

RAGHAV ACADEMY

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CUSTOM & FTP

THEORY & PRACTICALS

BY

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CUSTOMS LAW - BASIC CONCEPTS

CONCEPT 1. INTRODUCTION

Constitutional Provision: Entry 83 of the Union List of the Seventh Schedule to the Constitution of India is empowered to levy the customs duty by the Central Government of India.

The Customs Act, was enacted by the Parliament in the year 1962, as per the List I of the Union List Parliament has an exclusive right to make laws. The Central Government of India has power to make rules under section 156 of Customs Act, 1962, and also has the power to issue Notifications from time to time for the purpose of smooth functioning and effective administration of the Act.

As per section 157 of the Custom Act, 1962, the Central Board of Indirect Tax and Customs (CBIC), has been empowered to make regulations, consistent with provisions of the Act. The Commissioner of Customs has the power to issue the Public notices which are also called trade notices.

CONCEPT 2. DIFFERENCE BETWEEN THE RULES AND REGULATIONS

Rules	Regulations
(1) Issued by the Government of India	(1) Issued by the CBIC
(2) Rules have to be consistent with Act	(2) Regulations have to be consistent with Act & Rules.
(3) Has statutory force	(3) Has statutory force

CONCEPT 3. DEFINITIONS

(1) Adjudicating Authority: As per section 2(1) of the Customs Act, 1962, adjudicating authority means any authority competent to pass any order or decision under this Act, but does not include:

- The Central Board of Indirect Tax and Customs (CBIC),
- Commissioner of Customs (Appeals) or
- Customs, Excise and Service Tax Appellate Tribunal (CESTAT)

(2) Assessment: As per section 2(2) of the Customs Act, assessment means process of determining the tax liability in accordance with the provisions of the Act, which includes provisional assessment, self assessment, reassessment and any assessment in which the duty assessed is nil.

(3) Board: means As per section 2(6) f the Customs Act, board means the Central Board of Indirect Taxes and Customs constituted under the Central Boards of Revenue Act, 1963.

(4) Coastal Goods: As per section 2(7) of the Customs Act, the term coastal goods means goods, other than imported goods, transported in a vessel from one port in India to another.

(5) Conveyance: As per section 2(9) of the Customs Act Defines, 'Conveyance includes a Vessel, an Aircraft and a Vehicle'. The specific terms are vessel (by sea), aircraft (by air) and vehicle (by land).

(6) Coastal Goods: As per section 2(7) of the Customs Act, the term coastal goods means goods, other than imported goods, transported in a vessel from one port in India to another.

(7) Customs Area: As per section 2(11) of the Customs Act, customs area means the area of a customs station and includes any area in which imported goods or exported goods are ordinarily kept before clearance by Customs Authorities.

(8) Customs port: As per section 2(12) of the Customs Act, customs port means any port appointed under section 7(a) of the Customs Act, to be a customs port and includes a place appointed under section 7(aa) of the Customs Act, to be an inland container depot (ICD).

(9) Customs station: As per section 2(13) of the Customs Act, customs station means any customs port, customs airport or land customs station.

(10) Dutiable Goods: As per section 2(14) of the Customs Act, the term is defined to mean any goods which are chargeable to duty and on which duty has not been paid. It means to say that the name of the product or goods should find a mention in the Customs Tariff Act,

(11) Entry: As per section 2(16) of the Customs Act, entry in relation to goods means an entry made in bill of entry, shipping bill or bill of export and includes in the case of goods imported or to be exported by post, the entry referred to in section 82 or the entry made under the regulations made under section 84 of the Customs Act.

(12) Export: As per section 2(18) of the Customs Act, the term export means taking out of India to a place outside India.

(13) Exported Goods: As per section 2(19) of the Customs Act, the term exported goods means any goods, which are to be taken out of India to a place outside India.

(14) Foreign going Vessel or aircraft: As per section 2(21) of the Customs Act, the foreign going vessel or aircraft means any vessel or aircraft for the time being 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. The following are also included in the definition:

- (i) A foreign naval vessel doing naval exercises in Indian waters
- (ii) A vessel engaged in fishing or any other operation (like oil drilling by domestic vessel or foreign vessel) outside territorial waters
- (iii) A vessel going to a place outside India for any purpose whatsoever.

(15) Goods: As per section 2(22) of the Customs Act, the term goods includes (a) Vessels, aircrafts and vehicles (b) stores (c) baggage (d) currency and negotiable instruments and (e) any other kind of movable property.

(16) Import: As per the section 2(23) of the Customs Act, the term import means bringing into India from a place outside India.

(17) Imported Goods: As per section 2(25) of the Customs Act, the term imported goods means any goods brought into India from a place outside India but does not include goods which have been cleared for home consumption.

(18) Importer: As per section 2(26) of the Customs Act, the term importer means in relation to any goods at any time between their importation and the time when they are cleared for home consumption, includes any owner or any person holding himself out to be the importer.

(19) India (i.e. Territorial Waters): As per section 2(27) of the Customs Act, the term India is an inclusive definition and includes not only the land mass of India but also territorial waters of India. The territorial waters extend to 12 nautical miles into the sea from the base line. Therefore, a vessel not intended to deliver goods should not enter these waters.

(20) Indian Customs Waters: As per section 2(28) of the Customs Act, the term 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. India includes the surface of sea in the territorial waters, air space above and the ground at the bottom of the sea. Indian Customs Waters extend up to 200 nautical miles from the base line. Thereby, Indian Customs Waters cover both the Indian Territorial Waters and Exclusive Economic Zone as well. Indian Territorial Waters extend up to 12 nautical miles from the base line whereas Exclusive Economic Zone extend upto 200 nautical miles from the base line.

(21) Stores: As per section 2(38) of the Customs Act, stores means goods for use in a vessel or aircraft and includes fuel and spare parts and other articles of equipment, whether or not for immediate fitting.

(22) Person-in-charge: As per section 2(31) person-in-charge means

- (a) **Vessel:** Master
- (b) **Aircraft:** Commander or Pilot in Charge
- (c) **Train:** Conductor or Guard
- (d) **Vehicle:** Driver
- (e) **Other Conveyance:** Person in Charge

(23) Bill of Export: As per Section 2(5) of the Customs Act, 1962, the exporter of any goods shall make entry thereof by presenting to the proper officer in the case of goods to be exported by land, a bill of export in the prescribed form.

(24) Import Report: As per Section 2(24) of the Customs Act, 1962, the person-in-charge of a vehicle carrying imported goods or any other person as may be notified by the Central Government shall, in the case of a vehicle, deliver to the proper officer an import report within twelve hours after its arrival in the customs station, in the prescribed form.

(25) Tariff Value: The CBEC has the power to fix tariff values for any class of imported goods or exported goods. Fixing the tariff value for any class of imported goods or exported goods means the duty shall be chargeable with reference to such tariff value.

(26) High Seas: An area beyond 200 nautical miles from the base line is called High Seas. All countries have equal rights in this area.

(27) Exclusive Economic Zone: Exclusive Economic Zone extends to 200 nautical miles from the base line. In this zone, the coastal State has exclusive rights to exploit it for economic purpose like constructing artificial islands for oil exploration, power generation and so on. Note: one nautical mile = 1.1515 miles or 1.853 kms.

(28) Domestic Tariff Area means the whole of India (including the territorial waters and continental shelf) but does not include the areas of the Special Economic Zones (Section 2(i) of Special Economic Zones Act, 2005), 100% Export Oriented Units (EOUs)/Electronic Hardware Technology Park (EHTP)/Software Technology Park (STP)/ Bio Technology Park (BTP).

(29) Customs Act, 1962 and Customs Tariff Act, 1975 have been extended to whole of Exclusive Economic Zone (EEZ) and Continental Shelf of India for the purpose of (i) processing for extraction or production of mineral oils and (ii) Supply of any goods in connection with processing for extraction or production of mineral oils.

(30) Prohibited goods: means any goods the import or export of which is subject to any prohibition under this Act or any other law for the time being in force but does not include any such goods in respect of which the conditions subject to which the goods are permitted to be imported or exported have been complied with.

CONCEPT 4. ASSOCIATED CEMENT COMPANIES LTD.

RST Ltd. imported drawings and designs in paper form through professional courier and post parcels. However, the Assistant Commissioner of Customs valued these drawings and designs and levied duty on them. RST Ltd. Contended that customs duty cannot be levied on drawings and designs as they do not fall in the definition of goods under the Customs Act, 1962.

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

Answer: *Associated Cement Companies Ltd. v CC 2001 (128) ELT 21 (SC)* The Apex Court observed that though technical advice or information technology are intangible assets, but the moment they are put on a media, whether paper or cassettes or diskettes or any other thing, they become movable and are thus, goods. Therefore, the Supreme Court held that drawings, designs, manuals and technical material are goods liable to customs duty. Therefore, the stand taken by the RST Ltd. is not correct in law.

CONCEPT 5. Bringing of 'stores' is treated as import

A Big Ship carrying merchandize and stores enters the territorial waters of India but it cannot enter the port. In order to unload the merchandize lighter ships are employed. Stores are consumed on board the ship as well as by the small ships. Examine whether such consumption of stores attracts customs duty. Quote relevant section and case law if any. Stores are supplied to the above ships. Will such supplies be treated as exports and be entitled to draw back? (CMA Final Dec 2013)

Answer: Bringing of 'stores' is treated as import. However, there is special provision for stores under section 87. Imported stores consumed on board an ocean going vessel (i.e. foreign going vessel) are exempt from import duty under Section 87. Since the ship is ocean going, stores consumed on board will not attract customs duty. Regarding the smaller ships which are employed to unload the cargo

from the mother ship, they are termed as "Transhippers". These are also treated as ocean going vessels as was decided in ***UOI v VM Salgaoncar AIR 1998 SC1367: 99 ELT 3 (SC)***. Hence stores consumed by small vessels would also be exempt from customs duty. Stores supplied to the vessel will be treated as export as per Section 89 of Customs Act and hence will be eligible for duty drawback.

CONCEPT 6. TIRUPATI UDYOG LTD.

Goods cleared from unit of DTA to Special Economic Zone (SEZ) chargeable to duty under the SEZ Act, 2005 or the Customs Act, 1962?

Answer: Tirupati Udyog Ltd. v UOI 2011 (272) ELT 209 (AP) Decision: Customs duty can be levied only on goods imported into or exported beyond the territorial waters of India, section 12(1) of the Customs Act, 1962 (i.e. charging section) is not attracted for supplies made by a DTA unit to a unit located within the Special Economic Zone. **Therefore, goods cleared from DTA to SEZ is not liable to export duty either under SEZ Act, 2005 or under the Customs Act, 1962.**

CONCEPT 7. CIRCUMSTANCES OF LEVY

The Supreme Court of India has given the landmark judgments in cases of *Union of India v Apar Industries Ltd* (1999) and further in the case of *Garden Silk Mills Ltd v Union of India* (1999).

The import of goods will commence when they cross the territorial waters but continues and is completed when they become part of the mass of goods within the country, and the taxable event being reached at the time when goods reach the customs barriers and bill of entry for home consumption is filed.

CONCEPT 8. TAXABLE EVENT FOR IMPORTED GOODS

In the case of Kiran Spinning Mills (1999) the Hon'ble Supreme Court of India held that import is completed only when goods cross the customs barrier. The taxable event is the day of crossing of customs barrier and not on the date when goods landed in India or had entered territorial waters of India. Hence, taxable event in case of imported goods can be summed up in the following lines: The taxable event occurs in the course of imports under the customs law with reference to the principles laid down by the Supreme Court in the cases of *Garden Silk Mills Ltd. v Union of India*; and *Kiran Spinning Mills v CC*:

- (i) Unloading of imported goods at the customs port – ***is not a taxable event***
- (ii) Date of entry into Indian territorial waters – ***is not a taxable event***

(iii) ***Date on which the goods cross the customs barrier - is a taxable event***

(iv) Date of presentation of bill of entry – ***is not a taxable event***

CONCEPT 9. SUBMISSION OF BILL OF ENTRY

As per Section 46(3) of the Customs Act, 1962 a bill of entry may be presented at any time after the delivery of import manifest or import report. Therefore, no time limit has been fixed for submission of bill of entry. Hence, no penalty can be imposed if there is delay in submission of Bill of Entry. However, cargo should be cleared from the wharf within 30 days of unloading.

The importer shall present the bill of entry under section 46(1) of the Customs Act, 1962 before the end of the next day following the day (excluding holidays) on which the aircraft or vessel or vehicle carrying the goods arrives at a customs station at which such goods are to be cleared for home consumption or for warehousing.

Provided that a bill of entry may be presented within 30 days of the expected arrival of the aircraft or vessel or vehicle by which the goods have been shipped for importation into India.

Provided further that where the bill of entry is not presented within the time so specified and the proper officer is satisfied that there was no sufficient cause for such delay, the importer shall pay such charges for the late presentation of the bill of entry as may be prescribed.

Note: Bill of entry may be allowed to present 30 days before the entry inward granted to the vessel.

CONCEPT 10. Clearance of goods for home consumption [section 47 (1) of the Customs Act, 1962] w.e.f. 14-5-2016, Section 47(1)

Where the proper officer is satisfied that any goods entered for home consumption are not prohibited goods and the importer has paid the import duty, if any, assessed thereon and any charges payable under this Act in respect of the same, the proper officer may make an order permitting clearance of the goods for home consumption:

Provided that the Central Government may, by notification in the Official Gazette, permit certain class of importers to make deferred payment of said duty [i.e. duty payable under sec. 47(1)] or any charges in such manner as may be provided by rules (w.e.f. 14-5-2016).

w.e.f. 31-3-2017 Finance Act, 2017 section 47(2) amended: Importer shall have to make payment of duty on the same day in case of self-assessed Bill of Entry and in case of re-assessment or provisional assessment, within one day after the return of Bill of Entry. As per section 47(2) of Customs Act, the importer is liable to pay interest where -- the importer fails to pay the import duty under this section on the same day in case of self-assessed Bill of Entry and in case of re-assessment or provisional assessment, within one day after the return of Bill of Entry from the date on which the bill of entry is returned to him for payment of duty, he shall pay interest @ 15% p.a. on such duty till the date of payment of the said duty.

w.e.f. 14-5-2016: in the case of deferred payment under the proviso to sub-section (1), from such due date as may be specified by rules made in this behalf, he shall pay interest @ 15% p.a. on the duty not paid or short- paid till the date of its payment.

Note: if the CBEC satisfied that it is necessary in the public interest so to do, it may, by order for reasons to be recorded, waive the whole or part of any interest payable under this section.

CONCEPT 11. TAXABLE EVENT FOR WAREHOUSED GOODS

The taxable event in case of warehoused goods is when goods are cleared from customs bonded warehouse, by submitting sub-bill of entry.

As per Section 15(1)(b) of the Customs Act, 1962, when goods have been deposited into a warehouse, and they are removed there from for home consumption, the relevant date for determination of rate of duty is the date of presentation of ex-bond bill of entry (i.e. Sub-bill of Entry) for home consumption.

Section 15(1) has been amended to provide for determination of rate of duty and tariff valuation for imports through a vehicle in cases where the bill of entry is filed prior to the delivery of import report. The proviso to section 15(1) has been amended to lay down that if a bill of entry has been presented before the date of arrival of the vehicle by which the goods are imported, the bill of entry shall be deemed to have been presented on the date of such arrival.

Therefore, under the amended provisions, the relevant date for determination of rate of duty and tariff valuation of imported goods in different cases will be as under:

Particulars	Relevant date w.e.f. 6-8-2014
Goods entered for home consumption under section 46	Date of presentation of bill of entry OR Date of entry inwards of the vessel/arrival of the aircraft or vehicle whichever is later
Goods cleared from a warehouse under section 68	Date of presentation of bill of entry for home consumption
Other goods	Date of payment of duty

CONCEPT 12. TAXABLE EVENT FOR EXPORTED GOODS

As per section 16(1) of the Customs Act, 1962, taxable event arises only when proper officer makes an order permitting clearance (i.e. entry outwards) granted — *Esajee Tayabally Kapasi (1995) (SC)* and loading of the goods for exportation took place under Section 51 of the Customs Act, 1962.

In the case of any other goods, on the date of payment of duty. Therefore, export duty rate prevailing as on the date of entry outwards granted to the vessel by the Customs Officer is relevant.

CONCEPT 13. RATE OF FOREIGN EXCHANGE

In case of exports, rate of exchange of the CEBC as in force on the date on which a shipping bill or bill of export, as the case may be, is presented under Sec. 50 of the Customs Act, 1962 is applicable.

CONCEPT 14. FOB VALUE OF EXPORTS:

FOB value is normally considered as 'value' for export valuation. However, this can be rejected if there is over valuation (often done to get excess export benefits).

Assessable Value (for Exported Goods) = Free on Board (i.e. FOB)

CONCEPT 15. Free on Board (FOB):

FOB means all expenditure incurred by exporter upto the point of loading goods into the vessel or aircraft or vehicle is incurred by the exporter and hence, from importer point of view it is Free on Board.

CONCEPT 16. Cost Insurance and Freight (CIF):

CIF means once the goods are reached to the importer country port or air port importer has to pay Cost (i.e. FOB value) along with Insurance and Freight from exporter country to importer country.

Important point: As per our Foreign Trade Policy (2015-2020) all imports into India are measured in terms of CIF value whereas exports from India are measured in terms of FOB value.

As per CBE&C **Circular No. 18/2008-Cus, dated 10th November, 2008:** with effect from 1st January, 2009, it is proposed that for the purposes of calculation of export duty, the transaction value, that is to say the price actually paid or payable for the goods for delivery at the time and place of exportation under section 14 of Customs Act 1962, shall be the FOB price of such goods at the time and place of exportation.

Note: Export duties do not carry any cess.

CONCEPT 17. ENTRY INWARDS TO THE VESSEL

The Master of the vessel is not to permit the unloading of any imported goods until an order has been given by the proper officer granting Entry Inwards of such vessel. Normally, Entry Inwards is granted only after the import manifest has been delivered. This entry inward date is crucial for determining the rate of duty, as provided in section 15 of the Customs Act, 1962. Unloading of certain items like accompanied baggage, mail bags, animals, perishables and hazardous goods are exempted from this stipulation.

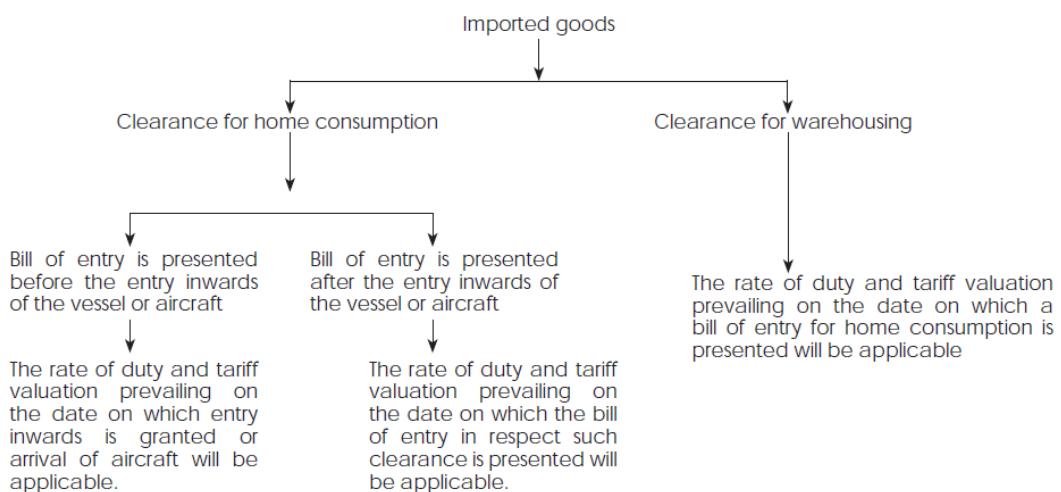
CONCEPT 18. ENTRY OUTWARDS TO THE VESSEL

The vessel should be granted 'Entry Outward'. Loading can start only after entry outward is granted under section 39 of Customs Act, 1962. Steamer Agents can file 'application for entry outwards' 14 days in advance so that intending exporters can start submitting 'Shipping Bills'. This ensures that formalities are completed as quickly as possible and loading in ship starts quickly.

If the shipping bill has been presented before the date of entry outwards of the vessel by which the goods are to be exported, the shipping bill shall be deemed to have been presented on the date of such entry outwards. The provisions of this section shall not apply to baggage and goods exported by post.

CONCEPT 19. RATE OF DUTY AND TARIFF VALUATION FOR IMPORTED GOODS

Date for determining the rate of duty and tariff valuation of imported goods will depend upon the imported goods cleared for home consumption and cleared for warehousing. The determination of appropriate rate of duty can be explained with the help of the following example:



CONCEPT 20. CIRCUMSTANCES UNDER WHICH NO DUTY WILL BE LEVIED

- (1) No duty will be levied on pilfered goods under section 13 of the Customs Act. 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 ware house, then the importer shall not be liable to pay the duty leviable on such goods.
- (2) No duty will be levied when the goods are damaged or deteriorated before or during the course of their unloading, where it is shown to the satisfaction of the Assistant or Deputy Commissioner of Customs (Section 22).

(3) No duty will be levied in case of warehoused goods, when the goods are damaged before their actual clearance from such warehouse, where it is shown to the satisfaction of the Assistant or Deputy Commissioner of Customs (Section 22).

(4) No duty will be levied in case of goods lost or destroyed due to natural causes like fire, flood, etc. such loss may take place at any time before the clearance of goods for home consumption. The loss may be at the warehouse (Section 22).

(5) No duty will be levied in case of goods abandoned by importers. Sometimes it may so happen that importer is unwilling or unable to take delivery of the imported goods due to the following reasons:

- The said goods may not be according to the specification,
- The goods may have been damaged during voyage,
- There might have been breach of contract.

In all the above cases the importer has to relinquish his title to the goods unconditionally and abandon them. The relinquishment is done by endorsing the document of title to the goods in favour of the Commissioner of Customs along with invoice.

(6) No duty will be levied, if the Central Government is satisfied that it is necessary in the public interest not to levy import duty by issuing the notification in the Official Gazette.

CONCEPT 21. TRANSIT OF GOODS (SECTION 53 OF THE CUSTOMS ACT, 1962)

Any goods imported in any conveyance will be allowed to remain on the conveyance and to be transited without payment of duty, to any place out of India or any customs station. These goods should be mentioned as Transit Goods in the Import General Manifest (IGM). They are allowed by customs to be transited through Indian port without payment of duty. However, Section 53 is not applicable in case of prohibited goods.

It means to say transit of goods does not cover prohibited goods, which will not be allowed to be transited.

w.e.f. 14-5-2016: Subject to the provisions of section 11 (i.e. power to prohibit importation or exportation of goods), where any goods imported in a conveyance and mentioned in the 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.

CONCEPT 22. TRANSHIPMENT OF GOODS (SECTION 54 OF THE CUSTOMS ACT, 1962)

Transhipment means transfer from one conveyance to another with or without payment of duty. It means to say that goods originally imported from outside India into India, then transhipped to another vessel to a place within India or outside India. If the imported goods are intended for transhipment, a '**bill of transhipment**' shall be presented to the proper officer by the person-in-charge of conveyance or the person authorized by the exporter to tranship along with a fee of ` 20 and also a bond. If the transhipped goods are covered by an international treaty or a bilateral agreement between India and another country then a '**Declaration of Transhipment**' will be presented in the place of Bill of Transhipment.

CONCEPT 23. TRANSHIPMENT OF GOODS WITHOUT PAYMENT OF DUTY UNDER SECTION 54(3):

Transhipment of goods without payment of import duty is permissible only if the following conditions satisfy:

- Transhipment of goods with foreign destination
- The goods find place as Transhipment Goods in the Import of General Manifest (IGM) or Import Report in case of goods imported in a vehicle

- Bill of Transhipment or Declaration of Transhipment filed.
- Goods must be transhipped to another vessel to place outside India.

CONCEPT 24. Duty on Transit or Transhipment of goods (Section 55 of the Customs Act, 1956)

Where any goods are allowed to be transited or transshipped, 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. If the goods arrive at such customs station in India as ultimate destination, then

- These goods are examined and assessed to pay duty,
- They shall be entered in the like manner as the goods are entered on the first importation and
- They are governed by the Customs Act, 1962 and the rules and regulations thereunder are same as applicable to any imported goods.

CONCEPT 25. PILFERAGE: SECTION 13 OF THE CUSTOMS ACT, 1962

- Pilferage means loss arising out of theft.
- No duty is payable under section 13, if the goods are pilfered
- 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
- If the duty is paid before finding the pilferage, refund can be claimed if goods are found to be pilfered during examination but before order for clearance is made.
- Section 13 does not apply for the warehoused goods.

w.e.f. 10-5-2013, there shall be no duty liability on a sample of goods consumed/destroyed during the course of testing/examination.

Important points:

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

CONCEPT 26. REMISSION OF DUTY ON LOSS, DESTROYED OR ABANDONED GOODS: SECTION 23 OF THE CUSTOMS ACT, 1962

- Section 23(1) of Customs Act provides for remission of duty on imported goods lost (other than pilferage) or destroyed, if such loss or destruction is at any time before clearance for home consumption.
- Burden of proof is on importer to prove loss or destruction under section 23
- Loss or destruction may be due to fire, accident etc, but not pilferage
- Section 23(2) provides that at any time before an order for clearance of goods for home consumption or order for permitting warehousing has been made, the owner of the goods may relinquish his title to the goods and thereupon no duty shall be levied.
- However, relinquishment of title of goods will not be permissible if offence appears to have been committed in respect of such goods under Customs Act or any other law

CONCEPT 27. IMPORTER MAY RELINQUISH HIS TITLE TO THE GOODS IN THE FOLLOWING CASES [Section 23(2)]:

- (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 may relinquish his title to the goods unconditionally and abandon them. 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.

Note: It is open to the importer to exercise the option to relinquish the title on the imported goods at any time before the passing of order for clearance for home consumption or before order permitting the deposit of goods in a warehouse.

CONCEPT 28. DUTY LIABILITY IN CERTAIN SPECIAL CIRCUMSTANCES

- Goods are imported into India after exportation therefrom.
- Imported goods have been originally exported to the overseas supplier for repairs.
- Exported goods may come back for repairs and re-export.

(1) Goods are imported into India after exportation therefrom

Good manufactured or produced in India, which are exported and thereafter re-imported are treated on par with other goods, which are imported. If the exporter has availed of export incentives in the nature of duty drawback, rebate under Central Excise Rules, etc., the import duty shall be restricted to the amount of incentive availed of at the time of export.

(2) Imported goods have been originally exported to the overseas supplier for repairs

If the imported goods are exported for repairs, then import duty on re-importation of such repaired goods is restricted to the cost of repairs done abroad, insurance and freight charges.

Conditions to avail the aforesaid benefit:

- The time limit for re-importation is 3 years from the date of export (extended up to 5 years)
- The exported and imported goods must be in the same form and ownership of the goods should also not have changed.
- This concept is not applicable if the repairs amount to manufacture and exports from EPZ or EOUs.

(3) Exported goods may come back for repairs and re-export

Sometimes exported goods come back for repairs into India, in such situation the re-imported goods can avail exemption from paying duty subject to satisfaction of some conditions.

Conditions:

- The re-importation is for repairs or reconditioning only
- The time limit for re-import should be within 3 years from the date of export. In case of export to Nepal, such time limit is 10 years.

- The time limit for re-export is 6 months from the date of import (extended upto 12 months).
- The importer at the time of importation executes a Bond.
- The re-importation is for reprocessing, refining or re-making then the time limit for re-importation should be within 1 year from the date of exportation.

CONCEPT 29. 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.

CONCEPT 30. GOODS BROUGHT INTO INDIA:

Apart from goods which are normally imported in the course of import, flotsam and jetsam, which are washed ashore, and derelict and wreck brought into India out of compulsion are also treated as par with goods brought into India.

Derelict	Jetsam	Flotsam
Goods abandoned by the owner of goods without any hope of recovering it.	Owner of goods has no intention to abandon	Owner of goods has no intention to abandon
Goods are not thrown from the vessel to prevent it from sinking	Goods are thrown with speed from the vessel to prevent it from sinking	Goods are thrown with speed from the vessel to prevent it from sinking
Derelict gets sunk and does not drift to the shore	Jetsam gets sunk and drifts to the shore	Flotsam does not sink but it floats and drifts to the shore.

CONCEPT 31. 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. 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, inasmuch as the quantity of goods at the time of import alone is to be looked at.

Decision: The Supreme Court held 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.

CONCEPT 32. TAX PLANNING vs TAX MANAGEMENT

Tax Planning	Tax Management
Tax planning primarily aims at adopting an arrangement so as to bring lesser incidence of tax.	Tax Management is dealing with compliance of statutory provisions, prospective planning etc. so as to ease the financial constraints that would arise when discharging the commitments through payment of tax, keep close watch and monitor statutory requirements etc
Tax planning may not be essential for every assessee.	Tax management is essential for every tax paying person otherwise he may become liable for penalty. For example, improper import of goods attract penalty.
Tax planning essentially looks at future benefits arising out of present actions.	Tax management relates to past, present and future. For Example: (i) appeals, revisions, rectification of mistakes deal with the past. (ii) maintenance of records, self assessment, filing of returns and other documents are present activities.
Tax planning is focusing on saving taxes by choosing best among the alternatives.	Tax management is focusing on compliance with legal formalities: e.g. filing of return, payment of tax, documentation, records, maintenance of accounts etc.

CONCEPT 33. CUSTOMS TARIFF ACT, 1975

Duties of customs will be levied by the customs department by referring Customs Tariff Act, 1975. The Customs Tariff Act, 1975 has been divided into 21 sections (i.e. XXI sections) and 99 chapters out of which chapter 77 is blank. It is pertinent to note that goods are classified under Central Excise Tariff Act, 1985 and Customs Tariff Act, 1975 based on the Harmonised System of Nomenclature (HSN).

The Customs Tariff Act, 1975 contains five columns —

1. Tariff Item
2. Description of goods
3. Unit
4. Standard Rate of Duty
5. Rate of duty for Preferential Area.

CONCEPT 34. RATE OF DUTY FOR PREFERENTIAL AREA

Rate of duty for Preferential Area means Government of India may charge lower customs duty than that of standard rate of duty for some specified goods if imported from friendly countries like Myanmar, Bangladesh, Mauritius, Seychelles, Nepal, Tonga etc.

CONCEPT 35. CLASSIFICATION OF GOODS

Under the Customs Tariff Act, 1975 goods are classified into FOUR digit system, these are called as HEADINGS. Further TWO digits are called as sub-classification, which are termed as SUB-HEADINGS. Further more TWO digits are added for sub-classification, which is known as TARIFF ITEM. Rate of duty is indicated against each tariff item and not against heading or sub-heading. Each section is divided into chapters and each chapter contains goods of one class. These chapters are divided into sub-chapters. Each chapter and sub-chapter further divided into various headings depending on different types of goods belonging to same class of products.

CONCEPT 36. CODING OF DASHES

As per Customs Tariff Act, 1975, dashes are very useful to classify the commodities into classification, sub-classification and so on.

Single dash (i.e. -)	= Primary classification of article covered by the heading
Double dash (i.e. --)	= sub-classification of primary classification
Triple dash (i.e. ---)	= sub-sub classification of primary classification or sub-classification of primary classification.
Quadruple dash (i.e. ----)	= sub-sub classification of primary classification or sub-classification of primary classification.

Note: Both three dashes or four dashes are used to indicate EIGHT digit classification known as tariff item.

CONCEPT 37. SCHEDULES TO THE CUSTOMS TARIFF ACT, 1975

The Customs Tariff Act, 1975, contains following two schedules namely: First Schedule Deals with import tariff, showing import duties leviable. Second schedule Deals with export tariff, showing export duties leviable.

CONCEPT 38. GENERAL RULES FOR INTERPRETATION OF IMPORT TARIFF

Classification of goods as per the Customs Tariff Act, 1975 shall be governed by the following principles: These rules come into play only if there is an ambiguity or confusion in classification.

Rule 1: No ambiguity in classifications:

The titles of Sections and Chapters are provided for ease of reference only; for legal purposes, refer the heading and sub-heading. Read corresponding Section Notes and Chapter Notes. If there is no ambiguity or confusion in classification of the goods then the classification is final.

Rule 2(a): Incomplete or unfinished goods:

Even if the goods are incomplete or unfinished, if they have *essential character* of finished goods, then classify them under same heading.

Rule 2(b): Mixture or Combinations of goods falls under different classifications:

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

Rule 3(a): Specific Description:

The heading which provides the most specific description shall be preferred to one of providing a general description. It means to say that a specific heading should be preferred over a general heading [CCE v Maharshi Ayurveda Corporation Ltd (SC) (2006)].

Rule 3(b): Essential Character:

If the product consists of different materials or made up of different components, mixtures or composite goods and cannot be classified based on Rule 3(a), it should be classified as if they consisted of material or component which gives them their essential character.

Rule 3(c): Latter the Better:

When goods cannot be classified by reference to rule 3(a) or rule 3(b), they shall be classified under the heading which occurs last in the numerical order among those which equally merit consideration. It means to say that, where two or more headings seem equal, priority should be given to the essential character.

Rule 4: Most Akin Goods:

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**. As per the Oxford dictionary 'Most Akin' can be understood as the majority of similar character or most related character. This means relationship between twins can be understood as most akin.

Rule 5: Packing Materials:

In addition to the forgoing provisions namely Rule 1, 2, 3 and 4, the following sub rules shall apply in respect of the goods referred therein.

Rule 5(a):

Packing material used as cases for camera, musical instrument cases, gun cases, drawing instrument cases, necklace cases and similar containers special shaped or fitted to contain a specific article or set of articles, suitable for long term use, will be classified along with that article, if such articles are normally sold along with such cases.

Rule 5(b):

Subject to the provisions of Rule 5(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. [Rule 5(a) or (b) does not apply in case the packing material is for repetitive use].

Rule 6: Goods compared at the same level of sub-headings:

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.

For the purposes of this rule the relative Section and Chapter Notes also apply, unless the context otherwise requires. This means to say that if one heading contains 4-5 sub-headings, these sub-headings can be compared with each other. However, sub-heading under one heading should not be compared with the sub-heading of another heading.

CONCEPT 39. TRADE PARLANCE THEORY

If a product is not defined in the Schedules and Section Notes and Chapter Notes of the Customs Tariff Act, 1975, then it should be classified according to its popular meaning or meaning attached to it by those dealing with it i.e., in its commercial sense.

CONCEPT 40. Where a classification (under a Customs Tariff head) is recognized by the Government in a notification at any point of time, can the same be made applicable in a previous classification in the absence of any conscious modification in the Tariff? *Keihin Penalfa Ltd. v Commissioner of Customs* 2012 (278) ELT 578 (SC)

Facts of the Case: Department contended that 'Electronic Automatic Regulators' were classifiable under Chapter sub-heading 8543.89 whereas the assessee was of the view that the aforesaid goods were classifiable under Chapter sub-heading 9032.89. An exemption notification dated 1-3-2002

exempted the disputed goods by classifying them under chapter sub-heading 9032.89. The period of dispute, however, was prior to 01.03.2002.

Point of Dispute: The dispute was on classification of Electronic Automatic Regulators.

Decision: The Apex Court observed that the Central Government had issued an exemption notification dated 1-3- 2002 and in the said notification it had classified the Electronic Automatic Regulators under Chapter sub-heading 9032.89. Since the Revenue itself had classified the goods in dispute under Chapter sub-heading 9032.89 from 1-3- 2002, the said classification needs to be accepted for the period prior to it.

QUESTIONS AND ANSWERS

Q. 1

The vessel sunk within territorial waters of India and therefore there is no export. Accordingly, no duty drawback shall be available in this case. [Union of India v Rajendra Dyeing & Printing Mills Ltd. 2005 (180) ELT 433 (SC)]. The territorial waters extend to 12 nautical miles into the sea from the base line.

Q. 2

A ONGC vessel and a vessel owned by A Ltd. of USA are drilling oil beyond 12 nautical miles in the sea. Hence, both the vessels are called as foreign going vessels.

Q. 3

If the proper officer of customs has reason to believe that any vessel in Indian Customs waters is being used in the smuggling of any goods, he may at any time stop any such vessel and examine and search any goods in the vessel (Section 106(1)(b) of the Customs Act, 1962).

Q. 4

Goods imported by the assessee for consumption on oil rigs which are situated in Continental Shelf/ Exclusive Economic Zones of India, are deemed to be a part of Indian Territory. Therefore, the supply of imported spares or goods or equipments to the rigs by a ship will attract import duty. [Aban Lloyd Chilie's Offshore Ltd. v UOI (2008) 227 ELT 24 (SC)]

Q. 5

Pornographic and obscene materials, Maps and literature where Indian external boundaries have been shown incorrectly, Narcotic Drugs and Psychotropic Substances, Counterfeit goods and goods violating any of the legally enforceable intellectual property right, Chemicals mentioned in Schedule 1 to the Chemical Weapons Convention of U.N. 1993, Wild life products, Specified Live birds and animals, Wild animals, their parts and products, Exotic birds except a few specified ones, Beef, tallow, fat/oil of animal origin. Specified Sea-shells, Human skeleton.

Q. 6

An importer imported some goods for subsequent sale in India at \$ 10,000 on Assessable value basis. Relevant exchange rate and rate of duty are as follows:

Particulars	Date	Exchange rate declared by the CBIC	Rate of Basic Customs Duty
Date of submission of bill of entry	25th February 2018	Rs. 58/USD	10%
Date of entry inwards granted to the vessel	5th March 2018	Rs. 58.75/USD	12%

Assume: Integrated Tax leviable u/s 3(7) of the Customs Tariff Act, 1975 is 18%. Calculate Assessable value and Customs Duty in Indian rupees?

Answer:

Relevant rate of duty for the imported goods is 12% (i.e. Date of submission of bill of entry or Date of entry inwards granted to the vessel whichever is latter)

Exchange Rate is Rs. 58 per USD (i.e. the rate of CBIC as on the date of submission of Bill of Entry by the importer)

Assessable value	= Rs. 5,80,000 (i.e. USD 10,000 x Rs. 58)
Basic Customs Duty	= Rs. 69,600 i.e. Rs. 5,80,000 x 12%
Social Welfare Surcharge on basic customs duty	= Rs. 6,960 (10% on 69,600)
IGST @ 18 U/S of Customs Tariff Act	= Rs. 1,18,180.8
Total Customs Duty	= Rs. 1,94,740.8 (including IGST)

Q. 7

An importer imported some goods. Entry inwards granted to the vessel on 7th February, and the goods were cleared from Chennai port for warehousing on 8th February, after assessment. The Bill of Entry was presented on 1st February for warehousing. Assessable value was US \$ 10,000. Assume that no additional duty is payable. The goods were warehoused at Chennai and were cleared from Chennai warehouse on 4th March. What is the duty payable while removing the goods from Chennai warehouse on 4th March? Exchange rates and rate of Customs Duties are as follows:

Particulars	Date	Exchange rate declared by the CBIC	Basic Customs Duty
Date of submission of bill of entry for warehousing	1st February	Rs.55/USD	10%
Date of entry inwards granted to the vessel	7th February	Rs.59/USD	15%
Date of clearance of goods from warehouse	4th March	Rs.60/USD	12%
Assume IGST @ 12%.			

Answer:

Relevant rate of duty for the imported goods warehoused is 12% (i.e. Date of submission of sub-bill of entry)

Exchange Rate is Rs. 55 per USD (i.e. the rate of CBIC as on the date of submission of Bill of Entry by the importer)

Assessable value	= Rs. 5,50,000 (i.e. USD 10,000 x Rs. 55)
Basic Customs Duty	= Rs. 66,000 i.e. Rs. 5,50,000 x 12%)
Social Welfare Surcharge @ 10%	= Rs. 6,600
IGST @ 12%	= Rs. 74,712
Total Customs Duty	= Rs. 1,47,312

Q. 8

An assessee submitted the shipping bill on 1st January 2014. At that time the export duty was nil (i.e. duty free). Let export order (i.e. entry outwards) was granted on 5th January 2014. However, due to some problems goods could not be loaded into ship. On 25th March 2014, the shipping bills were voluntarily resubmitted by the assessee with the request to permit the shipment by a different vessel. Subsequently, on 27th March 2014, let export order was granted. However, in the mean time the duty at the rate of 12% ad valorem was levied with effect from 1st March 2014. Examine, whether exporter is liable to pay duty?

Answer:

In the given case actual export took place only after revised shipping bill was submitted on 25th March 2014, for which entry outwards granted on 27th March, 2014. Hence, the rate prevalent as on the date of entry outwards granted to the vessel is relevant for determination of rate of duty. Therefore, assessee is liable to pay export duty @12%.

Q. 9

Compute export duty from the following data:

- (i) FOB price of goods: US \$ 1,00,000
- (ii) Shipping bill presented electronically on 28-02-2018
- (iii) Proper officer passed order permitting clearance and loading of goods for export on 01-03-2018.
- (iv) Rate of exchange and rate of export duty are as under

	Rate of Exchange	Rate of Export
Duty		
On 28-02-2018	1 US \$ = Rs.65	10%
On 01-03-2018	1 US \$ = Rs.66	8%

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

Answer:

Particulars	Value in Rs.	Remarks
FOB	65,00,000	1,00,000 x Rs.65
Customs Duty	5,20,000	Rs.65 lakhs x 8%

Note: Export duty does not carry Social Welfare Charge @ 10%.

Exchange rate for export of goods is the rate of CEBC at the time of submission of shipping bill.

Rate of duty for export is the date on which entry outward granted for export and loading of goods taken place.

Q. 10

An Exporter exported goods valuing Rs. 1,00,000 to United States of America (USA) by a vessel. Other details are as follows:

Particulars	Date of submission	Rate of export duty
Shipping Bill	1.8.2017	10%
Entry outwards granted to the vessel by the proper officer of Customs	5.8.2017	8%
Ship let for USA from the Indian port	7.8.2017	15%
Ship crossed the territorial waters of India	8.8.2017	12%

You are required to find the customs duty payable for exported goods?

Answer:

Customs Duty = Rs. 8,000 i.e. Rs. 1,00,000 x 8%)

Note:

- (i) As per section 16(1) of the Customs Act, 1962, taxable event arises only when proper officer makes an order permitting clearance (i.e. entry outwards) granted - Esajee Tayabally Kapasi (1995)(SC). Therefore, relevant rate is 8%
- (ii) Export duties do not carry Social Welfare Surcharge @ 10%.

Q. 11

A vessel Bhishma, sailing from U.S.A to Australia via,, India carries various types of products namely 'A, B, C & D'. 'A & B' are destined to Mumbai Port. On account of submission of bill of transhipment product 'A' transshipped to Chennai port as ultimate destination in India and product 'B' transshipped to Srilanka.

Find the imported goods, Transhipment goods and transit goods? Answer.

Product 'A' is imported goods because its ultimate destination is in India.

Products 'A & B' are called as Transhipment goods, since these goods are transshipped to another vessel, Product 'A' transshipped to Chennai attracts import duty whereas product 'B' is destined to Srilanka without payment of duty.

Products C & D are transit goods since these goods remains in the same vessel Bhishma chartered to Australia.

Q. 11

If goods are pilfered after the order of clearance is made but before the goods are actually cleared, duty would leviable?

Answer.

Yes. Importer has to pay duty. Note: refund can be claimed

Q. 12

Provisions of section 13 would apply if it can be shown that pilferage took place prior to the unloading of goods?

Answer.

Section 13 would not apply in the given case.

The pilferage should have occurred after the goods are unloaded, but before the proper officer makes the order of clearance.

Q. 13

Mr. M manufactured goods worth Rs. 1,00,000 exported to Mr. U of USA on 1st January, 2014. Mr. M availed the duty drawback for Rs. 1,000. If Mr. M imported the same on 31st January, 2014, the import duty that can be levied on Mr. M is Rs. 1,000.

Q. 14

Mr. A imported an Air conditioner on 1st January 2018 for Rs. 5,00,000 from USA. Mr. A has paid import duty for Rs. 50,000. Due to some technical problems the same was exported for want of repairs on 31st January 2018. After incurring some additional cost for repairs and replacement worth for Rs. 1,00,000 the same was re-imported on 5th February 2018. The import duty in such case will be restricted on the value of repairs and replacement of Rs. 1,00,000.

Q. 15

A machine was originally imported from Japan at Rs. 250 lakh in August 2017 on payment of all duties of customs. The said machine was exported (sent-back) to supplier for repairs in January 2018 and re-imported without any re-manufacturing or re-processing in October, 2018 after repairs. Since the machine was under warranty period, the repairs were carried out free of cost.

However, the fair cost of repairs carried out (including cost of material Rs. 6 lakh) would have been Rs. 9 lakh. Actual insurance and freight charges (to and fro) were Rs. 3 lakh. The rate of basic customs duty is 10% and rate of IGST in India on like article is 12%.

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.

Answer.

Particulars	Rs.
Value of goods re-imported after exports	12,00,000
9 lakh (including cost of materials) +	Rs. 3 lakh
Basic customs duty @ 10%	1,20,000
SWS @ 10%	12,000
Balance (i.e. Transaction value)	13,32,000
Add: IGST @12% on 13,32,000	1,59,840
Total Customs Duty	2,91,840

Q. 16

In case of pilferage, state the conditions which are to be satisfied for exemption from duty.

Answer:

In case of pilferage, Conditions to be satisfied for exemption from duty:

- (i) The imported goods should have been pilfered.
- (ii) 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.
- (iii) The pilfered goods should not have been restored back to the importer.

Q. 17

State the distinctions between pilfered goods u/s 13 of the Customs Act and Lost or destroyed goods u/s 23 of the Customs Act.

Answer:

Pilfered goods u/s 13 of the Customs Act vs. Lost or destroyed goods u/s 23 of the Customs Act:

Pilfered goods	Lost or destroyed goods
(i) Pilferage refers to that in small quantities	(i) Lost or destroyed postulates loss or destroyed by whatever reason whether theft, fire, accident etc.
(ii) In this case, the importer is not liable to pay duty	(ii) The duty payable on lost goods is remitted by Assistant/Deputy Commissioner.
(iii) In this case, if the pilfered goods are retrieved duty becomes payable.	(iii) In this case, restoration is impossible if the goods are destroyed.

(iv) The pilferage must have occurred after the unloading of the goods but before the proper officer has made an order for clearance for home consumption under section 47 of the Customs Act or deposit on a warehouse under section 60 of the Customs Act.	(iv) In this case, the goods must have been lost or destroyed at any time before their clearance for home consumption. Thus, it also covers the cases where the goods are lost after the duty has been paid and order for clearance has been given but before the goods are actually cleared.
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Q. 18

Write a short note on “Significance of Indian Customs Water”

Answer:

The significance of Indian Customs Waters is as under-

- i. Any person who has landed from/ about to board/ is on board any vessel within Indian Customs water and who has secreted about his person, any goods liable to confiscation or any documents relating thereto may be searched;
- ii. Any person within Indian Customs waters, who has committed an offence punishable under section 132 or 133 or 135 or 135A or 136 of the Customs Act, may be arrested;
- iii. Any vessel within Indian custom water, which has been, is being, or is about to be, used in the smuggling of any goods or in carriage of any smuggling goods, may be stopped;
- iv. Any goods which are brought within the Indian customs waters for the purpose of being imported from a place outside India, contrary to any prohibition imposed by or under this Act or any other law for the time being in force, shall be liable to confiscation; and
- v. Any vessel which is or has been within Indian customs waters is constructed, adapted, altered or fitted in any manner for concealing or concealing goods shall be liable to confiscation.

Q. 19

In case of pilferage, state the conditions which are to be satisfied for exemption from duty.

Answer:

In case of pilferage, Conditions to be satisfied for exemption from duty:

- (i) The imported goods should have been pilfered.
- (ii) 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.
- (iii) The pilfered goods should not have been restored back to the importer.

Q. 20

In customs, if goods are pilfered after the order of clearance is made but before the goods are actually cleared, would duty be leviable?

Answer:

In customs, if goods are pilfered after the order of clearance is made but before the goods are actually cleared, then the importer has to pay duty but refund can be claimed.

Q. 21

From the following data, find out the assessable value of imported goods.

	Particulars	US \$
1	Cost of the machine at the factory of the exporting country	20,000
2	Transport charges incurred by the exporter from his factory to the port for shipment	500
3	Handling charges paid for loading the machine in the ship	50
4	Buying commission paid by the importer	50
5	Freight charges from exporting country to India (including handling charges \$100)	1,000
6	Exchange rate to be considered: 1\$ = Rs. 48	

Answer:

FOB price (Cost + Transport + Handling)	\$20,550
Exchange rate notified by the CBIC	Rs.48
	Rs.
FOB Price in Indian Rs.	9,86,400
Add: Buying commission (not included)	Nil
Customs FOB	9,86,400
Add: cost of transport / handling under Rule 10 (2)(a) [1000\$ x Rs.48]	48,000
Add: insurance @ 1.125% of FOB, assuming unascertainable	11,097
CIF or Assessable Value	10,45,497

Q. 22

Explain provisions relating to 'pilferage' in customs law.

Answer:

Section 13 of Customs Act provides that if imported goods are pilfered after unloading but before order for clearance is passed by Customs Officer for clearance for home consumption or deposit in a warehouse, no duty is payable on the goods, unless the pilfered goods are restored to importer.

Under Section 13, normally duty is not paid. However, if duty is paid before examination of goods, refund can be claimed if goods are found to be pilfered during examination but before order for clearance are made.

Q. 23

What is transit of goods and transhipment of goods? Give examples.

Answer:

Transit of Goods: Any goods imported in any conveyance will be allowed to remain on the conveyance and to be transited without payment of duty, to any place out of India or any customs station.

Example: A vessel Bhishma, sailing from U.S.A. to Australia via India. Bhishma carries various types of goods namely 'A, B, C & D'. 'A & B' are destined to Mumbai Port and balance remains in the same vessel. Subsequently vessel chartered to Australia.

Transhipment of Goods: Transhipment means transfer from one conveyance to another with or without payment of duty. It means to say that goods originally imported from outside India into India, then transhipped to another vessel to a place within India or outside India.

Example: A vessel Bhishma, sailing from U.S.A to Australia via. India carries various types of products namely A, B, C & D. A & B are destined to Mumbai Port. On account of submission of bill of transhipment product 'A' transshipped to Chennai port as ultimate destination in India and product 'B' transshipped to Srilanka. Product 'A' is imported goods because its ultimate destination is in India. Products 'A' & 'B' are called as Transhipment goods, since these goods are transshipped to another vessel, Product 'A' transshipped to Chennai attracts import duty whereas product 'B' is destined to Srilanka without payment of duty. Products 'C' & 'D' are transit goods since these goods remains in the same vessel Bhishma chartered to Australia.

Q. 24

How is the expression "foreign going vessel or aircraft" defined under Customs Act,1962?

Answer:

Foreign going vessel or aircraft

As per section 2 (21) of the Customs Act, the foreign going vessel or aircraft means a vessel or aircraft

- from any port or airport in India
- to any port or airport outside India

The following are also included in the definition:

- (i) A foreign naval vessel going naval exercises in Indian waters;

- (ii) A vessel engaged in fishing or any other operation (like oil drilling by domestic vessel or foreign vessel) outside territorial waters.
- (iii) A vessel going to a place outside India for any purpose whatsoever.

Q. 25

What is the taxable event for exported goods? Also state the relevant rate of Foreign exchange in case of exports.

Answer:

Taxable event for exports

As per section 16(1) of the Customs Act, 1962, taxable event arises only when proper officer makes an order permitting clearance (i.e. entry outwards) granted and loading of the goods for exportation took place under Section 51 of the Customs Act, 1962.

Relevant rate of foreign exchange in case of exports:

In case of exports, rate of exchange of the CBEC as in force on the date on which a shipping bill or bill of export, as the case may be, is presented under Sec.50 of the Customs Act, 1962 is applicable.

Q. 26

M/s. X Ltd. (a unit of 100% EOU located in Chennai) sold goods to M/s. A Ltd. (located in Mumbai) for Rs. 20 lakh. If M/s. X Ltd. being EOU imported these goods exempted from BCD @ 10% IGST 12% is applicable.

Find the total GST is liable to pay by X Ltd.

How much input tax credit M/s. A Ltd. can avail?

Answer:

Particulars (w.e.f. 1-7-2017)	Value in Rs.	Workings
Assessable value	20,00,000	
Add : Basic Customs Duty 10%	2,00,000	20,00,000 x 10%
Add: Social Welfare Surcharge 10% on BCD	20,000	2,00,000 x 10%
Sub-total	22,20,000	
Add: IGST @ 12%	2,66,400	22,20,000 x 12%
Sub-total	24,86,400	
Total Duty Payable	4,86,400	

ITC allowed to M/s A Ltd. (Buyer):

Particulars	Value in Rs.
BCD	Nil
IGST	2,66,400
Total	2,66,400

Q. 27

Write short notes on 'Transit' and 'Transhipment' of goods under Customs Act.

Answer:

Transit of goods occur when any goods imported in any conveyance is allowed to remain on the conveyance and to be transited without payment of duty to any place outside India or any customs station. (Sec. 53 of Customs Act).

Transhipment means transfer from one conveyance to another with or without payment of duty. It means to say that goods brought originally imported from outside India into India, then transshipped to another vessel or vessels to a place within India or outside India.

Q. 28

What do you mean by the term "Goods" as per Customs Act?

Answer:

As per Section 2(22) of the Customs Act, the term goods include:

- Vessels, Aircrafts and vehicles
- Stores

- Baggage
- Currency and Negotiable Instruments and
- Any other kind of movable property.

If the vessel enters the territorial water merely as a conveyance (i.e. as carrier of the goods), then it cannot be said that the vessel was imported. The reason being that if the vessel enters the territorial water for the purpose of unloading the cargo then the import is of cargo and not of the vessel.

CLASSIFICATION UNDER CUSTOMS

CONCEPT 1. CUSTOMS TARIFF ACT, 1975

Duties of customs will be levied by the customs department by referring Customs Tariff Act, 1975. The Customs Tariff Act, 1975 has been divided into 21 sections (i.e. XXI sections) and 99 chapters out of which chapter 77 is blank. It is pertinent to note that goods are classified under Central Excise Tariff Act, 1985 and Customs Tariff Act, 1975 based on the Harmonised System of Nomenclature (HSN).

The Customs Tariff Act, 1975 contains five columns —

1. Tariff Item
2. Description of goods
3. Unit
4. Standard Rate of Duty
5. Rate of duty for Preferential Area.

CONCEPT 2. RATE OF DUTY FOR PREFERENTIAL AREA

Rate of duty for Preferential Area means Government of India may charge lower customs duty than that of standard rate of duty for some specified goods if imported from friendly countries like Myanmar, Bangladesh, Mauritius, Seychelles, Nepal, Tonga etc.

CONCEPT 3. Social Welfare Surcharge (SWS) ON Imports [w.e.f 02-02-2018]

1. Social Welfare Surcharge - A social welfare surcharge has been imposed on imported goods @ 10% of total customs duties (excluding certain duties) w.e.f 02-02-2018. Hence, effective rate of BCD = 10% general rate of basic custom duty (BCD) + SWS @ 10% of BCD = 11%.
2. No EC & SHEC W.E.F 02-02-2018 -Education cess @ 2% & Secondary & Higher Education Cess @ 1% was leived at total 3% on total import duties (excluding certain duties). Now, no EC & SHEC is leivable on imports from 02-02-2018 & Section 94 of Finance Act, 2007 providing for levy of EC/SHEC have been omitted.
3. Road & Infrastructure Cess on Imported goods (Section 111 of Finance Act, 2018 w.e.f 02-02-2018)- Road and Infrastructure cess is leived as duty of Customs @ 8 per litre on motor spirit (petrol) and high speed diesel imported into India for the purpose of financing infrastructure projects.
4. No Social Welfare Surcharge (SWS) is leived on Export Goods.

CONCEPT 4. CLASSIFICATION OF GOODS

Under the Customs Tariff Act, 1975 goods are classified into FOUR digit system, these are called as HEADINGS. Further TWO digits are called as sub-classification, which are termed as SUB-HEADINGS. Further more TWO digits are added for sub-classification, which is known as TARIFF ITEM. Rate of duty is indicated against each tariff item and not against heading or sub-heading. Each section is divided into chapters and each chapter contains goods of one class. These chapters are divided into sub-chapters. Each chapter and sub-chapter further divided into various headings depending on different types of goods belonging to same class of products.

CONCEPT 5. CODING OF DASHES

As per Customs Tariff Act, 1975, dashes are very useful to classify the commodities into classification, sub-classification and so on.

Single dash (i.e. -)	= Primary classification of article covered by the heading
Double dash (i.e. --)	= sub-classification of primary classification
Triple dash (i.e. ---)	= sub-sub classification of primary classification or sub-classification of primary classification.
Quadruple dash (i.e. ----)	= sub-sub classification of primary classification or sub-classification of primary classification.

Note: Both three dashes or four dashes are used to indicate EIGHT digit classification known as tariff item.

CONCEPT 6. SCHEDULES TO THE CUSTOMS TARIFF ACT, 1975

The Customs Tariff Act, 1975, contains following two schedules namely:

First Schedule Deals with import tariff, showing import duties leviable.

Second schedule Deals with export tariff, showing export duties leviable.

CONCEPT 7. GENERAL RULES FOR INTERPRETATION OF IMPORT TARIFF

Classification of goods as per the Customs Tariff Act, 1975 shall be governed by the following principles: These rules come into play only if there is an ambiguity or confusion in classification.

Rule 1: No ambiguity in classifications:

The titles of Sections and Chapters are provided for ease of reference only; for legal purposes, refer the heading and sub-heading. Read corresponding Section Notes and Chapter Notes. If there is no ambiguity or confusion in classification of the goods then the classification is final.

Rule 2(a): Incomplete or unfinished goods:

Even if the goods are incomplete or unfinished, if they have **essential character** of finished goods, then classify them under same heading.

Rule 2(b): Mixture or Combinations of goods falls under different classifications:

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

Rule 3(a): Specific Description:

The heading which provides the most specific description shall be preferred to one of providing a general description. It means to say that a specific heading should be preferred over a general heading [*CCE v Maharshi Ayurveda Corporation Ltd (SC) (2006)*].

Rule 3(b): Essential Character:

If the product consists of different materials or made up of different components, mixtures or composite goods and cannot be classified based on Rule 3(a), it should be classified as if they consisted of material or component which gives them their essential character.

Rule 3(c): Latter the Better:

When goods cannot be classified by reference to rule 3(a) or rule 3(b), they shall be classified under the heading which occurs last in the numerical order among those which equally merit consideration. It means to say that, where two or more headings seem equal, priority should be given to the essential character.

Rule 4: Most Akin Goods:

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**. As per the Oxford dictionary 'Most Akin' can be understood as the majority of similar character or most related character. This means relationship between twins can be understood as most akin.

Rule 5: Packing Materials:

In addition to the forgoing provisions namely Rule 1, 2, 3 and 4, the following sub rules shall apply in respect of the goods referred therein.

Rule 5(a):

Packing material used as cases for camera, musical instrument cases, gun cases, drawing instrument cases, necklace cases and similar containers special shaped or fitted to contain a specific article or set of articles, suitable for long term use, will be classified along with that article, if such articles are normally sold along with such cases.

Rule 5(b):

Subject to the provisions of Rule 5(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. [Rule 5(a) or (b) does not apply in case the packing material is for repetitive use].

Rule 6: Goods compared at the same level of sub-headings:

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.

For the purposes of this rule the relative Section and Chapter Notes also apply, unless the context otherwise requires. This means to say that if one heading contains 4-5 sub-headings, these sub-headings can be compared with each other. However, sub-heading under one heading should not be compared with the sub-heading of another heading.

CONCEPT 8. TRADE PARLANCE THEORY

If a product is not defined in the Schedules and Section Notes and Chapter Notes of the Customs Tariff Act, 1975, then it should be classified according to its popular meaning or meaning attached to it by those dealing with it i.e., in its commercial sense.

CONCEPT 9. Where a classification (under a Customs Tariff head) is recognized by the Government in a notification at any point of time, can the same be made applicable in a previous classification in the absence of any conscious modification in the Tariff?

Keihin Penalfa Ltd. v Commissioner of Customs 2012 (278) ELT 578 (SC)

Facts of the Case: Department contended that 'Electronic Automatic Regulators' were classifiable under Chapter sub-heading 8543.89 whereas the assessee was of the view that the aforesaid goods were classifiable under Chapter sub-heading 9032.89. An exemption notification dated 1-3-2002 exempted the disputed goods by classifying them under chapter sub-heading 9032.89. The period of dispute, however, was prior to 01.03.2002.

Point of Dispute: The dispute was on classification of Electronic Automatic Regulators.

Decision: The Apex Court observed that the Central Government had issued an exemption notification dated 1-3- 2002 and in the said notification it had classified the Electronic Automatic Regulators under Chapter sub-heading 9032.89. Since the Revenue itself had classified the goods in dispute under Chapter sub-heading 9032.89 from 1-3- 2002, the said classification needs to be accepted for the period prior to it.

CONCEPT 10. 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 between the date of contract and the date of actual importation? (ii) Whether the payment for post-importation process is includable in the value if the same is related to imported goods and is a condition of sale of the imported goods? (iii) Bill of entry was filed on 27.10.2017. Will you apply the exchange rate notified by the Central Board of Excise and Customs on 25.9.2017 or notified on 25.10.2017?

Answer: (i) The valuation under section 14(1) of the Customs Act, 1962, namely transaction value is applicable. (ii) The payment for post importation process is includable in the value of the imported goods if the same is related to such imported goods and is a condition of the sale thereof. (iii) The relevant exchange rate for imported goods is the rate which is in force on the date of presentation of bill of entry. CBEC declares the exchange rate applicable for a month which is generally notified in the preceding month. Therefore, in the given case, the bill of entry was submitted by the importer on 27.10.2017. Hence, relevant exchange rate is the rate prevailing on 25.09.2017.

CONCEPT 11. 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 by endorsement on the bill of entry. Since, importer wants to clear the goods he paid the penalty. Can penalty be imposed for late filing of the bill of entry? Examine the issue in the light of relevant statutory provisions.

Answer: W.e.f. 31-3-2017 Finance Act, 2017 Section 46 amended: Submission of Bill of entry: The importer shall present the bill of entry under section 46(1) of the Customs Act, 1962 before the end of the next day following the day (excluding holidays) on which the aircraft or vessel or vehicle carrying the goods arrives at a customs station at which such goods are to be cleared for home consumption or for warehousing. Provided that a bill of entry may be presented within 30 days of the expected arrival of the aircraft or vessel or vehicle by which the goods have been shipped for importation into India. Provided further that where the bill of entry is not presented within the time so specified and the proper officer is satisfied that there was no sufficient cause for such delay, the importer shall pay such charges for the late presentation of the bill of entry as may be prescribed. In the given case penalty of ` 10,000 is valid. Hence, as per the provisions of the Customs Act, 1962, penalty can be imposed for late filing of the bill of entry.

CONCEPT 12. What are the provisions relating to effective date of notifications issued under Section 25 of the Customs Act, 1962?

Answer: The Central Government of India has the power to issue Notification under Section 25 of the Customs Act, 1962 to exempt the excisable goods from the duty either by way of generally • Subject

to such conditions • Whole or any part of duty Provisions under Section 5A of the Central Excise Act, 1944 and provisions under Section 25 of the Customs Act, 1962 (i.e. power to grant exemption from customs duty) are one and the same. The notification becomes effective on the date it is issued for publication in Gazette or the date specified in the said notification as the case may be.

CONCEPT 13. Explain the meaning of the term “Bill of export” and “Import report” under the provisions of the Customs Act, 1962.

Bill of Export	Import Report
As per Section 2(5) of the Customs Act, “Bill of export” means a bill of export referred to in section 50 of the Customs Act, 1962	As per Section 2(24) of the Customs Act, “Import manifest” or “import report” means the manifest or report required to be delivered under section 30 of the Custom Act, 1962
The exporter of any goods shall make entry thereof by presenting to the proper officer in the case of goods to be exported in a vessel or aircraft, a shipping bill, and in the case of goods to be exported by land, a bill of export in the prescribed form.	The person in charge of a vehicle carrying imported goods or any other person as may be notified by the Central Government shall, in the case of a vehicle, deliver to the proper officer an import report within 12 hours after its arrival in the customs station, in the prescribed form.

CONCEPT 14. M/s Hind IT Co. imported laptops with Hard Disc Drives (HDD) preloaded with operating software like Windows XP, XP home etc. The department has claimed that the said laptop along with the operating software was classifiable and assessable as a single unit. It is the claim of the assessee that the software loaded HDD should be classified and assessed separately as an exemption is available as per notification issued under section 25(1) of the Customs Act, 1962. Decide with a brief note whether the action proposed by the department is correct in law.

Answer: The pre-loaded operating systems recorded in Hard Disc Drive in the laptop (item of import) forms an integral part of the laptop as the laptop cannot work without the operating system. A laptop without an operating system is like an empty building. Hence, laptop should be treated as one single unit classifiable under the Customs Tariff Act, 1975. The Apex Court held that when a laptop is imported with in-built pre-loaded operating system recorded on HDD, the said item forms an integral part of laptop (computer system). Hence, laptop should be treated as one single unit classifiable under Heading 84.71. However, if the operating system is imported as packaged software like an accessory, then it would be classifiable under Heading 85.24. There will be no question of adding the cost of the software. [CCus. v Hewlett Packard India Sales (P) Ltd. (2007) 215 ELT 484 (SC)] The Department action is correct in the eyes of the law.

CONCEPT 15. ABC Ltd., imported artemia cyst (i.e. brine shrimp eggs). The same has been classified as ‘prawn feed’ under the heading 2309 (i.e. Heading 2309 of the Customs Act, 1975, includes products of a kind used in animal feeding, not elsewhere specified or included, obtained by processing vegetable or animal materials to such an extent that they have lost the essential characteristics of the original material, other than vegetable waste, vegetable residues and by-products of such processing.) which includes products used as animal feed. However, the Department contended that this product was classifiable under the heading 0511.99 (i.e. which refers to other products in the category of non edible animal products). The contention of importer was that these imported cysts contained little organisms/embryos which later became larva that prawns feed on. Therefore, according to them, the nature and character of the product was not changed by nurturing or incubation. You are required to examine whether the contention of the Department is justified in law.

Answer: If a product undergoes some change after importation till the time it is actually used, it is immaterial, provided it remains the same product and it is used for the purpose specified in the classification. Therefore, in the given case, it examined whether the nature and character of the product remained the same. The Hon'ble High Court held that if the embryo within the egg was incubated in controlled temperature and under hydration, a larva was born. This larva did not assume the character of any different product. Its nature and characteristics were same as the product or organism which was within the egg. Hence, the Court in the case of Atherton Engineering Co. Pvt. Ltd. v UOI 2010-TIOL-271-HC-Kol-Cus., held that the said product should be classified as feeding materials for prawns under the heading 2309. These embryos might not be proper prawn feed at the time of importation but could become so, after incubation. The contention of the Department is not justified in law.

CONCEPT 16. X Ltd. is an Indian company manufacturing motor cars and had imported from A Ltd. of USA a shipment of 50 CKD packs (Completely Knocked down Condition) of motor car components. X Ltd. filed bill of entry for clearing the goods, by classifying these goods as components of motor cars. Thereby, X Ltd. also claimed benefit of a notification exempting components, including components of motor cars in semi-knocked down packs and completely knock down packs. The Customs Officer held that the imported components being complete cars in Completely Knocked down Condition packs had the essential character of the finished goods and as such the entire consignment were to be treated as motor cars and not components. Hence, customs department contended that X Ltd. was not entitled to the benefit of the notification as the notification was only for components. You are required to examine whether the contention of the Department is justified in law.

Answer: As per Rule 2(a) of the Interpretative Rules, if the goods are incomplete or unfinished provided these goods have essential character of finished goods, then classify in same heading.

Example: • Passenger Aircraft not fitted with seats will still be a passenger Aircraft. • Motor Car not fitted with wheels or tyres will be classified under the heading of Motor Vehicle • Parts of air conditioning machines removed in completely knocked down (CKD) or semi knocked down (SKD) packs will be classified as complete machine, if it contains essential elements of air conditioning machines. Because CKD or SKD is only for convenience of transport. [note that assembly at site does not amount to manufacture, these goods have already been manufactured in the factory] In the given case X Ltd. imported car components in CKD packs. The components imported had the essential character of complete car even though presented in unassembled form. Hence, the Hon'ble Supreme Court of India in the case of CC. v Maestro Motors Ltd. (2004) (SC), held that the components in CKD packs would be classified as motor car. With regard to exemption notification, exemption is granted with reference to tariff items in the First Schedule to the Customs Tariff Act, 1975, and then the Rules of Interpretation must apply. In the given case the notification exempted components, including components of fuel efficient motor cars in semi-knocked down packs and completely knocked down packs. As per the Customs Tariff Act, 1975 interpretative rules Rule 2(a), for the purpose of levy of customs duty the components in a completely knocked down pack would be considered as cars. Therefore, exemption notification which is applicable to components also applicable to components in completely knocked down packs. Form the above, it is concluded that the components in CKD packs imported by X Ltd. would get exemption under the said Notification, even though for the purpose of classification and clearance they may be considered to be motor cars. Hence, the contention of the Department is not sustainable in the eyes of the law.

CONCEPT 17. Assessee imported Compact Disk Read Only Memory (CD ROMs) containing images of drawings and designs of engineering goods. The Appellant (i.e. assessee), filed a Bill of Entry for the clearance of the CD ROM containing drawings, designs of engineering goods. The assessee claimed classification under Custom Tariff heading 4906, or, heading 4911, or, as Information Technology Software, or as CD ROM, where exemption is given from duty. However, the Department classified the same under Customs Tariff heading 8524.39 thereby recorded CD ROMs, liable to duty. Discuss in the light of decided case law, if any, whether the classification of the department is correct in law?

Answer: The Hon'ble Supreme Court held that “What is made duty free is the Compact Disk Read Only Memory (CD-ROM) as it is and not a disc containing certain drawings and designs”. It further said that the data in a compact disk does not fall within the meaning of the term ‘software’ to entail the benefit (i.e. nil rate of duty). Software is a computer program, which enables the computer to function. The drawings and designs of engineering goods recorded on a CD ROM could not be regarded as a “computer program” or “instructions” meant for functioning of computer. In fact, they are “output” of computer software, which generate such drawings and designs. Therefore, they are not Information Technology Software. The Supreme Court has ruled that the department can impose appropriate duty on the import of CD ROMs containing images of drawing and designs of engineering goods. The assessee cannot claim clearance of such goods at zero duty, said the apex court in the case of M/s L.M.L. Ltd v Commissioner of Customs (2010). Therefore, the classification of the department is correct in law.

CONCEPT 18. National Instruments Systems imported various products from its Holding Company and supplies the same to its customers in India. The imported products are PXI Controllers, Input/output Modules, Signal Converters, chassis and its parts. Assessee claims that these products were computer based instrumentation products. Accordingly N.I. Systems filed 64 bills of entries, under Customs Tariff Headings 8471, 8473 and other headings falling under Chapter 84. However, on verification of the technical data (including the catalogue and the webcast of the importer), Department observed that the subject goods were not structurally designed to function as a computer. PXI Controllers, I.O. Modules and Chassis are parts and accessories of a system/instrument which are suitable for use solely or mainly with a number of machines, instruments, apparatus of the same Heading, i.e., 9032 like sensors, thermostats etc. Discuss in the light of decided case law, if any, whether the view of the department is correct in law?

Answer: The Apex Court in the case of N.I. Systems (India) Pvt. Ltd. (2010) (SC), has held that imported goods were rightly classified by the Department under Chapter 90 (i.e. sensors, thermostats etc.). Because, the imported goods were manufactured for a special purpose and that purpose was either measurement or control for industrial use and not as Automatic Data Processing (ADP) Machines. As per the test of common parlance the subject goods are measuring/controlling instruments. Therefore, the view of the Department was right in classifying the Input/output Modules and Chassis as parts and accessories of Automatic Regulating or Controlling Instruments and Apparatus (i.e. the technical equipment or machinery needed for a particular activity or purpose) in terms of the Customs Tariff Heading 9032.90.00.

Q6. Customs Officers located a vessel which is carrying smuggled goods in the sea when it was around 8 nautical miles away from the outer limit of territorial waters. The Customs Officers stopped the vessel and examine and search the goods in the vessel. Examine the case whether the customs officers are authorized to stop the vessel and examine the goods in the vessel?

Answer: As per section 106 of the Customs Act, 1962, if any conveyance including animal in India or within Indian Customs Waters is believed to be engaged in smuggling, it may be stopped, for conducting search of its parts, examination and search of goods. In the given case, since the vessel is within the Indian Customs Waters, the customs officers are authorized to stop the vessel and examine and search the goods in the vessel.

Q7. Eva Offshore Ltd. is engaged in drilling operations for exploration of offshore oil, gas and other related activities under contracts. The drilling operations are carried out at oil rigs/vessels which are situated outside the territorial waters of India. Until around November, 1993, the company was permitted to tranship stores to the oil rigs without levy of any customs duty regardless of the fact whether oil rigs were operating within a designated area or non-designated area. Whether oil rigs engaged in operations in the exclusive economic zone/continental shelf of India, falling outside the territorial waters of India, are 'foreign going vessels' as defined by section 2(21) of the Customs Act, 1962, and are entitled to consume imported stores thereon without payment of customs duty in terms of section 87 of the Customs Act, 1962?

Answer: The Apex Court namely the Supreme Court of India in the case of Aban Lloyd Chilie's Offshore Ltd. v UOI (2008) 227 ELT 24 (SC), had held that the goods imported by the assessee for consumption on board on oil rigs 'were stores', as they were for use on oil rigs, which are vessels. However, the oil rigs proceeding to or carrying out operations in, continental shelf/ exclusive economic zones of India, which are deemed to be a part of Indian territory, would not be a foreign going vessels, as the oil rigs proceed from the territory of India to an area which also deemed to be a part of the territory of India.

Thereby, neither the 'oil rigs nor the ship employed for transshipment of the goods to the oil rigs were foreign going vessel'. Therefore, the stores transshipped to the oil rigs and consumed thereon were not entitled to exemption u/s. 87 of the Customs Act, 1962. Therefore, the supply of imported spares or goods or equipments to the rigs by a ship will attract import duty.

In the given case, Eva Offshore Ltd. is liable to pay duty on imported stores.

Q8. The shipping bill in respect of an export consignment was presented to the Customs Officer on 25th May 2013. The Customs Officer granted 'entry outwards' to the ship on 3rd June 2013, the loading of the goods in the ship had commenced only after 17th June 2013. A notification was issued by the Government of India under the Customs Act, 1962 exempting the export item from customs duty on 17th June 2013. The assessee contends that since the loading of the goods in the ship had commenced after 17th June 2013, the export consignment is eligible for the benefit of the exemption notification. You are required to examine whether the contention of the exporter is justifiable in the law.

Answer: As per Section 16 of the Customs Act, 1962, 'Relevant Date' for customs duty in connection with export of goods would be the rate which prevailed when "entry outwards" for the vessel which ultimately exported the goods was effected and subsequent change in the rate of duty would be irrelevant. In other words rate of duty as on the date of entry outwards was granted. The same view has been expressed by Hon'ble Supreme Court of India in case of Esajee Tayabally Kapasi (1995). Therefore, the assessee is not entitled to seek exemption under notification dated 17th June 2013 since the "entry outwards" had been made on 3rd June 2013.

CONCEPT 19. Q9. 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 based on the covenant in the contract between the buyer and seller, the assessments are finalized on such invoices. M/s HIL had filed two refund claims arising out of the finalization of the bills of entry by the authorities on 01.03.2014 and on 15.03.2014. With effect from 13.07.2014 (Presidential assent on 13.07.2014) section 18 of the Customs Act, 1962 was amended with the insertion of certain provisions in terms of which it became necessary for the assessee to prove that they had not passed on the amount to their customers. Based on this amendment, the department has rejected the refund claims. Discuss in the light of decided case law, if any, whether the action of the department is correct in law?

Answer: As per the provisions of the Customs Law, any notification issued by the Government of India is effective with effect from the date mentioned in it unless such notification is effective with effect from a retrospective date. In the given case notification is effective w.e.f. 13.7.2014. Section 18 of the Customs Act, 1962 was amended with the insertion of certain provisions in terms of which it became necessary for the assessee to prove that they had not passed on the amount to their customers. Prior to 13.07.2014, in order to claim refund arising out of finalization of provisional assessment, it was not necessary to prove that incidence of duty has not been passed on to the customers. The said requirement has been inserted in section 18 with effect from 13.07.2014. However, the amendment, by which the provisions of unjust enrichment are incorporated in section 18 has come into effect from 13.07.2014. Therefore, M/s HIL will not be required to refer something as evidence or proof that in respect of the bills of entry finalized on 01.03.2014 and 15.03.2014 they have not passed on the incidence of such duty to their customers (M/s Oriental Exports v Commissioner of Customs New Delhi (2006) 200 ELT A/138 (SC)). Hence, the action of department is not correct in law.

CONCEPT 20. Q10. Rishi Alloys Ltd., imported during June, 2013, by sea, a consignment of metal scrap weighting 3,000 M.T. (metric tones) from U.K. They filed a bill of entry for home consumption and the Assistant Commissioner of Customs passed an order for clearance of goods, and applicable duty was also paid. The importer thereafter found on taking delivery from the port trust authorities, that only 2,500 M.T. of scrap were available at the docks although they had paid duty for the entire 3,000 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 the importer. On filing a representation to the Customs Department, the importer has been directed in writing to justify as to which provision of the Customs Act, 1962 governs their claim for restoration of duty on 500 M.T. scrap not delivered by Port-Trust. You are approached by the importer as “counsel” for an opinion or advice. Examine the issues and tender your opinion as per law, giving reasons.

Answer: In the given case it is clear that 500 M.T. scrap has been lost while in custody of the Port-Trust and the weighment certificate also substantiate the fact of loss. Hence, the assessee or importer intimate the Department by a representation about the facts and legal position supra, justifying their claim for refund or restoration of duty under Section 23 of the Customs Act, 1962 (i.e. Section 23 deals with those cases where goods are lost after the proper officer has made an order for home consumption, but before the goods are cleared by the importer, such as in the instant case) read with Section 27 of the Customs Act, 1962, which deals with general refunds.

CONCEPT 21. Venus Udyog Ltd. imported copper scrap for using it as raw material in the manufacture of copper oxychloride. It cleared the imported goods by paying the applicable customs duties including additional customs duty. However, on coming to know that imported copper scrap was exempt from payment of additional customs duty under Notification No. 35/81 dated 1st March, 1981, it filed an application for refund of the same. The refund claim was rejected on the ground of unjust enrichment. The contention of the company is that the doctrine of 'unjust enrichment' is not applicable in case of captive consumption of imported material. Discuss the validity of the contention of the company in the light of the decided case law, if any.

Answer: As per the Hon'ble Supreme Court of India in the case of Union of India (UOI) v Solar Pesticide Pvt. Ltd. (2000) (SC), the doctrine of unjust enrichment is attracted even if the incidence of duty is passed on to another person indirectly as in the case of captive consumption of imported materials. Refund of import duty is made to the importer provided he has not passed on the incidence of duty to any other directly or indirectly (Section 27(2) of the Customs Act, 1962). In the given case Venus Udyog Ltd. imported copper scrap by paying customs duties, not allowed as refund under said notification even though imported goods are used for captive consumption. It means to say that the principle of unjust enrichment applies even in the case of captive consumption of goods. Therefore, contention of Venus Udyog Ltd. is not valid in law.

CONCEPT 22. The assessee had imported resin and impregnated paper and had bonded the same in the warehouse. The assessee had also sought the extension of the said warehousing period by contending that the goods were in good condition but could not be used for manufacture due to recession in the market and the extension was granted. Thereafter another application was made at a later date by contending that the resin impregnated papers which were stored in the ware house had lost its shelf life and had become unfit for use on account of nonavailability of orders for clearance and accordingly an application for remission of duty was made. The department rejected the remission of duty claim on the grounds that section 23 is applicable only when the imported goods have been lost or destroyed at any time before clearance for home consumption. Discuss in the light of decided case law, if any, whether the department is correct in law?

Answer: CCE v Decorative Laminates (I) Pvt. Ltd. 2010 (257) ELT 61 (Kar) The High Court held that the circumstances made out under section 23 of the Customs Act, 1962, were not applicable to the present case since the destruction of the goods or loss of the goods had not occurred before the clearance for home consumption within the meaning of that section. There will be no remission of duty if the goods had become unfit for use on account of non-availability of orders for clearance within the period or extended period as given by the authorities, their continuance in the warehouse will not attract section 23 of the Act. Therefore, from the above it is evident that the department is correct.

CONCEPT 23. B Ltd. filed a Bill of Entry and paid the higher duty in ignorance of notification which allowed him the payment of duty at a concessional rate. No assessment order was passed because the assessee simply filed Bill of Entry and paid the duty. B Ltd. filed a refund claim under section 27 of the Customs Act, 1962 of the excess duty paid by it. The Revenue contended that a refund in appeal could be asked for under section 27 of the Customs Act, 1962 only if the payment of duty had been made pursuant to an assessment order which was not so in the instant case. Do you think that Revenue's contention is valid in law?

Answer: A refund claim can be made u/s 27 if the payment of higher duty and interest in ignorance of a notification which allowed payment of duty at a concessional rate even if there was no assessment order and the payment u/s 27(i) has not been made pursuant to an assessment order. Section 27(ii) covers those classes of cases where the duty is paid by a person without an order of assessment. It

means a refund claim can be filed under section 27 of the Customs Act, 1962 even if the payment of duty has not been made pursuant to an assessment order [Aman Medical Products Ltd. v CCus., Delhi 2010 (250) ELT 30 (Del)]. Therefore, Revenue's contention is not valid in law.

Note: this case is pending before Apex Court (S.C.) in the case of Commissioner v Aman Medicals Products Ltd.

CONCEPT 24. Importer imported "Kari Mayer High Speed Draw Warping Machine" claimed exemption notification. Department contended that exemption notification is for "High Speed Warping Machine" but not for Drawing Unit. Importer further stated that as per opinion of the expert (i.e. Textile Commissioner) the goods imported is covered under Exemption Notification.

Answer: Commissioner of Customs (Import) v Konkan Synthetic Fibres 2012(278) ELT 37 (SC): When no statutory definition was provided in respect of an item in the Customs or Central Excise the opinion of the expert cannot be ignored, rather it should be given due importance. Decision is in favour of the importer and against the department

CONCEPT 25. The importer entered into contract for supply of crude sunflower seed oil U.S. \$ 435 C.I.F./Metric ton. Under the contract, the consignment was to be shipped in the month of July, 2013. The period was extended by mutual agreement and goods were shipped on 5th August, 2013 at old agreed prices. In the meanwhile, the international prices had gone up due to volatility in market, and other imports during August, 2013 were at higher prices. Department sought to increase the assessable value on the basis of the higher prices as contemporaneous imports. Decide whether the contention of the department is correct. You may refer to decided case law, if any, for your decision.

Answer: Commissioner of Cus., Vishakhapatnam v Aggarwal Industries Ltd. 2011 ELT 641 (SC): Decision: No. Department view is not correct. It is true that the commodity involved had volatile fluctuations in its price in the international market, but having delayed the shipment; the supplier did not increase the price of the commodity even after the increase in its price in the international market. There was no allegation of the supplier and importer being in collusion. Thus, the appeal was allowed in the favour of the respondent-assessee.

CONCEPT 26. Case law: Parimal Ray v CCus. 2015 (318) ELT 379 (Cal) Facts of the case: The petitioners imported tunnel boring machines which were otherwise fully exempt from customs duty. However, owing to erroneous classification of such machines, they paid large amount of customs duty. After expiry of more than 3 years, the petitioners filed a writ petition claiming the refund of the amount so paid. The said refund claim was rejected on the ground that the petitioners failed to make a proper application of refund under section 27 of the Customs Act, 1962 within the stipulated period of 1 year of payment of duty.

Decision: The High Court held that law of limitation under section 27 of the Customs Act, 1962 is applicable to duty or interest paid under the Act. However, any sum paid into the exchequer by the assessee is not duty or excess duty but is simply money paid into the account of Government. Therefore, the assessee is entitled to refund of the sum paid by it to the customs authorities.

QUESTIONS AND ANSWERS

Q. 1

- Passenger Aircraft not fitted with seats will still be a passenger Aircraft.
- Motor Car not fitted with wheels or tyres will be classified under the heading of Motor Vehicle
- Parts of air conditioning machines removed in completely knocked down (CKD) or semi knocked down (SKD) packs will be classified as complete machine, if it contains essential elements of air conditioning machines. Because CKD or SKD is only for convenience of transport. [note that assembly at site does not amount to manufacture, these goods have already been manufactured in the factory]

Q. 2

The Motor Car contains the stereo (music system), here two different products namely Motor Vehicle and Electronic System, hence we have to refer the Rule 3 for solution. It means to say that if Rule 2(b) is not applied for any reason then classification shall be under Rule 3.

Q. 3

Electrical lighting used for motor vehicles is more specifically classified under the heading 8512 but not under the heading 8513.

Lamps or torch used with dry batteries is more specifically classified under the heading 8513 but not under the heading 8512.

Q. 4

Cell phone which also contains a calculator will be called as Cell phone and not a calculator. It means to say that the classification should be done according to its main function and additional function may be ignored.

Q. 5

Software loaded into a laptop can be classified as laptop and considered as one unit. The essential character here is the laptop.

Q. 6

ABC Info Tech. developed a software and the same was loaded into a hard disc drive. The value of software is Rs. 100 lakhs and the value of hard disc drive is Rs. 1 lakh. Hence, the computer software gives the essential character and the drive is only a packing material. Therefore, the entire value of goods will be classified as software. [Sprint RPG India Ltd v Commissioner of Customs (SC) (2000)].

Q. 7

If a product by virtue of its essential character comes under two headings namely 8512 and 8513 equally then the said product can be classified under the heading 8513 (i.e. Latter the better)

Q. 8

Manufacturer manufacturing the following products can be understood as most akin products:

- (a) Window mirror of the car
- (b) Front mirror of the car

Q. 9

Glass mirror cannot be classified as Glass and Glassware because glass loses its basic character after it is converted into mirror. It means that mirror has the reflective function [Atul Glass Industries Ltd v CCE (SC) (1986)]

Q. 10

Where the Tariff headings itself uses highly scientific or technical terms, goods should be classified in scientific or technical sense. It means that if the tariff entry is used in a scientific or technical manner then the Trade Parlance Theory does not apply [Akbar Badruddin Jiwani v CC (SC) (1990)].

Q. 11

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 between the date of contract and the date of actual importation?
- (ii) Whether the payment for post-importation process is includable in the value if the same is related to imported goods and is a condition of sale of the imported goods?
- (iii) Bill of entry was filed on 27.10.2017. Will you apply the exchange rate notified by the Central Board of Excise and Customs on 25.9.2017 or notified on 25.10.2017?

Answer:

- (i) The valuation under section 14(1) of the Customs Act, 1962, namely transaction value is applicable.
- (ii) The payment for post importation process is includable in the value of the imported goods if the same is related to such imported goods and is a condition of the sale thereof.
- (iii) The relevant exchange rate for imported goods is the rate which is in force on the date of presentation of bill of entry. CBEC declares the exchange rate applicable for a month which is generally notified in the preceding month. Therefore, in the given case, the bill of entry was submitted by the importer on 27.10.2017. Hence, relevant exchange rate is the rate prevailing on 25.09.2017.

Q. 12

An importer filed a bill of entry after 60 days of filing Import General Manifest. The Deputy Commissioner of Customs imposed a penalty of Rs. 10,000 by endorsement on the bill of entry. Since, importer wants to clear the goods he paid the penalty. Can penalty be imposed for late filing of the bill of entry? Examine the issue in the light of relevant statutory provisions.

Answer:

W.e.f. 31-3-2017 Finance Act, 2017 Section 46 amended: Submission of Bill of entry:

The importer shall presented the bill of entry under section 46(1) of the Customs Act, 1962 before the end of the next day following the day (excluding holidays) on which the aircraft or vessel or vehicle carrying the goods arrives at a customs station at which such goods are to be cleared for home consumption or for warehousing.

Provided that a bill of entry may be presented within 30 days of the expected arrival of the aircraft or vessel or vehicle by which the goods have been shipped for importation into India.

Provided further that where the bill of entry is not presented within the time so specified and the proper officer is satisfied that there was no sufficient cause for such delay, the importer shall pay such charges for the late presentation of the bill of entry as may be prescribed.

In the given case penalty of Rs. 10,000 is valid. Hence, as per the provisions of the Customs Act, 1962, penalty can be imposed for late filing of the bill of entry.

Q. 13

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

Answer:

The Central Government of India has the power to issue Notification under Section 25 of the Customs Act, 1962 to exempt the excisable goods from the duty either by way of generally

- Subject to such conditions
- Whole or any part of duty

The exemption Notification issued U/S 25 of Customs Act, 1962, is not applicable if the EOU or SEZ unit cleared the goods for domestic tariff area, unless a specific provision is mentioned under the notification.

Provisions under Section 5A of the Central Excise Act, 1944 and provisions under Section 25 of the Customs Act, 1962 (i.e. power to grant exemption from customs duty) are one and the same. The notification becomes effective on the date it is issued for publication in Gazette or the date specified in the said notification as the case may be.

Q. 14

Explain the meaning of the term "Bill of export" and "Import report" under the provisions of the Customs Act. 1962.

Answer:

Bill of Export	Import Report
As per Section 2(5) of the Customs Act, "Bill of export" means a bill of export referred to in section 50 of the Customs Act, 1962	As per Section 2(24) of the Customs Act, "Import manifest" or "import report" means the manifest or report required to be delivered under section 30 of the Custom Act, 1962
The exporter of any goods shall make entry thereof by presenting to the proper officer in the case of goods to be exported in a vessel or aircraft, a shipping bill, and in the case of goods to be exported by land, a bill of export in the prescribed form.	The person in charge of a vehicle carrying imported goods or any other person as may be notified by the Central Government shall, in the case of a vehicle, deliver to the proper officer an import report within 12 hours after its arrival in the customs station, in the prescribed form.

Q. 15

M/s Hind IT Co. imported laptops with Hard Disc Drives (HDD) preloaded with operating software like Windows XP, XP home etc. The department has claimed that the said laptop along with the operating software was classifiable and assessable as a single unit. It is the claim of the assessee that the software loaded HDD should be classified and assessed separately as an exemption is available as per notification issued under section 25(1) of the Customs Act, 1962. Decide with a brief note whether the action proposed by the department is correct in law.

Answer:

The pre-loaded operating systems recorded in Hard Disc Drive in the laptop (item of import) forms an integral part of the laptop as the laptop cannot work without the operating system. A laptop without an operating system is like an empty building. Hence, laptop should be treated as one single unit classifiable under the Customs Tariff Act, 1975.

The Apex Court held that when a laptop is imported with in-built pre-loaded operating system recorded on HDD, the said item forms an integral part of laptop (computer system). Hence, laptop should be treated as one single unit classifiable under Heading 84.71.

However, if the operating system is imported as packaged software like an accessory, then it would be classifiable under Heading 85.24. There will be no question of adding the cost of the software. [CCus. v Hewlett Packard India Sales (P) Ltd. (2007) 215 ELT 484 (SC)]

The Department action is correct in the eyes of the law.

Q. 16

ABC Ltd., imported artemia cyst (i.e. brine shrimp eggs). The same has been classified as 'prawn feed' under the heading 2309 (i.e. Heading 2309 of the Customs Act, 1975, includes products of a kind used in animal feeding, not elsewhere specified or included, obtained by processing vegetable or animal materials to such an extent that they have lost the essential characteristics of the original material, other than vegetable waste, vegetable residues and by-products of such processing.) which includes products used as animal feed. However, the Department contended that this product was classifiable under the heading 0511.99 (i.e. which refers to other products in the category of non edible animal products). The contention of importer was that these imported cysts contained little organisms/embryos which later became larva that prawns feed on. Therefore, according to them, the

nature and character of the product was not changed by nurturing or incubation. You are required to examine whether the contention of the Department is justified in law.

Answer:

If a product undergoes some change after importation till the time it is actually used, it is immaterial, provided it remains the same product and it is used for the purpose specified in the classification. Therefore, in the given case, it examined whether the nature and character of the product remained the same.

The Hon'ble High Court held that if the embryo within the egg was incubated in controlled temperature and under hydration, a larva was born. This larva did not assume the character of any different product. Its nature and characteristics were same as the product or organism which was within the egg.

Hence, the Court in the case of Atherton Engineering Co. Pvt. Ltd. v UOI 2010-TIOL-271-HC-Kol-Cus., held that the said product should be classified as feeding materials for prawns under the heading 2309. These embryos might not be proper prawn feed at the time of importation but could become so, after incubation.

The contention of the Department is not justified in law.

Q. 17

X Ltd. is an Indian company manufacturing motor cars and had imported from A Ltd. of USA a shipment of 50 CKD packs (Completely Knocked down Condition) of motor car components. X Ltd. filed bill of entry for clearing the goods, by classifying these goods as components of motor cars. Thereby, X Ltd. also claimed benefit of a notification exempting components, including components of motor cars in semi-knocked down packs and completely knock down packs.

The Customs Officer held that the imported components being complete cars in Completely Knocked down Condition packs had the essential character of the finished goods and as such the entire consignment were to be treated as motor cars and not components. Hence, customs department contended that X Ltd. was not entitled to the benefit of the notification as the notification was only for components.

You are required to examine whether the contention of the Department is justified in law.

Answer:

As per Rule 2(a) of the Interpretative Rules, if the goods are incomplete or unfinished provided these goods have essential character of finished goods, then classify in same heading.

Example:

- Passenger Aircraft not fitted with seats will still be a passenger Aircraft.
- Motor Car not fitted with wheels or tyres will be classified under the heading of Motor Vehicle
- Parts of air conditioning machines removed in completely knocked down (CKD) or semi knocked down (SKD) packs will be classified as complete machine, if it contains essential elements of air conditioning machines. Because CKD or SKD is only for convenience of transport. [note that assembly at site does not amount to manufacture, these goods have already been manufactured in the factory]

In the given case X Ltd. imported car components in CKD packs. The components imported had the essential character of complete car even though presented in unassembled form. Hence, the Hon'ble Supreme Court of India in the case of CC. v Maestro Motors Ltd. (2004) (SC), held that the components in CKD packs would be classified as motor car.

With regard to exemption notification, exemption is granted with reference to tariff items in the First Schedule to the Customs Tariff Act, 1975, and then the Rules of Interpretation must apply.

In the given case the notification exempted components, including components of fuel efficient motor cars in semi-knocked down packs and completely knocked down packs. As per the Customs Tariff Act, 1975 interpretative rules Rule 2(a), for the purpose of levy of customs duty the components in a completely knocked down pack would be considered as cars. Therefore, exemption notification which is applicable to components also applicable to components in completely knocked down packs.

From the above, it is concluded that the components in CKD packs imported by X Ltd. would get exemption under the said Notification, even though for the purpose of classification and clearance they may be considered to be motor cars.

Hence, the contention of the Department is not sustainable in the eyes of the law.

Q. 18

Assessee imported Compact Disk Read Only Memory (CD ROMs) containing images of drawings and designs of engineering goods. The Appellant (i.e. assessee), filed a Bill of Entry for the clearance of the CD ROM containing drawings, designs of engineering goods. The assessee claimed classification under Custom Tariff heading 4906, or, heading 4911, or, as Information Technology Software, or as CD ROM, where exemption is given from duty.

However, the Department classified the same under Customs Tariff heading 8524.39 thereby recorded CD ROMs, liable to duty.

Discuss in the light of decided case law, if any, whether the classification of the department is correct in law?

Answer:

The Hon'ble Supreme Court held that "What is made duty free is the Compact Disk Read Only Memory (CD-ROM) as it is and not a disc containing certain drawings and designs". It further said that the data in a compact disk does not fall within the meaning of the term 'software' to entail the benefit (i.e. nil rate of duty).

Software is a computer program, which enables the computer to function. The drawings and designs of engineering goods recorded on a CD ROM could not be regarded as a "computer program" or "instructions" meant for functioning of computer. In fact, they are "output" of computer software, which generate such drawings and designs. Therefore, they are not Information Technology Software.

The Supreme Court has ruled that the department can impose appropriate duty on the import of CD ROMs containing images of drawing and designs of engineering goods. The assessee cannot claim clearance of such goods at zero duty, said the apex court in the case of M/s L.M.L. Ltd v Commissioner of Customs (2010).

Therefore, the classification of the department is correct in law.

Q. 19

National Instruments Systems imported various products from its Holding Company and supplies the same to its customers in India. The imported products are PXI Controllers, Input/output Modules, Signal Converters, chassis and its parts. Assessee claims that these products were computer based instrumentation products. Accordingly N.I. Systems filed 64 bills of entries, under Customs Tariff Headings 8471, 8473 and other headings falling under Chapter 84.

However, on verification of the technical data (including the catalogue and the webcast of the importer), Department observed that the subject goods were not structurally designed to function as a computer. PXI Controllers, I.O. Modules and Chassis are parts and accessories of a system/instrument which are suitable for use solely or mainly with a number of machines, instruments, apparatus of the same Heading, i.e., 9032 like sensors, thermostats etc.

Discuss in the light of decided case law, if any, whether the view of the department is correct in law?

Answer:

The Apex Court in the case of N.I. Systems (India) Pvt. Ltd. (2010) (SC), has held that imported goods were rightly classified by the Department under Chapter 90 (i.e. sensors, thermostats etc.).

Because, the imported goods were manufactured for a special purpose and that purpose was either measurement or control for industrial use and not as Automatic Data Processing (ADP) Machines. As per the test of common parlance the subject goods are measuring/controlling instruments.

Therefore, the view of the Department was right in classifying the Input/output Modules and Chassis as parts and accessories of Automatic Regulating or Controlling Instruments and Apparatus (i.e. the technical equipment or machinery needed for a particular activity or purpose) in terms of the Customs Tariff Heading 9032.90.00.

Q. 20

Customs Officers located a vessel which is carrying smuggled goods in the sea when it was around 8 nautical miles away from the outer limit of territorial waters. The Customs Officers stopped the vessel and examine and search the goods in the vessel. Examine the case whether the customs officers are authorized to stop the vessel and examine the goods in the vessel?

Answer:

As per section 106 of the Customs Act, 1962, if any conveyance including animal in India or within Indian Customs Waters is believed to be engaged in smuggling, it may be stopped, for conducting search of its parts, examination and search of goods.

In the given case, since the vessel is within the Indian Customs Waters, the customs officers are authorized to stop the vessel and examine and search the goods in the vessel.

Continental Shelf/Exclusive Economic Zones of India

Q. 21

Eva Offshore Ltd. is engaged in drilling operations for exploration of offshore oil, gas and other related activities under contracts. The drilling operations are carried out at oil rigs/vessels which are situated outside the territorial waters of India. Until around November, 1993, the company was permitted to tranship stores to the oil rigs without levy of any customs duty regardless of the fact whether oil rigs were operating within a designated area or non-designated area. Whether oil rigs engaged in operations in the exclusive economic zone/continental shelf of India, falling outside the territorial waters of India, are 'foreign going vessels' as defined by section 2(21) of the Customs Act, 1962, and are entitled to consume imported stores thereon without payment of customs duty in terms of section 87 of the Customs Act, 1962?

Answer:

The Apex Court namely the Supreme Court of India in the case of *Aban Lloyd Chilie's Offshore Ltd. v UOI (2008) 227*

ELT 24 (SC), had held that the goods imported by the assessee for consumption on board on oil rigs 'were stores', as they were for use on oil rigs, which are vessels. However, the oil rigs proceeding to or carrying out operations in, continental shelf/ exclusive economic zones of India, which are deemed to be a part of Indian territory, would not be a foreign going vessels, as the oil rigs proceed from the territory of India to an area which also deemed to be a part of the territory of India.

Thereby, neither the 'oil rigs nor the ship employed for transhipment of the goods to the oil rigs were foreign going vessel'. Therefore, the stores transshipped to the oil rigs and consumed thereon were not entitled to exemption u/s. 87 of the Customs Act, 1962. Therefore, the supply of imported spares or goods or equipments to the rigs by a ship will attract import duty.

In the given case, Eva Offshore Ltd. is liable to pay duty on imported stores. Relevant Date for Customs Duty in case of Export

Q. 22

The shipping bill in respect of an export consignment was presented to the Customs Officer on 25th May 2013. The Customs Officer granted 'entry outwards' to the ship on 3rd June 2013, the loading of the goods in the ship had commenced only after 17th June 2013. A notification was issued by the Government of India under the Customs Act, 1962 exempting the export item from customs duty on 17th June 2013. The assessee contends that since the loading of the goods in the ship had commenced after 17th June 2013, the export consignment is eligible for the benefit of the exemption notification. You are required to examine whether the contention of the exporter is justifiable in the law.

Answer:

As per Section 16 of the Customs Act, 1962, 'Relevant Date' for customs duty in connection with export of goods would be the rate which prevailed when "entry outwards" for the vessel which ultimately exported the goods was effected and subsequent change in the rate of duty would be irrelevant. In other words rate of duty as on the date of entry outwards was granted. The same view has been expressed by Hon'ble Supreme Court of India in case of *Esajee Tayabally Kapasi (7995)*.

Therefore, the assessee is not entitled to seek exemption under notification dated 17th June 2013 since the "entry outwards" had been made on 3rd June 2013.

Q. 23

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 based on the covenant in the contract between the buyer and seller, the assessments are finalized on such invoices. M/s HIL had filed two refund claims arising out of the finalization of the bills of entry by the authorities on 01.03.2014 and on 15.03.2014. With effect from 13.07.2014 (Presidential assent on 13.07.2014) section 18 of the Customs Act, 1962 was amended with the insertion of certain provisions in terms of which it became necessary for the assessee to prove that they had not passed on the amount to their customers. Based on this amendment, the department has rejected the refund claims. Discuss in the light of decided case law, if any, whether the action of the department is correct in law?

Answer:

As per the provisions of the Customs Law, any notification issued by the Government of India is effective with effect from the date mentioned in it unless such notification is effective with effect from a retrospective date.

In the given case notification is effective w.e.f. 13.7.2014. Section 18 of the Customs Act, 1962 was amended with the insertion of certain provisions in terms of which it became necessary for the assessee to prove that they had not passed on the amount to their customers. Prior to 13.07.2014, in order to claim refund arising out of finalization of provisional assessment, it was not necessary to prove that incidence of duty has not been passed on to the customers. The said requirement has been inserted in section 18 with effect from 13.07.2014. However, the amendment, by which the provisions of unjust enrichment are incorporated in section 18 has come into effect from 13.07.2014.

Therefore, M/s HIL will not be required to refer something as evidence or proof that in respect of the bills of entry finalized on 01.03.2014 and 15.03.2014 they have not passed on the incidence of such duty to their customers (M/s Oriental Exports v Commissioner of Customs New Delhi (2006) 200 ELT A/138 (SC)).

Hence, the action of department is not correct in law.

Goods Lost while in custody of the Port-Trust

Q. 24

Rishi Alloys Ltd., imported during June, 2013, by sea, a consignment of metal scrap weighting 3,000 M.T. (metric tones) from U.K. They filed a bill of entry for home consumption and the Assistant Commissioner of Customs passed an order for clearance of goods, and applicable duty was also paid. The importer thereafter found on taking delivery from the port trust authorities, that only 2,500 M.T. of scrap were available at the docks although they had paid duty for the entire 3,000 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 the importer.

On filing a representation to the Customs Department, the importer has been directed in writing to justify as to which provision of the Customs Act, 1962 governs their claim for restoration of duty on 500 M.T. scrap not delivered by Port-Trust. You are approached by the importer as "counsel" for an opinion or advice. Examine the issues and tender your opinion as per law, giving reasons.

Answer:

In the given case it is clear that 500 M.T. scrap has been lost while in custody of the Port-Trust and the weighment certificate also substantiate the fact of loss.

Hence, the assessee or importer intimate the Department by a representation about the facts and legal position supra, justifying their claim for refund or restoration of duty under Section 23 of the Customs Act, 1962 (i.e. Section 23 deals with those cases where goods are lost after the proper officer has made an order for home consumption, but before the goods are cleared by the importer, such as in the instant case) read with Section 27 of the Customs Act, 1962, which deals with general refunds.

Q. 25

Venus Udyog Ltd. imported copper scrap for using it as raw material in the manufacture of copper oxy-chloride. It cleared the imported goods by paying the applicable customs duties including additional customs duty. However, on coming to know that imported copper scrap was exempt from payment of additional customs duty under Notification No. 35/81 dated 1st March, 1981, it filed an application for refund of the same. The refund claim was rejected on the ground of unjust enrichment. The contention of the company is that the doctrine of 'unjust enrichment' is not applicable in case of captive consumption of imported material. Discuss the validity of the contention of the company in the light of the decided case law, if any.

Answer:

As per the Hon'ble Supreme Court of India in the case of Union of India (UOI) v Solar Pesticide Pvt. Ltd. (2000)

(SC), the doctrine of unjust enrichment is attracted even if the incidence of duty is passed on to another person indirectly as in the case of captive consumption of imported materials. Refund of import duty is made to the importer provided he has not passed on the incidence of duty to any other directly or indirectly (Section 27(2) of the Customs Act, 1962).

In the given case Venus Udyog Ltd. imported copper scrap by paying customs duties, not allowed as refund under said notification even though imported goods are used for captive consumption. It means to say that the principle of unjust enrichment applies even in the case of captive consumption of goods.

Therefore, contention of Venus Udyog Ltd. is not valid in law.

Q. 26

The assessee had imported resin and impregnated paper and had bonded the same in the warehouse. The assessee had also sought the extension of the said warehousing period by contending that the goods were in good condition but could not be used for manufacture due to recession in the market and the extension was granted. Thereafter another application was made at a later date by contending that the resin impregnated papers which were stored in the ware house had lost its shelf life and had become unfit for use on account of nonavailability of orders for clearance and accordingly an application for remission of duty was made.

The department rejected the remission of duty claim on the grounds that section 23 is applicable only when the imported goods have been lost or destroyed at any time before clearance for home consumption.

Discuss in the light of decided case law, if any, whether the department is correct in law?

Answer:

CCE v Decorative Laminates (I) Pvt. Ltd. 2010 (257) ELT 61 (Kar)

The High Court held that the circumstances made out under section 23 of the Customs Act, 1962, were not applicable to the present case since the destruction of the goods or loss of the goods had not occurred before the clearance for home consumption within the meaning of that section.

There will be no remission of duty if the goods had become unfit for use on account of non-availability of orders for clearance within the period or extended period as given by the authorities, their continuance in the warehouse will not attract section 23 of the Act.

Therefore, from the above it is evident that the department is correct.

Q. 27

B Ltd. filed a Bill of Entry and paid the higher duty in ignorance of notification which allowed him the payment of duty at a concessional rate. No assessment order was passed because the assessee simply filed Bill of Entry and paid the duty. B Ltd. filed a refund claim under section 27 of the Customs Act, 1962 of the excess duty paid by it. The Revenue contended that a refund in appeal could be asked for under section 27 of the Customs Act, 1962 only if the payment of duty had been made pursuant to an assessment order which was not so in the instant case.

Do you think that Revenue's contention is valid in law?

Answer:

A refund claim can be made u/s 27 if the payment of higher duty and interest in ignorance of a notification which allowed payment of duty at a concessional rate even if there was no assessment order and the payment u/s 27(i) has not been made pursuant to an assessment order. Section 27(ii) covers those classes of cases where the duty is paid by a person without an order of assessment. It means a refund claim can be filed under section 27 of the Customs Act, 1962 even if the payment of duty has not been made pursuant to an assessment order [Aman Medical Products Ltd. v CCus., Delhi 2010 (250) ELT 30 (Del)].

Therefore, Revenue's contention is not valid in law.

Note: this case is pending before Apex Court (S.C.) in the case of Commissioner v Aman Medicals Products Ltd.

Q. 28

Importer imported "Kari Mayer High Speed Draw Warping Machine" claimed exemption notification. Department contended that exemption notification is for "High Speed Warping Machine" but not for Drawing Unit.

Importer further stated that as per opinion of the expert (i.e. Textile Commissioner) the goods imported is covered under Exemption Notification.

Answer:

Commissioner of Customs (Import) v Konkan Synthetic Fibres 2012(278) ELT 37 (SC):

When no statutory definition was provided in respect of an item in the Customs or Central Excise the opinion of the expert cannot be ignored, rather it should be given due importance.

Decision is in favour of the importer and against the department

Q. 29

The importer entered into contract for supply of crude sunflower seed oil U.S. \$ 435 C.I.F./Metric ton. Under the contract, the consignment was to be shipped in the month of July, 2013. The period was extended by mutual agreement and goods were shipped on 5th August, 2013 at old agreed prices. In the meanwhile, the international prices had gone up due to volatility in market, and other imports during August, 2013 were at higher prices. Department sought to increase the assessable value on the basis of the higher prices as contemporaneous imports. Decide whether the contention of the department is correct. You may refer to decided case law, if any, for your decision.

Answer:

Commissioner of Cus., Vishakhapatnam v Aggarwal Industries Ltd. 2011 ELT 641 (SC):

Decision: No. Department view is not correct.

It is true that the commodity involved had volatile fluctuations in its price in the international market, but having delayed the shipment; the supplier did not increase the price of the commodity even after the increase in its price in the international market. There was no allegation of the supplier and importer being in collusion. Thus, the appeal was allowed in the favour of the respondent-assessee.

Q. 30

Parimal Ray v CCus. 2015 (318) ELT 379 (Cal)

Facts of the case: The petitioners imported tunnel boring machines which were otherwise fully exempt from customs duty. However, owing to erroneous classification of such machines, they paid large amount of customs duty.

After expiry of more than 3 years, the petitioners filed a writ petition claiming the refund of the amount so paid. The said refund claim was rejected on the ground that the petitioners failed to make a proper application of refund under section 27 of the Customs Act, 1962 within the stipulated period of 1 year of payment of duty.

Decision: The High Court held that law of limitation under section 27 of the Customs Act, 1962 is applicable to duty or interest paid under the Act. However, any sum paid into the exchequer by the assessee is not duty or excess duty but is simply money paid into the account of Government. Therefore, the assessee is entitled to refund of the sum paid by it to the customs authorities.

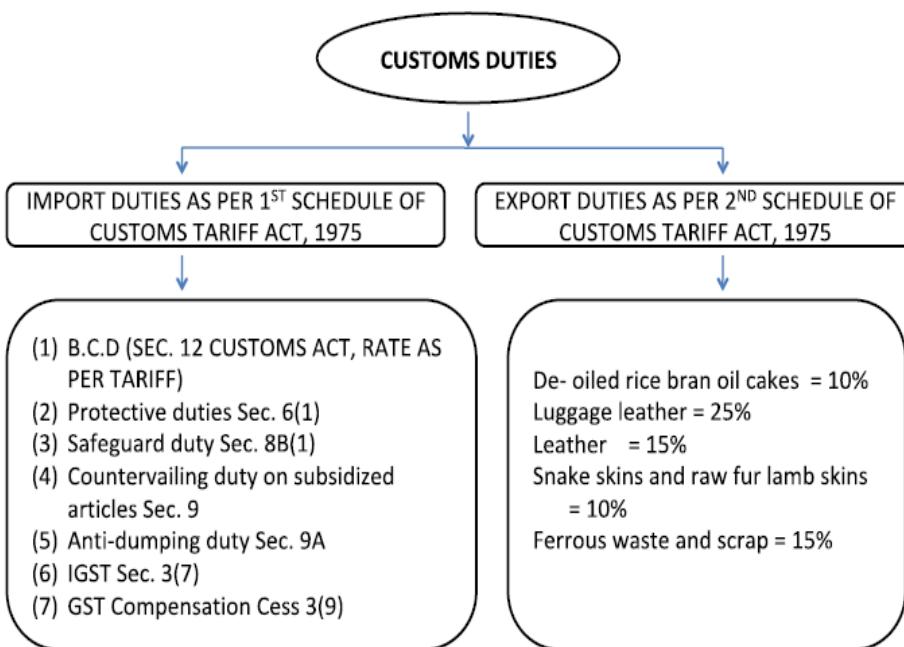
TYPES OF DUTIES

CONCEPT 1. Under the Customs Act, 1962 import duty can be levied on almost all imports, whereas only few goods export duty levied.

CONCEPT 2. Basically section 2 of the Customs Tariff Act, 1975 provides following:

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

CONCEPT 3. The following duties are leviable by the customs department as per the Customs Tariff Act, 1975



CONCEPT 4. The Basic Customs Duty is levied under section 12 of the Customs Act, 1962. As per section 2 of the Customs Tariff Act, 1975 preferential rate of duty is always lesser than standard rate of duty. The importer has to satisfy certain conditions to avail the preferential rate of duty on imported goods.

CONCEPT 5. Importer imports machinery as well as accessories which are classifiable under two different headings of Customs Tariff Act with different rate of duties. If so, the accessories are essential for machinery then the rate of duty applicable for machinery is also applicable for accessories.

CONCEPT 6. If the accessories are not essential for operation of machinery then rate of duties as applicable for machinery as well as accessories will apply separately. Hence, the common expenditure of packing charges, freight charges, insurance charges etc., will be apportioned in the ratio of the value of accessories and machinery.

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

CONCEPT 8. CASE LAW CVD (now called as IGST) on an imported product be exempted if the excise duty (now GST) on a like article produced or manufactured (now called as supply) in India is exempt? **Aidek Tourism Services Pvt. Ltd. v. CCus. 2015 (318) ELT 3 (SC)**

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

CONCEPT 9. GST Compensation cess, wherever applicable, would be levied on cargo that would arrive on or after 1st July 2017. The value of the imported article for the purpose of levying GST Compensation cess shall be, assessable value plus Basic Customs Duty levied under the Act, and any sum chargeable on the goods under any law for the time being in force, as an addition to, and in the same manner as, a duty of customs. These would include education cess or higher education cess as well as anti - dumping and safeguard duties.

CONCEPT 10. Input tax credit be availed on GST Compensation Cess paid on inward supplies: Yes, input tax credit can be availed on GST Compensation Cess paid on inward supplies of the above-mentioned notified goods. However, the credit of GST Compensation Cess paid can be utilized only towards payment of the GST Compensation Cess liability.

CONCEPT 11. In cases where imported goods are liable to Anti - Dumping Duty or Safeguard Duty, value for calculation of IGST as well as Compensation Cess shall also include Anti - Dumping Duty amount and Safeguard duty amount.

CONCEPT 12. The IGST paid shall not be added to the value for the purpose of calculating Compensation Cess.

CONCEPT 13. ADDITIONAL DUTY OF CUSTOMS OR COUNTERVAILING DUTY (CVD)

As per sec 3(1) of the Customs Tariff Act, 1975, any article which is imported into India is subject to liable to duty (in addition to BCD) equal to the excise duty for the time being leviable on a like article if produced or manufactured in India. This duty can be levied only if the article is such that, it could be manufactured or produced in India. As held by the Honourable Supreme Court of India in the case of *Hyderabad Industries Ltd. v Union of India (1999) (SC)*, in order to attract additional duty of customs it is not necessary that the like goods should have been manufactured in India and so long as the imported goods are the one capable of manufactured or produced, it attracts additional duty of customs even it is not actually manufactured in India. However, if goods manufactured in India are exempt from excise duty, then there is no Additional Duty of Customs [CCE v J K Synthetics (2000) (SC)]. **w.e.f. 17-3-2012.**

CONCEPT 14. CASE LAW M/s Bharti Telemedia Ltd. v Commissioner of Customs (Import),

Nhava Sheva 2016 (331) ELT 138 (Tri.-Mumbai): Issue: Set top boxes (STBs) are imported by a Direct to Home (DTH) broadcasting service provider and provided free of cost to the consumers of DTH service. The issue is whether, in such conditions, the value for the purposes of calculation of CVD be determined on the basis of retail sale price (RSP) in terms of proviso to section 3(2) of the Customs Tariff Act, 1975? Note: Set top boxes abatement 22%.

Decision: Hon'ble Tribunal has been held that one of the conditions to be met for CVD to be levied on retail sale price is that under the Legal Metrology Act, there should be requirement to declare on the package, the retail sale price (RSP) of the goods. There appears to be no sale in the use of the set top box by the ultimate consumer. After detailed analysis, the Tribunal held that in the given circumstances CVD would not be leviable on the basis of retail sale price. Therefore, Imported set top boxes to be valued under section 4 of the Central Excise Act, 1944 for the purpose of computing CVD.

CONCEPT 15. Imported goods shall in addition to basic customs duty and additional duty shall also be liable to special additional duty, which shall be levied at a rate to be specified by the Central Government Such rate shall be notified by the central govt. having regard to the maximum sales tax, local tax or any other charge. At present the special CVD rate is 4%.

CONCEPT 16. For a trader Spl. CVD is allowed as refund provided he suffered VAT in the state on these goods. In respect of the following imported goods, Spl. CVD under Section 3(5) of the Customs Tariff Act, 1975 is fully exempted:

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

CONCEPT 17. Protective duties are levied by the central govt. upon the recommendation made by the Tariff Committee and upon it being satisfied that circumstances exist which render it necessary to take immediate action to provide protection to any INDUSTRY established in India. While calculating protective duties we should not calculate the education cess and secondary and higher education cess. As per WTO, protective duty is not supposed to be levied, hence, at present this duty is not in force.

CONCEPT 18. Safeguard duty is imposed for the purpose of protecting the interests of any domestic industry in India. It is product specific. While calculating *Safeguard duty* we should not calculate the education cess and secondary and higher education cess. The Central Government of India can impose provisional safeguard duty, pending final determination upto 200 days. The duty imposed under this section shall be in force for a period of 4 years from the date of its imposition and can be extended with the total period of levy not exceeding 10 year *w.e.f. 6-8-2014 if imported goods are cleared in DTA, then safeguard duty will be payable.*

CONCEPT 19. The Central Government may, pending the determination under sub-section (1) of Section 8B, impose a provisional safeguard duty under this sub-section on the basis of a preliminary determination that increased imports have caused or threatened to cause serious injury to a domestic industry;

CONCEPT 20. Provided that where, on final determination, the Central Government is of the opinion that increased imports have not caused or threatened to cause serious injury to a domestic industry, it shall refund the duty so collected;

CONCEPT 21. Provided further that the provisional safeguard duty shall not remain in force for more than two hundred days from the date on which it was imposed.

CONCEPT 22. COUNTERVAILING DUTY ON SUBSIDIZED ARTICLES

Duty levied if the articles are imported into India by getting the subsidies from other country. While calculating *Countervailing Duty on Subsidized articles* we should not calculate the education cess and secondary and higher education cess. It shall be in force for a period of 5 years from the date of its imposition and can be extended for a further period of 5 years.

CONCEPT 23. ANTI-DUMPING DUTY

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

CONCEPT 24. Value for calculation of IGST as well as Compensation Cess shall also include Anti - Dumping Duty amount and Safeguard duty amount

CONCEPT 25. WHEN CAN PROVISIONAL MEASURES IMPOSED

Provisional Anti Dumping Measures can be imposed only after 60 days from the date of the intimation of anti dumping investigation namely The Directorate General of Anti Dumping and Allied Duties (DGAD). The Central Government has power to levy anti-dumping duty on dumped articles in accordance with the provisions of section 9A of the Customs Tariff Act, 1975 and the rules framed thereunder.

CONCEPT 26. REFUND OF ANTI-DUMPING DUTY

According to the provisions of section 9AA of the Customs Tariff Act, 1975, where an importer proves to the satisfaction of the Central Government that he has paid any antidumping duty imposed on any article, in excess of the actual margin of dumping in relation to such article, he shall be entitled to refund of such excess duty. However, the importer will not be entitled for refund of provisional anti-dumping duty under section 9AA as it is refundable under section 9A(2) of the said Act.

CONCEPT 27. Deferred Payment of Import Duty Rules, 2016 (w.e.f. 16.11.2016) Notification No. 134/2016 Customs (NT) dt. 02.11.2016

It is based on the principle 'Clear first-Pay later'.

As a part of the ease of doing business focus of the Government of India, the Central Board of Excise and Customs (CBEC) has rolled out the AEO (AUTHORIZED ECONOMIC OPERATOR) programme. This scheme is in force w.e.f. 16 Nov 2016. AEO means Authorised Economic Operator certified by the Directorate General of Performance Management under CBEC.

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

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

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

CONCEPT 28. For the economic operators other than importers and the exporters, the new programme offers only one tier of certification (i.e. AEO-LO) whereas for the importers and the exporters, there will be three tiers of certification (i.e. AEO-T1, AEO-T2 and AEO-T3).

CONCEPT 29. An eligible importer who intends to avail the benefit of deferred payment shall intimate to the Principal Commissioner of Customs or the Commissioner of Customs, as the case may be, having jurisdiction over the port of clearance, his intention to avail the said benefit. Once, Customs Authority satisfied with the eligibility of the importer allow him to pay the duty by due dates.

CONCEPT 30. Every importer certified as AEO-T2/AEO-T3 shall obtain ICEGATE (Indian Customs Electronic Commerce/Electronic Data interchange (EC/EDI) Gateway) Login which is essential to avail benefits envisaged in the Duty Deferment Scheme.

CONCEPT 31. 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.

CONCEPT 32. If there is default in payment of duty by due date more than once in three consecutive months, this facility of deferred payment will not be allowed unless the duty with interest has been paid in full. The benefit of deferred payment of duty will not be available in respect of the goods which have not been assessed or not declared by the importer in the bill of entry.

CONCEPT 33. Due dates for payment of duty: The eligible importer has to pay the duty by the dates mentioned below inclusive of the period (excluding holidays) as mentioned in section 47(1):-

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

For the period From 31.03.2017	
1 st to 15 th day of any month	16 th day of that month
16 th day till the last day of any month other than March	1 st day of the following month
16 th day till the 31 st day of March	31 st March

CONCEPT 34. IMPORTS AND INPUT TAX CREDIT (ITC)

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

QUESTIONS AND ANSWERS

Q. 1

Mr. X imported Cashewnuts shelled then the import duty will be as follows:

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

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

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

Q. 2

Mr. X imported the goods from China worth USD 10,000. The Basic Customs Duty @10%, Social Welfare Surcharge @ 10%. The exchange rate was 1 US \$ = Rs. 44 on date of presentation of Bill of Entry. Find the total Customs Duty.

Answer:

The assessable value of Imported Goods	= Rs. 4,40,000 [US \$ 10,000 x Rs. 44]
Basic Customs Duty 4,40,000 x 10%]	= Rs. 44,000
SWS	= Rs. 4,400
Total value of imported goods	= Rs. 4,88,400
Therefore the total value of customs duty	= Rs. 48,400

Q. 3

Suppose Assessable Value (A.V.) including landing charges = Rs. 100/-

- (1) BCD - 10%
- (2) IGST - 12%
- (3) SWS @ 10%

In view of the above parameters, the calculation of duty would be as below:

- (a) BCD = Rs. 10 [10% of A.V.]
- (b) SWS - Rs. 1 [10% of (a)]
- (c) IGST - Rs. 13.32 [A.V. + (a) + (b)] *12%

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

Q. 4

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

- (i) Assessable value of the imported equipment US \$10,100.
- (ii) Date of Bill of Entry 25.4.2018 basic customs duty on this date 12% and exchange rate notified by the Central Board of Excise and Customs US \$ 1 = Rs. 65.
- (iii) Date of Entry inwards 21.4.2018 Basic customs duty on this date 16% and exchange rate notified by the Central Board of Excise and Customs US \$ 1 = Rs. 60.
- (iv) IGST u/s 3(7) of the Customs Tariff Act, 1975: 12%. Social Welfare Surcharge = 10%

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

Answer:

A.V	6,56,500.00 (10,100 x 65)
Add: BCD 12% on 6,56,500	78,780.00
Add: SWS @10%	7,878.00
Balance	7,43,158.00

Add: IGST 12% on 7,43,158.00	89,178.96
Value of Imported goods	8,32,336.96
Customs Duty	1,75,836.96

Q. 5

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

- (i) F.O.B value of machine 8,000 UK Pounds
- (ii) Freight paid (air) 2,500 UK Pounds
- (iii) Design and development charges paid in UK 500 UK Pounds
- (iv) Commission payable to local agents @ 2% of F.O.B in Indian Rupees
- (v) Date of bill of entry 24.10.2019 (Rate BCD 12%; Exchange rate as notified by CBIC Rs. 68 per UK Pound)
- (vi) Date of entry inward 20.10.2019 (Rate of BCD 18%; Exchange rate as notified by CBIC Rs. 70 per UK Pound).
- (vii) IGST payable 18%.
- (viii) Insurance charges actually paid but details not available.

Answer:

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

Statement showing customs duties

Particulars	Value Rs.	Working note
Assessable value	7,13,281	
Add: BCD	85,593.72	(7,13,281 x 12%)
Add: SWS	8,559.37	
Balance	8,07,434.09	
Add: IGST	1,45,338.13	
Landed value	9,52,772.22	
Total Customs duties	2,39,491.22	

Q. 6

Liberty International Group has imported a machine by air from United States. Bill of entry is presented on 18.07.2019. However, entry inwards is granted on 7.08.2019.

The relevant details of the transaction are provided as follows:

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

Announced by	As on 18.07.2019	As on 7.08.2019
CBIC	1 US \$ = Rs. 66	1 US \$ = Rs. 65.80
RBI	1 US \$ = Rs. 66.10	1 US \$ = Rs. 66.10

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

BCD = Nil IGST = 18%

Make suitable assumptions wherever necessary.

Answer:

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

Q. 7

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

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

Date of bill of entry	20.02.2018 (Rate BCD 20%;
	Exchange rate as notified by CBIC
	Rs. 60 per US \$)
Date of entry inward	25.01.2018 (Rate of BCD 12%;
	Exchange rate as notified by CBIC
	Rs. 65 per US \$)

IGST payable under section 3(7) of the Customs Tariff Act, 1975 12%

Also find the eligible input tax credit to the importer.

Answer:

Statement showing Assessable and customs duty:

Particulars	US \$	Remarks
Cost of the machine	20,000	
Add: transport charges from factory of exporter to the port for shipment	800	
Add: handling charges	50	

FOB	20,850	
Add: buying commission	Nil	Not addable
FOB of the Customs	20,850	
Add: Insurance	234.5625	20,850 x 1.125%
Add: Freight	5,000	
Add: Lighterage charges	200	
Add: Ship demurrage	400	
CIF Value/Assessable Value	26,684.5625	
Assessable Value	16,01,074	26,684.5625 USD x Rs. 60
Add: BCD 20%	3,20,215	Rs. 16,01,074 x 20%
Add: SWS @ 10%	32,021.5	
Balance	19,53,310.5	
Add: IGST	2,34,397.26	
Landed value of imported goods	21,87,707.76	
Total customs duty	5,86,633.76	

Note: Importer is eligible to avail input tax credit of IGST portion (i.e. Rs. 2,34,397.26) under GST Law provided he is using these goods for his business.

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

Q. 8

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

X Ltd sold this machine to Y Ltd on 15th June 20XX by transferring documents of title on the goods. Y Ltd cleared goods from warehouse on 15th July 20XX after payment of duty and interest.

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

You are required to answer the following:

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

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

Answer:

Statement showing value for Customs Duty:

FOB		68,00,000
Add: Insurance 1.125%		76500
Add: Freight 20%	=	1360000
CIF (i.e. AV)	=	82,36,500
BCD with SWS:		
82,36,500 x 13.2%	=	10,87,218
sub-total	=	93,23,718
IGST	18%	= 16,78,269
Total Customs Duty	27,65,487	

w.e.f. 1-2-2019, Schedule III of CGST Act, 2017:

supply excludes Supply of warehoused goods to any person before clearance for home consumption. Therefore, there is no IGST under GST Law.

Q. 9

Suppose Assessable Value (A.V.) including landing charges = Rs. 100/-

- (1) BCD - 10%
- (2) IGST - 12%
- (3) SWS @ 10%
- (4) Compensation cess - 10%

In view of the above parameters, the calculation of duty would be as below:

- (a) BCD = Rs. 10 [10% of A.V.]
- (b) SWS - Rs. 1 [10% of (a)]
- (c) IGST - Rs. 13.32 [A.V. + (a)+(b)] x 12%
- (d) Compensation cess - Rs. 11.01 [A.V. + (a)+(b)] x 10%

Where product attract CVD, IGST & Compensation cess:

Q. 10

Suppose Assessable Value (A.V.) including landing charges = Rs. 100/-

- (1) BCD - 10%
 - (2) CVD - 12%
 - (3) IGST - 28%
 - (4) SWS @ 10%
 - (5) Compensation cess - 10%
- (a) BCD = Rs. 10 [10% of A.V.]
 - (b) CVD = Rs. 13.2 [12% of (A.V.+ BCD)]
 - (c) SWS - Rs. 2.32 (10% of BCD+CVD)
 - (d) IGST - Rs. 35.1456 [A.V. + (a) + (b)+ (c)] x 28%
 - (e) Compensation cess - Rs. 12.552 [A.V. + (a) + (b)+ (c)] x 10%

Q. 11

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

Particulars	Amount (INR)
Cost of vehicle (Assessable value)	300,00,000
Custom duty	10%
IGST	28%
Compensation cess	20%

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

Answer:

Particulars	Calculation	Amount (INR)
Cost of Vehicle-(A)		300,00,000
Custom duty-(B)	10%	30,00,000
SWS-(C)	10% on (B)	300,000
Total custom duty payable- (D)	(B+C)	33,00,000
Total Cost after Custom duty-(E)	(A+D)	3,33,00,000
IGST-(F)	28% on (E)	93,24,000
Compensation cess-(G)	20% on (E)	66,60,000
Total cost-(H)	(E+F+G)	4,92,84,000

- Input tax credit available to set off against output IGST is INR 93,24,000
- Compensation cess paid cannot be set off against output tax liability of IGST

Q. 12

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

Answer:

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

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

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

Q. 13

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

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

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

Note: Safeguard duty is @ 30%.

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

Answer:

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

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

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

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

Q. 14

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

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

Importers	Country of Import	Rs. Scores
X Ltd.	Developing country	70
Y Ltd.	Developing country	72
Z Ltd.	Developing country	52
A Ltd.	Developing country	50
Others	Developed country	2,256
	Total	2,500

Note: Safeguard duty 30%

Answer:

Importer	Country of import	Rs. in crores	% of imports
X Ltd.	Developing country	70	2.8%
Y Ltd.	Developing country	72	2.88%
Z Ltd.	Developing country	52	2.08%
A Ltd.	Developing country	50	2%
Others	Developed country	2,256	
	Total	2,500	9.76%

Safeguard duty is as follows:			
X Ltd		21	70 x 30%
Y Ltd		21.60	72 x 30%
Z Ltd		15.60	52 x 30%
A Ltd		15	50 x 30%

Articles originating from more than one developing countries and imports from each developing country is less than 3%, safeguard duty can be imposed if imports from all such developing countries taken together exceeds 9% of total imports of that article in India.

Q. 15

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

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

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

Note: Safeguard duty 30%.

Answer:

Importer	Country of import	Rs. in crores	% of imports
X Ltd.	Developing country	70	2.8%
Y Ltd.	Developing country	82	3.28%
Z Ltd.	Developing country	52	2.08%
A Ltd.	Developing country	50	2%
Others	Developed country	2,246	
	Total	2,500	6.88%
			3.28%

Safeguard duty is as follows:

X Ltd.	Nil	70 x 30%
Y Ltd.	24.60	82 x 30%
Z Ltd.	Nil	52 x 30%
A Ltd.	Nil	50 x 30%

Articles originating from more than one developing countries (each with less than 3% import share), then the aggregate of imports from all such countries taken together does not exceed 9% (i.e. in the given case 6.88%) of the total imports of that article into India. Therefore, Safeguard duty is not applicable to X Ltd., Z Ltd., and A Ltd.

Q. 16

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

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

Quantity imported: 500 kgs.

Exchange rate applicable: Rs. 60 = US\$1

Basic customs duty: 12%

Social Welfare Surcharge @ 10%

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

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

Assume that only 'basic customs duty' (BCD) and education and secondary and higher education cess are payable. IGST @ 12% is also be applicable.

Answer:

Statement showing landed value of imported goods and customs duties:

Particulars	US \$
CIF value	25,000
	Value in Rs.
Assessable value (i.e. 25,000 x Rs.60)	15,00,000
Add: Customs duty 13.2% on Assessable value	1,98,000
Landed value (or value of imported goods)	16,98,000
Anti-dumping duty (21,00,000 - 16,98,000)	4,02,000
Market value of imported goods (500 kgs x Rs.60 x US \$70) = 21,00,000	
Open Market Value	21,00,000
Add: IGST @12% on Rs. 21,00,000	2,52,000
Total	23,52,000

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

Q. 17

Mr. X an importer imported certain goods CIF value was US \$ 20,000 and quantity 1,000 Kgs. Exchange rate was 1 US \$ = Rs. 50 on date of presentation of Bill of Entry. Customs Duty rates are—
(i) Basic Customs Duty 12% (ii) SWS @ 10% There is no excise duty payable on these goods if manufactured in India. As per Notification issued by the Government of India, anti-dumping duty has been imposed on these goods. The anti-dumping duty will be equal to difference between amount calculated @ US \$ 30 per kg and 'landed value' of goods. Compute Customs Duty liability and anti-dumping liability.

Answer

Part I

	Rs.
Total CIF Price/Assessable Value US \$ 20,000 x Rs. 50	= 10,00,000
Basic duty @ 12%	= 1,20,000
Sub total	= 12,000
Add: SWS 10% on 1,20,000	= 2,400
Value of imported goods	= 11,32,000

Total Customs Duty payable is Rs. 1,32,000.

Part II

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

Part III

Computation of anti-dumping duty

Rate as per Anti Dumping Notification	= Rs. 15,00,000
Less: Value of imported goods as computed above	= Rs. (11,32,000)
Anti Dumping Duty payable	= Rs. 3,68,000

Q. 18

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

Import of Sodium Nitrite from developing and developed countries from 26th February, 2019 to 25th February, 2020 (both days inclusive) are as follows:

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

Note: Safeguard duty is 30%. [7]

Answer

Importer	Country of Import	Rs. in crores	% of imports
X Ltd.	Developing Country	70	2.8%
Y Ltd.	Developing Country	72	2.88%
Z Ltd.	Developing Country	52	2.08%
A Ltd.	Developing Country	50	2%
Others	Developed Country	2,246	
	Total	2,500	9.76%

Safeguard duty is as follows:

Importer	Rs. in crores	% of imports
X Ltd.	21	70 x 30%
Y Ltd.	21.60	72 x 30%
Z Ltd.	15.60	52 x 30%
A Ltd.	15	50 x 30%

Articles originating from more than one developing countries and imports from each developing country is less than 3%, safeguard duty can be imposed if imports from all such developing countries taken together exceed 9% of total imports of that article in India.

Q. 19

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

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

Quantity imported: 500 kgs.

Exchange rate applicable: Rs. 60=US\$1

Basic customs duty: 12%

Social Welfare Surcharge applicable as per the Finance Act, 2018.

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

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

Assume that only 'basic customs duty' (BCD) and Social Welfare Surcharge are payable. IGST @12% is also be applicable.

Answer

Statement showing landed value of imported goods and customs duties:

Particulars	US \$
CIF value	25,000
	Value in Rs.
Assessable value (i.e. 25,000 x Rs. 60)	15,00,000
Add: Customs duty (including SWS) 13.2% on Assessable value	1,98,000
Landed value (or value of imported goods)	16,98,000
Anti-dumping duty (21,00,000 - 16,98,000)	4,02,000
Market value of imported goods (500 kgs x Rs. 60 x US \$70) = 21,00,000	
Open Market Value	21,00,000
Add: IGST @12% on Rs. 21,00,000	2,52,000
Total	23,52,000

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

Q. 20

Enlist differences between Safeguard Duty and Anti - dumping duty. What do you mean by deemed export?

Answer

The difference between safeguard duty and anti-dumping duty:

Basis	Safeguard duty	Anti-dumping duty
Levy under	Section 8B or 8C of Custom Tariff Act, 1975.	Section 9A of Custom Tariff Act, 1975.
Objective	To ensure that bulk import of goods do not cause serious injury/ disruption to domestic industry.	To ensure that goods are not imported at lower than normal value (dumping) thereby, causing loss to domestic market.
Based on	Increased import in quantity	Imports at value less than normal value.
Quantum	Levied as determined by government	Cannot exceed margin of dumping.
Duration	Remains in force for 4 years , extendable upto 10 years from date of levy	Remains in force for 5 years, extendable by further 5 years.
Exception	Not levied if imports from a developing country does not exceed 3% and total imports from all developing countries (each with share upto 3% doesn't exceed 9% in total) .	Exception to levy of this duty is listed in section 9B.

Deemed Export:

The term Deemed Export is an export without actual export, it means goods and services are sold and provided respectively within India and payment is also received in the Indian Rupees.

As per the Foreign Trade Policy the following few transactions can be considered as deemed export.

- (i) Sale of goods to units situated in Export Oriented Units, Software Technology Park, and Electronic Hardware Technology Park etc.
- (ii) Sale of capital goods to fertilizer plants.
- (iii) Sale of goods to United Nations Agencies
- (iv) Sale of goods to projects financed by bilateral Agencies etc.

Q. 21

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

CIF value of the consignment: US\$ 25,000 Quantity imported: 500 kgs.

Exchange rate applicable: Rs. 60 = US\$ 1 Basic customs duty: 12%

Social welfare surcharge applicable as per the Finance Act, 2018.

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

Appraise the liability on account of normal duties, cess and the anti-dumping duty. Assume that only 'basic customs duty' (BCD) and Social welfare surcharge are payable. IGST @12% is also to be applicable. [12]

Answer

Statement showing land value of imported goods and customs duties:

Particulars	US \$
CIF value	25,000
	Value in Rs.
Assessable value (i.e. 25,000 x Rs. 60)	15,00,000
Add: Basic customs duty 12% on assessable value	1,80,000
Add: Social welfare cess @10% on basic customs duty	18,000
Landed value (or value of imported goods)	16,98,000
Anti-dumping duty (Rs. 21,00,000 - Rs. 16,98,000)	4,02,000
Market value of imported goods (500 kgs x Rs. 60 x US \$70) = Rs. 21,00,000	
Open Market Value	21,00,000
Add: IGST @12% on Rs. 21,00,000	2,52,000
Total	23,52,000

Total customs duty payable is Rs. 8,52,000 (i.e. Rs.1,80,000+ Rs.18,000 + Rs.4,02,000 + Rs.2,52,000)

Q. 22

A commodity is imported into India from a country covered by a notification issued by the Central Government under section 9A of the Customs Tariff Act, 1975. Following particulars are made available: CIF value of the consignment: US\$25,000

Quantity imported: 500 kgs.

Exchange rate applicable: 7.50 = US\$1

Basic customs duty: 20%

Education and secondary and higher Education Cess as applicable as per the Finance Act, 2008.

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

Appraise the liability on account of normal duties, Cess and the anti-dumping duty. Assume that only 'Basic Customs Duty' (BCD) and Education and Secondary and Higher Education Cess are payable.

Answer

Statement showing land value of imported goods and anti-dumping duty:

Particulars	US \$
CIF value	25,000
Add: 1% unloading charges on CIF	250
Assessable value	25,250
	Value in Rs.
Assessable value (i.e. 25,250 x 750)	12,62,500
Add: Customs duty 20.60% on Assessable value	2,60,075
Landed value (or value of imported goods)	15,22,575
Market value of imported goods (500 kgs x Rs. 50 x US\$70)	17,50,000
Anti-dumping duty 17,50,000 – Rs. 15,22,575)	2,27,425
Total customs duty payable	4,87,500

Q. 23

Write a short note on "Anti-dumping duty"

Answer

Anti-dumping duty:

- i. Anti dumping duty is leviable u/s 9A of Customs Tariff Act when foreign exporter exports his goods at low prices compared to prices normally prevalent in the exporting country.
- ii. Dumping is unfair trade practice and the anti-dumping duty is levied to protect Indian manufacturers from unfair competition.
- iii. Margin of dumping is the difference between normal value (i.e. his sale price in his country) and export price (price at which he is exporting the goods).
- iv. Price of similar products in India is not relevant to determine 'margin of dumping'.
- v. 'Injury Margin' means difference between fair selling price of domestic industry and landed cost of imported products. Dumping duty will be lower of dumping margin or injury margin.
- vi. Benefits accruing to local industry due to availability of cheap foreign inputs are not considered. This is a drawback.
- vii. CVD is not payable on anti-dumping duty. Education Cess and SAH education Cess is not payable on anti-dumping duty. In case of imports from WTO countries, antidumping duty can be imposed only if it causes material injury to domestic industry in India.
- viii. Dumping duty is decided by Designated Authority after enquiry and imposed by Central Government by notification. Provisional antidumping duty can be imposed.
- ix. Appeal against antidumping duty can be made to CESTAT.

Q. 24

Write a short note on “Safeguard duty under Customs”

Answer

Safeguard duty under Customs: In order to ensure that goods imported in increased quantity do not cause or threaten to cause serious injury to domestic industry, there are provisions for levy of safeguard duty on import of such articles into India. It can provide adequate protection to the indigenous industry against competition from the world players. The safeguard duty on imported goods is leviable under Section 8B of the Customs Tariff Act, 1975 read with the Customs Tariff (Identification and Assessment of Safeguard Duty) Rules, 1997.

Safeguard Duty can be imposed if the Central Government on enquiry finds that the imports in increased quantity - (i) have caused serious injury to Domestic Industry or, (ii) is threatening to cause serious injury to Domestic industry. It can be imposed irrespective of origin of imported goods.

Serious injury means an injury causing significant overall impairment in the position of a domestic industry. Threat of serious injury means a clear and imminent danger of serious injury.

The Safeguard Duty shall, unless it is revoked earlier, be in force till the expiry of 4 years from the date of its imposition. However, the Central Government reserves the right for its extension but total period of imposition cannot be beyond 10 years from the date of its imposition.

Unless specifically provided, the safeguard duty shall not be imposed on goods imported by a 100% EOU or unit located in Free Trade Zone/ Special Economic Zone.

Q. 25

Write a short note on GST Compensation Cess.

Answer

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

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

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

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

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

Q. 26

What is anti-subsidy duty? Write down the differences between the safeguard duty and anti-dumping duty.

Answer

Anti-subsidy duty: As per section 9 of the Customs Tariff Act, where any country or territory pays, or bestows, directly or indirectly, any subsidy upon the manufacture or production therein or the exportation there from of any article including any subsidy on transportation of such article, then,

- upon the importation of any such article into India,
- whether the same is imported directly from the country of manufacture, production or otherwise, and

- whether it is imported in the same condition as when exported from the country of manufacture or production or has been changed in condition by manufacture, production or otherwise,
- The Central Government may, by notification in the Official Gazette, impose a countervailing duty not exceeding the amount of such subsidy.

Differences between the safeguard duty and anti-dumping duty:—

Basis	Safeguard Duty	Anti-dumping Duty
1. Levy	As per section 8B or 8C of the Customs Tariff Act, 1975.	As per section 9A of the Customs Tariff Act, 1975.
2. Objective	To ensure that bulk imports of goods do not cause serious injury/ disruption to domestic industry.	To ensure that goods are not imported at lower than normal value (dumping), thereby, causing loss to domestic market.
3. Based on	Increased imports in quantity.	Imports at value less than normal value.
4. Quantum	Levied as determined by the Government.	Cannot exceed margin of dumping.
5. Duration	Remains in force for 4 years, extendable upto 10 years from the date of levy.	Remains in force for 5 years, extendable by further 5 years.
6. Exception	Not levied if imports from a developing country does not exceed 3% and total imports from all developing countries (each with share upto 3%) does not exceed 9% in total.	Exceptions to levy of this duty are listed in section 9B.

Q. 27

What is Protective Duties in customs?

Answer

Protective duty is a duty imposed on imported goods for the protection of the interests of any industry established in India on the recommendation of Tariff Commission.

The Central Government on the recommendation of the Tariff Commission of India levy protective duty for protection of interest of domestic industry established in India. To impose protective duties, the Central Government has to introduce a bill and get it passed in the Parliament.

The duty is effective only and inclusive of the date, if any, specified in the First Schedule of the Tariff. The Central Government has the power to reduce or increase such duty where it deems fit by a notification in the Official Gazette and get the approval of the same in the Parliament.

Q. 28

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

Answer

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

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

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

Q. 29

What is GST Compensation Cess?

Answer

GST compensation cess

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

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

GST Compensation Cess, wherever applicable, would be levied on cargo that would arrive on or after 1st July, 2017.

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

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

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

Q. 30

What is meant by 'Margin of Dumping' and 'Injury Margin'? How Anti Dumping Duty is quantified? Narrate with suitable examples. 3+4=7

Answer

"Margin of Dumping" means the difference between normal value of goods prevailing in a country and its export price (i.e., the price at which the goods are exported). It is generally expressed as a % of export price. For example, a textile machinery is sold at USD 11000 in local market of USA and if the same machinery is priced at USD 10000 for export, there is a dumping in this case as export price is lower than normal value and dumping margin in this case is 10%.

"Injury Margin" means difference between fair selling price (Non Injurious Price) and the landed value of imported product. The fair selling price (Non injurious price) is that level of price which the industry is expected to have charged under normal circumstances in the Indian market. Landed value is the assessable value for customs purposes. In the above example, if the similar textile machinery manufactured in India is sold at Rs. 8,12,500 (equivalent USD 12,500) and landed cost of the imported machinery inclusive of landed cost and basic customs duty is Rs. 7,38,400 (equivalent USD 11360), there is an injury to local industry of Rs. 74,100 (Rs. 8,12,500 - Rs. 7,38,400) and injury margin is 10.04%.

The anti-dumping duty will be lower of "dumping margin" and "injury margin". In the above two examples, dumping margin is slightly lower than the injury margin. Hence, the anti-dumping duty would be 10%.

Q. 31

What do you mean by the term 'GST Compensation Cess'? Can Input tax credit be availed on GST Compensation Cess paid on inward supplies? List out some of the Notified Goods on which GST Compensation Cess is applicable.

Answer

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

GST Compensation cess, wherever applicable, would be levied on cargo that would arrive on or after 1st July, 2017. Similarly ex-bond bill of entry filed on or after 1st July 2017 would attract

GST Compensation cess, as applicable. In the case where cargo arrival is after 1st July and an advance bill of entry was filed before 1st July along with the payment of duty, the bill of entry may be recalled and reassessed by the proper officer for levy of GST compensation Cess, as applicable.

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

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

GST Cess will be levied on supply of certain notified goods - mostly belonging to the luxury and demerit category. Coal, Pan Masala, Tobacco, Motor Vehicles, Aerated Drinks.

VALUATION UNDER CUSTOMS

CONCEPT 1. VALUE

- ✓ Once the duty liability arises, such duty can be calculated only on the assessable value.
- ✓ As per section 2(41) of the Customs Act, 1962 the term value means in relation to any goods as the value thereof determined in accordance with the provisions of sections 14(1) and sections 14(2) of the Customs Act, 1962.

CONCEPT 2. TRANSACTION VALUE

Transaction Value means:

- 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 Seller and buyer have no interest in the business of each other and
- Price is the sole consideration for sale
- At rate of exchange as on the date of presentation of Bill of Entry as fixed by the CBEC.

CONCEPT 3. VALUATION OF EXPORT GOODS

Valuation is essential for export goods even though many products are exempted from export duty under the Customs Law.

Importance of valuation of export goods:

- Duty Drawback
- Export incentives like DEPB License
- Refund of CENVAT credit, if any.
- Payment of duty on export, if any.

CONCEPT 4. THE CUSTOMS VALUATION (DETERMINATION OF VALUE OF EXPORT GOODS) RULES, 2007

The Customs Valuation (Determination of Value of Export Goods) Rules, 2007 is applicable only if the aforesaid conditions are not satisfied:

Rule 1:

- (i) These rules may be called the Customs Valuation (Determination of Value of Export Goods) Rules, 2007.
- (ii) They shall come into force on the 10th day of October, 2007.
- (iii) They shall apply to export goods.

Rule 2: Definitions

Some important definitions are:

- (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.

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—

- Difference in the dates of exportation,
- Difference in commercial levels and quantity levels,
- Difference in composition, quality and design between the goods to be assessed and the goods with which they are being compared,
- Difference in domestic freight and insurance charges depending on the place of exportation

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:—

- cost of production, manufacture or processing of export goods;
- Charges, if any, for the design or brand;
- An amount towards profit.

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 7: Declaration by the exporter

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

Rule 8: Rejection of declared value

(1) When the proper officer has reason to doubt the truth or accuracy of the value declared in relation to any export goods, he may ask the exporter of such goods to furnish further information including documents or other evidence and if, after receiving such further information, or in the absence of a response from 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.

CONCEPT 5. EXPORT DUTY

Presently the following goods are subject to export duty:

Commodity	Rate of Duty
Luggage leather	25%
Hides, Skins and leather	15%
Snake skins and lamb skins	10%
Steel product [w.e.f. 10-5-2008]	15%
Iron ores	₹ 300 per metric tonne
Chromium ores	₹ 2,000 per metric tonne

REFUND OF EXPORT DUTY:

Refund of export duty is permissible in the following circumstances subject to satisfaction of certain conditions

- Goods are reimported within one year from the date of export
- These goods are not for resale
- Refund claim is lodged within six months from the date of clearance by Customs Officer for re-importation

CONCEPT 6. VALUATION OF IMPORTED GOODS (RULE 1 TO 3)

Rule 1:

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

Rule 2:

Various terms defined like Relative, Transaction Value, Computed Value, Deductive Value, Similar Goods, and Identical Goods etc.,

RULE 3:

Subject to rule 12, the value of imported goods shall be the transaction value adjusted in accordance with provisions of rule 10.

Transaction Value of import goods under section 14(1) of the Customs Act and Rule 3(1) of the Imported Goods Rules:

This method is applicable only when importer satisfies the following conditions:

- There are no restrictions as to the disposition or use of the goods by the buyer,
- The sale or price is not subject to some conditions or considerations for which a value cannot be determined in respect of the goods being valued,
- 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
- 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 rule 3(3).

CONCEPT 7. COMMISSIONER OF CUS., VISHAKHAPATNAM V AGGARWAL INDUSTRIES LTD. 2011 ELT 641 (SC):

STATEMENT OF FACTS:

The importer entered into contract for supply of crude sunflower seed oil U.S. \$ 435 C.I.F./Metric ton. Under the contract, the consignment was to be shipped in the month of July, 2011. The period was extended by mutual agreement and goods were shipped on 5th August, 2011 at old agreed prices. In the meanwhile, the international prices had gone up due to volatility in market, and other imports during August, 2011 were at higher prices. Department sought to increase the assessable value on the basis of the higher prices as contemporaneous imports. Decide whether the contention of the department is correct. You may refer to decided case law, if any, for your decision. (CA FINAL MAY 2013)

DECISION:

No. Department view is not correct. It is true that the commodity involved had volatile fluctuations in its price in the international market, but having delayed the shipment; the supplier did not increase the price of the commodity even after the increase in its price in the international market. There was no allegation of the supplier and importer being in collusion. Thus, the appeal was allowed in the favour of the respondent- assessee.

CONCEPT 8. ASSESSABLE VALUE OF IMPORTED GOODS

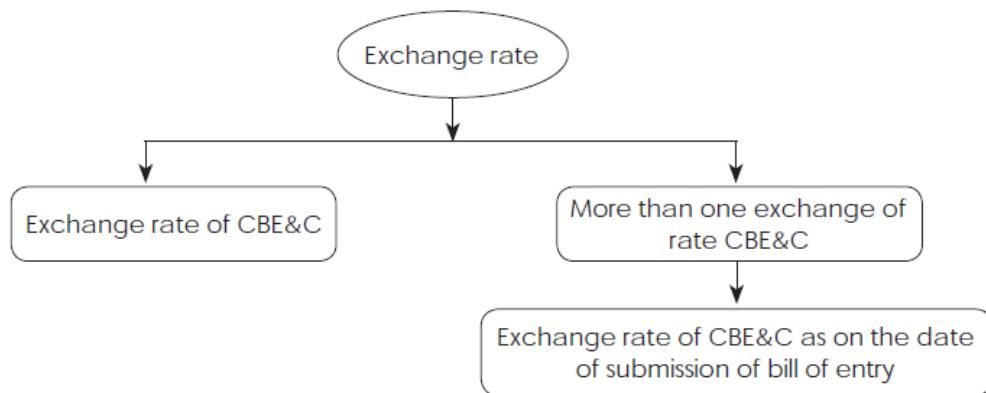
Assessable Value of Imported Goods

= (Free On Board (FOB) + Insurance + Freight) = CIF

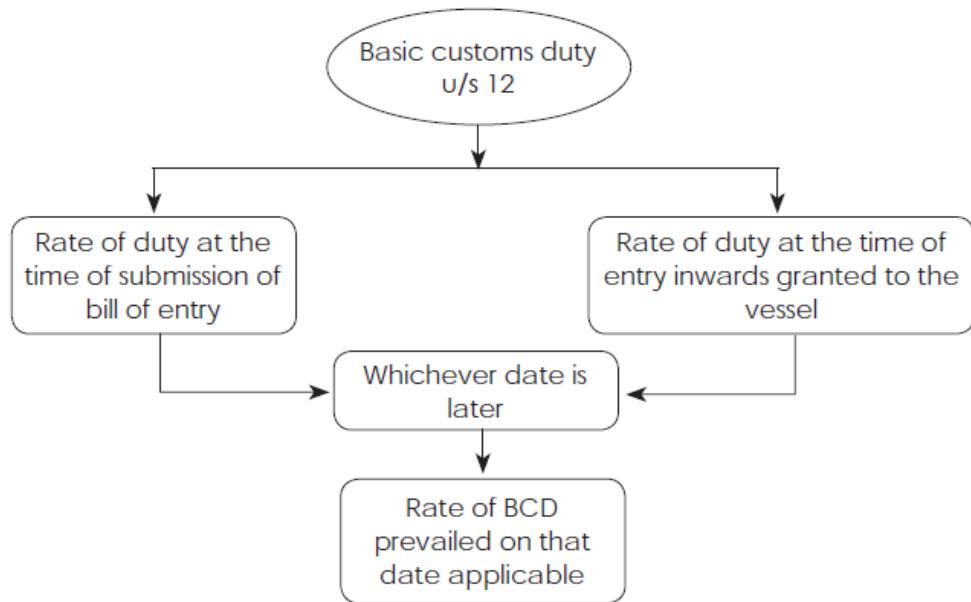
CONCEPT 9. GUIDELINES FOR VALUATION

- (1) 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.
- (2) Any expenditure like right to reproduce the imported goods in India shall not be added. However, if importer imports software and pays license fee with permission to use its copies at various branches, making additional copies for its own use at various branches does not amount to reproduction. Right to use countrywide is not right to reproduce. Therefore, the whole license fee is includable in assessable value [State Bank of India v Commissioner of Customs (2000) (SC)].
- (3) Cost of actual air freight exceeds @ 20% of FOB, only @ 20% of FOB price will be added for Customs Valuation. However, cost of transport within India is not to be included in the Assessable Value of imported goods.
- (4) Apportioning cost of tools are not consumed immediately by the importer, in such a case he may request Customs Officer to apportion full cost of tooling on first consignment itself.
- (5) The cost of transport of the imported goods includes the ship demurrage charges on chartered vessels, lighterage or barge charges. Some times the ship is not brought upto jetty because deep draught at port or ports are very busy or Odd dimensional or heavy lifts or hazardous cargo discharged at anchorage. Hence, charges for bringing goods from outer anchorage to the jetty are called as barging/lighterage charges.
- (6) However, demurrage charges payable to port trust authorities for delay in clearing goods are not to be added in the transaction value.
- (7) Free on Board (FOB): FOB means ‘Term of sale’ under which the price invoiced or quoted by a seller includes all charges up to placing the goods on board a ship at the port of departure specified by the buyer.

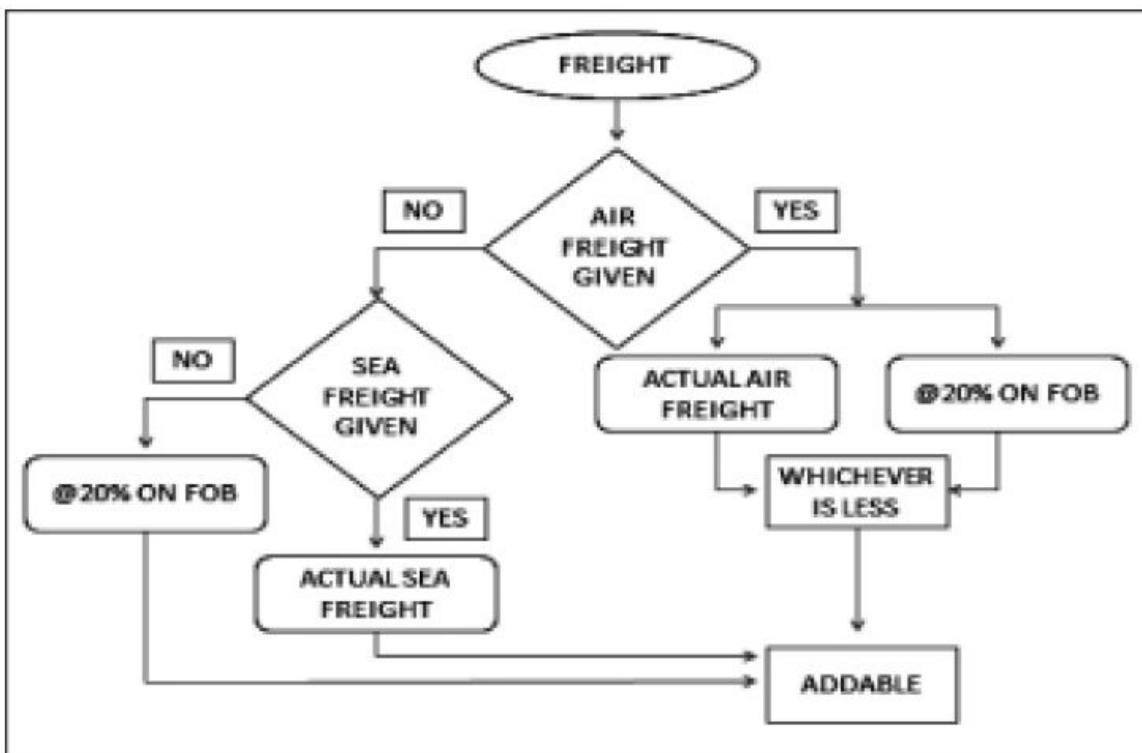
(8) Exchange Rate: we should consider the exchange rate of CBE&C for finding assessable value in Indian Rupees.



(9) Rate of determination of Basic Customs Duty:



(10) Freight from the exporter country to importer port or airport addable into assessable value.

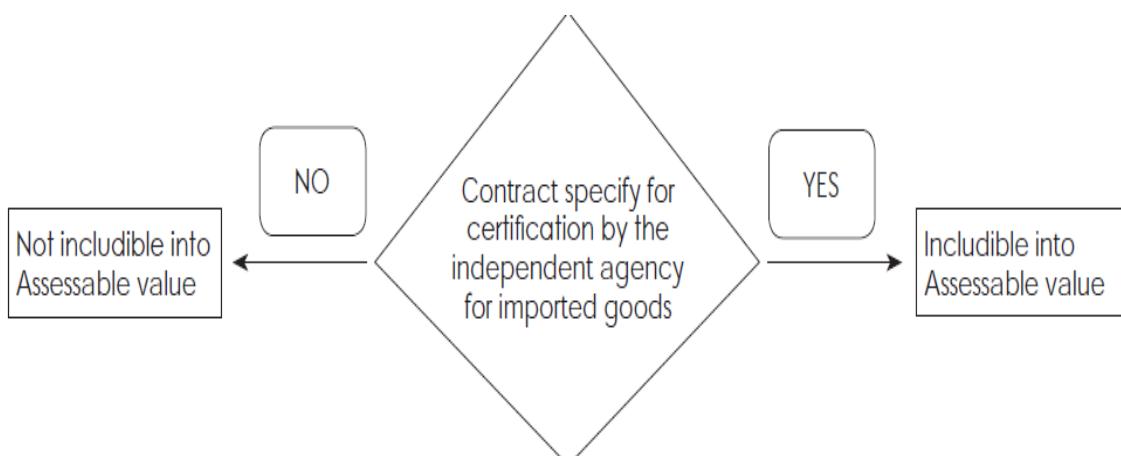


(11) Service charges paid to canalizing agent: It is includable in the assessable value of imported goods.

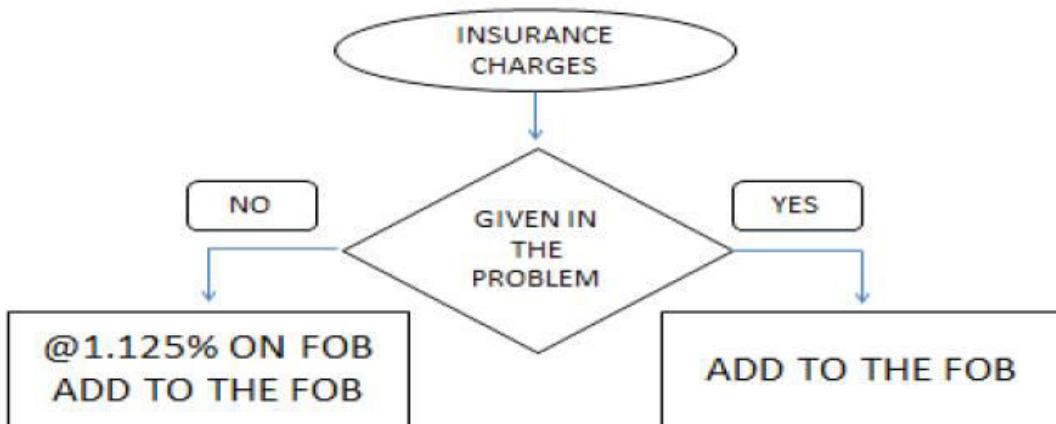
Canalizing agent: Since the canalizing agent is not the agent of the importer nor does he represent the importer abroad, purchases by canalizing agency from foreign seller and subsequent sale by it to Indian importer are independent of each other. The importer may either place the order directly or through the agent. In case of canalized items, he obtains the imports through the canalizing agency.

Canalisation means channelization of goods through a government agency like Metals and Minerals Trading Corporation of India (MMTC). The importer cannot directly import such canalized items. They have to place an order with the canalizing agency who shall import and supply the same.

(12) Inspection Charges:



(13) Insurance charges:



CONCEPT 10. COMMISSIONER OF CENTRAL EXCISE, MANGALORE V MANGALORE REFINERY & PETROCHEMICALS LTD. { (2016) 66 TAXMANN. COM 108 (SC) }

Revenue contended that demurrage charges paid by the assessee are includable in the assessable value for the levy of custom duty.

Decision: Demurrage charges are incurred after the goods reached at Indian Ports, thus it is a post-importation event; relying on the case of *Commissioner of Customs v Essar Steel Ltd.* (2015) 51 GST 181/58 taxmann.com 191, the Apex Court has held that Demurrage charges are not includable in assessable value of imported goods.

CONCEPT 11. VALUATION OF IMPORTED GOODS (RULE 4)

RULE 4:

Transaction value of Identical Goods Identical goods means the goods must be same in all respects, including physical quantity This method is applicable only when following conditions are satisfied:

- Identical goods can be compared with the other goods of the same country from which import takes place.
- These goods must be valued at a price which is produced by the same manufacturer.
- If price is not available then the price of other manufacturers of the same country is to be taken into account.
- If more than one value of identical goods is available, lowest of such value should be taken.

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.

Notes:

More than one transaction value for identical goods are given, we are supposed to take the lowest price of the quantity which is nearest to the quantity of import.

CONCEPT 12. Gira Enterprises v CCus. 2014 (307) ELT 209 (SC)

Can the value of imported goods be increased if Department fails to provide to the importer, evidence of import of identical goods at higher prices?

Facts of the Case:

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

Decision:

The Supreme Court held that mere existence of alleged computer printout was not proof of existence of comparable imports. Even if assumed that such printout did exist and content thereof were true, such printout must have been supplied to the appellant and it should have been given reasonable opportunity to establish that the import transactions were not comparable. Thus, in the given case, the value of imported goods could not be enhanced on the basis of value of identical goods as Department was not able to provide evidence of import of identical goods at higher prices.

CONCEPT 13. VALUATION OF IMPORTED GOODS (RULE 5)

Rule 5: Transaction value of Similar Goods

“Similar goods” includes—

- 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;
- Produced in the country in which the goods being valued were produced; and
- 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;

Difference between Identical and Similar Goods

Identical goods	Similar goods
Goods must be same in all respects, except for minor differences in appearance	Goods have like characteristics and components and perform same functions
For an example: Hero Honda two Wheeler Products namely Splendor and Passion	For an example: Hero Honda Splendor and Bajaj scooter.

CONCEPT 14. VALUATION OF IMPORTED GOODS (RULE 6 & 7)**Rule 6: Determination of value**

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.

Rule 7: Deductive Value

Based on the request of the importer if the Customs Officer approves, either deductive method or computed value method as the case may be can be adopted. In case of deductive method the valuation is as follows:

- Assessable is calculated by reducing the post-importation costs and expenses from this selling price.

CONCEPT 15. VALUATION OF IMPORTED GOODS (RULE 8)**Rule 8: Computed Value**

The value of imported goods shall be based on a computed value, which shall consist of the sum of:—

- The cost or value of materials and fabrication or other processing employed in producing the imported goods;
- 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;
- The cost or value of all other expenses under sub-rule (2) of rule 10.

<p>This method is normally possible when the importer in India and foreign exporter are closely associated and the foreign exporter is willing to give necessary costing.</p>	<table style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 70%; padding-right: 10px;">Cost of Materials and General Expenses for producing the imported good</td><td style="width: 30%; text-align: right; padding-right: 10px;">₹</td></tr> <tr> <td style="padding-right: 10px;">=</td><td style="text-align: right; padding-right: 10px;">XXX</td></tr> <tr> <td style="padding-right: 10px;">Add: profit of the exporter</td><td style="text-align: right; padding-right: 10px;">= XXX</td></tr> <tr> <td style="padding-right: 10px;">Add: all expenditure as per Rule 10</td><td style="text-align: right; padding-right: 10px;">= XXX</td></tr> <tr> <td colspan="2" style="text-align: right; padding-top: 10px;">Assessable Value</td></tr> <tr> <td colspan="2" style="text-align: right; padding-top: 10px;">= XXX</td></tr> </table>	Cost of Materials and General Expenses for producing the imported good	₹	=	XXX	Add: profit of the exporter	= XXX	Add: all expenditure as per Rule 10	= XXX	Assessable Value		= XXX	
Cost of Materials and General Expenses for producing the imported good	₹												
=	XXX												
Add: profit of the exporter	= XXX												
Add: all expenditure as per Rule 10	= XXX												
Assessable Value													
= XXX													

CONCEPT 16. VALUATION OF IMPORTED GOODS (RULE 9)**Rule 9: Residual method**

Residual method is also called as Best Judgment Method. This method is applicable when all aforesaid methods are not applicable. The value determined under this method cannot exceed normal price at which such or like goods are ordinarily sold or offered for sale for delivery at the time and place of importation in course of International Trade, when seller or the buyer are non-relatives and the price is sole consideration for such sale.

While determining Assessable Value, we should not consider the following

- The selling price in India of the goods produced in India;
- A system which provides for the acceptance for customs purposes of the highest of the two alternative values;
- The price of the goods on the domestic market of the country of exportation;

- 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;
- The price of the goods for the export to a country other than India;
- Minimum customs values; or
- Arbitrary or fictitious values.

CONCEPT 17. IMPORTANT POINTS FOR IMPORTED GOODS:

POINT 1:

WHERE COST OF INSURANCE AND COST OF TRANSPORTATION ARE NOT ASCERTAINABLE

S.No.	Rule	Particulars	Treatment	Remarks
1.	10(2) proviso 1	Cost of transport is not ascertainable	20% on FOB value	It is applicable even if goods are imported by air or sea.
2.	10(2) proviso 1	Cost of insurance is not ascertainable	1.125% on FOB value	It is applicable even if goods are imported by air or sea.
3.	10(2) proviso 1	Landing charges	1% on CIF value	This is a fixed charge irrespective of any amount of expenditure incurred towards landing charges
4.	10(2) proviso 2	Cost of Freight if the goods are imported by AIR	Restricted to 20% on FOB value	Actual air freight or 20% on FOB value whichever is less (i.e. in any case freight should not be nil)

POINT 2:

WHERE FOB VALUE; COST OF INSURANCE AND COST OF TRANSPORTATION ARE NOT ASCERTAINABLE:

S.No.	Rule	Particulars	Treatment	Remarks
1.	10(2) proviso 3	Cost of transport (i.e. Freight not known)	20% x (FOB value + Cost of Insurance)	CIF value x 20/120
2.	10(2) proviso 3	Insurance (i.e. not known)	1.125% x (FOB value + Cost of transport)	CIF value x 1.125/101.125
3.	10(2) proviso 3	FOB value	CIF value – cost transport – cost of insurance	

POINT 3: COST OF FREIGHT IN CASE OF GOODS IMPORTED BY SEA:

In case of goods imported by sea, stuffed in a container for clearance in an Inland Container Depot (ICD) or Container Freight Station (CFS), cost of freight from the port of entry to ICD or CFS shall not be included in the cost of transport referred to in rule 10(2)(a).

CONCEPT 18. RULE 11 TO 13

Rule 11:

Declaration by the Importer:

As per this rule, the importer shall declare value and furnish all documents or information called for by the proper officer for the purposes of valuation. Wrong declaration of value under Rule 10 may call for penal provisions in Customs Act, 1962

Rule 12:

Rejection of Declared Value:

If the proper officer feels that the declaration made under Rule 11 are not fair values he may reject it as not suitable in the determination of Transaction value under Rule 3, after procuring further information or documents. However, final decision under Rule 12 shall be taken after proper hearing only.

Rule 13:

Interpretative Notes:

These notes specified in the schedule to these rules are meant to render help in the interpretation of these rules. These interpretative notes are explained already in the aforesaid rules.

CONCEPT 19. Difference between valuation of imported goods and imported services

S.No.	Imported goods	Imported Services
(i)	Valuation for imported goods as per Customs Valuation (Determination of Value of Imported Goods) Rules, 2007	Valuation for imported services should be as per Service Tax (Determination of Value) Rules, 2006
(ii)	Related person concept plays vital role under customs	Related person concept has no importance
(iii)	CBIC exchange rate as on the date of submission of bill of entry is relevant	There is no such concept
(iv)	Imported goods should be valued for the balance sheet purpose as per Accounting Standard -2.	Imported services no Accounting Standards so far.
(v)	Closing stock should be valued inclusive of all taxes and duties unless credit allowed.	Service should be valued inclusive of all taxes and duties unless credit allowed.

CONCEPT 20. Following particulars are available in respect of consignment of goods imported:

- (i) Cost at the factory of the exporter : US\$ 20,000
- (ii) Carriage/freight/insurance upto the port of shipment in the exporter's country : US\$ 400 (iii) Charges for loading on to the ship at the shipping port : US\$ 100
- (iv) Freight charges of the ship for transport upto the Indian port : US\$ 1,200
- (v) Bill of entry submitted by the importer as on 18.7.2010 Compute the assessable value for the purpose of levy/payment of customs duty.

Rate of exchange as announced by	As on 18.07.2010	As on 7.08.2010
CBIC	1 US \$ = ₹ 46	1 US \$ = ₹ 45.80
RBI	1 US \$ = ₹ 46.10	1 US \$ = ₹ 46.10

CONCEPT 21. An importer imported some goods by air for subsequent sale in India at \$12,000 on FOB basis. Insurance is \$135 and freight for \$3,000. Relevant exchange rate as notified by the Central Government and RBI was ` 45 and ` 45.50 respectively. Arrive at the Assessable value.

CONCEPT 22. Following particulars are available in respect of certain goods imported into India: FOB price: US\$30,000 Exchange rate: Notified by RBI ` 50 = US\$1 Notified by CBIC ` 48 = US\$1 Compute the assessable value as per the Customs Act, 1962 and the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007.

CONCEPT 23. Care Energy Ltd. imported a lift from England at an invoice price of ` 20,00,000. The assessee had supplied raw material worth ` 5,00,000 to the supplier for the manufacture of said lift. Due to safety reasons, the lift was not taken to the jetty in the port but was unloaded at the outer anchorage. The charges incurred for such unloading amounted to ` 25,000 and the cost incurred on transport of the lift from outer anchorage to the jetty was ` 50,000. The importer was also required to pay ship demurrage charges ` 10,000. The lift was imported at an actual cost of transport ` 45,000 and insurance charges ` 20,000. Compute its assessable value.

CONCEPT 24. Liberty International Group has imported a machine by air from United States. Bill of entry is presented on 18.07.2016. However, entry inwards is granted on 7.08.2016. The relevant details of the transaction are provided as follows:— CIF value of the machine imported \$ 13,000 Air freight paid \$ 2,800 Insurance charges paid \$200

Rate of exchange as announced by	As on 18.07.2016	As on 7.08.2016
CBIC	1 US \$ = ₹ 46	1 US \$ = ₹ 45.80
RBI	1 US \$ = ₹ 46.10	1 US \$ = ₹ 46.10

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

Make suitable assumptions wherever necessary.

CONCEPT 25. A Ltd. imported a machine at an invoice price of GBP (Great British Pound) £ 10,000. This sum includes £ 2,000 attributable to post importation activities to be carried out by the seller. A Ltd. had supplied raw materials worth £500 to the seller for the manufacture of the said machine. The importer imported these goods by vessel and actual cost of transport is £1,500 and lighterage and barge charges in India are ` 50,000. Ship demurrage charges of ` 10,000. The importer also incurred in India ` 25,000 for transportation of goods from port of entry to Inland Container Depot (ICD). Insurance charges not known. Exchange rate 1£ = ` 66. Note: post shipment expenditure is not pre-condition for such import.

CONCEPT 26. An importer imported some goods for subsequent sale in India. The Customs Officer assessed value of goods for ` 10,19,090. The above value includes the following: Air Freight 25% on Free on Board (FOB) Insurance @1.125% Importer approached you to find correct assessable value for his import.

CONCEPT 27. Following particulars are available in respect of certain goods imported into India:
CIF value: US\$10,000 Exchange rate: Notified by RBI ` 50 = US\$1 Notified by CBIC ` 48 = US\$1 Compute the following: (a) FOB value (b) Cost of insurance (c) Cost of freight and (d) Assessable value in rupees as per the Customs Act, 1962 and the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007.

CONCEPT 28. Following particulars are available in respect of consignment of goods imported: (i) Cost at the factory of the exporter: US\$ 20,000 (ii) Carriage/freight/insurance upto the port of shipment in the exporter's country: US\$ 400 (iii) Charges for loading on to the ship at the shipping port: US\$ 100 (iv) Freight charges of the ship for transport upto the Indian port: US\$ 1,200 Compute the assessable value for the purpose of levy/payment of customs duty.

CONCEPT 29. 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 exporting country 10,000 (ii) Transport charges incurred by the exporter from his factory to the port for shipment. 500 (iii) Handling charges paid for loading the machine in the ship 50 (iv) Buying commission paid by the importer 50 (v) Freight charges from exporting country to India 1,000 (vi) Exchange Rate to be considered 1\$ = ` 45

CONCEPT 30. M/s Arman Ltd. a manufacturer has imported a machinery along with accessories required for the said machinery on 15th June, 2013. Details of information related to import of machinery are given below. Please (i) Compute the assessable value for purpose of determination of customs duty. (ii) Provide explanations where necessary

Particulars	Amount
Machinery imported from USA by air (FOB price)	US\$. 5000
Accessories compulsorily along with the machinery	US\$. 1000
Air freight	US\$. 1800
Insurance charges	Not available
Local agent's commission to be paid in India currency	₹ 9300
Transportation from India Airport to factory	₹ 4000
Exchange Rate notified by CBDT --- US\$1 = ₹ 62	
Exchange Rate as per RBI --- US\$1 = ₹ 59.50	

CONCEPT 31. The assessee-respondent had been importing “Orange Shock Tube” from the exporter at a unit price of US\$0.0150 per ft till November, 2000 when the price was reduced to US\$0.0141 per ft. However, in June, 2001, the importer declared the value of the imported tubes at a unit price of US\$0.0100 per ft. Revenue contended that declared value was substantially lower than the actual value i.e. the assessee had under-valued the goods. Therefore, the value had to be determined as per erstwhile rule 5 of Customs Valuation Rules, 1988 [now rule 4 of Customs Valuation (Determination of value of Imported Goods) Rules, 2007], viz., transactional value of identical goods. In this regard, the assessee provided the explanation that the reduction in price was subject to mutual agreement that he would purchase 100% of its annual requirement from the same exporter.

Answer: There is no undervaluation and hence, transactional value should be accepted as assessable value. [CCUs. v Initiating Explosives Systems (I) Ltd. 2008 (224) ELT 343 (SC)]

CONCEPT 32. The assessee was a manufacturer of printers. The shuttle, an integral part of a printer, was imported by him. The question which arose for determination was whether the adjudicating authority was entitled to load the royalty/ license fee payment on the price of the imported goods, viz., shuttle by taking its peak price.

Answer: Any post shipment expenses is includable in the assessable value only when it is pre-requisite to the sale or purchase. Hence, in the given case the royalty was not a pre-requisite condition for sale of shuttle. Therefore, the Department's contention is not tenable in the eyes of law. [Wep Peripherals Ltd. v CCUs., Chennai 2008 (224) ELT 30 (SC)]

CONCEPT 33. The goods initially exported by the assessee were re-imported back to India on being rejected by the foreign buyer as defective. The assessee initially claimed in the Bills of Entry the benefit of notification no. 158/95-Cus and also executed bonds for re-export, as required under the said notification. The assessee could not re-export the goods due to recessionary conditions in the textile industry. It claimed before the adjudicating authority that since it was not possible for it to re-export the goods, it should be allowed the benefits of another Notification No. 94/96-Cus. which was in force at the time of clearance from the factory originally. The main contention raised by the assessee was that if the benefits were available under the two notifications to the assessee, then the assessee could avail of the benefits under either of them. Revenue's reply to the said contention was that it was not correct to say that if two notifications were applicable, assessee after having opted to take the benefit under one of the notifications could change its option and avail the benefit under the other scheme because of the nature and contents of the notification. Whether the assessee can change its option and avail the benefit under other notification?

Answer: Once the assessee had claimed the Notification No. 158/95 for import of goods without payment of duty, then he has to fulfil all conditions mentioned in the said notification. Therefore, it is not open to the assessee to opt for another notification because he had not fulfilled the conditions of the earlier notification. [CCus., Calcutta v Indian Rayon & Industries Ltd. 2008 (229) ELT 3 (SC)]

CONCEPT 34. Gujarat Dry Fruits Limited imported dry fruits and declared the value as under—

Date of imports	Quantity (MT)	Declared value ₹ per MT	Country of import
November 2017	250	25,000	Egypt
November 2017	150	25,000	Egypt

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

Date of Imports:	Quantity (MT)	Declared Value	Country of import
And importer		₹ per MT	
September 2017	50	35,000	Dubai
Mumbai Int'l			
October 2017			
Chennai Fruits Ltd	20	40,000	Persia

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

Answer: The goods are said to be identical only if the goods to be valued have been produced in the same country. In the given question, the goods in question have been imported from Egypt, while other importers have imported goods from other countries. Therefore, the department action is not correct.

CONCEPT 35. The assessee M Ltd. entered into a joint venture with a foreign collaborator N for promotion and selling of antennas, accessories and other communication equipment. The agreement between them indicates that N owned majority of equity shares in M Ltd. Technical Services were provided by N to M Ltd, for various functions that were carried out in respect of manufacture of antenna system in India, for which technical services fee was paid to N by M Ltd. Based on the above facts, the department opined that both M Ltd. and N were related persons in terms of rule 2(2)(1) and 2(2)(iv) of the Customs Valuation (Determination of Price of Imported Goods) Rules, 1988 and that the technical fee paid by M Ltd. was includable in the assessable value of the imported components in terms of Rule 9(1)(c) of the Rules. Decide referring to decided case law.

Answer: Technical fee cannot be added simply because the importer and exporter are 'Related Persons'. It can be added only if it is related to imported goods itself. Here, import was for components while technical fee was for manufacture of antenna systems. The fee is not connected to imported goods. Hence, not includable. [CCus. v Prodelin India (P) Ltd. (2006) 202 ELT 13 (SC)]

QUESTIONS AND ANSWERS

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

Answer:

Persons shall be deemed to be "related" if one of them directly or indirectly controls the other. The word "control" has nowhere been defined under the said rules. As per the common parlance, the control is established when one enterprise holds at least 51% of the equity shareholding of the other company. However, in the instant case, the exporter company held only 30% of shareholding of the assessee. Thus, Exporter Company did not exercise a control over the assessee. So, the two parties cannot be said to be related.

The fact that assessee had made bulk imports could be a reason for reduction of import price. The burden to prove under-valuation lies on the Revenue and in absence of any evidence from the Department to prove under-valuation, the price declared by the assessee is acceptable. Therefore the Departmental action is not sustainable in law.

Q. 2

Cost of tooling is Rs. 2,00,000 and the tool expected to produce 20,000 pieces. If the importer imports 2,000 pieces in the first lot, 10% of cost of such tooling i.e. Rs. 20,000 may be apportioned to the 2,000 pieces and Rs. 20,000 may be added to transaction value for ascertaining assessable value.

Q. 3

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 exporting country	10,000
(ii) Transport charges incurred by the exporter from his factory to the port for shipment.	500
(iii) Handling charges paid for loading the machine in the ship	50
(iv) Buying commission paid by the importer	50
(v) Freight charges from exporting country to India	1,000
(vi) Exchange Rate to be considered 1\$ =	Rs. 65

Answer: Statement showing assessable value for imported goods:

S. No.	Particulars	Value US \$	Workings
(i)	Cost of the machine at the factory of the exporting country	10,000	
(ii)	Transport charges incurred by the exporter from his factory to the port for shipment	500	
(iii)	Handling charges paid for loading the machine in the ship	50	
	FOB Value of Exporter	10,550	
(iv)	Buying commission paid by the importer	-	Not addable into the assessable value
(v)	Cost of insurance	118.6875	@ 1.125% on FOB value
(vi)	Freight charges from exporting country to India	1,000	

(vi)	CIF Value/Assessable Value	11,668.6875	
(vii)	Assessable value (in INR)	Rs. 7,58,465	Rs. 65 x US \$ 11,668.6875

Q. 4

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

- (i) Freight from Japan to India Port 20,000 Yen
- (ii) Insurance paid to Insurer in India Rs. 10,000
- (iii) Designing charges paid to Consultancy firm in Japan 30,000 Yen
- (iv) M/s. XYZ Industries had expended Rs. 1,00,000 in India for certain development activities with respect to the imported equipment
- (v) XYZ Industries had incurred road transport cost from Mumbai port to their factory in Karnataka Rs. 30,000
- (vi) The Central Board of Indirect Taxes and Customs had notified for purpose of section 14(3)* of the Customs Act, 1962 exchange rate of 1 Yen = Rs. 0.3948. The inter bank rate was 1 Yen = Rs. 0.40
- (vii) M/s XYZ Industries had effected payment to the Bank based on exchange rate 1 Yen = Rs. 0.4150
- (viii) The commission payable to the agent in India was 5% of FOB cost of the equipment in Indian Rupees. Arrive at the assessable value for purposes of customs duty under the Customs Act, 1962 providing brief notes wherever required with appropriate assumptions.

Answer:

Statement showing computation of Assessable Value for the imported goods

Particulars	Amount in Yen	Remarks	Working note
Free on Board (FOB)	2,00,000		
Designing charges	30,000	Addable into the assessable value	
Development charges	—	Not addable into the assessable value, because these are post shipment expenses	
Road transport charges	—	Not addable into the assessable value, because these are post shipment expenses	
Commission	10,000	Addable into the assessable value	2,00,000 x 5% = 10,000
FOB value of the Customs	2,40,000		
	Amount in Rupees		
Total	94,752	Exchange rate of the Central Board of Excise and Customs (CBIC) is relevant	2,40,000 Yen x 0.3948
Insurance	10,000	Addable into the assessable value	
Freight	7,896	Addable into the assessable value	20,000 x .3948
Total CIF value/ Assessable Value	1,12,648		

Q. 5

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

- (i) F.O.B. cost of the machine 10,000 U.K. Pounds
- (ii) Freight (air) 3,000 U.K. Pounds

- (iii) Engineering and design charges paid to a firm in U.K. 500 U.K. Pounds
- (iv) License fee relating to imported goods payable by the buyer as a condition of sale 20% of F.O.B. Cost
- (v) Materials and components supplied by the buyer free of cost valued Rs. 20,000
- (vi) Insurance paid to the insurer in India Rs.6,000
- (vii) Buying commission paid by the buyer to his agent in U.K. 100 U.K. Pounds Other Particulars:
 - a. Inter-bank exchange rate as arrived by the authorized dealer Rs. 72.50 per U.K. Pound.
 - b. CBIC had notified for purpose of Section 14 of the Customs Act, 1944, exchange rate of Rs. 70.25 per U.K. Pound.
 - c. Importer paid Rs. 5,000 towards demurrage charges for delay in clearing the machine from the Airport. (Make suitable assumptions wherever required and show workings with explanations)

Answer:

	UK Pounds
FOB value	= 10,000
Add: Engineering and Design charges (paid in UK)	= 500
Add: License fee (20% on 10,000 UKP)	= 2,000
Sub-total	= 12,500
	Value in Rs.
Sub-total (12,500 UKP x ? 70.25)	= 8,78,125
Add: Material supplied by the buyer freely	= 20,000
FOB value as per customs	= 8,98,125
Add: Air freight (8,98,125 x 20%)	= 1,79,625
Add: Insurance	= 6,000
CIF value/Assessable Value	= 10,83,750

Q. 6

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 import of this gift consignment, there were following imports of edible oil of Malaysian origin:

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

The rate of exchange on the relevant date was 1 US \$ = Rs. 63.00 and the rate of basic customs duty was 15% ad valorem. There is no IGST. Calculate the amount of duty leviable on the consignment under the Customs Act, 1962 with appropriate assumptions and explanations where required.

Answer:

Calculation of amount of duty payable:—

exchange rate of \$ 1	= Rs. 63
CIF Value (800 metric tonnes x 160 USD x Rs. 63)/Assessable Value	= Rs. 80,64,000
15% Basic Customs duty on Rs. 80,64,000	= Rs. 12,04,600
Add: SWS @ 10% on 12,04,600	= Rs. 1,20,460
Total custom duty payable	= Rs. 13,25,060

Q. 7

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 recognised 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 be 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.

Q. 8

Selling price minus selling commission, transportation, insurance associated costs within India and duties and taxes paid in India.

This method may be used when goods are extracted on High Seas (e.g. minerals, crude oil etc.) and brought into India for sale. It will be import and dutiable.

Q. 9

Valuation 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
Sale quantity	Unit price
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 Rs. 90.

Q. 10

X Ltd., imported 500 units of minerals from High Seas for sale in India. Selling price exclusive of duties and taxes. Freight from port to depot in India is Rs. 10,150 and Insurance Rs. 1,250.

Sale quantity	Unit price Rs.
400 units	100
300 units	90
150 units	100
500 units	95
250 units	105
350 units	90
50 units	100

Basic Customs Duty 12% and education cess as applicable. Calculate total customs duty as per Rule 7 of Customs Valuation (Determination of Value of Imported Goods) Rules, 2007. Assume there is no IGST applicable for the product.

Answer

Total quantity	Sold Unit price
650	90
500	95

600 100
250 105

The greatest number of units sold at a particular price is 650 units; Therefore, the unit price in the greatest aggregate quantity is Rs. 90.

	Rs.
Selling Price	= 45,000 (i.e. 500 units x Rs. 90)
Less: Freight (post shipment)	= (10,150)
Less: Insurance (post shipment)	= (1,250)
Assessable Value	= 33,600
Total Customs Duty	= Rs. 4,435.2 i.e. 33,600 x 13.2%

Q. 11

Q.11 A Ltd., sell in India from a price list which grants favourable unit prices for purchases made in larger quantities.

Sale quantity	Unit price in f (Exclusive of duties and taxes)	Number of sales
1-10 units	100	10 sales of 5 units 5 sales of 3 units
11-25 units	95	5 sales of 11 units
Over 25 units	90	1 sale of 30 units 1 sale of 50 units

The selling price includes the following post shipment expenses:

Freight from port to factory in India for Rs. 24,000

Insurance to cover transit damage from port to factory in India for Rs. 6,000

Insurance to cover transit damage from port to factory
Number of units imported from high seas 5,000 units.

Number of units imported from high seas 5,000 &
Find the assessable value and total customs duty

Note: BCD @ 12%

Now: B

Sale quantity	Unit price in f (exclusive of duties and taxes)	Total quantity sold at each price
1-10 units	100	65
11-25 units	95	55
Over 25 units	90	80

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

	Rs.
Sale value	= 4,50,000 (i.e. Rs. 90 x 5,000 units)
Less: Freight & insurance	= 30,000
Assessable value	= 4,20,000
Total customs duty	= Rs. 55,440 (Rs. 4,20,000 x 13.2%)

Q. 12

Determine the assessable value of imported goods in the following cases:

Case I:

Particulars	US \$
FOB value	1,000
Freight, loading, unloading and handling charges associated with the delivery of the imported goods to the place of importation	Not known
Insurance charges	10

Answer:

Particulars	US \$	Working note
FOB value	1,000	
Add: Freight, loading, unloading and handling charges associated with the delivery of the imported goods to the place of importation	200	1,000 x 20% (As per 1st Proviso to Rule 10(2) of the Customs Valuation Rules for imported goods.)
Add: Insurance charges	10	
Assessable value (i.e. CIF value)	1,210	

Case II:

Particulars	US \$
FOB Value plus insurance charges	1,010
Freight, loading, unloading and handling charges associated with the delivery of the imported goods to the place of importation	Not known

Answer:

Particulars	US \$	Working note
FOB value plus insurance charges	1,010	
Add: Freight, loading, unloading and handling charges associated with the delivery of the imported goods to the place of importation	202	1,010 x 20% (As per 2nd Proviso to Rule 10(2) of the Customs Valuation Rules for imported goods.)
Assessable value (i.e. CIF value)	1,212	

Case III:

Particulars	US \$
FOB value	1,000
Sea freight, loading, unloading and handling charges associated with the delivery of the imported goods to the place of importation	60
Insurance charges	Not known

Answer:

Particulars	US \$	Working note
FOB value	1,000	
Add: Sea freight, loading, unloading and handling charges associated with the delivery of the imported goods to the place of importation	60	
Add: Insurance charges	11.25	1,000 x 1.125% (As per 3 rd Proviso to Rule 10(2) of the Customs Valuation Rules for imported goods.)
Assessable value (i.e. CIF value)	1,071.25	

Case IV:

Particulars	US \$
FOB value plus sea freight and loading, unloading and handling charges associated with the delivery of the imported goods to the place of importation	1,060
Insurance charges	Not known

Answer:

Particulars	US \$	Working note
FOB value plus sea freight and loading, unloading and handling charges associated with the delivery of the imported goods to the place of importation	1,060	
Add: Insurance charges	11.925	1,060 x 1.125% (As per 4 th Proviso to Rule 10(2) of the Customs Valuation Rules for imported goods.)
Assessable value (i.e. CIF value)	1,071.925	

Case V:

Particulars	US \$
FOB value	1,000
Air freight, loading, unloading and handling charges associated with the delivery of the imported goods to the place of importation	250
Insurance charges	10

Answer:

Particulars	US \$	Working note
FOB value	1,000	
Add: Air freight, loading, unloading and handling charges associated with the delivery of the imported goods to the place of importation Note: Restricted to 20% of the FOB value.	200	1,000 x 20% % (As per 5 th Proviso to Rule 10(2) of the Customs Valuation Rules for imported goods.
Insurance charges	10	
Assessable value (i.e. CIF value)	1,210	

Q. 13

State the points of difference between valuation of imported goods under Customs Act, 1962 and imported services under Finance Act, 1994 and valuation of imported goods and services, as per relevant Accounting Standard.

Answer

Difference between valuation of imported goods and imported services:

S. No.	Imported goods	Imported Services
(i)	Valuation for imported goods as per Customs Valuation (Determination of Value of Imported Goods) Rules, 2007	Valuation for imported services should be as per Service Tax (Determination of Value) Rules, 2006
(ii)	Related person concept plays vital role under customs	Related person concept has no importance
(iii)	CBIC exchange rate as on the date of submission of bill of entry is relevant	There is no such concept
(iv)	Imported goods should be valued for the balance sheet purpose as per Accounting Standard -2.	Imported services no Accounting Standards so far.
(v)	Closing stock should be valued inclusive of all taxes and duties unless credit allowed.	Service should be valued inclusive of all taxes and duties unless credit allowed.

Q. 14

Following particulars are available in respect of consignment of goods imported:

- (i) Cost at the factory of the exporter : US\$ 20,000
- (ii) Carriage/freight/insurance upto the port of shipment in the exporter's country : US\$ 400
- (iii) Charges for loading on to the ship at the shipping port : US\$ 100
- (iv) Freight charges of the ship for transport upto the Indian port : US\$ 1,200
- (v) Bill of entry submitted by the importer as on 18.7.2010

Compute the assessable value for the purpose of levy/payment of customs duty.

Rate of exchange as announced by	As on 18.07.2010	As on 7.08.2010
CBIC	1 US \$ = Rs. 46	1 US \$ = Rs. 45.80
RBI	1 US \$ = Rs. 46.10	1 US \$ = Rs. 46.10

Answer:

Statement showing assessable of imported goods

Particulars	Value in US\$	Workings
Cost at the factory (ex-factory price)	20,000	
Carriage/freight/insurance upto the port of shipment	400	
Charges for loading on the ship at the shipping port	100	
Free On Board (FOB)	20,500	
Insurance charges @1.125% on FOB	230.625	US\$ 20,500 x 1.125% = US \$ 230.625
Freight charges	1,200	Actual taken into account
CIF Value/Assessable Value	21,930.625	
	Value in Rs.	
Assessable Value	10,08,809	US\$ 21,930.625 x ? 46

Q. 15

An importer imported some goods by air for subsequent sale in India at \$12,000 on FOB basis. Insurance is \$135 and freight for \$3,000. Relevant exchange rate as notified by the Central Government and RBI was Rs. 45 and Rs. 45.50 respectively.

Arrive at the Assessable value

Answer:

Particulars	Amount in \$	Remarks	Workings
F O B value	12,000		
Add: Insurance	135	Addable into the assessable value	
Add: Air Freight	2,400	Air freight restricted to 20% on FOB	\$12,000 x 20% = \$2,400
CIF value/Assessable Value	14,535		
	Value in Rs.		
Assessable value	6,54,075	Exchange rate of Central Board of Indirect Taxes and Customs is relevant. If this rate is not given then we have to take the Government of India exchange rate	\$14,535 x Rs. 45

Q. 16

Following particulars are available in respect of certain goods imported into India:

FOB price: US\$30,000

Exchange rate:

Notified by RBI Rs. 50 = US\$1

Notified by CBIC Rs. 48 = US\$1

Compute the assessable value as per the Customs Act, 1962 and the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007.

Answer:

Statement showing assessable value:

Particulars	US \$
FOB	30,000.00
Add: Insurance @ 1.125% on FOB	337.50
Add: Freight 20% on FOB	6,000.00
CIF value/Assessable Value	36,337.50
	Value in Rs.
Assessable value (i.e. US \$ 36,337.50 x Rs. 48)	17,44,200

Q. 17

Care Energy Ltd. imported a lift from England at an invoice price of Rs. 20,00,000. The assessee had supplied raw material worth Rs. 5,00,000 to the supplier for the manufacture of said lift. Due to safety reasons, the lift was not taken to the jetty in the port but was unloaded at the outer anchorage. The charges incurred for such unloading amounted to Rs. 25,000 and the cost incurred on transport of the lift from outer anchorage to the jetty was Rs. 50,000. The importer was also required to pay ship demurrage charges Rs. 10,000. The lift was imported at an actual cost of transport Rs. 45,000 and insurance charges Rs. 20,000. Compute its assessable value.

Answer:

Value goods	= Rs. 20,00,000
Add: Raw material supplied	= Rs. 5,00,000
FOB	= Rs. 25,00,000
Charges for bringing the goods from Outer anchorage to jetty is known as Barging/lighterage or barge charges	= Rs. 50,000
Ship demurrage on chartered vessels (i.e.	
Demurrage is payable when ship was not unloaded within specified time)	= Rs. 10,000

Freight charges (Transport charges)	= Rs. 45,000
Insurance charges	= Rs. 20,000
Cost, Insurance and Freight (CIF)/ Assessable Value	= Rs.26,25,000

Note: actual amount of unloading charges or stevedoring charges are not addable into the assessable value. Revised CIF Value:

Q. 18

Liberty International Group has imported a machine by air from United States. Bill of entry is presented on 18.07.2016. However, entry inwards is granted on 7.08.2016.

The relevant details of the transaction are provided as follows:—

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

Rate of exchange as announced by	As on 18.07.2016	As on 7.08.2016
CBIC	1 US \$ = Rs. 46	1 US \$ = Rs. 45.80
RBI	1 US \$ = Rs. 46.10	1 US \$ = Rs. 46.10

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

Make suitable assumptions wherever necessary.

Answer:

Particulars	Amount in US\$	Remarks	Workings
CIF value	13,000		
Less: Air freight	2,800	Air freight should not be more than 20% on FOB	
Less: insurance	200		
F O B value	10,000		
Add: Air freight	2,000	Air freight restricted to 20% on the FOB value	10,000 x 20% = 2,000
Add: Insurance	200		
CIF value/Assessable Value	12,200		US\$ (10,000 + 2,000 + 200)
Amount in Rs.			
Assessable value	5,61,200	CBIC exchange rate as on the date of submission of bill of entry is relevant.	US\$12,200 x 46 = 5,61,200

Q. 19

A Ltd. imported a machine at an invoice price of GBP (Great British Pound) £ 10,000.

This sum includes £ 2,000 attributable to post importation activities to be carried out by the seller. A Ltd. had supplied raw materials worth £500 to the seller for the manufacture of the said machine. The importer imported these goods by vessel and actual cost of transport is £1,500 and lighterage and barge charges in India are Rs. 50,000. Ship demurrage charges of Rs. 10,000. The importer also incurred in India Rs. 25,000 for transportation of goods from port of entry to Inland Container Depot (ICD). Insurance charges not known.

Exchange rate 1£ = t 66.

Note: post shipment expenditure is not pre-condition for such import.

Answer:

Particulars	Value in GBP (£)	Remarks
Value of Machine	10,000	
Less: Cost of post shipment expenditure	2,000	It is not pre-condition for importation, hence deducted from the value of machine. Value of post shipment expenditure is addable to the assessable value if such expenditure is pre-condition for such

		import.
Add: cost of material supplied	500	Cost of material supplied is also addable into the assessable value.
Sub-total	8,500	

Particulars	Value in GBP (£)	Remarks
	Value in Rs.	
Sub-total	5,61,000	8,500 x Rs. 66
Add: ship demurrgages	10,000	
Add: lighterage and barge charges	50,000	
Add: transportation of goods from port of entry to ICD	Nil	Transportation of goods from port of entry to Inland Container Depot (ICD), not addable in assessable.
FOB value of the Customs	6,21,000	
Add: Insurance charges	6,986.25	Rs. 6,21,000 x 1.125% = 6,986.25
Add: Freight charges	99,000	1,500 x Rs. 66
Cost Insurance and Freight (CIF) value/ Assessable Value	7,26,986.25 or, 7,26,986	

Q. 20

An importer imported some goods for subsequent sale in India. The Customs Officer assessed value of goods for Rs. 10,19,090.

The above value includes the following:

Air Freight 25% on Free on Board (FOB)

Insurance @1.125%

Importer approached you to find correct assessable value for his import.

Answer:

Assessable value (AV) = (FOB + Insurance + Air freight)

Let assume FOB	= X
Add: Air Freight	= 0.25X
Add: Insurance	= 0.01125X
CIF Value/Assessable value	= 1.26125X
FOB value	= 8,08,000 (Rs. 10,19,090 - 1.26125)
Add: Air freight 20% on FOB	= 1,61,600
Add: Insurance @ 1.125%	= 9,090
CIF Value/ Assessable value	= 9,78,690

Q. 21

Following particulars are available in respect of certain goods imported into India:

CIF value: US\$10,000

Exchange rate:

Notified by RBI Rs. 50 = US\$1

Notified by CBIC Rs. 48 = US\$1

Compute the following:

- (a) FOB value
- (b) Cost of insurance
- (c) Cost of freight and
- (d) Assessable value in rupees as per the Customs Act, 1962 and the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007.

Answer:

As per Rule 10(2) proviso 3 of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007, where FOB value of goods and Cost of Insurance and Freight are not ascertainable, then the cost of insurance and transport shall be computed as follows:

Particulars	As per Rule 10(2) proviso 3	Working
Cost of transport (i.e. Freight not known)	20% x (FOB value + Cost of Insurance)	CIF value x 20/120
Insurance (i.e. not known)	1.125% x (FOB value + Cost of transport)	CIF value x 1.125/101.125
FOB value	CIF value - cost transport - cost of insurance	

CIF value in Rs. 4,80,000 (i.e. US \$ 10,000 x Rs. 48)

(a) FOB value	Rs. = 3,94,660	(i.e. Rs. 4,80,000 - 80,000 - 5,340)
(b) Cost of insurance	= 5,340	(i.e. Rs. 4,80,000 x 1.125/101.125)
(c) Cost of transport (i.e. Freight)	= 80,000	(i.e. Rs. 4,80,000 x 20/120)
(d) Assessable value	= 4,80,000	

Q. 22

Following particulars are available in respect of consignment of goods imported:

- (i) Cost at the factory of the exporter: US\$ 20,000
- (ii) Carriage/freight/insurance upto the port of shipment in the exporter's country: US\$ 400
- (iii) Charges for loading on to the ship at the shipping port: US\$ 100
- (iv) Freight charges of the ship for transport upto the Indian port: US\$ 1,200

Compute the assessable value for the purpose of levy/payment of customs duty.

Answer:

Statement showing assessable of imported goods

Particulars	Value in US\$	Workings
Cost at the factory (ex-factory price)	20,000	
Carriage/freight/insurance upto the port of shipment	400	
Charges for loading on the ship at the shipping port	100	
Free On Board (FOB)	20,500	
Insurance charges @ 1.125% on FOB	230.625	US\$ 20,500 x 1.125% = 230.625
Freight charges	1,200	Actual taken into account
CIF Value/ Assessable value	21,930.625	

Note: Since exchange rate is not given; therefore it is difficult to calculate the assessable value in Indian Rupees.

Q. 23

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

(i) Cost of the machine at the factory of the exporting country	10,000
(ii) Transport charges incurred by the exporter from his factory to the port for shipment.	500
(iii) Handling charges paid for loading the machine in the ship	50
(iv) Buying commission paid by the importer	50
(v) Freight charges from exporting country to India	1,000
(vi) Exchange Rate to be considered 1\$ = t 45	

Answer:

Statement showing assessable value for imported goods:

S. No.	Particulars	Value US \$	Workings
(i)	Cost of the machine at the factory of the exporting country	10,000	
(ii)	Transport charges incurred by the exporter from his factory to the port for shipment	500	
(iii)	Handling charges paid for loading the machine in the ship	50	
	FOB Value	10,550	
(iv)	Buying commission paid by the importer	-	Not addable into the assessable value
(v)	Cost of insurance	118.6875	@ 1.125% on FOB value
(vi)	Freight charges from exporting country to India	1,000	
(vi)	CIF Value	11,668.6875	
(vii)	Assessable value	Rs. 5,25,091	t 45 x US \$ 11,668.6875

Q. 24

M/s Arman Ltd. a manufacturer has imported a machinery along with accessories required for the said machinery on 15th June, 2013. Details of information related to import of machinery are given below. Please

Particulars	Amount
Machinery imported from USA by air (FOB price)	US\$. 5000
Accessories compulsorily along with the machinery	US\$. 1000
Air freight	US\$. 1800
Insurance charges	Not available
Local agent's commission to be paid in India currency	Rs. 9300
Transportation from India Airport to factory	Rs. 4000
Exchange Rate notified by CBDT --- US\$1= Rs. 62	
Exchange Rate as per RBI --- US\$1 = Rs. 59.50	

- (i) Compute the assessable value for purpose of determination of customs duty.
- (ii) Provide explanations where necessary.

Answer:

Particulars	Machinery X	Accessories X	Workings
FOB value	3,10,000	62,000	
Commission	7,750	1,550	Allocated in the ratio of FOB 5:1
FOB value of the customs	3,17,750	63,550	
Air freight	63,550	12,710	Should not exceeds 20% on FOB
Insurance	3,575	715	1.125% on FOB
CIF Value/ Assessable value	3,84,875	76,975	

Q. 25

The assessee-respondent had been importing "Orange Shock Tube" from the exporter at a unit price of US\$0.0150 per ft till November, 2000 when the price was reduced to US\$0.0141 per ft. However, in June, 2001, the importer declared the value of the imported tubes at a unit price of US\$0.0100 per ft. Revenue contended that declared value was substantially lower than the actual value i.e. the assessee had under-valued the goods. Therefore, the value had to be determined as per erstwhile rule 5 of Customs Valuation Rules, 1988 [now rule 4 of Customs Valuation (Determination of value of Imported Goods) Rules, 2007], viz., transactional value of identical goods. In this regard, the assessee provided the explanation that the reduction in price was subject to mutual agreement that he would purchase 100% of its annual requirement from the same exporter.

Answer:

There is no undervaluation and hence, transactional value should be accepted as assessable value. [CCus. v Initiating Explosives Systems (I) Ltd. 2008 (224) ELT 343 (SC)]

Q. 26

The assessee was a manufacturer of printers. The shuttle, an integral part of a printer, was imported by him. The question which arose for determination was whether the adjudicating authority was entitled to load the royalty/ license fee payment on the price of the imported goods, viz., shuttle by taking its peak price.

Answer:

Any post shipment expenses is includable in the assessable value only when it is pre-requisite to the sale or purchase. Hence, in the given case the royalty was not a pre-requisite condition for sale of shuttle. Therefore, the Department's contention is not tenable in the eyes of law. [Wep Peripherals Ltd. v CCus., Chennai 2008 (224) ELT 30 (SC)]

Q. 27

The goods initially exported by the assessee were re-imported back to India on being rejected by the foreign buyer as defective. The assessee initially claimed in the Bills of Entry the benefit of notification no. 158/95-Cus and also executed bonds for re-export, as required under the said notification. The assessee could not re-export the goods due to recessionary conditions in the textile industry. It claimed before the adjudicating authority that since it was not possible for it to re-export the goods, it should be allowed the benefits of another Notification No. 94/96-Cus. which was in force at the time of clearance from the factory originally. The main contention raised by the assessee was that if the benefits were available under the two notifications to the assessee, then the assessee could avail of the benefits under either of them.

Revenue's reply to the said contention was that it was not correct to say that if two notifications were applicable, assessee after having opted to take the benefit under one of the notifications could change its option and avail the benefit under the other scheme because of the nature and contents of the notification. Whether the assessee can change its option and avail the benefit under other notification?

Answer:

Once the assessee had claimed the Notification No. 158/95 for import of goods without payment of duty, then he has to fulfil all conditions mentioned in the said notification. Therefore, it is not open to the assessee to opt for another notification because he had not fulfilled the conditions of the earlier notification. [CCus., Calcutta v Indian Rayon & Industries Ltd. 2008 (229) ELT 3 (SC)]

Q. 28

Gujarat Dry Fruits Limited imported dry fruits and declared the value as under—

Date of imports	Quantity (MT)	Declared value Rs. per MT	Country of import
November 2019	250	25,000	Egypt
November 2019	150	25,000	Egypt

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

Date of Imports:	Quantity (MT)	Declared Value	Country of import
		Rs. per MT	
And importer			
September 2019	50	35,000	Dubai
Mumbai Intil			
October 2019			
Chennai Fruits Ltd	20	40,000	Persia

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

Answer: The goods are said to be identical only if the goods to be valued have been produced in the same country. In the given question, the goods in question have been imported from Egypt, while

other importers have imported goods from other countries. Therefore, the department action is not correct.

Q. 29

The assessee M Ltd. entered into a joint venture with a foreign collaborator N for promotion and selling of antennas, accessories and other communication equipment. The agreement between them indicates that N owned majority of equity shares in M Ltd. Technical Services were provided by N to M Ltd, for various functions that were carried out in respect of manufacture of antenna system in India, for which technical services fee was paid to N by M Ltd. Based on the above facts, the department opined that both M Ltd. and N were related persons in terms of rule 2(2)(1) and 2(2)(V) of the Customs Valuation (Determination of Price of Imported Goods) Rules, 1988 and that the technical fee paid by M Ltd. was includable in the assessable value of the imported components in terms of Rule 9(1)(c) of the Rules. Decide referring to decided case law.

Answer:

Technical fee cannot be added simply because the importer and exporter are 'Related Persons'. It can be added only if it is related to imported goods itself. Here, import was for components while technical fee was for manufacture of antenna systems. The fee is not connected to imported goods. Hence, not includable. [CCus. v Prodelin India (P) Ltd. (2006) 202 ELT 13 (SC)]

Q. 30

State the conditions to be satisfied to avail duty drawback on Re-export u/s 74.

Answer:

(a) Duty Drawback on Re-Export [Section 74] Conditions should be satisfied are:

1. Originally the goods should have been imported into India; Customs duty on import should have been paid.
2. The imported goods should be capable of being easily identifiable as the same goods which were originally imported.
3. The goods have been exported after proper examination of the goods and after ensuring that there is no prohibition or restriction on their export by the proper officer.
4. The goods should have been identified to the satisfaction of the Assistant or Deputy Commissioner of Customs as the goods, which were imported, and
5. The goods should have been entered for export within two years from the date of payment of duty of the importation thereof.
6. The market price of such goods must not be less than the amount of drawback claimed.

Q. 31

Compute the assessable value under the Customs Act, 1962 for an imported machine, based on the following information:

Particulars	US \$
(i) cost of the machine at the factory of the exporter	20,000
(ii) transport charges from the factory of exporter to port for shipment	800
(iii) handling charges paid for loading the machine in the ship	50
(iv) buying commission paid by the importer	100
(v) lighterage charges paid by the importer	200
(vi) freight and insurance (900+100) incurred from port of entry to inland container depot	1,000
(vii) ship demurrage charges	400
(viii) freight charges from exporting country to India (Insurance upto India is unascertainable)	4,000
(ix) loading, unloading and handling charges (includes \$100 incurred "at Indian port")	1,100
Date of bill of entry 20.3.2019: Exchange rate as notified by CBIC	Rs.68 per \$
Date of entry inward 25.3.2019: Exchange rate as notified by CBIC	Rs.65 per \$

Answer:

Computation of assessable value

FOB Price [Item (i) + (ii) + (iii)]	\$20,850
Add: Rule 10(1)(a) [Item (iv) is not includable]	Not included
Customs FOB	\$20,850
Add: Cost of transport and loading, unloading and handling charges under Rule 10(2)(a)	\$5,600
Item (v) included as per Expl. To Rule 10(2)	200
Item (vi) Cost of transshipment not included as per 5 th proviso to Rule 10(2)	
Item (vii) included as per Expl. To Rule 10(2)	400
Item (viii) General freight charges upto India	4,000
Item (ix) included on actual basis only "upto place of importation". Hence, charges incurred at place of Indian port not included in customs value	1,000
Add: insurance under Rule 10(2)(b) [not given, assumed 1.125% of customs FOB]	\$234.5625
CIF or Assessable Value	26,684.5625
Exchange Rate	Rs. 68 per \$
CIF or Assessable Value In Rs.	18,14,550.25

Q. 32

An importer has imported a machine from UK at FOB cost of 10,000 UK Pounds. Other details are as follows:

- (i) Freight from UK to Indian Port was 700 pounds.
- (ii) Insurance was paid to insurer in India: Rs. 6,000.
- (iii) Design and development charges of 2,000 UK Pounds were paid to a consultancy firm in UK.
- (iv) The importer also spent an amount of Rs. 50,000 in India for development work connected with the machinery.
- (v) 10,000 were spent in transporting the machinery from Indian Port to the factory of importer.
- (vi) Rate of exchange as announced by RBI was: Rs. 68.82 = one UK Pound.
- (vii) Rate of exchange as announced by CBE&C by notification was: Rs. 68.70 = one UK Pound.
- (viii) Rate at which bank recovered the amount from importer Rs. 68.35 = one UK Pound.
- (ix) Foreign exporters have an agent in India. Commission is payable to the agent in Indian Rupees @5% of FOB price.

Customs duty payable was 10%. Excise duty rate is 12.5%. Education cess of customs is as applicable. Special CVD is payable at applicable rates. Find customs duty payable. What are the duty refunds/ benefits available if the importer is (A) manufacturer (B) service provider (C) trader?

Answer:

FOB Value	10,000.00 UK Pounds
Add: Design & Development Charges	2,000.00 UK pounds
Add: Ocean freight	700.00 UK Pounds
Total C & F	12,700.00 UK Pounds
Total in Rs. @ 68.70	Rs. 8,72,490.00
Add: Insurance	Rs. 6,000.00
Add: Local Agency commission 500 UK pounds @ Rs. 68.70 = 1 UK Pound	Rs. 34,350.00
Total CIF Price	Rs. 9,12,840.00
Add: Landing Charges @ 1% of CIF	Rs. 9,128.40
Assessable Value	Rs. 9,21,968.40
Assessable Value (rounded to)	Rs. 9,21,968.00
Add: Basic Customs Duty (BCD) @10%	Rs. 92,197.00
Sub-total	Rs. 10,14,165.00

Add: Countervailing Duty (CVD) @ 12.5%	Rs. 1,26,771.00
Sub-total	Rs. 11,40,935.00
Add: 2% Education cess	Rs. 4,379.00
Add: 1% SAH Education cess	Rs. 2,190.00
Sub-total	Rs. 11,47,504.00
Add: Spl. CVD	Rs. 45,900.00
Value of imported goods	Rs. 11,93,404.00

The following import duties are allowed as CENVAT credit:

If the importer	BCD Rs.	CVD Rs.	SPL.CVD Rs.	Edu. CESS Rs.
Manufacturer	CENVAT credit not allowed	1,26,771	45,900	CENVAT credit not allowed
Service provider	CENVAT credit not allowed	1,26,771	CENVAT credit not allowed	CENVAT credit not allowed
Trader	CENVAT credit not allowed	CENVAT credit not allowed	CENVAT credit not allowed. However refund is allowed if VAT paid. (Rs. 45,900)	CENVAT credit not allowed

Note:

(1) Design and development work done in India and transport costs within India are not to be considered for purposes of 'Customs Value'.

Q. 33

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

CIF value of the consignment: US\$ 25,000 Quantity imported: 500 kgs. Exchange rate applicable: X 60 = US\$ 1 Basic customs duty: 12% Social welfare cess chargeable @ 10%.

As per the notification, the anti-dumping duty will be equal to the difference between the costs of commodity calculated @ US\$ 70 per kg. and the landed value of the commodity as imported. Appraise the liability on account of normal duties, cess and the anti-dumping duty. Assume that no GST compensation cess is payable. IGST @12% is also to be applicable.

Answer:

Statement showing land value of imported goods and customs duties:

Particulars	US \$
CIF value	25,000
	Value in Rs.
Assessable value (i.e. 25,000 x Rs. 60)	15,00,000
Add: Basic customs duty 12% on assessable value	1,80,000
Add: Social welfare cess @10% on basic customs duty	18,000
Landed value (or value of imported goods)	16,98,000
Anti-dumping duty (Rs. 21,00,000 – Rs. 16,98,000)	4,02,000
Market value of imported goods (500 kgs x Rs. 60 x US \$70) = Rs. 21,00,000	
Open Market Value	21,00,000
Add: IGST @12% on Rs. 21,00,000	2,52,000
Total	23,52,000

Total customs duty payable is Rs. 8,52,000 (i.e. Rs. 1,80,000 + Rs. 18,000 + Rs. 4,02,000 + Rs. 2,52,000)

Q. 34

What is similar goods in customs valuation?

Answer:

"Similar goods" includes 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.

Valuation of similar goods:

- Produced in the country in which the goods being valued were produced; and
- 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;

Q. 35

Compute the customs duty payable from the following data –

Machinery imported from USA by air	US \$ 12,000
Accessories worth US \$ 3,000 compulsorily supplied with machine, price is included in price of machine	
Air freight	US \$ 5,000
Insurance	US \$ 100
Local agent's commission	? 5,000
Exchange rate	1 US \$ = ? 60
Customs duty on machine	10% ad valorem
Customs duty on accessory	20% ad valorem
Integrated tax	12.00%
GST Compensation Cess	Nil
Education Cess plus Secondary and Higher Education Cess	2% +1%

Answer:

Computation of customs duty payable –

Cost of machinery inclusive of accessory (FOB)	US \$ 12,000
Total (in Indian US \$ 12,000 x Rs. 60 (being the exchange rate))	Rs. 7,20,000
Add: Agency commission	Rs. 5,000
FOB value as per Customs	Rs. 7,25,000
Add: Cost of insurance US \$ 100 x Rs. 60 (being the exchange rate)	Rs. 6,000
Add: Air freight (restricted to 20% of FOB value as per customs)	Rs. 1,45,000
CIF value/Assessable value	[A] Rs. 8,76,000
Add: Basic Customs duty (10% of assessable value)	[B] Rs. 87,600
Add: Education Cess @ 2% of [B]	[C] Rs. 1,752
Add: Secondary and Higher Education Cess @ 1% of [B]	[D] Rs. 876
Total for Integrated Tax	[E] Rs. 9,66,228
Add: Integrated Tax (@ 12% of Rs. 9,66,228 i.e. [E])	[F] Rs. 1,15,947
Total imported cost	Rs. 10,82,175
Total customs duty payable = [B] + [C] + [D] + [F]	Rs. 2,06,175

Working Notes:

- (1) Accessories and spare parts compulsorily supplied with main implements are chargeable at the same rate as applicable to main machine. Therefore, such accessories shall also be chargeable with duty at the rate applicable to the machinery i.e. @ 10% ad valorem.
- (2) Agency Commission, which is incurred in India, is not regarded as buying Commission and therefore will be added to determine customs FOB value.
- (3) Though actual air freight is US \$ 5,000, it is limited to 20% of Customs FOB value of goods.

Q. 36

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

(i)	F.O.B. cost of the machine	10,000 U.K. Pounds
(ii)	Freight (air)	3,000 U.K. Pounds
(iii)	Engineering and design charges paid to a firm in U.K	500 U.K. Pounds
(iv)	License fee relating to imported goods payable by the buyer as a condition of sale	20% of F.O.B. Cost
(v)	Materials and components supplied by the buyer free of cost valued	Rs. 20,000
(vi)	Insurance paid to the insurer in India	Rs. 6,000
(vii)	Buying commission paid by the buyer to his agent in U.K. 100 U.K. Pounds	

Other Particulars:

- (i) Inter-bank exchange rate as arrived by the authorized dealer: Rs. 88.50 per U.K. Pound.
- (ii) CBIC had notified for purpose of Section 14 of the Customs Act, 1944, exchange rate of Rs. 86.25 per U.K. Pound.
- (iii) Importer paid Rs. 5,000 towards demurrage charges for delay in clearing the machine from the Airport.

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

Answer:

Computation of Assessable Value of BSA & Company

Particulars	UK Pound
FOB Value	10,000
Add: Engineering and Design charges (Paid in (UK)	500
Add: License fee (20% on 10,000 UKP)	2,000
Sub-total	12,500
	Value in Rs.
Sub-total (12,500 UKP x Rs. 86.25)	10,78,125
Add: Material supplied by the buyer freely	20,000
FOB Value as per customs	10,98,125
Add: Air freight (10,98,125 x 20%)	2,19,625
Add: Insurance	6,000
CIF Value/ Assessable value	13,23,750

Q. 37

Miss Geeta imported certain goods from a related person Mr. Om of US and transaction value has been rejected. Rules 4 and Rule 5 of the Import Valuation Rules are found inapplicable, as no similar/ identical goods are imported in India. Miss Geeta furnished cost related data of imports and requests Customs Authorities to determine value as per Rule 8. The relevant data are –

1. Cost of material incurred by Mr. Om	\$600
2. Making charges incurred by Mr. Om	\$100
3. Other direct expenses incurred by Mr. Om	\$400
4. Overhead incurred by Mr. Om	\$150
5. Freight from Mr. Om's factory to US port	\$120
6. Loading charges at US port	\$30
7. Normal net profit margin of Mr. Om	20% of FOB
8. Air freight from US port to Indian port	\$500
9. Insurance from US port to Indian port	\$50
10. Exchange rate	Rs. 60 per \$

The Customs Authorities are of the opinion that since value as per Rule 7 can be determined at Rs. 1,45,000, there is no need to apply Rule 8.

Answer:

Computation of value as per Rule 8 :

Particulars	US \$
1. Cost of material incurred by Mr. Om	\$ 600
2. Making charges incurred by Mr. Om	\$100
3. Other direct expenses incurred by Mr. Om	\$ 400
4. Overhead incurred by Mr. Om	\$ 150
5. Freight from Mr. Om „s factory to US port	\$ 120
6. Loading charges at US port	\$ 30
Total Cost incurred by Mr. Om	\$ 1,400
7. Normal net profit margin of Mr. Om [20 % of FOB OR 25% of COST= 25% of \$ 1,400]	\$ 350
FOB price	\$ 1,750
8. Air freight and Handling from US port to India[Air freight cannot exceed 20% of FOB ; hence, restricted to 20% of \$ 1,750] [Rule 10(2)(a)]	\$ 350
9. Insurance from US port to Indian port [Rule 10(2)(b)]	\$ 50
CIF or Assessable Value under Customs	\$2,150
Assessable Value (in Rs.)[\$ 2,150 x Exchange Rate Rs. 60 per \$]	Rs. 1,29,000

Q. 38

State the characteristics of Similar Goods in the context of customs.

Answer:

Characteristics of Similar Goods:

1. Alike in all respects, have like characteristics and like components and perform same functions. These should be commercially inter-changeable with goods being valued as regards quality, reputation and trade mark.
2. The goods should have been produced in the same country in which the goods being valued were produced.
3. They should be produced by same manufacturer who has manufactured goods undervaluation - if price of such goods are not available, price of goods produced by another manufacturer in the same country can be considered. . However, if engineering, development work, art work, design work, plan or sketch undertaken in India were completed by the buyer on these imported goods free of charge or at reduced rate for use in connection with the production and sale for export of these imported goods, these will not be 'similar goods'.

Q. 39

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

The relevant details of the transaction are provided as follows:

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

Rate of exchange as

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

Calculate the assessable value (in rupees) for the purposes of levy of customs duty as well as landed value of M/s. Liberty International Group.

BCD = Nil

IGST = 18%

Make suitable assumptions wherever necessary.

Answer:

Computation of Assessable Value and Landed Value of M/s. Liberty International Group

Particulars	Amount in US\$	Remarks	Workings
CIF value	13,000		
Less: Air freight	2,800	Air freight should not be more than 20% on FOB	
Less: insurance	200		
FOB value	10,000		
Add: Air freight	2,000	Air freight restricted to 20% on the FOB value	$10,000 \times 20\% = 2,000$
Add: Insurance	200		
CIF value/Assessable Value	12,200		US\$ (10,000+ 2,000 + 200) $12,200 \times 1\% =$ US\$122
	Amount in Rs.		
Assessable value	8,05,200	CBIC exchange rate as on the date of submission of bill of entry is relevant.	US\$12,200 $\times 66 =$ Rs. 8,05,200
Add: BCD	Nil		
Add: SWS @ 10%	Nil		
Balance	8,05,200		
Add: IGST @ 18%	1,44,936		
Landed value	9,50,136		

Q. 40

Determine the price to be taken for computation of deductive value under rule 7 of Import Valuation Rules, 2007 —

Sales quantity	Unit price Rs.
40 units	105
30 units	95
15 units	105
50 units	100
25 units	110
35 units	95
5 units	105

Answer:

The total quantity sold at a single price is as given below:

Total quantity sold	Unit price Rs.
65	95
50	100
60	105
25	110

The greatest number of units sold at a particular price is 65, therefore the unit price in the greatest aggregate quantity is Rs. 95.

Q. 41

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

	US \$
(i) Cost of the machine at the factory of the exporter	20,000
(ii) Transport charges from the factory of exporter to the port for shipment	800
(iii) Handling charges paid for loading the machine in the ship	50
(iv) Buying commission paid by the importer	100

(v) Lighterage charges paid by the importer	200
(vi) Freight incurred from port of entry to Inland Container depot	1,000
(vii) Ship demurrage charges	400
(viii) Freight charges from exporting country to India	5,000

Date of bill of entry 20.02.2018 (Rate BCD 20%;

Exchange rate as notified by CBEC Rs. 60 per US \$)

Date of entry inward 25.01.2018 (Rate of BCD 12%;

Exchange rate as notified by CBEC Rs. 65 per US \$)

IGST payable under section 3(7) of the Customs Tariff Act, 1975 12%

Also find the eligible input tax credit to the importer.

Answer:

Statement showing assessable value and customs duty:

Particulars	US \$	Remarks
Cost of the machine	20,000	
Add: transport charges from factory of exporter to the port for shipment	800	
Add: handling charges	50	
FOB	20,850	
Add: buying commission	Nil	Not addable
FOB of the Customs	20,850	
Add: Insurance	234.5625	20,850 x 1.125%
Add: Freight	5,000	
Add: Lighterage charges	200	
Add: Ship demurrage	400	
CIF Value	26,684.5625	
	Rs.	
Assessable Value	16,01,074	USD 26,684.5625 x Rs. 60
Add: BCD 20%	3,20,215	Rs. 16,01,074 x 20%
Add: 3% Cess	9,606	(3,20,215 x 3%)
Balance	19,30,895	
Add: IGST	2,31,707	Rs. 19,30,895 x 12%
Landed value of imported goods	21,62,602	
Total customs duty	5,61,528	

Note: Importer is eligible to avail input tax credit of IGST portion (i.e. Rs. 2,31,707) under GST Law provided he is using these goods for his business.

Q. 42

RPG Ltd. imported 125 units of minerals from High Seas for sale in India. Selling price is exclusive of duties and taxes. Freight from port to depot in India is Rs.2,530 and insurance Rs.310.

Sale quantity	Unit price (Rs.)
80	105
60	90
30	105
100	100
50	95
70	90
10	105

Basic Customs Duty-12%. Assume there is no IGST applicable for the product.

You are required to calculate total customs duty as per Rule 7 of customs valuation (Determination of value of imported goods) Rules 20017.

Answer:

Total quantity (Unit)	Unit price (Rs.)
130	90
50	95
100	100
120	105

The greatest number of units sold at a particular price is 130 units. Therefore, the unit price in the greatest aggregate quantity is Rs.90.

	Rs.
Selling price (125 x 90)	1,1250
Less: Freight (post shipment)	(2,530)
Less: Insurance (Post shipment)	(310)
Assessable value	8,410
Custom duty [(12% + 3% E. Cess of BCD) = 12.36%]	1,039

Q. 43

The following details of import of a product made by Sikandi Machine Works Ltd., on 19/11/2018 are furnished to you:

Situation-1

Particulars	USD
FOB value	3,000
Freight, loading, unloading and handling charges associated with the delivery of the imported goods to the place of importation	Not known
Insurance charges paid for the shipment	40

Situation-2

Particulars	USD
FOB value	3,000
Sea freight, loading, unloading and handling charges associated with the delivery of the imported goods to the place of importation	480
Insurance charges paid for the shipment	Not known
Purchase commission	50

Compute the assessable value of an imported product in each situation, which are independent of each other.

Answer:

Situation 1

Particulars	USD
FOB Value	3,000
Add: Cost of transport, loading, unloading and handling charges connected with the delivery of the imported goods to the place of importation [20% of FOB Value in terms of first proviso to rule 10(2) of CVR]	600
Cost of insurance [Includible in terms of rule 10(2)(b) of CVR]	40
Where actual figure is known, the same is to be taken	Nil
Assessable value [CIF value]	3,640

Situation 2

Particulars	USD
FOB Value	3,000
Add: Cost of sea transport, loading, unloading and handling charges connected with the delivery of the imported goods to the place of importation [includible in terms of rule 10(2)(a) of CVR]	480
Insurance [1.125% of sum of FOB value of the goods in terms of third proviso to rule 10(2) of CVR]	33.75
Purchase Commission is not includible	Nil

Assessable value [CIF value]	3,513.75
Assessable value rounded off	3,514

Q. 44

Informatics Ltd., imported a photography printer by air from Best Inc., of USA, as per following details.

Particulars	USD\$
CIF Value	4,500
Air Freight Paid	1,000
Insurance Cost	250

- The rate of exchange notified by CBEC is Rs. 64.50 per USD and Inter Bank Selling Rate is Rs. 65 per USD.
- Basic Customs Duty @ 10% ad valorem. There is no CVD and Special CVD.

You are required to compute the Assessable Value and Import Duty payable by Informatics Ltd.

Answer:

Computation of Assessable Value & Total Customs Duty

Particulars	USD \$
CIF Value	4,500
Less: Air Freight Paid	1,000
Less: Insurance	250
FOB Value	3,250
Add: Air Freight @ 20% of FOB	650
Add: Insurance	250
CIF Value	4,150
Add: Landing Charges @ 1% of CIF Value	41.50
Assessable Value in USD	4,191.50
Assessable Value in INR @ Rs. 64.50	2,70,352
Customs Duty @ 10%	27,035
Add: Education Cess & SHEC @ 3%	811
Total Customs Duty Payable	27,846

Q. 45

From the undermentioned relating to import made on 12.10.2017 of product 'Minic' from New York, USA, to the Kochi Airport, by Mr. Prahalad, the importer:

FOB value of the product	\$ 10,000
Cost of transport, loading, unloading and handling charges associated with the delivery of the imported goods to the place of importation	\$3,500
Insurance	\$ 1,000
Unloading charges at Kochi Airport	Rs. 24,800
Basic customs duty	10%
Exchange rate notified by RBI	1\$ = Rs. 64.50
Exchange rate notified by CBEC	1\$ = Rs. 64

Ascertain the assessable value and total tax and duty payable by Mr. Prahalad.

Answer:

Calculation of assessable value and total tax & customs duty payable

FOB value of the product	\$10,000
Cost of transport, loading, unloading and handling charges connected with the delivery of the imported goods to the place of importation, restricted to 20% of FOB	\$ 2,000
Insurance (Actual) [if actual amount of insurance is known, the same is to be taken]	\$ 1,000
CIF Value	\$ 13,000
Unloading charges at Kochi airport (Not includable)	Nil

No landing charges are to be added to the CIF value in view of the amendment in rule 10(2) of the CVR vide Notification No. 91/2017 - Cus. (NT) dated 26.09.2017.	
Exchange rate notified by CBEC 1\$ = ? 64 is to be considered.	
Assessable value (13,000 * 64)	Rs. 8,32,000
Basic customs duty at 10%	83,200
Add: Education cess @ 2% & Secondary & Higher Education Cess @ 1% of custom duty	2,496
Value for the purpose of levying integrated tax	9,17,696
Add: Integrated tax leviable under section 3(7) @ 12%	1,10,124
Total duty & tax payable	1,95,820

Note: Here, it is assumed that the product attracts IGST and the rate of IGST is 12%.

Q. 46

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

(i)	F.O.B. cost of the machine	10,000 U.K. Pounds
(ii)	Freight (air)	3,000 U.K. Pounds
(iii)	Engineering and design charges paid to a firm in U.K.	500 U.K. Pounds
(iv)	License fee relating to imported goods payable by the buyer as a condition of sale	20% of F.O.B. Cost
(v)	Materials and components supplied by the buyer free of cost valued	Rs. 20,000
(vi)	Insurance paid to the insurer in India	Rs. 6,000
(vii)	Buying commission paid by the buyer to his agent in U.K.	100 U.K. Pounds

Other Particulars:

- (i) Inter-bank exchange rate as arrived at by the authorized dealer: Rs. 72.50 per U.K. Pound.
- (ii) CBIC had notified for purpose of Section 14 of the Customs Act, 1944, exchange rate of Rs. 70.25 per U.K. Pound.
- (iii) Importer paid Rs. 5,000 towards demurrage charges for delay in clearing the machine from the Airport. (Make suitable assumptions wherever required and show workings with explanations.)

Answer

Particulars	UK Pounds
FOB Value	10,000
Add: Engineering and Design charges (Paid in (UK))	500
Add: License fee (20% on 10,000 UKP)	2,000
Sub-total	12,500
Value in Rs.	
Sub-total (12,500 UKP x Rs. 70.25)	8,78,125
Add: Material supplied by the buyer freely	20,000
FOB Value as per customs	8,98,125
Add: Air freight (Rs. 8,98,125 * 20%)	1,79,625
Add: Insurance	6,000
CIF Value / Assessable value	10,83,750

Q. 47

Malya Internationals Ltd., has imported a machinery by air from Germany. Bill of Entry is presented on 20.01.2019. However, entry inwards is granted on 25.01.2019.

Relevant information of the transaction are provided hereunder:

(i)	CIF Value of Machine	5,000 USD
(ii)	Air Freight Paid	750 USD
(iii)	Insurance Charges Paid	100 USD
(iv)	Rate of Exchange on 20.01.2019	As per RBI 1 USD = Rs. 65.50 As per CBIC 1 USD = Rs. 66

(v)	Rate of Exchange on 25.01.2019	As per RBI 1 USD = Rs. 66.50 As per CBIC 1 USD = Rs. 67
(vi)	Basic Customs Duty Rate	10%
(vii)	IGST Rate	18%

Calculate the assessable value in INR for the purposes of levy of customs duty as well as total customs duty. You can make suitable assumptions wherever necessary.

Answer

Particulars	Amount in USD	Remarks	Workings
CIF Value	5,000		
Less: Air Freight	750	Air freight should not be more than 20% of FOB	
Less: Insurance	100		
FOB Value	4,150		
Add: Air Freight	750	Since actual air freight is less than 20% of FOB, actual freight is considered	4150X20% = 830
Add: Insurance	100		
Assessable Value	5,000		

Particulars	Amount in INR	Remarks	Workings
Assessable Value	3,30,000	CBIC exchange rate on the date of submission of bill of entry is relevant	5,000 USD x Rs. 66 = Rs. 3,30,000
Add: BCD @ 10%	33,000		Rs. 3,30,000 x 10% = Rs. 33,000
Add: Social Welfare	3,300		Rs. 33,000 x 10% = Rs. 3,300
Surcharge @ 10% on BCD			
Balance	3,66,300		
Add: IGST @ 18%	65,934		Rs. 3,66,300 x 18% = Rs. 65,934
Total Value	4,32,234		

Q. 48

Compute the Assessable Value of a machine imported from Germany by RLI Ltd., under Customs Act, 1962. Also determine the duty liability of RLI Ltd.

Particulars	USD\$
FOB Value	30,000
Air Freight Paid	7,250
Insurance & Transit Cost	Not Known
Designing Charges incurred in India	Rs. 15,000
Indian Agent's Commission	Rs. 20,000
Transport Charges from port to factory in India	Rs. 15,000
Rate of duty	10%
If the machinery is manufactured in India Excise duty payable as per Tariff	12.5%

The rate of exchange notified by CBEC is Rs. 65 per USD.

Answer

Computation of Assessable Value for Customs:

Particulars	Amount
FOB Value	\$30,000.00
Add: Insurance @ 1.125% of FOB Value	\$337.50
Add: Air Freight (restricted to 20% of FOB)	\$6,000.00
	\$36,337.50
Value in INR @ Rs. 65	Rs. 23,61,938.00

Add: Local Agent's Commission	Rs. 20,000.00
CIF Value	Rs. 23,81,938.00
Add: Landing Charges @ 1%	Rs.23,819.00
Assessable Value for Customs	Rs. 24,05,757

The total duty liability should be calculated as follows:

Particulars	Amount (Rs.)
Assessable Value	24,05,757
Add: Basic Customs Duty @ 10%	2,40,576
Balance	26,46,333
Add: CVD @ 12.5% on Rs. 26,46,333	3,30,792
Add: Education Cess @ 2% on Rs. 5,71,368	11,427
Add: SAH @ 1% on Rs. 5,71,368	5,714
Total Value of Import	29,94,266
Total Duty Liability	5,88,509

IMPORT EXPORT PROCEDURE

CONCEPT 1. INTRODUCTION

Import may take place in any of the following modes:

- By Sea
- By Air
- By Land
- By Post
- By Passengers as their Baggage
- By way of Ship stores considered as import

CONCEPT 2. IMPORT PROCEDURE

Imported goods can be cleared by the importer either for home consumption by paying customs duty on the value of imported goods or he may request to the Customs department for warehousing. If the goods are warehoused, later they will be cleared for Domestic Tariff Area (DTA) or for export as the case may be.

CONCEPT 3. "DOMESTIC TARIFF AREA"

"Domestic Tariff Area" means the whole of India (including the territorial waters and continental shelf) but does not include the areas of the Special Economic Zones (Section 2(i) of Special Economic Zones Act, 2005), 100% Export Oriented Units (EOUs)/Electronic Hardware Technology Park (EHTP)/Software Technology Park (STP)/Bio Technology Park (BTP).

CONCEPT 4. GOODS CLEARED FOR HOME CONSUMPTION

Importer has to pay the import duty on the value of goods imported by him before clearing from the Customs Authorities by submitting the Bill of Entry after the entry inwards granted to the Vessel or 30 days before the entry inwards granted to the vessel. The importer files Bill of Entry for all imported goods under section 46(1) of the Customs Act, 1962.

No Bill of Entry for Transit Goods and Transhipment Goods.

CONCEPT 5. TIME LIMIT FOR FILLING BILL OF ENTRY

As per Section 46(3) of the Customs Act, 1962 a bill of entry may be presented at anytime after the delivery of import manifest or import report. Therefore, no time limit has been fixed. Hence, no penalty can be imposed if there is delay in submission of Bill of Entry. However, goods should be cleared for home consumption, or warehoused or transhipped within 30 days from the date of the unloading thereof at the Customs Station.

The importer is required to declare in the Bill of Entry amongst other things the following:

- The particulars of packages,
- The description of the goods,
- The description given in the Customs Tariff.

According to section 46(3) a bill of entry is to be normally filed after the delivery of the Import manifest (vessel/ aircraft)/import report (vehicle). However, the bill of entry can be presented even before the delivery of the import manifest if vessel is expected to arrive within 30 days from the date of such presentation.

Bill of Entry consists of the following copies:

- Original meant for the customs authorities for assessment and collection of duty;

- Duplicate, indented as an authority to the custodian of the cargo to release cargo;
- Triplicate, as a copy for record for the importer; and
- Quadruplicate, as a copy to be presented to the bank

Types of Bill of Entry:

- Form I (white) - for home consumption
- Form II (yellow) - for warehousing
- Form III (green) - for ex-bond clearance for home consumption (from the warehousing)

Bill of Entry must be submitted electronically, unless manual submission is specifically permitted by Commissioner of Customs (w.e.f. 8-4-2011).

CONCEPT 6. W.E.F. 31-3-2017 FINANCE ACT, 2017 SECTION 46(3) AMENDED:

Submission of Bill of entry:

The importer shall presented the bill of entry under section 46(1) of the Customs Act, 1962 before the end of the next day following the day (excluding holidays) on which the aircraft or vessel or vehicle carrying the goods arrives at a customs station at which such goods are to be cleared for home consumption or for warehousing.

Provided that a bill of entry may be presented within 30 days of the expected arrival of the aircraft or vessel or vehicle, which has shipped the goods for importation into India.

Provided further that where the bill of entry is not presented within the time so specified and the proper officer is satisfied that there was no sufficient cause for such delay, the importer shall pay such charges for the late presentation of the bill of entry as may be prescribed.

Furthermore by Notification No 26/2017 Customs dated 31-3-2017 and Notification 27/2017 Customs dated 31-3- 2017 Bill of Entry (electronic Integrated Declaration) Regulations, 2011 and Bill of Entry (Forms) Regulations, 1976 has been amended to prescribe late charges for delayed filing.

Entry Inwards date at sea ports and date of arrival of cargo at the ICD, airport, Land Port (i.e. Land Customs Station) etc., would be the relevant date for determination the said charges, if any.

It has also been clarified in both the regulations that no charges for late presentation of Bill of Entry shall be liable to be paid where the goods have arrived before the enactment of Finance Bill, 2017 (i.e. 31-3-2017).

CONCEPT 7. NOTIFICATION NO. 24/2017 CUSTOMS DATED 31-3-2017:

As per the Handling Cargo in Customs Area Regulations, 2009 it is mandatory for the Customs Cargo Service providers to provide the information about arrival of cargo to the Customs. As per Notification No. 25/2017 Customs dated 31-3-2017, Additional / Joint Commissioner as the proper officer considering the request for waiver of late charge under second proviso to Section 46(3) of the Customs Act, 2017. Furthermore, section 47(2) has been amended so as to provide the manner of payment of duty and interest thereon in the case of self-assessed Bill of Entry or as the case may be assessed, reassessed, provisionally assessed Bill of Entry. Now, the importer shall have to make payment of duty on the same day in case of self-assessed Bill of Entry and in case of re-assessment or provisional assessment, within one year after the return of Bill of Entry (vide Circular No. 12/2017 dated 31-3-2017).

CONCEPT 8. Clearance of Goods for Home Consumption [Sec. 47 (1) of the Customs Act, 1962]

W.E.F. 14-5-2016, Sec. 47 (1) Where the proper officer is satisfied that any goods entered for home consumption are not prohibited goods and the importer has paid the import duty, if any, assessed

thereon and any charges payable under this Act in respect of the same, the proper officer may make an order permitting clearance of the goods for home consumption:

Provided that the Central Government may, by notification in the Official Gazette, permit certain class of importers to make deferred payment of said duty [ie. duty payable under sec. 47(1)] or any charges in such manner as may be provided by rules (w.e.f. 14-5-2016).

CONCEPT 9. INTEREST FOR LATE PAYMENT OF DUTY @15% [SECTION 47(2) OF THE CUSTOMS ACT, 1962]

The duty should be paid within five working days after the 'Bill of Entry' is returned to the importer for payment of duty. **w.e.f. 10-5-2013 the time reduced to two working days.**

Now, w.e.f. 31-3-2017 Finance Act, 2017 section 47(2) further amended: Importer shall have to make payment of duty on the same day in case of self-assessed Bill of Entry and in case of re-assessment or provisional assessment, within one day after the return of Bill of Entry.

As per section 47(2) of Customs Act, the importer is liable to pay interest where –

- the importer fails to pay the import duty under this section **on the same day** in case of self-assessed Bill of Entry and in case of re-assessment or provisional assessment, within one day after the return of Bill of Entry from the date on which the bill of entry is returned to him for payment of duty, he shall pay interest @ 15% p.a. on such duty till the date of payment of the said duty.

- w.e.f. 14-5-2016: in the case of deferred payment under the proviso to sub-section (1), from such due date as may be specified by rules made in this behalf, he shall pay interest @ 15% p.a. on the duty not paid or short- paid till the date of its payment.

Note: if the CBIC satisfied that it is necessary in the public interest so to do, it may, by order for reasons to be recorded, waive the whole or part of any interest payable under this section.

CONCEPT 10. IMPORT GENERAL MANIFEST

Import General Manifest is a very important document for the in charge of the conveyance, without which the Customs Authorities generally not allowed entry inwards to the vessel. IGM to be submit to the Customs authorities for getting entry inwards to the vessel.

It contains details regarding goods description, origin and destination place, name and address of the exporter and importer and so on. This a primary document, which can be compared with Bill of Entry, submitted by the importer. On satisfaction the Customs authorities will grant the entry inwards to the vessel.

The IGM also gives the following particulars

- Name of the Vessel
- Nationality
- Tonnage
- Name of the shipping line
- Last port of call
- Port arrival and date and time of arrival,
- Name of the master,
- Nationality of the master,
- Name and address of the local steamer or shipping agent
- Port called during the present voyage,
- Number of crew
- Number of passengers, etc.

The importer also required to submit the following documents the Customs Authorities, to assess the import duty on the value of imported goods.

- Invoice copy
- Contract copy

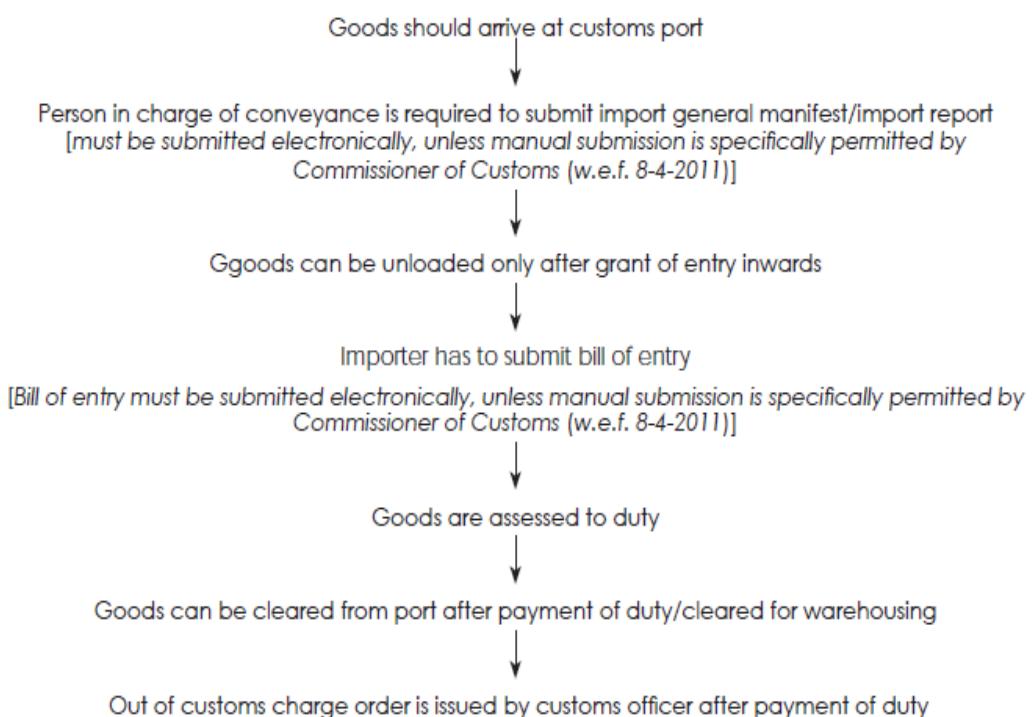
- Product literature
- Packing lists
- Import license
- Any other documents which may be required by the Customs Authorities

CONCEPT 11. TIME LIMIT FOR SUBMISSION OF IMPORT GENERAL MANIFEST OR IMPORT REPORT:

As per Section 30(1) of the Customs Act, 1962, the person-in-charge of the conveyance shall deliver import general manifest or import report to the proper officer as stated below:

Mode of Transport	Document	Time Limit	Penalty for non-submission within the prescribed time-limit
Vessel (Sea port)	Import General Manifest	Before arrival of the Vessel	₹ 50,000
Aircraft (Air port)	Import General Manifest	Before arrival of the Aircraft	₹ 50,000
Vehicle (Land Customs Station)	Import Report	Within 12 hours after arrival	₹ 50,000

CONCEPT 12. THE ENTIRE IMPORT PROCEDURE



CONCEPT 13. EXPORT PROCEDURE

The master of a vessel shall not permit the loading of any export goods, other than baggage and mail bags, until an order has been given by the proper officer granting entry-outwards to such vessel [Section 29 of the Customs Act, 1962]. The steamer agent is required to file an application for entry outwards 14 days in advance from the date of original export.

The person-in-charge of a conveyance shall not permit the loading at a customs station of export goods, other than baggage and mail bags, unless a shipping bill or bill of export or a bill of transshipment, as the case may be, duly passed by the proper officer, has been handed over to him by

the exporter. The person-in-charge of a conveyance shall not permit the loading at a customs station of baggage and mail bags, unless their export has been duly permitted by the proper officer [Section 40 of the Customs Act, 1962].

CONCEPT 14. EXPORT GENERAL MANIFEST

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, and in the case of a vehicle, an export report, in the prescribed form [Section 41 of the Customs Act, 1962]. The person-in-charge of a conveyance who has loaded any export goods at a customs station shall not permit the conveyance to depart from that customs station until a written order to that effect has been given by the proper officer.

Let export order shall not be given until:

- The person-in-charge of the conveyance has answered the questions put to him
- The provisions of section 41 have been complied with;
- 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;
- 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;
- The person-in-charge of the conveyance has satisfied the proper officer that no penalty is leviable on him under section 116 of the Customs Act, 1962.
- In any case where any export goods have been loaded without payment of export duty or in contravention of any provision of this Act or any other law for the time being in force relating to export of goods, such goods have been unloaded, or
- The Assistant Commissioner of Customs or Deputy Commissioner of Customs 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.

Either the Guarantee Receipt (GR) or Statutory Declaration Form (SDF) requires filing by the exporter to meet the requirements of the Reserve Bank of India. The purpose of these forms is to ensure that export proceeds are received in India through the authorized banking channels.

Note: Electronic filing of import/export manifest mandatory except in cases allowed by Commissioner of Customs [Section 30(1) & Section 41(1)] w.e.f. 10-5-2013:

Section 30(1) and section 41(1) have been amended vide the Finance Act, 2013 to provide for the mandatory electronic filing of the import manifest and export manifest respectively. However, in cases where it is not feasible to deliver import/export manifest by presenting them electronically, the Commissioner of Customs may, allow the same to be delivered in any other manner.

The entire concept of export procedure has been explained in the following lines:



CONCEPT 15. DEEMED EXPORTS

The term Deemed Exports an export without actual export, it means goods and services are sold and provided respectively within India and payment also received in the Indian Rupees. As per the Foreign Trade Policy the following few transactions can be considered as deemed exports.

- Sale of goods to units situated in Export Oriented Units, Software Technology Park, and Electronic Hardware Technology Park etc.
- Sale of capital goods to fertilizer plants
- Sale of goods to United Nations Agencies
- Sale of goods to projects financed by bilateral Agencies, etc

CONCEPT 16. IMPORTS BY 100% EXPORT ORIENTED UNITS (EOU):

EOUs/EHTPs/STPs will be allowed to import goods without payment of basic customs duty (BCD) as well additional duties leviable under Section 3 (1) and 3(5) of the Customs Tariff Act.

GST would be leviable on the import of input goods or services or both used in the manufacture by EOs which can be taken as input tax credit (ITC). This ITC can be utilized for payment of GST taxes payable on the goods cleared in the DTA or refund of unutilized ITC can be claimed under Section 54(3) of CGST Act.

In the GST regime, clearance of goods in DTA will attract GST besides payment of amount equal to BCD exemption availed on inputs used in such finished goods.

Note: DTA clearances of goods, which are not under GST, would attract Central Excise duties as before.

CONCEPT 17. CUSTOMS BROKERS

The term Custom House Agents are known by different names namely Customs Clearing Agent, Freight Forwarding Agent, Customs Broker and Shipping and Forwarding Agent.

A Customs House Agent (CHA) is a person who carries on business as an agent relating to the entry or departure of a conveyance or the import or export of goods at any customs-station unless such person holds a licence granted in this behalf in accordance with the regulations of the Central Board of Excise and Customs [Section 146 of the Customs Act, 1962].

Custom House Agent's (CHA) main job responsibility is to study the laws governing the export and import and interpreting the levies payable and incentives receivable by clients. They also assist their clients in preparation of document according to expectation of customs authorities.

Change of nomenclature of "customs house agents" to "customs brokers" [Section 146 and section 146A(2)(b)] [Effective from 10.05.2013]

Considering the global practice and internationally accepted nomenclature, nomenclature of "customs house agents", wherever used in the Customs Act, 1962, has been replaced with "customs brokers". Consequently, reference to "customs house agents", in section 146 and 146A(2)(b) in the Customs Act, 1962, has been substituted with "customs brokers".

Activities of CHA

- Processing of documents, shipping bills etc. for export.
- Carting of goods/cargo to Container Freight Station.
- Arranging of physical examination of goods
- Collection of measurement certificate
- Handover goods/cargo to carrier i.e., shipping line
- Personally attending stuffing of cargo in container
- Collection of Bill of Lading from shipping line
- Collection of documents from Customs such as duplicate copy of shipping bill, attested copy of Invoice & Packing List etc.

CONCEPT 18. INLAND CONTAINER DEPOT (ICD) AND CONTAINER FREIGHT STATION (CFS)

Generally, an exporter or import placed far way from the gateway port for clearance of import or export of goods. However, irrespective of distance from the servicing gateway port, prefers to move cargo by road to CFS (a transit facility where he stuffs cargo in containers and containers are transported to port for loading on board the ship). Both ICD and CFS is an infrastructure facility, owned and operated by public or private authority, especially designed for offering services of handling, storage and movement of containerized cargo and cargo under Customs supervision.

Distinction between ICD and CFS

Inland Container Station (ICD)	Container Freight Station (CFS)
It is a place where containers are aggregated for onwards movement to or from the ports.	It is a place where containers are stuffed, unstuffed and aggregation/segregation of cargo takes place.
ICD's are located outside the port towns.	No site restrictions apply for CFS.
An ICD may have a CFS attached to it.	CFS is treated as an extension of a port/ICD/air-cargo complex.
Movement of shipment by road and rail.	Movement of shipment by road.

Activities of ICD and CFS:

- Transfer of cargo into truck, Storage of cargo in truck, Road (truck) journey
- Breaking out of cargo from truck
- Transfer of cargo from truck to storage point/shed/yard in CFS
- Unpacking for customs examination
- Repacking for customs examination

- Consolidation of cargo according to destination
- Stuffing of cargo in the container
- Locking and sealing of container
- Loading of container on truck
- Transportation of loaded container to container yard in port
- Unloading of container in container yard in port
- Stacking of container in container yard in port
- Loading of container on truck to move container alongside ship, etc.,
- Truck journey from Container Yard to alongside ship i.e., Quay.
- Loading of container from truck to cellular hold of ship etc.

Services offered By ICD and CFS:

ICD and CFS handle only containerized shipment, thus special kind of facilities are provided like:

- Sheds for temporary storage of cargo and container yard for temporary storage of container,
- Customs clearance facility
- Cargo handling equipment and container handling equipment
- Arranging manpower for stuffing the cargo into container and destuffing the cargo from container
- Road/rail connectivity to and from serving gateway port.
- Bonded warehousing facility
- Maintenance and repair of container unit
- Packaging, palletisation (i.e. a portable platform on which goods can be moved, stocked, and stored) fumigation (i.e. disinfect with chemical fumes).

Person who has committed offence under the Finance Act, 1994 also disqualified to act as authorized representative [Section 146A(4)(b)] [Effective from 10.05.2013]

Erstwhile position

Hitherto, any person who was convicted of an offence connected with any proceeding under the Customs Act, 1962, the Central Excises and Salt Act, 1944, or the Gold (Control) Act, 1968 was disqualified from acting as an authorized representative in customs matters.

New position

Clause (b) to section 146A(4) has been substituted with new clause (b) to provide that any person who was convicted of an offence connected with any proceeding under the Customs Act, 1962, the Central Excise Act, 1944, or the Gold (Control) Act, 1968 or the Finance Act, 1994 is disqualified from acting as an authorized representative in customs matters. Hence, a person convicted under the Finance Act, 1994 has also been disqualified from acting as an authorized representative in customs matters.

CONCEPT 19. STORES

As per Section 2(38) of the Customs Act, 1962 stores means goods for use in a vessel or aircraft and includes fuel and spare parts and other articles of equipment, whether or not for immediate fitting. However, goods as per Section 2(22) of the Customs Act, 1962 includes stores. When the vessel enters into Indian territorial waters, stores get imported as goods. Hence, statutory provisions relating to stores are contained in Section 85 to 90 of the Customs Act, 1962 which are as follows:

Stores may be allowed to be warehoused without payment of import duty (Section 85 of the Customs Act, 1962)

Goods are imported for use as stores can be kept in the warehouse temporarily without following warehousing procedure. Therefore, this is also called as 'warehousing without warehousing'. Importer of these goods (i.e. stores) has no intention of clearing them for home consumption or for export as cargo. Hence, the proper officer takes physical stock of the goods and orders warehousing without

warehousing. Thereby, these goods are not assessed to duty under section 17 of the Customs Act, 1962. Subsequently importer can clear these imported goods as stores to foreign going vessels/aircraft without payment of duty. Moreover, consumable stores can be stored in a warehouse for a maximum period of 30 days and non-consumable stores upto one year.

Transit and Transhipment of Stores without payment of import duty (Section 86 of the Customs Act, 1962)

Transit of goods means any goods imported in any conveyance will be allowed to remain on the conveyance and to be transited without payment of duty, to any place out of India or any customs station. Transhipment of goods means transfer from one conveyance to another with or without payment of duty. As per section 86(1) of the Customs Act, 1962 any goods (i.e. stores) imported in any vessel/aircraft will be allowed to remain on the vessel/aircraft without payment of duty while foreign going vessel/aircraft is in India. As per section 86(2) of the Customs Act, 1962 any goods (i.e. stores) imported in a vessel/aircraft can be transferred, with the permission of the proper officer, to any foreign going vessel or aircraft for consumption without payment of duty under section 87 of the Customs Act, 1962 or to an Indian naval vessel for consumption without duty under section 90 of the Customs Act, 1962.

Imported stores may be consumed on board a foreign going vessel/aircraft without payment of import duty (Section 87 of the Customs Act, 1962)

Imported stores on board a foreign going vessel/aircraft may also be consumed on board without payment of import duty, during the period such vessel/aircraft is a foreign going vessel or aircraft. As long as such vessel or aircraft is foreign going vessel or aircraft, stores consumed on board within the Indian Territory are exempted from duty.

Regarding the smaller ships which are employed to unload the cargo from the mother ship, they are termed as "Transhippers". These are also treated as ocean going vessels as was decided in UOI v V M Salgaoncar AIR 1998 SC1367:99 ELT 3 (SC). Hence stores consumed by small vessels would also be exempt from customs duty. Stores supplied to the vessel will be treated as export as per Section 89 of Customs Act and hence will be eligible for duty drawback.

However, the oil rigs proceeding to or carrying out operations in, continental shelf/exclusive economic zones of India, which are deemed to be a part of Indian territory, would not be foreign going vessels, as the oil rigs proceed from the territory of India to an area which also is deemed to be a part of the territory of India. Therefore, the supply of imported spares or goods or equipments to the rigs by a ship will attract import duty. [Aban Lloyd Chilie's Offshore Ltd. v UOI (2008) 227 ELT 24 (SC)]

Thereby, the stores transshipped to the oil rigs and consumed thereon were not entitled to exemption under section 87 of the Customs Act, 1962.

Warehoused goods cleared without payment of import duty (Section 88(a) of the Customs Act, 1962)

Warehoused goods may be cleared for issue as stores on board to foreign going vessels and aircraft without payment of import duty. Section 69 of the Customs Act, 1962 will be applicable if warehoused goods are exported; no duty is leviable on their import. Section 69 is also extended to the stores taken on board foreign going vessel or aircraft. w.e.f. 10-5-2013, as per section 69(1)(a) of the Customs Act, 1962, permits export of warehoused goods under postal export documents [as referred to in section 82] also. *Note:* In the case of goods exported by post, any label or declaration accompanying the goods, which contains the description, quantity and value thereof, is deemed to be an entry for export.

Imported goods issued as stores to foreign going vessel/aircraft considered as export (Section 88(b) of the Customs Act, 1962)

The benefit of drawback under section 74 of the Customs Act, 1962 is extended to imported goods issued as stores to foreign going vessel/aircraft, provided stores had suffered import duty.

Stores to be free of export duty (Section 89 of the Customs Act, 1962)

Goods required as stores on any foreign going vessel or aircraft are permitted to be exported free of export duty, provided the following conditions to be satisfied: • Goods should have been produced or manufactured in India, • The quantity shall be determined by the proper officer and • The basis for such determination will be the size of conveyance, men on board (passengers and crew) and length of voyage.

Concessions in respect of imported stores for the Navy (Section 90 of the Customs Act, 1962)

Imported stores may be consumed on board a ship of the Indian Navy without payment of import duty. The imported stores supplied from customs bonded warehouse to the ships of Indian Navy are not subject to import duty. The imported stores taken on board any ship of Indian Navy are allowed 100% drawback, if import duty levied on these stores.

CONCEPT 20. COASTAL GOODS

As per section 2(7) of the Customs Act, the term coastal goods means goods, other than imported goods, transported in a vessel from one port in India to another.

Bill of Coastal Goods [Section 92(1) of the Customs Act, 1962]

The consignor of any coastal goods shall make an entry thereof by presenting to the proper officer a bill of coastal goods in the prescribed form. This bill contains the following details: • Port of landing, • Port at which the goods are to be delivered and • Other relevant details. Every such consignor while presenting a bill of coastal goods shall, at the foot thereof, make and subscribe to a declaration as to the truth of the contents of such bill.

Coastal Goods not to be allowed until bill relating thereto is passed by the proper officer (Section 93 of the Customs Act, 1962)

The master of a vessel shall not permit the loading of any coastal goods on the vessel until a bill relating to such goods presented under section 92 has been passed by the proper officer and has been delivered to the master by the consignor.

Clearance of coastal goods at destination (Section 94 of the Customs Act, 1962)

The master of a vessel carrying any coastal goods shall carry on board the vessel all bills relating to such goods delivered to him under section 93 and shall, immediately on arrival of the vessel at any customs or coastal port, deliver to the proper officer of that port all bills relating to the goods which are to be unloaded at that port. Where any coastal goods are unloaded at any port, the proper officer shall permit clearance thereof if he is satisfied that they are entered in a bill of coastal goods delivered to him.

Master of a coasting vessel to carry an “advice book” (Section 95 of the Customs Act, 1962)

The master of every vessel carrying coastal goods shall be supplied by the Customs authorities with a book to be called the “advice book” as per section 95(1). The proper officer at each port of call by such vessel shall make such entries in the advice book as he deems fit, relating to the goods loaded on the vessel at that port as per section 95(2). The master of every such vessel shall carry the advice book on board the vessel and shall on arrival at each port of call deliver it to the proper officer at that port for his inspection as per section 95(3).

Loading and unloading of coastal goods at customs port or coastal port only (Section 96 of the Customs Act, 1962)

No coastal goods shall be loaded or unloaded at any port other than a customs port or a coastal port appointed under section 7 of the Customs Act, 1962 for the loading or unloading of such goods.

No coasting vessel to leave without written order (Section 97 of the Customs Act, 1962)

The master of a vessel which has brought or loaded any coastal goods at a customs or coastal port shall not cause or permit the vessel to depart from such port until a written order to that effect has been given by the proper officer. The master of a vessel should fulfil following conditions for getting 'departure permission':

- (a) The master of the vessel has to answer all the questions put to him.
- (b) All charges and penalties due in respect of that vessel has been paid
- (c) no penalty is leviable on master of the vessel under section 116 (i.e. if the goods on a vessel are not landed or short landed, penalty is leviable which is not more than twice the export duty leviable had they been exported).
- (d) The provisions of this Chapter and any rules and regulations relating to coastal goods and vessels carrying coastal goods have been complied with.

CONCEPT 21. PROJECT IMPORTS

This concept has been introduced by the Government under the heading 9801 of the Customs Tariff to cover all machinery, instruments apparatus and appliances, components or raw materials for initial setting up or expansion of existing units for the purpose of following eligible projects:

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

The spare parts of machinery and raw material etc can be imported upto 10% of value of good can be imported.

The duties on project imports are as follows:

Basic Customs Duty (BCD) 5% (whereas normal rate of BCD @10%)

IGST as applicable has to pay.

BCD is 'NIL' for mega power projects, nuclear power projects and water supply projects for agricultural and industrial use.

There is no minimum investment requirement for project Imports with effect from 2.01.2007.

In case of project imports requirement of security deposit has been replaced by a bank guarantee of maximum ` One crore w.e.f. 8-4-2011.

Currently for items imported under project import scheme (i.e. CTH 9801), unique heading under the Central Excise Tariff, for the purposes of levy of CVD does not exist. Therefore, under the Central Excise Tariff, each item is getting classified in a heading as per its description and duty is paid on merit.

In the GST regime, for the purpose of levying IGST all the imports under the project import scheme will be classified under heading 9801 and duty shall be levied @ 18%.

CONCEPT 22. IMPORTS/PROCUREMENT BY SEZs

Authorised operations in connection with SEZs shall be exempted from payment of IGST. Hence, there is no change in operation of the SEZ scheme. Supplies made to an SEZ unit or a SEZ developer is zero rated.

The supplies made to an SEZ unit or a SEZ developer can be made in the same manner as supplies made for export:

Either

on payment of IGST under claim of refund;

Or

under bond or LUT without payment of any IGST.

CONCEPT 23. HIGH SEAS SALES

High Sea Sale Transaction means Sale Transaction done when goods are actually at High Sea i.e. during sea transit between Port of Loading and Port of Discharge. The date of transaction (agreement) should be between Bill of lading date and Vessel arrival date at Port of discharge. High Sea Sale is done mostly by Traders, sole Indenting Agent (of the Foreign Supplier) who buys in large quantity and then look out for buyers at Destination Country.

Benefits of High Sea Sale Transaction are like

- (1) Goods are available at short time to final buyers,
- (2) Also instead of buying entire shipment small quantities also can be bought for final buyers and
- (3) First buyer can buy large quantity of goods at cheap / reasonable price and sale at best price to final buyers.

Drawbacks of High Sea Sale Transaction are like

- (1) Cumbersome documentation / procedures and
- (2) Loading of pricing for Customs assessment.

High Sea sales contract/agreement should be signed after dispatch of goods from origin & prior to their arrival at destination. The agreement should be on stamp paper. On concluding the High Sea Sales agreement the bill of lading (B/L) should be endorsed in favor of the new buyer. In respect of air shipment, High Sea seller should write to the airline/consol agent informing that an High Sea Sales agreement has been established with the High Sea Sales buyer and that the carrier document should be considered as endorsed in favour of High Sea sales buyer and further the import General Manifest (IGM) should be filed by the carrier in name of High Sea buyer.

QUESTIONS AND ANSWERS

Q. 1

X Pvt. Ltd. imported goods in the month of April, 2018 and submitted 'Bill of Entry' on 9th April 2018 for home clearances. After verification bill of entry has been returned by the department on 10th April 2018 for payment of customs duty of Rs. 1,03,000. However, duty has been paid on 30th April, 2018. There are five holidays from 11th April 2018 to 30th April 2018. Find the interest under Sec. 47(2) of the Customs Act, 1962.

Answer

Interest is Rs. 677

No. of days from 10th April, 2018 to 30th April, 2018 = 21 days

No. of days delay = 21-5 = 16 days

Interest = 1,03,000 x 15/100 x 16/365 = Rs. 677

Q. 2

A bill of entry was presented on 4th August, 2019. The vessel carrying goods arrived on 11th August, 2019. Entry inwards was granted on 13th August, 2019, and the bill of entry was assessed on that date and was also returned to the importer for payment of duty on that date. The duty amounting to Rs. 5,00,000 was paid by the importer on 22nd August, 2019.

Calculate the amount of interest payable under section 47(2) of the Customs Act, 1962, given that there were four holidays during the period from 14th August to 22nd August, 2019.

Answer

Interest Rate = 15% p.a.

No. of days delay = from 13th Aug 2019 to 22nd Aug 2019 = 10 days

Less: No. of holidays = -4 days

Net No. of days delay for interest = 6 days

Interest = Rs. 1,233

Rs. 5,00,000 x 15/100 x 6/365 = Rs. 1,232.88

Q. 3

M/s X Ltd. (a unit of 100% EOU located in Chennai) sold goods to M/s A Ltd. (Located in Mumbai) for Rs. 20 lac. If M/s X Ltd. being EOU imported these goods exempted from BCD @10%. IGST 12% is applicable.

Find the total GST is liable to pay by X Ltd.

How much input tax credit M/s A Ltd. can avail?

Answer:

Particulars (w.e.f. 1-7-2017)	Value in Rs.	Workings
Assessable value	20,00,000	
ADD: Basic Customs Duty 10%	2,00,000	20,00,000 x 10%
Add: SWS @ 10% on BCD	20,000	2,00,000 x 10%
Sub-total	22,20,000	
ADD: IGST @ 12%	2,66,400	22,20,000 x 12%
Sub-total	24,86,400	
Total Duty payable	4,86,400	

ITC allowed to M/s A Ltd. (Buyer):

Particulars	Value Rs.
BCD	nil
IGST	2,66,400
Total	2,66,400

Q. 4

A Big Ship carrying merchandize and stores enters the territorial waters of India but it cannot enter the port. In order to unload the merchandize lighter ships are employed. Stores are consumed on board the ship as well as by the small ships. Examine whether such consumption of stores attracts customs duty. Quote relevant section and case law if any. Stores are supplied to the above ships. Will such supplies be treated as exports and be entitled to draw back?

Answer:

'Stores' means goods for use in a vessel and includes diesel and spare parts and other articles and equipments. Bringing of 'stores' is treated as import. However, there is special provision for stores under section 87. Imported stores consumed on board an ocean going vessel (i.e. foreign going vessel) are exempt from import duty under Section 87. Since the ship is ocean going, stores consumed on board will not attract customs duty.

Q. 5

(a) X Ltd. has exported following goods to USA. Discuss whether any duty drawback is admissible under section 75 of the Customs Act, 1962

Product	FOB Value exported goods	Market price of goods	Duty drawback rate
U	2,50,000	1,80,000	30% of FOB
T	1,00,000	50,000	0.75% of FOB
V	8,00,000	8,50,000	3.50% of FOB
W	2000	2,100	1.50% of FOB

Note: Imported value of product V is Rs. 9,50,000.

Answer

Duty draw back amount for all the products are as follows:

Product U:

Drawback amount = $2,50,000 \times 30\% = \text{Rs. } 75,000$ or $\text{Rs. } 1,80,000 \times 1/3 = \text{Rs. } 60,000$

Allowable duty draw back does not exceed 1/3 of the market value.

Hence, the amount of duty drawback allowed is Rs. 60,000.

Product T:

Drawback amount allowed is Rs. 750 (i.e. $\text{Rs. } 1,00,000 \times 0.75\%$).

Since, the amount is more than Rs. 500 even though the rate is less than 1%.

Product V:

No duty drawback is allowed, since the value of export is less than the value of import (i.e. negative sale).

Product W:

No duty drawback is allowed, since the duty drawback amount is Rs.30 (which is less than Rs.50).

Though rate of duty drawback is more than 1%, no duty drawback is allowed.

Q. 6

Explain the validity of the following statements with reference to Chapter IX of the Customs Act, 1962 containing the provisions relating to the warehousing:

- (i) The proper officer is not authorized to lock any warehouse with the lock of the Customs Department.
- (ii) The Commissioner of Customs (Appeals) may appoint public warehouses wherein dutiable goods may be deposited.
- (iii) The Commissioner of Customs or Principal Commissioner of Customs is not required to give a notice to the licensee while canceling the license of a private warehouse if he has contravened any provision of the said Act.

Answer

- (i) The given statement is invalid: Sec. 58A (1) The Principal Commissioner of Customs or Commissioner of Customs may, subject to such conditions as may be prescribed, license a special warehouse wherein dutiable goods may be deposited and such warehouse shall be caused to be locked by the proper officer and no person shall enter the warehouse or remove any goods there from without the permission of the proper officer.

(ii) The given statement is invalid: The Commissioner of Customs or the Principal Commissioner of Customs can appoint public warehouse, wherein dutiable goods can be deposited under Section 57 of the Customs Act, 1962.

(iii) The given statement is valid: The Commissioner of Customs or Principal Commissioner of Customs is not required to give a notice to the licensee while canceling the license of a private warehouse if he has contravened any provision of the said Act, as per section 58(2)(b) of the Customs Act, 1962.

Q. 7

State the negative list of duty drawback u/s 76

Answer:

(c) Negative list of Duty Drawback (DDB) [Section 76] are as follow:

- Duty Drawback is less than Rs.50.
- Export to Nepal and Bhutan and the export proceeds are not received in hard currency (it means USD, GBP or Pounds).
- Duty drawback is more than 1/3rd of market value of exported goods.
- Duty drawback as % on FOB less than 1% unless amount of DDB is more than or equal to Rs.500.

Q. 8

Write a short note on “Project Import”

Answer:

Project Import: Project import means, import of machineries required for initial set up of project and also includes raw materials, consumables and spare parts, (10% value of machinery) is allowed to import at concessional or nil rate of duty. Heavy customs duty on imported machinery for project makes project cost very high and may become unviable. The goods are classified under heading 9801, so that the clearance of goods becomes faster.

Eligible projects are:

- (a) Industrial plant
- (b) Irrigation Project
- (c) Power Project
- (d) Mining Project
- (e) Project for Oil and Mineral Exploration
- (f) Other Project specified by the Central Govt.

To get benefit under Project Import, the Contract for import has to be registered with Customs. Application is required to be made before importation and contract must be registered before order for clearance of goods is made from Customs. The contract can be amended if required. After completion of Project and submission documents assessment shall be finalized within 60 days.

Q. 9

State the need for warehousing in customs.

Answer

If the imported goods are not required immediately, importer may like to store the goods in a warehouse without payment of duty under a bond and then clear from warehouse when required on payment of duty. This will enable him to defer payment of customs duty till goods are actually required by him. In such case, importer can keep goods in warehouse without payment of customs duty. Goods are cleared from customs port under bond and kept in the warehouse. The importer can clear goods from customs warehouse on payment of duty when he requires the goods for use/consumption/sale.

This facility is available to traders as well as direct importers. A trader can import goods and keep in warehouse. He can supply the goods to buyers from warehouse, after paying customs duty. Thus, small importers, duty free shops etc. can procure goods from bonded warehouse without actually importing the goods.

A manufacturer can import inputs without payment of customs duty for manufacture in bond. He will have to export final product which was manufactured using imported duty free material.

Even duty free clearances can be made from bonded warehouse, if buyer is otherwise eligible for obtaining goods duty free.

Q. 10

What is warehousing in customs? State the features of warehousing.

Answer

W.e.f. 14-5-2016, As per Section 2(43) of the Customs Act, 1962, "warehouse" means a public warehouse licensed under section 57 or a private warehouse licensed under section 58 or Special Warehouse license u/s 58A.

Features of Warehousing:

1. Importer can defer payment of import duties by storing the goods in a safe place
2. Importer allowed doing manufacturing in bonded warehouse and then re-exporting from it.
3. The importer can be allowed to keep the goods up to One year without payment of duty from the date he deposited the goods into warehouse.
4. This time period is extended to Three years for Export Oriented Units and the time period still be extended to Five years if the goods are capital goods.
5. The importer minimizes the charges by keeping in a warehouse, otherwise the demurrage charges at port is heavy.
6. Assistant Commissioner of Customs or Deputy Commissioner of Customs are competent to appoint a warehouse as public bonded warehouse.
7. The Assistant Commissioner of Customs or Deputy Commissioner of Customs may license private warehouse. The license to private warehouse can be cancelled by giving ONE month notice.
8. Only dutiable goods can be deposited in the warehouse.
9. Green Bill of Entry has to be submitted by the importer to clear goods from warehouse for home consumption.
10. Rate of duty is applicable as on the date of presentation of Bill of Entry (i.e. sub-bill of entry or ex-bond bill of entry) for home consumption.
11. Reassessment is not allowed after the imported goods originally assessed and warehoused.
12. The exchange rate is the rate at which the Bill of Entry (i.e. 'into bond') is presented for warehousing.
13. If the goods which are not removed from warehouse within the permissible period, then subsequent removal called as improper removal. The rate of Basic Customs Duty which is applicable as on the last date on which the goods should have been removed but not removed is applicable.

Q. 11

What is One Time Lock (OTL) under customs?

Answer:

One Time Lock (OTL):

When the goods are removed from the customs station of import for warehousing, the proper officer affixes a one-time lock (OTL) on the container or means of transport (closed trucks). The serial number of OTL along with date and time of its affixation needs to be endorsed upon Bill of Entry for warehousing and transport document.

All customs stations are required to maintain records incorporating the number of the OTL, bill of entry, truck number, container number (if applicable), date & time of affixing the OTL and the name, designation & telephone number of the officer affixing the OTL.

A similar procedure has been provided under Warehoused Goods (Removal) Regulations, 2016 for removal of goods from one warehouse to another and from a warehouse to customs station for export.

However, the Principal Commissioner of Customs /Commissioner of Customs may permit movement of goods without affixation of such OTLs, where the nature of goods or their manner of transport so warrant (e.g. Liquid Bulk Cargo transported through Pipe Line & Over Dimensional Cargo).

Q. 12

What is meant by Duty Drawback? Discuss about the Negative List of Duty Drawback (Section 76).

Answer:

Duty Drawback is an export incentive scheme where the duties paid on any exported materials or excisable materials which are used in the manufacture/processing/carrying out any operations on the goods that are exported outside India is allowed as refund to the exporter.

Negative list of Duty Drawback [Section 76]

- (i) Duty Drawback (DDB) amount is less than Rs. 50
- (ii) In case of negative sales
- (iii) If CENVAT Credit availed (except BCD)
- (iv) DDB amount is more than 1/3rd of Market value of exports
- (v) Export to Nepal and Bhutan and the export proceeds are not received in hard currency (it means USD, GBP or Pounds).
- (vi) DDB as % on FOB less than 1% unless amount of DDB is more than or equal to Rs. 500
- (vii) Duty drawback is not allowed if the exporter has already availed the Duty Entitlement Pass Book (DEPB) or other export incentives.
- (viii) If the sale proceeds not received within the time period allowed by Reserve Bank of India.
- (ix) Duty drawback amount exceeds the market value of exported goods.

Q. 13

'A' exported a consignment under drawback claim consisting of the following items—

Particulars	Chapter Heading	FOB value Rs.	Drawback rate
200 pieces of pressure stores mainly made of beans @ Rs. 80/piece	74.04	16,000	4% of FOB
200 Kgs. Brass utensils @ Rs. 200 per Kg.	74.13	40,000	Rs. 24/Kg.
200 Kg. Artware of brass @ Rs. 300 per Kg.	74.22	60,000	17.50% of FOB subject to a maximum of Rs. 38 per Kg.

On examination in docks, weight of brass Artware was found to be 190 Kgs. and was recorded on shipping bill. Compute the drawback on each item and total drawback admissible to the party.

Answer:

The drawback on each item and total drawback admissible to the party shall be:

Particulars	FOB value Rs.	Drawback rate	Drawback Amount (Rs.)
200 pcs, pressure stoves made of brass	16,000	4% of FOB	640
200 Kgs. Brass utensils	40,000	Rs. 24 per Kg.	4,800
200 kgs. Artware of brass, whose actual weight was 190 Kgs. only. $(60,000 \times 190/200) \times 17.5\% = \text{Rs. } 9,975$ $190 \text{ kgs} \times \text{Rs. } 38 = \text{Rs. } 7,220$		17.50% of FOB subject to maximum of Rs. 38 per Kg. (Rs. 9,975 or Rs. 7,220 whichever is less)	7,220
Total Drawback admissible (in Rs.)			12,660

Q. 14

Write a short note on One Time Lock (OTL).

Answer:

When the goods are removed from the customs station of import for warehousing, the proper officer affixes a onetime lock (OTL) on the container or means of transport (closed trucks). The serial number of OTL along with date and time of its affixation needs to be endorsed upon Bill of Entry for warehousing and transport document. All customs stations are required to maintain records incorporating the number of the OTL, bill of entry, truck number, container number (if applicable), date & time of affixing the OTL and the name, designation & telephone number of the officer affixing the OTL.

A similar procedure has been provided under Warehoused Goods (Removal) Regulations, 2016 for removal of goods from one warehouse to another and from a warehouse to customs station for export. However, the Principal Commissioner of Customs /Commissioner of Customs may permit movement of goods without affixation of such OTLs, where the nature of goods or their manner of transport so warrant (e.g. Liquid Bulk Cargo transported through Pipe Line & Over Dimensional Cargo).

Q. 15

List major differences between drawback u/s 74 and 75.

Answer:

Basis	Re-export of duty paid goods [section 74]	Material used in manufacture/processing of exported goods [section 75]
1. Meaning	Drawback = Refund of import duties, IGST & GST Cess paid on import.	Drawback = import/ excise duty on imported or domestic materials (excluding IGST & GST cess).
2. Identity	Goods exported must be the duty paid goods actually imported.	Goods exported are goods manufactured or processed out of materials and are, thus, different.
3. Quantum	98% of duty paid at the time of import or reduced amount considering import.	Drawback is allowed at all industry rate or brand rate or special brand rate, as it is applicable.
4. Time-limit	Goods must be exported in 2 years (or extended) from payment of duty.	No time bar.
5. Value addition	No criteria of value addition; in fact, goods must remain same.	Notified value addition must be achieved and there should be no negative value addition.
6. Recovery of export proceeds	No provision/need to that effect.	Export proceeds must be realized in time limit allowed by RBI, except in exceptional circumstances.

Q. 16

An importer imported some goods on 1st January, 2019 and the goods were cleared from Mumbai port for warehousing on 8th January, 2019 by submitting bill of entry, exchange rate was Rs. 50 per US\$. FOB value US\$10,000. The rate of duty on 8th January, 2019 was 20%. The goods were warehoused at Pune and were cleared from Pune warehouse on 31st May, 2019, when rate of BCD was 12% and exchange rate was Rs. 68.75 per 1US\$. IGST @12% is applicable.

You are required to find:

- (i) The total customs duty payable.
- (ii) The interest if any payable.

Answer:

	USD
FOB	10,000
Add: 20% freight on FOB	2,000
Add: 1.125% insurance on FOB	112.5
CIF or Assessable Value	12,112.5

	Rs.
Assessable value	6,05,625 (i.e. 12,112.5 x Rs.50)
Add: BCD 12%	72,675 (i.e. 6,05,625 x 12%)
Add: 10% SWS	7,268 (i.e. 72,675 x 10%)
Transaction value subject to GST	6,85,568
Add: IGST	82,268 (i.e. 6,85,568 x 12%)
Value of import	7,67,836
Value of Custom duties	1,62,211
Interest (i.e. 1.62,211 x 15% x 54/365)	3,600

Working note: From 8th January 2019 to 31st May 2019 = 144-90 = 54 days

Q. 17

Explain the rights of the owner to deal with warehoused goods under section 64 of the Customs Act, 1962.

Answer:

As per Section 64 of the Customs Act, 1962 (as amended w.e.f. 14.05.2016), the owner of any warehoused goods may, after warehousing the same:

- (A) Inspect the goods;
- (B) Deal with the containers in such manner as may be necessary to prevent loss or deterioration or damage to the goods;
- (C) Sort the goods;
- (D) Show the goods for sale

Q. 18

Explain the validity of the following statements with reference to Chapter IX of the Customs Act, 1962 containing the provisions relating to the warehousing:

- (a) The proper officer is not authorized to lock any warehouse with the lock of the Customs Department.
- (b) The Commissioner of Customs (Appeals) may appoint public warehouses wherein dutiable goods may be deposited.
- (c) The Commissioner of Customs or Principal Commissioner of Customs is not required to give a notice to the licensee while cancelling the license of a private warehouse if he has contravened any provision of the said Act.

Answer:

The given statement is invalid: Sec. 58A (1) The Principal Commissioner of Customs or Commissioner of Customs may, subject to such conditions as may be prescribed, license a special warehouse wherein dutiable goods may be deposited and such warehouse shall be caused to be locked by the proper officer and no person shall enter the warehouse or remove any goods there from without the permission of the proper officer.

Q. 19

What is warehousing without warehousing? Also, explain the validity of the following statements with reference to Chapter IX of the Customs Act, 1962 containing the provisions relating to the warehousing:

- (1) The proper officer is not authorized to lock any warehouse with the lock of the Customs Department.
- (2) The Commissioner of Customs (Appeals) may appoint public warehouses wherein dutiable goods may be deposited.
- (3) The Commissioner of Customs or Principal Commissioner of Customs is not required to give a notice to the licensee while canceling the license of a private warehouse if he has contravened any provision of the said Act.

Answer:

Warehousing without warehousing:

Imported goods are kept in customs bonded warehouse after being assessed to duty. However, occasionally, it may happen that assessment of duty may take time for want of some clarification/reports etc. In such cases, goods lying in docks may incur heavy demurrage. There is a provision that customs department can issue detention certificate and on the basis of such certificate, port trust authorities may remit demurrage. If the assessment is delayed, then those goods can be stored in public warehouse without executing the bond.

W.e.f 10th May, 2013, there is a time limit of 30 days to remove the goods from warehouse where the goods has been stored under section 49 of the Customs Act, 1962 i.e. warehousing without warehousing. However, the Commissioner of Customs may extend the period of storage for a further period not exceeding 30 days at a time.

Validity of the following statements are explained as follows:

- (1) The given statement is invalid: Sec. 58A (1) The Principal Commissioner of Customs or Commissioner of Customs may, subject to such conditions as may be prescribed, license a special warehouse wherein dutiable goods may be deposited and such warehouse shall be caused to be locked by the proper officer and no person shall enter the warehouse or remove any goods therefrom without the permission of the proper officer.
- (2) The given statement is invalid: The Commissioner of Customs or the Principal Commissioner of Customs can appoint public warehouse, wherein dutiable goods can be deposited under Section 57 of the Customs Act, 1962.
- (3) The given statement is valid: The Commissioner of Customs or Principal Commissioner of Customs is not required to give a notice to the licensee while canceling the license of a private warehouse if he has contravened any provision of the said Act, as per section 58(2)(b) of the Customs Act, 1962.

Q. 20

What is redemption fine in customs?

Answer:

Redemption Fine:

- The term redemption fine means option to pay fine in lieu of confiscation.
- Such fine shall not exceed the market price of the goods confiscated, less the duty on imported goods.
- Such an importer is liable to pay in addition to the customs duty and charges payable in respect of such imports, the penalty namely redemption fine.

Q. 21

State the features of warehousing.

Answer:

Features of warehousing:

1. Importer can defer payment of import duties by storing the goods in a safe place.
2. Importer allowed doing manufacturing in bonded warehouse and then re-exporting from it.
3. The importer can be allowed to keep the goods up to one year without payment of duty from the date he deposited the goods into warehouse.
4. This time period is extended to three years for Export Oriented Units and the time period still be extended to five years if the goods are capital goods.
5. The importer minimizes the charges by keeping in a warehouse, otherwise the demurrage charges at port is heavy.
6. Assistant Commissioner of Customs or Deputy Commissioner of Customs are competent to appoint a warehouse as public bonded warehouse.
7. The Assistant Commissioner of Customs or Deputy Commissioner of Customs may license private warehouse. The license to private warehouse can be cancelled by giving one month notice.
8. Only dutiable goods can be deposited in the warehouse.
9. Green Bill of Entry has to be submitted by the importer to clear goods from warehouse for home consumption.
10. Rate of duty is applicable as on the date of presentation of Bill of Entry (i.e. sub-bill of entry or ex-bond bill of entry) for home consumption.
11. Reassessment is not allowed after the imported goods originally assessed and warehoused.
12. The exchange rate is the rate at which the Bill of Entry (i.e. 'into bond') is presented for warehousing.
13. If the goods which are not removed from warehouse within the permissible period, then subsequent removal called as improper removal. The rate of basic customs duty which is applicable as on the last date on which the goods should have been removed but not removed is applicable.

Q. 22

A bill of entry was presented by Zeelsin Ltd., an importer on 16th September, 2017. The vessel carrying goods arrived on 23rd September, 2017. Entry inwards was granted on 25th September, 2017 and the bill of entry was assessed on that date and was also returned to the importer for payment of duty on that date. The duty amounting to Rs.4,00,000 was paid by the importer on 4th October, 2017. There were four holidays during the period from 26th September to 4th October, 2017.

Calculate the amount of interest payable under section 47(2) of the Customs Act, 1962.

Answer:

Interest rate: 15% p.a.:

No. of days delay: (From 25th Sept'17 to 4th Oct'17): 10 days

Less: No. of Holidays 4 days

Net, No. of days delay for Interest 6 days

Interest: (Rs. 400000 * 0.15 * (6/365) Rs.986.30

(a) The given statement is invalid: Under Sec. 58A(1) The Principal Commissioner of Customs or Commissioner of Customs may, subject to such conditions as may be prescribed, license a special warehouse wherein dutiable goods may be deposited and such warehouse shall be caused to be locked by the proper officer and no person shall enter the warehouse or remove any goods there from without the permission of the proper office.

(b) The given statement is invalid: The Commissioner of Customs or the Principal Commissioner of Customs can appoint public warehouse, wherein dutiable goods can be deposited under Section 57 of the Customs Act, 1962.

(c) The given statement is valid: The Commissioner of Customs or Principal Commissioner of Customs is not required to give a notice to the licensee while cancelling the license of a private warehouse if he has contravened any provision of the said Act, as per section 58(2)(b) of the Customs Act, 1962.

Q. 23

Where an eligible exporter finds that he is entitled to an amount of refund of drawback which is higher than the one granted to him, in terms of the rates of drawback announced by the Central Government, can he make a supplementary claim? If yes, within what time and state the procedure to be followed in this regard by the exporter.

Answer:

Supplementary claim for refund of drawback

Yes, the exporter is eligible for claiming the difference of the drawback on the basis of the amount of rate of drawback determined by the Central Government of India for claiming the difference.

It can do so by filing a supplementary claim in the prescribed Form under rule 15 of the Customs Act and Central Excise Duties Drawback Rules, 1995 within a period of 3 months.

The said 3 months period may be further extended for a period of nine months for filing a supplementary claim under rule 15, by making an application accompanied with a fees of 1% of the FOB value of exports or Rs. 1,000 whichever is less.

Further, the said period may be extended by six months by Commissioner of Customs/Commissioner of Customs and Central Excise on an application accompanied with a fees of 2% of the FOB value or Rs. 2,000 whichever is less.

Q. 24

"The duty drawback granted under customs law will be recovered where sale proceeds are not realized by an exporter within the period allowed under FEMA". Explain the exception(s), if any, to this rule.

Answer:

as per Rule 16A(5) of the Customs, Central Excise Duties and Service Tax Drawback Rules, 1995, as amended by the Customs, Central Excise Duties and Service Tax Drawback (Second Amendment) Rules, 2011 in the notification no. 30/2011 Customs (N.T.), dt. 11.04.2011 where sale proceeds are not realized by an exporter within the period allowed under the FEMA, the amount of drawback paid to the exporter or the claimant shall not be recovered if:

- (i) Such non-realization of sale proceeds is compensated by the Export Credit Guarantee Corporation of India Ltd., (ECGC) under an insurance cover; and
- (ii) The RBI writes off the requirement of realization of sale proceed on merits; and
- (iii) The exporter produces a certificate from the concerned Foreign Mission of India about the fact of the non-recovery of sale proceeds from the buyer.

Q. 25

When a vessel caught up in the rough waters and sank in the territorial waters, can the duty drawback be claimed?

Answer:

In *Union of India v. Rajindra Dyeing & Printing Mills Ltd.*, 2005 (180) ELT 433 (SC): The vessel sunk within territorial waters of India and therefore there is no export. Accordingly, no duty drawback shall be available in this case. The territorial waters extend to 12 nautical miles into the sea from the base line.

Q. 26

Calculate the amount of duty drawback allowable under section 74 of the Customs Act, 1962 in the following cases:

- (a) Infopro Ltd., imported 50 computers paying customs duty of Rs. 30,000 per computer. Due to some technical problems, of the 50 computers imported, 25 computers were re-exported to the foreign supplier after 1 month without using them at all.
- (b) M/s. RKM Films P. Ltd., imported wearing apparels from USA paying duty of Rs. 5,00,000 and were used in their upcoming movie. The apparels were reexported to USA after use after 3 months.

Answer:

Duty Drawback is Rs. 7,35,000/- [Rs. 30000 * 25 * 98%], since the computers are reexported without being used. (b) Duty drawback on wearing apparel is not allowed as they were re-exported after being used.

Q. 27

Explain the rights of the owner to deal with waterhoused goods under section 64 of the Customs Act, 1962.

Answer:

As per Section 64 of the Customs Act, 1962 (as amended w.e.f. 14.05.2016), the owner of any warehoused goods may, after warehousing the same:

- (A) Inspect the goods;
- (B) Deal with the containers in such manner as may be necessary to prevent loss or deterioration or damage to the goods;
- (C) Sort the goods;
- (D) Show the goods for sale.

Q. 28

Briefly narrate the features and advantages of warehousing.

Answer:

Features and Advantages of Warehousing:

1. Importer can defer payment of import duties by storing the goods in a safe place;
2. Importer allowed doing manufacturing in bonded warehouse and then re-exporting from it;
3. The importer can be allowed to keep the goods up to one year without payment of duty from the date he deposited the goods in a warehouse;
4. This time period is extended up to 3 years for EOUs and in case of capital goods it can be still extended to 5 years;
5. The importer minimizes the charges by keeping in a warehouse, otherwise the demurrage charges at port is heavy;
6. Only dutiable goods can be deposited in the warehouse;

7. Green Bill of Entry has to be submitted by the importer to clear goods from the warehouse for home consumption.

Q. 29

Whether goods cleared from Domestic Tariff Area (DTA) to Special Economic Zones (SEZ) attract export duty? Explain.

Answer:

Madras High Court in Advait Steel Rolling Mills P Ltd., v UOI 286 ELT 535 has held that the clearance of goods from DTA to SEZ are not chargeable to export duty either under the SEZ Act, 2005 or under the Customs Act, 1962. Court observed the following:

- (a) The charging section needs to be construed strictly. If a person is not brought within the scope of the charging section, he cannot be taxed at all.
- (b) SEZ Act does not contain any provision for the levy and collection of export duty.
- (c) Section 12(1) of Customs Act makes it apparent that customs duty can be levied only on goods imported into or exported beyond territorial waters of India.

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

Q. 22

Do the provisions of the Customs Act permit manufacture of goods in a warehouse? If so, discuss the provisions in brief.

Answer:

Manufacture of goods in a warehouse:

Section 65 of the Customs Act deals with it. As per the said section, manufacturing or other operations can be carried out in the warehouse with the sanction of Principal Commissioner of Customs or Commissioner of Customs. The facility is useful when the final products are to be exported after manufacture. After manufacture, the goods may either be exported without payment of customs duty or cleared for home consumption on payment of duty.

Any waste or refuse arisen in the above manufacturing process shall be dealt with as follows:

- (i) 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
Provided that 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;
- (ii) 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.

WAREHOUSING

CONCEPT 1. WAREHOUSING

Under the Customs Act, 1962, there are two types of warehousing namely Public warehouse and Private warehouse (Section 2(43) of the Customs Act). Warehouse means a place where goods after landing are permitted to be removed without payment of duty. However, the duty is collected at the time of clearance from the warehouse. A public warehouse is owned and managed by a Government body like Central Warehousing Corporation. A private warehouse is a warehouse licensed to store dutiable imported goods of the licensee or on behalf of licensee, in case of public warehouses is not available.

CONCEPT 2. WAREHOUSING BOND

An importer can be cleared for warehousing without payment of import duty. It means the duty liability is postponed to the date of actual clearance from the warehouse to home consumption. Hence, such an importer shall execute a bond binding himself in a sum equal to *twice* the amount of the duty assessed on such goods to cover all duties and interest if any payable. The Assistant Commissioner of Customs or Deputy Commissioner of Customs may insist on a part of the bond amount secured by way of bank guarantee. w.e.f. 14-5-2016, As per Section 2(43) of the Customs Act, 1962, "warehouse" means a public warehouse licensed under section 57 or a private warehouse licensed under section 58 OR Special Warehouse license u/s 58A.

CONCEPT 3. LICENSES

Licensing of public warehousing: Section 57:

The Principal Commissioner of Customs or Commissioner of Customs may, subject to such conditions as may be prescribed, license a public warehouse wherein dutiable goods may be deposited.

Licensing of private warehouses: Section 58:

The Principal Commissioner of Customs or Commissioner of Customs may, subject to such conditions as may be prescribed, license a private warehouse wherein dutiable goods imported by or on behalf of the licensee may be deposited.

Licensing of Special Warehousing:

Section 58A (1):

The Principal Commissioner of Customs or Commissioner of Customs may, subject to such conditions as may be prescribed, license a special warehouse wherein dutiable goods may be deposited and such warehouse shall be caused to be locked by the proper officer and no person shall enter the warehouse or remove any goods therefrom without the permission of the proper officer.

Section 58A (2):

The Board may, by notification in the Official Gazette, specify the class of goods which shall be deposited in the special warehouse licensed under sub-section (1).

Consequently, CBEC, vide Notification No. 66/2016 Cus (NT) dated 14.05.2016 has notified the following class of goods which shall be deposited in a special warehouse:

- (i) gold, silver, other precious metals and semi-precious metals and articles thereof;
- (ii) goods warehoused for the purpose of:
 - a. supply to DFS (Duty Free Shops) in a customs area;
 - b. supply as stores to vessels/aircrafts under Chapter XI of the Customs Act, 1962;

- c. supply to foreign privileged persons in terms of the Foreign Privileged Persons (Regulation of Customs Privileges) Rules, 1957.

Note:

(1) 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.

(2) A Duty-Free Shop (DFS) in the airport need not be a licensed as warehouse under section 58A.

- a. DFS located in customs area should not be treated as a warehouse.
- b. In fact, it is a point of sale for the goods which are to be ex-bonded and removed from a warehouse for being brought to a DFS in the customs area for sale to eligible persons, namely international passengers arriving or departing from India.

CONCEPT 4. CANCELLATION OF LICENCE [SECTION 58B, W.E.F. 14-5-2016]

(1) Where a licensee contravenes any of the provisions of this Act or the rules or regulations made thereunder or breaches any of the conditions of the licence, the Principal Commissioner of Customs or Commissioner of Customs may cancel the licence granted under section 57 or section 58 or section 58A.

Provided that before any licence is cancelled, the licensee shall be given a reasonable opportunity of being heard.

(2) The Principal Commissioner of Customs or Commissioner of Customs may, without prejudice to any other action that may be taken against the licensee and the goods under this Act or any other law for the time being in force, suspend operation of the warehouse during the pendency of an enquiry under sub-section (1).

(3) Where the operation of a warehouse is suspended under sub-section (2), no goods shall be deposited in such warehouse during the period of suspension:

Provided that the provisions of this Chapter shall continue to apply to the goods already deposited in the warehouse.

(4) Where the licence issued under section 57 or section 58 or section 58A is cancelled, the goods warehoused shall, within seven 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, be removed from such warehouse to another warehouse or be cleared for home consumption or export:

Provided that the provisions of this Chapter shall continue to apply to the goods already deposited in the warehouse till they are removed to another warehouse or cleared for home consumption or for export, during such period.”.

CONCEPT 5. FEATURES OF WAREHOUSING

- Importer can defer payment of import duties
- Importer can store the goods in a safe place
- Importer allowed to do manufacture in bonded warehouse and then re-export from it.
- The importer can be allowed to keep the goods up to one year without payment of duty from the date he deposited the goods into warehouse
- The importer minimises the charges by keeping in a warehouse, otherwise the demurrage charges at port is heavy.

- As per Section 9 of the Customs Act, 1962, the Central Board of Excise and Customs, may, by notification in the Official Gazette, declare places to be warehousing stations at which alone public warehouses may be appointed and private warehouses may be licensed.
- Assistant Commissioner of Customs or Deputy Commissioner of Customs are competent to appoint a warehouse as public bonded warehouse
- The Commissioner of Customs or Principal Commissioner of Customs may license private warehouse. As per section 58(2)(b) of the Customs Act, 1962, Commissioner or Principal Commissioner of Customs is not required to give a notice to the licensee while cancelling the license of a private warehouse if he has contravened any provision of the said Act. Otherwise, the license to private warehouse can be cancelled by giving ONE month notice.
- Only dutiable goods can be deposited in the warehouse
- Green Bill of Entry has to be submitted by the importer to clear goods from warehouse for home consumption.
- Rate of duty is applicable as on the date of presentation of Bill of Entry (i.e. sub-bill of entry or ex-bond bill of entry) for home consumption.
- Reassessment is not allowed after the imported goods originally assessed and warehoused. • The exchange rate is the rate at which the Bill of Entry (i.e. 'into bond') is presented for warehousing. That is the date on which the Bill of Entry is submitted for warehousing not the Ex- Bill of Entry which is required to be submitted at the time of clearing the goods from warehouse.
- If the goods which are not removed from warehouse within the permissible period, would be deemed to have been improperly removed on the day it should have been removed. Hence, duty applicable on such date (i.e. last date on which the goods should have been removed) is applicable, and not the actual date on which goods are removed. **[Kesoram Rayon v Commissioner of Customs (1996)]**

- Relevant date when goods are warehoused can be summarized hereunder.

S. No.	Goods warehoused under Bond	Relevant date	Remarks
(i)	Rate of exchange	At the time of submission of 'into bond' bill of entry	When goods are removed for home consumption
(ii)	Rate of duty	As on the date of submission of sub-bill of entry	When goods are removed for home consumption
(iii)	Rate of duty	The rate of duty prevails on the date on which the goods should have been removed is to be considered	When the goods are not removed from warehouse within the permissible period and permission is also not obtained for the extended period – Improper removal.

CONCEPT 6. WAREHOUSING PERIOD

As per section 61 of the Customs Act, 1962 period of warehousing has been suggested in the following lines:

Importer	Normal warehousing period	Remarks
Other than EOU	One year	From the date of issuing the order by Customs Officer permitting deposit of goods in a warehouse.
EOU	Three years – for inputs, spares and consumables Five years – for capital goods	In the case of EOU units, the whole factory is treated as a bonded warehouse.

The power to extend the warehousing period beyond 5 years/3 years has been delegated to the Commissioner of Customs for such further period as he may deem fit. The period of 1 year can be extended by the Commissioner of Customs for further 6 months. However, for extending it further, authorization of Chief Commissioner of Customs is required.

In the case of goods warehoused by other than EOU, if they are likely to deteriorate, the normal warehousing period of one year may be reduced by the Commissioner of Customs to such shorter period as he may deem fit.

w.e.f. 14-5-2016:

- (1) Section 59 of the Customs Act, 1962, Bond amount has been increased from twice of the duty amount to thrice of the duty amount and security also will have to be given.
- (2) Now, rent charges claimable will not be pre-requisite for non-compliances of any of the provisions, since it is the issue of custodian i.e. owner of the warehouse.

CONCEPT 7. PERIOD FOR WHICH GOODS MAY REMAIN WAREHOUSED W.E.F. 14-5-2016

As per Sec. 61 of the Customs Act, 1962

(1) Any warehoused goods may remain in the warehouse in which they are deposited or in any warehouse to which they may be removed:

- (a) In the case of capital goods intended for use in any hundred per cent. export oriented undertaking or electronic hardware technology park unit or software technology park unit or any warehouse wherein manufacture or other operations have been permitted under section 65, till their clearance from the warehouse;
- (b) In the case of goods other than capital goods intended for use in any hundred per cent. export oriented undertaking or electronic hardware technology park unit or software technology park unit or any warehouse wherein manufacture or other operations have been permitted under section 65, till their consumption or clearance from the warehouse; and
- (c) In the case of any other goods, till the expiry of one year from the date on which the proper officer has made an order under sub-section (1) of section 60:

Provided that in the case of any goods referred to in this clause, the Principal Commissioner of Customs or Commissioner of Customs may, on sufficient cause being shown, extend the period for which the goods may remain in the warehouse, by not more than one year at a time:

Provided further that where such goods are likely to deteriorate, the period referred to in the first proviso may be reduced by the Principal Commissioner of Customs or Commissioner of Customs to such shorter period as he may deem fit.

(2) Where any warehoused goods specified in clause (c) of sub-section (1) remain in a warehouse beyond a period of ninety days from the date on which the proper officer has made an order under sub-section (1) of section 60, interest shall be payable at such rate as may be fixed by the Central Government under section 47, on the amount of duty payable at the time of clearance of the goods, for the period from the expiry of the said ninety days till the date of payment of duty on the warehoused goods:

Provided that if the Board considers it necessary so to do, in the public interest, it may,—

- (a) by order, and under the circumstances of an exceptional nature, to be specified in such order, waive the whole or any part of the interest payable under this section in respect of any warehoused goods;
- (b) by notification in the Official Gazette, specify the class of goods in respect of which no interest shall be charged under this section;

(c) by notification in the Official Gazette, specify the class of goods in respect of which the interest shall be chargeable from the date on which the proper officer has made an order under sub-section (1) of section 60.

w.e.f. 14-5-2016 Control over warehoused goods has been omitted:

Now there will be a record based control on such warehouses except for warehouses setup under section 58A and hence there is no need of payment of MOT charges by EOU except for class of goods which is notified under section 58A.

CONCEPT 8. SECTION 63 OF THE CUSTOMS ACT, 1962, PAYMENT OF RENT AND WAREHOUSE CHARGES.

Prior to 14-5-2016	W.e.f. 14-5-2016	Remarks
<p>The owner of any warehoused goods shall pay to the warehouse-keeper rent and warehouse charges at the rates fixed under any law for the time being in force or where no rates are so fixed, at such rates as may be fixed by the Commissioner of Customs.</p> <p>(2) If any rent or warehouse charges are not paid within ten days from the date when they became due, the warehouse- keeper may, after notice to the owner of the warehoused goods and with the permission of the proper officer cause to be sold (any transfer of the warehoused goods notwithstanding) such sufficient portion of the goods as the warehouse-keeper may select.</p>	Omitted	This was the issue of the custodian i.e. owner of warehouse and not the custom officers.

CONCEPT 9. SECTION 64 OF THE CUSTOMS ACT, 1962, OWNER'S RIGHT TO DEAL WITH WAREHOUSED GOODS:

w.e.f. 14-5-2016 The owner of any warehoused goods may, after warehousing the same:

- (a) Inspect the goods;
- (b) Deal with their containers in such manner as may be necessary to prevent loss or deterioration or damage to the goods;
- (c) Sort the goods; or
- (d) Show the goods for sale.

Note: Since physical control has been abolished, there is no need of obtaining sanction on payment of MOT charges.

CONCEPT 10. SECTION 65 OF THE CUSTOMS ACT, 1962 MANUFACTURE AND OTHER OPERATIONS IN RELATION TO GOODS IN A WAREHOUSE.

Prior to 14-5-2016	w.e.f. 14-5-2016	Remarks
With the sanction of the Assistant Commissioner of Customs or Deputy Commissioner of Customs and subject to such conditions and on payment of such fees as may be prescribed, the owner of any warehoused goods may carry on any manufacturing process or other operations in the warehouse in relation to such goods.	With the permission of the Principal Commissioner of Customs or Commissioner of Customs and subject to such conditions and on payment of such fees as may be prescribed, the owner of any warehoused goods may carry on any manufacturing process or other operations in the warehouse in relation to such goods.	It is upward delegation. Now EOU, EHTP Units will have to be obtained license u/s 58/65 from Principal Commissioner/ Commissioner

CONCEPT 11. CUSTODY AND REMOVAL OF WAREHOUSED GOODS (NEW SECTION 73A W.E.F. 14-5-2016)

- (1) All warehoused goods shall remain in the custody of the person who has been granted a licence under section 57 or section 58 or section 58A until they are cleared for home consumption or are transferred to another warehouse or are exported or removed as otherwise provided under this Act.
- (2) The responsibilities of the person referred to in sub-section (1) who has custody of the warehoused goods shall be such as may be prescribed.
- (3) Where any warehoused goods are removed in contravention of section 71, the licensee shall be liable to pay duty, interest, fine and penalties without prejudice to any other action that may be taken against him under this Act or any other law for the time being in force.

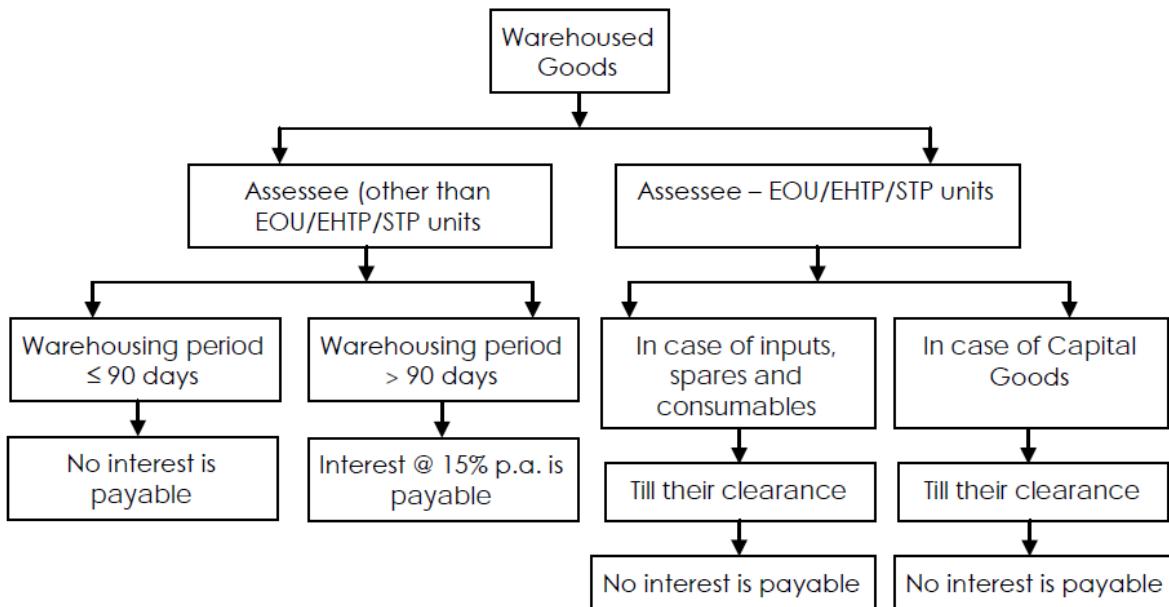
Note: The provision has been inserted so as to recover the duty either from custodian or importer as may be prescribed to protect the revenue. Liability of duty interest fine will be on importer and or custodian, as the case may be. This will cause more responsibility on custodian.

CONCEPT 12. INTEREST ON WAREHOUSED GOODS

If the importer after warehousing the goods does not clear within 90 days from the date of deposit of the goods, the interest @15% p.a. is to be paid on the value of total duty payable. However in case of Anti Dumping Duty interest has to be paid at the time of importation. If the Anti Dumping Duty is not levied at the time of import however, subsequently imposed on warehoused goods then no such duty is required to be paid by the importer at the time of clearance from the warehouse. Therefore no interest on the part of Anti Dumping duty will be imposed.

No interest, if no customs duty is payable on warehoused goods. While calculating the interest for number of days delay, we should take into account by including the date of payment of duty. [MF(DR) Circular No. 48/2002-Customs]

CONCEPT 13. APPLICABILITY OF INTEREST ON WAREHOUSED GOODS 14-5-2016:



CONCEPT 14. WAIVER OF INTEREST

Waiver of interest can be granted by the Chief Commissioner of Central Excise upto ` 2 crores, and the C.B.E. & C. can waive part or full interest under exceptional circumstances without any upper limit beyond ` 2 crores.

CONCEPT 15. CUSTODIAN UNDER SECTION 45 OF THE CUSTOMS ACT, 1962

All imported goods unloaded in a customs area shall remain in the custody of such person as may be approved by the Commissioner of Customs until they are cleared for home consumption or are warehoused or are transshipped. This person is called the custodian. The Post Trust Authority and the Notional Airport Authority can be considered as custodian.

Custodian has the following responsibilities under section 45(2):

- Keep proper record of goods received from the carriers
- Sending a copy of the same to the customs authorities
- Removal of goods from the customs area with specific permission of the Customs Authorities

Liability of the custodian under section 45(3):

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. ***International Airport Authority of India v Ashok Dhawan 1999(106) ELT 16 (SC).***

Port Trust authorities are not liable for payment of duty in respect of pilfered goods:

The Bombay High Court differently interpreted the liability of the Custodian. As per section 45 of the Customs Act, the person referred to in sub-section (1) thereof can only be the person approved by the Commissioner of Customs. It excludes a body of persons, who by virtue of a law for the time being in force, is entrusted with the custody of goods by incorporation of law under another enactment, (for example, the Port Trust Act in the given case). The recovery of duty in respect of pilfered goods could only from the approved person and the Port Trust is not liable to pay duty on goods pilfered while in their possession [***Board of Trustees of the Port of Bombay v UOI 2009 (241) ELT 513 (Bom)***]

A 100% EOU has to be treated as a Customs Bonded Warehouse

The entire premises of a 100% EOU has to be treated as a Customs bonded warehouse if the licence granted u/s 58 is in respect of the entire premises. Imported goods warehoused in the premises of a 100% EOU (which is licensed as a Customs bonded warehouse) and used for the purpose of manufacturing/processing by the 100% EOU in bond as authorized u/s 65 cannot be treated to have been removed for home consumption accordingly, filing or non-filing of ex-bond bill of entry before using the goods by the 100% EOU is not relevant. The Tribunal expressed the same view in the case of *Paras Fab International v CCE 2010 (256) ELT 556 (Tri.-LB)*.

CONCEPT 16. CLEARANCE OF WAREHOUSED GOODS FOR EXPORTATION

Warehoused goods may be exported without payment of import duty by satisfying the following:

- A shipping bill or a bill of export has been presented in respect of such goods in the prescribed form
- The export duty, penalties, rent, interest and other charges payable in respect of such goods have been paid; and
- An order for clearance of such goods for exportation has been made by the proper officer.

CONCEPT 17. Powers of proper officer to take samples for the purpose of examination or testing (Section 144):

The proper officer may –

- on the entry or clearance of any goods or at any time while such goods are being passed through the customs area,
- take samples of such goods in the presence of the owner thereof,
- for examination or testing, or for ascertaining the value thereof, or for any other purposes of this Act.

Return/Disposal of samples:

- After the purpose for which a sample was taken is carried out, such sample shall, if practicable, be restored to the owner.
- But if the owner fails to take delivery of the sample within three months from the date the sample was taken, it may be disposed of in such manner as the Commissioner of Customs may direct.

No duty on samples destroyed:

Prior to 10th May, 2013	W.e.f. 10th May, 2013
No duty shall be chargeable on any sample of goods taken under this section which is consumed or destroyed during the course of any test or examination thereof, if such duty amounts to five rupees or more.	No duty shall be chargeable on any sample of goods taken under this section which is consumed or destroyed during the course of any test or examination thereof.

CONCEPT 18. IMPORTED GOODS NOT CLEARED WITHIN 30 DAYS (SECTION 48 OF THE CUSTOMS ACT, 1962)

As per Section 48 of the Customs Act, 1962 the imported goods brought into India are allowed to stay not more than 30 days on the wharf. Therefore, these imported goods should be cleared for home consumption, or warehoused or transhipped within 30 days from the date of the unloading thereof at the Customs Station or within such further time as the proper officer may allow.

If the goods are not cleared within 30 days from the date of unloading or if the title to any imported goods is relinquished by the importer, such goods can be sold by the Custodian with customs permission and after notice to the importer.

However, in case of animals, perishable goods, hazardous goods, they can be sold any time with the permission of proper officer.

Arms and ammunition fall under Arms Act, 1959 they can be sold at the time/place/manner prescribed by the Central Government of India. However, Section 46 of the Customs Act, 1962 prescribes no time limit for filing a bill of entry by an importer upon arrival of goods.

CONCEPT 19. WAREHOUSING WITHOUT WAREHOUSING (SECTION 49 OF THE CUSTOMS ACT, 1962)

Imported goods are kept in customs bonded warehouse after being assessed to duty. However, occasionally, it may happen that assessment of duty may take time for want of some clarification/reports etc. In such cases, goods lying in docks may incur heavy demurrage. There is a provision that customs department can issue detention certificate and on the basis of such certificate, port trust authorities may remit demurrage. If the assessment is delayed, then those goods can be stored in public warehouse without executing the bond. W.e.f. 10th May, 2013.

Prior to 10th May, 2013	W.e.f 10th May, 2013
There is no time limit to remove the goods from warehouse where the goods has been stored under section 49 of the Customs Act, 1962 i.e. warehousing without warehousing	There is a time limit of 30 days to remove the goods from warehouse where the goods has been stored under section 49 of the Customs Act, 1962 i.e. warehousing without warehousing. However, the Commissioner of Customs may extend the period of storage for a further period not exceeding 30 days at a time.

CONCEPT 20. Extension of warehousing and acceptance of Letter of Undertaking in place of Bank Guarantee for export warehousing [Circular No. 976/10/2013-CX, dated 12.12.2013]:

1. Warehousing of goods shall initially be allowed for a period upto 6 months, which may be further extended by Assistant/Deputy Commissioner, each extension being for a period not exceeding 6 months, subject to verification that the goods have not deteriorated in quality.
2. The maximum period, for which goods may be left in the warehouse in which they are deposited, or in any warehouse to which such goods have been removed, shall be three years from the date on which such goods were first warehoused.
3. Excisable goods shall be deemed to be cleared for home consumption on expiry of warehousing period including extensions granted, if any.
4. Duty and interest @15% p.a. (w.e.f. 1-4-2106) shall be charged on such deemed removal. Prior to 1-4-2016 interest @ 24% per annum.
5. W.e.f. 12.12.2013, where exporter is a manufacturer and a Status Holder with a clean track record, requirement to furnish security equal to 25% of bond amount shall be replaced by the requirement of furnishing an LUT initially for a period up to 6 months which may be extended by a further period not exceeding 6 months.

Further, extensions in the warehousing period shall be allowed to such exporter only on furnishing security of 25% of the bond amount.

CONCEPT 21. WAREHOUSED GOODS (REMOVAL) REGULATIONS, 2016 (NT 67/2016 CUS DT 14.5.2016):

1. Owner of warehoused goods make a request:

Where the warehoused goods are to be removed from one warehouse to another warehouse or from a warehouse to a customs station for export, the owner is required to make a request in prescribed Form for transfer of goods.

2. Conditions for transport of goods:

Where the goods are removed:

- From the customs station of import to a warehouse or
- From one warehouse to another warehouse or
- From the warehouse to a customs station for export the transport of the goods shall be under one-time lock (OTL), affixed by the proper officer or licensee or bond officer [i.e. an officer of customs in charge of a warehouse], as the case may be.

However, the Principal Commissioner/Commissioner of Customs may dispense with the condition of one-time lock and allow transport of the goods without affixing the one-time-lock, having regard to the nature of goods or manner of transport.

3. Acknowledgement of receipt of goods at the destination, to be produced by the owner of goods:

The owner of the goods shall produce to the proper officer at customs station of import or the bond officer, within one month [or extended period allowed], an acknowledgement issued by the licensee or the bond officer of the warehouse to which the goods have been removed or the proper officer at the customs station of export, as the case may be, stating that the goods have arrived at that place. In case the owner fails to provide the acknowledgment, he shall pay the full amount of duty chargeable on account of such goods together with interest, fine and penalties payable under section 72(1).

CONCEPT 22. ONE TIME LOCK (OTL):

When the goods are removed from the customs station of import for warehousing, the proper officer affixes a one- time lock (OTL) on the container or means of transport (closed trucks). The serial number of OTL alongwith date and time of its affixation needs to be endorsed upon Bill of Entry for warehousing and transport document.

All customs stations are required to maintain records incorporating the number of the OTL, bill of entry, truck number, container number (if applicable), date & time of affixing the OTL and the name, designation & telephone number of the officer affixing the OTL.

A similar procedure has been provided under Warehoused Goods (Removal) Regulations, 2016 for removal of goods from one warehouse to another and from a warehouse to customs station for export.

However, the Principal Commissioner of Customs /Commissioner of Customs may permit movement of goods without affixation of such OTLs, where the nature of goods or their manner of transport so warrant (e.g. Liquid Bulk Cargo transported through Pipe Line & Over Dimensional Cargo)

CONCEPT 23. TRANSFER OF GOODS TO ANOTHER WAREHOUSE:

Warehouse - Private or Public	Special warehouse
(1) Licensee (namely incharge of warehouse) shall transfer warehoused goods to another warehouse only when the owner of the goods produce the form for transfer of goods bearing the orders of the bond officer permitting such transfer.	(1) Licensee (namely incharge of warehouse) shall transfer warehoused goods to another warehouse only with the permission of the Bond Officer on the form for transfer of goods.
(2) After the goods are removed and loaded on means of transport, licensee would: <ul style="list-style-type: none"> (a) affix a one-time-lock to the means of transport, (b) endorse the number of one-time lock on prescribed form for transfer of goods and on transportation documents, (c) cause one copy of each of these documents to be delivered to bond officer and (d) record the removal of goods 	(2) Once bond officer permits removal of goods from warehouse, licensee shall, in the presence of Bond Officer: <ul style="list-style-type: none"> (a) cause the goods to be loaded onto the means of transport, and (b) affix a one-time-lock to the means of transport.
Monthly return: A licensee shall file with the Bond Officer a monthly return in prescribed form, of the receipt, storage, operations and removal of the goods in the warehouse, within 10 days after the close of the month to which such return relates. However, such return shall be furnished on/before the 10th day of the month immediately preceding the month in which the warehousing period would expire.	

CONCEPT 24. ONLINE FILING OF EX-BOND BILL OF ENTRY AND EDI BASED MONITORING OF WAREHOUSES AT CUSTOMS STATION OF IMPORT (W.E.F. 31.05.2015)

The filing of ex-bond bills of entry on ICES will provide the benefits of automation to importers availing the warehousing facility and lend efficiency to the process of clearance of the warehoused goods.

On receipt of copy of the ex-bond bill of entry, jurisdictional bond officer shall verify its details from ICEGATE (Indian Customs Electronic Commerce/Electronic Data interchange (EC/EDI) Gateway) to check that, the order of clearance for home consumption has been made by the proper officer. In case of any discrepancy, he shall not permit the removal of goods from the warehouse and immediately inform his Deputy or Assistant Commissioner for resolution of the same.

DUTY DRAWBACK

CONCEPT 1. DUTY DRAWBACK

The term 'duty drawback' means drawing back of the duties paid. As per section 75 of the Customs Act, 1962, drawback is given as an amount to the exporter which represents:

- The duty paid on imported inputs which are used in the manufacture of export goods
- The excise duty paid on the indigenously produced inputs used in the manufacture of export goods.
- The service tax paid on input services.

However, the amount of drawback paid would not exactly relate to the actual import duty and excise duty components. It is determined by the government on the basis of an average amount of duty having regard to all the circumstances and facts of the manufacturing industry. Such a rate is called 'all industry rates' which may vary from time to time depending upon the duty prevalent on the inputs.

Brand rate of duty drawback is applicable in either of the following circumstances.

- When individual rate fixed in respect of goods on which all industry rate is not applicable

Or

- All industry rate does not cover 80% of the drawback amount due.

The Brand Rate of Duty Drawback fixed by the Central Government after necessary verification of the manufacturing processes and the documents provided giving details of input output ratio, duty paid on inputs, etc.

CONCEPT 2. SPECIAL BRAND RATE OF DUTY DRAWBACK

As per Rule 7 of Drawback Rules the special brand rate of duty drawback can be applied based on the satisfaction of following conditions:

- Exporter has to apply for fixation of special brand rate within 30 days from the date of export.
- All industry rates do not cover 80% of the duties paid by the exporter.
- Rate of Duty Drawback should not be less than 1% of Free on Board.
- Amount of Drawback should not be less than ₹ 500 per shipment, in case rate of Duty Drawback is less than 1% of FOB.
- Exported goods value is more than the value of imported goods.

CONCEPT 3. ALL INDUSTRY RATES

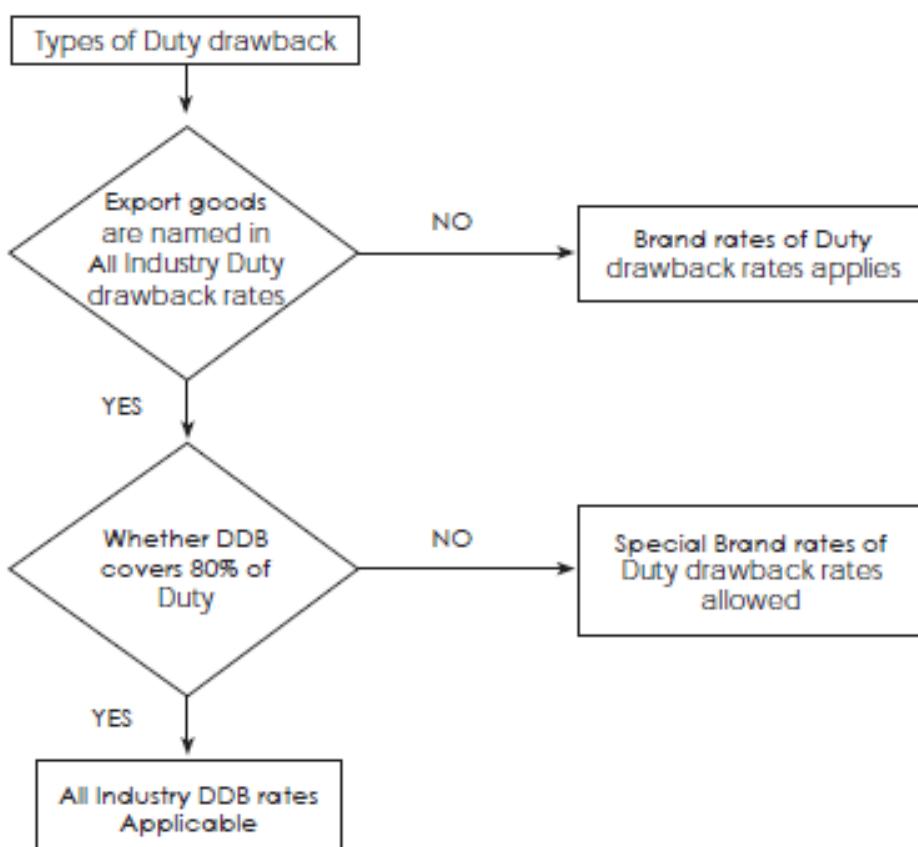
Generally these rates are fixed by the Drawback Directorate once in every year on 1st June. The Brand rate is fixed for those products in respect of which All Industry Rate is not announced. In that case, the manufacturer or exporter has to get the brand rate fixed by furnishing the prescribed data within 3 months from the relevant date for determination of rate of duty and tariff valuation to the Commissioner of Central Excise and Customs.

As per Rule 3(2) of Customs, Central Excise Duties and Service Tax Drawback Rules, 1995, all industry rate of duty drawback will be determined by the Drawback Directorate shall have regard to

- The average quantity or value of each class or description of the materials from which a particular class of goods is ordinarily produced or manufactured in India.
- The average quantity or value of the imported materials or excisable materials used for production or manufacture in India of a particular class of goods;

- The average amount of duties paid on imported materials or excisable materials used in the manufacture of semis, components and intermediate products which are used in the manufacture of goods.
- The average amount of duties paid on materials wasted in the process of manufacture.
- The average amount of duties paid on imported materials or excisable materials used for containing or, packing the export goods;
- The average amount of tax paid on taxable services which are used as input services for the manufacturing or processing or for containing or packing the export goods.
- Any other information, which the Central Government considers relevant or useful.

CONCEPT 4. TYPES OF DUTY DRAWBACKS CONCEPT AND ITS APPLICABILITY EXPLAINED HERE IN A SIMPLIFIED MANNER:



Where the exporter has already filed a duty drawback claim under All Industry Rates (AIR) Schedule, he cannot request for fixation of Special Brand Rate of drawback. Thus, the exporter should determine prior to export of goods, whether to claim drawback under AIR or Special Brand Rate. [w.e.f. 22.11.2014]

CONCEPT 5. DUTY DRAWBACK ON RE-EXPORT

Section 74 of the Customs Act, 1962, provides facility of claiming duty drawback on the re-export of duty paid goods.

- Originally the goods should have been imported into India;
- Customs duty on import should have been paid.
- The imported goods should be capable of being easily identifiable as the same goods which were originally imported.

- The goods have been exported after proper examination of the goods and after ensuring that there is no prohibition or restriction on their export by the proper officer.
- The goods should have been identified to the satisfaction of the Assistant or Deputy Commissioner of Customs as the goods, which were imported, and
- The goods should have been entered for export within two years from the date of payment of duty on the importation thereof.

The Central Board of Excise and Customs has the power to extend the period of two years. Once these conditions are satisfied, then 98% of the import duty paid on such goods at the time of importation shall be repaid as drawback. 98% duty drawback is allowed only when these goods are re-exported without being used in the industry. If the goods are taken into use after importation then the duty drawback is allowed based on the period of usage as per section 74(2) of the Customs Act, 1962.

CONCEPT 6. DRAWBACK RATES ON RE-EXPORT IF THE GOODS ARE TAKEN INTO USE AFTER IMPORTATION (NT NO. 23/2008-CUS., DATED 1-3-2008)

The following duty drawback rates has been notified by the Central Government under section 74(2) of the Customs Act, 1962. These rates are applicable if the goods are re-exported only after being used in the business.

Length of period between the date of clearance for home consumption and the date when goods are placed under Customs control for export.	% of import duty to be paid as Drawback
Not more than 3 months	95%
More than 3 months but not more than 6 months	85%
More than 6 months but not more than 9 months	75%
More than 9 months but not more than 12 months	70%
More than 12 months but not more than 15 months	65%
More than 15 months but not more than 18 months	60%
More than 18 months	NIL

Duty drawback rates on personnel goods under section 74(2) of the Customs Act

The following duty drawback rates are allowable on goods imported for personal use (like Motor cars or other goods) after payment of duty and subsequently re-exported: These rates are applicable if the goods are re-exported after being used.

Year	Quarter or part thereof	Rate of drawback to be reduced	Cumulative reduction	Allowable drawback
1	1st Quarter	4%	4%	96%
	2nd Quarter	4%	8%	92%
	3rd Quarter	4%	12%	88%
	4th Quarter	4%	16%	84%
2	1st Quarter	3%	19%	81%
	2nd Quarter	3%	22%	78%

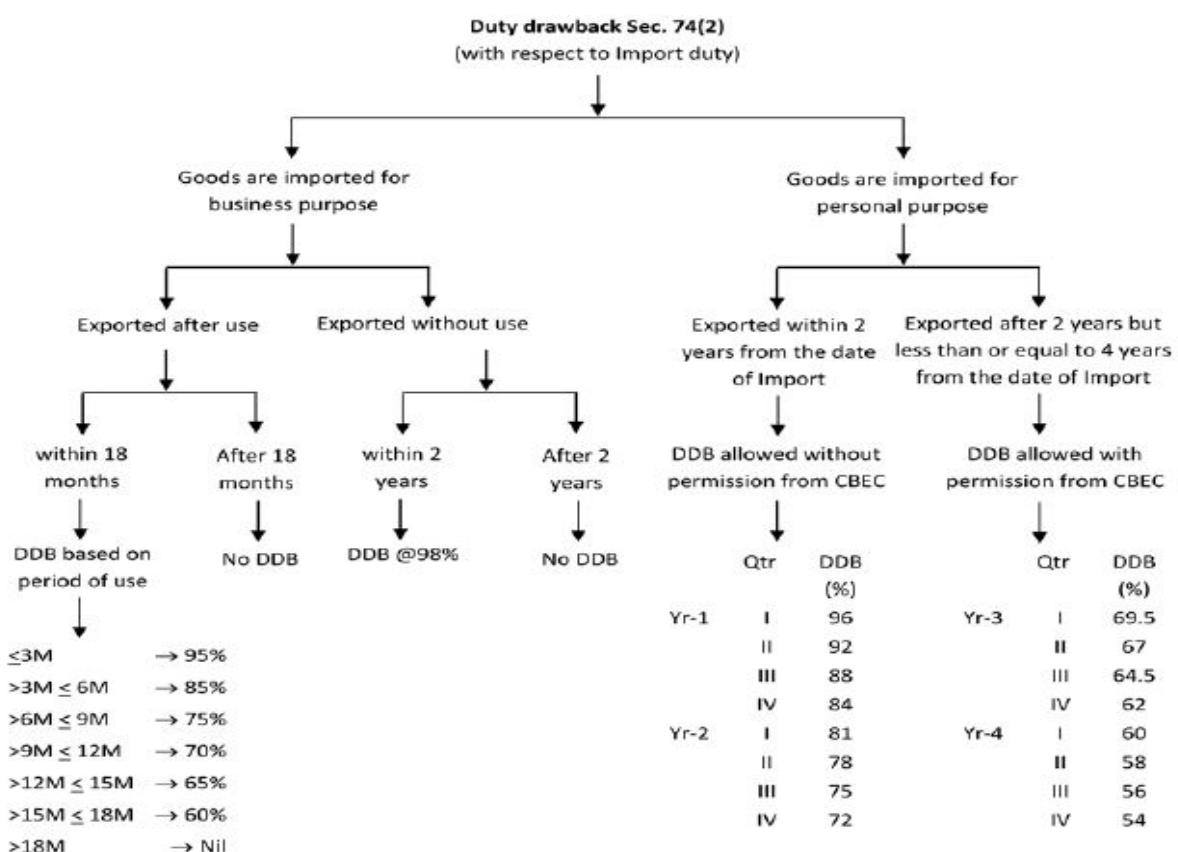
Year	Quarter or part thereof	Rate of drawback to be reduced	Cumulative reduction	Allowable drawback
	3rd Quarter	3%	25%	75%
	4th Quarter	3%	28%	72%
3	1st Quarter	2.50%	30.5%	69.5%
	2nd Quarter	2.50%	33%	67%
	3rd Quarter	2.50%	35.5%	64.5%
	4th Quarter	2.50%	38%	62%
4	1st Quarter	2%	40%	60%
	2nd Quarter	2%	42%	58%
	3rd Quarter	2%	44%	56%
	4th Quarter	2%	46%	54%

Part of the quarter is also considered as full quarter for allowing duty draw back rate.

CONCEPT 7. MOTOR CAR OR GOODS USED MORE THAN 2 YEARS:

Where the period of usage is more than 2 years, drawback shall be allowed only if the CBEC, on sufficient cause being shown, has in that particular case extended the period beyond 2 years and also that no drawback shall be allowed if such motor car has been used for more than 4 years.

CONCEPT 8. THE ENTIRE CONCEPT WITH REGARD TO DUTY DRAWBACK ON RE-EXPORT HAS BEEN EXPLAINED HEREUNDER:



CONCEPT 9. STATEMENTS/DECLARATION TO BE MADE ON EXPORT OTHER THAN BY POST

As per Rule 4 of the Re-export of Imported Goods (Drawback of Customs Duties) Rules, the exporter shall at the time of export of the goods

- State on shipping bill or bill of export, the description, quantity and such other particulars as are necessary for deciding whether the goods are entitled to drawback under section 74 and make a declaration on the relevant shipping bill or bill of export the following:
 - the export is being made under a claim for drawback under section 74 of the Customs Act;
 - that the duties of customs were paid on the goods imported;
 - that the imported goods were, or were not, taken into use after importation;
- furnish to the proper officer of customs, copy of bill of entry, import invoice, Documentary evidence of payment of duty, export invoice and packing list and permission from Reserve Bank of India to re-export the goods, wherever necessary

CONCEPT 10. TIME LIMIT FOR CLAIMING THE DUTY DRAWBACK

As per Rule 5(1) of the Re-export of Imported Goods (Drawback of Customs Duties) Rules, 1995 a claim for drawback, in case of goods exported other than by post, shall be filed in the specified form at Annexure II within three months from the date on which an order permitting clearance and loading of goods for exportation under section 51 is made by proper officer of customs.

In case of delay in filing the claim, the proper officer namely the Assistant Commissioner of Customs or Deputy Commissioner of Customs may, if he satisfied that the exporter was prevented by sufficient cause to file his claim within the aforesaid period of three months, allow the exporter to file his claim within a further period of three months.

Extension of time period for filing drawback claim under rule 5 of the Re-export of Imported Goods (Drawback of Customs Duties) Rules, 1995

Proviso to rule 5(1) of the Re-export of Imported Goods (Drawback of Customs Duties) Rules, 1995 has been substituted with a new proviso. Rule 5(1) provides that a claim for drawback shall be filed within three months from the date on which an order permitting clearance and loading of goods for exportation is made by proper officer of customs.

The new proviso lays down that the said period of three months may be extended by a period of three months by Assistant/Deputy Commissioner on an application accompanied with a fees of 1% of the FOB value of exports or ` 1000/- whichever is less and a further period of six months by Commissioner of Customs/ Commissioner of Customs and Central Excise on an application accompanied with a fees of 2% of the FOB value or ` 2000/- whichever is less. [Notification No. 48/2010-Cus. (NT), dated 17.06.2010]

Change in time periods available under rules 6, 7, 15 and 16A of the Customs, Central Excise Duties and Service Tax Drawback Rules, 1995

Following amendments have been made in the Customs, Central Excise Duties and Service Tax Drawback Rules, 1995: [Notification No. 49/2010 Cus.(NT), dated 17.06.2010]

(i) The time period for the following has been extended from sixty days to three months:

- (a) Making an application to the Commissioner of Central Excise/Commissioner of Customs and Central Excise for determination of the amount or rate of drawback if no All Industry Rate is specified [Rule 6].
- (b) making an application to the Commissioner of Central Excise/Commissioner of Customs and Central Excise for determination of the amount or rate of drawback where the amount or rate of drawback is low (i.e. All Industry Rate is lower than 80% of the duty or tax paid) [Rule 7].

Further, the aforesaid periods of three months may be extended by a period of three months by Assistant/Deputy Commissioner on an application accompanied with a fees of 1% of the FOB value of exports or ` 1000/- whichever is less and a further period of six months by Commissioner of Central Excise/ Commissioner of Customs and Central Excise on an application accompanied with a fees of 2% of the FOB value or ` 2000/- whichever is less.

CONCEPT 11. SUPPLEMENTARY CLAIM [RULE 15]:

Where an exporter finds that the amount of duty drawback paid to him is less than what he is entitled to on the basis of amount or rate of duty drawback as determined by the Commissioner of Central Excise/ Commissioner of Customs and Central Excise, he may prefer supplementary claim in prescribed form:

The claim shall be made within 3 months of the following dates:

- Where rate of duty drawback is determined or revised under Rule 3 or 4, date of publication of such date
- Where the rate is determined under Rule 6 or 7, the date of communication of rate to person

The said 3 months period further extended for a period of nine months for filing a supplementary claim under rule 15, by making an application accompanied with a fees of 1% of the FOB value of exports or ` 1000/- whichever is less. Further, the said period may be extended by six months by Commissioner of Customs/ Commissioner of Customs and Central Excise on an application accompanied with a fees of 2% of the FOB value or ` 2000/- whichever is less.

CONCEPT 12. Recovery of duty drawback where export proceeds are not realized [Rule 16A]:

Where the duty drawback has been paid to the exporter but the sale proceeds in respect of such goods have not been realized by the exporter within the period permissible by the Foreign Exchange Management Act, 1999 (FEMA), such duty drawback shall be recovered by the Government except under circumstances or conditions specified in rule 16A(5).

Where the sale proceeds are realized by the exporter after the amount of drawback has been recovered from him and the exporter produces evidence about such realization within a period of 3 months from the date of realization of sale proceeds provided the sale proceeds have been realized within the period permitted by the Reserve Bank of India. The amount of drawback so recovered shall be repaid the Assistant Commissioner or Deputy Commissioner of Customs to the exporter.

Further, the aforesaid period of three months may be extended by a period of nine months by Commissioner of Customs/Commissioner of Customs and Central Excise on an application accompanied with a fees of 1% of the FOB value of exports or ` 1000/- whichever is less.

Drawback shall not be recovered (Notification No. 30/2011-Cus., dated 11-4-2011):

As per Rule 16A (5) the Customs, Central Excise Duties and Service Tax Drawback Rules, 1995 where sale proceeds are not realized by an exporter within the period allowed under the FEMA, the amount of drawback paid to the exporter or the claimant shall not be recovered if

- such non-realisation of sale proceeds is compensated by the Export Credit Guarantee Corporation of India Ltd. (ECGC), under an insurance cover and
- The Reserve Bank of India writes off the requirement of realization of sale proceeds on merits and
- The exporter produces a certificate from the concerned Foreign Mission of India about the fact of non-recovery of sale proceeds from the buyer.

CONCEPT 13. DOCUMENTS TO BE FILED FOR CLAIMING OF DUTY DRAWBACK ON RE-EXPORT:

As per Rule 5(2) of the Re-export of Imported Goods (Drawback of Customs Duties) Rules, 1995, the claim shall be filed along with the following documents, namely

- Triplicate copy of the Shipping Bill bearing examination report recorded by the proper officer of the customs at the time of export.

- Copy of Bill of Entry or any other prescribed document against which goods were cleared on importation;
- Import invoice;
- Evidence of payment of duty paid at the time of importation of the goods;
- Permission from Reserve Bank of India for re-export of goods, wherever necessary;
- Export invoice and packing list;
- Copy of Bill of lading or Airway bill;
- Any other documents as may be specified in the deficiency memo.

As per Rule 5(3) of the Re-export of Imported Goods (Drawback of Customs Duties) Rules, 1995 the date of filing of the claim for the purpose of section 75A shall be the date of affixing the Dated Receipt Stamp on the claims, which are complete in all respects, and for which acknowledgement shall be issued in the form prescribed by the Commissioner of Customs.

As per Rule 5(4)(a) of the Any claim which is incomplete in any material particulars or is without the documents specified above shall not be accepted for the purpose of section 75A and such claim shall be returned to the claimant with the deficiency memo in the form prescribed by the Commissioner of Customs within fifteen days of submission and shall be deemed not to have been filed.

Incomplete claim if any shall not be accepted for the purpose of section 75A and the same shall be returned to the claimant with the deficiency memo in the form prescribed by the Commissioner of Customs within fifteen days of submission and shall be deemed not to have been filed.

Where the exporter complies with requirements specified in deficiency memo within thirty days from the date of receipt of deficiency memo, the same will be treated as a claim filed under Rule 5(1).

CONCEPT 14. PAYMENT OF ERRONEOUS OR EXCESS PAYMENT OF DUTY DRAWBACK AND INTEREST

Where an amount of drawback and interest, if any, has been paid erroneously or amount so paid in excess of what the claimant is entitled to, the claimant shall, on demand by an officer of customs repay the amount so paid erroneously or in excess, as the case may be, and where the claimant fails to repay the amount it shall be recovered in the manner laid down in Section 142(1) of the Customs Act, 1962 namely recovery of sums due to Government.

As per section 75A(2) of the Customs Act, 1962, the claimant (assessee) is liable to pay the excess amount of drawback, he is liable to pay interest as well. No notice need be issued separately as the payment of interest becomes automatic, once it is held that excess drawback has to be repaid. [CPS Textiles P Ltd. v Joint Secretary 2010 (255) ELT 228 (Mad)]

CONCEPT 15. RE-EXPORT OF IMPORTED GOODS BY POST

Procedure to claim the duty drawback when import duty paid on imported goods which are taken for re-export:

- The parcel carrying the address of the consignee shall also carry in bold letters the words “DRAWBACK EXPORT”;
- The exporter shall deliver to the competent Postal Authority, along with the parcel of package, a claim, in quadruplicate, duty filled in specified form.
- The relevant date for filing of drawback claim in such a case shall be the date of receipt of the aforesaid ‘claim form’ by the proper officer of customs from the postal authorities. This date is important for the purpose of calculation of interest on drawback under Section 75A of the Act.
- An intimation of the same shall be given by the proper officer of customs to the exporter in the form prescribed by the Commissioner of Customs.

- Deficiencies, if any, in the claim form shall be intimated to the exporter within 15 days of its receipt by postal authorities through a deficiency memo. In such circumstances such claim shall be deemed not to have been received.
- Where the exporter complies with the requirements specified in deficiency memo, within 30 days of receipt of the deficiency memo, he shall be issued an acknowledgement by the proper officer. The date of such acknowledgement shall be deemed to be the date of filing the claim for purposes of section 75A.

CONCEPT 16. NEGATIVE LIST OF DUTY DRAWBACK

Section 76 of the Customs Act, 1962 contains the provisions in respect of prohibition and regulation of drawback and no drawback shall be allowed in the following circumstances:

- (a) In respect of any goods, the market price of which is less than the amount of drawback due thereon,
- (b) If the Central Government is of the opinion that goods of any specified description in respect of which drawback is claimed under this Chapter are likely to be smuggled back into India.
- (c) CENVAT credit claim is on inputs and input services then no duty drawback is allowed. However, if the goods have already suffered the customs duty then duty drawback is allowed to the extent of customs duties.
- (d) Duty drawback is not allowed if the exporter has already availed the Duty Entitlement Pass Book (DEPB) or other export incentives.
- (e) If the sale proceeds not received within the time period allowed by Reserve Bank of India.
- (f) Export to Nepal and Bhutan and the export proceeds are not received in hard currency (it means USD, GBP or Pounds).
- (g) Drawback in respect of iron and steel, cement and rice is not allowed. [w.e.f. 29-5-2008]
- (h) Duty drawback is more than 1/3rd of market value of exported goods, then amount of duty drawback is restricted to 1/3rd of market value.
- (i) No amount or rate of drawback is to be determined except where the amount of drawback exceeds or equal to ` 500/- or it is 1% or more of the FOB value of export Where the amount of drawback in respect of any goods is less than `50.

CONCEPT 17. UPPER LIMIT OF DRAWBACK MONEY OR RATE

As per the Rule 8A of Customs, Central Excise Duties and Service Tax Drawback Rules, 1995 the drawback amount or rate determined under rule 3(i.e. the all industry rate) shall not exceed 1/3rd of the market price of export product.

CONCEPT 18. INTEREST ON DRAW BACK AMOUNT

Any drawback payable to a claimant u/s 74 or 75 is not paid within specified time period (i.e. one month from the date of filing of draw back claim), the @6% per annum interest is payable to the claimant after the expiry of said one month till the date of payment of such drawback. Drawback has been paid to the claimant erroneously or it becomes otherwise recoverable under this Act or rules made there under, within two months from the date of demand has to pay back. Otherwise, @13% per annum interest will be levied from the date of payment of such drawback to the claimant till the date of recovery of such drawback.

CONCEPT 19. DUTY DEFERMENT

Duty deferment [provisions of this section have been omitted w.e.f. 10.05.2013]

The Assistant Commissioner of Customs or Deputy Commissioner of Customs may permit clearance of material under an import licence without payment of duty leviable thereon. This is permissible subject to satisfaction of the following conditions [Section 143A of the Customs Act, 1962].

- While permitting clearance, the Assistant Commissioner of Customs or Deputy Commissioner of Customs may require the importer to execute a bond with such surety or security as he thinks fit.
- The duty payable on the material imported shall be adjusted against the drawback of duty payable under this Act
- If the imported goods are not exported within the period specified in Advance Authorisation or within such extended period not exceeding six months by the Assistant Commissioner of Customs or Deputy Commissioner of Customs, be liable to pay the amount of duty not so adjusted together with simple interest thereon at the rate of twelve per cent per annum from the date the said permission for clearance is given to the date of payment.

Drawback on export of Milk, Rice & Wheat:

W.e.f. 13-2-2015 Duty drawback on rice allowed

w.e.f. 23-11-2015 Duty drawback allowed on Wheat.

Prior to 21-9-2013	W.e.f. 21-9-2013
No drawback was allowed on milk products.	Rule 3 of the Central Excise Duties and Service Tax Drawback Rules, 1995, drawback will be allowed in respect of milk products.
Duty Drawback Allowed on Wheat.	Duty Drawback not Alloed on Wheat.
Duty Drawback not Allowed on Rice, casein, caseinates and other casein derivatives; casein glues.	Duty Drawback not Allowed on Rice, casein, caseinates and other casein derivatives; casein glues.

Drawback is allowed in respect of milk products.

Prior to 21-9-2013	W.e.f. 21-9-2013
No drawback was allowed on milk products.	Rule 3 of the Central Excise Duties and Service Tax Drawback Rules, 1995, drawback will be allowed in respect of milk products.

CONCEPT 20. EXPORT INCENTIVES IN LIEU OF DUTY DRAWBACK

The following are the export promotion schemes available to the exporters

- Duty Exemption Entitlement Certificate (DEEC) (Advance Licence),
- The Duty Free Replenishment Certificate (DFRC) Scheme,
- The Export Promotion Capital Goods Scheme (EPCG),
- Duty Exemption Pass Book Scheme (DEPB scheme).
- MEIS & SEIS, EPCG (please refer FTP)

Duty Exemption Entitlement Certificate (DEEC) (Advance Licence)

Under the DEEC (Advance Licence) scheme, exporters are permitted to import raw materials, required for export goods, without payment of duty on import (i.e. duty free imports). Such duty free imports can be effected in advance and exports made subsequently. The advance licences are issued by Director General of Foreign Trade (DGFT) with actual user condition and are not transferable. All the exporters intending to file Shipping Bills under the DEEC scheme should first get their DEEC licence registered with the EDI system in the licensing section. The original DEEC licence has to be produced at the time of registration of licence. The export obligation shall be discharged by exporting the resultant products within the period specified in the Annual Advance Licence.

Advance Licence can be issued for the following:

- Physical exports;
- Intermediate supplies
- Deemed exports.

Duty Free Replenishment Certificate (DFRC) Scheme

This scheme permits duty free import of raw materials/inputs against exports. The exporter while filing shipping bill has to declare that the export is under DFRC scheme. Based on proof of export, the DGFT issues DFRC licence for raw materials as per standard input output norms. Duty Free Replenishment Certificate (DFRC) is issued to a merchant-exporter or manufacturer-exporter for the import of inputs, used in the manufacture of goods, without the payment of basic customs duty and special additional duty. However, such inputs shall be subject to the payment of additional customs duty, equal to the excise duty at the time of import. The Duty Free Replenishment Certificate shall be issued only in respect of export products that are covered under the SIONs (Standard Input Output Norms) as notified by (Directorate General of Foreign Trade) DGFT.

Difference between DEEC and DFRC

- Under advance licence scheme (DEEC), the duty free imports can be made before exports whereas DFRC is issued only after exports and imports can be made only after exports.
- The advance licence (DEEC) is not transferable whereas the DFRC is transferable.
- DFRC is permitted only for goods listed under SION while it is not so in case of DEEC

Export Promotion Capital Goods Scheme (EPCG)

The Export Promotion Capital Goods Scheme enables for exporters to procure capital goods at concessional rate of duty. The exporters have to fulfill the export obligation within the prescribed period. The manufacturers, Exporters and Merchant Exporters are eligible to avail of this Scheme. Both new and second hand capital good may be imported. Second hand capital goods are permitted subject to the condition that such goods have a minimum of residual life of 5 years and the importer furnishing to the customs at the time of clearance of goods a self declaration to the effect that the second hand capital goods being imported have a minimum residual life of five years in the prescribed form. Licences are issued, under this scheme by the DGFT or his regional officers depending upon the value of the licence subject to execution of legal undertaking and bank guarantee by them undertaking among other things to fulfill their export obligation within the specified period.

Duty Exemption Pass Book Scheme (DEPB scheme)

Under the DEPB scheme, the exporters are allowed a duty exemption pass book credit against exports. It is a post-export scheme. The exporter while filing the shipping bill has to declare that exports are under DEPB scheme. Based on the proof of export, the exporters are issued DEPB licence which can be used for payment of Customs duties on any imports.

ADMINISTRATIVE AND OTHER ASPECTS

CONCEPT 1. CLASS OF OFFICERS

There shall be the following classes of officers of customs under section 3 of the Customs Act, 1962, namely:—

- Chief Commissioners of Customs;
- Commissioners of Customs;
- Commissioners of Customs (Appeals);
- Joint Commissioners of Customs;
- Deputy Commissioners of Customs;
- Assistant Commissioners of Customs or Deputy Commissioner of Customs;
- Such other class of officers of customs as may be appointed for the purposes of this Act.

CONCEPT 2. APPOINTMENT OF OFFICERS OF CUSTOMS

As per section 4 of the Customs Act, the Central Board of Excise and Customs may appoint such persons as it thinks fit to be officers of customs. The Central Board of Excise and Customs may authorize a Chief Commissioner of Customs or a Commissioner of Customs or a Joint Commissioner of Customs or Assistant Commissioner of Customs or Deputy Commissioner of Customs to appoint officers of customs below the rank of Assistant Commissioner of Customs.

CONCEPT 3. POWERS OF OFFICERS OF CUSTOMS

As per section 5 of the Customs Act, subject to such conditions and limitations as the Central Board of Excise and Customs (Board) may impose, an officer of customs may exercise the powers and discharge the duties conferred or imposed on him under this Act.

An officer of customs may exercise the powers and discharge the duties conferred or imposed under this Act on any other officer of customs who is subordinate to him. Notwithstanding anything contained in this section, a Commissioner (Appeals) shall not exercise the powers and discharge the duties conferred or imposed on an officer of customs other than those specified in Chapter XV and section 108.

CONCEPT 4. IMPORTANCE OF CENTRAL EXCISE DEPARTMENT

The other class of officers of the Central Excise is:

- The Superintendent of Central Excise
- The Inspector of Central Excise

These officers are not the officers of the Customs; it becomes necessary to empower them to be officers of Customs for the purpose of doing Customs work under section 4(1) of the Customs Act.

In addition to the Excise and Customs officers to operate the Customs Law and regulations in all border areas, following Government officials are appointed:

- Border Security Police
- Indo Tibetan Border Police
- Coast Guard

CONCEPT 5. OFFICERS OF OTHER DEPARTMENT

As per section 151 of the Customs Act, 1962, the following officers of other department are empowered to assist officers of the Customs.

- Officers of the Central Excise Department
- Officers of the Navy
- Officers of Police
- Officers of the Central or State Governments employed at any port or airport;

Such other officers of the Central or State Governments or a local authority as are specified by the Central Government in this behalf by notification in the Official Gazette.

CONCEPT 6. CIRCULARS OF THE CENTRAL BOARD OF EXCISE AND CUSTOMS (CBE&C) CANNOT PREVAIL OVER LAW LAID DOWN BY THE COURT

In the case of *Commissioner of Central Excise, Bolpur v Ratan Melting and Wire Industries, Calcutta (2005)*, the Apex Court held that Circulars and instructions issued by the Central Board of Excise and Customs (CBEC) are no doubt binding in law on the authorities under the respective statutes (which grants power to CBEC), but when the Supreme Court or High Court declares the law on the question arising for consideration, it would not be appropriate for the Court to direct that the circular should be given effect to and not the view expressed in a decision of the Supreme Court or the High Court. **It means to say that court decisions are superior to that of circulars issued by the CBE & C.**

CONCEPT 7. APPOINTMENT OF CUSTOMS PORTS, AIRPORTS, etc.

As per section 7 of the Customs Act, 1962, the Central Board of Excise and Customs may by notification in the Official Gazette, appoint—

- The ports and airports which alone shall be customs ports or customs airports for the unloading of imported goods and the loading of export goods or any class of such goods;
- The places which alone shall be land customs stations for the clearance of goods imported or to be exported by land or inland water or any class of such goods;
- The routes by which alone goods or any class of goods specified in the notification may pass by land or inland water into or out of India, or to or from any land customs station from or to any land frontier;
- The ports which alone shall be coastal ports for the carrying on of trade in coastal goods or any class of such goods with all or any specified ports in India. The Commissioner of Customs may approve proper places in any customs port or customs airport or coastal port for the unloading and loading of goods or for any class of goods and specify the limits of any customs area as per section 8 of the Customs Act, 1962. The Central Board of Excise and Customs may by notification in the Official Gazette, declare places to be warehousing stations at which alone public warehouses may be appointed and private warehouses may be licensed.

CONCEPT 8. CUSTOMS PORT

The term “customs port” means any port appointed under clause (a) of section 7 to be a customs port [and includes a place appointed under clause (aa) of that section to be an inland container depot]; the vessel entering in India from a place outside India into India must land only at Customs Port.

CONCEPT 9. CUSTOMS AIRPORT

The term “customs airport” means any airport appointed under clause (a) of section 7 to be a customs airport; aircraft entering in India from a place outside India must land only at Customs Airport.

CONCEPT 10. CUSTOMS AREA

The term “customs area” means the area of a customs station and includes any area in which imported goods or export goods are ordinarily kept before clearance by Customs Authorities.

CONCEPT 11. CUSTOMS STATION

The term “customs station” means any customs port, customs airport or land customs station.

CONCEPT 12. LAND CUSTOMS STATION

The term “land customs station” means any place appointed under clause (b) of section 7 to be a land customs station; it means goods imported by land should follow the prescribed route only to come to Land Customs Station. Such route will be specified by CBE & C.

CONCEPT 13. CONTAINER FREIGHT STATIONS

In short, we call as CFS or ICD (Inland Container Depot). After the imported goods are unloaded at the port, these containers are carried to Inland Container Depots for storage purpose. From these depots goods can be cleared for Domestic Tariff Area or cleared for export. Inland Container Depots are used for unloading of imported goods and loading of exported goods.

CONCEPT 14. ENTRY

The term Entry means an entry made in a bill of entry, shipping bill or bill of export and includes in the case of goods imported or to be exported by post [As per section 2(16) of the Customs Act, 1962].

CONCEPT 15. FIRST APPRAISEMENT SYSTEM

Section 17 of the Customs Act, 1962 stipulates that after submission of bill entry, goods will be examined and assessed. However, assessment can be made before examination of goods based on the submission of Bill of Entry and other documents produced before the Customs Authorities.

The Importer on request has to submit the following:

- Contract Agreement
- Brokers note
- Insurance policy
- Other documents which help to ascertain the duty liability.

The goods are examined first and then assessed. This is called as First Appraiselement System.

The appraiser normally resorts to this method if he is not able to make an assessment on the basis of declaration made in the bill of entry or shipping bill and the documents submitted along with them and deems that inspection is necessary. The importer himself may also request ‘first check procedure’, if he cannot give all required details regarding description/value of goods. He has to make request for first check examination at the time of filing of bill of entry.

CONCEPT 16. SECOND APPRAISEMENT SYSTEM

The information and documents furnished by the importer are adequate to determine the correct tariff nomenclature, tariff classification and valuation of the goods for purposes of assessment. Physical examination of the goods or their weighing or testing is only a confirmatory check. Under this system, such an examination is carried out after assessment and collection of duty. Such a system is also called as Second check procedure.

CONCEPT 17. FAST TRACK CLEARANCE' SCHEME

A pre-shipment inspection (PSI) is a set of import verification services, in the country of supply, developed to assist Customs in their mission or Destination Inspection (DI) is a set of verification and capacity building services, in the country of importation, developed to assist Customs their mission. Fast-track clearance is the process by which goods are cleared through Customs based on documentation inspection only. Importers can benefit from fast-track clearance when all documentation is verified and cleared by Customs; the past history of the importer is usually verified.

CONCEPT 18. REFUND OF CUSTOMS DUTY

Importer or Exporter who has actually paid the duty on import or export, which is not required to be paid alone, is eligible to claim refund.

(A) Refund of export duty

As per Section 26 of the Customs Act, 1962, duty paid on exported goods can be claim for refund in the case of combined reading of the following if:

- The goods are returned to such person otherwise than by way of re-sale;
- The goods are re-imported within **One year** from the date of exportation and
- An application for refund of such duty is made before the expiry of **six months** from the date on which the Customs officer makes an order for importation.

(B) Refund of import duty

As per Section 26A of the Customs Act, 1962, duty paid on imported goods can be claimed for refund on account of satisfying the following conditions:

(a) Goods are found defective

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: **Provided** that the goods have not been worked, repaired or used after importation except where such use was indispensable to discover the defects or non-conformity with the specifications;

(b) Goods are easily identifiable 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 claim is made

The importer does not claim drawback under any other provisions of this Act; and

(d) Activities carried out after importation

- (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 such manner as may be prescribed and within a period not exceeding 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.

Note:

(1) However, the period of 30 days may, on sufficient cause being shown, be extended by the Commissioner of Customs for a period not exceeding three months.

(2) No refund under section 26 is allowed in respect of perishable goods and goods which have exceeded their shelf life. **Relevant date:** Relevant date in case of filing refund claim may be any one of the following: • Let export order issued or • Date of abandonment or • Date of destruction of goods as the case may be.

CONCEPT 19. CLAIM FOR REFUND OF DUTY

Section 27 of the Customs Act, 1962 deals with refund of duty paid on imported or exported goods in excess of what was actually payable. Sometimes, such excess payment of duty may be due to shortage/short landing, pilferage of goods or even incorrect assessment of duty by Customs. In such cases, any excess interest has been paid by the importer or exporter can also be claimed for refund.

CONCEPT 20. NO REFUND AND RECOVERY IF THE AMOUNT OF CUSTOMS DUTY INVOLVED IS LESS THAN `100:

Third proviso to section 27(1) of Customs Act, provides that where the amount of refund claimed is less than ` 100, the same shall not be refunded. In other words, there would be no refund if the amount of customs duty involved is less than ` 100. (**w.e.f.10.05.2013**)

A refund claim can be made u/s 27 if the payment of higher duty and interest in ignorance of a notification which allowed payment of duty at a concessional rate even if there was no assessment order and the payment u/s 27(i) has not been made pursuant to an assessment order. Section 27(ii) covers those classes of cases where the duty is paid by a person without an order of assessment. It means a refund claim can be filed under section 27 of the Customs Act, 1962 even if the payment of duty has not been made pursuant to an assessment order [*Aman Medical Products Ltd. v CCus., Delhi 2010 (250) ELT 30 (Del)*].

CONCEPT 21. ATTESTED XEROX COPY OF THE GAR-7 CHALLAN SUFFICIENT FOR CLAIMING REFUND:

Refund claim *CAN NOT BE DENIED* purely on a technical contention that the assessee had produced the attested copy of GAR-7 (earlier TR-6) challan and not the original of the GAR-7 challan. Also as per clarification issued *vide* F.No. 275/37/2K-CX. 8A dated 2-1-2002, *a simple letter from the person who* made the deposit, requesting for return of the amount, along with the appellate order and attested Xerox copy of the Challan in Form GAR-7 would suffice for processing the refund application. [*Narayan Nambiar Meloths v CCus. 2010 (251) ELT 57 (Ker)*]

CONCEPT 22. TIME LIMIT FOR CLAIMING REFUND:

Person claiming refund	Time limit for claiming refund	Remarks
Individual - imported goods for his personnel use, Government or Any educational institutions or Any research institutions or Charitable institutions or hospitals	Application for refund can be made before the expiry of ONE year from the date of payment of duty and interest	The application for refund in duplicate has to be filed before the Assistant Commissioner or Dy. Commissioner of Customs.
Individual - for business use Companies or Firm etc.	Application for refund can be made before the expiry of ONE year (w.e.f. 8-4-2011) from the date of payment of duty and interest	The application for refund in duplicate has to file before the Assistant Commissioner or Dy. Commissioner of Customs.

CONCEPT 23. INTEREST ON DELAYED REFUNDS:

As per section 27A of the Customs Act, 1962, if the refund ordered is not paid within 3 months from the date of receipt of refund application by the Assistant Commissioner or Deputy Commissioner of Customs, then the department is liable to pay interest at the rate of 6% p.a. (i.e. interest is liable to be paid after expiry of three months from the date of receipt of the application for refund).

CONCEPT 24. FEW DIFFERENCES BETWEEN SECTION 26 AND SECTION 27 OF THE CUSTOMS ACT, 1962:

Section 26 deals with refund of export duty whereas Section 27 deals with refund of any export duty, import duty interest paid thereon. Refund of duty under section 26 is allowed on account of satisfying certain conditions whereas refund under section 27 is allowed only when duty paid in excess of normal duty. Refund is payable to the exporter who paid the duty under section 26 whereas refund is payable to the importer who paid the duty or to the buyer by whom the duty was borne.

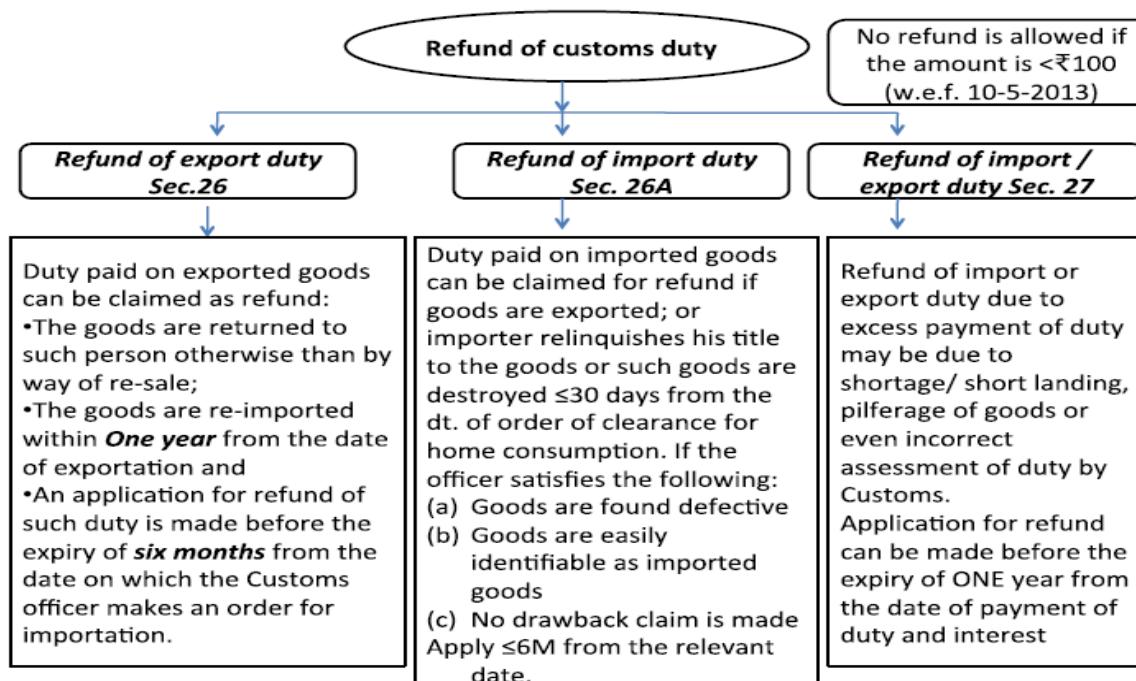
CONCEPT 25. CHARTERED ACCOUNTANT CERTIFICATE NOT SUFFICIENT TO CLAIM REFUND UNDER SECTION 27

As per section 27 of the Customs Act, 1962 the importer to produce such documents or other evidence, while seeking refund, to establish that the amount of duty in relation to which such refund is claimed, has not been passed on by him to any other person. However, if importer had not produced any document other than the certificate issued by the Chartered Accountant to substantiate its refund claim.

In the given case Madras High Court held that, the certificate issued by the Chartered Accountant was merely a piece of evidence acknowledging certain facts. It would not automatically entitle a person to refund in the absence of any other evidence. Hence, the importer could not be granted refund merely on the basis of the said certificate [*CCus., Chennai v BPL Ltd. 2010 (259) ELT 526 (Mad)*]

The period of limitation of one year for the purpose of refund of duty under section 27(1B) shall be computed in the following manner, namely:

- In the case of goods which are exempt from payment of duty by a special order issued under section 25(2) of the Custom Act, the limitation of one year shall be computed from the date of issue of such order;
- Where the duty becomes refundable as a consequence of any judgment, the limitation of one year shall be computed from the date of such judgment.
- Where any duty is paid provisionally under section 18, the limitation of one year shall be computed from the date of adjustment of duty after the final assessment thereof or incase of re-assessment, from the date of such re-assessment. **Refund of customs duties can be recollected in the following table:**



CONCEPT 26. AMENDMENTS TO DOCUMENTS

Generally the importer, exporter or 'person in-charge' of the conveyance (namely Master of the Vessel, Pilot of the Aircraft, Guard of the Train and Driver of the Vehicle) have to submit various documents to customs authorities like bill of entry, import general manifest (IGM), export general manifest (EGM), etc. These documents need to be amended due to various genuine reasons.

Example : • Due to changes in classification, • Due to clerical mistakes in document, and • Due to change in unloading/loading plan of vessels etc., Under section 149 of the Customs Act, 1962, Customs Authorities can give permission to amend these documents. However, such permission cannot be given if there are fraudulent intentions.

CONCEPT 27. IMPORT GENERAL MANIFEST

It is basically a document necessarily carried by the Person in charge along with conveyance. It is a very important document without which customs authorities not allowed to grant inward entry to the vessel.

Features of Import General Manifest:

- Person-in-charge of Vessel, Aircraft or Vehicle has to submit Import General Manifest.
- The IGM in case of a vessel or aircraft is required to be submitted prior to arrival of a vessel or aircraft.
- In case import is through a vehicle, the IGM (so called Import Report) has to be submitted within 12 hours of arrival at the Customs Station.
- Penalty up to ` 50,000 can be imposed on the person-in-charge who is responsible for delay in submission of Report or Manifest.
- If the customs station equipped electronically then IGM can be submitted electronically through floppy.
- Amendment can be done to Import General Manifest if the changes do not amount to illegal import.

CONCEPT 28. PROVISIONAL ASSESSMENT OF DUTY

An importer or exporter is unable to produce any document or furnish any information necessary for the assessment of duty on the imported goods or export goods as the case may be and he can request to the Customs authorities to assess the duty liability on provisional basis.

Provisional Assessment will be allowed by the Customs Officer, if he, satisfied with the request of the importer or exporter [Section 18 of the Customs Act, 1962]. Provisional assessment can be granted in the following three situations:

- An importer or exporter is unable to produce any document or furnish any information necessary for the assessment of duty.
- Any imported goods or export goods need to conduct any chemical or other test for the purpose of assessment of duty thereon.
- Where the importer or the exporter has produced all the necessary documents and furnished full information for the assessment of duty but the proper officer deems it necessary to make further enquiry for assessing the duty.

Adjustment of duty at the time of final assessment order is permissible.

Provisional Assessment	Remarks
Short paid	<p>Pay the deficiency along with the interest from the first day of the month in which duty is provisionally assessed till date of payment.</p> <p>Interest in case of Provisional Assessment Section 18(3) of the Customs Act, 1962:</p> <p>If differential amount is found to be payable after final assessment or re-assessment, it will be paid with interest @15% p.a. w.e.f. 1-4-2016 (prior to 1-4-2016 interest rate was @18% p.a.) from the first day of the month in which duty is provisionally assessed till date of payment.</p>
Excess paid	<p>Refund will be granted. Interest will be payable if refund is not granted within three months from the date of assessment of duty finally ordered.</p> <p>Interest @6% p.a. is payable by the Government.</p>

Refund of duty is subject to unjust enrichment (i.e. should not be undue benefit).

Customs (Provisional Assessment) Regulations, 2011: [vide circular no. 38/2016 Customs Dt. 22.08.2016]

Prior to 22.08.2016	w.e.f. 22.08.2016
Deposit 20% of the duty provisionally assessed	Deposit 20% of the duty provisionally assessed is not required.
Execute a bond	Execute a bond
Provide surety or security or both, as deemed fit by the Proper Officer.	Provide security for the payment of the duty deficiency. The security to be obtained shall be in the form of a bank guarantee or a cash deposit as convenient to the importer.
	No sureties' shall be obtained.

CONCEPT 29. INTEREST IN CASE OF PROVISIONAL ASSESSMENT (W.E.F. 8-4-2011):

Sec. 18(3) of the Customs Act, 1962 provides that if differential amount is found to be payable after final assessment or re-assessment, it will be paid with interest @15% p.a. w.e.f. 1-4-2016 (prior to 1-4-2016 interest rate was @18% p.a.) from the first day of the month in which duty is provisionally assessed till date of payment.

CONCEPT 30. INTEREST ON DELAYED REFUNDS

As per section 27A of the Customs Act, 1962, interest at such, not below five per cent and not exceeding thirty per cent per annum as is for the time being fixed by the Central Government by Notification in the Official Gazette, on such duty from the date immediately after the expiry of three months from the date of receipt of such order till the date of refund of such duty.

CONCEPT 31. SELF-ASSESSMENT OF CUSTOMS DUTY

Self-assessment of customs duty (section 17 of the Customs Act, 1962, w.e.f. 8-4-2011)

The importer or exporter shall self-assess the duty leviable on imported or exported goods respectively (except where goods are to be cleared as 'stores' for supply to vessels or aircrafts without payment of duty and without assessment under section 85 of Customs Act, 1962) as per section 17(1) of the Customs Act, 1962. The procedure of self assessment is same for imports and exports. Importer importing goods is required to submit Bill of Entry under section 46 of Customs Act, 1962. Exporter is required to submit shipping bill at the time of export under section 50 of Customs Act, 1962. Bill of Entry and Shipping Bill must be submitted electronically, unless manual submission is specifically permitted by Commissioner of Customs.

CONCEPT 32. VERIFICATION BY PROPER OFFICER

The self assessment may be verified by 'proper officer' by examining or testing the goods [section 17(2) of Customs Act 1962, w.e.f. 8-4-2011]. For verification of self assessment, 'Proper Officer' may ask importer, exporter or any other person (i.e. Customs House Agent or person who has purchased goods on high seas sale basis) to produce any contract, broker's note, insurance policy, catalogue or other documents whereby duty payable can be ascertained and to furnish further information for ascertainment.

CONCEPT 33. RE-ASSESSMENT

The proper officer can ask for only those documents which are within the powers of importer or exporter or other person to furnish [section 17(3) of Customs Act 1962, w.e.f. 8-4-2011]. On Such verification, 'proper officer' may re-assess the Bill of entry. Such re-assessment would be without

prejudice to any other action which may be taken under Customs Act [section 17(4) of Customs Act, 1962, w.e.f. 8-4-2011]. If the importer or exporter accepts in writing the reassessment made by proper officer about classification or valuation or exemption or concession, then no question of issuing any formal order arises.

CONCEPT 34. SPEAKING ORDER

Where the importer or exporter does not accept the re-assessment in writing, the proper officer shall pass a speaking order within 15 days from the date of re-assessment of 'Bill of Entry' [section 17(5) of Customs Act, 1962].

CONCEPT 35. AUDIT

If the goods are not taken for verification of self assessment, the goods will be allowed to be cleared from customs. However, later, proper officer may audit the assessment of duty. Such audit can be done either in the office of proper officer or at the premises of importer, as may be expedient [section 17(6) of Customs Act, 1962]. Subsequent to such audit, demand for differential duty and interest can be made under section 28 of Custom Act, 1962. This section also makes provisions in respect of penalty for such short payment.

CONCEPT 36. GENERAL PROVISIONS

Assessment includes provisional assessment, self-assessment, re-assessment and any assessment in which the duty assessed is Nil [section 2(2) of Customs Act, 1962]. As per section 2(34) of Customs Act, 'proper officer' in relation to any function under Customs Act, means the officer of customs who is assigned those functions by Board (CBE & C) or Commissioner of Customs.

CONCEPT 37. DUTY UNDER PROTEST

The term duty under protest means the Customs Officer completed the assessment and very clearly levied the duty; however, importer is aggrieved with the assessment. In such a situation importer has to pay the duty under protest at the time of clearing the goods from the customs station.

CONCEPT 38. INTEREST IF DUTY PAID LATE [SEC. 28AA OF CUSTOMS ACT 1962]: W.E.F. 1-4-2016;

Rate of interest is 15% p.a. Period for which interest payable: from the first day of the month succeeding the month in which the duty ought to have been paid or from the date of such erroneous refund, as the case may be, up to the date of payment of such duty.

CONCEPT 39. M/s CPS Textiles P Ltd. v. Joint Secretary 2010 (255) ELT 228 (Mad.)

Decision: The High Court held that the description of the goods as per the documents submitted along with the Shipping Bill would be a relevant criterion for the purpose of classification, if not otherwise disputed on the basis of any technical opinion or test. The petitioner could not plead that the exported goods should be classified under different headings contrary to the description given in the invoice and the Shipping Bill, which had been assessed and cleared for export. Further, the Court, while interpreting section 75A(2) of the Customs Act, 1962, noted that when the claimant is liable to pay the excess amount of drawback, he is liable to pay interest as well. The section provides for payment of interest automatically along with excess drawback. No notice for the payment of interest need be issued separately as the payment of interest becomes automatic, once it is held that excess drawback has to be repaid.

CONCEPT 40. IMPORTER EXPORTER CODE (IEC Number)

Facility to file application (i.e. ANF 2A) for Importer Exporter Code (IEC Number) is available through online. It is a unique 10 digits code. PAN is pre-requisite for grant of an IEC.

CONCEPT 41. RISK MANAGEMENT SYSTEM

The Central Board of Excise and Customs has decided to introduce the 'Risk Management System' (RMS) in major Customs locations where the Indian Customs EDI System (ICES) is operational. The implementation of the RMS is one of the most significant steps in the ongoing Business Process Re-engineering initiatives of the Customs and Central Excise Department [Circular No. 43/2005-Customs].

Features of the Risk Management System:

- The Risk Management System replaces the existing system of concurrent audit and replaced by a Post- Clearance Compliance Verification (Audit) function.
- This system provides the special Customs clearance for Accredited Clients. (Accredited Client means importer whose value of imports during the previous financial year ` 10 crores or paid duty more than ` 1 crore).
- This system applies only to those importers whose track record is good for the last 3 financial years.
- The RMS is intended to improve the management of the resources of the department to enhance the efficiency and effectiveness in meeting stakeholder expectations and to bring the Customs processes at par with the best international practices.

**CONCEPT 42. E-PAYMENT OF CUSTOMS DUTY (NT 83/2012-CUS, DATED 17-9-2012):
THE FOLLOWING ASSESSES ARE ELIGIBLE FOR E-PAYMENT OF CUSTOMS DUTY.**

- Importer registered under Accredited Clients Programme
- Importers paying customs duty of `1 lakh or more per bill of entry

CONCEPT 43. ACCREDITED CLIENTS PROGRAMME (ACP):

The importers desirous of availing the facility as "Accredited Clients" are required to apply for registration under the scheme using the Application form. Importers meeting the following criteria shall be the eligible under the Accredited Clients Program:

- Accredited Clients means they should have imported goods at `10 crores in the previous financial year; or Paid customs duty more than Rs. 1 crore in the previous financial year; or Importers, who are also Central Excise assessees, paid Central Excise Duties over Rs. One Crore from the Personal Ledger Account in the previous financial year.
- They should have filed at least 25 Bills of Entry in the previous financial year in one or more Indian Customs stations.
- They should have no cases of Customs, Central Excise or Service Tax booked against them in the previous three financial years. Cases booked would imply that there should be at least a show cause notice, invoking penal provisions, issued to an importer.
- They should also not have any cases booked under any of the Allied Acts being implemented by Customs.
- The quality of the submissions made by the applicants to Customs should be good as measured by the number of amendments made in the bills of entry submitted by them in relation to classification of goods, valuation and claim for exemption benefits. The number of such amendments should not have exceeded 20% of the bills of entry during the previous financial year.
- They should have no duty demands pending on account of non-fulfillment of Export obligation.

- (vii) They should have reliable systems of record keeping and internal controls and their accounting systems should conform to recognized standards of accounting. They are required to provide the necessary certificate from their Chartered Accountants in this regard as per format given in the Application form.

This program (ACP) gives the following benefits:

- (a) The clients will get assured facilitation;
- (b) In a small number of occasions their consignments will be randomly selected for checks by customs officers;
- (c) The Indian Customs EDI system will accept the declared classification and valuation and assess duty on the basis of importers' self-declaration;
- (d) They will also not be subjected to examination;
- (e) It will be ensured that their cargo is delivered quickly;
- (f) These benefits are applicable at all ICES locations

CONCEPT 44. DETENTION CERTIFICATE

Once goods are imported from a country outside India into India, such goods need to be cleared from the port within 3 working days from the date of import. For delay beyond 3 working days the port authorities will charge demurrage. If the delay is from the Customs authorities, then such authorities will issue a certificate called as Detention Certification for *bona fide* import. If the imported goods are not cleared from the Customs Authority within 30 days from the date of import then such goods can be stored in a warehouse pending clearance. Beyond the time limit these goods can be sold after giving show cause notice to such an importer

CONCEPT 45. BOAT NOTE

In India we have certain ports where the ships cannot come to the shore for unloading or loading goods due to depth of the Sea or vessel may not find the time in having berth in the port. In such cases goods are sent to shore in a small cargo (*i.e.* it may be loaded in a small boat and sent to shore). As per the Boat Note Regulations such a small boat must be accompanied by a Boat Note issued by the Customs Officer. The boat note must be in duplicate and machine numbered. Separate forms are prescribed for export cargo, import cargo and trans- shipment cargo.

CONCEPT 46. PROHIBITION RELATING TO IMPORT OR EXPORT OF GOODS

Section 11 of the Customs Act, 1962 enables the Central Government to notify in the Official Gazette the prohibition relating to the import or export goods. Twenty two such purposes are specified therein, out of which some are given below:

- The maintenance of the security of India.
- The maintenance of public order, standards of decency or morality.
- Prevention of smuggling
- Prevention of shortage of goods of any description
- The establishment of any industry.
- Conservation of exhaustible natural resources
- Prevention of deceptive practices.
- Prevention of serious injury to domestic production of goods.
- Prevention of human/animal life or health.

CONCEPT 47. PENALTIES UNDER CUSTOMS

Where the duty has not been levied or has been short-levied or the interest has not been charged or paid or has been part paid or the duty or interest has been erroneously refunded by reason of collusion or any willful mis-statement or suppression of facts, the person who is liable to pay the duty or interest, as the case may be, as determined under sub-section (2) of section 28 shall also be liable to pay a penalty equal to the duty or interest so determined [Section 114A of the Customs Act, 1962]

CONCEPT 48. WHETHER CUSTOM AUTHORITIES ARE AUTHORIZED TO AUCTION THE CONFISCATED GOODS DURING THE PERIOD OF PENDENCY OF APPEAL

The customs authorities are not authorized to auction the confiscated goods during the period of pendency of appeal. It means to say that the petitioner informed the customs authorities that he was filing an appeal against order of confiscation, then customs authorities are not authorized to auction the confiscated goods. [*Shabir Ahmed Abdul Rehman v UOI* 2009 (235) ELT 402 (Bom)].

CONCEPT 49. OFFENCES AND PROSECUTIONS UNDER CUSTOMS

Persons involved in smuggling and other modus operandi (i.e. Manner of operation) of imports and exports, in violation of prohibitions or restrictions with intent to evade duties or fraudulently claim export incentives are liable to serious penal action under the Customs Act, 1962. The offending goods can be confiscated and heavy fines and penalties imposed. There are provisions for arrests and prosecutions.

CONCEPT 50. DETENTION OF GOODS

It means the goods are temporarily detained by officer to check whether there is any violation of law. In the case of *Pro Musicals v Joint Commissioner Customs (Prev.), Mumbai* 2008 (227) ELT 182 (Mad) the Court clarified that the detention of goods is actually taking the custody of the goods and keeping it under restraint from being taken by the parties; but, the party is entitled to produce sufficient documentary evidence, and if he shows proof, he can take it. At that juncture, no question of seizure would arise. If such person not shows proof, then said goods are seized.

CONCEPT 51. SEIZURE OF GOODS (SECTION 110 OF THE CUSTOMS ACT, 1962)

The term seizure meant to take possession of the property contrary to the wishes of the owner of the goods in pursuance of a demand under legal right. Seizure involved not merely the custody of goods but also a deprivation (i.e. losing something) of possession of goods. It means to say that under seizure goods are taken in custody by the department. A stage before confiscation is called seizure. Generally goods liable to be confiscated may be seized. Goods should be returned within six months if no Show Cause Notice has been issued Show Cause Notice (SCN) shall be issued within six months from the date of seizure. This period can be further extended by SIX months on sufficient cause, by the Commissioner of Central Excise or Customs. If no show cause notice issued within SIX months, the goods shall be return to person from whose possession they were seized.

CONCEPT 52. RELEASE OF SEIZED GOODS AND DOCUMENTS (W.E.F. 8-4-2011):

Seized goods and documents can be released by adjudicating authority on submission of bond and security under section 110A of the Customs Act, 1962. Therefore, permission of Commissioner of Customs is not required w.e.f. 8-4-2011.

CONCEPT 53. MANISH LALITH KUMAR BAVISHI (2011).

Point of dispute: If any documents seized during the course of any action by an officer and relatable to the provisions of Customs Act, that officer was bound to make the documents available copies of those documents?

Answer: Yes. The Bombay High Court held the same view in the case of *Manish Lalith Kumar Bavishi* (2011).

CONCEPT 54. CONFISCATION OF GOODS

The term confiscation of goods means the goods become property of Government and Government can deal with these goods as it desires. Once confiscated goods are became property of Central Government, no duty liability arises on assessee whose goods are confiscated. However, in some cases, the person from whom goods were seized can be get them back on payment of fine (i.e. Redemption fine in lieu of confiscation) under section 125(1) of the Customs Act, 1962.

CONCEPT 55. PROVISIONS GOVERNING CONFISCATION UNDER CUSTOMS ACT, 1962

Goods are liable for confiscation in the following circumstances:

- Confiscation of improperly imported goods – Section 111
- Export goods liable for confiscation – Section 113
- Confiscation of Conveyances (i.e. Vehicles, Vessels, Air crafts, animals used as a means of transport in the smuggling) if used improperly for import or export of goods – Section 115
- Confiscation of packages and their contents – Section 118
- Confiscation of goods used for concealing smuggled goods – Section 119
- Confiscation of smuggled goods notwithstanding any change in form, etc. – Section 120
For example gold biscuits converted into jewellery. Hence, the entire value of jewellery is liable for confiscation.
- Confiscation of sale proceeds of smuggled goods – Section 121

As per section 124 of the Customs Act, 1962, before confiscating goods, Show Cause Notice must be issued to owner of goods giving grounds for confiscation.

Time limit of SIX months as given in Section 110 of the Customs Act, 1962 is not applicable. It means there is no time limit is specified in case of issue of SCN for confiscation of goods.

As per section 28 of the Customs Act, 1962, goods can be confiscated even after the goods are cleared from customs station.

CONCEPT 56. WRONG CONFISCATION OF GOODS:

Once the action of the Customs department with regard to confiscation of goods, set aside by Tribunal or Court (i.e. set aside means make inoperative or stop) the person is eligible to get back the goods. If in the meanwhile, goods have been sold by the Customs authorities, market value of goods as on date of setting aside confiscation of the order of confiscation by the judgment is payable (*Northern Plastics Ltd. v CCE* (2000) (SC)).

CONCEPT 57. CONFISCATION OF IMPROPERLY IMPORTED GOODS – SECTION 111:

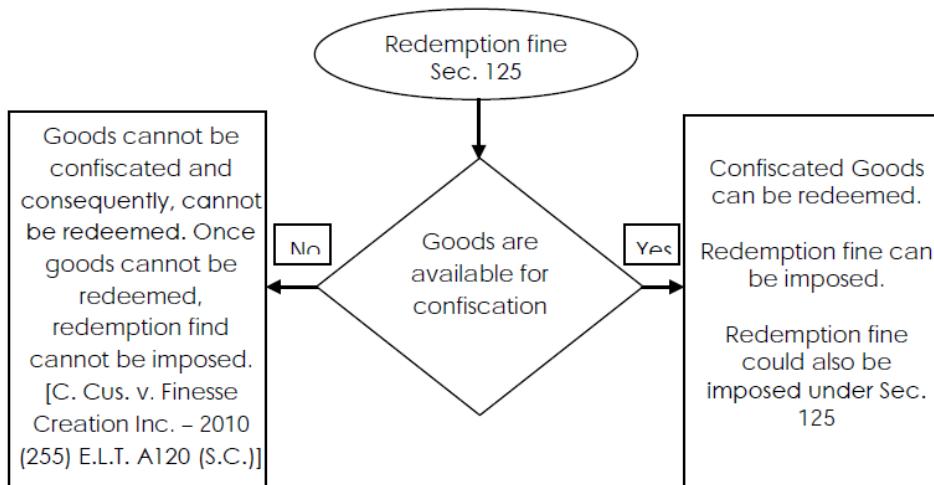
The following goods brought from a place outside India shall be liable to confiscation:

- (a) Any goods imported by sea or air which are unloaded or attempted to be unloaded at any place other than a customs port or customs airport.
- (b) Any goods imported by land or inland water through any route other than a route specified by the Govt.
- (c) Any dutiable or prohibited good brought into any bay, gulf, creek or tidal river for the purpose of being landed at a place other than a customs port.

- (d) Any goods which are imported or attempted to be imported or are brought within the Indian customs waters contrary to the provisions which are in force.
- (e) Any dutiable or prohibited goods found concealed (i.e. hid) in any manner in any conveyance
- (f) Goods not mentioned in the Import manifest or import report
- (g) Goods unloaded in contravention of the provisions of customs law
- (h) any dutiable or prohibited goods found concealed in any manner in any package either before or after the unloading thereof
- (i) any dutiable or prohibited goods removed or attempted to be removed from a customs area or warehouse without the permission of the proper officer.
- (j) Any dutiable or prohibited goods removed or attempted to be removed from a customs area or a warehouse without the permission of the proper
- (k) Any dutiable or prohibited goods which are not included or are in excess of those included in the entry made under this Act, or in the case of baggage in the declaration made under section 77.
- (l) Any goods which do not correspond in respect of value or in any other particular with the entry made under this Act or in the case of baggage with the declaration made under section 77.
- (m) Any dutiable or prohibited goods transited with or without transshipment in contravention of the provisions of customs.

CONCEPT 58. CONFISCATED GOODS CAN BE REDEEMED:

Under Customs Act, 1962 can redemption fine be imposed and penalty under section 112 be levied after release of imported goods on execution of a bond, if it is found subsequently that there has been an irregularity in the import? Discuss with the help of decided case law(s), if any.



It is important to note that for levying the penalty under section 112 (i.e., improper import) it is immaterial as to whether goods are available for confiscation or not because the said penalty is imposed when the goods are liable for confiscation.

CONCEPT 59. PENALTIES FOR IMPROPER IMPORT UNDER SECTION 112 OF THE CUSTOMS ACT, 1962

Penalty can be imposed for improper import as well as attempt to improperly export goods. 'Improper' means without the knowledge of the Customs officers.

CONCEPT 60. No question of penalizing the partners separately for the same contravention under section 112:

Once penalty was levied on the firm for contravention of any provision of the Act or the Rules framed there under, it amounted to levy of penalty on the partners. Hence, there was no question of penalizing the partners separately for the same contravention, unless the intention of the legislature to treat the firm and partners as distinct entities was borne out from the statute itself, i.e., expressly provided in the statute.

CONCEPT 61. PENALTIES FOR IMPROPER IMPORT [SECTION 112 OF THE CUSTOMS ACT, 1962]:

Penalties for improper import [section 112 of the Customs Act, 1962]:

Imported Goods (A)	Value in (₹) (B)	Minimum Penalty in (₹) (C)	Penalty in (₹) (B) or (C)
Prohibited Goods	Not exceeding the value of prohibited goods	₹ 5,000	Whichever is Higher
Dutiable Goods (Other than Prohibited goods)	w.e.f 14-5-2015: Not exceeding 10% of the Duty sought to be evaded.	₹ 5,000	Whichever is Higher
	w.e.f 14-5-2015: Penalty = 25% of the penalty imposed, if the duty, interest and reduced penalty is paid within 30 days from the date of receipt of adjudication order [Section 112(b)(ii) of the Customs Act, 1962].		
Misdeclaration of value	If actual value is higher than the value declared in Bill of Entry or declaration of contents of baggage: Actual value = xxx Less: Declared value = (xx) -----Difference = xxx =====	₹ 5,000	Whichever is Higher

Prohibited Goods plus Misdeclaration value	(i) Not exceeding the value of prohibited goods OR (ii) Actual value = xxx Less: Declared value = (xx) -----Difference = xxx ===== Whichever is higher	₹ 5,000	Whichever is Higher
Dutiable Goods plus Misdeclaration of Value	(i) Duty sought to be evaded OR (ii) Actual value = xxx Less: Declared value = (xx) -----Difference = xxx ===== Whichever is higher	₹ 5,000	Whichever is Higher

CONCEPT 62. EXPORT GOODS LIABLE FOR CONFISCATION — SECTION 113

These are goods attempted to be improperly exported under clauses of section 113:—

- (a) Goods attempted to be exported by sea or air from place other than customs port or customs airport
- (b) Goods attempted to be exported by land or inland water through unspecified route
- (c) Goods brought near land frontier or coast of India or near any bay, gulf, creek or tidal river for exporting from place other than customs port or customs station
- (d) Goods attempted to be exported contrary to prohibition under Customs Act or any other law
- (e) Goods concealed in any conveyance brought within limits of customs area for exportation
- (f) Goods loaded or attempted to be loaded for eventual export out of India, without permission of proper officer, in contravention of section 33 and 34 of the Customs Act, 1962
- (g) Goods stored at un-approved place or loaded without supervision of Customs Officer
- (h) Goods not mentioned or found excess of those mentioned in Shipping Bill or declaration in respect of baggage
 - (i) Any goods entered for exportation not corresponding in respect of value or any other particular in Shipping Bill or declaration of contents of baggage.
 - (ii) Goods entered for export under claim for duty drawback which do not correspond in any material particulars with any information provided for fixation of duty drawback.
- (i) Goods imported without duty but being re-exported under claim for duty drawback
- (j) Goods cleared for exportation which are not loaded on account of willful act, negligence or default, or goods unloaded after loading for exportation, without permission.
- (k) Provision in respect of 'Specified Goods' are contravened.

Penalties for improper export under section 114 of the Customs Act, 1962

Following monetary penalties prescribed under the Customs Act, with regard to improper export:

Attempt to improperly export (A)	Value in ₹ (B)	Minimum Penalty in ₹ (C)	Penalty in ₹ (B) or (C)
Prohibited Goods	Three times the value of the goods as declared by the exporter	The value as determined under the Customs Act.	Whichever is Higher
Dutiable Goods (other than Prohibited goods)	Duty sought to be evaded	₹ 5,000	Whichever is Higher
Other goods	Value declared in short	The value as determined under the Customs Act.	Whichever is Higher

Penalties for improper export U/S 114 of the Customs Act, 1962 (w.e.f. 14-5-2015)

Attempt to improperly export (A)	Value in ₹ (B)	Minimum Penalty in ₹ (C)	Penalty in ₹ (B) or (C)
Prohibited Goods	The value as determined under the Customs Act.	₹ 5,000	Whichever is Higher
Dutiable Goods (other than Prohibited goods)	w.e.f 14-5-2015: Not exceeding 10% of duty sought to be evaded.	₹ 5,000	Whichever is Higher
	w.e.f 14-5-2015: Penalty = 25% of penalty imposed, if duty, interest and reduced penalty is paid within 30 days from date of receipt of adjudication order - Section 114(ii) of Customs Act, 1962.		
Other goods	Not exceeding the value of goods as declared by exporter	The value as determined under the Customs Act.	Whichever is Higher

CONCEPT 63. CONFISCATION OF CONVEYANCES [SECTION 115 OF THE CUSTOMS ACT, 1962]:

Vehicles, Vessels, Aircrafts, animals used as a means of transport in the smuggling or improperly for import or export of goods shall be liable to confiscation. Any such conveyance is used for the carriage of goods or passengers for hire, the owner of any conveyance shall be given an option to pay in lieu of the confiscation of the conveyance a fine not exceeding the market price of the goods which are sought to be smuggled or the smuggled goods as the case may be.

CONCEPT 64. PENALTY FOR NOT ACCOUNTING FOR GOODS [SECTION 116 OF THE CUSTOMS ACT, 1962]:

The person-in-charge of the conveyance shall be liable to pay penalty if any goods loaded in a conveyance for importation into India, or any goods transshipped under the provisions of this Act or coastal goods carried in a conveyance: • If not unloaded at their place of destination in India, or • If the quantity unloaded is short of the quantity to be unloaded at that destination, or • If the failure to unload or the deficiency is not accounted

CONCEPT 65. QUANTUM OF PENALTY UNDER SECTION 116:

Imported goods: Exported goods Penalty not exceeding twice the amount of duty that would have been chargeable on the goods not unloaded or deficient goods, as the case may be, had such goods been imported. Penalty not exceeding twice the amount of export duty that would have been chargeable on the goods not unloaded or deficient goods, as the case may be, had such goods been exported.

CONCEPT 66. RESIDUAL PENALTY [SECTION 117]:

As per section 117 of the Customs Act, 1962, if no penalty has been prescribed for contravenes, then the penalty would be ` 1,00,000 can be levied (w.e.f. 10.5.2008).

CONCEPT 67. CONFISCATION OF PACKAGES AND THEIR CONTENTS – SECTION 118

Where any goods imported in a package or brought within the limits of a customs area for the purpose of exportation in a package shall also be liable to confiscation if the importer or exporter violates the provisions of the customs provisions.

CONCEPT 68. CONFISCATION OF GOODS USED FOR CONCEALING SMUGGLED GOODS – SECTION 119

Any goods used for concealing smuggled goods shall also be liable to confiscation. However, goods does not include a conveyance used as a means of transport.

CONCEPT 69. CONFISCATION OF SMUGGLED GOODS NOTWITHSTANDING ANY CHANGE IN FORM, ETC. – SECTION 120:

Smuggled goods may be confiscated notwithstanding (i.e. in spite of) any change in their form. Where smuggled goods are mixed with other goods in such manner that the smuggled goods cannot be separated from such other goods, the whole of the goods shall be liable to confiscation.

CONCEPT 70. CONFISCATION OF SALE PROCEEDS OF SMUGGLED GOODS – SECTION 121

Where any smuggled goods are sold by a person having knowledge or reason to believe that the goods are smuggled goods, the sale-proceeds thereof shall be liable to confiscation.

CONCEPT 71. SMUGGLED GOODS CANNOT BE TREATED PAR WITH IMPORTED GOODS FOR THE PURPOSE OF GRANTING THE BENEFIT OF THE EXEMPTION NOTIFICATION:

The Honorable Supreme Court of India held that if the smuggled goods and imported goods were to be treated as the same, then there would have been no need for two different definitions under the Customs Act, 1962. The Court observed that one of the principal functions of the Customs Act, 1962 was to curb the ills of smuggling on the economy. Hence, it held that it would be contrary to the purpose of exemption notifications to give the benefit meant for imported goods to smuggled goods. Therefore, the court held that the smuggled goods could not be considered as 'imported goods' for the purpose of benefit of the exemption notification [*CCus. (Prev.), Mumbai v M. Ambalal & Co.* 2010 (260) E.L.T. 487 (SC)].

CONCEPT 72. REDEMPTION FINE (SECTION 125)

The term redemption fine means Option to pay fine in lieu of confiscation. A person makes an unauthorized import of goods liable to confiscation. After adjudication, Assistant Commissioner of Customs provides an option to the importer to pay fine in lieu of confiscation [Section 125(1) of the Customs Act.]:

Provided that, without prejudice to the provisions of the proviso to sub-section (2) of section 115, such fine shall not exceed the market price of the goods confiscated, less in the case of imported goods the duty chargeable thereon. Such an importer is liable to pay in addition to the customs duty and charges payable in respect of such imports, the penalty.

CONCEPT 73. OPTION TO PAY FINE IN LIEU OF CONFISCATION ALSO GIVEN TO EXPORTER OF PROHIBITED GOODS

An exporter who had been held guilty of exporting 'prohibited goods', has an option to pay fine in lieu of confiscation under section 125 of the Customs Act. *CCus. (Preventive), West Bengal v India Sales International* 2009 (241) ELT 182 (Cal).

CONCEPT 74. SELLING THE CONFISCATED GOODS DURING THE PERIOD OF PENDENCY OF APPEAL WAS NOT JUSTIFIED

The Customs Officer confiscated the gold carried by the petitioner from Muscat. The Customs Department received the letter from the petitioner about his willing to file an appeal against the order of confiscation. Revenue informed the petitioner that the confiscated goods had been handed over to the warehouse of the Custom House for disposal and consequently, auctioned the confiscated goods. The action of the custom authorities in selling the gold during the pendency of the appeal was not justified. [*Shabir Ahmed Abdul Rehman v UOI* 2009 (235) ELT 402 (Bom)]

CONCEPT 75. OPTION TO REDEEM THE GOODS WITH ADJUDICATING AUTHORITY UNDER SECTION 125

Adjudicating Authority is vested with the discretion to give an option either to confiscate or redeem the prohibited goods imported/exported even though the goods are liable to absolute confiscation but in case of other goods [*CCus v Alfred Menezes* 2009 (242) ELT 334 (Bom)] *Goods are not redeemed by paying fine* Where the imported goods are confiscated, u/s 125 and goods are not redeemed by

paying fine, the importer is bound to pay the customs duty [*Poona Health Services v CCus.* 2009 (242) ELT 335 (Bom)]

CONCEPT 76. NO REDEMPTION OF FINE, IF GOODS NOT AVAILABLE FOR CONFISCATION

The concept of redemption fine arises in the event when the goods are available and are to be redeemed. If the goods are not available, there is no question of redemption of the goods under section 125. The question of confiscating the goods would not arise if there are no goods available for confiscation. [*CCus v Finesse Creation Inc.* 2009 (248) ELT 122 (Bom)]

CONCEPT 77. OFFENCES UNDER CUSTOMS

The term Offence means a violation or breach of a law, like evasion of duty and breaking prohibitions under the Customs Act, 1962. However, offence not defined under Customs Act, 1962. Thereby, 'Offence' as any act or omission made punishable by any law for the time being in force. There are basically two types of punishments namely civil penalty and criminal penalty. Civil penalty for violation of statutory provisions involving a penalty and confiscation of goods and can be exercised by the Department of Customs. Criminal punishment is of imprisonment and fine, which can be granted only in a criminal court after prosecution.

CONCEPT 78. EVASION OF DUTY OR PROHIBITION UNDER SECTION 135(1) OF THE CUSTOMS ACT, 1962

If a person has nexus with misdeclaration of value or evasion of duty or handling in any manner goods liable for confiscation under section 111 (i.e. Confiscation of improperly imported goods) or section 113 (i.e. Export goods liable for confiscation), he shall be punishable in the following manner: Imprisonment upto seven years and fine for the following four kinds of offences:

- Market value of offending goods exceeds ` one crore
- Value of evasion of duty exceeds ` 30 lakhs
- Offence pertains to prohibited goods notified by Central Government of India
- Value of fraudulent availment of drawback/exemption exceeds ` 30 lakhs For all other kind of offences imprisonment is upto three years or fine or both. For repeat conviction, the imprisonment can be seven years and fine and in absences of special and adequate reasons, the punishment shall not be less than one year.

CONCEPT 79. COGNIZABLE AND NON-COGNIZABLE OFFENCE

Cognizable offence means an offence for which a police officer may arrest without warrant (i.e. without the order of a Magistrate). Non-cognizable offence means offences under Customs were a police officer cannot investigate cases without the order of a Magistrate.

CONCEPT 80. COGNIZANCE OF OFFENCES

As per Section 137(1) of the Customs Act, 1962, Court cannot take cognizance of offences under the Customs Act, 1962 in the following cases without previous sanction of the Commissioner of Customs: False declaration or documents (Section 132)

- Obstruction (i.e. stop the progress) of Officers of Customs (Section 133)
- Refusal to be X-rayed (Section 134)
- Evasion of duty or prohibitions (Section 135)
- Preparation to do clandestine export (i.e. improper export) (Section 135A)

As per Section 137(2) of the Customs Act, 1962, for taking cognizance of an offence committed by a Customs officer under section 136 the Court needs previous sanction of the Central Government in respect of officers of the rank of Assistant or Deputy Commissioner and above and previous sanction

of the Commissioner of Customs in respect of officers lower in rank than Assistant or Deputy Commissioner.

Section 136 of the Customs Act deals with offences by Officers of Customs which are as follows:

- An officer of customs facilitated to do fraudulent export
- Search of persons without reason to believe in the secreting of goods on them
- Arrest of person without reason to believe that they are guilty

These are called *vexatious actions* of department officers.

CONCEPT 81. COMPOUNDING OF OFFENCES

Compounding means basically a compromise between assessee and department. It means to say that instead of going to court for imposition of fine and imprisonment, the offender (i.e. importer or exporter committed an offence) may agree to pay composition amount. If the case is pending, the accused and the complainant can make a joint application to the court that the parties have come to an agreement not to prosecute further.

CONCEPT 82. APPLICANT:

Any importer or exporter but shall not include officers of Customs. Therefore, applicant (importer or exporter) can apply for compounding of offence either before or after launching of prosecution.

CONCEPT 83. COMPOUNDING AUTHORITY:

Means the Chief Commissioner of Customs having jurisdiction over place of applicant. The application can be made for compounding of offence before the Chief Commissioner of Customs by the applicant.

CONCEPT 84. REPORTING AUTHORITY:

Means the Commissioner of Customs, from whom report will get by compounding authority with in one month from the date of request. After receiving the report the compounding authority may allow application indicating the compounding amount and grant immunity from prosecution or reject the application. Compounding amount in case of evasion of duty is @20% of market value of goods or ` 1,00,000, w.e.f. 13-11-2008, whichever is higher. This amount shall pay within 30 days from the date of receipt of order for compounding of offence.

Finance (No. 2) Act, 2009 provides that the following mentioned persons shall not be eligible for compounding under section 137(3) of the Customs Act, 1962:

- (i) Offences under section 135 (i.e. Evasion of duty or prohibition) and section 135A (i.e. any person attempting to export goods illegally shall be punishable with imprisonment) of the Customs Act, 1962 already compounded. (i.e. second time compounding not allowed)
- (ii) Offences under the following Acts, namely:
 - a. the Narcotic Drugs and Psychotropic Substances Act, 1985;
 - b. the Chemical Weapons Convention Act, 2000; • the Arms Act, 1959; • the Wild Life (Protection) Act, 1972;
- (iii) A person involved in smuggling of goods falling under any of the following, namely:—
 - a. goods specified in the list of Special Chemicals, Organisms, Materials, Equipment and Technology • goods which are specified as prohibited items for import and export
 - b. any other goods or documents, which are likely to affect friendly relations with a foreign State
- (iv) Offences exceeding ` one crore already compounded.
- (iv) Person who has been convicted under this Act on or after 30.12.2005

CONCEPT 85. FIRST CHARGE ON PROPERTY OF ASSESSEE

First Charge on Property of Assessee (Section 142A of the Customs Act, 1962) Customs duty, interest, penalty and other sum payable will have FIRST CHARGE ON PROPERTY of assessee.

CONCEPT 86. INTEGRATED DECLARATION UNDER INDIAN CUSTOMS SINGLE WINDOW PROJECT

Integrated Declaration under Indian Customs Single Window Project [w.e.f. 1-4-2016]:

- (i) CBEC has taken-up the task of implementing 'Indian Customs Single Window Project' to facilitate trade. This project envisages that the importers and exporters would electronically lodge their Customs clearance documents at a single point only with the Customs.
- (ii) The required permission, if any, from Partner Government Agencies (PGAs) such as Animal Quarantine, Plant Quarantine, Drug Controller, Food Safety and Standards Authority of India, Textile Committee etc. would be obtained online without the importer/exporter having to separately approach these agencies.
- (iii) This would be possible through a common, seamlessly integrated IT systems utilized by all regulatory agencies, logistics service providers and the importers/exporters. The Single Window would thus provide the importers/ exporters a single point interface for clearance of import and export goods thereby reducing dwell time and cost of doing business.
- (iv) This online clearance under Single Window Project has been rolled out at main ports and airports in Delhi, Mumbai, Kolkata and Chennai so far. It will be gradually extended across the country.
- (v) CBEC has since developed the 'Integrated Declaration', under which all information required for import clearance by the concerned government agencies has been incorporated into the electronic format of the Bill of Entry.
- (vi) The Customs Broker or Importer shall submit the "Integrated Declaration" electronically to a single entry point, i.e. the Customs Gateway (ICEGATE). Separate application forms required by different PGAs would be dispensed with.
- (vii) The Integrated Declaration will be applicable for consignments to be cleared under the Indian Customs EDI Systems. For the clearance of imported goods in the manual mode, separate documents prescribed by the respective agencies will continue to apply.
- (viii) Apart from incorporating such forms, the Integrated Declaration will also include different types of undertakings, declarations, and letters of guarantee that are presently required to be submitted on company letter heads.
- (ix) Upon filing of the Integrated Declaration, the bill of entry will automatically be referred to concerned agency, if required, based on risk. The system has been modified to enable simultaneous processing of bill of entry by PGA and Customs. The Integrated Declaration has become effective from 1st April, 2016 [Circular No. 10/2016 Cus dated 15.03.2016]

Consequently, w.e.f. 01.04.2016, in the Bill of Entry (Electronic Declaration) Regulations, 2011, the term Electronic Declaration has been substituted with the term, Electronic Integrated Declaration vide Notification No. 45/2016 Cus (NT) dated 01.04.2016.

CONCEPT 87. W.E.F. 14.07.2016 CUSTOMS (IMPORT OF GOODS AT CONCESSIONAL RATE OF DUTY FOR MANUFACTURE OF EXCISABLE GOODS) RULES, 2016

- (i) Service providers also allowed to import goods at concessional rate of duty Rule 2 has been amended so as to apply these rules mutatis mutandis to a service provider also.
- (ii) Furnishing of security also permitted Rule 5, inter alia, requires a manufacturer who intends to avail the benefit of an exemption notification, to submit a continuity bond with such surety undertaking to pay the amount equal to the difference between the duty leviable on such inputs but for the exemption and that already paid, if any, at the time of

- importation, along with applicable interest. Said rule has been amended to allow the manufacturer to either submit a security or a surety for the amount specified herein.
- (iii) Time period for re-export of unutilized or defective imported goods extended from 3 months to 6 months Rule 7 allows the manufacturer who has availed the benefit of exemption notification to re-export the unutilized or defective imported goods, with the permission of the jurisdictional Deputy/Assistant Commissioner of Central Excise within 3 months from the date of import, subject to specified conditions. The said time period allowed for re-export has been extended from 3 months to 6 months.

CONCEPT 88. A person makes an unauthorized import of goods liable to confiscation. The value of those goods as computed by the customs officer is ` 20 lakhs (exclusive of basic customs duty @12%). You are required to compute penalty under Section 112 of the Customs Act, 1962 from the following independent cases: (a) if imported goods are prohibited goods (accepted his fraud after 30 days from the date of receipt of order). Whether your answer is different if accepted his fraud within 30 days from the date of show cause notice. (b) if imported goods are non-prohibited goods (duty and interest paid within 30 days of receipt of order under section 112(b)(ii) of Customs Act, 1962). Whether your answer is different if duty and interest has been paid within 30 days of receipt of show cause notice. (c) if declared value of imported goods (declared as some other goods) is ` 15 lakhs (i.e. non-prohibited goods) if declared value of imported goods (declared as some other goods) is ` 15 lakhs (i.e. prohibited goods).

CONCEPT 89. A person makes an unauthorized export of goods liable to confiscation. The value of those goods as computed by the customs officer is ` 10 lakhs. You are required to compute penalty under Section 114 of the Customs Act, 1962, (a) If export goods are prohibited goods (declared as some other goods) for ` 5 lakhs. What is the penalty if the accepted his fraud before issuance of show cause notice? Whether your answer is different if accepted his fraud within 30 days from the date of receipt of show cause notice. Rework the penalty in case of (a) if accepted his fraud within 30 days from the date of receipt of order. (b) if export goods are non-prohibited goods (declared as some other goods) for ` 5 lakhs, applicable rate of duty @10%. What is the penalty if duty and interest paid within 30 days from the date of receipt of notice? Whether your answer is different if duty and interest paid within 30 days from the date of receipt of order? (c) if export goods are non-prohibited goods (declared as some other goods) for ` 5 lakhs, exempt from export duty.

CONCEPT 90. A person makes an unauthorized import of goods liable to confiscation. After adjudication, Assistant Commissioner provides an option to the importer to pay fine in lieu of confiscation. It is proposed to impose a fine (in lieu of confiscation) equal to 50% of margin of profit. From the following particulars calculate the amount of fine that can be imposed: Assessable value – ` 1,50,000, Total duty payable – ` 60,000, Market value – ` 2,50,000. Also calculate the amount of fine and the total payment to be made by the importer to clear the consignment.

CONCEPT 91. Mr. D, an exporter was held guilty of exporting ‘prohibited goods’ due to which his goods were confiscated. He demanded the release of goods in lieu of redemption fine under section 125 of the Customs Act, 1962. However, the customs officer denied to grant him the said option. Examine whether, in the instant case, the customs officer is bound to release the goods in lieu of redemption fine.

CONCEPT 92. Rama Telecoms were engaged in the business of providing telecommunication services in various States in India. For their business Rama Telecoms imported Optic Fibre Cables (OFC) and classified them under Heading 85.44 of the Customs Tariff. However, the Department claimed that the goods should be classified under Heading 90.01. The Commissioner of Customs (Appeals), when the matter was brought before him, held that the impugned goods were classifiable under Heading 85.44 of the Customs Tariff. The Department has filed an appeal before CESTAT against the said order which has yet not been decided. Meanwhile, the customs authorities (DRI officers) have seized the consignment of OFC imported and cleared by Rama Telecom on payment of duty assessed under Heading 85.44 and forced Rama Telecoms to pay the differential duty between Headings 85.44 and 90.01 by threat and coercion. Examine the validity of the action of the customs authorities, with the help of a decided case law, if any.

Answer: The action of the Director of Revenue (D.R.I) officers of the Customs is not valid. Optic Fibre Cables correctly classified by the importer as per the order of the Commissioner of Customs (Appeals) and paid the duty accordingly. Therefore, the action of the Director of Revenue Intelligence (D.R.I. officers) in the Customs Department in seizing the goods and collecting money from the petitioners was wholly unjustified. Moreover, in the absence of any reassessment order passed determining the duty liability, there would be no question of recovering differential duty. [Vodafone Essar South Ltd. v UOI 2009 (237) ELT 35 (Bom)]

CONCEPT 93. Mr. C is a manufacturer importing the machine without payment of customs duty as an actual user in view of an exemption allowed on the condition that importer would use for its own use for a period of 5 years. The machine was insured by it with the National Insurance Company Limited. The machine met with an accident and assessee reported the accident to the insurance company and claimed insurance. The insurance company settled the claim of assessee on a total loss basis and paid the settled amount to the assessee after deducting its scrap/residual value of machine. According to Department the machine was allowed to be imported without payment of duty on condition that the importer would use it for its own use for a period of 5 years. Since the machine, though met with an accident, was sold within a period of 5 years of the import, the condition for a duty free import was breached and was liable for confiscation under section 111(o) (i.e. Section 111(o) reads as goods conditionally exempted or prohibited; but conditions are not fulfilled) of the Customs Act, 1962. The Department accordingly seized the machine from the premises of the assessee. Assessee, contended that, no notice was issued to it prior to the seizure or even after the seizure till date under Section 110(2) read with of Section 124 of the Act within 6 months (which could be extended by a further period of 6 months). Discuss briefly taking support of decided case law, if any.

Answer: Show Cause Notice (SCN) shall be issued within SIX months from the date of seizure. This period can be further extended by SIX months on sufficient cause, by the Commissioner of Central Excise or Customs. If no show cause notice issued within SIX months, the goods shall be returned to person from whose possession they were seized as per section 110 read with section 124 of the Customs Act, 1962. In the given case, show cause notice under Section 110 read with section 124 of the Act has not been issued to the assessee within a period of 6 months. In fact the notice has not been issued till today. Consequently, the continued detention of the goods seized beyond the statutory period of 6 months under section 110(1) of the Customs Act, 1962 is not valid. [Gawar Construction Ltd. 2009 (HC)]

CONCEPT 94. The goods imported by Perfect Ltd., the assessee, were detained on 14th September, 2009. However, the assessee could not produce the documentary evidence. Consequently, the impugned goods were seized on 8th February, 2010. The department issued a show cause notice to the assessee on 15th May, 2010. The assessee put forth a question of limitation alleging that the impugned show cause notice had been issued after a period of six months. The goods were detained on 14th September, 2009, but the show cause notice was issued on 15th May, 2010. Perfect Ltd. has sought for quashing of the show cause notice and also for the return of the goods. Examine.

Answer: Where any goods are seized under section 110(1) and no show cause notice in respect thereof is given under clause (a) of section 124 within six months of the seizure of the goods, the goods shall be returned to the person from whose possession they were seized. [Pro Musicals v Joint Commissioner Customs (Prev.), Mumbai 2008 (227) ELT 182 (Mad)] Hence, the Court ruled out the assessee's contention that detention and seizure were one and the same. It means detention is not the seizure but seizure includes the detention. Goods were seized on 8th February 2010 and show cause notice to the assessee has been issued on 15th May 2010, which is well within the limit of Six months from the date of seizure. The Court further held that the show cause notice issued by the Department was valid. Therefore, the contention of Perfect Ltd. is not sustainable in law.

CONCEPT 95. The customs authority confiscated the gold carried by Rafi (assessee) from Dubai. Rafi informed the custom authorities that he was filing an appeal against the order of confiscation. The customs authorities informed Rafi that the confiscated goods had been handed over to the warehouse of the Customs House for disposal and consequently, auctioned the confiscated goods. Examine the validity of the action of the customs authorities, with the help of a decided case law, if any?

Answer: Handing over the confiscated gold immediately after serving the order of confiscation itself was improper. Hence, the action of the customs authorities is not valid in law. [Shabir Ahmed Abdul Rehman v UOI 2009 (235) ELT 402 (Bom)]

CONCEPT 96. Importer BOPP Ltd. imported two consignments of ethyl alcohol which were allowed to be cleared for home consumption on execution of a bond undertaking to produce licence within a month. Since, appellant failed to fulfill the obligation, proceedings were initiated which culminated in confiscation of the goods under Section 111(d) of the Customs Act, 1962 and imposition of penalty on the importer under section 112(a) of the Customs Act, 1962. Examine the correctness of the decision in terms of statutory provisions.

Answer: The given case is similar to the case of Hira Lal Hari Bhagwati v CBI (2003) 155 ELT 433 (SC). The Supreme Court of India had held that no penalty can be imposed if the goods are imported with bona fide belief that they are entitled to exemption, later on they could not fulfill conditions of exemption but paid the duty. Further it was held that for establishing offence of cheating, complainant (i.e. importer) is required to show dishonest intention at the time of making promise or presentation. Thereby there is no penalty under section 112(a) of the Customs Act, 1962. With regard to confiscation of the goods under Section 111(d) of the Customs Act, 1962, the Apex Court namely the Supreme Court of India in the case of Sachinanda Banerji v Sitaram Agarwala 110 ELT 292 (SC), held that goods imported against restrictions under section 11 of the Customs Act, 1962 (Section 11 deals with power to prohibit importation or exportation of goods) are liable to confiscation whenever they are found even if this is long after import is over and even if they are in possession of third persons who had nothing to do with actual import. Thereby, Department action to confiscate the goods under section 111(d) of the Customs Act, 1962 is valid.

CONCEPT 97. Pranav and Parul, the petitioners, were engaged in the business of import in trading of textiles and some other consumable goods. During search, the statements of both the petitioners were recorded and the petitioners were arrested for the offence under sections 132 and 135 of the Customs Act, 1962 on account of alleged false declaration, false documents and evasion of customs duty. Simultaneously, adjudication proceedings were also initiated under the Act. The accused persons were exonerated by the competent authority/tribunal in the adjudication proceedings. Criminal proceedings were carried on simultaneously and petitioners were alleged to have committed offences punishable under sections 132 and 135(1)(b). Whether the criminal prosecution can be permitted to continue against both when the adjudication proceedings are in favour of them? Discuss.

Answer: In case of *Kapil Rai and Jatin Kapoor v Union of India* (2008) (HC) New Delhi, court held that where the accused persons are exonerated by the competent authorities/Tribunal in adjudication proceedings, one will have to see that reasons for such exoneration to determine whether these criminal proceedings could still continue. If the exoneration in departmental adjudication is on technical ground or by giving benefit of doubt and not on merits or the adjudication proceedings were on different facts, it would have no bearing on criminal proceedings. If, on the other hand, the exoneration in the adjudication proceedings is on merits and it is found that allegations are not substantiated at all and the concerned persons(s) is/are innocent, and the criminal prosecution is also on the same set of facts and circumstances, the criminal prosecution cannot be allowed to continue. If the departmental authorities themselves, in adjudication proceedings, record a categorical and unambiguous finding that there is no such contravention of the provisions of the Act, it would be unjust for such departmental authorities to continue with the criminal complaint. From the above discussion it is evident that the criminal prosecution can not be permitted to continue against both when the adjudication proceedings are in favour of them. Because, charges in the departmental proceedings as well as criminal complaint are identical and the exoneration of the concerned person in the departmental proceedings is on merits holding that there is no contravention of the provisions of any Act.

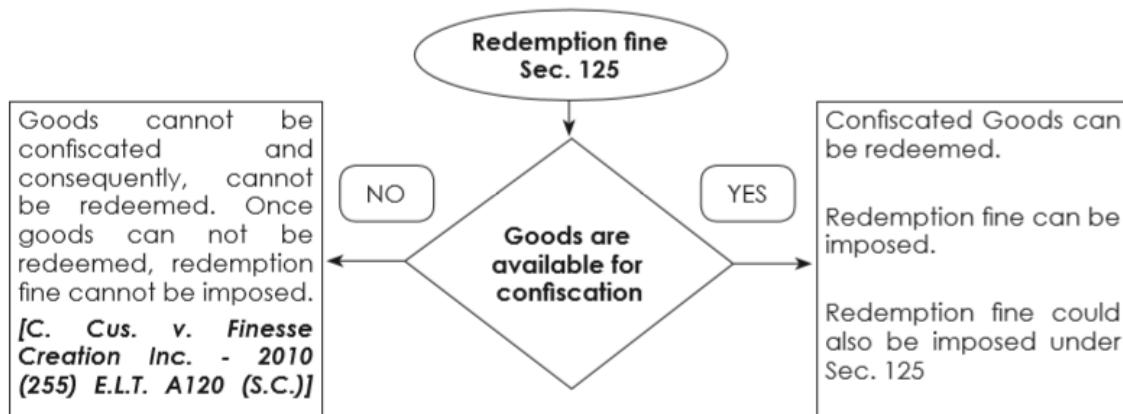
CONCEPT 98. The customs authority confiscated the gold from Mr. Rafi, at the time of import from Dubai. Mr. Rafi informed the custom authorities that he was filing an appeal against the order of confiscation.

Answer: Handing over the confiscated gold immediately after serving the order of confiscation itself was improper. Hence, the action of the customs authorities is not valid in law. [*Shabir Ahmed Abdul Rehman v UOI* 2009 (235) ELT 402 (Bom)]

CONCEPT 99. Case law: Can customs duty be demanded under section 28 and/or section 125(2) of the Customs Act, 1962 from a person dealing in smuggled goods when no such goods are seized from him? *CCUs. v Dinesh Chhajer* 2014 (300) ELT 498 (Kar)

Decision: The High Court held that Tribunal was justified in holding that no duty is leviable against the assessee as he is neither the importer nor the owner of the goods or was in possession of any goods.

CONCEPT 100. Under Customs Act, 1962 can redemption fine be imposed and penalty under section 112 be levied after release of imported goods on execution of a bond, if it is found subsequently that there has been an irregularity in the import? Discuss with the help of decided case law(s), if any.



It is important to note that for levying the penalty under section 112 (i.e. improper import) it is immaterial as to whether goods are available for confiscation or not because the said penalty is imposed when the goods are liable for confiscation.

QUESTIONS AND ANSWERS

Q. 1

X Ltd. imported goods on 29th Mar, 2020, and approached to the department for grant of provisional assessment u/s 18 of the Customs Act, 1962. Provisional Assessment granted on 10th April 2020 by demanding duty of Rs. 1,00,000.

On 1st July 2020 provisional assessment has been finalized with Rs. 1,50,000 of customs duty. Differential duty has been paid on 2nd July 2020. Find the interest payable u/s 18(3) of the Customs Act, 1962.

Answer:

Interest = Rs. $1,911/50,000 \times 15/100 \times 93/365 = \text{Rs.}2,293.15$)

Q. 2

Mr. Lal, paid the customs duty in the month of June 2016 Rs. 10,300. It was found by the department officer, the actual amount of duty is Rs. 15,450 for the June 2016. Customs duty of Rs. 5,150 as demanded by the department has been paid on 31st July 2016. Find the interest under section 28AA of the Customs Act, 1962?

Answer

Interest = Rs. 66

i.e. Rs. $5,150 \times 15/100 \times 31/365$)

Q. 3

Mr. Gopal, an Indian entrepreneur, went to London to explore new business opportunities on 01.04.2017. His wife also joined him in London on 01.12.2019. The following details are submitted by them with the Customs authorities on their return to India on 30.04.2020-

- (a) Used personal effects worth Rs.95,000
- (b) A music system worth Rs.34,000
- (c) the jewellery brought by Mr. Gopal for Rs.44,000 and the jewellery brought by his wife worth Rs.25,000 Determine their eligibility with regard to duty free allowance.

Duty drawback under Customs

Answer:

As per the Baggage Rules, in case of passengers other than tourists there is no customs duty on used personal effects and general free allowance is Rs.50,000 per passenger. Thus, their duty liability is nil for the personal effects and a music system.

However, the additional duty-free allowance, that is jewellery allowance is applicable to non-tourist passenger of Indian origin who had stayed abroad for period exceeding one year. The additional jewellery allowance is as follows:-

Gentleman Passenger - Rs.50,000/-

Lady Passenger - Rs.1,00,000/-

Thus, there is no duty liability on the jewellery brought by Mr.Gopal as he had stayed abroad for period exceeding one year.

However, his wife is not eligible for this additional jewellery allowance as she had stayed abroad for a period less than a year. Thus, she has to pay customs duty on the amount of jewellery brought by her. However, she is eligible to avail GFA of Rs.50,000.

Q. 4

A person makes an unauthorized import of goods liable to confiscation. After adjudication, Assistant Commissioner provides an option to the importer to pay fine in lieu of confiscation. It is proposed to impose a fine (in lieu of confiscation) equal to 50% of margin of profit. From the following particulars calculate the amount of fine that can be imposed: Assessable value - Rs. 50,000, Total duty payable - Rs. 20,000, Market value - 1,00,000. Also calculate the amount of fine and the total payment to be made by the importer to clear the consignment.

Answer

In the given case Assistant Commissioner intends to impose redemption fine equal to 50% of margin of profit. Total cost to importer = Rs. 50,000 + Rs. 20,000 = Rs. 70,000.

Margin of profit:

Market value - Total cost to importer = Rs. 1,00,000 - Rs. 70,000 = Rs. 30,000.

Hence, redemption fine will be Rs. 15,000 (@ 50% of Rs. 30,000).

In addition, duty of Rs. 20,000 is payable. Thus, importer will have to pay totally Rs. 35,000 to clear the goods from customs.

Q. 5

A person makes an unauthorized import of goods liable to confiscation. The value of those goods as computed by the customs officer is Rs. 20 lakhs (exclusive of basic customs duty @12%). You are required to compute penalty under Section 112 of the Customs Act, 1962 from the following independent cases:

- (a) If imported goods are prohibited goods (accepted his fraud after 30 days from the date of receipt of order). Whether your answer is different if accepted his fraud within 30 days from the date of show cause notice.
- (b) If imported goods are non-prohibited goods (duty and interest paid within 30 days of receipt of order under section 112(b)(ii) of Customs Act, 1962). Whether your answer is different if duty and interest has been paid within 30 days of receipt of show cause notice.
- (c) If declared value of imported goods (declared as some other goods) is Rs. 15 lakhs (i.e. non-prohibited goods) if declared value of imported goods (declared as some other goods) is Rs. 15 lakhs (i.e. prohibited goods).

Answer:

(a) Penalty = Rs. 20 Lakhs

Rs. 5,000 or Rs. 20 lakhs whichever is higher.

If duty and interest paid within 30 days of SCN:

Reduced penalty u/s 28(5) = Rs. 3 Lakhs (i.e. Rs. 20 L x 15%)

(b) Penalty = Rs. 6,180 (i.e. 0.2472 lakhs x 25%)

Working note: Rs. 5,000 or Rs. 0.2472 lakhs whichever is higher (i.e. Rs. 20 lakhs x 12.36% x 10%)

If duty and interest paid within 30 days of RECEIPT OF ORDER, then reduced penalty is 25% of penalty.

If duty and interest has been paid within 30 days of receipt of show cause notice then penalty is nil.

(c) Penalty = Rs. 5 Lakhs

(i) Rs. 2.472 lakhs

(i.e. Rs. 20 Lakhs x 12.36%)

(ii) Rs. 5 lakhs (i.e. 20 - 15) whichever is higher

(iii) Rs. 5,000 Therefore, penalty = Rs.5 lakhs

(d) Penalty = Rs. 20 lakhs whichever is higher

(i) Rs. 20 lakhs

(ii) Rs. 20 lakhs - Rs. 15 lakhs = Rs. 5 lakhs.

(iii) Rs. 5,000

Q. 6

A person makes an unauthorized export of goods liable to confiscation. The value of those goods as computed by the customs officer is Rs. 10 lakhs. You are required to compute penalty under Section 114 of the Customs Act, 1962,

(a) If export goods are prohibited goods (declared as some other goods) for Rs. 5 lakhs. What is the penalty if the accepted his fraud before issuance of show cause notice? Whether your answer is different if accepted his fraud within 30 days from the date of receipt of show cause notice.

Rework the penalty in case of (a) if accepted his fraud within 30 days from the date of receipt of order.

(b) If export goods are non-prohibited goods (declared as some other goods) for Rs. 5 lakhs, applicable rate of duty @10%. What is the penalty if duty and interest paid within 30 days from the date of receipt of notice? Whether your answer is different if duty and interest paid within 30 days from the date of receipt of order?

(c) If export goods are non-prohibited goods (declared as some other goods) for Rs. 5 lakhs, exempt from export duty.

Answer:

(a) Penalty = Rs. 10 lakhs Whichever is higher

- (i) Rs. 10 lakhs
- (ii) Rs. 5,000

If the duty and interest has been paid before issuance of show cause notice, then reduced penalty @15% of penalty. Therefore, penalty is Rs. 1.50 Lakhs (i.e. Rs. 10 L x 15%).

If duty and interest is paid within 30 days from the date of receipt of show cause notice penalty is Rs. 1.50 Lakhs.

(b) Penalty = Rs. 10,000 Whichever is higher

- (i) 10% of Rs. 1 lakh = Rs. 10,000

Duty = Rs. 1 lakh (i.e. Rs. 10 lakhs x 10%) Note: no social welfare surcharge on exports.

- (ii) Rs. 5,000.

If duty and interest paid within 30 days from the date of receipt of notice, then penalty is nil.

If duty and interest paid within 30 days from the date of receipt of order, then reduced penalty is 25% of such penalty. Therefore, penalty is 2,500 (i.e. Rs. 10,000 x 25%).

(c) Penalty = Rs. 10 lakhs

Whichever is higher

- (i) Rs. 5 lakhs
- (ii) Rs. 10 lakhs

Q. 7

A person makes an unauthorized import of goods liable to confiscation. After adjudication, Assistant Commissioner provides an option to the importer to pay fine in lieu of confiscation. It is proposed to impose a fine (in lieu of confiscation) equal to 50% of margin of profit. From the following particulars calculate the amount of fine that can be imposed: Assessable value - Rs. 1,50,000, Total duty payable - Rs. 60,000, Market value - Rs. 2,50,000. Also calculate the amount of fine and the total payment to be made by the importer to clear the consignment.

Answer:

In the given case Assistant Commissioner intends to impose redemption fine equal to 50% of margin of profit.

Total cost to importer = Rs. 1,50,000 + Rs. 60,000 = Rs. 2,10,000.

Margin of profit =

Market value - Total cost to importer = Rs. 2,50,000 - Rs. 2,10,000 = Rs. 40,000.

Hence, redemption fine will be Rs. 20,000 (@ 50% of Rs. 40,000). In addition, duty of Rs. 60,000 is payable. Thus, importer will have to pay totally Rs. 80,000 to clear the goods from customs.

Q. 8

Mr. D, an exporter was held guilty of exporting 'prohibited goods' due to which his goods were confiscated. He demanded the release of goods in lieu of redemption fine under section 125 of the Customs Act, 1962.

However, the customs officer denied to grant him the said option.

Examine whether, in the instant case, the customs officer is bound to release the goods in lieu of redemption fine.

Answer:

In case of prohibited goods	In case of non-prohibited goods
The adjudicating officer may provide an option to the owner of the goods to pay redemption fine in lieu of confiscation if the importation or exportation of goods is prohibited.	If importation or exportation of goods is not prohibited, the option to pay redemption fine shall be given to the owner of goods.

Therefore, an exporter guilty of exporting prohibited goods is not entitled as such to an option to pay fine in lieu of confiscation under section 125 of the Customs Act, 1962.

It is at the discretion of the adjudicating officer to give or not to give such an option to the exporter guilty of exporting prohibited goods.

Q. 9

Rama Telecoms were engaged in the business of providing telecommunication services in various States in India. For their business Rama Telecoms imported Optic Fibre Cables (OFC) and classified them under Heading 85.44 of the Customs Tariff. However, the Department claimed that the goods should be classified under Heading 90.01. The Commissioner of Customs (Appeals), when the matter was brought before him, held that the impugned goods were classifiable under Heading 85.44 of the Customs Tariff. The Department has filed an appeal before CESTAT against the said order which has yet not been decided.

Meanwhile, the customs authorities (DRI officers) have seized the consignment of OFC imported and cleared by Rama Telecom on payment of duty assessed under Heading 85.44 and forced Rama Telecoms to pay the differential duty between Headings 85.44 and 90.01 by threat and coercion.

Examine the validity of the action of the customs authorities, with the help of a decided case law, if any.

Answer:

The action of the Director of Revenue (D.R.I) officers of the Customs is not valid. Optic Fibre Cables correctly classified by the importer as per the order of the Commissioner of Customs (Appeals) and paid the duty accordingly. Therefore, the action of the Director of Revenue Intelligence (D.R.I. officers) in the Customs Department in seizing the goods and collecting money from the petitioners was wholly unjustified. Moreover, in the absence of any reassessment order passed determining the duty liability, there would be no question of recovering differential duty. [Vodafone Essar South Ltd. v UOI 2009 (237) ELT 35 (Bom)]

CUSTOMS (IMPORT OF GOODS AT CONCESSIONAL RATE OF DUTY) RULES, 2017

CONCEPT 1. INTRODUCTION

These rules were notified vide Notification No. 68 /2017 - Customs (N. T.) dated 30th June 2017. They shall come into force on the 1st day of July, 2017.

CONCEPT 2. Rule 2 - Application

- (1) These rules shall apply to an importer, who intends to avail the benefit of an exemption notification issued under sub-section (1) of section 25 of the Customs Act, 1962 (52 of 1962) and where the benefit of such exemption is dependent upon the use of imported goods covered by that notification for the manufacture of any commodity or provision of output service.
- (2) These rules shall apply only in respect of such exemption notifications which provide for the observance of these rules.

CONCEPT 3. Rule 3 - Definition

In these rules, unless the context otherwise requires, -

- (a) "Act" means the Customs Act, 1962 (52 of 1962);
- (b) "Exemption notification" means a notification issued under sub-section (1) of section 25 of the Act;
- (c) "Information" means the information provided by the manufacturer who intends to avail the benefit of an exemption notification;
- (d) "Jurisdictional Custom Officer" means an officer of Customs of a rank equivalent to the rank of Superintendent or an Appraiser exercising jurisdiction over the premises where either the imported goods shall be put to use for manufacture or for rendering output services;
- (e) "manufacture" means the processing of raw material or inputs in any manner that results in emergence of a new product having a distinct name, character and use and the term "manufacturer" shall be construed accordingly;
- (f) "Output service" means supply of service with the use of the imported goods.

CONCEPT 4. RULE 4- INFORMATION ABOUT INTENT TO AVAL BENEFIT OF EXEMPTION NOTIFICATION

An importer who intends to avail the benefit of an exemption notification shall provide the information to 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 rendering output service, the particulars, namely:-

- (i) the name and address of the manufacturer;
- (ii) the goods produced at his manufacturing facility;
- (iii) the nature and description of imported goods used in the manufacture of goods or providing an output service.

CONCEPT 5. Rule 5- Procedure to be followed

- (1) The importer who intends to avail the benefit of an exemption notification shall provide the following information – (i) the estimated quantity and value of the goods to be imported, (ii) particulars of the exemption notification applicable on such import and (iii) the port of import in respect of a particular consignment for a period not exceeding one year; (a) in duplicate, to 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 rendering output service, and (b) in one set, to the Deputy Commissioner of Customs or, as the case may be, Assistant Commissioner of Customs at the Custom Station of importation.
- (2) Submission of Bond - The importer who intends to avail the benefit of an exemption notification shall submit a continuity bond with such surety or security as deemed appropriate by the Deputy Commissioner of Customs or Assistant Commissioner of Customs having jurisdiction over the premises where the imported goods shall be put to use for manufacture of goods or for rendering output service, with an undertaking to pay 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 importation, along with interest, at the rate fixed by notification issued under section 28AA of the Act, for the period starting from the date of importation 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.
- (3) 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 rendering output service, shall forward one copy of information received from the importer to the Deputy Commissioner of Customs, or as the case may be, Assistant Commissioner of Customs at the Custom Station of importation.
- (4) On receipt of the copy of the information under clause (b) of sub-rule (1), the Deputy Commissioner of Customs or, as the case may be, Assistant Commissioner of Customs at the Custom Station of importation shall allow the benefit of the exemption notification to the importer who intends to avail the benefit of exemption notification.

CONCEPT 6. Rule 6 -Maintaining records and furnishing Importer who intends to avail the benefit of an exemption notification to give information regarding receipt of imported goods and maintain records. –

- (1) The importer who intends to avail the benefit of an exemption notification shall provide the information of the receipt of the imported goods in his premises where goods shall be put to use for manufacture, within two days (excluding holidays, if any) of such receipt to the jurisdictional Customs Officer.
- (2) The importer who has availed the benefit of an exemption notification shall maintain an account in such manner so as to clearly indicate the quantity and value of goods imported, the quantity of imported goods consumed in accordance with provisions of the exemption notification, the quantity of goods re-exported, if any, under rule 7 and the quantity remaining in stock, bill of entry wise and shall produce the said account as and when required by 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 rendering output service.
- (3) The importer who has availed the benefit of an exemption notification shall submit a quarterly return, in the Form appended to these rules, to 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 rendering output service, by the tenth day of the following quarter.

CONCEPT 7. Rule 7 Re-export or clearance of unutilised or defective goods

- (1) The importer who has availed benefit of an exemption notification, prescribing observance of these rules may reexport the unutilised or defective imported goods, within six months from the date of import, with the permission of the jurisdictional 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 rendering output service: Provided that the value of such goods for re-export shall not be less than the value of the said goods at the time of import.
- (2) The importer who has availed benefit of an exemption notification, prescribing observance of these rules may also clear the unutilised or defective imported goods, with the permission of the jurisdictional 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 rendering output service, within a period of six months from the date of import on payment of import 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 interest, at the rate fixed by notification issued under section 28AA of the Act, for the period starting from the date of importation 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.

CONCEPT 8. Rule 8 Recovery of duty in certain case. –

The importer who has availed the benefit of an exemption notification shall use the goods imported in accordance with the conditions mentioned in the concerned exemption notification or take action by re-export or clearance of unutilised or defective goods under rule 7 and in the event of any failure, 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 rendering output service shall take action by invoking the Bond to initiate the recovery proceedings of the amount 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 interest, at the rate fixed by notification issued under section 28AA of the Act, for the period starting from the date of importation 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. References in any rule, notification, circular, instruction, standing order, trade notice or other order pursuance to the Customs (Import of Goods at Concessional Rate of Duty for Manufacture of Excisable Goods) Rules, 1996 and any provision thereof or to the Customs (Import of Goods at Concessional Rate of Duty for Manufacture of Excisable Goods) Rules, 2016 and any corresponding provisions thereof shall, be construed as reference to the Customs (Import of Goods at Concessional Rate of Duty) Rules, 2017.

SEARCH, SEIZURE, CONFISCATION AND MISCELLANEOUS PROVISIONS

CONCEPT 1. Power to Search Suspected Persons Entering Or Leaving India (Section 100)

Under Section 100 of the Act where the proper officer of the Customs has reason to believe that the following categories of persons have secreted any goods, liable to confiscation or any documents thereto, he may search such persons: -

- (a) any person who has landed from or is about to board, or is on board any vessel within the Indian Customs waters;
- (b) any person who has landed from or is about to board, or is on board a foreign-going aircraft;
- (c) any person who has got out of, or is about to get into, or is in vehicle, which has arrived from, or is to proceed to any place outside India;
- (d) any person not included in clauses (a), (b) or (c) who has entered or is about to leave India; (e) any person in a customs area.

CONCEPT 2. Power to Search Suspected Persons In Certain Other Cases (Section 101)

Under Section 101 of the Act, an officer of the Customs empowered generally or specially by an order of Principal Commissioner of Customs can search any person if he has reason to believe that any person has secreted about his person, the following goods which are liable to confiscation, or documents relating thereto: (a) gold; (b) diamonds; (c) manufactures of gold or diamond; (d) watches; (e) any other class of goods which the Central Government may, by notification in the Official Gazette, specify. The power under Section 101 is without prejudice to the power conferred under Section 100 of the Act. Again under Section 101 any person can be searched.

CONCEPT 3. Persons to Be Searched May Require To Be Taken Before Gazetted Officer Of Customs Or Magistrate (Section 102)

Section 102 of the Act provides that when any officer of Customs is about to search any person in terms of Sections 100 and 101, he shall, if such person so requires, take him without unnecessary delay to the nearest Gazetted Officer of customs or magistrate. If such requisition is made, the officer of customs may detain the person making it until, he can bring him before the gazetted officer of customs or the magistrate.

The Gazetted Officer of customs or the magistrate before whom —such person is brought shall, if he sees no reasonable ground for search, forthwith discharge the person. In other cases, he shall direct that a search be made.

Before making a search, the officer of Customs shall call upon two or more persons to attend and witness the search and may issue an order in writing to them or any of them so to do. The search would be made in the presence of such persons and a list of all things seized in the course of such search shall be prepared by such officer or other person and signed by such witnesses. Where the person to be searched is a female, the search shall be done by a female only.

CONCEPT 4. Power to Screen or X-Ray Bodies of Suspected Persons for Detecting Secreted Goods (Section 103)

Section 103 of the Act contains powers, to screen or X-Ray bodies of persons suspected of secreting certain goods liable to confiscation. Where the proper officer has reason to believe that any person referred to in sub-section (2) of section 100 has any goods liable to confiscation secreted inside his body, he may detain such person and produce him without unnecessary delay before the nearest magistrate.

The Magistrate before whom any person is brought shall, if he sees how reasonable ground for believing that such person has any such goods secreted inside his body, forthwith discharge such person.

On the other hand, where the Magistrate has reasonable ground for believing that any such person has any such goods liable for confiscation secreted in his body and the Magistrate is satisfied that an X-Ray is necessary for this purpose, he may make an order and such person would be taken to a radiologist possessing qualifications recognized by the Central Government for the purpose of screening or X-raying the body and such person shall allow the radiologist to screen or X-ray his body. The radiologist shall, after the screening or X-Ray, forward his report together with the X-Ray picture taken by him to the Magistrate without unnecessary delay.

On receipt of the report of radiologist, if the Magistrate is satisfied that any person has any goods liable to confiscation secreted inside his body, he may direct; that suitable action for bringing out such goods be taken on the advice and under the supervision of a registered medical practitioner and such person shall be bound to comply with such direction. In the case of a female, the advice and supervision of a female registered medical practitioner is required.

For the purposes of complying with the provisions of this section any person brought before the Magistrate may be detained by him for such period as the Magistrate may direct. The above provisions will not apply to any such person who admits that goods liable to confiscation are secreted in his body and who voluntarily submits himself for suitable action being taken for bringing out such goods.

CONCEPT 5. Power to Arrest (Section 104)

If an officer of customs empowered in this behalf by general or special order of the Principal Commissioner of Customs or Commissioner of Customs has reason to believe that any person in India or within the Indian customs waters has committed an offence punishable under section 132 or section 133 or section 135 or section 135A or section 136, he may arrest such person and shall, as soon as may be, inform him of the grounds for such arrest. Every person arrested shall, without unnecessary delay, be taken to a magistrate. Where an officer of customs has arrested any person he shall, for the purpose of releasing such person on bail or otherwise, have the same powers and be subject to the same provisions as the officer-in-charge of a police station has and is subject to under the Code of Criminal Procedure, 1898. As per sub-section (4), notwithstanding anything contained in the Code of Criminal Procedure, 1973, any offence relating to (a) prohibited goods; or (b) evasion or attempted evasion of duty exceeding Rs. 50 Lakh, shall be cognizable. All other offences under the Act shall be non-cognizable except the two above.

As per sub-section (6), notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), an offence punishable under section 135 relating to –

- (a) Evasion or attempted evasion of duty exceeding fifty lakh rupees; or
- (b) prohibited goods notified under section 11 which are also notified under sub-clause (C) of clause (i) of subsection (1) of section 135; or
- (c) import or export of any goods which have not been declared in accordance with the provisions of this Act and the market price of which exceeds one crore rupees; or
- (d) fraudulently availing of or attempt to avail of drawback or any exemption from duty provided under this Act, if the amount of drawback or exemption from duty exceeds fifty lakh rupees, shall be non-bailable.

Except as provided in sub section (6), all other offences under this Act shall be bailable.

CONCEPT 6. Power to Search Premises (Section 105)

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

search for such goods, documents, or things. The provisions of the Code of Criminal Procedure, 1898 relating to searches shall, so far as may be, apply to searches under this section.

CONCEPT 7. Power to Stop and Search Conveyances (Section 106)

Where the proper officer has reason to believe that any aircraft, vehicle or animal in India or any vessel in India or within the Indian customs waters has been, is being, or is about to be, used in the smuggling of any goods or in the carriage of any goods which have been smuggled, he may at any time stop any such vehicle, animal or vessel or, in the case of an aircraft, compel it to land, and

- (a) Rummage and search any part of the aircraft, vehicle or vessel;
- (b) Examine and search any goods in the aircraft, vehicle or vessel or on the animal;
- (c) Break open the lock of any door or package for exercising the powers conferred by clauses (a) and (b), if the keys are withheld.

Where for the purposes above

- (a) it becomes necessary to stop any vessel or compel any aircraft to land, it shall be lawful for any vessel or aircraft in the service of the Government while flying her proper flag and any authority authorised in this behalf by the Central Government to summon such vessel to stop or the aircraft to land, by means of an international signal, code or other recognized means, and thereupon, such vessel shall forthwith stop or such aircraft shall forthwith land; and if it fails to do so, chase may be given thereto by any vessel or aircraft as aforesaid and if after a gun is fired as a signal the vessel fails to stop or the aircraft fails to land, it may be fired upon;
- (b) It becomes necessary to stop any vehicle or animal, the proper officer may use all lawful means for stopping it, and where such means fail, the vehicle or animal may be fired upon.

CONCEPT 8. Power to Inspect (Section 106A)

Section 106A of the Act empowers an Officer of Customs to enter any place intimated under Chapter IVA or IVB of the Act and inspect the goods kept or stored therein and require any person found therein, who is for the time being in charge thereof, to produce to him for this inspection the accounts maintained under the said Chapter IVA or Chapter IVB and to furnish to him such other information as he may reasonably require for the purpose of ascertaining whether or not such goods have been illegally imported, exported or likely to be illegally exported.

CONCEPT 9. Power to Examine Persons (Section 107)

Any officer of customs empowered in this behalf by general or special order of the Principal Commissioner of Customs or Commissioner of Customs may, during the course of any enquiry in connection with the smuggling of any goods, (a) require any person to produce or deliver any document or thing relevant to the enquiry; (b) examine any person acquainted with the facts and circumstances of the case.

CONCEPT 10. Power to Summon Persons to Give Evidence and Produce Documents (Section 108)

Any Gazetted officer of Customs (the words "empowered by the Central Government", has been omitted by Finance Act, 2008 w.e.f. 13th July 2006) shall have power to summon any person whose attendance he considers necessary either to give evidence or to produce a document or any other thing in any inquiry which such officer is making under this Act. A summons to produce documents or other things may be for the production of certain specified documents or things or for the production of all documents or things of a certain description in the possession or under the control of the person summoned. All persons so summoned shall be bound to attend either in person or by an authorised agent and state the truth upon any subject respecting which they are examined or make statements and produce such documents and other things as may be required. Provided that the exemption under section 132 of the Code of Civil Procedure, 1908 (5 of 1908), shall be applicable to any requisition for

attendance under this section. Every such inquiry as aforesaid shall be deemed to be a judicial proceeding within the meaning of section 193 and section 228 of the Indian Penal Code, 1860 (45 of 1860).

CONCEPT 11. Obligation to furnish information Section 108A

Any person who is responsible for maintaining record of registration or statement of accounts or holding any other information under any of the Acts specified above or under any other law for the time being in force, which is considered relevant for the purposes of this Act, shall furnish such information to the proper officer in such manner as may be prescribed by rules made under this Act. Where the proper officer considers that the information furnished is defective, he may intimate the defect to the person who has furnished such information and give him an opportunity of rectifying the defect within a period of seven days from the date of such intimation or within such further period which, on an application made in this behalf, the proper officer may allow and if the defect is not rectified within the said period of seven days or, further period, as the case may be, so allowed, then, notwithstanding anything contained in any other provision of this Act, such information shall be deemed as not furnished and the provisions of this Act shall apply. Where a person who is required to furnish information has not furnished the same within the time specified, the proper officer may serve upon him a notice requiring him to furnish such information within a period not exceeding thirty days from the date of service of the notice and such person shall furnish such information.

CONCEPT 12. Penalty for failure to furnish information return Section 108B

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

CONCEPT 13. Power to Require Production of Order Permitting Clearance of Goods Imported By Land (Section 109)

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

CONCEPT 14. Power to undertake controlled delivery Section 109A

The proper officer or any other officer authorised by him in this behalf, may undertake controlled delivery of any consignment of such goods and in the prescribed manner, to (a) any destination in India; or (b) a foreign country, in consultation with the competent authority of such country to which such consignment is destined. "Controlled delivery" means the procedure of allowing consignment of such goods to pass out of, or into, the territory of India with the knowledge and under the supervision of proper officer for identifying the persons involved in the commission of an offence or contravention under this Act.

CONCEPT 15. SEIZURE OF GOODS, DOCUMENTS AND THINGS

Persons involved in smuggling and other modus operandi (i.e. Manner of operation) of imports and exports, in violation of prohibitions or restrictions with intent to evade duties or fraudulently claim export incentives are liable to serious penal action under the Customs Act, 1962. The offending goods can be confiscated and heavy fines and penalties imposed. There are provisions for arrests and prosecutions.

CONCEPT 16. Detention of goods

It means the goods are temporarily detained by officer to check whether there is any violation of law. In the case of *Pro Musicals v Joint Commissioner Customs (Prev.)*, Mumbai 2008 (227) ELT 182 (Mad) the Court clarified that the detention of goods is actually taking the custody of the goods and keeping it under restraint from being taken by the parties; but, the party is entitled to produce sufficient documentary evidence, and if he shows proof, he can take it. At that juncture, no question of seizure would arise. If such person not shows proof, then said goods are seized.

CONCEPT 17. Seizure of goods (Section 110 of the Customs Act, 1962)

The term seizure meant to take possession of the property contrary to the wishes of the owner of the goods in pursuance of a demand under legal right. Seizure involved not merely the custody of goods but also a deprivation (i.e. losing something) of possession of goods. It means to say that under seizure goods are taken in custody by the department. A stage before confiscation is called seizure. Generally goods liable to be confiscated may be seized.

CONCEPT 18. Goods should be returned within six months if no Show Cause Notice has been issued

Show Cause Notice (SCN) shall be issued within six months from the date of seizure. This period can be further extended by SIX months on sufficient cause, by the Commissioner of Central Excise or Customs. If no show cause notice issued within SIX months, the goods shall be return to person from whose possession they were seized.

CONCEPT 19. Provisional Release of seized goods and documents (w.e.f. 8-4-2011):

Seized goods and documents can be released by adjudicating authority on submission of bond and security under section 110A of the Customs Act, 1962. Therefore, permission of Commissioner of Customs is not required w.e.f. 8-4-2011. When the goods confiscated by the Department are found not confiscable as per the decision of appeal or adjudication or of review application, then no application is required to be filed by the assessee to authorities to request for release of goods. It is obligatory for the Department to release the goods immediately. [Shree Grotex Trade Links Pvt. Ltd. vs CC (2014) 301 ELT 24 (Cal.)]

CONCEPT 20. Manish Lalith Kumar Bavishi (2011).

Point of dispute: If any documents seized during the course of any action by an officer and relatable to the provisions of Customs Act, that officer was bound to make the documents available copies of those documents? Answer: Yes. The Bombay High Court held the same view in the case of *Manish Lalith Kumar Bavishi (2011)*.

CONCEPT 21. Confiscation of goods

The term confiscation of goods means the goods become property of Government and Government can deal with these goods as it desires. Once confiscated goods are became property of Central Government, no duty liability arises on assessee whose goods are confiscated. However, in some cases, the person from whom goods were seized can be get them back on payment of fine (i.e. Redemption fine in lieu of confiscation) under section 125(1) of the Customs Act, 1962.

CONCEPT 22. Goods are liable for confiscation in the following circumstances:

- Confiscation of improperly imported goods – Section 111
- Export goods liable for confiscation – Section 113
- Confiscation of Conveyances (i.e. Vehicles, Vessels, Air crafts, animals used as a means of transport in the smuggling) if used improperly for import or export of goods – Section 115
- Confiscation of packages and their contents – Section 118
- Confiscation of goods used for concealing smuggled goods – Section 119
- Confiscation of smuggled goods notwithstanding any change in form, etc. – Section 120 For example gold biscuits converted into jewellery. Hence, the entire value of jewellery is liable for confiscation.
- Confiscation of sale proceeds of smuggled goods – Section 121

As per section 124 of the Customs Act, 1962, before confiscating goods, Show Cause Notice must be issued to owner of goods giving grounds for confiscation. Time limit of SIX months as given in Section 110 of the Customs Act, 1962 is not applicable. It means there is no time limit is specified in case of issue of SCN for confiscation of goods. As per section 28 of the Customs Act, 1962, goods can be confiscated even after the goods are cleared from customs station.

CONCEPT 23. Wrong confiscation of goods:

Once the action of the Customs department with regard to confiscation of goods, set aside by Tribunal or Court (i.e. set aside means make inoperative or stop) the person is eligible to get back the goods. If in the meanwhile, goods have been sold by the Customs authorities, market value of goods as on date of setting aside confiscation of the order of confiscation by the judgment is payable (Northern Plastics Ltd. v CCE (2000) (SC)).

CONCEPT 24. Confiscation of improperly imported goods – Section 111

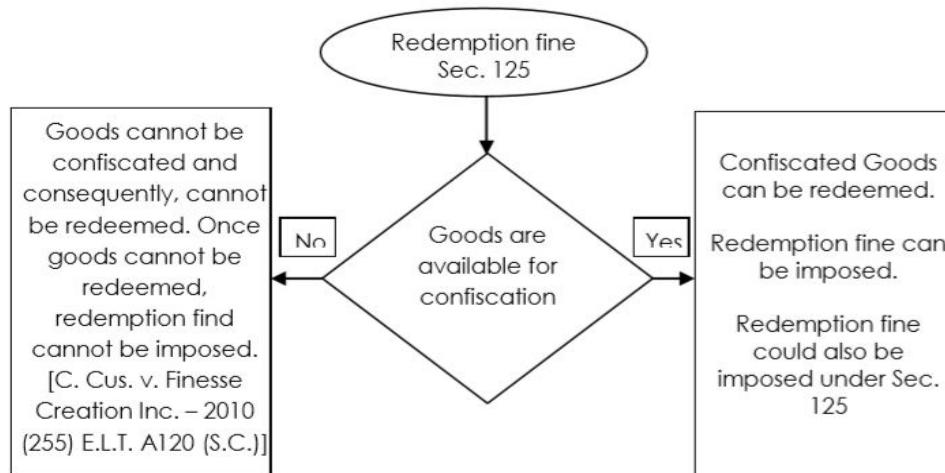
The following goods brought from a place outside India shall be liable to confiscation:

- (a) Any goods imported by sea or air which are unloaded or attempted to be unloaded at any place other than a customs port or customs airport.
- (b) Any goods imported by land or inland water through any route other than a route specified by the Govt.
- (c) Any dutiable or prohibited good brought into any bay, gulf, creek or tidal river for the purpose of being landed at a place other than a customs port.
- (d) Any goods which are imported or attempted to be imported or are brought within the Indian customs waters contrary to the provisions which are in force.
- (e) Any dutiable or prohibited goods found concealed (i.e. hidied) in any manner in any conveyance.
- (f) Goods not mentioned in the Import manifest or import report.
- (g) Goods un loaded in contravention of the provisions of customs law.
- (h) Any dutiable or prohibited goods found concealed in any manner in any package either before or after the unloading thereof.
- (i) Any dutiable or prohibited goods removed or attempted to be removed from a customs area or warehouse without the permission of the proper officer.
- (j) Any dutiable or prohibited goods removed or attempted to be removed from a customs area or a ware house without the permission of the proper.
- (k) Any dutiable or prohibited goods which are not included or are in excess of those included in the entry made under this Act, or in the case of baggage in the declaration made under section 77.
- (l) Any goods which do not correspond in respect of value or in any other particular with the entry made under this Act in the case of baggage with the declaration made under section 77.

(m) Any dutiable or prohibited goods transited with or without transshipment in contravention of the provisions of customs.

CONCEPT 25. Confiscated goods can be redeemed

Under Customs Act, 1962 can redemption fine be imposed and penalty under section 112 be levied after release of imported goods on execution of a bond, if it is found subsequently that there has been an irregularity in the import? Discuss with the help of decided case law(s), if any.



It is important to note that for levying the penalty under section 112 (i.e., improper import) it is immaterial as to whether goods are available for confiscation or not because the said penalty is imposed when the goods are liable for confiscation.

CONCEPT 26. Penalties for improper import under section 112 of the Customs Act, 1962

Penalty can be imposed for improper import as well as attempt to improperly export goods. 'Improper' means without the knowledge of the Customs officers.

CONCEPT 27. No question of penalizing the partners separately for the same contravention under section 112:

Once penalty was levied on the firm for contravention of any provision of the Act or the Rules framed there under, it amounted to levy of penalty on the partners. Hence, there was no question of penalizing the partners separately for the same contravention, unless the intention of the legislature to treat the firm and partners as distinct entities was borne out from the statute itself, i.e., expressly provided in the statute. For Example: Explanation to section 140 of the Customs Act equated partnership firm with company (which stands as separate entity distinct from its shareholders) in respect of commission of offences. However, there was no such corresponding provision in relation to imposition of penalty under section 112. The High Court held that separate penalty could not be imposed on the partners in addition to the penalty on the partnership firm [CCE & C, Surat-II v Mohammed Farookh Mohammed Ghani 2010 (259) ELT 179 (Guj)].

CONCEPT 28. Penalties for improper import [section 112 of the Customs Act, 1962]:

Imported Goods (A)	Value in ₹ (B)	Minimum Penalty in ₹ (C)	Penalty in ₹ (B) or (C)
Prohibited Goods	Not exceeding the value of prohibited goods	₹ 5,000	Whichever is Higher
Dutiable Goods (Other than Prohibited goods)	w.e.f 14-5-2015: Not exceeding 10% of the Duty sought to be evaded.	₹ 5,000	Whichever is Higher
	w.e.f 14-5-2015: Penalty = 25% of the penalty imposed, if the duty, interest and reduced penalty is paid within 30 days from the date of receipt of adjudication order [Section 112(b)(ii) of the Customs Act, 1962].		
Misdeclaration of value	If actual value is higher than the value declared in Bill of Entry or declaration of contents of baggage: Actual value = xxx Less: Declared value = (xx) -----Difference = xxx =====	₹ 5,000	Whichever is Higher
Prohibited Goods plus Misdeclaration value	(i) Not exceeding the value of prohibited goods OR (ii) Actual value = xxx Less: Declared value = (xx) -----Difference = xxx ===== Whichever is higher	₹ 5,000	Whichever is Higher
Dutiable Goods plus Misdeclaration of Value	(i) Duty sought to be evaded OR (ii) Actual value = xxx Less: Declared value = (xx) -----Difference = xxx ===== Whichever is higher	₹ 5,000	Whichever is Higher

CONCEPT 29. Export goods liable for confiscation — Section 113

These are goods attempted to be improperly exported under clauses of section 113:—

- (a) Goods attempted to be exported by sea or air from place other than customs port or customs airport
- (b) Goods attempted to be exported by land or inland water through unspecified route
- (c) Goods brought near land frontier or coast of India or near any bay, gulf, creek or tidal river for exporting from place other than customs port or customs station
- (d) Goods attempted to be exported contrary to prohibition under Customs Act or any other law
- (e) Goods concealed in any conveyance brought within limits of customs area for exportation
- (f) Goods loaded or attempted to be loaded for eventual export out of India, without permission of proper officer, in contravention of section 33 and 34 of the Customs Act, 1962
- (g) Goods stored at un-approved place or loaded without supervision of Customs Officer
- (h) Goods not mentioned or found excess of those mentioned in Shipping Bill or declaration in respect of baggage

- (i) Any goods entered for exportation not corresponding in respect of value or any other particular in Shipping Bill or declaration of contents of baggage.
- (ii) Goods entered for export under claim for duty drawback which do not correspond in any material particulars with any information provided for fixation of duty drawback.
- (i) Goods imported without duty but being re-exported under claim for duty drawback
- (j) Goods cleared for exportation which are not loaded on account of willful act, negligence or default, or goods unloaded after loading for exportation, without permission.
- (k) Provision in respect of 'Specified Goods' are contravened.

CONCEPT 30. Penalties for improper export under section 114 of the Customs Act, 1962

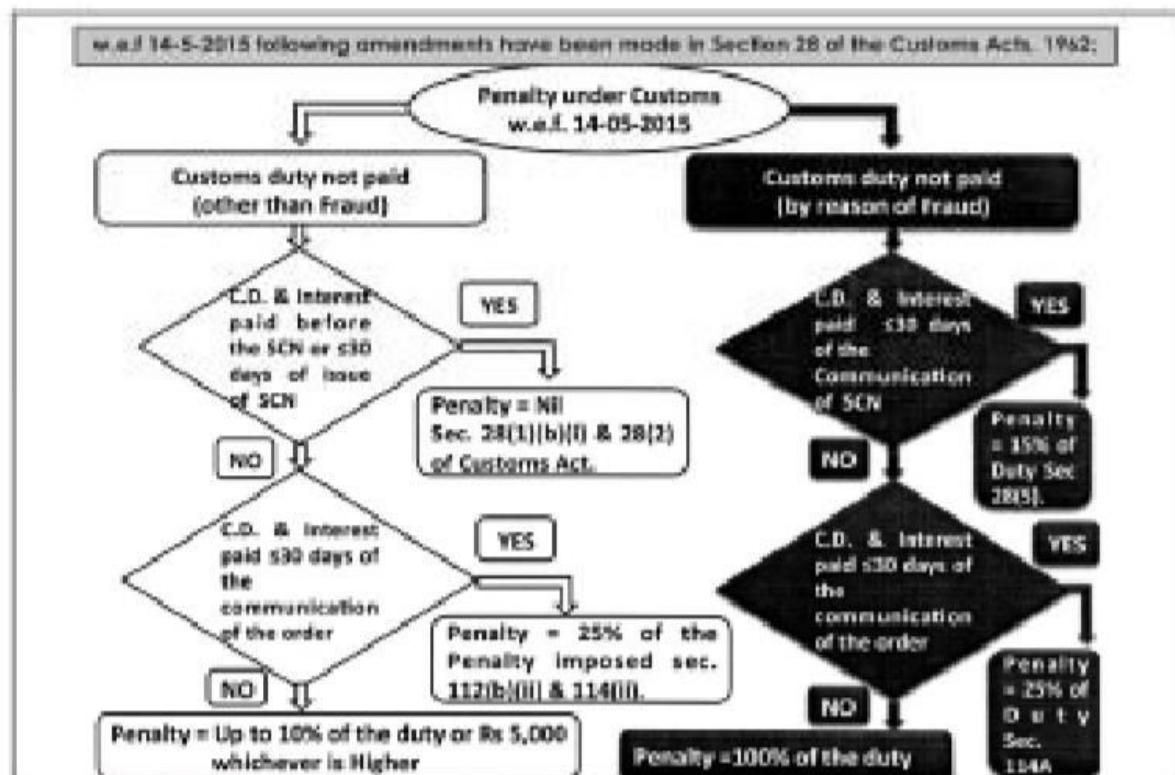
Following monetary penalties prescribed under the Customs Act, with regard to improper export:

Attempt to improperly export (A)	Value in ₹ (B)	Minimum Penalty in ₹ (C)	Penalty in ₹ (B) or (C)
Prohibited Goods	Three times the value of the goods as declared by the exporter	The value as determined under the Customs Act.	Whichever is Higher
Dutiable Goods (other than Prohibited goods)	Duty sought to be evaded	₹ 5,000	Whichever is Higher
Other goods	Value declared in short	The value as determined under the Customs Act.	Whichever is Higher

CONCEPT 31. Penalties for improper export U/S 114 of the Customs Act, 1962 (w.e.f.14-5-2015)

Attempt to improperly export (A)	Value in ₹ (B)	Minimum Penalty in ₹ (C)	Penalty in ₹ (B) or (C)
Prohibited Goods	The value as determined under the Customs Act.	₹ 5,000	Whichever is Higher
Dutiable Goods (other than Prohibited goods)	w.e.f 14-5-2015: Not exceeding 10% of duty sought to be evaded.	₹ 5,000	Whichever is Higher
	w.e.f 14-5-2015: Penalty = 25% of penalty imposed, if duty, interest and reduced penalty is paid within 30 days from date of receipt of adjudication order - Section 114(ii) of Customs Act, 1962.		
Other goods	Not exceeding the value of goods as declared by exporter	The value as determined under the Customs Act.	Whichever is Higher

CONCEPT 32. w.e.f. 14-5-2015 following amendments have been made in Section 28 of the Customs Act, 1962



w.e.f 14-5-2015:

In pending cases (both fraud and non-fraud) where the order has not been passed before 14.05.2015, proceedings to conclude if duty, interest and penalty is paid in full with 30 days of 14.05.2015 [New Explanation 3 to section 28]

w.e.f 14-5-2015: In pending cases (both fraud and non-fraud) where the order has not been passed before 14.05.2015, proceedings to conclude if duty, interest and penalty is paid in full within 30 days of 14.05.2015 [New Explanation 3 to section 28]

Explanation 3 has been inserted in section 28 to provide that where a notice under section 28(1) [non-fraud cases] or section 28(4) [fraud cases], as the case may be, has been served but an order determining duty under section 28(8) has not been passed before 14.05.2015 then, without prejudice to the provisions of sections 135, 135A and 140, as may be applicable, the proceedings in respect of such person or other persons to whom the notice is served will be deemed to be concluded if the payment of duty, interest and penalty under the proviso to section 28(2) or under section 28(5), as the case may be, is made in full within 30 days from 14.05.2015.

CONCEPT 33. Confiscation of Conveyances [Section 115 of the Customs Act, 1962]:

Vehicles, Vessels, Aircrafts, animals used as a means of transport in the smuggling or improperly for import or export of goods shall be liable to confiscation. Any such conveyance is used for the carriage of goods or passengers for hire, the owner of any conveyance shall be given an option to pay in lieu of the confiscation of the conveyance a fine not exceeding the market price of the goods which are sought to be smuggled or the smuggled goods as the case may be.

CONCEPT 34. Penalty for not accounting for goods [section 116 of the Customs Act, 1962]:

The person-in-charge of the conveyance shall be liable to pay penalty if any goods loaded in a conveyance for importation into India, or any goods transshipped under the provisions of this Act or coastal goods carried in a conveyance:

- If not unloaded at their place of destination in India, or
- If the quantity unloaded is short of the quantity to be unloaded at that destination, or
- If the failure to unload or the deficiency is not accounted.

CONCEPT 35. Quantum of penalty under section 116:

Imported goods:

Penalty not exceeding twice the amount of duty that would have been chargeable on the goods not unloaded or deficient goods, as the case may be, had such goods been imported.

Exported goods:

Penalty not exceeding twice the amount of export duty that would have been chargeable on the goods not unloaded or deficient goods, as the case may be, had such goods been exported.

CONCEPT 36. Residual Penalty [Section 117]:

As per section 117 of the Customs Act, 1962, if no penalty has been prescribed for contraventions, then the penalty would be ` 1,00,000 can be levied (w.e.f. 10.5.2008).

CONCEPT 37. Confiscation of packages and their contents – Section 118

Where any goods imported in a package or brought within the limits of a customs area for the purpose of exportation in a package shall also be liable to confiscation if the importer or exporter violates the provisions of the customs provisions.

CONCEPT 38. Confiscation of goods used for concealing smuggled goods – Section 119

Any goods used for concealing smuggled goods shall also be liable to confiscation. However, a goods does not include a conveyance used as a means of transport.

CONCEPT 39. Confiscation of smuggled goods notwithstanding any change in form, etc. – Section 120:

Smuggled goods may be confiscated notwithstanding (i.e. in spite of) any change in their form. Where smuggled goods are mixed with other goods in such manner that the smuggled goods cannot be separated from such other goods, the whole of the goods shall be liable to confiscation.

CONCEPT 40. Confiscation of sale proceeds of smuggled goods – Section 121

Where any smuggled goods are sold by a person having knowledge or reason to believe that the goods are smuggled goods, the sale-proceeds thereof shall be liable to confiscation.

CONCEPT 41. Smuggled goods cannot be treated par with imported goods for the purpose of granting the benefit of the exemption notification:

The Honorable Supreme Court of India held that if the smuggled goods and imported goods were to be treated as the same, then there would have been no need for two different definitions under the Customs Act, 1962. The Court observed that one of the principal functions of the Customs Act, 1962 was to curb the ills of smuggling on the economy. Hence, it held that it would be contrary to the purpose of exemption notifications to give the benefit meant for imported goods to smuggled goods.

Therefore, the court held that the smuggled goods could not be considered as 'imported goods' for the purpose of benefit of the exemption notification [CCus. (Prev.), Mumbai v M. Ambalal & Co. 2010 (260) E.L.T. 487 (SC)].

CONCEPT 42. Burden Of Proof in Certain Cases

Where any goods to which this section applies are seized under this Act in the reasonable belief that they are smuggled goods, the burden of proving that they are not smuggled goods shall be (a) in a case where such seizure is made from the possession of any person, (i) on the person from whose possession the goods were seized; and (ii) if any person, other than the person from whose possession the goods were seized, claims to be the owner thereof, also on such other person; (b) in any other case, on the person, if any, who claims to be the owner of the goods so seized. This section shall apply to gold, and manufactures thereof, watches, and any other class of goods which the Central Government may by notification in the Official Gazette specify.

CONCEPT 43. Issue of show cause notice before confiscation of goods etc. (section 124)

Section 124 provides that no order confiscating any goods or imposing any penalty on any person shall be made under this Chapter unless the owner of the goods or such person: (a) is given a notice in writing informing him of the grounds on which it is proposed to confiscate the goods or impose a penalty; (b) is given an opportunity of making a representation in writing within such reasonable time as may be specified in the notice against the grounds of confiscation or imposition of penalty mentioned therein; and (c) is given a reasonable opportunity of being heard in the matter; The notice referred to in clause (a) and the representation referred to in clause (b) may, at the request of the person concerned, be oral. Notwithstanding issue of notice under this section, the proper officer may issue a supplementary notice under such circumstances and in such manner as may be prescribed – (Inserted vide THE FINANCE ACT, 2018)

CONCEPT 44. Redemption Fine (Section 125)

The term redemption fine means Option to pay fine in lieu of confiscation. A person makes an unauthorized import of goods liable to confiscation. After adjudication, Assistant Commissioner of Customs provides an option to the importer to pay fine in lieu of confiscation [Section 125(1) of the Customs Act.]: Provided that, without prejudice to the provisions of the proviso to sub-section (2) of section 115, such fine shall not exceed the market price of the goods confiscated, less in the case of imported goods the duty chargeable thereon. Such an importer is liable to pay in addition to the customs duty and charges payable in respect of such imports, the penalty.

Non Applicability: Where the proceedings are deemed to be concluded under the proviso to Section 28(2) or under Section 28(6)(i) in respect of goods which are not prohibited or restricted, the provisions of this section shall not apply.

CONCEPT 45. Option to pay fine in lieu of confiscation also given to exporter of prohibited goods

An exporter who had been held guilty of exporting 'prohibited goods', has an option to pay fine in lieu of confiscation under section 125 of the Customs Act. CCus. (Preventive), West Bengal v India Sales International 2009 (241) ELT 182 (Cal).

CONCEPT 46. Selling the confiscated goods during the period of pendency of appeal was not justified

The Customs Officer confiscated the gold carried by the petitioner from Muscat. The Customs Department received the letter from the petitioner about his willing to file an appeal against the order of confiscation. Revenue informed the petitioner that the confiscated goods had been handed over to the warehouse of the Custom House for disposal and consequently, auctioned the confiscated goods. The action of the custom authorities in selling the gold during the pendency of the appeal was not justified. [Shabir Ahmed Abdul Rehman v UOI 2009 (235) ELT 402 (Bom)]

CONCEPT 47. Option to redeem the goods with Adjudicating Authority under section 125

Adjudicating Authority is vested with the discretion to give an option either to confiscate or redeem the prohibited goods imported/exported even though the goods are liable to absolute confiscation but in case of other goods [CCus v Alfred Menezes 2009 (242) ELT 334 (Bom)]

CONCEPT 48. Goods are not redeemed by paying fine

Option to be void if fine not paid within 120 days: Where the fine imposed is not paid within a period of 120 days from the date of option given thereunder, such option shall become void, unless an appeal against such order is pending.

CONCEPT 49. Transitional Provisions

Option to be exercised within 120 days from 29-03-2018 [Explanation]: For removal of doubts, it is hereby declared that in cases where an order under Section 125(1) has been passed before the date on which the Finance bill 2018 receives the assent of the President i.e 29-03-2018 and no appeal is pending against such order as on that date, the option under said sub-section may be exercised within a period of 120 days from the date on which assent is received.

Where the imported goods are confiscated, u/s 125 and goods are not redeemed by paying fine, the importer is bound to pay the customs duty [Poona Health Services v CCus. 2009 (242) ELT 335 (Bom)]

CONCEPT 50. No redemption of fine, if goods not available for confiscation

The concept of redemption fine arises in the event when the goods are available and are to be redeemed. If the goods are not available, there is no question of redemption of the goods under section 125. The question of confiscating the goods would not arise if there are no goods available for confiscation. [CCus v Finesse Creation Inc. 2009 (248) ELT 122 (Bom)]

CONCEPT 51. OFFENCES UNDER CUSTOMS

The term Offence means a violation or breach of a law, like evasion of duty and breaking prohibitions under the Customs Act, 1962. However, offence not defined under Customs Act, 1962. Thereby, 'Offence' as any act or omission made punishable by any law for the time being in force. There are basically two types of punishments namely civil penalty and criminal penalty. Civil penalty for violation of statutory provisions involving a penalty and confiscation of goods and can be exercised by the Department of Customs. Criminal punishment is of imprisonment and fine, which can be granted only in a criminal court after prosecution.

CONCEPT 52. Evasion of duty or prohibition under section 135(1) of the Customs Act, 1962

If a person has nexus with misdeclaration of value or evasion of duty or handling in any manner goods liable for confiscation under section 111 (i.e. Confiscation of improperly imported goods) or section 113 (i.e. Export goods liable for confiscation), he shall be punishable in the following manner:

Imprisonment upto seven years and fine for the following four kinds of offences:

- Market value of offending goods exceeds ` one crore
- Value of evasion of duty exceeds ` 30 lakhs
- Offence pertains to prohibited goods notified by Central Government of India
- Value of fraudulent availment of drawback/exemption exceeds ` 30 lakhs For all other kind of offences imprisonment is upto three years or fine or both.

For repeat conviction, the imprisonment can be seven years and fine and in absences of special and adequate reasons, the punishment shall not be less than one year.

CONCEPT 53. Cognizable and Non-cognizable Offence

Cognizable offence means an offence for which a police officer may arrest without warrant (i.e. without the order of a Magistrate). Non-cognizable offence means offences under Customs were a police officer cannot investigate cases without the order of a Magistrate.

CONCEPT 54. Cognizance of Offences

As per Section 137(1) of the Customs Act, 1962, Court cannot take cognizance of offences under the Customs Act, 1962 in the following cases without previous sanction of the Commissioner of Customs: False declaration or documents (Section 132) (i) Obstruction (i.e. stop the progress) of Officers of Customs (Section 133) (ii) Refusal to be X-rayed (Section 134) (iii) Evasion of duty or prohibitions (Section 135) (iv) Preparation to do clandestine export (i.e. improper export) (Section 135A) As per Section 137(2) of the Customs Act, 1962, for taking cognizance of an offence committed by a Customs officer under section 136 the Court needs previous sanction of the Central Government in respect of officers of the rank of Assistant or Deputy Commissioner and above and previous sanction of the Commissioner of Customs in respect of officers lower in rank than Assistant or Deputy Commissioner. Section 136 of the Customs Act deals with offences by Officers of Customs which are as follows:

- An officer of customs facilitated to do fraudulent export
- Search of persons without reason to believe in the secreting of goods on them
- Arrest of person without reason to believe that they are guilty

These are called vexatious actions of department officers.

CONCEPT 55. Compounding Of Offences

Compounding means basically a compromise between assessee and department. It means to say that instead of going to court for imposition of fine and imprisonment, the offender (i.e. importer or exporter committed an offence) may agree to pay composition amount. If the case is pending, the accused and the complainant can make a joint application to the court that the parties have come to an agreement not to prosecute further.

Applicant: any importer or exporter but shall not include officers of Customs. Therefore, applicant (importer or exporter) can apply for compounding of offence either before or after launching of prosecution.

Compounding Authority: means the Chief Commissioner of Customs having jurisdiction over place of applicant. The application can be made for compounding of offence before the Chief Commissioner of Customs by the applicant.

Reporting Authority: means the Commissioner of Customs, from whom report will get by compounding authority within one month from the date of request. After receiving the report the compounding authority may allow application indicating the compounding amount and grant immunity from prosecution or reject the application.

Compounding amount in case of evasion of duty is @ 20% of market value of goods or Rs. 1,00,000, w.e.f. 13-11-2008, whichever is higher. This amount shall pay within 30 days from the date of receipt of order for compounding of offence.

Finance (No. 2) Act, 2009 provides that the following mentioned persons shall not be eligible for compounding under section 137(3) of the Customs Act, 1962:

- (i) Offences under section 135 (i.e. Evasion of duty or prohibition) and section 135A (i.e. any person attempting to export goods illegally shall be punishable with imprisonment) of the Customs Act, 1962 already compounded. (i.e. second time compounding not allowed)
- (ii) Offences under the following Acts, namely: • the Narcotic Drugs and Psychotropic Substances Act, 1985; • the Chemical Weapons Convention Act, 2000; • the Arms Act, 1959; • the Wild Life (Protection) Act, 1972;
- (iii) A person involved in smuggling of goods falling under any of the following, namely:— • goods specified in the list of Special Chemicals, Organisms, Materials, Equipment and Technology • goods which are specified as prohibited items for import and export • any other goods or documents, which are likely to affect friendly relations with a foreign State
- (iv) Offences exceeding ` one crore already compounded.
- (v) Person who has been convicted under this Act on or after 30.12.2005

QUESTION AND ANSWER

Q. 1

A person makes an unauthorized import of goods liable to confiscation. After adjudication, Assistant Commissioner provides an option to the importer to pay fine in lieu of confiscation. It is proposed to impose a fine (in lieu of confiscation) equal to 50% of margin of profit. From the following particulars calculate the amount of fine that can be imposed:

Assessable value –	Rs. 50,000,
Total duty payable –	Rs. 20,000,
Market value –	1,00,000.

Also calculate the amount of fine and the total payment to be made by the importer to clear the consignment.

Answer:

In the given case Assistant Commissioner intends to impose redemption fine equal to 50% of margin of profit.

Total cost to importer = Rs. 50,000 + Rs. 20,000 = Rs. 70,000.

Margin of profit:

Market value – Total cost to importer = Rs. 1,00,000 – Rs. 70,000 = Rs. 30,000.

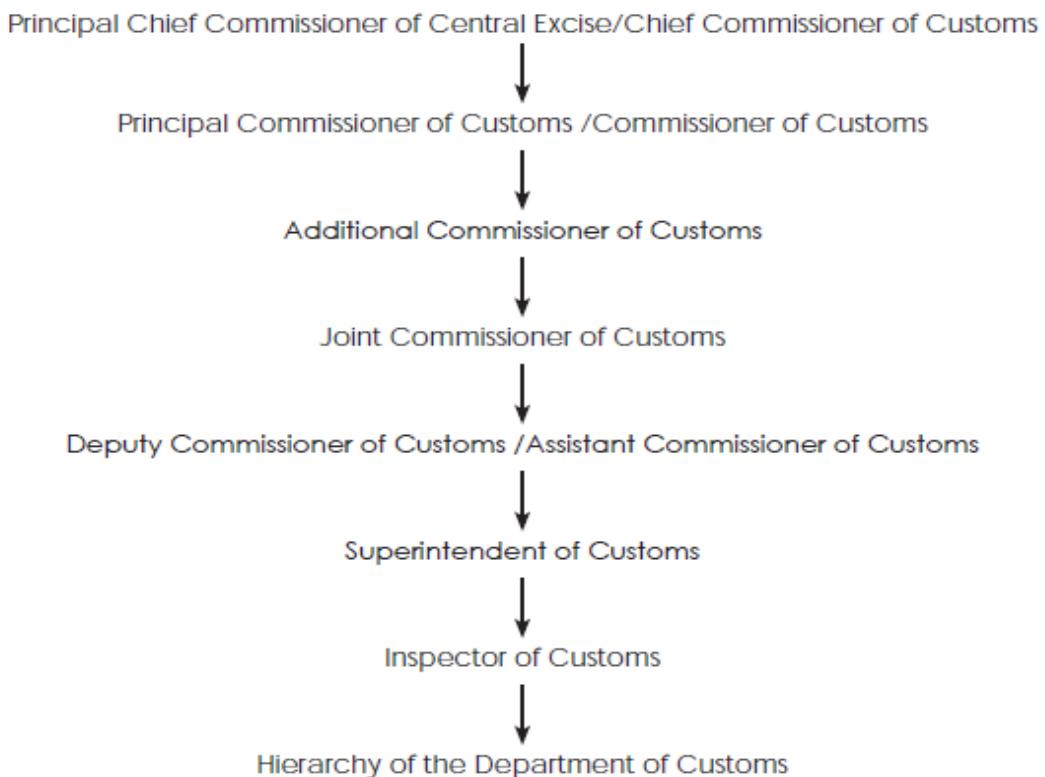
Hence, redemption fine will be Rs. 15,000 (@ 50% of Rs. 30,000).

In addition, duty of Rs. 20,000 is payable.

Thus, importer will have to pay totally Rs. 35,000 to clear the goods from customs.

COMPREHENSIVE ISSUES UNDER CUSTOMS

CONCEPT 1. ADJUDICATING AUTHORITY



CONCEPT 2. ADJUDICATING AUTHORITY FOR CONFISCATING GOODS U/S 122 OF THE CUSTOMS ACT, 1962

- ✓ The Superintendent \leq ` 50,000
- ✓ The Deputy/Assistant Commissioner $>$ ` 50,000 \leq 5,00,000
- ✓ The Joint/Additional Commissioner without any upper limit
- ✓ Commissioner without any upper limit

CONCEPT 3. Non-bailable offences

An offence punishable under section 135 relating to:—

- (a) Evasion or attempted evasion of duty exceeding `50 lakh; or
- (b) Prohibited goods [notified under section 11 also notified under section 135(1)(i)(C)]; or
- (c) import/export of any goods which have not been declared in accordance with the provisions of this Act and the market price of which exceeds `1 crore; or
- (d) Fraudulently availing of or attempt to avail of drawback or any exemption from duty provided under this Act, if the amount of drawback or exemption from duty exceeds `50 lakh, shall be a non-bailable offence.

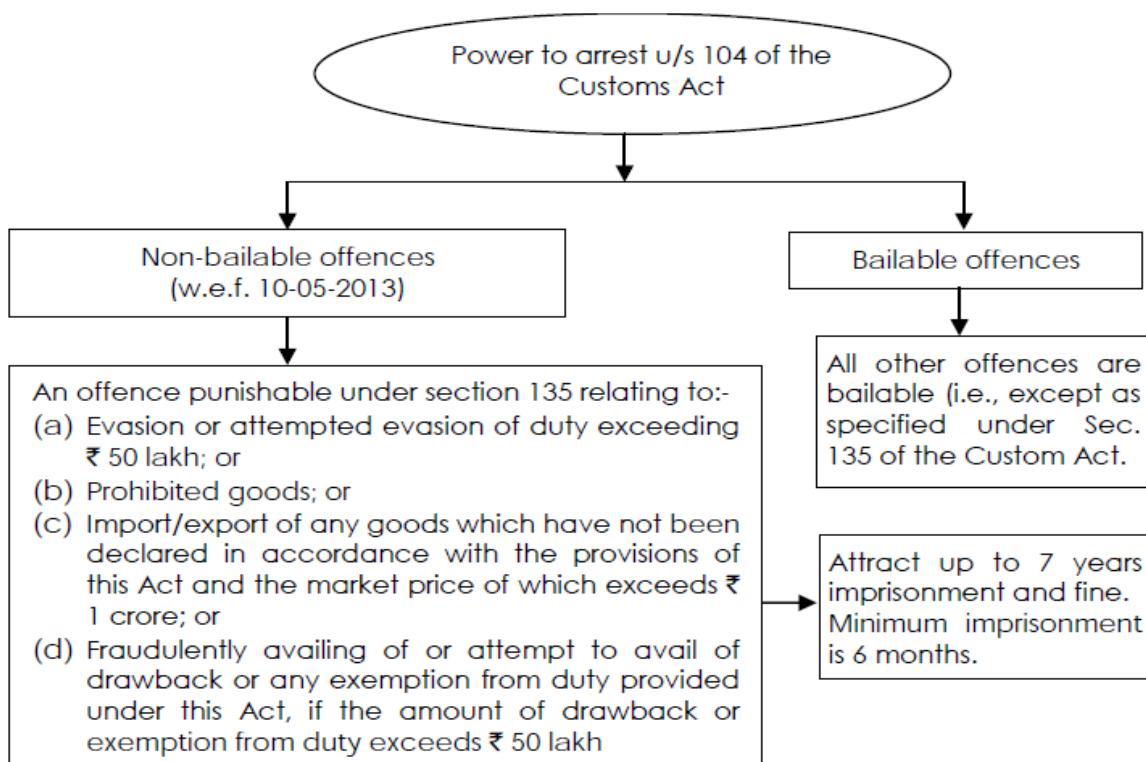
CONCEPT 4. Bailable offences

All other offences under the Customs Act, 1962 except those specified above shall be bailable.

CONCEPT 5. Offences involving evasion of duty

Section 135 stipulates the penal provisions applicable to a person who has committed any of the offences specified therein (hereafter referred to as offender who committed the offence u/s 135 of the Customs Act, 1962).

Prior to 10th May, 2013	W.e.f. 10th May, 2013
<p>such an offender was punishable with an imprisonment for a term which may extend upto 7 years and with fine in case of an offence relating to:—</p> <ul style="list-style-type: none"> (i) evasion or attempted evasion of duty exceeding ₹30 lakh or (ii) fraudulently availing of or attempting to avail of drawback or any exemption from duty provided under the Customs Act in connection with export of goods, if the amount of drawback or exemption from duty exceeds ₹30 lakh. 	<p>such an offender was punishable with an imprisonment for a term which may extend upto 7 years and with fine in case of an offence relating to:—</p> <ul style="list-style-type: none"> (i) evasion or attempted evasion of duty exceeding ₹50 lakh or (ii) fraudulently availing of or attempting to avail of drawback or any exemption from duty provided under the Customs Act in connection with export of goods, if the amount of drawback or exemption from duty exceeds ₹50 lakh.

CONCEPT 6. Power to Arrest u/s 104 of the Customs Act

CONCEPT 7. Immediate prosecution in case of gold (Circular No. 46/2016-Cus, dated 04.10.2016)

Where the offence relates to gold, prosecution may preferably be launched immediately after issuance of show cause notice.

CONCEPT 8. Silver bullion and cigarettes notified under section 123 of the Customs Act, 1962 Notification 103/2016 Cus (NT) dated 25.07.2016

Where these goods are seized under the Customs Act, 1962 in the reasonable belief that they are smuggled goods, the burden of proving that they are not smuggled goods shall be on the accused and not on the Department.

CONCEPT 9. Guidelines for arrest and bail under Customs Act, 1962: [Circular No. 974/08/2013-CX, dated 17.09.2013]

1. The power to arrest a person must be exercised with utmost care and caution by the Commissioner of Customs or Additional Director General of Customs.
2. The decision to arrest should be taken in cases which fulfil the requirement of the provisions of section 104(1) of Customs Act, 1962 and after considering the nature of offence, the role of the person involved and evidence available.
3. Persons involved should not be arrested unless the exigencies of certain situations demand their immediate arrest.

These situations may include circumstances:

- (a) To ensure proper investigation of the offence;
- (b) To prevent such person from absconding;
- (c) Cases involving organised smuggling of goods or evasion of customs duty by way of concealment;
- (d) Masterminds or key operators effecting proxy/benami imports/ exports in the name of dummy or non-existent persons/IECs, etc.

4. While the Act does not specify any value limits for exercising the powers of arrest, the same should be effected *in respect of bailable offence only in exceptional situations which may include:*

- (a) Outright smuggling of high value goods such as precious metal, restricted items or prohibited items or goods notified under section 123 of the Customs Act, 1962 or foreign currency where the value of offending goods exceeds `20 lakh.
- (b) In a case related to importation of trade goods (i.e. appraising cases) involving wilful mis-declaration in description of goods/ concealment of goods/goods covered under section 123 of Customs Act, 1962 with a view to import restricted or prohibited items and where the CIF value of the offending goods exceeds `50 lakh.

5. In every case of arrest effected in accordance with the provisions of section 104(1) of the Customs Act, 1962, there should be immediate intimation to the jurisdictional Chief Commissioner or DGRI, as the case may be.

6. A person arrested for a non-bailable offence should be produced before concerned Magistrate without unnecessary delay in terms of provisions of section 104(2) of the Act.

7. However, a Customs officer (arresting officer) is bound to offer release on bail to a person arrested in respect of bailable offence and accept bail bond for bailable offence.

8. Arrested person should produce within 24 hours before the Magistrate.

9. In case customs officer is not able to produce the arrested person before the Magistrate, then handed over to the nearest police station during night for safe custody.

CONCEPT 10. Section 153 of the Customs Act, 1962:

Service of order or decision or summons or notice by the commissioner of customs is valid even if it sent by the Registered post OR By Speed post with proof of delivery or courier approved by CBEC OR Tendering (Physical delivery) As may be approved by the commissioner of customs or Central Excise as the case may be.

CONCEPT 11. *Jay Balaji Jyoti Steels Limited v CESTAT Kolkata 2015 (37) STR 673 (Ori):*

Decision: The High Court, held that insertion of words “or by speed post with proof of delivery” in section 37C(1)(a) of the Central Excise Act, 1944 is clarificatory and a procedural amendment and hence, would have retrospective effect.

CONCEPT 12. *Jyoti Enterprises v CCEx. & ST 2016 (41) STR 0019 (All)*

Facts of the Case: The order-in-original, in assessee’s case, was passed by the Department. However, the assessee was unaware of the order passed and came to know about it two years later when the Department started recovery proceedings.

Point of Dispute: The assessee argued that there was no proper service of order by the Department. However, Department submitted that the order was served 2 years ago at the residential premises of the assessee to a person named Virendra Yadav who represented himself to be assessee’s nephew. The assessee contended that the order was required to be served to the person for whom it was intended, namely, the assessee or its authorised agent. Since Virendra Yadav was neither the authorised representative nor the order was served upon the assessee, there was no proper service of the order.

Decision: The High Court held that the order in original was duly served upon the assessee. The High Court observed that if the order is served on a member of the family of the assessee, it is duly served and there is sufficient service of the order. No assertion was made by the assessee that Virendra Yadav was not a family member or that he was not connected with the business. The assessee had nowhere stated that Virendra Yadav was not her nephew. Further, nothing has been stated that the address where the service of the original order was made was incorrect. Decision is given in favour of the Department and against the assessee.

CONCEPT 13. *Santosh Handlooms v CCUs. 2016 (331) ELT 44 (Del)*

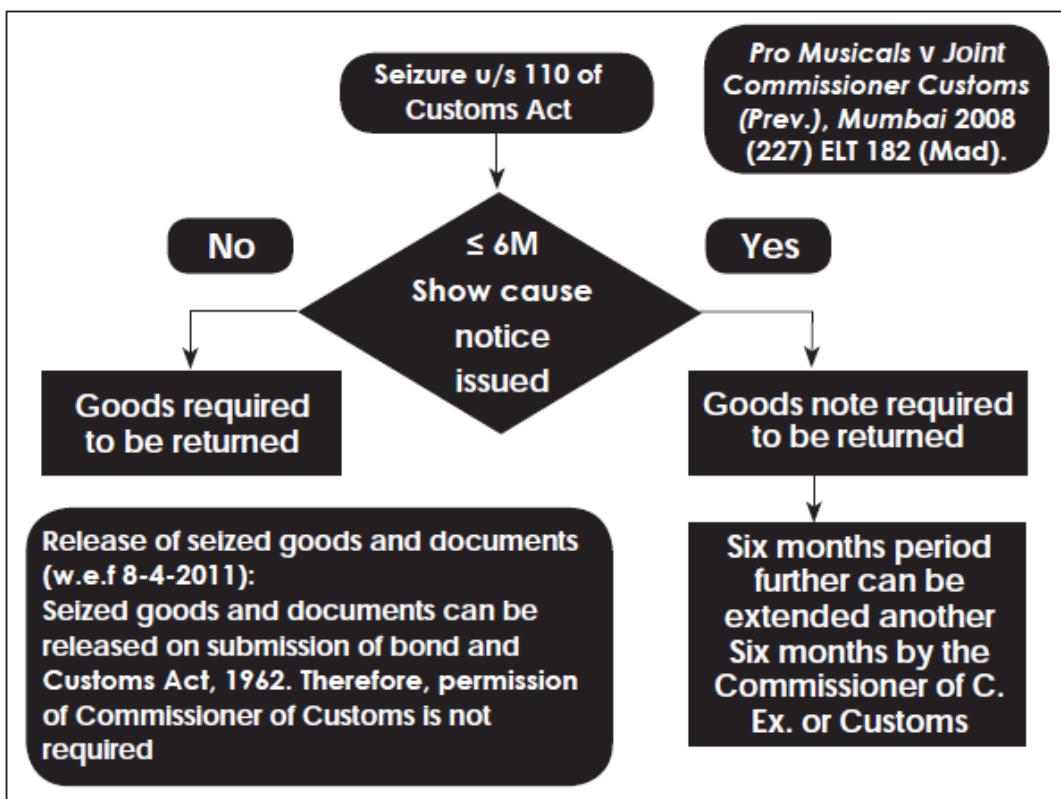
The issue which arose for consideration was whether in case of seizure of goods under section 110 of the Customs Act, 1962, the show cause notice [required to be issued under section 124(a) within six months of seizure] can be issued to the Customs House Agent [now Custom Broker] of the importer instead of importer himself.

Decision: The CHA [now Custom Broker], is an agent, who operates under a special contract with an importer or exporter, and in this context is authorized to perform various functions to clear the goods from customs. It is no part of the general duty cast upon the CHA to accept service of notices, summons, orders or decisions of the customs authorities, unless he has been specially authorized to do so. The High Court held that the show cause notice served on CHA [now Custom Broker] is not tenable in law.

CONCEPT 14. *Ratan Melting & Wire Industries v CCE 2008 (231) ELT 22 (SC):*

The Supreme Court has held that so far as the clarifications/circulars issued by the Central Government and of the State Government are concerned, they represent merely their understanding of the statutory provisions. They are not binding upon the Court. It is for the Court to declare what the particular provision of statute says and it is not for the Executive. A circular which is contrary to the statutory provisions has really no existence in law. Therefore, “Circulars issued by the Central Board of Excise and Customs (CBEC), which are contrary to the judgements of the Supreme Court and the High Courts are not binding on the authorities under the respective statutes.”

CONCEPT 15. Seizure u/s 110 of Customs Act



In case of Pro Musicals case it is clarified that 6 months time period reckoned from the date of seizure but not from the date of detention. **If any documents seized during the course of any action by an officer and relatable to the provisions of Customs Act, that officer was bound to make the documents available copies of those documents?** Answer: Yes.

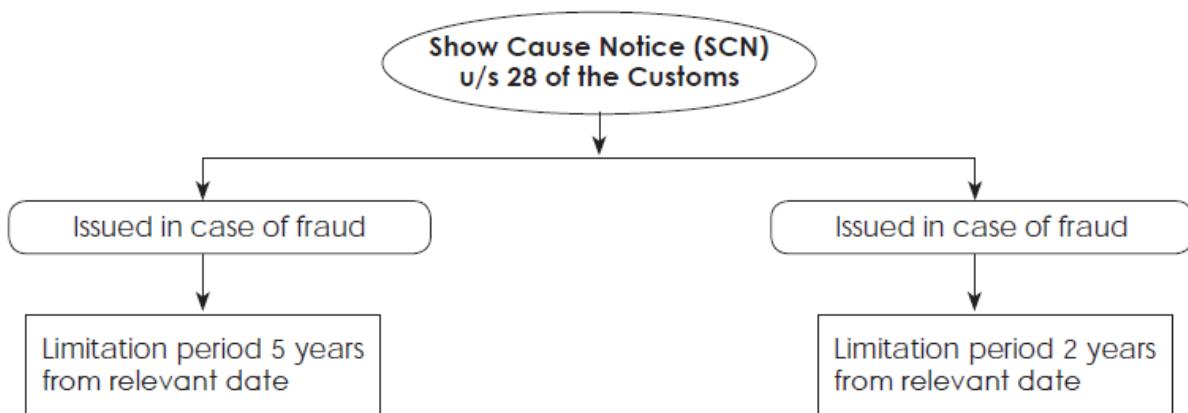
Facts of the case: An order for provisional release of the seized goods had been made under section 110A of the Act pursuant to an application filed by the petitioner in this regard. However, the petitioner claimed unconditional release of its seized goods in terms of sections 110(2) and 124 of the Act as no show cause notice had been issued within the extended period of six months (initial period of six months was extended by another six months by the Commissioner of Customs in this case). *Akanksha Syntex (P) Ltd. v Union of India* 2014 (300) ELT 49 (P&H)

Decision: Where no action is initiated by way of issuance of show cause notice under section 124(a) of the Act within six months or extended period stipulated under section 110(2) of the Act, the person from whose possession the goods were seized becomes entitled to their return. The remedy of provisional release is independent of remedy of claiming unconditional release in the absence of issuance of any valid show cause notice during the period of limitation or extended limitation prescribed under section 110(2) of the Customs Act, 1962.

CONCEPT 16. Refund of Duty / Rebate of Duty / Remission of Duty

Refund of duty	Rebate of duty	Remission of duty
<p>It means person paid tax or duty where subsequently noticed that not required to pay. Hence, such person is entitled to claim refund.</p> <p>For an example: Duty paid on exempted goods is qualify for refund</p>	<p>It means duty or tax paid where required to pay, thereafter, on account of satisfying certain conditions qualify for rebate of duty paid earlier.</p> <p>For an example: Rebate of duty can be understood as duty draw back. Where any goods are exported, the Central Government may, by notification, grant rebate of duty paid on such excisable goods or duty paid on materials used in the manufacture or processing of such goods and the rebate shall be subject to such conditions or limitations, if any, and fulfillment of such procedure, as may be specified in the notification.</p>	<p>It means duty or tax is levied but not paid, subsequently got exempted from payment of duty or tax.</p> <p>For an example: Warehoused goods after import got destroyed due to fire or natural calamities (i.e. loss occurred within the warehouse).</p>

CONCEPT 17. Show Cause Notice (SCN): Section 28 of the Customs Act, 1962



CONCEPT 18. MEANING OF RELEVANT DATE

W.e.f. 14-5-2015 relevant date in the case of customs law on which customs duty has not been levied or paid or has been short-levied or short-paid and the return has been filed is the date on which such return has been filed.

- (i) In any other case, the date on which duty is required to be paid under this Act or the rules made thereunder;
- (ii) In a case where duty of provisionally assessed under this Act or the rules made thereunder, the date of adjustment of duty after the final assessment thereof;
- (iii) In the case on which duty of customs has been erroneously refunded, the date of such refund;
- (iv) w.e.f. 14-5-2015, in a case where only interest is to be recovered, then the relevant date will be the date of payment of duty to which such interest relates.

CONCEPT 19. In the case of C.Cus. v. SAYED ALI 2011 (S.C.) the Apex Court held that

- Director General of Revenue Intelligence OR • Director General of Central Excise Intelligence are not eligible for issuing show cause notices.

However, w.e.f 16.9.2011 the law amended retrospectively by providing validity to those show cause notices issued by the Director General of Revenue Intelligence or, Director General of Central Excise Intelligence.

CONCEPT 20. PROTECTIVE DEMAND

Means issue show-cause notice-cum-demand in time, so that it does not become time barred, especially in the case of receipt of audit objections, protective demands should be issued in time.

CONCEPT 21. RECOVERY OF DUTIES IN CERTAIN CASES

An instrument (i.e. any scrip or authorisation or licence or certificate as a reward or incentive scheme or duty exemption scheme or duty remission scheme) has been obtained by the person by means of (a) Collusion; or (b) Wilful misstatement; or (c) Suppression of facts Duty and interest should be recovered within 30 days from the date of passing order to recover the same.

CONCEPT 22. Provisional attachment of property applicable u/s 28BA.

Proper officer empowered to provisionally attach the property in case of non-payment of customs duty or interest thereon on account of fraud, collusion, suppression of facts etc. as well [Section 28BA(1)]

Section 28BA of Customs Act, 1962	Prior to 10th May, 2013	W.e.f. 10th May, 2013
Provisional attachment of property in case of non payment of customs duty and interest on account of fraud	Provisionally attach the property belonging to only such person on whom notice has been served u/s 28(1) of the Customs Act, 1962	Provisionally attach the property belonging to any person on whom notice has been served u/s 28(1) or (4) of the Customs Act, 1962

CONCEPT 23. No recovery if the amount of customs duty involved is less than `100 [Section 28(1) - w.e.f. 10.05.2013]

Hitherto (UNTILL NOW / AAJ TAK), no minimum limit for recovery of customs duty had been specified under the Customs Act, 1962. Thus, recovery proceedings could be initiated even for the default of ` 1.

The Finance Act, 2013 has inserted third proviso in section 28(1) which provides that the proper officer will not serve the show cause notice, where the amount involved is less than ` 100. In other words, there would be no recovery of the customs duty if the amount of customs duty involved is less than ` 100.

CONCEPT 24. Uniworth Textiles Ltd. v. CCEEx. 2013 (288) ELT 161 (SC):

Statement of Facts: Assessee imported furnace oil and supplied the same to sister unit for generation of electricity, which is used by the assessee. The assessee claimed exemption on import of furnace oil. The assessee is also obtained a clarification from Development Commissioner for claiming exemption. However, irrespective of the clarification from Development Commissioner, a show cause notice demanding duty was issued on the assessee more than 1 year (i.e. longer limitation) after he had imported furnace oil on behalf of its sister unit.

Department Contention: The entitlement of duty free import of fuel for its captive power plant lies with the owner of the captive power plant, and not the consumer of electricity generated from the power plant.

Decision: As per Section 28 of Customs Act, 1962, longer limitation period in the given case not applicable. The assessee had shown bona fide conduct by seeking clarification from Development Commissioner and in a sense had offered its activities to assessment. Therefore, mere non-payment of duties could not be equated with collusion or willful misstatement or suppression of facts. Judgment is given in favour of the assessee.

CONCEPT 25. *Anita Grover v. CCEx.* 2013 (288) ELT 63 (Del):

Statement of Facts: A demand notice was raised against the petitioner in respect of the customs duty payable by the company (namely Shri Ram Casting P. Ltd) which she was formerly a director of. She had resigned from the Board of the company long time back. The Customs Department sought to attach the properties belonging to the petitioner for recovery of the dues to the company. Whether department action is justifiable?

As per sec. 142 of the Customs Act, 1962 and relevant rules, it was only the defaulter against whom steps might be taken under Rules. The defaulter was the person from whom dues were recoverable under the Act. In the present case, it was the company who was the defaulter. Therefore, department claim is not justifiable. The same view has been expressed by the Hon'ble Bombay High Court in case of *Vandana Bidyut Chatterjee v. UOI* 2013 (292) E.L.T. 6 (Bom.). w.e.f. 10-5-2013.

CONCEPT 26. Recovery under sec.142(1)(d) of the Customs Act, 1962 :

Issuance of the notice for recovery to any person other than from whom money is due

The Customs Officer may issue a written recovery notice to the following persons:

- any person from whom money is due to such person
- any person from whom money may become due to such person
- any person who holds money for or on account of such person
- Any person who may subsequently hold money for or on account of such person.

The noticee would be required to pay to the credit of the Central Government so much of the money as is sufficient to pay the amount due from such person or the whole of the money when it is equal to or less than that amount.

The money would be paid either forthwith upon the same becoming due or being held, or at or within the time specified in the notice. However, in no case the money would be required to be paid before it becomes due or is held.

In a case where the person to whom a notice under this sub-section has been issued, fails to make the payment is called as "**assessee in default**".

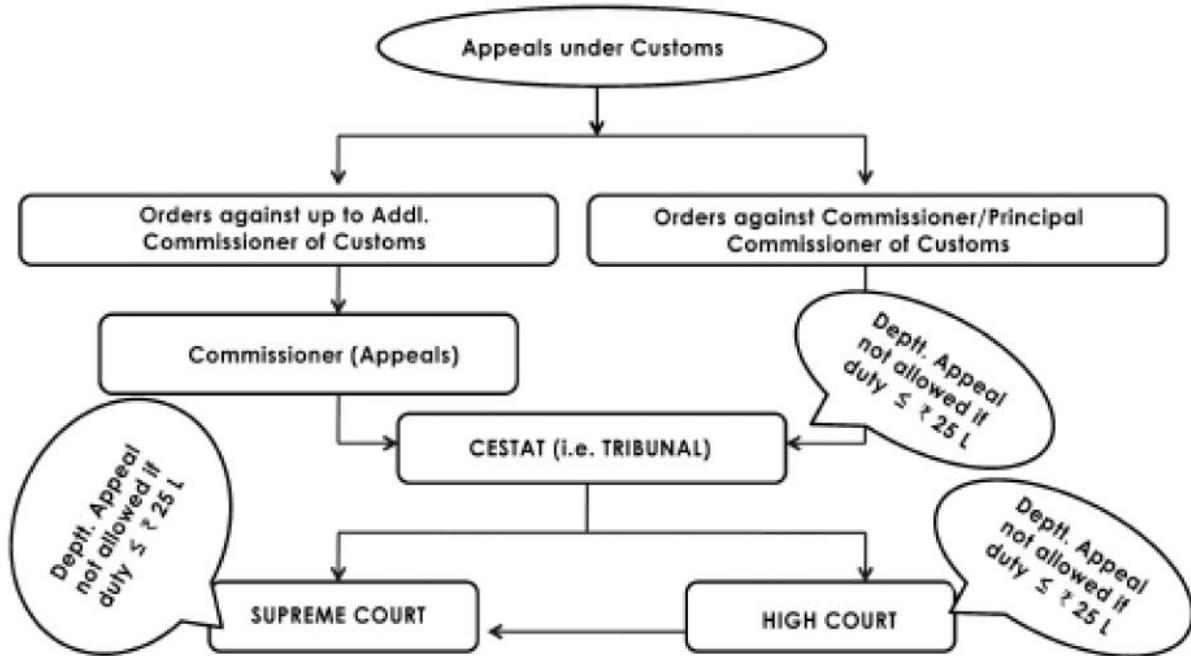
CONCEPT 27. *Kemtech International Pvt. Ltd. v. CCUs.* 2013 (292) E.L.T. 321 (S.C.)

Point of dispute: Is the adjudicating authority required to supply to the assessee copies of the documents on which it proposes to place reliance for the purpose of re-quantification of short-levy of customs duty?

Decision: The Apex Court elucidated that for the purpose of re-quantification of short-levy of customs duty, the adjudicating authority, following the principles of natural justice, should supply to the assessee all the documents on which it proposed to place reliance. Thereafter the assessee might furnish their explanation thereon and might provide additional evidence, in support of their claim.

CONCEPT 28. APPEALS UNDER CUSTOMS

HIERARCHY OF APPEALS UNDER CUSTOMS:



However, Departmental appeals in case of adverse judgments relating to the following disputes shall be allowed irrespective of the amount involved:

- Where the constitutional validity of the provisions of an Act or Rule is under challenge.
- Where notification/instruction/order or Circular has been held illegal or ultra vires.

The instruction has been further amended to provide that adverse judgments relating to classification and refunds issues which are of legal and/or recurring nature should also be contested irrespective of the amount involved **[Instruction F.No.390/Misc./163/2010 JC dated 17.12.2015]**.

CONCEPT 29. Mandatory pre-deposit for entertaining appeal (w.e.f. 6-8-2014):

Section 129E of the Customs Act, 1962, as amended by Finance (No. 2) Act, 2014 w.e.f. 6-8-2014, provides that Commissioner (Appeals) or CESTAT shall not '**entertain**' appeal unless specified pre-deposit of duty or penalty is made.

The pre-deposit is as follows –

- (a) 7.5% if appeal is filed before Commissioner (Appeals)
- (b) 7.5% if appeal is filed before CESTAT against order of Principal Commissioner/Commissioner as adjudicating authority
- (c) 10% if appeal is filed before CESTAT against order of Commissioner (Appeals).

Note: Maximum amount of pre-deposit is `10 crores.

The aforesaid percentage is to be calculated as follows –

- (i) If both duty and penalty is confirmed, then the percentage (7.5% or 10%) is only of the duty or service tax.
- (ii) If only penalty is imposed, then the percentage (7.5% or 10%) is of the penalty.

Note: Maximum amount of pre-deposit is `10 crores.

CONCEPT 30. CBEC has issued Circular No. 984/08/2014 CX dated 16.09.2014

Which clarifies the Quantum of pre-deposit: Where an appeal is made against the order of Commissioner (Appeals) before the Tribunal, 10% is to be paid on the amount of duty demanded or penalty imposed by the Commissioner (Appeals). This amount may or may not be same as the amount of duty demanded or penalty imposed in the Order-in-Original in the said case.

CONCEPT 31. Circular No. 984/08/2014 CX dated 16.09.2014 issued by CBEC

Has clarified that where penalty alone is in dispute and penalties have been imposed under different provisions of the Act, pre-deposit would be calculated based on the aggregate of all penalties imposed in the order sought to be appealed against.

CONCEPT 32. Meaning of 'duty demanded'

The term 'duty demanded' includes customs duty Interest if pre-deposit is to be refunded - @ 6% p.a. simple interest (Section 129EE of the Customs Act, 1962):

If the assessee finally wins the case, the pre-deposit is to be refunded with interest from the date of pre-deposit till the date of refund of such amount @ 6% p.a. simple interest.

However, interest on delayed refund of pre-deposit made prior to 06.08.2014 will continue to be governed by the erstwhile provisions.

CONCEPT 33. Whether the word 'include' used in a statutory definition enlarges the scope of preceding words or restricts their scope? Ramala Sahkari Chini Mills Ltd. v. CCEEx. 2016 (334) ELT 3 (SC)

Decision: The Supreme Court referring to the case of *Regional Director, Employees' State Insurance Corporation v. High Land Coffee Works of P.F.X. Saldanha and Sons & Anr.* [(1991) 3 SCC 617] held that that the word "include" in a statutory definition is generally used to enlarge the meaning of the preceding words and it is by way of extension, and not with restriction.

CONCEPT 34. Appeal to Commissioner (Appeal) (Section 128 of the Customs Act, 1962).

1. Appeal against orders up to Additional Commissioner lies with Commissioner (Appeals)
2. Appeal against Commissioner (Appeals) lies directly to CESTAT
3. Period of limitation for appeal:

In case of Customs

Original period of limitation 2 months from the date of communication of the order

Extended period of limitation 1 month from the date of communication of the order

However, Commissioner (Appeals) cannot condone the delay beyond period of One month [Amchong Tea Estate 2010 (SC)]. W.e.f. 28-5-2012 same provision for Service Tax appeals.

CONCEPT 35. CCus & CEx. v. Ashok Kumar Tiwari 2015 (37) STR 727 (All.):

The High Court noted that section 3(35) of the General Clauses Act, 1897 also defines the expression "month" to mean a month reckoned according to the British calendar. Further, the day on which order was received by the assessee, had to be excluded while computing the period of limitation. Since the original period of limitation and the period within which delay could be condoned expired on a public holiday, the assessee filed the appeal on the next working day. Therefore, Commissioner of Central Excise (Appeals) had the jurisdiction to condone the delay.

4. Appeal should also state statement of facts and grounds of appeal. New grounds of appeal generally not allowed.
5. In general appeals can be finalized within 6 months from the date on which it is filed.

6. Committee of Commissioners can file an appeal if the Commissioner (Appeals) has given a decision in favour of assessee, if it is of the opinion that the order is not legal or proper.

7. Appeal against the order of Principal Commissioner or Commissioner or Commissioner (Appeals) lies with Tribunal, except following (Sec. 129DD of Customs Act, 1962):

- Loss of goods occurring in transit from the factory to warehouse
- Rebate of duty on goods exported
- Goods exported without payment of duty

In the aforesaid matters, Tribunal has no jurisdiction, but revision application can be filed with Central Government [section 129DD of Customs Act, 1962] within 3 MONTHS. The Central Government of India can annul or modify the order.

In all other matters, appeal lies with Tribunal. Revision application can be filed by the assessee or the Commissioner of Customs. Revision application can be filed with Central Government along with fee of ` 200 if the amount, interest and penalty \leq ` 1,00,000, otherwise ` 1,000. An officer of the rank of Joint Secretary hears the issue and passes orders on behalf of Central Government of India.

Therefore, while mandatory pre-deposit would be required to be paid in cases of drawback, rebate and baggage at the first stage appeal before Commissioner (Appeals), no pre-deposit would be payable in such cases while filing appeal before the Joint Secretary (Revision Application) [circular no. 993/17/2014-CX dt. 5-1-2015].

8. Commissioner (Appeals) cannot remand the matter to lower adjudicating authority.

9. w.e.f 06.08.2014 to enable Commissioner (Appeals) also [apart from CESTAT and Court to take into consideration the fact that a particular order being cited as a precedent decision on the issue has not been appealed against for reasons of low amount (the Customs Act, 1962 in section 131BA).

CONCEPT 36. Chakiat Agencies v. UOI 2015 (37) STR 712 (Mad.)

Facts of the case: The assessee filed an appeal to Commissioner, but mistakenly gave it to the adjudicating officer who had passed the original order. The appellate authority rejected the appeal on the ground that the appeal was not received in time in his office.

Decision: The High Court noted that the appeal had been preferred in time, but reached different wing of the same building. Since, the appeal was received by the adjudicating officer who has passed the original order, he ought to have sent it to the other wing of the same building, but he had not done the same. Therefore, the order passed by the appellate authority cancelling the appeal on the ground that it was not received in time, could not be accepted.

The High Court directed the appellate authority to entertain the appeal of the assessee and to pass appropriate orders on merits and in accordance with law, after affording him an opportunity of being heard.

CONCEPT 37. Raja Mechanical Co. (P) Ltd. (2012) (SC):

Assessee Claim: Commissioner (Appeals) rejected the appeal on the ground of limitation. Therefore, the order passed by the original authority would merge with the orders passed by the first appellate authority.

Decision: an appeal is dismissed on the ground of limitation and not on merits that order would not merge with the orders passed by the first appellate authority. Judgment is given in favour of department and against the assessee.

CONCEPT 38. Commissioner of C.Ex. Mumbai III v. TIKITAR INDUSTRIES, 2012 (277) E.L.T. 149 (S.C.):

Assessee Claim: If Revenue accepts judgment of Commissioner (Appeals) on an issue for one period, then it should be precluded to make an appeal on the same issue for another period.

Decision: Since, the Revenue had not questioned the correctness or otherwise of the findings on the conclusion reached by the first appellate authority, it may not be open for the Revenue to contend this

issue further by issuing the impugned (i.e. disputed the truth) show cause notices on the same issue for further periods.

CONCEPT 39. C.C.E. & S.T. (LTU), Bangalore v. Dell Intl. Services India P. Ltd. 2014 (33) S.T.R. 362 (Kar.) Can the Committee of Commissioners review its decision taken earlier under section 86(2A) of the Finance Act, 1994, at the instance of Chief Commissioner?

Decision: The Karnataka High Court held that once the Committee of Commissioners, on a careful examination of the order of the Commissioner (Appeals), did not differ in their opinion against the said order of the Commissioner (Appeals) and decide to accept the said order, the matter ends there. The said decision is final and binding on the Chief Commissioner also. The Chief Commissioner is not vested with any power to call upon the Committee of Commissioners to review its order so that he could take decision to prefer an appeal. Such a procedure is not contemplated under law and is without jurisdiction.

CONCEPT 40. M/s Venus Rubbers v. The Additional Commissioner of Central Excise, Coimbatore 2014 (310) ELT 685 (Mad.)

Decision: The High Court held that there is no provision of law under the Central Excise Act, 1944 which gives power to the Commissioner (Appeals) to review his order. However, such a power is available to the Tribunal under section 35C(2) of the Central Excise Act, 1944 to rectify any mistake apparent on the record. The High Court elaborated that when there is no power under the statute, the Commissioner (Appeals) has no authority to entertain the application for review of the order.

CONCEPT 41. Enestee Engineering Pvt. Ltd. v. UOI 2016 (41) STR 0061 (Bom.)

Facts of the Case: The adjudication order was passed and was forwarded to the assessee. However, assessee did not receive the same. It learned about the order only after receipt of a letter from the Superintendent, nearly after two years, directing it to pay the dues as per said order. Thereafter, a copy of that order was made available to the assessee.

Point of Dispute: The appeal filed by the assessee against the said order was rejected by the Commissioner (Appeals) as well as by the Tribunal, as being barred by limitation. The assessee contended that the appeal could not be held to be barred by limitation as no order was received by it.

Decision: The High Court noted that the period of limitation prescribed under erstwhile section 85(3) [now section 85(3A)] of the Finance Act, 1994 to prefer an appeal against order-in-original is 3 months [now 2 months]. The said period begins from the date of receipt of the decision or the order of adjudicating authority. Further, section 37C(2) of the Central Excise Act, 1944 stipulates that every decision/order passed or any summons/notice issued under the said Act is deemed to have been served on the date on which such decision, order or summons is tendered or delivered by post or is affixed in the prescribed manner. Thus, a perusal of section 37C (as supported by erstwhile section 85(3) [now section 85(3A)] of the Finance Act, 1994) shows insistence upon the service of such adjudication order upon the assessee. Hence, the observation in the Tribunal's order that the order- in-original had been forwarded to the assessee on a particular date was not sufficient in the eyes of law to start computing the period of limitation.

The High Court observed that neither the order of Commissioner (Appeals) nor the order of Tribunal recorded a finding that the adjudication order was actually tendered to the assessee on a particular date or received by him on a particular date.

The High Court quashed and set aside both the orders - order of Commissioner (Appeals) and the order of Tribunal, and placed back the matter for fresh consideration before Commissioner (Appeals).

CONCEPT 42. Committee of Commissioners/ Chief Commissioners cannot review the same order twice under CEx., Customs and Service Tax law

The power of review of order of Commissioner (Appeals) or order of Principal Commissioner/ Commissioner as an adjudicating authority vests with the Committee of Commissioners and Committee of Chief Commissioners respectively and there is no provision for reviewing the same order twice [Instruction F.No.390/Review/36/2014 JC dated 17.03.2016].

CONCEPT 43. Appeals to the Customs, Excise and Service Tax Appellate Tribunal (CESTAT): (Sec. 129 Customs Act, 1962)

- (1) CESTAT hears appeals against orders of Commissioner as adjudicating authority and Commissioner (Appeals).
- (2) CESTAT is final fact finding authority
- (3) Appeal should be in prescribed form EA-3
- (4) Appeal should be filed within 3 months from the date of receipt of order in the prescribed form EA 3.
- (5) The Tribunal shall hear and decide every appeal within a period of 3 years.
- (6) If stay is granted by Tribunal for recovery, appeal shall be decided within 180 days. W.e.f. 10-5-2013 CESTAT may further extend the period of stay, by not more than 185 days in the following cases:
 - (i) On an application made in this behalf by a party and
 - (ii) On being satisfied that the delay in disposing of the appeal is not attributable to such partyIn case the appeal is not disposed of within the total period of 365 days from the date of the stay order, the stay order shall, on the expiry of 365, stand vacated.
- (7) Fee for filing an appeal Amount, interest and penalty demanded
Fee for filing an appeal
 - \leq ` 5,00,000 \leq 1,000
 - $>$ ` 5,00,000 \leq ` 50,00,000 \leq 5,000
 - $>$ ` 50,00,000 \leq 10,000
- (8) Monetary limit of the Single Bench of the Tribunal to hear and dispose of appeals enhanced from ` 10 lakh to ` 50 lakh [Section 35D(3)] (w.e.f. 10-5-2013)
- (9) Tribunal can condone the delay for any number of days.
- (10) Tribunal can refuse petty appeals below Rs. 2 lakhs.
- (11) CEB&C can extend time limit for sanctioning departmental appeal by 30 days in Customs (w.e.f. 6-8-2014): The Committee of Principal Commissioner or Commissioners or Principal Chief Comissioner/Chief Commissioners is required to take decision regarding filing of departmental appeal within 3 months. this period can be extended upto 30 days by CBE&C, on suffient case being shown (presumably by the Committee itself)- proviso to section 129D(3) of Customs Act 1962.

CONCEPT 44. Amidev Agro Care Pvt. Ltd. v. Union of India 2012 (279) E.L.T. 353 (Bom):

Assessee Claim: the copy of the order passed by the Commissioner of Central Excise (appeals) on was not served upon the assessee. It was only when the recovery proceedings were initiated, the assessee sought a copy of the order dated 31st mar 2008 and the same was made available to the assessee on 26th Feb 2010. Immediately thereupon the assessee filed an appeal before the CESTAT on 17th may 2010.

Department Contention: The appeal was not filed within the stipulated time of 3 months from 31st mar 2008.

Decision: As per sec 37C(1)(a) of the C.E.A. 1944, it was obligatory on the part of the revenue, either to tender a copy of the decision to the assessee or to send it by registered post with due acknowledgment to the assessee or its authorised agent. In the present case neither of the above had been complied with by the revenue. Therefore, assessee claim is justifiable.

Note: w.e.f. 10-5-2013 speed posts with proof of delivery or courier approved by the CBEC is also a valid communication.

CONCEPT 45. Mihani Network v. Ccus. & Cex. 2012 (285) ELT 182 (MP)

Statement of Facts: The assessee had filed an appeal along with an application for stay before the CESTAT. However, since there had been a delay in filing the appeal, the assessee also filed an application for condonation of delay. The CESTAT ordered that the delay would be treated as condoned, if the assessee deposits 50% of the amount of tax.

Decision: There is no legal provision which provides for condoning the delay in filing the appeal on a condition of depositing 50% of tax amount.

CONCEPT 46. Thakker Shipping P. Ltd. v. CC (General) 2012 (285) E.L.T. 321 (S.C.):

Statement of facts: The proceedings were initiated against the assessee under the Customs Act, 1962. However, Commissioner of Customs (General), in his order-in-original, dropped the said proceedings. The Committee of Chief Commissioners of the Customs constituted under Sec. 129A(1B) of the Customs Act, 1962 reviewed his order and directed him to apply to the Tribunal for determination of certain points. Since, the application not made within the prescribed period and was delayed by 10 days. Tribunal rejected the application for condonation of delay on the ground that Tribunal had no power to condone the delay caused in filing application under sec. 129A(4) by the Department beyond the prescribed period of 3 months.

Decision: Tribunal was competent to admit an appeal or permit the filing of a memorandum of cross-objections after expiry of the relevant period, if it is satisfied that there was sufficient cause for not presenting it within that period.

Order-in-original means: The Central Excise Officer after considering the submission made in reply to show cause notice as well as during personal hearing shall pass the order called Order-In-Original either confirming the demand or dropping the demand or partly confirming the demand and levy of penalty and interest. The aggrieved person can file an appeal, against order-in-original.

CONCEPT 47. Margara Industries Ltd. v. Commr. of C. Ex. & Cus. (Appeals) 2013 (293) E.L.T. 24 (All.)

Statement of facts: The CESTAT rejected the appellant's application for condonation of delay in filing the appeal before CESTAT on the ground that the reasons given for filing the appeal beyond time were not convincing. The Counsel of the appellant filed his personal affidavit stating that the appeal had been filed with a delay due to his mistake.

Decision: The High Court held that the Tribunal ought to have taken a lenient view in this matter as the appellant was not going to gain anything by not filing the appeal and the reason for delay in filing appeal as given by the appellant was the mistake of its counsel who had also filed his personal affidavit.

CONCEPT 48. Texcellence Overseas v. Union of India 2013 (293) ELT 496 (Guj.)

Facts of the case: The petitioner was granted a refund by way of order-in-original and the same was also upheld by the CESTAT. However, a fresh show cause notice was issued on the ground that refund was erroneously granted. The show cause notice, this time was adjudicated in favour of the Department. The petitioner challenged this order before Commissioner (Appeals) five months after the said order was passed. Therefore, the Commissioner (Appeals) and Tribunal (when the matter was brought before it) rejected the appeal on the grounds of limitation as the same was filed beyond three months from the date of the said order.

Decision: The High Court opined that since the total length of delay was very small and the case had extremely good ground on merits to sustain, its non-interference at that stage would cause gross injustice to the petitioner. Thus, the High Court, by invoking its extraordinary jurisdiction, quashed the order which held that refund was erroneously granted. The High Court held that such powers are required to be exercised very sparingly and in extraordinary circumstances in appropriate cases, where otherwise the Court would fail in its duty if such powers are not invoked.

CONCEPT 49. CCE v RDC Concrete (India) Pvt. Ltd. 2011 (270) ELT 625 (SC)

Question: Can re-appreciation of evidence by CESTAT be considered to be rectification of mistake apparent on record under section 35C(2) of the Central Excise Act, 1944?

Statements of Fact: the arguments not accepted at an earlier point of time were accepted by CESTAT while hearing the application for rectification of mistake and it arrived at a conclusion different from earlier one.

Decision: No. The Apex Court elucidated that re-appreciation of evidence on a debatable point cannot be said to be rectification of mistake apparent on record. The Supreme Court observed that arguments not accepted earlier during disposal of appeal cannot be accepted while hearing rectification of mistake application.

Note: As per section 35C(2) of the Central Excise Act, 1944, the Appellate Tribunal may amend the order passed by it earlier provided the parties to the appeal bring to the notice of the Tribunal for rectification of any mistakes apparent from the records within six months from the date of issuing such earlier order.

CONCEPT 50. CCE v Gujchem Distillers 2011 (270) ELT 338 (Bom) Is the CESTAT order disposing appeal on a totally new ground sustainable?

Decision: No. The High Court explained that had the CESTAT not been satisfied with the approach of the adjudicating authority, it should have remanded the matter back to the adjudicating authority. However, it could not have assumed to itself the jurisdiction to decide the appeal on a ground which had not been urged before the lower authorities.

CONCEPT 51. Commissioner of Central Excise, Delhi v. Brew Force Machine Pvt. Ltd. 2015-TIOL-1873-HC-DEL-CX-LB,

Hon'ble Delhi High Court was held that CESTAT, while dealing with an application for stay, has the power and jurisdiction to grant stay beyond 365 days, when the assessee is not responsible for delay in disposing of the appeal, under Section 35C(2A) of the Central Excise Act.

CONCEPT 52. Appeals to High Court (Sec. 130 Customs Act, 1962.)

1. An Appeal can be made to High Court within 180 days from the date of order of Tribunal received. High Courts are empowered to condone the delay in filing of appeals.
2. Case involves substantial question of law (i.e. Point relating to interpretation of statute, applicability of law etc,) will be taken up by High Court.
3. Appeal accompanied by a Fee of Rs. 200.

CONCEPT 53. CCE v. GEM PROPERTIES (P) LTD. 2010 (257) E.L.T. 222 (KAR):

Assessee claim: Excise duty was paid on exempted goods and hence, entitled to the refund of excise duty wrongly paid by it. Also stated that company is incurring heavy losses therefore, refund not amounts to unjust enrichment.

Department Contention: Since, all the material sold by the assessee had been inclusive of excise duty. It was evident from the Chartered Accountant's certificate that the cost of the duty was included while computing the cost of production of the material. Therefore, refund of duty not allowed.

Decision: Refund not allowed. It would amount to unjust enrichment because all the materials sold by the assessee had been inclusive of excise duty.

CONCEPT 54. CCEEx v. Superintending Engineer TNEB 2014 (300) E.L.T. 45 (Mad.)

Question: Does the principle of unjust enrichment apply to State Undertakings?

Facts of the case: 1. The assessee (Basin Bridge Gas Turbine Power Station of the Tamil Nadu Electricity Board) filed refund claim on the ground that they were eligible for exemption of duty on Naphtha used in the production of electricity at their power plant. Consequently, they claimed refund of the duty paid by them for naphtha received by them during the relevant period. 2. The claim of the respondent was rejected on the ground that the respondent (assessee) had not proved that they had not passed on the duty liability to the consumers and when the electricity rate had remained the same and the exemption notification was not in force, the continuance of the same electricity rates even after availing of the benefits of exemption, would indicate that the assessee had passed on the duty liability to the ultimate consumer.

Decision: The High Court relied on the decision of the Constitution Bench of the Apex Court rendered in the case of *Mafatlal Industries Ltd. v. Union of India* 1997 (89) E.L.T. 247 SC. The Supreme Court in the said case held as under "the doctrine of unjust enrichment is, however, inapplicable to the State". State represents the people of the country. No one can speak of the people being unjustly enriched." The High Court held that the concept of unjust enrichment is not applicable as far as State Undertakings are concerned and to the State. Judgment has been given in favour of the assessee and against the department.

CONCEPT 55. Astik Dyestuff Private Limited v. CCEEx. & Cus. 2014 (34) S.T.R. 814 (Guj.)

1. Whether sales commission services are eligible input services for availment of CENVAT credit?
2. If there is any conflict between the decision of the jurisdictional High Court and the CBEC circular, then which decision would be binding on the Department?
3. Also, if there is a contradiction between the decisions passed by jurisdiction High Court and another High Court, which decision will prevail?

Decision:

1. It was elaborated by the High Court that in the case of *Cadila Healthcare Limited*, the jurisdictional High Court did not allow CENVAT credit on sales commission services after interpreting the relevant provisions of law.
2. The High Court clarified that the decision of the jurisdictional High Court is binding to the Department rather than the Circular issued by the C.B.E. & C.
3. When there are two contrary decisions, one of jurisdictional High Court and another of the other High Court, then the decision of the jurisdictional High Court would be binding to the Department and not the decision of another High Court.

CONCEPT 56. Khanapur Taluka Co-op. Shipping Mills Ltd. v. CCEx. 2013 (292) E.L.T. 16 (Bom.):

Question: In a case where an appeal against order-in-original of the adjudicating authority has been dismissed by the appellate authorities as time-barred, can a writ petition be filed to High Court against the order-in-original?

Decision: The High Court referred to the case of *Raj Chemicals v. UOI 2013 (287) ELT 145 (Bom.)* wherein it held that where the appeal filed against the order-in-original was dismissed as time-barred, the High Court in exercise of writ jurisdiction could neither direct the appellate authority to condone the delay nor interfere with the order passed by the adjudicating authority. Consequently, it refused to entertain the writ petition in the instant case.

CONCEPT 57. Habib Agro Industries v. CCEx. 2013 (291) E.L.T. 321 (Kar.):

Question: Can delay in filing appeal to CESTAT for the reason that the person dealing with the case went on a foreign trip and on his return his mother expired, be condoned?

Decision: The High Court observed that there did not appear to be any deliberate laches or neglect on the part of the authorised representative to file the appeal. It held that the reason for delay in filing appeal to CESTAT, that the person dealing with the case went on a foreign trip and on his return his mother expired, could not be considered as unreasonable for condonation of delay. Therefore, delay can be condoned.

CONCEPT 58. Rishiroop Polymers Pvt. Ltd. v. Designated Authority 2013 (294) E.L.T. 547 (Bom.):

Facts of the case: The CESTAT upheld a notification issued by the Central Government imposing anti-dumping duty on certain products originating from specified countries pursuant to the findings recorded by the Designated Authority in a review of anti-dumping duty. The assessee filed a writ petition under Article 226 of the Constitution to challenge the said order passed by the CESTAT under section 9C of the Customs Tariff Act, 1975. The Department contended that an appeal, and not a writ petition, would lie against the order passed by the CESTAT.

Decision: The High Court, therefore, held that it would not be appropriate for it to exercise the jurisdiction under Article 226 of the Constitution, since an alternate remedy by way of an appeal was available in accordance with law. The High Court thus, dismissed the petition leaving it open to the assessee to take recourse to the appellate remedy.

CONCEPT 59. Metal Weld Electrodes v. CESTAT 2014 (299) ELT 3 (Mad.):

Question: Which remedy is available against a pre-deposit order (i.e. interim order) passed by CESTAT under section 35F of Central Excise Act, 1944/section 129E of Customs Act, 1962; is it an appeal to High Court under section 35G of Central Excise Act, 1944/section 130 of Customs Act, 1962 or a writ petition before High Court?

Decision: The Commissioner of Central Excise or the other party aggrieved may file an appeal to the High Court against "any order passed by the Appellate Tribunal" (other than valuation and rate of duty determination) Sec. 35G(2) of C.E.A. 1944. Finally, the High Court held that the order passed by the CESTAT in terms of section 35F of the Central Excise Act, 1944 or section 129E of the Customs Act, 1962 is appealable in terms of section 35G of the Excise Act, 1944 or section 130 of the Customs Act, 1962.

CONCEPT 60. CCE v. Nahar Industrial Enterprises Ltd. 2010 (19) STR 166 (P & H):

Facts of the Case: The assessee was engaged in the manufacture of sugar. The Central Government directed him to maintain buffer stock of free sale sugar for the specified period. In order to compensate the assessee, the Government of India extended buffer subsidy towards storage, interest and insurance charges for the said buffer stock of sugar. Revenue issued a show cause notice to the

assessee raising the demand of service tax alleging that amount received by the assessee as buffer subsidy was for storage and warehousing services.

Decision: The High Court noted that apparently, service tax could be levied only if service of storage and warehousing was provided. Nobody can provide service to himself. In the instant case, the assessee stored the goods owned by him. After the expiry of storage period, he was free to sell them to the buyers of its own choice. He had stored goods in compliance with the directions of the Government of India issued under the Sugar Development Fund Act, 1982. He had received subsidy not on account of services rendered to Government of India, but had received compensation on account of loss of interest, cost of insurance etc. incurred on account of maintenance of stock. Hence, the High Court held the act of assessee could not be called as rendering of services.

CONCEPT 61. Appeals to Supreme Court of India (Section 130E Customs Act, 1962.)

1. Order of CESTAT where it relates to question relating to rate of excise duty or value for the purpose of duty can make an appeal directly to the Supreme Court of India.
2. If High Court certifies it to be a fit case for appeal to Supreme Court, the aggrieved person can apply to the Supreme Court.
3. Appeal to the Supreme Court should be presented within 60 days from the date the order is communicated.
4. Once National Tax Tribunal (NTT) is made operational, then appeal against order of CESTAT can be made only to NTT.
5. w.e.f. 6-8-2014, determination of disputes relating to taxability or excisability of goods is covered under the term “determination of any question having a relation to rate of duty” and hence, appeal against Tribunal orders in such matters would lie before the Supreme Court.

CONCEPT 62. CCE v. Fact Paper Mills Private Limited 2014 (308) E.L.T. 442 (SC)

Can an appeal be filed before the Supreme Court against an order of the CESTAT relating to clandestine removal of manufactured goods and clandestine manufacture of goods?

Decision: The Supreme Court held that the appeals relating to clandestine removal of manufactured goods and clandestine manufacture of goods are not maintainable before the Apex Court under section 35L of the Central Excise Act, 1944.

CONCEPT 63. Principal Commissioner of Central Excise & Customs, Daman Commissionerate v. Omnitex Industries (India) Ltd. (2016) 67 taxmann.com 122 (Bombay)

Facts of the case: The appellant preferred appeal against the order of the CESTAT under section 35G of Central Excise Act within 180 days before the Gujarat HC. After admitting the appeal, it remained pending for 2192 days and after that the Gujarat HC held that since the manufacturing unit in the present case is located in Daman, the Gujarat HC does not have any territorial jurisdiction and hence dismissed the appeal.

Department contention: It was time barred appeal and condonation of delay is also be not filed.

Decision: the Bombay High court held that the entire period from the time of filing the appeal in Gujarat HC till its disposal can be fairly excluded for the computation of period of limitation. Further, there is no requirement of filing condonation of delay, as the period from the date of receipt of order appealed against and the date of filing the appeal in Bombay HC after deducting the entire period (from the date of filing appeal in Gujarat HC to the date of its disposal), still does not exceed 180 days. Hence, only if the said period exceeds 180 days, the appellant will be required to file application-seeking condonation of delay. Since, the assessee had wrongly filed appeal before Gujarat High Court instead of Bombay High Court, the period spent in pursuing remedy before Gujarat HC must be excluded while computation of time limit for filing appeal before Bombay HC.

CONCEPT 64. *Neeraj Jhanji v. CCE & Cus. 2014 (308) E.L.T. 3 (S.C.)*

Facts of the Case: In this case, the assessee filed a writ petition before the Delhi High Court *against the order* in original passed by the Commissioner of Customs of Kanpur. However, the jurisdictional High Court for the petitioner would have been Allahabad High Court. When the Revenue raised objection over the territorial jurisdiction of the High Court, the assessee withdrew the appeal from the Delhi High Court and filed the appeal with the Allahabad High Court with the application for condonation of delay. The Allahabad High Court, however, dismissed the application for condonation of delay and also dismissed the appeal as time barred. Then, the assessee filed a special leave petition with the Supreme Court.

Decision: The Supreme Court observed that the very filing of writ petition by the petitioner in Delhi High Court *against the order* in original passed by the Commissioner of Customs, Kanpur indicated that the petitioner had taken chance in approaching the High Court at Delhi which had no territorial jurisdiction in the matter. The filing of the writ petition before Delhi High Court was not at all bona fide.

CONCEPT 65. Appeals to the Settlement Commission (Section 127B Customs Act, 1962):

The Settlement Commission called as Customs, Central Excise and Service Tax Settlement Commission w.e.f. 6-8- 2014:

1. The additional amount accepted by applicant as payable shall be more than ` 3 lakhs.
2. Application can be made only when a case is pending before central excise/customs officers. w.e.f. 14.05.2015, All proceedings referred back to the adjudicating authority for a fresh adjudication and not just the proceedings referred back in any appeal or revision ineligible for settlement (amendment has been made in the Customs Act, 1962 in section 127A(b)). It means when any proceeding is referred back by any Court, Appellate Tribunal or any other authority, to the adjudicating authority for a fresh adjudication or decision, then such proceeding shall not be deemed to be a proceeding pending.
3. Cases pending in court or tribunal cannot be taken up.
4. Cases involving classification or valuation cannot be taken up by settlement commission
5. If goods or books of account or other documents have been seized, application can be made after expiry of 180 days from the date of seizure. Application for settlement can be made even if excisable goods or documents are seized, without waiting for 180 days (w.e.f. 6-8-2014).
6. Application to settlement commission should be filed in Form SC(C)-1 in case of Customs disputes.
7. The Settlement Commission can accept application for settlement, even if excise returns were not filed, if there were sufficient reasons for not filing the return [second proviso to section 32E of Central Excise Act, inserted vide Finance (No.2) Act, 2014 w.e.f. 6-8-2014].

CONCEPT 66. Appeals to Settlement Commission (Section 127B Customs Act, 1962.)

Step 1: Applicant should file an application by disclosing true and full information in Form SC(E)-1 or Form SC(C)

Step 2: Application should be accompanied by a fee of ` 1,000 (by way of GAR-7 challan only)

Step 3: Settlement Commission will issue NOTICE to the applicant within 7 days from the date of receipt of application.

Step 4: Thereafter, based on the applicant's reply, pass orders of admission or rejection within 14 days of notice. Hence, prescribed period for issue of orders is 7 days + 14 days = 21 days.

Step 5: Copy of orders under section 32F will be sent to applicant and jurisdictional Commissioner Central Excise (127C in case of Customs).

Step 6: Within 7 days of admission orders, the Settlement Commission shall call for the report of the jurisdictional Commissioner.

Step 7: The Commissioner should send report within 30 days. Settlement Commission will proceed further, even in the absence of any report from the jurisdictional Commissioner.

Step 8: The Settlement Commission can order Commissioner (Investigation) to make further enquiries and submit his report within 90 days. Settlement Commission will proceed further, even in the absence of any report from the Commissioner (Investigation).

Step 9: The Settlement Commission after hearing must pass order within 9 months (further 3 months allowed) from last day of month in which application was made

Step 10: If final order not passed within 9 months or 12 months, as the case may be, the case will go back to adjudicating authority.

CONCEPT 67. Powers of Settlement Commission to grant immunity from prosecution and penalty:

The Settlement Commission can grant immunity from prosecution for any offence under the Act and either wholly or in part from the imposition of penalty if it is satisfied that the applicant has made full and true disclosure and co-operated with the Commission. If the payment is not made as per the settlement order or any particulars are concealed or any false evidence is given, the immunity can be withdrawn. If prosecution has already been launched before submission of application for settlement, the immunity against such prosecution cannot be granted.

CONCEPT 68. CCus.v. Ashok Kumar Jain 2013 (292) ELT 32 (Del.)

Department contended: The Settlement Commission lacks the jurisdiction to entertain the baggage cases.

Decision: The High Court opined that the provisions that conferred jurisdiction on the Settlement Commission (Section 127B) cannot be construed as narrowly as it sought to be urged by the Revenue. A plain reading of the provisions of sections 127A and 127B reveals that there is no bar/express or implied on the Settlement Commission - in respect of entertaining applications by the passengers which brought in goods through their baggage. Therefore, Settlement Commission has jurisdiction over baggage cases.

CONCEPT 69. Saurashtra Cement Ltd. v. CCus. 2013 (292) E.L.T. 486 (Guj.)

Question: Is judicial review of the order of the Settlement Commission by the High Court or Supreme Court under writ petition/special leave petition, permissible?

Decision: The High Court noted that although the decision of Settlement Commission is final, finality clause would not exclude the jurisdiction of the High Court under Article 226 of the Constitution (writ petition to a High Court) or that of the Supreme Court under Articles 32 or 136 of the Constitution (writ petition or special leave petition to Supreme Court).

The Court would ordinarily interfere if the Settlement Commission has acted without jurisdiction vested in it or its decision is wholly arbitrary or perverse or mala fide or is against the principles of natural justice or when such decision is ultra vires the Act or the same is based on irrelevant considerations.

The Court, however, pronounced that the scope of court's inquiry against the decision of the Settlement Commission is very narrow, i.e. judicial review is concerned with the decision-making process and not with the decision of the Settlement Commission.

CONCEPT 70. Additional Commissioner of Customs v. Shri Ram Niwas Verma [W.P. (C) No. 7363/2014 & CM 17221/ 20 L4]:

Decision: Hon'ble Delhi High court held that Settlement Commission has no jurisdiction to decide cases in relation to smuggling of the goods specified under section 123 of the Customs Act, 1962. In view of the said order of the Delhi High Court, it has been clarified that Settlement Commission has no jurisdiction to entertain the matters in relation to the goods specified under section 123 of the Customs Act, 1962 which include gold [F. No. 275/46/2015 CX. 8A dated 01.10.2015].

CONCEPT 71. AUTHORITY FOR ADVANCE RULING Sec. 28E Customs Act, 1962

It means knowing the law in advance. Application for Advance Ruling can be made in respect of following Questions:

1. Classification of goods or services
2. Applicable of any exemption notification
3. Determination of Assessable value
4. Determination of origin of goods in case of Customs
5. Determination of liability to pay duties of excise on any goods

CONCEPT 72. Application can be rejected in the following cases:

(a) If the question rose is already pending before an officer of Excise or Tribunal or any Court. (b) If the matter has already been decided by CESTAT or any Court.

- Application can be withdrawn within 30 days from the date of filing the application.
- Authority for Advance Ruling once accepted the application can decide the case within 90 days from receipt of application.

CONCEPT 73. On whom, is the advance ruling pronounced by the Advance Ruling Authority under service tax binding?

Answer: Section 96E of the Finance Act, 1994, an advance ruling pronounced by the Authority under section 96D shall be binding only-

- (a) On the applicant who had sought it; in respect of any matter referred to in sub-section (2) of section 96C;
- (b) On the Commissioner, and the Central Excise authorities subordinate to him, in respect of the applicant.

Such advance ruling shall be binding as aforesaid unless there is a change in law or facts on the basis of which the advance ruling has been pronounced.

CONCEPT 74. An application for advance ruling can be made by any of the following if they propose to undertake any business activity in India.

1. A Non-resident setting up a joint venture in India in collaboration with a non-resident or a resident.
2. A wholly owned subsidiary Indian company, of which the holding company is a foreign company, such holding company proposes to undertake any business activity in India.
3. A joint venture in India in which at least one of the participants, partners, or equity share holders is a non-resident having substantial interest in the joint venture.
4. Public Sector Undertakings (PSUs)
5. A PUBLIC LIMITED (N.T.67/2011 DT 22.9.2011)
6. Any existing producer or manufacturer may also seek advance ruling in relation to any new business of production or manufacture proposed to be undertaken by him (w.e.f. 10-5-2013)
7. Any existing importer or exporter may also seek advance ruling in relation to any new business of import or export proposed to be undertaken by him (w.e.f. 10-5-2013)
8. A resident private limited company can make application for Advance w.e.f. 11-7-2014.

9. w.e.f. 1-3-2015, A resident firm (includes LLP; LLP which has no company as its partner; Sole Proprietorship or One Person Company).
10. As may be specified by the Central Government of India by issuing a notification.

Note: w.e.f. 10-5-2013, the admissibility of the credit of service tax paid or deemed to have been paid on input services used in the manufacture of excisable goods as well. [Section 23C(2)(e)]

QUESTIONS AND ANSWERS

Q. 1

X Ltd. received a protective demand notice from the department on 1.9.2019 under Section 28 of the Customs Act, 1962 where

Amount Rs.	
Customs Duty =	15,00,000
Interest =	15%
Penalty =	50% of Duty

The assessee went for appeal and filed the case in the Commissioner (Appeals) on 1.10.2019. Subsequently on 31.10.2019, the Commissioner (Appeals) decided the case in favour of the assessee. The Committee of Commissioners can delegate the authority to the department officers to go for further appeal on its behalf to the Appellate Tribunal (CESTAT) against such orderRs.

Answer:

As per the CBE&C instructions in a case involving duty of Rs. 10 lakh and below, no appeal shall be filed in the Tribunal (CESTAT).

In the given case, appeal can be filed in the Tribunal (since, amount of duty is more than Rs. 10 lakhs)

Q. 2:

X Ltd. received a protective demand notice from the department Assistant Commissioner of Customs on 1.9.2019 under Section 28 of the Customs Act, 1962 where

Amount Rs.	
Customs Duty =	5,00,000
Interest =	@ 15% p.a. for no. of days delay.
Penalty =	Nil

The assessee went for appeal and filed the case in the Commissioner (Appeals) on 25.9.2019. This appeal has been taken up for hearing on 06-10-2019. How much has to pay as pre-deposit of duty under section 129E of the Customs Act, 1962 and date of pre-deposit of duty by X Ltd. to entertain appeal by the Commissioner (Appeals).

Answer:

Pre-deposit amount = Rs. 37,500 i.e. Rs. 5,00,000 x 7.5%)

Therefore, in the given case pre-deposit can be paid before 06-10-2019.

Q. 3

Y Ltd. received a protective demand notice from the department Principal Commissioner of Customs on 29.8.2019 under Section 28 of the Customs Act, 1962 where

Amount Rs.	
Excise Duty =	9,75,00,000
Interest =	@ 15% p.a. for no. of days delay
Penalty =	25% of Customs duty

The assessee went for appeal and filed the case in the office of the Appellate Tribunal (CESTAT) against such order on 11.10.2019.

Subsequently on 18.10.2019, CESTAT entrain the appeal for hearing.

How much has to pay as pre-deposit of duty under section 129E of the Customs Act, 1962 and date of pre-deposit of duty by Y Ltd. to entertain appeal by the Appellate Tribunal (CESTAT).

Answer:

The pre-deposit is Rs. 73,12,500

(9,75,00,000 x 7.5%)

In the given case pre-deposit can be paid before 18-10-2019.

Q. 4

Z Ltd. received a protective demand notice from the department on 1.8.2019 under Section 28 of the Customs Act, 1962 where

	Amount Rs.
Excise Duty =	45,00,000
Interest =	@ 15% p.a. for no. of days delay
Penalty =	100% of customs duty

The assessee went for appeal and filed the case in the Commissioner (Appeals) on 5.8.2019.

The Commissioner (Appeals) entertained the appeal on 11.8.2019. Subsequently on 31.10.2019, the Commissioner (Appeals) decided the case in favour of the department.

The assessee went for further appeal and filed the case in the office of the Appellate Tribunal (CESTAT) against such order on 24.11.2019. Subsequently on 28.11.2019, CESTAT entreated the appeal for hearing.

How much has to pay as pre-deposit of duty under section 129E of the Customs Act, 1962 and date of pre-deposit of duty by Y Ltd. to entertain appeal by the Commissioner (Appeals) and the Appellate Tribunal (CESTAT).

Answer:

Statement showing pre-deposit of duty by Z Ltd.

Particulars	Pre-deposit in %	Pre-deposit duty Rs.	Pre-deposit of duty is before	Working note
Appeals to Comm. (appeals)	7.5%	3,37,500	11-08-2019	Rs. 45 L x 7.5% = Rs. 3.375 L
Appeals to CESTAT	10%	4,50,000	28-11-2019	Rs. 45 L x 10% = Rs. 4.5 L

Q. 5

In an order dated 20.08.2019 issued to M/s. GH & Sons, the Joint Commissioner of Customs has imposed a penalty of ₹10,50,000 (i.e. equal amount of customs duty). under section 112 of the Customs Act, 1962 plus a penalty of Rs. 2,50,000 under Section 112(b)(ii) of the Customs Act, 1962. M/s GH & Sons intends to file an appeal with the Commissioner (Appeals) against the said adjudication order.

Compute the quantum of pre-deposit required to be made by M/s. GH & Sons for filing the appeal with the Commissioner (Appeals).

Answer:

The quantum of pre-deposit will be Rs. 97,500.

[i.e. Rs. 10,50,000 + Rs. 2,50,000] x 7.5% = Rs. 97,500.

Q. 6

In an order dated 30.08.2019 issued to M/s. KK & Sons, the Commissioner of Customs has confirmed a duty demand of Rs. 50,50,000 and imposed a penalty of equal amount under Customs Act, 1962 plus a penalty of Rs. 5,50,000 under Customs Act, 1962.

M/s. KK & Sons deposits the required amount of pre-deposit on 10.09.2019 and files an appeal with CESTAT. CESTAT decides the appeal in favour of M/s. KK & Sons on 10.11.2019. M/s. KK & Sons submits a letter seeking refund of the pre deposit on 30.11.2019. The pre-deposit is refunded to M/s KK & Sons on 15.12.2019.

Compute the amount of interest payable on refund of such pre-deposit, if any under Sec. 129EE of the Customs Act, 1962.

Answer: Interest = Rs. 5,977 50,50,000 x 7.5%) x 6/100 x 96/365

Month No. of day delay

Sep	2014	21
Oct	2014	31
Nov	2014	30
Dec	2014	14
Total		96

Q. 7:

The assessee received the adjudication order on 08.02.2020 and filed an appeal against the said order before Commissioner of Customs (Appeals) on 15.04.2020 along with an application for condonation of delay.

However, the Commissioner dismissed the appeal as being time barred and declined to condone the delay. The Commissioner (Appeals) has jurisdiction to condone the delay?

Note: 12th 13th and 14th April 2020 are holidays.

Answer:

The Commissioner of Customs (Appeals) had the jurisdiction to condone the delay in filing of appeal by the assessee as the same had been filed within the stipulated time prescribed for the same [CCus & CEx. v. Ashok Kumar Tiwari 2015 (37) STR 727 (All.)].

Q. 8

Basant, a non-resident intends to provide a taxable service under a joint venture in collaboration with a nonresident, but has entertained some doubts about its valuation.

Aarohi, Basant's friend, has obtained an 'Advance Ruling' from the Authority for Advance Rulings on an identical point. Basant proposes to follow the same ruling in his case. Basant has sought your advice as his consultant whether he could follow the ruling given in the case of Aarohi. Explain with reasons.

Answer:

An advance ruling is binding only on the applicant who has sought it. In the given problem, in view of the aforesaid provision, Basant cannot make use of the advance ruling pronounced in the identical case of his friend, Aarohi. Basant should obtain a ruling from the Authority of Advance Ruling by making an application along with a fee of Rs. 2,500.

Q. 9

Mr. Q owns a sole proprietorship firm, 'Safe and Super Importers'. Mr. Q has never been to any place outside India. The firm proposes to import a product. Mr. Q is not sure of the correct classification of the product under Customs Tariff. His Tax Consultant has informed him that the said classification issue has been decided by the CESTAT in a different case. However, Mr. Q does not want to take any chances and is desirous of obtaining a ruling from the Authority for Advance Ruling under section 28H of the Customs Act, 1962 with respect to the classification of the product to be imported by it.

In the light of recent amendments, state whether Safe and Super Importers can seek advance ruling in the present case under the Customs Act, 1962?

Answer:

With effect from 01.03.2015, a resident firm can also apply for AAR. The sole proprietorship will have to satisfy the test of residency as per section 2(42) of the Income Tax Act, 1961 to be eligible to apply for an advance ruling.

Therefore, Safe and Super Importers, being a resident proprietorship firm, is an eligible applicant for advance ruling.

Since in the given case, question intended to be raised by Safe and Super Importers is already decided by the CESTAT, advance ruling cannot be sought by it.

FOREIGN TRADE POLICY 2015-2020

CONCEPT 1. INTRODUCTION

Foreign Trade Policy (FTP) 2015-2020 (Valid from 1st April 2015 to 31st March, 2020).

Section 3 of Foreign Trade (Development and Regulation) Act, 1992 [FT(D&R) Act, 1992] Empowers Central Government to the make provisions for development and regulation of foreign trade.

Section 5 of FT (D&R) Act, 1992 Empowers Central Government to formulate and announce by notification in Official gazette, the export and import policy and also amend the same by issuing a notification. In India, the Union Ministry of Commerce and Industry governs the affairs relating to the promotion and regulation of foreign trade.

CONCEPT 2. ADMINISTRATION OF FOREIGN TRADE POLICY

The Director General of Foreign Trade (DGFT) advises Central Government in formulating policy and exercise specified powers under the Foreign Trade (Development and Regulation) Act, 1992. DGFT issues public notices, policy circulars, notifications or decisions from time to time. DGFT is to work in close coordination with other agencies like CBEC, RBI.

CONCEPT 3. FEATURES OF FOREIGN TRADE POLICY

1. Export-Import is free unless specifically regulated by the provisions of the FTP.
2. Export and Import goods are broadly categorized as
 - a. Free (i.e. general goods freely import or export without any authorization).
 - b. Restricted (i.e. goods allowed to import or export only with authorization).
 - c. Prohibited (i.e. goods are not allowed to import or export)
3. There are restrictions on exports and imports for various strategic, health, and other reasons.
4. Exports are promoted through various promotional schemes.
5. There should be no taxes on exports.
6. Capital goods can be imported at NIL duty for the purpose of exports under the scheme of Export Promotion Capital Goods (EPCG) Scheme.
7. EOU'S and SEZ units are exempted from payment of taxes.
8. Deemed exports concept introduced.
9. Duty credit scrip's schemes are designed to promote exports of some specified goods to specified markets and to promote export of specified services.

CONCEPT 4. GUIDING PRINCIPLES OF FTP 2015-2020

1. "Make in India" vision.
2. Ease of doing business and trade facilitation by simplifying procedures and extensive use of e-governance (i.e. paper less working).
3. Encourage e-commerce exports of specified products.
4. Encourage manufacture and export by SEZ, EOU, STP, EHTP and BTP.
5. Offering duty credit scripts to encourage goods and services.
6. Special efforts to resolve quality complaints and trade disputes.

The following measures taken in said direction:

- a. Mandatory documents for export and import have been reduced to 3 each.

Export of goods from India	Import of goods into India
1. Bill of Lading/Airway Bill/Lorry Receipt/Railway Receipt/Postal Receipt.	1. Bill of Lading/Airway Bill/Lorry Receipt/Railway Receipt/Postal Receipt.
2. Commercial Invoice and Packing List.	2. Commercial Invoice and Packing List.
3. Shipping Bill/Bill of Export.	3. Bill of Entry

- b. The facility of 24 x 7 Customs clearance of specified imports has been made available at seaports and airports.
- c. Single window scheme has been introduced to enable importer and exporter to lodge their clearance documents at a single point thereby providing a common platform to trade to meet requirements of all regulatory agencies involved in EXIM trade.
- d. To facilitate processing of shipping bills before actual shipment, prior online filing facility for shipping bills has been provided by Customs:
 - (i) 7 days for air shipments
 - (ii) 14 days for shipments by sea
- e. Facility to file application (i.e. ANF 2A Application Form for Issue / Modification in Importer Exporter Code Number) through online for Importer Exporter Code (IEC). It is a unique 10 digits code. PAN is pre-requisite for grant of an IEC.

CONCEPT 5. SCOPE OF FTP

- 1. Policy for regulating import and export of goods and services.
- 2. Export Promotional Measures.
- 3. Duty Remission and Duty Exemption Scheme for promotion of exports.
- 4. Export Promotion Capital Goods (EPCG) Scheme.
- 5. Export Oriented Undertakings (EOU/EHTP/STP & BTP) Schemes.
- 6. Deemed Exports.
- 7. Quality complaints and Trade Disputes.

Note: Special Economic Zones (covered under separate Act namely Special Economic Zones Act, 2015 and are not part of FTP).

CONCEPT 6. AUTHORIZATION

It means “permission for import or export of goods and services” in terms of FT (D&R) Act, 1992. DGFT issues authorization for import or export. Decision of DGFT is final and binding in respect of any authorization issued under the FTP.

CONCEPT 7. MERCHANT EXPORTER

Merchant exporter does not have own manufacturing unit or processing factory.

CONCEPT 8. THIRD PARTY EXPORTS

Third-party exports means exports made by an exporter or manufacturer on behalf of another exporter(s). In such cases, export documents such as shipping bills shall indicate name of both manufacturing exporter/manufacturer and third party exporter(s). BRC, GR declaration, export order and invoice should be in the name of third party exporter. Such third party exports shall be allowed under FTP.

CONCEPT 9. LETTER OF CREDIT

A Letter of credit is a bank's written promise that it will make a customer's (the holder) payment to a vendor (the beneficiary).

Back-to-back letters of credit: It occurs when a buyer gives a letter of credit to a seller, who then obtains a letter of credit for a supplier.

CONCEPT 10. INDIAN TRADE CLASSIFICATION (HARMONIZED SYSTEM) [ITC (HS)]

The export or import policy regarding import or export of a specific item is given in the Indian Trade Classification Code based on the Harmonized System of Coding. It consists of 8 digit coding.

Schedule I of the ITC-HS code is divided into 21 sections and each section is further divided into chapters. The total number of chapters in the schedule I is 98.

The chapters are further divided into sub-heading under which different HS codes are mentioned. Export Policy Schedule II of the ITC-HS code contain 97 chapters giving all the details about the guidelines related to the export policies. Based on ITC (HS) we can find which product is Free, Restricted or Prohibited for import or export.

CONCEPT 11. BOARD OF TRADE (BOT)

Board of Trade has been constituted to advise Government on Policy measures like:

- Improve exports,
- Review export performance,
- Review policy and procedures for import and exports and
- Examine issues relevant for promotion of India's foreign trade.

Commerce and Industry Minister will be the Chairman of the BOT. Government shall also be nominated up to 25 persons. Board of Trade will meet at least once every quarter.

CONCEPT 12. IMPORT OF GIFTS

Import of gifts shall be permitted were such goods are otherwise freely importable under Indian Trade Classification (Harmonized System) [ITC (HS)]. In other cases, a Customs Clearance Permit (CCP) shall be required from DGFT.

CONCEPT 13. EXPORT OF GIFTS

Goods, including edible items, of value not exceeding ` 5,00,000 in a licensing year, may be exported as a gift. However, items mentioned as restricted for exports in ITC (HS) shall not be exported as a gift, without an Authorization.

CONCEPT 14. IMPORT OF SAMPLES

Authorization for import of samples is required only in case of vegetable seeds, bees and new drugs. Samples of tea up to ` 2,000 (CIF) per consignment will be allowed without authorization. All exporters without duty can import samples up to ` 3,00,000.

CONCEPT 15. EXPORT OF SAMPLES

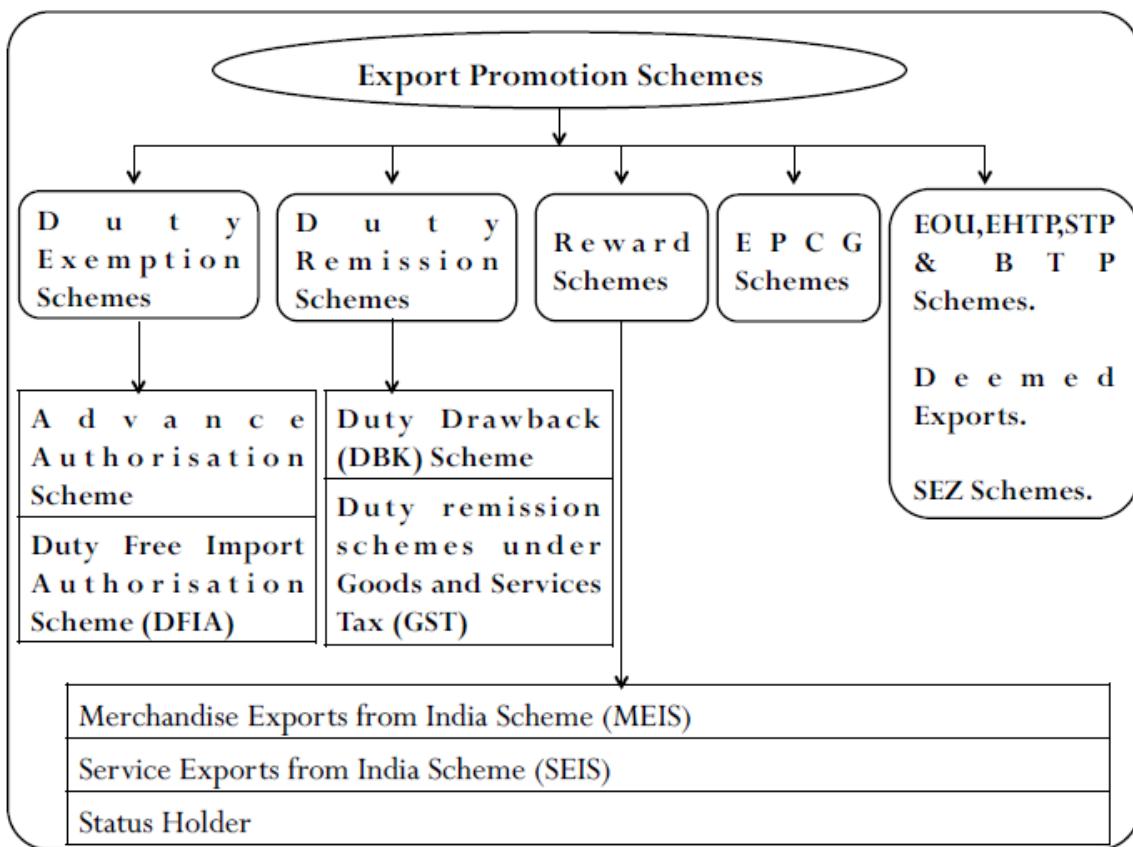
Export of bona fide trade and technical samples of freely exportable items shall be allowed without any limit. In case of restricted items, application should be made to DGFT.

CONCEPT 16. EXPORT OF ITEMS RESERVED FOR MSME SECTOR

Units other than small scale units (i.e. Micro, Small & Medium Enterprises) are permitted to expand or create new capacities in respect of items reserved for small scale sector, subject to condition that they obtain an Industrial licence under the Industries (Development and Regulation) Act, 1951, with export obligation as may be specified. Such licensee is required to furnish a LUT to RA and DGFT in this regard. DGFT / RA concerned shall monitor export obligation.

Note: EOU/EHTP/STP/BTP units are exempted from obtaining such industrial licence.

CONCEPT 17. OVER ALL VIEW OF THE FTP



CONCEPT 18. ADVANCE AUTHORISATION SCHEME

MEANING

W.E.F. 1-7-2017: Inputs, which are used in the export product, can be imported without payment of BCD, Anti-Dumping Duty & Safeguard duty. IGST will have to be paid on imports. IGST paid on import will be refunded on making exports

VALIDITY

12 months from the date of issue of such Authorisation.

EXPORT OBLIGATION

18 months from the date of issue of Authorisation.

ITEMS NOT ELIGIBLE FOR IMPORT

Items reserved for imports by STEs cannot be imported against Advance Authorisation.

ITEMS ELIGIBLE (ACTUAL USER CONDITION FOR ADVANCE AUTHORISATION)

Inputs which are physically incorporated in export product. Mandatory spare parts up to 10% of CIF value of Authorisation to export along with finished goods. Specified Spices only when used for crushing/sterilization/manufacture of oils and not simply cleaning, grading.

WHO ARE ELIGIBLE

Manufacturer exporter, Merchant exporter, deemed exporter. Supplied made to UNO or SEZ'S Supply of 'stores' on board of foreign going vessel/aircraft provided there is specific SION in respect of items supplied.

ANNUAL ADVANCE AUTHORIZATION

CIF Value of Import = Up to 300% of FOB value of physical exports in preceding financial and or FOR value of deemed exports in preceding year or `1 Crore, whichever is higher

VALUE ADDITION

15% (in case of Tea product 50%).

CONCEPT 19. DUTY FREE IMPORT AUTHORIZATION SCHEME

MEANING

Inputs, which are used in the export product, can be imported without payment of customs duty only for those products for which Standard Input and Output Norms (SION) have been notified. Imported goods are exempted ONLY from Basic Customs Duty.

WHEN TO OBTAIN DFIA FROM RA

Within 12 months from date of export Or 6 months from the date of realisation of export proceeds, whichever is later. DFIA shall be issued on post export basis.

VALIDITY

12 months from the date of issue of such Authorisation (i.e. transferable DFIA). Holder of DFIA has an option to procure inputs from indigenous manufacturer.

DFIA NOT ALLOWED

No DFIA shall be issued for an export product where SION prescribe 'Actual User' condition for any input.

WHO ARE ELIGIBLE

Manufacturer exporter, Merchant exporter, Supplies made to SEZ's

CONDITIONS FOR REDEEMING DFIA

Inputs actually used in manufacture of the export product should only be imported under DFIA and inputs actually imported must be used in the export product, for redeeming the DFIA.

VALUE ADDITION

20%

ADVANCE AUTHORIZATION:

- (i) Exporters having past export performance (in at least preceding two financial years) shall be entitled for Advance Authorization for Annual Requirement.
- (ii) Materials imported under Advance Authorization will 'Actual User Condition'. These imported goods will not be transferable even after completion of export obligation. However, holder of Advance Authorization will have an option to dispose off product manufactured out of duty free inputs once export obligation is completed.

- (iii) Advance Authorization is issued for inputs in relation to the resultant product on the basis of SION. If SION for a particular item is not fixed, Regional Authority (RA) based on self-declaration by applicant, except certain specified products, can issue Advance Authorization.
- (iv) It is necessary to establish that inputs actually used in manufacture of the export product should only be imported under Advance Authorization and inputs actually imported must be used in the export product, for redeeming the Authorization.

CONCEPT 20. STANDARD INPUT OUTPUT NORMS

Standard Input Output Norms or SION in short is standard norms which define the amount of input/inputs required to manufacture unit of output for export purpose. Input output norms are applicable for the products such as electronics, engineering, chemical, food products including fish and marine products, handicraft, plastic and leather products etc. SION is notified by DGFT in the Handbook, and is approved by its Boards of Directors.

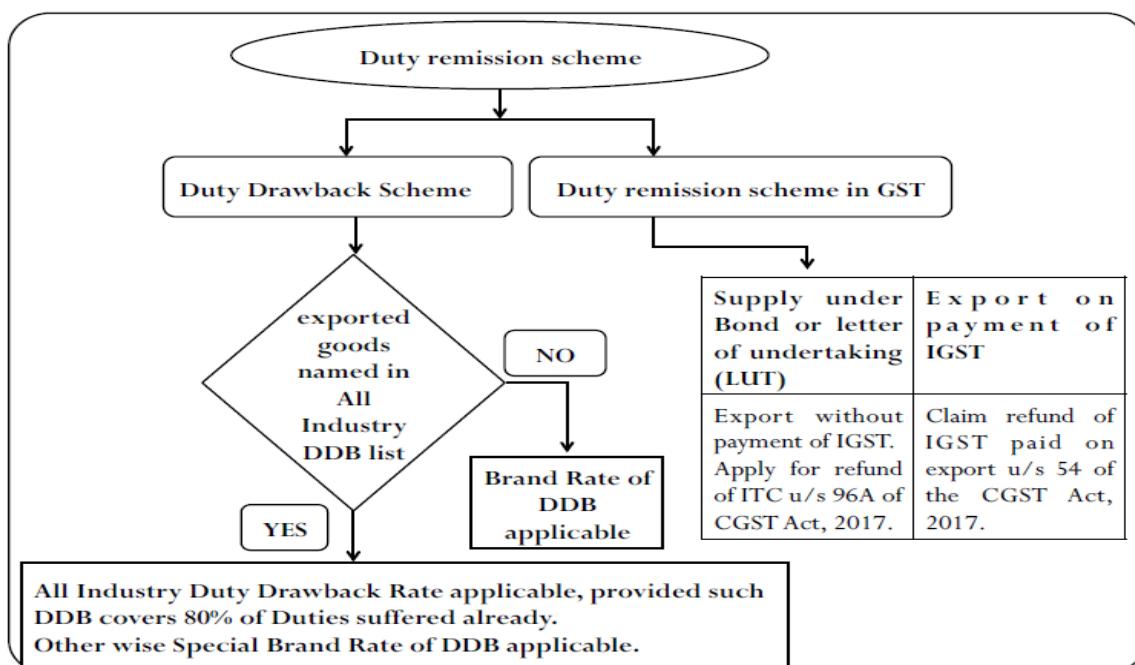
An application for modification of existing Standard Input-Output norms may be filed by manufacturer exporter and merchant-exporter. The Directorate General of Foreign Trade (DGFT) from time to time issue notifications for fixation or addition of SION for different export products. Fixation of Standard Input Output Norms facilitates issues of Advance License to the exporters of the items without any need for referring the same to the Headquarter office of DGFT on repeat basis.

CONCEPT 21. BASICS REQUIREMENTS OF STANDARD INPUT OUTPUT NORMS

For fixation / modification of Standard Input Output Norms (SION) following details are required:

- Technical Details of the export product as per the details given in Appendix 33.
- Chartered Engineer certificate certifying the import requirements of raw materials in the format given in Appendix 32B.
- Production and Consumption data of the manufacturer/supporting manufacturer of the preceding three licensing years as given in serial no 3 of sub section XII, duly certified by the Chartered accountant / Cost Accountant / Jurisdictional Excise Authority.

CONCEPT 22. DUTY REMISSION SCHEME



EXPORT REBATE NOT ALLOWABLE WHEN INDIAN MARKET PRICE OF GOODS EXPORTED IS LESS THAN THE REBATE CLAIMED W.E.F. 1-3-2016:

For claiming rebate under rule 18 fo Central Excise Rules, 2002, vide Notification No. 18/2016 CE (NT) dated 01.03.2016, one of the condition is that the Indian market price (prior to 1-3-2106 market price only was mentioned) of the excisable goods at the time of exportation should not be less than the amount of rebate of duty claimed.

CHARTERED ENGINEER CERTIFICATE:

w.e.f. 1-3-2016, the procedure required filing of a declaration by the manufacturer, will also have to file a Chartered Engineer's Certificate for correctness of ratio of input and output where SION is notified for claiming rebate of inputs used in goods exported. The permission for manufacture and export of finished goods before commencement of export will be given on the basis of such certificate.

CONDITIONS AND PROCEDURE RELATING TO EXPORT

The export consignments from the factory/ warehouse/ any other approved premises, goods needs to be sealed- either by Central Tax Officer after examination of such goods or by the exporter himself under self-sealing and self certification.

EXCEPTION:

In case of bulk cargo, iron-ore, alumina concentrates, heavy machinery etc. are difficult to seal in packages or container. Hence, it provides that where the nature of goods is such that the goods cannot be sealed in a package or a container such as coal or ore, etc., exemption from sealing of package or container may be granted by the Principal Chief Commissioner/ Chief Commissioner of Central Tax subject to safeguard as may be specified by him in the permission.

CONCEPT 23. MERCHANTISE EXPORT FROM INDIA SCHEME (MEIS)

The objective of MEIS is to compensate infrastructural inefficiencies and associated cost involved in export of goods/products, which are produced/manufactured in India, especially goods having high export intensity, employment potential and thereby enhancing India's export competitiveness.

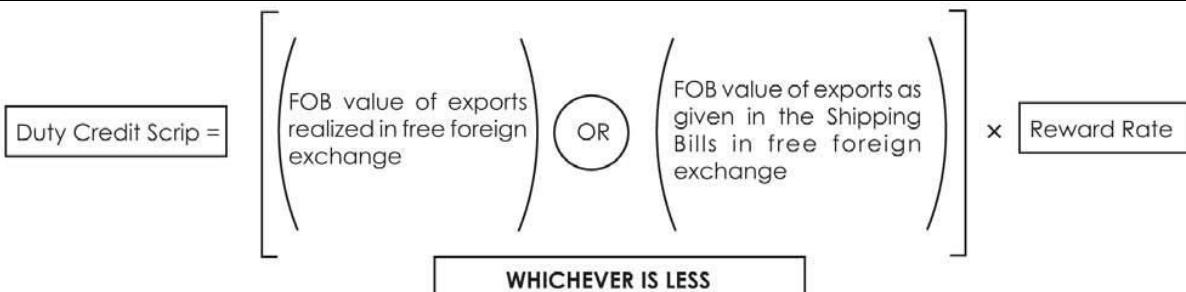
MEIS REWARD RATES:

Reward rates are prescribed under Appendix 3B-MEIS Schedule Table 2. ITC (HS) code wise list of products with rewards rates are incorporated under Appendix 3B. There are three types of reward rates are prescribed namely 2%, 3% and 5%. Applicability of these rates depends up on the country group and description of goods.

On request, split certificates of Duty Credit Scrip subject to a minimum of ₹ 5 Lakh each and multiples thereof may also be issued, at the time of application. Once Duty Credit Scrip has been issued, request for splits can be permitted with same port of registration as appearing on the original Scrip. The above procedure shall be applicable only in respect of EDI enabled ports.

In case of export through non-EDI ports, the facility of splits shall not be allowed after issue of Scrip.

CONCEPT 24. BASIS OF CALCULATION OF MEIS REWARD OR DUTY CREDIT SCRIP:



MEIS duty credit scrip's are not allowed in the following cases:

- (1) EOUs / EHTPs / BTPs/ STPs who are availing direct tax benefits / exemption
- (2) Supplies made from DTA units to SEZ units
- (3) Exports through trans-shipment, i.e., exports that are originating in third country but trans-shipped through India
- (4) Deemed Exports
- (5) SEZ/EOU/EHTP/BTP/FTWZ products exported through DTA units
- (6) Export products which are subject to Minimum export price or export duty
- (7) Ores and concentrates of all types and in all formations
- (8) Cereals of all types
- (9) Sugar of all types and all forms unless specifically notified.
- (10) Crude / petroleum oil and crude / primary and base products of all types and all formulations
- (11) Export of milk and milk products and meat and meat products unless specifically notified.

Export of goods through courier/foreign post offices using e-commerce:

The following products are eligible for rewards under MEIS:

- Exports of handicraft items,
- Export of handloom products,
- Export of books/periodicals,
- Export of leather footwear,
- Export of toys and
- Export of tailor made fashion garments

through courier or foreign post office using e-commerce of FOB value up to `25,000 per consignment shall be entitled for rewards under MEIS.

In case the value exceeds INR 25000, MEIS reward would be limited to FOB value of INR 25000 only.

Last date for filing application for obtaining Duty Credit Scrip under MEIS shall be Later of:

- (1) Twelve months from the Let Export Order date OR
- (2) Three months from the date of: • Uploading of EDI shipping bills into the DGFT server by Customs • Printing/ release of shipping bills for Non EDI shipping bills.

CONCEPT 25. SERVICE EXPORT FROM INDIA SCHEME (SEIS)

Objective of Service Exports from India Scheme (SEIS) is to encourage export of notified Services from India.

S.P. = Service provider,

P.Y. = Previous Year

NFE = Net Foreign Exchange

Net Foreign Exchange Earnings:

Particulars	Value in USD
Gross Earnings of Foreign Exchange	XXXX
Less: Payments made by IEC holder relating to service sector in the financial year	(xxxx)
Net Foreign Exchange Earnings (NFE)	Xxxx

Note:

- (a) If exporter is a manufacturer of goods as well as service provider, then the foreign exchange earnings and Total expenses / payment shall be taken into account for service sector only.
- (b) Foreign exchange earned through credit cards is counted for the purpose of computing the limit of minimum net foreign exchange required for being eligible to SEIS Scheme.

INELIGIBLE CATEGORIES UNDER SEIS:

1. Foreign exchange earnings from
 - a. Equity or debt participation
 - b. Donations
 - c. Receipts of repayment of loans
 2. Raising of all types of foreign currency Loans
 3. Export proceeds realization of clients
 4. Issuance of Foreign Equity through AD`/ GD` or other similar instruments
 5. Issuance of foreign currency Bonds
 6. Sale of securities and other financial instruments
 7. Other receivables not connected with services rendered by financial institutions.
 8. Earned through contract/ regular employment abroad (e.g. labour remittances)
 9. Payments for services received from EEFC Account
 10. Foreign exchange turnover by Healthcare Institutions like equity participation, donations etc.
 11. Foreign exchange turnover by Educational Institutions like equity participation, donations etc.
- Under education services, SEIS shall not be available on Capitation fee.
12. Export turnover relating to services of units operating under EOU/ EHTP/ STPI/ BTP Schemes or supplies of services made to such units.
 13. Clubbing of turnover of services rendered by SEZ/EOU/ EHTP/ STPI/ BTP units with turnover of DTA Service Providers
 14. Exports of Goods
 15. Foreign Exchange earnings for services provided by Airlines, Shipping lines service providers plying from any foreign country X to any foreign country Y routes not touching India at all.
 16. Service providers in Telecom Sector.

RATE OF SEIS REWARD:

Appendix 3D of Foreign Trade Policy 2015-20 gives list of Notified Services & rate of reward on such services. There are two types of rates namely 3% and 5%. Many services are entitled for 5% duty credit scrip.

CALCULATION OF REWARD:

The reward under SEIS will be calculated at rate notified in Appendix 3D of Foreign Trade Policy 2015-20 and on Net Foreign Exchange Earned.

PAYMENT IN INR:

Payment in Indian Rupees for service charges earned on specified services shall be treated as receipt in deemed foreign exchange as per guidelines of Reserve Bank of India. The list of such services is indicated in Appendix 3E

PROCEDURE FOR GETTING SEIS:

- Online Application is to be filed in Form ANF 3B
- Application should be enclosed with CA/CS/CMA Certificate in the form specified.

Last date of filing of application for Duty Credit Scrips under SEIS shall be 12 months from the end of relevant financial year of claim period.

CONCEPT 26. COMMON PROVISIONS APPLICABLE FOR BOTH THE SCHEMES (MEIS & SEIS)

(i) The following duties and taxes are allowed as CENVAT Credit, if paid by utilizing Duty Credit Scrip:

- i. Additional Customs duties (CVD & Spl. CVD).
- ii. Excise duty.
- iii. Service Tax

Note: Basic Customs duty paid by utilizing duty credit scrip shall be adjusted for Duty Drawback.

(ii) Transfer of export performance from one IEC hold to another IEC holder shall not be permitted. Thus, a shipping bill containing name of applicant shall be counted in export performance / turnover of applicant only if export proceeds from overseas are realized in applicant's bank account and this shall be evidenced from e - BRC / FIR. however, MEIS rewards can be claimed either by the supporting manufacturer (along with disclaimer from the company / firm who has realized the foreign exchange directly from overseas) or by the company/ firm who has realized the foreign exchange directly from overseas.

(iii) Utilization of Duty Credit Scrip shall be permitted for payment of duty in case of import of capital goods under lease financing.

(iv) Duty Credit Scrip can be utilised / debited for payment of Custom Duties in case of EO defaults for Authorizations. However, penalty / interest shall be required to be paid in cash.

(v) Duty Credit Scrip under MEIS & SEIS will be valid for 18 months from the date of issue and must be valid on the date on which actual Debit of duty is made.

(vi) Incentives of MEIS & SEIS are available to units located in SEZs also.

CONCEPT 27. STATUS HOLDERS

Business leaders who have excelled in international trade and have successfully contributed to country's foreign trade are proposed to be recognized, as Status Holders and given special treatment and privileges to facilitate their trade transactions, in order to reduce their transaction costs and time.

All exporters of goods, services and technology having an import-export code (IEC) number shall be eligible for recognition as a status holder.

An applicant shall be categorized as status holder upon achieving export performance during current and previous two financial years, as indicated below:

Status category	Export Performance FOB / FOR (as converted) Value (in US \$ Million) during current year and two previous years
One Star Export House	3
Two Star Export House	25
Three Star Export House	100
Four Star Export House	500
Five Star Export House	2000

Note: One million = 10 lakh

Important points:

(a) FOR Value (i.e. deemed export) of exports in India Rupees shall be converted in US\$ at the exchange rate notified by CEBC, as on 1st April of each Financial Year.

(b) For granting status, export performance is necessary in at least 2 out of 3 years.

(c) Grant of double weightage while calculating export performance is given to exporters who seeks One Star Export House status under the following categories:

(i) Micro, Small & Medium Enterprises (MSME)

(ii) Manufacturing units having ISO/BIS

(iii) Units located in North Eastern States and Jammu & Kashmir

(iv) Units located in Agri Export Zones.

A shipment can get double weightage only once in any one of above categories. It means a shipment can be included in one of categories indicated above only once.

- (d) Exports made on re-export basis shall not be counted for recognition.
- (e) Export of items under authorization, including Special Chemicals, Organisms, Materials, Equipment and Technologies (SCOMET) items, would be included for calculation of export performance.
- (f) Status Certificates issued under this FTP shall be valid for a period of 5 years from the date on which application for recognition was filed.

As per Notification No. 28/2015-2020, dated 27.08.2018 -

Amendment in Para 3.24 (j) of Chapter-3 of FTP 2015-2020.-

The limit of Rs One Crore per year for exports on free of cost exports basis for export promotion for Status Holders is removed and is made 2% of average annual export realization during preceding three licensing years with immediate effect

CONCEPT 28. BENEFITS TO STATUS HOLDERS

- a. Authorisation and Customs Clearances for both imports and exports may be granted on self-declaration basis;
- b. Fixation of Input Output Norms (SION) on priority by the Norms Committee i.e. within 60 days. c. Exemption from compulsory negotiation of documents through banks. The remittance receipts, however, would continue to be received through banking channels by way of e-BRC by DGFT.
- d. Exemption from furnishing of Bank Guarantee in Schemes under FTP.
- e. Two Star Export Houses and above are permitted to establish export warehouses.
- f. Three Star and above Export House shall be entitled to get benefit of Accredited Clients Programme (ACP) as per the guidelines of CBEC.
- g. Status holders shall be entitled to export freely exportable items on free of cost basis for export promotion subject to an annual limit of ₹10 lakh or 2% of average annual export realization during preceding 3 licensing years, whichever is higher.
- h. Manufacturer exporters who are also Status Holders shall be eligible to self-certify their goods as originating from India.

CONCEPT 29. EXPORT PROMOTION CAPITAL GOODS (EPCG) SCHEME

This scheme permits exporter to procure capital goods at concessional rate of customs duty / zero customs duty in return exporter is under an obligation to fulfill the export obligation.

Authorization shall be valid for 18 months from the date of issue of Authorization.

Import of capital goods shall be subject to 'Actual User' condition till export obligation is completed. After export obligation is completed, capital goods can be sold or transferred.

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.

Export obligation consists of average export obligation and specific export obligation. Specific Export Obligation (Specific EO) for such EPCG Authorizations would be 6 times of duty saved on capital goods to be fulfilled in 6 years reckoned from the date of issue of authorization.

Duty Saved Amount:	₹
Effective duty under Project Imports	XXX
Less: Concessional duty under the EPCG Scheme	(xx)
Duty Saved amount	XXX

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.

Average Export Obligation (Average EO) means is the average level of exports made by the applicant in the preceding 3 licensing years for the same and similar product. It has to be achieved within the overall EO period (i.e. within 6 years reckoned from the date of issue of authorization).

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.

Shipments under Advance Authorisation, DFIA, Drawback scheme, or reward schemes; would also be counted for fulfillment of EO under EPCG Scheme.

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 fulfillment of export obligation.

In case the Authorization Holder wants to export through a third party, export documents viz., shipping bills / Bill of exports etc. shall indicate name of both authorization holder and supporting manufacturer, if any, along with EPCG authorization number. BRC, GR declaration, export order and invoice should be in the name of third party exporter. The goods exported through third party should be manufactured by the EPCG Authorisation Holder or the supporting manufacturer where the capital goods imported under the authorisation have been installed.

POST EXPORT EPCG DUTY CREDIT SCRIP(S)

Under this scheme, capital goods are imported on full payment of applicable duties in cash. Later, basic customs duty paid on Capital Goods is remitted in the form of freely transferable duty credit scrip(s) and it can be utilized in the similar manner as the scrip's issued under reward schemes. Specific EO shall be 85% of the applicable specific EO stipulated under EPCG scheme. Average EO remains unchanged. Duty Drawback can be claimed for the duties paid like CVD & Spl. CVD paid on import of capital goods provided CENVAT Credit not availed.

The following are eligible for EPCG Scheme:

1. Manufacturer exporters with or without supporting manufacturer(s),
2. Merchant exporters tied to supporting manufacturer(s), and
3. Service providers including service providers designated as Common Service Provider (CSP) subject to prescribed conditions.

Note: "Common Service Provider" (CSP) means a service provider who is designated or certified as a Common Service Provider by the DGFT, Department of Commerce or State Industrial Infrastructural Corporation in a Town of Export Excellence;

ELIGIBLE CAPITAL GOODS FOR IMPORT UNDER EPCG SCHEME:

1. Capital Goods including capital goods in CKD/SKD condition
2. Computer software systems
3. Spares, moulds, dies, jigs, fixtures, tools & refractories for initial lining and spare refractories
4. Capital goods for Project Imports notified by CBEC.

INELIGIBLE CAPITAL GOODS FOR IMPORT UNDER EPCG SCHEME:

1. Second hand capital goods
2. Power Generator Sets

CONCEPT 30. EOU, EHTP, STP & BTP

These units may import or procure from DTA without payment of duty provided they are not prohibited items.

w.e.f. 1-7-2017 100% EOU will not get *ab initio* exemption of IGST for imports. In GST regime, EOUs will have to pay IGST on imports. Refund of Input Tax Credit (ITC) can be taken after exports as per ITC/Refund Rules.

EOU scheme is administered by Ministry of Commerce and Industry, while EHTP, STP & BTP schemes are administered by their respective administrative ministries. STP / EHTP Scheme is administered by Ministry of Information Technology. Bio Technology Park (BTP) is established on the recommendation of Department of Biotechnology.

Trading units are not covered under these schemes.

Only projects having a minimum investment of Rs. 1 crore in plant & machinery shall be considered for establishment as EOUs. However, Board of Approvals (BoA) may allow establishment of EOUs with a lower investment criteria also.

Approval for setting up of units under EOU scheme shall be granted by the Units Approval Committee within 15 days as per prescribed criteria. In other cases, approval may be granted by Board of Approval (BoA) set up for this purpose.

On approval, concerned authority will issue a Letter of Permission (LoP)/ Letter of Intent (LoI) which will have initial validity of 2 years (extendable by 2 years and further extension, if necessary, by BoA), by which time unit should have commenced production.

Positive Net Foreign Exchange (NFE) earnings:

EOU/ EHTP/ STP/ BTP unit must be a positive net foreign exchange earner.

NFE Earnings shall be calculated cumulatively in blocks of 5 years, starting from commencement of production.

Items of manufacture for export specified in LoP / LoI alone shall be taken into account for calculation of NFE.

Positive NFE = A – B > 0

‘A’ is FOB value of exports;

‘B’ is CIF value of imported inputs, Capital goods and value of all payments made in foreign exchange by way of commission / royalty etc. plus goods are obtained from another EOU/SEZ/international exhibition held in India or bonded warehouses

In case units not able achieve NFE due to any reason 5 years block period, may be extended suitably by BoA. In case of adverse market conditions 5 years period can be extendable up to 1 year.

Units Approval Committee shall monitor performance of EOU’s with regard to NFE earnings.

The following sales to DTA can be counted for positive NFE:

- (a) Supplies in DTA to holders of Advance Authorization / Advance Authorization for annual requirement/ DFIA under duty exemption/ remission scheme/ EPCG scheme subject to certain exceptions.
- (b) Supplies affected in DTA against foreign exchange remittance received from overseas.
- (c) Supplies to other EOU/ EHTP/ STP/ BTP/ SEZ units.
- (d) Supplies made to bonded warehouses set up under FTP and/ or under section 65 of Customs Act and Free Trade and Warehousing Zones (FTWZ), where payment is received in foreign exchange.
- (e) Supplies of goods and services to such organizations which are entitled for duty free import of such items in terms of general exemption notification issued by MoF.
- (f) Supplies of Information Technology Agreement (ITA-1) items and notified zero duty telecom/ electronics items.
- (g) Supplies of items like tags, labels, printed bags, stickers, belts, buttons or hangers to DTA unit for export.

Benefits to EOU/EHTP/STP/BTP units:

- (i) Exemption from industrial licensing for manufacture of items reserved for SSI sector.
- (ii) Export proceeds will be realized within 9 months.
- (iii) Units will be allowed to retain 100% of its export earnings in the EEFC account.
- (iv) Unit will not be required to furnish bank guarantee at the time of import or going for job work in DTA, subject to fulfillment of required conditions.
- (v) 100% FDI investment permitted through automatic route similar to SEZ units.

Sales to DTA units:

Up to 50% of FOB value of exports (including sales made to SEZ unit from Foreign Exchange Account of such unit), subject to fulfillment of positive NFE, on payment of concessional duties.

In case of units manufacturing and exporting more than one product, sale of any of these products into DTA, up to 90% of FOB value of export of the specific products is permitted, provided total DTA sales does not exceed the overall entitlement of 50% of FOB value of exports for the unit.

In case of new EOU, advance DTA sale will be allowed not exceeding 50% of its estimated exports for first year (2 years for pharmaceutical units).

CONCEPT 31. DEEMED EXPORTS

Goods manufactured in India and supplies from DTA to EOU, EHTP, STP & BTP units will be regarded as deemed exports and DTA supplier shall be eligible for export incentives.

The following supplies considered as deemed exports:

Goods supplied by a manufacturer:

1. Supply of goods against Advance Authorisation/ Advance Authorisation for Annual Requirement/ DFIA.
2. Supply of goods to units located in EOU/ STP/BTP/EHTP.
3. Supply of capital goods against EPCG authorization.
4. Supply of marine freight containers by 100% EOU provided said containers are exported within 6 months by another 100% EOU.

Goods supplied by a Main contractor / sub-contractor:

1. 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.
2. Supply of goods to any project where import is permitted at zero customs duty.
3. Supply of goods to mega power projects against International Competitive Bidding.
4. Supply to goods to UN or international organisations.
5. Supply of goods to nuclear projects through competitive bidding (need not be international competitive bidding).

Benefits for Deemed Exports

Deemed exports shall be eligible for any / all of following benefits:

1. Advance Authorisation/ Advance Authorisation for Annual requirement/ DFIA
2. Deemed Export Drawback

As per Notification No 43/2015-2020, dated 05.11.2018 - Para 4.32(i) and Para 6.01 (a) of Foreign Trade Policy 2015-20 are amended to allow export of findings like posts, push backs, locks which help in collating the jewellery pieces together, containing gold of 3 carats and above up to a maximum limit of 22 carats only from domestic tariff area and EOU/ EHTP/STP/BTP Units

As per Notification No 44/2015-2020, dated 30.11.2018 – Para 4.32(i) of Chapter 4 of the Foreign Trade Policy 2015-20 is amended to allow export of Goldidols (only gods and goddess) of 8 carats and above (upto 24 carats) from domestic tariff area.

CONCEPT 32. SPECIAL ECONOMIC ZONE

The provisions relating to SEZ are contained in Special Economic Zone Act, 2005 and SEZ Rules, 2006.

- SEZs are like a separate island within territory of India.
- SEZs are projected as duty free area for the purpose of trade, operation, duty and tariffs.
- Goods and services coming to SEZ units from domestic tariff area are treated as exports from India and goods and services rendered from SEZ to the DTA are treated as import into India.

Any proposal for setting up of SEZ unit in the Private/ Joint/ State Sector is routed through the concerned State government who in turn forwards the same to the Department of Commerce with its recommendations for consideration.

The following incentives offered to the units in SEZ:

- (a) Duty free import/ domestic procurement of goods for development, operation and maintenance of SEZ units.
- (b) Single window clearance for Central and State level approvals.
- (c) Exemption from State sales tax and other levies as extended by the respective State Governments.
- (d) "In order to give a boost to exports from SEZs, government has now decided to extend benefits of both the reward schemes (MEIS and SEIS) to units located in SEZs. (e) SEZs have been exempted from payment of IGST on imports. Supplies to SEZs by DTA units also exempted from IGST (i.e. zero rated supply).

CONCEPT 33. FTP AND GST

As per DGFT Trade Notice No. 9/2017 dated 12-6-2017 the provisions are as follows:

The Foreign Trade (Development & Regulation) Act, 1992 provides that no person shall make any import or export except under an Importer Exporter Code (IEC) number, granted by the Director General of Foreign Trade or the officer authorized by the Director General in this behalf. It means, a 10 digit IEC number, is mandatory for undertaking any import export activities.

With the implementation of the Goods and Services Tax (GST) w.e.f. 1st July 2017, GSTIN would be used for purpose of

- (i) credit flow of IGST on import of goods and
- (ii) Refund or rebate of IGST related to export of goods.

CONCEPT 34. GSTIN OR PAN IN PLACE OF IMPORTER EXPORTER CODE (IEC)

As GSTIN will be used for the purposes mentioned above, it thereby assumes importance as identifier at the transaction level. In view of this, it has been decided that importer/exporter would need to declare only GSTIN (wherever registered with GSTIN) at the time of import and export of goods. The PAN level aggregation of data would automatically happen in the system.

Since obtaining GSTIN is not compulsory for all importers/exporters below a threshold limit of turnover, all exporters/ importers may not register with GSTIN, barring compulsory registration in certain cases, it has been further decided, with the implementation of GST, to use PAN of an entity for the purpose of IEC (not individual transactions).

As a measure of ease of doing business, it has been decided to keep the identity of an entity uniform across the Ministries/Departments. Henceforth, (i.e. after introduction of GST w.e.f. 01-07-2017) PAN of an entity will be used for the purpose of IEC, i.e. IEC will be issued by DGFT with the difference that it will be alpha numeric (instead of 10 digit numeric at present) and will be same as PAN of an entity. For new applicants, w.e.f. 1-7-2017 the application for IEC will be made to DGFT and applicant's PAN will be authorised as IEC. For residuary categories, the IEC will be either Unique Identity Number issued by GSTIN and authorized by DGFT or any common number to be notified by DGFT.

Further, The legacy data, which is based on IEC, would be converted into PAN based in due course of time.

Penalties:

In case any exporter or importer in the country violates any provision of the Foreign Trade Policy, the office of DGFT can cancel his IEC number and thereupon that exporter or importer would not be able to transact any business in export or import.

QUESTIONS AND ANSWERS

Q. 1

LM Corporation, a merchant exporter, procured order of goods from a customer in USA. It approached ST Corporation, a manufacturer, for execution of the said order. The shipping bills relating to the consignment bear the name of LM Corporation. Bank Realization Certificate, GR declaration, export order and invoice are also in the name of LM Corporation. Comment whether ST Corporation would be deemed as the exporter under FTP. (CA Final Mock Test May 2015).

Answer:

The given scenario is a case of third-party exports.

Third-party exports means exports made by an exporter or manufacturer on behalf of another exporter(s). The conditions for being allowed as third-party exports under FTP are:

- (i) Export documents such as shipping bills shall indicate name of both manufacturing exporter/manufacturer and third party exporter(s).
- (ii) BRC, GR declaration, export order and invoice should be in the name of third party exporter.

In the above case, though BRC, GR declaration, export order and invoice are in the name of LM Corporation (third party exporter), the shipping bill does not have the name of ST Corporation (manufacturer). Therefore, ST Corporation will not be treated as the exporter in this case.

Q. 2

Answer the following questions with reference to the provisions of Foreign Trade Policy:

Bestron Ltd. 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 Bestron Manufacturers seek Advance Authorization in relation to the supplies made by it?

Answer:

Advance Authorization can be issued for supplies made to United Nations Organisations or under Aid Programme of the United Nations or other multilateral agencies and such supplies need to be paid for in free foreign exchange.

Q. 3

LMN Ltd. has imported inputs without payment of duty under Advance Authorization. The CIF value of such inputs is Rs. 20,00,000. The inputs are processed and the final product is exported. The exports made by LMN Ltd. are subject to general rate of value addition prescribed under Advance Authorization Scheme. No other input is being used by LMN Ltd. in the processing. What should be the minimum FOB value of the exports made by the LMN Ltd. as per the provisions of Advance Authorization?

Answer:

Advance Authorization necessitates exports with a minimum of 15% value addition (VA).

Therefore, the minimum FOB value of the exports made by LMN Ltd. should be Rs. 23,00,000 (i.e. Rs. 20 L x 115/100).

Q. 4

During F.Y. 2019-20 S Pvt Ltd has made Exports of "Safety Valves" coming under Chapter Heading 8481. Country of Export - USA & UK.

Realised FOB value of exports in free foreign exchange: Rs. 50 Crore

FOB value of exports as given in the Shipping Bills in free foreign exchange (Covered in Rs. 55 Crore. As per Appendix 3B of Foreign Trade Policy 2015-20, reward for Export of Safety Valves to USA & UK is 3%.

Find the Duty Credit Scrip or MEIS reward available to S Ltd.

Answer

Realised FOB value of exports = Rs. 50 crore or

FOB value of exports = Rs. 55 crore (as given in the Shipping Bills)

Whichever is LESS.

Therefore MEIS Reward available to S Pvt Ltd for F.Y. 2019-20 would be Rs. 1.5 Crores i.e. Rs. 50 Cr x 3%).

Q. 5

Classmate Printers Pvt. Ltd., manufactured register account books & letter pads and exported the same by courier at FOB value of 400 USD per consignment to USA and 350 UK Pounds per consignment to UK. During the year 2015-16, 40 consignments sent to USA. Exchange rate is Rs. 60 per USD. 20 consignments sent to UK. Exchange rate is Rs. 80 per Pound. Classmate Printers Pvt. Ltd., entitled 2% reward rate. Find the reward amount under MEIS for Classmate Printers Pvt. Ltd.

Answer:

Export to USA:

Reward amount in Rs. 19,200 [i.e. (400 USD x Rs. 60) x 2% x 40]

Export to UK:

Reward amount in Rs. 10,000 [i.e. (350 UK Pounds x Rs. 80 = Rs. 28,000)

however, maximum is Rs. 25,000 per consignment. [i.e. Rs. (25,000 x 20) x 2% = 10,000.

Q. 6

M Pvt Ltd is provides services of Technical Testing & Analysis Services.

During F.Y. 2015-16, Gross earning in foreign exchange from providing of services is \$ 2 Million. (INR Rs. 12 Crore) from USA and \$ 1.5 Million. (INR Rs. 9 Crore) from Nepal & Bhutan. Payment made in foreign Currency on services received from abroad is \$ 50,000 (INR 30 lakhs) and purchase of Capital Equipment of \$ 1 million (INR 6 Crore).

Calculate eligibility of SEIS Scheme to M Pvt Ltd.

During F.Y. 14-15, Net Foreign Exchange Earning was \$ 2.5 Million.

Note: Reward for export of Technical Testing & Analysis Services is 3%

Answer:

SEIS Reward available to M Pvt. Ltd., for F.Y. 15-16 would be Rs. 44.10 lakhs [i.e. (12+9) - (0.3+6) *3%].

Q. 7

Examine whether benefit of Service Exports from India Scheme (SEIS) can be availed with respect to notified services provided by service providers located in India in the current financial year in the following independent cases:

- (a) Net Foreign Exchange (NFE) earned by Mr. Raj, a service provider, in the preceding financial year is USD 4,500.
- (b) X & Co., is a partnership firm, supplier of taxable services, has earned net foreign exchange to the tune of USD 17,500 in the preceding financial year.
- (c) Mr. Roshan, a service provider, has earned net foreign exchange of USD 13,000 in the preceding financial year. Out of this, USD 4,000 has been paid to Mr. Roshan through the credit card of the foreign client.

Note: all the above services providers have an active IEC at the time of rendering services.

Answer:

- (a) Mr. Raj is not eligible for SEIS Scheme as his net foreign exchange earnings are less than USD 10,000 (minimum limit for individuals).
- (b) X & Co., being a partnership firm eligible for SEIS Scheme as their net foreign exchange exceeds the limit of USD 15,000 (minimum limit for firms).
- (c) Foreign exchange earned through credit cards is counted for the purpose of computing the limit of minimum net foreign exchange required for being eligible to SEIS Scheme. Thus, Mr. Roshan is eligible for SEIS Scheme.

Q. 8

George Inc., a US based company, sought architectural services from ABC India Pvt. Ltd. with regard to its newly established business in New York in April, 2015. ABC India Pvt. Ltd. charged US \$50,000 as a consideration for the architectural services provided to George Inc. In addition, ABC India Pvt. Ltd., also exported goods worth US \$15,000 to George Inc. and received the entire consideration of US \$65,000 on 28-04-2015.

Discuss the eligibility of ABC India Pvt. Ltd., for duty credit scrip entitlement under the Service Exports from India Scheme (SEIS).

Notes:

- (i) ABC India Pvt. Ltd., has an active Importer Exporter Code (IEC) at the time of rendering such services.
- (ii) Net Foreign Exchange earnings of ABC India Pvt. Ltd., in the financial year 2014-15 is US \$16,000.
- (iii) Notified rate of reward for architectural services is 5%

Will your answer be different if ABC India Pvt. Ltd., had provided telecom services to George Inc.?

Answer:

Duty credit scrip entitlement of ABC India Pvt. Ltd. is 5% of US \$ 50,000 i.e., US \$ 2,500. Further, if ABC India Pvt. Ltd. had provided telecom services to George Inc., it would not have been eligible for the duty credit scrip entitlement under the SEIS.

Q. 9

XYZ Co. Ltd., Delhi, with an active IEC, has provided research and development services on natural sciences* to a US based company in the current financial year. It has earned net foreign exchange to the tune of USD 14,000 in the preceding financial year. Can XYZ Co. Ltd. avail the benefit of Service Exports from India Scheme (SEIS) with respect to services provided by it?

*notified for availing benefit under Service Exports from India Scheme (SEIS)

Answer:

For availing SEIS by a person (other than individual or sole proprietor) need to fulfill minimum NFE is 15,000 USD.

In the given case XYZ & Co. Ltd. Delhi is not entitled to avail the SEIS, since, their NFE in the preceding previous year is 14,000 USD only.

Q. 10

From the following identify correct category for grant of status certificate to X Ltd:

Type of Exports in US \$	Current Year in (From April - Oct)	Previous Year 1	Previous Year 2
1. Exports of goods without Weightage US\$	1,25,000	11,00,000	5,80,000
2. Exports of services without Weightage US\$	1,55,000	4,20,000	3,95,000
3. FOR value for Deemed Exports (Rs.)	50,00,000	1,25,00,000	1,20,00,000

Exchange rate notified by the CBEC as on 1st April 2013, 1st April 2014 and 1st April 2015 is Rs. 55/USD, Rs. 58/USD and Rs. 60/USD respectively.

Answer

Statement showing exports for shipments during last two years and current year up to 31st Oct 2015:

Type of Exports in US\$	Current Year in US\$ (From April - Oct)	Previous Year 1 in US\$	Previous Year 2 in US\$
1. Exports of goods without Weightage	1,25,000	11,00,000	5,80,000
2. Exports of services without Weightage	1,55,000	4,20,000	3,95,000
3. FOR value for Deemed Exports US\$	83,333.33	2,15,517.24	2,18,181.82
TOTAL	3,63,333.33	17,35,517.24	11,93,181.82

X Ltd. export performance as on the date of application made to RA / Development Commissioner (DC) is US\$ 3.292 Millions i.e. 32,92,032.39 US\$/10,00,000). Therefore, X Ltd is eligible for One Star Export House status.

Q. 11

X Pvt. Ltd., being a by Micro, small &medium enterprises (MSME) manufactured and exported packing material to USA. Other information is as follows:

S. No.	Category of exports	FOB value US\$ in the current year (April to June)	FOB value US\$ in the Previous Year 1	FOB value US\$ in the Previous Year 2
1.	Export of goods as MSME	50,000	20,00,000	Nil
2.	Manufacturing units having ISO/ BIS	Nil	Nil	5,00,000

Find whether X Pvt. Ltd., is eligible for double weightage? If yes identify its export status?

Answer.

S. No.	Category of exports	FOB value US\$ in the current year (April to June)	FOB value US\$ in the Previous Year 1	FOB value US\$ in the Previous Year 2
1.	Export of goods as MSME	50,000	20,00,000	Nil
2.	Manufacturing units having ISO/ BIS	Nil	Nil	5,00,000
	Total FOB	50,000	20,00,000	5,00,000
	FOB Value of Exports with Double Weightage (US\$) = [2 x Total FOB Value]	1,00,000	40,00,000	10,00,000

X Pvt. Ltd., achieved export turnover of US\$ 5.10 Millions by applying double weightage. Therefore, X Pvt. Ltd., can apply for One Star Export House status.

Q. 12

X Pvt. Ltd., (One Star Export House) wanted to export general goods (i.e. export freely without any restriction or prohibition) worth ?25 lakh on free of cost basis for export promotion to USA.

Particulars	Current Year in (From April - Oct)	Previous Year	Previous Year	Previous Year
		1	2	3
Annual Export realization (INR)	9,11,25,000	1,11,00,000	10,80,00,000	8,15,80,000

Whether X Pvt. Ltd., can export goods on free of cost basis, if so what amount. Advise.

Answer.

X Pvt. Ltd. being a status holder can export freely exportable items on free of cost basis for export promotion maximum of. Rs. 13,37,867.

Therefore, maximum value of export at free of cost is Rs. 13,37,867.

Working note:

$$[(1,11,00,000 + 10,80,00,000 + 8,15,80,000) / 31 \times 2\% = \text{Rs. } 13,37,867]$$

Q. 13

Tarun Pvt. Ltd., a manufacturer, wants to import capital goods in CKD condition from a foreign country and assemble the same in India. The import of the capital goods will be under Project Imports. The capital goods will be used for pre-production processes. The final products of Tarun Pvt. Ltd. would be supplied in SEZ. Tarun Pvt. Ltd. wishes to sell the capital goods imported by it as soon as the production process starts.

Tarun Pvt. Ltd. seeks your advice whether it can avail the benefit of EPCG Scheme for importing the intended capital goods.

Note: Assume that all other conditions required for being eligible to the EPCG Scheme are fulfilled in the above case.

Answer:

Export Promotion Capital Goods Scheme (EPCG) permits exporters to procure capital goods at concessional rate of customs duty/zero customs duty. In return, exporter is under an obligation to fulfill the export obligation. Export obligation means obligation to export product(s) covered by Authorization/permission in terms of quantity or value or both, as may be prescribed/specify by Regional or competent authority.

Exports to SEZ unit/developer/co-developer will be considered for discharge of export obligation of EPCG Authorization, irrespective of currency.

The license holder can either procure the capital goods (whether used for pre-production, production or post-production) from global market or domestic market. The capital goods can also be imported in CKD/ SKD to be assembled in India.

An EPCG Authorization can also be issued for import of capital goods under Scheme for Project Imports'. Export obligation for such EPCG Authorizations would be 6 times of duty saved.

Duty Saved Amount:	
Effective duty under Project Imports	xxxx
Less: Concessional duty under the EPCG Scheme	(xxx)
Duty Saved amount	xxxx

However, import of capital goods is subject to 'Actual User' condition till export obligation is completed. Therefore, based on the above discussion, Tarun Pvt. Ltd. can import the capital goods under EPCG Scheme. However, it has to make sure that it does not sell the capital goods till the export obligation is completed.

Q. 14

X Ltd., imported a machine from USA under EPGC Scheme with zero customs duty in the financial year 2015-16 for production of product 'P'.

Customs duty otherwise payable is Rs. 20 lakh. Find the specific export obligation and average export obligation. Exports of finished goods 'P' in the preceding 5 licensing years are as follows:

Particulars	2014-15	2013-14	2012-2013	2011-12	2010-11
FOB value of exports in INR	80 lakh	72 lakh	45 lakh	50	25

Answer.

Specific Export Obligation is Rs. 120 lakh. It means capital goods imported under EPCG scheme should produce finished goods worth Rs. 120 lakh for export over a period of 6 years reckoned from the date of issue of Authorization.

Average Export Obligation is Rs. 65.67 lakh. It has to be achieved within the overall EO period (i.e. within 6 years reckoned from the date of issue of authorization).

Export obligation consists of average export obligation and specific export obligation. Hence, to redeem export obligation both specific and average export obligation should be fulfilled.

Q. 15

With reference to the provisions relating to Export Oriented Unit (EOU) Scheme as contained in Foreign Trade Policy, answer the following questions:

- (i) An EOU has started production after 4 years 10 months from the date of grant of Letter of Permission (LoP). Is it correct?
- (ii) A unit intending to trade in handicrafts wants to set up an EOU. Is it allowed?

Answer

- (i) On approval, concerned authority will issue a Letter of Permission (LoP)/Letter of Intent (LoI) which will have initial validity of 2 years (extendable by 2 years and further extension, if necessary, by BoA), by which time unit should have commenced production.
- (ii) In the given case EOU commenced production after 4 years 10 months from the date of LoP without obtaining extension. Hence, the given statement is incorrect.
- (iii) Trading unit can not setup an EOU. Manufacturing units (i.e. make in India) can set up an EOU.

Example 16:

With reference to the provisions of Foreign Trade Policy 2009-14, 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 CBEC. Decision of CBEC thereon would be final and binding.
- (ii) Waste generated during manufacture in an SEZ Unit can be freely disposed in DTA on payment of applicable customs duty, without any authorization.

Answer:

- (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) True. Any waste or scrap or remnant including any form of metallic waste & scrap generated during manufacturing or processing activities of an SEZ Unit/ Developer/ Co-developer are allowed to be disposed in DTA freely, without any authorization, subject to payment of applicable customs duty.

CASES

CASE 1.

RST Ltd. imported drawings and designs in paper form through professional courier and post parcels. However, the Assistant Commissioner of Customs valued these drawings and designs and levied duty on them. RST Ltd. Contended that customs duty cannot be levied on drawings and designs as they do not fall in the definition of goods under the Customs Act, 1962. Do you feel the stand taken by the RST Ltd. is tenable in law? Support your answer with a decided case law, if any.

Answer: *Associated Cement Companies Ltd. v CC* 2001 (128) ELT 21 (SC) The Apex Court observed that though technical advice or information technology are intangible assets, but the moment they are put on a media, whether paper or cassettes or diskettes or any other thing, they become movable and are thus, goods. Therefore, the Supreme Court held that drawings, designs, manuals and technical material are goods liable to customs duty. Therefore, the stand taken by the RST Ltd. is not correct in law.

CASE 2.

A Big Ship carrying merchandize and stores enters the territorial waters of India but it cannot enter the port. In order to unload the merchandize lighter ships are employed. Stores are consumed on board the ship as well as by the small ships. Examine whether such consumption of stores attracts customs duty. Quote relevant section and case law if any. Stores are supplied to the above ships. Will such supplies be treated as exports and be entitled to draw back? (CMA Final Dec 2013)

Answer: Bringing of 'stores' is treated as import. However, there is special provision for stores under section 87. Imported stores consumed on board an ocean going vessel (i.e. foreign going vessel) are exempt from import duty under Section 87. Since the ship is ocean going, stores consumed on board will not attract customs duty. Regarding the smaller ships which are employed to unload the cargo from the mother ship, they are termed as "Transhippers". These are also treated as ocean going vessels as was decided in *UOI v V M Salgaoncar* AIR 1998 SC1367: 99 ELT 3 (SC). Hence stores consumed by small vessels would also be exempt from customs duty. Stores supplied to the vessel will be treated as export as per Section 89 of Customs Act and hence will be eligible for duty drawback.

CASE 3.

Goods cleared from unit of DTA to Special Economic Zone (SEZ) chargeable to duty under the SEZ Act, 2005 or the Customs Act, 1962?

Answer: *Tirupati Udyog Ltd. v UOI* 2011 (272) ELT 209 (AP)

Decision: Customs duty can be levied only on goods imported into or exported beyond the territorial waters of India, section 12(1) of the Customs Act, 1962 (i.e. charging section) is not attracted for supplies made by a DTA unit to a unit located within the Special Economic Zone. **Therefore, goods cleared from DTA to SEZ is not liable to export duty either under SEZ Act, 2005 or under the Customs Act, 1962.**

CASE 4.

The Supreme Court of India has given the landmark judgments in cases of *Union of India v Apar Industries Ltd* (1999) and further in the case of *Garden Silk Mills Ltd v Union of India* (1999). The import of goods will commence when they cross the territorial waters but continues and is completed when they become part of the mass of goods within the country, and the taxable event being reached at the time when goods reach the customs barriers and bill of entry for home consumption is filed.

CASE 5.

In the case of Kiran Spinning Mills (1999) the Hon'ble Supreme Court of India held that import is completed only when goods cross the customs barrier. The taxable event is the day of crossing of customs barrier and not on the date when goods landed in India or had entered territorial waters of India.

CASE 6.

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. 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, inasmuch as the quantity of goods at the time of import alone is to be looked at.

Decision: The Supreme Court held 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.

CASE 7.

Where a classification (under a Customs Tariff head) is recognized by the Government in a notification at any point of time, can the same be made applicable in a previous classification in the absence of any conscious modification in the Tariff? *Keihin Penalfa Ltd. v Commissioner of Customs 2012 (278) ELT 578 (SC)*

Facts of the Case: Department contended that 'Electronic Automatic Regulators' were classifiable under Chapter sub-heading 8543.89 whereas the assessee was of the view that the aforesaid goods were classifiable under Chapter sub-heading 9032.89. An exemption notification dated 1-3-2002 exempted the disputed goods by classifying them under chapter sub-heading 9032.89. The period of dispute, however, was prior to 01.03.2002.

Point of Dispute: The dispute was on classification of Electronic Automatic Regulators.

Decision: The Apex Court observed that the Central Government had issued an exemption notification dated 1-3- 2002 and in the said notification it had classified the Electronic Automatic Regulators under Chapter sub-heading 9032.89. Since the Revenue itself had classified the goods in dispute under Chapter sub-heading 9032.89 from 1-3- 2002, the said classification needs to be accepted for the period prior to it.

CASE 8.

CVD (now called as IGST) on an imported product be exempted if the excise duty (now GST) on a like article produced or manufactured (now called as supply) in India is exempt? Aidek Tourism Services Pvt. Ltd. v. CCus. 2015 (318) ELT 3 (SC)

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

CASE 9.

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

Issue: Set top boxes (STBs) are imported by a Direct to Home (DTH) broadcasting service provider and provided free of cost to the consumers of DTH service. The issue is whether, in such conditions, the value for the purposes of calculation of CVD be determined on the basis of retail sale price (RSP) in terms of proviso to section 3(2) of the Customs Tariff Act, 1975? Note: Set top boxes abatement 22%.

Decision: Hon'ble Tribunal has been held that one of the conditions to be met for CVD to be levied on retail sale price is that under the Legal Metrology Act, there should be requirement to declare on the package, the retail sale price (RSP) of the goods. There appears to be no sale in the use of the set top box by the ultimate consumer. After detailed analysis, the Tribunal held that in the given circumstances CVD would not be leviable on the basis of retail sale price. Therefore, Imported set top boxes to be valued under section 4 of the Central Excise Act, 1944 for the purpose of computing CVD.

CASE 10.

Commissioner of Cus., Vishakhapatnam v Aggarwal Industries Ltd. 2011 ELT 641 (SC):

Statement of Facts: The importer entered into contract for supply of crude sunflower seed oil U.S. \$ 435 C.I.F./Metric ton. Under the contract, the consignment was to be shipped in the month of July, 2011. The period was extended by mutual agreement and goods were shipped on 5th August, 2011 at old agreed prices. In the meanwhile, the international prices had gone up due to volatility in market, and other imports during August, 2011 were at higher prices. Department sought to increase the assessable value on the basis of the higher prices as contemporaneous imports. Decide whether the contention of the department is correct. You may refer to decided case law, if any, for your decision. (CA FINAL MAY 2013)

Decision: No. Department view is not correct. It is true that the commodity involved had volatile fluctuations in its price in the international market, but having delayed the shipment; the supplier did not increase the price of the commodity even after the increase in its price in the international market. There was no allegation of the supplier and importer being in collusion. Thus, the appeal was allowed in the favour of the respondent- assessee.

CASE 11.

Commissioner of Central Excise, Mangalore v Mangalore Refinery & Petrochemicals Ltd. { (2016) 66 taxmann. com 108 (SC) Revenue contended that demurrage charges paid by the assessee are includable in the assessable value for the levy of custom duty.

Decision: Demurrage charges are incurred after the goods reached at Indian Ports, thus it is a post-importation event; relying on the case of *Commissioner of Customs v Essar Steel Ltd. (2015) 51 GST 181/58 taxmann.com 191*, the Apex Court has held that Demurrage charges are not includable in assessable value of imported goods.

CASE 12.

Commissioner of Central Excise, Mangalore v Mangalore Refinery & Petrochemicals Ltd. {(2016) 66 taxmann. com 108 (SC) Revenue contended that demurrage charges paid by the assessee are includible in the assessable value for the levy of custom duty.

Decision: Demurrage charges are incurred after the goods reached at Indian Ports, thus it is a post-importation event; relying on the case of *Commissioner of Customs v Essar Steel Ltd.* (2015) 51 GST 181/58 taxmann.com 191, the Apex Court has held that Demurrage charges are not includible in assessable value of imported goods.

CASE 13.

Gira Enterprises v CCus. 2014 (307) ELT 209 (SC) **Can the value of imported goods be increased if Department fails to provide to the importer, evidence of import of identical goods at higher prices?**

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

Decision: The Supreme Court held that mere existence of alleged computer printout was not proof of existence of comparable imports. Even if assumed that such printout did exist and content thereof were true, such printout must have been supplied to the appellant and it should have been given reasonable opportunity to establish that the import transactions were not comparable. Thus, in the given case, the value of imported goods could not be enhanced on the basis of value of identical goods as Department was not able to provide evidence of import of identical goods at higher prices.

CASE 14.

M/s CPS Textiles P Ltd. v. Joint Secretary 2010 (255) ELT 228 (Mad.)

Decision: The High Court held that the description of the goods as per the documents submitted along with the Shipping Bill would be a relevant criterion for the purpose of classification, if not otherwise disputed on the basis of any technical opinion or test. The petitioner could not plead that the exported goods should be classified under different headings contrary to the description given in the invoice and the Shipping Bill, which had been assessed and cleared for export. Further, the Court, while interpreting section 75A(2) of the Customs Act, 1962, noted that when the claimant is liable to pay the excess amount of drawback, he is liable to pay interest as well. The section provides for payment of interest automatically along with excess drawback. No notice for the payment of interest need be issued separately as the payment of interest becomes automatic, once it is held that excess drawback has to be repaid.

CASE 15.

Manish Lalith Kumar Bavishi (2011). Point of dispute: If any documents seized during the course of any action by an officer and relatable to the provisions of Customs Act, that officer was bound to make the documents available copies of those documents?

Answer: Yes. The Bombay High Court held the same view in the case of *Manish Lalith Kumar Bavishi* (2011). *Confiscation of goods* The term confiscation of goods means the goods become property of Government and Government can deal with these goods as it desires. Once confiscated goods are became property of Central Government, no duty liability arises on assessee whose goods are confiscated. However, in some cases, the person from whom goods were seized can be get them back on payment of fine (i.e. Redemption fine in lieu of confiscation) under section 125(1) of the Customs Act, 1962.

CASE 16.

Smuggled goods cannot be treated par with imported goods for the purpose of granting the benefit of the exemption notification: The Honorable Supreme Court of India held that if the smuggled goods and imported goods were to be treated as the same, then there would have been no need for two different definitions under the Customs Act, 1962. The Court observed that one of the principal functions of the Customs Act, 1962 was to curb the ills of smuggling on the economy. Hence, it held that it would be contrary to the purpose of exemption notifications to give the benefit meant for imported goods to smuggled goods. Therefore, the court held that the smuggled goods could not be considered as 'imported goods' for the purpose of benefit of the exemption notification [*CCus. (Prev.), Mumbai v M. Ambalal & Co.* 2010 (260) E.L.T. 487 (SC)].

CASE 17.

Jyoti Enterprises v CCEx. & ST 2016 (41) STR 0019 (All)

Facts of the Case: The order-in-original, in assessee's case, was passed by the Department. However, the assessee was unaware of the order passed and came to know about it two years later when the Department started recovery proceedings.

Point of Dispute: The assessee argued that there was no proper service of order by the Department. However, Department submitted that the order was served 2 years ago at the residential premises of the assessee to a person named Virendra Yadav who represented himself to be assessee's nephew. The assessee contended that the order was required to be served to the person for whom it was intended, namely, the assessee or its authorised agent. Since Virendra Yadav was neither the authorised representative nor the order was served upon the assessee, there was no proper service of the order.

Decision: The High Court held that the order in original was duly served upon the assessee. The High Court observed that if the order is served on a member of the family of the assessee, it is duly served and there is sufficient service of the order. No assertion was made by the assessee that Virendra Yadav was not a family member or that he was not connected with the business. The assessee had nowhere stated that Virendra Yadav was not her nephew. Further, nothing has been stated that the address where the service of the original order was made was incorrect. Therefore, decision is given in favour of the Department and against the assessee.

CASE 18.

Santosh Handlooms v CCus. 2016 (331) ELT 44 (Del) The issue which arose for consideration was whether in case of seizure of goods under section 110 of the Customs Act, 1962, the show cause notice [required to be issued under section 124(a) within six months of seizure] can be issued to the Customs House Agent [now Custom Broker] of the importer instead of importer himself.

Decision: The CHA [now Custom Broker], is an agent, who operates under a special contract with an importer or exporter, and in this context is authorized to perform various functions to clear the goods from customs. It is no part of the general duty cast upon the CHA to accept service of notices, summons, orders or decisions of the customs authorities, unless he has been specially authorized to do so. The High Court held that the show cause notice served on CHA [now Custom Broker] is not tenable in law.

CASE 19.

***Ratan Melting & Wire Industries v CCE* 2008 (231) ELT 22 (SC):** The Supreme Court has held that so far as the clarifications/circulars issued by the Central Government and of the State Government are concerned, they represent merely their understanding of the statutory provisions. They are not binding upon the Court. It is for the Court to declare what the particular provision of statute says and it is not for the Executive. A circular which is contrary to the statutory provisions has really no existence in law. Therefore, “Circulars issued by the Central Board of Excise and Customs (CBEC), which are contrary to the judgements of the Supreme Court and the High Courts are not binding on the authorities under the respective statutes.”

CASE 20.

Facts of the case: An order for provisional release of the seized goods had been made under section 110A of the Act pursuant to an application filed by the petitioner in this regard. However, the petitioner claimed unconditional release of its seized goods in terms of sections 110(2) and 124 of the Act as no show cause notice had been issued within the extended period of six months (initial period of six months was extended by another six months by the Commissioner of Customs in this case). *Akanksha Syntex (P) Ltd. v Union of India* 2014 (300) ELT 49 (P&H)

Decision: Where no action is initiated by way of issuance of show cause notice under section 124(a) of the Act within six months or extended period stipulated under section 110(2) of the Act, the person from whose possession the goods were seized becomes entitled to their return. The remedy of provisional release is independent of remedy of claiming unconditional release in the absence of issuance of any valid show cause notice during the period of limitation or extended limitation prescribed under section 110(2) of the Customs Act, 1962.

CASE 21.

In the case of C.Cus. v. SAYED ALI 2011 (S.C.) the Apex Court held that • Director General of Revenue Intelligence OR • Director General of Central Excise Intelligence are not eligible for issuing show cause notices. However, w.e.f 16.9.2011 the law amended retrospectively by providing validity to those show cause notices issued by the Director General of Revenue Intelligence or, Director General of Central Excise Intelligence.

CASE 22.

Uniworth Textiles Ltd. v. CCE 2013 (288) ELT 161 (SC):

Statement of Facts: Assessee imported furnace oil and supplied the same to sister unit for generation of electricity, which is used by the assessee. The assessee claimed exemption on import of furnace oil. The assessee is also obtained a clarification from Development Commissioner for claiming exemption. However, irrespective of the clarification from Development Commissioner, a show cause notice demanding duty was issued on the assessee more than 1 year (i.e. longer limitation) after he had imported furnace oil on behalf of its sister unit.

Department Contention: The entitlement of duty free import of fuel for its captive power plant lies with the owner of the captive power plant, and not the consumer of electricity generated from the power plant.

Decision: As per Section 28 of Customs Act, 1962, longer limitation period in the given case not applicable. The assessee had shown bona fide conduct by seeking clarification from Development Commissioner and in a sense had offered its activities to assessment. Therefore, mere non-payment of duties could not be equated with collusion or willful misstatement or suppression of facts. Judgment is given in favour of the assessee.

CASE 23.

Anita Grover v. CCEEx. 2013 (288) ELT 63 (Del):

Statement of Facts: A demand notice was raised against the petitioner in respect of the customs duty payable by the company (namely Shri Ram Casting P. Ltd) which she was formerly a director of. She had resigned from the Board of the company long time back. The Customs Department sought to attach the properties belonging to the petitioner for recovery of the dues to the company. Whether department action is justifiable?

As per sec. 142 of the Customs Act, 1962 and relevant rules, it was only the defaulter against whom steps might be taken under Rules. The defaulter was the person from whom dues were recoverable under the Act. In the present case, it was the company who was the defaulter. Therefore, department claim is not justifiable. The same view has been expressed by the Hon'ble Bombay High Court in case of *Vandana Bidyut Chatterjee v. UOI 2013 (292) E.L.T. 6 (Bom.)*.

CASE 24.

Kemtech International Pvt. Ltd. v. CCus. 2013 (292) E.L.T. 321 (S.C.)

Point of dispute: Is the adjudicating authority required to supply to the assessee copies of the documents on which it proposes to place reliance for the purpose of re-quantification of short-levy of customs duty?

Decision: The Apex Court elucidated that for the purpose of re-quantification of short-levy of customs duty, the adjudicating authority, following the principles of natural justice, should supply to the assessee all the documents on which it proposed to place reliance. Thereafter the assessee might furnish their explanation thereon and might provide additional evidence, in support of their claim.

CASE 25.

Whether the word 'include' used in a statutory definition enlarges the scope of preceding words or restricts their scope? *Ramala Sahkari Chini Mills Ltd. v. CCEEx. 2016 (334) ELT 3 (SC)*

Decision: The Supreme Court referring to the case of *Regional Director, Employees' State Insurance Corporation v. High Land Coffee Works of P.F.X. Saldanha and Sons & Anr. [(1991) 3 SCC 617]* held that that the word "include" in a statutory definition is generally used to enlarge the meaning of the preceding words and it is by way of extension, and not with restriction.

CASE 26.

CCus & CEx. v. Ashok Kumar Tiwari 2015 (37) STR 727 (All.): The High Court noted that section 3(35) of the General Clauses Act, 1897 also defines the expression “month” to mean a month reckoned according to the British calendar. Further, the day on which order was received by the assessee, had to be excluded while computing the period of limitation. Since the original period of limitation and the period within which delay could be condoned expired on a public holiday, the assessee filed the appeal on the next working day. Therefore, Commissioner of Central Excise (Appeals) had the jurisdiction to condone the delay.

CASE 27.**Chakiat Agencies v. UOI** 2015 (37) STR 712 (Mad.)

Facts of the case: The assessee filed an appeal to Commissioner, but mistakenly gave it to the adjudicating officer who had passed the original order. The appellate authority rejected the appeal on the ground that the appeal was not received in time in his office.

Decision: The High Court noted that the appeal had been preferred in time, but reached different wing of the same building. Since, the appeal was received by the adjudicating officer who has passed the original order, he ought to have sent it to the other wing of the same building, but he had not done the same. Therefore, the order passed by the appellate authority cancelling the appeal on the ground that it was not received in time, could not be accepted. The High Court directed the appellate authority to entertain the appeal of the assessee and to pass appropriate orders on merits and in accordance with law, after affording him an opportunity of being heard.

CASE 28.

Raja Mechanical Co. (P) Ltd. (2012) (SC): Assessee Claim: Commissioner (Appeals) rejected the appeal on the ground of limitation. Therefore, the order passed by the original authority would merge with the orders passed by the first appellate authority.

Decision: an appeal is dismissed on the ground of limitation and not on merits that order would not merge with the orders passed by the first appellate authority. Judgment is given in favour of department and against the assessee.

CASE 29.**Commissioner of C.Ex. Mumbai III v. TIKITAR INDUSTRIES, 2012 (277) E.L.T. 149 (S.C.):**

Assessee Claim: If Revenue accepts judgment of Commissioner (Appeals) on an issue for one period, then it should be precluded to make an appeal on the same issue for another period

Decision: Since, the Revenue had not questioned the correctness or otherwise of the findings on the conclusion reached by the first appellate authority, it may not be open for the Revenue to contend this issue further by issuing the impugned (i.e. disputed the truth) show cause notices on the same issue for further periods.

CASE 30.

C.C.E. & S.T. (LTU), Bangalore v. Dell Intl. Services India P. Ltd. 2014 (33) S.T.R. 362 (Kar.) Can the Committee of Commissioners review its decision taken earlier under section 86(2A) of the Finance Act, 1994, at the instance of Chief Commissioner?

Decision: The Karnataka High Court held that once the Committee of Commissioners, on a careful examination of the order of the Commissioner (Appeals), did not differ in their opinion against the said order of the Commissioner (Appeals) and decide to accept the said order, the matter ends there. The said decision is final and binding on the Chief Commissioner also. The Chief Commissioner is not vested with any power to call upon the Committee of Commissioners to review its order so that he could take decision to prefer an appeal. Such a procedure is not contemplated under law and is without jurisdiction.

CASE 31.

M/s Venus Rubbers v. The Additional Commissioner of Central Excise, Coimbatore 2014 (310) ELT 685 (Mad.)

Decision: The High Court held that there is no provision of law under the Central Excise Act, 1944 which gives power to the Commissioner (Appeals) to review his order. However, such a power is available to the Tribunal under section 35C(2) of the Central Excise Act, 1944 to rectify any mistake apparent on the record. The High Court elaborated that when there is no power under the statute, the Commissioner (Appeals) has no authority to entertain the application for review of the order.

CASE 32.

Enestee Engineering Pvt. Ltd. v. UOI 2016 (41) STR 0061 (Bom.)

Facts of the Case: The adjudication order was passed and was forwarded to the assessee. However, assessee did not receive the same. It learned about the order only after receipt of a letter from the Superintendent, nearly after two years, directing it to pay the dues as per said order. Thereafter, a copy of that order was made available to the assessee.

Point of Dispute: The appeal filed by the assessee against the said order was rejected by the Commissioner (Appeals) as well as by the Tribunal, as being barred by limitation. The assessee contended that the appeal could not be held to be barred by limitation as no order was received by it.

Decision: The High Court noted that the period of limitation prescribed under erstwhile section 85(3) [now section 85(3A)] of the Finance Act, 1994 to prefer an appeal against order-in-original is 3 months [now 2 months]. The said period begins from the date of receipt of the decision or the order of adjudicating authority. Further, section 37C(2) of the Central Excise Act, 1944 stipulates that every decision/order passed or any summons/notice issued under the said Act is deemed to have been served on the date on which such decision, order or summons is tendered or delivered by post or is affixed in the prescribed manner. Thus, a perusal of section 37C (as supported by erstwhile section 85(3) [now section 85(3A)] of the Finance Act, 1994) shows insistence upon the service of such adjudication order upon the assessee. Hence, the observation in the Tribunal's order that the order- in-original had been forwarded to the assessee on a particular date was not sufficient in the eyes of law to start computing the period of limitation. The High Court observed that neither the order of Commissioner (Appeals) nor the order of

Tribunal recorded a finding that the adjudication order was actually tendered to the assessee on a particular date or received by him on a particular date. The High Court quashed and set aside both the orders - order of Commissioner (Appeals) and the order of Tribunal, and placed back the matter for fresh consideration before Commissioner (Appeals).

CASE 33.

Amidev Agro Care Pvt. Ltd. v. Union of India 2012 (279) E.L.T. 353 (Bom):

Assessee Claim: the copy of the order passed by the Commissioner of Central Excise (appeals) on was not served upon the assessee. It was only when the recovery proceedings were initiated, the assessee sought a copy of the order dated 31st mar 2008 and the same was made available to the assessee on 26th Feb 2010. Immediately thereupon the assessee filed an appeal before the CESTAT on 17th may 2010.

Department Contention: The appeal was not filed within the stipulated time of 3 months from 31st mar 2008.

Decision: As per sec 37C(1)(a) of the C.E.A. 1944, it was obligatory on the part of the revenue, either to tender a copy of the decision to the assessee or to send it by registered post with due acknowledgement to the assessee or its authorised agent. In the present case neither of the above had been complied with by the revenue. Therefore, assessee claim is justifiable. Note: w.e.f. 10-5-2013 speed posts with proof of delivery or courier approved by the CBEC is also a valid communication.

CASE 34.

Mihani Network v. Ccus. & Cex. 2012 (285) ELT 182 (MP):

Statement of Facts: The assessee had filed an appeal along with an application for stay before the CESTAT. However, since there had been a delay in filing the appeal, the assessee also filed an application for condonation of delay. The CESTAT ordered that the delay would be treated as condoned, if the assessee deposits 50% of the amount of tax.

Decision: There is no legal provision which provides for condoning the delay in filing the appeal on a condition of depositing 50% of tax amount.

CASE 35.

Thakker Shipping P. Ltd. v. CC (General) 2012 (285) E.L.T. 321 (S.C.):

Statement of facts: The proceedings were initiated against the assessee under the Customs Act, 1962. However, Commissioner of Customs (General), in his order-in-original, dropped the said proceedings. The Committee of Chief Commissioners of the Customs constituted under Sec. 129A(1B) of the Customs Act, 1962 reviewed his order and directed him to apply to the Tribunal for determination of certain points. Since, the application not made within the prescribed period and was delayed by 10 days. Tribunal rejected the application for condonation of delay on the ground that Tribunal had no power to condone the delay caused in filing application under sec. 129A(4) by the Department beyond the prescribed period of 3 months.

Decision: Tribunal was competent to admit an appeal or permit the filing of a memorandum of cross-objections after expiry of the relevant period, if it is satisfied that there was sufficient cause for not presenting it within that period.

CASE 36.

Margara Industries Ltd. v. Commr. of C. Ex. & Cus. (Appeals) 2013 (293) E.L.T. 24 (All.)

Statement of facts: The CESTAT rejected the appellant's application for condonation of delay in filing the appeal before CESTAT on the ground that the reasons given for filing the appeal beyond time were not convincing. The Counsel of the appellant filed his personal affidavit stating that the appeal had been filed with a delay due to his mistake.

Decision: The High Court held that the Tribunal ought to have taken a lenient view in this matter as the appellant was not going to gain anything by not filing the appeal and the reason for delay in filing appeal as given by the appellant was the mistake of its counsel who had also filed his personal affidavit.

CASE 37.

Texcellence Overseas v. Union of India 2013 (293) ELT 496 (Guj.)

Facts of the case: The petitioner was granted a refund by way of order-in-original and the same was also upheld by the CESTAT. However, a fresh show cause notice was issued on the ground that refund was erroneously granted. The show cause notice, this time was adjudicated in favour of the Department. The petitioner challenged this order before Commissioner (Appeals) five months after the said order was passed. Therefore, the Commissioner (Appeals) and Tribunal (when the matter was brought before it) rejected the appeal on the grounds of limitation as the same was filed beyond three months from the date of the said order.

Decision: The High Court opined that since the total length of delay was very small and the case had extremely good ground on merits to sustain, its non-interference at that stage would cause gross injustice to the petitioner. Thus, the High Court, by invoking its extraordinary jurisdiction, quashed the order which held that refund was erroneously granted. The High Court held that such powers are required to be exercised very sparingly and in extraordinary circumstances in appropriate cases, where otherwise the Court would fail in its duty if such powers are not invoked.

CASE 38.

CCE v RDC Concrete (India) Pvt. Ltd. 2011 (270) ELT 625 (SC)

Question: Can re-appreciation of evidence by CESTAT be considered to be rectification of mistake apparent on record under section 35C(2) of the Central Excise Act, 1944? **Statements of Fact:** the arguments not accepted at an earlier point of time were accepted by CESTAT while hearing the application for rectification of mistake and it arrived at a conclusion different from earlier one. (CA Final May 2014 RTP)

Decision: No. The Apex Court elucidated that re-appreciation of evidence on a debatable point cannot be said to be rectification of mistake apparent on record. The Supreme Court observed that arguments not accepted earlier during disposal of appeal cannot be accepted while hearing rectification of mistake application. **Note:** As per section 35C(2) of the Central Excise Act, 1944,

the Appellate Tribunal may amend the order passed by it earlier provided the parties to the appeal bring to the notice of the Tribunal for rectification of any mistakes apparent from the records within six months from the date of issuing such earlier order.

CASE 39.

CCE v Gujchem Distillers 2011 (270) ELT 338 (Bom) Is the CESTAT order disposing appeal on a totally new ground sustainable?

Decision: No. The High Court explained that had the CESTAT not been satisfied with the approach of the adjudicating authority, it should have remanded the matter back to the adjudicating authority. However, it could not have assumed to itself the jurisdiction to decide the appeal on a ground which had not been urged before the lower authorities.

CASE 40.

Commissioner of Central Excise, Delhi v. Brew Force Machine Pvt. Ltd. 2015-TIOL-1873-HC-DEL-CX-LB, Hon'ble Delhi High Court was held that CESTAT, while dealing with an application for stay, has the power and jurisdiction to grant stay beyond 365 days, when the assessee is not responsible for delay in disposing of the appeal, under Section 35C(2A) of the Central Excise Act.

CASE 41.

CCE v. GEM PROPERTIES (P) LTD. 2010 (257) E.L.T. 222 (KAR):

Assessee claim: Excise duty was paid on exempted goods and hence, entitled to the refund of excise duty wrongly paid by it. Also stated that company is incurring heavy losses therefore, refund not amounts to unjust enrichment.

Department Contention: Since, all the material sold by the assessee had been inclusive of excise duty. It was evident from the Chartered Accountant's certificate that the cost of the duty was included while computing the cost of production of the material. Therefore, refund of duty not allowed.

Decision: Refund not allowed. It would amount to unjust enrichment because all the materials sold by the assessee had been inclusive of excise duty.

CASE 42.

CCE v. Superintending Engineer TNEB 2014 (300) E.L.T. 45 (Mad.)

Question: Does the principle of unjust enrichment apply to State Undertakings?

Facts of the case: 1. The assessee (Basin Bridge Gas Turbine Power Station of the Tamil Nadu Electricity Board) filed refund claim on the ground that they were eligible for exemption of duty on Naphtha used in the production of electricity at their power plant. Consequently, they claimed refund of the duty paid by them for naphtha received by them during the relevant period. 2. The claim of the respondent was rejected on the ground that the respondent (assessee) had not proved that they had not passed on the duty liability to the consumers and when the electricity rate had remained the same and the exemption notification was not in force, the

continuance of the same electricity rates even after availing of the benefits of exemption, would indicate that the assessee had passed on the duty liability to the ultimate consumer.

Decision: The High Court relied on the decision of the Constitution Bench of the Apex Court rendered in the case of *Mafatlal Industries Ltd. v. Union of India* 1997 (89) E.L.T. 247 SC. The Supreme Court in the said case held as under “the doctrine of unjust enrichment is, however, inapplicable to the State”. State represents the people of the country. No one can speak of the people being unjustly enriched.” The High Court held that the concept of unjust enrichment is not applicable as far as State Undertakings are concerned and to the State. Judgment has been given in favour of the assessee and against the department.

CASE 43.

Astik Dyestuff Private Limited v. CCEx. & Cus. 2014 (34) S.T.R. 814 (Guj.)

1. Whether sales commission services are eligible input services for availment of CENVAT credit?
2. If there is any conflict between the decision of the jurisdictional High Court and the CBEC circular, then which decision would be binding on the Department?
3. Also, if there is a contradiction between the decisions passed by jurisdiction High Court and another High Court, which decision will prevail?

Decision:

1. It was elaborated by the High Court that in the case of *Cadila Healthcare Limited*, the jurisdictional High Court did not allow CENVAT credit on sales commission services after interpreting the relevant provisions of law.
2. The High Court clarified that the decision of the jurisdictional High Court is binding to the Department rather than the Circular issued by the C.B.E. & C.
3. When there are two contrary decisions, one of jurisdictional High Court and another of the other High Court, then the decision of the jurisdictional High Court would be binding to the Department and not the decision of another High Court.

CASE 44.

Khanapur Taluka Co-op. Shipping Mills Ltd. v. CCEx. 2013 (292) E.L.T. 16 (Bom.):

Question: In a case where an appeal against order-in-original of the adjudicating authority has been dismissed by the appellate authorities as time-barred, can a writ petition be filed to High Court against the order-in-original?

Decision: The High Court referred to the case of *Raj Chemicals v. UOI* 2013 (287) ELT 145 (Bom.) wherein it held that where the appeal filed against the order-in-original was dismissed as time-barred, the High Court in exercise of writ jurisdiction could neither direct the appellate authority to condone the delay nor interfere with the order passed by the adjudicating authority. Consequently, it refused to entertain the writ petition in the instant case.

CASE 45.

Habib Agro Industries v. CCEEx. 2013 (291) E.L.T. 321 (Kar.): Question: Can delay in filing appeal to CESTAT for the reason that the person dealing with the case went on a foreign trip and on his return his mother expired, be condoned?

Decision: The High Court observed that there did not appear to be any deliberate latches or neglect on the part of the authorised representative to file the appeal. It held that the reason for delay in filing appeal to CESTAT, that the person dealing with the case went on a foreign trip and on his return his mother expired, could not be considered as unreasonable for condonation of delay. Therefore, delay can be condoned.

CASE 46.

Rishiroop Polymers Pvt. Ltd. v. Designated Authority 2013 (294) E.L.T. 547 (Bom.)

Facts of the case: The CESTAT upheld a notification issued by the Central Government imposing anti-dumping duty on certain products originating from specified countries pursuant to the findings recorded by the Designated Authority in a review of anti-dumping duty. The assessee filed a writ petition under Article 226 of the Constitution to challenge the said order passed by the CESTAT under section 9C of the Customs Tariff Act, 1975. The Department contended that an appeal, and not a writ petition, would lie against the order passed by the CESTAT.

Decision: The High Court, therefore, held that it would not be appropriate for it to exercise the jurisdiction under Article 226 of the Constitution, since an alternate remedy by way of an appeal was available in accordance with law. The High Court thus, dismissed the petition leaving it open to the assessee to take recourse to the appellate remedy.

CASE 47.

Metal Weld Electrodes v. CESTAT 2014 (299) ELT 3 (Mad.)

Question: Which remedy is available against a pre-deposit order (i.e. interim order) passed by CESTAT under section 35F of Central Excise Act, 1944/section 129E of Customs Act, 1962; is it an appeal to High Court under section 35G of Central Excise Act, 1944/section 130 of Customs Act, 1962 or a writ petition before High Court?

Decision: The Commissioner of Central Excise or the other party aggrieved may file an appeal to the High Court against “any order passed by the Appellate Tribunal” (other than valuation and rate of duty determination) Sec. 35G(2) of C.E.A. 1944. Finally, the High Court held that the order passed by the CESTAT in terms of section 35F of the Central Excise Act, 1944 or section 129E of the Customs Act, 1962 is appealable in terms of section 35G of the Excise Act, 1944 or section 130 of the Customs Act, 1962.

CASE 48.**CCE v. Nahar Industrial Enterprises Ltd. 2010 (19) STR 166 (P & H)**

Facts of the Case: The assessee was engaged in the manufacture of sugar. The Central Government directed him to maintain buffer stock of free sale sugar for the specified period. In order to compensate the assessee, the Government of India extended buffer subsidy towards storage, interest and insurance charges for the said buffer stock of sugar. Revenue issued a show cause notice to the assessee raising the demand of service tax alleging that amount received by the assessee as buffer subsidy was for storage and warehousing services.

Decision: The High Court noted that apparently, service tax could be levied only if service of storage and warehousing was provided. Nobody can provide service to himself. In the instant case, the assessee stored the goods owned by him. After the expiry of storage period, he was free to sell them to the buyers of its own choice. He had stored goods in compliance with the directions of the Government of India issued under the Sugar Development Fund Act, 1982. He had received subsidy not on account of services rendered to Government of India, but had received compensation on account of loss of interest, cost of insurance etc. incurred on account of maintenance of stock. Hence, the High Court held the act of assessee could not be called as rendering of services.

CASE 49.**CCE v. Fact Paper Mills Private Limited 2014 (308) E.L.T. 442 (SC) Can an appeal be filed before the Supreme Court against an order of the CESTAT relating to clandestine removal of manufactured goods and clandestine manufacture of goods?**

Decision: The Supreme Court held that the appeals relating to clandestine removal of manufactured goods and clandestine manufacture of goods are not maintainable before the Apex Court under section 35L of the Central Excise Act, 1944.

CASE 50.**Principal Commissioner of Central Excise & Customs, Daman Commissionerate v. Omnitex Industries (India) Ltd. (2016) 67 taxmann.com 122 (Bombay)**

Facts of the case: The appellant preferred appeal against the order of the CESTAT under section 35G of Central Excise Act within 180 days before the Gujarat HC. After admitting the appeal, it remained pending for 2192 days and after that the Gujarat HC held that since the manufacturing unit in the present case is located in Daman, the Gujarat HC does not have any territorial jurisdiction and hence dismissed the appeal. **Department contention:** It was time barred appeal and condo-nation of delay is also be not filed.

Decision: the Bombay High court held that the entire period from the time of filing the appeal in Gujarat HC till its disposal can be fairly excluded for the computation of period of limitation. Further, there is no requirement of filing condo-nation of delay, as the period from the date of receipt of order appealed against and the date of filing the appeal in Bombay HC after deducting the entire period (from the date of filing appeal in Gujarat HC to the date of its disposal), still does not exceed 180 days. Hence, only if the said period exceeds 180 days, the appellant will be required to file application-seeking condo- nation of delay. Since, the assessee had wrongly filed appeal before Gujarat High Court instead of Bombay High Court, the period

spent in pursuing remedy before Gujarat HC must be excluded while computation of time limit for filing appeal before Bombay HC.

CASE 51.

Neeraj Jhanji v. CCE & Cus. 2014 (308) E.L.T. 3 (S.C.)

Facts of the Case: In this case, the assessee filed a writ petition before the Delhi High Court against the order in original passed by the Commissioner of Customs of Kanpur. However, the jurisdictional High Court for the petitioner would have been Allahabad High Court. When the Revenue raised objection over the territorial jurisdiction of the High Court, the assessee withdrew the appeal from the Delhi High Court and filed the appeal with the Allahabad High Court with the application for condonation of delay. The Allahabad High Court, however, dismissed the application for condonation of delay and also dismissed the appeal as time barred. Then, the assessee filed a special leave petition with the Supreme Court.

Decision: The Supreme Court observed that the very filing of writ petition by the petitioner in Delhi High Court against the order in original passed by the Commissioner of Customs, Kanpur indicated that the petitioner had taken chance in approaching the High Court at Delhi which had no territorial jurisdiction in the matter. The filing of the writ petition before Delhi High Court was not at all bona fide.

CASE 52.

CCus.v. Ashok Kumar Jain 2013 (292) ELT 32 (Del.)

Department contended: The Settlement Commission lacks the jurisdiction to entertain the baggage cases.

Decision: The High Court opined that the provisions that conferred jurisdiction on the Settlement Commission (Section 127B) cannot be construed as narrowly as it sought to be urged by the Revenue. A plain reading of the provisions of sections 127A and 127B reveals that there is no bar/express or implied on the Settlement Commission - in respect of entertaining applications by the passengers which brought in goods through their baggage. Therefore, Settlement Commission has jurisdiction over baggage cases.

CASE 53.

Saurashtra Cement Ltd. v. CCus. 2013 (292) E.L.T. 486 (Guj.)

Question: Is judicial review of the order of the Settlement Commission by the High Court or Supreme Court under writ petition/special leave petition, permissible?

Decision: The High Court noted that although the decision of Settlement Commission is final, finality clause would not exclude the jurisdiction of the High Court under Article 226 of the Constitution (writ petition to a High Court) or that of the Supreme Court under Articles 32 or 136 of the Constitution (writ petition or special leave petition to Supreme Court). The Court would ordinarily interfere if the Settlement Commission has acted without jurisdiction vested in it or its decision is wholly arbitrary or perverse or mala fide or is against the principles of natural justice or when such decision is ultra vires the Act or the same is based on irrelevant considerations. The Court, however, pronounced that the scope of court's inquiry against the

decision of the Settlement Commission is very narrow, i.e. judicial review is concerned with the decision-making process and not with the decision of the Settlement Commission.

CASE 54.

Additional Commissioner of Customs v. Shri Ram Niwas Verma [W.P. (C) No. 7363/2014 & CM 17221/ 20 L4]:

Decision: Hon'ble Delhi High court held that Settlement Commission has no jurisdiction to decide cases in relation to smuggling of the goods specified under section 123 of the Customs Act, 1962. In view of the said order of the Delhi High Court, it has been clarified that Settlement Commission has no jurisdiction to entertain the matters in relation to the goods specified under section 123 of the Customs Act, 1962 which include gold [F. No. 275/46/2015 CX. 8A dated 01.10.2015].