



# Study Material on Import, Warehousing, and Customs Valuation

(Seminar Study Material)

## ABOUT THE TRAINER



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## Table of Contents

<b>Imports and Various Definitions.....</b>	<b>3</b>
<b>Meaning, Scope and Other Details Related to Imports.....</b>	<b>14</b>
<b>Landmark Judgement Defining Import .....</b>	<b>24</b>
<b>Recent Changes in Budget Related to Imports .....</b>	<b>33</b>
<b>High Sea Sale &amp; Sales in the Course of Import .....</b>	<b>38</b>
<b>Bonded Warehouse .....</b>	<b>45</b>
<b>Valuation of Imported Goods .....</b>	<b>64</b>
<b>SVB and Related Party Transactions .....</b>	<b>74</b>
<b>Import of services .....</b>	<b>79</b>
<b>Imports under GST.....</b>	<b>88</b>
<b>Important case studies and Advance Rulings.....</b>	<b>91</b>
<b>20 MCQ-Type Questions with Answers .....</b>	<b>97</b>



**The Imports are defined under various act and below is the definition of import under various act:**

### **Definition of Import Under Customs ("Customs")**

According to Section 2(23) of the Customs Act 1962 "import", with its grammatical variations and cognate expressions, means bringing into India from a place outside India.

### **Definition of Import Under GST Laws (IGST Act, 2017)**

**"Import"** means –

1) **goods:** - With its grammatical variations and cognate expressions, means bringing goods into India from a place outside India.

(Place of supply, Currency of payment, Location of supplier etc. are irrelevant what is relevant is movement of goods from a place outside India into India.)

2) **services:** - means the supply of any service, where –

- (i) The supplier of service is located outside India;
- (ii) The recipient of service is located in India; and
- (iii) The place of supply of service is in India;

(A service is said to be imported only when the above mentioned three conditions are met cumulatively).

### **Definition of Import Under Special Economic Zone (SEZ Act), 2005**

**“Import”** means –

- (i) Bringing goods or
- (ii) Receiving services, In a Special Economic Zone, by a Unit or Developer from a place outside India by land, sea or air or by any other mode, whether physical or otherwise; **or**
- (iii) Receiving goods, or
- (iv) Receiving services by, Unit or Developer from another Unit or Developer of the same Special Economic Zone or a different Special Economic Zone.

### **Definition of Import Under Foreign Exchange Management Act, 1999**

**“Import”** means –

- (i) **Goods** - Bringing into India any goods;
- (ii) **Services** - Bringing into India any services.

### **Definition of Import under the Foreign Trade (Development & Regulation) Act, 1992**

#### **In relation to goods**

“Import of Goods” means bringing into of India any goods by land, sea or air;

#### **In relation to services or technology**

Import of services or technology means-

- (i) From the territory of another country into the territory of India; [Cross border trade]

**Example:** A user in India receives services from Nepal through its telecommunications or postal infrastructure. Such supplies may include consultancy or market research reports, tele-medical advice, distance training, or architectural drawings etc.

- (ii) In the territory of another country to an Indian service consumer; [Consumption abroad]

**Example:** Nationals of India have moved Nepal as tourists, students, or patients to consume the services in India.

- (iii) By a service supplier of another country, through commercial presence in India; [Commercial Presence]

**Example:** The service is provided within India by a locally-established affiliate, subsidiary, or representative office of a Nepal-owned and controlled company (bank, hotel group, construction company, etc.)

- (iv) By a service supplier of another country, through presence of their natural persons in India; [Presence of natural persons]

**Example:** A Nepal national provides a service within India as an independent supplier (e.g., consultant, health worker) or employee of a service supplier (e.g. consultancy firm, hospital, construction company)

## **Definition of India Under Customs Act 1962**

According to Section 2(27) of the Customs India includes the territorial waters of India.

As Per Section 3 of the Territorial Water, Continental Shelf, Exclusive Economic Zone and Other Maritime Zone Act, 1976, territorial water extends to 12 nautical miles (**1 nautical miles = 1.1515 miles 1.852 km**) into the sea from the base line on the coast of India and include any bay, gulf, harbour, creek or tidal river. Further note that, India includes not only the surface of sea but also to the seabed and subsoil underlying, and the air space over, such waters.

India has sovereignty in its territorial waters. That means all the provisions of the Customs Act and rules and regulations are applicable in Indian Territorial Waters.

## **Meaning of Terms Used in India Definition:**

- **Baseline:** It is lower water mark along the coast.
- **Exclusive Economic Zone of India (EEZI):** The exclusive economic zone of India is an area beyond and adjacent to the territorial waters, and the limit of such zone is 200 nautical miles from the baseline.
- **Continental Shelf of India (CSI):** The continental shelf of India comprises the seabed and subsoil of the submarine areas that extend beyond the limit of its territorial waters throughout the natural prolongation of its land territory to the outer edge of the continental margin or to a distance of 200 nautical miles from the baseline, where the outer edge of the continental margin does not extend up to that distance.





### **Definition of Importer Under Customs Act 1962**

According to Section 2(26) of the Customs “**Importer**” in relation to any goods at any time between their importation and the time when they are cleared for home consumption includes any owner or any person holding himself out to be the importer.

(The term importer also includes a person who cleared the goods from warehouse even though he is not the actual importer.)

### **Definition of Goods Under Customs Act 1962**

According to Section 2(22) of the Customs

“**GOODS**” includes: -

- (a) vessels, aircrafts and vehicles;
- (b) stores;
- (c) baggage;
- (d) currency and negotiable instruments; and
- (e) any other kind of movable property.

### **Definition of Imported Goods Under Customs Act 1962**

According to Section 2(25) of the Customs “**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.

### **Definition of Bill of Entry Under Customs Act 1962**

According to Section 2(4) of the Customs “**Bill of entry**” means a bill of entry referred to in sec. 46.

**Sec. 46** provides that the importer of any goods, other than goods intended for transit or transshipment, shall make entry thereof by presenting electronically on the customs automated system to the proper officer a bill of entry for home consumption or warehousing in such form and manner as may be prescribed.

### **Definition of Conveyance Under Customs Act 1962**

According to Section 2(9) of the Customs “**Conveyance**” includes a vessel (for sea), an aircraft (for air) and a vehicle (for land).

(Vehicle means conveyance of any kind used on land and includes a railway vehicle — sec. 2(42))

### **Definition of Warehoused Goods Under Customs Act 1962**

According to Section 2(44) of the Customs “**warehoused goods**” means goods deposited in a warehouse.

### **Definition of Transit of Goods Under Customs Act 1962**

According to Section 53 of the Customs “**Transit of Goods**” means – Where any goods imported in a conveyance and mentioned in the arrival manifest or 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.

**The Importer Can Import the goods in following places as defined below:**

### **Definition of Customs Station Under Customs Act 1962**

According to Section 2(13) of the Customs “**Customs station**” means any customs port, customs airport, international courier terminal, foreign post office or land customs station.

### **Definition of Customs Airport Under Customs Act 1962**

According to Section 2(10) of the Customs “**Customs airport**” means any airport appointed u/s 7(a) to be a customs airport and includes a place appointed u/s 7(aa) to be an air freight station.

### **Definition of Customs Area Under Customs Act 1962**

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

### **Definition of Customs Port Under Customs Act 1962**

According to Section 2(12) of the Customs “Customs port” means any port appointed u/s 7(a) to be a customs port and includes a place appointed u/s 7(aa) to be an inland container depot;

### **Definition of Warehouse Under Customs Act 1962**

According to Section 2(43) of the Customs “**warehouse**” means a public warehouse licensed under Section 57 or a private warehouse licensed under Section 58 or a special warehouse licensed under Section 58A.

### **Definition of Person-In-Charge Under Customs Act 1962**

According to Section 2(31) of the Customs “**person-in-charge**” means –

- (a) in relation to a vessel, the master of the vessel;
- (b) in relation to an aircraft, the commander or pilot-in-charge of the aircraft;
- (c) in relation to a railway train, the conductor, guard or other person having the chief direction of the train;
- (d) in relation to any other conveyance, the driver or other person-in-charge of the conveyance.



## **The Goods Imported into India Are Categorized as Follows as Per FTP:**

### **Definition of Free Goods**

a) Exports and Imports shall be 'Free' except when regulated by way of 'Prohibition', 'Restriction' or 'Exclusive trading through State Trading Enterprises (STEs)' as laid down in Indian Trade Classification (Harmonized System) [ITC (HS)] of Exports and Imports.

(b) Further, there are some items which are 'Free' for import/export, but subject to conditions stipulated in other Acts or in law for the time being in force.

### **Definition of Prohibited Goods**

According to Section 2(33) of the Customs **"Prohibited Goods"** means any goods the import or export of which is subject to any prohibition under this Act or any other law for the time being in force but does not include any such goods in respect of which the conditions subject to which the goods are permitted to be imported or exported have been complied with.

### **Definition of Restricted Goods**

Any goods /service, the export or import of which is 'Restricted' may be exported or imported only in accordance with an Authorisation / Permission or in accordance with the Procedures prescribed in a Notification / Public Notice issued in this regard.

### **Actual User Condition**

Goods which are importable freely without any 'Restriction' may be imported by any person. However, if such imports require an Authorisation, Actual User alone may import such good(s) unless Actual User condition is specifically dispensed with by DGFT.

## **Other Details related to Import:**

### **HSN [Harmonized System of Nomenclature]**

HSN code is an internationally accepted system for categorizing goods in a structured and systematic manner. Developed by the World Customs Organization (WCO), it is used for customs tariffs, trade statistics and various other purposes globally. The HSN code is a numeric representation of goods, with each code representing a specific category or product. In simpler terms, all the goods that are of the same type and category will be represented by a common code known as the HSN code.

In the context of the GST regime, the HSN code serves as a basis for determining the tax liability of goods. A particular GST tax rate is assigned to each HSN code. It helps in the proper identification and classification of products, making it easier for businesses and tax authorities to understand the nature of the goods and apply the correct tax rate.

### **Structure of HSN Code in India:**

The HSN code follows a systematic structure that enables easy identification and classification of goods. The code comprises six-eight digits, grouped as follows:

**First Two Digits:** The first two digits represent the HSN chapter.

**Next Two Digits:** The next two digits signify the HSN heading.

**Subsequent Two Digits:** The subsequent two digits denote the HSN sub-heading.

**Last Two Digits:** The last two digits signify the tariff items.

The level of detail in the classification increases with each additional digit. The more digits present, the more specific the product classification becomes. This hierarchical structure aids in determining the applicable GST rate accurately. You can easily find the HSN code relevant to your product from the HSN code list. You can also use the HSN code finder to help identify the correct HSN code for your goods and services.

### **Bill of Lading**

A bill of lading (BL or BOL) is a legal document that's issued by a transportation company to a shipper. It details the type, quantity, and destination of the goods being carried. A bill of lading also serves as a shipment receipt when the carrier delivers the goods at a predetermined destination.

### **Definition of Beneficial Owner Under Customs Act 1962**

According to Section 2(3A) of the Customs “**Beneficial owner**” means any person on whose behalf the goods are being imported or exported or who exercises effective control over the goods being imported or exported;

## **Deemed Imports**

All we know that in case of imports goods should touch customs border but there is an exception where customs involvement is not required if goods are supplied from manufacturer functioning in DTA (Domestic Tariff Area) and supplied goods to importer on behalf of exporter.

### **Why it is required?**

The main reason for taking delivery of goods from DTA supplier instead of taking delivery directly from seller is saving of cost.

### **For example:**

One specific book which has strong market in India but the profit margin which the entity is enjoying would have been more if the same is printed by printer in DTA instead of importing. In case of deemed import the owner of the product is lying with the supplier situated in domestic tariff area (DTA). If goods are delivered directly from special economic zone (SEZ) evidence of import i.e. Bill of entry is required because SEZ is treated a territory outside the buyer's country.

The time of supply would be the day when final delivery is made. Why final delivery term is used because in some cases it is found that goods are delivered in lots. Final delivery would be the day when last lot is delivered to fulfil the ordered qty. The invoice date would be the date when final delivery takes place. Due date would be counted from the date of invoice/final supply.

## **Taxable Event in case of imports**

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.

In case of goods cleared for home consumption: The taxable event being reached at the time when the goods reach the customs barriers and bill of entry for home consumption is filed.

In case of goods cleared for warehousing: If imported goods are taken into warehouse, goods continue to be in custom bond. Thus, in case of warehouse also, import takes place when the goods are cleared for home consumption.

**Export Oriented Unit (EOU)** is a unit that is registered under a scheme to export its entire production of goods and services. However, EOUs may also be allowed to clear goods in the Domestic Tariff Area (DTA).

**Domestic Tariff Area (DTA)** is any area that is not under the jurisdiction of a customs bonded area. This includes areas outside of Special Economic Zones (SEZs) and Export Oriented Units (EOUs), as well as EHTPs [Electronics Hardware Technology Park], STPs [Secure Trade Partnership], and BTPs [Bio-Technology Park]. Units operating in DTAs are subject to the regulatory and statutory

requirements of the land, but they do not have the same benefits as SEZs, such as duty-free customs.

**Special Economic Zone (SEZ)** is a specifically delineated duty-free enclave and shall be deemed to be foreign territory for the purposes of trade operations and duties and tariffs.

It is a geographical area within a country that has different economic laws than the rest of the country. SEZs are often designed to promote economic growth and increase trade, employment, and investment. They can offer incentives to businesses, such as: Tax incentives, Duty-free exports, Lower tariffs, Special customs procedures, and Competitive infrastructure.

### **SCOMET**

**SCOMET** item is an acronym for Special Chemicals, Organisms, Materials, Equipment, and Technologies, and these are dual-use items that can be used for both civilian and military applications. India's **Foreign Trade Policy** regulates the export of items on the SCOMET List. The exporter must obtain a license from the **Directorate General of Foreign Trade**, Ministry of Commerce, to export SCOMET.

### **SCOMET Items Categories**

The eight categories of SCOMET items are as follows:

**Category 0:** Nuclear material, equipment, technology, and nuclear-related other materials

**Category 1:** Toxic chemical agent and other chemicals.

**Category 2:** Microorganisms and toxins.

**Category 3:** Material, Materials Processing Equipment's, and other material-related technologies.

**Category 4:** Nuclear-related equipment, test, and production types of equipment; assemblies and components of nuclear; and related technology, not controlled under Category 0.



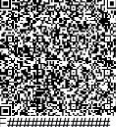
**Category 5:** Aerospace system, equipment including productions and test types of equipment, related technology, and specially designed components and accessories.

**Category 6:** Munitions List

**Category 7:** Computers, electronic, and information technology, including information security.

**Category 8:** Special Materials and Related Types of equipment, Electronics, Computers, Material Processing, Information Security, Sensors, Telecommunications and Lasers, Avionics, Marine, Aerospace Navigation, and Propulsion.

# Bill of Entry:

 		Port Code	BE No	BE Date	BE Type							
		####	####	DD/MM/YYYY	H							
INDIAN CUSTOMS		IEC/Br	#####									
PORT : ACC BANGALORE BENGALURU INTERNATIONAL AIRPORT BILL OF ENTRY FOR HOME CONSUMPTION		GSTIN/TYPE	#####/G									
		CB CODE										
		TYPE	INV	ITEM	CONT							
		Nos										
		PKG	G.WT (KGS)									
BE#####												
PART - I - BILL OF ENTRY SUMMARY												
STATUS	1.BE STATUS	2.MODE	3.DEF BE	4.KACHA	5.SEC 48	6.REIMP	7.ADV BE (Y/N/P)	8.ASSESS	9.EXAM	10.HSS	11.FIRST CHECK	12. PROV/ FINAL
		Air	T	N	N	N	N	N	N	N	N	F
DECLARANT	13.COUNTRY OF ORIGIN						14.COUNTRY OF CONSIGNMENT					
	15.PORT OF LOADING						16.PORT OF SHIPMENT					
	1.IMPORTER NAME & ADDRESS						2.CB NAME					
							3.AEO					
SUMMARY	AD CODE						4.UCR					
	#####											
	1.BCD	2.ACD	3.SWS	4.NCCD	5.ADD	6.CVD	7.IGST	8.G.CESS	18.TOT.ASS VAL			
	56379.5	0	5638		0	0	146474	0	751726			
	9.SG	10.SAED	11.GSIA	12.TTA	13.HEALTH	14.TOTAL DUTY	15.INT	16.PNLTY	17.FINE	9.TOT. AMOUNT		
						208492	514	0	0	209006		
D. MANIFEST DETAILS	1.IGM NO	2.IGM DATE	3.INW DATE	4.GIGMNO	5.GIGMDT	6.MAWB NO	7.DATE	8.HAWB NO	9.DATE	10.PKG	11.GW	
		DD/MM/YYYY	DD/MM/YYYY	0			DD/MM/YYYY		DD/MM/YYYY			
E. BOND DETAILS	1.BOND NO.	2.PORT	3.BOND CD	4.DEBT AMT	5.BG AMT							
G. WH	1.WBE NO.	2.DATE	3.WBE SITE	4.WH CODE								
H. PROCESSING DETAILS	1.EVENT	2.DATE	3.TIME	EXCHANGE RATE								
	Submission	06-SEP-22	16:51	1 EUR=81.25INR								
	Assessment	06-SEP-22	16:54	1 INR=1INR								
	Examination	13-09-2022	04:33									
CONTAINER DETAILS *	1.SNO	2.LCL/ FCL	3.TRUCK	4.SEAL	5.CONTAINER NUMBER							
						1.SR NO	2.CHALLAN NO	3.PAID ON	4.AMOUNT(Rs.)			
						1		DD/MM/YYYY	208492			
						1.S.NO	2.INVOICE NO	3.INV. AMT	4.CUR			
						1	#####	9151.4	EUR			
						INVOICE DETAILS - SUMMARY#						
						OOC NO						
						OOC DATE						
					DD/MM/YYYY							
<p>Signature Not Verified</p> <p>Digitally signed by DS CENTRAL BOARD OF INDIRECT TAXES AND CUSTOMS 04Date: 2022.09.13 04:41:57+05:30 Reason: CUSTOMS Location: INDIA</p>												
GLOSSARY												
A : DEF - Deferred Payment, REIMP - Reimport, ADV - Advance, P - Prior, HSS - HighSeaSale; B : CB - Customs Broker, AEO - Authorized Economic Operator, UCR - Unique Customs Reference; D : GIGM - Gateway IGM; G : WBE - Warehouse BE; I : OOC - Out of Charge, # Refer Par IV for full list of Invoices J : * Refer Part IV for full list of Containers;												

## Bill of Lading

Date: _____		<b>BILL OF LADING</b>		Page 1 of _____	
<b>SHIP FROM</b>			<b>Bill of Lading Number:</b> _____  <div style="border: 1px solid black; height: 40px; margin: 5px 0;"></div> <b>BAR CODE SPACE</b>		
<b>Name:</b> _____ <b>Address:</b> _____ <b>City/State/Zip:</b> _____ <b>SID#:</b> _____					
<b>FOB:</b> <input type="checkbox"/>					
<b>SHIP TO</b>					
<b>Name:</b> _____ <b>Location #:</b> _____ <b>Address:</b> _____ <b>City/State/Zip:</b> _____ <b>CID#:</b> _____			<b>CARRIER NAME:</b> _____ <b>Trailer number:</b> _____ <b>Seal number(s):</b> _____		
<b>FOB:</b> <input type="checkbox"/>			<b>SCAC:</b> _____ <b>Pro number:</b> _____		
<b>THIRD PARTY FREIGHT CHARGES BILL TO:</b>			<div style="border: 1px solid black; height: 40px; margin: 5px 0;"></div> <b>BAR CODE SPACE</b>		
<b>Name:</b> _____ <b>Address:</b> _____ <b>City/State/Zip:</b> _____					
<b>SPECIAL INSTRUCTIONS:</b> _____					
			<b>Freight Charge Terms:</b> <i>(freight charges are prepaid unless marked otherwise)</i> <b>Prepaid</b> _____ <b>Collect</b> _____ <b>3<sup>rd</sup> Party</b> _____		
<b>CUSTOMER ORDER INFORMATION</b>					
<b>CUSTOMER ORDER NUMBER</b>	<b># PKGS</b>	<b>WEIGHT</b>	<b>PALLET/SKIP (CIRCLE ONE)</b>		<b>ADDITIONAL SHIPPER INFO</b>
			Y	N	
			Y	N	
			Y	N	
			Y	N	
			Y	N	
			Y	N	
			Y	N	
			Y	N	
<b>GRAND TOTAL</b>					
<b>CARRIER INFORMATION</b>					
<b>HANDLING UNIT</b>		<b>PACKAGE</b>		<b>WEIGHT</b>	<b>H.M. (X)</b>
<b>QTY</b>	<b>TYPE</b>	<b>QTY</b>	<b>TYPE</b>		
<b>GRAND TOTAL</b>					
Where the rate is dependent on value, shippers are required to state specifically in writing the agreed or declared value of the property as follows: *The agreed or declared value of the property is specifically stated by the shipper to be not exceeding _____ per _____.				<b>COD Amount: \$</b> _____ <b>Fee Terms:</b> <b>Collect:</b> <input type="checkbox"/> <b>Prepaid:</b> <input type="checkbox"/> <b>Customer check acceptable:</b> <input type="checkbox"/>	
<b>NOTE Liability Limitation for loss or damage in this shipment may be applicable. See 49 U.S.C. • 14706(c)(1)(A) and (B).</b>					
RECEIVED, subject to individually determined rates or contracts that have been agreed upon in writing between the carrier and shipper, if applicable, otherwise to the rates, classifications and rules that have been established by the carrier and are available to the shipper, on request, and to all applicable state and federal regulations.				The carrier shall not make delivery of this shipment without payment of freight and all other lawful charges.	
<b>SHIPPER SIGNATURE / DATE</b>		<b>Trailer Loaded:</b>		<b>Freight Counted:</b>	
This is to certify that the above named materials are properly classified, packaged, marked and labeled, and are in proper condition for transportation according to the applicable regulations of the DOT.		<input type="checkbox"/> By Shipper		<input type="checkbox"/> By Shipper	
		<input type="checkbox"/> By Driver		<input type="checkbox"/> By Driver/pallets said to contain	
		<input type="checkbox"/> By Driver/Pieces			
<b>SHIPPER SIGNATURE / DATE</b> Carrier acknowledges receipt of packages and required documents. Carrier certifies emergency response information was made available and/or carrier has the DOT emergency response guidebook or equivalent documentation in the vehicle. Property described above is received in good order, except as noted.		<b>CARRIER SIGNATURE / PICKUP DATE</b>			
		<b>SHIPPER SIGNATURE</b>			
		<b>RECEIVING STAMP SPACE</b>			



# MEANING, SCOPE AND OTHER DETAILS RELATED TO IMPORTS



## Meaning and Scope of Imports

The term “imports” under customs refers to the process of bringing goods or services into a country from abroad for sale, use, or processing. The scope of imports under customs includes several key aspects:

1. **Customs Clearance:** This involves the preparation and submission of documentation required to facilitate the import of goods into the country. It includes representing the client during customs examination, assessment, payment of duty, and taking delivery of cargo from customs after clearance.
2. **Customs Duties:** These are tariffs or taxes imposed on imported goods. The rates of customs duties can be specific (a fixed amount per unit) or ad valorem (a percentage of the value of the goods).
3. **Customs Value:** This is the total expense of the goods, including the purchase price and additional costs like shipping, insurance, and handling until they reach the entry port.
4. **Regulations and Compliance:** Importers must comply with various laws and regulations, which may include obtaining licenses for certain goods, adhering to restrictions or prohibitions on specific items, and ensuring that all imported goods meet the standards set by the importing country.

5. **Documentation:** Essential documents for imports include the purchase order from the buyer, sales invoice from the supplier, bill of entry, bill of lading or airway bill, packing list, certificate of origin, and any other specific documentation required by the importing country

### **Key Objectives of Imports**

**Accelerating Industrialization:** Countries in the developing stage often import raw materials, capital goods, and advanced technology to facilitate swift industrial growth.

**Fulfilling Domestic Demand:** Goods that are in high demand but are not locally available are imported to meet consumer needs.

**Mitigating Effects of Natural Disasters:** In times of natural disasters like droughts, earthquakes, or floods, countries may import essential commodities and food grains to avert starvation.

**Enhancing Living Standards:** Imported goods can provide consumers with a wider range of high-quality products, contributing to an improved standard of living.

**Strengthening National Defence:** Specific defence equipment or technology that's not available domestically may be imported to ensure national security.

### **Benefits of Import**

**1. Access to a wider range of goods:** By importing products, businesses can access a wider range of goods than what is available domestically. This increased variety of products can help companies offer a more extensive selection to their customers, making their businesses more attractive and competitive.

**2. Lower prices:** Importing products can also help businesses lower their costs. By importing products from countries where labour or production costs are lower, companies can take advantage of the price difference to save money. This can translate into lower prices for consumers, which can increase demand and boost sales.

**3. Improved quality:** In some cases, imported products are of higher quality than what is available domestically. By importing these products, businesses can offer higher quality goods to their customers, which can improve their reputation and increase customer loyalty.

**4. Access to new technologies:** Importing products can also give businesses access to new technologies that may not be available domestically. This can help companies improve their production processes, increase efficiency, and reduce costs.

**5. Diversification:** By importing products from multiple countries, businesses can diversify their supply chain, reducing their dependence on a single supplier or country. This can help mitigate the risk of supply chain disruptions and ensure continuity of operations.

And Some Other Benefits Like -

- Economic Growth
- Consumer Choice
- Resource Optimization.
- Job Creation
- Competitiveness
- Foreign Investment
- Cultural Exchange
- Geopolitical Stability

### **Common Challenges**

- Navigating Complex Customs Procedures
- Complying with Import Regulations and Documentation Requirements
- Managing Currency Exchange Risks
- Dealing with Trade Barriers and Tariffs
- Ensuring Product Quality and Safety Standards
- Establishing Reliable Supply Chains.

### **Customs Import Procedures**

#### **1. Obtain Import-Export Code (IEC):**

In India, prior to the import, every importer must first obtain an IEC number from the regional joint Directorate General of Foreign Trade (DGFT) by filing an online application. The Import Export Code (IEC) is a permanent account number (PAN) with lifetime validity and is required for clearing customs, sending shipments, and sending or receiving money in foreign currency. The process to obtain the IEC registration takes about 10 to 15 days.

#### **2. Ensure the legal compliance under different trade laws:**

Once the IEC is allotted, the importer may import goods that are compliant with Section 11 of the *Customs Act (1962)*, *Foreign Trade (Development & Regulation) Act (1992)*, and the *Foreign Trade Policy, 2015-20*.

However, certain items that are restricted, canalized, or prohibited, as declared, and notified by the government, require additional permission and licenses from the Directorate General of Foreign Trade (DGFT) and the federal government.

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### **3. Procure Import Licenses:**

To determine whether a license is needed to import a particular commercial product or service, an importer must first classify the item by identifying its Indian Trading Clarification based on a Harmonized System of Coding or ITC (HS) classification. ITC (HS) is India's chief method of classifying items for trade and import-export operations. The ITC-HS code, issued by the DGFT, is an 8-digit alphanumeric code representing a certain class or category of goods, which allows the importer to follow regulations concerned with those goods.

An import license may be either a general license or specific license. Under a general license, goods can be imported from any country, whereas a specific or individual license authorizes import only from specific countries.

Import licenses are:

- Used in import clearance
- Renewable
- Typically, valid for 24 months for capital goods or 18 months for raw materials components, consumables, and spare parts

### **4. File Bill of Entry and other documents to complete customs clearing formalities:**

After obtaining import licenses, importers are required to furnish import declaration in the prescribed format along with the Bill of Entry and permanent account number (PAN)

A Bill of Entry gives information on the exact nature, precise quantity, and value of goods that have landed or entered inwards in the country.

If the goods are cleared through the Electronic Data Interchange (EDI) system, no formal Bill of Entry is filed as it is generated in the computer system. However, the importer must file a cargo declaration after prescribing particular requirements for processing the entry for customs clearance.

If the Bill of Entry is filed without using the EDI system, the importer is required to submit supporting documents that include:

- Certificate of origin
- Certificate of inspection
- Bill of exchange
- Commercial invoice cum packing list

Once the goods are shipped, the customs officials examine and assess the information furnished in the bill of entry and matches it with the imported items. If there are no irregularities, the officials issue a 'pass out order' that allows the imported goods to be moved out from the customs.

#### **5. Determine import duty for the clearance of goods:**

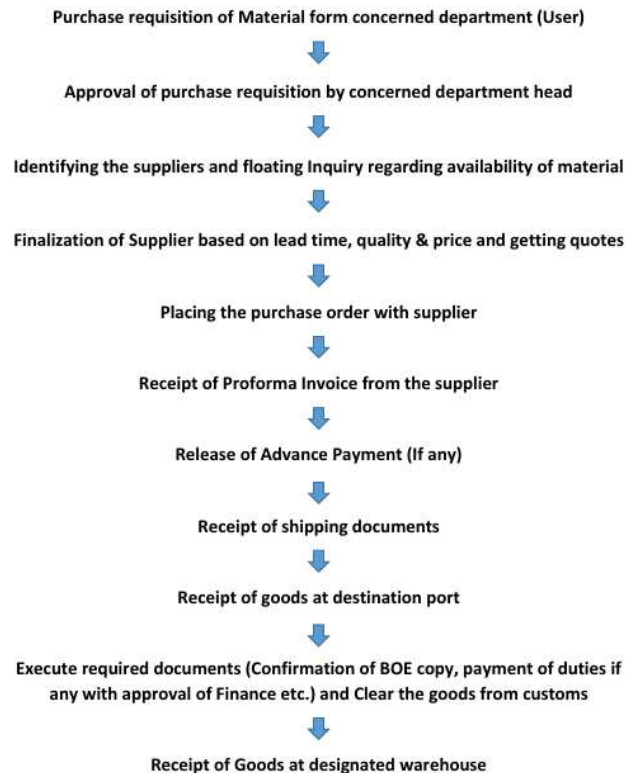
India levies basic customs duty on imported goods, as specified in the first schedule of the *Customs Tariff Act, 1975*, along with goods-specific duties such as anti-dumping duty, safeguard duty, and social welfare surcharge.

In addition to these, the government levies an integrated goods and services tax (IGST) under the new GST system. The IGST rates depend on the classification of imported goods as specified in schedules notified under Section 5 of the IGST Act (2017).

#### **List of Documents Required for Imports Customs Clearance**

- Bill of Entry
- Commercial Invoice -cum-packing list
- Bill of Lading or Airway Bill
- Import License
- Certificate of Insurance
- Letter of Credit (LC)
- Technical Write-up or Literature (Only required for specific goods)
- Industrial License (for specific goods)
- Test Report (If any)
- Registration cum Membership Certificate (RCMC)
- General Agreement on Tariffs and Trade (GATT) / Directorate General of Foreign Trade (DGFT) declaration
- Duty Entitlement Exemption Certificate (DEEC) / Duty Entitlement Pass Book (DEPB) / Export Credit Guarantee Corporation of India Limited (ECGC) License for duty benefits.

## **Import Process Flow Chart**



## **Import Duties Under Customs**

### **1. Basic Customs Duty (BCD) [Section. 12 of the Customs Act r.w.s. 2 of the Customs Tariff Act]**

Duty is levied as per Section. 12 of the Customs Act. Section. 2 of the Customs Tariff Act, 1975 provides the rate at which duties of customs shall be charged. First schedule to Customs Tariff Act enlists the goods liable to duty on importation whereas second schedule enlists the goods liable to duty on exportation. The duty charged by this system may be specific duty (i.e. duty based on measures like quintal, meters, etc.) or ad valorem (i.e. duty based on certain percentage of assessable value). Further, Customs Tariff Act provides two types of basic rate -

- a) Standard rate of duty: Generally, all goods are liable to duty at this rate. This rate is higher than preferential rate of duty. This rate is mentioned in fourth column of the schedule.
- b) Preferential rate of duty: Where goods are imported from notified preferential area, then preferential rate of duty is applicable. It is a concessional rate (given in column 5 of the schedule) for importation from preferential area. Importer should make a specific claim for this concessional rate and satisfy specified



conditions. If importer fails to satisfy those conditions, then goods shall be liable to standard rate even if such goods are imported from preferential area.

## **2. Integrated Goods and Services Tax (IGST) [Section. 3(7) of Customs Tariff Act, 1975]**

Any article which is imported into India shall, in addition, be liable to integrated tax.

IGST shall be levied at such rate as leviable u/s 5 of the Integrated Goods and Services Tax Act, 2017 on a like article on its supply in India.

For the purpose of levying IGST, value of the imported article shall be determined as under:

- The value of the imported article determined u/s 1) of the Customs or the tariff value of such article fixed u/s 14(2), as the case may be;
- Any duty of customs chargeable on that article u/s 12 of the Customs;
- Any sum chargeable on that article under any law for the time being in force as an addition to, and in the same manner as, a duty of customs like anti-dumping duty, safeguard duty, etc.;
- but does not include this IGST and the Compensation cess;

## **3. GST Compensation Cess [Section. 3(9) of Customs Tariff Act, 1975]**

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.

Any article which is imported into India shall, in addition, be liable to the goods and services tax compensation cess at such rate, as is leviable u/s 8 of the Goods and Services Tax (Compensation to States) Cess Act, 2017 on a like article on its supply in India.

Where such cess is leviable at any percentage of its value, the value of the imported article shall be the aggregate of the following:

- the value of the imported article determined u/s 14(1) of the Customs or the tariff value of such article fixed u/s 14(2), as the case may be;
- any duty of customs chargeable on that article u/s 12 of the Customs;
- any sum chargeable on that article under any law for the time being in force as an addition to, and in the same manner as, a duty of customs like anti-dumping duty, safeguard duty, etc.;
- but does not include the IGST or this cess.

#### **4. Protective Duties [Section. 6 of the Customs Tariff Act, 1975]**

In order to protect the interests of any industry established in India, Central Government may impose protective duty on any goods imported into India.

##### **Tax point:**

1. Government imposes such duty on recommendation made to it by the Tariff Commission established under the Tariff Commission Act, 1951.
2. This duty is effective only and inclusive of the date, if any, specified in the First Schedule of the Tariff [Section. 7 of the Customs Tariff Act, 1975]

#### **5. Safeguard Duty [Section. 8B of Customs Tariff Act]**

##### **Condition to impose:**

Where the Central Government is satisfied that -

- a. An article is imported into India in increased quantities; and
  - b. Such article is imported so as to cause or threaten to cause serious injury to the domestic industry,
- then it may apply such safeguard measures on that article, as it deems appropriate.

##### **Tax point:**

1. The safeguard measures shall include imposition of safeguard duty, application of tariff-rate quota or such other measure, as the Central Government may consider appropriate, to curb the increased quantity of imports of an article to prevent serious injury to domestic industry.
2. If the following conditions are satisfied then safeguard duty shall not be imposed —
  - a. Such article is originating from a developing country or countries; and
  - b. Aggregate import from country or countries shall not exceed —

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

3. However, the Central Government may exempt such quantity of any article, when imported from any country or territory into India, from payment of the whole or part of the safeguard duty leviable thereon.

4. Where tariff-rate quota is used as a safeguard measure, the Central Government shall not fix such quota lower than the average level of imports in the last 3 representative years for which statistics are available, unless a different level is deemed necessary to prevent or remedy serious injury.

5. The Central Government may allocate such tariff-rate quota to supplying countries having a substantial interest in supplying the article concerned, in such manner as may be provided by rules.

#### **6. Provisional Safeguard Duty:**

The Central Government may, pending the determination of safeguard measures, apply provisional safeguard measures on the basis of a preliminary determination that increased imports have caused or threatened to cause serious injury to a domestic industry. However, any provisional safeguard measure shall not remain in force for more than 200 days from the date on which it was applied.

Further, 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 safeguard duty so collected.

#### **Duration of imposition:**

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

#### **Safeguard duty or provisional safeguard duty shall not apply to articles imported by a 100% export-oriented or a unit in a special economic zone unless:**

- a. it is specifically made applicable in such notification or to such undertaking or unit; or
- b. such article is either cleared as such into the domestic tariff area or used in the manufacture of any goods that are cleared into the domestic tariff area, in which case, safeguard measures shall be applied on the portion of the article so cleared or used, as was applicable when it was imported into India.

The safeguard duty is product specific and it is in addition to any other duty imposed under this Act or under any other law for the time being in force.

Developing country means a country notified by the Central Government in the Official Gazette;

#### **Domestic industry means the producers:**

- a. as a whole of the like article or a directly competitive article in India; or
- b. whose collective output of the like article or a directly competitive article in India constitutes a major share of the total production of the said article in India;

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

### **Condition to impose:**

- a. Any country or territory pays, or bestows, directly or indirectly, any subsidy upon the manufacture or production therein or the exportation therefrom of any article including any subsidy on transportation of such article;
- b. Such article is imported into India;
- c. Such article is imported directly / indirectly from the country of manufacture, production; and
- d. The article is imported in the same condition as when exported from the country of manufacture or production or has been changed in condition by manufacture, production or otherwise.

**Quantum of duty:** The Central Government may impose a countervailing duty not exceeding the amount of such subsidy.

**Duration of imposition:** Such duty shall be in force for 5 years (unless revoked earlier) from the date of its imposition. However, it can be further extended for another 5 years.

## **8. Anti-Dumping duty [See. 9A of Customs Tariff Act]**

**Dumping** is said to occur when the goods are exported by a country to another country at a price lower than its normal value. This is an unfair trade practice which can have a distortive effect on international trade. Anti-dumping is a measure to rectify the situation arising out of the dumping of goods and its trade distortive effect. Thus, the purpose of anti-dumping duty is to rectify the trade distortive effect of dumping and re-establish fair trade. The use of anti-dumping measure as an instrument of fair competition is permitted by the WTO. In fact, anti-dumping is an instrument for ensuring fair trade and is not a measure of protection per se for the domestic industry, it provides relief to the domestic industry against the injury caused by dumping.

### **Condition to impose:**

- a. Any article is exported by an exporter or producer from any country or territory to India at less than its normal value; and
- b. Such article is imported into India;

However, in the case of import of the article from a country other than the country of origin and where the article has been merely transhipped through the country of export or such article is not produced in the country of export or there is no comparable price in the country of export, the normal value shall be determined with reference to its price in the country of origin.

## Landmark Judgement Defining Import



LANDMARK JUDGEMENT DEFINING IMPORT AND  
OTHER

### 1) Defining India Territory Landmark Judgement:

**Title: Validity of Customs Duty on Goods Imported for Offshore Oil Rig Operations in India's Exclusive Economic Zone (EEZ)**

#### **Background:**

- Company: Pride Foramer, a foreign company with its registered office in France and a branch office in Mumbai, engaged in offshore oil exploration and exploitation.
- Operations: The company operates an oil rig, Pride Pennsylvania, in the EEZ of India. The oil rig is towed to required locations outside the territorial waters of India and anchored for drilling operations on the high seas.

#### **Legal Issue:**

- Customs Duty: The primary issue was whether the goods imported by Pride Foramer for use on the oil rig should be subject to customs duty, given that the oil rig operates outside the territorial waters but within the EEZ of India.

**Key Points:**

- **Territorial Waters and EEZ:** The case raised questions about the boundaries of India in relation to maritime law, specifically the Territorial Waters, Continental Shelf, Exclusive Economic Zone, and Other Maritime Zones Act, 1976.
- **Customs Duty:** The petitioner argued against the levy of customs duty on goods (spares/stores) imported for use on the oil rig, which operates outside the territorial waters of India but within the EEZ.
- **Legal Interpretation:** The court examined whether the imported goods, which land at Mumbai Seaport/Airport before being transshipped to the oil rig, should be subject to customs duty.

**Judgment:**

- The Bombay High Court held that the levy of customs duty on goods imported for use on the oil rig was valid. The court reasoned that the goods, although used outside the territorial waters, are imported into India and thus fall within the scope of customs duty as per the Customs.

**Case Reference:** Pride Foramer vs Union of India (2001)

**Link:** [Pride Foramer vs Union Of India \(Uoi\) And Ors. on 24 April, 2001 \(indiankanoon.org\)](http://indiankanoon.org/Pride-Foramer-vs-Union-Of-India-(Uoi)-And-Ors.-on-24-April-2001)

**2) Defining India Landmark Judgement:**

**Title: Jurisdiction of Customs Authorities in India's Exclusive Economic Zone (EEZ)**

**Summary of the case:** The petitioner, K. Sugumar, was involved in a legal dispute concerning the jurisdiction of customs authorities over activities conducted in the Exclusive Economic Zone (EEZ) of India. The core issue was whether the customs authorities had the right to impose duties and exercise control over transactions and activities that took place in the EEZ, which extends beyond the territorial waters of India.

The Customs, under Section 2(27), defines “India” to include the territorial waters, continental shelf, exclusive economic zone, and other maritime zones of India. The petitioner argued that the customs authorities did not have jurisdiction over the EEZ, as it was not explicitly mentioned in the Customs Act.

The Madras High Court, in its judgment, clarified that the definition of “India” under the Customs Act indeed includes the EEZ. The court emphasized that the customs authorities have the jurisdiction to regulate and control activities within the EEZ, as it is considered part of India’s sovereign territory for the purposes of customs law. This interpretation was crucial in ensuring that the customs authorities could effectively monitor and regulate activities in the maritime zones, thereby preventing illegal activities such as smuggling and unauthorized trade.



The judgment reinforced the comprehensive scope of the Customs Act, ensuring that India's maritime boundaries are protected and that the customs authorities have the necessary jurisdiction to enforce the law in these areas.

**Case Reference:** K. Sugumar vs The Commissioner of Customs

**Link:** [K.Sugumar vs The Commissioner Of Customs on 7 October, 2021 \(indiankanoon.org\)](https://www.indiankanoon.org/cases/K.Sugumar%20vs%20The%20Commissioner%20Of%20Customs%20on%207%20October%202021)

### **3) Landmark Judgement permission from the ministry needs to be taken before import:**

**Title: Requirement for Obtaining Ministry Permissions for Imports under Customs Law**

#### **Summary of the case:**

This landmark judgment addresses the crucial requirement of obtaining permissions from the Ministry of Commerce and Industry for imports, as mandated by the Foreign Trade (Development and Regulation) Act, 1992. The case arose when T.R. Mehra imported goods without securing the necessary permissions, leading to the seizure of goods and imposition of penalties by customs authorities. The Supreme Court scrutinized the legal provisions governing foreign trade and emphasized the mandatory nature of obtaining an import license or permission from the relevant ministry before proceeding with any import transactions.

The Court upheld the actions of the customs authorities, affirming that non-compliance with the import regulations constituted a violation of the Act. This judgment underscores the importance of adhering to the established regulatory framework for imports, reinforcing that any failure to obtain the required permissions will result in legal penalties. The decision serves as a significant precedent, highlighting the legal obligations of importers to comply with government regulations and the severe consequences of neglecting these duties.

**Case Reference:** Union of India vs. T.R. Mehra, Supreme Court of India, Judgment dated 24.08.2019

**Link:** [Case Summary: Supreme Court Judgement on Import of Goods under Foreign Trade Act - NewsLaw](https://www.newsLaw.com/Case-Summary-Supreme-Court-Judgement-on-Import-of-Goods-under-Foreign-Trade-Act-NewsLaw)

### **4) Landmark Judgement on Deemed Import:**

**Title: Clarification on Deemed Import and Sales Tax Liability**

#### **Summary of the Case:**

This landmark case revolves around the interpretation of "deemed import" under the Customs, and its implications on sales tax exemptions under Section 5(2) of the Central Sales Tax Act, 1956. M/s. Vellanki Frame Works engaged in the importation of goods, which were subsequently sold to end-buyers while still in transit, through high sea sales agreements. The central issue was whether these transactions could be classified as deemed imports, thus qualifying for exemption from sales tax.

The Supreme Court of India scrutinized the nature of these transactions and established that for a sale to qualify as a deemed import, the goods must not cross the customs frontiers of India. In this case, the goods were cleared by M/s. Vellanki Frame Works from customs and only then sold to the buyers, meaning that the transactions did not meet the criteria for high sea sales. Consequently, these sales were not considered deemed imports and were subject to sales tax.

This judgment is crucial in clarifying the conditions under which a transaction qualifies as a deemed import, reinforcing the necessity that goods must remain outside the customs frontiers of India to be eligible for sales tax exemption under the Central Sales Tax Act, 1956.

**Case Reference:** M/s. Vellanki Frame Works vs. The Commercial Tax Officer, Visakhapatnam (Civil Appeal Nos. 14995 of 2015, Judgment dated 13.01.2021)

**Link:** [Customs Valuation between unrelated parties: Supreme Court clarifies the legal position | SCC Times \(scconline.com\)](#)

## **5) Landmark Judgement on import of free goods:**

### **Title: Confiscation and Redemption of Undeclared Gold under Customs Law**

#### **Summary of the Case:**

This case addresses the legal consequences of importing goods, specifically gold, into India without proper declaration and permissions under the Customs. P. Sinnasamy, the respondent, arrived at Anna International Airport in Chennai from Singapore, carrying gold that was seized by the Directorate of Revenue Intelligence (DRI) for being undeclared. The key issue was whether the gold could be confiscated under the Customs Act and if the respondent could be allowed to redeem the confiscated gold by paying a fine.

The Madras High Court examined Sections 111(d) and 125 of the Customs. Section 111(d) allows for the confiscation of goods that are imported contrary to any prohibition imposed by law. Section 125 provides for the option to pay a fine instead of confiscation. The Court held that the undeclared importation of gold was a clear violation of the Customs Act, justifying the confiscation. However, it also ruled that P. Sinnasamy should be allowed to redeem the gold upon payment of a fine, as permitted under Section 125.

This judgment underscores the importance of compliance with customs regulations, particularly the requirement to declare valuable items upon arrival in India. It also highlights the discretionary power of customs authorities to allow redemption of confiscated goods upon payment of a fine, balancing enforcement with fairness.

**Case Reference:** Commissioner of Customs (Air) vs. P. Sinnasamy, Madras High Court, Judgment dated 23.08.2016.

**Link:** [23083\\_2020\\_4\\_1501\\_35969\\_Judgement\\_19-May-2022.pdf \(sci.gov.in\)](#)

## **6) Landmark Judgement on Restricted goods:**

### **Title: Legal Consequences of Importing Restricted Goods without Necessary Licenses**

#### **Summary of the Case:**

This landmark case deals with the legal implications of importing restricted goods without the required import licenses. Atul Automations Pvt. Ltd. imported goods classified under a restricted category that necessitated specific permissions from the Directorate General of Foreign Trade (DGFT) before importation. The customs authorities seized the goods and imposed penalties on the company for violating import regulations.

The Supreme Court of India reviewed the relevant provisions of the Foreign Trade (Development and Regulation) Act, 1992, and the Customs. The Court determined that importing restricted goods without the necessary licenses was a clear violation of the law. It stressed the importance of adhering to the regulatory framework established by the government, particularly for goods that are subject to import restrictions.

The judgment highlighted the critical role of customs authorities in enforcing these regulations and reinforced the legal requirement for importers to obtain the requisite permissions from the relevant authorities before importing restricted goods. It also illustrated the severe legal consequences, including the seizure of goods and imposition of penalties, for failing to comply with import regulations.

#### **Case Reference:**

Atul Automations Pvt. Ltd. vs. Commissioner of Customs, Supreme Court of India, Judgment dated 15.11.2018.

**Link:** [Commissioner Of Customs vs M/S. Atul Automations Pvt Ltd. on 24 January, 2019 \(indiankanoon.org\)](https://indiankanoon.org/cases/commissioner-of-customs-vs-m/s-atul-automations-pvt-ltd-on-24-january-2019/)

## **7) Landmark Judgement on Prohibited goods:**

### **Title: Interpretation of Exemption Notifications for Prohibited Goods under Customs Law**

#### **Summary of the Case:**

This landmark case addresses the importation of prohibited goods under the Customs, and the interpretation of exemption notifications. Dilip Kumar and Company imported goods that were classified as prohibited under the law. The customs authorities seized the goods, citing a violation of the legal prohibitions on their importation. The central issue in the case was whether the importer could benefit from an exemption notification, which was ambiguously worded, potentially allowing for the import of such goods.

The Supreme Court of India examined the principles governing the interpretation of exemption notifications under customs law. The Court ruled that in cases where the language of an exemption notification is ambiguous, the benefit of the doubt should favor the revenue authorities (i.e., the customs authorities) rather than the importer.

This decision is pivotal as it established the legal principle that ambiguity in exemption notifications should be resolved in favor of the customs authorities, thereby ensuring strict compliance with the legal requirements for importing goods. It underscores the importance of adhering to customs law and highlights the potential consequences of violating prohibitions on the importation of goods.

Commissioner of Customs (Import) vs. Dilip Kumar and Company, Supreme Court of India, Judgment dated 30.07.2018.

### 8) Landmark Judgement on High Sea Sale:

### Summary of the case:

- The first issue was whether Integrated Goods and Services Tax (IGST) would be applicable on sales made to customers in India before the goods are cleared through customs—commonly known as High Sea Sales. The company sells goods purchased from an overseas related party to Indian customers while the goods are still in transit and before customs clearance.
- The second issue concerned whether BASF India Ltd. would need to reverse the input tax credit on the inputs, input services, and common services used in these transactions if the sales were deemed exempt from IGST.

**Case reference:** Maharashtra Authority for Advance Ruling, GST-ARA Application No. 27, dated 21.02.2018, BASF India Ltd.

Page 29 of 106

## **Other Landmark Judgements:**

### **1) Delhi High Court Ruling on Parallel Imports**

**Summary of the case:** The Delhi High Court issued a key ruling establishing that India adheres to the principle of national exhaustion for trademarks, not international exhaustion. This means that importing genuine goods into India without the trademark owner's authorization constitutes trademark infringement. The court emphasized that the Trademark Act's reference to 'market' pertains solely to the domestic market. The judgment also reinforced brand owners' rights to control the use of their trademarks and protect against risks like consumer confusion and dilution of their brand.

**Case reference:** Samsung Electronics Company Ltd v Kapil Wadhwa (IA No 7774/2011 and IA No 10124/2011 in CS (OS) No 1155/2011, February 17, 2012).

**Link:** [Delhi High Court issues landmark judgment on parallel imports - World Trademark Review](#)

### **2) Supreme Court Upholds Additional Duty on Goods Cleared from Bonded Warehouses**

**Summary of the case:** The Supreme Court addressed the issue of additional duty under Section 3 of the Customs Tariff Act, 1975, regarding imported goods stored in bonded warehouses. The appellants argued that additional duty should not apply as the goods were imported before the relevant ordinance imposing the duty was promulgated. The Court, however, ruled that the duty is applicable based on the date the goods are removed from the bonded warehouse, not when they arrived in India. Therefore, the additional duty was rightfully imposed when the goods were cleared after the ordinance took effect.

**Case reference:** Kiran Spinning Mills vs Collector of Customs, AIR 2000 SC 3448, decided on 5 August 1999.

**Link:** [Kiran Spinning Mills vs Collector Of Customs on 5 August, 1999 \(indiankanoon.org\)](#)

### **3) Supreme Court Affirms Inclusion of Landing Charges in CIF Value for Customs Duty Assessment**

#### **Summary of case:**

The Supreme Court of India dealt with whether customs authorities can add landing charges to the CIF (Cost, Insurance, and Freight) value when assessing customs duty on imported goods. The appellants argued that landing charges should not be included as they were paid separately. The Court held that landing charges are part of the value of goods at the time of importation and must be included in the assessable value for customs duty. The appeals were dismissed, affirming the decisions of various High Courts.

**Case reference:** Garden Silk Mills Ltd. & Anr vs Union of India and Ors on 29 September, 1999

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**Link:** [Garden Silk Mills Ltd. & Anr vs Union Of India And Ors on 29 September, 1999 \(indiankanoon.org\)](http://indiankanoon.org)

#### **4) Supreme Court Clarifies Customs Duty Assessment Date: Overturns Bombay High Court Decision**

##### **Summary of case:**

The Supreme Court addressed the issue of when customs duty should be assessed in relation to the date of importation. The Bombay High Court had previously ruled that duty should be based on the day goods entered Indian territorial waters, when they were exempt from duty. The Supreme Court overturned this decision, stating that the relevant date for determining customs duty is the date when the bill of entry is presented or when goods are removed from a bonded warehouse, not when they enter territorial waters. The Court referred to its earlier rulings which confirmed that the duty is applicable based on the date when the goods are cleared or warehoused, aligning with the provisions of the Customs Act.

**Case reference:** Union of India and Ors vs Apar Private Ltd. And Ors on 22 July, 1999

**Link:** [Union Of India And Ors vs Apar Private Ltd. And Ors on 22 July, 1999 \(indiankanoon.org\)](http://indiankanoon.org)

#### **5) Supreme Court Rules on Excise Duty Refunds and Unjust Enrichment in Mafatlal Industries Ltd. Case**

##### **Summary of case:**

Mafatlal Industries Ltd. and other mill owners sought refunds of excise duty paid on blended yarn, arguing that the duty was unlawfully levied before a specified date. The Supreme Court ruled that refunds for excise duty paid under a mistake of law must be processed according to Section 11B of the Central Excise Act or Section 27 of the Customs Act. The Court also affirmed that the doctrine of unjust enrichment applies: if the duty was passed on to buyers, the refund claim is barred. This decision clarified the conditions under which refunds are permissible and reinforced the principle of preventing unjust enrichment.

**Case reference:** Mafatlal Industries Ltd. And Ors. vs Union of India (Uoi) And Ors. on 19 December, 1996

**Link:** [Mafatlal Industries Ltd. And Ors. vs Union of India \(Uoi\) And Ors. on 19 December, 1996 \(indiankanoon.org\)](http://indiankanoon.org)

#### **6) Supreme Court Upholds Validity of Anti-Dumping Duties During Interregnum Period in G.M. Exports Case**

**Summary of case:** The Supreme Court examined the validity of imposing anti-dumping duties on ceramic tiles imported by G.M. Exports during the period between the expiry of provisional anti-dumping duties and the imposition of final anti-dumping duties. The key issues included the legality of imposing such duties during the interregnum period and the interpretation of GATT provisions. The Court ruled that



imposing anti-dumping duties during this period was valid, emphasizing that these duties are intended to protect domestic industries from unfair trade practices like dumping. Additionally, the Court addressed the classification of goods for customs duty purposes, underscoring the importance of accurate classification to determine the applicable duty rates.

**Case reference:** Supreme Court of India, G.M. Exports vs Union of India, [1999] AIR SC 563, [1999] 1 SCC 54

**Link:** [Commnr. Of Customs, Bangalore vs M/S. G.M. Exports & Ors on 23 September, 2015 \(indiankanoon.org\)](#)

#### **7) Pre-import condition in Foreign Trade Policy for availing benefit of exemption is not arbitrary or unreasonable: SC**

**Summary of case:** The Supreme Court reviewed the 'pre-import' condition in the Foreign Trade Policy, which required manufacturers to import goods before claiming exemptions under the Advance Authorization (AA) scheme. The Gujarat High Court had deemed this condition unconstitutional. However, the Supreme Court found the condition neither arbitrary nor unreasonable, emphasizing it is integral for proper exemption management. The Court set aside the High Court's ruling and directed that manufacturers with interim orders could claim refunds or input credits if they applied with the necessary documentation within six weeks.

**Case reference:** Union of India v. Cosmo Films Limited [2023] 149 taxmann.com 473 (SC)

## Recent Changes in Budget Related to Imports

### Acceptance of Proof of Origin:

- **Relevant Provision:** Section 28DA (Amended)
- **Key changes/Amendment/Impact:** Enables acceptance of various types of proof of origin provided in trade agreements, aligning the Section with new trade agreements that allow self-certification.
- **DA Insights:** Facilitates smoother trade processes by accepting diverse proof of origin documents, reducing administrative burdens for importers and exporters. Enhances India's compliance with international trade agreements.

### Restrictions on Warehouse Operations:

- **Relevant Provision:** Section 65(1) (Proviso Inserted)
- **Key changes/Amendment/Impact:** Empowers the Central Government to specify certain manufacturing and other operations that are not permitted in a warehouse for certain classes of goods.
- **DA Insights:** This provision aims to regulate warehouse operations, ensuring they are in line with policy objectives and safeguarding the integrity of the supply chain. It prevents misuse of warehouse facilities for unauthorized manufacturing activities.
- **Note:** This Section as nullified the case of ACME Heergarh Powertech Private Limited V/S Central Board Of Indirect Taxes And Customs & Anr (W.P.(C) 10537/2022) for detailed case reference refer our update : <https://rb.gy/au3s0d>

### Extension of Duty-Free Re-Import Period:

- **Relevant Provision:** Notification No. 45/2017-Customs (Amended)
- **Key changes/Amendment/Impact:** Increases the time-period for duty-free re-import of goods exported under warranty from 3 years to 5 years, with a possible extension of an additional 2 years.
- **DA Insights:** This amendment provides greater flexibility and relief to exporters, allowing more time to address warranty issues and re-import goods without incurring additional duties. It supports the competitiveness of Indian exporters by accommodating longer warranty periods.

## **Validation of Exemption from Compensation Cess for SEZ Imports:**

**Relevant Provision:** Clause 104 of the Bill (Inserted)

### **Key changes/Amendment/Impact:**

- **Validation of Notification:** Clause 104 validates the Government of India's notification (G.S.R. 394(E), dated 12th July 2024) issued by the Ministry of Finance.
- **Retrospective Effect:** The validation is applied retrospectively from 1st July 2017.
- **Exemption Provided:** The notification exempts SEZ units or developers from compensation cess on imports for authorized operations, under the powers conferred by Section 25(1) of the Customs Act and Section 3(12) of the Customs Tariff Act.

### **DA Insights:**

- **Legal Certainty:** This validation provides legal certainty and clarity to SEZ units and developers regarding the exemption from compensation cess on imports.
- **Operational Relief:** By applying the exemption retrospectively, SEZ entities can benefit from cost savings and avoid potential disputes or liabilities for past imports.
- **Encourages SEZ Growth:** This measure supports the growth and operational efficiency of SEZs, enhancing their attractiveness as hubs for investment and economic activity.

## **Amendment on Interest and Penalties for IGST Defaults on Import of Goods:**

The Finance Bill 2024, recently passed by the Lok Sabha, has introduced a critical amendment to Section 3(12) of the Customs Tariff Act, 1975 (CTA 1975). This amendment explicitly provides for the imposition of interest and penalties on defaults related to the Integrated Goods and Services Tax (IGST) levied on the import of goods. The change comes in response to recent judicial interpretations that exposed gaps in the existing legislation, prompting the government to act swiftly to ensure legal clarity and consistency in the application of these charges.

### **Reason for the Amendment:**

The amendment was driven by the need to address conflicting judicial decisions regarding the applicability of interest and penalties on IGST. In particular, the Bombay High Court's ruling in *Mahindra & Mahindra vs. UOI* held that interest could not be levied on countervailing duty (CVD) due to the absence of specific provisions under Section 3(12) of the CTA 1975.

The Supreme Court upheld this decision by dismissing the government's appeal. However, subsequent rulings by different judicial bodies, such as the CESTAT, took a contrasting stance, leading to legal uncertainty.

To resolve this inconsistency and ensure uniform enforcement, the government introduced this amendment to clearly extend all relevant provisions of the Customs, including those related to interest and penalties, to IGST defaults.

### **Key Impact and Next Course of Action:**

**Clearer Legal Framework:** The amendment brings much-needed clarity, explicitly authorizing the imposition of interest and penalties on IGST defaults, aligning the treatment of IGST with other customs duties.

**Broader Scope:** By incorporating all relevant provisions of the Customs, the amendment ensures comprehensive coverage, including aspects like assessment, non-levy, refunds, and appeals, leaving little room for legal ambiguity.

### **DA Insights and Next Steps:**

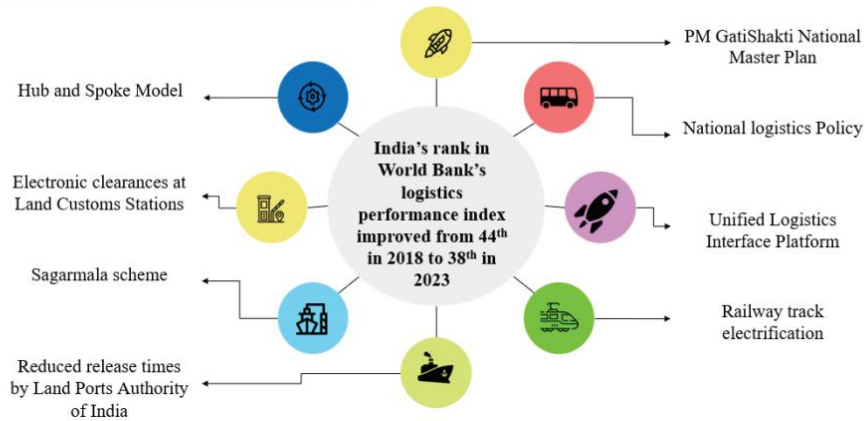
This amendment represents a significant step toward strengthening the legal framework for IGST on imports. Importers must now be more vigilant about compliance to avoid penalties and interest on defaults. However, since the amendment is prospective, past cases might still be eligible for relief.

Importers who have already paid interest and penalties under previous IGST demands should consider filing protests and seeking refunds.

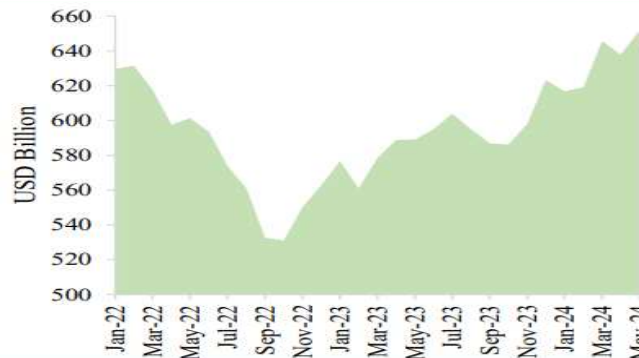
Additionally, those involved in past cases related to EPCG and Advance Licenses defaults may also be eligible to claim refunds on interest paid on IGST.



### Improvement in logistics performance



**Chart I.57: Forex reserves sufficient to cover around 11 months of imports**



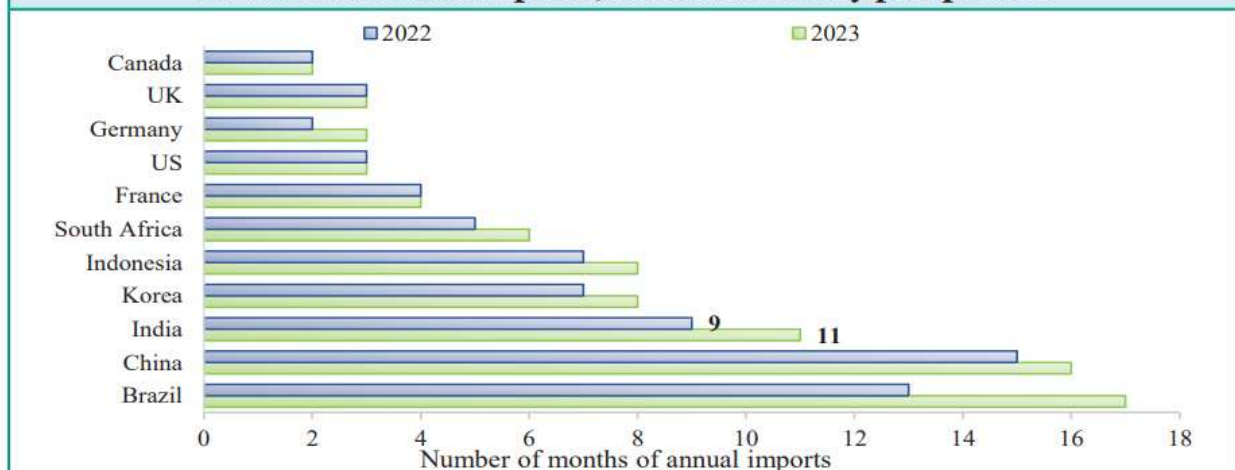
Source: Table 205, Handbook of Statistics on the Indian Economy, RBI

**Chart IV.4: India's overall trade performance in the last ten years**



Source: Export Import Data Bank (Annual), Trade Statistics, Ministry of Commerce and Industry, India's International Trade in Services, RBI

**Chart IV.32: Adequacy of India's forex reserves (in terms of number of months of annual imports): A cross-country perspective**



Source: IMF (forex reserves) and WTO (for import data)

**Table IV.1: Key aspects of India's trade (Calendar year-wise)**

	2020	2021	2022
<b>Export performance (in per cent)</b>			
Share in World Merchandise Exports	1.6	1.8	1.8
Share in World Commercial Services Exports	4.1	4.0	4.4
Share in World Merchandise Plus Services Exports	2.1	2.2	2.4
<b>Import Performance (in per cent)</b>			
Share in World Merchandise Imports	2.1	2.5	2.8
Share in World Commercial Services Imports	3.3	3.5	4.0
Share in World Merchandise Plus Services Imports	2.3	2.7	3.0
<b>India's rank in world trade</b>			
Merchandise Exports	21.0	18.0	18.0
Merchandise Imports	14.0	10.0	9.0
Services Exports	7.0	8.0	7.0
Services Imports	10.0	10.0	8.0

Source: DGFT, Monthly Bulletin on Foreign Trade Statistics, April 2024



## High Sea Sale & Sales in the Course of Import



High sea sales is a sales transaction where the buyer of the goods sells the goods to another person while the goods are still in transit on the high seas. This means that the sale happens after the goods have been dispatched from the port of loading and before they reach the port of discharge, where they are cleared for customs.

Let's say a buyer from Mumbai purchases electronic devices from China, and while in transit and before crossing the customs frontiers of India\*, the goods are sold to a buyer in Chennai. This transaction would be considered a high sea sale. High sea sales may also be made to a buyer outside India.

*\*Custom frontiers are defined in Section 2(4) of the Customs, as the perimeter of a customs station where imported goods are held before being cleared by customs officials.*

The high sea sale agreement or contract needs to be signed after the goods have been dispatched from the origin and before they reach their destination in India. High sea sales also apply to goods being imported by air. Once the high sea sales agreement is concluded, the ownership is to be transferred in favour of the new buyer.

### **Difference between regular imports and high sea sales:**

In the case of regular import of goods, the importer themselves physically receives the goods at the port/airport and brings them into the country. Goods are typically imported when domestic industries cannot produce similar goods effectively or at a lower cost. It also allows countries to obtain raw materials or commodities not available within their borders.

On the other hand, in a high sea sales transaction, the original importer does not bring the goods into the country themselves, but instead, the ownership and title of the goods are transferred to a buyer in the same country or a different country before crossing the customs frontiers of India.

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## **GST on high sea sales**

According to Section 7(2) of the IGST Act, “Supply of goods imported into the territory of India, till they cross the customs frontiers of India, shall be treated to be a supply of goods in the course of inter-state trade or commerce.

### **Time of levy on high sea sales in GST**

According to a circular released by the CBIC, IGST on high sea sales, whether it involves one or multiple transactions, is levied and collected only at the time of importation. This means that IGST is imposed when the import declarations are filed with customs authorities for customs clearance for the first time.

### **Value of levy on high sea sales under GST**

Any value added to the goods during the high sea sales will be taken into account when calculating the value on which IGST is collected during customs clearance. This means that the final buyer is responsible for paying GST on the total value of the goods, including any value added during the previous high sea sales when they import the goods.

A circular released by the CBEC in 2004 clarifies the value of high sea sales for customs clearance. According to the circular, the “high-seas-sales-charges” are taken to be 2% of the CIF value as a general practice. However, in case the actual high-sea-sale contract price is more than the CIF value + 2%, then the actual contract price paid by the last buyer will be the value taken for the purpose of assessment.

### **Documentation required for high sea sales**

Here is a list of documents required to get an HSS clearance:

- **Commercial Invoice:** Sale invoice for a high sea sales transaction in Indian currency, specifying quantities and rates of the items.
- **Import Invoice:** It reflects the original agreement between the consignee and the initial seller.
- **Certificate of Origin:** A document indicating the original destination of goods required for customs duties, sanctions, and quality certification, among others.
- **Insurance Certificate:** This is the original buyer's insurance for the imported goods, but can also be assigned to the next buyer of the high seas sales transaction.
- **High Sea Sale Agreement (HSS agreement):** It is an agreement between the original and subsequent buyers for the delivery of goods after customs clearance.
- **Bill of Lading:** Document showing ownership and title of goods during the high sea sale.

### **Can the final buyer claim an input tax credit of GST paid on high sea sales?**

Yes, the final buyer in an HSS agreement can claim Input Tax Credit (ITC) for the GST paid on the transaction.

In this type of arrangement, when the original buyer endorses the relevant documents to the subsequent buyer, the original buyer is relieved of the responsibility to pay Customs duty and IGST. Instead, the final buyer has to pay these taxes when they receive the goods. Hence, only the final buyer can then claim the ITC of the IGST they paid.

### **Advance ruling related to GST on HSS:**

**Case:** M/s. BASF India Ltd. approached the Maharashtra AAR with two questions related to the applicability of IGST and ITC reversal in the context of high sea sales.

**Question 1:** The applicant purchases goods from its overseas related party based on purchase orders received from its customers. The goods are sold by the applicant to its customers while in transit before customs clearance in India. The question raised was whether IGST would be levied on such sales to customers who were known to the applicant at the time of placing the order with the overseas party.

**Ruling 1:** The AAR answered this question in the negative, implying that IGST would not be leviable on such sales. The key factor was that the sales were made before the goods entered for customs clearance in India. (However, it is important to note that IGST will be levied at the time of import into India.)

**Question 2:** The applicant also inquired whether they would need to reverse ITC on inputs, input services, and common input services used if the above transaction was not subject to IGST, considering it as an exempt supply under Section 17 of the CGST Act.

**Ruling 2:** The AAR responded in the affirmative, stating that input tax credit would have to be reversed to the extent of inputs, input services, and common input services used if the transaction was treated as an exempt supply. However, this ruling only holds persuasive value for the applicant who sought it. This means that it is specific to M/s BASF India Limited and cannot be applied to other individuals or businesses.

## High Sea Sales under Customs:

1. **Definition:** High sea sales (HSS) refer to the sale of goods while they are still in transit, i.e., before they reach the destination port and clear customs. The sale occurs after the goods have been dispatched from the port of origin but before they arrive at the destination port.
2. **Customs Clearance:** The buyer in a high sea sale transaction is responsible for customs clearance. This means they must file the necessary customs declarations, such as the Bill of Entry, and pay the applicable import duties.
3. **Documentation:**
  - **High Sea Sale Agreement:** This agreement must be signed after the goods are dispatched from the port of origin and before they reach the destination port.
  - **Endorsement of Bill of Lading:** The original importer endorses the Bill of Lading in favor of the new buyer.
  - **Invoice:** The high sea sale invoice is issued by the original importer to the new buyer.
4. **Valuation:** The value of the goods for customs purposes is the transaction value, which includes the high sea sale price. This value is used to calculate the applicable customs duties.
5. **Multiple Sales:** The same consignment can be sold multiple times while in transit. Each subsequent buyer will be responsible for customs clearance and duties.
6. **Benefits:**
  - **Duty Exemptions:** If the final buyer is eligible for any duty exemptions (e.g., EOUs or SEZs), they can claim these benefits when filing the Bill of Entry.
  - **Cost Efficiency:** High sea sales can be cost-effective as they allow the final buyer to avoid additional costs associated with clearing and re-importing goods.

#### HIGH SEA SALES AGREEMENT

Know all men by these present that we, ABC Ltd., Nehru Place, New Delhi, made this High Sea Sale Agreement on \_\_\_\_\_ with XYZ Ltd., Nehru Market, Delhi as per the following terms and conditions:

1. Name of Seller : ABC Ltd., Nehru Place, New Delhi.
2. Name of Buyer : XYZ Ltd., Nehru Market, Delhi.
3. Description of Goods : As mentioned in Schedule Attached.
4. Name of Foreign Supplier : Supplier Address and Country of origin.
5. Invoice No. & Date of Foreign Supplier with details of Import Value (CIF) : Invoice No. \_\_\_\_\_ Dt. \_\_\_\_\_  
FOB Value USD 00000.00 Equivalent to  
Freight Charges Rs. 000000.00  
Insurance Charges Rs. 000000.00  
CIF Value Rs. 000000.00
6. Master Airway bill :
7. HAWB No. & Date :
8. Flight No. & Date :
9. Invoice No. & Date of ABC Ltd., Nehru Place, New Delhi. :
10. Value of Invoice No. in Indian Rupees : (This value should be minimum 3% more than the foreign supplier)
11. Port of Discharge : New Delhi Airport
12. Delivery : All the rights and title of ownership to the above goods will be transferred by Seller to Buyer by endorsing the above Mentioned House Airway Bill in favour of said buyer.
13. Import Duty, Demurrage Charges etc. : In view of the sales of the goods on high sea, the buyer shall arrange clearing of goods from the Customs at its sole risk and responsibility. The entire expenses e.g. Import Duty, Clearing Charges, Demurrage etc. if any, will be borne by the Buyer and paid directly to the respective authorities.

**Notification No. 11/2023-Integrated Tax (Rate)**, effective from October 1, 2023, amends Notification No. 8/2017-Integrated Tax (Rate) to address double taxation issues on ocean freight in CIF contracts. It removes provisions that could lead to IGST being levied on transportation services provided by entities in non-taxable territories, ensuring a streamlined and fair tax process. This change aims to provide clarity and uniformity in the application of IGST on such transactions.

## **Sale in Course of Import**

**Sale in Course of Import** refers to transactions where goods are sold while they are still in transit, before they have crossed the customs frontiers of the importing country. This type of sale is governed by Section 5(2) of the Central Sales Tax Act, 1956.

### **Key Characteristics:**

1. **Occasions Import:** The sale must either occasion the import of goods into India. This means the sale is directly linked to the import process.
2. **Transfer of Title:** The sale is effected by the transfer of documents of title to the goods before the goods have crossed the customs frontiers of India. This typically involves documents like the Bill of Lading.

### **Legal Basis:**

- **Section 5(2) of the CST Act:** A sale or purchase of goods is deemed to take place in the course of import if it either occasions such import or is effected by a transfer of documents of title to the goods before they have crossed the customs frontiers of India.

### **Documentation:**

- **Bill of Lading:** This document is crucial as it represents the title to the goods. The transfer of this document signifies the transfer of ownership.
- **Sales Agreement:** An agreement between the seller and buyer specifying the terms of the sale.

### **Tax Implications:**

- **Exemption from Sales Tax:** Sales in the course of import are exempt from sales tax under the CST Act. This is to avoid double taxation and ensure that only import duties are levied on such transactions



### **Difference between Sales in the course of Import vs. High Sea Sales:**

**Sales in the Course of Import** and **High Sea Sales** are both transactions involving goods that are in transit, but they have distinct characteristics and implications under customs regulations.

<b>Particular</b>	<b>Sales in the course of Import</b>	<b>High Sea Sales</b>
Definition	This refers to sales that occur during the importation process, where the goods are sold while they are still in transit but before they have crossed the customs frontiers of the importing country.	High Sea Sales occur when the original importer sells the goods to another buyer while the goods are still on the high seas, i.e., after dispatch from the port of origin but before arrival at the destination port.
Legal Basis	Governed by Section 5(2) of the Central Sales Tax Act, 1956.	Governed by customs regulations and the Central Sales Tax Act.
Customs Clearance	The buyer is responsible for customs clearance and payment of applicable duties once the goods arrive.	The final buyer is responsible for customs clearance and payment of duties.
Documentation	Requires a sales agreement, Bill of Lading, and other relevant import documents.	Requires a high sea sale agreement, endorsement of the Bill of Lading, and an invoice from the original importer to the new buyer.
Tax Implications	These transactions are exempt from sales tax as they are considered part of the import process	High sea sales are considered inter-state supplies under the IGST Act, and IGST is applicable

### **Key Differences**

- **Timing:** Sales in course of import occur before the goods cross the customs frontiers, while high sea sales occur while the goods are still in transit on the high seas.
- **Documentation:** High sea sales require specific documentation like the high sea sale agreement and endorsement of the Bill of Lading.
- **Tax Treatment:** Sales in course of import are exempt from sales tax, whereas high sea sales are subject to IGST.

## Bonded Warehouse

### The Three types of Customs Warehouses in India



#### Public Warehouse.

This is for businesses who want to store goods belonging to other people also known as depositors – licensed under Section 57 of the Customs Act.



#### Private Warehouse.

This is for businesses who want to store their Dutiable goods imported by or on their behalf – the licensee and the depositor are the same person – licensed under Section 58 of the Customs Act.



#### Special Warehouses:

For specific class of dutiable goods notified by the CBIC, can be deposited- licensed under Section 58 A of the Customs Act – these goods are specified in Notification 66/2016-Customs (N.T), dated 14th May, 2016 as amended by Notification 61/2020-Customs (N.T), dated 27th July 2020.

The goods are gold, silver, other precious metals and articles thereof; goods warehoused for the purpose of supply to duty free shops, supply as stores to vessels or aircrafts under Chapter XI, and for supply to foreign privileged persons

### CUSTOMS ACT CHAPTER IX WAREHOUSING

#### Section 57. Licensing of Public Warehouses

- [Public Warehouse Licensing Regulations, 2016](#)
- [Warehouse \(Custody and Handling of Goods\) Regulations, 2016](#)
- [Warehoused Goods \(Removal\) Regulations, 2016](#)

#### Section 58. Licensing of Private Warehouses

- [Private Warehouse Licensing Regulations, 2016](#)
- [Warehouse \(Custody and Handling of Goods\) Regulations, 2016](#)
- [Warehoused Goods \(Removal\) Regulations, 2016](#)

#### Section 58A. Licensing of special warehouses

- [Special Warehouse Licensing Regulations, 2016](#)
- [Notification 66/16-Cus. \(N.T.\), dated 14th May 2016](#) under sub-section (2) of Section 58A
- [Special Warehouse \(Custody and Handling of Goods\) Regulations, 2016](#)
- [Warehoused Goods \(Removal\) Regulations, 2016](#)

## **Licensing of warehouse:**

### **1) Public warehouse:**

Upon an application being made to license a public warehouse, the Principal Commissioner of Customs or Commissioner of Customs, as the case may be, may issue a license to an applicant who, –

- (a) is a citizen of India or is an entity incorporated or registered under any law for the time being in force;
- (b) submits an undertaking to comply with such terms and conditions as may be specified by the Principal Commissioner of Customs or Commissioner of Customs, as the case may be;
- (c) furnishes a solvency certificate from a scheduled bank for a sum of two crore rupees:

### **2) Private and Special warehouse:**

Upon an application being made to license a private warehouse, the Principal Commissioner of Customs or Commissioner of Customs, as the case may be, may issue a license to the applicant who, –

- (a) is a citizen of India or is an entity incorporated or registered under any law for the time being in force;
- (b) submits an undertaking to comply with such terms and conditions as may be specified by the Principal Commissioner of Customs or Commissioner of Customs, as the case may be;
- (c) furnishes a solvency certificate from a scheduled bank for an amount to be specified by the Principal Commissioner of Customs or Commissioner of Customs, as the case may be
- (d) undertakes to pay for the services of supervision of the warehouse by officers of customs on recovery of costs this is for special warehouse only

**The Principal Commissioner of Customs or Commissioner of Customs, as the case may be, shall not issue a license to an applicant if, -**

- a) he has been declared insolvent or bankrupt by a Court or Tribunal;
- (b) he has been convicted for an offence under any law for the time being in force;
- (c) he has been penalized for an offence under the Act, the Central Excise Act, 1944 (1 of 1944) or Chapter V of the Finance Act, 1994 (32 of 1994);
- (d) he is of unsound mind and stands so declared by a competent Court; or
- (e) the Principal Commissioner of Customs or the Commissioner of Customs, as the case may be, is satisfied that-
  - i. the site or building of the proposed public, private and special warehouse is not suitable for secure storage of dutiable goods;
  - ii. the site or building of the proposed public, private and special warehouse is not suitable for general supervision by officers of customs;
  - iii. bankruptcy proceedings are pending against the applicant; or
  - iv. criminal proceedings are pending against the applicant and the offences involved are of such nature that he is not a fit person for grant of license

#### **About the Manufacturing and Other Operations in Warehouse Regulations Scheme (MOOWR Scheme):**

**India allows manufacturing and other operations in a bonded manufacturing facility.**

With the Government's continuous efforts to promote India as the manufacturing hub globally and the commitment towards ease of doing business, another initiative in this direction by the Central Board of Indirect Taxes (CBIC) is allowing import of raw materials and capital goods without payment of duty for manufacturing and other operations in a bonded manufacturing facility.

When the raw materials or capital goods are imported, the import duty on them is deferred. If these imported inputs are utilized for exports, the deferred duty is exempted. Only when the finished goods are cleared to the domestic market, import duty is to be paid on the imported raw materials used in the production. Import duty on capital goods is to be paid if and when the capital goods are cleared to the domestic market.



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**Note:**

When the raw materials or capital goods are imported, the import duty on them is deferred. If these imported inputs are utilized for exports, the deferred duty is exempted. Only when the finished goods are cleared to the domestic market, import duty is to be paid on the imported raw materials used in the production. Import duty on capital goods is to be paid if and when the capital goods are cleared to the domestic market

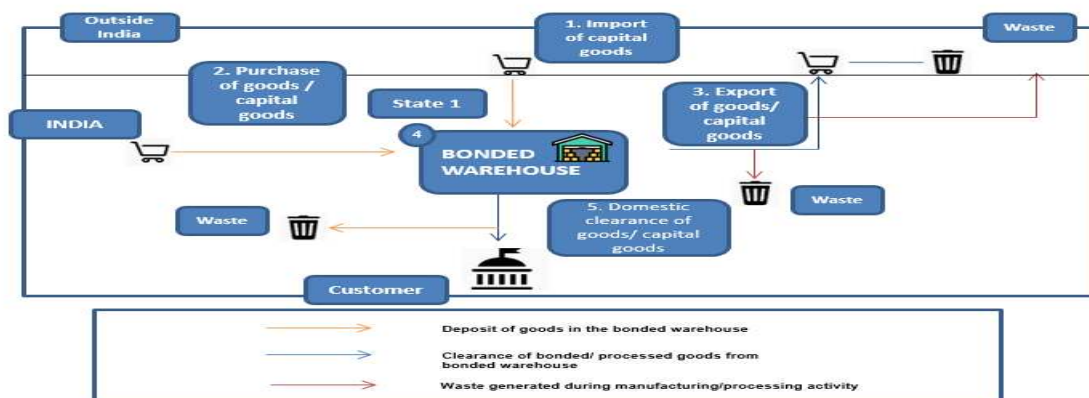
\* When finished goods are exported, in addition to the waiver of BCD + IGST on the imported goods used, the GST on the finished goods can be zero-rated.

**Conversion of existing facility into Bonded Manufacturing:**

- 1) Customs Bonded Manufacturing Warehouse is a secured and customs licensed area/structure where the imported inputs, consumables, or capital goods are stored which can be used for manufacturing and further supply in indigenous and international market where the customs duty on such import is deferred
- 2) To convert a new or existing facility into a bonded manufacturing premises, it is mandatory to seek license under Section 58 (that converts a premise to bonded warehouse) along with a license under Section 65 (that permits manufacturing or other operations like packaging, re-labelling in a bonded warehouse) of Customs
- 3) The unit just need to maintain records as per a single format specified in Annexure B of Manufacture and Other Operations in Warehouse Regulations 2019 (MOOW Regulations) which should be submitted in the office of Jurisdictional Commissioner of Customs on a monthly basis

**The salient features of the program are:**

- 1) No geographical limitation on where such units can be set up.
- 2) A single application cum approval form for uniformity of practice with a single point of approval to set up the operations of such units.
- 3) Improved liquidity with deferment of import duty and no interest liability.
- 4) Allows procurement of GST compliant goods from the domestic market for use in manufacture and other operations in a Section 65 unit.
- 5) A single digital account for ease of doing business and easy compliance.
- 6) Enables efficient capacity utilization, as there is no limit on quantum of clearances that can be exported or cleared to the domestic market.



### Duty payable on transactions:

S.no	Transactions	Customs Duty	GST
1	Import of goods	-	-
2	Local Purchase of goods	-	✓
3.	Export of Bonded Goods	-	-**
A	Waste is destroyed/exported	-	-
B	Waste is sold/cleared into domestic market	✓	✓
4.	Domestic sale/clearance of bonded goods	✓	✓
A	Waste generated is destroyed	✓	✓
B	Waste is sold/cleared into domestic market	✓	✓
5.	Clearance of capital goods:		
A	Re-export		
B	Cleared into domestic market***	✓	✓

\*\* Refund of input taxes or IGST payable on export can be availed

\*\*\* Customs duty to be paid on the assessable value declared at the time of import

### Key Highlights of MOOWR:

- 1) Single application for permission/license to operate warehouse under Section 58 and 65 of the Customs Act 1962.
- 2) Any existing business or new facility can be converted to a bonded premise with no specific eligibility criteria (product, investment)
- 3) No time limit for storage of imported goods/DTA sourced materials subject to use in process of manufacture or other operations
- 4) Unit is allowed to carry trading of goods, provided goods are moved within 90 days of import. Beyond 90 days and till a year, interest will be charged on the duty deferred
- 5) The unit is subject to audit by proper officer under Customs in accordance with the provisions of the law
- 6) No export obligation in case of a bonded warehouse, unlike other schemes such as AA, SEZ, EOU, EPCG, etc.



7) Job work transactions are permitted and Clearance from job-worker premises is allowed subject to Regulation 14/15 of MOOWR (no. 2) Regulations, 2019

8) Units operating under the MOOWR scheme are not eligible to claim RoDTEP and AIR of drawback under Customs/Foreign Trade Policy

9) Monthly return of the receipt, storage, operations and removal of the goods in the warehouse

#### **Execution and Maintenance of Bond:**

- Under this scheme, the licensee unit is required to execute the triple duty bond to serve the requirement of Section 59 of the Customs Act and the same bond is required to be executed for this scheme as well. The value of the bond should be calculated in the following manner:
  - ❖ Period for which bond to be executed;
  - ❖ Assessment of total duty on the goods to be imported during the bond period;
  - ❖ The bond should be thrice of value of the duty assessed on the imported goods. (Duty assessed period should be one year)
- The value of the said bond is to be discussed with the Assistant / Deputy Commissioner of Customs. Once the value of the bond is agreed by the Assistant / Deputy Commissioner of Customs. The bond is required to be executed on the stamp paper in the prescribed format in Annexure C;
- The executed bond is to be submitted along with the Bank Solvency Certificate to the Custom Officer. In this regard, a letter is issued by the Assistant / Deputy Commissioner of Customs for acceptance of the Bond and Solvency Certificate;
- The Bond value and period are to be monitored by the Company in the Bond Register. The Bond is required to be re-executed at the earliest of the following:
  - ❖ At the expiry of the Bond period; or
  - ❖ At the time of crossing the Bond value.
- The process of the re-execution of Bond is similar to the process of execution of the Bond first time under the scheme.

### **Insurance of Goods:**

Under the scheme, the licensed unit is required to obtain the insurance on the goods stored in bonded warehouse. Comprehensive Insurance to be given in favour of the President of India to cover the maximum duty leviable on the goods warehoused during the preceding period. Further, we are given to understand that the Company had already obtained the All-Risk Insurance policy for the goods to be stored in the warehouse.

Now, the Company is required to keep track on the expiry of policy and an extension shall be obtained before the expiry of said policy.

### **Note:**

1) In the event of failure to do so no clearance shall be permissible between the period of its expiry and subsequent renewal.

2) Comprehensive Insurance policy covers risk on entire assets of the company, which can be invoked on occurrence of certain events listed in the policy documents.

Whereas, Insurance under MOOWR scheme requires exclusive risk coverage on raw materials, consumables and capital goods, to be executed in favor of President of India (Through Principal Commissioner of Customs, <<City name>>). This policy known by name "all risk custom package" can be taken from any of the Govt GIC companies like New India Assurance, United India Insurance etc.,

### **# MOOWR scheme Amendment:**

In recent years there was an amendment proposed in the Finance Act, 2023 relating to Indirect Taxes for the MOOWR scheme to bring Section 65A of Customs.

The change is very relevant and important for the MOOWR scheme which will come the Section is notified along with issuance of relevant Rules.

### **Change Proposed for MOOWR scheme [Yet to be notified]:**

The Finance Act, 2023 inserted a new Section 65A under the Customs Act, 1961 which is yet to be notified which imposes IGST and GST Compensation Cess on the goods, that are moved to the warehouse for the purpose of carrying on any manufacturing process or other operations in the warehouse, at the time of removal of goods to such warehouse, instead of imposing it at the time of clearance of home consumption from the warehouse. Notably, no amendment is proposed in the existing provisions for the levy of customs duty, which will continue to be paid by the importer when the goods are cleared for home consumption from the bonded warehouse.

Accordingly, the deferment of duties in respect of goods imported under Manufacture and Other Operations in Warehouse Regulations (MOOWR) in future may be restricted to duties other than integrated tax (IGST) and compensation cess (Cess). In other words, IGST and Cess are payable on the import of goods under MOOWR. (New

Section 65A of the Customs has been introduced which will come into effect when the same is notified. Further relevant changes made in Sections 157, 159)

### DA Insights:


Non-deferment of IGST and cess in case of import of goods under MOOWR may lead to lower benefit under the MOOWR scheme on all imports by asking to pay upfront IGST and cess on Capital goods and consumables and others and also it impacts on the working capital of the taxpayers.

Once the amended Finance Bill, 2023 related to Section 65A of the Customs is passed by both houses of Parliament and assent by the President of India, we will let you know.

In recent years there was an amendment proposed in the Finance Act, 2024 relating to Indirect Taxes for the MOOWR scheme.

### Requirements for Record-keeping

#### 1. Maintenance of records

- Maintain detailed records of receipt, handling, storing and removal of goods into/ from the facility as per [Annexure B](#) .
- Keep record of each activity, operation or action taken in relation to the warehoused goods.
- Keep record of drawl of samples from the warehoused goods.
- Keep copies of the following documents:
  - Bills of Entry
  - Transport documents
  - Forms for transfer of goods from warehouse
  - Shipping Bills
  - Bills of Export
  - Any other documents indicating receipt/ removal of goods from the warehouse

#### 2. Preservation of physical and digital records

- Update records and accounts accurately and preserve for a minimum 5 years from the date of removal of goods from the facility.
- Preserve updated digital copies of records at a place other than the facility to prevent loss of records due to natural calamities.

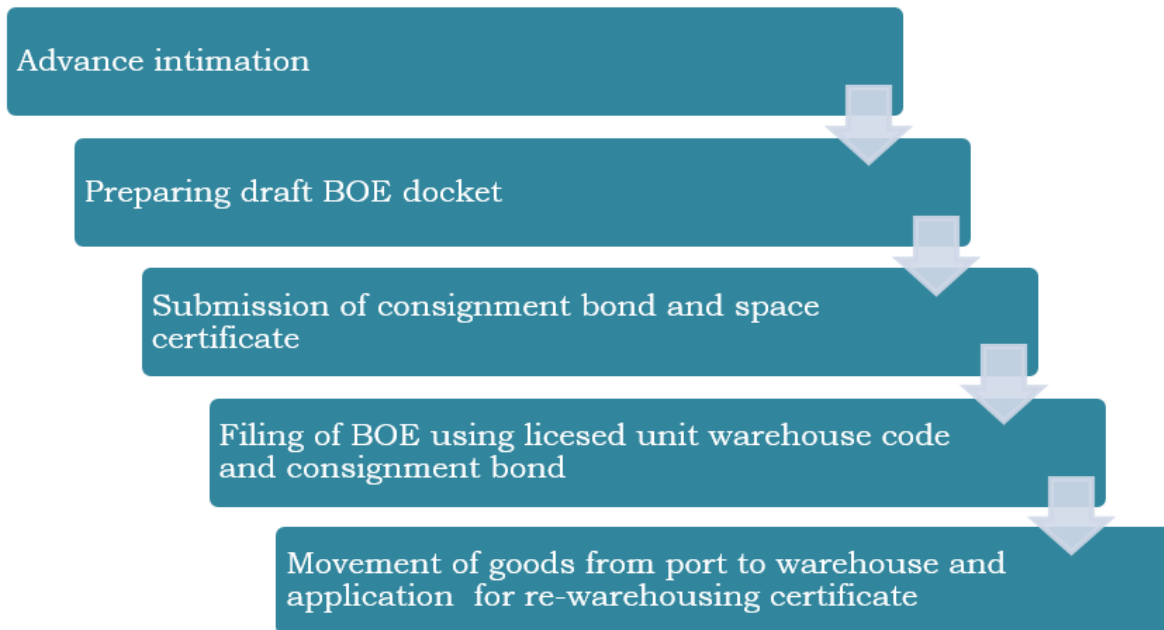
#### 3. Filing monthly returns

- File monthly returns within 10 days of closing of the month.

### **Goods Inwards in Licensed Unit:**

#### **A. Import of Goods (Arrival and clearance of goods at custom stations): -**

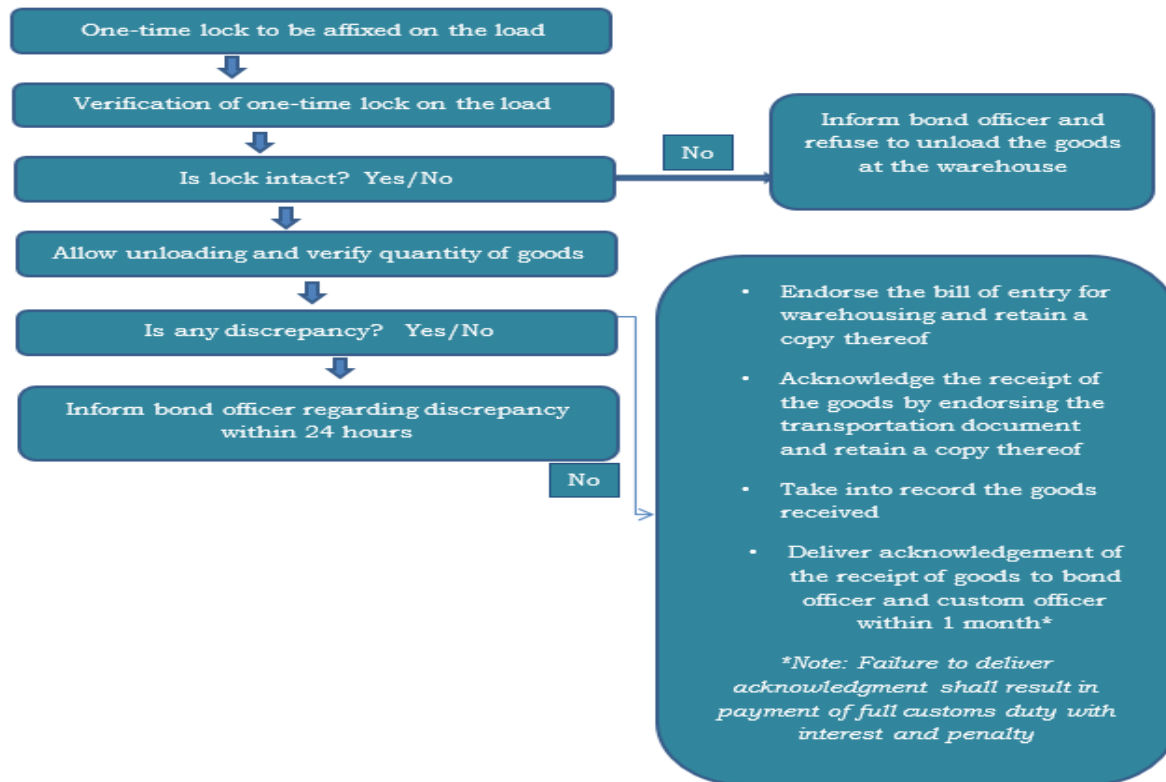
The licensed unit / warehouse owner shall be responsible to perform the following compliances at the time of arrival & clearance of goods at customs station:



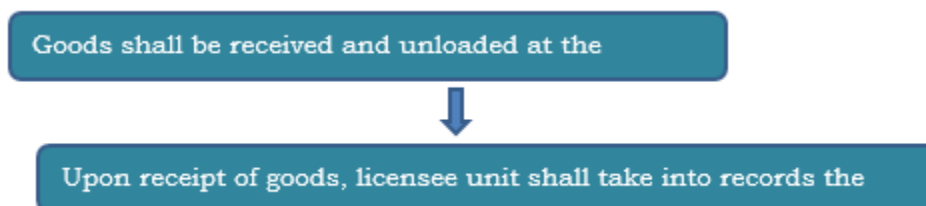
A separate form of Bill of Entry is used for clearance of goods for warehousing. All documents, as are required to be filed with Bill of Entry for home consumption are also required with the Bill of Entry for warehousing which is assessed in the same manner and duty payable is determined.

B. Import of Goods (Movement from Customs stations to licensed unit warehouse):

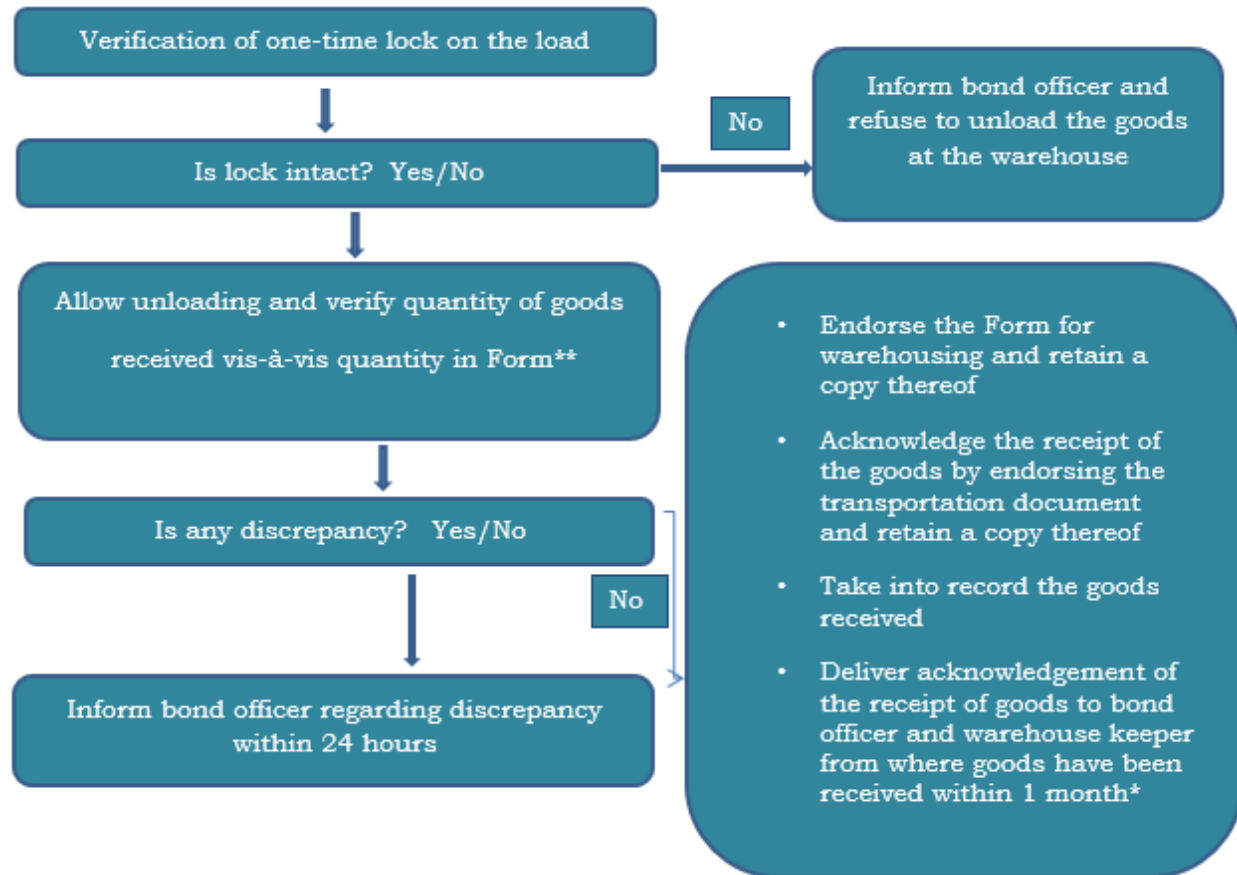
The licensed unit / warehouse owner shall perform following while moving the goods from customs station to warehouse.



C. DTA to licensed unit warehouse: In this regard, we wish to highlight that a unit operating as MOOWR warehouse, are entitled to procure goods domestically, without payment of taxes, unless there are any exemptions available on such goods.



D. From another warehouse (operating under Section 65 and Section 58 warehouse) to licensed unit warehouse: Licensee unit / warehouse owner may receive the goods from another warehouse and the following process documents should be maintained:



*\*Note: Failure to deliver acknowledgment shall result in payment of full customs duty with interest and penalty*

*\*\*Form: a) in case of goods received from a unit operating under Section 65, the Form appended into regulations prescribed for MOOWR scheme;*

*b) in case of goods received from a warehouse not operating under Section 65, the Form as prescribed under the Warehoused Goods (Removal) Regulations, 2016*



- E. Goods receipt from SEZ/FTWZ: Licensee unit / warehouse owner may receive the goods from SEZ and FTWZ without payment of duty and below process and documents should be maintained:

Details	Particulars
<b>Execution of bond under Section 59 of Customs Act</b>	The licensed unit would be required to execute the bond under Section 59 of Customs Act. Such bond may be running bond or a bond for specific consignment.  <i>Note: Bond executed under MOOWR by the Company would be sufficient for this requirement.</i>
<b>Permission from Deputy/Assistant Commissioner</b>	Permission should be obtained from the Deputy/Assistant Commissioner for procurement of goods from SEZ unit for the specified quantity and description.
<b>Filing of Bill of Entry</b>	A Bill of Entry from SEZ/FTWZ to warehousing shall be filed by the SEZ unit against the permission given by the Deputy/Assistant Commissioner of Customs.
<b>Receipt of goods</b>	<ul style="list-style-type: none"> <li>• Verify the quantity with Bill of Entry</li> <li>• Endorse the Bill of Entry and retain the copy of the same</li> <li>• Acknowledge the receipt of the goods and transportation documents</li> </ul>
<b>Reporting of the goods procured</b>	Goods received from the SEZ/FTWZ shall be separately reported in the monthly return. Also, it should be indicated in the registers that goods procured from SEZ/FTWZ for proper identification.
<b>Discharge of Bond</b>	Upon satisfactory accounting of the goods which are used for manufacturing resultant goods as per the approved input output norms, upon payment of duty on clearance of resultant goods or on export of resultant goods, the bond shall be discharged.
<b>Note: Duty on the scrap generated shall be paid as applicable in normal course. The Licensee unit shall follow all the procedures required under the law.</b>	

**Clarification:** *There are no restrictions imposed on sourcing of goods by units operating under Section 65. Moreover, the units are GST registrants, which are also allowed to procure goods from SEZ/FTWZs. In view of the foregoing, it is clarified that a Section 65 unit may source capital goods or inputs from a SEZ/FTWZ, following the applicable procedures.*

Vineet Suman Darda (Co-Founder and Managing Partner of Darda Advisors LLP)  
[www.dardaadvisors.com](http://www.dardaadvisors.com)

- F. Goods receipt from EOU/STP/EHTP: Licensed unit/warehouse owner may also receive the goods from EOU/STP/EHTP, however, MOOWR Rules and Custom regulation does not specify the how goods should be brought into the MOOWR warehouse. Therefore, it is advised that permission should be obtained from the Customs Authorities if goods are bought without payment of duty.

Further, provisions related to the deemed exports would apply as mentioned under GST law for supplies made to EOU/STP/EHTP.

- G. Re-import of exported goods: Licensed unit/warehouse owner may receive if resultant goods were exported and subsequently rejected and sent back for repair by the customer, then goods upon re-import have to be entered as import receipts in the accounting form. The relevant customs notification for re-import has to be followed while filing the Bill of Entry for re-import of the goods.

#### **Documents required for MOOWR Scheme:**



#### **Documents That Are Mandatory To Upload**

- |  |   |                              |
|--|---|------------------------------|
| ✓ Application For License                | ✓ Site Plan                                       | ✓ Lease Deed                 |
| ✓ NOC From Owner                         | ✓ PAN Card Copy                                   | ✓ Aadhar Card                |
| ✓ Bank Solvency Certificate              | ✓ Undertakings                                    | ✓ ID Proof Of Directors      |
| ✓ Certificate Of Incorporation           | ✓ List Of Director                                | ✓ Board Resolution           |
| ✓ General Continuity Bond                | ✓ Indemnity Bond                                  | ✓ Fire Fighting Installation |
| ✓ Insurance                              | ✓ ITR and Balance Sheet                           | ✓ Memorandum & Articles      |
| ✓ Appointment Letter Of Warehouse Keeper | ✓ Work Experience Certificate Of Warehouse Keeper | ✓ Importer Exporter Code     |

## **AEO Benefits for MOOWRS:**

### **About AEO:**

AEO is a programme under the aegis of the World Customs Organization (WCO) SAFE Framework of Standards to secure and facilitate Global Trade. The programme aims to enhance international supply chain security and facilitate movement of legitimate goods. AEO encompasses various players in the International supply chain. Under this programme

an entity engaged in international trade is approved by Customs as compliant with supply chain security standards and granted AEO status & certain benefits. India's AEO Programme is in sync with the commitments made under Article 7.7 of WTO TFA. AEO is a voluntary compliance programme. It enables Indian Customs to enhance and streamline cargo security through close cooperation with the principle stakeholders of the international supply chain viz. importers, exporters, logistics providers, custodians or terminal operators, custom brokers and warehouse operators.

The AEO holder will continue to enjoy the all the benefit even if after they register under the MOOWR scheme:

- **Deferred payment duty:** Deferred duty payment is a mechanism for delinking duty payment and Customs clearance. It is to be paid fortnightly. It is based on principle 'Clear-First-Pay-Later.
- **Faster disbursal of drawback amount:** Drawback amount will be disbursed within 72 hours of Export General Manifest (EGM) submission.
- **Self-declaration of SION:** Self-declaration of SION under Para 4.07A of FTP 2015-20 for AEO status holder Exporters in cases where SION is not notified.
- **Faster completion of SVB proceeding:** Faster completion of Special Valuation Branch ('SVB') proceedings in case of related party imports and monitoring of such cases.
- **Faster disbursal of refund:** The refund/Rebate of Customs/Central Excise duty and Service/GST Tax would be granted within 45 days of the submission of complete documents.
- **DPD/DPE Facility:** DPD of import Containers thereby entailing the delivery of a shipment from the port to the consignee instead of initially holding it at a container freight station (CFS) and/or DPE of Export Containers which ensures direct entry into the port terminal prior to granting Let Export Order (LEO).
- **Trade facilitation:** AEO operator will get trade facilitation by a foreign Customs administration with whom India enters into a Mutual Recognition Agreement/Arrangement (MRA).
- **Facilitation in import /export:** High level of facilitation in imports and export of consignments, thereby ensuring shorter cargo release time.

- **CRM level resolving of issues:** Customs Houses will appoint Customer Relationship Manager (CRM) at the level of Deputy / Assistant Commissioner to resolve the procedural and operational issues.
- **Paperless Declarations and MRP stickers:** AEO operator will be provided the facility of submitting paperless declarations with no supporting documents in physical form and facility of affixing MRP stickers in their premises.
- **Bank Guarantee:** Bank Guarantee to be furnished by the AEO operator that their liabilities will be met which is guaranteed by the bank.
- **No regular Post Clearance Audit (PCA):** PCA allows Customs to reduce border controls by shifting compliance checks from the clearance stage to the post clearance stage.
- **24/7 clearances on request at all seaports and airports:** As well as there is no need to pay Merchant Overtime Fee (MOT) charges, which are charged when the services of Custom Officers' services are used beyond office hours.
- **Receipt of an e-mail:** Receipt of an e-mail regarding arrival/ departure of the vessel carrying consignments.

**Major Benefits of the AEO certification are:**

- Self-declaration of SION under Para 4.07A of FTP 2015-20 for AEO Exporters in cases where SION is not notified.
- Inclusion of Direct Port Delivery of imports to ensure just-in-time inventory management by manufacturers – clearance from wharf to warehouse for AEO T1, T2 and T3.
- Inclusion of Direct Port Entry for factory stuffed containers meant for export by AEOs for AEO T1, T2 AND T3.
- Provision of Deferred Payment of duties – delinking duty payment and Customs clearance for AEO T2 and AEO T3
- Benefits of Mutual Recognition Agreements with other Customs Administrations for AEO T2 and AEO T3.
- Fast tracking of adjudications and refunds including IGST refunds and disbursal of drawback.

## **Important Provision of Section MOOWR Scheme:**

### **Section 58. Licensing of private warehouses. -**

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.

### **Section 59. Warehousing bond.**

(1) The importer of any goods in respect of which a bill of entry for warehousing has been presented under section 46 and assessed to duty under section 17 or section 18 shall execute a bond in a sum equal to thrice the amount of the duty assessed on such goods, binding himself-

(a) to comply with all the provisions of the Act and the rules and regulations made thereunder in respect of such goods;

(b) to pay, on or before the date specified in the notice of demand, all duties and interest payable under sub-section (2) of section 61; and

(c) to pay all penalties and fines incurred for the contravention of the provisions of this Act or the rules or regulations, in respect of such goods.

(2) For the purposes of sub-section (1), the Assistant Commissioner of Customs or Deputy Commissioner of Customs may permit an importer to execute a general bond in such amount as the Assistant Commissioner of Customs or Deputy Commissioner of Customs may approve in respect of the warehousing of goods to be imported by him within a specified period.

(3) The importer shall, in addition to the execution of a bond under subsection (1) or sub-section (2), furnish such security as may be prescribed

(4) Any bond executed under this section by an importer in respect of any goods shall continue to be in force notwithstanding the transfer of the goods to another warehouse.

(5) Where the whole of the goods or any part thereof are transferred to another person, the transferee shall execute a bond in the manner specified in sub-section (1) or sub-section (2) and furnish security as specified under sub-section (3).

### **Section 65. Manufacture and other operations in relation to goods in a warehouse.**

(1) With the permission of the Principal Commissioner of Customs or Commissioner of Customs and 2[subject to the provisions of section 65A and such conditions] 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.

(2) Where in the course of any operations permissible in relation to any warehoused goods under sub-section (1), there is any waste or refuse, the following provisions shall apply: -

(a) if the whole or any part of the goods resulting from such operations are exported, import duty shall be remitted on the quantity of the warehoused goods contained in so much of the waste or refuse as has arisen from the operations carried on in relation to the goods exported:

**Provided** that such waste or refuse is either destroyed or duty is paid on such waste or refuse as if it had been imported into India in that form;

(b) if the whole or any part of the goods resulting from such operations are cleared from the warehouse for home consumption, import duty shall be charged on the quantity of the warehoused goods contained in so much of the waste or refuse as has arisen from the operations carried on in relation to the goods cleared for home consumption.

### **Section 61. Period for which goods may remain warehoused:**

(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.

**Explanation.** - For the purposes of this section,

- (i) "electronic hardware technology park unit" means a unit established under the Electronic Hardware Technology Park Scheme notified by the Government of India;
- (ii) "hundred per cent. export oriented undertaking" has the same meaning as in clause (ii) of Explanation 2 to sub-section (1) of section 3 of the Central Excise Act, 1944 (1 of 1944); and
- (iii) "software technology park unit" means a unit established under the Software Technology Park Scheme notified by the Government of India.

**Section 66. Power to exempt imported materials used in the manufacture of goods in warehouse. –**

If any imported materials are used in accordance with the provisions of section 65 for the manufacture of any goods and the rate of duty leviable on the imported materials exceeds the rate of duty leviable on such goods, the Central Government, if satisfied that in the interests of the establishment or development of any domestic industry it is necessary so to do, may, by notification in the Official Gazette, exempt the imported materials from the whole or part of the excess rate of duty.

**Section 67. Removal of goods from one warehouse to another.**

The owner of any warehoused goods may, with the permission of the proper officer, remove them from one warehouse to another,

Subject to such conditions as may be prescribed for the due arrival of the warehoused goods at the warehouse to which removal is permitted.

**Section 68. Clearance of warehoused goods for home consumption. –**

Any warehoused goods may be cleared from the warehouse for home consumption, if -

- (a) a bill of entry for home consumption in respect of such goods has been presented in the prescribed form;
- (b) the import duty, interest, fine and penalties payable in respect of such goods have been paid; and

(c) an order for clearance of such goods for home consumption has been made by the proper officer:

**Provided** that the order referred to in clause (c) may also be made electronically through the customs automated system on the basis of risk evaluation through appropriate selection criteria:

**Provided** further that] the owner of any warehoused goods may, at any time before an order for clearance of goods for home consumption has been made in respect of such goods, relinquish his title to the goods upon payment of penalties that may be payable in respect of the goods and upon such relinquishment, he shall not be liable to pay duty thereon:

**Provided** also that] the owner of any such warehoused goods shall not be allowed to relinquish his title to such goods regarding which an offence appears to have been committed under this Act or any other law for the time being in force.

### **Section 69. Clearance of warehoused goods for export. -**

(1) Any warehoused goods may be exported to a place outside India without payment of import duty if -

(a) a shipping bill or a bill of export or the form as prescribed under section 84 has been presented in respect of such goods;]

(b) the export duty, fine and penalties payable in respect of such goods have been paid; and

(c) an order for clearance of such goods for 4 [export] has been made by the proper officer.

**Provided** that the order referred to in clause (c) may also be made electronically through the customs automated system on the basis of risk evaluation through appropriate selection criteria]

(2) Notwithstanding anything contained in sub-section (1), if the Central Government is of opinion that warehoused goods of any specified description are likely to be smuggled back into India, it may, by notification in the Official Gazette, direct that such goods shall not be exported to any place outside India without payment of duty or may be allowed to be so exported subject to such restrictions and conditions as may be specified in the notification.

### **Section 71. Goods not to be taken out of warehouse except as provided by this Act. -**

No warehoused goods shall be taken out of a warehouse except on clearance for home consumption or export, or for removal to another warehouse, or as otherwise provided by this Act.



## Valuation of Imported Goods

Get the right value for your goods

### Section 14. Valuation of goods

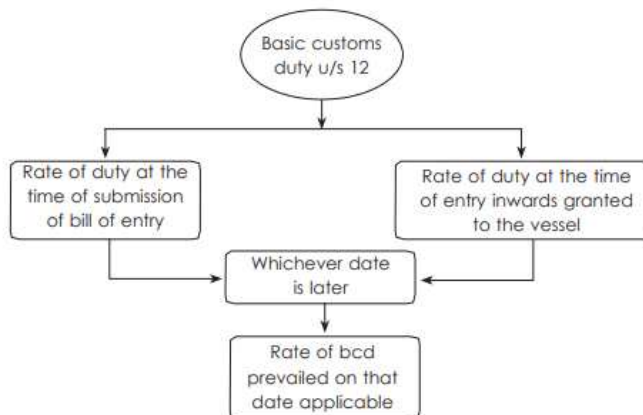
1) The value of the imported goods and export goods shall be the **transaction value** of such goods, that is to say, the **price actually paid or payable** for the goods when sold for export to India for delivery at the time and place of importation, or as the case may be, for export from India for delivery at the time and place of exportation, where the buyer and seller of the goods are not related and price is the sole consideration for the sale subject to such other conditions as may be specified in the rules made in this behalf.

#### 2) **Imported Goods Transaction Value Includes:**

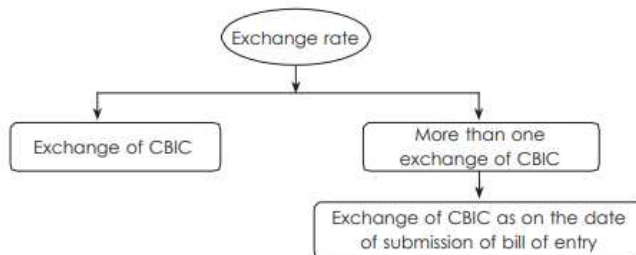
Costs and services such as commissions, brokerage, engineering, design work, royalties, license fees, transportation costs, insurance, loading, unloading, and handling charges.

3) **Price** shall be calculated with reference to the rate of exchange as in force on the date on which a bill of entry is presented under Section 46, or a shipping bill of export, as the case may be, is presented under Section 50.

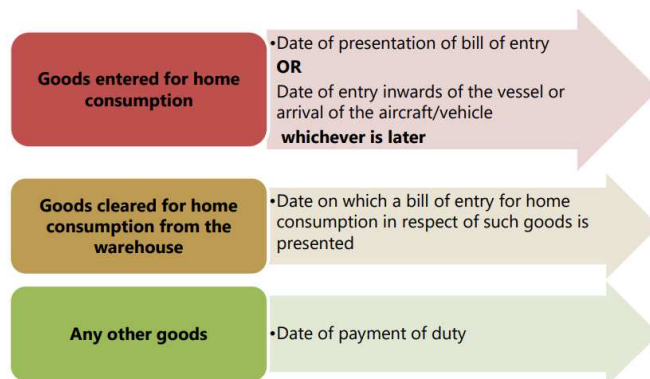
#### 4) Basic Customs Duty (BCD) on imported goods:



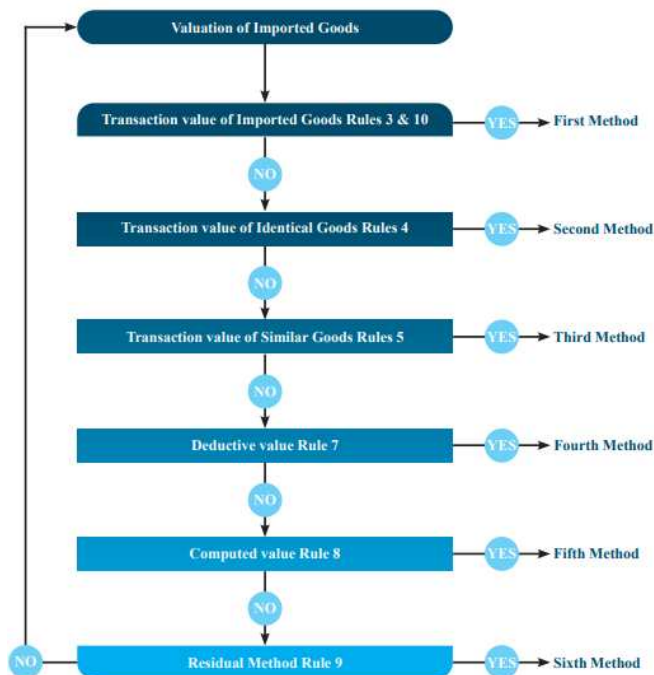
#### 5) Exchange rate for Imported Goods:



#### 6) Date for determining the rate of duty and tariff valuation of imported goods [Section 15]:



**7) The following methods can be applied in sequential order for imported goods:**



**8) Exemption from customs duty:**

**General Exemption**



- ☐ Central Government in public interest
- ☐ by notification in the Official Gazette  
exempt generally either absolutely or conditional exemption
- ☐ conditional exemption-valid upto 31st day of March falling immediately after 2 years from the date of such grant/variation **in other than specified cases**

**Special Exemption**



- ☐ Central Government in public interest
- ☐ by special order in each case  
exempt from payment of duty  
only under circumstances - exceptional nature
- ☐ No duty - if the amount of duty leviable is equal to or less than ₹ 100.

## **9) Custom Valuation (Determination of Price of Imported Goods Rules 2007:**

### **Rule 3 - Determination of The Method of Valuation**

(1) Subject to rule 12, the value of imported goods shall be the transaction value adjusted in accordance with provisions of rule 10.

(2) Value of imported goods under sub-rule (1) shall be accepted:

#### **Provided that-**

(a) there are no restrictions as to the disposition or use of the goods by the buyer other than restrictions which —

(i) are imposed or required by law or by the public authorities in India; or

(ii) limit the geographical area in which the goods may be resold; or

(iii) do not substantially affect the value of the goods;

(b) the sale or price is not subject to some condition or consideration for which a value cannot be determined in respect of the goods being valued;

(c) no part of the proceeds of any subsequent resale, disposal or use of the goods by the buyer will accrue directly or indirectly to the seller, unless an appropriate adjustment can be made in accordance with the provisions of rule 10 of these rules; and

(d) the buyer and seller are not related, or where the buyer and seller are related, that transaction value is acceptable for customs purposes under the provisions of sub-rule (3) below.

(3) (a) Where the buyer and seller are related, the transaction value shall be accepted provided that the examination of the circumstances of the sale of the imported goods indicate that the relationship did not influence the price.

(b) In a sale between related persons, the transaction value shall be accepted, whenever the importer demonstrates that the declared value of the goods being valued, closely approximates to one of the following values ascertained at or about the same time.

(i) the transaction value of identical goods, or of similar goods, in sales to unrelated buyers in India;

(ii) the deductive value for identical goods or similar goods;

(iii) the computed value for identical goods or similar goods.

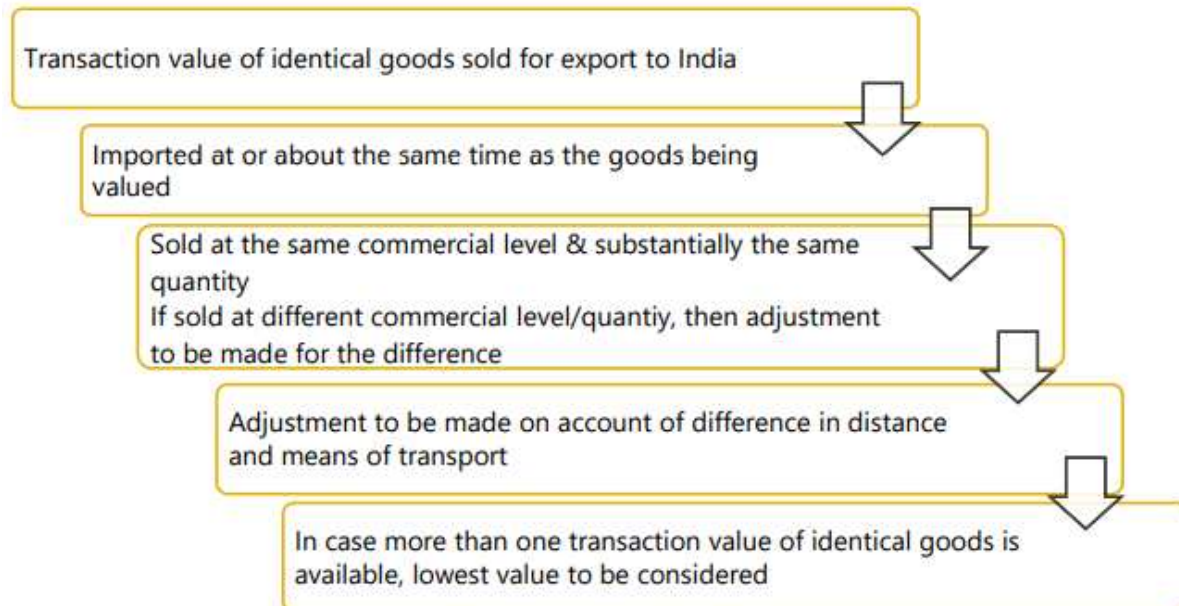
Provided that in applying the values used for comparison, due account shall be taken of demonstrated difference in commercial levels, quantity levels, adjustments in accordance with the provisions of rule 10 and cost incurred by the seller in sales in which he and the buyer are not related.

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



(4) If the value cannot be determined under the provisions of sub-rule (1), the value shall be determined by proceeding sequentially through rule 4 to 9.

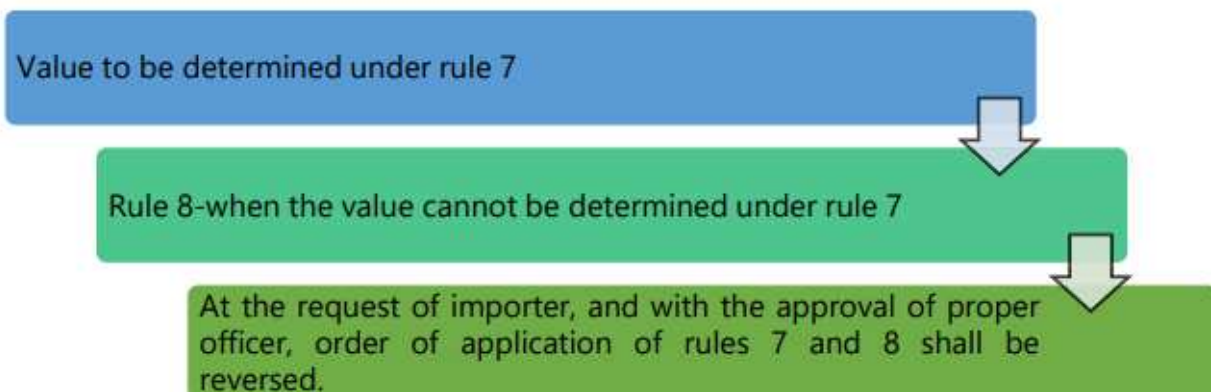
#### **Rule 4 - Transaction Value of Identical Goods:**



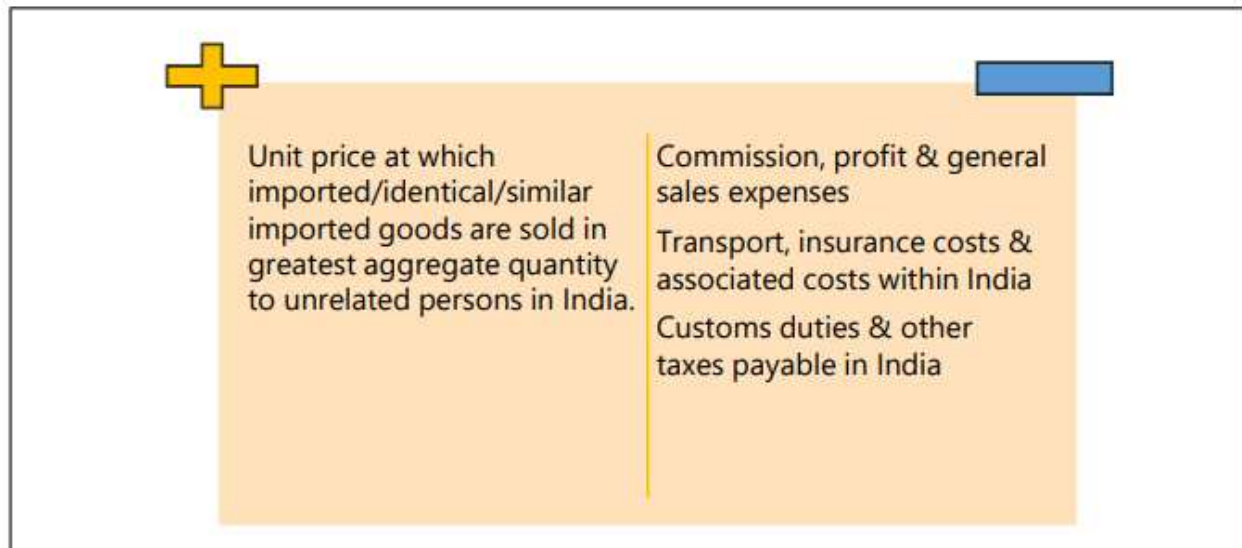
#### **Rule 5 - Transaction value of similar goods:**

The principles of valuation of identical goods also apply to valuation of similar goods

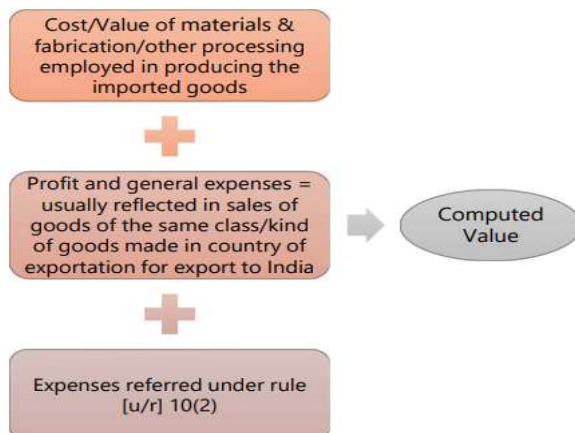
#### **Rule 6 — Determination of value where value cannot be determined under rules 3, 4 and 5:**



## Rule 7 — Deductive value:



## Rule 8 — Computed value:



## Rule 9 — Residual method:



Residuary method shall not be used for valuation on the basis of—

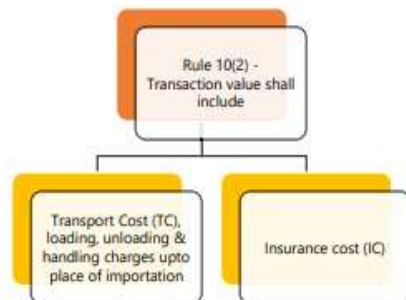
- (i) Selling price in India of the goods produced in India;
- (ii) a system which provides for the acceptance for customs purposes of the highest of the 2 alternative values;
- (iii) the price of the goods on the domestic market of the country of exportation;
- (iv) the cost of production other than computed values which have been determined for identical/similar goods as per rule 8;
- (v) the price of the goods for the export to a country other than India;
- (vi) minimum customs values; or
- (vii) arbitrary or fictitious values.

## Rule 10 - Cost and Services:

Rule 10(1) - Costs to be added if not included:

- i) commissions etc. **except buying commissions**, cost of containers/ packing
- ii) engineering, design work etc. **undertaken elsewhere than in India**, materials, tools, dies, consumables etc. used in production of imported goods - supplied free of charge/ at reduced cost
- iii) royalties & license fees as condition of sale
- iv) Proceeds of any subsequent sale accruing to seller
- v) all other payments as condition of sale

Rule 10(2)



Transport cost [TC]



Insurance cost



**Rule 11 - Declaration by the Importer:**

(1) The importer or his agent shall furnish —

(a) a declaration disclosing full and accurate details relating to the value of imported goods; and

(b) any Other statement, information or document including an invoice of the manufacturer or producer of the imported goods where the goods are imported from or through a person other than the manufacturer or producer, as considered necessary by the proper officer for determination of the value of imported goods under these rules.

(2) Nothing contained in these rules shall be construed as restricting or calling into question the right of the proper officer of customs to satisfy himself as to the truth or accuracy of any statement, information, document or declaration presented for valuation purposes.

(3) The provisions of the Customs relating to confiscation, penalty and prosecution shall apply to cases where wrong declaration, information, statement or documents are furnished under these rules.

**Rule 12 - 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 imported goods, he may ask the importer of such goods to furnish further information including documents or other evidence and if, after receiving such further information, or in the absence of a response of such importer, the proper officer still has reasonable doubt about the truth or accuracy of the value so declared, it Shall be deemed that the transaction value Of such imported goods cannot be determined under the provisions of sub-rule (I) Of rule 3.

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

**Explanation. -(I) For the removal of doubts, it is hereby declared that: —**

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

(ii) The declared value shall be accepted where the proper officer is satisfied about the truth and accuracy of the declared value after the said enquiry in consultation with the importers.

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

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

### **Calculation of Customs Duty in India:**

Customs duty is the buzzword whenever we discuss imports. Levy of customs duty has been the key for the government to protect the domestic industry while also reducing India's dependency on imports. Understanding the calculation of customs duty on imported goods becomes equally important for the importers for informed decision-making. It directly impacts the cost of purchasing and can have a significant impact on your profitability.

Customs duty is calculated on the assessable value of the goods imported. However, duties on the import of goods are not restricted to just customs duty. It also includes the levy of countervailing duties, social welfare surcharge, other protective duties, etc. Here's a detailed analysis of the customs duty:

Sr. No.	Particulars	Amount	Duty
I	Value of material (ex-factory price)	XXX	
II	Carriage / Freight / insurance up to the port of shipment in the exporter's country	XXX	
III	Charges for loading on to the ship at the shipping port in the exporter's country	XXX	
IV	<b>Free on Board (FOB)</b>	<b>XXX</b>	
V	<b>Add:</b> if not included above 1. Commission and brokerage (except buying commission) 2. Packing cost (except cost of durable and returnable packing) 3. Cost of engineering, development and plan or sketches (undertaken outside India) 4. Royalties and Licence Fee 5. Value of subsequent re-sale if payable to foreign supplier 6. Value of material supplied by the buyer free of cost	XXX	
VI	<b>FOB value as per Customs</b>	<b>XXX</b>	
VII	Actual Cost of freight	XXX	
VIII	Ship demurrage charges on chartered vessels, lighterage or barge charges	XXX	
IX	Actual Insurance charges	XXX	
X	<b>Assessable Value of the Goods</b>	<b>XXX</b>	
XI	Add: Basic Customs Duty on Assessable Value (on I)	XXX	XXX
XII	Add: Countervailing Duty on (I+II)	XXX	XXX
XIII	<b>Sub Total</b>	<b>XXX</b>	
XIV	Add: Social Welfare Surcharge on (IV)	XXX	XXX
XV	Add: Safeguard Duty on (I)	XXX	XXX
XVI	Add: Protective Duty on (I)	XXX	XXX
XVII	Add: Anti-Dumping Duty on (I)	XXX	XXX
XVIII	<b>Sub Total</b>	<b>XXX</b>	
XIX	Add: IGST on (IX)	XXX	XXX
XX	Add: Compensation Cess on (IX)	XXX	XXX
XXI	<b>Total Customs Duty Payable on (XII)</b>	<b>XXX</b>	<b>XXX</b>



# SVB AND RELATED PARTY TRANSACTIONS



Special Valuation Branch is a special unit of the Customs department which is specializing in investigating the transactions which are entered into by importer based out in India and a supplier based in foreign country who have relationship like joint ventures, partnerships, holding-subsidary etc. which could possibly influence the price of the transaction entered. The main task of the special valuation branch is to verify that the relationship has not influenced the terms and conditions of the transaction and in turn the transaction value between the parties. Apart from investigation of special relationship case, SVB also handles more complicated cases of additions or deletions with respect to transaction value that has been declared by the importers under Rule 10(1)(c) or Rule 10(1)(d) or Rule 10(1)(e) of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007.

### Meaning of Related Parties:

The relationship needs to be examined with respect to definition of related party under Rule 2(2) of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 which is supplied here –

“(2) For the purpose of these rules, persons shall be deemed to be “related” only if –

- they are **officers or directors** of one another's businesses.
- they are legally recognized **partners** in business.
- they are **employer and employee**.
- any person directly or indirectly owns, controls, or holds **five per cent or more** of the outstanding voting stock or shares of both of them.
- one of them directly or indirectly **controls** the other.
- both of them are directly or indirectly **controlled** by a third person.

- together they directly or indirectly control a **third person**; or
- they are members of the same **family**.

**Explanation I.** – The term “person” also includes legal persons.

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

### **Locations and Jurisdiction of SVB Units:**

The Special Valuation Branches are currently functional at following Customs location houses i.e., Bengaluru, Chennai, Kolkata, Delhi, Mumbai. Further, the jurisdiction of SVB would entirely be dependent on the corporate or registered office of the importer, whichever is nearby and convenient to the importer.

The importer is given free hand to choose which SVB he wants to approach for the cases which require investigation by the SVB. Once a particular import transaction has triggered investigation at one SVB, then the same needs to be communicated by the customs houses to other SVBs as well for the better compliance of the process involved.

### **Concept of Extra Duty Deposit / Revenue Deposit:**

As per Circular No. 01/98 dated 01.01.1988, there was a duty called extra duty deposit which was applicable in cases where the documents sought for are not provided to the relevant authorities failing for which the higher extra duty deposit shall be leviable. However, in the circular issued in 2016, board has reviewed the levy and has clarified that no security in form of extra duty deposit shall be obtained from the importers, but if the importer fails to provide the information within 60 days of such requisition, security deposit at a higher rate of 5% shall be imposed by the commissioner which shall be valid for the period of 3 months.

Also, where the documents are not provided by the importer for an additional 60 days, then commissioner in charge of such investigation may adopt to use such provisions of the customs act for obtaining such documents/information. But in no case, the imposition of such deposit shall exceed 3 months as discussed above. Importers are free to choose if such a deposit is to be made through cash deposit or through bank guarantee.

### **Investigations that can be undertaken by Special Valuation Branch:**

Every importer while importing goods need to make a declaration as to whether the supplier and buyer in India are related party or not. If the answer to the above is affirmative, then it would be very important to see whether this relationship has influenced the price or not. Particularly in these cases, SVB investigation would be required, and the transaction needs to be sent for review and enquiry.

Further, the trigger point for the investigation to be initiated by SVB is the first consignment coming from the foreign country during the import of the goods by the importer from the related party which he needs to submit the declaration along with the bill of entry and questionnaire in Annexure A. The investigation under SVB can also be initiated under unrelated party transactions where in following is nature of transaction –

- **Royalties and license fees:** Royalties and license fees related to the imported goods that the buyer is required to pay, directly or indirectly, as a condition of the sale of the goods being valued, to the extent that such royalties and fees are not included in the price actually paid or payable. [Rule 10(1)(c) of CVR, 2007]
- **Subsequent resale or disposal:** The value of any part of the proceeds of any subsequent resale, disposal or use of the imported goods that accrues, directly or indirectly, to the seller. [Rule 10(1)(d) of CVR, 2007]
- **Other connected payments:** All other payments actually made or to be made as a condition of sale of the imported goods, by the buyer to the seller, or by the buyer to a third party to satisfy an obligation of the seller to the extent that such payments are not included in the price actually paid or payable. [Rule 10(1)(e) of CVR, 2007]

#### **Exceptions where investigations under SVB not required:**

Due to long durational process involved in the investigation of the related party transaction, SVB investigations in the following cases should not be initiated looking at the revenue implications –

1. Imports involving samples and prototypes from related suppliers,
2. Imports from foreign suppliers where duty chargeable (including additional duty of Customs etc.) is unconditionally fully exempted or nil,
3. Any import transaction wherein the value of the imported goods is less than Rs. 1 Lakh but cumulatively these transactions do not exceed Rs. 25 Lakhs in a financial year.
4. Any additions that are sought under Rule 10(1)(a) or Rule 10(1)(b) of CVR, 2007 as that should be taken care by normal appraising groups.

Wherever the investigation by SVBs are not required, Customs house shall issue a reference number to the importer and the risk management division to indicate that the transaction has been analyzed from the viewpoint of SVB enquiries and it has been decided not to refer the same for the investigation.

### **Procedure for investigation under SVB:**

Finalization of Assessment: Upon receipt of Investigation report from the Special Valuation branch, there could be two scenarios which could affect the assessment –

**1. Declared Value is found confirming to Rule 3:** Where the declared value as per Bill of Entry has been found confirming to the relevant rule of the CVR,2007 – the provisional assessment done by the customs houses shall be considered the final assessment and accordingly it must be finalized.

**2. Declared Value is found not confirming to Rule 3:** Where the declared value as per Bill of Entry is found to be influenced by the relationship or such case as may be applicable, the proper office of the customs house shall issue a show cause notice to the importer within 15 days of the receipt of the Investigation Report (IR) from the Special Valuation Branch (SVB).

Wherever the imports have been cleared through multiple locations, jurisdictional commissioner shall after consulting with other locations, make a proposal for appointment of common adjudicating authority for the matter and after providing enough opportunity to the importer, pass a combined order quantifying the extent of influence on the declared transaction value.

### **Related Party Transaction:**

The World Trade Organisation (WTO) Customs Valuation Agreement addresses transfer pricing through its provisions regarding related party transactions. In examining whether the relationship influences the price, certain tests are used to determine **whether a transfer price may form the basis of the transaction value.**

The transaction value method cannot be applied in cases where the buyer and seller are related and the relationship has influenced the price. The scope of relationship is defined in Sub-Rule 2 (2) of the Customs Valuation Rules. In such cases the burden of proof shifts to the importer, who should satisfy the Customs that the declared price closely approximates to the arm's length. If the importer fails to discharge this responsibility, the declared value could be rejected, and valuation done under any of the subsequent methods applied in hierarchical order.

### **Transactions Involving Transfer Pricing:**

Under the Customs Law some of the imports involving transfer pricing are as follows: -

- Imports by wholly owned subsidiary from the foreign holding company or its subsidiaries/associates in other countries;
- Imports by a joint venture company from its foreign partners who has substantial stake in joint venture;
- Import by branches from their overseas principals;
- Import of new or used construction machinery/equipment by engineering construction companies for their own projects;
- Goods imported under leasing contract from a related party;
- Goods imported on loan basis from a related party.

### **Customs Valuation in Case of Related Party Transactions:**

The valuation for the purpose of assessment and recovery of customs duty on any imported goods in case of 'Related Party Transactions' involves the following three stages as per the provisions contained under Section 14 of the Customs read with the Customs Valuation Rules, 1988 (now the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007: -

- i. Examination of relationship between the foreign supplier and the Indian Importers to verify that both of them are 'Related Party' and the transactions are not at arm's length.
- ii. In case the foreign supplier and the Indian Importers are 'Related Party,' it is required to be examined as to whether the relationship has influenced the prices or not.
- iii. In case the foreign supplier and the Indian Importers are 'Related Party' and the relationship has influenced the prices, the extent of influence of relationship is required to be examined, the additions are required to be quantified and the valuation of the imported goods is required to be computed.

### **Valuation where relationship not influencing the price:**

Once it is established that the buyer and the seller are 'related party', the importers are required to demonstrate that the relationship has not influenced the prices and the price for the said goods closely approximates to one of the following values ascertained at or about the same time -

- The transaction value of identical goods, or of similar goods, in respect of sales to unrelated buyers in India;
- The deductive value for identical goods or similar goods; and
- The computed value for identical or similar goods.

If the importer is able to furnish evidence of the transaction value or the deductive value or the computed value of identical or similar goods in respect of sales to unrelated buyers in India at the same price and establish that the relationship has not influenced the prices, the declared value is accepted, and clearance allowed.

If the importer is not able to furnish evidence of the transaction value or the deductive value or the computed value of identical or similar goods in respect of sales to unrelated buyers in India at the same price and there are no contemporaneous imports, and there is no way to compare the values at the time of assessment of the Bill of Entry, the circumstances of sale are examined to ascertain as to whether the relationship has influenced the prices or not. In case relationship has influenced the prices then the valuation of the goods is required to be done.

## Import of services



**Definition:** Import of Services Section 2(11) of IGST Act 2017 defines Import of Services as follows: Import of services means the supply of any service where-

- (i) The supplier of service is located outside
- (ii) The recipient of service is located in India; and
- (iii) The place of supply of service is in India;

To understand the various provisions of GST applicable on import of services let us take an **example**: -

- John & Co an architecture consultancy firm of USA provided his services to Ram & Associates, a Chartered Accountants firm of India for designing its office at Mumbai and also to design the home of Mr. Ram, the Managing Partner of Ram & Associates for a consideration of Rs 10,00,000 & Rs 2,00,000 respectively. Also, Ram & Associates took the services of its' associate firm Ram Capital in London which specializes in Capital Management to manage its surplus funds without any consideration.

### **Whether it is service or not?**

- As per Section 2(102) of CGST Act, services mean anything other than goods, money and securities but includes activities relating to the use of money or its conversion by cash or by any other mode, from one form currency or denomination to another form, currency or denomination for which a separate consideration is charged.



- So, here designing consultancy by John & Co and capital management services by Ram Capital fall under the definition of services as these are activities other than goods, money and securities. Service can either be active i.e. to do something or passive i.e. not to do something.

### **Whether it is Supply or not?**

- As per Section 7(1) (b) of CGST Act: Supply includes Import of Services for a consideration whether or not in the course or furtherance of business. Also, as per point 4 of Schedule 1 of Section 7 (1)(c) of CGST Act: Supply even if made without consideration includes Import of services by a taxable person from a related person or from any of his other establishments outside India, in the course or furtherance of business.
- The word 'taxable' has been omitted vide CGST (Amendment) Act, 2018 w.e.f. 1-2-2019. Thus, import by any person from a related person outside India shall be 'import', but it should be in the course or furtherance of business. (point 4 of Schedule 1 of Section 7 (1)(c) of CGST Act).
- In this case John& Co provides design consultancy to both Ram Associates and also to its Managing Partner Mr. Ram. Service to Ram & Associates was for furtherance of business as the design was made for the office but service to Mr. Ram for designing his home was not for the furtherance of business but rather individual personal use. But still both these conditions satisfy the conditions of Section 7(1)(b) and hence are supply of service.
- Ram Capital of London is an associate firm of Ram & Associates and thus is an establishment outside India. Ram & Associates is a taxable person importing capital management service without consideration. Hence it is a supply.
- The Import of service from HO or branch outside India in the course or furtherance of business will be subject to GST even if no payment was made to HO or Branch outside India.

### **Whether it is Intra or Inter?**

- As per Section 7(4) of CGST Act, Supply of services imported into the territory of India shall be treated to be supply of services in course of inter-state trade or commerce.
- The services of John & Co and Ram Capital shall be treated as Inter and as a result IGST would be levied.

### **Place of Supply**

- Section 13 of IGST Act helps to determine the place of supply where the location of the supplier of service or the location of the recipient of service is outside India.
- Here the service of John & Co for designing the office and home is a supply of service directly in relation to an immovable property. So according to Section 13(4)

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of IGST Act, the place of supply will be the place where the immovable property is located or intended to be located. The place of supply in this case will be Mumbai i.e. Maharashtra.

- Branch office outside India providing service to Indian parent company is not import of service. An Indian parent company may have liaison office outside India. The Indian parent company will remit amount to liaison office outside India. In that case, that liaison office is 'intermediary'.
- As per Section 2(11) of IGST Act, one of the conditions for treating a service as "import of service" is that place of supply of service should be in India. Since this condition is not satisfied, the service received by Indian parent company cannot be 'import of service'. Consequently, Indian company will not be liable to pay service tax under reverse charge.

### **Place of supply for intermediary services:**

In the case of supply of capital management service, Ram Capital is working as an agent or intermediary to manage the surplus funds of Ram & Co. So accordingly, it falls under Section 13(8) which deals with services of intermediary, the place of supply shall be the location of supplier i.e. London.

### **Reverse Charges or Forward Charges:**

If the supplier of service is located in a non-taxable territory, the recipient of services located in the taxable territory is liable to pay GST under reverse charge. Notification Nos. 13/2017-CT (Rates) and 10/2017-IT (Rates) dated 28-6-2017

IGST is not payable on import of services under reverse charge if value of royalty and license fee was included in customs value of goods imported – (Notification No. 6/2018-IT (Rate) dated 25-1-2018 and FAQ issued by CBI&C on 15-12-2018.)

### **Time of Supply:**

Since supply covers under RCM, the time of Supply shall be earlier of the followings:

- a) Payment date or
- b) Day after 60 days of issuance of invoice. i.e. 61st day.

Import of services by United Nations or a specified international organisation for official use of the United Nations or the specified international organisation is exempt from GST (Notification No. 9/2017-IT (Rate) dated 28-6-2017 – inserted w.e.f. 27-7-2018.)

Import of services by Foreign diplomatic mission or consular post in India, or diplomatic agents or career consular officers posted therein is exempt from GST – (Notification No. 9/2017-IT (Rate) both dated 28-6-2017 – inserted w.e.f. 27-7-2018.)

As per the provisions contained in **Section 7(1)(b) of the CGST Act, 2017**, import of services under consideration of whether or not in the course or furtherance of business, shall be considered as a supply. Thus, in general, imports of services

without consideration shall not be considered as supply. However, business test is not required to be fulfilled for import of service to be considered as supply.

Furthermore, in view of the provisions contained in Schedule I of the CGST Act, 2017, the import of services by a taxable person from a related person or from a distinct person as defined in Section 25 of the CGST Act, 2017, in the course or furtherance of business shall be treated as supply even if it is made without any consideration.

In view of the provisions contained in Section 14 of the IGST Act, 2017, import of free services from Google and Facebook by all of us, without any consideration, are not considered as supply. Import (Downloading) of a song for consideration for personal use would be a service, even though the same are not in the course or furtherance of business. Import of some services by an Indian branch from their parent company, in the course or furtherance of business, even if without consideration, will be a supply.

Thus, import of services can be considered as supply based on whether there is consideration or not and whether the service is supplied in the course or furtherance of business. The same has been explained in the table below:

<b>Nature of Service</b>	<b>Consideration</b>	<b>Business Test</b>
Import of services	Necessarily Required	Not required
Import of services by a taxable person from a related person or from a distinct person	Not required	Necessarily Required

As per the provisions contained in Section 21 of the IGST Act, 2017, all imports of services made on or after the appointed day will be liable to integrated tax regardless of whether the transactions for such import of services had been initiated before the appointed day. However, if the tax on such import of services had been paid in full under the existing law, no tax shall be payable on such import under the IGST Act. In case the tax on such import of services had been paid in part under the existing law, the balance amount of tax shall be payable on such import under the IGST Act. For instance, suppose a supply of service for rupees one crore was initiated prior to the introduction of GST, a payment of Rs. 20 lacs have already been made to the supplier and service tax has also been paid on the same, the integrated tax shall have to be paid on the balance Rs. 80 lacs.

Section 13 of the IGST Act, 2017 provides for determination of place of supply in cases wherein the location of the supplier of services or the recipient of services is outside India. Thus, this Section provides the place of supply in relation to international or cross-border supply of services. Place of supply of a service shall determine as to whether a service can be termed as import or export of service. The specific provisions relating to the place of supply for international supply of services are as below:

<b>S.No</b>	<b>Situation</b>	<b>Place of Supply</b>
<b>1</b>	Default rule other mentioned below than specific situations	Location of the recipient of services; If not available, location of the supplier of services.
<b>2</b>	Services supplied in respect of goods which are required to be made physically available Services which require the physical presence of the recipient or the person acting on his behalf with the supplier of services	Location where the services are actually performed
<b>2.1</b>	Services are provided on goods but from a remote location by way of electronic means	Location where goods are situated at the time of supply of services
<b>2.2</b>	Above provisions is not applicable in respect of goods which are temporarily imported into India for repairs and are exported after repairs	
<b>3</b>	Services supplied directly in relation to an immovable property	Place where the immovable property is located or intended to be located
<b>4</b>	Admission to, or organization of an event	Place where the event is actually held
<b>4.1</b>	Above Services provided in more than one country including India	India
<b>4.2</b>	Above Services provided in more than one state	Proportionate Basis
<b>5</b>	Services supplied by a banking company, or a financial institution, or a non-banking financial company, to account holders	Location of the supplier of services
<b>5.1</b>	Intermediary services	
<b>5.2</b>	Services consisting of hiring of means of transport, including yachts but excluding aircrafts and vessels, up to a period of one month	
<b>6</b>	Transportation of goods, other than by way of mail or courier	Place of destination of such goods
<b>7</b>	Passenger transportation services	Place where the passenger embarks on the conveyance for a continuous journey
<b>8</b>	Services provided on board a conveyance	First scheduled point of departure of that conveyance for the journey
<b>9</b>	Online information and database access or retrieval services (OIDAR)	Location services of the recipient

**Online Information Database Access and Retrieval services (OIDAR):**

OIDAR) is a category of services provided through the medium of internet and received by the recipient online without having any physical interface with the supplier of such services. E.g. downloading of an e-book online for a payment would amount to receipt of OIDAR services by the consumer downloading the e-book and making payment. The IGST Act defines OIDAR to mean services whose delivery is mediated by information technology over the internet or an electronic network and the nature of which renders their supply essentially automated and involving minimal human intervention and impossible to ensure in the absence of information technology and includes electronic services such as, —

- (i) advertising on the internet;
- (ii) providing cloud services;
- (iii) provision of e-books, movie, music, software and other intangibles through telecommunication networks or internet;
- (iv) providing data or information, retrievable or otherwise, to any person in electronic form through a computer network;
- (v) online supplies of digital content (movies, television shows, music and the like); (vi) digital data storage; and
- (vii) online gaming

**How would OIDAR services be taxable under GST?**

For any supply to be taxable under GST, the place of supply in respect of the subject supply should be in India. In case, both the supplier of OIDAR Service and the recipient of such service is in India, the place of supply would be the location of the recipient of service i.e. it would be governed by the default place of supply rules.

What happens in cases where the supplier of service is located outside India and the recipient is located in India. In such cases also the place of supply would be India and the transaction would be amenable to tax.

**Examples of what could be or could not be OIDAR services:**

The inclusive part of the definition of OIDAR services are only indicative and not exhaustive. To determine if a particular service is an OIDAR service, the following test can be applied.

Service	Whether Provision of service mediated by information technology over the internet or an electronic network	Whether it is Automated and impossible to ensure in the absence of information technology	OIDAR Service
PDF document manually emailed by provider	Yes	No	No
PDF document automatically emailed by provider's system	Yes	Yes	Yes
PDF document automatically downloaded from site	Yes	Yes	Yes
Stock photographs available for automatic download	Yes	Yes	Yes
Online course consisting of pre-recorded videos and downloadable PDFs	Yes	Yes	Yes
Online course consisting of pre-recorded videos and downloadable PDFs plus support from a live tutor	Yes	No	No
Individually commissioned content sent in digital form e.g., photographs, reports, medical results	Yes	No	No

## **Indicative List of OIDAR Services:**

### **1. Website supply, web-hosting, distance maintenance of programmes and equipment**

- (a) Website hosting and webpage hosting
- (b) Automated, online and distance maintenance of programmes
- (c) Remote systems administration
- (d) Online data warehousing where specific data is stored and retrieved electronically
- (e) Online supply of on-demand disc space

### **2. Supply of software and updating thereof**

- (a) Accessing or downloading software (including procurement/ accountancy programmes and anti-virus software) plus updates
- (b) Software to block banner adverts, otherwise known as Banner blockers
- (c) Download drivers, such as software that interfaces computers with peripheral equipment (such as printers)
- (d) Online automated installation of filters on websites
- (e) Online automated installation of firewalls

### **3. Supply of images, text and information and making available of databases**

- (a) Accessing or downloading desktop themes
- (b) Accessing or downloading photographic or pictorial images or screensavers
- (c) The digitised content of books and other electronic publications
- (d) Subscription to online newspapers and journals
- (e) Weblogs and website statistics
- (f) Online news, traffic information and weather reports
- (g) Online information generated automatically by software from specific data input by the customer, such as legal and financial data, (in particular, data such as continually updated stock market data, in real time)
- (h) The provision of advertising space including banner ads on a website/web page
- (i) Use of search engines and Internet directories



#### **4. Supply of music, films and games, including games of chance and gambling games, and of political, cultural, artistic, sporting, scientific and entertainment broadcasts and events**

- (a) Accessing or downloading of music on to computers and mobile phones
- (b) Accessing or downloading of jingles, excerpts, ringtones, or other sounds
- (c) Accessing or downloading of films
- (d) Downloading of games on to computers and mobile phones
- (e) Accessing automated online games which are dependent on the Internet, or other similar electronic networks, where players are geographically remote from one another

#### **5. Supply of distance teaching**

- (a) Automated distance teaching dependent on the Internet or similar electronic network to function and the supply of which requires limited or no human intervention. These include virtual classrooms, except where the Internet or similar electronic network is used as a tool simply for communication between the teacher and student
- (b) Workbooks completed by pupils online and marked automatically, without human intervention, the place of supply of online information and database access or retrieval services shall be the location of the recipient of services.

#### **India: Changes to GST online information database access and retrieval (OIDAR) rules**

Changes to GST OIDAR rules in the Finance Act 2023, effective 1 October 2023

The Indian government has implemented changes to the Goods and Services Tax (GST) rules related to Online Information Database Access and Retrieval (OIDAR) services, effective from 1 October 2023. Key changes include:

- **Expansion of OIDAR Services Definition:** The terms "minimal human intervention" and "essentially automated" are removed, broadening the scope of OIDAR services. Any service mediated through information technology is now covered, even if human involvement is present.
- **Redefinition of Non-Taxable Online Recipient:** The definition now includes persons registered for GST solely for claiming Tax Deduction at Source (TDS). Non-resident sellers must collect GST from such customers, treating them as B2C.
- **Penalties on Marketplaces:** Marketplaces will face penalties if they allow vendors required to register for GST to sell on their platform without being registered. The obligation to verify vendor GST registration varies based on whether the vendor sells goods (always required to register) or services (subject to an annual sales threshold of INR 2 million).



Under the GST regime, Article 269 A constitutionally mandates that the supply of goods, or of services, or both in the course of import into the territory of India shall be deemed to be supply of goods, or of services, or both in the course of inter-State trade or commerce for levy of integrated tax.

So, import of goods or services will be treated as deemed inter-State supplies and would be subject to Integrated tax. While IGST on import of services would be leviable under the IGST Act, the levy of the IGST on import of goods would be levied under the Customs read with the Custom Tariff Act, 1975. The importer of services will have to pay tax on reverse charge basis. However, in respect of import of online information and database access or retrieval services (OIDAR) by unregistered, non-taxable recipients, the supplier located outside India shall be responsible for payment of taxes. Either the supplier will have to take registration or will have to appoint a person in India for payment of taxes. Supply of goods or services or both to a Special Economic Zone developer or a unit shall be treated as inter-State supply and shall be subject to levy of integrated tax.

**Import of Goods** The import of goods has been defined in the IGST Act, 2017 as bringing goods into India from a place outside India. All imports shall be deemed as inter-State supplies and accordingly Integrated tax shall be levied in addition to the applicable Custom duties. The IGST Act, 2017 provides that the integrated tax on goods imported into India shall be levied and collected in accordance with the provisions of the Customs Tariff Act, 1975 on the value as determined under the said Act at the point when duties of customs are levied on the said goods under the Customs. The integrated tax on goods shall be in addition to the applicable Basic Customs Duty (BCD) which is levied as per the Customs Tariff Act. In addition, GST

compensation cess, may also be leviable on certain luxury and demerit goods under the Goods and Services Tax (Compensation to States) Cess Act, 2017.

The Customs Tariff Act, 1975 has accordingly been amended to provide for levy of integrated tax and the compensation cess on imported goods. Accordingly, goods which are imported into India shall, in addition to the Basic Customs duty, be liable to integrated tax at such rate as is leviable under the IGST Act, 2017 on a similar article on its supply in India. Further, the value of the goods for the purpose of levying integrated tax shall be, assessable value plus Customs Duty levied under the Act, and any other duty chargeable on the said goods under any law for the time being in force as an addition to, and in the same manner as, a duty of customs.

The value of the imported article for the purpose of levying 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. The integrated tax paid shall not be added to the value for the purpose of calculating cess.

### **Let's take an example:**

Suppose the assessable value of an article imported into India is Rs. 100/-. Basic Customs Duty is 10% ad-valorem. Integrated tax rate is 18%.

The taxes will be calculated as under:

- Assessable Value= Rs. 100/- • Basic Customs Duty (BCD) = Rs. 10/-
- Value for the purpose of levying integrated tax= Rs. 100/- + Rs.10/-= Rs. 110/-
- Integrated Tax = 18% of Rs.110/- =Rs. 19.80
- Total taxes = Rs. 29.80

On the top of it, in case the goods are also leviable to cess under the Goods and Services Tax (Compensation to States) Cess Act, 2017, the same will be collected on the value taken for levying integrated tax. Thus, in the above example, in case, cess is leviable, the same would be levied on Rs. 110/-.

The Customs provides for removal of goods from a customs station to a warehouse without payment of duty. The said Act has been amended to include 'warehouse' in the definition of "customs area" in order to ensure that an importer would not be required to pay the Integrated tax at the time of removal of goods from a customs station to a warehouse.

**Input tax credit of integrated tax:** The definition of "input tax" in relation to a registered person also includes the integrated tax charged on import of goods. Thus, input tax credit of the integrated tax paid at the time of import shall be available to the importer and the same can be utilized by him as Input Tax credit for payment of taxes on his outward supplies. The integrated tax shall, in essence, be a pass-through to that extent. The Basic Customs Duty (BCD), shall however, not be available as input tax credit. HSN (Harmonised System of Nomenclature) code would be used for the purpose of classification of goods under the GST regime.

As per Section 11 of the IGST Act, 2017 the place of supply of goods, imported into India shall be the location of the importer. Thus, if an importer, say is located in Rajasthan, the state tax component of the integrated tax shall accrue to the State of Rajasthan.

### **Advance Rulings**

#### **1) Mere relationship is not sufficient for denial of transaction value; it must be established that the relationship has influenced the price**

The transaction price between the two parties must be influenced by their relationship in order to question the valuation of such a transaction. The rejection of transaction value can only be done after due verification and undertaking the exercise as to what influenced the price and cogent reasons to be recorded for such price not being the sole consideration. **[CCE V. Sanjivani Non-Ferrous Trading (P) Ltd., [2019 (365) E.L.T. 3 (S.C.)]**

#### **2) Commodity price fluctuation in the international market must be taken into consideration**

The transaction value agreed by both the parties cannot be questioned merely on the basis that there is increase in prices in the international market between the time of contract and actual shipment of the product as there was no collusion between the parties, as well the payment was received within the same terms under which the contract was entered into and there was actual no misstatement or undervaluation and the case was also not falling under any of the criteria as mentioned under Rule 4(2) of the Customs Valuation Rules, 1988. Department as well cannot rely on or take base the prices, which are almost a month after the actual date of contract, as the product dealt with is highly fluctuating in the international market. **[Commissioner of Customs, Vishakhapatnam V/S Aggarwal Industries Ltd. [2011 (272) E.L.T. 641 (S.C.)]]**

#### **3) High Court Rules Online Rummy as a Game of Skill, Not Gambling**

The petitioner, operating an online platform for skill-based games like Rummy, was issued a Show Cause Notice (SCN) alleging involvement in betting/gambling and GST evasion by misclassifying services. The petitioner challenged the SCN, arguing that skill-based games with monetary stakes do not constitute gambling. The High Court ruled that games of skill, such as Rummy, whether played online or offline, are not gambling and are not taxable under the GST framework. The SCN was set aside as illegal and without jurisdiction. **[Gameskraft Technologies (P.) Ltd. v. Directorate General of Goods Services Tax Intelligence [2023]]**

#### **4) Action against supplier is essential for non-reflection of invoices before seeking reversal from recipient: Calcutta HC**

In this case, the department disallowed the appellant's input tax credit (ITC) due to non-reflection of supplier invoices in GSTR-2A for FY 2017-18. Despite the appellant providing valid invoices and proof of payment, the demand was upheld. The appellant filed an intra-Court appeal after being directed to appeal before the Appellate Authority. The High Court noted that GSTR-2A does not affect a buyer's ITC and that action should be taken against the supplier before reversing ITC from the recipient. The Court found the Revenue's action arbitrary, setting aside the impugned order and deeming the demand unsustainable. The Supreme Court dismissed the Revenue's appeal. **[Suncraft Energy (P.) Ltd. v. Assistant Commissioner, State Tax [2023]**

#### **5) High Court Quashes Penalty for E-Way Bill Cancellation, Cites Lack of Tax Evasion Intent**

The petitioner's goods, accompanied by valid documents, were seized after the purchasing dealer cancelled the e-way bill. Despite the petitioner's lack of knowledge about the cancellation, a penalty was imposed under Section 129(3) of the CGST Act. The High Court held that the intent to evade tax, required under Section 130, was not observed in this case. The Court ruled that the proceedings under Section 129 were inappropriate, and any action should have been taken under Section 122 for a minor breach. **[Shyam Sel and Power Ltd. v. State of U.P 2023]**

#### **6) High Court Stays Demand-Cum-Show Cause Notice Due to Non-Issuance of GST ASMT-10**

The petitioner challenged a demand-cum-show cause notice issued under Section 73(1) for un-reconciled ITC in GSTR-9C for FY 2017-18, arguing that the notice was issued without following mandatory procedures, including the issuance of Form GST ASMT-10. The High Court found that the notice was issued without complying with the required conditions under Section 61 and Rule 99. Consequently, the Court stayed the operation of the notice and listed the matter for further hearing. **[Pepsico India Holdings (P.) Ltd. v. Union of India [2023]**

#### **7) Technical Know-How Costs Excluded from Assessable Value of Imported Goods**

Consideration paid for the technical know-how - the technical information which was to be provided by the Japanese company to the respondent was for the manufacture of the contract products by the respondent herein, naturally, after the setting up of the plant. This cost is, thus, incurred after the importation of the goods and therefore cannot be loaded on to the assessable value of the imported goods. **[CC Vs M/s Denso Kirloskar Industries Pvt Ltd 2015 (324) ELT 437 (SC) dated 13.08.2015]**



### **8) Assessment of Import Value Based on Original Contract Price Upheld Despite Market Fluctuations**

The importer contracted to buy crude sunflower seed oil at a fixed price, with shipment initially scheduled for July 2011 but delayed to August 2011. Despite a rise in international prices during August, the supplier honored the original contract price. The department attempted to increase the assessable value based on higher contemporaneous import prices. The Court ruled against the department, holding that the original contract price should be maintained as there was no collusion between the importer and supplier. The appeal was decided in favor of the respondent-assessee.

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

### **9) Supreme Court Rules Against Enhanced Valuation of Imported Goods Due to Lack of Evidence**

The appellant imported goods from China, and the department alleged undervaluation based on information from a computer printout, which indicated higher prices for identical goods. The department valued the goods as per Rule 4 of the Customs Valuation Rules, 2007, and demanded differential duty, penalty, and interest.

However, the department did not provide the printouts to the appellant. The Supreme Court ruled that the mere existence of the alleged printout was insufficient proof of comparable imports. Without providing the printout to the appellant or allowing them to contest the claim, the department's enhancement of the goods' value was unjustified. The appeal was decided in favor of the appellant. [Gira Enterprises v CCus. 2014 (307) ELT 209 (SC)]

### **10) Supreme Court Overturns Tribunal's Decision on Royalty Loading in Import Valuation Case**

The appellant, a manufacturer of printers, challenged a CESTAT order which upheld the inclusion of royalty/licence fee in the price of imported shuttle parts used in printers. The Supreme Court ruled in favor of the appellant, noting that the adjudicating authority and Tribunal erred by not considering the bulk order discount and by wrongly assuming that the royalty payment was a condition for the sale. The Court set aside the Tribunal's decision, referencing its earlier judgment in the M/s Ferodo India Pvt. Ltd. case. The appeal was allowed with no costs. [[Wep Peripherals Ltd. v CCus., Chennai 2008]

### **11) Supreme Court Clarifies Royalties Under MMDR Act Are Not Taxes**

The Supreme Court ruled that royalties paid under the Mines and Minerals (Development and Regulation) Act, 1957 (MMDR Act) are not considered taxes. This decision, aligning with the Kesoram Industries case and diverging from the India Cement ruling, clarifies the legislative boundaries between Union and State powers. It emphasizes that State powers do not extend to taxing mineral rights, guiding future State policies on mineral taxation and development. **[State of Odisha v. India Cement Ltd.]**



### **Case Studies**

#### **MOOWR Case Study: ABC Manufacturing Pvt. Ltd. and the MOOWR Scheme**

##### **Overview:**

ABC Manufacturing Pvt. Ltd. is converting its existing facility into a Customs Bonded Manufacturing Warehouse under the MOOWR scheme. The company aims to defer import duties on raw materials and capital goods used for manufacturing goods intended for both export and domestic markets.

##### **Key Facts:**

##### **1. Licensing Requirements:**

- Apply for licenses under Sections 58 and 65 of the Customs.
- Provide a solvency certificate, execute a triple duty bond, and obtain comprehensive insurance for goods stored.

##### **2. Benefits and Challenges:**

- Benefits: Deferred import duties, exemption of deferred duty on exports, and no export obligation.
- Challenges: Upfront IGST and GST Compensation Cess payments under new Section 65A may impact working capital.

##### **3. Recent Amendments:**

- Section 65A requires IGST and Cess payment at the time of moving goods to the warehouse, affecting cash flow.

#### 4. Compliance:

- Maintain records, submit monthly returns, and adhere to new warehouse operation restrictions.

#### **Questions:**

1. What are the steps for converting the facility into a bonded warehouse?
2. What benefits and challenges does the MOOWR scheme present?
3. How does Section 65A impact the business?
4. What compliance requirements must be met?

### **2) Case Study on Valuation of Imported Goods for Customs Duty**

#### **Scenario:**

M/s XYZ Textiles Ltd. imports fabric from a related foreign supplier. The goods are declared at a lower value to minimize customs duty. During a customs audit, authorities question the declared value and suspect undervaluation due to the relationship between the buyer and the seller.

#### **Key Questions:**

1. How should the customs authorities assess the value of the imported goods?
2. What are the implications for M/s XYZ Textiles Ltd. if the declared value is found to be incorrect?
3. What role does the Special Valuation Branch (SVB) play in such cases?

### **3) Case Study on High Sea Sale Transactions**

#### **Scenario:**

M/s Global Traders Pvt. Ltd. enters into a high sea sale agreement with M/s India Distributors Ltd. for the sale of electronics goods while the goods are still in transit. The sale occurs after the goods have been shipped from the exporter's country but before they reach Indian shores. Customs authorities are examining the transaction to ensure compliance with regulations, specifically focusing on the documentation and valuation of goods for customs purposes.

#### **Key Questions:**

1. What are the documentation requirements for a high sea sale?
2. How should the value of goods be determined for customs duty?
3. What challenges might arise during the customs clearance process?

#### **4) Case Study on SVB and Related Party Transactions**

##### **Scenario:**

M/s Alpha Pharmaceuticals imports raw materials from its parent company in Germany. The Indian customs authorities suspect that the transaction value may not reflect an arm's length price due to the relationship between the parties. The case is referred to the Special Valuation Branch (SVB) for a detailed investigation.

##### **Key Questions:**

1. What is the role of the SVB in related party transactions?
2. How can M/s Alpha Pharmaceuticals justify the declared value of the imports?
3. What are the potential outcomes of the SVB investigation?

## 20 MCQ-Type Questions with Answers

### Imports

**1) Which of the following is NOT considered an import?**

- a) Goods brought into India from a foreign country
- b) Services received from a foreign provider
- c) Goods sold within India
- d) High Sea Sales

**Answer:**

### Various Definitions

**2) Under the Customs, which term is used to describe the importation of goods into India?**

- a) Export
- b) Entry
- c) Import
- d) Delivery

**Answer:**

**3) Which of the following is an example of a "Deemed Import"?**

- a) Goods imported under a Duty Exemption Scheme
- b) Goods sent from India to another country for processing and re-imported
- c) Goods imported into India and later exported without any modification
- d) Goods brought into a Special Economic Zone (SEZ) from the Domestic Tariff Area (DTA)

**Answer:**

### Meaning & Scope of Imports

**4) Which of the following is NOT included in the scope of imports under Indian law?**

- a) Goods carried in the personal baggage of passengers
- b) Goods sent by post or courier
- c) Goods in transit across Indian territory
- d) Goods cleared through a Special Economic Zone (SEZ)

**Answer:**

### Landmark Judgement Defining Import

Vineet Suman Darda (Co-Founder and Managing Partner of Darda Advisors LLP)  
[www.dardaadvisors.com](http://www.dardaadvisors.com)

**5) What was the key legal issue in the Pride Foramer case?**

- a) Imposition of excise duty on oil rigs
- b) Validity of customs duty on goods used in the EEZ
- c) Jurisdiction of Indian courts in maritime disputes
- d) Legal ownership of offshore oil rigs

**Answer:**

**6) In the case of Union of India vs. T.R. Mehra, what was the key legal requirement emphasized by the Supreme Court?**

- a) Filing of proper customs documentation
- b) Obtaining permissions from the Ministry of Commerce before imports
- c) Correct valuation of imported goods
- d) Declaration of goods at customs

**Answer:**

**High Sea Sale**

**7) What is a High Sea Sale?**

- a) Sale of goods on high seas after they have been loaded on a vessel but before they reach the destination port
- b) Sale of goods at a higher price on land
- c) Sale of goods in domestic market
- d) None of the above

**Answer:**

**8) How should the value of goods be determined for customs duty in a high sea sale transaction?**

- a) Based on the original purchase price from the exporter.
- b) Based on the CIF value at the point of entry in India.
- c) Based on the market value at the time of customs clearance.
- d) Based on the declared value by the buyer.

**Answer:**

**Bonded Warehouse**

**9) Which of the following is TRUE about a Bonded Warehouse?**

- a) It is used for storing goods without paying customs duty
- b) It allows the buyer to take possession of goods without duty payment
- c) It is only for perishable goods
- d) It is for exporting goods only

**Answer:**



### **Valuation of Imported Goods**

**10) Which method is generally preferred for the valuation of imported goods under the Customs Act?**

- a) Transaction Value
- b) Computed Value
- c) Deductive Value
- d) Residual Method

**Answer:**

**11) The customs value of imported goods is based primarily on which factor?**

- a) Domestic price
- b) Transaction value of the goods
- c) Production cost
- d) Market demand

**Answer:**

### **SVB and Related Party Transactions**

**12) What does SVB stand for in the context of import valuation?**

- a) Standard Valuation Bureau
- b) Special Valuation Branch
- c) Simplified Value Board
- d) Systematic Valuation Bureau

**Answer:**

**13) SVB primarily deals with which type of transactions?**

- a) Transactions involving government purchases
- b) Transactions involving related parties
- c) High-value transactions only
- d) All transactions involving importers

**Answer:**

### **Import of Services**

**14) Under GST, import of services is considered an interstate supply and is liable to which tax?**

- a) IGST
- b) CGST
- c) SGST
- d) None of the above

**Answer:**

**15) Which of the following is TRUE about the import of services under GST?**

- a) Only services used for business purposes are taxed
- b) Import of services is taxed only if the supplier is located outside India
- c) Import of services is exempt from GST
- d) GST on import of services is payable under reverse charge

**Answer:**

**16) Under the Customs, which of the following activities is considered an import of services?**

- a) Services provided by an Indian resident to another Indian resident
- b) Services provided by a foreign company to an Indian resident
- c) Services provided by an Indian resident to a foreign resident
- d) Services provided by a company registered in India to a company registered abroad

**Answer:**

### **Imports and GST**

**17) Which of the following duties/taxes is applicable on the import of goods under GST?**

- a) IGST
- b) CGST
- c) SGST
- d) All of the above

**Answer:**

**18) Under GST, the value of imported goods for tax purposes includes which of the following?**

- a) Customs duty
- b) IGST
- c) CIF value
- d) All of the above

**Answer:**

### **Important case studies and Advance Rulings**

**19) In which scenario must commodity price fluctuations in the international market be taken into consideration when determining transaction value?**

- a) When there is a suspicion of undervaluation by the importer.
- b) When the product is highly fluctuating in the international market.
- c) When the supplier is related to the buyer.
- d) When the contract price remains constant despite market fluctuations.

**Answer:**

**20) The High Court ruled that online Rummy is considered a game of skill and not gambling in which case?**

- a) Suncraft Energy (P.) Ltd. v. Assistant Commissioner, State Tax
- b) Shyam Sel and Power Ltd. v. State of U.P.
- c) Gameskraft Technologies (P.) Ltd. v. Directorate General of GST Intelligence
- d) Pepsico India Holdings (P.) Ltd. v. Union of India

**Answer:**

**21) In the MOOWR case study, what new requirement under Section 65A impacts the business's cash flow?**

- a) Additional import duties.
- b) Upfront IGST and GST Compensation Cess payments.
- c) Export obligations.
- d) Increased bond value for deferred duties.

**Answer:**

**22) In the valuation of imported goods case study, what is the role of the Special Valuation Branch (SVB)?**

- a) To monitor all imports for under-invoicing.
- b) To ensure that the declared transaction value is at arm's length.
- c) To assess the quality of imported goods.
- d) To handle the logistics of imported goods.

**Answer:**

## Answers

### **Answers of Case Studies:**

#### **1) Answers:**

1. Steps: Obtain licenses under Sections 58 and 65, submit a solvency certificate, execute a triple duty bond, and get insurance.
2. Benefits: Deferred duties, export exemptions, and no export obligation. Challenges: Upfront IGST and Cess payments.
3. Impact: Increased cash flow requirements due to upfront IGST and Cess payments.
4. Compliance: Ensure bond execution, insurance coverage, timely reporting, and adherence to operational restrictions.

#### **2) Answer:**

##### **1. Customs Valuation:**

- Authorities should assess the transaction value based on the price actually paid or payable, adjusted for related party transactions, to reflect the true value.
- They may reject the declared value if the relationship between buyer and seller has influenced the price, applying alternative methods to determine the correct customs value.

##### **2. Implications for XYZ Textiles Ltd.:**

- If undervaluation is confirmed, the company may face additional duties, fines, and penalties.
- The company's past imports may be re-assessed, leading to potential retroactive duty adjustments.

##### **3. Role of SVB:**

- The SVB investigates related party transactions to determine whether the declared value is at arm's length.
- If the relationship has affected the price, the SVB may recommend an upward revision of the import value.

#### **Conclusion:**

M/s XYZ Textiles Ltd. should ensure that the declared value of imported goods reflects an arm's length transaction. The SVB's involvement is crucial in validating the declared value, and failure to comply can result in significant financial consequences.

### **3) Answer:**

#### **1. Documentation Requirements:**

- The high sea sale agreement must be executed before the goods arrive at the Indian port.
- The original Bill of Lading should be endorsed in favor of the buyer (M/s India Distributors Ltd.).
- Additional documents include the commercial invoice, packing list, and any amendments to the Bill of Entry reflecting the new buyer.

#### **2. Customs Valuation:**

- The value of the goods for customs duty should be based on the high sea sale price, which is the price paid by M/s India Distributors Ltd. to M/s Global Traders Pvt. Ltd.
- This value should include the cost, insurance, and freight (CIF) up to the point of entry in India.

#### **3. Challenges During Customs Clearance:**

- Customs may scrutinize the timing and authenticity of the high sea sale agreement.
- The valuation of goods may be questioned if there is a significant difference between the original purchase price and the high sea sale price, potentially leading to delays and reassessment of duties.

### **Conclusion:**

M/s Global Traders Pvt. Ltd. and M/s India Distributors Ltd. must ensure accurate documentation and proper valuation of goods in high sea sale transactions to avoid complications during customs clearance. Properly executed high sea sale agreements and transparent pricing will help in smooth processing of goods through customs.

### **4) Answer:**

#### **1. Role of the SVB:**

- The SVB is responsible for examining related party transactions to ensure that the declared value of imported goods is not influenced by the relationship between the buyer and the seller.
- The SVB assesses whether the declared transaction value reflects the true market value by comparing it with similar transactions, reviewing transfer pricing reports, and considering other relevant factors.

## 2. **Justifying the Declared Value:**

- M/s Alpha Pharmaceuticals should provide comprehensive documentation, including the transfer pricing report, pricing methodology, and any agreements between the related parties.
- Demonstrating that the prices are consistent with those charged to independent third parties, or explaining the rationale for any price differences, can help justify the declared value.

## 3. **Potential Outcomes:**

- **Acceptance of Declared Value:** If the SVB finds the declared value to be at arm's length, it will be accepted, and no further action is needed.
- **Adjustment of Declared Value:** If the SVB determines that the relationship has influenced the price, it may recommend an upward revision of the value, leading to higher customs duties.
- **Penalties and Reassessment:** If undervaluation is established, M/s Alpha Pharmaceuticals could face penalties, reassessment of duties for previous imports, and increased scrutiny in future transactions.

## **Conclusion:**

M/s Alpha Pharmaceuticals must be prepared to justify the declared value of imports in related party transactions. A thorough and transparent approach in dealing with the SVB will help ensure that the transaction value is accepted or adjusted fairly, minimizing potential financial and legal risks.



**Answers of MCQs:**

- 1) (c) Goods sold within India
- 2) (c) Import
- 3) (d) Goods brought into a Special Economic Zone (SEZ) from the Domestic Tariff Area (DTA)
- 4) (c) Goods in transit across Indian territory
- 5) (b) Validity of customs duty on goods used in the EEZ
- 6) (b) Obtaining permissions from the Ministry of Commerce before imports
- 7) (a) Sale of goods on high seas after they have been loaded on a vessel but before they reach the destination port
- 8) (b) Based on the CIF value at the point of entry in India.
- 9) (a) It is used for storing goods without paying customs duty
- 10) (a) Transaction Value
- 11) (b) Transaction value of the goods
- 12) (b) Special Valuation Branch
- 13) (b) Transactions involving related parties
- 14) (a) IGST
- 15) (d) GST on import of services is payable under reverse charge
- 16) (b) Services provided by a foreign company to an Indian resident
- 17) (a) IGST
- 18) (d) All of the above
- 19) (b) When the product is highly fluctuating in the international market.
- 20) (c) Gameskraft Technologies (P.) Ltd. v. Directorate General of GST Intelligence
- 21) (b) Upfront IGST and GST Compensation Cess payments
- 22) (b) To ensure that the declared transaction value is at arm's length.



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