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The Institute of Cost Accountants of India

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Section B
Customs Law

Study Note - 1

CUSTOMS LAW - BASIC CONCEPTS

This Study Note includes

1.1 Introduction
1.2 Definitions
1.3 Circumstances of Levy of Customs Duties
1.4 Duty Liability in Certain Special Circumstances
1.5 Circumstances under which No Duty will be Levied

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.

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 (CBE&C),
- 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) **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.

Shipping bill in case of goods exported in a vessel or air craft

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

(5) 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.

(6) 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).

Vessel	Aircraft	Vehicle

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

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

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.

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

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

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

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.

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

(11) **Foreign Going Vessel or Aircraft:** As per section 2(21) of the Customs Act, the foreign going vessel or aircraft from any port or airport in India to any port or airport outside India,

The following are also included in the definition:

(i) A foreign naval vessel 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.

(12) **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

any other kind of movable property

Case Law: 1

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

Facts of the Case: 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.

Decision: 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.

(13) **Import Report:** As per Section 2(24) of the Customs Act, 1962, the person-in-charge of a vehicle carrying imported goods; deliver to the proper officer an import report within twelve hours after its arrival in the customs station, in the prescribed form.

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).

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 Line/ 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)

(14) 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.

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.

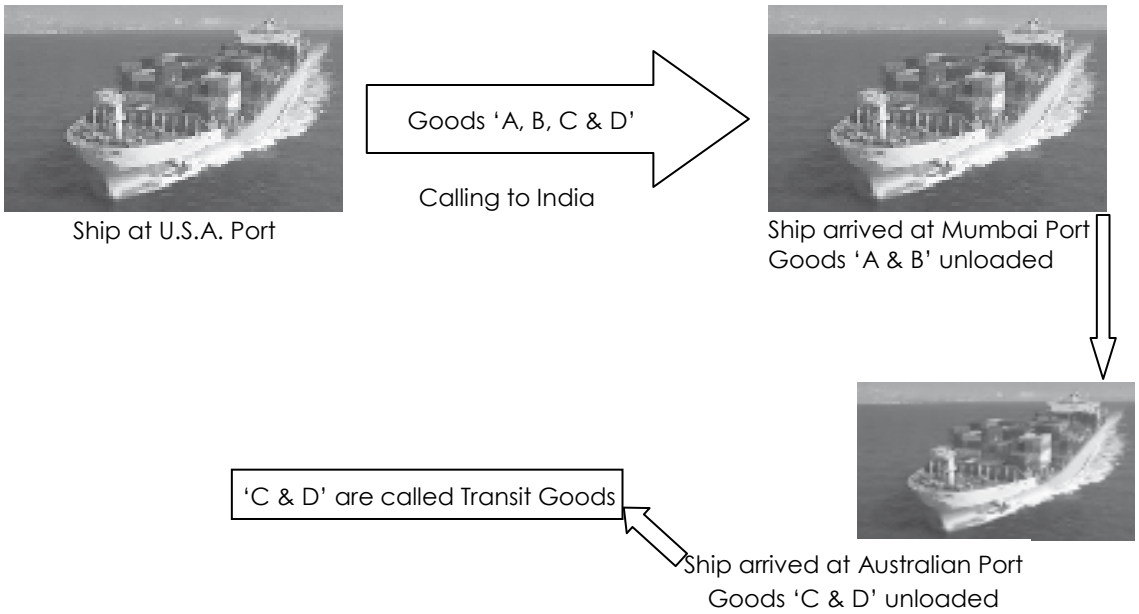
The Finance Act, 2013 has expanded the scope of clause (n) to include designs and geographical indications so as to provide for protection of these legal rights also. Consequently, Central Government can now prohibit the import/export of specified goods for protection of designs and geographical indications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

(15) 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]

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

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.



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

Subject to the provisions of section 11 (i.e. power to prohibit imprtation 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.

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

Example: 1

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.

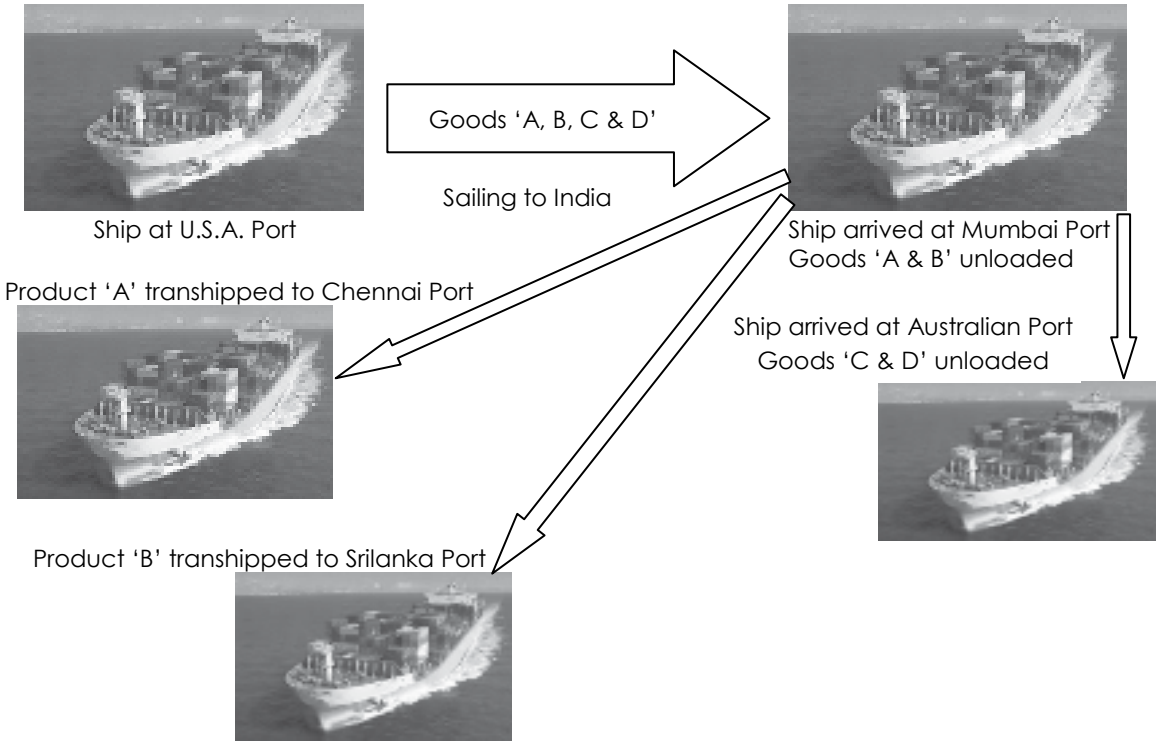
Find the imported goods, Transhipment goods and transit goods?

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.



(18) 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

UOI v. V M Salgaoncar AIR 1998 SC1367:99 ELT 3 (SC).

Facts of the case: 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)

Decision: 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.

(19) Person-in-charge:

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

(a) Vessel - Master

(b) Aircraft - Commander or Pilot in Charge

(c) Train - Conductor or Guard

(d) Vehicle - Driver

(e) Other Conveyance - Person in Charge

(20) High Seas:

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

(21) Exclusive Economic Zone:

Exclusive Economic Zone extends to 200 nautical miles from the base line.

Note: one nautical mile = 1.1515miles or 1.853kms

(22) Domestic Tariff Area (D.T.A):

Means the whole of India (including the territorial waters and continental shelf) but does not include the areas of the Special Economic Zones & 100% Export Oriented Units (EOUs)

Case Law: 3

Tirupati Udyog Ltd. v. UOI 2011 (272) E.L.T. 209 (A.P.)

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

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

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

Case Law: 4

Aban Llyod Chilies Offshore Ltd. v UOI (2008) 227 ELT 24 (SC).

Goods imported by the assessee for consumption on oil rigs which are situated in Continental Shelf/Exclusive Economic Zones of India.

Decision: E E Z 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.

Case Law: 5

CCus. (Prev.), Mumbai v M. Ambalal & Co. 2010 (260) E.L.T. 487 (SC)

Point of dispute: Smuggled goods can be treated par with imported goods for the purpose of granting the benefit of the exemption notification?

Imported goods:	Smuggled 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.	As per Section 2(39) of the Customs Act, Smuggled goods means any goods which are liable for confiscation u/s 111 or u/s 113 of the Customs Act.
Decision: The Apex court held that the smuggled goods could not be considered as 'imported goods' for the purpose of benefit of the exemption notification	

1.3 CIRCUMSTANCES OF LEVY OF CUSTOMS DUTIES

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.

(1) Taxable event for imported goods:

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

(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 of presentation of bill of entry – is not a taxable event

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

Example : 2

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%*

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 later)

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 x ₹ 58)

Basic Customs Duty = ₹ 69,600 (i.e. ₹ 5,80,000 x 12%)

10% Social Welfare Surcharge = ₹ 6,960 (i.e. ₹ 69,600 x 10%)

IGST (Assume 18%) 1,18,181 (i.e., 18% on (580000 + 69600 + 6960))

Total Customs Duty including IGST = ₹ 1,94,741/-

(2) Taxable event for warehoused goods:

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.

w.e.f. 6-8-2014, Section 15(1) of the Customs Act, 1962 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 (out of box) 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:

Example: 3

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%*

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 x ₹ 55)

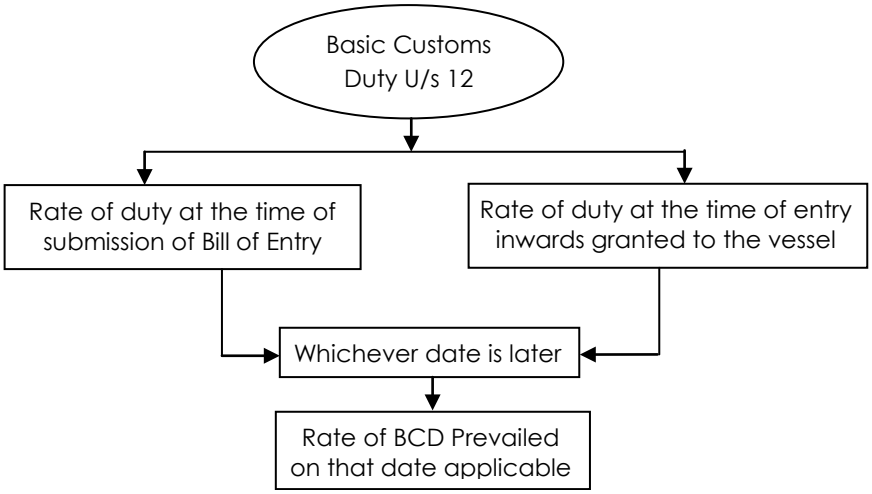
Basic Customs Duty = ₹ 66,000 (i.e. ₹ 5,50,000 x 12%)

10% Social Welfare Surcharge = ₹ 6,600 (i.e. ₹ 66,000 x 10%)

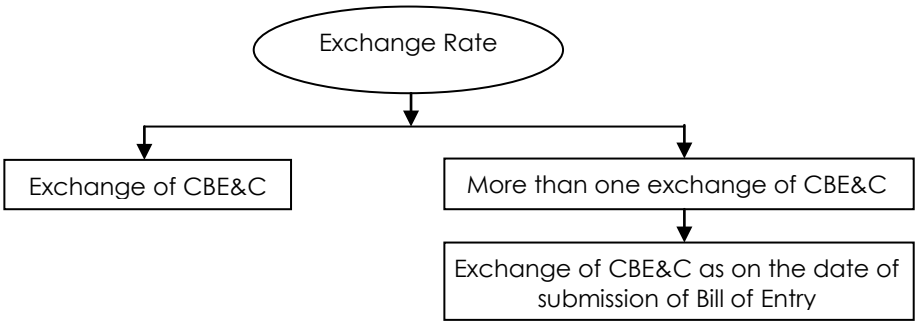
Total Customs Duty (excluding IGST) = ₹ 72,600/-

Particulars	Relevant date
Goods entered for home consumption under section 46	Date of presentation of bill of entry OR Date of entry inwards of the vessel/arrival of the aircraft or (vehicle w.e.f. 6-8-2014) 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

Basic Customs Duty (BCD) on imported goods



Exchange rate for imported goods



(3) 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 and loading of the goods for exportation took place under Section 51 of the Customs Act, 1962.

Rate of foreign exchange in case of exports:

In case of exports, rate of exchange of the CBIC 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.

Assessable Value for exported goods:

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.

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 country to importer country.

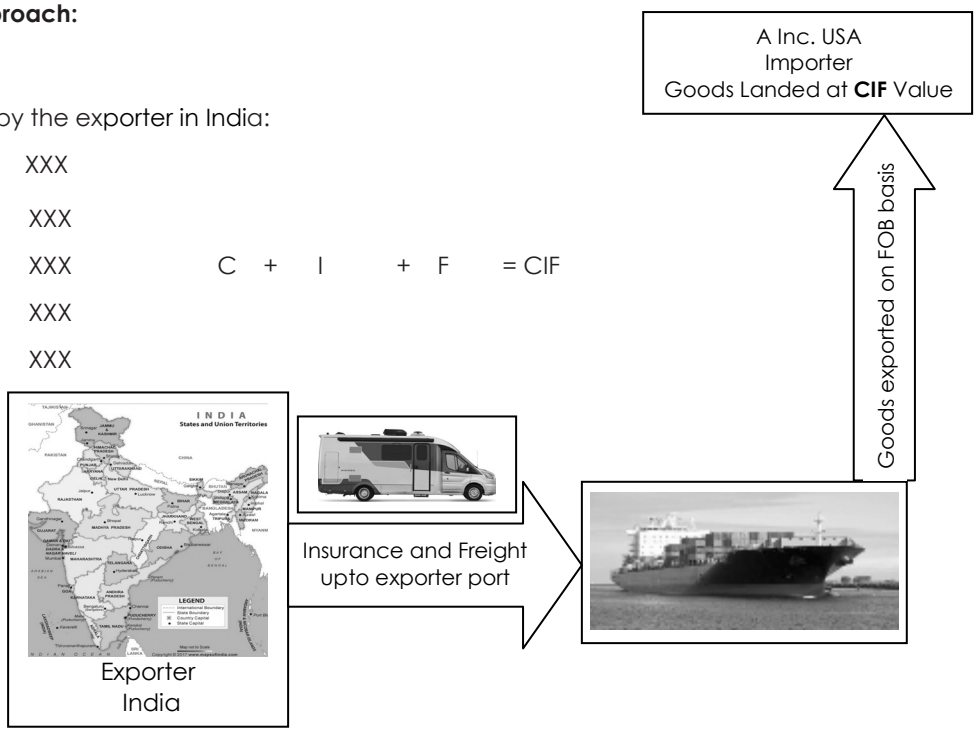
Important point: As per our Foreign Trade Policy (2015-2020) all imports into India are measured in terms of CIF value whereas exports from India are measured in terms of FOB value.

Simplified approach:

Cost incurred by the exporter in India:

Raw Material	XXX
OH	XXX
Freight	XXX
Insurance	XXX
Free on Board	XXX

C + I + F = CIF



Example: 4

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

Duty	Rate of Exchange	Rate of Export
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 x ₹65
Customs Duty	5,20,000	₹65 lakhs x 8%

Note: Export duty does not carry Social Welfare Surcharge.

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

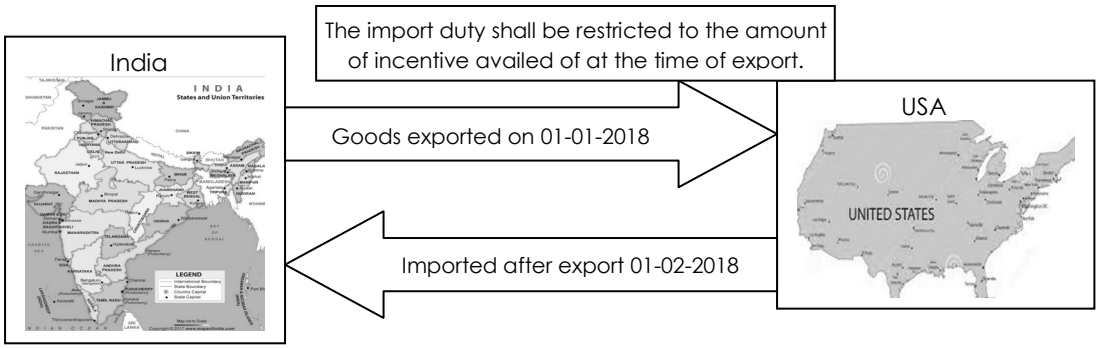
Rate of duty for export is the date on which entry outward granted for export and loading of goods taken place.

1.4 DUTY LIABILITY IN CERTAIN SPECIAL CIRCUMSTANCES

Duty liability in certain special circumstances:

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

1. Goods are imported into India after exportation there from:



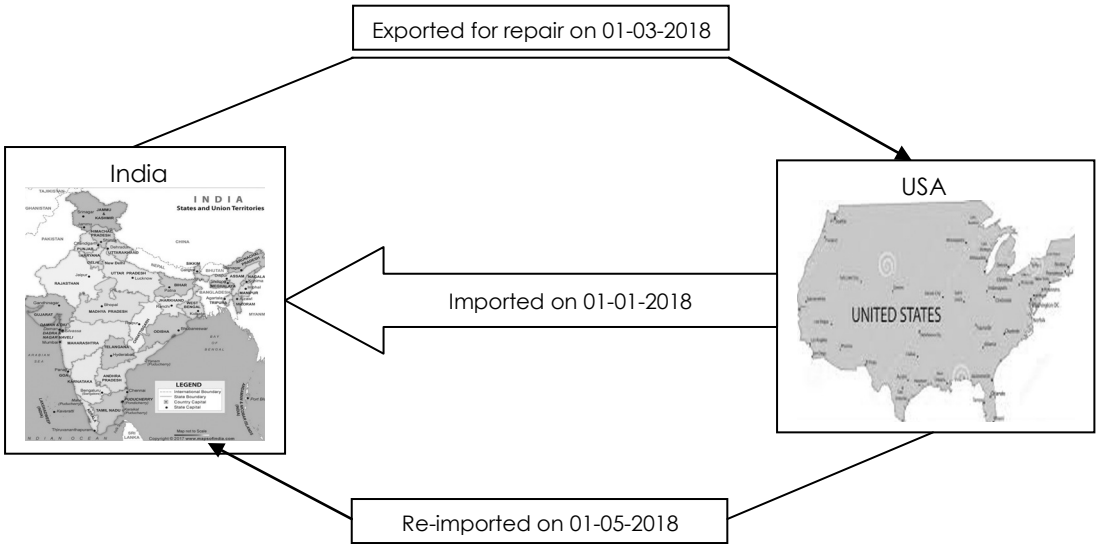
2. Imported goods have been originally exported to the overseas supplier for repairs:

No duty at the time of re-import will be levied:

If re-imported within 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 : 5

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 : 6

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.

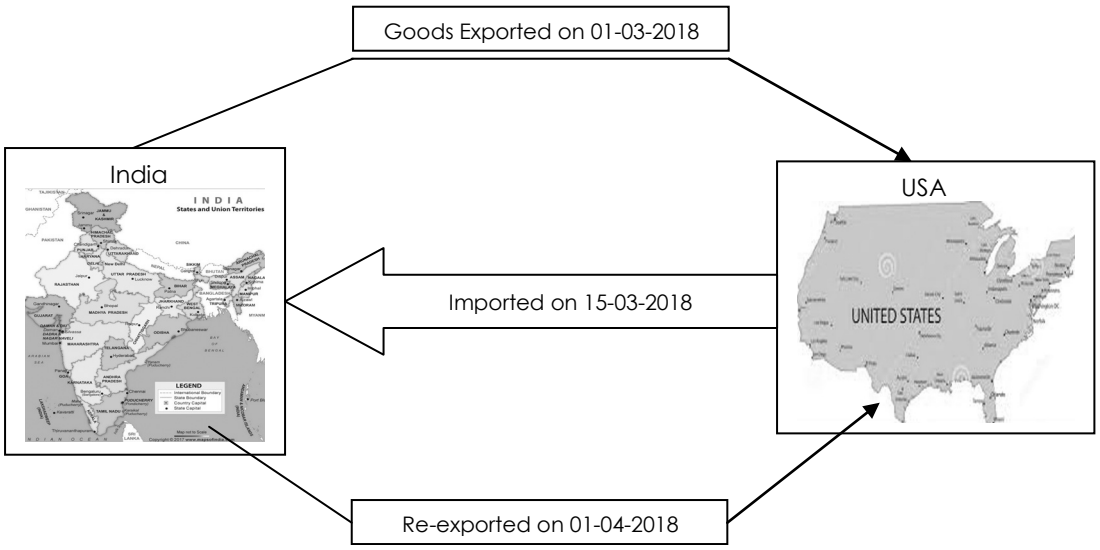
Answer:

Particulars	₹
Value of goods re-imported after exports [₹ 9 lakh (including cost of materials) + ₹3 lakh]	***12,00,000***
Basic customs duty @ 10%	***1,20,000***
Social Welfare Surcharge @ 10% on BCD	***12,000***
Balance (i.e. Transaction value)	***13,32,000***
Add: IGST @12% on 13,32,000	***1,59,840***
Landed Value	***14,91,840***
Total Customs Duty (including IGST)	***2,91,840***

3. Exported goods may come back for repairs and re-export:

No duty at the time of re-import will be levied:

1. 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.
2. The time limit for re-export is 6 months from the date of import (extended up to 12 months).
3. The importer at the time of importation executes a Bond.
4. 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.



1.5 CIRCUMSTANCES UNDER WHICH NO DUTY WILL BE LEVIED

Pilferage: Section 13 of the Customs Act, 1962

No duty is payable if the pilferage found before goods cleared from customs:

- Importer does not have to prove pilferage,
- If the duty is paid before finding the pilferage, refund can be claimed

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.

Conditions to be satisfied for exemption from duty:

(i) The imported goods should have been pilfered.

(ii) The pilferage should have occurred after the goods are unloaded, but before the proper officer makes the order of clearance for home consumption or for deposit into warehouse.

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

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: 7

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 : 8

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.

All goods, derelict, jetsam, flotsam and wreck brought or coming into India, shall be dealt with as if they were imported into India [Section 21]:

Thus, even though such goods had not been actually imported, they would be liable to import duty unless such goods are entitled to be duty free under this Act.

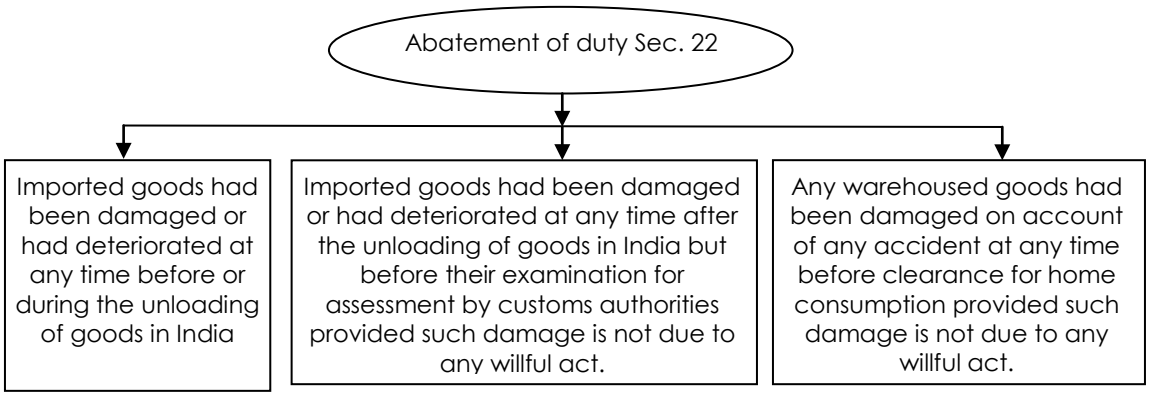
Derelict means vessel or cargo which is abandoned in sea without any hope of recovering it.

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

Abatement of duty on damaged goods or deteriorated goods, [Sec. 22]:



Amount of duty chargeable after abatement

$$\text{Amount of duty chargeable after abatement} = \begin{pmatrix}\text{Duty on Goods before}\\ \text{damage / deterioration}\end{pmatrix} - \left[\frac{\text{Value of damage / deteriorated goods}}{\text{Value of goods before damage / deterioration}} \times \begin{pmatrix}\text{Duty on Goods before}\\ \text{damage / deterioration}\end{pmatrix}\right]$$

Valuation of the damaged or deteriorated goods:

The value shall be: -

(a) Value ascertained by the proper officer

Or

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

Example: 9

X Ltd imported goods from USA for ₹ 50,000. After damage these goods valued by customs officer is ₹ 10,000. Total Customs duty on the value of imported goods levied ₹ 6,180. Imported goods had been damaged after the unloading of goods in India but before their examination for assessment by customs authorities, and such damage is not due to any willful act of X Ltd. Find total duty payable by X Ltd.

Answer:

Customs Duty = ₹ 1,236

Working Note:

6,180 – [(40,000/50,000) * 6,180] = ₹ 1,236

Abatement of duty is ₹ 4,944

Remission of duty on goods Lost or destruction of goods, [Section 23]:

- Section 23 applies only when there is no pilferage under section 13
- Burden of proof is on importer to prove loss or destruction under section 23
- Sec. 23 applicable in case of Loss or destruction (including leakage if any) must be due to fire, natural calamity (like earthquake or bad weather)
- Loss or destruction should be found before clearance of goods from the customs
- Section 23 is applicable even for the goods warehoused.

Analysis of Section 23:

(a) This section comes into play in case of loss/destruction of imported goods at any time before their clearance for home consumption.

(b) The remission of duty is permissible only in the case of total loss of goods. This implies that the loss is forever and beyond recovery. The loss referred to in this section is generally due to natural causes like fire, flood, etc. The loss of goods may be at the warehouse also.

(c) Since section 23(1) is subject to the provisions of section 13, in case the goods have been pilfered after they have been unloaded but before order for clearance for home consumption or deposit in a warehouse, section 13 would apply and the importer would not be liable to pay the duty.

No duty in case of relinquishment of the title to the goods [Section 23(2)]

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

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

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.

Study Note - 2

TYPES OF DUTIES

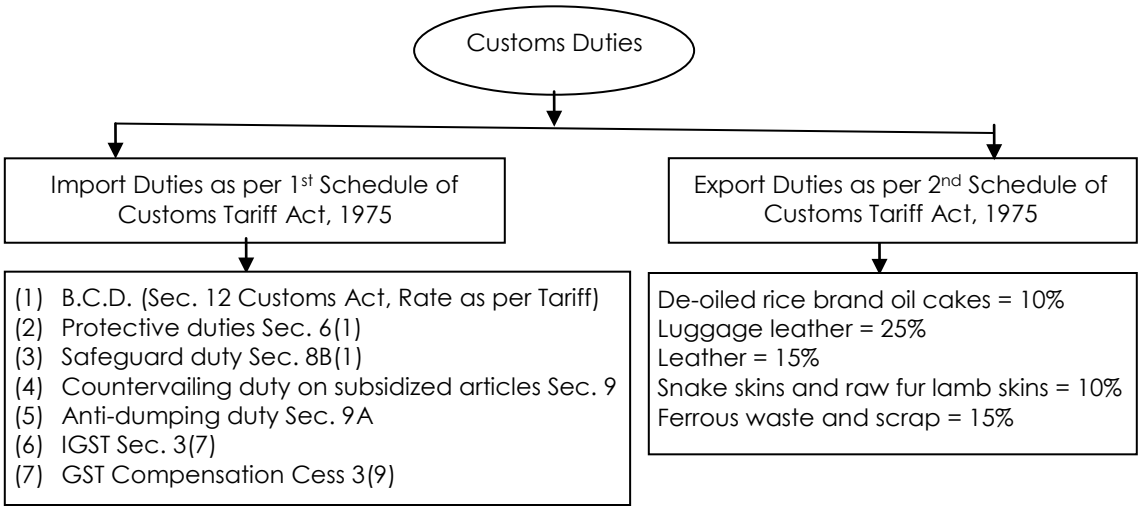
This Study Note includes

2.1 Introduction

2.2 Types of Duties

2.3 Exemption from Customs Duty

2.1 INTRODUCTION



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.

2.2 TYPES OF DUTIES

(1) Basic Customs Duty (As per Sec 12 of the Customs Act, 1962):

Goods imported into India are chargeable to basic customs duty (BCD) under Customs Act, 1962. The rates of BCD are indicated in I Schedule (for Imports) of Customs Tariff Act, 1975.

Generally, BCD is levied at standard rate of duty but if certain conditions are satisfied (below), the importer can avail the benefit of preferential rate of duty on imported goods.

Conditions for availing the benefit of preferential rate of duty:

- Specific claim for preferential rate must be made by the importer,
- Import must be from preferential area as notified by the Central Government,
- The goods should be produced/manufactured in such preferential area.

(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 1st July, 2017. It may also be noted that IGST would also be levied on cargo which has arrived prior to 1st July but a bill of entry is filed on or after 1st July 2017.

Similarly ex-bond bill of entry filed on or after 1st July 2017 would attract IGST, 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 IGST as applicable .

Example: 1

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

(1) BCD - 10%

(2) IGST - 12%

(3) Social Welfare Surcharge – 10%

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

(a) BCD = ₹ 10 [10% of A.V.]

(b) Social Welfare Surcharge - ₹ 1 [10% of (a)]

(c) IGST - ₹ 13.32 [A.V. +(a) +(b)]x12%

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.

(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.

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.

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%

Example : 2

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

(1) BCD - 10%

(2) IGST - 12%

(3) Social Welfare Surcharge – 10%

(4) Compensation cess - 10%

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

(a) BCD = ₹ 10 [10% of A.V.]

(b) Social Welfare Surcharge = 1 [10% of (a)]

(c) IGST - ₹13.32 [A.V. +(a)+(b)]x12%

(e) Compensation cess - ₹ 11.10 [A.V. +(a)+(b)]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 : 3

X Transport company imported Rolls Royce car for the purpose of providing output services by way of transportation 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:

Particulars	*Calculation*	*Amount(INR)*
Cost of Vehicle-(A)		*300,00,000*
Custom duty-(B)	*10%*	*30,00,000*
Social Welfare Surcharge - (C)	*10% on (B)*	*3,00,000*
Total custom duty payable- (D)	*(B+C)*	*33,00,000*
Total Cost after Custom duty-(E)	*(A+D)*	*333,00,000*
IGST-(F)	*28% on (E)*	*93,24,000*
Compensation cess-(G)	*20% on (E)*	*66,60,000*
Total cost-(H)	*(E+F+G)*	*492,84,000*

- **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**
- **Total tax payable by X Transport Company after adjusting IGST ITC is INR 26,76,000 (120,00,000-93,24,000)**

(4) Protective Duties:

A duty imposed on imported goods for the protection of the interests of any industry established in India on the recommendation of Tariff Commission. It is effective only and inclusive of the date, if any, specified in the First Schedule of the Tariff.

(5) Safeguard Duty:

Safeguard duty is product specific. 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 years.

Safeguard duty shall not apply to articles imported by a 100% EOU undertaking or a unit in a FTZ or in a SEZ unless specifically made applicable.

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.

Question:

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 : 4

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 (incuding developing country) is ₹ 2,500 crores.

Note: Safteguard 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 : 5

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:

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

Note: Safteguard duty 30%.

Answer:

Importer	Country of Import	₹ in Crores	% of imports
X Ltd.	Developing Courty	70	2.8%
Y Ltd.	Developing Courty	72	2.88%
Z Ltd.	Developing Courty	52	2.08%
A Ltd.	Developing Courty	50	2%
Others	Developed Courty	2,256	
	Total	2,500	9.76%

Safeguard duty is as follows:

Importer		₹ in Crores	% of imports
X Ltd.		21	70 × 30%
Y Ltd.		21.60	72 × 30%
Z Ltd.		15.60	52 × 30%
A Ltd.		15	50 × 30%

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

Example : 6

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

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

Importer	Country of Import	₹ in Crores
X Ltd.	Developing Courty	70
Y Ltd.	Developing Courty	82
Z Ltd.	Developing Courty	52
A Ltd.	Developing Courty	50
Others	Developed Courty	2,246
	Total	2,500

Note: Safteguard duty 30%.

Answer:

Importer	Country of Import	₹ in Crores	% of imports	
X Ltd.	Developing Courty	70	2.8%	
Y Ltd.	Developing Courty	72		3.28%
Z Ltd.	Developing Courty	52	2.08%	
A Ltd.	Developing Courty	50	2%	
Others	Developed Courty	2,256		
	Total	2,500	6.88%	3.28%

Safeguard duty is as follows:

Importer		₹ in Crores	% of imports
X Ltd.		NIL	70 × 30%
Y Ltd.		24.60	82 × 30%
Z Ltd.		NIL	52 × 30%
A Ltd.		NIL	50 × 30%

Articles originating from more than one developing countries (each with less than 3% import share), then the aggregate of imports from all such countreis 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:

Duty levied if the articles are imported into India by getting the subsidies from other country.

The amount of countervailing duty shall not exceed the amount of subsidy paid.

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.

It has been subsumed under GST.

(7) Anti-dumping duty:

It is imposed on imports of a particular country.

Where any articles exported by an exporter to India at less than its normal value, then, upon the importation of such article into India, the Central Govt., may impose an anti-dumping duty.

Example: 7

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 applicable as per the Finance Act, 2018.

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

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

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

Answer:

Statement showing land value of imported goods and customs duties:

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

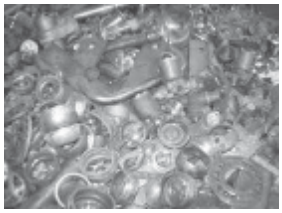
Total customs duty payable is ₹ 8,52,000 (i.e. 1,98,000 + 4,02,000 + 2,52,000)

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

(8) Export Duties as per 2nd Schedule of Customs Tariff Act, 1975

Export duty @ 10% on De Oiled Rice Bran (Grade 1) – used for Poultry/Cattle/Fish feed manufacturing	Export duty @ 25% on luggage leather	Export duty 15% Ferrous waste and scrap



Export duty @ 15% on Leather	Export duty 10% on Snake skins	Export duty 10% on raw fur lamb skins

2.3 EXEMPTION FROM CUSTOMS DUTY

Exemption from Customs Duties

- **General Exemption**
  - By notification in the official Gazette, exempt generally either absolutely or subject to such conditions as may be specified in the notification, goods of any specified description from the whole or any part of duty of customs leviable thereon.
- **Special Exemption**
  - By special order in each case, exempt from payment of duty, any goods on which duty is leviable only under circumstances of an exceptional nature to be stated in such order.

Note: No duty shall be collected if the amount of duty leviable is equal to, or less than ₹ 100.

Study Note - 3

VALUATION UNDER CUSTOMS

This Study Note includes

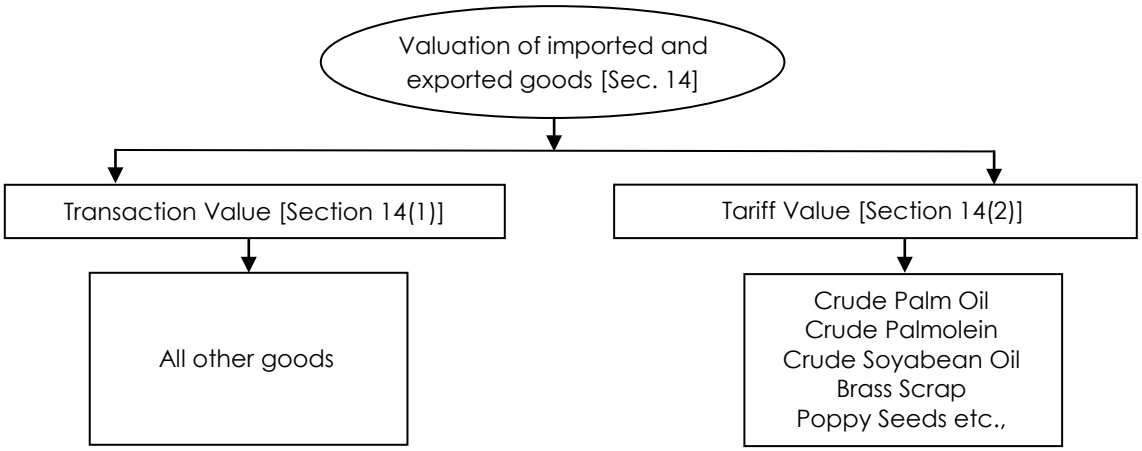
3.1 Introduction

3.2 Valuation of Imported Goods

3.3 Valuation of Export Goods

3.1 INTRODUCTION

Valuation of imported and exported goods [Sec.14]



3.2 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.,

Rule 3: Transaction Value of import goods read with Rule 10:

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

1. Seller should not have any control on the imported goods.
2. The sale price must be sole consideration
3. Sale proceeds should not be shared with exporter by the importer after sale
4. The buyer and seller should not be related.

Case Law: 1

Commissioner of Cus., Vishakhapatnam v. Aggarwal Industries Ltd. 2011 E.L.T. 641 (S.C.):

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.

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 up to 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)]	xxxx
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 [Rule 10(2)]	xxxx
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) Assessable Value of Imported Goods=(Free On Board (FOB) + Insurance + Freight)

(2) Service charges paid to canalizing agent: It is includible in the assessable value of imported goods [Hyderabad Industries Ltd. v. UOI 2000 (115) ELT 593 (SC)].

Who is a canalizing agent: He is not the agent of the importer nor does he represent the importer abroad. He use to buy goods from foreign seller and subsequently sells to Indian importer.

(3) Inspection/Certification Charges: If contract specify for certification by the independent agency for imported goods then charges incurred on such inspection are includible in assessable value [Bombay Dyeing & Mfg. v. CC 1997 (90) ELT 276 (SC)].

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.

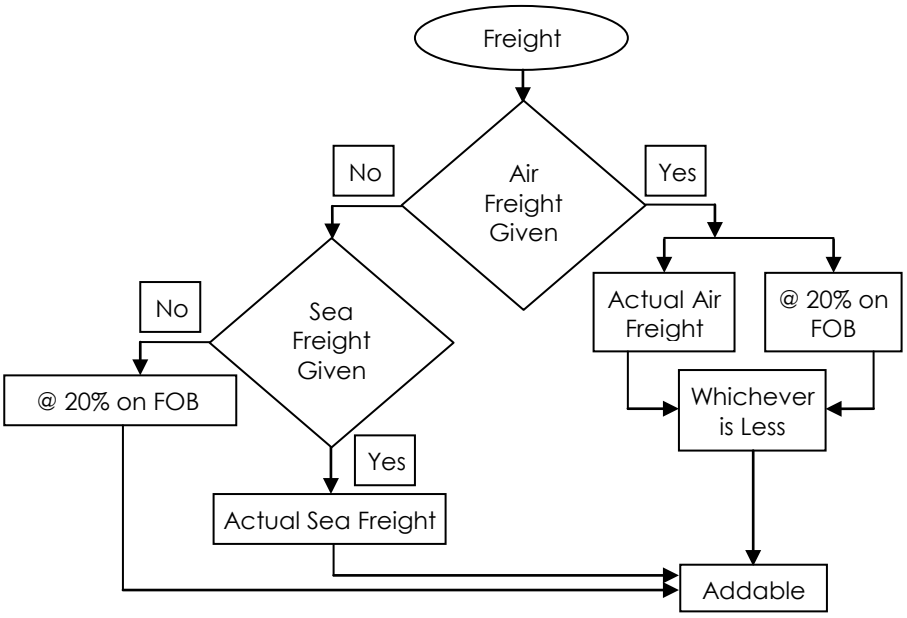
Case Law: 2

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

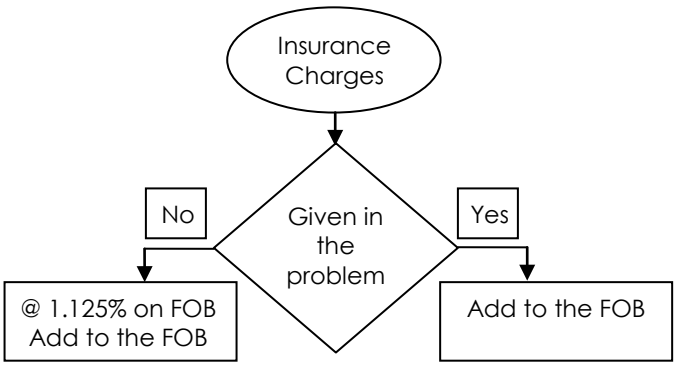
Revenue contended that demurrage charges paid by the assesse are includible in the assessable value for the levy of custom duty.

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.

Freight charges



Insurance charges



Example 1:

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

Sl. No.	*Particulars*	*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	
(vii)	CIF Value/ Assessable value	11,668.6875	
(viii)	Assessable value (in INR)	₹ 7,58,465	₹65 x US$11,668.6875 = ₹ 7,58,465

Example 2:

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 Excise 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

(vii) 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 ₹		
Total	94,752	Exchange rate of the Central Board of Excise and Customs (CBIC) is relevant	2,40,000 Yen x 0.3948

Particulars	Amount in ₹	Remarks	Working note
Insurance	10,000	Addable into the assessable value	
Freight	7,896	Addable into the assessable value	20,000 x 0.3948
Total CIF value/ Assessable Value	1,12,648		

Example 3:

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

(i)	F.O.B. cost of the machine	10,000 U.K. Pounds
(ii)	Freight (air)	3,000 U.K. Pounds
(iii)	Engineering and design charges paid to a firm in U.K.	500 U.K. Pounds
(iv)	License fee relating to imported goods payable by the buyer as a condition of sale	20% of F.O.B. Cost
(v)	Materials and components supplied by the buyer free of cost valued	₹ 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

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% in terms of the Finance Act, 2018.

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

Answer:

	₹	
A.V	6,56,500.00	(10,100 x 65)
ADD: BCD 12% on 6,56,500	78,780.00	
ADD: 10% Social Welfare Surcharge	7,878.00	(78,780 x 10%)
Balance	7,43,158.00	
ADD: IGST 12% on 7,43,158.00	89,179.00	
Value of Imported Goods	8,32,337.00	
Customs Duty (i.e. 8,32,337.00 – 6,56,500.00)	1,75,837.00	

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 (Rate BCD 12%; Exchange rate as notified by CBIC ₹ 68 per UK Pound)	24.10.2017
(vi)	Date of entry inward (Rate of BCD 18%; Exchange rate as notified by CBIC ₹ 70 per UK Pound)	20.10.2017
(vii)	IGST payable 18%	
(viii)	Insurance charges actually paid but details not available	

Answer:

	UK Pounds
FOB	8,000
Add: Design and Development (paid in UK)	500
Add: Commission to local agent (2% on 8,000 UKP)	160
FOB Value as per customs	8,660
Add: Air freight (8,660 × 20%)	1,732
Add: Insurance (8,660 × 1.125%)	97,425
CIF Value/ Assessable value	10,489,425
Assessable value in ₹ (10,489.425 × 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: Social Welfare Surcharge	8,559.37	(85,593.72 x 10%)
Balance	8,07,434.09	
Add: IGST	1,45,338.14	(8,07,434.09 x 18%)
Landed value	9,52,772.23	
Total Customs duties	2,39,491.23/2,39,491.00	(9,52,772.23 – 7,13,281)

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		
FOB 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) 12,200 x 1% = US$122
	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 @ 18%	*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: 10% SWS	*32,022*	*(3,20,215 x 10%)*
Balance	*19,53,311*	

Add: IGST	***2,34,397***	***₹ 19,53,311 x 12%***
Landed value of imported goods	***21,87,708***	
Total customs duty	***5,86,634***	

Note: Importer is eligible to avail input tax credit of IGST portion (i.e. ₹ 2,34,397) under GST Law provided he is using these goods for his business.

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 : 8

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 ₹ per MT*	*Country of import*
And importer			
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 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.

Example : 9

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 countervailing duty or special additional duty. 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 x ₹ 63)/ Assessable value	80,64,000
15% Basic Customs duty on ₹ 80,64,000	12,09,600
Add: Social Welfare Surcharge @ 10% on 12,09,600	1,20,960
Total custom duty payable	13,30,560

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.

Case Law : 3

Gira Enterprises v. CCus. 2014 (307) E.L.T.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;

Valuation:

- 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
Example: Hero Honda two Wheeler Products namely Splendor and Passion	**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 : 10

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

The 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 : 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* *5 sales of 3 units*
11-25 units	*95*	*5 sales of 11 units*
Over 25 units	*90*	*1 sale of 30 units* *1 sale of 50 units*

The selling price includes the following post shipment expenses:

Freight from port to factory in India for ₹ 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%)

Example : 12

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 Social Welfare Surcharge 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 = ₹ 4,435.20 (i.e. 33,600 x 13.20%)

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 goods	₹ xx
	Add: profit of the exporter	₹ xx
	Add: all expenditure as per Rule 10	₹ xx
	Assessable Value	₹ xx

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:

Already discussed under rule 3

Where FOB value; Cost of Insurance and Cost of Transportation are not ascertainable:

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

Example : 13

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

CIF value: US$10,000

Exchange rate:

Notified by RBI ₹ 60 = US$1

Notified by CBIC ₹ 58 = US$1

Compute the following:

(a) FOB value

(b) Cost of insurance

(c) Cost of freight and

(d) Assessable value in rupees as per the Customs Act, 1962 and the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007.

Answer:

As per Rule 10(2) proviso 3 of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007, where FOB value of goods and Cost of Insurance and Freight are not ascertainable, then the cost of insurance and transport shall be computed as follows:

Particulars	*As per Rule 10(2) proviso 3*	*Working*
Cost of transport (i.e. Freight not known)	*20% x (FOB value + Cost of Insurance)*	*CIF value x 20/120*
Insurance (i.e. not known)	*1.125% x (FOB value + Cost of transport)*	*CIF value x 1.125/101.125*
FOB value	*CIF value – cost transport – cost of insurance*	

CIF value in ₹ 5,80,000 (i.e. US $ 10,000 x ₹58)

Sl. No.	*Particulars*	₹	*Working*
(a)	*FOB value*	*= 4,76,881*	*(i.e. ₹ 5,80,000 – 96,667 – 6,452)*
(b)	*Cost of insurance*	*= 6,452*	*(i.e. ₹ 5,80,000 x 1.125/101.125)*
(c)	*Cost of transport*	*= 96,667*	*(i.e. ₹ 5,80,000 x 20/120)*
(d)	*Assessable value*	*= 5,80,000*	*(CIF Value = Assessable Value)*

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.

3.3 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.

Study Note - 4

IMPORT & EXPORT PROCEDURES

This Study Note includes

4.1 Import Procedure under Customs

4.2 Goods Cleared for Home Consumption

4.3 Warehousing

4.4 Export Procedure under Customs

4.5 Deemed Export

4.6 Duty Drawback

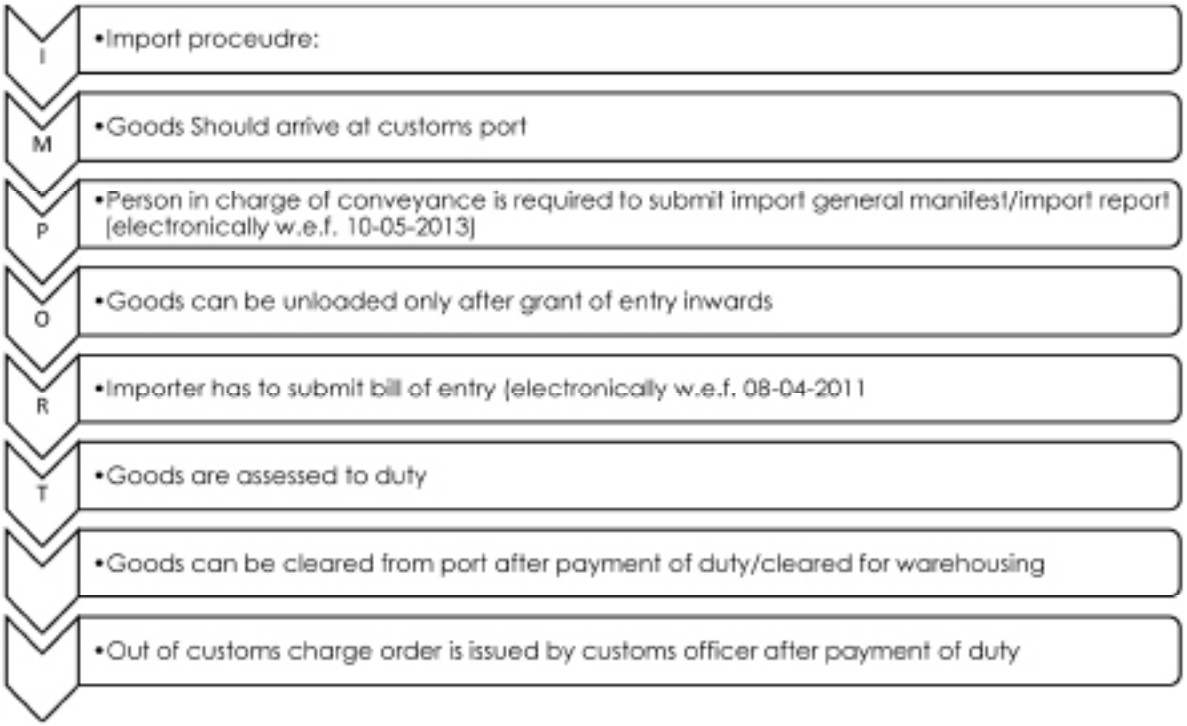
4.7 Negative List of Duty Drawback

4.8 Imports by 100% Export Oriented Units (EOU)

4.9 Import/Procurement by SEZs

4.10 Project Import

4.1 IMPORT PROCEDURE UNDER CUSTOMS



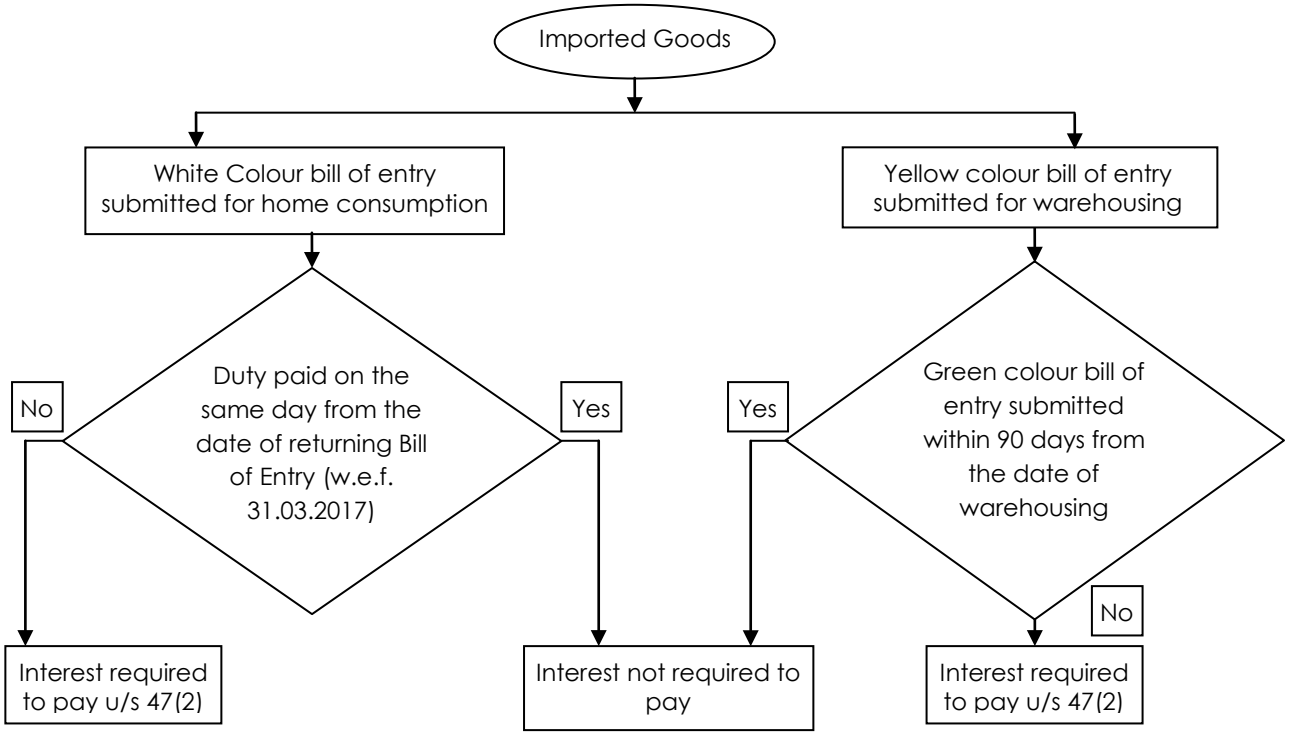
Imports and Input Tax Credit (ITC) :

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 Reg istration number (GSTIN) in the Bill of Entry. Provisional IDs issued by GSTN can be declared during the transi tion 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 b y 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.



4.2 GOODS CLEARED FOR HOME CONSUMPTION

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.

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 Entryfrom 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 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 : 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***

Case Law : 1

CCus. v. Shreeji Overseas (India) Pvt. Ltd. 2013 (289) E.L.T. 401 (Guj.)

Point of dispute: Can the time-limit prescribed under Sec. 48 of the Customs Act, 1962 for clearance of the goods within 30 days be read as time-limit for filing of bill of entry under Sec. 46 of the Customs Act, 1962?

Decision: It has been held by the High Court in the above case, 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.

Section 46 of the Customs Act, 1962: No time limit for filing a bill of entry by an importer upon arrival of goods.

Section 48 of the Customs Act, 1962: Authorities to sell the goods if imported goods not cleared for home consumption/warehoused/transhipped within 30 days of unloading the same.

Example : 3

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 Shreeji Overseas (India) Pvt. Ltd., 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.

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, CCus. v. Shreeji Overseas (India) Pvt. Ltd. 2013 (289) E.L.T. 401 (Guj.) case law became overruled.

4.3 WAREHOUSING

w.e.f. 14-5-2016, As per Section 2(43) of the Customs Act, 1962, "warehouse" means a public warehouse licensed under section 57 or a private warehouse licensed under section 58 OR Special Warehouse license u/s 58A.

Features of Warehousing:

1. Importer can defer payment of import duties by storing the goods in a safe place
2. Importer allowed doing manufacturing in bonded warehouse and then re-exporting from it.
3. The importer can be allowed to keep the goods up to One year without payment of duty from the date he deposited the goods into warehouse.
4. This time period is extended to Three years for Export Oriented Units and the time period still be extended to Five years if the goods are capital goods.
5. The importer minimizes the charges by keeping in a warehouse, otherwise the demurrage charges at port is heavy.
6. Assistant Commissioner of Customs or Deputy Commissioner of Customs are competent to appoint a warehouse as public bonded warehouse.
7. The Assistant Commissioner of Customs or Deputy Commissioner of Customs may license private warehouse. The license to private warehouse can be cancelled by giving ONE month notice.
8. Only dutiable goods can be deposited in the warehouse.
9. Green Bill of Entry has to be submitted by the importer to clear goods from warehouse for home consumption.
10. Rate of duty is applicable as on the date of presentation of Bill of Entry (i.e. sub-bill of entry or ex-bond bill of entry) for home consumption.
11. Reassessment is not allowed after the imported goods originally assessed and warehoused.
12. The exchange rate is the rate at which the Bill of Entry (i.e. 'into bond') is presented for warehousing.
13. If the goods which are not removed from warehouse within the permissible period, then subsequent removal called as improper removal. The rate of BCD which is applicable as on the last date on which the goods should have been removed but not removed is applicable, [**Kesoram Rayon v Commissioner of Customs (1996)]**.

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.

Licensing of Public Warehousing:

Sec. 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:

Sec. 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:

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.

Sec. 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).

Sec. 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".

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:

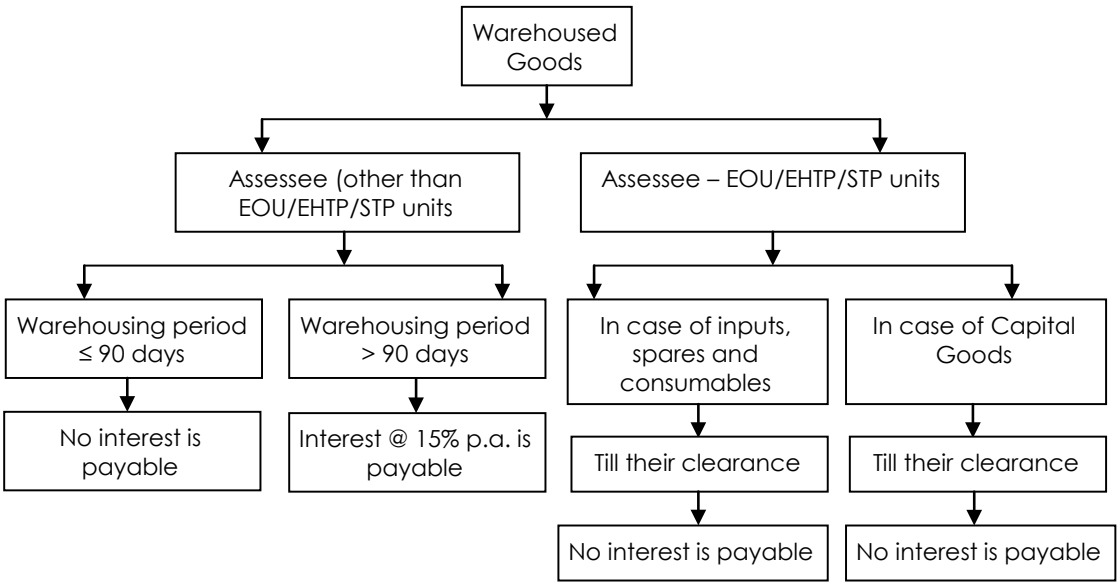
Provided that if the Board considers it necessary so to do, in the public interest, it may,—

(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.

Applicability of Interest on Warehoused Goods w.e.f. 14-5-2016:



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. (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.

Sec 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 or 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.

Warehousing without Warehousing (Section 49 of the Customs Act, 1962):

If the assessment is delayed for imported goods, then those goods can be stored in public warehouse without executing the bond is called as warehousing without warehousing.

Prior to 10-5-2013, no time-period had been specified under section 49 for which imported goods could be stored in a warehouse.

w.e.f. 10-5-2013, There is a time limit of 30 days to remove the goods from warehouse where the goods has been stored under S.49 of the Customs Act, 1962 i.e. warehousing without warehousing.

However, the Commissioner of Customs may extend the period of storage for a further period not exceeding 30 days at a time.

Warehoused Goods (Removal) Regulations, 2016 (NT 67/2016 Cus Dt 14.5.2016):

1. **Onwer 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: (a) affix a one-time-lock to the means of transport, (b) endorse the number of one-time lock on prescribed form for transfer of goods and on transportation documents, (c) cause one copy of each of these documents to be delivered to bond officer and (d) record the remval of goods record the removal of goods	(2) Once bond officer permits removal of goods from warehouse, licensee shall, in the presence of Bond Officer,: (a) cause the goods to be loaded onto the means of transport, and (b) affix a one-time-lock to the means of transport.

Monthly return: A licensee shall file with the Bond Officer a monthly return in prescribed form, of the receipt, storage, operations and removal of the goods in the warehouse, within 10 days after the close of the month to which such return relates. However, such return shall be furnished on/before the 10th day of the month immediately preceding the month in which the warehousing period would expire.

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.

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: 10% Social Welfare Surcharge	7,268	(i.e. 72,675 x 10%)
Transaction value subject to GST	6,85,568	
Add: IGST	82,268	(i.e. 6,85,568 x 12%)
Value of import	7,67,836	
Value of 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 'into 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

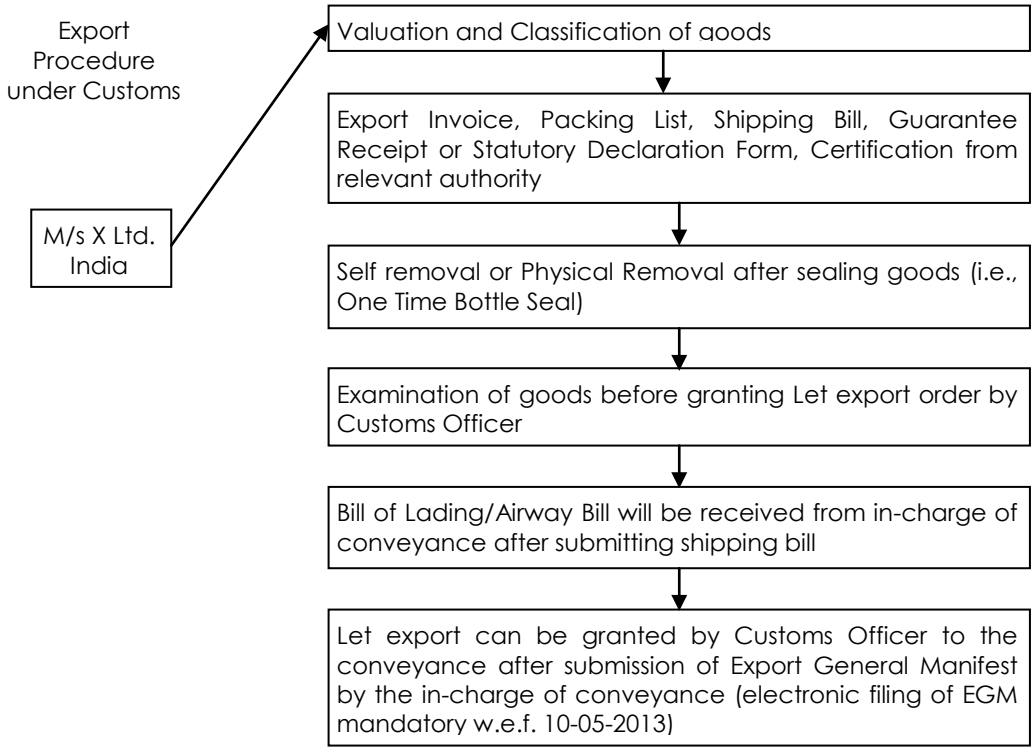
Interest payable is ₹ 16,211/-

(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 2019	31
Feb 2019	28
Mar 2019	31
April 2019	30
May 2019	14
Total	145
Less: No. of days for which no interest	-90
No. of delay for interest	55

4.4 EXPORT PROCEDURE UNDER CUSTOMS



Export Procedure under Goods and Services Tax (GST):

Exporters can furnish bond or letter of undertaking instead of paying Integrated GST at the time of exporting goods and services with effect from July 1, 2017. In case the IGST has been paid, the exporters can seek refund of the tax paid.

IGST is levied on the supply of any goods and services in the course of inter-state trade or commerce. As per the IGST Act, export and import of goods and services are deemed to be a supply in the course of inter-state trade or commerce. Supplies of goods and services for exports have been categorised as 'Zero Rated Supply' implying that goods could be exported under bond or Letter of Undertaking without payment of integrated tax followed by claim of refund.

Under section 7(5) of IGST Act, 2017 supply will be treated, as inter-state supply when

- the supplier is located in India and
- the place of supply is outside India or
- place of supply is SEZ unit.

Further, exports would be considered as "Zero rated supply" under section 16 of IGST Act.

Any person making zero rated supply (i.e. any exporter) shall be eligible to claim refund under either of the following options, namely:-

(a) he may supply goods or services or both, subject to such conditions, safeguards and procedure as may be prescribed, on payment of integrated tax and claim refund of such tax paid on goods or services or both supplied, in accordance with the provisions of section 54 (Refunds) of the Central Goods and Services Tax Act or the rules made there under.

(b) he may supply goods or services or both under bond or Letter of Undertaking (LUT), subject to such conditions, safeguards and procedure as may be prescribed, without payment of integrated tax and claim refund of unutilised input tax credit; or

For the option (a), procedure to file refund has been outlined in the Refund Rules under GST. The exporter claiming refund of IGST will file an application electronically through the Common Portal, either directly or through a Facilitation Centre notified by the GST Commissioner. The application shall be accompanied by documentary evidences as prescribed in the said rules. Application for refund shall be filed only after the export manifest or an export report, as the case may be, is delivered under section 41 of the Customs Act, 1962 in respect of such goods.

For the option (b),governing under rule 96 of the CGST Rules, 2017 the ARE-1 which is being submitted presently shall be dispensed with except in respect of commodities to which provisions of Central Excise Act would continue to be applicable. shipping bill filed by an exporter shall be deemed to be an application for refund of integrated tax paid on the goods exported out of India and such application shall be deemed to have been filed only when the person in charge of the conveyance carrying the export goods duly files an export manifest or an export report covering the number and the date of shipping bills or bills of export and the applicant has furnished a valid return (i.e.Form GSTR-3 or GSTR-3B).

ARE-1 which is being submitted presently shall be dispensed with except in respect of commodities to which provisions of Central Excise Act would continue to be applicable.

For both option (a) and (b) exporters have to provide details of GST invoice in the Shipping bill.

Procedure regarding refund of integrated tax paid on goods exported out of India is governed by rule 96 of the CGST Rules, 2017.

Procedure regarding LUT & refund of IGST is governed by rule 96A of CGST Rules, 2017 (w.e.f 01.07.2017).

Export of goods or services under bond or Letter of Undertaking as below:-

(1) Any registered person availing the option to supply goods or services for export without payment of integrated tax shall furnish, prior to export, a bond or a Letter of Undertaking in FORM GST RFD-11 to the jurisdictional Commissioner, binding himself to pay the tax due along with the interest specified under sub-section (1) of section 50 within a period of —

(a) fifteen days after the expiry of three months from the date of issue of the invoice for export, if the goods are not exported out of India; or

(b) fifteen days after the expiry of one year, or such further period as may be allowed by the Commissioner, from the date of issue of the invoice for export, if the payment of such services is not received by the exporter in convertible foreign exchange.

(2) The details of the export invoices contained in FORM GSTR-1 furnished on the common portal shall be electronically transmitted to the system designated by Customs and a confirmation that the goods covered by the said invoices have been exported out of India shall be electronically transmitted to the common portal from the said system.

(3) Where the goods are not exported within the time specified in sub-rule (1) and the registered person fails to pay the amount mentioned in the said sub-rule, the export as allowed under bond or Letter of Undertaking shall be withdrawn forthwith and the said amount shall be recovered from the registered person in accordance with the provisions of section 79.

(4) The export as allowed under bond or Letter of Undertaking withdrawn in terms of subrule (3) shall be restored immediately when the registered person pays the amount due.

(5) The Board, by way of notification, may specify the conditions and safeguards under which a Letter of Undertaking may be furnished in place of a bond.

(6) The provisions of sub rule (1) shall apply, mutatis mutandis, in respect of zero-rated supply of goods or services or both to a Special Economic Zone developer or a Special Economic Zone unit without payment of integrated tax.";

CBEC Circular No . 8/8 /2017 - GST dated 4th October 2017:

(1) Eligibility to export under LUT:

The facility of export under LUT has been now extended to all registered persons who intend to supply goods or services for export without payment of integrated tax except those who have been prosecuted for any offence under the CGST Act or the Integrated Goods and Services Tax Act, 2017 or any of the existing laws and the amount of tax evaded in such cases exceeds Rs 250 lakh (i.e. two hundred and fifty lakh rupees) vide Circular No . 8/8 /2017 - GST dated 4th October 2017 .

(2) Validity of LUT:

The LUT shall be valid for thewhole financial year in which it is tendered. However, in case the goods are not exported within the time specified in sub - rule (1) of rule 96A of the CGST Rules and the registered person fails to pay the amount mentioned in the said sub - rule, the facility of export under LUT will be deemed to have been withdrawn. If the amount mentioned in the said sub - rule is paid subsequently, the facility of export under LUT shall be restored.

As a result, exports, during the period from when the facility to export under LUT is withdrawn till the time the same is restored, shall be either on payment of the applicable integrated tax or under bond with bank guarantee.

(3) Form for bond/ LUT:

Till the time FORM GST RFD - 11 is available on the common portal, the registered person (exporters) may download the FORM GST RFD - 11 from the website of the Central Board of Excise and Customs (www.cbec.gov.in) and furnish the duly filled form to the jurisdictional Deputy/Assistant Commissioner having jurisdiction over their principal place of business. The LUT shall be furnished on the letter head of the registered person, in duplicate, and it shall be executed by the working partner, the Managing Director or the Company Secretary or the proprietor or by a person duly authorised by such working partner or Board of Directors of such company or proprietor. The bond, wherever required, shall be furnished on non-judicial stamp paper of the value as applicable in the State in which the bond is being furnished.

(4) Documents for LUT:

Self - declaration to the effect that the conditions of LUT have been fulfilled shall be accepted unless there is specific information otherwise. That is, self - declaration by the exporter to the effect that he has not been prosecuted should suffice for the purposes of Notification No. 37 /2017 - Central Tax dated 4 th October, 2017. Verification, if any, may be done on post - facto basis.

(5) Time for acceptance of LUT/Bond:

As LUT/ Bond is a priori requirement for export, including exports to a SEZ developer or a SEZ unit, the LUT/ bond should be processed on top most priority. It is clarified that LUT/ bond should be accepted within a period of three working days of its receipt along with the self - declaration as stated in para (4) above by the exporter. If the LUT / bond is not accepted within a period of three working days from the date of submission, it shall deemed to be accepted.

(6) Bank guarantee:

Since the facility of export under LUT has been extended to all registered persons, bond will be required to be furnished by those persons who have been prosecuted for cases involving an amount exceeding Rupees two hundred and fifty lakhs. A bond, in all cases, shall be accompanied by a bank guarantee of 15% of the bond amount.

(7) Clarification regarding running bond:

The exporters shall furnish a running bond where the bond amount would cover the amount of self - assessed estimated tax liability on the export . The exporter shall ensure that the outstanding integrated tax liability on exports is within the bond amount. In case the bond amount is insufficient to cover the said liability in yet to

be completed exports, the exporter shall furnish a fresh bond to cover such liability. The onus of maintaining the debit / credit entries of integrated tax in the running bond will lie with the exporter. The record of such entries shall be furnished to the Central tax officer as and when required.

(8) Sealing by officers:

Till mandatory self - sealing is operationalized, sealing of containers, wherever required to be carried out under the supervision of the officer, shall be done under the supervision of the central excise officer having jurisdiction over the place of business where the sealing is required to be done. A copy of the sealing report would be forwarded to the Deputy/Assistant Commissioner having jurisdiction over the principal place of business.

(9) Purchases from manufacturer and Form CT - 1:

It is clarified that there is no provision for issuance of CT - 1 form which enables merchant exporters to purchase goods from a manufacturer without payment of tax under the GST regime. The transaction between a manufacturer and a merchant exporter is in the nature of supply and the same would be subject to GST.

(10) Transactions with EOUs:

Zero rating is not applicable to supplies to EOUs and there is no special dispensation for them under GST regime. Therefore, supplies to EOUs are taxable like any other taxable supplies. EOUs, to the extent of exports, are eligible for zero rating like any other exporter.

(11) Realization of export proceeds in Indian Rupee : Attention is invited to para A (v) Part - I of RBI

Master Circular N o. 14/2015 - 16 dated 01 st July, 201 5 (updated as on 05 th November, 2015), which states that "there is no restriction on invoicing of export contracts in Indian Rupees in terms of the Rules, Regulations, Notifications and Directions framed under the Foreign Exchange Management Act, 1999. Further, in terms of Para 2.52 of the Foreign Trade Policy (2015 - 2020), a ll export contracts and invoices shall be denominated either in freely convertible currency or Indian rupees but export proceeds shall be realized in freely convertible currency. However, export proceeds against specific exports may also be realized in rupees, provided it is through a fre ely convertible Vostro account of a non - resident bank situated in any country other than a member country of Asian Clearing Union (ACU) or Nepal or Bhutan" .

Accordingly, it is clarified that the acceptance of LUT for supplies of goods to Nepal or Bhutan or SEZ developer or SEZ unit will be permissible irrespective of whether the payments are made in Indian currency or convertible foreign exchange as long as they are in accordance with the applicable RBI guidelines. It may also be noted that the supply of services to SEZ developer or SEZ unit under LUT will also be permissible on the same lines. The supply of services, however, to Nepal or Bhutan will be deemed to be export of services only if the payment for such services is received by the supplier in convertible foreign exchange.

(12) Jurisdictional officer:

In exercise of the powers conferred by sub - section (3) of section 5 of the CGST Act, it is hereby stated that the LUT /Bond shall be accepted by the jurisdictional Deputy/Assistant Commissioner having jurisdiction over the principal place of business of the exporter. The exporter is at liberty to fur nish the LUT /bond before either the Central Tax Authority or the State Tax Authority till the administrative mechanism for assigning of taxpayers to the respective authority is implemented.

Note: Circular No. 2/2/2017 – GST dated 5th July, 2017, Circular No. 4/4/2017 – GST dated 7th July, 2017 and Circular No. 5/5/2017 – GST dated 11th August, 2017 are hereby rescinded except as respects things already done or omitted to be done .

Practical theory:

Example : 7

How soon will refund in respect of export of goods or services be granted during the GST regime?

Answer:

(a) In case of refund of tax on inputs used in exports:

- ***Refund of 90% will be granted provisionally within seven days of acknowledgement of refund application.***
- ***Remaining 10% will be paid within a maximum period of 60 days from the date of receipt of application complete in all respects.***
- ***Interest @ 6% is payable if full refund is not granted within 60 days.***

(b) In the case of refund of IGST paid on exports:

Upon receipt of information regarding furnishing of valid return in Form GSTR-3 by the exporter from the common portal, the Customs shall process the claim for refund and an amount equal to the IGST paid in respect of each shipping bill shall be credited to the bank account of the exporter.

Example : 8

M/s X Ltd. manufacture of exempted excisable goods for export. Company availed input stage rebate (ITC on inputs) used in the manufacture of exported goods. Whether the company is eligible for refund of ITC on inputs?

Answer:

Under IGST law a person engaged in export of goods which is an exempt supply is eligible to avail input stage credit for zero rated supplies. Once goods are exported, refund of unutilized credit can be availed under Section 16(3)(a) of IGST Act, 2017 and Section 54 of the CGST Act, 2017 and the rules made there under.

Exampe : 9

what do you mean refund under section 54 of CGST Act, 2017?

Answer:

As per explanation to section 54 of the CGST Act 2017 refund includes refund of tax paid on zero-rated supplies of goods or services or both

OR

on inputs or input services used in making such zero-rated supplies, or refund of tax on the supply of goods regarded as deemed exports, or refund of unutilized input tax credit as provided under section 54(3) of the CGST Act, 2017.

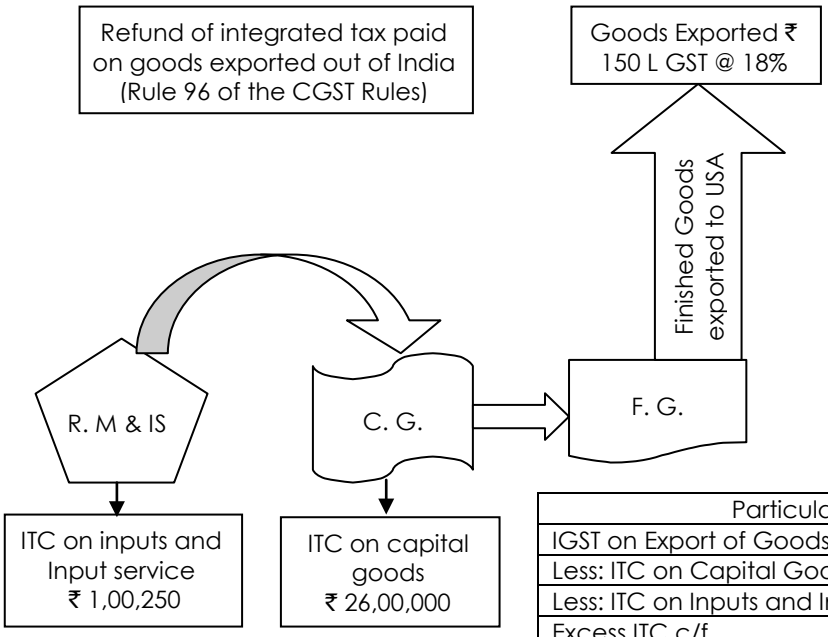
Example : 10

Under what circumstances it may be beneficial to pay IGST on export of goods and claim rebate (i.e. Refund) under rule 96 of the CGST Rules, 2017.

Answer:

If assessee has balance of tax in Capital Goods Input Tax Credit Account, it is advisable to pay duty (i.e. IGST) on export and claim refund, as balance in Capital Goods Input Tax Credit Account is never refundable.

Simiplified approach: Assume X Ltd. purchased goods by paying GST for manufacture. After manufacture supplied goods to an import located in USA in the following manner:



Particulars	Value in ₹
IGST on Export of Goods	27,00,000
Less: ITC on Capital Goods	(26,00,000)
Less: ITC on Inputs and Input Services	(1,00,250)
Excess ITC c/f	250
Therefore, IGST paid on export of goods for ₹ 27,00,000 is allowed as refund under section 54 of the CGST Act, 2017 read with rule 96 of the IGST Rules, 2017	

Note: In general all our exports free from Basic Customs Duty unless law specifically stated otherwise.

Example : 11

How to execute Bond required for exporting without payment of IGST?

Answer:

Following are the instructions on how to execute Bond required for exporting without payment of IGST.

Step 1: Bond has to be executed when your turnover in the previous year is less than ₹ 1,00,00,000/-.

Step 2: Bond of amount equivalent to the tax liability (usually annual liability) has to be executed on non-judicial stamp paper in the favour of President of India, through the concerned Assistant Commissioner.

Step 3: In the bond, exporter has to mention the Bank Guarantee amount which is equivalent to 15% of the bond value (or lesser if allowed by Assistant Commissioner).

Step 4: Stamp Paper for Bond can be of value ₹ 500/- or more (or as prescribed by concerned Assistant Commissioner). Stamp paper should be purchased from your own State (same jurisdiction) i.e. where the concerned Range Office is located. It should be purchased in the name of exporter (with address).

Bond-Language does not fit well on single page, so you have to use second page. Second page can be any blank page to print the extra content.

Step 5: Exporter has to self-sign the bond on first page as well as on second page. Second page has to be signed by two witnesses. Then, Bond has to be attested by a Notary.

Step 6: Exporter has to submit self-signed copy of own ID-Proof (Like Aadhar Card). You also have to submit the copies of ID-Proofs (Like Aadhar Card) of witnesses, which has to be self-signed by him.

4.5 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.

4.6 DUTY DRAWBACK

Duty drawback allowed for the following:

- Import duty paid on imported goods
- The excise duty and Service Tax

No drawback is allowed on VAT, CST

Duty Drawback is an export incentive scheme where the duties paid on any exported materials or excisable materials which are used in the manufacture/processing/carrying out any operations on the goods that are exported outside India is allowed as refund to the exporter.

Two categories of duty drawback:

1. Duty Drawback on Re-Export (Sec. 74)
2. Duty Drawback on Export (Sec. 75)

Duty Drawback on Re-Export [Section 74]

Conditions should be satisfied:

1. Originally the goods should have been imported into India; Customs duty on import should have been paid.
2. The imported goods should be capable of being easily identifiable as the same goods which were originally imported.
3. The goods have been exported after proper examination of the goods and after ensuring that there is no prohibition or restriction on their export by the proper officer.
4. The goods should have been identified to the satisfaction of the Assistant or Deputy Commissioner of Customs as the goods, which were imported, and
5. The goods should have been entered for export within two years from the date of payment of duty on the importation thereof. This period can be extended up to two years by CBEC or by the Commissioner of Customs.
6. The market price of such goods must not be less than the amount of drawback claimed.

Re-export of duty paid imported goods [Sec. 74]

- Goods are imported for business purpose
  - After use
    - Exported ≤ 18 months from the date of payment of duty

Exported ≤ 18 months from the date of payment of duty	% of DDB on import duty
≤ 3M	95%
> 3M ≤ 6M	85%
> 6M ≤ 9M	75%
> 9M ≤ 12M	70%
> 12M ≤ 15M	65%
> 15M ≤ 18M	60%
> 18M	NIL

  - Without use
    - DDB = @ 98% Exported ≤ 2 Years from the date of payment of duty
- Goods are imported for personal purpose
  - After use

	Qtr	DDB (%)
Yr-1	I	96
	II	92
	III	88
	IV	84
Yr-2	I	81
	II	78
	III	75
	IV	72

  - Without use
    - DDB = @ 98% Re-exported immediately

Goods are imported for personal purpose after use re-exported after 2 years from the date of payment of import duty then with prior permission from CBIC; DDB can be claimed as per the following percentages:

	Qtr	DDB
(%)		
Yr-3	I	69.5
	II	67
	III	64.5
	IV	62
Yr-4	I	60
	II	58
	III	56
	IV	54

Duty Drawback on Re-Export not allowed:

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.

Example : 12

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 goods are re-exported without being used.

Example : 13

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:

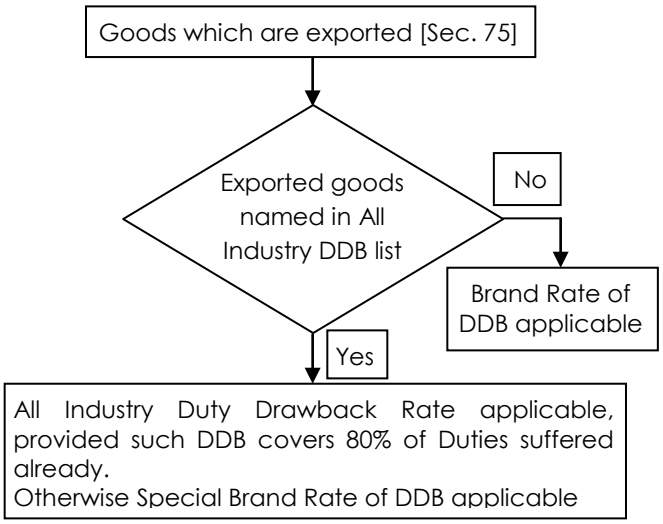
(i) As per section 74 of the Customs Act, 1962, the duty paid imported goods are required to be entered for export within two years from the date of payment of duty on the importation.

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.

Goods which are exported [Sec. 75]



w.e.f. 22.11.2014, 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.

Example: 14

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 x 11%)

or

₹1,60,000 (i.e. ₹80 x 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) x 100%].

Therefore, exporter is eligible for claiming All Industry Duty Drawback.

4.7 NEGATIVE LIST OF DUTY DRAWBACK

Negative list of Duty Drawback [Section 76]

(1) DDB amount is less than ₹ 50

(2) In case of negative sales

(3) If CENVAT CREDIT availed (except BCD)

(4) DDB amount is more than 1/3rd of Market value of exports

(5) Export to Nepal and Bhutan and the export proceeds are not received in hard currency (it means USD, GBP or Pounds).

(6) DDB as % on FOB less than 1% unless amount of DDB is more than or equal to ₹ 500

(7) Duty drawback is not allowed if the exporter has already availed the Duty Entitlement Pass Book (DEPB) or other export incentives.

(8) If the sale proceeds not received within the time period allowed by Reserve Bank of India.

(9) Duty drawback amount exceeds the market value of exported goods.

Example : 15

Computation of duty drawback: '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. *(60,000 x 190/200)x17.5%=9975* *190 kgs x ₹ 38 = ₹ 7,220*		*17.50% of FOB subject to maximum of ₹ 38 per Kg. (₹ 9,975 or ₹7,220 whichever is less)*	*7,220*
Total Drawback admissible (in ₹)			*12,660*

Exampe : 16

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 : 17

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.

Is drawback allowed in respect of milk products?

w.e.f. 23-11-2015 Duty Drawback Allowed on Wheat.

w.e.f. 13-02-2015 Duty drawback on rice allowed.

Prior to 21.09.2013	w.e.f. 21.09.2013
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 allowed on wheat
Duty drawback not allowed on rice, casein, caseinates and other casein derivatives; casein glues	Duty drawback not allowed on rice, casein, caseinates and other casein derivatives; casein glues

Drawback 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

I. such non-realisation of sale proceeds is compensated by the Export Credit Guarantee Corporation of India Ltd. (ECGC), under an insurance cover and

II. the Reserve Bank of India writes off the requirement of realization of sale proceeds on merits and

III. the exporter produces a certificate from the concerned Foreign Mission of India about the fact of non-recovery of sale proceeds from the buyer.

A Vessel was caught up in the rough weather and sank in the territorial waters.

Case Law: 2

Union of India v Rajindra Dyeing & Printing Mills Ltd. 2005 (180) ELT 433 (SC):

A vessel was cought up in the rough weather and sank in the territorial waters.

Duty drawback can be claimed?

Decision: The vessel sunk within territorial waters of India and therefore there is no export. Accordingly, no duty drawback shall be available in this case. The territorial waters extend to 12 nautical miles into the sea from the base line.

Example: 18

Alpha Ltd. manufactures heavy machinery. 50% of its production is exported to European countries. The machinery is manufactured with the help of imported components as well as indigenous raw materials. Alpha Ltd. regularly pays import duty and central excise duty on the imported components and indigenous raw materials respectively and claims duty drawback on exports made by it.

On 28.11.2018, it loaded a machinery manufactured by it on a vessel 'Victoria' for being exported to Germany. 'Victoria' set sail from Mumbai on 01.12.2018, but was caught up in the rough weather and sank in the territorial waters on 02.12.2018. The Customs Department has refused to grant duty drawback claimed by Alpha Limited in respect of the machinery loaded on 28.11.2018 for the reason that the machinery has not reached Germany.

Examine the situation with the help of decided case laws, if any.

Answer:

Union of India v Rajindra Dyeing & Printing Mills Ltd. 2005 (180) ELT 433 (SC):

The vessel sunk within territorial waters of India and therefore there is no export. Accordingly, no duty drawback shall be available in this case. The territorial waters extend to 12 nautical miles into the sea from the base line.

4.8 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 : 19

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 X 10%
Add: Social Welfare Surcharge 10% on BCD	20,000	2,00,000 X 10%
Sub-total	22,20,000	
ADD:IGST @12%	2,66,400	22,20,000X 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

4.9 IMPORTS / PROCUREMENT BY SEZ'S

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.

4.10 PROJECT IMPORT

Project Import :

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 - 5

CUSTOMS RULES, 2017

This Study Note includes

5.1 Customs (Import of Goods at Concessional Rate of Duty) Rules, 2017

5.1 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, -

"exemption notification" means a notification issued under sub-section (1) of section 25 of the Act;

"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;

"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;

"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 import and

(iii) the port of import in respect of a particular consignment for a period not exceeding one year;

(a) in duplicate, to the Deputy Commissioner of Customs or, as the case may be, Assistant Commissioner of Customs having jurisdiction over the premises where the imported goods shall be put to use for manufacture of goods or for rendering output service, and

(b) in one set, to the Deputy Commissioner of Customs or, as the case may be, Assistant Commissioner of Customs at the Custom Station of importation.

(2) Submission of Bond - The importer who intends to avail the benefit of an exemption notification shall submit a continuity bond with such surety or security as deemed appropriate by the Deputy Commissioner of Customs or Assistant Commissioner of Customs having jurisdiction over the premises where the imported goods shall be put to use for manufacture of goods or for rendering output service, with an undertaking to pay the amount equal to the difference between the duty leviable on inputs but for the exemption and that already paid, if any, at the time of importation, along with interest, at the rate fixed by notification issued under section 28AA of the Act, for the period starting from the date of importation of the goods on which the exemption was availed and ending with the date of actual payment of the entire amount of the difference of duty that he is liable to pay.

(3) The Deputy Commissioner of Customs or, as the case may be, Assistant Commissioner of Customs having jurisdiction over the premises where the imported goods shall be put to use for manufacture of goods or for rendering output service, shall forward one copy of information received from the importer to the Deputy Commissioner of Customs, or as the case may be, Assistant Commissioner of Customs at the Custom Station of importation.

(4) On receipt of the copy of the information under clause (b) of sub-rule (1), the Deputy Commissioner of Customs or, as the case may be, Assistant Commissioner of Customs at the Custom Station of importation shall allow the benefit of the exemption notification to the importer who intends to avail the benefit of exemption notification.

Rule 6 -Maintaining records and furnishing Importer who intends to avail the benefit of an exemption notification to give information regarding receipt of imported goods and maintain records. –

(1) The importer who intends to avail the benefit of an exemption notification shall provide the information of the receipt of the imported goods in his premises where goods shall be put to use for manufacture, within two days (excluding holidays, if any) of such receipt to the jurisdictional Customs Officer.

(2) The importer who has availed the benefit of an exemption notification shall maintain an account in such manner so as to clearly indicate the quantity and value of goods imported, the quantity of imported goods consumed in accordance with provisions of the exemption notification, the quantity of goods re-exported, if any, under rule 7 and the quantity remaining in stock, bill of entry wise and shall produce the said account as and when required by the Deputy Commissioner of Customs or, as the case may be, Assistant Commissioner of

Customs having jurisdiction over the premises where the imported goods shall be put to use for manufacture of goods or for rendering output service.

(3) The importer who has availed the benefit of an exemption notification shall submit a quarterly return, 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.