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# INDIRECT TAX LAWS & PRACTICE

FINAL

## STUDY NOTES

**The Institute of Cost Accountants of India**
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# Customs Law


# Study Note - 1

## CUSTOMS LAW - BASIC CONCEPTS

**This Study Note includes**



### 1.1 INTRODUCTION

Kautiliya's Arthashastra also refers to 'shulka' consisting of import duty and export duty that was collected at the city gates on goods coming in and going out respectively.

Subsequently, the levy of customs duty was organised through legislation during the British period.

Constitutional Provision:

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

The term customs is not new for us. It was customary for a trader who brings the goods to a particular kingdom to offer gifts to the king for allowing him to sell his goods in that kingdom. The gifts given by the dealer to the king was nothing but a customary practice in those days. In the modern days, these gifts are collected by the Government of India in the form of Customs Duty from the importer who imports the goods from a country outside India and from an exporter who exports the goods to a country outside India.

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

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

**Difference between the Rules and Regulations**

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

It is important to know the various terms used in the Customs Law to have better understanding of the subject.

## 1.2 DEFINITIONS

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

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

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

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

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

Under section 7(1)(d) of the Customs Act, 1962, the Central Board of Indirect Tax and Customs (CBIC), may by notification in the Official Gazette, appoint 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.

***Example 1:***


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

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

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

Customs Airport under section 7(a) means any airport and includes a place appointed under section 7(aa) (w.e.f. 28-5-2012) to be an air freight station.

Section 7(a): The CBIC may, by notification in the Official Gazette, appoint the ports and air ports 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.

Section 7(aa): The places which alone shall be inland container depots (ICD's) for the unloading of imported goods and the loading of export goods or any class of such goods.

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

As per Section 8 of the Customs Act, 1962, the Commissioner of Customs may (i) approve proper places in any customs port or customs airport or coastal port for the unloading of goods or for any class of goods; (ii) specify the limits of any customs area.

As per Section 141 of the Customs Act, 1962, all conveyances and goods in customs area are subject to control of officers of customs for enforcing the provisions of the Customs Act, 1962. The receipt/storage/delivery/dispatch/any other handling of goods (import/export) in the Customs area shall be in the prescribed

manner and the responsibility thereon lies on the persons engaged in such activities (i.e. Custodian of the said goods).

CBIC empowered to permit landing of vessels and aircrafts at any place other than customs port or customs airport [Section 29(1)] w.e.f. 10-5-2013:

The Finance Act, 2013 has amended section 29(1) to empower CBIC to permit landing of vessels and aircrafts at any place other than customs port or customs airport.

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

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

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

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

***Example 2:***

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

**(12) Foreign going Vessel or aircraft:** As per section 2(21) of the Customs Act, the foreign going vessel or aircraft means any vessel or aircraft for the time being in the carriage of goods or passengers between any port or airport in India and any port or airport outside India, whether touching any intermediate port or airport in India or not. The following are also included in the definition:

(i) A foreign naval vessel doing naval exercises in Indian waters

(ii) A vessel engaged in fishing or any other operation (like oil drilling by domestic vessel or foreign vessel) outside territorial waters

(iii) A vessel going to a place outside India for any purpose whatsoever.

***Example 3:***

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

**(13) Goods:** As per section 2(22) of the Customs Act, the term goods includes

(a) Vessels, aircrafts and vehicles

(b) stores

(c) baggage

(d) currency and negotiable instruments and

(e) any other kind of movable property.

**Case Law 1:**

RST Ltd. imported drawings and designs in paper form through professional courier and post parcels.

However, the Assistant Commissioner of Customs valued these drawings and designs and levied duty on them.

RST Ltd. Contended that customs duty cannot be levied on drawings and designs as they do not fall in the definition of goods under the Customs Act, 1962.

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

**Answer:**

***Associated Cement Companies Ltd.* v CC 2001 (128) ELT 21 (SC)**

The Apex Court observed that though technical advice or information technology are intangible assets, but the moment they are put on a media, whether paper or cassettes or diskettes or any other thing, they become movable and are thus, goods.

Therefore, the Supreme Court held that drawings, designs, manuals and technical material are goods liable to customs duty.

Therefore, the stand taken by the RST Ltd. is not correct in law.

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

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

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

**(17) India**: As per section 2(27) of the Customs Act, "India includes the territorial waters of India". The term India is an inclusive definition and includes not only the land mass of India but also territorial waters of India. The territorial waters extend to 12 nautical miles into the sea from the base line. Therefore, a vessel not intended to deliver goods should not enter these waters. [1 Nautical Mile = 1.852 Km or 1852 M]

**(18) Indian Customs Waters:** As per section 2(28) of the Customs Act, the term Indian Customs Waters - means the waters extending into the sea up to the limit of Exclusive Economic Zone under section 7 of the Territorial Waters, Continental Shelf, Exclusive Economic Zone and other Maritime Zones Act, 1976 and includes any bay, gulf, harbour, creek or tidal river India includes the surface of sea in the territorial waters, air space above and the ground at the bottom of the sea.

Continental Shelf means the area of relatively shallow seabed between the shore of a continent and deeper ocean

**(19)** Indian Customs Waters extend up to 200 nautical miles from the base line. Thereby, Indian Customs Waters cover both the Indian Territorial Waters and Exclusive Economic Zone as well. Indian Territorial Waters extend up to 12 nautical miles from the base line whereas Exclusive Economic Zone extend upto 200 nautical miles from the base line.

***Example 4:***

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

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

**Case Law 2:**

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

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

Regarding the smaller ships which are employed to unload the cargo from the mother ship, they are termed as "Transhippers". These are also treated as ocean going vessels as was decided in ***UOI* v *V M Salgaoncar* AIR 1998 SC1367: 99 ELT 3 (SC).**

Hence stores consumed by small vessels would also be exempt from customs duty.

Stores supplied to the vessel will be treated as export as per Section 89 of Customs Act and hence will be eligible for duty drawback.

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

| | |
|---|---|
| (a) Vessel | Master |
| (b) Aircraft | Commander or Pilot in Charge |
| (c) Train | Conductor or Guard or other person having direction of the train |
| (d) Vehicle | Driver or other person in charge of the vehicle. |
| (e) Other Conveyance | Person in Charge |

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

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

As per Finance Act, Import Manifest Report – Amendment to IGM – Procedure:-

On receipt of representation from the Trade that owning to tedious process of IGM amendment, there is reluctance to avail the facility of advance/prior Bill of Entry, the Department of Revenue prescribing revised procedure has clarified that the responsibility of amendment in the IGM rest solely with Shipping Liine/ Agent, as they file IGM with Customs under section 30 of the Customs Act, 1962, the fine/penalty impose, if any, upon adjudication in such cases, shall be payable by the Shipping Line only or such other person as specified; No fine/penalty is required to be imposed on the consignee or otherwise; and No request for any amendment in the IGM from Customs Broker/ Importer will be entertained (M.F circular No. 14/2017-Cus, dated 11-4-2017).

In case of vessel or air craft person-in-charge, deliver to the proper officer import general manifest (electronic filing mandatory w.e.f. 10-5-2013)

**(23) Notification:** As per Section 2(30AA) of the Customs Act, 1962, notification means notification published in the Official Gazette and the expression "notify" with its cognate meaning and grammatical variation shall be construed accordingly

**(24) Tariff Value:** The CBIC has the power to fix tariff values for any class of imported goods or exported goods. Fixing the tariff value for any class of imported goods or exported goods means the duty shall be chargeable with reference to such tariff value. (For example, please refer the duty based on the % of tariff value under Central Excise). [Section 2(40) of Customs Act, 1962]

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

**(26) Exclusive Economic Zone:** Exclusive Economic Zone extends to 200 nautical miles from the base line. In this zone, the coastal State has exclusive rights to exploit it for economic purpose like constructing artificial islands for oil exploration, power generation and so on.

*Note:* one nautical mile = 1.1515miles or 1.853kms.

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

**Case Law 3:**

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

**Answer: *Tirupati Udyog Ltd*. v *UOI* 2011 (272) ELT 209 (AP)**

**Decision:** Customs duty can be levied only on goods imported into or exported beyond the territorial waters of India, section 12(1) of the Customs Act, 1962 (i.e. charging section) is not attracted for supplies made by a DTA unit to a unit located within the Special Economic Zone.

**Therefore, goods cleared from DTA to SEZ is not liable to export duty either under SEZ Act, 2005 or under the Customs Act, 1962.**

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

> ***Example: 5***
>
> ***Goods imported by the assessee for consumption on oil rigs which are situated in Continental Shelf/ Exclusive Economic Zones of India, are deemed to be a part of Indian Territory. Therefore, the supply of imported spares or goods or equipments to the rigs by a ship will attract import duty. [Aban Lloyd Chilies Offshore Ltd. v UOI (2008) 227 ELT 24 (SC)]***

**(28)** **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.

> ***Example 6:***
>
> ***Pornographic and obscene materials, Maps and literature where Indian external boundaries have been shown incorrectly, Narcotic Drugs and Psychotropic Substances, Counterfeit goods and goods violating any of the legally enforceable intellectual property right, Chemicals mentioned in Schedule 1 to the Chemical Weapons Convention of U.N. 1993, Wild life products, Specified Live birds and animals, Wild animals, their parts and products, Exotic birds except a few specified ones, Beef, tallow, fat/oil of animal origin. Specified Sea-shells, Human skeleton.***

w.e.f. 10-5-2013: Clause (n) of section 11(2) provided that importation/exportation of goods may be prohibited for the protection of patents, trademarks and copyrights.

The Finance Act, 2013 has expanded the scope of clause (n) to include designs and geographical indications so as to provide for protection of these legal rights also. Consequently, Central Government can now prohibit the import/export of specified goods for protection of designs and geographical indications also apart from patents, trademarks and copyrights.

## 1.3 CIRCUMSTANCES OF LEVY

Section 12 of the Customs Act makes it clear that import or export of goods into or out of India is the taxable event for payment of the duty of customs. Lot of problems were faced in determining the point at which the importation or exportation takes place. The root cause of the problem was the definition of India.

The Supreme Court of India has given the landmark judgments in cases of *Union of India* v *Apar Industries Ltd* (1999) and further in the case of *Garden Silk Mills Ltd* v *Union of India* (1999). The import of goods will commence when they cross the territorial waters but continues and is completed when they become part of the mass of goods within the country, and the taxable event being reached at the time when goods reach the customs barriers and bill of entry for home consumption is filed.

***Taxable event for imported goods***

In the case of Kiran Spinning Mills (1999) the Hon'ble Supreme Court of India held that import is completed only when goods cross the customs barrier. The taxable event is the day of crossing of customs barrier and not on the date when goods landed in India or had entered territorial waters of India.

> ***Crossing customs barrier***:
> *when goods are imported into India even after the goods are unloaded from the ship, and even after the goods are assessed to duty subsequent to the filing of a bill of entry, the goods cannot be regarded as having crossed the customs barrier until the duty is paid and the goods are brought out of the limits of the customs station.*

Hence, taxable event in case of imported goods can be summed up in the following lines:

The taxable event occurs in the course of imports under the customs law with reference to the principles laid down by the Supreme Court in the cases of ***Garden Silk Mills Ltd. v Union of India; and Kiran Spinning Mills v CC:***

(i) Unloading of imported goods at the customs port – ***is not a taxable event***

(ii) Date of entry into Indian territorial waters – ***is not a taxable event***

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

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

**No time limit for submission of bill of entry after the delivery of Import General Manifest (IGM):**

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

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

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

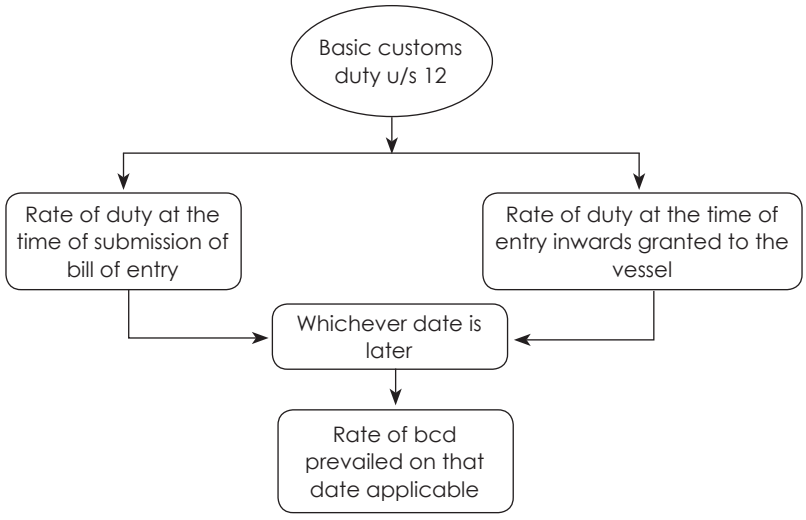
Provided that a bill of entry may be presented within 30 days of the expected arrival of the aircraft or vessel or vehicle by which the goods have been shipped for importation into India.

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

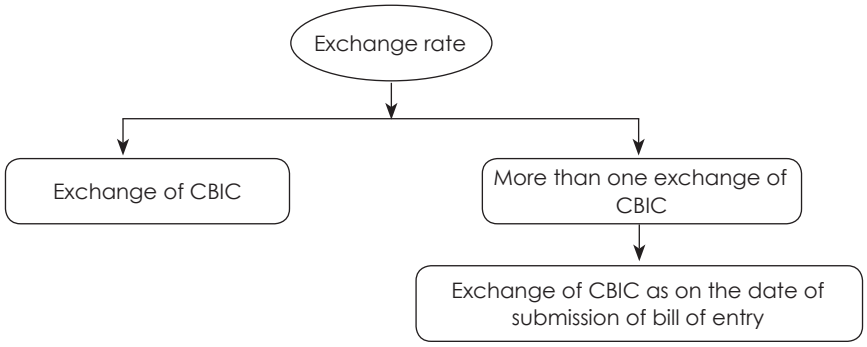
**Note:** Bill of entry may be allowed to present 30 days before the entry inward granted to the vessel.

W.E.F. 6-8-2014 The first proviso to section 46(3) has now been omitted and second proviso amended to lay down that a bill of entry may be presented before the delivery of import manifest (import through vessel or aircraft) or import report (import through land route) if the vessel/aircraft/vehicle by which the goods have been shipped for importation into India is expected to arrive within 30 days from the date of such presentation.

**Basic Customs Duty (BCD) on imported goods**



**Exchange rate for Imported Goods**




**Clearance of goods for home consumption [section 47 (1) of the Customs Act, 1962]**

w.e.f. 14-5-2016, Section 47(1) Where the proper officer is satisfied that any goods entered for home consumption are not prohibited goods and the importer has paid the import duty, if any, assessed thereon and any charges payable under this Act in respect of the same, the proper officer may make an order permitting clearance of the goods for home consumption:

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

**w.e.f. 31-3-2017 Finance Act, 2017 section 47(2) amended:**

Importer shall have to make payment of duty on the same day in case of self-assessed Bill of Entry and in case of re-assessment or provisional assessment, within one day after the return of Bill of Entry.

As per section 47(2) of Customs Act, the importer is liable to pay interest where –

- the importer fails to pay the import duty under this section on the same day in case of self-assessed Bill of Entry and in case of re-assessment or provisional assessment, within one day after the return of Bill of Entry from the date on which the bill of entry is returned to him for payment of duty, he shall pay interest @ 15% p.a. on such duty till the date of payment of the said duty.
- w.e.f. 14-5-2016: in the case of deferred payment under the proviso to sub-section (1), from such due date as may be specified by rules made in this behalf, he shall pay interest @15% p.a. on the duty not paid or short-paid till the date of its payment.

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

***Example 7:***

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

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

***Assume : Integrated Tax leviable u/s 3(7) of the Customs Tariff Act, 1975 is 18%.***

***Calculate Assessable value and Customs Duty in Indian rupees?***

***Answer:***

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

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

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

**Taxable event for warehoused goods**

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

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

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

***Example 8:***

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

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

***Assume IGST @ 12%.***

***Answer:***

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

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

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

**Taxable event for exported goods**

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

Therefore, export duty rate prevailing as on the date of entry outwards granted to the vessel by the Customs Officer is relevant.

***Example 9:***

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

***Answer:***

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

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

FOB Value of exports:

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

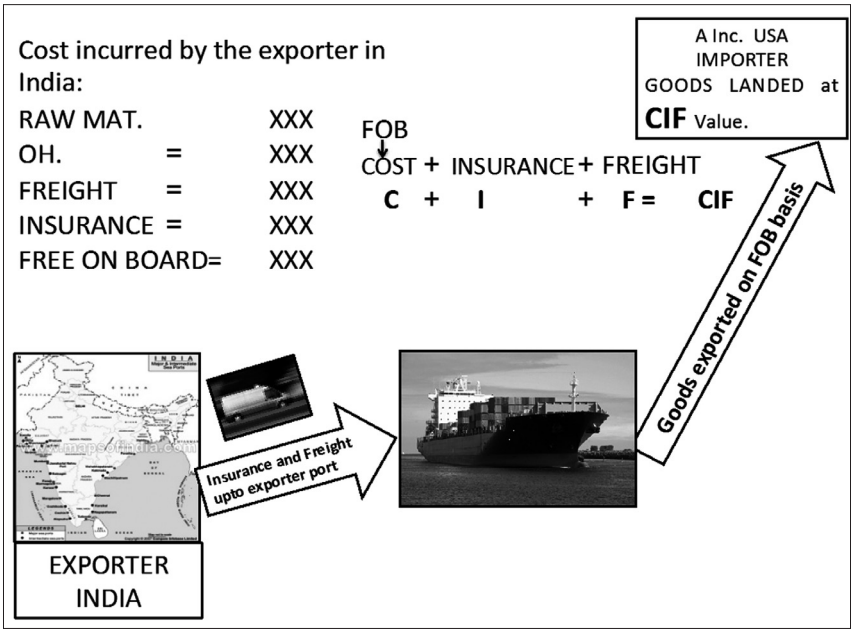
**Assessable Value (for Exported Goods) = Free on Board (i.e. FOB)**

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

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

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

**Simplified approach:**




***Example 10:***

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

***(i) FOB price of goods: US $ 1,00,000***

***(ii) Shipping bill presented electronically on 28-02-2018***

***(iii) Proper officer passed order permitting clearance and loading of goods for export on 01-03-2018.***

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

| | *Rate of Exchange* | *Rate of Export* |
|---|---|---|
| *Duty* | | |
| *On 28-02-2018* | *1 US $ = ₹65* | *10%* |
| *On 01-03-2018* | *1 US $ = ₹66* | *8%* |

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

***Answer:***

| *Particulars* | *Value in ₹* | *Remarks* |
|---|---|---|
| *FOB* | *65,00,000* | *1,00,000 × ₹65* |
| *Customs Duty* | *5,20,000* | *₹65 lakhs × 8%* |

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

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

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

***Example 11:***

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

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

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

***Answer:***

***Customs Duty = ₹ 8,000 (i.e. ₹ 1,00,000 × 8%)***

***Note:***

***(i) As per section 16(1) of the Customs Act, 1962, taxable event arises only when proper officer makes an order permitting clearance (i.e. entry outwards) granted - Esajee Tayabally Kapasi (1995)(SC). Therefore, relevant rate is 8%***

***(ii) Export duties do not carry Social Welfare Surcharge @ 10%.***

As per CBIC **Circular No. 18/2008-Cus, dated 10th November, 2008:**

with effect from 1st January, 2009, it is proposed that for the purposes of calculation of export duty, the transaction value, that is to say the price actually paid or payable for the goods for delivery at the time and place of exportation under section 14 of Customs Act 1962, shall be the FOB price of such goods at the time and place of exportation.

For example if the transaction is at ₹ 100 FOB, and the duty is 15%, the export duty will be 15% of FOB price that is ₹15. In case the transaction is on CIF basis, the FOB price may be deduced from the CIF value, and then the export duty is calculated as 15% of such FOB price.

*Note:* Export duties do not carry any cess.

**Entry Inwards to the vessel**

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

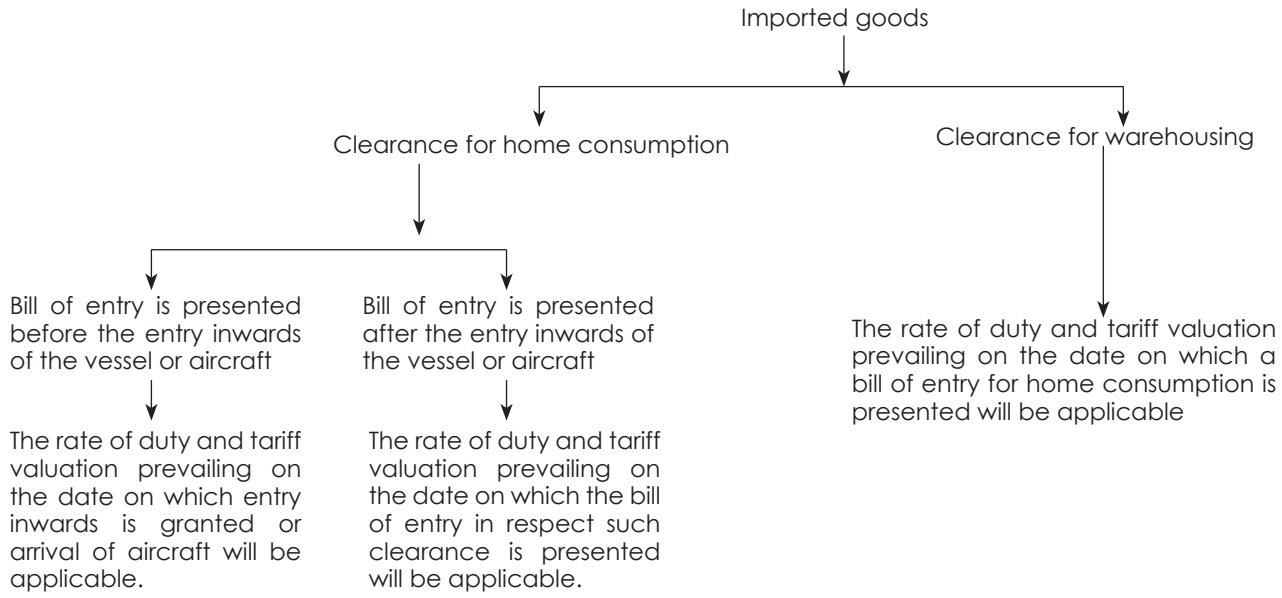
**Entry outwards to the vessel**

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

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

**Rate of duty and tariff valuation for imported goods**

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




**Note:** The applicable exchange rate is the rate declared by the CBIC on the date of submission of Bill of Entry. If more than one exchange of CBIC is available then consider the exchange rate which was prevailed as on the date of submission of Bill of Entry.

## 1.4 CIRCUMSTANCES UNDER WHICH NO DUTY WILL BE LEVIED

(1) No duty will be levied on pilfered goods under section 13 of the Customs Act. If any imported goods are pilfered after the unloading thereof and before the proper officer has made an order for clearance for home consumption or deposit in a ware house, then the importer shall not be liable to pay the duty leviable on such goods.

(2) No duty will be levied when the goods are damaged or deteriorated before or during the course of their unloading, where it is shown to the satisfaction of the Assistant or Deputy Commissioner of Customs (Section 22).

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

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

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

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

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

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

**Transit of Goods (Section 53 of the Customs Act, 1962)**

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

Conveyance, includes a vessel, an aircraft and a vehicle

These goods should be mentioned as Transit Goods in the Import General Manifest (IGM). They are allowed by customs to be transited through Indian port without payment of duty.

However, Section 53 is not applicable in case of prohibited goods. It means to say transit of goods does not cover prohibited goods, which will not be allowed to be transited.

**w.e.f. 14-5-2016:**

Subject to the provisions of section 11 (i.e. power to prohibit importation or exportation of goods), where any goods imported in a conveyance and mentioned in the import manifest or the import report, as the case may be, as for transit in the same conveyance to any place outside India or to any customs station, **the proper officer** may allow the goods and the conveyance to transit without payment of duty, subject to such conditions, as may be prescribed.

***Example 12:***

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

***Find the imported goods and transit goods?***

***Answer:***

***Imported Goods are A & B***

***Transit goods are C & D***

The same example has been explained with the help of a diagram.

**Ship at U.S.A. Port**

Goods
'A, B, C & D'

**calling to India**

**Ship arrived at Mumbai Port**
**Goods 'A & B' unloaded**

**Ship arrived at Australian Port**
**Goods 'C & D' unloaded**

**Transhipment of Goods (Section 54 of the Customs Act, 1962)**

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

If the imported goods are intended for transshipment, a ***'bill of transhipment'*** shall be presented to the proper officer by the person-in-charge of conveyance or the person authorized by the exporter to transship along with a fee of ₹ 20 and also a bond.

If the transhipped goods are covered by an international treaty or a bilateral agreement between India and another country then a **'Declaration of Transhipment'** will be presented in the place of Bill of Transhipment.

**Transhipment of goods without payment of duty under Section 54(3):**

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

- Transhipment of goods with foreign destination
- The goods find place as Transhipment Goods in the Import of General Manifest (IGM) or Import Report in case of goods imported in a vehicle
- Bill of Transhipment or Declaration of Transhipment filed.
- Goods must be transhipped to another vessel to place outside India.

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

Where any goods are allowed to be transited or transshipped, they shall, on their arrival at such station, be liable to duty and shall be entered in like manner as goods are entered on the first importation thereof and the provisions of this act and any rules and regulations shall, so far as may be, apply in relation to such goods.

If the goods arrive at such customs station in India as ultimate destination, then

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

***Example 13:***

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

***Find the imported goods, Transhipment goods and transit goods?***

***Answer:***

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

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

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

The same example has been explained with the help of a diagram.

**Ship at U.S.A. Port**

Goods
'A, B, C & D'

**Sailing to India**

**Ship arrived at Mumbai Port**
**Goods 'A & B' unloaded**

**Ship arrived at Australian Port**
**Goods 'C & D' unloaded**

Product 'B' transhipped
To Srilankan Port

Product 'A' transhipped
To Chennai Port

**Pilferage: Section 13 of the Customs Act, 1962**

- Pilferage means loss arising out of theft.
- No duty is payable under section 13, if the goods are pilfered
- Goods must have been pilfered after the unloading thereof and before the proper officer has made an order for clearance for home consumption or deposit in a warehouse
- If the duty is paid before finding the pilferage, refund can be claimed if goods are found to be pilfered during examination but before order for clearance is made.
- Section 13 does not apply for the warehoused goods.

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

**Important points:**

(a) If goods are pilfered after the order of clearance is made but before the goods are actually cleared, section 13 is not applicable and thus, duty would be leviable.

(b) Section 13 deals with only pilferage. It does not deal with loss/destruction of goods.

(c) Provisions of section 13 would not apply if it can be shown that pilferage took place prior to the unloading of goods.

(d) In case of pilferage, only section 13 applies and remission of duty under section 23(1) is not permissible.

***Example 14:***

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

***Answer:***

***Yes. Importer has to pay duty.***

***Note: refund can be claimed***

***Example 15:***

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

***Answer:***

***Section 13 would not apply in the given case.***

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

**Remission of Duty on Loss, Destroyed or Abandoned goods: Section 23 of the Customs Act, 1962**

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

**Importer may relinquish his title to the goods in the following cases [Section 23(2)]:**

(i) The goods may not be according to the specifications;

(ii) The goods may have been damaged or deteriorated during voyage and as such may not be useful to the importer;

(iii) There might have been breach of contract and, therefore, the importer may be unwilling to take delivery of the goods.

In all the above cases, the goods having been imported, the liability to customs duty is imposed and, therefore, the importer may relinquish his title to the goods unconditionally and abandon them. If the importer does so, he will not be required to pay the duty amount.

However, the owner of any such imported goods shall not be allowed to relinquish his title to such goods regarding which an offence appears to have been committed under this Act or any other law for the time being in force.

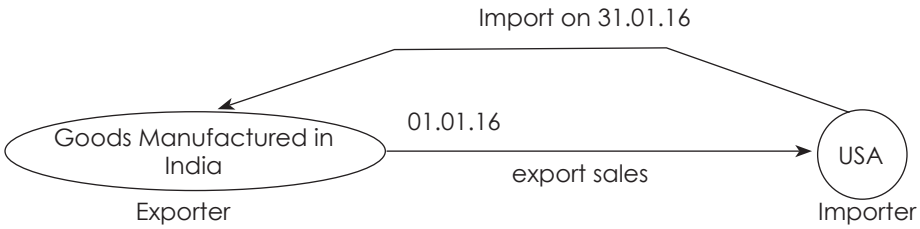
**Note:** It is open to the importer to exercise the option to relinquish the title on the imported goods at any time before the passing of order for clearance for home consumption or before order permitting the deposit of goods in a warehouse.

**Duty liability in certain special circumstances**

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

**(1) Goods are imported into India after exportation therefrom**

Good manufactured or produced in India, which are exported and thereafter re-imported are treated on par with other goods, which are imported.



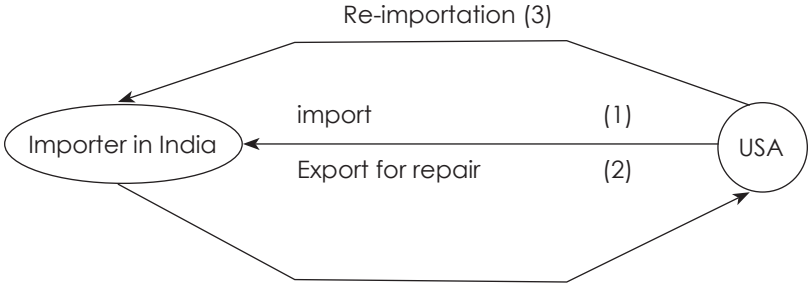

If the exporter has availed of export incentives in the nature of duty drawback, rebate under Central Excise Rules, etc., the import duty shall be restricted to the amount of incentive availed of at the time of export.

***Example 16:***

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

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

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




Conditions to avail the aforesaid benefit:

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

**Example 17:**

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

***Example 18:***

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

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

***Compute the amount of customs duty payable (if any) on re-import of the machine after repairs. The ownership of the machine has not been changed during the period.***

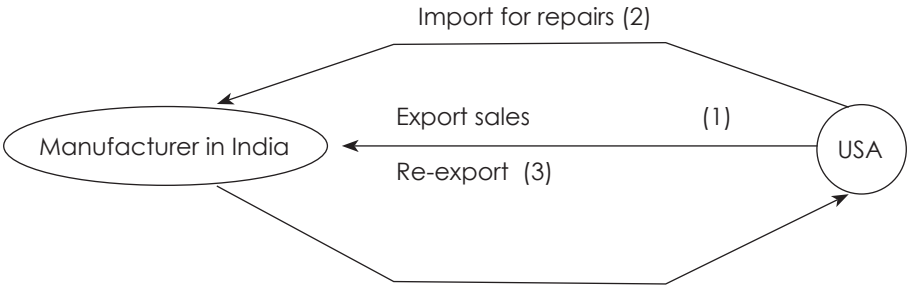
| ***Answer:*** | |
|---|---|
| ***Particulars*** | ₹ |
| ***Value of goods re-imported after exports*** | ***12,00,000*** |
| ***[₹ 9 lakh (including cost of materials) + ₹ 3 lakh]*** | |
| ***Basic customs duty @ 10%*** | ***1,20,000*** |
| ***SWS @ 10%*** | ***12,000*** |
| ***Balance (i.e. Transaction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

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

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

**Conditions:**

- The re-importation is for repairs or reconditioning only
- The time limit for re-import should be within 3 years from the date of export. In case of export to Nepal, such time limit is 10 years.
- The time limit for re-export is 6 months from the date of import (extended upto 12 months).
- The importer at the time of importation executes a Bond.
- The re-importation is for reprocessing, refining or re-making then the time limit for re-importation should be within 1 year from the date of exportation.




***Example 19:***

***Mr. B exported the Machinery to Mr. S of USA on 1st January, 2014 for ₹ 10,00,000. Due to technical problems Mr. S of USA returned the goods for want of repairs and the same was imported by Mr. B on 15th January, 2014. The same was repaired and brought into good condition and re-exported to Mr. S. Hence, Mr. B is not liable to pay any import duty.***

***Note: any loss notice during reprocessing, refining or re-making shall be exempt from the whole the customs duties subject to the satisfaction of the Assistant or Deputy Commissioner of Customs.***

**Goods Derelict, Wreck etc. [Section 21]**

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

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

**Goods Derelict**

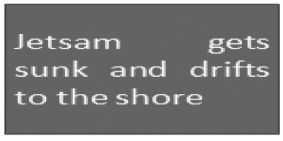
Derelict means vessel or cargo which is abandoned in sea without any hope of recovering it.

Jetsam means where goods are cast into sea to reduce weight of ship to prevent it from sinking and the thrown goods sink.

Flotsam means when goods continue to float after thrown in sea

Wreck means cargo or vessel or any property which are cast ashore by tides after ship-wreck

**Jetsam means where goods are cast into sea to reduce weight of shop to prevent it from sinking and the thrown goods sink.**





**Flotsam means when goods continue to float after thrown in sea**

**Distinguish between derelict, jetsam and flotsam**

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

**Wreck means cargo or vessel or any property which are cast ashore by tides after ship-wreck**

**Case law 4:**

***Mangalore Refinery & Petrochemicals Ltd* v *CCus*. 2015 (323) ELT 433 (SC):**

**Facts of the Case:** The assessee imported crude oil. On account of ocean loss, the quantity of crude oil shown in the bill of lading was higher than the actual quantity received into the shore tanks in India. The assessee paid the customs duty on the actual quantity received into the shore tanks.

The Department contended that the quantity of crude oil mentioned in the various bills of lading should be the basis for payment of duty, and not the quantity actually received into the shore tanks in India. This was stated on the basis that duty was levied on an ad valorem basis and not on a specific rate.

The assessee contended that it makes no difference as to whether the basis for customs duty is at a specific rate or is ad valorem, inasmuch as the quantity of goods at the time of import alone is to be looked at.

**Decision:** The Supreme Court held that the quantity of crude oil actually received into a shore tank in a port in India should be the basis for payment of customs duty.

## 1.5 TAX PLANNING vs TAX MANAGEMENT

It is essential to note differences between tax planning and tax management for effective learning of tax matters.

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

# Study Note - 2

## CLASSIFICATION UNDER CUSTOMS

**This Study Note includes**

**2.1 Customs Tariff Act, 1975**

**2.2 General Rules for the Interpretation of Import Tariff**

### 2.1 CUSTOMS TARIFF ACT, 1975

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

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

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

**NOTE :** Social Welfare Surcharge (SWS) ON Imports [w.e.f 02-02-2018]

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

***Classification of goods***

Under the Customs Tariff Act, 1975 goods are classified into FOUR digit system, these are called as HEADINGS. Further TWO digits are called as sub-classification, which are termed as SUB-HEADINGS. Further more TWO digits are added for sub-classification, which is known as TARIFF ITEM. Rate of duty is indicated against each tariff item and not against heading or sub-heading

Each section is divided into chapters and each chapter contains goods of one class. These chapters are divided into sub-chapters. Each chapter and sub-chapter further divided into various headings depending on different types of goods belonging to same class of products.

***Coding of dashes***

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

Single dash (i.e. -) = Primary classification of article covered by the heading

Double dash (i.e. - -) = sub-classification of primary classification

Triple dash (i.e. - - -) = sub-sub classification of primary classification or sub-classification of primary classification.

Quadruple dash (i.e. - - - -) = sub-sub classification of primary classification or sub-classification of primary classification.

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

***Schedules to the Customs Tariff Act, 1975***

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

| | |
|---|---|
| First Schedule | Deals with import tariff, showing import duties leviable. |
| Second schedule | Deals with export tariff, showing export duties leviable. |

***Specimen sheet of the Customs Tariff Act, 1975***

***Section-XVI*** ***Chapter-85***

| Tariff Item | Description of goods | Unit | Standard Rate of duty | Preferential Areas Rate of duty |
|---|---|---|---|---|
| 1 | 2 | 3 | 4 | 5 |
| 8512 | Electrical lighting or signalling Equipment (excluding articles of Heading 8539), windscreen wipers, Defrosters and demisters, of a kind Used for cycles or motor vehicles | | | |
| 8512 10 00 | Lighting or visual signalling equipment of a kind used on bicycles | U | 10% | — |
| 8512 20 | Other lighting or visual signalling equipment: | | | |
| 8512 20 10 | Head lamps, tail lamps, stop lamps, side lamps and blinkers | U | 10% | — |
| 8512 20 20 | Other automobile lighting equipment | U | 10% | — |
| 8512 20 90 | Other | U | 7.5% | — |
| 8512 30 | Sound signalling equipment: | | | |
| 8512 30 10 | Horns | U | 10% | — |
| 8512 30 90 | Other | U | 7.5% | — |
| 8512 40 00 | Windscreen wipers, defrosters and demisters | U | 10% | |
| 8512 90 00 | Parts | Kg. | 7.5% | |
| 8513 | Portable electric lamps designed to Function by their own source of energy (for Example, dry batteries, accumulators, Magnetos), other than lighting equipment of heading 8512 | | | |
| 8513 10 | Lamps : | | | |
| 8513 10 10 | Torch | U | 10% | — |
| 8513 10 20 | Other flash-lights excluding those for photographic purposes | U | 7.5% | — |
| 8513 10 30 | Miners' safety lamps | U | 7.5% | — |

| Tariff Item | Description of goods | Unit | Standard Rate of duty | Preferential Areas Rate of duty |
|---|---|---|---|---|
| 1 | 2 | 3 | 4 | 5 |
| 8513 10 40 | Magneto lamps | U | 7.5% | — |
| 8513 90 00 | Parts | Kg. | 7.5% | — |

## 2.2 GENERAL RULES FOR INTERPRETATION OF IMPORT TARIFF

Classification of goods as per the Customs Tariff Act, 1975 shall be governed by the following principles:

These rules come into play only if there is an ambiguity or confusion in classification.

**Rule 1: No ambiguity in classifications:**

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

**Rule 2(a): Incomplete or unfinished goods:**

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

***Example 1:***

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

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

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

***Example 2:***

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

**Rule 3(a): Specific Description:**

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

***Example 3:***

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

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

**Rule 3(b): Essential Character:**

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

***Example 4:***

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

***Example 5:***

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

***Example 6:***

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

**Rule 3(c): Latter the Better:**

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

***Example 7:***

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

**Rule 4: Most Akin Goods:**

Goods which cannot be classified in accordance with the above rules shall be classified under the heading appropriate to the goods to which they are **most akin**.

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

***Example 8:***

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

***(a) Window mirror of the car***

***(b) Front mirror of the car***

**Rule 5: Packing Materials:**

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

Rule 5(a): packing material used as cases for camera, musical instrument cases, gun cases, drawing instrument cases, necklace cases and similar containers special shaped or fitted to contain a specific article or set of articles, suitable for long term use, will be classified along with that article, if such articles are normally sold along with such cases.

Rule 5(b): subject to the provisions of Rule 5(a) above, packing materials and packing containers presented with the goods therein shall be classified with the goods if they are of a kind normally used for packing such goods. [Rule 5(a) or (b) does not apply in case the packing material is for repetitive use].

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

The classification of goods in the sub-headings of a heading shall be determined according to the terms of those sub-headings and any related sub-heading Notes and, *mutatis mutandis*, to the above rules, on the understanding that only sub-headings at the same level are comparable. For the purposes of this rule the relative Section and Chapter Notes also apply, unless the context otherwise requires.

This means to say that if one heading contains 4-5 sub-headings, these sub-headings can be compared with each other. However, sub-heading under one heading should not be compared with the sub-heading of another heading.

**Trade Parlance Theory:**

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

***Example 9:***

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

***Example 10:***

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

**Case law 5:**

**Where a classification (under a Customs Tariff head) is recognized by the**

**Government in a notification at any point of time, can the same be made applicable in a previous classification in the absence of any conscious modification in the Tariff?**

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

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

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

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

**Self-Examination Questions**

**1. Theoretical Questions with Answers**

**Q1.** Answer the following with reference to the provisions of section 14 of the Customs Act, 1962 and the rules made thereunder:

(i) What shall be the value, if there is a price rise between the date of contract and the date of actual importation?

(ii) Whether the payment for post-importation process is includible in the value if the same is related to imported goods and is a condition of sale of the imported goods?

(iii) Bill of entry was filed on 27.10.2017. Will you apply the exchange rate notified by the Central Board of Excise and Customs on 25.9.2017 or notified on 25.10.2017?

**Answer:**

(i) The valuation under section 14(1) of the Customs Act, 1962, namely transaction value is applicable.

(ii) The payment for post importation process is includible in the value of the imported goods if the same is related to such imported goods and is a condition of the sale thereof.

(iii) The relevant exchange rate for imported goods is the rate which is in force on the date of presentation of bill of entry. CBEC declares the exchange rate applicable for a month which is generally notified in the preceding month. Therefore, in the given case, the bill of entry was submitted by the importer on 27.10.2017. Hence, relevant exchange rate is the rate prevailing on 25.09.2017.

**Q2.** An importer filed a bill of entry after 60 days of filing Import General Manifest. The Deputy Commissioner of Customs imposed a penalty of ₹ 10,000 by endorsement on the bill of entry. Since, importer wants to clear the goods he paid the penalty. Can penalty be imposed for late filing of the bill of entry? Examine the issue in the light of relevant statutory provisions.

**Answer:**

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

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

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

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

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

**Q3.** What are the provisions relating to effective date of notifications issued under Section 25 of the Customs Act, 1962?

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

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

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

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

**Q4.** Explain the meaning of the term "Bill of export" and "Import report" under the provisions of the Customs Act. 1962.

**Answer:**

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

**Q5.** Distinguish between Tax planning and Tax Management.

**Answer:** Please refer point no. 1.5

**Case Studies**

**Classification**

**Q1.** M/s Hind IT Co. imported laptops with Hard Disc Drives (HDD) preloaded with operating software like Windows XP, XP home etc. The department has claimed that the said laptop along with the operating software was classifiable and assessable as a single unit. It is the claim of the assessee that the software loaded HDD should be classified and assessed separately as an exemption is available as per notification issued under section 25(1) of the Customs Act, 1962. Decide with a brief note whether the action proposed by the department is correct in law.

**Answer:**

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

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

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

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

**Q2.** ABC Ltd., imported artemia cyst (i.e. brine shrimp eggs). The same has been classified as 'prawn feed' under the heading 2309 (i.e. Heading 2309 of the Customs Act, 1975, includes products of a kind used in animal feeding, not elsewhere specified or included, obtained by processing vegetable or animal materials to such an extent that they have lost the essential characteristics of the original material, other than vegetable waste, vegetable residues and by-products of such processing.) which includes products used as animal feed. However, the Department contended that this product was classifiable under the heading 0511.99 (i.e. which refers to other products in the category of non edible animal products). The contention of importer was that these imported cysts contained little organisms/embryos which later became larva that prawns feed on. Therefore, according to them, the nature and character of the product was not changed by nurturing or incubation. You are required to examine whether the contention of the Department is justified in law.

**Answer:**

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

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

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

The contention of the Department is not justified in law.

**Q3.** X Ltd. is an Indian company manufacturing motor cars and had imported from A Ltd. of USA a shipment of 50 CKD packs (Completely Knocked down Condition) of motor car components. X Ltd. filed bill of entry for clearing the goods, by classifying these goods as components of motor cars. Thereby, X Ltd. also claimed benefit of a notification exempting components, including components of motor cars in semi-knocked down packs and completely knock down packs.

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

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

**Answer:**

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

Example:

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

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

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

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

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

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

**Q4.** Assessee imported Compact Disk Read Only Memory (CD ROMs) containing images of drawings and designs of engineering goods. The Appellant (i.e. assessee), filed a Bill of Entry for the clearance of the CD ROM containing drawings, designs of engineering goods. The assessee claimed classification under Custom Tariff heading 4906, or, heading 4911, or, as Information Technology Software, or as CD ROM, where exemption is given from duty.

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

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

**Answer:**

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

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

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

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

**Q5.** National Instruments Systems imported various products from its Holding Company and supplies the same to its customers in India. The imported products are PXI Controllers, Input/output Modules, Signal Converters, chassis and its parts. Assessee claims that these products were computer based instrumentation products. Accordingly N.I. Systems filed 64 bills of entries, under Customs Tariff Headings 8471, 8473 and other headings falling under Chapter 84.

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

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

**Answer:**

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

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

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

PXI Controller

I/O modem control

Signal Converters

Chassis

**Imported goods**

**Thermostat**

**Indian Customs Waters**

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

**Answer:**

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

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

**Continental Shelf/Exclusive Economic Zones of India**

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

**Answer:**

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

be a foreign going vessels, as the oil rigs proceed from the territory of India to an area which also deemed to be a part of the territory of India.

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

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

**Relevant Date for Customs Duty in case of Export**

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

You are required to examine whether the contention of the exporter is justifiable in the law.

**Answer:**

As per Section 16 of the Customs Act, 1962, ***'Relevant Date'*** for customs duty in connection with export of goods would be the rate which prevailed when ***"entry outwards"*** for the vessel which ultimately exported the goods was effected and subsequent change in the rate of duty would be irrelevant. In other words rate of duty as on the date of entry outwards was granted. The same view has been expressed by Hon'ble Supreme Court of India in case of ***Esajee Tayabally Kapasi* (*1995*)**.

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

**Rejection of Refund**

**Q9.** M/s. HIL imports copper concentrate from different suppliers. At the time of import, the seller issues a provisional invoice and the goods are provisionally assessed under section 18 of the Customs Act, 1962 based on the invoice. When the final invoice is raised, based on the price prevalent in the London Metal Exchange on a predetermined date based on the covenant in the contract between the buyer and seller, the assessments are finalized on such invoices. M/s HIL had filed two refund claims arising out of the finalization of the bills of entry by the authorities on 01.03.2014 and on 15.03.2014. With effect from 13.07.2014 (Presidential assent on 13.07.2014) section 18 of the Customs Act, 1962 was amended with the insertion of certain provisions in terms of which it became necessary for the assessee to prove that they had not passed on the amount to their customers. Based on this amendment, the department has rejected the refund claims. Discuss in the light of decided case law, if any, whether the action of the department is correct in law?

**Answer:**

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

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

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

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

**Goods Lost while in custody of the Port-Trust**

**Q10.** Rishi Alloys Ltd., imported during June, 2013, by sea, a consignment of metal scrap weighting 3,000 M.T. (metric tones) from U.K. They filed a bill of entry for home consumption and the Assistant Commissioner of Customs passed an order for clearance of goods, and applicable duty was also paid. The importer thereafter found on

taking delivery from the port trust authorities, that only 2,500 M.T. of scrap were available at the docks although they had paid duty for the entire 3,000 M.T., since there was no short-landing of cargo. The short-delivery of 500 M.T. was also substantiated by the Port-Trust Authorities, who gave a "weighment certificate" to the importer.

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

**Answer:**

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

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

**Doctrine of Unjust Enrichment**

**Q11.** Venus Udyog Ltd. imported copper scrap for using it as raw material in the manufacture of copper oxy-chloride. It cleared the imported goods by paying the applicable customs duties including additional customs duty. However, on coming to know that imported copper scrap was exempt from payment of additional customs duty under Notification No. 35/81 dated 1st March, 1981, it filed an application for refund of the same. The refund claim was rejected on the ground of unjust enrichment. The contention of the company is that the doctrine of 'unjust enrichment' is not applicable in case of captive consumption of imported material. Discuss the validity of the contention of the company in the light of the decided case law, if any.

**Answer:**

As per the Hon'ble Supreme Court of India in the case of ***Union of India (UOI)* v *Solar Pesticide Pvt. Ltd.* (2000) (SC),** the doctrine of unjust enrichment is attracted even if the incidence of duty is passed on to another person indirectly as in the case of captive consumption of imported materials. Refund of import duty is made to the importer provided he has not passed on the incidence of duty to any other directly or indirectly (Section 27(2) of the Customs Act, 1962).

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

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

**Rremission of Duty**

**Q12.** The assessee had imported resin and impregnated paper and had bonded the same in the warehouse. The assessee had also sought the extension of the said warehousing period by contending that the goods were in good condition but could not be used for manufacture due to recession in the market and the extension was granted. Thereafter another application was made at a later date by contending that the resin impregnated papers which were stored in the ware house had lost its shelf life and had become unfit for use on account of non-availability of orders for clearance and accordingly an application for remission of duty was made.

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

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

**Answer:**

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

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

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

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

**Refund of Duty**

**Q13.** B Ltd. filed a Bill of Entry and paid the higher duty is ignorance of notification which allowed him the payment of duty at a concessional rate. No assessment order was passed because the assessee simply filed Bill of Entry and paid the duty. B Ltd. filed a refund claim under section 27 of the Customs Act, 1962 of the excess duty paid by it. The Revenue contended that a refund in appeal could be asked for under section 27 of the Customs Act, 1962 only if the payment of duty had been made pursuant to an assessment order which was not so in the instant case.

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

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

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

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

**Q14**. Importer imported "Kari Mayer High Speed Draw Warping Machine" claimed exemption notification.

Department contended that exemption notification is for "High Speed Warping Machine" but not for Drawing Unit.

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

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

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

Decision is in favour of the importer and against the department

**Q15**. The importer entered into contract for supply of crude sunflower seed oil U.S. $ 435 C.I.F./Metric ton. Under the contract, the consignment was to be shipped in the month of July, 2013. The period was extended by mutual agreement and goods were shipped on 5th August, 2013 at old agreed prices.

In the meanwhile, the international prices had gone up due to volatibility in market, and other imports during August, 2013 were at higher prices.

Department sought to increase the assessable value on the basis of the higher prices as contemporaneous imports.

Decide whether the contention of the department is correct. You may refer to decided case law, if any, for your decision.

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

Decision: No. Department view is not correct.

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

Thus, the appeal was allowed in the favour of the respondent-assessee.

**Q16**. Case law:

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

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

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

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

# Study Note - 3

## TYPES OF DUTIES

**This Study Note includes**



### 3.1 INTRODUCTION

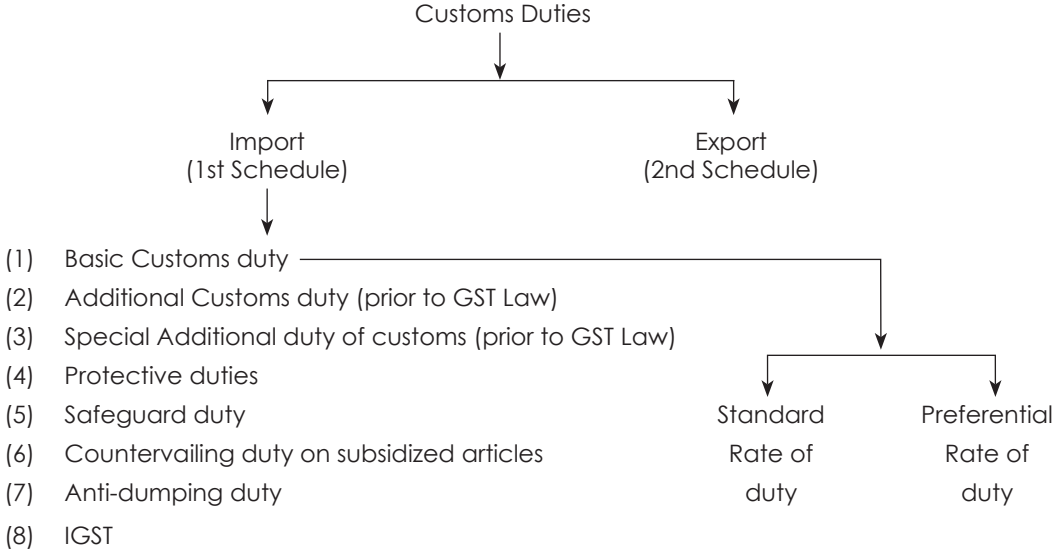
Under the Customs Act, 1962 import duty can be levied on almost all imports, whereas only few goods export duty levied. However, it is important to understand various types of duties under Customs Law, for the purpose of import and export of goods.

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

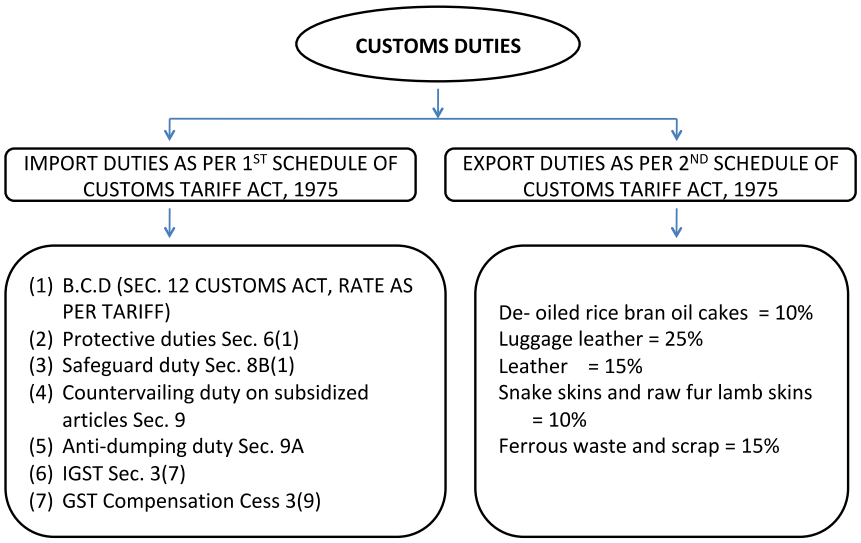
- First Schedule - Goods liable for import duty
- Second Schedule - Goods liable for export duty

### 3.2 TYPES OF DUTIES

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



***After GST Law:***




**NOTE :**

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

**(1) *Basic customs duty***

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

***Example 1:***

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

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

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

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

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

***Example 2:***

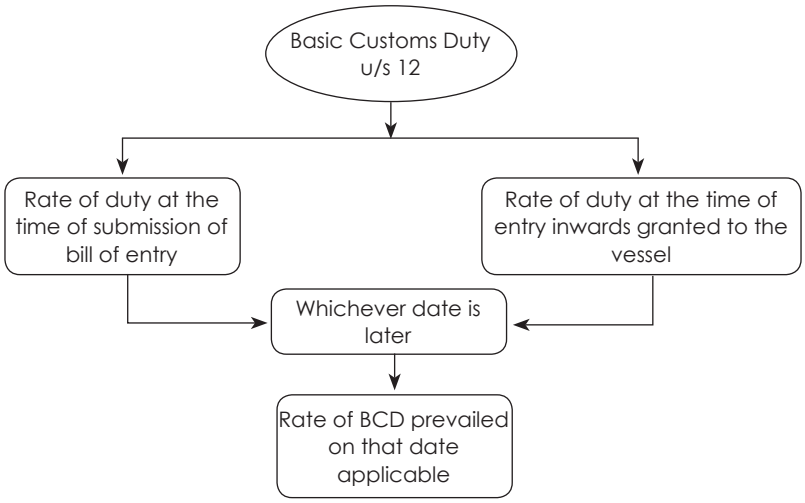
***Mr. X imported the goods from China worth USD 10,000. The Basic Customs Duty @10%, Social Welfare Surcharge @ 10%. The exchange rate was 1 US $ = ₹ 44 on date of presentation of Bill of Entry. Find the total Customs Duty.***

***Answer:***

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

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

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




**(2) Integrated Goods and Services Tax (IGST)**

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

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

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

***Example 3:***

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

***(1) BCD - 10%***

***(2) IGST - 12%***

***(3) SWS @ 10%***

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

***(a) BCD = ₹ 10 [10% of A.V.]***

***(b) SWS - ₹ 1 [10% of (a)]***

***(c) IGST - ₹ 13.32 [A.V. + (a) + (b)] ×12%***

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

**Case Law 1:**

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

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

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

***Example 4:***

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

***(i) Assessable value of the imported equipment US $10,100.***

***(ii) Date of Bill of Entry 25.4.2018 basic customs duty on this date 12% and exchange rate notified by the Central Board of Excise and Customs Us $ 1 = ₹ 65.***

***(iii) Date of Entry inwards 21.4.2018 Basic customs duty on this date 16% and exchange rate notified by the Central Board of Excise and Customs US $ 1 = ₹ 60.***

***(iv) IGST u/s 3(7) of the Customs Tariff Act, 1975: 12%.***

***Social Welfare Surcharge = 10%***

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

***Answer:***

| | ₹ | |
|---|---|---|
| ***A.V*** | ***6,56,500.00*** | ***(10,100 × 65)*** |
| ***Add: BCD 12% on 6,56,500*** | ***78,780.00*** | |
| ***Add: SWS @10%*** | ***7,878.00*** | |
| ***Balance*** | ***7,43,158.00*** | |
| ***Add: IGST 12% on 7,43,158.00*** | ***89,178.96*** | |
| ***Value of Imported goods*** | ***8,32,336.96*** | |
| ***Customs Duty*** | ***1,75,836.96*** | |

***Example 5:***

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

| | | |
|---|---|---|
| ***(i)*** | ***F.O.B value of machine*** | ***8,000 UK Pounds*** |
| ***(ii)*** | ***Freight paid (air)*** | ***2,500 UK Pounds*** |
| ***(iii)*** | ***Design and development charges paid in UK*** | ***500 UK Pounds*** |
| ***(iv)*** | ***Commission payable to local agents @ 2% of F.O.B in Indian Rupees*** | |
| ***(v)*** | ***Date of bill of entry*** | ***24.10.2017*** |
| | ***(Rate BCD 12%; Exchange rate as notified by CBIC ₹ 68 per UK Pound)*** | |
| ***(vi)*** | ***Date of entry inward*** | ***20.10.2017*** |
| | ***(Rate of BCD 18%; Exchange rate as notified by CBIC ₹ 70 per UK Pound).*** | |
| ***(vii)*** | ***IGST payable 18%.*** | |
| ***(ix)*** | ***Insurance charges actually paid but details not available.*** | |

**Answer:**

| | | ***UK Pounds*** |
|---|---|---|
| ***FOB value*** | = | ***8,000*** |
| ***Add: Design and Development (paid in UK)*** | = | ***500*** |
| ***Add: Commission to local agent (2%on8,000UKP)*** | = | ***160*** |
| ***FOB value as per customs*** | = | ***8,660*** |
| ***Add: Air freight (8,660 x 20%)*** | = | ***1,732*** |
| ***Add: Insurance (8,660 x 1.125%)*** | | ***97.425*** |
| ***CIF value/Assessable value*** | = | ***10,489.425*** |
| ***Assessable value (10,489.425 x 68)*** | = | ***7,13,281*** |

***Statement showing customs duties***

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

***Example 6:***

***Liberty International Group has imported a machine by air from United States. Bill of entry is presented on 18.07.2017. However, entry inwards is granted on 7.08.2017.***

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

| | | |
|---|---|---|
| ***CIF value of the machine imported*** | ***$ 13,000*** | |
| ***Airfreight paid*** | ***$ 2,800*** | |
| ***Insurance charges paid*** | ***$200*** | |
| ***Rate of exchange as*** | | |
| ***Announced by*** | ***As on 18.07.2017*** | ***As on 7.08.2017*** |
| ***CBIC*** | ***1 US $ = ₹ 66*** | ***1US $ = ₹ 65.80*** |
| ***RBI*** | ***1 US $ = ₹ 66.10*** | ***1 US $ = ₹ 66.10*** |

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

***BCD = Nil***

***IGST = 18%***

***Make suitable assumptions wherever necessary.***

***Answer:***

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

***Example 7:***

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

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

| | |
|---|---|
| *Date of bill of entry* | *20.02.2018 (Rate BCD 20%; Exchange rate as notified by CBIC ₹ 60 per US $)* |
| *Date of entry inward* | *25.01.2018 (Rate of BCD 12%; Exchange rate as notified by CBIC ₹ 65 per US $)* |
| *IGST payable under section 3(7) of the Customs Tariff Act, 1975* | *12%* |

*Also find the eligible input tax credit to the importer.*

**Answer:**

**Statement showing Assessable and customs duty:**

| *Particulars* | *US $* | *Remarks* |
|---|---|---|
| *Cost of the machine* | *20,000* | |
| *Add: transport charges from factory of exporter to the port for shipment* | *800* | |
| *Add: handling charges* | *50* | |
| *FOB* | *20,850* | |
| *Add: buying commission* | *Nil* | *Not addable* |
| *FOB of the Customs* | *20,850* | |
| *Add: Insurance* | *234.5625* | *20,850 x 1.125%* |
| *Add: Freight* | *5,000* | |
| *Add: Lighterage charges* | *200* | |
| *Add: Ship demurrage* | *400* | |
| *CIF Value/Assessable Value* | *26,684.5625* | |

| | ₹ | |
|---|---|---|
| ***Assessable Value*** | ***16,01,074*** | ***26,684.5625 USD x ₹ 60*** |
| ***Add: BCD 20%*** | ***3,20,215*** | ***₹ 16,01,074 x 20%*** |
| ***Add: SWS @ 10%*** | ***32,021.5*** | |
| ***Balance*** | ***19,53,310.5*** | |
| ***Add: IGST*** | ***2,34,397.26*** | |
| ***Landed value of imported goods*** | ***21,87,707.76*** | |
| ***Total customs duty*** | ***5,86,633.76*** | |

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

**(3) GST Compensation cess:**

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

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

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

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

**GST Compensation Cess applicable goods:**

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

Sample of items on which GST Cess will be applicable are as follows:

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

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

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

**Example 8:**

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

***(1) BCD - 10%***

***(2) IGST - 12%***

***(3) SWS @ 10%***

***(4) Compensation cess - 10%***

***In view of the above parameters, the calculati on of duty would be as below:***

***(a) BCD = ₹ 10 [10% of A.V.]***

***(b) SWS - ₹ 1 [10% of (a)]***

***(c) IGST - ₹ 13.32 [A.V. + (a)+(b)] x 12%***

***(d) Compensation cess - ₹ 11.01 [A.V. + (a)+(b)] x 10%***

**Where product attract CVD, IGST & Compensation cess:**

***Example 9:***

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

***(1) BCD - 10%***

***(2) CVD - 12%***

***(3) IGST - 28%***

***(4) SWS @ 10%***

***(5) Compensation cess - 10%***

***(a) BCD = ₹ 10 [10% of A.V.]***

***(b) CVD = ₹ 13.2 [12% of (A.V.+ BCD)***

***(c) SWS - ₹ 2.32 (10% of BCD+CVD)***

***(d) IGST - ₹ 35.1456 [A.V. + (a) + (b)+ (c)] x 28%***

***(e) Compensation cess – ₹ 12.552 [A.V. + (a) + (b)+ (c)] x 10%***

**Note:**

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

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

***Example 10:***

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

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

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

***Answer:***

| *Particuars* | *Calculation* | *Amount (INR)* |
|---|---|---|
| *Cost of Vehicle-(A)* | | *300,00,000* |
| *Custom duty-(B)* | *10%* | *30,00,000* |
| *SWS-(C)* | *10% on (B)* | *300,000* |
| *Total custom duty payable- (D)* | *(B+C)* | *33,00,000* |
| *Total Cost after Custom duty-(E)* | *(A+D)* | *3,33,00,0000* |
| *IGST-(F)* | *28% on (E)* | *93,24,000* |
| *Compensation cess-(G)* | *20% on (E)* | *66,60,000* |
| *Total cost-(H)* | *(E+F+G)* | *4,92,84,000* |

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

**Prior to GST Law**

***Additional Duty of Customs or Countervailing Duty (CVD)***

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

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

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

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

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

**w.e.f. 17-3-2012, cvd is equal to basic excise duty (excluding cess).**

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

**The following points are important to note:**

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

| | | ₹ |
|---|---|---|
| Value of goods Imported (Assessable Value) | = | xxxx |
| Add: Basic Customs Duty | = | xxxx |
| Add: National Calamity Contingent Duty [NCCD] | = | xxxx |
| Balance | = | xxxx |
| Add: Additional Customs Duty (CVD) On the above Balance | = | xxxx |
| Balance | = | xxxx |
| Add: SWS @ 10% on BCD + NCCD + CVD | = | xxxx |
| Value of Imported Goods | = | xxxx |

**Note:**

NCCD of Customs is levied on imports of Pan Masala, chewing tobacco and cigarettes.

(i) The payment for post importation process is includible in the value of the imported goods if the same is related to such imported goods and is a condition of the sale thereof.

(ii) The excise exemption notification provided that exemption will be available if the goods are used in 'same factory'. Hence, the imported goods are used by the importer in the same factory or factory belonging to the importer, then no CVD attracted on such imported goods**. CC v *Malwa Industries* (2009) 235 ELT 214 (SC).**

**Case Law 2:**

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

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

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

Note: Set top boxes abatement 22%.

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

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

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

**Prior to GST Law:**

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

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

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

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

(i) Goods packed for retail sales covered under Standards of Weights and Measurement Act.

(ii) Wrist watches and pocket watches

(iii) Telephones for cellular networks

(iv) Articles of apparel excluding parts of made-up clothing accessories.

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

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

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

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

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

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

**Provisional Safeguard Duty:**

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

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

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

***Example 11:***

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

***Answer:***

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

***(i) Articles originating from a developing country, so long as the share of imports of that article from that country does not exceed 3% of the total imports of that article into India;***

***(ii) Articles originating from more than one developing country, so long as the aggregate of imports from developing countries each with less than 3% import share taken together does not exceed 9% of the total imports of that article into India;***

***(iii) Articles imported by a 100% EOU or units in a Free Trade Zone or Special Economic Zone unless the duty is specifically made applicable on them.***

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

***Example 12:***

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

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

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

***Note: Safeguard duty is @ 30%.***

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

***Answer:***

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

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

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

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

***Example 13:***

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

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

| *Importers* | *Country of Import* | *₹ Scrores* |
|---|---|---|
| *X Ltd.* | *Developing country* | *70* |
| *Y Ltd.* | *Developing country* | *72* |
| *Z Ltd.* | *Developing country* | *52* |
| *A Ltd.* | *Developing country* | *50* |
| *Others* | *Developed country* | *2,256* |
| | *Total* | *2,500* |

***Note: Safeguard duty 30%***

***Answer:***

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

| | | | |
|---|---|---|---|
| ***Safeguard duty is as follows:*** | | | |
| ***XLtd*** | | ***21*** | ***70 x 30%*** |
| ***YLtd*** | | ***21.60*** | ***72 x 30%*** |
| ***ZLtd*** | | ***15.60*** | ***52 x 30%*** |
| ***A Ltd*** | | ***15*** | ***50 x 30%*** |
| ***Articles originating from more than one developing countries and imports from each developing country is less than 3%, safeguard duty can be imposed if imports from all all such developing countries taken together exceeds 9% of total imports of that article in India.*** | | | |

***Example 14:***

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

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

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

***Note: Safeguard duty 30%.***

***Answer:***

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

**Circular No. 23/2015-Cus, dated 29.09.2015]**

**Safeguard duties are rebatable as duty drawback (section 75 of the Customs Act).**

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

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

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

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

Duty levied if the articles are imported into India by getting the subsidies from other country. While calculating *Countervailing Duty on Subsidized articles* we should not calculate the education cess and secondary and higher education cess.

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

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

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

***Example 15:***

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

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

***Quantity imported: 500 kgs.***

***Exchange rate applicable: ₹ 60 = US$1***

***Basic customs duty: 12%***

***Social Welfare Surcharge @ 10%***

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

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

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

***Answer:***

***Statement showing landed value of imported goods and customs duties:***

| *Particulars* | *US $* |
|---|---|
| *CIF value* | *25,000* |

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

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

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

## 3.3 WHEN CAN PROVISIONAL MEASURES IMPOSED

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

The Central Government has power to levy anti-dumping duty on dumped articles in accordance with the provisions of section 9A of the Customs Tariff Act, 1975 and the rules framed thereunder. In a case where provisional duty is imposed under section 9A(2), the date of commencement of anti-dumping duty will be the date of publication of notification, imposing provisional duty under section 9A(2), in the Official Gazette. In a case where no provisional duty is imposed, the date of commencement of antidumping duty will be the date of publication of notification, imposing anti-dumping duty under section 9A(1), in the Official Gazette.

Where anti-dumping duty is imposed retrospectively under section 9A(3) from a date prior to the date of imposition of provisional duty, the date of commencement of anti-dumping duty will be such prior date as may be notified in the notification imposing anti-dumping duty retrospectively, but not beyond 90 days from the date of such notification of provisional duty.

## 3.4 REFUND OF ANTI-DUMPING DUTY

According to the provisions of section 9AA of the Customs Tariff Act, 1975, where an importer proves to the satisfaction of the Central Government that he has paid any antidumping duty imposed on any article, in excess of the actual margin of dumping in relation to such article, he shall be entitled to refund of such excess duty.

However, the importer will not be entitled for refund of provisional anti-dumping duty under section 9AA as it is refundable under section 9A(2) of the said Act.

***Example 16:***

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

***Answer***

| | | |
|---|---|---|
| ***Part I*** | | ₹ |
| ***Total CIF Price/Assessable Value US $ 20,000 x ₹ 50*** | = | ***10, 00,000*** |
| ***Basic duty @ 12%*** | = | ***1,20,000*** |
| ***Sub total*** | = | ***12,000*** |
| ***Add: SWS 10% on 1,20,000*** | = | ***2,400*** |
| ***Value of imported goods*** | = | ***11,32,000*** |

***Total Customs Duty payable is ₹ 1,32,000.***

***Part II***

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

***Part III***

***Computation of anti-dumping duty***

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

## 3.5 DEFERRED PAYMENT OF IMPORT DUTY RULES, 2016

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

**Notification No. 134/2016 Customs (NT) dt. 02.11.2016**

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

**Eligible importers:**

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

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

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

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

**Intimation about intent to avail benefit of notification:**

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

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

**Registration to pay duty under deferred payment scheme:**

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

**Electronic payment of duty:**

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

**Deferred payment not to apply in certain cases:**

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

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

**Due dates for payment of duty:**

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

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

## 3.6 IMPORTS AND INPUT TAX CREDIT (ITC)

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

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

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

## 3.7 PROJECT IMPORTS

This concept has been introduced by the Government under the heading 9801 of the Customs Tariff to cover all machinery, instruments apparatus and appliances, components or raw materials for initial setting up or expansion of existing units for the purpose of following eligible projects:

(i) Industrial plant,

(ii) Irrigation project,

(iii) Power project,

(iv) Mining project,

(v) Oil & other mineral exploration project

(vi) Other projects as notified by the Central Government. The spare parts of machinery and raw material etc can be imported upto 10% of value of good can be imported.

The duties on project imports are as follows:

Basic Customs Duty (BCD) 5% (whereas normal rate of BCD @10%)

IGST as applicable has to pay.

BCD is 'NIL' for mega power projects, nuclear power projects and water supply projects for agricultural and industrial use.

There is no minimum investment requirement for project Imports with effect from 2.01.2007.

In case of project imports requirement of security deposit has been replaced by a bank guarantee of maximum One crore w.e.f. 8-4-2011.

Currently for items imported under project import scheme (i.e. CTH 9801), unique heading under the Central Excise Tariff, for the purposes of levy of CVD does not exist. Therefore, under the Central Excise Tariff, each item is getting classified in a heading as per its description and duty is paid on merit.

In the GST regime, for the purpose of levying IGST all the imports under the project import scheme will be classified under heading 9801 and duty shall be levied @ 18%.

# Study Note - 4

## VALUATION UNDER CUSTOMS

**This Study Note includes**



### 4.1 INTRODUCTION

Once the duty liability arises, such duty can be calculated only on the assessable value. As per section 2(41) of the Customs Act, 1962 the term value means in relation to any goods as the value thereof determined in accordance with the provisions of sections 14(1) and sections 14(2) of the Customs Act, 1962. There are basically specific duties based on the quantity of the goods like ₹ 5,000 per Kg of Steel or Ad valorem rate of duty expressed as percentage of the value of the goods say 20% *ad valorem*. However, Government of India will lose its revenue if it follows specific rate of duty due to continuous upward trend in the price of goods.

As per the World Trade Organization (WTO), Transaction Value (i.e. ad valorem) is the base and our Customs Valuation Rules were prepared based on these lines. The Central Board of Indirect Taxes and Customs (CBIC) empowers to fix tariff values of imported goods or export goods by issuing notifications under section 14(2).

### 4.2 TRANSACTION VALUE

As per section 14(1) of the Customs Act, 1962 valuation based on transaction value is applicable for export as well as imported goods

Transaction Value means:

- Price at which such or like goods are ordinarily sold or offered for sale
- for delivery at the time and place of importation
- in the course of international Trade
- When Seller and buyer have no interest in the business of each other and
- Price is the sole consideration for sale
- At rate of exchange as on the date of presentation of Bill of Entry as fixed by the CBIC.

The conditions laid down above are common to imports as well as exports. Export goods are to be valued as per section 14(1) of the Customs Act, 1962. If any one of the above conditions are not satisfied valuation for export goods should be done based on the Customs Valuation (Determination of Value of Export Goods) Rules, 2007.

However, in case of imported goods, assessable value is to be determined in accordance with the Customs (Determination of Price of Imported Goods) Rules, 2007. Basically there is no conflict between section and rules because main focus is on transaction value which is arrived at based on the valuation rules either in case of export or import.

## 4.3 VALUATION OF EXPORT GOODS

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

Importance of valuation of export goods:

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

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

**Rule 1:** (i) These rules may be called the Customs Valuation (Determination of Value of Export Goods) Rules, 2007.

(ii) They shall come into force on the 10th day of October, 2007.

(iii) They shall apply to export goods.

**Rule 2:** Definitions

Some important definitions are:

(a) **"goods of like kind and quality"** means export goods which are identical or similar in physical characteristics, quality and reputation as the goods being valued, and perform the same functions or are commercially interchangeable with the goods being valued, produced by the same person or a different person; and

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

**Rule 3:** Determination of the method of valuation

1. Subject to rule 8, the value of export goods shall be the transaction value.
2. The transaction value shall be accepted even where the buyer and seller are related, provided that the relationship has not influenced the price.
3. If the value cannot be determined under the provisions of sub-rule (1) and sub-rule (2), the value shall be determined by proceeding sequentially through rules 4 to 6.

**Rule 4:** Determination of export value by comparison

(1) The value of the export goods shall be based on the transaction value of goods of like kind and quality exported at or about the same time to other buyers in the same destination country of importation or in its absence another destination country of importation adjusted in accordance with the provisions of sub-rule (2).

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

- difference in the dates of exportation,
- difference in commercial levels and quantity levels,
- difference in composition, quality and design between the goods to be assessed and the goods with which they are being compared,

- difference in domestic freight and insurance charges depending on the place of exportation

**Rule 5:** Computed value method

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

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

**Rule 6:** Residual method

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

**Rule 7:** Declaration by the exporter

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

**Rule 8:** Rejection of declared value

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

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

**Presently the following goods are subject to export duty:**

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

**Refund of Export duty:**

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

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

## 4.4 VALUATION OF IMPORTED GOODS

**Rule 1:** Customs Valuation (Determination of Value of Imported Goods) Rules, 2007

**Rule 2**: Various terms defined like Relative, Transaction Value, Computed Value, Deductive Value, Similar Goods, and Identical Goods etc., Some important definitions are ,

(1) In these rules, unless the context otherwise requires, -

(c) "goods of the same class or kind", means imported goods that are within a group or range of imported goods produced by a particular industry or industrial sector and includes identical goods or similar goods;

(d) "identical goods" means imported goods -

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

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

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

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

(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;

(2) For the purpose of these rules, persons shall be deemed to be "related" only if -

(i) they are officers or directors of one another"s businesses;

(ii) they are legally recognised partners in business;

(iii) they are employer and employee;

(iv) any person directly or indirectly owns, controls or holds five per cent or more of the outstanding voting stock or shares of both of them;

(v) one of them directly or indirectly controls the other;

(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.

***Example 1:***

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

***Answer:***

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

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

**Rule 3:** Subject to rule 12, the value of imported goods shall be the transaction value adjusted in accordance with provisions of rule 10.

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

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

- There are no restrictions as to the disposition or use of the goods by the buyer,
- The sale or price is not subject to some conditions or considerations for which a value cannot be determined in respect of the goods being valued,
- No part of the proceeds of any subsequent resale, disposal or use of the goods by the buyer will accrue directly or indirectly to the seller, unless an appropriate adjustment can be made in accordance with the provisions of ***rule 10*** of these rules, and
- The buyer and seller are not related, or where the buyer and seller are related, that transaction value is acceptable for customs purposes under the provisions of rule 3(3).

**Case Law 1:**

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

**Statement of Facts:** The importer entered into contract for supply of crude sunflower seed oil U.S. $ 435 C.I.F./Metric ton. Under the contract, the consignment was to be shipped in the month of July, 2011. The period was extended by mutual agreement and goods were shipped on 5th August, 2011 at old agreed prices.

In the meanwhile, the international prices had gone up due to volatibility in market, and other imports during August, 2011 were at higher prices.

Department sought to increase the assessable value on the basis of the higher prices as contemporaneous imports.

Decide whether the contention of the department is correct. You may refer to decided case law, if any, for your decision. (CA FINAL MAY 2013)

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

Thus, the appeal was allowed in the favour of the respondent- assessee.

**Statement Showing Computation of Assessable value for Imported Goods**

| | | ₹ |
|---|---|---|
| | Value of Material (at ex-factory price) | = xxxx |
| | Carriage/freight/insurance upto the port (sea/air) of shipment in the exporter's country | = xxxx |
| | Charges for loading on to the ship at the shipping port in the exporter's country | = xxxx |
| | Free on Board (FOB) | = xxxx |
| FOB | | = xxxx |
| Add: | If not included in the above [Rule 10(1)] | |
| | Commission and brokerage (except buying commissions) | = xxxx |
| | Packing cost (except cost of durable and returnable packing) | = xxxx |
| | Cost of engineering, development and plan or sketches (Undertaken outside India) | = xxxx |
| | Royalties and license fee | = xxxx |
| | Value of subsequent re-sale if payable to foreign supplier | = xxxx |
| | Value of material supplied by the buyer free of cost | = xxxx |
| | **FOB value as per the Customs** | = xxxx |
| | Cost of freight if not specified @ 20% of FOB value as per Customs [Rule 10(2)] | = xxxx |
| | Ship demurrage charges on chartered vessels, lighterage or barge charges [Rule 10(2)] | = xxxx |
| | Insurance if not specified @1.125% of FOB value as per Customs [Rule 10(2)] | = xxxx |
| | Cost, Insurance and Freight (CIF)/Assessable Value | = xxxx |

**Note:** (1) The term "buying commissions" means fees paid by an importer to his agent for the service of representing him abroad in the purchase of the goods being valued.

(2) Any expenditure like right to reproduce the imported goods in India shall not be added. However, if importer imports software and pays license fee with permission to use its copies at various branches, making additional copies for its own use at various branches does not amount to reproduction. Right to use countrywide is not right to reproduce. Therefore, the whole license fee is includible in assessable value [*State Bank of India* v *Commissioner of Customs* (2000) (SC)].

(3) Cost of actual air freight exceeds @ 20% of FOB, only @ 20% of FOB price will be added for Customs Valuation. However, cost of transport within India is not to be included in the Assessable Value of imported goods.

(4) Apportioning cost of tools are not consumed immediately by the importer, in such a case he may request Customs Officer to apportion full cost of tooling on first consignment itself.

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

(5) The cost of transport of the imported goods includes the ship demurrage charges on chartered vessels,

lighterage or barge charges. Some times the ship is not brought upto jetty because deep draught at port or ports are very busy or Odd dimensional or heavy lifts or hazardous cargo discharged at anchorage. Hence, charges for bringing goods from outer anchorage to the jetty are called as barging/lighterage charges.

(6) However, demurrage charges payable to port trust authorities for delay in clearing goods are not to be added in the transaction value.

(7) Free on Board (FOB): FOB means 'Term of sale' under which the price invoiced or quoted by a seller includes all charges up to placing the goods on board a ship at the port of departure specified by the buyer.

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

**Amendment in Customs Valuation**

As per Notification No. 91/2017-CUSTOMS (N.T.), dt. 26.09.2017, the following changes are made to the Customs Valuation (Determination of Value of Imported Goods) Rules 2007 (or CVR, 2007), namely:-

(1) "place of importation" means the customs station, where the goods are brought for being cleared for home consumption or for being removed for deposit in a warehouse;"

(2) the value of the imported goods shall include –

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

(b) the cost of insurance to the place of importation

Provided that where the cost referred to in (a) is not ascertainable, such cost shall be twenty per cent of the free on board value of the goods:

Provided further that where the free on board value of the goods is not ascertainable but the sum of free on board value of the goods and the cost referred to in (b) is ascertainable, the cost referred to in (a) shall be twenty per cent of such sum:

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

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

Provided also that in the case of goods imported by air, where the cost referred to in (a) is ascertainable, such cost shall not exceed twenty per cent of free on board value of the goods:

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

**Explanation:**

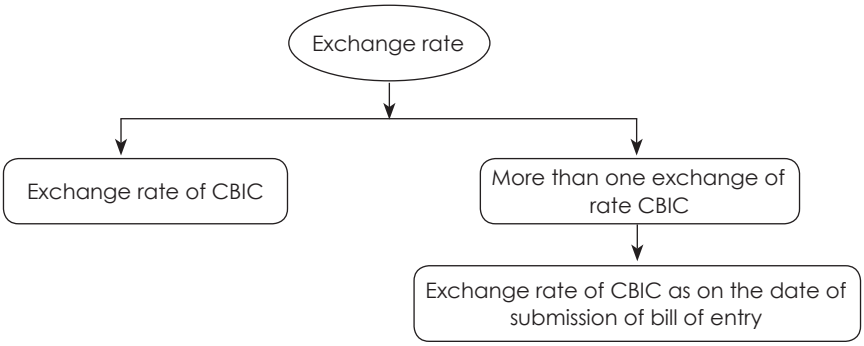
The cost of transport of the imported goods referred to in (a) includes the ship demurrage charges on charted vessels, lighterage or barge charges."

As per Circular No. 39 / 2017-Customs, dt. 26.09.2017, the treatment of the loading, unloading and handling charges will be:

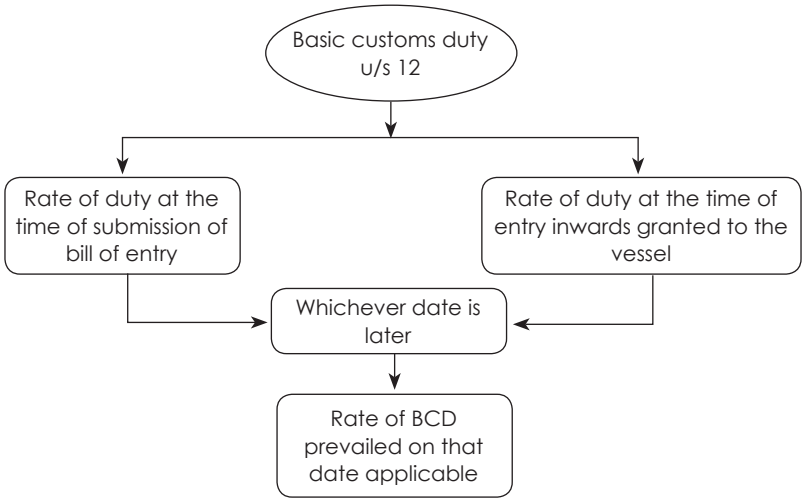
(1) The Hon'ble Supreme Court had ruled in the case of M/s Wipro Ltd. Vs Assistant Collector of Customs-2015 (319) ELT 177 (S.C.) dated 16/04/2015 that the landing charges to be added to the value of goods, should be based on actual charges incurred, and not a notional charge of 1% as has been provided in the Rules.

(2) By virtue of the amendment now carried out to the CVR, 2007, the loading, unloading and handling charges associated with the delivery of the imported goods at the place of importation, shall no longer be added to the CIF value of the goods.

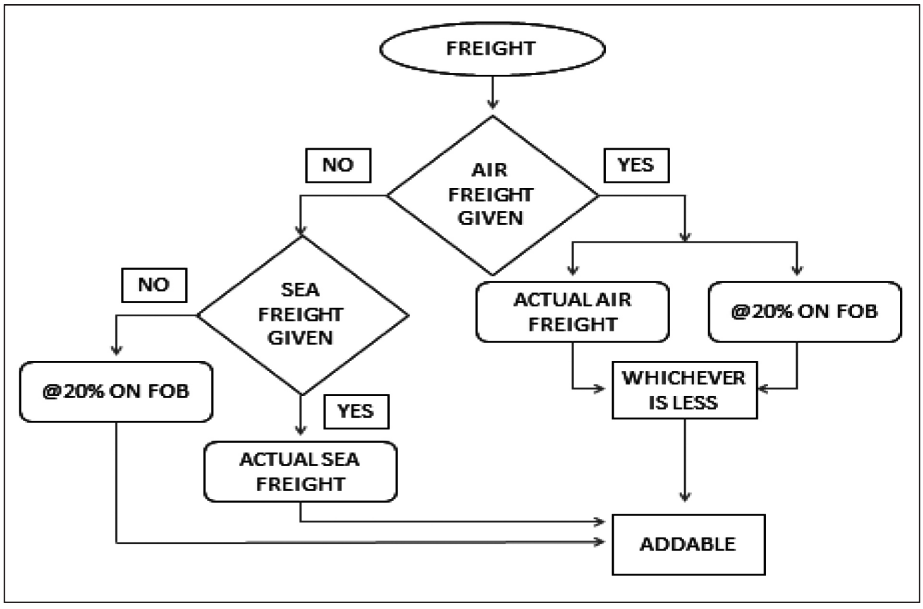
(3) The phrase "loading, unloading and handling charges" is to be understood as "the cost of transport of the imported goods to the port or place of importation". Thus, only charges incurred for delivery of goods "to" the place of importation (such as the loading and handling charges incurred at the load port) shall now be includible in the transaction value.




(9) Rate of determination of Basic Customs Duty:




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

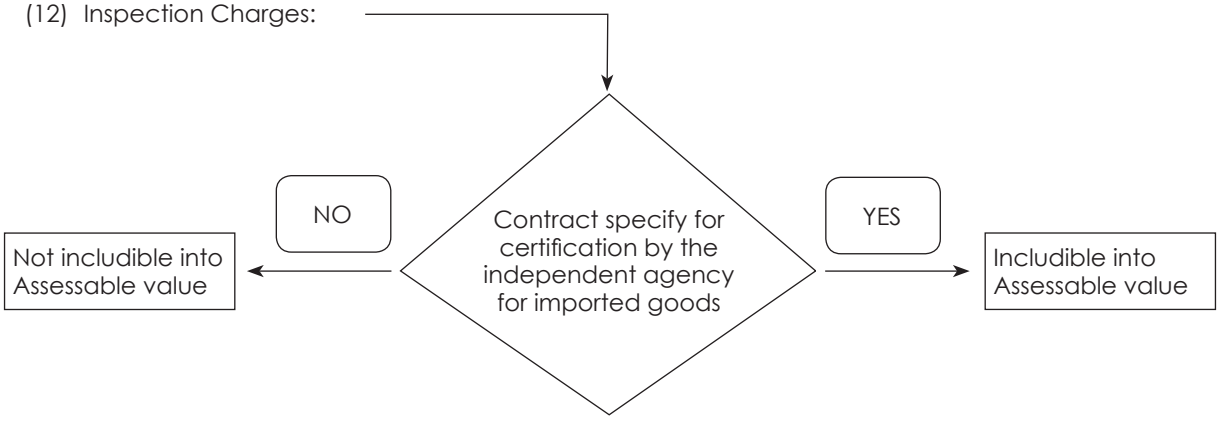


(11) Service charges paid to canalyzing agent: It is includible in the assessable value of imported goods.

Canalyzing agent: Since the canalizing agent is not the agent of the importer nor does he represent the importer abroad, purchases by canalizing agency from foreign seller and subsequent sale by it to Indian importer are independent of each other.

The importer may either place the order directly or through the agent. In case of canalized items, he obtains the imports through the canalizing agency. Canlisation means channelization of goods through a government agency like Metals and Minerals Trading Corporation of India (MMTC). The importer cannot directly import such canalized items. They have to place an order with the canalizing agency who shall import and supply the same.

(12) Inspection Charges:



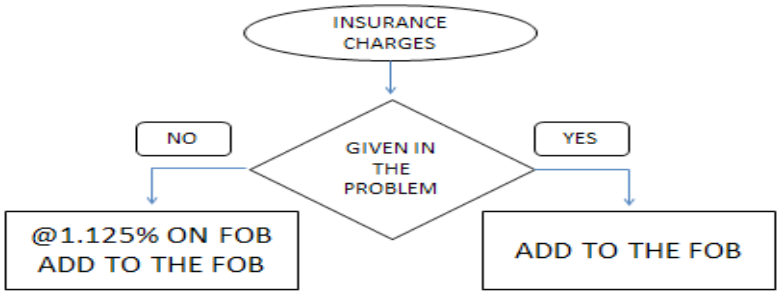

**Case Law 2:**

***Commissioner of Central Excise, Mangalore* v *Mangalore Refinery & Petrochemicals Ltd.* {(2016) 66 taxmann. com 108 (SC)**

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

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

(13) Insurance charges:




Demurrage charges:

**Case Law 3:**

***Commissioner of Central Excise, Mangalore* v *Mangalore Refinery & Petrochemicals Ltd.* {(2016) 66 taxmann. com 108 (SC)**

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

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

***Example 3:***

***From the particulars given below, find out the assessable value of the imported goods under the Customs Act, 1962.***

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

***Answer:***

***Statement showing assessable value for imported goods:***

| ***S.No.*** | ***Particulars*** | ***Value US $*** | ***Workings*** |
|---|---|---|---|
| ***(i)*** | ***Cost of the machine at the factory of the exporting country*** | ***10,000*** | |
| ***(ii)*** | ***Transport charges incurred by the exporter from his factory to the port for shipment*** | ***500*** | |
| ***(iii)*** | ***Handling charges paid for loading the machine in the ship*** | ***50*** | |
| | ***FOB Value of Exporter*** | ***10,550*** | |
| ***(iv)*** | ***Buying commission paid by the importer*** | ***-*** | ***Not addable into the assessable value*** |
| ***(v)*** | ***Cost of insurance*** | ***118.6875*** | ***@1.125% on FOB value*** |
| ***(vi)*** | ***Freight charges from exporting country to India*** | ***1,000*** | |
| ***(vi)*** | ***CIF Value/Assessable Value*** | ***11,668.6875*** | |
| ***(vii)*** | ***Assessable value (in INR)*** | ***₹ 7,58,465*** | ***₹ 65 x US $ 11,668.6875*** |

***Example 4:***

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

***(i) Freight from Japan to India Port 20,000 Yen***

***(ii) Insurance paid to Insurer in India ₹ 10,000***

***(iii) Designing charges paid to Consultancy firm in Japan 30,000 Yen***

***(iv) M/s. XYZ Industries had expended ₹ 1,00,000 in India for certain development activities with respect to the imported equipment***

***(v) XYZ Industries had incurred road transport cost from Mumbai port to their factory in Karnataka ₹ 30,000***

***(vi) The Central Board of Indirect Taxes and Customs had notified for purpose of section 14(3)* of the Customs Act, 1962 exchange rate of 1 Yen = ₹ 0.3948. The inter bank rate was 1 Yen = ₹ 0.40***

***(viii) M/s XYZ Industries had effected payment to the Bank based on exchange rate 1 Yen = ₹ 0.4150***

***(viii) The commission payable to the agent in India was 5% of FOB cost of the equipment in Indian Rupees Arrive at the assessable value for purposes of customs duty under the Customs Act, 1962 providing brief notes wherever required with appropriate assumptions.***

***Answer:***

***Statement showing computation of Assessable Value for the imported goods***

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

***Example 5:***

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

***(i) F.O.B. cost of the machine — 10,000 U.K. ounds***

***(ii) Freight (air) — 3,000 U.K. Pounds***

***(iii) Engineering and design charges paid to a firm in U.K. — 500 U.K. Pounds***

***(iv) License fee relating to imported goods payable by the buyer as a condition of sale — 20% of F.O.B.Cost***

***(v) Materials and components supplied by the buyer free of cost valued — ₹ 20,000***

***(vi) Insurance paid to the insurer in India — ₹6,000***

***(vii) Buying commission paid by the buyer to his agent in U.K. 100 U.K. Pounds***

***Other Particulars:***

***(i) Inter-bank exchange rate as arrived by the authorized dealer: ₹ 72.50 per U.K. Pound.***

***(ii) CBIC had notified for purpose of Section 14 of the Customs Act, 1944, exchange rate of ₹ 70.25 per U.K. Pound.***

***(iii) Importer paid ₹ 5,000 towards demurrage charges for delay in clearing the machine from the Airport.***

***(Make suitable assumptions wherever required and show workings with explanations)***

***Answer:***

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

**Rule 4: Transaction value of Identical Goods**

Identical goods means the goods must be same in all respects, including physical quantity

This method is applicable only when following conditions are satisfied:

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

A condition for adjustment because of different commercial levels or different quantities is that such adjustment, whether it leads to an increase or a decrease in the value, be made only on the basis of demonstrated evidence that clearly establishes the reasonableness and accuracy of the adjustment, e.g. valid price lists containing prices referring to different levels or different quantities.

***Example 6:***

***A consignment of 800 metric tonnes of edible oil of Malaysian origin was imported by a charitable organization in India for free distribution to below poverty line citizens in a backward area under the scheme designed by the Food and Agricultural Organization. This being a special transaction, a nominal price of US$ 10 per metric tonne was charged for the consignment to cover the freight and insurance charges. The Customs House found out that at or about the time of import of this gift consignment, there were following imports of edible oil of Malaysian origin:***

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

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

| | |
|---|---|
| ***Answer:*** | |
| ***Calculation of amount of duty payable:—*** | |
| ***exchange rate of $ 1 = ₹ 63*** | |
| ***CIF Value (800 metric tonnes x 160 USD × ₹ 63)/Assessable Value*** | ***= ₹ 80,64,000*** |
| ***15% Basic Customs duty on ₹ 80,64,000*** | ***= ₹ 12,04,600*** |
| ***Add: SWS @ 10% on 12,04,600*** | ***= ₹ 1,20,460*** |
| ***Total custom duty payable*** | ***= ₹ 13,25,060*** |

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

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

***Example 7:***

***If the imported goods being valued consist of a shipment of 10 units and the only identical imported goods for which a transaction value exists involved a sale of 500 units, and it is recognised that the seller grants quantity discounts, the required adjustment may be accomplished by resorting to the seller's price list and using that price applicable to a sale of 10 units. This does not require that a sale had to be made in quantities of 10 as long as the price list has been established as being bona fide through sales at other quantities. In the absence of such an objective measure, however, the determination of a value under the provisions of rule 4 is not appropriate.***

**Case Law 4:**

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

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

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

**Decision:** The Supreme Court held that mere existence of alleged computer printout was not proof of existence of comparable imports. Even if assumed that such printout did exist and content thereof were true, such printout must have been supplied to the appellant and it should have been given reasonable opportunity to establish that the import transactions were not comparable.

Thus, in the given case, the value of imported goods could not be enhanced on the basis of value of identical goods as Department was not able to provide evidence of import of identical goods at higher prices.

**Rule 5: Transaction value of Similar Goods**

"Similar goods" includes—

- Which although not alike in all respects, have like characteristics and like component materials which enable them to perform the same functions and to be commercially interchangeable with the goods being valued having regard to the quality, reputation and the existence of trade mark;
- Produced in the country in which the goods being valued were produced; and

- Produced by the same person who produced the goods being valued, or where no such goods are available, goods produced by a different person, but shall not include imported goods where engineering, development work, art work, design work, plan or sketch undertaken in India were completed directly or indirectly by the buyer on these imported goods free of charge or at a reduced cost for use in connection with the production and sale for export of these imported goods;

**Difference between Identical and Similar Goods**

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

**Rule 6: Determination of value**

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

**Rule 7: Deductive Value**

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

In case of deductive method the valuation is as follows:

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

***Example 8:***

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

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

***Example 9:***

***Valuation where various quantities are sold at various prices.***

***(a) Sales***

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

***(b) Totals***

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

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

***Example 10:***

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

| *Sale quantity* | *Unit price ₹* |
|---|---|
| *400 units* | *100* |
| *300 units* | *90* |
| *150 units* | *100* |
| *500 units* | *95* |
| *250 units* | *105* |
| *350 units* | *90* |
| *50 units* | *100* |

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

***Answer:***

| *Total quantity Sold* | *Unit price* |
|---|---|
| *650* | *90* |
| *500* | *95* |
| *600* | *100* |
| *250* | *105* |

***The greatest number of units sold at a particular price is 650 units;***

***Therefore, the unit price in the greatest aggregate quantity is ₹ 90.***

| | ₹ |
|---|---|
| *Selling Price* | *= 45,000 (i.e. 500 units x ₹ 90)* |
| *Less: Freight (post shipment)* | *= (10,150)* |
| *Less: Insurance (post shipment)* | *= (1,250)* |
| *Assessable Value* | *= 33,600* |

***Total Customs Duty = ₹ 4,435.2 (i.e 33,600 X 13.2%)***

***Example 11:***

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

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

***The selling price includes the following post shipment expenses:***

***Freight from port to factory in India for ₹ 24,000***

***Insurance to cover transit damage from port to factory in India for ₹ 6,000***

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

***Note: BCD @12%.***

***Answer:***

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

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

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

**Rule 8: Computed Value**

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

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

| | | | ₹ |
|---|---|---|---|
| This method is normally possible when the importer in India and foreign exporter are closely associated and the foreign exporter is willing to give necessary costing. | Cost of Materials and General Expenses for producing the imported good | = | xxx |
| | Add: profit of the exporter | = | xxx |
| | Add: all expenditure as per Rule 10 | = | xxx |
| | Assessable Value | = | XXX |

**Rule 9: Residual method**

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

While determining Assessable Value, we should not consider the following

- The selling price in India of the goods produced in India;
- A system which provides for the acceptance for customs purposes of the highest of the two alternative values;
- The price of the goods on the domestic market of the country of exportation;
- The cost of production other than computed values which have been determined for identical or similar goods in accordance with the provisions of rule 8;
- The price of the goods for the export to a country other than India;
- Minimum customs values; or
- Arbitrary or fictitious values.

**Rule 10: Cost of Services:**

The following shall be added to the invoice price (i.e. FOB value) to determine the transaction value for imported goods:

| | Value in Rupees |
|---|---|
| Commission and brokerage (except buying commissions) | = xxxx |
| Packing cost (except cost of durable and returnable packing) | = xxxx |
| Cost of engineering, development and plan or sketches | = xxxx |
| (Undertaken outside India) | |
| Royalties and license fee | = xxxx |
| Value of subsequent re-sale if payable to foreign supplier | = xxxx |
| Cost of freight and insurance up to place of importation | = xxxx |
| Cost of freight if not specified @ 20% of FOB | = xxxx |
| Insurance if not specified @1.125% of FOB | = xxxx |
| Ship demurrage charges on chartered vessels, lighterage or barge charges | = xxxx |
| | = xxxx |

The following shall not be added to the invoice price (i.e. FOB value) to determine the transaction value for imported goods:

| *Value in Rupees* | |
|---|---|
| Duties and taxes in India | = xxx |
| Cost of erection charges in India | = xxx |
| Cost of transport and insurance from port to factory of importer in India | = xxx |
| Cost of development charges in connection with imported machinery | = xxx |
| Port demurrage charges and unloading charges in India | = xxx |
| Any other charges incurred after importation (i.e. Post shipment charges, unless | |
| such post shipment charges are pre-condition for importation) | = xxx |

***Important points for imported goods:***

**Point 1: Where Cost of Insurance and Cost of Transportation are not ascertainable**

| S.No. | Rule | Particulars | Treatment | Remarks |
|---|---|---|---|---|
| 1. | 10(2) proviso 1 | Cost of transport is not ascertainable | 20% on FOB value | It is applicable even if goods are imported by air or sea. |
| 2. | 10(2) proviso 3 | Cost of insurance is not ascertainable | 1.125% on FOB value | It is applicable even if goods are imported by air or sea. |

**Point 2: Where FOB value; Cost of Insurance and Cost of Transportation are not ascertainable:**

| S.No. | Rule | Particulars | Treatment | Remarks |
|---|---|---|---|---|
| 1. | **10(2) proviso 2** | Cost of transport (i.e. Freight not known) | 20% x (FOB value + Cost of Insurance) | CIF value x 20/120 |
| 2. | **10(2) proviso 4** | Insurance (i.e. not known) | 1.125% x (FOB value + Cost of transport) | CIF value x 1.125/101.125 |
| 3. | **10(2) proviso 3** | FOB value | CIF value – cost transport – cost of insurance | |

**Point 3: Cost of freight in case of goods imported by air:**

In the case of goods imported by air, where the cost of freight is ascertainable, such cost shall not exceed 20% of free on board value of the goods:

**Point 4: Cost of freight in case of goods imported by sea:**

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

**Rule 11: Declaration by the Importer:**

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

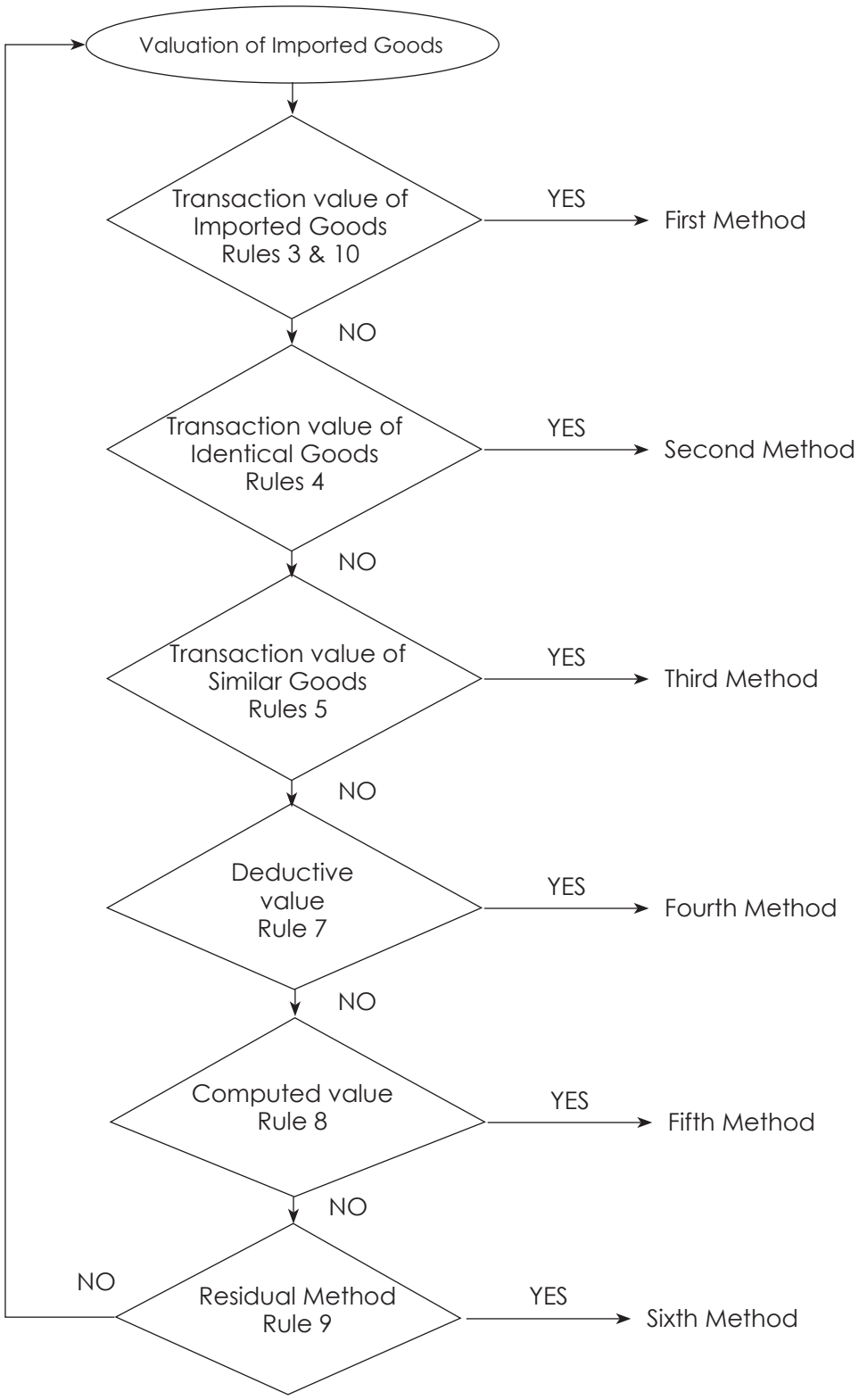
**Rule 12: Rejection of Declared Value:**

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

**Rule 13: Interpretative Notes:**

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

**The following methods can be applied in sequential order for imported goods**



**Self-Examination Questions**

**1. Theory Questions**

**Q1.** Explain the procedure to be followed for finding the transaction value with reference to Assessable Value?

**Answer 1:** please refer point no. 4.2

**Q2.** When is the residual method applicable?

**Answer 2:** please refer point no. 4.4, Rule 9

**Q3.** State the points of difference between valuation of imported goods under Customs Act, 1962 and imported services under Finance Act, 1994 and valuation of imported goods and services, as per relevant Accounting Standard.

**Answer 3:** Difference between valuation of imported goods and imported services:

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

**2. Practical Problems with Answers**

**FOB, CIF and Assessable Value (Rule 3 read with Rule 10)**

**Illustration 1:**

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

(i) Cost at the factory of the exporter : US$ 20,000

(ii) Carriage/freight/insurance upto the port of shipment in the exporter's country : US$ 400

(iii) Charges for loading on to the ship at the shipping port : US$ 100

(iv) Freight charges of the ship for transport upto the Indian port : US$ 1,200

(v) Bill of entry submitted by the importer as on 18.7.2010

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

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

**Solution:**

**Statement showing assessable of imported goods**

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

**Transaction value of Imported Goods (Rule 3 read with Rule 10)**

**Illustration 2:**

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

Arrive at the Assessable value

**Solution:**

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

**Illustration 3:**

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

FOB price: US$30,000

Exchange rate:

Notified by RBI ₹ 50 = US$1

Notified by CBIC ₹ 48 = US$1

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

**Solution:** Statement showing assessable value:

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

**Post Shipment Expenses**

**Illustration 4:**

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

**Solution:**

| | |
|---|---|
| Value goods | = ₹ 20,00,000 |
| **Add:** Raw material supplied | = ₹ 5,00,000 |
| FOB | = ₹ 25,00,000 |
| Charges for bringing the goods from | |
| Outer anchorage to jetty is known as | |
| Barging/lighterage or barge charges | = ₹ 50,000 |
| Ship demurrage on chartered vessels (i.e. | |
| Demurrage is payable when ship was not | |
| unloaded within specified time) | = ₹ 10,000 |
| Freight charges (Transport charges) | = ₹ 45,000 |
| Insurance charges | = ₹ 20,000 |
| | ---------- |
| Cost, Insurance and Freight (CIF)/ Assessable Value | = ₹26,25,000 |

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

**Revised CIF Value:**

**Illustration 5:** Liberty International Group has imported a machine by air from United States. Bill of entry is presented on 18.07.2016. However, entry inwards is granted on 7.08.2016.

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

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

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

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

Make suitable assumptions wherever necessary.

**Solution:**

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

**Illustration 6:**

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

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

Exchange rate 1£ = ₹ 66.

*Note*: post shipment expenditure is not pre-condition for such import.

**Solution :**

| Particulars | Value in GBP (£) | Remarks |
|---|---|---|
| Value of Machine | 10,000 | |
| Less: Cost of post shipment expenditure | 2,000 | It is not pre-condition for importation, hence deducted from the value of machine. Value of post shipment expenditure is addable to the assessable value if such expenditure is pre-condition for such import. |
| Add: cost of material supplied | 500 | Cost of material supplied is also addable into the assessable value. |
| Sub-total | 8,500 | |

| Particulars | Value in GBP (£) | Remarks |
|---|---|---|
| | Value in ₹ | |
| Sub-total | 5,61,000 | 8,500 x ₹ 66 |
| Add: ship demurrages | 10,000 | |
| Add: lighterage and barge charges | 50,000 | |
| Add: transportation of goods from port of entry to ICD | Nil | transportation of goods from port of entry to Inland Container Depot (ICD), not addable in assessable. |
| FOB value of the Customs | 6,21,000 | |
| Add: Insurance charges | 6,986.25 | ₹6,21,000 x 1.125% = 6,986.25 |
| Add: Freight charges | 99,000 | 1,500 x ₹66 |
| Cost Insurance and Freight (CIF) value/ Assessable Value | 7,26,986.25 or, 7,26,986 | |

**Illustration 7:**

An importer imported some goods for subsequent sale in India. The Customs Officer assessed value of goods for ₹ 10,19,090.

The above value includes the following:

Air Freight 25% on Free on Board (FOB)

Insurance @1.125%

Importer approached you to find correct assessable value for his import.

**Solution:**

Assessable value (AV) = (FOB + Insurance + Air freight)

Let assume FOB = X

Add: Air Freight = 0.25X

Add: Insurance = 0.01125X

CIF Value/Assessable value = 1.26125X

| | ₹ |
|---|---|
| FOB value | = 8,08,000 (₹ 10,19,090 ÷ 1.26125) |
| Add: Air freight 20% on FOB | = 1,61,600 |
| Add: Insurance @1.125% | = 9,090 |
| CIF Value/ Assessable value | = 9,78,690 |

**Illustration 8:**

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

CIF value: US$10,000

Exchange rate:

Notified by RBI ₹ 50 = US$1

Notified by CBIC ₹ 48 = US$1

Compute the following:

(a) FOB value

(b) Cost of insurance

(c) Cost of freight and

(d) Assessable value in rupees as per the Customs Act, 1962 and the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007.

**Solution:**

As per Rule 10(2) proviso 3 of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007, where FOB value of goods and Cost of Insurance and Freight are not ascertainable, then the cost of insurance and transport shall be computed as follows:

| Particulars | As per Rule 10(2) proviso 3 | Working |
|---|---|---|
| Cost of transport (i.e. Freight not known) | 20% x (FOB value + Cost of Insurance) | CIF value x 20/120 |
| Insurance (i.e. not known) | 1.125% x (FOB value + Cost of transport) | CIF value x 1.125/101.125 |
| FOB value | CIF value – cost transport – cost of insurance | |

CIF value in ₹ 4,80,000 (i.e. US $ 10,000 x ₹ 48)

| | | ₹ | |
|---|---|---|---|
| (a) | FOB value | = 3,94,660 | (i.e. ₹ 4,80,000 – 80,000 – 5,340) |
| (b) | Cost of insurance | = 5,340 | (i.e. ₹ 4,80,000 x 1.125/101.125) |
| (c) | Cost of transport (i.e. Freight) | = 80,000 | (i.e. ₹ 4,80,000 x 20/120) |
| (d) | Assessable value | = 4,80,000 | |

**Illustration 9:**

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

(i) Cost at the factory of the exporter: US$ 20,000

(ii) Carriage/freight/insurance upto the port of shipment in the exporter's country: US$ 400

(iii) Charges for loading on to the ship at the shipping port: US$ 100

(iv) Freight charges of the ship for transport upto the Indian port: US$ 1,200

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

**Solution :**

**Statement showing assessable of imported goods**

| Particulars | Value in US$ | Workings |
|---|---|---|
| Cost at the factory (ex-factory price) | 20,000 | |
| Carriage/freight/insurance upto the port of shipment | 400 | |
| Charges for loading on the ship at the shipping port | 100 | |
| Free On Board (FOB) | 20,500 | |
| Insurance charges @1.125% on FOB | 230.625 | US$ 20,500 x 1.125% = 230.625 |

| Particulars | Value in US$ | Workings |
|---|---|---|
| Freight charges | 1,200 | Actual taken into account |
| CIF Value/ Assessable value | 21,930.625 | |

*Note:* Since exchange rate is not given; therefore it is difficult to calculate the assessable value in Indian Rupees.

**Illustration 10:**

From the particulars given below, find out the assessable value of the imported goods under the Customs Act, 1962.

| | | US $ |
|---|---|---|
| (i) | Cost of the machine at the factory of the exporting country | 10,000 |
| (ii) | Transport charges incurred by the exporter from his factory to the port for shipment. | 500 |
| (iii) | Handling charges paid for loading the machine in the ship | 50 |
| (iv) | Buying commission paid by the importer | 50 |
| (v) | Freight charges from exporting country to India | 1,000 |
| (vi) | Exchange Rate to be considered 1$ = ₹ 45 | |

**Solution:** Statement showing assessable value for imported goods:

| S.No. | Particulars | Value US $ | Workings |
|---|---|---|---|
| (i) | Cost of the machine at the factory of the exporting country | 10,000 | |
| (ii) | Transport charges incurred by the exporter from his factory to the port for shipment | 500 | |
| (iii) | Handling charges paid for loading the machine in the ship | 50 | |
| | FOB Value | 10,550 | |
| (iv) | Buying commission paid by the importer | - | Not addable into the assessable value |
| (v) | Cost of insurance | 118.6875 | @1.125% on FOB value |
| (vi) | Freight charges from exporting country to India | 1,000 | |
| (vi) | CIF Value | 11,668.6875 | |
| (vii) | Assessable value | ₹ 5,25,091 | ₹ 45 x US $ 11,668.6875 |

**Illustration 11.** M/s Arman Ltd. a manufacturer has imported a machinery along with accessories required for the said machinery on 15th June, 2013. Details of information related to import of machinery are given below. Please

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

(i) Compute the assessable value for purpose of determination of customs duty.

(ii) Provide explanations where necessary.

**Solution:**

| Particulars | Machinery ₹ | Accessories ₹ | Workings |
|---|---|---|---|
| FOB value | 3,10,000 | 62,000 | |
| Commission | 7,750 | 1,550 | Allocated in the ratio of FOB 5:1 |
| FOB value of the customs | 3,17,750 | 63,550 | |
| Air freight | 63,550 | 12,710 | Should not exceeds 20% on FOB |
| Insurance | 3,575 | 715 | 1.125% on FOB |
| CIF Value/ Assessable value | 3,84,875 | 76,975 | |

**3. Case Studies with Answers**

**Q 1.** The assessee-respondent had been importing "Orange Shock Tube" from the exporter at a unit price of US$0.0150 per ft till November, 2000 when the price was reduced to US$0.0141 per ft. However, in June, 2001, the importer declared the value of the imported tubes at a unit price of US$0.0100 per ft. Revenue contended that declared value was substantially lower than the actual value i.e. the assessee had under-valued the goods. Therefore, the value had to be determined as per erstwhile rule 5 of Customs Valuation Rules, 1988 [now rule 4 of Customs Valuation (Determination of value of Imported Goods) Rules, 2007], viz., transactional value of identical goods. In this regard, the assessee provided the explanation that the reduction in price was subject to mutual agreement that he would purchase 100% of its annual requirement from the same exporter.

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

**Q 2.** The assessee was a manufacturer of printers. The shuttle, an integral part of a printer, was imported by him. The question which arose for determination was whether the adjudicating authority was entitled to load the royalty/ license fee payment on the price of the imported goods, viz., shuttle by taking its peak price.

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

**Q 3.** The goods initially exported by the assessee were re-imported back to India on being rejected by the foreign buyer as defective. The assessee initially claimed in the Bills of Entry the benefit of notification no. 158/95-Cus and also executed bonds for re-export, as required under the said notification. The assessee could not re-export the goods due to recessionary conditions in the textile industry. It claimed before the adjudicating authority that since it was not possible for it to re-export the goods, it should be allowed the benefits of another Notification No. 94/96-Cus. which was in force at the time of clearance from the factory originally. The main contention raised by the assessee was that if the benefits were available under the two notifications to the assessee, then the assessee could avail of the benefits under either of them.

Revenue's reply to the said contention was that it was not correct to say that if two notifications were applicable, assessee after having opted to take the benefit under one of the notifications could change its option and avail the benefit under the other scheme because of the nature and contents of the notification. Whether the assessee can change its option and avail the benefit under other notification?

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

**Q 4.** Gujarat Dry Fruits Limited imported dry fruits and declared the value as under—

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

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

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

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

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

**Q 5.** The assessee M Ltd. entered into a joint venture with a foreign collaborator N for promotion and selling of antennas, accessories and other communication equipment. The agreement between them indicates that N owned majority of equity shares in M Ltd. Technical Services were provided by N to M Ltd, for various functions that were carried out in respect of manufacture of antenna system in India, for which technical services fee was paid to N by M Ltd. Based on the above facts, the department opined that both M Ltd. and N were related persons in terms of rule 2(2)(1) and 2(2)(*iv*) of the Customs Valuation (Determination of Price of Imported Goods) Rules, 1988 and that the technical fee paid by M Ltd. was includible in the assessable value of the imported components in terms of Rule 9(1)(c) of the Rules. Decide referring to decided case law.

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

# Study Note - 5

## IMPORT AND EXPORT PROCEDURE

**This Study Note includes**



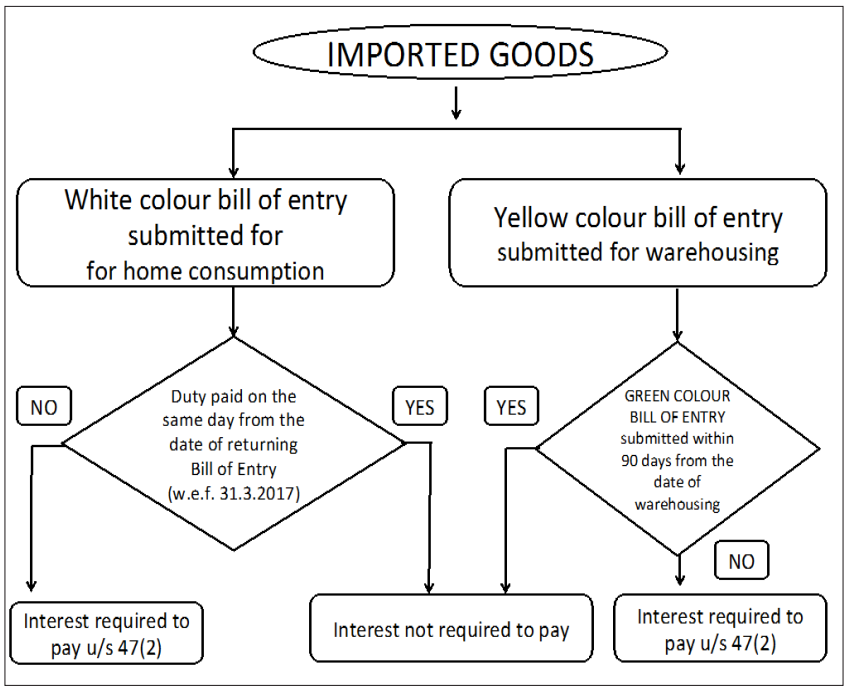
### 5.1 INTRODUCTION

Customs Duty is on import and on export. Hence, it is essential to have better understanding of the provisions of import and export. Import may take place in any of the following modes:

- By Sea
- By Air
- By Land
- By Post
- By Passengers as their Baggage
- By way of Ship stores considered as import

### 5.2 IMPORT PROCEDURE

Imported goods can be cleared by the importer either for home consumption by paying customs duty on the value of imported goods or he may request to the Customs department for warehousing. If the goods are warehoused, later they will be cleared for Domestic Tariff Area (DTA) or for export as the case may be.




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

***Goods cleared for Home Consumption***

Importer has to pay the import duty on the value of goods imported by him before clearing from the Customs Authorities by submitting the Bill of Entry after the entry inwards granted to the Vessel or 30 days before the entry inwards granted to the vessel. The importer files Bill of Entry for all imported goods under section 46(1) of the Customs Act, 1962. No Bill of Entry for Transit Goods and Transhipment Goods.

*Time limit for filling Bill of Entry:*

As per Section 46(3) of the Customs Act, 1962 a bill of entry may be presented at anytime after the delivery of import manifest or import report. Therefore, no time limit has been fixed. Hence, no penalty can be imposed if there is delay in submission of Bill of Entry.

However, goods should be cleared for home consumption, or warehoused or transhipped within 30 days from the date of the unloading thereof at the Customs Station.

The importer is required to declare in the Bill of Entry amongst other things the following:

- The particulars of packages,
- The description of the goods,
- The description given in the Customs Tariff.

According to section 46(3) a bill of entry is to be normally filed after the delivery of the Import manifest (vessel/ aircraft)/import report (vehicle). However, the bill of entry can be presented even before the delivery of the import manifest if vessel is expected to arrive within 30 days from the date of such presentation.

Bill of Entry consists of the following copies:

- Original meant for the customs authorities for assessment and collection of duty;
- Duplicate, indented as an authority to the custodian of the cargo to release cargo;

- Triplicate, as a copy for record for the importer; and
- Quadruplicate, as a copy to be presented to the bank

Types of Bill of Entry:

- Form I (white) - for home consumption
- Form II (yellow) - for warehousing
- Form III (green) - for ex-bond clearance for home consumption (from the warehousing)

*Bill of Entry must be submitted electronically, unless manual submission is specifically permitted by Commissioner of Customs (w.e.f. 8-4-2011).*

**W.e.f. 31-3-2017 Finance Act, 2017 Section 46(3) amended:**

Submission of Bill of entry:

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

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

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

Furthermore by Notification No 26/2017 Customs dated 31-3-2017 and Notification 27/2017 Customs dated 31-3-2017 Bill of Entry (electronic Integrated Declaration) Regulations, 2011 and Bill of Entry (Forms) Regulations, 1976 has been amended to prescribe late charges for delayed filing. Entry Inwards date at sea ports and date of arrival of cargo at the ICD, airport, Land Port (i.e. Land Customs Station) etc., would be the relevant date for determination the said charges, if any. It has also been clarified in both the regulations that no charges for late presentation of Bill of Entry shall be liable to be paid where the goods have arrived before the enactment of Finance Bill, 2017 (i.e. 31-3-2017).

***Notification No. 24/2017 Customs dated 31-3-2017:***

As per the Handling Cargo in Customs Area Regulations, 2009 it is mandatory for the Customs Cargo Service providers to provide the information about arrival of cargo to the Customs.

*As per Notification No. 25/2017 Customs dated 31-3-2017, Additional / Joint Commissioner as the proper officer considering the request for waiver of late charge under second proviso to Section 46(3) of the Customs Act, 2017.*

*Furthermore, section 47(2) has been amended so as to provide the manner of payment of duty and interest thereon in the case of self-assessed Bill of Entry or as the case may be assessed, reassessed, provisionally assessed Bill of Entry. Now, the importer shall have to make payment of duty on the same day in case of self-assessed Bill of Entry and in case of re-assessment or provisional assessment, within one year after the return of Bill of Entry (vide Circular No. 12/2017 dated 31-3-2017).*

**Clearance of Goods for Home Consumption [Sec. 47 (1) of the Customs Act, 1962]**

w.e.f. 14-5-2016, Sec. 47 (1) Where the proper officer is satisfied that any goods entered for home consumption are not prohibited goods and the importer has paid the import duty, if any, assessed thereon and any charges payable under this Act in respect of the same, the proper officer may make an order permitting clearance of the goods for home consumption:

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

**Interest for Late Payment of Duty @15% [Section 47(2) of the Customs Act, 1962]**

The duty should be paid within five working days after the 'Bill of Entry' is returned to the importer for payment of duty. **w.e.f. 10-5-2013 the time reduced to two working days.**

**Now, w.e.f. 31-3-2017 Finance Act, 2017 section 47(2) further amended:**

Importer shall have to make payment of duty on the same day in case of self-assessed Bill of Entry and in case of re-assessment or provisional assessment, within one day after the return of Bill of Entry.

As per section 47(2) of Customs Act, the importer is liable to pay interest where –

- the importer fails to pay the import duty under this section **on the same day** in case of self-assessed Bill of Entry and in case of re-assessment or provisional assessment, within one day after the return of Bill of Entry from the date on which the bill of entry is returned to him for payment of duty, he shall pay interest @ 15% p.a. on such duty till the date of payment of the said duty.
- w.e.f. 14-5-2016: in the case of deferred payment under the proviso to sub-section (1), from such due date as may be specified by rules made in this behalf, he shall pay interest @15% p.a. on the duty not paid or short-paid till the date of its payment.

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

***Example 1:***

***X Pvt. Ltd. imported goods in the month of April, 2018 and submitted 'Bill of Entry' on 9th April 2018 for home clearances. After verification bill of entry has been returned by the department on 10th April 2018 for payment of customs duty of ₹ 1,03,000. However, duty has been paid on 30th April, 2018. There are five holidays from 11th April 2018 to 30th April 2018. Find the interest under Sec. 47(2) of the Customs Act, 1962.***

***Answer:***

***Interest is ₹ 677***

***No. of days from10th April, 2018 to 30th April, 2018 = 21 days***

***No. of days delay = 21-5 =16 days***

***Interest = 1,03,000 x 15/100 x 16/365 = ₹ 677***

***Example 2:***

***A bill of entry was presented on 4th August, 2017. The vessel carrying goods arrived on 11th August, 2017. Entry inwards was granted on 13th August, 2017, and the bill of entry was assessed on that date and was also returned to the importer for payment of duty on that date. The duty amounting to ₹ 5,00,000 was paid by the importer on 22nd August, 2017.***

***Calculate the amount of interest payable under section 47(2) of the Customs Act, 1962, given that there were four holidays during the period from 14th August to 22nd August, 2017.***

***Answer:***

| | |
|---|---|
| ***Interest Rate = 15% p.a.*** | |
| ***No. of days delay = from 13th Aug 2017 to 22nd Aug 2017*** | ***= 10 days*** |
| ***No. of days delay*** | ***= 10 days*** |
| ***Less: No. of holidays*** | ***= –4 days*** |
| ***Net No. of days delay for interest*** | ***= 6 days*** |
| ***Interest*** | ***= ₹1,233*** |
| ***₹5,00,000 x 15/100 x 6/365*** | ***= ₹1,232.88*** |

***Import General Manifest***

Import General Manifest is a very important document for the in charge of the conveyance, without which the

Customs Authorities generally not allowed entry inwards to the vessel. IGM to be submit to the Customs authorities for getting entry inwards to the vessel. It contains details regarding goods description, origin and destination place, name and address of the exporter and importer and so on. This a primary document, which can be compared with Bill of Entry, submitted by the importer. On satisfaction the Customs authorities will grant the entry inwards to the vessel.

The IGM also gives the following particulars

- Name of the Vessel
- Nationality
- Tonnage
- Name of the shipping line
- Last port of call
- Port arrival and date and time of arrival,
- Name of the master,
- Nationality of the master,
- Name and address of the local steamer or shipping agent
- Port called during the present voyage,
- Number of crew
- Number of passengers, etc.

The importer also required to submit the following documents the Customs Authorities, to assess the import duty on the value of imported goods.

- Invoice copy
- Contract copy
- Product literature
- Packing lists
- Import license
- Any other documents which may be required by the Customs Authorities.

*Time Limit for submission of Import General Manifest or Import Report:*

As per Section 30(1) of the Customs Act, 1962, the person-in-charge of the conveyance shall deliver import general manifest or import report to the proper officer as stated below:

| Mode of Transport | Document | Time Limit | Penalty for non-submission within the prescribed time-limit |
|---|---|---|---|
| Vessel (Sea port) | Import General Manifest | Before arrival of the Vessel | ≤ ₹ 50,000 |
| Aircraft (Air port) | Import General Manifest | Before arrival of the Aircraft | ≤ ₹ 50,000 |
| Vehicle (Land Customs Station) | Import Report | Within 12 hours after arrival | ≤ ₹ 50,000 |

**The entire import procedure has been explained in the following lines**

Goods should arrive at customs port

↓

Person in charge of conveyance is required to submit import general manifest/import report
[*must be submitted electronically, unless manual submission is specifically permitted by Commissioner of Customs* (*w.e.f. 8-4-2011*)]

↓

Ggoods can be unloaded only after grant of entry inwards

↓

Importer has to submit bill of entry

[*Bill of entry must be submitted electronically, unless manual submission is specifically permitted by Commissioner of Customs (w.e.f. 8-4-2011)*]

↓

Goods are assessed to duty

↓

Goods can be cleared from port after payment of duty/cleared for warehousing

↓

Out of customs charge order is issued by customs officer after payment of duty

## 5.3 EXPORT PROCEDURE

The master of a vessel shall not permit the loading of any export goods, other than baggage and mail bags, until an order has been given by the proper officer granting entry-outwards to such vessel [Section 29 of the Customs Act, 1962]. The steamer agent is required to file an application for entry outwards 14 days in advance from the date of original export.

The person-in-charge of a conveyance shall not permit the loading at a customs station of export goods, other than baggage and mail bags, unless a shipping bill or bill of export or a bill of transshipment, as the case may be, duly passed by the proper officer, has been handed over to him by the exporter. The person-in-charge of a conveyance shall not permit the loading at a customs station of baggage and mail bags, unless their export has been duly permitted by the proper officer [Section 40 of the Customs Act, 1962].

***Export General Manifest***

The person-in-charge of a conveyance carrying export goods shall, before departure of the conveyance from a customs station, deliver to the proper officer in the case of a vessel or aircraft, an export manifest, and in the case of a vehicle, an export report, in the prescribed form [Section 41 of the Customs Act, 1962].

The person-in-charge of a conveyance who has loaded any export goods at a customs station shall not permit the conveyance to depart from that customs station until a written order to that effect has been given by the proper officer.

Let export order shall not be given until:

- The person-in-charge of the conveyance has answered the questions put to him
- The provisions of section 41 have been complied with;
- The shipping bills or bills of export, the bills of transshipment, if any, and such other documents as the proper officer may require have been delivered to him;
- All duties leviable on any stores consumed in such conveyance, and all charges and penalties due in respect of such conveyance or from the person-in-charge thereof have been paid;
- The person-in-charge of the conveyance has satisfied the proper officer that no penalty is leviable on him under section 116 of the Customs Act, 1962.
- In any case where any export goods have been loaded without payment of export duty or in contravention of any provision of this Act or any other law for the time being in force relating to export of goods, such goods have been unloaded, or
- The Assistant Commissioner of Customs or Deputy Commissioner of Customs is satisfied that it is not practicable to unload such goods, the person-in-charge of the conveyance has given an undertaking, secured by such guarantee or deposit of such amount as the proper officer may direct, for bringing back the goods to India

Either the Guarantee Receipt (GR) or Statutory Declaration Form (SDF) requires filing by the exporter to meet

the requirements of the Reserve Bank of India. The purpose of these forms is to ensure that export proceeds are received in India through the authorized banking channels.

**The entire concept of export procedure has been explained in the following lines:**

Submit Shipping Bill for Export to Customs

[*Shipping Bill must be submitted electronically, unless manual submission is specifically permitted by Commissioner of Customs (w.e.f. 8-4-2011)*]

↓

Submit invoice, packing lists, contracts etc

↓

Submit Guarantee Receipt (GR), Statutory Declaration Form (SDF)

↓

Noting shipping bill by Customs officer

↓

Valuation and classification of goods

↓

Customs check whether export is restricted or prohibited

↓

Examination of goods by customs officer

↓

Stuffing of Container if not already done

↓

Let export order by Customs Officer

↓

Claim the duty drawback or export incentives

**Note: Electronic filing of import/export manifest mandatory except in cases allowed by Commissioner of Customs [Section 30(1) & Section 41(1)] w.e.f. 10-5-2013:**

Section 30(1) and section 41(1) have been amended vide the Finance Act, 2013 to provide for the mandatory electronic filing of the import manifest and export manifest respectively. However, in cases where it is not feasible to deliver import/export manifest by presenting them electronically, the Commissioner of Customs may, allow the same to be delivered in any other manner.

## 5.4 DEEMED EXPORTS

The term Deemed Exports an export without actual export, it means goods and services are sold and provide respectively within India and payment also received in the Indian Rupees. As per the Foreign Trade Policy the following few transactions can be considered as deemed exports.

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

**Imports by 100% Export Oriented Units (EOU):**

EOUs/EHTPs/STPs will be allowed to import goods without payment of basic customs duty (BCD) as well additional dutie s leviable under Section 3 (1) and 3(5) of the Customs Tariff Act.

GST would be leviable on the import of input goods or services or both used in the manufacture by EOUs which can be taken as input tax credit (ITC). This ITC can be utilized for payment of GST taxes payable on the goods cleared in the DTA or refund of unutilized ITC can be claimed under Section 54(3) of CGST Act.

In the GST regime, clearance of goods in DTA will attract GST besides payment of amount equal to BCD exemption availed on inputs used in such finished goods.

**Note:** DTA clearances of goods, which are not under GST, would attract Central Excise duties as before.

***Example 3:***

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

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

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

***Answer:***

| *Particulars (w.e.f. 1-7-2017)* | *Value in ₹* | *Workings* |
|---|---|---|
| *Assessable value* | *20,00,000* | |
| *ADD: Basic Customs Duty 10%* | *2,00,000* | *20,00,000 × 10%* |
| *Add: SWS @ 10% on BCD* | *20,000* | *2,00,000 x 10%* |
| *Sub-total* | *22,20,000* | |
| *ADD: IGST @12%* | *2,66,400* | *22,20,000 × 12%* |
| *Sub-total* | *24,86,400* | |
| *Total Duty payable* | *4,86,400* | |

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

| *Particulars* | *Value ₹* |
|---|---|
| *BCD* | *nil* |
| *IGST* | *2,66,400* |
| *Total* | *2,66,400* |

## 5.5 CUSTOMS BROKERS

The term Custom House Agents are known by different names namely Customs Clearing Agent, Freight Forwarding Agent, Customs Broker and Shipping and Forwarding Agent.

A Customs House Agent (CHA) is a person who carries on business as an agent relating to the entry or departure of a conveyance or the import or export of goods at any customs-station unless such person holds a licence granted in this behalf in accordance with the regulations of the Central Board of Excise and Customs [Section 146 of the Customs Act, 1962].

Custom House Agent's (CHA) main job responsibility is to study the laws governing the export and import and interpreting the levies payable and incentives receivable by clients. They also assist their clients in preparation of document according to expectation of customs authorities.

**Change of nomenclature of "customs house agents" to "customs brokers" [Section 146 and section 146A(2)(b)] [Effective from 10.05.2013]**

Considering the global practice and internationally accepted nomenclature, nomenclature of "customs house agents", wherever used in the Customs Act, 1962, has been replaced with "customs brokers". Consequently, reference to "customs house agents", in section 146 and 146A(2)(b) in the Customs Act, 1962, has been substituted with "customs brokers".

***Activities of CHA***

- Processing of documents, shipping bills etc. for export.
- Carting of goods/cargo to Container Freight Station.
- Arranging of physical examination of goods
- Collection of measurement certificate
- Handover goods/cargo to carrier i.e., shipping line
- Personally attending stuffing of cargo in container
- Collection of Bill of Lading from shipping line
- Collection of documents from Customs such as duplicate copy of shipping bill, attested copy of Invoice & Packing List etc.

## 5.6 INLAND CONTAINER DEPOT (ICD) AND CONTAINER FREIGHT STATION (CFS)

Generally, an exporter or import placed far way from the gateway port for clearance of import or export of goods. However, irrespective of distance from the servicing gateway port, prefers to move cargo by road to CFS (a transit facility where he stuffs cargo in containers and containers are transported to port for loading on board the ship). Both ICD and CFS is an infrastructure facility, owned and operated by public or private authority, especially designed for offering services of handling, storage and movement of containerized cargo and cargo under Customs supervision.

***Distinction between ICD and CFS***

| Inland Container Station (ICD) | Container Freight Station (CFS) |
|---|---|
| It is a place where containers are aggregated for onwards movement to or from the ports. | It is a place where containers are stuffed, unstuffed and aggregation/segregation of cargo takes place. |
| ICD's are located outside the port towns. | No site restrictions apply for CFS. |
| An ICD may have a CFS attached to it. | CFS is treated as an extension of a port/ICD/air-cargo complex. |
| Movement of shipment by road and rail. | Movement of shipment by road. |

***Activities of ICD and CFS:***

- Transfer of cargo into truck, Storage of cargo in truck, Road (truck) journey
- Breaking out of cargo from truck
- Transfer of cargo from truck to storage point/shed/yard in CFS
- Unpacking for customs examination
- Repacking for customs examination
- Consolidation of cargo according to destination
- Stuffing of cargo in the container

- Locking and sealing of container
- Loading of container on truck
- Transportation of loaded container to container yard in port
- Unloading of container in container yard in port
- Stacking of container tin container yard in port
- Loading of container on truck to move container alongside ship, etc.,
- Truck journey from Container Yard to alongside ship i.e., Quay.
- Loading of container from truck to cellular hold of ship etc.

***Services offered By ICD and CFS:***

ICD and CFS handle only containerized shipment, thus special kind of facilities are provided like:

- Sheds for temporary storage of cargo and container yard for temporary storage of container,
- Customs clearance facility
- Cargo handling equipment and container handling equipment
- Arranging manpower for stuffing the cargo into container and destuffing the cargo from container
- Road/rail connectivity to and from serving gateway port.
- Bonded warehousing facility
- Maintenance and repair of container unit
- Packaging, palletisation (i.e. a portable platform on which goods can be moved, stocked, and stored) fumigation (i.e. disinfect with chemical fumes).

**Person who has committed offence under the Finance Act, 1994 also disqualified to act as authorized representative [Section 146A(4)(b)] [Effective from 10.05.2013]**

**Erstwhile position**

Hitherto, any person who was convicted of an offence connected with any proceeding under the Customs Act, 1962, the Central Excises and Salt Act, 1944, or the Gold (Control) Act, 1968 was disqualified from acting as an authorized representative in customs matters.

**New position**

Clause (b) to section 146A(4) has been substituted with new clause (b) to provide that any person who was convicted of an offence connected with any proceeding under the Customs Act, 1962, the Central Excise Act, 1944, or the Gold (Control) Act, 1968 or the Finance Act, 1994 is disqualified from acting as an authorized representative in customs matters. Hence, a person convicted under the Finance Act, 1994 has also been disqualified from acting as an authorized representative in customs matters.

## 5.7 STORES

As per Section 2(38) of the Customs Act, 1962 stores means goods for use in a vessel or aircraft and includes fuel and spare parts and other articles of equipment, whether or not for immediate fitting**.** However, goods as per Section 2(22) of the Customs Act, 1962 includes stores. When the vessel enters into Indian territorial waters, stores get imported as goods. Hence, statutory provisions relating to stores are contained in Section 85 to 90 of the Customs Act, 1962 which are as follows:

***Stores may be allowed to be warehoused without payment of import duty (Section 85 of the Customs Act, 1962)***

Goods are imported for use as stores can be kept in the warehouse temporarily without following warehousing procedure. Therefore, this is also called as 'warehousing without warehousing'. Importer of these goods (i.e. stores) has no intention of clearing them for home consumption or for export as cargo. Hence, the proper officer takes physical stock of the goods and orders warehousing without warehousing. Thereby, these goods are not assessed to duty under section 17 of the Customs Act, 1962. Subsequently importer can clear these imported goods as stores to foreign going vessels/aircraft without payment of duty. Moreover, consumable stores can be stored in a warehouse for a maximum period of 30 days and non-consumable stores upto one year.

***Transit and Transhipment of Stores without payment of import duty (Section 86 of the Customs Act, 1962)***

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

Transhipment of goods means transfer from one conveyance to another with or without payment of duty.

As per section 86(1) of the Customs Act, 1962 any goods (i.e. stores) imported in any vessel/aircraft will be allowed to remain on the vessel/aircraft without payment of duty while foreign going vessel/aircraft is in India.

As per section 86(2) of the Customs Act, 1962 any goods (i.e. stores) imported in a vessel/aircraft can be transferred, with the permission of the proper officer, to any foreign going vessel or aircraft for consumption without payment of duty under section 87 of the Customs Act, 1962 or to an Indian naval vessel for consumption without duty under section 90 of the Customs Act, 1962.

***Imported stores may be consumed on board a foreign going vessel/aircraft without payment of import duty (Section 87 of the Customs Act, 1962)***

Imported stores on board a foreign going vessel/aircraft may also be consumed on board without payment of import duty, during the period such vessel/aircraft is a foreign going vessel or aircraft. As long as such vessel or aircraft is foreign going vessel or aircraft, stores consumed on board within the Indian Territory are exempted from duty.

***Example 4:***

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

***Answer:***

***'Stores' means goods for use in a vessel and includes diesel and spare parts and other articles and equipments. Bringing of 'stores' is treated as import. However, there is special provision for stores under section 87. Imported stores consumed on board an ocean going vessel (i.e. foreign going vessel) are exempt from import duty under Section 87. Since the ship is ocean going, stores consumed on board will not attract customs duty.***

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

However, the oil rigs proceeding to or carrying out operations in, continental shelf/exclusive economic zones of India, which are deemed to be a part of Indian territory, would not be foreign going vessels, as the oil rigs proceed from the territory of India to an area which also is deemed to be a part of the territory of India. Therefore, the supply of imported spares or goods or equipments to the rigs by a ship will attract import duty. [Aban Lloyd Chilies Offshore Ltd. v UOI (2008) 227 ELT 24 (SC)]

Thereby, the stores transshipped to the oil rigs and consumed thereon were not entitled to exemption under section 87 of the Customs Act, 1962.

***Warehoused goods cleared without payment of import duty (Section 88(a) of the Customs Act, 1962)***

Warehoused goods may be cleared for issue as stores on board to foreign going vessels and aircraft without payment of import duty. Section 69 of the Customs Act, 1962 will be applicable if warehoused goods are exported; no duty is leviable on their import. Section 69 is also extended to the stores taken on board foreign going vessel or aircraft.

w.e.f. 10-5-2013, as per section 69(1)(a) of the Customs Act, 1962, permits export of warehoused goods under postal export documents [as referred to in section 82] also.

*Note*: In the case of goods exported by post, any label or declaration accompanying the goods, which contains the description, quantity and value thereof, is deemed to be an entry for export.

***Imported goods issued as stores to foreign going vessel/aircraft considered as export (Section 88(b) of the Customs Act, 1962)***

The benefit of drawback under section 74 of the Customs Act, 1962 is extended to imported goods issued as stores to foreign going vessel/aircraft, provided stores had suffered import duty.

***Stores to be free of export duty (Section 89 of the Customs Act, 1962)***

Goods required as stores on any foreign going vessel or aircraft are permitted to be exported free of export duty, provided the following conditions to be satisfied:

- Goods should have been produced or manufactured in India,
- The quantity shall be determined by the proper officer and
- The basis for such determination will be the size of conveyance, men on board (passengers and crew) and length of voyage.

***Concessions in respect of imported stores for the Navy (Section 90 of the Customs Act, 1962)***

Imported stores may be consumed on board a ship of the Indian Navy without payment of import duty. The imported stores supplied from customs bonded warehouse to the ships of Indian Navy are not subject to import duty. The imported stores taken on board any ship of Indian Navy are allowed 100% drawback, if import duty levied on these stores.

## 5.8 COASTAL GOODS

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

***Bill of Coastal Goods [Section 92(1) of the Customs Act, 1962]***

The consignor of any coastal goods shall make an entry thereof by presenting to the proper officer a bill of coastal goods in the prescribed form.

This bill contains the following details:

- Port of landing,
- Port at which the goods are to be delivered and
- Other relevant details

Every such consignor while presenting a bill of coastal goods shall, at the foot thereof, make and subscribe to a declaration as to the truth of the contents of such bill.

***Coastal Goods not to be allowed until bill relating thereto is passed by the proper officer (Section 93 of the Customs Act, 1962)***

The master of a vessel shall not permit the loading of any coastal goods on the vessel until a bill relating to such goods presented under section 92 has been passed by the proper officer and has been delivered to the master by the consignor.

***Clearance of coastal goods at destination (Section 94 of the Customs Act, 1962)***

The master of a vessel carrying any coastal goods shall carry on board the vessel all bills relating to such goods delivered to him under section 93 and shall, immediately on arrival of the vessel at any customs or coastal port, deliver to the proper officer of that port all bills relating to the goods which are to be unloaded at that port.

Where any coastal goods are unloaded at any port, the proper officer shall permit clearance thereof if he is satisfied that they are entered in a bill of coastal goods delivered to him.

***Master of a coasting vessel to carry an "advice book" (Section 95 of the Customs Act, 1962)***

The master of every vessel carrying coastal goods shall be supplied by the Customs authorities with a book to be called the "advice book" as per section 95(1).

The proper officer at each port of call by such vessel shall make such entries in the advice book as he deems fit, relating to the goods loaded on the vessel at that port as per section 95(2).

The master of every such vessel shall carry the advice book on board the vessel and shall on arrival at each port of call deliver it to the proper officer at that port for his inspection as per section 95(3).

***Loading and unloading of coastal goods at customs port or coastal port only (Section 96 of the Customs Act, 1962)***

No coastal goods shall be loaded or unloaded at any port other than a customs port or a coastal port appointed under section 7 of the Customs Act, 1962 for the loading or unloading of such goods.

***No coasting vessel to leave without written order (Section 97 of the Customs Act, 1962)***

The master of a vessel which has brought or loaded any coastal goods at a customs or coastal port shall not cause or permit the vessel to depart from such port until a written order to that effect has been given by the proper officer.

The master of a vessel should fulfil following conditions for getting 'departure permission':

(a) the master of the vessel has to answer all the questions put to him.

(b) all charges and penalties due in respect of that vessel has been paid

(c) no penalty is leviable on master of the vessel under section 116 (i.e. if the goods on a vessel are not landed or short landed, penalty is leviable which is not more than twice the export duty leviable had they been exported).

(d) the provisions of this Chapter and any rules and regulations relating to coastal goods and vessels carrying coastal goods have been complied with.

## 5.9 IMPORTS/PROCUREMENT BY SEZs

Authorised operations in connection with SEZs shall be exempted from payment of IGST. Hence, the re is no change in operation of the SEZ scheme.

Supplies made to an SEZ unit or a SEZ developer is zero rated. The supplies made to an SEZ unit or a SEZ developer can be made in the same manner as supplies made for export:

Either on payment of IGST under claim of refund;

Or

under bond or LUT without payment of any IGST.

## 5.10 HIGH SEAS SALES

High Sea Sale Transaction means Sale Transaction done when goods are actually at High Sea i.e. during sea transit between Port of Loading and Port of Discharge. The date of transaction (agreement) should be between Bill of lading date and Vessel arrival date at Port of discharge. High Sea Sale is done mostly by Traders, sole Indenting Agent (of the Foreign Supplier) who buys in large quantity and then look out for buyers at Destination Country.

Benefits of High Sea Sale Transaction are like

(1) Goods are available at short time to final buyers,

(2) Also instead of buying entire shipment small quantities also can be bought for final buyers and

(3) First buyer can buy large quantity of goods at cheap / reasonable price and sale at best price to final buyers.

Drawbacks of High Sea Sale Transaction are like

(1) Cumbersome documentation / procedures and

(2) Loading of pricing for Customs assessment.

High Sea sales contract/agreement should be signed after dispatch of goods from origin & prior to their arrival at destination. The agreement should be on stamp paper. On concluding the High Sea Sales agreement the bill of lading (B/L) should be endorsed in favor of the new buyer. In respect of air shipment, High Sea seller should write to the airline/consol agent informing that an High Sea Sales agreement has been established with the High Sea Sales buyer and that the carrier document should be considered as endorsed in favour of High Sea sales buyer and further the import General Mani face (IGM) should be filed by the carrier in name of High Sea buyer.

**FORMAT OF A HIGH SEA SALE AGREEMENT**

| | |
|---|---|
| 1. Name & address of the Buyer | |
| 2. Other details of Buyer | Import code No.<br>I.T. Regn. No.<br>VAT Regn. No.<br>CST Regn. No. |
| 3. Name and address of the seller | |
| 4. Goods | |
| 5. Quantity / Invoice No | |
| 6. Name of Vessel | |
| 7. Bill of Lading No. | |
| 8. Price | |
| 9. Delivery | All right , title and interest of the seller in the Goods will be transferred by the seller to the buyer by endorsing the Bill Of Lading in favour of the Buyer. |
| 10. Name of the Foreign Supplier | |
| 11. Duty | Custom Duty, Import Duty or any other levy or duty shall be borne and paid by the Buyer. |
| 12. Tax | Sales Tax, Central or State, Customs Duty, Countervailing Duty, Octroi and the like or any other charge if payable or imposed or levied or leviable by any authority whomsoever, either on the goods or on the prices thereof, shall be borne and paid by the Buyer.<br>If for any reason, any of the aforesaid is paid by the seller, the same shall be forthwith reimbursed by the Buyer to the Seller. |

| | |
|---|---|
| 13. Clearance | The Buyer shall make its own arrangement for obtaining delivery and clearance of the goods from the Customs and Port Authorities and shall bear and pay Port Charges, Wharfage, Handling charges, Transport charges, demurrage, Octroi and any other charges whatsoever in this regard. |
| 14. Other charges | All other charges including but not limited to Letter of Credit, Letter of Credit amendment charges, Bank interest, commission and other charges for the retirement of documents shall be paid by the …..<br>If for any reason, any of the aforesaid is paid by the seller, the same shall be forthwith reimbursed by the Buyer to the Seller. |
| 15. Payment | The Buyer shall make payment to the Seller forthwith on receipt of the Bill of Lading duly endorsed in the Buyers' favour. In case of delay in payment by the Buyer, the Buyer shall pay to the Seller interest at the rate of …% per annum on the outstanding amount. |
| 16. Insurance | The Seller shall nominate and subrogate its rights to the Buyer to enable the Buyer to directly deal with the Insurance company, Steamer Agent and /or Customs Authorities. |
| 17.General Conditions | The Buyer shall on clearing the consignment through the Customs Authorities, make available to the Seller, copies of the exchange control, copy of the Supplier's Invoice, Bill of Lading and the Seller's Clearing Agent's bill.<br>The seller shall not be responsible for non-fulfillment of any of its obligations resulting from a force majeure event which shall mean any and all circumstances which the Seller cannot prevent despite using reasonable care, including, but not limited to Act of God, war or warlike events, explosion, fire, strike, boycott and act or omission to act by authorities.<br>Defects, if any, should be notified and specified in writing within 10 (ten) days of receipt of goods. If defects are notified within the time specified, the Seller warrants that it shall replace the defective goods with goods of the same type conforming to specification, thereby freeing the Seller from any further claim by the Buyer. If the Seller does not provide such replacement, the Buyer has the right to raise rescission or price reduction claims, but no claims for damages. The Seller does not warrant for products which are at an experimental stage. |

# Study Note - 6

## WAREHOUSING

**This Study Note includes**

**6.1 Warehousing**

### 6.1 WAREHOUSING

Under the Customs Act, 1962, there are two types of warehousing namely Public warehouse and Private warehouse (Section 2(43) of the Customs Act). Warehouse means a place where goods after landing are permitted to be removed without payment of duty. However, the duty is collected at the time of clearance from the warehouse. A public warehouse is owned and managed by a Government body like Central Warehousing Corporation. A private warehouse is a warehouse licensed to store dutiable imported goods of the licensee or on behalf of licensee, in case of public warehouses is not available.

***Warehousing bond [Section 59]***

An importer can be cleared for warehousing without payment of import duty. It means the duty liability is postponed to the date of actual clearance from the warehouse to home consumption. Hence, such an importer shall execute a bond binding himself in a sum equal to ***twice*** the amount of the duty assessed on such goods to cover all duties and interest if any payable. The Assistant Commissioner of Customs or Deputy Commissioner of Customs may insist on a part of the bond amount secured by way of bank guarantee.

w.e.f. 14-5-2016, As per Section 2(43) of the Customs Act, 1962, "warehouse" means a public warehouse licensed under section 57 or a private warehouse licensed under section 58 OR Special Warehouse license u/s 58A.

**Licensing of public warehousing:**

Section 57: The Principal Commissioner of Customs or Commissioner of Customs may, subject to such conditions as may be prescribed, license a public warehouse wherein dutiable goods may be deposited.

**Licensing of private warehouses:**

Serction 58: The Principal Commissioner of Customs or Commissioner of Customs may, subject to such conditions as may be prescribed, license a private warehouse wherein dutiable goods imported by or on behalf of the licensee may be deposited.

**Licensing of Special Warehousing:**

Section 58A (1): The Principal Commissioner of Customs or Commissioner of Customs may, subject to such conditions as may be prescribed, license a special warehouse wherein dutiable goods may be deposited and such warehouse shall be caused to be locked by the proper officer and no person shall enter the warehouse or remove any goods therefrom without the permission of the proper officer.

Section 58A (2): The Board may, by notification in the Official Gazette, specify the class of goods which shall be deposited in the special warehouse licensed under sub-section (1).

Consequently, CBEC, vide Notification No. 66/2016 Cus (NT) dated 14.05.2016 has notified the following class of goods which shall be deposited in a special warehouse:

(i) gold, silver, other precious metals and semi-precious metals and articles thereof;

(ii) goods warehoused for the purpose of:

- supply to DFS (Duty Free Shops) in a customs area;

- supply as stores to vessels/aircrafts under Chapter XI of the Customs Act, 1962;
- supply to foreign privileged persons in terms of the Foreign Privileged Persons (Regulation of Customs Privileges) Rules, 1957.

**Note:**

(1) Privileged person means a person entitled to import/purchase locally from bond goods free of duty for his personal use/for the use of any member of his family/for official use in his Mission, Consular Post or Office or in Deputy High Commission/Assistant High Commission.

(2) A Duty-Free Shop (DFS) in the airport need not be a licensed as warehouse under section 58A.

a. DFS located in customs area should not be treated as a warehouse.

b. In fact, it is a point of sale for the goods which are to be ex-bonded and removed from a warehouse for being brought to a DFS in the customs area for sale to eligible persons, namely international passengers arriving or departing from India.

**Cancellation of Licence [Section 58B, w.e.f. 14-5-2016]:**

(1) Where a licensee contravenes any of the provisions of this Act or the rules or regulations made thereunder or breaches any of the conditions of the licence, the Principal Commissioner of Customs or Commissioner of Customs may cancel the licence granted under section 57 or section 58 or section 58A.

Provided that before any licence is cancelled, the licensee shall be given a reasonable opportunity of being heard.

(2) The Principal Commissioner of Customs or Commissioner of Customs may, without prejudice to any other action that may be taken against the licensee and the goods under this Act or any other law for the time being in force, suspend operation of the warehouse during the pendency of an enquiry under sub-section (1).

(3) Where the operation of a warehouse is suspended under sub-section (2), no goods shall be deposited in such warehouse during the period of suspension:

Provided that the provisions of this Chapter shall continue to apply to the goods already deposited in the warehouse.

(4) Where the licence issued under section 57 or section 58 or section 58A is cancelled, the goods warehoused shall, within seven days from the date on which order of such cancellation is served on the licensee or within such extended period as the proper officer may allow, be removed from such warehouse to another warehouse or be cleared for home consumption or export:

Provided that the provisions of this Chapter shall continue to apply to the goods already deposited in the warehouse till they are removed to another warehouse or cleared for home consumption or for export, during such period.".

***Features of warehousing:***

- Importer can defer payment of import duties
- Importer can store the goods in a safe place
- Importer allowed to do manufacture in bonded warehouse and then re-export from it.
- The importer can be allowed to keep the goods up to one year without payment of duty from the date he deposited the goods into warehouse
- The importer minimises the charges by keeping in a warehouse, otherwise the demurrage charges at port is heavy.
- As per Section 9 of the Customs Act, 1962, the Central Board of Excise and Customs, may, by notification in the Official Gazette, declare places to be warehousing stations at which alone public warehouses may be

appointed and private warehouses may be licensed.

- Assistant Commissioner of Customs or Deputy Commissioner of Customs are competent to appoint a warehouse as public bonded warehouse
- The Commissioner of Customs or Principal Commissioner of Customs may license private warehouse. As per section 58(2)(b) of the Customs Act, 1962, Commissioner or Principal Commissioner of Customs is not required to give a notice to the licensee while cancelling the license of a private warehouse if he has contravened any provision of the said Act. Otherwise, the license to private warehouse can be cancelled by giving ONE month notice.
- Only dutiable goods can be deposited in the warehouse
- Green Bill of Entry has to be submitted by the importer to clear goods from warehouse for home consumption.
- Rate of duty is applicable as on the date of presentation of Bill of Entry (i.e. sub-bill of entry or ex-bond bill of entry) for home consumption.
- Reassessment is not allowed after the imported goods originally assessed and warehoused.
- The exchange rate is the rate at which the Bill of Entry (i.e. 'into bond') is presented for warehousing. That is the date on which the Bill of Entry is submitted for warehousing not the Ex- Bill of Entry which is required to be submitted at the time of clearing the goods from warehouse.
- If the goods which are not removed from warehouse within the permissible period, would be deemed to have been improperly removed on the day it should have been removed. Hence, duty applicable on such date (i.e. last date on which the goods should have been removed) is applicable, and not the actual date on which goods are removed. [***Kesoram Rayon* v *Commissioner of Customs* (1996)]**
- Relevant date when goods are warehoused can be summarized hereunder.

| S. No. | Goods warehoused under Bond | Relevant date | Remarks |
|---|---|---|---|
| (i) | Rate of exchange | At the time of submission of 'into bond' bill of entry | When goods are removed for home consumption |
| (ii) | Rate of duty | As on the date of submission of sub-bill of entry | When goods are removed for home consumption |
| (iii) | Rate of duty | The rate of duty prevails on the date on which the goods should have been removed is to be considered | When the goods are not removed from warehouse within the permissible period and permission is also not obtained for the extended period – Improper removal. |

***Warehousing period***

As per section 61 of the Customs Act, 1962 period of warehousing has been suggested in the following lines:

| Importer | Normal warehousing period | Remarks |
|---|---|---|
| Other than EOU | One year | From the date of issuing the order by Customs Officer permitting deposit of goods in a warehouse. |
| EOU | Three years – for inputs, spares and consumables<br>Five years –for capital goods | In the case of EOU units, the whole factory is treated as a bonded warehouse. |

*The power to extend the warehousing period beyond 5 years/3 years has been delegated to the Commissioner of Customs for such further period as he may deem fit. The period of 1 year can be extended by the Commissioner of Customs for further 6 months. However, for extending it further, authorization of Chief Commissioner of Customs is required.*

*In the case of goods warehoused by other than EOU, if they are likely to deteriorate, the normal warehousing period of one year may be reduced by the Commissioner of Customs to such shorter period as he may deem fit.*

**w.e.f. 14-5-2016:**

(1) Section 59 of the Customs Act, 1962, Bond amount has been increased from twice of the duty amount to thrice of the duty amount and security also will have to be given.

(2) Now, rent charges claimable will not be pre-requisite for non- compliances of any of the provisions, since it is the issue of custodian i.e. owner of the warehouse.

**Period for which goods may remain warehoused w.e.f. 14-5-2016**

As per Sec. 61 of the Customs Act, 1962

(1) Any warehoused goods may remain in the warehouse in which they are deposited or in any warehouse to which they may be removed:

(a) in the case of capital goods intended for use in any hundred per cent. export oriented undertaking or electronic hardware technology park unit or software technology park unit or any warehouse wherein manufacture or other operations have been permitted under section 65, till their clearance from the warehouse;

(b) in the case of goods other than capital goods intended for use in any hundred per cent. export oriented undertaking or electronic hardware technology park unit or software technology park unit or any warehouse wherein manufacture or other operations have been permitted under section 65, till their consumption or clearance from the warehouse; and

(c) in the case of any other goods, till the expiry of one year from the date on which the proper officer has made an order under sub-section (1) of section 60:

Provided that in the case of any goods referred to in this clause, the Principal Commissioner of Customs or Commissioner of Customs may, on sufficient cause being shown, extend the period for which the goods may remain in the warehouse, by not more than one year at a time:

**Provided further** that where such goods are likely to deteriorate, the period referred to in the first proviso may be reduced by the Principal Commissioner of Customs or Commissioner of Customs to such shorter period as he may deem fit.

(2) Where any warehoused goods specified in clause (c) of sub- section (1) remain in a warehouse beyond a period of **ninety days** from the date on which the proper officer has made an order under sub-section (1) of section 60, interest shall be payable at such rate as may be fixed by the Central Government under section 47, on the amount of duty payable at the time of clearance of the goods, for the period from the expiry of the said ninety days till the date of payment of duty on the warehoused goods:

Provided that if the Board considers it necessary so to do, in the public interest, it may,—

(*a*) by order, and under the circumstances of an exceptional nature, to be specified in such order, waive the whole or any part of the interest payable under this section in respect of any warehoused goods;

(*b*) by notification in the Official Gazette, specify the class of goods in respect of which no interest shall be charged under this section;

(*c*) by notification in the Official Gazette, specify the class of goods in respect of which the interest shall be chargeable from the date on which the proper officer has made an order under sub-section (1) of section 60.

**w.e.f. 14-5-2016 Control over warehoused goods has been omitted:**

Now there will be a record based control on such warehouses except for warehouses setup under section 58A and hence there is no need of payment of MOT charges by EOU except for class of goods which is notified under

section 58A.

**Section 63 of the Customs Act, 1962, Payment of rent and warehouse charges.**

| Prior to 14-5-2016 | W.e.f. 14-5-2016 | Remarks |
|---|---|---|
| The owner of any warehoused goods shall pay to the warehouse-keeper rent and warehouse charges at the rates fixed under any law for the time being in force or where no rates are so fixed, at such rates as may be fixed by the Commissioner of Customs.<br>(2) If any rent or warehouse charges are not paid within ten days from the date when they became due, the warehouse- keeper may, after notice to the owner of the warehoused goods and with the permission of the proper officer cause to be sold (any transfer of the warehoused goods notwithstanding) such sufficient portion of the goods as the warehouse-keeper may select. | Omitted | This was the issue of the custodian i.e. owner of warehouse and not the custom officers. |

**Section 64 of the Customs Act, 1962, Owner's right to deal with warehoused goods:**

w.e.f. 14-5-2016 The owner of any warehoused goods may, after warehousing the same:

(*a*) inspect the goods;

(*b*) deal with their containers in such manner as may be necessary to prevent loss or deterioration or damage to the goods;

(*c*) sort the goods; or

(*d*) show the goods for sale.

***Note*:** Since physical control has been abolished, there is no need of obtaining sanction on payment of MOT charges.

**Section 65 of the Customs Act, 1962 Manufacture and other operations in relation to goods in a warehouse.**

| Prior to 14-5-2016 | w.e.f. 14-5-2016 | Remarks |
|---|---|---|
| With the sanction of the Assistant Commissioner of Customs or Deputy Commissioner of Customs and subject to such conditions and on payment of such fees as may be prescribed, the owner of any warehoused goods may carry on any manufacturing process or other operations in the warehouse in relation to such goods. | **With the permission of the Principal Commissioner of Customs**<br>**or**<br>**Commissioner of Customs** and subject to such conditions and subject to such conditions and on payment of such fees as may be prescribed, the owner of any warehoused goods may carry on any manufacturing process or other operations in the warehouse in relation to such goods. | It is upward delegation. Now EOU, EHTP Units will have to be obtained license u/s 58/65 from Principal Commissioner/ Commissioner |

**Custody and removal of warehoused goods (New Section 73A w.e.f. 14-5-2016)**

(1) All warehoused goods shall remain in the custody of the person who has been granted a licence under section 57 or section 58 or section 58A until they are cleared for home consumption or are transferred to another warehouse or are exported or removed as otherwise provided under this Act.

(2) The responsibilities of the person referred to in sub-section (1) who has custody of the warehoused goods shall be such as may be prescribed.

(3) Where any warehoused goods are removed in contravention of section 71, the licensee shall be liable to pay duty, interest, fine and penalties without prejudice to any other action that may be taken against him under this Act or any other law for the time being in force.

*Note*: The provision has been inserted so as to recover the duty either from custodian or importer as may be prescribed to protect the revenue.

Liability of duty interest fine will be on importer and or custodian, as the case may be.

This will cause more responsibility on custodian.

***Interest on warehoused goods***

If the importer after warehousing the goods does not clear within 90 days from the date of deposit of the goods, the interest @15% p.a. is to be paid on the value of total duty payable. However in case of Anti Dumping Duty interest has to be paid at the time of importation. If the Anti Dumping Duty is not levied at the time of import however, subsequently imposed on warehoused goods then no such duty is required to be paid by the importer at the time of clearance from the warehouse. Therefore no interest on the part of Anti Dumping duty will be imposed.

No interest, if no customs duty is payable on warehoused goods.

While calculating the interest for number of days delay, we should take into account by including the date of payment of duty. [MF(DR) Circular No. 48/2002-Customs]

***Example 1:***

***An importer imported some goods in February, 2018 and the goods were cleared from Mumbai port for warehousing on 8th February, 2018 after assessment. Assessable value was ₹ 4,86,000 (US $ 10,000 at the rate of exchange ₹ 48.60 per US $). The rate of duty on that date was 20% (assume that no additional duty is payable). The goods were warehoused at Pune and were cleared from Pune warehouse on 4th March, 2018, when rate of duty was 12% and exchange rate was ₹ 48.75 = 1US $. What is the duty payable while removing the goods from Pune on 4th March, 2018? (Applicable Social Welfare Surcharge @ 10%)***

***Answer:***

***The rate of exchange will be ₹ 48.60 per USD***

| | | | |
|---|---|---|---|
| ***Assessable value (i.e. US $ 10,000 at ₹48.60 per US $)*** | = | ₹ | ***4, 86,000*** |
| ***Rate of duty*** | = | @ | ***12%.*** |
| ***Basic customs duty payable*** | = | ₹ | ***58,320*** |
| ***Social Welfare Surcharge @ 10%*** | = | ₹ | ***5,832*** |
| ***Total Duty payable*** | = | ₹ | ***64,152*** |

***Example 2:***

***Certain goods were imported in February 2018. "Into bond" bill of entry was presented on 14th February, 2018 and goods were cleared from the port for warehousing. Assessable value was $5,00,000. Customs officer issued the order under section 60 permitting the deposit of the goods in warehouse on 21st February, 2018 for 3 months. Goods were not cleared even after warehousing period was over, i.e., 21st May, 2018 and extension of time was also not obtained. Customs officer issued notice under section 72 demanding duty and other charges. Goods were cleared by importer on 28th June, 2018. What is the amount of duty payable while removing the goods? Compute on the basis of following information (assume that no additional duty or special additional duty payable). (Applicable Social Welfare Surcharge @ 10%)***

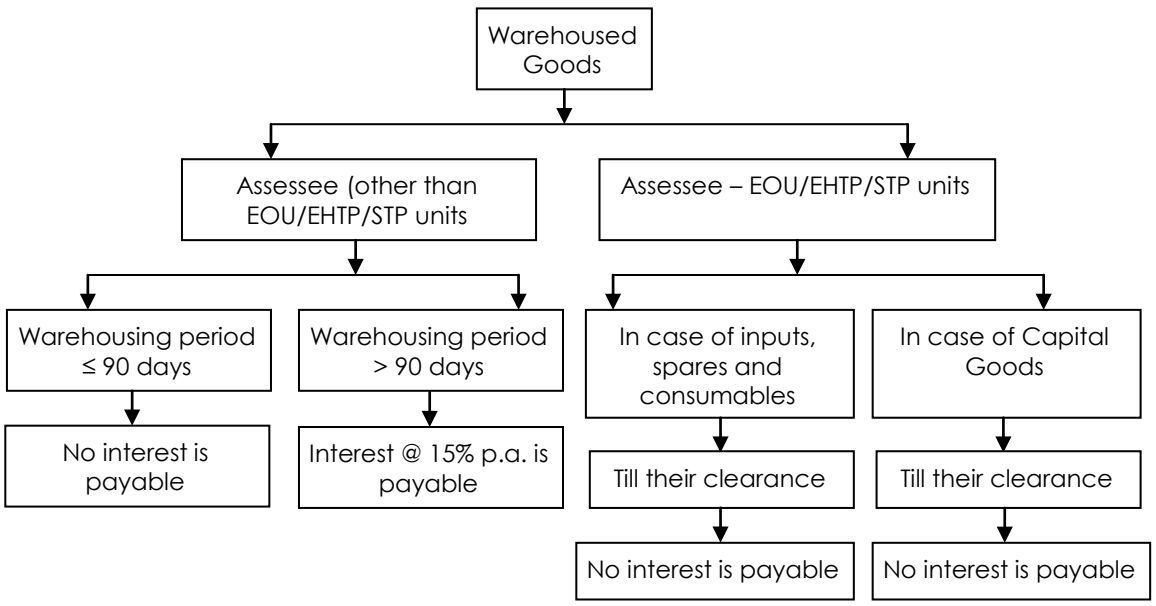
| | 14.02.2018 | 21.05.2018 | 28.06.2018 |
|---|---|---|---|
| Rate of Exchange per USD | ₹ 48.30 | ₹ 48.40 | ₹ 48.50 |
| Basic customs duty | 35% | 12% | 25% |

***Answer:***

| | | |
|---|---|---|
| Rate of duty applicable | = | @ 12% |
| Exchange rate | = ₹ | 48.30 |
| Assessable value 5,00,000USD @ 48.30 | = ₹ | 2,41,50,000 |
| Customs Duty @12% x 2,41,50,000 | = ₹ | 28,98,000 |
| Social Welfare Surcharge 10% | = ₹ | 2,89,800 |
| Total Customs duty payable | = ₹ | 31,87,800 |

***Note: Goods not removed from the warehouse within the permissible period, is considered as deemed to be removed improperly on the due date, even though, the goods actually removed at a later date. The rate of duty prevailing on the date on which the goods should have been removed is to be considered i.e. 12%. [Kesoram Rayon v Commissioner of Customs (1996)]***

**Applicability of Interest on Warehoused Goods 14-5-2016:**



***Waiver of interest***

Waiver of interest can be granted by the Chief Commissioner of Central Excise upto ₹ 2 crores, and the C.B.E. & C. can waive part or full interest under exceptional circumstances without any upper limit beyond ₹ 2 crores.

***Custodian under section 45 of the Customs Act, 1962***

All imported goods unloaded in a customs area shall remain in the custody of such person as may be approved by the Commissioner of Customs until they are cleared for home consumption or are warehoused or are transshipped. This person is called the custodian. The Post Trust Authority and the Notional Airport Authority can be considered as custodian.

Custodian has the following responsibilities under section 45(2):

- Keep proper record of goods received from the carriers
- Sending a copy of the same to the customs authorities
- Removal of goods from the customs area with specific permission of the Customs Authorities

Liability of the custodian under section 45(3)]:

If any imported goods are pilfered after unloading in any customs area, while in the custody of the custodian, such custodian shall be liable to pay duty on such goods. ***International Airport Authority of India* v *Ashok Dhawan* 1999(106) ELT 16 (SC)**.

Port Trust authorities are not liable for payment of duty in respect of pilfered goods:

The Bombay High Court differently interpreted the liability of the Custodian. As per section 45 of the Customs Act, the person referred to in sub-section (1) thereof can only be the person approved by the Commissioner of Customs. It excludes a body of persons, who by virtue of a law for the time being in force, is entrusted with the custody of goods by incorporation of law under another enactment, (for example, the Port Trust Act in the given case). The recovery of duty in respect of pilfered goods could only from the approved person and the Port Trust is not liable to pay duty on goods pilfered while in their possession **[*Board of Trustees of the Port of Bombay* v *UOI* 2009 (241) ELT 513 (Bom)]**

***A 100% EOU has to be treated as a Customs Bonded Warehouse***

The entire premises of a 100% EOU has to be treated as a Customs bonded warehouse if the licence granted u/s 58 is in respect of the entire premises. Imported goods warehoused in the premises of a 100% EOU (which is licensed as a Customs bonded warehouse) and used for the purpose of manufacturing/processing by the 100% EOU in bond as authorized u/s 65 cannot be treated to have been removed for home consumption accordingly, filing or non-filing of ex-bond bill of entry before using the goods by the 100% EOU is not relevant. The Tribunal expressed the same view in the case of ***Paras Fab International* v *CCE* 2010 (256) ELT 556 (Tri.-LB).**

***Example 3:***

***A 100% EOU in Alwar, filed 'into Bond Bill of Entry' for warehousing the imported goods. The impugned goods were warehoused in their 100% EOU in Alwar and subsequently used in the factory within the premises of the 100% EOU for manufacture of the finished goods. The Department demanded customs duty on the impugned goods.***

***Answer:***

***Imported goods warehoused in the premises of a 100% EOU (which is licensed as a Customs bonded warehouse) and used for the purpose of manufacturing/processing by the 100% EOU in bond as authorized u/s 65 cannot be treated to have been removed for home consumption accordingly customs duty not required to pay.***

***Goods improperly removed from warehouse***

In any of the following cases, we can say the goods were improperly removed as per section 72 of the Customs Act, 1962:

- Warehoused goods taken out of a warehouse (except on clearance for home consumption or re-exportation,

or for removal to another warehouse etc.)

- Warehoused goods have not been removed from a warehouse at the expiry of the period during which such goods are permitted
- Warehoused goods taken as samples without payment of duty but not returned
- Warehoused goods for which a bond has been executed and have not been cleared goods for home consumption or export.

***Clearance of warehoused goods for exportation***

Warehoused goods may be exported without payment of import duty by satisfying the following:

- A shipping bill or a bill of export has been presented in respect of such goods in the prescribed form
- The export duty, penalties, rent, interest and other charges payable in respect of such goods have been paid; and
- An order for clearance of such goods for exportation has been made by the proper officer.

Powers of proper officer to take samples for the purpose of examination or testing (Section 144):

The proper officer may -

- on the entry or clearance of any goods or at any time while such goods are being passed through the customs area,
- take samples of such goods in the presence of the owner thereof,
- for examination or testing, or for ascertaining the value thereof, or for any other purposes of this Act.

Return/Disposal of samples:

- After the purpose for which a sample was taken is carried out, such sample shall, if practicable, be restored to the owner.
- But if the owner fails to take delivery of the sample within three months from the date the sample was taken, it may be disposed of in such manner as the Commissioner of Customs may direct.

No duty on samples destroyed:

| Prior to 10th May, 2013 | W.e.f. 10th May, 2013 |
|---|---|
| No duty shall be chargeable on any sample of goods taken under this section which is consumed or destroyed during the course of any test or examination thereof, if such duty amounts to five rupees or more. | No duty shall be chargeable on any sample of goods taken under this section which is consumed or destroyed during the course of any test or examination thereof. |

***Imported goods not cleared within 30 days (Section 48 of the Customs Act, 1962)***

As per Section 48 of the Customs Act, 1962 the imported goods brought into India are allowed to stay not more than 30 days on the wharf. Therefore, these imported goods should be cleared for home consumption, or warehoused or transhipped within 30 days from the date of the unloading thereof at the Customs Station or within such further time as the proper officer may allow.

If the goods are not cleared within 30 days from the date of unloading or if the title to any imported goods is relinquished by the importer, such goods can be sold by the Custodian with customs permission and after notice to the importer.

However, in case of animals, perishable goods, hazardous goods, they can be sold any time with the permission of proper officer.

Arms and ammunition fall under Arms Act, 1959 they can be sold at the time/place/manner prescribed by the Central Government of India.

However, Section 46 of the Customs Act, 1962 prescribes no time limit for filing a bill of entry by an importer upon arrival of goods.

***Warehousing without warehousing (Section 49 of the Customs Act, 1962)***

Imported goods are kept in customs bonded warehouse after being assessed to duty. However, occasionally, it may happen that assessment of duty may take time for want of some clarification/reports etc. In such cases, goods lying in docks may incur heavy demurrage. There is a provision that customs department can issue detention certificate and on the basis of such certificate, port trust authorities may remit demurrage.

If the assessment is delayed, then those goods can be stored in public warehouse without executing the bond.

W.e.f. 10th May, 2013.

| Prior to 10th May, 2013 | W.e.f 10th May, 2013 |
|---|---|
| There is no time limit to remove the goods from warehouse where the goods has been stored under section 49 of the Customs Act, 1962 i.e. warehousing without warehousing | There is a time limit of 30 days to remove the goods from warehouse where the goods has been stored under section 49 of the Customs Act, 1962 i.e. warehousing without warehousing.<br>However, the Commissioner of Customs may extend the period of storage for a further period not exceeding 30 days at a time. |

Extension of warehousing and acceptance of Letter of Undertaking in place of Bank Guarantee for export warehousing [*Circular No. 976/10/2013-CX, dated 12.12.2013*]:

1. Warehousing of goods shall initially be allowed for a period upto 6 months, which may be further extended by Assistant/Deputy Commissioner, each extension being for a period not exceeding 6 months, subject to verification that the goods have not deteriorated in quality.
2. The maximum period, for which goods may be left in the warehouse in which they are deposited, or in any warehouse to which such goods have been removed, shall be **three years** from the date on which such goods were first warehoused.
3. Excisable goods shall be deemed to be cleared for home consumption on expiry of warehousing period including extensions granted, if any.
4. Duty and interest @**15% p.a. (w.e.f. 1-4-2106)** shall be charged on such deemed removal. Prior to 1-4-2016 interest @ 24% per annum.
5. W.e.f. 12.12.2013, where exporter is a manufacturer and a Status Holder with a clean track record, requirement to furnish security equal to 25% of bond amount shall be replaced by the requirement of furnishing an **LUT** initially for a period up to 6 months which may be extended by a further period not exceeding 6 months.

Further, extensions in the warehousing period shall be allowed to such exporter only on furnishing security of 25% of the bond amount.

**Warehoused Goods (Removal) Regulations, 2016 (NT 67/2016 Cus Dt 14.5.2016):**

1. **Owner of warehoused goods make a request:**

   Where the warehoused goods are to be removed from one warehouse to another warehouse or from a warehouse to a customs station for export, the owner is required to make a request in prescribed Form for transfer of goods.

2. **Conditions for transport of goods:** Where the goods are removed:

   - from the customs station of import to a warehouse or

- from one warehouse to another warehouse or
- from the warehouse to a customs station for export

the transport of the goods shall be under one-time lock (OTL), affixed by the proper officer or licensee or bond officer [i.e. an officer of customs in charge of a warehouse], as the case may be. However, the Principal Commissioner/Commissioner of Customs may dispense with the condition of one-time lock and allow transport of the goods without affixing the one-time-lock, having regard to the nature of goods or manner of transport.

3. **Acknowledgement of receipt of goods at the destination, to be produced by the owner of goods:**

The owner of the goods shall produce to the proper officer at customs station of import or the bond officer, within one month [or extended period allowed], an acknowledgement issued by the licensee or the bond officer of the warehouse to which the goods have been removed or the proper officer at the customs station of export, as the case may be, stating that the goods have arrived at that place. In case the owner fails to provide the acknowledgment, he shall pay the full amount of duty chargeable on account of such goods together with interest, fine and penalties payable under section 72(1).

**One Time Lock (OTL):**

When the goods are removed from the customs station of import for warehousing, the proper officer affixes a one-time lock (OTL) on the container or means of transport (closed trucks). The serial number of OTL alongwith date and time of its affixation needs to be endorsed upon Bill of Entry for warehousing and transport document.

All customs stations are required to maintain records incorporating the number of the OTL, bill of entry, truck number, container number (if applicable), date & time of affixing the OTL and the name, designation & telephone number of the officer affixing the OTL.

A similar procedure has been provided under Warehoused Goods (Removal) Regulations, 2016 for removal of goods from one warehouse to another and from a warehouse to customs station for export.

However, the Principal Commissioner of Customs /Commissioner of Customs may permit movement of goods without affixation of such OTLs, where the nature of goods or their manner of transport so warrant (e.g. Liquid Bulk Cargo transported through Pipe Line & Over Dimensional Cargo)

**Transfer of goods to another warehouse:**

| Warehouse – Private or Public | Special warehouse |
|---|---|
| (1) Licensee (namely incharge of warehouse) shall transfer warehoused goods to another warehouse only when the owner of the goods produce the form for transfer of goods bearing the orders of the bond officer permitting such transfer. | (1) Licensee (namely incharge of warehouse) shall transfer warehoused goods to another warehouse only with the permission of the Bond Officer on the form for transfer of goods. |
| (2) After the goods are removed and loaded on means of transport, licensee would:<br>(a) affix a one-time-lock to the means of transport,<br>(b) endorse the number of one-time lock on prescribed form for transfer of goods and on transportation documents,<br>(c) cause one copy of each of these documents to be delivered to bond officer and<br>(d) record the remval of goods | (2) Once bond officer permits removal of goods from warehouse, licensee shall, in the presence of Bond Officer,:<br>(a) cause the goods to be loaded onto the means of transport, and<br>(b) affix a one-time-lock to the means of transport. |

**Monthly return:** A licensee shall file with the Bond Officer a monthly return in prescribed form, of the receipt, storage, operations and removal of the goods in the warehouse, within 10 days after the close of the month to which such return relates. However, such return shall be furnished on/before the 10th day of the month immediately preceding the month in which the warehousing period would expire.

**Online filing of Ex-bond bill of entry and EDI based monitoring of warehouses at customs station of import (w.e.f. 31.05.2015)**

The filing of ex-bond bills of entry on ICES will provide the benefits of automation to importers availing the warehousing facility and lend efficiency to the process of clearance of the warehoused goods.

On receipt of copy of the ex-bond bill of entry, jurisdictional bond officer shall verify its details from ICEGATE (Indian Customs Electronic Commerce/Electronic Data interchange (EC/EDI) Gateway) to check that, the order of clearance for home consumption has been made by the proper officer. In case of any discrepancy, he shall not permit the removal of goods from the warehouse and immediately inform his Deputy or Assistant Commissioner for resolution of the same.

***Example 4:***

***Explain the validity of the following statements with reference to Chapter IX of the Customs Act, 1962 containing the provisions relating to the warehousing:***

***(a) The proper officer is not authorized to lock any warehouse with the lock of the Customs Department.***

***(b) The Commissioner of Customs (Appeals) may appoint public warehouses wherein dutiable goods may be deposited.***

***(c) The Commissioner of Customs or Principal Commissioner of Customs is not required to give a notice to the licensee while canceling the license of a private warehouse if he has contravened any provision of the said Act.***

***Answer:***

***(a) The given statement is invalid: Sec. 58A (1) The Principal Commissioner of Customs or Commissioner of Customs may, subject to such conditions as may be prescribed, license a special warehouse wherein dutiable goods may be deposited and such warehouse shall be caused to be locked by the proper officer and no person shall enter the warehouse or remove any goods therefrom without the permission of the proper officer.***

***(b) The given statement is invalid: The Commissioner of Customs or the Principal Commissioner of Customs can appoint public warehouse, wherein dutiable goods can be deposited under Section 57 of the Customs Act, 1962.***

***(c) The given statement is valid: the Commissioner of Customs or Principal Commissioner of Customs is not required to give a notice to the licensee while canceling the license of a private warehouse if he has contravened any provision of the said Act, as per section 58(2)(b) of the Customs Act, 1962.***

***Example 5:***

***An importer imported some goods on 1st January, 2019 and the goods were cleared from Mumbai port for warehousing on 8th January, 2019 by submitting Bill of Entry, exchange rate was ₹ 50 per US $. FOB value US $ 10,000. The rate of duty on 8th January, 2019 was 20%. The goods were warehoused at Pune and were cleared from Pune warehouse on 31st May, 2019, when rate of basic customs duty was 12% and exchange rate was ₹68.75 per 1US $. IGST @12% is applicable. (Applicable Social Welfare Surcharge @ 10%)***

***You are required to find:***

***(a) The total Customs duty payable?***

***(b) The interest if any payable?***

***Answer:***

| | USD |
|---|---|
| FOB | 10,000 |
| ADD: 20% Freight on FOB | 2,000 |
| ADD: 1.125% Insurance on FOB | 112.5 |
| CIF / Assessable Value | 12,112.50 |

| | ₹ | |
|---|---|---|
| Assessable Value | 6,05,625 | (i.e. 12,112.50 x ₹ 50) |
| Add: BCD 12% | 72,675 | (i.e. 6,05,625 x 12%) |
| Add: Social Welfare Surcharge @ 10% | 7,268 | (i.e. 72,675 @ 10%) |
| Transaction value subject to GST | 6,85,568 | |
| Add: IGST | 82,268 | (i.e. 6,85,568 @ 12%) |
| Value of import | 7,67,836 | |
| Value of Customs duties | 1,62,211 | |
| Interest: (i.e. 1,62,211 x 15% x 54/365) | 3,600 | |

***Working Note:***

***From 8th January 2019 to 31st May 2019 = 144 – 90 = 54 days.***

***Example 6:***

***Vipul imported certain goods in December, 2018. An 'Thrice the duty bond' bill of entry was presented on 14th December, 2018 and goods were cleared from the port for warehousing. Assessable value on that date was US $1,00,000. The order permitting the deposit of goods in warehouse for four months was issued on 21st December, 2018. Vipul deposited the goods in warehouse on the same day but did not clear the imported goods even after the warehousing period got over on 20th April, 2019.***

***A notice was issued under section 72 of the Customs Act, 1962, demanding duty, interest and other charges. Vipul cleared the goods on 14th May 2019. Compute the amount of duty and interest payable by Vipul while removing the goods on the basis of following information:***

| *Particulars* | *14-12-2018* | *20-4-2019* | *14-5-2019* |
|---|---|---|---|
| *Rate of exchange per US$ (as notified by Central Board of Excise & Customs)* | *₹ 65.20* | *₹ 65.40* | *₹ 65.50* |
| *Basic Customs Duty* | *15%* | *10%* | *12%* |

***No other customs duty is payable except basic customs duty.***

***Answer:***

***Assessable vale ₹ 65,20,000/-***

***Customs duty is ₹ 7,17,200 (USD 1,00,000 x ₹65.20) x 11% = ₹7,17,200***

***Interest payable is ₹ 16,211/- (7,17,200 x 15/100) x 55 days/365 = ₹16,211/-***

***No. of days delay:***

| *Month* | *No. of days delay* |
|---|---|
| *From 21st Dec 2018 to 31st Dec 2018* | *11* |
| *Jan 2018* | *31* |
| *Feb 2018* | *28* |
| *Mar 2018* | *31* |
| *April 2018* | *30* |
| *May 2018* | *14* |
| *Total* | *145* |
| *Less: No. of days for which no interest* | *-90* |
| *No. of delay for interest* | *55* |

# Study Note - 7

## DUTY DRAWBACK

**This Study Note includes**



### 7.1 DUTY DRAWBACK

The term 'duty drawback' means drawing back of the duties paid. Drawback is given as an amount to the exporter which represents:

- The duty paid on imported inputs which are used in the manufacture of export goods.
- The excise duty paid on the indigenously produced inputs used in the manufacture of export goods and the service tax paid on input services. However, the excise duty and the service tax have been subsumed into GST.

No drawback is allowed on VAT, CST

However, the amount of drawback paid would not exactly relate to the actual import duty and excise duty components. It is determined by the government on the basis of an average amount of duty having regard to all the circumstances and facts of the manufacturing industry. Such a rate is called 'all industry rates' which may vary from time to time depending upon the duty prevalent on the inputs.

Brand rate of duty drawback is applicable in either of the following circumstances.

- When individual rate fixed in respect of goods on which all industry rate is not applicable

  Or

- All industry rate does not cover 80% of the drawback amount due

The Brand Rate of Duty Drawback fixed by the Central Government after necessary verification of the manufacturing processes and the documents provided giving details of input output ratio, duty paid on inputs, etc.

### 7.2 SPECIAL BRAND RATE OF DUTY DRAWBACK

As per Rule 7 of Drawback Rules the special brand rate of duty drawback can be applied based on the satisfaction of following conditions:

- Exporter has to apply for fixation of special brand rate within 30 days from the date of export.
- All industry rates do not cover 80% of the duties paid by the exporter.
- Rate of Duty Drawback should not be less than 1% of Free on Board.
- Amount of Drawback should not be less than ₹ 500 per shipment, in case rate of Duty Drawback is less than 1% of FOB.
- Exported goods value is more than the value of imported goods.

***Example 1:***

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

***Answer:***

- ***Drawback Amount ₹ 1,65,000 (i.e. 2,000 x 750 × 11%) or ₹ 1,60,000 (i.e. ₹ 80 × 2,000) whichever is less.***
- ***Therefore duty drawback allowed is ₹ 1,60,000.***
- ***All Industry duty drawback rate = @82.05% [(1,60,000/1,95,000) × 100%]***
- ***Exporter is not eligible to apply for Special Brand rate.***
- ***Therefore, exporter is eligible for claiming All Industry Duty Drawback.***

***Note: special brand rate of duty is applicable only when all industry rates do not cover 80% of the duties paid by the exporter.***

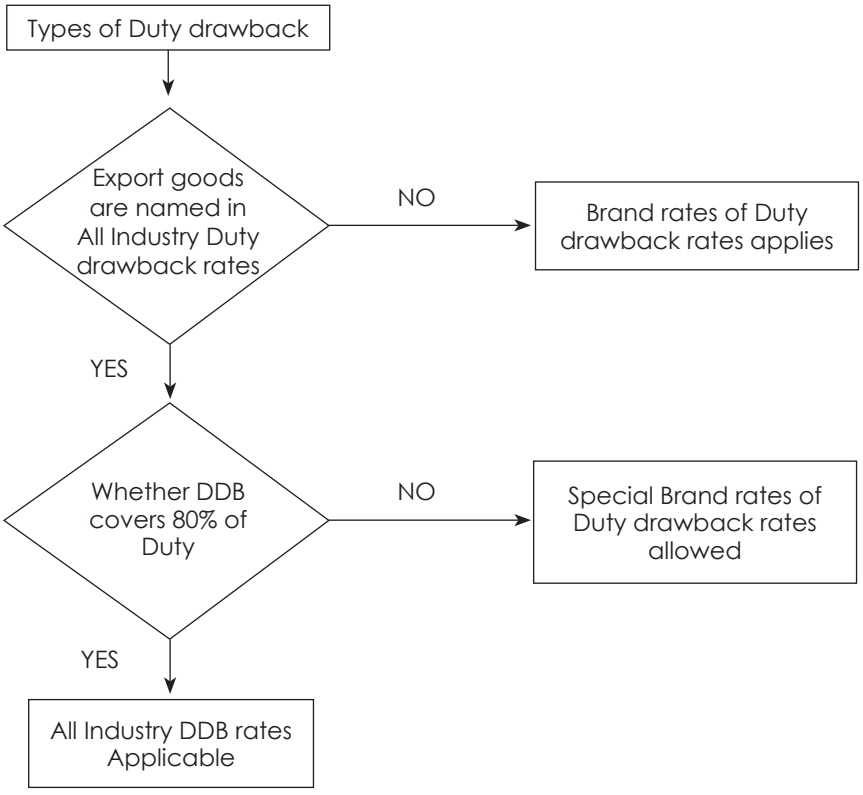
***All Industry Rates***

Generally these rates are fixed by the Drawback Directorate once in every year on 1st June. The Brand rate is fixed for those products in respect of which All Industry Rate is not announced. In that case, the manufacturer or exporter has to get the brand rate fixed by furnishing the prescribed data within 3 months from the relevant date for determination of rate of duty and tariff valuation to the Commissioner of Central Excise and Customs.

As per Rule 3(2) of Customs, Central Excise Duties and Service Tax Drawback Rules, 1995, all industry rate of duty drawback will be determined by the Drawback Directorate shall have regard to

- The average quantity or value of each class or description of the materials from which a particular class of goods is ordinarily produced or manufactured in India.
- The average quantity or value of the imported materials or excisable materials used for production or manufacture in India of a particular class of goods;
- The average amount of duties paid on imported materials or excisable materials used in the manufacture of semis, components and intermediate products which are used in the manufacture of goods.
- The average amount of duties paid on materials wasted in the process of manufacture.
- The average amount of duties paid on imported materials or excisable materials used for containing or, packing the export goods;
- The average amount of tax paid on taxable services which are used as input services for the manufacturing or processing or for containing or packing the export goods.
- Any other information, which the Central Government considers relevant or useful.

**Types of duty drawbacks concept and its applicability explained here in a simplified manner:**




Where the exporter has already filed a duty drawback claim under All Industry Rates (AIR) Schedule, he cannot request for fixation of Special Brand Rate of drawback. Thus, the exporter should determine prior to export of goods, whether to claim drawback under AIR or Special Brand Rate. [*w.e.f. 22.11.2014*]

## 7.3 DUTY DRAWBACK ON RE-EXPORT

**Section 74** of the Customs Act, 1962, provides facility of claiming duty drawback on the re-export of duty paid goods.

- Originally the goods should have been imported into India;
- Customs duty on import should have been paid.
- The imported goods should be capable of being easily identifiable as the same goods which were originally imported.
- The goods have been exported after proper examination of the goods and after ensuring that there is no prohibition or restriction on their export by the proper officer.
- The goods should have been identified to the satisfaction of the Assistant or Deputy Commissioner of Customs as the goods, which were imported, and
- The goods should have been entered for export within **two years** from the date of payment of duty on the importation thereof.

Drawback of import duty paid is not allowed if these goods are exported: Wearing apparel, Tea chests, Exposed cinematograph film passed by the Board of Film Censors in India, Unexposed photographic films, paper and plates and X-Ray films.

The Central Board of Excise and Customs has the power to extend the period of two years. Once these conditions are satisfied, then 98% of the import duty paid on such goods at the time of importation shall be repaid as drawback. 98% duty drawback is allowed only when these goods are re-exported without being used in the industry. If the goods are taken into use after importation then the duty drawback is allowed based on the period of usage as per section 74(2) of the Customs Act, 1962.

***Example 2:***

***ABC Ltd., who is an exporter, finds that the amount of drawback refunded to it is less than what it is entitled to, on the basis of the rates of drawback announced by the Central Government. Briefly discuss whether ABC Ltd. can claim the difference of drawback short refunded and procedure to be followed in this regard.***

***Answer:***

***Yes, ABC Ltd. is eligible for claiming the difference of the drawback on the basis of the amount of rate of drawback determined by the Central Government of India for claiming the difference by filing a supplementary claim in the prescribed form under rule 15 of the Customs Act and Central Excise Duties Drawback Rules, 1995 within a period of 3 months.***

***The said 3 months period further extended for a period of nine months for filing a supplementary claim under rule 15, by making an application accompanied with a fees of 1% of the FOB value of exports or ₹ 1000/- whichever is less. Further, the said period may be extended by six months by Commissioner of Customs/ Commissioner of Customs and Central Excise on an application accompanied with a fees of 2% of the FOB value or ₹ 2000/- whichever is less.***

***Drawback rates on re-export if the goods are taken into use after importation (NT No. 23/2008-Cus., dated 1-3-2008)***

The following duty drawback rates has been notified by the Central Government under section 74(2) of the Customs Act, 1962. These rates are applicable if the goods are re-exported only after being used in the business.

| Length of period between the date of clearance for home consumption and the date when goods are placed under Customs control for export. | % of import duty to be paid as Drawback |
|---|---|
| Not more than 3 months | 95% |
| More than 3 months but not more than 6 months | 85% |
| More than 6 months but not more than 9 months | 75% |
| More than 9 months but not more than 12 months | 70% |
| More than 12 months but not more than 15 months | 65% |
| More than 15 months but not more than 18 months | 60% |
| More than 18 months | NIL |

***Duty drawback rates on personnel goods under section 74(2) of the Customs Act***

The following duty drawback rates are allowable on goods imported for personal use (like Motor cars or other goods) after payment of duty and subsequently re-exported: These rates are applicable if the goods are re-exported after being used.

| Year | Quarter or part thereof | Rate of drawback to be reduced | Cumulative reduction | Allowable drawback |
|---|---|---|---|---|
| 1 | 1st Quarter | 4% | 4% | 96% |
| | 2nd Quarter | 4% | 8% | 92% |
| | 3rd Quarter | 4% | 12% | 88% |
| | 4th Quarter | 4% | 16% | 84% |
| 2 | 1st Quarter | 3% | 19% | 81% |
| | 2nd Quarter | 3% | 22% | 78% |
| | 3rd Quarter | 3% | 25% | 75% |
| | 4th Quarter | 3% | 28% | 72% |
| 3 | 1st Quarter | 2.50% | 30.5% | 69.5% |
| | 2nd Quarter | 2.50% | 33% | 67% |
| | 3rd Quarter | 2.50% | 35.5% | 64.5% |

| Year | Quarter or part thereof | Rate of drawback to be reduced | Cumulative reduction | Allowable drawback |
|---|---|---|---|---|
| | 4th Quarter | 2.50% | 38% | 62% |
| 4 | 1st Quarter | 2% | 40% | 60% |
| | 2nd Quarter | 2% | 42% | 58% |
| | 3rd Quarter | 2% | 44% | 56% |
| | 4th Quarter | 2% | 46% | 54% |

Part of the quarter is also considered as full quarter for allowing duty draw back rate.

**Motor car or goods used more than 2 years:**

where the period of usage is more than 2 years, drawback shall be allowed only if the CBEC, on sufficient cause being shown, has in that particular case extended the period beyond 2 years and also that no drawback shall be allowed if such motor car has been used for more than 4 years.

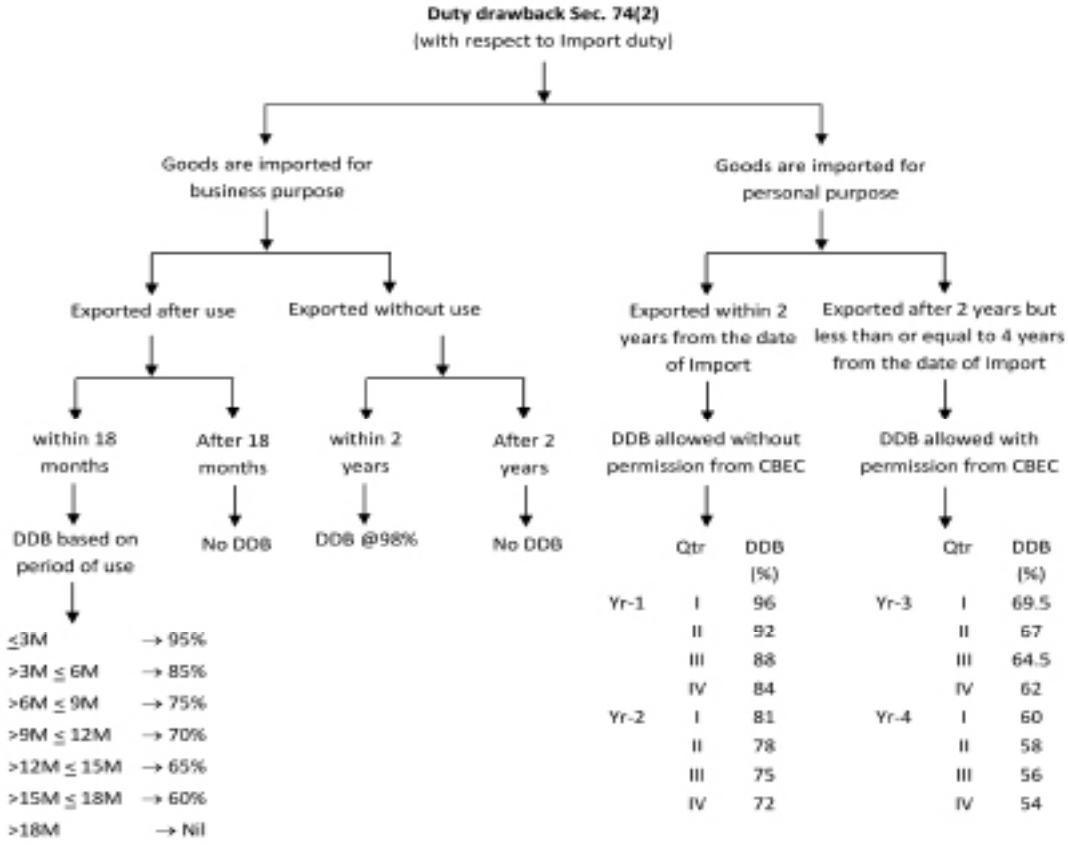
***Example 3:***

***Mr. Ram wants to take back with him (i.e. re-export) a car that he was imported on duty payment, when came to India. Can he get any duty drawback from the government? He has imported motor car for his personal use and paid ₹ 2,50,000 as import duty. Car used in India for 3months and 2 days.***

***Answer:***

***Yes, he can claim the duty drawback @92% on the value of import duty i.e. ₹ 2,30,000.***

**The entire concept with regard to duty drawback on re-export has been explained hereunder:**



***Example 4:***

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

***(a) Salman imported a motor car for his personal use and paid ₹ 5,00,000 as import duty. The car is re-exported after 6 months and 20 days.***

***(b) Nisha imported wearing apparel and paid ₹ 50,000 as import duty. As she did not like the apparel, these are re-exported after 20 days.***

***(c) Super Tech Ltd. imported 10 computer systems paying customs duty of ₹ 50 lakh. Due to some technical problems, the computer systems were returned to foreign supplier after 2 months without using them at all.***

***Answer:***

***(a) The amount of duty drawback is ₹ 4,40,000 (i.e. ₹ 5,00,000 @ 88%), since these goods are used in India.***

***(b) Duty drawback is ₹ nil, assumed that wearing apparels are re-exported after being used.***

***(c) Duty drawback is ₹ 49,00,000 (i.e. 50,00,000 x 98%), since these good are re-exported without being used.***

***Example 5:***

***With reference to drawback on re-export of duty paid imported goods under section 74 of the Customs Act, 1962, answer in brief the following questions:***

***(i) What is the time limit for re-exportation of goods as such?***

***(ii) What is the rate of duty drawback if the goods are exported without use?***

***(iii) Is duty drawback allowed on re-export of wearing apparel without use?***

***Answer:***

***(i) As per section 74 of the Customs Act, 1962, the duty paid imported goods are required to be entered for export within two years from the date of payment of duty on the importation.***

***This period can be extended by CBEC if the importer shows sufficient reason for not exporting the goods within two years.***

***(ii) If duty paid imported goods are exported without use, then 98% of such duty is re-paid as drawback.***

***(iii) Yes, duty drawback is allowed when wearing apparels are re-exported without being used.***

***Statements/Declaration to be made on export other than by post***

As per Rule 4 of the Re-export of Imported Goods (Drawback of Customs Duties) Rules, the exporter shall at the time of export of the goods

- State on shipping bill or bill of export, the description, quantity and such other particulars as are necessary for deciding whether the goods are entitled to drawback under section 74 and make a declaration on the relevant shipping bill or bill of export the following:
  - the export is being made under a claim for drawback under section 74 of the Customs Act;
  - that the duties of customs were paid on the goods imported;
  - that the imported goods were, or were not, taken into use after importation;
- furnish to the proper officer of customs, copy of bill of entry, import invoice, Documentary evidence of payment of duty, export invoice and packing list and permission from Reserve Bank of India to re-export the goods, wherever necessary

***Time limit for claiming the duty drawback***

As per Rule 5(1) of the Re-export of Imported Goods (Drawback of Customs Duties) Rules, 1995 a claim for drawback, in case of goods exported other than by post, shall be filed in the specified from at Annexure II within three months from the date on which an order permitting clearance and loading of goods for exportation under section 51 is made by proper officer of customs.

In case of delay in filing the claim, the proper officer namely the Assistant Commissioner of Customs or Deputy Commissioner of Customs may, if he satisfied that the exporter was prevented by sufficient cause to file his claim within the aforesaid period of three months, allow the exporter to file his claim within a further period of three months.

***Extension of time period for filing drawback claim under rule 5 of the Re-export of Imported Goods (Drawback of Customs Duties) Rules, 1995***

Proviso to rule 5(1) of the Re-export of Imported Goods (Drawback of Customs Duties) Rules, 1995 has been substituted with a new proviso. Rule 5(1) provides that a claim for drawback shall be filed within three months from the date on which an order permitting clearance and loading of goods for exportation is made by proper officer of customs.

The new proviso lays down that the said period of three months may be extended by a period of three months by Assistant/Deputy Commissioner on an application accompanied with a fees of 1% of the FOB value of exports or ₹ 1000/- whichever is less and a further period of six months by Commissioner of Customs/ Commissioner of Customs and Central Excise on an application accompanied with a fees of 2% of the FOB value or ₹ 2000/- whichever is less. **[Notification No. 48/2010-Cus. (NT), dated 17.06.2010]**

***Change in time periods available under rules 6, 7, 15 and 16A of the Customs, Central Excise Duties and Service Tax Drawback Rules, 1995***

Following amendments have been made in the Customs, Central Excise Duties and Service Tax Drawback Rules, 1995: [Notification No. 49/2010 Cus.(NT), dated 17.06.2010]

(i) The time period for the following has been extended from sixty days to three months:

   (a) making an application to the Commissioner of Central Excise/Commissioner of Customs and Central Excise for determination of the amount or rate of drawback if no All Industry Rate is specified [Rule 6].

   (b) making an application to the Commissioner of Central Excise/Commissioner of Customs and Central Excise for determination of the amount or rate of drawback where the amount or rate of drawback is low (i.e. All Industry Rate is lower than 80% of the duty or tax paid) [Rule 7].

Further, the aforesaid periods of three months may be extended by a period of three months by Assistant/Deputy Commissioner on an application accompanied with a fees of 1% of the FOB value of exports or ₹ 1000/- whichever is less and a further period of six months by Commissioner of Central Excise/ Commissioner of Customs and Central Excise on an application accompanied with a fees of 2% of the FOB value or ₹ 2000/- whichever is less.

**Supplementry Claim [Rule 15]:**

Where an exporter finds that the amount of duty drawback paid to him is less than what he is entitled to on the basis of amount or rate of duty drawback as determined by the Commissioner of Central Excise/ Commissioner of Customs and Central Excise, he may prefer supplementary claim in prescribed form:

The claim shall be made within 3 months of the following dates:

- Where rate of duty drawback is determined or revised under Rule 3 or 4, date of publication of such date
- Where the rate is determined under Rule 6 or 7, the date of communication of rate to person

The said 3 months period further extended for a period of nine months for filing a supplementary claim under rule

15, by making an application accompanied with a fees of 1% of the FOB value of exports or ₹ 1000/- whichever is less. Further, the said period may be extended by six months by Commissioner of Customs/ Commissioner of Customs and Central Excise on an application accompanied with a fees of 2% of the FOB value or ₹ 2000/- whichever is less.

**Recovery of duty drawback where export proceeds are not realized [Rule 16A]:**

Where the duty drawback has been paid to the exporter but the sale proceeds in respect of such goods have not been realized by the exporter within the period permissible by the Foreign Exchange Management Act, 1999 (FEMA), such duty drawback shall be recovered by the Government except under circumstances or conditions specified in rule 16A(5).

Where the sale proceeds are realized by the exporter after the amount of drawback has been recovered from him and the exporter produces evidence about such realization within a period of 3 months from the date of realization of sale proceeds provided the sale proceeds have been realized within the period permitted by the Reserve Bank of India. The amount of drawback so recovered shall be repaid the Assistant Commissioner or Deputy Commissioner of Customs to the exporter.

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

5.7.4.2.3 Drawback shall not be recovered (Notification No. 30/2011-Cus., dated 11-4-2011):

As per Rule 16A (5) the Customs, Central Excise Duties and Service Tax Drawback Rules, 1995 where sale proceeds are not realized by an exporter within the period allowed under the FEMA, the amount of drawback paid to the exporter or the claimant shall not be recovered if

- such non-realisation of sale proceeds is compensated by the Export Credit Guarantee Corporation of India Ltd. (ECGC), under an insurance cover and
- the Reserve Bank of India writes off the requirement of realization of sale proceeds on merits and
- the exporter produces a certificate from the concerned Foreign Mission of India about the fact of non-recovery of sale proceeds from the buyer.

***Documents to be filed for claiming of duty drawback on re-export:***

As per Rule 5(2) of the Re-export of Imported Goods (Drawback of Customs Duties) Rules, 1995, the claim shall be filed along with the following documents, namely

- Triplicate copy of the Shipping Bill bearing examination report recorded by the proper officer of the customs at the time of export.
- Copy of Bill of Entry or any other prescribed document against which goods were cleared on importation;
- Import invoice;
- Evidence of payment of duty paid at the time of importation of the goods;
- Permission from Reserve Bank of India for re-export of goods, wherever necessary;
- Export invoice and packing list;
- Copy of Bill of lading or Airway bill;
- Any other documents as may be specified in the deficiency memo.

As per Rule 5(3) of the Re-export of Imported Goods (Drawback of Customs Duties) Rules, 1995 the date of filing of the claim for the purpose of section 75A shall be the date of affixing the Dated Receipt Stamp on the claims, which are complete in all respects, and for which are acknowledgement shall be issued in the form prescribed

by the Commissioner of Customs.

As per Rule 5(4)(a) of the Any claim which is incomplete in any material particulars or is without the documents specified above shall not be accepted for the purpose of section 75A and such claim shall be returned to the claimant with the deficiency memo in the form prescribed by the Commissioner of Customs within fifteen days of submission and shall be deemed not to have been filed.

Incomplete claim if any shall not be accepted for the purpose of section 75A and the same shall be returned to the claimant with the deficiency memo in the form prescribed by the Commissioner of Customs within fifteen days of submission and shall be deemed not to have been filed.

Where the exporter complies with requirements specified in deficiency memo within thirty days from the date of receipt of deficiency memo, the same will be treated as a claim filed under Rule 5(1).

***Payment of erroneous or excess payment of duty drawback and interest***

Where an amount of drawback and interest, if any, has been paid erroneously or amount so paid in excess of what the claimant is entitled to, the claimant shall, on demand by an officer of customs repay the amount so paid erroneously or in excess, as the case may be, and where the claimant fails to repay the amount it shall be recovered in the manner laid down in Section 142(1) of the Customs Act, 1962 namely recovery of sums due to Government.

As per section 75A(2) of the Customs Act, 1962, the claimant (assessee) is liable to pay the excess amount of drawback, he is liable to pay interest as well. No notice need be issued separately as the payment of interest becomes automatic, once it is held that excess drawback has to be repaid. [***CPS Textiles P Ltd.* v *Joint Secretary* 2010 (255) ELT 228 (Mad)]**

**Computation of duty drawback:**

***Example 6:***

***'A' exported a consignment under drawback claim consisting of the following items—***

| *Particulars* | *Chapter Heading* | *FOB value ₹* | *Drawback rate* |
|---|---|---|---|
| *200 pieces of pressure stores mainly made of beans @ ₹ 80/piece* | *74.04* | *16,000* | *4% of FOB* |
| *200 Kgs. Brass utensils @ ₹ 200 per Kg.* | *74.13* | *40,000* | *₹ 24/Kg.* |
| *200 Kg. Artware of brass @ ₹ 300 per Kg.* | *74.22* | *60,000* | *17.50% of FOB subject to a maximum of ₹ 38 per Kg.* |

***On examination in docks, weight of brass Artware was found to be 190 Kgs. and was recorded on shipping bill. Compute the drawback on each item and total drawback admissible to the party.***

***Answer:***

***The drawback on each item and total drawback admissible to the party shall be-***

| Particulars | FOB value (₹) | Drawback rate | Drawback Amount (₹) |
|---|---|---|---|
| *200 pcs, pressure stoves made of brass* | *16,000* | *4% of FOB* | *640* |
| *200 Kgs. Brass utensils* | *40,000* | *₹ 24 per Kg.* | *4,800* |
| *200 kgs. Artware of brass, whose actual weight was 190 Kgs. only.<br>(60,000 x 190/200) x 17.5%=9975<br>190 kgs x ₹ 38 = ₹ 7,220* | | *17.50% of FOB subject to maximum of ₹ 38 per Kg.<br>(₹ 9,975 or ₹7,220 whichever is less)* | *7,220* |
| *Total Drawback admissible (in ₹)* | | | *12,660* |

***Exampe 7:***

***X Ltd. has exported following goods to USA. Discuss whether any duty drawback is admissible under section 75 of the Customs Act, 1962.***

| Product | FOB Value of Exported goods | Market Price of goods | Duty drawback rate |
|---|---|---|---|
| A | 2,50,000 | 1,80,000 | 30% of FOB |
| B | 1,00,000 | 50,000 | 0.75% of FOB |
| C | 8,00,000 | 8,50,000 | 3.50% of FOB |
| D | 2,000 | 2,100 | 1.50% of FOB |

***Note: Imported value of product C is ₹ 9,50,000.***

***Answer:***

***Duty draw back amount for all the products are as follows***

***Product A:***

***Drawback amount = 2,50,000 x 30% = ₹ 75,000 or ₹ 1,80,000 x 1/3 = ₹ 60,000***

***Allowable duty draw back does not exceed 1/3 of the market value.***

***Hence, the amount of duty drawback allowed is ₹ 60,000***

***Product B:***

***Drawback amount allowed is ₹ 750 (i.e. ₹ 1,00,000 x 0.75%). Since, the amount is more than ₹ 500 even though the rate is less than 1%.***

***Product C:***

***No duty drawback is allowed, since the value of export is less than the value of import (i.e. negative sale)***

***Product D***

***No duty drawback is allowed, since the duty drawback amount is ₹ 30 (which is less than ₹ 50).***

***Though rate of duty drawback is more than 1%, no duty drawback is allowed.***

***Example 8:***

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

***(a) Jaggi Mehta imported a car from U.K. for his personal use and paid ₹ 4,50,000 as import duty. However, the car is re-exported immediately without bringing it into use.***

***(b) Meenakshi imported a music player from Dubai and paid ₹12,000 as import duty. She used it for four months but re-exports the same after four months.***

***(c) XYZ Ltd. exported 1000 kgs of a metal of FOB value of ₹ 1,00,000. Rate of duty drawback on such export is ₹60 per kg. Market price of goods is ₹ 40,000 (in wholesale market).***

***Answer:***

***(a) Jaggi Mehta can claim duty drawback of ₹ 4,41,000 (98% of ₹ 4,50,000).***

***(b) Meenakshi can claim duty drawback of ₹ 10,200 (i.e. 85% of ₹ 12,000)***

***(c) XYZ Ltd. is not entitled to claim duty drawback in this case. Since, market value of exported goods is less than the value of Duty Drawback.***

***Re-export of Imported Goods by POST***

Procedure to claim the duty drawback when import duty paid on imported goods which are taken for re-export:

- The parcel carrying the address of the consignee shall also carry in bold letters the words "DRAWBACK EXPORT";
- The exporter shall deliver to the competent Postal Authority, along with the parcel of package, a claim, in

quadruplicate, duty filled in specified form.

- The relevant date for filing of drawback claim in such a case shall be the date of receipt of the aforesaid 'claim form' by the proper officer of customs from the postal authorities. This date is important for the purpose of calculation of interest on drawback under Section 75A of the Act.
- An intimation of the same shall be given by the proper officer of customs to the exporter in the form prescribed by the Commissioner of Customs.
- Deficiencies, if any, in the claim form shall be intimated to the exporter within 15 days of its receipt by postal authorities through a deficiency memo. In such circumstances such claim shall be deemed not to have been received.
- Where the exporter complies with the requirements specified in deficiency memo, within 30 days of receipt of the deficiency memo, he shall be issued an acknowledgement by the proper officer. The date of such acknowledgement shall be deemed to be the date of filing the claim for purposes of section 75A.

## 7.4 NEGATIVE LIST OF DUTY DRAWBACK

Section 76 of the Customs Act, 1962 contains the provisions in respect of prohibition and regulation of drawback and no drawback shall be allowed in the following circumstances:

(a) In respect of any goods, the market price of which is less than the amount of drawback due thereon,

(b) If the Central Government is of the opinion that goods of any specified description in respect of which drawback is claimed under this Chapter are likely to be smuggled back into India.

(c) CENVAT credit claim is on inputs and input services then no duty drawback is allowed. However, if the goods have already suffered the customs duty then duty drawback is allowed to the extent of customs duties.

(d) Duty drawback is not allowed if the exporter has already availed the Duty Entitlement Pass Book (DEPB) or other export incentives.

(e) If the sale proceeds not received within the time period allowed by Reserve Bank of India.

(f) Export to Nepal and Bhutan and the export proceeds are not received in hard currency (it means USD, GBP or Pounds).

(g) drawback in respect of iron and steel, cement and rice is not allowed. [w.e.f. 29-5-2008]

(h) duty drawback is more than 1/3rd of market value of exported goods, then amount of duty drawback is restricted to 1/3rd of market value.

(i) No amount or rate of drawback is to be determined except where the amount of drawback exceeds or equal to ₹ 500/- or it is 1% or more of the FOB value of export

Where the amount of drawback in respect of any goods is less than ₹50.

***Example 9:***

| *Particulars* | *Situation 1* | *Situation 2* | *Situation 3* | *Situation 4* |
|---|---|---|---|---|
| *Free On Board (FOB) in ₹* | *1,000* | *10,000* | *1,00,000* | *1,00,000* |
| *Duty Draw Back (DDB) in ₹* | *40* | *200* | *450* | *750* |
| *DDB (%)* | *4%* | *2%* | *0.45%* | *0.75%* |
| *DDB* | *Not allowed* | *Allowed* | *Not allowed* | *Allowed* |
| *Remarks* | *Since, DDB is <₹ 50* | *Since, DDB ≥1% and amount also ≥₹ 50* | *Since, DDB < 1% and DDB amount also < ₹ 500* | *Since, DDB amount is ≥ ₹ 500 even though DDB < 1%* |

***The above list is only illustrative but not exhaustive.***

***Example 10:***

***XYZ Company Limited exported a consignment of manufactured goods. The company has paid import duty and central excise duty on the components used in the manufacture. A duty drawback rate has been fixed for these goods. The ship carrying the consignment runs into trouble and sinks in the Indian territorial waters. The customs department refused to grant drawback for the reason that the goods did not reach their destination. As a consultant for M/s XYZ Limited you are required to prepare a brief note with the reason whether the stand taken by the customs department is correct in law.***

***Answer:***

***The term "export" means "taking out of India to a place outside India". The term "taking out of a place outside India" would also mean a place in high seas, if that place is beyond territorial waters of India. If the goods cross the territorial waters of India then it is an export and duty drawback cannot be denied.***

***In the given case, the vessel sunk within territorial waters of India and therefore there is no export. Accordingly, no duty drawback shall be available in this case [Union of India v Rajindra Dyeing & Printing Mills Ltd. 2005 (180) ELT 433 (SC)].***

***Example 11:***

***Sun industries sent certain goods by a ship from Kolkatta to Colombo in Sri Lanka under claim for drawback on the said goods under section 75 of the Customs Act, 1962 against shipping bill. The ship had passed beyond the territorial waters of India and the engine developed trouble while the ship was on high seas falling within the ambit of the expression 'taking out a place outside India'. The ship returned back and ran aground in Indian territorial waters at the port of Paradeep. The fittings, stores and cargo were salvaged. Discuss the admissibility of claim for drawback by the company.***

***Answer:***

***In the given case it is apparent that the goods are exported. The fact that the ship was brought back to India because of the damages in the ship does not affect the position. The assessee was entitled to the benefit of section 75 of the Customs Act, 1962. Once the ship carrying goods crosses the territorial waters, export is complete and duty drawback is allowable and its running aground in India due to engine trouble makes no difference.***

***Upper limit of drawback money or rate***

As per the Rule 8A of Customs, Central Excise Duties and Service Tax Drawback Rules, 1995 the drawback amount or rate determined under rule 3(i.e. the all industry rate) shall not exceed 1/3rd of the market price of export product.

***Interest on draw back amount***

Any drawback payable to a claimant u/s 74 or 75 is not paid within specified time period (i.e. one month from the date of filing of draw back claim), the @6% per annum interest is payable to the claimant after the expiry of said one month till the date of payment of such drawback.

Drawback has been paid to the claimant erroneously or it becomes otherwise recoverable under this Act or rules made there under, within two months from the date of demand has to pay back. Otherwise, @13% per annum interest will be levied from the date of payment of such drawback to the claimant till the date of recovery of such drawback.

**CUSTOMS AND CENTRAL EXCISE DUTIES DRAWBACK RULES, 2017**

**Rule 1 Short title, extent and commencement.-**

(1) These rules may be called the Customs and Central Excise Duties Drawback Rules, 2017.

(2) They extend to the whole of India.

(3) They shall come into force on the 1st day of October, 2017

**Rule 2 Definitions**

In these rules, unless the context otherwise requires, -

(a) "drawback" in relation to any goods manufactured in India and exported, means the rebate of duty excluding integrated tax leviable under sub-section (7) and compensation cess leviable under sub-section (9) respectively of section 3 of the Customs Tariff Act, 1975 (51 of 1975) chargeable on any imported materials or excisable materials used in the manufacture of such goods;

(b) "excisable material" means any material produced or manufactured in India subject to a duty of excise under the Central Excise Act, 1944 (1 of 1944);

(c) "export", with its grammatical variations and cognate expressions, means taking out of India to a place outside India or taking out from a place in Domestic Tariff Area (DTA) to a special economic zone and includes loading of provisions or store or equipment for use on board a vessel or aircraft proceeding to a foreign port;

(d) "imported material" means any material imported into India and on which duty is chargeable under the Customs Act, 1962 (52 of 1962);

(e) "manufacture" includes processing of or any other operation carried out on goods, and the term manufacturer shall be construed accordingly;

(f) "tax invoice" means the tax invoice referred to in section 31 of the Central Goods and Services Tax Act, 2017 (12 of 2017).

**Rule 3 Drawback**

(1) Subject to the provisions of –

(a) the Customs Act, 1962 (52 of 1962) and the rules made there under;

(b) the Central Excise Act, 1944 (1 of 1944) and the rules made thereunder; and

(c) these rules, a drawback may be allowed on the export of goods at such amount, or at such rates, as may be determined by the Central Government :

Provided that where any goods are produced or manufactured from imported materials or excisable materials, on some of which only the duty chargeable thereon has been paid and not on the rest, or only a part of the duty chargeable has been paid; or the duty paid has been rebated or refunded in whole or in part or given as credit, under any of the provisions of the Customs Act, 1962 (52 of 1962) and the rules made thereunder, or of the Central Excise Act, 1944 (1 of 1944) and the rules made thereunder, the drawback admissible on the said goods shall be reduced taking into account the lesser duty paid or the rebate, refund or credit obtained :

Provided further that no drawback shall be allowed –

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

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

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

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

(A) jute yarn (including Bimlipatam jute or mesta fibre), twist, twine, thread and ropes in which jute yarn predominates in weight;

(B) jute fabrics (including Bimlipatam jute or mesta fibre), in which jute predominates in weight;

(C) jute manufactures not elsewhere specified (including Bimlipatam jute or mesta fibre) in which jute predominates in weight.

(2) In determining the amount or rate of drawback under this rule, the Central Government shall have regard to, -

(a) the average quantity or value of each class or description of the materials from which a particular class of goods is ordinarily produced or manufactured in India;

(b) the average quantity or value of the imported materials or excisable materials used for production or manufacture in India of a particular class of goods;

(c) the average amount of duties paid on imported materials or excisable materials used in the manufacture of semis, components and intermediate products which are used in the manufacture of goods;

(d) the average amount of duties paid on materials wasted in the process of manufacture and catalytic agents:

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

(e) the average amount of duties paid on imported materials or excisable materials used for containing or, packing the export goods;

(f) any other information which the Central Government may consider relevant or useful for the purpose.

**Rule 4 Revision of rates**

The Central Government may revise amount or rates determined under rule 3.

**Rule 5 Determination of date from which the amount or rate of drawback is to come into force and the effective date for application of amount or rate of drawback.–**

(1) The Central Government may specify the period upto which any amount or rate of drawback determined under rule 3 or revised under rule 4, as the case may be, shall be in force.

(2) Where the amount or rate of drawback is allowed with retrospective effect, such amount or rate shall be allowed from such date as may be specified by the Central Government by notification in the Official Gazette which shall not be earlier than the date of changes in the rates of duty on inputs used in the export goods.

(3) The provisions of section 16, or sub-section (2) of section 83, of the Customs Act, 1962 (52 of 1962) shall determine the amount or rate of drawback applicable to any goods exported under these rules.

**Rule 6 Cases where amount or rate of drawback has not been determined-**

(1) (a) Where no amount or rate of drawback has been determined in respect of any goods, any exporter of such goods may, within three months from the date relevant for the applicability of the amount or rate of drawback in terms of sub-rule (3) of rule 5, apply to the Principal Commissioner of Customs or Commissioner of Customs, as the case may be, having jurisdiction over the place of export, for determination of the amount or rate of drawback thereof stating all the relevant facts including the proportion in which the materials or components are used in the production or manufacture of goods and the duties paid on such materials or components:

Provided that-

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

(ii) the Assistant Commissioner of Customs or Deputy Commissioner of Customs, as the case may be, may extend the aforesaid period of three months by a period of three months and the Principal Commissioner of Customs or Commissioner of Customs, as the case may be, may further extend the period by a period of six months;

(iii) the Assistant Commissioner of Customs or Deputy Commissioner of Customs or Principal Commissioner of Customs or Commissioner of Customs, as the case may be, may, on an application and after making such enquiry as he thinks fit, grant extension or refuse to grant extension after recording in writing the reasons for such refusal;

(iv) an application fee equivalent to 1% of the FOB value of exports or one thousand rupees whichever is less, shall be payable for applying for grant of extension to the Assistant Commissioner of Customs or Deputy Commissioner of Customs, as the case may be and an application fee of 2% of the FOB value or two thousand rupees whichever is less, shall be payable for applying for grant of extension to the Principal Commissioner of Customs or Commissioner of Customs, as the case may be.

(b) On receipt of an application under clause (a), the Principal Commissioner of Customs or Commissioner of Customs, as the case may be, shall, after making or causing to be made such inquiry as it deems fit, determine the amount or rate of drawback in respect of such goods.

(2) (a) Where an exporter desires that he may be granted drawback provisionally, he may, while making an application under clause (a) of sub-rule (1) apply to the Principal Commissioner of Customs or Commissioner of Customs, as the case may be, that a provisional amount be granted to him towards drawback on the export of such goods pending determination of the amount or rate of drawback under clause (b) of that sub-rule.

(b) The Principal Commissioner of Customs or Commissioner of Customs, as the case may be, may, after considering the application, allow provisionally payment of an amount not exceeding the amount claimed by the exporter in respect of such export:

Provided that the Principal Commissioner of Customs or Commissioner of Customs, as the case may be, may, for the purpose of allowing provisional payment of drawback in respect of such export, require the exporter to enter into a general bond for such amount, and subject to such conditions, as he may direct; or to enter into a bond for an amount not exceeding the full amount claimed by such exporter as drawback in respect of a particular consignment and binding himself, -

(i) to refund the amount so allowed provisionally, if for any reason, it is found that the duty drawback was not admissible; or

(ii) to refund the excess, if any, paid to such exporter provisionally if it is found that a lower amount was payable as duty drawback:

Provided further that when the amount or rate of drawback payable on such goods is finally determined, the amount provisionally paid to such exporter shall be adjusted against the drawback finally payable and if the amount so adjusted is in excess or falls short of the drawback finally payable, such exporter shall repay to the Principal Commissioner of Customs or Commissioner of Customs, as the case may be, the excess or be entitled to the deficiency, as the case may be.

(c) The bond referred to in clause (b) may be with such surety or security as the Principal Commissioner of Customs or Commissioner of Customs, as the case may be, may direct.

(3) Where the Central Government considers it necessary so to do, it may,–

(a) revoke the rate of drawback or amount of drawback, determined under clause (b) of sub-rule (1) by the Principal Commissioner of Customs or Commissioner of Customs, as the case may be; or

(b) direct the Principal Commissioner of Customs or Commissioner of Customs, as the case may be, to withdraw the rate of drawback or amount of drawback determined.

**Explanation.-** For the purpose of this rule, "place of export" means customs station or any other place appointed for loading of export goods under section 7 of the Customs Act, 1962 (52 of 1962) from where the exporter has exported the goods or intends to export the goods in respect of which determination of amount or rate of drawback is sought.

**Rule 7. Cases where amount or rate of drawback determined is low.–**

(1) Where, in respect of any goods, the exporter finds that the amount or rate of drawback determined under rule 3 or, as the case may be, revised under rule 4, for the class of goods is less than eighty per cent. of the duties paid on the materials or components used in the production or manufacture of the said goods, he may, except where a claim for drawback under rule 3 or rule 4 has been made, within three months from the date relevant for the applicability of the amount or rate of drawback in terms of sub-rule (3) of rule 5, make an application to the Principal Commissioner of Customs or Commissioner of Customs, as the case may be, having jurisdiction over the place of export, for determination of the amount or rate of drawback thereof stating all relevant facts including the proportion in which the materials or components are used in the production or manufacture of goods and the duties paid on such materials or components:

Provided that -

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

(ii) the Assistant Commissioner of Customs or Deputy Commissioner of Customs, as the case may be, may extend the aforesaid period of three months by a period of three months and that the Principal Commissioner of Customs or Commissioner of Customs, as the case may be, may further extend the period by a period of six months;

(iii) the Assistant Commissioner of Customs or Deputy Commissioner of Customs or Principal Commissioner of Customs or Commissioner of Customs, as the case may be, may, on an application and after making such enquiry as he thinks fit, grant extension or refuse to grant extension after recording in writing the reasons for such refusal;

(iv) an application fee equivalent to 1% of the FOB value of exports or one thousand rupees whichever is less, shall be payable for applying for grant of extension to the Assistant Commissioner of Customs or Deputy Commissioner of Customs, as the case may be and an application fee of 2% of the FOB value or two thousand rupees whichever is less, shall be payable for applying for grant of extension by the Principal Commissioner of Customs or Commissioner of Customs, as the case may be.

(2) On receipt of the application referred to in sub-rule (1), the Principal Commissioner of Customs or Commissioner of Customs, as the case may be, may, after making or causing to be made such inquiry as it deems fit, allow payment of drawback to such exporter at such amount or at such rate as may be determined to be appropriate, if the amount or rate of drawback determined under rule 3 or, as the case may be, revised under rule 4, is in fact less than eighty per cent. of such amount or rate determined under this sub-rule.

(3) Provisional drawback amount, as may be specified by the Central Government, shall be paid by the proper officer of Customs and where the exporter desires that he may be granted further drawback provisionally, he may, while making an application under sub-rule (1), apply to the Principal Commissioner of Customs or Commissioner of Customs, as the case may be, in this behalf in the manner as has been provided in clause (a) of sub-rule (2) of rule 6 for the application made under that rule along with details of provisional drawback already paid and the grant of further provisional drawback shall be considered in the manner and subject to the conditions specified in clauses (b) and (c) of sub-rule (2), and sub-rule (3) of rule 6, subject to the condition that bond required to be executed by the claimant shall only be for the difference between amount or rate of drawback determined under rule 3 or, as the case may be, revised under rule 4 by the Central Government and the provisional drawback authorised by the Principal Commissioner of Customs or Commissioner of Customs, as the case may be, under this rule.

(4) Where the Central Government considers it necessary so to do, it may,–

(a) revoke the rate of drawback or amount of drawback determined under sub-rule (2) by the Principal Commissioner of Customs or Commissioner of Customs, as the case may be; or

(b) direct the Principal Commissioner of Customs or the Commissioner of Customs, as the case may be, to withdraw the rate of drawback or amount of drawback determined.

**Explanation.-** For the purpose of this rule, "place of export" means customs station or any other place appointed for loading of export goods under section 7 of the Customs Act, 1962 (52 of 1962) from where the exporter has exported the goods or intends to export the goods in respect of which determination of amount or rate of drawback is sought.

**Rule 8 Cases where no amount or rate of drawback is to be determined**

No amount or rate of drawback shall be determined in respect of any goods or class of goods under rule 6 or rule 7, as the case may be, if the export value of each of such goods or class of goods in the bill of export or shipping bill is less than the value of the imported materials used in the manufacture of such goods or class of goods, or is not more than such percentage of the value of the imported materials used in the manufacture of such goods or class of goods as the Central Government may, by notification in the Official Gazette, specify in this behalf.

**Rule 9 Upper Limit of Drawback amount or rate**

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

**Rule 10 Power to require submission of information and documents**

For the purpose of –

(a) determining the class or description of materials or components used in the production or manufacture of goods or for determining the amount of duty paid on such materials or components; or

(b) verifying the correctness or otherwise of any information furnished by any manufacturer or exporter or other persons in connection with the determination of the amount or rate of drawback; or

(c) verifying the correctness or otherwise of any claim for drawback; or

(d) obtaining any other information considered by the Principal Commissioner of Customs or Commissioner of Customs, as the case may be, to be relevant or useful, any officer of the Central Government specially authorised in this behalf by an Assistant Commissioner of Customs or Deputy Commissioner of Customs, as the case may be, may require any manufacturer or exporter of goods or any other person likely to be in possession of the same to furnish such information and to produce such books of account and other documents as are considered necessary by such officer.

**Rule 11 Access to manufactory**

Whenever an officer of the Central Government specially authorised in this behalf by an Assistant Commissioner of Customs or Deputy Commissioner of Customs, as the case may be, considers it necessary, the manufacturer shall give access at all reasonable times to the officer so authorised to every part of the premises in which the goods are manufactured, so as to enable the said officer to verify by inspection the process of, and the materials or components used for the manufacture of such goods, or otherwise the entitlement of the goods for drawback or for a particular amount or rate of drawback under these rules.

**Rule 12 Procedure for claiming drawback on goods exported by post**

(1) Where goods are to be exported by post under a claim for drawback under these rules,-

(a) the outer packing carrying the address of the consignee shall also carry in bold letters the words "DRAWBACK EXPORT";

(b) the exporter shall deliver to the competent Postal Authority, alongwith the parcel or package, a claim in the Form at Annexure I, in quadruplicate, duly filled in.

(2) The date of receipt of the aforesaid claim form by the proper officer of Customs from the postal authorities shall be deemed to be date of filing of drawback claim by the exporter for the purpose of section 75A and an intimation of the same shall be given by the proper officer of Customs to the exporter in such form as the Principal Commissioner of Customs or Commissioner of Customs, as the case may be, may prescribe.

(3) In case the aforesaid claim form is not complete in all respects, the exporter shall be informed of the deficiencies therein within fifteen days of its receipt from postal authorities by a deficiency memo in the form prescribed by the Principal Commissioner of Customs or Commissioner of Customs, as the case may be, and such claim shall be deemed not to have been received for the purpose of sub-rule (2).

(4) When the exporter complies with the requirements specified in the deficiency memo within thirty days of its return, he shall be issued an acknowledgement by the proper officer in the form prescribed by the Principal Commissioner of Customs or Commissioner of Customs, as the case may be, and the date of such acknowledgement shall be deemed to be date of filing the claim for the purpose of section 75A.

**Rule 13 Statement/Declaration to be made on exports other than by Post**

(1) In the case of exports other than by post, the exporters shall at the time of export of the goods –

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

(i) a claim for drawback under these rules is being made;

(ii) in respect of duties of Customs and Central Excise paid on containers, packing materials and materials used in the manufacture of the export goods on which drawback is claimed, no separate claim for rebate of duty under the Central Excise Rules, 2002 or any other law has been or will be made to the Central excise authorities:

Provided that if the Principal Commissioner of Customs or Commissioner of Customs, as the case may be, is satisfied that the exporter or his authorised agent has, for reasons beyond his control, failed to comply with the provisions of this clause, he may, after considering the representation, if any, made by such exporter or his authorised agent, and for reasons to be recorded, exempt such exporter or his authorised agent from the provisions of this clause;

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

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

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

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

**Rule 14 Manner and time for claiming drawback on goods exported other than by post**

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

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

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

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

(iii) insurance certificate, wherever necessary; and

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

(3) (a) If the said claim for drawback is incomplete in any material particulars or is without the documents specified in sub-rule (2), shall be returned to the claimant with a deficiency memo in the form prescribed by the Principal Commissioner of Customs or Commissioner of Customs, as the case may be, within 10 days and shall be deemed not to have been filed for the purpose of section 75A.

(b) where the exporter resubmits the claim for drawback after complying with the requirements specified in the deficiency memo, the same will be treated as a claim filed under sub-rule (1) for the purpose of section 75A.

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

**Rule 15 Payment of drawback and interest**

(1) The drawback under these rules and interest, if any, shall be paid by the proper officer of Customs to the exporter or to the agent specially authorised by the exporter to receive the said amount of drawback and interest.

(2) The officer of Customs may combine one or more claims for the purpose of payment of drawback and interest, if any, as well as adjustment of any amount of drawback and interest already paid and may issue a consolidated order for payment.

(3) The date of payment of drawback and interest, if any, shall be deemed to be, in the case of payment –

(a) by cheque, the date of issue of such cheque; or

(b) by credit in the exporter's account maintained with the Custom House, the date of such credit.

**16. Supplementary claim. –**

(1) Where any exporter finds that the amount of drawback paid to him is less than what he is entitled to on the basis of the amount or rate of drawback determined by the Central Government or Principal Commissioner of Customs or Commissioner of Customs, as the case may be, he may prefer a supplementary claim in the form at Annexure II:

Provided that the exporter shall prefer such supplementary claim within a period of three months, -

(i) where the rate of drawback is determined or revised under rule 3 or rule 4, from the date of publication of such rate in the Official Gazette;

(ii) where the rate of drawback is determined or revised upward under rule 6 or rule 7, from the date of communicating the said rate to the person concerned;

(iii) in all other cases, from the date of payment or settlement of the original drawback claim by the proper officer:

Provided further that –

(i) the Assistant Commissioner of Customs or Deputy Commissioner of Customs, as the case may be, may extend the aforesaid period of three months by a period of nine months and that the Principal Commissioner of Customs or Commissioner of Customs, as the case may be, may further extend the period by a period of six months;

(ii) the Assistant Commissioner of Customs or Deputy Commissioner of Customs or Principal Commissioner of Customs or Commissioner of Customs, as the case may be, may, on an application and after making such enquiry as he thinks fit, grant extension or refuse to grant extension after recording in writing the reasons for such refusal;

(iii) an application fee equivalent to 1% of the FOB value of exports or one thousand rupees whichever is less, shall be payable for applying for grant of extension by the Assistant Commissioner of Customs or Deputy Commissioner of Customs, as the case may be and an application fee of 2% of the FOB value

or two thousand rupees whichever is less, shall be payable for applying for grant of extension by the Principal Commissioner of Customs or Commissioner of Customs, as the case may be.

(2) Save as otherwise provided in this rule, no supplementary claim for drawback shall be entertained.

(3) The date of filing of the supplementary claim for the purpose of section 75A shall be the date of affixing the Dated Receipt Stamp on such claims which are complete in all respects and for which an acknowledgement shall be issued in the form prescribed by the Principal Commissioner of Customs or Commissioner of Customs, as the case may be.

(4) (a) Claims which are not complete in all respects or are not accompanied by the required documents shall be returned to the claimant with a deficiency memo in the form prescribed by the Principal Commissioner of Customs or Commissioner of Customs, as the case may be within fifteen days of submission and shall be deemed not to have been filed.

(b) Where the exporter resubmits the supplementary claim after complying with the requirements specified in the deficiency memo, the same will be treated as a claim filed under sub-rule (1) for the purpose of section 75A.

**Rule 17 Repayment of erroneous or excess payment of drawback and interest**

Where an amount of drawback and interest, if any, has been paid erroneously or the amount so paid is in excess of what the claimant is entitled to, the claimant shall, on demand by a proper officer of Customs repay the amount so paid erroneously or in excess, as the case may be, and where the claimant fails to repay the amount it shall be recovered in the manner laid down in sub-section (1) of section 142 of the Customs Act, 1962 (52 of 1962).

**Rule 18 Recovery of amount of Drawback where export proceeds not realised**

(1) Where an amount of drawback has been paid to an exporter or a person authorised by him (hereinafter referred to as the claimant) but the sale proceeds in respect of such export goods have not been realised by or on behalf of the exporter in India within the period allowed under the Foreign Exchange Management Act, 1999 (42 of 1999), including any extension of such period, such drawback shall, except under circumstances or conditions specified in sub-rule (5), be recovered in the manner specified below:

Provided that the time-limit referred to in this sub-rule shall not be applicable to the goods exported from the Domestic Tariff Area to a special economic zone.

(2) If the exporter fails to produce evidence in respect of realisation of export proceeds within the period allowed under the Foreign Exchange Management Act, 1999, or any extension of the said period by the Reserve Bank of India, the Assistant Commissioner of Customs or the Deputy Commissioner of Customs, as the case may be, shall cause notice to be issued to the exporter for production of evidence of realisation of export proceeds within a period of thirty days from the date of receipt of such notice and where the exporter does not produce such evidence within the said period of thirty days, the Assistant Commissioner of Customs or Deputy Commissioner of Customs, as the case may be, shall pass an order to recover the amount of drawback paid to the claimant and the exporter shall repay the amount so demanded within thirty days of the receipt of the said order:

Provided that where a part of the sale proceeds has been realised, the amount of drawback to be recovered shall be the amount equal to that portion of the amount of drawback paid which bears the same proportion as the portion of the sale proceeds not realised bears to the total amount of sale proceeds.

(3) Where the exporter fails to repay the amount under sub-rule (2) within said period of thirty days referred to in sub-rule (2), it shall be recovered in the manner laid down in rule 17.

(4) Where the sale proceeds are realised by the exporter after the amount of drawback has been recovered from him under sub-rule (2) or sub-rule (3) and the exporter produces evidence about such realisation within a period of three months from the date of realisation of sale proceeds, the amount of drawback so recovered shall be repaid by the Assistant Commissioner of Customs or Deputy Commissioner of Customs, as the case may be, to the claimant provided the sale proceeds have been realised within the period permitted by the Reserve Bank of India:

Provided that-

(i) the Principal Commissioner of Customs or Commissioner of Customs, as the case may be, may extend the aforesaid period of three months by a period of nine months provided the sale proceeds have been realised within the period permitted by the Reserve Bank of India;

(ii) an application fee equivalent to 1% of the FOB value of exports or one thousand rupees whichever is less, shall be payable for applying for grant of extension by the Principal Commissioner of Customs or Commissioner of Customs, as the case may be.

(5) Where sale proceeds are not realised by an exporter within the period allowed under the Foreign Exchange Management Act, 1999 (42 of 1999), but such non-realisation of sale proceeds is compensated by the Export Credit Guarantee Corporation of India Ltd. under an insurance cover and the Reserve Bank of India writes off the requirement of realisation of sale proceeds on merits and the exporter produces a certificate from the concerned Foreign Mission of India about the fact of non-recovery of sale proceeds from the buyer, the amount of drawback paid to the exporter or the claimant shall not be recovered.

**Rule 19 Power to relax**

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

**Rule 20 Repeal and saving**

(1) From the commencement of these rules, the Customs, Central Excise Duties and Service Tax Drawback Rules, 1995 shall cease to operate.

(2) Notwithstanding such cesser of operation –

(a) every application made by a manufacturer or an exporter for the determination or revision of the amount or rate of drawback in respect of goods exported before the commencement of these rules but not disposed of before such commencement shall be disposed of in accordance with the provisions of the Customs, Central Excise Duties and Service Tax Drawback Rules, 1995 as if these rules had not been made;

(b) any claim made by an exporter or his authorised agent for the payment of drawback in respect of goods exported before the commencement of these rules but not disposed of before such commencement shall be disposed of in accordance with the provisions of the Customs, Central Excise Duties and Service Tax Drawback Rules, 1995 as if these rules had not been made;

(c) every amount or rate of drawback determined under the Customs, Central Excise Duties and Service Tax Drawback Rules, 1995 and in force immediately before the commencement of these rules shall cease to operate in respect of goods exported on or after commencement of these rules.

## 7.5 DUTY DEFERMENT

**Duty deferment [provisions of this section have been omitted w.e.f. 10.05.2013]**

The Assistant Commissioner of Customs or Deputy Commissioner of Customs may permit clearance of material under an import licence without payment of duty leviable thereon. This is permissible subject to satisfaction of the following conditions [Section 143A of the Customs Act, 1962].

- While permitting clearance, the Assistant Commissioner of Customs or Deputy Commissioner of Customs may require the importer to execute a bond with such surety or security as he thinks fit.
- The duty payable on the material imported shall be adjusted against the drawback of duty payable under this Act

- If the imported goods are not exported within the period specified in Advance Authorisation or within such extended period not exceeding six months by the Assistant Commissioner of Customs or Deputy Commissioner of Customs, be liable to pay the amount of duty not so adjusted together with simple interest thereon at the rate of twelve per cent per annum from the date the said permission for clearance is given to the date of payment.

***Drawback on export of Milk, Rice & Wheat:***

**W.e.f. 13-2-2015** Duty drawback on rice allowed

**w.e.f. 23-11-2015** Duty drawback allowed on Wheat.

| Prior to 21-9-2013 | W.e.f. 21-9-2013 |
|---|---|
| No drawback was allowed on milk products. | Rule 3 of the Central Excise Duties and Service Tax Drawback Rules, 1995, drawback will be allowed in respect of milk products. |
| Duty Drawback Allowed on Wheat. | Duty Drawback not Alloed on Wheat. |
| Duty Drawback not Allowed on Rice, casein, caseinates and other casein derivatives; casein glues. | Duty Drawback not Allowed on Rice, casein, caseinates and other casein derivaties; casein glues. |

**Drawback is allowed in respect of milk products.**

| Prior to 21-9-2013 | W.e.f. 21-9-2013 |
|---|---|
| No drawback was allowed on milk products. | Rule 3 of the Central Excise Duties and Service Tax Drawback Rules, 1995, drawback will be allowed in respect of milk products. |

## 7.6 EXPORT INCENTIVES IN LIEU OF DUTY DRAWBACK

The following are the export promotion schemes available to the exporters

- Duty Exemption Entitlement Certificate (DEEC) (Advance Licence),
- The Duty Free Replenishment Certificate (DFRC) Scheme,
- The Export Promotion Capital Goods Scheme (EPCG),
- Duty Exemption Pass Book Scheme (DEPB scheme).
- MEIS & SEIS, EPCG (please refer FTP)

***Duty Exemption Entitlement Certificate (DEEC) (Advance Licence)***

Under the DEEC (Advance Licence) scheme, exporters are permitted to import raw materials, required for export goods, without payment of duty on import (i.e. duty free imports). Such duty free imports can be effected in advance and exports made subsequently. The advance licences are issued by Director General of Foreign Trade (DGFT) with actual user condition and are not transferable.

All the exporters intending to file Shipping Bills under the DEEC scheme should first get their DEEC licence registered with the EDI system in the licensing section. The original DEEC licence has to be produced at the time of registration of licence. The export obligation shall be discharged by exporting the resultant products within the period specified in the Annual Advance Licence.

Advance Licence can be issued for the following:

- Physical exports;
- Intermediate supplies
- Deemed exports.

***Duty Free Replenishment Certificate (DFRC) Scheme***

This scheme permits duty free import of raw materials/inputs against exports. The exporter while filing shipping bill has to declare that the export is under DFRC scheme. Based on proof of export, the DGFT issues DFRC licence for raw materials as per standard input output norms.

Duty Free Replenishment Certificate (DFRC) is issued to a merchant-exporter or manufacturer-exporter for the import of inputs, used in the manufacture of goods, without the payment of basic customs duty and special additional duty. However, such inputs shall be subject to the payment of additional customs duty, equal to the excise duty at the time of import.

The Duty Free Replenishment Certificate shall be issued only in respect of export products that are covered under the SIONs (Standard Input Output Norms) as notified by (Directorate General of Foreign Trade) DGFT.

**Difference between DEEC and DFRC**

- Under advance licence scheme (DEEC), the duty free imports can be made before exports whereas DFRC is issued only after exports and imports can be made only after exports.
- The advance licence (DEEC) is not transferable whereas the DFRC is transferable.
- DFRC is permitted only for goods listed under SION while it is not so in case of DEEC

***Export Promotion Capital Goods Scheme (EPCG)***

The Export Promotion Capital Goods Scheme enables for exporters to procure capital goods at concessional rate of duty. The exporters have to fulfill the export obligation within the prescribed period.

The manufacturers, Exporters and Merchant Exporters are eligible to avail of this Scheme.

Both new and second hand capital good may be imported. Second hand capital goods at permitted subject to the condition that such goods have a minimum of residual life of 5 years and the importer furnishing to the customs at the time of clearance of goods a self declaration to the effect that the second hand capital goods being imported have a minimum residual life of five years in the prescribed form.

Licences are issued, under this scheme by the DGFT or his regional officers depending upon the value of the licence subject to execution of legal undertaking and bank guarantee by them undertaking among other things to fulfill their export obligation within the specified period.

***Duty Exemption Pass Book Scheme (DEPB scheme)***

Under the DEPB scheme, the exporters are allowed a duty exemption pass book credit against exports. It is a post-export scheme. The exporter while filing the shipping bill has to declare that exports are under DEPB scheme. Based on the proof of export, the exporters are issued DEPB licence which can be used for payment of Customs duties on any imports.

A format of theDuty Exemption Entitlement Certificate (DEEC) is appended below -

The Schedule
DUTY EXEMPTION ENTITLEMENT CERTIFICATE
Part -1 (IMPORT)
(This consists of ..... pages)
Sl. No. ....(IMP)

Date of issue

Port of registration
Issued to

(name and full address of the licencee)

Materials imported against licence no…… dated …….. issued by …….. to the above licencee and covered by the list of materials specified in list (a) of Part "C" of this certificate would be eligible for exemption from customs duties subject to the conditions specified in the notification of the Government of India Ministry of Finance, Department of Revenue No. Customs, dated the April, 2000.

The importer shall discharge the export obligation in terms of the said notification within …….. months from the date of issue of licence

A bond with security/surety in terms of the said notification shall be executed before clearance of the goods from the Customs

Signature
Seal of licensing authority
Date

**Self - Examination Questions**

**Say Yes of No, give reasons**

**(1)** Under section 46(1) of the Customs Act, 1962, an importer of any goods, other than goods intended for transshipment, is required to file a bill of entry.

**Answer:**

**Yes.** Yes. The importer files Bill of Entry for all imported goods under section 46(1) of the Customs Act, 1962. No Bill of Entryfor Transit Goods and Transhipment Goods.

**Theory Questions**

**Q1.** Explain the term Deemed Export?

**Answer:** please refer point no. 5.4

**Q2.** Explain the importance of Customs House Agent in case of import and exports

**Answer:** please refer point no. 5.5

**Q3.** Under what circumstances disallowances of duty drawback take place?

**Answer:** please refer point no. 7.4

**Q4.** How to calculate Interest on warehoused goods?

**Answer:** Please refer notes in Chapter 6.

**Q5.** Write a note on Special Brand Rate of duty drawback?

**Answer:** Please refer point no. 7.2

**Q6.** AB Exim Ltd. exported a full container load of ready made shirts. The goods were inspected, samples were drawn and the container was sealed by Central Excise Officers and container was allowed to be loaded by customs after ensuring that seal on container was intact. However, while filling shipping bill, by mistake declaration that drawback is being claimed was not made. AB Exim Ltd. has approached for advice. What will be your advice.

**Answer:** If the requisite documents are not furnished or there is any deficiency, the claim may be returned after shipment for complying with the requirements and furnishing requisite information/documents.

Therefore, it is advised that AB Exim Ltd. can file declaration for drawback claim after shipment.

**Q7.** On the package, received as a post parcel from abroad, contents are indicated as calculators valued at ₹ 1,000. However, when the parcel was opened, it was found to contain ten mobile phones valued at ₹ 2,50,000. A show cause notice has been issued to the importer proposing to confiscate the goods and impose penalty on the importer. Examine the legality of action proposed in terms of statutory provisions under Customs Act, 1962.

**Answer:** In the case of postal parcel the label affixed to the parcel constitutes 'entry'. Accordingly, section 111(m) of the Customs Act, 1962 "any goods which do not correspond in respect of value or in any other particulars with the entry made, then the parcel brought to India is liable for confiscation". For such cases penalty is imposable under section 112.

**Q8.** State the conditions to be fulfilled for obtaining a written order from proper officer that will enable the person-in-charge of the conveyance which has loaded any exported goods to depart from a customs station.

**Answer:** Please refer point no. 5.3

**Q9.** Write short notes on Goods improperly removed from a warehouse under section 72 of the Customs Act, 1962?

**Answer:** please refer notes in Chapter 6.

**Q10.** Whether the assessable value of the warehoused goods which are sold before being cleared for home consumption should be taken as the price at which the original importer has sold the goods, before a Bill of Entry for home consumption is filed?

**Answer:** Transaction value is defined to mean the price actually paid or payable for the goods when goods are sold for export to India for delivery at the time and place of importation.

In the given case the goods are sold after being warehoused, therefore, it cannot be said that export of goods is not complete. Therefore, the sale of warehoused goods cannot be considered as sale for export to India (*vide* CBEC Circular No. 11/2010, dated 3.6.2010). Hence, the price at which the imported goods are sold after warehousing them in India does not qualify to be the transaction value as per section 14 of the Customs Act, 1962.

**Practical problems with answers**

**Practical Theory**

**Illustration 1:**

(a) Explain briefly, the significance of Indian customs waters under the Customs Act, 1962.

(b) Section 14 of the Customs Act, 1962, with effect from 10.10.2007, and the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 are now fully compatible. Explain with a brief note.

(c) Can warehoused goods be transferred from one warehouse to another under the Customs Act, 1962?

(d) What is the minimum and maximum rate or amount of duty drawback prescribed under the Customs, Central Excise Duties and Service Tax Drawback Rules, 1995 made under section 75 of the Customs Act, 1962? Explain with a brief note.

(e) Briefly discuss, the procedure for confiscation of goods or imposition of penalty under section 124 of the Customs Act, 1962.

**Solution:**

(a)
- Any person within the Indian Customs Waters committing an offence is punishable
- Customs Officer has the right to stop any vehicle or vessel entered into the Indian Customs Water without the permission.

(b) To avoid the difference between rules and sections the transaction value concept brought under Section 14 of the Customs Act.

(c) warehoused goods can be transferred from one warehouse to another with the permission of the proper officer under section 76 of the Customs Act, 1962.

(d) Minimum rate or amount of duty drawback is 1% of the FOB value or the amount of drawback per shipment exceeds ₹ 500 respectively.

Maximum rate of duty draw back is 33% of the market price of the exported goods.

(e) As per section 124 of the Customs Act, 1962 a show cause notice is supposed to issue before confiscation or imposing any penalty. Such show cause notice can be issued with the prior approval of the appropriate authority of customs.

**Duty Drawback**

**Illustration 2.**

X Ltd. has imported 10 mainframe computer systems from USA in December 2006 paying customs duty of ₹ 60 lakhs. Due to some technical snags that developed in the system in March 2007 the supplier sent his technicians to India to resolve the same. No solution was found. In July 2007 X Ltd. decided to re-ship/return the goods to the foreign supplier.

You are the Finance Manager of X Ltd. and have been approached for advice whether import duty already paid can be got back from the Central Government, when the goods are reshipped/returned.

Briefly examine with reference to the provisions of Customs Act, 1962.

**Solution:**

**The amount of duty drawback depends upon whether the imported goods are used before re-export or not:**

(A) If computer systems are exported without use, then the amount of duty drawback will be @98% of duty paid on imported goods provided these goods are re-exported within 2 years from the date of payment of duty.

(B) If computer systems are re-exported after being used, then amount of duty drawback is allowed based on the period of usage under section 74(2) of the Customs Act, 1962, provided the company must re-export the same within 36 months from the date of payment of duty on imported goods.

**Illustration 3.**

X Ltd has exported following goods:

Product P, FOB value worth ₹ 1,00,000 and the rate of duty drawback on such export of goods is 0.75%.

Product Q, FOB value worth ₹ 10,000 and the rate of duty drawback on such export of goods is 1%.

Will X Ltd be entitled to any duty drawback?

**Solution:**

Duty drawback on product P allowed is ₹ 750 (*i.e.* 1,00,000 x 0.75%), since amount is more than ₹ 500.

Duty drawback on product Q is allowed, because the amount of duty drawback is ₹ 100 (which is more than ₹ 50).

**4. Case studies with answers**

**Distribution of sale proceeds of warehoused goods**

**Q1.** M/s Gargi Polymers, India imports goods and warehouses them with PVC Containers Ltd. after the execution of necessary bond but does not clear them within the warehousing period nor seeks any extension. Meanwhile, PVC Containers Ltd. auctions the goods under section 63(2) of the Act and seeks the permission from the department for their clearance to the highest bidder and for the recovery of its warehousing charges. However, the custom authorities insist that under section 150 of the Customs Act, 1962, the entire auction proceeds have to be first adjusted towards the custom duty. You are required to examine the veracity of the custom authorities' claim with the help of a decided case law, if any.

**Answer :** As per Section 150 of the Customs Act, 1962, the proceeds of any such sale shall be applied

- firstly to the payment of the expenses of the sale,
- next to the payment of the freight and other charges, if any, payable in respect of the goods sold, to the carrier, if notice of such charges has been given to the person having custody of the goods,
- next to the payment of the duty, if any, on the goods sold,
- next to the payment of the charges in respect of the goods sold due to the person having custody of the goods **(omitted w.e.f. 14-5-2016)**,
- next to the payment of any amount due from the owner of the goods to the Central Government under the provisions of this Act or any other law relating to customs, and the balance, if any, shall be paid to the owner of the goods.

Therefore, claim of the Customs authorities is not correct.

***Associated Container Terminals Ltd.* v *Union of India* 2008 (226) ELT 169 (Del.).**

**Seizure**

**Q2.** The goods imported by Fidelity Industries were detained on 22-5-2011. However, Fidelity Industries did not produce the required documentary evidence. Consequently, the impugned goods were seized on 2-8-2011. The Department issued a show cause notice to Fidelity Industries on 15-1-2013. Fidelity Industries put forth the question of limitation alleging that the impugned show cause notice had been issued after a period of six months from the date of the seizure as one envisaged under section 110(2) of the Customs Act, 1962 and hence, it was time-barred. The goods were taken on 22-5-2011; but, the show cause notice was issued on 15-1-2013 which was after a lapse of six months. So, Fidelity Industries sought for quashing of the said show cause notice and also for the return of the goods. Do you think that the contention of the Fidelity Industries is tenable in law?

**Answer:** Where any goods are seized under section 110(1) and no show cause notice in respect thereof is given under clause (a) of section 124 within six months of the seizure of the goods, the goods shall be returned to the person from whose possession they were seized. ***Pro Musicals* v *Joint Commissioner Customs (Prev.), Mumbai* 2008 (227) ELT 182 (Mad)**

Hence, the Court ruled out the assessee's contention that detention and seizure were one and the same. It means detention is not the seizure but seizure includes the detention. The Court further held that the show cause notice issued by the Department was valid.

Therefore, the contention of the Fidelity Industries is not tenable in law.

**Warehousing**

**Q3.** BL Ltd. imported Super Kerosene Oil (SKO) and stored it in a warehouse. An ex-bond bill of entry for home consumption was filed and duty was paid as per rate prevalent on the date of presentation of such bill of entry; and the order for clearance for home consumption was passed. On account of highly combustible nature of SKO, the importer made an application to permit the storage of such kerosene oil in the same warehouse until actual clearance for sale/use. The application was allowed. When the goods were actually removed from the warehouse,

the rate of duty got increased. The department demanded the differential duty. The company challenged the demand. Whether it will succeed? Discuss briefly taking support of decided case law(s), if any.

Warehoused goods are duty levied goods, once duty is paid on these goods then no longer considered as warehoused goods.

**Answer:** Since the importer paid the duty on the warehoused goods an out of charge order for home consumption was passed. Therefore, the BL Ltd. is not liable to pay any differential duty. **[C*Cus* v *Biecco Lawrie Ltd.* 2008 (223) ELT 3 (SC)]**

**Q4.** The assessee imported capital goods and deposited them in warehouse. The said goods were not removed from the warehouse within the period permitted under section 61(1)(a) i.e. five years. Subsequently, the assessee filed an application for relinquishment of title of such warehoused goods.

The Department contended that since the assessee did not file an application for extension of warehousing period before the expiration of five years under section 61(1)(a), after expiration of the said period, the goods could no longer be termed as 'warehoused goods'. Therefore the assessee lost its title to the same and consequently it lost its right to relinquish its title thereto. It was further claimed that the relinquishment of title to the said goods ought to have been made by the assessee before the expiration of the warehousing period and not thereafter and therefore the said goods were 'deemed to have been improperly removed from warehouse'. Consequently, the assessee became liable to pay duty, penalty and interest with respect to the said goods as provided under section 72(1)(b) of the Customs Act.

**Answer:** Hints: The High Court observed that the owner of the goods (importer) though loses control over the goods when he deposits them in the warehouse, but he does not lose his title or ownership to such goods so long as they remain in the warehouse either during the continuance of the warehousing period or even after its expiration.

The High Court pointed out that the provisions of section 23(2) and proviso to section 68 make it clear that upon relinquishment of his title to any imported goods, including the warehoused goods, the owner of such goods shall not be liable to pay duty thereon and when the owner is not liable to pay duty, the question of paying any interest on the duty and penalty would not arise. The Court however made it clear that interest and rent payable under section 68 would be recoverable from the date of deposit of the goods in the warehouse to the date of relinquishment of title to goods. Thus, the High Court dismissed the Department's appeal. **[C*Cus.* v *i2 Technologies Software (P) Ltd.* 2007 (217) ELT 176 (Kar)]**

**Q5**. The assessee had imported certain goods and kept them in warehouse. However, the goods were not removed from the warehouse at the expiration of the statutory time period during which such goods were permitted under section 61 to remain in a warehouse.

The assessee sought to relinquish the title to such goods under the proviso to section 68.

However, the department contended that since the goods were deemed to be improperly removed from the warehouse (considering the over stay of such goods in the warehouse) under the section 72(1)(b), the case would not fall under section 68 and thus proviso to section 68 could not be invoked. It was submitted that before invoking the proviso to section 68, the conditions of section 68 must be fulfilled which was not done in the instant case.

**Answer:** Self study

**[*J.K. Cement Works* v *CCEx. & Cus.* 2008 (223) ELT 138 (Raj)]**

**Advance License**

**Q6**. The Assessee had imported capital goods under a license with the condition to fulfill the export obligation within the prescribed time limit. However, the assessee failed to discharge the export obligation. Consequently, the Department invoked the bank guarantee and realized the amount. However, subsequently, the assessee fulfilled the export obligation and as a result of which the Department cancelled the bank guarantee. Accordingly, the assessee filed a refund claim for the amount realized by invocation of the bank guarantee. However, the Department rejected the refund claim on the ground that it was time barred in terms of section 27(1)(b) of the Customs Act, 1962.

**Answer:** Department's view is not correct. The refund of duty is not time barred, because there is no duty required to be paid first of all. **[C*Cus.* (*Exports*) v *Jraj Exports (P) Ltd.* 2007 (217) ELT 504 (Mad)]**

**Duty Drawback**

**Q7.** The petitioner imported raw materials for manufacturing two machines. Material for both the machines were common. When he exported the first machine, the entire papers of import of raw material were submitted before the Authorities for claiming drawback. Subsequently, when the petitioner exported the second machine and again claimed drawback, those papers became necessary. However, those papers were lying with the Department and the same were returned to the petitioner only on 13-10-2004. Immediately, thereafter, on 26-11-2004, the petitioner submitted an application for the drawback.

However, the petitioner's claim for the drawback was denied on the ground that the application was submitted after the expiry of statutory period (90 days) allowed for filing the drawback claim under rule 6 of the Drawback Rules.

**Answer:** Self study.

**DEPB**

**Q8.** The assessee warehoused the Acid Grade Flourspar falling in Customs Bonded. Subsequently, the warehoused goods are being cleared after 90 days on payment of duty by utilizing Export incentive (DEPB credit) allowed under export incentive scheme. The importers were called upon by department to show cause why interest shall not be demanded from them, since they had effected clearance beyond the interest free warehousing period of 90 days as per Section 61 of the Act. The assessee contended that payment by debit in DEPB is not cash payment but exemption and hence interest is not payable on non-existing duty.

Discuss briefly taking support of decided case law, if any.

**Answer:** The Hon'ble Supreme Court of India had held that goods cleared under DEPB (Duty Exemption Pass Book) Scheme cannot be treated as exempted but are duty paid goods and hence interest is payable on them if the same are cleared from warehouse beyond the period of 90 days, as per section 61 of the Customs Act, 1962. **[*Tanfac Industries Ltd*. 2009 (SC)]**

**Delay from any department**

**Q9.** Hitech Energy Ltd. is engaged in oil exploration and has imported software containing seismic data. The importer is entitled to exemption from customs duty subject to the production of an 'Essentiality Certificate' issued by the Director General of Hydrocarbons at the time of importation of the goods.

The Essential Certificate was not made available to the importer within a reasonable time by the concerned government authority. The Customs Department therefore rejected the claim for exemption. Examine whether the Customs Department's action is justified.

**Answer:** The importer is not responsible for the delay in granting certificate within a reasonable time. The Directorate General of Hydrocarbons is under the Ministry of Petroleum and Natural Gas and such a public functioning is supposed to grant the essentiality certificate within a reasonable time so as to enable the importer to avail of the benefits under the notification.

The Apex Court has held in ***CC* v *Tullow India Operations Ltd*. (2005) (SC)**, that if a condition is not within the power and control of the importer such importer is not supposed to be penalized.

Therefore, the department's action is not justifiable in the eyes of law.

**Pilferages of goods were in the custody of port trust:**

**Q10.** M/s. Pipli Imports Ltd. imported certain goods, which were unloaded in the customs area on 01.10.2013. When order for clearance was passed by proper officer on 5.10.2013, it was found that there was some pilferage of such goods. As the imported goods were in the custody of port trust, the Department demanded duty from the custodian under Section 45(3) of the Customs Act, 1962 on such pilferage. The port trust denied such demand contending that it was not an approved custodian falling under Section 45 but possession of goods by it was by virtue of powers conferred under the Major Port Trust Act, 1963. Hence, it is not liable for customs duty on pilfered goods.

The importer has also asked the custodian to make good the loss of goods. Examine, whether demands made by the Department and importer are justified in law, referring to decided case law.

**Answer:**

The Bombay High Court differently interpreted the liability of the Custodian. As per section 45 of the Customs Act, the person referred to in sub-section (1) thereof can only be the person approved by the Commissioner of Customs. It excludes a body of persons, who by virtue of a law for the time being in force, is entrusted with the custody of goods by incorporation of law under another enactment, (for example, the Port Trust Act in the given case). The recovery of duty in respect of pilfered goods could only be from the approved person and the Port Trust is not liable to pay duty on goods pilfered while in their possession **(*Board of Trustees of the Port of Bombay* v *UOI* 2009 (241) ELT 513 (Bom).**

Therefore, demands made by the Department and importer are not justifiable in law.

**Q11.** Mr. Suhaan imported a consignment of goods which was unloaded on 31.10.2013. He filed the bill of entry on 15.12.2013. The Deputy Commissioner of Customs imposed a penalty of ₹ 15,000 on Mr. Suhaan as there was a delay of 15 days in filing the bill of entry. The Deputy Commissioner contended that section 46 and 48 of the Customs Act, 1962 read together provide that bill of entry ought to be filed within 30 days from the date of unloading of the goods.

Examine the issue in the light of relevant statutory provisions and decided case laws, if any.

**Answer:** It has been held by the High Court in the case of ***CCus.* v *Shreeji Overseas (India) Pvt. Ltd*. 2013 (289) ELT 401 (Guj)** the time-limit prescribed under section 48 for clearance of the goods within 30 days cannot be read into section 46 and it cannot be inferred that section 46 prescribes any time-limit prescribed for filing of bill of entry.

Therefore, penalty cannot be imposed on Mr. Suhaan as he has not committed any offence by filing bill of entry after 45 days of unloading the goods.

Author view: However, the custodian after giving notice to Mr. Suhaan and with the approval of the proper officer can sell the goods imported by Mr. Suhaan.

**W.e.f. 31-3-2017 Finance Act, 2017 Section 46 amended:**

Submission of Bill of entry:

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

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

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

Therefore, from the above amended provision CCus. v. Shreeji Overseas (India) Pvt. Ltd. 2013 (289) E.L.T. 401 (Guj.) case law became overruled.

**Q12.** Can penalty for short-landing of goods be imposed on the steamer agent of a vessel if he files the Import General Manifest, deals with the goods at different stages of shipment and conducts all affairs in compliance with the provisions of the Customs Act, 1962?

**Answer: *Caravel Logistics Pvt. Ltd.* v *Joint Secretary* (*RA*) 2013 (293) ELT 342 (Mad)**

**Decision:** The High Court held that conjoint reading of sections 2(31), 116 and 148 of Customs Act, 1962 makes it clear that in case of short-landing of goods, if penalty is to be imposed on person-in-charge of conveyance/ vessel, it can also be imposed on the agent appointed by him.

**Q13.** Whether any interest is payable on delayed refund of sale proceeds of auction of seized goods after adjustment of expenses and charges in terms of section 150 of the Customs Act, 1962?

**Answer: *Vishnu M Harlalka* v *Union of India* 2013 (294) ELT 5 (Bom)**

**Decision:** The High Court held that Department cannot plead that the Customs Act, 1962 provides for the payment of interest only in respect of refund of duty and interest and hence, the assessee would not be entitled to interest on the balance of the sale proceeds which were directed to be paid by the Settlement Commission.

The High Court clarified that acceptance of such a submission would mean that despite an order of the competent authority directing the Department to grant a refund, the Department can wait for an inordinately long period to grant the refund. The High Court directed the Department to pay interest from the date of approval of proposal for sanctioning the refund.

**Q14.** (i) Will the description of the goods as per the documents submitted along with the Shipping Bill be a relevant criterion for the purpose of classification, if not otherwise disputed on the basis of any technical opinion or test?

(ii) Whether a separate notice is required to be issued for payment of interest which is mandatory and automatically applies for recovery of excess drawback?

**Answer:**

***M/s CPS Textiles P Ltd.* v *Joint Secretary*** 2010 (255) ELT 228 (Mad)

**Decision:** The High Court held that the description of the goods as per the documents submitted along with the Shipping Bill would be a relevant criterion for the purpose of classification, if not otherwise disputed on the basis of any technical opinion or test. The petitioner could not plead that the exported goods should be classified under different headings contrary to the description given in the invoice and the Shipping Bill which had been assessed and cleared for export.

Further, the Court, while interpreting section 75A(2) of the Customs Act, 1962, noted that when the claimant is liable to pay the excess amount of drawback, he is liable to pay interest as well. The section provides for payment of interest automatically along with excess drawback. No notice for the payment of interest need be issued separately as the payment of interest becomes automatic, once it is held that excess drawback has to be repaid.

**Q15**. Point of dispute: Following questions arose before the Larger Bench of the Tribunal for consideration:

(a) Whether the entire premises of 100% EOU should be treated as a warehouse?

(b) Whether the imported goods warehoused in the premises of 100% EOU are to be held to have been removed from the warehouse if the same is issued for manufacture/production/processing by the 100% EOU?

(c) Whether issue for use by 100% EOU would amount to clearance for home consumption?

**Facts of the case:** The appellants were 100% EOU in Alwar. They imported the impugned goods namely HSD oil through Kandla Port and filed 'into Bond Bill of Entry' for warehousing the imported goods. The impugned goods were warehoused in their 100% EOU in Alwar and subsequently used in the factory within the premises of the 100% EOU for manufacture of the finished goods. The Department demanded customs duty on the impugned goods.

The contention of the appellants was that since (i) the entire premises of the 100% EOU had been licensed as a warehouse under the Customs Act; (ii) the impugned goods had been warehoused therein and subsequently utilized for manufacture of finished goods in bond; and (iii) the impugned goods had not been removed from the warehouse, there could not be any question of demanding duty on the same.

Department contended that the entire premises of the 100% EOU could not be treated as a warehouse. The Appellants had executed a common bond B-17 for fulfilling the requirements under the Customs Act, 1962 and the Central Excise Act, 1944. Under the Central Excise Law, the removal of goods for captive consumption would be treated as removal of goods and the assessee were required to pay duty on such removal.

**Decision: *Paras Fab International* v *CCE* 2010 (256) ELT 556 (Tri.-LB)**

**Observations of the Court:** The Tribunal observed that as per Customs manual, the premises of EOU are approved as a Customs bonded warehouse under the Warehousing provisions of the Customs Act. It is also stated therein that the manufacturing and other operations are to be carried out under customs bond. The goods are required to be imported into the EOU premises directly and prior to undertaking import, the unit is required to get the premises customs bonded. The importer is required to maintain a proper record and proper account of the import, consumption and utilization of all imported materials and exports made and file periodical returns. The EOUs are licensed to manufacture goods within the bonded premises for the purpose of export. Tribunal held that neither the scheme of the Act nor the provisions contained in the Manual require filing of ex-bond bills of entry or payment of duty before taking the imported goods for manufacturing in bond nor there is any provision to treat such goods as deemed to have been removed for the purpose of the Customs Act, 1962.

The Tribunal answered the issues raised as follows:—

**(a)** The entire premises of a 100% EOU has to be treated as a warehouse if the licence granted under to the unit is in respect of the entire premises.

**(b) and (c)** Imported goods warehoused in the premises of a 100% EOU (which is licensed as a Customs bonded warehouse) and used for the purpose of manufacturing in bond as authorized under section 65 of the Customs Act, 1962, cannot be treated to have been removed for home consumption.

**Q16**. Case law:

**Facts of the case:** An order for provisional release of the seized goods had been made under section 110A of the Act pursuant to an application filed by the petitioner in this regard. However, the petitioner claimed unconditional release of its seized goods in terms of sections 110(2) and 124 of the Act as no show cause notice had been issued within the extended period of six months (initial period of six months was extended by another six months by the Commissioner of Customs in this case).

**Answer**: ***Akanksha Syntex (P) Ltd.* v *Union of India* 2014 (300) ELT 49 (P&H)**

***Decision:*** Where no action is initiated by way of issuance of show cause notice under section 124(a) of the Act within six months or extended period stipulated under section 110(2) of the Act, the person from whose possession the goods were seized becomes entitled to their return.

The remedy of provisional release is independent of remedy of claiming unconditional release in the absence of issuance of any valid show cause notice during the period of limitation or extended limitation prescribed under section 110(2) of the Customs Act, 1962.

**Q17.** Case law:

***Purushottam Jajodia* v *Director of Revenue Intelligence* 2014 (307) ELT 837 (Del)**

**Facts of the Case:** As per section 110(2) of the Customs Act, 1962, a notice under section 124(a) is required to be **"given"** to the person from whose possession they were seized informing him the grounds on which goods are proposed to be confiscated, within 6 months (extendable upto one year) of seizure of the goods. Otherwise, goods need be returned to such person.

However, in the present case, the notice under section 124(a) was dispatched by registered post on the date of expiry of stipulated period under section 110(2) and received by the petitioner after the expiry of such period.

**Decision:** The High Court held that since the petitioners did not receive the notice under section 124(a) within the time stipulated in section 110(2) of the Act, such notice will not considered to be "given" by the Department within the stipulated time, i.e. before the terminal date. Consequently, the Department was directed to release the goods seized.

# Study Note - 8

## BAGGAGE AND POSTAL ARTICLES

**This Study Note includes**



### 8.1 INTRODUCTION

The term Baggage means luggage of the passenger if they travel by Air or Sea from one country to another country. Sometimes this baggage amounts to import thereby import duty may be levied. It is essential for us to know the provisions relating to levy, exemption and non-levy of duty on baggage.

Provisions relating to levy and non-levy of duty on baggage are contained in Chapter XI [Special Provisions Regarding Baggage, Goods Imported or Exported by Post and Stores] of Customs Act, and Baggage Rules, 1988.

### 8.2 BAGGAGE

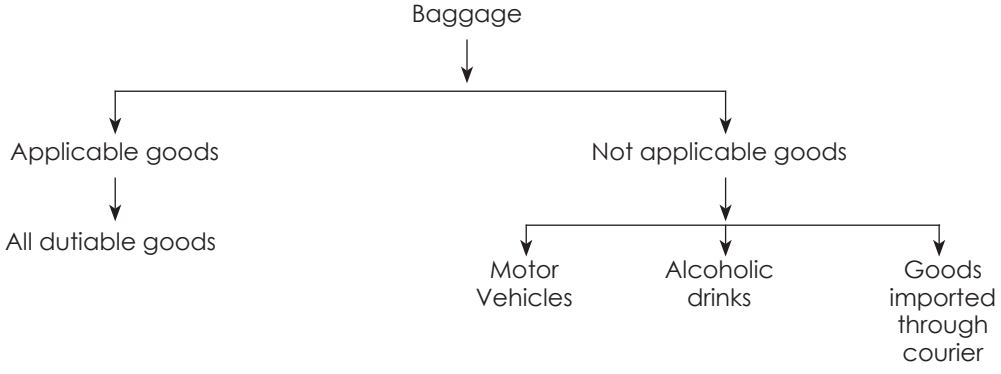
General Meaning: Baggage means all dutiable goods imported by a passenger or a member of a crew in his baggage.

Statutory Meaning u/s 2(3) of Customs Act: Baggage includes:

(a) unaccompanied baggage (i.e., baggage not carried by passenger at the time of his arrival, but sent before or after arrival of passenger).

(b) but does not include motor vehicles.

Baggage can be classified as follows:




*Green Channel* means if a person does not have any dutiable goods, he can go through green channel without undergoing any check along with baggage.

*Red Channel* means if carrying dutiable goods he should pass through red channel and should submit the declaration and his baggage can be inspected by the customs authorities.

**Section 77: Declaration by owner of baggage:** The owner of any baggage shall make a declaration of its contents to the proper officer for the purpose of clearing it.

**Section 78: Determination by rate of duty and tariff valuation in respect of baggage:** The rate of duty and tariff valuation, if any, applicable to baggage shall be the rate and valuation in force on the date on which a declaration is made in respect of such baggage under section 77.

Rate of Duty on Baggage is @ 35% plus 2% education cess plus 1% secondary and higher education cess. [Notification No. 136/90-Cus., dated 20.03.1990]

Additional Customs Duty u/s 3(1) or 3(5) (Special CVD) – Nil [Notification No. 183/86-Cus and Notification No. 21/2012-Cus]

Exemption to 1 Laptop: The Central Government has exempted one laptop computer (note book computer) when imported into India by a passenger of the age of 18 years or above (other than member of crew) from whole of the BCD [Notification No. 11/2004-Cus]

**Section 80: Temporary Detention of Baggage:**

- The proper officer may detain the baggage of a passenger which contains any article which is dutiable or the import of which is prohibited and in respect which a true declaration has been made under section 77.
- The proper officer may do so, at the request of the passenger for the purpose of being returned to the passenger either:
  - o At the time of his leaving India or
  - o Through any other passenger authorized by him and leaving India or
  - o As a cargo consigned in his name.

**Section 79: Bona fide baggage exempted from duty:**

- The proper office may, subject to rules made under this section, pass free of duty—

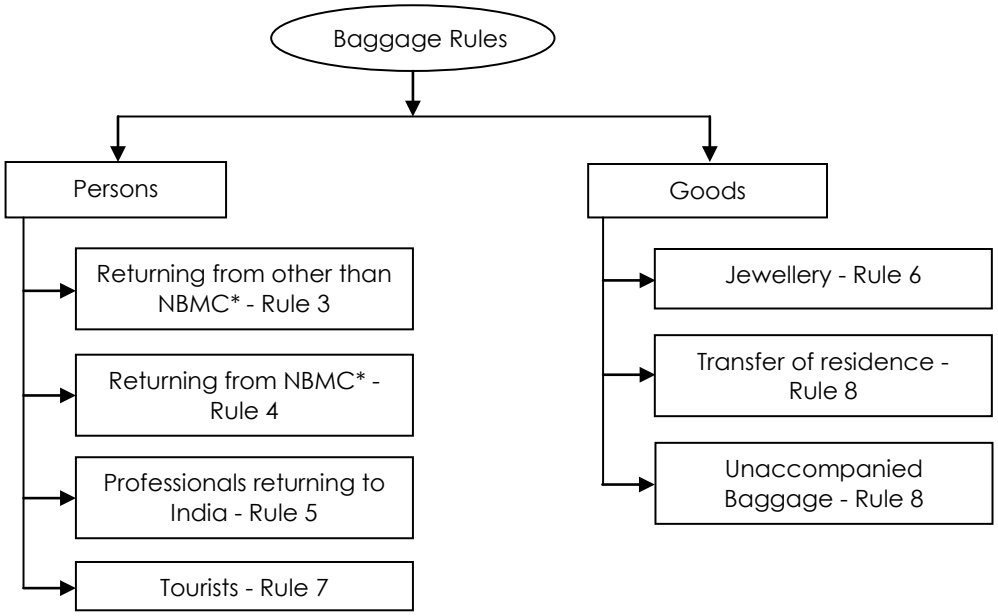
  (*a*) Any article in the baggage of a passenger or a member of the crew in respect of which the said officer is satisfied that it has been in his use for such minimum period as may be specified in the rules

  (*b*) Any article in the baggage of a passenger in respect of which the said officer is satisfied that it is for the use of the passenger or his family or is a bona fide gift or souvenir; provided that the value of each such article and the total value of all such articles does not exceed such limits as may be specified in the rules.

[By exercising the power vested on the Central Government under this section, the Central Government framed **The Baggage Rules, 1998]**.

**The Baggage Rules, 1998**

The provisions relating to baggage rules can be classified into two categories as to provisions relating to persons who are coming into India and Goods that are brought into India. These categories can be further sub-classified as follows:




***NBMC – Nepal, Bhutan, Myanmar and China**

**(1) *General Free Allowances for Passengers — Rule 3 & Rule 4***

| Particulars | Age - less than 10 years | | Age - 10 or more years of age | |
|---|---|---|---|---|
| | Period of Stay in abroad | | | |
| | <= 3 days | > 3 days | <= 3 days | > 3 days |
| Passenger returning from any country other than NBMC except by land route as mentioned in Annexure IV - Rule 3 | Upto ₹3,000 | Upto ₹15,000 w.e.f 11-7-2014 ₹ 17,500 | Upto ₹15,000 w.e.f 11-7-2014 ₹ 17,500 | Upto ₹35,000 w.e.f 11-7-2014 ₹ 45,000 |
| Passenger returning from any country other than NBMC by land route as mentioned in Annexure IV - Rule 3 | Nil | Upto ₹1,500 | Nil | Upto ₹6,000 |
| Passenger returning from NBMC other than by land route as mentioned in Annexure IV- Rule 4 | | | | |

**Note:**

- The above exemption limit is not applicable to articles which are mentioned in Annexure 1 to the Baggage Rules. The articles which are mentioned in Annexure 1 are:
  - Fire Arms, Cartridges of fire arms exceeding 50
  - Cigarettes exceeding 200 or cigars exceeding 50 or tobacco exceeding 250 gms
  - Alcoholic liquor or wines in excess of two litres
  - Gold or Silver, in any form, other than ornaments.
  - w.e.f 26-08-2013 Import of LCD/LED/Plasma TV.
- The free allowance under these rules shall not be allowed to be pooled with the free allowance of any other passenger.
- The used personal effects, excluding jewellery required for satisfying daily necessities of life are not taxable
- Land routes as mentioned in Annexure IV:
  - **Amristar** – Amristar Railway Station, Attari Road, Attari Railway Station, Kharla
  - **Baroda** – Assara Naka, Khavda Naka, Lakhpat, Santha Naka, suigam Naka
  - **Delhi** – Delhi railway Station
  - **Ferozpur District**: Hussainiwala
  - **Jodhpur** – Barmer Railway Station, Munabao Railway Station
  - **Baramullah District** – Adoosa

**General Free Allowance (GFA) w.e.f. 1-4-2016:**

| Passengers | GFA |
|---|---|
| Passengers (i.e. Indian resident or a foreigner residing in India or a tourist of Indian origin (but not infant) arriving from countries other than Nepal, Bhutan or Myanmar. | GFA will be allowed without payment of duty for bona fide baggage (i.e. used personal effects) upto ₹50,000/- per persons. |
| Indian resident coming from Nepal, Bhuttan or Myanmar, if the passenger come by air craft.<br>Note: if the passenger come by road, there is no free allowance. | GFA will be allowed without payment of duty for bona fide baggage (i.e. used personal effects) upto ₹15,000/- per persons. |
| A tourist of foreign origin (but not infant), arriving from any country other than Nepal, Bhutan or Myanmar | -do- |
| Passengers (i.e. Indian resident or a foreigner residing in India or a tourist of Indian origin (but not infant) arriving from Nepal, Bhutan and Myanmar.<br>Note: if the passenger come by road, there is no free allowance | -do- |

**Important note:**

(1) for infant, only used personal effects shall be allowed duty free.

(2) the free allowance cannot be allowed to be pooled with the free allowance of any other passenger.

(3) Bona fide baggage means used personal effects, travel souvenirs and articles other than those mentioned in Annexure I.

(4) Annexure I includes:

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

**Duty Free Allowance (w.e.f. 1-4-2016):**

| Eligible Passenger | Origin Country | Duty Free Allowance |
|---|---|---|
| Passengers of Indian origin and foreigners residing in India, excluding infants | Other than Nepal, Bhutan, Myanmar | ₹ 50,000 |
| Tourists of foreign origin, excluding infants | Other than Nepal, Bhutan, Myanmar | ₹ 15,000 |
| Passengars of Indian origin and foreigners residing in India, excluding infants AND Tourists of foreign origin, excluding infants | Nepal, Bhutan and Myanmar | ₹ 15,000 (by Air)<br>NIL (By Land) |
| Indian passenger who has been residing abroad for over one year | Anywhere | Gold Jewellery<br>Gentleman- 20 gms. with a value cap of ₹50,000<br>Lady - 40 gms with a value cap of ₹1,00,000 |
| All passengers | Anywhere | Alcohol liquor or wine: 2 litres |
| All passengers | Anywhere | Cigaretters: 100 numbers or Cigars upto 25 or Tobacco 125 grams |
| Passenger of 18 years and above | Anywhere | One laptop computer (notebook computer) |

**No restriction on age and minimum period of stay (w.e.f. 1-4-2016):**

Restrictions on age and minimum period of stay abroad have been withdrawn.

Free baggage allowances are same for all passengers irrespective of their age and period of stay.

**(2) *Professionals returning to India – Rule 5***

- An Indian passenger who was engaged in his profession abroad is allowed clearance free of duty upto the following limits:

| Particulars | Used Household articles | Professional Equipment |
|---|---|---|
| Indian Passenger returning after atleast 3 months | ₹12,000 | ₹20,000 |
| Indian Passenger returning after atleast 6 months | | ₹40,000 |
| Indian Passenger returning after a stay of minimum 365 days during the preceding 2 years on termination of his work and Who has not availed this concession in the preceding 3 years | Used Household articles and personal effects, which have been in the possession and use abroad of the passenger or his family for atleast 6 months and which are not mentioned in Annexure I, II or III upto an aggregate value of ₹75,000 | |

- The above allowance is in addition to the allowances given under Rule 3 or Rule 4 as the case may be.
- For the purpose of these rules, "Family" includes all persons who are residing in the same house and form part of the same domestic establishment – Rule 2(iv)
- "Professional Equipment" means:
  - such portable equipments, instruments, apparatus and appliances as are required in his profession
  - by a carpenter, a plumber, a welder, a mason and the like and
  - shall not include items of common use such cameras, cassette recorders, Dictaphones, personal computers, typewriters, and other similar articles
- List of Articles mentioned in Annexure I – Same as discussed in Rule 3 & Rule 4
- List of Articles mentioned in Annexure II:
  - Color Television or Monochrome Television, Digital Video Disc Player, Video Home Theater System, Music System
  - Dish washer, Airconditioner, Domestic refrigerators of capacity above 300 litres with one or more of the following goods, namely Television Receiver, Sound Recording or reproducing apparatus and Video reproducing apparatus
  - Word Processing Machine, Fax machine, portable photocopying machine
  - Vessel, Aircraft
  - Cinematographic films of 35mm and above
  - Gold or Silver, in any form, other than ornaments
- List of Articles mentioned in Annexure III:
  - Video Cassette Recorder or Video Cassette Player or Video Television Receiver or Video Cassette Disk Player
  - Washing Machine
  - Electrical or Liquefied Petroleum Gas Cooking Range
  - Personal Computer (Desktop Computer), Laptop Computer (Note book Computer)
  - Domestic Refrigerators of capacity upto 300 litres or its equivalent.

*Note*: **No restriction on age and minimum period of stay (w.e.f. 1-4-2016).**

**(3) *Tourist – Duty Free Allowance – Rule 7***

A tourist arriving in India shall be allowed clearance free of duty articles in his bona fide baggage to the extent of following:

| Case | Duty Free Allowance |
|---|---|
| (a) Tourists of Indian origin coming to India other than tourists of Indian origin coming by land routes as specified in Annexure IV; | (i) Used personal effects and travel souvenirs, if-<br>(a) These goods are for personal use of the tourist, and<br>(b) These goods, other than those consumed during the stay in India, are re-exported when the tourist leaves India for a foreign destination.<br>(ii) Articles as allowed to be cleared under rule 3 or rule 4. |
| (b) Tourists of foreign origin, other than those of Pakistani origin coming from Pakistan, coming to India by air. | (i) Used personal effects<br>(ii) Articles other than those mentioned in Annexure I upto a value of ₹8,000 for personal use of the tourist or as gifts and travel souvenirs if these are carried on the person or in the accompanied baggage of the passenger. |
| (c) Tourists –<br>(i) of Pakistani coming from Pakistan other than by land routes;<br>(ii) of Pakistani origin or foreign tourists coming by land routes as specified in Annexure IV;<br>(iii) of Indian origin coming by land routes as specified in Annexure IV. | (i) Used personal effects<br>(ii) Articles other than those mentioned in Annexure I upto value of ₹6,000 for personal use of the tourist or as gifts and travel souvenirs if these are carried on the person or in the accompanied baggage of the passenger. |

**Meaning of tourist [Rule 2(iii)]: "Tourist" means**

- Not normally resident in India
- Who enters India for a stay of not more than 6 months in the course of any 12 months period
- For legitimate non-immigrant purposes, such as touring, recreation, sports, health, family reasons, study, religious pilgrimage or business

**Customs Declaration Form:**

International passengers, when coming to India, need not fill Customs Declaration Form if they are not carrying dutiable goods as part of their baggage w.e.f 1-4-2016.

**(4) *Jewellery - Duty Free Allowance - Rule 6***

A passenger returning to India having resided abroad for more than a year shall be allowed clearance free of duty jewellery in his *bona fide* baggage to the extent of the following:

| Person | Prior to 01.03.2013 | w.e.f. 01.03.2013 |
|---|---|---|
| Gentleman passenger | ₹ 10,000 | ₹ 50,000 |
| Lady Passenger | ₹ 20,000 | ₹ 1,00,000 |

***Example 1:***

***Mr. Gopal, an Indian entrepreneur, went to London to explore new business opportunities on 01.04.2013. His wife also joined him in London on 01.12.2013. The following details are submitted by them with the Customs authorities on their return to India on 30.04.2014.-***

***(a) used personal effects worth ₹ 95,000***

***(b) a music system worth ₹ 34,000***

***(c) the jewellery brought by Mr. Gopal for ₹44,000 and the jewellery brought by his wife worth ₹25,000***

***Determine their eligibility with regard to duty free allowance.***

***Answer:***

***As per the Baggage Rules, 1998, in case of passengers other than tourists there is no customs duty on used personal effects and general free allowance is ₹35,000 per passenger. Thus, their duty liability is nil for the personal effects and a music system.***

***However, the additional duty free allowance, that is jewellery allowance is applicable to non-tourist passenger of Indian origin who had stayed abroad for period exceeding one year. The additional jewellery allowance is as follows:-***

***Gentleman Passenger - ₹50,000/-***

***Lady Passenger - ₹1,00,000/-***

***Thus, there is no duty liability on the jewellery brought by Mr. Gopal as he had stayed abroad for period exceeding one year. However, his wife is not eligible for this additional jewellery allowance as she had stayed abroad for a period less than a year. Thus, she has to pay customs duty on the amount of jewellery brought by her.***

**Duty Free Jewellery (w.e.f. 1-4-2016):**

Coming to India by an Indian Passenger after stay abroad more than one year

(i) Jewellery upto a weight, of 20 grams with a value cap of ₹50,000 if brought by a gentleman passenger

(ii) Jewellery upto a weight, of 40 grams with a value cap of ₹1,00,000 if brought by a lady passenger.

**(5) *Transferring residence to India (Rule 8)***

- a person who is transferring his residence to India shall be allowed clearance free of duty, in addition to what he is allowed under rule 3 or 4 as the case may be, articles in his *bona fide* baggage to the extent of the following:

| **Articles allowed free of duty** | |
|---|---|
| • Used personal and household articles, other than those listed in Annexure I and Annexure II, but including the article listed in Annexure III and<br>• Jewellery to the extent mentioned in Rule 6 | |
| **Conditions** | **Relaxation that may be considered** |
| Minimum stay of 2 years abroad, immediately preceding the date of his arrival on Transfer of Residence | Shortfall of upto 2 months in stay abroad can be condoned by Assistant Commissioner or Deputy Commissioner of customs, if the early return is on account of:<br>• Terminal leave or vacation being availed of by the passenger, or<br>• Any other special circumstances |
| Total stay in India on short visit during the 2 preceding years should not exceed 6 months | Commissioner of Customs may condone short visits in excess of 6 months in deserving cases |
| Passenger has not availed this concession in the preceding three years | No relaxation |

- To the extent of satisfaction of the Assistant commissioner of customs, Jewellery brought back which was taken out earlier by the passenger or by a member of his family from India shall be allowed clearance free of duty.

**Transfer of residence w.e.f. 1-4-2016:**

A person, who is engaged in a profession abroad, or is transferring his residence to India can bring, used household items as below:

| Passengers who have stayed abroad | GFA for personal household items upto ₹ |
|---|---|
| 3-6 months | ₹60,000 |
| 6-12 months | ₹1,00,000 |
| 1-2 years | ₹2,00,000 |
| Above 2 years | ₹5,00,000 |

**(6) *Unaccompanied Baggage — Rule 9***

1. **These rules apply to unaccompanied baggage as well:** Provisions of these rules are also extended to unaccompanied baggage except where they have been specifically excluded

2. **time Limit – Baggage received after arrival of passenger: The unaccompanied baggage:**

   (a) had been in the possession abroad of the passenger and

   (b) is dispatched within one month of his arrival in India or within such further period as Assistant or Deputy Commissioner of Customs may allow.

3. **Time Limit – Baggage received before arrival of passenger:** The unaccompanied baggage may land in India

   (a) Upto 2 months before the arrival of the passenger or

   (b) Within such period, not exceeding one year, as the Assistant or Deputy Commissioner of customs may allow, for reasons to be recorded, if he is satisfied that:

      (i) The passenger was prevented from arriving in India within the period of two months

      (ii) Due to circumstances beyond his control such as sudden illness of the passenger or a member of his family, or natural calamities or disturbed conditions or disruption of the transport or travel arrangement in the country or countries concerned or any other reasons, which necessitate a change in the travel schedule of the passenger.

**(7) *Application of these rules to members of the crew* [*Rule 10*]**

1. **Crew member of a foreign going vessel:** The provisions of these rules shall apply in respect of members of the crew engaged in a foreign going vessel for importation of their baggage at the time of final pay off on termination of their engagement

   However, except as specified above, a crew member of a vessel shall be allowed to bring:

   - Items like chocolates, cheese, cosmetics and other petty gift items for their personal or family use
   - Which shall not exceed the value of ₹1,500 (before 01.03.2013, it was ₹600)

2. **Crew Member of an aircraft:** Notwithstanding anything contained in these rules a crew member of an aircraft shall be allowed to bring gift items like chocolates, cheese, cosmetics and other petty gift items at the time of the returning of the aircraft from foreign journey for their personal or family use which shall not exceed value of ₹1,500 (before 01.03.2013 – ₹600).

## 8.3 POSTAL ARTICLES

As per sections 82 to 84 of the Customs Act, 1962, goods can be cleared by post. Any label or declaration accompanying the goods showing the description, quantity and value thereof, shall be treated as "an entry for import" under the Customs Act.

The rate of duty and tariff value applicable to goods imported by post shall be the rate and valuation in force on the date on which the postal authorities present to the proper officer a list containing the particulars of such goods for the purpose of assessment of duty.

The procedure for clearance:

(i) Post parcels are allowed to pass from port/airport to Foreign Parcel Department of Government Post Offices without payment of customs duty.

(ii) The Postmaster hands over to Principal Appraiser of Customs the memo showing

   - Total number of parcels from each country of origin,
   - Parcel bills or senders' declaration,

- Customs declaration and dispatch notes, and
- Other information that may be required.

(iii) The mail bags are opened and scrutinized by Postmaster under supervision of Principal Postal Appraiser of Customs.

(iv) Packets suspected of containing dutiable goods are separated and presented to Customs Appraiser with letter mail bill and assessment memos.

(v) The Customs Appraiser marks the parcels which are required to be detained if—

- necessary particulars are not available, or
- mis-declaration or undervaluation is suspected, or
- goods are prohibited for import.

Appraiser has the power to examine any parcel. After inspection, the parcels are sealed with a distinctive seal. Any mis-declaration or undervaluation is noted or goods are prohibited goods for imports these be detained and the same intimated to Commissioner of Customs.

If everything is in order after verification, goods will be handed over to Post Master, who will hand over the same to the addressee on receipt of customs duty.

## 8.4 IMPORT OF SAMPLES

In the International trade it is considered often necessary that samples of the goods manufactured in one country be sent to another country for being shown or demonstrated for Customer appreciation. There are duty free imports of genuine commercial samples into the country for smooth flow of trade.

The commercial samples are basically specimens of goods that may be imported by the traders or representatives of manufacturers. However, goods which are prohibited under Foreign Trade (Development and Regulation) Act, 1992 are not allowed to be imported as samples (i.e. wild animals, wild birds and parts of wild animals, arms and ammunitions and so on).

Samples can be imported by the traders, industry, individuals, research institutes and so on. These samples can also be brought by the persons as part of their personal baggage or through port or in courier.

The current limit of ₹ 1 lakh per annum for duty free import of samples in terms of NT 154/94 Customs, dated 13.7.1994 is enhanced to ₹ 3 lakh per annum (w.e.f. 27.2.2010).

### Baggage Rules, 2016

**[Notification No. 30/2016-Customs (N.T.) dated 1.3.2016 as amended by Notification No. 43/2016-Customs (N.T) dated 31.3.2016 read with corrigendum dated. 1.4.2016]**

In exercise of the powers conferred by section 79 of the Customs Act, 1962 (52 of 1962), and in supersession of the Baggage Rules, 1998, except as respects things done or omitted to be done before such supersession, the Central Government hereby makes the following rules, namely:-

**1. Short title and commencement. –**

(1) These rules may be called the Baggage Rules, 2016.

(2) They shall come into force on the 1st day of April, 2016.

**2. Definitions. –** (1) In these rules, unless the context otherwise requires, -

(i) "Annexure" means Annexure appended to these rules;

(ii) "family" includes all persons who are residing in the same house and form part of the same domestic establishment;

(iii) "infant" means a child not more than two years of age;

(iv) "resident" means a person holding a valid passport issued under the Passports Act, 1967 (15 of 1967) and normally residing in India;

(v) "tourist" means a person not normally resident in India, who enters India for a stay of not more than six months in the course of any twelve months period for legitimate non-immigrant purposes;

(vi) "personal effects" means things required for satisfying daily necessities but does not include jewellery.

(2) Words and expression used and not defined in these rules but defined in the Customs Act, 1962 (52 of 1962) shall have the same meaning respectively assigned to them in the said Act.

**3. Passenger arriving from countries other than Nepal, Bhutan or Myanmar.-** An Indian resident or a foreigner residing in India or a tourist of Indian origin, not being an infant arriving from any country other than Nepal, Bhutan or Myanmar, shall be allowed clearance free of duty articles in his bona fide baggage, that is to say,-

(a) used personal effects and travel souvenirs; and

(b) articles other than those mentioned in Annexure-I, upto the value of fifty thousand rupees if these are carried on the person or in the accompanied baggage of the passenger:

Provided that a tourist of foreign origin, not being an infant, shall be allowed clearance free of duty articles in his bona fide baggage, that is to say,

(a) used personal effects and travel souvenirs; and

(b) articles other than those mentioned in Annexure- I, upto the value of fifteen thousand rupees if these are carried on the person or in the accompanied baggage of the passenger:

Provided further that where the passenger is an infant, only used personal effects shall be allowed duty free.

Explanation - The free allowance of a passenger under this rule shall not be allowed to pool with the free allowance of any other passenger.

**4. Passenger arriving from Nepal, Bhutan or Myanmar.-** An Indian resident or a foreigner residing in India or a tourist, not being an infant arriving from Nepal, Bhutan or Myanmar, shall be allowed clearance free of duty articles in his bona fide baggage, that is to say,

(a) used personal effects and travel souvenirs; and

(b) articles other than those mentioned in Annexure -I up to the value of fifteen thousand rupees if these are carried on the person or in the accompanied baggage of the passenger:

Provided that where the passenger is an infant, only used personal effects shall be allowed duty free:

Provided further that where the passenger is arriving by land, only used personal effects shall be allowed duty free.

**Explanation-** The free allowance of a passenger under this rule shall not be allowed to pool with the free allowance of any other passenger.

**5. Jewellery -** A passenger residing abroad for more than one year, on return to India, shall be allowed clearance free of duty in his bona fide baggage of jewellery upto a weight, of twenty grams with a value cap of fifty thousand rupees if brought by a gentleman passenger, or forty grams with a value cap of one lakh rupees if brought by a lady passenger.

**6. Transfer of residence –**

(1) A person, who is engaged in a profession abroad, or is transferring his residence to India, shall, on return, be allowed clearance free of duty in addition to what he is allowed under rule 3 or, as the case may be, under rule 4, articles in his bonafide baggage to the extent mentioned in column (2) of the Appendix below, subject to the conditions, if any, mentioned in the corresponding entry in column (3) of the said Appendix.

(2) The conditions mentioned in column (3) of the said Appendix may be relaxed to the extent mentioned in column (4) of the said Appendix.

**Appendix**

| Duration of stay abroad | Articles allowed free of duty | Conditions | Relaxation |
|---|---|---|---|
| (1) | (2) | (3) | (4) |
| From three months upto six months | Personal and household articles, other than those mentioned in Annexure I or Annexure II but including articles mentioned in Annexure III upto an aggregate value of sixty thousand rupees. | Indian passenger | — |
| From six months upto one year | Personal and household articles, other than those mentioned in Annexure I or Annexure II but including articles mentioned in Annexure III, upto an aggregate value of one lakh rupees. | Indian passenger | — |
| Minimum stay of one year during the preceding two years | Personal and household articles, other than those mentioned in Annexure I or Annexure II but including articles mentioned in Annexure III upto an aggregate value of two lakh rupees. | The Indian passenger should not have availed this concession in the preceding three years. | — |
| Minimum stay of two years or more. | Personal and house household articles, other than those listed at Annexure I or Annexure II but including articles mentioned in Annexure III upto an aggregate value of five lakh rupees. | (i) Minimum stay of two years abroad, immediately preceding the date of his arrival on transfer of residence;<br>(ii) Total stay in India on short visit during the two preceding years should not exceed six months; and<br>(iii) Passenger has not availed this concession in the preceding three years. | (a) For condition (i), shortfall of upto two months in stay abroad can be condoned by Deputy Commissioner of Customs or Assistant Commissioner of Customs if the early return is on account of:-<br>(i) terminal leave or vacation being availed of by the passenger; or<br>(ii) any other special circumstances for reasons to be recorded in writing.<br>(b) For condition (ii), the Principal Commissioner of Customs or Commissioner of Customs may condone short visits in excess of six months in special circumstances for reasons to be recorded in writing.<br>No relaxation. |

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

**8. Provisions regarding unaccompanied baggage -** (1) These rules shall apply to unaccompanied baggage except where they have been specifically excluded:

Provided that the said unaccompanied baggage had been in the possession, abroad, of the passenger and is dispatched within one month of his arrival in India or within such further period as the Deputy Commissioner of Customs or Assistant Commissioner of Customs may allow:

Provided further that the said unaccompanied baggage may land in India upto two months before the arrival of the passenger or within such period, not exceeding one year, as the Deputy Commissioner of Customs or Assistant Commissioner of Customs may allow, for reasons to be recorded, if he is satisfied that the passenger was prevented from arriving in India within the period of two months due to circumstances beyond his control, such as sudden illness of the passenger or a member of his family, or natural calamities or disturbed conditions or disruption of the transport or travel arrangements in the country or countries concerned or any other reasons, which necessitated a change in the travel schedule of the passenger.

**9. Application of these rules to members of the crew -** (1)These rules shall also apply to the members of the crew engaged in a foreign going conveyance for importation of their baggage at the time of final pay off on termination of their engagement.

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

**Annexure – I**

**(See rule 3, 4 and 6)**

1. Fire arms.
2. Cartridges of fire arms exceeding 50.
3. Cigarettes exceeding 100 sticks or cigars exceeding 25 or tobacco exceeding 125 gms.
4. Alcoholic liquor or wines in excess of two litres.
5. Gold or silver in any form other than ornaments.
6. Flat Panel (Liquid Crystal Display/Light-Emitting Diode/ Plasma) television.

**Annexure - II**

**(See rule 6)**

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

**Annexure - III**

**(See rule 6)**

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

**Self - Examination Questions**

**Theory Questions**

**Q1.** Explain the term baggage? What do we mean by Green Channel and Red Channel?

**Answer:** Please refer point no. 8.2

**Q2.** Write short note on

(i) Bona fide baggage

(ii) General Free Allowance

**Answer:**

(i) please refer point no. 8.2

(ii) please refer point no. 8.2

**Q3.** What are the products not coming under baggage rules?

**Answer:** please refer point no. 8.2

**Q4.** Write a detailed note regarding clearance of postal articles?

**Answer:** please refer point no. 8.3

**Q5.** Explain the provision under the Customs Act, 1962 relating to baggage duty and concessions to Indian residents returning from abroad after a short visit.

**Answer:** please refer point no. 8.2

**Practical Problems**

**Illustration 1:** After visiting USA, Mrs. & Mr. X brought to India a laptop computer valued at ₹ 80,000 personal effects cloths valued at ₹ 90,000 and a personal computer for ₹ 52,000. What is the customs Duty payable?

**Solution:**

Duty payable on baggage is ₹ 770/-

[₹ (52,000 – 50,000) x 38.50%]

**Illustration 2:** Amarnath, an IT professional and a person of Indian origin, is residing in Denmark for the last 14 months. He wishes to bring a used microwave oven (costing approximately ₹ 1,24,200 and weighing 15 kg) with him during his visit to India. He purchased the oven in Denmark 6 months back and he has been using that oven for his personal use in his kitchen. He is not aware of Indian customs rules. Could you please provide him some advice in this regard?

**Solution:**

Transfer of residence w.e.f 1-4-2016:

A person, who is engaged in a profession abroad, or is transferring his residence to India can bring, used household items as below:

| Passengers who have stayed abroad | GFA for personal household items upto ₹ |
|---|---|
| 3-6 months | ₹ 60,000 |
| 6-12 months | ₹ 1,00,000 |
| 1-2 years | ₹ 2,00,000 |
| Above 2 years | ₹ 5,00,000 |

In the given example Amarnath brings the used household articles worth ₹ 1,24,200 which is free of duty. As per the rule 5 of the Baggage Rules, 1998 he is not liable to pay any duty.

**Illustration 3:** Mr. Ajay, an Indian entrepreneur, went to London to explore new business opportunities on 01.04.2017. His wife also joined him in London on 01.12.2017. The following details are submitted by them with the Customs authorities on their return to India on 30.04.2018.-

(a) used personal effects worth ₹ 80,000

(b) a music system worth ₹ 35,000

(c) Gold bars (i.e. other than ornaments) brought by Mr. Ajay for ₹ 48,000 and the jewellery brought by his wife worth ₹ 20,000

Determine their eligibility with regard to duty free allowance.

**Solution:**

**Statement showing customs duty in the hands of Mr. Ajay:**

| **Particulars** | **Amount ₹** | **Workings** |
|---|---|---|
| Personal effects | Nil | Fully exempted from duty |
| Music system | 35,000 | Dutiable within the limit of GFA |
| *Less*: GFA | -35,000 | GFA allowed upto ₹45,000 (w.e.f. 1-4-2016 GFA increased to ₹ 50,000) |
| Dutiable goods | Nil | |
| Jewellery | 48,000 | |
| Less: exemption | 48,000 | Upto ₹50,000 is free from duty, since, he stayed outside abroad for a period more than one year. |
| Dutiable goods | Nil | |

**Statement showing customs duty in the hands of Mrs. Ajay:**

| Particulars | Amount ₹ | Workings |
|---|---|---|
| Gold bars (other than jewellery) | 20,000 | Fully taxable |
| *Less*: exemption | Nil | General free allowance not allowed. |
| Dutiable goods | 20,000 | |
| Customs duty | 7,700 | (₹ 20,000 x 38.50%) |

**Illustration 4:** Mr. Devendra an Indian Entrepreneur, went to China to explore new business opportunities on 05-04-2016. The following details, regarding imports are submitted by him with the Customs authorities on return to India on 20-02-2017.

(a) 2 Music systems each worth ₹. 23,000.

(b) Jewellery brought by Mr. Devendra worth ₹.49,000 (18 Grams).

Write a brief note on his eligibility with regard to duty free baggage allowances as per the Baggage Rules, 2016.

**Solution:**

- Music system 23000 x 2 = ₹ 46,000
- Add: Jewellery = ₹ 49,000
- Sub-total = ₹ 95,000
- Less: GFA = ₹ (50,000)
- Dutiable goods = ₹ 45,000

Total duty payable is ₹ 17,325 (i.e. 45,000 x 38.50%)

Note: Since, Mr. Devendra stay abroad does not exceeds one year, he will not be eligible for additional jewellery allowance under rule 5 of the Baggage Rules, 2016.

**Case Law**

***Q 1. Hemal K. Shah* 2012 (275) ELT 266 (GOI)**

**Facts of the Case:** Shri Hemal K. Shah, a passenger, who arrived at SVPI Airport, Ahmedabad, had declared the total value of goods as ₹13,500 in the disembarkation slip. On detailed examination of his baggage, it was found to contain Saffron, Umicore Rhodium Black, Titan Wrist watches, Mobile Phones, assorted perfumes, Imitation stones and bags.


Since, the said goods were in commercial quantity and did not appear to be a bona fide baggage; the same were placed under seizure. The passenger in his statement admitted the offence and showed his readiness to pay duty on seized goods or re- shipment of the said goods.

The adjudicating authority determined total value of seized goods; ordered confiscation of seized goods under section 111(d) and 111(m) of the Customs Act, 1962; imposed penalty on Hemal K. Shah; confirmed and ordered for recovery of customs duty on the goods with interest and gave an option to redeem the goods on payment of a fine which should be exercised within a period of three months from date of receipt of the order.

On appeal by Hemal K. Shah, the appellate authority allowed re-export of the confiscated goods. Against this order, the Department filed a revision application before the Revisionary Authority under section 129DD of the Customs Act, 1962.

**Point of Dispute:** The Department questioned the re-export of confiscated goods. They contended that the goods which had been confiscated were being smuggled in by the passenger without declaring the same to the Customs and were in commercial quantity. In view of these facts, the appellate authority had erred in allowing the re-export of the goods on payment of redemption fine.

**Revisionary Authority's Decision**: The Government noted that the passenger had grossly mis-declared the goods with intention to evade duty and to smuggle the goods into India. As per the provisions of section 80 of the Customs Act, 1962 when the baggage of the passenger contains article which is dutiable or prohibited and in respect of which the declaration is made under section 77, the proper officer on request of passenger can detain such article for the purpose of being returned to him on his leaving India. Since passenger neither made true declaration nor requested for detention of goods for re-export, before customs authorities at the time of his arrival at airport, the re-export of said goods could not be allowed under section 80 of the Customs Act.

# Study Note - 9

## ADMINISTRATIVE AND OTHER ASPECTS

This Study Note includes



### 9.1 INTRODUCTION

It is essential to know the departmental set up of the Customs Department. The administration of the Customs Act, 1962 is carried out by the departmental adjudicating authority. Moreover, the Act specifies the class of officers who are responsible for the functioning of the law. As we know the Central Board of Excise and Customs is empowered to regulate the Customs Act as well as Central Excise Act.

## 9.2 CLASSES OF OFFICERS

There shall be the following classes of officers of customs under section 3 of the Customs Act, 1962, namely:—

- Chief Commissioners of Customs;
- Commissioners of Customs;
- Commissioners of Customs (Appeals);
- Joint Commissioners of Customs;
- Deputy Commissioners of Customs;
- Assistant Commissioners of Customs or Deputy Commissioner of Customs;
- Such other class of officers of customs as may be appointed for the purposes of this Act.

## 9.3 APPOINTMENT OF OFFICERS OF CUSTOMS

As per section 4 of the Customs Act, the Central Board of Excise and Customs may appoint such persons as it thinks fit to be officers of customs.

The Central Board of Excise and Customs may authorize a Principal Chief Commissioner of Customs or a Principal Commissioner of Customs or a Joint Commissioner of Customs or Assistant Commissioner of Customs or Deputy Commissioner of Customs to appoint officers of customs below the rank of Assistant Commissioner of Customs.

## 9.4 POWERS OF OFFICERS OF CUSTOMS

As per section 5 of the Customs Act, subject to such conditions and limitations as the Central Board of Excise and Customs (Board) may impose, an officer of customs may exercise the powers and discharge the duties conferred or imposed on him under this Act.

An officer of customs may exercise the powers and discharge the duties conferred or imposed under this Act on any other officer of customs who is subordinate to him.

Notwithstanding anything contained in this section, a Commissioner (Appeals) shall not exercise the powers and discharge the duties conferred or imposed on an officer of customs other than those specified in Chapter XV and section 108.

## 9.5 IMPORTANCE OF CENTRAL EXCISE DEPARTMENT

The other class of officers of the Central Excise is:

- The Superintendent of Central Excise
- The Inspector of Central Excise

These officers are not the officers of the Customs; it becomes necessary to empower them to be officers of Customs for the purpose of doing Customs work under section 4(1) of the Customs Act.

In addition to the Excise and Customs officers to operate the Customs Law and regulations in all border areas, following Government officials are appointed:

- Border Security Police
- Indo Tibetan Border Police
- Coast Guard

***Officers of other department***

As per section 151 of the Customs Act, 1962, the following officers of other department are empowered to assist officers of the Customs.

- Officers of the Central Excise Department
- Officers of the Navy
- Officers of Police

Officers of the Central or State Governments employed at any port or airport; such other officers of the Central or State Governments or a local authority as are specified by the Central Government in this behalf by notification in the Official Gazette.

***Circulars of the Central Board of Excise and Customs (CBE&C) cannot prevail over law laid down by the Court***

In the case of ***Commissioner of Central Excise, Bolpur v Ratan Melting and Wire Industries, Calcutta* (2005)**, the Apex Court held that Circulars and instructions issued by the Central Board of Excise and Customs (CBEC) are no doubt binding in law on the authorities under the respective statutes (which grants power to CBEC), but when the Supreme Court or High Court declares the law on the question arising for consideration, it would not be appropriate for the Court to direct that the circular should be given effect to and not the view expressed in a decision of the Supreme Court or the High Court. **It means to say that court decisions are superior to that of circulars issued by the CBE & C.**

## 9.6 APPOINTMENT OF CUSTOMS PORTS, AIRPORTS, etc.

As per section 7 of the Customs Act, 1962, the Central Board of Excise and Customs may by notification in the Official Gazette, appoint—

- The ports and airports which alone shall be customs ports or customs airports for the unloading of imported goods and the loading of export goods or any class of such goods;
- The places which alone shall be land customs stations for the clearance of goods imported or to be exported by land or inland water or any class of such goods;
- The routes by which alone goods or any class of goods specified in the notification may pass by land or inland water into or out of India, or to or from any land customs station from or to any land frontier;
- The ports which alone shall be coastal ports for the carrying on of trade in coastal goods or any class of such goods with all or any specified ports in India.

The Commissioner of Customs may approve proper places in any customs port or customs airport or coastal port for the unloading and loading of goods or for any class of goods and specify the limits of any customs area as per section 8 of the Customs Act, 1962.

The Central Board of Excise and Customs may by notification in the Official Gazette, declare places to be warehousing stations at which alone public warehouses may be appointed and private warehouses may be licensed.

## 9.7 CUSTOMS PORT

The term "customs port" means any port appointed under clause (a) of section 7 to be a customs port [and includes a place appointed under clause (aa) of that section to be an inland container depot]; the vessel entering in India from a place outside India into India must land only at Customs Port.

## 9.8 CUSTOMS AIRPORT

The term "customs airport" means any airport appointed under clause (a) of section 7 to be a customs airport; aircraft entering in India from a place outside India must land only at Customs Airport.

## 9.9 CUSTOMS AREA

The term "customs area" means the area of a customs station and includes any area in which imported goods or export goods are ordinarily kept before clearance by Customs Authorities.

## 9.10 CUSTOMS STATION

The term "customs station" means any customs port, customs airport, International courier terminal, foreign post office or land customs station.

## 9.11 LAND CUSTOMS STATION

The term "land customs station" means any place appointed under clause (b) of section 7 to be a land customs station; it means goods imported by land should follow the prescribed route only to come to Land Customs Station. Such route will be specified by CBE & C.

## 9.12 CONTAINER FREIGHT STATIONS

In short, we call as CFS or ICD (Inland Container Depot). After the imported goods are unloaded at the port, these containers are carried to Inland Container Depots for storage purpose. From these depots goods can be cleared for Domestic Tariff Area or cleared for export. Inland Container Depots are used for unloading of imported goods and loading of exported goods.

## 9.13 ENTRY

The term Entry means an entry made in a bill of entry, shipping bill or bill of export and includes in the case of goods imported or to be exported by post [As per section 2(16) of the Customs Act, 1962].

## 9.14 FIRST APPRAISEMENT SYSTEM

Section 17 of the Customs Act, 1962 stipulates that after submission of bill entry, goods will be examined and assessed. However, assessment can be made before examination of goods based on the submission of Bill of Entry and other documents produced before the Customs Authorities. The Importer on request has to submit the following:

- Contract Agreement
- Brokers note
- Insurance policy
- Other documents which help to ascertain the duty liability.

> The goods are examined first and then assessed. This is called First Appraisement System
>
> The goods are assessed first and then examined. This is called Second Appraisement System

The goods are examined first and then assessed. This is called as First Appraisement System. The appraiser normally resorts to this method if he is not able to make an assessment on the basis of declaration made in the bill of entry or shipping bill and the documents submitted along with them and deems that inspection is necessary. The importer himself may also request 'first check procedure', if he cannot give all required details regarding description/value of goods. He has to make request for first check examination at the time of filing of bill of entry.

## 9.15 SECOND APPRAISEMENT SYSTEM

The information and documents furnished by the importer are adequate to determine the correct tariff nomenclature, tariff classification and valuation of the goods for purposes of assessment.

Physical examination of the goods or their weighing or testing is only a confirmatory check. Under this system, such an examination is carried out after assessment and collection of duty. Such a system is also called as Second check procedure.

***Fast Track Clearance' Scheme***

A pre-shipment inspection (PSI) is a set of import verification services, in the country of supply, developed to assist Customs in their mission or Destination Inspection (DI) is a set of verification and capacity building services, in the country of importation, developed to assist Customs their mission. Fast-track clearance is the process by which goods are cleared through Customs based on documentation inspection only.

Importers can benefit from fast-track clearance when all documentation is verified and cleared by Customs; the past history of the importer is usually verified.

## 9.16 REFUND OF CUSTOMS DUTY

Importer or Exporter who has actually paid the duty on import or export, which is not required to be paid alone, is eligible to claim refund.

**(A) Refund of export duty**

As per Section 26 of the Customs Act, 1962, duty paid on exported goods can be claim for refund in the case of combined reading of the following if:

- The goods are returned to such person otherwise than by way of re-sale;
- The goods are re-imported within ***One year*** from the date of exportation and
- An application for refund of such duty is made before the expiry of ***six months*** from the date on which the Customs officer makes an order for importation.

Suppose, X Ltd. exported product 'P' to Y Ltd of USA on 1.1.2014. The duty paid on export of product 'P' for ₹1,00,000. Y Ltd. returned product 'P' to X Ltd., on 1.8.2014. The return is otherwise than by way of sale (i.e. it may be sale return or rejected goods, goods sent on consignment returned by the overseas agent or goods sent for exhibition coming back etc.). It means to say that Y Ltd. should not be sold 'P' to X Ltd. Moreover, exported goods are returned within ***One year*** from the date of exportation. Hence, X Ltd. can claim for refund of ₹ 1,00,000 within ***Six months*** from Customs clearances order for imported goods (i.e. 1.8.2014).

**(B) Refund of import duty**

As per Section 26A of the Customs Act, 1962, duty paid on imported goods can be claimed for refund on account of satisfying the following conditions:

**(a) Goods are found defective**

The goods are found to be defective or otherwise not in conformity with the specifications agreed upon between the importer and the supplier of goods:

**Provided** that the goods have not been worked, repaired or used after importation except where such use was indispensable to discover the defects or non-conformity with the specifications;

**(b) Goods are easily identifiable as imported goods**

The goods are identified to the satisfaction of the Assistant Commissioner of Customs or Deputy Commissioner of Customs as the goods which were imported;

**(c) No drawback claim is made**

The importer does not claim drawback under any other provisions of this Act; and

**(d) Activities carried out after importation**

(i) The goods are exported; or

(ii) The importer relinquishes his title to the goods and abandons them to customs; or

(iii) Such goods are destroyed or rendered commercially valueless in the presence of the proper officer, in such manner as may be prescribed and within a period not exceeding 30 days from the date on which the proper officer makes an order for the clearance of imported goods for home consumption under section 47.

**Note:**

(1) However, the period of 30 days may, on sufficient cause being shown, be extended by the Commissioner of Customs for a period not exceeding three months.

(2) No refund under section 26 is allowed in respect of perishable goods and goods which have exceeded their shelf life.

**Relevant date:**

Relevant date in case of filing refund claim may be any one of the following:

- Let export order issued or
- Date of abandonment or
- Date of destruction of goods as the case may be.

## 9.17 CLAIM FOR REFUND OF DUTY

**Claim for refund of duty (section 27 of the Customs Act, 1962)**

Section 27 of the Customs Act, 1962 deals with refund of duty paid on imported or exported goods in excess of what was actually payable. Sometimes, such excess payment of duty may be due to shortage/short landing, pilferage of goods or even incorrect assessment of duty by Customs. In such cases, any excess interest has been paid by the importer or exporter can also be claimed for refund.

**No refund and recovery if the amount of customs duty involved is less than ₹100:**

Third proviso to section 27(1) of Customs Act, provides that where the amount of refund claimed is less than ₹ 100, the same shall not be refunded. In other words, there would be no refund if the amount of customs duty involved is less than ₹ 100. **(w.e.f.10.05.2013)**

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

**Attested Xerox copy of the GAR-7 Challan sufficient for claiming refund:**

Refund claim *CAN NOT BE DENIED* purely on a technical contention that the assessee had produced the attested copy of GAR-7 (earlier TR-6) challan and not the original of the GAR-7 challan. Also as per clarification issued *vide* F.No. 275/37/2K-CX. 8A dated 2-1-2002, ***a simple letter from the person who*** made the deposit, requesting for return of the amount, along with the appellate order and attested Xerox copy of the Challan in Form GAR-7 would suffice for processing the refund application. **[*Narayan Nambiar Meloths* v *CCus*. 2010 (251) ELT 57 (Ker)]**

**Time Limit for claiming refund:**

| Person claiming refund | Time limit for claiming refund | Remarks |
|---|---|---|
| Individual – imported goods for his personnel use, Government or Any educational institutions or Any research institutions or Charitable institutions or hospitals | Application for refund can be made before the expiry of ONE year from the date of payment of duty and interest | The application for refund in duplicate has to be filed before the Assistant Commissioner or Dy. Commissioner of Customs. |
| Individual – for business use Companies or Firm etc. | Application for refund can be made before the expiry of ONE year (w.e.f. 8-4-2011) from the date of payment of duty and interest | The application for refund in duplicate has to file before the Assistant Commissioner or Dy. Commissioner of Customs. |

**Interest on delayed refunds:** As per section 27A of the Customs Act, 1962, if the refund ordered is not paid within 3 months from the date of receipt of refund application by the Assistant Commissioner or Deputy Commissioner of Customs, then the department is liable to pay interest at the rate of 6% p.a. (i.e. interest is liable to be paid after expiry of three months from the date of receipt of the application for refund).

**Few differences between section 26 and section 27 of the Customs Act, 1962:**

Section 26 deals with refund of export duty whereas Section 27 deals with refund of any export duty, import duty interest paid thereon.

Refund of duty under section 26 is allowed on account of satisfying certain conditions whereas refund under section 27 is allowed only when duty paid in excess of normal duty.

Refund is payable to the exporter who paid the duty under section 26 whereas refund is payable to the importer who paid the duty or to the buyer by whom the duty was borne.

**Chartered Accountant Certificate not sufficient to claim refund under section 27**

As per section 27 of the Customs Act, 1962 the importer to produce such documents or other evidence, while seeking refund, to establish that the amount of duty in relation to which such refund is claimed, has not been passed on by him to any other person.

However, if importer had not produced any document other than the certificate issued by the Chartered Accountant to substantiate its refund claim.

In the given case Madras High Court held that, the certificate issued by the Chartered Accountant was merely a piece of evidence acknowledging certain facts. It would not automatically entitle a person to refund in the absence of any other evidence. Hence, the importer could not be granted refund merely on the basis of the said certificate **[CC*us., Chennai* v *BPL Ltd.* 2010 (259) ELT 526 (Mad)]**

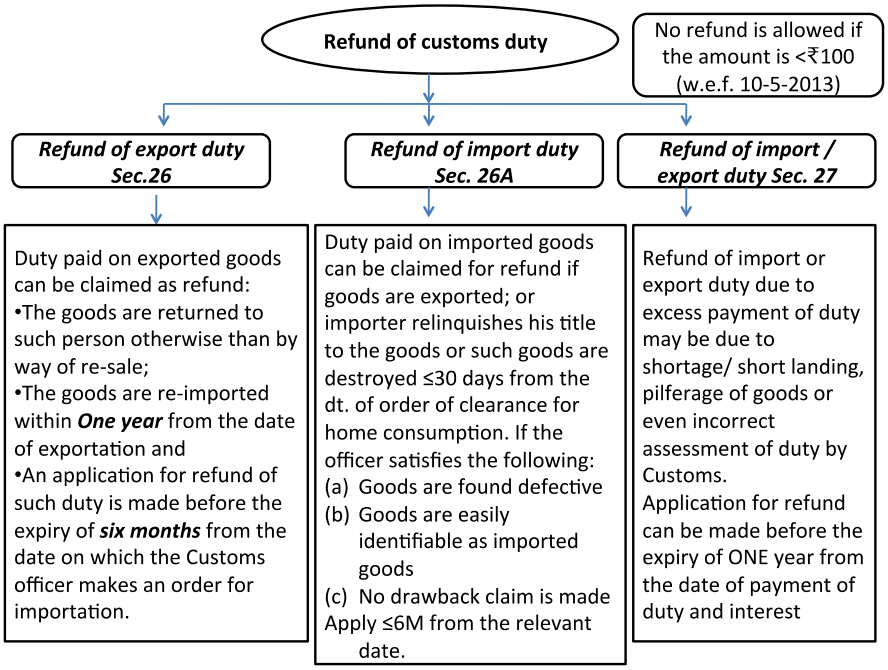
The period of limitation of one year for the purpose of refund of duty under section 27(1B) shall be computed in the following manner, namely:

(a) In the case of goods which are exempt from payment of duty by a special order issued under section 25(2) of the Custom Act, the limitation of one year shall be computed from the date of issue of such order;

(b) Where the duty becomes refundable as a consequence of any judgment, the limitation of one year shall be computed from the date of such judgment.

(c) Where any duty is paid provisionally under section 18, the limitation of one year shall be computed from the date of adjustment of duty after the final assessment thereof or incase of re-assessment, from the date of such re-assessment.

**Refund of customs duties can be recollected in the following table:**



## 9.18 AMENDMENTS TO DOCUMENTS

Generally the importer, exporter or 'person in-charge' of the conveyance (namely Master of the Vessel, Pilot of the Aircraft, Guard of the Train and Driver of the Vehicle) have to submit various documents to customs authorities like bill of entry, import general manifest (IGM), export general manifest (EGM), etc. These documents need to be amended due to various genuine reasons.

**Example 1**:

- Due to changes in classification,
- Due to clerical mistakes in document, and
- Due to change in unloading/loading plan of vessels etc.,

Under section 149 of the Customs Act, 1962, Customs Authorities can give permission to amend these documents. However, such permission cannot be given if there are fraudulent intentions.

## 9.19 IMPORT GENERAL MANIFEST

It is basically a document necessarily carried by the Person in charge along with conveyance. It is a very important document without which customs authorities not allowed to grant inward entry to the vessel.

Features of Import General Manifest:

- Person-in-charge of Vessel, Aircraft or Vehicle has to submit Import General Manifest.
- The IGM in case of a vessel or aircraft is required to be submitted prior to arrival of a vessel or aircraft.
- In case import is through a vehicle, the IGM (so called Import Report) has to be submitted within 12 hours of arrival at the Customs Station.
- Penalty up to ₹ 50,000 can be imposed on the person-in-charge who is responsible for delay in submission of Report or Manifest.
- If the customs station equipped electronically then IGM can be submitted electronically through floppy.
- Amendment can be done to Import General Manifest if the changes do not amount to illegal import.

## 9.20 PROVISIONAL ASSESSMENT OF DUTY

An importer or exporter is unable to produce any document or furnish any information necessary for the assessment of duty on the imported goods or export goods as the case may be and he can request to the Customs authorities to assess the duty liability on provisional basis. Provisional Assessment will be allowed by the Customs Officer, if he, satisfied with the request of the importer or exporter [Section 18 of the Customs Act, 1962].

Provisional assessment can be granted in the following three situations:

- An importer or exporter is unable to produce any document or furnish any information necessary for the assessment of duty.
- Any imported goods or export goods need to conduct any chemical or other test for the purpose of assessment of duty thereon.
- Where the importer or the exporter has produced all the necessary documents and furnished full information for the assessment of duty but the proper officer deems it necessary to make further enquiry for assessing the duty.

Adjustment of duty at the time of final assessment order is permissible.

| Provisional Assessment | Remarks |
|---|---|
| Short paid | Pay the deficiency along with the interest from the first day of the month in which duty is provisionally assessed till date of payment.<br>**Interest in case of Provisional Assessment Section 18(3) of the Customs Act, 1962:**<br>If differential amount is found to be payable after final assessment or re-assessment, it will be paid with interest @15% p.a. w.e.f. 1-4-2016 (prior to 1-4-2016 interest rate was @18% p.a.) from the first day of the month in which duty is provisionally assessed till date of payment. |
| Excess paid | Refund will be granted. Interest will be payable if refund is not granted within three months from the date of assessment of duty finally ordered.<br>Interest @6%p.a. is payable by the Government. |

Refund of duty is subject to unjust enrichment (i.e. should not be undue benefit).

**Customs (Provisional Assessment) Regulations, 2011: [vide circular no. 38/2016 Customs Dt. 22.08.2016]**

| Prior to 22.08.2016 | w.e.f. 22.08.2016 |
|---|---|
| Deposit 20% of the duty provisionally assessed | Deposit 20% of the duty provisionally assessed is not required. |
| Execute a bond | Execute a bond |
| Provide surety or security or both, as deemed fit by the Proper Officer. | Provide security for the payment of the duty deficiency. The security to be obtained shall be in the form of a bank guarantee or a cash deposit as convenient to the importer.<br>No sureties' shall be obtained. |

**Interest in case of Provisional Assessment (w.e.f. 8-4-2011):**

Sec. 18(3) of the Customs Act, 1962 provides that if differential amount is found to be payable after final assessment or re-assessment, it will be paid with interest @15% p.a. w.e.f. 1-4-2016 (prior to 1-4-2016 interest rate was @18% p.a.) from the first day of the month in which duty is provisionally assessed till date of payment.

***Example 1:***

***X Ltd. imported goods on 29th Mar, 2017, and approached to the department for grant of provisional assessment u/s 18 of the Customs Act, 1962. Provisional Assessment granted on 10th April 2017 by demanding duty of ₹1,00,000.***

***On 1st July 2017 provisional assessment has been finalized with ₹1,50,000 of customs duty. Differential duty has been paid on 2nd July 2017. Find the interest payable u/s 18(3) of the Customs Act, 1962.***

***Answer:***

***Interest = ₹1,911/-***

***(₹50,000 × 15/100 × 93/365 = ₹2,293.15)***

## 9.21 INTEREST ON DELAYED REFUNDS

As per section 27A of the Customs Act, 1962, interest at such, not below five per cent and not exceeding thirty per cent per annum as is for the time being fixed by the Central Government by Notification in the Official Gazette, on such duty from the date immediately after the expiry of three months from the date of receipt of such order till the date of refund of such duty.

## 9.22 SELF-ASSESSMENT OF CUSTOMS DUTY

**Self-assessment of customs duty (section 17 of the Customs Act, 1962, w.e.f. 8-4-2011)**

The importer or exporter shall self-assess the duty leviable on imported or exported goods respectively (except where goods are to be cleared as 'stores' for supply to vessels or aircrafts without payment of duty and without assessment under section 85 of Customs Act, 1962) as per section 17(1) of the Customs Act, 1962. The procedure of self assessment is same for imports and exports. Importer importing goods is required to submit Bill of Entry under section 46 of Customs Act, 1962. Exporter is required to submit shipping bill at the time of export under section 50 of Customs Act, 1962. Bill of Entry and Shipping Bill must be submitted electronically, unless manual submission is specifically permitted by Commissioner of Customs.

***Verification by proper officer***

The self assessment may be verified by 'proper officer' by examining or testing the goods [section 17(2) of Customs Act 1962, w.e.f. 8-4-2011]. For verification of self assessment, 'Proper Officer' may ask importer, exporter or any other person (i.e. Customs House Agent or person who has purchased goods on high seas sale basis) to produce any contract, broker's note, insurance policy, catalogue or other documents whereby duty payable can be ascertained and to furnish further information for ascertainment.

***Re-assessment***

The proper officer can ask for only those documents which are within the powers of importer or exporter or other person to furnish [section 17(3) of Customs Act 1962, w.e.f. 8-4-2011]. On Such verification, 'proper officer' may re-assess the Bill of entry. Such re-assessment would be without prejudice to any other action which may be taken under Customs Act [section 17(4) of Customs Act, 1962, w.e.f. 8-4-2011].

If the importer or exporter accepts in writing the reassessment made by proper officer about classification or valuation or exemption or concession, then no question of issuing any formal order arises.

***Speaking order***

Where the importer or exporter does not accept the re-assessment in writing, the proper officer shall pass a speaking order within 15 days from the date of re-assessment of 'Bill of Entry' [section 17(5) of Customs Act, 1962].

***Audit [This provision has been omitted w.e.f 29-03-2018 vide Finance Bill ,2018]***

If the goods are not taken for verification of self assessment, the goods will be allowed to be cleared from customs. However, later, proper officer may audit the assessment of duty. Such audit can be done either in the office of proper officer or at the premises of importer, as may be expedient [section 17(6) of Customs Act, 1962]. Subsequent to such audit, demand for differential duty and interest can be made under section 28 of Custom Act, 1962. This section also makes provisions in respect of penalty for such short payment.

***General provisions***

Assessment includes provisional assessment, self-assessment, re-assessment and any assessment in which the duty assessed is Nil [section 2(2) of Customs Act, 1962].

As per section 2(34) of Customs Act, 'proper officer' in relation to any function under Customs Act, means the officer of customs who is assigned those functions by Board (CBE & C) or Commissioner of Customs.

## 9.23 DUTY UNDER PROTEST

The term duty under protest means the Customs Officer completed the assessment and very clearly levied the duty; however, importer is aggrieved with the assessment. In such a situation importer has to pay the duty under protest at the time of clearing the goods from the customs station.

**Interest if duty paid late [Sec. 28AA of Customs Act 1962]:**

**w.e.f. 1-4-2016; Rate of interest is 15%p.a.**

**Period for which interest payable:** from the first day of the month succeeding the month in which the duty ought to have been paid or from the date of such erroneous refund, as the case may be, up to the date of payment of such duty.

***Example 2:***

***Mr. Lal, paid the customs duty in the month of June 2016 ₹ 10,300. It was found by the department officer, the actual amount of duty is ₹ 15,450 for the June 2016. Customs duty of ₹5,150 as demanded by the department has been paid on 31st July 2016. Find the interest under section 28AA of the Customs Act, 1962?***

***Answer: Interest = ₹ 66***

***(i.e. ₹ 5,150 × 15/100 × 31/365)***

**Case Law 1:**

**M/s CPS Textiles P Ltd. v. Joint Secretary 2010 (255) ELT 228 (Mad.)**

**Decision:** The High Court held that the description of the goods as per the documents submitted along with the Shipping Bill would be a relevant criterion for the purpose of classification, if not otherwise disputed on the basis of any technical opinion or test. The petitioner could not plead that the exported goods should be classified under different headings contrary to the description given in the invoice and the Shipping Bill, which had been assessed and cleared for export.

Further, the Court, while interpreting section 75A(2) of the Customs Act, 1962, noted that when the claimant is liable to pay the excess amount of drawback, he is liable to pay interest as well. The section provides for payment of interest automatically along with excess drawback. No notice for the payment of interest need be issued separately as the payment of interest becomes automatic, once it is held that excess drawback has to be repaid.

## 9.24 IMPORTER EXPORTER CODE (IEC Number)

Facility to file application (i.e. ANF 2A) for Importer Exporter Code (IEC Number) is available through online. It is a unique 10 digits code. PAN is pre-requisite for grant of an IEC.

## 9.25 RISK MANAGEMENT SYSTEM

The Central Board of Excise and Customs has decided to introduce the 'Risk Management System' (RMS) in major Customs locations where the Indian Customs EDI System (ICES) is operational. The implementation of the RMS is one of the most significant steps in the ongoing Business Process Re-engineering initiatives of the Customs and Central Excise Department [Circular No. 43/2005-Customs].

*Features of the Risk Management System:*

- The Risk Management System replaces the existing system of concurrent audit and replaced by a Post-Clearance Compliance Verification (Audit) function.
- This system provides the special Customs clearance for Accredited Clients. (Accredited Client means importer whose value of imports during the previous financial year ₹ 10 crores or paid duty more than ₹ 1 crore).
- This system applies only to those importers whose track record is good for the last 3 financial years.
- The RMS is intended to improve the management of the resources of the department to enhance the efficiency and effectiveness in meeting stakeholder expectations and to bring the Customs processes at par with the best international practices.

***E-payment of Customs Duty (NT 83/2012-Cus, dated 17-9-2012): the following assesses are eligible for e-payment of Customs duty.***

(i) Importer registered under Accredited Clients Programme

(ii) Importers paying customs duty of ₹1 lakh or more per bill of entry

***Accredited Clients Programme (ACP):***

The importers desirous of availing the facility as "Accredited Clients" are required to apply for registration under the scheme using the Application form attached at Annex-1. Importers meeting the following criteria shall be the eligible under the Accredited Clients Program:

(i) Accredited Clients means they should have imported goods at ₹10 crores in the previous financial year; or

Paid customs duty more than ₹1 crore in the previous financial year; or

Importers, who are also Central Excise assessees, paid Central Excise Duties over Rs. One Crore from the Personal Ledger Account in the previous financial year.

(ii) They should have filed at least 25 Bills of Entry in the previous financial year in one or more Indian Customs stations.

(iii) They should have no cases of Customs, Central Excise or Service Tax booked against them in the previous three financial years. Cases booked would imply that there should be at least a show cause notice, invoking penal provisions, issued to an importer.

(iv) They should also not have any cases booked under any of the Allied Acts being implemented by Customs.

(v) The quality of the submissions made by the applicants to Customs should be good as measured by the number of amendments made in the bills of entry submitted by them in relation to classification of goods, valuation and claim for exemption benefits. The number of such amendments should not have exceeded 20% of the bills of entry during the previous financial year.

(vi) They should have no duty demands pending on account of non-fulfillment of Export obligation.

(vii) They should have reliable systems of record keeping and internal controls and their accounting systems should conform to recognized standards of accounting. They are required to provide the necessary certificate from their Chartered Accountants in this regard as per format given in the Application form.

***This program (ACP) gives the following benefits:***

(a) The clients will get assured facilitation;

(b) In a small number of occasions their consignments will be randomly selected for checks by customs officers;

(c) The Indian Customs EDI system will accept the declared classification and valuation and assess duty on the basis of importers' self-declaration;

(d) They will also not be subjected to examination;

(e) It will be ensured that their cargo is delivered quickly;

(f) These benefits are applicable at all ICES locations

## 9.26 DETENTION CERTIFICATE

Once goods are imported from a country outside India into India, such goods need to be cleared from the port within 3 working days from the date of import. For delay beyond 3 working days the port authorities will charge demurrage. If the delay is from the Customs authorities, then such authorities will issue a certificate called as Detention Certification for *bona fide* import.

If the imported goods are not cleared from the Customs Authority within 30 days from the date of import then such goods can be stored in a warehouse pending clearance. Beyond the time limit these goods can be sold after giving show cause notice to such an importer.

## 9.27 BOAT NOTE

In India we have certain ports where the ships cannot come to the shore for unloading or loading goods due to depth of the Sea or vessel may not find the time in having berth in the port. In such cases goods are sent to shore in a small cargo (*i.e.* it may be loaded in a small boat and sent to shore). As per the Boat Note Regulations such a small boat must be accompanied by a Boat Note issued by the Customs Officer. The boat note must be in duplicate and machine numbered. Separate forms are prescribed for export cargo, import cargo and trans-shipment cargo.

## 9.28 PROHIBITION RELATING TO IMPORT OR EXPORT OF GOODS

Section 11 of the Customs Act, 1962 enables the Central Government to notify in the Official Gazette the prohibition relating to the import or export goods. Twenty two such purposes are specified therein, out of which some are given below:

- The maintenance of the security of India.
- The maintenance of public order, standards of decency or morality.
- Prevention of smuggling
- Prevention of shortage of goods of any description
- The establishment of any industry.
- Conservation of exhaustible natural resources
- Prevention of deceptive practices.
- Prevention of serious injury to domestic production of goods.
- Prevention of human/animal life or health.

## 9.29 PENALTIES UNDER CUSTOMS

Where the duty has not been levied or has been short-levied or the interest has not been charged or paid or has been part paid or the duty or interest has been erroneously refunded by reason of collusion or any willful mis-statement or suppression of facts, the person who is liable to pay the duty or interest, as the case may be, as determined under sub-section (2) of section 28 shall also be liable to pay a penalty equal to the duty or interest so determined [Section 114A of the Customs Act, 1962]

## 9.30 WHETHER CUSTOM AUTHORITIES ARE AUTHORIZED TO AUCTION THE CONFISCATED GOODS DURING THE PERIOD OF PENDENCY OF APPEAL

The customs authorities are not authorized to auction the confiscated goods during the period of pendency of appeal. It means to say that the petitioner informed the customs authorities that he was filing an appeal against order of confiscation, then customs authorities are not authorized to auction the confiscated goods. **[*Shabir Ahmed Abdul Rehman* v *UOI* 2009 (235) ELT 402 (Bom)].**

## 9.31 OFFENCES AND PROSECUTIONS UNDER CUSTOMS

Persons involved in smuggling and other modus operandi (i.e. Manner of operation) of imports and exports, in violation of prohibitions or restrictions with intent to evade duties or fraudulently claim export incentives are liable to serious penal action under the Customs Act, 1962.

The offending goods can be confiscated and heavy fines and penalties imposed. There are provisions for arrests and prosecutions.

***Detention of goods***

It means the goods are temporarily detained by officer to check whether there is any violation of law. In the case of ***Pro Musicals* v *Joint Commissioner Customs* (*Prev.*), *Mumbai* 2008 (227) ELT 182 (Mad)** the Court clarified that the detention of goods is actually taking the custody of the goods and keeping it under restraint from being taken by the parties; but, the party is entitled to produce sufficient documentary evidence, and if he shows proof, he can take it. At that juncture, no question of seizure would arise. If such person not shows proof, then said goods are seized.

***Seizure of goods (Section 110 of the Customs Act, 1962)***

The term seizure meant to take possession of the property contrary to the wishes of the owner of the goods in pursuance of a demand under legal right. Seizure involved not merely the custody of goods but also a deprivation (*i.e.* losing something) of possession of goods. It means to say that under seizure goods are taken in custody by the department. A stage before confiscation is called seizure. Generally goods liable to be confiscated may be seized.

Detention is without seizure and possession of goods whereas seizure of goods necessarily means detention plus taking possession of goods by officer.

**Goods should be returned within six months if no Show Cause Notice has been issued**

Show Cause Notice (SCN) shall be issued within six months from the date of seizure. This period can be further extended by SIX months on sufficient cause, by the Commissioner of Central Excise or Customs. If no show cause notice issued within SIX months, the goods shall be return to person from whose possession they were seized.

**Release of seized goods and documents (w.e.f. 8-4-2011):**

Seized goods and documents can be released by adjudicating authority on submission of bond and security under section 110A of the Customs Act, 1962. Therefore, permission of Commissioner of Customs is not required w.e.f. 8-4-2011.

**Case Law : 2**

***Manish Lalith Kumar Bavishi* (2011).**

**Point of dispute:** If any documents seized during the course of any action by an officer and relatable to the provisions of Customs Act, that officer was bound to make the documents available copies of those documents?

**Answer: Yes.** The Bombay High Court held the same view in the case of ***Manish Lalith Kumar Bavishi* (2011).**

***Confiscation of goods***

The term confiscation of goods means the goods become property of Government and Government can deal with these goods as it desires. Once confiscated goods are became property of Central Government, no duty liability arises on assessee whose goods are confiscated.

Search, seizure and confiscation not applicable to service tax.

However, in some cases, the person from whom goods were seized can be get them back on payment of fine (i.e. Redemption fine in lieu of confiscation) under section 125(1) of the Customs Act, 1962.

***Provisions governing Confiscation under Customs Act, 1962***

**Goods are liable for confiscation in the following circumstances:**

- Confiscation of improperly imported goods – Section 111
- Export goods liable for confiscation – Section 113
- Confiscation of Conveyances (i.e. Vehicles, Vessels, Air crafts, animals used as a means of transport in the smuggling) if used improperly for import or export of goods – Section 115
- Confiscation of packages and their contents – Section 118
- Confiscation of goods used for concealing smuggled goods – Section 119
- Confiscation of smuggled goods notwithstanding any change in form, etc. – Section 120

For example gold biscuits converted into jewellery. Hence, the entire value of jewellery is liable for confiscation.

- Confiscation of sale proceeds of smuggled goods – Section 121

As per section 124 of the Customs Act, 1962, before confiscating goods, Show Cause Notice must be issued to owner of goods giving grounds for confiscation. Time limit of SIX months as given in Section 110 of the Customs Act, 1962 is not applicable. It means there is no time limit is specified in case of issue of SCN for confiscation of goods. As per section 28 of the Customs Act, 1962, goods can be confiscated even after the goods are cleared from customs station.

Goods already exported cannot be confiscated under Section 113 of the Customs Act, 1962

**Wrong confiscation of goods:**

Once the action of the Customs department with regard to confiscation of goods, set aside by Tribunal or Court (i.e. set aside means make inoperative or stop) the person is eligible to get back the goods. If in the meanwhile, goods have been sold by the Customs authorities, market value of goods as on date of setting aside confiscation of the order of confiscation by the judgment is payable **(*Northern Plastics Ltd.* v *CCE* (2000) (SC)).**

**Confiscation of improperly imported goods – Section 111:**

The following goods brought from a place outside India shall be liable to confiscation:

(a) Any goods imported by sea or air which are unloaded or attempted to be unloaded at any place other than a customs port or customs airport.

(b) Any goods imported by land or inland water through any route other than a route specified by the Govt.

(c) Any dutiable or prohibited good brought into any bay, gulf, creek or tidal river for the purpose of being landed at a place other than a customs port.

(d) Any goods which are imported or attempted to be imported or are brought within the Indian customs waters contrary to the provisions which are in force.

(e) Any dutiable or prohibited goods found concealed (i.e. hided) in any manner in any conveyance

(f) Goods not mentioned in the Import manifest or import report

(g) Goods unloaded in contravention of the provisions of customs law

(h) any dutiable or prohibited goods found concealed in any manner in any package either before or after the unloading thereof

(i) any dutiable or prohibited goods removed or attempted to be removed from a customs area or warehouse without the permission of the proper officer.

(j) Any dutiable or prohibited goods removed or attempted to be removed from a customs area or a warehouse without the permission of the proper

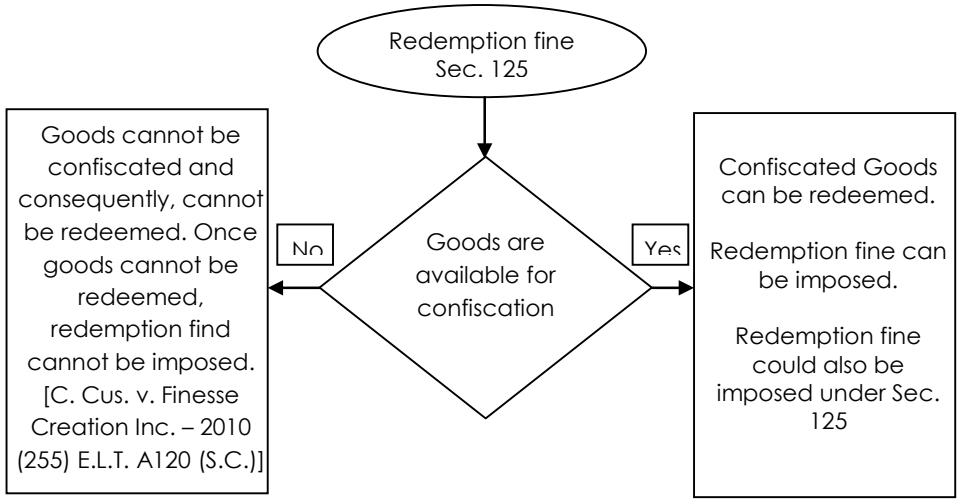
(k) Any dutiable or prohibited goods which are not included or are in excess of those included in the entry made under this Act, or in the case of baggage in the declaration made under section 77.

(l) Any goods which do not correspond in respect of value or in any other particular with the entry made under this Act or in the case of baggage with the declaration made under section 77.

(m) Any dutiable or prohibited goods transited with or without transshipment in contravention of the provisions of customs.

**Confiscated goods can be redeemed:**

Under Customs Act, 1962 can redemption fine be imposed and penalty under section 112 be levied after release of imported goods on execution of a bond, if it is found subsequently that there has been an irregularity in the import? Discuss with the help of decided case law(s), if any.




It is important to note that for levying the penalty under section 112 (i.e., improper import) it is immaterial as to whether goods are available for confiscation or not because the said penalty is imposed when the goods are liable for confiscation.

***Penalties* for improper import *under section 112 of the Customs Act, 1962***

Penalty can be imposed for improper import as well as attempt to improperly export goods. 'Improper' means without the knowledge of the Customs officers.

**No question of penalizing the partners separately for the same contravention under section 112:**

Once penalty was levied on the firm for contravention of any provision of the Act or the Rules framed there under, it amounted to levy of penalty on the partners. Hence, there was no question of penalizing the partners separately for the same contravention, unless the intention of the legislature to treat the firm and partners as distinct entities was borne out from the statute itself, i.e., expressly provided in the statute.

For Example: Explanation to section 140 of the Customs Act equated partnership firm with company (which stands as separate entity distinct from its shareholders) in respect of commission of offences.

However, there was no such corresponding provision in relation to imposition of penalty under section 112. The High Court held that separate penalty could not be imposed on the partners in addition to the penalty on the partnership firm [***CCE & C, Surat-II* v *Mohammed Farookh Mohammed Ghani* 2010 (259) ELT 179 (Guj)].**

***Penalties* for improper import [*section 112 of the Customs Act, 1962*]:**

| Imported Goods (A) | Value in (₹) (B) | Minimum Penalty in (₹) (C) | Penalty in (₹) (B) or (C) |
|---|---|---|---|
| Prohibited Goods | Not exceeding the value of prohibited goods | ₹ 5,000 | Whichever is Higher |
| Dutiable Goods (Other than Prohibited goods) | w.e.f 14-5-2015:<br>Not exceeding 10% of the Duty sought to be evaded. | ₹ 5,000 | Whichever is Higher |
| | w.e.f 14-5-2015:<br>Penalty = 25% of the penalty imposed, if the duty, interest and reduced penalty is paid within 30 days from the date of receipt of adjudication order [Section 112(b)(ii) of the Customs Act, 1962]. | | |
| Misdeclaration of value | If actual value is higher than the value declared in Bill of Entry or declaration of contents of baggage:<br>Actual value = xxx<br>Less: Declared value = (xx)<br>------Difference = xxx<br>==== | ₹ 5,000 | Whichever is Higher |

| | | | |
|---|---|---|---|
| Prohibited Goods plus Misdeclaration value | (i) Not exceeding the value of prohibited goods<br>OR<br>(ii) Actual value = xxx<br>*Less*: Declared value = (xx)<br>------Difference = xxx<br>====<br>Whichever is higher | ₹ 5,000 | Whichever is Higher |
| Dutiable Goods plus Misdeclaration of Value | (i) Duty sought to be evaded<br>OR<br>(ii) Actual value = xxx<br>*Less*: Declared value = (xx)<br>------Difference = xxx<br>====<br>Whichever is higher | ₹ 5,000 | Whichever is Higher |

***Export goods liable for confiscation — Section 113***

These are goods attempted to be improperly exported under clauses of section 113:—

(a) Goods attempted to be exported by sea or air from place other than customs port or customs airport

(b) Goods attempted to be exported by land or inland water through unspecified route

(c) Goods brought near land frontier or coast of India or near any bay, gulf, creek or tidal river for exporting from place other than customs port or customs station

(d) Goods attempted to be exported contrary to prohibition under Customs Act or any other law

(e) Goods concealed in any conveyance brought within limits of customs area for exportation

(f) Goods loaded or attempted to be loaded for eventual export out of India, without permission of proper officer, in contravention of section 33 and 34 of the Customs Act, 1962

(g) Goods stored at un-approved place or loaded without supervision of Customs Officer

(h) Goods not mentioned or found excess of those mentioned in Shipping Bill or declaration in respect of baggage

  (i) Any goods entered for exportation not corresponding in respect of value or nay other particular in Shipping Bill or declaration of contents of baggage.

  (ii) Goods entered for export under claim for duty drawback which do not correspond in any material particulars with any information provided for fixation of duty drawback.

(i) Goods imported without duty but being re-exported under claim for duty drawback

(j) Goods cleared for exportation which are not loaded on account of willful act, negligence or default, or goods unloaded after loading for exportation, without permission.

(k) Provision in respect of 'Specified Goods' are contravened.

***Penalties* for improper *export under section 114 of the Customs Act, 1962***

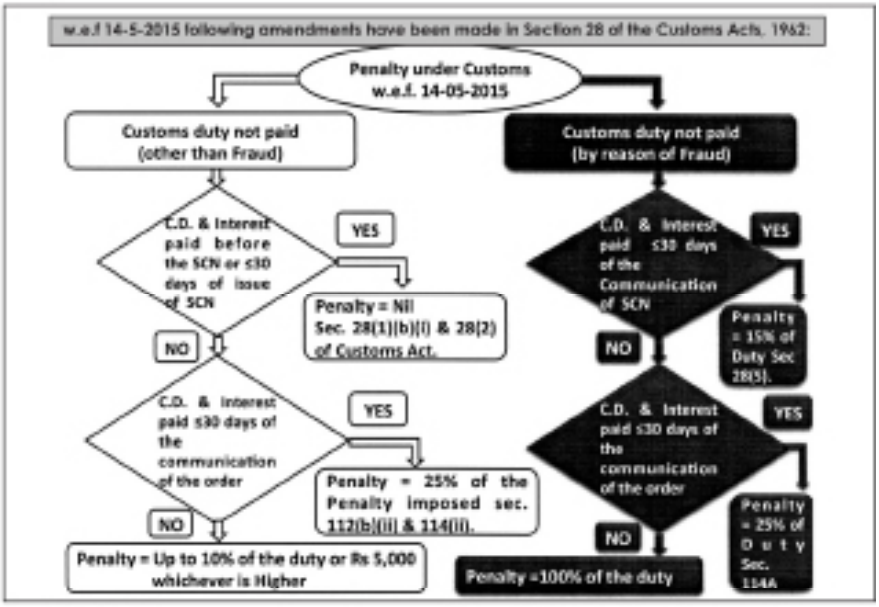
Following monetary penalties prescribed under the Customs Act, with regard to improper export:

| Attempt to improperly export (A) | Value in (₹) (B) | Minimum Penalty in (₹) (C) | Penalty in (₹) (B) or (C) |
|---|---|---|---|
| Prohibited Goods | Three times the value of the goods as declared by the exporter | The value as determined under the Customs Act. | Whichever is Higher |
| Dutiable Goods (other than Prohibited goods) | Duty sought to be evaded | ₹ 5,000 | Whichever is Higher |
| Other goods | Value declared in short | The value as determined under the Customs Act. | Whichever is Higher |

***Penalties* for improper *export U/S 114 of the Customs Act, 1962 (w.e.f.14-5-2015)***

| Attempt to improperly export (A) | Value in (₹) (B) | Minimum Penalty in (₹) (C) | Penalty in (₹) (B) or (C) |
|---|---|---|---|
| Prohibited Goods | The value as determined under the Customs Act. | ₹ 5,000 | Whichever is Higher |
| Dutiable Goods (other than Prohibited goods) | w.e.f 14-5-2015: Not exceeding 10% of duty sought to be evaded. | ₹ 5,000 | Whichever is Higher |
| | w.e.f 14-5-2015: Penalty = 25% of penalty imposed, if duty, interest and reduced penalty is paid within 30 days from date of receipt of adjudiction order - Section 114(ii) of Customs Act, 1962. | | |
| Other goods | Not exceeding the value of goods as declared by exporter | The value as determined under the Customs Act. | Whichever is Higher |

**w.e.f. 14-5-2015 following amendments have been made in Section 28 of the Customs Act, 1962:**




**w.e.f 14-5-2015:**

**In pending cases (both fraud and non-fraud) where the order has not been passed before 14.05.2015, proceedings to conclude if duty, interest and penalty is paid in full within 30 days of 14.05.2015 [New Explanation 3 to section 28]**

*Explanation* 3 has been inserted in section 28 to provide that where a notice under section 28(1) [non-fraud cases] or section 28(4) [fraud cases], as the case may be, has been served but an order determining duty under section 28(8) has not been passed before 14.05.2015 then, without prejudice to the provisions of sections 135, 135A and 140, as may be applicable, the proceedings in respect of such person or other persons to whom the notice is served will be deemed to be concluded if the payment of duty, interest and penalty under the proviso to section 28(2) or under section 28(5), as the case may be, is made in full within 30 days from 14.05.2015.

***Confiscation of Conveyances [Section 115 of the Customs Act, 1962]:***

Vehicles, Vessels, Aircrafts, animals used as a means of transport in the smuggling or improperly for import or export of goods shall be liable to confiscation.

Any such conveyance is used for the carriage of goods or passengers for hire, the owner of any conveyance shall be given an option to pay in lieu of the confiscation of the conveyance a fine not exceeding the market price of the goods which are sought to be smuggled or the smuggled goods as the case may be.

***Penalty for not accounting for goods [section 116 of the Customs Act, 1962]:***

The person-in-charge of the conveyance shall be liable to pay penalty if any goods loaded in a conveyance for importation into India, or any goods transshipped under the provisions of this Act or coastal goods carried in a conveyance:

- If not unloaded at their place of destination in India, or
- If the quantity unloaded is short of the quantity to be unloaded at that destination, or
- If the failure to unload or the deficiency is not accounted

***Quantum of penalty under section 116:***

| Imported goods: | Exported goods |
|---|---|
| Penalty not exceeding twice the amount of duty that would have been chargeable on the goods not unloaded or deficient goods, as the case may be, had such goods been imported. | Penalty not exceeding twice the amount of export duty that would have been chargeable on the goods not unloaded or deficient goods, as the case may be, had such goods been exported. |

***Residual Penalty [Section 117]:***

As per section117 of the Customs Act, 1962, if no penalty has been prescribed for contravenes, then the penalty would be ₹ 1,00,000 can be levied (w.e.f. 10.5.2008).

***Confiscation of packages and their contents – Section 118***

Where any goods imported in a package or brought within the limits of a customs area for the purpose of exportation in a package shall also be liable to confiscation if the importer or exporter violates the provisions of the customs provisions.

***Confiscation of goods used for concealing smuggled goods – Section 119***

Any goods used for concealing smuggled goods shall also be liable to confiscation. However, goods does not include a conveyance used as a means of transport.

***Confiscation of smuggled goods notwithstanding any change in form, etc. – Section 120:***

Smuggled goods may be confiscated notwith-standing (i.e. in spite of) any change in their form. Where smuggled goods are mixed with other goods in such manner that the smuggled goods cannot be separated from such other goods, the whole of the goods shall be liable to confiscation.

Owner of goods proves that he had no knowledge or reason to believe that smuggled goods included in the whole of the goods, then such part of smuggled goods shall be liable to confiscation.

***Confiscation of sale proceeds of smuggled goods – Section 121***

Where any smuggled goods are sold by a person having knowledge or reason to believe that the goods are smuggled goods, the sale-proceeds thereof shall be liable to confiscation.

**Case Law 3:**

**Smuggled goods cannot be treated par with imported goods for the purpose of granting the benefit of the exemption notification:**

The Honorable Supreme Court of India held that if the smuggled goods and imported goods were to be treated as the same, then there would have been no need for two different definitions under the Customs Act, 1962.

The Court observed that one of the principal functions of the Customs Act, 1962 was to curb the ills of smuggling on the economy. Hence, it held that it would be contrary to the purpose of exemption notifications to give the benefit meant for imported goods to smuggled goods. Therefore, the court held that the smuggled goods could not be considered as 'imported goods' for the purpose of benefit of the exemption notification **[*CCus.* (*Prev.*), *Mumbai* v *M. Ambalal & Co.* 2010 (260) E.L.T. 487 (SC)].**

***Redemption Fine (Section 125)***

The term redemption fine means Option to pay fine in lieu of confiscation. A person makes an unauthorized import of goods liable to confiscation. After adjudication, Assistant Commissioner of Customs provides an option to the importer to pay fine in lieu of confiscation [Section 125(1) of the Customs Act.]:

Provided that, without prejudice to the provisions of the proviso to sub-section (2) of section 115, such fine shall not exceed the market price of the goods confiscated, less in the case of imported goods the duty chargeable thereon.

Such an importer is liable to pay in addition to the customs duty and charges payable in respect of such imports, the penalty.

**Non Applicability :** Where the proceedings are deemed to be concluded under the proviso to Section 28(2) or under Section 28(6)(i) in respect of goods which are not prohibited or restricted, the provisions of this section shall not apply.

***Example 3:***

***A person makes an unauthorized import of goods liable to confiscation. After adjudication, Assistant Commissioner provides an option to the importer to pay fine in lieu of confiscation. It is proposed to impose a fine (in lieu of confiscation) equal to 50% of margin of profit. From the following particulars calculate the amount of fine that can be imposed: Assessable value – ₹ 50,000, Total duty payable – ₹ 20,000, Market value – 1,00,000. Also calculate the amount of fine and the total payment to be made by the importer to clear the consignment.***

***Answer:***

***In the given case Assistant Commissioner intends to impose redemption fine equal to 50% of margin of profit.***

***Total cost to importer = ₹ 50,000 + ₹ 20,000 = ₹ 70,000.***

***Margin of profit:***

***Market value – Total cost to importer = ₹ 1,00,000 – ₹ 70,000 = ₹ 30,000.***

***Hence, redemption fine will be ₹ 15,000 (@ 50% of ₹ 30,000). In addition, duty of ₹ 20,000 is payable. Thus, importer will have to pay totally ₹ 35,000 to clear the goods from customs.***

***Option to pay fine in lieu of confiscation also given to exporter of prohibited goods***

An exporter who had been held guilty of exporting 'prohibited goods', has an option to pay fine in lieu of confiscation under section 125 of the Customs Act. **CCus. (*Preventive*), *West Bengal* v *India Sales International* 2009 (241) ELT 182 (Cal).**

***Selling the confiscated goods during the period of pendency of appeal was not justified***

The Customs Officer confiscated the gold carried by the petitioner from Muscat. The Customs Department received the letter from the petitioner about his willing to file an appeal against the order of confiscation. Revenue informed the petitioner that the confiscated goods had been handed over to the warehouse of the Custom House for disposal and consequently, auctioned the confiscated goods. The action of the custom authorities in selling the gold during the pendency of the appeal was not justified. **[*Shabir Ahmed Abdul Rehman* v *UOI* 2009 (235) ELT 402 (Bom)]**

***Option to redeem the goods with Adjudicating Authority under section 125***

Adjudicating Authority is vested with the **discretion to give an option either to confiscate or redeem** the prohibited goods imported/exported even though the goods are liable to absolute confiscation but in case of other goods **[CC*us* v *Alfred Menezes* 2009 (242) ELT 334 (Bom)]**

***Goods are not redeemed by paying fine***

Option to be void if fine not paid within 120 days: Where the fine imposed is not paid within a period of 120 days from the date of option given thereunder, such option shall become void, unless an appeal against such order is pending.

**Transitional Provisions-**Option to be exercised within 120 days from 29-03-2018 [Explanaation]: For removal of doubts, it is hereby declared that in cases where an order under Section 125(1)has been passed before the date

on which the Finance bill 2018 receives the assent of the President i.e 29-03-2018 and no appeal is pending against such order as on that date, the option under said sub-section may be exercised within a period of 120 days from the date on which assent is received.

Where the imported goods are confiscated, u/s 125 and goods are not redeemed by paying fine, **the importer is bound to pay the customs duty [*Poona Health Services* v *CCus*. 2009 (242) ELT 335 (Bom)]**

***No redemption of fine, if goods not available for confiscation***

The concept of **redemption fine arises in the event when the goods are available and are to be redeemed**. If the goods are not available, there is no question of redemption of the goods under section 125. The question of confiscating the goods would not arise if there are no goods available for confiscation. **[*CCus* v *Finesse Creation Inc*. 2009 (248) ELT 122 (Bom)]**

***Offences under Customs***

The term Offence means a violation or breach of a law, like evasion of duty and breaking prohibitions under the Customs Act, 1962. However, offence not defined under Customs Act, 1962. Thereby, 'Offence' as any act or omission made punishable by any law for the time being in force.

There are basically two types of punishments namely civil penalty and criminal penalty. Civil penalty for violation of statutory provisions involving a penalty and confiscation of goods and can be exercised by the Department of Customs. Criminal punishment is of imprisonment and fine, which can be granted only in a criminal court after prosecution.

***Evasion of duty or prohibition under section 135(1) of the Customs Act, 1962***

If a person has nexus with misdeclaration of value or evasion of duty or handling in any manner goods liable for confiscation under section 111 (i.e. Confiscation of improperly imported goods) or section 113 (i.e. Export goods liable for confiscation), he shall be punishable in the following manner:

Imprisonment upto seven years and fine for the following four kinds of offences:

- Market value of offending goods exceeds ₹ one crore
- Value of evasion of duty exceeds ₹ 30 lakhs
- Offence pertains to prohibited goods notified by Central Government of India
- Value of fraudulent availment of drawback/exemption exceeds ₹ 30 lakhs

For all other kind of offences imprisonment is upto three years or fine or both.

For repeat conviction, the imprisonment can be seven years and fine and in absences of special and adequate reasons, the punishment shall not be less than one year.

***Cognizable and Non-cognizable Offence***

Cognizable offence means an offence for which a police officer may arrest without warrant (i.e. without the order of a Magistrate). Non-cognizable offence means offences under Customs were a police officer cannot investigate cases without the order of a Magistrate.

***Cognizance of Offences***

As per Section 137(1) of the Customs Act, 1962, Court cannot take cognizance of offences under the Customs Act, 1962 in the following cases without previous sanction of the Commissioner of Customs:

False declaration or documents (Section 132)

(i) Obstruction (i.e. stop the progress) of Officers of Customs (Section 133)

(ii) Refusal to be X-rayed (Section 134)

(iii) Evasion of duty or prohibitions (Section 135)

(iv) Preparation to do clandestine export (i.e. improper export) (Section 135A)

As per Section 137(2) of the Customs Act, 1962, for taking cognizance of an offence committed by a Customs officer under section 136 the Court needs previous sanction of the Central Government in respect of officers of the rank of Assistant or Deputy Commissioner and above and previous sanction of the Commissioner of Customs in respect of officers lower in rank than Assistant or Deputy Commissioner.

Section 136 of the Customs Act deals with offences by Officers of Customs which are as follows:

- An officer of customs facilitated to do fraudulent export
- Search of persons without reason to believe in the secreting of goods on them
- Arrest of person without reason to believe that they are guilty

These are called ***vexatious actions*** of department officers.

## 9.32 COMPOUNDING OF OFFENCES

Compounding means basically a compromise between assessee and department. It means to say that instead of going to court for imposition of fine and imprisonment, the offender (i.e. importer or exporter committed an offence) may agree to pay composition amount. If the case is pending, the accused and the complainant can make a joint application to the court that the parties have come to an agreement not to prosecute further.

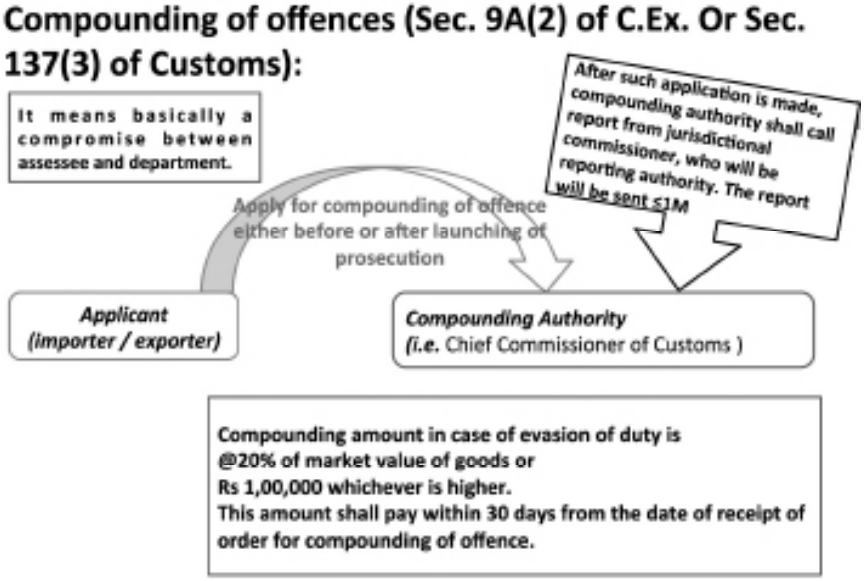
***Applicant*:** any importer or exporter but shall not include officers of Customs. Therefore, applicant (importer or exporter) can apply for compounding of offence either before or after launching of prosecution.

***Compounding Authority*:** means the Chief Commissioner of Customs having jurisdiction over place of applicant. The application can be made for compounding of offence before the Chief Commissioner of Customs by the applicant.

***Reporting Authority:*** means the Commissioner of Customs, from whom report will get by compounding authority with in one month from the date of request. After receiving the report the compounding authority may allow application indicating the compounding amount and grant immunity from prosecution or reject the application.

Compounding amount in case of evasion of duty is @20% of market value of goods or ₹1,00,000, w.e.f. 13-11-2008, whichever is higher. This amount shall pay within 30 days from the date of receipt of order for compounding of offence.

**Simplified approach:**




Finance (No. 2) Act, 2009 provides that the following mentioned persons shall not be eligible for compounding under section 137(3) of the Customs Act, 1962:

(i) Offences under section 135 (i.e. Evasion of duty or prohibition) and section 135A (i.e. any person attempting to export goods illegally shall be punishable with imprisonment) of the Customs Act, 1962 already compounded. **(i.e. second time compounding not allowed)**

(ii) Offences under the following Acts, namely:

- the Narcotic Drugs and Psychotropic Substances Act, 1985;
- the Chemical Weapons Convention Act, 2000;
- the Arms Act, 1959;
- the Wild Life (Protection) Act, 1972;

(iii) A person involved in smuggling of goods falling under any of the following, namely:—

- goods specified in the list of Special Chemicals, Organisms, Materials, Equipment and Technology
- goods which are specified as prohibited items for import and export
- any other goods or documents, which are likely to affect friendly relations with a foreign State

(iv) Offences exceeding ₹ one crore already compounded.

(v) Person who has been convicted under this Act on or after 30.12.2005

## 9.33 FIRST CHARGE ON PROPERTY OF ASSESSEE

**First Charge on Property of Assessee (Section 142A of the Customs Act, 1962)**

Customs duty, interest, penalty and other sum payable will have FIRST CHARGE ON PROPERTY of assessee.

## 9.34 INTEGRATED DECLARATION UNDER INDIAN CUSTOMS SINGLE WINDOW PROJECT

**Integrated Declaration under Indian Customs Single Window Project [w.e.f. 1-4-2016]:**

(i) CBEC has taken-up the task of implementing 'Indian Customs Single Window Project' to facilitate trade. This project envisages that the importers and exporters would electronically lodge their Customs clearance documents at a single point only with the Customs.

(ii) The required permission, if any, from Partner Government Agencies (PGAs) such as Animal Quarantine, Plant Quarantine, Drug Controller, Food Safety and Standards Authority of India, Textile Committee etc. would be obtained online without the importer/exporter having to separately approach these agencies.

(iii) This would be possible through a common, seamlessly integrated IT systems utilized by all regulatory agencies, logistics service providers and the importers/exporters. The Single Window would thus provide the importers/exporters a single point interface for clearance of import and export goods thereby reducing dwell time and cost of doing business.

(iv) This online clearance under Single Window Project has been rolled out at main ports and airports in Delhi, Mumbai, Kolkata and Chennai so far. It will be gradually extended across the country.

(v) CBEC has since developed the 'Integrated Declaration', under which all information required for import clearance by the concerned government agencies has been incorporated into the electronic format of the Bill of Entry.

(vi) The Customs Broker or Importer shall submit the "Integrated Declaration" electronically to a single entry point, i.e. the Customs Gateway (ICEGATE). Separate application forms required by different PGAs would be dispensed with.

(vii) The Integrated Declaration will be applicable for consignments to be cleared under the Indian Customs EDI Systems. For the clearance of imported goods in the manual mode, separate documents prescribed by the respective agencies will continue to apply.

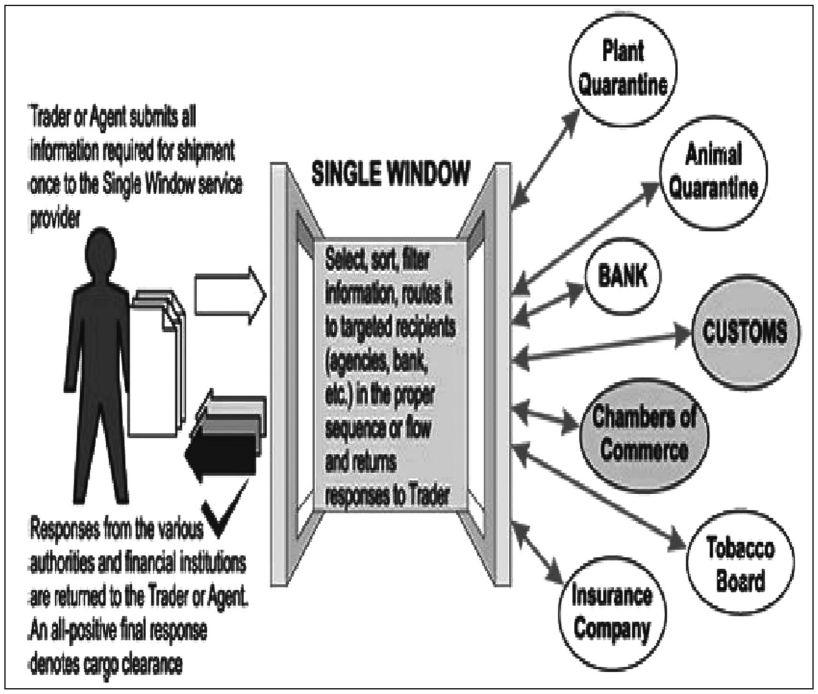
(viii) Apart from incorporating such forms, the Integrated Declaration will also include different types of undertakings, declarations, and letters of guarantee that are presently required to be submitted on company letter heads.

(ix) Upon filing of the Integrated Declaration, the bill of entry will automatically be referred to concerned agency, if required, based on risk. The system has been modified to enable simultaneous processing of bill of entry by PGA and Customs. The Integrated Declaration has become effective from 1st April, 2016 **[*Circular No. 10/2016 Cus dated 15.03.2016*]**

Consequently, w.e.f. 01.04.2016, in the Bill of Entry (Electronic Declaration) Regulations, 2011, the term Electronic Declaration has been substituted with the term, Electronic Integrated Declaration vide ***Notification No. 45/2016 Cus (NT) dated 01.04.2016.***

***Overall view:***

**Integrated Declaration under Indian Customs Single Window Project w.e.f. 1-4-2016**




**w.e.f. 14.07.2016 Customs (Import of Goods at Concessional Rate of Duty for Manufacture of Excisable Goods) Rules, 2016**

(i) Service providers also allowed to import goods at concessional rate of duty Rule 2 has been amended so as to apply these rules mutatis mutandis to a service provider also.

(ii) Furnishing of security also permitted Rule 5, inter alia, requires a manufacturer who intends to avail the benefit of an exemption notification, to submit a continuity bond with such surety undertaking to pay the amount equal to the difference between the duty leviable on such inputs but for the exemption and that already paid, if any, at the time of importation, along with applicable interest. Said rule has been amended to allow the manufacturer to either submit a security or a surety for the amount specified herein.

(iii) Time period for re-export of unutilized or defective imported goods extended from 3 months to 6 months Rule 7 allows the manufacturer who has availed the benefit of exemption notification to re-export the unutilized or defective imported goods, with the permission of the jurisdictional Deputy/Assistant Commissioner of Central Excise within 3 months from the date of import, subject to specified conditions. The said time period allowed for re-export has been extended from 3 months to 6 months.

**Self - Examination Questions**

**Theory Questions with Answer**

**Q1.** Explain the term Adjudicating Authority

**Answer:** Please refer point nos. 9.1 and 9.2

**Q2.** What do you mean by Risk Management System?

**Answer:** Please refer point no. 9.25

**Q3.** Write a short note

(i) Detention Certificate

(ii) Duty under protest

(iii) Boat Note

(iv) Provisional Assessment of Duty

**Answer:**

(i) Please refer point no. 9.26

(ii) Please refer point no. 9.23

(iii) Please refer point no. 9.27

(iv) Please refer point no. 9.20

**Q4.** Write a note on Import General Manifest?

**Answer:** Please refer point no. 9.19

**Q5.** Explain the powers of department with regard to appointment of customs ports, airports?

**Answer:** Please refer point no. 9.6

**Q6.** Distinguish between the 'Seizure' and 'confiscation' under the customs law.

**Answer:** Please refer point nos. 9.31

**Q7.** Enumerate 'Fast Track Clearance' Scheme under Customs Law.

**Answer:** Please refer point no. 9.15

**Q8**. Write a short note on Primacy of circulars issued by CBEC over the decisions of Court?

**Answer:** Please refer point no. 9.5

**Q9.** Discuss briefly the penalty leviable under section 114 of the Customs Act, 1962 for improper exportation of goods.

**Answer:** Please refer point no. 9.31

**Practical Problems with Answers**

**Illustration 1.** A person makes an unauthorized import of goods liable to confiscation. The value of those goods as computed by the customs officer is ₹ 20 lakhs (exclusive of basic customs duty @12%). You are required to compute penalty under Section 112 of the Customs Act, 1962 from the following independent cases:

(a) if imported goods are prohibited goods (accepted his fraud after 30 days from the date of receipt of order). Whether your answer is different if accepted his fraud within 30 days from the date of show cause notice.

(b) if imported goods are non-prohibited goods (duty and interest paid within 30 days of receipt of order under section 112(b)(ii) of Customs Act, 1962). Whether your answer is different if duty and interest has been paid within 30 days of receipt of show cause notice.

(c) if declared value of imported goods (declared as some other goods) is ₹ 15 lakhs (i.e. non-prohibited goods) if declared value of imported goods (declared as some other goods) is ₹ 15 lakhs (i.e. prohibited goods).

**Solution:**

(a) Penalty = ₹ 20 Lakhs

₹ 5,000 or ₹ 20 lakhs whichever is higher.

If duty and interest paid within 30 days of SCN:

Reduced penalty u/s 28(5) = ₹ 3 Lakhs (i.e. ₹ 20 L x 15%)

(b) Penalty = ₹ 6,180 (i.e. 0.2472 lakhs x 25%)

Working note: ₹ 5,000 or ₹ 0.2472 lakhs whichever is higher (i.e. ₹ 20 lakhs x 12.36% x 10%)

If duty and interest paid within 30 days of RECEIPT OF ORDER, then reduced penalty is 25% of penalty.

If duty and interest has been paid within 30 days of receipt of show cause notice then penalty is nil.

(c) Penalty = ₹ 5 Lakhs

(i) ₹ 2.472 lakhs
(i.e. ₹ 20 Lakhs x 12.36%)

(ii) ₹ 5 lakhs (i.e. 20 – 15)
whichever is higher

(iii) ₹ 5,000

Therefore, penalty = ₹5 lakhs

(d) Penalty = ₹ 20 lakhs
whichever is higher

(i) ₹ 20 lakhs

(ii) ₹ 20 lakhs – ₹ 15 lakhs = ₹ 5 lakhs.

(iii) ₹ 5,000

**Illustration 2.** A person makes an unauthorized export of goods liable to confiscation. The value of those goods as computed by the customs officer is ₹ 10 lakhs. You are required to compute penalty under Section 114 of the Customs Act, 1962,

(a) If export goods are prohibited goods (declared as some other goods) for ₹ 5 lakhs. What is the penalty if the accepted his fraud before issuance of show cause notice? Whether your answer is different if accepted his fraud within 30 days from the date of receipt of show cause notice.

Rework the penalty in case of (a) if accepted his fraud within 30 days from the date of receipt of order.

(b) if export goods are non-prohibited goods (declared as some other goods) for ₹ 5 lakhs, applicable rate of duty @10%. What is the penalty if duty and interest paid within 30 days from the date of receipt of notice? Whether your answer is different if duty and interest paid within 30 days from the date of receipt of order?

(c) if export goods are non-prohibited goods (declared as some other goods) for ₹ 5 lakhs, exempt from export duty.

**Solution:**

(a) Penalty = ₹ 10 lakhs

Whichever is higher

(i) ₹ 10 lakhs

(ii) ₹ 5,000

if the duty and interest has been paid before issuance of show cause notice, then reduced penalty @15% of penalty. Therefore, penalty is ₹ 1.50 Lakhs (i.e. ₹ 10 L x 15%).

if duty and interest is paid within 30 days from the date of receipt of show cause notice penalty is ₹ 1.50 Lakhs.

(b) Penalty = ₹ 10,000

Whichever is higher

(i) 10% of ₹ 1 lakh = ₹ 10,000

Duty = ₹ 1 lakh (i.e. ₹ 10 lakhs x 10%)

Note: no social welfare surcharge on exports.

(ii) ₹ 5,000.

if duty and interest paid within 30 days from the date of receipt of notice, then penalty is nil.

if duty and interest paid within 30 days from the date of receipt of order, then reduced penalty is 25% of such penalty. Therefore, penalty is 2,500 (i.e. ₹ 10,000 x 25%).

(c) Penalty = ₹ 10 lakhs

Whichever is higher

(i) ₹ 5 lakhs

(ii) ₹ 10 lakhs

**Redemption Fine**

**Illustration 3.** A person makes an unauthorized import of goods liable to confiscation. After adjudication, Assistant Commissioner provides an option to the importer to pay fine in lieu of confiscation. It is proposed to impose a fine (in lieu of confiscation) equal to 50% of margin of profit. From the following particulars calculate the amount of fine that can be imposed: Assessable value – ₹ 1,50,000, Total duty payable – ₹ 60,000, Market value – ₹ 2,50,000. Also calculate the amount of fine and the total payment to be made by the importer to clear the consignment.

**Solution:**

In the given case Assistant Commissioner intends to impose redemption fine equal to 50% of margin of profit.

Total cost to importer = ₹ 1,50,000 + ₹ 60,000 = ₹ 2,10,000.

Margin of profit =

Market value – Total cost to importer = ₹ 2,50,000 – ₹ 2,10,000 = ₹ 40,000.

Hence, redemption fine will be ₹ 20,000 (@ 50% of ₹ 40,000). In addition, duty of ₹ 60,000 is payable. Thus, importer will have to pay totally ₹ 80,000 to clear the goods from customs.

**Illustration 4.** Mr. D, an exporter was held guilty of exporting 'prohibited goods' due to which his goods were confiscated. He demanded the release of goods in lieu of redemption fine under section 125 of the Customs Act, 1962.

However, the customs officer denied to grant him the said option.

Examine whether, in the instant case, the customs officer is bound to release the goods in lieu of redemption fine.

**Solution:**

| In case of prohibited goods | In case of non-probibited goods |
|---|---|
| the adjudicating officer may provide an option to the owner of the goods to pay redemption fine in lieu of confiscation if the importation or exportation of goods is prohibited. | if importation or exportation of goods is not prohibited, the option to pay redemption fine shall be given to the owner of goods. |

Therefore, an exporter guilty of exporting prohibited goods is not entitled as such to an option to pay fine in lieu of confiscation under section 125 of the Customs Act, 1962.

It is at the discretion of the adjudicating officer to give or not to give such an option to the exporter guilty of exporting prohibited goods.

**Case Studies with Answers**

**Classification**

**Q.1** Rama Telecoms were engaged in the business of providing telecommunication services in various States in India. For their business Rama Telecoms imported Optic Fibre Cables (OFC) and classified them under Heading 85.44 of the Customs Tariff. However, the Department claimed that the goods should be classified under Heading 90.01. The Commissioner of Customs (Appeals), when the matter was brought before him, held that the impugned goods were classifiable under Heading 85.44 of the Customs Tariff. The Department has filed an appeal before CESTAT against the said order which has yet not been decided.

Meanwhile, the customs authorities (DRI officers) have seized the consignment of OFC imported and cleared by Rama Telecom on payment of duty assessed under Heading 85.44 and forced Rama Telecoms to pay the differential duty between Headings 85.44 and 90.01 by threat and coercion.

Examine the validity of the action of the customs authorities, with the help of a decided case law, if any.

**Answer:** The action of the Director of Revenue (D.R.I) officers of the Customs is not valid. Optic Fibre Cables correctly classified by the importer as per the order of the Commissioner of Customs (Appeals) and paid the duty accordingly. Therefore, the action of the Director of Revenue Intelligence (D.R.I. officers) in the Customs Department in seizing the goods and collecting money from the petitioners was wholly unjustified. Moreover, in the absence of any reassessment order passed determining the duty liability, there would be no question of recovering differential duty. [***Vodafone Essar South Ltd.* v *UOI* 2009 (237) ELT 35 (Bom)]**

**Imported duty exempted based on conditions**

**Q2.** Mr. C is a manufacturer importing the machine without payment of customs duty as an actual user in view of an exemption allowed on the condition that importer would use for its own use for a period of 5 years. The machine was insured by it with the National Insurance Company Limited. The machine met with an accident and assessee reported the accident to the insurance company and claimed insurance. The insurance company settled the claim of assessee on a total loss basis and paid the settled amount to the assessee after deducting its scrap/residual value of machine.

According to Department the machine was allowed to be imported without payment of duty on condition that the importer would use it for its own use for a period of 5 years. Since the machine, though met with an accident, was sold within a period of 5 years of the import, the condition for a duty free import was breached and was liable for confiscation under section 111(o) (i.e. Section 111(o) reads as goods conditionally exempted or prohibited; but conditions are not fulfilled) of the Customs Act, 1962. The Department accordingly seized the machine from the premises of the assessee.

Assessee, contended that, no notice was issued to it prior to the seizure or even after the seizure till date under Section 110(2) read with of Section 124 of the Act within 6 months (which could be extended by a further period of 6 months). Discuss briefly taking support of decided case law, if any.

**Answer:** Show Cause Notice (SCN) shall be issued within SIX months from the date of seizure. This period can be further extended by SIX months on sufficient cause, by the Commissioner of Central Excise or Customs. If no show cause notice issued within SIX months, the goods shall be returned to person from whose possession they were seized as per section 110 read with section 124 of the Customs Act, 1962.

In the given case, show cause notice under Section 110 read with section 124 of the Act has not been issued to the assessee within a period of 6 months. In fact the notice has not been issued till today. Consequently, the continued detention of the goods seized beyond the statutory period of 6 months under section 110(1) of the Customs Act, 1962 is not valid. **[*Gawar Construction Ltd*. 2009 (HC)]**

**Seizure of goods**

**Q3.** The goods imported by Perfect Ltd., the assessee, were detained on 14th September, 2009. However, the assessee could not produce the documentary evidence. Consequently, the impugned goods were seized on 8th February, 2010. The department issued a show cause notice to the assessee on 15th May, 2010. The assessee put forth a question of limitation alleging that the impugned show cause notice had been issued after a period of six months. The goods were detained on 14th September, 2009, but the show cause notice was issued on 15th May, 2010. Perfect Ltd. has sought for quashing of the show cause notice and also for the return of the goods. Examine.

**Answer:** Where any goods are seized under section 110(1) and no show cause notice in respect thereof is given under clause (a) of section 124 within six months of the seizure of the goods, the goods shall be returned to the person from whose possession they were seized. **[*Pro Musicals* v *Joint Commissioner Customs* (*Prev.*), *Mumbai* 2008 (227) ELT 182 (Mad)]**

Hence, the Court ruled out the assessee's contention that detention and seizure were one and the same. It means detention is not the seizure but seizure includes the detention. Goods were seized on 8th February 2010 and show cause notice to the assessee has been issued on 15th May 2010, which is well within the limit of Six months from the date of seizure. The Court further held that the show cause notice issued by the Department was valid.

Therefore, the contention of Perfect Ltd. is not sustainable in law.

**Confiscation of goods**

**Q4.** The customs authority confiscated the gold carried by Rafi (assessee) from Dubai. Rafi informed the custom authorities that he was filing an appeal against the order of confiscation. The customs authorities informed Rafi that the confiscated goods had been handed over to the warehouse of the Customs House for disposal and consequently, auctioned the confiscated goods.

Examine the validity of the action of the customs authorities, with the help of a decided case law, if any?

**Answer:** Handing over the confiscated gold immediately after serving the order of confiscation itself was improper. Hence, the action of the customs authorities is not valid in law. **[*Shabir Ahmed Abdul Rehman* v *UOI* 2009 (235) ELT 402 (Bom)]**

**Q5.** Importer BOPP Ltd. imported two consignments of ethyl alcohol which were allowed to be cleared for home consumption on execution of a bond undertaking to produce licence within a month. Since, appellant failed to fulfill the obligation, proceedings were initiated which culminated in confiscation of the goods under Section 111(d) of the Customs Act, 1962 and imposition of penalty on the importer under section 112(a) of the Customs Act, 1962. Examine the correctness of the decision in terms of statutory provisions.

**Answer:** The given case is similar to the case of ***Hira Lal Hari Bhagwati* v *CBI* (2003) 155 ELT 433 (SC)**. The Supreme Court of India had held that no penalty can be imposed if the goods are imported with bona fide belief that they are entitled to exemption, later on they could not fulfill conditions of exemption but paid the duty. Further it was held that for establishing offence of cheating, complainant (i.e. importer) is required to show dishonest intention at the time of making promise or presentation. Thereby there is no penalty under section 112(a) of the Customs Act, 1962.

With regard to confiscation of the goods under Section 111(d) of the Customs Act, 1962, the Apex Court namely the Supreme Court of India in the case of ***Sachinanda Banerji* v *Sitaram Agarwala* 110 ELT 292 (SC)**, held that goods imported against restrictions under section 11 of the Customs Act, 1962 (Section 11 deals with power to prohibit importation or exportation of goods) are liable to confiscation whenever they are found even if this is long after import is over and even if they are in possession of third persons who had nothing to do with actual import.

Thereby, Department action to confiscate the goods under section 111(d) of the Customs Act, 1962 is valid.

**Offences and criminal proceedings:**

**Q6.** Pranav and Parul, the petitioners, were engaged in the business of import in trading of textiles and some other consumable goods. During search, the statements of both the petitioners were recorded and the petitioners were arrested for the offence under sections 132 and 135 of the Customs Act, 1962 on account of alleged false declaration, false documents and evasion of customs duty. Simultaneously, adjudication proceedings were also initiated under the Act. The accused persons were exonerated by the competent authority/tribunal in the adjudication proceedings. Criminal proceedings were carried on simultaneously and petitioners were alleged to have committed offences punishable under sections 132 and 135(1)(b). Whether the criminal prosecution can be permitted to continue against both when the adjudication proceedings are in favour of them? Discuss. **Answer:**

In case of ***Kapil Rai and Jatin Kapoor* v *Union of India* (2008) (HC)** New Delhi, court held that where the accused persons are exonerated by the competent authorities/Tribunal in adjudication proceedings, one will have to see that reasons for such exoneration to determine whether these criminal proceedings could still continue.

If the exoneration in departmental adjudication is on technical ground or by giving benefit of doubt and not on merits or the adjudication proceedings were on different facts, it would have no bearing on criminal proceedings.

If, on the other hand, the exoneration in the adjudication proceedings is on merits and it is found that allegations are not substantiated at all and the concerned persons(s) is/are innocent, and the criminal prosecution is also on the same set of facts and circumstances, the criminal prosecution cannot be allowed to continue.

If the departmental authorities themselves, in adjudication proceedings, record a categorical and unambiguous finding that there is no such contravention of the provisions of the Act, it would be unjust for such departmental authorities to continue with the criminal complaint.

From the above discussion it is evident that the criminal prosecution can not be permitted to continue against both when the adjudication proceedings are in favour of them. Because, charges in the departmental proceedings as well as criminal complaint are identical and the exoneration of the concerned person in the departmental proceedings is on merits holding that there is no contravention of the provisions of any Act.

**Q7**. The customs authority confiscated the gold from Mr. Rafi, at the time of import from Dubai. Mr. Rafi informed the custom authorities that he was filing an appeal against the order of confiscation.

**Answer 7:** Handing over the confiscated gold immediately after serving the order of confiscation itself was improper. Hence, the action of the customs authorities is not valid in law. **[*Shabir Ahmed Abdul Rehman* v *UOI* 2009 (235) ELT 402 (Bom)]**

**Q8**. Case law:

Can customs duty be demanded under section 28 and/or section 125(2) of the Customs Act, 1962 from a person dealing in smuggled goods when no such goods are seized from him?

***CCus.* v *Dinesh Chhajer* 2014 (300) ELT 498 (Kar)**

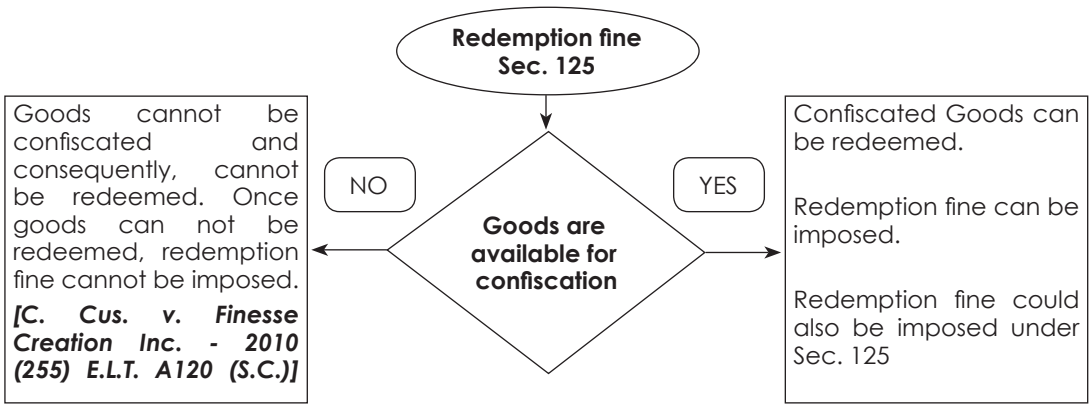
**Decision:** The High Court held that Tribunal was justified in holding that no duty is

leviable against the assessee as he is neither the importer nor the owner of the goods or was in possession of any goods.

**Confiscated goods can be redeemed:**

**Q9.** Under Customs Act, 1962 can redemption fine be imposed and penalty under section 112 be levied after release of imported goods on execution of a bond, if it is found subsequently that there has been an irregularity in the import? Discuss with the help of decided case law(s), if any.

**Answer:**




It is important t note that for levying the penalty under section 112 (i.e. improper import) it is immaterial as to whether goods are available for confiscation or not because the said penalty is imposed when the goods are liable for confiscation.

# Study Note - 10

## CUSTOMS (IMPORT OF GOODS AT CONCESSIONAL RATE OF DUTY) RULES, 2017

**This Study Note includes**

**10.1 Customs (Import of Goods at Concessional Rate of Duty) Rules, 2017**

### 10.1 CUSTOMS (IMPORT OF GOODS AT CONCESSIONAL RATE OF DUTY) RULES, 2017

These rules were notified vide Notification No. 68 /2017 - Customs (N. T.) dated 30th June 2017.They shall come into force on the 1stday of July, 2017.

**Rule 2 - Application**

(1) These rules shall apply to an importer, who intends to avail the benefit of an exemption notification issued under sub-section (1) of section 25 of the Customs Act, 1962 (52 of 1962) and where the benefit of such exemption is dependent upon the use of imported goods covered by that notification for the manufacture of any commodity or provision of output service.

(2) These rules shall apply only in respect of such exemption notifications which provide for the observance of these rules.

**Rule 3 - Definition**

In these rules, unless the context otherwise requires, -

(a) "Act" means the Customs Act, 1962 (52 of 1962);

(b) "exemption notification" means a notification issued under sub-section (1) of section 25 of the Act;

(c) "information" means the information provided by the manufacturer who intends to avail the benefit of an exemption notification;

(d) "Jurisdictional Custom Officer" means an officer of Customs of a rank equivalent to the rank of Superintendent or an Appraiser exercising jurisdiction over the premises where either the imported goods shall be put to use for manufacture or for rendering output services;

(e) "manufacture" means the processing of raw material or inputs in any manner that results in emergence of a new product having a distinct name, character and use and the term "manufacturer" shall be construed accordingly;

(f) "output service" means supply of service with the use of the imported goods.

**Rule 4- Information about intent to avail benefit of exemption notification.**

An importer who intends to avail the benefit of an exemption notification shall provide the information to the Deputy Commissioner of Customs or, as the case may be, Assistant Commissioner of Customs having jurisdiction over the premises where the imported goods shall be put to use for manufacture of goods or for rendering output service, the particulars, namely:-

(i) the name and address of the manufacturer;

(ii) the goods produced at his manufacturing facility;

(iii) the nature and description of imported goods used in the manufacture of goods or providing an output service.

**Rule 5- Procedure to be followed**

(1) The importer who intends to avail the benefit of an exemption notification shall provide the following information–

(i) the estimated quantity and value of the goods to be imported,

(ii) particulars of the exemption notification applicable on such importand

(iii) the port of import in respect of a particular consignment for a period not exceeding one year;

(a) in duplicate, to the Deputy Commissioner of Customs or, as the case may be, Assistant Commissioner of Customs having jurisdiction over the premises where the imported goods shall be put to use for manufacture of goods or for rendering output service, and

(b) in one set, to the Deputy Commissioner of Customs or, as the case may be, Assistant Commissioner of Customs at the Custom Station of importation.

(2) Submission of Bond - The importer who intends to avail the benefit of an exemption notification shall submit a continuity bond with such surety or security as deemed appropriate by the Deputy Commissioner of Customs or Assistant Commissioner of Customs having jurisdiction over the premises where the imported goods shall be put to use for manufacture of goods or for rendering output service, with an undertaking to pay the amount equal to the difference between the duty leviable on inputs but for the exemption and that already paid, if any, at the time of importation, along with interest, at the rate fixed by notification issued under section 28AA of the Act, for the period starting from the date of importation of the goods on which the exemption was availed and ending with the date of actual payment of the entire amount of the difference of duty that he is liable to pay.

(3) The Deputy Commissioner of Customs or, as the case may be, Assistant Commissioner of Customs having jurisdiction over the premises where the imported goods shall be put to use for manufacture of goods or for rendering output service, shall forward one copy of information received from the importer to the Deputy Commissioner of Customs, or as the case may be, Assistant Commissioner of Customs at the Custom Station of importation.

(4) On receipt of the copy of the information under clause (b) of sub-rule (1), the Deputy Commissioner of Customs or, as the case may be, Assistant Commissioner of Customs at the Custom Station of importation shall allow the benefit of the exemption notification to the importer who intends to avail the benefit of exemption notification.

**Rule 6 -Maintaining records and furnishingImporter who intends to avail the benefit of an exemption notification to give information regarding receipt of imported goods and maintain records. –**

(1) The importer who intends to avail the benefit of an exemption notification shall provide the information of the receipt of the imported goods in his premises where goods shall be put to use for manufacture, within two days (excluding holidays, if any) of such receipt to the jurisdictional Customs Officer.

(2) The importer who has availed the benefit of an exemption notification shall maintain an account in such manner so as to clearly indicate the quantity and value of goods imported, the quantity of imported goods consumed in accordance with provisions of the exemption notification, the quantity of goods re-exported, if any, under rule 7 and the quantity remaining in stock, bill of entry wise and shall produce the said account as and when required by the Deputy Commissioner of Customs or, as the case may be, Assistant Commissioner of Customs having jurisdiction over the premises where the imported goods shall be put to use for manufacture of goods or for rendering output service.

(3) The importer who has availed the benefit of an exemption notification shall submit a quarterly return, in the Form appended to these rules, to the Deputy Commissioner of Customs or, as the case may be, Assistant Commissioner of Customs having jurisdiction over the premises where the imported goods shall be put to use for manufacture of goods or for rendering output service, by the tenth day of the following quarter.

**Rule 7 Re-export or clearance of unutilised or defective goods**

(1) The importer who has availed benefit of an exemption notification, prescribing observance of these rules may reexport the unutilised or defective imported goods, within six months from the date of import, with the permission of the jurisdictional Deputy Commissioner of Customs or, as the case may be, Assistant Commissioner of Customs having jurisdiction over the premises where the imported goods shall be put to use for manufacture of goods or for rendering output service:

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

(2) The importer who has availed benefit of an exemption notification, prescribing observance of these rules may also clear the unutilised or defective imported goods, with the permission of the jurisdictional Deputy Commissioner of Customs or, as the case may be, Assistant Commissioner of Customs having jurisdiction over the premises where the imported goods shall be put to use for manufacture of goods or for rendering output service, within a period of six months from the date of import on payment of import duty equal to the difference between the duty leviable on such goods but for the exemption availed and that already paid, if any, at the time of importation, along with interest, at the rate fixed by notification issued under section 28AA of the Act, for the period starting from the date of importation of the goods on which the exemption was availed and ending with the date of actual payment of the entire amount of the difference of duty that he is liable to pay.

**Rule 8 Recovery of duty in certain case. –**

The importer who has availed the benefit of an exemption notification shall use the goods imported in accordance with the conditions mentioned in the concerned exemption notification or take action by re-export or clearance of unutilised or defective goods under rule 7 and in the event of any failure, the Deputy Commissioner of Customs or, as the case may be, Assistant Commissioner of Customs having jurisdiction over the premises where the imported goods shall be put to use for manufacture of goods or for rendering output service shall take action by invoking the Bond to initiate the recovery proceedings of the amount equal to the difference between the duty leviable on such goods but for the exemption and that already paid, if any, at the time of importation, along with interest, at the rate fixed by notification issued under section 28AA of the Act, for the period starting from the date of importation of the goods on which the exemption was availed and ending with the date of actual payment of the entire amount of the difference of duty that he is liable to pay.

References in any rule, notification, circular, instruction, standing order, trade notice or other order pursuance to the Customs (Import of Goods at Concessional Rate of Duty for Manufacture of Excisable Goods) Rules,1996 and any provision thereof or to the Customs (Import of Goods at Concessional Rate of Duty for Manufacture of Excisable Goods) Rules, 2016 and any corresponding provisions thereof shall, be construed as reference to the Customs (Import of Goods at Concessional Rate of Duty) Rules, 2017.

**QUARTERLY RETURN**

**Return for the quarter ending_____**

| Sl. No. | Bill of Entry No. and date | Description of goods imported at concessional rate Description of goods imported at concessional rate | Opening balance on the 1st day of the quarter | Details of goods imported during the quarter | | | | | | | Specified purpose for procuring the goods at concessional rate of duty. | Goods manufactured during the quarter/Output service provided | | Whether the goods used for specified purpose or not and in case of export, specify the quantity exported with details of Tax Invoice |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | | | | Value of goods received during the quarter | Quantity of goods received during the quarter | Total of column (4) and (6) | Quantity consumed for the intended purpose, during the quarter | Quantity re-exported during the quarter | Quantity cleared in to the domestic market during the quarter | Closing balance on the last day of the quarter | | Description | Quantity | |
| (1) | (2) | (3) | (4) | (5) | (6) | (7) | (8) | (9) | (10) | (11) | (12) | (13) | (14) | (15) |
| | | | | | | | | | | | | | | |

# Study Note - 11

## SEARCH, SEIZURE, CONFISCATION AND MISCELLANEOUS PROVISIONS

**This Study Note includes**

**11.1 Search of Persons, Premises and Conveyances**
**11.2 Seizure of Goods, Documents and Things**
**11.3 Confiscation of Goods, Conveyances and Penalty on Improper Importation and Exportation**
**11.4 Burden of Proof and Redemption Fine**
**11.5 Offences under Customs**

### 11.1 SEARCH OF PERSONS, PREMISES AND CONVEYANCES

***Power to Search Suspected Persons Entering Or Leaving India (Section 100)***

Under Section 100 of the Act where the proper officer of the Customs has reason to believe that the following categories of persons have secreted any goods, liable to confiscation or any documents thereto, he may search such persons: -

(a) any person who has landed from or is about to board, or is on board any vessel within the Indian Customs waters;

(b) any person who has landed from or is about to board, or is on board a foreign-going aircraft;

(c) any person who has got out of, or is about to get into, or is in vehicle, which has arrived from, or is to proceed to any place outside India;

(d) any person not included in clauses (a), (b) or (c) who has entered or is about to leave India;

(e) any person in a customs area.

***Power to Search Suspected Persons In Certain Other Cases (Section 101)***

Under Section 101 of the Act, an officer of the Customs empowered generally or specially by an order of Principal Commissioner of Customs can search any person if he has reason to believe that any person has secreted about his person, the following goods which are liable to confiscation, or documents relating thereto:

(a) gold;

(b) diamonds;

(c) manufactures of gold or diamond;

(d) watches;

(e) any other class of goods which the Central Government may, by notification in the Official Gazette, specify.

The power under Section 101 is without prejudice to the power conferred under Section 100 of the Act. Again under Section 101 any person can be searched.

***Persons to Be Searched May Require To Be Taken Before Gazetted Officer Of Customs Or Magistrate (Section 102)***

Section 102 of the Act provides that when any officer of Customs is about to search any person in terms of Sections 100 and 101, he shall, if such person so requires, take him without unnecessary delay to the nearest Gazetted Officer of customs or magistrate. If such requisition is made, the officer of customs may detain the person making it until, he can bring him before the gazetted officer of customs or the magistrate.

The Gazetted Officer of customs or the magistrate before whom any —such person is brought shall, if he sees no reasonable ground for search, forthwith discharge the person. In other cases, he shall direct that a search be made.

Before making a search, the officer of Customs shall call upon two or more persons to attend and witness the search and may issue an order in writing to them or any of them so to do. The search would be made in the presence of such persons and a list of all things seized in the course of such search shall be prepared by such officer or other person and signed by such witnesses.

Where the person to be searched is a female, the search shall be done by a female only.

***Power to Screen or X-Ray Bodies of Suspected Persons for Detecting Secreted Goods (Section 103)***

Section 103 of the Act contains powers, to screen or X-Ray bodies of persons suspected of secreting certain goods liable to confiscation.

Where the proper officer has reason to believe that any person referred to in sub-section (2) of section 100 has any goods liable to confiscation secreted inside his body, he may detain such person and produce him without unnecessary delay before the nearest magistrate. The Magistrate before whom any person is brought shall, if he sees how reasonable ground for believing that such person has any such goods secreted inside his body, forthwith discharge such person.

On the other hand, where the Magistrate has reasonable ground for believing that any such person has any such goods liable for confiscation secreted in his body and the Magistrate is satisfied that an X-Ray is necessary for this purpose, he may make an order and such person would be taken to a radiologist possessing qualifications recognized by the Central Government for the purpose of screening or X-raying the body and such person shall allow the radiologist to screen or X-ray his body.

The radiologist shall, after the screening or X-Ray, forward his report together with the X-Ray picture taken by him to the Magistrate without unnecessary delay. On receipt of the report of radiologist, if the Magistrate is satisfied that any person has any goods liable to confiscation secreted inside his body, he may direct; that suitable action for bringing out such goods be taken on the advice and under the supervision of a registered medical practitioner and such person shall be bound to comply with such direction.

In the case of a female, the advice and supervision of a female registered medical practitioner is required. For the purposes of complying with the provisions of this section any person brought before the Magistrate may be detained by him for such period as the Magistrate may direct. The above provisions will not apply to any such person who admits that goods liable to confiscation are secreted in his body and who voluntarily submits himself for suitable action being taken for bringing out such goods.

***Power to Arrest (Section 104)***

If an officer of customs empowered in this behalf by general or special order of the Principal Commissioner of Customs or Commissioner of Customs has reason to believe that any person in India or within the Indian customs waters has committed an offence punishable under section 132 or section 133 or section 135 or section 135A or section 136, he may arrest such person and shall, as soon as may be, inform him of the grounds for such arrest.

Every person arrested shall, without unnecessary delay, be taken to a magistrate.

Where an officer of customs has arrested any person he shall, for the purpose of releasing such person on bail or otherwise, have the same powers and be subject to the same provisions as the officer-in-charge of a police station has and is subject to under the Code of Criminal Procedure, 1898. As per sub-section (4), notwithstanding anything contained in the Code of Criminal Procedure, 1973, any offence relating to

(a) prohibited goods; or

(b) evasion or attempted evasion of duty exceeding Rs. 50 Lakh, shall be cognizable.

All other offences under the Act shall be non-cognizable except the two above.

As per sub-section (6), notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), an offence punishable under section 135 relating to –

(a) evasion or attempted evasion of duty exceeding fifty lakh rupees; or

(b) prohibited goods notified under section 11 which are also notified under sub-clause (C) of clause (i) of sub-section (1) of section 135; or

(c) import or export of any goods which have not been declared in accordance with the provisions of this Act and the market price of which exceeds one crore rupees; or

(d) fraudulently availing of or attempt to avail of drawback or any exemption from duty provided under this Act, if the amount of drawback or exemption from duty exceeds fifty lakh rupees, shall be non-bailable.

Except as provided in sub section (6), all other offences under this Act shall be bailable.

***Power to Search Premises (Section 105)***

Section 105 of the Act provides that if the Assistant/Deputy Commissioner of Customs or any other officer of customs in case of any area adjoining the land frontier or the coast of India specially empowered by name in this behalf by the Board, has reason to believe that any goods liable to confiscation or any documents or things which in his opinion will be useful to any proceedings under the Act, are secreted in any place, he may authorise any officer of customs to search or may himself search for such goods, documents, or things.

The provisions of the Code of Criminal Procedure, 1898 relating to searches shall, so far as may be, apply to searches under this section

***Power to Stop and Search Conveyances (Section 106)***

Where the proper officer has reason to believe that any aircraft, vehicle or animal in India or any vessel in India or within the Indian customs waters has been, is being, or is about to be, used in the smuggling of any goods or in the carriage of any goods which have been smuggled, he may at any time stop any such vehicle, animal or vessel or, in the case of an aircraft, compel it to land, and -

(a) rummage and search any part of the aircraft, vehicle or vessel;

(b) examine and search any goods in the aircraft, vehicle or vessel or on the animal;

(c) break open the lock of any door or package for exercising the powers conferred by clauses (a) and (b), if the keys are withheld.

Where for the purposes above -

(a) it becomes necessary to stop any vessel or compel any aircraft to land, it shall be lawful for any vessel or aircraft in the service of the Government while flying her proper flag and any authority authorised in this behalf by the Central Government to summon such vessel to stop or the aircraft to land, by means of an international signal, code or other recognized means, and thereupon, such vessel shall forthwith stop or such aircraft shall forthwith land; and if it fails to do so, chase may be given thereto by any vessel or aircraft as aforesaid and if after a gun is fired as a signal the vessel fails to stop or the aircraft fails to land, it may be fired upon;

(b) it becomes necessary to stop any vehicle or animal, the proper officer may use all lawful means for stopping it, and where such means fail, the vehicle or animal may be fired upon.

***Power to Inspect (Section 106A)***

Section 106A of the Act empowers an Officer of Customs to enter any place intimated under Chapter IVA or IVB of the Act and inspect the goods kept or stored therein and require any person found therein, who is for the time being in charge thereof, to produce to him for this inspection the accounts maintained under the said Chapter IVA or Chapter IVB and to furnish to him such other information as he may reasonably require for the purpose of ascertaining whether or not such goods have been illegally imported, exported or likely to be illegally exported.

***Power to Examine Persons (Section 107)***

Any officer of customs empowered in this behalf by general or special order of the Principal Commissioner of Customs or Commissioner of Customs may, during the course of any enquiry in connection with the smuggling of any goods, -

(a) require any person to produce or deliver any document or thing relevant to the enquiry;

(b) examine any person acquainted with the facts and circumstances of the case.

***Power to Summon Persons to Give Evidence and Produce Documents (Section 108)***

Any Gazetted officer of Customs (the words "empowered by the Central Government", has been omitted by Finance Act, 2008 w.e.f. 13th July 2006) shall have power to summon any person whose attendance he considers necessary either to give evidence or to produce a document or any other thing in any inquiry which such officer is making under this Act. A summons to produce documents or other things may be for the production of certain specified documents or things or for the production of all documents or things of a certain description in the possession or under the control of the person summoned. All persons so summoned shall be bound to attend either in person or by an authorised agent and state the truth upon any subject respecting which they are examined or make statements and produce such documents and other things as may be required.

Provided that the exemption under section 132 of the Code of Civil Procedure, 1908 (5 of 1908), shall be applicable to any requisition for attendance under this section.

Every such inquiry as aforesaid shall be deemed to be a judicial proceeding within the meaning of section 193 and section 228 of the Indian Penal Code, 1860 (45 of 1860).

***Obligation to furnish information***

***Section 108A*** - Any person who is responsible for maintaining record of registration or statement of accounts or holding any other information under any of the Acts specified above or under any other law for the time being in force, which is considered relevant for the purposes of this Act, shall furnish such information to the proper officer in such manner as may be prescribed by rules made under this Act.

Where the proper officer considers that the information furnished is defective, he may intimate the defect to the person who has furnished such information and give him an opportunity of rectifying the defect within a period of seven days from the date of such intimation or within such further period which, on an application made in this behalf, the proper officer may allow and if the defect is not rectified within the said period of seven days or, further period, as the case may be, so allowed, then, notwithstanding anything contained in any other provision of this Act, such information shall be deemed as not furnished and the provisions of this Act shall apply.

Where a person who is required to furnish information has not furnished the same within the time specified, the proper officer may serve upon him a notice requiring him to furnish such information within a period not exceeding thirty days from the date of service of the notice and such person shall furnish such information.

***Penalty for failure to furnish information return***

***Section 108B -*** Where the person who is required to furnish information under section 108A fails to do so within the period specified in the notice issued, the proper officer may direct such person to pay, by way of penalty, a sum of one hundred rupees for each day of the period during which the failure to furnish such information continues.

***Power to Require Production of Order Permitting Clearance of Goods Imported By Land (Section 109)***

Any officer of customs appointed for any area adjoining the land frontier of India and empowered in this behalf by general or special order of the Board, may require any person in possession of any goods which such officer has reason to believe to have been imported into India by land, to produce the order made under section 47 permitting clearance of the goods :

However, this section shall not apply to any imported goods passing from a land frontier to a land customs station by a route appointed under clause (c) of section 7.

**Power to undertake controlled delivery**

**Section 109A –** The proper officer or any other officer authorised by him in this behalf, may undertake controlled delivery of any consignment of such goods and in the prescribed manne, to-

(a) any destination in India; or

(b) a foreign country, in consultation with the competent authority of such country to which such consignment is destined.

"Controlled delivery" means the procedure of allowing consignment of such goods to pass out of, or into, the territory of India with the knowledge and under the supervision of proper officer for identifying the persons involved in the commission of an offence or contravention under this Act.

## 11.2 SEIZURE OF GOODS, DOCUMENTS AND THINGS

Persons involved in smuggling and other modus operandi (i.e. Manner of operation) of imports and exports, in violation of prohibitions or restrictions with intent to evade duties or fraudulently claim export incentives are liable to serious penal action under the Customs Act, 1962.

The offending goods can be confiscated and heavy fines and penalties imposed. There are provisions for arrests and prosecutions.

***Detention of goods***

It means the goods are temporarily detained by officer to check whether there is any violation of law. In the case of ***Pro Musicals* v *Joint Commissioner Customs* (*Prev.*), *Mumbai* 2008 (227) ELT 182 (Mad)** the Court clarified that the detention of goods is actually taking the custody of the goods and keeping it under restraint from being taken by the parties; but, the party is entitled to produce sufficient documentary evidence, and if he shows proof, he can take it. At that juncture, no question of seizure would arise. If such person not shows proof, then said goods are seized.

***Seizure of goods (Section 110 of the Customs Act, 1962)***

The term seizure meant to take possession of the property contrary to the wishes of the owner of the goods in pursuance of a demand under legal right. Seizure involved not merely the custody of goods but also a deprivation (*i.e.* losing something) of possession of goods. It means to say that under seizure goods are taken in custody by the department. A stage before confiscation is called seizure. Generally goods liable to be confiscated may be seized.

Detention is without seizure and possession of goods whereas seizure of goods necessarily means detention plus taking possession of goods by officer.

**Goods should be returned within six months if no Show Cause Notice has been issued**

Show Cause Notice (SCN) shall be issued within six months from the date of seizure. This period can be further extended by SIX months on sufficient cause, by the Commissioner of Central Excise or Customs. If no show cause notice issued within SIX months, the goods shall be return to person from whose possession they were seized.

**Provisional Release of seized goods and documents (w.e.f. 8-4-2011):**

Seized goods and documents can be released by adjudicating authority on submission of bond and security under section 110A of the Customs Act, 1962. Therefore, permission of Commissioner of Customs is not required w.e.f. 8-4-2011.

When the goods confiscated by the Department are found not confiscable as per the decision of appeal or adjudication or of review application, then no application is required to be filed by the assesee to authorities to request for release of goods. It is obligatory for the Department to release the goods immediately. [**Shree Grotex Trade Links Pvt. Ltd. vs CC (2014) 301 ELT 24 (Cal.)**]

**Case Law : 2**

***Manish Lalith Kumar Bavishi* (2011).**

**Point of dispute:** If any documents seized during the course of any action by an officer and relatable to the provisions of Customs Act, that officer was bound to make the documents available copies of those documents?

**Answer: Yes.** The Bombay High Court held the same view in the case of ***Manish Lalith Kumar Bavishi* (2011).**

## 11.3 CONFISCATION OF GOODS, CONVEYANCES AND PENANLTY ON IMPROPER IMPORTATION AND EXPORTATION

***Confiscation of goods***

The term confiscation of goods means the goods become property of Government and Government can deal with these goods as it desires. Once confiscated goods are became property of Central Government, no duty liability arises on assessee whose goods are confiscated.

Search, seizure and confiscation not applicable to service tax.

However, in some cases, the person from whom goods were seized can be get them back on payment of fine (i.e. Redemption fine in lieu of confiscation) under section 125(1) of the Customs Act, 1962.

***Provisions governing Confiscation under Customs Act, 1962***

**Goods are liable for confiscation in the following circumstances:**

- Confiscation of improperly imported goods – Section 111
- Export goods liable for confiscation – Section 113
- Confiscation of Conveyances (i.e. Vehicles, Vessels, Air crafts, animals used as a means of transport in the smuggling) if used improperly for import or export of goods – Section 115
- Confiscation of packages and their contents – Section 118
- Confiscation of goods used for concealing smuggled goods – Section 119
- Confiscation of smuggled goods notwithstanding any change in form, etc. – Section 120

For example gold biscuits converted into jewellery. Hence, the entire value of jewellery is liable for confiscation.

- Confiscation of sale proceeds of smuggled goods – Section 121

As per section 124 of the Customs Act, 1962, before confiscating goods, Show Cause Notice must be issued to owner of goods giving grounds for confiscation. Time limit of SIX months as given in Section 110 of the Customs Act, 1962 is not applicable. It means there is no time limit is specified in case of issue of SCN for confiscation of goods. As per section 28 of the Customs Act, 1962, goods can be confiscated even after the goods are cleared from customs station.

Goods already exported cannot be confiscated under Section 113 of the Customs Act, 1962

**Wrong confiscation of goods:**

Once the action of the Customs department with regard to confiscation of goods, set aside by Tribunal or Court (i.e. set aside means make inoperative or stop) the person is eligible to get back the goods. If in the meanwhile, goods have been sold by the Customs authorities, market value of goods as on date of setting aside confiscation of the order of confiscation by the judgment is payable **(*Northern Plastics Ltd.* v *CCE* (2000) (SC)).**

**Confiscation of improperly imported goods – Section 111:**

The following goods brought from a place outside India shall be liable to confiscation:

(a) Any goods imported by sea or air which are unloaded or attempted to be unloaded at any place other than a customs port or customs airport.

(b) Any goods imported by land or inland water through any route other than a route specified by the Govt.

(c) Any dutiable or prohibited good brought into any bay, gulf, creek or tidal river for the purpose of being landed at a place other than a customs port.

(d) Any goods which are imported or attempted to be imported or are brought within the Indian customs waters contrary to the provisions which are in force.

(e) Any dutiable or prohibited goods found concealed (i.e. hided) in any manner in any conveyance.

(f) Goods not mentioned in the Import manifestor import report.

(g) Goods un loaded in contravention of the provisions of customs law.

(h) Any dutiable or prohibited goods found concealed in any manner in any package either before or after the unloading thereof.

(i) Any dutiable or prohibited goods removed or attempted to be removed from a customs area or warehouse without the permission of the proper officer.

(j) Any dutiable or prohibited goods removed or attempted to be removed from a customs area or a ware house without the permission of the proper.

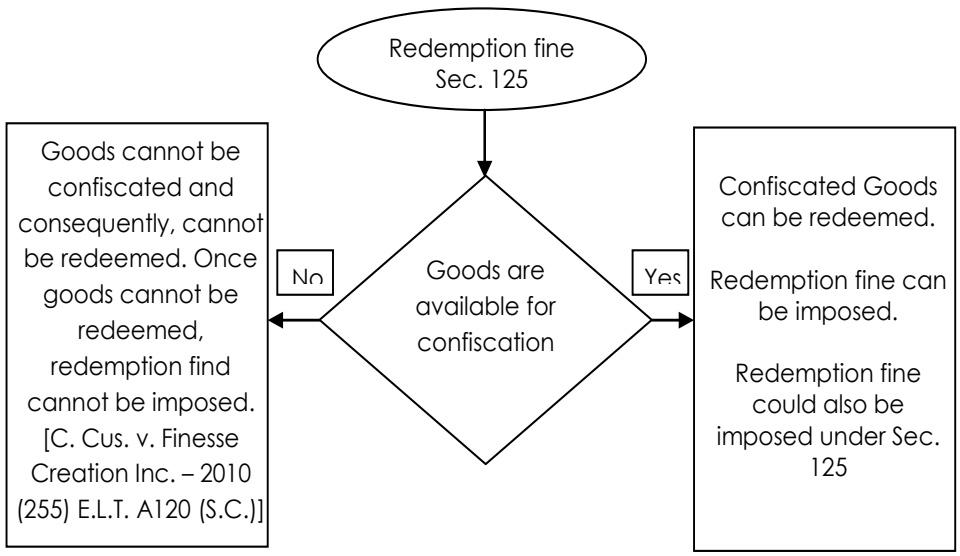
(k) Any dutiable or prohibited goods which are not included or are in excess of those included in the entry made under this Act, or in the case of baggage in the declaration made under section 77.

(l) Any goods which do not correspond in respect of value or in any other particular with the entry made under this Actor in the case of baggage with the declaration made under section 77.

(m) Any dutiable or prohibited goods transited with or without transshipment in contravention of the provisions of customs.

**Confiscated goods can be redeemed:**

Under Customs Act, 1962 can redemption fine be imposed and penalty under section 112 be levied after release of imported goods on execution of a bond, if it is found subsequently that there has been an irregularity in the import? Discuss with the help of decided case law(s), if any.




It is important to note that for levying the penalty under section 112 (i.e., improper import) it is immaterial as to whether goods are available for confiscation or not because the said penalty is imposed when the goods are liable for confiscation.

***Penalties* for improper import *under section 112 of the Customs Act, 1962***

Penalty can be imposed for improper import as well as attempt to improperly export goods. 'Improper' means without the knowledge of the Customs officers.

**No question of penalizing the partners separately for the same contravention under section 112:**

Once penalty was levied on the firm for contravention of any provision of the Act or the Rules framed there under, it amounted to levy of penalty on the partners. Hence, there was no question of penalizing the partners separately for the same contravention, unless the intention of the legislature to treat the firm and partners as distinct entities was borne out from the statute itself, i.e., expressly provided in the statute.

For Example: Explanation to section 140 of the Customs Act equated partnership firm with company (which stands as separate entity distinct from its shareholders) in respect of commission of offences.

However, there was no such corresponding provision in relation to imposition of penalty under section 112. The High Court held that separate penalty could not be imposed on the partners in addition to the penalty on the partnership firm [***CCE & C, Surat-II* v *Mohammed Farookh Mohammed Ghani* 2010 (259) ELT 179 (Guj)].**

***Penalties* for improper import [*section 112 of the Customs Act, 1962*]:**

| Imported Goods (A) | Value in (₹) (B) | Minimum Penalty in (₹) (C) | Penalty in (₹) (B) or (C) |
|---|---|---|---|
| Prohibited Goods | Not exceeding the value of prohibited goods | ₹ 5,000 | Whichever is Higher |
| Dutiable Goods (Other than Prohibited goods) | w.e.f 14-5-2015:<br>Not exceeding 10% of the Duty sought to be evaded. | ₹ 5,000 | Whichever is Higher |
| | w.e.f 14-5-2015:<br>Penalty = 25% of the penalty imposed, if the duty, interest and reduced penalty is paid within 30 days from the date of receipt of adjudication order [Section 112(b)(ii) of the Customs Act, 1962]. | | |
| Misdeclaration of value | If actual value is higher than the value declared in Bill of Entry or declaration of contents of baggage:<br>Actual value = xxx<br>Less: Declared value = (xx)<br>------Difference = xxx<br>==== | ₹ 5,000 | Whichever is Higher |
| Prohibited Goods plus Misdeclaration value | (i) Not exceeding the value of prohibited goods<br>OR<br>(ii) Actual value = xxx<br>*Less*: Declared value = (xx)<br>------Difference = xxx<br>====<br>Whichever is higher | ₹ 5,000 | Whichever is Higher |
| Dutiable Goods plus Misdeclaration of Value | (i) Duty sought to be evaded<br>OR<br>(ii) Actual value = xxx<br>*Less*: Declared value = (xx)<br>------Difference = xxx<br>====<br>Whichever is higher | ₹ 5,000 | Whichever is Higher |

***Export goods liable for confiscation — Section 113***

These are goods attempted to be improperly exported under clauses of section 113:—

(a) Goods attempted to be exported by sea or air from place other than customs port or customs airport

(b) Goods attempted to be exported by land or inland water through unspecified route

(c) Goods brought near land frontier or coast of India or near any bay, gulf, creek or tidal river for exporting from place other than customs port or customs station

(d) Goods attempted to be exported contrary to prohibition under Customs Act or any other law

(e) Goods concealed in any conveyance brought within limits of customs area for exportation

(f) Goods loaded or attempted to be loaded for eventual export out of India, without permission of proper officer, in contravention of section 33 and 34 of the Customs Act, 1962

(g) Goods stored at un-approved place or loaded without supervision of Customs Officer

(h) Goods not mentioned or found excess of those mentioned in Shipping Bill or declaration in respect of baggage

  (i) Any goods entered for exportation not corresponding in respect of value or nay other particular in Shipping Bill or declaration of contents of baggage.

  (ii) Goods entered for export under claim for duty drawback which do not correspond in any material particulars with any information provided for fixation of duty drawback.

(i) Goods imported without duty but being re-exported under claim for duty drawback

(j) Goods cleared for exportation which are not loaded on account of willful act, negligence or default, or goods unloaded after loading for exportation, without permission.

(k) Provision in respect of 'Specified Goods' are contravened.

***Penalties* for improper *export under section 114 of the Customs Act, 1962***

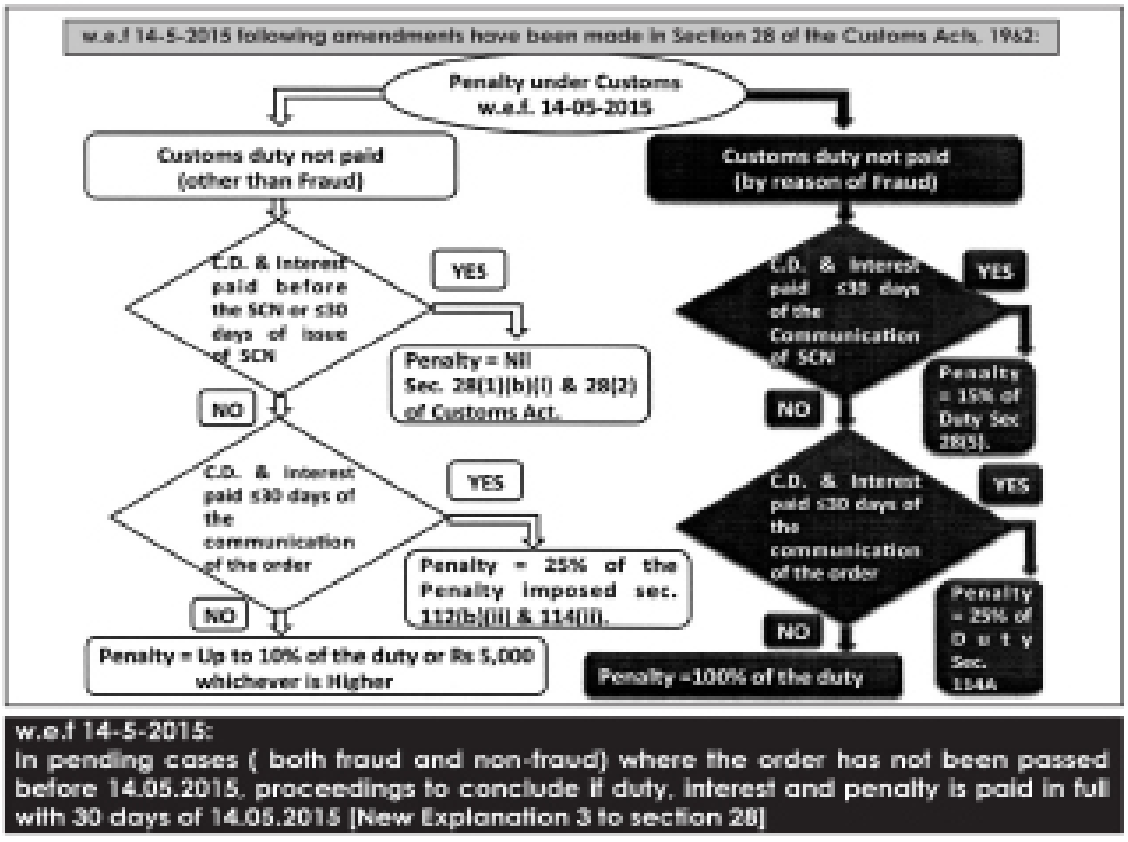
Following monetary penalties prescribed under the Customs Act, with regard to improper export:

| **Attempt to improperly export (A)** | **Value in (₹) (B)** | **Minimum Penalty in (₹) (C)** | **Penalty in (₹) (B) or (C)** |
|---|---|---|---|
| Prohibited Goods | Three times the value of the goods as declared by the exporter | The value as determined under the Customs Act. | Whichever is Higher |
| Dutiable Goods (other than Prohibited goods) | Duty sought to be evaded | ₹ 5,000 | Whichever is Higher |
| Other goods | Value declared in short | The value as determined under the Customs Act. | Whichever is Higher |

***Penalties* for improper *export U/S 114 of the Customs Act, 1962 (w.e.f.14-5-2015)***

| Attempt to improperly export (A) | Value in (₹) (B) | Minimum Penalty in (₹) (C) | Penalty in (₹) (B) or (C) |
|---|---|---|---|
| Prohibited Goods | The value as determined under the Customs Act. | ₹ 5,000 | Whichever is Higher |
| Dutiable Goods (other than Prohibited goods) | w.e.f 14-5-2015: Not exceeding 10% of duty sought to be evaded. | ₹ 5,000 | Whichever is Higher |
| | w.e.f 14-5-2015: Penalty = 25% of penalty imposed, if duty, interest and reduced penalty is paid within 30 days from date of receipt of adjudiction order - Section 114(ii) of Customs Act, 1962. | | |
| Other goods | Not exceeding the value of goods as declared by exporter | The value as determined under the Customs Act. | Whichever is Higher |

**w.e.f. 14-5-2015 following amendments have been made in Section 28 of the Customs Act, 1962:**




**w.e.f 14-5-2015:**

**In pending cases (both fraud and non-fraud) where the order has not been passed before 14.05.2015, proceedings to conclude if duty, interest and penalty is paid in full within 30 days of 14.05.2015 [New Explanation 3 to section 28]**

*Explanation* 3 has been inserted in section 28 to provide that where a notice under section 28(1) [non-fraud cases] or section 28(4) [fraud cases], as the case may be, has been served but an order determining duty under section 28(8) has not been passed before 14.05.2015 then, without prejudice to the provisions of sections 135, 135A and 140, as may be applicable, the proceedings in respect of such person or other persons to whom the notice is served will be deemed to be concluded if the payment of duty, interest and penalty under the proviso to section 28(2) or under section 28(5), as the case may be, is made in full within 30 days from 14.05.2015.

***Confiscation of Conveyances [Section 115 of the Customs Act, 1962]:***

Vehicles, Vessels, Aircrafts, animals used as a means of transport in the smuggling or improperly for import or export of goods shall be liable to confiscation.

Any such conveyance is used for the carriage of goods or passengers for hire, the owner of any conveyance shall be given an option to pay in lieu of the confiscation of the conveyance a fine not exceeding the market price of the goods which are sought to be smuggled or the smuggled goods as the case may be.

***Penalty for not accounting for goods [section 116 of the Customs Act, 1962]:***

The person-in-charge of the conveyance shall be liable to pay penalty if any goods loaded in a conveyance for importation into India, or any goods transshipped under the provisions of this Act or coastal goods carried in a conveyance:

- If not unloaded at their place of destination in India, or
- If the quantity unloaded is short of the quantity to be unloaded at that destination, or
- If the failure to unload or the deficiency is not accounted

***Quantum of penalty under section 116:***

| Imported goods: | Exported goods |
|---|---|
| Penalty not exceeding twice the amount of duty that would have been chargeable on the goods not unloaded or deficient goods, as the case may be, had such goods been imported. | Penalty not exceeding twice the amount of export duty that would have been chargeable on the goods not unloaded or deficient goods, as the case may be, had such goods been exported. |

***Residual Penalty [Section 117]:***

As per section117 of the Customs Act, 1962, if no penalty has been prescribed for contravenes, then the penalty would be ₹ 1,00,000 can be levied (w.e.f. 10.5.2008).

***Confiscation of packages and their contents – Section 118***

Where any goods imported in a package or brought within the limits of a customs area for the purpose of exportation in a package shall also be liable to confiscation if the importer or exporter violates the provisions of the customs provisions.

***Confiscation of goods used for concealing smuggled goods – Section 119***

Any goods used for concealing smuggled goods shall also be liable to confiscation. However, goods does not include a conveyance used as a means of transport.

***Confiscation of smuggled goods notwithstanding any change in form, etc. – Section 120***:

Smuggled goods may be confiscated notwith-standing (i.e. in spite of) any change in their form. Where smuggled goods are mixed with other goods in such manner that the smuggled goods cannot be separated from such other goods, the whole of the goods shall be liable to confiscation.

***Confiscation of sale proceeds of smuggled goods – Section 121***

Where any smuggled goods are sold by a person having knowledge or reason to believe that the goods are smuggled goods, the sale-proceeds thereof shall be liable to confiscation.

**Case Law 3:**

**Smuggled goods cannot be treated par with imported goods for the purpose of granting the benefit of the exemption notification:**

The Honorable Supreme Court of India held that if the smuggled goods and imported goods were to be treated

as the same, then there would have been no need for two different definitions under the Customs Act, 1962.

The Court observed that one of the principal functions of the Customs Act, 1962 was to curb the ills of smuggling on the economy. Hence, it held that it would be contrary to the purpose of exemption notifications to give the benefit meant for imported goods to smuggled goods. Therefore, the court held that the smuggled goods could not be considered as 'imported goods' for the purpose of benefit of the exemption notification **[*CCus.* (*Prev.*), *Mumbai* v *M. Ambalal & Co.* 2010 (260) E.L.T. 487 (SC)].**

## 11.4 BURDEN OF PROOF AND REDEMPTION FINE

**Burden Of Proof in Certain Cases**

Where any goods to which this section applies are seized under this Act in the reasonable belief that they are smuggled goods, the burden of proving that they are not smuggled goods shall be -

(a) in a case where such seizure is made from the possession of any person, -

  (i) on the person from whose possession the goods were seized; and

  (ii) if any person, other than the person from whose possession the goods were seized, claims to be the owner thereof, also on such other person;

(b) in any other case, on the person, if any, who claims to be the owner of the goods so seized.

This section shall apply to gold, and manufactures thereof, watches, and any other class of goods which the Central Government may by notification in the Official Gazette specify.

***Issue of show cause notice before confiscation of goods etc. (section 124)***

Section 124 provides that no order confiscating any goods or imposing any penalty on any person shall be made under this Chapter unless the owner of the goods or such person:

(a) is given a notice in writing informing him of the grounds on which it is proposed to confiscate the goods or impose a penalty;

(b) is given an opportunity of making a representation in writing within such reasonable time as may be specified in the notice against the grounds of confiscation or imposition of penalty mentioned therein; and

(c) is given a reasonable opportunity of being heard in the matter;

The notice referred to in clause (a) and the representation referred to in clause (b) may, at the request of the person concerned, be oral.

Notwithstanding issue of notice under this section, the proper officer may issue a supplementary notice under such circumstances and in such manner as may be prescribed – (Inserted vide THE FINANCE ACT, 2018)

***Redemption Fine (Section 125)***

The term redemption fine means Option to pay fine in lieu of confiscation. A person makes an unauthorized import of goods liable to confiscation. After adjudication, Assistant Commissioner of Customs provides an option to the importer to pay fine in lieu of confiscation [Section 125(1) of the Customs Act.]:

Provided that, without prejudice to the provisions of the proviso to sub-section (2) of section 115, such fine shall not exceed the market price of the goods confiscated, less in the case of imported goods the duty chargeable thereon.

Such an importer is liable to pay in addition to the customs duty and charges payable in respect of such imports, the penalty.

**Non Applicability :** Where the proceedings are deemed to be concluded under the proviso to Section 28(2) or under Section 28(6)(i) in respect of goods which are not prohibited or restricted,the provisions of this section shall not apply.

***Example 1:***

***A person makes an unauthorized import of goods liable to confiscation. After adjudication, Assistant Commissioner provides an option to the importer to pay fine in lieu of confiscation. It is proposed to impose a fine (in lieu of confiscation) equal to 50% of margin of profit. From the following particulars calculate the amount of fine that can be imposed: Assessable value – ₹ 50,000, Total duty payable – ₹ 20,000, Market value – 1,00,000. Also calculate the amount of fine and the total payment to be made by the importer to clear the consignment.***

***Answer:***

***In the given case Assistant Commissioner intends to impose redemption fine equal to 50% of margin of profit. Total cost to importer = ₹ 50,000 + ₹ 20,000 = ₹ 70,000.***

***Margin of profit:***

***Market value – Total cost to importer = ₹ 1,00,000 – ₹ 70,000 = ₹ 30,000.***

***Hence, redemption fine will be ₹ 15,000 (@ 50% of ₹ 30,000). In addition, duty of ₹ 20,000 is payable. Thus, importer will have to pay totally ₹ 35,000 to clear the goods from customs.***

***Option to pay fine in lieu of confiscation also given to exporter of prohibited goods***

An exporter who had been held guilty of exporting 'prohibited goods', has an option to pay fine in lieu of confiscation under section 125 of the Customs Act. **CCus. (*Preventive*), *West Bengal* v *India Sales International* 2009 (241) ELT 182 (Cal).**

***Selling the confiscated goods during the period of pendency of appeal was not justified***

The Customs Officer confiscated the gold carried by the petitioner from Muscat. The Customs Department received the letter from the petitioner about his willing to file an appeal against the order of confiscation. Revenue informed the petitioner that the confiscated goods had been handed over to the warehouse of the Custom House for disposal and consequently, auctioned the confiscated goods. The action of the custom authorities in selling the gold during the pendency of the appeal was not justified. **[*Shabir Ahmed Abdul Rehman* v *UOI* 2009 (235) ELT 402 (Bom)]**

***Option to redeem the goods with Adjudicating Authority under section 125***

Adjudicating Authority is vested with the **discretion to give an option either to confiscate or redeem** the prohibited goods imported/exported even though the goods are liable to absolute confiscation but in case of other goods **[CC*us* v *Alfred Menezes* 2009 (242) ELT 334 (Bom)]**

***Goods are not redeemed by paying fine***

Option to be void if fine not paid within 120 days: Where the fine imposed is not paid within a period of 120 days from the date of option given thereunder, such option shall become void, unless an appeal against such order is pending.

**Transitional Provisions-**Option to be exercised within 120 days from 29-03-2018 [Explanaation]: For removal of doubts, it is hereby declared that in cases where an order under Section 125(1)has been passed before the date on which the Finance bill 2018 receives the assent of the President i.e 29-03-2018 and no appeal is pending against such order as on that date, the option under said sub-section may be exercised within a period of 120 days from the date on which assent is received.

Where the imported goods are confiscated, u/s 125 and goods are not redeemed by paying fine, **the importer is bound to pay the customs duty [*Poona Health Services* v *CCus*. 2009 (242) ELT 335 (Bom)]**

***No redemption of fine, if goods not available for confiscation***

The concept of **redemption fine arises in the event when the goods are available and are to be redeemed**. If the goods are not available, there is no question of redemption of the goods under section 125. The question of confiscating the goods would not arise if there are no goods available for confiscation. **[*CCus* v *Finesse Creation Inc*. 2009 (248) ELT 122 (Bom)]**

## 11.5 OFFENCES UNDER CUSTOMS

The term Offence means a violation or breach of a law, like evasion of duty and breaking prohibitions under the Customs Act, 1962. However, offence not defined under Customs Act, 1962. Thereby, 'Offence' as any act or omission made punishable by any law for the time being in force.

There are basically two types of punishments namely civil penalty and criminal penalty. Civil penalty for violation of statutory provisions involving a penalty and confiscation of goods and can be exercised by the Department of Customs. Criminal punishment is of imprisonment and fine, which can be granted only in a criminal court after prosecution.

***Evasion of duty or prohibition under section 135(1) of the Customs Act, 1962***

If a person has nexus with misdeclaration of value or evasion of duty or handling in any manner goods liable for confiscation under section 111 (i.e. Confiscation of improperly imported goods) or section 113 (i.e. Export goods liable for confiscation), he shall be punishable in the following manner:

Imprisonment upto seven years and fine for the following four kinds of offences:

- Market value of offending goods exceeds ` one crore
- Value of evasion of duty exceeds ` 30 lakhs
- Offence pertains to prohibited goods notified by Central Government of India
- Value of fraudulent availment of drawback/exemption exceeds ₹ 30 lakhs For all other kind of offences imprisonment is upto three years or fine or both.

For repeat conviction, the imprisonment can be seven years and fine and in absences of special and adequate reasons, the punishment shall not be less than one year.

***Cognizable and Non-cognizable Offence***

Cognizable offence means an offence for which a police officer may arrest without warrant (i.e. without the order of a Magistrate). Non-cognizable offence means offences under Customs were a police officer cannot investigate cases without the order of a Magistrate.

***Cognizance of Offences***

As per Section 137(1) of the Customs Act, 1962, Court cannot take cognizance of offences under the Customs Act, 1962 in the following cases without previous sanction of the Commissioner of Customs:

False declaration or documents (Section 132)

(i) Obstruction (i.e. stop the progress) of Officers of Customs (Section 133)

(ii) Refusal to be X-rayed (Section 134)

(iii) Evasion of duty or prohibitions (Section 135)

(iv) Preparation to do clandestine export (i.e. improper export) (Section 135A)

As per Section 137(2) of the Customs Act, 1962, for taking cognizance of an offence committed by a Customs

officer under section 136 the Court needs previous sanction of the Central Government in respect of officers of the rank of Assistant or Deputy Commissioner and above and previous sanction of the Commissioner of Customs in respect of officers lower in rank than Assistant or Deputy Commissioner.

Section 136 of the Customs Act deals with offences by Officers of Customs which are as follows:

- An officer of customs facilitated to do fraudulent export
- Search of persons without reason to believe in the secreting of goods on them
- Arrest of person without reason to believe that they are guilty

These are called ***vexatious actions*** of department officers.

**Compounding Of Offences**

Compounding means basically a compromise between assessee and department. It means to say that instead of going to court for imposition of fine and imprisonment, the offender (i.e. importer or exporter committed an offence) may agree to pay composition amount. If the case is pending, the accused and the complainant can make a joint application to the court that the parties have come to an agreement not to prosecute further.

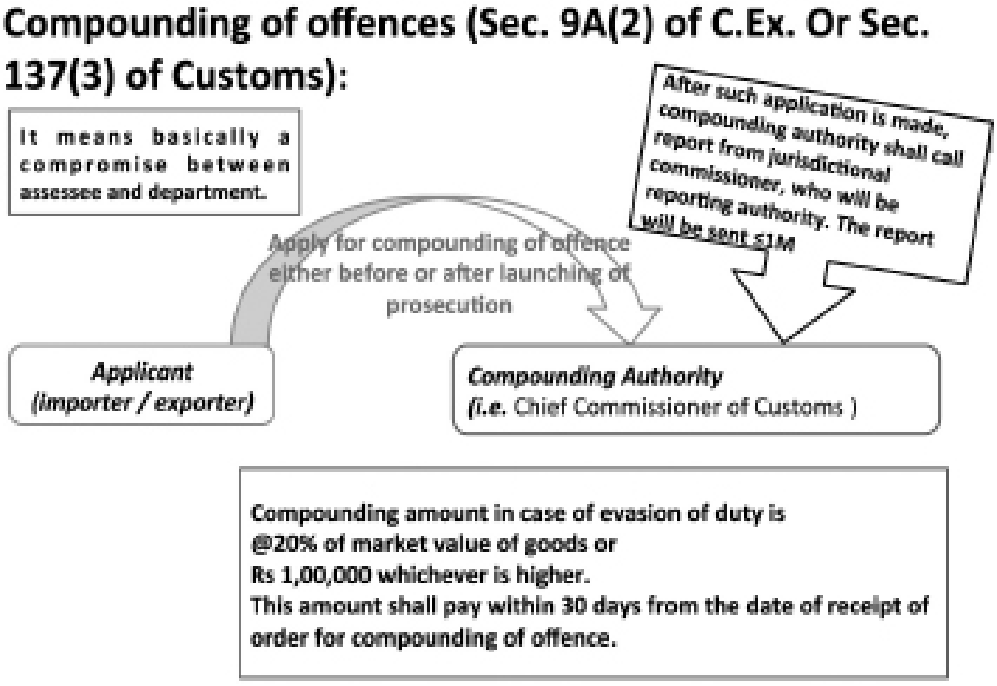
***Applicant*:** any importer or exporter but shall not include officers of Customs. Therefore, applicant (importer or exporter) can apply for compounding of offence either before or after launching of prosecution.

***Compounding Authority*:** means the Chief Commissioner of Customs having jurisdiction over place of applicant. The application can be made for compounding of offence before the Chief Commissioner of Customs by the applicant.

***Reporting Authority:*** means the Commissioner of Customs, from whom report will get by compounding authority within one month from the date of request. After receiving the report the compounding authority may allow application indicating the compounding amount and grant immunity from prosecution or reject the application.

Compounding amount in case of evasion of duty is @20% of market value of goods or ` 1,00,000, w.e.f. 13-11-2008, whichever is higher. This amount shall pay within 30 days from the date of receipt of order for compounding of offence.

**Simplified approach:**



Finance (No. 2) Act, 2009 provides that the following mentioned persons shall not be eligible for compounding under section 137(3) of the Customs Act, 1962:

(i) Offences under section 135 (i.e. Evasion of duty or prohibition) and section 135A (i.e. any person attempting to export goods illegally shall be punishable with imprisonment) of the Customs Act, 1962 already compounded. **(i.e. second time compounding not allowed)**

(ii) Offences under the following Acts, namely:

- the Narcotic Drugs and Psychotropic Substances Act, 1985;
- the Chemical Weapons Convention Act, 2000;
- the Arms Act, 1959;
- the Wild Life (Protection) Act, 1972;

(ii) A person involved in smuggling of goods falling under any of the following, namely:—

- goods specified in the list of Special Chemicals, Organisms, Materials, Equipment and Technology
- goods which are specified as prohibited items for import and export
- any other goods or documents, which are likely to affect friendly relations with a foreign State

(iii) Offences exceeding ` one crore already compounded.

(iv) Person who has been convicted under this Act on or after 30.12.2005

# Study Note - 12

## COMPREHENSIVE ISSUES UNDER CUSTOMS

**This Study Note includes**



### 12.1 INTRODUCTION

It is essential to know the Customs Department's hierarchy before dealing with their officers. Any aggrieved person against the order of adjudicating authority can knock the doors of the higher authority for want of justice. In this chapter it has been explained to the core by highlighting the important issues in a simplified manner. There are many provisions are commonly applicable for GST Law and Customs. The same has been explained in this lesson at appropriate places.

### 12.2 ADJUDICATING AUTHORITY

Principal Chief Commissioner of Central Excise/Chief Commissioner of Customs

↓

Principal Commissioner of Customs /Commissioner of Customs

↓

Additional Commissioner of Customs

↓

Joint Commissioner of Customs

↓

Deputy Commissioner of Customs /Assistant Commissioner of Customs

↓

Superintendent of Customs

↓

Inspector of Customs

↓

Hierarchy of the Department of Customs

***Adjudicating Authority for Confiscating Goods u/s 122 of the Customs Act, 1962***

| Adjudicating Authority for Confiscating Goods u/s 122 of the customs Act, 1962 | |
|---|---|
| **Authority** | **Goods liable for confiscation (w.e.f. 28-5-2012)** |
| The Superintendent | ≤ ₹ 50,000 |
| The Deputy/Assistant Commissioner | > ₹ 50,000 ≤ 5,00,000 |
| The Joint/Additional Commissioner | without any upper limit |
| Commissioner | without any upper limit |

***Power to Arrest u/s 104 of the Customs***

***Powers to arrest and summon***

**Certain specified offences to be non-bailable [Section 104(6) of Customs Act, 1962] w.e.f. 10-5-2013:**

**Non-bailable offences**

An offence punishable under section 135 relating to:—

(a) evasion or attempted evasion of duty exceeding ₹50 lakh; or

(b) prohibited goods [notified under section 11 also notified under section 135(1)(i)(C)]; or

(c) import/export of any goods which have not been declared in accordance with the provisions of this Act and the market price of which exceeds ₹1 crore; or

(d) fraudulently availing of or attempt to avail of drawback or any exemption from duty provided under this Act, if the amount of drawback or exemption from duty exceeds ₹50 lakh, shall be a non-bailable offence.

**Bailable offences**

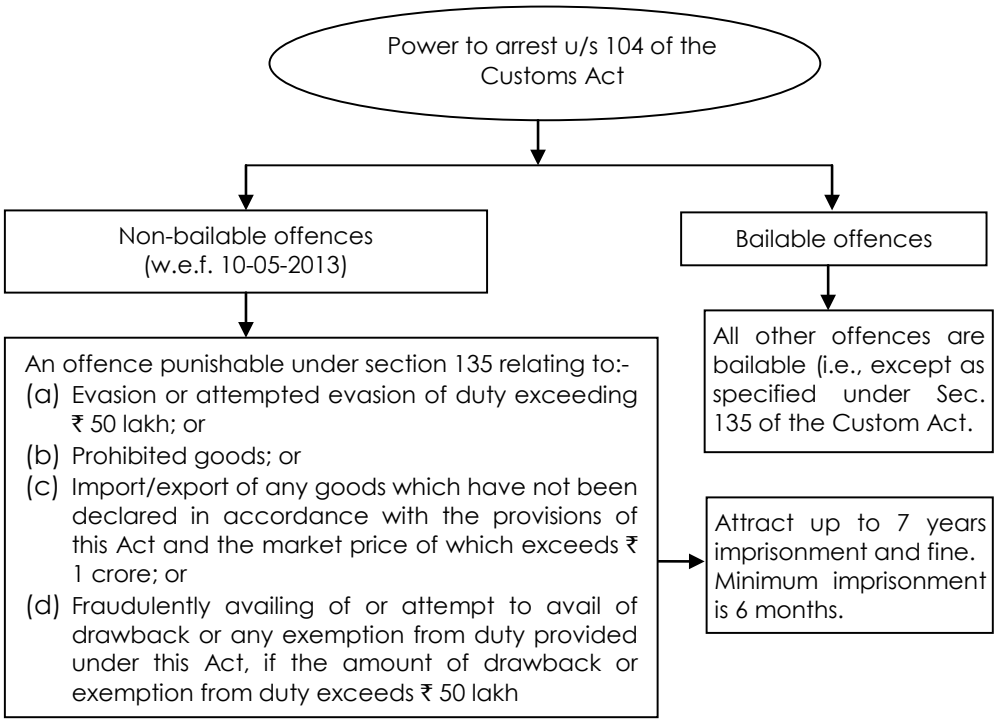
All other offences under the Customs Act, 1962 except those specified above shall be bailable.

**Offences involving evasion of duty [Sub-clause (C) and (D) of section 135(1)(i)]**

Section 135 stipulates the penal provisions applicable to a person who has committed any of the offences specified therein (hereafter referred to as offender who committed the offence u/s 135 of the Customs Act, 1962).

| Prior to 10th May, 2013 | W.e.f. 10th May, 2013 |
|---|---|
| such an offender was punishable with an imprisonment for a term which may extend upto 7 years and with fine in case of an offence relating to:—<br>(i) evasion or attempted evasion of duty exceeding ₹30 lakh or<br>(ii) fraudulently availing of or attempting to avail of drawback or any exemption from duty provided under the Customs Act in connection with export of goods, if the amount of drawback or exemption from duty exceeds ₹30 lakh. | such an offender was punishable with an imprisonment for a term which may extend upto 7 years and with fine in case of an offence relating to:—<br>(i) evasion or attempted evasion of duty exceeding ₹50 lakh or<br>(ii) fraudulently availing of or attempting to avail of drawback or any exemption from duty provided under the Customs Act in connection with export of goods, if the amount of drawback or exemption from duty exceeds ₹50 lakh. |

**Power to Arrest u/s 104 of the Customs Act**




**Immediate prosecution in case of gold (Circular No. 46/2016-Cus, dated 04.10.2016)**

Where the offence relates to gold, prosecution may preferably be launched immediately after issuance of show cause notice.

**Silver bullion and cigarettes notified under section 123 of the Customs Act, 1962 Notification 103/2016 Cus (NT) dated 25.07.2016**

Where these goods are seized under the Customs Act, 1962 in the reasonable belief that they are smuggled goods, the burden of proving that they are not smuggled goods shall be on the accused and not on the Department.

**Guidelines for arrest and bail under Customs Act, 1962:**

**[Circular No. 974/08/2013-CX, dated 17.09.2013]**

1. The power to arrest a person must be exercised with utmost care and caution by the Commissioner of Customs or Additional Director General of Customs.
2. The decision to arrest should be taken in cases which fulfil the requirement of the provisions of section 104(1) of Customs Act, 1962 and after considering the nature of offence, the role of the person involved and evidence available.
3. Persons involved should not be arrested unless the exigencies of certain situations demand their immediate arrest. These situations may include circumstances:
   (a) to ensure proper investigation of the offence;
   (b) to prevent such person from absconding;
   (c) cases involving organised smuggling of goods or evasion of customs duty by way of concealment;
   (d) masterminds or key operators effecting proxy/benami imports/ exports in the name of dummy or non-existent persons/IECs, etc.
4. While the Act does not specify any value limits for exercising the powers of arrest, the same should be effected *in respect of bailable offence only in exceptional situations which may include:*
   (a) Outright smuggling of high value goods such as precious metal, restricted items or prohibited items or goods notified under section 123 of the Customs Act, 1962 or foreign currency where the value of offending goods exceeds ₹20 lakh.

(b) In a case related to importation of trade goods (i.e. appraising cases) involving wilful mis-declaration in description of goods/ concealment of goods/goods covered under section 123 of Customs Act, 1962 with a view to import restricted or prohibited items and where the CIF value of the offending goods exceeds ₹50 lakh.

5. In every case of arrest effected in accordance with the provisions of section 104(1) of the Customs Act, 1962, there should be immediate intimation to the jurisdictional Chief Commissioner or DGRI, as the case may be.

6. A person arrested for a non-bailable offence should be produced before concerned Magistrate without unnecessary delay in terms of provisions of section 104(2) of the Act.

7. However, a Customs officer (arresting officer) is bound to offer release on bail to a person arrested in respect of bailable offence and accept bail bond for bailable offence.

8. Arrested person should produce within 24 hours before the Magistrate.

9. In case customs officer is not able to produce the arrested person before the Magistrate, then handed over to the nearest police station during night for safe custody.

**Section 153 of the Customs Act, 1962:**

Service of order or decision or summons or notice by the commissioner of customs is valid even if it sent by the

By Registered post

OR

By Speed post with proof of delivery or courier approved by CBEC

OR

Tendering (Physical delivery)

As may be approved by the commissioner of customs or Central Excise as the case may be.

***Jay Balaji Jyoti Steels Limited* v *CESTAT Kolkata* 2015 (37) STR 673 (Ori):**

**Decision:** The High Court, held that insertion of words "or by speed post with proof of delivery" in section 37C(1)(*a*) of the Central Excise Act, 1944 is clarificatory and a procedural amendment and hence, would have retrospective effect.

**Case Law 1:**

***Jyoti Enterprises* v *CCEx. & ST* 2016 (41) STR 0019 (All)**

**Facts of the Case:** The order-in-original, in assessee's case, was passed by the Department. However, the assessee was unaware of the order passed and came to know about it two years later when the Department started recovery proceedings.

**Point of Dispute:** The assessee argued that there was no proper service of order by the Department. However, Department submitted that the order was served 2 years ago at the residential premises of the assessee to a person named Virendra Yadav who represented himself to be assessee's nephew.

The assessee contended that the order was required to be served to the person for whom it was intended, namely, the assessee or its authorised agent. Since Virendra Yadav was neither the authorised representative nor the order was served upon the assessee, there was no proper service of the order.

**Decision:** The High Court held that the order in original was duly served upon the assessee. The High Court observed that if the order is served on a member of the family of the assessee, it is duly served and there is sufficient service of the order. No assertion was made by the assessee that Virendra Yadav was not a family member or that he was not connected with the business. The assessee had nowhere stated that Virendra Yadav was not her nephew. Further, nothing has been stated that the address where the service of the original order was made was incorrect.

Therefore, decision is given in favour of the Department and against the assessee.

**Case Law 2:**

***Santosh Handlooms* v *CCus.* 2016 (331) ELT 44 (Del)**

The issue which arose for consideration was whether in case of seizure of goods under section 110 of the Customs Act, 1962, the show cause notice [required to be issued under section 124(a) within six months of seizure] can be issued to the Customs House Agent [now Custom Broker] of the importer instead of importer himself.

**Decision:** The CHA [now Custom Broker], is an agent, who operates under a special contract with an importer or exporter, and in this context is authorized to perform various functions to clear the goods from customs. It is no part of the general duty cast upon the CHA to accept service of notices, summons, orders or decisions of the customs authorities, unless he has been specially authorized to do so. The High Court held that the show cause notice served on CHA [now Custom Broker] is not tenable in law.

**"Circulars of CBEC v Judgments of the Supreme Court and the High Courts: Which one is binding on the authorities under the respective statutes?**

**Case Law 3:**

***Ratan Melting & Wire Industries* v *CCE* 2008 (231) ELT 22 (SC):**

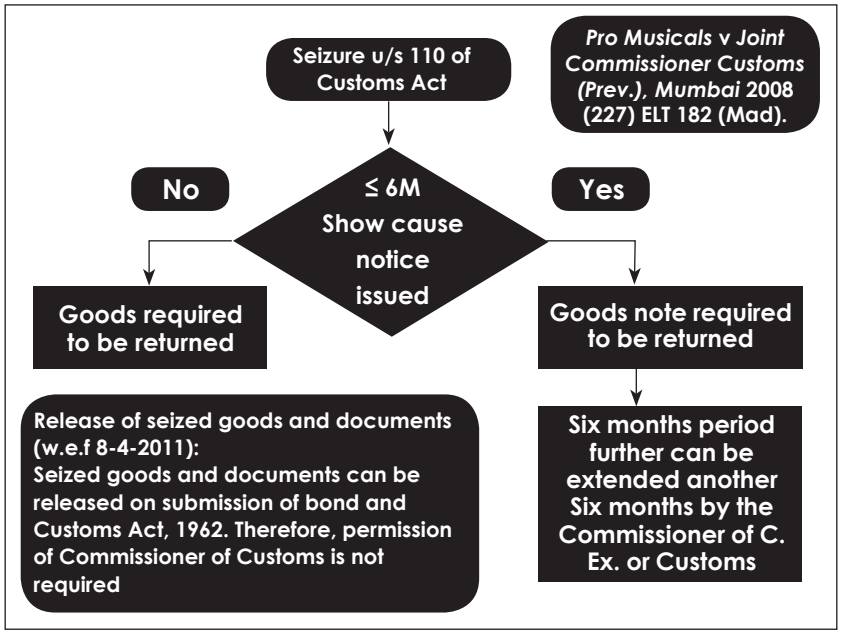
The Supreme Court has held that so far as the clarifications/circulars issued by the Central Government and of the State Government are concerned, they represent merely their understanding of the statutory provisions. They are not binding upon the Court. It is for the Court to declare what the particular provision of statute says and it is not for the Executive. A circular which is contrary to the statutory provisions has really no existence in law.

Therefore, "Circulars issued by the Central Board of Excise and Customs (CBEC), which are contrary to the judgements of the Supreme Court and the High Courts are not binding on the authorities under the respective statutes."

**Circular No. 1006/13/2015-CX, dated 21.09.2015:**

In the light of the aforesaid judgment, CBEC, has instructed its officers not to follow the Board Circulars contrary to the judgements of Hon'ble Supreme Court and High Court where Board has decided not to file an appeal on merit as such circulars become non-est in law.

***Seizure u/s 110 of Customs Act***



*In case of Pro Musicals case it is clarified that 6 months time period reconed from the date of sizure but not from the date of denention.*

***If any documents seized during the course of any action by an officer and relatable to the provisions of Customs Act, that officer was bound to make the documents available copies of those documents?***

***Answer:*** Yes. The Bombay High Court held the same view in the case of Manish Lalith Kumar Bavishi (2011).

**Case Law 4:**

***Akanksha Syntex (P) Ltd.* v *Union of India*** 2014 (300) ELT 49 (P&H)

**Facts of the case:** An order for provisional release of the seized goods had been made under section 110A of the Act pursuant to an application filed by the petitioner in this regard. However, the petitioner claimed unconditional release of its seized goods in terms of sections 110(2) and 124 of the Act as no show cause notice had been issued within the extended period of six months (initial period of six months was extended by another six months by the Commissioner of Customs in this case).

***Akanksha Syntex (P) Ltd.* v *Union of India*** 2014 (300) ELT 49 (P&H)

***Decision:*** Where no action is initiated by way of issuance of show cause notice under section 124(a) of the Act within six months or extended period stipulated under section 110(2) of the Act, the person from whose possession the goods were seized becomes entitled to their return.

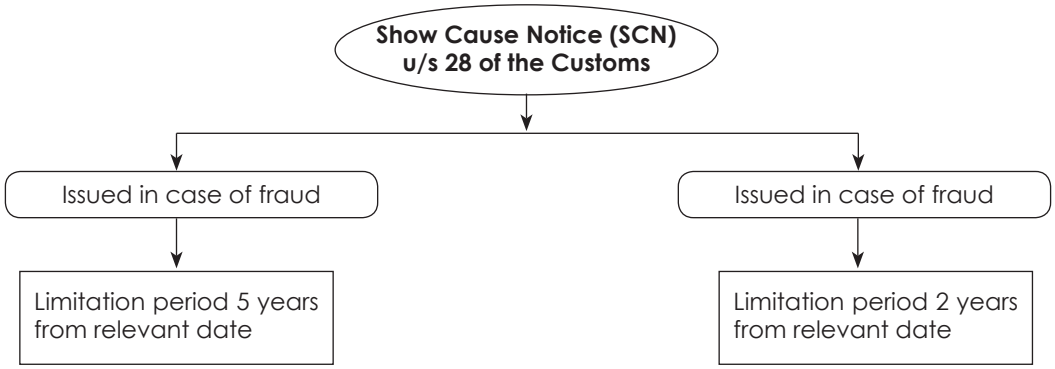
The remedy of provisional release is independent of remedy of claiming unconditional release in the absence of issuance of any valid show cause notice during the period of limitation or extended limitation prescribed under section 110(2) of the Customs Act, 1962.

***Refund of Duty / Rebate of Duty / Remission of Duty***

| Refund of duty | Rebate of duty | Remission of duty |
|---|---|---|
| It means person paid tax or duty where subsequently noticed that not required to pay. Hence, such person is entitled to claim refund.<br>**For an example:** Duty paid on exempted goods is qualify for refund | It means duty or tax paid where required to pay, thereafter, on account of satisfying certain conditions qualify for rebate of duty paid earlier.<br>**For an example:** Rebate of duty can be under stood as duty draw back.<br>Where any goods are exported, the Central Government may, by notification, grant rebate of duty paid on such excisable goods or duty paid on materials used in the manufacture or processing of such goods and the rebate shall be subject to such conditions or limitations, if any, and fulfillment of such procedure, as may be specified in the notification. | It means duty or tax is levied but not paid, subsequently got exempted from payment of duty or tax.<br>**For an example:** Warehoused goods after import got destroyed due to fire or natural calamities (i.e. loss occurred within the warehouse). |

## 12.3 OFFENCES

**Show Cause Notice (SCN): Section 28 of the Customs Act, 1962**



**w.e.f. 14-5-2015 relevant date in the case of customs law on which customs duty has not been levied or paid or has been short-levied or shor-paid and the return has been filed is the date on which such return has been filed.**

(i) in any other case, the date on which duty is required to be paid under this Act or the rules made thereunder;

(ii) in a case where duty of provisionally assessed under this Act or the rules made thereunder, the date of adjustment of duty after the final assessment thereof;

(iii) in the case on which duty of customs has been erroneously refunded, the date of such refund;

(iv) w.e.f. 14-5-2015, in a case where only interest is to be recovered, then the relevant date will be the date of payment of duty to which such interest relates.

**Case Law 5:**

In the case of C.Cus. v. SAYED ALI 2011 (S.C.) the Apex Court held that

- Director General of Revenue Intelligence OR
- Director General of Central Excise Intelligence

are not eligible for issuing show cause notices.

However, w.e.f 16.9.2011 the law amended retrospectively by providing validity to those show cause notices issued by the Director General of Revenue Intelligence or, Director General of Central Excise Intelligence.

## 12.4 PROTECTIVE DEMAND

Means issue show-cause notice-cum-demand in time, so that it does not become time barred, especially in the case of receipt of audit objections, protective demands should be issued in time.

## 12.5 RECOVERY OF DUTIES IN CERTAIN CASES

***Recovery of duties in certain cases [section 28AAA of the Customs Act]:***

An instrument (i.e. any scrip or authorisation or licence or certificate as a reward or incentive scheme or duty exemption scheme or duty remission scheme) has been obtained by the person by means of

(a) Collusion; or

(b) Wilful misstatement; or

(c) Suppression of facts

Duty and interest should be recovered within 30 days from the date of passing order to recover the same.

Provisional attachment of property applicable u/s 28BA.

**Proper officer empowered to provisionally attach the property in case of non-payment of customs duty or interest thereon on account of fraud, collusion, suppression of facts etc. as well [Section 28BA(1)]**

| Section 28BA of Customs Act, 1962 | Prior to 10th May, 2013 | W.e.f. 10th May, 2013 |
|---|---|---|
| Provisional attachment of property in case of non payment of customs duty and interest on account of fraud | Provisionally attach the property belonging to only such person on whom notice has been served u/s 28(1) of the Customs Act, 1962 | Provisionally attach the property belonging to any person on whom notice has been served u/s 28(1) or (4) of the Customs Act, 1962 |

**No recovery if the amount of customs duty involved is less than ₹100 [Section 28(1) - w.e.f. 10.05.2013]**

**Proviso inserted in section 28(1)**

Hitherto, no minimum limit for recovery of customs duty had been specified under the Customs Act, 1962. Thus, recovery proceedings could be initiated even for the default of ₹ 1.

The Finance Act, 2013 has inserted third proviso in section 28(1) which provides that the proper officer will not serve the show cause notice, where the amount involved is less than ₹ 100. In other words, there would be no recovery of the customs duty if the amount of customs duty involved is less than ₹ 100.

**Case Law 6:**

**Uniworth Textiles Ltd. v. CCEx. 2013 (288) ELT 161 (SC):**

**Statement of Facts:** Assessee imported furnace oil and supplied the same to sister unit for generation of electricity, which is used by the assessee. The asseessee claimed exemption on import of furnace oil.

The assessee is also obtained a clarification from Development Commissioner for claiming exemption.

However, irrespective of the clarification from Development Commissioner, a show cause notice demanding duty was issued on the assessee more than 1 year (i.e. longer limitation) after he had imported furnace oil on behalf of it sister unit.

**Department Contention:** The entitlement of duty free import of fuel for its captive power plant lies with the owner of the captive power plant, and not the consumer of electricity generated from the power plant.

**Decision:** As per Section 28 of Customs Act, 1962, longer limitation period in the given case not applicable. The assessee had shown bona fide conduct by seeking clarification from Development Commissioner and in a sense had offered its activities to assessment.

Therefore, mere non-payment of duties could not be equated with collusion or willful misstatement or suppression of facts.

Judgment is given in favour of the assesse.

**Case Law 7:**

***Anita Grover* v. *CCEx*. 2013 (288) ELT 63 (Del):**

**Statement of Facts:** A demand notice was raised against the petitioner in respect of the customs duty payable by the company (namely Shri Ram Casting P. Ltd) which she was formerly a director of. She had resigned from the Board of the company long time back. The Customs Department sought to attach the properties belonging to the petitioner for recovery of the dues to the company.

Whether department action is justifiable?

As per sec. 142 of the Customs Act, 1962 and relevant rules, it was only the defaulter against whom steps might be taken under Rules. The defaulter was the person from whom dues were recoverable under the Act. In the present case, it was the company who was the defaulter.

Therefore, department claim is not justifiable.

The same view has been expressed by the Hon'ble Bombay Highe in case of ***Vandana Bidyut Chatterjee v. UOI 2013 (292) E.L.T. 6 (Bom.).***

**w.e.f. 10-5-2013:**

***Recovery under sec.142(1)(d) of the Customs Act, 1962 :***

*Issuance of the notice for recovery to any person other than from whom money is due*

The Customs Officer may issue a written recovery notice to the following persons:

- any person from whom money is due to such person
- any person from whom money may become due to such person
- any person who holds money for or on account of such person
- any person who may subsequently hold money for or on account of such person.

The noticee would be required to pay to the credit of the Central Government so much of the money as is sufficient to pay the amount due from such person or the whole of the money when it is equal to or less than that amount.

The money would be paid either forthwith upon the same becoming due or being held, or at or within the time specified in the notice. However, in no case the money would be required to be paid before it becomes due or is held.

In a case where the person to whom a notice under this sub-section has been issued, fails to make the payment is called as **"assessee in default"**.

**Case Law 8:**

***Kemtech International Pvt. Ltd. v. CCus. 2013 (292) E.L.T. 321 (S.C.)***

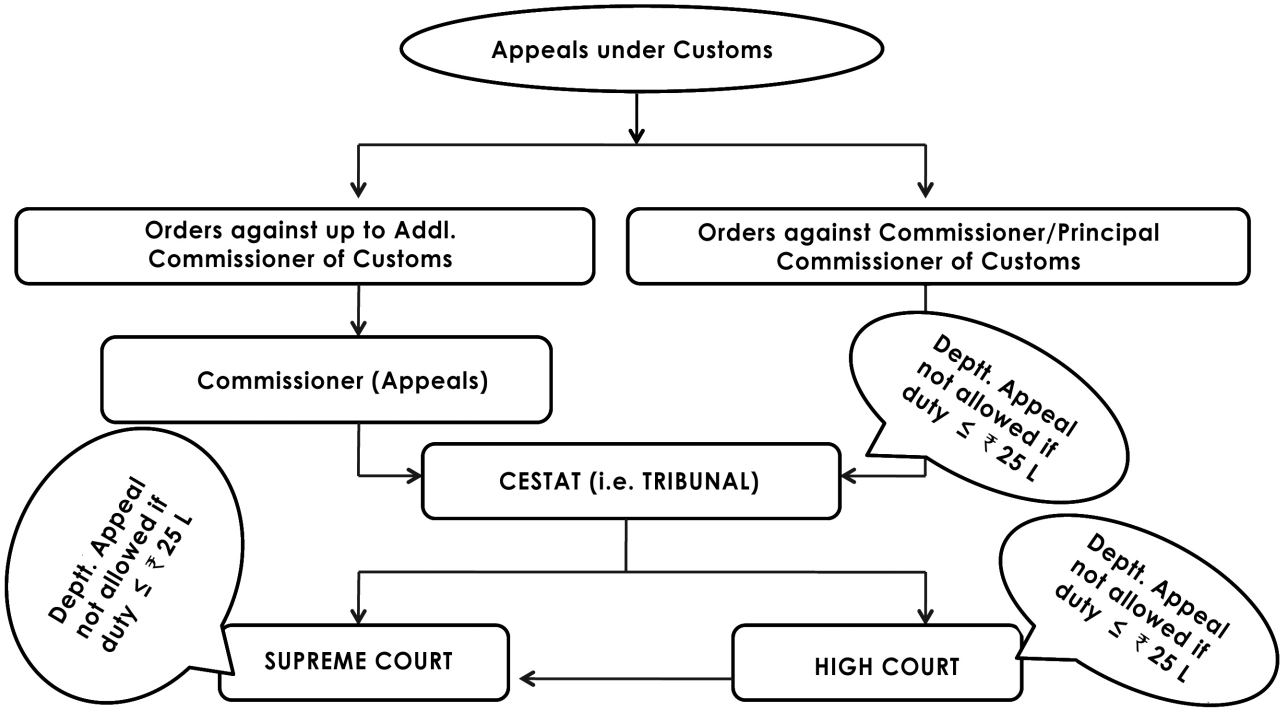
**Point of dispute:** Is the adjudicating authority required to supply to the assessee copies of the documents on which it proposes to place reliance for the purpose of re-quantification of short-levy of customs duty?

**Decision:** The Apex Court elucidated that for the purpose of re-quantification of short-levy of customs duty, the adjudicating authority, following the principles of natural justice, should supply to the assessee all the documents on which it proposed to place reliance.

Thereafter the assessee might furnish their explanation thereon and might provide additional evidence, in support of their claim.

## 12.6 APPEALS UNDER CUSTOMS

Hierarchy of appeals under Customs:




However, Departmental appeals in case of adverse judgments relating to the following disputes shall be allowed irrespective of the amount involved:

- Where the constitutional validity of the provisions of an Act or Rule is under challenge.
- Where notification/instruction/order or Circular has been held illegal or ultra vires.

The instruction has been further amended to provide that adverse judgments relating to classification and refunds issues which are of legal and/or recurring nature should also be contested irrespective of the amount involved ***[Instruction F.No.390/Misc./163/2010 JC dated 17.12.2015].***

***Example 1:***

***X Ltd. received a protective demand notice from the department on 1.9.2017 under Section 28 of the Customs Act, 1962 where***

| | ***Amount*** ₹ |
|---|---|
| ***Customs Duty*** | ***= 15,00,000*** |
| ***Interest*** | ***= 15%*** |
| ***Penalty*** | ***= 50% of Duty*** |

***The assessee went for appeal and filed the case in the Commissioner (Appeals) on 1.10.2017. Subsequently on 31.10.2017, the Commissioner (Appeals) decided the case in favour of the assessee.***

***The Committee of Commissioners can delegate the authority to the department officers to go for further appeal on its behalf to the Appellate Tribunal (CESTAT) against such order?***

***Answer:***

***As per the CBE&C instructions in a case involving duty of ₹10 lakh and below, no appeal shall be filed in the Tribunal (CESTAT).***

***In the given case, appeal can be filed in the Tribunal (since, amount of duty is more than ₹ 10 lakhs)***

**Mandatory pre-deposit for entertaining appeal (w.e.f. 6-8-2014): –**

Section 129E of the Customs Act, 1962, as amended by Finance (No. 2) Act, 2014 w.e.f. 6-8-2014, provides that Commissioner (Appeals) or CESTAT shall not ***'entertain'*** appeal unless specified pre-deposit of duty or penalty is made.

**The pre-deposit is as follows –**

(a) 7.5% if appeal is filed before Commissioner (Appeals)

(b) 7.5% if appeal is filed before CESTAT against order of Principal Commissioner/ Commissioner as adjudicating authority

(c) 10% if appeal is filed before CESTAT against order of Commissioner (Appeals).

**Note: Maximum amount of pre-deposit is ₹10 crores.**

**The aforesaid percentage is to be calculated as follows –**

(i) if both duty and penalty is confirmed, then the percentage (7.5% or 10%) is only of the duty or service tax.

(ii) if only penalty is imposed, then the percentage (7.5% or 10%) is of the penalty.

**Note: Maximum amount of pre-deposit is ₹10 crores.**

***Example 2:***

***X Ltd. received a protective demand notice from the department Assistant Commissioner of Central Excise on 1.9.2017 under Section 28 of the Customs Act, 1962 where***

| | ***Amount*** ₹ |
|---|---|
| ***Customs Duty*** | ***= 5,00,000*** |
| ***Interest*** | ***= @15% p.a. for no. of days delay.*** |
| ***Penalty*** | ***= Nil*** |

***The assessee went for appeal and filed the case in the Commissioner (Appeals) on 25.9.2017. This appeal has been taken up for hearing on 06-10-2017. How much has to pay as pre-deposit of duty under section 129E of the Customs Act, 1962 and date of pre-deposit of duty by X Ltd. to entertain appeal by the Commissioner (Appeals).***

***Answer:***

***Pre-deposit amount = ₹37,500***

***(i.e. ₹ 5,00,000 x 7.5%)***

***Therefore, in the given case pre-deposit can be paid before 06-10-2017.***

***Example 3:***

***Y Ltd. received a protective demand notice from the department Principal Commissioner of Central Excise on 29.8.2017 under Section 28 of the Customs Act, 1962 where***

| | Amount ₹ |
|---|---|
| Excise Duty | = 9,75,00,000 |
| Interest | = @15% p.a. for no. of days delay |
| Penalty | = 25% of Customs duty |

***The assessee went for appeal and filed the case in the office of the Appellate Tribunal (CESTAT) against such order on 11.10.2017. Subsequently on 18.10.2017, CESTAT entrain the appeal for hearing.***

***How much has to pay as pre-deposit of duty under section 129E of the Customs Act, 1962 and date of pre-deposit of duty by Y Ltd. to entertain appeal by the Appellate Tribunal (CESTAT).***

***Answer:***

***The pre-deposit is ₹ 73,12,500***

***(9,75,00,000 x 7.5%)***

***In the given case pre-deposit can be paid before 18-10-2017.***

**CBEC has issued Circular No. 984/08/2014 CX dated 16.09.2014 which clarifies the Quantum of pre-deposit: Where an appeal is made against the order of Commissioner (Appeals) before the Tribunal, 10% is to be paid on the amount of duty demanded or penalty imposed by the Commissioner (Appeals). This amount may or may not be same as the amount of duty demanded or penalty imposed in the Order-in-Original in the said case.**

***Example 4:***

***Z Ltd. received a protective demand notice from the department on 1.8.2017 under Section Section 28 of the Customs Act, 1962 where***

| | Amount ₹ |
|---|---|
| Excise Duty | = 45,00,000 |
| Interest | = @15% p.a. for no. of days delay |
| Penalty | = 100% of customs duty |

***The assessee went for appeal and filed the case in the Commissioner (Appeals) on 5.8.2017. The Commissioner (Appeals) entertained the appeal on 11.8.2017. Subsequently on 31.10.2017, the Commissioner (Appeals) decided the case in favour of the department.***

***The assessee went for further appeal and filed the case in the office of the Appellate Tribunal (CESTAT) against such order on 24.11.2017. Subsequently on 28.11.2017, CESTAT entrained the appeal for hearing.***

***How much has to pay as pre-deposit of duty under section 129E of the Customs Act, 1962 and date of pre-deposit of duty by Y Ltd. to entertain appeal by the Commissioner (Appeals) and the Appellate Tribunal (CESTAT).***

***Answer:***

***Statement showing pre-deposit of duty by Z Ltd.***

| *Particulars* | *Pre-deposit in %* | *Pre-deposit duty ₹* | *Pre-deposit of duty is before* | *Working note* |
|---|---|---|---|---|
| *Appeals to Comm. (appeals)* | *7.5%* | *3,37,500* | *11-8-2017* | *₹ 45 L x 7.5% = ₹ 3.375 L* |
| *Appeals to CESTAT* | *10%* | *4,50,000* | *28-11-2017* | *₹ 45 L × 10% = ₹ 4.5 L* |

**Circular No. 984/08/2014 CX dated 16.09.2014 issued by CBEC has clarified that where penalty alone is in dispute and penalties have been imposed under different provisions of the Act, pre-deposit would be calculated based on the aggregate of all penalties imposed in the order sought to be appealed against.**

***Example 5:***

***In an order dated 20.08.2017 issued to M/s. GH & Sons, the Joint Commissioner of Customs has imposed a penalty of ₹10,50,000 (i.e. equal amount of customs duty). under section 112 of the Customs Act, 1962 plus a penalty of ₹ 2,50,000 under Section 112(b)(ii) of the Customs Act, 1962. M/s GH & Sons intends to file an appeal with the Commissioner (Appeals) against the said adjudication order.***

***Compute the quantum of pre-deposit required to be made by M/s. GH & Sons for filing the appeal with the Commissioner (Appeals).***

***Answer:***

***The quantum of pre-deposit will be ₹97,500.***

***[i.e. ₹ 10,50,000 + ₹ 2,50,000] x 7.5% = ₹ 97,500.***

**Meaning of 'duty demanded' –** The term 'duty demanded' includes customs duty

**Interest if pre-deposit is to be refunded - @ 6% p.a. simple interest (Section 129EE of the Customs Act, 1962):**

If the assessee finally wins the case, the pre-deposit is to be refunded with interest from the date of pre-deposit till the date of refund of such amount @ 6% p.a. simple interest.

However, interest on delayed refund of pre-deposit made prior to 06.08.2014 will continue to be governed by the erstwhile provisions.

***Example 6:***

***In an order dated 30.08.2017 issued to M/s. KK & Sons, the Commissioner of Central Excise has confirmed a duty demand of ₹ 50,50,000 and imposed a penalty of equal amount under Customs Act, 1962 plus a penalty of ₹ 5,50,000 under Customs Act, 1962.***

***M/s. KK & Sons deposits the required amount of pre-deposit on 10.09.2017 and files an appeal with CESTAT. CESTAT decides the appeal in favour of M/s. KK & Sons on 10.11.2017. M/s. KK & Sons submits a letter seeking refund of the pre deposit on 30.11.2017. The pre-deposit is refunded to M/s KK & Sons on 15.12.2017.***

***Compute the amount of interest payable on refund of such pre-deposit, if any under Sec. 129EE of the Customs Act, 1962.***

***Answer:***

***Interest = ₹5,977 (₹50,50,000 × 7.5%) × 6/100 × 96/365***

| *Month* | *No. of day delay* |
|---|---|
| *Sep 2014* | *21* |
| *Oct 2014* | *31* |
| *Nov 2014* | *30* |
| *Dec 2014* | *14* |
| *Total* | *96* |

***Important points:***

***(1) for pre-deposits made prior to the amendments to Section 35FF of CEA, 1944 and Sec 129EE of Customs Act, 1962, the provisions of earlier sections shall apply (i.e. Section 11BB of CEA, 1944).***

***(2) Application for stay is still required? – The provisions of sections 35F of Central Excise Act and 129E of Customs Act relating to pre-deposit of duty or penalty [as amended by Finance (No.2) Act, 2014 w.e.f. 6-8-2014] are only in respect of 'entertaining' appeal by Commissioner (Appeals) or CESTAT. There is no provision that once the pre-deposit is made, the recovery of balance amount will be stayed. Technically, department can start recovery of balance amount. Hence, till the issue is clarified by CBE&C, it is highly advisable to file stay application, along with the appeal.***

**Case Law 9:**

**Whether the word 'include' used in a statutory definition enlarges the scope of preceding words or restricts their scope?**

**Ramala Sahkari Chini Mills Ltd. v. CCEx. 2016 (334) ELT 3 (SC)**

**Decision:** The Supreme Court referring to the case of *Regional Director, Employees' State Insurance Corporation* v. *High Land Coffee Works of P.F.X. Saldanha and Sons & Anr. [(1991) 3 SCC 617]* held that that the word "include" in a statutory definition is generally used to enlarge the meaning of the preceding words and it is by way of extension, and not with restriction.

**Appeal to Commissioner (Appeal)**

(*Section128 of the Customs Act, 1962*).

1. Appeal against orders up to Additional Commissioner lies with Commissioner (Appeals)
2. Appeal against Commissioner (Appeals) lies directly to CESTAT
3. Period of limitation for appeal:

| **In case of Customs** |
|---|
| Original period of limitation |
| 2 months from the date of communication of the order |
| **Extended period of limitation** |
| 1 month from the date of communication of the order |
| However, Commissioner (Appeals) cannot condone the delay beyond period of One month [**Amchong Tea Estate 2010 (SC)]**. W.e.f. 28-5-2012 same provision for Service Tax appeals. |

**Case Law 10:**

**CCus & CEx. v. Ashok Kumar Tiwari 2015 (37) STR 727 (All.):**

The High Court noted that section 3(35) of the General Clauses Act, 1897 also defines the expression "month" to mean a month reckoned according to the British calendar. Further, the day on which order was received by the assessee, had to be excluded while computing the period of limitation. Since the original period of limitation and the period within which delay could be condoned expired on a public holiday, the assessee filed the appeal on the next working day. Therefore, Commissioner of Central Excise (Appeals) had the jurisdiction to condone the delay.

***Example 7:***

***The assessee received the adjudication order on 08.10.2011 and filed an appeal against the said order before Commissioner of Central Excise (Appeals) on 09.04.2012 along with an application for condonation of delay.***

***However, the Commissioner dismissed the appeal as being time barred and declined to condone the delay. The Commissioner (Appeals) has jurisdiction to condone the delay?***

***Answer:***

***The Commissioner of Central Excise (Appeals) had the jurisdiction to condone the delay in filing of appeal by the assessee as the same had been filed within the stipulated time prescribed for the same [CCus & CEx. v. Ashok Kumar Tiwari 2015 (37) STR 727 (All.)].***

***Note: 8th April 2012 Sunday (also Easter a regional holiday).***

4. Appeal should also state statement of facts and grounds of appeal. New grounds of appeal generally not allowed.
5. In general appeals can be finalized within 6 months from the date on which it is filed.
6. Committee of Commissioners can file an appeal if the Commissioner (Appeals) has given a decision in favour of assessee, if it is of the opinion that the order is not legal or proper.
7. Appeal against the order of Principal Commissioner or Commissioner or Commissioner (Appeals) lies with Tribunal, except following (Sec. 129DD of Customs Act, 1962):
   - Loss of goods occurring in transit from the factory to warehouse
   - Rebate of duty on goods exported
   - Goods exported without payment of duty

   In the aforesaid matters, Tribunal has no jurisdiction, but revision application can be filed with Central Government [section 129DD of Customs Act, 1962] within 3 MONTHS. The Central Government of India can annul or modify the order. In all other matters, appeal lies with Tribunal. Revision application can be filed by the assesse or the Commissioner of Customs.

   Revision application can be filed with Central Government along with fee of ₹200 if the amount, interest and penalty ≤ ₹1,00,000, otherwise ₹1,000. An officer of the rank of Joint Secretary hears the issue and passes orders on behalf of Central Government of India.

   Therefore, while mandatory pre-deposit would be required to be paid in cases of drawback, rebate and baggage at the first stage appeal before Commissioner (Appeals), no pre-deposit would be payable in such cases while filing appeal before the Joint Secretary (Revision Application) [circular no. 993/17/2014-CX dt. 5-1-2015].
8. Commissioner (Appeals) cannot remand the matter to lower adjudicating authority.
9. w.e.f 06.08.2014 to enable Commissioner (Appeals) also [apart from CESTAT and Court to take into consideration the fact that a particular order being cited as a precedent decision on the issue has not been appealed against for reasons of low amount (the Customs Act, 1962 in section 131BA).

**Case Law 11:**

**Chakiat Agencies v. UOI 2015 (37) STR 712 (Mad.)**

**Facts of the case:** The assessee filed an appeal to Commissioner, but mistakenly gave it to the adjudicating officer who had passed the original order. The appellate authority rejected the appeal on the ground that the appeal was not received in time in his office.

**Decision:** The High Court noted that the appeal had been preferred in time, but reached different wing of the same building. Since, the appeal was received by the adjudicating officer who has passed the original order, he ought to have sent it to the other wing of the same building, but he had not done the same. Therefore, the order passed by the appellate authority cancelling the appeal on the ground that it was not received in time, could not be accepted.

The High Court directed the appellate authority to entertain the appeal of the assessee and to pass appropriate orders on merits and in accordance with law, after affording him an opportunity of being heard.

**Case Law 12:**

**Raja Mechanical Co. (P) Ltd. (2012) (SC):**

**Assessee Claim:** Commissioner (Appeals) rejected the appeal on the ground of limitation. Therefore, the order passed by the original authority would merge with the orders passed by the first appellate authority.

**Decision:** an appeal is dismissed on the ground of limitation and not on merits that order would not merge with the orders passed by the first appellate authority.

Judgment is given in favour of department and against the assesse.

**Case Law 13:**

**Commissioner of C.Ex. Mumbai III v. TIKITAR INDUSTRIES, 2012 (277) E.L.T. 149 (S.C.):**

**Assessee Claim:**

If Revenue accepts judgment of Commissioner (Appeals) on an issue for one period, then it should be precluded to make an appeal on the same issue for another period

**Decision:** Since, the Revenue had not questioned the correctness or otherwise of the findings on the conclusion reached by the first appellate authority, it may not be open for the Revenue to contend this issue further by issuing the impugned (i.e. disputed the truth) show cause notices on the same issue for further periods.

**Case Law 14:**

***C.C.E. & S.T. (LTU), Bangalore v. Dell Intl. Services India P. Ltd. 2014 (33) S.T.R. 362 (Kar.)***

**Can the Committee of Commissioners review its decision taken earlier under section 86(2A) of the Finance Act, 1994, at the instance of Chief Commissioner?**

**Decision:** The Karnataka High Court held that once the Committee of Commissioners, on a careful examination of the order of the Commissioner (Appeals), did not differ in their opinion against the said order of the Commissioner (Appeals) and decide to accept the said order, the matter ends there. The said decision is final and binding on the Chief Commissioner also. The Chief Commissioner is not vested with any power to call upon the Committee of Commissioners to review its order so that he could take decision to prefer an appeal. Such a procedure is not contemplated under law and is without jurisdiction.

**Case Law 15:**

***M/s Venus Rubbers v. The Additional Commissioner of Central Excise, Coimbatore 2014 (310) ELT 685 (Mad.)***

**Decision:** The High Court held that there is no provision of law under the Central Excise Act, 1944 which gives power to the Commissioner (Appeals) to review his order. However, such a power is available to the Tribunal under section 35C(2) of the Central Excise Act, 1944 to rectify any mistake apparent on the record. The High Court elaborated that when there is no power under the statute, the Commissioner (Appeals) has no authority to entertain the application for review of the order.

**Case Law 16:**

***Enestee Engineering Pvt. Ltd. v. UOI 2016 (41) STR 0061 (Bom.)***

**Facts of the Case:** The adjudication order was passed and was forwarded to the assessee. However, assessee did not receive the same. It learned about the order only after receipt of a letter from the Superintendent, nearly after two years, directing it to pay the dues as per said order. Thereafter, a copy of that order was made available to the assessee.

Point of Dispute: The appeal filed by the assessee against the said order was rejected by the Commissioner (Appeals) as well as by the Tribunal, as being barred by limitation.

The assessee contended that the appeal could not be held to be barred by limitation as no order was received by it.

**Decision:** The High Court noted that the period of limitation prescribed under erstwhile section 85(3) [now section 85(3A)] of the Finance Act, 1994 to prefer an appeal against order-in-original is 3 months [now 2 months]. The said period begins from the date of receipt of the decision or the order of adjudicating authority. Further, section 37C(2) of the Central Excise Act, 1944 stipulates that every decision/order passed or any summons/notice issued under the said Act is deemed to have been served on the date on which such decision, order or summons is tendered or delivered by post or is affixed in the prescribed manner.

Thus, a perusal of section 37C (as supported by erstwhile section 85(3) [now section 85(3A)] of the Finance Act, 1994) shows insistence upon the service of such adjudication order upon the assessee. Hence, the observation in

the Tribunal's order that the order- in-original had been forwarded to the assessee on a particular date was not sufficient in the eyes of law to start computing the period of limitation.

The High Court observed that neither the order of Commissioner (Appeals) nor the order of Tribunal recorded a finding that the adjudication order was actually tendered to the assessee on a particular date or received by him on a particular date.

The High Court quashed and set aside both the orders - order of Commissioner (Appeals) and the order of Tribunal, and placed back the matter for fresh consideration before Commissioner (Appeals).

***Committee of Commissioners/ Chief Commissioners cannot review the same order twice under CEx., Customs and Service Tax law***

The power of review of order of Commissioner (Appeals) or order of Principal Commissioner/ Commissioner as an adjudicating authority vests with the Committee of Commissioners and Committee of Chief Commissioners respectively and there is no provision for reviewing the same order twice [Instruction F.No.390/Review/36/2014 JC dated 17.03.2016].

**Appeals to the Customs, Excise and Service Tax Appellate Tribunal (CESTAT):**

**(Sec. 129 Customs Act, 1962)**

(1) CESTAT hears appeals against orders of Commissioner as adjudicating authority and Commissioner (Appeals).

(2) CESTAT is final fact finding authority

(3) Appeal should be in prescribed form EA-3

(4) Appeal should be filed within 3 months from the date of receipt of order in the prescribed form EA 3.

(5) The Tribunal shall hear and decide every appeal within a period of 3 years.

(6) If stay is granted by Tribunal for recovery, appeal shall be decided within 180 days.

W.e.f. 10-5-2013 CESTAT may further extend the period of stay, by not more than185 days in the following cases:

(i) on an application made in this behalf by a party and

(ii) on being satisfied that the delay in disposing of the appeal is not attributable to such party

In case the appeal is not disposed of within the total period of 365 days from the date of the stay order, the stay order shall, on the expiry of 365, stand vacated.

(7) Fee for filing an appeal

| Amount, interest and penalty demanded | Fee for filing an appeal |
|---|---|
| ≤ ₹5,00,000 | ₹1,000 |
| > ₹5,00,000 ≤ ₹50,00,000 | ₹5,000 |
| > ₹50,00,000 | ₹10,000 |

(8) Monetary limit of the Single Bench of the Tribunal to hear and dispose of appeals enhanced from ₹10 lakh to ₹50 lakh [Section 35D(3)] (w.e.f. 10-5-2013)

(9) Tribunal can condone the delay for any number of days.

(10) Tribunal can refuse petty appeals below ₹2 lakhs.

(11) CEB&C can extend time limit for sanctioning departmental appeal by 30 days in Customs (w.e.f. 6-8-2014):

The Committee of Principal Commissioner or Commissioners or Principal Chief Comissioner/Chief Commissioners is required to take decision regarding filing of departmental appeal within 3 months. this period can be extended upto 30 days by CBE&C, on suffient case being shown (presumably by the Committee itself)- proviso to section 129D(3) of Customs Act 1962.

**Case Law 17:**

***Amidev Agro Care Pvt. Ltd. v. Union of India 2012 (279) E.L.T. 353 (Bom):***

**Assessee Claim**: the copy of the order passed by the Commissioner of Central Excise (appeals) on was not served upon the assessee. It was only when the recovery proceedings were initiated, the assessee sought a copy of the order dated 31st mar 2008 and the same was made available to the assessee on 26th Feb 2010. Immediately thereupon the assessee filed an appeal before the CESTAT on 17th may 2010.

**Department Contention:** The appeal was not filed within the stipulated time of 3 months from 31st mar 2008**.**

**Decision:** As per sec 37C(1)(a) of the C.E.A. 1944, it was obligatory on the part of the revenue, either to tender a copy of the decision to the assessee or to send it by registered post with due acknowledgment to the assessee or its authorised agent. In the present case neither of the above had been complied with by the revenue. Therefore, assessee claim is justifiable.

**Note:** w.e.f. 10-5-2013 speed posts with proof of delivery or courier approved by the CBEC is also a valid communication.

**Case Law 18:**

**Mihani Network v. Ccus. & Cex. 2012 (285) ELT 182 (MP):**

**Statement of Facts:** The assessee had filed an appeal along with an application for stay before the CESTAT. However, since there had been a delay in filing the appeal, the assessee also filed an application for condonation of delay.

The CESTAT ordered that the delay would be treated as condoned, if the assessee deposits 50% of the amount of tax.

**Decision:**There is no legal provision which provides for condoning the delay in filing the appeal on a condition of depositing 50% of tax amount.

**Case Law 19:**

**Thakker Shipping P. Ltd. v. CC (General) 2012 (285) E.L.T. 321 (S.C.):**

**Statement of facts:** The proceedings were initiated against the assessee under the Customs Act, 1962. However, Commissioner of Customs (General), in his order-in-original, dropped the said proceedings.

The Committee of Chief Commissioners of the Customs constituted under Sec. 129A(1B) of the Customs Act, 1962 reviewed his order and directed him to apply to the Tribunal for determination of certain points.

Since, the application not made within the prescribed period and was delayed by 10 days.

Tribunal rejected the application for condonation of delay on the ground that Tribunal had no power to condone the delay caused in filing application under sec. 129A(4) by the Department beyond the prescribed period of 3 months.

**Decision:** Tribunal was competent to admit an appeal or permit the filing of a memorandum of cross-objections after expiry of the relevant period, if it is satisfied that there was sufficient cause for not presenting it within that period.

**Order-in-original means:** The Central Excise Officer after considering the submission made in reply to show cause notice as well as during personal hearing shall pass the order called Order-In-Original either confirming the demand or dropping the demand or partly confirming the demand and levy of penalty and interest.

The aggrieved person can file an appeal, against order-in-original.

**Case Law 20:**

**Margara Industries Ltd. v. Commr. of C. Ex. & Cus. (Appeals) 2013 (293) E.L.T. 24 (All.)**

**Statement of facts:** The CESTAT rejected the appellant's application for condonation of delay in filing the appeal before CESTAT on the ground that the reasons given for filing the appeal beyond time were not convincing. The Counsel of the appellant filed his personal affidavit stating that the appeal had been filed with a delay due to his mistake.

**Decision:** The High Court held that the Tribunal ought to have taken a lenient view in this matter as the appellant was not going to gain anything by not filing the appeal and the reason for delay in filing appeal as given by the appellant was the mistake of its counsel who had also filed his personal affidavit.

**Case Law 21:**

**Texcellence Overseas v. Union of India 2013 (293) ELT 496 (Guj.)**

**Facts of the case:** The petitioner was granted a refund by way of order-in-original and the same was also upheld by the CESTAT.

However, a fresh show cause notice was issued on the ground that refund was erroneously granted. The show cause notice, this time was adjudicated in favour of the Department. The petitioner challenged this order before Commissioner (Appeals) five months after the said order was passed.

Therefore, the Commissioner (Appeals) and Tribunal (when the matter was brought before it) rejected the appeal on the grounds of limitation as the same was filed beyond three months from the date of the said order.

**Decision:** The High Court opined that since the total length of delay was very small and the case had extremely good ground on merits to sustain, its non-interference at that stage would cause gross injustice to the petitioner.

Thus, the High Court, by invoking its extraordinary jurisdiction, quashed the order which held that refund was erroneously granted. The High Court held that such powers are required to be exercised very sparingly and in extraordinary circumstances in appropriate cases, where otherwise the Court would fail in its duty if such powers are not invoked.

**Case Law 22:**

***CCE v RDC Concrete (India) Pvt. Ltd. 2011 (270) ELT 625 (SC)***

**Question:** Can re-appreciation of evidence by CESTAT be considered to be rectification of mistake apparent on record under section 35C(2) of the Central Excise Act, 1944?

**Statements of Fact:** the arguments not accepted at an earlier point of time were accepted by CESTAT while hearing the application for rectification of mistake and it arrived at a conclusion different from earlier one. (CA Final May 2014 RTP)

**Decision:** No. The Apex Court elucidated that re-appreciation of evidence on a debatable point cannot be said to be rectification of mistake apparent on record. The Supreme Court observed that arguments not accepted earlier during disposal of appeal cannot be accepted while hearing rectification of mistake application.

*Note*: As per section 35C(2) of the Central Excise Act, 1944, the Appellate Tribunal may amend the order passed by it earlier provided the parties to the appeal bring to the notice of the Tribunal for rectification of any mistakes apparent from the records within six months from the date of issuing such earlier order.

**Case Law 23:**

***CCE* v *Gujchem Distillers* 2011 (270) ELT 338 (Bom)**

**Is the CESTAT order disposing appeal on a totally new ground sustainable?**

**Decision:** No. The High Court explained that had the CESTAT not been satisfied with the approach of the adjudicating authority, it should have remanded the matter back to the adjudicating authority. However, it could not have assumed to itself the jurisdiction to decide the appeal on a ground which had not been urged before the lower authorities.

**Case Law 24:**

**Commissioner of Central Excise, Delhi v. Brew Force Machine Pvt. Ltd. 2015-TIOL-1873-HC-DEL-CX-LB,**

Hon'ble Delhi High Court was held that CESTAT, while dealing with an application for stay, has the power and jurisdiction to grant stay beyond 365 days, when the assessee is not responsible for delay in disposing of the appeal, under Section 35C(2A) of the Central Excise Act.

**Appeals to High Court**

**(Sec. 130 Customs Act, 1962.)**

1. An Appeal can be made to High Court within 180 days from the date of order of Tribunal received. High Courts are empowered to condone the delay in filing of appeals.
2. Case involves substantial question of law (i.e. Point relating to interpretation of statute, applicability of law etc,) will be taken up by High Court.
3. Appeal accompanied by a Fee of ₹200.

**Case Law 25:**

**CCE v. GEM PROPERTIES (P) LTD. 2010 (257) E.L.T. 222 (KAR):**

**Assessee claim:** Excise duty was paid on exempted goods and hence, entitled to the refund of excise duty wrongly paid by it. Also stated that company is incurring heavy losses therefore, refund not amounts to unjust enrichment.

**Department Contention:** Since, all the material sold by the assessee had been inclusive of excise duty. It was evident from the Chartered Accountant's certificate that the cost of the duty was included while computing the cost of production of the material. Therefore, refund of duty not allowed.

**Decision:** Refund not allowed. It would amount to unjust enrichment because all the materials sold by the assessee had been inclusive of excise duty.

**Case Law 26:**

**CCEx v. Superintending Engineer TNEB 2014 (300) E.L.T. 45 (Mad.)**

**Question: Does the principle of unjust enrichment apply to State Undertakings?**

**Facts of the case:**

1. The assessee (Basin Bridge Gas Turbine Power Station of the Tamil Nadu Electricity Board) filed refund claim on the ground that they were eligible for exemption of duty on Naphtha used in the production of electricity at their power plant. Consequently, they claimed refund of the duty paid by them for naphtha received by them during the relevant period.
2. The claim of the respondent was rejected on the ground that the respondent (assessee) had not proved that they had not passed on the duty liability to the consumers and when the electricity rate had remained the same and the exemption notification was not in force, the continuance of the same electricity rates even after availing of the benefits of exemption, would indicate that the assessee had passed on the duty liability to the ultimate consumer.

**Decision:** The High Court relied on the decision of the Constitution Bench of the Apex Court rendered in the case of *Mafatlal Industries Ltd.* v. *Union of India 1997 (89) E.L.T. 247 SC*.

The Supreme Court in the said case held as under "the doctrine of unjust enrichment is, however, inapplicable to the State".

State represents the people of the country. No one can speak of the people being unjustly enriched."

The High Court held that the concept of unjust enrichment is not applicable as far as State Undertakings are concerned and to the State. Judgment has been given in favour of the assesse and against the department.

**Case Law 27:**

**Astik Dyestuff Private Limited v. CCEx. & Cus. 2014 (34) S.T.R. 814 (Guj.)**

1. Whether sales commission services are eligible input services for availment of CENVAT credit?
2. If there is any conflict between the decision of the jurisdictional High Court and the CBEC circular, then which decision would be binding on the Department?
3. Also, if there is a contradiction between the decisions passed by jurisdiction High Court and another High Court, which decision will prevail?

**Decision:**

1. It was elaborated by the High Court that in the case of *Cadila Healthcare Limited,* the jurisdictional High Court did not allow CENVAT credit on sales commission services after interpreting the relevant provisions of law.
2. The High Court clarified that the decision of the jurisdictional High Court is binding to the Department rather than the Circular issued by the C.B.E. & C.
3. When there are two contrary decisions, one of jurisdictional High Court and another of the other High Court, then the decision of the jurisdictional High Court would be binding to the Department and not the decision of another High Court.

**Case Law 28:**

***Khanapur Taluka Co-op. Shipping Mills Ltd. v. CCEx. 2013 (292) E.L.T. 16 (Bom.):***

**Question:** In a case where an appeal against order-in-original of the adjudicating authority has been dismissed by the appellate authorities as time-barred, can a writ petition be filed to High Court against the order-in-original?

**Decision:** The High Court referred to the case of *Raj Chemicals v. UOI 2013 (287) ELT 145 (Bom.)* wherein it held that where the appeal filed against the order-in-original was dismissed as time-barred, the High Court in exercise of writ jurisdiction could neither direct the appellate authority to condone the delay nor interfere with the order passed by the adjudicating authority. Consequently, it refused to entertain the writ petition in the instant case.

**Case Law 29:**

**Habib Agro Industries v. CCEx. 2013 (291) E.L.T. 321 (Kar.):**

**Question:** Can delay in filing appeal to CESTAT for the reason that the person dealing with the case went on a foreign trip and on his return his mother expired, be condoned?

**Decision:** The High Court observed that there did not appear to be any deliberate latches or neglect on the part of the authorised representative to file the appeal. It held that the reason for delay in filing appeal to CESTAT, that the person dealing with the case went on a foreign trip and on his return his mother expired, could not be considered as unreasonable for condonation of delay.

Therefore, delay can be condoned.

**Case Law 30:**

**Rishiroop Polymers Pvt. Ltd. v. Designated Authority 2013 (294) E.L.T. 547 (Bom.)**

**Facts of the case:** The CESTAT upheld a notification issued by the Central Government imposing anti-dumping duty on certain products originating from specified countries pursuant to the findings recorded by the Designated Authority in a review of anti-dumping duty.

The assessee filed a writ petition under Article 226 of the Constitution to challenge the said order passed by the CESTAT under section 9C of the Customs Tariff Act, 1975.

The Department contended that an appeal, and not a writ petition, would lie against the order passed by the CESTAT.

**Decision:** The High Court, therefore, held that it would not be appropriate for it to exercise the jurisdiction under Article 226 of the Constitution, since an alternate remedy by way of an appeal was available in accordance with law.

The High Court thus, dismissed the petition leaving it open to the assessee to take recourse to the appellate remedy.

**Case Law 31:**

***Metal Weld Electrodes v. CESTAT 2014 (299) ELT 3 (Mad.)***

**Question:** Which remedy is available against a pre-deposit order (i.e. interim order) passed by CESTAT under section 35F of Central Excise Act, 1944/section 129E of Customs Act, 1962; is it an appeal to High Court under section 35G of Central Excise Act, 1944/section 130 of Customs Act, 1962 or a writ petition before High Court?

**Decision:** The Commissioner of Central Excise or the other party aggrieved may file an appeal to the High Court against "any order passed by the Appellate Tribunal" (other than valuation and rate of duty determination) Sec. 35G(2) of C.E.A. 1944.

Finally, the High Court held that the order passed by the CESTAT in terms of section 35F of the Central Excise Act, 1944 or section 129E of the Customs Act, 1962 is appealable in terms of section 35G of the Excise Act, 1944 or section 130 of the Customs Act, 1962.

**Case Law 32:**

**CCE v. Nahar Industrial Enterprises Ltd. 2010 (19) STR 166 (P & H)**

**Facts of the Case:** The assessee was engaged in the manufacture of sugar. The Central Government directed him to maintain buffer stock of free sale sugar for the specified period. In order to compensate the assessee, the Government of India extended buffer subsidy towards storage, interest and insurance charges for the said buffer stock of sugar.

Revenue issued a show cause notice to the assessee raising the demand of service tax alleging that amount received by the assessee as buffer subsidy was for storage and warehousing services.

**Decision:** The High Court noted that apparently, service tax could be levied only if service of storage and warehousing was provided. Nobody can provide service to himself. In the instant case, the assessee stored the goods owned by him.

After the expiry of storage period, he was free to sell them to the buyers of its own choice. He had stored goods in compliance with the directions of the Government of India issued under the Sugar Development Fund Act, 1982. He had received subsidy not on account of services rendered to Government of India, but had received compensation on account of loss of interest, cost of insurance etc. incurred on account of maintenance of stock. Hence, the High Court held the act of assessee could not be called as rendering of services.

**Appeals to Supreme Court of India (Section 130E Customs Act, 1962.)**

1. Order of CESTAT where it relates to question relating to rate of excise duty or value for the purpose of duty can make an appeal directly to the Supreme Court of India.
2. If High Court certifies it to be a fit case for appeal to Supreme Court, the aggrieved person can apply to the Supreme Court.
3. Appeal to the Supreme Court should be presented within 60 days from the date the order is communicated.
4. Once National Tax Tribunal (NTT) is made operational, then appeal against order of CESTAT can be made only to NTT.
5. **w.e.f. 6-8-2014,** determination of disputes relating to taxability or excisability of goods is covered under the term "determination of any question having a relation to rate of duty" and hence, appeal against Tribubal orders in such matters would lie before the Supreme Court.

**Case Law 33:**

**CCE v. Fact Paper Mills Private Limited 2014 (308) E.L.T. 442 (SC)**

**Can an appeal be filed before the Supreme Court against an order of the CESTAT relating to clandestine removal of manufactured goods and clandestine manufacture of goods?**

**Decision:** The Supreme Court held that the appeals relating to clandestine removal of manufactured goods and clandestine manufacture of goods are not maintainable before the Apex Court under section 35L of the Central Excise Act, 1944.

**Case Law 34:**

**Principal Commissioner of Central Excise & Customs, Daman Commissionerate v. Omnitex Industries (India) Ltd. (2016) 67 taxmann.com 122 (Bombay)**

**Facts of the case:** The appellant preferred appeal against the order of the CESTAT under section 35G of Central Excise Act within 180 days before the Gujarat HC. After admitting the appeal, it remained pending for 2192 days and after that the Gujarat HC held that since the manufacturing unit in the present case is located in Daman, the Gujarat HC does not have any territorial jurisdiction and hence dismissed the appeal.

**Department contention:** It was time barred appeal and condo-nation of delay is also be not filed.

**Decision:** the Bombay High court held that the entire period from the time of filing the appeal in Gujarat HC till its disposal can be fairly excluded for the computation of period of limitation.

Further, there is no requirement of filing condo-nation of delay, as the period from the date of receipt of order appealed against and the date of filing the appeal in Bombay HC after deducting the entire period (from the date of filing appeal in Gujarat HC to the date of its disposal), still does not exceed 180 days.

For computing the period of limitation- the time xperiod spent in pursuing remedy before wrong forum to be excluded.

Hence, only if the said period exceeds 180 days, the appellant will be required to file application-seeking condo-nation of delay.

Since, the assessee had wrongly filed appeal before Gujarat High Court instead of Bombay High Court, the period spent in pursuing remedy before Gujarat HC must be excluded while computation of time limit for filing appeal before Bombay HC.

**Case Law 35:**

***Neeraj* Jhanji v. CCE & Cus. 2014 (308) E.L.T. 3 (S.C.)**

**Facts of the Case:** In this case, the assessee filed a writ petition before the Delhi High Court *against the* order in original passed by the Commissioner of Customs of Kanpur. However, the jurisdictional High Court for the petitioner would have been Allahabad High Court. When the Revenue raised objection over the territorial jurisdiction of the High Court, the assessee withdrew the appeal from the Delhi High Court and filed the appeal with the Allahabad High Court with the application for condonation of delay. The Allahabad High Court, however, dismissed the application for condonation of delay and also dismissed the appeal as time barred. Then, the assessee filed a special leave petition with the Supreme Court.

**Decision:** The Supreme Court observed that the very filing of writ petition by the petitioner in Delhi High Court against the order in original passed by the Commissioner of Customs, Kanpur indicated that the petitioner had taken chance in approaching the High Court at Delhi which had no territorial jurisdiction in the matter. The filing of the writ petition before Delhi High Court was not at all bona fide.

**Appeals to the Settlement Commission (Section 127B Customs Act, 1962):**

The Settlement Commission called as Customs, Central Excise and Service Tax Settlement Commission w.e.f. 6-8-2014:

1. The additional amount accepted by applicant as payable shall be more than ₹ 3 lakhs.
2. Application can be made only when a case is pending before central excise/customs officers.

   **w.e.f. 14.05.2015, All proceedings referred back to the adjudicating authority for a fresh adjudication and not just the proceedings referred back in any appeal or revision ineligible for settlement (amendment has been made in the Customs Act, 1962 in section 127A(b).**

   It means when any proceeding is referred back by any Court, Appellate Tribunal or any other authority, to the adjudicating authority for a fresh adjudication or decision, then such proceeding shall not be deemed to be a proceeding pending.
3. Cases pending in court or tribunal cannot be taken up.
4. Cases involving classification or valuation cannot be taken up by settlement commission

5. If goods or books of account or other documents have been seized, application can be made after expiry of 180 days from the date of seizure. Application for settlement can be made even if excisable goods or documents are seized, without waiting for 180 days (w.e.f. 6-8-2014).
6. Application to settlement commission should be filed in Form SC(C)-1 in case of Customs disputes.
7. The Settlement Commission can accept application for settlement, even if excise returns were not filed, if there were sufficient reasons for not filing the return [second proviso to section 32E of Central Excise Act, inserted vide Finance (No.2) Act, 2014 w.e.f. 6-8-2014].

**Appeals to Settlement Commission (Section 127B Customs Act, 1962.)**

**Step 1:** Applicant should file an application by disclosing true and full information in Form SC(E)-1 or Form SC(C)

**Step 2**: Application should be accompanied by a fee of ₹ 1,000 (by way of GAR-7 challan only)

**Step 3:** Settlement Commission will issue NOTICE to the applicant within 7 days from the date of receipt of application.

**Step 4:** Thereafter, based on the applicant's reply, pass orders of admission or rejection within 14 days of notice. Hence, prescribed period for issue of orders is 7 days + 14 days = 21 days.

**Step 5:** Copy of orders under section 32F will be sent to applicant and jurisdictional Commissioner Central Excise (127C in case of Customs).

**Step 6:** Within 7 days of admission orders, the Settlement Commission shall call for the report of the jurisdictional Commissioner.

**Step 7:** The Commissioner should send report within 30 days. Settlement Commission will proceed further, even in the absence of any report from the jurisdictional Commissioner.

**Step 8:** The Settlement Commission can order Commissioner (Investigation) to make further enquiries and submit his report within 90 days. Settlement Commission will proceed further, even in the absence of any report from the Commissioner (Investigation).

**Step 9:** The Settlement Commission after hearing must pass order within 9 months (further 3 months allowed) from last day of month in which application was made

**Step 10:** If final order not passed within 9 months or 12 months, as the case may be, the case will go back to adjudicating authority.

**Powers of Settlement Commission to grant immunity from prosecution and penalty:**

The Settlement Commission can grant immunity from prosecution for any offence under the Act and either wholly or in part from the imposition of penalty if it is satisfied that the applicant has made full and true disclosure and co-operated with the Commission.

If the payment is not made as per the settlement order or any particulars are concealed or any false evidence is given, the immunity can be withdrawn.

If prosecution has already been launched before submission of application for settlement, the immunity against such prosecution cannot be granted.

**Case Law 36:**

***CCus.v. Ashok Kumar Jain 2013 (292) ELT 32 (Del.)***

**Department contended:** The Settlement Commission lacks the jurisdiction to entertain the baggage cases.

**Decision:** The High Court opined that the provisions that conferred jurisdiction on the

Settlement Commission (Section 127B) cannot be construed as narrowly as it sought to be urged by the Revenue. A plain reading of the provisions of sections 127A and 127B reveals that there is no bar/express or implied on the Settlement Commission - in respect of entertaining applications by the passengers which brought in goods through their baggage.

Therefore, Settlement Commission has jurisdiction over baggage cases.

**Case Law 37:**

***Saurashtra Cement Ltd. v. CCus. 2013 (292) E.L.T. 486 (Guj.)***

**Question:** Is judicial review of the order of the Settlement Commission by the High Court or Supreme Court under writ petition/special leave petition, permissible?

**Decision:** The High Court noted that although the decision of Settlement Commission is final, finality clause would not exclude the jurisdiction of the High Court under Article 226 of the Constitution (writ petition to a High Court) or that of the Supreme Court under Articles 32 or 136 of the Constitution (writ petition or special leave petition to Supreme Court).

The Court would ordinarily interfere if the Settlement Commission has acted without jurisdiction vested in it or its decision is wholly arbitrary or perverse or mala fide or is against the principles of natural justice or when such decision is ultra vires the Act or the same is based on irrelevant considerations.

The Court, however, pronounced that the scope of court's inquiry against the decision of the Settlement Commission is very narrow, i.e. judicial review is concerned with the decision-making process and not with the decision of the Settlement Commission.

**Case Law 38:**

**Additional Commissioner of Customs v. Shri Ram Niwas Verma [W.P. (C) No. 7363/2014 & CM 17221/ 20 L4]:**

**Decision:** Hon'ble Delhi High court held that Settlement Commission has no jurisdiction to decide cases in relation to smuggling of the goods specified under section 123 of the Customs Act, 1962.

In view of the said order of the Delhi High Court, it has been clarified that Settlement Commission has no jurisdiction to entertain the matters in relation to the goods specified under section 123 of the Customs Act, 1962 which include gold ***[F. No. 275/46/2015 CX. 8A dated 01.10.2015].***

## 12.7 AUTHORITY FOR ADVANCE RULING

Sec. 28E Customs Act, 1962

It means knowing the law in advance.

Application for Advance Ruling can be made in respect of following Questions:

1. Classification of goods or services
2. Applicable of any exemption notification
3. Determination of Assessable value
4. Determination of origin of goods in case of Customs
5. Determination of liability to pay duties of excise on any goods

Application can be rejected in the following cases:

(a) If the question rose is already pending before an officer of Excise or Tribunal or any Court.

(b) If the matter has already been decided by CESTAT or any Court.

- Application can be withdrawn within 30 days from the date of filing the application.
- Authority for Advance Ruling once accepted the application can decide the case within 90 days from receipt of application.

**On whom, is the advance ruling pronounced by the Advance Ruling Authority under service tax binding?**

**Answer**: Section 96E of the Finance Act, 1994, an advance ruling pronounced by the Authority under section 96D shall be binding only-

(a) on the applicant who had sought it; in respect of any matter referred to in sub-section (2) of section 96C;

(b) on the Commissioner, and the Central Excise authorities subordinate to him, in respect of the applicant.

Such advance ruling shall be binding as aforesaid unless there is a change in law or facts on the basis of which the advance ruling has been pronounced.

***Example 8:***

***Basant, a non-resident intends to provide a taxable service under a joint venture in collaboration with a non-resident, but has entertained some doubts about its valuation.***

***Aarohi, Basant's friend, has obtained an 'Advance Ruling' from the Authority for Advance Rulings on an identical point. Basant proposes to follow the same ruling in his case. Basant has sought your advice as his consultant whether he could follow the ruling given in the case of Aarohi. Explain with reasons.***

***Answer:***

***An advance ruling is binding only on the applicant who has sought it. In the given problem, in view of the aforesaid provision, Basant cannot make use of the advance ruling pronounced in the identical case of his friend, Aarohi. Basant should obtain a ruling from the Authority of Advance Ruling by making an application along with a fee of ₹ 2,500.***

An application for advance ruling can be made by any of the following if they propose to undertake any business activity in India.

1. A Non-resident setting up a joint venture in India in collaboration with a non-resident or a resident.
2. A wholly owned subsidiary Indian company, of which the holding company is a foreign company, such holding company proposes to undertake any business activity in India.
3. A joint venture in India in which at least one of the participants, partners, or equity share holders is a non-resident having substantial interest in the joint venture.
4. Public Sector Undertakings (PSUs)
5. A PUBLIC LIMITED (N.T.67/2011 DT 22.9.2011)
6. Any existing producer or manufacturer may also seek advance ruling in relation to any new business of production or manufacture proposed to be undertaken by him (w.e.f. 10-5-2013)
7. Any existing importer or exporter may also seek advance ruling in relation to any new business of import or export proposed to be undertaken by him (w.e.f. 10-5-2013)
8. A resident private limited company can make application for Advance w.e.f. 11-7-2014.
9. w.e.f. 1-3-2015, A resident firm (inlcudes LLP; LLP which has no company as its partner; Sole Proprietorship or One Person Company).
10. As may be specified by the Central Government of India by issuing a notification.

**Note:** w.e.f. 10-5-2013, the admissibility of the credit of service tax paid or deemed to have been paid on input services used in the manufacture of excisable goods as well.[ Section 23C(2)(e)]

***Example 9:***

***Mr. Q owns a sole proprietorship firm, 'Safe and Super Importers'. Mr. Q has never been to any place outside India. The firm proposes to import a product. Mr. Q is not sure of the correct classification of the product under Customs Tariff. His Tax Consultant has informed him that the said classification issue has been decided by the CESTAT in a different case. However, Mr. Q does not want to take any chances and is desirous of obtaining a ruling from the Authority for Advance Ruling under section 28H of the Customs Act, 1962 with respect to the classification of the product to be imported by it.***

***In the light of recent amendments, state whether Safe and Super Importers can seek advance ruling in the present case under the Customs Act, 1962?***

***Answer:***

***With effect from 01.03.2015, a resident firm can also apply for AAR. The sole proprietorship will have to satisfy the test of residency as per section 2(42) of the Income Tax Act, 1961 to be eligible to apply for an advance ruling.***

***Therefore, Safe and Super Importers, being a resident proprietorship firm, is an eligible applicant for advance ruling.***

***Since in the given case, question intended to be raised by Safe and Super Importers is already decided by the CESTAT, advance ruling cannot be sought by it.***