



CERTIFICATE COURSE IN EXPORT & IMPORT MANAGEMENT - IMPORT, WAREHOUSING & CUSTOMS VALUATIONS



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About The Trainer



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Vineet has over 19+ years of consulting experience in leadership role in Indirect tax including GST (around 13 years in Big 4)

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He has worked with leading players in diverse industry sectors such as Logistic, Auto Component, Financial Services, Technology, infrastructure and hospitality, Mining, PSU, Government, Pharma, Manufacturing, Trading and other sectors for addressing their concerns under indirect taxes



Import and Various Definitions

Definition of Import Under Customs Act 1962

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 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 or services;
- (ii) Services - Bringing into India any services.

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 the Foreign Trade (Development & Regulation) Act, 1992

In relation to goods

“Import of Goods” means bringing into 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]
- ii. In the territory of another country to an Indian service consumer; [Consumption abroad]
- iii. By a service supplier of another country, through commercial presence in India; [Commercial Presence]
- iv. By a service supplier of another country, through presence of their natural persons in India; [Presence of natural persons]

Definition of India Under Customs Act 1962

According to Section 2(27) of the Customs Act, 1962 **“India”** includes the territorial waters of India.

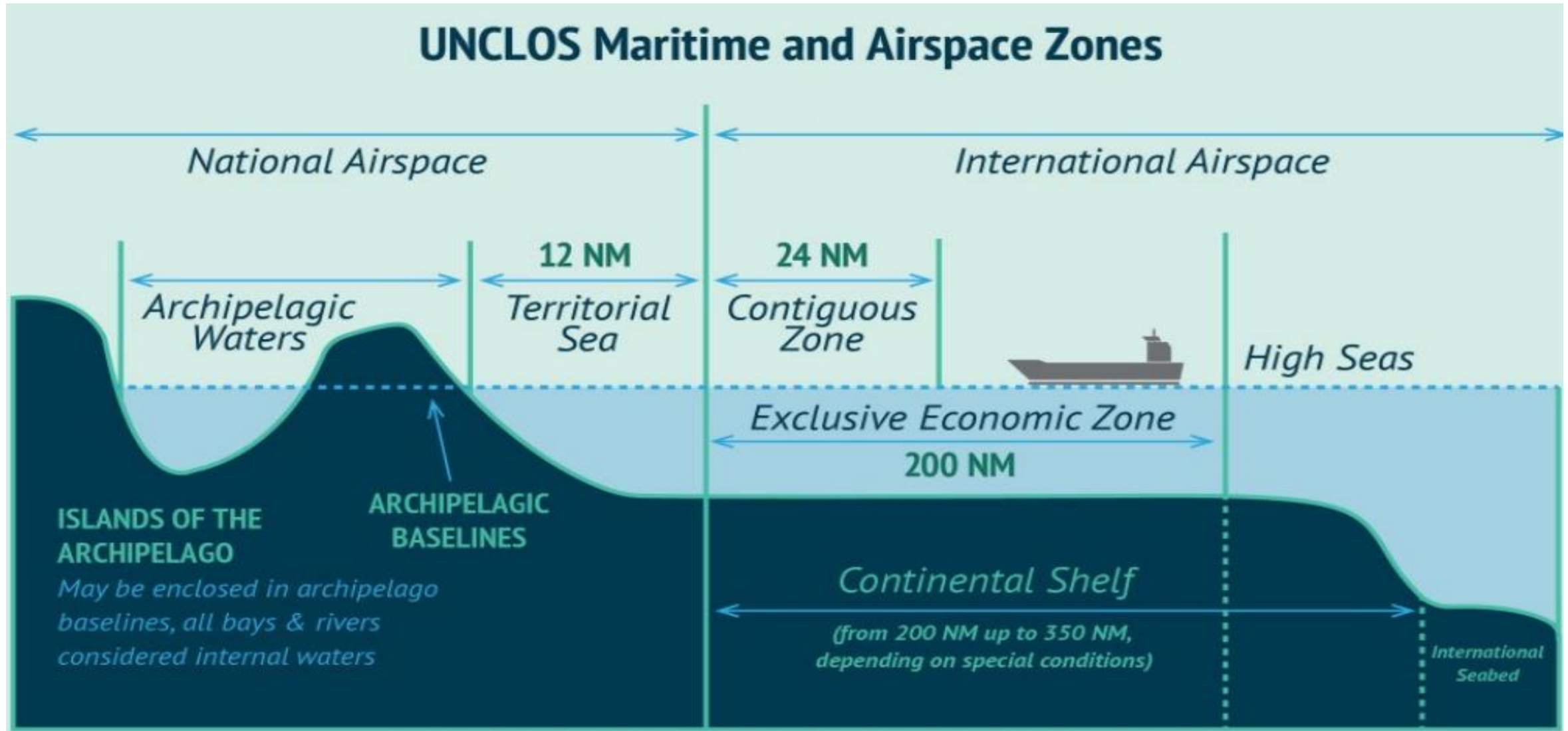
As per Section 2 (28) of the Customs Act, 1962, "Indian Customs Waters" means the 23 [waters extending into the sea up to the limit of 24 [Exclusive Economic Zone under section 7] of the Territorial Waters, Continental Shelf, Exclusive Economic Zone and other Maritime Zones Act, 1976, (80 of 1976)] and includes any bay, gulf, harbour, creek or tidal river;

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 Act, 1962 “**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 Person-In-Charge Under Customs Act 1962

According to Section 2(31) of the Customs Act, 1962 “**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.

Definition of Beneficial Owner Under Customs Act 1962

According to Section 2(3A) of the Customs Act, 1962 “**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;

Definition of Goods Under Customs Act 1962

According to Section 2(22) of the Customs Act, 1962

“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 Prohibited Goods Under Customs Act 1962

According to Section 2(33) of the Customs Act, 1962 **“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

“Restricted goods”, also known as controlled goods, are goods that are subject to customs laws and regulations that control their importation, exportation, transfer, or carriage. Importers or exporters can import or export restricted goods if they have the necessary permits or authorization. For example, foodstuffs may require permits from agricultural or health authorities.

Definition of Warehoused Goods Under Customs Act 1962

According to Section 2(44) of the Customs Act, 1962 **“warehoused goods”** means goods deposited in a warehouse.

Definition of Bill of Entry Under Customs Act 1962

According to Section 2(4) of the Customs Act, 1962 **“Bill of entry”** means a bill of entry referred to in Section 46. this Section 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.

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 Transit of Goods Under Customs Act 1962

According to Section 53 of the Customs Act, 1962 **“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.

Definition of Customs Station Under Customs Act 1962

According to Section 2(13) of the Customs Act, 1962 **“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 Act, 1962 **“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 Act, 1962 **“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 Act, 1962 **“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 Act, 1962 **“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.

Domestic Tariff Area

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.

Export Oriented Unit

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).

Special Economic Zone

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.



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 take place when the goods are cleared for home consumption.

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.

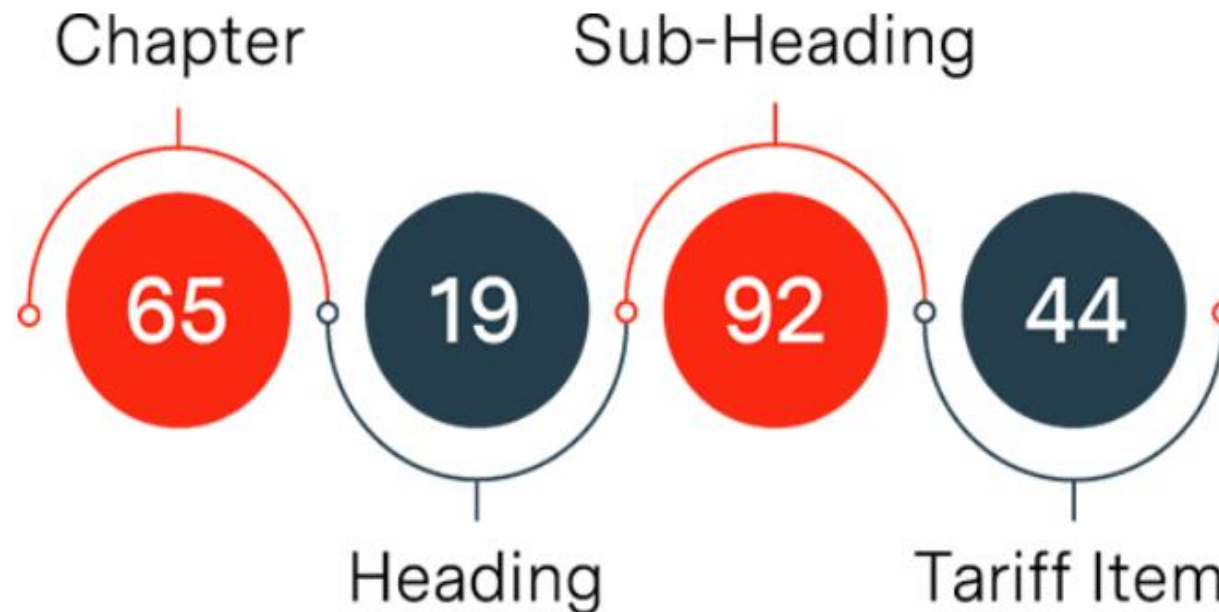
For example: One specific book which has strong market in India but the profit margin which the entity is enjoying would have been more if the same is printed by printer in DTA instead of importing. In case of deemed import the owner of the product is lying with the supplier situated in domestic tariff 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.

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.

ILLUSTRATION ➡





HSN Code



Harmonized System of Nomenclature

HSN code stands for "Harmonized System of Nomenclature"

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.



**LANDMARK JUDGEMENT DEFINING IMPORT AND
OTHER**

1) 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 Act, 1962, 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.

Judgment:

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

2) 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 Act, 1962.

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

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.

Judgment:

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

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 Act, 1962, 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.

Judgment:

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)

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 Act, 1962. 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.

Judgment:

The Madras High Court examined Sections 111(d) and 125 of the Customs Act, 1962. 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.

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.

Judgment:

The Supreme Court of India reviewed the relevant provisions of the Foreign Trade (Development and Regulation) Act, 1992, and the Customs Act, 1962. 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.

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 Act, 1962, 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.

Judgment:

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. The judgment emphasized that exemption notifications must be interpreted strictly, and any ambiguity should not result in granting an exemption to 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.

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

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

2) Under the Customs Act, 1962, which term is used to describe the importation of goods into India?

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

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)

CASE STUDY :

4) 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



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.

Meaning, Scope and Other Details Related to Imports

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.

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)
2. Ensure the legal compliance under different trade laws
3. Procure Import Licenses
4. File Bill of Entry and other documents to complete customs clearing Formalities
5. Determine import duty for the clearance of goods

Import Duties Under Customs

1. Basic Customs Duty (BCD)
2. Integrated Goods and Services Tax (IGST)
3. GST Compensation Cess
4. Protective Duties
5. Safeguard Duty
6. Provisional Safeguard Duty
7. Countervailing Duty on Subsidized articles
8. Anti-Dumping duty



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.



5) 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)



IMPORT OF SERVICES

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 Sec 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 Sec 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 Sec 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 Sec 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 Sec 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 Sec 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 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 Sec 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.)

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.

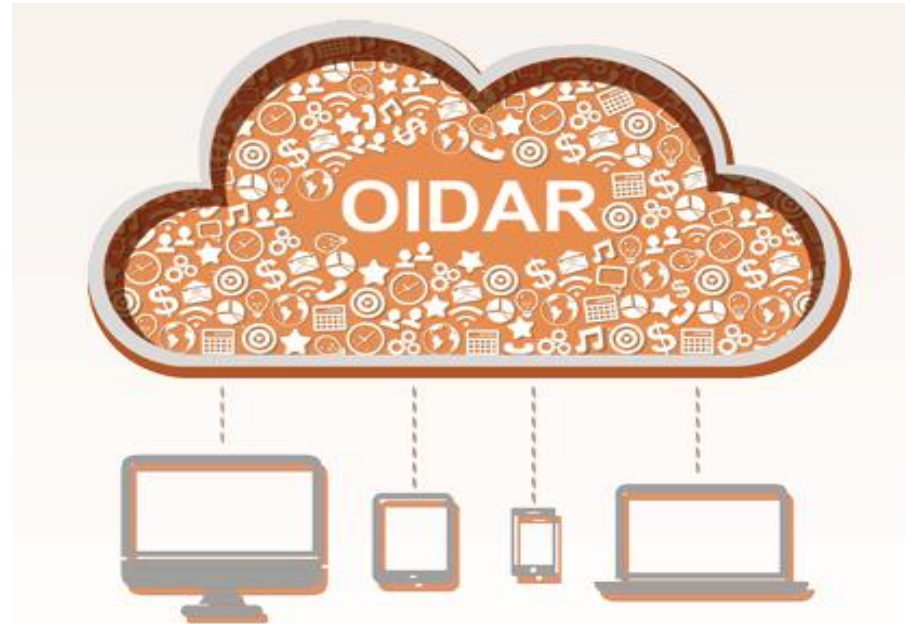
Examples of what could be or could not be OIDAR services:

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
2. Supply of software and updating thereof
3. Supply of images, text and information and making available of databases
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
5. Supply of distance teaching



6) 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

7) 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

8) Under the Customs Act, 1962, 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

A man with a beard and glasses, wearing a grey polo shirt, is working in a warehouse. He is holding a black tablet in his left hand and a handheld barcode scanner in his right hand. He is looking down at the tablet. In the background, there are stacks of cardboard boxes and warehouse shelving. An orange circle is overlaid on the left side of the image, containing the text "Imports Under GST".

Imports Under GST

Imports under GST:

Under the GST regime, Article 269A of the Constitution mandates that the import of goods or services into India is treated as an inter-State supply, making it subject to Integrated GST (IGST).

IGST on imported services is levied under the IGST Act and is paid by the importer on a reverse charge basis. However, for online information and database access or retrieval services (OIDAR) provided to unregistered, non-taxable recipients in India, the foreign supplier is responsible for paying taxes, either by registering in India or appointing a representative.

For goods, IGST is levied under the Customs Tariff Act, 1975, alongside applicable Customs duties. The value for IGST calculation includes the assessable value plus Customs Duty and other charges. The IGST paid is excluded when calculating any additional cess on certain goods. Goods supplied to Special Economic Zones (SEZs) are also treated as inter-State supplies and subject to IGST.

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/-.

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.



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

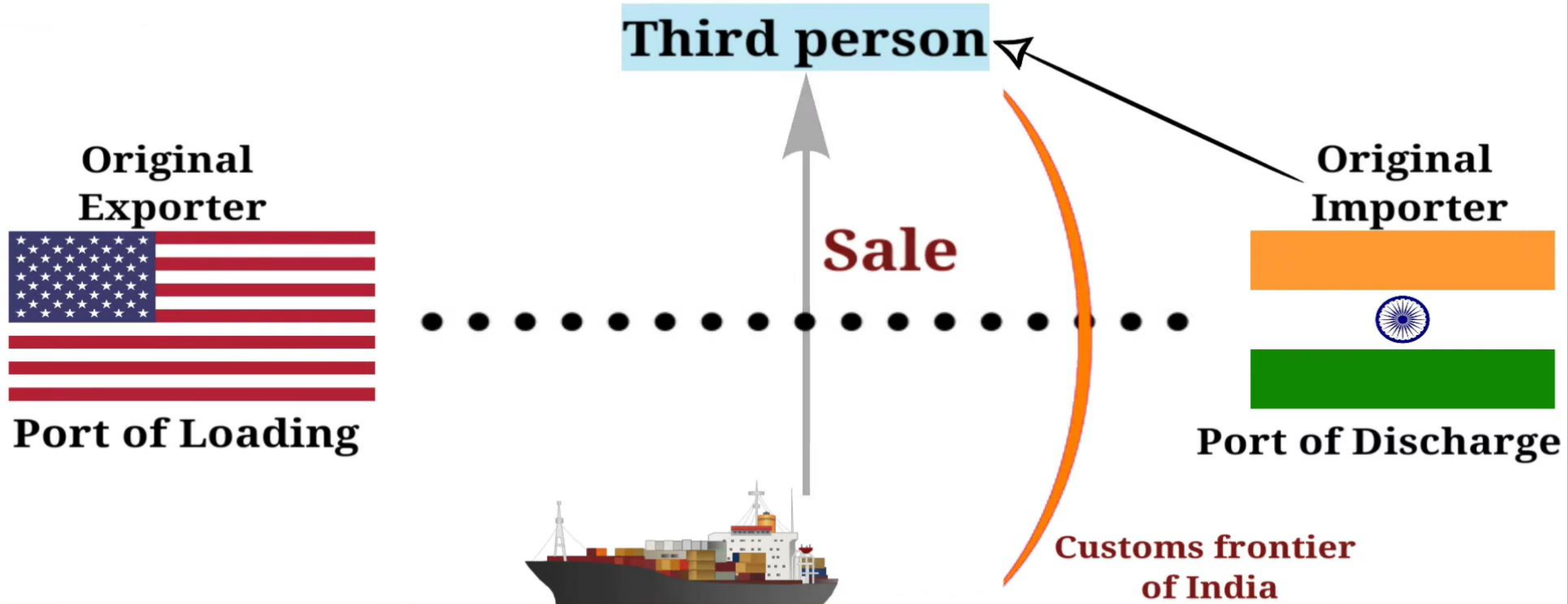
- a) IGST
- b) CGST
- c) SGST
- d) All of the above

10) 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

**HIGH SEA SALE
AND SALES IN
THE COURSE OF
IMPORT**





High Sea Sale Transactions

High Sea Sale

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.

For Example:

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 Act, 1962, 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.

High Sea Sales under GST:

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.

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) **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.
- 4) **Multiple Sales:** The same consignment can be sold multiple times while in transit. Each subsequent buyer will be responsible for customs clearance and duties.
- 5) **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.



Documentation required for High sea sales:

- **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.

Sale in Course of Import (SICOI)

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:

- **Occasions Import:** The sale must either occasion the import of goods into India. This means the sale is directly linked to the import process.
- **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:

Particular	Sales in the course of Import (SICOI)	High Sea Sales
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

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 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	Rs. 000000.00
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 then 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.



8) Landmark Judgement on High Sea Sale:

Title: BASF India Ltd. - Advance Ruling on Applicability of IGST for High Sea Sales Transactions

Summary of the case:

BASF India Ltd., engaged in manufacturing and trading chemicals, sought an advance ruling on two key issues regarding their business operations.

- 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.

Judgment:

The Maharashtra Authority for Advance Ruling (AAR) examined the provisions of the IGST Act and relevant customs laws. The ruling clarified that IGST on imported goods is levied only at the point of customs clearance, as stipulated in Section 3(7) of the Customs Tariff Act, 1975. Therefore, the High Sea Sales, which occur before the goods enter Indian customs, do not attract IGST under the IGST Act. Additionally, since these transactions are not considered supplies subject to IGST, the question of reversing the input tax credit does not arise.

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

1) 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?

11) 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

12) 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.

A blurred background image of a warehouse interior. In the foreground, a conveyor belt with green guides is visible, carrying cardboard boxes. In the background, there are tall metal shelving units filled with various boxes and equipment. A semi-transparent orange rectangle is centered over the image, containing the text.

CUSTOM 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) The has been declared insolvent or bankrupt by a Court or Tribunal;
- b) The has been convicted for an offence under any law for the time being in force;
- c) The 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) The 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 (MOOWR) Scheme:

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

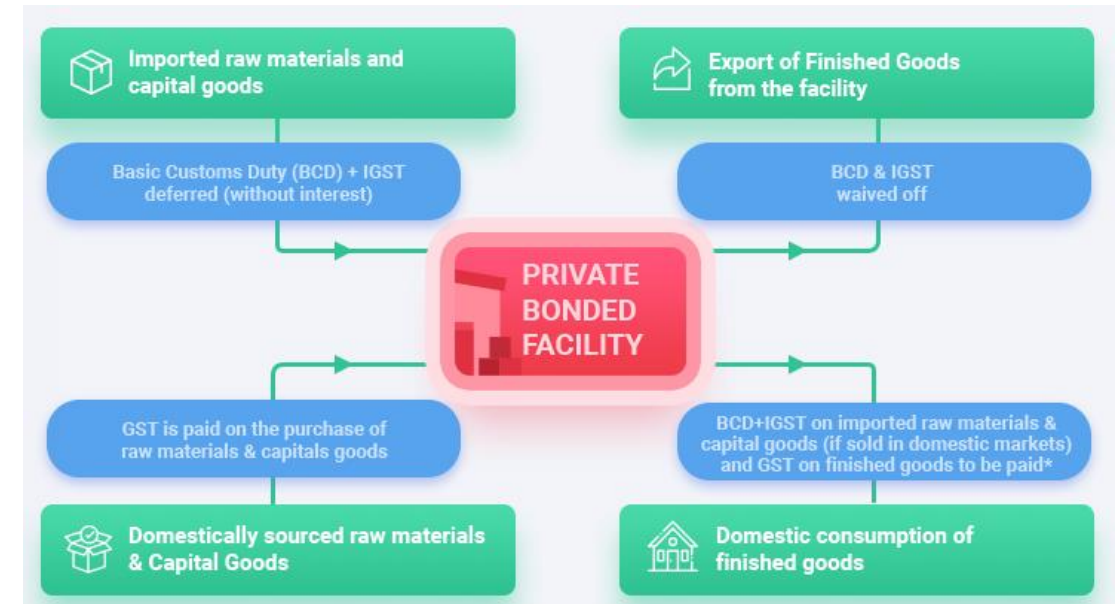
With the Government's continuous efforts to promote India as the manufacturing hub globally and the commitment towards ease of doing business, another initiative in this direction by the Central Board of Indirect Taxes (CBIC) is allowing import of raw materials and capital goods without payment of duty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

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 Act, 1962
- 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.

— 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.

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 Act, 1962.

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 Act, 1962 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 Act, 1962 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.

Documents required for MOOWR Scheme:

- | | | |
|---|--|------------------------------|
| ✓ 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 |

1) 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 Act, 1962.
- 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?

13) 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

CASE STUDY :

14) 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.



Valuation of Imported Goods

Get the right value for your goods

Valuation of goods

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.

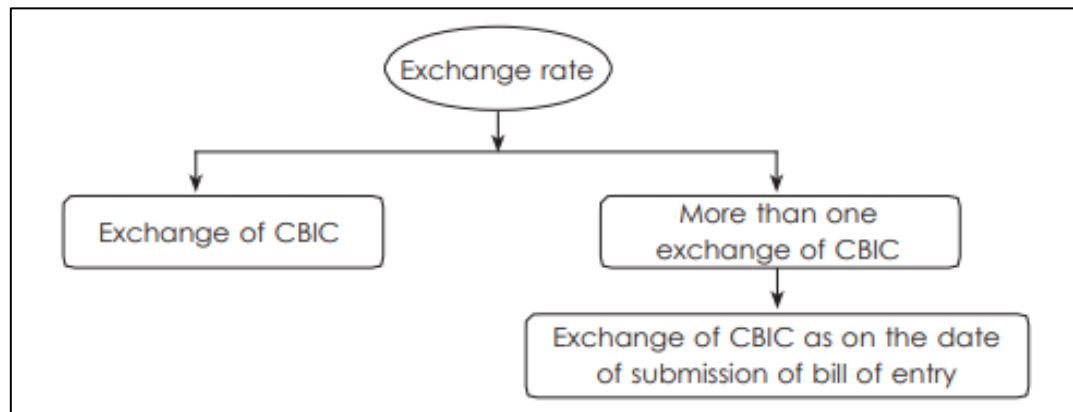
Transaction Value Includes:

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

Price:

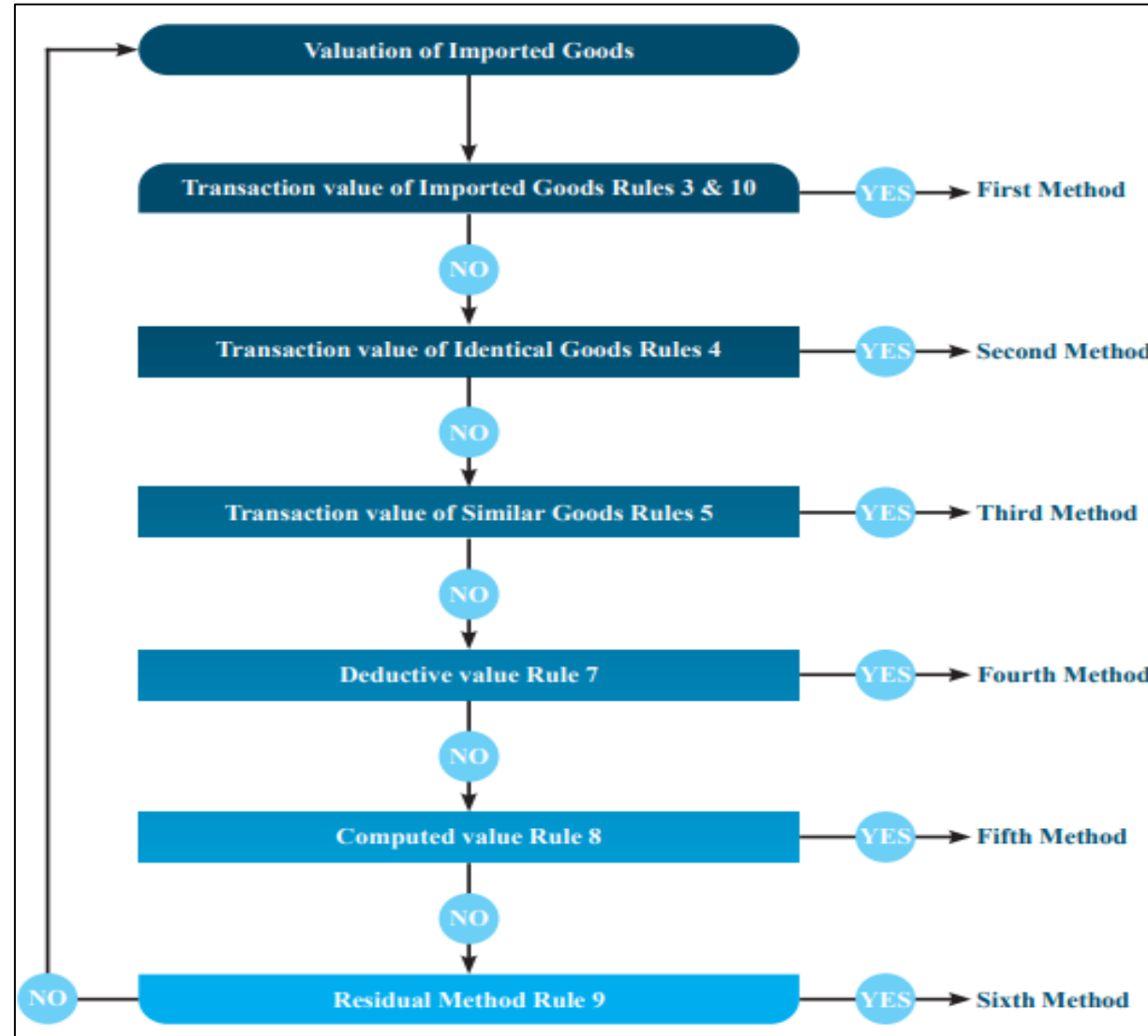
Price shall be calculated with reference to the rate of exchange as in force on the date on which a bill of entry is presented under section 46, or a shipping bill of export, as the case may be, is presented under section 50.

Exchange rate for Imported Goods:



Valuation of Imported Goods

The following methods can be applied in sequential order for Imported goods:



Definition of Identical Goods:

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

This method is applicable only when following conditions are satisfied:

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

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

Definition of Similar Goods:

"**Similar goods**" includes—

- Which although not alike in all respects, have like characteristics and like component materials which enable them to perform the same functions and to be commercially interchangeable with the goods being valued having regard to the quality, reputation and the existence of trade mark.
- Produced in the country in which the goods being valued were produced; and
- Produced by the same person who produced the goods being valued, or where no such goods are available, goods produced by a different person, but shall not include imported goods where engineering, development work, art work, design work, plan or sketch undertaken in India were completed directly or indirectly by the buyer on these imported goods free of charge or at a reduced cost for use in connection with the production and sale for export of these imported goods;

Custom Valuation (Determination of Price of Imported Goods Rules 2007:

Rule 3 - Determination of The Method of Valuation:

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

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

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

Rule 3(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.

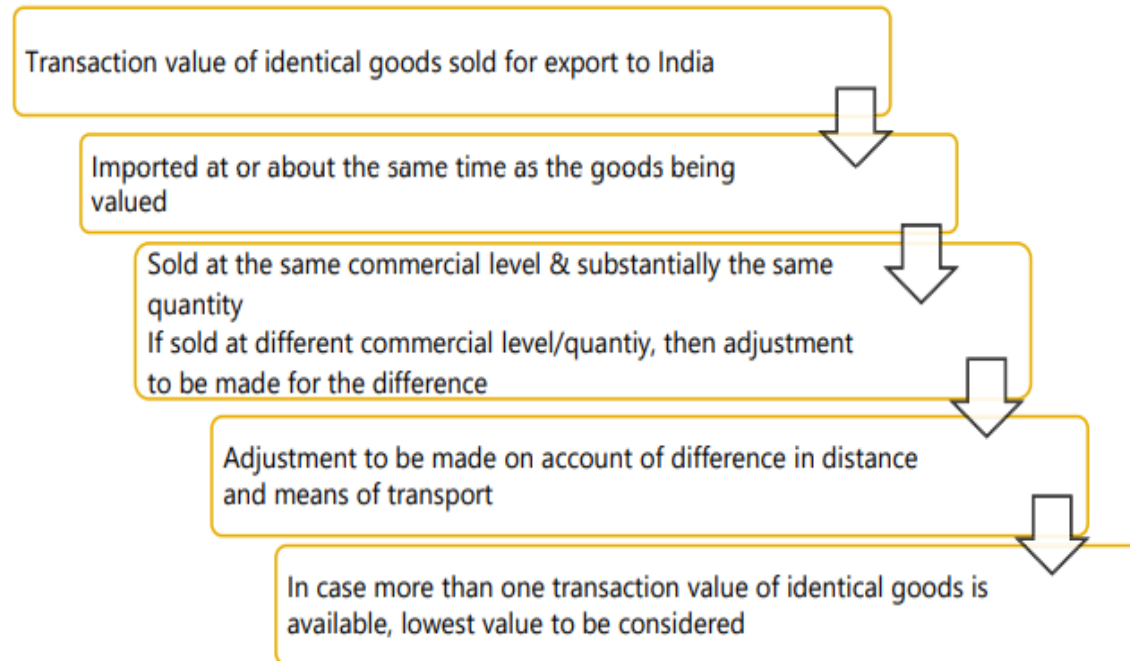
Provided that in applying the values used for comparison, due account shall be taken of demonstrated difference in commercial levels, quantity levels, adjustments in accordance with the provisions of rule 10 and cost incurred by the seller in sales in which he and the buyer are not related.

(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.

Custom Valuation (Determination of Price of Imported Goods Rules 2007:

Rule 4 - Transaction Value of Identical Goods :

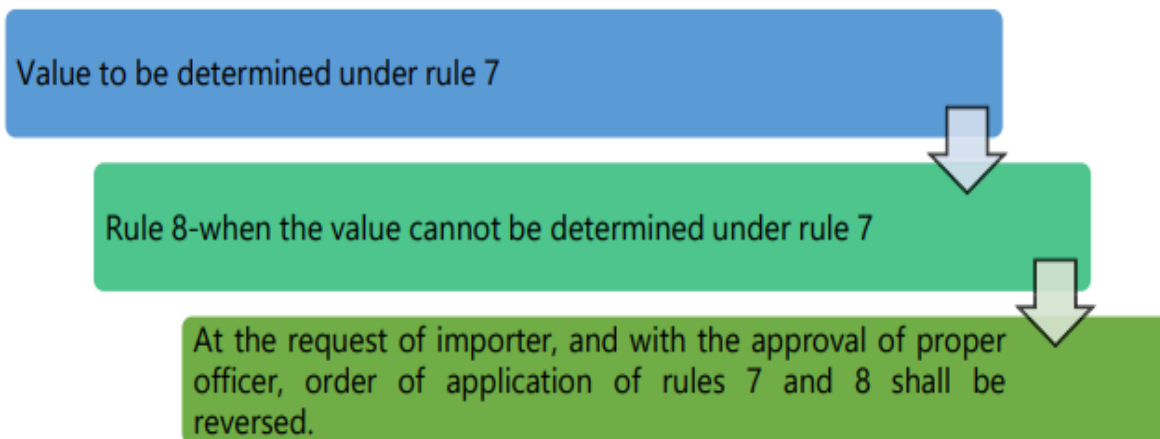


Rule 5 - Transaction value of similar goods:

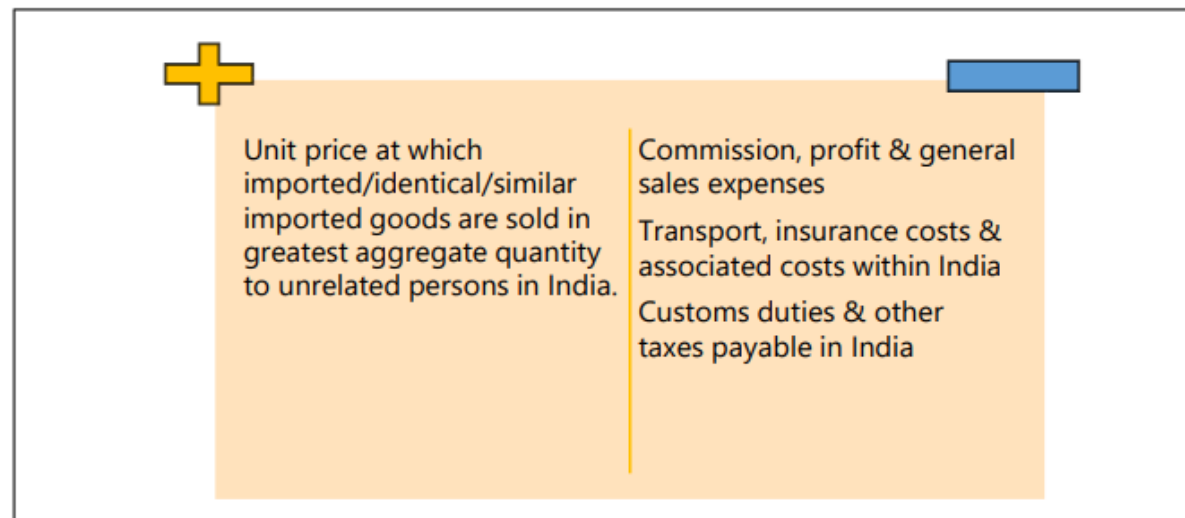
The principles of valuation of identical goods also apply to valuation of similar goods

Custom Valuation (Determination of Price of Imported Goods Rules 2007:

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



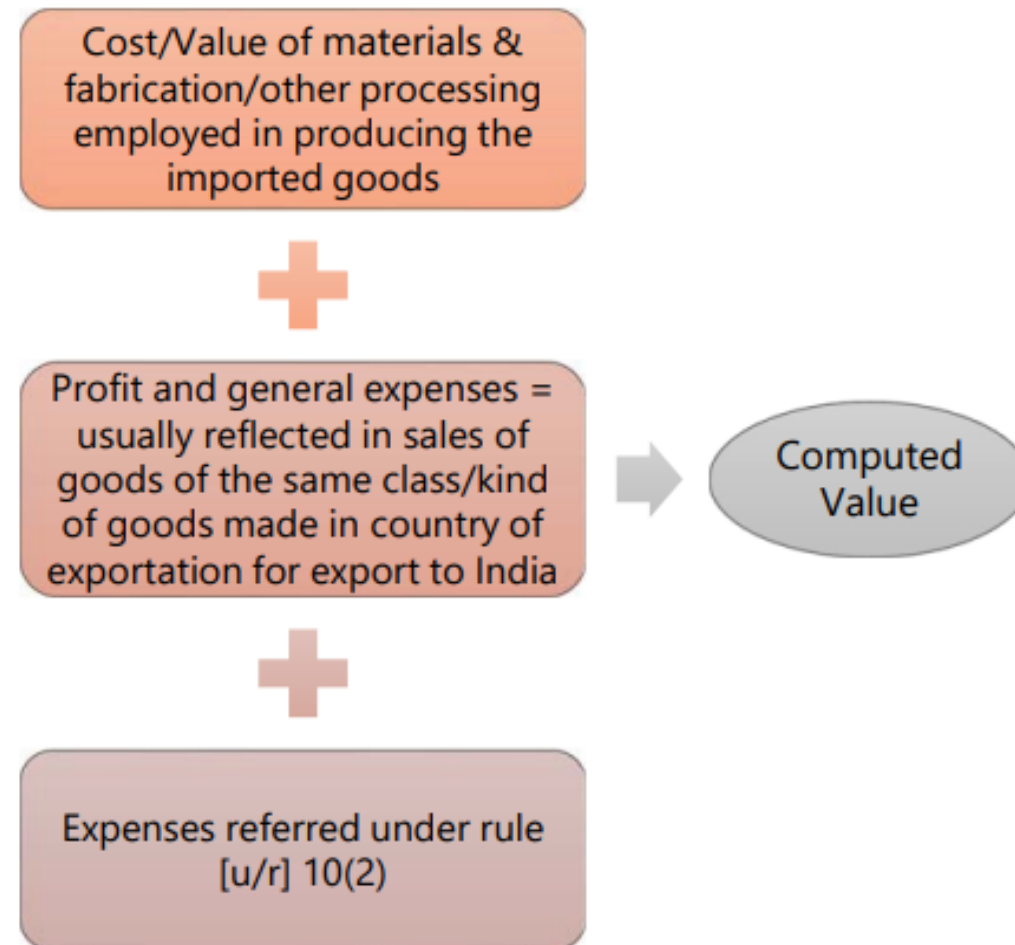
Rule 7 — Deductive value:



Valuation of Imported Goods

Custom Valuation (Determination of Price of Imported Goods Rules 2007:

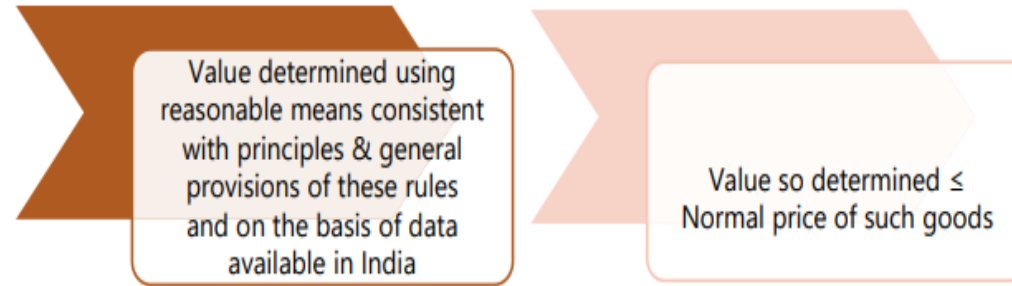
Rule 8 — Computed value:



Valuation of Imported Goods

Custom Valuation (Determination of Price of Imported Goods Rules 2007:

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.

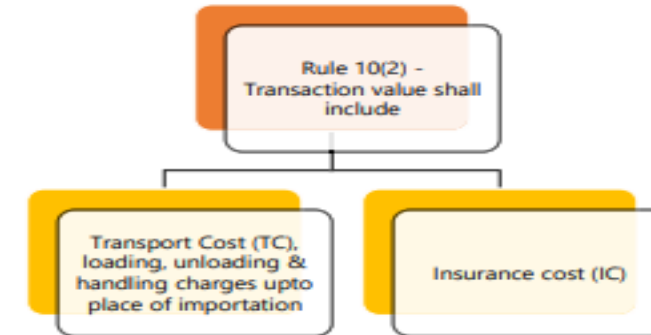
Custom Valuation (Determination of Price of Imported Goods Rules 2007:

Rule 10 - Cost and Services:

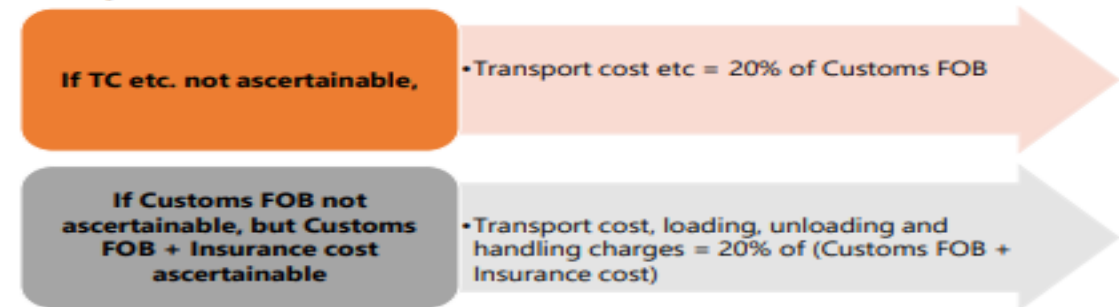
Rule 10(1) - Costs to be added if not included:

- 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

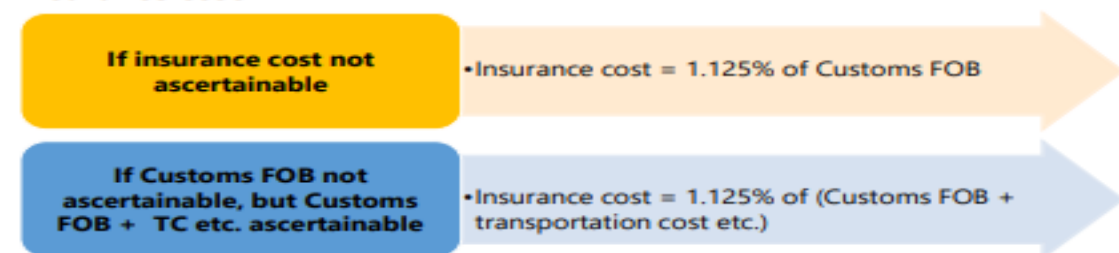
Rule 10(2)



Transport cost [TC]



Insurance cost



Custom Valuation (Determination of Price of Imported Goods Rules 2007:

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 Act, 1962 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).

Calculation of Customs Duty in India:

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	Free on Board (FOB)	XXX	
V	Add: 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	FOB value as per Customs	XXX	
VII	Actual Cost of freight	XXX	
VIII	Ship demurrage charges on chartered vessels, lighterage or barge charges	XXX	
IX	Actual Insurance charges	XXX	
X	Assessable Value of the Goods	XXX	
XI	Add: Basic Customs Duty on Assessable Value (on I)	XXX	XXX
XII	Add: Countervailing Duty on (I+II)	XXX	XXX
XIII	Sub Total	XXX	
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	Sub Total	XXX	
XIX	Add: IGST on (IX)	XXX	XXX
XX	Add: Compensation Cess on (IX)	XXX	XXX
XXI	Total Customs Duty Payable on (XII)	XXX	XXX

1) 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?

15) 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

16) 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

SVB AND RELATED PARTY TRANSACTIONS



Special Valuation Branch:

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.”

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.

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 Act, 1962 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.

1) 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?

17) 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


18) 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

CASE STUDY :

19) 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.

A close-up photograph of a wooden gavel with a brass band, resting diagonally across a white document. The document has the words "Advance Ruling" printed in a large, black, sans-serif font. The background shows a wooden surface with a grid pattern.

Advance Ruling

G.S.T

1) High Court Rules Online Rummy as a Game of Skill, Not Gambling

Case Summary: 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]]**

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

Case Summary: 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]]**

IMPORT

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

Case Summary: 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

Case Summary: 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) Technical Know-How Costs Excluded from Assessable Value of Imported Goods

Case Summary: 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]**

4) Supreme Court Rules Against Enhanced Valuation of Imported Goods Due to Lack of Evidence

Case Summary: 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)]**

5) Supreme Court Overturns Tribunal's Decision on Royalty Loading in Import Valuation Case

Case Summary: 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]**

20) 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.



**RECENT
CHANGES
IN BUDGET
RELATED
TO IMPORT**

Validation of Exemption from Compensation Cess for SEZ Imports:

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)

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 Act, 1962, 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 Act, 1962, the amendment ensures comprehensive coverage, including aspects like assessment, non-levy, refunds, and appeals, leaving little room for legal ambiguity.

Recent Changes in Budget Related to Imports

Sector Specific Customs Duty Proposals

Comprehensive review of the rate structure for ease of trade, removal of duty inversion and reduction of disputes

Changes in Custom Duty

Beneficiaries

Fully exempt 3 more cancer medicines from custom duties

Affordable medicines

Reduce BCD to 15% on Mobile phone, Mobile PCBA and charger

Mobile industry

Reduce custom duty on gold and silver to 6% and platinum to 6.4%

Domestic value addition

Reduce BCD on shrimp and fish feed to 5%

Enhance competitiveness in marine exports

Exempted more capital goods for manufacturing of solar cells & panels

Support energy transition

Fully exempt custom duties on 25 critical minerals

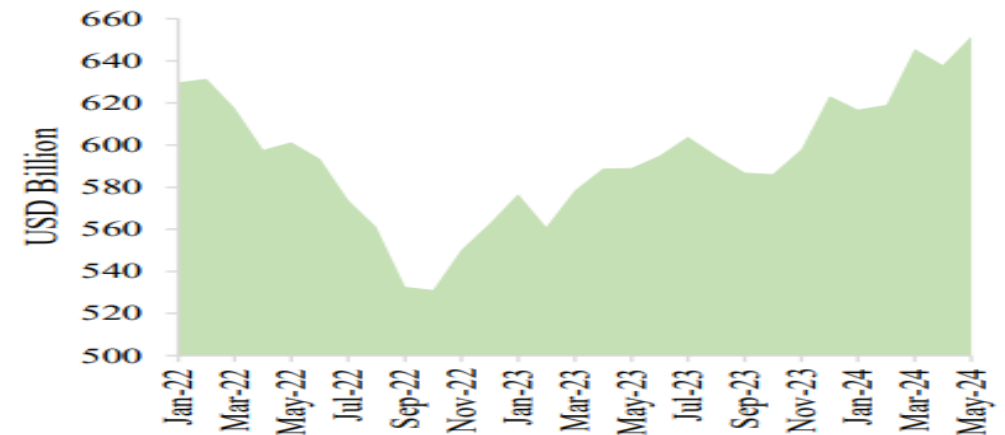
Boost to strategic sectors

12

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

Abbreviations

Abbreviation	Expanded form
AA	Advance Authorization
AEO	Average Export Obligation
ARO	Advance Release Order
ADD	Anti Dumping Duty
BCD	Basic customs duty
BE	Bill of entry
CTH	Customs Tariff Heading
CBIC	Central Board of Indirect Taxes and Customs
CBDT	Central Board of Direct Taxes
CECAs	Comprehensive Economic Cooperation Agreements
CETH	Central Excise Tariff Heading
CSO	Central Statistical organization
c.i.f.	Cost Insurance Freight
Commissionerate	Commissionerate of customs
CVD	Countervailing duty
DMA	Disaster Management Advisor
DoR	Department of Revenue
DoC	Department of Commerce
DGFT	Director General of Foreign Trade
DC	Development Commissioner
DGAD	Director General of Anti Dumping
DGCIS	Director General of commercial intelligence and statistics
DGTR	Directorate General of Trade Remedies
DGOV	Directorate General of Valuation
DTA	Domestic Tariff Area
DEPB	Duty Entitlement Pass Book
DEEC	Duty Exemption Entitlement Certificate
DFRC	Duty Free Replenishment Certificate
EDI	Electronic Data Interchange
EO	Export obligation
EODC	Export obligation discharge certificate
EOU	Export Oriented Unit
EP	Export Performance
EPCG	Export Promotion Capital Goods
EPZ	Export Processing Zone
EXIM	Export and Import
FY	Financial year

Abbreviation	Expanded form
FOB	Free on Board
FOR	Free on Road
FTP	Foreign Trade Policy
GDP	Gross Domestic Product
GFR	General Financial Rules
GST	Goods and Services Tax
HBP	Hand Book of Procedures
HSN	Harmonised system of nomenclature
ICT	Information and Communication Technology
ICEGAT	Indian Customs Electronic Commerce Gateway
IEC	Importer Exporter Code
ICES	Indian Customs Electronic Data Interchange System
ICD	Inland Container Depot
ITC(HS)	International Tariff Classification (Harmonised System)
JDGFT	Joint Director General of Foreign Trade
LOP	Letter of permission
LRM	Local Risk Management
MEIS	Merchandise Exports from India Scheme
NFCD	National Co-operative Construction & Development Federation
OC	Occupation certificate
OSPCA	On Site Post Clearance Audit
PAC	Public Accounts Committee
Pr.CCA	Principal Chief Controller of Accounts
PSU	Public Sector Undertaking
PWO	Public Works Organization
RCMC	Registration cum Membership Certificate
RLA	Regional licensing authority
RMS	Risk Management System
₹	Rupees
SAD	Special additional duty of customs
SEIS	Service Exports from India Scheme
SEZ	Special Economic Zone
SFIS	Served from India Scheme
STP	Software Technology Park
SION	Standard Input Output Norms
UAC	Unit Approval Committee
VKGUY	Vishesh Krishi and Gram Udyog Yojana



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