway called, 'ICEGATE' through which the payments are to be made.

The importer need not produce any proof of payment for the clearance of goods in case of e-payment.

FACELESS ASSESSMENT

Trade facilitation is a key enabler for simplification of procedures and reduction of barriers to the trade. In India, CBIC has been at the forefront of taking initiatives aimed at catalysing economic development through transparency, harmonization, predictability and automation in trade. The aim has been to reduce time and cost for the EXIM community. This would help them become more competitive in the international arena.

In line with this momentum, CBIC has implemented next generation reforms through Turant Customs, strongly enabled by technology. Turant Customs is a mega reform for the ease of doing business.

This flagship initiative stands on the pillars of – Faceless, Contactless and Paperless Customs. This reform will help India take a substantial leap forward towards faster and cheaper Customs clearance of imported goods.

Faceless Assessment

A key enabler in Turant Customs is Faceless Assessment. It has been rolled out in phases and covered the entire country. This would enable uniform, anonymous Customs assessments and reduce interface between the Trade and Customs officers.

Faceless Assessment, a component of the Turant Customs programme, is a path breaking initiative aimed at introducing anonymity and uniformity in Customs assessments pan India.

JOURNEY TOWARDS FACELESS ASSESSMENT

Decades ago, goods imported into India were assessed for Customs duty at the border by jurisdictional Customs officers on the basis of physical documents. Subsequent introduction of computers led to automation of assessment. This was followed by a robust digital risk management system (RMS) for Customs clearance

with minimal checks, while interdicting risk-prone cargo for assessment and examination. In 2012, the Customs Act 1962, was amended to introduce self-assessment by importers/exporters themselves. While digitisation helped in streamlining of procedures, yet disparities in assessment prevailed due to interpretation issues. Customs officials recognised a dire need to provide uniformity and certainty in assessment practices. It was also clear that anonymity in assessment and load balancing of import documents that are required to be assessed would bring about more efficiency and help improve the speed of Customs clearances across India. This was the trigger for the conceptualization and development of Faceless Assessment.

WHAT IS FACELESS ASSESSMENT?

Faceless Assessment is a major Customs Reforms where a Bill of Entry that is identified for scrutiny (non-facilitated Bill of Entry) is assigned to an assessing officer who is physically located at a Customs station, which is not the Port of Import in the Customs Automated System. It separates the assessment process from the physical location of Port of Import, using a technology platform.

Faceless Assessment (also referred to as virtual assessment or anonymised assessment) uses a technology platform to separate the Customs assessment process from the physical location of a Customs officer at the port of arrival. This measure will bolster efforts to ensure an objective, free, fair and just assessment.

From an importer's perspective, there will be no changes to the process of filing a Bill of entry. He will continue to file his documentation including bill of entry and supporting documents on the ICEGATE portal.

KEY OBJECTIVES OF FACELESS ASSESSMENT :

- i. Anonymity in assessment for reduced physical interface between trade and Customs
- ii. Speedier Customs clearances through efficient utilisation of manpower
- iii. Greater uniformity of assessment across locations
- iv. Promoting sector specific and functional specialisation in assessment

PAYMENT THROUGH ELECTRONIC CASH LEDGER AND ELECTRONIC DUTY CREDIT LEDGER

LEDGER FOR PAYMENT OF DUTY, INTEREST, PENALTY, ETC. [SECTION 51A]

A new system to leverage payments-automation is enabled in Customs clearance (imports or exports) by way of insertion of section 51A. It provides for advance deposit which would enable payment of duties, taxes, fee, interest, and penalty through electronic cash ledger. This is a welcome measure that will avoid delays in payment of duty or amounts being transferred to CHA towards payment of duty. With this ECL, money can be transferred in advance and appropriated in respect of each demand. Rules for Electronic Cash Ledger are yet to be notified.

Central Board of Indirect Taxes and Customs (CBIC) can prescribe the persons on whom, and goods in respect of which, provisions of Electronic Cash Ledger shall not apply.

With the use of an authorized mode of payment, persons who regularly make payment of duty, interest and even penalty, if any, are permitted to 'deposit' a certain amount of money. And then when the occasion to make payment arises, they can pay by debit to the balance in this deposit account (electronic cash ledger balance). Person who may be required to regularly make payment are importer, exporter (of dutiable goods) or Customs Brokers.

- (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 prescribed conditions and restrictions, be credited to the electronic cash ledger of such person, to be maintained in the prescribed manner.
- (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 the prescribed manner and conditions and prescribed time limit.

- (3) The balance in the electronic cash ledger, after payment of duty, interest, penalty, fee or any other amount payable, may be refunded in the prescribed manner.
- (4) Board is empowered to exempt the deposits made by specified class of persons or with respect to specified categories of goods, from all or any of the provisions of this section if it is necessary or expedient so to do.

CBIC has exempted following deposits from the provisions of section 51A of the Customs Act -

- (i) with respect to goods imported or exported in customs stations where customs automated system is not in place;
- (ii) with respect to accompanied baggage;
- (iii) other than those used for making electronic payment of:
 - (a) any duty of customs, including cesses and surcharges levied as duties of customs;
 - (b) IGST;
 - (c) GST Compensation Cess;
 - (d) interest, penalty, fees or any other amount payable under the Act, or Customs Tariff Act, 1975.

LEDGER FOR DUTY CREDIT [SECTION 51B]

The Central Government may specify the manner in which it shall issue duty credit vide notification in the official gazette —

- (a) in lieu of remission of any duty/tax/levy, chargeable on any material used in the manufacture/processing of goods or for carrying out any operation on such goods in India that are exported; or
- (b) in lieu of such other financial benefit subject to specified conditions and restrictions.

The duty credit shall be maintained in the customs automated system in the form of an electronic duty credit ledger of the person who is the recipient of such duty credit, in the prescribed manner.

The duty credit available in the electronic duty credit ledger may be used by the

person to whom it is issued or the person to whom it is transferred, towards making payment of duties payable under the Customs Act or under the Customs Tariff Act, 1975 in the prescribed manner and time.

Duty Credit Ledger will enable credit in lieu of duty remission to be given in respect of exports or other such benefit in electronic form for its usage, transfer, etc.

Duty Credit Ledger is a step in the right direction to streamline the processes of availment of export benefits by removing the physical interface and also usher transparency by avoiding fraudulent claims.

PROCEDURE FOR DISPOSAL OF GOODS NOT CLEARED [SECTION 48]

If there are any goods imported from a place outside India, which are not cleared either for home consumption or for warehouse within 30 days or within such further time as the proper officer may allow or if the title to any imported goods is relinquished (Section 23), the custodian of the goods is permitted, with the approval of the customs department and after giving notice to the importer, to sell the goods by auction.

CBIC has clarified vide *Circular No. 49/2018-Cus dated 03.12.2018* that after the successful bidder has been informed about the result of the auction, a consolidated bill of entry, buyer-wise will be filed with the Customs in the prescribed format by the concerned custodian for clearance of the goods as per section 46 of the customs Act, 1962 read with Un-Cleared Goods (Bill of Entry) Regulations, 1972 (Regulation 2 & 3).

- (a) The proper officer of Customs shall assess the goods to duty in accordance with the extant law within 15 days of filing of Bill of Entry and after assessment inform the amount of duty payable to the concerned custodian.
- (b) The auctioned goods shall be handed over to the successful bidder after assessment and out-of-charge orders given by the proper officer, on payment of dues.

In the case of sensitive goods like animals, foodstuffs and hazardous goods etc. the custodian with the approval of the proper officer can sell the goods even before the expiry of the 30 days limit. Similarly, in the case of arms or ammunition, which cannot be sold in public auction, the disposal is regulated by the rules made in this regard.

STORAGE OF IMPORTED GOODS IN WAREHOUSE PENDING CLEARANCE OR REMOVAL [SECTION 49]

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 (Warehousing) of the Act. However, the Principal Commissioner/Commissioner of Customs may extend such period of storage for further 30 days at a time.

For instance, when Single Window NAC Module was launched at major customs station, there were delays obtaining NOC from various Government agencies before clearance of goods. The CBIC clarified that Section 49 warehousing facility may be resorted to.



6. EXPORTATION

IMPORTANT DEFINITIONS

- (a) **Export** [Section 2(18)] with its grammatical variations and cognate expressions, means taking out of India to a place outside India.
- (b) **Export goods** [Section 2(19)] means any goods, which are to be taken out of India to a place outside India.
- (c) **Exporter** [Section 2(20)] 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.

CONTROL OVER EXPORT GOODS

It would be convenient at this juncture to discuss the provision relating to the export of the goods in so far as it applies to the master of the vessel or his agent.

The steamer agent comes into the picture only after the customs have permitted the export goods to be shipped.

EXPORT GOODS NOT TO BE LOADED ON VESSEL UNTIL ENTRY-OUTWARDS GRANTED [SECTION 39]

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 begin 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.

In sum, for loading of goods for export, the following requirements are to be fulfilled:

- (i) 'Entry outwards' to be granted under section 39 (in case of vessel).
- (ii) 'Shipping bill/Bill of export/Bill of Transhipment' 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.

EXPORT GOODS NOT TO BE LOADED UNLESS DULY PASSED BY PROPER OFFICER [SECTION 40]

The first and foremost duty cast on the person-in-charge of conveyance under section 40 is that export goods are not to be loaded unless duly passed by Proper Officer.

The person-in-charge of a conveyance shall not permit the loading at a customs station

- (a) of export goods, other than baggage and mail bags, unless a shipping bill or bill of export or a bill of transhipment, as the case may be, duly passed by the proper officer, has been handed over to him by the exporter;
- (b) of baggage and mail bags, unless their export has been duly permitted by the 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), or
 - Bill of Export (at Land Customs Station), or
 - Bill of Transshipment (for transshipment goods),
- all duly passed by the proper officer.
- (ii) **In case of baggage and mail bags** – they should be permitted by Customs for export.

DELIVERY OF DEPARTURE MANIFEST/ EXPORT MANIFEST/ EXPORT REPORT [SECTION 41]

Section 41 has been amended so as to provide a facility, that the departure manifest/export manifest/ export report can also be furnished by a person notified by the Central Government, in addition to the person-in-charge of the conveyance.

It consists of a general declaration of particulars of the vessel, its crew and passengers, its date and port of departure; a list of ship's stores; a list of crew's personal effects; and a cargo declaration which is a complete list of the goods shipped from the port, goods transshipped at the port, goods lying in the vessel but not landed or transshipped ("same bottom cargo"), and dutiable goods, including arms and ammunition, forming part of the equipment of the vessel.

Section 41(1) of the Customs Act, 1962 provides that the person-in-charge of a conveyance carrying export goods or imported goods or any other person as may be specified by the Central Government, by notification, shall, before departure of the conveyance from a Customs station, deliver to the proper officer in the case of a vessel or aircraft, a departure manifest or an export manifest by presenting electronically, and in the case of a vehicle, an export report, in such form and manner as may be prescribed and in case, such person-in-charge or other person 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 or other person shall be liable to pay penalty not exceeding fifty thousand rupees.

However, in cases where it is not feasible to deliver departure manifest or export manifest by presenting them electronically, the Principal Commissioner/Commissioner of Customs may, allow the same to be delivered in any other manner. [Section 41(1)]

The person delivering the departure manifest or export manifest or export report shall make and subscribe a declaration as to the truth of its contents as a footnote thereof. [Section 41(2)]

Amendment to EGM: If the proper officer is satisfied that the departure manifest or export manifest or the export report is in any way incorrect and there was no fraudulent intention, he may permit such manifest or report to be amended or supplemented. [Section 41(3)]

Preparation of Export General Manifest: The procedure for preparation of cargo manifest is as follows:

- (i) In the case of shipment by sea, the ship's officer gives a receipt after he has received the consignment on board the ship. This receipt is called mate receipt. It is surrendered to the steamer agent or the agent who issues the bill of lading.
- (ii) In the case of shipment by air, after the cargo is delivered to the airways for loading, the airways issues an air consignment note.
- (iii) In the case of train and lorry, a railway receipt or a lorry receipt as the case may be, is issued as soon as the consignment is received by the carrier.

The export general manifest or report is the consolidated report of all such Bills of Lading/Air Consignment Notes/Railway Receipts/Lorry Receipts issued.

PASSENGER AND CREW DEPARTURE MANIFEST AND PASSENGER NAME RECORD INFORMATION [SECTION 41A]

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, shall deliver to the proper officer—

- (i) the passenger and crew departure manifest; and

- (ii) 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.

Where the passenger and crew departure manifest or the passenger name record information or any part thereof is not delivered to the proper officer within the prescribed time and if the proper officer is satisfied that there was no sufficient cause for such delay, the person-in-charge or the other specified person shall be liable to such penalty, not exceeding ₹ 50,000, as may be prescribed.

NO CONVEYANCE TO LEAVE WITHOUT WRITTEN ORDER [SECTION 42]

The person-in-charge of the conveyance which has brought any imported goods or has loaded any export goods at a customs station shall not cause or permit the conveyance to depart from that customs station until a written order to that effect has been given by the proper officer.

Subsection (2) of section 42 stipulates that no such order shall be given until

- (a) The person-in-charge of a conveyance has answered the questions put to him under Section 38;
- (b) The provisions of section 41 have been complied with;
- (c) The shipping bills 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;
- (d) 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;
- (e) The person-in-charge of the conveyance has satisfied the proper officer that no penalty is leviable on him under section 116 or the payment of any penalty that may be levied upon him under that section has been secured by such guarantee or deposit of such amount as the proper officer may direct;
- (f) 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 in relation to export of goods-

- (i) Such goods have been unloaded, or
- (ii) Where the Assistant Commissioner is satisfied that it is not practicable to unload such goods, the person-in-charge of the conveyance has given an undertaking, secured by such guarantee or deposit of such amount as the proper officer may direct, for bringing back the goods to India.



7. PROCEDURE FOR THE CLEARANCE OF EXPORT GOODS

ENTRY OF GOODS FOR EXPORTATION [SECTION 50]

The exporter is, under section 50 of the Customs Act, required to present electronically on the customs automated system to a proper officer of customs a shipping bill in case of export by a vessel or by air and a bill of export, in case of export by a vehicle. With this extent of automation, Customs expects that filing of shipping bill and payment of duty is on the automated system of customs department or CAS.

However, the Principal Commissioner/Commissioner of Customs may, in cases where it is not feasible to make entry by presenting electronically, allow an entry to be presented in any other manner. Hence, manual submission of shipping bill/bill of export is allowable in cases where electronic submission is not feasible.

The form of the shipping bill is prescribed under the Shipping Bill and Bill of Export (Forms) Regulations, 2017.

Normally a shipping bill is permitted to be filed only after an entry outward has been granted for the particular vessel or aircraft by which the goods are to be exported. However, under special circumstances the Principal Commissioner/Commissioner of Customs may permit advance shipping bill to be filed. The exporter of any goods, while presenting a shipping bill or bill of export, shall make and subscribe to a declaration as to the truth of its contents.

The exporter who presents a shipping bill or bill of export under this section 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.

CLEARANCE OF GOODS FOR EXPORTATION [SECTION 51]

After the shipping bill is filed, they are presented for the customs appraisal. The officer of customs checks that the goods are not prohibited for export and whether they are liable to any export duty. Physical check is carried out in terms of prevailing instructions. 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" order. 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, in which case 'let export' can be ordered before duty is paid.

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.

NOTICE OF SHORT-EXPORT OF GOODS

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.



8. PROCEDURE FOR POSTAL ARTICLES

IMPORT / EXPORT OF GOODS BY POST OR COURIER

Sections 83 and 84 of the Customs Act contain the substantive provisions relating to goods imported or exported by post or through authorized courier.



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

- (1) The rate of duty and tariff value, if any, applicable to any goods imported by post or courier shall be the rate and valuation in force on the date on which postal authorities or the authorized courier present to the proper officer a list containing the particulars of such goods for the purposes of assessing the duty thereon.

POSTAL ARTICLES

However, where the postal goods arrive on a vessel, and the list containing the particulars is available and is filed by the Post Master, before the arrival of the vessel, the list shall be deemed to have been filed on the date of arrival of the vessel.

The effect of this proviso is that the relevant date for imports by post is the date of submission of the list by the Post-Master or the date of arrival of the vessel, whichever is later.

- (2) The rate of duty and tariff value applicable to any goods exported by post or courier shall be the rate and valuation in force on the date on which the exporter delivers such goods to the postal authorities or the authorized courier for exportation.



Procedure for goods imported or to be exported by post or courier [Section 84]

This section empowers the Board to make regulations providing

- (a) the form and manner in which an entry may be made in respect of goods imported or to be exported by post or courier
- (b) the examination, assessment to duty, and clearance of goods imported or to be exported by post or courier
- (c) the transhipment or transit of goods imported by post or courier from one Customs station to another or to a place outside India.

PROCEDURE FOR IMPORT AND EXPORT OF GOODS BY POST

In the case of goods imported by post the agency for the carriage of goods is the Government of India be it through sea, air or land. The control of the Customs Department is only on goods, whether imported or exported

- (i) on which there is a duty; and
- (ii) which are subject to prohibition or restriction under the Customs Act or any other law for the time being in force.

The customs have no concern over other goods or other mail.



9. SPECIAL PROVISIONS RELATING TO STORES

The term "stores" has been defined under section 2(38) of the Customs Act to mean "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". It covers items like food, drink, medicines, life-saving equipment like oxygen and life boats, articles or equipment used for entertainment, in addition to fuel, spare parts and other equipment.

These items are not imported into or exported out of India in the course of international trade, but by the very fact of their being brought into India from a place outside India, and *vice versa*, they attract the rigors of the controls on import and export of goods. This has necessitated special provisions to deal with such stores. Sections 85 to 90 of the Customs Act contain detailed provisions relating to treatment of Stores under the Act.

STORES

"Store list" in the prescribed format is required to be filed as part of the import manifest as well as export manifest / import report or export report.

WAREHOUSING OF STORES [SECTION 85]

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. Section 85 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 being assessed to duty."

This is a deviation from the general provision of warehousing the goods, where the goods are assessed to duty at the time of warehousing. Though such duty is not payable at the time of warehousing.

TRANSIT AND TRANSHIPMENT OF STORES [SECTION 86 AND 87]

Section 86 of the Customs Act provides that:

1. Any stores imported in a vessel or aircraft, may remain on board such vessel or aircraft, without payment of duty, while it is in India. (Transit)
2. Any stores imported in a vessel or aircraft may, with the permission of the proper officer be transferred to any vessel or aircraft as stores for consumption therein. (Transhipment)

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.

As a result of these two specific provisions of law, it follows that in other cases normal law of levy and assessment to import duty would apply. Thus, in the case of:

- (i) vessels/aircraft arriving in India and terminating their voyage at the port of arrival;
- (ii) vessel/aircraft arriving in India and subsequently converting into coastal voyage/run or domestic flight, import duty would be chargeable on the unconsumed stores brought by the vessel/aircraft/conveyance at the point of its entry into India. The stores list in the arrival manifest or import manifest forms the basic document for determination of duty liability.

APPLICATION OF SECTION 69 AND CHAPTER X TO STORES [SECTION 88]

This section provides that the provisions of section 69 and chapter X (which contains the provisions for drawback of duty) shall apply to stores other than those covered by section 90. Thus, it follows that,

- (i) Section 69 allows warehoused goods to be exported on payment of export duty (if any) from the warehouse (thus no import duty is paid on such goods). By virtue of section 88, this benefit is available to warehoused goods if they are taken on board any foreign going vessel or aircraft as stores.
- (ii) Further, as per section 74, where duty paid imported goods are exported within two years then subject to certain conditions, such duty shall be repaid as drawback. By virtue of section 88, this benefit has been made available to imported stores.

In case of imported stores, which have been re-exported after the import duties for the same have been paid, the original import duty paid is eligible as drawback. For stores like fuel and lubricants oil taken on board any foreign going aircraft 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 export duty (if any) from the warehouse under Section 69.

SUPPLY OF STORES [SECTION 89]

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 export 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 stores should be as per estimated requirement.

SPECIAL PROVISIONS REGARDING SHIPSTORES SUPPLIED TO INDIAN NAVAL VESSELS [SECTION 90]

Following are the special provisions in relation to supply of stores to Naval vessels:

- (i) Imported Stores for the use in a ship of the Indian Navy may without payment of duty be consumed on board the ship of Indian Navy ;
- (ii) Imported 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.
- (iii) The provisions of section 69 (duty-free export from a warehouse) and Chapter X (drawback) 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.



10. SPECIAL PROCEDURES RELATING TO CLEARANCE OF BAGGAGE

BAGGAGE

The term "baggage" has been defined under section 2(3) of the Customs Act in an inclusive manner, to include unaccompanied baggage as well but does not include motor vehicles. In common parlance, the term means luggage of a passenger comprising trunks or bags and personal belongings of the passenger.

The term "goods" has been defined under section 2(22) of the Customs Act, to include *inter alia*, baggage also. Therefore, the restrictions and regulations governing the import and export of goods will apply *mutatis mutandis* to baggage also.

ISSUES RELEVANT TO BAGGAGE

The person-in-charge of the conveyance is to file an Import General Manifest in the case of imported goods and an Export General Manifest in the case of export goods. In both the cases, "baggage goods" are required to be declared in separate sheets.

BAGGAGE

STATUTORY PROVISIONS

The statutory provisions relating to Baggage are covered by sections 77 to 81 of the Customs Act.

ENTRY OF BAGGAGE BY OWNER [SECTION 77]

Under this section, the owner of the baggage has to make a declaration of its contents to the proper officer of customs, for the purpose of clearing it. This is known as **Baggage Declaration Form**.

Declaring packing list is sufficient declaration.

RATE OF DUTY AND TARIFF VALUATION APPLICABLE TO BAGGAGE [SECTION 78]

Section 78 of the Customs Act stipulates that the rate of the duty and tariff valuation, if any applicable to baggage shall be the rate of and valuation in force on the date on which a declaration is made in respect of such baggage under section 77. Therefore, the relevant date for determining rate of duty is the date of filing baggage declaration under section 77.

Rate of duty on baggage.

Passenger baggage is exempted from IGST as well as GST Compensation Cess. The basic customs duty at the rate of 35% and the applicable social welfare surcharge is leviable on the value which is in excess of the duty-free allowances provided under the Baggage Rules, 2016. Thus, the effective rate of duty for baggage including social welfare surcharge is 38.5%.



This rate of duty is not applicable to fire arms, cartridges of fire arms exceeding 50, cigarettes, cigars or tobacco in excess of the quantity prescribed for importation free of duty under the relevant baggage rules and goods imported through a courier service.

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

Valuation rules apply to valuation of baggage also.



DUTY EXEMPTION TO BAGGAGE [SECTION 79]

Section 79(1) of the Customs Act refers to the duty relief available in respect of baggage. It stipulates that the proper officer, may subject to any rules made under sub-section (2), pass free of duty

- (a) any article in the baggage, of a passenger or a member of the crew, in respect of which the said officer is satisfied that it has been in his use for such minimum period as may be specified in the rules;
- (b) any article in the baggage of a passenger in respect of which the officer is satisfied that it is for the use of the passenger or his family or is a bonafide gift or souvenir, provided that the value of each such article and the total value of all such articles does not exceed such limits as may be specified in the rule.

The law thus envisages two categories of baggage, namely those belonging to (a) passengers; and (b) members of the crew.

Similarly, it envisages three classes of goods, namely (a) personal effects, which have been in the use of the person for a minimum period; (b) household effects, which is used by the family including the person; and (c) gifts and souvenirs.

Sub-section (2) of section 79 enables the Central Government to make rules for the purposes of carrying out the provisions of section 79(1). It also stipulates that such rules may specify



- (a) the minimum period for which any article has been used by a passenger or a member of the crew for the purposes of [clause (a) of sub-section(1)] determining personal effects;

- (b) The maximum value of any individual article and the maximum total value of all the articles which may be passed free of duty [under clause (b) of sub-section (1)] i.e., household effects, gifts, souvenirs etc.;
- (c) the conditions to be fulfilled before or after clearance subject to which the baggage may be passed free of duty. Sub-section (3) of section 79 provides that different rules may be made for different classes of persons.

PASSENGER BAGGAGE RULES

In pursuance of the powers conferred under section 79 of the Customs Act, the Government had earlier issued the Baggage Rules 1998. The Baggage Rules, 1998 have been substituted with the Baggage Rules, 2016. The salient features of the Baggage Rules 2016 are discussed hereunder:

 **General duty-free baggage allowance:** The general duty-free baggage allowance for different class of passengers coming from different countries is given hereunder:

Rule No.	Class passenger	Origin country from which the passenger is coming	Articles allowed free of duty
3	Indian resident or Foreigner residing in India or Tourist of Indian origin, excluding an infant	Any country other than Nepal, Bhutan or Myanmar	<ul style="list-style-type: none"> (i) Used personal effects and travel souvenirs; and (ii) Articles up to the value of ₹ 50,000 (excluding articles mentioned in Annexure I), if carried on in person or in the accompanied baggage of the passenger
3	Tourist of foreign origin excluding infant	Any country other than Nepal, Bhutan or Myanmar	<ul style="list-style-type: none"> (i) Used personal effects and travel souvenirs; and

			(ii) Articles up to the value of ₹ 15,000 (excluding articles mentioned in Annexure I), if carried on in person or in the accompanied baggage of the passenger
4	Indian resident or Foreigner residing in India or Tourist, excluding an infant	Nepal, Bhutan or Myanmar	<p>(i) Used personal effects and travel souvenirs; and</p> <p>(ii) Articles up to the value of ₹ 15,000 (excluding articles mentioned in Annexure I), if carried on in person or in the accompanied baggage of the passenger.</p> <p><u>On arriving by land:</u> Only used personal effects.</p>



When a passenger is an infant, only used personal effects will be allowed duty free. The general duty-free baggage allowance of a passenger cannot be pooled with the general duty-free baggage allowance of any other passenger.

- (a) "Infant" means a child not more than two years of age;
- (b) "Resident" means a person holding a valid passport issued under the Passports Act, 1967 and normally residing in India;
- (c) "Tourist" means a person not normally resident in India, who enters India for a stay of not more than six months in the course of any twelve months period for legitimate non-immigrant purposes;
- (d) "Personal effects" means things required for satisfying daily necessities but does not include jewellery.



Jewellery Allowance [Rule 5]:

Rule No.	Class of passenger	Origin country from which the passenger is coming	Articles allowed free of duty
5	Passenger residing abroad for more than one year	Any country	<p><u>Gentleman:</u> Jewellery upto a weight of 20 gms with a value cap of ₹ 50,000</p> <p><u>Lady passenger:</u> Jewellery upto a weight of 40 gms with a value cap of ₹ 1,00,000</p>



Transfer of residence [Rule 6]: 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.

Appendix

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 mentioned in Annexure III upto an aggregate value of ₹ 60,000	Indian passenger	-

From 6 months upto 1 year	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 ₹ 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 ₹ 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 ₹ 5,00,000	(i) Minimum stay of 2 years abroad, immediately preceding the date of his arrival on transfer of residence;	The shortfall of upto 2 months in stay abroad can be condoned by Deputy/ 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 two preceding years should not exceed 6 months; and	The Principal Commissioner/ Commissioner 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



Currency [Rule 7]: The import and export of currency under these rules shall be governed in accordance with the provisions of the Foreign Exchange Management (Export and Import of Currency) Regulations, 2015, and the notifications issued thereunder.



Unaccompanied Baggage [Rule 8]: 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 2months upto a maximum of 1 year for reasons to be recorded.

 **Crew baggage [Rule 9]:** 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 ₹ 1500.

 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, II and III are given below:

ANNEXURE-I (See rule 3, 4 and 6)

1. Firearms.
2. Cartridges of fire arms exceeding 50.
3. Cigarettes exceeding 100 sticks or cigars exceeding 25 or tobacco exceeding 125gms.
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.

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.

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 Discplayer.
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 litres or its equivalent.

Illustration 4

Mr. Sujoy, an Indian entrepreneur, went to London to explore new business opportunities on 01.04.2024. 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 15.04.2025:

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

With reference to Baggage Rules, 2016, determine whether Mr. and Mrs. Sujoy will be required to pay any customs duty?

Answer

As per rule 3 of the Baggage Rules, 2016, 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, that is to say, used personal effects and travel souvenirs; and articles [other than certain specified articles], upto the value of ₹ 50,000 if these are carried on the person or in the accompanied baggage of the passenger.

Thus, there is no customs duty on used personal effects and travel souvenirs and general duty free baggage allowance is ₹ 50,000 per passenger. Thus, duty liability of Mr. Sujoy and his wife is nil for the used personal effects worth ₹ 80,000 and 2 music systems each worth ₹ 50,000.

As per rule 5 of the Baggage Rules, 2016, the jewellery allowance is as follows:

Jewellery brought by	Duty free allowance
Gentleman Passenger	Jewellery upto a weight of 20 grams with a value cap of ₹ 50,000
Lady Passenger	Jewellery upto a weight of 40 grams with a value cap of ₹ 1,00,000

However, the jewellery allowance is applicable only to a passenger residing abroad for more than 1 year.

Consequently, there is no duty liability on the jewellery brought by Mr. Sujoy 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 ₹ 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 ₹50,000 allowed under rule 3.

Illustration 5

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

Answer

- (1) As per Baggage Rules, 2016, an Indian resident arriving from any country other than Nepal, Bhutan or Myanmar is allowed duty free clearance of-
 - (i) Used personal effects and travel souvenirs without any value limit.
 - (ii) Articles [other than certain specified articles] upto a value of ₹ 50,000 carried as accompanied baggage [General duty-free baggage allowance].

Further, such general duty-free baggage allowance of a passenger cannot be pooled with the general duty free baggage allowance of any other passenger.

- (2) One laptop computer when imported into India by a passenger of the age of 18 years or above (other than member of crew) as baggage is exempt from whole of the customs duty [Notification No. 11/2004 Cus. dated 08.01.2004].
- (3) Accordingly, there will be no customs duty on used personal effects (worth ₹ 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 ₹ 52,000 – ₹ 50,000 = ₹2,000.

Effective rate of duty for baggage = 38.5% [including social welfare surcharge @ 10%]

Therefore, total customs duty = ₹770

Illustration 6

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

Answer

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.

TEMPORARY DETENTION OF BAGGAGE [SECTION 80]

It may so happen that a passenger has brought with him an article, which is prohibited. The passenger may not insist on taking it into the Indian Territory. On the contrary, he may opt to re-export it or take it with him when he leaves the country.

Similarly, a passenger may not unnecessarily pay duty on an article, which he can conveniently avoid taking into the town, if the duty is heavy. In such case also, he may opt to take the article with him when he leaves the country.

In both the cases, he will have to deposit the article with the customs authorities and take it back at the port of his departure.

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 and if for any reason, the passenger is not able to collect the article at the time of his leaving India the article may be returned to him through any other passenger authorised by him and leaving India or as cargo consigned in his name".

Declaration – the essence: The declaration of the goods brought in is an absolute necessity. If the goods are not declared under section 77, the passenger cannot subsequently claim the benefit under section 80 and the goods are liable for confiscation.

REGULATIONS IN RESPECT OF BAGGAGE [SECTION 81]

Since the provisions in respect of baggage are a complete code by themselves, it is desirable to supplement detailed procedures wherever necessary with the rule making powers. Section 81 therefore provides that the Board may make regulations in the following matters:

- (a) providing for the manner of declaring the contents of any baggage;

- (b) providing for the custody, examination, assessment to duty and clearance of baggage;
- (c) providing for transit or transhipment of baggage from one customs station to another or to a place outside India.

Baggage declaration form: In exercise of these powers, the form of the baggage declaration has been prescribed and standardized. Transit or transhipment of baggage from one customs station to another becomes a necessity for convenient clearance of unaccompanied baggage.

In the Customs Baggage Declaration Regulations, 2013, the baggage declaration will have to be filed only by those passengers who come to India and carry dutiable or prohibited goods or have anything to declare.

Note: CBIC vide *Circular No. 08/2016 Cus. dated 08.03.2016* has clarified that the domestic passengers who board international flights in the domestic leg are not required to file the Customs Baggage Declaration Form.



11. TRANSIT AND TRANSHIPMENT

TRANSIT AND TRANSHIPMENT OF IMPORT CARGO – AN INTRODUCTION:

A conveyance may not carry goods intended for a particular customs station only. It may carry goods intended for other Indian ports and other foreign ports. There are two distinct possibilities:

- (a) The conveyance may not call at all other Indian ports/customs stations and foreign ports for which it carries goods.
- (b) The conveyance may call at all other Indian ports/customs stations and foreign ports for which it carries goods.



In the case of the former, the goods will have to be transferred to any other conveyance onward carriage to the destination. This is called transhipment. This will cover both goods intended for Indian ports and foreign ports.

In the latter situation, the goods will continue to be carried by the same conveyance. This is called transit of goods.

In both the situations, import duty is not collected on the goods even though the liability has already accrued by the fact of import into India (which includes the territorial waters of India). It would be necessary to ensure that

- (a) in the case of goods intended for Indian ports, the goods have actually to be conveyed to the Indian port of destination and appropriate duty of customs is collected thereupon;
- (b) in the case of goods intended for foreign ports, the goods are actually conveyed out of India and are not landed in any Indian customs station.



DIFFERENCE BETWEEN TRANSIT AND TRANSHIPMENT

The essential difference between transit and transhipment lies in the continuity of records and documentation.

- (a) In the case of transit of goods by the same conveyance, the record already made in the ship's/aircraft's manifest will continue. The goods would have to be shown in the manifest as same bottom cargo. The destination of the cargo consignment wise has to be shown in the same bottom cargo manifest. These entries have necessarily to figure in the departure manifest or export manifest of the conveyance. Thereafter when the conveyance calls at the next Indian customs port or airport the goods have to figure in the Import General Manifest filed there as landing cargo or same bottom cargo as the case may be. Thus, there is continuity in the record and there is no chance of the control over such transit goods being lost.
- (b) The position of the transhipment is entirely different. In the first instance, such transhipment goods are landed in the particular Indian customs station. Thereafter, they have to be shipped by a conveyance to the

TRANSIT

TRANSHIPMENT

destination to be transhipped. These are the following stages where care and caution have to be exercised to ensure that the goods are not illicitly landed and smuggled into India.

- (i) during the period when the transhipment goods lie in the Indian customs station;
- (ii) when the goods are transhipped by another conveyance to their final destination;
- (iii) where the transhipped goods are destined to another Indian customs station, care has to be taken at that station for actual landing and proper clearance.

STATUTORY PROVISIONS

The statutory provisions relating to Transit and Transhipment of goods are covered in sections 52 to 56 of the Customs Act.



EXCEPTIONS TO THIS CHAPTER [SECTION 52]

The provisions of this chapter shall not apply to

- (a) Baggage
- (b) Goods imported by post and
- (c) Stores



TRANSIT OF GOODS IN THE SAME VESSEL OR AIR [SECTION 53]

Subject to the provisions of section 11 (power to prohibit import or export of goods), 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.



TRANSHIPMENT OF GOODS WITHOUT PAYMENT OF DUTY [SECTION 54]

- (1) Where any goods imported into a customs station are intended for transhipment, a bill of transhipment shall be presented to the proper

officer in the prescribed form. Where the goods are being transferred under an international treaty or bilateral agreement between the Government of India and Government of a foreign country, a declaration for transhipment instead of a bill of transhipment shall be presented to the proper officer in the prescribed form.

- (2) Subject to the provisions of sections 11 (power to prohibit import or export of goods), 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 transhipment to anyplace outside India, such goods may be allowed to be so transhipped without payment of duty.



- (3) Where any goods imported into a customs station are mentioned in the arrival manifest or import manifest or the import report, as the case may be, as for transhipment:-
- to any major port as defined in the Indian Ports Act, 1908 (15 of 1908), or the customs airport at Mumbai, Calcutta, Delhi, or Chennai or any other custom port or customs airport which the board may, by notification in the Official Gazette, specify in this behalf, or
 - to any other customs station and the proper officer is satisfied that the goods bona fide intended for transhipment to such customs station, the proper officer may allow the goods to be transhipped without payment of duty, subject to such conditions as may be prescribed for the due arrival of such goods at the customs station to which transhipment is allowed.

Illustration 7

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

Answer

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



LIABILITY OF DUTY ON GOODS TRANSITED UNDER SECTION 53 OR TRANSSHIPPED UNDER SECTION 54 [SECTION 55]

Where any goods are allowed to be transited under section 53 or transhipped under section 54(3) (transhipment within India) 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.



TRANSPORT OF CERTAIN CLASSES OF GOODS SUBJECT TO PRESCRIBED CONDITIONS [SECTION 56]

The provisions of sections 53 and 54 apply only to goods imported at an Indian customs port/airport and transmitted or transshipped to another Indian customs port/airport. They do not cover transport by land from one Indian land custom station to another Indian land customs station.

In the case of goods destined to foreign ports/airports/custom station, the problem had been specifically faced in the case where imported goods meant for Nepal landed at any Indian customs port/airport or land customs station. Such goods had to be transported by road or rail to Indian land customs station

along the Indo Nepal Border and thereafter crossed over to the corresponding Nepalese customs station. Similarly, there was rail traffic between West and East Pakistan before the latter was liberated and named Bangladesh. The movement across the Indian territory was found to be faster and cheaper compared to movement by sea around the Indian subcontinent. Such a situation is dealt with by section 56 of the Customs Act.

Section 56 specifically provides that 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.

In the first part, movement within Indian Territory is allowed without payment of customs duty, for goods imported from outside India for ultimate destination outside India.

In the second part, movement through foreign territory is allowed without payment of customs duty, for goods starting from one part of India to another part of India.

IMPORT AND EXPORT PROCEDURES

The brief description of Import and Export Procedures is given as under:

IMPORT PROCEDURES

The procedure for importation of goods by air, by sea, or by land has been outlined below:-

(1) Landing/calling of aircraft/vessel: In case goods are imported by sea/air, the goods shall be loaded in the vessel/aircraft in the exporting country and sent to India. In case of import by land, the goods shall be sent in a vehicle (rail or road vehicle).

When the vessel/aircraft carrying imported goods arrives in India, the **person-in-charge of such vessel/aircraft** [master/pilot of the vessel/aircraft respectively] entering into India from outside India shall allow calling/landing of the vessel/aircraft only at the customs port/customs airport unless otherwise permitted by CBIC.

- (2) Delivery of import manifest/report:** The person-in-charge of a vessel/aircraft shall deliver to the proper officer an **import manifest** [*detailed information about goods in vessel/aircraft*] by presenting the same electronically before the arrival of the vessel/aircraft at the customs port/customs airport. In case of import by land, the person-in-charge of the vehicle shall deliver to the proper officer an **import report** [*detailed information about goods in vehicle*] within 12 hours of the arrival of vehicle at the customs station.
- (3) Grant of Entry Inwards to the master of the vessel/permission to unload the goods:** On receiving import manifest from the master of a vessel, the proper officer shall grant Entry Inwards to the master. The master of the vessel shall not permit the goods to be unloaded until the order of Entry Inwards has been granted by the proper officer to such vessel. Date of Entry Inwards is the date on which the customs department is ready to supervise the unloading of cargo.
- (4) Unloading of goods:** Imported goods shall be unloaded:-
- only if mentioned in the import manifest/import report.
 - only at the approved places in any customs port/customs airport.
 - under the supervision of the proper officer.
 - during working hours and shall not be unloaded on Sunday/on any holiday.
- (5) Unloaded goods to be in the custody of the Custodian until their clearance:** Once the imported goods have entered the customs area, they shall remain in the custody of the **Custodian** [*a person approved by the Commissioner of Customs for this purpose*]. If the imported goods are pilfered after unloading in a customs area, while in the custody of the Custodian, then the Custodian shall be liable to pay duty on such goods.
- (6) Filing of entry for import i.e. Bill of Entry:** The importer of any goods, other than goods intended for transit or transhipment [*provisions of goods in transit/transhipment are discussed below in point (11)*], shall file a Bill of Entry electronically for clearance of goods from the custom station port/airport.

In case the goods are to be cleared for home consumption, importer would file Bill of Entry for home consumption. However, if the importer does not

need the goods immediately, he may request the goods to be warehoused. In that case, an Into-Bond Bill of Entry (for warehousing) would be filed. When subsequently, the goods are to be cleared from warehouse for home consumption, an Ex-Bond Bill of Entry is required to be filed.

- (7) **Timing of filing of Bill of Entry:** Bill of entry may be presented before the end of the day (including holidays) preceding the day on which the aircraft/vessel/vehicle carrying the goods arrives at a customs station at which such goods are to be cleared for home consumption or warehousing. However, Board may, in such cases as it may deem fit, prescribe different time limits for presentation of the bill of entry, which shall not be later than the end of the day of such arrival.

Further, a bill of entry may be presented at any time not exceeding 30 days prior to the expected arrival of the aircraft/vessel/vehicle by which the goods have been shipped for importation into India.

- (8) **Assessment of duty on the imported goods:** Assessment is the procedure of quantifying the amount of liability. The importer will self-assess the duty considering the applicable rate of exchange and rate of import duty. This self-assessment is subject to verification by the proper officer of the Customs and may lead to reassessment by such officer if the assessment made by the importer is found to be incorrect. The proper officer shall return the Bill of Entry to the importer after determination of the duty amount.

- (9) **Payment of duty:** If the goods are cleared to be stored in a warehouse, payment of duty is deferred till the time of clearance from such warehouse. However, in case the goods are cleared for home consumption, customs duty has to be paid. The benefit of deferred payment of duty has also been permitted in respect of certain class of importers (discussed in preceding paragraphs).

The importer has to pay the duty within the prescribed time-limit as discussed under section 47. In case he fails to do so, he is required to pay interest on the duty till the time he actually pays the duty and clears the goods.

- (10) **Maximum Time for clearance of imported goods from the custom station:** The goods lying under the custody of the custodian have to be cleared either for home consumption or for warehousing or for transhipment

within 30 days (or such extended time as the proper officer may allow) from the date of unloading of goods at the customs station. Otherwise, the goods would be subject to auction by the person having custody thereof as per section 48 of the Customs Act, 1962.

(11) Mandatory documents for imports: The following documents are mandatory-

1. Bill of Lading/Airway Bill/Lorry Receipt/ Railway Receipt/Postal Receipt
2. Commercial Invoice cum Packing List (or separate invoice and packing list)
3. Bill of Entry

For import of specific goods or in specific cases of import, additional documents may be notified/sought.

Note: *There are separate import procedures for import of baggage and import by post.*

EXPORT PROCEDURES

The procedure for exportation of goods by air, by sea or by land has been outlined below:

(1) Filing of shipping bill/ bill of export: The exporter is required to present electronically to a proper officer of customs a **shipping bill** [in case of export by a vessel or by air] and a **bill of export** [in case of export by a vehicle].

An exporter entering any export goods self-assesses and pays the duty, if any, leviable on such goods subject to verification by the proper officer.

(2) Order permitting clearance and loading of goods for exportation: Where the proper officer is satisfied that:

- ◆ goods entered for export are **NOT prohibited goods and**
- ◆ exporter has **paid duty, if any**, on them,

he passes order permitting clearance and loading of goods for exportation called '**Let Export Order**'.

(3) Grant of Entry Outwards: A vessel intending to start loading of export goods must be first granted an 'Entry Outwards' by the proper officer. The master of a vessel shall not permit the loading of any export goods, until the proper officer grants entry-outwards to such vessel.

Note: Entry outwards is the permission granted by the Customs authorities to a vessel to go on a foreign voyage to the port of consignment.

- (4) **Loading of goods on conveyance for exportation:** The export goods shall be loaded on the conveyance for exportation with the permission of person-in-charge. He shall not permit the loading at a customs station unless a shipping bill/bill of export/bill of transhipment, as the case may be, duly passed by the proper officer, has been handed over to him by the exporter.

Note: In case of goods exported in a vessel, grant of entry outwards is also mandatory requirement before loading of goods.

- (5) **Delivery of export manifest/report:** The person-in-charge of a conveyance carrying export goods shall, before departure of the conveyance from a customs station, deliver to the proper officer in the case of a vessel or aircraft, an export manifest electronically, and in the case of a vehicle, an export report.
- (6) **No conveyance to leave without written order:** The person-in-charge of a conveyance which has loaded any export goods at a customs station shall not cause or permit the conveyance to depart from that customs station until a written order to that effect has been given by the proper officer.
- (7) **Mandatory documents for exports:** The following documents are mandatory-

- 1 Bill of Lading/Airway Bill/Lorry Receipt/ Railway Receipt/Postal Receipt
- 2 Commercial Invoice cum Packing List (or separate invoice and packing list)
- 3 Shipping Bill/Bill of Export/ Postal Bill of Export

For export of specific goods or in specific cases of export, additional documents may be notified/sought.

Note: There are separate export procedures prescribed for export of baggage and export by post.



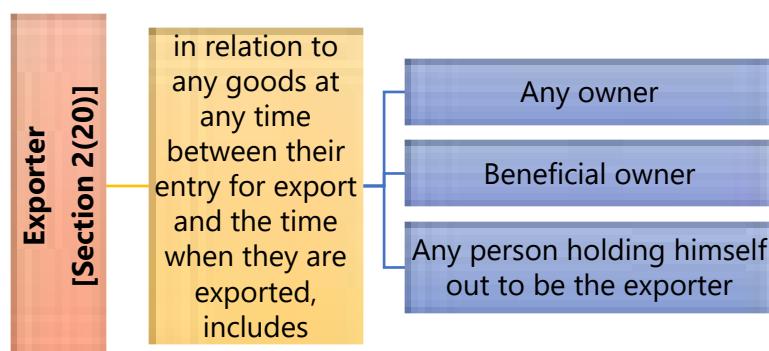
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Important Definitions

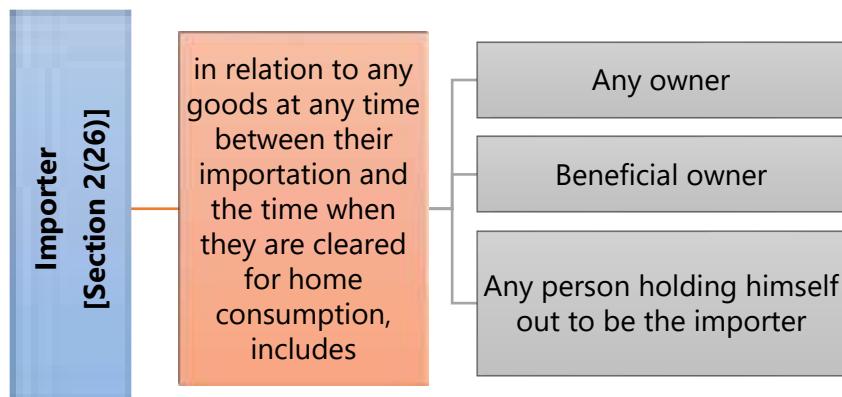
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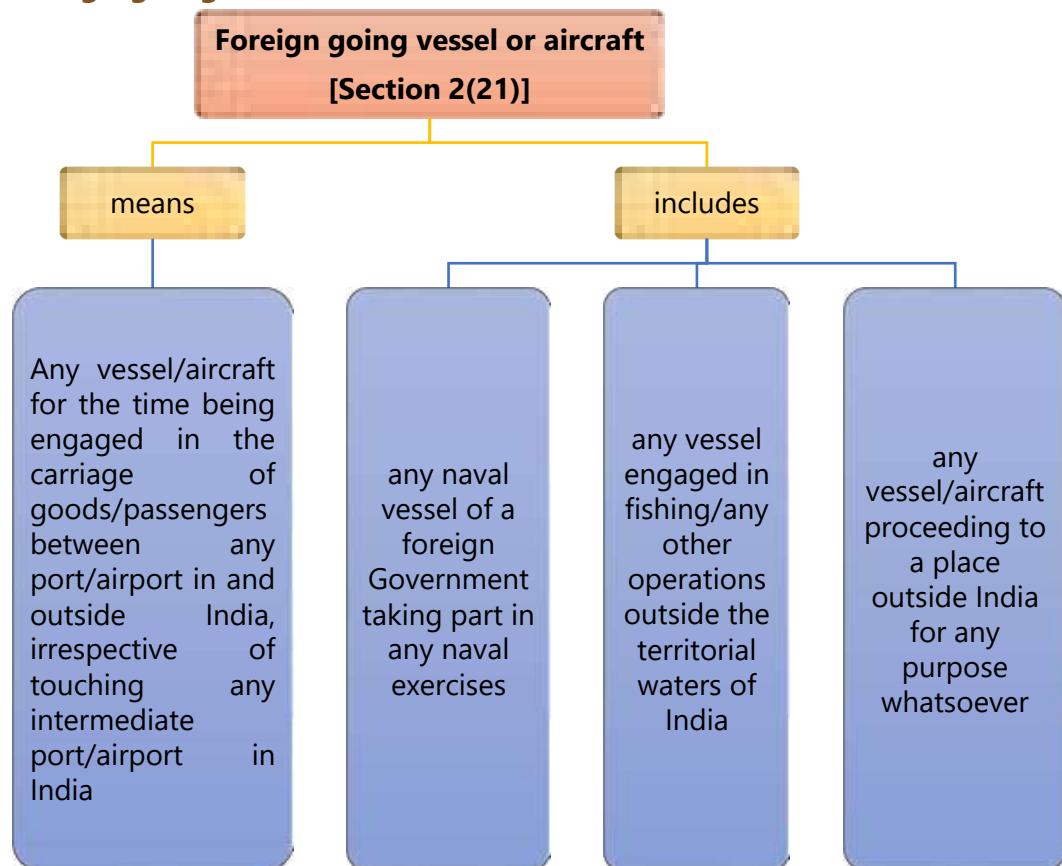
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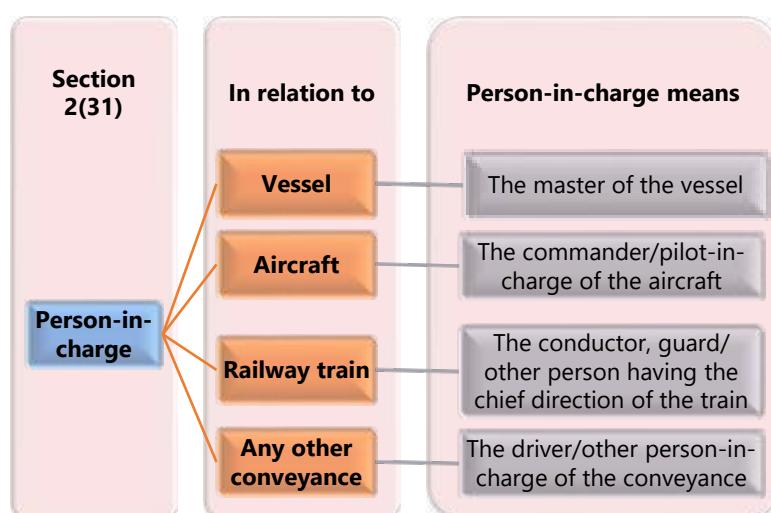
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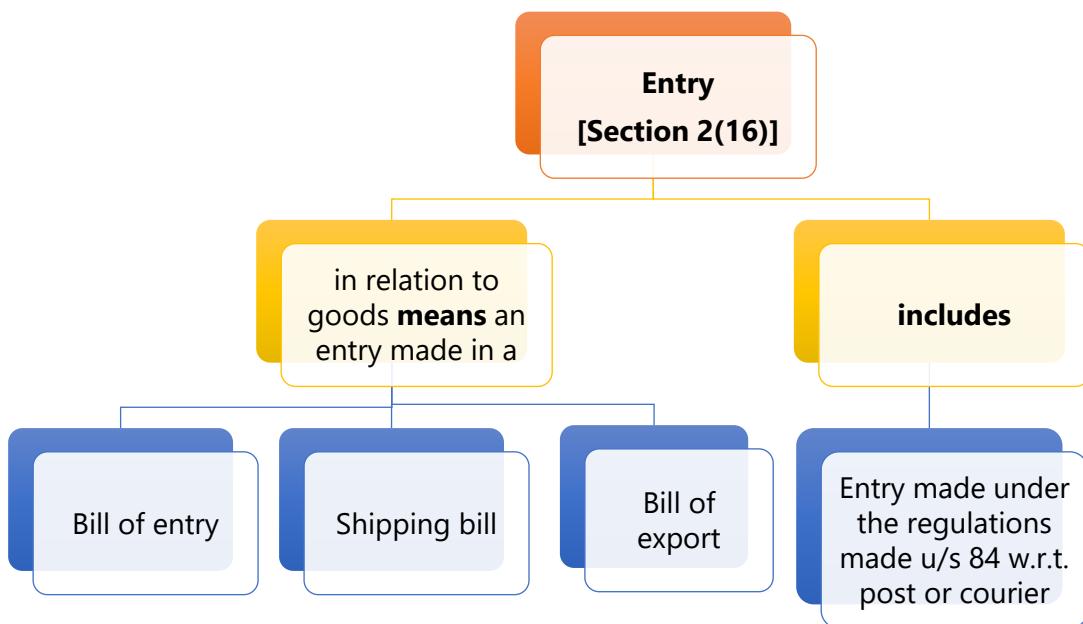


Foreign going vessel or aircraft



Person in Charge



Entry**Arrival of vessels and aircrafts in India [Section 29]**

Person-in-charge of vessel/aircraft entering India not to permit the vessel/aircraft to call/land at any place other than customs port/customs airport

for the first time after arrival in India or

at any time while carrying passengers/cargo unless permitted by the Board

Allowed to call/land at other place if compelled by accident, stress of weather/other unavoidable cause

Obligations of Person in charge

Obligations of person-in-charge of such vessel/aircraft:-

- (i) To report arrival of vessel/landing of aircraft to the nearest customs officer/officer in charge of police station & produce log book if demanded
- (ii) W/o consent of such officer - not permit unloading of goods & any passengers/crew to leave the vicinity of vessel/aircraft
- (iii) Comply with all the directions given by such officer

Exception:- Goods can be unloaded or passengers/crews can leave w/o consent due to health, safety/preservation of life or property

Delivery of Arrival manifest/ Import manifest/Import report [Section 30]

Imported goods brought in

Vessel/Aircraft

Vehicle

Import Document to be presented by person-in-charge

Arrival manifest (AM)/import manifest (IM)

Import Report (IR)

Time limit for presentation of IM/IR

Any time prior to its arrival

Within 12 hours after its arrival

Mode of presentation

Electronic filing

Prescribed manner

Principal Commissioner/ Commissioner of Customs may allow AM/IM to be delivered in any other manner, if not feasible to present electronically.

Penalty

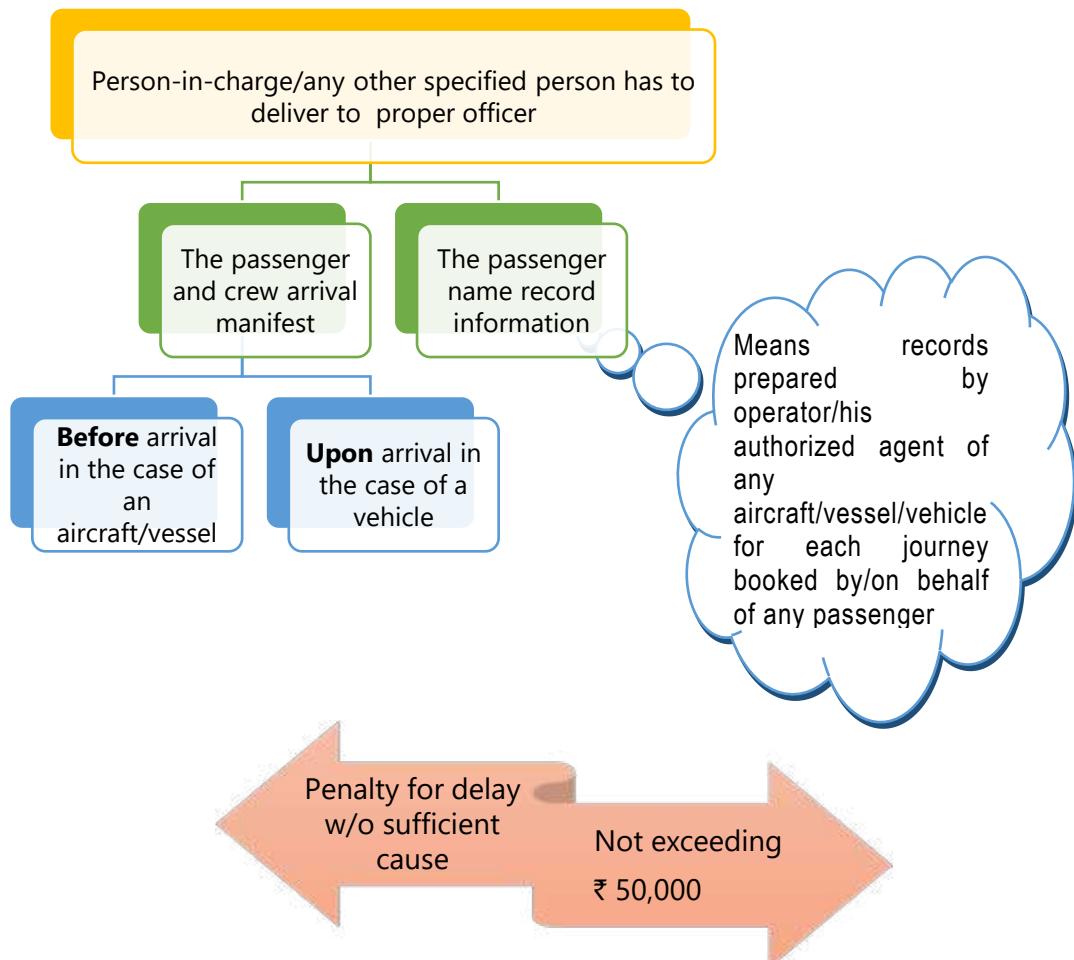
Penalty for delay w/o sufficient cause

- Not exceeding ₹ 50,000

Proper officer satisfied that AM/IM/IR is in any way incorrect/incomplete & no fraudulent intention

- May permit it to be amended or supplemented.

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



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

Master of vessel not permitted for unloading of any imported goods until order granting entry inwards given by proper officer

Order to be given only if arrival manifest/ import manifest delivered or proper officer satisfied of valid reason for non-delivery.

Exception:-

Unloading of baggage accompanying passenger/member of the crew,
mail bags,
animals,
perishable goods & hazardous goods

Imported goods not to be unloaded unless mentioned in arrival manifest or import manifest or import report [Section 32]

W/o permission of proper officer

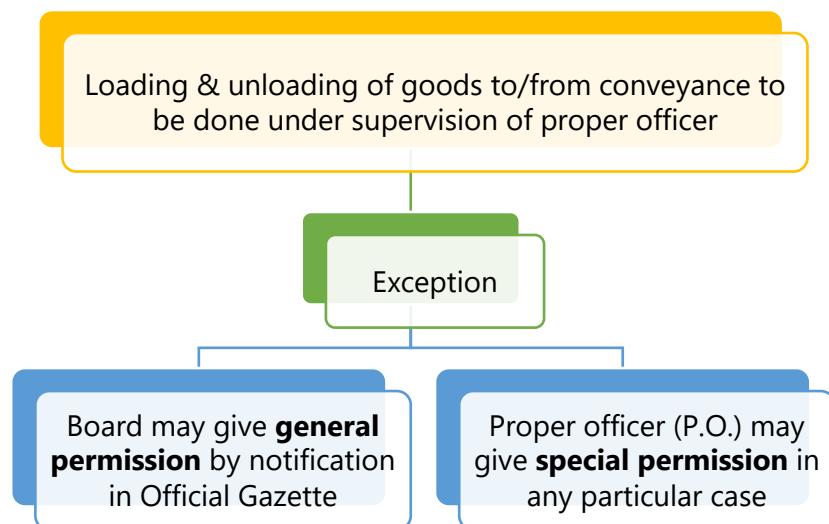
- Imported goods not to be unloaded
- Unless mentioned in arrival manifest, import manifest/import report for being unloaded in that customs station

Loading and unloading of goods at approved places only [Section 33]

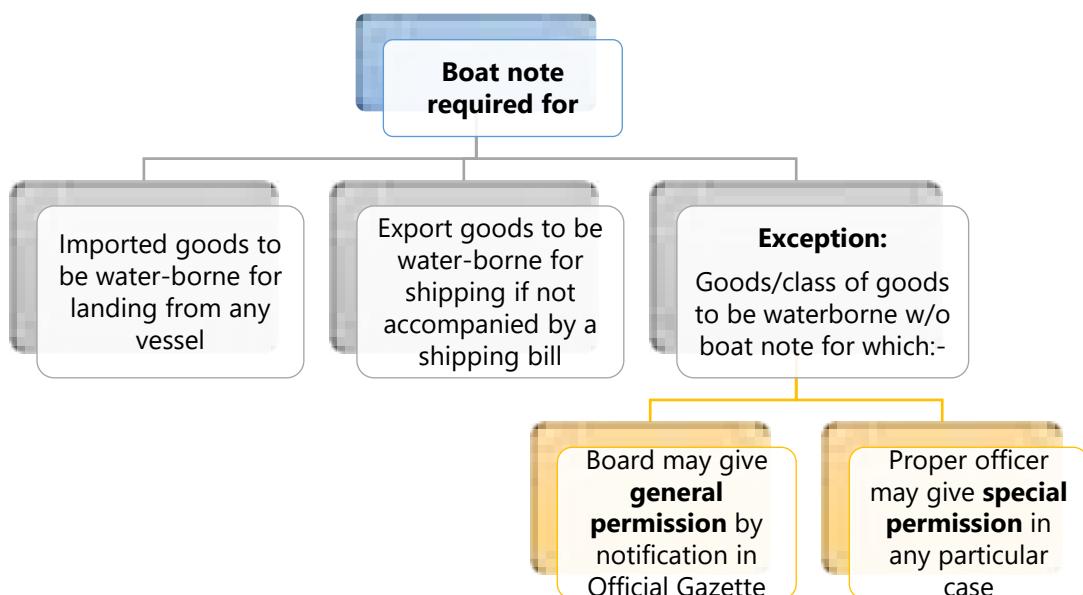
Loading & Unloading of goods to be undertaken

Only at approved places

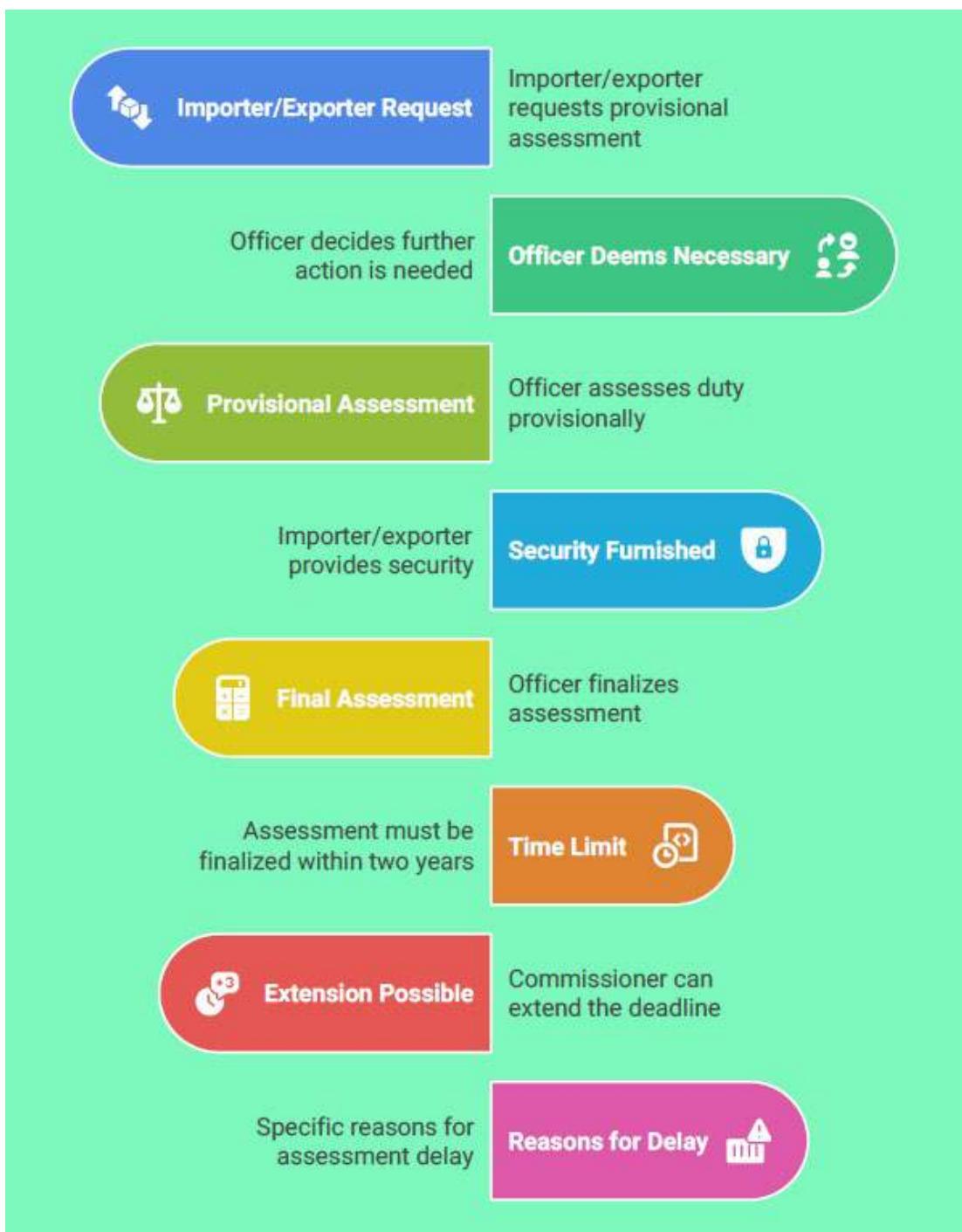
Goods not to be loaded or unloaded except under the supervision of Customs Officer [Section34]



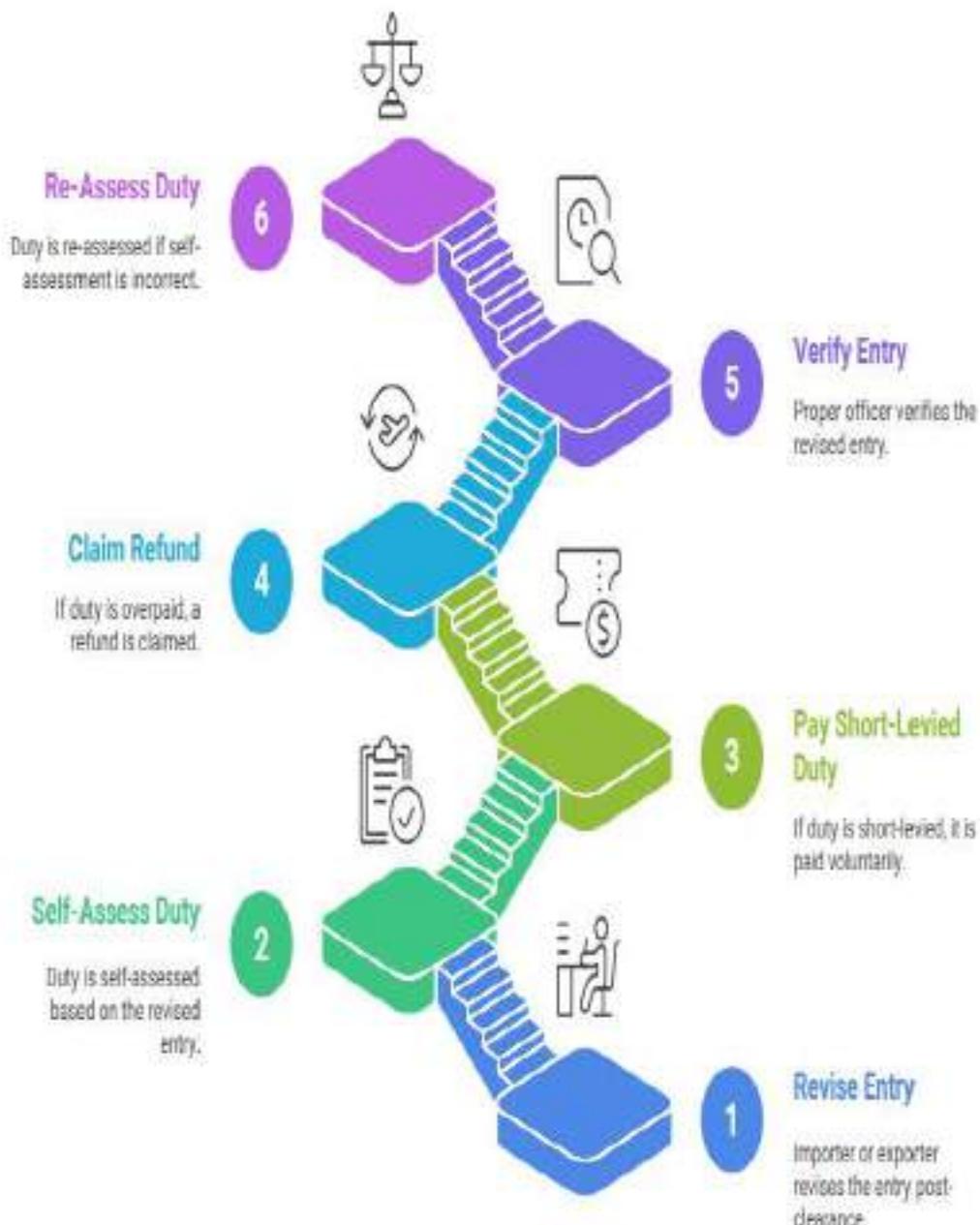
Restrictions on goods being water-borne [Section 35]



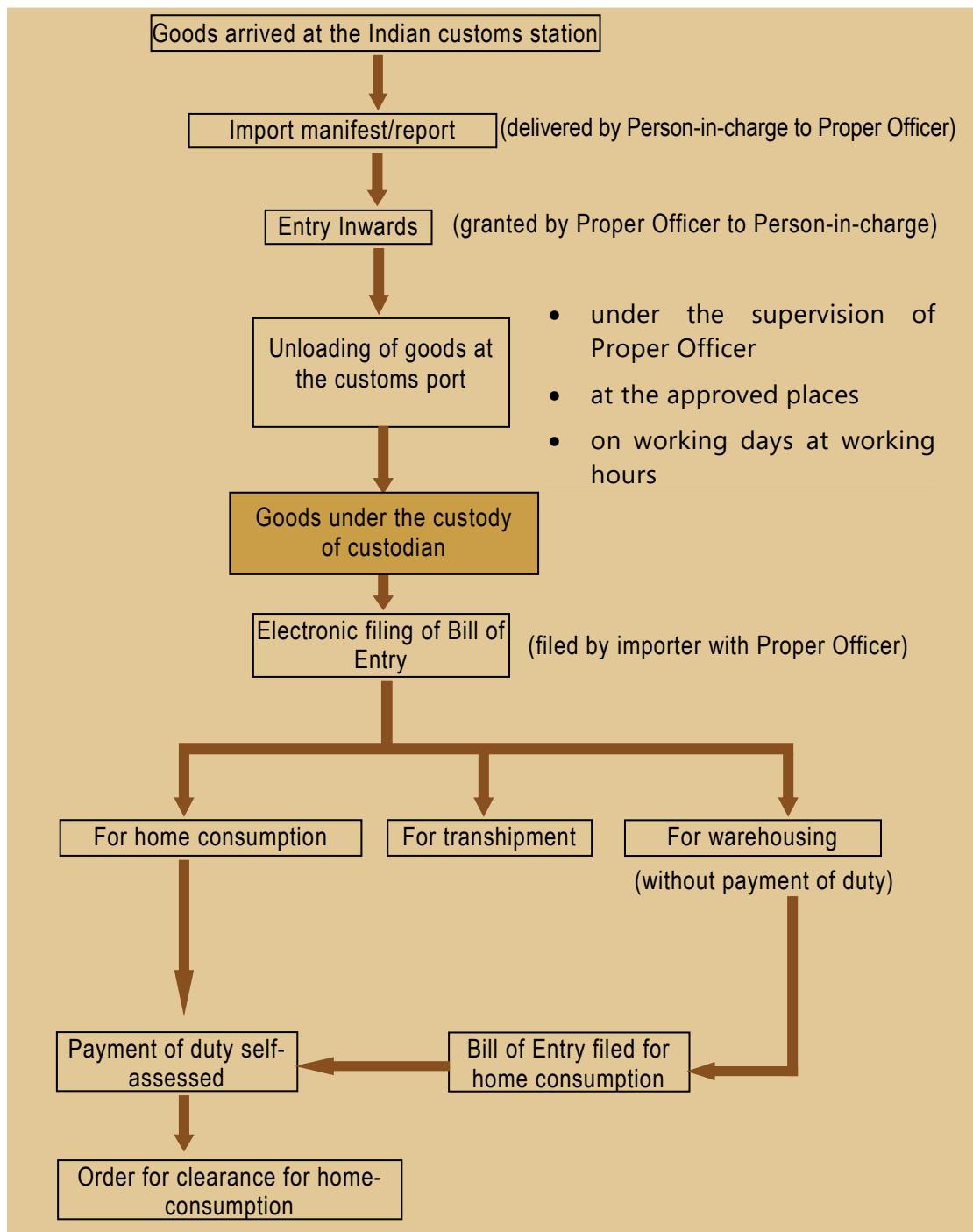
Provisional assessment of duty [Section 18]



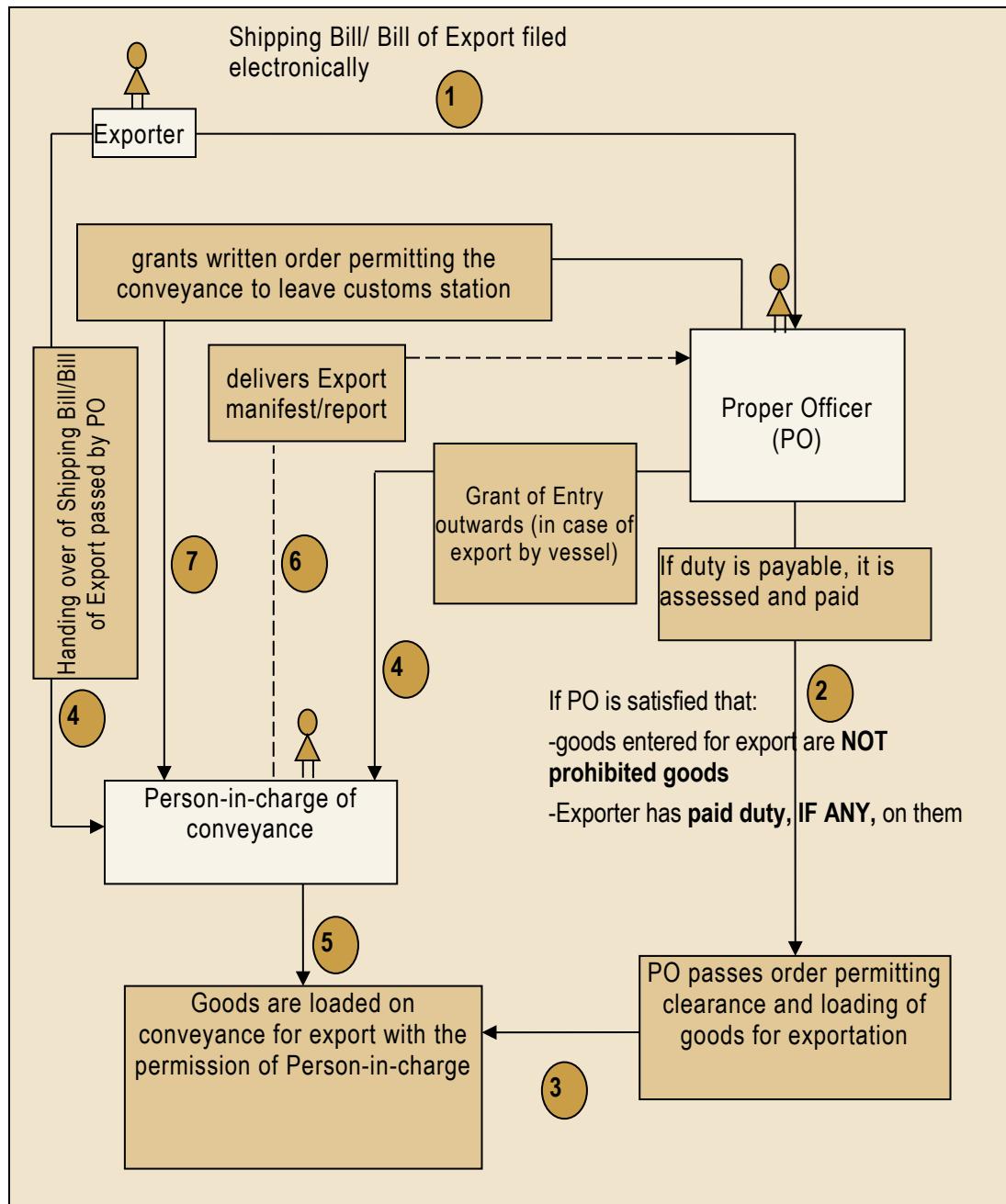
Voluntary revision of entry post clearance [Section 18A]



Import Procedure



Export Procedure



BAGGAGE RULES, 2016

General duty free baggage allowance (GFA)						
Rule No.	Class of passenger	Origin country from which passenger is coming	Articles allowed free of duty			
3	Indian resident (IR)/ Foreigner residing in India (FR)/ Tourist of Indian origin, excluding an infant	Any country other than Nepal, Bhutan or Myanmar (NBM)	(i) Used personal effects (UPE) & travel souvenirs (TS) ; and	₹ 50,000		
	Tourist of foreign origin excluding infant	Any country other than NBM	(ii) Articles (excluding Annexure I articles), if carried on in person/ in accompanied baggage, up to value of	₹ 15,000		
4	IR/ FR/ Tourist, excluding an infant	NBM	₹ 15,000 Arriving by land: only UPE			
Note: <u>Infant passenger</u> : only UPE allowed duty free. GFA of a passenger cannot be pooled with GFA of any other passenger.						
Jewellery Allowance						
5	Passenger residing abroad for more than 1 year	Any country	Passenger	Jewellery		
			Gentlemen	upto 20 gms with a value cap of ₹ 50,000		
			Lady Passenger	upto 40 gms with value cap of ₹ 1,00,000		
Transfer of residence						
6	Duration of stay abroad	Articles allowed free of duty	Conditions	Relaxation		
	3-6 months	Personal and household articles,	₹ 60,000	Indian passenger		
	6 months-1 year		₹ 1,00,000	Indian passenger		

	Minimum stay of 1 year during 2 PYs	other than those mentioned in Annexure I/ II, including Annexure III articles upto an aggregate value of	₹ 2,00,000	Indian passenger should not have availed this concession in 3 PYs	-
	Minimum stay of 2 yrs or more		₹ 5,00,000	(i) Minimum stay of 2 years abroad, immediately preceding date of his arrival on transfer of residence	The shortfall of upto 2 months in stay abroad can be condoned by AC/DC if early return is on account of - (i) terminal leave/vacation availed by passenger; or (ii) any other special circumstances.
				(ii) Total stay in India on short visit during 2 PYs should not exceed 6 months; &	The Principal Comm/ Comm 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 3 PYs	No relaxation
9	<p>Crew Members: Baggage rules also apply to crew members engaged in foreign going conveyance for importation of their baggage, when they are finally paid off on termination of their engagement.</p> <p>However, other crew members of a vessel and aircraft are allowed to bring items like chocolates, cheese, cosmetics & other petty gift items for their personal/family use for a value \leq ₹ 1500.</p>				

Annexure I (See rule 3, 4 and 6)	Annexure II (See rule 6)	Annexure III (See rule 6)
•Fire arms [& their cartridges≤ 50]	•Colour Television/ Video Home Theatre System.	•VCR/VCP/VTR/VCDP
•Cigarettes > 100 sticks, cigars>25, tobacco > 125 gms.	•Dish Washer.	•Digital Video Disc player/ Music System.
•Alcoholic liquor/wines> 2 ltrs.	•Domestic Refrigerators \geq 300 ltrs	•Air-Conditioner & Microwave Oven.
•Gold/silver [other than ornaments]	•Deep Freezer.	•Word Processing Machine.
•Flat Panel (LCD/LED/Plasma) television.	•Video camera/ combination thereof	•Fax/Portable Photocopying Machine.
	•Cinematographic films \geq 35 mm	•Washing Machine/ Electrical/LPG Cooking Range
	•Gold/silver [other than ornaments]	•Personal Computer/ Laptop Computer
		•Domestic Refrigerators \leq 300 ltrs

- **Unaccompanied baggage (UB):** Above provisions are also applicable to UB, unless specifically excluded, if UB had been in possession, abroad, of passenger & is dispatched within 1 month [extended period] of his arrival in India.
- UB can also land in India upto 2 months before arrival of the passenger. However, if passenger is not able to arrive in India within 2 months due to circumstances beyond his control, AC/DC may extend said period of 2 months upto 1 year.

Owner of the baggage is required to make a declaration [**Baggage Declaration Form**] of its contents to PO of customs, for clearing it. Duty is payable on such baggage **at the rate in force on the date of such declaration. Rate of duty on baggage is 35% ad valorem.**



TEST YOUR KNOWLEDGE

Note: The rates of duties, wherever mentioned in the illustrations/questions/examples may not always be the actual rate prevalent during the period in question. They may be hypothetical rates assumed to explain the provisions of law with more clarity.

1. 'Queen Marry', is a vessel containing the goods imported by XML Ltd. The events relating to its entry into India and the discharge and onward movement and storage of the goods are as follows.

24th May Vessel entered the Indian territorial waters.

25th May Import manifest was delivered to the customs authorities

27th May XML Ltd filed bill of entry for the goods

29th May Entry inwards granted to the vessel

The rate of customs duty on the goods was increased from 8% to 10% on 28th May.

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

2. Write a brief note on self-assessment in customs under the Customs Act, 1962.
3. State briefly the provisions of the Customs Act, 1962 relating to payment of interest in case of provisional assessment.
4. What is meant by 'boat notes'?
5. Discuss the provisions regarding transit of goods and transhipment of goods without payment of duty under the Customs Act.
6. Explain in brief the duty exemption to baggage under section 79(1) of the Customs Act, 1962.
7. What is the relevant date for determining the rate of duty and tariff valuation in respect of goods imported/exported by post?
8. Explain the obligation cast on person-in-charge on arrival of vessels or aircrafts in India under section 29 of the Customs Act, 1962.

9. *Explain briefly the meaning of entry inwards and entry outwards with reference to the customs law.*
10. *Which class of importers is required to pay customs duty electronically? Name the dedicated payment gateway set up by the Board (CBIC) to use e-payment facility easily by an importer.*
11. *Mr. Anil and his wife (non-tourist Indian passengers) are returning from Dubai to India after staying there for a period of two years. They wish to bring gold jewellery purchased from Dubai. Please enumerate provisions of customs laws for jewellery allowance in their case.*
12. *Can the customs audit cover a person who is not an exporter or importer?*
13. *A fishing trawler is operating 10 nautical miles from the baseline. Is it entitled to duty-free stores?*
14. *What are the circumstances under which assessment is done provisionally under section 18?*
15. *State the provisions of transhipment of goods without payment of duty under section 54 of the Customs Act, 1962.*
16. *Explain the procedure prescribed in Customs Act, 1962 in case of goods not cleared, warehoused or transhipped within 30 days after unloading.*
17. *Write short notes on:*
 - (a) *Export general manifest*
 - (b) *Boat note (or restriction on goods being water borne)*
18. *Discuss briefly:*
 - (a) *Temporary detention of baggage*
 - (b) *Relevant date for rate of duty and tariff valuation in respect of goods imported and exported by post*
19. *What is the permissible time limit with respect to the following- :*
 - (i) *for filing a bill of entry*
 - (ii) *for paying the assessed duty*

- (iii) for delivery of arrival manifest or import manifest/report and departure manifest or export manifest/report
20. State in brief the provisions of the Customs Act, 1962 relating to filing of "Arrival manifest or import manifest/ Report".
21. Write a brief note on the declaration made by the owner of baggage.
22. State and summarise the provisions and procedure in the Customs Act, 1962 governing preparation and filing of a bill of entry.
23. Under what situations the amount of duty and interest refundable under section 18 of the Customs Act, 1962 shall be paid to the importer/exporter instead of being credited to the Consumer Welfare Fund?
24. State the procedure for clearance of goods imported by post.
25. Briefly explain the following with reference to the provisions of the Customs Act, 1962:
- (i) Bill of export
 - (ii) Import report
 - (iii) Imported goods
 - (iv) Entry
 - (v) Prohibited goods
 - (vi) Customs port
 - (vii) Goods
 - (viii) Stores
 - (ix) Conveyance
 - (x) Dutiable goods
 - (xi) Customs area
 - (xii) Adjudicating Authority
 - (xiii) Foreign going vessel or aircraft
 - (xiv) Assessment

26. With reference to the facility, 'Clear first-Pay later' extended to importers under the customs law, answer the following questions:
- What is the objective of the facility?
 - Who is eligible to avail this scheme?
 - What are the due dates for payment of duty under this facility?
 - What are the circumstances when the deferred payment facility will not be available?
27. Gregory Peg of foreign origin has come on travel visa, to tour in India. He carries with him, as part of baggage, the following:

Particulars	Value in ₹
Travel Souvenir	85,000
Other articles carried on in person	1,50,000
120 sticks of cigarettes of ₹100 each	12,000
Fire arm with 100 cartridges (value includes the value of cartridges at @ ₹ 500 per cartridge).	1,00,000

Determine customs duty payable, if the effective rate of customs duty is 38.50% inclusive of social welfare surcharge, with short explanations where required. Ignore Agriculture infrastructure and development cess.

28. An importer filed a bill of entry after 60 days of filing Import General Manifest. The Deputy Commissioner of Customs imposed a penalty of ₹ 10,000 for late filing of the bill of entry. Since, importer wanted to clear the goods urgently, he paid the penalty. Can penalty be imposed for late filing of the bill of entry? Can bill of entry be filed in advance? Examine the issue regarding period available for filing bill of entry in the light of relevant statutory provisions?
29. Laxmi Company imported goods valued at ₹ 10,00,000 vide a Bill of Entry presented before the proper officer on 15th December, 2024, on which date the rate of customs duty was 20%. The proper officer decided that the goods should be subject to chemical or other test and therefore, the same were provisionally assessed at a value of ₹ 10,00,000 and Laxmi company paid provisional duty of

₹2,00,000 on the same date. Laxmi Company wants to voluntarily pay duty of ₹1,50,000 on 20th January, 2025.

- (1) Can Laxmi Company provisionally pay the duty and what are the conditions which are to be complied before such payment is made?
 - (2) Determine the amount of interest payable, if any, under section 18 of the Customs Act, 1962 assuming that the payment of ₹1,50,000 as stated above is made on 20th January, 2025 and that the final duty is assessed on 31st January, 2025 at ₹4,00,000 and the balance duty is paid on the same day.
30. After visiting USA for a month, Mrs. and Mr. Iyer (Indian residents aged 35 and 40 years respectively) brought to India a laptop computer valued at ₹70,000, used personal effects valued ₹1,40,000 and a personal computer for ₹58,000. Calculate the custom duty payable by Mrs. & Mr. Iyer, if any. Ignore Agriculture infrastructure and development cess.
31. Mrs. X, an Indian resident (36 years old) who was on a visit to China, returned after 6 months. She was carrying with her the following items:

(i)	Personal effects	₹ 75,000
(ii)	Laptop computer	₹ 60,000
(iii)	Jewellery - 25 grams (purchased in China)	₹ 75,000
(iv)	Music system	₹ 50,000

Compute the customs duty payable by Mrs. X with reference to the Baggage Rules, 2016. Ignore Agriculture infrastructure and development cess.



ANSWERS/HINTS

1. Rate of duty will be 10%, because the bill of entry is deemed to have been filed on the date of entry inward though it was actually filed before the rate of duty increased.
2. Refer section 17.

3. Interest is payable from the first day of the month in which the provisional assessment began. Refer section 18.
4. Boat notes are issued to cover transport of cargo to or from vessels that cannot come into the port. Refer 'Restrictions on goods being water-borne'. (section 35)
5. Refer sections 53 and 54.
6. Refer section 79 and Baggage Rules.
7. Refer Section 83.
8. Vessel / aircraft must call or land only at a notified customs port or airport, unless otherwise permitted, and except in an emergency. Refer section 29 of the Customs Act.
9. Entry inwards is permission to begin unloading of the imported goods, and entry outwards is permission to begin loading of export goods. Refer section 31 and section 39.
10. Authorised economic operators and those importers who are paying ₹ 10,000 or more per bill of entry. They will pay through ICEGATE. Refer para "Mandatory E-payment of duty".
11. As per rule 5 of the Baggage Rules, 2016, a passenger who has been residing abroad for more than one year and returns to India shall be allowed duty free clearance of jewellery in *bona fide* baggage as under:
 - Jewellery upto a weight of 20 grams with a value cap of ₹ 50,000 for a gentlemen passenger
 - Jewellery upto a weight of 40 grams with a value cap of ₹ 1,00,000 for a lady passengerThus, in the given case, Mr. Anil would be allowed duty free jewellery upto a weight of 20 grams with a value cap of ₹ 50,000 and his wife would be allowed duty free jewellery upto a weight of 40 grams with a value cap of ₹1,00,000.
Further, in addition to the jewellery allowance, Mr. Anil and his wife would also be allowed duty free clearance of jewellery worth ₹ 1,00,000 (₹ 50,000 per person) as part of free baggage allowance.
12. Yes, persons dealing with the goods can also be audited. Refer section 99A and related regulations.

13. No. Refer definitions of Foreign going vessel and 'India'.
14. Refer provisional assessment of duty under para 5.
15. Refer transit and transhipment of goods under para 11.
16. Refer section 48: The goods can be auctioned.
17. (a) EGM: Refer section 41;(b) boat note: Refer section 35
18. (a) Refer section 80 (b) Refer section 83
19. (i) Refer section 46: 30 days prior to arrival, & not later than the end of the day of arrival.
(ii) Refer section 47: day of filing bill of entry (self-assessment) or within a day of receiving re-assessed bill of entry.
(iii) Refer section 30: import manifest: before arrival; import report: within 12 hours of arrival of conveyance at customs station; section 41: departure or export manifest / report: before departure of conveyance.
20. Refer section 30
21. Refer section 77 read with Baggage Declaration Regulations 2013
22. Refer section 46
23. Refer section 18
24. Refer section 84
25. Refer para 3
26. (i) 'Clear first-Pay later' i.e., deferred duty payment is a mechanism for delinking duty payment and customs clearance. The aim is to have a seamless wharf to warehouse transit in order to facilitate just-in-time manufacturing.
(ii) Central Government has permitted importers certified under Authorized Economic Operator programme as AEO (Tier-Two) and AEO (Tier-Three) to make deferred payment of import duty (eligible importers).

As a part of the ease of doing business focus of the Government of India, the CBIC has rolled out the AEO (Authorized Economic Operator) programme.

It is a trade facilitation move wherein benefits are extended to the entities who have demonstrated strong internal control systems and willingness to comply with the laws administered by the CBIC.

- (iii)** The due dates for payment of deferred duty are -

S. No.	Goods corresponding to bill of entry returned for payment from	Due date of payment of duty, inclusive of the period (excluding holidays) as mentioned in section 47(2)
1.	1 st day to 15 th day of any month	16 th day of that month
2.	16 th day till the last day of any month other than March	1 st day of the following month
3.	16 th day till the 31 st day of March	31 st March

Further, where the Central Government considers it necessary and expedient, it may, under exceptional circumstances, and for reasons to be recorded in writing, allow payment to be made on a different due date.

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

Further, the eligible importer shall be permitted to make the deferred payment if he has—

- (i) paid the duty for a bill of entry within due date and
- (ii) paid the differential duty for the same bill of entry along with the interest on account of reassessment within one day (excluding holidays).

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.

27. As per rule 3 of Baggage Rules, 2016, tourist of foreign origin, excluding infant, is allowed duty free clearance of
- travel souvenirs; and
 - Articles up to the value of ₹ 15,000 (excluding *inter alia* fire arms, cartridges of fire arms exceeding 50 and cigarettes exceeding 100 sticks), if carried on in person.

Computation of customs duty payable		₹
Travel souvenir		Nil
Articles carried on in person		1,50,000
Cigarettes [100 sticks can be accommodated in General Free Allowance (GFA)]		10,000
Fire arms cartridge (50 cartridges can be accommodated in GFA)		25,000
Baggage than can be accommodated in GFA		1,85,000
Less: GFA		15,000
Baggage on which duty is payable		1,70,000
Duty payable @ 38.50% (including 10% Social welfare surcharge)		65,450

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

28. Yes, charges are payable for late filing of bill of entry if an importer fails to present the bill of entry before the end of the day (including holidays) preceding the day on which the aircraft/vessel/vehicle carrying the goods

arrives at a customs station at which such goods are to be cleared for home consumption or warehousing, and the proper officer is satisfied that there was no sufficient cause for such delay [Section 46(3) of the Customs Act, 1962]. However, the Board may, in such cases as it may deem fit, prescribe different time limits for presentation of the bill of entry, which shall not be later than the end of the day of such arrival.

Yes, a bill of entry can be filed in advance. It can be presented within 30 days of the expected arrival of the aircraft/vessel/vehicle by which the goods have been shipped for importation into India vide proviso to section 46(3) of the Customs Act, 1962.

In the given case also, the time period as described above will be available - with reference to the date of arrival of vessel/aircraft - for filing the bill of entry.

- 29. (1)** Provisional assessment of duty is permitted in case where the proper officer deems it necessary to subject any imported goods or export goods to any chemical or other test [Section 18 of the Customs Act, 1962]. Thus, Laxmi Company can pay the duty on provisional basis.

Before, the provisional assessment of duty, the importer must furnish such security as the proper officer deems fit for the payment of the deficiency, if any, between the duty finally assessed/re-assessed and the duty provisionally assessed.

- (2)** Section 18 of the Customs Act, 1962 further stipulates that the importer is liable to pay interest, on any amount payable consequent to the final assessment order @ 15% p.a. from the first day of the month in which the duty is provisionally assessed till the date of payment thereof.

Accordingly, amount of interest payable will be

$$\begin{aligned} &= [\text{₹ } 1,50,000 \times 15\% \times 51/365] + [\text{₹ } 50,000 \times 15\% \times 62/365] \\ &= \text{₹ } 3,144 + \text{₹ } 1,274 = \text{₹ } 4,418 \end{aligned}$$

- 30.** (1) As per the Baggage Rules, 2016, an Indian resident arriving from a country other than Nepal, Bhutan, or Myanmar, is allowed duty free clearance of-
- (i) Used personal effects and travel souvenirs without any value limit.
 - (ii) Articles [other than certain specified articles] up to a value of ₹ 50,000 carried as accompanied baggage [General duty free baggage allowance].
 - (iii) Further, such general duty free baggage allowance of a passenger cannot be pooled with the general duty free baggage allowance of any other passenger.
- (2) 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 Cus. dated 08.01.2004*].
- (3) (i) Accordingly, there will be no customs duty on used personal effects (worth ₹ 1,40,000) of Mrs. and Mr. Iyer and laptop computer brought by them will be exempt from duty.
- (ii) Duty payable on personal computer after exhausting the duty free baggage allowance will be ₹58,000 – ₹ 50,000 = ₹ 8,000.
- (iii) Effective rate of duty for baggage = 38.50% [including Social Welfare Surcharge]
- (iv) Therefore, total customs duty = ₹ 3,080.

31. Computation of customs duty payable by Mrs. X

Particulars	₹
Personal effects [Duty free clearance is allowed]	Nil
Laptop computer [One laptop computer is exempt when imported into India by a passenger \geq 18 years of age]	Nil

Jewellery	75,000
[Duty free jewellery allowance is not available to Mrs. X since she did not reside abroad for more than 1 year]	
Music system	50,000
Total value	1,25,000
Less: General duty free baggage allowance of ₹ 50,000	50,000
Value of baggage liable to customs duty	75,000
Rate of Duty	38.50%
Customs duty @ 38.50% (including social welfare surcharge)	28,875

WAREHOUSING



LEARNING OUTCOMES

After studying this chapter, you would be able to:

- explain the concept of warehousing, types of warehouses, cancellation of license, warehousing bond, cancellation and return of the same, removal of goods for warehousing, warehousing period and warehousing interest.
- describe the provisions relating to owner's right to deal with warehoused goods, manufacture and other operations in relation to goods in a warehouse, removal of goods from warehouse to another warehouse or for home consumption or for export, goods improperly removed from the warehouse, allowance in case of volatile goods, responsibilities of warehouse keeper.
- compute the interest payable, if any, on the amount of duty payable at the time of clearance of the warehoused goods.

CHAPTER OVERVIEW



1. INTRODUCTION

There are instances when the importer does not want to clear the imported goods lying at the customs station, immediately. This may be due to many factors, namely, falling market price, declining saleability, lower requirement in the factory of production, lack of storage facilities in importer's premises, arrival of shipment much earlier than planned, working capital issues, etc. Goods imported for sale in Duty Free Shops (hereinafter referred to as DFS) at International Airports are also warehoused before being sold to international travellers.



Thus, the Customs Act, 1962 contains specific provisions that facilitate the warehousing of imported goods. The imported goods after landing may be allowed to be removed to a warehouse without payment of customs duty. Duty is paid at the time of clearance from the warehouse. Provisions lay down the time period up to which the goods may remain in a warehouse, without incurring any interest liability and thereafter, with interest liability.

Sections 57 to 73A of the Customs Act, 1962 deal with warehousing provisions. This facility is available to traders as well as to direct importers.



(1) Mr. A needs 50 tonnes of rice at any given point of time. He has to import the same from Mr. B. However, in case the supplier – Mr. B does not agree to sell that much quantity or the freight is not economical, Mr. A - the importer, in these circumstances, is forced to place an order for 200 tonnes. As soon as the goods are imported, duty has to be assessed on them. Therefore, instead of clearing the whole consignment, Mr. A wishes to clear the consignment in convenient lots after paying appropriate duty only on that particular portion that is cleared. During the intervening period, the goods can be held in custody in a place called warehouse.

The consideration the importer is required to pay for this facility is that:-

- (i) he should bind himself to pay to the Government a sum equal to thrice the amount of total duty determined, with such surety or security as may be required and
- (ii) he should agree to pay duty on the goods cleared from such warehouse at the rate of duty and valuation prevalent on the date on which a bill of entry in respect of such goods is presented.

Thrice the amount of duty

This facility is also useful in another situation. Ship stores like liquors, cigarettes, preserved food are imported into India and supplied to vessels according to their requirements. The entire consignment imported is intended to be so shipped out of the country. The same is the case of fuel for the ship like furnace oil, diesel oil etc. Evidently, there is no point in collecting import duty on the whole of the consignment and granting drawback piecemeal as and when such goods are exported. It is not also safe for the revenue point of view to allow such goods to lie in the port uncleared until they are exported/shipped as ship stores. Warehousing is the most convenient option available in such case.

An importer who intends to get his goods warehoused files an **into-bond bill of Entry** [Bill of entry for Warehousing], which is assessed to customs duty at the port of import. The importer is also required to execute a bond to cover the risk to customs duty, interest, penalty etc. Once the bond is executed by the importer, the assessing officer at the port of import permits the goods to be deposited without payment of duty in a warehouse. When the importer wishes to clear the goods from warehouse, **ex-bond bill of entry** needs to be filed and applicable duty be paid by importer. Thereafter, the proper officer will pass the order for clearance of goods from warehouse.

Into-Bond Bill of Entry

It is important to note that when warehoused goods are cleared from warehouse for home consumption, rate of duty and tariff valuation applicable to such imported goods shall be the rate and valuation in force on the date on which a bill of entry in respect of such goods is presented for their removal from the warehouse.



2. SPECIAL PROVISIONS FOR WAREHOUSING

A separate chapter is incorporated in the Customs Act, 1962, containing specific provisions relating to warehousing of imported goods. Chapter IX of the Customs Act, 1962 contains the following provisions: -

Section No.	Provision contained
57	Licensing of public warehouses
58	Licensing of private warehouses
58A	Licensing of special warehouses

58B	Cancellation of license
59	Warehousing bond
60	Permission for removal of goods for deposit in warehouse
61	Period for which goods may remain warehoused
64	Owner's right to deal with warehoused goods
65	Manufacture and other operations in relation to goods in a warehouse
66	Power to exempt imported materials used in the manufacture of goods in warehouse
67	Removal of goods from one warehouse to another
68	Clearance of warehoused goods for home consumption
69	Clearance of warehoused goods for [export]
70	Allowance in case of volatile goods
71	Goods not to be taken out of warehouse except as provided by this Act
72	Goods improperly removed from warehouse, etc.
73	Cancellation and return of warehousing bond
73A	Custody and removal of warehoused goods

We shall examine each of the provisions in detail in the subsequent paragraphs.



3. TYPES OF WAREHOUSES [SECTION 57, 58 AND 58A]

Meaning of warehouse

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 [Section 2(43)].

Meaning of warehoused goods

Warehoused goods means goods deposited in a warehouse [Section 2(44)].

A customs bonded warehouse can be established at any place in India, if approved by the licensing officer. There are **three types of warehouses**, namely – Public Warehouses, Private Warehouses and Special Warehouses.

Private and Public Warehouses are **not under physical control** of the customs authorities (i.e. not under lock of customs). Control is record based. However, Special Warehouses remain under customs lock. In a **Private Warehouse**, dutiable goods imported **only by licensee** are deposited. In a **Public Warehouse**, goods can be kept by any importer.

Special Warehouses remain under physical control of proper officer (under customs lock). Such warehouses will be caused to be locked by the proper officer and no person will enter the warehouse or remove any goods therefrom without the permission of the proper officer (PO). Only the dutiable goods notified by CBIC may be deposited in Special Warehouse. Some of the notified goods¹ are gold, silver, other precious metals and articles thereof, goods warehoused for the purpose of supply to DFS in a customs area, supply as stores to vessels/aircrafts and supply to foreign privileged persons².

Special Warehouses

Notified goods

The license is not required to be renewed annually. Further, it is not transferable & valid till its cancellation/surrender. License would be cancelled on written request of the licensee³.



4. CANCELLATION OF LICENSE [SECTION 58B]

License granted for all types of warehouses namely- Public, Private and Special Warehouses, can be cancelled. Principal Commissioner/ Commissioner may cancel the warehousing licence granted under section 57/58/58A if the licensee

¹These goods have been notified vide Notification No. 66/2016 Cus (NT) dated 14.05.2016 as amended. Examples of goods which can be kept in Special Warehouse have been given hereunder only for the knowledge of the students. These are not relevant for examination purposes.

² Privileged person means a person entitled to import/purchase locally from bond goods free of duty for his personal use/for the use of any member of his family/for official use in his Mission, Consular Post or Office or in Deputy High Commission/Assistant High Commission

³ Public/Private/Special Warehouse Licensing Regulations, 2016

contravenes any of the provisions of the customs law or breaches any of the conditions of the licence. Before, cancellation, the licensee shall be given a reasonable opportunity of being heard.

During the pendency of an enquiry under this section, operations of the warehouse may be suspended. During suspension period, no goods shall be deposited in such warehouse.

Where the licence is cancelled, the goods warehoused shall:

- (i) be removed from such warehouse to another warehouse or
- (ii) be cleared for home consumption/export.

The goods shall be removed within 7 days from the date on which order of such cancellation is served on the licensee or within such extended period as the proper officer may allow.

7 Days

Till the time the goods are deposited in the warehouse (whether in case of suspension or removal), they will continue to be governed by the warehousing provisions under Customs law.



5. WAREHOUSING BOND [SECTION 59]

An importer desirous of warehousing the goods without paying customs duties needs to execute an indemnity bond to cover the risk to Government revenue. Importer is required to execute the bond for the goods in respect of which an into-bond bill of entry has been presented and assessed to duty.

An importer executing bond binds 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 demand notice, all duties and interest⁴; and
- to pay all penalties and fines incurred for the contravention of the provisions of the customs law, in respect of such goods.

⁴ Interest referred here is interest payable under section 61(2)

Consignment Bond

The bond can be executed in respect of a particular 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.

Consignment Bond

In addition to the bond, importer may also be required to furnish prescribed security.

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.

General Bond

The Assistant/Deputy Commissioner of Customs may permit an importer to execute a general bond of such amount as he may approve in respect of the warehousing of goods to be imported by the importer within a specified period.

General Bond

The bond amount is determined by Assistant/Deputy Commissioner of Customs, having regard to:

- past imports warehoused and the duty involved in such consignments;
- anticipated imports and expected revenue involved.

In practice, a running account is maintained which is debited when imported goods are warehoused and credited when warehoused goods are cleared ex-bond on payment of duty.

Above bonds will continue to be valid even if the goods are transferred 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.



6. PERMISSION FOR REMOVAL OF GOODS FOR DEPOSIT IN WAREHOUSE [SECTION 60]

Once the importer has furnished the stipulated bond and security (i.e. he has complied with the provisions of section 59 in respect of any goods), the proper officer may make an order permitting the deposit of the goods in a warehouse. Such order may also be made electronically through the customs automated system on the basis of risk evaluation through appropriate selection criteria.



7. PERIOD FOR WHICH GOODS MAY REMAIN IN A WAREHOUSE [SECTION 61]

A. Warehousing Period

The period for which imported goods may be kept in a warehouse without payment of duty is called warehousing period. Such period may be extended to a limited extent, with interest on the duty thus deferred.

(i) Warehouses where manufacture/ other operations are permitted under section 65

The warehousing period for warehouses where manufacture/ other operations are permitted under section 65 in case of capital goods is till their ex-bonding and for goods other than capital goods, it is till their ex-bonding/consumption.

Till consumption/clearance

(ii) Other cases

In other cases, warehousing period is till the expiry of 1 year from the date of order permitting removal of goods from a customs station for deposit in a warehouse under section 60.

1 Year

(iii) EOUs, EHTPs, STPs⁵

(iv) Extension of period

The Principal Commissioner/ Commissioner may extend the warehousing period by not more than 1 year at a time. The extension may be reduced based on the shelf life of the goods.

⁵ In case of EOUs, EHTPs and STPs, the warehousing period for capital goods prescribed under section 61 is till their ex-bonding and for goods other than capital goods, it is till their ex-bonding/consumption.

However, with effect from 13.07.2016, EOUs/STPs/EHTPs etc. were relieved from complying with the warehousing provisions. As a consequence, these units stand delicensed as warehouses under the Customs Act, 1962. Section 65 of the Customs Act, 1962 is also not applicable to these units. The concept of 'debonding' of goods stands dispensed with; in other words, the requirement of these units to operate under customs bond is dispensed with. However, such clearances will still require approval and payment of applicable customs duties. [Notification 52/2003 Customs dated 31.03.2003 as amended by Notification 44/2016 Customs dated 29.07.2016 read with Circular No.35/2016 Cus. dated 29.07.2016]

B. Interest on warehoused goods

(i) Warehouses where manufacture/ other operations are permitted under section 65

As seen above, in such cases, the warehousing period for capital goods is till their ex-bonding and for goods other than capital goods, it is till their ex-bonding/consumption. As a corollary, no interest is chargeable for the period that the goods remain warehoused.

NO Interest

(ii) Other cases

In other cases, interest is charged on the duty deferred on warehoused goods beyond a period of 90 days.

90 Days

The period of warehousing to be reckoned from the date of order permitting deposit of goods in a warehouse under section 60. Hence, the period of 90 days, will be computed from the date on which the proper officer gives out of charge orders on an into-bond bill of entry at the customs station, which is clearly ascertainable.

Rate of interest is the rate fixed by the Central Government under section 47. Rate of interest fixed by a notification issued under section 47 is 15% p.a.

(iii) Waiver of interest

The Board may waive the interest (whole or partial) in individual cases by ad-hoc order or by notification in respect of any class of goods. Further, the Board may also notify the class of goods in respect of which the interest will be chargeable from the date of order permitting deposit of goods in a warehouse under section 60.

(iv) No interest on warehoused goods if customs duty is not payable

In *Pratibha Processors v. UOI* 1996 (88) E.L.T. 12 (S.C.), it is held that interest is compensatory in character and is imposed on an assessee who has withheld payment of any tax as and when it is due and payable. The levy of interest is geared to actual amount of tax withheld and the extent of delay in paying the tax on due date. Essentially, it is compensatory and different from penalty.

It is implicit from the language of section 61(2) that the interest shall be payable on the amount of duty "payable or due" on the warehoused goods for the period

from the expiry of period specified or granted till the date of clearance of the goods from the warehouse. In this case, on the date of clearance of the goods, *no duty was payable*. The goods were not eligible to duty at that time.

The calculation of interest is always on the principal amount. The principal amount herein is the amount of duty payable on clearance of goods. When such principal amount is nil because of the exemption, *a fortiori*, interest payable is also nil. Thus, the interest is necessarily linked to the duty payable and if no duty is payable, there will be no liability of interest.

ILLUSTRATION

'X', an importer, imported some goods and deposited them in the warehouse on 12th April. These goods were re-exported without payment of duty on 15th August. With reference to the Customs Act, 1962, discuss whether any interest under section 61 of the Customs Act, 1962 is payable by 'X'?

ANSWER

As per section 61(2) of the Customs Act, 1962, if goods 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 *Pratibha Processors v. UOI* 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) is solely dependant upon the eligibility 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'.



★ **If no customs duty is payable at the time of clearance of goods from warehouse, no interest is payable. Interest is mere 'accessory' to principal⁶.**

⦿ **In case of Kesoram Rayon v. CC 1996 (86) ELT 464 (SC), it was held that goods which are not removed from the warehouse after the expiry of the period permitted for warehousing or extended, are deemed to be improperly removed in terms of section 72⁷. The rate of duty applicable in such case will be the rate in force on the date of deemed removal, i.e. the date on which the permitted period or its permitted extension comes to an end. When the demand notice is issued is not relevant for determining the rate of duty. Section 15(1)(b) has no application in such cases where the goods are removed from warehouse beyond the permitted period of warehousing; it is applicable only to the cases where a bill of entry is presented for removal from warehouse under section 68, i.e. only when goods are cleared from the warehouse within the permitted period or its permitted extension.**



8. OWNER'S RIGHT TO DEAL WITH WAREHOUSED GOODS [SECTION 64]

When the imported goods are warehoused, the temporary possession and the custody of the goods are passed on to the warehouse keeper. However, the remaining titular rights of the goods vest with the owner. Thus, the owner has every access to the goods.

In the course of his dealings with the goods, he may:

- inspect the goods;
- ensure that the goods do not deteriorate or get damaged during storage in the warehouse;
- sort the goods; or
- show the goods for sale.

⁶ *Pratibha Processors v. UOI 1996 (88) E.L.T. 12 (S.C.)*

⁷ Students may refer the provisions of section 72 which have been discussed subsequently in this chapter.



9. MANUFACTURE AND OTHER OPERATIONS IN RELATION TO GOODS IN A WAREHOUSE [SECTIONS 65 & 66]

Section 65 enables conduct of manufacture and other operations in a Customs bonded warehouse⁸. The owner of any warehoused goods may carry on any manufacturing process or other operations in relation to warehoused goods in a custom bonded warehouse.

After manufacture, the produced goods may either be exported out of India or cleared for home consumption. The duties are fully remitted if the goods resulting from such operations are exported. Import duty, interest, fine and penalties, if any, are payable only if the resulting goods or imported goods are cleared in the domestic market (ex-bonding). Further, the clearance of such goods for domestic consumption squarely qualifies as supply under GST law and would be leviable to tax under section 9 of the CGST Act or section 5 of the IGST Act depending upon whether the supply from warehouse is an intra-State supply or inter-State supply⁹.

At present, manufacture and other operations in a bonded warehouse are allowed only in a Private Bonded Warehouse and not in a Public Bonded Warehouse¹⁰.

Further, manufacture and other operations are also allowed in a Special Bonded Warehouse in respect of the goods notified to be warehoused in Special Warehouse¹¹.

Permission for in-bond manufacturing facility can be given by the Principal Commissioner/ Commissioner of Customs.

During the manufacturing operations or other processes done in the warehouse, waste or refuse may also arise. The question that arises is whether any import duty should be levied on the waste or refuse so generated. The answer is dependent upon whether finished product manufactured is exported out of India or cleared for home consumption.

⁸ The provisions of section 65 are subject to the provisions of section 65A.

⁹ Provisions relating to leviability of GST on supply of goods and/or services has been discussed in Chapter 2 – Charge of GST in Module 1 of the Study Material.

¹⁰ Manufacture and Other Operations in Warehouse (No. 2) Regulations, 2019

¹¹ Manufacture and Other Operations in Special Warehouse Regulations, 2020

In this respect, the following provisions shall apply: –

- (a) if the whole or any part of the goods resulting from such operations are exported,** import duty shall be remitted on the quantity of the warehoused goods contained in so much of the waste or refuse as has arisen from the operations carried on in relation to the goods exported.
However, such waste or refuse is either destroyed or duty is paid on such waste or refuse as if it had been imported into India in that form.
- (b) if the whole or any part of the goods resulting from such operations are cleared from the warehouse for home consumption,** import duty shall be charged on the quantity of the warehoused goods contained in so much of the waste or refuse as has arisen from the operations carried on in relation to the goods cleared for home consumption.

Let us consider a few examples to understand the above provisions:



(2) Let us take the case of cutlery manufactured out of imported high-speed cutting steel strips. Locally procured plastic is used for providing handles to the cutlery i.e. knife, fork, etc. In a batch process 200 kg imported steel strips and 100 kg plastic is issued for the manufacture of the cutlery items. 400 gross knives are manufactured and they are cleared for home consumption. The steel strip content in the above knives is 178 kg. The weight of the plastic handles is 85 kg. The waste is in the form of shaving etc. The total weight of the waste is $[(200+100)-(178+85)=37 \text{ kg}]$. The steel content of the waste is 22 kg. So import duty of customs at the rate applicable to steel strips should be collected on the waste.

The other alternative is where the finished goods are exported out of the country. Take the same example. In this case the manufacturer has two options. He can destroy the waste. Then he will not be required to pay duty on the steel strip content in the waste. If he does not choose to destroy the waste, then he has to pay duty on the steel strip content in the waste. Remission of duty on the imported material content in the waste or refuse is allowed only when the final product concerned is exported out of India and the waste is destroyed.

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

sheet (3) chemicals and (4) mineral oil.

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

Wastage relatable to tyres exported 60kg = 45 kg

Imported rubber content in the waste relatable to the exported tyres

$$= 45 \times \frac{1500}{1710} = 39.5 \text{ kg(appx)}$$

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

Weight of waste relatable to tyres cleared for home consumption = 15 kg

Imported rubber content in the waste = 13.2 kg

Import duty is compulsorily leviable on this quantity of import rubber.

If any imported materials are used in accordance with the provisions of section 65 for the manufacture of any goods and the rate of duty leviable on the imported materials exceeds the rate of duty leviable on such goods, the Central Government, if satisfied that in the interests of the establishment or development of any domestic industry it is necessary so to do, may, by notification in the Official Gazette, exempt the imported materials from the whole or part of the excess rate of duty.



10. REMOVAL OF GOODS FROM THE WAREHOUSE [SECTIONS 67, 68 & 69]

The warehoused goods can be removed from the warehouse for any of the following three reasons:

- transfer from one warehouse to another [Section 67]; or
- clearance for home consumption [Section 68]; or
- clearance for export [Section 69].

Transfer of warehoused goods from one warehouse to another

Section 67 permits removal of warehoused goods 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. Permission of proper officer is required for such transfer.

There's a huge emphasis on ensuring proper dispatch of goods under one-time lock from the warehouse where the goods are originally stored and proper receipt of the warehoused goods at the destination warehouse, so that there is no risk to revenue.

Clearance of warehoused goods for home consumption

Any warehoused goods may be cleared for home consumption, in accordance with the provisions of section 68. The essential ingredients of section 68 are:

- An ex-bond bill of entry [Bill of entry for home consumption] should be presented to the proper officer.
- After assessment of the ex-bond bill of entry, the **duty** determined in the same should be paid.
- Along with the import duty, **the interest, penalty, if any**, imposed or levied on the warehoused goods should also be paid.

Once the proper officer is satisfied that all the amounts payable by the owner of the goods including duty, interest, any penalty payable on the warehoused goods, have been paid, he may permit removal of the goods from the warehouse and pass a suitable order for clearance. The order for clearance for home consumption may also be made electronically through the customs automated system on the basis of risk evaluation through appropriate selection criteria.

Relinquishment of title of the warehoused goods: The 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 payment of penalties that may be payable in respect of the goods and upon such relinquishment, he shall not be liable to pay duty thereon.

However, 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.

Clearance of warehoused goods for export

Warehoused goods can be exported without payment of duty in accordance with the provisions of section 69, for instance, ship stores, which are meant to be exported only; goods meant for re-export and goods supplied to duty free shops and the like. The essential ingredients of section 69 are:

- (1) Warehoused goods may be exported to a place outside India.
- (2) No import duty will be levied on the goods so exported subject to fulfilment of conditions prescribed herein.
- (3) A shipping bill/bill of export/label or declaration accompanying the goods should be presented in respect of the warehoused goods sought to be cleared for export.
- (4) The export duty, fine and penalties payable, if any, on such goods on export should be assessed and paid. Only payment of import duty otherwise leviable on such warehoused goods is waived.
- (5) The proper officer of customs should satisfy himself that all regulations, restrictions and prohibitions in force in respect of export of such goods, is complied with or fulfilled.

After satisfying himself about this aspect as well as payment of all duties, fine and penalties payable, he will make an order for clearance of warehoused goods for export from the bonded warehouse.

Order for clearance of warehoused goods for export may also be made electronically through the customs automated system on the basis of risk evaluation through appropriate selection criteria.

- (6) In case Government of India 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 notification¹².



11. ALLOWANCE IN RESPECT OF VOLATILE GOODS [SECTION 70]

In some cases, warehoused goods are subject to normal loss owing to volatility of such goods and manner of their storage.

For instance, petroleum products like aviation fuel, motor spirit, mineral turpentine, acetone, methanol, raw naptha, vaporizing oil, kerosene, high speed diesel oil, batching oil, diesel oil, furnace oil and ethylene dichloride, kept in tanks, subjected to atmospheric pressure have a tendency to evaporate during long period of storage. Similarly, wine, spirit and beer, are imported under over proof conditions, in wooden casks stored in bonded warehouses; they are volatile in nature and there is considerable evaporation loss during storage.

Resultantly, there is generally a difference between the bonded quantity and the quantity at the time of removal from the warehouse. This loss is due to natural causes and neither the importer nor the warehouse keeper is at fault.

Natural Causes

¹² For instance, export of warehoused goods to Burma, Nepal and Bhutan, export of warehoused goods in vessels of less than 1000 tons, taking of stores on board vessels of less than 200 tons, etc. have been banned under said provision. These examples are only for knowledge of the students and are not relevant for examination purposes.

Thus, neither the importer nor the warehouse keeper can be asked to bear the duty burden of this loss. This position has been recognised and duty on the deficiency has been remitted under section 70.

When any warehoused goods notified under this section¹³, are at the time of delivery from a warehouse found to be deficient in quantity on account of natural loss, the Assistant/ Deputy Commissioner of Customs may remit the duty on such deficiency. Goods are notified under this section having regard to volatility of the goods and manner of their storage.

Notified goods



12. IMPROPER REMOVAL OF GOODS FROM WAREHOUSE [SECTIONS 71 & 72]

As we have seen above, warehoused goods can be removed from warehouse only in situations stipulated under sections 67, 68 and 69. As a corollary, it follows that warehoused goods cannot be removed otherwise. Sections 71 and 72 provide for such a prohibition and the penal action thereon.

Section 71 prohibits the removal of the warehoused goods out of a warehouse except on clearance for home consumption, or export, or for removal to another warehouse, or as otherwise provided by the Customs Act.

Section 72 enumerates the cases where the proper officer may demand, the full amount of duty chargeable on account of warehoused goods together with interest, fine and penalties payable in respect of such goods. The owner of the warehoused goods is required to forthwith pay the same.

Cases enumerated in section 72 are as follows:

- ✓ where any warehoused goods are removed from a warehouse in contravention of section 71

¹³ Aviation fuel, motor spirit, mineral turpentine, acetone, methanol, raw naptha, vaporizing oil, kerosene, high speed diesel oil, batching oil, diesel oil, furnace oil and ethylene dichloride, kept in tanks; liquid helium gas kept in containers; wine, spirit and beer, kept in casks and crude stored in caverns, have been specified as goods to which the provisions of section 70 apply vide Notification No. 3/2016 Cus. NT dated 11.01.2016. These examples are only for knowledge of the students and are not relevant for examination purposes.

- ✓ 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.

In case the owner fails to pay duty chargeable on account of warehoused goods together with interest, fine and penalties payable in respect of goods warehoused by it, the proper officer may cause such goods to be detained and sold, such sufficient portion of his goods, if any, in the warehouse, as the said officer may deem fit. However, the proper officer has to first give a notice to the owner (any transfer of the goods notwithstanding) for the same.



13. CANCELLATION AND RETURN OF THE WAREHOUSING BOND [SECTION 73]

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



14. CUSTODY AND REMOVAL OF WAREHOUSED GOODS [SECTION 73A]

The licensee shall appoint a warehouse keeper for discharge of functions on his behalf. Warehouse keeper will be in-charge of the warehouse and shall have a computerised system for accounting of goods.

In case private/public warehouses, there is only record based control; physical control of Bond Officer is not there (his presence is required only in case of removal of goods for export). Consequently, the responsibilities of warehouse keepers assume greater significance. Special warehouses remain locked and any removal/deposit of goods from/to the warehouse is only in the presence of the Bond Officer.

A warehouse keeper shall maintain records of receipt, handling, storing, and removal of any goods into/from the warehouse; each activity/operation in relation to the warehoused goods; and drawal of samples from the warehoused goods. He shall keep copies of documents evidencing the receipt/removal of goods into/from the warehouse and copies of the bonds executed.

The said records and accounts are required to be preserved for a minimum period of 5 years from the date of removal of goods from the warehouse. Further, digital copies of the same also need to be preserved at any place other than warehouse¹⁴.

Section 73A makes the warehouse keeper as a custodian of the warehoused goods and prescribes the provisions for custody and removal of warehoused goods. It stipulates that all warehoused goods will remain in the custody of the person who has been granted a license under section 57/ 58/ 58A until they are cleared for home consumption/ transferred to another warehouse/ exported/ removed as otherwise provided under Customs Act.

Where any warehoused goods are removed in contravention of section 71, the licensee shall be liable to pay duty, interest, fine and penalties.

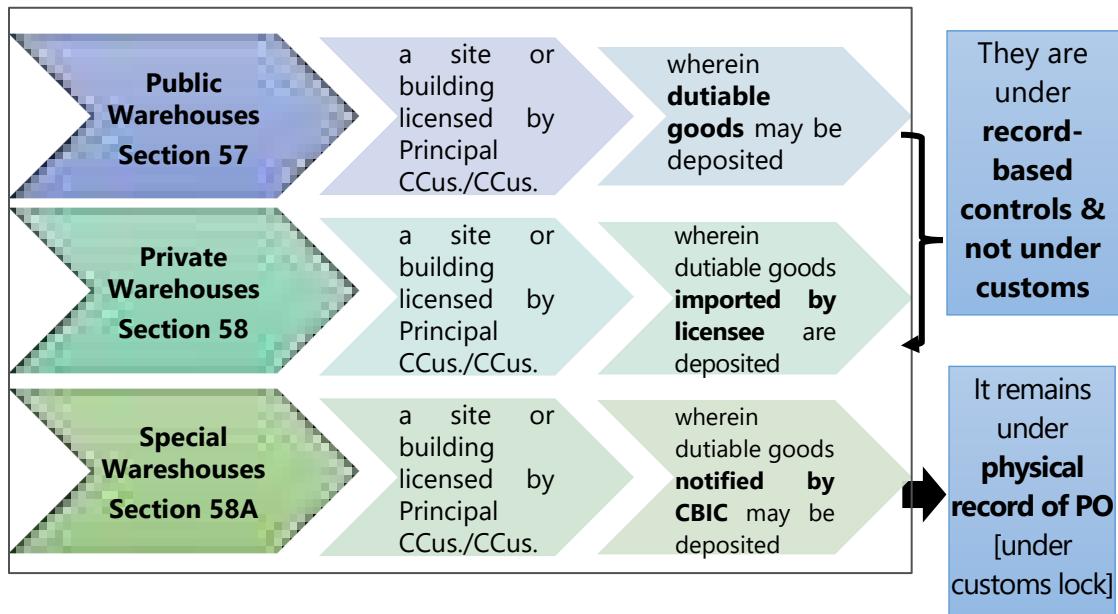
This would be in addition to any other action that may be taken against him under this Act or any other law for the time being in force.

¹⁴ Provisions discussed in this para have been laid down by Warehouse (Custody & Handling of Goods) Regulations, 2016 and Special Warehouse (Custody & Handling of Goods) Regulations, 2016. These regulations have been notified to vest the licensee with responsibilities including appointment of warehouse keeper, providing sufficient facilities, equipment and personnel and maintaining & preserving records as also to prescribe the procedure to be followed by the licensee or bond officer on arrival of goods in, and removal of goods from, warehouse.



LET US RECAPITULATE

Types of warehouses



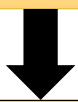
Warehousing bond

Warehousing Bond + Prescribed security



Importer has to furnish Warehousing Bond + Security for warehousing goods / or for transferring goods from one warehouse to another warehouse, without paying customs duties

Consignment Bond



Thrice the amount of duty assessed

General Bond



Assistant Commissioner /Deputy Commissioner may permit importer to execute General Bond in respect of goods warehoused within a specified period

Period for which goods may remain in a warehouse

S. No.	Class of goods		Time for which the goods may remain warehoused	
1.	Goods for use in any warehouse where manufacture or other operations are permitted under section 65			
	(i)	Capital goods		Till the clearance of such goods from warehouse
	(ii)	Other goods		Till the consumption or clearance of such goods from warehouse
2.	Goods other than 1 above		Till the expiry of 1 year from the date of order permitting deposit of goods in warehouse	

Interest on warehoused goods

S. No.	Class of goods	Provisions relating to interest payable
1.	Capital goods and other goods for use in any warehouse where manufacture or other operations are permitted under section 65	No interest is payable
2.	Goods other than 1. above	<p>Interest will be payable if goods remain in the warehouse beyond 90 days from the date on which the order permitting deposit of goods in a warehouse under section 60 is made.</p> <p>Rate of interest 15% p.a.</p>

	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.

Owner's right to deal with warehoused goods



Treatment of waste in the manufacturing/other operations in relation to warehoused goods

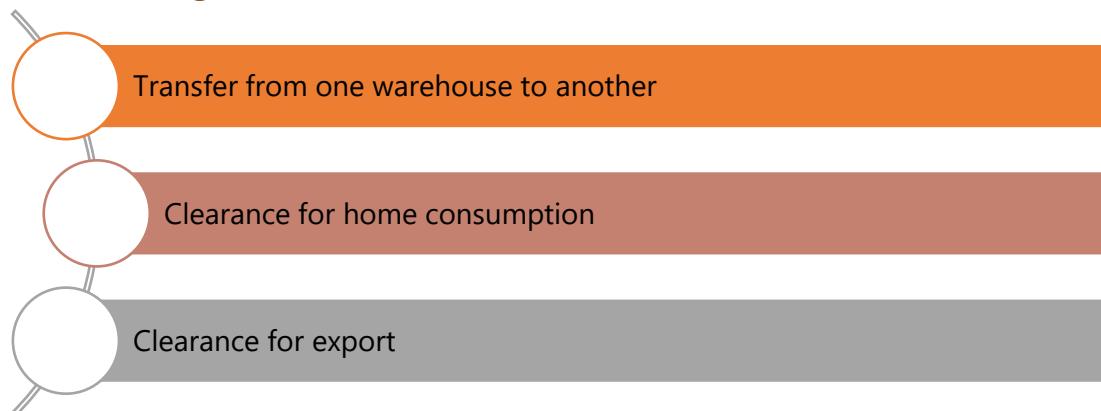
If whole/part of goods resulting from such operations are **exported**,

- Import duty to be remitted
- Waste is to be either destroyed or duty to be paid.

If whole/part of goods resulting from such operations are **cleared from the warehouse for home consumption**

- Import duty is charged

Removal of goods from the warehouse



Allowance in respect of volatile goods

Volatile goods

Natural loss

AC/DC may remit the duty



TEST YOUR KNOWLEDGE

1. *Interest free period of ninety (90) days under section 61(2) in respect of warehoused goods commences from the date on which an into-bond bill of entry in respect of such goods is presented. Comment on the validity of the statement.*
2. *"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.

3. *Enumerate the circumstances under which goods are considered to have been removed improperly from a warehouse under the Customs Act.*
4. *Vipul imported certain goods in May. An 'into bond' bill of entry was presented on 14th May and goods were cleared from the port for warehousing. Assessable value on that date was US \$ 1,00,000. The order permitting the deposit of goods in warehouse for 4 months was issued on 21st May. 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 21st September.*

A notice was issued under section 72 of the Customs Act, 1962, demanding duty and interest. Vipul cleared the goods on 14th October. Compute the amount of duty and interest payable by Vipul while removing the goods on the basis of the following information:

Particulars	14 th May	21 st September	14 th October
Rate of exchange per US \$ (as notified by Central Board of Indirect taxes & Customs)	₹ 65.20	₹ 65.40	₹ 65.50
Basic customs duty	15%	10%	12%

Integrated Tax leviable under section 3(7) of the Customs Tariff Act is exempt. Ignore agriculture and infrastructure development cess.

5. *BL Ltd. imported Super Kerosene Oil (SKO) and stored it in a warehouse. An ex-bond bill of entry for home consumption was filed and duty was paid as per the rate prevalent 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. The application was allowed. However, the rate of duty increased when the goods were actually removed from the warehouse.

The Department demanded the differential duty. The company challenged the demand. Whether it will succeed? Discuss briefly taking support of decided case(s), if any.



ANSWERS/HINTS

1. Invalid. As per section 61, if goods remain in a warehouse beyond a period of 90 days from the date on which the order permitting deposit of goods in a warehouse under section 60(1) is made, interest is payable @ 15% on the amount of duty payable at the time of clearance of the goods, for the period from the expiry of the said 90 days till the date of payment of duty on the warehoused goods.

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

2. **The said statement is valid.**

Section 65 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.

3. Section 72 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.

4. **Computation of import duty payable by Vipul**

Particulars	Amount (US \$)
Assessable value	1,00,000
	Amount (₹)
Value in Indian currency (US \$ 1,00,000 x ₹ 65.20) [Note 1]	65,20,000
Customs duty @ 10% [Note 2]	6,52,000
<i>Add: Social welfare surcharge @ 10% on ₹ 6,52,000</i>	65,200
Total customs duty payable	7,17,200

Notes:

- As per third proviso to section 14(1) of the Customs Act, 1962, assessable value has to be calculated with reference to the rate of exchange prevalent on the date on which the into bond bill of entry is presented for warehousing under section 46 of the Customs Act, 1962.
- Goods which are not removed within the permissible period are deemed to be improperly removed in terms of section 72 of the Customs Act, 1962 on the day they should have been removed [*Kesoram Rayon v. CC 1996 (86) ELT 464 (SC)*]. The applicable rate of duty in such a case is the rate of duty prevalent on the last date on which the goods should have been removed.

As per section 61 of the Customs Act, 1962, if goods remain in a warehouse beyond a period of 90 days from the date on which the order permitting deposit of goods in warehouse under section 60 is made, interest is payable @ 15% p.a., on the amount of duty payable at the time of clearance of the goods, for the period from the expiry of the said 90 days till the date of payment of duty on the warehoused goods.

Therefore, interest payable will be computed as under:

Period of 90 days commencing from the date of order made under 60 expires on	19 th August
No. of days for which interest shall be payable [12 days of August + 30 days of September + 14 days of October]	56 days
Interest payable = ₹ 7,17,200 × $\frac{15}{100} \times \frac{56}{365}$ (rounded off)	₹ 16,505

5. Yes, the company will succeed. The facts of the given situation are similar to the case of *CCus vs. 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 allowed to be retained for storage in the warehouse as permitted under section 49 of the Customs Act are not treated as warehoused goods and importer would not be required to pay anything more.

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 a private warehouse on the application of the importer and if 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.

AMENDMENT MADE VIDE THE FINANCE ACT, 2023

The new section 65A inserted in the Customs Act, 1962 vide the Finance Act, 2023 would become effective only from a date to be notified by the Central Government in the Official Gazette. Such a notification has not been issued till 30.04.2025. Therefore, applicability or otherwise of such amendment for May 2026, September 2026 and/or January 2027 examinations shall be informed by the ICAI by way of an announcement.

In the table given below, the provisions of section 65A of the Customs Act, 1962 are elaborated as under:

Once the announcement for applicability of such amendment for examination(s) is made by the ICAI, students should read the new provisions given hereunder.

Section No.	Existing provisions	Provisions as amended by the Finance Act, 2023	Remarks
65A		<p><u>Goods brought for operations in warehouse to have ordinarily paid certain taxes.</u></p> <p><i>(1) Notwithstanding anything to the contrary contained in this Act or the Customs Tariff Act, 1975, the following provisions shall, with effect from such date as may be notified by the Central Government, apply to goods in relation to which any manufacturing process or other operations in terms of section 65 may be carried out, namely:—</i></p> <p><i>(A) the dutiable goods, which are deposited in the warehouse shall be goods on which the integrated tax under sub-section (7) and the goods and services tax compensation cess under sub-section (9), of section 3 of the</i></p>	<p>New section 65A to be inserted so as to provide all customs bonded warehouses undertaking manufacturing and other operations therein including units registered under the Manufacture and Other Operations in Warehouse Regulations (MOOWRs Scheme) will not be eligible to avail the exemption from IGST and GST Compensation Cess on its import into India. They will only</p>

Customs Tariff Act, 1975 have been paid, and only for the purpose of the duty payable, other than the said tax and cess paid, such dutiable goods shall be warehoused goods;

(B) the dutiable goods shall be permitted to be removed for the purpose of deposit in the warehouse, where—

- (i) in respect of the goods, an entry thereof has been made by presenting electronically on the customs automated system, a bill of entry for home consumption under section 46 and the goods have been assessed to duty under section 17 or section 18, as the case may be, in accordance with clause (a) of sub-section (1) of section 15;**
- (ii) the integrated tax under sub-section (7) and the goods and services tax compensation cess under sub-section (9), of section 3 of the Customs Tariff Act, 1975 have been paid in accordance with section 47;**
- (iii) on removal of the goods from another warehouse in terms of section 67, a bill of entry for home consumption under clause (a) of section 68 has been presented and the integrated tax under sub-section (7), and the goods**

be eligible to avail the benefit of exemption from payment of other types of customs duty and cesses (such as BCD, anti-dumping duty, etc). Of this, GST and Compensation payment, these units will, however, be eligible to avail input tax credit (ITC), if otherwise available, under the GST law.

A 'bill of entry for home consumption' needs to be filed for moving the goods to a warehouse operating under section 65 of Customs Act instead of 'Bill of entry for warehousing'.

Integrated Goods & Service Tax (IGST) and compensation cess needs to be paid on such goods kept in the warehouse operating under Section 65 of Customs Act. For the purpose of payment

		<p><i>and services tax compensation cess under sub-section (9), of section 3 of the Customs Tariff Act, 1975 have been paid before the goods are so removed from that other warehouse;</i></p> <p>(iv) <i>the provisions of section 59, subject to the following modifications therein, have been complied with, namely:—</i></p> <p>(a) <i>for the words "bill of entry for warehousing", the words "bill of entry for home consumption" shall be substituted; and</i></p> <p>(b) <i>for the words "amount of the duty assessed", the words "amount of duty assessed, but not paid" shall be substituted;</i></p> <p>(C) <i>the duty payable in respect of warehoused goods referred to in clause (A), to the extent not paid, is paid before the goods are removed from the warehouse in such manner as may be prescribed.</i></p> <p>(2) <i>The provisions of sub-section (1) shall not apply for the purpose of manufacturing process or other operations in terms of section 65 to dutiable goods which have</i></p>	<p>of duty other than the aforesaid i.e., Basic Customs duty etc., the goods shall be treated as warehoused goods. The Government may notify the category of goods, importers or exporters and industry sector on which the provisions of Section 65A shall not be applicable.</p>
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been deposited in the warehouse or permitted to be removed for deposit in the warehouse prior to the date notified under that subsection.

- (3) *The Central Government may, if it considers necessary or expedient, and having regard to such criteria, including but not limited to, the nature or class or categories of goods, or class of importers or exporters, or industry sector, exempt, by notification, such goods in relation to which any manufacturing process or other operations in terms of section 65 may be carried out, as may be specified in the notification, from the application of this section.*

REFUND



LEARNING OUTCOMES

After studying this chapter, you would be able to:

- understand and analyze the manner in which application for refund of import duty or interest is to be made.
- comprehend the manner of processing of refund claim.
- compute the amount of interest payable on delayed refund.
- identify the cases in which refund of import duty/ export duty is made.
- analyse and apply the principle of doctrine of unjust enrichment with respect to refund of duty.

CHAPTER OVERVIEW



Application for refund of duty/ interest

Processing of refund claim

Doctrine of unjust enrichment with respect to refund of duty

Interest on delayed refund

Refund of export duty in certain cases

Refund of import duty in certain cases



1. INTRODUCTION

Sometimes customs duty is found to have been paid in excess of what was actually leviable on the goods. This may happen for various reasons, like error, lack of information, etc. In such cases, refund of excess amount of duty paid can be claimed. Refund of any excess interest paid by the importer/exporter can also be claimed.

Refund of IGST paid on goods exported – If goods are exported on payment of IGST, refund of IGST paid on such goods exported is given by the Customs department. However, if goods are exported without payment of IGST, refund of corresponding input tax credit is granted by GST Officers.



2. APPLICATION FOR REFUND OF DUTY OR INTEREST [SECTION 27]

Person who can claim refund of duty / 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: The claim for refund of any duty or interest paid or borne by the claimant must be made in such form or manner as may be prescribed.



Application for refund to be filed within one year: 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)].

1 year

A claim by person, other than the importer, from whom duty was collected, must be made before expiry of one year from the date of purchase of goods [Explanation 1 to Section 27(1)].

For the removal of doubts, it is hereby clarified that the period of limitation of one year in case of claim of refund consequent to the revised entry under section 18A(3)(b) or amendment of documents under section 149¹, shall be computed from the date of payment of such duty or interest [Explanation 2 to section 27(1)].

¹ In case where an amendment has to be made in any of the documents submitted to customs authorities by the importer/exporter/person-in-charge, permission to amend these documents can be given by customs authorities in accordance with the provisions of section 149; however, the provisions of section 149 are outside the purview of syllabus of Paper 5 – Indirect Tax Laws.

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 [Section 27(1B)(a)]
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 [Section 27(1B)(b)]
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 [Section 27(1B)(c)].

No limitation in case of duty paid under protest: The limitation of one year shall not apply where any duty or interest has been paid under protest. [Section 27(1) second proviso]

No time limit

Hence, in case of duty/interest paid under protest, refund claim may be filed without any time-limit.

Minimum amount of refund: Where the amount claimed is less than ₹ 100, it will not be refunded. [Section 27(1) third proviso]

**Minimum Refund
– ₹ 100 or more**

In other words, refund will be granted only when the duty amount involved is ₹ 100 or more.

Documentary evidence to be furnished to prove that incidence of the duty/interest for which refund claim has been filed is not passed on to any other person

Refund application must be accompanied by documentary or other evidence (including the documents, like invoice, referred to in section 28C) to establish that the amount of duty or interest, in relation to which such refund is claimed, was collected from or paid by him, and that the incidence of such duty or interest has not been passed on by him to any other person [Section 27(1A)].

Documentary evidence

(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. The documents enclosed to the refund claim must refute this presumption. Please see the section on unjust enrichment, later in this chapter.)



3. PROCESSING OF REFUND CLAIM [SECTION 27(2)]

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 (see below) 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:

- (a) if the importer or the exporter, as the case may be, has not passed on the incidence of such duty and interest to any other person;
- (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—
 - (i) such excess payment of duty is evident from the bill of entry in the case of self-assessed bill of entry; or
 - (ii) the duty actually payable is reflected in the reassessed bill of entry in the case of reassessment.

**Consumer
Welfare Fund**



4. DOCTRINE OF UNJUST ENRICHMENT WITH RESPECT TO REFUND OF DUTY

Meaning of unjust enrichment

When an importer imports goods, he has to pay the customs duty on such goods. Similarly, in case of export goods, if the same are leivable to export duty, the exporter pays the export duty. This duty is recovered from the purchasers when the goods are sold by the importer or exporter, as the case may be. In other words, the incidence or burden of duty is passed on to the purchaser, from whom the importer or exporter collects the customs duty. Subsequently, if the importer or exporter makes a claim for refund of duty (due to excess payment) and receives the refund from the government, he would be called to have enriched himself as he collected the duty from his customer also and also as refund from the government. Such enrichment is referred to as 'unjust enrichment'.

Unjust Enrichment

Accordingly, the doctrine of 'unjust enrichment' implies that no person should enrich himself at the cost of others.

Therefore, wherever there is excess collection of duty, the refund is to be given only to the person who has borne the burden of duty and interest, if any. When the person who applies for refund is not the person who has borne the burden of duty, the refund is paid into a fund called 'Consumer Welfare Fund'. Therefore, it is noteworthy that even the customs authorities are not entitled to retain the excess payments of duty merely because the refund cannot be given to the applicant as he has passed on the incidence.

In terms of Section 27, the importer or his agent, or the buyer who has been charged the duty by the importer, has to prove that he has not passed the burden of duty to another person, in order to be given refund of duty.

Statutory presumption

Section 28D creates a statutory presumption that he did pass on the burden of duty; this presumption has to be refuted by proving the contrary. If he succeeds in this, the claimant is given the refund in terms of Section 27(2), clause (a) for the importer and clause (c) for the buyer.



(1) The importer has imported an article, which has been valued at ₹ 1,000. The customs duty on this article comes to ₹ 250. Now the importer adds his profit margin of say ₹ 250 and sells the article for ₹ 1,500. Now the price charged by the importer consists of the duty element which has been passed on to the buyer.

If later on it is found that there was an error resulting in excess payment of duty, such excess duty is liable to be refunded. But as may be seen above, the importer has already collected the duty from the purchaser and if any refund is granted to him, it would confer on him a double benefit to which he does not have a valid right. Therefore, in such cases the refund is credited to the "Consumer Welfare Fund".

The landmark judgment on refund is by a Nine Member Bench of the Supreme Court in **Mafatlal Industries Ltd. v. U.O.I. -[1997 (89) E.L.T. 247]**. Though the judgment is from the erstwhile Central Excise laws, the principles laid down in this judgement are applicable to all indirect tax laws. The principles laid down in this judgment can be summarised as under:

- a. The theory of unjust enrichment is valid and constitutional. However, the theory that, conversely, the manufacturer would be unjustly impoverished in case of demands has not been agreed to.
- b. Section 27 (Customs Act) is self-contained code for refunds; resort to civil suits or writs is not permissible unless the taxing provision is struck down as unconstitutional. The general theory laid down in certain judgments of both the Supreme Court and High Courts that refund could be claimed within three years of discovery of mistake has been disapproved.
- c. Unless the levy is struck down as unconstitutional, all Courts must exercise jurisdiction in terms of section 11B of the Central Excise Act, 1944 and refuse to grant relief if the incidence of tax has been passed on.
- d. Whatever amount is collected as duty will have to be paid to the Government. If excess is collected than that payable, it would be credited to the Consumer Welfare Fund or given as refund to the person who has borne the incidence of duty.

Further, the Supreme Court in the case of *CCE v. Allied Photographics 2004 (166) ELT 3* has held that doctrine of unjust enrichment applies even when duty is paid under protest. It has been held that even if there is no change in price before

and after assessment (i.e. before and after imposition of duty), it does not lead to the inevitable conclusion that incidence of duty has been passed on to the buyer, as such uniformity may be due to various factors.

Exceptions to the Doctrine of Unjust Enrichment

As seen above, clauses (a) and (c) of sub-section (2) of section 27 provide that a refund may be paid to the applicant if the said applicant proves that he did not pass on the incidence of duty to another person. Sub-section (2) also provides for certain exceptions to the doctrine of unjust enrichment. In these exceptions refund of duty and interest may be paid to the applicant if such amount is relatable to:

- ◆ drawback of duty payable under sections 74 and 75;
- ◆ export duty as specified in section 26;
- ◆ the duty and interest on imports made by an individual for his personal use;
- ◆ the duty and interest borne by any other such class of applicants as the Central Government may, by notification in the Official Gazette, specify. However, no notification shall be issued unless in the opinion of the Central Government the incidence of duty and interest has not been passed on by the persons concerned to any other person.
- ◆ the duty paid in excess by the importer before an order permitting clearance of goods for home consumption is made where
 - (i) such excess payment of duty is evident from the bill of entry in the case of self-assessed bill of entry; or
 - (ii) the duty actually payable is reflected in the reassessed bill of entry in the case of reassessment.

Illustration 1

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

Answer

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

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



5. INTEREST ON DELAYED REFUND [SECTION 27A]

The Customs authority has to finalize refund claims without delay upon receipt of the refund application in proper form along-with all the documents. In case any duty ordered to be refunded to an applicant is not refunded within 3 months from the date of receipt of application for refund, interest is to be paid to the applicant. The government is permitted to fix such interest between 5% and 30%.

Rate – 6%

Currently, the rate of interest is 6% vide *Notification No. 75/2003-Cus (NT)* dated 12.09.2003.

The interest is to be paid for the period beginning from the date immediately after the expiry of 3 months from the date of receipt of such application, till the date of refund of such duty. For the purpose of payment of interest, the application is deemed to have been received on the date on which a complete application, as acknowledged by the proper officer of Customs, has been made.

Where any order of refund is made by the Commissioner (Appeals), Appellate Tribunal, National Tax Tribunal or any Court against an order of the Assistant Commissioner/Deputy Commissioner of Customs, the order passed by the Commissioner (Appeals), Appellate Tribunal, National Tax Tribunal or by the Court, as the case may be is deemed to be an order for the purpose of payment of interest on delayed refund. In other words, in cases where no refund claim has been made, if a refund results from an order passed by the appellate authorities mentioned above or by a court of law, refund is to be paid within 3 months of the order, and interest will be payable after that.

The interest on delayed refund is payable only in respect of delayed refunds of Customs duty and no interest is payable in respect of deposits such as deposits for project imports, security for provisional release of goods etc.



6. REFUND OF EXPORT DUTY IN CERTAIN CASES [SECTION 26]

Where export duty has been paid on the exportation of any 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.



7. REFUND OF IMPORT DUTY IN CERTAIN CASES [SECTION 26A]

Section 26A provides that the import duty paid on clearance of imported goods for home consumption capable of being easily identified shall be refunded to the person by whom or on whose behalf such duty was paid subject to the fulfillment of the following conditions:

- (a) **Goods are defective/not as per specifications:** The goods are found to be defective or otherwise not in conformity with the specifications agreed upon between the importer and the supplier of goods.

However, the goods should not have been worked upon, repaired or used after importation except where such use was indispensable to discover the defects or non-conformity with the specifications;

- (b) **Goods identified as imported goods:** The goods are identified to the satisfaction of the Assistant Commissioner of Customs or Deputy Commissioner of Customs as the goods which were imported;
- (c) **No drawback claimed:** The importer does not claim drawback under any other provisions of this Act; and

(d) Importer exports the goods/relinquishes title to goods/destroys or renders them commercially valueless

- (i) the goods are exported; or
- (ii) the importer relinquishes his title to the goods and abandons them to customs; or
- (iii) such goods are destroyed or rendered commercially valueless in the presence of the proper officer

in the prescribed manner within 30 days from the date on which the proper officer makes an order for the clearance of imported goods for home consumption under section 47.

However, the period of 30 days may, on sufficient cause being shown, be extended by the Principal Commissioner/Commissioner of Customs for a period not exceeding 3 months.

Goods in respect of which offence has been committed: 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.

Application for refund of import duty: 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].

Meaning of relevant date: Explanation to sub-section (2) provides the relevant dates in various circumstances as under:-

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

No refund in case of perishable goods: 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)].

The Board may, by notification in the Official Gazette, specify any other condition subject to which the refund may be allowed [Sub-section (4)].



8. REFUND CLAIM CANNOT BE A SUBSTITUTE FOR APPEAL

The Customs Act, 1962 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, unless an assessment order has been reviewed and/or modified in an appeal, that assessment order stands.

Duty is payable only as per that assessment order. A refund claim is not an appeal proceeding. Further, the officer considering the refund claim, cannot review the assessment order. Thus, refund claims based on challenge to an order of assessment are liable to be rejected.

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.

Appeal should be filed and not a refund claim when adjudication order has been issued or even when self assessment made

An adjudication order should be appealed against, if assessee is aggrieved by adjudication order. The order cannot be challenged by filing refund application.

In *CCE v. Flock (India) Pvt. Ltd. 2000 (120) E.L.T. 285 (S.C.)*, it was observed, "Refund is in nature of execution of a decree/order. Thus, issue of clarification (which has become final as no appeal was filed) cannot be agitated in refund proceedings. If the order is appealable, appeal should be filed. Otherwise, provisions of appeal will become redundant. Refund claim cannot be used as an appeal against an adjudication order.

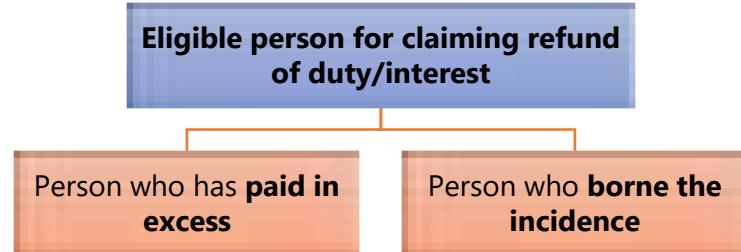
Important Judgments on Refund

Refund claim cannot be a substitute for appeal	<i>Priya Blue Industries Limited v CCUs, 2004 (172) ELT 145(SC)</i>
Burden of proof that incidence of duty has not been passed on to consumers is on assessee.	<i>Banmore Foam v. CCE 2006 (193) ELT 112 (Tribunal-Delhi)</i>
It has been held that appeal is required to be filed and not refund claim, even in respect of self assessment.	<i>ITC Limited v CCE, 2019 (368) ELT 216 (SC)</i>

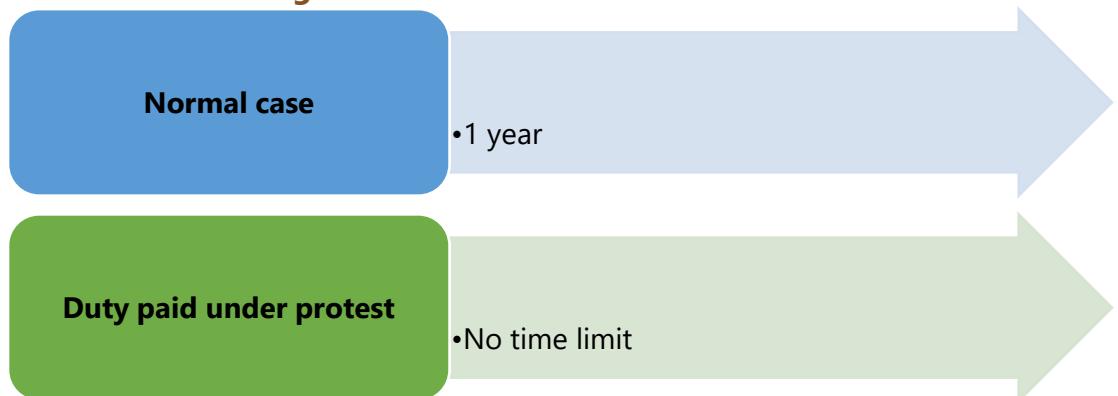


LET US RECAPITULATE

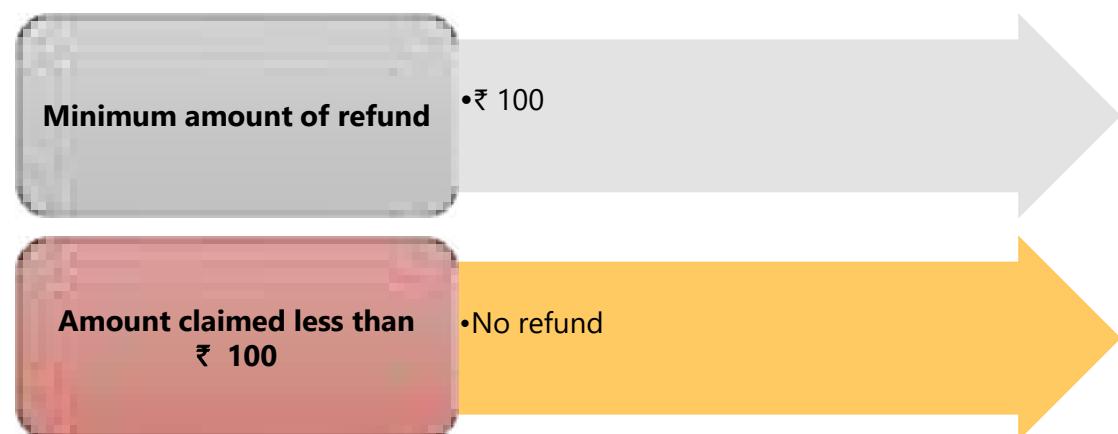
Eligible person to claim refund of duty/interest



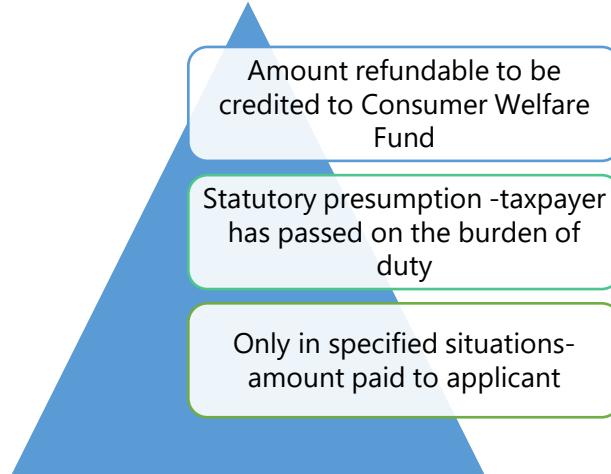
Time limit for filing refund



Minimum amount of Refund



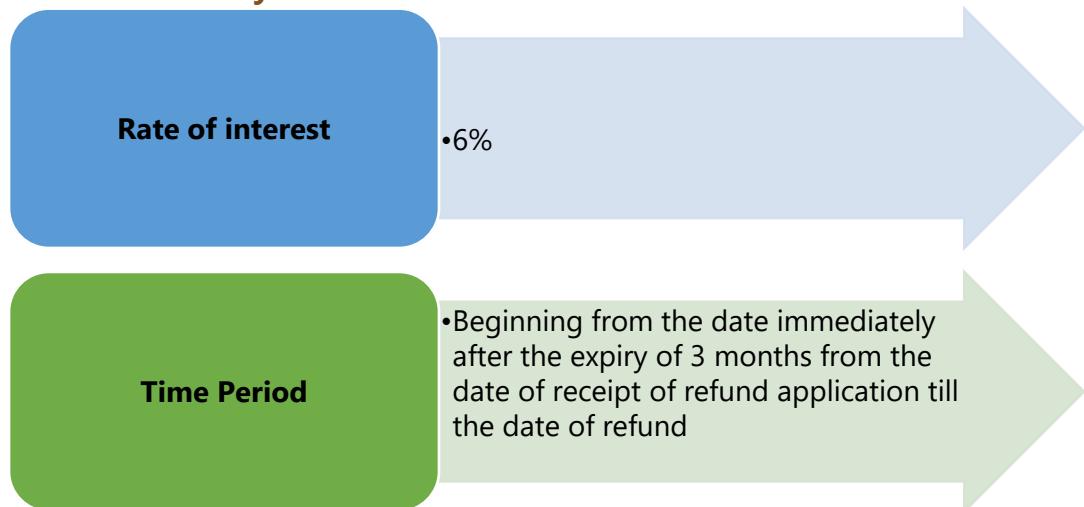
Doctrine of unjust enrichment



Situations where refundable amount is paid to the applicant instead of being credited to Consumer Welfare Fund

- 1 • If importer/exporter has not passed on incidence of duty/interest to other person
- 2 • Buyer who has borne the duty has not passed on incidence of duty/interest to other person
- 3 • Imports by individual for personal use
- 4 • Export duty paid as specified in section 26
- 5 • Drawback of duty
- 6 • Duty/interest borne by notified applicant
- 7 • Duty paid in excess by importer before order for clearance of home consumption evident from bill of entry/reassessed bill of entry.

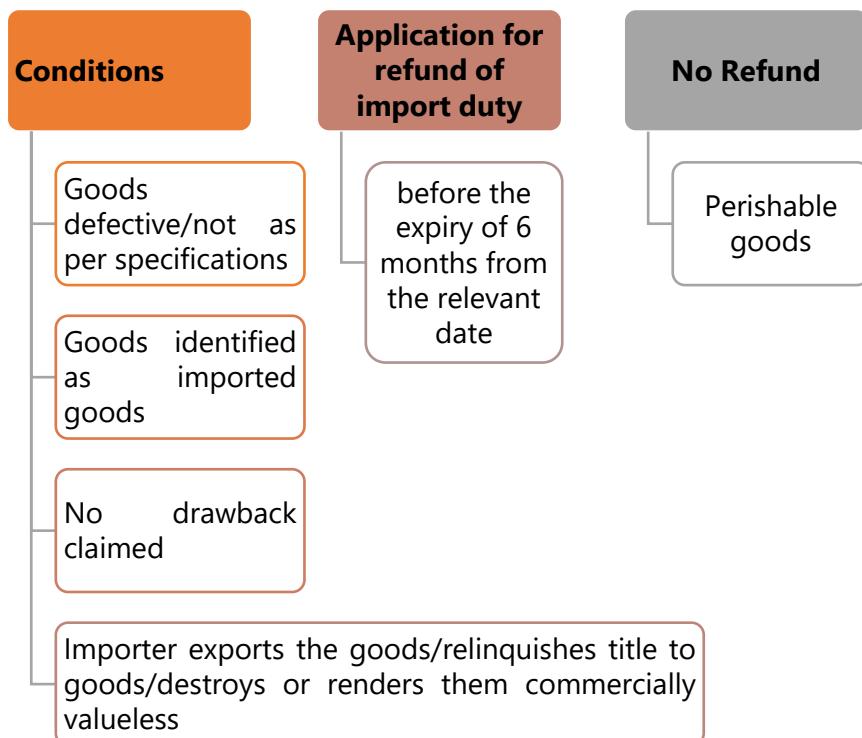
Interest on delayed refund



Refund of export duty in certain cases [Section 26]



Refund of import duty in certain cases [Section 26A]



Meaning of relevant date

S.No.	Case	Relevant date
1.	Goods exported out of India	Date on which proper officer makes an order for exportation under section 51
2.	Relinquishment of title to goods	Date of such relinquishment
3.	Goods being destroyed or rendered commercially valueless	Date of such destruction/rendering of goods commercially valueless



TEST YOUR KNOWLEDGE

1. *Explain the provisions of Customs Act, 1962 relating to computation of limitation for submission of refund application.*
2. *M/s. HIL imports copper concentrate from different suppliers. At the time of import, the seller issues a provisional invoice and the goods are provisionally assessed under section 18 of the Customs Act, 1962, based on the invoice. When the final invoice is raised based on the price prevalent in the London Metal Exchange on a predetermined date as agreed in the contract between the buyer and seller, the assessments are finalized on the basis of the price in such invoices.*
M/s HIL has filed a refund claim arising out of the finalization of the bill of entry by the authorities. The Department, however, has passed an order of refund to be credited to the fund in absence of any evidence from M/s HIL that the burden of duty has not been passed on to the buyer. Discuss whether the action of the department is correct in law?
3. *Section 26A of the Customs Act, 1962 provides for refund of import duty paid if goods are found defective or are not as per specifications. Discuss the conditions governing such refund in brief.*
4. *What is the minimum monetary limit prescribed in the Customs law below which no refund shall be granted?*
5. *Explain the doctrine of unjust enrichment with respect to refund of duty.*
6. *Acme Sales' imports were being provisionally assessed pending a verification that the department was carrying out. Upon completion of the verification, the assessments were finalized, and Acme Sales was asked to pay ₹12 lakh, which it paid. After six months, upon detailed scrutiny of the verification report and taking legal opinion on it, Acme Sales filed a claim for refund of ₹8 lakh on the ground that the differential amount should be ₹4 lakh only and that there were factual errors in the verification report. Was this the correct mode of redressal by Acme Sales? What will be likely outcome of the claim? Discuss on the basis of case law on the subject.*

7. Mr. N has, over three consignments of 200, 400 and 400 units, imported a total of 1000 units of an article "ZEP", which has been valued at ₹ 1,150 per unit. The customs duty on this article has been assessed ₹ 250 per unit. He adds his profit margin ₹ 350 per unit and sells the article for ₹ 1,750 per unit.

After one month of selling the entire consignment of article "ZEP", Mr. N found that there had been an error in payment of amount of duty, in which duty for the consignment of 200 units was paid as if it was 400 units, resulting in excess payment of duty. Mr. N files an application for refund for ₹ 50,000 (200 X 250). Is the bar of unjust enrichment attracted?

8. Explain the relevant dates as provided in section 26A(2) of the Customs Act, 1962 for purpose of refund of duty under specified circumstances, namely:
- (i) goods exported out of India
 - (ii) relinquishment of title to goods
 - (iii) goods destroyed or rendered valueless.
9. Explain whether refund of import duty is allowed in case of perishable goods?
10. Briefly explain whether interest is paid to the applicant in case of delayed refund by Customs Authorities? If yes, also explain the period for computation of interest?



ANSWERS/HINTS

1. According to section 27(1) of the Customs Act, 1962, a refund claim should be lodged before the expiry of one year from the date of payment of such duty or interest. The period of limitation of one year should be computed in the following manner:
- (a) If the refund claim is lodged by the importer, the time limit should be calculated from the date of payment of duty.
 - (b) If the refund claim is lodged by the buyer of imported goods, the time limit should be calculated from the date of purchase of goods.
 - (c) In case of goods which are exempt from payment of duty by an ad-hoc exemption, the limitation of one year should be computed from the date of issue of such exemption order.

- (d) Where any duty is paid provisionally, the time limit should be computed from the date of adjustment of duty after the final assessment thereof or in case of re-assessment, from the date of such re-assessment.
- (e) Where the refund arises as a result of any judgement/ decree/order/ direction of the Appellate Authority/Appellate Tribunal/Court, the time limit should be calculated from the date of such judgement/ decree/ order/direction.

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

2. Section 18 (dealing with provisional assessment) incorporates the principle of unjust enrichment in case of refund arising out of finalization of provisional assessment. Sub-section (5) of section 18 of the Customs Act, 1962 provides that if any amount is found to be refundable after finalisation of provisional assessment, such refund will be subject to doctrine of unjust enrichment.

Further, section 28D places the onus on the person who has paid duty to prove that he has not passed on the incidence of such duty. In the absence of any proof from such person, section 28D deems that the burden of duty has been passed on to the buyer.

Therefore, in the given case, the Department's action will be correct if M/s HIL does not produce any evidence of bearing the burden of duty.

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

The section stipulates the following cases in which the refund shall be paid to the person by whom or on whose behalf such duty was paid:

- (i) the goods are found to be defective or otherwise not in conformity with the specification agreed upon between the importer and the supplier of goods;

However, the goods should have not been worked, repaired or used after importation except where such use was indispensable to discover the defects or non-conformity with the specifications;

- (ii) the goods are identified to the satisfaction of Assistant/Deputy Commissioner of Customs as the goods which were imported;

- (iii) the importer does not claim drawback under any other provision of this Act; and

- (iv) the goods are exported or

the importer relinquishes his title to the goods and abandons them to customs or

such goods are destroyed/rendered commercially valueless in the presence of proper officer in prescribed manner within 30 days from the date on which the order of clearance of imported goods for home consumption is made by the proper officer. This period of 30 days can be extended up to 3 months on sufficient cause.

- (v) An application for refund of duty shall be made before the expiry of 6 months from the relevant date in prescribed form and manner.

- (vi) Imported goods should not be such regarding which an offence appears to have been committed under this Act or any other law.

- (vii) Imported goods should not be perishable goods and goods which have exceeded their shelf life or their recommended storage before use period.

4. As per third proviso to section 27(1) of the Customs Act, 1962, the minimum monetary limit below which refund cannot be granted is ₹ 100.
5. Customs duty is a levy under Indirect taxation, which implies that the incidence of the customs duty paid is generally passed on to the buyer of the goods.

When an importer imports goods, he has to pay the customs duty on such goods. Similarly, an exporter in case of export goods, if the same are subject to export duty, the exporter pays the export duty. This duty is recovered from the buyer when the goods are sold by the importer or exporter, as the case may be. In other words, the incidence or burden of duty is passed on to the buyer, from whom the importer or exporter collects the customs duty paid. Subsequently, if the importer or exporter makes a claim for refund of duty paid (due to excess payment) and receives the refund from the Government, he would be called to have enriched himself as he collected the duty from his customer also and also as refund from the Government. Such enrichment is referred to as 'unjust enrichment'.

Accordingly, the doctrine of 'unjust enrichment' implies that no person should enrich himself at the cost of others.

Therefore, wherever there is excess payment of duty, the refund is to be given only to the person who has borne the burden of such duty along with interest, if any. When the person who applies for refund is not the person who has borne the burden of duty, the refund is paid into a fund called 'Consumer Welfare Fund'.

Section 28D provides that every person who has paid duty under the Customs Act, unless the contrary is proved by him, shall be deemed to have passed the full incidence of such duty to the buyer; hence the applicant for refund has to refute the presumption of passing on the incidence of duty.

6. Acme Sales received an order finalizing provisional assessment on the basis of a verification report, and requiring payment of ₹ 12 lakh. They did not contest this order, but made the payment, and allowed the appeal period of sixty days to lapse. After appeal became time-barred they filed a claim for refund in which they challenged the order. This was a backdoor method of seeking relief against the order; it also asked an officer of the same rank to review the order passed; and it sought to bypass the time limitation for appeal by presenting the appeal as a claim for refund. The Supreme Court has held, in the case of *Priya Blue Industries Limited*, 2004 (172) ELT 145 (SC), that such a refund claim is not permissible for all these reasons. A person who is aggrieved with an assessment order cannot seek refund without filing an appeal against the assessment order.

7. Mr. N's invoices show that he collected duty of ₹ 250 per unit on 1,000 items. However, he paid duty on 200 items more. This payment, in the normal course, was made before the order permitting the clearance of the goods. It would be evident from the bill of entry that the amount paid was more than the amount of duty assessed. Thus Mr. N's case falls within the exception to unjust enrichment listed at clause (g) of the first proviso to section 27(2). He will be able to refute the charge of unjust enrichment. Furthermore, clause (a) of the same sub-section provides that the doctrine of unjust enrichment will not apply to the refund of duty and interest, if any, paid on such duty if such amount is relatable to the duty and interest paid by the importer/exporter, if he had not passed on the incidence of such duty and interest to any other person. Mr. N's invoices and other documentary evidences will show how much duty he collected from his customers, hence he may be covered by this clause also to escape the bar of unjust enrichment.
8. The relevant dates provided under Explanation to section 26A(2) of the Customs Act, 1962 for purpose of refund of duty under specified circumstances are as follows:-

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

9. Refund is not allowed in case of perishable goods and goods which have exceeded their shelf life or their recommended storage-before-use period in terms of section 26A(3) of the Customs Act, 1962.
10. Yes, interest is to be paid to the applicant in case any duty ordered to be refunded to an applicant is not refunded within 3 months from the date of receipt of application for refund. The government is permitted to fix such interest between 5% and 30%.

Currently, the rate of interest is 6% vide *Notification No. 75/2003-Cus (NT)* dated 12.09.2003.

The interest is to be paid for the period beginning from the date immediately after the expiry of 3 months from the date of receipt of such application, till the date of refund of such duty. For the purpose of payment of interest, the application is deemed to have been received on the date on which a complete application, as acknowledged by the proper officer of Customs, has been made.

CHAPTER

8

FOREIGN TRADE POLICY



For the sake of brevity, Foreign Trade Policy has been referred to as FTP at many places in this Chapter.

LEARNING OUTCOMES

After studying this chapter, you would be able to:

- explain the legislation governing FTP, salient features of FTP, administration of FTP, contents of FTP and other related provisions.
- appreciate and explain the basic concepts relating to import and export of goods under FTP.
- analyse the basic concepts relating to export promotion schemes provided under FTP namely, duty exemption and remission schemes, RoDTEP scheme, EPCG scheme, EOU, EHTP, STP & BTP schemes, deemed exports.

CHAPTER OVERVIEW



Salient Features of FTP

Administration of FTP

Contents of FTP

Trade Facilitation & Ease of doing business

Provisions regarding imports and exports

Duty Exemption and Remission Schemes

Export Promotion Capital Goods Scheme [EPCG]

EOU, EHTP, STP and BTP

Deemed Exports

UNIT – I: INTRODUCTION TO FTP



1. INTRODUCTION

In the era of globalization, international trade has become the lifeline of any economy. Today, international trade has begun to play a significant part in the Indian economy reflecting its increasing integration in globalisation.

International trade not only enables a nation to specialize in the goods which it can produce most cheaply and efficiently, but also to consume more than it would be able to produce with its own resources. International trade enlarges the potential markets for the goods of a particular economy.

Foreign Trade Policy is a set of guidelines or instructions issued by the Central Government which specifies policy for exports and imports viz., **foreign trade**. It's

primary purpose is not merely to earn foreign exchange, but also to stimulate greater economic activity.

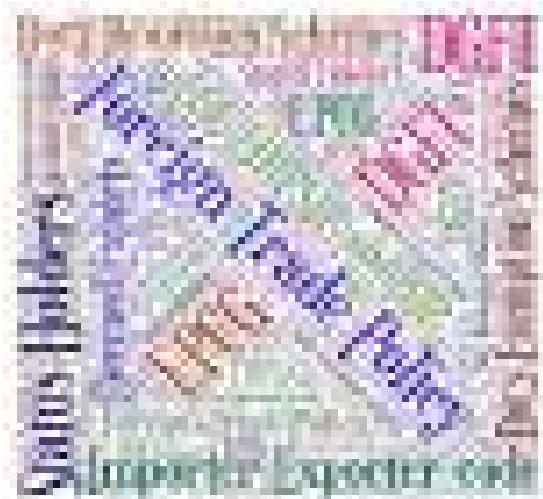
Legislation governing foreign trade:

In India, Ministry of Commerce and Industry governs the affairs relating to the promotion and regulation of foreign trade.

The Foreign Trade Policy, 2023, (as updated) is notified by the Central Government, in exercise of powers conferred under **Section 5 of the Foreign Trade (Development & Regulation) Act, 1992** [FT(D&R) Act], as amended.

The main legislation concerning foreign trade is the **Foreign Trade (Development and Regulation) Act, 1992 FT(D&R) Act**. The FT(D&R) Act provides for the development and regulation of foreign trade by facilitating imports into, and augmenting exports from, India and for matters connected therewith or incidental thereto. As per the provisions of the Act, the Central Government: -

- (i) may make provisions for facilitating and controlling foreign trade;
- (ii) may prohibit, restrict and regulate exports and imports, in all or specified cases as well as subject them to exemptions;
- (iii) is authorised to formulate and announce an export and import policy and also amend the same from time to time, by notification in the Official Gazette;
- (iv) is also authorised to appoint a 'Director General of Foreign Trade' for the purpose of the Act, including formulation and implementation of the export-import policy.



Foreign Trade Policy: In exercise of the powers conferred by the FT(D&R) Act, the Union Ministry of Commerce and Industry, Government of India generally

announces the integrated **Foreign Trade Policy (FTP)** with certain underlined objectives. The Foreign Trade Policy was earlier called as Export Import policy i.e., EXIM Policy. However, export import policy is now referred to as Foreign Trade Policy (FTP) of the country as it covers areas much beyond export and import. This policy is updated every year, in addition to changes that are made throughout the year.

The FTP, in general, aims at developing export potential, improving export performance, encouraging foreign trade and creating favorable balance of payments position. The policies are driven by factors like export led growth, improving efficiency and competitiveness of the Indian industries, ease of doing business etc.



2. SALIENT FEATURES OF FTP

The following are some of the key attributes of the FTP:

- ❑ Export-Import of goods and services is generally free unless specifically regulated by the provisions of the Policy or any other law for the time being in force.
- ❑ Export and import goods are broadly categorized as – (a) Free (b) Restricted (c) Prohibited.
- ❑ Some goods are 'free' for import and export but can be imported/exported only through State Trading Enterprises (STE).
- ❑ There are restrictions on exports and imports for various strategic, health, defence, environment, and other reasons. If the goods are restricted for import/export but not prohibited, the Government can give a permission/license for specific reasons.
- ❑ Exports are promoted through various promotional schemes.
- ❑ Goods and services to be exported but, not the taxes. Hence, any indirect taxes on exports are either exempted or refunded on both outputs and inputs, through application of various schemes in the form of Duty Exemption / Duty Refund (Drawbacks and Rebates), as the case may be.

- Capital goods can be imported at NIL duty for the purpose of exports under the scheme of EPCG.
- For units undertaking to export all their production, there are special schemes so that they can avoid taxes at every stage under the scheme of EOU/SEZ.
- In certain specified cases imports get duty exemption/concession/remission for certain special purposes. In such cases, to enable domestic suppliers to compete with the international suppliers, the supplies of domestic suppliers are treated as deemed exports.

FEATURES

Foreign Trade Policy 2023 -The present Foreign Trade Policy, which was announced on 01.04.2023, is an integrated policy for relating to export and import of goods and services. shall come into force with effect from 1st April 2023 and shall continue to be in operation unless otherwise specified or amended.

WTO Provisions in respect of foreign trade – India is member of World Trade Organisation (WTO). The four main WTO guidelines are –

- (i) Trade without discrimination
- (ii) Predictable and growing market access
- (iii) Promoting fair competition and
- (iv) Encouraging development and economic reforms.

WTO promotes free trade by lowering tariffs, quotas, import restrictions, quantity restrictions etc. Countries should 'bind' their commitments so that stability and predictability and investment is encouraged.

WTO discourages direct export incentives or subsidies on goods or services exported, as it distorts free competition. However, goods and services can be made free of Indian taxes. Hence, all our export promotion schemes are designed to suit WTO stipulations.



3. ADMINISTRATION OF THE FTP

The FTP is formulated, controlled and supervised by the office of the Director General of Foreign Trade (DGFT), an attached office of the Ministry of Commerce

& Industry, Government of India. DGFT has several offices in various parts of the country which work on the basis of the policy formed by the headquarters at Delhi.

DGFT issues **authorization** (earlier called as licence) for import/export. 'Authorization' means a permission in terms of the FTDR Act to import or export (which is applicable for only specified goods which are restricted). It also grants **Importer Exporter Code** (IEC) Number to importers and exporters. Import and Export without IEC number is not permitted, unless specifically exempted.

Decision of DGFT is final and binding in respect of interpretation of Policy, or provision in Handbook of Procedures, Appendices and Aayat Niryat Forms or classification of any item for import / export in the ITC (HS). A Policy Interpretation Committee (PIC) may be constituted to aid and advice DGFT.



Exemption from Policy/Procedures

DGFT may in public interest pass such orders or grant such exemption, relaxation or relief, as he may deem fit and proper, on grounds of genuine hardship and adverse impact on trade to any person or class or category of persons from any provision of FTP or any Procedures.

While granting such exemption, DGFT may impose certain conditions after consulting Norms Committees (for Fixation/modification of product norms under all schemes), EPCG Committee (Nexus with Capital Goods (CG) and benefits under EPCG Schemes) and Policy Relaxation Committee (PRC) (for all other issues).

If an importer/ exporter is aggrieved by any decision taken by PRC, or a decision/order by any authority in the DGFT, a specific request for Personal Hearing (PH) has to be made to DGFT. DGFT may consider request for relaxation after consulting concerned Norms Committee, EPCG Committee or Policy Relaxation Committee (PRC) and the decision conveyed in pursuance to the personal hearing shall be final and binding.

Government is committed to easy and speedy redressal of grievances from Trade and Industry.

The Settlement Commission¹ set up by the Department of Revenue has been empowered to settle matters of default in export obligation also.

¹ **Settlement Commission/ Interim Board provides the taxpayers a one-time opportunity to settle pending disputes related to customs duties in a speedy manner**

Other authorities involved: Though the FTP is formulated by DGFT, it is administered in close coordination with other agencies. Other important authorities dealing with FTP are:

(1) Central Board of Indirect Taxes and Customs (CBIC): CBIC comes under Ministry of Finance and its two Departments namely, Customs and GST facilitate in implementing the provisions of the FTP.

Customs Department is responsible for clearance of export and import goods after their valuation and examination. Customs authorities follow the policy formed by the DGFT while clearing the imported and export goods.

Since there is GST on almost all the goods and services (except petroleum products, tobacco products and alcoholic liquor), Central GST authorities need to be involved for all matters of exports, where goods have to be cleared with/without payment of GST.

(2) Reserve Bank of India (RBI): RBI is the nodal bank in the country which formulates the policies related to management of money, including payments and receipts of foreign exchange. It also monitors the receipt and payments for exports and imports. RBI works under the Ministry of Finance.

(3) State GST Departments: To avoid dual control, some taxable persons are under jurisdiction of State GST authorities. In their case, State GST Authorities are controlling authorities.



4. CONTENTS OF FOREIGN TRADE POLICY

The contents of the FTP 2023 are as follows

- (i) FTP 2023:** having 11 Chapters giving basic policy. This has been notified by the Central Government on 01.04.2023.
- (ii) Handbook of Procedures 2023:** (HBP 2023) containing 11 chapters, covering procedural aspects of policy. This has been notified by Director General of Foreign Trade on 01.04.2023. It is amended from time to time as per requirements. Also, it contains **Appendices and Aayat Niryat Forms (AANF)** containing various appendices and forms relating to the procedural aspects provided under the policy and procedures and Standard Input-Output

and avoid prolonged litigation. Said provisions are outside the scope of syllabus of Paper 5 -Indirect Tax Laws.

Norms² (SION) of various products notified from time to time. Based on SION, exporters are provided the facility to make duty-free import of inputs required for manufacture of export products under the Duty Exemption Schemes like Advance Authorisation and DFIA.

- (iii) **ITC (HS) classification of exports and import items:** The Export Import Policy regarding import or export of a specific item is given in the Indian Trade Classification Code based on Harmonized System of Coding [ITC(HS)]. ITC-HS Coding was adopted in India for import-export operations. Indian customs uses eight digit ITC-HS Codes to suit the national trade requirements.

CONTENTS OF FTP

ITC-HS codes are divided into two schedules. **Schedule I - Import Policy – ITC(HS) 2023** describe the rules and guidelines related to import policies whereas **Schedule II– Export Policy – ITC(HS) 2023** describes the rules and regulation related to export policies. Presently, most of the goods can be imported without any authorization. Schedule II contains very few products, where export is prohibited or restricted. Excluding those items, export of all other goods is free. **SCOMET LIST** is also provided

Any changes or formulation or addition of new codes in ITC-HS Codes are carried out by DGFT (Directorate General of Foreign Trade).

Foreign Trade Policy vis a vis tax laws: The Foreign Trade Policy is closely knit with the Customs, GST Laws and Excise/state laws of India. However, the policy provisions *per-se* do not override tax laws. The exemptions extended by FTP are given effect to by issuing notifications under the 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).

FTP, Handbook of procedures under FTP, CGST Act, SGST Act, IGST Act, Central Excise Act (for petroleum products and tobacco products), Customs Act and notifications issued hereunder form an integrated scheme of indirect taxation. All these statutes have to be read as a whole and not in isolation, since they are series of statutes relating to the related subject matter.

² SION specify the quantity and value of inputs that can be used for the production of specific export items and the corresponding quantity of output that can be expected.



5. SCOPE OF FTP

The FTP covers the policies and regulations with respect to the following matters:

Chapter No.	Contents of Foreign Trade Policy
1	Legal framework and trade facilitation
2	General provisions regarding imports and exports
3	Developing districts as export hubs
4	Duty exemption remission schemes
5	Export promotion Capital Goods (EPCG) Scheme
6	Export Oriented Units (EOUS), Electronics Hardware Technology Parks (EHTPS), Software Technology Parks (STPS) and Bio-Technology Parks (BTPS)
7	Deemed exports
8	Quality Complaints and Trade Disputes
9	Promoting cross border trade in digital economy
10	Scomet: special chemicals, organisms, materials, equipment and technologies
11	Definitions

Provisions relating to Special Economic Zone (SEZ) are contained in a separate Act and are not part of FTP. However, provisions of SEZ are closely related to Foreign Trade Policy.

Handbook of Procedures (HBP 2023) has 11 corresponding chapters which mainly deal with procedural aspects of the foreign trade policy.



6. TRADE FACILITATION AND EASE OF DOING BUSINESS

Since India ratified the World Trade Organization's Trade Facilitation Agreement (TFA), there's a special focus on implementing the international trade facilitation measures. DGFT, in consultation with Export Promotion Councils and Trade and Industry bodies, dedicatedly functions as a facilitator of exports and imports. National Committee on Trade Facilitation (NCTF) has been constituted to facilitate coordination and implementation of the TFA provisions. National Trade Facilitation Action Plan aims to achieve:

- ❑ Improvement in Ease of Doing Business through reduction in transaction cost and time
- ❑ Reduction in cargo release time
- ❑ A paperless regulatory environment
- ❑ A transparent and predictable legal regime
- ❑ Improved investment climate through better infrastructure

In view of the same, following trade facilitation measures are provided under FTP:

- ❑ Free passage will be provided to export consignment and there will not be any seizure of export related stock except in exceptional cases.
- ❑ Single window system to facilitate export of perishable agricultural produce.
- ❑ DGFT is implementing the Niryat Bandhu Scheme for mentoring new and potential exporter on the intricacies of foreign trade through counseling, training and outreach programmes including the 'Districts as Export Hubs³'.
- ❑ **DGFT online customer portal (<https://dgft.gov.in>)** provides information relating to export and import including Acts, rules, policy and procedures. Online facilities for e-RCMC/RC related processes, e-Certificate of Origin (e-CoO) and Quality Control and Trade Disputes (QCTD) are also available on said common digital platform.

³ The concept of 'Districts as Export Hubs' has been discussed subsequently.

- DGFT has undertaken a number of IT Initiatives to enable a paperless, contactless and transparent environment for availing benefits under the export promotion schemes.
- A dedicated 24 X 7 Helpdesk facility has been put in place to assist the exporters in filing online applications on the DGFT portal and other matters pertaining to FTP.
- A large number of Trade Facilitation measures have been taken by Customs Department⁴.

Trade facilitation measures introduced with an option available to the Central Government for consultation with relevant stakeholders to seek their views and also providing the mechanism on best endeavour basis, to inform reasons for not accepting views concerning the formulation or amendment of the FTP.

Consultation with Stakeholders

The Central Government, in the course of formulation of FTP, as and when it deems reasonable to do so, may seek views/ suggestions/ comments/ feedback from relevant stakeholders, including importers/exporters/industry experts with regard to formulation, incorporation of specific provision(s) or amendments in the FTP, and to the extent possible, 30 days' time-period may be provided to such relevant stakeholders for submission of their views/ suggestions/comments/feedback.

However, Central Government reserves the right to suo moto formulate, amend or incorporate any specific provisions, without seeking views, suggestions, comments, or feedback from stakeholders.

⁴ Some of these measures are 24X7 customs clearance in specified seaports and airports, Single Window Interface for Trade (SWIFT) under customs which allows importers and exporters, the facility to lodge their clearance documents online at a single point only, E-Sanchit or E-Storage and Computerized Handling of Indirect Tax documents facilitates traders with paperless processing, TURANT Customs (faceless assessment), Compliance Information Portal (CIP) which is one stop solution for information on all clearance related procedures, duties, fee and charges for import/export of any goods, etc.

Soliciting of views, suggestions, comments or feedback

If the views, suggestions, comments or feedback are not incorporated in the FTP, the Central Government may to the extent possible and if deems reasonable to do so, provide, to the relevant stakeholders, including importers/exporters/industry experts the reasons for not considering their views etc. while formulating, amending or incorporating specific provisions in the FTP.



However, Central Government is not obliged or mandated to disclose reasons for not incorporating views etc., that

- (i) has the potential to or will adversely affect trade relations with any foreign country;***
- (ii) would adversely affect food, economic or national security of India;***
- (iii) is in conflict with any government policies, strategic programs, international obligations or commitments or long-term plans and would undermine the objectives of such policies or programs;***

- (iv) **addresses matters unrelated to trade or serve narrow, private or special interests to the detriment of or contrary to the broader public interest, good; or**
- (v) **would require the disclosure of confidential or classified information**
Nothing shall confer any legal right whatsoever on any person to seek reasons for his views comments, opinions or feedback, not being incorporated in the FTP thereof.

Further, no legal right shall be conferred on any person to seek reasons for his views, comments, opinions or feedback, not being incorporated in the FTP thereof.

Reasons for not incorporating views



AUTHORIZED ECONOMIC OPERATOR (AEO)

Under AEO programme of Indian Customs, a business entity engaged in international trade is granted AEO status if it is approved by Customs as compliant with supply chain security standards. Such entities are considered as trusted trade partner of Indian customs.

AEO status holders get extensive benefits including preferential customs treatment in terms of reduced examination and faster processing and clearance of cargo, deferred payment of duty, direct port delivery/entry, enhanced border clearance privileges in Mutual Recognition Agreement (MRA) partner countries, greater facilitation and self-certification. AEO programme is based on WCO's SAFE Framework of Standards (FoS).



TOWNS OF EXPORT EXCELLENCE (TEE)

Selected towns which are contributing handsomely to India's exports by producing goods of specified amount may be granted recognition as TEE. They will be provided targeted support and infrastructure development to maximize their export competitiveness and enable them to move up the value chain and also to tap new markets by granting specified privileges to them.

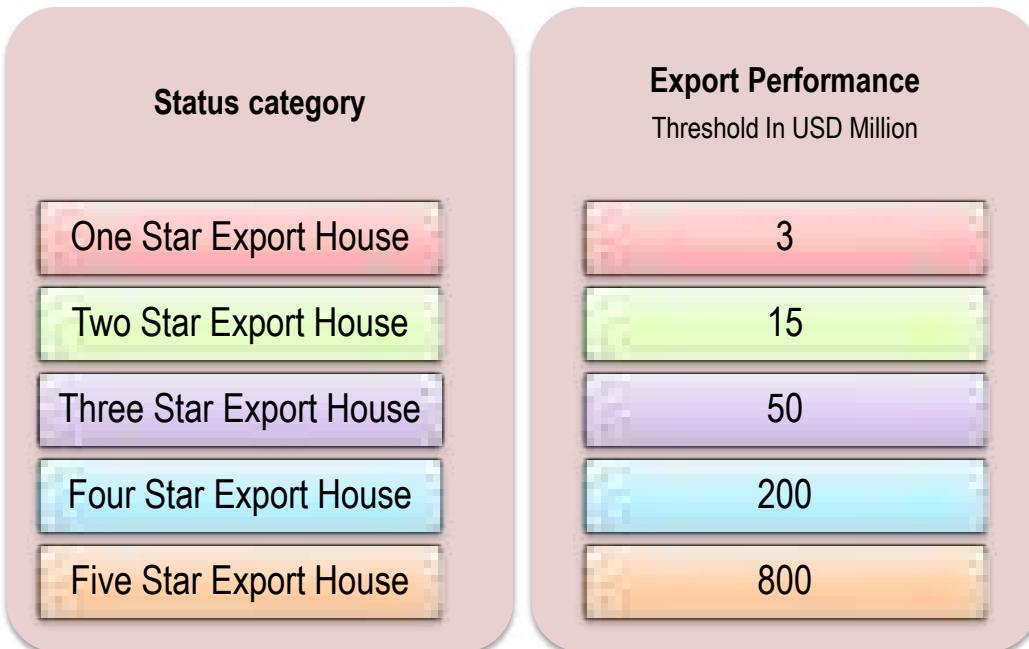


STATUS HOLDERS

Status Holders are exporter firms recognised as business leaders who have excelled in international trade and have successfully contributed to country's foreign trade. They are expected to not only contribute towards India's exports but also provide guidance and handholding to new entrepreneurs. All exporters of goods, services and technology having an import-export code (IEC) number shall be eligible for recognition as a status holder. Status recognition depends upon export performance**.

**Export performance
- All 3 preceding FYs**

An applicant shall be categorized as status holder upon achieving the threshold export performance in the current and preceding three financial years⁵, as indicated below:



****Points which merit consideration while computing export performance for grant of status:**

- The export performance shall be counted on the basis of FOB of export earnings in freely convertible foreign currencies or in Indian Rupees
- For deemed export, FOR value of exports in Indian Rupees shall be converted in US\$ at the exchange rate notified by CBIC, as applicable on 1st April of each Financial Year.
- For granting status, an export performance would be necessary in all the three preceding FYs.
- Export performance is not transferrable among IEC holders.

STATUS HOLDERS

⁵ *Separate provisions regarding Status Holder recognition are prescribed for Gems & Jewellery sector. FTP provisions relating to Gems & Jewellery sector are not relevant for examination purpose.

- ❑ Exports made on re-export basis shall not be counted for recognition.
- ❑ Export of items under authorization, including SCOMET items, would be included for calculation of export performance.
- ❑ For calculating export performance for grant of One Star Export House Status category,
 - exports by IEC holders under Micro and Small Enterprises,
 - manufacturing units having ISO/BIS certification,
 - units located in Northeastern States including Sikkim and Union Territories of Jammu, Kashmir and Ladakh and
 - export of fruits and vegetables

shall be granted double weightage once in any of these categories.

Privileges of Status Holders: Status holders are eligible for privileges as under:

- (a) Authorisation and custom clearances for both imports and exports on self-declaration basis.
- (b) Fixation of Input Output Norms on priority i.e. within 60 days by Norms Committee⁶.
- (c) Exemption from compulsory negotiation of documents through banks. Exception are remittance/ receipts.
- (d) Exemption from furnishing of Bank Guarantee in Schemes under FTP unless otherwise specified.
- (e) Two Star Export Houses and above are permitted to establish export warehouses.
- (f) Manufacturers who are also status holders (Three Star/Four Star/Five Star) will be enabled to self-certify their manufactured goods (as per their Industrial

⁶ Norms Committee in the DGFT is for the approval of adhoc input – output norms in cases where SION does not exist and recommends SION to be notified in DGFT.

Entrepreneurs Memorandum (IEM)⁷ / Industrial License (IL)⁸ /Letter of Intent (LOI)⁹) as originating from India with a view to qualify for preferential treatment under specified agreements.

- (g) Status holders shall be entitled to export freely exportable items¹⁰ on free of cost basis for export promotion subject to a specified annual limit.
- (h) The status holders would be entitled to preferential treatment and priority in handling of their consignments by the concerned agencies.

Skilling and mentorship obligations of Status Holders

Status Holders (other than One Star Export House) are being made "partners" in providing mentoring and training in international trade to specified number of trainees each year based on status they achieve.



7. OTHER MISCELLANEOUS PROVISIONS

DEVELOPING DISTRICTS AS EXPORT HUBS

Every district has products and services which are being exported, and can be further promoted, along with new products/ services, to increase production, grow exports, generate economic activity and achieve the goal of Atma Nirbhar Bharat, Vocal for local and Make in India.

Products/services (GI products, agricultural clusters, toy clusters etc.) with export potential in each District have to be identified and institutional mechanism in the form of District Export Promotion Committees

EXPORT HUBS

⁷ Industrial undertakings exempted from the requirements of Industrial Licensing under THE INDUSTRIES (DEVELOPMENT AND REGULATION) ACT I (D&R),1951 are required to file information relating to setting up of industries is known as IEM (Industrial Entrepreneur Memorandum).

⁸ An industrial license is a legal authorization or permission granted by the government to establish and operate an industrial enterprise in certain sectors or for specific activities.

⁹ Letter of Intent (LOI) typically refers to a document issued by an exporter to indicate their intention to export goods or services. The LOI serves as an initial communication between the exporter and the buyer, outlining the key terms and conditions of the proposed export transaction.

¹⁰ excluding Gems and Jewellery, Articles of Gold and precious metals

(DEPCs) at the district level is to be created to provide support for export promotion and address the bottlenecks for export growth in the districts. A District Export Action Plan (DEAP) may be prepared for each district. 2-3 high potential products/services from the districts may be prioritised and comprehensive plan for their export growth may be prepared and implemented. DGFT Regional Authorities will be engaging with all the relevant State and Central agencies to take forward this initiative in each district.

QUALITY COMPLAINTS AND TRADE DISPUTES

In case of import/export, owner is liable to state the value, quality and description of the goods/services/technology to the best of his knowledge and belief, in the Bill of Entry or the Shipping Bill or any other prescribed document. In case of export, certification regarding quality and specification of the goods/services/technology being in accordance with the terms of export contract is also required.

Necessary action is prescribed against the erring exporters/importers under the FT(D&R) Act, as amended and under Foreign Trade (Regulation) Rules, 1993. Further, a mechanism has been laid down to resolve complaints/ trade disputes between foreign buyer/supplier and Indian exporter/importer in respect of quality of goods/services/technology supplied or unethical commercial dealings including non-supply/ partial supply/ wrong supply/ non- payment; non-adherence to delivery schedules, etc.

Committee on Quality complaints and Trade Disputes (CQCTD) will be responsible for enquiring and investigating into all quality related complaints and other trade related complaints falling under the jurisdiction of the respective RAs. It will take prompt and effective steps to redress and resolve the grievances of the importers/exporters and overseas buyers/ suppliers.

SCOMET: SPECIAL CHEMICALS, ORGANISMS, MATERIALS, EQUIPMENT AND TECHNOLOGIES

India is a signatory to international conventions on disarmament and non-proliferation and is a member of major multilateral export control regimes. Resultantly, export of dual-use items, including software and technologies, having potential civilian/ industrial applications as well as use in weapons of mass destruction is regulated under FTP. It is either prohibited or is permitted under an Authorization unless specifically exempted. SCOMET list is our

The logo for SCOMET (Special Chemicals, Organisms, Materials, Equipment and Technologies) is displayed in a bold, brown, sans-serif font. The word 'SCOMET' is the central element, with 'S' and 'C' on the top line and 'OMET' on the bottom line. The letters are slightly shadowed, giving a 3D effect. The entire word is enclosed within a decorative border consisting of a dashed outer line and a solid inner line, creating a double-lined effect.

National Export Control List of dual use items munitions and nuclear related items, including software and technology and is aligned to the control lists of the all the multilateral export control regimes and conventions.



8. PROVISIONS REGARDING IMPORTS AND EXPORTS

A. GENERAL PROVISIONS APPLICABLE TO IMPORT AND EXPORT OF GOODS

Before entering into a transaction of import or export, one needs to ascertain whether the specific item is 'free' or 'restricted' or 'prohibited' for import or export, and whether it is required to be traded exclusively through a State Trading Enterprise (STE). Prohibitions / restrictions on import or export can be imposed by the DGFT through a notification for specified reasons which are essentially the public interest factors. If there is a restriction, an authorisation is required for export/ import; and the import authorisations are for the 'actual user' only, unless this condition is specifically dispensed with by the DGFT. Authorisation can be applied for on the portal of the DGFT, dgft.gov.in by using the applicant's IEC number.

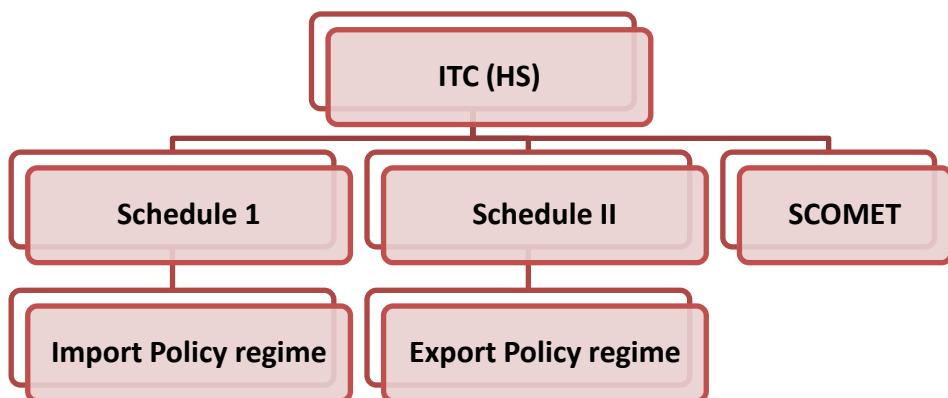
Prohibitions on import and export have been imposed for specified countries, organisations, groups, individuals etc. Further, product specific prohibitions are also imposed. Special schemes may be devised to promote and regulate trade and strengthen economic ties with neighbouring countries.

Imported goods are required to comply with all domestic laws applicable to domestically produced goods, unless exempted. In addition, the DGFT may prescribe procedures by means of a public notice, to be followed by an importer or exporter.

Other general provisions regarding export and import have been outlined as follows:

- 1. ITC(HS) [Indian Trade Classification (Harmonised System)]:** The information regarding status of the goods being free/restricted/prohibited / traded through STE, for import/export is available in the ITC(HS), i.e. import/export policies for all goods are indicated against each item as per its ITC(HS). In addition to this status under the FTP, import or export may be subject to restrictions or conditions under any other law.

International Harmonised System goods nomenclature was adopted in India for import-export operations. Indian custom uses eight-digit ITC-HS codes to suit the national trade requirements. The same system is used for classifying goods in the Customs Tariff. The classification schedule under ITC (HS) is referred for import or export status and restrictions, while the classification schedule under the Customs Tariff, read with relevant exemption notifications, is referred for rate(s) of customs duty on the goods.



2. **State Trading Enterprises:** ITC(HS) specifies against certain goods that they can be imported/exported only through 'State Trading Enterprises' notified by DGFT. State Trading Enterprises (STEs) are governmental/non-governmental enterprises, including marketing boards, which deal with goods for export and /or import. However, DGFT has the discretion to issue authorisation to other entities to import or export goods that are notified for exclusive trading through STEs.

Some of the STEs are Food Corporation of India, Oil and Natural Gas Corporation Ltd, National Fertilizers Limited, Indian Rare Earth Ltd., National Dairy Development Board, National Agricultural Cooperative Marketing Federation of India (NAFED), State Cooperative Marketing Federation, etc.

3. **Importer-Exporter Code (IEC):** A person can undertake export or import activity only after obtaining Importer-Exporter Code (IEC) unless specifically exempted. It is a ten-character alphanumeric number allotted to an entity. It is the same number as the applicant's PAN but is issued separately by the DGFT. An online application has to be filed for IEC. Specified categories of importers or exporters are exempted from obtaining IEC. IEC details have to be



electronically updated every year, even if there are no changes; failing which it will be de-activated till updation.

4. **Mandatory documents:**

- **For export**, the following documents are mandatory:
 1. Bill of Lading/ Airway Bill/ Lorry Receipt/ Railway Receipt/Postal Receipt
 2. Commercial Invoice cum Packing List (or separate invoice and packing list)
 3. Shipping Bill/Bill of Export/ Postal Bill of Export
- **For import**, the following documents are mandatory:
 1. Bill of Lading/Airway Bill/Lorry Receipt/ Railway Receipt/Postal Receipt
 2. Commercial Invoice cum Packing List (or separate invoice and packing list)
 3. Bill of Entry

For import/export of specific goods or in specific cases of export or import, additional documents may be notified/sought.

5. **Penal action and placing of an entity in Denied Entity List (DEL)**

(a) **Penal action**

In following situations, a person shall be liable to penal action under FT (D&R) Act and rules and orders made thereunder, FTP and any other law for time being in force:

- (i) authorisation holder:
 - violates any condition of such Authorisation
 - fails to fulfill export obligation
 - fails to deposit the requisite amount within the period specified in demand notice

- (ii) any information/particulars furnished by applicant subsequently found untrue/incorrect¹¹

(b) Denied Entity List (DEL)

A firm may be placed under DEL, by the concerned Regional Authority (RA) of the DGFT. In such a case:

- (i) firm may be refused grant or renewal of a licence/authorization /certificate/scrip/any instrument bestowing financial/fiscal benefits, and
- (ii) all new licences, authorisations, scrips, certificates, instruments etc. will be blocked from printing/ issue/renewal.

A firm's name can be removed from DEL, by the concerned RA for reasons if the firm completes Export Obligation/ pays penalty/ fulfils requirement of demand notice(s) issued by the RA/submits documents required by the RA.

B. PROVISIONS RELATING TO IMPORT OF GOODS

1. 'Actual user' condition: Goods which are importable freely without any 'restriction' may be imported by any person. However, if such imports require an authorisation, actual user alone may import such good(s) unless said condition is specifically dispensed with by DGFT.

2. Import of specific categories of goods

(a) Samples: Import of samples of even 'restricted' items, is allowed without import authorisation. Exceptions are defence / security items, seeds, bees, and new drugs; these need authorisation.

Duty free import of samples upto ₹ 3,00,000 for all exporters shall be allowed subject to terms and conditions of customs notification¹² as amended.

(b) Gifts: Import of gifts (including those purchased from e-commerce portals) through post / courier, where customs clearance is sought as gifts, is prohibited. Exceptions are 'rakhi' and life-saving medicines.

¹¹ With a view to raising ethical standards and for ease of doing business, DGFT has provided for self-certification system under various schemes in FTP. In such cases, applicants is expected to undertake self-certification with sufficient care and caution in filling up information/ particulars.

¹² Notification No. 154/94 Customs dated 13.07.1994

Gifts, however, can be imported upon payment of applicable customs duties. If duty leviable on rakhi is upto ₹ 100, no duty will be collected on the same.

(c) **Passenger baggage:** Following are allowed to be imported as part of passenger baggage without an authorisation subject to the Baggage Rules, 2016:

- Bona-fide household goods and personal effects
- Samples of items freely importable under FTP*
- Drawings, patterns, labels, price tags, buttons, belts, trimming and embellishments required for export, imported as part of the passenger baggage of exporters coming from abroad, upto prescribed value limit.

**Any item(s) including Samples/Prototypes of items whose import policy is "restricted" or "prohibited" or is channelised through STEs are not permitted as part of passenger baggage except with a valid authorization.*

(d) **Re-import of repaired goods:** Capital goods, equipment, components, parts and accessories, whether imported or indigenous, except those restricted under ITC (HS) may be sent abroad for repairs, testing, quality improvement or upgradation or standardization of technology and re-imported without an Authorisation.

(e) **Goods used in projects abroad:** Project contractors after completion of projects abroad, may import without an Authorisation, goods including capital goods used in the project, provided they have been used for at least one year.

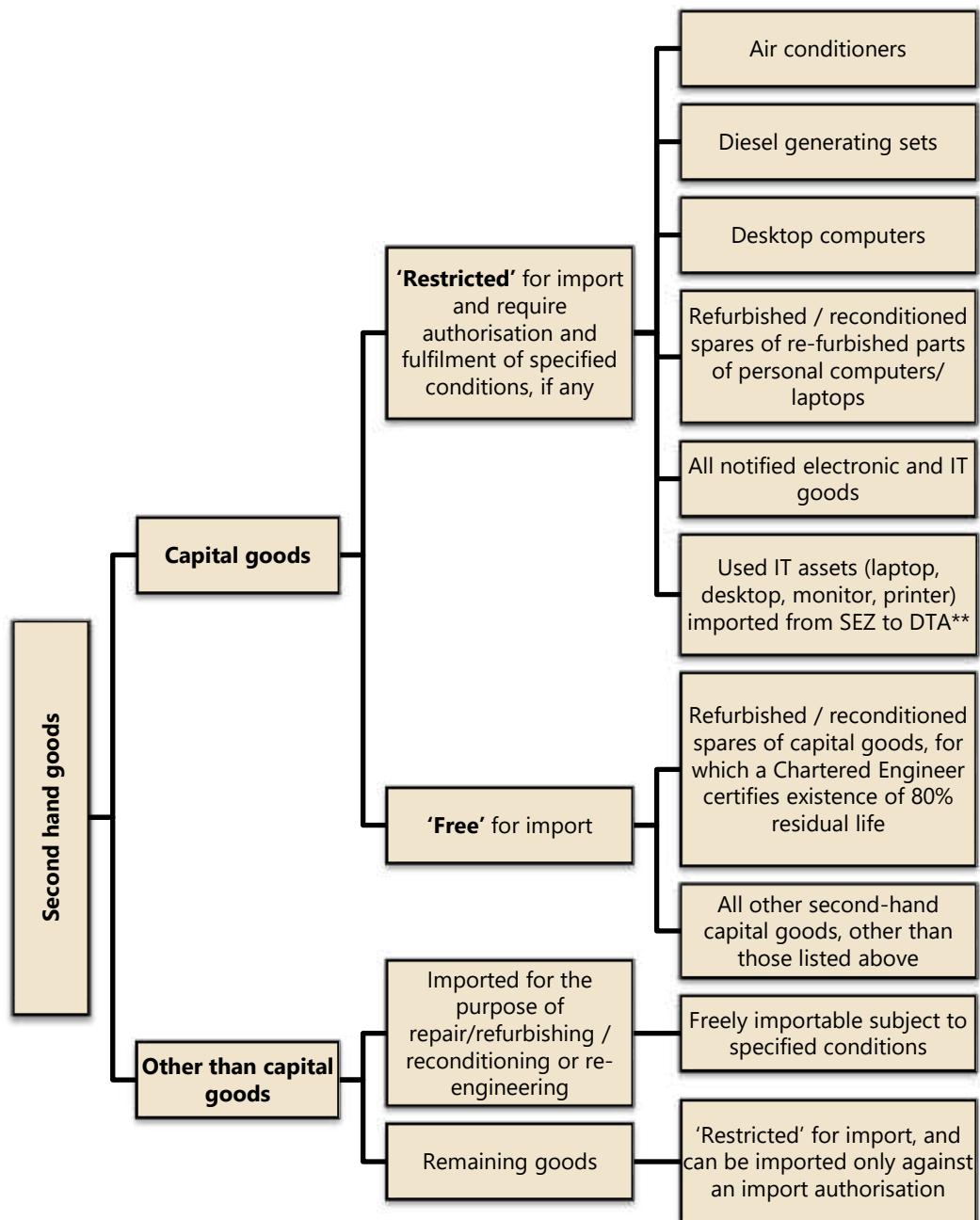
(f) **Prototypes:** New / second hand prototypes / second hand samples may be imported without an Authorisation on the following conditions:

- The importer is an Actual User (industrial)
- He is engaged in production of, or having industrial license / letter of intent for research in an item for which prototype is sought for product development or research, as the case may be,
- The importer files a self-declaration to that effect, to the satisfaction of Customs authorities.

(g) **Metallic waste & scrap:** Import of any form of metallic waste, scrap will be subject to the condition that it will not contain hazardous, toxic waste, radioactive contaminated waste / scrap containing radioactive

material, any type of arms, ammunition, mines, shells, live or used cartridge or any other explosive material in any form either used or otherwise.

(h) **Second hand goods:** Import policy for second hand goods is as follows:



**Import policy of used IT assets (laptop, desktop, monitor, printer) imported from SEZ to DTA, subject to fulfilment of specified conditions, has been notified in the FTP. The said import is restricted and requires authorization.

3. Import of items under Advance Authorisation/EOU/SEZ enabled without compliance to mandatory Quality Control Orders (QCO)

Quality Control Orders (QCOs) are regulatory mandates issued by the Indian government to ensure that products meet specific quality standards. These orders, typically issued by the Bureau of Indian Standards (BIS) under the BIS Act, 2016, apply to a wide range of products to protect consumer safety, health, and environment. Domestic manufacturers as well as importers need to ensure that products covered by QCOs must not be manufactured/imported without compliance with specific standards.

Enabling provisions have been incorporated in FTP for exempting inputs imported by Advance Authorisation holders, EOU and SEZ from mandatory Quality Control Orders (QCOs). However, import of inputs under Advance Authorisation/EOU/SEZ without compliance to the mandatory QCOs, shall be subjected to the following conditions:

(i) For Advance Authorisation:

- (a) Import of inputs under the Advance authorization without compliance to the mandatory QCOs shall be with pre import condition. Such inputs shall be utilised in the manufacturing of the export product (making normal allowance for wastage) and shall be exported under the same authorization. Unutilized imports shall not be transferred to DTA, even after regularization of default in fulfilment of export obligation. It shall be destroyed in the presence of jurisdictional GST/Customs authorities or may be re-exported. In addition, such unutilised imports shall be liable to payment of effective duty along with interest to customs authorities and specified composition fee to DGFT.
- (b) Said Exemption shall be specifically endorsed in the advance authorization, upon the request of the authorization holder.

- (c) The exemption from QCO will be available for physical exports only and such exemption will not be allowed for deemed exports for Advance Authorisation Holders.
- (d) Import of Inputs without compliance to the mandatory QCOs under DFIA scheme is not allowed.

(ii) For EOU

Exemption from applicability of mandatory QCOs issued under the BIS Act, 2016, shall be provided to EOU on import of inputs which are required for export production. No DTA clearance of such inputs or goods manufactured made out of such inputs, are allowed.

An undertaking to that effect will be submitted to the Customs authorities by the EOU at the time of importation and a copy of the same shall also be submitted to the Development Commissioner concerned. The exemption from QCO will be available for physical exports only and such exemption will not be allowed for deemed exports.

(iii) For SEZ

Exemption from applicability of mandatory QCOs issued under the BIS Act, 2016, shall be provided to SEZ on import of inputs which are required for export production. No DTA clearance of such inputs or goods manufactured made out of such inputs, are allowed.

An undertaking to that effect will be submitted to the concerned Development Commissioner of the SEZ by the SEZ Unit at the time of importation. The exemption from QCO will be available for physical exports only.

Above exemption shall be applicable only for the list of notified Ministries/Departments whose notifications on mandatory QCOs are exempted by the DGFT for goods to be utilised/consumed in manufacture of export products.

4. **Miscellaneous provisions regarding import:** Some of the provisions to be noted are –

- Goods for import into India can be sold on the high seas, subject to FTP/other laws in force.
- Merchanting trade means shipment of goods from one foreign country to another foreign country without touching Indian ports, involving an Indian intermediary. This is allowed, subject to RBI guidelines, except for goods in the CITES¹³ and SCOMET lists.
- Further, merchanting trade carried out within one specific foreign country is also permitted, subject to RBI guidelines, except for goods in the CITES and SCOMET lists.
- Import of capital goods under lease financing does not require any specific permission from the DGFT.
- For imported goods, **Bank Guarantee / Letter of Undertaking/ Bond (BG/ LUT /Bond)** is to be executed with customs in case of duty-free import or otherwise required, before clearance of goods. For indigenously sourced goods, an authorisation-holder has to execute LUT/BG/Bond with the RA concerned, before sourcing such material.

C. PROVISIONS RELATING TO EXPORT OF GOODS

All goods may be exported without any restriction except to the extent that such exports are regulated by ITC(HS) or any other provision of FTP or any other law for the time being in force.

1. **Benefits for supporting manufacturers:** Supporting manufacturer is one who manufactures goods/products or any part/ accessories/ components of a good/ product for a merchant exporter/manufacturer exporter under a specific Authorisation. For any benefit to accrue to the supporting manufacturer, the names of both supporting manufacturer as well as the

¹³ CITES (Convention on International Trade in Endangered Species of Wild Fauna and Flora) is an international agreement between governments. Its aim is to ensure that international trade in specimens of wild animals and plants does not threaten the survival of the species.

merchant exporter must figure in the concerned export documents, especially in tax invoice / shipping bill / bill of export/ airway bill.

2. **Third Party Exports:** Third party exports is allowed under FTP. Third-party exports means exports made by an exporter/manufacturer on behalf of another exporter(s). In such cases, export documents such as shipping bills shall indicate names of both manufacturer exporter/manufacturer and third-party exporter(s). Bank Realisation Certificate (BRC), Self-Declaration Form (SDF), export order and invoice should be in the name of third-party exporter.
3. **Samples:** Exports of trade and technical samples of goods of freely importable items are allowed without any limit.
4. **Gifts:** Goods including edible items, of value not exceeding ₹ 5,00,000 in a licensing year (1st April-31st March), 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 authorisation.
5. **Passenger baggage:** Bona-fide personal baggage may be exported either along with passenger or, if unaccompanied, within 1 year before or after passenger's departure from India. However, items mentioned as restricted for exports in ITC(HS) shall not be exported as a gift, without an Authorisation. Samples that freely exportable can be exported as part of passenger baggage. Authorisation will be required for restricted items.

Samples of freely exportable items may be exported as part of passenger baggage without an authorisation.

6. **Import for export**

- Goods that are freely importable as well as freely exportable can be imported and then exported in same or substantially the same form, without any authorisation.
- Goods including capital goods (both new and second hand) can be imported under customs bond and then cleared for export against freely convertible foreign currency provided they are freely exportable. This includes goods that are 'restricted' for import.

- Capital goods that are freely importable and freely exportable can be imported for export upon execution of LUT/BG with the customs authorities.
- Notwithstanding the above, goods of other than Indian origin that are 'restricted' for export (other than 'prohibited' or SCOMET items) but 'free' for import can be imported for exports in same or substantially the same form. Such goods shall be kept in bonded warehouse and re-exported from there subject to provisions of section 69 of the Customs Act, 1962.
- Goods that are imported against payment in freely convertible foreign currency can be exported only against payment in freely convertible foreign currency, unless otherwise notified.

7. Payments and Receipts on Imports / Exports:

- (a) **Denomination of Export Contracts:** Export contracts may be denominated either in Indian rupees or freely convertible currency, but export proceeds should be realised in freely convertible foreign currency¹⁴. However, in specified cases, exports proceeds may be realized in rupees subject to fulfilment of specified conditions.
- (b) **Non-realisation of export proceeds:** If an exporter fails to realize export proceeds within time specified by RBI, he shall be liable to return all benefits/ incentives availed against such exports and shall be liable to penal action under FT (D&R) Act and the FTP. However, if such non-realization is for reasons beyond his control, he may approach RBI for writing off the unrealized amount.
- (c) **Export Credit Agencies (ECAs):** ECAs provide financial support to exporters. They support exports by insurance, guarantee and also direct

¹⁴ *Freely convertible foreign currency refers to a currency that can be exchanged or converted into other currencies without significant restrictions or limitations imposed by the government or regulatory authorities.*

lending. For instance, Export Credit Guarantee Corporation of India Ltd. (ECGC), Exim Bank, etc.

8. **Export Promotion Councils:** Export Promotion Councils (EPCs) are organizations of exporters, set up to promote and develop Indian exports. Each Council is responsible for promotion of a particular group of products/projects/services. EPCs are also eligible to function as Registering Authorities to issue **Registration-cum-Membership Certificate (RCMC)**. RCMC is required to be furnished by any person, applying for an Authorisation to import/ export under the FTP (except 'Restricted' items) or applying for any other benefit or concession under FTP.
9. **Self-certification of origin of goods:** Till now, certificate of origin of goods for export was issued by the designated agencies. Now, **self-certification** has been enabled for "**approved exporters**". Manufacturers who are also status holders will be eligible for the 'approved exporter' scheme.

Approved Exporters will be entitled to self-certify their manufactured goods as originating from India with a view to qualifying for preferential treatment under different Preferential Trade Agreements [PTAs], Free Trade Agreements [FTAs], Comprehensive Economic Cooperation Agreements [CECA] and Comprehensive Economic Partnerships Agreements [CEPA] which are in operation. Self-certification will be permitted only for the goods that are manufactured as per the IEM/IL/LOI issued to manufacturers.

UNIT – II : BASIC CONCEPTS RELATING TO EXPORT PROMOTION SCHEMES UNDER FTP

Export promotion schemes

Exports of a country play an important role in the economy. Government always endeavors to encourage exports by introducing various export promotion schemes.



1. DUTY EXEMPTION & REMISSION SCHEMES

The Duty Exemption and Remission Schemes are the most important schemes in the Foreign Trade Policy as they are most widely utilized.

Objective

Duty exemption and remission schemes enable duty free import of inputs for export production, including replenishment of inputs or duty remission.

Schemes¹⁵

(A) Duty exemption schemes: Duty exemption schemes enable duty free import of inputs required for export production.

The two duty exemption schemes are as follows: -

1. Advance Authorization Scheme (which will include Advance Authorisation for Annual Requirement).
2. Duty Free Import Authorization Scheme (DFIA)

(B) Duty remission schemes: Duty Remission Scheme enables post export replenishment / remission of duty on inputs used in export product. Duty Drawback (DBK) Scheme, administered by Department of Revenue is designed for this purpose.

¹⁵ Separate provisions have been prescribed for duty exemption/remission schemes applicable for Gems & Jewellery Sector. FTP provisions relating to Gems & Jewellery Sector are not relevant for examination purpose.

(C) Scheme for Remission of duties and taxes on exported products (RoDTEP):

This scheme has been notified by Department of Commerce and administered by Department of Revenue.

(D) Scheme for Rebate on State and Central Taxes and Levies (RoSCTL), as notified by the Ministry of Textiles¹⁶:

A Duty exemption schemes

(1) ADVANCE AUTHORISATION SCHEME

Items which can be imported duty free against advance authorization:

- Input that is physically incorporated in export product (making normal allowance for wastage).
- Fuel, oil, catalyst which is consumed / utilized in the process of production of export product.

Eligible Applicant / Export

- (a) Advance Authorisation can be issued either to a manufacturer exporter or merchant exporter tied to supporting manufacturer.
- (b) Advance Authorisation for pharmaceutical products manufactured through Non-Infringing (NI) process shall be issued to manufacturer exporter only.

Eligible Supply

Advance Authorisation is issued for procurement of inputs for the following kinds of supply:-

- Physical export (including export to SEZ)
- Intermediate supply; and/or
- Deemed exports¹⁷

¹⁶ This scheme has not been discussed in detail and not relevant from examination point of view.

¹⁷ The provisions relating to Deemed exports has been discussed subsequently.

- Supply of 'stores' on board of foreign going vessel / aircraft, subject to condition that there is specific SION in respect of item supplied.

□ Basis of issuance of Advance Authorisation

Advance Authorisation is issued for inputs in relation to resultant product, on the following basis:

- As per Standard Input Output Norms (SION) notified); or
- On the basis of self declaration or
- Applicant-specific prior fixation of norm by the Norms Committee or
- On the basis of Self Ratification Scheme

ADVANCE AUTHORISATION

□ Self-Ratification Scheme

Where there is no SION/valid Adhoc Norms for an export product or where SION has been notified but exporter intends to use additional inputs in the manufacturing process, eligible exporter can apply for an Advance Authorisation under this scheme on self declaration and self ratification basis.

The expression "additional inputs" refers not to additionality in terms of quantity/value of an input specified in a norm, but to another additional input. Say, if the inputs specified in the norm are X1 and X2 only, then input Y would represent an additional input.

RA may issue Advance Authorisations and such cases need not be referred to Norms Committees for ratification of norms. Application under this scheme shall be made along with a Certificate from Chartered Engineer in the prescribed format.

□ Eligibility to opt for this scheme

An exporter (manufacturer or merchant), who holds AEO Certificate under Common Accreditation Programme of CBIC is eligible to opt for this scheme.

A status holder who is a manufacturer cum actual user and holds valid 2-star or above status and who has already submitted its application for grant of AEO on CBIC's AEO portal is also eligible to apply for this scheme subject to the specified conditions.

However, DGFT may deny authorisation under this scheme to two star and above status holder based on its risk management principles. The scheme is not available for the specified export products as well as specified inputs.

Pre-import condition

Imported inputs are subject to pre import condition and they should be physically incorporated in the export product (making normal allowance for wastage). In case of local procurement under invalidation/ARO, the inputs shall be procured prior to manufacture of export item and shall be physically incorporated in the export product.

Invalidation letter- Regional Authority shall issue Invalidation Letter when domestic supplier intends to **obtain duty free material for inputs through Advance Authorisation** for supplying resultant product to another Advance Authorisation / DFIA /EPCG Authorisation.

Advance Release Order (ARO) - Regional Authority shall issue Advance Release Order if the domestic supplier intends to **seek refund of duties exempted through Deemed Exports mechanism.**

Validity Period for Import

Validity Period of an advance authorization in two situations is as follows:

- Validity period of Advance Authorisation shall be **12 months** from the date of issue of Authorisation. This means that import under the authorisation must be made within this period. Re-validation for another period of 12 months can be allowed once only. Application for re-validation can be made online.
- Validity of Advance Authorisation for supplies under deemed exports shall be co-terminus with contracted duration of project execution or 12 months from the date of issue of Authorisation, whichever is later.

12 months valid

Advance Authorisation for Annual Requirement and Eligibility Condition

- Advance Authorisation for Annual Requirement shall only be issued for items notified in SION. And it shall not be available in case of adhoc norms under Self-Declared Authorisations where SION does not exist.

- Advance Authorisation for Annual Requirement shall also not be available in respect of SION where input is notified.
- Exporters having past export performance (**in at least preceding two financial years**) shall be entitled for Advance Authorisation for Annual requirement.
- **Entitlement in terms of CIF value of imports shall be upto 300% of the FOB value of physical export and / or FOR value of deemed export in preceding financial year or Rs 1 Crore, whichever is higher.**

□ **Value Addition**

Value Addition for the purpose of this Chapter shall be:-

VA = (A – B)/ B x100, where

A =FOB value of export realized/FOR value of supply received.

B =CIF value of inputs covered by Authorisation, plus value of any other input used on which benefit of duty drawback is claimed or intended to be claimed.

□ **Minimum Value Addition¹⁸**

Minimum value addition required to be achieved under Advance Authorisation is **15%**.

Minimum 15% value addition

However, in case of specified products (petroleum products etc), value addition could be less than 15%.

□ **Import of Mandatory Spares**

Spares that are required to be supplied with the export product can be imported duty-free under the advance authorisation up to a value of **10% of the CIF value** of the authorisation.

Note: It may be noted that import of specified products is not permissible on self-declaration basis.

¹⁸ The separate rate of minimum value addition is prescribed in case of gems & jewellery sector, tea and spices.

□ Details of Duties exempted

Imports under Advance Authorisation are exempted from payment of

- Basic Customs Duty,
- Additional Customs Duty,
- Education Cess,
- Anti- dumping Duty,
- Countervailing Duty,
- Safeguard Duty,
- Transition Product Specific Safeguard Duty, wherever applicable.

However, specified¹⁹ deemed exports are not exempted from payment of applicable anti-dumping duty, countervailing duty, safeguard duty and transition product specific safeguard duty, if any.

Note: Imports under Advance Authorisation for physical as well as deemed exports are also exempt from whole of the Integrated Tax and Compensation Cess.

□ Actual User Condition for Advance Authorisation

- Advance Authorisation and / or material imported under Advance Authorisation is subject to 'Actual User' condition. **The same shall not be transferable even after completion of export obligation.** However, Authorisation holder will have option to dispose of product manufactured out of duty free input once export obligation is completed.
- If CENVAT/input tax credit facility on input has been availed for the exported goods, even after completion of export obligation, the goods imported against such Advance Authorisation shall be utilized only in

ACTUAL USER CONDITION

¹⁹Deemed exports specified for this purpose are Supply of capital goods against EPCG authorisation and supply of goods to UN or international organisations for their official use or supplied to projects financed by them.

the manufacture of dutiable goods whether within the same factory or outside (by a supporting manufacturer).

- Waste / Scrap arising out of manufacturing process, as allowed, can be disposed off on payment of applicable duty even before fulfillment of export obligation.

□ Free of Cost Supply by Foreign Buyer

Advance Authorisation is also available where some or all inputs are supplied free of cost to exporter by foreign buyer. In such cases, notional value of free of cost input is added in the CIF value of import and FOB value of export for the purpose of computation of value addition. However, realization of export proceeds will be equivalent to an amount excluding notional value of such input.

□ Export Obligation Period and its Extension

“Export Obligation” means obligation to export product or products covered by Authorisation or permission in terms of quantity, value or both, as may be prescribed or specified by Regional or competent authority.

EXPORT OBLIGATION

The Export Obligation Period (EOP) of Advance Authorisations issued for such items shall be **90 days** from the date of clearance of import consignment and no extension in EOP shall be allowed. Such import shall be subject to actual user condition and no transfer of imported raw material, for any purpose, including job work, shall be permitted.

□ Admissibility of Drawback

Duty drawback as per rate determined and fixed by Customs authority is available for duty paid imported or indigenous inputs (not specified in the norms) used in the export product. For this purpose, applicant shall indicate clearly details of duty paid input in the application for Advance Authorisation.

□ Audit/Special audit

Concerned Norms Committee may conduct audit of the manufacturer. Concerned Norms Committee may also initiate special audit, considering the nature and complexity of the case and revenue of government, if he is of the

opinion at any stage of scrutiny/enquiry/investigation that the norms have not been claimed correctly or the excess benefit has been availed. Special audit can be conducted even if the manufacturer has already been audited before.

(2) DUTY FREE IMPORT AUTHORISATION SCHEME (DFIA)

Provisions applicable to Advanced Authorisation are broadly applicable in case of DFIA. However, these Authorizations shall be issued **only for products for which Standard Input and Output Norms (SION) have been notified.**

- (a) Duty Free Import Authorisation is issued to allow duty free import of inputs as well as of oil and catalyst which is consumed/ utilised in the process of production of export product.
- (b) Import of Tyre under DFIA scheme is not allowed.

□ Duties Exempted

- Duty Free Import Authorisation shall be exempted only from payment of Basic Customs Duty (BCD).
- Drawback as per rate determined and fixed by Customs authority shall be available for duty paid inputs, whether imported or indigenous, used in the export product.

□ Eligibility

- Duty Free Import Authorisation shall be issued on **post export basis** for products for which SION have been notified.
- Application is to be filed with concerned Regional Authority **before starting export** under DFIA.
- Merchant Exporter shall be required to mention name and address of supporting manufacturer of the export product on the export document viz. Shipping Bill/ Bill of Export / Tax Invoice for export prescribed under the GST rules.



No DFIA for inputs with 'Actual User' condition

No DFIA shall be issued for an input which is subject to pre-import condition or where SION prescribes 'Actual User' condition or certain other specified inputs with pre import condition.

Minimum Value Addition

Minimum value addition of **20%** shall be required to be achieved.

**Minimum 20%
value addition**

Transferability of DFIA

Regional Authority shall issue **transferable DFIA**.

Validity of DFIA

- Export shall be completed within 12 months from the date of online filing of application and generation of file number.
- DFIA is valid for 12 months from the date of issue.
- No further revalidation shall be granted by Regional Authority.
- Separate DFIA shall be issued for each SION.

Common provisions applicable to Advance authorisation and DFIA schemes

Accounting of Input

- Where SION permits use of either (a) a generic input or (b) alternative input, the name/description of the input used (or to be used) in the Authorisation must match exactly with the name/description endorsed in the shipping bill. At the time of discharge of export obligation (issue of EODC) or at the time of redemption, Regional Authority shall allow only those inputs which have been specifically indicated in the shipping bill together with quantity.
- The above provisions will also be applicable for supplies to SEZs and supplies made under Deemed exports.

□ Importability / Exportability of items that are Prohibited/ Restricted / STE

Prohibited items

No export/import of an item shall be allowed under Advance Authorisation / DFIA if the item is prohibited. Export of a prohibited item may be allowed under Advance Authorisation provided it is separately so notified, subject to the conditions given therein.

STE

- Items reserved for **imports by STEs** cannot be imported against Advance Authorisation / DFIA. However, those items can be procured from STEs against ARO or Invalidation letter.
- Items reserved for **export by STE** can be exported under Advance Authorisation / DFIA only after obtaining a 'No Objection Certificate' from the concerned STE.

Restricted items

- **Import** of restricted items shall be allowed under Advance Authorisation/DFIA unless specifically disallowed.
- **Export** of restricted / SCOMET items however, shall be subject to all conditionalities or requirements of export authorisation or permission.

□ Domestic Sourcing of Inputs

Holder of an Advance Authorisation / Duty Free Import Authorisation can procure inputs from indigenous supplier/ State Trading Enterprise/EOU/EHTP/BTP/ STP in lieu of direct import. Such procurement can be against Advance Release Order (ARO), or Invalidation Letter.

Validity of Advance Release Order / Invalidation Letter shall be co- terminous with validity of Authorisation.

□ Currency for Realisation of Export Proceeds.

Export proceeds shall be realized in freely convertible currency or in Indian Rupees, except otherwise specified. Provisions regarding realisation and non-realisation of export proceeds are already discussed in general provisions regarding imports and exports.

Re-import of exported goods under Duty Exemption/ Remission Scheme

Goods exported under advance authorisation/ duty free import authorisation may be re-imported in same or substantially same form subject to the specified conditions.

B Duty remission schemes

DUTY DRAWBACK (DBK)

- Various schemes like Advance Authorisation, DFIA, manufacture under bond, EOU, SEZ, etc. are available to obtain inputs without payment of customs duty or obtain refund of duty paid on inputs. Suppliers who are unable to avail any of these schemes can avail "duty drawback".
- Here, the customs duty paid on inputs is given back to the exporter of finished product by way of "duty drawback".
- Duty drawback is granted when imported materials are used in the manufacture of goods which are then exported as well as when imported goods are re-exported as it is, and article is easily identifiable.
- It is important to note that the duty drawback is only of customs duty. There is no duty drawback in respect of GST.

DUTY DRAWBACK

C Scheme for Remission of Duties and Taxes on Exported Products (RoDTEP)

RoDTEP scheme is based on the globally accepted principle that taxes and duties should not be exported, and taxes and levies borne on the exported products should be either exempted or remitted to exporters.

The Remission of duties & taxes on exported Product (RoDTEP) scheme aims to refund such duties and taxes on exported products, as are otherwise not being refunded under other provisions of law.

The rebate under the Scheme shall not be available in respect of duties and taxes already exempted or remitted or credited.

□ **Objective of the Scheme:**

The objective of the scheme is to refund, currently unrefunded:

- (i) Duties/ taxes/ levies, at the Central, State & local level, borne on the exported product, including prior stage cumulative indirect taxes on goods & services used in **production** of the exported product, and
- (ii) Such indirect duties/taxes/levies in respect of **distribution** of exported products.

□ **Salient features of the scheme:**

- Rebate amount is issued in the form of a transferable duty credit/electronic scrip (e-scrip), which will be maintained in an electronic ledger by the CBIC.
- Such duty credit shall be **used only to pay basic customs duty** on imported goods.
- The duty credit scrips are **freely transferable**, i.e. credits can be transferred to other importers.
- The rebate under the scheme **shall not be available** in respect of **duties and taxes already exempted or remitted or credited**.

RoDTEP

□ **Reward under the scheme**

Rebate would be granted to eligible exporters at a notified rate as **a % of FOB value with a value cap per unit** of the eligible exported product, wherever required, on export of items. However, for certain export items, **a fixed quantum of rebate amount** per unit may also be notified.

□ **Sale proceeds**

Rebate would not be dependent on the realization of export proceeds at the time of issue of rebate. However, rebate will be deemed never to have been allowed in case of non-receipt of sale proceeds within time allowed under the Foreign Exchange Management Act, 1999.

□ **Ineligible supplies/ items/ categories under RoDTEP**

Following categories of exports/exporters shall not be eligible for rebate under the scheme:

Export of imported goods in same or substantially the same form
Exports through trans-shipment, meaning thereby exports that are originating in third country but trans-shipped through India
Export products which are subject to minimum export price or export duty
Products which are restricted/prohibited for export under FTP
Deemed Exports
Supplies of products manufactured by DTA units to SEZ/FTWZ units.
Products manufactured partly or wholly in a warehouse under section 65 of the Customs Act
Products manufactured or exported availing the benefit of <i>Notification No. 32/1997 Cus. dated 01.04.1997</i> ²⁰ (job work and re-export of goods supplied by the foreign supplier)
Exports for which the electronic documentation in ICEGATE EDI has not been generated/ exports from non-EDI ports
Goods which have been taken into use after manufacture

Note: The support under RoDTEP scheme for export of products manufactured by DTA units is available till 30-09-2025²¹.



- 'Advance Authorisation' is not transferable. DFIA is transferable after export obligation is fulfilled.
- Advance Authorisation scheme requires 15% value addition, while in case of DFIA, minimum 20% value addition is required.
- The method of computing value addition for all the schemes is same.

²⁰ Goods which are imported for execution of an export order placed on the importer by the supplier of goods for jobbing are exempt from basic customs duty, IGST and GST compensation cess subject to conditions specified therein.

²¹ **Notification No. 32/2024-25 dated 30.09.2024 read with NN 66/2024-25 dated 20.03.2025. Further, the RoDTEP Scheme benefit will be available for export of products manufactured from Advance Authorisation units, SEZs, and EOUs with effect from 01.06.2025, vide Notification No. 11/2025-26 dated 26.05.2025.**



2. EXPORT PROMOTION CAPITAL GOODS SCHEME (EPCG)

□ Objective of EPCG scheme

The objective of the EPCG Scheme is to facilitate import of capital goods for producing quality goods and services and enhance India's manufacturing competitiveness.

Export Promotion Capital Goods Scheme (EPCG) permits exporters to import capital goods (except specified 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.

□ Eligible exporters:

Following are eligible for EPCG scheme:

- ◆ Manufacturer exporters with or without supporting manufacturer(s),
- ◆ Merchant exporters tied to supporting manufacturer(s), and
- ◆ Service providers including service providers designated as Common Service Provider (CSP) subject to prescribed conditions.

□ Eligible capital goods

- ◆ Capital Goods including capital goods in CKD/SKD condition
- ◆ Computer systems and software which are a part of the Capital Goods being imported
- ◆ Spares, moulds, dies, jigs, fixtures, tools & refractories
- ◆ Catalysts for initial charge plus one subsequent charge

Meaning of capital goods for purpose of FTP²²

“Capital Goods” means any plant, machinery, equipment or accessories required for manufacture or production, either directly or indirectly, of goods

²² The definition of capital goods has been given only for information purpose and not relevant from examination point of view.

or for rendering services, including those required for replacement, modernisation, technological up-gradation or expansion.

It includes packaging machinery and equipment, refrigeration equipment, power generating sets, machine tools, equipment and instruments for testing, research and development, quality and pollution control.

Capital goods may be for use in manufacturing, mining, agriculture, aquaculture, animal husbandry, floriculture, horticulture, pisciculture, poultry, sericulture and viticulture as well as for use in services sector.

□ **Applicability of IGST and compensation cess**

Capital goods imported under EPCG Authorisation for physical exports are also exempt from IGST and Compensation Cess .

In case integrated tax and compensation cess are paid in cash on imports under EPCG, incidence of the said integrated tax and compensation cess would not be taken for computation of net duty saved provided, input tax credit is not availed.



□ **Restricted import/export**

Import of items which are restricted for import shall be permitted under EPCG Scheme only after requisite approval. Similarly, if the goods proposed to be exported under EPCG Authorisation are restricted for export, the EPCG Authorisation shall be issued only after requisite approval for issuance of Export Authorisation.

□ **Actual User Condition**

Imported capital goods shall be subject to Actual User condition till export obligation is completed and Export Obligation Discharge Certificate (EODC) is granted.

□ **Validity**

Authorisation shall be valid for import for **24 months** from the date of issue of Authorisation. Revalidation of EPCG Authorisation shall not be permitted.

24 months valid

Indigenous Sourcing of Capital Goods and benefits to Domestic Supplier

A person holding an EPCG authorisation may source capital goods from a domestic manufacturer either through Invalidation letter or through Advance Release Order. Such domestic manufacturer shall be eligible for deemed export benefits. Such domestic sourcing shall also be permitted from EOUs.

Export Obligation

Export obligation means obligation to export product(s) covered by Authorisation/permission in terms of quantity or value or both, as may be prescribed/specified by Regional or competent authority.

Import under EPCG scheme shall be subject to an export obligation equivalent to **6 times of duties, taxes and cess saved on capital goods to be fulfilled in 6 years reckoned from the date of issue of authorization.**

Import/procurement under EPCG scheme shall also be subjected to Average Export Obligation (AEO)

Export obligation consists of average export obligation and specific export obligation

Specific export obligation (Specific EO) under EPCG scheme is equivalent to 6 times of duty saved on capital goods imported under EPCG scheme, to be fulfilled in 6 years reckoned from Authorization issue-date. Specific EO is over and above the Average EO.

Average export obligation(Average EO) under EPCG scheme is the average level of exports made by the applicant in the **preceding 3 licensing years** for the same and similar products. It has to be achieved within the overall EO period (including extended period unless otherwise specified).

The Average Export Obligation (AEO) shall be fulfilled every financial year, till export obligation is completed. Exports/supplies made over and above AEO shall only be considered for fulfillment of Export Obligation.

□ Conditions applicable to the fulfilment of the Export Obligation (EO):

EO shall be fulfilled by the authorisation holder through export of goods which are manufactured by him or his supporting manufacturer / services rendered by him, for which the EPCG authorisation has been granted.

For export of goods, EPCG Authorisation holder may export either directly or through third party(ies).

In case of **indigenous sourcing of capital goods**,

Specific EO shall be **25% less than the EO** mentioned above, i.e. EO will be 4.5 times (75% of 6 times) of duty saved on such goods procured.

There shall be **no change in average EO** imposed, if any.

Exports under Advance Authorisation, DFIA, Duty Drawback, RoSCTL and RoDTEP Schemes would also be eligible for fulfilment of EO under EPCG Scheme.

Exports made from DTA units shall only be counted for calculation and/or fulfillment of AEO and/or EO.

EO can also be fulfilled by the supply of Information Technology Agreement (ITA-1) items to DTA, provided realization is in free foreign exchange.

Both physical exports as well as specified deemed exports shall also be counted towards fulfilment of export obligation.

□ Calculation of Export Obligation

In case of direct imports, EO shall be reckoned with reference to actual duty/Taxes/Cess saved amount. In case of domestic sourcing, EO shall be reckoned with reference to notional Customs duty /Taxes/Cess saved on FOR value.

□ Incentives for early fulfillment of export obligation

In cases where Authorization holder has fulfilled 75% or more of specific export obligation and 100% of Average Export Obligation till date, if any, in half or less than half the original export obligation period specified, remaining export obligation shall be condoned and the Authorization redeemed.



3. EOU, EHTP, STP AND BTP

EOU, EHTP, STP and BTP stands for Export Oriented Unit (EOU) Scheme, Electronics Hardware Technology Park (EHTP) Scheme, Software Technology Park (STP) Scheme or Bio-Technology Park (BTP). Units **undertaking to export their entire production** of goods and services (**except permissible sales in DTA**), may be set up under these schemes for manufacture of goods, including repair, re-making, reconditioning, re-engineering, rendering of services, development of software, agriculture including agro-processing, aquaculture, animal husbandry, bio-technology, floriculture, horticulture, pisciculture, viticulture, poultry and sericulture. **Trading units** are **not covered** under these schemes.

EOU, EHTP, STP & BTP

Objectives of these schemes are to promote exports, enhance foreign exchange earnings, attract investment for export production and employment generation.

EOU/EHTP/STP/BTP units may **export all kinds of goods and services except items that are prohibited** in ITC (HS)²³. An EOU / EHTP/ STP/ BTP unit **may import and / or procure, from DTA or bonded warehouses in DTA / international exhibition held in India**, all types of goods²⁴, required for its activities, without payment of basic customs duty, additional duty (leviable u/s 3 of the Customs Tariff Act), IGST and compensation cess. However, procurement of goods covered under GST from DTA would be on payment of applicable GST and compensation cess. Units can also **import goods including capital goods** required for approved activity on a self-certification basis. Goods imported by a unit shall be with actual user condition and shall be utilized for export production.

State Trading regime shall not apply to EOU manufacturing units except for specified products.

Supplies **from DTA to EOU/EHTP/STP/BTP units** for use in their manufacture for exports will be eligible for **“benefits under deemed exports”**. DTA supplier shall be eligible for relevant entitlements under deemed exports provisions of FTP,

²³*Export of gold jewellery, findings like posts, push backs, locks which help in collating the jewellery pieces together, SCOMET is governed by a separate procedure. The same is not relevant for examination.*

²⁴*provided they are not prohibited items of import in the ITC (HS)*

besides discharge of export obligation, if any, on the supplier. The refund of GST paid on such supply from DTA to EOU would be available to the supplier subject to specified conditions and documentations²⁵.

Other Entitlements: Exemption from industrial licensing for manufacture of items reserved for micro and small enterprises. Export proceeds will be realized within 9 months. Units will be allowed to retain 100% of its export earnings in the EEFC (Exchange Earners' Foreign Currency) account. Unit will not be required to furnish bank guarantee at the time of import or going for job work in DTA subject to fulfilment of specified conditions. 100% FDI investment permitted through automatic route similar to SEZ units.

EOU, EHTP, STP & BTP

Net Foreign Exchange Earnings:

EOU/EHTP/STP/BTP unit shall be a **positive net foreign exchange earner**. Moreover, certain sector specific provisions have also been laid down where a higher value addition and other conditions are given. NFE Earnings shall be calculated cumulatively in blocks of 5 years (extendible in specified cases), starting from commencement of production.

Applications & Approvals/Letter of Permission/ Letter of Intent and Legal Undertaking

Application for setting up an EOU shall be considered by **Unit Approval Committee (UAC)/ Board of Approval (BoA)** as the case may be.

Investment Criteria

Only projects having a **minimum investment of ₹ 1 crore in plant & machinery** shall be considered for establishment as EOUs. However, this shall not apply to existing units, units in EHTP/STP/BTP, and EOUs in handicrafts/agriculture/floriculture/aquaculture/animal

²⁵ In addition, EOU/EHTP/STP/BTP units shall be entitled to following:-

- (i) *Reimbursement of Central Sales Tax (CST) on goods manufactured in India, wherever applicable. Simple interest @ 6% per annum will be payable on delay in refund of CST, if the case is not settled within 30 days of receipt of complete application.*
- (ii) *Exemption from payment of central excise duty on goods, falling in Fourth Schedule of Central Excise Act, procured from DTA on such goods manufactured in India.*

husbandry/information technology, services, brass hardware and handmade jewellery sectors. BoA may allow establishment of EOUs with a lower investment criteria.

Inter Unit Transfer

Transfer of manufactured goods/capital goods from one EOU/ EHTP/STP/BTP unit to another EOU / EHTP/ STP/ BTP unit is allowed on payment of applicable GST and compensation cess with prior intimation to concerned Development Commissioners of the transferor and transferee units as well as concerned Customs authorities as per the specified procedure. Goods supplied by one unit to another unit shall be treated as imported goods for second unit for payment of duty, on DTA sale by second unit.

EOU, EHTP, STP & BTP

Exit from the Scheme

With approval of DC/Designated officer of EHTP/ STP/BTP, an EOU/EHTP/STP/BTP unit may opt out of scheme. Such exit shall be subject to payment of applicable excise and customs duties and on payment of applicable IGST/ CGST/ SGST/ UTGST and compensation cess, if any, and industrial policy in force. If unit has not achieved obligations, it shall also be liable to penalty at the time of exit.

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 avail exemptions in duties and taxes as applicable.



4. DEEMED EXPORTS

The objective of deemed exports is to provide a level-playing field to domestic manufacturers and to promote make in India, in certain specified cases i.e. to ensure that the domestic suppliers are not in disadvantageous position *vis-à-vis* foreign suppliers in terms of the fiscal concessions. The underlying theory is that foreign

exchange saved must be treated at par with foreign exchange earned by placing Indian manufacturers at par with foreign suppliers.

Deemed Exports for the purpose of this FTP

It refers to those transactions in which goods supplied do not leave country, and payment for such supplies is received either in Indian rupees or in free foreign exchange. Supply of goods as specified in FTP shall be regarded as "Deemed Exports" provided goods are manufactured in India.

Deemed Exports for the purpose of GST

It would include only the supplies notified under section 147 of the CGST/SGST Act, on the recommendations of the GST Council. The benefits of GST and conditions applicable for such benefits would be as specified by the GST Council and as per relevant rules and notification.

We will restrict our discussion to 'Deemed exports for the purpose for FTP' in this chapter.

Deemed exports broadly cover three areas.

- Supplies to domestic entities who can import their requirements duty free or at reduced rates of duty.
- Supplies to projects/ purposes that involve international competitive bidding.
- Supplies to infrastructure projects of national importance.

(I) CATEGORIES OF SUPPLIES CONSIDERED AS 'DEEMED EXPORT'

Supply by manufacturer	Supply by main/sub-contractors(s)
Supply of goods against Advance Authorisation/Advance Authorisation for annual requirement/ DFIA	Supply of goods to projects or turnkey contracts financed by multilateral or bilateral agencies/Funds notified by Department of Economic Affairs (DEA), under International Competitive Bidding (ICB).
Supply of goods to units	Supply of goods to any project or for any

located in EOU/ STP/ EHTP/ BTP.	purpose where import is permitted at zero basic customs duty provided supply is made against International Competitive Bidding.
Supply of capital goods against EPCG authorisation	Supply of goods to mega power projects
	Supply of goods to UN or international organisations for their official use or supplied to projects financed by them.
	Supply of goods to nuclear projects through national/international competitive bidding.

(II) BENEFITS FOR DEEMED EXPORTS

Deemed exports shall be eligible for any/ all of following benefits in respect of manufacture and supply of goods, qualifying as deemed exports, subject to specified terms and conditions:

a. Advance Authorisation/ Advance Authorisation for Annual requirement/ DFIA

b. Deemed Export Drawback

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 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.

c. Refund of terminal excise duty for specified excisable goods

Supply of goods will be eligible for refund of terminal excise duty provided recipient of goods does not avail CENVAT credit/rebate on such goods and supply is eligible under that category of deemed exports.

(III) COMMON CONDITIONS FOR DEEMED EXPORT BENEFITS

(i) Supplies shall be made directly to entities listed in the point (I) above. Third party supply shall not be eligible for benefits/exemption.

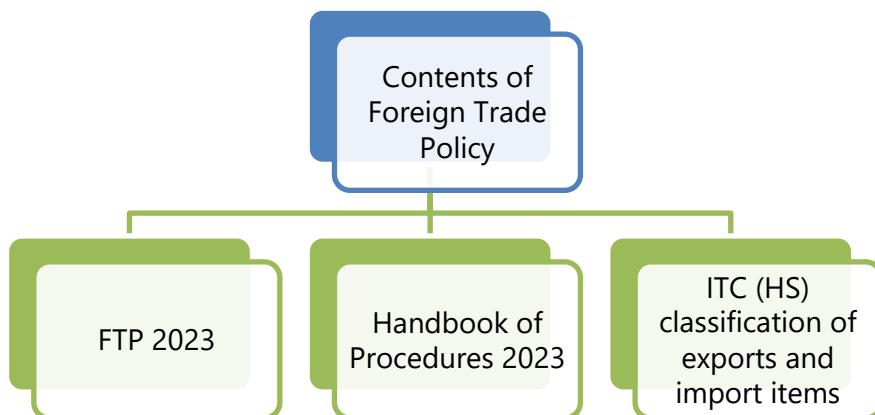
- (ii) In all cases, supplies shall be made directly to the designated Projects/Agencies/Units/ Advance Authorisation/ EPCG Authorisation holder. Sub-contractors may, however, make supplies to main contractor instead of supplying directly to designated Projects/ Agencies. Payments in such cases shall be made to sub-contractor by main-contractor and not by project Authority.
- (iii) Supply of domestically manufactured goods by an Indian Sub-contractor to any Indian or foreign main contractor, directly at the designated project's/ Agency's site, shall also be eligible for deemed export benefit.

DEEMED EXPORT

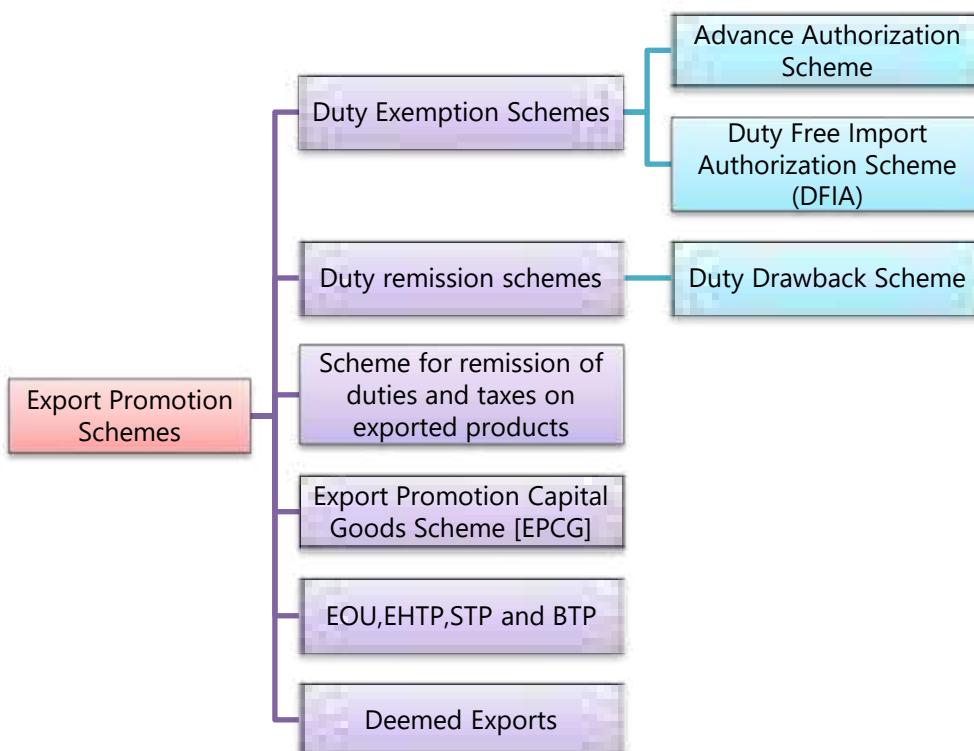


LET US RECAPITULATE

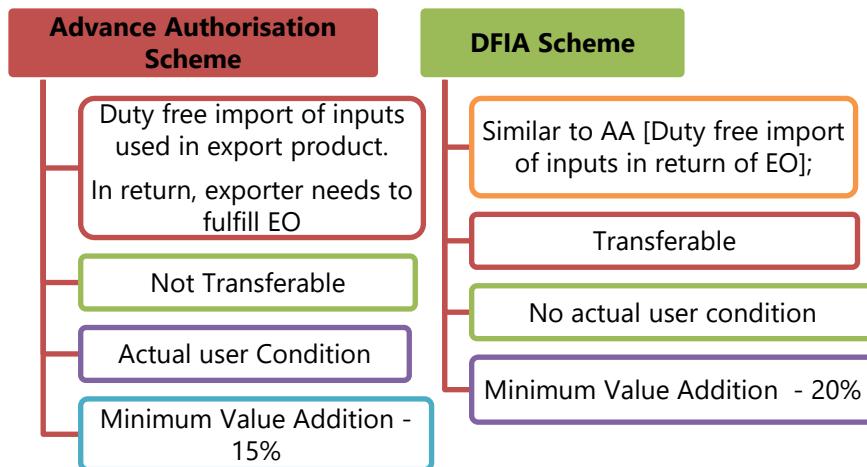
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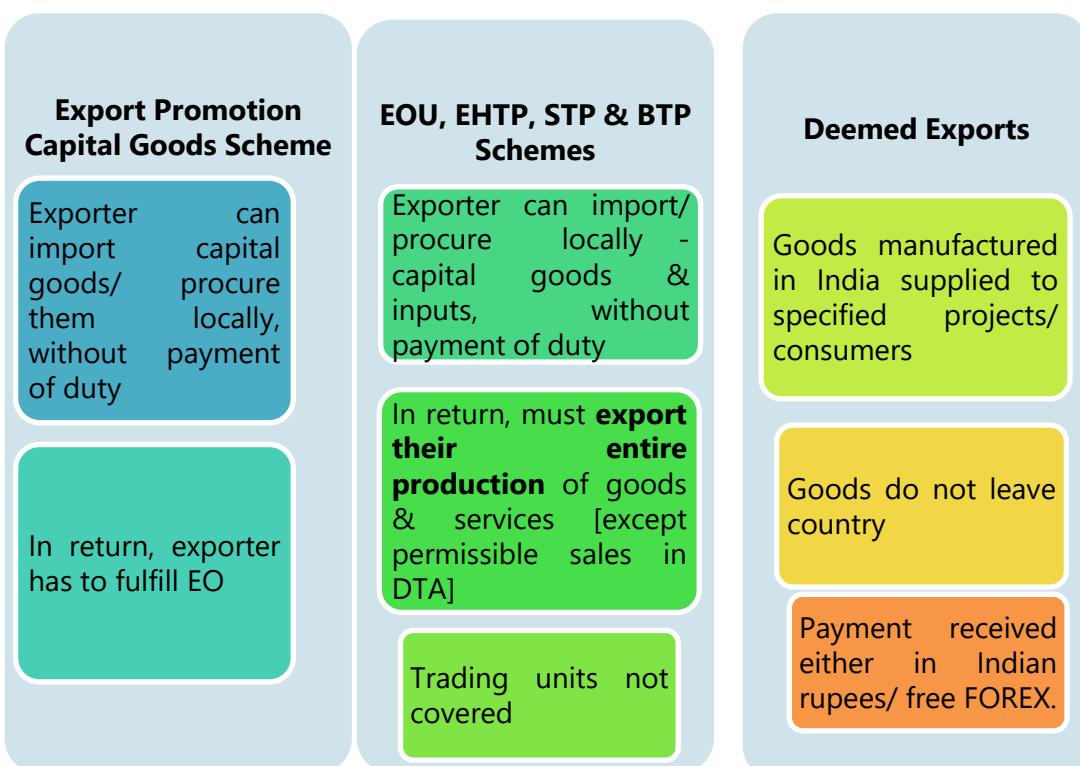
Export Promotion Schemes



Advance Authorisation and DFIA Scheme



EPCG, EOU, EHTP, STP & BTP Schemes, Deemed Exports





TEST YOUR KNOWLEDGE

1. *Mr. Ayush Bhandari wants to import samples from US. State in brief policy for import of samples.*
2. *State salient aspects of Advance authorisation for annual requirements to exporters.*
3. *Mr. X is desirous to know the benefits of deemed exports under FTP. You are required to discuss the same with reference to FTP.*
4. *Discuss the key similarities and differences between Advance Authorization and DFIA (Duty Free Import Authorization) schemes.*
5. *Discuss the privileges granted under FTP to Status Holders.*
6. *With reference to the provisions of FTP, discuss giving reasons whether the following statements are true or false:*
 - (i) *If any doubt arises in respect of interpretation of any provision of FTP, the said doubt should be forwarded to CBIC, whose decision thereon would be final and binding.*
 - (ii) *IEC is a unique 12 digit PAN based alphanumeric code allotted to a person for undertaking any export/ import activities*
7. *Two exporters namely, Red Sky Pvt. Ltd. and Black Night Pvt. Ltd. have achieved the status of Status Holders (One Star Export House) in the current financial year. Both the exporters have been regularly exporting goods (other than Gems and Jewellery) every year. What would have been the minimum export performance of the two exporters to achieve such status?*

Both the exporters want to establish export warehouses in accordance with the applicable guidelines. What should be their export turnover to enable them to establish export warehouses?
8. *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 with reference to the provisions of Foreign Trade Policy for the supplies made by it?*

9. 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 under FTP?
10. '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 with reference to the provisions of Foreign Trade Policy



ANSWERS/HINTS

1. Import of samples of even 'restricted' items, is allowed without import authorisation. Exceptions are defence / security items, seeds, bees, and new drugs; these need authorisation.

Duty free import of samples upto ₹ 3,00,000 for all exporters shall be allowed subject to terms and conditions of customs notification as amended.

2. Annual Advance authorisation would be issued to exporters having past export performance in at least preceding two financial years, to enable them to import the inputs required by them on annual basis.

Advance authorization for annual requirement shall only be issued for items, notified in SION and not on basis of *ad hoc* norms under self-declared authorisations where SION does not exist.

Annual Advance Authorisation in terms of CIF value of imports will be granted upto 300% of FOB value of physical exports in preceding financial year and/or FOR value of deemed exports in preceding year or ₹ 1 crore, whichever is higher.

3. Deemed exports shall be eligible for any/ all of following benefits in respect of manufacture and supply of goods, qualifying as deemed exports, subject to specified terms and conditions:

- a. Advance Authorisation/ Advance Authorisation for Annual requirement/DFIA
- b. Deemed Export Drawback

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 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.

- c. Refund of terminal excise duty for specified excisable goods

Supply of goods will be eligible for refund of terminal excise duty provided recipient of goods does not avail CENVAT credit/rebate on such goods and supply is eligible under that category of deemed exports.

- 4. In both DFIA and Advance Authorization schemes, import of inputs, oil and catalyst which are consumed/ utilised in the process of production of export product are permitted without payment of customs duty. Validity period for both the schemes is 12 months from the date of issue.

Key differences between DFIA and Advance Authorisation schemes are as follows -

- (i) 'Advance Authorisation' is not transferable. DFIA is transferable after export obligation is fulfilled.
- (ii) Advance Authorisation scheme requires 15% value addition, while in case of DFIA, minimum 20% value addition is required.
- (iii) Advance Authorisation and / or material imported under Advance Authorisation is subject to 'Actual User' condition. No DFIA shall be issued for an input which is subject to pre-import condition or where SION prescribes 'Actual User' condition or certain other specified inputs with pre import condition.

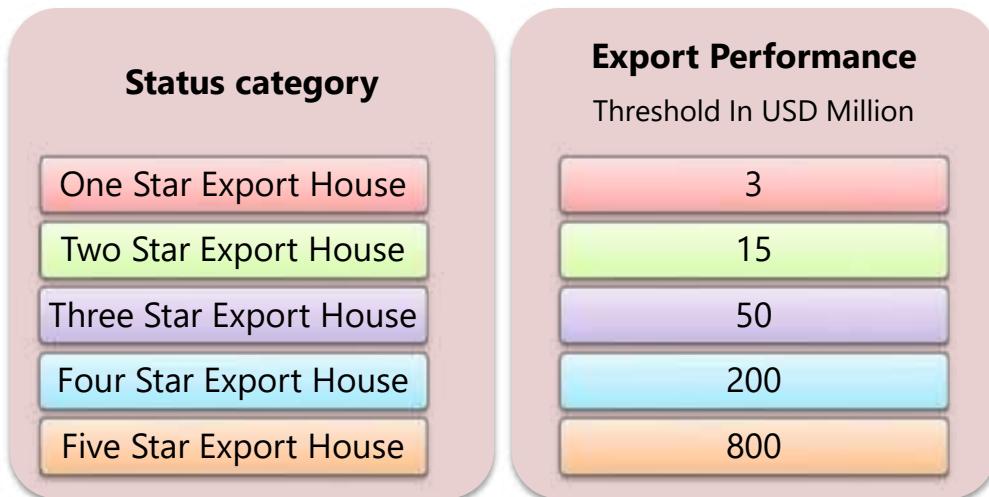
- (iv) DFIA cannot be issued where SION (Standard Input Output Norms) prescribes actual user condition [as the material is transferable after fulfilment of export obligation]. Advance Authorisation can be issued even if SION for that product is not fixed. DFIA can be issued only if SION has been fixed for that product to be exported.
- (v) Duty Free Import Authorisation shall be exempted only from payment of Basic Customs Duty (BCD). Drawback as per rate determined and fixed by Customs authority shall be available for duty paid inputs, whether imported or indigenous, used in the export product. Imports under Advance Authorisation are exempted from payment of Basic Customs duty, Additional Customs duty, Education cess, Anti- dumping duty, Countervailing duty, Safeguard duty and Transition Product Specific Safeguard duty, wherever applicable.

However, specified deemed exports are not exempted from payment of applicable anti-dumping duty, countervailing duty, safeguard duty and transition product specific safeguard duty, if any. Imports under Advance Authorisation for physical as well as deemed exports are also exempt from whole of the Integrated Tax and Compensation Cess.

5. Status holders are eligible for privileges as under:

- (a) Authorisation and custom clearances for both imports and exports on self-declaration basis.
- (b) Fixation of Input Output Norms on priority i.e. within 60 days by Norms Committee.
- (c) Exemption from compulsory negotiation of documents through banks. Exception are remittance/ receipts.
- (d) Exemption from furnishing of Bank Guarantee in Schemes under FTP unless otherwise specified.
- (e) Two Star Export Houses and above are permitted to establish export warehouses.

- (f) Manufacturers who are also status holders (Three Star/Four Star/Five Star) will be enabled to self-certify their manufactured goods (as per their Industrial Entrepreneurs Memorandum (IEM) / Industrial License (IL) /Letter of Intent (LOI)) as originating from India with a view to qualify for preferential treatment under specified agreements.
 - (g) Status holders shall be entitled to export freely exportable items on free of cost basis for export promotion subject to a specified annual limit.
 - (h) The status holders would be entitled to preferential treatment and priority in handling of their consignments by the concerned agencies.
6. (i) **False.** If any question or doubt arises in respect of interpretation of any provision of the FTP, said question or doubt ought to be referred to DGFT whose decision thereon would be final and binding.
- (ii) **False.** IEC is a unique 10-digit alphanumeric number allotted to a person for undertaking export/ import activities.
7. Status Holders are exporter firms recognised as business leaders who have excelled in international trade and have successfully contributed to country's foreign trade. All exporters of goods, services and technology having an import-export code (IEC) number shall be eligible for recognition as a status holder. Status recognition depends upon export performance
- In order to be categorized as One Star Export House, an exporter needs to achieve the export performance of 3 million US \$ [FOB/ FOR (as converted)] during current and all the three preceding financial years.
- Thus, export performance of Red Sky Pvt. Ltd. and Black Night Pvt. Ltd. would have been at least 3 million US \$ [FOB/ FOR (as converted)] during current and all the three preceding FYs.
- Further, Two Star Export Houses and above are permitted to establish export warehouses. Therefore, Red Sky Pvt. Ltd. and Black Night Pvt. Ltd. can establish export warehouses in India only if they achieve the status of Two Star Export House and above. In order to achieve said status, export performance of the exporters during current and previous three financial years should be as indicated below:



8. Supply to goods to UN or international organisations 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.
9. 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 to attain 15% VA.

10. 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. Details about duty paid material must be mentioned in the application for Advance Authorization.