

Lesson 5

Customs Law

Introduction and Basic Concepts, Valuation, Assessment of Imported and Export Goods and Procedural Aspects

LESSON OUTLINE

This lesson is divided into the following parts:

- I Introduction and Basic Concepts of Customs Law
- II Valuation, Assessment of Imported and Export Goods and Procedural Aspects

LEARNING OBJECTIVES

The Custom duty derived its value from the word “custom” under which whenever a merchant entered a Kingdom with his merchandise, he had to give some gift to the king. Subsequently, this custom formalized into the levy of custom duty or tax on goods imported into and exported from the country was organized through various laws during the British period. After Independence the Sea Customs Act 1878, the Land Customs Act, 1924 and other allied enactments were repealed by a consolidating and amending legislation entitled the Customs Act, 1962. Similarly the Indian Customs Act, 1934 was repealed by the Customs Tariff Act, 1975(CTA).

At the end of this lesson, the students will

- Have the understanding of the basic and practical aspects of customs law
- Be able to value the imported and export goods for payment of duty
- Understand clearance procedures involved in importation and exportation of goods

As per the Customs Act, 1962 the Central Board of Excise and Customs (the Board) has been given the powers to appoint Customs Ports, Airports and Inland Container Depots (ICD), where the imported goods can be brought in for unloading or loading of export goods. Similarly, powers have been given to the Board to notify places as Land Customs Stations (LCS) for clearance of goods imported or exported by land or by inland water.

CUSTOMS LAW

PART I: INTRODUCTION AND BASIC CONCEPTS OF CUSTOMS LAW

After going through this part you will be able to understand:

- Meaning and objects of customs duty
- Definitions and Concepts
- Scope and coverage of custom law
- Types of custom duties
- Rate of custom duties applicable

INTRODUCTION

Custom Duty is an indirect tax, imposed under the Customs Act formulated in 1962. The power to enact the law is provided under the Constitution of India under the Article 265, which states that “no tax shall be levied or collected except by authority of law”. Entry No. 83 of List I to Schedule VII of the Constitution empowers the Union Government to legislate and collect duties on import and exports. The Customs Act, 1962 is the basic statute which governs entry or exit of different categories of vessels, aircrafts, goods, passengers etc., into or outside the country. The Act extends to the whole of the India.

Customs Act, 1962 just like any other tax law is primarily for the levy and collection of duties but at the same time it has the other and equally important purposes such as:

- (i) regulation of imports and exports;
- (ii) protection of domestic industry;
- (iii) prevention of smuggling;
- (iv) conservation and augmentation of foreign exchange and so on.

Section 12 of the Custom Act provides that duties of customs shall be levied at such rates as may be specified under the Customs Tariff Act, 1975 or other applicable Acts on goods imported into or exported from India.

STATUTORY PROVISIONS OF CUSTOMS ACT, 1962

Customs Act, 1962 came into force from 1-2-1963. It extends to whole of India. The whole Act is divided into XVII chapters comprising of 161 sections.

Table showing the contents of Customs Act, 1962

<i>Chapter No. and Title</i>	<i>Sections</i>	<i>Contents</i>
I. Preliminary	Section 1 to 2	Short title, extent and commencement and Definitions
II. Officers of Customs	Section 3 to 6	Appointment and powers of officers of customs
III. Appointment of Customs Ports, Airports, Ware-	Section 7 to 10	Appointments of Customs Ports, Airports, Warehousing Stations etc.

Lesson 5 Customs Law: Valuation, Assessment of imported and export
Goods and procedural aspects

	housing Stations etc.		
IV.	Prohibitions on importation and exportation of goods	Section 11	Powers to prohibit import and export of goods
IVA.	Detection of illegally imported goods and prevention of the disposal thereof	Sections 11A to 11G	Provisions for illegal importation of notified goods and prevention of the disposal thereof
IVB.	Prevention or Detection of Illegal Export of Goods	Sections 11H to 11M	Provisions for illegal export of specified goods
IVC.	Power to exempt from the provisions of Chapters IVA and IVB	Section 11N	Power to exempt
V.	Levy of, and Exemption from, Customs Duties	Sections 12 to 28BA	Chargeable section, valuation of goods, Recovery and refund of duty
VA.	Indicating amount of duty in the price of goods, etc., for purpose of refund	Section 28C to 28D	Price of goods and incidence of duty passed on to the buyer
VB.	Advance Rulings	Section 28E to 28M	Provisions for advance ruling such as authority, application, procedure and powers of authority
VI.	Provisions relating to conveyances carrying imported or exported goods	Sections 29 to 43	Arrival or departure of goods, delivery of export manifest or export report
VII.	Clearance of imported goods and export goods	Sections 44 to 51	Clearance of import and export goods other than by way of baggage and postal articles.
VIII.	Goods in Transit	Sections 52 to 56	Transit and transshipment of goods
IX.	Warehousing	Section 57 to 73	Provision relating to public and private warehouse
X.	Drawback	Sections 74 to 76	Duty drawback on re-export of duty paid goods or material used in the manufacture of goods
XA.	Special Provisions relating to Special Economic Zone	Sections 76A to 76N	Omitted <i>in view of the introduction of a special Act, namely, Special Economic Zones Act, 2005</i>
XI.	Special provisions regarding baggage, goods imported or exported by post, and stores	Section 77 to 90	Special provisions regarding baggage, goods imported or exported by post, and stores
XII.	Provisions relating to	Section 91 to 99	Provisions relating to coastal goods and

	coastal goods and vessels carrying coastal goods		vessels carrying coastal goods other than baggage and stores
XIII.	Searches, seizure and arrest	Section 100 to 110A	Power to search, inspect, examine persons and seizure of goods, documents and things
XIV.	Confiscation of goods and conveyances and imposition of penalties	Section 111 to 127	Adjudication proceedings and confiscation of goods.
XIVA.	Settlement of cases	Sections 127A to 127N	Provisions relating to Settlement Commission
XV.	Appeals and Revision	Sections 128 to 131C	Procedure and time limits for appeals and revisions
XVI.	Offences and Prosecutions	Section 132 to 140A	Offences and cognizance of offences
XVII.	Miscellaneous	Section 141 to 161	Conveyances, duty deferment, licencing of Customs house agent, appearance by authorised representative, delegation of power etc.

LIMBS OF CUSTOMS LAW

Customs Act, 1962 and Customs Tariff Act, 1975 are the two limbs of Customs Law in India which must be read with rules and regulations. The rule making power is delegated to the Central Government while the regulation making power delegated to the Central Board of Excise and Customs (CBEC).

There are a number of rules and regulation prescribed from time to time to carry the objective of the Act. Some of the rules and regulations are enumerated here as follows:

- Baggage Rules , 2016
- Customs , Central Excise Duties and Service Tax Drawback Rules,1995
- Re-Export of Imported Goods (Drawback of Customs Duties) Rules, 1995
- Customs Valuation (Determination of Price of Imported Goods) Rules, 2007
- Customs Valuation (Determination of Value of Export Goods) Rules, 2007
- Customs (Advance Rulings) Rules, 2002
- Customs (Appeals) Rules, 1982
- Customs(Import of Goods at Concessional Rate of Duty for Manufacture of Excisable Goods) Rules, 1996
- Specified Goods (Prevention of Illegal Export) Rules, 1969
- Customs (Compounding of Offences) Rules, 2005
- Customs (Settlement of Cases) Rules, 2007
- Notified Goods (Prevention of Illegal Import) Rules, 1969
- Bill of Entry (Electronic Declaration) Regulations, 2011
- Customs (Provisional Duty Assessment) Regulations, 2011
- Customs House Agents Licensing Regulations, 2004

- Intellectual Property Rights (Imported Goods) Enforcement Rules, 2007

Differences between Rules and Regulations

(1) The Central Government is authorized to make the rules and the CBEC is authorized to make the regulations consistent with this Act.

(2) The powers to make the rules is contained in section 156 whereas the power to make regulations is prescribed under section 157.

(3) Rules may provide for all or any of the following matters, namely:

- (a) the manner of determining the transaction value of the imported goods and export goods under sub-section (1) of section 14;
- (b) the conditions subject to which accessories of, and spare parts and maintenance and repairing implements for, any article shall be chargeable at the same rate of duty as that article;
- (c) the detention and confiscation of goods the importation of which is prohibited and the conditions, if any, to be fulfilled before such detention and confiscation and the information, notices and security to be given and the evidence requisite for the purposes of such detention or confiscation and the mode of verification of such evidence;
- (d) the reimbursement by an informant to any public officer of all expenses and damages incurred in respect of any detention of any goods made on his information and of any proceedings consequent on such detention;
- (e) the information required in respect of any goods mentioned in a shipping bill or bill of export which are not exported or which are exported and are afterwards re-landed;
- (f) the publication, subject to such conditions as may be specified therein, of names and other particulars of persons who have been found guilty of contravention of any of the provisions of this Act or the rules.
- (g) the amount to be paid for compounding and the manner of compounding under sub-section (3) of section 137.

Whereas regulations may provide for all or any of the following matters, namely:

- (a) the form of a bill of entry, shipping bill, bill of export, import manifest, import report, export manifest, export report, bill of transshipment, declaration for transshipment boat note and bill of coastal goods;
- (b) the manner of export of goods, relinquishment of title to the goods and abandoning them to customs and destruction or rendering of goods commercially valueless in the presence of the proper officer under clause (d) of sub-section (1) of section 26A;
- (c) the form and manner of making application for refund of duty under sub-section (2) of section 26A;
- (d) the form and manner in which an application for refund shall be made under section 27;
- (e) the conditions subject to which the transshipment of all or any goods under sub-section (3) of section 54, the transportation of all or any goods under section 56 and the removal of warehoused goods from one warehouse to another under section 67, may be allowed without payment of duty;
- (f) The conditions subject to which any manufacturing process or other operations may be carried on in a warehouse under section 65.
- (g) The manner of conducting audit of the assessment of duty of the imported or export goods at the office of the proper officer or the premises of the importer or exporter, as the case may be.

IMPORTANT DEFINITIONS

Section 2 of the Customs Act, 1962 contains the definitions of various terms used at several places in the Act. Here, some of the important definitions are reproduced as follows;

- (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) **“Appellate Tribunal”** means the Customs, Excise and Service Tax Appellate Tribunal constituted under section 129;
- (3) **“assessment”** includes provisional assessment, self-assessment, re-assessment and any order of assessment in which the duty assessed is nil; (4) **“baggage”** includes unaccompanied baggage but does not include motor vehicles [Section 2(3)];
- (5) **“bill of entry”** means a bill of entry referred to in section 46[Section 2(4)];
- (6) **“bill of export”** means a bill of export referred to in section 50[Section 2(5)];
- (7) **“Board”** means the Central Board of Excise and Customs constituted under the Central Boards of Revenue Act, 1963 (54 of 1963) [Section 2(6)];
- (8) **“coastal goods”** means goods, other than imported goods, transported in a vessel from one port in India to another[Section 2(7)];
- (9) **“dutiable goods”** means any goods which are chargeable to duty and on which duty has not been paid [Section 2(14)];
- (10) **“entry”** in relation to goods means an entry made in a bill of entry, shipping bill or bill of export and includes the entry made under the regulations made under section 84; [Section 2(16)];
- (11) **“export”**, with its grammatical variations and cognate expressions, means taking out of India to a place outside India [Section 2(18)];
- (12) **“export goods”** means any goods which are to be taken out of India to a place outside India [Section 2(19)];
- (13) **“exporter”**, in relation to any goods at any time between their entry for export and the time when they are exported, includes ¹⁵[any owner, beneficial owner] or any person holding himself out to be the exporter [Section 2(20)];
- (14) **“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 [Section 2(21)];
- (15) **“goods”** includes -
 - (a) vessels, aircrafts and vehicles;
 - (b) stores;

- (c) baggage;
- (d) currency and negotiable instruments; and
- (e) any other kind of movable property [Section 2(22)].

(16) **“import”**, with its grammatical variations and cognate expressions, means bringing into India from a place outside India [Section 2(23)];

(17) **“import manifest”** or **“import report”** means the manifest or report required to be delivered under section 30 [Section 2(24)];

(18) **“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 [Section 2(25)];

(19) **“importer”**, in relation to any goods at any time between their importation and the time when they are cleared for home consumption, includes ¹⁸[any owner, beneficial owner] or any person holding himself out to be the importer [Section 2 (26)];

(20) **“India”** includes the territorial waters of India [Section 2(27)];

(21) **“Indian customs waters”** means the waters extending into the sea up to the limit of contiguous zone of India under section 5 of the Territorial Waters, Continental Shelf, Exclusive Economic Zone and other Maritime Zones Act, 1976 (80 of 1976) and includes any bay, gulf, harbour, creek or tidal river [Section 2(28)];

The concept of territorial waters and Indian customs waters are highly relevant for customs law. Territorial waters extend upto twelve nautical miles from the baseline on the coast of India. Indian customs waters extend upto contiguous zone of India which twenty four nautical miles from the nearest point of base line. Thus Indian customs waters extend upto twelve nautical miles beyond territorial waters. The significance of Indian customs waters is that the Customs Officer has powers to arrest a person; to stop and search any vessel; to confiscate a vessel concealing goods; to search any person on board any vessel and; to confiscate goods in the these waters.

(22) **“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 [Section 2(31)].

(23) **“prohibited goods”** means any goods the import or export of which is subject to any prohibition under this Act or any other law for the time being in force but does not include any such goods in respect of which the conditions subject to which the goods are permitted to be imported or exported have been complied with [Section 2(33)];

(24) **“proper officer”**, in relation to any functions to be performed under this Act, means the officer of customs who is assigned those functions by the Board or the Commissioner of Customs [Section 2(34)];

- (25) **“shipping bill”** means a shipping bill referred to in section 50 [Section 2(37)];
- (26) **“stores”** means goods for use in a vessel or aircraft and includes fuel and spare parts and other articles of equipment, whether or not for immediate fitting; [Section 2(38)];
- (27) **“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; [Section 2(39)];
- (28) **“tariff value”**, in relation to any goods, means the tariff value fixed in respect thereof under sub-section (2) of section 14 [Section 2(40)];
- (29) **“value”**, in relation to any goods, means the value thereof determined in accordance with the provisions of sub-section (1) or sub-section (2) of Section 14 [Section 2(41)];
- (30) **“vehicle”** means conveyance of any kind used on land and includes a railway vehicle [Section 2(42)]
- (31) **“warehouse”** means a public warehouse licensed under section 57 or a private warehouse licensed under section 58 or a special warehouse licensed under section 58A; [Section 2(43)].
- (32) **“warehoused goods”** means goods deposited in a warehouse [Section 2(44)];

The definition of warehouse has so as to add a new class of warehouses for enabling storage of specific goods under physical control of the department, as control over the other types of warehouses would be only record based.

OTHER DEFINITIONS AS AMENDED VIDE FINANCE ACT, 2017

“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)]

“customs area” means the area of a customs station and includes any area in which imported goods or export goods are ordinarily kept before clearance by Customs Authorities; Customs area includes warehouse Section 2(11) .

Note: Since customs area covers warehouse, no IGST is payable for goods removed from customs station to warehouse.

“customs station” means any customs port, customs airport, international courier terminal, foreign post office or land customs station Section (13);

“foreign post office” means any post office appointed under clause (e) of sub-section (1) of section 7 to be a foreign post office; [Section 2(20A)]

section (28A) **“international courier terminal”** means any place appointed under clause (f) of sub-section (1) of section 7 to be an international courier terminal;]

Establishments under customs

Section 7: Appointment of customs ports, airports, etc - 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;
- (aa) the places which alone shall be inland 5[container depots or air freight stations] for the unloading of imported goods and the loading of export goods or any class of such goods;
- (b) 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;

- (c) the routes by which alone goods or any class of goods specified in the notification may pass by land or inland water into or out of India, or to or from any land customs station from or to any land frontier;
- (d) the 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.
- (e) 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;
- (f) the places which alone shall be international courier terminals for the clearance of imported goods or export goods or any class of such goods.

Every notification issued under this section and in force immediately before the commencement of the Finance Act, 2003 shall, on such commencement, be deemed to have been issued under the provisions of this section as amended by section 105 of the Finance Act, 2003 and shall continue to have the same force and effect after such commencement until it is amended, rescinded or superseded under the provisions of this section.

International courier terminals for the clearance of imported goods or export goods can be now appointed by the Board.

LEVY OF CUSTOM DUTY

There are four stages in any tax structure, viz., levy, assessment, collection and postponement. The basis of levy of tax is specified in Section 12, charging section of the Customs Act. It identifies the person or properties in respect of which tax or duty is to be levied or charged. Under assessment, the liability for payment of duty is quantified and the last stage is the collection of duty which is may be postponed for administrative convenience.

As per Section 12, customs duty is imposed on goods imported into or exported out of India as per the rates specified under the Customs Tariff Act, 1975 or any other law. On analysis of Section 12, we derive the following points:

- (i) Customs duty is imposed on goods when such goods are imported into or exported out of India;
- (ii) The levy is subject to other provisions of this Act or any other law;
- (iii) The rates of Basic Custom Duty are as specified under the Tariff Act, 1975 or any other law;
- (iv) Even goods belonging to Government are subject to levy, though they may be exempted by notification(s) under Section 25.

Custom Tariff Act, 1975 has two schedules. Schedule I prescribes tariff rates for imported goods, known as "Import Tariff" and Schedule II contains tariff for export goods known as "Export Tariff".

TAXABLE EVENT

The basic condition for levy of customs duty is import/export of goods i.e. goods become liable to duty when there is import into or export from India.

- Import means bringing into India from a place outside India [Section 2(23)].
- Export means taking out of India to a place outside India [Section 2(18)].
- "India" includes the territorial waters of India [Section 2(27)]. The limit of the territorial waters is the line every point of which is at a distance of twelve nautical miles from the nearest point of the appropriate baseline.

Though the taxable event is import/export yet it is difficult to determine the exact time of levy. The provision of assessment and collection of duty will be discussed in other parts.

Here in this part, we will discuss the types of duties leviable under Custom Tariff Act.

As per section 12, Customs duties are levied on the goods imported into, or exported from, India at the rates specified in the schedules to the Customs Tariff Act, 1975. The first schedule prescribed the rates of duty on imports and Second schedule prescribe the rates of duty on exports.

TYPES OF DUTIES UNDER CUSTOMS

IMPORT DUTY

There are various types of Customs import duties:

(1) BASIC CUSTOM DUTY

It is levied under Section 12 of Customs Act, 1962, and specified under Section 2 of the Customs Tariff Act, 1975. Normally, it is levied as a percentage of Value as determined under section 14(1). There are different rates for different goods. But the general basic rate is 10%. This basic duty may be exempted by a notification under Section 25. The basic duty may have two rates under the First Schedule to Customs Tariff Act, 1975; viz. standard rates and preferential rates.

Standard and Preferential Rates

Duty at the “Standard rate” is charged where there is no provision for preferential treatment. To be eligible, for the preferential treatment the goods should be the one which are imported from any preferential area covered under the Government of India Agreements for charging preferential rate of duty. The Central Government has the power to increase or reduce or discontinue the preferential rate in respect of any article specified in the First Schedule provided it considers it to be necessary in the public interest. Preferential rate is applied only where the owner of the article (importer) claims at the time of importation, with supporting evidence, that the goods are chargeable with the preferential rate of duty.

(2) ADDITIONAL CUSTOM DUTY/COUNTERVAILING DUTY [Section 3(1)]

This is levied under Section 3(1) of the Customs Tariff Act, 1975. The amount of this duty is equivalent to the amount of excise duty payable on like goods manufactured or produced in India. In *S.K. Patnaik v. State of Orissa*, 2000 S.C. it was held that countervailing duty is imposed when excisable articles are imported in order to counter balance the excise duty, which is leviable on similar goods if manufactured in India:

- Countervailing Duty is payable at effective rates.
- When excise duty is exempt/nil rate is applicable on goods imported, no Countervailing Duty is levied (*Collector v. J. K. Synthetics* 2000 (120) E.L.T. 54(SC))
- Countervailing Duty is leviable even if similar goods are not produced in India.
- Exemption of basic customs duty doesn't automatically mean exemption of Countervailing Duty.
- Countervailing Duty is payable in case of goods leviable under State Excise also.
- When the imported goods are valued under Section 4A [valuation based on retail price], or Tariff Values under section 3(2) the amount of Countervailing Duty is calculated accordingly if the goods are sold in retail in India.

Value for calculation of duty: Additional duty/ IGST is calculated on a value of the imported article

determined under section 14 of the Customs Act and basic custom duty under section 12 of the Customs Act and any other law for the time being in force but does not include;

- additional duty referred to in section 3(5) of The Customs Tariff Act, 1975
- The safeguard duty referred to in section 8B of The Customs Tariff Act, 1975.
- The countervailing duty referred to in section 9 of The Customs Tariff Act, 1975
- The anti dumping duty referred to in section 9A of The Customs Tariff Act, 1975

In other words, the additional customs duty is payable on assessable value plus basic customs duty plus NCCD of customs. While calculating additional customs duty, Anti Dumping Duty, education cess of customs and safeguard duty is not required to be considered.

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

Note: Under GST regime, alcoholic liquor is still under state excise which has not been subsumed under GST. So, IGST is not leviable on its import.

Rate of duty: Such portion of the excise duty leviable on such raw materials, components and ingredients as, in either case, may be determined by rules made by the Central Government in this behalf.

Input Tax Credit of CVD/ IGST: If imported goods are used in manufacture of final products or for provision of output service, **Input Tax credit** of CVD/ IGST paid on imported capital goods is also available.

Important Note: GST has already been brought into effect in India. By virtue of it, IGST (Integrated goods and service tax) is chargeable on goods imported into India. CVD is still payable, wherever applicable on the imported goods for which GST Laws are not applicable.

National Calamity Contingent Duty will be levied only on tobacco products and crude oil. Additional duty of Customs is to be levied on pan masala and tobacco products imported.

Petroleum products such as motor spirit, high speed diesel, aviation turbine fuel, and tobacco products will be outside the scope of GST and additional duties of Customs will be levied on the import of the same.

(3) ADDITIONAL DUTY/SPECIAL ADDITIONAL DUTY (SAD) UNDER SECTION 3(5)

It is levied to offset the effect of sales tax, VAT, local tax or other charges leviable on articles on its sale, purchase or transaction in India. It is leviable on imported goods even if article was not sold in India.

The Central Government may levy additional duty to counter balance the sales tax, value added tax, local tax or any other charges leviable in the like article on its sale, purchase or transportation in India. The rate shall be notified by the Central Government which cannot exceed 4%.

The value of the imported article shall, be the aggregate of the value determined under section 14(1) of the Customs Act, 1962 and 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 such additional duty of custom under section 3(1) and section 3(3), but does not include—

- (a) the duty referred to in sub-section (5);
- (b) the safeguard duty referred to in sections 8B
- (c) the countervailing duty referred to in section 9; and
- (d) the anti-dumping duty referred to in section 9A.

This additional duty is eligible for Cenvat Credit for a manufacturer but not for a provider of taxable service. In respect of capital goods, 100% credit of SAD is available to manufacturers in the first year itself.

Note: Special CVD is subsumed now under IGST, as such this duty is leviable only on the imported goods for which GST Laws are not applicable. It may be noted that petroleum products are yet to be brought under GST.

Provisions under IGST Act, 2017 Applicable for imported goods

Integrated Goods and Services Act came to effect from June 22, 2017. Through ordinance, The President of India extended the Act to the state of Jammu & Kashmir also with effect from 8th July, 2017.

Accordingly, goods imported into India are now subjected to IGST, not CVD and Special CVD. However, petroleum products and tobacco products are outside the scope of GST and hence CVD and special CVD are applicable to them as usual.

Relevant Provisions under IGST Act:

As per section 5 of the IGST Act that Subject to the provisions of sub-section (2), there shall be levied a tax called the integrated goods and services tax on all inter-State supplies of goods or services or both, except on the supply of alcoholic liquor for human consumption, on the value determined under section 15 of the Central Goods and Services Tax Act and at such rates, not exceeding forty per cent., as may be notified by the Government on the recommendations of the Council and collected in such manner as may be prescribed and shall be paid by the taxable person.

Provided that the integrated tax on goods imported into India shall be levied and collected in accordance with the provisions of section 3 of the Customs Tariff Act, 1975 on the value as determined under the said Act at the point when duties of customs are levied on the said goods under section 12 of the Customs Act, 1962.

The integrated tax on the supply of petroleum crude, high speed diesel, motor spirit (commonly known as petrol), natural gas and aviation turbine fuel shall be levied with effect from such date as may be notified by the Government on the recommendations of the Council.

DETERMINATION OF NATURE OF SUPPLY [SECTION 7(2)]

Supply of goods imported into the territory of India, till they cross the customs frontiers of India, shall be treated to be a supply of goods in the course of inter-State trade or commerce.

Section 8. (1) Proviso:

Provided that the following supply of goods shall not be treated as intra-State supply, namely:

- (i) supply of goods to or by a Special Economic Zone developer or a Special Economic Zone unit;
- (ii) goods imported into the territory of India till they cross the customs frontiers of India;

Part (ii) above is dealing with high sea purchases for which IGST is payable.

Section 3 of Customs Tariff Act, 1975 has been amended and new subsections added as given below:

Section 3(7) (Substituted): Any article which is imported into India shall, in addition, be liable to integrated tax at such rate, not exceeding forty per cent 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).

Section 3(8) For the purposes of calculating the integrated tax under sub-section (7) on any imported article where such tax is leviable at any percentage of its value, the value of the imported article shall, notwithstanding anything contained in section 14 of the Customs Act, 1962, be the aggregate of:

- (a) the value of the imported article determined under sub-section (1) of section 14 of the Customs Act, 1962 or the tariff value of such article fixed under sub-section (2) of that section, as the case may be; and
- (b) any duty of customs chargeable on that article under section 12 of the Customs Act, 1962, and any sum chargeable on that article under any law for the time being in force as an addition to, and in the same manner as, a duty of customs, but does not include the tax referred to in sub-section (7) or the cess referred to in sub-section (9).

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).

Section 3(10) For the purposes of calculating the goods and services tax compensation cess under sub-section (9) on any imported article where such cess is leviable at any percentage of its value, the value of the imported article shall, notwithstanding anything contained in section 14 of the Customs Act, 1962, be the aggregate of:

- (a) the value of the imported article determined under sub-section (1) of section 14 of the Customs Act, 1962 or the tariff value of such article fixed under sub-section (2) of that section, as the case may be; and
- (b) any duty of customs chargeable on that article under section 12 of the Customs Act, 1962, and any sum chargeable on that article under any law for the time being in force as an addition to, and in the same manner as, a duty of customs, but does not include the tax referred to in sub-section (7) or the cess referred to in sub-section (9).

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.

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."

Summary of Customs Duty Payable under GST Laws

The following example shows the calculation the above three duties if the assessable value is Rs. 100.

eq.	Duty Description	Duty %	Amount (in ₹)	Total Duty (in ₹)
A	Assessable Value		100	
B	Basic Customs Duty	10	10	10
C	Subtotal for calculating IGST(A+B)		110	
D	Add IGST@18%	18	19.8	19.8
E	Sub total		129.8	29.8
F	Education Cess of Customs- 2% of BCD+IGST above	2	0.596	0.596
G	Secondary and Higher Education Cess of BCD+IGST above - 1%	1	0.298	0.298
H	Total		130.694	30.694
I	Total Duty rounded off (The importer is eligible to take input tax credit on IGST paid.			31

(4) PROTECTIVE DUTY - SECTION 6 & 7 OF THE CUSTOMS TARIFF ACT, 1975

- The protective duties should not be very stiff so as to discourage imports.
- It should be sufficiently attractive to encourage imports to bridge the gap between demand and supply of those articles in the market.
- Section 6 provides that the protective duties are levied by the Central Government upon the recommendation made to it by the Tariff Commission established under the Tariff Commission Act,

1951, and upon it being satisfied that circumstances exist which render it necessary to take immediate action to provide protection to any industry established in India.

- As per section 7(1), the protective duty shall be effective only upto and inclusive of the date if any, specified in the First Schedule.
- Section 7(2) provides that the Central Government may reduce or increase the duty by notification in the Official Gazette. However, such duty shall be altered only if it is satisfied, after such inquiry as it thinks necessary, that such duty has become ineffective or excessive for the purpose of securing the protection intended to be afforded by it to a similar article manufactured in India.
- If there is any increase in the duty as specified above, then the Central Government is required to place such notification in the Parliament for its approval.
- As per section 7(3), every notification in so far as it relates to increase of such duty, shall be laid before each House of Parliament if it is sitting as soon as may be after the issue of the notification, and if it is not sitting within seven days of its re-assembly, and the Central Government shall seek the approval of Parliament to the notification by a resolution moved within a period of fifteen days beginning with the day on which the notification is so laid before the House of the People. If the Parliament recommends any change in the notification, then the notification shall have effect subject to such changes. However, anything done pursuant to the notification before the recommendation by the Parliament shall be valid.

(5) SAFEGUARD DUTY - SECTION 8B OF CUSTOMS TARIFF ACT, 1975

- The Central Government may impose safeguard duty on specified imported goods, if it is satisfied that the goods are being imported in large quantities and they are causing serious injury to domestic industry.

However, the safeguard duty shall not be imposed in the following cases:

- Articles originating from developing country, so long as the share of imports of that article from that country does not exceed 3% of the total imports of that article into India.
- Articles originating from more than one developing country, so long as the aggregate of imports from developing countries each with less than 3% import share taken together does not exceed 9% of the total imports of that article into India.
- Unless specifically made applicable in the notification, the articles imported by a 100% EOU or units in a Free Trade Zone or Special Economic Zone.
- The safeguard duty is imposed for the purpose of protecting the interests of any domestic industry in India aiming to make it more competitive.

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

- Under section 8B(2), the Central Government is also empowered to impose provisional safeguard duty pending determination of the final duty. This provisional duty may be imposed on the basis of preliminary determination that increased imports have caused or threatened to cause serious injury to a domestic industry.

Further on final determination, if the Central Government is of the opinion that increased imports have not caused or threatened to cause serious injury to a domestic industry, it shall refund the duty so collected. Provided further that the provisional safeguard duty shall not remain in force for more than two hundred days from the date on which it was imposed.

Safeguard duty is leviable on goods imported by EOU to the extent of their clearance in Domestic Tariff Area.

- **Section 8B(2A)** : The provisions shall not apply to articles imported by a hundred percent Export-Oriented Undertaking or a unit in a special economic zone unless,-
 - (i) Specifically made applicable in such notifications or such impositions, as the case may be; or
 - (ii) The articles imported is either cleared as such into the domestic tariff area or used in the manufacture of any goods that are cleared into the domestic tariff area and in such cases safeguard duty shall be levied on that portion of the article so cleared or so used as was leviable when it was imported into India.

Comment: if an EOU imports a product which attracts safeguard duty in India EOU is also required to pay safeguard duty to the extent of its sale in DTA India.

Example: Caustic soda attracts safeguard duty in India. The same has been imported by an EOU and used in manufacture of detergent cake. 30% of the detergent cake has been sold in DTA. Then it has to pay safeguard duty on 30% of caustic soda imported.

The provisional duty shall be in force for a maximum period of 200 days from the date of its imposition.

If upon final determination, the Central Government is of the opinion that the increased imports have not caused or threatened to cause serious injury to a domestic industry, the duty collected shall be refunded.

- As per section 8B (4), the duty imposed under this section shall be in force for a period of 4 years from the date of its imposition.

Central Government may extend the period of such imposition from the date of first imposition provided it is of the opinion that Domestic industry has taken measures to adjust to such injury or as the case may be to such threat and it is necessary that the safeguard duty should continue to be imposed.

- Section 8B(4A) provides that the provisions of the Customs Act, 1962 and the rules and regulations made thereunder, including those relating to the date for determination of rate of duty, assessment, non-levy, short levy, refunds, interest, appeals, offences and penalties shall, as far as may be, apply to the duty chargeable under this section as they apply in relation to duties leviable under that Act.

- ✓ *Safeguard duty is product specific i.e. the safeguard duty is applicable only for certain articles in respect of which it is imposed.*
- ✓ *Every notification issued under this section shall, as soon as may be after it is issued, be laid before each House of Parliament.*
- ✓ *Safeguard duty is in addition to any other duty in respect of such goods levied under this Act or any other law for the time being in force.*
- ✓ *Education Cess and Secondary and Higher Education Cess are not payable on safeguard duty.*

(6) COUNTERVAILING DUTY ON SUBSIDIZED ARTICLES - SECTION 9 OF THE CUSTOMS TARIFF ACT

- Section 9(1) provides that the countervailing duty on subsidized articles is imposed if any country or territory, directly or indirectly, pays or bestows subsidy upon the manufacture or production or exportation of any article. Such subsidy includes subsidy on transportation of such article. Such articles are imported into India. The importation may or may not directly be from the country of manufacture or production. The article, may be in the same condition as when exported from the country of manufacture or production or may be changed in condition by manufacture, production or otherwise.

Subsidy shall be deemed to exist if

- (a) there is financial contribution by a government, or any public body in the exporting or producing country or territory, that is, where -
 - a government practice involves a direct transfer of funds (including grants, loans and equity infusion), or potential direct transfer of funds or liabilities, or both;
 - government revenue that is otherwise due is foregone or not collected (including fiscal incentives)
 - a government provides goods or services other than general infrastructure or purchases goods;
- (b) a government makes payments to a funding mechanism, or entrusts or directs a private body to carry out one or more of the type of functions specified in clauses (i) to (iii) above which would normally be vested in the government and the practice in, no real sense, differs from practices normally followed by governments; or
- The amount of countervailing duty shall not exceed the amount of subsidy paid or bestowed as aforesaid.
- Countervailing duty shall not be levied unless it is determined that -
 - (i) The subsidy relates to export performance;
 - (ii) The subsidy relates to the use of domestic goods over imported goods in the export article; or
 - (iii) The subsidy has been conferred on a limited number of persons engaged in manufacturing producing or exporting the article unless such a subsidy is for-
 - Research activities conducted by or on behalf of such persons engaging in manufacture, production, export;
 - Assistance to disadvantaged regions within the territory of the exporting country; or
 - Assistance to promote adaptation of existing facilities to new environmental requirements.
- Unless revoked earlier, the duty imposed under this section shall be in force for a period of 5 years from the date of its imposition.

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

However, the extension can be for a maximum period of 5 years. If the review is not completed before the expiry of the period of imposition (5 years) then the duty may continue to remain in force pending the outcome of such review for a further period not exceeding 1 year.
- When the determination of the amount of subsidy is pending, the Central Government may impose a provisional countervailing duty not exceeding the amount of such subsidy as provisionally estimated by it.

If the final subsidy determined is less than the subsidy provisionally determined, then the Central Government shall reduce such duty and also refund the excess duty collected.

- As per section 9(4), if the Central Government is of the opinion that
 - (a) The injury to domestic industry, which is difficult to repair, is caused by massive imports in a relatively short period, of the articles benefiting from subsidies and
 - (b) to preclude recurrence of such injury, may by notification levy countervailing duty with retrospective effect;

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

- The provisions of the Customs Act, 1962 and the rules and regulations made thereunder, including those relating to the date for determination of rate of duty, assessment, non-levy, short levy, refunds, interest, appeals, offences and penalties shall, as far as may be, apply to the duty chargeable under this section as they apply in relation to duties leviable under that Act.
- No education cess or SAH cess is payable on CVD on subsidised goods.

(7) ANTI-DUMPING DUTY (ADD) ON DUMPED ARTICLES - SECTION 9A OF THE CUSTOMS TARIFF ACT, 1975

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 not exceeding the margin of dumping in relation to such article. The anti dumping duty is dumping margin or injury margin whichever is lower.

Dumping means exporting goods to India, at prices lower than the ones in the domestic market of the exporting country, subject to certain adjustments.

To prevent dumping, the Central Government may levy ADD up to margin of dumping (MOD). MOD is the difference between the normal value and the price charged for exports to India.

Normal value means comparable price in the ordinary course of trade, in the exporting country, after making adjustments to the extent of conditions of sale, taxation, etc.

Injury margin means difference between fair selling price of domestic industry and landed cost of imported product.

ANTI DUMPING DUTY CAN BE IMPOSED RETROSPECTIVELY AND PROVISIONALLY

(i) Determination of duty provisionally

The Central Government may, pending the determination in accordance with the provisions of this section and the rules made thereunder of the normal value and the margin of dumping in relation to any article, impose on the importation of such article into India an anti-dumping duty on the basis of a provisional estimate of such value and margin and if such anti-dumping duty exceeds the margin 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 of the antidumping duty which has been collected as is in excess of the anti-dumping duty as so reduced.

(ii) Determination of duty retrospectively:

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 ninety days from the date of notification, and notwithstanding anything contained in any other law for the time being in force, such duty shall be payable at such rate and from such date as may be specified in the notification.

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

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

Where a review initiated before the expiry of the aforesaid period of five 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 one year.

Important points

- ✓ *Safeguard duty is product specific and anti dumping duty is country specific*
- ✓ *Refund of anti dumping duty is subject to doctrine of unjust enrichment. [Automotive Tyre Manufacturers Association, 2011(SC)]*
- ✓ *Education cess and Secondary and Higher Education cess are not payable on Safeguard duty, countervailing duty on subsidized articles, anti dumping duty and any other protective duty.*

Emergency power of Central Government

Under section 8, if the Central Government is satisfied that the export duty leviable thereon should be levied, and that circumstances exist which render it necessary to take immediate action the Central Government may, by notification in the Official Gazette, direct an amendment of the Second Schedule to be made so as to provide for an increase in the export duty leviable or, as the case may be, for the levy of an export duty, on that article.

Similarly, Central Government may, by notification in the Official Gazette, direct an amendment in the First Schedule to be made so as to provide for an increase in the import duty leviable on such article to such extent as it thinks necessary:

Government actively encourages export, so there is export duty on every few products. Articles on which export is leviable are given in second schedule to Customs Tariff. Out of these, many have been exempted by way of notification. Export duty will be calculated on FOB price. If duty rate is 15% and FOB price is Rs. 100, the export duty will be Rs. 15.

Section 26 of Customs Act makes the provision for refund of export duty. Export duty is refundable if (a) Goods are imported within one year (b) the goods returned are not 're-sale' and (c) refund claim is lodged

within six months from the date of clearance by customs officer for re- importation.

Emergency powers of Central Government to increase or levy export duty.- section 8 of Customs Tariff Act empowers Central Government to amend second schedule to Customs Tariff (which contains articles on which export duty is leviable) and increase or impose export duty on any product , by issue of a notification. Such notifications should be placed before the Parliament within 15 days after it assembles.

SELF-TEST QUESTIONS

(These are meant for recapitulation only. Answers to these questions need not be submitted for evaluation)

1. What is the object of levying of duties on Import and Export of goods?
2. How are the territorial limits of India fixed for the purpose of Import and Export of goods?
3. What kinds of Import duties are provided under the Customs Act, 1962?

SUGGESTED READING

- (1) Customs Law Manual — *R. K. Jain's*
- (2) Indirect Taxes Law and Practice — *V.S. Datey*

CUSTOMS LAW

PART II: VALUATION, ASSESSMENT OF IMPORTED AND EXPORT GOODS AND PROCEDURAL ASPECTS

After completion of this lesson, the student will have the clear understanding of;

- Concept of Transaction Value
- Valuation of imported goods and applicable rules
- Valuation of Export goods and applicable rules
- Assessment of imported and export goods
- Provisional assessment
- Remission of duty on pilfered or lost or destroyed goods.
- Levy of duty on goods derelict, wreck, jetsam etc.
- Rules for denaturing or mutilation of goods
- Power of Central Government to grant exemption
- Recovery and refund provisions

INTRODUCTION

The expression “levy”, “assessment” and “collection” have legal import and significance. The term “levy” is superior legislative function, “assessment” a quasi-judicial function and “collection” is an administrative function. In view of Article 265 of the Constitution of India, which lays down that “no tax shall be levied or collected except by authority of law”, it has been held that the words “levy” and “collection” were used in the said Article in a “comprehensive manner and that they are intended to include and envelop the entire process of taxation, commencing from the taxing statute to the taking away of the monies from the pocket of the citizen” [Rayalaseema Constructions v. Deputy Commercial Tax Officer, MR (1959) Madras 382 p. 386].

The following observations of the Punjab High Court in *Hazarimal Kuthalia v. Income-tax Officer*, AIR (1957) Punjab 5, will give an insight to the most important expressions used in taxing statutes:

- To levy a tax means to impose or assess or collect under the authority of law. It is a unilateral act of superior legislative power to declare the subjects and rates of taxation and to authorise the collection to proceed to collect the tax.
- Assessment is the official determination of liability of a person to pay a particular tax.
- Collection is the power to gather money for taxes, by enforced payment if necessary.

“These three expressions levy, assessment and collection are of the widest significance and embrace in their broad sweep all the proceedings which can possibly be imagined for raising money by the exercise of the power of taxation from the inception to the conclusion of the proceedings”. The assessing authorities are thus under obligation in law to assess correctly and properly and give reasons for their findings in assessment proceedings.

The process of assessment underwent major changes in the Budget 2011, wherein the self assessment scheme was introduced thereby the work of assessment is no more the official determination of liability however, the proper officer can verify and reassess the duty leviable on the

goods.

Charging of Customs Duty

The Customs Act, 1962, provides vide its section 12, for levy of duties on goods imported or exported from India.

- Customs duty is imposed on goods imported into or exported out of India as per the rates specified under the Customs Tariff Act, 1975.
- Levy of custom duty on ad valorem (i.e. as a percentage to the value) basis is the predominant mode of levy.
- For this purpose, the value of the imported goods is required to be determined as per provisions of section 14 of the Customs Act, 1962 read with the Customs Valuation (Determination of prices of Imported Goods) Rules, 2007.
- Likewise, in respect of export goods the value is determined as per provisions of section 14 of the Customs Act, 1962 read with the Customs Valuation (Determination of value of Export Goods) Rules, 2007.

VALUATION OF GOODS FOR LEVY OF CUSTOMS DUTY

The method of valuation of goods for both import and export for the purposes of levy of customs duty on the basis of transaction value has been set out under Section 14 of the Customs Act, 1962 (effective from 10.10.2007). The transaction value is the price actually paid or payable for the goods when sold for export to India for delivery at the time and place of importation, or for export from India for delivery at the time and place of exportation, where the buyer and seller of the goods are not related and the price is the sole consideration for sale, subject to such other conditions as may be specified in the rules made in this behalf.

Accordingly, the old Customs Valuation (Determination of Imported Goods) Rules, 1988 (relevant for old section 14) have also been replaced by new Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 and Customs Valuation (Determination of Value of Export Goods) Rules, 2007.

VALUATION OF IMPORTED GOODS

Section 14(1) provides that the value of imported goods shall also include various items of costs and services to the extent provided by the rules. Proviso to section 14(1) states that the price shall be calculated as per the rate of exchange as in force on the date of presentation of bill of entry or shipping bill or bill of export under section 46 or section 50, as the case may be. Further, if transaction value is not determinable (in case of no sale or buyer or seller being related or price not being sole consideration), value is determined in accordance with valuation rules. Hence, the value of imported goods shall be computed in accordance with section 14(1) read with the Customs Valuation (Determination of Value of imported Goods) Rules, 2007.

Let's discuss the valuation rules of import in detail:

CUSTOMS VALUATION (DETERMINATION OF PRICE OF IMPORTED GOODS) RULES, 2007

As per Notification No. 94/2007-Customs (N.T.), dated 13.9.2007, in exercise of the powers conferred by Section 156 read with Section 14 of the Customs Act, 1962 (62 of 1962), the Central Government hereby makes the following rules, namely:

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

Rule 3	Determination of the method of valuation
Rule 4	Transaction value of identical goods
Rule 5	Transaction value of similar goods
Rule 6	Situation where the above methods cannot be applied
Rule 7	Deductive value method
Rule 8	Computed value

DETERMINATION OF THE METHOD OF VALUATION - RULE 3

Rule 3 of Import valuation rules provides that the value of the imported goods shall be transaction value adjusted on accordance with rule 10. However, where for any reason the transaction value cannot be determined, or the same is not acceptable for any reason, then, the value shall be determined as per the methods laid down in Rules 4 to 9, which are to be preceded sequentially.

As per rule 2(g): "**transaction value**" means the value referred to in sub-section (1) of section 14 of the Customs Act, 1962.

As already discussed, transaction value as per section 14 of the Customs Act, 1962 is the price actually paid or payable;

- when sold for export to India for delivery at the time and place of importation in case of imports and
- when sold for export from India the price for delivery at the time and place of exportation,

where the buyer and seller are not related and price is the sole consideration for the sale subject to such other conditions as "may be specified in the rules" made in this behalf.

The first proviso to Section 14(1) states that the transaction value shall include in addition to the price paid or payable on imported goods any amount paid or payable for costs and services including:

- commissions and brokerage,
 - engineering,
 - design work,
 - Royalties and license fees,
 - costs of transportation to the place of importation,
 - Insurance,
 - loading, unloading and handling charges.
- The costs and services required to be included in the price actually paid or payable are exhaustive.
 - "Loading" and "unloading" charges have also been included along with the "handling charges".
 - The rate of exchange shall be as in force on the date of submission of bill of entry under section 46 or shipping bill or bill of export is presented under section 50 as the case may be. - *[Third*

Proviso to section 14(1)]

As per clause (ii) of second proviso to section 14(1) value of goods shall be determined as per Valuation Rules if the transaction value cannot be determined. It may be in situations where there is no sale at the time and place of importation or exportation, or buyer or seller are related or price is not the sole consideration for sale.

Rule 3(1) of the Valuation Rules provide that the value of imported goods shall be the transaction value adjusted in accordance with provisions of rule 10 (detailed later).

Further, as per rule 3(2), transaction value of the imported goods, as determined under rule 3(1) shall be acceptable as the value of such goods only if the following conditions are fulfilled [Rule 3(2)]-

(a) No restriction on buyer for disposal of goods: there are no restrictions as to the disposition or use of the goods by the buyer other than restrictions which –

- (i) are imposed or required by law or by the public authorities in India; or
- (ii) limit the geographical area in which the goods may be resold; or
- (iii) do not substantially affect the value of the goods;

Among restrictions which would not render a price actually paid or payable unacceptable are restrictions which do not substantially affect the value of the goods.

An example of such restrictions would be the case where a seller requires a buyer of automobiles not to sell or exhibit them prior to a fixed date which represents the beginning of a model year.

(b) Sale not subject to conditions of which value cannot be determined: 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;

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

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

However, conditions or considerations relating to the production or marketing of the imported goods shall not result in rejection of the transaction value.

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

(c) No further consideration to seller of which adjustment cannot be made: no part of the proceeds of

any subsequent resale, disposal or use of the goods by the buyer will accrue directly or indirectly to the seller, unless an appropriate adjustment can be made in accordance with the provisions of rule 10 of these rules; and

(d) Unrelated buyer and seller except where value is acceptable under rule 3(3): the buyer and seller are not related (definition of related persons as per rule 2(2) given below) , or where the buyer and seller are related, that transaction value is acceptable for customs purposes under the provisions of rule 3(3).

As per rule 3(3), in the following two cases the transaction value shall be acceptable even if goods are sold to related persons:

- i. Where the buyer and seller are related, the transaction value shall be accepted provided that the examination of the circumstances of the sale of the imported goods indicates that the relationship did not influence the price.

Where the proper officer of customs has no doubts about the acceptability of the price, it should be accepted without requesting further information from the importer.

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

- ii. In a sale between related persons, the transaction value shall be accepted, whenever the importer demonstrates that the declared value of the goods being valued **closely approximates** to one of the following values ascertained at or about the same time.
 - the transaction value of identical goods, or of similar goods, in sales to unrelated buyers in India;
 - the deductive value for identical goods or similar goods;
 - the computed value for identical goods or similar goods:

"Unrelated buyers" means buyers who are not related to the seller in any particular case.

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

A number of factors must be taken into consideration in determining whether one value "closely approximates" to another value. These factors include

- the nature of the imported goods,
- the nature of the industry itself,
- the season in which the goods are imported, and
- whether the difference in values is commercially significant.

Since these factors may vary from case to case, it would be impossible to apply a uniform standard such as a fixed percentage, in each case.

For example, a small difference in value in a case involving one type of goods could be unacceptable while a large difference in a case involving another type of goods might be acceptable in determining whether the transaction value closely approximates to the "test" values.

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

As per 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 five per cent or more of the outstanding voting stock or shares of both of them;
- (v) one of them directly or indirectly controls the other *;
- (vi) both of them are directly or indirectly controlled by a third person;
- (vii) together they directly or indirectly control a third person; or
- (viii) they are members of the same family.

*One person shall be deemed to control another when the former is legally or operationally in a position to exercise restraint or direction over the latter.

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

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

As per rule 3(4), if the value cannot be determined under the provisions of rule 3(1), the value shall be determined by proceeding sequentially through rule 4 to 9.

Before moving to other rules, first discuss the adjustments for costs and services, inclusions and exclusions in accordance with rule 10 as mentioned in Rule 3(1).

ADJUSTMENTS IN TRANSACTION VALUE (RULE 10)

I. Adjustments specified in Rule 10(1)

In determining the transaction value, there shall be added to the price actually paid or payable for the imported goods, —

- (a) the following to the extent they are incurred by the buyer but are not included in the price actually paid or payable for the imported goods, namely:-
 - (i) commission and brokerage, except buying commissions;

Buying commission refers to fees paid by an importer to his agent for service of representing him abroad in purchase of goods being valued. Commission paid to canalising agent in India is not buying commission – Hyderabad Industries Ltd. v. UOI (2009) 115 ELT 593 (SC)
 - (ii) the cost of containers imported along with the goods;
 - (iii) the cost of packing whether for labour or materials;
- (b) The value, apportioned as appropriate, of the following goods and services where supplied directly or indirectly by the buyer free of charge or at reduced cost for use in connection with the production

and sale for export of imported goods, to the extent not included in the *price actually paid or payable* (refer the box), 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*(refer the box),.
- (d) The value of any part of the proceeds of any subsequent resale, disposal or use of the imported goods that accrues, directly or indirectly, to the seller;
- (e) all other payments actually made or to be made as a condition of sale of the imported goods, by the buyer to the seller, or by the buyer to a third party to satisfy an obligation of the seller to the extent that such payments are not included in the *price actually paid or payable* (refer the box),.

Explanation- Where the royalty, licence fee or any other payment for a process, whether patented or otherwise, is includible referred to in clauses (c) and (e), such charges shall be added to the price actually paid or payable for the imported goods, notwithstanding the fact that such goods may be subjected to the said process after importation of such goods.

Points for consideration regarding Price actually paid or payable

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

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

- The value of imported goods shall not include the following charges or costs, provided that they are distinguished from the price actually paid or payable for the imported goods:
 - (a) Charges for construction, erection, assembly, maintenance or technical assistance, undertaken after importation on imported goods such as industrial plant, machinery or equipment;
 - (b) The cost of transport after importation;
 - (c) Duties and taxes in India.

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

II. Adjustments specified in Rule 10(2)

The value of the imported goods shall be the value of such goods, for delivery at the time and place of importation and shall include –

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

The following points shall also be considered while determining the assessable value:

- (i) Where the cost of transport is not ascertainable, such cost shall be 20% of the free on board value of the goods. In the case of goods imported by air, even where the cost of transportation is ascertainable, such cost shall not exceed 20% of free on board value of the goods.
- (ii) where the cost of insurance is not ascertainable, such cost shall be 1.125% of free on board (FOB) value of the goods;
- (iii) loading, unloading and handling charges shall be 1% of the free on board (FOB) value of the goods + the cost of transport + cost of insurance i.e. CIF Value

Computation where FOB value and Cost of Insurance & Transport not ascertainable:

Where the free on board value of the goods is not ascertainable, then

- Costs of transportation shall be 20% of the FOB value of the goods + cost of insurance and
- Cost of insurance shall be 1.125% of the free on board value of the goods + cost of transport.

Other points for consideration

In case of goods imported by sea stuffed in a container for clearance at an Inland Container Depot or Container Freight Station, the cost of freight incurred in the movement of container from the port of entry to the Inland Container Depot or Container Freight Station shall not be included in the cost of transport.

The cost of transport of the imported goods includes the ship demurrage charges on chartered vessels, lighterage or barge charges.

Additions to the price actually paid or payable shall be made under this rule on the basis of objective and quantifiable data.

No addition shall be made to the price actually paid or payable in determining the value of the imported goods except as provided for in this rule.

In Wipro vs. ACC (2015) 319 ELT 177 (SC), the apex court held that the objective of section 14 of the Act is to accept actual cost paid or payable for customs valuation. Any fictional cost (like landing charges, insurance, freight etc.) can be added only when actual cost is not ascertainable.

As per the scheme of valuation, transaction value shall be applied to the goods imported into or exported from India. Where it is not possible to apply transaction value, alternative methods have to be applied in sequence. That means first of all, apply Rule 4, where Rule 4 cannot be applied, apply Rule 5 and so on.

DETERMINATION OF TRANSACTION VALUE IN CASE OF IDENTICAL GOODS (RULE 4)

Rule 4(1): If the value cannot be determined under the provisions of rule 3(1), the value shall be the transaction value of the identical goods (for definition of identical goods as per rule 2(1)(d) given below), which are sold for export to India and imported at or about the same time as the goods being valued.

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

The transaction value of identical goods will be used in determining the value of imported goods only when such identical goods fulfill the following conditions:

- (i) These goods are in a sale at the same commercial level and
- (ii) These goods are substantially of the same quantity as the goods being valued.

Where these two conditions are not satisfied then the transaction value in a sale of identical goods shall be used under any of the following circumstances;

- sale at a same commercial level but in different quantities or
- sale at a different commercial level but in substantially the same quantity
- sale at a different commercial level and in different quantities.

However, such adjustments shall be made on the basis of demonstrated evidence which clearly establishes the reasonableness and accuracy of the adjustments, whether such adjustment leads to an increase or decrease in the value.

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

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

Having found a sale under any one of these three conditions adjustments will then be made, as the case may be, for:

- (a) quantity factors only;
- (b) commercial level factors only; or
- (c) both commercial level and quantity factors.

Adjustment in the transaction value referred in Rule 10(2) [Rule 4(2)]

Where the costs and charges referred to in sub-rule (2) of rule 10 of these rules are included in the transaction value of identical goods, an adjustment shall be made, if there are significant differences in such costs and charges between the goods being valued and the identical goods in question arising from differences in distances and means of transport.

Transaction value where more than one transaction value found

If more than one transaction value of identical goods is found, the lowest such value shall be used to determine the value of imported goods [Rule 4(3)].

Identical goods [Rule 2(1)(d)]

"Identical goods" means imported goods -

- (i) which are same in all respects, including physical characteristics, quality and reputation as the goods being valued except for minor differences in appearance that do not affect the value of the goods;
- (ii) produced in the country in which the goods being valued were produced; and
- (iii) produced by the same person who produced the goods, or where no such goods are available, goods produced by a different person, but shall not include imported goods where engineering, development work, art work, design work, plan or sketch undertaken in India were completed directly or indirectly by the buyer on these imported goods free of charge or at a reduced cost for use in connection with the production and sale for export of these imported goods;

If the price of such goods is not available, price of goods produced by another manufacturer in the same country can be taken.

TRANSACTION VALUE OF SIMILAR GOODS (RULE 5)

If the value cannot be determined under the provisions of rule 3(1), the value of imported goods shall be the transaction value of similar goods [definition of similar goods as per rule 2(1)(f) given below] sold for export to India and imported at or about the same time as the goods being valued:

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

The provisions of rule 4 shall, *mutatis mutandis*, also apply in respect of similar goods.

Similar Goods

Similar Goods [Rule 2(1)(f)]: "similar goods" means imported goods -

- (i) which although not alike in all respects, have like characteristics and like component materials which enable them to perform the same functions and to be commercially interchangeable with the goods being valued having regard to the quality, reputation and the existence of trade mark;
- (ii) produced in the country in which the goods being valued were produced; and
- (iii) produced by the same person who produced the goods being valued, or where no such goods are available, goods produced by a different person

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

DETERMINATION OF VALUE WHERE VALUE CAN NOT BE DETERMINED UNDER RULES 3, 4 AND 5 (RULE 6)

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

rule 8.

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

DEDUCTIVE VALUE (RULE 7)

Rule 7(1), subject to the provisions of rule 3, if the goods being valued or identical or similar imported goods are sold in India, in the condition as imported at or about the time at which the declaration for determination of value is presented, the value of imported goods shall be based on the unit price at which the imported goods or identical or similar imported goods are sold in the greatest aggregate quantity to persons who are not related to the sellers in India, subject to the following deductions : —

- (i) either the commission usually paid or agreed to be paid or the additions usually made for profits and general expenses in connection with sales in India of imported goods of the same class or kind;
- (ii) the usual costs of transport and insurance and associated costs incurred within India;
- (iii) the customs duties and other taxes payable in India by reason of importation or sale of the goods.

Rule 7(2): If neither the imported goods nor identical nor similar imported goods are sold at or about the same time of importation of the goods being valued, the value of imported goods shall, subject otherwise to the provisions of sub-rule (1), be based on the unit price at which the imported goods or identical or similar imported goods are sold in India, at the earliest date after importation but before the expiry of ninety days after such importation.

Rule 7(3): If neither the imported goods nor identical nor similar imported goods are sold in India in the condition as imported, then, the value shall be based on the unit price at which the imported goods, after further processing, are sold in the greatest aggregate quantity to persons who are not related to the seller in India.

In such determination, due allowance shall be made for the value added by processing and the deductions provided for in items (i) to (iii) of 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.

Example:

Goods are sold from a price list which grants favourable unit prices for purchases made in larger quantities.

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

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

Example:

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:

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

(a) Sales

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

(b) Totals

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

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

COMPUTED VALUE (RULE 8)

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

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

RESIDUAL METHOD (RULE 9)

Subject to the provisions of rule 3, where the value of imported goods cannot be determined under the provisions of any of the preceding rules, the value shall be determined using reasonable means consistent with the principles and general provisions of these rules and on the basis of data available in India;

However, 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(1)].

As per rule 9(2), no value shall be determined under the provisions of this rule on the basis of;

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

Value of imported goods determined under the provisions of rule 9 should to the greatest extent possible, be based on previously determined customs values.

The methods of valuation to be employed under rule 9 may be those laid down in rules 3 to 8, inclusive, but a reasonable flexibility in the application of such methods would be in conformity with the aims and provisions of rule 9.

Some examples of reasonable flexibility are as follows:

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

DECLARATION TO BE FURNISHED BY THE IMPORTER (RULE 11)

The importer or his agent shall furnish -

- (a) a declaration disclosing full and accurate details relating to the value of imported goods; and
 - (b) any other statement, information or document including an invoice of the manufacturer or producer of the imported goods where the goods are imported from or through a person other than the manufacturer or producer, as considered necessary by the proper officer for determination of the value of imported goods under these rules.
- (2) The proper officer of customs has the power to satisfy himself as to the truth or accuracy of any statement, information, document or declaration presented for valuation purposes.
- (3) The provisions of the Customs Act, 1962 (52 of 1962) relating to confiscation, penalty and prosecution

shall apply to cases where wrong declaration, information, statement or documents are furnished.

REJECTION OF DECLARED VALUE BY CUSTOMS OFFICER (RULE 12)

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).

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.

Other points for consideration (Explanation to rule 12)

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

The process of assessment involves value and rate of duty. Value is found out under section 14 and rate of duty is ascertained as per Section 15 and 16 of the Customs Act.

RELEVANT DATE FOR DETERMINATION OF THE RATE OF DUTY AND TARIFF VALUATION (SECTION 15)

Under section 15(1), the rate of duty and tariff valuation, if any, applicable to any *imported goods*, shall be the rate and valuation in force,

- (a) In the case of goods entered for home consumption under section 46: The date on which a bill of entry is presented [Section 15(1)(a)]
- (b) In the case of goods cleared from a warehouse under section 68: The date on which a bill of entry

for home consumption is presented [Section 15(1)(b)].

(c) In the case of any other goods: The date of payment of duty [Section 15(1)(c)].

However, if a bill of entry has been presented before the date of entry inwards of the vessel or the arrival of the aircraft or the vehicle by which the goods are imported, the bill of entry shall be deemed to have been presented on the date of such entry inwards or the arrival, as the case may be [Proviso to section 15(1)].

The provisions of this section shall not apply to baggage and goods imported by post [Section 15(2)].

VALUATION OF EXPORT GOODS

Customs value of export goods, whether liable to ad valorem duty or not is to be determined under Section 14(1) of the Customs Act, 1962 read with Section 2(41) thereof. By virtue of Section 2(41), 'value' in relation to any goods will mean the value thereof determined under Section 14(1) read with Customs Valuation (Determination of Value of Export Goods) Rules, 2007.

CUSTOMS VALUATION (DETERMINATION OF VALUE OF EXPORT GOODS) RULES, 2007

Rule 3	Determination of the method of valuation
Rule 4	Determination of export value by comparison
Rule 5	Computed value method
Rule 6	Residual method
Rule 7	Declaration by the exporter
Rule 8	Rejection of declared value

DETERMINATION OF THE METHOD OF VALUATION (RULE 3)

The value of export goods shall be its transaction value. However, the transaction value may be rejected as per the provisions of Rule 8.

As per rule 3(2), the transaction value shall be accepted even where the buyer and seller are related, provided that the relationship has not influenced the price.

If the value cannot be determined under the provisions of Rule 3(1) and (2), the value shall be determined by proceeding sequentially through Rules 4 to 6 [Rule 3(3)].

DETERMINATION OF EXPORT VALUE BY COMPARISON (RULE 4)

As per Rule 4(1), the value of the export goods shall be based on the transaction value of "*goods of like kind and quality*" exported at or about the same time to other buyers in the same destination country of importation or in its absence another destination country of importation adjusted in accordance with the provisions of Rule 4(2).

"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;

"Transaction value" means the value of export goods within the meaning of sub-section (1) of section 14 of the Customs Act, 1962 (52 of 1962).

For the purposes of these rules, persons shall be deemed to be "related" only if -

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

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

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

Adjustments under Rule 4(2):

In determining the value of export goods under sub-rule (1), the proper officer shall make such adjustments as appear to him reasonable, taking into consideration the relevant factors, including-

- (i) difference in the dates of exportation,
- (ii) difference in commercial levels and quantity levels,
- (iii) difference in composition, quality and design between the goods to be assessed and the goods with which they are being compared,
- (iv) difference in domestic freight and insurance charges depending on the place of exportation.

COMPUTED VALUE METHOD (RULE 5)

If the value cannot be determined under rule 4, it shall be based on a computed value, which shall include the following:-

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

Computed value = Cost of production + Charges if any for design or brand +An amount towards profit.

The board has clarified that while determining the value under this rule, the proper officer shall give due consideration to the cost certificate issued by the Cost Accountant or Chartered Accountant or Government approved valuer, as produced by the exporter.

RESIDUAL METHOD (RULE 6)

Subject to the provisions of rule 3, where the value of the export goods cannot be determined under the provisions of rules 4 and 5, the value shall be determined using reasonable means consistent with the principles and general provisions of these rules provided that local market price of the export goods may not be the only basis for determining the value of export goods.

DECLARATION BY THE EXPORTER (RULE 7)

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

REJECTION OF DECLARED VALUE (RULE 8)

As per rule 8(1), when the proper officer has reason to doubt the truth or accuracy of the value declared in relation to any export goods, he may ask the exporter of such goods to furnish further information including documents or other evidence and if, after receiving such further information, or in the absence of a response of such exporter, the proper officer still has reasonable doubt about the truth or accuracy of the value so declared, the transaction value shall be deemed to have not been determined in accordance with Rule 3(1).

Under rule 8(2), at the request of an exporter, the proper officer shall intimate the exporter in writing the ground for doubting the truth or accuracy of the value declared in relation to the export goods by such exporter and provide a reasonable opportunity of being heard, before taking a final decision under Rule 8(1).

OTHER IMPORTANT POINTS

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

RELEVANT DATE FOR DETERMINATION OF RATE OF DUTY AND TARIFF VALUATION OF EXPORT GOODS (SECTION 16)

As per section 16(1), the rate of duty and tariff valuation, if any, applicable to any export goods, shall be the rate and valuation in force, -

- (a) in the case of goods entered for export under section 50, on the date on which the proper officer makes an order permitting clearance and loading of the goods for exportation under section 51.
- (b) in the case of any other goods, on the date of payment of duty.

The provisions of this section shall not apply to baggage and goods exported by post [Section 16(2)].

Illustration: Compute export duty from the following data:

- (i) FOB price of goods: US \$ 2,00,000.
- (ii) Shipping bill presented electronically on 26-02-2016.

(iii) Proper officer passed order permitting clearance and loading of goods for export on 04-03-2016.

(iv) Rate of exchange and rate of export duty are as under:

	<i>Rate of Exchange</i>	<i>Rate of Export Duty</i>
On 26-02-2016	1 US \$ = `69	10%
On 04-03-2016	1 US \$ = `59	8%

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

Solution:

FOB price of goods:	US \$ 2,00,000
Exchange rate	`60
Value in INR	120,00,000
Rate of Customs Duty	8%
Duty	` 9,60,000

Notes:

1. Rate of exchange has been taken as on the date of submission of Shipping Bill as per Section 14 of the Customs Act.
2. Rate of Duty has been taken as on the date of order permitting clearance and loading of goods for export as per section 16(1)(a).

Note: Landing charges and education cess are not applicable to export duty payable.

Illustration

Import by Air

CIF Value: 1,000 Euros.

Freight: 300 Euros

Insurance: 15 Euros

Find the assessable value.

The exchange rate notified by CBEC as on the date of submission of Bill of Entry was `70 per euro.

Solution:

Since the freight charges cannot exceed 20% of FOB value, it is necessary to find out FOB value.

		Euros	
FOB value:		1,000	
Less: Freight	300		
Insurance	<u>15</u>	315	
FOB		685	
Add: Freight @20% on 685		137	
Add: Insurance		<u>15</u>	837.00

Lesson 5 Customs Law: Valuation, Assessment of imported and export
Goods and procedural aspects

Add: Landing charges @1%

8.37

845.37

Assessable value in Indian Rupees = `70 x 845.37 = `59,176/- (rounded off)

Illustration

Determine the customs duty payable under Customs Tariff Act, 1975 including the safeguard duty of 20% under section 8B of the said Act with the following details given below:

Import of Sodium N from a developing country from 25th September, 2016 to 24th September, 2017 (both days inclusive)	20,00,000
Share of imports of Sodium N from the developing country against total imports of Sodium N to India	3.5%
Basic Customs Duty	10%
IGST payable on such goods in India	18%
Education cess	2%
Secondary & Higher Education cess	1%

Solution:

Computation of customers duties of Sodium Nitrate

Particulars	Value ₹	Duties ₹
Value of Sodium N	20,00,000	2,00,000
Add: BCD @ 10%	2,00,000	
	22,00,000	396,000
Add: IGST @ 18%	3,96,000	
Total	25,96,000	596,000
Add: Cess @3% on 596,000	17,880	17,880
	26,13,880	613,880
Add: Safeguard duty @ 20% on 20,00,000	4,00,000	4,00,000
Total	30,13,880	10,13,880

Total duty including safeguard duty = Rs. 10, 13,880

Working Notes:

1. Since the share of developing country is more than 3% of total imports into India, Safe guard duty is leviable under section 8B of Customs Tariff Act, 1975.
2. Safeguard duty @ 20% has been added on the assessable value of Rs.20,00,000
3. IGST is payable on imported goods as import is an interstate supply.
4. Input tax credit is available to the importer on IGST.

Illustration

Customs value (assessable value) of imported goods is Rs. 4,00,000. basic customs duty payable is 10%. If the goods were supplied in India, IGST would have been 18%. Education cess is as applicable. No state compensation cess is payable Find out the customs duty payable. How much input tax credit can be availed of by importer?

SOLUTION:

Particulars	Value ₹	Duties ₹
Assessable Value	4,00,000	40,000
Add: BCD @ 10%	40,000	
	440,000	1,200
Add: Cess @ 3% on 40,000	1,200	
Total	441,200	79,416
Add: IGST @ 18% on 441,200	79,416	
Total	520,616	120,616
Total (rounded off) Rs	520,616	120,616

Illustration

Ranga Ltd., an Indian company located at Raipur. imported into India certain commodities in August. 2017 from a country which attracts anti dumping duty by a Notification issued under Section 9A of the Customs Tariff Act. 1975.

The relevant particulars relating to import are as follows:

(1) CIF value of the consignment — US \$ 30,000

(2) Quantity imported — 500 kgs.

(3) Exchange rate applicable — US \$ = Rs 66

(4) Basic Customs Duty (BCD) — 10%

(5) As per the Notification, the anti-dumping duty leviable will be 60% of the difference between the cost of the commodity calculated @ US \$ 100 per kg. and the landed value of the commodity as imported.

You are required to calculate the amount of total Customs duty (including anti-dumping duty) payable by Ranga Ltd.

Note: Assume IGST and compensation cess payable under Section 3(7) and 3(9), respectively of the Customs Tariff Act. 1975 are exempt but Education Cess and Secondary & Higher Education Cess are payable wherever applicable. Working notes with brief reasons should form part of the answer.

SOLUTION:

Margin of Injury is calculated as given below:

Fair market value = 500 x 100 = 50,000 USD

Landed value is computed as follows:

Assessable value= 101% of CIF= 30,000 x 1.01 = 30,300 USD
 Add BCD @ 10% = 3,030 USD
 Education CESS @ 3% on 3,030 = 90.9 USD
 Landed value = 33,420.90 USD

Difference between (1) and (2) above is 50,000 USD - 33,420.90 USD = 16,579.10 USD

Anti-dumping duty = 60% of 16,579.10 USD = 9947.46 USD

Anti-dumping duty INR = 66 x 9947.46 USD = 656,532 INR

Total customs duty Rs. = (3120.90 USD + 9947.46 USD) x 66 = 862512 INR

NOTE: Where compensation cess is payable it is added on the total value of (AV+ BCD+Education cess) but not on IGST

Illustration:

Determine the customs duty payable under Customs Tariff Act, 1975 including the safeguard duty of 20% under section 8B of the said Act with the following details given below:

Import of Sodium N from a developing country from 25th September, 2016 to 24th September, 2017 (both days inclusive)	20,00,000
Share of imports of Sodium N from the developing country against total imports of Sodium N to India	3.5%
Basic Customs Duty	10%
IGST payable on such goods in India	18%
Education cess	2%
Secondary & Higher Education cess	1%

SOLUTION:

Computation of customs duties of Sodium Nitrate

Particulars	Value ₹	Duties ₹
Value of Sodium N	20,00,000	2,00,000
Add: BCD @ 10%	2,00,000	
	22,00,000	6,000
Add: Cess @3% on 2,00,000	6,000	
Total	22,06,000	2,06,000
Add: Safeguard duty @ 20% on 20,00,000	4,00,000	4,00,000
	26,06,000	6,06,000
Add IGST @ 18% on 26,06,000	469,080	469,080
Total	30,75,080	10,75,080

Total duty including safeguard duty = Rs. 10,75,080

Notes:

1. Since the share of developing country is more than 3% of total imports into India, Safe guard duty is leviable under section 8B of Customs Tariff Act, 1975.
2. Safeguard duty @ 20% has been added on the assessable value of Rs.20,00,000
3. IGST is payable on imported goods as import is an interstate supply as per Section 5 of IGST Act
4. Input tax credit is available to the importer on IGST
5. IGST is payable on Safeguard duty also.

Illustration:

Where CVD and IGST both are payable together with compensation cess:

Given Assessable Value: Rs. 1,00,000

BCD @10%; CVD @12%

IGST payable 28% and G ST Compensation cess payable is 15%

Show the calculations:

Solution:

COMPUTATION OF CUSTOMS DUTIES:

Particulars	Value ₹	Duties ₹
Assessable Value:	1,00,000	
1.Add: BCD @ 10%	10,000	10,000
	110,000	
2.Add: CVD @12% on 110,000	13,200	13,200
Total	123,200	23,200
3.Add: CESS @ 3% on 23,200	696	696
	123,896	23,896
4.Add IGST @ 28% on 123,896	34,691	34,691
5. Add compensation cess @ 15% on 123,896	18,584	18,584
Total	177,171	77,171

Notes:

1. IGST is payable on CVD also.
2. Compensation cess is payable on all except IGST

ASSESSMENT OF DUTY

Section 17 of the Customs Act, prescribes the method for assessment of duty. For example, under Sub-section (1), after an importer has entered any imported goods or an exporter has entered any export goods, the importer and exporter self assess the duty if any leviable on such goods. As per sub-section 2 the self assessed goods may be verified, examined or tested by the proper officer.

Section 17 reads as follows:

- (1) An importer entering any imported goods under section 46, or an exporter entering any export goods under section 50, shall, save as otherwise provided in section 85, self-assess the duty, if any, leviable on such goods.
- (2) The proper officer may verify the self-assessment of such goods and for this purpose, examine or test any imported goods or export goods or such part thereof as may be necessary.
- (3) For verification of self-assessment under sub-section (2), the proper officer may require the importer, exporter or any other person to produce any document or information, whereby the duty leviable on the imported goods or export goods, as the case may be, can be ascertained and thereupon, the importer, exporter or such other person shall produce such document or furnish such information.
- (4) Where it is found on verification, examination or testing of the goods or otherwise that the self-assessment is not done correctly, the proper officer may, without prejudice to any other action which may be taken under this Act, re-assess the duty leviable on such goods.
- (5) Where any re-assessment done under sub-section (4) is contrary to the self-assessment 25 done by the importer or exporter regarding valuation of goods, classification, exemption or concessions of duty availed consequent to any notification issued therefore under this Act and in cases other than those where the importer or exporter, as the case may be, confirms his acceptance of the said re- assessment in writing, the proper officer shall pass a speaking order on the re-assessment, within fifteen days from the date of re-assessment of the bill of entry or the shipping bill, as the case may be.
- (6) Where re-assessment has not been done or a speaking order has not been passed on re- assessment, the proper officer may audit the assessment of duty of the imported goods or export goods at his office or at the premises of the importer or exporter, as may be expedient, in such manner as may be prescribed.

PROVISIONAL ASSESSMENT OF DUTY [SECTION 18]

Notwithstanding anything contained in this Act but without prejudice to the provisions of section 46,

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

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

[Section 18(1)].

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) in the case of goods cleared for home consumption or exportation, the amount paid shall be adjusted against the duty finally assessed and if the amount so paid falls short of, or is in excess of the duty finally assessed, the importer or the exporter of the goods shall pay the deficiency or be entitled to a refund, as the case may be;
- (b) in the case of warehoused goods, the proper officer may, where the duty finally assessed or re-assessed, as the case may be, is in excess of the duty provisionally assessed, require the importer to execute a bond, binding himself in a sum equal to twice the amount of the excess duty [Section 18(2)].

The importer or exporter shall be liable to pay interest, on any amount payable to the Central Government, consequent to the final assessment order or re-assessment order, at the rate fixed by the Central Government under section 28AB from the first day of the month in which the duty is provisionally assessed till the date of payment thereof [Section 18(3)].

Subject the section 18(5), if any refundable amount referred to in clause (a) of section 18(2) is not refunded under that sub-section within three months from the date of assessment of duty finally or reassessment of duty, as the case may be, there shall be paid an interest on such un-refunded amount at such rate fixed by the Central Government under section 27A till the date of refund of such amount [Section 18(4)].

As per section 18(5), the amount of duty refundable under section 18(2) and the interest under section 18(4), if any, shall, instead of being credited to the Fund, be paid to the importer or the exporter, as the case may be, if such amount is relatable to:

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

DETERMINATION OF DUTY WHERE GOODS CONSIST OF ARTICLES LIABLE TO DIFFERENT RATES OF DUTY (SECTION 19)

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

- (a) articles liable to duty with reference to quantity shall be chargeable to that duty;
- (b) articles liable to duty with reference to value shall, if they are liable to duty at the same rate, be chargeable to duty at that rate, and if they are liable to duty at different rates, be chargeable to duty at the highest of such rates;
- (c) articles not liable to duty shall be chargeable to duty at the rate at which articles liable to duty with

reference to value are liable under clause (b) :

However,

- (a) accessories of, and spare parts or maintenance and repairing implements for, any article which satisfy the conditions specified in the rules made in this behalf shall be chargeable at the same rate of duty as that article;
- (b) if the importer produces evidence to the satisfaction of the proper officer or the evidence is available regarding the value of any of the articles liable to different rates of duty, such article shall be chargeable to duty separately at the rate applicable to it.

RE-IMPORTATION OF GOODS (SECTION 20)

When goods are re-imported into India, after exportation there from, such goods are liable to duty and are subject to all the conditions and restrictions, if any, to which goods of the like kind and value are liable or subject, on the importation thereof. The provisions relating to these matters are found in Section 20 of the Customs Act, 1962.

Section 20 reads as under:

If goods are imported into India after exportation there from, such goods shall be liable to duty and be subject to all the conditions and restrictions, if any, to which goods of the like kind and value are liable or subject, on the importation thereof.

Notification Nos. 94/96 and 158/95 provide for certain relaxations for reimported goods.

DUTY ON PILFERED GOODS (SECTION 13)

If any imported goods are

- pilfered after the unloading thereof and
- before the proper officer has made an order for clearance for home consumption or deposit in a warehouse,

the importer shall not be liable to pay the duty leviable on such goods except where such goods are restored to the importer after pilferage.

As per section 45(3), if any imported goods are pilfered after unloading thereof in a customs area while in the custody of a person approved by the Commissioner u/s 45(1), that person shall be liable to pay duty on such goods at the rate prevailing on the date of delivery of an import manifest or an import report to the proper officer u/s 30 for the arrival of the conveyance in which the said goods were carried.

GOODS DERELICT, WRECK, ETC. (SECTION 21)

Section 21 lays down that all goods, derelict, jetsam, flotsam and wreck brought or coming into India, shall be dealt with as if they were imported into India, unless it be shown to the satisfaction of the proper officer that they are entitled to be admitted duty free under this Act.

“Derelict” is a term applied to any property, whether vessel or cargo, left or abandoned in open sea by persons in charge of it without any hope of recovering or intention of returning to it.

“Jetsam” is where the goods are thrown into the sea with a view to lighten the ship in order to prevent it from sinking.

“Flotsam” is where the goods having been at sea in a ship, are separated from it by some peril. The property in this case is not renounced by the owner by throwing them overboard and the owner is entitled to recover the possession.

“Wreck” refers to the property cast ashore within the ebb and flow of the tide after shipwreck. The property involved may be a ship, a cargo or portion thereof.

ABATEMENT OF DUTY ON DAMAGED OR DETERIORATED GOODS (SECTION 22)

If any goods are found damaged and are examined by customs authority for that purpose on an application made therefor, the duty can be charged only on the goods which are serviceable or on the reduced value as may be determined by customs authority. Provisions in this regard have been made under Section 22 of the Customs Act, 1962.

Under Section 22, there is allowed abatement of duty on damaged or deteriorated goods under Sub-section (1), where it is shown to the satisfaction of the Assistant/Deputy Commissioner of Customs—

- (a) that any imported goods had been damaged or had deteriorated at any time before or during the unloading of the goods in India; or
- (b) that any imported goods, other than warehoused goods, had been damaged at any time after the unloading thereof in India but before their examination under Section 17, on account of any accident not due to any wilful act, negligence or default of the importer, his employee or agent; or
- (c) that any warehoused goods have been damaged at any time before clearance for home consumption on account of any accident not due to any wilful act, negligence or default of the owner his employee or agent.

Such goods are chargeable to duty in accordance with the provisions of Sub-section (2).

Sub-section (2) lays down that the duty to be charged on the goods referred above shall bear the same proportion to the duty chargeable on the goods before the damage or deterioration which the value of the damaged or deteriorated goods bear to the value of the goods before the damage or deterioration.

Under Sub-section (3), the value of damaged or deteriorated goods may, be ascertained by either of the following methods at the option of the owner, viz.:

- (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 proceeds shall be deemed to be the value of such goods.

REMISSION OF DUTY ON LOST, DESTROYED OR ABANDONED GOODS (SECTION 23)

Where any goods are lost or destroyed, except by way of pilferage, whether totally or partially, even after the “out of charge” is signed but before they are physically removed from customs area, the owner is entitled for remission of duty on such goods.

Further, an owner of goods can surrender the title to the goods to customs before an order for home consumption has been made and no duty need be paid on such goods.

Section 23 relates to remission of duty on lost, destroyed or abandoned goods. It reads as follows:

- (1) Without prejudice to the provisions of Section 13, where it is shown to the satisfaction of the

Assistant/Deputy Commissioner of Customs that any imported goods have been lost otherwise than as a result of pilferage or destroyed, at any time before clearance for home consumption, the Assistant/Deputy Commissioner of Customs shall remit the duty on such goods.

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

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.

DENATURING OR MUTILATION OF GOODS (SECTION 24)

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

Denaturing is connected with liquid items and mutilation is associated with solid items. After the process of mutilation or denaturing, the goods are classified as per the latest condition and the lower rate as applicable after mutilation or denaturing will be taken for assessment. This provision is importer friendly and this benefit is given to encourage him to undertake the mutilation/ denaturing process in India.

For example, you may import pure ethyl alcohol attracting 150% of BCD and you may denature it by adding copper sulphate. Then after denaturing it is classified as denatured ethyl alcohol which attracts only 5% BCD.

POWER TO GRANT EXEMPTION FROM DUTY (SECTION 25)

Under the section, exemptions are of two kinds. One type which is in common use, is under Sub-section (1), in public interest, where there is a general exemption in respect of any article or class of articles. Such exemptions may be absolute or subject to certain conditions specified in the relevant notifications. Other is under Sub-section (2), the exemptions granted may be applicable to specific cases and these will be by a special order. These have to be done in respect of any goods of strategic or secret nature or for charitable purpose, which are stated in such order.

Notifications exempting goods under Sub-section (1) have to be laid before Parliament, as soon as may be, after their issue and the Parliament may amend or reject them. This shows that such notifications are in exercise of ‘sovereignty’ i.e. legislative powers. On the other hand, special order under Sub-section (2) is an executive order because it is not required to be published and it grants exemption specifically and not generally.

Every notification issued under sub-section (1) or sub-section (2A) shall, - (a) unless otherwise provided, come into force on the date of its issue by the Central Government for publication in the Official Gazette;	Now there is no requirement of publishing and offering for sale any notification issued, by the Directorate of Publicity and Public Relations of
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Sub-sections (4) and (5), puts it beyond doubt that every exemption notification shall, unless otherwise provided, come into force on the date of its issue by the Central Government for publication in the Official

Gazette. The Finance Act, 2016 has removed the statutory obligation for publication of notifications by the Directorate of Publicity and Public Relations and for their sale to the public. The notifications shall however, also continue to be published in the Gazette of India, as usual.

This amendment has been made in order to do away with the practical problem caused about effective date of notifications by recent Supreme Court judgement in *Collectors v. New Tobacco Co.* (1998) 97 E.L.T. 388 (S.C.).

However, exemptions granted under Section 25(1) of the Customs Act, can operate only in respect of such duty as is specifically mentioned in the particular notification. Thus, a notification exempting goods from the levy of basic customs duty can not by itself exempt such goods from the levy of countervailing duty or additional duty leviable under the Tariff Act nor can exemption from levy of countervailing duty or additional duty, wholly or partially, result in exemption of the goods from the levy of basic customs duty, wholly or partially.

In order to obtain a keen insight and to understand the philosophy or rationale underlying the grant of exemptions under Section 25 it is pertinent to note the explanation given by the Ministry of Finance to the Public Accounts Committee of the Lok Sabha, which had made some observations regarding manner and reasons underlying grant of exemptions from customs duty [PAC (5th Lok Sabha) (1974-75), 135th Report p. 55]. The Ministry of Finance had explained that the exemptions from customs duty were granted for one or more of the following reasons:

- (i) in accordance with the General Agreement on Trade and Tariff certain concessions agreed to by India have to be implemented through exemption notifications;
- (ii) in cases, where indigenously manufactured finished products using imported raw materials are placed at a disadvantageous position vis-a-vis imported finished products on account of high incidence of import duties leviable on imported articles, the industries concerned have to be given tariff assistance by bringing down, through exemption notifications, the import duties applicable in the case of imported raw materials to a level necessary for the removal of the disadvantages;
- (iii) in cases where component/raw materials required for the initial setting up, assembly or manufacture of machinery/finished product are assessable to duty at a higher rate than what is leviable on the machinery/finished product, the tariff anomaly has to be set right through exemption notifications, equalising the two rates;
- (iv) certain raw materials/semi-finished products are imported for producing finished products which are to be exported later. In such cases, exemptions from import duties have to be given in the interest of export promotion; and
- (v) some exemptions have to be given on humanitarian grounds like relief, rehabilitation, and repatriation of Indians, etc.

Accordingly, exemptions of the types enumerated above are given under Section 25(1) of the Customs Act, 1962. Ad hoc exemptions, however, are given under Sub-section (2) of the said section only under the designed conditions after the amendment of this sub-section by the Finance Act, 1999. The amended policy guidelines issued by the Finance Ministry for grant of such exemption are reproduced below:

POLICY GUIDELINES FOR AD HOC EXEMPTIONS UNDER SECTION 25(2)

In supersession of the Office Memorandum dated 8th October, 1996, the Finance Minister has approved the

following guidelines for consideration of request for exemption from customs duty under Section 25(2) of the Customs Act, 1962 as amended by the Finance Act, 1999:

- (a) Imports of secret goods by Government.
- (b) Imports for India's defence needs relating only to military hardware and software or for R&D units under the DRDO may be allowed free of duty.
- (c) Imports by Central Policy Organisation for equipping their forces may be allowed free of duty.
- (d) State Police Organisations may be allowed to import free of duty equipments required for anti-subversion, anti-terrorism and intelligence work.
- (e) Imports by Charitable Institutions which are providing all their services free where the imports are required for use in hospitals, educational institutions, etc., may be allowed free of duty.

The imports by these charitable organisations should fulfill the following conditions:

- (i) The imports should be received as donations or gifts and the donor should be known institution, but not an individual, say a society or a foundation. No payment for imports should be involved.
- (ii) The recipient should also be an institution/organisation, but not an individual, which is registered as charitable organisation.
- (iii) The said organisation/institution should be providing services, such as running hospitals, educational institutions etc., on either 'free' or 'no loss or no profit' basis.
- (iv) The charitable nature of the organisation and the fact of rendering services on 'free' or 'no loss no profit' basis should be certified by the concerned district authorities.
- (v) The organisation/institution should certify that the goods under import are for its use and provide an undertaking to the effect that they would fulfill the conditions.

2. All ad hoc exemptions from duty to non-governmental organisation will be issued subject to the conditions that the imported goods will not be put to any commercial use and will not be sold, gifted or parted by the importer in any manner without the prior permission of the Ministry of Finance. The imported goods will be kept available for inspection by Customs Officers.

3. Import of goods which are not covered in any of the categories mentioned in para 1 will not be considered for grant of ad hoc exemptions under Section 25(2) of the Customs Act, 1962.

Section 25 read as follows:

(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.

(2A) 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 issued under sub-section (1) or order issued under subsection (2), insert an explanation in such notification or order, as the case may be, by notification in the Official Gazette, at any time within one year of issue of the notification under sub-section (1) or order under sub-section (2), and every such explanation shall have effect as if it had always been the part of the first

such notification or order, as the case may be.

(3) An exemption under sub-section (1) or sub-section (2) in respect of any goods from any part of the duty of customs leviable thereon (the duty of customs leviable thereon being hereinafter referred to as the statutory duty) may be granted by providing for the levy of a duty on such goods at a rate expressed in a form or method different from the form or method in which the statutory duty is leviable and any exemption granted in relation to any goods in the manner provided in this sub-section shall have effect subject to the condition that the duty of customs chargeable on such goods shall in no case exceed the statutory duty.

Explanation. - "Form or method", in relation to a rate of duty of customs, means the basis, namely, valuation, weight, number, length, area, volume or other measure with reference to which the duty is leviable.

(4) Every notification issued under sub-section (1) or sub-section (2A) shall, -

- (a) unless otherwise provided, come into force on the date of its issue by the Central Government for publication in the Official Gazette;

(5) Notwithstanding anything contained in this Act, no duty shall be collected if the amount of duty leviable is equal to, or less than, one hundred rupees.

Sub section (7) inserted vide Finance Act, 2014 provides that the mineral oils (including petroleum and natural gas) extracted or produced in the continental shelf of India or exclusive economic zone of India as referred to in section 6 and section 7, respectively, of the Territorial Waters, Continental Shelf, Exclusive Economic Zone and Other Maritime Zones Act, 1976, and imported prior to the 7th day of February, 2002 shall be deemed to be and shall always be deemed to have been exempted from the whole of the duties of customs leviable on such mineral oils and accordingly, notwithstanding anything contained in any judgment, decree or order of any court, tribunal or other authority, no suit or other proceedings in respect of such mineral oils and accordingly notwithstanding anything contained in any judgment, decree or order of any court, tribunal or other authority, no suit or other proceedings in respect of such mineral oils shall be maintained or continued in any court, tribunal or other authority.

(6) Notwithstanding the exemption provided under sub-section (7), no refund of duties of customs paid in respect of the mineral oils specified therein shall be made.

REFUND AND RECOVERY PROVISIONS (SECTION 26 TO 28D)

REFUND OF EXPORT DUTY IN CERTAIN CASES (SECTION 26)

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

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

REFUND OF IMPORT DUTY IN CERTAIN CASES (SECTION 26A)

Section 26A provides for refund of import duty in certain cases.

As per sub section (1) of section 26A, 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, if;

- (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, no duty shall be refunded where the goods have 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, in such manner as may be prescribed and within a period not exceeding thirty days from the date on which the proper officer makes an order for the clearance of imported goods for home consumption under section 47:

The period of thirty days may be extended by the Commissioner of Customs for a period not exceeding three months where sufficient cause being shown (first proviso to section 26A).

However, these provisions shall not apply to the goods regarding which an offence appears to have been committed under this Act or any other law for the time being in force (Second proviso to section 26A).

An application for refund of duty shall be made before the expiry of six months from the relevant date in such form and in such manner as may be prescribed [section 26(2)].

“Relevant date” means,—

(a) in cases where the goods are exported out of India, the date on which the proper officer makes an order permitting clearance and loading of goods for exportation under section 51;

(b) in cases where the title to the goods is relinquished, the date of such relinquishment;

(c) in cases where the goods are destroyed or rendered commercially valueless, the date of such destruction or rendering of goods commercially valueless.

As per section 26(3), 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.

Section 26(4) provides that the Board may, by notification in the Official Gazette, specify any other condition subject to which the refund under sub-section (1) may be allowed.

CLAIM FOR REFUND OF DUTY (SECTION 27)

(1) Section 27 of the Customs Act deals with the refund of the duty. As per this section—

- (a) Any person who has paid the duty or interest or who has borne the incidence of duty or interest can claim refund of duty by way of application.
- (b) The application for refund is to be made to the Assistant Commissioner of customs or Deputy Commissioner of customs.
- (c) The application should be made before the expiry of one year from the date of payment of such duty or interest. However the limitation period of one year shall not apply where duty or interest is paid

under protest.

- (d) The application should be accompanied by such documentary or other evidence 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 incidence of such amount is not transferred to any other person.

The period of one year shall be computed from the following date:

- | | | |
|---|---|---|
| (1) Where goods are exempt from payment of duty by a special order under Sub-section (2) of Section 25 | — | Date of issue of such order. |
| (2) Duty becomes refundable because of judgement, decree, order or direction of appellate authority, appellate tribunal, or court | — | Date of such judgement decree, order or direction |
| (3) Duty is paid provisionally under Section 18 | — | Date of adjustment of duty after final assessment |

Where the amount of refund claimed is less than rupees one hundred the same shall not be refunded.

(2) If, on receipt of any such application, the Assistant/Deputy Commissioner of Customs is satisfied that the whole or any part of the duty and interest, if any, paid on such duty paid by the applicant is refundable, he may make an order accordingly and the amount so determined shall be credited to the Fund:

Provided that the amount of duty and interest, if any, paid on such duty as determined by the Assistant/Deputy Commissioner of Customs under the foregoing provisions of this sub-section shall, instead of being credited to the Fund, be paid to the applicant, if such amount is relatable to:

- (a) the duty and interest, if any, paid on such duty paid by the importer or 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) the duty and interest if any, paid on such duty borne by any other such class of applicants as the Central Government may, by notification in the Official Gazette, specify.
- (g) the duty paid in excess by the importer before an order permitting clearance of goods for homeconsumption is made where: (i) such excess payment of duty is evident from the bill of entry in the case of self-assessed bill of entry; or (ii) the duty actually payable is reflected in the reassessed bill of entry in the case of reassessment.

The above amendment was to keep outside the ambit of unjust enrichment, the refund of duty paid in excess by the importer before an order permitting clearance of goods for home consumption is made in the above cases

Provided further that no notification under clause (f) of the first proviso shall be issued unless in the opinion of the Central Government the incidence of duty and interest, if any, paid on such duty has not been passed on by the persons concerned to any other person.

(3) Notwithstanding anything to the contrary contained in any judgement, decree, order or direction of the Appellate Tribunal or any Court or in any other provision of this Act or the regulations made thereunder or any other law for the time being in force, no refund shall be made except as provided in Sub-section (2).

(4) Every notification under clause (f) of the first proviso to Sub-section (2) shall be laid before each House of Parliament, if it is sitting, as soon as may be after the issue of the notification, and if it is not sitting, within seven days of its re-assembly, and the Central Government shall seek the approval of Parliament to the notification by a resolution moved within a period of fifteen days beginning with the day on which the notification is so laid before the House of the People and if Parliament makes any modification in the notification or directs that the notification should cease to have effect, the notification shall thereafter have effect only in such modified form or be of no effect, as the case may be, but without prejudice to the validity of anything previously done thereunder.

(5) For the removal of doubts, it is hereby declared that any notification issued under clause (f) of the first proviso to Sub-section (2), including any such notification approved or modified under Sub-section (4), may be rescinded by the Central Government at any time by notification in the Official Gazette.

INTEREST ON DELAYED REFUNDS (SECTION 27A)

Section 27A incorporated in the Customs Act by the Finance Act, 1995 (w.e.f. 26.5.95) provide for payment of interest on refunds of duty which is not paid to the applicant within three months from the date of receipt of application under Sub-section (1) of Section 27.

It has also been provided that in case where appellate remedies are resorted to either by the Department or by the assessee, the refund finally payable shall bear interest for the period starting from the date immediately after the expiry of three months from the date of receipt of applications under Sub-section (1) of Section 27 till the date of refund of duty. It may be specifically noted that:

- (a) interest will be paid only on the amount of duty which is finally held to be refunded.

Example: in case the assessee has claimed a refund of `60,000/- the Assistant/Deputy Commissioner allows a refund of `10,000/- and on appeal the amount decided to be refunded is `30,000/- then the interest would be payable on the amount finally decided to be refunded viz. `30,000/- for the period commencing from the expiry of three months from the date of the refund application till its payment. Conversely, if the Assistant/Deputy Commissioner has determined the amount due as refund at `30,000/- which on appeal by the Department is reduced to `10,000/- interest would be payable for the aforesaid period only on the amount of `10,000/-;

- (b) the interest will be paid at the rate to be fixed by the Central Government by issue of Gazette Notification as simple interest, Interest on interest is not payable;
- (c) no interest is to be paid on any refund of fines or penalties; the provision has been made for payment of interest only on delayed refund of duty amounts;
- (d) it is to be clearly noted that interest if any would be payable on the amount of duty to be refunded arising only from proceedings initiated under Section 27 i.e. where an application for refund has been filed.

Recovery of duties not levied or not paid or short-levied or short- paid (SECTION 28)

Where any duty has not been levied or not paid or has been short-levied or short-paid or erroneously refunded, or any interest has not been paid or erroneously refunded, for—

- (1) any reason other than the reason of collusion or any willful mis-statement or suppression of facts then the proper officer shall within two years from the relevant date serve notice on the person chargeable with duty or interest requiring him to show cause why he should not pay the amount specified in the notice.

However the person chargeable with duty or interest may pay before the service of notice any amount of duty along with interest or interest on the basis of—

- (i) his own ascertainment of such duty or
- (ii) the duty ascertained by the proper officer

the amount of duty along with the interest payable thereon under section 28AA @ fifteen per cent. per annum w.e.f 1.4.2016 vide notification no. 33/2016 - Customs (N. T.) dated 1st March, 2016) or the amount of interest which has not been so paid or part-paid.

Provided that where notice has been served and the proper officer is of the opinion that the amount of duty along with interest payable thereon under section 28AA @ fifteen per cent. per annum w.e.f 1.4.2016 vide notification no. 33/2016 - Customs (N. T.) dated 1st March, 2016) or the amount of interest, as the case may be, as specified in the notice, has been paid in full within thirty days from the date of receipt of the notice, no penalty shall be levied and the proceedings against such person or other persons to whom the said notice is served shall be deemed to be concluded.

and inform the proper officer of such payment in writing, who, on receipt of such information shall not serve any notice in respect of duty or interest so paid. However proper officer can issue notice for the remaining amount.

The proper officer shall not serve such show cause notice, where the amount involved is less than rupees one hundred.

- (2) the reason of—
 - (i) collusion; or
 - (ii) any willful mis-statement; or
 - (iii) suppression of facts,

by the importer or exporter or the agent or employee of the importer or exporter, the proper officer shall within 5 years from the relevant date, serve notice on the person chargeable with duty or interest which has not been so levied or which has been so short-levied or short-paid or to whom the refund has erroneously been made, requiring him to show cause why he should not pay the amount specified in the notice.

However the person may pay the duty in full or in part, as may be accepted by him, and the interest payable thereon under Section 28AA @ fifteen per cent. per annum w.e.f 1.4.2016 vide notification no. 33/2016 - Customs (N. T.) dated 1st March, 2016) and the penalty equal to fifteen percent of the duty specified in the notice or the duty so accepted by that person, within thirty days of the receipt of notice and inform the proper officer about the payment in writing.

The proper officer then determine the amount of duty or interest and on determination, if proper officer is of

the opinion—

- (i) that the duty with interest and penalty has been paid in full, then, the proceedings in respect of such person or other person to whom the notice is served, under Sub-section (1) or Sub-section (4) shall, without prejudice to the provision of Section 135, 135H and 140 be deemed to be conclusive as to the matters stated therein; or
- (ii) that the duty with interest and penalty paid falls short of the amount actually payable, then proper officer shall proceed to issue the notice in respect of the amount which falls short within a period of two years from the date of receipt of information about such payment.

The proper officer shall determine the amount within—

- (a) six months from the date of notice in respect of cases where duty has not been levied or not paid or has been short-levied or short-paid or erroneously refunded, or any interest has been paid, part-paid or erroneously refunded, for any reason other than the reason of collusion or any willful mis-stated or suppression of facts.
- (b) within one year from the date of notice in respect of cases where reasons for non-levy, short levy or erroneous refund are collusion, any willful misstatement or suppression of facts.

“relevant date” means—

- (a) in a case where duty is not levied, or interest is not charged, the date on which the proper officer makes an order for the clearance of goods;
- (b) in a case where duty is provisionally assessed under Section 18, the date of adjustment of duty after the final assessment thereof;
- (c) in a case where duty or interest has been erroneously refunded, the date of such refund;
- (d) in any other case, the date of payment of duty or interest.

For removal of doubts it is declared that, where a notice under clause (a) of sub-section (1) or sub-section (4) of section 28, has been served but an order determining duty under sub-section (8) has not been passed before the date on which the Finance Bill, 2015 received the assent of the President, i.e. 14th May, 2015 then, without prejudice to the provisions of sections 135, 135A and 140, as may be applicable, the proceedings in respect of such person or other persons to whom the notice is served shall be deemed to be concluded if the payment of duty, interest and penalty under the proviso to sub-section (2) or under sub-section (5), as the case may be, is made in full within 30 days from the date on which such assent is received

POWER NOT TO RECOVER DUTIES NOT LEVIED OR SHORT-LEVIED AS A RESULT OF GENERAL PRACTICE (SECTION 28A)

(1) Notwithstanding anything contained in this Act, if the Central Government is satisfied –

- (a) that a practice was, or is, generally prevalent regarding levy of duty (including non-levy thereof) on any goods imported into, or exported from, India; and
- (b) that such goods were, or are, liable -
 - (i) to duty, in cases where according to the said practice the duty was not, or is not being, levied, or
 - (ii) to a higher amount of duty than what was, or is being, levied, according to the said practice, then,

the Central Government may, by notification in the Official Gazette, direct that the whole of the duty payable on such goods, or, as the case may be, the duty in excess of that payable on such goods, but for the said practice, shall not be required to be paid in respect of the goods on which the duty was not, or is not being, levied, or was, or is being, short-levied, in accordance with the said practice.

(2) Where any notification under sub-section (1) in respect of any goods has been issued, the whole of the duty paid on such goods, or, as the case may be, the duty paid in excess of that payable on such goods, which would not have been paid if the said notification had been in force, shall be dealt with in accordance with the provisions of sub-section (2) of section 27:

However, where the person is claiming the refund of such duty or, as the case may be, excess duty, makes an application in this behalf to the Assistant Commissioner of Customs or Deputy Commissioner of Customs, in the form referred to in sub-section (1) of section 27, before the expiry of six months from the date of issue of the said notification.

INTEREST ON DELAYED PAYMENT OF DUTY (SECTION 28AA)

(1) Notwithstanding anything contained in any judgment, decree, order or direction of any court, Appellate Tribunal or any authority or in any other provision of this Act or the rules made there under, the person, who is liable to pay duty in accordance with the provisions of section 28, shall, in addition to such duty, be liable to pay interest, if any, at the rate fixed under sub-section (2), whether such payment is made voluntarily or after determination of the duty under that section.

(2) Interest at such rate not below ten per cent. and not exceeding thirty-six per cent per annum, as the Central Government may, by notification in the Official Gazette, fix, shall be paid by the person liable to pay duty in terms of section 28 and such interest shall be calculated from the first day of the month succeeding the month in which the duty ought to have been paid or from the date of such erroneous refund, as the case may be, up to the date of payment of such duty. The Central government has fixed the rate of interest at fifteen per cent. per annum w.e.f 1.4.2016 under the section.

(3) Notwithstanding anything contained in sub-section (1), no interest shall be payable where,—

- (a) the duty becomes payable consequent to the issue of an order, instruction or direction by the Board under section 151A; and
- (b) such amount of duty is voluntarily paid in full, within forty-five days from the date of issue of such order, instruction or direction, without reserving any right to appeal against the said payment at any subsequent stage of such payment.”.

RECOVERY OF DUTIES IN CERTAIN CASES (SECTION 28AAA)

Section 28AAA(1) Instruments obtained by collusion, willful misstatement or suppression of facts for the purpose of Customs Act/Foreign Trade (Development & Regulation) Act and utilized will be subject to action for recovery.

The amount is recoverable from the person to whom such instrument was issued.

As per Proviso to Section 28AAA(1), importer may also be subject to action under Section 28.

Explanation 1: Instrument means any scrip, authorization, license or certificate issued under FTDR Act with respect to a reward scheme under Foreign Trade Policy.

Explanation 2: This section is applicable to utilization made after the Finance Act, 2012 became effective.

(2) Interest @18% is also payable from the date of utilization of the instrument till the date of recovery.

(3) A show cause notice has to be issued by proper officer for recovery.

- A 30 days time shall be given to respond and make representation if any.
- Order should be passed by giving opportunity of being heard for recovery of duty, interest or both.
- The amount in the order passed shall not exceed the amount specified in the show cause notice.
- The amount shall be paid within 30 days of receiving the order.
- Interest is payable whether specifically mentioned in the order or not.

(4) An order need not be passed separately if an order has been passed under Section 28.

(5) The amount if not paid within 30 days, shall be recovered under Section 142(1).

Difference between refund under Section 26, 26A and 27

Section 26 deals with refund of export duty which is rarity. It is granted under the conditions that the goods same goods by same party were re-imported within 1 year and an application was made for refund within 6 months. Moreover, doctrine of unjust enrichment is not applicable to this refund.

Section 26A on the other hand is the refund of import duty in special cases though limitation period to claim the refund under this section is also 6 months.

Section 27(1) deals with general cases of refund (other than those under Sections 26 and 26A) and it is more procedural in nature. Under this, limitation period is 1 year for all claimants. Moreover, refund in majority of cases is subject to doctrine of unjust enrichment.

Section 27(2) gives the list of instances where refund is possible. Those instances include both the cases which undergo the test of doctrine of unjust enrichment and which do not require to take the test.

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

(1) Notwithstanding anything to the contrary contained in any order or direction of the Appellate Tribunal, National Tax Tribunal or any Court or in any other provision of this Act or the regulations made thereunder, every person who is liable to pay duty under this Act and has collected any amount in excess of the duty assessed or determined or paid on any goods under this Act from the buyer of such goods in any manner as representing duty of customs, shall forthwith pay the amount so collected to the credit of the Central Government.

(1A) Every person who has collected any amount in excess of the duty assessed or determined or paid on any goods or has collected any amount as representing duty of customs on any goods which are wholly exempt or are chargeable to nil rate of duty from any person in any manner, shall forthwith pay the amount so collected to the credit of the Central Government.

(2) Where any amount is required to be paid to the credit of the Central Government under sub-section (1) or sub-section (1A), as the case may be, and which has not been so paid, the proper officer may serve on the person liable to pay such amount, a notice requiring him to show cause why he should not pay the amount,

as specified in the notice to the credit of the Central Government.

(3) The proper officer shall, after considering the representation, if any, made by the person on whom the notice is served under sub-section (2), determine the amount due from such person (not being in excess of the amount specified in the notice) and thereupon such person shall pay the amount so determined.

(4) The amount paid to the credit of the Central Government under sub-section (1) or sub-section (1A) or sub-section (3) as the case may be, shall be adjusted against the duty payable by the person on finalisation of assessment or any other proceeding for determination of the duty relating to the goods referred to in subsection (1) or sub-section (1A).

(5) Where any surplus is left after the adjustment made under sub-section (4), the amount of such surplus shall either be credited to the Fund or, as the case may be, refunded to the person who has borne the incidence of such amount, in accordance with the provisions of section 27 and such person may make an application under that section in such cases within six months from the date of the public notice to be issued by the Assistant Commissioner of Customs for the refund of such surplus amount.

Provisional attachment to protect revenue in certain cases (Section 28BA)

(1) Where, during the pendency of any proceeding under section 28 or section 28B, the proper officer is of the opinion that for the purpose of protecting the interests of revenue, it is necessary so to do, he may, with the previous approval of the Principal Commissioner or Commissioner of Customs as the case may be, by order in writing, attach provisionally any property belonging to the person on whom notice is served under sub-section (1) of section 28 or sub-section (4) of section 28, as the case may be, in accordance with the rules made in this behalf under section 142.

(2) Every such provisional attachment shall cease to have effect after the expiry of a period of six months from the date of the order made under sub-section (1):

Provided that the Principal Chief Commissioner or Chief Commissioner of Customs as the case may be, may, for reasons to be recorded in writing, extend the aforesaid period by such further period or periods as he thinks fit, so, however, that the total period of extension shall not in any case exceed two years :

Provided further that where an application for settlement of case under section 127B is made to the Settlement Commission, the period commencing from the date on which such application is made and ending with the date on which an order under sub-section (1) of section 127C is made shall be excluded from the period specified in the preceding proviso.

PRICE OF GOODS TO INDICATE THE AMOUNT OF DUTY PAID THEREON (SECTION 28C)

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.

PRESUMPTION THAT INCIDENCE OF DUTY HAS BEEN PASSED ON TO THE BUYER (SECTION 28D)

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.

SELF TEST QUESTION

(These are meant for recapitulation only. Answers to these questions need not to be submitted for evaluation).

1. How is the 'assessment value' of imported goods determined for the purpose of levying of Import duties under the Customs Act, 1962? Is there any change in the law in this regard in the recent past? Explain.
2. What cost elements constitute the value of imported goods for the purpose of assessable value?
3. What is the concept of 'Transaction Value' introduced through the newly enacted Valuation Rules, 1988?
4. Under what circumstances 'Transaction Value' may not be accepted for valuation of imported goods?
5. How is the custom duty levied in case imported goods are pilfered before clearance?
6. How is the rate of Duty and Tariff Valuation determined in case of imported goods?
7. How is the rate of duty determined in case of export goods?
8. What is the procedure of assessment of Customs Duty in case of import and export of goods?
9. What are the circumstances under which customs duties may be assessed provisionally?
10. What is the procedure and conditions of provisional assessment of customs duties?
11. How is the customs duty determined where goods consist of articles liable to different rates of duty?
12. State the circumstances when the abatement of customs duty may be allowed under the Act?
13. What are the provisions with regard to levying of duties of customs on goods found derelict, wreck, etc. on importation?
14. What are the provisions of Customs Act, 1962 with regard to remission of duty on lost, destroyed or abandoned goods ?
15. What are the provisions of Customs Act, 1962 with regard to grant of exemption from custom duty ?
16. State the circumstances and reasons for providing of exemptions from customs duty under the Customs Act, 1962.
17. Who has the power to grant exemptions of customs duty and what kinds of exemptions can be granted within the provisions of Customs Act, 1962?
18. State the circumstances under which refund of export duty is permitted.
29. When can the claim for refund of customs duty be made and what is the procedure for the same?
20. What are the provisions under the Customs Act, 1962 regarding recoveries of duties with retrospective effect? State the circumstances and reasons.

SUGGESTED READINGS:

- (1) Customs Law Manual — R.K. Jains
- (2) Indirect Taxes Law and Practice — V.S. Datey

[illegible]

Lesson 5 Customs Law: Valuation, Assessment of imported and export
Goods and procedural aspects
