

**For CMA**

# **INDIRECT TAX**

**CUSTOM DUTY**

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**EDUCATION IS A JOURNEY**

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**CUSTOM DUTY**

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# CUSTOMS ACT, 1962

Post-independence, the **Customs Act was passed in 1962**. It consolidated the erstwhile Sea Customs Act, 1878, Land Customs Act, 1924 and Indian Custom Aircraft Act, 1911. Further, the **Customs Tariff Act was passed in 1975** to replace the erstwhile Indian Tariff Act, 1934.

## Constitutional Provisions

**According to Article 265** of the Constitution of India, **No tax of any nature** can be levied and collected by Central or State Governments except by the authority of law. The authority to enact law and levy taxes and duties is given by the constitution vide Article 246.

**According to Article 246**, law can be enacted by Parliament or the State Legislature, if such power is given by the Constitution of India.

The power to levy the custom duty is conferred by **Entry No. 83 of the Union List of the Seventh Schedule** to the Constitution of India which provides as under:

**“Duty of Customs including exports duties”.**

Thus, the power to make laws in respect of Customs duty **vests with the Central Government**. The tax receipts on account of customs duty are solely enjoyed by the Union.

## Sources of Customs Law

1. <b>The Customs Act, 1962</b>	This is a consolidating enactment providing levy of import and export duties of customs on goods imported into or exported from India through sea, air or land.  It provides for the provisions of levy and collection of duty, importation or exportation, transit and transshipment, prohibition on importation or exportation of goods, warehousing etc.
2. <b>The Customs Tariff Act, 1975</b>	The Act contains various types of custom duties to be levied on the importation and exportation of the articles. It contains two schedules –  <b>Schedules 1: Known as ‘Import Tariff’ and Schedules 2: Known as ‘Export Tariff’</b>  ‘Import Tariff’ consists of 98 Chapters grouped under 21 Sections This Schedule refers to <b>goods liable to import duty of Customs</b> . ‘Export Tariff’ refers to <b>goods liable to export duty of Customs</b> .
3. <b>Rules</b>	<b>Section 156</b> of the Customs Act, 1962 empowers the <b>Central Government</b> to make rules consistent with this Act.  <ul style="list-style-type: none"> <li>• Customs Valuation (Determination of Value of Imported Goods) Rules, 2007</li> <li>• Customs Valuation (Determination of Value of Export Goods) Rules, 2007</li> <li>• <b>Baggage Rules 2016</b></li> </ul>
4. <b>Regulations</b>	<b>Section 157</b> of the Customs Act, 1962 empowers the <b>Central Board of Excise and Customs</b> to make regulations consistent with the Act and the rules, generally to carry out the purposes of the Act.  <ul style="list-style-type: none"> <li>• Export Manifest (Vessels) Regulations 1976</li> </ul>
5. <b>Notifications under Customs Act</b>	<b>Central Government</b> has been empowered to issue notifications under various sections of the Customs Act, 1962.

**Application of the Act**

The Customs Act, 1962 applies to the whole of India. India **includes** territorial waters of India. **The Customs Act, 1962 and Customs Tariff Act, 1975 have been further extended to:-**

- (i) the **notified designated areas** in the Continental Shelf of India (CSI) and Exclusive Economic Zone of India (EEZI) and
- (ii) **Whole of EEZI and CSI for the purpose of** processing or extraction or production of mineral oils and supply of any goods in connection thereto.

**Note:**

- (i) **Territorial waters of India** extend upto 12 nautical miles inside sea from baseline on coast of India and **include any bay, gulf, harbour, creek or tidal river.** (1 nautical mile = 1.1515 miles = 1.853 Kms).
- (ii) **Indian Customs waters** extend up to the limit of contiguous zone of India (i.e. 12 nautical miles **beyond territorial waters**) and **includes any bay, gulf, harbour, creek or tidal river.** Powers of customs officers extend up to Indian Customs Waters (i.e. total of 24 nm)

**Indian customs waters cover both the Indian territorial waters and contiguous zone.** Indian territorial waters extend up to 12 nautical miles (nm) from the base line whereas contiguous zone extend to a further 12 nm from the outer limit of the territorial waters. **Therefore, Indian customs waters extend up to a total of 24 nm from base line.**

- (iii) '**Exclusive economic zone**' extends to 200 nautical miles from the base-line.
- (iv) **Continental shelf** is the part of the **sea floor** adjoining a land mass where the depth gradually increases before it plunges into the ocean deeps. **Continental Shelf of India extends to a distance of 200 nautical miles from the baseline.**

**Significance of Indian territorial waters and Indian customs waters:**

Since India includes Indian territorial waters, all the provisions of the Customs Act and rules and regulations there under are applicable in Indian territorial waters. In addition to this, the Customs Act, 1962 has extended **certain powers of the customs officers in the Indian customs waters as well (for example, power to stop and search any vessel, power to arrest a person in Indian customs waters etc.).**

**Charging Section**

**Section 12:** Except as provided in this Act, or any other law for the time being in force,

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

The aforesaid provisions shall apply in respect of **all goods belonging to Government** as they apply in respect of goods not belonging to Government.

***However, imports by Indian Navy, specific equipment required by police, Ministry of Defense, Coastal Guard etc. are fully exempt from customs duty by virtue of specific notifications subject to fulfillment of conditions and/or procedure set out in the said notifications.***

**IMP:**

(i) Customs duty is **charged on goods and not on the person** importing them or paying the duty. Being such, it is expected to be passed on to the buyer.

(ii) ***It may, however, be noted that this levy is subject to other sections in the Act. For instance:***

**Section 13** – No duty on pilfered goods

**Section 22** – Reduced duty on damaged goods

**Section 23** – Remission of duty on destroyed goods.

(iii) **Government goods shall be treated at par with non-Governmental goods** for the purposes of levy of customs duty.

**Rates of duty:**

The rates at which duties of customs shall be levied under the Customs Act 1962 are specified in the **First and Second Schedules** of the Customs Tariff Act, 1975.

(a) **Preferential Rate of duty:** If the goods are imported from the preferential areas [as notified by the Central Government], then a **lower preferential rate of duty** will be applicable on such goods subject to the fulfillment of specified conditions.

(b) **Standard rate of duty:** In any entry, if no preferential rate of duty has been notified, the **standard rate of duty** shall be applicable.

**IMPORT PROCEDURES****Landing /Calling of Vessel/Aircraft:**

- a) When the Vessel/Aircraft carrying imported goods arrives in India, the **person-in-charge of such vessel/aircraft** [Master/Pilot] entering into India from outside India shall allow calling / landing of the vessel / aircraft **only at the customs port/customs airport.**
- b) However **Board (CBEC) may allow** such person-in-charge to cause/permit such vessel/aircraft to call/land at a place other than customs port/airport.
- c) **Landing at other places is permissible** under unavoidable circumstances like accident, stress of weather, navigational problem, etc., subject to the following conditions: -
- i. Landing should be **reported to the nearest customs officer or police officer**, also log book should be produced on demand.
  - ii. Without the permission of Customs neither the cargo should be **unloaded** nor the passengers or crew **depart** from the vicinity of vessel/aircraft.
  - iii. The persons in charge of the conveyance **shall comply** with the proper officer's instructions in regard to such goods.
  - iv. No passenger or crew **shall leave the immediate vicinity** of vessel or aircraft without the consent of the proper officer.

However, the passengers, crew and goods can however **keep away from the conveyance for reasons of health, safety or preservation of life or property.**

**DELIVERY OF IMPORT MANIFEST (Import General Manifest) OR IMPORT REPORT:**

- a) The person-in-charge of the conveyance shall deliver Import Manifest/ Import Report to the proper officer:

Nature of Conveyance	Name of Document	Time Limit	Mode of Presentation
Vessel (Port)	Import Manifest (IGM)	Before arrival	Electronic Filing
Aircraft (Airport)	Import Manifest (IGM)	Before arrival	Electronic Filing
Vehicle (Land custom station)	Import Report (IR)	Within 12 hours after arrival	Manual Filing

- b) **In cases where it is not feasible to deliver IGM by presenting them electronically, the Commissioner of Customs may, allow the same to be delivered in any other manner.**
- c) The person delivering the import manifest or import report shall at the foot thereof make and subscribe to a declaration as to the truth of its contents.
- d) **Belated filing of IGM:** Import manifest/Report filed belatedly may also be accepted by the proper officer on valid justified grounds.
- e) **Amendment to IGM:** If the proper officer is satisfied that the import manifest or import report is in any way incorrect or incomplete and there is no fraudulent intention, he may permit it to be amended or supplemented.
- f) Penalty for non-submission within the prescribed time-limit without sufficient cause for such delay - Not more than Rs. 50,000/-

g) The IGM (IMPORT GENERAL MANIFEST) also gives the following particulars:

1. Name of the Vessel	2. Nationality	3. Tonnage(weight in tons)
4. Name of the shipping line	5. Last port of call	6. Port arrival and date and time of arrival
7. Name of the master	8. Nationality of the master	9. Name and address of the local steamer or shipping agent
10. Port called during the present voyage	11. Number of crew	12. Number of passengers, etc

### Grant of Entry Inwards to the master of the vessel/permission to unload the goods

On receiving import manifest from the master of a vessel, the proper officer **shall grant Entry Inwards** to the master. The master of the vessel shall not permit the goods to be unloaded until the order of Entry Inwards has been granted by the proper officer to such vessel. Date of Entry Inwards is the date on which the vessel finds a berth place for discharge of cargo.

### Unloading of goods:

Imported goods shall be unloaded:-

- (a) Only if mentioned in the import manifest/import report.
- (b) Only at the approved places in any customs port/customs airport.
- (c) Under the supervision of the proper officer.
- (d) During working hours and shall not be unloaded on Sunday or any holiday.

#### Note:

1. Board may give general permission and the proper officer may in any particular case give special permission for any goods to be unloaded without the supervision of the PO.
2. Goods may be unloaded after working hours or on Sunday/holiday after giving prescribed notice and on the payment of the prescribed fees, if any.

### RESTRICTIONS ON CUSTODY AND REMOVAL OF IMPORTED GOODS

#### (1) Unloaded goods to be in the custody of the Custodian until their clearance:

Customs act provide that once the imported goods have entered the customs area, they shall remain in the custody of the **Custodian** [a person approved by the Commissioner of Customs for this purpose] until they are cleared for home consumption or are warehoused or are transshipped.

#### (2) He shall keep a record of such goods and send a copy thereof to the proper officer

#### (3) He shall not permit such goods to be removed from the custom area except with the permission in writing of the PO.

#### (4) Pilferage while in custody:

If any imported goods are pilfered after unloading thereof in a custom area while in the custody, **custodian shall be liable to pay duty** on such goods at the rate prevailing on the date of delivery of IGM to PO.

**PROVISIONS RELATING TO BILL OF ENTRY**

1. Bill of entry is the basic document which is **filed by importer** for the purposes of clearance of goods lying at the place of importation.
2. The bill of entry shall cover up all goods mentioned in bill of lading or other receipt given by carrier to the consignee.
3. Bill of entry is required even in case of exempted goods.
4. Electronic submission of Bill of Entry is mandatory. Manual submission is possible only with permission of commissioner of customs.
5. **The following 3 different types of bill of entry are used in Customs Laws:**

(i) **Bill of Entry for home consumption:** This is used when the imported goods lying at the place of importation are to be cleared (for immediate utilization) upon payment of duty. Home consumption means use within India. It is white coloured and hence, often called "**white bill of entry**".

(ii) **Bill of Entry for Warehousing:** This is used when the, imported goods lying at the place of importation are to be transferred to customs warehouse without payment of duty. This is filed when goods are not required for immediate utilization and hence, duty payment is to be deferred till the time of actual need of goods. It is yellow coloured and hence, often called "**yellow bill of entry**". It is also called "Into-Bond Bill of Entry" as bond is executed for transfer of goods in a warehouse.

**Question: State purpose and use of Yellow Bill of Entry**

(iii) **Ex-Bond Bill of Entry for clearance from warehouse:** This is used when the imported goods transferred to customs warehouse are to be cleared from warehouse for home consumption paying customs duty. It is green coloured and hence, often called "**green bill of entry**". It is also called "Ex-Bond Bill of Entry"

6. **The form of the bill of entry is governed by Bill of Entry (Forms Regulations, 1976). When Bill of Entry is filed electronically, it is in four copies:**

- (a) **Original**, meant for the customs authorities for assessment and collection of duty;
- (b) **Duplicate**, intended as an authority to the custodian of the cargo to release cargo to the importer from his custody;
- (c) **Triplicate**, as a copy for record for the importer; and
- (d) **Quadruplicate**, as a copy to be presented to the bank or Reserve Bank of India for the purposes of making remittance for the imported goods.

**Timing of filing of Bill of Entry:**

1. **NEW:** According to section 46(3), the importer shall present the bill of entry **before the end of the next day following the day (excluding holidays) 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. **[W.e.f. 31.03.2017 as amended by Finance Act 2017]** - Earlier there was no time limit was prescribed under the Act
2. Further, in case of Aircraft or Vessel, it can be submitted **up to 30 days prior to expected date of arrival** of ship or aircraft.
3. Department has clarified that if vessel does not arrive within 30 days, filing of fresh bill of entry will be necessary.

**Assessment of duty on the imported goods:**

1. Assessment is the procedure of quantifying the amount of liability. The importer will self-assess the duty considering the applicable rate of exchange and rate of import duty.
2. This self-assessment is subject to verification by the proper officer of the Customs and may lead to reassessment by such officer, if the assessment made by the importer is found to be incorrect.

**Importer Exporter Code (IEC)**

1. Import Export Code Number (IEC) is required to be taken by every Importer and Exporter and no Import/Export is allowed without this number.
2. It is allotted by Directorate General of Foreign Trade (DGFT) on application made in prescribed form.
3. It is based on PAN allotted under Income-Tax.
4. It can be cancelled if importer/ exporter has-
  - a) Contravened the law
  - b) Engaged in Import/Export in a manner prejudicial to foreign trade relation of India or to interests of Exporters/Importers.

**Payment of duty:**

1. If the goods are cleared to be stored in a warehouse, payment of duty is deferred till the time of clearance from such warehouse.
2. However, in case the goods are cleared for home consumption, customs duty has to be paid.
3. The duty may be paid manually or electronically unless otherwise specified.
4. ~~The importer has to pay the duty within **2 days** (excluding holidays) of the determination of such duty amount. Earlier, it was **5 days**~~
5. **NEW: W.e.f 31.03.2017**, duty is payable **on the same day** from the date of returning bill of entry in case of self assessment & payable within one day after the return of bill of entry in case of re-assessment or provisional assessment.
6. **Payment of Duty Electronically is mandatory in following cases:**
  - Importers registered under Accredited Clients Programme.
  - Importers paying customs duty of Rs. 1 lakh or more per bill of entry.
7. **Interest @15% on delayed payment of duty:**

Where the importer fails to pay the import duty under **within 2 days**, excluding holidays, from the date on which the bill of entry is returned to him for payment of duty, he shall be liable to pay interest @ **15% p.a.** on such duty till the date of payment of the said duty.
8. **Power to waive interest:** if the Board is satisfied that it is necessary in the public interest so to do, it may, by order for reasons to be recorded, **waive the whole or part of any interest payable** under it.

**Clearance of imported goods from the custom station:**

1. **Port demurrage charges** is payable if goods are not cleared **within 3 days** from port.
2. Any imported goods should be cleared within 30 days from the date of unloading of goods at a customs station failing which the goods **maybe disposed of by way of auction.**

It is also provided that animals, perishable goods and hazardous goods may be sold even before the expiry of 30 days. Also, Arms and Ammunition shall be sold in the manner as directed by the Central Government.

**Warehousing of imported goods:**

The importer may not clear the goods for home consumption and request the goods to be warehoused. In such a case, he shall file an Into-Bond Bill of Entry for warehousing and is assessed to duty. Thereafter, he shall execute a bond binding him in a sum equal to **THRICE the amount** of the duty assessed on such goods. The proper officer after satisfying himself that all the requirements have been fulfilled shall make an order permitting the deposit of the goods in a warehouse.

Subsequently, the importer of any warehoused goods may clear them for home consumption provided:-

- (i) an ex-Bond Bill of Entry has been presented to the proper officer and duty is assessed and paid by him
- (ii) Penalty on warehoused goods, if any, have been paid by importer, and
- (iii) An order for clearance of such goods for home consumption has been made by the proper officer.

**Imported goods in Transit or Transshipment:****Transit of Goods**

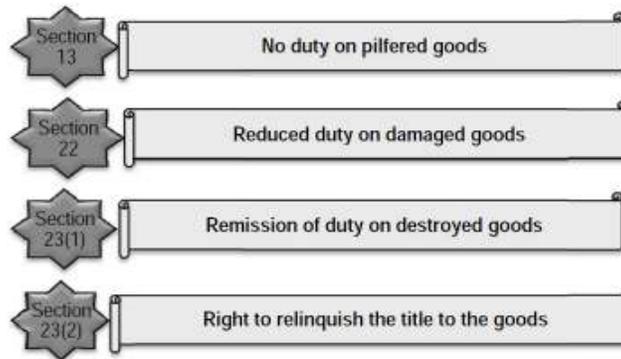
Where any goods which are imported in any conveyance are mentioned, in the import manifest/import report, as for ***transit in the same conveyance*** to any place outside India or any customs station, they may be allowed to be so transited ***without payment of duty***.

**Transshipment of Goods**

Where any goods (not being a prohibited goods) which are imported in a conveyance are mentioned, in the import manifest/import report, as ***for transshipment in another conveyance*** to any place outside India or to any major port/other port as notified/any other custom station, they may be allowed to be so transhipped ***without payment of duty***. The importer shall present the ***Bill of Entry for transshipment*** to the proper officer.

**Unlike Transit, Under Transshipment, goods are transferred from one conveyance to another.**

## Custom Duty not leviable in Certain cases:



### 1. No duty on Pilfered Goods [Section 13]:

If any imported goods are pilfered **after the unloading** thereof but **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.

However, where such goods are restored to the importer after pilferage, the importer becomes liable to duty.

**Meaning of term 'pilfer':** The term pilfer means "to steal, especially in small quantities: petty theft", therefore, the term does not include loss of total package.

#### **ANALYSIS:**

##### **(a) Conditions to be satisfied for exemption from duty:**

- The imported goods should have been pilfered.
- The pilferage should have occurred **after the goods are unloaded**, but **before the proper officer makes the order of clearance for home consumption or for deposit into warehouse**.
- The pilfered goods **should not have been restored back** to the importer.

##### **(b) Imp Points:**

- If goods are pilfered after the order of clearance is made but before the goods are actually cleared, Section 13 is not applicable and thus, duty would be leviable.
- Section 13 deals with only pilferage. It does not deal with loss/destruction of goods.
- Provisions of Section 13 would not apply if it can be shown that pilferage took place prior to the unloading of goods.
- In case of Pilferage, only Section 13 applies and Remission of duty u/s 23(1) is not permissible.

### 2. Remission of duty on goods lost or destroyed [Section 23(1)]:

Subject to Section 13, where it is shown to the satisfaction of the AC/DC 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 AC/DC of Customs shall remit the duty on such goods.

#### **ANALYSIS:**

- (a)** This section comes into play in case of loss/destruction of imported goods at any time before their clearance for home consumption.
- (b)** The remission of duty is permissible only in the case of total loss of goods. This implies that the loss is forever and beyond recovery. The loss referred to in this section is generally due to natural causes like fire, flood, etc. The loss of goods may be at the warehouse also.
- (c)** Since Section 23(1) is subject to the provisions of Section 13, in case the goods have been pilfered after they have been unloaded but before order for clearance for home consumption or deposit in a warehouse, Section 13 would apply and the importer would not be liable to pay the duty.

**Distinction between Section 13 and Section 23(1):**

Basis	Pilferage of Goods u/s 13	Loss or Destruction of Goods u/s 23(1)
<b>Meaning</b>	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.
<b>Duty on goods</b>	Duty is not at all leviable on such goods.	The duty paid on the goods shall be remitted to the importer.
<b>Subsequent restoration of goods</b>	Where the pilfered goods are restored to the importer after pilferage, the importer becomes liable to duty.	In case of destruction of goods, the restoration of goods is not possible.
<b>Warehoused goods</b>	Provisions of Section 13 are not applicable to warehoused goods.	Provisions of Section 23(1) apply to warehoused goods also.
<b>Onus to prove the pilferage/destruction or loss of goods</b>	The onus to prove the pilferage does not lie on the importer.	The importer has to prove the loss/destruction to the satisfaction of the AC/DC of Customs.
<b>Time of occurrence of pilferage or loss/destruction</b>	The imported goods must have been pilfered <b>after the unloading</b> thereof and <b>before an order for clearance for home consumption or deposit in a warehouse.</b>	The imported goods should have been lost/destroyed at any time <b>before clearance for home consumption.</b>

**3. Right to relinquish the title to the Goods [Section 23(2)]:**

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

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

**ANALYSIS:**

**Sometimes, it may so happen that the importer is unwilling or unable to take delivery of the imported goods. Some of the likely causes may be:**

- (a) the goods may not be according to the specifications;
- (b) the goods may have been damaged or deteriorated during voyage and as such may not be useful to the importer;
- (c) There might have been breach of contract and, therefore, the importer may be unwilling to take delivery of the goods.

In all the above cases, the goods having been imported, the liability to customs duty is imposed and, therefore, the importer may relinquish his title to the goods unconditionally and abandon them. If the importer does so, he will not be required to pay the duty amount.

**Abatement of duty on Damaged or Deteriorated goods [Section 22]**

Section 22 provides the importer with an option to pay the reduced duty if the goods are damaged or deteriorated under any of the specified circumstances.

- (e) **Cases where abatement is available:** Abatement is available if it is shown to the satisfaction of the AC/DC of Customs that the goods are damaged/deteriorated under any of the following circumstances:

S.No.	In case
1.	any imported goods had been damaged or had deteriorated at any time before or during the unloading of the goods in India
2.	any imported goods, other than warehoused goods, had been damaged on account of any accident, at any time after the unloading thereof in India but before their examination for assessment by the customs authorities
3.	any warehoused goods had been damaged on account of any accident at any time before clearance for home consumption

**Note:** Provided such accident is not due to any willful act, negligence or default of the importer, his employee or agent.

**Meaning:**

(1) **Damage:** The term '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.

(2) **Deterioration:** Deterioration is reduction in quality of goods due to natural causes.

(f) **Amount of duty chargeable after abatement:**

$$\text{Duty to be charged} = \frac{\text{Value of damaged goods/ deterioration goods}}{\text{Value of goods before damage/deterioration}} \times \text{Duty on goods before damage / deterioration}$$

(g) **Valuation of the damaged or deteriorated goods: The value shall be:-**

(a) Value ascertained by the proper officer

or

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

**Example: if the value of goods is Rs 50,000 and after damage the value is Rs 10,000 then duty payable on Rs 50,000/- should be appropriately reduced to 20% of the duty on such goods before their damage (proportion of 10,000 to 50,000).**

### **Clearance of goods from DTA to SEZ**

In the case of *Advait steel Rolling Mills Pvt. Ltd. vs. UOI*, it is held that the clearance of goods from DTA to Special Economic Zone are not chargeable to export duty either under the SEZ Act, 2005 or under the Customs Act, 1962 on the basis of the following observations:

- The charging section needs to be construed strictly. If a person is not expressly brought within the scope of the charging section, he cannot be taxed at all.
- SEZ Act does not contain any provision for levy and collection of export duty on goods supplied by a DTA unit to a unit in a Special Economic Zone for its authorized operations. Since there is no charging provision in the SEZ Act providing for the levy of customs duty on such goods, export duty cannot be levied on the DTA supplier.
- Reading section 12(1) of the Customs Act, 1962 makes it apparent that Customs duty can be levied only on goods imported into or exported beyond the territorial water of India.

Since both the SEZ unit and the DTA unit are located within the territorial waters of India, supplies from DTA to SEZ would not attract Section 12(1).

## **Taxable event in case of import of goods into India/export of goods from India**

Imported or Exported goods into or out of India is the taxable event for payment of the duty of customs. Lot of problems was faced in determining the point at which the importation or exportation takes place. The root cause of the problem was the definition of India.

The Supreme Court of India has given the ***landmark judgments in cases of Union of India v Apar Industries Ltd (1999) and further in the case of Garden Silk Mills Ltd v Union of India (1999)***. The import of goods will commence when they cross the territorial waters but continues and is completed when they become part of the mass of goods within the country, and the taxable event being reached at the time when goods reach the Customs barriers and Bill of Entry for home consumption is filed.

### ***Taxable event for Imported Goods***

***In the case of Kiran Spinning Mills (1999), the Hon'ble Supreme Court of India held*** that import is completed only when goods cross the customs barrier. The taxable event is the day of crossing of customs barrier and not on the date when goods landed in India or had entered territorial waters of India.

### ***Crossing customs barrier:***

when goods are imported into India even after the goods are unloaded from the ship, and even after the goods are assessed to duty subsequent to the filing of a bill of entry, the goods cannot be regarded as having crossed the customs barrier until the duty is paid and the goods are brought out of the limits of the customs station.

### ***Hence, taxable event in case of imported goods can be summed up in the following lines:***

The taxable event occur in the course of imports under the customs law with reference to the principles laid down by the Supreme Court in the cases of Garden Silk Mills Ltd. v Union of India; and Kiran Spinning Mills v CC:

- |   |                          |
|---|--------------------------|
| (i) Unloading of imported goods at the Customs Port     | - is not a taxable event |
| (ii) Date of entry into Indian Territorial Waters       | - is not a taxable event |
| (iii) Date on which the goods cross the customs barrier | - is a taxable event     |
| (iv) Date of presentation of bill of entry              | - is not a taxable event |

### ***No time limit for submission of bill of entry after the delivery of Import General Manifest (IGM):***

As per Section 46(3) of the Customs Act, 1962, a bill of entry may be presented at any time after the delivery of import manifest or import report. Therefore, no time limit has been fixed for submission of bill of entry. Hence, no penalty can be imposed if there is delay in submission of Bill of Entry.

However, cargo should be cleared from the port within 30 days of unloading.

### **Note:**

Bill of Entry can also be filed up to 30 days before the arrival of the goods in India. The classification, valuation and duty can be checked and verified beforehand so that when the consignment arrives it can be cleared immediately.

### ***Taxable event for Warehoused Goods***

The taxable event in case of warehoused goods is when goods are cleared from customs bonded warehouse, by submitting EX-bond bill of entry.

## **TAXABLE EVENT IN CASE OF EXPORTS:**

As per Section 16(1) of the Customs Act, 1962, taxable event arises only when proper officer makes an order permitting clearance (i.e. entry outwards) granted and loading of the goods for exportation took place under Section 51 of the Customs Act, 1962. In the case of any other goods, on the date of payment of duty.

Export of goods is complete when the goods ***cross the territorial waters of India***. If ship sinks within the territorial waters, export is not complete.

# BAGGAGE

(Section 77 to 81)

General provision relating to imports is not applicable to baggage and postal parcels. There are special provisions for them. **Section 77 to 81 read with Baggage Rules, 2016 (w.e.f. 01/04/2016) ~~Baggage Rules, 1998~~** deals with the baggage.

**Baggage [Section 2(3)]:**

**Baggage includes:**

- (a) Un-accompanied baggage (i.e. baggage not carried by passenger at the time of his arrival, but, sent before or after arrival of passenger).
- (b) **but does not include motor vehicles.**

Thus, baggage rules are also applicable in respect of baggage which comes separately and which is dispatched from abroad before or after the travellers departure.

**What is the effective rate of custom duty on baggage?**

General rate of duty on import of baggage is 36.05% (35% Basic Customs Duty plus 2% Education Cess plus 1% SAH Education Cess). [Classification: Heading – 98 03 under CTA Act 1975]

**Full exemption from IGST** has been provided on passenger baggage.

Note: **One Laptop as baggage by person over 18 years of age** (other than crew member) is fully exempt from custom duty. [Notification No. 11/2004]

**Relevant date for rate and valuation of customs duty**

**Declaration by Owner of Baggage**

As per Section 77 of the Custom Act 1962, the owner of any baggage shall for the propose of clearing it, **make a declaration of its contents** to the proper officer.

**Determination of Rate of Duty and Tariff Valuation in respect of Baggage:**

As per Section 78 of the Custom Act 1962, the rate of duty and tariff valuation leviable on the baggage shall be the rate of duty and tariff valuation in force on the **date on which the owner of the baggage makes a declaration** under Section 77 to the proper officer.

**Relevant date in case of unaccompanied baggage:**

The rate of duty as in force on the **date of arrival of unaccompanied baggage** would be leviable and not as in force on the date of advance information on the arrival of baggage.

**Channels of clearance (Green and Red Channels)**

For the purpose of Customs clearance of arriving passengers, a two channel system has been adopted

- **Green Channel** for passengers not having any dutiable goods or prohibited goods.
- **Red Channel** for passengers having dutiable goods/prohibited goods.

However, **All the passengers shall ensure to file correct declaration of their baggage.**

**[Goods Imported in commercial quantities or goods imported by frequent visitors may be regarded as non bonafide baggage and not eligible for free allowance under Baggage Rules]**

**Section 79- Bona fide baggage exempted from duty**

The provision relating to duty exemption of baggage is provided under Section 79. The proper officer may, subject to rules made under section 79(2), **pass free of duty**,

- a) any article in the baggage of a passenger or a member of the crew in respect of which the said officer is satisfied that it **has been in his use** for such minimum period as may be specified in the rules;
- b) any article in the baggage of a passenger in respect of which the said officer is satisfied that it **is for the use of the passenger or his family** or is a bona fide gift or souvenir; provided that 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.

**Baggage Rules, 2016 [W.e.f 01/04/2016]: Baggage Rules, 2016** have been framed by the **Central Government** which specifies the period, terms and conditions, value, limits etc. for the above purpose.

**Section 80 – Temporary Detention of Baggage**

If the baggage of a passenger contains any article, **which is dutiable or the import of which is prohibited** and in respect of which a **true declaration** has been made u/s 77,

- ✓ The PO may, at the request of the passenger, detain such article for the purpose of being returned to him on his leaving India
- and if for any reason, the passenger is not able to collect the article at the time of his leaving India, the article may be **returned to him**
  - **Though any other passenger** authorized by him and leaving India or
  - **As cargo consigned in his name**

**Section 81 – Regulation in respect of Baggage**

The board may make regulations-

- (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;
- (c) Providing for the transit or transshipment of baggage from one customs station to another or to a place outside India

**Customs Baggage Declaration Regulation 2013** apply to baggage including any package comprised therein of the passengers

- (a) Who come to India; and
- (b) Who have anything to declare or **are carrying dutiable or prohibited goods**

and require such passengers to declare their accompanied baggage in specified form

**[Circular No. 8/2016: Domestic Passengers travelling along with international passengers in the international flight flying in its domestic leg are not required to file the customs baggage declaration form.]**

## BAGGAGE RULE 2016 [W.e.f. 01/04/2016]

### CERTAIN DEFINITION:

- (a) "Family" includes all persons who are residing in the same house and form part of the same domestic establishment;
- (b) "Infant" means a child not more than 2 years of age;
- (c) "Resident" means a person holding a **valid passport** issued under the Passports Act, 1967 and **normally residing** in India;
- (d) "Tourist" means 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 purpose (such as touring, recreation, sports, health, study, family, religious purpose etc)**
- (e) "Personal effects" means things required for satisfying daily necessities **but does not include jewellery.**

### Rule 3: General Free Allowance (GFA) in case of Returning from a country other than Nepal, Bhutan or Myanmar ~~and China~~

<b>Infant Passenger</b>	Only <b>USED</b> personal effects
<b>Any other being</b> (a) Indian Resident (b) Foreigner Residing in India (c) A Tourist of Indian Origin	<ul style="list-style-type: none"> <li>• Used Personal Effects</li> <li>• Travel Souvenirs and</li> <li>• Other Article (<b>except those in Annex I</b>) upto <b>Rs. 50,000</b>, if these are <b>carried on the person or in the accompanied baggage</b> of the passenger</li> </ul>
<b>Any other person being a <u>tourist of foreign origin</u></b>	Same as above, except that instead of Rs. 50,000, <b>limit is Rs. 15,000</b>

- Free allowance of a passenger under this rule **shall not be allowed to pool** with free allowance of any other passenger. In other words, **if a baggage is common** to two persons, then, GFA limit shall apply to baggage only one item and will not be doubled for two persons.

### Rule 4: General Free Allowance (GFA) in case of Returning from Nepal, Bhutan or Myanmar ~~and China~~

<b>Infant Passenger or Passenger arriving <u>by Land</u></b>	Only <b>USED</b> personal effects
<b>Any other being</b> (a) Indian Resident (b) Foreigner residing in India (c) A Tourist of (Indian Origin or foreign origin)	<ul style="list-style-type: none"> <li>• Used Personal Effects</li> <li>• Travel Souvenirs and</li> <li>• Other Article (<b>except those in Annex I</b>) upto <b>Rs. 15,000</b>, if these are <b>carried on the person or in the accompanied baggage</b> of the passenger</li> </ul>

### Annexure I

- (i) Firearms
- (ii) Cartridges of fire arms **exceeding 50**
- (iii) **Cigarettes** exceeding 100 sticks or **Cigars** exceeding 25 sticks or **tobacco** exceeding 125 gms.
- (iv) Alcoholic liquor or wines **in excess of two liters.**
- (v) Gold or silver, in any form, **other than ornaments.**
- (vi) Flat Panel (LCD/LED/PLASMA) Television

**Rule 5: Jewellery**

A **passenger returning to India** shall be allowed clearance free of duty of jewellery in his bona fide baggage to the extent below:

Status	Jewellery (free of duty) as bona fide baggage
Indian Passenger who has been residing abroad <b>for over 1 year</b>	Jewellery up to a weight of <b>20 grams</b> with a value cap of <b>Rs. 50,000/-</b> by a <b>gentlemen passenger</b> ,  or  Jewellery up to a weight of <b>40 grams</b> with a value cap of <b>Rs. 100,000/-</b> by a <b>Lady passenger</b> ,

**Rule 6: Professionals returning from Abroad 'or' Persons Transferring Residence (TR)**

(i) A person who is engaged in a profession abroad, or is transferring his residence to India shall be allowed the following articles in his bonafide baggage free of duty in addition to what he is allowed under Rule 3 or 4

**Eligible Articles:**

Allowance is available for personal and household articles, **other than those mentioned in Annexure I or Annexure II but including articles mentioned in Annexure III**

(ii) **Additional Allowance:**

Duration of Stay Abroad	Value of Eligible Articles	Conditions with Relaxation
<b>From 3 Months upto 6 Months</b>	Upto Rs. 60,000	Indian Passenger
<b>From 6 months upto 1 year</b>	Upto Rs. 100,000	Indian Passenger
<b>Minimum 1 year, during preceding 2 years</b>	Upto Rs. 200,000	Indian passenger and <b>he should not have availed this concession in preceding 3 years</b>
<b>Min. 2 years or more</b>	Upto Rs. 500,000	<p>(i) Minimum stay of 2 years abroad, immediately preceding the date of his arrival on TR,</p> <p>However, Shortfall of <b>up to 2 months</b> in stay abroad can be condoned by AC/DC if the early return is on account of</p> <p>(i) Terminal leave or vacation being availed of by the passenger; or</p> <p>(ii) Any other special circumstances.</p> <p>(ii) Total stay in India on short visit during the 2 preceding years <b>should not exceed 6 months</b>.</p> <p>However, Principal Commissioner or Commissioner of Customs may <b>condone short visits in excess of 6 months in special circumstances for reasons to be recorded in writing</b>.</p> <p>(iii) Passenger has not availed this concession <b><u>in the preceding three years</u></b>.</p>

**Rule 7: Currency**

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.

**Rule 8: Provisions regarding unaccompanied baggage*****Unaccompanied Baggage:***

Baggage that is not accompanied with the passenger is 'Unaccompanied Baggage'. In other words, where the baggage of the passenger is bound to arrive earlier or later than the passenger, it is termed as 'unaccompanied baggage',

**(i) These rule apply to unaccompanied baggage as well:**

Provisions of these Rules are also extended to unaccompanied baggage except where they have been specifically excluded.

**(ii) Time limit – Baggage received after arrival of passenger:** The unaccompanied baggage

**(a)** had been in the possession abroad of the passenger and

**(b)** is dispatched **within 1 month** of his arrival in India or within such further period as the AC/DC may allow.

**(iii) Time limit - Baggage received before arrival of passenger:** The unaccompanied baggage may land in India

**(a)** **up to 2 months before** the arrival of the passenger or

**(b)** Within such period, **not exceeding 1 year**, as the AC/DC may allow, for reasons to be recorded, if he is satisfied that

- The passenger was **prevented from arriving in India** within the period of two months
- **Due to circumstances** beyond his control such as
  - **sudden illness** of the passenger or a member of his family, or
  - **natural calamities** or disturbed conditions or
  - **disruption of the transport** or travel arrangements in the country or countries concerned or
  - **any other reasons, which necessitated a change** in the travel schedule of the passenger

**Rule 9: Application of these Rules to members of the crew.****Crew member of a Foreign Going Vessel:**

The provisions of these Rules shall apply in respect of members of the crew engaged in a foreign going **vessel** for importation of their baggage **at the time of final pay off on termination of their engagement**.

While in service, a crew member of a vessel/Aircraft **shall be allowed to bring**

- items like chocolates, cheese ,cosmetics and other petty gift items for their personal or family use
- Which **shall not** exceed the value of Rs. 1500

**Annexure II**

- (i) Color Television
- (ii) Video Home Theatre System.
- (iii) Dish Washer.
- (iv) Domestic refrigerators of capacity above 300 liters or its equivalent.
- (v) Deep Freezer.
- (vi) Video camera or the combination of any such video camera with one or more of the following goods, namely:-
  - (a) Television Receiver;
  - (b) Sound recording or reproducing apparatus;
  - (c) Video reproducing apparatus.
- (vii) Cinematographic films of 35 mm and above.
- (viii) Gold or silver, in any form, other than ornaments.

**Annexure III**

- (i) Video Cassette Recorder or Video Cassette Player or Video Television Receiver or Video Cassette Disk Player.
- (ii) Digital Video Disc Player.
- (iii) Music System.
- (iv) Air-Conditioner.
- (v) **Microwave Oven.**
- (vi) Word Processing Machine.
- (vii) Fax Machine.
- (viii) Portable Photocopying Machine.
- (ix) Washing Machine.
- (x) Electrical or Liquefied Petroleum Gas Cooking Range
- (xi) Personal Computer (Desktop Computer)
- (xii) Laptop Computer (Notebook Computer)
- (xiii) Domestic Refrigerators of capacity up to 300 liters or its equivalent.

## PRACTICAL PROBLEMS ON BAGGAGE

1. Mrs. & Mr. Menon visited Germany and brought following goods while returning to India after 6 days stay abroad on 8th April 2017:

- (i) Their personal effects like clothes, etc., valued at Rs 35,000.
- (ii) A personal computer bought for Rs 51,000.
- (iii) A laptop computer bought for Rs 95,000.
- (iv) Two liters of liquor bought for Rs 1,600.
- (v) A new camera bought for Rs 52,400.

What is the amount of customs duty payable?

**Answer:**

Particular	Amount	Amount
Their personal effects like clothes, etc., valued at Rs 35,000.	exempt	-
A personal computer bought for Rs 51,000.	51,000	-
A laptop computer bought for Rs 95,000.	exempt	-
Two liters of liquor bought for Rs 1,600.	1,600	-
A new camera bought for Rs 52,400.	-	52,400
<b>Total</b>	<b>52,600</b>	<b>52,400</b>
Less: General Free Allowance Rs 50,000 + Rs 50,000	50,000	50,000
<b>Baggage taxable</b>	<b>2,600</b>	<b>2,400</b>

Customs Duty is Rs 1,803 (i.e. 5,000 x 36.05%) payable by Mrs. & Mr. Menon.

2. After visiting USA, Mrs. & Mr. Rao brought to India a laptop computer valued at Rs 80,000 personal effects valued at Rs 90,000 and a personal computer for Rs 53,000. What is the customs Duty payable?

**Answer:**

There is no custom duty on personal effects. One laptop computer can be brought without payment of customs duty. The General Free Allowance cannot be pooled i.e. husband and wife cannot have combined allowance of Rs. 100000 respect of one item, though individually, and then are eligible for GFA of Rs. 50,000 each. Thus, they are eligible for general free allowance of Rs. 50,000.

Thus, they have to pay duty on Rs. 3,000 (Rs. 53,000 - Rs.50,000) @ 35% i.e. customs duty payable is Rs. 1,050 plus EC of Rs. 21 plus SHEC of Rs. 10.50.

3. Mr. Ram an Indian resident, aged 45 years, returned to India after visiting USA on 15/05/2017. He had gone to USA on 1/05/2017. On his way back to India he brought following goods with him –

His personal effects like clothes etc. valued at	Rs 90,000
2 liter of Wine worth	Rs 1,000
A video camera worth	Rs 36,000
A watch worth	Rs 23,000

Find the customs duty payable by Mr. Ram

**(CMA June 13) (4 Marks)**

**Answer:**

Particular	Amount (Rs)
Personal effects like clothes	Exempt
2 liters of wine	1,000
Video camera	36,000
Watch	23,000
<b>Total</b>	<b>60,000</b>
Less: General Free Allowance	50,000
Net value	10,000
<b>Customs duty @ 36.05% on Rs 10,000</b>	<b>3,605</b>

4. Mrs. & Mr. Khemka visited Australia and brought following goods while returning to India on 10-05-2017 after 7 days of stay-
- Their personal effects like clothes, etc., valued at Rs 80,000.
  - A personal computer bought for Rs 61,000.
  - A laptop computer bought for Rs 35,000.
  - Two liters of liquor bought for Rs 10,000.
  - A new camera bought for Rs 62,400.
- What is the amount of customs duty payable? (RTP – CMA)

**Answer:**

The question can be solved making two assumptions:

- (a) Mr. and Mrs. Khemka have brought separate baggage and made separate declarations u/s 77:
- In this case, GFA of Rs 50,000 each will be available to Mr. and Mrs. Khemka separately;
  - Used personal effects and one laptop shall be exempt;
  - It is assumed that out of non-exempt items, Mr. Khemka brought personal computer and liquor; while Mrs. Khemka brought new camera.
  - Any other alternative allocation to avail full GFA of Rs 50,000 under Rule 3 for each passenger may also be taken for the purpose of solution.
- (b) They have brought single baggage and made single declaration u/s 77, so that GFA shall be available only one time and will not be separately available for each passenger.

**Computation of Customs Duty**

	Separate Baggage		Single Baggage for Mr. & Mrs. Khemka
	Mr. Khemka	Mrs. Khemka	
Their personal effects like clothes, etc.	Exempt	Exempt	Exempt
A personal computer	61,000	---	61,000
A laptop computer	Exempt	Exempt	Exempt
Two liters of liquor (Liquor more than 2 liters is covered by Annex. I. Liquor up to 2 liters forms part of bona fide baggage and are eligible for GFA.)	10,000	---	10,000
New camera	---	62,400	62,400
Gross Value of Bona fide baggage	71,000	62,400	1,33,400
Less: General Free Allowance under Rule 3	50,000	50,000	50,000
<b>Dutiable Value</b>	<b>21,000</b>	<b>12,400</b>	<b>83,400</b>
<b>Duty @ 36.05%</b>	<b>7,571</b>	<b>4,470</b>	<b>30,066</b>

5. Mr. Sandip Roy, an Indian resident, aged 40 years, returned to India after visiting Canada on 20.5.2017. He had been to Canada on 02.05.2017. On his way back to India he brought following goods with him:
- His personal effects like clothes etc. valued at Rs. 40,000
  - 1 litre of Wine worth Rs. 1,000
  - A video cassette recorder worth Rs. 11,000
  - A microwave oven worth Rs. 20,000
- What is the customs duty payable? **RTP June -11**

**Answer**

Under Rule 3 of the Baggage rules, Mr. Roy, is eligible for the following general free allowance –

- Used personal effects of any amount; and
- Other articles, **other than those mentioned in Annex. I**, up to a value of Rs. 50,000. Hence, the duty payable by Mr. Roy shall be –

Particular	Rs.
Personal effects like clothes etc.	NIL
Wine up to 2 liters (Can be accommodated in GFA)	1,000
Video cassette recorder is dutiable	11,000
A microwave oven	20,000
Total dutiable goods imported (that can be accommodated in GFA)	32,000
Less : General Free Allowance under Rule 3 (Limit is Rs. 50,000)	32,000
Balance goods on which duty is payable	Nil
Customs duty payable @ 36.05%	Nil

## ***Import and Export by post:***

### ***Postal articles:***

**Section 82:** Provides that, in case of goods imported or exported by post, any label or declaration accompanying the goods, which contains the description, quantity and value thereof, shall be deemed to be an entry for import or export under this Act.

**Section 83:** Rate of duty and tariff valuation the rate of duty and tariff valuation shall be –

(1) **In case of goods imported by post:**

The applicable rate of duty and tariff value shall be the rate and valuation in force on the date on which the postal authorities present a list containing the particulars of such goods to the proper officer of customs for assessing the duty thereon.

However, if such goods are *imported by a vessel* and the list of the goods containing the particulars was presented **before the date of the arrival of the vessel, it shall be deemed to have been presented on the date of such arrival.**

(2) **In case of goods exported by post:**

The applicable rate of duty and tariff value shall be the rate and valuation in force on the date on which the exporter delivers such goods to the postal authorities for exportation.

**Question: Relevant date for rate and valuation of customs duty for import's through post. [D07 (4 Marks)]**

### ***Regulations regarding goods imported or to be exported by post [Section 84]***

The **Board may make regulations** providing for

- (a) the **form and manner** in which an entry may be made in respect of any specified class of goods imported or to be exported by post, **other than goods which are accompanied by a label or declaration** containing the description, quantity and value thereof;
- (b) the **examination, assessment to duty, and clearance of goods** imported or to be exported by post
- (c) The **transit or transshipment of goods** imported by post, from one customs station to another or to a place outside India.

**Question 1 Computation of duty on goods imported by post:**

M/s. HLL Ltd. imported certain goods valuing Rs 15 lakhs (assessable value) from U.S.A. by post. Compute the amount of duty payable by the importer in the light of the following information:

Date of presentation of a list containing particulars of said goods to proper officer of customs	15-10-17
Rate of duty prevalent on the date of such presentation	20%
Date of arrival of vessel through which the packet containing the said goods was imported	20-10-17
Rate of duty prevalent on the date of such arrival	25%

**Answer:**

As per Section 83 of the Customs Act, 1962, in case of importation of goods by post, the date for determination of rate of duty shall be –

- (a) The date on which postal authorities present a list containing particulars of the said goods to the proper officer of customs; or
- (b) If such goods are imported by a vessel, the date of arrival of the vessel, whichever is later.

In this case, the date of arrival of vessel, being later in time, shall be the relevant date and the rate of duty prevalent on that date shall be applicable. **Therefore, duty payable = 25.75% of 15 lakhs = Rs 3, 86,250.**

**Question 2**

What would be your answer in the preceding illustration in the following independent cases assuming that all other facts remain the same -

- (a) If the date of arrival of vessel had been 10-5-2017 (Rate of duty prevalent on that date being 30%);
- (b) If the goods had been imported by aircraft.

**Answer:** (a) & (b) Rs 3,09,000

**Question 3**

Computation of duty on goods exported by post: On 15/4/2017, M/s. XYZ Ltd. delivered goods valuing Rs 10 lakhs (assessable value) to the postal authorities for the purpose of export by post to Germany. The order for clearance of such goods for export was made on 29/4/2017, but the goods could actually be exported on 1st May, 2017. The rates of duty prevalent on the said dates were 20%, 25% and 30% respectively. Determine the amount of customs duty payable?

**Answer:** As per Section 83, in the case of goods exported by post, **the relevant date for determination of rate of duty** shall be the date on which the exporter delivers such goods to the postal authorities.

Hence, the amount of customs duty payable = 20% of Rs 10 lakhs = Rs 2, 00,000.

## Stores [Section 85 to 90]

**Meaning of Stores** : As per section 2(38) of the Customs Act, stores means goods for use in a vessel or aircraft and includes fuel and spare parts and other articles of equipment, whether or not for immediate fitting.

**Stores include:**

- **foods stuffs,**
- **fuel,**
- **spares**
- **And other item used on board of the ship or in the air craft.**

**Question:** *Stores under the Customs Act, 1962.*

*(5 marks) 2003 - June*

**Answer:**

**Stores [Sec. 2(38)]:** "Stores" means goods for use in a vessel or aircraft and includes fuel and spare parts and other articles of equipment, whether or not for immediate fitting. The statutory provisions relating to stores are contained in sections 85 to 90 which are as follows:

**(1) Stores may be allowed to be warehoused without assessment of duty [Section 85]:**

Under this provision the stores which are meant for supply to vessels or aircrafts without payment of import duty is **allowed to be warehoused** by the proper officer **without their being assessed to duty.**  
**[warehousing without warehousing]**

**(2) Transit and transshipment of stores [Section 86]:**

Any stores imported in a vessel or aircraft may, without payment of duty, remain on board such vessel or aircraft while it is in India. This enables the **foreign going vessels to keep stores on board** while they are temporarily engaged in coastal trade, instead of paying duty and then claiming drawback. Section 86(2) allows the transferring of the stores to any vessel or aircraft as stores -or consumption in accordance with Sections 87 and 90.

**(3) Imported stores may be consumed on board a foreign-going vessel or aircraft [Section 87]:**

This provision was introduced to give the vessel or aircraft the facility of consuming stores without payment of duty. The only condition that they are required to satisfy is that such vessel or aircraft must remain as a **'foreign - going vessel'**.

**(4) Stores to be free of export duty [Section 89]:**

Goods produced or manufactured in India and required as stores **on any foreign-going vessel or aircraft** may be exported free of duty in such quantities as the proper officer may determine, having regard to the size of the vessel aircraft, the number of passengers and crew and the length of the voyage or journey on which the vessel or aircraft is about to depart.

**(5) Concessions in respect of imported stores for the Navy [Section 90]:**

Imported stores may without payment of duty be consumed **on board a ship of the Indian Navy.**

## TRANSIT AND TRANSHIPMENT OF GOODS (Section 52 to 56)

### SECTION 52:

**The provisions of this chapter are applicable only to General Cargo. The provisions of this Chapter shall not apply to**

- (a) Baggage
- (b) Goods imported by post
- (c) Stores.

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

Any goods imported in any conveyance will be **allowed to remain on the conveyance** and to be transited without payment of duty, to any place out of India or any customs station.

- Goods should not be prohibited goods under Section 11.
- **Transit goods must be specified in the Import Manifest or the Import Report as the case may be**
- Transit of goods is allowed without payment of duty **subject to such conditions, as may be prescribed.**
- Destination Place may be Indian Port or Foreign Port.

### **Transshipment of Goods (Section 54 of the Customs Act, 1962)**

Transshipment means **transfer from one conveyance to another** with or without payment of duty. It means to say that goods originally imported from outside India into India, then transhipped to another vessel to a place within India or outside India.

### **Transshipment of goods without payment of duty under Section 54(3)**

Transshipment of goods without payment of import duty is permissible **only if the following conditions satisfy:**

- (i) Goods should not be prohibited goods under section 11.
- (ii) Goods must be specified in the import manifest or the import report as the case may be.
- (iii) Bill of Transshipment or Declaration of Transshipment must be presented to proper officer in prescribed form.
- (iv) Goods must be Transhipped to another vessel to place outside India or notified ports in India.

### **Liability of duty on goods Transited under Section 53 or Transhipped under Section 54 [Section 55]**

Where any goods are allowed to be transited under Section 53 or transhipped under sub-section (3) of section 54 to any customs station, **they 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 and the provisions of this Act and any rules and regulations shall, so far as may be, apply in relation to such goods.

## Distinguish between Transit of Goods and Transshipment of Goods

Basic	Transit of Goods	Transshipment of Goods
<b>Section</b>	Section 53 of the Custom Act	Section 54 of the Custom Act
<b>Conveyance</b>	Such goods are mentioned in import manifest/report, as <b><u>for transit in same conveyance.</u></b>	Such goods are mentioned in import manifest/report, as for <b><u>transit in any other conveyance.</u></b>
<b>Bill</b>	Bill of Transshipment is not applicable,	Such goods are also mentioned in a separate Bill of Transshipment
<b>Records and Control</b>	In case of transit, in the record already made in the ships/aircraft's manifest continue. Thus <b><i>there is continuity in the records</i></b> and there is no chance of the control over such transit goods being lost.	In the Transshipment of goods, continuity in the records is not maintained as the goods are transferred to another conveyance.

<b>Permission</b>	Transit of goods may be permitted without payment of duty, if the destination is <b>(i)</b> Any place outside India. <b>(ii)</b> Any other customs station	It may be permitted without duty, if destination is- <b>(i)</b> Any place outside India, <b>(ii)</b> Any major port, airport at Mumbai, Kolkata, Delhi or Chennai, other notified port/airport, other customs station, <b>if goods are bonafide intended for transshipment.</b>
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**Question: Distinguish between transit of goods and transshipment of goods under customs law, as regards documents and permission required.** **Dec 2012 (4 Marks)**

### **Common under Transit and Transshipment**

- (a) Import Manifest** is to be submitted.
- (b)** Department may be disallow if goods are **prohibited** in nature.
- (c)** No duty is payable **at the port of transit / transshipment.**
- (d)** Port of clearance may be Indian port or foreign port but **Transit and Transshipment port** are Indian ports only.

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**Class Notes**

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# Warehousing In Customs

If the imported goods are **not required immediately**, importer may like to store the goods in a warehouse without payment of duty **under a bond** and then clear from warehouse when required on payment of duty. This will **enable him to defer payment of customs duty** till goods are actually required by him.

## **Use of Warehousing Facility**

- a) Importer has to plan his purchases well in advance. He also has to maintain some stocks to ensure that there is no loss of production if a shipment of imported raw materials is delayed. Thus, when the goods arrive in the port, **the importer may not immediately require the goods** as he may be having stock.
- b) Importer would like to store the imported goods without payment of customs duty as far as possible and pay duty only when goods are required for his immediate use, so that his funds are not blocked.
- c) The importer may be intending to clear the goods without payment of duty **under Advance Licence or DEPB scheme**. However, the Licence/DEPB may not be in hands when imported goods have arrived at the docks.
- d) The importer may not be having adequate ready funds to pay customs duty.
- e) Importer can avail facility of manufacture in bonded warehouse and then re-export the final product

## **Warehouse**

'Warehouse' means a **"Public Warehouse" licensed under Section 57** or a **"Private Warehouse" licensed under Section 58** or a **Special Warehouse Licensed under Section 58A**.

*[As per Section 2(43) of the Customs Act, 1962]*

## **Warehoused Goods**

Warehoused goods means goods deposited in a warehouse **[Section 2(44)]**.

There are 3 types of warehouses under the Customs Act, 1962, namely – Public Warehouses, Private Warehouses and Special Warehouses.

### **Licensing of Public Warehouses [Section 57]:**

*The Principal Commissioner or Commissioner of Customs may, subject to such conditions as may be prescribed, licence a public warehouse wherein dutiable goods may be deposited.*

*Note: It is a warehouse run by any statutory body like Port Trust, Air Port authority of India. **Non dutiable goods cannot be stored in a public warehouse.***

### **Licensing of private warehouses [Section 58]:**

*The Principal Commissioner or Commissioner of Customs may, subject to such conditions as may be prescribed, licence a private warehouse wherein dutiable goods **imported by or on behalf of the licensee** may be deposited*

### **Licensing of special warehouses [Section 58A]:**

1. The Principal Commissioner or Commissioner of Customs may, subject to such conditions as may be prescribed, licence a special warehouse wherein dutiable goods may be deposited and such warehouse shall be **caused to be locked by the proper officer** and no person shall enter the warehouse or remove any goods therefrom without the permission of the proper officer.
2. The Board may, by notification in the Official Gazette, **specify the class of goods** which shall be deposited in the special warehouse licensed under sub-section (1).

**Note:**

A customs bonded warehouse can be established at any place, if approved by the licensing officer. Warehouses - Private and Public Warehouses - are not under physical control (under lock of customs), but are under record based controls, except for Special Warehouses which would remain under customs lock. In a Private Warehouse, dutiable goods imported only by licensee are deposited.

**CBEC, vide Notification No. 66/2016 Cus (NT) dated 14.05.2016 has notified the following class of goods which shall be deposited in a special warehouse:**

- (i) **Gold, silver, other precious metals and semi-precious metals** and articles thereof;
- (ii) Goods warehoused for the purpose of:
  - a) **supply to DFS (Duty Free Shops)** in a customs area;
  - b) **supply as stores to vessels/aircrafts** under Chapter XI of the Customs Act, 1962;
  - c) **supply to foreign privileged persons** in terms of the Foreign Privileged Persons (Regulation of Customs Privileges) Rules, 1957.

**Note:**

1. **Privileged person means** a person entitled to import/purchase locally from bond goods free of duty for his personal use/for the use of any member of his family/for official use in his Mission, Consular Post or Office or in Deputy High Commission/Assistant High Commission.
2. **A Duty-Free Shop (DFS) in the airport need not be a licensed as warehouse under Section 58A.**
  - a) DFS located in customs area should not be treated as a warehouse.
  - b) In fact, it is a point of sale for the goods which are to be ex-bonded and removed from a warehouse for being brought to a DFS in the customs area for sale to eligible persons, namely international passengers arriving or departing from India.

**Cancellation of Licence [Section 58B w.e.f. 14-5-2016]:**

- (1) Where a licensee contravenes any of the provisions of this Act or the rules or regulations made thereunder or breaches any of the conditions of the licence, the Principal **Commissioner or Commissioner of Customs may cancel the licence** granted under section 57 or section 58 or section 58A.

Provided that before any licence is cancelled, **the licensee shall be given a reasonable opportunity of being heard.**

- (2) The Principal Commissioner or Commissioner of Customs may, without prejudice to any other action that may be taken against the licensee and the goods under this Act or any other law for the time being in force, **suspend operation of the warehouse** during the pendency of an enquiry under sub-section (1).
- (3) Where the operation of a warehouse is suspended under sub-section (2), **no goods shall be deposited in such warehouse during the period of suspension:**

Provided that the provisions of this Chapter shall continue to apply to the goods already deposited in the warehouse.

- (4) Where the licence issued under section 57 or section 58 or section 58A **is cancelled**, the goods warehoused shall, **within 7 days** from the date on which order of such cancellation is served on the licensee or within such extended period as the proper officer may allow, **be removed from such warehouse** to another warehouse or be cleared for home consumption or export:

Provided that the provisions of this Chapter shall continue to apply to the goods already deposited in the warehouse till they are removed to another warehouse or cleared for home consumption or for export, during such period”.

**Warehousing Bond – Section 59**

Since imported goods are kept in warehouse without payment of customs duty, importer has to execute a bond binding himself to

- a. **observe all provisions** of Customs Act and rules/regulations in respect of the goods
- b. pay on **demand all duties and interest**
- c. **pay all penalties leviable** for violations of provisions of Customs Act, rules and regulations.

The bond amount is equal to **thrice the amount of duty assessed**. The importer shall, in addition to the execution of a bond, furnish **such security as may be prescribed**.

*Bond will continue to be valid even if goods are removed to another warehouse*

If the warehoused goods are transferred to another person (either wholly or partially), **the transferee will have to execute the bond and furnish prescribed security**.

Bond is cancelled and returned only when duty and all other dues are paid on goods cleared and goods are duly accounted for.

**Bonded warehouse**

Since goods are kept in warehouse under a 'bond', the warehouse is termed as 'bonded warehouse'. It does not necessarily mean that the warehouse is physically bonded. For example, in case of manufacture in warehouse, the manufacture is in 'bonded warehouse' **but there is no physical supervision of customs officer**.

**Procedure for warehousing imported goods**

Imported goods are cleared from seaport/airport on submission of Bill of Entry for warehousing. **This Bill of Entry is printed on yellow paper and often called 'Yellow Bill of Entry'**. Bond is executed for transfer of goods from port to warehouse.

**Period for which Goods may remain Warehoused w.e.f. 14-5-2016**

**As per Sec. 61 of the Customs Act, 1962**

1. **Any warehoused goods may remain in the warehouse in which they are deposited or in any warehouse to which they may be removed:**
  - a) in the case of **capital goods intended for use** in any 100% export oriented undertaking or electronic hardware technology park unit or software technology park unit or any warehouse wherein manufacture or other operations have been permitted under section 65, **till their clearance from the warehouse;**
  - b) in the case of **goods other than capital goods** intended for use in any 100% export oriented undertaking or electronic hardware technology park unit or software technology park unit or any warehouse wherein manufacture or other operations have been permitted under section 65, **till their consumption or clearance from the warehouse;** and
  - c) in the case of **any other goods, till the expiry of one year** from the date on which the proper officer has made an order under sub-section (1) of section 60.

Provided that in the case of any goods referred to in this clause, the **Principal Commissioner or Commissioner of Customs** may, on sufficient cause being shown, extend the period for which the goods may remain in the warehouse, **by not more than one year at a time:**

Provided further that where such goods are likely to deteriorate, the period referred to in the first proviso **may be reduced by the Principal Commissioner or Commissioner of Customs** to such shorter period as he may deem fit.

2. Where any warehoused goods specified in clause (c) of sub-section (1) remain in a warehouse **beyond a period of ninety days** from the date on which the proper officer has made an order under sub-section (1) of section 60, interest shall be payable at such rate as may be fixed by the Central Government under section 47, **on the amount of duty payable at the time of clearance of the goods**, for the period **from the expiry of the said ninety days till the date of payment of duty on the warehoused goods**

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

- a. by order, and under the circumstances of an exceptional nature, to be specified in such order, **waive the whole or any part of the interest payable** under this section in respect of any warehoused goods;
- b. by notification in the Official Gazette, **specify the class of goods in respect of which no interest shall be charged** under this section;
- c. by notification in the Official Gazette, **specify the class of goods in respect of which the interest shall be chargeable from the date** on which the proper officer has made an order under sub-section (1) of section 60.

Presently, the interest rate is **15% to be paid on the value of total duty payable**. While calculating the interest for number of days delay, we should take into account by **including the date of payment of duty**.

#### **Interest for warehousing beyond 90 days**

Even if goods are permitted to be stored for one year (plus extension if permitted), interest is payable for storing goods beyond a period of 90 days in the warehouse. **The interest is payable on the basis of duty payable at the time of clearance (and not duty assessed when goods were warehoused).**

#### **Interest not payable when no customs duty payable**

In some cases, no customs duty is payable on goods warehoused as they are exempt from duty on date of clearance. **In Pratibha Processors, it has been held** that if no customs duty is payable at the time of clearance of goods from warehouse, no interest is payable. **Interest is a mere 'accessory' to principal and if principal is not payable, interest is also not payable. This view is also accepted in CBEC Circular.**

#### **Clearance from bonded warehouse**

**Section 71 allows clearance for (a) home consumption, (b) re-exportation or (c) removal to another warehouse. Green Bill of Entry** has to be submitted by the importer to clear goods from warehouse for home consumption.

#### **Rate of duty as applicable on date of removal**

**As per Section 15, rate of duty as prevalent on date of presentation of Bill of Entry for home consumption for clearance from warehouse is applicable and not rate prevalent when goods were removed from customs port.**

**Note:** Re-assessment is not allowed after the imported goods originally assessed and warehoused.

#### **Duty payable if warehousing period is not extended**

Goods which are not removed within the permissible period, are deemed to be improperly removed on the day it should have been removed. **Thus, duty applicable on such date (i.e. last date on which the goods should have been removed) is applicable, and not the date on which goods were actually removed.**

#### **Rate of exchange in case of warehoused goods**

Relevant exchange rate for valuation is as in force on date on which bill of entry is presented u/s 46. Bill of Entry is presented u/s 46 of Customs Act either for home consumption or for warehousing. **Hence, in case of warehoused goods, exchange rate prevailing on the date on which Bill of Entry is presented u/s 46 and not when Bill of Entry is presented u/s 68 for clearance from customs warehouse is used.**

**Relevant date when goods are warehoused can be summarized hereunder:**

S. No	Situations	Goods warehoused under Bond	Relevant date
(i)	When goods are removed for warehousing	Rate of exchange	At the time of submission of 'into bond' bill of entry
(ii)	When goods are removed for home consumption	Rate of duty	As on the date of submission of ex-bond bill of entry
(iii)	When the goods are not removed from warehouse <b>within the permissible period.</b>	Rate of duty	The rate of duty prevails <b>on the date on which the goods should have been removed</b> is to be considered

**No Anti dumping duty on goods warehoused prior to levy of anti-dumping duty**

Antidumping duty is leviable on date of importation. Hence, if goods are already warehoused prior to imposition of anti-dumping duty, anti-dumping duty will not be leviable on warehoused goods, even if cleared subsequent to imposition of anti-dumping duty

**Same principle will apply to protective duty and safeguard duty also.**

**Sale of goods when goods are in bonded warehouse is 'sale in the course of import'**

In Kiran Spinning Mills, it has been held that goods continue to be in customs barrier when they are in customs bonded warehouse. Import would be completed only when goods cross customs barrier and not when they land in India or enter territorial waters. **Thus, if documents are transferred when goods are in customs bonded warehouse, it will be treated as transfer of documents before goods cross customs barrier.**

**Clearance for export**

Customs warehoused goods can be exported without payment of duty, vide section 69(1) of Customs Act. A shipping bill or bill of export or label or declaration (in case of export by post) has to be presented. Export duty, penalties, interest etc. is payable as applicable and then goods are allowed to be exported. **If warehoused goods are re-exported without payment of duty, no interest is payable.**

**Section 64 of the Customs Act, 1962 - Owner's Right to deal with Warehoused Goods:**

**W.e.f. 14-5-2016, The owner of any warehoused goods may, after warehousing the same:**

- a) **inspect** the goods;
- b) **deal** with their containers in such manner as may be necessary to prevent loss or deterioration or damage to the goods;
- c) **sort** the goods; or
- d) **show** the goods for sale.

**Note:** Since physical control has been abolished, there is no need of obtaining sanction on payment of MOT charges

**Section 65 of the Customs Act, 1962 - Manufacture and Other Operations in relation to Goods in a Warehouse.**

With the permission of the Principal Commissioner of Customs or Commissioner of Customs and subject to such conditions and subject to such conditions and on payment of such fees as may be prescribed, the owner of any warehoused goods may carry on any manufacturing process or other operations in the warehouse in relation to such goods

**Custody and Removal of Warehoused Goods (New Section 73A w.e.f. 14-5-2016)**

1. All warehoused goods shall remain in the custody of the person who has been granted a licence under section 57 or section 58 or section 58A until they are cleared for home consumption or are transferred to another warehouse or are exported or removed as otherwise provided under this Act.
2. The responsibilities of the person referred to in sub-section (1) who has custody of the warehoused goods shall be such as may be prescribed.
3. Where any warehoused goods are removed in contravention of section 71, the licensee shall be liable to pay duty, interest, fine and penalties without prejudice to any other action that may be taken against him under this Act or any other law for the time being in force.

**Note:** The provision has been inserted so as to recover the duty either from custodian or importer as may be prescribed to protect the revenue. Liability of duty interest fine will be on importer and or custodian, as the case may be. This will cause more responsibility on custodian.

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**Question: Warehousing without Warehousing.****(4 marks)**

**Answer:** Under Sec. 49 of the custom act, where goods imported for home Consumption whether dutiable or not, **cannot be assessed for want of information, such goods may be warehoused** in a public warehouse, ~~or in its absence, in a private warehouse~~ on application in writing by the importer. On application by the importer the AC/DC may allow such goods to be warehoused without assessment. The purpose is to save the goods to be warehouse from demurrage, pilferage in docks goods are then assessed and cleared from warehouse.

Normally 'warehousing' is done after goods are assessed. However, u/s 49, goods are stored in warehouse without enforcing the provisions of warehousing, i.e, without assessment, and hence it is called 'warehousing without warehousing'. In actual practice, such cases are rare; but the provisions are very beneficial if such occasion arises.

There is a time limit of 30 days to remove the goods from warehouse where the goods has been stored under Section 49 of the Customs Act, 1962 i.e. warehousing without warehousing. The period can be **extended by Principle Commissioner or Commissioner of Customs by 30 days at a time.**

# Import Procedure

## **PASSENGER AND CREW ARRIVAL MANIFEST AND PASSENGER NAME RECORD INFORMATION. [SECTION 30A]**

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 proper officer

- (i) the **passenger and crew arrival manifest before arrival** in the case of an aircraft or a vessel and **upon arrival** in the case of a vehicle; and
- (ii) the **passenger name record information** of arriving passengers, in such form, containing such particulars, in such manner and within such time, as may be prescribed.

Where the passenger and crew arrival manifest or the passenger name record information or any part thereof is **not delivered to the proper officer** within the prescribed time and if the proper officer 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 Rs. 50,000**, as may be prescribed.

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

## **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.

### **RESTRICTIONS ON CUSTODY AND REMOVAL OF IMPORTED GOODS [SECTION 45]**

Once the imported goods have entered the Customs area, there arises the question of who is responsible for the safe custody of goods. ***This section requires that until the imported goods are cleared for home consumption or are warehoused or are exported for transshipment, they shall remain in the custody of such person as may be approved by the Principal Commissioner/Commissioner of Customs*** [Section 45(1)]. This person is called the custodian. 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.

[In major ports, the custodian is the Port Trust. In other places, the custodian are the warehouse keepers. In Inland Container Depots, the Container Corporation of India is the custodian of the imported cargo. In case of air cargo, the custodian is the National Airport Authority. For goods brought by rail, the custodian is the Station Master.]

### **Responsibility of Custodian of goods [Section 45(2)]:**

**During the time the goods are in the custody of the custodians, they have the following responsibilities:**

1. Maintain a proper record of goods received from the carriers and send a copy of the record to the proper officer.
2. Not to permit such goods to be removed from the customs area or allow them to be dealt with otherwise except under the specific permission in writing of the proper officer.

In pursuance to this responsibility, the custodian is required to tally the particulars of the goods landed by a vessel, and send a report to the customs authorities. ***This enables the customs authorities to check whether all goods manifested in the import general manifest for landing in a particular place have actually been landed.*** In case of the goods are not so landed, action is taken against the carriers.

**Liability of the Custodians [Section 45(3)]**

This provision provides that notwithstanding anything contained in any law for the time being in force, if any imported goods are pilfered after unloading in any customs area, while in the custody of the custodian, such custodian shall be liable to pay duty on such goods. Therefore, in respect of pilfered goods covered by section 13, the **loss of revenue is compensated by the custodian**. *The duty shall be paid at the rate prevailing on the day of delivery of the import manifest or as the case may be, an import report to the proper officer under section 30 for the arrival of the conveyance in which such goods were carried.*

This provision is intended to make the custodian of the imported goods lying in customs area **liable for duty** even if they are pilfered when they were in their custody.

Section 45 holds the custodian responsible **only in respect of the Customs duty** in respect of pilfered goods. It **does not extend to the value of goods lost**. *If the custodian has no explanation at all to show how the loss occurred in respect of goods in its custody, the custodian is liable for loss of goods.*

**FILING OF IMPORT BILL OF ENTRY [SECTION 46]**

It is the duty of the importer of any goods to **make an application electronically** to the proper officer for clearance of the goods. The importer is required to make an **electronic integrated declaration** to the Customs Computer Systems through network facility. [The Bill of Entry (Electronic Integrated Declaration) Regulations, 2011, provides the details.]

However, the Principal Commissioner/ Commissioner of Customs may, in cases where it is not feasible to make entry by presenting electronically, allow an entry to be presented in any other manner. **Hence, manual submission of Bill of Entry is allowable in cases where electronic submission is not feasible**. [The form of the bill of entry is governed by Bill of Entry (Forms Regulations, 1976).]

**The goods may be cleared for home consumption or for deposit in a warehouse or for transit or transshipment.**

**There are three types of Bills of Entries** prescribed for these three different purposes:

**Form I (White)** – for home consumption.

**Form II (Yellow)** – for warehousing (into bond).

**Form III (Green)** – for ex-bond clearance for home consumption (ex-bond).

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

- a) **Original**, meant for the customs authorities for assessment and collection of duty;
- b) **Duplicate**, intended as an authority to the custodian of the cargo to release cargo to the importer from his custody;
- c) **Triplicate**, as a copy for record for the importer; and
- d) **Quadruplicate**, as a copy to be presented to the bank or Reserve Bank of India for the purposes of making remittance for the imported goods.

The importer is required to declare in the Bill of Entry amongst other things the particulars of packages, the descriptions of the goods, in terms of the description given in the Customs Tariff to enable proper classification of the goods and the correct value of the goods for the determining the amount of duty. **Since the assessment is based on the declaration made by the importer, the onus is cast upon him to make a declaration and serious affirmation about the truth of the contents in the Bill of Entry.**

**Importer unable to furnish details:**

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

Alternatively, he can seek permission to deposit the goods in a public bonded warehouse appointed under section 57 **pending receipt of the necessary information and the supporting documents under section 49**. This is also called warehousing without warehousing. 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.

**[Bill of Lading:** The Bill of Lading given by the carrier of the goods is the importer's document of title to the goods. The Bill of Lading covers all the goods imported with full description]

**Time limit for filing: NEW**

According to section 46(3), the importer shall present the bill of entry **before the end of the next day following the day (excluding holidays) 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. **[W.e.f. 31.03.2017 as amended by Finance Act 2017]** - Earlier there was no time limit was prescribed under the Act

Section 46(3) further provides that a bill of entry may be **presented within 30 days of the expected arrival** of the aircraft/vessel/vehicle by which the goods have been shipped for importation into India.

However, where the bill of entry is not presented within the time so specified and the proper officer is satisfied that there was no sufficient cause for such delay, **the importer shall pay prescribed charges for late presentation of the bill of entry.**

**ASSESSMENT OF GOODS [SECTION 17]**

a) **Duty to be self-assessed by the importer/exporter:** An importer entering any imported goods under section 46, or an exporter entering any export goods under section 50, shall **self-assess the duty, if any, leviable on such goods.**

b) **Verification by proper officer:**

The proper officer may verify the self assessment of such goods and for this purpose, examine or test any imported goods or export goods or such part thereof as may be necessary.

For verification of self-assessment, the **proper officer 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 and thereupon, the importer, exporter or such other person shall produce such document or furnish such information.

c) **Reassessment of duty by the proper officer if self-assessment not done correctly:**

Where it is found on verification, examination or testing of the goods or otherwise that the self-assessment is **not done correctly**, the proper officer may, without prejudice to any other action which may be taken under this Act, **re-assess the duty leviable on such goods.**

d) **Speaking order for re-assessment to be passed unless the importer agrees with the reassessment:**

Where any *re-assessment done is contrary to the self-assessment done* by the importer or exporter regarding valuation of goods, classification, exemption or concessions of duty availed consequent to any notification issued therefore under this Act and in cases **other than those** where the importer or exporter, as the case may be, confirms his acceptance of the said re-assessment in writing, **the proper officer shall pass a speaking order on the re-assessment, within 15 days from the date of re-assessment of the bill of entry or the shipping bill, as the case may be.**

**PROVISIONAL ASSESSMENT OF DUTY [SECTION 18]**

The provisional assessment can be directed by proper officer in the following circumstances:

- a. where the importer or exporter is **unable to make self-assessment under section 17(1)** and makes a request in writing to the proper officer for assessment; or
- b. where the proper officer deems it necessary to subject any imported goods or export goods to any **chemical or other test**; or
- c. where the importer or exporter has produced all the necessary documents and furnished full information but the **proper officer deems it necessary** to make further enquiry; or
- d. where **necessary documents have not been produced** or information has not been furnished and the proper officer deems it necessary to make further enquiry.

***Furnishing of security:***

The proper officer may direct provisional assessment if the importer or the exporter, as the case may be, furnishes such security as the proper officer deems fit for the payment of the deficiency, if any, between the duty as may be finally assessed or re-assessed (as the case may be), and the duty provisionally assessed.

***Importer required to file bill of entry in case of provisional assessment also:***

The provisions of section 18 apply without prejudice to the provisions of Section 46. **Hence, the bill of entry is required to be presented in accordance with the provisions of Section 46 even for the purposes of provisional assessment as well.**

***Finalisation of assessment:***

When the duty leviable on such goods is assessed finally or re-assessed by the proper officer in accordance with the provisions of this Act, then

- a. ***if the goods are cleared for home consumption or exportation***, the amount paid shall be adjusted against the duty finally assessed or re-assessed. In case the amount so paid falls short or is in excess of duty finally assessed or re-assessed, the importer or the exporter of the goods shall pay the deficiency or is entitled to a refund.
- b. ***if the goods are warehoused*** and the duty finally assessed or re-assessed is in excess of the provisional duty, the customs officer may require the importer to execute a bond binding himself in a sum **equal to twice the amount of the excess duty**.

***Interest of demand:***

The importer or exporter shall be liable to pay interest, on any amount payable to Central Government, consequent to the final assessment order or reassessment order, **at 18% p.a.** from the ***first day of the month in which the duty is provisionally assessed*** till the date of payment thereof.

***Interest on delayed refund:***

If any amount refundable is not refunded within 3 months from the date of assessment of duty finally or reassessment of duty, as the case may be, there shall be paid an interest on such amount **at 6% p.a. after the expiry of 3 months till the date of refund of such amount**.

***Circumstances under which refund can be granted:***

The amount of duty and the interest shall be credited to ***Customer Welfare Fund***. **However, instead of being credited to Consumer Welfare Fund in the following cases it shall be paid to the importer or the exporter, if such amount is related to,-**

- a. the duty and interest, (if any, paid on such duty) paid by the importer, or the exporter, as the case may be, if he had not passed on the incidence of such duty and interest, to any other person;
- b. 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, to any other person;
- d. the export duty as specified in Section 26;
- e. drawback of duty payable under Section 74 and 75.

**CLEARANCE OF GOODS [SECTION 47]**

Once the customs check and payment of duty is completed, the customs officers allow clearance of the goods. Section 47 provides that where the proper officer is satisfied that the goods entered for home consumption are not prohibited ***and the appropriate import duty and any charges payable thereon has been paid***, he can make **an order permitting clearance of the goods for home consumption.**

However, Central Government may permit certain class of importers to make deferred payment of said duty or any charges in such manner as may be provided by rules.

In this respect, Central Government has ***permitted importers certified under Authorized Economic Operator programme*** as AEO (Tier-Two) and AEO (Tier-Three) to make deferred payment of import duty (eligible importers). AEO means Authorized Economic Operator certified by the Directorate General of Performance Management under CBEC. ***On making this 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.***

**[Some major importers have been given the green channel clearance facility.** It means clearance of goods is done without routine examination of the goods. They have to make a declaration in the declaration form at the time of filing of bill of entry. The appraisal is done as per normal procedure **except that there would be no physical examination of the goods.** Only marks and number are to be checked in such cases. 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.]

**Time limit for payment of import duty: - NEW – w.e.f 31.03.2017 as amended by FA 17**

The importer shall pay the import duty-

- a) on the date of presentation of the bill of entry ***in the case of self assessment***; or
- b) within one day (excluding holidays) from the date on which the bill of entry is returned to him by the proper officer ***for payment of duty in the case of assessment, reassessment or provisional assessment***; or
- c) ***in the case of deferred payment, from such due date as may be specified by rules*** made in this behalf, and

if he fails to pay the duty either in full or in part within the time so specified, ***he shall pay interest on the duty not paid or short-paid till the date of its payment.***

***The rate of interest shall be not below 10% and not exceeding 36% per annum and shall be fixed by the central government. However, the interest may be waived by the CBEC in public interest.*** [Section 47(2)]

[Presently, Interest rate notified is 15%]

**Deferred Payment of Import Duty Rules, 2016 read with Circular No. 52/2016-Cus dated 15.11.2016**

An eligible importer intending to avail the benefit of deferred payment **shall intimate** to the Principal Commissioner/Commissioner of Customs, having jurisdiction over the port of clearance, his intention to avail the said benefit who on being satisfied with the eligibility of the importer **allow him to pay the duty by due dates.**

**Due dates for deferred payment of import duty-**

S. No.	Goods corresponding to Bill of Entry returned for payment	Due date of payment of duty, inclusive of the period (excluding holidays) as mentioned in section 47(2)
1	1st day to 15th day of any month	16th day of that month
2	16th day till the last day of any month other than March	1st day of the following month
3	16th day till the 31st day of March	31st March

**Electronic payment of duty:** The eligible importer shall pay the duty electronically. However, the **Assistant/Deputy Commissioner of Customs** may for reasons to be recorded in writing, allow payment of duty by any mode other than electronic payment.

**Deferred payment not to apply in certain cases:** If there is default in payment of duty by due date **more than once in three consecutive months**, this facility of deferred payment **will not be allowed** unless the duty with interest has been paid in full.

The benefit of deferred payment of duty **will not be available in respect of the goods which have not been assessed or not declared by the importer in the entry**

**PROCEDURE FOR DISPOSAL OF GOODS NOT CLEARED [SECTION 48]**

If there are any goods imported from a place outside India, which are not cleared within 30 days from the date of unloading, the custodian of the cargo is unnecessarily burdened with the custody of the goods. It also deprives the customs department of its legitimate revenue in the form of customs duty. The 30 days have been considered to be sufficient time for any importer to make up his mind whether the goods should be cleared for home consumption on payment of duty or whether they should be transhipped or whether they should be deposited in a warehouse.

If such imported goods are not cleared either for home consumption or for warehouse within 30 days or within such further time as the proper officer may allow or if the title to any imported goods is relinquished, 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 proper officer can sell the goods even before the expiry of the 30 days limit. Similarly 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

**Date relevant for determination of Rate of Exchange (Explanation to Section 14)**

- (1) For imported goods, the conversion in value shall be done with reference to the rate of exchange prevalent on the **date of filing bill of entry**.
- (2) For export goods, the conversion in value shall be done with reference to the rate of exchange prevalent on the **date of filing shipping bill or bill of export**.

**Rate of exchange means the rate of exchange determined by the Board (CBEC).** There are separate rates for imported goods (selling rate) and export goods (buying rate).

**Example:**

ABC Manufacturers have imported machinery from US worth \$ 10,000. Determine the rate of exchange for the purpose of computation of customs duty from the following additional information:

Particulars	Date	Exchange rate as notification by CBEC	Exchange rate as notification by RBI
Date of bill of entry	24.10.2017	Rs 68 per US dollar	Rs 69 per US dollar
Date of entry inward	20.10.2017	Rs 70 per US dollar	Rs 71 per US dollar

**Solution:**

Exchange rate in the given case will be the rate of exchange notified by CBEC on the date of presentation of bill of entry i.e. 24.10.2017

Hence, the rate of exchange for the purposes of computation of customs duty will be Rs 68 per US dollar

**Date for determining the rate of duty and tariff valuation of imported goods**

**Section 15** prescribes the relevant date for determining the rate of duty and tariff valuation, if any applicable to any imported goods in the following manner:

Case	The rate of duty and tariff valuation shall be the rate and valuation in force on the
Goods enter for the home consumption	Date on which a bill of entry in respect of such goods is presented <b>OR</b> Date of Entry Inwards of the <b>Vessel</b> is granted / Arrival of the <b>Aircraft/Vehicles</b> takes place; <b>whichever is later</b>
Goods cleared for the home consumption from the ware house	Date on which a bill of entry <b>[EX-bond]</b> for home consumption of such goods is presented
Any other case	Date of payment of duty

**Example:**

Bill of entry is presented on 1.1.2018, the vessel or aircraft arrives on 3.1.2018. In this situation, relevant date for determination of the rate of import duty is 3.1.2018 because though for procedural purposes, the Bill of Entry was filed on 01.01.2018, for the purpose of determining the rate of duty and tariff valuation of such goods, Bill of Entry will be deemed to have been filed on 03.01.2018.

**Date of for determination of rate of duty and tariff valuation of export goods [Section 16]:**

**Section 16** prescribes the relevant date for determining the rate of duty and tariff valuation, if any applicable to any Export Goods in the following manner:

- In the case of goods entered for export under section 50, the date on which the proper officer makes an order permitting clearance and loading of the goods for exportation under section 51.
- In the case of any other goods, the date of payment of duty.

**The provision of section 16 shall not apply to baggage and goods exported by post.**

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**Class Notes**

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## Type of Custom Duties

Custom Act, 1962	Custom Tariff Act, 1975	Finance Act
Sec 12 - Basic Custom Duty	Sec 3(1) - CVD(E.D-FP) Sec 3(5) - CVD(VAT)-4% <b>Sec 3(7) - IGST</b> <b>Sec 3(9) - GST Compensation Cess</b> Sec 6(1) - Protective Duty Sec 8B - Safe Guard Duty Sec 9 - CVD on Subsidized Articles Sec 9A - Anti -Dumping Duty	FA 2004- Education Cess @2% FA 2007- SHEC @1% <b>(Not applicable in case of exports)</b>

### Basic Customs Duty levied u/s 12 of Customs Act.

**As per Section 12 of Customs Act, 1962**, Basic Customs Duty [BCD] can be levied on the value of goods. Section 2 of the Customs Tariff Act, 1975 provides the rate of duty to be applied on the value of goods. **Basically Section 2 of the Customs Tariff Act, 1975 provides following**

<b>First Schedule</b>	-	Goods liable for import duty
<b>Second Schedule</b>	-	Goods liable for export duty

The rate of basic customs duty is specified in Customs Tariff Act, read with relevant exemption notification. Generally, Basic Customs Duty is **10%**.

**Assessable Value for computing BCD is Transaction Value** under Section 14(1)/Tariff Value determined under Section 14(2).

### SECTION 3(1): Levy of additional duty equal to excise duty (CVD)

- Any article which is imported into India shall, in addition, be liable to a duty (CVD) equal to the excise duty for the time being leviable **on a like article if produced or manufactured in India**. (Goods which is outside the scope of GST but excise duty is applicable **OR** Excise duty is also applicable with GST)
- CVD (Countervailing Duty) is payable on imported goods u/s 3(1) of Customs Tariff **Act to counter balance impact of excise duty** on indigenous manufactures, to ensure level playing field.
- It is payable **at effective rate of Excise Duty**, which is generally **12.5%**. It means CVD is equal to Basic Excise Duty.
- **When excise duty is exempt/nil rate** is applicable on goods imported, no CVD is levied.
- CVD is leviable **even if similar goods are not produced** in India.
- Such imported goods are charged with similar articles in India. If more than one similar article are available attracting different rate of duty, **highest** of the rates is applied.
- **CVD is payable on assessable value plus basic customs duty.**

**EDUCATION CESS & SECONDARY AND HIGHER EDUCATION CESS****Education Cess (EC)**

<b>Levied on</b>	Imported goods
<b>Rate of cess</b>	2% on aggregate of customs duties leviable on such goods
<b>Duties to be excluded for computing this cess</b>	Special CVD under section 3(5), duties leviable under section 8B/8C/9/9A and SHEC and EC itself  <b>IGST &amp; GST Compensation Cess</b>

**Secondary and Higher Education Cess (SHEC)**

<b>Levied on</b>	Imported goods
<b>Rate of cess</b>	1% on aggregate of customs duties leviable on such goods
<b>Duties to be excluded for computing this cess</b>	Special CVD under section 3(5), duties leviable under section 8B/8C/9/9A and EC and SHEC itself  <b>IGST &amp; GST Compensation Cess</b>

**SECTION 3(5): Special Additional Duty of customs equal to Sale-Tax/VAT (also known as Special CVD)**

<b>It is leviable on</b>	Any imported article	
<b>Purpose of levy of this duty</b>	To counter-balance the sales tax, VAT, local tax or any other charges for the time being in force leviable on a like article on its sale, purchase or transportation in India.	
<b>Rate of duty</b>	Rate as notified by the Central Government, but not exceeding 4%.	
	If a like article is not so sold, purchased or transported, rate of duty is the rate at which such taxes/charges would be leviable on the class or description of articles to which the imported article belongs, and where such taxes/ charges are leviable at different rates, <b>the highest of such tax such charge.</b>	
<b>Assessable Value for computing Special CVD under section 3(5)</b>	<b>Value under Section 14(1) /Tariff Value determined Section 14(2)</b> Add: Basic Custom Duty Add: CVD Under Section 3(1) Add: Education Cess [Customs] Add: Secondary and Higher Education Cess [Customs] <b>Assessable Value for Special CVD</b>	Xxx xxx xxx xxx <u>xxx</u> xxx

**Integrated Goods and Services Tax (IGST) [Section 3(7)]**

- IGST (Integrated Goods and Services Tax) is a component under GST law, which is levied on goods being imported into India from other country. ***It has been subsumed various customs duties including Countervailing Duty (CVD) and Special Additional Duty of Customs (SAD).***
- In the GST regime, IGST will be levied on imports by virtue of sub - section (7) of Section 3 of the Customs Tariff Act, 1975. **IGST wherever applicable, would be levied on cargo that would arrive on or after 1st July, 2017.**
- It may also be noted that IGST would also be levied on cargo which has arrived prior to 1st July **but a bill of entry is filed on or after 1st July 2017**. Similarly **ex-bond bill of entry** filed on or after 1st July 2017 would attract IGST, as applicable.
- In the case where cargo arrival is after 1st July and an advance bill of entry was filed before 1st July along with the payment of duty, the **bill of entry may be recalled and reassessed by the proper officer** for levy of IGST as applicable.

**GST Compensation Cess [Section 3(9)]**

- Under GST regime, Compensation Cess will be charged on **luxury products like high-end cars and demerit commodities like pan masala, tobacco and aerated drinks** for the period of 5 years in order to compensate states for loss of revenue.
- GST Compensation cess, wherever applicable, would be levied on cargo that would arrive on or after 1st July, 2017. Similarly ex-bond bill of entry filed on or after 1st July 2017 would attract GST Compensation cess, as applicable.
- In the case where cargo arrival is after 1st July and an advance bill of entry was filed before 1 st July along with the payment of duty, the bill of entry may be recalled and reassessed by the proper officer for levy of GST compensation Cess, as applicable
- The value of the imported article for the purpose of levying IGST & GST Compensation cess shall be, assessable value plus Basic Customs Duty levied under the Act, and any sum chargeable on the goods under any law for the time being in force , as an addition to, and in the same manner as, a duty of customs. **These would include education cess or higher education cess as well as anti - dumping and safeguard duties.**
- **Input tax credit be availed on IGST & GST Compensation Cess paid on inward supplies:**  
Yes, input tax credit can be availed on IGST & GST Compensation Cess paid on inward supplies of the imported goods.  
  
**However, the credit of GST Compensation Cess paid can be utilized only towards payment of the GST Compensation Cess liability. IGST can be utilized in the payment of IGST, CGST, SGST/UTGST.**
- In cases where imported goods are liable to Anti - Dumping Duty or Safeguard Duty, calculation of Anti - Dumping Duty or Safeguard duty would be as per the respective notification issued for levy of such duty. ***It is also clarified that value for calculation of IGST as well as Compensation Cess shall also include Anti - Dumping Duty amount and Safeguard duty amount.***
- The inclusion of anti - dumping duties and safeguard duty in the value for levy of IGST and Compensation Cess **is an important change**. These were not hitherto included in the value for the levy of additional duty of customs (CVD) or Special Additional Duty (SAD).
- **The IGST paid shall not be added to the value for the purpose of calculating Compensation Cess.**

**Steps for computation of Custom Duties including GST**

S.No.	Particulars	Rs
(1)	Assessable value for computing basic customs duty [Transaction value under section 14(1)/Tariff value under section 14(2)]	Xxxx
(2)	Add: Basic custom duty [(1) × Rate of BCD]	Xxxx
(3)	Total value for computing additional customs duty u/s 3(1) [(1)+(2)]	xxxx
(4)	Additional custom duty u/s 3(1) [(3) × Rate of CVD]	Xxxx
(5)	Total duty amount for education cess of customs [(2)+(4)]	xxxx
(6)	Education cess @ 2% of (5)	Xxxx
(7)	Secondary and higher education cess @ 1% of (5)	xxxx
(8)	Total duty payable before additional customs duty u/s 3(5) [(5)+(6)+(7)]	xxxx
(9)	Total value for computing additional customs duty u/s 3(5) [(1)+(8)]	xxxx
(10)	Additional customs duty u/s 3(5) [(9)×4%]	xxxx
(11)	Total Value [(9)+(10)]	xxxx
(12)	IGST [(11) * IGST Rate]	xxxx
(13)	GST Compensation Cess [(11) * Cess Rate]	xxxx
(14)	Total Cost	

**SECTION 6: Protective Duties****Reason for imposition:**

Where the CG, upon a **recommendation made to it in this behalf by the Tariff Commission** is satisfied that the circumstances exist which rendered it necessary to take immediate action to **provide for the protection of the interests of any industry established** in India.

**Amount of Duty:**

The CG may, by notification, impose on any goods imported into India in respect of which the said recommendation is made, a duty of customs of such amount, **not exceeding the amount proposed in the said recommendation**, as it thinks fit.

**Nature of Duty:**

Every such duty imposed shall be deemed to have been specified in the first Schedule

**Period of Duty:**

CG may specify the period up to which protective duty shall in force, reduce or extend **such period**, reduce or increase **the effective rate**.

**SECTION 8B: Safeguard Duty**

1. As per provisions of Section 8B of the CTA, the CG may by notification, impose this duty when after conducting an enquiry it is satisfied that any article is imported into India in **such increased quantity so as cause serious injury to domestic industry**.

~~2. Similar duty is imposed u/s 8C if goods are imported from China.~~

3. It can provide adequate protection to the indigenous industry against competition from the world players.

4. CG may exempt such quantity of any article as it may specify in the notification from payment of whole or part of the safeguard duty leviable.

**5. Provisional Safeguard Duty Pending Enquiry:**

- Pending final determination of injury, safeguard Duty may be imposed **provisionally for a maximum period of 200 days** from the date when it was first imposed.
- It shall be refundable if it is **not finalized within 200 days**.
- The **provisional duty collected shall be refundable** if it is finally determine that such import shall not cause injury to domestic industry.

**6. Period of Imposition:**

- Initially, it can be imposed for a maximum period of **4 Years** (including the period of provisional imposition).
- However, the Central Government reserves the right for its extension but **total period of imposition cannot be beyond 10 years from** the date of its imposition.

**7. No Safeguard Duty on Articles Originating from Developing Countries:**

In case of articles originating from a notified developing country, this duty cannot be imposed under following circumstances -

- (a) If the imports of such article from that developing country **does not exceed 3% of the total imports** of that article into India.
- (b) Where the article is originating from more than one developing countries (each with less than or equal to three percent import share), then the aggregate of imports from **all such countries taken together does not exceed 9% of the total imports** of that article into India.

**No Safeguard Duty in certain cases:** Unless specifically provided, the **safeguard duty shall not be imposed on goods imported by a 100% EOU or unit located in Free Trade Zone/ Special Economic Zone**.

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**Section 9: CVD on Subsidized Articles**

1. Where any country or territory grant directly or indirectly, any subsidy, ***upon the exportation there from of any article*** (including any subsidy on transportation of such article), then, upon the importation of any such article into India, The CG may, imposing a countervailing duty not exceeding the amount of such subsidy.
2. ***Provisional Duty:***
  - Pending final determination of injury, Countervailing Duty on Subsidized Article may be imposed provisional till the time subsidy is not determined.
  - The provisional duty collected shall be refunded; If it is finally determining that provision duty was imposed, in excess of subsidy.
3. ***Period of Imposition:***
  - Initially, it can be imposed for a maximum period of 5 year (including the period of provisional basis)
  - Extension of said period is possible subject to the condition that total period of imposition ***shall be restricted to 10 Years.***
4. The importation may/may not directly from the country of manufacture/production
5. The article, may be in the same condition as when exported from the country of manufacturer or production or may be changed in condition by manufacturer, production or otherwise.

**Section 9A: Anti-Dumping Duty**

1. Dumping is unfair trade practice and the anti-dumping duty is levied to protect Indian manufacturers from unfair competition.
2. Levy of such anti-dumping duty is permissible as per WTO agreement. Anti dumping action can be taken only when there is an Indian industry producing 'like articles'.
3. Where any article is exported by an exporter to India at less than its normal value, then, upon the importation of such article into India, the Central Government may impose an anti-dumping duty not exceeding the margin of dumping in relation to such article.
4. ***Anti-Dumping duty will be lower of dumping margin or injury margin.***
5. "**Margin of dumping**" means the difference between **normal value** (his sale price in his country) and **export price**. (price at which he is exporting the goods).

**Note:** Price of similar products in India is not relevant to determine 'margin of dumping'.

6. '**Normal Value**' means comparable price in ordinary course in trade, for like article, when destined for consumption in **the exporting country or territory**.

If such price is not available or not comparable

- (a) comparable representative price of like article exported from exporting country or territory to appropriate third country or
  - (b) Cost of production plus reasonable profit, can be considered.
7. '**Injury Margin**' means difference between fair selling price of domestic industry and **landed cost of imported products**. The landed cost will include **landing charges of 1% and basic customs duty**.

**8. Period of Imposition:**

- a) The duty imposed under this section shall be in force for a period of 5 years from the date of its imposition
- b) And can be extended for a further period of 5 years. Total period shall be restricted to 10 Years.
- c) The antidumping duty shall not be leviable on articles imported by a 100% EOU unless specifically made applicable for such units.

**9. Provisional Duty**

- a) Pending final determination of injury, Anti Dumping Duty may be imposed provisionally for 6 Months
- b) Even retrospective imposition on provisional basis is possible for maximum period of 90 Days.
- c) The provisional duty collected shall be refunded; if it is finally determined that provisional duty was imposed in excess of actual margin of dumping.

**10. Dumping Duty for WTO Countries**

Section 9B of Customs Tariff Act provides restrictions on imposing dumping duties in case of imports from WTO countries or countries given 'Most Favored Nation' by an agreement. Dumping duty can be levied on import from such countries, only if Central Government declares that import of such articles in India causes material injury to industry established in India or materially retards establishment of industry in India.

WTO agreement permits levy of anti-dumping duty when it causes injury to domestic industry as a result of specific unfair trade practice by foreign producer, by selling below normal value. 'Injury to domestic industry' will be considered on basis of volume effect and price effect on Indian industry. There must be a 'casual link' between material injury being suffered by dumped articles and the dumped imports.

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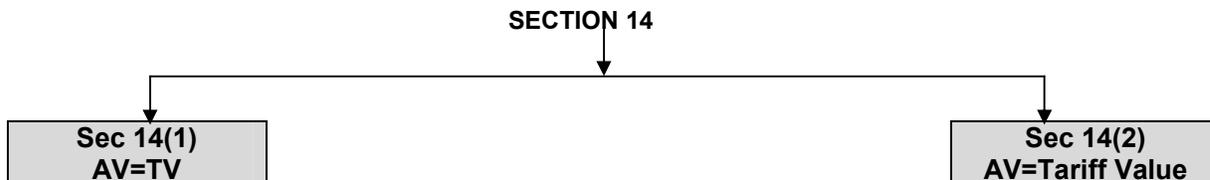
# Valuation in Customs

The manner in which duties of customs are charged on goods imported into India (import duty) or goods exported from India (export duty) is **basically either by way of –**

- (a) **A specific duty based on the quantity** of the goods like Rs.1000 per metric tons of steel or
- (b) **Ad valorem, namely expressed as percentage** of the value of the goods i.e. 40% ad valorem. etc.

## Concept of value

Section 2(41) of the Customs Act, 1962, defines “**Value**” in relation to any goods as the value thereof determined in accordance with the provisions of sub-section (1) or sub-section (2) of section 14.



**Relevant Rule:** *Customs Valuation (Determination of Value of Imported Goods) Rules, 2007*

## **Tariff Value - Sec 14(2)**

- Tariff Value can be fixed by CBEC (Board) for any class of imported goods or export goods.
- CBEC should consider trend of value of such or like goods while fixing tariff value
- Once so fixed, duty is payable as percentage of this value.

## **Valuation of Goods - Sec 14(1)**

**Valuation of imported goods:** Value of the imported goods shall be the **transaction value of such goods**.

### **Transaction Value means (Rule 3):-**

- The price actually paid or payable
- For the goods
- When sold for export to India(imported in India)
- For delivery at the time and place of importation.
- Where the **buyer and seller are not related**
- & **Price is the sole consideration** for sale.

### **Additions in 'Transaction Value'- Rule 10:**

**Rule 10 of Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 provide that following cost and services are to be added, if these are not already included in the invoice price:**

- (i) Commission and brokerage, **except buying Commission**, if not already included in the invoice price.
- (ii) **Cost of container** which are treated as being one with the goods for customs purposes, if not already included in the invoice price.
- (iii) **Cost of packing** whether labour or materials, if not already included in the invoice price.
- (iv) Materials, components, tools, dies, moulds, and consumables **used in production** of imported goods, **supplied by buyer** directly or indirectly, free of charge or at reduced cost, to the extent not already included in price.
- (v) Engineering, development, art work, design work, plans and sketches undertaken elsewhere than in India and necessary for production of imported goods, to the extent not already included in price.
- (vi) Royalties and license fees relating to imported goods that **buyer is required to pay**, directly or indirectly, **as a condition of sale** of goods being valued.
- (vii) Value of proceeds of subsequent resale, disposal or use of goods that **accrues directly or indirectly to seller** (i.e. to foreign exporter).
- (viii) All other payments **made as condition of sale of goods** being valued made directly or to third party to satisfy obligation of seller, to the extent not included in the price.
- (ix) Cost of transport up to place of importation.
- (x) Loading, unloading and handling charges associated with delivery of imported goods at place of importation **[These are termed as landing charges and are to be taken as 1%]**.
- (xi) Cost of insurance

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***Class Notes***

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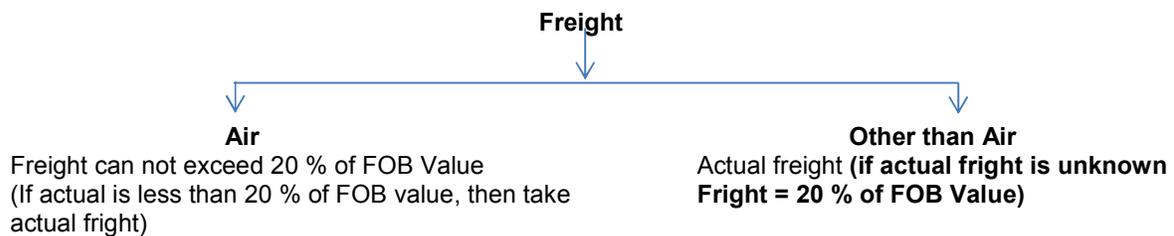
**Notes**➤ **Landing Charges to be added:**

Cost of unloading and handling associated with delivery of imported goods in port (called landing charges) shall be added.

**These will be calculated @ 1% of CIF value, i.e. FOB price plus freight plus insurance.**

➤ **Cost of Transport up to Port should be added:**

- ✓ Cost of transport from exporting country to India is to be added in 'Assessable Value'. In other words, CIF value is the basis for valuation.
- ✓ If the goods are imported by air, the air freight will be very high. Hence, ***in case, air freight is higher than 20% of FOB price of goods, only 20% of FOB price will be added for Customs Valuation purposes.***
- ✓ If cost of transport is not ascertainable, it will be taken as 20% of FOB value of goods.
- ✓ **However, cost of transport within India is not to be considered.**

➤ **Insurance Cost should be added:**

Insurance charges on goods are to be added. ***If these are not ascertainable, these will be calculated @ 1.125% of FOB Value of goods.***

➤ **Exclusions from Assessable Value:**

Interpretative Note to Rule 3 of Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 provides that following charges shall be excluded:

- (a) Charges for construction, erection, assembly, maintenance or technical assistance undertaken **after importation** of plant, machinery or equipment
- (b) Cost of transport **after importation**
- (c) Duties and taxes **in India**
- (d) Other payments from buyer to seller that **do not relate to imported goods** are not part of the customs value.

## **Statement Showing Computation of Assessable value for Imported Goods**

<b>Value of Material (at ex-factory price)</b>	<b>XXXX</b>
<b>ADD:</b> Carriage/freight/insurance up to the port (sea/air) of shipment in the exporter's country	<b>XXXX</b>
Charges for loading on to the ship at the shipping port in the exporter's country	<b>XXXX</b>
<b>Free on Board (FOB)</b>	<b>XXXX</b>
<b>Add: If not included in the above [Rule 10(1)]</b>	<b>XXXX</b>
Commission and brokerage (except buying commissions)	<b>XXXX</b>
Packing cost (except cost of durable and returnable packing)	<b>XXXX</b>
Cost of engineering, development and plan or sketches (Undertaken outside India)	<b>XXXX</b>
Royalties and license fee	<b>XXXX</b>
Value of subsequent re-sale if payable to foreign supplier	<b>XXXX</b>
Value of material supplied by the buyer free of cost	<b>XXXX</b>
<b>FOB value as per the Customs</b>	<b>XXXX</b>
<b>ADD:</b> Cost of freight if not specified @ 20% of FOB value as per Customs [Rule 10(2)]	<b>XXXX</b>
Ship demurrage charges on chartered vessels [Rule 10(2)]	<b>XXXX</b>
Lighterage or barge charges [Rule 10(2)]	<b>XXXX</b>
Insurance if not specified @1.125% of FOB value as per Customs [Rule 10(2)]	<b>XXXX</b>
<b>Cost, Insurance and Freight (CIF)</b>	<b>XXXX</b>
<b>ADD: <u>Unloading charges @ 1% on CIF [Rule 10(2)]</u></b>	<b>XXXX</b>
<b>ASSESSABLE VALUE</b>	<b>XXXX</b>

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***Class Notes***

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***Class Notes***

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**Question:**

Explain briefly, how the following would be treated for purposes of valuation under section 14 of the Customs Act, 1962 and the Customs Valuation Rules, 2007.

- (i) "Dismantling charges" paid by the importer of a machine to the foreign supplier for removal of the machine before shipment at the foreign supplier's place.
- (ii) "Demurrage charges" actually incurred by the importer of goods.

**Solution:**

Provisions relating to valuation of goods for purposes of customs duty are contained in Sec 14(1) read with **Customs Valuation (Determination of Value of Imported Goods) Rules, 2007**. Rules provides for acceptance of "transaction value" as assessable value subject to adjustments provided in Rule 10. Rule 10 states the various factors for which addition can be made while determining assessable value. No addition can be made for factors other than those stated in Rule 10.

The treatment of given items has been discussed below keeping in mind the provisions of Rule 10:

- (i) **"Dismantling charges" for removal of the machine before shipment:** Rule 10 is the "residuary provision" which provides for any payment made by buyer as a condition for sale of imported goods when such payment is directly to the exporter or to a third party to satisfy an obligation of the exporter seller. Rule 10 will cover up "dismantling charges" in the given situation.

It was held that in case of purchase of old machinery, all expenses connected with the dismantling of old machinery, and making it ready for being transported are includible.

- (ii) **"Demurrage charges":**

Demurrage (ship demurrage) becomes payable on when goods could not be unloaded within the specified time. Ship demurrage is payable in addition to the normal contracted freight.

Rule 10 of said rules provides for addition of "cost of transportation upto the place of importation". It specifically provides that such charges **shall be includible as a part of "cost of transport"** of imported goods.

**Question:**

Discuss the includibility or otherwise of following costs/payments in the assessable value of imported goods. If these are not already included in the invoice price. -

- (i) Buying commission;
- (ii) Interest on delayed payment

**Solution:** The treatment of given items has been discussed below:

- (i) **Buying Commission:**

Rule 10 provides for inclusion of commission and brokerage to the sale price to arrive at the assessable value. However, it specifically provides that buying commission shall not be includible. **Thus, any payment made as buying commission to the agent appointed by the buyer shall not be includible.**

- (ii) **"Interest on delayed payment":**

Rule 10 is the residuary clause which provides for the addition of any payment made by buyer to the exporter seller which is made as condition for sale of imported goods. **However, it is clarified that interest on delayed payment shall not be includible, if the following conditions are satisfied:**

- (i) Interest charges are shown separately in the invoice;
- (ii) The financing agreement is in writing and
- (iii) Price has not been influenced on account of interest charges,

**Question**

Discuss the includibility or otherwise to the assessable value of the following payments made by an importer to the overseas supplier of a second hand plant in India.

- (i) Fees for supervision of erection and commissioning of plant in India. For this purposes the foreign supplier deputed their technicians in India.
- (ii) Training charges paid to supplier, for imparting training to the Indian Company's personnel, on how to use the equipment.

**Answer** The treatment of given item has been discussed below:

Rule 10 is the residuary clause which provides for the addition of any payment made by buyer to the exporter seller which is made as condition for sale of imported goods. However while making addition under the shelter of "residuary clause". It shall be ensure that no addition is made for post-importation expenditure.

- (i) **"Supervision Fee" in respect of erection and commission of imported plant in India:**  
Supervision fees/charges in respect of erection and commissioning of imported plant in India are by nature of post-importation expenditure and thus shall **not be included** in the assessable value.
- (ii) **"Training Charges" in respect of imparting training to importer company's personnel:**  
Training Charges are by nature of post-importation expenditure and thus, **shall not be included** in the assessable

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

FOB price: US\$30,000 Exchange rate: Notified by RBI Rs 50 = US\$; Notified by CBEC Rs 48 = US\$. Compute the assessable value as per the Customs Act, 1962 and the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007.

**Answer:** The answer is as follows –

<b>FOB Price</b>	<b>\$ 30,000</b>
Exchange rate notified by the CBEC (in force on date of presentation of bill of entry)	Rs 48
<b>FOB price in Indian Rs</b>	14,40,000
Add: Cost of transport @ 20% of FOB, assuming it is unascertainable	2,88,000
Add: Insurance @ 1.125% of FOB, assuming it is unascertainable	16,200
<b>CIF</b>	17,44,200
Add: Loading, unloading and handling charges @ 1% of CIF	17,442
<b>Assessable Value</b>	<b>17,61,642</b>

**Question:** A material was imported by air at CIF price of 5,000 US\$. Freight paid was 1,500 US\$ and insurance cost was 500 US\$. The banker realized the payment from importer at the exchange rate of Rs 45 per dollar. Central Board of Excise and Customs notified the exchange rate as Rs 44.50 per US\$. Find the value of the material for the purpose of Levying duty.

**Answer:** The answer is as follows –

FOB Price [CIF \$ 5000 - Freight \$ 1500 - Insurance \$ 500]	\$ 3,000.00
Exchange rate notified by the CBEC (in force on date of presentation of bill of entry)	Rs 44.50
	Rs
<b>FOB price in Indian Rs</b>	<b>1,33,500.00</b>
Add: Cost of transport @ 20% of FOB [Actual is 1,500 \$; while in case of import by air, it cannot exceed 20% of FOB i.e. 20% of 3000 = 600 \$ × Rs 44.50]	26,700.00
Add: Insurance [Actual viz. 500 \$ × 44.50]	22,250.00
<b>CIF</b>	<b>1,82,450.00</b>
Add: Loading, unloading and handling charges under Rule 10@ 1% of CIF	1,824.50
<b>Assessable Value</b>	<b>1,84,274.50</b>

**Question:**

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

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

The bank had received payment from the importer at the exchange rate of US \$ 1 = Rs 46 while the CBEC notified exchange rate on the relevant date was US \$ 1 = Rs 45.50

(Make suitable assumptions where required and provide brief explanations to your answer.)

**Solution:**

FOB Price [CIF \$ 6000 - Freight \$ 2000 - Insurance \$ 700]	\$ 3,300.00
Exchange rate notified by the CBEC (in force on date of presentation of bill of entry)	Rs 45.50
	Rs
<b>FOB price in Indian Rs</b>	1,50,150.00
<b>Add:</b> Cost of transport under Rule 10 @ 20% of FOB [Actual is 2,000 \$; while in case of import by air, it cannot exceed 20% of FOB i.e. 20% of 3,300 = 660 \$ × Rs 45.5]	30,030.00
<b>Add:</b> Insurance under Rule 10 [Actual viz. 700 \$ X 45.5]	31,850
<b>CIF</b>	2,12,030.00
<b>Add:</b> Loading, unloading and handling charges under Rule 10 @ 1% of CIF	2,120.30
<b>Assessable Value</b>	<b>2,14,150.30</b>

**Question:**

Find out the assessable value of the imported goods under the Customs Act, 1962:

	Particular	US \$
1	Cost of the machine at the factory of the exporting country	10,000
2	Transport charges incurred by the exporter from his factory to the port for shipment	500
3	Handling charges paid for loading the machine in the ship	50
4	Buying commission paid by the importer	50
5	Freight charges from exporting country to India	1,000
6	Exchange rate to be considered:	1 \$ = Rs 45

**Solution:**

FOB Price [Cost \$10,000 + Transport in foreign country \$500 + Handling in foreign country for loading goods in ship \$ 50] [FOB comprises of all such charges upto the stage foreign supplier ships the goods and the risk is assumed by the importer]	\$ 10,550.00
Exchange rate notified by the CBEC (in force on date of presentation of bill of entry)	Rs 45.00
	Rs
FOB price in Indian	4,74,750.00
<b>Add:</b> Buying commission [Not includible in view of provisions of Rule 10]	NIL
<b>Add:</b> Cost of transport under Rule 10( [1,000 \$ × Rs 45]	45,000.00
<b>Add:</b> Insurance under Rule 10 @ 1.125% of FOB, assuming it is unascertainable	5,340.94
<b>CIF</b>	<b>5,25,090.94</b>
<b>Add:</b> Loading, unloading and handling charges under Rule 10 @ 1 % of CIF	5,251.90
<b>Assessable Value</b>	<b>5,30,341.84</b>

**Question:**

Compute the assessable value from the following data:

Particular	
Machinery imported	US \$ 4000
Accessories compulsorily supplied along with the machinery	US \$ 1000
Air freight	US \$ 1200
Insurance charges	Actuals not available
Local agent's commission to be paid in Indian Currency	Rs 9,300
Transportation from Indian Airport to factory	Rs 4,000
(Exchange rate US \$ 1 = Rs 48. Provide explanation where necessary.)	

**Solution:**

FOB Price [\$ 4,000 + Accessory \$ 1000] [since accessory is compulsorily supplied along with article, it is chargeable in the same manner as the article]	\$ 5,000
Exchange rate notified by the CBEC (in force) <i>on date of presentation of bill of entry</i>	Rs 48.00 Rs
FOB Price in Indian Rs	2,40,000.00
<b>Add: Local agents commission</b>	9,300.00
<b>FOB Value as per Custom</b>	<b>249,300.00</b>
<b>Add:</b> Cost of transport@ 20% of FOB [Actual is 1,200 \$; while in case of import by air, it cannot exceed 20% of FOB i.e. 20% of 249,300]	NIL
<b>Add:</b> Transport from airport to factory is a post-importation activity and not includible	
<b>Add:</b> Insurance under Rule 10 @ 1.125% of FOB, as it is unascertainable	
<b>CIF</b>	
<b>Add:</b> Loading, unloading and handling charges under Rule 10@ 1% of CIF	
<b>Assessable Value</b>	

# Methods Of Valuation

The Customs Valuation (Determination of Value of Imported Goods) Rules, 2007, consist of rules providing six methods of valuation.

- (i) **Transaction Value** of Imported goods [Section 14(1) and Rule 3(1)]
- (ii) Transaction Value of **Identical Goods** [Rule 4]
- (iii) Transaction Value of **Similar Goods** [Rule 5]
- (iv) **Deductive Value** which is based on identical or similar imported goods sold in India [Rule 7]
- (v) **Computed value** which is based on cost of manufacture of goods plus profits [Rule 8]
- (vi) **Residual method** based on reasonable means and data available [Rule 9]

## [Rule 4] Transaction Value of Identical Goods

If the assessable value cannot be determined as per Rule 3 then value shall be determined as per Rule 4.

### Meaning of Identical Goods:

Identical goods' those goods which fulfill all following conditions-

- (i) the goods should be **same in all respects, including physical characteristics, quality and reputation; except for minor differences in appearance** [like Nokia 6265 (steel gray) & Nokia 6265 (Black color)], that do not affect value of goods,
- (ii) the goods should have been **produced in the same country** in which the goods being valued were produced,
- (iii) They should be **produced by same manufacturer** who has manufactured goods under valuation. If price of such goods are not available, price of goods **produced by another manufacturer** in the same country.

### But shall not include:

Imported goods where engineering, development work, art work, design work, plan or sketch undertaken in India

- were completed by the buyer on these imported goods
- and supplied free of charge or at a reduced cost
- for use in connection with the production and sale for export of these goods.

**Rule 4(1)(a):** Customs Valuation Rules provide that the 'Assessable value' will be decided on basis of transaction value of identical goods **sold for export to India and imported at or about the same time**.

**Rule 4(1)(b):** Sale of identical goods **at the same commercial level** as the goods being valued shall be used to determine the value of imported goods.

### **Valuation of 'Identical Goods'**

- 1st preference – same manufacturer,
- 2nd preference – only if same manufacturer not available then different manufacturer,

**Rule:** If more than one transaction value of identical goods is found, the **lowest of such value** shall be used

**Question:** A consignment of 8,000 units of product X was imported from USA by a charitable organization in India for free distribution to below poverty line citizens in a backward area. This being a special transaction, a nominal price of US\$ 50 per product was charged for the consignment to cover the freight and insurance charges. The Customs House found out that at or about the time of import of this gift consignment, there were following imports of product X from USA:

S. No.	Quantity imported in metric tonnes	Unit price in US \$ (CIF)
1.	200	260
2.	1,000	220
3.	5,000	200
4.	9,000	175
5.	4,000	180
6.	7,800	160

The rate of exchange on the relevant date was 1 U S \$ = Rs 50.00 and the rate of basic customs duty was 10% ad valorem. There is no GST. Calculate the amount of duty leviable on the consignment under the Customs Act, 1962 with appropriate assumptions and explanations where required.

**Solution:**

Particulars	Value in US\$	
CIF value	160.00	
Add: 1% unloading charges on CIF value	1.60	
Assessable value per unit	161.60	
	<b>Value in Rs</b>	
Assessable value for total import	6,46,40,000	(i.e. 161.60 x 8,000 units x Rs.50)
Add: Customs Duty	66,57,920	(i.e. 6,46,40,000 x 10.30%)
Total value of imports	7,12,97,920	

**[Rule 5] Transaction Value of Similar Goods**

- (a) Rule 2 Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 define '**similar goods**' as **Alike in all respects, have like characteristics and like components and perform same functions.** These should be **commercially inter-changeable** with goods being valued as regards quality, reputation and trade mark.
- (b) The goods should have been **produced in the same country** in which the goods being valued were produced.
- (c) They should be **produced by same manufacturer** who has manufactured goods undervaluation. If price of such goods are not available, price of goods produced by another manufacturer in the same country can be considered.

**But shall not include:**

Imported goods where engineering, development work, art work, design work, plan or sketch undertaken in India

- were completed by the buyer on these imported goods
- and supplied free of charge or at a reduced cost
- For use in connection with the production and sale for export of these goods.

**The principles of valuation on basis of identical goods equally applies to similar goods**

- Value of goods provisionally assessed **not to be taken**
- Goods at same commercial or quantity level to be taken for valuation
- Adjustment for differences in commercial or quantity levels
- Adjustment for costs and services as referred in Rule 10
- More than one value is found – **lowest value** shall be used

**Rule 5(1)(a):** Customs Valuation Rules provides that the 'Assessable value' of the similar goods will be treated as Assessable Value of the imported goods.

**Rule 5(1)(b):** Sale of similar goods sold at the same commercial level as the goods being valued shall be used to determine the value of imported goods.

**Difference between identical and Similar Goods**

Identical goods	Similar goods
Goods must be same in all respects, except for minor differences in appearance	Goods have like characteristics and components and perform same functions
<b>Example:-</b> Hero Honda two Wheeler Products namely Splendor and Passion	<b>Example:-</b> Hero Honda Splendor and Bajaj scooter.

**[Rule 6]**

Normally, Rule 8 is applied only when Rule 7 is not applicable. **But as per Rule 6, Rule 8 can precede Rule 7, if the following conditions are satisfied-**

- On the request of importer
- On approval of proper officer

**[Rule 7] Deductive Value which is based on identical or similar imported goods sold in India**

This method should be applied if transaction value of identical goods or similar goods is not available; but these products are sold in India. The assumption made in this method is that identical or similar imported goods are sold in India and its selling price in India is available.

The sale should be in the same condition as they are imported. Assessable Value is calculated by reducing post-importation costs and expenses from this selling price. This is called 'deductive value' because assessable value has to be arrived at by method of deduction.

**Notes:**

- Goods sold after further processing shall be considered,
- Sales are made at or about the time (within a maximum 90 days after import),
- Unit price at which **greatest number of unit it sold at the first commercial level after importation,**

**Deduction from Sale Price**

Assessable Value is calculated by reducing post-importation costs and expenses from this selling price.

- commission and brokerage, paid or agree to be paid
- cost of transportation from the place of importation
- Other taxes payable in India for sale of goods
- insurance, loading, unloading and handling charges
- General expenses in connection with sale in India of imported goods of the same class of kind.

**Question:** X ltd import 500 units of minerals from High seas for sale in India. Selling price exclusive of duties and Tax. Fright from port to depot in India is Rs. 10,150 and insurance is Rs, 1,250

Sale Quantity	Unit Price
400 Unit	100
300 Unit	90
150 Unit	100
500 Unit	95
250 Unit	105
350 Unit	90
50 Unit	100

**Basic Custom Duty 10% and education cess as applicable. Calculate total custom duty as per Rule 7 of Custom Valuation. Assume There are no GST.**

**Answer**

Total Quantity Sold	Unit Price
650	90
500	95
600	100
250	105

**The greatest number of unit sold at a particular price is 650 units; therefore, the unit price is the greatest aggregate quantity is Rs. 90.**

Selling Price	45,000	(500 x 90)
Less: Fright (Post Shipment)	(10,150)	
Less: Insurance (Post Shipment)	(1,250)	
Assessable Value	<u>33,600</u>	

Total Custom Duty = Rs 3,461(33,600 X 10.30%)

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***Class Notes***

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**[Rule 8] Computed value Method - which is based on cost of manufacture of goods plus profits**

If valuation is not possible by deductive method, the same can be done by computing the value under rule 8. In this method, value is the sum of-

- (a) Cost of value of materials and fabrication or other processing employed in producing the imported goods,
- (b) an amount for profit and
- (c) general expenses which are made in country of exportation
- (d) The cost of value of all other expenses under Rule 10 i.e. transport, insurance, loading, unloading and handling charges.

**[Rule 9] Residual method based on reasonable means and data available**

This method is used in cases where 'Assessable Value' cannot be determined by any of the preceding methods. **The sixth and the last method is called "residual method". It is also often termed as 'fallback method'. This is similar to 'best judgment method' of the Central Excise, Income Tax and Sales Tax.**

While deciding Assessable Value under this method, reasonable means consistent with general provisions of these rules should be the basis and valuation should be on basis of data available in India.

**The value cannot exceed normal price**

The value so determined cannot be more than the 'normal price' i.e. price at which such or like goods are ordinarily sold or offered for sale for delivery at the time and place of importation in course of International Trade, when seller and buyer have no interest in the business of each other or one of them has no interest in the other and price should be sole consideration for sale or offer for sale

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***Class Notes***

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**EXPORTS GOODS**

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**Taxable event for exported goods:**

As per Section 16(1) of the Customs Act, 1962, taxable event arises only when proper officer makes an order permitting clearance (i.e. entry outwards) granted and loading of the goods for exportation took place under Section 51 of the Customs Act, 1962.

**Rate of foreign exchange in case of exports:**

In case of exports, rate of exchange of the CBEC as in force on the date on which a shipping bill or bill of export, as the case may be, **is presented** under Sec. 50 of the Customs Act, 1962 is applicable.

**Assessable Value for exported goods:**

For the purposes of calculation of export duty, the transaction value, that is to say the price actually paid or payable for the goods for delivery at the time and place of exportation under section 14 of Customs Act 1962, **shall be the FOB price of such goods at the time and place of exportation.**

*Assessable value (for Exported Goods) = Free on board (i.e. FOB) Value*

**Free on Board (FOB):** FOB means all expenditure incurred by exporter upto the point of loading goods into the vessel or aircraft or vehicle.

**Cost Insurance and Freight (CIF):** CIF means once the goods are reached to the importer country port or air port, importer has to pay Cost (i.e. FOB value) along with Insurance and Freight from exporter country to importer country.

**Important point:** As per our Foreign Trade Policy, all imports into India are measured in terms of CIF value whereas exports from India are measured in terms of FOB value.

**VALUATION OF EXPORT GOODS**

Valuation is essential for export goods even though many products are exempted from export duty under the Customs Law.

**Importance of valuation of export goods:**

- Duty Drawback
- Export incentives
- Refund of Tax Credit (GST), if any.
- Payment of duty on export, if any.

*The Customs Valuation (Determination of Value of Export Goods) Rules, 2007***Rule 1:**

- (i) These rules may be called the Customs Valuation (Determination of Value of Export Goods) Rules, 2007.
- (ii) They shall come into force on the 10th day of October, 2007.
- (iii) They shall apply to export goods.

**Rule 2: Definitions**

- A. **“Goods of like kind and quality” means** export goods which are identical or similar in physical characteristics, quality and reputation as the goods being valued, and perform the same functions or are commercially interchangeable with the goods being valued, produced by the same person or a different person; and
- B. **“Transaction value” means** the value of export goods within the meaning of sub-section (1) of section 14 of the Customs Act, 1962.

**Rule 3: Determination of the method of valuation**

- (i) Subject to rule 8, the value of export goods shall be the transaction value.
- (ii) The transaction value shall be accepted even where the buyer and seller are related, provided that the relationship has not influenced the price.
- (iii) If the value cannot be determined under the provisions this rule, the value shall be determined by proceeding sequentially through rules 4 to 6.

**Rule 4: Determination of export value by comparison**

1. The value of the export goods shall be based on the transaction value **of goods of like kind and quality** exported at or about the same time to other buyers in the same destination country of importation or in its absence another destination country of importation adjusted in accordance with the provisions of sub-rule (2).
2. In determining the value of export goods under sub-rule (1), the proper officer shall make such adjustments as appear to him reasonable, taking into consideration the relevant factors, including-
  - ✓ difference in the dates of exportation
  - ✓ difference in commercial levels and quantity levels
  - ✓ difference in composition, quality and design between the goods to be assessed and the goods with which they are being compared
  - ✓ difference in domestic freight and insurance charges depending on the place of exportation

**Rule 5: Computed value method**

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

- ✓ cost of production, manufacture or processing of export goods
- ✓ charges, if any, for the design or brand
- ✓ An amount towards profit

**Rule 6: Residual method**

Subject to the provisions of rule 3, where the value of the export goods cannot be determined under the provisions of rules 4 and 5, **the value shall be determined using reasonable means consistent with the principles and general provisions of these rules** provided that local market price of the export goods **may not be the only basis** for determining the value of export goods.

**Rule 7: Declaration by the exporter**

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

**Rule 8: Rejection of declared value**

- a. When the proper officer has reason to doubt the truth or accuracy of the value declared in relation to any export goods, he may ask the exporter of such goods to furnish further information including documents or other evidence and if, after receiving such further information, or in the absence of a response from such exporter, the proper officer still has reasonable doubt about the truth or accuracy of the value so declared, ***the transaction value shall be deemed to have not been determined in accordance with rule 3.***
  
- b. 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.

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*Class Notes*

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# MISC. PROVISIONS - CUSTOM

## ***Determination of duty where goods consist of articles liable to different rates of duty [Section 19]***

Except as otherwise provided in any law for the time being in force, where **goods consist of a set of articles**, duty shall be calculated as follows

- a. articles liable to duty with reference to **quantity** shall be chargeable to that duty;
- b. articles liable to duty with reference to **value** shall be chargeable to duty as under
  - (i) if such articles are liable with the **same rate of duty** then duty shall be levied at that rate;
  - (ii) if the **articles in the set** are liable to duty at different rates then duty shall be calculated **at the highest of those rates**.
- c. articles not liable to duty, then they **shall also be chargeable to duty at the highest of the rates** specified in (b) above.

### ***Duty where evidence of separate value of articles is available:***

If the importer produces evidence to the satisfaction of the proper officer 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.

### ***Rate of Duty applicable to accessories, etc. supplied with imported article [Accessories (Condition) Rules, 1963]***

Certain accessories are sometimes **compulsorily supplied with the main equipment**. It may be difficult to value such accessories and to assess them separately or to charge duty on them when no additional consideration is involved in normal course.

In such case, if any accessories of, spare parts and maintenance implements for, any article are imported along with that article, then such accessories/ spare parts and maintenance implements shall be chargeable **at the same rate of duty as that article**, if the proper officer is satisfied that in the ordinary course of trade

- a) **such accessories, parts and implements are compulsorily** supplied with that article; **and**
- b) **no separate charge is made for such supply**, their price being included in the price of that article.

### ***Duty to be paid on goods derelict, wreck etc. coming into India [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. Thus, even though such goods had not been actually imported, **they would be liable to import duty**.

However, if such goods are entitled to be admitted duty-free under this Act, duty would not be levied provided it is shown to the satisfaction of the proper officer that they are so entitled.

<b>Derelict</b> -	This refers to any cargo, vessel, etc. abandoned in the sea with no hope of recovery.
<b>Jetsam</b> -	This refers to goods jettisoned from the vessel to save her from sinking.
<b>Flotsam</b> -	Jettisoned goods which continue floating in the sea are called flotsam.
<b>Wreck</b> -	This refers to cargo or vessel or any property which are cast ashore by tides after ship wreck.

### ***Circumstance under which no duty will be levied***

- a. No duty will be levied on pilfered goods under **section 13** of the Customs Act. 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 ware house, then the importer shall not be liable to pay the duty leviable on such goods.
- b. No duty will be levied in case of goods lost or destroyed due to natural causes like fire, flood, etc. such loss may take place at any time before the clearance of goods for home consumption. The loss may be at the warehouse. **(Section 23)**
- c. **No duty will be levied in case of goods abandoned by importers [Section 25]**  
*Sometimes it may so happen that importer is unwilling or unable to take delivery of the imported goods due to the following reasons:*  
*(i) the said goods may not be according to the specification,*  
*(ii) the goods may have been damaged during voyage,*  
*(iii) there might have been breach of contract.*  
*In all the above cases the importer has to relinquish his title to the goods unconditionally and abandon them. The relinquishment is done by endorsing the document of title to the goods in favour of the Commissioner of Customs along with invoice.*
- d. No duty will be levied, if the Central Government is satisfied that it is necessary in the public interest not to levy import duty by issuing the notification in the Official Gazette. **[Section 25]**

### **Exemption from customs duty [Section 25]:**

**Central Government's power to grant exemption:** Article 265 of the Constitution provides that "No tax shall be levied or collected except by authority of law". The power of the Central Government to alter the duty rate structure is known as delegated legislation and this power is always subject to superintendence and check by the Parliament.

- (a) **General exemption:** If the Central Government is satisfied that it is necessary in the public interest so to do, it may, **by notification** in the Official Gazette, exempt generally either absolutely or subject to such conditions (to be fulfilled before or after clearance) as may be specified in the notification, goods of any specified description from the whole or any part of duty of customs leviable thereon.
- (b) **Special exemption:** If the Central Government is satisfied that it is necessary in the public interest so to do, it may, **by special order** in each case, exempt from payment of duty, any goods on which duty is leviable **only under circumstances of an exceptional nature to be stated in such order**. Further, no duty shall be collected if the amount of duty leviable is equal to, or less than, Rs. 100.

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. Further, the duty leviable under such altered form or method shall in no case exceed the statutory duty leviable under the normal form or method.

**Rationale for grant of exemption:** The power for grant of exemption vests with the Central Government subject to the overall control of the Parliament. The Government on a rational basis may use this power and the exemptions may be based on any of the following factors:

- (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.**

**Question**

**An importer imported certain input for manufacture of final product. A small portion of the imported inputs were damaged in transit and could not be used in the manufacture of final product. An exemption notification was in force providing exemption in respect of specified raw materials imported into India for use in manufacture of specified goods, which was applicable to the Imports made by the importer in the present case. Briefly examine whether the importer could claim the benefit of aforesaid notification in respect of the entire lot of the inputs imported including those that were damaged in transit.**

**Solution**

The benefit of the notification cannot be denied in respect of goods which **are intended to use** for manufacture of the final product but cannot be so used **due to shortage/leakage**.

No material distinction can be drawn between loss on account of leakage and loss on account of damage. The benefit of said exemption cannot be denied as inputs were "intended to use" in the manufacture of final product but could not be so used due storage/leakage/damage. **It can be said that word "to use" have to be construed to mean "intended to use"**

Therefore, the importer can claim the benefit of the notification in respect of the entire lot of the inputs.

**"Green Channel Procedure" for Clearance of Imported Goods**

Green Channel procedure has been introduced in major Custom Houses **on experimental basis to expedite clearance of imported goods**. This procedure is applied only in respect of certain specified imports.

**Some of such imports identified are:-**

- a. Goods imported by Government departments and public sector undertakings, which do not require physical identification for the purpose of either ITC classification/ restrictions or Customs classification.
- b. Imports under project Import Regulations.
- c. Bulk imports sourced directly from reputed suppliers.
- d. Consignments, which consist of single product of a well- known brand or specification, tested earlier and, covered by valid test report of an earlier import.
- e. Imports by importers with proven identity and unblemished record of past conduct.

The Bills of Entry under this procedure are **processed and assessed to duty under the second appraisal system i.e., assessment and duty collection is done first and then consignment examined**. In such cases the Assessing Officer indicates on the reverse of the duplicate Bill of Entry to the Appraiser in charge of examination to 'Inspect the lot and check marks and numbers on the packages'.

After inspection of the lot and marks and numbers of the packages with reference to the declaration in the Bill of Entry and other connection documents, the Docks Appraiser gives 'passed Out of Customs' order. The Docks Appraiser, in the presence of Assistant Commissioner may examine the goods in exceptional cases.

***Class Notes***

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**Re-importation of goods [Section 20]:**

In case if any goods have been imported into India after exportation therefrom, such goods shall be liable to duty and subject to such restrictions and conditions, if any, to which the goods of like kind and value are liable or subject on the importation thereof.

**Re-imports are entitled for following concessions as have been notified by the Government:**

**Condition -1:**

**Goods exported under claim of drawback or under bond without payment of duty or under claim for rebate and re-imported within 3 years (or extended period, if any) without being re-manufactured/re-processed.**

**Duty Liability:** The amount of benefit availed on account of duty drawback/incentives availed when the goods were exported.

**Condition -2:**

**Goods exported for repairs abroad and re-imported by the same person within 3 years (or extended period, if any) without being re-manufactured/ re-processed.**

**Duty leviable on a value** = Fair cost of repairs carried out including cost of materials used in repairs (whether such costs are actually incurred or not) + Insurance and freight charges, both ways

**Condition -3:**

**Goods manufactured in India and re-imported into India -**

- a. for **repairs or re-conditioning** within 3 years from the date of exportation (in case of Nepal, such re-importation takes place within 10 years from date of exportation); or
- b. for **reprocessing; or refining; or re-making**; or other similar process **within 1 year** from the date of exportation.

**Duty Liability:** NIL, if -

- a. such goods are **exported within 6 months** from the date of their re-importation or such extended period not exceeding a **further period of six months as the Commissioner** of Customs may allow; and
- b. the **Assistant Commissioner of Customs** is satisfied as regards identify of the goods;

***Class Notes***

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## **Refund of Customs Duty**

Importer or Exporter actually paid the duty on import or export, which is not required to pay alone allowed as refund.

### **1. Refund of Export Duty**

As per **Section 26** of the Customs Act, 1962, **duty paid on exported goods** can be claim for refund if following conditions are satisfied:

- (i) The goods are returned to such person **otherwise than by way of re-sale**;
- (ii) The goods are re-imported within **One year** from the date of exportation and
- (iii) An application for refund of such duty is made **before the expiry of six months** from the date on which the Customs officer makes an order for importation.

#### **Example:**

X Ltd. exported product 'P' to Y Ltd of USA on 1.1.2017. The duty paid on export of product 'P' for Rs 1,00,000. Y Ltd. returned product 'P' to X Ltd., on 1.8.2017. The return is otherwise than by way of sale (i.e. it may be sale return or rejected goods, goods sent on consignment returned by the overseas agent or goods sent for exhibition coming back etc.). It means to say that Y Ltd. should not be sold 'P' to X Ltd. Moreover, exported goods are returned within One year from the date of exportation. **Hence, X Ltd. can claim for refund of Rs 1,00,000 within Six months from Customs clearances order for imported goods (i.e. 1.8.2017).**

### **2. Refund of Import Duty**

As per Section 26A of the Customs Act, 1962, **duty paid on imported goods** can be claim for refund on account of satisfying following conditions:

#### **(a) Goods are found defective**

The goods are found to be defective or otherwise not in conformity with the specifications agreed upon between the importer and the supplier of goods **provided** that the goods have not been worked, repaired or used after importation **except where such use was indispensable to discover the defects or non-conformity with the specifications**;

#### **(b) Goods are easily identifiable as imported goods**

The goods are identified to the satisfaction of the AC/DC as the goods which were imported

#### **(c) No drawback claim is made**

The importer does not claim drawback under any other provisions of this Act; and

#### **(d) Activities carried out after importation**

- The goods are exported; or
- The importer relinquishes his title to the goods and abandons them to customs; or
- Such goods are destroyed or rendered commercially valueless in the presence of the proper officer, in such manner as may be prescribed **and within a period not exceeding 30 days from the date on which the proper officer makes an order for the clearance of imported goods for home consumption under section 47.**

#### **Note:**

- (a) However, the period of 30 days may, on sufficient cause being shown, be extended **by the Commissioner of Customs for a period not exceeding three months.**
- (b) No refund under section 26 is allowed **in respect of perishable goods and goods which have exceeded their shelf life.**
- (c) Moreover, nothing contained in this section (Sec. 26A of the Customs Act, 1962) shall apply to the goods regarding which an **offence appears to have been committed** under this Act or any other law for the time being in force.

#### **Relevant date:**

Relevant date in case of filing refund claim (application for refund is made before expiry of 6 months) may be any one of the following:

- Let export order issued or
- Date of abandonment or
- Date of destruction of goods

**3. Claim for Refund of Duty (Section 27 of the Customs Act, 1962)**

Section 27 of the Customs Act, 1962 deals with refund of duty paid on imported or exported goods ***in excess of what was actually payable***. Sometimes, such excess payment of duty may be due to shortage/ short landing, pilferage of goods or even incorrect assessment of duty by Customs. ***In such cases, any excess interest has been paid by the importer or exporter can also be claimed for refund.***

Section 27 also covers those classes of cases where the duty is paid by a person without an order of assessment. It means a refund claim can be filed under section 27 of the Customs Act, 1962 even if the payment of duty has not been made pursuant to an assessment order.

***Attested Xerox copy of the GAR-7 Challan sufficient for claiming refund:***

Refund claim CAN NOT BE DENIED purely on a technical contention that the assessee had produced the attested copy of GAR -7 challan and not the original of the GAR-7 challan.

Also as per clarification issued, a simple letter from the person who made the deposit, requesting for return of the amount, along with the appellate order and attested Xerox copy of the Challan in Form GAR-7 would suffice for processing the refund application.

**Chartered Accountant Certificate not sufficient to claim refund under section 27**

As per section 27 of the Customs Act, 1962 the importer to produce such documents or other evidence, while seeking refund, to establish that the amount of duty in relation to which such refund is claimed, has not been passed on by him to any other person.

Madras High Court held that, the certificate issued by the Chartered Accountant was merely a piece of evidence acknowledging certain facts. ***It would not automatically entitle a person to refund in the absence of any other evidence. Hence, the importer could not be granted refund merely on the basis of the said certificate***

**Time Limit for claiming refund:** Application for refund can be made **before the expiry of ONE year from the date of payment of duty and interest**. The application for refund in duplicate has to file before the AC/DC.

**Interest on delayed refunds:**

As per Section 27A of the Customs Act, 1962, if the refund order is ***not paid within 3 months*** from the date of receipt of refund application by the AC/DC, then the department is liable to pay ***interest at the rate of 6% p.a. (i.e. interest is liable to be paid after expiry of three months from the date of receipt of the application for refund)***.

**4. Few differences between section 26 and section 27 of the Customs Act, 1962**

- a) Section 26 deals with refund of export duty whereas Section 27 deals with refund of any export duty, import duty interest paid thereon.
- b) Refund of duty under section 26 is allowed on account of satisfying certain conditions whereas refund under section 27 is allowed only when ***duty paid in excess of normal duty***.
- c) Refund is payable to the exporter who paid the duty under section 26 **whereas refund u/s 27 is payable to the importer who paid the duty or to the buyer by whom the duty was borne.**

**5. The period of limitation of one year for the purpose of refund of duty under Sec 27(1B) shall be computed in the following manner, namely:**

- (i) In the case of goods which are exempt from payment of duty by a special order issued under section 25(2) of the Custom Act, the limitation of one year shall be computed from the ***date of issue of such order***,
- (ii) Where the duty becomes refundable as a consequence of any judgment, the limitation of one year shall be computed ***from the date of such judgment***.
- (iii) Where any duty is paid provisionally under section 18, the limitation of one year shall be computed from the ***date of adjustment of duty after the final assessment*** thereof or incase of re-assessment, from the date of such re-assessment.

**VARIOUS DEFINITIONS**

- (1) "**Adjudicating authority**" means any authority competent to pass any order or decision under this Act, ***but does not include***
- The Board,
  - Commissioner of Custom (Appeals) or
  - Customs, Excise and Service Tax Appellate Tribunal (CESTAT)
- (2) "**Assessment**" means process of determining the tax liability in accordance with the provisions of the Act, which includes provisional assessment, self-assessment, reassessment and any order of assessment in which the duty assessed is NIL;
- (3) "**Baggage**" includes unaccompanied baggage but does not include motor vehicles;
- (4) **Bill of Export:**  
As per Section 2(5) of the Customs Act, 1962, the exporter of any goods shall make entry thereof by presenting to the proper officer in the case of goods to be exported by land, a bill of export in the prescribed form. [Shipping bill in case of goods exported in a vessel or air craft.]
- (5) "**Customs airport**" means any airport appointed under of section 7(a) to be a customs airport;
- (6) "**Customs area**" means the area of a customs station and includes any area in which imported goods or export goods are ordinarily kept before clearance by Customs Authorities;
- (7) "**Customs port**" means any port appointed under section 7(a) to be a customs port and includes a place appointed to be an inland container depot;
- (8) "**Customs station**" means any customs port, customs airport or land customs station;
- (9) "**Coastal Goods**" means goods, other than imported goods, transported in a vessel from one port in India to another;
- (10) "**Conveyance**" includes a vessel, an aircraft and a vehicle;
- (11) "**Customs Station**" means any Customs Port, Customs Airport or Land Customs Station;
- (12) "**Dutiable Goods**" means any goods which are chargeable to duty and on which duty has not been paid;
- (13) "**Export**" means taking out of India to a place outside India;
- (14) "**Export Goods**" means any goods which are to be taken out of India to a place outside India;
- (15) "**Exporter**", in relation to any goods at any time between their entry for export and the time when they are exported, includes any owner or any person holding himself out to be the exporter;
- (16) "**Goods**" includes-
- (a) vessels, aircrafts and vehicles;
  - (b) stores;
  - (c) baggage;
  - (d) currency and negotiable instruments; and
  - (e) any other kind of movable property;
- For anything to be called as goods, it must moveable and marketable.**

- (17) "**Import**", means bringing into India from a place outside India;
- (18) "**Imported Goods**" means any goods brought into India from a place outside India but does not include goods which have been cleared for home consumption;
- (19) "**Importer**", in relation to any goods at any time between their importation and the time when they are cleared for home consumption, includes any owner or any person holding himself out to be the importer;
- (20) "**Person-in-charge**" means,-

In relation to a Vessel,	The Master of the vessel;
In relation to an Aircraft,	The Commander or pilot-in-charge of the aircraft.
In relation to a Railway Train,	The Conductor, guard or other person having the chief direction of the train;
In relation to any other conveyance,	The Driver or other person-in-charge of the conveyance;

# Duty Drawback

In 'Duty Drawback', the customs duty paid on inputs is given back to the exporter of finished product by way of 'Duty Drawback'.

- Duty Drawback Under Section 74 is applicable when imported goods are re-exported as it is, and article is easily identifiable.
- Duty Drawback Under Section 75 is granted when **imported materials are used in the manufacture of goods** which are then exported,

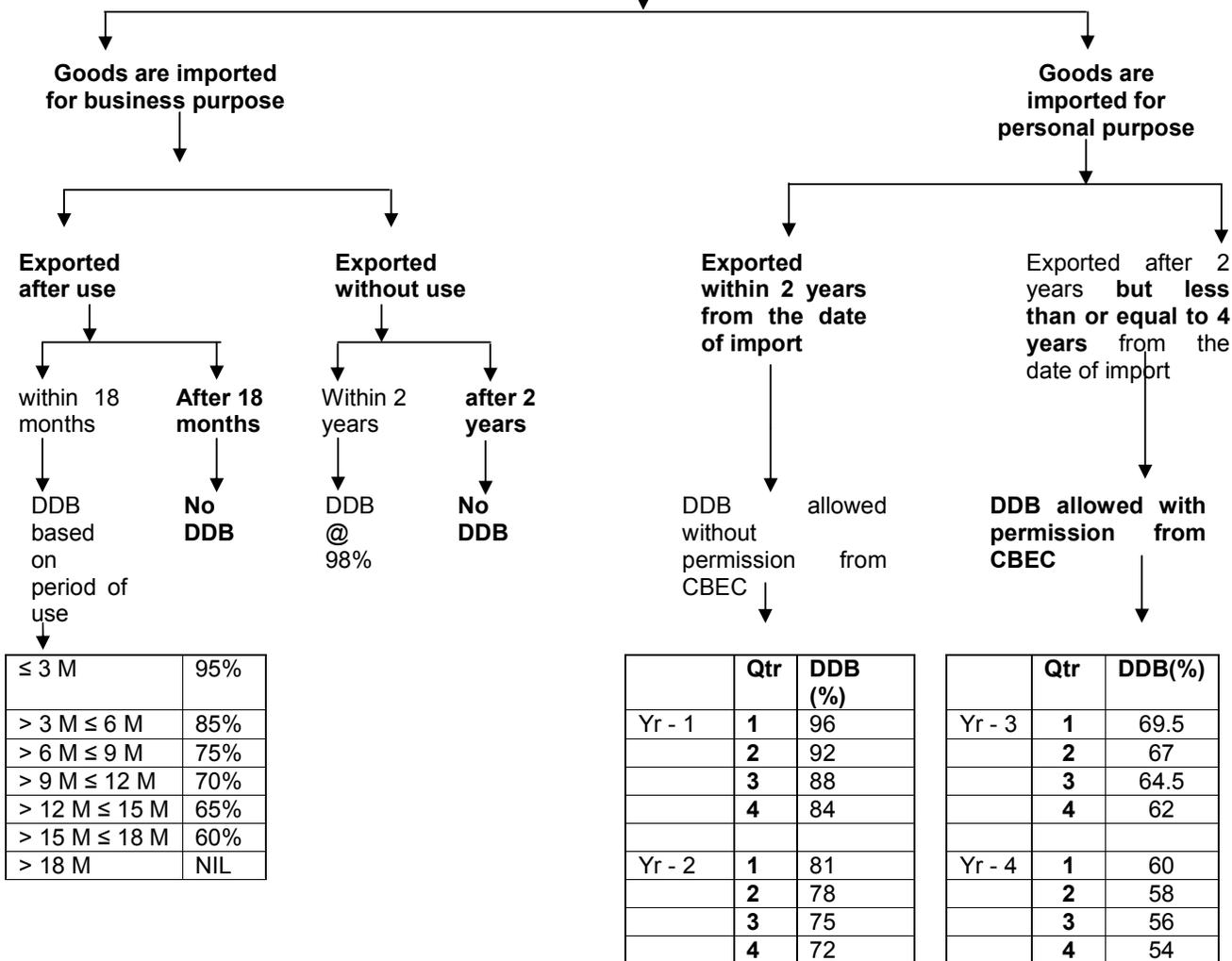
**Comparison of the provision of Section 74 and 75 is as follows:**

**Question:** Give a comparison between Section 74 and 75 of the Customs Act, 1962 relating to duty drawback. **RTP - Dec-2013**

s.no	Drawback allowable on re-export of duty paid goods (Sec 74)	Drawback on <u>material used</u> in the manufacture of exported goods (Sec 75)
(i)	Drawback, in relation to any goods Exported out of India, means <b>refund of duty paid on importation</b> of such goods in terms of section 74.  Thus, drawback is allowed only if import duties of customs is paid.	"Drawback" in relation to any goods manufactured in India and exported, means the rebate of duty chargeable on the <b>imported materials or local tax paid goods/services used</b> in the manufacture of such goods.
(ii)	<b>The identity</b> of the goods exported should be established as the one, which was imported on payment of duty.	The goods exported under this section is <b>one different from the inputs</b> as the inputs are manufactured, processed or any operations are carried on then before their export.
(iii)	Drawback under this section is available <b>on all goods</b> (Identification is the only criterion)	Drawback under this section is available <b>only on notified goods</b> .
(iv)	The exported goods should have been imported and customs duty is paid thereon.	The goods to be exported <b>may be manufactured or processed from imported or indigenous inputs</b> or by utilizing input services.
(v)	The <b>rate of drawback is 98%</b> in case the goods are exported <u>without use</u> .  The rate of drawback on goods <u>taken into use</u> is separately notified depending upon the period of use, depreciation in value and other relevant factors.	<b>Rate per unit of final article</b> to be exported is fixed by taking into account a) Mode of manufacture b) Input-output ratio c) Standardization of the products etc.
(vi)	The goods should be exported <u>within two years</u> from the date of payment of duty <b>or such extended time</b> as the board (CBEC) may allow.	No such restrictions.
(vii)	There is no criterion of minimum value addition, which is to be fulfilled before export for claim of drawback.	It has been specifically provided that there should <b>not be negative value addition</b> and in case where minimum value addition is specified the same should be achieved for claim of drawback.
(viii)	No provision in this behalf	The sale-proceeds in respect of such goods on which the drawback has been allowed, have to be received by the exporter or by any person on his behalf <b>with the period as specified in the FEMA, 1999</b> .  In absence of this, such drawback shall be deemed never to have been allowed and procedure for recovery or adjustment of the drawback amount will be initiated

**Summary of duty drawback on re-export has been explained as follows**

**Duty Drawback Sec-74 (2)  
(with respect to import duty)**



**No Drawback on certain goods:**

When any of the following goods **has been used after their importation into India**, drawback of import duty paid thereon shall not be allowed on its export out of India -

- Tea-Chests
- Wearing apparel
- Exposed cinematograph film passed by the Board of Film Censors in India.
- Unexposed photographic films, paper and plates and X-Ray films.

**Types of duty drawback: (Section 75)**

Duty drawback rates are of following types –

- (i) All Industry Rate
- (ii) Brand Rate and
- (iii) Special Brand Rate.

(i) **All Industry Drawback Rates**

The all industry rates are fixed by the Drawback Directorate, usually **as a fixed percentage of the FOB price of export goods**. It is normally revised on 1st June every year.

**Duty drawback rate shall not exceed 33% of market price of export goods.** In some cases, value cap has been fixed. In such cases, maximum drawback allowable per unit of quantity has been specified (This is to avoid misuse by over-valuation of export goods).

(ii) **Brand Rate of duty drawback**

It is possible to fix All Industry Rate only for some standard products. **It cannot be fixed for special type of products**. In such cases, brand rate is fixed.

The manufacturer has to submit application with all details to Commissioner, Central Excise. ***Such application must be made within 60 days of export. This period can be extended by Central Government by further 30 days. Further extension can be granted even upto one year in if delay was due to abnormal situations.***

Duty drawback rate **shall not exceed 33% of market price** of export goods

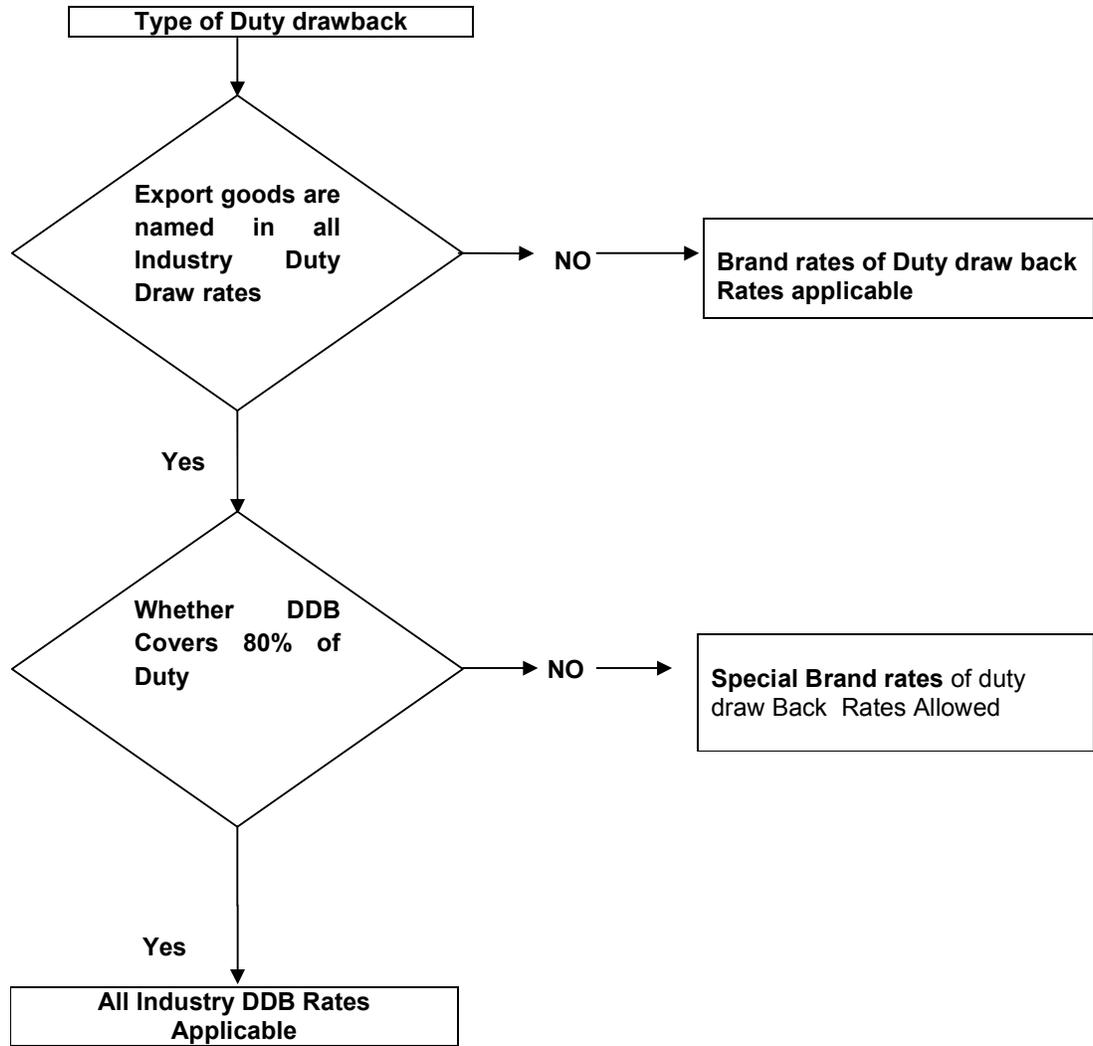
(iii) **Special Brand Rate of duty drawback**

All Industry rate is fixed on average basis. Thus, a particular manufacturer or exporter may find that the actual excise/customs duty paid on inputs or input services **are higher than All Industry Rate fixed** for his product. In such case, **he can apply under Rule 7 of Drawback Rules for fixation of Special Brand Rate, within 30 days from export.**

**The conditions of eligibility are**

- (a) the All Industry Rate fixed should be less than 80% of the duties paid by him
- (b) rate should not be less than 1% of FOB value of product except when amount of drawback per shipment is more than Rs 500
- (c) Export value is not less than the value of imported material used in them – **i.e. there should not be 'negative value addition'**.

*Types of duty draw back concept and its applicability explained here is a simplifier manner:*



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**Few Cases where Duty Drawback is denied – Negative List**

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Section 75 of Customs Act, 1962 & related rules provides some disallowances or cases when drawback allowed can be recovered. *Further, Section 76(2) of Customs Act, 1962 authorises Central Government to issue notifications prohibiting drawback if the goods are likely to be smuggled back to India after export.* Drawback Rules also provide for some disallowances.

**These are summarised below:**

- (i) If **sale proceeds** of export goods are not received within time stipulated by RBI
- (ii) If no customs is paid on the inputs
- (iii) If imported inputs were obtained under Advance License (DEEC scheme) without payment of duty
- (iv) If importer avails DEPB or DFRC
- (v) Goods manufactured under Customs Bond where inputs were obtained without payment of duty
- (vi) Goods manufactured by EOU or a unit in Special Economic Zone (as they obtain inputs without payment of duty)
- (vii) If Input tax Credit was claimed on indigenous inputs.
- (viii) **In case of negative value addition** – i.e. selling price of exported goods is less than value of imported goods i.e. foreign exchange spent on import of raw material is more than FOB Value of exports.
- (ix) Where specific rates are provided, drawback will not be paid if it is less than 1% of FOB Value of the product, unless drawback claim per shipment is over Rs 500.
- (x) Exports to Nepal/Bhutan. **However, exports to Nepal are eligible if payment is received under hard currency i.e. dollars, euro, Yen British pounds etc.**
- (xi) If drawback is less than Rs 50.
- (xii) DDB amount is more than 1/3<sup>rd</sup> of market value of exported goods, **then it will be restricted to 1/3<sup>rd</sup> of market value**
- (xiii) DDB amount **exceeds the market value** of exported goods.

### Practical Problems Related to Customs Duty

#### Question 1:

Calculate the amount of duty drawback allowable under section 74 of the Customs Act, 1962 in following cases:

- Salman imported a motor car for his personal use and paid Rs 5,00,000 as import duty. The car is re-exported after 6 months and 20 days.
- Nisha imported wearing apparel and paid Rs 50,000 as import duty. As she did not like the apparel, these are re-exported after 20 days.
- Super Tech Ltd. imported 10 computer systems paying customs duty of Rs 50 lakh. Due to some technical problems, the computer systems were returned to foreign supplier after 2 months without using them at all.

#### Solution:

- The amount of duty drawback is Rs. 4,40,000 (i.e. Rs 5,00,000 x 88%), since these goods used in India.
- Duty drawback is not allowed on wearing apparel.
- Duty drawback is Rs. 49,00,000 (i.e. Rs. 50,00,000 x 98%), since these goods are re-exported without being used.

#### Question 2:

Computation of duty drawback: 'A' exported a consignment under drawback claim consisting of the following items—

Particulars	Chapter Heading	FOB value (Rs)	Drawback rate
200 pieces of pressure stores mainly made of beans @ Rs 80/piece	74.04	16,000	4% of FOB
200 Kgs. Brass utensils @ Rs 200 per Kg.	74.13	40,000	Rs 24/Kg.
200 Kg. Artware of brass @ Rs 300 per Kg	74.22	60,000	17.50% of FOB subject to a maximum of Rs 38 per Kg.

On examination in docks, weight of brass Artware was found to be 190 Kgs. and was recorded on shipping bill. Compute the drawback on each item and total drawback admissible to the party.

#### Solution:

The drawback on each item and total drawback admissible to the party shall be-

Particulars	FOB value	Drawback rate	Drawback Amount
200 pcs, pressure stoves	16,000	4% of FOB	640
200 Kgs. Brass utensils	40,000	Rs 24 per Kg.	4,800
200 kgs. Artware of brass, whose actual weight was 190 Kgs. only.	60,000	17.50% of FOB subject to maximum of Rs 38 per Kg. (Rs 9,975 or Rs 7,220 whichever is less)	7,220
<b>Total Drawback admissible (in Rs)</b>			<b>12,660</b>

#### Question:

X Ltd has exported following goods Product P, FOB value worth Rs 1,00,000 and the rate of duty drawback on such export of goods is 0.75%. FOB value of product 'Q' worth Rs 10,000 and the rate of duty drawback on such export of goods is 1%. Will X Ltd be entitled to any duty drawback?

#### Solution:

Duty drawback on product P allowed is Rs 750 (i.e. 1,00,000 x 0.75%), since amount is more than Rs 500. Duty drawback on product Q is allowed, because the amount of duty drawback Rs 100 (which is more than Rs 50).

**Question:**

Y Ltd has been exported following goods to USA. Discuss whether any duty drawback is admissible under section 75 of the Customs Act, 1962.

Product	FOB Value of Exported goods (Rs)	Market Price of goods (Rs)	Duty drawback rate
A	2,50,000	1,80,000	30% of FOB
B	1,00,000	50,000	0.75% of FOB
C	8,00,000	8,50,000	3.50% of FOB
D	2,000	2,100	1.50% of FOB

Note: Imported value of product C is Rs 9,50,000.

**Solution:**

Duty draw back amount for all the products are as follows

**Product A:**

Drawback amount =  $2,50,000 \times 30\% = \text{Rs } 75,000$  or  $\text{Rs } 1,80,000 \times 1/3 = \text{Rs } 60,000$

Allowable duty draw back does not exceed 1/3 of the market value.

Hence, the amount of duty drawback allowed is **Rs 60,000**

**Product B:**

Drawback amount allowed is Rs 750 (i.e.  $\text{Rs } 1,00,000 \times 0.75\%$ ). Since, the amount is more than Rs 500 even though the rate is less than 1%.

**Product C:**

No duty drawback is allowed, since the value of export is less than the value of import (i.e. negative sale)

**Product D:**

No duty drawback is allowed, since the duty drawback amount is Rs. 30 (which is less than Rs 50). Though rate of duty drawback is more than 1%, no duty drawback is allowed.

**Question**

Ascertain whether the exporter is entitled to duty drawback in the following independent cases and if yes, what the quantum of such duty drawback is:

- (i) FOB value of goods exported is Rs. 50,000. Rate of duty drawback on such export of goods is 1%.
- (ii) FOB value of 2,000 kgs goods exported is Rs. 2,00,000. Rate of duty drawback on such export is Rs. 30 per kg. Market price of goods is Rs. 50,000 (in wholesale market)

**Answer**

- (i) No amount of drawback shall be allowed if the rate of drawback is less than 1% of the FOB value, **except where the amount of drawback per shipment exceeds Rs. 500.**

Further, drawback is not allowed where the drawback due in respect of any goods is less than Rs. 50. In the given case, since the rate of duty drawback is not less than 1% and drawback due is Rs. 500 (1% of FOB value) which is more than Rs. 50, **duty drawback shall be allowed.**

- (ii) **No drawback shall be allowed in respect of any goods, the market price of which is less than the amount of drawback due** thereon.

In this case, the market price of the goods is Rs. 50,000, which is less than the amount of duty drawback, i.e.  $2,000 \text{ kgs} \times \text{Rs. } 30 = \text{Rs. } 60,000$ . Hence, no drawback shall be allowed.

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**Class Notes**

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**KAMNA GUPTA**

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**A.I.R. 23**



**PRADEEP**

**A.I.R. 24**



**ARUN SHEKHAR**

**A.I.R. 47**



**VIVEK SHARMA**

**A.I.R. 27**



## About Author



CA Suraj Agrawal is a Commerce Graduate [B.Com (H)] from Kolkata University and has qualified CA in November 2005 in First Attempt. He has also secured All India 27th Rank in CA-Foundation - 1st level.

Besides CA, he has completed Certification Course of International Taxation of the ICAI in 2009. He has also qualified CPA (Certified Public Accountant) examination from AICPA (USA) in 2009 with more than 90 Marks in each of four papers in First Attempt.

He started his Career by joining Direct Tax Department of Reliance Industries Limited, Mumbai and worked for near 2 years in core tax team. He has also worked in Taxation Division of Chaturvedi & Shah (Chartered Accountants), Delhi followed by Tax Division of Ernst & Young, Gurgaon, India (A Leading Big 4 Firm having International Presence). During the working tenure of more than 4 years, he is exposed to in-depth theoretical and practical knowledge of Direct Taxation & has a consultancy exposure in various industries including Energy - Oil & Gas, Airlines, Retail, Infrastructure and Shipping Industries.

With the above academic and practical knowledge, he is in teaching profession from more than 7 years to serve professional students. His in-depth coverage of legal provisions in Tax with practical approach is very well recognized among the students. He is also an associate member of ICAI and is also providing services as Tax Consultant to various organisations.

He was also a member in WTO, FEMA & International Tax Study Group of the NIRC of the ICAI for the year 2011-12 and was member of International Taxation & FEMA Research Study Group of NIRC of the ICAI for the year 2010-11. He is regularly contributing tax articles and various opinions on subjects of Direct Taxation including International Taxation in various leading magazines [Taxmann] and professional forums.

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