PAPER – 19

INDIRECT TAX LAWS & PRACTICE

[CUSTOMS & FTP]

CMA FINAL

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Aman Mahajan (CA AIR 19)

I really liked your classes, especially the practical linkages explained with amazing graphics. The full subject test serieshelped a lot in improving my writing speed and presentation skills.

Sundar Sri Renganathan B (AIR 33)

I took Accounting from IndigoLearn and the classes were really good. They emphasized on conceptual clarity over getting things done quickly, which is really vital to score good marks in practical papers. Other resources like Notes, Quizzes and Forum was beneficial too.

Dwarakesh

Thank you IndigoLearn team for the guidance and support throughout the past few months. I had great conceptual clarity in all the subjects and the revision classes by Suraj Sir were very helpful. Study planner and Free resources were very useful. Thank you Team IndigoLearn.

Yug Manoj Kumar Bhattad

I have cleared my CA Foundation examination with the total of 286. And this was not possible without the efforts and support of IndigoLearn. The way of teaching with utmost conceptual clarity is the best thing at Indigolearn.

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Good experience, unlimited views helped a lot in last one month preparation. Looking forward for

Bhagyasree Chougule

It was only because of Indigolearn that my concepts became very clear, and I was able to crack the exam. I wasn't 100% prepared I needed more practice but luckily I got through. I'm definitely choosing IndigoLearn for group 2 preparation. A big thanks!

Mohd Thayyab

Theoretical subjects made easier through story based examples and charts. Concept clarity 100%. Fully exam+practical oriented classes will help not only to retain the concepts during exams but for the longer duration.

Lalit Chetan Sanpal

Indigolearn has been fantastic and brilliant. Helped me alot in my preparations. I cleared both the groups in first attempt with your brilliant classes and notes. Thanks to all the faculties, coordinators, forum admins and everyone at Indigolearn. Really grateful. Will go for CA Finals at Indigolearn For sure. Thank you so much Indigolearn.

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Abishek M

I'd like to thank IndigoLearn for all the support they've provided me with. Modules were great. They were time saving and straight to the point. I extensively used the materials provided before exams, they were so helpful. Also I'd appreciate them for providing unlimited views as I kept looking into the maths modules till the end.

Munnur Nandini Sree

Accounting classes I have taken from IndigoLearn. Now I feel that it's a great choice that I have made (after seeing my result) because only in Accounting I got exemption. Thank you IndigoLearn.

Harshita G

Thank u so much IndigoLearn for your guidance. This is only possible because of u people.... For my finals also my journey will continue with IndigoLearn.

Bharathsha PS

I purchased Economics, IT, FM, EIS and Audit from Indigolearn. All your classes are superb and anyone can easily crack the CA exams. What makes u special is your classes help us to understand the concepts very well.Special thanks to the FM faculty, I studied only 2 chapters in economics,and still managed to score excemption in the 8th paper.

Nayi Mihir kumar

This platform is very helpful in all activity like mcq practise, notes, teaching activities, revisions and the forum interaction with all students which I like the most. If anybody want to clear their exams in first attempt then IndigoLearn is the best platform for them. My all regards to IndigoLearn. Thank you so much.

Rajalaxmi
CA Inter

Can't believe I cleared.Sathya Sir, Suraj Sir, Yogita Mam ... thanks to all my faculties. Basically an Eng student with zero accounts knowledge. Thanks IndigoLearn for making me clear in first attempt.

Priyanka Udeshi

All the faculties have excellent knowledge of the subject and deliver it in very crisp & effective manner. Also, quick response at Forums never let any of my doubts go unresolved no matter how small they were. Thank you once again to all the teachers & staff at IndigoLearn!

Naveen Kumar T

It been a great journey with indigo learn team. Thanks to all the facilities and forum friends who support me a lot.

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This book is designed for students pursuing CMA Final course, who are appearing for the **Indirect Tax Laws & Practice** exam in **JUNE-24 or afterwards**. The content in the book is not in the order provided by ICAI to ensure logical and comprehensive learning.

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CUSTOMS

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1. LEVY AND EXEMPTIONS OF CUSTOMS

1. INTRODUCTION

Contents

- Understand the basic concepts of customs law.
- Understand the definition of important terms.
- Determining factors to levy customs duty.
- Points and circumstances for levy of customs duty.
- Assessment of duty.
- Remission, abatements and exemptions under customs law

- Customs is a form of indirect tax. Customs is defined as duties imposed on imported goods/ less commonly exported goods.
- ***The Customs Act*** was passed and promulgated in India by the Parliament in the year ***1962*** which replaced the erstwhile Sea Customs Act, 1878. Further, the ***Customs Tariff Act was passed in the year 1975*** to replace the Indian Tariff Act, 1934. The Customs Tariff Act was ***amended in the year 1985***.
- The Customs Act, as it stands now, consolidates the entire law on the subject of import and export duties, which were earlier contained in various enactments like the Sea Customs Act, 1878, Inland Bonded Warehouses Act, 1896 and the Land Customs Act, 1924.

1.1 - Constitutional Provision

The power to levy customs duties on import/export, as well as the power to legislate the principles to determine whether a transaction qualifies as import/export, lies solely with the Union, i.e., the Parliament of India [as per Article 286].

1.2 - Overview of the Customs Law

- ***The Customs Act, 1962 extends to the whole of India*** and, save as otherwise provided in this Act, it applies also to any offence or contravention thereunder committed outside India by any person.
- The entire Act has ***161 Sections*** in total divided into ***Seventeen chapters***.

2. IMPORTANT DEFINITIONS

2.1 - Beneficial Owner - Section 2(3A)

Any person –

a. on whose behalf the goods are being imported or exported, or
b. ***who exercises effective control*** over the goods being imported or exported

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2.2 - Customs area - Section 2(11)

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.

2.3 - Customs Station - Section 2(13)

Any customs port, customs airport, international courier terminal, foreign post office, or land customs station.

2.4 - Export - Section 2(18)

Export with its grammatical variations and cognate expressions, means ***taking out of India to a place outside India.***

2.5 - Import - Section 2(23)

Import with its grammatical variations and cognate expressions means ***bringing into India from a place outside India.***

2.6 - India - Section 2(27)

India includes the territorial waters of India.

> *The territorial waters of India extend to 12 nautical miles into sea from the appropriate base line. Thus, goods are deemed to have been imported if the vessel enters the imaginary line on the sea at the 12th nautical mile i.e., if the vessel enters the territorial waters of India.*

India includes not only the surface of sea in the territorial waters, but also the air space above and the ground at the bottom of the sea.

2.7 - Indian customs waters - Section 2(28)

The waters extending into the sea up to the limit of Exclusive Economic Zone and includes any bay, gulf, harbour, creek or tidal river.

Indian customs waters cover both the Indian territorial waters and exclusive economic zone as well.

Indian territorial waters extend up to 12 nautical miles (nm) from the base line Whereas, exclusive economic zone of India is an area beyond the Indian territorial waters. The limit of exclusive economic zone is 200 nautical miles from the nearest point of the baseline. Therefore, Indian customs waters extend to a total of 200 nm from base line.

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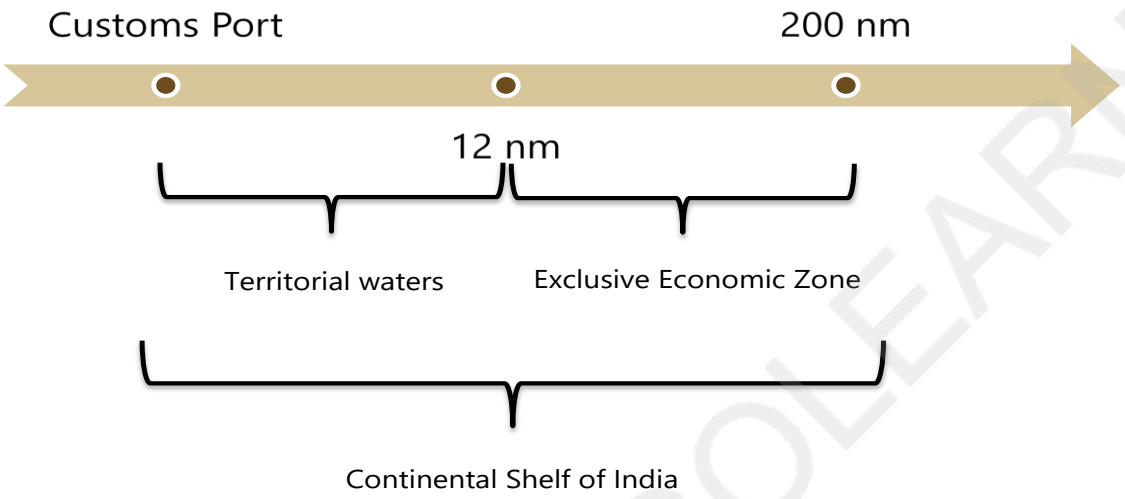
- *If a person has committed any offence punishable under customs law within the Indian customs waters, he may be arrested.*
- *Also, goods may be confiscated, and vessel be stopped in the Indian customs waters if the same is found to be used in the smuggling.*
- *Further, prohibited goods can also be confiscated if brought within the Indian customs waters.*



3. DETERMINING FACTORS FOR IMPOSITION OF TAXES AND DUTIES

3.1 - Stages of imposition of taxes and duties

All taxes and duties are imposed in three stages –

1. ***Levy*** – declaration of liability is made and persons or properties in respect of which the tax or duty is to be levied is identified and charged.
2. ***Assessment*** – procedure of quantifying the amount of liability, and
3. Collection of tax or duty

3.2 - Factors upon which liability towards customs duty is based

- The goods, the point and the circumstances under which the customs duty becomes leviable
- The procedure, the mechanism and the organisation for determining the amount of customs duty and collection thereof
- The exemption to the levy

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4. POINT AND CIRCUMSTANCES OF LEVY

Charging Section [Section 12]

- Section 12 is the charging section of the Act.
- The taxable event is import or export of goods.
- However, it may be noted that this ***levy is subject to other sections*** in the Act.
- There is ***no general exemption to the goods imported by the Government***. However, imports by ***Indian Navy***, specific equipment required by ***police***, ***Ministry of Defence***, ***Costal Guard*** etc. are fully exempt from customs duty by virtue of specific notifications (subject to fulfilment of conditions and/or procedure set out in the notification).
- The duty shall be charged at such rates as may be specified under the Customs Tariff Act, 1975.
- The ***charge*** of customs duty is considered to be ***on the goods*** and ***not on the person*** importing them or paying the duty.

4.1.1 - Taxable event

Importation or exportation of goods into or out of India is the taxable event for payment of the duty of customs.

The **main test** for determining the taxable event is the **happening of the event** on which the charge is affixed.

Imports	***Exports***
a) In case of goods cleared for home consumption – 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. The taxable event is reached at the time when the goods reach the customs barriers and bill of entry for home consumption is filed. *[Garden Silk Mills (SC)]*. ***b) In case of goods cleared for warehousing*** – The custom barriers would be crossed when they are sought to be taken out of customs and brought to the mass of goods in the country. *[Kiran Spinning Mills (SC)]*.	Export of goods is complete when the goods cross the territorial waters of India.

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4.2 - Distinction between clearance for home consumption and Clearance for warehousing

Goods cleared for home consumption	• Customs duty on import of the goods has been discharged. • The goods are therefore cleared for utilization or consumption.
Goods cleared for warehousing	• Goods are deposited in a warehouse and cleared at a later time. • The collection of customs duty is deferred till such goods are cleared for home consumption. • The importer executes a bond binding himself in a sum equal to thrice the amount of duty assessed. • Importer also pays interest, rent and charges for storage of goods in the warehouse.

4.3 - Duty liability in certain special circumstances

4.3.1 - Re-importation of goods [Section 20]

- Goods imported into India after exportation therefrom.
- Such goods shall be liable to duty and be subject to all the conditions and restrictions, if any, to which goods of the like kind and value are liable or subject, on the importation thereof.
- Exceptions in this regard–
    - ***i) Concessional duty payable in case of re-importation of goods exported under duty drawback, exported for repairs, etc. [Notification No. 45/2017 Cus. dated 30.06.2017] –***

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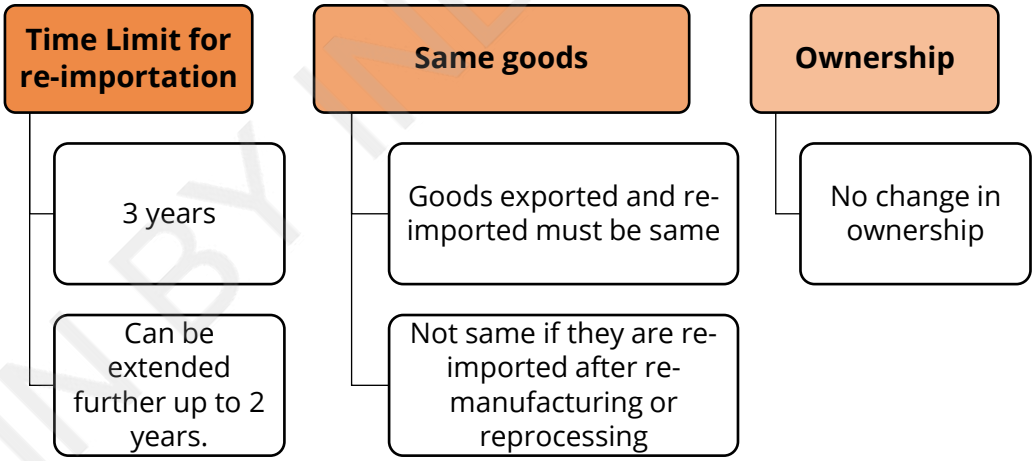
Description of goods exported	*Amount of import duty payable if re-imported*
A. Goods exported- i. under claim for duty drawback, ii. under claim for refund of integrated tax paid on export goods, iii. under bond without payment of integrated tax iv. under duty exemption scheme or Export Promotion Capital Goods Scheme (EPCG)	Amount of incentive availed of at the time of export. In case of point (iv) amount of IGST and compensation cess leviable at the time and place of importation of goods subject to specified conditions.
B. Goods other than those falling under above category exported for repairs abroad	Customs duty* on the value of re-imported goods. Value of Re-imported goods = Fair cost of repairs + cost of materials used in repairs + insurance and freight (both ways). *Customs duty = Basic Customs Duty + IGST + GST Compensation cess
C. Goods other than A & B above	NIL

- Conditions to be satisfied for claiming these exemptions –



- Cases where exemptions/concessions are not applicable –
  a. re-imported goods had been exported by 100% Export Oriented Undertaking (EOU) or a unit in Free Trade Zone (FTZ),
  b. re-imported goods had been exported from a public/private warehouse,
  c. re-imported goods which fall under Fourth schedule to the Central Excise Act, 1944 (***tobacco products and petroleum products***).

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*In case of **goods taken out of India for exhibition or on consignment basis for export promotion** (except the activities satisfying the tests laid down in Schedule I of the CGST Act, 2017), re import of such goods after return from such exhibition or from such consignees will be covered under residual entry of the Notification No. 45/2017 dated 30.06.2017, **provided re-import happens before 6 months from the date of delivery challan.***

ii) Exemption to re-import of goods and parts thereof for repairs, reconditioning, reprocessing, remaking or similar other process –

Particulars	*Time-limit for re-importation*	*Other conditions*
A. Goods manufactured in India and re-imported for repairs or for reconditioning other than the specified goods	3 years [10 years in case of export to Nepal]	i) Goods must be re-exported within 6 months (extendable till 1 year). ii) The AC/DC is satisfied as regards identity of the goods. iii) The importer at the time of importation executes a bond.
B. Goods manufactured in India and re-imported for a. Reprocessing b. Refining c. Re-making d. Any similar process as (a) to (b) above	1 year	

The exemption is available even if quantity re-imported is short or low in quantity as long as nature and variety of goods is same.

4.3.2 - Goods derelict, wreck etc. - Section 21

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

Derelict	Any cargo, vessel, etc. abandoned in the sea with no hope of recovery.
Jetsam	Goods jettisoned (i.e., dropped or thrown) from the vessel to save her from sinking.
Flotsam	Jettisoned goods which continue floating in the sea.
Wreck	Cargo or vessel or any property which are cast ashore by tides after ship wreck.

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4.4 - Customs (Import of Goods at Concessional Rate of Duty or for specified End use) Rules, 2022

These rules shall apply where (a) a notification provides for the observance of these rules; (b) an importer intends to avail the benefit of any notification and such benefit is dependent upon the use of the goods imported being covered by that notification for the manufacture of any commodity or provision of output service or being put to a specified end use [Rule 2].

4.4.1 - Definition - Rule 3

• Capital goods	→ Goods, the value of which is ***capitalised in the books of account*** of the importer.
• Exemption notification	→ A notification issued under ***section 25(1)*** and Section 11 of the Customs Act, 1962.
• Information	→ The ***information provided by the manufacturer*** who intends to avail the benefit of an exemption notification.
• Job work	→ Any ***treatment, process or manufacture***, consistent with the exemption notification undertaken by a person on goods belonging to the importer except gold, jewellery and articles thereof, and other precious metals or stones; and the term "***job worker***" shall be construed accordingly.
• Jurisdictional Custom Officer	→ An officer of Customs of a ***rank equivalent to the rank of Superintendent or an Appraiser*** exercising jurisdiction over the premises where either the imported goods shall be put to use for manufacture or for rendering output services, the primary address specified in the Importer Exporter Code issued by Directorate General of Foreign Trade in other cases.
• Manufacture	→ The ***processing of raw materials or inputs*** by the importer in any manner ***that results in emergence of a new product*** having a distinct nature or character or use or name; and the term "manufacturer" shall be construed accordingly.
• Output service	→ Supply of service excluding after-sales service, utilizing imported goods.
• Specified End use	→ Specified end use means dealing with the goods imported in a manner specified in the notification and includes supply to the intended person and the term "end use recipient" shall be construed accordingly.

4.4.2 - Importer to give one time prior information - Rule 4

1. The importer shall provide on time prior information on the common portal in the prescribed form containing following particulars.
   i. The name and address of the importer and his job worker, if any,
   ii. The ***goods produced or process undertaken*** at the manufacturing facility of the importer and/or his job worker, if any, or both,
   iii. The ***nature and description of imported goods used*** in the manufacture of goods at the premises of the importer or the job worker, if any,
   iv. particulars of the notification applicable on such import,

v. Nature of output service rendered utilising imported goods,
vi. particulars of premises intended to be used in case of unit transfer,
vii. details of the end use recipient in cases where goods imported are supplied for specified end use; and
viii. the intended ports of import

On acceptance of the information, an Import of Goods at Concessional Rate of Duty (IGCR) Identification Number (IIN) shall be generated against such information. However, such information may be updated on the common portal in case of a change in the details furnished in prescribed form.

The importer who intends to avail the benefit of a notification shall submit a continuity bond with such surety or security as deemed appropriate by the Deputy Commissioner/Assistant Commissioner of Customs having jurisdiction over the premises

4.4.3 - Procedure to be followed - Rule 5

1. The importer who intends to avail the benefit of a notification shall be required to mention the IIN (referred to in sub-rule (2) of Rule 4) and continuity bond number and details while filing the Bill of Entry.
2. The Deputy Commissioner/Assistant Commissioner of Customs at the custom station of importation shall allow the benefit of the notification to the importer.
3. Where a Bill of Entry is cleared for home consumption, the bond submitted by the importer gets debited automatically in the customs automated system and the details shall be made available electronically to the jurisdictional Customs Officer.

4.4.4 - Importer to maintain records. - Rule 6

- The importer shall maintain an account so as to clearly indicate:
  - Quantity and value of goods imported,
  - Quantity and date of receipt of goods imported in the relevant premises
  - quantity of such goods consumed including the quantity used domestically for manufacture, quantity exported, if any, to fulfil the intended purpose and quantity of goods sent to an end use recipient;
  - quantity of goods sent for job work and the nature of job work carried out;
  - quantity of goods received after job work;
  - quantity of goods re-exported, if any, under rule 10; and vii. quantity remaining in stock, according to bills of entry,

- Importer must produce the account as and when required by the Deputy Commissioner/Assistant Commissioner of Customs having jurisdiction
- The importer shall submit a monthly statement on the common portal in the prescribed form by 10th day of the following month;

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4.4.5 - Procedure for allowing imported goods for job work. - Rule 7

1. The importer shall maintain a record of the goods sent for job work during the month and mention the same in the monthly statement referred to in sub-rule (2) of rule 6
2. The importer shall ***send the goods to the premises of the job worker*** under an invoice or wherever applicable, through an electronic-way bill, as specified in the CGST Act, 2017, mentioning the description and quantity of the goods.
3. The maximum period for which the goods can be sent to the job worker – 6 months from the date of invoice or ewaybill.
4. In case the importer is unable to establish that the goods sent for job work have been used as per the particulars of job work, the Jurisdictional Customs Officer shall take necessary action against the importer
5. The job worker shall –
    i. Maintain an account of
        a. receipt of goods,
        b. manufacturing process undertaken thereon, and
        c. the waste generated, if any, during such process,
    ii. Produce the account details before the Jurisdictional Customs Officer as and when required by the said officer,
    iii. After completion of the job work send the processed goods to the importer or to another job worker as directed by the Importer for carrying out the remaining processes, if any, under the cover of an invoice or ewaybill.

4.4.6 – Procedure for allowing imported goods for unit transfer – Rule 8

(1) The importer shall maintain a record of the goods sent for unit transfer during the month and mention the same in the monthly statement referred to in sub-rule (2) of rule 6.

(2) The importer shall send the goods under an invoice or wherever applicable, through an e-way bill, as specified in the CGST Act, 2017, mentioning the description and quantity of the goods.

(3) The importer shall in relation to transfer of goods to another unit,-

- maintain an account of receipt of goods, manufacturing process undertaken thereon and the waste generated, if any, during such process;
- produce the account details before the jurisdictional Customs Officer as and when required by the said officer;
- after completion of the said process, send the processed goods back to the premises of the importer from where the goods were received or to a job worker for carrying out the remaining processes, if any, under the cover of an invoice or electronic way bill.

4.4.7 – Procedure for supplying imported goods to the end use recipient – Rule 9

(1) The importer shall maintain a record of the goods supplied to the end use recipient during the month and mention the same in the monthly statement referred to in sub-rule (2) of rule 6.

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(2) The importer shall send the goods under an invoice or wherever applicable, through an electronic way bill, as specified in the CGST, 2017, mentioning the description and quantity of the goods.

(3) In case of supply for replenishment or export against supply, the end use recipient shall,-

maintain an account of receipt of goods, manufacturing process undertaken thereon and the waste generated, if any, during such process;

produce the account details before the jurisdictional Customs Officer as and when required by the said officer;

produce the relevant details to the importer for fulfilment of the benefit under the notification.

4.4.8 - Re-export or clearance of unutilised or defective goods - Rule 10

1. Re-export or clearance

Within 6 months from the date of import, with the **permission of the jurisdictional Deputy/ Assistant Commissioner of Customs having jurisdiction over the premises,** the importer shall have an option to re export or clear the goods for home consumption.

Said period of 6 months can be further extended by the jurisdictional Commissioner for a period not exceeding 3 months, if sufficient reason is shown that the causes for not conforming to the time period were beyond the importer's control.

2. Any re-export of the unutilised or defective goods referred to in sub rule (1) shall be recorded by the importer in the monthly statement by providing the details of necessary export documents. However, the value of such goods for re-export shall not be less than the value of the said goods at the time of import.

3. Clearance of imported capital goods after having been used for the specified purpose –

On payment of duty equal to the difference between the duty leviable on such goods but for the exemption availed and that already paid, if any, at the time of importation, **along with interest**, at the rate fixed by the notification issued under section 28AA of the Act, **on the depreciated value allowed in straight line method**, as specified below, namely: —

i. for every quarter in the first year @ 4%,
ii. for every quarter in the second year @ 3%,
iii. for every quarter in the third year @ 3%,
iv. for every quarter in the fourth and fifth year @ 2.5%, and
v. thereafter for every quarter @ 2%.

4.4.9 - Recovery of duty in certain case - Rule 11

In the event of any failure on the part of the importer to comply with the conditions mentioned in sub-rule (1) of rule 10 or where the payment referred in sub-rules (3) and (4) of rule 10 is not paid or short paid, the Deputy Commissioner of Customs or, as the case may be, Assistant Commissioner of Customs having jurisdiction over the premises where the imported goods shall be put to use for

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manufacture of goods or for specified end use or for rendering output service shall take action by invoking the Bond to initiate the recovery proceedings

The importer shall be responsible for ensuring that the said goods are used in accordance with the purposes provided in the exemption notification. In the event of failure to do so, the Jurisdictional AC/DC shall take action under these rules, without prejudice to any other action which may be taken under the Act, rules or regulations made thereunder or under any other law for the time being in force.

4.4.10 – Penalty - Rule 12

The importer or a job worker who contravenes any of the provisions of these rules or abets such contravention shall be liable to a specified penalty without prejudice to any other action which may be taken under the Act, rules or regulations made thereunder or under any other law for the time being in force.

5. PROCEDURE, MECHANISM AND ORGANISATION FOR ASSESSMENT OF DUTY

5.1 - Assessment

In the context of the customs duty, the term assessment means **quantification of the amount of duty payable.** The process of assessment involves the following stages –

- Determination of the quantity and total value of the consignment.
- Determination of the proper tariff classification of the goods.
- ***Determination of the appropriate rate of duty*** after considering the various exemptions, abatements, remissions.
- Determining whether the goods are to be cleared for home consumption or to be deposited in the warehouse.

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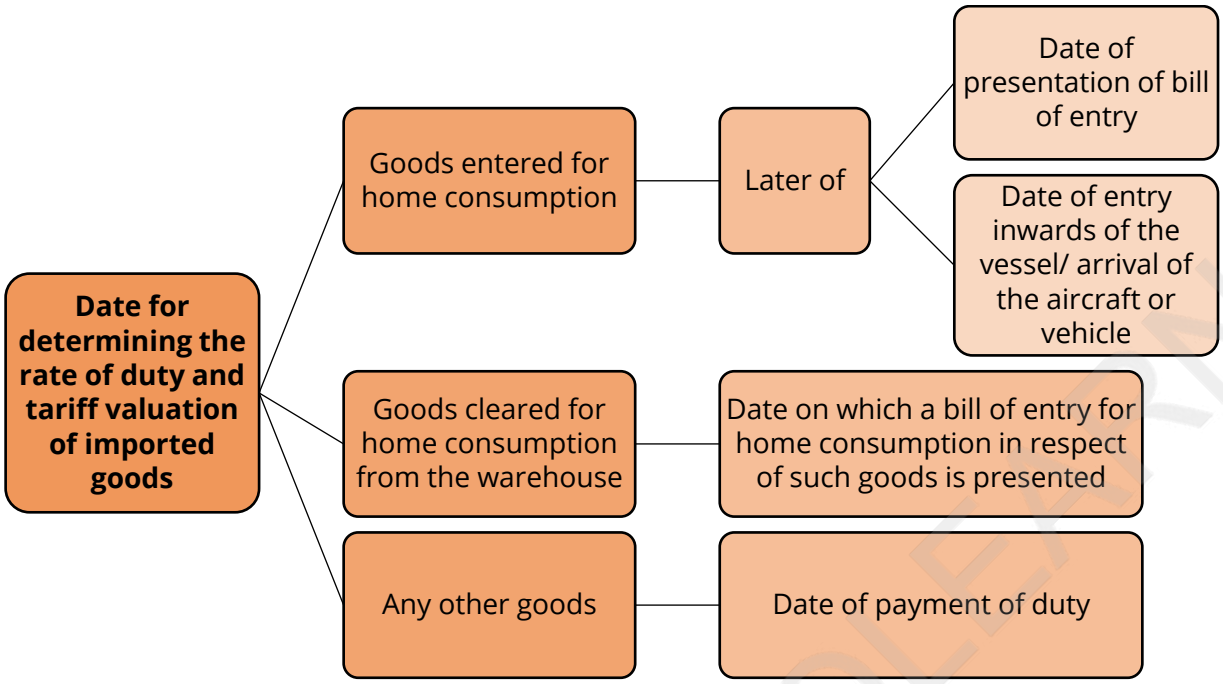
5.2 - Date for determining the Rate of Duty and Tariff Valuation of Imported goods - Section 15



In respect of **baggage and goods imported by post**, the provisions of section 15 will not be applicable as they are independently covered by other sections.

Case Law: Bharat Surfacants Pvt. Ltd. v. UOI (SC)

Facts*: In this case, a ship entered Bombay and made prior entry on 04.07.1981 at which time the duty was 12.5%. Since there was no space, the ship proceeded to Karachi and after that came back to Bombay on 23.07.1981 and was granted final entry on 04.08.1981 when the duty rate had been revised to 15%.*

Judgement*: The Supreme Court held that the rate applicable would be 15% only since the formality of entry inward could be done only on 04.08.1981.*

Case Law: Rajkumar Knitting Mills P. Ltd. vs CC (SC)

Judgement: Date of contract is not relevant and only the date of importation is relevant.

6. REMISSION, ABATEMENT AND EXEMPTIONS

6.1 - No duty on pilfered goods - Section 13

- If any imported goods are ***pilfered after the unloading thereof and before the proper officer has made an order for clearance*** for home consumption or deposit in a warehouse, the importer shall not be liable to pay the duty leviable on such goods.
- The term '***pilfer***' means "to steal, especially in small quantities; ***petty theft***".
- However, where such goods are restored to the importer after pilferage, the importer becomes liable to the duty.

Conditions to be satisfied for exemption from duty u/s 13

- Imported goods should have been pilfered
- Pilferage should have occured after the goods are unloaded but before the PO makes the order for clearance
- Pilfered goods should not have been restored back to the importer

- In order to claim pilferage, the following circumstances should exist –
  - There should be evidence of tampering with the packages,
  - There should be ***blank space for the missing articles*** in the package, and
  - The missing articles should be ***unit articles*** [and not part articles].
- Pilferage noticed at the time of removal of goods by the importer –
  - In such a case, ***the order for clearance***, or as the case may be, for bonding ***would already have been passed***. Therefore, the ***importer has to ask for survey*** either by the steamer agents or by the insurance surveyors and the ***report issued by them would form the basis for claiming remission***. As in such the circumstances, the duty would already have been paid, ***the remission is allowed in the form of a refund.***
  - If goods are pilfered after the order of clearance is made but before the goods are actually cleared, duty is leviable.

Section 13 deals only with pilferage and **does not deal with loss/destrcution of goods.**

Section 13 would **not apply if it is shown that pilferage took place prior to the unloading** of goods.

In case of pilferage, only section 13 applies and **claim of refund u/s 23(1) is not permissible.**

Section 13 also **applies to the goods which are under the custody of the custodian u/s 45.** Whether duty is paid by the custodian or not, remission cannot be denied to the importer the Department.

6.2 - Remission of duty on goods lost, destroyed or abandoned - Section 23

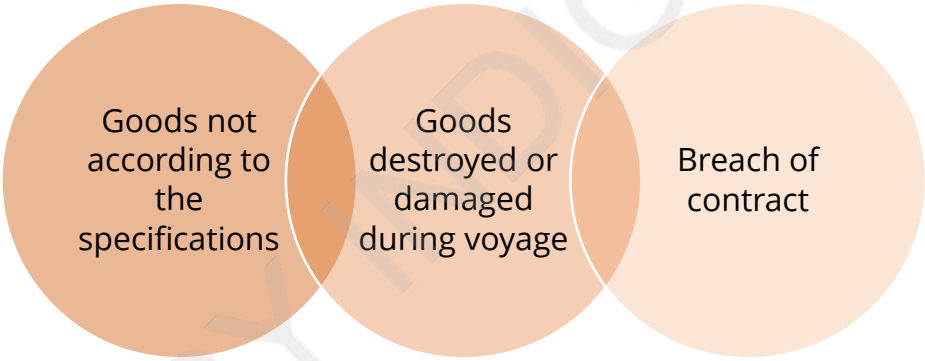
6.2.1 - Remission of duty

- The provision u/s 23 is not those goods will not be liable to duty, but duty paid on such goods shall be remitted by the AC/DC of Customs.
- Where it is shown to the satisfaction of the Assistant Commissioner of Customs or Deputy Commissioner of Customs that any imported goods have been ***lost (otherwise than as a result of pilferage) or destroyed***, at any time ***before clearance for home consumption***, the ***Assistant Commissioner of Customs or Deputy Commissioner of Customs shall remit the duty on such goods***. [Sub-section (1)].

- Thus, section 23 shows that it comes into play after the duty has been paid and even after an order for home consumption has been passed, but before the goods are actually cleared, and then it is found that they have been lost/destroyed.
- The loss referred to in this section is generally due to ***natural causes*** like fire, flood, etc, and may be at the warehouse also.
- ***The loss/ destruction have to be proved to the satisfaction of the Assistant Commissioner or Deputy Commissioner***. Thereupon, he may pass remission orders cancelling the payment of duty. In case duty has already been paid, refund can be obtained after getting the remission orders.

6.2.2 - Right to relinquish the title to the goods – abandonment of goods

- "Relinquish" means to give over the possession or control of, to leave off.
- The owner of any imported goods may, at any time before an order for clearance of goods for home consumption under section 47 or an order for permitting the deposit of goods in a warehouse under section 60 has been made, relinquish his title to the goods and thereupon he shall not be liable to pay the duty thereon. [Sub-section (2)].
- ***Exception*** – The owner of any such imported goods shall not be allowed to relinquish his title to such ***goods regarding which an offence appears to have been committed*** under this Act or any other law for the time being in force.
- Reasons for abandonment of goods by importers –



- Relinquishment is done by endorsing the document of title, viz. Bill of Lading, Airway Bill, etc. in favour of the Principal Commissioner/Commissioner of Customs along with the invoice. If the importer does so, he will not be required to pay the duty amount.

Distinction between Section 13 and Section 23		
Basis	***Pilferage of goods u/s 13***	***Loss or destruction of goods u/s 23***
Meaning	The word 'pilfer' means to steal, especially in small quantities; petty theft.	The word 'lost' or 'destroyed' refers to total loss of goods i.e. loss is forever and beyond recovery. Abandonment of goods is possible where the importer is unwilling/unable to take the delivery of the imported goods.

Duty on goods	The importer shall not be liable to pay the duty leviable on such goods.	The duty paid on such goods shall be remitted to the importer.
Subsequent restoration of goods	The importer become liable to duty.	Restoration is not possible.
Warehoused goods	Provisions of section 13 are not applicable to warehoused goods.	Provisions of section 23 apply to warehoused goods also.
Onus to prove the pilferage/destruction or loss of goods	Does not lie on the importer as it is obvious at the time of examination by the proper officer.	The importer has to prove the loss/destruction to the satisfaction of the AC/DC of Customs.
Time of occurrence	After the unloading thereof and before the proper officer has made an order for clearance for home consumption or deposit in a warehouse.	Any time before clearance for home consumption under section 47

6.3 - Abatement of duty on damaged or deteriorated goods - Section 22

- "Damage" denotes physical damage to the goods. This implies that the goods are not fit to be used for the purpose for which they are meant.
- "Deterioration" means reduction in quality of goods due to natural causes.

6.3.1 - Cases where the abatement is available

Note: The accident should not be due to any wilful act, negligence or default of the importer, his employee or agent.

6.3.2 - Amount of duty chargeable after abatement

$$= Duty\ on\ goods\ before\ damage\ or\ destruction \times \frac{Value\ of\ damaged\ or\ deteriorated\ goods}{Value\ of\ goods\ before\ damage\ or\ deterioration}$$

6.3.3 - Valuation of the damaged or deteriorated goods

The value shall be –

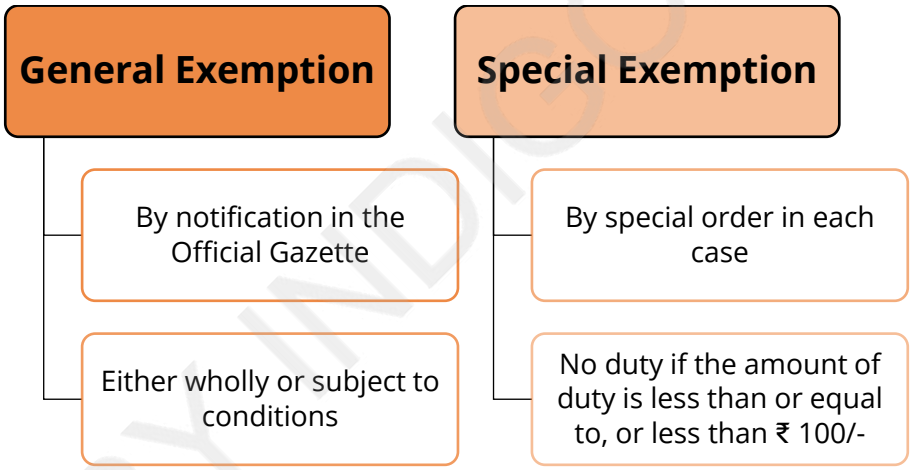
a. Ascertained by the proper officer, or
b. The proper officer may sell such goods by public auction/tender or if the importer agrees, in any other manner and the gross sale proceeds shall be deemed to be the value of such goods.

6.4 - Denaturing or Mutilation of Goods - Section 24

- If any imported goods can be used for more than one purpose and duty is leviable on the basis of its purpose of utilisation, then denaturing or mutilation of such goods is useful.
- By ***denaturing, goods are made unfit for other purposes***. After denaturing process, goods can be used only for one purpose and accordingly duty can be levied.

6.5 - Exemption from Customs Duty - Section 25

The **power to grant exemption** from payment of customs duty is given to **Central Government**. The power of the Central Government to alter the duty rate structure is known as delegated legislation. This power is always **subject to superintendence and check by Parliament**.



Both the above-mentioned exemptions may be granted by providing for the levy of duty on such goods at a rate expressed in a form or method different from the form or method in which the statutory duty is leviable.

However limited period of validity shall not apply to any such exemption granted to, or in relation to, –

a) any multilateral or bilateral trade agreement;
b) obligations under ***international agreements***, ***treaties***, ***conventions*** or such other obligations including with respect to United Nations
c) ***agencies***, ***diplomats*** and international organisations;
d) privileges of constitutional authorities;
e) schemes under the Foreign Trade Policy;
f) the ***Central Government schemes*** having validity of more than two years;
g) re-imports, temporary imports, goods imported as gifts or personal baggage;

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h) any duty of customs under any law for the time being in force, including integrated tax leviable under sub-section (7) of section 3 of the Customs Tariff Act, 1975, other than duty of customs leviable under section 12.

6.5.1 - Rationale for Grant of Exemption

a. ***Moral grounds***, where the duty should not be levied at all. Some of the instances, which may be given, are –
   i. Where the goods do not reach the Indian soil at all.
   ii. Where the goods have reached the Indian soil but are not available for consumption.
   iii. Where the goods get damaged or deteriorated in transit.
b. ***Discretionary provision***, where the exemption is used for controlling the economy and industrial growth of the country.

6.5.2 - Effective date

- The date of effect of the notification will be the date of its issue for publication in the Official Gazette.
- Where the ***exemption is through a special order***, the above rules do not apply. Special orders are issued separately for each case and communicated to the beneficiary directly by the Government. The ***beneficiary can claim refund for the period reckoned from the date of its issue.***
- ***Clarifications*** to the notifications ***may be issued within one year*** from the issue of the notification and such clarifications ***will have retrospective effect***.

6.6 - Exemption from customs duty on imported goods used for inward processing of goods - Section 25A

- Where the Central Government is satisfied that it is necessary in the public interest so to do, it may, by notification, exempt such of the ***goods which are imported for the purposes of repair, further processing or manufacture,*** as may be specified therein, from the whole or any part of duty of customs leviable thereon.

Conditions for exemption u/s 25A

- The goods shall be re-exported after such repair, further processing or manufacture, as the case may be, within 1 year from the date on which the order for clearance of the imported goods is made
- The imported goods are identifiable in the export goods
- Other conditions as may be specified in that notification

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6.7 - Exemption from customs duty on re-imported goods used for outward processing - Section 25B

Where the Central Government is satisfied that it is necessary in the public interest so to do, it may, by notification, exempt such of the goods which are re-imported after being exported for the purposes of repair, further processing or manufacture, as may be specified therein, from the whole or any part of duty of customs leviable thereon.

Conditions for exemption u/s 25B

- The goods shall be re-imported into India after such repair, further processing or manufacture, as the case may be, within 1 year from the date on which the order for clearance for export is made
- The exported goods are identifiable in the re-imported goods
- Other conditions as may be specified in that notification

7. SIGNIFICANT SELECT CASES

7.1 - Mangalore Refinery & Petrochemicals Ltd v. Cus. 2015 (323) ELT 433 (SC)

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

Issue – Whether customs duty is payable on the basis of the quantity of oil shown in the bill of lading or on the actual quantity received into shore tanks in India?

Judgement – The quantity of crude oil actually received into a shore tank in a port in India should be the basis for payment of customs duty.

7.2 - Tirupati Udyog Ltd. v. UOI 2011 (272) ELT 209 (AP)[maintained by SC]

Issue – Are the clearance of goods from DTA to Special Economic Zone chargeable to export duty under the SEZ Act, 2005 or the Customs Act, 1962?

Judgement – : The High Court, on the basis of the following observations, inferred that the clearance of goods from DTA to Special Economic Zone is not liable to export duty either under the SEZ Act, 2005 or under the Customs Act, 1962 –

i. A charging section has to be construed strictly. If a person has not been brought within the ambit of the charging section by clear words, he cannot be taxed at all.

ii. SEZ Act does not contain any provision for levy and collection of export duty for goods supplied by a DTA unit to a Unit in a Special Economic Zone for its authorised operations.

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iii. Since both the SEZ unit and the DTA unit are located within the territorial waters of India, section 12(1) of the Customs Act 1962 (the charging section) is not attracted for supplies made by a DTA unit to a unit located within the Special Economic Zone.

7.3 - Other select cases laws on scope of exemption notifications

Case	*Judgement*
1. U.O.I. v. Paliwal Electricals P. Ltd (SC)	• Exemption notification represents the policy of the government. • It evolved to sub-serve public interest and revenue.
2. Shrijee Sales Corporation v. U.O.I. (SC)	Time bound notification can be withdrawn.
3. U.O.I. v. Jalyan Udyog 1993 (SC)	Exemption notification is a class of delegated or conditional legislation. Power can be used to – • raise revenue • regulate the economy and • serve social objectives.
4. Murthy Match Works v. AC (SC)	Classification between small and big manufacturers not discriminatory.
5. ITC Bhadrachalam Paper Boards Ltd. v. CCE (SC)	Choice of date in exemption notifications cannot be questioned as it a question of policy.
6. Ramdhan Pandey v. State of UP (SC)	Exemption notification not valid if it does not recite public interest.
7. MJ Exports v. CCE (approved by SC)	Public interest means an act beneficial to general public.
8. Hero Cycles Ltd. v Union of India (Bom.) [maintained by SC]	In case of omission to claim exemption does not result in denial of benefit.
9. Boc India Ltd. v State of Jharkhand (SC)	For claiming exemption, assessee must bring on record sufficient materials/ evidence/ documents to prove his eligibility.

7.4 - Case laws on interpretation of notification

Case	*Judgement*
1. CCE v. Parle Exports P. Ltd. (SC)	• Notification to be treated as a part of the enactment itself. • Interpretation given at the time of enactment or issue to be given weight.
2. HMM Ltd. v. CCE (SC)	Exemption notification should be construed strictly and reasonably having regard to the language employed.
3. Swadeshi Polytex Ltd. v. CCE (SC)	Strictness of construction does not mean that circuitous (i.e., indirect) process should be followed. Strictness should also result in giving full effect.

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4. GSFC Ltd. v. CCE (SC)	Express language to be given effect. Supposed intention to be gathered from language used.
5. CC v. United Electrical Industries Ltd. (SC)	• Exemption notification not to be rendered nugatory or purposeless. • The word singular includes plural.
6. Novopan India Ltd. v. CCE (SC)	Exemption notification construable strictly.
7. SG Glass Works P. Ltd. v. CCE (SC)	Exemption notification need not be construed strictly when there is no doubt or ambiguity in it.
8. Rajasthan Spg. & Wvg. Mills Ltd. v. CCE (SC)	Liberal construction which enlarges the term and scope of notification not permissible.
9. CCE v. Shibani Engineering Systems (SC)	Exemption notification to be read as an ordinary man would read it.
10. Prestige Engg. India Ltd. v. CCE (SC)	Expressions used in the Act should be understood in the same sense if used in Rules and notifications.
11. BK Industries v. U.O.I. (SC) 12. Doypack Systems P. Ltd. v. U.O.I (SC)	• Exemption cannot be claimed on the strength of Finance Ministers Budget speech. • Notings on Government files cannot be used as an aid in construction.
13. Bombay Chemicals P. Ltd. v. CCE (SC)	• Exemption notification to be interpreted differently from statute. • Strict interpretation applicable to find out whether a subject falls under the exemption. Once this is solved, liberal interpretation to be given by reading the notification as a whole.
14. MCF Ltd v. Dy. Commissioner (SC) 15. Thermax P. Ltd. v. CCE (SC) 16. Formica India Division v. CCE (SC) 17. Indian Aluminium company Ltd. v. Thane Municipal Corporation 1991 (SC)	• Conditions given in the exemption must be satisfied to give exemption. • If not, then the exemption granted will result in fraud or administrative inconvenience.
18. Mysore Metal Industries v. CCE (SC) 19. Motiram tolaram v. U.O.I. (SC)	Burden to prove eligibility to exemption notification on the claimant.
20. Prince Khadi Woollen Handloom Prod. Coop. Indl. Society v. CCE (SC)	Exemption cannot be denied on a ground not originally contended.
21. CCE v. Indian Petro Chemicals (SC)	Assessee can opt for that notification which is more beneficial.
22. CC v. Perfect Machine Tools Co. P. Ltd (SC)	A particular item not expressly excluded does not mean that it is included.
23. Faridabad CT Scan Centre v. DG Health Services (SC)	Benefit not to be extended on the ground that such benefit is wrongly extended to others.
24. Johnson & Johnson Ltd. v. CCE (SC)	In interpreting an earlier notification, narrow or broader view to be taken can be decided based on subsequent notification.

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25. Kuil Fireworks Industries v. CCE (SC)	Assessee cannot suffer on account of illegal act of Department.
26. CC v. Lekhraj Jessumal & Sons (SC)	Words in Tariff Schedule to be interpreted keeping in mind the rapid march of technology as industry is not static.

ILLUSTRATIONS – Unit 1

Illustration 1

What will be the impact on the customs duty in the following circumstances-?

1) Goods are damaged inside the warehouse before clearance for home consumption Goods are deteriorated inside the warehouse before clearance for home consumption
2) Goods are destroyed in the warehouse before clearance for home consumption
3) Goods are destroyed on the wharf, before clearance for home consumption Goods are destroyed after clearance from warehouse

Illustration 2

A machine was originally imported from Japan at Rs. 250 lakh in July 20XX on payment of all duties of customs. The said machine was exported (sent-back) to supplier for repairs in December 20XX and re-imported without any re-manufacturing or re-processing in October next year after repairs.

Since the machine was under warranty period, the repairs were carried out free of cost.

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

Ignore GST compensation Cess.

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

Note: the importer intends to avail exemption, if any, with regard to re-importation of goods which had been exported for repairs abroad.

Illustration 3

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

However, the fair cost of repairs carried out (including cost of material

Rs.6 lakh) would have been Rs.9 lakh. Actual insurance and freight charges (to and from) were Rs.3 lakh. The rate of basic customs duty is 10% and integrated tax is 12%. Ignore GST compensation cess & Agriculture infrastructure and development cess.

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

Note: The importer intends to avail exemption, if any, with regard to re- importation of goods which had been exported for repairs abroad.

Illustration 4

What are the provisions relating to effective date of notifications issued under section 25 of the Customs Act,1962?

Illustration 5

ASC Ltd. Entered in to technical collaboration with MSC Ltd. Of Netherlands and imported drawings and designs in paper form through professional courier and post parcels.

ASC Ltd. Declared the value of these drawings and designs at a very nominal value

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

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

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

Illustration 6

M/s Pure Energy Ltd. is engaged in oil exploration and has imported software containing seismic data. The importer is entitled to exemption from customs duty subject to the condition that an "essentiality certificate" granted by the Director General of Hydrocarbons is produced at the time of importation of the goods. Though the importer applied for the certificate within the statutory time limit prescribed for the same, the certificate was not made available to the importer within a reasonable time by the Director General of Hydrocarbons. The customs department rejected the importer's claim for exemption.

Examine briefly whether the department's action is sustainable in law.

Illustration 7

Lucrative Laminates imported resin impregnated paper and plywood for the purpose of manufacture of furniture.

The said goods were warehoused from the date of its import.

Lucrative Laminates sought an extension of the warehousing period which was granted by the authorities. However, even after the expiry of the said date, it did not remove the goods from the warehouse.

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Subsequently, Lucrative Laminates applied for remission of duty under section 23 of the Customs Act, 1962 on the ground that the said goods had lost their shelf life and had become unfit for use on account of non- availability of orders for clearance.

Explain, with the help of a decided case law, if any, whether the application for remission of duty filed by the Lucrative Laminates is valid in law?

Illustration 8

M/s. XYZ, a 100% export-oriented undertaking (100% E.O.U. in short) imported DG sets and furnace oil duty free for setting up captive power plant for its power requirements for export production. This benefit was available vide an exemptions notification. They used the power so generated for export production but sold surplus power in domestic tariff area.

Customs Department has demanded duty on DG sets and furnace oil as surplus power has been sold in domestic tariff area. The notification does not specifically restrict the use of imported goods for manufacture of export goods.
Do you think the demand of the Customs Department is valid in law.

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2. TYPES OF DUTIES

Contents

- Understand the various duties/taxes leviable under the Customs law.
- Understand Basic Customs Duty, IGST, Compensation Cess, SWS and AIDC and their calculation.
- Additional Duties of Customs
- Concept of protective duties, safeguard duty, countervailing duties on subsidised goods and anti-dumping duty.
- Emergency power of CG to impose or enhance Export and Import duties.
- Appeal to CESTAT.

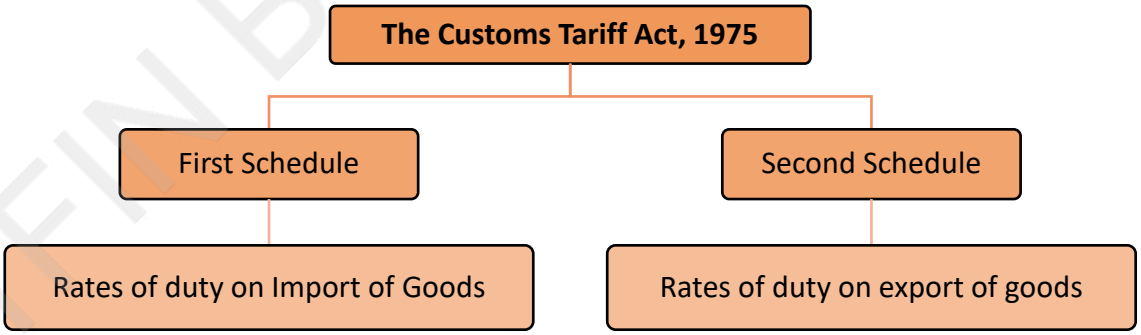
1. BASIC CUSTOMS DUTY (BCD) [SECTION 12 OF THE CUSTOMS ACT & SECTION 2 OF THE CUSTOMS TARIFF ACT (CTA)]

1.1 - Charging Section - Section 12

The duties of customs shall be levied

- at such rates as may be specified under the Customs Tariff Act, 1975 or any other law for the time being in force
- on goods imported into or exported from India.

1.2 - Rates of Basic Custom Duty - Section 2 of the Customs Tariff Act



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1.3 – First Schedule

Standard Rate

- Generally, the standard rate of BCD is applicable

Preferential Rate

- Reduced tariff rates levied on the basis of trade agreements between two or more countries.

Conditions to be fulfilled for preferential rate of duty –

The importer will have to fulfil the following conditions to make the imported goods eligible for preferential rate of duty –

a) At the time of importation, he should ***make a specific claim for the preferential*** rate.
b) He should also claim that the goods are produced or manufactured in such preferential area.
c) The ***area should be notified under section 4(3)*** of the Customs Tariff Act to be a preferential area.
d) The ***origin of the goods*** shall be determined in accordance with the rules made under section 4(2) of the Customs Tariff Act.

Second Schedule

- Second Schedule to the Customs Tariff Act ***provides for rate of export duty*** on goods exported out of India.
- As per Foreign Trade Policy adopted by India, goods are to be exported and not the taxes. Hence, ***generally there are no export duties on goods exported out of India.***
- However, still there is a ***small list of goods on which export duty is leviable*** as a policy adopted by the Ministry on time-to-time basis.

2. INTEGRATED TAX - SECTION 3(7) OF CTA

- Any article which is imported into India shall, in addition, be liable to integrated tax at such rate, not exceeding 40%.
- IGST shall be applicable at the same rate as is applicable on goods supplied in India.

3. GOODS AND SERVICES TAX COMPENSATION CESS – SECTION 3(9) OF THE CTA

- GST compensation cess is levied on notified intra-state and inter-state supply of goods or services to provide compensation to the States for loss of revenue due to implementation of GST in India.
- Any article which is imported into India shall, in addition, be liable to the goods and services tax compensation cess ***at such rate, as is leviable*** under section 8 of the Goods and Services Tax (Compensation to States) Cess Act, 2017 ***on a like article on its supply in India***, on the value of the imported article as determined under sub-section (10) or sub-section (10A).
- As of now, GST compensation cess is levied on luxury and sin goods like pan masala, tobacco etc.

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4. MANNER OF COMPUTING ASSESSABLE VALUE FOR LEVYING INTEGRATED TAX - SECTION 3(8) OF THE CTA

Value of imported article determined u/s 14 of the Customs Act,1962	XXX
Add: Customs duty chargeable u/s 12 of the Customs Act, 1962	XXX
Add: Any tax/cess chargeable on that article under any other law for the time being in force	XXX
Value for calculating IGST (and GST Compensation cess)	XXX

Notes:

- The assessable value for levying GST compensation cess is to be computed in the same manner as discussed above [Section 3(10)].
- The provisions of the Customs Act, 1962 and the rules and regulations made thereunder, including those relating to drawbacks, refunds and exemption from duties shall also apply to the duty chargeable under this section.

5. MANNER OF COMPUTING VALUE IN CASE OF WAREHOUSED GOODS - SECTION 3(8A) OF THE CUSTOMS TARIFF ACT

- Section 3(8A) determines the value, for the purpose of computing IGST, of goods deposited in a warehouse and are sold to any person before clearance for home consumption or export.
- The value of such goods shall be as follows –

Circumstance	***Value***
Whole goods are sold	Higher of – • Value u/s 3(8) of CTA, or • Transaction Value of such goods
Part of the goods sold	Higher or – • Proportionate value determined u/s 3(8) of CTA, or • Transaction value of such goods
Whole/part of goods sold more than once before clearance, the value of the last such transaction shall be the transaction value for computing the value as above.	

- The value of warehoused goods which remain unsold shall be determined in accordance with Section 3(8) of CTA.

6. ADDITIONAL DUTY OF CUSTOMS - SECTION 3 OF CTA

6.1 - Additional duty - Section 3(1)

- Any article which is imported into India is also liable to a ***duty equal to the excise duty*** for the time being leviable on a like article if produced or manufactured in India. This duty is called as additional duty.
- Rate of additional duty – That percentage of the value of goods at which excise duty is leviable on like article produced in India.
- In case of any ***alcoholic liquor for human consumption*** imported into India, the Central Government may notify the rate of additional duty.

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- Excise duty has been restricted to few goods such as ***Petroleum products*** (crude, diesel, petrol, ATF, natural gas) and ***Tobacco products***. Hence, duty u/s 3(1) is also restricted to these goods.

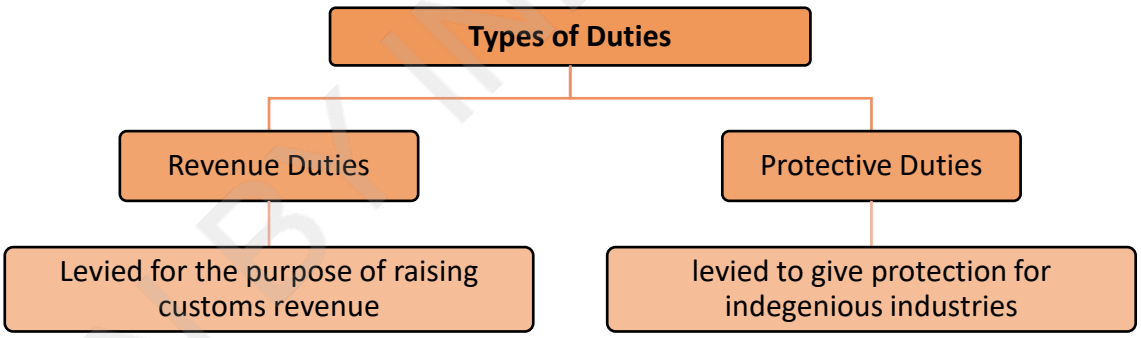
6.2 - Countervailing duty - Section 3(3)

- ***Purpose*** – Levied ***to counter balance the excise duty leviable on raw materials, components and ingredients*** of the same nature as, or similar to those, used in the production or manufacture of the imported article.
  This duty is levied to ensure that domestic manufacturers are at par with foreign manufacturers as domestic manufacturers would have incurred tax cost as excise duty on raw materials, components used to manufacture goods.
- The Central Government can levy such duty if it is satisfied that it is necessary in the public interest to do so even if such article is liable to additional duty leviable u/s 3(1).

6.3 - Special Additional duty - Section 3(5)

- ***Purpose – To counter-balance the sales tax, value added tax, local tax*** or any other charges for the time being leviable on a like article on its sale, purchase or transportation in India.
- The CG shall notify any imported article which be liable to an additional duty at a ***rate not exceeding 4% of the value of the imported article*** as specified in that notification.
- Additional duty of customs will be levied only on the few products not leviable to GST.

7. PROTECTIVE DUTIES



7.1 - Factors to be considered while giving protection through protective duties

i. It is ***not so stiff*** as to discourage imports.
ii. It is ***sufficiently attractive to encourage imports*** to bridge the gap between demand and supply of those articles in the market.

7.2 - Levied by the Central Government - Section 6 of CTA

- On the recommendation of the Tariff Commission and upon being satisfied those ***circumstances exist making it necessary to take immediate action to protect the Indian industries***, the CG shall levy protective duties.

- If protective duties are not levied there could be an overflow of cheap imported articles in the market making the indigenous goods unattractive.

7.3 - Duration of protective duties

- The protective duty shall be effective only up to and inclusive of the date if any, specified in the First Schedule [Section 7(1)].

7.4 - Power of Central Government to increase/decrease such duties

- The Central Government may reduce or increase the duty by notification in the Official Gazette, if it is satisfied, after such inquiry as it thinks necessary, that such duty has become ineffective or excessive for the purpose of securing the protection intended to be afforded by it.
- In case of increase in duty, approval of Parliament shall be required.

8. - EMERGENCY POWER TO IMPOSE OR ENHANCE EXPORT DUTIES - SECTION 8 OF CTA

The Central Government may impose or enhance export duties by making amendment to the Second Schedule by issue of a notification in the Official Gazette.

Conditions

- The goods should be specified in the First Schedule.
- The Central Government is satisfied that circumstances exist, which render it necessary for the enhancement of import duties

9. EMERGENCY POWER TO IMPOSE OR ENHANCE IMPORT DUTIES - SECTION 8A OF CTA

The Central Government may impose or enhance import duties by making amendment to the First Schedule by issue of a notification in the Official Gazette.

Conditions

- The goods should be specified in the First Schedule.
- The Central Government is satisfied that circumstances exist, which render it necessary for the enhancement of import duties

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10. POWER OF CG TO APPLY SAFEGUARD MEASURES - SECTION 8B OF THE CTA

10.1 - Circumstances in which safeguard measures can be imposed by CG

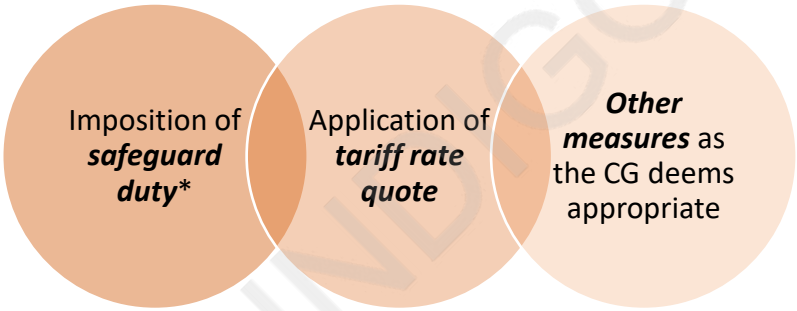
- Any is imported into india in increased quantities
- Such increased importation is causing or threatening to cause ***serious injury*** to domestic industry.

"Serious injury" means an injury causing significant overall impairment in the position of a domestic industry.

10.2 - Objective of safeguard measures

- To protect the interests of any domestic industry in India aiming to make it more competitive.

10.3 - Modes of safeguard measures



*The safeguard duty is in addition to any other duty in respect of such goods levied under this Act or any other law for the time being in force.

10.4 - Duration of safeguard measures

- Duration of 4 years from the date of its imposition.
- The CG may extend the period of imposition if it is of the opinion that –
- Domestic industry has taken measures to adjust to such injury or such threat of injury, and
- It is necessary that the safeguard measures should continue to operate.
- However, the maximum period of levy of safeguard duty is restricted to 10 years.

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10.5 - Exemptions from safeguard measures

Articles from developing countries	• Total ***share of imports*** of that article from such developing country ***does not exceed 3%*** of the total imports of that article into India.
Articles from more than one developing country	• Share of imports from each developing country does not exceed 3% of the total imports into India, and • ***Aggregate of imports*** from all developing countries ***does not exceed 9%*** of the total imports of that article
Imports by 100% EOU or units in SEZ	• ***Exception*** - It is specifically made applicable • ***Exception*** - The article imported is either cleared as such into DTA or used in the manufacture of any goods that are cleared into DTA

10.6 - Provisional Assessment

- ***The CG may impose provisional safeguard measures*** on the basis of preliminary determination that increased imports have caused or threatened to cause serious injury to a domestic industry.
- ***Duration of provisional safeguard measures*** – maximum period of 200 days from the date of its imposition.
- ***Refunds*** – If ***upon final determination***, the Central Government is of the opinion that the ***increased imports have not caused or threatened to cause serious injury*** to a domestic industry, the safeguard duty collected shall be refunded.

11. COUNTERVAILING DUTY ON SUBSIDIZED ARTICLES - SECTION 9 OF THE CTA

11.1 - Conditions to be satisfied for imposing countervailing duty

Any country, directly or indirectly, pays or bestows subsidy upon the manufacture/ production/ exportation of any article.	Such subsidized articles are imported into India
The importation may/may not be from the country of manufacture/production	The article may be in the same condition as when exported from the country of manufacture or may be changed in condition by manufacture/ production or otherwise

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Countervailing duty (CVD) shall not be levied unless it is determined that –

i. The subsidy ***relates to export performance***,
ii. The subsidy ***relates to use of domestic goods over imported goods in the export article***,
iii. The subsidy has been ***granted to a limited number of persons*** engaged in the manufacture/ production/ export of articles.

Subsidy shall be deemed to exist if-

a. There is financial contribution by the Government or any public body in the exporting or producing country or territory. Such contribution may include direct transfer of funds like grants, loans etc., waiver of revenue due to the Government etc.
b. There is any form of income or price support granted or maintained by the Government, which results in increased export of such article or reduced import of any article into that country.
c. *A Government makes payments to a funding mechanism, or entrusts or directs a private body to carry out one or more of the type of functions specified above which*

11.2 - Anti-circumvention measure in respect of countervailing duty on subsidized articles

"Circumvent" means to find a way around a problem or difficulty in a clever or indirect way.

Where the CG is of the opinion that circumvention of CVD has taken place, it may extend the CVD to such other article also from such date, not earlier than the ***date of initiation of the inquiry, as the CG may***, by notification in the Official Gazette, ***specify***.

Ways in which circumvention of CVD may take place –

- By altering the description or name or composition of the article,
- By import of the article in an unassembled or disassembled manner,
- By changing the country of its origin or export,
- Any other manner.

11.3 - Absorption of countervailing duty

Where the CG is of the opinion that absorption of CVD has taken place whereby the CVD so imposed is rendered ineffective it may –

- ***modify such duty*** to counter the effect of such absorption,
- ***from such date***, not earlier than the date of initiation of the inquiry,
- ***as may be specified by the CG*** by way of notification in the Official Gazette.

Absorption of CVD is said to have taken place –

i. if there is a ***decrease in the export price of an article without any commensurate change in the resale price in India*** of such article imported from the exporting country or territory; or

ii. under such ***other circumstances as may be provided by rules.***

11.4 - Non-applicability of countervailing duty

- CVD shall not apply ***to article imported by a 100% EOU or a unit in SEZ.***
- ***Exceptions*** –
  - ***Specifically made applicable*** in such notification or to such undertaking or unit, ***or***
  - Such ***article is either cleared as such into the DTA*** or used in the manufacture of any goods that are cleared into the DTA.

11.5 - Amount of countervailing duty

- Countervailing duty is in addition to any other duty chargeable.
- Amount of CVD ***shall not exceed the amount of subsidy paid*** or bestowed.

11.6 - Duration of countervailing duty

- The CVD shall be in force for a period of ***5 years from the date of its imposition***.
- Extension of duration –
  - The ***CG may extend such period*** if it, in a review, is of the opinion that cessation of such duty is likely to lead to continuation or recurrence of such subsidization and injury.
  - However, the ***extension*** can be for a ***maximum period up to 5 years***.
  - If the review is not completed before the expiry of period of imposition, the duty may continue for further period not exceeding 1 year until the review is completed.
  - If the ***duty is revoked temporarily***, the period of revocation ***shall not exceed 1 year at a time***.

11.7 - Provisional countervailing duty

- ***When the determination of the amount of subsidy is pending***, the CG may impose a ***provisional CVD not exceeding the amount of such subsidy as provisionally estimated*** by it.
- If the ***final subsidy determined is less*** than the subsidy provisionally determined, then the CG shall ***reduce such duty and also refund the excess*** duty collected.

11.8 - Retrospective imposition of countervailing duty

- CVD may be imposed retrospectively if the following conditions are satisfied –
  - The injury to domestic industry, which is difficult to repair, is caused by massive imports of subsidized articles in a relatively short period,
  - In order to preclude recurrence of such injury, it is necessary to levy CVD retrospectively.
- The ***retrospective date*** from which the duty is payable shall ***not be beyond 90 days*** from the date of notification.

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12. ANTI-DUMPING DUTY - SECTION 9A OF THE CTA

When the **export price** of a product imported into India **is less than the Normal Value of 'like articles' sold in the exporting market,** it is known as "**dumping**".

Where any ***article is exported by an exporter or producer from any country*** or territory (hereinafter in this section referred to as the exporting country or territory) ***to India at less than its normal value***, then the CG may, by notification in the Official Gazette, impose an anti-dumping duty.

12.1 - Computation of anti-dumping duty

- The anti-dumping duty is in addition to any other duty imposed.
- Anti-dumping duty = Lower of:
    a) Margin of dumping, OR
    b) Injury margin

Case Law: Designated Authority vs Haldor Topsoe 2000 (SC)
Judgement: Anti-Dumping duty could be fixed with reference to prices in a territory and that European Union could also be a territory.

12.1.1 - Margin of dumping

Margin of dumping means ***the difference between its export price and normal value***. It is generally expressed as a percentage of the export price.

- ***Export Price*** – The price of an article exported from the exporting country or territory.
- ***Constructed export price*** – Where there is no export price, or it is unreliable, the export price may be constructed –
    - ***Where the article is resold to an independent party*** – At the price at which the imported articles are first resold to an independent party.
    - ***Where it is not resold to an independent party or not resold in the same condition as imported*** – On such reasonable basis as may be determined in accordance with the rules made.
- ***Normal Value*** – Comparable price at which the goods under complaint are sold ***in the domestic market of the exporting country/territory*** in the ordinary course of trade.
- If the normal value cannot be determined as per the sales in the domestic market of exporting country – Normal value shall be
    a. Comparable representative price when exported to an appropriate third country, or

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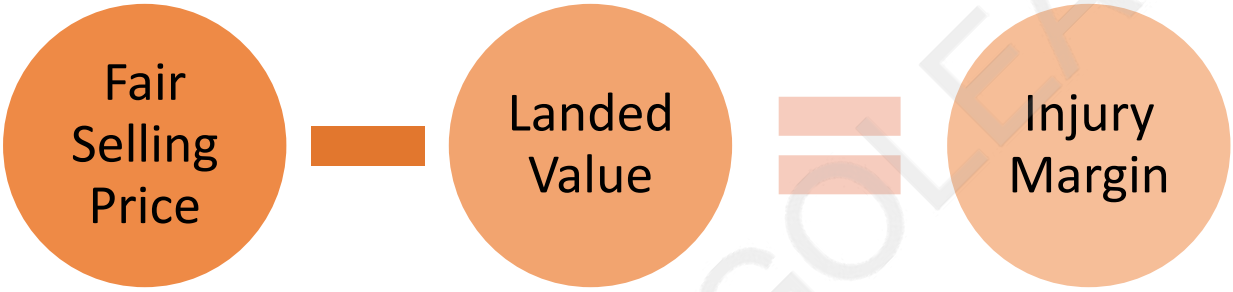
b. Cost of production in country of origin + administrative, selling and general costs + profits.

The margin of dumping shall be determined on the basis of records concerning the normal value and export price maintained, and the information provided by the exporter or producer. However, where the exporter or producer fails to provide such records, it shall be determined on the basis of facts available.

12.1.2 - Injury margin

- The margin adequate to ***remove the injury to the domestic industry***.
- It is the ***difference between*** the ***Fair Selling Price*** [Non-Injurious Price (NIP)] due to the Domestic Industry and the ***Landed Value*** of the dumped imports.



- ***Fair Selling price (FSP)/ Non-injurious price (NIP)*** –
  It is the fair selling price of a product for the domestic industry. It is the level of price, which is expected to have charged under normal circumstances in the Indian Market during the period defined.
- ***Landed Value*** – Is the assessable value under the Customs Act and the applicable basic customs duties except CVD, SAD and special duties.

Case Law: Reliance Industries ltd. v. Designated Authority (SC)
Judgement: *There would be a single Non-Injurious Price for a product and not several Non-Injurious Price for the same product.*

12.2 - Circumvention of anti-dumping duty

- Where the ***CG***, on such inquiry, is of the opinion that circumvention of anti-dumping duty has taken place, it may –
  - ***extend the anti-dumping duty to such article*** or an article originating in or exported from such country, as the case may be
  - ***from such date, not earlier than the date of initiation of the inquiry***, as may be specified by the CG by notification in the Official Gazette.
- Ways in which circumvention of anti-dumping duty may take place is the same as that of countervailing duty.

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12.3 - Absorption of Anti-dumping duty

- Where the CG is of the opinion that ***absorption of antidumping duty has taken place*** whereby the snit-dumping duty so imposed is rendered ineffective it may –
  - ***modify such duty*** to counter the effect of such absorption,
  - ***from such date***, not earlier than the date of initiation of the inquiry,
  - ***as may be specified by the CG*** by way of notification in the Official Gazette.
- ***Absorption of anti-dumping duty is said to have taken place*** –
  - if there is a ***decrease in the export price of an article without any commensurate change in the resale price in India*** of such article imported from the exporting country or territory; or
  - under such ***other circumstances as may be provided by rules***.

12.4 - Provisional anti-dumping duty

- ***When the determination of the normal value and margin of dumping is pending***, the CG may impose a ***provisional anti-dumping duty*** on the basis of provisional estimate of such value and margin.
- If the ***provisional duty is higher than the margin finally determined***, then the CG shall ***reduce such duty and also refund the excess duty*** collected.

12.5 - Non-applicability of anti-dumping duty

- Anti-dumping duty shall not apply ***to article imported by a 100% EOU or a unit in SEZ.***
- ***Exceptions*** –
  - ***Specifically made applicable*** in such notification or to such undertaking or unit, or
  - Such ***article is either cleared as such into the DTA*** or used in the manufacture of any goods that are cleared into the DTA.

12.6 - Imposition of duty with retrospective effect

Anti-dumping duty shall be imposed with retrospective effect, ***by the CG by notification in the Official Gazette***, if the following conditions are satisfied –

a) ***There is a history of dumping which caused injury*** or that the importer was, or should have been, aware that the exporter practices dumping, and
b) The ***injury is caused by massive dumping*** of an article imported ***in a relatively short time*** which is likely to seriously undermine the remedial effect of the anti-dumping duty liable to be levied.

The ***retrospective date*** from which the duty is payable ***shall not be beyond 90 days*** from the date of such notification.

12.7 - Duration of Anti-dumping duty

- The duty shall be in force for a period of ***5 years from the date of its imposition***.
- Extension of duration –
  - The ***CG may extend such period*** if it, in a review, is of the opinion that cessation of such duty is likely to lead to continuation or recurrence of dumping and injury.

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- However, the ***extension*** can be for a ***maximum period up to 5 years*** commencing from the date of such extension.
- If the review is not completed before the expiry of period of imposition, the duty may continue for further period not exceeding 1 year until the review is completed.
- If the ***duty is revoked temporarily***, the period of revocation ***shall not exceed 1 year at a time***.

Case Law: Rishiroop Polymers Pvt. Ltd. v. Designated Authority and Additional Secretary (SC)

Judgement: *The entire purpose of the review enquiry is not to see whether there is a need for imposition of anti-dumping duty but to see whether in the absence of such continuance, dumping would increase, and the domestic industry would suffer.*

12.8 - Refund of anti-dumping duty - Section 9AA of CTA

- Where the importer proves that he has ***paid anti-dumping duty in excess*** of the actual margin of dumping in relation to such article –
  - the ***CG shall***, as soon as may be, ***reduce such anti-dumping duty*** as is in excess, ***and***
  - such importer shall be entitled to ***refund of such excess duty***.

13. NO LEVY UNDER SECTION 9 OR SECTION 9A IN CERTAIN CASES - SECTION 9B OF THE CTA

- ***No article shall be subjected to both CVD and anti-dumping duty*** to compensate for the same situation of dumping or export subsidization.
- No duty u/s 9 or 9A just because such articles are –
  - Exempt from duties in the country of origin/ exportation, or
  - Refunded such duties/ taxes.
- No duty u/s 9 or 9A on imports from –
  - ***A member country of WTO***, or
  - A country with whom the GOI has a ***most favored nation*** agreement, or
  - ***Specified countries.***
- ***Note:*** These points shall not be applicable in a case where countervailing or anti-dumping duty has been imposed on any article to prevent injury or threat of an injury to the domestic industry of a third country exporting the like articles to India.

14. APPEAL - SECTION 9C OF THE CTA

- An appeal against the order of determination or review thereof ***shall lie to the Customs, Excise and Service Tax Appellate Tribunal (CESTAT)*** in respect of the existence, degree and effect of –
  - any subsidy/dumping in relation to import of any article, or
  - import of any article into India in such increased quantities and under such condition that causes or threatens to cause serious injury to domestic industry.
- ***Fees for appeal*** –
  - Every appeal made to the CESTAT shall be accompanied by a fees of ₹15,000/-.

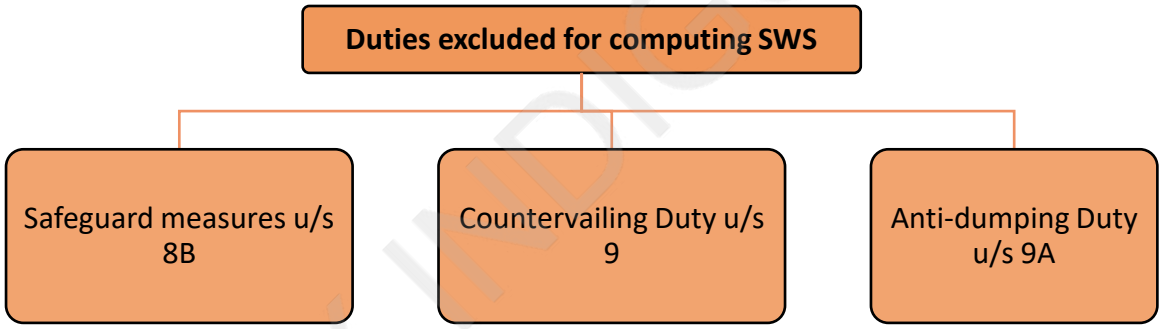
- Every application made in an appeal for grant of stay or for rectification of mistake, or for restoration of an appeal/application shall be accompanied by a fee of ₹500/-.

- ***Time limit for filing appeal*** –
  - Within 90 days of the date of order under appeal.
  - Delay shall be condoned if the Appellate Tribunal is satisfied that the appellant was prevented by sufficient cause from filing the appeal in time.
- ***Order of the CESTAT*** –
  - The CESTAT may pass an order confirming, modifying or annulling the order appealed against.
  - The parties to the appeal shall be given an opportunity of being heard.

15. SOCIAL WELFARE SURCHARGE [SWS] ON IMPORTED GOODS

- Social welfare surcharge (SWS) @ ***10%*** is levied in lieu of education cesses ***for providing and financing education, health and social security***.
- ***Calculation of SWS*** –

Customs duty chargeable u/s 12 of the Customs Act, 1962	xxx
Add: Any tax/cess chargeable on that article under any other law for the time being in force	xxx
Value for calculating SWS	**XXX**



16. AGRICULTURE INFRASTRUCTURE AND DEVELOPMENT CESS ON IMPORT OF CERTAIN ITEMS

- An Agriculture Infrastructure and Development Cess (AIDC) has been levied on import of specified goods at the notified rate to finance ***the improvement of agriculture infrastructure and other development expenditure.***
- ***For the purposes of calculating the AIDC, the value of such goods is calculated*** in the ***same manner as the value of goods is calculated for the purpose of customs duty*** under section 14 of the Customs Act, 1962.
- ***Examples of notified goods*** – Apples, kabuli chana, coal, urea, silver, Silver dore, gold, gold dore etc.
- The AIDC on imported goods is in addition to any other duties of customs chargeable on such goods.

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ILLUSTRATIONS

Illustration 1

Determine the customs duty payable under the Customs Tariff Act, 1975 including the safeguard duty of 30% under section 8B of the said Act with the following details available on hand:

Import of Sodium Nitrite from a developing country from 26th February,2017 to 25th February 2018 (both days inclusive)	30,00,000
Share of imports of Sodium Nitrite from the developing country against total imports of Sodium Nitrite to India	4%
Basic custom duty	10%
Integrated tax	18%
Social welfare surcharge	10%

Illustration (Countervailing Duty)

A Ltd. imported flat rolled products of stainless steel, with CIF value $40,000 from China.

- Exchange-rate was 1$ = Rs. 45 on the date of presentation of bill of entry.
- Basic customs duty @ 10%
- Social welfare surcharge @ 10%
- Said products if imported from China is liable to Anti-subsidy duty @ 18.95% of landed value.
- IGST on similar product supplied in India @18%

You are given that, Landed value for levy of Anti-subsidy duty = Customs value + all duties of customs (except duties levied as per Section 3,3A, 8A,9,9A of Customs Tariff Act).
Calculate Total Customs Duty

Illustration 2

ABC imported certain goods weighing, 1000 kgs. with CIF value US$ 40,000.

Exchange Rate: 1$ = Rs.45, on date of presentation of bill of entry. BCD: 10%, SWS: 10%, IGST: 12%

As per notification issued by Gov. of India, Anti-dumping duty shall be imposed.

The Anti-dumping duty will be, difference between, amount calculated $60/kg. and landed value of goods. Compute Customs Duty.

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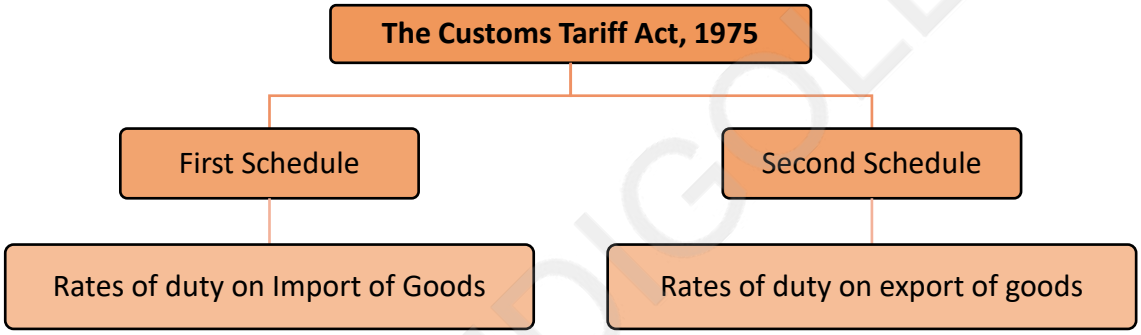
3. CLASSIFICATION OF IMPORTED AND EXPORT GOOODS

Contents

- Need for classification of goods.
- General explanatory notes of the First Schedule.
- The 6 General Rules of Interpretation.
- Project Imports.

1. CUSTOMS TARIFF

- One of the important steps in assessing the amount of duty payable is ***classification of the goods with reference to HSN system specified under Customs Tariff Act, 1975***.
- ***The correct classification of goods is necessary to ascertain the rate of custom duty.***



1.1 - Rules of interpretation and explanatory notes

- The Indian Customs Tariff is based upon the ***Harmonized System of Nomenclature (HSN)***.
- The HSN is an ***internationally standardized system of names and numbers for classifying traded products*** which was developed and maintained by the World Customs Organization (WCO)
- The CTA, 1975 also has a set of ***General Rules of Interpretation of the First Schedule*** which inter alia contains the ***General explanatory notes.***
- These rules of interpretation and general explanatory notes –
  - gives ***clear direction*** as to how the nomenclature in the schedule is to be interpreted, and
  - also gives ***statutory force*** to the interpretative rules and the general explanatory notes by their inclusion as part of the First Schedule.

1.2 - First Schedule of the Customs Tariff

Comprises of ***98 chapters*** grouped under ***21 sections***.

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Sections	• A group of chapters representing a particular class of goods.
Chapters	• Each section is divided into various chapters and sub-chapters containing goods of a particluar class.
Chapter Notes	• Mentioned at the beginning of each chapter. Have the legal authority in determining the classification of goods.
Heading	• Each chapter and sub-chapter is further divided in headings.
Sub-heading	• Each heading is further divided into sub-headings.

2. GENERAL EXPLANATORY NOTES

There are ***3 general explanatory notes*** included in the First Schedule.

2.1 - Relevance of one dash ["-"] , two dash ["--"] and three dash ["---"]

One dash ["-"]	Two dash ["--"]	Three dash ["---"] or ["----"]
• Description of an article/group thereof under a heading is preceded by "-" • Denotes that said article/group therof shall be the sub-classification of the heading	• Denotes that said article/group therof shall be the sub-classification of the immediately preceding article/group thereof which has "-".	• Denotes that said article/group therof shall be the sub-classification of the immediately preceding article/group thereof which has "-" or "--".

2.2 - Meaning of abbreviation "%" in relation to the rate of duty

- The ***duty shall be computed at the percentage specified*** on the value of the goods as defined in section 14 of the Customs Act.

2.3 - Standard rate of duty applicable if no preferential rate specified

- In any entry, if no preferential rate of duty has been notified, the standard rate of duty shall be applicable.

3. RULES OF INTERPRETATION OF THE FIRST SCHEDULE TO THE CTA

3.1 - Rule 1 – General Rule of Classification

- For legal purposes classification shall be determined according to the terms of the headings and any relative section or chapter notes and the subsequent rules.

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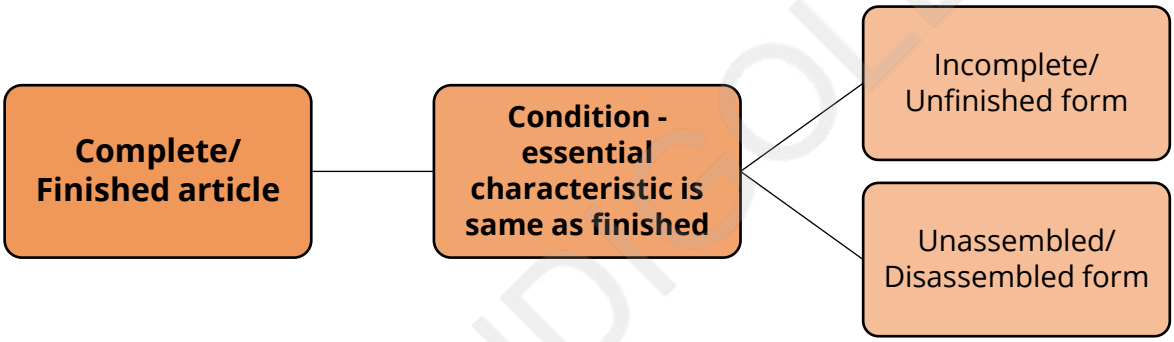
- The rules of interpretation need not be resorted to when classification is possible on the basis of description in heading, sub-heading, chapter notes and section notes.
- Notes of one chapter or section cannot be applied for interpreting entries in other chapters or sections.

3.2 - Rule 2(a) – Classification of Incomplete/Unfinished Articles

- ***Any incomplete/unfinished article shall be covered under the same heading as that of the complete/finished form of that article.***
- ***Condition*** – The incomplete/unfinished article have the essential characteristics of the finished article.
- ***Any unassembled/dis-assembled article shall be covered under the same heading as that of the complete/finished form of that article.***
- ***Condition*** – The incomplete/unfinished article have the essential characteristics of the finished article.

  Example: A car without seats would still be classified as a car.



3.3 - Rule 2(b) – Classification of Mixtures/Combinations of a Material/Substance with Other Materials/Substances

- Any ***reference to a material or substance*** would ***refer to mixture or combination*** of that material or substance.
- Any reference to goods containing a particular material or substance would include a reference to goods consisting wholly or partly of such specified material or substance.

  Example: The term coffee will include coffee mixed with chicory.

3.4 - Rule 3 – Classification in case goods are classifiable under two or more headings

- The application of this rule arises when the goods consist of more than one material or substance.

3.4.1 - Rule 3(a) – Specific over general

- ***The heading that provides a more specific description should be preferred*** over the heading that provides a general description.

3.4.2 - Rule 3(b) – Essential character principle

- Mixtures, composite goods consisting of different materials or made up of different components, and goods put up in sets for retail sale, which ***cannot be classified with reference to (a)***, shall be ***classified as if they consisted of material which gives them their essential character.***
- ***Example***: ***Product*** – Lead pencil with an eraser at the back.
- ***Classification*** – Though the above product is composite goods, the essential character is that it is a pencil. Therefore, it shall be classified as a pencil and not as an eraser.

3.4.3 - Rule 3(c) – Latter the better

- When goods cannot be classified by reference to (a) or (b), they shall be ***classified under the heading which occurs last in numerical order*** among those which equally merit consideration.

Case Law: Mahindra and Mahindra v. CCE [1999 (109) E.L.T. 739 (Tribunal)

Facts: *Goods cleared by assessee were equally classifiable under the following two headings –*

a) Heading No. 8703: Motor cars and other vehicles principally designed for the transport of persons.

b) Heading No. 8704: Motor vehicles meant for transport of goods.

Judgement: *It was held that heading 8704 occurs last and as both the headings equally merit classification, goods shall be classified under 8704.*

3.5 - Rule 4 – Akin Rule

If the goods cannot be classified in accordance with the earlier rules, they shall be classified under the heading in which the most akin (i.e., similar) goods are classified.

3.6 - Rule 5 – Classification of packing materials and containers

3.4.4 - Rule 5(a) – Classification of cases/containers used for packaging of goods

- Cases which are specially designed or fitted to contain a specific article and given with the articles for which they are intended shall ***follow the classification of the items which are packed.***
- ***Conditions*** –
  - These cases/containers are ***specially shaped/fitted to contain a specific article or a set of articles.***
  - These cases/containers are –
    - ***suitable for long term use and***
    - ***presented with the articles for which they are intended.***
- ***Exception*** –
  - When packing material itself gives the essential character as a whole.

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3.4.5 - Rule 5(b) – Classification of packing materials and packing containers

- Packing materials and packing containers presented with the goods therein ***shall be classified with the goods, if they are of a kind normally used for packing such goods.***
- ***Example***: Leather cases which are normally supplied along with the goods, need not be classified separately, however costly they might be.
- ***Exception*** –
  - Durable containers capable of repetitive use should be classified separately.

3.7 - Rule 6: Only Sub-Headings at the Same Level are Comparable

- This implies that a sub-heading can be compared only with another sub-heading within the same heading.

4. PROJECT IMPORTS

- Project Imports are the ***imports of machinery, instruments, and apparatus etc.***, falling under different classifications, ***required for initial set up of a unit or for substantial expansion of an existing unit.***
- Since each of these ***different items are required to be imported at different rates*** of customs duties, it is ***difficult to make assessmen***t of each item separately.
- Hence, ***for such project imports one consolidated rate of customs duty has been made applicable*** for all items imported under a project irrespective of the nature of the goods and their customs classification.
- The ***items eligible for project import*** are specified in ***Heading 9801*** of the Customs Tariff Act, 1975 and includes –
  - All items of machinery,
  - Instruments, apparatus, and appliances,
  - Components of raw materials,
  - Spare parts, raw materials and consumables up to 10% of the value of goods.
- ***Eligible projects*** –
  - Industrial Plants,
  - Irrigation Projects,
  - Power Projects,
  - Mining Projects,
  - Projects for Oil or Mineral Exploration and
  - Other projects notified by the CG

5. SOME JUDGEMENTS ON CLASSIFICATION

5.1 - Saurashtra Chemicals v. CC 1986 (Tri-LB) [approved by SC]

Issue – The importance of section notes, and chapter notes in the classification of goods.

Judgement – Section notes, and Chapter notes are a part of the statute and thus are relevant in the classification of goods. These notes sometimes restrict and sometimes expand the scope of headings. Thus, in the sense, these notes have an overriding effect on the headings.

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5.2 - CC v. Maestro Motors Ltd. 2004 (SC)

Judgement – If a tariff heading is specially mentioned in exemption notification, the general interpretative rules would be applicable to such exemption notification. But, if an item is specifically mentioned without any tariff heading, then exemption would be available even though for the purpose of classification, it may be otherwise.

5.3 - CC v. Hewlett Packard India Sales (p) Ltd. 2007 (SC)

Facts – The assessee was engaged in the manufacture of, and trading in, computers including Laptops falling under Heading 84.71 of the CTA Schedule. They imported Notebooks (Laptops) with Hard Disc Drivers preloaded with Operating Software. These computers were also accompanied by separate Compact Discs (CDs) containing the same software, which were intended to be used in the event of Hard Disc failure.

Issue – The assessee classified the software separately and claimed exemption.

Judgement – Without the OS the laptop cannot work. Therefore, the laptop along with the software has to be classified as laptop and valued as a single unit.

5.4 - Keihin Penalfa Ltd. v. Commissioner of Customs 2012 (SC)

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

Issue – Where a classification (under a Customs Tariff head) is recognized by the Government in a notification at any point of time, can the same be made applicable in a previous classification in the absence of any conscious modification in the Tariff?

Judgement – Since the Revenue itself had classified the goods in dispute under Chapter sub-heading 9032.89 from 01.03.2002, the said classification needs to be accepted for the period prior to it.

5.5 - M/s CPS Textiles P Ltd. v. Joint Secretary 2010 (Mad.)

Issue –

i. Will the description of the goods as per the documents submitted along with the Shipping Bill be a relevant criterion for the purpose of classification?
ii. Whether a separate notice is required to be issued for payment of interest which is mandatory and automatically applies for recovery of excess drawback?

Judgement –

i. The High Court held that the description of the goods as per the documents submitted along with the Shipping Bill would be a relevant criterion for the purpose of classification, if not otherwise disputed on the basis of any technical opinion or test.

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ii. Under Section 75A(2), when the claimant is liable to pay the excess amount of drawback, he is liable to pay interest as well. No notice for the payment of interest need be issued separately.

6. OVERVIEW

- ***The correct classification of goods is necessary to ascertain the rate of duty.***
- The classification is based on the ***Harmonized System of Nomenclature (HSN).***
- The First schedule of the CTA, 1975 contains ***General Rules of Interpretation and General Explanatory Notes.***
- ***General Explanatory Notes –***

Relevance of one dash, two dash and three dash	"-" sub-classification of the heading above.
	"--" sub-classification of immediately preceding article having "-".
	"---" sub-classification of immediately preceding article having "--".
Abbreviation '%' in relation to rate of duty	Duty shall be computed at the percentage specified.
Standard rate of duty applicable if not preferential duty specified.	

- ***Rules of Interpretation of the First Schedule –***

Rule 1: General Rule of Classification	Classification shall be determined according to the terms of the headings and any relative section or chapter notes and the subsequent rules.
Rule 2(a): Classification of Unfinished/ Incomplete Article	Covered under the same heading as that of the complete/finished form of that article (condition - essential characteristic)
Rule 2(b): Classification of Mixtures or combination of substances/materials	Any reference to a material or substance would refer to mixture or combination of that material or substance.
Rule 3: Classification where goods are classifiable under more than one heading	(a) Specific over general (b) Essential character principle (c) Later the better
Rule 4: Akin Rule	Where goods which cannot be classified in accordance with the above rules, shall be classified under the head appropriate to the goods to which they are most akin.
Rule 5: Classification of packing materials and containers	(a) Cases which are specially designed or fitted to contain a specific article and given with the articles for which they are intended shall follow the classification of the items which are packed. (b) Packing materials and packing containers presented with the goods therein shall be classified with the goods, if they are of a kind normally used for packing such goods.
Rule 6: Only sub-headings at the same level are comparable.	

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- ***Project Imports -***
    - Whenever an ***industrial/ similar project is going to be installed or an existing unit is to be expanded***, several different machineries, raw-materials, components etc. are required. ***All these machineries, raw materials etc., are called project import***.
    - For project imports ***one consolidated rate of customs duty*** has been made applicable for all items imported under a project irrespective of the nature of the goods and their customs classification.
    - The items eligible for project import are specified in ***Heading 9801*** of the Customs Tariff Act, 1975.

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4. VALUATION UNDER THE CUSTOMS ACT, 1962

Contents

- Understand the terms used in the course of valuation.
- Concept of transaction value u/s 14.
- Determination of exchange rates.
- Customs valuation rules relating to imported goods.
- Customs valuation rules relating to export goods.
- Date for determination of rate of duty.
- Calculation of duty of sets of articles and accessories.

1. INTRODUCTION

- The ***manner in which duties of customs are charged*** on goods imported into India or goods exported from India is basically either by way of –
  a. ***Specific duty based on the quantity*** of the goods, or
  b. ***Ad valorem duty*** expressed as percentage of the value of the goods.
- "***Value in relation to any goods***" is defined u/s 2(41) of the Customs Act, 1962 as the value thereof ***determined u/s 14.***
- ***Customs duty is a tax on the goods***, and it is not a tax on the person having or owning the goods. ***The charge of tax attaches to the goods***. Unless the tax liability is discharged, the goods are not allowed to proceed further.
- The valuation for customs duty follows that -
  - There should be ***uniformity*** in tax burden.
  - Since the rate of duty is already fixed for like goods, the ***value of goods should be uniform for all imports / exports for like goods*** at the same time and place.
  - The value of the goods should be ***proximate to the point of taxation.***
  - ***Variations in the price agreed in each transaction*** on account of factors other than in the course of normal international wholesale trade ***should be adjusted***.

2. TERMS USED IN COMMERCIAL PARLANCE

Sl. No.	Terms	Meaning
1.	**Invoice**	Basic commercial document showing particulars regarding description of goods such as quantity, unit price, discount, net price, names of consignor and consignee, payment details.
2.	**Packing specification**	Gives particulars of contents of each package in the consignment.
3.	**Certificate of Origin**	A certificate issued by the competent authority in the country of manufacture.

4.	**Bill of Lading**	A negotiable document given by the carriers of the cargo giving particulars of - • Port of shipment • No. of packages covered by the consignment • Marks and numbers on the page • Name of the vessel in which the goods have been dispatched • Name of the consignee of the goods, • Status of freight payment.
5.	**Air Consignment Note**	A document corresponding to Bill of Lading, in the case of cargo imported or exported by air
6.	**Indent**	A document showing the particulars of the consignment for which the buyer has placed an order with the supplier.
7.	**Quotation**	A document, which indicates the price, the terms and other conditions on which the seller is willing to supply goods to the buyer.
8.	**Letter of Credit**	An instrument delivered by the bank intimating the seller that the buyer has instructed the bank and the bank will according to these instructions pay the seller of the goods, the bill amount for the supply of the goods on presentation of certain documents evidencing shipment of the goods.
9.	**Sight draft**	A documentary bill of exchange between importer and exporter, promising payment to exporter immediately on delivery of original negotiable documents to the importer through banking channel.
10.	**Mate's Receipt**	A receipt given by the First mate or First officer or cargo supervisor of the conveyance certifying the total quantity of the consignment received on board the vessel or the aircraft.

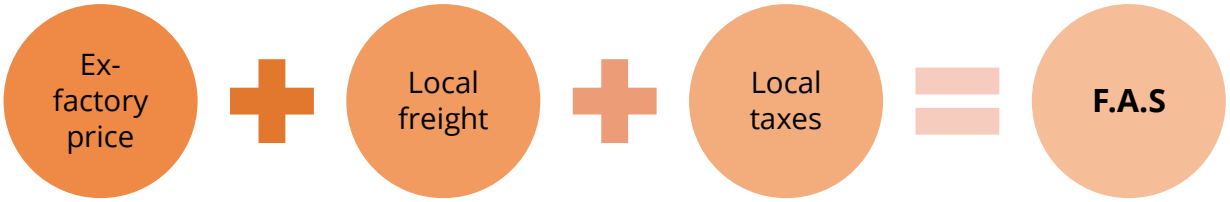
3. TECHNICAL TERMS RELATING TO VALUE IN THE COURSE OF IMPORT OR EXPORT – INTERNATIONAL COMMERCIAL (INCO) TERMS

3.1 - Ex-Factory Price

- It is the ***price*** of the goods ***at the factory gate.***
- It ***includes*** cost of production and manufacturer's margin of profit, and
- ***Excludes*** cost of freight for outward delivery of goods.

3.2 - F.A.S. (Free Alongside)

- The ***cost at which the export goods are delivered alongside the ship***, ready for shipment.



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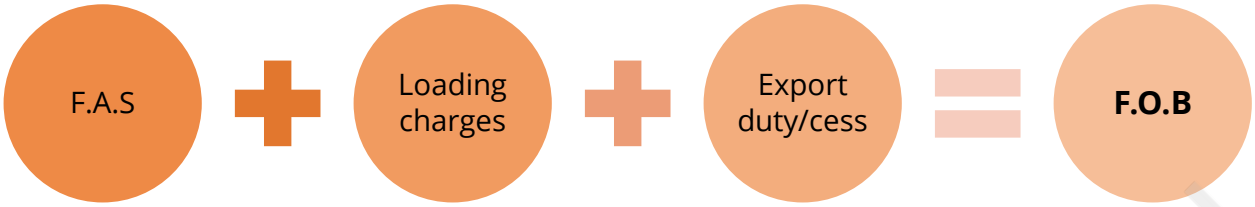
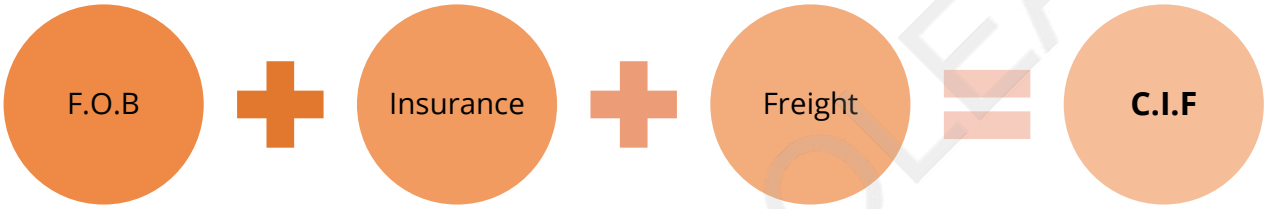
3.3 - F.O.B. (Free on Board)

- FOB means the stage at which the ***goods are placed on board the conveyance carrying the vessel.***



3.4 - C.I.F. (Cost Insurance Freight)

- ***The cost at which the goods are delivered at the Indian port.***
- It is also sometime called CFC.



4. TWO APPROACHES FOR COMPUTING THE ASSESSABLE VALUE

- Generally, the value declared by the importer, i.e., ***the declared value, shall be accepted by the customs officers*** subject to fulfilment of conditions.
- However, ***where the declared value is not acceptable in law, the following approaches may be used by the customs officer -***
  - i. The ***wholesale market price*** of the goods giving necessary abatements to adjust the post-importation costs.
  - ii. The ***value given in the invoice*** adjusting for factors influencing the price in individual transactions.

5. VALUATION OF GOODS BASED ON SECTION 14

Section 14 of the Customs Act, 1962 prescribes the ***mode of identifying the value of imported or export goods for the purpose of payment of customs duty.***

5.1 - Transaction Value

- For the purpose of the CTA the ***value of the imported goods and export goods*** shall be the ***'transaction value'*** of such goods.

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Transaction Value

In case of Export goods	In case of Imported goods
•The price actually paid or payable for the goods when sold for export from India for delivery at the time and place of exportation. •Conditions - •The buyer and seller of the goods are not related. •Price shall be the sole consideration for the sale.	•The price actually paid or payable for the goods when sold for export to India for delivery at the time and place of importation. •Conditions - •The buyer and seller of the goods are not related. •Price shall be the sole consideration for the sale.

- In simple words, in case of imported goods assessable value is nothing but the C.I.F. value.
- The transaction value shall also include in addition to the price above, the following amount paid or payable –
  - commissions and brokerage,
  - engineering,
  - design work,
  - royalties and licence fees,
  - costs of transportation to the place of importation,
  - insurance
  - loading,
  - unloading and
  - handling charges

5.2 – Conversion Dates

Imported goods

Rate of exchange prevalent on the date of filling bill of entry u/s 46

Export goods

Rate of exchange prevalent on the date of filing shipping bill or bill of export u/s 50

Case Law: Samar Timber Corporation v. ACC 1995 (Bom.)

Judgement: *Relevant date in respect of rate of duty payable is the date of presentation of Bill of Entry and not date of re-presentation after correction.*

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5.3 - Currency Conversion Rate

For the purpose of customs valuation, "rate of exchange" means the rate of exchange-

a. determined by the Board, or
b. ascertained in such manner as the Board may direct,

for the conversion of Indian currency into foreign currency or vice versa.

Thus, for the purpose of valuation under customs laws, rate notified by CBIC (Board) shall be taken into account.

5.4 - Tariff Value

The ***Board may fix tariff values*** for any class of imported goods or export goods by notification in the Official Gazette if it is satisfied that it is necessary to do so. Where any such tariff values are fixed, ***the duty shall be chargeable with reference to such tariff value***.

6. CUSTOMS VALUATION (DETERMINATION OF VALUE OF IMPORTED GOODS) RULES, 2007

The Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 apply to ***imported goods.***

6.1 - Rule 3 – Determination of the Method of Valuation

6.1.1 - Value of imported goods [Rule 3(1) & (2)]

The value of imported goods shall be the ***transaction value adjusted in accordance with provisions of rule 10***, subject to the following conditions –

A) ***There are no restrictions as to the disposition or use of the goods by the buyer*** other than restrictions which –

   i. are imposed or required by law or by the public authorities in India, or
   ii. limit the geographical area in which the goods may be resold, or
   iii. do not substantially affect the value of the goods.

B) The sale or price is ***not subject to some condition or consideration for which a value cannot be determined.***

C) The ***proceeds of any subsequent resale***, disposal or use of the goods by the buyer ***shall not accrue directly or indirectly to the seller***, unless proper adjustment has been made in accordance with rule 10.

D) The buyer and seller are ***not related***.

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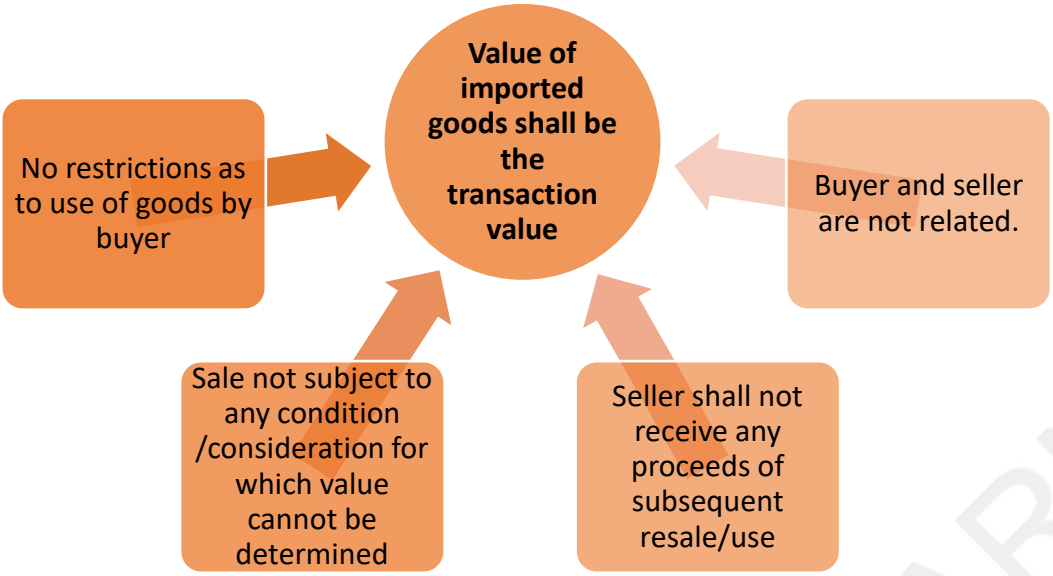

6.1.2 - Where the buyer and seller are related parties - Rule 3(3)

- The ***transaction value*** shall be ***accepted*** as the value of imported goods ***if***,
  - Upon examination of the circumstances of such sale, it is clear that ***the relationship does not influence the price.***
  - The importer demonstrates that the ***declared value of the goods closely approximates to one of the following values*** -
    - the ***transaction value*** of identical goods/ similar goods, ***in sales to unrelated buyers*** in India,
    - the ***deductive value*** for identical goods/ similar goods,
    - the ***computed value*** for identical goods/ similar goods.

Meaning of few terms used -	
Related persons	*Persons shall be deemed to be "related" only if -* *i) they are **officers/directors of one another's businesses,*** *ii) they are legally recognised **partners** in business,* *iii) they are **employer and employee,*** *iv) any person directly or indirectly **owns, controls or holds 5% or more of the outstanding voting stock or shares of both of them,*** *v) **one** of them directly or indirectly **controls the other,*** *vi) **both** of them are directly or indirectly **controlled by a third person,*** *vii) together they directly or indirectly **control a third person,*** *viii) they are **members of the same family.***
Computed value	*Value of imported goods determined in accordance with **rule 8**.*
Deductive value	*Value determined in accordance with **rule 7**.*
Identical goods	*Imported goods -* *i) which are **same in all respects,*** *ii) produced in the country in which the goods being valued were produced, and* *iii) produced by the same person who produced the goods , or where such goods are not 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.
Similar goods	*Imported goods –* *i) having **like characteristics and like component materials** which enable them to perform the same functions and are commercially interchangeable with the goods being valued,* *ii) produced in the country in which the goods being valued were produced, and* *iii) produced by the same person who produced the goods , or where such goods are not 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.*

6.1.3 - Where transaction value cannot be determined - Rule 3(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***.

6.2 - Rule 4 – Transaction Value of Identical Goods

6.2.1 - Identical goods at the same commercial level - Rule 4(1)

- Where rule 3 fails, the value of imported goods shall be the ***transaction value of identical goods*** at the ***same commercial level and substantially the same quantity*** as the goods being valued which are ***sold for export to India and imported at about the same time.***
- ***Where sale at same commercial level and in substantially same quantity is not available***, the transaction value of identical goods sold at a different commercial level or in different quantities or both, appropriately adjusted to take account of the difference shall be used.

6.2.2 - Adjustments on account of difference in distance and means of transport - Rule 4(2)

- An adjustment shall be made if there are ***significant differences in costs and charges*** referred in rule 10 between the goods valued and identical goods in question ***arising from differences in distances and means of transport.***

6.2.3 - More than one transaction value of identical goods id found - Rule 4(3)

- If more than one transaction value of identical goods is found, the ***lowest such value shall be used*** to determine the value of imported goods.

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6.3 - Rule 5 – Transaction Value of Similar Goods

- Subject to rule 3, the value of imported goods shall be the ***transaction value of similar goods sold for export to India and imported at or about the same time*** as the goods being valued.
- The remaining provisions of Rule 4 shall, mutatis mutandis, also apply to similar goods.

6.4 - Rule 6 – Determination of value where value cannot be determined under Rules 3, 4 and 5

- Where the value of imported goods cannot be determined in accordance with rules 3,4 and 5, the ***value shall be determined as per rule 7***.
- When the ***value cannot be determined under rule 7*** also, ***rule 8*** shall be followed.
- ***The order of application of rules 7 and 8 can be reversed*** –
    - At the ***request of the importer***, and
    - With the ***approval of the proper officer (P.O.)***.

6.5 - Rule 7 – Deductive Value

6.5.1 - Where similar/ identical goods are sold in India - Rule 7(1)

If the goods being valued or identical or similar imported goods are sold in India, in the ***condition*** as imported ***at the time of valuation***, -

- The ***value of goods shall be based on the unit price*** at which those goods are ***sold in the greatest aggregate quantity*** to unrelated persons in India.
- ***Following deductions*** shall be made while calculating the value –
    - ***i. Commission paid, general expenses and additions for profits,***
    - ii. ***Costs of transport and insurance and associated costs*** incurred within India,
    - iii. ***Customs duties and other taxes*** payable in India.

Example: For "unit price at which goods are sold in the greatest aggregate quantity"

Sale quantity	Unit price (₹)	No. of sales	Total quantity sold
1-10 units	100	10 sales of 5 units 5 sales of 3 units	65
11-25 units	95	5 sales of 11 units	55
Over 25 units	90	1 sale of 30 units 1 sale of 50 units	80

The greatest number of units sold is 80 units. Therefore, the unit price in the greatest aggregate quantity is ₹ 90/-.

6.5.2 - Where identical/ similar goods are not sold at the same time - Rule 7(2)

The value of imported goods shall be based on –

- the ***unit price*** at which these goods are sold in India,
- ***at the earliest date after importation***

- but ***before the expiry of 90 days*** after such importation.

6.5.3 - Where identical/similar goods are not sold in the condition as imported - Rule 7(3)

- The value shall be based on the ***unit price*** at which the imported goods, a***fter further processing***, are sold in the greatest aggregate quantity to unrelated persons in India.
- Due allowance shall be made for the value added by processing and the deductions under sub-rule (1).

6.6 - Rule 8 – Computed Value

Subject to provisions of rule 3, the value of imported goods shall be based on a computed value, which ***shall consist of the sum of*** –

i. ***Cost of materials*** and fabrication and other processing employed in producing the imported goods.
ii. ***Profit and general expenses***,
iii. ***Other expenses under rule 10(2)***.

6.7 - Rule 9 – Residual Method

6.7.1 - Value to be determined on reasonable basis - Rule 9(1)

- Where the value of imported goods ***cannot be determined under the provisions of any of the preceding rules, the value shall be determined using*** –
  - ***reasonable means*** consistent with the principles and general provisions of these rules and
  - on the basis of ***data available*** in India.
- ***The value so determined shall not exceed the price at which such or like goods are ordinarily sold*** or offered for sale at the time and place of importation in the course of international trade, when the buyer and seller are unrelated, and price is the sole consideration.

6.7.2 - Restrictions while using residual method - Rule 9(2)

The value shall be determined based on –

i. The ***selling price*** in India ***of goods produced in India***,
ii. A system which provides for acceptance of the ***highest of two alternative values***,
iii. The ***price*** of the goods in the domestic market of the ***country of exportation***,
iv. ***Cost of production*** except as per rule 8,
v. The ***price*** of goods ***for export to a country outside India***,
vi. ***Minimum customs values***, or
vii. ***Arbitrary or fictitious values***.

Case Law: Sanjay Chandiram v. CC 1995 (SC)
Judgement: *The residuary method can be considered if valuation is not possible by any other method.*

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6.8 - Rule 10 – Cost and Services

6.8.1 - Value of costs and services to be included in price [Rule 10(1)]

In determining the transaction value, the following shall be added to the price paid or payable for the imported goods –

The ***flow of dividends or other payments*** from the buyer to the seller that do not relate to the imported goods are ***not part of the customs value.***

A. To the extend they are incurred by the buyer and not included in price actually paid/payable–
   - ***Commissions and brokerage*** (except buying commission),
   - ***Cost of containers,***
   - ***Cost of packing*** whether for labour or materials.
B. The value of ***following goods and services supplied directly or indirectly by the buyer*** free of cost/ at reduced cost for use in connection with the production and sale for export of imported goods –
   - ***Materials, components, parts, and similar items incorporated*** in the imported goods,
   - ***Materials consumed*** in the production of the imported goods,
   - ***Tools, dies, moulds and similar items*** used in the production of the imported goods,
   - ***Engineering, development, artwork, design work, and plans and sketches undertaken elsewhere than in India*** and necessary to produce the imported goods.
C. ***Royalties and license fees*** related to the imported goods that the buyer is required to pay,
D. ***Proceeds of any subsequent resale***, disposal or use of imported goods that accrues to the seller,
E. ***All other payments*** made as a condition of sale of the imported goods by the buyer to the seller/third party.

6.8.2 - Cost of transport and insurance - Rule 10(2)

The value of imported goods shall include –

a. The cost of transport, loading, unloading and handling charges associated with delivery to the place of importation [including ship demurrage charges on charted vessels, lighterage or barge charges]
b. Cost of insurance to the place of importation.

"Place of importation" means the ***customs station, where the goods are brought for being cleared for home consumption*** or for being removed for deposit in a warehouse.

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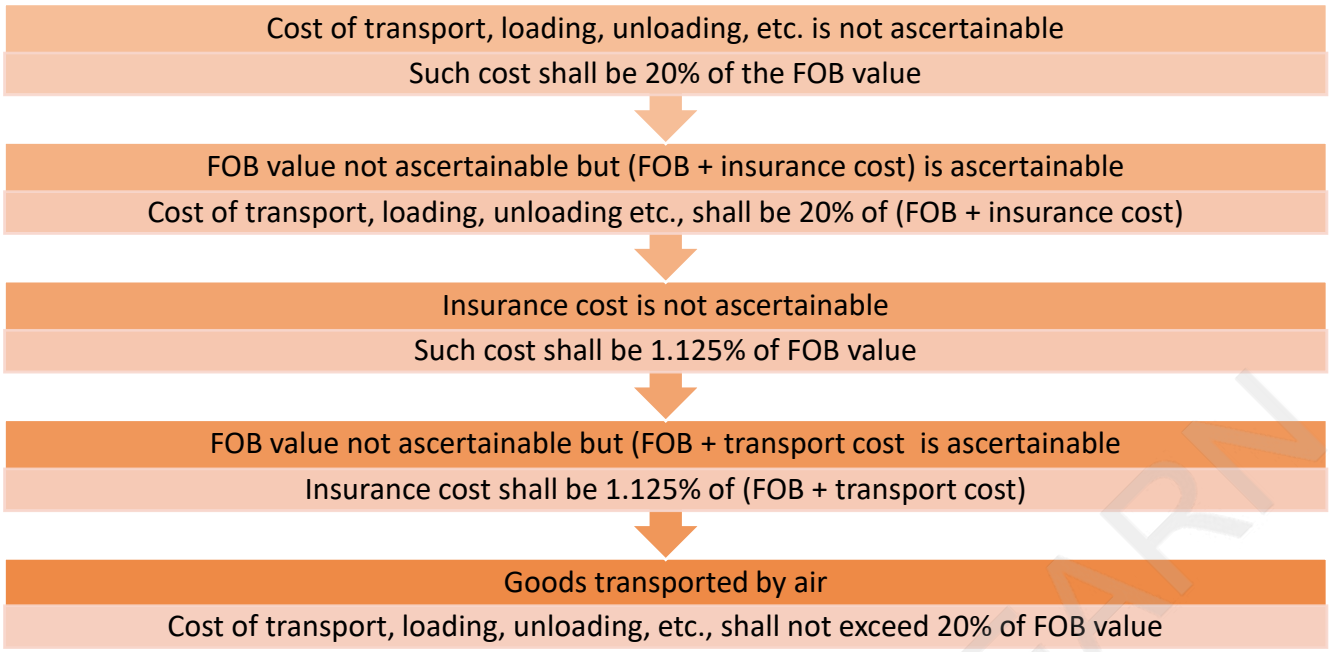


Notes:

- In the case of goods imported by sea or air and ***transshipped to another customs station in India***, the cost of insurance, transport, loading, unloading, handling charges associated with such transshipment shall be excluded.
- The ***cost of transport*** of the imported goods ***includes*** the ship ***demurrage charges*** on charted vessels, ***lighterage*** or ***barge charges***.

The value of imported goods shall not include the following charges or costs*, provided that they are distinguished from the price actually paid or payable –*

- ***Charges for construction, erection, assembly, maintenance or technical assistance, undertaken after importation*** *on imported goods,*
- *The cost of* ***transport after importation,***
- ***Duties and taxes in India****. [Rule 13 – Interpretative Notes]*

6.9 - Rule 11 – Declaration by the Importer

The ***importer or his agent*** shall furnish –

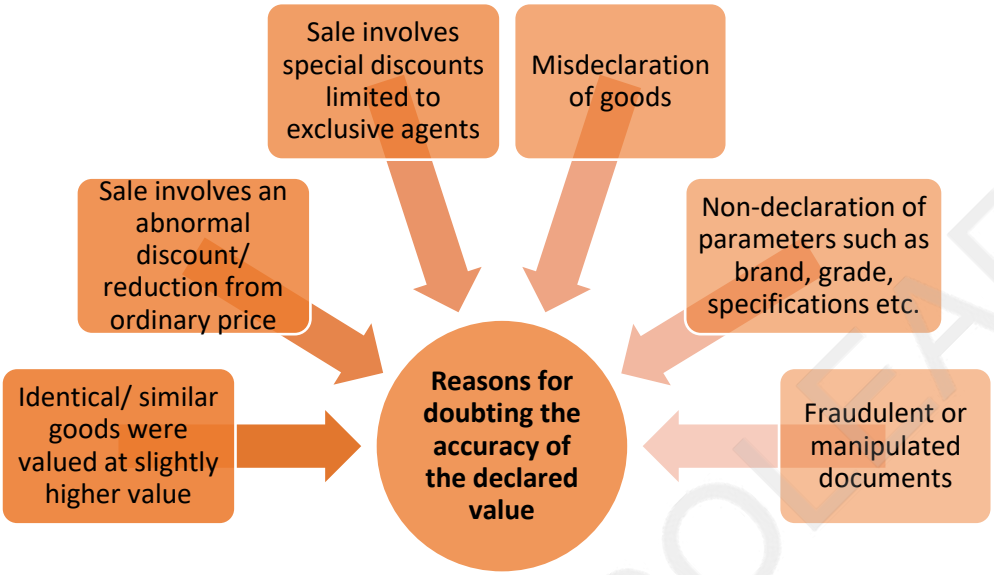
a. a ***declaration*** disclosing full and accurate details relating to the value of imported goods; and
b. any ***other statement, information or document*** including an invoice of the manufacturer or producer of the imported goods.

6.10 - Rule 12 – Rejection of Declared Value

When the ***P.O. has reason to doubt the truth or accuracy of the value declared*** in relation to any imported goods, -

- He may ***ask the importer 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 P.O. 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 rule 3(1).
- At the request of an importer, the P.O., shall ***intimate the importer in writing the grounds for doubting*** the truth or accuracy of the value declared ***before taking a final decision.***



7. CUSTOMS VALUATION (DETERMINATION OF VALUE OF EXPORT GOODS) RULES, 2007

The Customs Valuation (Determination of Value of Export Goods) Rules, 2007 shall ***apply to the export goods.***

- Rule 3 - Determination of the Method of Valuation

- Subject to rule 8, the value of export goods shall be the ***transaction value***. [Rule 3(1)]
- **Where buyer and seller are related** –
  The transaction value shall be accepted provided that the ***relationship has not influenced the price. [Rule 3(2)]***
- **Rule 3(1) and (2) not suitable for determining value** –
  The value shall be determined by ***proceeding sequentially through rules 4 to 6.*** [Rule 3(3)]

- Rule 4 - Determination of Export Value by Comparison

- The value of the export goods shall be based on the ***transaction value of goods of like kind and quality***
- ***exported at or about the same time*** to other buyers
- in the ***same destination country*** of importation ***or in its absence another destination country,***
- subject to ***adjustments*** based on the following considerations –
  a) differences in ***date of exportation,***
  b) difference in ***commercial levels and quantity levels,***
  c) difference in ***composition, quality and design,***
  d) difference in domestic ***freight and insurance charges.***

- Rule 5 - Computed Value Method

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

a) ***cost of production***, manufacture or processing of export goods,
b) ***charges***, if any, ***for the design or brand***,
c) an amount towards ***profit***.

7.4 - Rule 6 - Residual Method

Where the ***value of the export goods cannot be determined under the provisions of rules 4 and 5***, the value shall be determined using ***reasonable means consistent with the principles and general provisions of these rules.***

7.5 - Rule 7 - Declaration by the Exporter

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

7.6 - Rule 8 - Rejection of Declared Value

Where the P.O. has reason to doubt the truth or accuracy of the value declared –

- He may ***ask the exporter to furnish further information*** including documents or other evidence.
- If, after receiving such further information, or in the absence of a response of such exporter, the ***P.O. still has reasonable doubt*** about the truth or accuracy of the value so declared, the ***transaction value shall be deemed to have not been determined in accordance with rule 3(1).***
- At the request of an exporter, the proper officer shall ***intimate the exporter in writing the ground for doubting*** the truth or accuracy of the value declared in relation to the export goods by such exporter and ***provide a reasonable opportunity of being heard***, before taking a final decision.

Reasons for the P.O. to doubt the accuracy of the declared value

- Significant variation in the value at which goods of like kind and quality are exported at or about the same time in comparable quantities
- Significantly higher value compared to the market value of goods of like kind and quality
- Mis-declaration of parameters of the goods

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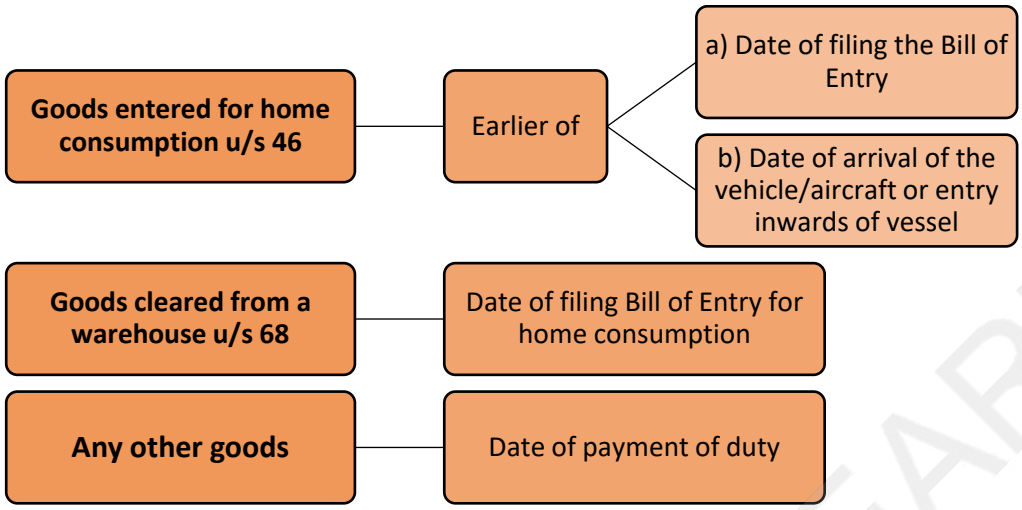
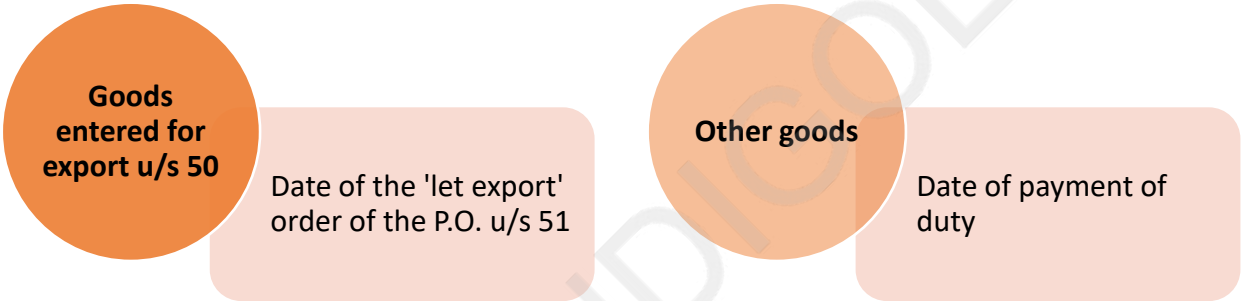
8. DATE FOR DETERMINATION OF RATE OF DUTY AND TARIFF VALUE

8.1 - For Imported Goods - Section 15



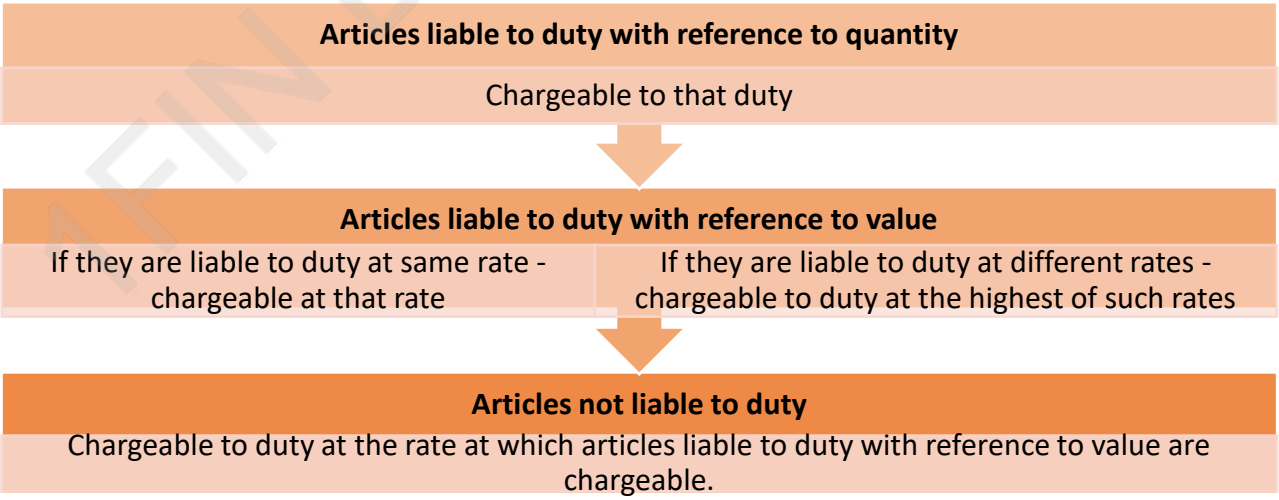
8.2 - For Export Goods - Section 16



Note: The provisions of Section 16 shall not apply to baggage and imports by post.

9. SPECIAL PROVISIONS FOR CLASSIFICATION OF SETS OF ARTICLES AND ACCESSORIES - SECTION 19

Where goods consist of a set of articles, duty shall be calculated as follows –



Exceptions –

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- ***Accessories of, and spare parts or maintenance and repairing implements*** for, any article which satisfy the conditions specified in the rules made in this behalf shall be ***chargeable at the same rate of duty as that article, if –***
    - The P.O. is satisfied that in the ordinary course of trade such accessories, parts and implements are ***compulsorily supplied along with the article***, and
    - ***No separate charge is made for such supply***, their price being included in the price of the main article.
- ***If the importer produces evidence*** to the satisfaction of the P.O. or the evidence is available ***regarding the value of any of the articles liable to different rates of duty,*** such article shall be ***chargeable to duty separately at the rate applicable to it.***

10. RELEVANT CASE LAWS

10.1 - CC Vs M/s Denso Kirloskar Industries Pvt Ltd

Facts – Technical information was provided by the Japanese company to the respondent for the manufacture of the contract products by the respondent, after the setting up of the plant.

Issue – Whether this consideration paid for technical know-how can be added to the assessable value?

Judgement – This cost is incurred after the importation of the goods and therefore cannot be loaded on to the assessable value of the imported goods.

10.2 - Mangalore Refineries and Petrochemicals Ltd Vs CC (SC)

Judgement – Duty is payable on the quantity received in India, not the quantity exported from another country. If the goods are pilfered after they are unloaded or lost or destroyed at any time before clearance for home consumption or deposit in a warehouse, the importer is not liable to pay the duty leviable on such goods. Similarly, the owner of the imported goods may also at any time before such orders have been made relinquish his title to the goods and shall not be liable to pay any duty thereon. Thus, the quantity of goods imported will be the quantity of goods at the time they are entered for home consumption.

10.3 - Gira Enterprises v. CC (SC)

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

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

Judgement –

- Mere existence of alleged computer printout was not proof of existence of comparable imports.
- Even if assumed that such printout did exist and content thereof were true, such printout must have been supplied to the appellant and it should have been given reasonable opportunity to establish that the import transactions were not comparable.

This case establishes the principle that **the onus to prove that identical goods have been imported at a price higher** than the value of the goods declared by the importer, **lies with the Department.**

10.4 - The Commissioner of Customs v. M/s Indo Rubber and Plastic Works (SC)

Facts – The assessee entered into distribution agreement with the Exporter for the purpose of import and sale of 'Li Ning' branded sports goods within India. Department alleged that marketing, advertising, sponsorship and promotional expenses/ payments made by the assessee to promote the 'Li Ning' brand was a condition of sale and consequently such amount was liable to be included in the value of the imported goods as per Rule 10(1).

Issue – Whether the marketing, advertising, sponsorship and promotional expenses/payments should be includible in assessable value of imported goods as per Rule 10(1)(e) of Customs Valuation Rules?

Judgement – The activity of advertisement and sales promotion was a post import activity incurred by the assessee on its own account and not for discharge for any obligation of the seller under the terms of sale. Hence, marketing, advertising, sponsorship and promotional expenses/payments made by the assessee for promotion of brand is not includible in assessable of imported goods and thus, Rule 10(1)(e) of the Customs Valuation Rule is not invokable.

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ILLUSTRATIONS

Illustration 1

Compute the total duty and integrated tax payable under the Customs Law on imported equipment based on the following information:

- Assessable value of the imported equipment US $ 10,100
- Date of bill of entry is 25.4.20XX. Basic customs duty on this date is 10% and exchange rate notified by the Central Board of Excise and Customs is US $ 1 = 65.
- Date of entry inwards is 21.4.20XX. Basic customs duty on this date is 20% and exchange rate notified by the Central Board of Excise and Customs is US $ 1 = 70.

Illustration 2

Compute export duty from the following data

- FOB price of goods: US $ 50,000.
- Shipping bill presented electronically on 26.04.20XX.
- Proper officer passed order permitting clearance and loading of goods for export (Let Export Order) on 06.05.20XX.

Rate of exchange and rate of export duty are as under:

	Rate of Exchange	Rate of Export duty
26.04.20XX	1 US $ = 70	10%
06.05.20XX	1 US $ = 76	8%

Rate of exchange is notified for export by CBIC

Illustration 3

Whether the assessable value of the warehoused goods which are sold before being cleared for home consumption should be taken as the price at which the original importer has sold the goods, before a Bill of Entry for home consumption is filed?

Illustration 4

Jagat Corporation Limited imported some goods from US. The details of the transactions are as follows

Authority	Rate of Exchange
CBIC	1 US $ = Rs. 70
RBI	1 US $ = Rs. 71

- CIF value of the goods is $ 1,50,000
- Rate of basic custom duty is 10%
- Rate of Social welfare surcharge 10%
- Integrated tax leviable under section 3(7) of Customs Tariff Act, is 18%. Ignore GST Compensation Cess.

Calculate total customs duty and integrated tax payable thereon.

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Illustration 5

M/s Impex imported some consignment of goods on 01.6.20XX. A bill of entry for warehousing of goods was presented on 05.6.20XX and the materials were duly warehoused. The goods were subject to duty @ 50% ad valorem. In the meanwhile, on 01.07.20XX, an exemption notification was issued reducing the effecting customs duty @ 30%, ad valorem. M/s Impex filed their bill of entry for home consumption on 01.08.20XX claiming duty @ 30% ad valorem. However, Customs Department charged duty @ 50% ad valorem being the rate on the date of clearance into the warehouse. Explain with reference to the provisions of the Customs Act, 1962:
the rate of duty applicable for clearance for home consumption in this case.

Illustration 6

A material was imported by air at

CIF price	5,000 US$
Freight paid	1,500 US$
Insurance cost	500 US$

- The banker realized the payment from importer at the exchange rate of Rs. 71 per dollar.
- Central Board of Indirect taxes and Customs notified the exchange rate as Rs. 70 per US$.
- Find the value of the material for the purpose of levying duty.

Illustration 7

ABC Industries Ltd. imports an equipment by air

CIF price	6,000 US$
Freight paid	1,200 US$
Insurance cost	1,800 US$

- The banker realizes the payment from importer at the exchange rate of Rs. 61 per US$.
- Central Board of Indirect taxes and Customs notifies the exchange rate as Rs. 70 per US$ 58265 while rate of exchange notified by RBI is Rs. 72 per US$.
- ABC Industries Ltd. expends Rs. 56,000 in India for certain development activities with respect to the imported equipment.
- Basic customs duty is 10%, Integrated tax is leviable @ 12% and social welfare surcharge is 10% on duty. Ignore GST Compensation Cess.

You are required to compute the amount of total duty and integrated tax payable by ABC Industries Ltd. under Customs law

Illustration (Questions)

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

What shall be the value, if there is a price rise of the imported goods in international market between the date of contract and the date of actual importation but the importer pays the contract price?

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Illustration (Questions)

'A' had imported goods from Finland. Due to deep draught at the port, such goods were not taken to the jetty in the port but were unloaded at the outer anchorage. The charges incurred for such unloading and transport of the goods from outer anchorage to the jetty in barges (small boats) were Rs. 1,35,000. 'A' claims that such charges form part of the loading and unloading charges and should be deemed to be included in the addition of 1% of the CIF value of such goods, made under rule 10(2)(b) of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007.

Discuss the tenability of 'A's' claim.

Illustration 8

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

Particulars	US $
Cost of the machine at the factory of the exporter	10,000
Transport charges from the factory of exporter to the port for shipment	500
Handling charges paid for loading the machine in the ship	50
Buying commission paid by the importer	50
Freight charges from exporting country to India	1,000
Exchange rate to be considered: 1$ = Rs. 70	
Actual insurance charges paid are not ascertainable	

Illustration 9

Foreign Trade International Ltd. has imported one machine from England. It has given the following particulars:

Price of machine	8,000 UK Pounds
Freight paid (air)	2,500 UK Pounds
Design and development charges paid in UK	500 UK Pounds
Commission payable to local agent of exporter @ 2% of price of machine, in Indian Rupees	
Date of bill of entry	24.10.20XX (Rate of BCD 10%; Exchange rate as notified by CBIC Rs. 100 per UK Pound)
Date of arrival of aircraft	20.10.20XX (Rate of BCD 20%; Exchange rate as notified by CBIC Rs. 98 per UK Pound)
Integrated tax is 12%	
Insurance charges have been actually paid but details are not available.	

Compute the total customs duty and integrated tax payable by Foreign Trade International Ltd. Ignore GST compensation cess.

Illustration 10

From the following particulars, calculate total customs duty and integrated tax payable:

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Date of presentation of bill of entry:	20.6.20XX [Rate of BCD 20%; Inter-bank exchange rate: Rs. 61.60 and rate notified by CBIC Rs. 70]
Date of arrival of aircraft in India:	30.6.20XX [Rate of BCD 10%; Inter-bank exchange rate: Rs. 61.80 and rate notified by CBIC Rs. 73.00]
Rate of Integrated tax	12%.
Ignore GST Compensation Cess	
CIF value 2,000 US Dollars	
Air freight	500 US Dollars
Insurance cost	100 US Dollars
Social Welfare Surcharge 10%	

Illustration 11

Mr. Backpack imported second-hand goods from a UK supplier by air, which was contracted on CIF basis. However, there were changes in prices in the international market between the date of contract and actual importation. As a result of several negotiations, the parties agreed for a negotiated price payable as follows:

Particulars	Contract Price	Changed Price	Negotiated Price
CIF Value	5000	5800	5500
Air Freight	300	600	500
Insurance	500	650	600

Other details for computing assessable value and duty payable are tabled below:

Particulars	Amount
Vendor inspection charges (inspection carried out by foreign supplier on his own, not required under contract or for making the goodsready for shipment)	1600
Commission payable to local agent @ 1% of FOB in local currency	

Date of bill of entry	Basic customs duty	Exchange rate in ` (notified by CBIC)
18th February	10%	102
Date of arrival ofaircraft	Basic custom duty	Exchange rate in (notified by CBIC)
15th February	15%	98

Inter-bank rate 1 UK Pound = Rs.106

Compute the assessable value and calculate basic customs duty payable by Mr.Backpack.

Illustration 12

F. Ltd. imported a machine from UK in May, 20XX. The details in this regard are as under:

FOB value of the machine	10,000 UK Pound
Freight (Air)	3,000 UK Pound

Licence fee, the buyer was required to pay in UK	400 UK Pound
Buying commission paid in India	Rs. 20,000
Date of bill of entry	20.05.20XX The rate of exchange notified by CBIC on this date was Rs. 99.00 per one pound. Rate of BCD was 7.5%.
Date of arrival of aircraft	25.05.20XX The rate of exchange notified by CBIC on this date was Rs. 98.50 per pound Rate of BCD was 10%.
Integrated tax was 12% and ignore GST Compensation Cess.	
Insurance premium details were not available.	

You are required to compute the total customs duty and integrated tax payable on the importation of machine.
You may make suitable assumptions wherever required.

Illustration 13

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

S.No.	***Particulars***	***Amount (UK pounds)***
a.	Price of the machine	10,000
b.	Freight (air)	3,000
c.	Engineering and design charges paid to a firm in U.K.	500
d.	License fee relating to imported goods payable by the buyer as a condition of sale	20% of price of machine
e.	Materials and components supplied in UK by the buyer free of cost valued at Rs. 20,000	
f.	Insurance paid to the insurer in India	Rs. 6,000
g.	Buying commission paid by the buyer to his agent in U.K.	100

Other particulars:

i. Inter-bank exchange rate: Rs. 98 per U.K. Pound.
ii. CBEC had notified for purpose of section 14 of the Customs Act, 1962, exchange rate of Rs. 100 per U.K. Pound.

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iii. Importer paid Rs. 5,000 towards demurrage charges for delay in clearing the machine from the Airport.

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

Illustration 14

Jagat Corporation Limited imported some goods from US. The details of the transactions are as follows

Authority	Rate of Exchange
CBIC	1 US $ = Rs. 70
RBI	1 US $ = Rs. 71

- CIF value of the goods is $ 1,50,000
- Rate of basic custom duty is 10%
- Rate of Social welfare surcharge 10%
- Integrated tax leviable under section 3(7) of Customs Tariff Act, is 18%. Ignore GST Compensation Cess.

Calculate total customs duty and integrated tax payable thereon.

Illustration 15

ABC Industries Ltd. imports an equipment by air. CIF price of the equipment is 6,000 US$, freight paid is 1,200 US$ and insurance cost is 1,800 US$. The banker realizes the payment from importer at the exchange rate of Rs. 61 per US$. Central Board of Excise and Customs notifies the exchange rate as Rs. 70 per US$ while rate of exchange notified by RBI is Rs. 72 per US$.

ABC Industries Ltd. expends Rs. 56,000 in India for certain development activities with respect to the imported equipment.

Basic customs duty is 10%, Integrated tax u/s 3(7) of the Customs Tariff Act is leviable @ 12% and social welfare surcharge 10% on duty. Ignore GST Compensation Cess.

You are required to compute the amount of total duty and integrated tax payable by ABC Industries Ltd. under Customs law.

Illustration 16

Compute the total customs duty and integrated tax payable under Customs law on an imported machine, based on the following information

S.No.	*Particulars*	*Amount (US $)*
a.	Cost of the machine at the factory of the exporter	20,000
b.	Transport charges from the factory of exporter to the port for shipment	800
c.	Handling charges paid for loading the machine in the ship	50
d.	Freight charges from exporting country to India	5,000
e.	Buying commission paid by the importer	100
		Amount (Rs.)
f.	Lighterage charges paid by the importer at port of	12,000

	Importation	
g.	Freight incurred from port of entry to Inland Container depot	60,000
h.	Ship demurrage charges paid at port of importation	24,000

Illustration 17

Abhimanyu Enterprises, India imported a machine costing US $ 17,000 from George Corp., US through a vessel. Determine the assessable value of the said machine under the Customs Act, 1962 with the help of the additional information given below:

S.No.	***Particulars***	***Amount (US $)***
a.	Transport charges from the factory of George Corp to the port for shipment	850
b.	Freight charges from US to India	1,700
c.	Handling charges paid for loading the machine in the ship	85
d.	Buying commission paid by Abhimanyu Enterprises	85
e.	Exchange rate to be considered 1$ = Rs. 60	
f.	Actual insurance charges paid are not ascertainable	

Illustration 18

Determine assessable value under customs law of an imported machine based on the following information

S.No.	***Particulars***	***Amount (Rs.)***
a.	Cost of machine • Contract Price • Revised Price • Negotiated and agreed Price	 1,00,000 2,00,000 1,50,000
b.	Freight from the factory of the exporter to the port for shipment	20,000
c.	Freight incurred from port of entry to inland container depot	60,000
d.	Handling charges paid for loading the machine in the ship	5,000
e.	Demurrage charge paid at port	30,000
f.	Buying commission paid by importer	5,000
g.	Commission paid to local agent appointed by exporter	1,000
h.	Vendor inspection charges (not required under contract)	8,000

Illustration 19

Niketan Industries Ltd., New Delhi has imported certain machine (by sea) from Japan.
From the following particulars furnished by it, work out the assessable value of the machine and customs duty payable by Niketan Industries Ltd with appropriate working notes:

S.No.	Particulars	Amount (Rs.)
a.	CIF value of the machine	4,23,379.69
b.	Freight incurred from port of entry to Inland Container depot	25,000
c.	Unloading and handling charges paid at the place of importation	40,000
d.	Designing charges paid to Consultancy firm in Mumbai	10,000

Basic Customs Duty leviable	10% advalorem
Integrated tax leviable under section 3(7) of the Customs Tariff Act, 1975	18%
35820 Note Ignore GST Compensation Cess	

Illustration 20

ABC Industries Ltd. of Mumbai Imported one machine through vessel from Japan, in the month of September 2018
The following particulars are made available:

S.No.	Particulars	Amount (Japanese ¥)
a.	Cost upto port of exportation incurred by exporter	6,00,000
b.	Loading charges at port of exportation	25,000
c.	Freight Charges from port of export to port of import in India	1,00,000

Following additional amount paid by ABC Industries Ltd. :

S.No.	Particulars	Amount (Rs.)
a.	Designing charges paid to Consultancy firm in New Delhi, which was necessary for such machine	8,00,000
b.	Commission paid (not buying commission) to local agent of exporter	1,25,000
c.	Actual Landing charges paid at the place of importation	15,000
d.	Actual insurance charges paid to the place of importation are not ascertainable	-
e.	Lighterage charges paid at port of importation	20,000

Illustration 21

Mr.X imported certain goods from a related person Mr.Q of US and transaction value has been rejected. Rules 4 and 5 of the import valuation rules are found inapplicable, as no similar / identical goods are imported in India. Mr.X furnishes cost related data of imports and requests Customs Authorities to determine value accordingly as per Rule 8. The relevant data are

1. Cost of material incurred by Mr.Q $2,000
2. Fabrication charges incurred by Mr.Q $1,000
3. Other chargeable expenses incurred by Mr.Q $400
4. Other indirect costs incurred by Mr.Q $250
5. Freight from Mr.Q's factory to US port $250
6. Loading charges at US port $100
7. Normal net profit margin of Mr.Q is 20% of FOB
8. Air freight from US port to Indian port $1,500
9. Insurance from US port to Indian port $50
10. Exchange rate 70 per $

The Customs Authorities are of the opinion that since value as per Rule 7 can be determined at Rs.4,00,000, there is no need to apply Rule 8.

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Can the request of Mr.X be legally acceptable? If so compute the Assessable value under the Customs Act, 1962.

Illustration 22

An importer entered into a contract for supply of crude sunflower seed oil @

U.S. $ 435 C.I.F./Metric ton.

Under the contract, the consignment was to be shipped in the month of July. The period was extended by mutual agreement and goods were shipped on 5th August at old prices.

In the meanwhile, the international prices had gone up due to volatility in market and other imports during the month of August were at higher prices. Department sought to increase the assessable value on the basis of the higher prices of contemporaneous imports.

Decide whether the contention of the Department is correct, with reference toa decided case law, if any.

Illustration 23

Kaveri Enterprises imported some goods from Italy. On the basis of certaininformation obtained through computer printouts from the Customs House, Department alleged that during the period in question, large number of consignments of such goods were imported at a much higher price than the price declared by Kaveri Enterprises. Therefore, Department valued such goodson the basis of transaction value of identical goods as per rule 4 of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 and demanded the differential duty along with penalty and interest from the Kaveri Enterprises. However, Department did not provide these printouts to Kaveri Enterprises.

Kaveri Enterprises contended that Department's demand was without any basisin law, without any legally admissible evidence and opposed to the principles of natural justice as the computer printouts which formed the basis of such demand had not been supplied to them. Resultantly, they had no means of knowing as to whether any imports of comparable nature were made at the relevant point of time.
You are required to examine the contention of Kaveri Enterprises, with the help of a decided case law, if any.

Illustration 24

M/s Impex imported some consignment of goods on 1st June. A bill of entry for warehousing of goods was presented on 5th June and the materials were duly warehoused. The goods were subject to duty @ 50% ad valorem. In the meanwhile, on 1st July, an exemption notification was issued reducing the effecting customs duty @ 30%, ad valorem. M/s Impex filed their bill of entryfor home consumption on 1st August claiming duty @ 30% ad valorem. However, Customs Department charged duty @ 50% ad valorem being the rate on the date of clearance into the warehouse.

Explain with reference to the provisions of the Customs Act, 1962:

1. the rate of duty applicable for clearance for home consumption in this case.
2. whether the rate of exchange on 1st August could be adopted for purposeof conversion of foreign currency into local currency?

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5. IMPORTATION, EXPORTATION AND TRANSPORTATION OF GOODS

Contents

- Understand the import and export procedures.
- Duties and obligations of the Person-in-charge of a conveyance.
- Assessment of duty.
- Faceless Assessment
- Transit vs. Transhipment

1. SOME IMPORTATNT DEFINITIONS

1.1 - Goods [Section 2(22)]

"Goods" ***includes***

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

1.2 - Vehicle [Section 2(42)]

- ***Conveyance*** of any kind ***used on land*** and ***includes a railway vehicle.***

1.3 - Stores [Section 2(38)]

- ***Goods for use in a vessel or aircraft*** and
- ***Includes fuel and spare parts and other articles of equipment***, whether or not for immediate fitting.

1.4 - Baggage [Section 2(3)]

- Baggage ***includes unaccompanied baggage*** but ***does not include motor vehicles.***

1.5 - Exporter [Section 2(20)]

"Exporter", in relation to any goods at any time between their entry for export and the time when they are exported, ***includes***

- any ***owner***,
- ***beneficial owner*** or
- any ***person holding himself out to be the exporter.***

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1.6 - Importer [Section 2(26)]

"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***,
- ***beneficial owner*** or
- any ***person holding himself out to be the importer***.

Importer also includes any person ***holding himself to be the importer for purpose of clearance of goods***. This is the ***person who files the import documents***.

Case Law: Union of India v Sampath Raj Dugar, 1991 (Bom. HC)
Judgement: *Between the owner and any person holding himself out to be the owner, the owner takes precedence.*

Case Law: Agrim Sampada Ltd v Union of India, 2004 (Del.HC)
Judgement: *The* ***goods being abandoned by original importer****, ownership thereof continues to vest in foreign supplier. The said goods* ***if transferred by endorsement of Bill of Lading to another person,*** *that another person holding document of title (Bill of Lading)* ***to be regarded as 'importer'*** *under Section 2(26) of the Customs Act, 1962.*

1.7 - Beneficial owner - Section 2(3A)

Any person –

i. ***on whose behalf the goods are being imported or exported***, ***OR***
ii. ***who exercises effective control*** over the goods being imported or exported

1.8 - Person-in-charge - Section 2(31)

Vessel	Master of the vessel
Aircraft	Commander/ Pilot-in-charge of the aircraft
Railway train	Conductor/ guard/ other person having chief direction of the train
Other conveyance	Driver/ other person-in charge of the conveyance

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2. PROCEDURES FOR LOADING AND UNLOADING OF IMPORTED GOODS

2.1 - Arrival of Vessels and Aircrafts in India - Section 29

2.1.1 - Calling or landing at Customs port or Customs airport only

- The ***person-in-charge of a vessel or an aircraft entering India*** from any place outside India ***shall not cause or permit the vessel or aircraft to call or land*** –
    - ***for the first time after arrival*** in India, ***or***
    - ***at any time while it is carrying passengers or cargo*** brought in that vessel or aircraft,

  at any place other than a customs port or a customs airport, as the case may be,
- ***unless permitted by the Central Board of Indirect taxes and Customs*** (i.e., CBIC or the Board).

2.1.2 - Consequences of contravention

Any contravention of this provision will ***operate as a presumption*** against the person-in-charge of conveyance or beneficial owner to have an ***intention to illegally import goods into India.***

2.1.3 - Calling or landing at another place

- The vessel or aircraft, which is ***compelled by accident, stress of weather, or other unavoidable cause*** may call or land at a place other than the customs port or customs airport.
- In this case, the person-in-charge shall have the following obligations –
    i. ***Report the arrival/ landing*** to the nearest customs officer/ officer in charge of police station and produce the log book if demanded.
    ii. Should ***not allow any loading/ unloading*** of any goods without permission, and should not allow the passenger or crew to leave the immediate vicinity of the vessel/ aircraft.
    iii. However, the goods can be removed, or the passengers and crews can be allowed to depart if the same is necessary for reason of health, safety or preservation of life or property.
    iv. ***Comply with all the directions*** given by such officers w.r.t. any such goods.

2.2 - Delivery of Arrival Manifest or Import Manifest or Import Report - Section 30

The ***person-in-charge*** of a vessel, or an aircraft, or a vehicle, carrying imported goods ***or any other person*** as may be specified by the CG, by notification in the Official Gazette, in this behalf shall, ***deliver the arrival manifest or import manifest or import report*** to the P.O. ***within the time limit prescribed,*** in the ***form prescribed***.

2.2.1 - Arrival manifest or Import manifest or Import report [Section 2(24)]

Arrival manifest or Import manifest or Import report means ***the report required to be delivered under section 30.***

- It is a ***detailed information*** to the customs ***about goods in the vessels/ aircrafts*** which have been brought in at any port/ airport for unloading at that particular port/international airport as also that which would be carried further for other ports/airports.

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- The prescribed form for making such declaration is the ***Import General Manifest (or IGM).***
- ***Import report (IR)*** is required only when ***goods are imported via land route.***

2.2.2 - Time limit for delivery of IGM/IR

Imported goods brought in	Import Document	Time limit for presentation	Mode of presentation
A vessel	Arrival manifest or import manifest	Any time prior to the arrival of the vessel	Electronic filing. Where it is not feasible to deliver the document electronically, the Principal Commissioner/ Commissioner may allow the same to be delivered in any other manner.
An aircraft	Arrival manifest or import manifest	Any time prior to the arrival of the aircraft	
A vehicle	Import Report	Within 12 hours after its arrival in the customs station	Manual filing

2.2.3 - Delay in filing the IGM/IR

If the arrival manifest or import manifest or the import report or any part thereof, is not delivered to the P.O. within the specified time and if the P.O. is satisfied that there was no sufficient cause for such delay, the ***person-in-charge would be liable to a penalty up to ₹ 50,000/-.***

2.2.4 - Belated filing of IGM/IR

Arrival manifest or import manifest or import report filed belatedly may also be ***accepted by the P.O. on valid justified grounds.***

2.2.5 - Amendment to IGM/IR

- If the P.O. is satisfied that the IGM/IR is in any way ***incorrect/ incomplete*** and there is ***no fraudulent intention***, he may ***permit it to be amended or supplemented.***
- ***Subsequent amendment of IGM/IR shall not be treated as late filing.***

2.3 - Passenger and Crew Arrival Manifest and Passenger Name Record Information - Section 30A

2.3.1 - Time limit for filing

The ***person-in-charge of a conveyance*** that enters India from any place outside India ***or any other person as may be specified***, shall deliver to the P.O. -

- The ***passenger and crew arrival manifest,***
  - In the case of an ***aircraft or a vessel – Before arrival***
  - In case of a ***vehicle – Upon arrival.***
- The ***passenger name record information*** of arriving passengers.

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Passenger name record information [Section 2(30B)] –
*The **records prepared by an operator** of any aircraft or vessel or vehicle or his authorized agent **for each journey booked by or on behalf of any passenger.***

2.3.2 - Delay in filing the Passenger and Crew Arrival Manifest and Passenger Name Record Information

The person-in-charge or the other specified person shall be liable to such ***penalty, not exceeding ₹ 50,000/-,*** as may be prescribed, if the P.O. is satisfied that there was no sufficient cause for such delay.

2.4 - Imported Goods not to be unloaded from vessel until Entry Inwards Granted - Section 31

- The master of a vessel ***shall not permit the unloading of any goods until*** an order has been given by the ***P.O. granting 'Entry Inwards'*** to such vessels.
- ***Entry Inwards shall not be given until the arrival manifest or import manifest has been delivered*** or the P.O. is satisfied that a valid reason is given for not delivering it within prescribed time.
- Application for entry inward has to be submitted along with the IGM.
- This is ***applicable only for vessels*** and not for aircrafts or vehicles.
- ***Exceptions*** – This section shall not be applicable to the ***unloading of*** –
    - ***Baggage*** accompanying a passenger/ crew member,
    - ***Mail bags,***
    - ***Animals,***
    - ***Perishable goods and***
    - ***Hazardous items.***

Case Law: Bharat Surfactants Pvt Ltd v Union of India, 1989 (SC), SRS Engineering Industries v Secretary, Ministry of Finance 2009 (Del. HC).

Judgement: *Grant of Entry Inwards is an acknowledgement of the fact that Customs Department is ready to supervise the unloading of the cargo, and is prepared to assess the goods to duty. It is not given if –*

a) there is no berth for the ship to dock [Bharat Surfactants Pvt Ltd (SC)],

OR

b) customs supervision is not possible for other reasons [SRS Engineering Industries (Del)].

2.5 - Imported Goods not to be unloaded unless mentioned in Arrival Manifest or Import Manifest or Import Report - Section 32

- Without the permission of the P.O., the imported goods cannot be unloaded, unless they are ***mentioned in the IGM for being unloaded in that customs station.***

2.6 - Loading and Unloading of Goods at approved places only - Section 33

- Loading and unloading of goods are to be undertaken only at ***places approved under section 8(a) of the Customs Act, 1962.***
- Section 8(a) provides proper places in any customs port, customs airport, or coastal port for loading and unloading of goods.

2.7 - Goods not to be loaded or unloaded except under the Supervision of Customs Officer - Section 34

- Loading and unloading should be done under the ***supervision of the P.O.***
- ***Exceptions*** –
    - In some cases, the ***Board may give general permission for any goods to be loaded or unloaded without such supervision.***
    - Also, the ***P.O. may, in any particular case, give special permission*** for any goods to be loaded or unloaded without such supervision.

2.8 - Restrictions on Goods being water-borne - Section 35

- In certain circumstances ***where the vessel cannot be berthed (i.e., accommodated) at the port, the cargo is ferried from or to the ships anchored at mid-sea to the port in boats.***
- In such case, the boat should be ***accompanied by a 'Boat note'.***
- ***No imported goods shall be water borne for being loaded*** in any vessel, and ***no export goods which are not accompanied by a shipping bill, shall be water borne for being shipped*** unless the goods are accompanied by a boat note in the prescribed form.
- **Exceptions** –
    - In some cases the ***Board may give general permission*** for any goods/ class thereof to be water borne without being accompanied by a boat-note.
    - Also, the ***P.O. may, in any particular case, give special permission*** for any goods/class thereof to be water borne without being accompanied by a boat-note.

2.9 - Further controls on the conveyance and loading and unloading of goods

Section 36	Section 37	Section 38
•Goods cannot be loaded or unloaded on Sundays or other holidays observed by the Customs Dept., or after the working hours. •Exception - If prescribed notic and fee are paid.	•The P.O. may, at any time, board any conveyance carrying imported goods or export goods and may remain there for such period as he considers necessary.	•The P.O. may require the person in charge of any conveyance to produce such documents/ answer any questions and such person shall be bound to reply.

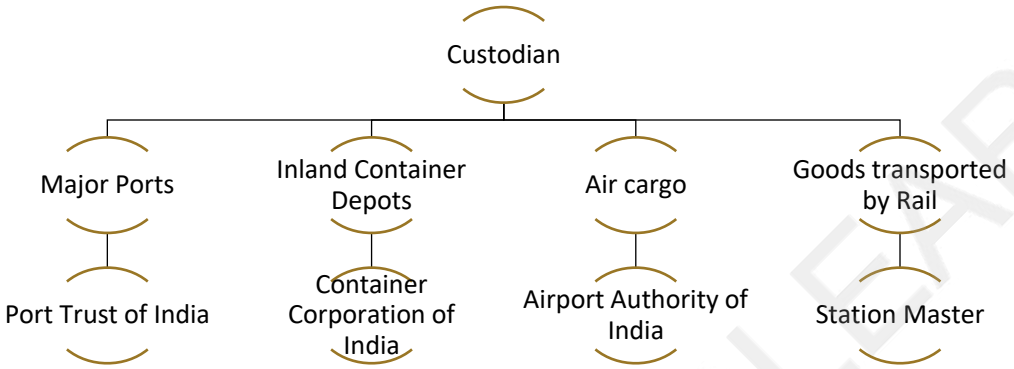
3. PROCEDURE FOR CLEARANCE OF IMPORTED GOODS

The procedures for clearance of imported goods are contained in ***Section 45 to Section 49*** of the Customs Act. These procedures are ***not applicable to*** –

- ***baggage*** and
- ***goods imported or to be exported by post.***

3.1 - Restrictions on Custody and Removal of Imported Goods - Section 45

- Until the imported goods are cleared for home consumption or are warehoused or are exported for transhipment, they shall ***remain in the custody of such person as may be approved by the Principal Commissioner/Commissioner of Customs*** (Principal CCus./ CCus.). This person is called the ***custodian***.



3.1.1 - Responsibility of Custodian of goods - Section 45(2)

The responsibility of the custodian commences in respect of imported goods the moment the ship is berthed in the harbour or the goods are ready for unloading from the aircraft. During this time, they have the following responsibilities –

a. ***Maintain a proper record*** of goods received from the carriers and send a copy of the record to the P.O.
b. ***Not to permit goods to be removed from the customs area*** or allow them to be dealt with otherwise except under the specific permission of the Customs Authorities.

In pursuance to this responsibility, the custodian is required to tally the particulars of the goods landed by a vessel, and send a report known as out turn statement to the customs authorities

3.1.2 - Liability of the Custodians - Section 45(3)

If any goods are pilfered after unloading in any customs area, (while in the custody of custodian) such ***custodian shall be liable to pay duty*** on such goods.

The duty shall be paid at the ***rate prevailing on the day of delivery of the IGM/ IR*** to the P.O. u/s 30.

3.2 - Filing of Import Bill of Entry - Section 46

"Bill of entry" means a bill of entry referred to in section 46, to be filed when goods are imported by sea or air [Section 2(4)].

It is a document of assessment and when assessed becomes an assessment order.

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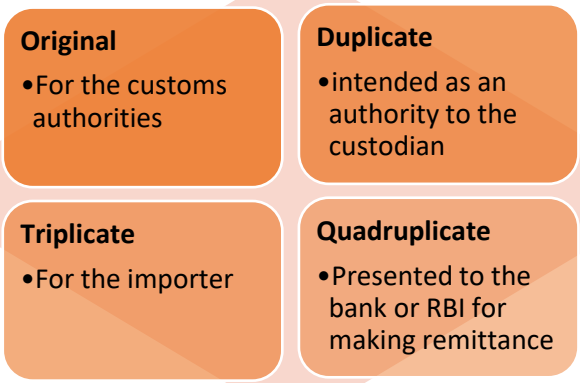
3.2.1 - E-filing of bill of entry

It is the duty of the ***importer*** of any goods to ***make an application electronically*** on the ***customs automated system*** to the P.O. for clearance of the goods.

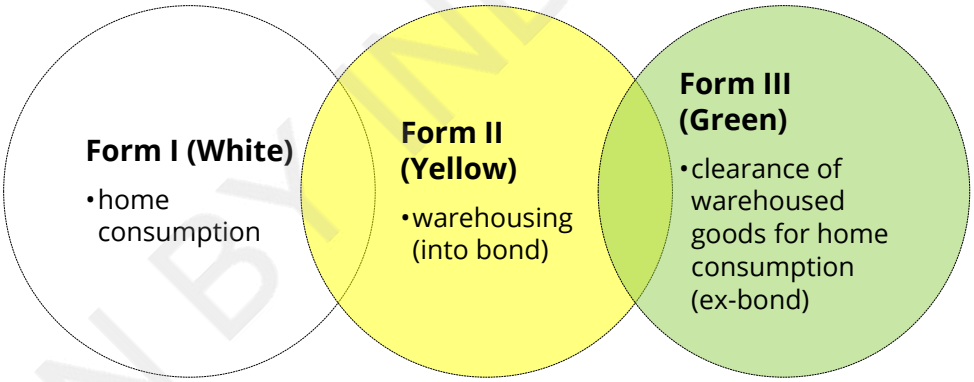
When Bill of Entry is filed electronically, it is in ***four copies*** –



3.2.2 - Manual submission of Bill of Entry

Where it is not feasible to make entry by presenting electronically on the customs automated system, the Principal CCus./ CCus. may allow entry to be presented manually in prescribed form and manner.

3.2.3 - Types of Bills of Entries



3.2.4 - Declaration in the Bill of entry

Amongst other things –

- Particulars of packages,
- Description of goods,
- Correct value of the goods.

The importer who presents a bill of entry shall ensure the following –

a. the ***accuracy and completeness*** of the information given therein,
b. the ***authenticity and validity of any document*** supporting it, and

c. ***compliance with the restriction or prohibition, if any, relating to the goods*** under this Act or under any other law for the time being in force.

3.2.5 - Importer unable to furnish details

If for any reason the importer is unable to furnish these details, he may –

a. ***Request the customs officials to examine the goods in his presence*** to enable him to ascertain the necessary details for making a proper declaration in the bill of entry, ***OR***
b. ***Seek permission to deposit the goods in a public bonded warehouse*** appointed u/s 57 pending receipt of the necessary information and the supporting documents u/s 49. This is called ***warehousing without warehousing.***

   Note: *Such goods shall not be deemed to be warehoused goods for the purpose of the Act and accordingly warehousing provisions shall not apply to such goods.*

3.2.6 - Time limit for filing - Section 46(3)

- ***Before the end of the day (including holidays) preceding the day*** on which the **aircraft/vessel/vehicle carrying the goods arrives at a customs station** at which such goods are to be cleared for home consumption or warehousing.
- *The **Board may**, in such cases as it may deem fit, **prescribe different time limits** for presentation of the bill of entry, which shall **not be later than the end of the day of such arrival.***
- **Advance filing** – A bill of entry may be presented at **any time not exceeding 30 days prior to the expected arrival** of the aircraft/vessel/vehicle by which the goods have been shipped for importation into India.
- Where the bill of entry is **not presented within the time so specified** and the P.O. is satisfied that there was **no sufficient cause for such delay**, the importer shall **pay prescribed charges** for late presentation of the bill of entry.

3.3 - Assessment of Goods - Section 17

3.3.1 - Self-assessment

- An ***importer/ exporter*** shall self-assess the duty, if any, leviable on such imported/ export goods.
- ***Exception*** – Section 85 provides stores which are allowed to be warehoused without the assessment of duty.

3.3.1 - Verification by P.O.

- The ***P.O. may verify the self-assessment*** made by assessee and for this purpose, examine or test any imported goods or export goods or such part thereof as may be necessary.
- For this purpose the ***P.O. may require the importer, exporter or any other person to produce any document or information***, whereby the duty leviable on the imported goods or export goods, as the case may be, can be ascertained

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- ***Green channel clearance facility*** – Some major importers have been given the green channel clearance facility. It means ***clearance of goods is done without routine examination of the goods.***
    i. They have to ***make a declaration*** in the declaration form at the time of filing of bill of entry.
    ii. However, in rare cases, ***if there are specific doubts regarding description or quantity of the goods, physical examination may be ordered*** by the senior officers/investigation wing like Special Intelligence and Investigation Branch (SIIB).

3.3.2 - Re-assessment of duty by P.O.

- If it is found that ***self-assessment is not done properly,*** the P.O. may re-assess the duty leviable on such goods.

3.3.3 - Speaking order for re-assessment

Where –

- the ***re-assessment is contrary to the self-assessment*** done by the importer/ exporter, ***AND***
- the ***importer/ exporter does not confirm his acceptance of the said re-assessment in writing***,

the ***P.O. shall pass a speaking order on the re-assessment, within 15 days*** from the date of re-assessment.

3.4 - Provisional Assessment of Duty - Section 18

3.4.1 - Circumstances where provisional assessment can be made

- Importer/exporter is unable to make self-assessment and makes a written request to P.O.
- P.O. deems it necessary to subject any imported/ export goods to any chemical or other test.
- P.O. deems it necessary to make further enquiry even after the importer/exporter produces all necessary information or documents.
- Necessary documents or information has not been produced and P.O. deems it necessary to make further enquiry.

In any of the above cases, the P.O. may direct provisional assessment of duty if the ***importer/ exporter, furnishes such security as the P.O. deems fit for the payment of the deficiency***, if any, between the duty as may be finally assessed or re-assessed and the duty provisionally assessed.

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Wherever, duty is to be assessed provisionally, the importer shall –

- ***execute a bond*** *for the purposes of undertaking to pay on demand the deficiency in duty,* ***and***
- ***furnish prescribed amount of security*** *for the payment of the duty deficiency. No sureties shall be obtained. The security to be obtained shall be* ***in the form of a bank guarantee or a cash deposit****.*

3.4.2 - Submission of additional information for final assessment

Where any document/ information is required by the P.O. for final assessment, the importer/ exporter shall submit it ***within prescribed time,*** and the P.O. shall finalise the provisional assessment within prescribed time and in prescribed manner.

3.4.3 - Effect of final assessment

Goods cleared for home consumption/ exportation	Warehoused goods
•The amount paid shall be adjusted against the duty finally assessed/ re-assessed. •If the amount falls short of the duty provisionally assessed, deficiency shall be paid. •If the amount is in excess of the duty provisionally assessed, the importer/exporter shall be entitled to refund.	•If duty finally assessed/ re-assessed is in excess of the duty provisonally assessed, the P.O. shall require the importer to execute a bond, binding himself in a sum equal to twice the amount of excess duty.

3.4.4 - Interest on demand amount

- The ***importer/ exporter shall be liable to pay interest***, on any amount payable to the CG, ***consequent to the final assessment*** order or re-assessment order.
- The interest shall be paid at the ***rate fixed by the CG u/s 28AA from the first day of the month in which the duty is provisionally assessed till the date of payment thereof.***

3.4.5 - Interest on refund

If refundable amount is ***not refunded within 3 months*** from the date of assessment of duty, interest shall be paid on such unrefunded amount at such ***rate as fixed by CG u/s 27A.***

The refund of duty and interest thereon is subject to the principle of unjust enrichment and shall be paid only if such amount is relatable to –

a) the duty and interest, if any, paid on such duty paid by the importer/ exporter if he had ***not passed on the incidence of such duty and interest,*** if any, paid on such duty ***to any other person,***

b) the duty and interest, if any, paid on such ***duty on imports made by an individual for his personal use,***

c) the duty and interest, if any, paid on such ***duty borne by the buyer, if he had not passed on the incidence*** of such duty and interest, if any, paid on such duty to any other person,

d) the ***export duty*** as specified ***u/s 26,***

e) ***drawback of duty*** payable u/s 74 and 75.

In all other cases, the amount of such refund and interest shall be credited to the Consumer Welfare Fund.

3.4.6 - Customs (Finalisation of Provisional Assessment) Regulations

A) Time-limit and manner for submission of documents or information by importer/ exporter for the purpose of finalisation of provisional assessment

i) Where the provisional assessment is made on the ground that, either

- The necessary documents/ information have not been produced, or
- The P.O. requires additional information or documents,

Such documents and information shall be submitted within 1 month of the order of provisional assessment or the date of requisition by the P.O.

ii) The P.O. would ***inform the importer/ exporter, in writing, the specific details of the information/ documents to be submitted within 15 days*** from the date of such order of provisional assessment. This period ***may be extended by the P.O. for 3 months***, after recording the reasons in writing.

iii) The ***AC/JC may further extend the time period to another 3 months*** if the documents/ information is not submitted within prescribed time limit.

iv) If the aforesaid time limits don't suffice, the Commissioner of Customs, may extend the time period further as deemed fit.

v) All the requisite information/ documents need to be submitted in one instance by importer/ exporter.

vi) The importer/exporter themselves or his authorised representative or Customs Broker shall ***inform the P.O. in writing that he has submitted all the documents or information to be furnished or requisitioned.***

B) Time-limit for finalisation of provisional assessment

The P.O. will finalise the provisional assessment ***within 2 months of receipt of:***

a) an ***intimation from the importer/ exporter*** or his authorised representative or Customs Broker or

b) a ***chemical or other test report***, where the provisional assessment was ordered for that reason, or

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c) an ***enquiry or investigation or verification report***, where the provisional assessment was ordered for that reason.

Where the ***documents or information*** required to be furnished by the importer/ exporter, or requisitioned by the P.O. are ***not made available or made partly available*** and n***o further extension of time has been allowed,*** the P.O. shall proceed to ***finalise the provisional assessment within 2 months of the expiry of the time allowed for submission*** of the said documents or information.

In case the ***P.O. is unable to complete the finalisation within 2 months,*** the Commissioner of Customs may allow ***further 3 months*** period after recording the reasons in writing.

C) Manner of finalisation of provisional assessment

i) The provisional assessment will be finalised as per the ***provisions of section 18*** of the Act.

ii) ***Any short fall in duty*** shall be adjusted from the security obtained at the time of provisional assessment and any balance remaining to be paid afterwards shall be paid by the importer/exporter.

iii) ***Bond*** executed at the time of provisional assessment ***shall be cancelled after finalization.***

iv) Where final assessment is contrary to the provisional assessment, the P.O. shall pass a ***speaking order.***

v) Where the ***final assessment confirms the provisional assessment,*** the P.O. will finalise the same after ascertaining the acceptance of such finalisation from the importer/ exporter on record and inform them in writing of the date of such finalisation.

vi) Where a Bill of Entry or Shipping Bill is presented electronically and is ordered to be provisionally assessed, the P.O. will finalise the provisional assessment on the system also consequent to the procedure prescribed in these regulations.

D) ***Penalty***

If any importer/ exporter or his authorised representative or Customs Broker ***contravenes any provision of these regulations*** or abets such contravention, or fails to comply with any provision of these regulations, he shall be liable to a ***penalty which may extend to ₹ 50,000.***

*The Customs Audit Regulations, 2018 defines **'auditee'** to mean –*

- *"a person who is subject to an audit u/s 99A of the Act, and*
- *includes an importer/ exporter or custodian approved u/s 45 or licensee of a warehouse and any other person concerned directly or indirectly in clearing, forwarding, stocking, carrying, selling or purchasing of imported goods or export goods or dutiable goods".*

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Auditee to preserve the records for conduct of this audit for years

Risk Based Assessment will identify the persons to be audited

Audit will be conduted in the premises of the auditee by the authorised officers who will intimate 15 days in advance of their scheduled visit.

Based on the findings, the auditee may accept the liabilities and voluntarily discharge the duty, interest and penalty.

Assistance of experts like CA/ CWA/ IT professionals can be availed for conducting the audit.

Contarvention attracts penalty of Rs. 50,000/-

3.5.1 - Types of Audit

Transaction Based Audit (TBA)

- Under TBA, transactions are audited.
- TBA may subsequently be converted into PBA.

Premises Based Audit (PBA)

- In PBA, customs would review the import and export over a given period and check all relevant commercial records to verify the particulars given in a goods declaration.
- Further, Board may select any criteria or theme for the audit.

3.5.2 - Conduct of Customs Audit

- ***Directorate General of Analysis and Risk Management*** has been entrusted the ***responsibility of identifying the potential focus areas and entities*** for various types of audit.
- The ***executive Customs Commissionerates shall also assist*** Audit Commissionerates in the conduct of the audit.
- Apart from overall supervision, ***Chief Commissioner shall examine on a selective basis, 5% of the audit reports***, selected randomly based on the quarterly reports submitted by Audit Commissionerates ***to ensure that audit has been conducted as per prescribed procedures.***

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3.6 - Clearance of Goods - Section 47

Once the customs check and payment of duty is completed, the customs officers allow clearance of the goods.

3.6.1 - Order permitting clearance of goods

- ***The P.O. shall make an order*** permitting clearance of goods for home consumption when –
  - He is ***satisfied that such goods are not prohibited, and***
  - The appropriate ***import duty and charges payable thereon has been paid.***
- The order may also be ***made electronically through customs automated system.***
- On making clearance order, which is popularly known as "***pass out of customs charge order***" the ***bill of entry (duplicate) copy is produced to the custodian*** who delivers the goods to the importer.

3.6.2 - Deferred payment of import duty

The CG may permit ***the following class of importers to make deferred payment of duty/ charges*** in such manner as provided by the rules –

Importers certified under Authorized Economic Operator programme as AEO (Tier-Two) and AEO (Tier-Three)	Authorised Public Undertaking
• AEO means the Authorised Economic Operator approved by the Directorate of International Customs under CBIC	• means the Authorised Public Undertaking approved by the Directorate of International Customs under CBIC

An ***eligible importer*** who intends to avail the benefit of deferred payment shall ***intimate to the Principal CCus./CCus., having jurisdiction over the port of clearance, his intention to avail the said benefit.***

The Principal CCus./CCus. shall on being satisfied with the eligibility of the importer, allow him to pay the duty on deferred basis.

3.6.3 - Time limit for payment of import duty

In case of self -assessment	• On the date of presentation of Bill of entry
In case of assessment, re-assessment or provisional assessment	• Within one day from the date on which the bill of entry is retrned to him by the P.O. for payment of duty
In case of deferred payment	• From such date as may be specified by the rules

Due dates for deferred payment of import duty –

Goods corresponding to Bill of Entry returned for payment from	Due date of payment of duty, inclusive of the period (excluding holidays)
• 1st day to 15th day of any month	16th day of that month
• 16th day till the end of last day of any month other than March	1st day of the following month
• 16th day till 31st day of March	31st March

- ***The eligible importer shall pay the duty electronically.*** However, the AC/DC of Customs may for reasons to be recorded in writing, allow payment of duty by any other mode.
- If there is ***default in payment of duty by due date more than once in 3 consecutive months***, this facility of ***deferred payment will not be allowed*** unless the duty with interest has been paid in full.
- Also, the facility of deferred payment will ***not be available in respect of the goods which have not been assessed or not declared*** by the importer in the entry.

3.6.4 - Mandatory Electronic Payment of Duty

- The Board has set up a ***dedicated payment gateway*** called, '***ICEGATE***' through which the payments are to be made.
- The importer need not produce any proof of payment for the clearance of goods in case of e-payment.

4. INTRODUCTION OF FACELESS ASSESSMENT

With an aim to reduce time and cost for the EXIM community and to make them more competitive in the international arena, the CBIC has implemented next generation reforms through ***Turant Customs***, strongly enabled by technology.

- Turant Customs is a ***mega reform*** for the ease of doing business.
- This flagship initiative stands on the ***pillars*** of – ***Faceless, Contactless and Paperless Customs.***
- A key enabler in Turant Customs is ***Faceless Assessment.*** It has been rolled out in phases and covered the entire country. It is a path breaking initiative ***aimed at introducing anonymity and uniformity in Customs assessments*** pan India.
- Anonymity in assessment and load balancing of import documents that are required to be assessed would bring about ***more efficiency and help improve the speed of Customs***

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clearances across India. This was the trigger for the conceptualization and development of Faceless Assessment.

4.1 - What is Faceless Assessment?

- Faceless Assessment is a major Customs Reforms where a ***Bill of Entry that is identified for scrutiny (non-facilitated Bill of Entry) is assigned to an assessing officer who is physically located at a Customs station, which is not the Port of Import*** in the Customs Automated System.
- It separates ***uses a technology platform*** to separate the Customs assessment process from the physical location of a Customs officer at the port of arrival. This measure will bolster efforts to ***ensure an objective, free, fair and just assessment.***
- Faceless Assessment is also called ***virtual assessment*** or ***anonymised assessment***.
- ***From the importer's perspective, there will be no change in the process of filing the Bill of Entry.***

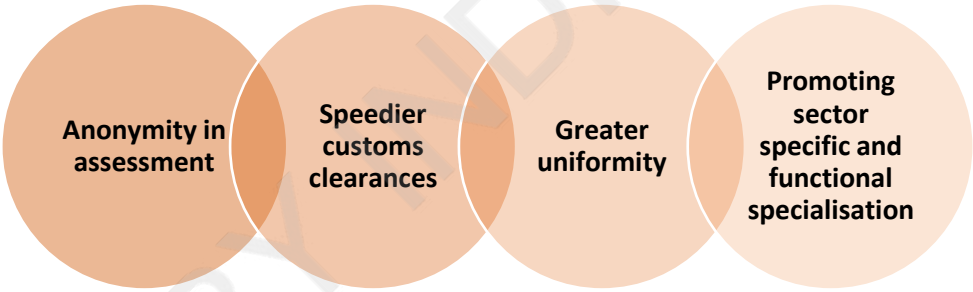
4.2 - Key Objectives of Faceless Assessment

i) ***Anonymity in assessment*** for reduced physical interface between trade and Customs.

ii) ***Speedier Customs clearances*** through efficient utilisation of manpower.

iii) ***Greater uniformity of assessment*** across locations.

iv) ***Promoting sector specific and functional specialisation*** in assessment.



5. PAYMENT THROUGH ELECTRONIC CASH LEDGER AND ELECTRONIC DUTY CREDIT LEDGER

5.1 - Ledger for payment of Duty, Interest, Penalty, etc. - Section 51A

- This section provides for ***advance deposit*** which would enable payment of duties, taxes, fee, interest, and penalty ***through electronic cash ledger (ECL).***
- With the use of an authorized mode of payment, persons who regularly make payment of duty, interest and even penalty (i.e., importer, exporter or Customs Brokers) are ***permitted to 'deposit' a certain amount of money.*** When the occasion to make payment arises, ***they can pay by debit to the balance in the ECL balance.***
- The ***balance in the ECL, after payment*** of duty, interest, penalty, fee or any other amount payable, may be ***refunded*** in the prescribed manner.
- The CBIC may prescribe the persons on whom, and goods in respect of which, provisions of Electronic Cash Ledger shall not apply.

5.2 - Ledger for Duty Credit - Section 51B

Duty credit shall be issued in lieu of –

a) ***Remission of any duty/tax/levy, chargeable on any material used in the manufacture/processing of goods*** or for carrying out any operation on such goods in India that are exported, ***or***

b) ***Such other financial benefit*** subject to specified conditions and restrictions

The duty credit shall be ***maintained in the customs automated system in the form of an electronic duty credit ledger (DCL)*** of the person who is the recipient of such duty credit.

The duty credit available in the DCL ***may be used towards making payment of duties payable*** under the Customs Act or under the Customs Tariff Act, 1975 in the prescribed manner and time.

5.3 - Procedure for disposal of goods not cleared - Section 48

Any ***goods imported*** from a place outside India –

- Which are ***not cleared either for home consumption or for warehouse within 30 days*** (or within such further time as the P.O. may allow), or
- ***Title to which has been relinquished u/s 23,***

the ***custodian of the goods is permitted***, with the approval of the customs department and after giving notice to the importer, ***to sell the goods by auction.***

*In the case of **sensitive goods** like animals, foodstuffs and hazardous goods etc. the custodian with the approval of the P.O. **can sell the goods even before the expiry of the 30 days limit.***
*In the case of **arms or ammunition**, which **cannot be sold in public auction,** the disposal is regulated by the rules made in this regard.*

1) The ***successful bidder shall be informed of the result of the auction***, after which a ***consolidated bill of entry, buyer-wise will be filed with the Customs*** in the prescribed format ***by the concerned custodian*** for clearance of the goods.

2) The P.O. shall ***assess the goods to duty within 15 days of filing the Bill of Entry*** and after assessment inform the amount of duty payable to the concerned custodian.

3) The ***auctioned goods shall be handed over to the successful bidder*** after assessment and out-of-charge orders given by the P.O., ***on payment of dues.***

5.4 - Storage of Imported Goods in warehouse pending Clearance or Removal - Section 49

In case goods cannot be cleared or removed for deposit in a warehouse within a reasonable time, the goods can be ***stored in a public warehouse for a period not exceeding 30 days.***

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This period of 30 days ***may be extended by the Principal CCus./CCus. for further 30 days at a time.***

6. EXPORTATION

6.1 Export Goods not to be loaded on vessel until Entry Outwards granted - Section 39

The master of the vessel shall not begin the loading of any export goods, other than baggage and mail bags, until an order has been given by the proper officer granting entry-outwards to such vessel.

This restriction is for vessels and not for aircraft and vehicles.

6.2 - Export Goods not to be loaded unless duly passed by Proper Officer - Section 40 – applies to all types of conveyances

The person-in-charge of a conveyance shall not permit the loading at a customs station –

a. ***Of export goods, other than baggage and mail bags***, unless a ***shipping bill or bill of export or a bill of transshipment***, as the case may be, duly passed by the P.O., ***has been handed over to him*** by the exporter,
b. ***Of baggage and mail bags*** unless their export has been ***duly permitted by the P.O.***

6.3 - Delivery of Departure Manifest/ Export Manifest/ Export Report - Section 41

- The ***person-in-charge of a conveyance*** carrying export goods/ imported goods, or any other person as CG may specify, shall ***deliver to the P.O.*** –
  - ***In case of vessel/aircraft*** – A departure manifest or export manifest in electronic form
  - ***In case of vehicle*** – An export report, in prescribed form and manner.
- These shall be ***delivered before the departure of the conveyance from the Customs Station.***
- If the person-in-charge ***fails to deliver*** such departure manifest/ export manifest/ export report within the time as specified, and the ***P.O. is satisfied that there is no sufficient cause for such delay***, such person-in-charge or other person shall be ***liable to pay penalty not exceeding ₹ 50,000/-.***
- Where it is ***not feasible to deliver departure manifest or export manifest by presenting them electronically***, the Principal CCus./CCus. may, allow the same to be delivered in any other manner.

6.3.1 - Amendment to EGM

The P.O. may permit the departure manifest/export manifest/ export report to be amended, if –

a) He is satisfied that the ***manifest/report is in any way incorrect, and***

b) There was ***no fraudulent intention.***

6.3.2 - Preparation of Export General Manifest

The EGM is a consolidated report of all Bills of Lading/Air Consignment Notes/Railway Receipts/Lorry Receipts issued.

Shipment by the sea	
Ship's officer gives mate receipt after receiving the consignment on board the ship.	It is surrendered to the steamer agent or the agent who issues the bill of lading

Shipment by air
Cargo is delivered to the airways for loading, the airways issues an air consignment note.

Shipment by train/ lorry
Railway/lorry receipt is issued once the consignemnt is received by the carrier.

6.4 - Passenger and Crew Departure Manifest and Passenger Name Record Information - Section 41A

- The ***person-in-charge of a conveyance that departs from India to a place outside India or any other person*** as may be specified by the CG, shall ***deliver to the P.O.*** within the time prescribed, -
    - ***The passenger and crew departure manifest***, and
    - ***The passenger name record information*** of departing passengers.
- Where it is ***not delivered to the P.O. within the time specified*** and the P.O. is satisfied that there was ***no sufficient cause for such delay***, the person-in-charge or the other specified person shall be liable to such ***penalty, not exceeding ₹ 50,000***, as may be prescribed.

6.5 - No conveyance to leave without Written Order - section 42

The person-in-charge of the conveyance which has brought any imported goods or has loaded any export goods at a customs station shall ***not cause or permit the conveyance to depart from that customs station until a written order to that effect has been given by the P.O.***

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Conditions for passing the order	Person-in-charge has answered the question put to him u/s 38
	Provisions of Section 41 have been complied with.
	The shipping bills/ bill of export/ bill of transshipment have been delivered
	All duties on any stores consumed in such conveyance+ all charges and penalities due has been paid or secured by guarantee.
	No penalty payable by pesron -in-charge u/s 116 orsuch payment has been secured by a guarantee.
	In case such goods have been loaded without payment of export duty or in contravention of any law such goods have been either unloaded or otherwise, person-in-charge has given an undertaking for bring back the goods, secured by guarantee.

7. PROCEDURE FOR THE CLEARANCE OF EXPORT GOODS

7.1 - Entry of Goods for Exportation - Section 50

- The ***exporter shall present electronically*** on the Customs Automated System, to the P.O. –
  a. ***A shipping bill – in case of export by vessel/air,***
  b. ***A bill of export – in case of export by a vehicle.***
- Where it is not feasible to make an entry by presenting electronically, the Principal CCus./CCus. shall allow an entry to be presented in any other manner.
- ***Form for shipping bill*** – Prescribed under the Shipping Bill and Bill of Export (Forms) Regulations, 2017.
- ***When to file the Shipping Bill –***

  Normally the shipping bill shall be filed only after an entry outward has been granted for that particular vessel/aircraft.

  However, under special circumstances the Principal CCus./CCus. may permit advance shipping bill to be filed.

7.2 - Clearance of Goods for Exportation - Section 51

- Once the shipping bill is presented, the officer of customs shall check that the goods are not prohibited for export and whether they are liable to any export duty.
- The customs officer shall ***make an order for shipment on the duplicate copy of the shipping bill when he is satisfied that –***
  - The ***goods are not prohibited*** for export, ***and***
  - The ***exporter has paid the duty*** and other charges payable.

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This order is known as ***'Let Export' order.***

- ***Deferred payment of duty –***

  The CG may, in certain cases permit certain class of exporters to make deferred payment of said duty. ***In such case 'Let Export' order can be ordered before duty is paid.***

  However, where the ***exporter fails to pay the export duty, either in full or in part, by such due date*** as may be specified by rules, he will have to ***pay interest*** on said duty not paid or short-paid till the date of its payment.

  The CG may notify a rate of interest between 5% p.a. and 36% p.a.

7.3 - Notice of Short-Export of Goods

If any goods mentioned in a shipping bill or bill of export and cleared for exportation are ***not exported*** – the exporter shall, ***within 7 days from the date of departure of the conveyance, furnish the prescribed information to the P.O.*** in respect of such goods.

8. TRANSIT AND TRANSHIPMENT

8.1 - Transhipment

- Where a conveyance which ***carries goods intended not just for a particular customs station alone, but for other Indian ports and other foreign ports as well***, and
- ***such conveyance does not call at all other Indian ports/customs stations*** and foreign ports for which it carries goods,
- then the goods have to be ***transferred to any other conveyance onward carriage to the destination***. This is called ***transhipment***.

8.2 - Transit

- Where a conveyance which ***carries goods intended not just for a particular customs station alone, but for other Indian ports and other foreign ports as well***, and
- the ***conveyance calls at all other Indian ports/customs stations*** and foreign ports for which it carries goods, then the goods will ***continue to be carried by the same conveyance.*** This is called ***transit of goods.***

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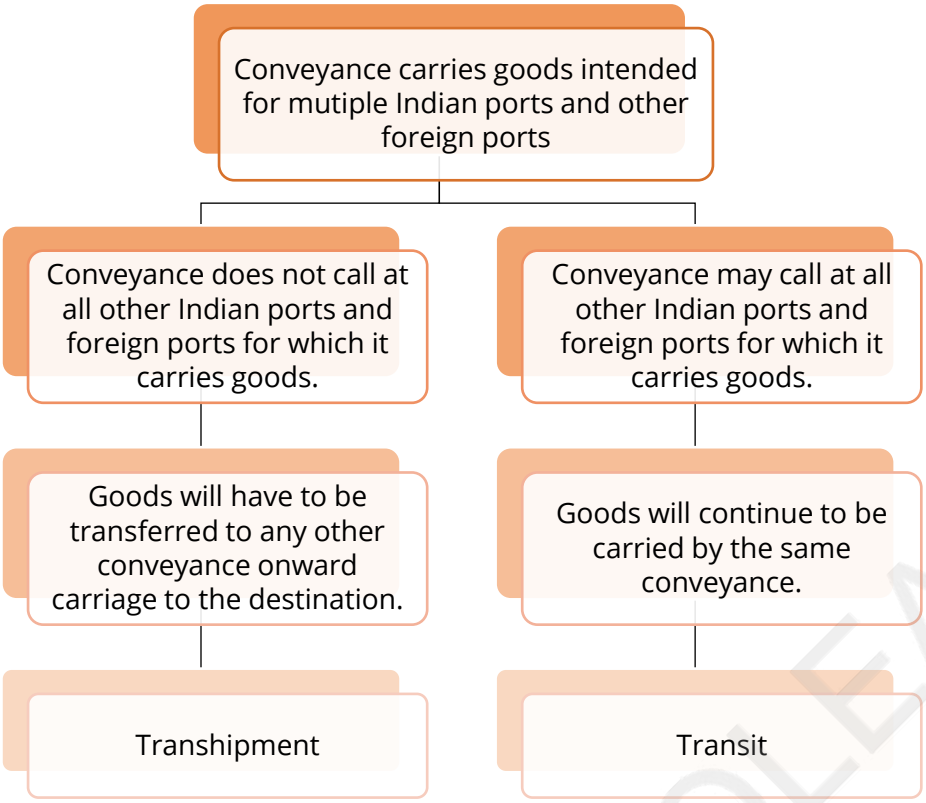

8.3 - Difference between Transit and Transhipment

Transit of goods	Transhipment of goods
• The record already made in the ship's/ aircraft's manifest will continue. • The destination of the cargo consignment wise has to be shown in the same bottom cargo manifest. • when the conveyance calls at the next Indian customs port or airport the goods have to figure in the Import General Manifest filed there as landing cargo or same bottom cargo as the case may be.	In case of transhipment the goods are landed in the particular Indian customs station. Thereafter, they have to be shipped by a conveyance to the destination to be transhipped. Hence caution has to be taken at the following stages to ensure that goods are not illicitly smuggled into India – • During the period when the transhipment goods lie in the Indian customs station, • When the goods are transhipped by another conveyance to their final destination, • Where the transhipped goods are destined to another Indian customs station, care has to be taken at that station for actual landing and proper clearance.

8.4 - Applicability

- The statutory provisions relating to Transit and Transhipment of goods are covered in ***sections 52 to 56*** of the Customs Act.

- However, these sections are ***not applicable to*** –
    - ***Baggage,***
    - ***Goods imported by post, and***
    - ***Stores.***

8.5 - Transit of Goods in the same Vessel or Air - Section 53

Goods imported in a conveyance and mentioned in the arrival manifest or import manifest or the import report, as for ***transit in the same conveyance to any place outside India or any customs station, may be allowed by the P.O. to transit without the payment of duty.***

8.6 - Transshipment of goods without payment of duty - Section 54

- Where any ***goods are intended for transhipment*** –
    - A ***bill of transhipment shall*** be presented to the P.O.
    - If the ***goods are being transferred under an international treaty or bilateral agreement*** between the GOI and government of a foreign country – ***Declaration of transhipment.***
- ***Goods imported in a conveyance and mentioned in the arrival manifest or import manifest or the import report, as for transshipment*** to any place outside India may be allowed to be ***transshipped without payment of duty.***
- Where the goods are mentioned in the arrival manifest, etc., as for transhipment -
    - ***To any major port***/ any other port mentioned by the CG in this behalf, ***or***
    - ***To any other customs station*** and the ***P.O. is satisfied that the goods bonafide intended for transhipment to such customs station,***

  he may ***allow the goods to be transshipped without the payment of duty***, subject to such ***conditions as may be prescribed for the due arrival of such goods at the customs station to which transshipment is allowed.***

8.7 - Liability of duty on goods transited u/s 53 or transhipped u/s 54 - Section 55

Goods transited u/s 53 or transhipped u/s 54 shall, ***on their arrival at such station, be liable to duty*** and shall be entered in like manner as goods are entered on the first importation thereof.

8.8 - Transport of certain classes of goods subject to prescribed conditions - Section 56

Imported goods may be transported ***without payment of duty from one customs station to another***, and any goods may be transported ***from one part of India to another part through any foreign territory***, subject to such conditions as may be prescribed for the due arrival of such goods at the place of destination.

ILLUSTRATIONS

Illustration 1

Shyam Lal has imported goods from Germany and is finally re-assessed u/s 18(2) of the Customs Act, 1962 for two such consignments.

Following are the particulars:

Date of provisional assessment	12th December, 2017
Date of final re-assessment	2nd February, 2018
Duty demand for 1st consignment	Rs. 1,80,000
Refund for the 2nd consignment	Rs. 4,20,000
Date of refund made by the department	28th April, 2018
Date of payment of duty demanded	5th February, 2018

Determine the interest payable and receivable, if any, by Shyam Lal on the final re-assessment of the two consignments, with suitable notes thereon.

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6. WAREHOUSING

Contents

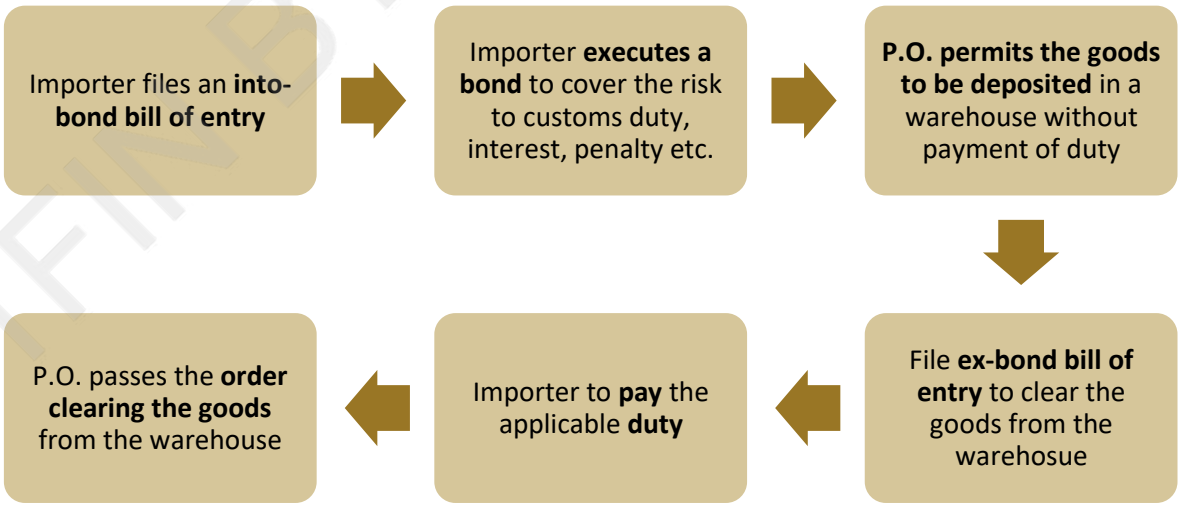
- Types of warehouses and cancellation of license.
- Warehousing bond and cancellation thereof.
- Owner's right to deal with warehoused goods.
- Removal of goods for warehousing and the effect of improper removal.
- Period for which goods may remain in a warehouse.

1. INTRODUCTION

There are instances when the importer does not want to clear the imported goods lying at the customs station, immediately. Some of the reasons could be

- Falling market prices,
- Declining saleability or lower requirements,
- Lack of storage facilities in importer's premises,
- Arrival of shipment much earlier than planned,
- Working capital issues,
- Warehousing for supplies to EOU/ EHTP/ STP/ SEZ units.

Sections 57 to 73A of the Customs Act, 1962 deal with warehousing provisions. The imported goods after landing may be allowed to be removed to a warehouse without payment of customs duty. ***Duty is paid at the time of clearance from the warehouse.***



Note : Into-bond bill of entry is the Bill of entry for warehousing. Ex-bond bill of entry is the Bill of entry for clearance from warehouse.

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Consideration that the importer is required to pay to avail the warehousing facility –

i) Bind himself to the Govt. to pay thrice the amount of total duty determined with such surety/security as determined, and

ii) Agree to pay duty on the goods cleared from the warehouse at the rate and valuation prevalent on the date on which Bill of entry is presented.

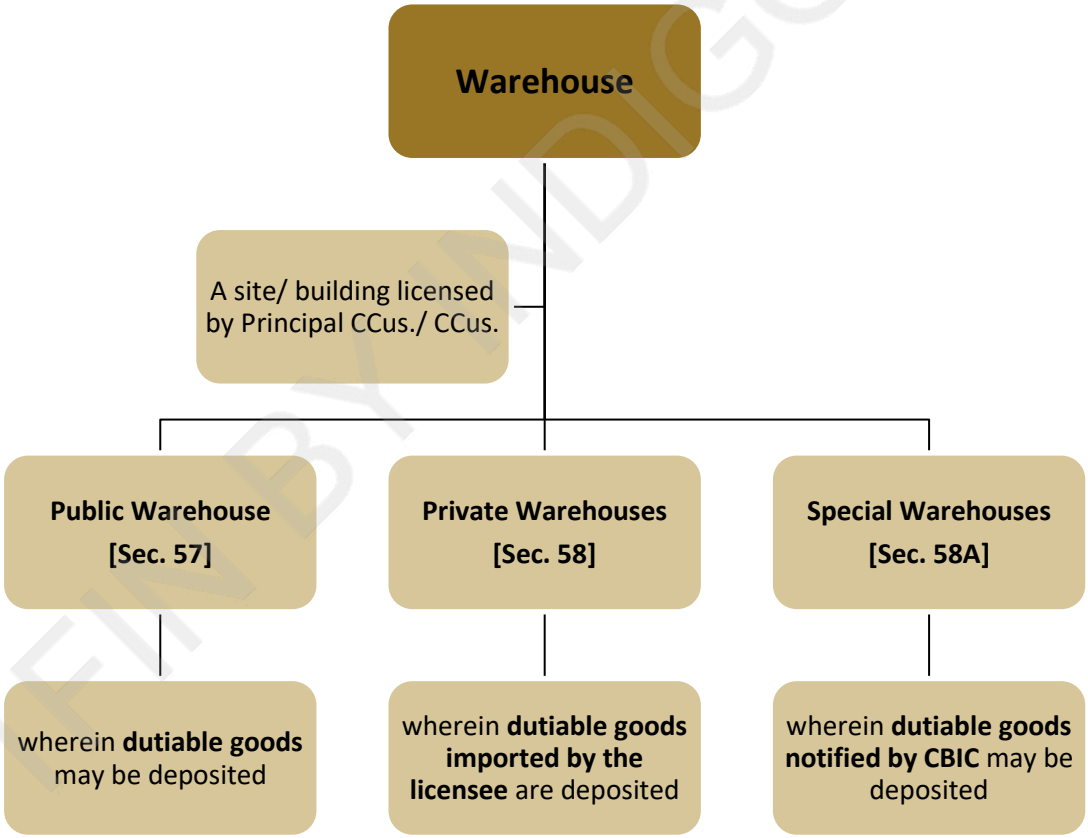
1. TYPES OF WAREHOUSES

2.1 Warehouse [Section 2(43)]

Warehouse ***means***

- A ***public warehouse*** licensed u/s 57 or
- A ***private warehouse*** licensed u/s 58 or
- A ***special warehouse*** licensed u/s 58A.

2.2 Three types of warehouses



- Public warehouses u/s 57 and private warehouses u/s 58 are under ***record based controls*** and not under customs lock, whereas special warehouses u/s 58A remains under physical record of P.O. (i.e., under ***customs lock***).
- ***Special warehouses*** will be caused to be ***locked by the P.O.*** and no person will enter the warehouse or remove any goods therefrom without the permission of the P.O.

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- The ***license is not required to be renewed*** annually. Also, it is ***not transferable*** and valid till its cancellation/surrender.

> Some of the **dutiable goods notified by CBIC for deposit in the Special warehouse** are gold, silver, other precious metals and articles, goods warehoused for supply to Duty Free Shop (DFS), supply as stores to vessels/aircrafts and supply to foreign privileged persons.

2. CANCELLATION OF LICENSE [SECTION 58B]

License granted for all types of warehouses ***may be cancelled by the Principal CCus./ CCus.*** if the licensee ***contravenes any of the provisions*** of the customs law or breaches any of the conditions of the licence, after giving the licensee an opportunity of being heard.

During the pendency of an enquiry under this section	
Operations of the warehouse may be suspended	No goods shall be deposited in such warehouse during this period

Where the license is cancelled,	
Warehoused goods may be removed to another warehouse, OR cleared for home consumption/ export	Goods shall be removed within 7 days of service of order of cancellation to the licensee or such extended period.

3. WAREHOUSING BOND [SECTION 59]

- An importer desirous of warehousing the goods without paying customs duties needs to ***execute an indemnity bond to cover the risk to Government revenue.***
- ***An importer executing bond binds himself –***
  - to ***comply with all the provisions of the Customs law*** in respect of such goods,
  - ***to pay***, on or before the date specified in the demand notice, ***all duties and interest,*** and
  - ***to pay all penalties and fines*** incurred for the contravention of the provisions of the customs law, in respect of such goods.
  - In addition to the bond, importer may ***also be required to furnish prescribed security.***

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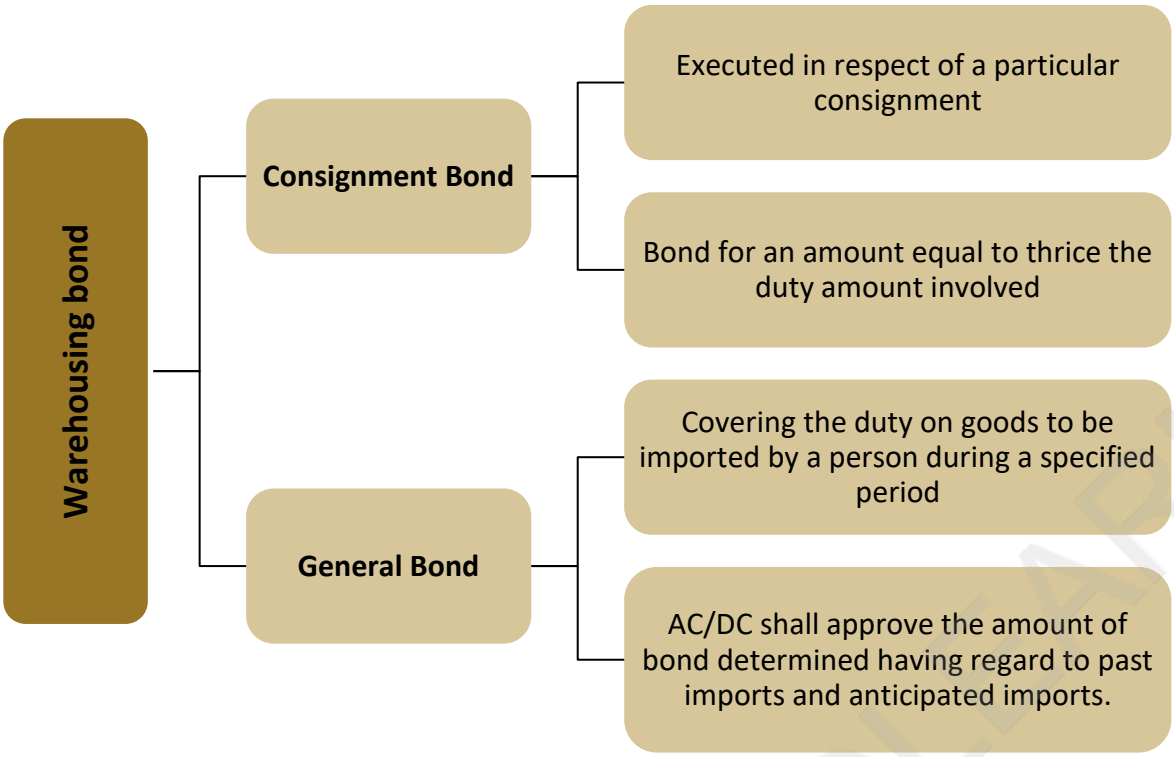

- These bonds will continue to be ***valid even if the goods are transferred to another warehouse.***
- If the ***warehoused goods are transferred to another person***, the ***transferee will have to execute the bond*** and furnish prescribed security.

4. PERMISSION FOR REMOVAL OF GOODS FOR DEPOSIT IN WAREHOUSE [SECTION 60]

Once the importer has furnished the stipulated bond and security u/s 59, the ***P.O. may make an order permitting the deposit of the goods in a warehouse. The order may be also made electronically.***

5. PERIOD FOR WHICH GOODS MAY REMAIN IN A WAREHOUSE [SECTION 61]

6.1 Warehousing Period

The ***period for which imported goods may be kept in a warehouse without payment of duty*** is called warehousing period.

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Capital goods for use in 100% EOU/ EHTP/ STP/ warehouse where manufacture or other operations are permited u/s 65

Till the clearance of such goods from warehouse

Goods other than capital goods for use in 100% EOU/ EHTP/ STP/ warehouse where manufacture or other operations are permited u/s 65

Till the consumption or clearance of such goods from warehouse

Other cases

Till the expiry of 1 year from the date of order permitting deposit in the warehouse

Extension

The Principal CCus./ CCus. may extend the warehousing period by not more than 1 year at a time.

6.2 Interest on warehoused goods

i) ***EOUs, EHTPs, STPs, or warehouses where manufacture/ other operations are permitted under section 65*** –

No interest is chargeable for the period that goods remain warehoused as warehousing period is till ex-bonding or consumption.

ii) Other cases –

- Interest will be payable if ***goods remain in the warehouse beyond 90 days*** from the date on which the order permitting deposit of goods in a warehouse u/s 60 is made.
- Rate of interest is fixed at ***15% p.a.***

iii) Waiver of interest –

The Board may waive the interest ***wholly or partially***,

- In individual cases by ad-hoc order or
- By notification in respect of any class of goods.

Further, the Board may ***also notify the class of goods in respect of which the interest will be chargeable from the date of order permitting deposit*** of goods in a warehouse.

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6. OWNER'S RIGHT TO DEAL WITH WAREHOUSED GOODS [SECTION 64]

When goods are warehoused, even though temporary possession and custody is passed on to the warehouse keeper, the title to the goods remains with the owner.

Thus, the owner may –

- ***Inspect*** the goods,
- ***Ensure that the goods do not deteriorate or get damaged*** during storage in the warehouse,
- ***Sort*** the goods, or
- ***Show the goods for sale***.

7. MANUFACTURE AND OTHER OPERATIONS IN RELATION TO GOODS IN A WAREHOUSE [SECTIONS 65 & 66]

- The owner of any warehoused goods may carry on any **manufacturing process or other operations in relation to warehoused goods in a custom bonded warehouse.**
- Manufacture and other operations in a bonded warehouse are **allowed only in a Private Bonded Warehouse** and not in in Public Bonded Warehouse. Also, in respect of **goods notified to be warehoused in Special Warehouse**, manufacture and other operations are also **allowed in a Special Bonded Warehouse.**
- **After manufacture**, the produced goods may either be **exported** out of India **or cleared for home consumption.**
    - ***Exported*** – The duties are fully remitted.
    - ***Cleared for home consumption*** – Import duty, interest, fine and penalties, if any, are payable.
- ***Import duty on waste or refuse generated during the manufacturing operations etc.*** –
    - ***Whole/ part of goods are exported – Import duty shall be remitted*** on the quantity of the warehoused goods contained in so much of the waste or refuse as has arisen from the operations carried on in relation to the goods exported.
    - ***Whole or any part of the goods resulting from such operations are cleared from the warehouse for home consumption*** – Import duty shall be charged on the quantity of the warehoused goods contained in so much of the waste or refuse as has arisen from the operations carried on in relation to the goods cleared for home consumption.
- ***Imported materials used for the manufacture of any goods in accordance with Sec. 65*** –

  If the rate of ***duty leviable on such imported materials exceeds the rate of duty leviable on such goods***, the CG, if satisfied that in the interests of the establishment or development of any domestic industry it is necessary so to do, may, by notification in the Official Gazette, ***exempt the imported materials from the whole or part of the excess rate of duty.***

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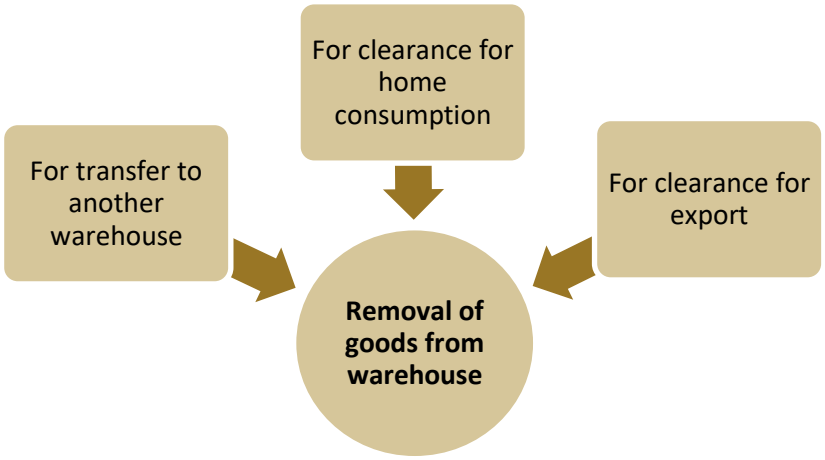
8. REMOVAL OF GOODS FROM THE WAREHOUSE [SECTIONS 67, 68 & 69]



9.1 Transfer of warehoused goods from one warehouse to another [Section 67]

- ***Permission of P.O.*** is required for such transfer.
- Transfer subject to the ***conditions prescribed for the due arrival of the warehoused goods*** at the warehouse to which removal is permitted.

9.2 Clearance of warehoused goods for home consumption [Section 68]

- ***Ex-bond bill of entry t***o be presented to the P.O.
- After assessment of the ex-bond bill of entry, the ***duty determined in the same should be paid.***
- Along with the import duty, the ***interest, penalty, if any***, imposed or levied on such goods should also be paid.
- After payment of all duties, the P.O. may permit removal of the goods from the warehouse and ***pass a suitable order for clearance.***
- ***The owner of the warehoused goods may relinquish the title to such goods and not be liable to pay duty thereon***

9.3 Clearance of warehoused goods for export [Section 69]

- Warehoused goods may be exported to a place outside India.
- ***No import duty will be levied*** on the goods so exported subject to fulfilment of conditions prescribed.
- A ***shipping bill/bill of export/label or declaration accompanying the goods*** should be presented.
- ***The export duty, fine and penalties payable***, if any, on such goods on export should be ***assessed and paid.***
- The P.O. of customs should satisfy himself that all regulations, restrictions and prohibitions in force in respect of export of such goods, is complied with or fulfilled after which P.O. will

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make an order for clearance of warehoused goods for export from the bonded warehouse.

- In case CG is of the opinion that ***goods of any specified description are likely to be smuggled back into India***, it may by notification in the Official Gazette, ***direct that such goods:***
    - ***Shall not be exported without payment of duty*** or
    - ***May be allowed*** to be so exported ***subject to such restrictions and conditions*** as may be specified in the notification.

9. ALLOWANCE IN RESPECT OF VOLATILE GOODS [SECTION 70]

Some warehoused goods are subject to normal loss owing to the volatility of such goods and the manner of their storage. This results in difference between the bonded quantity and the quantity at the time of removal from the warehouse.

Since, this loss is due to natural causes, neither the importer nor the warehouse keeper can be asked to bear the duty of such loss.

When any ***warehoused goods notified goods under this section*** are at the time of delivery from a warehouse ***found to be deficient in quantity on account of natural loss***, the ***AC/DC of Customs may remit the duty*** on such deficiency.

Petroleum products like aviation fuel, motor spirit, etc., wine, spirit and beer, etc., have been specified as goods notified u/s 70

Distinction between remission under section 23 and section 70

Section 23 is applicable where goods are lost before clearance for home consumption is made. Whereas, section 70 provides for remission of duty in respect of loss during warehousing of only the goods notified by the CG.

10. IMPROPER REMOVAL OF GOODS FROM WAREHOUSE

11.1 Prohibitions on removal of goods [Section 71]

This section prohibits the removal of the warehoused goods out of a warehouse ***except on clearance for home consumption, or export, or for removal to another warehouse, or as otherwise provided by the Customs Act.***

11.2 Cases where P.O. may demand duty to be paid [Section 72]

The P.O. may demand, the full amount of duty chargeable on account of warehoused goods together with interest, fine and penalties payable in respect thereof, in the following cases –

a) Where any ***warehoused goods are removed in contravention of section 71***,

b) where any ***warehoused goods have not been removed from a warehouse at the expiration of the period*** during which such goods are permitted u/s 61 to remain in a warehouse,

c) where any ***goods in respect of which a bond has been executed u/s 59 and which have not been cleared for home consumption or export are not duly accounted for*** to the satisfaction of the P.O.

Where the ***owner fails to pay duty chargeable*** on account of warehoused goods together with interest, fine and penalties payable – ***The P.O. may cause such goods to be detained and sold,*** in sufficient portion as he may deem fit after giving a notice to the owner for the same.

11. CANCELLATION AND RETURN OF THE WAREHOUSING BOND [SECTION 73]

The P.O. shall cancel the warehousing bond executed u/s 59 as discharged in full ***when*** –

- ***The whole of the goods covered by any bond have been cleared*** for home consumption or exported or transferred or are otherwise duly accounted for, ***and***
- ***All amounts due*** on account of such goods ***have been paid.***

12. CUSTODY AND REMOVAL OF WAREHOUSED GOODS [SECTION 73A]

The ***warehouse keeper appointed by the licensee*** will be in-charge of the warehouse and shall have a computerised system for accounting of goods.

Section 73A stipulates that ***all warehoused goods will remain in the custody of the person who has been granted a licence under section 57/58/58A until they are cleared*** for home consumption or transferred to another warehouse or exported or removed as otherwise provided under Customs Act.

Where any ***warehoused goods are removed in contravention of section 71***, the licensee shall be liable to pay duty, interest, fine and penalties, in addition to any other action that may be taken against him under this Act or any other law.

Duties of a warehouse keeper –

- Maintain ***records of receipt, handling, storing, and removal*** of any goods into/from the warehouse,
- Maintain ***records of each activity/operation*** in relation to the warehoused goods,
- Maintain ***records of drawal of samples*** from the warehoused goods.
- Keep copies of ***documents evidencing the receipt/removal of goods*** into/from the warehouse and ***copies of the bonds executed.***
- These records and accounts are **to be preserved for 5 years from the date of removal of goods.** Further, digital copies are also to be maintained at any place other than the warehouse.

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Illustration 1

Vipul imported certain goods in May. An 'into bond' bill of entry was presented on 14th May and goods were cleared from the port for warehousing. Assessable value on that date was US $ 1,00,000. The order permitting the deposit of goods in warehouse for 4 months was issued on 21st May. Vipul deposited the goods in warehouse on the same day but did not clear the imported goods even after the warehousing period got over on 21st September.

A notice was issued under section 72 of the Customs Act, 1962, demanding duty and interest. Vipul cleared the goods on 14th October. Compute the amount of duty and interest payable by Vipul while removing the goods on the basis of the following information:

Particulars	**14th May**	**21st Sept**	**14th Oct**
Rate of exchange per US $ (as notified by Central Board of Indirect taxes & Customs)	65.20	65.40	65.50
Basic customs duty	15%	10%	12%

Integrated Tax leviable under section 3(7) of the Customs Tariff Act is exempt. Ignore agriculture and infrastructure development cess.

Illustration 2

With reference to Section 70 of the Customs Act, 1962, briefly discuss the conditions to be satisfied for remission of duty in case of volatile goods.

Illustration 3

Who can suspend or cancel a warehousing license and on what grounds? What is the effect of suspension or cancellation on the warehouse and on the goods in the warehouse? Explain with the provisions related to cancellation of license under section 58B of the customs Act, 1962

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7. REFUND

Contents

- Application of refund.
- Processing of claim for refund.
- Interest payable on delay in payment of refund.
- Conditions subject to which refund of import duty/ export duty is paid.
- Doctrine of unjust enrichment with respect to refund.

1. APPLICATION FOR REFUND OF DUTY OR INTEREST - SECTION 27

1.1 Person who can claim refund of duty / interest

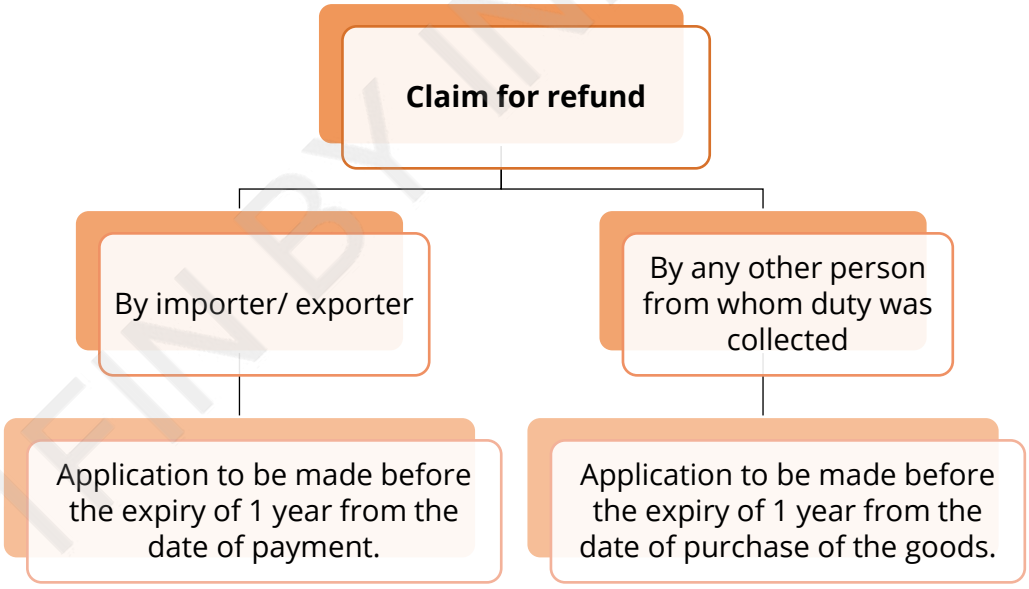
Refund of duty/ interest paid can be claimed by –

a) The ***person who paid*** the duty or interest in excess, or

b) The ***person who bore the incidence*** of such duty or interest.

The application for refund shall be made in such form or manner as may be prescribed.

1.2 Time limit of filing application for refund



Computation of one year in other cases –

Event	***Limitation of 1 year to be computed from the***
Exemption of duty by a special order issued under section 25(2)	Date of issue of such order

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Refund of duty arising as a consequence of any judgment, decree, order or direction of the appellate authority, Appellate Tribunal or any court	Date of such judgment, decree, order or direction
Provisional payment of duty under section 18	Date of adjustment of duty after the final assessment, or in case of re-assessment, from the date of such re-assessment

Limitation of one year shall not apply in case the duty/ interest has been paid under protest.

1.3 Minimum amount of refund

Amount of refund ***below ₹ 100 shall not be refunded.***

1.4 Documentary evidence to be furnished

Refund application must be accompanied by ***documentary or other evidence referred to in section 28C*** to establish that –

- The amount of duty or interest, in relation to which such refund is claimed, was collected from or paid by him, and
- That the incidence of such duty or interest has not been passed on by him to any other person

2. PROCESSING OF REFUND CLAIM [SECTION 27(2)]

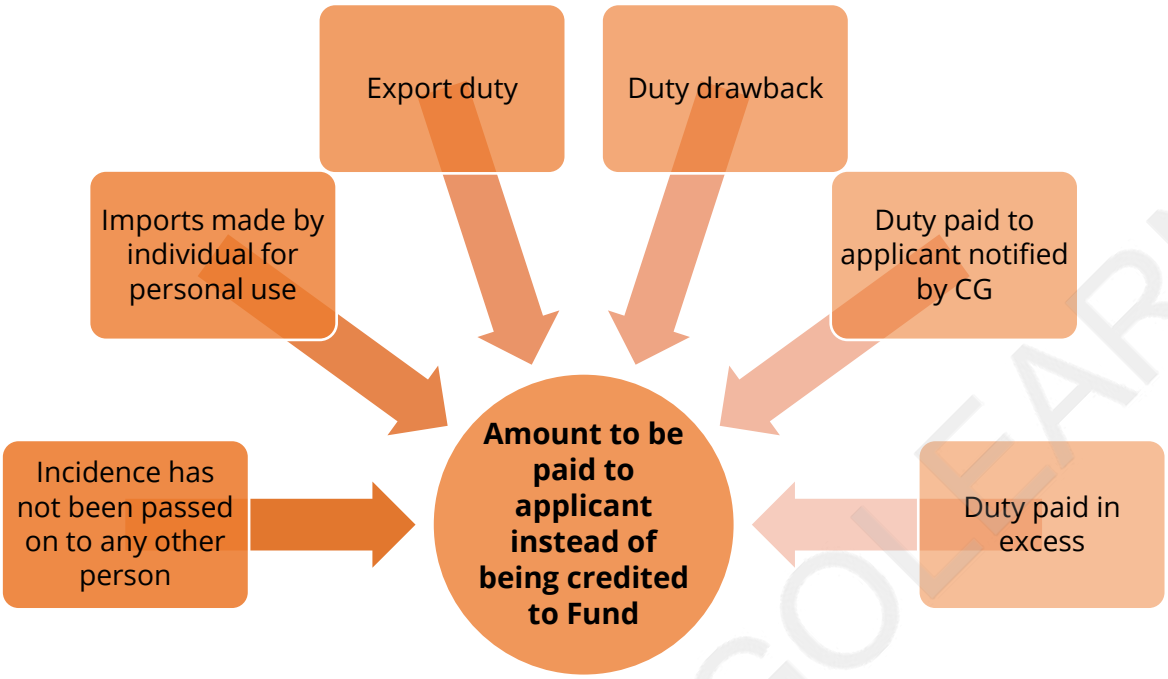
In view of the ***provisions of unjust enrichment*** enshrined in the Customs Act, the ***amount*** found refundable has to be ***transferred/credited to the Consumer Welfare Fund.***

However, ***in the following situations the amount of duty and interest payable shall be paid to the applicant*** instead of being credited to the Consumer Welfare Fund –

- If the ***importer/exporter has not passed on the incidence of such duty and interest*** to any other person.
- If the ***buyer who has borne*** the duty and interest, has ***not passed on the incidence of such duty and interest to any other person.***
- If ***imports*** were made ***by an individual for personal use.***
- If amount found refundable ***relates to export duty paid on goods which has returned to exporter*** as specified in section 26.
- If ***amount relates to drawback*** of duty payable u/s 74 and 75.
- If the duty or interest was ***borne by a class of applicants which has been notified*** for such purpose in the official gazette by the CG.
- If the ***duty paid in excess by the importer*** before an order permitting clearance of goods for home consumption is made where –

i) Such excess payment of duty is evident from the bill of entry in the case of self-assessed bill of entry, or

ii) The duty actually payable is reflected in the reassessed bill of entry in the case of reassessment.



3. DOCTRINE OF UNJUST ENRICHMENT WITH RESPECT TO REFUND OF DUTY

- ✓ The ***incidence*** of customs duty paid by the importer or export duty paid by exporter is ***passed on to the purchaser*** when the goods are sold by them.
- ✓ Subsequently, ***if the importer or exporter makes a claim for refund*** of duty ***and receives the refund*** from the government, he would be called to have enriched himself as he collected the duty from his customer also and also as refund from the government. Such enrichment is referred to as '***unjust enrichment***'.
- ✓ Hence, the doctrine of 'unjust enrichment' implies that ***no person should enrich himself at the cost of others.***
- ✓ When the person who applies for refund is not the person who has borne the burden of duty, the ***refund is paid into a fund called 'Consumer Welfare Fund'.***

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Case Law: Mafatlal Industries Ltd. v. U.O.I (SC)

Judgement: *The judgment is from the erstwhile Central Excise laws, the principles laid down in this judgement are applicable to all indirect tax laws.*

i) The theory of unjust enrichment is valid and constitutional. However, the theory that, conversely, the manufacturer would be unjustly impoverished in case of demands has not been agreed to.

ii) Section 27 (Customs Act) is self-contained code for refunds; resort to civil suits or writs is not permissible unless the taxing provision is struck down as unconstitutional.

iii) Unless the levy is struck down as unconstitutional, all Courts must exercise jurisdiction in terms of section 11B of the Central Excise Act, 1944 and refuse to grant relief if the incidence of tax has been passed on.

iv) Whatever amount is collected as duty will have to paid to the Government. If excess is collected than that payable, it would be credited to the Consumer Welfare Fund or given as refund to the person who has borne the incidence of duty.

4. INTEREST ON DELAYED REFUND [SECTION 27A]

- ✓ Duty ordered to be refunded shall be ***refunded to the applicant within 3 months from the date of receipt of application for refund***. In case duty is not refunded within this time limit, interest is to be paid to the applicant, within the range of 5% and 30%, as fixed by the government.
- ✓ ***Currently, the rate of interest is 6%.***
- ✓ The interest is to be paid for the period beginning from the ***date immediately after the expiry of 3 months*** from the date of receipt of such application, ***till the date of refund of such duty.***
- ✓ If the ***refund is a result of an order passed by the appellate authorities*** or by a court of law, refund is to be paid within 3 months of the order, and interest will be paid after that.

The interest on delayed refund is payable only in respect of delayed refunds of Customs duty and no interest is payable in respect of deposits.

5. REFUND OF EXPORT DUTY IN CERTAIN CASES [SECTION 26]

Export duty shall be refunded to the person by whom or on whose behalf it was paid, if –

a) The ***goods are returned*** to such person ***otherwise than by re-sale***,

b) The ***goods are re-imported within 1 year*** from the date of exportation, ***and***

c) An ***application*** for refund of such duty ***is made before the expiry of 6 months from the date on which the P.O. makes an order for the clearance.***

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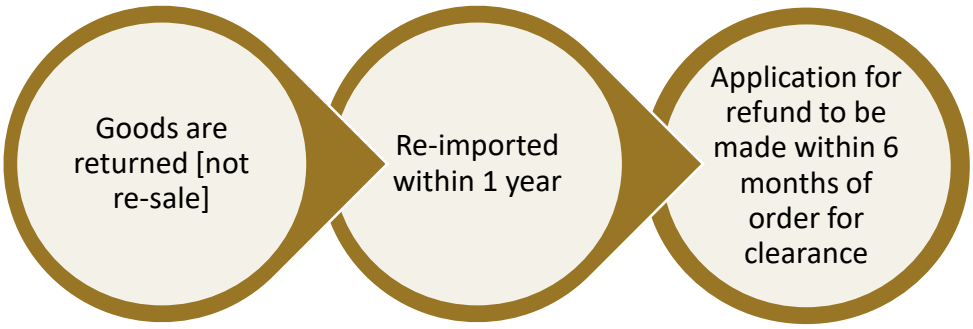

6. REFUND OF IMPORT DUTY IN CERTAIN CASES [SECTION 26A]

The import duty paid on clearance of imported goods for home consumption shall be refunded to the person who has paid such duty subject to the fulfilment of the following ***conditions*** –

> Section 26A does not apply to the goods regarding which an offence appears to have been committed.

i) ***Goods are defective/ not as per specifications*** agreed upon between the importer and the supplier of goods.

Exception – Goods should not have been worked upon/ repaired/ used after importation except where such usage was necessary to discover the defects, etc.

ii) Goods are ***identified*** to the satisfaction of the AC/DC of Customs.

iii) The importer ***does not claim drawback.***

iv) The ***importer*** –

- ***Exports*** the goods, or
- ***Relinquishes his title*** to the goods and abandons them to customs, or
- ***The goods are destroyed/ rendered commercially valueless*** in the presence of the P.O.

6.1 Time limit for filing application for refund

Application for refund of duty shall be made ***before the expiry of 6 months from the relevant date.***

Case	***Relevant date***
Goods exported out of India	Date on which the P.O. makes an order permitting clearance and loading of goods for exportation u/s 51
Relinquishment of title to the goods	Date of such relinquishment
Goods being destroyed or rendered commercially valueless	Date of such destruction or rendering of goods commercially valueless

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6.2 Perishable goods

In respect of ***perishable goods and goods which have exceeded their shelf life*** or their recommended storage-before-use period, the ***refund shall not be allowed.***

The CBIC may, by notification in the Official Gazette, specify any other condition subject to which the refund may be allowed.

7. REFUND CLAIM CANNOT BE A SUBSTITUTE FOR APPEAL

Case Law: Priya Blue Industries Limited (SC)

Facts: *Duty was assessed on the imported item and the importer paid the duty under protest. Thereafter, the importer filed a claim for refund of the duty.*

Judgement: *Once an Order of Assessment is passed the duty would be payable as per that order. Unless that order of assessment has been reviewed u/s 28 and/or modified in an Appeal that Order stands. So long as the Order of Assessment stands the duty would be payable as per that Order of Assessment.*

A refund claim is not an Appeal proceeding. The Officer considering a refund claim cannot sit in Appeal over an assessment made by a competent Officer. The Officer considering the refund claim cannot also review an assessment order.

8. IMPORTANT JUDGEMENTS ON REFUND

1. ***Corporation Bank v. Saraswati Abharansala (SC)***

   Judgement – If excess tax is paid, the excess amount must be refunded except in cases involving the principles of unjust enrichment.

2. ***Jaswant b. Shah v. CC (Tribunal)***

   Judgement – Refund claim cannot be filed by the agent in his own name, without power of attorney.

3. ***Banmore Foam v. CCE (Tribunal -Delhi)***

   Judgement – Burden of proof that incidence of duty has not been passed on to consumers is on assessee.

4. ***CCus. v Consolidated Solvents and Chemical Corporation (Tribunal)***

   Judgement – Interest on delayed refund is payable at the rates as applicable time to time and not at the rate applicable on day when refund was due.

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ILLUSTRATIONS

Illustration 1 (Set I)

Explain the provisions of Customs Act, 1962 relating to computation of limitation for submission of refund application.

Illustration 2 (Set I)

The assessee furnished bank guarantee to the department as required and imported capital goods at concessional rate of duty under an authorisation with export obligation.

Illustration 3 (Set I)

The assessee furnished bank guarantee to the department as required and imported capital goods at concessional rate of duty under an authorisation with export obligation

But failed to complete the export obligation within the prescribed time.

Consequently, the Department invoked the bank guarantee and realized the amount of duty foregone.

Subsequently the assessee fulfilled the export obligation and the same was also accepted by the Department.

The assessee filed a refund claim for the amount realized by the Department under the bank guarantee.

The Department rejected the refund claim on the ground that it was time barred in terms of section 27 of the Customs Act, 1962.

Was the stand taken by the Department correct in law? Examine with the support of case law on the issue.

Illustration 4 (Set II)

M/s. HIL imports copper concentrate from different suppliers.

At the time of import, the seller issues a provisional invoice and the goods are provisionally assessed under section 18 of the Customs Act, 1962 based on the invoice.

When the final invoice is raised, based on the price prevalent in the London Metal Exchange on a predetermined date as agreed in the contract between the buyer and seller, the assessments are finalized on the basis of the price in such invoices.

M/s HIL has filed a refund claim arising out of the finalization of the bill of entry by the authorities.

Department, however, has rejected the refund claim on the grounds of unjust enrichment.

whether the action of the department is correct in law?

Illustration 5 (Set II)

XYZ Ltd imported capital goods and used them in its factory to produce goods for sale.

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Upon discovery of an error by which excess import duty had been paid on the said capital goods, it filed a claim for refund.

As regards unjust enrichment, it contended -

that the capital goods were not sold and hence the principle of unjust enrichment will not apply to the refund of import duty paid on capital goods; and

that in any case the price of the finished goods manufactured in the factory remained the same before and after the import and installation of the capital goods, which is sufficient proof to establish that duty burden has not been passed on.

Examine the merits of these contentions, with the support of case law, if any.

Illustration 6 (Set III)

Section 26A of Customs Act, 1962 provides for refund of import duty paid if goods are found defective or not as per specifications.

Discuss the conditions governing such refund in brief.

Illustration 7 (Set III)

Acme Sales' imports were being provisionally assessed pending a verification that the department was carrying out. Upon completion of the verification, the assessments were finalized, and Acme Sales was asked to pay Rs.12 lakh, whichit paid. After six months, upon detailed scrutiny of the verification report and taking legal opinion on it, Acme Sales filed a claim for refund of

Rs.8 lakh on the ground that the differential amount should be Rs.4 lakh only and that there were factual errors in the verification report. Was this the correct mode of redressal for Acme Sales? What will be likely outcome of the claim? Discuss on the basis of case law on the subject.

Illustration 8 (Set IV)

Mr. N has, over three consignments of 200, 400 and 400 units, imported a totalof 1000 units of an article "ZEP", which has been valued at Rs.1,150 per unit.The customs duty on this article has been assessed Rs.250 per unit. He adds his profit margin Rs.350 per unit and sells the article for Rs.1,750 per unit.

After one month of selling the entire consignment of article "ZEP", Mr. N found that there had been an error in payment of amount of duty, in which duty forthe consignment of 200 units was paid as if it was 400 units, resulting in excess payment of duty. Mr. N files an application for refund for

Rs.50,000 (200 X 250). Is the bar of unjust enrichment attracted?

Illustration 8 (Set IV)

Explain the relevant dates as provided in section 26A(2) of the customs Act,1962 for purpose of refund of duty under specified circumstances, namely

1. Goods exported out of India
2. Relinquishment of title to goods
3. Goods destroyed or rendered valueless

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8. BAGGAGE

1. PROCEDURE FOR POSTAL ARTICLES

1.1 Import / Export of Goods by Post or Courier

1.1.1 Relevant date for Rate of duty and tariff valuation in respect of goods imported or exported by post [Section 83]

In case of Import	In case of Export
• The rate and valuation in force on the **date on which the postal Authorities or the authorized courier present a list of goods for assessment** of duty to the P.O. • If the **goods are imported by a vessel** and the **list of goods was presented before the date of arrival of the vessel**, the list shall be deemed to have been presented on the date of such arrival.	• The rate and valuation in force on **the date on which the exporter deliver such goods to the postal authorities** or the authorized courier for exportation.

1.1.2 Procedure for goods imported or to be exported by postal courier [Section 84]

The Board may make regulations for-

a) The **form and manner in which entry** may be made,

b) The **examination, assessment** to duty and **clearance** of such goods,

c) The **transit or transshipment** of such goods from one customs station to another or to a place outside India.

1.2 Procedure for Import and Export of Goods by Post

- In the case of goods imported by post the agency for the carriage of goods is the Government of India be it through sea, air or land.
- **The control of the Customs Department is only on goods,** whether imported or exported
  - **On which there is a duty, and**
  - **Which are subject to prohibition or restriction** under the customs act or any other law for the time being in force.

1.3 Provisions under Indian Post Office Act

1.3.1 Power to deal with postal articles containing goods contraband or liable to duty [Section 24 of the Indian Post Office Act]

- The postal office authority has a **right and duty to open and examine a postal article** if he **suspects that the postal article contains any goods which are –**

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- **Liable to duty of customs**, or
- **Subject to a prohibition** under any law in force.

- The postal authority shall issue a **notice in writing to the addressee, initiating him to attend**, either in person, or by an agent, within a specified time at a post office for opening of the postal article.
- **If the addressee or his agent does not turn up** at the appointed time and place, the **postal authorities are entitled to open and examine the postal article in his absence.**

1.3.2 Delivery to customs authority [Section 24A of the Indian Post Office Act]

Once the postal authorities have found some postal article to contain dutiable or prohibited goods, that authority, as empowered by the CG by a general or special order **should deliver the postal article in question to the customs authority for necessary action.**

2. SPECIAL PROVISIONS RELATING TO STORES

The term 'stores' has been defined u/s 2(38). It covers items like food, drink, medicines, life-saving equipment like oxygen and life boats, articles or equipment used for entertainment, in addition to fuel, spare parts and other equipment.

"**Store list**" in the prescribed format is required to be filed as part of the import manifest as well as export manifest / import report or export report.

2.1 Warehousing of Stores [Section 85]

In case of **goods which are imported into India to be supplied as stores**, the P.O. may permit the **goods to be warehoused without the goods being assessed to duty, if–**

a) The **imported goods are entered for warehousing**, and

b) The **importer makes and subscribes to a declaration** that the goods are to be supplied as stores to vessels or aircraft without payment of import duty.

Section 85 is a deviation from the general provision of warehousing the goods, where the goods are assessed to duty at the time of warehousing. Though such duty is not payable at the time of warehousing.

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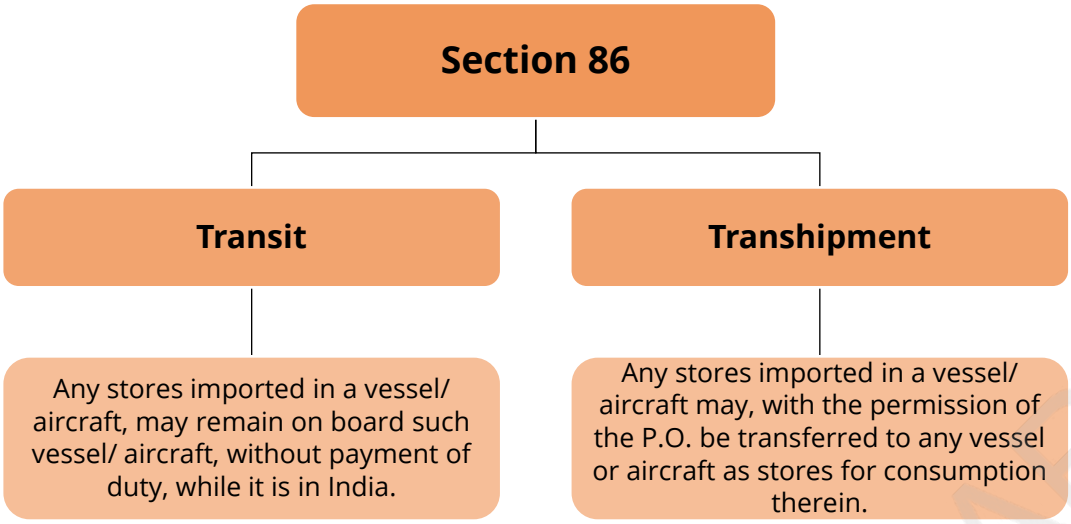
2.2 Transit and Transhipment of Stores [Section 86 and 87]



Any imported stores on board a vessel or aircraft may, without payment of duty, be consumed during the period such **vessel or aircraft is a foreign going vessel or aircraft** [**Section 87**].

2.3 Application of Section 69 and Chapter X to Stores [Section 88]

- Section 69 – warehoused goods are allowed to be exported on payment of export duty from the warehouse. This benefit is also available to **warehoused goods** if they are **taken on board any foreign going vessel or aircraft as stores**.
- Section 74 - Where **duty paid imported goods are exported within two years**, then subject to certain conditions, such **duty shall be repaid as drawback**. This benefit is also available to stores.

2.4 Supply of Stores [Section 89]

Goods produced or manufactured in India and required as stores on any foreign going vessel/ aircraft may be exported free of export duty in such quantities as the P.O. may determine having regard to –

- The size of the vessel or aircraft,
- The number of passengers and the crew, and
- The length of the voyage or journey on which the vessel or aircraft is about to depart.

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2.5 Special provisions regarding Shipstores supplied to Indian Naval Vessels [Section 90]

- Imported stores for the use in a ship of the Indian Navy may without payment of duty be consumed on board the ship of Indian Navy.
- Imported stores supplied free by the Government for the use of the crew of a ship of the Indian Navy may be supplied without payment of duty to be consumed on board the ship of Indian Navy.
- The provisions of section 69 and Chapter X shall apply as they apply to other goods with the exception that they will be entitled to drawback of the whole of the duty of customs if any paid therein, instead of 98% alone otherwise applicable.

3. SPECIAL PROCEDURES RELATING TO CLEARANCE OF BAGGAGE

3.1 Entry of Baggage by Owner [Section 77]

The owner of baggage shall **make a declaration of its contents to the P.O.** for clearing it. This is known as **baggage declaration form.**

3.2 Rate of Duty and Tariff Valuation applicable to Baggage [Section 78]

The relevant date for determining the rate of duty applicable to baggage is **the date of filing baggage declaration u/s 77.**

Rate of duty on baggage is 35% ad valorem except in case of –

i. Fire arms,

ii. Cartridges of fire arms exceeding 50,

iii. Cigarettes,

iv. Cigars, or

v. Tobacco in excess of the quantity prescribed for importation free of duty under the relevant baggage rules, and

vi. Goods imported through a courier service.

3.3 Duty Exemption to Baggage [Section 79]

The P.O. may pass free of duty –

a) Any article in the **baggage of a passenger/ member of the crew**, which has been **used by such passenger/ crew member for a minimum period** as specified in the rules,

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b) Any article in the **baggage of a passenger** which is

- **for the use of the passenger or his family or is a bonafide gift**/ souvenir, **and**
- the **value of each** such article **and the total value** of all such articles **does not exceed such limits as may be specified** in the rules.

The CG shall make the rules for the purpose of carrying out these provisions.

3.4 Passenger Baggage Rules, 2016

3.4.1 General duty-free baggage allowance

	Class of passenger	Articles allowed free of cost
Rule 3	• Indian resident or • Foreigner residing in India or • Tourist of Indian origin, excluding an infant **Coming from any country other than Nepal, Bhutan or Myanmar.**	i) **Used personal effects** and travel souvenirs, and ii) Articles up to the value of **₹50,000** if carried on in person or in the accompanied baggage of the passenger.
	Tourist of foreign origin excluding infant **coming from any country other than Nepal, Bhutan or Myanmar.**	i) **Used personal effects** and travel souvenirs, and ii) Articles up to the value of **₹15,000** if carried on in person or in the accompanied baggage of the passenger.
Rule 4	• Indian resident or • Foreigner residing in India or • Tourist, excluding an infant **Coming from Nepal , Bhutan or Myanmar.**	i) **Used personal effects** and travel souvenirs, and ii) Articles up to the value of **₹15,000** if carried on in person or in the accompanied baggage of the passenger. **If arriving by land** – only used personal effects.

Notes –

- *In case of passenger who is an infant (i.e., not more than 2 years), only used personal effects will be allowed duty free.*
- *Personal effects – things required for satisfying daily necessities but excludes jewellery.*
- *The general duty-free baggage allowance of a passenger cannot be pooled with the general duty-free baggage allowance of any other passenger.*
- *Resident – a person holding a valid passport issued under the Passports Act, 1967 and normally residing in India.*
- *Tourist – a person not normally resident in India, who enters India for a stay of not more than 6 months in the course of any 12 months period for legitimate non-immigrant purposes.*

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3.4.2 Jewellery Allowance [Rule 5]

- **Class of passenger** – Passenger **residing abroad for more than 1 year.**
- **Articles allowed free of duty** –
  - i) **Gentleman** – jewellery up to a weight of **20 gms** with a value cap of **₹ 50,000.**
  - ii) **Lady passenger** – Jewellery up to a weight of **40 gms** with a value cap of **₹ 1,00,000.**

3.4.3 Transfer of residence [Rule 6]

A person, who –

- Is **engaged in a profession abroad**, or
- Is **transferring his residence to India**,

will be **allowed duty free clearance of articles on his return** in the following manner –

Duration of stay abroad	Articles allowed free of duty	Conditions
From 3 months up to 6 months	• Personal and household articles, • Other than those mentioned in Annexure I or Annexure II • But including articles mentioned in Annexure III up to an aggregate value of ₹ 60,000.	Indian passenger
From 6 months up to 1 year	• Personal and household articles, • Other than those mentioned in Annexure I or Annexure II • But including articles mentioned in Annexure III, up to an aggregate value of ₹ 1,00,000.	Indian passenger
Minimum Stay of 1 year during the preceding 2 years	• Personal and household articles, • Other than those mentioned in Annexure I or Annexure II • But including articles mentioned in Annexure III up to an aggregate value of ₹ 2,00,000.	The Indian passenger should not have availed this concession in the preceding 3 years.
Minimum stay of 2 years or more	• Personal and house household articles, • Other than those listed at Annexure I or Annexure II • But including articles mentioned in Annexure III up to an aggregate value of ₹ 5,00,000	i) Minimum stay of 2 years abroad, immediately preceding the date of his arrival on transfer of residence. The shortfall of up to 2 months in stay abroad can be condoned by DC/AC of Customs if the early return is on account of – ▪ Terminal leave or vacation, or ▪ Any other special circumstances.

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		ii) Total stay in India on short visit during the 2 preceding years should not exceed 6 months. The Principal CCus./ CCus. may condone short visits in excess of 6 months in special circumstances.
		iii) Passenger has not availed this concession in the preceding 3 years.

3.4.4 Currency [Rule 7]

The import and export of currency under these rules shall be **governed in accordance with the provisions of the Foreign Exchange Management (Export and Import of Currency) Regulations, 2015,** and the notifications issued thereunder.

3.4.5 Unaccompanied Baggage [Rule 8]

These rules shall apply to unaccompanied baggage except when they are specifically excluded, subject to following conditions:

- The said unaccompanied baggage had been in **possession, abroad, of the passenger** and is or within such time as the AC/DC may allow.
- The said unaccompanied baggage **may land in India up to 2 months before the arrival of the passenger** or within such other period, not exceeding 1 year, as the AC/DC may allow.

3.4.6 Crew baggage [Rule 9]

a) These baggage rules are **also applicable to the members of the crew engaged in foreign going conveyance** for importation of their baggage when they are finally paid off on termination of their engagement.

b) Other crew members are **allowed to bring items like chocolates, cheese, cosmetics and other petty gift items for their personal or family use for a value not exceeding ₹ 1500.**

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Annexure I	Annexure II	Annexure III

• Firearms.
• Catridges of firearms exceeding 50.
• Cigarettes exceeding 100 sticks or cigars exceeding 25 or tobacco exceeding 125 gms.
• Alcoholic liquor/ wines in excess of 2 ltrs.
• Gold or silver in any form other than ornaments.
• Flat panel TV.
	• Colour Television.
	• Video Home Theatre System.
	• Dish Washer.
	• Domestic Refrigerators of capacity equal to or more than 300 ltrs.
	• Deep Freezer.
	• Video camera or the combination thereof with one or more of the following goods,
	  • Television receiver
	  • sound recording or reproducing apparatus
	  • video reproducing apparatus.
	• Cinematographic films of 35 mm and above.
	• Gold or silver in any form other than ornaments.
		• Video Cassette Recorder or VC Player or Video Television Receiver or VC Disk Player.
		• Digital Video Discplayer.
		• Music System.
		• Air-Conditioner.
		• Microwave Oven.
		• Word Processing Machine.
		• Fax Machine.
		• Portable Photocopying Machine.
		• Washing Machine.
		• Electrical or LPG Cooking Range.
		• PC (Desktop Computer)
		• Laptop (Note book Computer)
		• Domestic Refrigerators of capacity up to 300 litres or its equivalent.

3.5 Temporary detention of Baggage [Section 80]

In the following cases, **a passenger will deposit the articles with the customs authorities and take it back at the port of his departure** –

- Passenger has brought in an **article which is prohibited** and may opt to re-export it or take it with him when he leaves the country.
- Passenger may opt not to take a particular article into the town if the **duty is heavy**.

The **declaration of goods brought in u/s 77** is an absolute necessity to claim the benefit u/s 80. In that case the goods are liable for confiscation.

If the article is not able to collect the article at the time of his leaving India – The article may be returned to him through any other passenger authorised by him and leaving India or as cargo consigned in his name.

3.6 Regulations in respect of Baggage [Section 81]

The Board may make regulations in the following matters –

a) Providing for the **manner of declaring the contents of any baggage,**

b) Providing for the **custody, examination, assessment to duty and clearance of baggage,**

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c) Providing for **transit or transhipment of baggage** from one customs station to another or to a place outside India.

In exercise of these powers, the **form of the baggage declaration** has been prescribed and standardized. In the **Customs Baggage Declaration Regulations, 2013**, the baggage **declaration will have to be filed only by those passengers who come to India and carry dutiable or prohibited goods or have anything to declare.**

Domestic passengers who board international flights in the domestic leg are not required to file the Customs Baggage Declaration Form.

ILLUSTRATIONS

Illustration 1 (Baggage Rules I)

After visiting USA, Mrs. and Mr. X, brought to India a laptop computer valued at Rs.80,000, used personal effects valued at Rs.90,000 and a personal computer for Rs.52,000. What is the customs duty payable?

Illustration 2 (Baggage Rules II)

Mrs. and Mr. Kapoor visited Germany and brought following goods while returning to India on 8th April, 2016.

- Personal Effects like clothes etc valued at Rs.35,000
- Personal computer bought for Rs.47,000
- Laptop computer bought for Rs.95,000
- 2 litres of liquor bought for Rs.1,600
- A new camera bought for Rs.34,500

What is the amount of Customs duty payable?

Illustration 3 (Baggage Rules 1)

An Indian resident goes to Nepal on tour. He purchases

- Colour TV of Rs.18,000.
- Laptop of Rs.79,000.
- Hair dryer Rs.22,000 and brings the same to India.

What is the duty if he returns by

- Air
- Land route

Illustration 4 (Baggage Rules I)

Mr Samuel, a US resident, aged 35 years has come to India on a tourist Visa for a month-long vacation. He carries with him as a part of baggage the following items

- Travel souvenirs - Rs.85,000
- Other articles carried on in person – Rs.1,50,000
- 80 cigarettes of Rs.100 each – Rs.8,000 [Annexure I]
- 30 Cartridges of fire arms of Rs.500 each – Rs.15,000 [Annexure I]
- 1 litre wine – Rs.15,000 [Annexure I]

With reference to Baggage rules, determine whether Mr Samuel will be required to pay any Customs Duty.

Illustration 5 (Baggage Rules II)

Mr. Sujoy, an Indian entrepreneur, went to London to explore new business opportunities on 01.04.2018. His wife also joined him in London after three months. The following details are submitted by them with the Customs authorities on their return to India on 15.04.2019:

- used personal effects worth Rs. 80,000,
- 2 music systems each worth Rs. 50,000,
- the jewellery brought by Mr. Sujoy worth Rs. 48,000 [20 grams] and the jewellery brought by his wife worth Rs. 96,000 [40 grams]

With reference to Baggage Rules, 2016, determine whether Mr. and Mrs. Sujoy will be required to pay any customs duty?

Illustration 6 (Baggage Rules III)

After visiting USA for a month, Mrs. and Mr. Subrahmanyam (Indian residents aged 35 and 40 years respectively) brought to India

- a laptop computer valued at Rs. 60,000,
- used personal effects valued at Rs. 1,20,000 and
- a personal computer for Rs. 54,000.

Calculate the customs duty payable?

Illustration 7 (Baggage Rules IV)

Mr. Iyer, an Indian entrepreneur went to London to explore new business opportunities on 7th April,2016. 35550 His wife also joined him in London after three months.

The following details are submitted by them with the Customs authorities on their return to India on 21.04.2017:

- used personal effects worth Rs. 90,000,
- 2 music systems each worth Rs. 50,000,
- the jewellery brought by Mr. Sujoy worth Rs. 49,500 [20 grams] and the jewellery brought by his wife worth Rs. 97,500 [40 grams]

With reference to Baggage Rules, 2016, determine whether Mr. and Mrs. Iyer will be required to pay any customs duty?

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Illustration 8 (Baggage Rules V)

Mrs. X an Indian resident, who as on a visit to China returned after 3 months. She as carrying with her the following items:

- used personal effects worth Rs. 75,000,
- Laptop computers worth Rs. 60,000,
- Jewellery [25 grams] purchased in China Rs. 75,000
- Music system Rs. 50,000

Compute customs duty payable by Mrs. X with reference to Baggage Rules, 2016

Illustration 9 (Baggage Rules VI)

Mr. X, an Indian resident and a doctor by profession who was engaged in his profession in Germany for 4 months, brought with him the following items on his return to India –

a) Used personal effects like cloths etc. of Rs. 50,000;
b) a video cassette recorder of Rs. 25,000;
c) Jewellery of Rs. 35,000;
d) Used household articles of Rs. 20,000;
e) His professional equipment like stethoscope and other surgical instruments worth Rs.24,000;
f) A Laptop computer worth Rs. 1,20,000
g) LCD TV- Rs.41,000

Determine the duty payable by him.

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10. FOREIGN TRADE POLICY

Contents

- Legislation governing FTP.
- Salient features of FTP.
- Administration of FTP.
- Basic concepts relating to import and export of goods under FTP.
- Authorised Economic Operator (AEO)
- Status holders and their privileges.
- Understand the various duty exemption and remission schemes.
- EPCG scheme and export obligation.
- EOU, EHTP, STP, BTP schemes.
- Deemed export and benefits.

1. INTRODUCTION

Power to Formulate FTP → Section 5 of FT (D & R) Act,` 1992

- Empowers Central Government to the make provisions for development and regulation of foreign trade
- Empowers Central Government to formulate and announce by notification in Official gazette, the Foreign Trade Policy (FTP) and also amend the same by issuing a notification.

[FT(D&R) Act, 1992] – Foreign Trade (Development and Regulations) Act, 1992

- Came in to Force on ***01.04.2023***
- Continue to be in operation unless otherwise specified or amended.
- Any License/ Authorisation/ Certificate/Scrip/ issued before commencement of FTP 2023 shall continue to be valid

2. AUTHORISATION

- It means "permission for import or export of goods and services" in terms of FT (D&R) Act, 1992.
- DGFT issues authorization for import or export.
- Decision of DGFT is final and binding in respect of any authorization issued under the FTP.

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3. SALIENT FEATURES OF FTP

1. Export-Import is free unless specifically regulated by the provisions of the FTP.
2. Export and Import goods are broadly categorized as
   a. Free (i.e. general goods freely import or export without any authorization).
   b. Restricted (i.e. goods allowed to import or export only with authorization).
   c. Prohibited (i.e. goods are not allowed to import or export)
3. Exclusive trading through State Trading Enterprises (STEs)
4. There are restrictions on exports and imports for various strategic, health, and other reasons.
5. Exports are promoted through various promotional schemes.
6. There should be no taxes on exports.
7. Capital goods can be imported at NIL duty for the purpose of exports under the scheme of Export Promotion Capital Goods (EPCG) Scheme.
8. EOUÕS and SEZ units are exempted from payment of taxes.\
9. Deemed exports concept introduced.
10. Duty credit scrips schemes are designed to promote exports of some specified goods to specified markets and to promote export of specified services

4. STATE TRADING ENTERPRISES

- State Trading Enterprises (STEs) are governmental and non-governmental enterprises, including marketing boards, which deal with goods for export and /or import.
- Any good, import or export of which is granted to State Trading Enterprise (STE), may be imported or exported by the concerned STE as per conditions specified in ITC (HS).
- Examples: FCI, ONGC

5. SCOPE OF FTP

1. Legal Framework and Trade Facilitation
2. General Provisions Regarding Imports and Exports
3. Developing Districts as Export Hubs
4. Duty Exemption / Remission Schemes
5. ***Export Promotion Capital Goods (EPCG) Scheme***
6. ***Export Oriented Units (EOUs)***, ***Electronics Hardware Technology Parks (EHTPs)***, ***Software Technology Parks (STPs)*** and ***Bio-Technology Parks (BTPs)***
7. Deemed Exports
8. Quality Complaints and Trade Disputes
9. Promoting Cross Border Trade in Digital Economy
10. ***SCOMET: Special Chemicals, Organisms, Materials, Equipment and Technologies***
11. Definitions

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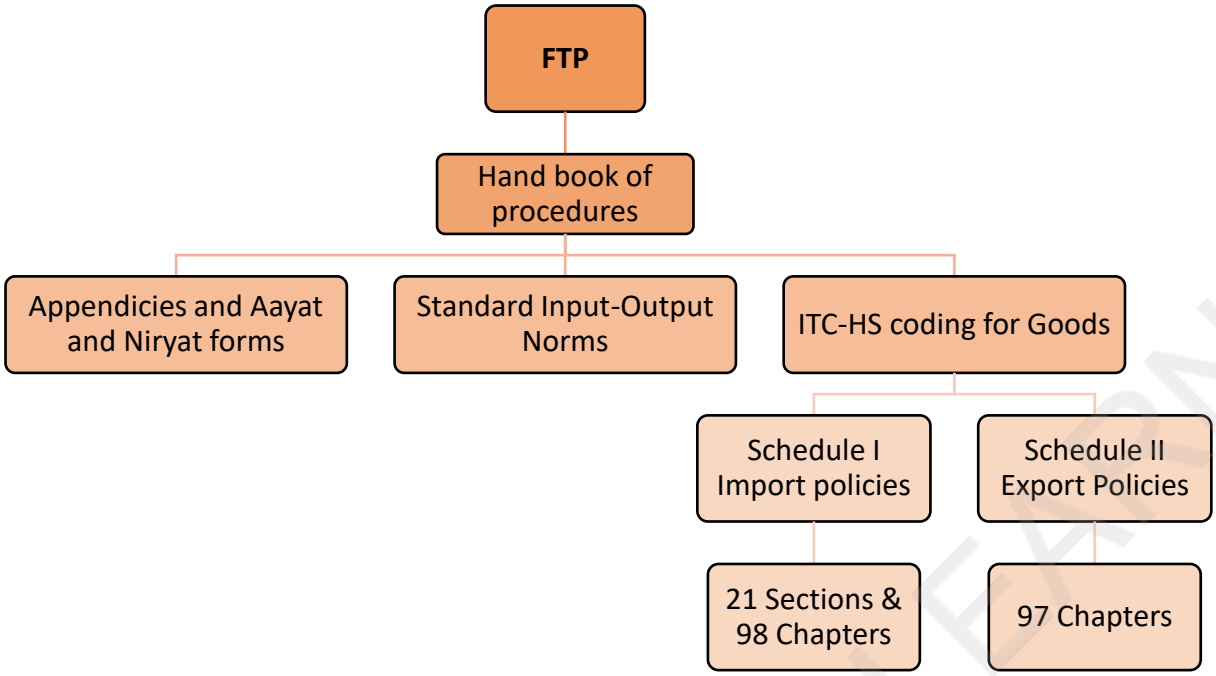
6. COMPONENTS OF FOREIGH TRADE POLICY



7. IMPORTER – EXPORTER CODE (IEC)

- Mandatory to Export any goods out of India or to Import any goods into India unless specifically exempted.
- It is a unique 10-digit Alpha numeric code issued by DGFT
- Pan is a pre-requisite
- Only one IEC will be issued with a single PAN
- DGFT has decided to use PAN as IEC number.
- IEC details have to be electronically updated every year, even if there are no changes; failing which it will be de-activated till updating.

8. MANDATORY DOCUMENTS FOR EXPORT/IMPORT FOODS INTO INDIA

Export	Import
• Bill of lading/Airway bill/ Lorry Bill/ Postal Bill • Commercial invoice cum packing list • Shipping bill/ Bill of export	• Bill of lading/Airway bill/ Lorry Bill/ Postal Bill • Commercial invoice cum packing list • Bill of entry

9. PROVISIONS RELATING TO IMPORT OF GOODS

- Goods which are importable without any restriction may be imported by any person. However, if such goods are restricted then actual user alone can import unless exempted by DGFT.
- ***Import of gifts (Including those purchased from E commerce portals):***
    - Through post or courier where Customs clearance is sought as gifts, is prohibited except for life saving drugs/ medicines and Rakhi (but not gifts related to Rakhi).

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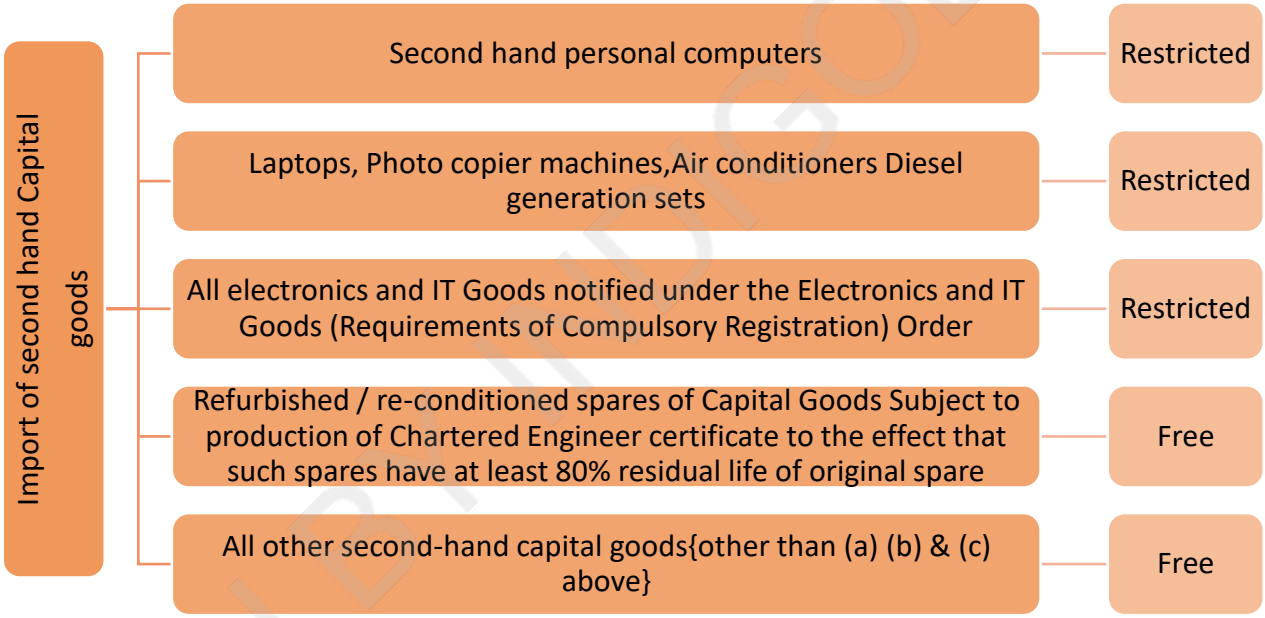
- Import of goods as gifts with payment of full applicable duties is allowed.

- ***Import of samples:***
  - Import of samples of even restricted goods without authorization is allowed.
  - Requires authorization only in case defense/Security Items, Veg-seeds, bees & new drugs
  - Duty free Import of samples up to RS 3,00,000 can be made by all the exporters without payment of duty, Passenger baggage
- Scrap/Waste/remnant generated during manufacturing activity of an SEZ shall be allowed to dispose in DTA freely on payment of applicable customs duty without an Authorization.



- Capital goods, components, parts & accessories can be sent abroad for repairs, improvisation, testing and can be re-imported without reauthorization unless they are restricted goods.
- ***Import of goods used in projects abroad:***

  Project contractors after completion of projects abroad, may import without an Authorisation, goods including capital goods used in the project, provided they have been used for at least one year.
- ***Import of Prototypes:***

  Import of new / second hand prototypes / second hand samples may be allowed on payment of duty without an Authorisation to an Actual User (industrial) engaged in production of or having industrial license / letter of intent for research in item for which prototype is sought for product development or research, as the case may be, upon a self- declaration

to that effect, to the satisfaction of Customs authorities.

- ***Import of Metallic Waste and Scrap:***
  Import of any form of metallic waste, scrap will be subject to the condition that it will not contain hazardous, toxic waste, radioactive contaminated waste/scrap containing radioactive material, any types of arms, ammunition, mines, shells, live or used cartridge or any other explosive material in any form either used or otherwise.
- Import of Capitals goods under lease financing is freely permitted
- Goods for import into India can be sold on the high seas, subject to FTP/other laws in force.
- Where goods imported duty free, imported shall execute Bond, LUT or Bank guarantee with customs before clearance.
  Merchanting trade means shipment of goods from one foreign country to another foreign country without touching Indian ports, involving an Indian intermediary. This is allowed, subject to RBI guidelines

10. PENAL ACTION ABD PLACING OF AN ENTITY IN A DENIED ENTITY LIST (DEL)

- In following situations, a person shall be liable to penal action under FT (D&R) Act and rules and orders made thereunder, FTP and any other law for time being in force:
- Denied Entity List (DEL):
- A firm may be placed under DEL, by the concerned Regional Authority (RA) of
  i. the DGFT. In such a case firm may be refused grant or renewal of a licence/ authorisation/certificate/scrip/any instrument bestowing financial/fiscal benefits, and
  ii. all new licences, authorisations, scrips, certificates, instruments etc. will be blocked from printing/ issue/ renewal.

11. PROVISIONS RELATED TO EXPORT GOODS

Free Exports

All goods may be exported without any restriction except to the extent that such exports are regulated by ITC(HS).

Benefits for Supporting Manufacturers:

Supporting manufacturer is one who manufactures goods/products or any part/ accessories/ components of a good/ product for a merchant exporter/ manufacturer exporter under a specific Authorisation

For any benefit to accrue to the supporting manufacturer, the names of both supporting manufacturer as well as the merchant exporter must figure in the concerned export documents Third Party Exports:

Third-party exports means exports made by an exporter/manufacturer on behalf of another exporter(s).

In such cases, export documents such as shipping bills shall indicate names of both Bank Realisation Certificate (BRC), Self-Declaration Form (SDF), export order and invoice should be in the name of third-party exporter.

Export of Samples

Exports of bonafide trade and technical samples of goods of freely importable items are allowed without any limit.

Export of Gifts:

Goods including edible items, of value not exceeding Rs.5,00,000/- in a licensing year, may be exported as a gift. Even goods restricted can be exported without Authorisation.

Export of Passenger Baggage:

Bona-fide personal baggage may be exported

However, items mentioned as restricted for exports in ITC(HS) shall not be exported as a gift, without an Authorisation. Samples that freely exportable can be exported as part of passenger baggage without Authrisation. Authorisation will be required for restricted items

12. PAYMENTS AND RECEIPTS ON IMPORTS/EXPORTS

- Export proceeds shall be realized in freely convertible currency, Documents can be in any currency
- Export proceeds against specific exports may also be realized in rupees, provided it is through a freely convertible Vostro account
- If an exporter fails to realize export proceeds within time specified by RBI, he shall be liable to return all benefits
- ***Export Credit Agencies (ECAs)***: ECAs provide financial support to exporters. They support exports by insurance, guarantee and also direct lending.

13. EXPORT PROMOTION COUNCILS

- Set up to promote and develop Indian exports.
- Each Council is responsible for promotion of a particular group of products/ projects/services.
- EPCs are also eligible to function as Registering Authorities to issue Registration-cum-Membership Certificate (RCMC).
- RCMC is required to be furnished by any person, applying for an Authorisation to import/ export under the FTP
- Approved Exporters will be entitled to self-certify their manufactured goods as originating from India with a view to qualifying for preferential treatment under different Preferential Trade Agreements

14. AUTHORISED ECONIMOC OPERATOR (AEO) PROGRAMME

Authorised Economic Operator (AEO) programme' has been developed by Indian Customs to enable business involved in the interna6tional trade to reap the following benefits:

i. Secure supply chain from point of export to import;

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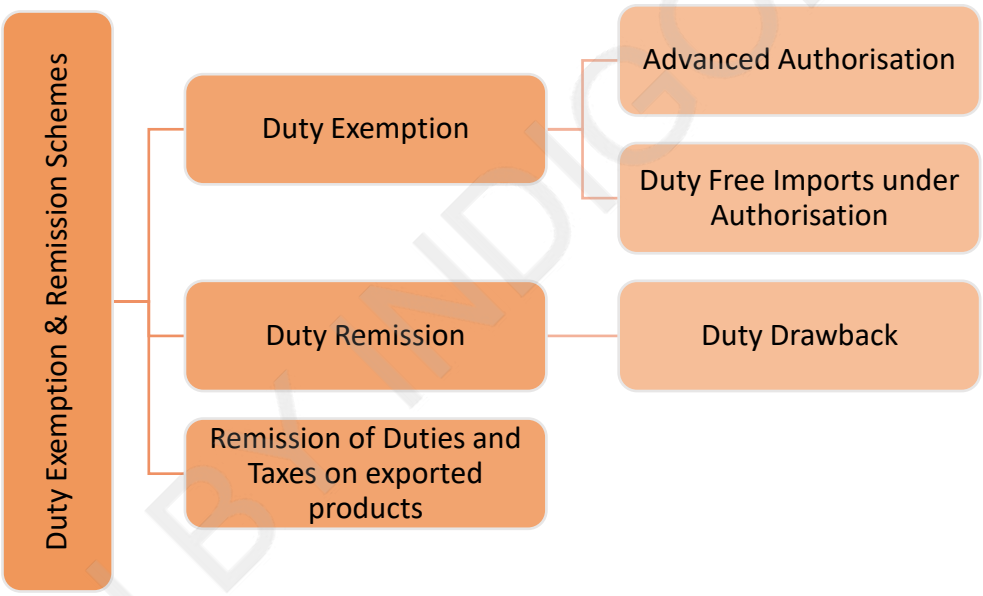
ii. Ability to demonstrate compliance with security standards when contracting to supply overseas importers /exporters;
iii. Enhanced border clearance privileges in Mutual Recognition Agreement (MRA) partner countries;
iv. Minimal disruption to ßow of cargo after a security related disruption;
v. Reduction in dwell time and related costs; and
vi. Customs advice / assistance if trade faces unexpected issues with Customs of countries with which India have MRA.

15. TOWNS OF EXPORT EXCELLENCE (TEE)

Selected towns which are contributing handsomely to India's exports by producing goods of specified amount may be granted recognition as TEE.

They will be provided targeted support and infrastructure development to maximize their export competitiveness and enable them to move up the value chain and also to tap new markets by granting specified privileges to them.

16. DUTY EXEMPTION AND REMISSION SCHEMES



17. ADVANCE AUTHORIZATION SCHEME

- Advance Authorization scheme is a facility to import Inputs to be used/required in the manufacture of Export product without payment of Import duty (Excluding IGST and Cess) subject to 15 % value addition
- Advance Authorization can be issued either to a manufacturer exporter or merchant exporter tied to supporting manufacturer(s)
- AA can also be issued for making
    - Physical exports (including export to SEZ) by Authorisation holder
    - Intermediate supply
    - Supplies made to specified categories of deemed exports

- Supply of 'stores' on board of foreign going vessel/aircraft provided there is specific SION in respect of items supplied

18. VALIDITY PERIOD OF AUTHORIZATION

- Validity period for import of Advance Authorisation shall be 12 months from the date of issue of Authorisation.
- For deemed exports Contract duration of project execution or 12 months from authorization earlier

19. EXPORT OBLIGATION (EO) AND RELIASATION

- EO needs to be fulfilled within 18 months from Date of Authorization or as notified
- EO shall be realized in convertible Foreign currency, export to Export to SEZ Developers/Co Developers can be realised in Indian rupees as well.

20. ITEMS THAT CAN BE IMPORTED DUTY FREE AGAINST ADVANCE AUTHORISATION

- Inputs, which are physically incorporated in export product (making normal allowance for wastage)
- Fuel, oil, catalysts which are consumed/utilised to obtain export product
- Mandatory spares which are required to be exported/supplied with resultant product permitted upto 10% of CIF value of Authorization.
- Specified spices only when used for activities like crushing/ grinding/sterilization/ manufacture of oils or oleoresins and not for simply cleaning, grading, re-packing etc.
- However, items reserved for imports by STEs cannot be imported against advance authorization.

21. CALCULATION OF VALUE ADDITION (EXCEPT FOR GEM AND JEWELLERY SECTOR)

VA = [(A-B) x 100]/B

A = FOB value of export realised/FOR value of supply received.

B = CIF value of inputs covered by authorisation plus any other imported materials used on which benefit of duty drawback (DBK) is claimed or intended to be claimed.

If some items are supplied free of cost by foreign buyer, its notional valuewill be added in the CIF value of import and FOB value of export for purpose of calculating value addition. Exports to SEZ Developers/ Co- developers, irrespective of currency of realization, would also be covered.

22. ENTITLEMENT OF AA IN TERMS OF CIF VALUE OF IMPORTS

- 300% of the FOB value of physical exports and / or Entitlement of AA in terms of CIF value of
- imports and / or FOR value of deemed export in preceding financial year Or 1 Crore
- Whichever is higher

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23. BASICS OF AA (QUANTITY & VALUE)

- As per Standard Input Output Norms (SION) notified (or)
- On the basis of self-declaration where no SION/adhoc norms have been notified / published (or)
- Applicant specific prior fixation of norm by the Norms Committee (or)
- On the basis of self-ratification Scheme no SION/valid Adhoc Norms for an export product

24. WHAT IS SION?

- SION are standard norms which define the number of input(s) required to manufacture unit of output for export purpose.
- Notified by DGFT on basis of recommendation of Norms Committee

25. ACTUAL USER CONDITION

- Advance Authorization and/ or materials imported thereunder will be with actual user condition.
- It will not be transferable even after completion of export obligation.
- However, Authorization holder will have an option to dispose of product manufactured out of duty-free inputs in DTA once export obligation is completed.

26. DOMESTIC SOURCING OF INPUTS

- Holder of AA has an option to procure the materials/ inputs from indigenous manufacturer/STE in lieu of direct import against Advance Release Order (ARO)/Invalidation letter/ Back to Back Inland Letter of Credit.
- However, AA holder may obtain supplies from EOU/EHTP/BTP/STP/SEZ units, without obtaining ARO or Invalidation letter.

27. MAINTENANCE OF PROPER ACCOUNTS FOR AUTHORIZATIONS

- Every AA holder shall maintain a true and proper account of consumption and utilization of duty free imported / domestically procured inputs against each authorisation as per the prescribed formats
- Such records shall be preserved for a period of at least three years from the dateof redemption
- While doing export/supply, applicant shall indicate authorisation number on the export documents.

28. REDEMPTION OR CLOSURE OF ADVANCE AUTHORIZATION

- On completion of exports and imports and other conditions as specified under the advance authorisation, the Authorisation holder shall submit application in the prescribed form alongwith supporting documents for redemption of the authorization
- Regional Authority after duly verifying grant issue EODC / Redemption Certificate
- If goods are imported against advance authorization but export obligation is not fulfilled, duty and interest is payable.

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29. DUTY FREE IMPORTS UNDER AUTHORIZATION

- Post Export facility to Import units used in manufacture of export products without payment of BCD
- Export shall be complete within 12 months from the date of online filing of application. And generation of file number
- Value addition to be made for 20 % (Except for physical exports for which payment not received in Conv Forex)
- Authorizations are issued only to products covered under SION
- Exempted only from payment of BCD
- Applicant shall file an online application before regional authority before Import
- Export proceeds shall be realized in Convertible Forex
- After realization of export proceeds, request for issue of transferable DFIA can be made within a period of
    - 12 Months from date of export or
    - 6 Months from date of realization of export proceeds (Whichever is later)
- No DFIA shall be issued for an export product where SION prescribes actual user condition for any input.
- Holder of DFIA can procure inputs from indigenous manufacturer against Advance release order. DFIA holder may obtain supplies from EOU/EHTP/BTP/STP without obtaining ARO.

Particulars	Advance Authorization	Duty Free Imports under Authorization
About	Is a facility to import Inputs to be used/required in the manufacture of Export product without payment of Import duty (Excluding IGST and Cess) subject to 15 % value addition	It is a post export facility to import inputs used in manufacture of export products without payment of BCD
Export Obligation	EO needs to be fulfilled within 18 months from Date of Authorization	Export shall be completed within 12 months from date of online application
Basis (Qty & value)	SION / Self Declaration / Applicant Specific prior fixation of norm/ On basis of self-ratification scheme	Issued only if SION is notified.
Transferable	No	Transferable
Value Addition	Generally, ≥ 15 % (Except Physical exports not realized in FCC) Tea ≥ 50%	≥ 20 %
Available even to	Jem and Jewellery Sector	Not Available
Exemption	BCD, Adtnl Customs duty, IGST, comp Cess	Only BCD

30. REMISSION OF DUTIES AND TAXES ON EXPORTED PRODUCTS

RoDTEP scheme is based on the globally accepted principle that taxes and duties should not be exported, and taxes and levies borne on the exported products should be either exempted or remitted to exporters

This scheme provides for remission of the amount in the form of duty credit scrip credited in an exporter's ledger account with customs.

Objective of the Scheme:

The objective of the scheme is to refund, currently unrefunded:

i. Duties/ taxes/ levies, at the Central, State & local level, borne on the exported product, including prior stage cumulative indirect taxes on goods & services used in production of the exported product, and
ii. Such indirect duties/taxes/levies in respect of distribution of exported products.

Salient features of the scheme:

- It seeks to refund to exporters the embedded Central, State and local duties/taxes that were so far not being rebated/refunded.
- Duty credit is issued –
  - in lieu of remission of any duty/tax/levy chargeable on any material used in the manufacture/processing of goods or for carrying out any operation on such goods in India that are exported, where such duty/ tax /levy is not exempted/remitted/credited under any other Scheme;
  - against export of notified goods under FTP.
- Value of the said goods for calculation of duty credit to be allowed under the scheme shall be the declared export FOB value of the said goods or up to 1.5 times the market price of the said goods, whichever is less.
- The refund in the form duty credits would be credited in the electronic credit ledger in the customs automated account of the exporter.
- Such duty credit shall be used only to pay basic customs duty on imported goods.
- The duty credit scrips are freely transferable, i.e. credits can be transferred to other importers.
- The rebate under the scheme shall not be available in respect of duties and taxes already exempted or remitted or credited.

31. ELIGIBILITY FOR THE SCHEME

All exporters of eligible RoDTEP export items are eligible for the scheme. Reward under the scheme.

32. REWARD

Rebate would be granted to eligible exporters at a notified rate as a % of FOB value with a value cap per unit of the eligible exported product, wherever required, on export of items. However, for certain export items, a fixed quantum of rebate amount per unit may also be notified.

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Rebate would not be dependent on the realization of export proceeds at the time of issue of rebate. However, rebate will be deemed never to have been allowed in case of non-receipt of sale proceeds within time allowed under the Foreign Exchange Management Act, 1999.

Ineligible supplies/ items/ categories under Ro DTEP

- Export of imported goods in same or substantially the same form
- Exports through trans-shipment, meaning thereby exports that are originating in third country but trans-shipped through India
- Export products which are subject to minimum export price or export duty
- Products which are restricted/prohibited under FTP
- Supplies of products manufactured by DTA units to SEZ/FTWZ units.
- Products manufactured in EHTP and BTP
- Goods which have been taken into use after manufacture
- Exports for which the electronic documentation in ICEGATE EDI has not been generated/ exports from non-EDI ports
- Products manufactured or exported availing the benefit of Notification No. 32/1997 Cus. dated 01.04.1974

33. DEEMED EXPORTS

- Products manufactured partly or wholly in a warehouse under section 65 of the Customs Act
- Goods for which claim of duty credit is not filed in a shipping bill or bill of export in the customs automated system
- Products manufactured or exported in discharge of EO against an AA/DFIA/Special AA issued under a duty exemption scheme of relevant FTP
- Products manufactured/exported by a unit licensed as 100% EOU in terms of the provisions of FTP or by any of the units situated in FTZ/EPZ/SEZ
- EPCG SCHEME (Export Promotion Capital Goods Scheme)
- EPCG scheme allows import of capital goods without payment of duty for pre-production, production, post production.
- Capital goods imported under EPCG authorisation are exempted from IGST and compensation cess as well
- Authorisation holder can procure capital goods indigenously (with in India) as well.
- Authorisation is valid for 18 months from the date of issue of its authorisation.
- Import of capital goods shall be subject to 'Actual User' condition till export obligation is completed. After export obligation is completed, capital goods can be sold or transferred.
- Export proceeds shall be realized in freely convertible currency except for deemed exports plies.
- Export to SEZ Units shall be taken into account for discharge of export obligation provided payment is realised from Foreign Currency Account of the SEZ unit
- Export to SEZ Developers / Co-developers can also be taken into account for discharge of export obligation even if payment is realised in Indian Rupees

34. CAPITAL GOODS FOR THE PURPOSE OF EPCG SHALL INCLUDES

- Capital Goods including capital goods in CKD/SKD condition

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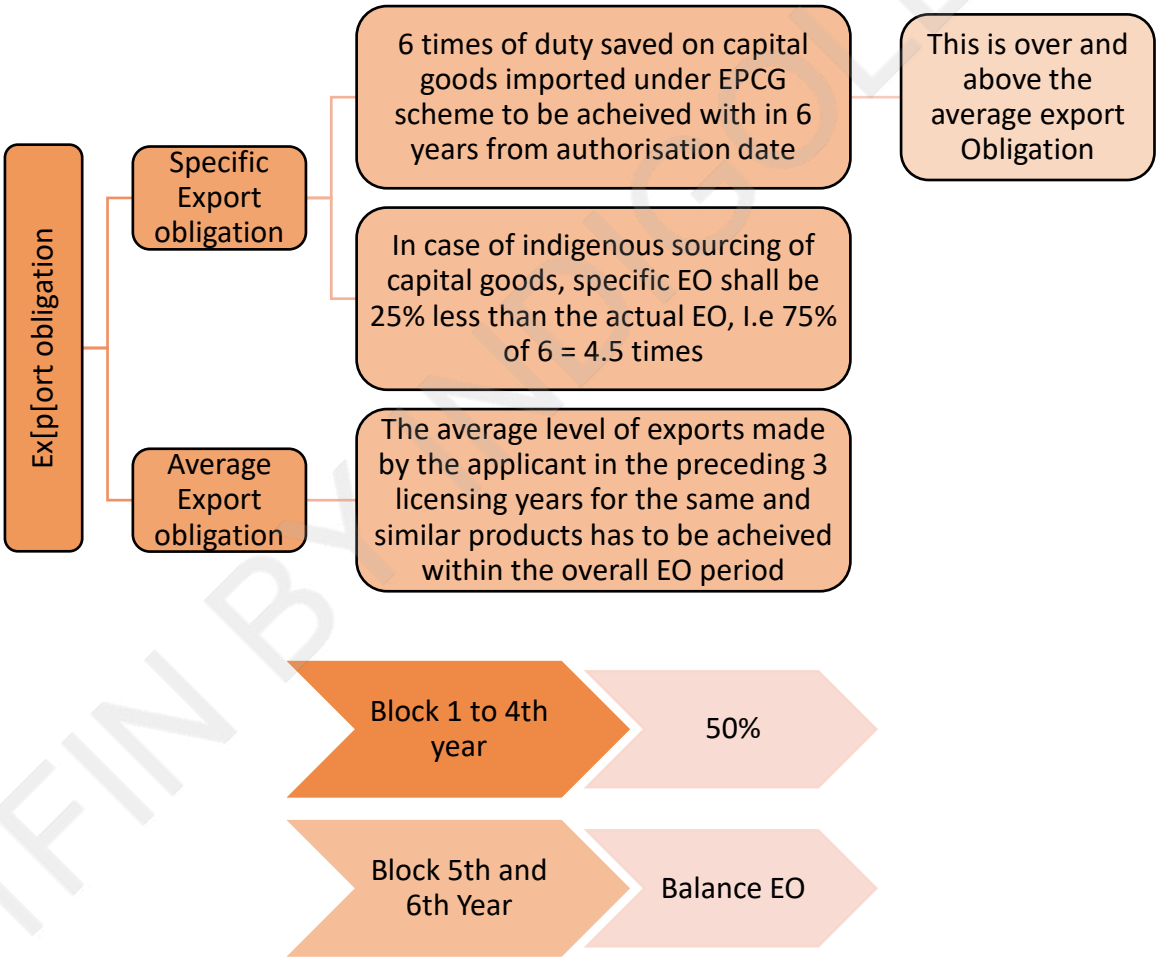
- Computer systems and software which are a part of the Capital Goods being imported
- Spares, moulds, dies, jigs, fixtures, tools & refractories
- Catalysts for initial charge plus one subsequent charge
- Capital goods for Project Imports notified by CBIC

35. EXPORTERS ELIGIBLE FOR EPCG SCHEME

- Manufacturer exporters with or without supporting manufacturer(s),
- Merchant exporters tied to supporting manufacturer(s), and
- Service providers including service providers designated as Common Service Provider (CSP) subject to prescribed conditions

36. EXPORT OBLIGATION

- Export obligation means obligation to export product(s) covered by Authorisation in terms of quantity or value or both, as may be prescribed.



37. OTHER CONDITIONS

- Shipments under Advance Authorisation, DFIA, Drawback scheme, or reward schemes; would also be counted for fulfilment of EO under EPCG Scheme.
- EO can also be fulfilled by the supply of Information Technology Agreement (ITA-1) items to DTA, provided realization is in free foreign exchange.

- Both physical exports as well as specified deemed exports shall alsobe counted towards fulfilment of export obligation.
- EPCG Authorisation holder shall submit to RA concerned by 30thApril of every year, report on fulfilment of export obligation.
- Every EPCG authorisation holder shall maintain, for a period of 2 years from date of redemption, a true and proper account of exports/ supplies made and services rendered towards fulfilment of export obligation.
- Applicant shall indicate authorisation number on the export documents while doing exports.
- On completion of exports and imports and other conditions as specified under the EPCG authorisation, the Authorisation holder shall submit application in the prescribed form along with supporting documents for redemption of the authorisation under the prescribed format
- On being satisfied, RA concerned shall issue a EODC / Redemption Certificate to the EPCG authorisation holder and forward a copy to Customs Authorities indicating the same details of proof of fulfilment of EO

38. INCENTIVE FOR EARLY FULFILMENT OF EXPORT OBLIGATION

- Importer fulfilled the export obligation as specified below with in half or less than half of the original export obligation period
    - 75 % or more of specific export obligation
    - 100 % of Average export obligation

39. STATUS HOLDER

- StatusHolders are businessleaders who have excelled in international trade and have successfully contributed to country's foreign trade.
- All exporters of goods, services and technology having an import-export code (IEC) number shall be eligible for recognition as a status holder.
- An applicant shall be categorized as status holder upon achieving export performance during current and previous three financial years*
- However, for Gems & Jewellery Sector, the performance during the current and previous two financial years shall be considered.

Status Category	***Export Performance***
One-star Export house	3 million USD
Two-star Export house	15 million USD
Three-star Export house	50 million USD
Four-star Export house	200 million USD
Five-star Export house	800 million USD

- Export performance will be counted on the basis of FOB value of exportearnings in free foreign currencies.
- For deemed export, FOR value of exports in Indian Rupees shall be converted in US$ at the exchange rate notified by CBIC, as applicable on 1st April of each Financial Year.
- For granting status, export performance is necessary in at least 2 out of 4 years

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- Export performance of one IEC holder shall not be permitted to be transferred to another IEC holder. Hence, calculation of exports performance based on disclaimer shall not be allowed.
- Exports made on re-export basis shall not be counted for recognition.
- Export of items under authorization, including SCOMET items, would be included for calculation of export performance.
- Export of items under authorization, including SCOMET items, would be included for calculation of export performance.
- For calculating export performance for grant of One Star Export House Status category, exports by IEC holders under the following categories shallbe granted double weightage:
    - Micro, Small & Medium Enterprises (MSME) as defined in Micro, Small& Medium Enterprises Development (MSMED) Act 2006
    - Manufacturing units having ISO/BIS
    - Units located in North Eastern States including Sikkim and Jammu & Kashmir
    - Units located in Agri Export Zones

40. PRIVILEGES OF STATUS HOLDERS: STATUS HOLDERS ARE GRANTED CERTAIN BENEFITS LIKE

a. Authorisation and custom clearances for both imports and exports on self- declaration basis.
b. Fixation of Input Output Norms (SION) on priority i.e. within 60 days by Norms Committee.
c. Exemption from compulsory negotiation of documents through banks. The remittance/ receipts, however, would continue to be received through banking channels.
d. Exemption from furnishing of Bank Guarantee in Schemes under FTP.
e. Two Star Export Houses and above are permitted to establish export warehouses.
f. Manufacturers who are also status holders (Three Star/Four Star/Five Star) will be enabled to self-certify their manufactured goods (as per their IEM/IL/LOI) as originating from India with a view to qualify for preferential treatment under different preferential trading agreements (PTA), Free Trade Agreements (FTAs), Comprehensive Economic Cooperation Agreements (CECA) and Comprehensive Economic Partnership Agreements (CEPA).
g. Status holders shall be entitled to export freely exportable items (excluding Gems and Jewellery, Articles of Gold and precious metals) on free of cost basis for export promotion subject to a certain annual limit specified for each sector separately.

41. EOU, EHTP, STP & BTP SCHEMES

Units under Export Oriented Unit (EOU) Scheme, Electronics Hardware Technology Park (EHTP) Scheme, Software Technology Park (STP) Scheme or Bio-Technology Park (BTP) Scheme:

- Can export their entire production of goods and services (except permissible sales in DTA), and
- can import inputs and capital goods without payment of customs duty.

42. GOVERNANCE AND ADMINISTRATION

- STP/EHTP/BTP schemes are similar to EOU schemes and provisions are more/ less identical.

- EOU scheme is administered by Ministry of Commerce and Industry, while STP/EHTP/BTP schemes are administered by their respective administrative ministries.

Eligibility:

- Such units may be set up for manufacture of goods, including repair, re-making, reconditioning, re-engineering, rendering of services, development of software, agriculture.
- Trading units are not covered under these schemes.
- Only projects having a minimum investment of Rs 1 crore in plant & machinery shall be considered for establishment as EOUs. However, Board of Approvals (BoA) may allow establishment of EOUs with a lower investment criteria also
- Approval for setting up of units under EOU scheme shall be granted by the Units Approval Committee within 15 days as per prescribed criteria. In other cases, approval may be granted by Board of Approval (BoA) set up for this purpose.
- Letter of Permission validity of 2 years (extendable by 2 years and further extension, if necessary, by BoA)

43. NET FOREIGN EXCHANGE EARNINGS

- EOU/ EHTP/ STP/ BTP unit must be a positive net foreign exchangeearner.
- NFE Earnings shall be calculated cumulatively in blocks of 5 years, starting from commencement of production.
- Items of manufacture for export specified in LoP/LoI alone shall be taken into
    - account for calculation of NFE
    - Positive NFE = A - B > 0 'A' is FOB value of exports;
    - 'B' is CIF value of imported inputs, capital goods and value of all payments

44.1 - Sales to DTA units

Up to 50% of FOB value of exports (including sales made to SEZ unit from Foreign Exchange Account of such unit), subject to fulfillment of positive NFE, on payment of concessional duties.

In case of units manufacturing and exporting more than one product, sale of any of these products into DTA, up to 90% of FOB value of export of the specific products is permitted, provided total DTA sales does not exceed the overall entitlement of 50% of FOB value of exports for the unit. In case of new EOUs, advance DTA sale will be allowed not exceeding 50% of its estimated exports for first year (2 years for pharmaceutical units)

45. SPECIAL ECONOMIC ZONES

- Are like a separate island within territory of India.
- SEZs are projected as duty free area for the purpose of trade, operation, duty and tariffs.
- Goods and services coming to SEZ units from domestic tariff area are treated as exports from India and goods and services rendered from SEZ to the DTA are treated as import into India.

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45.1 - Incentives to Special Economic Zones:

1. Duty free import/domestic procurement of goods for development, operation and maintenance of SEZ units.
2. Single window clearance for Central and State level approvals.
3. Exemption from State sales tax and other levies as extended by the respective State Governments.
4. "In order to give a boost to exports from SEZs, government has now decided to extend benefits of both the reward schemes (MEIS and SEIS) to units located in SEZs.
5. SEZs have been exempted from payment of IGST on imports. Supplies to SEZs by DTA units also exempted from IGST (i.e. zero-rated supply

Deemed Exports:

Goods manufactured in India and supplies from DTA to EOU, EHTP, STP & BTP units will be regarded as deemed exports and DTA supplier shall be eligible for export incentives.

Deemed Exports for the purpose of GST

It would include only the supplies notified under section 147 of the CGST/SGST Act, on the recommendations of the GST Council. The benefits of GST and conditions applicable for such benefits would be as specified by the GST Council and as per relevant rules and notification.

We will restrict our discussion to 'Deemed exports for the purpose for FTP' inthis chapter. Deemed exports broadly cover three areas.

a. Supplies to domestic entities who can import their requirements duty free or at reduced rates of duty.
b. Supplies to projects/ purposes that involve international competitive bidding
c. Supplies to infrastructure projects of national importance

Supply by manufacturer	Supply by main/sub-contractors(s)
Supply of goods against Advance Authorisation/Advance Authorisation for Annual Requirement/ DFIA	Supply of goods to projects or turnkey contracts financed by multilateral or bilateral agencies/Funds notified by Department of Economic Affairs (DEA), under International Competitive Bidding.
Supply of goods to units located in EOU/STP/BTP/EHTP	Supply of goods to any project where import is permitted at zero customs duty as per customs
Supply of capital goods against EPCG authorisation	Supply of goods to mega power projects against International Competitive Bidding
	Supply to goods to UN or international organisations
	Supply of goods to nuclear projects through competitive bidding (need not be international competitive bidding).

Benefits for Deemed Exports

Deemed exports shall be eligible for any/ all of following benefits in respect of manufacture and supply of goods, qualifying as deemed exports, subject to specified terms and conditions:

a. Advance Authorisation/ Advance Authorisation for Annual requirement/DFIA
b. Deemed Export Drawback
c. Refund of terminal excise duty for excisable goods mentioned in Schedule 4of Central Excise Act 1944 provided the supply is eligible under that category of deemed exports and there is no exemption.

ILLUSTRATIONS

Illustration (Specific Provisions Applicable to Exports)

CD Corporation, a merchant exporter, procured order of goods from a customer in USA.

It approached AB Corporation, a manufacturer, for execution of the said order.

The shipping bills relating to the consignment bear the name of CD Corporation.

Bank Realization Certificate, export order and invoice are also in the name of CD Corporation.

Comment whether AB Corporation would be deemed as the exporter under FTP.

Illustration 1

Answer the following questions with reference to the provisions of Foreign Trade Policy:

FIintex Manufacturers manufactures goods by using imported inputs and supplies the same under Aid Programme of the United Nations.

The payment for such supply is received in free foreign exchange.

Can FIintex Manufacturers seek Advance Authorization for the supplies made by it?

XYZ Ltd. has imported inputs without payment of duty under Advance Authorization.

The CIF value of such inputs is Rs. 10,00,000.

The inputs are processed, and the final product is exported.

The exports made by XYZ Ltd. are subject to general rate of value addition prescribed under Advance Authorization Scheme.

No other input is being used by XYZ Ltd. in the processing.

What should be the minimum FOB value of the exports made by the XYZ Ltd. as per the provisions of Advance Authorization?

'A' has used some duty paid inputs in its export products.

However, for the rest of the inputs, he wants to apply for the Advance Authorization.

Can he do so? Explain