Customs Act, 1962

SECTION 1 – Short title, extent and commencement –

(1) This Act may be called the Customs Act, 1962.

(2) It extends to the whole of India.

(3) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.

SECTION 2 – Definitions

(14) "Dutiable goods" means any goods which are chargeable to duty and on which duty has not been paid;

(18) "Export", with its grammatical variations and cognate expressions, means taking out of India to a place outside India;

(19) "Export goods" means any goods which are to be taken out of India to a place outside India;

(20) "Exporter", in relation to any goods at any time between their entry for export and the time when they are exported, includes any owner or any person holding himself out to be the exporter;

(22) "Goods" includes -

(a) Vessels, aircrafts and vehicles;

(b) Stores;

(c) Baggage;

(d) Currency and negotiable instruments; and

(e) Any other kind of movable property;

(23) "Import" means bringing into India from a place outside India;

(25) "Imported goods" means any goods brought into India from a place outside India but does not include goods which have been cleared for home consumption;

(27) "India" includes the territorial waters of India;

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

Section 12 – Charging Section

(1) Except as otherwise provided in this Act, or any other law for the time being in force, duties of customs shall be levied at such rates as may be specified under the Customs Tariff Act, 1975 or any other law for the time being in force, on goods imported into, or exported from, India.

(2) The provisions of sub-section (1) shall apply in respect of all goods belonging to Government as they apply in respect of goods not belonging to Government.

Exercise 1: Scope of the Act

1. Goods purchased by a merchant in Jammu and Kashmir from outside India
2. Goods purchased by Defence Ministry of the Indian Government

Exercise 2: Export

(a) Movement of goods from Indian Territory to the structures in Continental Shelf

(b) Movement of goods from DTA to SEZ

Exercise 3: Import

(a) Movement of goods from a foreign territory to the Continental Shelf

(b) Goods are imported into customs warehouses

(c) Re–importation of goods

(d) Derelict, Jetsam, Floatsam, Wreck

Exercise 4: Calculate Customs Duty

(a) Assessable Value = Rs. 10 Lakh, BCD at 10%, IGST at 18%.

(b) Assessable Value = Rs. 10 Lakh, BCD at 10%, IGST at 28%. Compensation Cess at 15%

(c) Rama Imports(P) Ltd, imported, certain chemical compounds, details of the same are as follows –

Assessable value (including landing charges) of imported item from a developing country from 1st November, 20XX to 30thOctober of next year (both days inclusive)	Rs.60,00,000
Share of imports of Item from the developing country against total imports of the Item to India	5%
SGD Rate	30%
Integrated tax under section 3(7) of the Customs Tariff Act, 1975.	12%

Determine the customs duty payable under the Customs Tariff Act, 1975 including the safeguard duty of 30% under section 8B

Exercise 4: Relevant Date

(a) The Shipping Bill in respect of an Export Consignment was presented to the Customs Authority on 8th March. The Customs Authority granted "Let Export Order" and "Entry Outwards" to the Ship on 11th March. A Notification was issued under the Customs Act exempting the export item from Customs Duty on the 17th March.

Assessee contends that since the loading of goods in the ship had commenced after 17th March, the export consignment is eligible for Exemption. Discuss with reasons whether the assessee's contention is tenable.

(b) "Queen Mary", the vessel containing the goods imported by XML Ltd entered the Indian Territorial waters on 26.5.20x0. The Import Manifest was submitted on 24.5.20x0. The Vessel arrived at the Customs Port on 29.5.20x0 but the Entry Inwards was given to the vessel on 4.6.20x0. An "Into Bond Bill of Entry" was presented by XML Ltd. On 3.7.20x0 Safeguard Duty at 8% was imposed on such goods. XML Ltd had presented the Bill of Entry for Ex-Bond Clearance in respect of such goods on 1.7.20x0 and cleared the goods from the Bonded Warehouse on 5.7.20x0. Discuss whether XML Ltd is liable to pay Safeguard Duty on the goods imported by it. Will your answer be different if the Bill of Entry for Ex-bond Clearance is presented by XML Ltd, on 4.7.20x0?

Exercise 5:

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

(b) What shall be the value if there is a reduction in the market price of the imported goods while its travelling in the ship?

(c) Bill of Entry filed on 27.04.x1. Will you apply the Exchange Rate notified by CBEC on 25.3.x1 or notified on 25.04.x1?

(d) Can Insurance Value be adopted the basis for valuation under Customs?

Exercise 6:

The Importer of goods keeps the goods into the warehouse by filing a Bill of Entry. The actual Import Value was Rs.10 Lakhs. However, during such storage, he sells such warehoused goods to another person for Rs.15 Lakhs. What shall be Assessable Value for determination of Customs Duty?

Exercise 7: Transaction Value

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

(a) Freight from Japan to Indian Port – 20,000 Yen

(b) Insurance paid to Insurer in India – Rs.10,000

(c) Designing Charges paid to Consultancy Firm in Japan – 30,000 Yen

(d) XYZ Ltd expended Rs.1,00,000 in India, for development activities with respect to the imported equipment

(e) XYZ Ltd had incurred road transport cost from Mumbai Port to their factory in Karnataka – Rs.30,000

(f) CBEC had notified an exchange rate of 1 yen = Rs.0.3948.

(g) Commission payable to the agent in India was 5% of FOB cost of equipment in Indian Rupees.

Arrive at the Assessable Value for the purposes of Customs Duty.

Exercise 8: Transaction Value

From the particulars, find out the Assessable Value of the imported goods under the Customs Act, 1962:

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) Handing charges paid for loading the machine in the ship	50
(iv) Buying commission paid by the importer	50
(v) Freight charges from exporting country to India	1,000
(vi) Exchange rate to be considered: 1 $ = Rs.45	
(vii)Cost of accessories supplied compulsorily along with main product (BCD rate = 20%)	1,000

Normal BCD Rate is 10% p.a. ACD and SAD are 12% and 4% respectively.

Exercise 9: Transaction Value

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

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

The bank had received payment from the importer at the exchange rate of US $ 1 = Rs.46 while the CBEC notified exchange rate on the relevant date was US$ 1 = Rs.45.5 (Make suitable assumptions where required)

Exercise 10: Rule 4 – Identical Goods

Gujarat Dry Fruits Ltd, imported dry fruits and declared the value as under –

Month	Quantity	Value declared (Rs.)	Country of Import
Nov	250 M.T	25,000 per M.T.	Egypt
Nov	150 M.T	25,000 per M.T.	Egypt

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

Importer	Month	Quantity	Value declared	Country of Import
Mumbai International	Sept	50 M.T	Rs.35,000 per M.T.	Dubai
Chennai Fruits Ltd	Oct.	20 M.T.	Rs.40,000 per M.T.	Persia

The Customs Department has sought to assess the imports made by Gujarat Dry Fruits Ltd. On the basis of "Contemporaneous Imports" u/s 14 with Rule 4 of Customs Valuation Rules. Briefly examine whether the action proposed by the Department is correct.

Exercise 11:

A Consignment of 800 MT of Skimmed Milk Powder of US Origin was imported by a non–profit making organisation for free distribution of milk to the children in a Tribal Area under a World Health Programme. This being a special transaction a nominal price of US $ 10 per MT was charged for the consignment, to cover Freight and Insurance Charges. The Customs Department found out at or about the time of importation of this gift consignment, there were the following imports of Skimmed Milk Powder of US Origin.

S.No.	**1**	**2**	**3**	**4**	**5**	**6**
Quantity imported in MT	20	100	500	900	400	780
Unit Price in US$ C.I.F	260	220	200	175	180	160

The Rate of Exchange on the relevant date was 1 US $ = Rs.46.

Briefly explain, how the Assessable Value for purposes of Customs Duty will be arrived at in this case under the Customs Act,1962 and the Customs Valuation Rules, 2007.

Exercise 12: Deductive Value

M/s Bahadur Ltd imported 1,000 art forms from its Belgium branch for sale in India. Hence, import price is not known. There were no contemporaneous imports in India. However, following further information are given by the Company for assessment of duty.

At the time of import, Bahadur Ltd has sold similar art forms at the following rates, in India –

Quantity	200	300	500	250
Price p.u.	Rs.10,000	Rs.15,000	Rs.12,000	Rs.11,000

The Company has a fixed mark–up of 25% on Cost. The company had to appoint a curator to manage these art forms in its proper condition. Maintenance and Packing Cost p.u. comes to Rs.1,000 p.u.

Average Transportation Cost from port to storage works to Rs.100 p.u. Customs Duty Rate is 10%.

IGST included in above sale value at 5%. Determine the Assessable Value of Imported Goods under applicable method.

Exercise 13: Rejection of Value

The Importer had entered into contract with the foreign supplier to deliver sunflower oil in June, with an agreement to deliver the goods in July. However, the actual shipment happened in the first week of august. During the period between the agreed date and actual date of shipment, international oil prices drastically increased and hence, the Proper Officer rejected the value declared by the assessee.

Exercise 14: Rejection of Value

The Department considered the prices specified in the London Metal Exchange Bulletin (LME) as the base for computing the transaction value of the imports, but did not show any material in support of any contemporaneous imports at such LME prices. **[Prabhu Dayal Prem Chand 2010 (253) E.L.T. 353 (S.C.)]**

Exercise 15: Rejection of Value

An Agreement was entered between the Importer of vessel and Foreign Vendor, determining the price of the vessel. The Agreement did not contain any provision for price variation. Subsequently, the price was reduced by an addendum to the main agreement, due to deficiencies in the vessel. The Bill of Entry disclosed only the reduced price, specifying the reasons for such reduction. Is the reduced price acceptable or can the same be rejected by the Department? **[CC Vs Rai Metal Works Ltd 2010 (259) ELT 488 (SC)] [Atam Manohar Ship Breakers Ltd (2009) 233 ELT 145 (SC)]**

Transaction Value under Customs

1. Assessable Value = Transaction Value u/s 14(1)

2. Transaction Value = Actual Price Paid or Payable for the goods when sold

3. Conditions for applying Transaction Value -
(a) The Goods must be sold
(b) The Goods must be delivered at the place of Import
(c) The Buyer and Seller are not related
(d) Price should be the sole consideration for sale

4. Transaction Value includes **(Rule 10(1))** -
(a) Packing, Containers, Commission and Brokerage excluding Buying Commission
(b) Value of Any goods supplied by the **Buyer to the Seller**
(c) Proceeds of any **subsequent resale** flowing from **Buyer to the Seller**
(d) **Royalties** Payable as a **condition of Sale**
(e) Any other Amount Payable as a **condition of Sale**

Notes: **Royalties**

Situation 1	**Situation 2**
Primary Contract: Sale of goods Secondary : Supply of Technical Know How (Service)	Primary Contract: Supply of Technical Know How (Service) Secondary Contract: Sale of Goods
Matsuhita Television and Audio (I) Ltd	J K Corporation Ltd Case

5. Exclusions from Transaction Value
(a) Transport Expenses in India
(b) Taxes and Duties in India
(c) Post import export expenses incurred in India

6. FOB Value

7. Additions under Rule 10(2)
1. Transport Charges (Freight)

Aircraft

Ascertianable	Not Ascertainable
Actual Freight or 20% FOB (Lower)	20% FOB

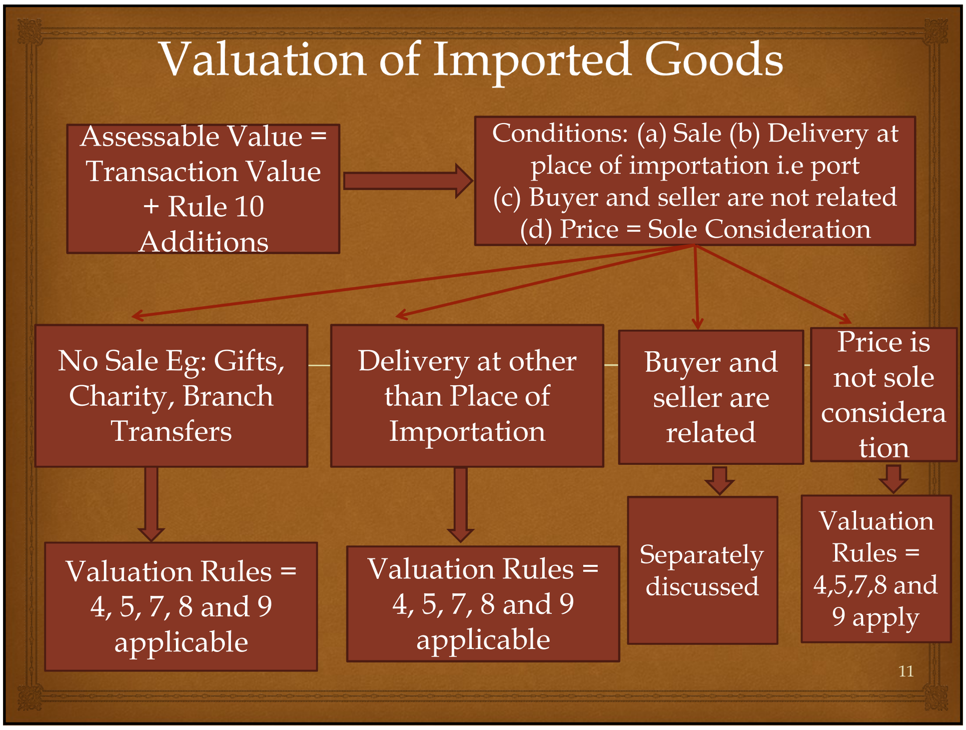
Vessel / Vehicle

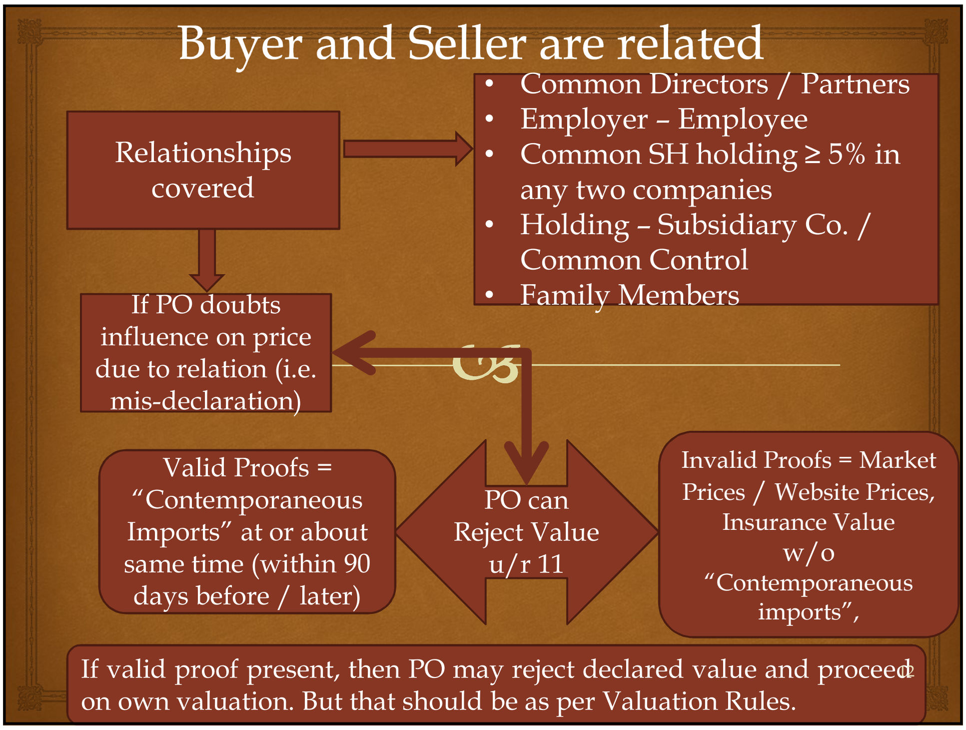
Ascertianable	Not Ascertainable
Actual Freight	20% FOB

2. Insurance Charges

Ascertianable	Not Ascertainable
Actuals	1.125% FOB

CIF Value


Valuation of Imported Goods
Assessable Value = Transaction Value + Rule 10 Additions
Conditions: (a) Sale (b) Delivery at place of importation i.e port
(c) Buyer and seller are not related
(d) Price = Sole Consideration
No Sale Eg: Gifts, Charity, Branch Transfers
Delivery at other than Place of Importation
Buyer and seller are related
Price is not sole considera tion
Valuation Rules = 4, 5, 7, 8 and 9 applicable
Valuation Rules = 4, 5, 7, 8 and 9 applicable
Separately discussed
Valuation Rules = 4,5,7,8 and 9 apply
11


Buyer and Seller are related
Relationships covered
• Common Directors / Partners
• Employer – Employee
• Common SH holding ≥ 5% in any two companies
• Holding – Subsidiary Co. / Common Control
• Family Members
If PO doubts influence on price due to relation (i.e. mis-declaration)
Valid Proofs = "Contemporaneous Imports" at or about same time (within 90 days before / later)
PO can Reject Value u/r 11
Invalid Proofs = Market Prices / Website Prices, Insurance Value w/o "Contemporaneous imports",
If valid proof present, then PO may reject declared value and proceed on own valuation. But that should be as per Valuation Rules.
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Valuation of Imported Goods Rules, 2007

Rule 4

AV = TV of Identical Goods (IG)

IG = Same Physical Features, Same Reputation, Same Quality, Same Country

Rule 5

AV = TV of Similar Goods (SG)

SG = Need not be same Features, but commercially Interchangeable in terms of use.

To take IG / SG Value the following conditions to be satisfied -

1. No Provisional Assessment value
2. At or about same time
3. Same Commercial Level
4. 10(2) Adjustment
5. Lowest of TV to be taken

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Valuation of Imported Goods

Rule 7

AV = Deductive Value of IG/SG

If IG/SG upto 90 days before / after can be taken

Particulars	Rs.
NTV of IG / SG in India	
Less: Processing Expenses / Commission / Transportation / Other Expenses in India	
Less: Customs Duties	
Less: Profits Margin	
Assessable Value	

Rule 8

AV = Computed Value of IG/SG

Particulars	Rs.
Cost of RM used	
Add: Cost of Production	
Add: Cost of Sales	
Add: Normal GP of Foreign Supplier	
Add: Additions u/r 10(2)	

Rule 7 and 8 can be interchanged at the option of the Assessee – Rule 6

14

Valuation of Imported Goods

Rule 9

Residuary Method

If Previous Methods could not be applied

TV determined ≤ Value in international Trade in arm length transaction

TV to be decided using
(a) Reasonable Means
(b) Using available data
(c) Consistent with rules

TV ≠

1. **Selling Price in India**
2. **Selling Price in Supplier's Country**
3. **Cost of Production**
4. **Export Price to another Country**
5. **Notional Values**

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Valuation of Imported Goods

Documentation

1. Declaration by Importer regarding goods
2. Supporting documents for above declarations

Powers of PO

1. Demand any document to vouch the accuracy of declarations
2. Reject AV declared by importer

(a) Reasonable doubt regarding accuracy and truth of declarations

(b) Less Value compared to Contemporaneous Imports

(c) Mis-declaration of Qty, Quality, Origin, year of production, Brand, Documentation

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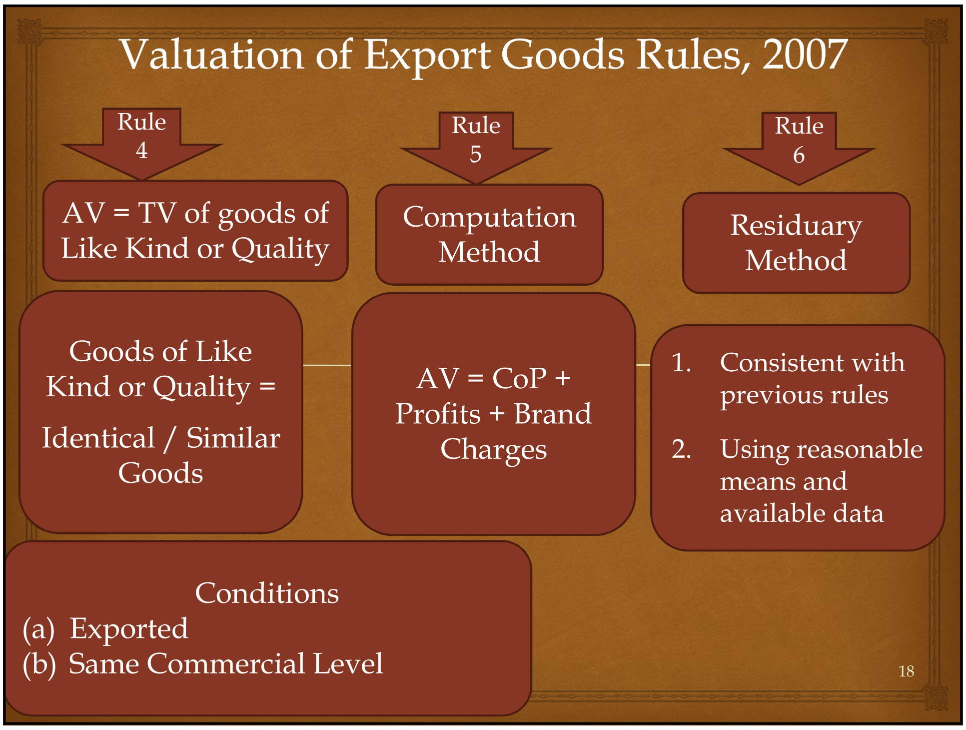
Valuation of Export Goods Rules 2007
Assessable Value = Transaction Value
Conditions: (a) Sale (b) Delivery at place of importation i.e port
(c) Buyer and seller are not related
(d) Price = Sole Consideration
No Sale Eg. Charity, Gifts, Branch Transfers
Delivery at other than Place of Exportation
Buyer and seller are related
Price is not sole considera tion
Valuation Rules = 4, 5, and 6
Rule 4,5 and 6
If price influenced, Valuation under Rules 4,5 & 6
Valuation Rules = 4,5, and 6
17


Valuation of Export Goods Rules, 2007
Rule 4
Rule 5
Rule 6
AV = TV of goods of Like Kind or Quality
Computation Method
Residuary Method
Goods of Like Kind or Quality =
Identical / Similar Goods
AV = CoP + Profits + Brand Charges
1. Consistent with previous rules
2. Using reasonable means and available data
Conditions
(a) Exported
(b) Same Commercial Level
18

Valuation of Export Goods

Documentation

1. Declaration by Exporter regarding goods
2. Supporting documents for above declarations

Powers of PO

1. Demand any document to vouch the accuracy of declarations
2. Reject AV declared by Exporter

(a) Reasonable doubt regarding accuracy and truth of declarations

(b) High Value compared to Contemporaneous Exports/Market Prices

(c) Mis-declaration of Qty, Quality, Brand, Documentation

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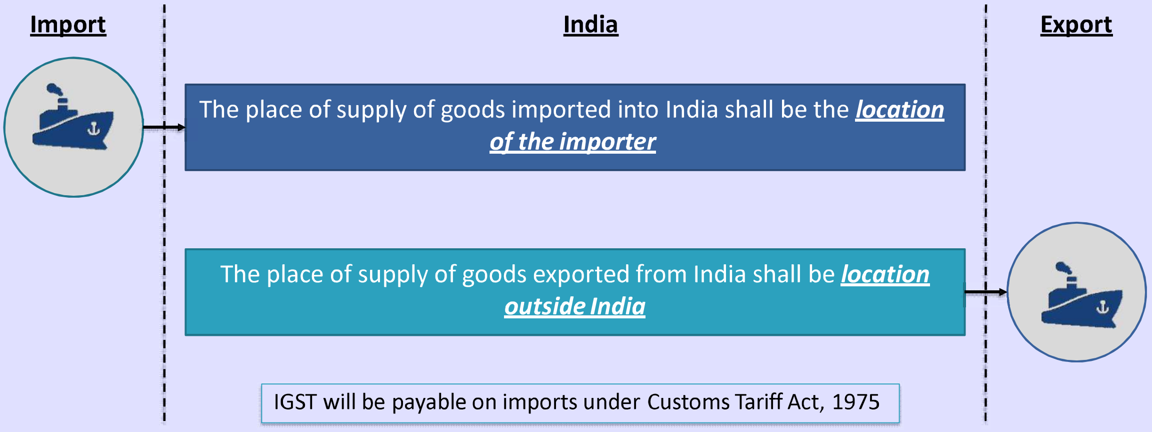
Place of Supply – Import / Export of Goods

➢Export of goods: With its grammatical variations and cognate expressions, means taking out of India to a place outside India.[Sec. 2(18) of Customs Act, 1962 - similar definition in GST Law]

➢Import of goods: With its grammatical variations and cognate expressions, means bringing into India from a place outside India.[Sec 2(23) of Customs Act - similar definition in GST]

Place of Supply – Goods: Import or Export

- Import – Location of Importer
- Export – Location outside India



Place of Supply – Services (Proxies)

Sec.	Situation	Place of supply	Impact
8(1)	Goods imported into India	Location of importer	Imports will be **liable to IGST in addition to Basic Customs Duty (and other Customs Duties)**
8(2)	Goods exported from India	Location outside India	Exports will be **zero-rated with benefit of refund of Input Tax Credit or Rebate of tax paid.**

GST on Imports - Case Study #13

1. *Assessable Value = Rs. 10 Lakh, BCD at 10%, IGST at 18%*

Particulars	Rs.	Reason
1. Transaction Value u/s 14(1)	10,00,000	
2. Basic Customs Duty (BCD) at 10%	1,00,000	
3. Social Welfare Surcharge (SWS) on Customs Duty @10%	10,000	10% ×1,00,000
4. Total Customs Duty = BCD + ACD u/s 3(1) = (2) + (3)	1,10,000	
5. Integrated Tax at 18% on (1) + (4) Above	1,99,800	18% ×11,10,000
6. Total Customs Duty payable [(4) + (5)]	**3,09,800**	

GST on Imports - Case Study #14

2. *Assessable Value = Rs. 10 Lakh, BCD at 10%, IGST at 28%, Compensation Cess at 15%*

Particulars	Rs.	Reason
1. Transaction Value u/s 14(1)	10,00,000	
2. Basic Customs Duty (BCD) at 10%	1,00,000	
3. SWS on Customs Duty @10%	10,000	10% ×1,00,000
4. Total Customs Duty = BCD + ACD u/s 3(1) = (2) + (3)	1,10,000	
5. Integrated Tax at 28% on (1) + (4) Above	3,10,800	28% ×11,10,000
6. Compensation Cess at 15% on (1) + (4) Above	1,66,500	15% ×11,10,000
7. Total Customs Duty payable [(4) + (5) + (6)]	**5,87,300**	

Included Supplies - Case Study #15

Section 7(1)(b)

Importation of service

+

Made for a Consideration

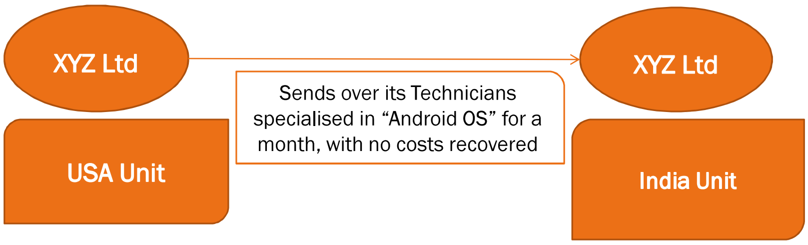
+

Whether or not in the normal Course of Business → Supply

Ex: Kareena Kapoor uses "Jean Claude" a designer based in Paris for designing her Wedding Dress

Note: These supplies are normally chargeable under Reverse Charge Mechanism (RCM), where it will be Taxable in the hands of Importer.

Deemed Supplies - Case Study #16



Note: *1. Here, Service is imported from an establishment (of the same Assessee) outside India / Related person who is outside India. This shall be treated as supply without involving consideration as per the Schedule I of the Goods and Services Act.*

2. However, such import shall be in the course of furtherance of business

Case Studies – #17 to 25

Premier Ltd., manufacturer of Equipments / Industrial Inputs from their plant at Trichy. Calculate Tax liability based on the following –

(a) Supply of goods within State, value Rs.7,50,000, [Recd. against such consignment – Rs.3,75,000].

(b) Export under LUT – Rs. 2,50,000.

(c) Export to an EOU unit in Coimbatore Rs. 5,00,000.

(d) Supply of Special purpose machineries for construction of road to State of TN– Rs.2,50,000 were charged towards machineries and Rs.50,000 for installation & commissioning.

(e) Advance of Rs.500000 received for machinery to be supplied to a SEZ Unit (under LUT)

(f) Supply w/i state against an advance received in previous month Rs.250000

(g) Legal consulting fee paid to an Advocate in Chennai Rs.25000

(h) Filing fees paid to MCA for Annual Returns amounted to Rs.1500

(i) Factory license fees paid to State Industrial Development Corporation Rs.2,50,000

(j) Fees paid for Technical consulting to UK Company Rs.120000

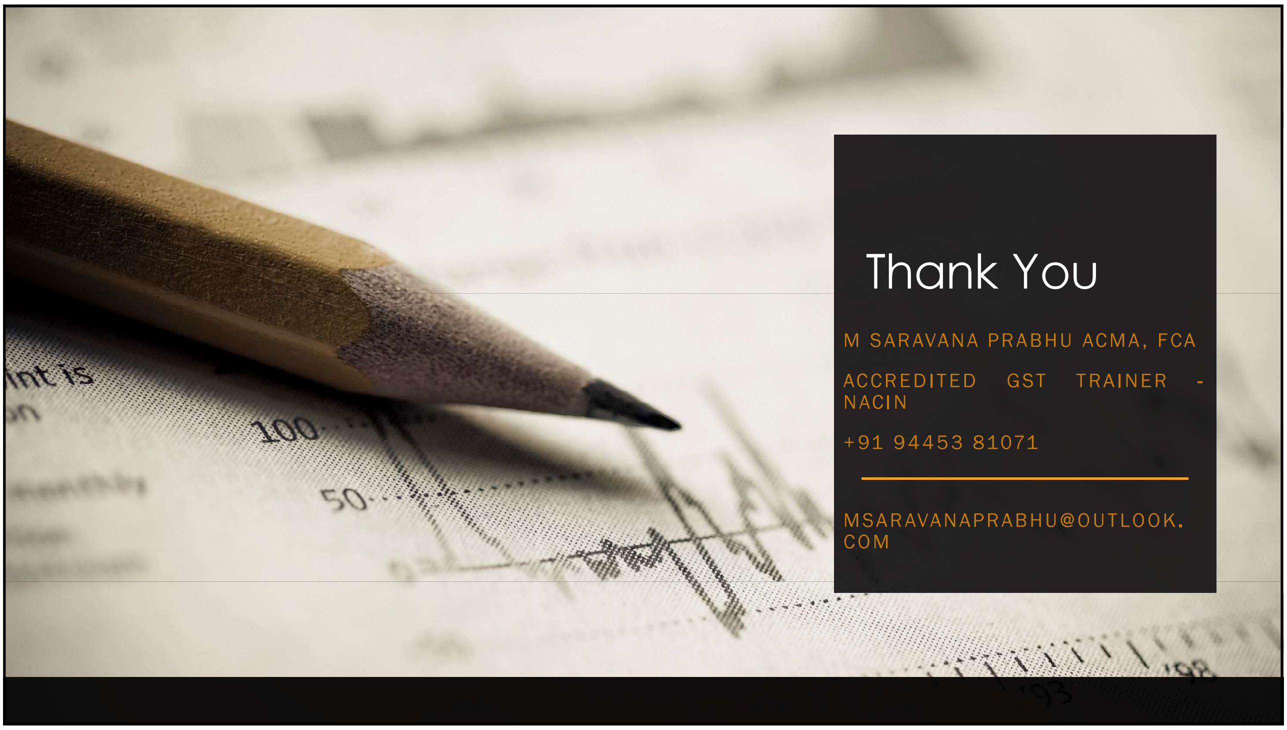
Consider GST at 18% for the calculation of tax liability of industrial equipment.

A few more Case Studies … #26

Transaction
Transfer/sale of goods while being deposited in a customs bonded warehouse–In this transaction, the Importer files an into-bond Bill of Entry (BoE) and stores the goods in a customs bonded warehouse and thereafter, supplies such goods to another person who then files an ex-bond BoE for clearing the said goods from the customs bonded warehouse for home consumption.

A few more Case Studies #27

Goods imported by Special Economic Zone (SEZ)
Goods imported by EOU



Thank You

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