

**Chapter 1****INTRODUCTION**

**1.** Entry 83 of the Union list has empowered the Central Government to levy duty of Customs including export duties.

**2.** The Customs Act, 1962 extends to the whole of India and, **save as otherwise provided in this Act, it applies also to any offence or contravention thereunder committed outside India by any person.** [Sec. 1]

**THE CHARGEABILITY**

Section 12 of the Customs Act, 1962 the charging section, lays down the following points:

- (a) Duties of customs shall be levied on goods imported into or exported from India.
- (b) The duty shall be at such rate as is specified in the Customs Tariff Act, 1975 or any other law for the time being in force.
- (c) Government goods shall be treated at par with the non-government goods for the purpose of levy of customs duty.
- (d) Such levy shall be subject to the other provisions of the Customs Act, 1962, or any other law for the time being in force.

**DISCUSSIONS & EXPLANATIONS****Basic Terminology**

(i) The jurisdiction of India extended up to 12 Nautical miles from the end of land mass of India. This is known as “**Indian territorial waters**”. It also extends to structures, installations and vessels in relation to oil exploitation etc. between Indian territorial water and Exclusive Economic Zone i.e. in the region of continental shelf.

(ii) “**Indian Custom Waters**” extends up to the limit of **200 nautical miles (EEZ)** from the base line and includes any bay, gulf, harbour, creek or tidal river. [Section 2(28)- limit extended ]

(iii) Exclusive Economic Zone (EEZ) extends up to 200 nautical miles from the land mass.

(iv) Continental shelf – from territorial water to Exclusive Economic Zone.

**Import Procedure****SUMMARY**

(1) At first the master of the vessel shall file the *Import General Manifest* (IGM). This contains the descriptions of the goods contain in the vessels

(2) After proper verification of I.G.M. the proper officer of Customs grant *Entry Inward* to the vessels .

(3) The importer establishes the ownership of his goods through *Bill of Lading* and other relevant document.

(4) The importer now *files Bill of Entry electronically for Home Consumption* and pays Custom Duty. And thereafter gets the goods cleared from custom station

In case the importer is not able to pay customs duty then he shall file *Into- bond Bill of Entry electronically* for warehousing and get the goods deposited in the warehouse. Thereafter he files *Ex-Bond Bill of Entry electronically* to get the goods cleared from custom station and pays custom duty.

## PROCEDURE OF IMPORTATION

**(1) Goods shall only be arrived to the Custom Station [Section 29]:** The person-in-charge of a vessel or an aircraft entering India from any place outside India shall not cause or permit the vessel or aircraft to call or land

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

(b) at any time while it is carrying passengers or cargo brought in that vessel or aircraft;

at any place other than a customs port or a customs airport, as the case may be, unless permitted by the Board. However, such vessel or aircraft can land at a place other than a customs port or customs airport in case of accident, stress of weather or other unavoidable cause and the person in charge has to comply the following obligation -

(i) immediately report the arrival of the vessel/aircraft to the nearest customs officer/police station, (ii) produce the log book on demand, (iii) unloaded goods on permission and (iv) must comply direction given custom officer.

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**(2) Filing of Import General Manifest Import Report [Section 30]:** Person in charge of the vessels/ vehicle/aircraft carrying imported goods **or export goods** shall—

— submit arrival manifest or IGM electronically before arrival of the vessels/aircraft at the customs port/airport. [in case of vessels or aircraft]

— submit Import Report within 12 hours of arrival of the vehicle at the customs station. [in case vehicle]

In case of delay, without sufficient reasons a maximum penalty ₹50,000 can be imposed.

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

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**(3) Section 30A: Passenger and crew arrival manifest and passenger name record information**

(1) The person-in-charge of a conveyance that enters India from any place outside India or any other person as may be specified by the Central Government by notification in the Official Gazette, shall deliver to the proper officer—

(i) the passenger and crew arrival manifest before arrival in the case of an aircraft or a vessel and upon arrival in the case of a vehicle; and

(ii) the passenger name record information of arriving passengers, in such form, containing such particulars, in such manner and within such time, as may be prescribed.

(2) Where the passenger and crew arrival manifest or the passenger name record information or any part thereof is not delivered to the proper officer within the prescribed time and if the proper officer is satisfied that there was no sufficient cause for such delay, the person-in-charge or specified person shall be liable to such penalty, not exceeding ₹50,000 as may be prescribed.

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**(4) Granting of Entry Inwards [Section 31]:** After proper verification of I.G.M. the proper officer of Customs grant *Entry Inward* to the vessels.

The master of a vessel shall not permit the unloading of any imported goods until an order has been given by the proper officer granting ENTRY INWARDS to such vessel.

Entry inwards shall not be given until the arrival manifest or import manifest has been delivered or the proper officer is satisfied that there was sufficient cause for not delivering it.

This provision is not applicable to unloading of baggage accompanying a passenger or a member of the crew, mail bags, animals, perishable goods and hazardous goods.

**(5) Unloading of goods at the custom station:** Imported goods shall be unloaded- only if mentioned in the IGM/import report –only at the approved places in any customs port/airport – under the supervision of the proper officer –during working hours and shall not be unloaded on Sundays/on any holidays.

**(6) Goods remain under the custody of the custodian at custom station:** The Goods so unloaded shall remain in the custody of the Custodian. A custodian is a person approved by the Commissioner of Customs for this purpose. If the imported goods are pilfered after unloading in a customs area, while in the custody of the custodian, then the custodian shall be liable to pay duty on such goods.

**(7) Electronic filing of bill of entry [Section 46 read with the Bill of Entry (Electronic Integrated Declaration and Paperless Processing) Regulations, 2018]:**

1. The importer now required files Bill of Entry electronically **on the customs automated system** for Home Consumption **in such form and manner as may be prescribed** and pays Custom Duty and thereafter gets the goods cleared from custom station. In case the importer is not able to pay customs duty then he shall file Into- bond Bill of Entry electronically for warehousing and get the goods deposited in the warehouse. Thereafter he files Ex-Bond Bill of Entry electronically to get the goods cleared from custom station and pays custom duty.

**"bill of entry" means electronic integrated declaration accepted and a unique number generated and assigned to that particular bill of entry by the Indian Customs Electronic Data Interchange System, and includes its electronic records or print-outs. [Regulation 2]**

**2. Time Limit of filing Bill of Entry:** The importer shall present the bill of entry before the end of the next day following the day (excluding holidays) on which the aircraft or vessel or vehicle carrying the goods arrives at a customs station at which such goods are to be cleared for home consumption or warehousing.

Provided it may be presented **at any time not exceeding 30 days prior to** the expected arrival of the aircraft or vessel or vehicle by which the goods have been shipped for importation into India.

The bill of entry shall be deemed to have been filed and self-assessment completed when after entry of the electronic integrated declaration on the customs automated system or by way of data entry through the service centre, a bill of entry number is generated by the Indian Customs Electronic Data Interchange System for the said declaration and the self-assessed copy of the Bill of Entry may be electronically transmitted to the authorised person or printed out at the service centre. [Regulation 4(2)]

**3. Charges for late presentation of the bill of entry:** ₹ 5000 per day for the initial 3 days of default and thereafter ₹10000 per day for each day of default. Where the proper officer is satisfied with the reasons of delay, he may waive off the charges. The late presentation charges in respect of any bill of entry shall not exceed the duty payable in respect of that particular bill of entry. However, where the duty or any other charges in respect of any bill of entry are not

payable for any reason like exemption or otherwise, the late presentation charges shall not exceed ₹ 50,000. [Regulation 4(3) &(4)]

4. The importer while presenting a bill of entry shall make and subscribe to a declaration as to the truth of the contents of such bill of entry and shall, in support of such declaration, produce to the proper officer the invoice, if any, **and such other documents relating to the imported goods as may be prescribed.**

5. The importer who presents a bill of entry shall ensure the following, namely:—  
(a) the accuracy and completeness of the information given therein;

(b) the authenticity and validity of any document supporting it; and

(c) compliance with the restriction or prohibition, if any, relating to the goods under this Act or under any other law for the time being in force. [Sec. 46(4A)]

6. **Retention of document:** The authorised person shall retain, for a period of 5 years from the date of presentation of the bill of entry, the assessed copy of the bill of entry, digital or otherwise, and all supporting documents in original, which were used or relied upon by him in submitting the electronic integrated declaration, and shall produce them before Customs in connection with any action or proceedings under the Act or under any other law for the time being in force [Regulation 6]

7. **Penalty:** Any authorised person who contravenes any provision of these regulations or who fails to comply with any provisions of these regulations shall be liable to a penalty which may extend to ₹ 50,000. [Regulation 8]

8. **Substitution of BOE:** If the proper officer is satisfied that the interests of revenue are not prejudicially affected and that there was no fraudulent intention, he may permit substitution of a bill of entry for home consumption for a bill of entry for warehousing or *vice versa*.

9. **Amendment of Bill of Entry:** Section 149 of the Act gives discretionary powers to the proper officer to authorise the amendment of any document presented in the custom house. Hence, Bill of Entry can be amended U/s 149. However, in case the imported goods are cleared for home consumption or for deposit in a warehouse the amendment of bill of entry is not possible except on the basis of documentary evidence, which was in existence at the time the goods were cleared or deposited.

| <b>Amendment of Bill of Entry</b>  | <b>Substitution of Bill of Entry</b>  |
|--|---|
| (1) In case of amendment of Bill of Entry some rectification or alteration is made in the BOE. For instance if we have file for home consumption, we will continue with Bill of Entry for H.C. but some changes would be made in it. | (1) In case of substitution of BOE, A Bill of Entry for H.C is substituted by Bills of Entry for warehousing or vice-versa. |
| (2) Amendment of BOE always related to original date.  | (2) Substitution of B.E would relate to the fresh date when the substituted BOE is filed                                    |

Note: If there is loss of revenue then the department will not permit substitution of bill of entry.

**(8) Assessment of duty:** The importer will self-assess the duty payable as per the applicable rate of duty and exchange rate. The self-assessment is subject to verification of proper officer. The proper officer may re-assess the duty if it found that the self-assessment is incorrect. This is called re-assessment procedures. After determination of duty the proper officer shall return the Bill of Entry to the importer. [Section 17]

**(9) Payment of duty [Section 47]:** If the goods are cleared for home consumption, the importer shall pay the import duty—

(a) on the date of presentation of the bill of entry in the case of self-assessment; or

(b) within one day (excluding holidays) from the date on which the bill of entry is returned to him by the proper officer for payment of duty in the case of assessment, reassessment or provisional assessment; or

(c) in the case of deferred payment, from the specified due date.

and if he fails to pay the duty within the time so specified, he shall pay interest on the duty not paid or short-paid till the date of its payment, @ 15% p.a (10-36%) on such duty till the date of payment.

However, if the goods are cleared to be stored in a warehouse, payment of duty is deferred till the time of clearance from such warehouse.

#### **Deferred Payment of Duty**

Provided that the Central Government may, by notification in the Official Gazette, permit certain class of importers to make deferred payment of said duty or any charges in such manner as may be provided by rules. [2<sup>nd</sup> Proviso to Sec. 47(1)]

**Deferred payment of Import Duty, Rules 2016**-Importers certified under Authorised Economic Operator Programmer as AEO (Tier –two and Tier-three) by the Directorate General of Performance Management under CBIC can only avail such benefits.

#### **Due Date**

| Bill of Entry returned for Payment from                        | Due date of payment (excluding holidays) |
|--|--|
| Upto 15 <sup>th</sup> day of any month                         | 16 <sup>th</sup> day of same month       |
| From 16 <sup>th</sup> to last date of any month (except March) | 1 <sup>st</sup> day of next month        |
| From 16 <sup>th</sup> to 31 <sup>st</sup> March                | 31 <sup>st</sup> March                   |

Procedure – (i) must inform to the Principal/ Chief Commissioner. (ii) Payment shall be made electronically unless specifically allowed for physical payment. (iii) the benefit shall not be allowed for goods which have not been assessed/not cleared by the importer; or if there is more than one delay payment of duty in 3 consecutive months till the duty and interest has been fully paid.

**Note - E-payment of duty is mandatory for an,** (a) Importer registered under accredited client programmed; (b) Importer paying custom duty of ₹ 1lakh or more per bill of entry.

**(10) Clearance of imported goods:** The goods lying in the custom station must be cleared within 30 days either for home consumption or for warehousing or for transshipment within 30 days or such extended period as may be granted, from the date of unloading of goods. [Section 48]

**Further, after the successful bidder has been informed about the result of the auction, a consolidated bill of entry, buyer-wise will be filed with the Customs in the prescribed format by the concerned custodian for clearance of the goods as per Section 46 of the Customs Act 1962 read with Un-Cleared Goods (Bill of Entry) Regulations, 1972 (Regulation 2 & 3)**

**(a) The proper officer of Customs shall assess the goods to duty in accordance with the extant law within 15 days of filing of the Bill of Entry and after assessment inform the amount of duty payable to the concerned custodian.**

**(b) The auctioned goods shall be handed over to the successful bidder after assessment and out-of-charge orders given by the proper officer, on payment of dues.**

**However,** (a) animals, perishable goods and hazardous goods, may, with the permission of the proper officer, be sold at any time; (b) arms and ammunition may be sold at such time and place and in such manner as the Central Government may direct.

**(i) Clearance for home consumption [Section 47]:** 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 and any charges payable under this Act in respect of the same, the proper officer may make an order permitting of the goods for home consumption.

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

**(ii) Warehousing of imported goods [Section 68]:** The importer shall file Into-Bond bill of entry electronically and is assessed to duty. Thereafter shall execute **triple duty bond** i.e, a bond binding himself in a sum equal to thrice the amount of the duty assessed on such goods. The proper officer after satisfying himself that all the requirements have been fulfilled shall make an order permitting the deposit of the goods in a warehouse. Subsequently, the importer shall clear the warehouse goods for home consumption-

(a) by presenting an ex-bond bill of entry to the proper officer.

(b) the import duty, interest, fine and penalties in respect of such goods have been paid, and

(c) the proper office has made an order for clearance of such goods for home consumption.

**[Details to be discussed in separate chapter]**

### **(iii) SECTION 49: STORAGE OF IMPORTED GOODS IN WAREHOUSE PENDING CLEARANCE/ WAREHOUSING WITHOUT WAREHOUSING**

Where, the Assistant Commissioner of Customs or Deputy Commissioner of Customs is satisfied on the application of the importer that the goods cannot be cleared/ removed for deposit in a warehouse within a reasonable time -

(a) in case of any imported goods, (whether dutiable or not), entered for home consumption;

(b) in the case of any imported dutiable goods,

the goods may pending clearance/removal, be permitted to be stored in a public warehouse for a period not exceeding 30 days [ may extend further 30 days at a time by the Principal Commissioner of Customs or Commissioner of Customs]

The provisions of Warehousing shall not apply to goods permitted to be stored in a public warehouse under this section.

### **(iv) Transit and transshipment of imported goods (other than Baggage, Goods imported by post, Stores):**

**Transit of goods without payment of duty (Section 53):** Any goods (other than prohibited goods) imported in a conveyance and mentioned in the arrival manifest or import manifest or the import report as for transit in the same conveyance to any place outside India or any custom station may be allowed to be transited without payment of duty, **subject to prescribed conditions.**

**Transshipment of goods [Section 54]:** Where any goods (other than prohibited goods) imported in a conveyance and mentioned in the arrival manifest or import manifest or the import report as for transshipment to any place outside India or any custom station in India, then such goods may be allowed to be so transshipped without payment of duty. The importer shall present a Bill of transshipment to the proper officer in such form and manner as may be prescribed. Unlike transit under transshipment, Goods are transferred from one conveyance to another.

Where the goods (other than prohibited goods) are being transshipped under an international treaty or bilateral agreement between the Government of India and Government of a foreign country, a declaration for transshipment (instead of a bill of transshipment) shall be presented to the proper officer in such form and manner as may be prescribed.

### **Discussions & Explanations**

| Transit                                    | Transshipment                          |
|--|--|
| Without payment of duty                    | Without payment of duty                |
| Same conveyance                            | Different conveyance                   |
| It is sufficient if it is mentioned in IGM | Mention in IGM + Bill of transshipment |
| Condition to be fulfilled.                 | Prescribed condition to be satisfied   |

Note: We know that the Date of Entry Inward is relevant to determine the rate of duty.

**In case of Transit-** The foreign vessel is granted Entry Inward in Every Custom station. Therefore, for every Custom station we shall have a *new date* of Entry Inward [**Rate of duty and tariff valuation of transshipped goods to be determined as per section 15 - Amber Woolen Mills (SC)**]

**In case of Transshipment-** There is only one date of Entry Inward which is granted at original Custom station from where the goods are to be transshipped. [There cannot be a different date of entry inwards in respect of the vessel for the goods intended for transshipment :- Amber Woolen Mills (SC)]

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### **JUDICIAL PRONOUNCEMENTS**

(1) The assessee sought to amend the Bill of Entry by providing a totally different declaration than what have been declared in the earlier Bill of Entry filed by them (in respect to description of goods). Held that since the goods had left the customs control and were not available for verification, hence, the amendment of bill of entry was not to be allowed.

(2) In case of short-landed goods, the excess duty paid, if any can be claimed as refund without challenging the assessment order.

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**PAYMENTS THROUGH ELECTRONIC CASH LEDGER****Payment of duty, interest, penalty, etc. [ Section 51A- w.e.f 29.3.2018]**

(1) Every deposit made towards duty, interest, penalty, fee or any other sum payable by a person under the provisions of this Act or under the Customs Tariff Act, 1975 or under any other law for the time being in force or the rules and regulations made thereunder, using authorised mode of payment shall, subject to such conditions and restrictions, be credited to the electronic cash ledger of such person, to be maintained in such manner, as may be prescribed.

(2) The amount available in the electronic cash ledger may be used for making any payment towards duty, interest, penalty, fees or any other sum payable under the provisions of this Act or under the Customs Tariff Act, 1975 or under any other law for the time being in force or the rules and regulations made thereunder in such manner and subject to such conditions and within such time as may be prescribed.

(3) The balance in the electronic cash ledger, after payment of duty, interest, penalty, fee or any other amount payable, may be refunded in such manner as may be prescribed.

(4) Notwithstanding anything contained in this section, if the Board is satisfied that it is necessary or expedient so to do, it may, by notification, exempt the deposits made by such class of persons or with respect to such categories of goods, as may be specified in the notification, from all or any of the provisions of this section

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**Chapter 2****CUSTOM VALUATION - I****VALUATION OF IMPORTED GOODS**

**Taxable Event** -The taxable event in customs is importation of goods into India or exportation of goods from India.

(i) Import commences when goods crossed the Indian territorial water. Import is complete when the goods crossed the inner boundary of customs station i.e. when the goods are cleared for home consumption. This means that if the goods are destroyed when they are in custom station then custom duty will not be payable because the import is not complete **Garden Silk Mills Ltd. v. UOI [1999] 113 ELT 358 (SC)**

**(ii) Rates of Custom Duty /Section 15/**

1. For goods cleared for home consumption –

(i) date of filling bill of entry or

(ii) Entry Inward (for the vessels)/ arrival of the aircraft or vehicle whichever is later.

2. For warehoused goods- date of filling Ex-bond Bill of Entry.

3. In the case of any other goods, on the date of payment of duty.

**(iii) Exchange rates (as announced by CBIC)**

1. For goods cleared for home consumption- date of filling Bill of Entry

2. For warehoused goods- date of Into Bill of Entry for warehousing

**TYPES OF CUSTOMS DUTIES**

Section 2 of Customs Tariff Act provides the rate at which duties of customs shall be charged. The duty charged by this system may be specific duty (i.e. duty based on measures like quintal, meters, etc.) or ad valorem (i.e. duty based on certain percentage of value). The First Schedule Provides the rate of Import duty and the Second Schedule provides the rate of Export Duty.

|   |   |
|---|---|
| Basic Custom Duty<br>[Section 2 of<br>Customs Tariff<br>Act]            | <b>Customs Tariff Act provides two types of basic rate: -</b><br><b><u>(a) Standard rate of duty:</u></b> Generally, all goods are liable to duty at this rate. This rate is higher than preferential rate of duty. This rate is mentioned in fourth column of the schedule.<br><b><u>(b) Preferential rate of duty:</u></b> Where goods are imported from notified preferential area, then preferential rate of duty is applicable. It is a concessional rate (given in column 5 of the schedule) for importation from preferential area. Importer should make a specific claim for this concessional rate and satisfy specified conditions. |
| Social Welfare Surcharge (SWS)<br>[Chapter VI of the Finance Act, 2018] | Social Welfare Surcharge @ 10% shall be levied on the goods specified in the First Schedule as a duty of customs. It shall be calculated on Basic Customs Duty. [For Petrol, Diesel, Gold and Silver @ 3%] w.e.f 2.2.2018].<br>SWS shall not be levied on – (i) Safeguard Duty u/s. 8B/8C of the Customs Tariff Act; (ii) Countervailing duty u/s. 9; (iii) Anti-dumping duty u/s. 9A; (iv) IGST u/s. 3(7); (v) GST Compensations Cess U/s. 3(9)  |
| Auxiliary Customs Duty  | Article 271 of the Constitution empowers the Parliament to impose surcharges on existing taxes and proceeds from any such surcharge shall form part of the Union Revenue only. The surcharges so levied are known as Auxiliary duty of customs.   |
| Road and Infrastructure Cess  | <b>An additional duty of custom in the name of Road and Infrastructure Cess shall be levied on import of motor spirit (petrol) and on High speed diesel oil @ ₹ 8 per litre.[Chapter VII of the Finance Act, 2018]</b>  |

**LEVY OF IGST AND GST (COMPENSATION) CESS ON IMPORTED GOODS****[Section 3(7) & 3(9) of the Customs Tariff Act, 1975]**

**(1) Section 3(7):** Any article which is imported into India shall, in addition, be liable to integrated tax at such rate, not exceeding 40% as is leviable under section 5 of the Integrated Goods and Services Tax Act, 2017 on a like article on its supply in India, on the value of the imported article as determined under sub-section (8) or **(8A)**, as the case may be.

**(2) Section 3(9):** Any article which is imported into India shall, in addition, be liable to the goods and services tax compensation cess at such rate, as is leviable under section 8 of the Goods and Services Tax (Compensation to States) Cess Act, 2017 on a like article on its supply in India, on the value of the imported article as determined under sub-section (10) or (10A), as the case may be.

**(3) Section 3(8)/(10):** For the purposes of calculating the IGST/GST Cess on any imported article where such tax is leviable at any percentage of its value, the value of the imported article shall, notwithstanding anything contained in section 14 of the Customs Act, 1962, be the aggregate of—

(a) the value of the imported article determined u/s. 14(1) of the Customs Act, 1962 or the tariff value of such article fixed u/s. 14(2); and

(b) any duty of customs chargeable on that article under section 12 of the Customs Act, 1962, and any sum chargeable on that article under any law for the time being in force as an addition to, and in the same manner as, a duty of customs, but does not include IGST u/s. 3(7) and Cess u/s. 3(9)

**(4) Section 3(8A)/(10A):** Where the goods deposited in a warehouse under the provisions of the Customs Act, 1962 are sold to any person before clearance for home consumption or export under the said Act, the value of such goods for the purpose of calculating the integrated tax and Compensation Cess shall be

(a) where the whole of the goods are sold, the value determined under sub-section (8)/(10) or the transaction value of such goods, whichever is higher; or

(b) where any part of the goods is sold, the proportionate value of such goods as determined under sub-section (8)/(10) or the transaction value of such goods, whichever is higher:

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

Provided further that in respect of warehoused goods which remain unsold, the value or the proportionate value, as the case may be, of such goods shall be determined in accordance with the provisions of sub-section (8)/(10).

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

**(4) Section 3(11):** The duty or tax or cess, as the case may be, chargeable under this section shall be in addition to any other duty or tax or cess, as the case may be, imposed under this Act or under any other law for the time being in force.

**(5) Section 3(12):** The provisions of the Customs Act, 1962 and the rules and regulations made thereunder, including those relating to drawbacks, refunds and exemption from duties shall, so far as may be, apply to the duty or tax or cess, as the case may be, chargeable under this section as they apply in relation to the duties leviable under that Act."

**(6) Rate of IGST/GST Compensation Cess-** same as notified in respective Act. Further, NO Social Welfare Surcharge is levied on such rate in Customs.

Rate of IGST for goods of chapter 98 are – [Project Imports- 18%, Laboratory Chemicals- 18%, Passenger baggage – Nil Rate, Specified Drugs and medicines for personal use- 5%, Other drugs and medicines for personal use- 12%, All other dutiable goods for personal use- 28]

### MANNER OF CALCULATION OF CUSTOMS DUTIES

[AS PER CBIC GUIDELINES]

| Cases                                     | Calculations of Customs duties  |
|---|---|
| (1) Suppose Assessable Value = ₹ 1,00,000 | <u>Amount (₹)</u>   |
| BCD- 10%                                  | (A) Assessable Value 1,00,000   |
| IGST-12%                                  | (B) Basic Customs Duty@ 10% on 'A' 10,000                               |
| SWS – 10%                                 | (C) Social Welfare Surcharge @ 10% on 'B' 1,000                         |
| GST Compensation Cess -10%                | (D)IGST u/s. 3(7) @ 12% of (A+B+C) 13320                                |
|   | (E) GST Compensation Cess u/s. 3(9)<br>@ 10% of (A+B+C) <u>11,100</u>   |
|   | Total Custom Duty Payable (B+C+D+E) 35,420                              |
| (1) Suppose Assessable Value = ₹ 1,00,000 | <u>Amount (₹)</u>   |
| BCD - 10%                                 | (A) Assessable Value 1,00,000   |
| CVD -10%                                  | (B) Basic Customs Duty@ 10% 10,000                                      |
| IGST -12%                                 | (C) CVD @ 10% OF (A+B) 11,000   |
| SWS – 10%                                 | (D) SWS @ 10% of (B) 1,000  |
| GST Compensation Cess -10%                | (E) IGST u/s. 3(7) @ 12% of (A+B+C+D) 14,640                            |
|   | (F) GST Compensation Cess u/s. 3(9)<br>@ 10% of (A+B+C+D) <u>12,200</u> |
|   | Total Custom Duty Payable (B+C+D+E+F+G) 48,840                          |

**Question 1:** Whether the high sea sales of imported goods would be chargeable to IGST twice i.e. at the time of Customs clearance u/s. 3(7) of Customs Tariff Act, 1975 and also separately under Section 5 of The Integrated Goods and Services Tax Act, 2017.

**Circular No. 33/2017, Customs:** 'High Sea Sales' is a common trade practice whereby the original importer sells the goods to a third person before the goods are entered for customs clearance. After the High sea sale of the goods, the Customs declarations i.e. Bill of Entry etc is filed by the person who buys the goods from the original importer during the said sale.

**Clarification:** IGST on high sea sale (s) transactions of imported goods, whether one or multiple, shall be levied and collected only **at the time of importation** i.e. when the import declarations are filed before the Customs authorities for the customs clearance purposes for the first time.

Further, value addition accruing in each such high sea sale shall form part of the value on which IGST is collected at the time of clearance.

This is at par with the provisions of section 3(12) of Customs Tariff Act, 1975 inasmuch as in respect of imported goods, all duties, taxes, cesses etc shall be collected at the time of importation i.e. when the import declarations are filed before the customs authorities for the customs clearance purposes.

The importer (last buyer in the chain) would be required to furnish the entire chain of documents, such as original Invoice, high-seas-sales-contract, details of service charges/commission paid etc, to establish a link between the first contracted price of the goods and the last transaction.

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

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### **INPUT TAX CREDIT UNDER CUSTOMS**

- 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.
  - IGST would be available based on GSTIN declared in the Bill of Entry. Input tax credit shall be availed by a registered person only if all the applicable particulars as prescribed in the Invoice Rules are contained in the said document, and the relevant information, is furnished in GST return.
  - Customs EDI system would be interconnected with GSTN for validation of ITC.
-

## VALUATION OF IMPORTED GOODS

**Transaction value:** Section 14(1) provides that for the purposes of the Customs Tariff Act, 1975, or any other law for the time being in force, the value of the imported goods shall be the transaction value of such goods, that is to say, the price actually paid or payable for the goods when sold for export to India for delivery at the time and place of importation where the buyer and the seller of the goods are not related and price is the sole consideration for the sale subject to such other conditions as may be specified in “**Customs Imports Valuation Rules, 2007**”

However, the transaction value in the case of imported goods shall include, in addition to the price as aforesaid, any amount paid or payable for costs or services, including-

- commissions and brokerage,
- engineering, design work,
- royalties and licence fees,
- costs of transportation to the place of importation,
- insurance,
- loading, unloading and handling charges to the extent and in the manner specified in the rules made in this behalf:

### VALUATION FORMAT

|   |            |
|---|------------|
| Ex-Factory Price  | xxx        |
| Add: Freight, loading, unloading and handling charges<br>from the factory of exporter to the loading port | xxx        |
|   | xxx        |
| <b>Add: Adjustment under Rule 10(1)</b> (if not included in the contract price)                           |            |
| (a) Raw material, engineering, design. etc.<br>Supplied by importer free of cost/lower rate               |            |
| (b) Cost of packing/container   |            |
| (c) Royalty, license fees, any other payment as a condition of sale                                       |            |
| (d) Benefit transfer to seller directly or indirectly on subsequent sell                                  |            |
| (e) Commission & Brokerage (except buying commission)   | xxx        |
| <b>FOB value for purpose of imported goods</b>  | <b>xxx</b> |
| <b>Add: Adjustment under Rule 10(2)</b>   |            |
| Freight, Ship Demurrages, Lighterage/barrage charges [Note 1]   |            |
| Insurance [Note 2]  | xxx        |
| <b>CIF value of imported goods/Assessable Value</b>   | <b>xxx</b> |

### **Note 1: Freight:**

#### → Vessel/ Vehicle

If ascertainable - Actual cost

If unascertainable – 20% of FOB value

#### → Air

If ascertainable - Actual cost or 20% of FOB value whichever is lower. If unascertainable – 20% of FOB value

**Note 2: Insurance**

If ascertainable: Actual

If unascertainable: 1.125% of FOB value

Note: Loading, unloading, handling charges, goods demurrage charges related to delivery of the imported goods at the place of importation (Indian port), shall not be considered in computation of CIF value of the goods.

## **CUSTOMS IMPORTS VALUATION RULES, 2007**

### **(1) RULE 10(2) OF THE CUSTOMS IMPORTS VALUATION RULES, 2007**

#### **ADJUSTMENT WITH REGARD TO COST OF TRANSPORTATION, INSURANCE, AND LOADING, UNLOADING AND HANDLING CHARGES**

Rule 10(2) provides that the following shall be included in the value of imported goods for delivery at the time and place of importation-

**“place of importation”** means the customs station, where the goods are brought for being cleared for home consumption or for being removed for deposit in a warehouse.

(a) Actual cost of transport of the imported goods to the place of importation: However, in case the actual cost is unascertainable such cost shall be 20% of the Free on Board (FOB) value of the goods. In case of importation of goods by air, even if the actual cost of transport is ascertainable, the same shall not exceed 20% of FOB value of the goods.

Provided also that in the case of goods imported by sea or air and transshipped to another customs station in India, the cost of insurance, transport, loading, unloading, handling charges associated with such transshipment shall be excluded.

Explanation: The cost of transport of the imported goods referred above includes the ship demurrage charges on chartered vessels, lighter age or barge charges.

(b) **Insurance**: However, in case the cost of insurance is unascertainable, such cost shall be 1.125% of the FOB value of the goods.

#### **Where FOB value and costs of Insurance & transport, not ascertainable:**

The cost of insurance and transport shall be determined as follows-

(a) Cost of transport = 20% of (FOB Value + Cost of Insurance) or  $\text{CIF Value} \times 20 \div 120$ .

(b) Cost of insurance = 1.125% of (FOB Value + Transport Cost) or  $\text{CIF Value} \times 1.125 \div 101.125$

## **(2) RULE 10(1): VARIOUS DUTIABLE FACTORS THAT ARE TO BE ADDED TO THE TRANSACTION VALUE**

According to **Rule 10(1)**, in determining the transaction value, the following dutiable factors are to be added to the price actually paid or payable for the imported goods.

**(a)** the following cost and services to the extent they are incurred by the buyer but are not included in the price actually paid or payable for the imported goods, namely:-

- (i) Commissions and brokerage, except buying commissions;
- (ii) The cost of containers which are treated as being one for customs purpose with the goods in question;
- (iii) The cost of packing whether for labour or materials;

**(b)** The value appropriate, of the following goods and services where supplied directly or indirectly by the buyer free of charge or at reduced cost for use in connection with the production and sale for export of imported goods, to the extent that such value has not been included in the price actually paid or payable namely:-

- (i) materials, components, parts and similar items incorporated in the imported goods;
- (ii) tools, dies, moulds, and similar items used in the production of the imported goods;
- (iii) materials consumed in the production of the imported goods;
- (iv) engineering, development, art work, design work, and plans and sketches undertaken elsewhere than in India and necessary for the production of the imported goods;

**(c)** royalties and licence fees related to the imported goods that the buyer is required to pay, directly or indirectly, as a condition of the sale of the goods being valued, to the extent that such royalties and fees are not included in the price actually paid or payable;

**(d)** the value of any part of the proceeds of any subsequent resale, disposal or use of the imported goods that accrues, directly or indirectly, to seller;

**(e)** all other payments actually made or to be made as condition of sale of the imported goods, by the buyer to the seller, or by the buyer to a third party to satisfy an obligation of the seller to the extent that such payments are not included in the price actually paid or payable.

**Explanation-** Where the royalty, licence fee or any other payment for a process, whether patented or otherwise, is includible under (c) and (e) above, such charges shall be added to the price actually paid or payable for the imported goods, even if such goods are subjected to the said process after importation of such goods.

**Rule 10(3)** - Additions to the price actually paid or payable shall be made under this rule on the basis of objective and quantifiable data.

**Rule 10(4)** - No addition shall be made to the price actually paid or payable in determining the value of the imported goods except as provided under Rule 10.

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**INTERPRETATIVE NOTES TO RULE 10**

**A-Interpretative notes to Rule 10(1)(a)(i) - 'Buying commission'** refers to the fees paid by an importer to his agent for service of representing him abroad in purchase of goods being valued.

**B-Interpretative notes Rule 10(1)(b): Valuation and apportionment when the buyer is providing any goods or services free of charge or at reduced cost for production and sale of export goods-**

**1. In case of goods supplied free of charge or at reduced cost by the buyer**

**Valuation:** If such goods were acquired by the buyer from an unrelated seller, the value thereof shall be purchase price, however, if such goods were produced by the buyer or were acquired from a related seller, the value shall be its cost of production. If in any of these cases, the goods had been used by the buyer-importer, prior to such supply, the purchase price/production cost will be suitably adjusted downward to arrive at a correct value reflecting such use.

**Apportionment:** The value determined in the aforesaid manner shall be apportioned to the imported goods in a reasonable manner following the generally accepted principles of accounting. Based on the documentation provided by the importer and as per the option exercised by him, such value may be apportioned to the first shipment of import or to the goods produced up to the first shipment of import or to the entire anticipated production under the contract.

**For example:** An importer provides the producer with a mould (of value ₹ 1,00,000) to be used in the production of the imported goods and contracts with him to buy 10,000 units. By the time of arrival of the first shipment of 1,000 units, the producer has already produced 4,000 units. The importer may request the customs officer to apportion the value of the mould (₹1,00,000) over 1,000 units (i.e. @ ₹ 100 p.u.), 4,000 units (i.e. @ ₹ 25 p.u.) or 10,000 units (i.e. @ ₹ 10 p.u.).

**B- Interpretative notes Rule 10(1)(c): Determination of nature and scope of the Royalties and License fees includible in the transaction value -**

1. The royalties and licence fees may include among other things, payments in respect to patents, trademarks and copyrights. However, the charges for the right to reproduce the imported goods in the country of importation shall not be added to the price actually paid or payable for the imported goods in determining the customs value.

2. Payments made by the buyer for the right to distribute or resell the imported goods shall not be added to the price actually paid or payable for the imported goods if such payments are not a condition of the sale for export to the country of importation of the imported goods.

**C- Interpretative notes Rule 10(3): Objective and quantifiable data-**Where objective and quantifiable data do not exist with regard to the additions required to be made under the provisions of rule 10, the transaction value cannot be determined under the provisions of Rule 3. For example: If a product is imported in Kilogram and the same is made into liquid solution after importation and the royalty is based on sale price of that solution, then, such royalty is not addable.



**Question 2:** Consider the following points in respect to Royalty –

► X Ltd. imports shuttles for the manufactures of printers. In a Separate contract it also pays royalty to the foreign supplier to obtain know-how for manufacture of printers. Both are independent contract.

Answer:

► X Ltd. imports certain components for manufacturing certain goods. The foreign supplier shall provide the know-how for processing of components to manufacturing finished goods. Both the parties have signed MOU for this purpose.

Answer:

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### CONCEPT OF TARIFF VALUE

**Section 14(2) of the Customs Act, 1962** provides that if the Board (CBIC) is satisfied that it is necessary or expedient so to do, it may, by notification in the Official Gazette, fix tariff values for any class of imported goods or export goods, having regard to the trend of value of such or like goods, and where any such tariff values are fixed, the duty shall be chargeable with reference to such tariff value. At present tariff value has been fixed for some essential edible oils, brass, scrap etc.

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## THE PRACTICE WOK BOOK

### CUSTOM VALUATION OF IMPORTED GOODS

#### **Question 3:**

- (1) FOB value of goods imported through sea route = \$ 1,00,000 )
- (2) Freight \$ 25, 000
- (3) Insurance not known
- (4) Lighterage & barge charges \$ 1,000
- (5) Ship demurrage \$ 1,000
- (6) Freight from port of entry to CFS ₹ 40, 000
- (7) Goods demurrage ₹ 25, 000
- (8) Loading & unloading expenses ₹ 35, 000
- Bill of Entry filed on 10-08-20XX. Entry Inward granted on 16-08-20XX

| <b>Particulars</b>                   | <b>10-08-20XX</b> | <b>16-08-20XX</b> |
|--------------------------------------|-------------------|-------------------|
| BCD                                  | 40%               | 30%               |
| IGST u/s. 3(7)                       | 18%               | 12%               |
| GST Compensation Cess u/s. 3(9)      | 5%                | 10%               |
| Exchange Rate                        | 1\$ = ₹ 70        | ₹ 71              |
| Compute custom duty and GST payable. |                   |                   |

#### **Question 4: Goods imported on 28.9.20XX8**

|                 |            |
|-----------------|------------|
| CIF value       | \$ 10, 000 |
| Freight charges | \$ 2,800   |
| Insurance       | \$ 200     |

Consider BCD 40% & Exchange rate, 1\$ = ₹50

Rate of IGST = Nil

Compute custom duty payable if;

- (1) Goods have been imported by Vessels
- (2) Goods imported by Air

**Question 5:** ABC Ltd. imported a Plant on 1.10.2018 at an invoice price of ₹20,00,000 including ₹4,00,000 attributable to post-importation activities. Transport charges ₹1,00,000. Insurance amounted to ₹72,000. The importer has paid - ₹ 8,000 for demurrage charges and ₹20,000 for barge charges and ₹30,000 for transport of goods from port of entry to CFS. Loading, unloading and handling charges ₹10,000 incurred at the unloading port. The company had supplied raw material for ₹7,00,000 to the seller for the manufacture of the Plant. Calculate Assessable Value.

**Question 6:** M/s Ajanta Industries imported certain goods by Air from USA at CIF value \$ 13,000. Air freight US \$ 2,800 and insurance charges US\$ 200 were also paid. Bill of Entry was presented on 01.08.20XX, but the Entry Inwards was granted on 10-08-20XX. Other relevant information is as follows

|   | As on<br>01.08.20XX | As on<br>10.08.20XX |
|---|---------------------|---------------------|
| Rate of Exchange:   |                     |                     |
| As announced by CBIC US \$ 1 =                                    | ₹ 66.80             | ₹ 66.60             |
| As Announced by RBI US\$1 =                                       | ₹ 66.70             | ₹ 66.50             |
| Rates of Custom Duty:   |                     |                     |
| Basic Customs Duty  | 30%                 | 20%                 |
| IGST payable under section 3(7) of the Customs Tariff Act         | 12%                 | 18%                 |
| GST Compensation Cess payable u/d. 3(9) of the Customs Tariff Act | 10%                 | 5%                  |

Compute the custom duty and GST payable.

**Question 7:** PQR Ltd. has imported a certain equipment from Japan at an FOB cost of 2,00,000 Yen on 1.11.20XX. The other expenses were as follows -

- Freight from Japan to Indian Port 20,000 Yens.
- Insurance paid to insurer in India ₹10,000
- PQR Industries Ltd. had incurred road transport cost from Mumbai port to their factory in Karnataka ₹30,000.
- CBIC had notified for purpose of Section 14(3) of the Customs Act, 1962 exchange rate of 1 yen = ₹ 0.3948. The interbank exchange rate was 1 yen = ₹ 0.40
- M/s. PQR Industries Ltd. made payment to the Bank based on exchange rate of 1 Yen = Re. 0.4150
- The commission payable to the agent in India was @ 5% of FOB price in Indian Rupees.
- Designing charges paid to consultancy firm in Japan 30,000 Yen.
- M/s PQR Industries Ltd. spent ₹1,00,000 in India for certain development work connected with respect to the imported equipment.

Arrive at the assessable value for purposes of Customs duty.

**Question 8:** Compute the assessable value for the purpose of customs duty from the following data –

|  |                      |
|--|----------------------|
| Plant imported from US by air on 15.9.20XX | US \$ 10000          |
| Accessories supplied along with the Plant  | US \$ 3000           |
| Custom duty on machine                     | 10% ad valorem       |
| Customs duty on accessory                  | 20% ad valorem       |
| IGST u/s. 3(7)                             | 12%                  |
| Freight                                    | US \$ 5000           |
| Indian agent's commission                  | ₹ 5500               |
| Exchange rate                              | 1 US \$ = ₹45        |
| Insurance                                  | actual not available |
| Ignore compensation cess.                  |                      |

**Question 9:** Compute the customs duty liability from the following information.

|                                       |                |
|---------------------------------------|----------------|
| Total FOB value of the goods          | US \$ 1,48,000 |
| Ocean freight                         | US \$ 20,000   |
| Insurance                             | US \$ 1480     |
| Exchange Rate                         | 1 US \$ = ₹65  |
| Date of presentation of Bill of Entry | 01.09.2018     |
| Date of Entry Inwards of the vessel   | 03.09.2018     |

| Type of customs duty - | As on 01.09.20XX | As on 03.09.20XX |
|------------------------|------------------|------------------|
| Basic Customs Duty     | 5%               | 10%              |
| IGST u/s. 3(7)         | 18%              | 5%               |
| GST Compensation Cess  | Nil              | Nil              |

Will your answer change if the actual cost of freight and insurance is not available?

**Question 10:** T Ltd. imported some goods from LMP Inc. of United States by air freight on 15.10.20XX. You are required to compute the value for purposes of customs duty under the Customs Act, 1962 from the following particulars:

|                |             |
|----------------|-------------|
| CIF value      | US \$ 6,000 |
| Freight paid   | US \$ 2,000 |
| Insurance cost | US \$ 700   |

The bank had received payment from the importer at the exchange rate of US \$ 1 = ₹66 while the CBIC notified exchange rate on the relevant date was US \$ 1 = ₹65.5.

**Question 11:** Compute the assessable value of the machine imported by M/s. ABC India Pvt. Ltd. On 15.7.20XX, under the Customs Act, 1962.

|   |                   |
|---|-------------------|
|   | US \$             |
| FOB price of the machine                | 9,000             |
| Design and development charges          | 1,000             |
| Air freight paid                        | 2,500             |
| Insurance for transit of machine        | Not Ascertainable |
| Cost of development work in India       | ₹ 40,000          |
| Local agent's commission                | ₹ 10,000          |
| Cost of local transport                 | ₹ 5,000           |
| Exchange rate applicable US \$ 1 = ₹ 65 |                   |
| Provide explanation for your answer.    |                   |

**Question 12:** 15000 Chalices were imported for charitable distribution in India by XY Charitable Trust. The Trust did not pay either for the cost of goods or for the design and development charges, which was borne by the supplier. Customs officer computed its FOB value at USD 20,000 (including design and development charges), which was accepted by the Trust. Other details obtained were as follows:

| SL. NO. | Particulars  | Amount |
|---------|--|--------|
| 1.      | Freight paid (air) (in USD)  | 4,500  |
| 2.      | Design & Development charges paid in USA (in USD)                    | 2,500  |
| 3.      | Commission payable to an agent in India (in ₹)                       | 12,500 |
| 4.      | Exchange rate and rate of basic duty notified by CBIC is as follows: |        |

|    |  |            |                          |     |
|----|--|------------|--------------------------|-----|
|    | Date of Bill of Entry<br>08-08-20XX                                    | BCD<br>20% | Exchange Rate in ₹<br>60 |     |
|    | Date of Entry Inward<br>30-08-20XX                                     | BCD<br>30% | Exchange Rate in ₹<br>62 |     |
|    | While the inter-bank rate was 1 USD = ₹ 63                             |            |                          |     |
| 5. | IGST u/s 3(7) of the Customs Tariff Act, 1975                          |            |                          | 12% |
| 6. | GST Compensation Cess payable u/s.3(9) of the Customs Tariff Act, 1975 |            |                          | 5%  |
| 7. | Cess as applicable.  |            |                          |     |

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

**Question 13:** Mr. Backpack imported goods from a UK supplier by air, which was contracted on CIF basis. However, there changes in prices in the international market between the date of contract and actual importation. As a result of several negotiations, the parties agreed for a negotiated price payable as follows:

| Particulars | Contract Price (£) | Changed Price (£) | Negotiated Price (£) |
|-------------|--------------------|-------------------|----------------------|
| CIF Value   | 5000               | 5800              | 5500                 |
| Air Freight | 300                | 600               | 500                  |
| Insurance   | 500                | 650               | 600                  |

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

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

| Date of Bill of Entry       | Basic Customs Duty | Rate of IGST | Exchange rate in ₹ (notified by CBIC) |
|-----------------------------|--------------------|--------------|---------------------------------------|
| 18-07-20XX                  | 10%                | 12%          | 102                                   |
| Date of arrival of aircraft | Basic customs Duty | Rate of IGST | Exchange rate in ₹ (notified by CBIC) |
| 15-07-20XX                  | 15%                | 18%          | 98                                    |

Inter-bank rate 1 UK Pound = ₹106. Compute the assessable value and calculate basic customs duty payable by Mr. Backpack. [Final Exam Question]

**Question 14:** BSP Trexim Pvt. Ltd, provides you the following information to compute its import duty, where the rate of Basic customs duty is 10%. Social Welfare Surcharge 10% and the rate of GST is on such goods in India 12%.

| Particulars  | Amount         |
|--|----------------|
| Ex-factory price   | US \$ 1,00,000 |
| Designing and Engineering charges carried in USA   | US\$ 20,000    |
| Freight, loading, unloading and handling charges from the factory of exporter to the port of USA | US\$ 10,000    |
| Buying commission paid to agent of USA   | US\$ 500       |
| Freight, loading charges at the port of USA to India   | US\$ 20,000    |
| Transit Insurance  | US\$ 2000      |

|  |          |
|--|----------|
| Unloading and handling charges at Indian Port  | ₹ 20,000 |
| Loading, unloading and freight during the transshipment from one port in Indian to another | ₹ 10,000 |

Consider CBIC notified rate is ₹60/per US\$. The date filing bill of entry is 1.12.20XX.

**Is your answer be changed if the import has been made by air.**

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**Question 15:** Niketan Industries Ltd., New Delhi has imported certain machine (by sea) from Japan. From the following particulars furnished by it, work out the assessable value of the machine and customs duty payable by Niketan Industries Ltd. with appropriate working notes: [Exam Question]

| S. No. | Particulars  | Amount in(₹)  |
|--------|--|---------------|
| (i)    | CIF value of the machine   | 4,23,379.69   |
| (ii)   | Freight incurred from port of entry to Inland Container depot                      | 25,000.00     |
| (iii)  | Unloading and handling charges paid at the place of importation                    | 40,000.00     |
| (iv)   | Designing charges paid to Consultancy firm in Mumbai                               | 10,000.00     |
| 1.     | Basic Customs Duty leviable  | 10% advalorem |
| 2.     | Integrated tax leviable under section 3(7) of the Customs Tariff Act, 1975 is 18%. |               |
| 3.     | Note: Ignore GST Compensation Cess.  |               |

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**SOLUTIONS TO THE PRACTICE WORK BOOK****Solution to Question 5:**

|  |                  |
|--|------------------|
|  | <u>₹</u>         |
| Invoice Price  | 20,00,000        |
| Less: Post importation activity cost<br>(assume not a condition of sale) | 4,00,000         |
| Add: Raw material supplied by buyer as per Rule 10(1)(b)                 | <u>7,00,000</u>  |
| <b>FOB Value</b>   | <b>23,00,000</b> |
| Add: <u>Transport Charges</u>  |                  |
| Actual transport for vessel  | 1,00,000         |
| Ship demurrage   | 8,000            |
| Barge & lighterage   | 20,000           |
| Unloading charges  | <u>Nil</u>       |
| Insurance  | <u>72,000</u>    |
| Assessable Value   | <b>25,00,000</b> |

**Solution to Question 6:** Computation of duty payable

|  |                               |
|--|-------------------------------|
|  | <u>US \$</u>                  |
| FOB (US\$ 13,000 – US\$ 2800 – US\$ 200)   | 10,000                        |
| Add: Air freight – amount actually incurred or 20% of FOB – Lower  | 2,000                         |
| Insurance – Actually incurred  | <u>200</u>                    |
| <b>CIF VALUE</b>   | <b><u>12,200</u></b>          |
| CIF Value in INR – based on Exchange rate<br>notified by CBIC on the date of presentation<br>of bill of entry. [US\$ 12,200 × 66.80]               | <u>Amount (₹)</u>             |
|  | 8,14,960.00                   |
| <b>Assessable Value</b>  | <b>(A) <u>8,14,960.00</u></b> |
| Basic Customs Duty – 20% of Assessable Value<br>(on the date of presentation of Bill of entry or Entry<br>Inward whichever is later) – Rounded off | <b>(B) 1,62,992.00</b>        |
| Social Welfare Surcharge @ 10% of Basic Customs Duty (r/off)   | <b>(C) 16,299.00</b>          |
| IGST u/s. 3(7) @ 18 % of (A+B+C)   | <b>(D) 1,80,755.00</b>        |
| GST Compensation Cess u/s. 3(9) @ 5% (A+B+C) -r/off  | <b>(E) <u>50,210.00</u></b>   |
| <b>Total Customs and GST Payable</b>   | <b>(B+C+D+E) 4,12,049.00</b>  |

**Solution to Question 7:** Computation of Assessable Value

|  |                 |
|--|-----------------|
|  | <u>Yens</u>     |
| FOB Value  | 2,00,000        |
| Add: Design Charges                              | 30,000          |
| Commission paid to Indian Agent @ 5% of 2,00,000 | <u>10,000</u>   |
|  | <u>2,40,000</u> |
| Freight from Japan to India                      | <u>20,000</u>   |
|  | <u>2,60,000</u> |
| Value in INR (2,60,000 yen × 0.3948)             | 1,02,648        |
| Add: Insurance                                   | 10,000          |
| CIF Value/ Assessable Value                      | <b>1,12,648</b> |

**Solution to Question 8:** Computation of assessable Value

|  |                                     |
|--|-------------------------------------|
|  | Amount                              |
|  | <u>Machinery</u> <u>Accessories</u> |

|   |                    |                    |
|---|--------------------|--------------------|
| FOB Price (\$)  | 10,000             | 3,000              |
| FOB Price (₹)   | 4,50,000           | 1,35,000           |
| Add: Commission to local Agent (pro-rata basis)                   | 4230.76            | 1,269.24           |
| FOB as per customs (₹)  | 4,54,230.76        | 1,36,269.24        |
| Add: <u>Air freight</u>   |                    |                    |
| Actual amount ₹ 2,25,000 (5000 x 45) but restricted to 20% of FOB | 90,846.15          | 27,253.85          |
| Insurance [1.125% of FOB]   | 5110.09            | 1,533.03           |
| <b>CIF Value (₹)/Assessable Value of Custom</b>                   | <b>5,50,187.00</b> | <b>1,65,056.12</b> |
|   |                    |                    |

**Note:** Since one of the condition of the Accessories (Conditions) Rules, 1963 has not been satisfied i.e., in the given case price of the accessories charged separately and is not included in the value of machinery; therefore, accessories shall be charged at different rate than the rate of machinery. Hence, separate valuation required to determine the custom duty of machinery and accessories. [Section 19 read with Accessories (Conditions) Rules, 1963]

### Solution to Question 9: Computation of customs duty and IGST Payable

#### 1. Total CIF value:

|               |                 |
|---------------|-----------------|
|               | US \$           |
| FOB value     | 1,48,000        |
| Ocean freight | 20,000          |
| Insurance     | <u>1,480</u>    |
| <b>Total</b>  | <b>1,69,480</b> |

#### 2. Assessable value:

#### Amount(₹)

|   |                |                  |
|---|----------------|------------------|
| Exchange rate 1\$ = ₹65                     |                |                  |
| CIF value (1,69,480 x 65)/ Assessable Value | (A)            | 1,10,16,200      |
| <b>3. Customs duty payable:</b>             |                |                  |
| Basic customs duty @ 10%                    | (B)            | 11,12,636        |
| Social Welfare Surcharge @ 10% of (B)       | (C)            | 1,11,264         |
| IGST u/s. 3(7) @ 5% of (A+B+C)              | (D)            | <u>6,12,005</u>  |
| <b>Total customs duty and IGST payable</b>  | <b>(B+C+D)</b> | <b>18,35,905</b> |

(b) If actual cost of freight and insurance are not available: The computation will be as under –

#### 1. Total CIF value:

#### US \$

|                                  |                 |
|----------------------------------|-----------------|
| FOB value                        | 1,48,000        |
| Ocean freight @ 20% of FOB value | 29,600          |
| Insurance @ 1.125% of FOB value  | <u>1,665</u>    |
| <b>Total</b>                     | <b>1,79,265</b> |



|  |     |                  |
|--|-----|------------------|
| <b>2. Assessable value:</b>                        |     | ₹                |
| Exchange rate 1\$ = ₹65                            |     |                  |
| CIF value (1,79,265 x 65)                          |     | 1,16,52,225      |
| <b>Total Assessable value</b>                      | (A) | 1,16,52,225      |
| <b>3. Customs duty payable:</b>                    |     |                  |
| Basic customs duty @ 10% on 11652225 (R/off)       | (B) | 11,65,223        |
| Social Welfare Surcharge @ 10% of (B) [R/off]      | (C) | 1,16,522         |
| IGST u/s. 3(7) @ 5% on [A+B+C] [R/off]             | (D) | 6,46,699         |
| <b>Total customs duty and IGST payable (B+C+D)</b> |     | <b>19,28,444</b> |

**Solution to Question 10:** Computation of assessable value of the goods imported by T Ltd.:-

|   |             |
|---|-------------|
| CIF   | 6,000 US \$ |
| Less: Freight   | 2,000 US \$ |
| Less: Insurance   | 700 US \$   |
| Therefore, FOB value                                      | 3,300 US \$ |
| Add: Freight (20% of FOB value)                           | 660 US \$   |
| (See Note – 1)  |             |
| Add: Insurance (actual)                                   | 700 US \$   |
| CIF for customs purpose                                   | 4,660 US \$ |
| Exchange rate as per CBIC = ₹65.50 per US \$              |             |
| (See Note – 3)  |             |
| Assessable Value = ₹65.50 x 4,706.60 US \$ = ₹3,08,282.30 |             |

**Notes:**

- As the material has been imported by air, the freight has been restricted to 20% of FOB value i.e. 660 US \$.
- As per the explanation to section 14(1), the exchange rate shall be the rate as notified by CBIC. Therefore, applicable exchange rate would be ₹65.50 per US \$ as notified by CBIC.

**Solution to Question 11:** Computation of Assessable Value of machine for customs duty:

|  |            |
|--|------------|
| FOB price of the machine   | USD 9,000  |
| Add: Design & development charges  | USD 1,000  |
|  | USD 10,000 |
| FOB price in Indian currencies [10,000 x 65]   | 6,50,000   |
| Add:   |            |
| Local agent commission – it is not a buying commission and hence, includible in assessable value [Rule 10(1)(a).   | 10,000     |
| FOB Value as per Customs   | 6,60,000   |
| Add:   |            |
| (i) Air freight (Maximum 20% of FOB i.e, 6,60,000)<br>(Restricted to 20% of FOB value as per Second proviso to rule 10(2) of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007) | 1,32,000   |
| (ii) Insurance charges (1.125% of FOB)   | 7,425      |
| CIF value/ Assessable Value  | 7,99,425   |

**Notes:**

- Cost of local transport is not includible in assessable value as it is a post importation activity.
- Cost of development work in India is not includible in the assessable value [Rule 10(1)(b)].

**Solution to Question 12:**

| Particulars   | Amount       |
|---|--------------|
| FOB price (in USD) including designing charges                          | 20,000       |
| FOB price (in INR): 20,000 x ₹60  | 12,00,000    |
| Add: Commission to Indian Agent (in INR)                                | 12,500       |
| FOB Value as per Customs (in INR)                                       | 12,12,500    |
| Add: Air freight [20% of ₹12,12,500 or (\$ 4500 x ₹60); which is lower] | 2,42,500     |
| Add: Insurance (1.215% of ₹12,12,500)                                   | 13,640.63    |
| CIF Value (₹)/Assessable Value (A)                                      | 14,68,640.63 |
| (B) Basic Customs duty @ 30 % (round off)                               | 4,40,592     |
| (C) Social Welfare Surcharge @ 10% on (B) (round off)                   | 44,059       |
| (D) IGST u/s. 3(7) @ 12% on (A + B + C) (round off)                     | 2,34,395     |
| (E) GST compensation Cess u/s. 3(9) @ 5% on (A+B+C) (round off)         | 97,665       |
| Total Custom Duty and IGST Payable (B+C+D+E)                            | 8,16,711     |

**Solution to Question 13:****Amount (In ₹)**

|  |       |
|--|-------|
| CIF Value (Price actually paid or payable i.e negotiated price to be considered as per Sec.14) | 5,500 |
| Less: Actual Air Freight   | 500   |
| Actual Insurance   | 600   |
| FOB Value  | 4,400 |
| Add: Local agent commission (1% of ₹4400)  | 44    |
|  | 4,444 |
| Add: Freight @ 20% of FOB or Actual; whichever is lower  | 500   |
| Actual Insurance charges   | 600   |
| CIF Value  | 5,544 |

**Amount (in ₹)**

|  |                 |
|--|-----------------|
| CIF value in INR (5544 x ₹102)/              |                 |
| Assessable Value                             | (A) 5,65,488.00 |
| Basic Custom Duty @ 10% (rounded off)        | (B) 56,549.00   |
| Social Welfare Surcharge @ 10% (rounded off) | (C) 5,655.00    |
| IGST u/s. 3(7) @ 12% on (A+B+C)              | (D) 75,323.00   |
| Custom Duty and IGST Payable (B+C+D)         | 1 3 7 5 2 7     |

**Note:** Only payment made as condition of sale of the imported goods shall form part of assessable value. Since, in the given case, vendor inspection charges are not relevant for making the goods ready for shipment, therefor shall not form part of assessable value.

**Solution to Question 14:****(a) Computation of customs duty (import other than by air)**

| Particulars  | Amount         |
|--|----------------|
| Ex-factory price   | US \$ 1,00,000 |
| Designing and Engineering charges carried in USA   | US\$ 20,000    |
| Freight, loading, unloading and handling charges from the factory of exporter to the port of USA | US\$ 10,000    |
| Buying commission paid to agent of USA   | Nil            |
| FOB Price  | US\$ 1,30,000  |

|   |             |
|---|-------------|
| Add: Freight, loading charges at the port of USA to India                                       | US\$ 20,000 |
| Add: Insurance charges  | US\$ 2000   |
| Add: Loading, unloading and freight during the transshipment from one port in Indian to another | Nil         |
| CIF Value (US\$)  | 1,52,000    |
| CIF Value in (INR) [ 1,52,000 x ₹ 60]   | 91,20,000   |
| Add: Unloading and handling charges at Indian Port  | Nil         |
| Assessable value [A]  | 91,20,000   |
| Basic Customs Duty @10% of (A) [B]  | 9,12,000    |
| Social Welfare Surcharge @ 10% of (B) [C]   | 91,200      |
| IGST u/s. 3(7) of Customs Tariff Act @ 12% of (A+B+C) [D]                                       | 12,14,784   |
| Total Import duty payable [B+C+D]   | 22,17,984   |

Note: Write in detail notes in exam.

(i) Charges incurred for delivery of goods from loading port **to the place of importation are included in the assessable value**. However, loading, unloading and handling charges incurred at the place of importation shall not be form part of CIF value. Further, charges incurred in the course of transshipment of imported goods shall not form part of assessable value. **Rule 10(2) has been amended in this respect w.e.f 26.9.2017**

(ii) Designing and engineering charges incurred outside India relevant for production of imported goods shall form part of assessable value as per Rule 10(1).

(iii) buying commission is not included as per Rule 10(1).

**(b) If imported by air- Computation of customs duty**

| Particulars  | Amount      | Amount         |
|--|-------------|----------------|
| Ex-factory price   |             | US \$ 1,00,000 |
| Designing and Engineering charges carried in USA   |             | US\$ 20,000    |
| Freight, loading, unloading and handling charges from the factory of exporter to the port of USA           | US\$ 10,000 |                |
| Buying commission paid to agent of USA   | Nil         |                |
| Freight, loading charges at the port of USA to India   | US\$ 20,000 |                |
| Total cost of transportation, loading etc. to the place of importation                                     | US\$ 30,000 |                |
| But restricted to 20% of [Ex-factory price 1,00,000+ design charge 20,000 + freight at loaded port 10,000] |             | US\$ 26,000    |
| Add: Insurance charges   |             | US\$ 2000      |
| Add: Loading, unloading and freight during the transshipment from one port in Indian to another            |             | Nil            |
| CIF Value (US\$)   |             | 1,48,000       |
| CIF Value in (INR) [ 1,52,000 x ₹ 60]  |             | 88,80,000      |
| Add: Unloading and handling charges at Indian Port   |             | Nil            |
| Assessable value [A]   |             | 88,80,000      |
| Basic Customs Duty @10% of (A) [B]   |             | 8,88,000       |
| Social Welfare Surcharge @ 10% of (B) [C]  |             | 88,800         |

|   |  |           |
|---|--|-----------|
| IGST u/s. 3(7) of Customs Tariff Act @ 12% of (A+B+C) [D] |  | 11,82,816 |
| Total Import duty payable [B+C+D]                         |  | 21,59,616 |

**Solution to Question 15:**

| Particulars  | Amount in(₹) |
|--|--------------|
| CIF value of the machine   | 4,23,379.69  |
| Add: Adjustment u/s. 10(1)/(2)   |              |
| Freight incurred from port of entry to Inland Container depot (Note 1)   | Nil          |
| Unloading and handling charges paid at the place of importation (Note 2) | Nil          |
| Designing charges paid to Consultancy firm in Mumbai (Note 3)            | Nil          |
| Assessable Value (A)   | 4,23,379.69  |
| Basic Customs Duty @ 10% (B) – Rounded off                               | 42,338       |
| Social Welfare Surcharge @ 10% (C)- Rounded off                          | 4,234        |
| IGST u/s. 3(7) @ 18% on 'A+B+C' (D)- Rounded off                         | 84,591       |
| Total Customs Duty (B+C+D)   | 1,31,163     |

**Note 1:** As per proviso to section 10(2), in the case of goods imported by sea or air and transshipped to another customs station in India, the cost of insurance, transport, loading, unloading, handling charges associated with such transshipment shall be excluded.

**Note 2:** The loading, unloading and handling charges associated with the delivery of the imported goods “at” the place of importation are not to be added to the CIF value of the goods.

**Note 3:** Only the design and engineering work undertaken outside India is includible in the assessable value.

## CUSTOM VALUATION - II

### CUSTOMS IMPORTS VALUATION RULES, 2007

**Conditions for acceptance of transaction value** – According to Rule 3(2) the transaction value of the imported goods, as determined under Rule 3(1) shall be accepted only if the following conditions are satisfied-

- (a) there is no restriction as to the disposition or use of the goods by the buyer other than restrictions which-
  - (i) are imposed or required by law or by the public authorities in India; or
  - (ii) limit the geographical area in which the goods may be resold; or
  - (iii) do not substantially affect the value of the goods;
- (b) the sale or price is not subject to some condition or consideration for which a value cannot be determined in respect of the goods being valued;
- (c) no part of the proceeds of any subsequent resale, disposal or use of the goods by the buyer will accrue directly or indirectly to the seller for which adjustments cannot be made under Rule 10
- (d) the buyer and seller are not related, or where the buyer or seller are related, that transaction value is acceptable for customs purposes under the provisions of Rule 3(3).

**Related Persons [Rule 2(2)]:**

Persons shall be deemed to be 'related' only if, -

- (i) They are officers or directors of one another's businesses;
- (ii) They are legally recognised partners in business;
- (iii) They are employer and employee;
- (iv) Any person directly or indirectly owns, controls or holds 5% or more of the outstanding voting stock or shares of both of them;
- (v) One of them directly or indirectly controls the other;
- (vi) Both of them are directly or indirectly controlled by a third person;
- (vii) Together they directly or indirectly control a third person; or
- (viii) They are members of the same family.

**Transaction value acceptable even if goods sold to related person [Rule 3(3)]:** Even if the goods are sold to related persons, the transaction value under Rule 3(1) shall be accepted in the following cases if the importer establishes that relationship and demonstrates that the declared value closely approximates the value of identical goods, or of similar goods.

### Discussions & Explanations

(a) Under Customs Act Section 2(41) define the term value and states that the term value means value calculated in accordance with provision of Section-14.

(b) Customs duty is always charged on transaction value provided all the condition of Section-14 is satisfied. In case after the date of import there is a significant increase in market price then also custom duty will be charged on transaction value and not on the market price. [Aggarwal Industries Ltd. 2011(S.C.)]

(c) In case goods are sold by original importer to another person before the goods are cleared from custom station, then it is the ultimate importer who shall be liable to pay custom duty and the transaction value of ultimate importer shall be relevant.

(d) Supplies from DTA to SEZ is not an Export as per Customs Law. Similarly, supplies from SEZ to DTA is not an import as per Customs Law. But these provisions are governed by GST Laws/ FTPs.

(e) Suppose goods are transferred from one branch in London to another branch in Mumbai of the assessee. This would be regarded as import hence custom duty will be chargeable.

## **DETERMINATION OF ASSESSABLE VALUE WHEN TRANSACTION VALUE FAILS**

### **RULE 4: TRANSACTION VALUE OF IDENTICAL GOODS**

As per **Rule 2(1)(d)** "Identical goods" means imported goods -

(a) which are same in all respects, including physical characteristics, quality and reputation as the goods being valued except for minor differences in appearance that do not affect the value of goods;

(b) produced in the country in which the goods being valued were produced; and

(c) produced by the same person who produced the goods, or where no such goods are available, goods produced by a different person,

but shall not include imported goods where engineering, development work, art work, design work, plan or sketch undertaken in India were completed directly or indirectly by the buyer on these imported goods free of charge or at a reduced cost for use in connection with the production and sale for export of these imported goods;

**Rule 4(1)** provides that If it is not possible to ascertain the transaction value of the goods the value of imported goods shall be the transaction value of identical goods imported at or about the same time as the goods being valued. **However**, such transaction value shall not be the value of the goods provisionally assessed under section 18 of the Customs Act, 1962.

**Conditions:** The identical goods so taken should fulfill the following conditions: -

- (1) They are in sale at the same commercial level; and
- (2) They are in substantially the same quantities as the goods being valued.

**Adjustments when required:** In case any of the above conditions is not fulfilled, a sale of identical goods that takes place under any one of the following three circumstances may be used:

- (a) Sale at the same commercial level but in different quantities;
- (b) Sale at a different commercial level but in substantially the same quantities; or
- (c) Sale at a different commercial level and in different quantities

**However**, in any of the aforesaid circumstance, adjustments will be made on the basis of demonstrated evidence.

**Rule 4(2) Provides that** where the cost and charges referred to in Rule 10(2) i.e., transport costs, landing charges and insurance cost, are included in the transaction value of identical goods, an adjustment shall be made, if there are significant differences in such costs and charges between the goods being valued and the identical goods in question arising from differences and distances and means of transport.

**Rule 4(3) provides that** if more than one transaction value of identical goods is found, the lowest such value shall be used to determine the value of imported goods.

#### Interpretative notes to Rule 4

1. The transaction value of identical imported goods means a value, adjusted as provided for in this rule, which has already been accepted under rule 3.

2. Example of adjustments: If the imported goods being valued consists 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 restoring to the seller's price list and using that price applicable to a sale of 10 units. This does not require that a sale had to have been made in questions 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.

#### Discussions & Explanations

##### Identical goods:

- (a) Imported goods
- (b) Same in all respect except for minor differences in appearances, that does not affect the value.
- (c) Same country of production, preferably same manufacturer, same commercial level, same time.
- (d) Should not be provisionally assessed
- (e) Lowest value to be taken if there is more than one identical value.
- (f) If quantity/ commercial level is different, then suitable adjustments will be made.

**Question 16:** A consignment of 800 metric tons of skimmed milk powder of US origin was imported by a Non-profit making organization for free distribution of milk to the children in a tribal area under a World Health Programme. This being a special transaction of nominal price of US \$ 10 per metric ton was charged for the consignment to cover freight and insurance charges. The Customs Department found out that at or about the time of importation of this gift consignment there were the following imports of skimmed milk powder of US origin;

| Sl. No | Quantity imported<br>In metric tons | Unit price in US<br>\$ C.I.F |
|--------|-------------------------------------|------------------------------|
| 1      | 20                                  | 80                           |
| 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 \$ = ₹46. Compute the Assessable Value.

### RULE 5: TRANSACTION VALUE OF SIMILAR GOODS

According to **Rule 2 (1)(f)** "Similar goods" means imported goods -

(a) 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;

(b) produced in the country in which the goods being valued were produced; and

(c) 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.

**Rule 5 Provides that** the same principles, as specified in Rule 4, are applicable for valuation of similar goods.

### DISCUSSIONS & EXPLANATIONS

**Example** - N-13      Similar      Nokia N-14

i) Like characteristics and like component materials

ii) Same function

iii) Commercially interchangeable regard to quality, reputation and Trademark

### RULE 6: WHERE VALUE CAN NOT BE DETERMINED UNDER RULE 3, 4 & 5

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

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



**RULE 7: DEDUCTIVE VALUE METHOD**

The Deductive method of valuation is provided for under Rule 7 of Customs Import Valuation Rules, 2007. This method is called for when the transaction value of identical goods or similar goods cannot be determined as per Rule 4 and Rule 5 of the Custom Import Valuation Rules, 2007.

The value will be determined under Rule 7 only when the following conditions are fulfilled -

(1) Though the transaction value of the imported goods or identical or similar goods is not ascertainable, but the goods are sold in India after importation.

(2) The sale in India should be in the same condition as they are imported.

In case neither the imported goods nor identical nor similar imported goods are sold in India in the condition as imported, then, the goods sold after further processing shall be considered, except where the value added by further processing cannot be ascertain separately.

(3) The sale should be to unrelated persons.

(4) The sales are made at or about the time at which the declaration for determination of value is presented, or at the earliest date after importation but within a maximum of 90 days after import of the goods to be valued.

**As such the valuation under Deductive Value Method may be done in the following manner -**

|  |     |
|--|-----|
| Unit price at which such goods are sold in the in the greatest aggregate quantity i.e. the price at which the greatest number of units is sold to unrelated buyers at the first commercial level after importation.                          | xxx |
| Less: The following deductions on account of post importation costs or expenses -  |     |
| (a) Selling expenses, general expenses and selling profits made in connection with sale of imported goods of the same class or kind. <i>The "general expenses" include the direct and indirect costs of marketing the goods in question.</i> | xxx |
| (b) Transport, insurance and associated costs within India.  | xxx |
| (c) Customs duties, GST and other taxes levied in India.   | xxx |
| (d) In case the value is based on the unit price after further   | xxx |
| <b>Deductive value</b>   | xxx |

**Interpretative notes to Rule 7**

(1) The term ‘unit/price at which goods are sold in the greatest aggregate quantity’ means the price at which the greatest number of units is sold in sales to persons who are not related to the persons from whom they buy such goods at the first commercial level after importation at which such sales take place.

**(2) Examples:**

**Example 1:** Goods are sold from a price list which grants favorable unit prices for purchases made in large quantities.

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

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

**Example 2:** Two sales occur. In the first sale 500 units are sold at a price of 95 currency units each. In the second sale 400 units are sold at a price of 90 currency units each. In this example, the greatest number of units sold at a particular price is 500, therefore, the unit price in the greatest aggregate quantity is 95.

**Example 3:** Where various quantities are sold at various prices-

**(a) Sales -**

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

**(b) Totals**

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

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

**RULE 8: COMPUTED VALUE METHOD**

The computed valuation method is provided for under Rule 8 of the Customs Import Valuation Rules, 2007. This method of valuation is suitable when the producer is willing to give necessary costing data along with subsequent clarifications, as and when required.

Computed value is the sum total of the production/ processing cost of the imported goods, the usual profit and general expenses, and the costs and charges referred to in Rule 10(2) of the Import valuation Rules.

**Table showing the detailed mode of computation of computed value -**

|                                |  |     |
|--------------------------------|--|-----|
| 1.                             | <b>Production /Processing cost of imported goods</b> i.e. <u>Cost or value</u> of the materials a fabrication or other processing employed in producing the imported goods.  | xxx |
| 2.                             | <b>Add: Usual profit margin and general expenses</b> i.e. an <u>amount for profit and general expenses</u> equal to that usually reflected in the sales of the 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. | xxx |
| 3.                             | <b>Add: Costs and charges referred to in Rule 10(2)</b> i.e. the cost of transport, the cost of insurance, and the loading and unloading and handling charges.   | xxx |
| <b>Computed Value [ 1+2+3]</b> |  | xxx |

|                                       |
|---------------------------------------|
| <b>Interpretative notes to Rule 8</b> |
|---------------------------------------|

(1) The "cost or value" shall be determined on the basis of information supplied by or on behalf of the producer and which are substantiated with the commercial accounts that are based on generally accepted accounting practices. Such cost or value shall include the following expenses –

(a) Cost of commission and brokerage and packing cost [as given in Rule 10(l)(a)]

(b) Cost of material supplied free, tooling cost, development and engineering charges, design work cost etc. [as given in Rule 10(l)(b)]

(2) The "amount for profit and general expenses" is to be determined on the basis of information supplied by or on behalf of the producer unless the producer's figures are inconsistent with those usually reflected in sales of goods of the same class or kind as the goods being valued which are made by producers in the country of exportation for export to India.

(3) The general expenses cover the direct and indirect costs of producing and selling the goods for export.

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### RULE 9: RESIDUAL METHOD OF VALUATION

**Rule 9(1)** provides that, where the value of imported goods cannot be determined under the provisions of any of the preceding rules, the value shall be determined using reasonable means consistent with the principles and general provisions of these rules and section 14 and on the basis of data available in India.

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

**Rule 9(2)** provides that, the following shall not be considered in determining the value under this method -

- (i) the selling price in India of the goods produced in India;
- (ii) a system which provides for the acceptance for customs purposes of the highest of the two alternative values;
- (iii) the price of the goods on the domestic market of the country of exportation;
- (iv) the cost of production other than computed values which have been determined for identical or similar goods in accordance with the provisions of Rule 8;
- (v) the price of the goods for the export to a country other than India;
- (vi) minimum customs values; or
- (vii) arbitrary or fictitious values.

### INTERPRETATIVE NOTES TO RULE 9

**(1)** The value of imported goods determined in accordance with provisions of Rule 9 should to the greatest extent possible be based on previously determined customs values, but a reasonable flexibility in the application of such methods would be allowed.

**(2) Examples of reasonable flexibility:** Following are some examples of reasonable flexibility -

**(a) Identical/Similar good:** The requirement that the identical goods should be imported at or about the same time as the goods being valued could be flexibly interpreted; identical imported goods produced in a country other than the country of exportation of the goods being valued could be the basis for customs valuation; customs values of identical imported goods already determined under the provisions of rules 7 and 8 could be used.

**(b) Deductive method:** The requirement that the goods shall have been sold in the "**condition as imported**" in rule 7(1) could be flexibly interpreted; or the 90 days requirement could be administered flexibly.

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**RULE 11: DECLARATION TO BE FURNISHED BY THE IMPORTER**

The importer or his agent shall furnish –

- (a) a declaration disclosing full and accurate details relating to the value of imported goods; and
- (b) any other statement, information or document including an invoice of the manufacturer or producer of the imported goods where the goods are imported from or through a person other than the manufacturer or producer, as considered necessary by the proper officer for determination of the value of imported goods under these rules.

**RULE 12: REJECTION OF DECLARED VALUE BY CUSTOMS OFFICER**

(1) When the proper officer has reason to doubt the truth or accuracy of the value declared in relation to any imported goods, he may ask the importer of such goods to furnish further information including documents or other evidence and if, after receiving such further information, or in the absence of a response of such importer, the proper officer still has reasonable doubt about the truth or accuracy of the value so declared, it shall be deemed that the transaction value of such imported goods cannot be determined under the provisions of Rule 3(1).

(2) At the request of an importer, the proper officer, shall intimate the importer in writing the grounds for doubting the truth or accuracy of the value declared in relation to goods imported by such importer and provide a reasonable opportunity of being heard, before taking a final decision.

**Explanation:**

(i) This rule by itself does not provide a method for determination of value, it provides a mechanism and procedure for rejection of declared value in cases where there is reasonable doubt that the declared value does not represent the transaction value; where the declared value is rejected, the value shall be determined by proceeding sequentially in accordance with rules 4 to 9.

(ii) The proper officer shall have the powers to raise doubts on the truth or accuracy of the declared value based on certain reasons which may include –

- (a) the significantly higher value at which identical or similar goods imported at or about the same time in comparable quantities in a comparable transaction were assessed;
- (b) the sale involves an abnormal discount or abnormal reduction from the ordinary competitive price;
- (c) the sale involves a special discounts limited to exclusive agents;
- (d) the misdeclaration of goods in parameters such as description, quality, country of origin, year of manufacture or production;
- (e) the non-declaration of parameters such as brand, grade, specifications that have relevance to value; (f) the fraudulent or manipulated documents.

## RECENT JUDICIAL PRONOUNCEMENTS

**(1) Gira Enterprises (2014)(SC):** Facts: Department denied the transaction value of the assessee and applied transaction value of the identical goods on the ground that large number of such goods were imported at a higher value than the value actually declared by the assessee. The claim of the department was based on a computer printout obtained from the Customs House. However, the department did not supply such printout to the assessee. The assessee argued that the department had violated the principles of natural justice.

It was held that:

(i) The department did not supply the basis i.e. the computer printout to the assessee. Accordingly, the assessee did not get reasonable opportunity to establish the import transaction were not comparable. Even if the content of computer printout were correct the assessee must have been given the same as a principle of natural justice to present his case.

(ii) Hence, the value could not be enhanced on the basis of value of identical goods as the department fails to provide evidence of import of goods at higher prices.

**(2) Siddachalam Exports Pvt. Ltd. [2011] (SC):** The exporter over valued the price of the exported goods in order to claim higher drawback. It was held that, the department must first applied Rule 3 of Customs Export Valuation Rules, 2007 and not Rule 6.

**(3) Rai Metal Works Ltd. [2010] 259 ELT 488 (SC):** In the given case the agreement price is reduced subsequently vide an addendum to that agreement due to major discrepancy found in the imported product. It was held that, the assessable value of the imported goods is the transaction value. However, if the transaction value is reduced subsequently, then the reduced price can only be accepted on the basis of genuineness. In the given case, the reduction of price is genuine and therefore such reduced price shall be accepted for determining assessable value.

**(4) Dunlop India Ltd. v. CC [2010] ELT 328 (Cal.):**

Assessee does not have any import license therefore it engages an Indian Export-Import House to import a machinery for which it pays licence premium @ 35% the value of the machinery.

The machinery could not be imported without a valid license. The payment of license premium has a direct nexus to the import of the machinery. Therefore, the license premium paid by the assessee formed part of the transaction value of the machinery under section 14 read with Rule 10 of the Customs Import Valuation Rules, 2007.

**(5) Prabhu Prem Chand [2010] 253 ELT 353 (SC)-**

The department sought to enhance the value of imports as per the London Metal Exchange (LME) Rates prevalent at that time.

**Held that,** in absence of any evidence as to contemporaneous imports, the value of the imported goods cannot be enhanced based on LME rates, which are merely prevalent/offer prices. LME rates are not the prices at which the goods were actually imported in India at or about the same time, hence, LME rates were not the value of "**contemporaneous imports**".

**(6) *Pernod Ricard India (P) Ltd. [2010] 256 ELT 161 (SC):***

The department rejects the transaction value and compute valuation as per value of the similar goods. The Tribunal gives direction to apply the value of the similar goods after allowing adjustment (i.e. discount/deduction) of 20% from the value of similar goods on the ground that the imports made by the assessee were higher in quantity than the comparable imports of the similar goods.

Held that, The transaction value of similar goods can be taken, subject to adjustment to take account of the difference attributable to commercial level or to the quantity or both and such adjustments should be made on the basis of '**demonstrated evidence**'. The grant of discount in case of larger imports is a normal commercial practice. However, in the given case there was no demonstrated evidence to allow such 20% discount. In absence of any demonstrated evidence, the adjustment was invalid. Accordingly, the Tribunal **decision's** was not valid.

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**(7) *Mangalore Refinery & Petro chemicals Ltd. 2015 (323) (SC):*** In case of import of crude oil the actual quantity received in Indian port should be the basis for payment of customs duty and not the quantity shown in the bill of lading. As per the charging Section 12 the levy of customs duty is only on goods imported into India. Goods can be said to be imported only if brought to India. Hence, the quantity of goods imported into India will be the quantity that are entered for home consumption.

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## CUSTOM VALUATION - III

### PROVISIONS RELATED TO EXPORT

Export, with its grammatical variations and cognate expressions, means taking out of India to a place outside India. Exporter, in relation to any goods at any time between their entry for export and the time when they are exported, includes any owner, beneficial owner or any person holding himself out to be exporter.

**Beneficial Owner** means any person on whose behalf the goods are being imported or exported or who exercises effective control over the goods being imported or exported. [Section 2(3A)]

### PROCEDURES OF EXPORTATION

These procedures are not applicable to Baggage and goods imported or to be exported by post.

1. **Shipping Bill:** At first the exporter shall make entry of the exported goods by presenting a shipping bill (in case of vessel/aircraft)/ bill of export (in case of vehicle) **electronically on the customs automated system** in such form and manner as maybe prescribed. The exporter self-assesses and pays the duty, if any, leviable on exported goods subject to verification by the proper officer. [Section 50]

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

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

2. **Let Export order:** Thereafter, the proper officer shall give export clearance, if the exported goods are not prohibited and the exporter has paid the prescribed duty. This is known as Let Export Order. [Sec. 51]

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

3. **Grant of Entry Outwards:** A vessel intending to start loading of export goods must be first granted an Entry Outwards by the proper officer. The master of the vessel shall not permit the loading of any export goods, until the proper officer grants entry-outward to such vessels.

4. **Loading of Goods on conveyance:** The export goods shall be loaded on the conveyance for exportation with the permission of person-in-charge. The person-in-charge shall not permit the loading unless the goods shall be accompanied by a shipping bill or bill of export or bill of transshipment, as the case may be, duly passed by the proper officer, has been handed over to him by the exporter.

5. **Export General Manifest or Departure manifest [Sec.41]:**

The person-in-charge of a conveyance carrying export goods or imported goods or any other person as may be specified by the Central Government, by notification, shall, before departure of the conveyance from a customs station, deliver to the proper officer in the case of a vessel or aircraft, a departure manifest or an export manifest by presenting electronically, and in the case of a vehicle, an export report, in such form and manner as may be prescribed and in case, such person-in-charge or other person fails to deliver the departure manifest or export manifest or the export report or any part thereof within such time, and



the proper officer is satisfied that there is no sufficient cause for such delay, such person-in charge or other person shall be liable to pay penalty not exceeding ₹50,000/-.

However, in cases where it is not feasible to deliver the export manifest by presenting electronically, the Principal Commissioner of Customs/ Commissioner of Customs may allow the same to be delivered in any other manner.

The person in charge of a conveyance shall also deliver to the proper officer –

(i) the passenger and crew departure manifest

(ii) the passenger name record information of arriving passenger.

note- in case of delay, without sufficient reasons a maximum penalty of ₹ 50,000 can be imposed.

[Section 41A]

6. **No conveyance to leave without written order:** The person-in-charge of a conveyance which has brought any imported goods or has loaded any export goods at a customs station shall not cause or permit the conveyance to depart from that customs station until a written order to that effect has been given by the proper officer.

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## VALUATION OF EXPORT DUTY

(1) **TAXABLE EVENT:** Exportation commences when the shipping bill in respect of such goods is filed but the taxable event is completed when the goods cross the territorial waters of India.

(2) **RATE OF DUTY:**

(a) in the case of goods entered for export u/s 50, on the date on which the proper officer makes an order permitting clearance and loading of the goods for exportation u/s 51. (b) in the case of any other goods, on the date of payment of duty. [Section 16]

**Note-**The provisions of this section shall not apply to baggage and goods exported by post.

**Pallava Minerals Limited v. UOI [2001] 127 ELT 19 (Mad):** Duty is levied and collected at the rate prevalent on the date when the goods are actually allowed for export. The date of presentation of prior shipping bill through which the goods cannot be exported is not relevant.

(b) In case of export by post the rate of duty shall be the rate prevailing on the date on which the exporter delivers goods to the postal authorities.

(3) **VALUATION OF EXPORT GOODS**

(1) Valuation is done on FOB basis

(2) Exchange rate is taken on the date on which shipping bill/bill of export is presented u/s 50.

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**Example:** Compute Export duty, where the FOB price of the exported goods US \$ 50,000. The other details as under-

| Date       | Particulars  | Rate of Duty | Rate of Exchange notified by CBIC |
|------------|--|--------------|-----------------------------------|
| 10.01.20X1 | Presentation of shipping bill  | 10%          | 1 US \$ - ₹ 60                    |
| 02.02.20X1 | Let export order passed by proper officer for clearance and loading of goods u/s. 51 | 8%           | 1 US \$ - ₹ 55                    |

**Solution:**

FOB price of goods US \$ 50,000  
 Value in Indian Currency [US \$ 50,000 x ₹ 60] ₹ 30,00,000  
 Export Duty @ 8% ₹ 2,40,000  
 Social Welfare Surcharge shall not be levied on exported goods.

**SUMS FOR SELF PRACTICE**

**Question 17:** Compute export duty from the following data:

- FOB price of goods: US \$ 1,00,000; CIF Value \$ 1,20,000
- Shipping bill presented electronically on 26-02-20X1
- Proper officer passed order permitting clearance and loading of goods for export on 04-03-20X1.
- Rate of exchange and rate of export duty are as under:

|               | Rate of Exchange | Rate of Export Duty |
|---------------|------------------|---------------------|
| On 26-02-20X1 | 1 US \$ = ₹ 55   | 10%                 |
| On 04-03-20X1 | 1 US \$ = ₹ 56   | 8%                  |

Rate of exchange is notified for export by Central Board of Indirect Taxes and Customs.

**Solution:**

| Particulars                                      | Amount (US \$)    |
|--|-------------------|
| FOB price of goods                               | 1,00,000          |
|  | <b>Amount (₹)</b> |
| Value in Indian currency (US \$ 1,00,000 x ₹ 55) | 55,00,000         |
| <b>Export duty @ 8%</b>                          | <b>4,40,000</b>   |

- Valuation is done on FOB basis
- Exchange rate is taken on the date on which shipping bill/bill of export is presented u/s 50.
- Relevant date for determining the rate of duty is on the date on which the proper officer makes an order permitting clearance and loading of the goods for exportation u/s 51(Let Export Order).
- Social Welfare Surcharge shall not be charged on Export duty.

**Question 18:** Pyramid Expo Ltd. has exported some goods by air. The FOB price of goods exported is US \$ 50,000. The shipping bill was presented electronically on 7-3-20X1 and Let Export Order is passed by proper officer on 19-4-20X1. The rate of exchange notified by CBIC on 7-3-20X1 and 19-4-20X1 are 1 US \$ = ₹ 65 and 1 US \$ = ₹ 64 respectively. Compute the export duty payable by Pyramid Expo with the help of following details provided. [Exam Question]

| Particulars                   | Date      | Rate of Duty |
|-------------------------------|-----------|--------------|
| Presentation of shipping bill | 7-3-20X1  | 12%          |
| Let Export order              | 19-4-20X1 | 10%          |

**Answer: Computation of export duty**

| Particulars                            | Amount (US)     |
|--|-----------------|
| Assessable Value [FOB Price]           | 50,000          |
|  | <b>Amount</b>   |
| Assessable Value = US \$ 50,000 x ₹ 65 | 32,50,000       |
| <b>Export duty @ 10%</b>               | <b>3,25,000</b> |

Working- same as Question 17.

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**CUSTOMS EXPORT VALUATION RULES, 2007**

|                                   |   |
|-----------------------------------|---|
| <b>Transaction Value [Rule 3]</b> | <p>The value of export goods shall be the transaction value subject to rule 8 of the said rules (i.e., it may be rejected).</p> <p><b>Valuation in case of related persons:</b> The transaction value shall be accepted even where the buyer and the seller are related, provided that the relationship has not influenced the price.</p> <p><b>Valuation when transaction value not acceptable:</b> In case transaction value is not acceptable, the value shall be determined by proceeding sequentially through Rules 4 to 6.</p>  |
| <b>Comparative Value [Rule 4]</b> | <p><b>Assessable Value</b> = Transaction value of <u>goods of like kind and quality</u> i.e, identical or similar goods, exported at or about the same time to other buyers.</p> <p><b>Rule 4:</b></p> <p>(1) The value of the export goods shall be based on the transaction value of <u>goods of like kind and quality</u> 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 given below</p> <p>(2) Adjustments shall be made in respect of the following:</p> <p>(i) difference in the dates of exportation,</p>             |
|                                   | <p>(ii) difference in commercial levels and quantity levels,</p> <p>(iii) difference in composition, quality and design between the goods to be assessed and the goods, with which they are being compared,</p> <p>(iv) difference in domestic freight and insurance charges depending on the place of exportation.</p> <p><b>Note:</b> According to Rule 2(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.</p> |

|   |   |
|---|---|
| <b>Computed Value [Rule 5]</b>              | <p>If the value cannot be determined under Rule 4, it shall be based on a computed value, which is the sum total of the following:-</p> <p>(a) cost of production, manufacture or processing of export goods;</p> <p>(b) charges, if any, for the design or brand; (c) an amount towards profit.</p> <p><b>Note:</b> The Board has clarified that while determining the value under this Rule, the proper officer shall due consideration to the cost-certificate issued by a Cost Accountant or Chartered Accountant or Government approved valuer, as produced by the exporter.</p> |
| <b>Residual Method [Rule 6]</b>             | 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. However, local market price of the export goods may not be the only basis for determining the value of export goods.   |
| <b>Declaration by the Exporter [Rule 7]</b> | same as Import  |
| <b>Rejection of declared value [Rule 8]</b> | same as import  |

**Chapter 3****SPECIAL TYPES OF DUTIES UNDER CUSTOM**

Duties are broadly of two categories – (1) Revenue duties (to generate revenue) and (2) Protective duties (to protect domestic market).

**Protective duty [Sec. 6 of CTA, 1975]**

Protective duties are levied by the Central Government on the recommendation of the Tariff Commission of India to ensure protection to domestic industries established in India, from bulk imports. Protective duty is imposed by the Central Government by introducing a Bill and getting it passed in the Parliament. It is characterized in column 5 of the Customs Tariff schedule as 'protective'.

**Safeguard duty [Sec. 8B of Customs Tariff Act]**

**Section 8B (1):** Where the Central Government is satisfied that –

- a. An article is imported into India in increased quantities; and
  - b. Such article is imported in such manner which shall cause or is threatening to cause serious injury to the domestic market,
- then it may impose safeguard duty on such imported articles.

If the following conditions are satisfied then safeguard duty shall not be imposed- (a) Such article is originating from a developing country or countries

- (i) Where the article is originating from one developing country - The share of imports of that article from that country does not exceed 3% of the total imports of that article in India
- (ii) Where the article is originating from more than one developing country - The aggregate of the imports from all such countries does not exceed 9% of the total imports of that article into India

**Section 8B(2):** The Central Government may, pending the enquiry, impose a provisional safeguard duty on the basis of preliminary determination that increased imports have caused or is threatened to cause serious injury to a domestic industry. However, such provisional safeguard duty shall not remain in force for more than 200 days from the date on which it was imposed.

The duty so collected shall be refunded if on a final determination the Central Government is of the opinion that neither any injury has been caused to the domestic industry, nor there is any such threat to cause serious injury.

**Section 8B(2A):** Unless and until specifically mentioned in the notification, safeguard duty or provisional safeguard duty shall not apply on articles imported by a 100% export oriented undertaking or a unit in free trade zone or in special economic zone.

**Section 8B (4):** Safeguard duty shall be ceased to have effect on the expiry of 4 years (unless revoked earlier) from the date of its imposition. However, the Central Government may extend the period of levy to 10 years.

Articles imported by an EOU/SEZ unit and cleared as such into DTA or used in the manufacture of final products that are cleared into DTA liable to safeguard duty. In such a case safe guard duty shall be levied on that portion of the article so cleared or so used as was leviable when it was imported into India.

**Notes:**

(a) "Serious Injury" means an injuring causing significant overall impairment in the position of a domestic industry.

(b) “Threat of serious Injury” means a clear and impairment danger of serious injury.

### Discussions & Explanations

| Safeguard duty [section 8B]   | Anti-subsidy duty [Section 9]  |
|---|--|
| (i) Increased quantity + Serious injury                                     | (i) Government of other country gives subsidy for export to India.   |
| (ii) Imposed on an article  | (ii) Imposed on a country  |
| (iii) Provisional duty when the Government is not sure about serious injury | (iii) Imposed when the Govt. is sure that subsidy is granted but not sure about quantum.                         |
| (iv) No retrospective levy  | (iv) Retrospective levy if massive import in a relatively short period causes injury.                            |
| (v) 4 years but maximum 10 years  | (v) 5 years and then it can be extended from time to time for further period of 5 years.<br>[e.g, 5+5.....+5...] |

### Countervailing duty on subsidized articles [Sec. 9 of CTA]

The Central government has the powers to levy duty when any country gives any subsidy, directly or indirectly, upon the manufacture or production, transportation or exportation of any article into India. countervailing duty cannot exceed the amount of such subsidy. This duty is also known as anti-subsidy duty.

**Anti-circumvention measures:** Where the Central Government, on such inquiry as it considers necessary, is of the opinion that circumvention of countervailing duty imposed under sub-section (1) has taken place, either by altering the description or name or composition of the article on which such duty has been imposed or by import of such article in an unassembled or disassembled form or by changing the country of its origin or export or in any other manner, whereby the countervailing duty so imposed is rendered ineffective, it may extend the countervailing duty to such other article also. [Section 9(1A)]

### Provisional anti-subsidy

The Central government may, pending the determination of the amount of subsidy, impose a provisional countervailing duty not exceeding the amount of such subsidy as provisionally estimated by it and if such countervailing duty exceeds the subsidy as so determined,

- (a) the Central Government shall, having regard to such determination and as soon as may be after such determination, reduce such countervailing duty; and
- (b) refund shall be made of so much of such countervailing duty which has been collected in excess of the countervailing duty so reduced.

The countervailing duty shall not be imposed unless it is determined that –

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

The countervailing duty on subsidized article shall be in addition to any other duty imposed under this Act.

### Retrospective levy

The Central Government can levy retrospectively anti-subsidy duty if massive imports in a relatively short period have caused injury to the domestic industry. Such duty can be imposed retrospectively from a date prior to the date of imposition of provisional countervailing duty but not beyond **90 days** from the date of such notification of provisional duty.

**Duration**

The countervailing duty imposed under this section shall, unless revoked earlier, cease to have effect on the expiry of five years from the date of such imposition.

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

**Provided** further that where a review initiated before the expiry of the aforesaid period of five years has not come to a conclusion before expiry, the countervailing duty may continue to remain in force pending the outcome of such a review for a further period not exceeding one year.

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**Anti-Dumping Duty [Sec. 9A of CTA, 1975]**

(1) Dumping is said to be a case when the **exporter or a producer** sell the product to an importing country at a price less than the price which is prevailing in its indigenous markets for the like product.

Section 9A(1) provides that where *any article is exported by an exporter or producer* from any country or territory to India at less than its normal value, then upon the importation of such article into India, the Central Government may by notification in the official gazette, impose an anti-dumping duty on not exceeding the margin of dumping.

**Explanation:**

(a) **Margin of Dumping** in relation to an article, means the difference between its export price and its normal value.

(b) **Normal Value** in relation to the article means,

(i) The comparable domestic price of the article, in the ordinary course of trade when destined for consumption in the exporting country.

(ii) In other cases the normal value shall be either.

(a) Comparable representative price of the like article from the exporting country or territory to an appropriate third country.

(b) The cost of production of the said article in the country of origin along with reasonable addition for administrative, selling and general costs, and for profits.

(iii) In case of import of the article from a country other than the country of origin the normal value shall be determined with reference to its price in the country of origin.

(c) **Export price:** The “export price” of the article is the price of the article exported from the exporting country. In case where export price is unreliable, then the export price is determined as follows-

(a) The price is determined on basis of the price at which the imported article is first sold to an independent buyer, and

(b) In case there is no independent buyer or not resold in the condition in which it was imported, then, the price is determined in accordance with the rules made in this behalf

The margin of dumping in relation to an article shall be determined on the basis of records concerning normal value and export price maintained, and information provided, by such exporter or producer and if they fail to give the records then it shall be determined on the basis of facts available. [Section 9(6A)]

**(1A)** Where the Central Govt., on such inquiry as it may consider necessary, is of the opinion that circumvention of anti-dumping duty imposed under sub-section (1) has taken place, be either of the following ways-

- a) by altering the description or name or composition of the article subject to such anti-dumping duty
- b) by import of such article in an unassembled or disassembled form
- c) by changing the country of its origin or export or
- d) in any other manner, whereby the anti-dumping duty so imposed is rendered ineffective it may extend the anti-dumping duty to such article originating in or exported from such country, as the case may be.

**(2) Provisional anti-dumping duty**

The central Government may, pending the determination of the amount of dumping, as provisional estimated by it and if such anti-dumping duty exceeds the margin of dumping as so determined,

(a) the central Government shall, having regard to such determination and as soon as may be after such determination, reduce such anti-dumping duty, and

(b) refund shall be made of so much anti-dumping duty which has been collected in excess of the anti-dumping duty so reduced.

**(3) No duty in case of 100% EOU: [Sec. 9A(2A)]**

Anti-dumping duty shall not apply to articles imported by a 100% EOU unless-

(i) specifically made applicable in such notifications or such impositions, as the case may be; or

(ii) the article imported is either cleared as such into the DTA or used in the manufacture of any goods that are cleared into the DTA, and in such cases anti-dumping duty shall be levied on that portion of article so cleared or so used as was leviable when it was imported into India.

**(4) Retrospective levy**

The central Government can levy retrospectively anti-dumping duty if massive imports in a relatively short period has caused injury to the domestic industry. Such duty can be imposed retrospectively from a date prior to the date of imposition of provisional anti-dumping duty but not beyond **90 days** from the date of such notification of provisional duty.

**(5)** The anti-dumping duty is levied in addition to any other duty levied under this act or any other law for the time being in force.

**(6) Duration**

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

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

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

In case the goods made out of the material subjected to anti-dumping duty are exported, then duty drawback will be allowed on such goods as special brand rate.



**Question 19:** Chaintop Industries has challenged the imposition of anti-dumping duty retrospectively from the date prior to the date of imposition of anti-dumping duty on the grounds that it is unconstitutional. Explain whether it would succeed in its contention. [Final Exam Question]

**Answer:** As per section 9A(3), If the Central Government, in respect of the dumped article under inquiry, is of the opinion that –

(i) there is a history of dumping which caused injury or that the importer was, or should have been, aware that the exporter practices dumping and that such dumping would cause injury; and  
 (ii) the injury is caused by massive dumping of an article imported in a relatively short time which in the light of the timing and the volume of imported article dumped and other circumstances is likely to seriously undermine the remedial effect of the antidumping duty liable to be levied,  
 the Central Government may, by notification in the Official Gazette, levy anti-dumping duty retrospectively from a date prior to the date of imposition of anti-dumping duty but not beyond 90 days from the date of notification. Hence, in view of the above provisions, the assessee can succeed only if conditions of Section 9A(3) are not satisfied.

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### **Miscellaneous provisions**

#### **SECTION 8: POWER OF CENTRAL GOVT. TO INCREASE OR LEVY EXPORT DUTIES**

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

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#### **SECTION 8A: POWER OF CENTRAL GOVERNMENT TO INCREASE IMPORT DUTIES**

Where in respect of any article included in the First Schedule, the Central Government is satisfied that the import duty leviable thereon u/s 12 of the Customs Act, 1962 should be increased and circumstances exist which render it necessary to take immediate action, it may by notification in Official Gazette, direct an amendment of the First Schedule so as to provide for an increase in the import duty leviable on such article to such extents as it thinks necessary. However, no second increase of import duty on any article shall be made under this section, unless the first increase thereof has been approved with or without modifications by the parliament.

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#### **SECTION 9AA: REFUND OF ANTI-DUMPING DUTY IN CERTAIN CASES**

Where upon determination by an officer authorized in this behalf by the Central Government, an importer proves to the satisfaction of the Central Government that he has paid anti-dumping duty imposed u/s. 9A(1) on any article, in excess of the actual margin of dumping in relation to such article, the Central government shall, as soon as may be, reduce such anti-dumping duty as is in excess of actual margin of dumping so determined, in relation to such article or such importer, and such importer shall be entitled to refund of such excess duty. However, the importer will not be entitled for refund of provisional anti-dumping duty which is refundable u/s 9A. For this purpose, the Central Government may make rules authorizing the officer of Customs to dispose of such application of refund and the time limit within which such refund will be granted.

**Refund of Anti-Dumping Duty (Paid in Excess of Actual Margin of Dumping) Rules, 2012** [Notification No. 05/2012 Customs (N.T.), dated 19.1.2012]

**Procedure for claiming refund of excess payment of Anti-dumping duty**

The application should be made along with necessary documents evidencing payment of anti-dumping duty to the AC/ DC of Customs, as the case may be, at the port of importation. The application should be filed within three months from the date of publication of notification/court orders. If the application is found to be deficient in any material particulars, it shall be returned to the importer within one month pointing out the deficiencies. The importer may re-submit the application within one month of receipt thereof. The refund shall be granted within 90 days of the receipt of the application/revised application. This shall be subject to doctrine of unjust enrichment.

**SECTION 9B: NO LEVY OF COUNTERVAILING DUTY AND ANTI-DUMPING DUTY IN CERTAIN CASES**

Section 9B provides that in case of the following circumstances countervailing duty and antidumping duty cannot be levied-

- (i) Both countervailing duty and antidumping duty shall not be levied together on any article to compensate for the same situation of dumping or export subsidization.
- (ii) Where article enjoy exemptions from duties or taxes or refund of such duties or taxes when meant for consumption in the country of origin or exportation.
- (iii) Where goods are imported from MFN - unless subsidy or dumping is proved as per the rule framed in that behalf.
- (iv) The Central Government may not levy any countervailing duty u/s 9, at any time, upon receipt of satisfactory voluntary undertakings from the Government of the exporting country or territory agreeing to eliminate or limit the subsidy or take other measures concerning its effect, or the exporter agreeing to revise the price of the article and the Central Government is satisfied that the injurious effect to the subsidy is eliminated thereby.
- (v) The Central Government may not levy any anti-dumping duty u/s 9A, at any time, upon receipt of satisfactory voluntary undertaking from any exporter to revise its prices or to cease exports to the area in question at dumped price and if the Central Government is satisfied that the injurious effect of dumping is eliminate by such action.

**SECTION 9C: APPEAL**

(1) An appeal against the order of determination or review thereof shall lie to the Customs, Excise and Service Tax Appellate Tribunal constituted under section 129 of the Customs Act, 1962, in respect of the existence, degree and effect of—

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

(2) The appeal shall be accompanied by a fee of ₹15,000. A fee of ₹500 shall be accompanied on every application made before the Tribunal for grant of stay or rectification of mistake or for restoration of appeal or an application.

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

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

### PROJECT IMPORT AND ELIGIBLE PROJECTS

(1) Setting up of a project in India may require a number of machines and equipment's to be imported and this importation may spread over a period of times and thereby assigning values to the machines also becomes a cumbersome process.

(2) In order to avoid all such difficulties, a new Tariff item under the Heading 9801 has been incorporated in the Customs Tariff Act, 1975. This Heading covers all machinery, instruments, apparatus and appliances for research and development purposes, components of raw material required for manufacture of aforesaid items etc., which are utilised for initial setting up of project or **substantial expansion** of the existing project. The spares to the extent of **10%** of the total value of plant and machinery can be imported under project import.

**substantial expansion:** means increased in installed capacity by more than 25%

(4) The eligible projects are industrial plants, irrigation power, mining projects, oil and other mineral exploration projects and any other project notified by the Central Government. There is no minimum investment criterion for the purpose.

(5) Circular No.49/2011, dated 4-11-2011: Construction equipment are also covered under tariff heading 9801 and eligible for import under project import, provided such construction equipment are prerequisite for initial setting up or substantial expansion of registered project.

(6) **Lanco Kondapalli Power Pvt. Ltd. [2011] (SC)**: Concession given under Project import cannot be denied when imported goods are lost in sea before reaching the project site.

### SAFEGUARD DUTY VS. ANTI DUMPING DUTY

| Safeguard duty   | Anti dumping duty  |
|--|--|
| 1. Safeguard duty is levied in order ensure that goods imported in increased quantity do not cause or threaten to cause serious injury to  | 1. Anti dumping duty is levied on the dumped articles in order to protect the domestic market  |
| 2. Safeguard duty relates to quantum of imports.   | 2. Anti dumping duty is concerned with valuation of imported goods.  |
| 3. In case of articles originating from developing country, safeguard duty can be imposed only if –<br>(a) Imports of such article from the developing country exceeds three percent of the total imports of that article to India.<br>(b) Where the article is originating from more than "M one developing country, than the aggregate of imports E from all such countries taken together exceed 9% of the total imports of that article into India | 3. Where any article is exported from any country to India at less than its normal price, then the central government can impose an anti dumping duty not exceeding the margin of dumping.<br><br>margin of <b>dumping</b> " = Normal value of the article – export price of the article |

Note: Where Customs duty is not payable on import of electrical energy, same rule shall be applicable for transfer of similar goods from SEZ to DTA. [Case of Adani Power Ltd. (SC)]

**SUMS FOR PRACTICE**

**Question 20:** X imported certain goods weighing 1,000 kgs on 15.9.20XX. With CIF value US \$ 40,000. Exchange rate was 1 US \$ = ₹ 45 on the date of presentation of bill of entry. Basic customs duty is chargeable @ 10%. As per Notification issued by the Government of India, anti-dumping duty has been imposed on these goods. The anti-dumping duty will be equal to difference between amount calculated @ US \$ 60 per kg. and 'landed value' of goods. Compute custom duty, IGST and anti-dumping duty payable by X. Rate of IGST is 5%. Ignore Compensation Cess.

**Solution :**

|   |                  |
|---|------------------|
| CIF Value of the consignment (in Indian ₹)[US \$ 40000 X 45]  |                  |
| <b>Assessable Value under Customs Laws</b>  | 18,00,000        |
| Add : Basic Customs Duty @ 10%  | 1,80,000         |
| Add : Social Welfare Surcharge @ 10 % on BCD  | 18,000           |
| <b>Landed Value / Cost of the goods [A]</b>   | <u>19,98,000</u> |
| Cost of commodity for the purposes of anti-dumping notification [B]<br>[1000 Kg. x US\$ 60 per Kg. x ₹ 45 per dollar] | 27,00,000        |
| <b>Anti-dumping duty [B – A]</b>  | 7,02,000         |
| <b>IGST u/s. 3(7) @5% on (19,98,000 + 702000)</b>   | 1,35,000         |
| <b>Total Customs Duty [1,80,000+18,000+7,02,000+1,35,000]</b>   | 10,35,000        |

**Notes:**

(1)For the purposes of anti-dumping duty, "landed value" means the assessable value as determined under the Customs Act, 1962 and includes all duties of customs except duties under sections 3,8B, 9 and 9A of the said Customs Tariff Act, 1975. SWS shall not be levied on Antidumping duty and also on IGST.

**Question 21:** Determine the customs duty payable under Customs Tariff Act, 1975 including the safeguard duty of 30% under section 8B of the said Act with the following details available on hand:

|   |             |
|---|-------------|
| Import of Sodium Nitrite from a developing country  | ₹ 30,00,000 |
| Share of imports of Sodium Nitrite from the developing country against total imports of Sodium Nitrite to India | 4%          |
| Basic Customs Duty  | 10%         |
| IGST U/S. 3(7) of the Customs Tariff Act, 1975  | 12%         |
| Social Welfare Surcharge  | 10%         |

(Final Exam Question)

**Solution :** Computation of custom duty payable

|  |                  |
|--|------------------|
|  | ₹                |
| (A) Price of Imported goods/ Assessable Value<br>(Assuming landing charges are also included)  | 30,00,000        |
| (B) Basic Custom Duty @ 10%  | 3,00,000         |
| (C) Social Welfare Surcharge @ 10% on (B)  | 30,000           |
| (D) Safeguard Duty u/s. 8B @ 30% of 30,00,000<br>(Since, import from developing country exceed 3% of total import into India)<br>(SWS shall not be levied on Safeguard Duty) | 9,00,000         |
| (E) IGST U/S.3(7) @ 12% on (A+B+C+D)   | <u>5,07,600</u>  |
| <b>Custom Duty and IGST Payable (B +C+D+E)</b>   | <b>17,37,600</b> |

**Chapter 4****TREATMENT IN SPECIAL CASES****SECTION 23: REMISSION OF DUTY ON LOST, DESTROYED OR ABANDONED GOODS**

(1) Where it is shown to the satisfaction of the Assistant Commissioner or Deputy Commissioner that any imported goods have been lost (otherwise than as a result of pilferage) or destroyed at any time before clearance for home consumption, then the Assistant Commissioner or Deputy Commissioner shall remit the duty on such goods. The term **"loss"** here means the loss is forever and there is no possibility of tracing it or recovering it.

Is to be noted that in case of theft no remission is available u/s. 23, as theft does not fall within the purview of expression **"lost"** or **"destroyed"** [*Case of Himalaya Granites Ltd. (2007) (Mad)*]

(2) The owner of any imported goods may, before an order for clearance of goods for home consumption or an order for permitting the deposit of goods in a warehouse, relinquish his title to the goods and thereupon he shall not be liable to pay the duty thereon.

**Provided that** 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.

**SECTION 13: DUTY ON PILFERED GOODS**

If any imported goods are pilfered after the unloading thereof and before the proper officer has made an order for clearance for home consumption or deposit in a warehouse, the importer shall not be liable to pay the duty leviable on such goods except where such goods are re-stored to the importer after pilferage - [Sec. 13]

All imported goods unloaded in a customs area shall remain in the custody of an approved person (being approved by the Commissioner) until they are cleared for home consumption or are warehoused or are transhipped - [Sec.45(1)]

If any imported goods are pilfered after unloading thereof in a custom area while in the custody of such approved person, then that person shall be liable to pay duty on such goods at the rate prevailing on the date of delivery of an arrival manifest or import manifest or an import report to the proper officer - [Sec. 45(2)]

**"customs area"** means the area of a custom station or a warehouse and includes any area in which imported goods or exported goods are ordinarily kept before clearance by customs authorities. [Section 2(11)]

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

**SECTION 24: DENATURING AND MUTILATION OF GOODS**

The Central Government may make rules for permitting at the request of the owner the denaturing or mutilation (i.e. making goods, which are ordinarily used for more than one purpose, unfit for one or more of such purposes) of imported goods.

Where any goods are so denatured or mutilated they shall be chargeable to duty at such rate applicable as would be applicable if the goods have been imported in the denatured or mutilated form.

The Supreme Court in the case of UOI vs. Madanlal Steel Industries Ltd. (2001) 132 ELT 526, held that mutilation and release u/s 24 is not permissible in case of willfully mis declared goods.

## SECTION 19: DETERMINATION OF DUTY WHERE GOODS CONSIST OF ARTICLES LIABLE TO DIFFERENT RATE OF DUTY

Where the goods consist of a set of articles, duty shall be calculated on the following basis:

| Articles   | Basis of chargeability   |
|--|--|
| 1. Articles liable to duty on the basis of quantity  | Such articles shall be chargeable on the basis of quantity   |
| 2. Articles liable to duty on the basis of value<br>- If they are liable to duty at same rate<br><br>- If they are liable to duty at different rates | Such articles shall be chargeable at that rate<br><br>Such articles shall be chargeable at the highest of such rates |
| 3. Articles not liable to duty   | Such articles shall be chargeable on the basis mentioned (2) above   |

### Other points

1. Accessories of articles and spare parts or maintenance and repairing implements for, any article shall be chargeable at the same rate of duty as that article, provided (a) such accessories, parts etc. are compulsorily supplied with that article; and (b) no separate charge is made for such supply, their price being included in the price of that article. [Accessories (Conditions) Rules, 1963]

2. Where the importer produces evidence to the satisfaction of the proper officer or *the evidence is available* regarding the value of any of the articles liable to different rates of duty, such article shall be chargeable to duty separately at the rate applicable to it.

## SECTION 21: GOODS DERELICT, WRECK, JETSAM AND FLOTSAM

### Meaning

Derelict : Derelict means property abandoned at sea without hope of recovering.

Wreck : Wreck is the property cast ashore after shipwreck.

Jetsam : Where goods are cast into the sea for lighten the ship to prevent it from sinking.

Flotsam : Goods separated from ship by some peril, which continue to float on sea.

### Treatment:

Goods being derelict, wreck, jetsam and flotsam brought or coming into India shall be dealt with as if they were imported into India. However, where it is shown to the satisfaction of the proper officer that they are entitled to be admitted duty-free, then proper officer may admit it as duty-free.

## SECTION 22: ABATEMENT OF DUTY ON DAMAGED OR DETERIORATED GOODS

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

(1) That any imported goods had been damaged or had deteriorated at any time before or during the unloading of the goods in India; or

(2) That any imported goods (other than warehouse goods) had been damaged at any time after the unloading of goods in India but before its examination u/s 17 on account of any accident not due to any willful act, negligence or default of the importer, his employee or agent; or

(3) That any warehoused goods had been damaged at any time before clearance for home consumption on account of any accident not due to any willful act, negligence or default of the owner, his employee or agent.

### **Treatment**

The duty to be charged on the goods shall bear the proportion to the duty chargeable on the goods before the damage or deterioration, which the value of the damaged or deteriorated goods bears to the value before the damage or deterioration. Mathematically,

$$\text{Duty on damaged goods} = \frac{\text{Duty on goods before damage}}{\text{Value of goods before damage}} \times \text{Value of goods after damage}$$

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

(a) The value of such goods may be ascertained by the proper officer; or

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

### **Discussions & Explanations**

#### **Summary -**

(1) If goods are lost or destroyed before physical clearance for Home Consumption—Duty shall be remitted.

(2) Importer can relinquish title to goods before order or clearance for Home Consumption/depositing in warehouse.

(3) If goods are pilfered before order for clearance for Home Consumption or warehousing then no duty payable

(4) Denature / Mutilation—Permitted  
Rate- Denature / Mutilation form

(5) Damage or Deteriorated – value proportionately reduced

(6) Goods derelict/wreck, jetsam/ flotsam brought to/ carry to India is treated as if it is import.

**Symphony Services Corporation India Pvt. Ltd. [2012] (Kar.):** Where the imported goods were substantially damaged by rain water and were rendered of no use it was held that S. 22 (abatement of duty in case of damage or deterioration to the goods on account of any accident) was not applicable as Section 22 had no application in case of natural calamities. However, the importer can relinquish his title to goods U/s 23.

## CONSEQUENCES OF EXPORT AND THEN RE-IMPORT

**(a) Refund of export duty (Section 26):** Any export duty paid on goods exported will be refunded for re-importation, if Goods are re-imported within one year due to return otherwise than by way of resale. Refund claim is to be made within 6 months from the date when goods are cleared for re-importation.

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**(b) No refund instead imports duty u/s. 20 will be charged – if it is a case of resale.**

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**SECTION 20:** Where the goods have been imported in to India after exportation therefrom, -

- (i) they shall be liable to such duty as the goods of like kind and value are liable; and
- (ii) they shall be subject to such restrictions & conditions as apply to like goods of same kind and value.

However, the following notifications have provided certain concession in this regard.

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**Condition 1: Not. No. 94/96-Cus., dated 16-12-1996:** Goods exported under claim of drawback or under bond without payment of duty or under claim for rebate and re-imported within 3 years (or extended period, if any) without being re-manufactured/ re-processed.

**Concession available** - The importer will be liable to pay customs duties equal to - the amount of benefit availed on account of duty draw back and excise duty concessions/ rebate when the goods were exported.

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**Condition 2: Not. No. 94/96-Cus., dated 16-12-1996:** Goods exported for repairs abroad and re-imported by the same person within 3 years (or extended period, if any) without being re-manufactured/ re-processed. Further, exported goods and the re-imported goods must be the same and ownership of the goods should not change.

**Concession available** - Importer will be liable to pay duty on the value comprising of fair cost of repairs carried out including cost of materials used in repairs (whether such costs are actually incurred or not) *plus* insurance and freight charges, both ways.

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**Condition 3: Not. No.158/95-Cus., dated 14-11-1995,:**

Goods manufactured in India and re-imported into India –

- (a) for repairs or re-conditioning **other than the goods specified** within 3\* years from the date of exportation (in case of Nepal, such re- importation takes place within 10 years from the date of exportation); or

[\*7 years for some specified electronic Goods (such as Electric sound amplifier sets, colour TVs, hearing Aid etc)]

- (b) for reprocessing; or refining; or re-making; or other similar process within 1 year from the date of exportation.

**Concession available** – There is a complete exemption from import duty leviable on such goods provided such goods are exported within **6 months (1 year for specified goods)** from the date of their re-importation or such extended period not exceeding a further period of six months as the Commissioner of Customs may allow; and the Assistant Commissioner of Customs is satisfied as regards identity of the goods;

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### THE QUESTION BANK

**Question 22:** Mayank manufactured and exported goods worth ₹10,00,000 to Uday of UK on 1<sup>st</sup> January, 20X1 and availed duty drawback of ₹15,000. Mayank imported the same goods on 8<sup>th</sup> February, 20X1. What will be the customs duty payable by Mayank, if rate of basic customs duty is 10% and goods are exempt from IGST.

**Solution:** If the same goods which were exported are re-imported within 3 years and there is no change in the identity of the goods between the time of their export and re-import then custom duty shall be payable equal to duty drawback availed. Thus the custom duty payable by Mr. Mayank on re-import of goods shall be ₹15,000. [Refer Not. No. 94/96-Cus., dated 16-12-1996]

**Question 23:** A machine was originally imported from Japan at ₹400 Lakh in August, 20XX on payment of all duties of customs. The said machine was exported (sent back) to supplier for repairs in January, 20X1 and re-imported without any remanufacturing or re-processing in October, 20XX after repairs.

Since the machine was under warranty period, the repairs were carried out free of cost. Other information is as under: -

- (i) the fair cost of repairs was ₹5,00,000
- (ii) the cost of material was ₹ 7,00,000.
- (iii) Annual insurance and freight charges (both ways) were ₹4,00,000

The rate of basic custom duty is 10% and rate of IGST u/s. 3(7) of the Customs Tariff Act, 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.

**Solution:** Refer Not. No. 94/96-Cus., dated 16-12-1996. Since all the conditions has been satisfied therefore it has been assume that the importer has opted the benefit provided under said notification. Accordingly, the custom duty is to be computed as under –

| Particulars  | ₹               |
|--|-----------------|
| (A) Value of goods re-imported<br>[Fair cost + cost of material + freight] | 16,00,000       |
| (B) Basic customs duty @ 10%   | 1,60,000        |
| (C) Social Welfare Surcharge @ 10% (B)                                     | 16,000          |
| (D) IGST u/s. 3(7) @ 12% of (A+B+C)  | <u>2,13,120</u> |
| Total Custom duty (B+C+D)  | 3,89,120        |

**Question 24:** Maxiline Corp, not being an EOU, had imported technical instruments from USA for ₹ 180 lakh on payment of duty. It had to subsequently send back the same to the supplier for repair. The supplier has agreed to provide discount of 50% of the fair cost of repairs, resulting in Maxiline Corp paying USD 15,000. Following further particulars are available:

| Particulars      | Date       | Rate of Duty | Inter Bank<br>Exchange rate | Rate notified<br>by CBEC |
|------------------|------------|--------------|-----------------------------|--------------------------|
| Bill of Entry    | 21-02-20X1 | 20%          | 60                          | 62                       |
| Aircraft arrival | 26-02-20X1 | 15%          | 62                          | 61                       |

IGST u/s 3(7) of Customs Tariff Act, 1975 -12%.

|             | Outwards (Amt. in ₹) | Inwards (Amt. in ₹) |
|-------------|----------------------|---------------------|
| Insurance   | 20,000               | 30,000              |
| Air Freight | 80,000               | 1,20,000            |

Other details available on records:

- (a) Goods are reimported within 3 years of despatch for repair .
- (b) Both the exported and imported goods are the same.
- (c) There is no change in the ownership of technical instruments.
- (d) The export is not from a public/private warehouse and repairs does not amount to manufacture.

Determine total duty payable with appropriate notes for your computation.

**Answer:** Refer Not. No. 94/96-Cus., dated 16-12-1996. Since all the conditions has been satisfied therefore it has been assume that the importer has opted the benefit provided under said notification. Accordingly, the custom duty is to be computed as under –

| Particulars   |              |
|---|--------------|
| Fair cost of repairs (in US\$) = \$15,000/50%               | \$ 30,000    |
| Fair cost of repairs (in INR) [ \$30,000 × ₹ 62 ]           | ₹18,60,000   |
| Add: Inward and outward insurance [₹ 20,000 + ₹ 30,000]     | ₹50,000      |
| Add: Inward and outward air freight [₹ 80,000 + ₹ 1,20,000] | ₹2,00,000    |
| CIF Value/ Assessable Value                                 | A ₹21,10,000 |
| Basic customs duty @15% of 'A'                              | B ₹3,16,500  |
| Social Welfare Surcharge @ 10% of 'B'                       | C ₹31,650    |
| IGST @ 12% on A+B+C   | D ₹2,94,978  |
| Total Customs Duty [B+C+D]                                  | ₹6,43,128    |

**Question 25:** An importer imported a consignment weighing 10,000 tons. The importer filed a bill of entry for home consumption. The Assistant Commissioner passed an order for clearance of goods and applicable duty was paid by them. The importer thereafter found, on taking delivery from the Port Trust Authorities i.e., before the clearance for home consumption, that only 9,000 tonnes of inputs were available at the docks although he had paid duty for the entire 10,000 tonnes.

There was no short-landing of cargo. The short- delivery of 1,000 tonnes was also substantiated by the Port Trust Authorities, who gave a weightment 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 his claim for remission of duty on the 10,000 tonnes not delivered by the Port Trust. Examine the issue and tender your opinion as per law, giving reasons. [Exam Question]

**Answer:** As per Section 23(1), where it is shown to the satisfaction of the Assistant Commissioner or Deputy Commissioner that any imported goods have been lost (otherwise than as a result of pilferage) or destroyed at any time before clearance for home consumption, then the Assistant Commissioner or Deputy Commissioner shall remit the duty on such goods. Further, the loss of 1,000 tonnes of inputs cannot be construed to be pilferage, as loss of such huge quantity cannot be treated as "Petty Theft". Hence, the importer's claim for remission of duty.

**Chapter 5****POWER TO GRANT EXEMPTION FROM DUTY****SECTION 25**

(1) If the Central Government is satisfied that it is necessary in the public interest so to do, it may, by notification in the Official Gazette, exempt generally either absolutely or subject to such conditions (to be fulfilled before or after clearance) as may be specified in the notification goods of any specified description from the whole or any part of duty of customs leviable thereon.

(2) If the Central Government is satisfied that it is necessary in the public interest so to do, it may, by special order in each case, exempt from the payment of duty, under circumstances of an exceptional nature to be stated in such order, any goods on which duty is leviable.

(3) The Central Government may, if it considers it necessary or expedient so to do for the purpose of clarifying the scope or applicability of any notification or order issued, insert an explanation in such notification or order, by notification in the Official Gazette, at any time within 1 year of issue of the notification or order, and every such explanation shall have effect as if it had always been the part of the first such notification or order.

(4) Notwithstanding anything contained in this Act, no duty shall be collected if the amount of duty leviable is equal to, or less than, ₹ 100.

**SECTION 25A: Inward processing of goods**

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

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

**SECTION 25B. Outward processing of goods**

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

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

**Chapter 6****DUTY DRAWBACK****SECTION 74: DRAWBACK ALLOWABLE ON RE-EXPORT OF DUTY PAID GOODS****Conditions to be satisfied**

1. Any imported goods are entered for export u/s 51 or are to be exported as baggage u/s 77 or are entered for export by post u/s. 84(a).
2. Such goods are identified to the satisfaction of the Assistant or Deputy Commissioner as the goods which were imported; and
3. Such goods are entered for export within 2 years from the date of payment of duty on the importation thereof. On sufficient cause being shown, the period of 2 years may be extended by the Board by such further period as it deems fit.

**Quantum of drawback**

98% of such duty shall be re-paid as drawback. However, if the goods are used then the drawback rates shall be notified.

**Rate of Drawback**

Pursuant to Section 74(2) the drawback rates notified by the Central Government are follows -

(1) Drawback of import duty will not be allowed in respect of the following goods, if they have been used after their importation into India -

- (i) Wearing apparel
- (ii) Tea chests
- (iii) Exposed cinematograph film passed by the Board of Film Censors in India.
- (iv) Unexposed photographic films, paper and plates, and X-ray films.

(2) Draw backs rates, in respect of goods which were used after their importation and which have been out of Customs control -

| Period between the date of clearance for home consumption and the date when the goods are placed under the customs control for export | % age of duty paid as draw back. |
|---|----------------------------------|
| 0 – 3 months  | 95%                              |
| 3 – 6 months  | 85%                              |
| 6 – 9 months  | 75%                              |
| 9 – 12 months   | 70%                              |
| 12 – 15 months  | 65%                              |
| 15 – 18 months  | 60%                              |
| Above 18 months   | NIL                              |

**3. Special rate of drawback in respect of motors vehicles:** In respect of a motor car or goods imported by a person for his personal and private use, drawback of duty shall be calculated by reducing the import duty paid in respect of such motor car or goods by 4%, 3%, 2.5% and 2% for use of each quarter or part thereof during the period of first year, second year, third year and fourth year respectively.

Where such cars are exported after the period of 2 years, drawback shall be allowed only if the CBIC on sufficient cause being shown extends the period for expiry beyond the 2 years. However, no drawback shall be allowed if such motor cars or goods have been used for more than 4 years.

## MANNER & TIME OF CLAIMING DRAWBACK

### Rule 5 of the Re-export of Imported Goods (Drawback of Customs Duties) Rules, 1995

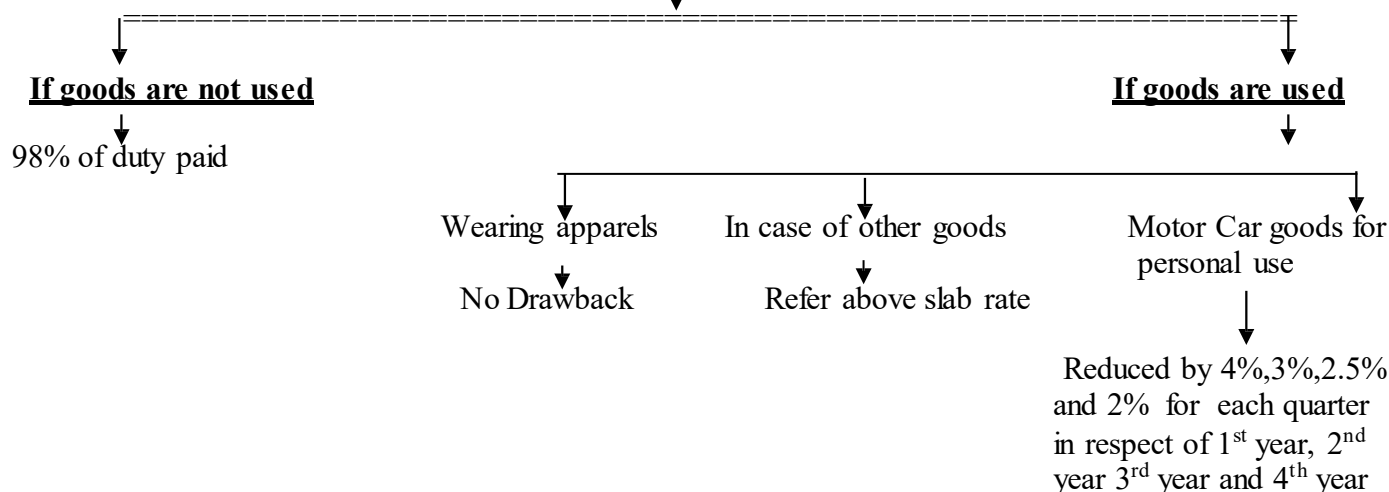
In case of goods exported other than post the claim for draw back shall be filed in the prescribed form within **3 months** from the date on which an order permitting clearance and loading of goods for exportation under section 51 is made by proper officer of custom.

The above period of three months may be extended –

| Extended period              | Granting authority            | Application for extension + following fees to be paid -       |
|------------------------------|-------------------------------|---|
| by a period of 3 months      | Assistant/Deputy Commissioner | 1% of the FOB value of exports or ₹ 1000/- whichever is less. |
| a further period of 6 months | Commissioner                  | 2% of the FOB value or ₹ 2000/- whichever is less.            |

### DISCUSSIONS & EXPLANATIONS

#### Draw back amount U/S. 74



### Whether Drawback u/s. 74 also apply to IGST and compensation Cess?

**Drawback** in relation to any goods exported out of India, means the refund of duty or tax or cess as referred to in the Customs Tariff Act, 1975 and paid on importation of such goods in terms of section 74 of the Customs Act, 1962. **[Rule 2 (a) of the Re-export Rules, 1995]**

Further, in terms of Section 3(12) of the CTA, 1975, the provisions of the Customs Act, 1962 and rules and regulations made thereunder relating inter alia to drawback shall apply to integrated tax and compensation cess also.

Accordingly, drawback under Section 74 would include refund of integrated tax and compensation cess along with basic customs duty, etc.

In order to prevent dual benefit while sanctioning drawback under Section 74 of the Customs Act, 1962, it may be ensured that a certificate duly signed by the Central/State/UT GST officer, having jurisdiction over the exporter is obtained, that no credit of integrated tax /compensation cess paid on imported goods has been availed or no refund of such credit or integrated tax paid on reexported goods has been claimed.

## SECTION 75: DRAWBACK ON IMPORTED MATERIALS USED IN THE MANUFACTURING OF EXPORTED GOODS

### Conditions to be satisfied

- (1) Any notified goods are entered for export u/s 51 or entered for export by post u/s 84(a).
- (2) Such goods have been manufactured, processed in India or on which any operation has been carried out in India;
- (3) Imported duty paid material has been used in the manufacture or processing of such goods or carrying out any operation on such goods.
- (4) The export value of such goods shall not be less than prescribed percentage of value of imported materials used in the manufacture or processing of such goods or carrying out any operation on such goods.
- (5) Sale proceeds in respect of drawback goods should be received in India within the time allowed under FEMA. Otherwise drawback shall be disallowed. *However, the Central Govt. can allow drawback in certain circumstances even if export remittances are not received within the time allowed under FEMA.*

### DISCUSSIONS & EXPLANATIONS

| Section-74   | Section-75   |
|--|--|
| (1) Same goods are exported  | (1) Raw material is imported and after manufacturing/processing, finished goods are exported |
| (2) Re-export within 2 year from the date of payment of import duty. CBIC can extend the time. | (2) No time limit prescribed.  |
| (3) All goods are covered.   | (3) Notified goods are exported.   |
| (4) Not applicable   | (4) Minimum value addition to be achieved  |
| (5) Drawback of Customs including IGST and Compensation Cess.                                  | (5) Drawback of Excise, Customs. [Does not include IGST and Compensation Cess]               |
| (6) 98% of duty paid   | (6) Rate to be notified  |

### Computation of Drawback u/s. 75

- Section 76:** (1) Market price of finished goods cannot be less than the drawback  
 (2) Drawback should not be less than ₹ 50/-

- Rule 9:** (3) Maximum Drawback =  $\frac{1}{3}$ <sup>rd</sup> of market price of export product.  
 (4) Value Addition must be achieved.

**Question 26:** State whether the Drawback shall be granted in the following cases or not?

| SL No. | Market price of the goods (in ₹) | FOB value of goods (in ₹) | Drawback rates         | Value of raw materials (in ₹) |
|--------|----------------------------------|---------------------------|------------------------|-------------------------------|
| 1      | 80, 000                          | 45, 000                   | 1% of FOB              | 30, 000                       |
| 2      | 60, 000                          | 85, 000                   | 0.9% of FOB            | 50, 000                       |
| 3      | 5,000                            | 4, 000                    | 1.2% of FOB            | 3, 000                        |
| 4      | 1, 00, 000                       | 90, 000                   | 70% of FOB             | 82, 000                       |
| 5      | 1, 00, 000                       | 80, 000                   | ₹100 per kg for 200kg. | 83, 000                       |
| 6      | 80, 000                          | 70, 000                   | 0.5% of FOB            | 30, 000                       |

## SECTION 76: PROHIBITION AND REGULATION OF DRAWBACK IN CERTAIN CASES

In the following cases, drawback shall not be allowed -

- (1) Where the market price of any goods is less than the amount of drawback due thereon;
- (2) Where the drawback due in respect of any goods is less than ₹50.
- (3) Where the Central Government is of the opinion that such goods are likely to be smuggled back into India.

However, Central Government may allow drawback on such goods subject to prescribed restrictions and conditions.

No drawback shall be allowed if the goods exported were imported into India from third countries and exported to Nepal.

## THE CUSTOMS AND CENTRAL EXCISE DUTIES DRAWBACK RULES, 2017

### Definitions:

- (a) **“drawback”** in relation to any goods manufactured in India and exported, means the rebate of duty excluding integrated tax leviable and compensation cess leviable u/s. 3(7)/(9) of the Customs Tariff Act, 1975 chargeable on any imported materials or excisable materials used in the manufacture of such goods;
- (b) **“excisable material”** means any material produced or manufactured in India subject to a duty of excise under the Central Excise Act, 1944;
- (c) **“export”**, with its grammatical variations and cognate expressions, means taking out of India to a place outside India or taking out from a place in Domestic Tariff Area (DTA) to a special economic zone and includes loading of provisions or store or equipment for use on board a vessel or aircraft proceeding to a foreign port;
- (d) **“imported material”** means any material imported into India and on which duty is chargeable under the Customs Act, 1962;
- (e) **“manufacture”** includes processing of or any other operation carried out on goods, and the term manufacturer shall be construed accordingly;

**RULE 3: DRAWBACK BASED ON ALL INDUSTRY RATE DECLARED BY GOVT.**

(1) Subject to the provisions of –

- (a) the Customs Act, 1962 and the rules made thereunder;
- (b) the Central Excise Act, 1944 and the rules made thereunder; and
- (c) these rules, a drawback may be allowed on the export of goods at such amount/at such rates and for such period, as may be determined by the Central Government.

However, where any goods are produced or manufactured from imported materials or excisable materials,

- (i) on some of which only the duty chargeable thereon has been paid and not on the rest, or
- (ii) only a part of the duty chargeable has been paid; or
- (iii) the duty paid has been rebated or refunded in whole or in part or given as credit, under any of the provisions of the Customs or Central Excise,

the drawback admissible on the said goods shall be reduced taking into account the lesser duty paid or the rebate, refund or credit obtained.

**2. All Industry Rates:** The all industry rates are fixed by the Drawback Directorate, usually as a fixed percentage of the FOB price of export goods. It is normally revised on 1<sup>st</sup> June every year, after considering the changes in excise, custom duties and service tax.

**3. Relevant factors:** In fixing the All Industry Rate, the Central Government shall have regard to, -

- (a) 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;
- (b) 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;
- (c) 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;
- (d) the average amount of duties paid on materials wasted in the process of manufacture and catalytic agents:

Provided that if any such waste or catalytic agent is re-used in any process of manufacture or is sold, the average amount of duties on the waste or catalytic agent re-used or sold shall also be deducted;

- (e) the average amount of duties paid on imported materials or excisable materials used for containing or, packing the export goods;
- (f) any other information which the Central Government may consider relevant or useful for the purpose.

**4. No drawback shall be allowed –**

- (i) if the said goods, (except tea chests used as packing material for export of blended tea,) have been taken into use after manufacture;



(ii) if the said goods are produced or manufactured, using imported materials or excisable materials in respect of which duties have not been paid;

(iii) on jute batching oil used in the manufacture of export goods, namely, jute (including Binlipatam jute or Mesta fibre) yarn, twist, twine, thread, cords and ropes;

(iv) if the said goods, being packing materials have been used in or in relation to the export of jute yarn, jute fabrics.

5. The drawback amount or rate determined under rule 3 shall not exceed one third of the market price of the export product. (Rule 9)

6. The Central Government may revise amount or rates determined under rule 3. [Rule 4]

### Rule 6: Brand Rate

(1) Brand rate is fixed for those products in respect of which All Industry Rate is not announced.

(2) In that case, the exporter of such goods may, within 3 months from the date relevant for the applicability of the amount or rate of drawback in terms section 16 or 83., apply to the Principal Commissioner of Customs/ Commissioner of Customs, having jurisdiction over the place of export, for determination of the amount or rate of drawback thereof stating all the relevant facts including the proportion in which the materials or components are used in the production or manufacture of goods and the duties paid on such materials or components.

(3) The Principal Commissioner/Commissioner of customs after making such necessary inquiries as it deems fit will fix the brand rate.

(4) The manufacturer or exporter may be granted provisional duty drawback when he executes a bond binding himself to repay the entire or excess amount of drawback if drawback was not admissible/lower.

(5) In case an exporter is exporting from more than one place of export, he shall apply to the Principal Commissioner or Commissioner of Customs, having jurisdiction over any one of the said places of export;

(6) Where the Central Government considers it necessary so to do, it may revoke the rate/amount of drawback and direct the Principal Commissioner of Customs/Commissioner of Customs, to withdraw the rate/amount of drawback determined.

(7) No amount or rate of drawback shall be determined, if the export value in the bill of export or shipping bill is less than the value of the imported materials used in the manufacture of such goods, or is not more than the notified percentage of the value of the imported materials [Rule 8]

**(8) Further, the periods of three months may be extended-**

| Extended period            | Granting authority                  | Application for extension + following fees to be paid -       |
|----------------------------|-------------------------------------|---|
| by a period of 3 months    | Assistant/Deputy Commissioner       | 1% of the FOB value of exports or ₹ 1000/- whichever is less. |
| further period of 6 months | Principal Commissioner/Commissioner | 2% of the FOB value or ₹ 2000/- whichever is less.            |

(9) **"place of export"** means customs station or any other place appointed for loading of export goods from where the exporter has exported the goods or intends to export the goods in respect of which determination of amount or rate of drawback is sought.

### Rule 7: Special Brand Rate

- (1) All industry rates are announced on the basis of average quantum of excise and customs duty borne by the goods.
- (2) In case the manufacturer or exporter finds that the duty drawback as per all industry rate is less than 80% of the duties or taxes paid on the materials or components, he can apply for special brand rate to the Principal Commissioner/Commissioner of Customs within 3 months.
- (3) The exporter has to get the special brand rate fixed by furnishing the prescribed data within **3 months (except where a claim for drawback under rule 3 or rule 4 has been made)** from the relevant date for determination of rate of duty and tariff valuation u/s. 16 or 83. The Principal Commissioner/Commissioner of Customs after making such necessary inquiries as it deems fit will fix the special brand rate.

**Point 4 to 9 is similar to rule 6.**

Note: Where in respect of export product, NIL rate or no rate of drawback is provided in AIR Schedule, an application for fixation of Brand Rate under Rule 7 shall not be admissible. In such situation, application for fixation of Brand Rate may be filed under Rule 6.

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### Rule 16: Supplementary claim

- (i) Where any exporter finds that the amount of drawback paid to him is less than what he is entitled to on the basis of the amount or rate of drawback determined by the Central Govt/Principal Commissioner or commissioner of customs, he may prefer a supplementary claim.
- (ii) Supplementary claim can be made in Form Annexure III within 3 months from - (a) the date of publication in official Gazette in case of All Industry rate  
 (b) the date of communication of the said rate in case of brand rate or special brand rates  
 (c) the date of payment or settlement of the original drawback in all other cases.

**Further, the aforesaid periods of three months may be extended 6-**

| Extended period              | Granting authority                              | Application for extension + following fees to be paid -       |
|------------------------------|---|---|
| by a period of 9 months      | Assistant/Deputy Commissioner of customs        | 1% of the FOB value of exports or ₹ 1000/- whichever is less. |
| a further period of 6 months | Principal Commissioner/ Commissioner of customs | 2% of the FOB value or ₹ 2000/- whichever is less.            |

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### Rule 17: Repayment of erroneous or excess payment of drawback and interest

Where an amount of drawback and interest, if any, has been paid erroneously or the amount so paid is in excess of what the claimant is entitled to, the claimant shall, on demand by a proper 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 sub-section (1) of section 142 of the Customs Act, 1962.

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**Rule 18: Recovery of amount of Drawback where exports proceed not realized**

(1) The Assistant/Deputy Commissioner of Customs shall cause notice to be issued to the exporter for production of evidence of realisation of export proceeds and where the exporter does not produce such evidence within 30 days, they shall pass an order to recover the amount of drawback paid to the claimant and the exporter shall repay the amount so demanded within thirty days of the receipt of the said order. Otherwise recovery proceeding shall be initiated as per rule 17.

(2) Where a part of the sale proceeds has been realized, the amount of drawback to be recovered shall be computed as under- **[Except under circumstances or conditions specified in sub-rule (5)]**

$$\text{Amount of drawback to be recovered} = \frac{\text{Unrealised sale proceeds}}{\text{Total amount of sale proceeds}} \times \text{Drawback paid}$$

**Note:** The time limit specified under FEMA above shall not be applicable to the goods exported from DTA to a SEZ.

**(2) Rule 18(5)-** Where sale proceeds are not realised by an exporter within the period allowed under the FEMA, 1999, but such non- realisation of sale proceeds is compensated by the Export Credit Guarantee Corporation of India Ltd. under an insurance cover and the Reserve Bank of India writes off the requirement of realisation 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, the amount of drawback paid to the exporter or the claimant shall not be recovered.

**(3) Repayment of drawback recovered on realization of sale proceeds** –Where the sale proceeds are realized by the exporter after the amount of drawback has been recovered from him and he produces evidence about such realization within a period of 3 months from the date of realization of sale proceeds, then the amount of drawback so recovered shall be repaid by the Assistant/ Deputy commissioner to the claimant, if the sale proceeds have been realised within the period permitted by the Reserve Bank of India.

Further, the aforesaid period of 3 months may be extended by a period of 9 months by the Principal Commissioner/Commissioner of Customs on an application accompanied with a fees of 1% of the FOB value of exports or ₹ 1000/- whichever is less.

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**Some relevant Points**

**(1) Power to require submission of information and documents:** For the purpose of determining the class/description of material, verifying the correctness of claim and obtaining any other relevant information the proper officer may require any manufacturer or exporter of goods or any other person likely to be in possession of the same to furnish such information and to produce such books of account and other documents as are considered necessary by such officer. [Rule 10]

**(2) Access to manufactory:** the manufacturer shall give access at all reasonable times to the officer so authorised to every part of the premises in which the goods are manufactured. [Rule 11]

**(3) Payment of drawback and interest:** The drawback and interest, if any, shall be paid by the proper officer of Customs to the exporter or to his authorized agent. The date of payment of drawback and interest, if any, shall be deemed to be, in the case of payment – (a) by cheque, the date of issue of such cheque; or (b) by credit in the exporter's account maintained with the Custom House, the date of such credit. [Rule 15]

**(4) Power to relax:** If the Central Government is satisfied that in relation to the export of any goods, the exporter or his authorised agent has, for reasons beyond his control, failed to comply with any of the provisions of these rules, and has thus been entitled to drawback, it may, after considering the representation, if any, made by such exporter or agent, and for reasons to be recorded in writing, exempt such exporter or agent from the provisions of such rule and allow drawback in respect of such goods. [Rule 19]

## PROCEDURE FOR CLAIMING DRAWBACK

**In case of Export by Post [Rule 12]:** The outer packing shall carry in bold letters the words “DRAWBACK EXPORT”. A claim in the Form at Annexure I, in quadruplicate, duly filled in. The date of receipt of the aforesaid claim form by the proper officer of Customs from the postal authorities shall be deemed to be date of filing of drawback claim. In case of deficiencies the exporter shall be informed within 15 days. Acknowledgment shall be issued within 30 days of return of deficiency form and the date of such acknowledgement shall be deemed to be date of filing the claim for the purpose of section 75A.

**In the case of eexports others than by post [Rule 13 and 14]:**

(1) the exporters shall at the time of export of the goods –

(a) state on the shipping bill or bill of export, the description, quantity and such other particulars as are necessary for deciding whether the goods are entitled to drawback, and if so, at what rate or rates and make a declaration on the relevant shipping bill or bill of export that a claim for drawback under these rules is being made.

(b) furnish to the proper officer of Customs, a copy of shipment invoice or any other document giving particulars of the description, quantity and value of the goods to be exported.

(c) Where the amount or rate of drawback has been determined under rule 6 or rule 7, the exporter shall make an additional declaration on the relevant shipping bill or bill of export that –

(i) there is no change in the manufacturing formula and in the quantum per unit of the imported materials or components, if any, utilised in the manufacture of export goods; and

(ii) the materials or components, which have been stated in the application under rule 6 or rule 7 to have been imported, continue to be so imported and are not being obtained from indigenous sources.

(2) Electronic shipping bill under the claim of drawback or triplicate copy of the shipping bill for export of goods under a claim of drawback shall be deemed to be a claim for drawback filed on the date on which the proper officer of Customs makes an order permitting clearance and loading of goods for exportation under section 51 and said claim for drawback shall be retained by the proper officer making such order.

(2) The said claim for drawback should be accompanied by the following documents, namely:-

(i) copy of export contract or letter of credit, as the case may be;

(ii) copy of ARE-1, wherever applicable;

(iii) insurance certificate, wherever necessary; and

(iv) copy of communication regarding rate of drawback where the drawback claim is for a rate determined by the Principal Commissioner of Customs or Commissioner of Customs, as the case may be, under rule 6 or rule 7 of these rules.

(3)(a) If the said claim for drawback is incomplete in any material particulars or is without the documents, shall be returned to the claimant with a deficiency memo, within 10 days and shall be deemed not to have been filed for the purpose of section 75A.

(b) where the exporter resubmits the claim for drawback after complying with the requirements specified in the deficiency memo, the same will be treated as a claim filed.

(4) For computing the period of one month prescribed under section 75A for payment of drawback to the claimant, the time taken in testing of the export goods, not more than one month, shall be excluded.

### SECTION 75A: INTEREST ON DRAWBACK

(i) **Payable to claimant:** Where any drawback u/s 74 or 75 is payable to a claimant is not paid within a period of 1 month from the date of filing a claim for payment of such drawback, then interest @ 6% p.a shall also be paid to the claimant. Such interest shall be paid for the period commencing from the date after expiry of 1 month till the date of payment of such drawback.

(ii) **Payable by claimant:** Where any drawback is erroneously paid to the claimant, then the claimant shall require to repay the amount within a period of 2 months from the date of demand and interest @ 15% p.a shall also be payable for the period from the date of payment of such drawback to the claimant till the date of recovery of such drawback.

**For example:**

| Particulars  | Interest payable/ receivable  |
|--|---|
| (i) Mr. X filed an application for duty drawback of ₹ 75,000 on 02.09.20XX. drawback received on 10.12.20XX.   | Interest receivable by Mr. X =<br><br>Period of delay= 3.10.20XX to 10.12.20XX<br><br>= 29+ 30+10 = 69 days<br><br>Amount of Interest = 75,000 x 6% x 69/365 = 851  |
| (ii) Mr. Y has got drawback erroneously of ₹ 35,000 on 15.09.20XX. Department issued notice for recovery of such amount on 1.10.20XX. The amount was refunded on 18.11.20XX. | Interest payable by Mr. Y<br>Period of delay = 16.09.20XX to 18.11.20XX=<br>15+31+18 = 64 days<br><br>Amount of interest =<br>35,000 x 15% x 64/365 =921<br>[It is clarified that although, the amount may be payable within 2 months but the interest is calculated from beginning.] |

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**Question:** Whether duty drawback is allowed on Safeguard duties and on Countervailing duties?

**Answer:** Yes.

**(i) Duty drawback u/s. 75:** Since Safeguard Duties and countervailing duties are not taken into consideration while fixing All Industry Rates of drawback, the drawback of such duties can be claimed through Brand Rate.

**(ii) Duty Drawback u/s. 74:** Where imported goods subject to Safeguard Duties are exported out of the country as such, then the Drawback payable under Section 74 of the Customs Act would also include the incidence of Safeguard Duties and countervailing duties as part of total duties paid, subject to fulfilment of other conditions.

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### PRACTICAL SUMS ON DUTY DRAWBACK

**Question 27:** An exporter exported 2,000 pairs of leather shoes @ ₹ 750 per pair. All industry rate of drawback is fixed on average basis, i.e. @ 11% of FOB subject to maximum of ₹ 80 per pair. The exporter found that the actual duty paid on inputs was ₹ 1,95,000. He has approached you, as a consultant, to apply under Rule 7 of the drawback rules for fixation of 'special brand rate'. Advise him suitably.

**Answer :** Drawback as per Industry rate – lower of

- |  |                   |
|--|-------------------|
| (a) 11% of (2000 × 750)                          | ₹ 1,65,000        |
| (b) Maximum – 80 × 200)                          | <u>₹ 1,60,000</u> |
| Drawback admissible                              | ₹ 1,60,000        |
| 80 % of Actual duty paid i.e., 80% of 1,95,000 = | ₹ 1,56,000        |

As per Rule 7 importer can apply for Special Brand rate only when drawback admissible as per industry rate is less than 80% of duty paid. In the given case since the drawback paid is not less than 80% of the actual duty paid on inputs, therefore, the exporter is not eligible to apply for special Brand rate.

**Question 28:** Calculate the amount of duty drawback allowable under section 74 of the Customs Act, 1962 in the following cases:

- (a) Salman imported a motor car for his personal use and paid ₹ 5,00,000 as import duty. The car is re-exported after 6 months and 20 days.
- (b) Nisha imported wearing apparel and paid ₹ 50,000. As she did not like the apparel, these are re-exported after 20 days.
- (c) Super Tech Ltd. imported 10 computer systems paying customs duty of ₹ 50 lakh. Due to some technical problems, the computer systems were returned to foreign supplier after 2 months without using them at all.

**Answer :**

- (a) 100% - (4% × 3 quarters) = 88% of ₹ 5,00,000 amounts to ₹ 4,40,000.
- (b) Assume re-export goods were used. Hence, Drawback NIL.
- (c) Amounts of drawback = 98% of ₹ 50,00,000 = ₹ 49,00,000.

**Question 29:** Infinity Corporation has imported goods and the following particulars are available for claiming duty drawback under sections 74 & 75 of Customs Act, 1962:

|     |  |                 |
|-----|--|-----------------|
| (a) | Custom duty has been paid on goods imported for use and have been out of customs control for 14 months   | ₹ 14,00,000     |
| (b) | Raghuveer exports manufactured goods having FOB value of ₹ 86,000.<br>Rate of duty drawback on FOB value of exports Market value of the export product | 40%<br>₹ 96,000 |

Determine duty drawback with explanations in the above cases. [Final Exam Question]

**Answer:** As per section 74(2) of Customs Act, 1962 read with Notification No. 19/65 Cus dated 06.02.1995, the Draw backs rates, in respect of goods which were used after their importation and which have been out of Customs control is 65% import duty if goods are used after importation and have been out of customs control for export for a period of more than 12 months but not more than 15 months. Therefore, amount of duty drawback = ₹ 14,00,000 × 65% = ₹ 9,10,000

(b) Amount of duty drawback = ₹ 86,000 × 40% = ₹ 34,400. As per rule 9 of Customs & Central Excise Duties Drawback Rules, 2017, the drawback amount should not exceed one third of the market price of the export product. Thus, drawback amount shall be restricted to ₹ 96,000/3 = ₹ 32,000

**Chapter 7****BAGGAGE**

(1) As per section 2(3), baggage includes unaccompanied baggage but does not include motor vehicle.

**(2) Rate of Custom duty:** Baggage is classified under Heading 9803 @ 35%. Social Welfare Surcharge @ 10%. IGST payable is NIL. Therefore, the effective rate is 38.5%.

However, the above rate shall not apply to the following cases, in such cases respective schedule rate will apply.

- (i) fire arms; (ii) cartridges of fire arms exceeding 50;
- (iii) cigarettes (more than 100), cigars (more than 25) or tobacco (more than 125 gms);
- (iv) alcoholic liquor or wines in excess of 2 litres;
- (v) gold or silver in any form other than ornaments;
- (vi) flat panel (Liquid Crystal Display or Light- Emitting Diode or Plasma) television; and
- (vii) goods imported through a courier service.

**(3)** The statutory provisions relating to baggage are covered by section 77 to 81 of the Customs Act. These are follows-

**(a) Baggage Declaration (Sec. 77):** The owner of any baggage shall (for the purpose of clearing it) make a declaration of its contents to the proper officer of customs.

The baggage declaration will have to filed only those passengers who carry dutiable or prohibited goods or have anything to declare and not by all passenger. The domestic passengers who board international flights in the domestic leg are not required to file the declaration form.

**(b)** The rate of duty and tariff valuation shall be of the date on which declaration u/s 77 is made. [Section 78]

**V.H Doshi vs. CC (1986) (Tri)**- In this case it was held that, even if an advance information about the later arrival of the unaccompanied baggage has been made at the time of arrival of the passenger at an earlier date, a declaration u/s 77 can be deemed to have been made only when the content of the unaccompanied baggage arrived. Therefore, the rate of duty as in force on the date of arrival of the unaccompanied baggage would be leviable and not as in force on the date of advance information on the arrival of the passenger.

**(4) Temporary detention of baggage [Sec. 80]** - Where the baggage of a passenger contains any article (in respect of which a true declaration has been made u/s 77) -

- a. which is dutiable; or
  - b. the import of which is prohibited,
- then, the proper officer may, at the request of the passenger, detain such article for the purpose of being returned to him on his leaving India.

If for any reason the passenger is not able to collect the article at the time of his leaving India the article may be returned to him through -

- a. Any other passenger authorized by him and leaving India; or
- b. Cargo consigned in his name.

**Anirudh Singh Katoch [2011](SC)**: In case of return from abroad and consequent transfer of residence, fire arms cannot be allowed to be imported in the baggage. The import of fire-arms is regulated by the Arms and Ammunitions Act and import thereof is allowable only as per conditions under that Act.

**He mal K. Shah (2011) (Revision before GOI)**: Smuggled goods once imported shall not be allowed to be re-exported unless duty, penalty, fine in lieu of confiscation has been paid.

**THE BAGGAGE RULES, 2016**

(Applicable from F.Y 2016-17 and onwards)

**(1) General Duty Free Allowances:**

| Rules         | Eligible passenger   | Passenger coming from (Origin country) | Duty Free Allowances (other than items of Annexure 1)   |
|---------------|--|--|---|
| <b>Rule 3</b> | (i) Indian Resident; or foreigners residing in India; Tourist of Indian Origin | Other than Nepal, Bhutan, Myanmar      | (i) Used personal effect and travel souvenirs<br><br>(ii) <b><u>Other accompanied Articles</u></b> (except Items of Annexure 1)<br>- upto value ₹ 50,000<br>- Nil for infant                              |
|               | (ii) Tourists of foreign origin  | <b>Do</b>                              | Same as above but the limit is restricted to ₹ 15,000.  |
| <b>Rule 4</b> | (i) Indian Resident and foreigners residing in India<br><br>(ii) Tourist       | Nepal, Bhutan, Myanmar                 | (i) Used personal effect and travel souvenirs<br><br>(ii) <b><u>Other accompanied Articles</u></b> (except Items of Annexure 1)<br>- upto value ₹ 15,000<br>- Nil if arriving by land<br>- Nil for infant |
| <b>Rule 5</b> | Passenger residing abroad for more than one year, on return to India           | Anywhere                               | <b><u>Jewellery Allowances:</u></b><br>Gentlemen Passenger: upto 20 gms with a value cap of ₹ 50,000<br>Lady Passenger: upto 40gms with a value cap of ₹ 1,00,000   |
|               | All passengers   | Anywhere                               | (i) Alcohol liquor or wine upto 2 litres<br>(ii) Cigarettes (upto 100) or cigars (upto 25) or tobacco (upto 125 gms)<br><b>(Fall under the limit of GFA)</b>  |
|               | Passengers of 18 years and Above   | Anywhere                               | One laptop/note book computer<br><b>(fully exempted)</b>  |

**Notes:**

- (a) The free allowance of a passenger shall not be allowed to pool with the free allowance of any other passenger.
- (b) where the passenger is an infant (child upto 2 years of age), only used personal effects shall be allowed duty free.
- (c) "resident" means a person holding a valid passport issued under the Passports Act, 1967 and normally residing in India;
- (d) "tourist" means a person not normally resident in India, who enters India for a stay of not more than six months in the course of any twelve months period for legitimate non-immigrant purposes;
- (e) "personal effects" means things required for satisfying daily necessities but does not include jewellery.

**(f) Items of Annexure 1:**

- (i) Fire arms;
- (ii) Cartridges of fire arms exceeding 50;
- (iii) Cigarettes exceeding 100 sticks or cigars exceeding 25 or tobacco exceeding 125 gms.
- (iv) Alcoholic liquor or wines in excess of two litres.
- (v) Gold or silver in any form other than ornaments.
- (vi) Flat Panel (Liquid Crystal Display/Light-Emitting Diode/ Plasma) television



**(2) Rule 6: Transfer of residence / professional returning to India**

(1) A person, who is engaged in a profession abroad, or is transferring his residence to India, shall, on return, be allowed following duty free clearance articles in addition to the free allowances under Rule 3 or Rule 4:-

**Value of Free Allowances for Personal and household articles, (other than items of Annexure I & II) but including items of Annexure III:**

| Benefit Allowed to - | Duration of Stay abroad   | Value of Free Allowances |
|----------------------|---|--------------------------|
| Indian Passenger     | 3 months upto 6 months  | upto ₹ 60,000            |
|                      | 6 months upto 1 year  | upto ₹ 1,00,000          |
|                      | At least for 1 year during the preceding 2 years not availed this concession in the preceding 3 years   | upto ₹ 2,00,000          |
| Any Passenger        | (i) Minimum stay of 2 years or more immediately preceding the date of his arrival on transfer of residence; and (N. 1)<br>(ii) his total stay during short visit to India does not exceed 6 months during 2 preceding years; and (N.2)<br>(iii) does not availed this concession in the preceding 3 years.<br>(N. 3)<br><b><u>Relaxation</u></b><br>Note 1: shortfall upto 2 months can be condone by Deputy/ Asst. Commissioner if early return is due to terminal leave/ vacation availed by the passenger or other special circumstances for reasons to be recorded in writing.<br>Note 2: short visit in excess of 6 months can be condone by the Principal Commissioner/ Commissioner in special circumstances for reasons recorded in writing.<br>Note 3: No relaxation | upto ₹ 5,00,000          |

**Items of Annexure II:**

(1) Colour Television; (2) Video Home Theatre System; (3) Dish Washer; (4) Domestic Refrigerators of capacity above 300liters or its equivalent(5) Deep Freezer; (6) Video camera or the combination of any such Video camera with one or more of the following goods, namely:- (a) television receiver; (b) sound recording or reproducing apparatus; (c) video reproducing apparatus; (7) Cinematographic films of 35mm and above; (8) Gold or Silver, in any form, other than ornaments.

**Items of Annexure III:**

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

**(3) Rule 7: Currency:** The import and export of currency under these rules shall be governed in accordance with the provisions of the Foreign Exchange Management (Export and Import of Currency) Regulations, 2015, and the notifications issued thereunder.

**(4) Rule 8: Provisions regarding unaccompanied baggage:** The above rules shall apply to unaccompanied baggage except where they have been specifically excluded.

**Conditions:**

(i) The said unaccompanied baggage had been in the possession, abroad, of the passenger and is dispatched within 1 month of his arrival in India or within such further period as the Deputy Commissioner of Customs or Assistant Commissioner of Customs may allow; **or**

(ii) The said unaccompanied baggage may land in India upto 2 months before the arrival of the passenger. The Deputy/ Asst. Commissioner can extend the period of 2 months upto maximum of 1 year for reasons to be recorded, if he is satisfied that the passenger was prevented from arriving in India due to circumstances beyond his control such as\* -

\*(sudden illness of the passenger or a member of his family, or natural calamities or disturbed conditions or disruption of the transport or travel arrangements in the country or countries concerned or any other reasons, which necessitated a change in the travel schedule of the passenger)

**(5) Rule 9: Application of these rules to members of the crew**

(1) The above rules shall also apply to the members of the crew engaged in a foreign going conveyance for importation of their baggage at the time of final pay off on termination of their engagement.

(2) However, a member of crew of a vessel or an aircraft other than those referred to in sub-rule(1), shall be allowed to bring articles like chocolates, cheese, cosmetics and other petty gift items for their personal or family use which shall not exceed the value of ₹ 1500.

**FOR YOUR KNOWLEDGE**

**GREEN AND RED CHANNELS:**

For the purpose of customs clearance of arriving passengers, a two channel system has been adopted

- (i) Green channel for passengers having no dutiable goods.
- (ii) Red channels for passengers having dutiable goods.

However green channel passengers must deposit the customs portion of the disembarkation card to the customs official at the exit gate before leaving the terminal. Declaration of foreign exchange / currency has to be made before the custom officers in the following cases:

- (i) Where the value of foreign currency notes exceed US\$ 5,000 or equivalent.
- (ii) Where the aggregate value of foreign exchange including currency exceeds US\$ 10,000 or equivalent.
  - Passengers walking through the green channel with dutiable/prohibited are liable to prosecution / penalty and confiscation of goods.
  - Trafficking of narcotics and psychotropic substances is a serious offence and is punishable with offence.

## PRACTICAL SUMS ON BAGGAGE

**Question 30:** Mr. A, an Indian resident, aged 50 years, returned to India after visiting England on 10-08-20XX. He had been to England on 1-08-20XX. On his way back to India he brought following goods with him-

- (a) His personal effects like clothes etc. valued at ₹80,000;
- (b) 1 litre of Wine worth ₹ 2,000;
- (c) A video cassette recorder worth ₹22,000;
- (d) A microwave oven worth ₹ 40,000.

What is the customs duty payable as per the Baggage Rules, 2016?

**Question 31:** After visiting USA, on 1.8.20XX Mrs. & Mr. A brought to India a laptop computer valued at ₹1,00,000, personal effects valued at ₹70,000 and a personal computer for ₹ 82,000. What is the customs Duty payable as per the Baggage Rules, 2016?

**Question 32:** Mrs & Mr. Kapoor visited Germany and brought following goods while returning to India on 8<sup>th</sup> February, 20X1:

- (a) Their personal effects like clothes, etc, valued at ₹35, 000
- (b) A personal computer brought for ₹36, 000.
- (c) A laptop computer brought for ₹95, 000
- (d) Two litres of liquor brought for ₹1, 600.
- (e) A camera brought for ₹37,400

What is the amount of customs duty payable as per the Baggage Rules, 2016?

**Question 33:** Mr. X of India returning to India after 8 months from Germany

- (1) Used personal effect- ₹ 70,000
- (2) Jewellery ₹ 36,000
- (3) Household articles- ₹145,000
- (4) Wine (2 litre.)- ₹ 3,000
- (5) Laptop - ₹45,000

What is the amount of customs duty payable as per the Baggage Rules, 2016?

**Question 34:** Mr. John, an Indian resident and a doctor by profession who was engaged in his profession in Japan for 1 year and 3 months, brought with him on 20-08-20XX the following items on his return to India –

- (a) Used personal effects like clothes ₹75,000
- (b) Video cassette recorder ₹35,000
- (c) Used house hold article ₹2,00,000
- (d) Professional equipment ₹130,000
- (e) Laptop Computer ₹50,000
- (f) Jewellery (25 grams) ₹75,000

What is the amount of customs duty payable as per the Baggage Rules, 2016?

**Question 35:** Mrs & Mr. Lawrence, origin of USA , comes to India as tourist for 3 months along with their child. They brought following goods:

| Items                  | Mrs. Lawrence<br>(aged 25 years) | Mr. Lawrence<br>(aged 24 years) | Child<br>(2 years) |
|------------------------|----------------------------------|---------------------------------|--------------------|
| Personal effects worth | 45000                            | 30000                           | 20000              |
| Travel Souvenirs worth | 15000                            | 10000                           | -                  |
| One Laptop each worth  | 60000                            | 80000                           | 10000              |
| Mobile Phone worth     | 15000                            | 20000                           | -                  |

In addition to above they brought 2 bottles of wine of 2 liters each, worth ₹ 10,000. You are required to compute duty payable in a manner to reduce the incidence of duty as per the Baggage Rules, 2016.

**Question 36:** Gregory Peg of foreign origin has come on travel visa, to tour in India. He carries with him, as part of baggage, the following:

| Particulars   | Value in ₹ |
|---|------------|
| Travel Souvenir   | 85,000     |
| Other articles carried on in person   | 1,50,000   |
| 120 sticks of cigarettes of ₹100 each   | 12,000     |
| Fire arm with 100 cartridges (value includes the value of cartridges at @ ₹ 500 per cartridge). | 1,00,000   |

Determine customs duty payable, if the effective rate of customs duty is 35%. Social Welfare Surcharge 10%, with short explanations where required. [Exam Question]

### Solutions

|   |               |
|---|---------------|
| <b><u>Solution to Question 30:</u></b>            | ₹             |
| (a) Personal effect like clothes                  | Nil           |
| (b) 1 Ltr of wine                                 | 2,000         |
| (c) Video cassette recorder                       | 22,000        |
| (d) A microwave oven                              | 40,000        |
| Total dutiable goods imported                     | 64,000        |
| <b>Less: General Free Allowances under Rule 3</b> | <b>50,000</b> |
| Good on which Duty payable                        | 14,000        |
| <b>Customs Duty payable @ 38.5%</b>               | <b>5,390</b>  |

Note: Personal effect is allowed as duty free allowances as per rule 3 without any limit. Further, wine upto 2ltr is allowed as duty free allowances.

|   |                |
|---|----------------|
| <b><u>Solution to Question 31:</u></b>        | ₹              |
| <b>One laptop</b>                             | <b>Nil</b>     |
| <b>Personal effect</b>                        | <b>Nil</b>     |
| <b>Personal computer</b>                      | <b>82,0000</b> |
|   | <b>82,000</b>  |
| <b>Less: General Free Allowances (Rule 3)</b> | <b>50,000</b>  |
| <b>Assessable value</b>                       | <b>32,000</b>  |
| <b>Custom Duty payable @ 38.5%</b>            | <b>12,320</b>  |

**Note:**

(1) Any person of 18 years above brings a laptop is free of custom duty through worldwide, therefore the laptop brought by Mrs. & Mr. A will be allowed duty free clearance.

(2) Since General Free Allowances allowed only once, it cannot be pooled, therefore Mrs.& Mr. A cannot claim ₹ 50000 separately on personal computer.

**Solution to Question 32:** As per Rule 3 of Baggage Rules, 2016 a complete exemption shall be available on use personal effects and a General Free Allowances of ₹ 50,000 per passenger shall be allowed on all Articles other than those mentioned in Annexure 1. However as per Rule 3 Clubbing of this exemption is not permissible. The question does not specify that whether the goods have been brought on a single baggage or in separate

baggages by Mrs. and Mr. Kapoor. It is therefore assumed that the goods have been brought in a Single Baggage.

**Computation of Customs Duty Payable**

|   |                     |
|---|---------------------|
| (1) Used personal effects – Exempted        | Nil                 |
| (2) Personal Computer                       | 36,000              |
| (3) Laptop – Exempted by notification       | Nil                 |
| (4) Two Ltr of wine – upto 2 Ltr            | 1,600               |
| (5) Camera                                  | 37,400              |
|   | <hr/> 75,000        |
| Less: General Free Allowances as per Rule 3 | <hr/> 50,000        |
|   | <hr/> <b>25,000</b> |
| Customs Duty payable @ 38.5% (rounded off)  | <b>9,625</b>        |

**Solution to Question 33:**

|  |                |
|--|----------------|
|  | ₹              |
| (1) Used personal effect (Rule 3 – free allowances)  | Nil            |
| (2) Jewellery (additional benefit of rule 5 not allowed, since stay abroad does not exceed 1 year) | 36,000         |
| (3) Household articles   | 1,45,000       |
| (4) Wine (2 litre.)-   | 3,000          |
| (5) Laptop - exempted for passenger aged 18 yrs or more  | Nil            |
|  | <hr/> 1,84,000 |
| Less: General Free Allowances (Rule 3)   | <hr/> 50,000   |
| Assessable Value   | <hr/> 1,34,000 |
| Custom Duty payable @ 38.5% (rounded off)  | <b>51,590</b>  |

**Solution to Question 34:**

|  |                  |
|--|------------------|
|  | ₹                |
| (a) Used personal effects like clothes (rule 3)                        | Nil              |
| (b) Video cassette recorder  | 35,000           |
| (c) Used house hold article  | 2,00,000         |
| (d) Professional equipment   | 1,30,000         |
| (e) Laptop Computer – exempt   | Nil              |
| (f) Jewellery (exempted ₹ 50000 or Value of 20 grams i.e, 60000;lower) | 25,000           |
|  | <hr/> 3,90,000   |
| Less: General Free Allowances under rule 3                             | <hr/> (50,000)   |
| Additional Free Allowances under rule 6                                | <hr/> (2,00,000) |
| Assessable Value   | <hr/> 1,40,000   |
| Custom Duty payable @ 38.5%  | <b>53,900</b>    |

Note: Assume that his stay of 1 year 3 months is during the preceding 2 years and he has not avail this concession in the preceding 3 years. (Rule 6)

**Answer to Question 35:**

| Items  | Mrs. Lawrence | Mr. Lawrence | Child |
|--|---------------|--------------|-------|
| Personal effects (exempt)                                      | Nil           | Nil          | Nil   |
| Travel Souvenirs (exempt)                                      | Nil           | Nil          | -     |
| Laptop (one laptop exempt for passenger of 18 years and above) | Nil           | Nil          | 10000 |
| Mobile Phone worth   | 15000         | 20000        | -     |

|   |       |       |                   |
|---|-------|-------|-------------------|
| Wines (maximum 2 liters per baggage is allowed under General Free Allowances) | 5000  | 5000  |                   |
|   | 20000 | 25000 | 10000             |
| Less: General Free Allowances   | 15000 | 15000 | Nil (not allowed) |
| Assessable Value  | 5000  | 10000 | 10000             |
| Custom Duty @ 38.5% (rounded off)   | 1925  | 3850  | 3850              |

**Note:**

- (1) For lowering the duty incidence they must brought goods in three separate baggage and declaration must be given separately, as the free allowances of one passenger cannot be pooled with another passenger.
- (2) In order to reduce the tax liability one bottles of wine must be kept in the Baggage of Mr. Lawrence and another is in the Baggage of Mrs. Lawrence.

**Solution to Question 36:**

| Computation of customs duty payable                            | ₹               |
|--|-----------------|
| Travel souvenir  | <i>Nil</i>      |
| Articles carried on in person                                  | <i>1,50,000</i> |
| Cigarettes [100 sticks can be accommodated in GFA]             | <i>10,000</i>   |
| Fire arms cartridge (50 cartridges can be accommodated in GFA) | <i>25,000</i>   |
| Total  | <i>1,85,000</i> |
| Less: General Free Allowances (GFA)                            | <i>15,000</i>   |
| Baggage on which duty is payable                               | <i>1,70,000</i> |
| Basic Customs Duty@ 35%  | <i>59,500</i>   |
| Social Welfare Surcharge @ 10%                                 | <i>5,950</i>    |
| Total Customs Duty   | <i>65,450</i>   |

**Note:** Fire arms, cartridges of firearms exceeding 50 and cigarettes exceeding 100 sticks are not chargeable @ 35%, therefore not taken in to account in the above computation.

**Chapter 8****STORES**

Stores means goods for use in a vessel or aircraft including fuel and spare parts and other articles of equipment, whether or not for immediate fittings - Sec. 2(38)

**Stores shall be warehouse without assessment to duty [Section 85]**

Where any imported goods are entered for warehousing and the importer makes and subscribes to a declaration that the goods are to be supplied as stores to vessels or aircrafts, without payment of import duty, then the proper officer may permit the goods to be warehoused without assessment to duty.

**Transit and transshipment of stores [Section 86]**

(i) **Transit of stores**: Any stores imported in vessel or aircraft may remain on board such vessel or aircraft while it is in India without payment of duty.

(ii) **Transshipment of stores**: With the permission of the proper officer, any stores imported in a vessel or aircraft may, without payment of duty, be transferred to any vessel or aircraft as stores for consumption therein.

**Imported stores may be consumed on board a foreign going vessel or aircraft [Section 87]**

Any imported stores on board a vessel or aircraft may, without payment of duty, be consumed thereon as stores during the period such vessel or aircraft is a foreign going vessel or aircraft.

**Supply of import duty paid stores [Sec. 88]**

Where any paid duty goods is supplied (i.e. re-exported) to a foreign going vessel or aircraft as stores, then 98% of custom duty paid shall be allowed as 'duty drawback'. However, in case of fuel and lubricating oil 100% of custom duty paid shall be allowed as 'duty drawback'.

**Stores to be free of export duty [Sec. 89]**

Goods produced or manufactured in India and required as stores on any foreign going vessel or aircraft may be exported free of duty in such quantities as the proper officer may determine. Proper officer shall determine such quantities after considering following factors -

- a. the size of the vessel or aircraft;
- b. the number of passengers and crew;
- c. the length of the voyage or journey on which the vessel or aircraft is about to depart.

**Concession in respect of imported stores for the Navy [Sec. 90]**

In relation to supply of stores for the use of a ship of the Indian Navy and stores supplied free by Government for the use of the crew of a ship of the Indian Navy (in accordance with their conditions of service), following special provisions shall be applicable -

- a. It may be supplied without payment of duty.
- b. Where any duty paid goods is supplied as stores, then 100% of custom duty paid shall be allowed as 'duty drawback'.

However, it was held in the case of *Leader Engineering Works vs. CCEx. (2007) 212 ELT 168 (SC)* that the exemption shall be available only if such stores are directly supplied to the Indian Navy and not through ship builders.

**Aban Lloyd Chilies Offshore Ltd. v. UOI [2008] 227 ELT 24 (SC)**: Oil rigs located in Continental Shelf /Exclusive Economic Zone of India are not '**foreign going vessels**' and hence, imported stores consumed thereon will not be eligible for exemption u/s. 87.

**Chapter 9****ASSESSMENT & AUDIT****1. Section 2(2) of the Customs Act, 1962 (Substituted by the Finance Act, 2018)**

“assessment” means determination of the dutiability of any goods and the amount of duty, tax, cess or any other sum so payable, if any, under this Act or under the Customs Tariff Act, 1975 or under any other law for the time being in force, with reference to—

- (a) the tariff classification of such goods as determined in accordance with the provisions of the Customs Tariff Act;
- (b) the value of such goods as determined in accordance with the provisions of this Act and the Customs Tariff Act;
- (c) exemption or concession of duty, tax, cess or any other sum, consequent upon any notification issued therefor under this Act or under the Customs Tariff Act or under any other law for the time being in force;
- (d) the quantity, weight, volume, measurement or other specifics where such duty, tax, cess or any other sum is leviable on the basis of the quantity, weight, volume, measurement or other specifics of such goods;
- (e) the origin of such goods determined in accordance with the provisions of the Customs Tariff Act or the rules made thereunder, if the amount of duty, tax, cess or any other sum is affected by the origin of such goods;
- (f) any other specific factor which affects the duty, tax, cess or any other sum payable on such goods,

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

**2. SECTION 17: ASSESSMENT OF DUTY**

The earlier section has been substituted by the Finance Act, 2011 to provide legal backing for self – assessment of import/export duty by the importer/exporter.

- (1) An importer entering any imported goods u/s. 46, or an exporter entering any export goods u/s. 50, shall, save as otherwise provided in section 85 (i.e stores allowed to be warehouse without assessment of duty), self-assess the duty, if any, leviable on such goods.
- (2) The proper officer may verify **the entries made under section 46 or section 50 and the self-assessment of goods referred to in sub-section (1)** and for this purpose, examine or test any imported goods or export goods or such part thereof as may be necessary.

**“Provided that the selection of cases for verification shall primarily be on the basis of risk evaluation through appropriate selection criteria**

- (3) For **the purposes of verification** under sub-section (2), the proper officer may require the importer, exporter or any other persons to produce any document or information, whereby the duty leviable on the imported goods or export goods, as the case may be, can be ascertained and thereupon, the importer, exporter or such other persons shall produce such document or furnish such information.



(4) Re-assessment- Where it is found on verification, examination or testing of the goods or otherwise that the self- assessment is not done correctly, the proper officer may, without prejudice to any other action which may be taken under this Act, re-assess the duty leviable on such goods.

(5) Where any re-assessment done is contrary to the self-assessment done by the importer or exporter and in cases other than those where the importer or exporter, as the case may be, confirms his acceptance of the said re- assessment in writing, the proper officer shall pass a **speaking order** on the re-assessment, within 15 days from the date of re-assessment of the bill of entry or the shipping bill, as the case may be. **[Scope of re-assessment broadened]**

### 3. SECTION 18: PROVISIONAL ASSESSMENT OF DUTY

(1) Notwithstanding anything contained in this Act but without prejudice to the provisions of section 46 and **section 50**,—

- i) where the importer or exporter is unable to make self-assessment and makes a request in writing to the proper officer for assessment; or
- ii) where the proper officer deems it necessary to subject any imported goods or export goods to any chemical or other test; or
- iii) where the importer or exporter has produced all the necessary documents and furnished full information but the proper officer deems it necessary to make further enquiry; or
- iv) where necessary documents have not been produced or information has not been furnished and the proper officer deems it necessary to make further enquiry,

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

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

(2) When the duty leviable on such goods is assessed finally or reassessed by the proper officer in accordance with the provisions of this Act, then -

- (a) If the goods are cleared for home consumption or exportation, the amount paid shall be adjusted against the duty finally assessed or re-assessed, as the case may be. In case the amount so paid falls short or is in excess of duty finally assessed or re-assessed, as the case may be, the importer or the exporter of the goods shall pay the deficiency or is entitled to a refund.
- (b) If the goods are warehoused and the duty finally assessed or re-assessed, as the case may be, is in excess of the provisional duty, the customs officer may require the importer to execute a bond binding himself in a sum equal to thrice the amount of the excess duty.

(3) The importer or exporter shall be liable to pay interest @ 15% p.a from the first day of the month in which the duty is provisionally assessed till the date of payment thereof. [Section 18(3)]

(4) If any refundable amount is not refunded within 3 months from the date of assessment of duty finally or re-assessment of duty, as the case may be, there shall be paid an interest on such un refunded amount at rate of 6% p.a. till the date of refund of such amount. [Sec. 18(4)]

(5) The amount of duty refundable and the interest shall instead of being credited to the Consumer welfare Fund, be paid to the importer or the exporter, if such amount is relatable to –

- the duty and interest, if any, paid on such duty paid by the importer, or the exporter, as the case may be, if he had not passed on the incidence of such duty and interest, if any, paid on such duty to any other person;
- the duty and interest, if any, paid on such duty on imports made by an individual for his personal use;
- the duty and interest, if any, paid on such duty borne by the buyer, if he had not passed on the incidence of such duty and interest, if any, paid on such duty to any other person;
- the export duty as specified in section 26;
- drawback of duty payable under sections 74 and 75.

**Question 42:** Pradhan imported a consignment valuing ₹8 lakh vide a bill of entry presented before the proper officer on 25th April, 20XX on which date the rate of customs duty was 10%. On Pradhan's failing to produce requisite documents for the purpose of assessment, the goods were provisionally assessed at a value of ₹8 lakh and the duty was paid accordingly on the same date. The goods were finally assessed at ₹12 lakh on 9th June, 20XX and the differential duty was paid on 12th June, 20XX. Compute the amount of interest, if any, under section 18 of the Customs Act, 1962.

**Solution:** The importer shall be liable to pay interest @ 15% p.a on any differential amount payable after final assessment, from the first day of the month in which duty is provisionally assessed till the payment. The amount of interest in present case shall be arrived as under:

The amount of differential duty payable by Mr. Pradhan = (12 Lakh – 8 Lakh) x 11% (including SWS) = ₹44,000

- No. Of days for which interest is payable = 1/4/20XX to 12/6/20XX = 73 days
- Amount of interest payable = ₹44,000 x 15% x 73 days / 365 Days = ₹ 1320

**Question 43:** Moris Lal has imported goods from Germany and is finally re-assessed u/s 18(2) of the Customs Act, 1962 for two such consignments. Particulars are as follows:

|   |                                 |
|---|---------------------------------|
| Date of provisional assessment              | 12 <sup>th</sup> December, 20X1 |
| Date of final re-assessment                 | 2 <sup>nd</sup> February, 20X1  |
| Duty demand for 1 <sup>st</sup> consignment | ₹ 1,80,000                      |
| Refund for the 2 <sup>nd</sup> consignment  | ₹ 4,20,000                      |
| Date of refund made by the department       | 28 <sup>th</sup> April, 20X1    |
| Date of payment of duty demanded            |                                 |

Determine the interest payable and receivable, if any, by Moris Lal on the final re- assessment of the two consignments, with suitable notes thereon. [Final Exam Question]

**Answer-** As per section 18(3) of the Customs Act, 1962, the importer shall be liable to pay interest @ 15% p.a on any differential amount payable after final assessment/re-assessment order, from the first day of the month in which duty is provisionally assessed till the payment.

The amount of interest in present case w.r.t. 1<sup>st</sup> consignment shall be arrived as under:-

$$\begin{aligned} & ₹1,80,000 \times 15\% \times 67/365 \\ & = ₹4,956 \text{ (r/off)} \end{aligned}$$

Further, as per section 18(4), if any refundable amount is not refunded within 3 months from the date of assessment of duty finally or re-assessment of duty, as the case may be, there shall be paid an interest on such un refunded amount at rate of 6% p.a. till the date of refund of such amount. [Sec. 18(4)]

In respect of 2<sup>nd</sup> Consignment, since in the given case, refund has been made i.e 28.04.20X1 within 3 months from the date of re-assessment of duty i.e 02.02.20X1, interest is not payable to on duty refunded.

**The Customs (Finalisation of Provisional Assessment) Regulations, 2018.**  
[w.e.f 14.8.2018]

**Regulation 4: Time-limit and manner for submission of documents or information for the purpose of finalisation of provisional assessment.**

(1) Where a provisional assessment is ordered by the proper officer for the reasons that, -

(a) the necessary documents have not been produced or information has not been furnished; or (b) the proper officer requires the importer or the exporter to produce any additional documents or information,

then such information or documents shall be made available by the importer or the exporter within 1 month from the date of such order of provisional assessment or the date of such requisition by the proper officer, as the case may be.

(2) The proper officer shall within 15 days from the date of such order of provisional assessment, inform the importer or the exporter, in writing, the specific details of the information to be furnished or the documents to be produced. The proper officer may, for reasons to be recorded in writing, allow a further period not exceeding 3 months. The Additional Commissioner or Joint Commissioner of Customs, may further extend the time period referred for another 3 months. The Commissioner of Customs, may extend the time period further as deemed fit,

(3) The importer or the exporter or his authorised representative or Customs Broker shall inform the proper officer in writing that he has submitted all the documents or information to be furnished or requisitioned. For the purpose of these regulations, each Bill of Entry or Shipping Bill, as the case may be, that has been assessed provisionally shall be treated as a separate case of provisional assessment

**Regulation 5: Time-limit for finalisation of provisional assessment. –**

(1) The proper officer shall finalise the provisional assessment within 2 months of receipt of:

- (a) an intimation from the importer or the exporter or his authorised representative or Customs Broker; or
- (b) a chemical or other test report, where the provisional assessment was ordered for that reason; or
- (c) an enquiry or investigation or verification report, where the provisional assessment was ordered for that reason.

Provided that where the documents or information required to be furnished by the importer or the exporter or requisitioned by the proper officer are made available intermittently, the time period of two months shall be reckoned from the date of last intimation referred to in clause (a) above,:

Provided further that where the documents or information are not made available or made partly available and no further extension of time has been allowed, the proper officer shall proceed to finalise the provisional assessment within 2 months of the expiry of the time allowed for submission of the said documents or information.

(2) The Commissioner of Customs concerned may allow, for reasons to be recorded in writing, a further time period of three months in case the proper officer is not able to finalise the provisional assessment within the period of 2 months

**Regulation 6: Manner of finalisation of provisional assessment.**

(1) The provisional assessment shall be finalised as per the provisions of section 18 of the Act. if the amount so adjusted or paid falls short the importer or exporter of the goods shall pay the shortfall or the same shall be adjusted against the security.

(2) The Bond executed at the time of provisional assessment with security, if any, shall be cancelled after finalisation of provisional assessment and the security shall also be returned, if there are no pending dues.

(3) Where the final assessment is contrary to the provisional assessment, the proper officer shall pass a speaking order following principles of natural justice.

(4) Where the final assessment confirms the provisional assessment, the proper officer shall finalise the same after ascertaining the acceptance of such finalisation from the importer or the exporter on record and inform the importer or exporter in writing of the date of such finalisation.

(5) Where a Bill of Entry or Shipping Bill is presented electronically on the Customs Automated system and is ordered to be provisionally assessed, the proper officer shall finalise the provisional assessment on the system also consequent to the procedure prescribed in these regulations.

**Regulation 7: Penalty.** - If any importer or exporter or his authorised representative or Customs Broker contravenes any provision of these regulations or abets such contravention, or fails to comply with any provision of these regulations, he shall be liable to a penalty which may extend to ₹ 50,000.

## AUDIT UNDER CUSTOMS

[Section 99A]

The proper officer may carry out the audit of assessment of imported goods or export goods or of an auditee under this Act either in his office or in the premises of the auditee in such manner as may be prescribed.

Explanation.—For the purposes of this section, “auditee” means a person who is subject to an audit under this section and includes an importer or exporter or custodian approved under section 45 or licensee of a warehouse and any other person concerned directly or indirectly in clearing, forwarding, stocking, carrying, selling or purchasing of imported goods or export goods or dutiable goods.’

### The Customs Audit Regulations, 2018

(a) “audit” includes examination or verification of declaration, record, entry, document, import or export licence, authorisation, scrip, certificate, permission etc., books of account, test or analysis reports, and any other document relating to imported goods or export goods or dutiable goods, and may include inspection of sample and goods, if such sample or goods are available and where necessary, drawl of samples;

(b) “auditee” means a person who is subject to an audit under section 99A of the Act and includes an importer or exporter or custodian approved under section 45 or licensee of a warehouse and any other person concerned directly or indirectly in clearing, forwarding, stocking, carrying, selling or purchasing of imported goods or export goods or dutiable goods;

(c) “premises” includes the registered office, branch office, warehouse, factory, or any other premises at which, imported goods or export goods or dutiable goods or books of account or records of transaction or other related documents, in relation to the said goods are ordinarily kept, for any purpose by an auditee.

**Relevant points**

1. Auditee to preserve relevant documents for a minimum period of five years in relation to imported goods or export goods or dutiable goods.
2. Audit selection is primarily be based on risk evaluation through appropriate selectivity criteria
3. The proper officer may conduct audit either in his office or in certain cases at the premises of an auditee after giving 15 days advance notice.
4. Where the auditee is in agreement with the audit findings, he may make voluntary payments of duty, interest or other sums, due, if any, in part or in full and the proper officer shall record the same in the audit report.
5. The proper officer shall complete audit in cases where it is conducted at the premises of the auditee **within thirty days from the date of starting of the audit.**

Provided that the jurisdictional Commissioner of Customs may extend the period of completion of audit **from thirty days to sixty days**, by an order in writing.

6. If the proper officer, having regard to the nature and complexity of the audit, is of the opinion that the audit has to be done with the assistance of a professional like Chartered Accountant, Cost Accountant, an expert in the field of computer sciences or information technology etc., may do so, with the previous approval of the Principal Commissioner/Commissioner of Customs.

**7. Penalty** - Any auditee, who contravenes any provision of these regulations or abets such contravention or fails to comply with any provision of these regulations with which it was his duty to comply, shall be liable to a penalty which may extend to ₹ 50,000.

**Circular No.2/2019,08/01/2019 :Under the new scheme, Transaction based audit (TBA) and Premises based audit (PBA) have been prescribed.**

1. Under TBA transactions are audited. TBA may subsequently be converted into a Premises based Audit (PBA).
  2. The provision of section 99A of the Customs Act, 1962 has extended the scope of **Premises Based Audit** by including other entities who are concerned with imports or exports. In PBA, customs would review the import and export over a given period and check all relevant commercial records, including financial statements and contracts to verify the particulars given in a goods declaration. PBA would enable the department to bridge the communication divide and usher in a new era of partnership with trade. Further, Board may also select any criteria or Theme for the audit.
  3. Directorate General of Analysis and Risk Management has been entrusted the responsibility of identifying the potential focus areas and entities for various types of audit.
  4. The executive Customs Commissionerates shall also assist Audit Commissionerates in the conduct of Theme based audit and Premises based audit. The Chief Commissioner shall examine on a selective basis, 5% of the Audit reports, selected randomly based on the quarterly reports submitted by Audit Commissionerates to ensure that audit has been conducted as per prescribed procedures.
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**Chapter 10****PROCEDURE FOR REFUND OF DUTY****SECTION 26A: REFUND OF IMPORT DUTY**

(1) Where on the importation of any goods capable of being easily identified as such imported goods, any duty has been paid on clearance of such goods for home consumption, such duty shall be refunded to the person by whom or on whose behalf it was paid, in such manner as may be prescribed. The following conditions must be satisfied 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:

(a) the goods are found to be defective or otherwise not in conformity with the specifications agreed upon between the importer and the supplier of goods. However, the goods 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) 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) the importer does not claim drawback under any other provisions of this Act; and

(d) (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,

(3) The period of 30 days may, on sufficient cause being shown, be extended by the Commissioner of Customs for a period not exceeding 3 months.

(4) Nothing contained in this section shall apply to the goods regarding which an offence appears to have been committed under this Act or any other law for the time being in force.

(5) No refund shall be allowed in respect of perishable goods and goods which have exceeded their shelf life or their recommended storage-before-use period.

(6) An application for refund of duty shall be made before the expiry of 6 months from the relevant date in such form and in such manner as may be prescribed.

Note: “relevant date” means,—

(1) in cases where the goods are exported out of India, the date of Let Export Order under section 51;

(2) in cases where the title to the goods is relinquished, the date of such relinquishment;

(3) in cases where the goods are destroyed or rendered commercially valueless, the date of such destruction or rendering of goods commercially valueless.

**SECTION 27: CLAIM FOR REFUND OF DUTY**

(1) Any person claiming refund of any duty or interest,-

(a) paid by him; or

(b) borne by him,

may make an application in such form and manner as may be prescribed for such refund to the Assistant Commissioner of Customs or Deputy Commissioner of Customs, before the expiry of one year, from the date of payment of such duty or interest:

Provided further that the limitation of one year shall not apply where any duty or interest has been paid under protest.

Provided also that where the amount of refund claimed is less than ₹ 100, the same shall not be refunded.

Explanation.- For the purposes of this sub-section, "the date of payment of duty or interest"" in relation to a person, other than the importer, shall be construed as "the date of purchase of goods" by such person.

(2) The application shall be accompanied by such documentary or other evidence (including the documents referred to in section 28C) as the applicant may furnish to establish that the amount of duty or interest, in relation to which such refund is claimed was collected from, or paid by him and the incidence of such duty or interest, has not been passed on by him to any other person.

(3) The period of limitation of 1 year shall be computed as under in certain cases—

| <b>CASE</b>   | <b>The of limitation 1 year shall be computed -</b>  |
|---|--|
| i) where the duty becomes refundable as a consequence of judgment, decree, order or direction of the appellate authority, Appellate Tribunal or any court | - from the date of such judgment, decree, order or direction.  |
| ii) where goods are exempt from payment of duty by a special order issued u/s. 25(2)  | - from the date of issue of such order.  |
| iii) where any duty is paid provisionally u/s. 18   | - from the date of adjustment of duty after the final assessment thereof or in case of re-assessment, from the date of such re-assessment. |

However, in the following cases the refund is granted to applicant instead of credited to Consumer Welfare Fund-

- (a) the duty and interest, if any, paid on such duty paid by the importer, or the exporter, as the case may be if he had not passed on the incidence of such duty and interest, if any, paid on such duty to any other person;
- (b) the duty and interest, if any, paid on such duty on imports made by an individual for his personal use;
- (c) the duty and interest, if any, paid on such duty borne by the buyer, if he had not passed on the incidence of such duty and interest, if any, paid on such duty to any other person;
- (d) the export duty as specified in section 26;
- (e) drawback of duty payable under sections 74 and 75;
- (f) notified applicants
- (g) the duty paid in excess by the importer before an order permitting clearance of goods for home consumption is made here—
- (i) such excess payment of duty is evident from the bill of entry in the case of self-assessed bill of entry; or
- (ii) the duty actually payable is reflected in the reassessed bill of entry in the case of reassessment

**Section 27A: Interest for delayed refund**

If any duty ordered to be refunded u/s 27(2) to an appellant is not refunded within 3 months from the date of receipt of application u/s 27(1), there shall be paid to that appellant interest @ 6% p.a on such duty from the date immediately after the expiry of 3 months from the date of receipt of such application till the date of refund of such duty.

**Section 28(10A): Recovery of Excess Refund Paid [newly inserted w.e.f 29.3.2018]**

Notwithstanding anything contained in this Act, where an order for refund under sub-section (2) of section 27 is modified in any appeal and the amount of refund so determined is less than the amount refunded under said sub-section, the excess amount so refunded shall be recovered along with interest thereon at the rate fixed by the Central Government under section 28AA, [ @ 15%p.a] from the date of refund up to the date of recovery, as a sum due to the Government.

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**SECTION 28C. Price of goods to indicate the amount of duty paid thereon.** - Notwithstanding anything contained in this Act or any other law for the time being in force, every person who is liable to pay duty on any goods shall, at the time of clearance of the goods, prominently indicate in all the documents relating to assessment, sales invoice, and other like documents, the amount of such duty which will form part of the price at which such goods are to be sold.

**SECTION 28D. Presumption that incidence of duty has been passed on to the buyer.**- Every person who has paid the duty on any goods under this Act shall, unless the contrary is proved by him, be deemed to have passed on the full incidence of such duty to the buyer of such goods.

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**JUDICIAL PRONOUNCEMENTS**

**(1) KSJ Metal Impex (P) Ltd. (Madras High Court) (2013):** Where refund of Special counter veiling duty(special additional duty) u/s. 3(5) arises due to exemption by notification u/s. 25, then in case of delayed refund the department is liable to pay interest as per section 27A.

**(2) Question:** Settlement Commission passed an order for release of seized goods of Mr. Banerjee. Since the goods were subject to deterioration, the Revenue informed the Commission that the seized goods had already been auctioned. The Commission, therefore, directed the Revenue to refund the amount remaining in balance after the application of sale proceeds as provided u/s 150(2) of the Customs Act, 1962. The Revenue refunded the principal amount of the sale proceeds without payment of interest for the delay, on the premise that it did not represent duty or interest as contemplated u/s 27 and 27-A of the Customs Act. Reason out the action of the Revenue by supporting it with case law. [Final Exam Question]

**Answer: Vishnu M Harlalka (Bombay High Court) (2013):** The Department is liable to pay interest on delayed refund of sale proceeds of goods seized and auctioned after application thereof as prescribed in the section 150(2).

In the given case, the Settlement Commission ordered to refund the sale proceeds received on account of auction of seized asset after adjustment towards fine u/s. 150(2). However, irrespective of several representations, the department did not return the amount. It was held that the department is required to refund the amount along with interest on delay payment.

Further, the contention of the department that such refund is not covered u/s. 27 and therefore no liability of interest u/s. 27A shall be arises, cannot be accepted otherwise, the department can wait for an inordinately long period to give the refund despite an order of the competent authority directing the Department to grant a refund.



**Chapter 11****MISCELLANEOUS PROVISIONS****IMPORT/EXPORT BY POST OR COURIER****Rate of duty and tariff valuation [Sec. 83]:**

**In case of import** - The rate of duty and tariff value (if any) applicable to any goods imported by post or **courier** shall be the rate and valuation in force on the date on which the postal authorities or **the authorised courier** present to the proper officer a list containing the particulars of such goods for the purpose of assessing the duty thereon. Where such goods are imported by a vessel and the list of the goods was presented before the date of the arrival of such vessel, then it shall be deemed to have been presented on the date of such arrival.

**In case of export** - The rate of duty and tariff value (if any) applicable to goods exported by post or **courier** shall be the rate and valuation in force on the date on which the exporter delivers such goods to the postal authorities or the authorised courier for exportation.

**Section 84:** The Board may make regulations providing for –

- (a) the form and manner in which an entry may be made in respect of goods imported or to be exported by post **or courier**;
- (b) the examination, assessment to duty, and clearance of goods imported or to be exported by post or **courier**;
- (c) the transit or transshipment of goods imported by post **or courier**, from one customs station to another or to a place outside India.

**The Exports by Post Regulations, 2018**

1. Application. – These Regulations shall apply to export of goods by any person, holding a valid Import Export Code issued by the Director General of Foreign Trade, in furtherance of business from any foreign post office notified under sub-section (e) of section 7 of the Customs Act, 1962

2. “e-commerce” means buying and selling of goods through the internet on an e-commerce platform, the payment for which shall be done through international credit or debit cards and as specified by the Reserve Bank of India from time to time

3. **Entry to be made for export goods.** - In case of goods to be exported through a foreign post office, an entry shall be required to be presented to the proper officer at the foreign post office of clearance, in the form PBE-I (e-commerce) /PDE-II (for others).

**INDIAN CUSTOMS SINGLE WINDOW PROJECT**

It facilitates Integration of all clearances, declaration, permission at one single online point with the customs through ICEGATE - Indian Customs Electronic Commerce/Electronic Data interchange (EC/EDI) Gateway]

- (i) The importers and exporters would electronically lodge their Customs clearance documents at a single point only with the Customs.
- (ii) All the required permission, 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) **Integrated Declaration**: It provides the importers/exporters a single point interface for clearance of import and export goods thereby reducing dwell time and cost of doing business.

- All information required for import clearance by the concerned government agencies has been incorporated into the electronic format of the Bill of Entry. The Customs Broker or Importer shall submit the "Integrated Declaration" electronically to a single entry point (ICEGATE).

- Different types of undertakings, declarations, and letters of guarantee that are presently required to be submitted on company letter heads would be dispensed with.

- Upon filing of the Integrated Declaration, the bill of entry will automatically be referred to concerned agency, if required, based on risk. It enables simultaneous processing of bill of entry by PGA and Customs.

### **SECTION 35: RESTRICTION ON GOODS BEING WATER-BORNE/ BOAT NOTE**

Imported goods and exported goods (not accompanied by shipping bill) shall not be water-borne without being landed /shipped, unless the goods are accompanied by a boat-note in the prescribed form. However, CBIC may give general permission by notification and the proper officer may give special permission for any goods or any class of goods to be water-borne without boat note.

Boat notes are used for bringing the goods in a boat from a ship to the shore or vice versa, when the does not get berth at the port.

### **The Customs (Import of Goods at Concessional Rate of Duty) Rules, 2017**

#### **Application [Rule 2]**

(1) These rules shall apply to an importer, who intends to avail the benefit of an exemption notification issued u/s. 25(1) 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.

#### **Procedure to be followed [Rule 4, 5]**

(1) The importer who intends to avail the benefit of an exemption notification shall provide/submit the following to the Deputy/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,

(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.

(iv) information in duplicate, the estimated quantity and value of the goods to be imported, particulars of the exemption notification applicable on such import and the port of import in respect of a particular consignment for a period not exceeding 1 year; (in one set, given to the DC/AC of Customs at the Custom Station of importation)

(v) submit a continuity bond with such surety or security 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, 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.

(2) The DC/AC of Customs shall forward one copy of information received from the importer to the DC/AC of Customs at the **Custom Station of importation. On receipt, they shall allow the benefit of the exemption notification to the importer.**

**Record to be maintained and return to be filed [Rule 6]:** The importer who intends to avail the benefit of an exemption notification shall –

(i) 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.**

(ii) 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, and the quantity remaining in stock, bill of entry wise and shall produce the said account as and when required.

(iii) shall submit a quarterly return to the DC/AC **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 10 days of the following quarter.

**Re-export or clearance of unutilized or defective goods [Rule 7]**

(1) The importer who has availed benefit of an exemption notification, prescribing observance of these rules may

(i) re-export the unutilised or defective imported goods, within 6 months from the date of import, with the permission of the jurisdictional DC/AC. However, the value of such goods for re-export shall not be less than the value of the said goods at the time of import.

(ii) may also clear the unutilised or defective imported goods, with the permission of the jurisdictional DC/AC within a period of 6 months from the date of import on payment of differential import duty.

**Recovery of duty in certain case [Rule 8]**

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 and in the event of any failure, the jurisdictional DC/AC shall take action by invoking the Bond to initiate the recovery proceedings.

## **OFFICER'S OF CUSTOMS**

**Section 3: Classes of officers of customs.**

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

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## APPOINTMENT OF CUSTOMS PORTS, AIRPORTS, WAREHOUSING STATIONS, ETC.

**Appointment of customs ports, airports and warehousing stations [Sec 7]:** (1) The Board may, by notification in the Official Gazette, appoint-

- (a) 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;
- (b) the places which alone shall be inland container depots air freight station for the unloading of imported goods and the loading of export goods or any class of such goods; [clause (aa)]
- (c) 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;
- (d) 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;
- (e) 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.
- (f) the post offices which alone shall be foreign post offices for the clearance of imported goods or export goods or any class of such goods;
- (g) the places which alone shall be international courier terminals for the clearance of imported goods or export goods or any class of such goods.

**Section 2(10):** Custom airport means any airport appointed u/s. 7(a) to be a custom airport and includes a place appointed under clause (aa) of section 7 to be an air freight station.

**Power to approve landing places and specify limits of customs area [Sec 8]:** The Commissioner of Customs

**Power to declare places to be warehousing stations [Sec 9]:** The CBIC

**Appointment of boarding stations [Sec 10]:** The Commissioner of Customs

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## IMPORTANT DEFINITIONS

### Self - Study

**(1) Adjudicating Authority [Sec. 2(1)]:** "Adjudicating authority" means any authority competent to pass any order or decision under this Act, but does not include the Board, Commissioner (Appeals) or Appellate Tribunal.

**(2) Assessment [Sec. 2(2)]:** "assessment" means determination of the dutiability of any goods and the amount of duty, tax, cess or any other sum so payable, if any, under this Act or under the Customs Tariff Act, 1975 or under any other law for the time being in force, with reference to—

- (a) the tariff classification of such goods as determined in accordance with the provisions of the Customs Tariff Act;
- (b) the value of such goods as determined in accordance with the provisions of this Act and the Customs Tariff Act;
- (c) exemption or concession of duty, tax, cess or any other sum, consequent upon any notification issued therefor under this Act or under the Customs Tariff Act or under any other law for the time being in force;
- (d) the quantity, weight, volume, measurement or other specifics where such duty, tax, cess or any other sum is leviable on the basis of the quantity, weight, volume, measurement or other specifics of such goods;
- (e) the origin of such goods determined in accordance with the provisions of the Customs Tariff Act or the rules made thereunder, if the amount of duty, tax, cess or any other sum is affected by the origin of such goods;
- (f) any other specific factor which affects the duty, tax, cess or any other sum payable on such goods,

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

**(3) Coastal goods [Sec. 2(7)]:** "Coastal goods" means goods, other than imported goods, transported in a vessel from one port in India to another.

**(4) Conveyances [Sec. 2(9)]:** "conveyance" includes a vessel, an aircraft and a vehicle.

**(5) Dutiable goods [Sec. 2(14)]:** "Dutiable goods" means any goods which are chargeable to duty and on which duty has not been paid.

**(6) Entry [Sec. 2(16)]:** "Entry" in relation to goods means an entry made in,

- (a) A bill of entry in case of imported goods;
- (b) A shipping bill or bill of export in case of export goods; and
- (c) The label affixed or declaration accompanying the parcel in case the goods are imported or to be exported by post.

**(7) Export goods [Sec. 2(19)]:** "Export goods," means any goods which are to be taken out of India to a place outside India.

**(8) Foreign Going vessel or aircraft [Sec. 2(21)]:** "Foreign-going vessel or *aircraft*" means any vessel or aircraft for the time being engaged in the carriage of goods or passengers between any port or airport in India and any port or airport outside India, whether touching any intermediate-port or airport in India or not, and includes -

- (i) Any naval vessel of a foreign Government taking part in any naval exercises;
- (ii) Any vessel engaged in fishing or any other operations outside the territorial waters of India;
- (iii) Any vessel or aircraft proceeding to a place outside India for any purpose whatsoever,

**(9) Goods [Sec. 2(22)]:** Goods includes – (a) Vessels, aircrafts and vehicles (b) Stores (c) Baggage (d) Currency and negotiable instruments (e) Any other kind of movable property

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

**(11) Imported goods [Sec. 2(25)]:** "Imported goods," means any goods brought into India from a place outside India but does not include goods, which have been cleared for home consumption.

In the case of goods warehoused under section 59, the goods retain their character of imported goods till they are cleared for home consumption. Thus, the goods that have been cleared for home consumption do not remain imported goods.

**(12) India [Sec. 2(27)]:** "India" includes the territorial waters of India.

Territorial waters of India extend into sea to the distance of 12 nautical miles measured from appropriate base line on the coast of India and include any bay, gulf, harbour, creek or tidal river. The outer boundary of territorial waters is international boundary of India beyond which the high sea lies.

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

**(13) Indian Customs Waters [Sec. 2(28)]** : "Indian Customs Waters" means, the waters extending into the sea upto 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.

The exclusive economic zone of India is an area beyond and adjacent to the territorial waters, and the limit of such zone is two hundred nautical miles from the baseline. [Section 7 of the Said Act]

**(14) Notification [Sec. 20(30AA)]** means notification published in the Official Gazette and the expression “notify” with its cognate meaning and grammatical variation shall be construed accordingly.

**(15) Person-in-charge [Sec. 2(31)]** : "Person-in-charge" means –

- (a) in relation to a vessel, the master of the vessel;
- (b) in relation to an aircraft, the commander or pilot-in-charge of the aircraft;
- (c) in relation to a railway train, the conductor, guard or other person having the chief direction of the train;
- (d) in relation to any other conveyance, the driver or other person-in-charge of the conveyance;

**(16) Smuggling [Sec. 2(39)]**: "Smuggling", in relation to any goods, means any act or omission which will render such goods liable to confiscation under section 111 or section 113.

Under Section 111 provisions have been made for confiscation of goods in case of improper importation and under Section 113 provisions have been made for confiscation of goods in case of improper exportation.

**Chapter 12****REVISIONARY TEST PAPER****REVISIONARY TEST PAPER - 1****THE CHARGEABILITY**

**Question 1:** A ship carrying the goods for ABC entered the territorial waters of India from a foreign country on February 25, 20X1. The goods were exempted on that day under a notification. The goods were warehoused on February 26, 20X1. The goods were removed from the warehouse on March 15, 20X1 by which time the earlier notification exempting the goods from payment of customs duty stood rescinded. Discuss.

**Question 2:** Akash imports consignment goods, which were chargeable to duty at 60% ad valorem. The goods were warehoused on 18<sup>th</sup> October 20XX after filling the bill of entry for warehousing. The government issued notification on 31<sup>st</sup> October 20XX reducing the rate of customs duty to 30% ad valorem. Akash filed bill of entry for home consumption on 15<sup>th</sup> November 20XX specifying the rate of duty as 30%. However, the customs department charged the duty at 60%.

Akash wants to know from you whether the charging of duty at 60% is valid. Examine the issue in the light of the provisions of the Customs Act, 1962 and give your advice to Akash.

**Question 3:** The shipping bill in respect of an export consignment was presented to the Customs Authority on March 8, 20X1. The Customs Authority granted "entry outwards" to the ship on March 11, 20X1, the loading of the goods in the ship had commenced only after March 17, 20X1. A notification was issued under the Customs Act, 1962 exempting the export item from customs duty on March 17, 20X9. The assessee contends that since the loading of the goods in the ship had commenced after March 17, 20X1, the export consignment is eligible for the benefit of the exemption notification. Discuss with reasons whether the assessee's contention is tenable in law.

**CUSTOMS VALUATION**

**Question 4:** An importer provided the producer with a mould to be used in production of imported goods. The cost of mould is ₹5,40,000 which is expected to produce 27,000 pieces. The importer has imported 7,000 pieces in the first lot. Is it necessary to add the cost of mould in transaction value? If yes, what will be the amount to be added? The importer is expecting an increase in the rate of custom duty next month, so he has requested to the proper officer that if cost of mould is required to be added in transaction value, the full cost of mould, i.e., ₹ 5,40,000 may be added in the transaction value of first lot of 7,000 pieces itself. Is his demand valid in law?

**Question 5:** XYZ Co. has claimed before the Customs Authority that since the exports of goods in its case attracted no duty, the value for purposes of Customs Act, 1962 to be declared shall be the value of the goods, which he expects to receive on sale of goods in the overseas market. Discuss whether the stand taken by XYZ Co. is correct.

**Question 6:** Gujarat Dry Fruits Ltd., imported dry fruits and declared the value as under –

| Date of Imports | Quantity | Value declared  | Country of Import |
|-----------------|----------|-----------------|-------------------|
| Nov 20XX        | 250 MT   | ₹ 25,000 per MT | Egypt             |
| Nov 20XX        | 150 MT   | ₹ 25,000 per MT | Egypt             |

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

| Date of Imports | Quantity | Value declared | Country of Import |
|-----------------|----------|----------------|-------------------|
|-----------------|----------|----------------|-------------------|

|  |       |                 |        |
|--|-------|-----------------|--------|
| September 20XX, By importer Mumbai International | 50 MT | ₹ 35,000 per MT | Dubai  |
| October 20XX, By importer Chennai Fruits Ltd.    | 20 MT | ₹ 40,000 per MT | Persia |

The

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

**Question 7:** V steels imported various items for its captive power plant with technical know-how from, 'N' Engineering U.S.A. the relevant drawings of the turbine shaft and layout of the turbine with other items were also supplied. One of the items which was a turbine shaft was in a semi-finished condition. Before fitting, this turbine shaft had to be further ground and finished as per the dimensions of the shaft indicated in the layout drawing. "V" steels paid US\$2000 for the layout drawing and did not pay any customs duty on this amount. The customs Department has claimed that this amount of US\$ 2000 forms part of the transaction value. Discuss.

**Question 8:** The assessee A Ltd. entered into a joint venture with a foreign collaborator 'B' for promotion and selling antennas, accessories and communication equipment. The arrangement between them indicates that 'B' owned majority of equity shares in A Ltd. Technical services were provided by 'B' to A Ltd. for various functions that were carried out in respect of manufacture of antenna system in India, for which technical service fee was paid to 'B' by A Ltd. Based on the above facts, the department opined that both A Ltd. and 'B' were related persons and that the technical fee. was includible in the assessable value. [Exam Question]

**Question 9:** An importer imported some goods in February 20X1 and the goods were cleared from Mumbai port for warehousing on 8<sup>th</sup> February 20X1 after assessment. Assessable value was ₹9,72,000 (US \$ 20,000 at the rate of exchange ₹48.60 per US \$). The rate of duty on that date was 25% (assume that no additional duty is payable). The goods were warehoused at Pune and were cleared from Pune warehouse on 4<sup>th</sup> March 20X1, when rate of duty was 20% and exchange rate was ₹48.75 = 1 US \$. What is the duty payable while removing the goods from Pune on 4<sup>th</sup> March 20X1? [Final Exam Question]

**Question 10:** Kaveri Enterprises imported some goods from Italy. On the basis of certain information obtained through computer printouts from the Customs House, Department alleged that during the period in question, large number of consignments of such goods were imported at a much higher price than the price declared by Kaveri Enterprises. Therefore, Department valued such goods on the basis of transaction value of identical goods as per rule 4 of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 and demanded the differential duty along with penalty and interest from the Kaveri Enterprises. However, Department did not provide these printouts to Kaveri Enterprises.

Kaveri Enterprises contended that Department's demand was without any basis in law, without any legally admissible evidence and opposed to the principles of natural justice as the computer printouts which formed the basis of such demand had not been supplied to them. Resultantly, they had no means of knowing as to whether any imports of comparable nature made at the relevant point of time. You are required to examine the contention of Kaveri Enterprises, with the help of a decided case law, if any. [Final Exam Question]

### TREATMENT IN SPECIAL CASES

**Question 11:** Triveni Alloys imported during June 20XX, by sea, a consignment of metal scrap weighing 3000 metric tones from U.K. They filed a Bill of Entry for Home consumption and the Assistant Commissioner passed an order for clearance of goods and the applicable duty was also paid. The importer thereafter found on taking delivery from the Port Trust Authorities, that only 2,500 metric tones of scrap were available at the docks although they had paid duty for the entire 3000 metric tones since there was no short landing of cargo. The short delivery of 500 metric tones was also substantiated by the Port Trust Authorities, who gave a weighment certificate to the importer to that effect. Upon 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 the importer's claim for restoration of duty paid on the quantity of 500 metric tones scrap not delivered by the Port Trust. Examine the issues involved and briefly discuss the same with reference to the provisions of the Customs Act, 1962.

**Question 12:** (KP) are the promoters of Naphtha based short gestation 355 M.W. combined cycle power plant. The Company imported certain equipments from a foreign supplier. The project equipment was off loaded after filing necessary documents relating to clearance of goods vide Bill of Entry No. 109 dated 20.2.20X1. The Customs Authorities in terms of the contract registered under the Project Import Regulations assessed the customs duty and the duty was paid accordingly. The cargo was discharged between 21.2.20X1 and 24.2.20X1.

The Company decided to transport the equipment by sea in a costal barge to project site. The barge set out on Costal Voyage on 1.3.20X1 after taking necessary permission from various authorities. Unfortunately the barge capsized during the Voyage on 2.3.20X1 and finally overturned resulting in total loss of all packages containing the said equipment. The importers have sought for remission of duty and refund of duty already paid. Discuss.

**Question 13:** Mr. X imported certain goods but found them to be defective. He does not want the said goods as it is of no use to him. Advise suitably regarding payment of customs duty.

**Question 14:** M/s. RIL Ltd. claimed duty drawback in respect of its export products. Over 97% of the inputs by weight of the product were procured indigenously and were not excisable. All industry rates under the Customs and Central Excise Duties Drawback Rules, 2017 were fixed taking into account the incidence of customs duty on imported products inputs. Explain briefly with reference to Rule 3 of the said rules whether the claim of M/s. RIL will merit consideration by the authorities.

### **ANSWERS TO SOME QUESTIONS**

(Briefly given. In exam you are required to write relevant provisions in detail)

**Answer to Question 1:** M/s. ABC is liable to pay customs at the rate in force on the date of presentation of bill of entry for home consumption u/s 68. **Refer – Section 15, case law of –(1) UOI vs. Apar Pvt. Ltd, (2) Gardens Silk Mills Ltd. vs. UOI.**

**Answer to Question 2:** According to section 15(1)(b) of Customs Act, 1962, in the case of goods cleared from a warehouse, the applicable rate of duty and tariff valuation shall be the rate and valuation in force on the date on which a bill of entry for home consumption in respect of such goods is presented.

In the present case, in view of the above provisions, the applicable rate shall be 30%.

**Answer to Question 3:** As per Section 16 of the Customs Act, 1962, in the case of goods entered for export, the rate of duty and tariff valuation is the date on which the proper officer makes an order permitting clearance and loading of the goods for exportation u/s 51. Subsequent changes after such order for clearance is immaterial.

In the given case, in view of the above provisions, the contention of the assessee is not tenable.

**Answer to Question 4:** The demand of the importer is valid in the eyes of the law. **Refer Rule 10 of the Import Valuation Rule.**

**Answer to Question 5:** The stand taken by XYZ Co. is not correct. For all purposes the export made by XYZ Co. will be valued at transaction value u/s 14(1). However, if tariff values have been fixed u/s 14(2), such goods shall be valued at such tariff values.

**Answer to Question 6:** According to the definition of identical goods given in Rule 2(1)(d), the goods must be produced in the same country in which the goods being valued were produced.

In the given case, the goods were imported from Egypt but the other imports were from Dubai and Persia. Hence, the country of importation was not same. Moreover, there was a substantial difference in the quantity of goods imported and the contemporaneous imports taken by the customs for enhancing the value.

Hence, department's action to enhance the value is not correct according to the provisions of section 14 read with the Customs Import Valuation Rules, 2007.

**Answer to Question 7:** As per Rule 10(l)(e) of Customs Valuation Rules, 2007, in determination of the transaction value, any payment made by the buyer as a condition of sale of goods will be included in the value of the goods.

In the given case, the turbine shaft was imported in a semi-finished condition and has to be fitted and finished as per the indications in the layout drawing. Thus, this drawing is necessary for further finishing of the imported turbine shaft i.e. in the final production of the imported item before it is fitted. Therefore, as the payment of US \$2000 is made for layout drawing without which the plant cannot be installed, hence, the value of such layout drawing will be included in the value of the goods.

In view of the provisions of Rule 10(l)(e), the drawing is necessary for the production of the imported item and therefore has to be included in the transaction value of the imported item.

**Answer to Question 8: (a)** Transaction value can be rejected only when the circumstances indicate that the relationship influenced the price and not merely because of the fact that the importer and the foreign exporter are related to each other. As in the given case the relationship did not influence the price, so the transaction value cannot be rejected.

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

In the given case A Ltd. had imported antenna parts from B and has paid technical fees to B for various functions to be carried out on such imported antenna parts for the manufacture of antenna system in India.

Hence, in view of the above provisions the technical fees is includible while calculating assessable value of imported antenna parts although it relates to a post importation activity.

**Answer to Question 9:** As per section 14 of the Act, the assessable value is determined by applying rate of exchange in force on the date on which bill of entry is presented u/s 46. U/s 46, bill of entry is presented either for home consumption or for warehousing. Therefore, in case of warehoused goods, the rate of exchange in force on the date on which the into- bond bill of entry for warehousing is presented, i.e. in this case, ₹ 48.60 per US \$ on 8-2-20X1, shall be the rate applicable for arriving at the assessable value.

However, as per section 15(1)(b), the rate of duty applicable on goods cleared from warehouse u/s 68 shall be the rate in force on the date on which ex-bond bill of entry for home consumption is presented. Therefore, the rate of duty in force on 4-3-20X1 i.e. 20% shall be applicable.

Accordingly duty payable =

|  |            |
|--|------------|
| Assessable value i.e. US \$ 20,000 x ₹ 48.60 per US \$ | ₹ 9,72,000 |
| Customs duty @ 22% [including SWS]                     | ₹ 2,13,840 |

Note: Assuming no other duty payable.

**Answer to Question 10:** Refer the case of Gira Enterprises (2014)(SC). Applying the ratio of the said case, the value could not be enhanced on the basis of value of identical goods as the department fails to provide evidence of import of goods at higher prices.

**Answer to Question 11:** From the facts of the case it is evident that,

(a) Triveni Alloys imported 3000 M.T. of the metal scrap from U.K and the Bill of Entry for the same was filed, duty was deposited and they obtained order for clearance of goods for home consumption.

(b) Entire 3000 M.T. of cargo was unloaded by the Port Trust Authorities.

Thus, in present case 500 M.T of metal scrap has been lost, hence it will not be covered under pilferage because pilferage is loss of goods in small quantities by reason of theft etc.

Thus, the case is covered under Section 23 of the Customs Act, 1962 which covers remission of duty on lost goods. As per the provisions of Section 23(1) in case the goods are lost before physical clearance for home consumption, the importer will not be liable to pay duties of customs.

Hence, here the goods have been lost before physical clearance by the importer; he will get remission of duty on the imported goods. However, since the importer has already paid import duty he will have to make an application for refund of such duty in accordance with provisions of Section 27 of the Customs Act, 1962.

**Answer to Question 12:** In the present case KP Corporation imported power plants under Project Import Regulations 1986. They filed the Bill of Entry and the said goods were provisionally assessed and after deposit of the provisional duty the order for clearance of the cargo was given. The said cargo was totally lost while in transit from the port to the project site of importer.

The question here is whether the importer will be granted the benefit under Section 23(1). The remission of duty is granted only when the said goods are lost or destroyed before clearance for home consumption.

In the present case such loss occurred after physical clearance of goods from the port while in transit. Hence no benefit of remission will be available to the importer and he will be liable to pay import duty of customs.

**Solution to Question 13:** As per section 23(2), an importer can relinquish his title to the goods, before clearance and thereupon he shall not be liable to pay the duty thereon. However, in case the importer has committed any offence then, such relinquish of title to such goods shall not be allowed. Hence, in the given case, since the goods are found to be defective and having no use, therefore the importer can relinquish his title to the goods and accordingly, not liable to pay any customs duty.

**Answer to Question 14:** Rule 3 provides that no draw back shall be allowed if the exported goods have been produced or manufactured using imported materials or excisable materials on which duty has not been paid. In case of **Rubfila International Ltd.**, it was held where almost 97% of the Raw material is non duty payable then such cases drawback shall not be admissible at all, since almost the entire portion of the goods are non-duty paid. Therefore, in view of the above discussions, M/s. RIL Ltd., is not entitled to any drawback and claim made by the it will be rejected by the authority concern.

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## REVISIONARY TEST PAPER -2

**Question 1:** M/s PQR Co imported goods declaring transaction value ₹ 1,000/unit, which was rejected. Rules 4 and 5 of the Import Valuation Rules are found inapplicable, as no similar goods are imported in India. M/s PQR Co gives you the data and asks you to compute the value of imported goods as per Rule 7 :

1. Sale Price in India (after value addition) : ₹ 4,200 per unit (inclusive of GST @ 5%)
2. Commission to Indian agent on above sales : 5% of sale price (before GST)
3. Value addition after import : ₹ 50 per unit
4. Freight and Insurance from Port of import to factory of importation : ₹ 60 and ₹ 20 per unit
5. General Expenditure after importing : ₹ 90 per unit
6. Net profit margin (normally earned by others also) : 20% of sale price (before GST)
7. Rate of Basis Customs Duty : 10%. IGST @ 5% u/s 3(7) of CTA, 1975. SWS applicable (no other duty taxable.)(ITC is not admissible under GST Laws)

Answer - Computation of Customs Value under Rule 7 :

| Particulars   | ₹ (per unit) |
|---|--------------|
| Selling Price (inclusive of GST)                                      | 4,200        |
| Less : IGST (₹ 4,200*5%/105%)   | 200          |
| Sale Price before IGST  | 4,000        |
| Less : Post importation expenses –                                    |              |
| ➤ Commission on sales to Indian agents [5% of ₹ 4,000]                | 200          |
| ➤ Value addition after import   | 50           |
| ➤ Freight and Insurance from Port of import to factory of importation | 80           |
| ➤ General Expenditure after importing                                 | 90           |
| ➤ Net profit margin in India  | 800          |
| Cum – duty price inclusive of IGST on imports                         | 2,780        |
| Less: IGST u/s 3(7) @ 5% (₹2,780*5/105)                               | 132          |
| Cum – duty price inclusive of IGST on imports                         | 2,648        |
| Less: Customs Duty @ 11% (including SWS) (₹ 2,648*11/111)             | 262.41       |
| Assessable Value  | 2,385.59     |

**Question 2:** Mr A imported goods from a related person Mr P of US and transaction value has been rejected. Rule 4 and 5 of the Import Valuation Rules are found inapplicable, as no similar/identical goods are imported in India. Mr A furnishes cost related data of imports and requests Custom Authorities to determine value accordingly as per Rule 8. They are –

- |   |            |
|---|------------|
| 1. Cost of material incurred by Mr P          | \$ 4,000   |
| 2. Fabrication charges incurred by Mr P       | \$ 1,000   |
| 3. Other chargeable expenses incurred by Mr P | \$ 400     |
| 4. Other indirect costs incurred by Mr P      | \$ 250     |
| 5. Freight from Mr P's factory to US port     | \$ 250     |
| 6. Loading charges at US port                 | \$ 100     |
| 7. Normal net profit margin of Mr P           | 20% of FOB |
| 8. Air freight from US port to Indian port    | \$ 2,500   |
| 9. Insurance from US port to Indian port      | \$ 50      |
| 10. Exchange rate                             | ₹ 65 / \$  |

Answer - As per Rule 6, at request of importer, Rule 8 may be applied before Rule 7. Hence, request of Mr X to apply Rule 8 data is available, the Customs Authorities cannot insist upon valuation as per Rule 7.

Computation of value as per Rule 8 :

|    |  |    |       |
|----|--|----|-------|
| 1. | Cost of material incurred by Mr P          | \$ | 4,000 |
| 2. | Fabrication charges incurred by Mr P       | \$ | 1,000 |
| 3. | Other chargeable expenses incurred by Mr P | \$ | 400   |

|     |   |    |          |
|-----|---|----|----------|
| 4.  | Other indirect costs incurred by Mr P   | \$ | 250      |
| 5.  | Freight from Mr P's factory to US port  | \$ | 250      |
| 6.  | Loading charges at US port  | \$ | 100      |
|     | Total Cost incurred by Mr P   | \$ | 6,000    |
| 7.  | Normal net profit margin of Mr P [20% of FOB or 25% of \$ 6,000]  |    | 1,500    |
|     | FOB price   |    | 7,500    |
| 8.  | Air freight from US port to Indian [Air freight cannot exceed 20% of FOB, hence, restricted to 20% of \$ 7,500] [Rule 10(2)(a)] | \$ | 1,500    |
| 9.  | Insurance from US port to Indian port [Rule 10(2)(a)]   | \$ | 50       |
|     | CIF/Assessable Value under Customs  |    | 9,050    |
| 10. | Exchange rate   | ₹  | 65       |
|     | Assessable Value under Customs  |    | 5,88,250 |

**Question 3:** A Malaysian company donated 1,000 metric tons of palm oil to a charitable trust in India for free distribution to the poor and the needy citizens. The trust in India had to meet the expenditure towards freight and insurance only which came to us \$ 20 per metric ton. The Custom Department found that at or about the same time of importation of this consignment, there were following imports of palm oil of Malaysian origin into India

| Sl. No. | Quantity imported<br>in metric tons | Unit price in US Dollars (CIF) |
|---------|-------------------------------------|--------------------------------|
| 1       | 500                                 | 400                            |
| 2       | 900                                 | 350                            |
| 3       | 780                                 | 300                            |

The rate of exchange on the relevant date was 1 US \$ = ₹65 and the rate of customs duty was 20% ad valorem. Calculate the amount of customs duty payable on the consignment under the Customs Act, 1962 with appropriate assumptions and explanations. It would be sufficient if only basic customs duty is calculated [Nov-18-5 Marks]

**Answer-** In the given case, there is no transaction value for the subject goods. Therefore, value has to be determined based on the transaction value of contemporaneous imports of identical/similar goods in accordance with rule 4 of Customs Valuation (Determination of Value of Imported Goods) Rules, 2007.

Write relevant provisions of Rule 4(1). The consignment of 500 tonnes cannot be considered to be of substantially the same quantity. Hence, remaining 2 consignments will only be relevant. If more than one transaction value of identical goods is found, the lowest of such value shall be used to determine the value of imported goods. Accordingly, the unit price of the consignment under valuation would be US \$ 300 per metric tonne.

#### Computation of amount of duty payable

##### Particulars

|   |                 |
|---|-----------------|
| CIF value of 1000 metric tonnes [1,000 x \$ 300]          | US \$ 3,00,000  |
| CIF Value (in Rupees) at the exchange rate of \$ 1 = ₹ 65 | 1,95,00,000     |
| Assessable value  | 1,95,00,000     |
| <b>Customs duty @ 20%</b>                                 | <b>3,90,000</b> |
| <b>Add: SWS @ 10% of BCD</b>                              | <b>39,000</b>   |
|   | <b>4,29,000</b> |

**Question 4:** After visiting USA for a month, Mrs. and Mr. Iyer (Indian resident 4 aged 35 and 40 years respectively) brought to India a laptop computer valued at ₹70,000, used personal effects valued ₹ 1,40,000 and a personal computer for ₹58,000. Calculate the custom duty payable by Mrs. & Mr. Iyer, if any. [Nov -18-4 Marks]

**Answer-** There will be no customs duty on used personal effects (worth ₹ 1,40,000) of Mrs. and Mr. Iyer and laptop computer brought by them will be exempt from duty.

(ii) Duty payable on personal computer after deducting the duty free baggage allowance will be ₹ 58,000 – ₹ 50,000 = ₹ 8,000.

(iii) Effective rate of duty for baggage = 38.5% [including SWS]

(iv) Therefore, total customs duty = ₹ 3080

**Question 5:** Abdul Overseas Pvt. Ltd. was erroneously refunded a sum of ₹ 30000 in excess of actual drawback on 16-6-20XX. A demand for recovery of the same was issued by the Department on 24.08.20XX. Abdul Overseas Private Limited returned the erroneous refund to the Department on 16-10-20XX. You are required to calculate the amount of interest chargeable from Abdul Overseas Pvt. Ltd. Provide brief reasons for your answer [Nov -18 4 Marks]

**Answer- Computation of interest chargeable from Abdul Overseas Pvt. Ltd.**

Duty drawback erroneously refunded ₹ 30,000

No. of days of delay [17.06.20XX to 16.10.20XX] (Refer Note) 122 days

Rate of interest (Refer Note) 15%

**Quantum of interest (rounded off) [₹ 30,000 x 122/365 x 15/100] = ₹ 1,504**

**Note:** Where any drawback is erroneously paid to the claimant, then the claimant shall require to repay the amount within a period of 2 months from the date of demand and interest @ 15% p.a shall also be payable for the period from the date of payment of such drawback to the claimant till the date of recovery of such drawback.

**Question 6:** Jolly overseas Ltd. of Hyderabad has imported a machine from U.K (England) through the sea route by a vessel. The details of the import transaction are as follows-

| Particulars  | Amount in UK (£) |
|--|------------------|
| (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                   | 600              |
| (iii) Handling charges paid for loading the machine on the ship at the port of exportation     | 500              |
| (iv) License fee relating to the imported goods payable by the importer as a condition of sale | 900              |
| (v) Actual Freight charges from the port of export to the port of import are not ascertainable | -                |
| (vi) Actual insurance charges paid   | 200              |
| (vii) Landing charges paid at the place of importation are not ascertainable                   | -                |
| (viii) Handling charges associated of the imported goods at the place of importation           | ₹ 15,000         |

|   |   |
|---|---|
| <b>Bill of entry: Dated 21.01.20XX</b>  | <b>Entry inward: Dated 26.01.20XX</b>   |
| <b>Exchange rate on that day:</b><br>(a) Notified by CBEC I UK £ = ₹ 101<br>(b) prescribed by RBI I UK£ = ₹ 100 | Exchange rate on that day:<br>(a) Notified by CBEC I UK £ = ₹ 102<br>(b) prescribed by RBI I UK £ = ₹ 103 |

Compute the assessable value of the machine purpose of levy of Customs Duty [Nov 18- 5Marks]

**Answer-**

| Particulars  | Amount in UK (£) |
|--|------------------|
| (i) Cost of the machine at the factory of the exporter   | 20,000           |
| Add: License fee relating to the imported goods payable by the importer as a condition of sale | 900              |
| Add: Transport charges from the factory of exporter to the port for shipment                   | 600              |
| Add: Handling charges paid for loading the machine on the ship at the port of exportation      | 500              |
| FOB Price  | 22,000           |
| Add: Freight @ 20% of FOB (since not ascertainable)  | 4,400            |
| Add: Actual insurance charges paid   | 200              |
| CIF Value/Assessable Value   | 26,600           |
| Assessable Value in INR [26,600 x ₹ 101]   | 26,86,600        |

**Note-** Transport charges from the factory of exporter to the port for shipment and Handling charges paid for loading the machine on the ship at the port of exportation will form part of assessable value.

**ALTERNATIVE SOLUTION**

| Particulars  | Amount in UK (£) |
|--|------------------|
| (i) Cost of the machine at the factory of the exporter   | 20,000           |
| Add: License fee relating to the imported goods payable by the importer as a condition of sale   | 900              |
| Add: Cost of transport, loading, unloading and handling charges associated with the delivery of the imported goods to the place of importation [20% of 20,000+600+500+900] | 4,400            |
| Add: Actual insurance charges paid   | 200              |
| CIF Value/Assessable Value   | 25,500           |
| Assessable Value in INR [25,500 x ₹ 101]   | 25,75,500        |

Note-Transport, loading, unloading and handling charges associated with the delivery of the imported goods to the place of importation, since not ascertainable therefore it is calculated as 20% of FOB. For this purpose FOB includes cost of machine (20,000) + License fee relating to the imported goods payable by the importer as a condition of sale (900) + Transport charges from the factory of exporter to the port for shipment (600) + Handling charges paid for loading the machine on the ship at the port of exportation (500) =22,000

However, Transport charges from the factory of exporter to the port for shipment and Handling charges paid for loading the machine on the ship at the port of exportation will not form part of assessable value.

**Question 7:** In January, 20X1, Rock & Rock India Ltd. imported a consignment from U.S.A (by sea). The value of consignment was ₹ 7,50,000 and total duty payable was ₹ 1,50,000.

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

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

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

Would your answer be different in the above case if the goods get deteriorated after unloading and examination but before clearance for home consumption, and value comes down to ₹ 7,00,000 ? [Nov 18- 5 Marks]

**Answer-** Write relevant provisions. The stand taken by the proper officer of refusing the claim for abatement is not valid in law. The duty to be charged on the damaged goods shall be reduced in proportion to the reduction in the value of goods on account of damage.

Thus, in the given case, the amount of total duty payable

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

$$= \text{₹}30,000$$

Since in this case, imported goods have deteriorated before clearance for home consumption, abatement of duty will not be allowed and full duty will have to be paid.

**Question 8:** ABC Industries Ltd. of Mumbai imported one machine through vessel from Japan, in the month of September, 20XX.

The following particulars are made available

| Particulars   | Amount in Japanese Yen (¥) |
|---|----------------------------|
| (i) Cost upto port of exportation incurred by exporter                | 6,00,000                   |
| (ii) Loading charges at port of exportation                           | 25,000                     |
| (iii) Freight charges from port of export to port of import in India. | 1,00,000                   |

Following additional amounts paid by ABC Industries Ltd:-

| Particulars  | Amount in Indian rupees (₹) |
|--|-----------------------------|
| (i) Designing charges, necessary for such machine, paid to consultancy firm in New Delhi | 8,00,000                    |
| (ii) Commission paid (not the buying commission) to local agent of exporter.             | 1,25,000                    |
| (iii) Actual landing charges paid at the place of importation.                           | 15,000                      |
| (iv) Actual insurance charges paid to the place of importation are not ascertainable.    | -                           |
| (v) Lighterage charges paid at the port of importation                                   | 20,000                      |

Other Information

- (i) Rate of basic customs duty is 10%
- (ii) Rate of social welfare surcharge is 10%
- (iii) Integrated tax leviable under section 3(7) of Customs Tariff Act, 1975 is 12%.
- (iv) Ignore GST compensation cess.
- (v) Rate of exchange to be taken is 1 Japanese Yen (¥) = ₹ 0.65

Arrive at the total customs duty, including integrated tax payable under section 3(7) of the Customs Tariff Act, 1975 with appropriate working notes. (May 2019)

**Answer:**

| Particulars   | Japanese Yen |
|---|--------------|
| Cost upto port of exportation   | 6,00,000     |
| Add: Loading charges at the port of exportation   | 25,000       |
| Total in Japanese Yen   | 6,25,000     |
|   | ₹            |
| Total in Indian rupees @ ₹0.65 per Japanese Yen   | 4,06,250.00  |
| Add: Commission paid to local agent of exporter   | 1,25,000.00  |
| FOB value as per customs  | 5,31,250.00  |
| Add: Freight charges from port of export to port of import in India<br>[1,00,000 Japanese Yen × 0.65 = ₹65,000] | 65,000.00    |



|  |                    |
|--|--------------------|
| Add: Lighterage charges paid by the importer at port of importation          | 20,000             |
| Add: Insurance charges @ 1.125% of FOB [ $\text{₹}5,31,250 \times 1.125\%$ ] | <u>5,976.56</u>    |
| <b>CIF value</b>   | <b>6,22,226.56</b> |
| Assessable Value (rounded off)   | 6,22,227           |
| Add: Basic customs duty @ 10% (r/off)(A)                                     | 62,223             |
| Add: Social welfare surcharge @ 10% (r/off) (B)                              | 6,222              |
| Total  | 6,90,672           |
| Add: Integrated tax @ 12% of ₹6,90,672 (rounded off)                         |                    |
| <b>Total custom duty and integrated tax payable</b>                          |                    |
| <b>[(A) + (B) + (C)] (rounded off)</b>                                       | <b>1,51,326</b>    |

**Question 9:** Laxmi Company imported goods valued at ₹10,00,000 vide a Bill of Entry presented before the proper officer on 15th December, 20XX, on which date the rate of customs duty was 20%. The proper officer decided that the goods should be subject to chemical or other test and therefore, the same were provisionally assessed at a value of ₹10,00,000 and Laxmi company paid provisional duty of ₹2,00,000 on the same date. Laxmi Company wants to voluntarily pay duty of ₹1,50,000 on 20th January, 20X1.

(1) Can Laxmi Company provisionally pay the duty and what are the conditions which are to be complied before such payment is made?

(2) Determine the amount of interest payable, if any, under section 18 of the Customs Act, 1962 assuming that the payment of ₹1,50,000 as stated above is made on 20th January, 20X1 and that the final duty is assessed on 31st January, 20X1 at ₹4,00,000 and the balance duty is paid on the same day. **(May 2019)**

**Answer: Write relevant provisions of section 18.**

(1) Can pay the duty on provisional basis as per section 18. Before, the provisional assessment of duty She needs to pay such security as the proper officer deems fit.

(2) Amount of interest payable will be  

$$= [\text{₹}1,50,000 \times 15\% \times 51/365] + [\text{₹}50,000 \times 15\% \times 62/365]$$

$$= \text{₹}3,144 + \text{₹}1,274$$

$$= \text{₹}4,418$$

**Question 10:** Determine the total duties (duty, tax and cess) payable under Customs Act if Mr. Rao imported rubber from Malaysia at landed price of ` 25 lakh. It has been notified by the Central Government that share of imports of rubber from the developing country against total imports to India exceeds 5%. Safeguard duty notified on this product is 30%, rate of integrated tax u/s 3(7) is 12% and rate of basic customs duty is 10%. (May 19)

| <b>Answer: Particulars</b>                                | <b>(₹)</b>      |
|---|-----------------|
| 1 Landed price  | 25,00,000       |
| 2 Add: Basic customs duty @ 10%                           | 2,50,000        |
| 3 Add: Safeguard duty @ 30% on ₹25,00,000                 | 7,50,000        |
| 4 Add: Social welfare surcharge (SWS) @ 10 % on ₹2,50,000 | 25,000          |
| 5 Add: Integrated tax 12% of ₹35,25,000                   | <u>4,23,000</u> |
| 6 Total customs duties and tax payable                    | 14,48,000       |

Note: SWS is not levied on safeguard duty.

**Question 11:** Determine the Assessable value under customs law of an imported machine based on the following information :

- (1) Cost of machine  
(Contract price = ₹1,00,000, Revised price = ₹2,00,000, Negotiated & Agreed price = ₹1,50,000)
- (2) Freight from the factory of the exporter to the port for shipment = ₹20,000
- (3) Freight incurred from port of entry to inland container depot = ₹60,000

- (4) Handling charges paid for loading the machine in the ship = ₹5,000  
 (5) Demurrage charge paid at port of importation = ₹30,000  
 (6) Buying commission paid by importer = ₹5,000  
 (7) Commission paid to local agent appointed by exporter = ₹1,000  
 (8) Vendor inspection charges (not required under contract) = ₹8,000 (May 19)

**Answer:** Computation of assessable value

| Particulars   | (₹)      |
|---|----------|
| Cost of machine (negotiated price i.e price actually payable)   | 1,50,000 |
| Add: Commission paid to local agent appointed by exporter   | 1,000    |
| Add: Freight from factory of exporter to port for shipment  | 20,000   |
| Add: Handling charges paid for loading the machine in the ship  | 5,000    |
| FOB Price   | 1,76,000 |
| Add: Cost of transport, loading, unloading and handling charges associated with the delivery of the imported goods to the place of importation - 20% of FOB | 35,200   |
| Add: Demurrage charges (actual)   | 30,000   |
| Add: Insurance @ 1.125 % of FOB   | 1,980    |
| Assessable value  | 2,43,180 |

Note- Freight from the factory of exporter to the port for shipment and Handling charges paid for loading the machine on the ship at the port of exportation will form part of assessable value.

#### Alternative Solutions

**Answer:** Computation of assessable value

| Particulars  | (₹)      |
|--|----------|
| Cost of machine (negotiated price i.e price actually payable)  | 1,50,000 |
| Add: Commission paid to local agent appointed by exporter  | 1,000    |
| Add: Cost of transport, loading, unloading and handling charges associated with the delivery of the imported goods to the place of importation - 20% of FOB [Note-1] | 35,200   |
| Add: Insurance @ 1.125 % of FOB  | 1,980    |
| Assessable value   | 1,88,180 |

Note 1: For the purpose of computing 20% of FOB. FOB value = cost of machine (₹ 1,50,000) + freight from factory of exporter to port for shipment (₹20,000) + handling charges paid for loading the machine in the ship (5,000) + commission paid to local agent appointed by exporter (₹1000) = ₹ 1,76,000

However, freight from the factory of exporter to the port for shipment and Handling charges paid for loading the machine on the ship at the port of exportation will not form part of assessable value.

Further, actual demurrage charges have not been added separately by taking a view that the same has already included on 20% of FOB value.

**Chapter 13****WAREHOUSING OF GOODS****Warehousing bond [Section 59]**

(1) The importer of any goods in respect of which a bill of entry for warehousing has been presented u/s. 46 and assessed to duty u/s. 17 or u/s. 18 shall execute a bond equal to thrice the amount of the duty assessed on such goods, binding himself—

(a) to comply with all the provisions of the Act and the rules and regulations made thereunder in respect of such goods;

(b) to pay, on or before the date specified in the notice of demand, all duties and interest payable u/s. 61(2); and

(c) to pay all penalties and fines incurred for the contravention of the provisions of this Act or the rules or regulations, in respect of such goods.

(2) However, the AC/DC of Customs may permit an importer to execute a general bond in such amount as approved by them, in respect of the warehousing of goods to be imported by him within a specified period.

(3) The importer shall furnish such security as may be prescribed, in addition to the execution of a bond.

(4) Any bond executed under this section by an importer in respect of any goods shall continue to be in force notwithstanding the transfer of the goods to another warehouse.

(5) Where the whole of the goods or any part thereof are transferred to another person, the transferee shall execute a bond along with security, as mentioned above.

**Permission for deposit of goods in a warehouse [Section 60]**

When the provisions of section 59 have been complied with in respect of any goods, the proper officer may make an order permitting removal of the goods from a customs station for the purpose of deposit in a warehouse and the goods shall be deposited in a warehouse in such manner as may be prescribed.

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

**Storage Period of warehoused Goods & Interest Payable (Section 61)**

| Particulars  | Goods intended for use in:  | Other Goods   |
|--|---|---|
|  | (i) 100% EOU unit<br>(ii) Electronic hardware technology park unit<br>(iii) software technology park unit<br>(iv) any warehouse wherein manufacture or other operations have been permitted u/s. 65 |   |
| Period for which goods may remain in the warehouse | Till their clearance from the warehouse.  | Till the expiry of 1 year from the date of order for deposit u/s. 60. |

|                                   |                              |   |
|-----------------------------------|------------------------------|---|
| Extension of Warehousing period   | Not applicable.              | Principal Commissioner/ Commissioner: Maximum 1 year at a time, on sufficient cause.  |
| Reduction of warehousing period   | Time limit cannot be reduced | If goods are likely to deteriorate, the Comm. may reduce.   |
| Interest Charged                  | Nil                          | Interest @ 15% p.a. will be charged after the expiry of 90 days from the date of deposit till the date of payment of duty.  |
| Calculation of Period of Interest | -                            | <p>The period of 90 days shall be calculated from the date of deposit of goods in the warehouse. [Circular No. 39/2013]</p> <p>However, The CBIC may by notification, specify the class of goods in respect of which the interest shall be chargeable from the date of order for deposit.</p> |
| Waiver of Interest                | -                            | <p>CBIC in the public interest, may,—</p> <p>(a ) by order, and under the circumstances of an exceptional nature, waive the whole or part of the interest;</p> <p>(b) by notification, specify the class of goods in respect of which no interest shall be charged.</p>                       |

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### **Owner's right to deal with warehoused goods [Section 64]**

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
-

### **Manufacture and other operations in relation to goods in a warehouse [Sec. 65]**

According to Section 65, the owner of any warehoused goods may carry on any manufacturing process or other operations in relation to warehoused goods, **with the permission of the Principal Commissioner/Commissioner of Customs and subject to such conditions as may be prescribed.**

**Section 65(2)** deals with any waste or refuse that arises during the manufacturing operations or other processes done in the warehouse. It is necessary to understand two different situations arising under these circumstances- Firstly, in case the finished-product manufactured out of the manufacturing process or other operations is exported out of India and secondly, in case they are cleared for home consumption.

**Situation 1: In case the finished product is exported out of India-** In such circumstances the element of import duty, which is contained in the waste or refuse that has arisen out of the operations carried out, shall be remitted. However, this remission is subject to the condition that (i) such waste or refuse is destroyed or (ii) Duty is paid on such waste or refuse as if it had been imported into India in that form.

**For Example:** Suppose an importer imports 20,000 kgs. of Raw material. He takes sanction from Deputy Commissioner and accordingly starts manufacturing process on the imported goods. He gets finished goods of 19,500 kgs and 500 kgs of waste this is meant for export.

In this case he will not be liable to pay custom duty on raw material used for manufacture of 19,500 kgs of finished goods as the import shall never be complete in respect of such goods.

But if he destroys the waste or pays duty on 500 kgs of waste as if the waste is imported, then he shall not be liable to pay duty on Raw material contained in the waste.

**Situation 2: In case the finished goods is cleared for home consumption:** In such cases the import duty shall be charged on the quantity of warehoused goods contained in so much of the waste as has arisen from operations carried out in relation to goods cleared for home consumption.

**For Example:** If in the above example entire 19,500 kgs. of finished goods are sold in the domestic market, then, on entire 20,000 kgs of raw material, the import duty will be levied.

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### **Power to exempt imported materials used in the manufacture of goods in warehouse [S. 66]**

If any imported materials are used in accordance with the provisions of section 65 for the manufacture of any goods and the rate of duty leviable on the imported materials exceeds the rate of duty leviable on such goods, the Central Government, if satisfied that in the interests of the establishment or development of any domestic industry it is necessary so to do, may, by notification in the Official Gazette, exempt the imported materials from the whole or part of the excess rate of duty.

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**Question 1:** What is the warehousing period for capital goods and other goods in the case of EOUs, EHTPs, STPs, and for warehouses where manufacture/ other operations are permitted under section 65 of Customs Act, 1962 and also in other cases? Can the warehousing period be extended? [Exam Question]

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## **REMOVAL OF GOODS FROM THE WAREHOUSE**

The warehoused goods can be removed for-

- (1) transfer from one warehouse to another [Section 67]
- (2) clearance for home consumption [Section 68] (3) clearance for export [Section 69]

### **(1) Removal of goods from one warehouse to another [Section 67]**

Section 67 provides that the owner of the warehouse may, with the permission of the proper officer, remove them from one warehouse to another, subject to the prescribed conditions.

### **(2) Clearance for home consumption [Section 68]:**

**Any warehoused goods may be cleared from the warehouse for home consumption -**

- (a) by presenting an ex-bond bill of entry to the proper officer.
- (b) the import duty, interest, fine and penalties payable in respect of such goods have been paid; and
- (c) the proper officer has made an order for clearance of such goods for home consumption.

Provided that the order referred to in clause (c) may also be made electronically through the customs automated system on the basis of risk evaluation through appropriate selection criteria

Relinquishment of title - The owner of the warehoused goods may also relinquish his title to goods at any time before an order for clearance for home consumption has been passed and upon payment of duty, interest etc.

However, the owner of the warehoused goods shall not be allowed to relinquish his title to goods regarding which an offence appears to have been committed under this Act or any other law for the time being in force.

### **(3) Clearance for export [Section 69]**

(1) Any warehoused goods may be exported to a place outside India without payment of import duty if -

- (a) a shipping bill or a bill of export or the form as prescribed under section 84 has been presented in respect of such goods.
- (b) the export duty, fine and penalties payable in respect of such goods have been paid; and
- (c) an order for clearance of such goods for export has been made by the proper officer.

**Provided that the order referred to in clause (c) may also be made electronically through the customs automated system on the basis of risk evaluation through appropriate selection criteria.**

(2) If the Central Government is of opinion that warehoused goods of any specified description are likely to be smuggled back to India, it may direct that such goods shall not be exported to any place outside India without payment of duty or may be allowed to be so exported subject to such restrictions and conditions as may be specified in the notification.

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### **Goods not to be taken out of warehouse except as provided by this Act [Section 71]**

Section 71 provides that warehoused goods are not to be removed except for home consumption or export or to another warehouse or otherwise provided by the Act.

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### Improper Removal of Goods [Section 72]

U/s 72 the following cases are to be considered to be improper removal of the goods and the proper office may demand duty, interest, fine and penalty: -

- Where the goods are removed in contravention of Section 71
- Where the warehoused goods have not been removed from the warehouse even after the expiration of the specified period.
- Where a warehousing bond has been executed in respect of the warehoused goods which have not been cleared and they are not duly accounted for.

**Question 2:** Mehul imported certain goods in April, 2019. An 'into Bond' bill of entry was presented on 15-04-20XX and goods were cleared from the port for warehousing. Assessable value on that date was US \$ 60,000. The order permitting the deposit of goods in warehouse for 4 months was issued on 22-04-2019. Mehul deposited goods in warehouse on the same day but did not clear the imported goods within the warehousing period which got over on 22-08-20XX. A notice was issued under section 72 of the Customs Act, 1962 demanding duty, interest and penalty. Mehul cleared the goods on 15-09-20XX. Compute the duty and interest payable by Mehul, while removing the goods from the warehouse. *Following information is made available.*

|      | Particulars   | 15-04-20XX | 22-08-20XX | 15-09-20XX |
|------|---|------------|------------|------------|
| (i)  | Rate of Exchange per US\$ as notified by CBEC                           | ₹65        | ₹64.50     | ₹64        |
| (ii) | Rate of Basic Customs Duty (advalorem) Ignore IGST & Compensation cess. | 12%        | 10%        | 8%         |

**Answer:** Assessable value in INR [US\$60,000 × ₹65] ₹ 39,00,000

|                                     |            |
|-------------------------------------|------------|
| Basic Customs duty @ 10%            | ₹ 3,90,000 |
| Add: Social Welfare Surcharge @ 10% | ₹ 39,000   |
| Total customs duty payable          | ₹ 4,29,000 |

**1. The rate of duty prevalent on last day on which goods should have been removed is considered while computing customs duty.** [Kesoram Rayon v. CC 1996 (86) ELT 464 (SC)]

2. Interest is payable @ 15% p.a. on duty payable at the time of clearance of the goods from warehouse, from the expiry of 90 days from date of order for warehousing (22.07.2017) till the date of payment of duty on such goods (15.09.2017).

Thus, no. of days delay = 10 days of July + 31 days of August + 15 days of September = 56 days

**Amount of interest = 4,29,000 × 15% × 56/365 = ₹ 9873.**

### Cancellation and return of warehousing bond [Section 73]

When the whole of the goods covered by any bond executed u/s.59 have been cleared for home consumption or exported or **transferred or** are otherwise duly accounted for, and when all amounts due on account of such goods have been paid, the proper officer shall cancel the bond as discharged in full, and shall on demand deliver it, so cancelled, to the person who has executed or is entitled to receive it.

### REMISSION FOR VOLATILE GOODS [Section 70]

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

- The goods should be deficient in quantity at the time of removal from the bonded warehouse.
- This deficiency should be on account of natural loss i.e. evaporation etc.
- These provisions are applicable only to such goods as are notified by the Central Government. Some of the goods notified by Government are Kerosene, Wine, Beer, High speed diesel oil, spirit, motor spirit, menthol, aviation fuel etc. **and crude stored caverns.**

***Illustration:*** An importer, having received 200 casks of whisky from Scotland by a vessel, warehouses them in a bonded place. Each cask is reported to contain 1000 liters. At the time of removal of goods, it is found that 100 cases contained only 980 liters each. The importer claims that there has been a loss in storage and hence no duty can be levied on the storage. Explain the relevant provisions of the Customs Act, 1962 regarding shortage of volatile goods and state, with reason, how you would decide the case.

**Answer:** In the present case the loss of 2% is minimal in nature, which can be justified to be on account of natural causes. Hence, the importer will be able to claim remission of duty on such goods.

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### **Custody and removal of warehoused goods (Section 73A)**

- (1) All warehoused goods shall remain in the custody of the person who has been granted a licence u/s. 57/58/58A 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 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

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### **MISCELLANEOUS PROVISIONS**

**Section 2(43) “warehouse”** means a public warehouse licensed under section 57 or a private warehouse licensed under section 58 or a special warehouse licensed under section 58A.

**Licensing of public warehouses (Sec. 57):** The Principal Commissioner of Customs or Commissioner of Customs may, subject to such conditions as may be prescribed, licence a public warehouse wherein dutiable goods may be deposited.

**Licensing of Private Warehouses [Section 58]:** The Principal Commissioner of Customs or Commissioner of Customs may, subject to such conditions as may be prescribed, licence a private warehouse wherein dutiable goods imported by or on behalf of the licensee may be deposited

### **Licensing of special warehouses (Section 58A):**

- (1) The Principal Commissioner of Customs or Commissioner of Customs may, subject to such conditions as may be prescribed, licence 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 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).

### **Cancellation of licence (Sec. 58B):**

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 u/s. 57/58/58A after giving a reasonable opportunity of being heard.

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## SEARCH AND SEIZURE IN CUSTOMS

### SEARCH IN CUSTOMS

|    | <b>Sections 100: Power to search suspected persons entering or leaving India</b>   | <b>Sections 101: Power to search suspected persons in certain other cases</b>   |
|----|--|---|
| 1. | Search under this Section is conducted by the Proper officer of the Customs.   | Search is conducted by the officer of Customs empowered by the Commissioner.  |
| 2. | Search can be conducted for any goods where there is reason to believe that person has secreted about his person, any goods liable to confiscation or any documents relating thereto               | Search can be conducted for specified goods where there is reason to believe that the person, any such goods liable to confiscation or any documents relating thereto. The goods specified are: <ul style="list-style-type: none"> <li>• gold;</li> <li>• diamonds;</li> <li>• manufactures of gold or diamonds</li> <li>• watches</li> <li>• any other class of notified goods.</li> </ul> |
| 3. | Such person must be in customs area or is landed from or is about to Board of any vessel within India Customs Waters or foreign going aircraft or vehicle or is entering India by any other means. | There is no restriction regarding place of such person.   |

### **SECTION 103: Power to Screen/x-ray bodies of suspected persons for detecting secreted goods.**

*(1) Where the proper officer has reason to believe that any person referred to section 100 has any goods liable to confiscation secreted inside his body, he may detain such person and shall, (a) with the prior approval of the Deputy Commissioner of Customs or Assistant Commissioner of Customs, as soon as practicable, screen or scan such person using such equipment as may be available at the customs station, but without prejudice to any of the rights available to such person under any other law for the time being in force, including his consent for such screening or scanning, and forward a report of such screening or scanning to the nearest magistrate if such goods appear to be secreted inside his body; or (b) produce him without unnecessary delay before the nearest magistrate.*

### **Power to search premises [Section 105]**

(1) If the officer concerned has reason to believe that any goods liable to confiscation, or any documents or things which in his opinion will be useful for or relevant to any proceeding under this Act, are secreted in the place searched.

(2) The provisions of the Code of Criminal Procedure, 1898, relating to searches shall apply to searches under this section subject to the modification that for the word **"Magistrate"**, wherever it occurs, the words Commissioner of Customs were substituted.

### **Power to stop and search conveyances [Section 106]**

(1) 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 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, if the keys are withheld.

Where it becomes necessary to stop any such vehicle or animal, the proper officer may use all lawful means for stopping it, and where such means fails, the vehicle or animal may be fired upon.

### **Power to undertake controlled delivery [Section 109A]**

Notwithstanding anything contained in this Act, 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 such manner as may be prescribed, 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.

Explanation.—For the purposes of this section “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.

### **Seizure of goods, documents and things [Section 110]**

(1) If the proper officer has reason to believe that any goods are liable to confiscation under this Act, he may seize such goods.

*Provided that where it is not practicable to remove, transport, store or take physical possession of the seized goods for any reason, the proper officer may give custody of the seized goods to the owner of the goods or the beneficial owner or any person holding himself out to be the importer, or any other person from whose custody such goods have been seized, on execution of an undertaking by such person that he shall not remove, part with, or otherwise deal with the goods except with the previous permission of such officer:*

*Provided further that where it is not practicable to seize any such goods, the proper officer may serve an order on the owner of the goods or the beneficial owner or any person holding himself out to be importer, or any other person from whose custody such goods have been found, directing that such person shall not remove, part with, or otherwise deal with such goods except with the previous permission of such officer.*

(2) The proper officer may seize any documents or things, which, in his opinion, will be useful for, or relevant to any proceeding under this act.

(3) Where any goods have been seized by a proper officer, he shall prepare an inventory of such goods and shall make an application to a Magistrate for the purpose of—

- (a) certifying the correctness of the inventory so prepared; or
- (b) taking, in the presence of the Magistrate, photographs of such goods, and certifying such photographs as true; or
- (c) allowing to draw representative sample of such goods, in the presence of the Magistrate, and certifying the correctness of any list of samples so drawn.

(4) Where an application is made, the Magistrate shall, as soon as may be, allow the application as soon as it is possible and the proper officer will proceed to dispose off the goods by way of sale.

(5) Where any goods are seized and no notice in respect thereof is given within 6 months of the seizure of the goods, the goods shall be returned to the person from whose possession they were seized:

Provided that the Principal Commissioner of Customs or Commissioner of Customs may, for reasons to be recorded in writing, extend such period to a further period not exceeding 6 months and inform the person from whom such goods were seized before the expiry of the period so specified:

Provided further that where any order for provisional release of the seized goods has been passed under section 110A, the specified period of six months shall not apply. [Section 110(2)- proviso substituted]

(6) The person from whose custody any documents are seized shall be entitled to make copies thereof or take extracts therefrom in the presence of an officer of customs.

*(7) Where the proper officer, during any proceedings under the Act, is of the opinion that for the purposes of protecting the interest of revenue or preventing smuggling, it is necessary so to do, he may, with the approval of the Principal Commissioner of Customs or Commissioner of Customs, by order in writing, provisionally attach any bank account for a period not exceeding 6 months:*

*Provided that the Principal Commissioner of Customs or Commissioner of Customs may, for reasons to be recorded in writing, extend such period to a further period not exceeding six months and inform such extension of time to the person whose bank account is provisionally attached, before the expiry of the period so specified*

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### **Provisional release of goods, documents and things seized or bank a/c. provisionally attached pending adjudication [Section 110A]**

Any goods, documents or things seized or bank account provisionally attached u/s. 110, may, pending the order of the adjudicating authority, be released, to the owner/Bank a/c holder on taking a bond from him in the proper form with such security and conditions as the adjudicating authority may require.

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### **Burden of proof [Section 123]**

Section 123 provides that in case gold and manufactures thereof, watches, and other notified goods are seized under the Act in the reasonable belief that they are smuggled goods, then, the burden of proving that they are not smuggled goods lies on the following-

- (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 other person claims to be the owner thereof, also on such other person.
- (b) In any other case, on the person who claims to be the owner of the goods so seized.

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### **Issue of show cause notice before confiscation of goods, etc [Section 124]**

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 with the prior approval of the officer of Customs not below the rank of *Assistant Commissioner of Customs*, informing him of the grounds on which it is proposed to confiscate the goods or to impose a penalty;
- (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:

Provided that the notice or the representation may, at the request of the person concerned be oral.

Provided further that 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.

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**Option to pay fine in lieu of confiscation (Redemption Fine)**  
**[Section 125]**

(1) Whenever confiscation of any goods is authorised by this Act, the officer adjudging it may, in the case of any goods, the importation or exportation whereof is prohibited under this Act or under any other law for the time being in force, and shall, in the case of any other goods, give to the owner of the goods or, where such owner is not known, the person from whose possession or custody such goods have been seized, an option to pay in lieu of confiscation such fine as the said officer thinks fit:

*Provided that where the proceedings are deemed to be concluded under the proviso to Sec. 28(2) or u/s. 28(6)(i) in respect of the goods which are not prohibited or restricted, no such fine shall be Imposed*

Provided further 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.

(2) Where any fine in lieu of confiscation of goods is imposed under sub-section (1), the owner of such goods or the person referred to in sub-section (1), shall, in addition, be liable to any duty and charges payable in respect of such goods.

**(3) Where the fine imposed under sub-section (1) 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.**

**Question 3:** Vishal has made an unauthorized import of 1,000 pieces of a product. Other particulars are as under:

Total assessable value: ₹5,00,000

Total customs duty payable: ₹1,20,000

Market price in India: ₹ 1,000 per piece

Customs authorities have confiscated the said goods and importer has been given an option to get the said goods released on payment of a fine equal to margin of profit.

Compute (i) amount of fine payable; and (ii) maximum amount of fine under section 125 of the Customs Act, 1962.

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**Confiscation of improperly imported goods, etc. [Section 111]**

1. Goods which are imported by sea / air and offloaded / attempted to be offloaded in a port other than the appointed customs' port
  2. Goods which are imported by land / inland water, through a route other than a specified route
  3. any dutiable / prohibited goods brought in to any bay / creek / gulf etc. for the purpose of being landed at a place other than customs' port
  4. any dutiable / prohibited goods, found concealed in a conveyance
  5. any dutiable / prohibited goods which should have been disclosed in the Import General Manifest but were not
  6. any dutiable / prohibited goods removed / attempted to be removed from a warehouse / customs station, without permission
  7. goods which do not match the description in the documents, vis-à-vis value / any other particulars
  8. any goods, which were exempted from duty subject to a condition, which was eventually not met
-

**PENALTY FOR IMPROPER IMPORTATION OF GOODS [SEC. 112]**

Penalty under Section 112 of the Customs Act, 1962 may be imposed on any person who in relation to any goods does or omits to be any act of commission or omission, which would render such goods liable to confiscation under Section 111 of that Act. The quantum of penalty is as under.

| Particulars   | Quantum of Penalty Not Exceeding -  |
|---|---|
| Prohibited goods  | The value of goods or ₹5,000 whichever is greater.  |
| Dutiable goods  | 10% of duty sought to be evaded or ₹ 5000, whichever is higher and subject to section 114A. <b>Further</b> , where duty and interest payable is paid within 30 days from the date of communication of the order, the amount of penalty shall be 25% of the penalty so determined. |
| In case the value stated in Bill of Entry or Baggage Declaration is less than actual value  | The difference between (actual value and declared value thereof) or ₹5,000 whichever is greater   |
| In respect of goods that are prohibited and in respect of which the value stated in Bill of Entry or Baggage Declaration is less than actual value. | (The value of the goods) or (the difference between the actual value and the declared value thereof) or ₹5,000 whichever is greater   |
| In the case of dutiable goods in respect of which the value stated in Bill of Entry or Baggage Declaration is less than actual value.               | (The Duty sought to be evaded) or (the difference between the actual value and declared value) or ₹5,000 whichever is greater   |

**Question 4:** A consignment containing many items was imported by Suraj. On examination of the goods, it was found that he had made misdeclaration in respect of all the items. You are required to indicate the penalty imposed under section 112 of Customs Act, 1962 in each case given below. Values are exclusive of customs duties. Basic Customs Duty is 10%, Social Welfare Surcharge -10%. No other tax is attracted on these imports.

| Particulars   | Penalty  |
|---|--|
| (1) Non- prohibited dutiable goods and the value is mis-declared as ₹10,00,000 instead of ₹11,50,000.   | 10% of duty sought to be evaded or ₹ 5000, whichever is higher i.e 10% of (150,000 x 11% = 1650 or 5000; higher = ₹5000  |
| (2) In the case at serial number 1, if the importer pays duty and interest within 30 days from the date of communication of the order.  | 25% of 5000 = ₹1250  |
| (3) The value of imported goods declared is higher than the value determined by Customs. Value determined by Customs is ₹15,00,000 but the value declared by Suraj is ₹20,00,000. | The difference between (actual value and declared value thereof) or ₹5,000 whichever is greater i.e 5,00,000 or 5,000; higher = 5,00,000.  |
| (4) The value of prohibited goods was declared as ₹20,00,000 and the actual value determined was ₹15,00,000   | (i) The value of the goods) or (ii) (the difference between the actual value and the declared value thereof) or (iii) ₹5,000 whichever is greater i.e 15,00,000 or 5,0,000 or 5,000; higher i.e ₹ 15,00,000. |
| (5) The imported goods are prohibited goods, which were declared by Suraj to be some other goods valued ₹ 15,00,000 and actual value is found to be ₹20,00,000.                   | The value of goods or ₹5,000 whichever is greater i.e 20,00,000 or 5,000; higher = ₹ 20,00,000.  |

[Exam Question]

### **Penalty for attempt to export goods improperly [Section 114]**

Any person who, in relation to any goods, does or omits to do any act which act or omission would render such goods liable to confiscation under section 113, or abets the doing or omission of such an act, shall be liable to penalty as follows -

- (a) In case of prohibited goods, penalty not exceeding three times the value of the goods as declared by the exporter or the value as determined under this Act, whichever is the greater
- (b) In the case of dutiable goods, other than prohibited goods, 10% of duty sought to be evaded or ₹ 5000, whichever is higher and subject to section 114A. Further, where duty and interest payable is paid within 30 days from the date of communication of the order, the amount of penalty shall be 25% of the penalty so determined.
- (c) In the case of any other goods, penalty not exceeding the value of the goods, as declared by the exporter or the value as determined under this Act, whichever is the greater.

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Penalty → for use of false and incorrect materials shall be 5 times of value of goods u/s. 114AA

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### **Confiscation of conveyances [Section 115]**

According to Section 115 of Customs Act, 1962 the following conveyances shall be liable to confiscation:-

- (a) Any vessel/vehicle/aircraft within Indian custom waters or in India and which is or has been in a custom area, while constructed, adapted, altered or fitted in any manner for the purpose of concealing goods;
- (b) Any conveyance from which the whole or any part of the goods is thrown overboard, staved or destroyed so as to prevent seizure by an officer of customs;
- (c) Any conveyance which having been required to stop or land u/s. 106 fails to do so, except for good and sufficient cause;
- (d) Any conveyance from which any warehoused goods cleared for exportation, or any other goods cleared for exportation under a claim for drawback, are unloaded, without the permission of the proper officer;
- (e) Any conveyance carrying imported goods which has entered India and is afterwards found with the whole or substantial portion of such goods missing, unless the master of the vessel or aircraft is able to account for the loss of, or deficiency in, the goods.
- (f) Any conveyance or animal used as a means of transport in the smuggling of any goods or in the carriage of any smuggled goods shall be liable to confiscation, unless the owner of the conveyance or animal proves that it was so used without the knowledge or connivance of the owner himself, his agent, if any, and the person in charge of the conveyance or animal.

**However**, where 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.

**Note:** Here, “market price” means market price at the date when goods are seized.

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### **Penalty for not accounting for goods [Section 116]**

Section 116 of the Customs Act, 1962 provides that 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 are not unloaded at that destination; and
- if the failure to unload or the deficiency is not accounted for to the satisfaction of the Assistant Commissioner of Customs or Deputy Commissioner of Customs, then, the Assistant/Deputy Commissioner of Customs may impose –

**(a) In case of goods loaded in a conveyance for importation into India or goods transshipped under the provisions of this Act:** A penalty not exceeding twice the amount of duty that would have been chargeable on the goods not unloaded or the deficient goods, as the case may be, had such goods been imported;

**(b) In case of coastal goods:** A penalty not exceeding twice the amount of export duty that would have been chargeable on the goods not unloaded or the deficient goods, had such goods been exported;

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### **Penalties for contravention, etc., not expressly mentioned [Section 117]**

Any person contravenes any provisions of this Act or abets any such contravention or who fails to comply with any provision of this Act with which it was his duty to comply, where no express penalty is elsewhere provided for such contravention or failure, shall be liable to a penalty not exceeding ₹4,00,000.

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### **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.

*Case of Shabir Ahmed Abdul Rehman vs. UOI (2009) (Bombay)* it can be concluded that the custom are not authorised to auction the confiscated goods during the pendency of appeal.

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### **Adjudication of confiscations and penalties [Section 122]**

In every case under this Chapter in which anything is liable to confiscation or any person is liable to a penalty, such confiscation or penalty may be adjudged, -

- (a) without limit, by a Principal Commissioner of Customs or Commissioner of Customs or a Joint Commissioner of Customs;
  - 
  - (b) up to such limit, by such officers, as the Board may, by notification, specify.
-

**DISCUSSIONS & EXPLANATIONS****Section 100**

Search of person for any goods in Customs area *or* Indian Custom water where there is reason to believe that such person has secreted goods liable for confiscation

↓  
The burden of proof on the Department. (by implication)

**Section 101**

Search of person for notified goods in any area where there is reason to believe that such person has secreted goods liable for confiscation

↓  
The burden of proof on that they are not smuggled on the assessee. [Section 123]

**Section 105**

Search of premises if reason to believe that goods liable for confiscation are secreted.

**Section 106**

Search for conveyance if reason to believe that secreted goods are kept.

**Section 110**

If proper officer has reason to believe that goods are liable for confiscation the goods will be seized.

**Section 124**

Notice given to the assessee, opportunity of being heard and order for confiscation (no time Limit)

**Section 125: Redemption fine**

**For prohibited goods:** May or may not give the option

**For the other goods:** Must give option

**Maximum redemption fine:** Market price – Duty paid

**Point to be noted:-**

(1) The time limit of 6 month is calculated from the date of seizure and not from the date of detention. Detention is done at the enquiry stage whereas seizure is done when there is reason to believe that goods are liable for confiscation.

(2) Suppose the goods are seized but notice is not given within 6 month or notice is given but goods are provisionally released, they can still be confiscated as Section 110 deals only with seizure and not with confiscation.

**Conveyance:-**

(1) **Burden of proof:** owner/agent (that he had no knowledge)

(2) **Maximum Redemption fine:** Market price of goods.

**Section 121:-**

(1) Where the importer has sold the goods to other person then the goods can be seized from such other person and notice should be given to the importer and the owner.

(2) If the goods have been sold and it **can't** be traced then obviously the goods **can't** be confiscated and the redemption fine cannot be imposed but the department can confiscate the sale proceeds.



## OFFENCES AND PROSECUTION

### SECTION 135: PUNISHMENT FOR EVASION OF DUTY OR PROHIBITIONS & ARREST U/S. 104

- (1) Without prejudice to any action that may be taken under this Act, if any person -
- (a) is in relation to any goods in any way knowingly concerned in misdeclaration of value or in any fraudulent evasion or attempt at evasion of any duty chargeable thereon or any prohibition for the time being imposed under this Act or any other law for the time being in force with respect to such goods; or
  - (b) acquires possession of or is in any way concerned in carrying, removing, depositing, harboring, keeping, concealing, selling or purchasing or in any other manner dealing with any goods which he knows or has reason to believe are liable to confiscation under section 111 or section 113, as the case may be; or
  - (c) attempts to export any goods which he knows or has reason to believe are liable to confiscation under section 113; or
  - (d) fraudulently avails of or attempts to avail of drawback or any exemption from duty provided under this Act in connection with exports of goods, or
  - (e) obtains an instrument from any authority by fraud, collusion, wilful misstatement or suppression of facts and such instrument has been utilised by such person or any other person*
- he shall be punishable, -

#### PUNISHMENT, ARREST

| Case of offences   | Punishment   | Arrest (Cognizable or non- cognizable)                                  | Arrest (Bailable or non-bailable) |
|--|--|---|-----------------------------------|
| <p>An offences punishable u/s. 135 w.r.t</p> <p>(i) evasion or attempt evasion of duty exceeding ₹ 50 lakhs; or</p> <p>(ii) prohibited goods notified u/s 11 which are also notified u/s. 135(1) (i) (c); or</p> <p>(iii) 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 crores; or</p> <p>(iv) fraudulently availing of or attempt to avail of drawback or any exemption from duty provided under this Act, if the amount of drawback or exemption from duty exceeds ₹ 50 lakh,</p> <p>(v) fraudulently obtaining an instrument for the purposes of this Act or the Foreign Trade (Development and Regulation) Act, 1992, and such instrument is utilised under this Act, where duty relatable to such utilisation of instrument exceeds ₹ 50 lakh</p> | <p>- imprisonment for a term which may extend to 7 years and with fine.</p> <p>- for second and subsequent offence: imprisonment for a term, which may extend to 7 years and with fine.</p> <p>- in the absence of special and adequate reasons to the contrary to be recorded in the judgment of the court, such imprisonment shall not be for less than <b>1 year</b>;</p> | Cognizable offence<br>(Power to arrest immediately without any warrant) | Non-bailable                      |

|                          |   |   |          |
|--------------------------|---|---|----------|
| <b>Any other offence</b> | - imprisonment for a term which may extend to <b>3 years</b> , or with fine, or with both.  | Non - cognizable Offence (Arrest cannot be made without arrest warrant) | Bailable |
|                          | - For second and subsequent offence: imprisonment for a term, which may extend to <b>7 years</b> and with fine. However, in the absence of special and adequate reasons to the contrary to be recorded in the judgment of the court, such imprisonment shall not be for less than <b>1 year</b> ; |   |          |

### POWER OF ARREST [SEC. 104]

(1) Section 104 of the Customs Act, 1962 empowers a proper officer (who is empowered by general or special order of Commissioner of customs) to arrest any person in India or within India customs waters, who he thinks of is guilty of an offence punishable under Section 132, 133, 135, 135A or 136.

(2) Such a person should be informed of the grounds of his arrest and taken to the magistrate immediately.

(3) The customs officer is vested with the powers of an officer-in-charge of a police station for the purpose of releasing any person on bail or otherwise.

### SECTION 137: COGNIZANCE OF OFFENCES

(1) No Court shall take cognizance of any offence u/s. 132, section 133 or 135 or section 135A, except with the previous sanction of the commissioner of customs.

(2) Moreover a court shall take cognizance offence u/s. 136 only with the previous sanction of the following authority

#### Offences alleged to have been committed by –

Customs officer not lower in rank than Assistant/  
Deputy Commissioner of Customs

Customs officer lower in rank than Assistant/ Deputy  
Commissioner of Customs

#### Cognizance with the previous sanction of –

Central Government

Commissioner of Customs

(3) Any offences under this chapter may, either before or after the institution of prosecution, be compound by the Chief Commissioner of Customs on payment, by the person accused of the offence to the Central Government, of such compounding amount and in such manner of compounding as may be specified.

**“Provided** that nothing contained in this sub-section shall apply to-

(a) a person who has been allowed to compound once in respect of any offence u/s. 135 and 135A;

(b) a person who has been accused of committing an offence under this Act which is also an offence under any of the following Acts, namely:—

(i) the Narcotic Drugs and Psychotropic Substances Act, 1985; (ii) the Chemical Weapons Convention Act, 2000; (iii) the Arms Act, 1959; (iv) the Wild Life (Protection) Act, 1972;

(c) a person involved in smuggling of goods falling under any of the following, namely:—

(i) goods specified in the list of Special Chemicals, Organisms, Materials, Equipment and Technology in Appendix 3 to Schedule 2 (Export Policy) of ITC (HS) Classification of Export and Import Items of the Foreign Trade Policy, as amended from time to time, issued under section 5 of the Foreign Trade (Development and Regulation) Act, 1992;

(ii) goods which are specified as prohibited items for import and export in the ITC (HS) Classification of Export and Import Items of the Foreign Trade Policy, as amended from time to time, issued under section 5 of the Foreign Trade (Development and Regulation) Act, 1992;

(iii) any other goods or documents, which are likely to affect friendly relations with a foreign State or are derogatory to national honour;

(d) a person who has been allowed to compound once in respect of any offence under this Chapter for goods of value exceeding ₹ 1 crore;

(e) a person who has been convicted under this Act on or after the 30th day of December, 2005.

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