PART 1: CONSTITUTIONAL PROVISIONS AND DEFINITIONS

Explain the constitutional authority for levy of customs duty and the body of Customs Law.

Ans: The Central Government has been empowered by Entry 83 of Union List of the VII Schedule of the Constitution of India, to levy customs duty. **Entry 83** of Union List reads as under:

**Duties of customs includes export 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.

The body of the Customs Law comprises of:

<p>| | |</p>
<table>
<thead>
<tr>
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</thead>
<tbody>
<tr>
<td><strong>1</strong></td>
<td><strong>The Customs Act, 1962</strong></td>
</tr>
<tr>
<td></td>
<td>It extends to the whole of India and, save as otherwise provided in this Act, it applies also to any offence or contravention thereunder committed outside India by any person.</td>
</tr>
<tr>
<td></td>
<td>It provides for levy of import and export duties of customs on goods imported into or exported from India through sea, air or land. It contains provisions of levy and collection of duty, importation or exportation, transit and transhipment, prohibitions, warehousing, duty drawback, appeals, settlement, advance rulings, offences and prosecution etc.</td>
</tr>
</tbody>
</table>

| **2** | **The Customs Tariff Act, 1975** |
|   | The Customs Tariff Act, 1975 has been enacted for classification of goods. The various types of custom duties to be levied on the importation and exportation of the articles are provided under this Act. It contains two Schedules:

(a) The First Schedule is known as, "Import Tariff" and it refers to goods liable to import duties of customs.

(b) The Second Schedule is known as, "Export Tariff" and it refers to goods liable to export duties of customs. |

| **3** | **Rules** |
|   | Section 156 of the Customs Act, 1962 empowers the Central Government to make rules. Such rules may provide for matters relating to the manner of determining the value of imported goods/export goods, duty drawback, baggage etc. The Rules so framed are consistent with the provisions of the Customs Act, 1962. |

| **4** | **Regulations** |
|   | The **Central Board of Indirect Taxes and Customs** is empowered under Section 157 of the Customs Act, 1962 to make regulations to carry out the purposes of the Act. The Regulations so framed are consistent with the provisions of the Act as well as the rules framed by Central Government. |
### PART 2: DEFINITIONS

<table>
<thead>
<tr>
<th>Term</th>
<th>Definition</th>
</tr>
</thead>
<tbody>
<tr>
<td>Adjudicating Authority</td>
<td><strong>Means</strong> -&lt;br&gt;  - any authority competent to pass any order or decision under this Act,&lt;br&gt;  - <em>but does not include</em> the Board, Commissioner (Appeals) or Appellate Tribunal. [Section 2(1)] (Nov. 2005)&lt;br&gt;The Superintendent, Assistant Commissioner, Deputy Commissioner, Joint Commissioner and Principal Commissioner or Commissioner of Customs are adjudicating authorities.&lt;br&gt;Adjudicating Authority adjudicates the cases i.e. it issues show cause notices in case of short levy/non-levy of duty or non-payment/short-payment of any duty and after giving the assessee an opportunity of being heard, passes its decision or order. In case, if any person is aggrieved by such decision or order, appeal can be filed to the concerned Appellate authority i.e. Commissioner (Appeals) and Appellate Tribunal.&lt;br&gt;The Board (CBIC) is not an adjudicating authority but is an administrative authority.</td>
</tr>
<tr>
<td>Aircraft</td>
<td>The same meaning as in the Aircraft Act, 1934. [Section 2(1A)]</td>
</tr>
<tr>
<td>Appellate Tribunal</td>
<td><strong>Means</strong> the Customs, Excise and Service Tax Appellate Tribunal constituted u/s 129. [Section 2(1B)]</td>
</tr>
<tr>
<td>Assessment</td>
<td><strong>Means</strong> determination of the dutiability of any goods and the amount of duty, tax, cess or any other sum so payable, if any, under this Act or under the Customs Tariff Act, 1975 or under any other law for the time being in force, with reference to—&lt;br&gt;  (a) the tariff classification of such goods as determined in accordance with the provisions of the Customs Tariff Act;&lt;br&gt;  (b) the value of such goods as determined in accordance with the provisions of this Act and the Customs Tariff Act;&lt;br&gt;  (c) exemption 05 concession of duty, tax, cess or any other sum, consequent upon any notification issued therefor under this Act or under the Customs Tariff Act or under any other law for the time being in force;&lt;br&gt;  (d) the quantity, weight, volume, measurement or other specifics where such duty, tax, cess or any other sum is leviable on the</td>
</tr>
<tr>
<td>Term</td>
<td>Definition</td>
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</tr>
<tr>
<td>basis of the quantity, weight, volume, measurement or other specifics of such goods;</td>
<td>(e) the origin of such goods determined in accordance with the provisions of the Customs Tariff Act or the rules made thereunder, if the amount of duty, tax, cess or any other sum is affected by the origin of such goods;</td>
</tr>
<tr>
<td>and includes provisional assessment, self-assessment, re-assessment and any assessment in which the duty assessed is nil. [Section 2(2)]</td>
<td></td>
</tr>
<tr>
<td>Baggage</td>
<td>Includes unaccompanied baggage but does not include motor vehicles. [Section 2(3)]</td>
</tr>
<tr>
<td>Beneficial owner</td>
<td>Means any person on whose behalf the goods are being imported or exported or who exercises effective control over the goods being imported or exported. [Section 2(3A)]</td>
</tr>
<tr>
<td>Bill of Entry</td>
<td>Means a bill of entry referred to in Section 46. [Section 2(4)] Bill of entry is the basic document for assessment of customs duty. The importer has to present electronically bill of entry for clearance of imported goods.</td>
</tr>
<tr>
<td>Bill of Export</td>
<td>Means a bill of export referred to in Section 50. [Section 2(5)]</td>
</tr>
<tr>
<td>Board</td>
<td>Means the Central Board of Indirect Taxes and Customs constituted under the Central Boards of Revenue Act, 1963. [Section 2(6)]</td>
</tr>
<tr>
<td>Coastal goods</td>
<td>Means goods, other than imported goods, transported in a vessel from one port in India to another. [Section 2(7)] (Nov. 2003)</td>
</tr>
<tr>
<td>Commissioner (Appeals)</td>
<td>Means a person appointed to be a Commissioner of Customs (Appeals) under section 4(1) of the Act. [Section 2(7A)]</td>
</tr>
<tr>
<td>Principal Commissioner or Commissioner of Customs</td>
<td>Except for the purposes of Chapter XV of the Customs Act 1962, includes an Additional Commissioner of Customs. [Section 2(8)] Chapter XV of the Customs Act, 1962, contains the provisions of Appeals and Revision. For the purpose of said chapter, Additional Commissioner is treated as an authority lower in rank to Principal Commissioner or Commissioner.</td>
</tr>
<tr>
<td>Conveyance</td>
<td>Includes a vessel, an aircraft and a vehicle. [Section 2(9)] (May 2007, Nov. 2014)</td>
</tr>
<tr>
<td>Customs airport</td>
<td>Means,-&lt;br&gt;  ➢ any airport appointed u/s 7(a) to be a customs airport,&lt;br&gt;  ➢ and includes a place appointed u/s 7(aa) to be an air freight station. [Section 2(10)]</td>
</tr>
<tr>
<td>Customs area</td>
<td>Means,-&lt;br&gt;  ➢ the area of a customs station or a warehouse;&lt;br&gt;  ➢ and includes any area in which imported goods or export goods are ordinarily kept before clearance by Customs Authorities. [Section 2(11)] (Nov. 2003, Nov. 2005, June 2009-NS)</td>
</tr>
</tbody>
</table>
| **Customs port** | **Means**:-
| | ➢ any port appointed u/s 7(a) to be a customs port,
| | ➢ and includes a place appointed u/s 7(aa) to be an inland container depot. [Section 2(12)] (Nov. 2006) |
| **Customs station** | **Means** any customs port, customs airport, **international courier terminal**, **foreign post office** or land customs station. [Section 2(13)] (May 2000) |
| **Dutiable goods** | **Means**:-
| | ➢ any goods which are chargeable to duty, and
| | ➢ on which duty has not been paid. [Section 2(14)] (Nov. 2000, May 2007) |

The Supreme Court in *Associated Cement Companies Ltd. v. CC* [2001] 128 ELT 21 (SC) has held that the expression "chargeable to duty on which duty has not been paid" indicates that,-

- If goods are chargeable with Nil rate of duty, then they are not dutiable goods since no duty can be paid at nil rate.
- If goods are chargeable with duty and duty has been paid, then after such payment, the goods cease to be dutiable goods.

Therefore, the goods on which no custom duty is payable either due to exemption notification or no duty is specified in tariff, will not be regarded as dutiable goods.

| **Duty** | **Means** a duty of customs leviable under this Act. [Section 2(15)] |
| **Entry** | In relation to goods means an entry made in,-
| | ➢ a bill of entry,
| | ➢ shipping bill or bill of export
| and includes the entry made under the regulations made u/s 84. [Section 2(16)] (May : 1998, 2001, 2005) |
| **Examination** | In relation to any goods, includes measurement and weighment thereof. [Section 2(17)] |
| **Export** | With its grammatical variations and cognate expressions, **means** taking out of India to a place outside India. [Section 2(18)] |
| **Export goods** | **Means** any goods which are to be taken out of India to a place outside India. [Sec. 2(19)] Thus, the goods intended for export, when brought to the port and shipping bills for export of the same filed, become export goods. But, where the goods had already been exported pursuant to the order made under section 51 of the Customs Act, 1962, such goods cannot be deemed to be 'export goods' within the meaning of this sub-section.

**Export goods v. Exported goods** : There is a distinction between export goods and exported goods. The former is one, which is to be taken out of India (and not taken out of India) while the latter is one, which has already crossed the territorial waters of India.
<table>
<thead>
<tr>
<th>Basic Concepts</th>
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<tbody>
<tr>
<td><strong>Exporter</strong></td>
<td>In relation to any goods at any time between their entry for export and the time when they are exported, <em>includes any owner, beneficial owner</em> or any person holding himself out to be the exporter. [<em>Section 2(20)</em>]</td>
</tr>
<tr>
<td><strong>Foreign post office</strong></td>
<td><em>Means</em> any post office appointed u/s 7(1)(e) to be a foreign post office. [<em>Section 2(20A)</em>]</td>
</tr>
<tr>
<td><strong>Foreign-going vessel or aircraft</strong></td>
<td><em>Means</em>,-&lt;br&gt;any vessel or aircraft for the time being engaged in the carriage of goods or passengers between any port or airport in India and any port or airport outside India, whether touching any intermediate port or airport in India or not, and&lt;br&gt;<em>includes</em> –&lt;br&gt;(a) Any naval vessel of a foreign Government taking part in any naval exercises;&lt;br&gt;(b) Any vessel engaged in fishing or any other operations outside the territorial waters of India;&lt;br&gt;(c) Any vessel or aircraft proceeding to a place outside India for any purpose whatsoever. [<em>Section 2(21)</em>] (<em>Nov. 1998, Nov. 2004, May 2006</em>)</td>
</tr>
<tr>
<td><strong>Fund</strong></td>
<td><em>Means</em> the Consumer Welfare Fund established u/s 12C of the Central Excise Act, <em>1944</em>. [<em>Section 2(21A)</em>]</td>
</tr>
<tr>
<td><strong>Goods</strong></td>
<td><em>Includes</em>,-&lt;br&gt;any vessels, aircrafts and vehicles;&lt;br&gt;stores;&lt;br&gt;baggage;&lt;br&gt;currency and negotiable instruments; and&lt;br&gt;<em>any other kind of movable property</em>. [<em>Section 2(22)</em>] (<em>Nov.: 1999, 2000, 2004, 2006</em>)</td>
</tr>
<tr>
<td><strong>Import</strong></td>
<td>With its grammatical variations and cognate expressions, means bringing into India from a place outside India. [<em>Section 2(23)</em>] (<em>Nov. 2007</em>)</td>
</tr>
<tr>
<td><strong>Arrival manifest or Import manifest or Import report</strong></td>
<td><em>Means</em> the manifest or report required to be delivered under section 30; [<em>Section 2(24)</em>]&lt;br&gt;The person in charge of conveyance has to present arrival manifest or import manifest or import report in prescribed from.</td>
</tr>
<tr>
<td><strong>Imported goods</strong></td>
<td><em>Means</em>,-&lt;br&gt;any goods brought into India from a place outside India;&lt;br&gt;but does not include goods, which have been cleared for home consumption. [<em>Section 2(25)</em>] (<em>Nov. 2000, Nov. 2003, May 2010</em>)&lt;br&gt;The warehoused goods under section 59 are imported goods until they are cleared for home consumption from warehouse.</td>
</tr>
<tr>
<td>Term</td>
<td>Definition</td>
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</table>
| Importer | In relation to any goods at any time between their importation and the time when they are cleared for home consumption includes any owner, beneficial owner or any person holding himself out to be the importer. *(Section 2(26)) (Nov. 1998, May 2006, Nov. 2007)*  
Thus, any person who files the Bill of Entry under section 46 and pays duty thereon shall be held to be the importer of the goods.  
In case of high sea sales where the original importer transfers the title of goods before the goods cross the customs frontiers, the buyer of goods is required to file the Bill of entry and clear the goods, then such buyer will be treated as importer. |
| India | Includes the territorial waters of India. *(Section 2(27)) (May 2007, Nov. 2014)*  
Territorial Water extends to 12 nautical miles from the baseline. It also includes any bay, gulf, harbour, creek or tidal river. The outer boundary of territorial waters is international boundary of India beyond which the high sea lies.  
Baseline is the lower water mark along the coast. |
| Indian customs waters | Means the waters extending into the sea up to the limit of Exclusive Economic Zone under section 7 of the Territorial Waters, Continental Shelf, Exclusive Economic Zone and other Maritime Zones Act, 1976 and includes any bay, gulf, harbour, creek or tidal river; *(Section 2(28)) (Dec. 2001, June 2004)*  
Continental shelf of India: 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. The maximum depth of sea water in the continental shelf is 200 meters. Continental shelf of India extends beyond the limit of its territorial waters throughout the natural prolongation of its land territory to the outer edge of the continental margin or to a distance of 200 nautical miles from the baseline. |
<p>| International courier terminal | Means any place appointed under section 7(1) (f) to be an international courier terminal. <em>(Section 2(28A))</em> |
| Land customs station | Means any place appointed u/s 7(b) to be a land customs station. <em>(Section 2(29))</em> |
| Market price | In relation to any goods, means the wholesale price of the goods in the ordinary course of trade in India. <em>(Section 2(30))</em> |
| Notification | Means notification published in the Official Gazette and the expression &quot;notify&quot; with its cognate meaning and grammatical variation shall be construed accordingly. <em>(Sec 2(30AA))</em> |
| 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. <em>(Sec. 2(30B)))</em> |</p>
<table>
<thead>
<tr>
<th>Term</th>
<th>Definition</th>
</tr>
</thead>
<tbody>
<tr>
<td>Person-in-charge</td>
<td>in relation to a vessel means the <strong>master of the vessel</strong>; in relation to an aircraft means the <strong>commander or pilot-in-charge of the aircraft</strong>; in relation to a railway train means the <strong>conductor, guard or other person having chief direction of the train</strong>; in relation to any other conveyance means the <strong>driver or other person-in-charge of the conveyance</strong>. [Section 2(31)] (Nov. 1996, 2000, 2004, 2009, May 1999, 2006)</td>
</tr>
<tr>
<td>Prescribed</td>
<td><strong>Means</strong> prescribed by regulations made under this Act. [Section 2(32)]</td>
</tr>
<tr>
<td>Prohibited goods</td>
<td><strong>Means</strong>- any goods the import or export of which is subject to any prohibition under this Act or any other law for the time being in force; <strong>but does not include</strong> any such goods in respect of which the conditions subject to which the goods are permitted to be imported or exported have been complied with. [Section 2(33)] (May 1998, May 2001, May 2005, Nov. 2002, May 2011)</td>
</tr>
<tr>
<td>Proper officer</td>
<td>In relation to any functions to be performed under this Act, means the officer of customs who is assigned those functions by the Board or the Principal Commissioner or Commissioner of Customs. [Section 2(34)]</td>
</tr>
<tr>
<td>Regulations</td>
<td><strong>Means</strong> the regulations made by the Board under any provision of this Act. [Section 2(35)]</td>
</tr>
<tr>
<td>Rules</td>
<td><strong>Means</strong> the rules made by the Central Government under any provision of this Act. [Section 2(36)]</td>
</tr>
<tr>
<td>Shipping bill</td>
<td><strong>Means</strong> a shipping bill referred to in section 50. Shipping bill is the basic document for assessment of export duty. The exporter has to present shipping bill for clearance of export goods through vessel or aircraft. [Section 2(37)]</td>
</tr>
<tr>
<td>Stores</td>
<td><strong>Means</strong>- goods for use in a vessel or aircraft, and <strong>includes</strong> fuel and spare parts and other articles of equipment, whether or not for immediate fitting. [Section 2(38)] (May 2001, Nov. 2006)</td>
</tr>
<tr>
<td>Smuggling</td>
<td>In relation to any goods, means any act or omission which will render such goods liable to confiscation under Section 111 (improper importation) or Section 113 (improper exportation). [Section 2(39)] (Nov. 1998, Nov. 2005)</td>
</tr>
<tr>
<td>Tariff value</td>
<td>In relation to any goods, means the tariff value fixed in respect thereof under section 14(2) of the Act. [Section 2(40)]</td>
</tr>
<tr>
<td>Value</td>
<td>In relation to any goods, means the value thereof determined in accordance with the provisions of Section 14(1)(2) of the Act. [Section 2(41)]</td>
</tr>
<tr>
<td>Vehicle</td>
<td>Means conveyance of any kind used on land and includes a railway vehicle. [Sec. 2(42)]</td>
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</tbody>
</table>
| 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. [Section 2(43)] (Nov. 2011) |
| Warehoused goods | Means goods deposited in a warehouse. [Section 2(44)] (Nov. 2011) |

**NOTE 1:** Explain briefly, the significance of Indian customs waters under Customs Act. (Nov. 2008 (NS), 2 Marks), (May 2011, 3 Marks)

**Ans:** The significance of territorial waters, Indian Customs waters and Indian Exclusive Economic Zone for Customs law is as under -

(1) **12 nautical miles from base line i.e. the Territorial waters of India:** This determines taxable event. Thus, in case of importation, import of goods will commence when they cross territorial waters and exportation is completed when the goods cross the territorial waters.

(2) **200 nautical miles from base line i.e. the Indian Customs Waters:** The significance is as follows -

(a) Any person who has landed from/about to board/ is on board any vessel within Indian customs waters and who has secreted about his person, any goods liable to confiscation or any documents relating thereto may be searched [Section 100];

(b) Any person within Indian customs waters, who has committed an offence punishable under section 132 or 133 or 135 or 135A or 136, may be arrested [Section 104];

(c) Any vessel within Indian customs waters, which has been, is being, or is about to be, used in the smuggling of any goods or in carriage of any smuggled goods, may be stopped [Section 106];

(d) Any goods which are brought within the Indian customs waters for the purpose of being imported from a place outside India, contrary to any prohibition imposed by or under this Act or any other law for the time being in force, shall be liable to confiscation [Section 111(d)]; and

(e) Any vessel which is or has been within Indian customs waters is constructed, adapted, altered or fitted in any manner for concealing goods shall be liable to confiscation [Section 115(1)(a)].

**NOTE 2:** Distinguish between Rules and Regulations. (2½ marks, May 97) (Nov. 03, 2 marks) (Nov. 06, 3 marks)

**Ans:** The distinction between Rules and Regulations is as under -

<table>
<thead>
<tr>
<th>Points of difference</th>
<th>Rules</th>
<th>Regulations</th>
</tr>
</thead>
<tbody>
<tr>
<td>Authority</td>
<td>Power to make rules vests with Central Government.</td>
<td>Power to make regulations vests with CBIC.</td>
</tr>
<tr>
<td>Section</td>
<td>Central government has been empowered to make Rules under section 156.</td>
<td>CBIC has been empowered to make Regulations under section 157.</td>
</tr>
<tr>
<td>---------</td>
<td>-----------------------------------------------------------------------</td>
<td>------------------------------------------------------------------</td>
</tr>
<tr>
<td>Consistency</td>
<td>Rules must be consistent with the provisions of the Act.</td>
<td>Regulations must be consistent with the provisions of the act as well as the rules.</td>
</tr>
</tbody>
</table>

**PART 3: TAXABLE EVENT AND DATE FOR DETERMINATION OF DUTY**

**What is taxable event under customs?**

1) **Dutiable goods [Section 12]:**
   The provisions relating to charge of duties of customs are contained in Section 12 of the Customs Act, 1962 which is also known as Charging Section.

2) **Essential ingredients for Charge of custom duty:**
   The charging section provides the following,-
   (a) The levy of duty is on goods.
   (b) The goods must be imported into or exported from India.
   (c) The rate at which duty of customs is to be levied is specified in the Customs Tariff Act, 1975 or any other law for the time being in force.
   (d) Government goods shall be treated at par with the non-government goods for the purpose of levy of customs duty.
   (e) Such levy of duty is subject to the exception as provided in this Act or any other law for the time being in force.

   Therefore, the importation of goods into India or exportation of goods from India is taxable event in customs.

3) **In case of Importation:**
   The Supreme Court has held in *Kiran Spinning Mills v. Collector [1999] 113 ELT 753 (SC)* that taxable event occurs when the customs barrier is crossed and not on the date when goods had landed in India or had entered the territorial waters of India.
   Further, the Supreme Court in *Garden Silk Mills Ltd. v. UOI [1999] 113 ELT 358 (SC)* has held that importation starts when the vessel carrying goods crosses the territorial waters of India but is completed when such goods becomes part of the mass of the goods within the country.

   Taxable event is reached when the goods reach the customs barrier and the bill of entry for home consumption is filed.
**In case of Exportation:**

Exportation commences when the shipping bill in respect of such goods is filed but the taxable event is completed when the goods cross the territorial waters of India.

<table>
<thead>
<tr>
<th>Mangalore Refinery &amp; Petrochemicals Ltd. v. CC [2015] 323 ELT 433 (SC)</th>
<th>Taxable event occurs only when goods are imported and the levy of duty is only on goods imported into India. The act of importation is complete only after the order for clearance for home consumption is made. Thus, where the quantity of imported crude oil actually received in the shore tank in port in India was lesser than the quantity mentioned in the Bill of lading, duty was leviable only on the goods received in the shore tank. Quantity shown in the Bill of lading cannot form the basis for valuation as it does not reflect the quantity of goods at the time and place of importation.</th>
</tr>
</thead>
</table>

| CCEx. v. Aban Loyd Chiles Offshore Ltd. [2017] 346 ELT 513 (SC) | Facts: The Rig was brought to Indian port for repairs and after it was repaired, it was taken out of the territorial waters of India. The adjudication order was passed claiming that when the rig was repaired in India, it was imported into India for home consumption. In adjudication it was held that the repairs undertaken would complete the act of import, as the requirement of home consumption was satisfied. Held that, mere repair of vessel is not putting the vessel to use in India and would not result in home consumption as the vessel was not utilised within the territory of India. Repairs were carried on the vessel and not to utilise the vessel. It would not amount to utilisation / operation of the vessel in India. Therefore, mere repair of the vessel would not constitute taxable import. Though it does not amount to importation, but on entering into the territorial waters of India it is required to comply with Customs Act, 1962 which has much wider and broader scope. The Act regulates and mandates compliance by the foreign going vessels even when no goods are to be unloaded for import into India or the vessel is not a "goods" meant for home consumption. On violations of these regulations, the rig is liable for confiscation. In present case, in absence of any deliberate intention to contravene these provisions, reduction of redemption fine was upheld. |


**RATE OF DUTY - IMPORT**

1) **Date for determination of rate of duty and tariff valuation of imported goods [Section 15]:**

   According to Section 15 of the Customs Act, 1962, the provisions relating to date for determination of rate of duty and tariff valuation of imported goods are as under -

   (a) in the case of goods **entered for home consumption** under section 46,
   
   (i) the date of presentation of Bill of Entry; or
   
   (ii) the date of **entry inwards** of the vessel or the **arrival** of the aircraft or the vehicle by which the goods are imported, **whichever is later**.

   (b) in the case of goods **cleared from a warehouse** under section 68, the date of presentation of the **Ex-Bond clearance Bill of Entry** for home consumption under that section.

   (c) in the case of any other goods, the date of payment of duty.

2) **Non Applicability of provisions of Section 15 [Section 15(2)]:**

   The provisions of Section 15 shall not apply to **baggage and goods imported by post**.

---

**Q 1** An importer, imported consignment of goods, chargeable to duty @ 15% ad valorem. The vessel arrived on 31st May, 2019. A bill of entry for warehousing the goods was completed on 2nd June, 2019 and the goods were duty warehoused. In the meantime, an exemption notification was issued on 15th October, 2019 reducing the effective customs duty to 10% ad valorem. Thereafter, the importer filed a bill of entry for home consumption on 20th October claiming 10% duty. The customs Department charged higher rate of duty @ 15% ad valorem. Give your view about the same; discussing the relevant provisions of the Customs Act, 1962.

**Solution:** According to section 15(1)(b) of the customs Act, 1962 the relevant date for determination of rate of duty and tariff value in case of goods cleared from a warehouse is the date on which a bill of entry for home consumption in respect of such goods is presented. Therefore, the relevant date for determining the duty in the given case will be 20-10-2019 (**the date on which the bill of entry for home consumption is presented**). Therefore, the relevant rate will be 10%.
RATE OF DUTY ON EXPORT

(1) Date for determination of rate of duty and tariff valuation of export goods [Section 16]:
According to Section 16 of the Customs Act, 1962, the provisions relating to date for determination of rate of duty and tariff valuation of export goods are as under-
(a) 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.
(b) in the case of any other goods, the date of payment of duty.

(2) Non Applicability of provisions of Section 16 [Section 16(2)]:
The provisions of Section 16 shall not apply to baggage and goods exported by post.

Q 2 - Mr. Tapas has exported goods valuing Rs. 8,00,000 to UK by a vessel. He filed the shipping bill for export on 28-2-2019 (rate of duty 5%). The order permitting clearance and loading of the goods for exportation was made by the proper officer on 1-3-2019 (rate of duty 15%). The ship left for UK on 04-3-2019 (rate of duty 15%) and the ship crossed the territorial waters of India on 8-3-2019 (goods were made exempt from duty). Compute the amount of duty payable by Mr. Tapas.

Solution: As per section 16(1)(a), the relevant date for determination of rate of duty and tariff valuation in case of export goods is the date on which the proper officer makes an order for clearance and loading of the goods for exportation under section 51. Hence, relevant date, in this case, is 1-3-2019 and rate of duty is 15%.

Export duty payable by Mr. Tapas = Rs. 8,00,000 × 15% = Rs. 1,20,000. No Social Welfare Surcharge (SWS) is levied on export goods.

DTA TO SEZ

Explain, with reference to decided case law, whether clearances from Domestic Tariff Area (DTA) to Special Economic Zone is chargeable to export duty under the SEZ Act, 2005 or the Customs Act, 1962. (3 Marks, May 2012)

Ans: In the case of Advait Steel Rolling Mills Pvt. Ltd. v. UOI [2012] 286 ELT 535 (Mad.), it is held that the clearances 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 authorised 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 waters 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).
PART 4: ASSESSMENT

Meaning of Assessment:
Assessment is procedure adopted for determining the duty liability by correct classification and valuation of goods.

Assessment of duty [Section 17]:
(a) Self-assessment by Importer or Exporter:
   An -
   (i) importer entering any imported goods under section 46 (i.e. Bill of entry is presented by him for clearance of goods), or
   (ii) exporter entering any export goods under section 50 (i.e. Shipping bill or Bill of export is presented for clearance of export goods),
   shall self-assess the duty, if any, leviable on such goods. However, stores can be warehoused without assessment as provided in Section 85.

(b) Verification and Examination/Testing of goods by Proper Officer:
The proper officer may verify the entries made under section 46 or section 50 and the self-assessment of goods referred to in Section 17(1) and for this purpose, examine or test any imported goods or export goods or such part thereof as may be necessary.
However, the selection of cases for verification shall primarily be on the basis of risk evaluation through appropriate selection criteria.
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.

(c) Calling for information/documents for verification of self assessment:
For the purposes of verification, 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.

(d) Re-assessment of duty in case of incorrect self assessment:
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, re-assess the duty leviable on such goods. However, such reassessment, shall be without prejudice to any other action which may be taken under this Act.
(e) **Reassessment contrary to self-assessment - Proper officer to pass speaking order within 15 days:**

Where any re-assessment done is contrary to the self-assessment done by the importer or exporter 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. Such speaking order is passed 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 [Section 18]**

(1) **Circumstances in which Provisional assessment can be ordered:**

As per Section 18(1), 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.

(2) **Bill of entry to be filled for provisional assessment also:**

The provisions of section 18 apply without prejudice to the provisions of Section 46 and Section 50. Hence, the bill of entry/Shipping bill is required to be presented in accordance with the provisions of Section 46/Section 50 even for the purposes of provisional assessment as well.

(3) **Furnishing of documents or information and finalisation of assessment as prescribed:**

Where, pursuant to the provisional assessment Section 18(1), if any document or information is required by the proper officer for final assessment, the importer or exporter, as the case may be, shall submit such document or information within such time, and the proper officer shall finalise the provisional assessment within such time and in such manner, as may be prescribed.

(4) **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.
(5) **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 proper officer may require the importer to execute a **bond** binding himself in a sum equal to twice the amount of the excess duty.

(6) **Interest on 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 the rate specified in Section 28AA of the Customs Act, 1962 i.e. @ **15% p.a.** from the first day of the month in which the duty is provisionally assessed till the date of payment thereof.

(7) **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 unrefunded amount at the rate specified in section 27A of the Customs Act, 1962 (i.e. @ **6% p.a.**) till the date of refund of such amount.

(8) **Circumstances under which refund can be granted:**
The amount of duty refundable and the interest shall be credited to Consumer 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 relatable 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 sections 74 and 75.
For this purpose **Customs (Finalisation of Provisional Assessment) Regulations, 2018** have been framed wherein it is provided that:

(i) One month will be allowed for the importer/exporter to furnish the deficient information from the date of the provisional assessment order or as requested.

(ii) Intimation for furnishing deficient information will be issued to the importer/exporter within 15 days from the date of provisional assessment order.

(iii) Extension not exceeding 3 months will be granted to the importer/exporter for this purpose. Power to extend by a further 3 months is available with the Additional Commissioner or Joint Commissioner of Customs and with further powers with Commissioner of Customs.

(iv) Upon receipt of the information, assessment is required to be finalized within 2 months from the date when the last of the information was furnished by the importer/exporter. Where documents are not furnished, provisional assessment is to be finalized within 2 months from the end of the time allowed for furnishing the information. This time period of 2 months may be extended by Commissioner of Customs by additional 3 months.

(v) Assessment to be finalized as per section 18 and any shortfall in duty paid to be appropriated from the security collected.

(vi) Bond executed at the time of order of provisional assessment may be cancelled on finalization of the assessment.

(vii) Failure to adhere to these Regulations attracts penalty which may extend to Rs. 50,000 to importer/exporter and authorized person/CH Broker.

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**Tata Chemicals Ltd. v. CC**  
**[2015] 320 ELT 45(SC)**  
The authority to subject the goods to chemical or other test analysis u/s 18(1)(b) of the Customs Act, 1962 can be exercised by the proper officer only when he has good *prima facie* reason that the documents furnished by the importer do not inspire confidence. If the samples drawn are not in accordance with law, the test reports based on the same cannot be looked at.

If the samples drawn are contrary to law, the Customs Authorities cannot plead that the assessee is estopped from raising an objection because their representative was present when the samples were taken.

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**Q 3 - Compute the amount of interest, if any, under section 18 of the Customs Act, 1962 in the following independent cases -**

**1**  
XYZ Ltd. imported goods valuing Rs. 300 lakhs vide a Bill of Entry presented before the proper officer on 01-11-2019, on which the rate of customs duty was 10%. The proper officer decided that the goods should be subject to chemical examination and therefore, the same were provisionally assessed at a value of Rs. 300 lakhs and XYZ Ltd. paid provisional duty Rs. 30 lakhs on the same date. XYZ Ltd. wants to
voluntarily pay duty of Rs. 10 lakhs on 15-12-2019. Can it do so and what are the conditions which are to be complied before such payment.

(ii) In the above case, if the final duty is assessed on 31-12-2019 amounting Rs. 52 lakhs, calculate the interest liability under section 18.

**ASSESSMENT OF ARTICLE IMPORTED AS A SET**

(i) **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,-

- if such articles are liable with the same rate of duty then duty shall be levied at that rate;
- if the articles in the set are liable to duty at different rates then duty shall be chargeable 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.

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

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.
AUDIT

Audit [Section 99A]:
The proper officer may carry out the audit of assessment of imported goods or export goods or of an auditee under this Act either in his office or in the premises of the auditee in such manner as may be prescribed.

"Auditee" means a person who is subject to an audit under this section and includes an importer or exporter or custodian approved under section 45 or licensee of a warehouse and any other person concerned directly or indirectly in clearing, forwarding, stocking, carrying, selling or purchasing of imported goods or export goods or dutiable goods.

[Explanation]

For this purpose Customs Audit Regulations, 2018, have been framed. The salient feature of the audit procedure are as follows:

(i) Auditee is to preserve records for conduct of this audit for a period of 5 years.
(ii) Risk based assessment will identify persons to be audited.
(iii) Audit will be conducted at the premises of the auditee by the authorized officers who will intimate 15 days in advance of the schedule visit.
(iv) Based on the findings, auditee may accept the liabilities and voluntarily discharge the duty, interest and penalty, as applicable.
(v) The proper officer shall complete audit in cases where it is conducted at the premises of the auditee within 30 days from the date of starting of the audit. However, the jurisdictional Commissioner of Customs may extend the period of completion of audit from 30 days to 60 days, by an order in writing.
(vi) Assistance of experts can be availed for conducting this audit such as CA, CWA or IT professionals with permission of Principal Commissioner/ Commissioner of Customs.
(vii) Contravention of these Regulations attracts penalty which may extend to Rs. 50,000.

Types of Audit-Transaction Based Audit (TBA) and Premise Based Audit (PBA) [Circular No. 02/2019-Customs dated 08-01-2019]:

Under the new scheme, Transaction based audit (TBA) and Premises based audit (PBA) have been prescribed

- **TBA (audit of transactions)**: Under TBA, transactions are audited. It may be noted that a TBA may subsequently be converted into a Premises based Audit (PBA).
- **PBA (audit at the premises)**: The new provision on Customs Audit under section 99A of the Customs Act, 1962 has extended the scope of Premises Based Audit by including other entities who are concerned with imports or exports. In PBA, customs would review the import and export over a given period and check all relevant commercial records, including financial
statements and contracts to verify the particulars given in a goods declaration. PBA would enable the department to bridge the communication divide and usher in a new era of partnership with trade. Further, Board may also select any criteria or Theme for the audit.

<table>
<thead>
<tr>
<th>Selection criteria for audit</th>
<th>Directorate General of Analysis and Risk Management has been entrusted the responsibility of identifying the potential focus areas and entities for various types of audit.</th>
</tr>
</thead>
</table>
| Executive Commissionerates to assist Audit Commissionerates | The executive Customs Commissionerates shall also assist Audit Commissionerates in the conduct of Theme based audit and Premises based audit.  

The Chief Commissioners shall put in place a suitable monitoring arrangement to review the progress and performance of audit. Apart from overall supervision, Chief Commissioner shall examine on a selective basis, 5% of the Audit reports, selected randomly based on the quarterly reports submitted by Audit Commissionerates to ensure that audit has been conducted as per prescribed procedures. |

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<tr>
<th>PART 5: SECTION 20 TO SECTION 25 (INCLUDING SECTION 13)</th>
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</thead>
</table>

**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 [Notification No. 158/95 as amended by 60/2018 and Notification No. 45/2017-Cus.]:

<table>
<thead>
<tr>
<th>Case of re-import</th>
<th>Time-limit for re-import</th>
<th>BCD, IGST &amp; GST Cess is exempt and following sum is payable -</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Goods manufactured in India and exported and re-imported in India for -</td>
<td></td>
<td>Duty is <strong>Fully Exempt</strong>, if –</td>
</tr>
<tr>
<td>(i) Repairs or re-conditioning other than the specified goods</td>
<td>Within 3 years (10 years in case of Nepal and Bhutan)</td>
<td>Such goods are re-exported within 6 months from date of re-import (extension upto 6 months allowed by Commissioner or Principal Commissioner); and</td>
</tr>
<tr>
<td>(ii) Reprocessing/refining/re-making or other similar process</td>
<td>Within 1 year</td>
<td></td>
</tr>
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</table>
## Basic Concepts

<table>
<thead>
<tr>
<th>2.</th>
<th>Goods re-imported without being subjected to re-manufacturing or reprocessing through melting, recycling or recasting abroad—</th>
<th><strong>Within 3 years</strong> from date of export (2 year extension)</th>
</tr>
</thead>
<tbody>
<tr>
<td>(A) If exported under following benefit-</td>
<td></td>
<td></td>
</tr>
<tr>
<td>(a) Claiming drawback / refund of customs or central excise or state excise, or, IGST;</td>
<td>Amount of drawback/refund of customs or central/ state excise duty, or, IGST</td>
<td></td>
</tr>
<tr>
<td>(b) Under bond without payment of IGST</td>
<td>Amount of IGST not paid</td>
<td></td>
</tr>
<tr>
<td>(c) Under duty exemption scheme (DEEC / Advance Authorisation / DFIA) or Export Promotion Capital Goods Scheme (EPCG)</td>
<td>Only for (c): in 1 year from export (1 year extension) Amount of IGST and GST compensation cess leviable at time and place of import</td>
<td></td>
</tr>
<tr>
<td>(B) Re-import of any other Goods [not falling under 2(a) to 2(c)] exported for repairs abroad and there has been no change in ownership of the goods between the time of export of such goods and re-import thereof.</td>
<td>Value (for levy of duty) = Fair cost of repairs + Cost of materials used in repairs (such cost includible even if not actually incurred) + Insurance and freight charges both ways</td>
<td></td>
</tr>
<tr>
<td>(C) Re-import of any other exported goods</td>
<td>Nil</td>
<td></td>
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### Re-import of goods which had been earlier exported either for participation in exhibition or on consignment basis - such re-imports not liable to IGST since the activity does not amount to supply at the time of taking/ sending goods out of India [Circular No. 21/2019 -Customs dated 24-07-2019]

**Issue under consideration**: Applicability of Notification No. 45/2017-Cus on the re-import of goods which had been earlier exported either for participation in exhibition or on consignment basis - re-imports.

**Departmental clarification**: Assistant Commissioner is satisfied about identity of such goods.
(1) **Activity does not amount to supply at the time of taking /sending goods out of India for export promotion basis:** Circular No. 108/27/2019-GST dated 18-07-2019 has clarified that the activity of sending/taking the specified goods (i.e. goods sent/ taken out of India for exhibition or on consignment basis for export promotion except the activities satisfying the tests laid down in Schedule I of the CGST Act, 2017) out of India do not constitute supply within the scope of Section 7 of the CGST Act as there is no consideration at that point in time.

Since such activity is not a supply, the same cannot be considered as 'Zero rated supply' as per the provisions contained in Section 16 of the IGST Act, 2017. Also that there is no requirement of filing any LUT/bond as required u/s 16 of IGST Act, 2017 for such activity of taking specified goods out of India.

(2) **Condition for payment of integrated tax at the time of re-import is not applicable as the activity of sending/taking goods out of India is not regarded as supply at the time of initial export:** Situation mentioned at Sl. No. 1(d) of the Notification no. 45/2017-Cus dated 30-06-2017 [point no. 2(b) of the above table require payment at the time of re-import of integrated tax not paid initially at the time of export, for availing exemption under the said notification.

As in the case of re-import of specified goods, no integrated tax was required to be paid for specified goods at the time of taking these out of India, the activity being not a supply, hence the said condition requiring payment of integrated tax at the time of re-import of specified goods in such cases is not applicable. Such cases will fall more appropriately under residuary entry of the said Notification even though those specified goods were exported under LUT, in view of the fact that the activity of sending/taking specified goods out of India is neither a supply nor a zero rated supply.

(3) **Goods sent to related or distinct persons or to principal or agent - returned after exhibition - not liable to integrated tax at the time of re-imports if such re-imports take place within 6 months from delivery challan:** It is also clarified that, even in cases where exports have been made to related or distinct persons or to principals or agents, as the case may be, for participation in exhibition or on consignment basis, but, such goods exported are returned after participation in exhibition or the goods are returned by such consignees without approval or acceptance, as the case may be, the basic requirement of 'supply' as defined cannot be said to be met as there has been no acceptance of the goods by the consignees. Hence, re-import of such goods after return from such exhibition or from such consignees will be covered by residuary entry, provided re-import happens before six months from the date of delivery challan.
Goods derelict, wreck, etc. [Section 21]:
All goods derelict, jetsam, flotsam and wreck brought or coming into India, shall be dealt with as if they were imported into India, unless it is shown to the satisfaction of the proper officer that they are entitled to be admitted duty-free under this Act.

<table>
<thead>
<tr>
<th>Meaning of the various terms —</th>
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</thead>
<tbody>
<tr>
<td>(a) Derelict</td>
</tr>
<tr>
<td>(b) Jetsam</td>
</tr>
<tr>
<td>(c) Flotsam</td>
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<tr>
<td>(d) Wreck</td>
</tr>
</tbody>
</table>

PILFERAGE – SECTION 13
(1) 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;
- except where such goods are restored to the importer after pilferage.

Meaning of Pilfer: The term 'Pilfer' is defined to mean, loss of goods in small quantities by reasons of theft, etc. Therefore, the term does not include loss of total package. In order to claim pilferage the following circumstances should exist:
(a) there should be evidence of tampering with the packages;
(b) there should be blank space for the missing articles in the package; and
(c) the missing articles should be unit articles and not part articles.

(2) Liability of duty in case of pilfered goods [Section 45(3)]:
It is important to note that the Port Trust authority is the custodian of imported goods. Section 13 disables the Government from collecting the duty on pilfered goods from the importer. On the other hand, Section 45 of the Customs Act provides that if any imported goods are pilfered after unloading thereof in a customs area, while in the custody of a person approved by the Principal Commissioner or Commissioner u/s 45(1), then such custodian of cargo shall be liable to pay duty on such goods at the rate prevailing on the date of delivery of an import manifest or an import report to the proper officer under section 30 for the arrival of the conveyance in which the said goods were carried. Thus, Section 45 enables the Government to demand the duty from the custodian of cargo.
ABATEMENT – SECTION 22
Abatement of duty on damaged or deteriorated goods [Section 22]:

(1) **Circumstances when abatement is allowed:**
Where it is shown to the satisfaction of the [Assistant Commissioner](https://example.com) of Customs or [Deputy Commissioner](https://example.com) of Customs,

(a) that any imported goods had been damaged or had deteriorated **at any time before or during the unloading** of the goods in India; or

(b) that any imported goods, other than warehoused goods, had been damaged **at any time after the unloading thereof in India but before their examination under section 17**, on account of any accident not due to any wilful act, negligence or default of the importer, his employee or agent; or

(c) that any warehoused goods had been damaged **at any time before clearance for home consumption** on account of any accident not due to any wilful act, negligence or default of the owner, his employee or agent.

(2) **Duty liability in case of abatement:**
The goods shall be chargeable to duty determined in the following manner:

\[
\text{Duty leviable on such damaged or deteriorated goods} = \frac{\text{Duty chargeable on the goods before the damage or deterioration}}{\text{Value of the goods before damage or deterioration}} \times \text{Value of the damaged or deteriorated goods}
\]

**Abatement of duty on damaged or deteriorated goods**

\[
\text{Abatement of duty on damaged or deteriorated goods} = \text{Duty leviable on the goods before damage} - \text{Duty leviable on the goods after damage}
\]

(3) **Valuation of damaged/ deteriorated goods:**
The value of damaged or deteriorated goods may be ascertained by either of the following methods (at the option of the owner),

(a) The value of such goods may be ascertained **by the proper officer**; or

(b) Such goods may be sold by proper officer **by public auction or by tender or with consent of owner in any other manner** and the gross sale proceeds shall be deemed to be the value of such goods.
REMISSION OF DUTY - SECTION 23

Remission of Duty on Lost, Destroyed and Abandoned Goods [Section 23]: Section 23 of the Customs Act 1962, specifically permits remission of duty in the following cases, -

(1) **Loss or destruction of goods [Section 23(1)]:**
   In case where it is shown to the satisfaction of Assistant or Deputy Commissioner of Customs -
   - that any imported goods have been lost (otherwise than as a result of pilferage) or destroyed,
   - at any time before clearance for home consumption,
   then he shall remit the duty on such goods.

(2) **Abandonment or Relinquishment of goods by importer [Section 23(2)]:**
   The owner of the imported goods may at any time before, -
   - an order for clearance of goods for home consumption under section 47; or
   - an order permitting the deposit of the goods in a warehouse under section 60 has been made,
   relinquish his title to the goods and thereupon he shall not be liable to pay the duty thereon.

   **No relinquishment, if Offence Committed**: 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 the Customs Act, 1962 or any other law for the time being in force.

   **CCEx. v. Bakelite Hylam Ltd. [2016] 335 ELT 673 (SC)**
   No customs duty is payable on unsuitable goods rejected as waste including those damaged in transit and not put to further use.

Power to make rules for denaturing or mutilation of goods [Section 24]:
Section 24 of Customs Act, 1962, provides that an importer can request Central Government to denature or mutilate the imported goods, which are ordinarily used for more than one purpose, so as to render them unfit for one or more of such purpose. If the goods are denatured or mutilated, they are assessed as if the goods were imported in denatured or mutilated form. The Central Government has framed Denaturing of Spirit Rules, 1972 in this regard.

**Illustration 4 - Re-import after repairs:** Mr. X of Delhi imported «i machinery on 1-1-2020 (value Rs. 10 lakh and duty Rs. 1,10,000) from Mr. Y of US. Later, he found that machinery was defective and therefore, he sent back that machinery for repairs, etc. abroad. The cost of insurance and freight from Delhi to US is Rs. 55,000. Repair work was carried out on machinery by Mr. Y and materials worth Rs. 77,500 and labour, etc. worth Rs. 14,500 was borne by Mr. Y. The cost of insurance and freight for repaired goods from US to Delhi is Rs. 60,000. Determine the duty payable at the time of re-import on 1-1-2020, if rate of
duty is 11%. Department claims that machinery is liable to duty on full value of Rs. 11,10,000 (market price on 1-1-2020).

**INWARD PROCESSING AND OUTWARD PROCESSING**

The provisions relating to Inward processing/ Outward processing of goods are as under—

<table>
<thead>
<tr>
<th>Inward processing of goods [Section 25A]</th>
<th>Outward processing of goods [Section 25B]</th>
</tr>
</thead>
<tbody>
<tr>
<td>(1) Where the Central Government is satisfied that it is necessary in the public interest so to do, it may, by notification, exempt such of the goods which are—</td>
<td>as may be specified therein, from the whole or any part of duty of customs leviable thereon,</td>
</tr>
<tr>
<td>Imported for the purposes of repair, further processing or manufacture,</td>
<td>Re-imported after being exported for the purposes of repair, further processing or manufacture,</td>
</tr>
</tbody>
</table>

**(2) Conditions for exemption :** The following conditions must be satisfied for the purpose of claiming exemption, namely:-

| (a) the goods shall be re-exported after such repair, further processing or manufacture, as the case may be, within a period of one year from the date on which the order for clearance of the imported goods is made; | (a) the goods shall be re-imported into India after such repair, further processing or manufacture, as the case may be, within a period of one year from the date on which the order permitting clearance for export is made; |
| (b) the imported goods are identifiable in the export goods; and | (b) the exported goods are identifiable in the re-imported goods; and |
| (c) such other conditions as may be specified in that notification. | (c) such other conditions as may be specified in that notification. |

It must be noted that the provisions of Section 25B has been given an overriding effect over provisions of Section 20.
PART 6: CUSTOMS (IMPORT OF GOODS AT CONCESSIONAL RATE OF DUTY) RULES, 2017


(1) **Application [Rule 2]:**
   (a) These rules shall apply to an importer, who intends to avail the benefit of an exemption notification issued under section 25(1) of the Customs Act, 1962 and where the benefit of such exemption is dependent upon the use of imported goods covered by that notification for the manufacture of any commodity or provision of output service.
   (b) These rules shall apply only in respect of such exemption notifications which provide for the observance of these rules.

(2) **Definition [Rule 3]:**
   In these rules, unless the context otherwise requires, -
   (a) "Exemption Notification" means a notification issued under section 25(1) of the Customs Act, 1962.
   (b) "Information" means the information provided by the manufacturer who intends to avail the benefit of an exemption notification.
   (c) "Jurisdictional Custom Officer" means an officer of Customs of a rank equivalent to the rank of Superintendent or an Appraiser exercising jurisdiction over the premises where either the imported goods shall be put to use for manufacture or for rendering output services.
   (d) "Manufacture" means the processing of raw material or inputs in any manner that results in emergence of a new product having a distinct name, character and use and the term "manufacturer" shall be construed accordingly.
   (e) "Output service" means supply of service with the use of the imported goods.

(3) **Information about intent to avail benefit of exemption notification [Rule 4]:**
An importer who intends to avail the benefit of an exemption notification shall provide the information to the Deputy Commissioner or Assistant Commissioner of Customs having jurisdiction over the premises where the imported goods shall be put to use for manufacture of goods or for rendering output service, the particulars, namely:-
   (i) the name and address of the manufacturer;
   (ii) the goods produced at his manufacturing facility;
   (iii) the nature and description of imported goods used in the manufacture of goods or providing an output service.
(4) **Procedure to be followed [Rule 5]:**

(i) **Information to be provided by Importer** : The importer who intends to avail the benefit of an exemption notification shall provide information—

(a) in duplicate, to the Deputy/Assistant Commissioner of Customs having jurisdiction over the premises where the imported goods shall be put to use for manufacture of goods or for rendering output service, the estimated quantity and value of the goods to be imported, particulars of the exemption notification applicable on such import and the port of import in respect of a particular consignment for a period not exceeding 1 year; and

(b) in one set, to the Deputy/Assistant Commissioner of Customs at the Custom Station of importation.

(ii) **Submission of Continuity Bond** : The importer who intends to avail the benefit of an exemption notification shall submit a continuity bond with such surety or security as deemed appropriate by the Deputy/Assistant Commissioner of Customs having jurisdiction over the premises where the imported goods shall be put to use for manufacture of goods or for rendering output service, with an undertaking to pay the amount equal to the difference between the duty leviable on inputs but for the exemption and that already paid, if any, at the time of importation, along with interest, @ 15% p.a. for the period starting from the date of importation of the goods on which the exemption was availed and ending with the date of actual payment of the entire amount of the difference of duty that he is liable to pay.

(iii) **Jurisdiction AC/DC to send one copy to AC/DC at Customs Station** : The Deputy/Assistant Commissioner of Customs having jurisdiction over the premises where the imported goods shall be put to use for manufacture of goods or for rendering output service, shall forward one copy of information received from the importer to the Deputy/Assistant Commissioner of Customs at the Custom Station of importation.

(iv) **AC/DC at Customs Station to Allow Exemption** : On receipt of the copy of the information, the Deputy/Assistant Commissioner of Customs at the Custom Station of importation shall allow the benefit of the exemption notification to the importer who intends to avail the benefit of exemption notification.

(5) **Importer who intends to avail the benefit of an exemption notification to give information regarding receipt of imported goods and maintain records [Rule 6]:**

(i) **Information of receipt of goods in 2 working days to jurisdictional Custom Officer** : The importer who intends to avail the benefit of an exemption notification shall provide the information of the receipt of the imported goods in his premises where goods shall be put to use for manufacture, within 2 days (excluding holidays, if any) of such receipt to the jurisdictional Customs Officer.
(ii) **Maintenance of stock of imported goods**: The importer who has availed the benefit of an exemption notification shall maintain an account in such manner so as to clearly indicate the quantity and value of goods imported, the quantity of imported goods consumed in accordance with provisions of the exemption notification, the quantity of goods re-exported, if any, under rule 7 and the quantity remaining in stock, bill of entry wise and shall produce the said account as and when required by the Deputy/Assistant Commissioner of Customs having jurisdiction over the premises where the imported goods shall be put to use for manufacture of goods or for rendering output service.

(iii) **Quarterly return by 10th**: The importer who has availed the benefit of an exemption notification shall submit a quarterly return, in the prescribed form, to the Deputy/Assistant Commissioner of Customs having jurisdiction over the premises where the imported goods shall be put to use for manufacture of goods or for rendering output service, **by the 10th day of the following quarter**.

(6) **Re-export or clearance of unutilised or defective goods [Rule 7]**:

(i) **Re-export of goods within 6 months from date of import**: The importer who has availed benefit of an exemption notification, prescribing observance of these rules may re-export the unutilised or defective imported goods, **within 6 months from the date of import**, with the permission of the jurisdictional Deputy/Assistant Commissioner of Customs having jurisdiction over the premises where the imported goods shall be put to use for manufacture of goods or for rendering output service. However, the value of such goods for re-export shall not be less than the value of the said goods at the time of import.

(ii) **Clearance of goods on payment of duty with interest**: The importer who has availed benefit of an exemption notification, prescribing observance of these rules may also clear the unutilised or defective imported goods, with the permission of the jurisdictional Deputy/Assistant Commissioner of Customs having jurisdiction over the premises where the imported goods shall be put to use for manufacture of goods or for rendering output service, within a period of 6 months from the date of import on payment of import duty equal to the difference between the duty leviable on such goods but for the exemption availed and that already paid, if any, at the time of importation, along with interest, at the rate fixed by notification issued under section 28AA of the Customs Act, for the period starting from the date of importation of the goods on which the exemption was availed and ending with the date of actual payment of the entire amount of the difference of duty that he is liable to pay.

(7) **Recovery of duty in certain case [Rule 8]**:

The importer who has availed the benefit of an exemption notification shall—

- use the goods imported in accordance with the conditions mentioned in the concerned exemption notification, or
take action by reexport or clearance of unutilised or defective goods under rule 7, and in the event of any failure, the Deputy Commissioner/Assistant Commissioner of Customs having jurisdiction over the premises where the imported goods shall be put to use for manufacture of goods or for rendering output service shall take action by invoking the Bond to initiate the recovery proceedings of the amount equal to the difference between the duty leviable on such goods but for the exemption and that already paid, if any, at the time of importation, along with interest @ 15% p.a. for the period starting from the date of importation of the goods on which the exemption was availed and ending with the date of actual payment of the entire amount of the difference of duty that he is liable to pay.
CHAPTER 30 - CLASSIFICATION & TYPES OF CUSTOMS DUTIES

PART 1: CUSTOMS TARIFF ACT, 1975

BASIC’S
(1) **Classification:**
Classification of goods consists of **determining the headings or sub-headings** of the Customs Tariff under which the said goods are covered.

(2) **Need for classification:**
   (a) **Determination of Rate of Duty:** The rate of duty is determinable on the basis of classification of goods.
   (b) **Determination of Eligibility of Exemption:** The classification of goods is also required to be decided for the purpose of determining eligibility to exemptions, most of which are with reference to the Tariff headings or sub-headings.

(3) **Relevant time for Classification:**
Classification is done at the time of importation or exportation of goods.

SCHEDULE
(1) **First Schedule:**
In this schedule goods chargeable with import duty are listed. It is also known as 'Import Tariff' which comprises of **98 chapters grouped under 21 sections.**
   (i) **Sections:** A group of Chapters representing a particular class of goods.
   (ii) **Chapters:** Each section is divided into various chapters and sub-chapters. Each chapter contains goods of one class.
   (iii) **Chapter notes:** They are mentioned at the beginning of each chapter. These notes are part of the statute and hence have the legal authority in determining the classification of goods.
   (iv) **Heading:** Each chapter and sub-chapter is further divided into various headings.
   (v) **Sub-heading:** Each heading is further divided into various sub-headings.

(2) **Second Schedule:**
In this schedule goods chargeable with export duty are listed. It is also known as 'Export Tariff.'
(3) **Column Headings:**

The five column headings as prescribed in schedules to Customs Tariff Act, 1975 are as under,-

<table>
<thead>
<tr>
<th>Column No.</th>
<th>Particulars</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.</td>
<td>Tariff Item</td>
</tr>
<tr>
<td>2.</td>
<td>Description of the Goods</td>
</tr>
<tr>
<td>3.</td>
<td>Unit</td>
</tr>
<tr>
<td>4.</td>
<td>Standard Rate of duty</td>
</tr>
<tr>
<td>5.</td>
<td>Preferential Rate of duty</td>
</tr>
</tbody>
</table>

(4) **Rates of custom Duty:**

The basic customs duty are 5%, 7.5% and 10%. Highest rate of basic customs duty is 10% for non-agricultural items, with some exceptions. On baggage, the general rate of duty is 35% and no additional duty of customs is leviable on baggage.

(5) **Social Welfare Surcharge (SWS) on Imports [w.e.f. 02-02-2018]:**

A social welfare surcharge has been imposed on imported goods @ 10% of total customs duties (excluding certain duties) w.e.f. 02-02-2018. Hence, effective rate of BCD = 10% general rate of basic customs duty (BCD) + SWS @ 10% of BCD = 11%

**HSN CODE**

(1) **Harmonised Commodity description and Coding System:**

Harmonised System of Nomenclature (HSN) is an internationally accepted product coding system formulated under the auspices of the General Agreement on Tariffs and Trade (GATT). It forms the basis of the system of classification in the Customs Tariff Act, 1975. It has been developed by the Customs Co-operation Council, Brussels.

(2) **Explanatory Notes to the HSN:**

(a) **Official notes issued by the Customs Co-operation Council** : The Explanatory Notes to the HSN are the official notes issued by the Customs Co-operation Council, Brussels.

(b) **Explain and clarify the scope of headings of HSN** : They explain and clarify the scope and extent of each and every heading of the HSN, on the basis of which the present Customs Tariff has been patterned.

(c) **Do not have a legal backing—are only of persuasive value** : It is to be remembered that the Explanatory Notes do not have legal backing, unlike the Chapter Notes and Section Notes contained in the Tariff. Consequently, these Explanatory Notes are only of persuasive value and can be used as an aid to classification of goods when there is ambiguity as to the scope of the entry.
(d) Can be resorted to only in case of ambiguity in tariff items in Customs Tariff:

- HSN explanatory notes can be resorted to in case of ambiguity in classifying goods.
- When there is no ambiguity about the scope of the entry, the classification has to be done as per the tariff entry itself.

(3) Judicial View:

The Customs Tariff is structured on the basis of Internationally accepted nomenclature found in HSN. Hence, except where there is an express different intention indicated by the Customs Tariff Act, 1975, the tariff classification related disputes must be resolved with reference to nomenclature indicated by HSN. - *CC. v. Business Forms Ltd. THR. O.L. [2002] 142 ELT 18 (SC)*.

In case of *Camlin Ltd. v. CCE*. [2008] 230 ELT 193 (SC), the Supreme Court ruled that when the entries in HSN and the Tariff are not aligned, reliance cannot be placed upon HSN for the purposes of classification of goods and the Tariff classification should be followed in such cases. It should be appreciated that since the entries under the HSN and the entries under the said Tariff were completely different in the said case, the Department could not base its decision on the entries in the HSN.

**PART 2: INTERPRETATIVE RULES**

Purpose of Interpretation Rules of Tariff:

- to give clear direction as to how the nomenclature in the Schedule is to be interpreted; and
- to give statutory force to the Interpretation Rules and the general explanatory notes.

<table>
<thead>
<tr>
<th>Rule 1</th>
<th>Section and Chapter Titles have no legal validity</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>The titles of Sections and Chapters are provided for each of reference only. But for legal purposes, classification shall be determined according to the terms of headings and any relative Section or Chapter Notes and, provided such headings or notes do not otherwise require, according to the provisions hereinafter contained.</td>
</tr>
</tbody>
</table>

**Example: Classification of product:**

Letter closing and sealing machine.

Sub-heading 8422 30 00 Machinery for filling, closing, sealing or labelling bottles, cans, boxes, bags or other containers; machinery for capsuling bottles, jars, tubes and similar containers; machinery for aerating beverages

Sub-heading 8472 30 00 inter alia covers machines for closing or sealing mails.

Both the headings appear to be relevant for the product.
in question. However, chapter note 2 to chapter 84 inter alia provides
that Heading No. 8422 does not cover office machinery of
Heading No. 8472. Therefore, the product in question will
be classified under 8472 30 00.

<table>
<thead>
<tr>
<th>Rule 2(a)</th>
<th>Classification of Incomplete or unfinished articles – Classification as Complete/Finished Goods</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Any reference in a heading to an article shall be taken to include a reference to that article incomplete or unfinished, provided that, as presented, the incomplete or unfinished article has the essential character of the complete or finished article.</td>
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<tr>
<td></td>
<td>It shall also be taken to include a reference to that article complete or finished (or falling to be classified as complete or finished by virtue of this rule), removed unassembled or disassembled.</td>
</tr>
<tr>
<td></td>
<td><strong>Only goods requiring minor adjustments can be construed as having the essential character:</strong> Only goods requiring minor adjustments would be construed as having the essential character. Those requiring major processes like turning, grinding, broaching, groove cutting, heat treatment, surface treatment etc, cannot be construed as having the essential character of complete and finished articles and cannot fall within the scope of rule 2(a) of the General Interpretative Rules.</td>
</tr>
<tr>
<td></td>
<td><strong>Examples:</strong> (a) Railway coaches removed without seats would still be railway coaches. (b) A car without seats would still be classified as car.</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Rule 2(b)</th>
<th>Classification of Mixtures/ Combinations of a Material / Substance with other Materials/ Substances – To be classified as that Material or Substance</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Any reference in a heading to a material or substance shall be taken to include a reference to mixtures or combinations of that material or substance with other materials or substances. Any reference to goods of a given material or substance shall be taken to include a reference to goods consisting wholly or partly of such material or substance.</td>
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<tr>
<td></td>
<td>The classification of the goods consisting of more than one material or substance shall be according to the principle of Rule 3.</td>
</tr>
<tr>
<td></td>
<td><strong>Examples:</strong> (a) The term coffee will include coffee mixed with chicory. (b) Natural rubber will cover a mixture of natural and synthetic rubber and rubber sheet would cover a sheet made up of a mixture of natural and synthetic rubber.</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Rule 3</th>
<th>Classification</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>When by application of Rule 2(b), or for any other reason,</td>
</tr>
</tbody>
</table>
Classification & Types of Customs Duties

when goods classifiable under two or more headings:

(а) **Most Specific description shall prevail over General Description [Rule 3(a)]:**

The heading, which provides the most specific description, shall be preferred to headings providing a more general description.

**Example:** Heading 8215 covers spoons, forks, ladles, skimmers, fish-knives etc. while Heading 7323 covers table, kitchen or other household articles of iron and steel. In order to classify steel forks, obviously heading 8215 is preferred to heading 7323.

However, when two or more headings each refer to only part of the materials or substances contained in mixed or composite goods or to part only of the items in a set put up for retail sale, those headings are to be regarded as equally specific in relation to those goods, even if one of them gives a more complete or precise description of the goods.

In such cases the classification of the goods shall be determined by Rule 3(b) or 3(c).

(b) **Classification on basis of Essential Character [Rule 3(b)]:**

Mixtures, composite goods consisting of different materials or made up of different components and goods put up in sets for retail sale, which cannot be classified by reference to (a), shall be classified as if they consisted of the material or component which gives them their essential character, so far as this criterion is applicable. This Rule will be applicable only on the failure of Rule 3(a).

**Example:** Hair dressing sets consisting of a pair of electric hair clippers (heading 8510), a comb (heading 9615), a pair of scissors (heading 8213), a brush (heading 9603) and a towel for textile material (heading 6304) put up in a leather case (heading 4202) – classifiable in Heading 8510.

(c) **Latter the Better Maxim [Rule 3(c)]:**

When goods cannot be classified by reference to (a)
or (b) they shall be classified under the heading, which occurs last in numerical order among those, which equally merit considerations. **This rule is also known as 'latter the better maxim'.**

**Example:** Consider the case of a convey or belting used in the colliery. The top layer is vulcanized rubber as coal has a tendency to ignite and burn on its own, the central layer is that of textiles which give strength and the bottom layer is of plastic which is friction free to move on rollers. The following headings are relevant –

- **4010** Conveyor or transmission belting;
- **5910** Transmission or conveyor belts or belting of textile material, whether or not reinforced with metal or other material.

Even though each of the above headings is equally specific, by virtue of Rule 3(c), the last heading 5910 will be the appropriate heading for classification.

<table>
<thead>
<tr>
<th>Rule 4</th>
<th>Akin Rule</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Goods, which cannot be classified in accordance with the above rules, shall be classified under the heading appropriate to the goods to which they are most akin.</strong></td>
<td></td>
</tr>
<tr>
<td><strong>Example:</strong> Consider plastic films used to filter or remove the glare of the sunlight, pasted on car glass windows, window panes etc, there is no specific entry appropriate to the goods. However, consider the following tariff entry –</td>
<td></td>
</tr>
<tr>
<td><strong>3925 30 00, Builders’ ware of plastics not elsewhere specified – shutters, blinds (including Venetian blinds).</strong></td>
<td></td>
</tr>
<tr>
<td>Even though this is not a builders’ ware of plastics, since it is most akin to the plastic blinds, it will appropriately be classified under the above heading.</td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Rule 5</th>
<th>Classification of Packing materials</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>(a) Classification of cases/ containers used for Packaging of Goods:</strong></td>
<td></td>
</tr>
<tr>
<td>Camera cases, musical instrument cases, gun cases, drawing instrument cases, necklace cases and similar containers, specially shaped or fitted to contain a specific article or set of articles, suitable for long-term use and presented with the articles for which they are intended, shall be classified with such articles when of a kind normally sold therewith. <strong>This rule does not, however, apply to containers which give the whole its essential</strong></td>
<td></td>
</tr>
</tbody>
</table>
Classification & Types of Customs Duties

(b) **Classification of packing materials and Packing Containers:**
Subject to the provisions of (a) above, packing materials and packing containers presented with the goods therein shall be classified with the goods if they are of a kind normally used for packing such goods. **However, this provision does not apply when such packing materials or packing containers are clearly suitable for repetitive use.**

<table>
<thead>
<tr>
<th>Rule 6</th>
<th>Only sub-headings at the same level are comparable</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>For legal purposes, the classification of goods in the sub-headings of a heading shall be determined according to the terms of those sub-heading and any related sub-heading notes and, <em>mutatis mutandis</em>, to the above Rules, on the understanding that only sub-headings at the same level are comparable. For the purposes of this rule, the relative Chapter and Section Notes also apply, unless the context otherwise requires.</td>
</tr>
</tbody>
</table>

(1) **General Explanatory Note No. 1 - Relevance of Single dash ["-"], Double dash ["- -"], Triple dash ["- - -"] or Quadruple dash ["-----"]:**
The General Explanatory Note No. 1 outlines the scheme of description of the Tariff items. Besides the Heading Nos. and Sub-Heading Nos. a system of dashes has also been adopted as under:-

<table>
<thead>
<tr>
<th>Where description of an article or group of articles is preceded by-</th>
<th>The said article or group of articles shall be taken to be a sub-classification of-</th>
</tr>
</thead>
<tbody>
<tr>
<td>(a) &quot;-&quot; (Single dash)</td>
<td>The article or group of articles covered by the said heading</td>
</tr>
<tr>
<td>(b) &quot;- -&quot; (Double dash)</td>
<td>The article or group of articles which has &quot;-&quot; (single dash).</td>
</tr>
<tr>
<td>(c) &quot;- - -&quot; (Triple dash) or &quot;-----&quot; (Quadruple dash)</td>
<td>The immediately preceding description of article or group of articles which has &quot;-&quot; (single dash) or &quot;-&quot; (double dash).</td>
</tr>
</tbody>
</table>

(2) **General Explanatory Note No. 2 - Meaning of abbreviation "%" in relation to the rate of duty:**
The abbreviation "%" in any column of this Schedule in relation to the rate of duty indicates that duty on the goods to which the entry relates shall be charged on the basis of the value of the goods as defined in Section 14 of the Customs Act, 1962, the duty being equal to such percentage of the value as is indicated in that column.
(3) **If preferential rate not specified - Standard Rate Applicable:**

In any entry, if no rate of duty is shown in column (5), the rate shown under column (4) shall be applicable.

**Note:**

'Standard Unit of Quantity' is a unit of measure. It has been prescribed in column 3 of the First Schedule to the Tariff for each tariff item to facilitate the collection, comparison and analysis of trade statistics. The unit of measure is indicated by abbreviations. Some abbreviations are cc-cubic centimeter, cm-centimetre(s), g-gram(s), mt-Metric Tonne. An importer/manufacturer should use single standard unit of quantity. Use of different units of quantity for the same goods has been causing serious problems in data analysis for National Import Data Base.
PART 3: TYPES OF DUTIES

Social Welfare Surcharge (SWS) on imported goods [Section 110 of Finance Act, 2018 w.e.f. 02-02-2018]:
SWS is a duty of Customs levied for the purpose of Union on the goods specified in the First Schedule to the Customs Tariff Act, 1975, being goods imported into India.

(a) **Purpose of levy**: SWS is levied to fulfil the commitment of the Government to provide and finance education, health and social security.

(b) **Calculation of SWS**: SWS shall be calculated @ 10% on the aggregate of duties, taxes and cesses which are levied and collected by the Central Government under section 12 of the Customs Act, 1962 and any sum chargeable on the imported goods specified under any other law as an addition to, and in the same manner as, a duty of customs, but not including—
(i) the safeguard duty referred to in sections 8B and 8C of the Customs Tariff Act;
(ii) the countervailing duty referred to in section 9 of the Customs Tariff Act;
(iii) the anti-dumping duty referred to in section 9A of the Customs Tariff Act;
(iv) the Social Welfare Surcharge on imported goods i.e. no SWS shall be levied on SWS (which is a duty of customs).

(c) **No SWS on IGST and GST compensation cess**: SWS on IGST and GST compensation cess has been made exempt vide Notification No. 11/2018 dated 02-02-2018.

(d) The Social Welfare Surcharge on imported goods shall be in addition to any other duties of customs or tax or cess chargeable on such goods, under the Customs Act, 1962 or any other law for the time being in force.

Road and Infrastructure Cess on imported goods [Section 111 of Finance Act, 2018 w.e.f. 02-02-2018]:
Road and Infrastructure cess is levied as duty of customs @ Rs. 9 per litre on motor spirit (petrol) and high speed diesel (HSD) imported into India for the purpose of financing infrastructure projects.

**PREFERENTIAL DUTY**
The Central Government has the power to declare certain areas as preferential areas, the imports where from are chargeable to preferential rate of duty. Section 4 of the Customs Tariff Act, 1975 makes the following provisions in this behalf,-

**Duty leviable at standard rate unless conditions for charge of duty at preferential rate fulfilled**: The duty shall be levied and collected at the standard rates specified in the First Schedule to the Tariff. However, where in respect of any article a preferential rate of revenue duty is specified in the First Schedule, to the Customs Tariff Act, 1975 or a
preferential rate is admissible by virtue of an exemption notification under section 25 of the Customs Act, 1962, the duty shall be levied and collected at the preferential rate only if all of the following conditions are fulfilled:

(a) the importer/owner of the article must claim at the time of importation that the article is chargeable with a preferential rate of duty;

(b) the importer/owner must also claim that such article has been produced or manufactured in a preferential area;

(c) such preferential area, being a country or territory, must be notified as a preferential area by the Central Government; and

(d) the origin of such article (i.e. identification whether such article is a produce or manufacture of notified preferential area) must be determined in accordance with rules made in this behalf.

Power to discontinue or amend preferential rate:
In the interests of trade including promotion of exports, the Central Government may direct an amendment of the First Schedule so as to,-

(a) provide for discontinuance of preferential rate; or

(b) increase the preferential rate to a rate not exceeding the standard rate; or

(c) decrease the preferential rate.
PART 4: ADDITIONAL DUTIES OF CUSTOMS

Additional duty of customs equal to excise duty (also known as CVD) [Section 3(1)]:
Any article which is imported into India shall be liable to an additional duty of customs equal to the excise duty for the time being leviable on a like article, if produced or manufactured in India.

In case if a like article is not so produced or manufactured, then an additional duty of customs will be leviable equal to the excise duty for the time being leviable on the class or description of articles to which the imported article belongs, and where such duty is leviable at different rates, the highest rate of excise duty shall be taken for calculating additional duty of customs.

Value for Additional Duty of Customs:
If the excise duty leviable on the like article is leviable on percentage of its value, then the additional duty to which the imported article shall be so liable will be calculated at that percentage of the value of the imported article.

Rate of additional duty on alcoholic liquor for human consumption:
In case of any alcoholic liquor for human consumption imported into India, the Central Government may notify the rate of additional duty,-
(a) having regard to the excise duty for the time being leviable on a like alcoholic liquor produced or manufactured in different States; or
(b) if a like alcoholic liquor is not produced or manufactured in any State, then, having regard to the excise duty which would be leviable for the time being in different States on the class or description of alcoholic liquor to which such imported alcoholic liquor belongs.

If any article is not subjected to excise duty, then no additional duty of customs can be levied:
The Supreme Court in Hyderabad Industries Ltd. v. UOI [1999] 108 ELT 321 (SC), has held that in case if any process does not amount to manufacture or production, then such article cannot be subjected to excise duty. On importation of such article into India, no additional duty of customs can be levied.

In case if any article is unconditionally exempt from excise duty then additional duty of customs shall also be exempt. The Supreme Court in Aidek Tourism Services Pvt. Ltd. v. CCus. [2015] 318 ELT 3 (SC) held that rate of additional duty leviable under section 3(1) of the Customs Tariff Act, 1975 would be only that which is payable under the Central Excise Act, 1944 on a like article.
Therefore, the importer would be entitled to payment of concessional/ reduced or nil rate of countervailing duty if any notification is issued providing exemption/ remission of excise duty with respect to a like article if produced/ manufactured in India.

**Special additional duty of customs equal to sales-tax/VAT (also known as Special CVD) [Section 3(5)]:**

If the Central Government is satisfied that it is necessary in the public interest to levy on any imported article such additional duty as would counter-balance the sales tax, value added tax, local tax or any other charges for the time being leviable on a like article on its sale, purchase or transportation in India then it may, by notification direct that such imported article shall be liable to an additional duty at a rate not exceeding 4% of the value of the imported article as specified in that notification.

The expression "sales tax, value added tax, local tax or any other charges for the time being leviable on a like article on its sale, purchase or transportation in India" means the sales tax, value added tax, local tax or other charges for the time being in force, which would be leviable on a like article if sold, purchased or transported in India or, if a like article is not so sold, purchased or transported, which would be leviable on the class or description of articles to which the imported article belongs, and where such taxes, or charges as the case may be are leviable at different rates, the highest rate or charge as the case may be shall be taken.

**Mode of calculation of Additional duty of customs u/s 3(1) & 3(5) :**

The additional duty of customs under section 3(1) and 3(5) of the Custom Tariff Act on any imported article shall be calculated as follows -

<table>
<thead>
<tr>
<th>Description</th>
<th>Formula</th>
</tr>
</thead>
<tbody>
<tr>
<td>Assessable value u/s 14(1) or Tariff Value u/s 14(2) of Customs Act</td>
<td>[A] XX</td>
</tr>
<tr>
<td>Add: Basic duty of customs u/s 12 on (A) above and other duties (See Note)</td>
<td>[B] XX</td>
</tr>
<tr>
<td>Value for the purposes of levy of additional duty of customs u/s 3(1) [A +</td>
<td>[C] XX</td>
</tr>
<tr>
<td>B]</td>
<td></td>
</tr>
<tr>
<td>Add: Additional duty of customs u/s 3(1) = Excise Duty leviable in India</td>
<td>[D] XX</td>
</tr>
<tr>
<td>computed on (C) above</td>
<td></td>
</tr>
<tr>
<td>Add: SWS @ 10% on ((B) + (D))]</td>
<td>[E] XX</td>
</tr>
<tr>
<td>Value for the purposes of levy of additional duty of customs u/s 3(5) [C +</td>
<td>[F] XX</td>
</tr>
<tr>
<td>D + E]</td>
<td></td>
</tr>
<tr>
<td>Add: Additional duty of customs u/s 3(5) computed on (F) above</td>
<td>[G] XX</td>
</tr>
<tr>
<td>Total cost of imported goods [F + G]</td>
<td>[H] XX</td>
</tr>
<tr>
<td>Total Customs Duty payable = [H - A], or [B + D + E + G]</td>
<td></td>
</tr>
</tbody>
</table>

**Note:** Non Inclusion of duties : In computation of value for levy of additional duty of customs, the following duties shall not be included:-

(a) Additional duty of customs referred to in Section 3(1), (3), (5), (7) and (9) of the CTA, 1975;
(b) The safeguard duty referred to in Sections 8B and 8C of the CTA, 1975;
(c) The countervailing duty referred to in Section 9 of the CTA, 1975; and
(d) The anti-dumping duty referred to in Section 9A of the CTA, 1975.
Note: Due to introduction of GST, the applicability of additional duty of customs is very limited. GST is levied on all supplies of goods and/or services except supply of alcoholic liquor for human consumption. Further, GST on the supply of petroleum crude, high speed diesel, motor spirit (commonly known as petrol), natural gas and aviation turbine fuel shall be levied with effect from such date as may be notified by the Government on the recommendations of the Council. Thus, additional duty of customs will be levied only on the few products not leviable to GST.

Integrated tax [Section 3(7)]:
Any article which is imported into India shall, in addition, be liable to integrated tax at such rate, not exceeding 40% as is leviable under section 5 of the Integrated Goods and Services Tax Act, 2017 on a like article on its supply in India, on the value of the imported article as determined under Section 3(8).

Mode of calculation of Integrated Tax u/s 3(7) [Section 3(8)]:
The Integrated tax under section 3(7) of the Custom Tariff Act on any imported article shall be calculated as follows -

<table>
<thead>
<tr>
<th>Description</th>
<th>Formula</th>
</tr>
</thead>
<tbody>
<tr>
<td>Assessable value u/s 14(1) or Tariff Value u/s 14(2) of Customs Act</td>
<td>[A] xx</td>
</tr>
<tr>
<td>Add: Basic duty of customs (BCD) u/s 12 on (A) above and any sum chargeable</td>
<td>[B]</td>
</tr>
<tr>
<td>on that article under any law for the time being in force as an addition to,</td>
<td></td>
</tr>
<tr>
<td>and in the same manner as, a duty of customs</td>
<td></td>
</tr>
<tr>
<td>Add: SWS @ 10% of BCD i.e. 10% of (B)</td>
<td>[C] xx</td>
</tr>
<tr>
<td>Value for the purposes of levy of Integrated Tax u/s 3(7) [A + B + C]</td>
<td>[D] xx</td>
</tr>
<tr>
<td>Add: Integrated Tax (IT) u/s 3(7) = Applicable Rate of Integrated tax</td>
<td>[D] xx</td>
</tr>
<tr>
<td>computed on (D) above (Integrated tax will be exclusive of SWS, as</td>
<td></td>
</tr>
<tr>
<td>SWS on Integrated tax have been exempted vide Notification No. 13/2018-Cus.</td>
<td></td>
</tr>
<tr>
<td>dated 02-02-2018</td>
<td></td>
</tr>
</tbody>
</table>

Note: Non Inclusion of duties: In computation of value for levy Integrated tax the following duties shall not be included,-

(a) Integrated tax referred to in Section 3(7) the CTA, 1975;
(b) GST compensation cess referred to in Sections 3(9) of the CTA, 1975.

Value for levy of integrated tax in respect of warehoused goods [Section 3(8A)]:
Where the goods deposited in a warehouse under the provisions of the Customs Act, 1962 are sold to any person before clearance for home consumption or export under the said Act, the value of such goods for the purpose of calculating the integrated tax under Section 3(7) shall be, —

(a) where the whole of the goods are sold, the value determined under Section 3(8) or the transaction value of such goods, whichever is higher; or
(b) where any part of the goods is sold, the proportionate value of such goods as determined under Section 3(8) or the transaction value of such goods, whichever is higher.

**Last transaction value to be taken**: However, where the whole of the warehoused goods or any part thereof are sold more than once before such clearance for home consumption or export, the transaction value of the last such transaction shall be the transaction value for the purposes of clause (a)/(b).

**Unsold goods - Value to be determined as per Section 3(8)**: In respect of warehoused goods which remain unsold, the value or the proportionate value, as the case may be, of such goods shall be determined in accordance with the provisions of Section 3(8).

"Transaction value", in relation to warehoused goods, means the amount paid or payable as consideration for the sale of such goods. [Explanation]

**GST Compensation Cess [Section 3(9) of the Customs Tariff Act]**:
Any article which is imported into India shall, in addition, be liable to the goods and services tax compensation cess at such rate, as is leviable under section 8 of the Goods and Services Tax (Compensation to States) Cess Act, 2017 on a like article on its supply in India, on the value of the imported article as determined under Section 3(10).

**Mode of calculation of GST Compensation Cess 3(9) [Section 3(10)]**:
The GST Compensation Cess under Section 3(9) of the Custom Tariff Act on any imported article shall be calculated as follows -

<table>
<thead>
<tr>
<th>Description</th>
<th>Formula</th>
</tr>
</thead>
<tbody>
<tr>
<td>Assessable value u/s 14(1) or Tariff Value u/s 14(2) of Customs Act</td>
<td>[A]</td>
</tr>
<tr>
<td>Add: Basic duty of customs (BCD) u/s 12 on (A) above and any sum chargeable on that article under any law for the time being in force as an addition to, and in the same manner as, a duty of customs</td>
<td>[B]</td>
</tr>
<tr>
<td>Add: SWS @ 10% of BCD i.e. 10% of (B)</td>
<td>[C]</td>
</tr>
<tr>
<td>Value for the purposes of levy of GST Compensation Cess u/s 3(9) [A + B + C]</td>
<td>[D]</td>
</tr>
<tr>
<td>Add: GST Compensation Cess u/s 3(9) = Applicable Rate of GST compensation cess computed on (D) above (GST compensation cess will be exclusive of SWS as SWS on GST Compensation cess have been exempted vide Notification No. 13/2018-Cus. dated 2-2-2018</td>
<td>xx</td>
</tr>
</tbody>
</table>

**Note: Non Inclusion of duties**: In computation of value for GST Compensation Cess, the following duties shall not be included,-

(a) integrated tax referred to in Section 3(7) the CTA, 1975;

(b) GST compensation cess referred to in Sections 3(9) of the CTA, 1975.
**Value for levy of GST compensation cess in respect of warehoused goods [Section 3(10A)]**

Where the goods deposited in a warehouse under the provisions of the Customs Act, 1962 are sold to any person before clearance for home consumption or export under the said Act, the value of such goods for the purpose of calculating the goods and services tax compensation cess under Section 3(9) shall be,—

(a) where the whole of the goods are sold, the value determined under Section 3(10) or the transaction value of such goods, whichever is higher; or

(b) where any part of the goods is sold, the proportionate value of such goods as determined under Section 3(10) or the transaction value of such goods, whichever is higher.

**Last transaction value to be taken**: However, where the whole of the warehoused goods or any part thereof are sold more than once before such clearance for home consumption or export, the transaction value of the last of such transaction shall be the transaction value for the purposes of clause (a)/(b).

**Unsold goods - Value to be determined as per Section 3(10)**: In respect of warehoused goods which remain unsold, the value or the proportionate value, as the case may be, of such goods shall be determined in accordance with the provisions of Section 3(10).

"Transaction value", in relation to warehoused goods, means the amount paid or payable as consideration for the sale of such goods. [Explanation]

**Mode of calculation of Integrated Tax u/s 3(7) & GST Compensation Cess 3(9) [Section 3(8) & 3(10) of the Customs Tariff Act]**:

The Integrated tax under section 3(7) and GST Compensation Cess under Section 3(9) of the Custom Tariff Act on any imported article shall be calculated as follows -

<table>
<thead>
<tr>
<th>Step</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Assessable value u/s 14(1) or Tariff Value u/s 14(2) of Customs Act [A]</td>
</tr>
<tr>
<td>2</td>
<td>Add: Basic duty of customs (BCD) u/s 12 on (A) above and any sum chargeable on that article under any law for the time being in force as an addition to, and in the same manner as, a duty of customs [B]</td>
</tr>
<tr>
<td>3</td>
<td>Add: SWS @ 10% of BCD i.e. 10% of (B) [C]</td>
</tr>
<tr>
<td>4</td>
<td>Value for the purposes of levy of Integrated Tax u/s 3(7) and GST Compensation Cess u/s 3(9) [A + B + C] [D]</td>
</tr>
<tr>
<td>5</td>
<td>Add: Integrated Tax (IT) u/s 3(7) = Applicable Rate of Integrated tax computed on (D) above (Integrated tax will be exclusive of SWS as SWS on Integrated tax have been exempted vide Notification No. 13/2018-Cus. dated 02-02-2018 [E]</td>
</tr>
<tr>
<td>6</td>
<td>Add: GST Compensation Cess u/s 3(9) = Applicable Rate of GST compensation cess computed on (D) above (GST compensation cess will be exclusive of SWS as SWS on GST Compensation cess [F]</td>
</tr>
</tbody>
</table>
have been exempted vide Notification No. 13/2018-Cus. dated 2-2-2018

<table>
<thead>
<tr>
<th>Total cost of imported goods [D + E + F]</th>
<th>[G] xx</th>
</tr>
</thead>
<tbody>
<tr>
<td>Total Customs Duty payable = [G - A], or [B + C + E + F]</td>
<td>xx</td>
</tr>
</tbody>
</table>

**Note: Non Inclusion of duties**: In computation of value for levy Integrated Tax and GST Compensation Cess, the following duties shall not be included,-

(a) Integrated tax referred to in Section 3(7) the CTA, 1975;
(b) GST compensation cess referred to in Sections 3(9) of the CTA, 1975.

**Q1 - Computation of custom duty**: The assessable value of imported goods is Rs. 10,00,000. The basic customs duty is 10%. Integrated tax leviable under section 3(7) of the Customs Tariff Act, 1975 is 12%. GST Compensation Cess is leviable @ 15%. Social Welfare Surcharge @ 10%. Compute total customs duty and imported tost of the goods, if imports are made on or after 02-02-2019.

**Q2 - Computation of custom duty**: The assessable value of imported goods is Rs. 10,00,000. The basic customs duty is 10%. Integrated tax leviable under section 3(7) of the Customs Tariff Act, 1975 is 12%. GST compensation cess: Nil. Social Welfare Surcharge @ 10%. The goods were deposited in custom bonded warehouse. The goods were sold in warehouse at a transaction value of Rs. 15,00,000 before clearance from warehouse. Compute total customs duty.

**Q. Examine the validity of the statement**: Goods exempt from basic customs duty would automatically be exempt from Integrated tax. (Nov. 2007, 2 Marks), (2 Marks, Nov. 2015)

**Ans**: The statement is not correct. Exemption from basic customs duty would not mean exemption from Integrated Tax. When goods are exempted from basic customs duty in terms of Section 12 of the Customs Act, 1962 it would not mean that they are exempted from Integrated tax also, as basic customs duty is leviable by virtue of Section 12 of the Customs Act, 1962 while Integrated tax is leviable under section 3(7) of the Customs Tariff Act, 1975. - *Eastern Shipping Mills & Indus. Ltd. v. UOI [1988] 37 ELT 14 (Cal)*.

**Q. Write a note on Levy of a lower rate of duty under a trade agreement.**

**Ans**: Levy of a lower rate of duty under a trade agreement [Section 5]: The Government of India can enter into a trade agreement with a Government of foreign country or territory for levy of duty at a lower rate. In case if any goods are imported under a trade agreement, then duty as per the trade agreement shall be levied. The decision of Central Government shall be final whether trade agreement applies to a particular country or territory or not.
PART 5: OTHER DUTIES

PROTECTIVE DUTY

(1) **Power of Central Government to levy protective duties in certain cases [Section 6]:**
According to Section 6 of the Customs Tariff Act, 1975, the Central Government on the recommendation of the Tariff Commission of India levy protective duty for protection of interest of domestic industry established in India. To impose Protective duty, the Central Government has to introduce a Bill and get it passed in the Parliament. Such duty is deemed to have been specified in the First Schedule as the duty leviable in respect of such goods. Protective duty is characterized in column 5 of tariff schedule as protective.

(2) **Duration of protective duties and power of Central Government to alter them [Section 7]:**
The duty shall have effect only up to and inclusive of the date, if any, specified in First Schedule. The Central Government has the powers to reduce or increase such duty where it deems fit by a notification in the Official Gazette and get the approval of the same in the Parliament.

Q. Discuss the following - (i) Emergency power of Central Government to increase or levy export duties; and (ii) Emergency power of Central Government to increase import duties. (2 Marks, Nov. 2015)

**Ans:** The aforesaid points have been discussed below -

(i) **Emergency power of Central Government to increase or levy export duties [Section 8]:** Where the Central Government is satisfied that in respect of any article, *whether included in Second Schedule or not,* -

- The export duty leviable thereon should be increased or an export duty should be levied, and
- Circumstances exist which render it necessary to take immediate action, then, the Central Government may, by notification in Official Gazette, direct an amendment of the Second Schedule so as to provide for increase or levy of export duty on that article.

(ii) **Emergency power of Central Government to increase import duties [Section 8A]:** Where in respect of any article included in the First Schedule, the Central Government is satisfied that,-
The import duty leviable thereon u/s 12 of the Customs Act, 1962 should be increased; and

Circumstances exist which render it necessary to take immediate action, it may, by notification in the Official Gazette, direct an amendment of the First Schedule so as to provide for an increase in the import duty leviable on such article to such extent as it thinks necessary.

However, the Central Government shall not issue any notification for substituting the rate of import duty in respect of any article as specified by an earlier notification, unless such earlier notification has been approved with or without modifications.

**SAFEGUARD DUTY**

The provisions regard to imposition of "Safeguard duty" under Section 8B are as under-

(1) **Imposition of Safeguard duty:**
Safeguard duty can be imposed if the Central Government on enquiry finds that the imports in increased quantity -

(a) have caused serious injury to domestic industry or,

(b) is threatening to cause serious injury to domestic industry.

It can be imposed irrespective of origin of imported goods.

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

"Threat of serious injury" means a clear and imminent danger of serious injury.

(2) **Safeguard duty cannot be imposed on articles originating from developing countries:**
In case of articles originating from a developing country (i.e. a country notified by the Government of India for purpose of levy of such duty), this duty cannot be imposed under following circumstances,-

(a) If the imports of such article from 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 3% 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.

(3) **Imposition of Provisional Safeguard Duty:**
Section 8B(2) enables the Central Government to impose a provisional safeguard duty in appropriate cases, pending the determination of the issues as to whether the import of the concerned article to India would cause or threaten to cause serious injury to the domestic industry. The duty so collected, shall be refunded if, on a final determination, the Central Government is of the opinion that neither
any injury has been caused to the domestic industry, nor there is any such threat to cause serious injury.

The Provisional safeguard duty cannot remain in force for more than 200 days from the date when it was first imposed.

(4) **Period of Imposition:**

The safeguard duty shall, unless it is revoked earlier, be in force till the expiry of **4 years** from the date of its imposition. However, the Central Government can extend the period of imposition but total period of imposition (including extension) cannot be beyond **10 years** from the date of its imposition.

(5) **Non Imposition of Safeguard Duty:**

The safeguard duty shall not apply to articles imported by a 100% EOU or a unit in a SEZ unless,—

(a) specifically made applicable in such notifications or such impositions, as the case may be; or

(b) the article imported is either cleared as such into the domestic tariff area or used in the manufacture of any goods that are cleared into the domestic tariff area and in such cases safeguard duty shall be levied on that portion of the article so cleared or so used as was leviable when it was imported into India.

(6) **Applicability of provisions of Customs Act, 1962:**

The provisions of Customs Act, 1962 and the rules and regulations made thereunder, including those relating to the date for determination of rate of duty assessment, non-levy, short levy, refunds, interest, appeals, offences and penalties shall, as far as may be, apply to the duty chargeable under this section as they apply in relation to duties leviable under that Act.

**Q 3 - Computation of safeguard duty:** Determine the customs duty payable under Customs Tariff Act 1975 including the safeguard duty of 30% u/s 8B of the said Act with the following details available on hand:

Import of Sodium Nitrite from a developing country from 26th February, 2019 to 25th February, 2020 (both days inclusive)

Share of imports of Sodium Nitrite from the developing country against total imports of sodium Nitrite to India 4%

<table>
<thead>
<tr>
<th>Description</th>
<th>Rate</th>
</tr>
</thead>
<tbody>
<tr>
<td>Basic Customs Duty</td>
<td>10%</td>
</tr>
<tr>
<td>Integrated tax u/s 3(7) of Customs Tariff Act, 1975</td>
<td>18%</td>
</tr>
<tr>
<td>GST compensation Cess</td>
<td>Nil</td>
</tr>
<tr>
<td>Social Welfare Surcharge</td>
<td>10%</td>
</tr>
</tbody>
</table>

30.19
Q 4 - Computation of Safeguard duty: Determine the safeguard duty payable by X Ltd., Y Ltd., and Z Ltd., and A Ltd. under section 813 of the Customs Tariff Act, 1975 from the following:

Import of Sodium Nitrite from developing and developed countries from 26th February, 2019 to 25th February, 2020 (both days inclusive) are as follows:

<table>
<thead>
<tr>
<th>Importer</th>
<th>Country of Import</th>
<th>Rs. in crores</th>
</tr>
</thead>
<tbody>
<tr>
<td>X Ltd.</td>
<td>Developing country</td>
<td>70</td>
</tr>
<tr>
<td>Y Ltd.</td>
<td>Developing country</td>
<td>82</td>
</tr>
<tr>
<td>Z Ltd.</td>
<td>Developing country</td>
<td>52</td>
</tr>
<tr>
<td>A Ltd.</td>
<td>Developing country</td>
<td>50</td>
</tr>
<tr>
<td>Others</td>
<td>Developed country</td>
<td>2,246</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td></td>
<td><strong>2,500</strong></td>
</tr>
</tbody>
</table>

Note: Safeguard duty 30%.

**ANTI SUBSIDY DUTY**

Countervailing duty on subsidized articles [Section 9]:

Section 9 of the Customs Tariff Act, 1975 provides for levy of countervailing duty on subsidized article the relevant provisions are as under -

(1) **Imposition of Countervailing duty:**

In case any foreign country or territory gives any subsidy, directly or indirectly, upon the manufacture or production, transportation or exportation of such article into India, then the Central Government on recommendation of anti subsidy authority levy countervailing duty not exceeding the amount of such subsidy. This duty is also known as anti-subsidy duty.

Subsidy shall be deemed to exist if -

(a) There is financial contribution by the Government or any public body in the exporting or producing country or territory. Such contribution may include direct transfer of funds like grants, loans etc., waiver of revenue due to the Government etc.

(b) There is any form of income or price support granted or maintained by the Government, which results in increased export of such article or reduced import of any article into that country.

(c) A Government makes payments to a funding mechanism, or entrusts or directs a private body to carry out one or more of the type of functions specified above which would normally be vested in the Government and the practice in, no real sense, differs from practices normally followed by Governments.

(2) **CVD on subsidized article to be extended on articles imported by Altering form/Description [Sec 9 (1A)]:**
Where the Central Government, on such inquiry as it considers necessary, is of the opinion that circumvention of countervailing duty imposed under section 9(1) has taken place, —

(a) either by altering the description or name or composition of the article on which such duty has been imposed or
(b) by import of such article in an unassembled or disassembled form or
(c) by changing the country of its origin or export or
(d) in any other manner,

whereby the countervailing duty so imposed is rendered ineffective, it may extend the countervailing duty to such other article also. [Amended by Finance (No. 2) Act, 2019 w.e.f. 01-08-2019]

(3) **No Countervailing duty to be imposed in Certain Cases:**

The countervailing duty shall not be levied unless it is determined that,—

(a) the subsidy relates to export performance;
(b) the subsidy relates to the use of domestic goods over imported goods in the export article; or
(c) the subsidy has been conferred on a limited number of persons engaged in the manufacture, production or export of articles.

(4) **Provisional Duty:**

The Central Government, pending the determination of the amount of subsidy, may impose a provisional countervailing duty not exceeding the amount of such subsidy as provisionally estimated by it. If the provisional countervailing duty exceeds the subsidy as so determined, then the Central Government shall,—

(a) reduce such countervailing duty as soon as may be; and
(b) refund the countervailing duty collected in excess of such reduced countervailing duty.

(5) **Retrospective levy:**

The Central Government has powers to levy countervailing duty retrospectively if massive imports in a relatively short period have caused injury to the domestic industry. Such duty can be imposed retrospectively from a date prior to the date of imposition of provisional countervailing duty but not beyond 90 days from the date of such notification of provisional duty.

(6) **Duration of levy - 5 Years:**

The countervailing duty imposed under this section shall, unless revoked earlier, cease to have effect on the expiry of 5 years from the date of such imposition.

The Central Government may extend the period of such imposition for a further period of 5 years, if, in a review, it is of the opinion that the cessation of such duty
is likely to lead to continuation or recurrence of subsidization and injury and in that case, such further period shall commence from the date of order of such extension.

Where a review initiated before the expiry of the aforesaid period of 5 years has not come to a conclusion before such expiry, the countervailing duty may continue to remain in force pending the outcome of such a review for a further period not exceeding 1 year.

(7) **Provisions of Customs Act, 1962 to Apply:**
The provisions of Customs Act, 1962 and the rules and regulations made thereunder, including those relating to the date for determination of rate of duty, assessment, non-levy, short levy, refunds, interest, appeals, offences and penalties shall, as far as may be, apply to the duty chargeable under this section as they apply in relation to duties leviable under that Act.

**ANTI DUMPING DUTY**

**Anti-dumping duty on dumped articles [Section 9A]:** The provisions relating to levy of anti-dumping duty are as under -

(1) **Power to levy Anti Dumping Duty:**
The Central Government has the power to levy anti-dumping duty on dumped articles. However, the amount of anti dumping duty cannot exceed the margin of dumping.

**Margin of dumping** in relation to an article, means the difference between its export price and its normal value.

**Normal Value,** in relation to the article, means,-

(a) Comparable domestic price of the like article, in the ordinary course of trade when destined for consumption in exporting country or territory, as determined in accordance with rules made in this behalf.

(b) In circumstances where there are no sales of the like article in the domestic market of exporting country or the sales are under circumstances which do not permit a proper comparison, the normal value shall be either:

(i) comparable representative price of the like article when exported from the exporting country/ territory to an appropriate third country as determined in accordance with rules made in this behalf; or

(ii) cost of production of the said article in the country of origin along with reasonable addition for administrative, selling and general costs, and for profits, as determined in accordance with the rules. However, in case of import of article from a country other than country of origin, the normal value shall be determined with reference to its price in country of origin.
Export Price of the article is the price of the article exported from the exporting country. In case where there is no export price or export price is unreliable, then the export price is determined as follows:

(a) The price at which the imported articles are first sold to an independent buyer; and
(b) In case there is no independent buyer or such articles are not resold in the condition in which it was imported, then, the price is determined in accordance with the rules made in this behalf.

Margin of Dumping to be determined as per records maintained by Exporter/Producer: The margin of dumping in relation to an article, exported by an exporter or producer, under inquiry under this section, shall be determined on the basis of records concerning normal value and export price maintained, and information provided, by such exporter or producer. However, where an exporter or producer fails to provide such records or information, the margin of dumping for such exporter or producer shall be determined on the basis of facts available.

(2) Anti-dumping duty to be extended on articles imported by Altering form/Description:
Where the Central Government, on such inquiry as it may consider necessary, is of the opinion that circumvention of anti-dumping duty has taken place,-

(a) either by altering the description or name or composition of the article subject to such anti-dumping duty; or
(b) by import of such article in an unassembled or disassembled form; or
(c) by changing the country of its origin or export; or
(d) in any other manner,
whereby the anti-dumping duty so imposed is rendered ineffective, it may extend the anti-dumping duty to such article or an article originating in or exported from such country, as the case may be.

(3) Non Imposition of Anti Dumping Duty:
Unless specifically provided, anti dumping duty shall not be imposed on goods imported by a,-

- 100% EOU, or
- unit located in SEZ.

(4) Anti dumping duty leviable on goods imported by EOU and cleared to DTA:
If the article imported by a 100% EOU is,-

- either cleared as such into the domestic tariff area; or
used in the manufacture of any goods that are cleared into the domestic tariff area,
then, in such cases, anti-dumping duty shall be levied on that portion of the article so cleared or so used as was leviable when it was imported into India.

(5) **Other points similar to Section 9:**
The other provisions relating to this duty are same as that of countervailing duty on subsided article.

(6) **Refund of anti-dumping duty in certain cases [Section 9AA]:**
Where upon determination by an officer authorised in this behalf by the Central Government, an importer proves to the satisfaction of the Central Government that he has paid anti-dumping duty imposed under section 9A(1) on any article, in excess of the actual margin of dumping in relation to such article,-
(a) the Central Government shall, as soon as may be, reduce such anti-dumping duty as is in excess of actual margin of dumping so determined, in relation to such article or such importer, and
(b) such importer shall be entitled to refund of such excess duty.
However, the importer will not be entitled for refund of provisional antidumping duty which is refundable under section 9A(2).

(7) **Rules:**
For this purpose refund of **Anti-Dumping Duty (Paid in Excess of Actual Margin of Dumping) Rules, 2012** have been framed and relevant provisions are as under -

(a) **Filing of Application and time limit:** An application for refund is to be made to Assistant Commissioner Deputy Commissioner of Customs at the port of importation in prescribed form **within 3 months** from date of publication of notification issued by Central Government reducing the anti-dumping duty. In case where such duty becomes refundable as a consequence of judgment, decree, order or direction of the Court, Appellate Tribunal or Authority, the application is to be filed within 3 months from the date of such judgment, decree, order or direction.

(b) **Deficiency in application filed by Importer:** In case of any deficiency in the application filed by importer, the same shall be returned to him **within one month** stating the deficiencies. The importer may re-submit the application after removing the deficiencies within one month of receipt of deficiency memo.

(c) **Refund of Claim to be made within 90 days:** If the Assistant Commissioner/Deputy Commissioner is satisfied that the duty is to be refunded, in whole or in part, he may make an order accordingly and the amount so determined shall be refunded to the importer **within 90 days** of
the receipt of the application (or application resubmitted after rectification of deficiency), subject to doctrine of unjust enrichment.

(8) **Explain the situations when anti-subsidy and anti-dumping duty cannot be levied?**

No levy under Section 9 or Section 9A in certain cases [Section 9B]: Countervailing duty (CVD) or Antidumping duty (ADD) shall not be levied in following cases under section 9B.-

1. Countervailing duty and anti-dumping duty shall not be levied together on any article to compensate for the same situation of dumping or export subsidization.
2. The Central Government shall not levy any countervailing duty or antidumping duty on such or like articles that enjoy exemptions from duties or taxes or refund of such duties or taxes when meant for consumption in the country of origin or exportation.
3. The Central Government shall not levy any countervailing duty or antidumping duty on article imported from specified countries i.e. the member country of the World Trade Organisation or from a country with whom Government of India has a most favoured nation agreement, unless subsidy or dumping is proved as per the rules framed in that behalf.
4. The Central Government may not levy any countervailing duty under Section 9, at any time, upon receipt of satisfactory Voluntary undertakings from the Government of the exporting country or territory agreeing to eliminate or limit the subsidy or take other measures concerning its effect, or the exporter agreeing to revise the price of the article and the Central Government is satisfied that the injurious effect of the subsidy is eliminated thereby.
5. The Central Government may not levy any anti-dumping duty under Section 9A, at any time, upon receipt of satisfactory voluntary undertaking from any exporter to revise its prices or to cease exports to the area in question at dumped price and if the Central Government is satisfied that the injurious effect of dumping is eliminated by such action.

(9) **What are the provisions of appeal against the order imposing/ reviewing any anti-subsidy duty or antidumping duty or safeguard duty?**

(a) Appeal [Section 9C]: An appeal against the order of determination or review thereof shall lie to the CESTAT, in respect of the existence, degree and effect of—

(i) any subsidy or dumping in relation to import of any article; or
(ii) import of any article into India in such increased quantities and under such condition so as to cause or threatening to cause serious injury to domestic industry requiring imposition of safeguard duty in relation to import of that article. [Amended by Finance (No. 2) Act, 2019 w.e.f. 01-08-2019]
(b) Hearing before special bench: This appeal shall be heard by special bench constituted by the President of Appellate Tribunal.

(c) Time limit of filing appeal: Every appeal shall be filed within 90 days of the date of order tinder appeal. The Appellate Tribunal may entertain any appeal after the expiry of the said period of 90 days, if it is satisfied that the appellant was prevented by sufficient cause from filing the appeal in time.

(d) Fees for Appeal: The appeal shall be accompanied by a fee of Rs. 15,000. Every application made before the Tribunal for grant of stay or rectification of mistake or for restoration of appeal or application shall be accompanied by a fee of Rs. 500.

(e) Passing of order: After giving the parties to the appeal an opportunity of being heard, the Appellate Tribunal may pass such orders thereon as it thinks fit, confirming, modifying or annulling the order appealed against.

Q 5 – Computation of anti dumping duty: Ms. X imported certain goods weighing 2,500 kgs with CIF value US $ 1,20,000. Exchange rate was 1 US $ = Rs. 65 on the date of presentation of bill of entry. Basic customs duty is chargeable @ 10% and SWS as applicable. There is no Integrated tax and GST Compensation Cess payable on these goods, if supplied in India. As per Notification issued by the Government of India, anti-dumping duty has been imposed on these goods. The anti-dumping duty will be equal to difference between amount calculated @ US $ 80 per kg and ‘landed value’ of goods. You are required to compute custom duty and anti-dumping duty payable by Ms X. (5 Marks, May 2010-NS)
PART 6: PROJECT IMPORTS AND ELIGIBLE PROJECTS

(1) Need of heading Project Import:
Setting up of a project in India may require a number of machines and equipments to be imported. This importation may spread over a period of time and thus assigning values and paying heavy customs duty on imported machineries make the initial project a cumbersome and costly process. Hence, concept of 'Project Import' has been introduced under heading 9801 of Customs Tariff Act, 1975.

In the GST regime, for the purpose of levying IGST all the imports under the project import scheme will be classified under heading 9801 and duty shall be levied @ 18%.

(2) Scope of Project Import:
Machines, instruments, apparatus and appliances for research and development purposes, components of raw material required for manufacture of aforesaid items etc., utilized for initial setting up of project or substantial expansion of the existing project (i.e. increase in installed capacity by more than 25%) are covered under this heading. Spares etc. essential for maintenance of plant or a project are eligible only upto 10% of the value of goods and can be imported under project imports.

(3) Eligible Projects:
The eligible projects are -
(a) Industrial plant;
(b) Irrigation project;
(c) "Power project;
(d) Mining project;
(e) Oil & other mineral exploration project;
(f) Other projects as notified by the Central Government.
(4) **Minimum Investment:**
Minimum investment criteria has not been specified.

(5) **Construction equipments required for set-up/substantial expansion are eligible for import under Project Imports:**
Construction equipments, required for initial setting up or substantial expansion of registered projects are eligible for import as business equipments under Tariff Heading 9801. After completion of intended use of construction equipment, they may be transferred to other registered project under Tariff heading 9801, on recommendations of sponsoring authority.

| IVRCL Infrastructure and Projects Ltd. v. CC [2015] 319 ELT 194 (SC) | Rule 2(a) of Rules for Interpretation of Tariff will have no application to an exemption notification under section 25 of the Customs Act, 1962. Where the "basic characters" of the Hot Mix plant for construction of roads was imported while the steel structure containers required for their assembling was indigenously procured, the exemption available on the import of the "plant" cannot be availed as what was imported was "parts of the plant" and not the "plant" in its entirety. Statements made to Customs Officer are admissible in evidence under section 108 of the Customs Act, 1962 and the Court has to merely scrutinize whether the admissions made were voluntary. |

***************************************************************************
PART 1: CONCEPT OR VALUATION AND TARIFF VALUE

The value of the goods (i.e. imported goods or export goods) is determined in accordance with the provisions of Section 14 of the Customs Act, 1962.

(1) Valuation of goods [Section 14(1)]:
   For the purposes of the Customs Tariff Act, 1975, or any other law for the time being in force, —
   ➢ the value of the -
     (a) imported goods, and
     (b) export goods,
   shall be the transaction value of such goods, that is to say, the price actually paid or payable for the goods when sold -
     (a) for export to India for delivery at the time and place of importation, or
     (b) for export from India for delivery at the time and place of exportation,
   ➢ where the buyer and seller of the goods are not related, and
   ➢ price is the sole consideration for the sale,
   ➢ subject to such other conditions as may be specified in the rules made in this behalf.

(2) Inclusions in transaction value in the case of imported goods:
The transaction value in the case of imported goods shall include, in addition to the price as aforesaid, any amount paid or payable for costs and services, including commissions and brokerage, engineering, design work, royalties and licence fees, costs of transportation to the place of importation, insurance, loading, unloading and handling charges to the extent and in the manner specified in the rules made in this behalf.

(3) Scope of valuation rules:
The rules made in this behalf may provide for,-
   (a) the circumstances in which the buyer and the seller shall be deemed to be related;
   (b) the manner of determination of value in respect of goods when there is no sale, or the buyer and the seller are related, or price is not the sole consideration for the sale, or in any other case;
   (c) the manner of acceptance of rejection of value declared by the importer or exporter where the proper officer has reason to doubt the truth or accuracy of such value, and determination of value for the purposes of this section.
(4) **Price to be computed with reference to exchange rate :**

The 'price' referred under section 14(1) is to be calculated with reference to the rate of exchange as in force **on the date on which a bill of entry is presented** under section 46, or **a shipping bill or bill of export is presented** under section 50.

(5) **Valuation of imported goods :**

Section 14(1) provides that the value of imported goods shall also include various items of costs and services to the extent provided by the rules. Hence, the value of imported goods shall be computed in accordance with Section 14(1) read with the **Customs Valuation (Determination of Value of Imported Goods) Rules, 2007** (for short "import valuation rules").

Rule 3 of import valuation rules provides that the value of the imported goods shall be the transaction value adjusted in accordance with Rule 10. However, where for any reason the transaction value cannot be determined, or, the same is not acceptable for any reason, then, the value shall be determined as per the following methods laid down in Rules 4 to 9, which are to be proceeded with **sequentially** -

(a) Transaction value of Identical goods (Rule 4);
(b) Transaction value of Similar goods (Rule 5);
(c) Deductive value (Rule 7);
(d) Computed value (Rule 8);
(e) Residual Method (Rule 9).

In all the methods of valuation given in Rules 4 to 9, adjustments for costs and services are to be made in accordance with Rule 10(2) of the said rules.

(6) **Valuation of Export Goods :**

The value of export goods shall be computed in accordance with the provisions of section 14(1) read with the **Customs Valuation (Determination of Value of Export Goods) Rules, 2007** (for short "export valuation rules").

Rule 3 of the export valuation rules provides that the value of export goods shall be the transaction value. However, where for any reason the transaction value cannot be determined, or, the same is not acceptable for any reason, then, the value shall be determined as per the following methods laid down in Rules 4 to 6, which are to be proceeded with **sequentially**-

(a) Determination of value by comparison or Comparative Value (Rule 4);
(b) Computed Value (Rule 5);
(c) Residual Method (Rule 6).

**Note:** In this chapter, first of all, the mode of valuation of imported goods has been discussed and, thereafter, the mode of valuation of export goods has been taken up.
PART 2: TARIFF VALUATION

The provisions relating to Tariff Value under the Customs Act, 1962 are discussed as under-

(1) **Tariff value**:
As per Section 2(40) of the Customs Act, 1962, 'tariff value' in relation to any goods, means the tariff value fixed in respect thereof under Section 14(2).

(2) **Overriding effect over Section 14(1)**:
The provisions of Section 14(2) has been given an overriding effect over Section 14(1).

(3) **Statutory provisions**:
As per Section 14(2) of the Act, if the CBIC is satisfied that it is necessary or expedient so to do, it may, by notification in the Official Gazette, fix tariff values for any class of imported goods or export goods, having regard to the trend of value of such or like goods, and where any such tariff values are fixed, the duty shall be chargeable with reference to such tariff value.

(4) **Goods covered**:
At present, tariff value has been fixed for some essential edible oils, brass scrap, gold or silver etc.
PART 3: VALUATION – IMPORT

3.1 HIGH SEA SALE

(1) **Meaning of high sea transactions:**
Purchase on high sea basis means that the imported goods are acquired by a buyer from the original importer while they in the high seas *i.e.*, the purchase takes place before they reach India.

(2) **Valuation in case of goods purchased on high sea basis:**
In case of imported goods purchased on high sea sales basis, the price, at which the goods are acquired by the buyer from the original importer, can be the price for the delivery of such goods at the time and place of importation and, therefore, such price would be taken to be the value of such goods. In case of more than one high sea sales, the last sale price *i.e.*, the actual high-seas-sale-contract price paid by the last buyer would be taken as the value of such goods.

<table>
<thead>
<tr>
<th><strong>Circular No. 33/2017 dated 1-8-2017</strong></th>
<th>Duty and IGST leviable only once on price paid by final importer.</th>
</tr>
</thead>
<tbody>
<tr>
<td>➢ IGST on high sea sale (s) transactions of imported goods, whether one or multiple, shall be levied and collected only at the time of importation <em>i.e.</em> when the import declarations are filed before the Customs authorities for the customs clearance purposes for the first time. Further, value addition accruing in each such high sea sale shall form part of the value on which IGST is collected at the time of clearance. Thus, every high sea sale would not be regarded as an interstate transaction so as to attract levy of IGST.</td>
<td></td>
</tr>
<tr>
<td>➢ The importer (last buyer in the chain) would be required to furnish the entire chain of documents, such as original Invoice, high-seas-sales-contract, details of service charges/commission paid etc, to establish a link between the first contracted price of the goods and the last transaction. In case of a doubt regarding the truth or accuracy of the declared value, the department may reject the declared transaction value and determination the price of the imported goods as provided in the Customs Valuation rules.</td>
<td></td>
</tr>
</tbody>
</table>
3.2 TRANSACTION VALUE

1. "Place of importation"
   means the customs station, where the goods are brought for being cleared for home consumption or for being removed for deposit in a warehouse. [Rule 2(da)]

2. Transaction Value [Rule 3(1)]:
The value of the imported goods shall be the transaction value adjusted in accordance with the provisions of Rule 10.
   According to Rule 2(g), transaction value means the value referred to in Section 14(1) of the Act. According to Section 14(1), transaction value means the 'price actually paid or payable' for goods when sold for export to India for delivery at the time and place of importation where the buyer and seller of the goods are not related and price is the sole consideration for the sale.

3. Conditions subject to which Transaction Value Acceptable:
   According Rule 3(2), the transaction value of the imported goods, shall be accepted as the value of such goods subject to fulfillment of the following conditions -
   (a) No Restrictions as to disposition or use of goods - there are no restrictions as to the disposition or use of the goods by the buyer, other than restrictions which-
      (i) are imposed or required by law or by the public authorities in India; or
      (ii) limit the geographical area in which the goods may be resold; or
      (iii) do not substantially affect the value of the goods;
   (b) Sale or price not subject to condition/ consideration - the sale or price is not subject to some condition or consideration for which a value cannot be determined in respect of the goods being valued;
   (c) Proceeds of subsequent resale no part of the proceeds of any subsequent resale, disposal or use of the goods by the buyer will accrue directly or indirectly to the seller, unless an appropriate adjustment can be made in accordance with the provisions of Rule 10; and
   (d) Related person the buyer and seller are not related, or where the buyer and seller are related, that transaction value is acceptable for customs purposes under the provisions of Rule 3(3).

   Note: In case transaction value cannot be determined if the above conditions are not fulfilled. The value shall be determined proceeding sequentially as per Rule 4 to Rule 9.

4. Charges for Post Importation Activities:
   As per interpretative notes, activities undertaken by the buyer on his own account, other than those, for which an adjustment is provided in Rule 10, are not considered to be an indirect payment to the seller, even though they might be
regarded as benefit to the seller. Hence, their cost shall not be added in determining the value of imported goods. As the price actually paid or payable refers to the price for imported goods, the cost of the activities subsequent to importation are not includible.

However, these charges are to be distinguished from the price actually paid or payable for the value of the goods in question i.e. such charges are to be shown separately in the invoice.

The following are a few examples of such charges,-

(i) Charges for construction, erection, assembly, maintenance or technical assistance, undertaken after importation on imported goods such as industrial plant, machinery or equipment;
(ii) The cost of transport after importation;
(iii) Duties and taxes in India.

5. **Related persons [Rule 2(2)]:**

Persons shall be deemed to be 'related' only if,-

(i) they are officers or directors of one another's businesses;
(ii) they are legally recognised partners in business;
(iii) they are employer and employee;
(iv) any person directly or indirectly owns, controls or holds 5% or more of the outstanding voting stocks or shares of both of them;
(v) one of them directly or indirectly controls the other;
(vi) both of them are directly or indirectly controlled by a third person;
(vii) together they directly or indirectly control a third person; or
(viii) they are members of the same family.

6. **Legal persons included:**

The term "person" also includes legal persons. [Explanation 1]

7. **Sole agents, etc not related unless Other Relationship Exists:**

A sole distributor or a sole agent or a sole concessionaire (by whatever name called) shall be deemed to be related only when he or it satisfies any of the above-mentioned criteria. [Explanation 2]
3.3 ADJUSTMENTS FOR COSTS AND SERVICE

As per Rule 10(1), while determining the transaction value, there shall be added to the price actually paid or payable for imported goods,-

(a) Cost and service charges [Rule 10(1)(a)]:
The following costs and services, to the extent they are incurred by the buyer but have not been included in the price actually paid or payable for the imported goods -
(i) commission and brokerage, except buying commission;
   [Buying Commission: As per interpretative notes, 'Buying commission' means fees paid by an importer to his agent for service of representing him abroad in purchase of goods being valued.
The Supreme Court in Hyderabad Industries Ltd. v. UOI [2000] 115 ELT 593 (SC) has held that commission paid to canalising agent in India is not 'buying commission', since they are independent parties.]
(ii) the cost of containers which are treated as being one for customs purposes with the goods in question i.e. cost of containers imported along with the goods;
(iii) cost of packing whether for labour or materials.

(b) Apportioned value of goods and services supplied by the buyer free or at concessional rate [Rule 10(1)(b)]:
The value, apportioned as appropriate of the following goods and services, which are supplied directly or indirectly by the buyer free of charge or at reduced costs for use in connection with the production and sale for export of imported goods, to the extent that such value has not been included in the price actually paid or payable, namely -
(i) materials, components, parts and similar items incorporated in the imported goods;
(ii) tools, dies, moulds and similar items used in the production of the imported goods;
(iii) materials consumed in the production of the imported goods;
(iv) engineering, development, art work, design work, and plans and sketches undertaken elsewhere than in India and necessary for the production of the imported goods.

(c) Royalties and licence fees payable as condition of sale [Rule 10(1)(c)]:
Royalties and the licence fees related to the imported goods that the buyer is required to pay, directly or indirectly, as a condition of the sale of the goods being valued, to the extent the same is not included in the price actually paid or payable.
(d) **Subsequent Sale Proceeds [Rule 10(1)(d)]:**
The value of any part of the proceeds of any subsequent resale disposal or use of the imported goods that accrues, directly or indirectly, to the seller.

(e) **Other payments as a condition of sale [Rule 10(1)(e)]:**
All other payments actually made or to be made as a condition of sale of the imported goods, by the buyer to the seller, or by the buyer to a third party to satisfy an obligation of the seller, to the extent that such payments are not included in the price actually paid or payable.

**Royalty payment for post importation process includible [Explanation]:** Where the royalty, licence fee or any other payment for a process, whether patented or otherwise, is includible under (c) and (e) above such charges shall be added to the price actually paid or payable for imported goods, even if such goods are subjected to the said process after importation of such goods.

**Additions on basis of quantifiable data [Rule 10(3)]:**
The additions to the price actually paid or payable are to be made on the basis of objective and quantifiable data.

**No addition except as provided in these Rules [Rule 10(4)]:**
No other addition can be made to the price actually paid or payable except as provided under Rule 10.

**Rule 10(2):**
Adjustments of cost of transportation, loading, unloading and handling charges and Insurance Charges:
The value of the imported goods shall be the value of such goods, for delivery at the time and place of importation and shall include,

(a) **Cost of transportation, loading, unloading and handling charges:**
The cost of transport, loading, unloading and handling charges associated with the delivery of the imported goods TO the place of importation.

➤ **Cost of transportation, loading, unloading and handling charges is not ascertainable [First Proviso to Rule 10(2)]:** Where the cost referred to in 10(2)(a) i.e. Cost of transportation, loading, unloading and handling charges associated with the delivery of the imported goods to the place of importation is not ascertainable, such cost shall be 20% of the free on board value of the goods.

➤ **Cost of transportation, loading, unloading and handling charges when FOB value not ascertainable but FOB value + Cost of Insurance ascertainable**
[Second Proviso to Rule 10(2)] : Where the FOB value of the goods is not ascertainable but the sum of FOB value of the goods and the cost of insurance to the place of importation is ascertainable, the cost of transportation, loading, unloading and handling charges associated with the delivery of the imported goods to the place of importation shall be 20% of such sum i.e. 20% of [FOB Value + Cost of Insurance].

➢ Air freight etc. cannot exceed 20% of FOB value of the goods [Fifth Proviso to Rule 10(2)] : In case of importation of goods by air, even if the actual cost of transport, loading, unloading and handling charges associated with the delivery of the imported goods to the place of importation is ascertainable, the same shall not exceed 20% of FOB value of the goods.

➢ Transhipment costs to be excluded [Sixth Proviso to Rule 10(2)] : In the case of goods imported by sea or air and transshipped to another customs station in India, the cost of insurance, transport, loading, unloading, handling charges associated with such transshipment shall be excluded.

➢ Ship demurrage charges on charted vessels, lighterage or barge charges - Includible [Explanation to Rule 10(2)] : The cost of transport of the imported goods referred above includes the ship demurrage charges on charted vessels, lighterage or barge charges.

(b) Insurance Charges:

The cost of insurance TO the place of importation.

➢ Cost of insurance not ascertainable [Third Proviso to Rule 10(2)] : In case the cost of insurance to the place of importation is not ascertainable, such cost shall be 1.125% of the FOB value of the goods.

➢ Cost of insurance when FOB value not ascertainable but FOB value + Cost of transportation, loading, unloading and handling charges ascertainable [Fourth Proviso to Rule 10(2)] : Where the FOB value of the goods is not ascertainable but the sum of FOB value of the goods and the cost of transport, loading, unloading and handling charges associated with the delivery of the imported goods to the place of importation is ascertainable, the cost of insurance to the place of importation shall be 1.125% of such sum i.e. 1.125% of [FOB Value + Cost of transport, loading, unloading and handling charges associated with the delivery of the imported goods to the place of importation].
Chart showing the determination of assessable value after adjustments under Rule 10:

<table>
<thead>
<tr>
<th>FOB Price (Free on Board)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Add: Charges for costs and services as per Rule 10(1) <em>(Excluding charges for Post-importation Activities)</em></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Transaction Value</th>
</tr>
</thead>
<tbody>
<tr>
<td>Add: The following adjustments [(a) and (b)] under Rule 10(2) —</td>
</tr>
</tbody>
</table>

(a) Actual cost of transport, loading, unloading and handling charges associated with the delivery of the imported goods to the place of importation (In case of air it cannot exceed **20% of FOB value of goods**)

If not ascertainable - **20% of the FOB value of goods.** In case FOB value is also not ascertainable, then it will be **20% of [FOB value + Cost of Insurance]**

(b) Actual Cost of insurance

If not ascertainable - **1.125% of the FOB value of goods.** In case FOB value is also not ascertainable then it will be **1.125% of [FOB value + Cost of transport, loading, unloading and handling charges]**

<table>
<thead>
<tr>
<th>CIF value (FOB value + cost of transport + cost of insurance) being Assessable Value for the Purpose of calculating duties of custom</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
</tr>
</tbody>
</table>

As per ICAI’s Valuation norms, the valuation will be done as under:

<table>
<thead>
<tr>
<th>FOB Price (Free on Board)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Add: Charges for costs and services as per Rule 10(1) <em>(Excluding charges for Post-importation Activities)</em></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Customs FOB</th>
</tr>
</thead>
<tbody>
<tr>
<td>Add: The following adjustments [(a) and (b)] under Rule 10(2) —</td>
</tr>
</tbody>
</table>

(a) Actual cost of transport, loading, unloading and handling charges associated with the delivery of the imported goods to the place of importation (In case of air it cannot exceed **20% of Customs FOB value of goods**)

If not ascertainable - **20% of the Customs FOB value of goods.** In case Customs FOB value is also not ascertainable, then it will be **20% of [Customs FOB value + Cost of Insurance]**

(b) Actual Cost of insurance

If not ascertainable - **1.125% of the Customs FOB value of goods.** In case Customs FOB value is also not ascertainable then it will be **1.125% of [Customs FOB value + Cost of transport, loading, unloading and handling charges]**

<table>
<thead>
<tr>
<th>CIF value (Customs FOB value + cost of transport + cost of insurance) being Assessable Value for the Purpose of calculating duties of custom</th>
</tr>
</thead>
</table>
PART 4: VALUATION RULES

(1) "Identical goods" means imported goods,-
(a) which are same in all respects, including physical characteristics, quality and reputation as the goods being valued except for minor differences in appearance that do not affect the value of goods;
(b) produced in the country in which the goods being valued were produced; and
(c) produced by the same person who produced the goods, or where no such goods are available, goods produced by a different person,

but shall not include imported goods where engineering, development work, art work, design work, plan or sketch undertaken in India were completed directly or indirectly by the buyer on these imported goods free of charge or at a reduced cost for use in connection with the production and sale for export of these imported goods. [Rule 2(1)(d)]

(2) "Similar goods" means imported goods,-
(a) which although not alike in all respects, have like characteristics and like component materials which enable them to perform the same functions and to be commercially interchangeable with the goods being valued having regard to the quality, reputation and the existence of trade mark;
(b) produced in the country in which the goods being valued were produced; and
(c) produced by the same person who produced the goods being valued, or where no such goods are available, goods produced by a different person,

but shall not include imported goods where engineering, development work, art work, design work, plan or sketch undertaken in India were completed directly or indirectly by the buyer on these imported goods free of charge or at a reduced cost for use in connection with the production and sale for export of these imported goods. [Rule 2(1)(f)]

4.1 RULE 4 – IDENTICAL GOODS

The provisions of Rule 4 of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 which deals with determination of transaction value of identical goods are as follows -

(1) Transaction value of identical goods :
If the value of imported goods cannot be determined as per Rule 3 of Customs Valuation (Determination of Value of Imported Goods) Rules, 2007, then, the value thereof shall be the transaction value of the identical goods sold for export to India and imported at or about the same time as the goods being valued.
(2) **Value of goods provisionally assessed not to be taken:**
Such transaction value shall not be the value of the goods provisionally assessed under Section 18 of the Customs Act, 1962.

(3) **Goods at same commercial or quantity level to be taken for valuation:**
In applying this rule, the transaction value of identical goods in a sale at the same commercial level and in substantially the same quantity as the goods being valued, shall be used to determine the value of imported goods.

(4) **Adjustments for differences in commercial or quantity levels:**
In case any of the above conditions is not fulfilled, transaction value in a sale of identical goods that takes place under any one of the following three circumstances may be used:

(a) sale at the same commercial level but in different quantities;
(b) sale at a different commercial level but in substantially the same quantities; or
(c) sale at a different commercial level and in different quantities.

Having found a sale under any one of these three conditions adjustments will then be made, as the case may be, for:

(a) quantity factory only;
(b) commercial level factors only; or
(c) both commercial level and quantity factory.

(5) **Adjustment for costs and services as referred in Rule 10(2):**
Where the costs and charges refer to in Rule 10(2) *i.e.* cost of transport, landing charges and insurance charges, are included in the transaction value of identical goods and it is found that, there are significant differences in such costs and charges between the goods being valued and the identical goods in question, arising from the differences in distances and means of transport, adjustments shall be made to account for the same.

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

[Valuation of similar goods under Rule 5: The above principles of valuation on basis of identical goods equally applies to similar goods which is covered in Rule 5.]
**4.2 RULE 7 - DEDUCTIVE VALUE**

**Determination of value where value cannot be determined under Rules 3 to 5 [Rule 6]:**
If the value of imported goods cannot be determined under the provisions of rules 3 to 5, then the value shall be determined under provisions of Rule 7 (Deductive Value) or, when the value cannot be determined under rule 7, under rule 8 (Computed Value). However, at the request of the importer, and with the approval of the proper officer, the order of application of Rules 7 and 8 shall be reversed.

(1) **Deductive Value [Rule 7]:**
If the value of imported goods cannot be determined as per provisions of Rule 4 and Rule 5, then value is to be determined as per Rule 7 i.e. deductive value.
Deductive value is the unit price at which imported goods or identical goods or similar imported goods are sold in the greatest aggregate quantity, to persons who are not related to the sellers in India at the time when declaration for value is presented, after making the following deductions from unit price -
(a) either the commission usually paid or agreed to be paid or the additions usually made for profits and general expenses in connection with sales in India of imported goods of the same class or kind;
(b) the usual costs of transport and insurance and associated cost incurred within India;
(c) the customs duties and other taxes payable in India by reason of importation or sale of the goods.

(2) **Goods not sold at or about the same time of importation:**
If neither the imported goods nor identical nor similar imported goods are sold at or about the same time of importation of the goods being valued, then the value of imported goods shall be based on the unit price at which the imported goods or identical or similar imported goods are sold in India, at the earliest date after importation but before the expiry of 90 days after such importation.

(3) **Due allowance of value addition if goods are sold after further processing:**
If neither the imported goods nor identical nor similar imported goods are sold in India in the condition as imported, then, the value shall be based on the unit price at which the imported goods, after further processing, are sold in the greatest aggregate quantity to person who are not related to the seller in India. In such determination, deduction shall be made for the value added by processing, besides the above deductions.

(4) **"Goods of the same class or kind", means -**
(i) imported goods that are within a group or range of imported goods produced by a particular industry or industrial sector; and
(ii) includes identical goods or similar goods. [Rule 2(c)]

31.13
This expression has been used in Rule 7 and Rule 8 of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007.

4.3 RULE 8 - COMPUTED VALUE

Computed Value [Rule 8]:
As per Rule 2(1)(a) of the said rules, computed value means the value of imported goods determined in accordance with Rules.

As per Rule 8, subject to the provisions of Rule 3, the value of imported goods shall be based on a computed value, which shall consist of the sum of:

(a) the cost or value of materials and fabrication or other processing employed in producing the imported goods;
(b) an amount for profit and general expenses equal to that usually reflected in sales of goods of the same class or kind as the goods being valued, which are made by producers in the country of exportation for export to India;
(c) the cost or value of all other expenses under Rule 10(2).

4.4 - RULE 9 - RESIDUAL METHOD

(1) Residual method of valuation [Rule 9(1)]:
According to residual method, value is to be determined using reasonable means consistent with the principles and general provisions of these Rules and Section 14 and the data available.

However, the value so determined shall not exceed the price at which such or like goods are ordinarily sold or offered for sale for delivery at the time and place of importation in the course of international trade, when the seller or buyer has no interest in the business of other and price is the sole consideration for the sale or offer for sale.

(2) Basis on which value cannot be determined under this Rule [Rule 9(2)]:
The following shall not be considered in determining the value under this method:
(i) the selling price in India of the goods produced in India;
(ii) a system which provides for the acceptance for customs purposes of the highest of the two alternative values;
(iii) the price of goods on the domestic market of the country of exportation;
(iv) the cost of production other than the computed value of identical goods or similar goods as determined in Rule 8;
(v) the price of the goods for the export to a country other than India;
(vi) minimum customs values;
(vii) arbitrary or fictitious values.
(3) **Interpretative Notes:**

As per interpretative notes to Rule 9 -

(a) Value of imported goods determined under the provisions of Rule 9 should to the greatest extent possible, be based on previously determined customs values.

(b) The methods of valuation to be employed under Rule 9 may be those laid down in Rules 3 to 8, inclusive, but a reasonable flexibility in the application of such methods would be in conformity with the aims and provisions of Rule 9.

**4.5 RULE 11 – DECLARATION**

**Declaration to be furnished by importer [Rule 11]:**

(1) The importer or his agent shall furnish,-

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

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

(2) The Customs officer has the power to satisfy himself as to the truth or accuracy of any statement, information, document or declaration presented for valuation purposes.

(3) The provisions of the Customs Act, 1962 relating to confiscation, penalty and prosecution shall apply to cases where wrong declaration, information, statement or documents are furnished under these rules.

**4.6 RULE 12 – REJECTION**

**Rejection of declared value by customs officer [Rule 12]:**

(1) **Proper officers power to call for Necessary Information:**

When the proper officer has reason to doubt the truth or accuracy of the value declared in relation to any imported goods, he may ask the importer of such goods to furnish further information including documents or other evidence.

If, after receiving such further information, or in the absence of a response of such importer, the proper officer still has reasonable doubt about the truth or accuracy of the value so declared, then it shall be deemed that the value of such imported goods cannot be determined under the provisions of Rule 3(1).
(2) **Reasons to be Intimated to Importer:**

On importer's request, the proper officer shall intimate the importer in writing, the grounds for doubting the truth or accuracy of the value declared in relation to goods imported by such importer and provide a reasonable opportunity of being heard, before taking a final decision.

(3) **Other provisions [Explanation to Rule 12]:**

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

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

(c) **Reasons for which doubt may be raised on truth or accuracy of value**: The proper officer shall have the power to raise doubts on the truth or accuracy of the declared value based on certain reasons, which may include the,-

(i) **significantly higher value** at which identical or similar goods, imported at or about the same time in comparable quantities in a comparable commercial transaction, were assessed;

(ii) sale involves an abnormal discount or abnormal reduction from the ordinary competitive price;

(iii) sale involves special discounts limited to exclusive agents;

(iv) mis-declaration of goods in parameters such as description, quality, quantity, country of origin, year of manufacture or production;

(v) non declaration of parameters such as brand, grade, specifications that have relevance to value;

(vi) fraudulent or manipulated documents.
PART 5: VALUATION OF EXPORT GOODS

Determination of the method of valuation [Rule 3]:

(1) **Transaction value [Rule 3(1)]:**

The value of the export goods shall be the transaction value. However, such transaction value is subject to the provisions of Rule 8 *i.e. the proper officer has a right to reject such transaction value.*

According to Section 14(1), transaction value means the 'price actually paid or payable' for goods when sold for export from India for delivery at the time and place of exportation, where the buyer and seller of the goods are not related, and price is the sole consideration for the sale.

(2) **Valuation in case of related persons:**

The transaction value shall be accepted even where the buyer and seller are related, **provided that the relationship has not influenced the price.**

(3) **Valuation when transaction value not acceptable:**

In case the transaction cannot be determined, then the value shall be determined proceeding sequentially through Rules 4 to 6.

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Customs (Determination of Value of Export Goods) Rules, 2007

<table>
<thead>
<tr>
<th>Determination of export value by comparison [Rule 4]:</th>
<th>The value of the export goods shall be based on the transaction value of &quot;goods of like kind and quality&quot; 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 provisions given below.</th>
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<tbody>
<tr>
<td><strong>Adjustments to be made</strong>: In determining the value of export goods as above the proper officer shall make such adjustments as appear to him reasonable, taking into consideration the relevant factors, including -</td>
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<td>(a) difference in the dates of exportation,</td>
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<td>(b) difference in commercial levels and quantity levels,</td>
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<tr>
<td>(c) difference in composition, quality and design between the goods to be assessed and the goods with which they are being compared,</td>
<td></td>
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<tr>
<td>(d) difference in domestic freight and insurance charges depending on place of exportation.</td>
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</table>
### Computed value [Rule 5]:
If the value cannot be determined under Rule 4, it shall be based on a computed value, which shall include the following:

- (a) Cost of production, manufacture or processing of export goods;
- (b) Charges, if any, for the design or brand;
- (c) An amount towards profit.

### Residual method [Rule 6]:
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. However, \textbf{local market price of the export goods may not be the only basis for determining the value} of export goods.

### Declaration by the exporter [Rule 7]:
The exporter shall furnish a declaration relating to the value of export goods in the manner specified in this behalf.

### Rejection of declared value [Rule 8]:

- (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 of 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.

### Other provisions [Explanation to Rule 8]:

- (i) This rule by itself does not provide a method for determination of value, it provides a mechanism and procedure for rejection of declared value, in case, where there is reasonable doubt that the declared value does not represent the transaction value, where the declared value is rejected, the value shall be determined by proceeding sequentially in accordance with Rules 4 to 6.

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

- (iii) \textbf{Reasons for which doubts may be raised}: The proper officer shall have the power to raise doubts on the declared value based on certain reasons, which may include,-
(a) significant variation in value at which goods of like kind and quality, exported at or about the same time in comparable quantities in a comparable commercial transaction, were assessed.

(b) the significantly higher value compared to the market value of goods of like kind and quality at the time of export.

(c) the mis-declaration of goods in parameters such as description, quality, quantity, year of manufacture or production.

PART 6: CASE LAWS AND CIRCULARS

**CC v. Essar Steel Ltd. [2015] 319 ELT 202 (SC)**

Technical services for setting up and commissioning of plant is post importation charges and cannot be added to value of plant since customs duty is chargeable on goods by reference to value at a price at which goods are ordinarily sold/ offered for sale at time and place of importation in international trade.

**Facts:**
- Foreign supplier was associated as a technical consultant to the assessee importer to coordinate and advise Indian importer to successfully set up, commission and operate plant in India.
- There was no transfer of know-how or patents, trademarks or copy rights.
- Though the agreement for technical services was made prior to the commissioning of the plant, the Importer assessee became owner of only that portion of the documents, drawings, plans and specifications necessary for setting up of the plant, which were post importation.
- Liquidated damages were required to be paid for delay in commissioning of the project.
- The Revenue contended that the fees paid for technical consultancy charges ought to be added to the transaction value as it was a payment made on account of the technical consultancy agreement as a condition of sale of imported goods, as per Rule 10(1) (e) of the Customs Valuation (Determination of Price of Imported Goods) Rules, 2007.

**Question:**
Whether the payments made for the technical services agreement is to be added to the value of the plant that is imported treating the same as a condition of sale of the imported goods?

**Decision:**
It was held that –
• The perusal of the agreement shows that the coordination and advise from the foreign supplier was for setting up and commissioning of the plant which meant that they were post importation.

• The assessee Indian importer became the owner only of the documents, drawings, etc. of setting up, commissioning and operating plant, all of which were post importation.

• Liquidated damages are only payable for delay in commissioning the plant and for failure to achieve the stipulated performance, both of which are post-importation activities.

• Hence, technical services were not a pre-condition for the sale of plant, and payment therefore cannot be added to value of plant as post importation charges are excluded since customs duty is chargeable on goods by reference to value at a price at which goods are ordinarily sold/offered for sale at time and place of importation in international trade.

**CC (Imports) v. Hindalco Industries Ltd. [2015] 320 ELT 42 (SC)**

Fees for Licence, Basic Engineering, Training and Technical Services is neither related to import of capital goods nor is it a condition of sale. It pertains to services that are to be provided after importation of goods. Therefore, value of these services cannot be loaded on to value of imported goods.

**Facts:**

• Assessee was engaged in the manufacture of copper and copper products in their smelter plant. For setting up of the said plant it had imported certain capital goods from few foreign suppliers. Three agreements were entered into between the assessee and the Exporter of capital goods. These are known as Licence Agreement, Delivery of Proprietary Equipments Agreement and Basic Engineering, Training and Technical Services Agreement. Under the Delivery of Proprietary Equipments Agreement, capital goods for setting up of the plant were imported. The bill of entry showing the aforesaid invoice value was filed.

• The Customs Authorities wanted to load the price as shown in Bill of Entry with the consideration that was charged for other agreements *i.e.* Licence Agreement and Basic Engineering, Training and Technical Services Agreement.

**Question:**

Whether consideration for Licence, Basic Engineering, Training and technical Services would be loaded into the value of goods at which such goods were imported?

**Decision:**

It was held that –

• Neither the fees paid under the Licence Agreement nor under the Basic Engineering, Training and Technical Services Agreement was related to the import of capital goods nor was it a condition of sale.
Moreover, these agreements pertained to the services that were to be provided post import of the aforesaid goods.

Therefore value of these services could not be loaded on to the value of imported goods.


Cost of technical know-how having been incurred post importation in relation to the manufacture of machinery will not be added to arrive at the assessable value of the components/raw material imported for the said manufacture.

The assessee imported machinery components to manufacture air conditioners and for the same, it entered into a technical know-how agreement with a foreign company and paid fee as consideration.

It was held that the know-how fee paid would not be added to arrive at the assessable value of the imported machinery components since the technical information was provided by the foreign company after the components were imported and the plant for the production of air conditioners was set up. Also, the said know-how fee is related to the finished products and not the imported components.

**Circular No. 39/2017-Cus dated 26-9-2017**

(1) **Treatment of the loading, unloading and handling charges** : The Hon’ble Supreme Court had ruled in the case of *M/s. Wipro Ltd. v. Assistant Collector of Customs [2015] 319 ELT 177 (SC)* dated 16-04-2015 that the landing charges to be added to the value of goods, should be based on actual charges incurred, and not a notional charge of 1% as has been provided in the Rules.

By virtue of the amendment now carried out to the CVR, 2007, the loading, unloading and handling charges associated with the delivery of the imported goods **AT** the place of importation, shall no longer be added to the CIF value of the goods.

The phrase "loading, unloading and handling charges" appearing in the amended Rule 10(2) (a) is to be understood in context of Article 8(2) of the *WTO Agreement* which reads as "the cost of transport of the imported goods to the port or place of importation". Thus, only charges incurred for delivery of goods "**TO**" the place of importation (such as the loading and handling charges incurred at the load port) shall now be includible in the transaction value.

(2) **Computation of freight and insurance** : Now, the 2nd and 4th provisos to Rule 10(2) impart more clarity in computation of transport and insurance charges, when actuals of each individual element are not known, but the cumulative value of FOB and freight, or, FOB and insurance charges are known.

(3) **Treatment of transshipment costs** : In the erstwhile 4th proviso to Rule 10(2), while the transshipment charges with respect to a container being moved from port to an ICD and CFS were excluded from the transaction value of the goods, there was no mention of a similar treatment to transshipment of goods by sea or air.
Now, by virtue of the 6th proviso to Rule 10(2), costs related to transshipment of goods (from ports to ICDs; port to port, port to CFS, Airport to Airport etc.) within India will be excluded, providing uniform treatment to different modes of transshipment.

The normal rule as provided under section 14 of the Customs Act, 1962, being that assessable value to be arrived at on basis of price actually paid and mentioned in Bills of Entry. In order to reject the transaction value, it is incumbent upon the Assessing Officer to give reasons as to why the transaction value declared in the Bills of Entry was being rejected; to establish that the price is not the sole consideration; and to give the reasons supported by material on the basis of which the Assessing Officer arrives at his own assessable value.

**fact**
- The assessee imported various varieties of Aluminum scrap and filed the Bills of Entry along with the invoices and purchase orders in respect therein declaring the transaction value of the imported goods for the purpose of paying the customs duty.
- Finding it to be low, the Assessing Officer rejected the said declared value and reassessed the goods by increasing the assessable value.
- The Assessment order of the Assessing Officer was challenged by the assessee. The Tribunal's judgment in favour of the assessee was challenged by the Department in the Apex Court

**Question:**
Can the transaction value as declared in the Bills of Entry be rejected by the Assessing Officer and enhancement made therein without giving the reasons supported by material on the basis of which he arrives at his own assessable value?

**Decision:**
- The normal rule as given under section 14 of the Customs Act, 1962, is that the value of any goods chargeable to ad valorem duty is deemed to be the price as referred to in that provision. Normally, the Assessing Officer is supposed to act on the basis of price which is actually paid and treat the same as assessable value/transaction value of the goods.
- Rules 3(1) of Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 also provide that the adjudicating authority is bound to accept price actually paid or payable for goods as the transaction value. Rule 3(2) provides for exceptions to this Rule, providing thereby that the transaction value mentioned in the Bills of Entry can be discarded in case it is found that there are any imports of identical goods or similar goods at a higher price at around the same time or if the buyers and sellers are related to each other.
- However, in order to invoke such a provision it is incumbent upon the Assessing Officer to give reasons as to why the transaction value declared in the Bills of Entry...
was being rejected; to establish that the price is not the sole consideration; and to give the reasons supported by material on the basis of which the Assessing Officer arrives at his own assessable value.

- In the instant case, no such exercise was done by Assessing Officer before rejecting price declared in Bills of Entry, therefore, the order for enhancement of transaction value was set aside.


Sole Distributorship is not the conclusive consideration for determination of "Related person" when the foreign supplier did not, directly or indirectly, control the assessee. To establish the fact of "Related Person", the case should fall in one of the clauses mentioned in Rule 2(2) of Customs Valuation Rules, 2007.

Onus was on the Department to bring evidences to testify their claim of sales/transaction at high price. In absence of any such evidence on record, agreement with another importer for prior periods cannot be relied upon as it was not contemporaneous.

**Facts:**
- The assessee was the sole distributor of a foreign supplier M/s. R & H for a certain product and entered into an agreement with the said supplier for importing the aforesaid product at US $ 2.10 per Kg CIF, Mumbai,. The assessee filed Bill of Entry at the same price.
- It was noticed by the Department that prior to the aforementioned agreement, M/s. R & H was in agreement with another importer for import of same goods at the rate of US $ 2.85 per kg which is higher than the price charged from the assessee.
- Rejecting the price declared by the assessee on ground that assessee was the 'related person' of the foreign supplier, Revenue issued a SCN demanding differential duty treating the transaction value as US $ 2.85 per kg.

**Question:**
Whether the assessee was the "Related Person" of M/s. R & H in accordance to provisions of Rule 2(2) of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 and can reliance be placed on the the price of the same goods for a prior period?

**Decision:** It was held that -
- It was held that mere sole distributorship is not the conclusive consideration for determining whether the assessee was a "Related person". The foreign supplier was not controlling the assessee either directly or indirectly. It had also to be demonstrated that the case falls in one of the eight clauses mentioned in Rule 2(2), which was not the case here.
- The transactions between M/s. R & H and the assessee were at arms length price. No evidence was brought on record by Department to testify their claim of sales/
transactions at high price to another buyer within the same time period i.e. contemporaneous. In such case, reliance could not be put upon the agreement between the foreign supplier and another importer as the transactions between the two parties were not related to the same time period as that of the assessee.

- So, the assessee did not come within the purview of "Related Person" and the transaction between the foreign supplier and the assessee was treated to be at arms length price. Thus, the transaction value between the assessee and foreign supplier shall be taken as the assessable value.

S12 Micro Systems Ltd. v. CCEx & Cus. [2016] 335 ELT 198 (SC)
The assessee pleaded that though there was no sale consideration payable at the time of import of machines, but since the payment was made subsequently through banking channels, the Department had wrongly applied Rule 9 of Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 instead of Rule 3 as the transaction value could be arrived at on the basis of the evidence placed.

Held that, since the payment was made through the banking channels, same was verifiable and the valuation should have been made on basis of 'Transaction value' as per Rule 3 of Valuation Rules, 2007.

Century Metal and Recycling Pvt. Ltd. v. UOI 2019 (367) E.L.T. 3 (S.C.)
Rejection of the transaction value declared by importer without giving cogent and good reasons in terms of section 14(1) of the Customs Act, 1962 and rule 12 of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 is not permissible. Enquiry prior to such rejection and giving of valid reasons for doing so by proper officer, is necessary. Requirement of giving reasons, both at the preliminary as well as the second stage of enquiry i.e. when doubting the truth or accuracy of the value declared, mandatory in nature

Facts:
The appellant Company was engaged in the manufacture of aluminium alloys, for which they regularly imported aluminium waste as a raw material for self-consumption. Appellant declared value of Rs. 81.31 per kg. on import of aluminium waste which was rejected by departmental authority by mentioning that as per contemporaneous import data, it should have been between Rs. 83.26 to Rs. 120.97 per kg. The departmental authority insisted to pay the duty as per the valuation by the Customs and compelled them to forego their right to provisional assessment under Section 18 of the Customs Act, 1962.

Apex Court Ruling:
It was observed by the Apex court that imported aluminium scrap is not a homogeneous commodity and cannot be evaluated on lab testing to determine as to whether alleged contemporaneous import was of same quality or not.

The Adjudication order itself recorded difficulty in finding any identical/similar import having same chemical and physical composition. Therefore rejection of transaction value
on aforesaid ground was not sustainable without following mandate of Rule 12 of Customs Valuation (Determination of Value of Imported Goods) Rules, 2007. In terms of this provision, assessing officer after conducting preliminary enquiry, ought to have intimated in writing grounds for doubting truth or accuracy of declared value. It is only after this that transaction value can be rejected and value re-determined.

Formation of opinion regarding reasonable doubt on correctness of value is mandatory before rejecting transaction value and cannot be circumvented under any circumstances. As already held in 2019 (365) E.L.T. 3 (S.C.) that transaction value mentioned in Bill of Entry should not be discarded unless there are contrary details of contemporaneous imports or other corroborative evidence of import which would justify rejection of declared value and its enhancement.

**Anil Kumar Anand v. CC [2019] 366 ELT 601 (SC)**

Valuation Rules are to be sequentially followed. Valuation could not be determined straightaway under on Rules 7, 8 and 9 of Valuation Rules, 2007 without considering and making adjustments as set out in Rules 3,4 and 5 of the said rules.

**Facts:**
The appellant was a regular importer of electric decorative lighting. The department rejected the declared value on the ground that appellant, knowingly, did not declare the brand of imported goods and the fact that said goods were imported from its related party and that he had undervalued the same to evade Customs duty. The valuation of the goods was made by the department under Rule 7 and Rule 9 of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007.

The appellant assessee objected to the valuation under Rule 7 and Rule 9 claiming that the valuation Rules needed to be applied sequentially.

The appellant's contention was that 21 consignments (including the one directly in question) were not imported from one source, but three different sources. Out of the three different sources, only one source was related party. Moreover, the brands were not so well known in the market as to make a difference on the valuation.

The appellant assessee contended that the sequential application of Rules, thus, required the valuation to be done in accordance with Rules 3 to 5, before proceeding to the subsequent Rules, and it was not a case where valuation was not possible under Rules 3 to 5.

**Decision:**
The court observed that Once the statutory Rules exist and provide for sequential implementation, the assessing authority has no option but to proceed in accordance with those Rules, in that manner. Imports from different countries where there were no related parties could have been considered and adjustments made as set out in Rules 3, 4 and 5 of Customs Valuation (Determination of Value of Imported Goods)

**Explain the nature and scope of royalties and license fees as per Rule 10(1)(c) in view of interpretative**

Whether the payment for post-importation process is includible in the value if the same is related to imported goods and is a condition of the sale of the imported goods? *(Nov. 2008, 2 Marks)*

**Ans:** The relevant provisions are discussed as under -

1. **Royalties and license fees payable as condition of sale - Includible [Rule 10(1)(c)]**:
   - Royalty and License fees is added to the transaction value of the imported goods only if the following conditions are satisfied,
   - (a) such royalties or license fees are related to the imported goods; and
   - (b) the buyer is required to pay the same as a condition of the sale of the goods being valued.

2. **Nature and Scope of Royalty as per Interpretative Notes**:
   - (a) The royalties and licence fees may include, among other things, payments in respect to patents, trademarks and copyrights.
   - (b) **Royalty charges for reproduction not includible**: However, the charges for the right to reproduce the imported goods in the country of importation shall not be added to the price actually paid or payable for the imported goods in determining the customs value.
   - (c) **Payment for re-distribution/ re-selling not includible**: Payments made by the buyer for the right to distribute or resell the imported goods shall not be added to the price actually paid or payable for the imported goods if such payments are not a condition of the sale for export to the country of importation of the imported goods.

3. **Post-importation process [Explanation to Rule 10]**: Where the royalty, licence fee or any other payment for a process, whether patented or otherwise, is includible, such charges shall be added to the price actually paid or payable for imported goods, even if such goods are subjected to the said process after importation of such goods.
PART 7: PROBLEMS

Q 1 - Computation of assessable value: Compute the assessable value from the following information:

(i) FOB value of machine - 1,00,000 UK Pounds;
(ii) Cost of Insurance, Cost of transport, loading, unloading and handling charges associated with the delivery of the imported goods to the place of importation are not ascertainable;
(iii) Unloading and handling charges at the place of importation – Rs. 25,000;
(iv) Exchange rate as notified by CBIC Rs. 100 per UK Pound.

Q 2 - Computation of assessable value: Compute the assessable value from the following information:

(i) FOB value of machine - $ 10,000;
(ii) Air Freight, loading, unloading and handling charges associated with the delivery of the imported goods to the place of importation - $ 2,300;
(iii) Cost of Insurance : $ 500;
(iv) Unloading and handling charges at the place of importation –Rs. 50,000;
(v) Exchange rate as notified by CBIC 1$ = Rs. 70.

Q 3 – Computation of assessable value: Compute the assessable value from the following information:

(i) FOB value of machine - $ 10,000
(ii) Air Freight, loading, unloading and handling charges associated with the delivery of the imported goods to the place of importation - $ 1,000.
(iii) Cost of Insurance : Not ascertainable
(iv) Unloading and handling charges at the place of importation – Rs. 50,000
(v) Exchange rate as notified by CBIC 1 $ = Rs. 70

Q 4 - Computation of assessable value: Compute the assessable value from the following information:

(i) FOB value of machine - Not Ascertained
(ii) FOB Value of Machine and air freight, loading, unloading and handling charges associated with the delivery of the imported goods to the place of importation - US $ 15,000.
(iii) Cost of Insurance : Mot ascertainable
(iv) Unloading and handling charges at the place of importation – Rs. 50,000
(v) Exchange rate as notified by CBIC 1 $ = Rs. 70
Q 5 - Computation of assessable value: Compute the assessable value from the following information:

(i) FOB value of machine - Not Ascertainable;
(ii) Air freight, loading, unloading and handling charges associated with the delivery of the imported goods to the place of importation - Not ascertainable;
(iii) FOB Value of Machine and cost of insurance to the place of importation - US $15,000;
(iv) Unloading and handling charges at the place of importation – Rs. 50,000;
(v) Exchange rate as notified by CBIC 1 $ = Rs. 70.

Q 6 - Computation of Assessable Value and GST liability: Product 'Z' was imported by Mr. X by air. The details of the import transaction are as follows:

<table>
<thead>
<tr>
<th>Particulars</th>
<th>US $</th>
</tr>
</thead>
<tbody>
<tr>
<td>Price of ‘Z’ at exporter’s factory</td>
<td>8,500</td>
</tr>
<tr>
<td>Freight from factory of the exporter to load airport (airport in the country of exporter)</td>
<td>250</td>
</tr>
<tr>
<td>Loading and handling charges at the load airport</td>
<td>250</td>
</tr>
<tr>
<td>Freight from load airport to the airport of importation in India</td>
<td>4,500</td>
</tr>
<tr>
<td>Insurance charges</td>
<td>2,000</td>
</tr>
</tbody>
</table>

Though the aircraft arrived on 22-08-2019, the bill of entry for home consumption was presented by Mr. X on 20-08-2019.

The other details furnished by Mr. X are:

<table>
<thead>
<tr>
<th></th>
<th>20-08-2019</th>
<th>22-08-2019</th>
</tr>
</thead>
<tbody>
<tr>
<td>Rate of basic customs duty</td>
<td>20%</td>
<td>10%</td>
</tr>
<tr>
<td>Exchange rate notified by CBIC</td>
<td>Rs. 70 per US $</td>
<td>Rs. 73 per US $</td>
</tr>
<tr>
<td>Exchange rate prescribed by RBI</td>
<td>Rs. 71 per US $</td>
<td>Rs. 72 per US $</td>
</tr>
<tr>
<td>Integrated tax leviable under section 3(7) of the Customs Tariff Act, 1975</td>
<td>18%</td>
<td>12%</td>
</tr>
</tbody>
</table>

Compute - (i) value of product ‘Z’ for the purpose of levying customs duty; (ii) customs duty and tax payable.

Q 7- Computation of assessable value & customs duty: Compute the assessable value and Custom duty payable from the following information: (CA Final June 2009, 6 Marks) (Similar 5 Marks. Nov. 2012)

(i) FOB value of machine - 8,000 UK Pounds
(ii) Freight paid (air) - 2,500 UK Pounds
(iii) Design and development charges paid in UK - 500 UK Pounds
(iv) Commission payable to local agent @ 2% of FOB in Indian Rs.
(v) Date of bill of entry- 24-10-2019 (Rate BCD 10%, Exchange rate as notified by CBIC Rs. 100 per UK Pound)
(vi) Date of arrival of aircraft- 20-10-2019 (Rate BCD 18%, Exchange rate as notified by CBIC Rs. 95 per UK Pound)
(vii) Integrated tax leviable under Section 3(7) of CTA, 1975 - @ 12%
(viii) Insurance charges actually paid but details not available.

Q 8 - Computation of assessable value (or purpose of calculating import duty) : Care Energy Ltd. imported a lift from England at an invoice price of Rs. 20,00,000. The assessee had supplied raw material worth Rs. 5,00,000 to the supplier for the manufacture of said lift. Due to safety reasons, the lift was not taken to the jetty in the port but was unloaded at the outer anchorage. The charges incurred for such unloading amounted to Rs. 25,000 and the cost incurred on transport of the lift from outer anchorage to the jetty was Rs. 50,000. The importer was also required to pay ship demurrage charges Rs. 10,000. The lift was imported at an actual cost of transport Rs. 45,000 and insurance charges Rs. 20,000.

Compute its assessable value.

(CS June 2010, 5 Marks)

Q 9 - Computation of assessable value and import duties of customs: From the following particulars, calculate assessable value and total customs duty payable:

(1) Date of presentation of bill of entry: 20-6-2019 [Rate of BCD 15%; Exchange Rate: Rs. 65.00 and rate notified by CBIC Rs. 66.00]
(b) Date of arrival of goods in India: 30-6-2019 [Rate of BCD 10%; Exchange Rate: Rs. 65.50 and rate notified by CBIC Rs. 68.00]
(c) Rate of Integrated tax : 12%
(d) CIF value 2,000 US Dollars; Air Freight 500 US Dollars, Insurance cost US Dollars [Landing Charges not ascertainable]
(e) SWS applicable 10%
(f) Assume there is no GST Compensation cess.

(May 2007, 6 Marks)

Q 10 - Computation of import duties of customs: Compute the customs duty payable from the following data -

(Modified, ICWA Inter June, 2001)

<table>
<thead>
<tr>
<th>Machinery imported from USA by air</th>
<th>US $ 10000</th>
</tr>
</thead>
<tbody>
<tr>
<td>Accessories worth US $ 2000 compulsorily supplied with machine, price in included in price of machine</td>
<td>US $ 3000</td>
</tr>
<tr>
<td>Air freight</td>
<td>US $ 100</td>
</tr>
<tr>
<td>Insurance</td>
<td>Rs. 4,500</td>
</tr>
<tr>
<td>Local agent's commission</td>
<td>1 US $ = Rs. 70</td>
</tr>
<tr>
<td>Exchange rate</td>
<td>10% ad valorem</td>
</tr>
<tr>
<td>Customs duty on machine</td>
<td>20% ad valorem</td>
</tr>
<tr>
<td>Customs duty on accessory</td>
<td>12%</td>
</tr>
<tr>
<td>Integrated tax</td>
<td>NIL</td>
</tr>
<tr>
<td>GST Compensation Cess</td>
<td>10%</td>
</tr>
<tr>
<td>SWS</td>
<td>31.29</td>
</tr>
</tbody>
</table>
Q 11 - *Computation of assessable value* : PQR Industries Ltd, has imported certain equipment from Japan at an FOB cost of 2,00,000 yen (Japanese). The other expenses incurred by M/s. PQR Industries Ltd. in this connection are as follows:

(i) Freight from Japan to Indian Port

(ii) Insurance paid to insurer in India (for the importation of the machine)

(iii) Designing charges paid to consultant in Japan

(iv) M/s. PQR Industries Ltd. had expended Rs. 1,00,000 in India for certain developmental activities with respect to the imported machine.

(v) PQR Industries Ltd., had incurred road transport cost from Mumbai port to their factory in Karnataka.

(vi) CBIC had notified for purposes of section 14 of the Customs Act exchange rate of 1 yen = Rs. 0.65. The interbank exchange rate as announced by the authorized dealer was 1 yen = Rs. 0.66

(vii) M/s. PQR Industries Ltd. had effected payment based on exchange rate 1 yen = Rs. 0.6545

(viii) The commission payable to the agent in India was 5% of the FOB cost of the equipment in Indian rupees

Arrive at the assessable value for purposes of valuation under the Customs Act, 1962 with brief notes wherever necessary for each of the adjustments at (i) to (viii) above.

*(May 2012, 5 Marks)*

Q 12- *Valuation on basis of identical goods* : A consignment of 800 metric tonnes of edible oil of Malaysian origin was imported by a charitable organization in India for free distribution to below poverty line i ilizens in a backward area under the scheme designed by the Food and Agricultural Organization. This being a special transaction, a nominal price of US $ 10 per metric tonne was charged for the consignment to cover the freight and insurance charges. The Customs House found out that at or about the time of importation of this gift consignment, there were following imports of edible oil of Malaysian origin:

<table>
<thead>
<tr>
<th>S.No.</th>
<th>Quantity imported in metric tons</th>
<th>Unit price in US $ C.I.F.</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.</td>
<td>20</td>
<td>260</td>
</tr>
<tr>
<td>2.</td>
<td>100</td>
<td>220</td>
</tr>
<tr>
<td>3.</td>
<td>500</td>
<td>200</td>
</tr>
<tr>
<td>4.</td>
<td>900</td>
<td>175</td>
</tr>
<tr>
<td>5.</td>
<td>400</td>
<td>180</td>
</tr>
<tr>
<td>6.</td>
<td>780</td>
<td>160</td>
</tr>
</tbody>
</table>

The rate of exchange on the relevant date was 1 US $ = Rs. 65.00 and the rate of basic customs duty was 10% ad valorem. There is no Integrated tax and GST Compensation cess.
Calculate the amount of duty leviable on the consignment under the Customs Act, 1962 with appropriate assumptions and explanations where required. (May 2001, 6 Marks) (Nov. 2008 (NS), 5 Marks)

Q 13 - Deductive Value - Rule 7: M/s. XYZ Co. imported goods declaring transaction value of Rs. 1,000 per unit, which was rejected. Rules 4 and 5 of the Import Valuation Rules are found inapplicable, as no similar/identical goods are imported in India. M/s. XYZ Co. furnishes you the following data and requests you to compute the value of imported goods as per Rule 7:

(1) Sale Price in India (after value addition): Rs. 2,100 per unit (inclusive of GST @ 5%)
(2) Commission to Indian agent on above sales: 4% of sale price (before GST)
(3) Value addition after import: Rs. 50 per unit
(4) Freight and Insurance from Fort of import to factory of importation: Rs. 60 and Rs. 20 per unit
(5) General Expenses after importation: Rs. 90 per unit
(6) Net profit margin (normally earned by others also): 20% of sale price (before GST)
(7) Rate of Basis Customs Duty: 10%. IGST @ 5% under Section 3(7) of CTA, 1975. SWS applicable (no other duty leviable). (ITC is not admissible under GST Laws)

Q 14 - Computed Value - Rule 8: Mr. X imported certain goods from a related person Mr. Paul of US and transaction value has been rejected. Rules 4 and 5 of the Import Valuation Rules are found inapplicable, as no similar/identical goods are imported in India. Mr. X furnishes cost related data of imports and requests Customs Authorities to determine value accordingly as per Rule 8. The relevant data are -

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

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

*******************************************************************************
CHAPTER 32 - IMPORTATION AND EXPORTATION

PART 1: FLOW PATTERN OF IMPORT

Flow pattern of import: The flow pattern of import is as given herein below,-

i. The person-in-charge of the vessel or aircraft or any other person notified by Central Government calls on the port and files the arrival report with the Customs Authorities.

ii. The Customs Authorities check the documents, grant entry inwards to the vessel, assign an Import General Manifest (IGM) number to the manifest, and permit the master of the vessel to land and unload the cargo.

iii. The vessel discharges the cargo into the custody of the Port Trust Authorities, or any other authority appointed in the particular port to receive the cargo.

iv. The importer of the goods delivers the negotiable bill of lading received from the shipper of the goods to the master or the steamer agent of the vessel and obtains the delivery order.

v. The importer, makes self assessment and thereafter, presents a bill of entry in prescribed form electronically for clearance of the goods for home-consumption or warehousing.

vi. In case bill of entry for home consumption is presented and proper self assessment made by importer, the Proper Officer shall make an order of clearance of goods for home consumption only after he is satisfied that such goods are not prohibited goods and import duty has been paid.

vii. In case bill of entry for warehousing is presented, the importer has to execute triple duty bond, and on such execution an order for deposit of goods in warehouse shall be made by Proper Officer.

viii. On showing the customs clearances to Port Trust Authorities or any other Custodian of the cargo, the importer takes delivery of the cargo for home consumption or for deposit in the warehouse.

ix. For removal of goods from warehouse, the importer files the 'ex-bond bill of entry' for clearance of warehoused goods. Under this bill of entry, duty will be assessed again in terms of Section 15(1)(b) of Customs Act, 1962.

x. After payment of customs duty so re-determined and other charges payable to the warehouse keeper including rent and interest, the goods are removed for home consumption.
PART 2: PROVISIONS RELATING TO CONVEYANCES CARRYING IMPORTED GOODS OR EXPORT GOODS

Arrival of vessels and aircrafts in India [Section 29]:
The relevant provisions are as under -

1) **Person in charge to call/land conveyance at Custom port/Airport [Section 29(1)]:**
The person-in-charge of a vessel or an aircraft entering India from any place outside India **shall not cause or permit the vessel or aircraft to call or land** -
(a) for the first time after arrival in India; or
(b) at any time while it is carrying passengers or cargo brought in that vessel or aircraft;

**at any place other than a customs port or a customs airport** as the case may be, unless permitted by the Board.

2) **Emergency landing of conveyance - Other than Custom port/Airport [Section 29(2)]:**
The above provisions shall not apply in relation to any vessel or aircraft which is compelled by **accident, stress of weather or other unavoidable cause** to call or land at a place other than a customs port or customs airport but the person-in-charge of any such vessel or aircraft,-
(a) shall immediately **report the arrival** of the vessel or the landing of the aircraft **to the nearest Customs Officer or the officer-in-charge of a police station** and, shall on demand, produce to him the log book belonging to the vessel or the aircraft;
(b) **shall not** without the consent of any such officer **permit any goods** carried in the vessel or the aircraft **to be unloaded** from, or any of the **crew or passengers to depart** from the vicinity of, the vessel or the aircraft; and
(c) shall comply with any directions given by any such officer with respect to any such goods,

and no passenger or member of the crew shall, without the consent of any such officer, leave the immediate vicinity of the vessel or the aircraft.

**Passengers or crew members may leave the Place for Health or Safety Purposes:**
However, nothing in this section shall prohibit the departure of any crew or passengers from the vicinity of, or the removal of goods from, the vessel or aircraft where the departure or removal is necessary **for reasons of health, safety or the preservation of life or property.**
Write a short note on Import General Manifest

Delivery of arrival manifest or import manifest or import report [Section 30]: The relevant provisions are as under-

1. **Arrival Manifest or Import manifest report:**
   According to Section 2(24) of the Customs Act, 1962, "arrival manifest or import manifest" or "import report" means the manifest or report as required to be delivered under section 30 of the Customs Act, 1962.

2. **Persons required to furnish the arrival manifest/import manifest/import report**: The persons in charge of conveyance carrying imported goods or export goods has to present arrival manifest or import manifest (in case of vessel or aircraft) or import report (in case of vehicle) in such form and manner as may be prescribed. The Central Government can specify other persons who can furnish arrival manifest or import manifest in case of vessel or aircraft.

3. **Time limit for presentation of arrival manifest/import manifest or import report**: The arrival manifest or import manifest or import report has to be delivered within the following time limits,-
   - **(a) In case of Vessel/Aircraft**: Electronically prior to the arrival of the vessel or aircraft at customs station.
   - **(b) In case of Vehicle**: Within twelve hours after its arrival in the customs station.

   **Electronic filing not feasible - Filing in Other Manner**: The Principal Commissioner or Commissioner of Customs may, in cases where it is not feasible to deliver arrival manifest or import manifest by presenting electronically, allow the same to be delivered in any other manner.

4. **Penalty for non filing the arrival UianifesV import manifest report within time limit - Not exceeding Rs. 50,000**: In case the arrival manifest or import manifest or import report is not presented within specified time limit, and if the proper officer is satisfied that there was no sufficient cause for delay in filing arrival manifest or import report/manifest, then the person-in-charge or any other person specified above who caused such delay, shall be liable to a penalty not exceeding Rs. 50,000.

5. **Arrival manifest import manifest report can be amended or supplemented**: If the proper officer is satisfied that the arrival manifest or import manifest/report is incorrect or incomplete and there was no fraudulent intention, he may permit it to be amended or supplemented.
6. Declaration as to truth of contents:
The person delivering the arrival manifest or import manifest or import report shall at the foot thereof make and subscribe to a declaration as to the truth of its contents.

Caravel Logistics P. Ltd. v. Jt. Secy (RA) Ministry of Finance, Department of Revenue [2016] 338 ELT 266 (Mad.)

IGM is an important document without which the entry inwards of the vessel cannot be granted by the proper officer and unloading of goods cannot be permitted. The person lodging the IGM with customs authorities has to be treated as an agent of the 'Master of Vessel'. In case of short landing of goods penalty is imposable on such agent.

Facts: In the instant case, the appellant being the shipping agent, filed the IGM before the customs authorities representing themselves on behalf of the Master of the vessel. On goods found short landed, penalty was imposed on the shipping agent. The question that arose here is whether shipping agent can be treated as 'person in-charge' to be liable on goods?

Decision: Held that, though the definition of 'person in charge' as given under section 2(31) of the Act does not include a shipping agent within its ambit, however, by representing themselves before Customs Officer on behalf of the person-in-charge i.e. the Master of the Vessel, the appellant becomes an agent in terms of section 148 of the Customs Act, 1962. Moreover, by lodging IGM duly certifying its contents, appellant was also covered under the term 'any other person' u/s 30(1) if not as an agent of the 'Person-in-charge of vessel'. Hence, penalty is imposable on him for short landing of the cargo.

Filing of manifest for arrival of passenger and crew

Passenger and crew arrival manifest and passenger name record information [Section 30A]:

(1) Person-in-charge to file arrival manifest of passenger and crew [Section 30A(1)]:
The person-in-charge of a conveyance that enters India from any place outside India or any other person as may be specified by the Central Government by notification in the Official Gazette, 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.
(2) **Penalty for non filing of manifest within time limit - Not exceeding Rs. 50,000 [Section 30A(2)]:**
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 person referred to in Section 30A(1) shall be liable to such penalty, not exceeding Rs. 50,000, as may be prescribed.

**Passenger name record information [Section 2(30B)]:** It 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.

**Entry Inwards and Boat Note.**

(i) **Imported goods not to be unloaded from vessel until entry inwards granted [Section 31]:**
(a) The master of a vessel shall not permit the unloading of any imported goods until an order has been given by the proper officer granting entry inwards to such vessel.
(b) No order shall be given until an arrival manifest or import manifest has been delivered or the proper officer is satisfied that there was sufficient cause for not delivering it.
(c) The provisions of this section shall not apply to the unloading of baggage accompanying a passenger or a member of the crew, mail bags, animals, perishable goods and hazardous goods.

**Date of entry inward :** For the purpose of Section 15(1) (a) of the Customs Act, 1962, the date of entry inward is the date recorded in the Customs register and not the date of actual entry of the vessel as has been judicially decided in **Bharat Surfactants (Pvt.) Ltd. v. UOI [1989] 43 ELT 189 (SC).**

(ii) **Boat Note (or Restrictions on goods being water borne) [Section 35]:**
In case the vessel arriving at the port does not get a berth, then, the import cargo is taken from the ship to the shore and the export cargo is taken from the shore to the ship, in boats.

**No imported goods** shall be water-borne for being landed from any vessel and **no export goods** which are not accompanied by a shipping bill, shall be water borne for being shipped unless' the goods are accompanied by a boat-note in prescribed form.

**Exemption from boat note :** The Board may give general permission, and the proper officer may in any particular case give special permission, for any goods or any class of goods to be water-borne without being accompanied by a boat-note.
Other provisions in relation to conveyances carrying imported goods.
The other provisions relating to conveyances carrying imported goods are as follows,-

(a) **Imported goods not to be unloaded unless mentioned in arrival manifest or import manifest or import report [Section 32]:**
No imported goods required to be mentioned under the regulations in an arrival manifest or import manifest or import report shall, except with the permission of the proper officer, be unloaded at any customs station unless they are specified in such manifest or report for being unloaded at that customs station.

(b) **Unloading and loading of goods at approved places only [Section 33]:**
Except with the permission of the proper officer, no imported goods shall be unloaded, and no export goods shall be loaded, at any place other than a place approved u/s 8(a) for the unloading or loading of such goods.

(c) **Goods not to be unloaded or loaded except under supervision of customs officer [Section 34]:**
Imported goods shall not be unloaded from, and export goods shall not be loaded on, any conveyance except under the supervision of the proper officer.

The Board may, by notification in the Official Gazette, give general permission and the proper officer may in any particular case give special permission, for any goods or class of goods to be unloaded or loaded without the supervision of the proper officer.

(d) **Restrictions on unloading and loading of goods on holidays etc. [Section 36]:**
No imported goods shall be unloaded from, and no export goods shall be loaded on, any conveyance on any Sunday or on any holiday observed by the Customs Department or on any other day after the working hours, except-
- after giving the prescribed notice; and
- on payment of the prescribed fees, if any.

However, no fees shall be levied for the unloading and loading of baggage accompanying a passenger or a member of the crew, and mail bags.

(e) **Power to board conveyances [Section 37]:**
The proper officer may, at any time, board any conveyance carrying imported goods or export goods and may remain on such conveyance for such period as he considers necessary.

(f) **Power to require production of documents and ask questions [Section 38]:**
For purposes of carrying out the provisions of this Act, the proper officer may require the person-in-charge of any conveyance or animal carrying imported goods or export goods to produce any document and to answer any questions
and thereupon such person shall produce such documents and answer such questions.

PART 3: CUSTODIANS OF CARGO AND PROCEDURE FOR CLEARANCE OR IMPORTED GOODS

Sections 45 to 51 not to apply to baggage and postal articles [Section 44]: The provisions of sections 45 to 51 shall not apply to,

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

Restriction on custody and removal of imported goods u/s 45 of customs Act, 1962.

(1) **Restrictions on custody and removal of imported goods [Section 45]**:
All the imported goods that are unloaded in the customs area shall remain in the custody of such person as may be approved by the Principal Commissioner or Commissioner of Customs until they are cleared for home consumption, or are warehoused, or are transhipped.

(2) **Duties of Custodian of cargo**:
The person having custody of any imported goods in a customs area—
(a) shall keep a record of such goods and send a copy thereof to the proper officer;
(b) shall not permit such goods to be removed from the customs area or otherwise dealt with, except under and in accordance with the permission in writing of the proper officer or in such manner as may be prescribed.

(3) **Custodian liable to pay duty on pilfered goods**:
If any imported goods are pilfered after unloading thereof in the customs area, while in custody of the person as referred above, that person will be liable to pay duty on such goods at the rate prevalent on the date of delivery of arrival manifest or import manifest or import report to the proper officer for the arrival of the conveyance in which the said goods were carried.

The SC in Forbes Forbes Campbell & Co. Ltd. v. Board of Trustees Port of Bombay [2014] 310 ELT 625 (SC), has held that demurrage and port charges are statutory charges, and in absence of any specific bar under Major Port Trust Act, 1963, the same can be recovered from steamer agents.

| Rasiklal Kantilal & Co. v. Board of Trustee of Port of Bombay [2017] 348 ELT 3 (SC) | Under the Major Port Trusts Act, 1963, the Port Trust authorities have been bestowed with the right to claim the various amounts due to it, from any person claiming delivery of goods (either bailor or person claiming through bailor) for services rendered with respect to goods. Terms and conditions of the contract between the consignor or person claiming delivery of goods is irrelevant for |

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32.7
**Facts:**

- The goods were bailed by the consignor (the bailor) to the shipowner (the bailee).
- The goods were bailed through the steamer agent (agent of the bailee). A third party (the petitioner) acquired title to goods after they arrived in Port (claiming through the bailor), without having any direct contractual relationship with Port.
- However, when the petitioner sought to take the delivery of goods, the Port Trust Authorities refused to grant delivery of the goods until the payment of the demurrage charges on account of delayed clearance of the goods.

**Question:**

- Whether the petitioner, who acquired the title to the goods long after their arrival at the port and discharged from the vessel which carried the goods, was liable to pay for the demurrage charges for the period prior to their acquiring the title, since the Port Trust authorities rendered no service to the appellant during that period?
- Whether the petitioner was entitled to complete remission of the demurrage charges as the delay in clearance of the goods was on account of the delay on part of the Customs Department?

**Decision:**

- **Held that**, there is a fiction created under Bill of Lading Act, 1856 whereby, the moment the property in the goods is passed on to the consignee, the liabilities of the consignee in respect of such goods would be the same as those of the consignor, as if the contract contained in the bill of lading had been made with the consignee. In the instant case, since the delivery of the goods was pursuant to the Bill of Lading, creating a bailment between the shipper and the owner of the ship, the Port Trust authorities (being the sub-bailee) would be entitled to enforce its rights flowing from the bailment between them and the shipowner against the consignee and recover expenses incurred by them in connection with the bailment. The terms and conditions of contract between the consignor or person claiming delivery of goods are irrelevant for determining right of Port Trust to recover its dues.

- With respect to the second question, it was held that, the fact that the petitioner was not permitted to clear the goods because of the pendency of some proceedings initiated by the customs authorities by itself does not create a right of remission in favour of the petitioner. Although, it may constitute a relevant circumstance for considering granting of remission if the Port Trust authorities so choose as a matter of policy.

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**Jindal Drugs Ltd. v. UOI [2018] 361 ELT 769 (SC)**

Where there was no mala-fide intent or any extraneous reasons or grounds attributable to customs department in detaining of the goods on possible understanding of the relevant notification, subsequent change of opinion based on Board's clarificatory circular and releasing the goods on basis of interim order of High Court, cannot be made.
Importation and exportation

<table>
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<tr>
<th>Jain Exports Pvt. Ltd. v. UOI [2017] 354 ELT A15 (SC)</th>
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<tbody>
<tr>
<td>The imported goods were confiscated with option to redemption on payment of fine, however such confiscation was subsequently quashed by Appellate Authority but importer did not get the goods released. The assessee had been prosecuting the case before wrong forum by filing writ petition before the High Court which was dismissed after 20 years for lack of jurisdiction. The question that arose was whether, during the pendency of the writ before High Court, can the Customs be held liable for the demurrage charges?</td>
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<td>Held that, Demurrage charges are payable by importer if he did not get the goods released after confiscation set aside in appeal even though no detention certificate was issued by Customs. The Customs Authorities could only be held liable for charges during the pendency of then proceedings before the Adjudicating Authority and the Appellate Authority but could not be held liable for payment of the demurrage charges during the period when the importer had been prosecuting the case before a wrong forum.</td>
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</table>

"Import Bill of Entry".

**Ans:** The provisions relating to filing of Bill of Entry are as under -

1. **Entry of goods on importation [Section 46]:**
   The importer of any goods,-
   a) other than goods intended for transit or transhipment,
   b) shall make entry thereof by presenting electronically on the customs automated system to proper officer a bill of entry in such form and manner as may be prescribed for,-
   i) home consumption; or
   ii) warehousing.

   For this purpose the CBIC has notified Bill of Entry (Electronic Integrated Declaration and Paperless Processing) Regulations, 2018.

2. **Electronic filing not feasible - Filing in other manner:**
   The Principal Commissioner or Commissioner of Customs may, in cases where it is not feasible to make entry by presenting electronically on the customs automated system, 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 transhipment. Therefore, there are three types of Bills of Entries prescribed for these three different purposes.

(a) Form I (White) - for home consumption.
(b) Form II (Yellow) - for warehousing (into bond).
(c) 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.

(3) **Examination/ warehousing of goods in absence of information required for filing bill of entry:**
If the importer makes and subscribes to a declaration before the proper officer, to the effect that he is unable for want of full information to furnish all the particulars of the goods required above, the proper officer may, pending the production of such information, permit him, previous to the entry thereof -

(a) to examine the goods in the presence of an officer of customs, or
(b) to deposit the goods in a public warehouse appointed u/s 57 without warehousing the same.

(4) **Bill of entry to include all goods mentioned in bill of lading:**
A bill of entry shall include all the goods mentioned in the bill of lading, or other receipt given by the carrier to the consignor, except as otherwise permitted by the proper officer.

(5) **Time limit of presentation of bill of entry:**
The importer shall present the bill of entry before the end of the next day following the day (excluding holidays) on which the aircraft or vessel or vehicle carrying the goods arrives at a customs station at which such goods are to be cleared for home consumption or warehousing.

However, a bill of entry may be presented at any time not exceeding 30 days prior to the expected arrival of the aircraft or vessel or vehicle by which the goods have been shipped for importation into India.
Where the bill of entry is not presented within the time so specified and the proper officer is satisfied that there was no sufficient cause for such delay, the importer shall pay such charges for late presentation of the bill of entry as may be prescribed.

Analysis: This means, the amendment of Section 46 of Customs clarifies that the importer has to file bill of entry with customs authorities within a working day of its arrival of goods at destination customs location in India, failing which penal charges is imposed. If any holidays are excluded to calculated arrival time at destination customs station from aircraft or vessel or vehicle carrying the goods.

Entry Inwards date at sea ports and date of arrival of cargo at the ICD, airports, Land Customs stations etc. would be the relevant date for determining the said charges. As is evident from the foregoing, for clearances at ICDs, date of arrival of cargo is critical for determining late charges. Board has therefore, made amendments in the Handling of Cargo in Customs Areas Regulations, 2009 so as to make it mandatory for the Customs Cargo Service providers to provide the information about arrival of cargo to the Customs.

Charges not payable due to technical glitches: As per Boards Instruction No. 12/2017-Cus. no late fees is payable, if delay in filing bill of entry ifs due to technical problems related to ICEGATE connectivity server etc. In such cases Additional Commissioner or Joint Commissioner may exercise power to waive late fees.

(6) Declaration as to truth of the contents & submission of Invoice:
The importer while presenting a bill of entry shall make and subscribe to a declaration as to the truth of the contents of such bill of entry and shall in support of such declaration, produce to the proper officer the invoice, if any, and such other documents relating to the imported goods as may be prescribed.

(7) Compliance by Importer:
The importer who presents a bill of entry shall ensure the following, namely:
(a) the accuracy and completeness of the information given therein;
(b) the authenticity and validity of any document supporting it; and
(c) compliance with the restriction or prohibition, if any, relating to the goods under this Act or under any other law for the time being in force.

(8) Bill of entry to be filed even if goods exempt [Instruction F.No. 401/202/2010-Cus.-III, dated 22-2-2011]:
Section 46 applies in case of import of all goods. Therefore, even if some goods are exempt and no duty is payable on import thereof, a bill of entry u/s 46 is required to be filed in respect of such import.
Discuss Bill of Entry (Electronic Integrated Declaration and Paperless Processing) Regulations, 2018.

<table>
<thead>
<tr>
<th>Title</th>
<th>Provisions</th>
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| 1. Short title and commencement | (1) These regulations may be called the Bill of Entry (Electronic Integrated Declaration and Paperless Processing) Regulations, 2018.  
(2) They shall apply to the import of goods through all customs stations where the Indian Customs Electronic Data Interchange System is in operation.  
(3) They shall come into force on 11-05-2018. |
| 2. Manner of filing electronic integrated declaration [Regulation 3] | The authorised person shall enter the electronic integrated declaration and the supporting documents himself by affixing his digital signature and enter them on the Customs Automated System and he may also get the electronic integrated declaration made on the customs automated system along with the supporting documents by availing the services at the service centre.  
➢ "Authorised person" means an importer or a person authorised by him who has a valid licence under the Customs Brokers Licensing Regulations, 2013 or any other regulation dealing with the similar matters and it also includes an employee of the Customs broker who has been issued a photo identity card in Form G under the Customs Brokers Licensing Regulations, 2013 or any other regulation dealing with the similar matters;  
➢ "Electronic integrated declaration" means particulars relating to the imported goods that are entered in the Indian Customs Electronic Data Interchange System;  
➢ "Service centre" means the place specified by the Principal Commissioner or the Commissioner of Customs, as the case may be, where the data entry of an electronic integrated declaration, is carried out;  
➢ "Supporting documents" means the documents in the electronic form or otherwise, which are relevant to the assessment of the imported goods under sections 17 and 46 of the Act. |
<p>| 3. Procedure for filing bill of entry [Regulation 4] | (1) The authorised person shall file the bill of entry before the end of the next day following the day (excluding holidays) on which the aircraft or vessel or vehicle carrying the goods arrives at a customs station at which such goods are to be cleared for home consumption or warehousing. |</p>
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<th>(2) The bill of entry shall be deemed to have been filed and self-assessment completed when after entry of the electronic integrated declaration on the customs automated system or by way of data entry through the service centre, a bill of entry number is generated by the Indian Customs Electronic Data Interchange System for the said declaration and the self-assessed copy of the Bill of Entry may be electronically transmitted to the authorised person or printed out at the service centre.</th>
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<td>(3) Where the bill of entry is not filed within the time specified above and the proper officer of Customs is satisfied that there was no sufficient cause for such delay, the importer shall be liable to pay charges for late presentation of the bill of entry at the rate of <strong>Rs. 5,000 per day for the initial 3 days of default</strong> and at the rate of <strong>Rs. 10,000 per day for each day of default thereafter</strong>. Where the proper officer is satisfied with the reasons of delay, he may waive off the charges referred to in the second proviso to Section 46(3) of the Customs Act, 1962.</td>
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<td>(4) The <strong>late presentation charges in respect of any bill of entry shall not exceed the duty payable</strong> in respect of that particular bill of entry. Where the duty or any other charges in respect of any bill of entry are not payable for any reason like exemption or otherwise, the late presentation charges shall not exceed Rs. 50,000.</td>
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<td></td>
<td>&quot;Bill of entry&quot; means electronic integrated declaration accepted and a unique number generated and assigned to that particular bill of entry by the Indian Customs Electronic Data Interchange System, and includes its electronic records or print-outs; &quot;ICEGATE&quot; means the customs automated system of Central Board of Indirect Taxes and Customs;</td>
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<td>4.</td>
<td><strong>Order permitting clearance of goods [Regulation 5]</strong> After the completion of the assessment, an order permitting clearance under Section 47(1) or Section 68, as the case may be, shall be made, after examination of the imported goods if so required and the order under regulation 5 may be recorded on the customs automated system and conveyed electronically to the authorised person, the custodian, and to any other person(s) designated by the authorised person.</td>
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</table>
5. **Retention of bill of entry and supporting documents** [Regulation 6]
   The authorised person shall retain, for a period of 5 years from the date of presentation of the bill of entry, the assessed copy of the bill of entry, digital or otherwise, and all supporting documents in original, which were used or relied upon by him in submitting the electronic integrated declaration, and shall produce them before Customs in connection with any action or proceedings under the Act or under any other law for the time being in force.

6. **Generation of authenticated copy of bill of entry** [Regulation 7]
   An authenticated copy of bill of entry may be generated at the request of the authorised person if possession of the said copy is required by him for compliance of provisions of law for the time being in force.

7. **Penalty** [Regulation 8]
   Any authorised person who contravenes any provision of these regulations or who fails to comply with any provisions of these regulations shall be liable to a penalty which may extend to Rs. 50,000.

**Illustration 1 - Charges for late presentation of bill of entry**: XYZ Ltd. imported goods through vessel which arrived at customs port on 01-05-2019. The company presented bill of entry for home consumption in Indian Customs Electronic Data Interchange Gateway on 06-05-2019. Determine charges if any for late presentation of bill of entry by XYZ Ltd.

**Solution**: As per Regulation 4(1) of Bill of Entry (Electronic Integrated Declaration) Regulations, 2011, the importer shall file the bill of entry before the end of the next day following the day (excluding holidays) on which the aircraft or vessel or vehicle carrying the goods arrives at a customs station at which such goods are to be cleared for home consumption or warehousing.

As per Regulation 4(3) of the said regulations, where the bill of entry is not filed within the above time limit and the proper officer of Customs is satisfied that there was no sufficient cause for such delay, the importer shall be liable to pay charges for late presentation of the bill of entry @ Rs. 5,000 per day for the initial 3 days of default and @ Rs. 10,000 per day for each day of default thereafter.

In this case since the vessel arrived at custom station on 01-05-2019, the bill of entry was required to be presented on 02-05-2019. The company has presented the bill of entry on 06-05-2019, there is delay of 4 days, hence, the company will be liable to pay charges amounting to Rs. 25,000 (Rs. 5,000 × 3 + Rs. 10,000 for the 4th day) for such delay.

**Substitution of bill of entry**

1. **Substitution of bill of entry**: According to Section 46(5), a bill of entry for home consumption can be substituted for bill of entry for warehousing or vice versa. Such substitution is permissible only if proper officer is satisfied that the interest of revenue are not prejudicially affected and there was no fraudulent intention.
Duty applicable on the date of filing substituted bill of entry shall apply: In case of substitution of bill of entry, the date of submission of revised bill of entry will be the relevant date for determination of rate of duty and tariff valuation. In case importer seeks to substitute bill of entry originally filed, he has to file a new bill of entry in the prescribed form again along with the application for substitution.

(2) Amendment of bill of entry:
Amendment of bill of entry can be made in accordance with provisions of Section 149 of the Customs Act, 1962. In case of the imported goods which have been cleared for home consumption or deposited in a warehouse, no amendment of a bill of entry shall be so authorised, except on the basis of documentary evidence which was in existence at the time the goods were cleared or deposited. Amendment relates back to the date of presentation of original bill of entry.

Therefore, the date of filing of bill of entry for determination of rate of customs duty shall be such original date on which the original bill of entry was filed as has been judicially decided by Supreme Court in ACC v. Associated Forest Products (P) Ltd. [2000] 115 ELT 37 (SC).

Mohit Overseas v. CC [2016] 335 ELT 18 (Del.)
Amendment in Bill of entry after clearance of goods for home consumption is permissible under section 149 of the Customs Act, 1962 provided the amendment is based on the documentary evidence which was in existence at the time when the goods were cleared.
In the instant case, the assessee by mistake did not refer to an exemption notification in its Bill of Entry and thereby cleared the goods at full rate. He sought amendment of the Bill of Entry subsequently under section 149 of the Customs Act, 1962.
Held that, since the said exemption notification was in existence at that point of time when the said goods were cleared, hence amendment in bill of entry was permissible under section 149 of the Customs Act, 1962.

Clearance of goods for home consumption.
Clearance of goods for home consumption [Section 47]:
(1) Order permitting clearance of goods for home consumption:
Where the proper officer is satisfied that,-
➢ any goods entered for home consumption are not prohibited goods; and
➢ the importer has paid the import duty, if any, assessed thereon and any charges payable under this Act in respect of the same,
the proper officer may make an order permitting clearance of the goods for home consumption.

Such order may also be made electronically through the customs automated system on the basis of risk evaluation through appropriate selection criteria.

**Deferred payment option to certain class of importers**: The Central Government may, by notification in the Official Gazette, permit certain class of importers to make deferred payment of said duty or any charges in such manner as may be provided by rules.

The Central Government has notified the following importers to make deferred payment of import duty:

Importers certified under Authorized Economic Operator programme as AEO (Tier-Two) and AEO (Tier-Three).

**Explanation**: 'AEO' means Authorized Economic Operator certified by the Directorate General of Performance Management under the Central Board of Excise and Customs.

(2) **Payment of duty electronically:**

The Central Government may, by notification in the Official Gazette, specify the class or classes of importers who shall pay such duty electronically.

The Central Government has notified the following classes of importers who shall pay duty electronically, namely,

(a) Importers registered under Accredited Clients Programme; and
(b) Importers paying customs duty of Rs. **10,000** or more per bill of entry.

(3) **Time limit for payment of duty and interest @ 15% p.a. on delayed payment of duty:**

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 where the importer fails to pay the duty within the time so specified, he shall pay interest on the duty not paid or short-paid till the date of its payment, @ 15% per annum.

**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 this section.
# Deferred Payment of Import Duty Rules, 2016 - 'Clear first-Pay later'

<table>
<thead>
<tr>
<th>Title</th>
<th>Provisions</th>
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</table>
| 1. Short title and commencement                                       | (1) These rules may be called the Deferred Payment of Import Duty Rules, 2016.  
(2) They shall come into force on the **16-11-2016**.                                                                                           |
| 2. Definitions                                                        | (1) In these rules, unless the context otherwise requires, —  
(a) "Act" means the Customs Act, 1962;  
(b) "due date" means the date specified in rule 5 of these rules;  
(c) "eligible importer" means any class of importers notified under proviso to Section 47(1) of the Act  
*i.e.* [Importers certified under Authorized Economic Operator programme as AEO (Tier-Two) and AEO (Tier-Three)].  
(2) Words and expressions used and not defined herein but defined in the Act, shall have the meanings respectively assigned to them in the Act. |
| 3. Application                                                        | These rules shall apply to eligible importer who have been notified under the proviso to Section 47(1) of the Act.                                                                                           |
| 4. Information about intent to avail benefit of notification          | (1) An eligible importer who intends to avail the benefit under section 47(1) of the Act shall intimate to the Principal Commissioner of Customs or the Commissioner of Customs, as the case may be, having jurisdiction over the port of clearance, his intention to avail the said benefit.  
(2) The Principal Commissioner of Customs or the Commissioner of Customs, as the case may be, shall, upon being satisfied with the eligibility of the importer to pay the duty under these rules, allow the eligible importer to pay the duty by due dates specified in Rule 5. |
| 5. Payment of duty                                                    | The eligible importer shall pay the duty by the dates specified hereunder inclusive of the period (excluding holidays) as mentioned in Section 47(2) of the Act, namely:-                                                                 |
| For goods corresponding to Bill of Entry returned for payment -        | Date for payment of Duty                                                                                                                  |
| ⇒ from 1<sup>st</sup> day to 15<sup>th</sup> day of any month          | 16<sup>th</sup> day of that month                                                                                                           |
| ⇒ from 16<sup>th</sup> day till the last day of any month other than March | 1<sup>st</sup> day of the following month                                                                                                   |
| ⇒ from 16<sup>th</sup> day till the 31<sup>st</sup> day of March          | 31<sup>st</sup> March                                                                                                                       |
| 6. Manner of payment                                                  | The eligible importer shall pay the duty electronically. The Assistant Commissioner or the Deputy Commissioner of |
Customs, as the case may be, for reasons to be recorded in writing, may allow payment of duty by any mode other than electronic payment.

7. Deferred payment not to apply in certain cases
An eligible importer who fails to pay duty in full by due date more than once in a period of three consecutive months shall not be permitted to make deferred payment.

The facility of deferred payment shall not be restored unless the eligible importer has paid the duty in full along with the interest.

8. Exemption in respect of certain goods
Nothing contained in these rules shall apply to the goods which have not been assessed or not declared by the importer in the entry made under the Act.

Illustration 2 - Interest on delayed payment of duty: A bill of entry was presented electronically on 4th August 2019. The vessel carrying goods arrived on 11th August, 2019. Entry inwards was granted on 14th August, 2019, and the bill of entry was assessed on that date and was also returned to the importer for payment of duty on that date. The duty amounting to Rs. 14,60,000 was paid by the importer on 19th August, 2019. Calculate the amount of interest payable under section 47(2) of the Customs Act, 1962, given that there was holiday on 15th August, 2019 during the period from 14th August to 19th August, 2019. (Modified CS Dec. 2003)

Solution: As per the provisions of Section 47(2) in case if the importer fails to pay the duty within one working day excluding holidays when the bill of entry is returned to him, he shall be liable to pay interest @ 15% p.a. after the expiry of such one day till the date of payment of duty. Hence, the interest liability shall be calculated as under:

| Date of return of such bill of entry | 14-08-2019 |
| Add: one working days (15th August is holiday) being due date of payment of duty | 16-08-2019 |
| Actual date of payment of duty | 19-08-2019 |
| Period of delay in days | 3 days |
| Duty Payable | 14,60,000 |
| Rate of Interest | 15% p.a. |
| Interest [Rs. 14,60,000 x 15% x 3/365] | 1,800 |

Procedure prescribed in the Customs Act, 1962 in case of goods not cleared, warehoused or transhipped within 30 days after unloading.

Procedure in case of goods not cleared, warehoused, or transhipped within 30 days after unloading [Section 48]: The relevant provisions are discussed as under—

(1) Right of custodians to sell the goods:
If any goods brought into India from a place outside India are not cleared for home consumption, or warehoused, or transhipped within 30 days from the date of the unloading thereof at a customs station or within such further time as the proper officer may allow, or if the title to any imported goods is relinquished,
then,-
(a) after notice to the importer and with the permission of the proper officer,
(b) such goods may be sold by the person having the custody thereof.

CBIC has clarified vide Circular No. 49/2018-Cus dated 03.12.2018 that after the successful bidder has been informed about the result of the auction, a consolidated bill of entry, buyer-wise will be filed with the Customs in the prescribed format by the concerned custodian for clearance of the goods as per section 46 of the customs Act, 1962 read with Un-Cleared Goods (Bill of entry) regulations, 1972 (Regulation 2 & 3).

(a) The proper officer of Customs shall assess the goods to duty in accordance with the extant law within 15 days of filing of Bill of Entry and after assessment inform the amount of duty payable to the concerned custodian.

(b) The auctioned goods shall be handed over to the successful bidder after assessment and out-of-charge orders given by the proper officer, on payment of dues.

(2) Special provisions in respect of animals, perishable goods and arms etc. However, the above time limit of 30 days will not be applicable in case of,-
(a) animals, perishable goods and hazardous goods. The same may be sold at any time with the permission of the proper officer, and
(b) arms and ammunition. The same may be sold at such time and place and in such manner as the Central Government may direct.

'Warehousing without warehousing' under the Customs Act, 1962.

(1) Storage of imported goods in warehouse pending clearance or removal [Section 49]:

Where,-
(a) in the case of any imported goods, whether dutiable or not, entered for home consumption, the Assistant Commissioner of Customs or Deputy Commissioner of Customs is satisfied on the application of the importer that the goods cannot be cleared within a reasonable time;

(b) in the case of any imported dutiable goods, entered for warehousing, the Assistant Commissioner of Customs or Deputy Commissioner of Customs is satisfied on the application of the importer that the goods cannot be removed for deposit in a warehouse within a reasonable time,

the goods may pending clearance or removal, as the case may be, be permitted to be stored in a public warehouse for a period not exceeding 30 days.

However, goods which are permitted to be stored in a public warehouse shall not be deemed to be warehoused goods for the purposes of this Act under this section and accordingly the provisions of warehousing shall not apply to such goods.
(2) **Extension by Principal Commissioner or Commissioner for further period of 30 days:**

The Principal Commissioner or Commissioner of Customs may extend the period of storage for a further period not exceeding 30 days at a time.

The said goods are kept in warehouse so as to avoid demurrage charges charged by the port trust authority/ custodians of cargo, if goods remain in their custody beyond the stipulated period.
PART 4.1 - FLOW PATTERN OF EXPORT

(1) Presentation of Electronic Integrated declaration by the authorized person and assessment of goods to duty [Shipping Bill (Electronic Integrated Declaration and Paperless Processing) Regulations, 2019 applicable w.e.f. 25-04-2019]:

(a) Authorised person to enter, etc. electronic integrated declaration: Any authorised person [i.e. exporter or custom broker authorised by him] shall enter the electronic integrated declaration [i.e. particulars relating to the export goods] and upload the supporting documents on the ICEGATE by affixing his digital signature on the ICEGATE or get the electronic integrated declaration made on the ICEGATE along with the supporting documents by availing the services at the service centre. (Regulation 3)

(b) Shipping bill when deemed to be filed and self assessment completed: The shipping bill shall be deemed to have been filed and self-assessment completed when, after entry of the electronic integrated declaration on the ICEGATE or by way of data entry through the service centre, a shipping bill number is generated by the ICEDIS for the said declaration. (Regulation 4)

(c) Order under section 51 or section 69: After the completion of assessment, payment of duty or cess, etc. if any, and examination of export goods, if so required, an order permitting clearance, under Section 51(1) or section 69 as the case may be, shall be made and the order under this regulation may be recorded on the ICEGATE and conveyed electronically to the authorised person, the custodian, and to any other person(s) designated by the authorised person (Regulation 5)

(d) Retention of assessed copy of shipping bill and supporting documents: The authorised person shall retain, for a period of 5 years from the date of presentation of the shipping bill, the assessed copy of the shipping bill, digital or otherwise, and all supporting documents in original, which were used or relied upon by him in submitting the electronic integrated declaration, and shall produce them before Customs authorities in connection with any action or proceedings under the Act or under any other law for the time being in force. (Regulation 6)

(e) Generation of authenticated copy of shipping bill: An authenticated copy of shipping bill may be generated at the request of the authorised person if possession of the said copy is required by him for compliance of provisions of any law for the time being in force. (Regulation 7)

(f) Penalty for contravention, etc. of regulations: Any authorised person who contravenes any provision of these regulations or who fails to comply with any provisions of these regulations shall be liable to a penalty which may extend to Rs. 50,000. (Regulation 8)

(g) The export goods along with assessed shipping bill is presented to preventive officers of customs i.e. (an officer-in-charge in-charge of supervision of the loading of cargo). Permission of loading of goods i.e. 'Let Ship' order is given...
by preventive officer, if he is satisfied that all the customs checks (including export trade control licence and export duty payment) have been completed.

(2) **Loading of Goods:**

(a) The assessed **Snipping Bill is presented to the master/ agent/ mate** of the vessel, who shall permit loading of goods.

(b) If the vessel is anchored in mid sea, the goods have to be taken to the ship by boats/lighters, and the **boat note procedure** would be followed.

(c) On receipt of the cargo on board the ship, **the master/mate/agent of the ship issues a receipt of the quantity and particulars of the cargo loaded** on the ship which is endorsed by Customs Officer.

(3) **Notice of Short-Export Rules, 1963:**

If any goods mentioned in a shipping bill or bill of export and cleared for exportation are not exported, the **exporter shall, within 7 days, from the date of departure of the conveyance** by which such goods were intended to be exported, —

(a) furnish information in writing to proper officer in respect of the goods not so exported:
   (i) Number of Packages,
   (ii) Description of goods,
   (iii) Quantity,
   (iv) Value,
   (v) Country of destination; or

(b) present the shipping bill or the bill of export for cancellation or amendment.

**Penalty** : Any exporter fails to comply with aforesaid provisions shall be liable to penalty **not exceeding Rs. 100**.

**PART 4.2: PROCEDURE FOR CLEARANCE OF EXPORT GOODS**

**Entry Outwards.**

(1) **Export goods not to be loaded on vessel until entry-outwards granted [Section 39]:**

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

(2) **Export goods not to be loaded unless duly passed by proper officer [Section 40]:**

The person-in-charge of a conveyance shall not permit the loading at a customs station,
(a) of export goods, *other than baggage and mail bags*, unless a shipping bill or bill of export or a bill of transhipment duly passed by the proper officer has been handed over to him by exporter;

(b) of baggage and mail bags, unless their export has been duly permitted by the proper officer.

**Departure manifest or export manifest**

(1) **Delivery of departure manifest or export manifest or export report** [Section 41]  
*Amended by Finance (No. 2) Act, 2019 w.e.f. 07-08-2019*:

The person-in-charge of a conveyance carrying export goods or imported goods or any other person as may be specified by the Central Government, by notification, shall, before departure of the conveyance from a customs station, deliver to the proper officer -

(a) in the case of a vessel or aircraft, a departure manifest or an export manifest by presenting electronically, and

(b) in the case of a vehicle, an export report, in such form and manner as may be prescribed.

**Penalty - Not exceeding Rs. 50,000**: In case, such person-in-charge or other person fails to deliver the departure manifest or export manifest or the export report or any part thereof within such time, and the proper officer is satisfied that there is no sufficient cause for such delay, such person-in-charge or other person shall be liable to pay penalty not exceeding Rs. 50,000.

**Objective of amendment**: Section 41 has been amended so as to provide a facility, that the departure manifest and export report can also be furnished by a person notified by the Central Government, in addition to the person-in-charge of the conveyance.

(2) **Electronic filing not feasible - Filing in other manner**:  
The Principal Commissioner or Commissioner of Customs may, in cases where it is not feasible to deliver departure manifest or export manifest by presenting electronically, allow the same to be delivered in any other manner.

(3) **Declaration**:  
The person delivering the departure manifest or export manifest or export report shall at the foot thereof make and subscribe to a declaration as to the truth of its contents.

(4) **Departure manifest or Export manifest/ report can be amended/ supplemented**:  
If the proper officer is satisfied that the departure manifest or export manifest or export report is in any way incorrect or incomplete and *that there was no fraudulent intention*, he may permit such manifest or report to be amended or supplemented.
Manifest for departure of passenger and crew.

Passenger and crew departure manifest and passenger name record information [Section 41A]:

(1) **Person-in-charge to file departure manifest:**
    The person-in-charge of a conveyance that departs from India to a place outside India or any other person as may be specified by the Central Government by notification in the Official Gazette, shall deliver to the proper officer—
    (i) the passenger and crew departure manifest; and
    (ii) the passenger name record information of departing passengers,
    in such form, containing such particulars, in such manner and within such time, as may be prescribed.

(2) **Penalty for non filing of manifest within time limit - Not exceeding Rs. 50,000 :**
    Where the passenger and crew departure 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 person referred to in Section 40A(1) shall be liable to such penalty, not exceeding Rs. 50,000, as may be prescribed.

"The conveyances are not allowed to leave India without the written permission from the Customs Authorities".

(1) **No conveyance to leave without written order [Section 42]**:
    The person-in-charge of a conveyance, which has brought any imported goods or has loaded any export goods at a customs station, shall not cause or permit the conveyance to depart from that customs station until a written order has been given by the proper officer.

(2) **Conditions of giving such order by proper officer:**
    No such order shall be given by the proper officer until,-
    (a) The person-in-charge has answered the questions put to him under section 38 of the Act.
    (b) The provisions of Section 41 (delivery of departure manifest or export manifest/report) have been complied with.
    (c) The shipping bill or bills of export, the bills of transhipment, if any, and such other documents as the proper officer may require have been delivered to him.
    (d) All duties leviable on any stores consumed in such conveyance, and all charges and penalties due in respect of such conveyance or from the person-
in-charge thereof have been paid or the payment secured by such guarantee or deposit of such amount as the proper officer may direct.

(e) The person-in-charge of the conveyance has satisfied the proper officer that no penalty is leviable on him under section 116 (Penalty for non accounting of goods) or the payment of any penalty that may be levied upon him under that section has been secured by such guarantee or deposit of such amount as the proper officer may direct.

(f) In any case, where any export goods have been loaded without payment of export duty or in contravention of any provision of this Act or any other law for the time being in force relating to export of goods,-

(i) such goods have been unloaded, or

(ii) where the Assistant/Deputy Commissioner is satisfied that it is not practicable to unload such goods, person-in-charge of conveyance has given an undertaking, secured by such guarantee or deposit of such amount as proper officer may direct, for bringing back the goods to India.

(3) **Exemption of certain classes of conveyances from certain provisions [Section 43]:**

(a) The provisions of Sections 30, 41 and 42 shall not apply to a vehicle, which carries no goods other than luggage of its occupants.

(b) The Central Government may by notification, exempt the following classes of conveyances from all or any provisions of Section 29 to 42:

(i) conveyances belonging to the Government or any Foreign Government;

(ii) vessels and aircraft which temporarily enter India by reason of any emergency.

**Procedure and documentation for clearance of "export cargo", under the Customs Act, 1962.**

(1) **Entry of goods for exportation [Section 50]:**

The exporter of goods shall make the entry of such goods by presenting electronically on the customs automated system to the proper officer in such form and manner as may be prescribed -

(a) a shipping bill (in case of goods to be exported in a vessel or aircraft); or

(b) a bill of export (in case of goods to be exported by land).

**Electronic filing not feasible - Filing in other manner :** The Principal Commissioner or Commissioner of Customs may, in cases where it is not feasible to make entry by presenting electronically on the customs automated system, allow an entry to be presented in any other manner.
Declaration as to truth of contents: The exporter of any goods, while presenting a shipping bill or bill of export, shall make and subscribe to a declaration as to the truth of its contents.

(2) Compliance by Exporter:
The exporter who presents a shipping bill or bill of export under this section shall ensure the following, namely:
(a) the accuracy and completeness of the information given therein;
(b) the authenticity and validity of any document supporting it; and
(c) compliance with the restriction or prohibition, if any, relating to the goods under this Act or under any other law for the time being in force.

(3) Clearance of goods for exportation [Section 51]:
(a) Order for clearance of goods for exportation [Section 51(1)]: The proper officer may make an order permitting clearance and loading of export goods for exportation only when:
   (i) the shipping bill or bill of export has been presented by the exporter;
   (ii) the proper officer is satisfied that such goods are not prohibited goods; and
   (iii) the exporter has paid the duty, if any, assessed on such goods and any charges payable under this Act in respect of the same.

Such order may also be made electronically through the customs automated system on the basis of risk evaluation through appropriate selection criteria.

Deferred payment option to certain class of exporters: The Central Government may, by notification in the Official Gazette, permit certain class of exporters to make deferred payment of said duty or any charges in such manner as may be provided by rules.

(b) Interest on delayed payment of export duty [Section 51(2)]: Where the exporter fails to pay the export duty, either in full or in part, under section 51(1) by such due date as may be specified by rules, he shall pay interest on said duty not paid or short-paid till the date of its payment at such rate, not below 5% and not exceeding 36% per annum, as may be fixed by the Central Government, by notification in the Official Gazette.
PART 5: PAYMENTS THROUGH ELECTRONIC CASH LEDGER

Payment of duty, interest, penalty, etc. [Section 51A]

(1) **Deposits to be credited in electronic cash ledger:**
Every deposit made towards duty, interest, penalty, fee or any other sum payable by a person under the provisions of this Act or under the Customs Tariff Act, 1975 or under any other law for the time being in force or the rules and regulations made thereunder, using authorised mode of payment shall, subject to such conditions and restrictions, be credited to the electronic cash ledger of such person, to be maintained in such manner, as may be prescribed.

(2) **Utilisation of Electronic cash ledger:**
The amount available in the electronic cash ledger may be used for making any payment towards duty, interest, penalty, fees or any other sum payable under the provisions of this Act or under the Customs Tariff Act, 1975 or under any other law for the time being in force or the rules and regulations made thereunder in such manner and subject to such conditions and within such time as may be prescribed.

(3) **Refund of balance:**
The balance in the electronic cash ledger, after payment of duty, interest, penalty, fee or any other amount payable, may be refunded in such manner as may be prescribed.

(4) **Exemption:**
Notwithstanding anything contained in this section, if the Board is satisfied that it is necessary or expedient so to do, it may, by notification, exempt the deposits made by such class of persons or with respect to such categories of goods, as may be specified in the notification, from all or any of the provisions of this section.
PART 6: TRANSIT AND TRANSHIPMENT OF GOODS

Sections not to apply to baggage, postal articles and stores [Section 52]:
The provisions of Sections 53 to 56 shall not apply to,-

- baggage,
- goods imported by post, and
- stores.

Transit of goods [Section 53]:
Where any goods imported in a conveyance and mentioned in the arrival manifest or import manifest or the import report, as the case may be, as for transit in the same conveyance to any place outside India or to any customs station, the proper officer may allow the goods and the conveyance to transit without payment of duty, subject to such conditions, as may be prescribed. However, the goods should not have been prohibited u/s 11 of the Customs Act.

Transhipment of goods [Section 54]:
This refers to transfer of goods from one conveyance to another. It may be from one customs station to any custom station in India. Section 54 provides that,-

(a) where any goods imported into a customs station are intended for transhipment, the person-in-charge of conveyance will have to present a bill of transhipment to the proper officer in such form and manner as may be prescribed;

(b) where any goods imported into a customs station are mentioned in the arrival manifest or import manifest or import report, as for transhipment to any place outside India, such goods will be allowed to be so transhipped without payment of duty. However, the goods should not have been prohibited under section 11 of the Customs Act.

(c) where any goods imported into a customs station are mentioned in the arrival manifest or import manifest or import report for transhipment to any major port (as defined in the Indian Ports Act, 1908) or to customs airport or customs port (as notified by the Board) or to any other customs station and the proper officer is satisfied about the bona-fide intention for transhipment of the goods to such customs station, the proper officer may allow the goods to be transhipped, without payment of duty.

Differences between transit and transhipment has been summarized in the table hereunder -

<table>
<thead>
<tr>
<th>Basis of difference</th>
<th>Transit</th>
<th>Transhipment</th>
</tr>
</thead>
<tbody>
<tr>
<td>Statutory provision</td>
<td>Section 53 of the Customs Act, 1962 provides for transit of goods and conveyance.</td>
<td>Section 54 of the Customs Act, 1962 provides for transhipment of goods.</td>
</tr>
<tr>
<td>Conveyance</td>
<td>In case of transit of goods, goods</td>
<td>In case of transhipment of goods,</td>
</tr>
<tr>
<td><strong>Importation and exportation</strong></td>
<td><strong>AJ Education NeXt</strong></td>
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<td>-------------------------------</td>
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<td></td>
</tr>
<tr>
<td><strong>are allowed to remain on the same conveyance.</strong></td>
<td><strong>the conveyance changes i.e. the goods are unloaded from one conveyance and loaded in another conveyance.</strong></td>
<td></td>
</tr>
<tr>
<td><strong>Documentation</strong></td>
<td><strong>In case of transit, the record already made in the ship's/aircraft's manifest continues. The imported goods are shown in the manifest as the same bottom cargo. Thus, there is continuity in the records and there is no chance of the control over such transit goods being lost.</strong></td>
<td></td>
</tr>
<tr>
<td><strong>In transhipment of goods, continuity in the records is not maintained as the goods are transferred to another conveyance.</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Supervision</strong></td>
<td><strong>No supervision is required for transit goods.</strong></td>
<td></td>
</tr>
<tr>
<td><strong>Transhipment takes place under the supervision of the proper officer.</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Additional Formalities</strong></td>
<td><strong>No additional conditions or formalities are required.</strong></td>
<td></td>
</tr>
<tr>
<td><strong>Specific conditions are imposed if the goods are deliverable at Indian port.</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Port</strong></td>
<td><strong>Transit is allowed in every port normally.</strong></td>
<td></td>
</tr>
<tr>
<td><strong>Transhipment is allowed in specified ports only.</strong></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

**Duty liability in cases of transit and transhipment of goods?**

**Liability of duty on goods transited u/s 53 or transhipped u/s 54 [Section 55]**: Where any goods are allowed to be transited under section 53 or transhipped under section 54 to any customs station, then, on their arrival at such customs station,-

(i) they shall be liable to duty,

(ii) they shall be entered in the like manner as the goods are entered on the first importation, and

(iii) the provisions of this Act and any rules and regulations shall apply in relation to such goods.

**Transport of certain classes of goods subject to prescribed conditions [Section 56]**: Imported goods may be transported without payment of duty from one land customs station to another, and any goods may be transported from one part of India to another part through any foreign territory, subject to conditions prescribed for the due arrival of such goods at the place of destination.

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CHAPTER 33 - DUTY DRAWBACK

Concept of duty drawback: Duty drawback is an export incentive scheme where the duties paid on any imported materials or excisable materials which are used in the manufacture/processing/carrying out any operations on the goods that are exported outside India is allowed as refund to the exporter.

PART 1: DUTY DRAWBACK UNDER SECTION 74

Explain briefly the provisions of Sections 74 and 75 of the Customs Act, 1962 relating to duty drawback. (May 1999, 6 Marks) (May 2003, 5 Marks)

Ans: The differences between the provisions of Section 74 and Section 75 are as follows:

<table>
<thead>
<tr>
<th>Basis</th>
<th>Drawback allowable on re-export of duty paid goods - Section 74</th>
<th>Drawback on materials used in the manufacture of exported goods - Section 75</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Meaning of drawback</td>
<td>Drawback in relation to any goods exported out of India, means the refund of duty or tax or cess as referred to in the Customs Tariff Act, 1975 and paid on importation of such goods in terms of Section 74 of the Customs Act. Thus, IGST and GST compensation cess paid on imported goods is also eligible for drawback.</td>
<td>&quot;Drawback&quot; in relation to any goods manufactured in India and exported, means the rebate of duty excluding IGST leviable u/s 3(7) and Compensation cess leviable u/s 3(9) of the Customs Tariff Act, 1975 chargeable on any imported materials or excisable materials used in the manufacture of such goods. Thus, IGST and GST Compensation cess leviable on imported material or excisable material is not eligible for drawback. GST has to be taken as credit or refund as per the provisions of CGST Act and the rules made thereunder.</td>
</tr>
<tr>
<td>2. Identity of goods exported</td>
<td>The goods must be capable of being easily identified.</td>
<td>There is no criteria of such identification since the inputs are manufactured before their export.</td>
</tr>
<tr>
<td>3. Eligibility</td>
<td>All goods are eligible for drawback subject to their identification.</td>
<td>Drawback is available only in respect of notified goods.</td>
</tr>
<tr>
<td>4. User criteria</td>
<td>Duty drawback shall be allowed even if the imported goods are taken into use and then exported.</td>
<td>If the goods manufactured from imported material are used in India and subsequently exported, then no duty drawback shall be allowed,</td>
</tr>
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<td></td>
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<tr>
<td>---</td>
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</tr>
<tr>
<td>5. <strong>Nature of goods exported</strong></td>
<td>The exported goods should have been imported and customs duty be paid thereon. (subject to certain exceptions)</td>
<td>The goods exported may be manufactured or processed from imported or indigenous inputs.</td>
</tr>
<tr>
<td>6. <strong>Rate of Duty drawback</strong></td>
<td>Duty drawback is allowed @ 98% of the import duty, if the goods are exported without use and in case if they are taken into use drawback is allowed at notified rate depending upon the period of use.</td>
<td>Duty drawback is allowed as per All Industry Rate notified by the Drawback Directorate. In case if no rate is notified, then the exporter can apply for Brand rate and in case if duty drawback as per All Industry Rate is less than 80% of the duty paid on importation, then the exporter can apply for Special Brand Rate.</td>
</tr>
<tr>
<td>7. <strong>Time limit for exportation of goods</strong></td>
<td>The goods must be exported within 2 years from the date of payment of duty or such extended time as allowed by Board.</td>
<td>There is no time limit for such exportation.</td>
</tr>
<tr>
<td>8. <strong>Requirement of Value addition</strong></td>
<td>There is no requirement of minimum value addition.</td>
<td>There should not be any negative value addition and minimum value addition must be achieved, if specified.</td>
</tr>
<tr>
<td>9. <strong>Realisation of export-sale proceeds in convertible foreign exchange</strong></td>
<td>There is no requirement to bring the export proceeds in convertible foreign exchange.</td>
<td>If the export proceeds are not brought in convertible foreign exchange within time limit specified under FEMA, 1999, then the drawback so granted shall be recovered.</td>
</tr>
<tr>
<td>10. <strong>Rules framed</strong></td>
<td>Re-export of Imported goods (Drawback of Customs Duties) Rules, 1995 has been framed.</td>
<td>Customs and Central Excise Duties Drawback Rules, 2017 has been framed.</td>
</tr>
<tr>
<td>11. <strong>Export in form of Baggage</strong></td>
<td>The goods can be exported in form of Baggage.</td>
<td>The goods cannot be exported as Baggage.</td>
</tr>
</tbody>
</table>
1.1 DD ON RE - EXPORT AS SUCH:

Drawback allowable on re-export of duty paid goods [Section 74]:
Duty drawback is allowed of custom duty paid on goods imported into India and which are subsequently re-exported. The provisions of Section 74 are as follows:

(1) **Drawback only on duty paid imported goods:**
Only imported goods on which duty has been paid on importation are eligible for drawback.

(2) **Order for exportation:**
The goods so imported must have been entered for exportation either -
(a) under section 51; or
(b) under section 77 as baggage; or
(c) under Section 84(a) by post,
and the proper officer must have made an order for permitting clearance of goods for exportation.
The goods shall be deemed to have been entered for export on the date with reference to which the rate of duty is calculated under section 16.

(3) **The goods should be capable of being easily identified:**
Such goods are identified to the satisfaction of the Assistant or Deputy Commissioner as the goods which were imported.

(4) **Drawback is allowed equal to 98% of the import duty:**
98% of the import duty paid is allowed as drawback in case the goods are exported out of India without being put to use. In case the goods are taken into use and then exported, duty drawback shall be allowed at notified rates under section 74(2) having regard to the duration of use, the depreciation in value and other relevant circumstances.

(5) **Re-export within 2 years:**
The goods must be entered for export within 2 years from the date of payment of duty on the importation thereof. However, extension can be granted by the Board on sufficient cause been shown. In the case of goods assessed to duty provisionally under section 18, the date of payment of the provisional duty shall be deemed to be the date of payment of duty.

For the purpose of this section **Re-export of Imported Goods (Drawback of Customs Duties) Rules, 1995** has been framed by the Central Government.
1.2.1 DD ON RE - EXPORT AFTER PUT TO COMMERCIAL USE

According to Section 74(2), the Central Government is empowered to fix the rate of drawback in case of those goods, which are exported after having been put to use subsequent to their importation, having regard to the duration of use, the depreciation in value and other relevant circumstances.

(1) Rates of Drawback notified by the Central Government:

The Central Government has notified the drawback rates in respect of goods taken into use after importation,-

<table>
<thead>
<tr>
<th>Length of period between the date of clearance for home consumption and the date when goods are placed under Customs control for export.</th>
<th>% of import duty to be paid as Drawback</th>
</tr>
</thead>
<tbody>
<tr>
<td>Not more than 3 months</td>
<td>95%</td>
</tr>
<tr>
<td>More than 3 months but not more than 6 months</td>
<td>85%</td>
</tr>
<tr>
<td>More than 6 months but not more than 9 months</td>
<td>75%</td>
</tr>
<tr>
<td>More than 9 months but not more than 12 months</td>
<td>70%</td>
</tr>
<tr>
<td>More than 12 months but not more than 15 months</td>
<td>65%</td>
</tr>
<tr>
<td>More than 15 months but not more than 18 months</td>
<td>60%</td>
</tr>
<tr>
<td>More than 18 months</td>
<td>Nil</td>
</tr>
</tbody>
</table>

(2) Goods in respect of which no duty drawback is allowed:

The goods in respect of which no drawback of import duty shall be allowed on export, if they have been used in India after importation, are as follows,-

(a) Wearing apparel, (b) Tea chests, (c) Exposed cinematograph film passed by the Board of Film Censors in India. (d) Unexposed photographic films, paper and plates and X-Ray films.

1.2.2 RE – EXPORT AFTER BEIGN PUT TO PERSONAL USE

In respect of a motor car or goods imported by a person for his personal and private use, drawback of duty shall be equal to the import duty paid in respect of such motor car or goods as reduced by 4%, 3%, 2.5% and 2% for use for each quarter or part thereof during the period of first year, second year, third year, and fourth year respectively.

➤ Permission by CBIC : In case the above period is more than 2 years, drawback shall be allowed only if the Board has extended the period beyond 2 years, on sufficient cause being shown.

➤ No drawback after use of 4 years : If motorcar or goods has or have been used for more than 4 years, then no drawback shall be allowed.
PART 2: RE-EXPORT OF IMPORTED GOODS  
(DRAWBACK OF CUSTOMS DUTIES) RULES, 1995

2.1 PROCEDURE FOR EXPORT BY POST

Procedure for claiming drawback on goods exported by post [Rule 31: Rule 1 of the Re-export of Imported Goods (Drawback of Customs Duties) Rules, 1995 provides that,-

1) Where goods are to be exported by post under a claim for drawback under these rules,-
   (a) the outer packing carrying the address of the consignee shall also carry in bold letters the words "DRAWBACK EXPORT";
   (b) the exporter shall deliver to the competent Postal Authority, along with the parcel or package, a claim in the prescribed form in quadruplicate, duly filled in.

2) Date of receipt of drawback claim:
   The date of receipt of the aforesaid claim form by the proper officer of customs from the postal authorities shall be deemed to be the date of filing of drawback claim by the exporter for the purpose of Section 75A and an intimation of the same shall be given by the proper officer of customs to the exporter in such form as the Principal Commissioner or Commissioner of Customs may prescribe.

3) Deficiencies in claim to be informed:
   In case the aforesaid claim form is not complete in all respects, the exporter shall be informed of the deficiencies therein within 15 days of its receipt from postal authorities by a deficiency memo in the form prescribed by the Principal Commissioner or Commissioner of Customs, and such claim shall be deemed not to have been received for the purpose of (2) above.

4) Compliance of requirements specified in deficiency memo:
   When the exporter complies with the requirements specified in the deficiency memo, within 30 days of receipt of the deficiency memo, he shall be issued an acknowledgment by the proper officer in the form prescribed by the Principal Commissioner or Commissioner of Customs and the date of such acknowledgment shall be deemed to be date of filing the claim for the purpose of Section 75A.

2.2 PROCEDURE FOR EXPORT OTHER THAN BY POST

Statements/Declarations to be made on exports other than by post [Rule 4]: In the case of exports other than by post, the exporter shall, at the time of export of the goods,-
(1) **Declaration to be made on shipping bill:**
State on the shipping bill or bill of export, the description, quantity and such other particulars as are necessary for deciding whether the goods are entitled to drawback under section 74 and make a declaration on the relevant shipping bill or bill of export that,-
(a) the export is being made under a claim for drawback under section 74 of the Customs Act;
(b) that the duties of customs were paid on the goods imported;
(c) that the imported goods were, or were not, taken into use after importation;
However, the Principal Commissioner or Commissioner can exempt the exporter from compliance of above requirements if the same is beyond his control.

(2) **Documents to furnished:**
Furnish to the proper officer of customs, a copy of the Bill of Entry or any other prescribed document against which goods were cleared on importation, import invoice, documentary evidence of payment of duty, export invoice and packing list and permission from Reserve Bank of India to re-export the goods, wherever necessary.

### 2.3 TIME AND MANNER FOR OTHER THAN POST

Manner and time of claiming drawback on goods exported other than by post [Rule 5]:

(1) **Claim to be made within 3 months of export:**
A claim for drawback, in case of goods exported other than by post, shall be filed in the specified form within 3 months from the date on which an order permitting clearance and loading of goods for exportation under section 51 is made by proper officer of customs.

**Extension of time limit for filing drawback claim and fees therefor:**

<table>
<thead>
<tr>
<th>Extending authority</th>
<th>Period of extension, which can be allowed by the authority</th>
<th>Fees payable along with the application for grant of extension</th>
</tr>
</thead>
</table>
| Assistant/Deputy Commissioner | Further 3 months *(beyond original period of 3 months)* | ➢ 1% of the FOB value of exports; or  
➢ Rs. 1,000, whichever is less. |
| Principal Commissioner or Commissioner | Further 6 months *(beyond original period of 3 months & extension of 3 months by AC/DC)* | ➢ 2% of the FOB value; or  
➢ Rs. 2,000, whichever is less. |
(2) **List of documents to be filed along with duty drawback claim:**
The claim shall be filed along with the following documents,

(a) **Triplicate copy of the Shipping Bill** bearing examination report recorded by the proper officer of the customs at the time of export;

(b) **Copy of Bill of Entry** or any other prescribed document against which goods were cleared on importation;

(c) **Import invoice**;

(d) **Evidence of payment of duty** paid at the time of importation of the goods;

(e) **Permission from RBI** for re-export of goods, wherever necessary;

(f) **Export invoice and packing list**;

(g) **Copy of Bill of lading or Airway bill**;

(h) Any other documents as may be specified in the deficiency memo.

(3) **Date of filing claim:**
The date of filing of the claim for the purpose of Section 75A shall be the date of affixing the Dated Receipt Stamp on the claims, which are complete in all respects, and for which an acknowledgment shall be issued in the form prescribed by the Principal Commissioner or Commissioner of Customs.

(4) **Deficiency memo:**
Any claim which is incomplete in any material particulars or is without the documents specified above, shall not be accepted for the purpose of Section 75A and such claim shall be returned to the claimant with the deficiency memo in the form prescribed by the Principal Commissioner or Commissioner of Customs within 15 days of submission and shall be deemed not to have been filed.

Where exporter complies with requirements specified in deficiency memo within 30 days from the date of receipt of deficiency memo, the same will be treated as a claim filed for the purpose of Section 75A.

(5) **Claim for drawback ordered by Commissioner (Appeals), Central Government or any Court:**
Where any order for payment of drawback is made by Commissioner (Appeals), Central Government or any Court against an order of the proper officer of customs, the exporter may file a claim for drawback under this rule within 3 months from the date of receipt of the order so made.
2.4 INTEREST

(a) **Payment of drawback and interest [Rule 6]:**

The drawback under these rules and interest, if any, shall be paid by the officer of Customs to the exporter or to the agent specially authorised by the exporter to receive the said amount of drawback and interest. The date of payment of drawback and interest shall be deemed to be, the date of issue of cheque; or the date of credit in the exporter's account maintained with the Custom House, as the case may be.

(b) **Repayment of erroneous or excess payment of drawback and interest [Rule 7]:**

Where an amount of drawback and interest, if any, has been paid erroneously or the amount so paid is in excess of what the claimant is entitled to, the claimant shall, on demand by an officer of customs repay the amount so paid erroneously or in excess, and where the claimant fails to repay the amount it shall be recovered in the manner laid down in Section 142 of the Customs Act, 1962, as "Recovery of sums due to Government".
PART 3.1: DUTY DRAWBACK UNDER SECTION 75

Drawback on imported materials used in the manufacture of goods which are exported [Section 75]:
The provisions regarding drawback in case of imported materials used in the manufacture of goods, which are exported are as follows,-

(1) **Notified goods:**
Drawback is allowed on goods which are notified by Central Government.

(2) **Manufacturing process or other operations must be performed:**
Such goods must either be manufactured or processed, or in respect of which any operation must have been carried out in India.

(3) **Order for exportation by proper officer:**
Such goods must have been entered for exportation and the order permitting loading thereof has been made by proper officer u/s 51, or they must have entered for export post u/s 84(a) and in respect of which proper officer has made an order permitting clearance for exportation.

(4) **Duty Drawback of custom duties to be allowed:**
The drawback of duties of customs chargeable on any imported materials of a class or description, which is used in the manufacture or processing or in carrying out any such operation on such goods shall be allowed.

(5) **No drawback to be allowed in case of negative value addition:**
If the export value of such goods or class of goods is less than the value of the imported materials used in the manufacturing, processing of such goods or carrying out any operation on them, then, no drawback shall be allowed.

(6) **Minimum value addition:**
If the export value of such goods is not more than such percentage of the value of the imported materials used in their manufacture etc., as specified by the Central Government, no drawback shall be allowed.

(7) **Sale proceeds to be realised within the period as specified in FEMA:**
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 within the period as specified in the FEMA, 1999. If such sale proceeds are not received within the said time limit, such drawback shall (except under such circumstances or such conditions as the Central Government may, by rules,
specify) be deemed never to have been allowed and procedure for recovery or adjustment of the drawback amount will be initiated.

(8) **Deemed imported material:**
As per Section 75(1A), where it appears to the Central Government that the quantity of particular imported material into India is more than the total quantity of like material used in the manufacturing or processing or carrying out any operation on the goods that are exported outside India, then the Central Government may by notification in Official Gazette, declare so much of the material as is contained in the goods exported shall be deemed to be imported material and the same shall be eligible for drawback.

(9) **Rules framed:**
Customs and Central Excise Duties Drawback Rules, 2017 has been framed by Central Government in accordance of which duty drawback will be allowed.

(10) **Power to give drawback with retrospective effect:**
The Central Government has power to give drawback with retrospective effect from a date not earlier than the date of changes in the rates of duty on inputs used in the export goods.

**PART 3.2 CUSTOMS AND CENTRAL EXCISE DUTIES DRAWBACK RULES, 2017**

(1) **Export:**
As per Rule 2(c) of the Customs and Central Excise Duties Drawback Rules, 2017, "Export" means,-
(a) taking out of India to a place outside India, or
(b) taking out from a place in Domestic Tariff Area to a Special Economic Zone, and
(c) includes loading of provisions or store or equipment for use on board a vessel or aircraft proceeding to a foreign port or airport.

(2) **Allowability of Drawback in case export goods get destroyed in transit:**
'India' includes territorial waters of India. When the export goods are destroyed before they cross the territorial waters of India, then the same will not be regarded as 'export', being the goods didn't move out of India.

In case the goods are destroyed in high seas (*i.e.* beyond territorial waters of India), then the same shall be eligible for drawback since the export is completed. — *Sun Industries v. CC.* [1988] 35 ELT 241 (SC) and *UOI v. Rajindra Dyeing & Printing Mills Ltd.* [2005] 180 ELT 433 (SC).
3.2.1 - All Industry Rates.

*Ans:* The provisions are as under -

(1) **All Industry Rates [Rule 3]:**

The Central Government's Drawback Directorate fixes all industry rates, having regard to the following criteria,-

(a) the average quantity or value of each class or description of the materials from which a particular class of goods is ordinarily produced or manufactured in India;

(b) the average quantity or value of the imported materials or excisable materials used for production or manufacture in India of a particular class of goods;

(c) the average amount of duties paid on imported materials or excisable materials used in the manufacture of semis, components and intermediate products which are used in the manufacture of goods;

(d) the average amount of duties paid on materials wasted in the process of manufacture and catalytic agents:

However, if any such waste or catalytic agent is re-used in any process of manufacture or is sold, the average amount of duties on the waste or catalytic agent re-used or sold shall also be deducted;

(e) the average amount of duties paid on imported materials or excisable materials used for containing or packing the export goods;

(f) any other information which the Central Government may consider relevant or useful for the purpose.

(2) **Reduced drawback to be allowed in Certain Cases:**

In case where any goods are produced or manufactured from imported materials or excisable materials,-

(a) the duty chargeable on which has been paid only on some of such materials and not on the rest, or the duty chargeable on which has been paid in part, or

(b) the duty paid has been rebated or refunded in whole or in part or given as credit, under any of the provisions of the Customs Act, 1962, and the rules made thereunder, or of the Central Excise Act, 1944 and the rules made thereunder,

the drawback admissible on the said goods shall be reduced taking into account the lesser duty paid or the rebate, refund or credit obtained.

(3) **Cases where no duty drawback is allowed [Rule 3]:**

No duty drawback will be allowed,-

(i) if *the said goods*, except tea chests used as packing material for export of blended tea, have been taken into use after manufacture;
(ii) if the said goods are produced or manufactured, **using imported materials or excisable materials in respect of which duties have not been paid**;

(iii) on jute batching oil used in the manufacture of export goods, namely, jute (including Bimlipatam jute or mesta fibre) yarn, twist, twine, thread, cords and ropes;

(iv) if the said goods, being packing materials have been used in or in relation to the export of -
   (a) jute yarn (including Bimlipatam jute or mesta fibre), twist, twine, thread and ropes in which jute yarn predominates in weight;
   (b) jute fabrics (including Bimlipatam jute or mesta fibre), in which jute predominates in weight;
   (c) jute manufactures not elsewhere specified (including Bimlipatam jute or mesta fibre) in which jute predominates in weight.

(4) As per **Notification No. 89/2017-Cus (N.T.) dated 21-09-2017**, the rates of drawback specified in the said Schedule shall not be applicable to export of a commodity or product if such commodity or product is -
   (a) manufactured partly or wholly in a warehouse under section 65 of the Customs Act, 1962;
   (b) manufactured or exported in discharge of export obligation against an Advance Authorisation or Duty Free Import Authorisation issued under the Duty Exemption Scheme of the relevant Foreign Trade Policy;
   (c) manufactured or exported by a unit licensed as hundred per cent Export Oriented Unit in terms of the provisions of the relevant Foreign Trade Policy;
   (d) manufactured or exported by any of the units situated in Free Trade Zones or Export Processing Zones or Special Economic Zones;
   (e) manufactured or exported availing the benefit of the Notification No. 32/1997-Cus., dated 1-4-1997 (This notification allows exemption to goods imported for execution of an export order placed on the importer by the supplier of goods for jobbing.)

**3.2.2 - Brand Rates**

(1) **Cases where amount or rate of drawback has not been determined - Brand Rate [Rule 6]**:

Where no amount or rate of drawback has been determined in respect of any goods, any exporter of such goods may, **within 3 months** from the date relevant for the applicability of the amount or rate of drawback, apply to the Principal Commissioner of Customs or Commissioner of Customs, as the case may be, having jurisdiction over the place of export, for determination of the amount or rate of drawback thereof stating all the relevant facts including the proportion in which the materials or components are used in the production or manufacture of goods and the duties paid on such materials or components.
In case an exporter is exporting the aforesaid goods from more than one place of export, he shall apply to the Principal Commissioner or Commissioner of Customs, having jurisdiction over any one of the said places of export.

**Extension of time limit for filing drawback claim and fees therefor:**

<table>
<thead>
<tr>
<th>Extending authority</th>
<th>Period of extension, which can be allowed by the authority</th>
<th>Fees payable along with the application for grant of extension</th>
</tr>
</thead>
<tbody>
<tr>
<td>Assistant/ Deputy Commissioner of Customs</td>
<td>Further 3 months (beyond original period of 3 months)</td>
<td>➢ 1% of the FOB value of exports; or ➢ 1,000, whichever is less.</td>
</tr>
<tr>
<td>Principal Commissioner or Commissioner of Customs</td>
<td>Further 6 months (beyond original period of 3 months &amp; extension of 3 months by AC/DC)</td>
<td>➢ 2% of the FOB value; or ➢ 2,000, whichever is less.</td>
</tr>
</tbody>
</table>

(2) **Grant of Drawback:**

The Principal Commissioner or Commissioner of Customs after making such necessary inquiries as it deems fit will fix the brand rate.

(3) **Revocation of Drawback:**

The Central Government where considers it necessary so to do, it may,-

(a) revoke the rate of drawback or amount of provisional drawback by the Principal Commissioner or Commissioner of Customs, as the case may be; or

(b) direct the Principal Commissioner or Commissioner of Customs, as the case may be, to withdraw the rate of drawback or amount of drawback determined.

(4) **"Place of export"**

means customs station or any other place appointed for loading of export goods u/s 7 of the Customs Act, 1962 from where the exporter has exported the goods or intends to export the goods in respect of which determination of amount or rate of drawback is sought. [Explanation]

(5) **"Provisional drawback"**

**Provisional duty drawback [Rule 6]:** Yes, duty drawback can be granted to exporter on provisional basis.

The exporter may be granted provisional duty drawback when he executes a bond binding himself to repay the entire or excess amount of drawback. Where an exporter desires that he may be granted drawback provisionally, he may make an application in writing to Principal Commissioner or Commissioner of Customs that a provisional amount be granted to him towards drawback on the export of such goods.
goods pending determination of the final amount or drawback. The exporter may be allowed provisional duty drawback of an amount not exceeding the amount claimed by him in respect of such export.

However, the Principal Commissioner or Commissioner of Customs, for the purpose of allowing provisional payment of drawback in respect of such export, require the exporter to enter into a general bond for such amount, and subject to such conditions, as he may direct; or to enter into a bond (with such surety or security as the Officer directs) for an amount not exceeding the full amount claimed by such exporter as drawback in respect of a particular consignment and binding himself,-

(i) to refund the amount so allowed provisionally, if for any reason, it is found that the duty drawback was not admissible; or
(ii) to refund the excess, if any, paid to such exporter provisionally if it is found that a lower amount was payable as duty drawback.

When the amount or rate of drawback payable on such goods is finally determined, the amount provisionally paid to such exporter shall be adjusted against the drawback finally payable and if the amount so adjusted is in excess or falls short of the drawback finally payable, such exporter shall repay to the Principal Commissioner or Commissioner of Customs the excess or be entitled to the deficiency, as the case may be.

3.2.3 - Special Brand Rates

(1) Cases where the amount or rate of drawback determined is low - Special Brand Rate [Rule 7]:
In case if the duty drawback as per all industry rate is less than 80% of the duties paid on the materials or components, then the exporter, except where a claim for drawback under rule 3 or rule 4 has been made, can apply for special brand rate to the Principal Commissioner or Commissioner of Customs by furnishing the prescribed data within 3 months from the relevant date for determination of rate of duty and tariff valuation under Section 16 or 83.

Thus, if an exporter makes a claim for drawback as per All Industry Rates, he cannot apply for special brand rate.

(2) Extension of due date of filing the application & fees therefor:
Same as provided in Rule 6.

(3) Provisional determination of special brand rate:
(a) Provisional drawback amount, equal to the customs component of all industry rate corresponding to the export goods, as may be specified by the Central Government will be paid by the proper officer of customs pending processing of the application for brand rate of drawback: Provisional
Duty Drawback

Duty drawback amount, as may be specified by the Central Government, shall be paid by the proper officer of Customs.

(b) **Option to claim further provisional drawback**: Where the exporter desires that he may be granted further drawback provisionally, he may, while making an application under rule 7(1), apply to the the Commissioner of Customs in writing in this behalf in the manner as has been provided in Rule 6(2) for the applications made under that rule along with details of provisional drawback already paid and the grant of further provisional drawback shall be considered in the manner and subject to the conditions as specified in Rule 6, subject to the condition that bond required to be executed by the claimant shall only be for the difference between amount or rate of drawback determined under rule 3 or, as the case may be, revised under rule 4 by the Central Government and the provisional drawback authorised by the Commissioner of Customs under this rule.

3.2.4 – Minimum and Maximum DD

(1) **No Drawback under section 75 if minimum value addition is not achieved**: No drawback will be allowed under Section 75, if minimum value addition is not achieved *i.e.* -

(a) The value of export goods is less than the value of imported materials used therein; or

(b) The value of export goods is not more than the value of imported materials by specified percentage.

(2) **Upper limit of drawback money or rate [Rule 9]**: The drawback amount or rate determined under rule 3 (*i.e.* the all industry rate) shall not exceed 1/3rd of the market price of export product.

3.2.5 - Access to manufactory by the Department officials.

**Access to manufactory [Rule 11]**: Whenever an officer of the Central Government specially authorised in this behalf by an **Assistant Commissioner of Customs or Deputy Commissioner of Customs**, considers it necessary, the manufacturer shall give access at all reasonable times to the officer so authorised to every part of the premises in which the goods are manufactured, so as to enable the said officer to verify by inspection the process of, and the materials or components used for the manufacture of such goods, or otherwise the entitlement of the goods for drawback or for a particular amount or rate of drawback under these rules.
3.2.6 - RULE 13: STATEMENT OR DECLARATION TO BE MADE ON EXPORTS OTHER THAN BY POST:

In the case of exports other than by post, the exporters shall at the time of export of the goods,-

(1) **Declaration to be made on shipping bill:**

State on the shipping bill or bill of export, the description, quantity and such other particulars as are necessary for deciding whether the goods are entitled to drawback, and if so, at what rate or rates and make a declaration on the relevant shipping bill or bill of export that,-

(a) a claim for drawback under these rules is being made;

(b) in respect of duties of Customs and Central Excise paid on the containers, packing materials and materials used in the manufacture of the export goods on which drawback is being claimed, no separate claim for rebate of duty under the Central Excise Rules, 2002 or any other law has been or will be made to the Central Excise authorities.

However, if Principal Commissioner or Commissioner of Customs is satisfied that the exporter or his authorised agent has, for reasons beyond his control, failed to comply with the above provisions, he may, after considering the representation, if any, made by such exporter or his authorised agent, and for reasons to be recorded, exempt such exporter or his authorised agent from provisions of this clause.

(2) **Documents to furnished:**

Furnish to the proper officer of Customs, a copy of shipment invoice or any other document giving particulars of the description, quantity and value of the goods to be exported.

3.2.7 - RULE 14: MANNER AND TIME FOR CLAIMING DRAWBACK ON GOODS EXPORTED OTHER THAN BY POST

(1) **Filing of claim for drawback:**

Triplicate copy of the Shipping Bill for export of goods under a claim for drawback shall be deemed to be a claim for drawback filed on the date on which the proper officer of Customs makes an order permitting clearance and loading of goods for exportation under section 51 and said claim for drawback shall be retained by the proper officer making such order.

Where the exporter has exported the goods under **electronic shipping bill in Electronic Data Interchange (EDI)** under the claim of drawback, the electronic shipping bill itself shall be treated as the claim for drawback.
Duty Drawback

(2) **Documents to be accompanied along with claim:**

The said claim for drawback should be accompanied by the following documents,-

(a) copy of export contract or letter of credit, as the case may be,
(b) copy of ARE-1, wherever applicable,
(c) insurance certificate, wherever necessary, and
(d) copy of communication regarding rate of drawback where the drawback claim is for a rate determined by the Principal Commissioner or Commissioner of Customs under rule 6 (Brand Rate) or rule 7 (Special Brand Rate) of these rules.

(3) **Deficient claim to be returned with deficiency memo:**

If the said claim for drawback is incomplete in any material particulars or is without the documents specified above, it shall be returned to the claimant with a deficiency memo in the form prescribed by the Principal Commissioner or Commissioner of Customs **within 10 days** and shall be deemed not to have been filed for the purpose of Section 75A.

But, where the exporter re-submits the claim for drawback after complying with the requirements specified in the deficiency memo, the same will be treated as a claim filed for purpose of Section 75A.

### 3.2.8 - RULE 15: INTEREST

_ans:_ Payment of drawback and interest [Rule 15]:

(1) The drawback under these rules and interest, if any, shall be paid by the proper officer of Customs to the exporter or to the agent specially authorised by the exporter to receive the said amount of drawback and interest.

(2) The officer of Customs may combine one or more claims for the purpose of payment of drawback and interest, if any, as well as adjustment of any amount of drawback and interest already paid and may issue a consolidated order for payment.

(3) The date of payment of drawback and interest (if any) shall be deemed to be,-

(a) the date of issue of cheque; or

(b) the date of credit in the exporter’s account maintained with the Custom House.

### 3.2.9 - RULE 16: SUPPLEMENTARY CLAIM

(1) **Supplementary Claim [Rule 16]:**

Where any exporter finds that the amount of drawback paid to him is less than what he is entitled to on the basis of the amount or rate of drawback determined by the Central Government or Principal Commissioner or Commissioner of Customs, as the case may be, he may prefer a supplementary claim. Therefore,
ABC Ltd. can claim the difference of drawback by preferring a supplementary claim in the prescribed form.

(2) **Time-limit within which supplementary claim to be preferred:**

<table>
<thead>
<tr>
<th>Case</th>
<th>Claim to be file within 3 months from -</th>
</tr>
</thead>
<tbody>
<tr>
<td>(a) In case of All Industry Rates</td>
<td>the date of publication of such All Industry Rate.</td>
</tr>
<tr>
<td>(b) In case of brand rates or special brand rates</td>
<td>the date of communication of the said rate.</td>
</tr>
<tr>
<td>(c) In all other cases</td>
<td>the date of payment or settlement of the original drawback claim by the proper officer.</td>
</tr>
</tbody>
</table>

(3) **Extension of time limit of filing form for supplementary claim and fees therefor:**

<table>
<thead>
<tr>
<th>Extending authority</th>
<th>Period of extension, which can be allowed by the authority</th>
<th>Fees payable along with the application for grant of extension</th>
</tr>
</thead>
<tbody>
<tr>
<td>Assistant/ Deputy Commissioner of Customs</td>
<td>Further 9 months (<em>beyond original period of 3 months</em>)</td>
<td>➢ 1% of the FOB value of exports; or ➢ Rs. 1,000, whichever is less.</td>
</tr>
<tr>
<td>Principal Commissioner or Commissioner of Customs</td>
<td>Further 6 months (<em>beyond original period of 3 months &amp; extension of 9 months by AC/DC</em>)</td>
<td>➢ 2% of the FOB value; or ➢ Rs. 2,000, whichever is less.</td>
</tr>
</tbody>
</table>

**Grant, or Refusal of Extension:** The Assistant or Deputy Commissioner or the Principal Commissioner or Commissioner may on an application and after making such enquiry as he thinks fit, grant extension or refuse to grant extension after recording in writing the reasons for such refusal.

(4) **The date of affixing Dated Receipt Stamp to be the date of filing of supplementary claim:**

The date of filing of supplementary claim for the purpose of Section 75A shall be the date of affixing the Dated Receipt Stamp on such claims which are complete in all respects and for which an acknowledgment shall be issued in the form prescribed by the Principal Commissioner or Commissioner of Customs.

(5) **Deficient claims to be returned with deficiency memo:**

Claims which are not complete in all respects or are not accompanied by the required documents shall be returned to the claimant with a deficiency memo in the form prescribed by the Principal Commissioner or Commissioner of Customs **within 15 days** of submission and shall be deemed not to have been filed.
Where the exporter resubmits the supplementary claim after complying with the requirements specified in the deficiency memo, the same will be treated as a claim filed for the purpose of Section 75A.

**3.2.10 - RULE 18: RECOVERY OF THE AMOUNT OF DRAWBACK**

**Recovery of amount of Drawback where export proceeds not realised [Rule 18]**: The relevant provisions are as follows,-

1. **Drawback to be recovered if sale proceeds not realised**:
   Where -
   - an amount of drawback has been paid to the claimant
   - but the sale proceeds in respect of such export goods have not been realised by or on behalf of the exporter in India within the period allowed under the Foreign Exchange Management Act, 1999 (including extension of such period by RBI),
   - then, such drawback shall be recovered in the manner specified in this Rule.
   However, this time limit (i.e. time allowed under Foreign Exchange Management Act, 1999) shall not be applicable to the goods exported from the Domestic Tariff Area to a Special Economic Zone.

2. **Failure in production of evidence of realisation of export proceeds**:
   If the exporter fails to produce evidence in respect of realisation of export proceeds within aforesaid time limit,-
   - the Assistant or Deputy Commissioner of Customs shall cause notice to be issued to the exporter for production of evidence of realisation of export proceeds within a period of 30 days from the date of receipt of such notice; and
   - where the exporter does not produce such evidence within the said period of 30 days, the Assistant or Deputy Commissioner shall pass an order to recover the amount of drawback paid to the claimant and the exporter shall repay the amount so demanded within 30 days of the receipt of the said order.

3. **Amount of drawback to be recovered where only part of sale proceeds is realised**:
   Where a part of the sale proceeds has been realised, the amount of drawback to be recovered shall be determined as under –

   \[
   \text{Amount of drawback to be recovered} = \frac{\text{Sale proceeds not realised}}{\text{Total amount of sale proceeds}} \times \text{Amount of Drawback Paid}
   \]
(4) **No recovery of drawback in certain cases:**

Where sale proceeds are not realised by an exporter within the period allowed under the Foreign Exchange Management Act, 1999, but -

- such non-realisation of sale proceeds is compensated by the Export Credit Guarantee Corporation of India Ltd. (ECGC) under an insurance cover; and
- the RBI writes off the requirement of realisation of sale proceeds on merits; and
- the exporter produces a certificate from the concerned Foreign Mission of India about the fact of non-recovery of sale proceeds from the buyer,
- the amount of drawback paid to the exporter or the claimant shall not be recovered.

(5) **Recovery as per Section 142:**

Where the exporter fails to repay the amount within said period of thirty days, it shall be recovered in accordance with the provisions of Section 142 as "Recovery of sums due to the Government".

(6) **On realisation of sale proceeds, recovered drawback to be re-paid to the exporter:**

Where -

- the sale proceeds are realised by the exporter after the amount of drawback has been recovered from him; and
- he produces evidence about such realisation **within a period of 3 months from the date of realization of sale proceeds,**

the amount of drawback so recovered shall be repaid by the Assistant/Deputy Commissioner to the claimant, **if the sale proceeds have been realised within the period permitted by the RBI.**

**Extension of the aforesaid period of 3 months and fees therefor:** The Principal Commissioner or Commissioner of Customs or Commissioner of Customs and Central Excise may-

- extend the aforesaid period of **3 months by a period of 9 months** provided the sale proceeds have been realised within the period permitted by the Reserve Bank of India; and
- an application fee equivalent to **1% of the FOB value of exports or Rs. 1,000 whichever is less,** shall be payable for applying for grant of such extension.
**PART 4: INTEREST ON DRAWBACK AND PROHIBITION OR REGULATION OF DUTY**

**DRAWBACK**

**Interest on drawback [Section 75A]:**
Section 75A provides for interests on drawback as follows -

<table>
<thead>
<tr>
<th>SS.</th>
<th>Circumstance</th>
<th><strong>Specified time period for payment of drawback &amp; interest</strong></th>
<th>Rate of interest</th>
<th>Amount on which interest payable</th>
<th>Interest from -</th>
</tr>
</thead>
<tbody>
<tr>
<td>(1)</td>
<td>Any drawback payable to a claimant u/s 74 or 75 is not paid <strong>within specified time period</strong></td>
<td>One month from the date of filing of drawback claim</td>
<td>Rate specified u/s 27A of the Customs Act, 1962 <em>i.e.</em> 6% p.a.</td>
<td>Amount drawback remaining unpaid to the claimant</td>
<td>The date after expiry or the said period of one month till the date of payment of such drawback shall be paid to the claimant</td>
</tr>
<tr>
<td>(2)</td>
<td>Drawback has been paid to the claimant erroneously or it becomes otherwise recoverable under this Act or rules made thereunder</td>
<td>Two months from date of demand of the amount of drawback erroneously paid or otherwise recoverable</td>
<td>Rate specified u/s 28AA of the Customs Act, 1962 <em>i.e.</em> 15% p.a.</td>
<td>Amount of drawback erroneously paid to the claimant or otherwise recoverable from him</td>
<td>The date of payment of such drawback to the claimant till the date of recovery of such drawback shall be paid by the claimant</td>
</tr>
</tbody>
</table>

**Prohibition and regulation of drawback in certain cases [Section 76]**
According to Section 76,-

(1) No drawback shall be allowed in respect of any goods,-
   (a) the market price of which is less than the amount of drawback due thereon;
   (b) where the amount of drawback is less than Rs. 50.

[Section 76(1) overrides other provisions of the Act]
(2) If the Central Government is of the opinion that goods of any specified description in respect of which drawback is claimed, are likely to be smuggled back into India, it may, by notification in the Official Gazette, direct that,-

(a) drawback shall not be allowed in respect of such goods; or

(b) may be allowed subject to such restrictions and conditions as may be specified.

PART 5: CIRCULARS


(1) Drawback of safeguard duty/Countervailing Duties under Section 75 admissible as Brand Rate or Special Brand rate:
Safeguard Duties/Countervailing Duties leviable under Section 9 are not taken into consideration while fixing All Industry Rates of drawback, the drawback of such duties can be claimed under an application for Brand Rate under Rule 6 or Rule 7 of the Customs, Central Excise Duties and Service Tax Drawback Rules, 2017. This would necessarily mean that drawback shall be admissible only where the inputs which suffered such duties were actually used in the goods exported as confirmed by the verification conducted for fixation of Brand Rate.

(2) Drawback of safeguard duty under Section 74 is admissible:
Where imported goods subject to Safeguard Duties/Countervailing Duties are exported out of the country as such, then the Drawback payable under Section 74 of the Customs Act would also include the incidence of Safeguard Duties as part of total duties paid, subject to fulfilment of other conditions.

<table>
<thead>
<tr>
<th>Circular No. 33/2019-Cus dated 19-09-2019</th>
<th>Issue</th>
<th>Clarification</th>
</tr>
</thead>
<tbody>
<tr>
<td>Representations have been received from EPC’s Trade Bodies, and individual exporters regarding show cause notices issued for recovery of duty drawback on account of short realization of export sale proceeds due to bank charges deducted from export invoice by the banks.</td>
<td>It is clarified that duty drawback may be permitted on FoB value without deducting foreign bank charges. It is further clarified that since agency commission up to the limit of 12.5% of the FoB value has been allowed, such deduction on account of foreign bank charges is allowed within this overall limit of 12.5% of the FoB value. From the average rates of agency commission and foreign bank charges in respect of export shipments, it is seen that these deductions fall within the aforesaid overall limit of 12.5% of FoB value allowed by the Board. Agency commission and foreign bank charges, separately or jointly, exceeding this limit should be deducted from the FoB value for granting duty drawback.</td>
<td></td>
</tr>
</tbody>
</table>
PART 6: PROBLEMS

Q1 - Calculate the amount of drawback available under section 74 of the Customs Act, 1962 in the following three separate cases —

(1) X imported computers for office use and paid Rs. 5,00,000 as import duty. These computers are re-exported after 13 months.

(2) Y imported goods for his personal use and paid Rs. 1,00,000 as import duty. Such goods are re-exported after 3 months 10 days.

(3) Z imported wearing apparel and paid Rs. 20,000 as import duty. These are re-exported after 6 months.

(1 Marks, June 2013)

Q2 - Answer the following with reference to the provisions of the Customs Act, 1962 and rules made thereunder:

(1) Mr. X filed a claim for payment of duty drawback amounting to Rs. 1,50,000 on 30-07-2019. But the amount was received on 28-10-2019. You are required to calculate the amount of interest payable to Mr. X on the amount of duty drawback claimed.

(2) Mr. X was erroneously refunded a sum of Rs. 20,000 in excess of actual drawback in 20-06-2019. The same was demanded by the department on 14-08-2019 and the same was returned to the department on 20-10-2019. You are required to calculate the amount of interest chargeable from Mr. X.

Provide brief reasons for your answer.

Q3 - Discuss whether any duty drawback is admissible under section 75 in the following cases and if yes, what is the quantum of such duty drawback -

<table>
<thead>
<tr>
<th>FOB value of exported goods (Rs.)</th>
<th>Rate or amount of drawback</th>
<th>Market price of goods (Rs.)</th>
<th>Value of imported material used in goods (Rs.)</th>
</tr>
</thead>
<tbody>
<tr>
<td>(1) 2,00,000</td>
<td>40% of FOB value</td>
<td>1,50,000</td>
<td>1,20,000</td>
</tr>
<tr>
<td>(2) 1,00,000 (2,000 Kgs.)</td>
<td>Rs. 30 per kg.</td>
<td>55,000</td>
<td>40,000</td>
</tr>
<tr>
<td>(3) 4,00,000</td>
<td>3.5% of FOB value</td>
<td>4,60,000</td>
<td>4,50,000</td>
</tr>
<tr>
<td>(4) 4,20,000</td>
<td>4% of FOB value</td>
<td>4,10,000</td>
<td>3,00,000*</td>
</tr>
</tbody>
</table>

*In case (4), the Central Government has specified a minimum value-addition to be achieved @ 40% of imported material in terms of FOB value.

**********************************************************************
CHAPTER 34 - BAGGAGE, POSTAL ARTICLES & STORES

PART 1: PROVISIONS RELATING TO BAGGAGE

The provisions relating to baggage are as under -

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

"Baggage" includes unaccompanied baggage but does not include motor vehicles.

The term baggage is a comprehensive term which means the luggage of a passenger accompanied or unaccompanied, and comprises of trunks or bags and the personal belongings of the passenger.

(2) Declaration by owner of baggage [Section 77]:

The owner of any baggage shall, for the purpose of clearing it, make a declaration of its contents to the proper officer.

(3) Date for determination of rate of duty and tariff valuation in case of baggage [Section 78]:

The rate of duty and tariff valuation applicable to the baggage shall be the rate of duty and valuation in force on the date on which a baggage declaration is made under Section 77 to the proper officer.

If such declaration has been made before the arrival of vessel, then same shall be deemed to have been made on the date of arrival of the vessel.

(4) Rate of duty: The rate of duty applicable in respect of baggage is as under—

<table>
<thead>
<tr>
<th>Description of articles</th>
<th>Rate</th>
</tr>
</thead>
<tbody>
<tr>
<td>Any article the value of which exceeds the duty free allowance admissible to such passenger or member under the Baggage Rules, 2016. On the unaccompanied baggage.</td>
<td>35% ad valorem</td>
</tr>
<tr>
<td>Integrated Tax u/s 3(7) of Customs Tariff Act = Nil. [Notification No. 183/86-Cus., as amended vide Entry 147 of Notification No. 2/2017-CT(Rate)/IT (Rate). GST is exempt on Passenger Baggage. The duty is to be increased by SWS @ 10%. Hence, effective duty is 38.5%</td>
<td></td>
</tr>
</tbody>
</table>

Circular No. 08/2016-Cus. dated 8-3-2016

The CBIC has clarified that the domestic passengers who board international flights in the domestic leg are not required to file the Customs Baggage declaration form.
(5) **Bona fide baggage exempted from duty [Section 79]:**  
The provision relating to duty exemption of baggage is provided under Section 79. The proper officer may, subject to the 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 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 the value of each such article and the total value of all such articles does not exceed the limits specified in the rules.

**Note:**

(1) **Bona fide Baggage**: Imports of furniture, light fittings, bathroom accessories etc. by passengers making short visits abroad do not qualify as bona fide baggage.

(2) **Laptop exempt**: One laptop computer (notebook computer) is exempted from whole of the duty of Customs when imported by a passenger (other than member of crew) of the age of 18 years or above vide Notification No. 11/2004-Cus., dated 8-1-2004.

(6) **Temporary detention of baggage [Section 80]:**  
Where 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 under section 77,

the proper officer may, at the request of the passenger, detain such article for the purpose of being returned to him on his leaving India.

However, 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,-

- through any other passenger authorised by him and leaving India, or
- as cargo consigned in his name.

**BAGGAGE RULES, 2016**

**Passengers arriving from countries other than Nepal, Bhutan or Myanmar [Rule 3]:**

**General duty free baggage allowance:**

In pursuance of the powers conferred under section 79 of the Customs Act, the Government had earlier passed the Baggage Rules 1998. The Baggage Rules, 1998 have been substituted with the new Baggage Rules, 2016. The salient features of the Baggage rules 2016 are discussed hereunder:
<table>
<thead>
<tr>
<th>Rule No.</th>
<th>Class of passenger</th>
<th>Origin country from which the passenger is coming</th>
<th>Articles allowed free of duty</th>
</tr>
</thead>
<tbody>
<tr>
<td>3</td>
<td>Indian resident or Foreigner residing in India or Tourist of Indian origin, excluding an infant</td>
<td>Any country other than Nepal, Bhutan or Myanmar</td>
<td>(i) Used personal effects and travel souvenirs; and (ii) Articles up to the value of `50,000 (excluding articles mentioned in Annexure I), if carried on in person or in the accompanied baggage of the passenger</td>
</tr>
<tr>
<td>3</td>
<td>Tourist of foreign origin excluding infant</td>
<td>Any country other than Nepal, Bhutan or Myanmar</td>
<td>(i) Used personal effects and travel souvenirs; and (ii) Articles up to the value of `15,000 (excluding articles mentioned in Annexure I), if carried on in person or in the accompanied baggage of the passenger</td>
</tr>
<tr>
<td>4</td>
<td>Indian resident or Foreigner residing in India or Tourist, excluding an infant</td>
<td>Nepal, Bhutan or Myanmar</td>
<td>(i) Used personal effects and travel souvenirs; and (ii) Articles up to the value of `15,000 (excluding articles mentioned in Annexure I), if carried on in person or in the accompanied baggage of the passenger</td>
</tr>
<tr>
<td></td>
<td><strong>On arriving by land:</strong></td>
<td></td>
<td>Only used personal effects.</td>
</tr>
</tbody>
</table>

(ii) When a passenger is an infant, only used personal effects will be allowed duty free. The general duty free baggage allowance of a passenger cannot be pooled with the general duty free baggage allowance of any other passenger.
(a) "Infant" means a child not more than two years of age;
(b) "Resident" means a person holding a valid passport issued under the Passports Act, 1967 and normally residing in India;
(c) "Tourist" means a person not normally resident in India, who enters India for a stay of not more than six months in the course of any twelve months period for legitimate non-immigrant purposes;
(d) "Personal effects" means things required for satisfying daily necessities but does not include jewellery.

ANNEXURE-I
(See rule 3, 4 and 6)
1. Firearms.
2. Cartridges of fire arms exceeding 50.
3. Cigarettes exceeding 100 sticks or cigars exceeding 25 or tobacco exceeding 125 gms.
4. Alcoholic liquor or wines in excess of two litres.
5. Gold or silver in any form other than ornaments.
6. Flat Panel (Liquid Crystal Display/Light-Emitting Diode/ Plasma) television.

Jewellery Allowance [Rule 5]:

<table>
<thead>
<tr>
<th>Rule No.</th>
<th>Class of passenger</th>
<th>Origin country from which the passenger is coming</th>
<th>Articles allowed free of duty</th>
</tr>
</thead>
</table>
| 5       | Passenger residing abroad for more than one year | Any country                                  | Gentleman: Jewellery upto a weight of 20 gms with a value cap of `50,000  
Lady passenger: Jewellery upto a weight of 40 gms with a value cap of `1,00,000 |

RULE 6: Transfer of residence:

(1) A person, who is engaged in a profession abroad, or is transferring his residence to India, shall, on return, be allowed clearance free of duty in addition to what he is allowed under rule 3 or, as the case may be, under rule 4, articles in his bonafide baggage to the extent mentioned in column (2) of the Appendix below, subject to the conditions, if any, mentioned in the corresponding entry in column (3) of the said Appendix.

(2) The conditions mentioned in column (3) of the said Appendix may be relaxed to the extent mentioned in column (4) of the said Appendix.
## APPENDIX

<table>
<thead>
<tr>
<th>Duration of stay abroad</th>
<th>Articles allowed free of duty</th>
<th>Conditions</th>
<th>Relaxation</th>
</tr>
</thead>
<tbody>
<tr>
<td>From 3 months up to 6 months</td>
<td>Personal and household articles, other than those mentioned in Annexure I or Annexure II but including articles mentioned in Annexure III up to an aggregate value of Rs. 60,000.</td>
<td>Indian passenger</td>
<td>–</td>
</tr>
<tr>
<td>From 6 months up to 1 year</td>
<td>Personal and household articles, other than those mentioned in Annexure I or Annexure II but including articles mentioned in Annexure III, up to an aggregate value of Rs. 1,00,000.</td>
<td>Indian passenger</td>
<td>–</td>
</tr>
<tr>
<td>Minimum stay of 1 year during the preceding 2 years.</td>
<td>Personal and household articles, other than those mentioned in Annexure I or Annexure II but including articles mentioned in Annexure III up to an aggregate value of Rs. 2,00,000.</td>
<td>The Indian passenger should not have availed this concession in the preceding 3 years.</td>
<td>–</td>
</tr>
<tr>
<td>Minimum stay of 2 years or more.</td>
<td>Personal and household articles, other than those listed at Annexure I or Annexure II but including articles mentioned in Annexure III up to an aggregate value of Rs. 5,00,000.</td>
<td>(i) Minimum stay of 2 years abroad, immediately preceding the date of his arrival on transfer of residence; Shortfall of up to 2 months in stay abroad can be condoned by Deputy Commissioner of Customs or Assistant Commissioner of Customs if the early return is on account of: -(i) terminal leave or vacation being availed of by the passenger; or (ii) any other special circumstances for reasons to be recorded in writing. (ii) Total stay in</td>
<td>The Principal Commissioner</td>
</tr>
<tr>
<td></td>
<td>India on short visit during the 2 preceding years should not exceed 6 months; and</td>
<td>of Customs or Commissioner of Customs may condone short visits in excess of 6 months in special circumstances for reasons to be recorded in writing.</td>
<td></td>
</tr>
<tr>
<td>---</td>
<td>---</td>
<td>---</td>
<td></td>
</tr>
<tr>
<td>(iii)</td>
<td>Passenger has not availed this concession in the preceding 3 years.</td>
<td>No relaxation.</td>
<td></td>
</tr>
</tbody>
</table>

ANNEXURE – II  
(See rule 6)

1. Colour Television.
2. Video Home Theatre System.
3. Dish Washer.
4. Domestic refrigerators of capacity above 300 litres or its equivalent.
5. Deep Freezer.
6. 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.
7. Cinematographic films of 35mm and above.
8. Gold or Silver, in any form, other than ornaments.

ANNEXURE – III  
(See rule 6)

1. Video Cassette Recorder or Video Cassette Player or Video Television Receiver or Video Cassette Disk Player.
2. Digital Video Disc player.
5. Microwave Oven.
7. Fax Machine.
10. Electrical or Liquefied Petroleum Gas Cooking Range.
13. Domestic Refrigerators of capacity up to 300 litres or its equivalent.

**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**

The provisions of free allowances given under Baggage Rules, 2016 shall be applicable to 'unaccompanied baggage' if,-

1. The said unaccompanied baggage had been in the possession, abroad, of the passenger and is dispatched within 1 month of his arrival in India or within such further period as the Deputy Commissioner of Customs or Assistant Commissioner of Customs may allow.

2. The said unaccompanied baggage may land in India up to 2 months before the arrival of the passenger or within such period, not exceeding 1 year, as the Deputy Commissioner of Customs or Assistant Commissioner of Customs may allow, for reasons to be recorded, if he is satisfied that the passenger was prevented from arriving in India within the period of 2 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.

**Note:** "Family" includes all persons who are residing in the same house and form part of the same domestic establishment;

**Rule 9: Applicability of baggage rules to member of crew**

These rules shall also apply to the members of the crew engaged in a foreign going conveyance for importation of their baggage at the time of final pay off on termination of their engagement.

A member of crew of a vessel or an aircraft other than those referred above, shall be allowed to bring articles like chocolates, cheese, cosmetics and other petty gift items for their personal or family use which shall not exceed the value of Rs. 1,500.
PART 2: GOODS IMPORTED OR EXPORTED BY POST/COURIER

The provisions relating to Postal Articles are as under -

Rate of duty and tariff valuation in respect of goods imported or exported by post or courier [Section 83]:

The provisions relating to the date for determination of rate of duty and tariff valuation in case of goods imported or exported by post or courier under section 83 are as follows,-

(a) **For goods imported by Post/ Courier:**
   The rate of duty and tariff value, if any, applicable to any goods imported by post or courier shall be the rate and valuation in force on the date on which the postal authorities or the authorised courier present to the proper officer a list containing the particulars of such goods for the purpose of assessing the duty thereon:
   However, if such goods are imported by a vessel and the list was presented before the date of the arrival of the vessel, then it shall be deemed to have been presented on the date of such arrival.

(b) **For goods exported by Post/ Courier:**
   The rate of duty and tariff value, if any, applicable to any goods exported by post or courier shall be the rate and valuation in force on the date on which the exporter delivers such goods to the postal authorities or the authorised courier for exportation.

Regulations regarding goods imported or to be exported by post or courier [Section 84]:

The Board may make regulations providing for -

(a) the form and manner in which an entry may be made in respect of goods imported or to be exported by post or courier;

(b) the examination, assessment to duty, and clearance of goods imported or to be exported by post or courier;

(c) the transit or transhipment of goods imported by post or courier, from one customs station to another or to a place outside India.

Exports by Post Regulations, 2018 [Notification No. 48/2018-Cus (N.T.) date 04-06-2018]:

<table>
<thead>
<tr>
<th>Particulars</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Short title and commencement</td>
<td>These regulations may be called the Exports by Post Regulations, 2018.</td>
</tr>
<tr>
<td></td>
<td>They shall come into force on 21-06-2018.</td>
</tr>
<tr>
<td>2. Application</td>
<td>These Regulations shall apply to export of goods by any person,</td>
</tr>
<tr>
<td></td>
<td></td>
</tr>
<tr>
<td>---</td>
<td>---</td>
</tr>
<tr>
<td>holding a valid Import Export Code issued by the DGFT, in furtherance of business from any foreign post office notified under section 7(e) of the Customs Act, 1962;</td>
<td>3. Definition</td>
</tr>
<tr>
<td>&quot;E-commerce&quot; means buying and selling of goods through the internet on an e-commerce platform, the payment for which shall be done through international credit or debit cards and as specified by the Reserve Bank of India from time to time;</td>
<td>4. Entry to be made for export goods</td>
</tr>
<tr>
<td>In case of goods to be exported through a foreign post office, an entry shall be required to be presented to the proper officer at the foreign post office of clearance, in the FORM-I [Postal Bill of Export-1 (PBE-I)].</td>
<td></td>
</tr>
</tbody>
</table>
PART 3: STORES

"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. [Section 2(38)]

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]:**
Where any imported goods are entered for warehousing and the importer makes and subscribes to a declaration that the goods are to be supplied as stores to vessels or aircrafts without payment of import duty, the proper officer may permit the goods to be warehoused without being assessed to duty.

(2) **Transit and Transhipment 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. Any stores imported in a vessel or aircraft may be transferred to any vessel or aircraft as stores for consumption therein as provided in Section 87 or Section 90, with the permission of the proper officer.

(3) **Imported stores may be consumed on board of a foreign-going vessel or aircraft [Section 87]:**
Any imported stores on board of foreign-going vessel or aircraft (other than stores meant for ship of Indian Navy to which Section 90 applies) may be consumed thereon as stores without payment of duty.

(4) **Drawback on export of stores [Section 88]:**
If any stores are "taken on board any foreign-going vessel or aircraft as stores", then the same shall be regarded as export and duty drawback shall be allowed of the import duty so paid. However, in case of fuel and lubricating oil taken on board any foreign-going aircraft as stores, 100% drawback shall be admissible under section 74.

(5) **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.

Q. Certain imported stores, which were warehoused, were subsequently cleared from warehouse for being taken on Board a ship of Indian Navy. Explain the provisions for aforesaid purpose. (Nov. 1997)
Ans: 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. The stores taken on Board of the ship of Indian Navy will be treated as if they are exported out of India and will be entitled for duty drawback at the rate of 100% of the import duty.

"Stores" means (a) stores for the use of a ship of the Indian Navy; (b) stores supplied free by the Government for the use of the crew of a ship of the Indian Navy in accordance with their conditions of service.

PART 4: PROBLEMS

Q1 - Mr. B, an Indian resident, aged 30 years, returned to India on 10-04-2019 after visiting England. He had been to England on 01-04-2019. On his way back to India he brought following goods with him,-

(1) Personal effects like clothes etc. valued at Rs. 1,00,000;
(2) 1 litre of Wine worth Rs. 15,000;
(3) A digital Camera worth Rs. 55,000;
(4) A Mobile worth Rs. 25,000.

What is the customs duty payable?

Solution: An Indian resident arriving from any country other than Nepal, Bhutan or Myanmar, shall be allowed clearance free of duty articles in his bonafide baggage,-

(a) used personal effects, travel souvenirs; and
(b) articles other than those mentioned in Annexure I, upto the value of Rs. 50,000 if these are carried on the person or in the accompanied baggage of the passenger.

Computation of Custom duty payable by Mr. B (amount in Rs.)-

| (1) Personal effects like clothes etc. | Nil |
| (2) Wine (upto 2 litre can be accommodated in General Free Allowance) | 15,000 |
| (3) Digital Camera | 55,000 |
| (4) Mobile | 25,000 |
| Total dutiable goods imported | 95,000 |
| Less: General Free Allowance under Rule 3 | 50,000 |
| Balance Goods on which duty is payable | 45,000 |
| Customs duty @ 38.5% (inclusive of SWS) | 17,325 |

Q2 - Mrs. A, a person of Indian origin, aged 40 years came to India on tour along with her baby aged 1½ years. She carried with her following goods:

(1) Personal effects like clothes of Mrs. A valued at Rs. 40,000
(2) Used personal effects of infant valued at Rs. 60,000
(3) Laplop worth Rs. 65,000
(4) Travel souvenirs valued at Rs. 25,000
(5) 1 liter wine worth Rs. 5,000
(6) Mobile worth Rs. 20,000
(7) Digital camera Rs. 60,000
(8) Cigars 20 worth Rs. 1,340
What is the customs duty payable?

Solution: Computation of Customs duty payable by Mrs. A (amount in Rs.):

<table>
<thead>
<tr>
<th>Particulars</th>
<th>Value</th>
</tr>
</thead>
<tbody>
<tr>
<td>(1) Personal effects like clothes of Mrs. A</td>
<td>Exempt</td>
</tr>
<tr>
<td>(2) Used personal effects of infant</td>
<td>Exempt</td>
</tr>
<tr>
<td>(3) Laptop</td>
<td>Exempt</td>
</tr>
<tr>
<td>(4) Travel souvenirs</td>
<td>Exempt</td>
</tr>
<tr>
<td>(5) Wine (upto 2 liters can be accommodated in GFA)</td>
<td>5,000</td>
</tr>
<tr>
<td>(6) Mobile</td>
<td>20,000</td>
</tr>
<tr>
<td>(7) Digital camera</td>
<td>60,000</td>
</tr>
<tr>
<td>(8) Cigars (upto 25 nos. Can be accommodated in GFA)</td>
<td>1,340</td>
</tr>
</tbody>
</table>

Total dutiable goods imported (that can be accommodated in GFA) 86,340

Less: General Free Allowance under Rule 3 50,000

Balance goods on which duty is payable 36,340

Customs duty payable @ 38.5% (inclusive of SWS) 13,991

Q 3 - Mr. Fang a tourist of Chinese origin aged 22 years came in India on tourist visa for a period of one month on 1-4-2019 along with his wife aged 20 years and child Jing aged 2 years. He brought the following items along with him:

(1) Personal effects like clothes of Mr. Fang valued at Rs. 40,000, of Mrs. Fang valued at Rs. 50,000 and of the Jing worth Rs. 25,000.

(2) 2 laptop computers worth Rs. 36,000 each.

(3) 3 bottles of wine of 1 litre each of total value of Rs. 6,000.

(4) DigiLai camera worth Rs. 11,000.

(5) Mobile worth Rs. 15,000.

What is the customs duty payable?

Solution: Computation of Customs duty payable by Mr. Fang (amount in Rs.):

<table>
<thead>
<tr>
<th>Particulars</th>
<th>Value</th>
</tr>
</thead>
<tbody>
<tr>
<td>(1) Personal effects</td>
<td>Exempt</td>
</tr>
<tr>
<td>(2) 1 laptop computer</td>
<td>Exempt</td>
</tr>
<tr>
<td>(3) 2 bottles of wine (Wine upto 2 litres can be accommodated in the GFA)</td>
<td>4,000</td>
</tr>
<tr>
<td>(Rs. 6,000 + 3×2) [WN-1]</td>
<td></td>
</tr>
<tr>
<td>(4) Digital camera</td>
<td>11,000</td>
</tr>
</tbody>
</table>

Total dutiable goods imported 15,000

Less: General free allowance under Rule 3 15,000

Balance Goods on which duty is payable Nil

Customs duty payable Nil

Computation of Customs duty payable by Mrs. Fang (amount in Rs.):

<table>
<thead>
<tr>
<th>Particulars</th>
<th>Value</th>
</tr>
</thead>
<tbody>
<tr>
<td>(1) Personal effects</td>
<td>Exempt</td>
</tr>
<tr>
<td>(2) 1 laptop computer</td>
<td>Exempt</td>
</tr>
</tbody>
</table>
1 bottles of wine (Wine upto 2 litres can be accommodated in the GFA) (Rs. 6,000 ÷ 3×1) [WN-1] 2,000

Mobile 15,000

Total dutiable goods imported 17,000
Less: General free allowance under Rule 3 15,000

Balance Goods on which duty is payable 2,000
Customs duty @ 38.5% (inclusive of SWS) 770

Computation of Customs duty payable in respect of the Child Jing (amount in Rs.):

<table>
<thead>
<tr>
<th>Particulars</th>
<th>Jing</th>
</tr>
</thead>
<tbody>
<tr>
<td>Used personal effects</td>
<td>Exempt</td>
</tr>
<tr>
<td>Total value of dutiable goods</td>
<td>Nil</td>
</tr>
<tr>
<td>Customs duty @ 38.5% (inclusive of SWS)</td>
<td>Nil</td>
</tr>
</tbody>
</table>

Working Notes:
1. Since only 2 litres of wine can be accommodated in General Free Allowance, therefore, 2 litres is declared in the baggage of Mr. Fang and 1 litre in the baggage of Mrs. Fang.
2. The free allowance of one passenger cannot be pooled with that of other.
3. For infants only used personal effects shall be allowed duty free. It has been assumed that Mrs. & Mr. Fang and child Jing have brought three separate baggages for which separate declaration have been given to lower the incidence of customs duty.

Q4 - Compute duty liability in respect of Jewellery in independent cases if the passenger was residing abroad for over one year before his return to India on 10-04-2019.

<table>
<thead>
<tr>
<th>Name of passenger</th>
<th>Weight of Jewellery</th>
<th>Value of Jewellery (Rs.)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Mr. A</td>
<td>18 grams</td>
<td>52,000</td>
</tr>
<tr>
<td>Mr. B</td>
<td>22 grams</td>
<td>44,000</td>
</tr>
<tr>
<td>Mr. C</td>
<td>20 grams</td>
<td>50,000</td>
</tr>
<tr>
<td>Mr. D</td>
<td>25 grams</td>
<td>75,000</td>
</tr>
<tr>
<td>Ms. P</td>
<td>38 grams</td>
<td>1,12,500</td>
</tr>
<tr>
<td>Ms. Q</td>
<td>45 grams</td>
<td>90,000</td>
</tr>
<tr>
<td>Ms. R</td>
<td>45 grams</td>
<td>1,12,500</td>
</tr>
<tr>
<td>Ms. S</td>
<td>50 grams</td>
<td>1,50,000</td>
</tr>
</tbody>
</table>

Q 5 - Mr. Ram, an Indian resident and an engineer by profession who was engaged in his profession in USA for 9 months, brought with him on 10-04-2019 the following used items on his return to India:
1. Used personal effects like clothes etc. of Rs. 1,00,000
2. Digital Video Disc player of Rs. 5,000
3. Music System of Rs. 55,000
4. Air-Conditioner of Rs. 45,000
5. Microwave Oven of Rs. 28,000
6. Fax Machine of Rs. 52,000
(7) Domestic Refrigerator of capacity of 285 liters of Rs. 1,20,000
(8) Jewellery (18 grams) of Rs. 75,000

Calculate the custom duty payable by him.

**Solution:** Duty free allowances allowed to Mr. Ram are as follows -

(a) Under Rule 3, goods eligible for General free allowance are:
   (i) used personal effects (excluding jewellery); and
   (ii) other articles (other than those mentioned in Annexure I) upto Rs. 50,000.

(b) Under Rule 6, Duty free allowance of Used personal and household articles, other than those mentioned in Annexure I or Annexure II but including articles mentioned in Annexure III, upto an aggregate value or Rs. 1,00,000.

Under Rule 5, No duty free allowance in case of jewellery of Rs. 50,000 will be available, since he was not residing abroad for more than one year prior to his return to India.

**Computation of Customs duty payable by Mr. Ram (amount in Rs.)**:

<table>
<thead>
<tr>
<th>No.</th>
<th>Item Description</th>
<th>Value (Rs.)</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Used personal effects like clothes etc.</td>
<td>Nil</td>
</tr>
<tr>
<td>2</td>
<td>Digital Video Disc player</td>
<td>5,000</td>
</tr>
<tr>
<td>3</td>
<td>Music System</td>
<td>55,000</td>
</tr>
<tr>
<td>4</td>
<td>Air-Conditioner</td>
<td>45,000</td>
</tr>
<tr>
<td>5</td>
<td>Microwave Oven</td>
<td>28,000</td>
</tr>
<tr>
<td>6</td>
<td>Fax Machine</td>
<td>52,000</td>
</tr>
<tr>
<td>7</td>
<td>Domestic Refrigerator</td>
<td>1,20,000</td>
</tr>
<tr>
<td>8</td>
<td>Jewellery (18 grams)</td>
<td>75,000</td>
</tr>
<tr>
<td></td>
<td><strong>Total dutiable goods imported</strong></td>
<td><strong>3,80,000</strong></td>
</tr>
</tbody>
</table>

Less: Total allowance [(i.e., Rs. 50,000 (GFA) + Rs. 1,00,000 (Transfer of residence)] 1,50,000

<table>
<thead>
<tr>
<th></th>
<th>Value of goods on which duty is payable (Rs.)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Customs duty @ 38.5% (inclusive of SWS)</td>
<td>88,550</td>
</tr>
</tbody>
</table>

Q6 - M/s. XYZ Ltd. imported certain goods valuing Rs. 15 lakhs (assessable value) from America by post. Compute the amount of duty payable by the importer in the light of the following information:

<table>
<thead>
<tr>
<th>Description</th>
<th>Date</th>
<th>Percentage</th>
</tr>
</thead>
<tbody>
<tr>
<td>Date of presentation of a list containing particulars of said goods to proper officer of customs</td>
<td>15-05-2019</td>
<td>7.5%</td>
</tr>
<tr>
<td>Rate of duty prevalent on the date of such presentation</td>
<td></td>
<td>7.5%</td>
</tr>
<tr>
<td>Date of arrival of vessel through which the packet containing the said goods was imported</td>
<td>20-05-2019</td>
<td>10%</td>
</tr>
<tr>
<td>Rate of duty prevalent on the date of such arrival</td>
<td></td>
<td>10%</td>
</tr>
</tbody>
</table>

**Solution:** 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 will be 10% as increased by Social Welfare Surcharge @ 10% = 11% of Rs. 15 lakhs = Rs. 165000.

**Q7 -** On 15-6-2019 M/s. XYZ Ltd. delivered goods valuing Rs. 20 lakhs (assessed 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 29-6-2019, but the goods could actually be exported on 01-07-2019. The rates of duty prevalent on the said dates were 10%, 15% and 20% respectively. Determine the amount of customs duty payable?

**Solution:** 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 *i.e.* 15-06-2019.

Hence, the amount of customs duty payable = 10% of Rs. 20 lakhs = Rs. 2,00,000.
CHAPTER 35 - EXEMPTIONS AND REFUNDS

PART 1: POWER TO GRANT EXEMPTION

As per Section 25 of the Customs Act, 1962 exemption can be –

(i) General exemption (2 Marks, June 2009)

(ii) Special Exemption/Adhoc Exemption (2 Marks, June 2009)/(2 Marks, May 2014)

(1) General exemption [Section 25(1)]:
The Central Government in public interest may, by notification in Official Gazette, exempt the goods from duties of customs. The exemption may be from the whole of the duties or from part of duties of customs. The exemption may be with conditions (to be fulfilled before or after clearance) or unconditional (Absolute exemption).

(2) Special exemption or Ad hoc Exemption [Section 25(2)]:
If Central Government is satisfied that it is necessary in the public interest so to do, it may, by special order in each case, exempt the goods from the payment of duty, under circumstances of an exceptional nature to be stated in such order, any goods on which duty is leviable.

(3) Power to clarify scope of exemption - Within a period of 1 year from date of issue of exemption notification [Section 25(2A)]:
For the purpose of clarifying the scope and applicability of an exemption notification (i.e. general or special exemption) the Central Government may insert an explanation in the exemption notification within a period of 1 year from its issue. Such an explanation shall have the effect as if it had always been part of the first notification.

(4) Exemption may be in different form or method [Section 25(3)]:
The exemption whether general or special can be provided by levy of duty in a form or method different from form or method in which the statutory duty (i.e. the duty levied before exemption) is leviable. The duty after exemption cannot exceed the statutory duty.

"Form or method", in relation to rate of duty means the basis, namely, valuation, weight, number, length, area, volume or other measure with reference to which the duty is leviable.
(5) **Effective date of exemption notification [Section 25(4)]:**
Every notification issued u/s 25(1) or 25(2A) shall, unless otherwise provided, come into force on the date of its issue by the Central Government for publication in the Official Gazette.

(6) **No collection of customs duty if it does not exceed Rs. 100:**
No customs duty shall be collected if the amount of duty leviable is equal to, or less than, Rs. 100/-. 

**PART 2: REFUNDS, INTEREST THEREON AND OTHER PROVISIONS**

**Doctrine of Unjust Enrichment:**
The doctrine of unjust enrichment means no person can be unjustly enriched at expense of another person. In indirect taxes, the duty burden passes on to the person who ultimately consumes goods. Since the law authorises recovery of indirect taxes (customs duty) from buyer, therefore, it is always presumed that incidence of duty has been passed.

Therefore, if any refund becomes due to the importer, then, since importer has recovered the duty from the buyer, thus, to be fair, refund should be made to consumer. However, it is not possible to locate individual buyers and pay refund to them. Also without authority of law Government cannot retain the excess duty. Therefore, Section 27 has been introduced which provides that any refund due to an assessee shall be transferred to Consumer Welfare Refund and will be used for the purpose of protection and welfare of the consumers. The refund shall be granted to the assessee only when he proves that incidence of duty has not been passed to any other person or in certain other specified cases.

**The provisions relating to refund of Custom duty are as under -**

(1) **Application for Refund and time limit:**
Section 27 provides that any person claiming refund of any duty or interest -
(a) paid by him; or
(b) borne by him,

may make an application in such form and manner as may be prescribed for such refund to the Assistant Commissioner/ Deputy Commissioner of Customs, **before the expiry of 1 year**, from the date of payment of such duty or interest.

**Time Limit not applicable in case duty is paid under protest:** The limitation of one year shall not apply where any duty or interest has been paid under protest.
Hence, in case of duty/interest paid under protest, refund claim may be filed without any time-limit.

“The date of payment of duty or interest” in relation to a person, other than the importer, shall be construed as “the date of purchase of goods” by such person.

(2) **No refund admissible if amount is less than Rs. 100:**
Where the amount of refund claimed is less than Rs. 100, the same shall not be refunded.

(3) **Documentary evidence to be furnished to prove that incidence of the duty/interest for which refund claim has been filed is not passed on to any other person [Section 27(1A)]:**
Refund application shall be accompanied by such documentary or other evidence (including documents referred to in Section 28C) as the applicant may furnish to establish that the amount of duty or interest in relation to which such refund is claimed,-

(a) was collected from, or paid by him; and

(b) the incidence of such duty or interest, has not been passed on by him to any other person.

(4) **Manner of computation of limitation period of one year [Section 27(1B)]:**
Save as otherwise provided in this section, the period of limitation of one year shall be computed in the following manner, namely,-

<table>
<thead>
<tr>
<th>Sl. No.</th>
<th>In case</th>
<th>The limitation of one year shall be computed from the -</th>
</tr>
</thead>
<tbody>
<tr>
<td>(1)</td>
<td>Goods are exempt from payment of duty by a special order issued u/s 25(2)</td>
<td>Date of issue of such order</td>
</tr>
<tr>
<td>(2)</td>
<td>Where the duty becomes refundable as a consequence of any judgment, decree, order or direction of the Appellate authority, Appellate Tribunal or any court</td>
<td>Date of such judgment, decree, order or direction</td>
</tr>
<tr>
<td>(3)</td>
<td>Where any duty is paid provisionally under Section 18</td>
<td>Date of adjustment of duty after the final assessment thereof or in case of re-assessment, from the date of such re-assessment.</td>
</tr>
<tr>
<td>(4)</td>
<td>In any other case</td>
<td>Date of payment of such duty or interest</td>
</tr>
</tbody>
</table>

(5) **Order of refund [Section 27(2)]:**
On receipt of such an application, if the Assistant/ Deputy Commissioner of Customs is satisfied that the whole or any part of the duty and interest, if any,
paid thereon paid by the applicant is refundable, then, he shall make an order accordingly and the amount shall be credited to the Consumer Welfare Fund.

(6) **Circumstances when refund granted to assesse:**

The amount of customs duty along with interest, if any, paid thereon shall be paid to the applicant instead of being credited to the fund in the following circumstances,—

(a) **Refund to importer/exporter if duty incidence is not passed** : If the importer or exporter has paid the duty and interest and has not passed on the incidence of such duty and interest to any other person.

(b) **Imports made by individual for personal use** : If the duty and interest is paid on imports made by an individual for his personal use.

(c) **Refund to buyer if duty burden not passed** : If the duty and interest has been borne by the buyer and he has not passed on the incidence thereof to any other person.

(d) **Duty drawback** : In case of drawback of duty payable u/s 74 and 75 of the Customs Act 1962.

(e) **Refund of Export duty** : In case the refund is in respect of the export duty as specified in Section 26 of Customs Act, 1962.

(f) **Notified class of applicants** : In case the duty and interest is borne by any other such class of applicants as the Central Government may by notification in the official gazette specify and such class of persons have not passed on the incidence thereof to any other person.

(g) **Excess duty paid by importer** : The duty paid in excess by the importer before an order permitting clearance of goods for home consumption is made where—

(i) such excess payment of duty is evident from the bill of entry in the case of self-assessed bill of entry; or

(ii) the duty actually payable is reflected in the reassessed bill of entry in the case of reassessment.

**Refund of export duty.**

**Refund of Export Duty [Section 26]** : Any export duty paid on goods exported will be refunded if the following conditions are satisfied: -

(i) Goods are **re-imported within one year,**

(ii) The goods are **returned otherwise than by way of resale,** and

(iii) **Refund claim is made within 6 months** from the date when the proper officer made an order for clearance of the goods for re-importation.
Refund of Import duty.

Refund of import duty in certain cases [Section 26A of the Customs Act, 1962]:

(1) **Applicability:**
This section applies in respect of the importation of any **goods capable of being easily identified** as such imported goods, if -

(a) any duty has been paid on clearance of such goods for home consumption;

(b) 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;

(c) 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;

(d) the goods are identified to the satisfaction of the **Assistant Commissioner or Deputy Commissioner** as the goods which were imported;

(e) the importer **does not claim** drawback under any other provision of this Act; and

(f) **either of the following** -
   (i) the **goods are exported**; or
   (ii) the **importer relinquishes his title to the goods** and abandons them to customs; or
   (iii) such **goods are destroyed or rendered commercially valueless** in the presence of the proper officer.

(2) **Manner & Time-limit of export/ relinquishment/ destruction & extension of time-limit:**
The export/ relinquishment/ destruction, etc. [referred to in point (1)(f)] should be done in the prescribed manner and **within a period of upto 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.

**Extension of upto 3 Months** : However, the period of 30 days may, on sufficient cause being shown, be extended by the Principal Commissioner or Commissioner of Customs for a **period not exceeding 3 months**.

(3) **Refund of import duty if aforesaid conditions fulfilled** If the aforesaid conditions are satisfied, then, such duty paid at the time of clearance of such goods shall be refunded to the person by whom or on whose behalf it was paid.

(4) **Manner and time-limit of claiming refund:**
An application for refund of duty shall be made before the expiry of 6 months from the relevant date in prescribed form and manner.

"**Relevant date**" means,-
(a) in cases where the goods are exported out of India, the date on which the proper officer makes an order permitting clearance and loading of goods for exportation under section 51;
(b) in cases where the title to the goods is relinquished, the date of such relinquishment;
(c) in cases where the goods are destroyed or rendered commercially valueless, the date of such destruction or rendering of goods commercially valueless.

(5) **Exceptions to this Section:**
   (a) **Offending Goods**: This section shall not 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.
   (b) **Perishable goods or Expired Goods**: No refund shall be allowed in under this section in respect of perishable goods and goods which have exceeded their shelf life or their recommended storage-before-use period.

(6) **Power of Board to impose Additional Condition**:
The Board may, by notification in Official Gazette, specify any other condition subject to which the refund under this section may be allowed.

**PART 3: INTEREST ON LATE DISBURSEMENT OF REFUND.**

**Interest on delayed refunds [Section 27A]**: The provisions relating to interest on delayed refunds are as under:

(1) **Circumstances in which refund can be granted**:
   If any duty, ordered to be refunded, is **not refunded within 3 months** from the date of receipt of application, interest shall be paid to that applicant.

(2) **Period for which interest will be paid**:
   Interest will be paid on such duty from the date immediately after the expiry of three months from the date of receipt of such application till the date of refund of such duty.

(3) **Rate of interest**: 6% p.a.

(4) **Refund in consequence of Appellate Authority's order**:
   Where any order of refund is made by the Commissioner (Appeals), Appellate Tribunal or any court against an order of the Assistant Commissioner of Customs or Deputy Commissioner of Customs, the order passed by the Commissioner
Exemption

PART 4: CASE LAWS

CC (Import) v. Dilip Kumar and Company [2018] 167 ELT 577 (SC)

➢ Interpretation of Tax exemption notifications - Burden to prove for its entitlement is on assessee claiming exemption. If there is any ambiguity in exemption Notification, benefit of such ambiguity cannot be claimed by assessee and it must be interpreted in favour of Revenue.

➢ Interpretation of Taxing statutes - In case there is ambiguity in interpretation of a taxing statute and it is open to two interpretations, benefit of interpretation is given to the subject/ assessee.

Decision:

➢ Words in a statute when clear, plain and unambiguous and only one meaning can be inferred, Courts are bound to give effect to the said meaning irrespective of consequences. In applying rule of plain meaning any hardship and inconvenience cannot be the basis to alter the meaning to the language employed by the legislation especially in fiscal statutes and penal statutes.

➢ However, if words are ambiguous in a taxing statute (not exemption clause) and open to two interpretations, benefit of interpretation is given to the subject/assessee.

➢ If there is any ambiguity in exemption Notification, benefit of such ambiguity cannot be claimed by assessee and it must be interpreted in favour of Revenue/Department. Thus, Exemption notifications should be interpreted strictly, assessee cannot take benefit of ambiguity in exemption notification; benefit of such ambiguity must be interpreted in favour of revenue.

CC v. Dilip Kumar & Co. [2018] 361 ELT 577 (SC)

➢ Interpretation of statutes : Words in a statute when clear, plain and unambiguous and only one meaning can be inferred, Courts are bound to give effect to the said meaning irrespective of consequences. In applying rule of plain meaning any hardship and inconvenience cannot be the basis to alter the meaning to the language employed by the legislation especially in fiscal statutes and penal statutes.

➢ The maxim under tax laws is that — Exemption Notification : Exemption notification should be interpreted strictly; the burden of proving applicability would be on the assessee to show that his case comes within the parameters of the exemption clause or exemption notification.
When there is ambiguity in exemption notification which is subject to strict interpretation, the benefit of such ambiguity cannot be claimed by the subject/assessee and it must be interpreted in favour of the revenue.

**Taxability** : In case of taxing statute imposing tax liability on assessee, the burden to prove tax liability of an assessee is on the Revenue.

In case of any ambiguity in a taxing statute imposing tax liability on the assessee, benefit of doubt is to be given to assessee.

**ITC Ltd. v. CCE. [2019] 368 ELT 216 (SC)**

Refund claim against the assessed duty cannot be entertained without challenging the assessment order even in case of self assessment made by the assessee. Thus, only when the order of assessment or self-assessment is modified in accordance with law by taking recourse to the appropriate proceedings, refund, claim u/s 27 of the Customs Act, 1962 is admissible.

**Facts:**
The appellants paid custom duty on the basis of self assessment which was subsequently claimed as refund without challenging the assessment order.

**Question :**
The question involved in these appeals is whether in the absence of any challenge to the order of assessment in appeal, any refund application against the assessed duty can be entertained?

**Appellants Argument:**
It was argued that prior to the amendment by the Finance Act, 2011, the scheme of assessment under Section 17 of the Customs Act was such that once a bill of entry was filed, examination and testing of the imported goods were done by the proper officer, thereafter, an order of assessment was passed after the physical examination. Accordingly, Section 27 of the Customs Act provided that claim for refund to be made by any person who had (a) paid duty in pursuance of an order of assessment or (b) a person who had borne the duty. Earlier, there was a necessity for an order of assessment by a proper officer under Section 17 of the Customs Act.

After the amendment to the Act in 2011, there is no need to get the assessment of bill of exchange done for claiming a refund of excess duty paid under Section 27 of the Act, as now the bill of entry is to be self-assessed by the importer or exporter and will be subject to verification. Further, under Section 17(4) of the Customs Act if it is found that self-assessment of duty has not been done correctly by an importer or exporter the proper officer, may re-assess the duty. In the case pf re-assessment done under Section 17(4), it is only in these circumstances an order is passed. If no order of assessment is passed in the case of self-assessment, the refund application can He. It was urged that Section 27 has also been amended by way of amendment by the Finance Act, 2011. An
application for refund of duty and the requirement of order of assessment that was requisite before the amendment has now been expressly removed.

**Decision:**

- The expression which was earlier used in Section 27(1)(i) that "in pursuance of an order of assessment" has been deleted from the amended provision of Section 27 due to introduction of provision as to self-assessment. However, as self-assessment is nonetheless an order of assessment, no difference is made by deletion of aforesaid expression as no separate reasoned assessment order is required to be passed in the case of self-assessment.
- Refund provisions u/s 27 cannot be invoked in the absence of amendment or modification having been made in the bill of entry on the basis of which self-assessment has been made.
- The refund proceedings are in the nature of execution for refunding amount. It is not assessment or re-assessment proceedings at all. Existence of those exigencies is also to be proved which cannot be adjudicated within the scope of provisions as to refund. While processing a refund application, re-assessment is not permitted nor conditions of exemption can be adjudicated.
- It will virtually amount to an order of assessment or re-assessment in case the Assistant Commissioner or Deputy Commissioner of Customs while dealing with refund application is permitted to adjudicate upon the entire issue which cannot be done in the ken of the refund provisions under Section 27.
- Thus, a claim for refund cannot be entertained unless the order of assessment or self-assessment is modified in accordance with law by taking recourse to the appropriate proceedings.

**Yu Televentures Pvt. Ltd. v. UOI [2017] 358 ELT 81(Del)**

Chartered Accountant's certificate that incidence of Countervailing Duty (CVD) on import was not passed on to customers is sufficient to rebut presumption of unjust enrichment, more so where same certificate had been accepted in earlier proceedings.

**PCC v. Suren International Ltd. [2017] 355 ELT 26 (Del)**

There is no provision in Customs Act, 1962 for granting of refund of warehousing charges.

Thus, where in the instant case, the assessee, got the confiscated goods released on payment of the fine and penalty and paid the warehousing charges demanded by the CWC under protest, and later sought to claim refund of the warehousing charges so paid under protest, it was held that the refund application could not be entertained as there was no provision in the Customs Act, 1962 to enable granting of refund of warehousing charges. The liability to pay warehousing charges was independent of liability to pay Customs duty, interest, fine and penalty.
PART 5: PROBLEMS

Q1. State whether the principle of 'unjust enrichment' shall be applicable in the following cases -

(1) Refund of duty paid on provisional basis under section 18 of the Customs Act.
(2) Refund of an advance payment made in anticipation of importation of goods.
(3) Refund of duty paid under protest.
(4) Refund of wrongly encashed bank guarantee. (*May 2008, 3 Marks*)
(5) Refund of excess interest paid by the assessee. (*May 2008, 1 Mark*)
(6) Refund of duty on car imported for personal use. (*May 2008, 3 Marks*)
(7) Refund of export duty. (*Nov. 2004, 2 Marks*)

**Ans:** The aforesaid points have been discussed below -

(1) **Yes.** The doctrine of 'unjust enrichment' is applicable in case of refund of duty paid on raw materials which have been captively consumed, as has been judicially decided by the Supreme Court in **UOI v. Solar Pesticides (P) Ltd. [2000] 116 ELT 401 (SC).** The Apex court held that the duty burden can be passed on directly or indirectly. In case of raw materials which is captively consumed and finished goods manufactured therefrom are sold, it can be said that incidence of duty has been passed on, since the same is included in value of finished goods and therefore the doctrine of unjust enrichment is applicable in such case.

(2) **Yes.** Section 18 of the Customs Act, 1962 statutorily provides that refund of import duty of customs paid on provisional basis can be made only if the importer proves that he has not passed on the incidence of duty to any other person. Hence, doctrine of 'unjust enrichment' is applicable in such case.

(3) **No.** The doctrine of "unjust enrichment" will not be applicable in case duty is paid in advance in anticipation of importation of goods. The Delhi High Court in **United News of India v. UOI [2004] 168 ELT 442 (Del.)** has held that till the advance payment is appropriated against the duty on actual importation of goods, such amount cannot be regarded as duty to be hit by doctrine of unjust enrichment. Thus, the time limit under section 27 and bar of unjust enrichment is not applicable in such cases.

(4) **Yes.** The Supreme Court in **Allied Photographies India Ltd. [2004] 166 ELT 3 (SC)** has held that every claim of refund, even if duty is paid under protest, shall be dealt in accordance with provisions of Section 27. Thus, refund of duty paid under protest is also governed by doctrine of unjust enrichment.

(5) **No.** The provisions of section 27(2) apply when an assessee claims refund of duty, hence, bar of unjust enrichment will not apply to refund of wrongly encashed bank guarantee. An amount secured by bank guarantee cannot be held to be paid to the Revenue as duty. Hence, the Revenue will have to pay back the amount of bank guarantee (encashed wrongly), if the case is finally decided in favour of assessee. – **Oswal Agro Mills Ltd. v. ACCE (1994) 70 ELT 48 (SC)**

(6) **Yes.** The bar of unjust enrichment will apply in case of excess interest paid by the assessee as the words used under section 27(1) and 27(2) are "duty and interest,
if any, paid on such duty". The payment of interest is inextricably linked with payment of duty. Thus, the excess amount of interest paid by the assessee will be refunded to him only if he does not pass on the incidence of such interest to any other person.

(7) No. The principle of unjust enrichment will not apply to refund of duty on car imported for personal use, Section 27(2) stipulates that in case of imports made by an individual for his personal use, the refund should not be credited to consumer welfare fund, but shall be paid to the applicant.

(8) No. The Tribunal in the case of CC v. Ken Agritech Pvt. Ltd. [2004] 166 ELT 339 (Tri.-Bang.) has held that the provisions relating to unjust enrichment introduced in section 27 by way of amendment in the Customs Act could only apply to refund of import duty under the said section. Since refund of export duty is dealt with under section 26 of the Act and the same has not been amended by the Parliament, the provisions relating to unjust enrichment introduced under section 27 could not be made applicable to refund of export duty under the said section 26.

Q2 - M/s. RLL filed a claim for refund of duty amounting to Rs. 5 crores on 25-12-2016; however, such claim was rejected by the Department vide order dated 23-6-2018. Aggrieved thereby, the assessee filed appeal and succeeded vide final appellate order dated 25-1-2019. The refund was paid on 25-3-2019. The assessee has sought interest under section 27A on delay in refund, while Department contends that since the refund has been granted within 3 months' from the date of appellate order, no interest is due, as there is no delay. Decide the issue and compute the amount of interest, if any.

Solution: The Apex Court in Ranbaxy Laboratories Ltd. v. UOI [2011] 273 ELT 3 (SC) observed that interest under section 27A becomes payable, if on expiry of a period of three months from the date of receipt of the application for refund, the amount claimed is not refunded. Thus, the only interpretation of Section 27A that can be arrived at is that interest under the said section becomes payable on the expiry of a period of three months from the date of receipt of the application under section 27(1).

The Apex Court further noted that Explanation appearing below the proviso to section 27A introduces a deeming fiction that where the order for refund of duty is not made by the Assistant Commissioner/Deputy Commissioner of Customs, but by an Appellate Authority or the Court, then for the purpose of this section, the order made by such higher Appellate Authority or by the Court shall be deemed to be an order made under section 27(2). It is apparent that the explanation does not have any bearing or connection with the date from which interest under section 27A becomes payable and does not postpone the said date.

The relevant computation is as follows (amounts in Rs.):

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Amount of refund</td>
<td>[A] 5,00,00,000</td>
</tr>
<tr>
<td>Date of making application</td>
<td>[B]</td>
</tr>
<tr>
<td></td>
<td>25-12-2016</td>
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<tr>
<td>Three Months' period from the date of application</td>
<td>[C] = [B] + 3 months</td>
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Q3 - Acme Sales’ imports’ very being provisionally assessed pending a verification that the department was carrying out. Upon completion at the verification, the assessments were finalized, and Acme Sales was asked to pay Rs. 12 lakhs, which it paid. After six months, upon detailed scrutiny of the verification report and taking legal opinion on it. Acme Sales filed a claim for refund of Rs. 8 lakhs on the ground that the differential amount should be Rs. 4 lakhs only and that there were factual errors in the verification report. Was this the correct mode of redressal for Acme Sales? What will be likely outcome of the claim? Discuss on the basis of case law on the subject.

**Ans:** Acme Sales received an order finalizing provisional assessment on the basis of a verification report, and requiring payment of Rs. 12 lakhs. They did not contest this order, but made the payment, and allowed the appeal period of sixty days to lapse. After appeal became time-barred they filed a claim for refund in which they challenged the order. This was a backdoor method of seeking relief against the order; it also asked an officer of the same rank to review the order passed; and it sought to bypass the time limitation for appeal by presenting the appeal as a claim for refund. The Supreme Court has held, in the case of *Priya Blue Industries Limited [2004] 172 ELT 145 (SC)*, that such a refund claim is not permissible for all these reasons. A person who is aggrieved with an assessment order cannot seek refund without filing an appeal against the assessment order.

Q4. Does the bar of unjust enrichment apply to all types of refunds? Does the refund of penalty attract such bar? (Nov. 2005, 2 Marks)

**Ans:** No, the bar of unjust enrichment does not apply to all types of refunds. Only when the burden of the duty has been shifted by the manufacturer to the buyer, the refund gets hit by such bar.

No, refund of penalty does not attract bar of unjust enrichment. - *CCEx. v. Shivalik Agro Poly Products Ltd. [2004] 173 ELT 64 (Tri.)*

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<td>Exemptions and Refunds</td>
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<td>expires on -</td>
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<td>Date of making refund</td>
<td>[D]</td>
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<tr>
<td>No. of years and days for which interest to be granted</td>
<td>[E] = [D] - [C]</td>
<td>2 years</td>
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<td>Interest on refund @ 6%</td>
<td>[A] × [E] × 6%</td>
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CHAPTER 36 – FOREIGN TRADE POLICY

PART 1: BASIC CONCEPTS OF FOREIGN TRADE POLICY

What is Foreign Trade Policy? Explain the need of foreign trade.

Foreign Trade Policy (FTP) is a set of guidelines or instructions issued by the Central Government in matters related to import and export of goods in India i.e. foreign trade.

Need of foreign trade: In the era of globalization, foreign trade has become the lifeline of any economy. Its primary purpose is not merely to earn foreign exchange, but also to stimulate greater economic activity. International Trade not only enables a nation to specialize in the goods which it can produce most cheaply and efficiently, but also to consume more than it would be able to produce with its own resources. International trade enlarges the potential markets for the goods of a particular economy.

Explain the need of foreign trade policy.

The foreign trade policy is needed to regulate the foreign trade. The FTP, in general, aims at -

(i) developing export potential,
(ii) improving export performance,
(iii) encouraging foreign trade,
(iv) creating favorable balance of payments position,
(v) improving efficiency and competitiveness of the Indian industries, etc.,
(vi) create self-reliance and self-sufficiency,
(vii) ensure export led growth.

Explain in brief the legislation governing foreign trade.

The relevant provisions are as under -

(1) Legislation governing foreign trade:

The main legislation concerning foreign trade is the Foreign Trade (Development and Regulation) Act, 1992 [FT (D&R) Act], which replaced the earlier Import and Export (Control) Act, 1947.

FT (D&R) Act, confers powers on the Union Ministry of Commerce and Industry, Government of India to –

(a) make provisions for facilitating and controlling foreign trade;
(b) prohibit, restrict and regulate exports and imports, in all or specified cases as well as subject them to exemptions;
(c) formulate and announce an export and import policy and also amend the same from time to time, by notification in the Official Gazette;
(d) appoint a 'Director General of Foreign Trade' for the purpose of the Act, including formulation and implementation of the export-import policy.

(2) **FTP in every 5 years:**
In exercise of its powers Union Ministry of Commerce and Industry, Government of India, announces an integrated Foreign Trade Policy in every five years with certain underlined objectives. This policy is updated every year in April, in addition to changes that are made throughout the year.

The Foreign Trade Policy (FTP), 2015-2020, (as updated) on 30-06-2019 incorporating provisions relating to export and import of goods and services, shall remain in force up to 31st March, 2020, unless otherwise specified.

All exports and imports made upto the date of notification shall, accordingly, be governed by the relevant FTP, unless otherwise specified.

(3) **Amendment to FTP:**
Central Government, in exercise of powers conferred by Section 5 of FT (D&R) Act, 1992, as amended from time to time, reserves the right to make any amendment to the FTP, by means of notification, in public interest.

(4) **Specific provision to prevail over the general:**
Where a specific provision is spelt out in the FTP/Hand Book of Procedures (HBP), the same shall prevail over the general provision.

**Contents of Foreign Trade Policy:**
The contents of the FTP 2015-2020 are as follows-

(1) **FTP 2015-2020** having 9 Chapters giving basic policy. This has been notified by the Central Government on 01-04-2015. The policy is amended normally in April every year and also during the year.

(2) **Handbook of Procedures 2015-2020:**
(HBP 2015-2020) containing 9 chapters, covering procedural aspects of policy. This has been notified by Director General of Foreign Trade on 01-04-2015. It is amended from time to time as per requirements.

(3) **Appendices and Aayat Niryat Forms (AANF)** Containing various appendices and forms relating to import and export.

(4) **Standard Input-Output Norm:**
Standard Input-Output Norms (SION) of various products are notified from time to time. Based on SION, exporters are provided the a permission in terms of the FT(D&R) Act to import or export. It also grants Importer facility to make duty-free
import of inputs required for manufacture of export products under the Duty Exemption Schemes like Advance Authorisation and DFIA.

(5) **ITC(HS) Classification of Exports and Import Items:**
The Export Import Policy regarding import or export of a specific item is given in the Indian Trade Classification Code based on Harmonized System of Coding [ITC(HS)]. ITC-HS Coding was adopted in India for import-export operations. Indian custom uses **eight digit ITC-HS Codes** to suit the national trade requirements.

ITC-HS codes are divided into two schedules. **ITC(HS) Import Schedule I** describe the rules and guidelines related to **import policies** whereas **Schedule II** describe the rules and regulation related to **export policies**. Presently, most of the goods can be imported without any authorization. Schedule II contains very few products, where export is prohibited or restricted. Excluding those items, export of all other goods is free.

Any changes or formulation or addition of new codes in ITC-HS Codes are carried out by DGFT (Directorate General of Foreign Trade).

(6) **Foreign Trade Policy vis a vis tax laws:**
The FTP is closely knit with the Customs, GST Laws and Excise laws of India. However, the policy provisions per-se do not override tax laws. The exemptions extended by FTP are given effect to by issue of notifications under respective tax laws (e.g., Customs Tariff Act). Thus, actual benefit of the exemption depends on the language of exemption notifications issued by the CBIC. In most of the cases the exemption notifications refer to policy provisions for detailed conditions. Ministry of Finance/Tax Authorities cannot question the decision of authorities under the Ministry of Commerce (so far as the issue of authorization etc. is concerned).

FTP, Handbook of procedure's under FIT, CGST Act, SGST Act, IGSI Act, Contral Excise Act (for petroleum products and tobacco products). Customs Act and notifications issued hereunder form an integrated scheme of indirect taxation. All these statues have to be read as a whole and not in isolation, since they are series of statues relating to related subject matter.
PART 2: FTP - OBJECTIVES, ADMINISTRATION AND LEGAL FRAMEWORK

(1) **Stable and sustainable policy environment for foreign trade:**
To provide a stable and sustainable policy environment for foreign trade in merchandise and services;

(2) **Export Promotion Mission:**
To link rules, procedures and incentives for exports and imports with other initiatives such as "Make in India", "Digital India" and "Skills India" to create an "Export Promotion Mission" for India;

(3) **Diversification of India's export:**
To promote the diversification of India's export basket by helping various sectors of the Indian economy to gain global competitiveness with a view to promoting exports;

(4) **Expansion and integration of export market:**
To create an architecture for India's global trade engagement with a view to expanding its markets and better integrating with major regions, thereby increasing the demand for India's products and contributing to the government's flagship "Make in India" initiative;

(5) **Regular appraisal:**
To provide a mechanism for regular appraisal in order to rationalise imports and reduce the trade imbalance.

Guiding principles of FTP 2015-20.

(1) **Employment generation:** Generation of employment and increasing value addition in country, in keeping with 'Make in India' vision.

(2) **Ease of doing business and trade facilitation:** Focus on improving 'ease of doing business' and 'trade facilitation' by simplifying procedures and extensive use of e-governance- move towards paperless working.

(3) **E-commerce exports:** Encouraging e-commerce exports of specified products.

(4) **Exports by notified zones:** Steps to encourage manufacture and export by SEZ, EOU, STP, EHTP and BTP.

(5) **Duty credit scrips:** Duty credit scrips to (a) encourage exports of specified products to specified markets (b) export of services.

(6) **Settlement of quality complaints and trade disputes:** Special efforts to resolve quality complaints and trade disputes.
The various measures taken in said direction include:

(i) **Only three mandatory documents:**
The number of mandatory documents required for exports and imports of goods from/into India have been reduced to 3 each (discussed in detail later).

(ii) **24 x 7 Customs clearance:**
The facility of **24 x 7 Customs clearance** for specified imports has been made available at the **18 specified sea ports**. The facility of 24 x 7 Customs clearance for specified imports has also been made available at the **17 specified air cargo complexes**. The 24 x 7 Customs clearance facility has now been extended to **all Bills of Entry** (not only facilitated Bills of Entry). Further, **no MOT charges** are required to be collected in respect of the services provided by the Customs officers at 24 x 7 Customs Ports and Airports.

(iii) **Single window scheme:**
Indian Customs has introduced **SWIFT (Single Window Interface for Facilitating trade)** w.e.f. 01-04-2016 for ensuring ease of doing business.

Under SWIFT, the Importers electronically lodge Integrated Declaration at a single point only with Customs. The required permission, if any, from other regulatory agencies (such as Animal quarantine, Plant quarantine, Drug Controller, Textile Committee etc.) is obtained online without the importer/exporter having to separately approach these agencies. Benefits of Single Window Scheme include:

(a) Reduced Cost of doing business;
(b) Enhanced transparency;
(c) Reduced duplicity and cost of compliance;
(d) Optimal utilization of man power.

(iv) **Prior Online filing of shipping bill:**
To facilitate processing of shipping bills before actual shipment, prior online filing facility for shipping bills has been provided by the Customs - **7 days for air shipments & ICDs** and **14 days for shipments by sea**.

(v) **Online filing of documents:**
DGFT under the EDI initiatives has provided the facility of on-line filing of applications to obtain Importer Exporter Code and various authorizations/scrips.

Exports from and imports in India, need a lot of regulatory requirements to be complied with at various stages. Yet if properly planned, exports and imports can utilize a lot benefits that are available under various provisions of the FTP. The policy not only prescribes the guidelines as to which goods and services can be
imported/exported and the relevant procedures thereto but also provides a lot of benefits if properly planned.

Schemes like Duty Exemption Schemes, EPCG Schemes, Deemed Exports, etc., benefit exporters, importers and even defined domestic businesses thereby assisting all businesses to reduce costs at every stage in the value chain. In addition, exporters can avail other benefits under promotional schemes.

(vi) **National Committee on Trade Facilitation (NCTF):**
Consequent to India’s ratification of the WTO Agreement on Trade Facilitation (TFA) in April 2016, the National Committee on Trade Facilitation (NCTF) has been constituted. The establishment of the Committee is part of mandatory, institutional arrangement of the TFA. This inter-ministerial body on trade facilitation will be chaired by the Cabinet Secretary. Its Secretariat will be housed within the Central Board of Indirect Taxes (CBIC), in the Directorate General of Export Promotion, New Delhi. The defined objective behind setting up the NCTF is to have national level body that will facilitate domestic co-ordination and implementation of TFA provisions. It will play the lead role in developing the Pan-India road map for trade facilitation. It will be instrumental in synergizing the various 21 trade facilitation perspectives across the country and will also focus on an outreach programmes for sensitization of all stakeholders about TFA.

**Important features of the Foreign Trade Policy.**

1. **Free Export-Import:** Export-Import is free unless specifically regulated by the provisions of the Policy or any other law for the time being in force.

2. **Restrictions for strategic and health reasons:** There are restrictions on exports and imports for various strategic, health, and other reasons. If the goods are not banned, the government can give a permission/license for specific reasons.

3. **Export promotion schemes:** Exports are promoted through various promotional schemes.

4. **Duty exemptions, drawbacks and rebates available:** To provide for tax free exports, the taxes on exports are either exempted or adjusted or refunded on both outputs and inputs, through schemes of Duty Exemption, Duty Refund (Drawbacks and Rebates).

5. **Free import of capital goods for exports:** Even capital goods can be imported at NIL duty for the purpose of exports under the scheme of EPCG.

6. **Special Schemes for EOU:** For units undertaking to export all their production, there are special schemes so that they can avoid taxes at every stage under the scheme of EOU.

7. **Deemed Exports:** In certain cases imports get duty exemption/concession for certain special purposes. In such cases, to enable domestic suppliers compete
with the international suppliers, the supplies of domestic suppliers are treated as deemed exports.

**Administrative machinery of Foreign Trade Policy.**

1. **Director General of Foreign Trade:**
   Director General of Foreign Trade (DGFT), an attached office of the Ministry of Commerce & Industry, Government of India formulates, controls and supervises the Foreign Trade Policy. DGFT has several offices in various parts of the country for execution of the policy formed by the headquarters at Delhi.

2. **Other Authorities involved in administration of FTP:**
   Though the FTP is formulated by DGFT, it is administered in close coordination with other agencies, like-
   - **Central Board of Indirect Taxes (CBIC):** CBIC, along with its departments, under the Ministry of Finance, facilitate the implementation of FTP.
     **Responsibilities of the departments:** Customs Department which is responsible for clearance of export and import goods, follow the policy framed by FTP. On the other hand the GST Authorities are required to be involved for all matters of exports, where goods have to be cleared without payment of Integrated tax.
   - **Reserve Bank of India (RBI):** RBI which is the nodal bank in the country, working under the Ministry of Finance, is entrusted with policy formulation for foreign exchange management including the payments and receipts of foreign exchange and promotion and orderly development and maintenance of foreign exchange market in India.
   - **State GST Departments:** To avoid dual control, some taxable persons are under jurisdiction of State GST authorities. In their case, State GST Authorities are controlling authorities.

**Scope of FTP**

1. **Scope of foreign trade policy:**
   The FTP covers the policies and regulations with respect to the following matters:
   - (a) Legal framework and trade facilitation - Chapter 1
   - (b) General provisions regarding Imports and Exports - Chapter 2
   - (c) Export Promotional Measures - Exports from India Schemes - Chapter 3
   - (d) Duty Remission and Duty Exemption Scheme for promotion of exports - AA and DFIA and duty drawback - Chapter 4
   - (e) Export promotion Capital Goods (EPCG) Scheme - Chapter 5
(f) Export Oriented Undertakings (EOU) / Electronic Hardware Technology Park (EHTP) / Software technology Park (STP) and Bio Technology Parks (BTP) Schemes - Chapter 6

(g) Deemed Exports - Chapter 7

(h) Quality Complaints and Trade Disputes - Chapter

(i) Definitions - Chapter 9

Provisions relating to Special Economic Zone (SEZ) are contained in a separate Act and are not part of FTP. However, provisions of SEZ are closely related to Foreign Trade Policy.

Handbook of Procedures (HBP 2015-2020) has 9 corresponding chapters which mainly deal with procedural aspects of the foreign trade policy.

(2) Special focus initiatives:
The FTP provides certain special focus initiatives for Market Diversification, Technological Upgradation, Support to status holders, Agriculture, Handlooms, Handicraft, Gems & Jewellery, Leather, Marine, Electronics and IT Hardware Manufacturing Industries, Green products, Exports of products from North-East, Sports Goods and Toys sectors wherein the Government of India shall make concerted efforts to promote exports.

(3) Board of Trade:
Board of Trade (BOT) has been constituted to advise Government on Policy measures for increasing exports, review export performance, review policy and procedures for imports and exports and examine issues relevant for promotion of India’s foreign trade. Commerce & Industry Minister will be the Chairman of the BOT. Government shall also nominate upto 25 persons, of whom at least 10 will be experts in trade policy. In addition, Chairmen of recognized Export Promotion Councils (EPCs) and President or Secretary- Generals of National Chambers of Commerce will be ex-officio members. BOT will meet at least once every quarter.

(4) Trade facilitation through EDI Initiatives:
DGFT has put in place a robust EDI system for the purpose of export facilitation and good governance. DGFT has set up a secured EDI message exchange system for various documentation related activities including import and export authorizations established with other administrative departments, namely, Customs, Banks and EPCs. This has reduced the physical interface of exporters and importers with the Government Departments and is a significant measure in the direction of reduction of transaction cost. The endeavour of DGFT has been to enlarge the scope of EDI to achieve higher level of integration with partner departments.
(5) **E-BRC:**
One prominent initiative in recent times has been the **E-BRC (Electronic Bank Realisation Certificate)** project and its successful implementation by DGFT. It has enabled DGFT to capture details of realisation of export proceeds directly from the Banks through secured electronic mode. This has facilitated the implementation of various export promotion schemes without any physical interface with the stakeholders.

RBI has also developed a comprehensive IT-based system called **Export Data Processing and Monitoring System (EDPMS)** for monitoring of export of goods and software and facilitating AD banks to report various returns through a single platform.

(6) **DGCI&S Commercial Trade Data: Director General of Commercial Intelligence and Statistics (DGCI&S)**
is an ISO certified organization under the administrative control of DGFT. It is the provider of trade data which is a source of guidance and direction for export & import trade and which help the exporters and importers formulate their trade strategy. **DGCI&S has put in place a Data Suppression Policy.** Transaction level data would not be made publicly available to protect privacy. DGCI&S trade data shall be made available at aggregate level with a minimum possible time lag in a query based structured format on commercial criteria.

(7) **Special Focus Initiatives to expand employment opportunities:**
With a view to expand employment opportunities, certain special focus initiatives for Handlooms, Handicraft, Leather, Marine, Sports Goods and Toys sectors are required. These sectors are being provided the following duty free (only basic customs duty free with effect from 01-07-2017) entitlements:

| (i) | Handlooms | ➢ Duty free import entitlement of specified trimmings and embellishments up to 5% of FOB value of exports during previous financial year. Handloom and made ups are included for the entitlement.  
➤ Duty free import entitlement of hand knotted carpet samples up to 1% of FOB value of exports during previous financial year. |
| (ii) | Handicrafts | ➢ Duty free import entitlement of tools, trimmings and embellishments up to 5% of FOB value of exports during previous financial year. Entitlement shall extend to merchant exporters tied up with supporting manufacturers.  
➤ Handicraft EPC is authorized to import trimmings, embellishments and consumables on behalf of those exporters for whom directly importing may not be viable. |
(iii) Leather and Footwear

- Duty five import entitlement of specified items up to 3% of FOB value of exports of leather garments during preceding financial year.
- Duty free entitlement for import of trimmings, embellishments and footwear components for footwear (leather as well as synthetic) and other leather products up to 5% of FOB’ value of exports of previous financial year.

(iv) Marine Sector

Duty free import of specified specialised inputs/chemicals and flavouring oils is allowed to the extent of 1% of FOB value of preceding financial year’s export.

(v) Sports Goods and Toys

Duty free import of specified specialised inputs allowed to the extent of 3% of FOB value of preceding financial year’s export.

**Powers granted to DGFT for regulation of FTP?**

(1) **Interpretation of Policy:**

(a) **DGFT- Final authority**: The decision of **DGFT shall be final and binding** on all matters relating to interpretation of Policy, or provision in Handbook of Procedures, Appendices and Aayat Niryat Forms or classification of any item for import / export in the ITC (HS).

(b) **Policy Interpretation Committee**: A Policy Interpretation Committee (PIC) may be constituted to aid and advise DGFT. The composition of the PIC would be as follows:

(i) **DGFT: Chairman**

(ii) All Additional DGFTs in Headquarters: **Members**

(iii) All Joint DGFTs in Headquarters looking after Policy matters: **Members**

(iv) Joint DGFT (PRC/PIC): **Member Secretary**

(v) Any other person/representative of the concerned Ministry/Department, to be co-opted by the Chairman.

(2) **Exemption from Policy/ Procedure:**

DGFT may in public interest pass such orders or grant such exemption, relaxation or relief, as he may deem fit and proper, on grounds of genuine hardship and adverse impact on trade to any person or class or category of persons from any provision of FTP or any procedure. While granting such exemption, DGFT may impose such conditions as he may deem fit after consulting the Committees as under:

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<th>Description</th>
<th>Committee</th>
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<td>(a) Fixation/modification of product norms</td>
<td>Norms Committee</td>
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<tr>
<td>(b) Nexus with Capital Goods (CG) and benefits under EPCG Schemes.</td>
<td>EPCG Committee</td>
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(3) **Personal Hearing by DGFT for Grievance Redressal:**

(a) **Relaxation of policy and procedure by DGFT:** Government is committed to easy and speedy redressal of grievances from Trade and Industry. FTP provides for relaxation of Policy and Procedures on grounds of genuine hardship and adverse impact on trade.

If an importer/exporter is aggrieved by any decision taken by Policy Relaxation Committee (PRC), or a decision/order by any authority in the Directorate General of Foreign Trade, a specific request for Personal Hearing (PH) along with the prescribed application fee has to be made to DGFT.

**Decision - final and binding:** DGFT may consider request for relaxation after consulting concerned Norms Committee, EPCG Committee or Policy Relaxation Committee (PRC) and the decision conveyed in pursuance to the personal hearing shall be final and binding.

(b) **Non applicability of personal hearing:** The opportunity for Personal Hearing will not apply to a decision/order made in any proceeding, including an adjudication proceeding, whether at the original stage or at the appellate stage, under the relevant provisions of FT (D&R) Act, 1992, as amended from time to time.

(4) **Regularization of EO default and settlement of Customs duty and interest through Settlement Commission:**

With a view to providing assistance to firms who have defaulted under FTP for reasons beyond their control as also facilitating merger, acquisition and rehabilitation of sick units, it has been decided to empower Settlement Commission in Department of Revenue to decide such cases also with effect from 01-04-2005.
PART 3: GENERAL PROVISIONS REGARDING IMPORTS AND EXPORTS

General provisions with respect to import /export of goods.

(1) **Exports and Imports - 'Free', unless regulated:**
Exports and Imports shall be free, except where regulated by FTP or any other law in force. The item wise export and import policy shall be specified in ITC(HS) notified by DGFT from time to time. These are classified as - *(a) Free (b) Restricted (c) Prohibited (d) Exclusive trading through State Trading Enterprise (STEs).*

(2) **Compliance with laws:**
Every exporter or importer shall comply with the provisions of the FT (D&R) Act, the rules and orders made there-under, the FTP and terms and conditions of any authorization granted to him. All imported goods shall also be subject to domestic laws, rules, orders, regulations, technical specifications, environmental and safety norms as applicable to domestically produced goods unless specifically exempted.

(3) **Interpretation of policy:**
If any question or doubt arises in respect of interpretation of any provision, said question or doubt shall be referred to DGFT whose decision thereon shall be final and binding.

(4) **Authority to specify procedures:**
DGFT may specify procedure to be followed by an exporter or importer or by any licensing/ Regional Authority (RA) or by any other authority for purposes of implementing provisions of FT (D&R) Act, the Rules and the Orders made there under and FTP. Such procedure, or amendments, if any, shall be published by means of a Public Notice.

(5) **Exemption from policy/ procedure:**
DGFT may pass such orders or grant such relaxation or relief, as he may deem fit and proper, on grounds of genuine hardship and adverse impact on trade. DGFT may, in public interest, exempt any person or class or category of persons from any provision of FTP or any procedure and may, while granting such exemption, impose such conditions as he may deem fit.
Principle of Restriction' under FTP.

(1) Reasons of restrictions:
DGFT may, through a Notification, impose restrictions on export and import, necessary for:
(a) Protection of public morals;
(b) Protection of human, animal or plant life or health;
(c) Protection of patents, trademarks and copyrights, and the prevention of deceptive practices;
(d) Prevention of use of prison labour;
(e) Protection of national treasures of artistic, historic or archaeological value;
(f) Conservation of exhaustible natural resources;
(g) Protection of trade of fissionable material or material from which they are derived;
(h) Prevention of traffic in arms, ammunition and implements of war.
(i) Relating to importation or exportation of Gold or silver.

(2) Export Import of Restricted goods/Services:
Any goods/service, the export or import of which is 'Restricted' may be exported or imported only in accordance with an Authorisation/Permission or in accordance with the procedure prescribed in a Notification / Public Notice issued in this regard.

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

What is meant by 'Authorization' in terms of FT(D&R) Act? What are the terms and conditions for the issue of authorization?
DGFT issues authorization (earlier called as licence) for import/export. 'Authorization' means a permission in terms of the FT (D&R) Act to import or export.

(1) Terms and Conditions of an Authorisation:
Every Authorisation shall, inter alia, include following terms and conditions (as applicable), in addition to such other conditions as may be specified:
(a) Description, quantity and value of goods;
(b) Actual User condition (as defined in Chapter 9);
(c) Export Obligation;
(d) Minimum Value addition to be achieved;
(e) Minimum export/import price;
(f) Bank guarantee/ Legal undertaking / Bond with Customs Authority/RA (as in para 2.35 of FTP).
(g) Validity period of import/export as specified in Handbook of Procedures.

(2) Application Fee:
Application for IEC/ Authorisation/ License/ Scrips must be accompanied by application fees as indicated in the Appendix 2K of Appendices and Aayat Niryat Forms.

(3) Clearance of Goods from Customs against Authorization:
Goods already imported / shipped / arrived, in advance, but not cleared from Customs may also be cleared against an Authorisation issued subsequently. However, such goods already imported/shipped/arrived, in advance are first warehoused against Bill of Entry for Warehousing and then cleared for home consumption against an Authorisation issued subsequently. This facility will however be not available to "restricted" items or items traded through STEs.

(4) Authorisation - Not a Right:
No person can claim an Authorisation as a right and DGFT or RA shall have power to refuse to grant or renew the same in accordance with provisions of FT (D&R) Act Rules made there under and FTP.

(5) Penalty:
If an authorization holder violates any condition of such authorization or fails to fulfill export obligation, he shall be liable for action in accordance with FT (D&R) Act, the Rules and Orders made there under, FTP and any other law for time being in force.

(6) Outstanding export obligations/liabilities to be informed to NCLT and RA:
Any firm / company coming under the adjudication proceedings before the National Company Law Tribunal (NCLT) shall inform the concerned Regional Authority (RA) and NCLT of any outstanding export obligations/liabilities under any of the schemes under FTP. The total outstanding duty saved amount/dues along with interest, and any penalty imposed under FTD&R Act, or any other dues, shall be counted as part of the dues to the government against the said firm/ company, [Inserted by Notification No. 25/2015-20 dated 18-10-2019]
Explain the provisions relating to Import/ Export Through State Trading Enterprises.

(1) State Trading Enterprises (STEs):
State Trading Enterprises (STEs) are governmental and non-governmental enterprises, including marketing boards, which deal with goods for export and/or import. Any good, import or export of which is governed through exclusive or special privilege granted to State Trading Enterprises (STE), may be imported or exported by the concerned STE as per conditions specified in ITC (HS).

(2) Imports or exports by STE in accordance with commercial considerations:
Such STE (s) shall make any such purchases or sales involving imports or exports solely in accordance with commercial considerations including price, quality, availability, marketability, transportation and other conditions of purchase or sale in a non discriminatory manner and shall afford enterprises of other countries adequate opportunity in accordance with customary business practices, to compete for participation in such purchases or sales.

(3) Other person can be granted authorization:
DGFT may, however, grant an authorization to any other person to import or export any of the goods notified for exclusive trading through STEs.

What is 'Importer Exporter Code Number' (IEC)?

Importer-Exporter Code (IEC) -10 digit PAN based code: It is a unique 10 digit code issued by DGFT to a person. IEC is mandatory to export any goods out of India or to import any goods into India unless specifically exempt. Permanent Account Number (PAN) is pre-requisite for grant of an IEC. Only one IEC can be issued against a single PAN.

DGFT has decided to use income tax PAN as IEC number i.e., IEC will be issued by DGFT with the difference that it will be alpha numeric (instead of 10 digit numeric at present) and will be same as PAN of an entity.

With the introduction of GST, GSTIN would be used for purposes of
(i) credit flow of IGST on import of goods, and
(ii) refund or rebate of IGST related to export of goods.

In view of this, it has been decided that importer/exporter would need to declare only GSTIN (wherever registered with GSTN) at the time of import and export of goods. For residuary categories, UIN issued by GSTN and authenticated by DGFT will be used. For others, common number will be notified by DGFT.

An application for IEC/ modification in IEC to be made only electronically by applicants through digital signature (Class-II or Class-III). Further, only the following are required to be uploaded/submitted along with the application for IEC:
(a) Digital photograph of the signatory applicant;
(b) Copy of the PAN card of the business entity in whose name Import/Export would be done (Applicant individual in case of Proprietorship firms);
(c) Cancelled cheque bearing entity’s pre-printed name or Bank certificate in prescribed format ANF-2A(I).

In case of STPI/ EHTP/ BTP units, the Regional Offices of the DGFT having jurisdiction over the district in which the Registered/ Head Office of the STPI unit is located shall issue or amend the IECs

What are the mandatory documents required for export/import of goods from/into India?
The mandatory documents for export/import of goods from/into India are as under—

(1) **Mandatory documents required for export of goods from India:**
   (a) Bill of Lading/ Airway Bill/ Lorry Receipt/ Railway Receipt/ Postal Receipt.
   (b) Commercial Invoice cum Packing List [Separate Commercial Invoice and Packing List would also be accepted.]
   (c) Shipping Bill/Bill of Export.

(2) **Mandatory documents required for import of goods into India:**
   (a) Bill of Lading/ Airway Bill/ Lorry Receipt/ Railway Receipt/ Postal Receipt.
   (b) Commercial Invoice cum Packing List [Separate Commercial Invoice and Packing List would also be accepted.]
   (c) Bill of Entry

(3) **Additional documents required for restricted goods:**
   For export or import of specific goods or category of goods, which are subject to any restrictions/policy conditions or require NOC or product specific compliances under any statute, the regulatory authority concerned may notify additional documents for purposes of export or import.

(4) **Additional documents to ensure legal compliance:**
   In specific cases of export or import, the regulatory authority concerned may electronically or in writing seek additional documents or information, as deemed necessary to ensure legal compliance.

(5) The above stipulations are effective from 1st April, 2015.
General provisions relating to import of goods under FTP 2015-20.

(1) **Trade with neighbouring Countries:**

DGFT may issue instructions or frame schemes as may be required to promote trade and strengthen economic ties with neighbouring countries.

(2) **Transit facility:**

Transit of goods through India from/ or to countries adjacent to India shall be regulated in accordance with bilateral treaties between India and those countries and will be subject to such restrictions as may be specified by DGFT in accordance with International Conventions.

(3) **Import Policy for Second Hand Goods:**

<table>
<thead>
<tr>
<th>Sl. No.</th>
<th>Categories of Second Hand Goods</th>
<th>Import Policy</th>
<th>Conditions, if any</th>
</tr>
</thead>
<tbody>
<tr>
<td>(I)</td>
<td><strong>Second Hand Capital Goods</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>(a)</td>
<td>(i) Personal computers/laptops including their refurbished/re-conditioned spares</td>
<td>Restricted</td>
<td>Importable against authorization</td>
</tr>
<tr>
<td></td>
<td>(ii) Photocopier machines/Digital multifunction Print &amp; Copying Machines</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>(iii) Air conditioners</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>(iv) Diesel generating sets.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>(b)</td>
<td>Refurbished/ re-conditioned spares of Capital Goods</td>
<td>Free</td>
<td>Subject to production of Chartered Engineer certificate to the effect that such spares have at least 80% residual life of original spare.</td>
</tr>
<tr>
<td>(c)</td>
<td>All other second hand capital goods [other than (a) &amp; (b) above]</td>
<td>Free</td>
<td></td>
</tr>
<tr>
<td>(II)</td>
<td><strong>Second Hand Goods other than capital goods</strong></td>
<td>Restricted</td>
<td>Importable against Authorization</td>
</tr>
<tr>
<td>(III)</td>
<td>Second Hand Goods imported for the purpose of repair/refurbishing/re-conditioning or re-engineering.</td>
<td>Free</td>
<td>Subject to condition that waste generated during the repair / refurbishing of imported items is treated as per domestic Laws / Rules / Orders /</td>
</tr>
</tbody>
</table>
Foreign Trade Policy

(4) **Removal of Scrap/waste from SEZ:**
A SEZ unit/Developer/ Co-developer may be allowed to dispose of in DTA any waste or scrap, including any form of metallic waste and scrap, generated during manufacturing or processing activity, without an authorization, on payment of applicable Customs Duty.

(5) **Import of Gifts and Samples:**
Import of gifts shall be permitted where such goods are otherwise freely importable under ITC(HS). In other cases, a **Customs Clearance Permit (CCP)** shall be required from DGFT. Further, import of samples shall be governed by the prescribed procedures. Authorisation for import of samples is required only in case of vegetable seeds, bees and new drugs. Samples of tea upto Rs. 2,000 (CDF) per consignment will be allowed without authorization. Samples upto Rs. 3,00,000 can be imported by all exporters without duty.

(6) **Execution of Legal Undertaking (LUT) / Bank Guarantee (BG):**
Whenever goods are imported duty free or otherwise specifically stated, importer shall execute prescribed LUT (Letter of Undertaking)/ BG (Bank Guarantee)/ Bond with Customs Authority before clearance of goods.

In case of indigenous sourcing, Authorization holder shall furnish LUT/ BG/ Bond to RA concerned before sourcing material from indigenous supplier/ nominated agency as per the prescribed procedures.

(7) **Private/public bonded warehouses for imports:**
Private/public bonded warehouses may be set up in DTA (Domestic Tariff Area) as per terms and conditions of notification issued by DoR.

Any person may import goods, except prohibited items, arms and ammunition, hazardous waste and chemicals *Saxd* warehouse them in such bonded warehouses. Such goods may be cleared for home consumption against authorisation, whenever required. Customs duty as applicable shall be paid at the time of clearance of such goods.

The clearance of the warehoused goods shall be as per the provisions of the Customs Act, 1962.
(8) **Import of goods used in projects abroad:**
Project contractors after completion of projects abroad, may import without an Authorisation, goods including capital goods used in the project, provided they have been used for at least one year.

(9) **Re-import of goods repaired abroad:**
Capital goods, equipments, components, parts and accessories, whether imported or indigenous, except those restricted under ITC (HS) may be sent abroad for repairs, testing, quality improvement or upgradation or standardization of technology and re-imported without an Authorisation.

(10) **Sale on High Seas:**
Sale of goods on high seas for import into India may be made subject to FTP or any other law in force.

(11) **Import under lease financing:**
It is freely permitted. Permission of Regional Authority is not required for import of capital goods under lease financing. However, RBI approval is required in some cases.

**Passenger Baggage - Import and Export thereof.**

(1) **Import of Passenger Baggage:**
The provisions are as under:
(a) Bona-fide household goods and personal effects may be imported as part of passenger baggage as per limits, terms and conditions thereof in Baggage Rules notified by Ministry of Finance.
(b) Samples of such items that are otherwise freely importable under FTP may also be imported as part of passenger baggage without an Authorisation.
(c) Exporters coming from abroad are also allowed to import drawings, patterns, labels, price tags, buttons, belts, trimming and embellishments required for export, as part of their passenger baggage without an Authorisation.

(2) **Export of Passenger Baggage:**
The provisions are as under:
(a) Bona-fide personal baggage may be exported either along with passenger or, if unaccompanied, within one year before or after passenger's departure from India.
However, items mentioned as restricted in ITC (HS) shall require an Authorisation.
Government of India officials proceeding abroad on official postings shall, however, be permitted to carry along with their personal baggage, food items (free, restricted or prohibited) strictly for their personal consumption.

The Provisions of the Para shall be subject to Baggage Rules issued under Customs Act, 1962.

(b) Samples of such items that are otherwise freely exportable under FTP may also be exported as part of passenger baggage without an Authorisation.

General provisions with respect to export of goods.

(1) **Free exports:**
All goods may be exported without any restriction except to the extent that such exports are regulated by ITC (HS) or any other provision of FTP or any other law for the time being in force. DGFT may, however, specify through a public notice such terms and conditions according to which any goods, not included in ITC (HS), may be exported without an Authorisation.

(2) **Export of samples:**
Export of samples and free of charge goods shall be governed by prescribed procedures. Export of *bona fide* trade and technical samples of freely exportable item shall be allowed without any limit. In case of restricted items, application should be made to DGFT. Such samples can be exported as part of passenger baggage without an Authorisation.

(3) **Export of gifts:**
Goods, including edible items, of value not exceeding Rs. **5,00,000** in a licensing year, may be exported as a gift. However, items mentioned as restricted for exports in ITC(HS) shall not be exported as a gift, without an Authorization.

(4) **Export of spares:**
Warranty spares (whether indigenous or imported) of plant, equipment, machinery, automobiles or any other goods, [except those restricted under ITC(HS)] may be exported along with main equipment or subsequently, but within contracted warranty period of such goods subject to approval of RBI.

(5) **Third party exports:**
Third-party exports means exports made by an exporter or manufacturer on behalf of another exporter(s). In such cases, export documents such as shipping bills shall indicate name of both; manufacturing exporter/manufacturer and third party exporter(s). Bank Realisation Certificate (BRC), Self Declaration Form (SDF), export order and invoice should be in the name of third party exporter.
6) **Export of imported goods or Import for export:**
Goods imported, in accordance with FTP, may be exported? In same or substantially the same form without an Authorization, provided that an item to be imported or exported is not restricted for import or export in ITC(HS).
Exports of such goods imported against payment in freely convertible currency would be permitted provided export proceeds are realized in freely convertible currency. However, export of such goods to notified countries will be permitted in Indian rupees subject to at least 15% value addition. Such exports shall not be eligible for any export incentives.

7) **Export of replacement goods:**
Goods or parts thereof on being exported and found defective/damaged may be replaced free of charge by the exporter and such goods shall be allowed clearance by customs authorities, provided that *replacement goods are not mentioned as restricted items for exports* in ITC(HS); If the export item is 'restricted'/under SCOMET, the exporter shall require a export license for replacement.

8) **Export of repaired goods:**
Goods or parts thereof, except restricted under ITC (HS), on being exported and found defective, damaged or otherwise unfit for use *may be imported for repair and subsequent re-export*. Such goods shall be allowed clearance without an Authorisation and in accordance with customs notification. To that extent the exporter shall return the benefits/incentive availed on the returned goods. If the item is 'restricted' for import, the exporter shall require an import license.
However, re-export of such defective parts/spares by the Companies/firms and Original Equipment Manufacturers shall not be mandatory if they are imported exclusively for undertaking root cause analysis, testing and evaluation purpose.

9) **Free movement of export goods:**
Consignments of items meant for exports shall not be withheld/delayed for any reason by any agency of Central/State Government. In case of any doubt, authorities concerned may ask for an undertaking from exporter and release such consignment.

10) **No seizure of export related stock:**
No seizure of stock shall be made by any agency so as to disrupt manufacturing activity and delivery schedule of exports. In exceptional cases, concerned agency may seize the stock on basis of *prima facie* evidence of serious irregularity. However, *such seizure should be lifted within 7 days* unless the irregularities are substantiated.
(11) **Export through courier service/post:**
Exports through a registered courier service/Foreign Post Office is permitted as per Notification issued by DoR. However, exportability of such items shall be regulated in accordance with FTP/Export Policy in ITC (HS), 2018. The value limit for exports through courier service shall be Rs. 5,00,000 per consignment.

**What are the provisions with respect to denomination and realisation of export contracts?**

(1) **Denomination of Export Contract:**
(a) All export contracts and invoices shall be denominated either in freely convertible currency or Indian rupees but export proceeds shall be realized in freely convertible currency.

(b) However, export proceeds against specific exports may also be realized in rupees, provided it is through a freely convertible Vostro account of a non-resident bank situated in any country other than a member country of Asian Clearing Union (ACU) or Nepal or Bhutan. Additionally, rupee payment through Vostro account must be against payment in free foreign currency by buyer in his non-resident bank account. Free foreign exchange remitted by buyer to his non-resident bank (after deducting bank service charges) on account of this transaction would be taken as export realization under export promotion schemes of FTP.

(c) Contracts (for which payments are received through Asian Clearing Union (ACU) shall be denominated in ACU Dollar. Central Government may relax provisions of this paragraph in appropriate cases. Export contracts and invoices can be denominated in Indian rupees against EXIM Bank/Government of India line of credit.

(2) **Non-Realisation of Export Proceeds:**
If an exporter fails to realise export proceeds within time specified by RBI, he shall, without prejudice to any liability or penalty under any law in force, be liable to action in accordance with provisions of FT(D&R) Act, rules and orders made thereunder and provisions of FTP.

**Write a note on Export Promotion Councils.**

(1) **Export Promotion Councils (EPCs)** are organizations of exporters, set up with the objective to promote and develop Indian exports. Each Council is responsible for promotion of a particular group of products/projects/services as given in Appendix 2T of AANF.

(2) EPCs are also eligible to function as Registering Authorities to issue Registration-cum-Membership Certificate (RCMC) to its members. The criteria for EPCs to be
recognized as Registering Authorities for issue of RCMC to its members are detailed in the Handbook of Procedures.

**Registration-cum-Membership Certificate (RCMC) and what is its need?**

(1) **Registration-Cum-Membership Certificate:**
   It means certificate of registration and membership granted by an Export Promotion Council/ Commodity Board/ Development Authority or other competent authority as prescribed in FTP or Handbook of Procedures.

   **CRES issued by Spices Board to be treated as RCMC:** Certificate of Registration as Exporter of Spices (CRES) issued by Spices Board shall be treated as Registration-Cum-Membership Certificate (RCMC) for the purposes under this Policy.

   Certificate of Registration as Exporter of coir & coir products issued by the Coir Board shall be treated as Registration-Cum-Membership Certificate (RCMC) for the purposes under this Policy.

(2) **Need of RCMC:**
   Any person, applying for -
   (a) An Authorisation to import/export (except items) listed as 'Restricted' items in FTC (HS); or
   (b) Any other benefit or concession under FTP shall be required to furnish or upload on DGFTs website in the Importer Exporter Profile, the RCMC granted by competent authority in accordance with procedure specified in HBP, unless specifically exempted under FTP.

**Explain the provisions with respect to private/ public bonded warehouses for imports and exports.**

(1) **Private/ Public Bonded Warehouses for Imports:**
   (a) Private/ Public bonded warehouses may be set up in DTA as per terms and conditions of notification issued by DoR. Any person may import goods except prohibited items, arms and ammunition, hazardous waste and chemicals and warehouse them in such bonded warehouses.

   (b) Such goods may be cleared for home consumption in accordance with provisions of FTP and against Authorisation, wherever required. Customs duty as applicable shall be paid at the time of clearance of such goods.

   (c) If such goods are not cleared for home consumption within a period of one year or such extended period as the customs authorities may permit, importer of such goods shall re-export the goods.
(2) **Private Bonded Warehouses for Exports:**

(a) Private bonded warehouses exclusively for exports may be set up in DTA as per terms and conditions of notifications issued by Department of Revenue.

(b) Such warehouses shall be entitled to procure goods from domestic manufacturers without payment of duty. Supplies made by a domestic supplier to such notified warehouses shall be treated as physical exports provided payments are made in free foreign exchange.
PART 4: EXPORT PROMOTION SCHEMES

Exports from India Schemes under FTP and what is the nature of reward under the scheme.

(1) **Reward Schemes:**

The objective of schemes is to provide rewards to exporters to offset infrastructural inefficiencies and associated costs. There shall be following two schemes for exports of Merchandise and Services respectively:

(i) Merchandise Exports from India Scheme (MEIS).
(ii) Service Exports from India Scheme (SEIS).

(2) **Nature of Rewards:**

Duty Credit Scrips shall be granted as rewards under MEIS and SEB. The Duty Credit Scrips and goods imported/domestically procured against them shall be freely transferable. The Duty Credit Scrips can be used for:

(i) Payment of Basic Customs Duty and Additional Customs Duty specified under sections 3(1), 3(3) and 3(5) of the Customs Tariff Act, 1975 for import of inputs or goods, including capital goods, as per DoR Notification, except items listed in Appendix 3A.
(ii) Payment of Central excise duties on domestic procurement of inputs or goods,
(iii) Payment of composition fee under FTP, for payment of application fee under FTP, if any and for payment of value shortfall in Export Obligation.

No use for payment of GST on Domestic/Imports: In absence of enabling provision, scrips cannot be used to pay GST (CGST or SGST/UTGST or IGST or GST Cess on domestic purchases or imports).

(3) **Scrip may be used to import under lease financing:**

Utilization of Duty Credit Scrip shall be permitted for payment of duty in case of import of capital goods under lease financing.

(4) **Drawback of BCD paid using Scrip:**

Basic Customs duty paid in cash or through debit under Duty Credit scrip shall be adjusted for Duty Drawback as per DoR rules or notifications.

(5) **Scrip valid for 24 months:**

Duty Credit Scrip issued on or after 01-01-2016 shall be valid for 24 months from the date of issue and must be valid on date on which actual debit of duty is made. Re-validation of Duty Credit Scrip is not permitted unless covered under HBP.

Concept of "Credit Scrips":

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36.25
Credit Scrips are just like 'E-Credit Ledger or E-Wallet'.

While e-credit/e-cash is earned on payment in cash to supplier/Government, credit scrips are earned as a specified percentage of exports (or on any other basis) (scrips are export incentive for exporters).

E-Credit may be used to pay duty/tax on output. But, credit scrips may be used to pay duty even on inputs or even make other payments as per FTP.

Just as amount paid through e-credit/e-cash is available to buyer of output as credit/drawback, etc.; similarly, with exceptions, amount paid through credit scrips on purchases, is available as drawback to assessee himself.

For example: Rohan makes exports worth Rs. 1,000. He is entitled to credit scrips @ 5%. Hence, he will have a credit scrip of Rs. 50. Now, Rohan wants to import inputs for use in exports and duty thereon is Rs. 40. Here, Kohan can pay Rs. 40 out of Rs. 50 credit scrip and duty so paid may be availed as drawback as follows:

<table>
<thead>
<tr>
<th>Opening assumed to be Nil</th>
<th>Scrip</th>
<th>Drawback</th>
</tr>
</thead>
<tbody>
<tr>
<td>Exports made worth Rs. 1,000</td>
<td>50 credit</td>
<td>-</td>
</tr>
<tr>
<td>Import of inputs and use of scrip to pay BCD</td>
<td>40 debit</td>
<td>40 credit</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>10 credit</strong></td>
<td><strong>40 credit</strong></td>
</tr>
</tbody>
</table>

4.1 MERCHANDISE EXPORTS FROM INDIA SCHEME (MEIS)

(1) **Objective:**
Merchandise Exports from India Scheme (MEIS) is to promote the manufacture and export of notified goods/products.

(2) **Entitlement under MEIS:**
Exports of notified goods/products with ITC[HS] code, to notified markets as listed in Appendix 3B, shall be rewarded under MEIS. Appendix 3B also lists the rate(s) of rewards on various notified products [ITC (HS) code wise].

**Basis of calculation of reward:** Unless otherwise specified, the basis of calculation of reward would be -

(i) on realized FOB value of exports in free foreign exchange, or

(ii) on FOB value of exports as given in the Shipping Bills in free foreign exchange,

whichever is less.

(3) **Entitlement under MEIS for Export of goods through courier or foreign post offices:**
Exports of goods through courier or foreign post office, as notified in Appendix 3C, of FOB value upto Rs. 5,00,000 per consignment shall be entitled for rewards under MEIS. If the value of exports, is more than Rs. 5,00,000 per consignment
then MEIS reward would be calculated on the basis of FOB Value of Rs. 5,00,000 only.

(4) **Ineligible categories under MEIS:**
The following exports categories/sectors shall be ineligible for Duty Credit Scrip entitlement under MEIS:
(i) Supplies made from DTA units to SEZ units;
(ii) Export of imported goods covered under paragraph 2.46 of FTP;
(iii) Exports through trans-shipment, meaning thereby exports that are originating in third country but trans-shipped through India;
(iv) Deemed Exports;
(v) SEZ/ EOU/EHTP/BTP/FTWZ products exported through DTA units;
(vi) Export products which are subject to Minimum export price or export duty;
(vii) Exports made by units in FTWZ.

Q1 - Determine reward under Merchandise Exports from India Scheme (MEIS) from the following particulars (rate of reward may be taken to be 5%):

(1) Goods X - FOB Value declared in shipping bill is Rs. 15,00,000. FOB value realised due to exchange gains: Rs. 15,10,000.
(2) Goods Y - FOB Value declared in shipping bill is Rs. 12,00,000. FOB value realised due to exchange loss: Rs. 11,98,000.
(3) Exports of Product 'X' through courier - FOB Value Rs. 5,30,000
(4) Exports of Product 'Y' through courier - FOB Value Rs. 4,88,000
(5) Supplies of goods made to SEZ units: Rs. 50,000

**Solution:** The MEIS reward is computed below -

<table>
<thead>
<tr>
<th>Description</th>
<th>Value (Rs.)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Goods X (FOB Value realized or FOB value in shipping bill, whichever is lower is to be taken)</td>
<td>15,00,000</td>
</tr>
<tr>
<td>Goods Y (FOB value realized or FOB value in shipping bill, whichever is lower is to be taken)</td>
<td>11,98,000</td>
</tr>
<tr>
<td>Exports of Product 'X' through courier - FOB Value Rs. 5,30,000 (For MEIS computation, value is to be limited to Rs. 5,00,000)</td>
<td>5,00,000</td>
</tr>
<tr>
<td>Exports of Product 'Y' through courier with FOB Value Rs. 4,88,000 (For MEIS computation, value is to be limited to Rs. 4,88,000)</td>
<td>4,88,000</td>
</tr>
<tr>
<td>Supplies of goods made to SEZ units: Rs. 50,000 (Not eligible for MEIS)</td>
<td>Ineligible</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td>36,86,000</td>
</tr>
<tr>
<td><strong>MEIS reward @ 5%</strong></td>
<td>1,84,300</td>
</tr>
</tbody>
</table>
4.2 SERVICE EXPORTS FROM INDIA SCHEME (SEIS)

(1) **Objective:**
Service Exports from India Scheme (SEIS) is to encourage export of notified Services from India.

(2) **Eligibility:**
(i) A service provider (with active IEC at the time of rendering services) located in India, should have minimum net free foreign exchange earnings as under mentioned in year of rendering service to be eligible for Duty Credit Scrip.

- Individual service providers and sole proprietorship: US $ 10,000
- Other service providers: US $ 15,000

*Specified manner* is supply of a 'service' from India to any other country; (Mode 1 - Cross border trade) and supply of a 'service' from India to service consumer(s) of any other country in India; (Mode 2- Consumption abroad). Payment in Indian Rupees for service charges earned on specified services, shall be treated as receipt in deemed foreign exchange as per guidelines of Reserve Bank of India.

(ii) Payment in Indian Rupees for service charges earned on specified services, shall be treated as receipt in deemed foreign exchange as per guidelines of Reserve Bank of India. The list of such services is indicated in Appendix 3E.

(iii) Net Foreign exchange earnings for the scheme are defined as under:
Net Foreign Exchange = Gross Earnings of Foreign Exchange minus Total expenses/payment/ remittances of Foreign Exchange by the IEC holder, relating to service sector in the Financial year.

(iv) **Active IEC holder** : In order to claim reward under the scheme, Service provider shall have to have an active IEC at the time of rendering such services for which rewards are claimed.

(1) 'Services' include all tradable services covered under General Agreement on Trade in Services (GATS) and earning foreign exchange.

(2) 'Service Provider' means a person providing:
   (i) Supply of a 'service' from India to any other country; (Model-Cross border trade)
   (ii) Supply of a 'service' from India to service consumer(s) of any other country in India; (Mode 2- Consumption abroad)
   (iii) Supply of a 'service' from India through commercial presence in any other country. (Mode 3 - Commercial Presence)
   (iv) Supply of a 'service' from India through the presence of natural persons in any other country (Mode 4 - Presence of natural persons)
(a) **NFE of services only to be taken into account for person who is manufacturer as well as service provider**: If the IEC holder is a manufacturer of goods as well as service provider, then the foreign exchange earnings and Total expenses/payment/remittances shall be taken into account for service sector only.

(3) **Ineligible categories under SEIS:**

Foreign exchange remittances other than those earned for rendering of notified services would not be counted for entitlement. **Thus, other sources of foreign exchange earnings such as equity or debt participation, donations, receipts of repayment of loans etc. and any other inflow of foreign exchange, unrelated to rendering of service, would be ineligible.**

Following shall not be taken into account for calculation of entitlement under the scheme:

1. **Foreign Exchange remittances**
   
   (A) Related to Financial Services Sector:
   
   - Raising of all types of foreign currency Loans
   - Export proceeds realization of clients
   - Issuance of Foreign Equity through ADRs/ GDRs or other similar instruments
   - Issuance of foreign currency Bonds
   - Sale of securities and other financial instruments
   - Other receivables not connected with services rendered by financial institutions.

   (B) Earned through contract/regular employment abroad (*e.g.* labour remittances)

2. Payments for services received from EEFC Account

3. Foreign exchange turnover by Healthcare Institutions like equity participation, donations etc.

4. Foreign exchange turnover by Educational Institutions like equity participation, donations etc.

5. Export turnover relating to services of units operating under EOU/EHTP/STPI/BTP Schemes or supplies of services made to such units

6. Clubbing of turnover of services rendered by EOU/EHTP/STPI/BTP units with turnover of DTA Service Providers

7. Foreign Exchange earnings for services provided by Airlines, Shipping lines service providers plying from any foreign country X to any foreign country Y routes not touching India at all

8. Service providers in Telecom Sector.
(4) Remittances through Credit Card and other instruments for MEIS and SEIS:
Free Foreign Exchange earned through international credit cards and other instruments, as permitted by RBI shall also be taken into account for computation of value of exports.

| Policy Circular No. 1/2015-20 dated 11.6.2015 | SEZ is 'Indian Territory' supply of a service to SEZs is not eligible for rewards under SEIS. Only Services rendered in the specified manner of this policy shall be eligible for rewards.
*Specified manner is supply of a 'service' from India to any other country; (Mode 1- Cross border trade) and supply of a 'service' from India to service consumers) of any other country in India; (Mode 2- Consumption abroad).
Thus, this policy makes it abundantly clear that 'supply' of a service to any other country only is eligible for SEIS benefits under Model 1. Since SEZ is 'Indian Territory' supply of a service to SEZs is not eligible for rewards under SEIS.
Therefore it is clarified that regardless of the amendment notified vide Notification No. 08/2015-2020 dated 04-06-2015 (through which export turnover relating to services of units operating under SEZ Scheme or supplies of services made to such units has been deleted from the list of ineligible categories under SEIS thereby making supply of a 'service' from SEZ to other countries eligible for SEIS benefits), supply of a 'service' by units located in DTA to SEZ units was and shall continue to remain ineligible for rewards under SEIS as explained above. |

Q2 - BMR Ltd., an eligible service exporter of specified service, requires you to compute its duty credit scrip entitlement under the Service Exports from India Scheme (SEIS). The company has provided/supplied specified service during the financial year as follows -

(1) Supply from India to US: $ 30,000
(2) Supply from India to service consumer of US in India: $ 12,000
(3) Supply from India through commercial branch in a city of US: $ 8,000
(4) Supply from India through presoncv of employees in another city of US: $ 6,500.

The total expenses/payments of BMR Ltd. relating to aforesaid supplies are:
- 5% of gross receipts in foreign exchange, and
- another 10% of gross receipts in Indian rupees.

BMR Ltd. also informs that it has received -
- Loans of $ 5,000 from US; and
- another amount of $ 2,500 (net of expenses) on behalf of a client, who is also an exporter of specified services.
Notified rate for service provided by BMR Ltd. is 7%.

**Solution:** The SEIS benefit is computed below:

<table>
<thead>
<tr>
<th>Gross ($)</th>
<th>Expenses in foreign exchange ($)</th>
<th>NFE of current year ($)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Supply from India to US – Eligible</td>
<td>30,000</td>
<td>5% i.e., 1,500</td>
</tr>
<tr>
<td>Supply from India to service consumer of US in India – Eligible</td>
<td>12,000</td>
<td>5% i.e., 600</td>
</tr>
<tr>
<td>Supply from India through commercial branch in a city of US</td>
<td>Ineligible</td>
<td>Ineligible</td>
</tr>
<tr>
<td>Supply from India through presence of employees in another city of US</td>
<td>Ineligible</td>
<td>Ineligible</td>
</tr>
<tr>
<td>Loan from US</td>
<td>Ineligible</td>
<td>Ineligible</td>
</tr>
<tr>
<td>Realization on behalf of client</td>
<td>Ineligible</td>
<td>Ineligible</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>42,000</strong></td>
<td><strong>2,100</strong></td>
</tr>
<tr>
<td><strong>Credit scrip entitled @ 7% of $ 39,900</strong></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Q3 - ABC Ltd., an eligible service exporter of specified service, requires you to compute its duty credit scrip entitlement for financial year under the Service Exports from India Scheme (SEIS) from the following information -

1. Supply from India to US: $ 30,000 (Expenses incurred US $ 900)
2. Amount of $ 4,000 (net of expenses) realised on behalf of client who is also an exporter of specified services.

Notified rate for SEIS is 7%.

**Solution: Eligibility for SEIS Benefits:** Service providers of notified services who have earned minimum net free foreign exchange earnings of US $ 15,000 in year of rendering service are eligible for Duty Credit Scrip.

The SEIS benefit is computed below:

<table>
<thead>
<tr>
<th>Gross ($)</th>
<th>Expenses in foreign exchange ($)</th>
<th>NFC of current year ($)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Supply from India to US – Eligible</td>
<td>30,000</td>
<td>900</td>
</tr>
<tr>
<td>Realization on behalf of client</td>
<td>Ineligible</td>
<td>Ineligible</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>30,000</strong></td>
<td><strong>900</strong></td>
</tr>
<tr>
<td><strong>Credit scrip entitled @ 7% of $ 29,100</strong></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
Common Provisions for Exports from India Schemes (MEIS and SEIS).

(1) **Drawback:**
- Basic Custom duty paid in cash or through debit under Duty Credit scrip shall be adjusted for Duty Drawback as per DoR rules or notifications.
- Duty credit scrip shall be permitted to be utilized for payment of duty in case of import of capital goods under lease financing.

(2) **Transfer of export performance** from one IEC holder to another IEC holder **shall not be permitted.** Thus, a shipping bill containing name of applicant shall be counted in export performance/ turnover of applicant only if export proceeds from overseas are realized in applicant's bank account and this shall be evidenced from- BRC/FIRC.

However, MEIS rewards can be claimed either by the supporting manufacturer (along with disclaimer from the company/ firm who has realized the foreign exchange directly from overseas) or by the company/ firm who has realized the foreign exchange directly from overseas.

(3) **Incentives of MEIS & SEIS** are available to units located in SEZs also.

(4) **Facility of payment of custom duties in case of EO defaults and fee through duty credit scrips** Duty Credit Scrip can be utilised/ debited for payment of Customs Duties in case of EO defaults for Authorizations. Such utilization/ usage shall be in respect of those goods which are permitted to be imported under the respective reward schemes. However, penalty/ interest shall be required to be paid in cash.

### 4.3 - STATUS HOLDER

(i) **What do you mean by "Status Holder"? Who are eligible for recognition as Status Holder?**

(ii) **What is the average export value to be achieved to become the Status Holder?**

(iii) **Indicate five benefits available to "Status Holders" under the reward scheme of Foreign Trade Policy 2015-2020. There is no need to define the term "status holder". (5 Marks May 2018-NS)**

(1) **Status Holder:**

   (a) **Meaning:** Status Holders are business leaders **who have excelled in international trade** and have successfully contributed to country's foreign trade. Status Holders are expected to not only contribute towards India's exports but also provide guidance and hand holding to new entrepreneurs.

   (b) **Eligibility - Export performance:** All exporters of goods, services and technology having an import-export code (IEC) number shall be eligible for recognition as a status holder.
Status recognition will depend on export performance. An applicant shall be categorized as status holder on achieving export performance during the current and previous 3 financial years (for Gems & Jewellery Sector the performance during the current and previous two financial years shall be considered for recognition as status holder) as indicated in table below.

(c) **Computation of export performance**: The export performance will be counted on the basis of FOB of export earning in free foreign exchange.

For deemed export, FOR value of exports in Indian Rupees shall be converted in US $ at the exchange rate notified by CBIC, as applicable on 1st April of each Financial Year.

(d) **Export performance necessary in 2 out of 4 years**: For granting status, export performance is necessary in at least two out of 4 years.

### (2) Status Category:

<table>
<thead>
<tr>
<th>Status Category</th>
<th>Export Performance FOB/FOR (as converted) Value (in US $ million)</th>
</tr>
</thead>
<tbody>
<tr>
<td>One Star Export House</td>
<td>3</td>
</tr>
<tr>
<td>Two Star Export House</td>
<td>25</td>
</tr>
<tr>
<td>Three Star Export House</td>
<td>100</td>
</tr>
<tr>
<td>Four Star Export House</td>
<td>500</td>
</tr>
<tr>
<td>Five Star Export House</td>
<td>2,000</td>
</tr>
</tbody>
</table>

### (3) Grant of double weightage:

(a) **Eligible exports for double weightage**: The exports by IEC holders under the following categories shall be granted double weightage for calculation of export performance for grant of status.


(ii) Manufacturing units having ISO/ BIS.

(iii) Units located in North Eastern States including Sikkim and Jammu & Kashmir.

(iv) Units located in Agri Export Zones.

(b) **Double weightage only for determination of One Star Export House**: Double Weightage shall be available for grant of One Star Export House Status category only. Such benefit of double weightage shall not be admissible for grant of status recognition of other categories namely Two Star Export House, Three Star Export House, Four Star export House and Five Star Export House.

(c) **Double weightage only once for each shipment**: A shipment can get double weightage only once in any one of above categories.
(4) **Other conditions for grant of status:**

(a) **Export performance - Non transferable**: Export performance of one IEC holder shall not be permitted to be transferred to another IEC holder. Hence, calculation of exports performance based on disclaimer shall not be allowed.

(b) **Re-exports not counted**: Exports made on re-export basis shall not be counted for recognition.

(c) **Export of items under authorization, including SCOMET items, would be included** for calculation of export performance.

(5) **Privileges of Status Holders:**

Status holders are granted certain benefits like:

(a) **Self declaration based Clearances and authorizations**: Authorisation and custom clearances for both imports and exports on self-declaration basis.

(b) **Priority in SION fixation**: Fixation of Input Output Norms (SION) on priority he. within 60 days.

(c) **No. need of negotiation of documents through banks - Only remittances through banks**: Exemption from compulsory negotiation of documents through banks. The remittance receipts, however, would continue to be received through banking channels.

(d) **Exemption form BG**: Exemption from furnishing of Bank Guarantee in Schemes under FTP.

(e) **Establishment of Export warehouses**: Two Star Export Houses and above are permitted to establish export warehouses.

(f) **ACP benefit**: Three Star and above Export House shall be entitled to get benefit of Accredited Clients Programme (ACP) as per the guidelines of CBIC.

(g) **Free of Cost Export supplies**: Status holders shall be entitled to export freely exportable items (excluding Gems and Jewellery, Articles of Gold and precious metals) on free of cost basis for export promotion subject to an annual limit as below:

(i) Annual limit of 2% of average annual export realization during preceding 3 licensing years for all exporters [excluding the exporters of following sectors - (1) Gems and Jewellery Sector, (2) Articles of Gold and precious metals sector],

(ii) Annual limit of **Rs. 1 crore** or 2% of average annual export realization during preceding 3 licensing years, whichever is lower, [for exporters of the following sectors - (1) Gems and Jewellery Sector, (2) Articles of Gold and precious metals sector].

(iii) In case of supplies of pharmaceutical products, vaccines and lifesaving drugs to health programmes of international agencies such as UN, WHO-PAHO and Government health programmes, the annual limit shall be upto 8% of the average annual export realisation during preceding 3 licensing years.
The free of cost supplies made as above shall not be entitled to Duty Drawback or any other export incentive under any export promotion scheme.

**Q4 - Status Holders:** XYZ Ltd., a medium enterprise, covered under MSMED Act has made exports worth US $25 lakhs per annum (on an average) during last 3 years. It wants to export certain goods for export promotion on free of cost basis, which are worth Rs. 32 lakh. Can it do so, given that 1 $ = Rs. 60.

**Solution:** Exports by MSMEs are given double weightage for determination of one-star status. Hence, for said purpose, exports are worth = $25 lakh × 2 = $50 lakh = $5 million. Therefore, XYZ Ltd. is eligible for status of one star export house.

A status holder can export goods free of cost for export promotion -2% of average exports of last 3 years *i.e.,* 2% of $25 lakh × Rs. 60 per $ = Rs. 30 lakh. Hence, it can export freely export promotion material upto Rs. 30 lakh.
PART 5: DUTY EXEMPTION /REMISSION SCHEMES.

(1) **Objective:**
Schemes under this Chapter enable duty free import of inputs for export production, including replenishment of input or duty remission.

(2) **Schemes:**
(a) **Duty Exemption Schemes:** The Duty Exemption schemes consist of the following -
   (i) **Advance Authorisation (AA)** (which includes Advance Authorisation for Annual Requirement).
   (ii) **Duty Free Import Authorisation (DFIA).**
(b) **Duty remission scheme:** Duty Drawback (DBK) Scheme, administered by Department of Revenue.

### 5.1 - ADVANCE AUTHORIZATION SCHEME

(1) **Advance Authorisation:**
Under advance authorization scheme, INPUTS which are used in the export product can be imported without payment of customs duty.

(2) **Details of Duties exempted:**
Imports under Advance Authorisation are **exempted from payment of Basic Customs Duty, Additional Customs Duty, Education Cess, Anti-dumping Duty, Countervailing duty, Safeguard Duty and Transition Product Specific Safeguard Duty, wherever applicable.** The conditions for duty free imports against physical exports are provided in notification issued under the Customs law.

**ADD/ Anti-subsidy/ Safeguard duty not exempt in Certain Cases :** However, import against following deemed exports will not be exempt from ADD, Anti-subsidy duty and Safeguard duty -
(a) Supply of capital goods against EPCG Authorisation;
(b) Supply of marine freight containers by 100% EOU (Domestic freight container-manufacturers); and
(c) Supply of goods to United Nations or International Organisations, etc.

IGST and GST Compensation Cess have been exempted up to **31-03-2020** on imports under Advann¹ Authorisation for physical exports or following deemed exports:-
(a) Supply of goods by a registered person against Advance Authorisation.
(b) Supply of capital goods by a registered person against Export Promotion Capital Goods Authorisation.
(c) Supply of goods by a registered person to Export Oriented Unit.

(3) **Validity Period of Advance Authorisation:**

(i) **Advance Authorisation - Valid for 12 months from the date of issue:** Validity period for import of Advance Authorisation shall be **12 months** from the date of issue of Authorisation.

(ii) **Advance Authorisation for Deemed Export:** Advance Authorisation for Deemed Export shall be co-terminus with contracted **duration of project execution or 12 months** from the date of issue of Authorisation, **whichever is more.**

(4) **Export Obligation:**

(i) **Period for fulfillment of export obligation - 18 months:** Period for fulfillment of export obligation under Advance Authorisation shall be **18 months from the date of issue of Authorisation** or as notified by DGFT.

(ii) **Period in case of deemed exports or turnkey projects:** In cases of supplies to projects in India under deemed export category or projects abroad, the Export Obligation period shall be **co-terminus with contracted duration of the project execution or 18 months** whichever is more.

(iii) **Period for fulfillment of export obligation for defence items - 24 months:** Export Obligation for items falling in categories of defence, military store, aerospace and nuclear energy shall be **24 months from the date of issue of authorization or co-terminus with contracted duration of the export order whichever is more.**

(iv) Expert Obligation Period for inputs, as specified in Appendix 4-J, shall be as mentioned in the relevant column of the said Appendix.

(5) **Currency for Realisation of Export Proceeds:**

Exports proceeds shall be realized in freely convertible currency except otherwise specified.

(6) **Basis of issue of Advance Authorisation:**

Advance Authorisation is issued for inputs in relation to resultant product, on the following basis:

(i) As per Standard Input Output Norms (SION) notified; or

(ii) On the basis of self declaration Regional Authority may also issue Advance Authorisation where there is no SION/valid Ad hoc Norms for an export product or where SION/Ad hoc norms have been notified/published but exporter intends to use additional inputs in the manufacturing process, based on self-declaration by applicant. Wastage so claimed shall be subject to wastage norms as decided by Norms Committee. The applicant shall submit an undertaking to abide by decision of Norms Committee; or

(iii) Applicant specific prior fixation of norm by the Norms Committee; or
(iv) On the basis of Self Ratification Scheme. Where there is no SION/valid Adhoc Norms for an export product and where SION has been notified but exporter intends to use additional inputs in the manufacturing process, eligible exporter can apply for an Advance Authorisation under this scheme on self-declaration and self-ratification basis. RA may issue Advance Authorisations and such cases need not be referred to Norms Committees for ratification of norms. An exporter (manufacturer or merchant exporter) who holds AEO (Authorised Economic Operator) Certificate under Common Accreditation Programme of CBIC is eligible to opt for the scheme.

(7) **Items which can be imported duty free against advance authorization:**

(a) Inputs, which are physically incorporated in export product (making normal allowance for wastage).

(b) Fuel, oil, catalysts which are consumed/utilised to obtain export product.

(c) Mandatory spares which are required to be exported/supplied with resultant product permitted **upto 10% of CIF value of Authorization.**

(d) Specified spices only when used for activities like crushing/ grinding /sterilization/ manufacture of oils or oleoresins and not for simply cleaning, grading, re-packing etc.

However, items reserved for imports by STEs cannot be imported against advance authorization.

(8) **Actual User Condition for Advance Authorisation :**

(i) **Actual User Condition :** Advance Authorisation and/or material imported under Advance Authorisation shall be subject to 'Actual User' condition.

**Authorisation Non transferable :** The **same shall not be transferable even after completion of export obligation.** However, Authorisation holder will have option to dispose of product manufactured out of duty free input once export obligation is completed.

(ii) **If Input tax credit availed, imported inputs, to be used only in manufacture of dutiable goods :** hi case where CENVAT/input tax credit facility on input has been availed for the exported goods, even after completion of export obligation, the goods imported against such Advance Authorisation shall be utilized only in the manufacture of dutiable goods whether within the same factory or outside (by a supporting manufacturer).

For this, the Authorisation holder shall produce a certificate from either Chartered Accountant, at the option of the exporter, at the time of filing application for Export Obligation Discharge Certificate to Regional Authority concerned.

(iii) **Disposal of waste and scrap on payment of duty :** Waste/scrap arising out of manufacturing process, as allowed, can be disposed off on payment of applicable duty even before fulfillment of export obligation.


(9) **Eligible Applicant/ Export/ Supply:**

(a) **Manufacturer Exporter/ Merchant Exporter:** Advance Authorisation can be issued either to a **manufacturer exporter or merchant exporter tied to supporting manufacturer.**

(b) **Pharma products - Only Manufacturer exporter eligible:** Advance Authorisation for pharmaceutical products manufactured through Non-Infringing (NI) process shall be issued to manufacturer exporter only.

(c) **Physical or Deemed Exports - Both eligible:** Advance Authorisation shall be issued for:

   (i) Physical export (including export to SEZ);
   (ii) Intermediate supply; and/or
   (iii) Supplies made to specified categories of deemed exports
   (iv) Supply of 'stores' on board of foreign going vessel/aircraft, subject to condition that there is specific Standard Input Output Norms in respect of item supplied.

(10) **Domestic sourcing of inputs:**

   Holder of advance authorization has an option to procure the materials/inputs from indigenous manufacturer/STE in lieu of direct import against Advance Release Order (ARO)/Invalidation letter/Back to Back Inland Letter of Credit. However, Advance Authorisation holder may obtain supplies from EOU/EHTP/BTP/STP/SEZ units, without obtaining ARO or Invalidation letter.

(11) **Conditions for redeeming authorisation:**

   Wherever SION permits use of either (a) a generic input or (b) alternative input, unless the name of the specific input together with quantity [which has been used in manufacturing the export product] gets indicated / endorsed in the relevant shipping bill and these inputs, so endorsed, within quantity specified and match the description in the relevant bill of entry, the concerned Authorisation will not be redeemed. The name/description of the input in the Authorisation must match exactly with the name/description endorsed in the shipping bill.

   Further, quantity of input to be allowed under Advance Authorisation shall be in proportion to the quantity of input actually used/consumed in production. If goods are imported against advance authorization but export obligation is not fulfilled, duty and interest is payable.

   Aforesaid provisions will also be applicable for supplies to SEZs and supplies made under deemed exports.
(12) **Advance Authorisation for Annual Requirement:**

(i) **Eligible for items notified in SION**: Advance Authorisation for Annual Requirement shall only be issued for items notified in **Standard Input Output Norms (SION)**, and it shall not be available in case of adhoc norms. It is not available on self-declaration basis.

(ii) **Export performance in last 2 years**: Exporters having past export performance (in at least preceding two financial years) shall be entitled for Advance Authorisation for Annual requirement.

(iii) **Entitlement** in terms of CIF value of imports shall be —

   (a) upto 300% of the FOB value of physical export and/or FOR value of deemed export in preceding financial year; or

   (b) Rs. 1 crore, whichever is higher.

(13) **Value Addition:**

Value Addition for the purpose of this Chapter (except for Gems and Jewellery sector for which value addition is prescribed separately under FTP) shall be:

\[ \text{Value addition} = \frac{A - B}{B} \times 100, \]

Where -

- A = FOB value of export realized/ FOR value of supply received
- B = CIF value of inputs covered by Authorisation, plus value of any other input used on which benefit of DBK is claimed or intended to be claimed.

If some items are supplied free of cost by foreign buyer, its notional value will be added in the CIF value of import and FOB value of export for purpose of calculating value addition. Exports to SEZ Units/ supplies to Developers/ Co-developers, irrespective of currency of realization, would also be covered.

(14) **Minimum Value Addition - 50% in case of tea and 15% in other cases**:

(i) Minimum value addition required to be achieved under Advance Authorisation is 15%.

(ii) Export Products where value addition could be less than 15% are given in Appendix 4D.

(iii) For physical exports for which payments are not received in freely convertible currency, value addition shall be as specified in Appendix 4C.

(iv) In case of Tea, minimum value addition shall be **50%**.

(15) **Admissibility of Drawback:**

Drawback as per rate determined and fixed by Central Excise authority shall be available for duty paid imported or indigenous inputs (not specified in the norms) used in the export product.
For this purpose, applicant shall indicate clearly details of duty paid input in the application for Advance Authorisation. As per details mentioned in the application, Regional Authority shall also clearly endorse details of such duty paid inputs in the condition sheet of the Advance Authorisation.

(16) **Accounting of Input:**

(i) **Name/description must match with shipping bill and quantity of input to be allowed shall be in same proportion to quantity of input actually used or consumed**: Wherever SION permits use of either *(a)* a generic input or *(b)* alternative input, unless the **name of the specific input** [which has been used in manufacturing the export product] **gets indicated/endorsed in the relevant shipping bill** and these inputs, so endorsed, match the description in the relevant bill of entry, the concerned **Authorisation will not be redeemed.** In other words, the name/description of the input used (or to be used) in the Authorisation must match exactly with the name/description endorsed in the shipping bill.

(ii) **Proportion of inputs actually consumed to be used, if single quantity indicated in SION against more than one input**: In addition, if in any SION, a single quantity has been indicated against a number of inputs (more than one input), then quantities of such inputs to be permitted for import shall be in proportion to the quantity of these inputs actually used/consumed in production, within overall quantity against such group of inputs. **Proportion of these inputs actually used/consumed in production of export product shall be clearly indicated in shipping bills.**

(iii) **Discharge of export obligation - Aforesaid inputs to be indicated in shipping bill**: At the time of discharge of export obligation (issue of Export obligation discharge certificate EODC) or at the time of redemption, Regional Authority shall allow only those inputs which have been specifically indicated in the shipping bill.

(iv) **Provisions also be applicable for supplies to SEZs and supplies made under Deemed export**: The above provisions will also be applicable for supplies to SEZs and supplies made under Deemed export. Details as given above will have to be indicated in the relevant Bill of Export, ARE-3, Central Excise certified Invoke/import document/document for domestic procurement/supply.

**Q5** - Niryat Ltd. has imported inputs without payment of duty under Advance Authorization. The CIF value of such inputs is Rs. 25,00,0110. The inputs are processed and the final product is exported. The exports made by Niryat Ltd. are subject to general rate of value addition prescribed under Advance Authorization Scheme. No other input is being used by Niryat Ltd. in the processing. What should be the minimum FOB value of the exports made by the Niryat Ltd. as per the provisions of Advance Authorization?
**Ans:** Advance Authorization necessitates exports with a minimum value addition of 15% value addition (VA).

\[ VA = \left(\frac{A - B}{B} \times 100\right) \]

where,

- \( A \) = FOB value of export realized,
- \( B \) = CIF value of inputs covered by authorization.

Therefore, the minimum FOB value of the exports made by Niryat Ltd. should be Rs. 28,75,000.

**Q6 -** Compute entitlement advance authorisation for annual requirement for an exporter having export performance in past five years and last financial year's details being:

(i) Physical export (FOB Rs. 45 lakh);
(ii) Deemed Exports (FOR Rs. 5 lakh).

**Solution:** Since exporter has export performance in at least past 2 years, it is eligible for advance authorisation for annual requirement.

The Entitlement would be:

- Rs. 1 crore, whichever is higher \( i.e., \) Rs. 150 lakh. Or
- Rs. 1 crore,

wherever is higher \( i.e., \) Rs. 150 lakh.

### 5.2 - DUTY FREE IMPORT AUTHORIZATION (DFIA) SCHEME

1) **DFIA Scheme:**

DFIA is issued to allow duty free import of inputs. In addition, import of oil and catalyst which is consumed/utilised in the process of production of export product, may also be allowed. Provisions applicable to Advanced Authorisation are broadly applicable in case of DFIA. DFIA Scheme shall not be available for import of raw sugar.

2) **Duties Exempted and Admissibility of CENVAT and Drawback:**

(i) DFIA shall be exempted only from payment of **Basic Customs Duty. IGST will be payable on imports.**

(ii) **Drawback** as per rate determined and fixed by Customs authority shall be available for duty paid inputs, whether imported or indigenous, used in the export product. However, in case such drawback is claimed for inputs not specified in SION, the applicant should have indicated clearly details of such duty paid inputs also in the application for DFIA, and as per the details mentioned in the application, the Regional Authority should also have clearly endorsed details of such duty paid inputs in the condition sheet of the DFIA.
(3) **Eligibility:**

(i) DFIA shall be issued on **post export basis for products for which SION have been notified.**

(ii) Merchant Exporter shall be required to mention **name and address of supporting manufacturer** of the export product on the export document viz. Shipping Bill/Bill of Export/Tax Invoice for export prescribed under the GST rules.

(iii) **Application is to be filed with concerned Regional Authority before effecting export under DFIA.**

(iv) **No DFIA for 'Actual User' condition inputs:** No DFIA shall be issued for an export product where SION prescribes 'Actual User' condition for any input.

(4) **Minimum Value Addition - 20%:**

Minimum value addition of 20% shall be required to be achieved except for physical exports for which payments are not received in freely convertible currency.

(5) **Validity & Transferability of DFIA:**

(i) **Online application :** Applicant shall file **online application to Regional Authority** concerned before starting export under DFIA.

(ii) **Fulfillment of exports - 12 months :** Export shall be completed within 12 months from the date of online filing of application and generation of file number.

(iii) **Indication of file number :** While doing export/ supply, applicant shall indicate file number on the export /supply documents viz. Shipping Bill/Bill of Export/Tax invoice for supply prescribed under GST rules.

(iv) **Endorsement of input name and quantity in documents :** Wherever SION permits use of either (a) a generic input or (b) alternative input, the specific input together with quantity [which has been used in manufacturing the export product] should be indicated/ endorsed in the relevant Shipping Bill / Bill of Export/ Tax invoice for supply prescribed under GST rules.

Only such inputs may be permitted for import in the authorisation in proportion to the quantity of these inputs actually used/consumed in production, within overall quantity against such generic input/ alternative input.

(v) If in any SION, a single quantity has been indicated against a number of inputs (more than one input), then quantities of such inputs to be permitted for import shall be in proportion to the quantity of these inputs actually used/consumed in production and declared in Shipping Bill/Bill of Export/Tax invoice for supply prescribed under GST rules within overall quantity against such group of inputs. Proportion of these inputs actually used/consumed in production of export product shall be clearly indicated in Shipping Bill/Bill of Export/Tax invoice for supply prescribed under GST rules.

(vi) **Separate DFIA shall be issued for each SION and each port.**
(vii) **Exports from Listed Ports and separate application for EDI and Non EDI ports:**
Export under DFIA shall be made from any listed port. However, separate application shall be made for EDI and non-EDI ports. In case export is made from a non-EDI port, separate application shall be made for each non-EDI port.

(viii) **Transferability:** Regional Authority shall issue transferable DFIA with a validity of 12 months from the date of issue. No further revalidation shall be granted by Regional Authority.

After completion of exports and realization of export proceeds, request for issuance of transferable DFIA may be made to concerned RA within a period of:
(a) 12 months from the date of export or
(b) 6 months (or additional time allowed by RBI for realization) from the date of realization of export proceeds, whichever is later.

Exports proceeds shall be realized in freely convertible currency except otherwise specified.

(6) **Domestic sourcing of inputs:**
Holder of DFIA has an option to procure the materials/ inputs from indigenous manufacturer/STE in lieu of direct import against Advance Release Order (ARO)/ Invalidation letter/Back to Back Inland Letter of Credit. DFIA holder may obtain supplies from EOU/ EHTP/ BTP/ STP/ SEZ units, without obtaining ARO or Invalidation letter.

(7) **Conditions for redeeming authorisation:**
It is necessary to establish that inputs actually used in manufacture of the export product should only be imported under the authorization and inputs actually imported must be used in the export product, for redeeming the DFIA. The name/description of the input in the DFIA must match exactly with the name/description endorsed in the shipping bill.

Further, quantity of input to be allowed under DFIA shall be in proportion to the quantity of input actually used/consumed in production.

If goods are imported against advance authorization but export obligation is not fulfilled, duty and interest is payable.

Aforesaid provisions will also be applicable for supplies to SEZs and supplies made under deemed exports.

**Q7- DFIA:** XYZ Ltd. has imported inputs without payment of duty under DFIA. The CIF value of such inputs is Rs. 10,00,000. The inputs are processed and the final product is exported. The exports made by XYZ Ltd. Are subject to general rate of value addition prescribed under Advance Authorization Scheme. No other input is being
used by XYZ Ltd. in the processing. What should be the minimum FOB value of the exports made by the XYZ Ltd. as per the provisions of Advance Authorization?

**Ans:** DFIA necessitates exports with a minimum value addition of 20% value addition (VA). Therefore, the minimum FOB value of the exports made by XYZ Ltd. should be Rs. 12,00,000.

**Q 8 - Duty-free imports of raw material subject to condition of export of finished goods out of that material - Import obligation cannot be fulfilled by arranging third party exports:** Materials imported under advance licence - Pennar Industries Ltd., imported hot rolled non-alloy steel wide coils against an advance licence issued under the DEEC Scheme. No import duty was paid at the time of imports as the assessee availed the benefit of the Exemption Notification which allowed actual users to import the raw material duty free with the condition that the said material would be used by the importer itself and converted into specified finished goods and thereafter export those goods.

The assessee, though used the raw material for the manufacture of the specified goods but as the quality of those goods was not good enough for the purposes of exports, therefore, instead of exporting these goods, the assessee disposed of the said manufactured goods in the domestic market. DGFT allowed the assessee to meet export obligation under the licence by arranging the exports from third party, after satisfying that there was neither misutilization of raw material nor violation of any other conditions of the licence at cost of exchequer.

The Customs authorities issued a SCN to the assessee demanding duty along with interest and also levied penalty as conditions under the notification were not fulfilled Aggrieved by this the assessee approaches you for advise. The contention of the assessee is that as the DGFT allowed him to meet the export obligation through third parly, and therefore it had fulfilled its obligation.

You answer should be based on decided cases

**Ans:** The facts of the case are similar to that of **CC v. Pennar Industries Ltd. [2015] 322 ELT 402 (SC)** wherein the Apex Court held that in order to avail of the benefit of the Exemption Notification, the necessary condition was to make export of the product which was manufactured from that very raw material that was imported: This condition was not fulfilled by the assessee as there was no export of the goods from the raw material so utilised. Instead, exports were made of the product manufactured from other raw material and that too through third party. Hence, the assessee becomes liable to pay the import duty which would have been payable by it but for the benefit of exemption Notification which was obtained by the assessee.

[However, in the present case, the Apex Court reduced the interest from 24% to 9% and further observed that the Government should bestow its consideration and make appropriate provisions for dealing with such situations so that when the assessee fulfilled his export obligation which was accepted by the DGFT, through third party, such person should not be left high and dry.]
5.3 – EXPORT PROMOTION CAPITAL GOODS SCHEME (EPCG)

(1) **Objective:**
The objective of the EPCG Scheme is to facilitate import of capital goods for producing quality goods and services to enhance India’s export competitiveness.

(2) **EPCG Scheme:**
(a) **Imports free of duty**: EPCG Scheme allows import of capital goods for pre-production, production and post-production at Zero customs duty.
(b) **IGST and GST compensation cess exempt on imports**: Capital goods imported under EPCG scheme for physical exports are also exempt from whole of the Integrated Tax leviable under Section 3(7) and Compensation Cess leviable thereon under Section 3(9) of the Customs Tariff Act, 1975 upto 31-03-2020, as may be provided in the notification issued under Department of Revenue.
(c) **Indigenous purchases allowed**: Alternatively, the Authorisation holder may also procure Capital Goods from indigenous sources in accordance with provisions of paragraph 5.07 of FTP.

**Indigenous Sourcing of Capital Goods and benefits to Domestic Supplier**: A person holding an EPCG authorization may source capital goods from a domestic manufacturer. Such domestic manufacturer shall be eligible for deemed export benefit and as may be provided under GST Rules under the category of Deemed Exports. Such domestic sourcing shall also be permitted from EOUs and these supplies shall be counted for purpose of fulfilment of positive NFE by said EOU as provided in Para 6.09 (a) of FTP.

(d) **Eligible capital goods**: Capital goods for the purpose of the EPCG scheme shall include:
   (i) Capital Goods including in CKD/SKD condition thereof;
   (ii) Computer systems and software which are a part of the Capital Goods being imported
   (iii) Spares, moulds, dies, jigs, fixtures, tools & refractories for initial lining and spare refractories; and
   (iv) Catalysts for initial charge plus one subsequent Charge.
   (v) Capital goods for Project Imports notified by CBIC.

(e) **Ineligible capital goods include**:
   (i) Second hand capital goods
   (ii) Any Capital Goods for generation/transmission of power (including Captive plants and Power Generator Sets of any kind) for:
       > Export of electrical energy (power);
       > Supply of electrical energy (power) under deemed exports;
       > Supply of power (energy) in their own unit, and
       > Supply/export of electricity transmission services
(f) **EO equivalent to 6 times of duty saved on capital goods – Time limit of 6 years:** Import under EPCG Scheme shall be subject to an export obligation equivalent to **6 times of duties, taxes and cess** saved on capital goods, to be fulfilled in **6 years reckoned from date of issue of Authorisation.**

(g) **Authorisation validity – 18 months:** Authorisation shall be valid for import for **18 months** from the date of issue of Authorisation. Revalidation of EPCG Authorisation shall not be permitted.

(h) **IGST paid in cash – Not to be taken into account for net duty saved provided ITC not availed:** In case Integrated Tax and Compensation Cess are paid in cash on imports under EPCG, incidence of the said Integrated Tax and Compensation Cess would not be taken for computation of net duty saved provided Input Tax Credit is not availed.

(i) **Restricted Imports – Approval of EFC required:** Import of items which are restricted for import shall be permitted under EPGG Scheme only after approval from Exim Facilitation Committee (EFC) at DGFT Headquarters.

(j) **Restricted exports – Approval of EFC required:** If the goods proposed to be exported under EPCG Authorization are restricted for export, the EPCG authorization shall be issued only after approval for issuance of export authorization from Exim Facilitation Committee at DGFT Headquarters.

(k) **Eligible exporters:** Following are eligible for EPCG scheme:

(i) Manufacturer exporters with or without supporting manufacturer(s)

(ii) Merchant exporters tied to supporting manufacturer(s)

Name of supporting manufacturer(s) shall be endorsed on the EPCG Authorisation before installation of the capital goods in the factory/premises of the supporting manufacturer(s).

In case of any change in supporting manufacturer(s) the RA shall intimate such change to jurisdictional Customs Authority of existing as well as changed supporting manufacturer(s) and the Customs at port of registration of Authorisation.

(iii) Service providers including service provider who is designated/certified as a Common Service Provider (CSP) subject to prescribed conditions.

(l) **Actual User Condition till export obligation fulfilled:** Imported capital goods shall be subject to Actual User condition till export obligation is completed and EODC is granted.

(3) **Export Obligation (EO):**

Export obligation means obligation to export product(s) covered by Authorisation/permission in terms of quantity or value or both, as may be prescribed/specified by Regional or competent authority. Export obligation consists of average export obligation and specific export obligation.

**Specific export obligation (Specific EO)** under EPCG scheme is equivalent to **6 times of duty saved** on capital goods imported under EPCG scheme, to be fulfilled.
in 6 years reckoned from Authorization issue-date. Specific EO is over and above the Average EO.

**Average export obligation (Average EO)** under EPCG scheme is the average level of exports made by the applicant in the **preceding 3 licensing years** for the same and similar products. It has to be achieved within the overall EO period (including extended period unless otherwise specified).

(4) **Conditions applicable to the fulfilment of the Export Obligation (EO):**

Following conditions shall apply to the fulfilment of EO –

(a) **Fulfillment through export of goods or services**: EO shall be fulfilled by the authorization holder through export of goods which are manufactured by him or his supporting manufacturer / services rendered by him, for which the EPCG authorization has been granted.

(b) **EO is over and above average level of exports of last 3 years**: EO under the scheme shall be, over and above, the average level of exports achieved by the applicant in the **preceding 3 licensing years** for the same and similar products within the overall EO period including extended period, if any; except for specified categories. Such average would be the arithmetic mean of export performance in the preceding three licensing years for same and similar products.

(c) **25% less EO in case of ingeniousness sourcing of capital goods**: In case of indigenous sourcing of capital goods, specific EO shall be 25% less than the EO mentioned above, i.e. EO will be 4.5 times (75% of 6 times) of duty saved on such goods procured.

(d) **Shipments under AA/DFIA/ Drawback scheme or reward schemes – Also eligible**: Shipments under Advance Authorisation, DFIA, Drawback scheme or reward schemes under Chapter 3 of FTP; would also count for fulfillment of EO under EPCG Scheme.

(e) **Physical exports and specific deemed exports included**: Export shall be physical export. However, deemed exports shall also be counted towards fulfillment of export obligation.

(f) **Supply of ITA-I items to DTA – Counted for EO**: EO can also be fulfilled by the supply of ITA-I items to DTA, provided realization is in free foreign exchange.

(g) **Royalty payments – Counted for EO**: Royalty payments received by the Authorisation holder in freely convertible currency and foreign exchange received for R&D services shall also be counted for discharge under EPCG.

(h) Payment received in rupee terms for such Services as notified in Appendix 5D shall also be counted towards discharge of export obligation under the EPCG scheme.
(5) **Calculation of export obligation:**
In case of direct imports, EO shall be reckoned with reference to actual duty saved amount. In case of domestic sourcing, EO shall be reckoned with reference to notional Customs duties saved on FOR value.

(6) **Incentive for early EO fulfilment:**
With a view to accelerating exports, in cases where Authorisation holder has fulfilled **75% or more of specific export obligation and 100% of Average Export Obligation** till date, if any, in half or less than half the original export obligation period specified, remaining export obligation shall be condoned and the Authorisation redeemed by RA concerned. However no benefit under para 5.21 of HBP shall be permitted where incentive for early EO fulfilment has been availed.

(7) **Reduced EO for Green Technology Products:**
For exporters of Green Technology Products, Specific EO shall be 75% of EO. There shall be no change in average EO.

(8) **Reduced EO for North East Region and Jammu & Kashmir:**
For units located in Arunachal Pradesh, Assam, Manipur, Meghalaya, Mizoram, Nagaland, Sikkim, Tripura and Jammu & Kashmir, specific EO shall be 25% of the EO. There shall be no change in average EO imposed.

Thus, the export obligation to be fulfilled can be summarised as under:

<table>
<thead>
<tr>
<th>Case</th>
<th>Export Obligation (EO)</th>
<th>Duty Saved</th>
</tr>
</thead>
<tbody>
<tr>
<td>(A) Imports under EPCG Scheme</td>
<td>Duties, taxes and cess saved on capital goods x 6</td>
<td>Actual duty saved amount</td>
</tr>
<tr>
<td>(B) Indigenous sourcing of Capital Goods</td>
<td>25% lesser than that in Item (A) i.e., Duties, taxes &amp; cess saved x 4.5 times</td>
<td>Notional Customs duties saved on &quot;FOR value&quot;</td>
</tr>
<tr>
<td>(C) For exporters of Green Technology Products</td>
<td>In case falling in Item (A): 7.5% of EO in Item (A) i.e.,Duty saved x 4.5 times In any other case : No change</td>
<td>As applicable, as per above</td>
</tr>
<tr>
<td>(D) For units located in Arunachal Pradesh, Assam, Manipur, Meghalaya, Mizoram, Nagaland, Sikkim, Tripura and Jammu &amp; Kashmir</td>
<td>In case falling in Item (A): 25% of EO in Item (A) i.e., Duty saved x 1.5 times In an other case: No change</td>
<td>As applicable, as per above</td>
</tr>
</tbody>
</table>
(9) **Post Export EPCG Duty Credit Scrip(s):**

(a) **Eligibility - Import on full payment of duty**: Post Export EPCG Duty Credit Scrip(s) shall be available to exporters who intend to import capital goods on full payment of applicable duties in cash and choose to opt for this scheme.

(b) **Remission of basic custom duty**: Basic Customs duty paid on Capital Goods shall be remitted in the form of freely transferable duty credit scrip(s).

(c) **EO - 85% of applicable Specific EO**: Specific EO shall be 85% of the applicable specific EO under the EPCG Scheme. However, average EO shall remain unchanged.

(d) **Pro rata remission**: Duty remission shall be in proportion to the EO fulfilled.

(e) **Use same as of SEIS/MEIS scrips**: These Duty Credit Scrip(s) can be utilized in the similar manner as the scrips issued under reward schemes can be utilised.

(f) **Other provisions**: All provisions of the existing EPCG Scheme shall apply insofar as they are not inconsistent with this scheme.

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**Q 9 - Export obligation under EPCG**: Determine Export Obligation an exporter who has purchased the following capital goods under EPCG scheme:

(i) Import of capital goods 'P': Duty payable was Rs. 5 lakh

(ii) Domestic purchases of capital goods 'S': IGST payable was Rs. 1,00,000 but notional customs duties payable (considering it as deemed import) were Rs. 1,20,000.

**Solution**: Computation of Export Obligation is as follows:

<table>
<thead>
<tr>
<th>Capital goods</th>
<th>Duty Saved</th>
<th>Export obligation factor</th>
<th>EO</th>
</tr>
</thead>
<tbody>
<tr>
<td>P</td>
<td>Rs. 5,00,000</td>
<td>6</td>
<td>30,00,000</td>
</tr>
<tr>
<td>S</td>
<td>Notional Customs Duties i.e., Rs. 1,20,000 [See Note]</td>
<td>4.5</td>
<td>5,40,000</td>
</tr>
<tr>
<td><strong>Total Export Obligation</strong></td>
<td></td>
<td></td>
<td><strong>35,40,000</strong></td>
</tr>
</tbody>
</table>

**Note**: In case of indigenous sourcing of Capital Goods, specific EO shall be 25% less than the normal EO hence it will be $6 \times 75\% = 4.5$. 
PART 6: EOU, EHTP, STP & BTP SCHEMES

Brief introduction and Objective of import or export under EOU/ EHTP/ BTP schemes.

Introduction:
Units undertaking to export their entire production of goods and services (except permissible sales in DTA), may be set up under the Export Oriented Unit (EOU) Scheme, Electronics Hardware Technology Park (EHTP) Scheme, Software Technology Park (STP) Scheme or Bio-Technology Park (BTP) Scheme for manufacture of goods, including repair, re-making, reconditioning, re-engineering, rendering of services, development of software, agriculture including agro-processing, aquaculture, animal husbandry, biotechnology, floriculture, horticulture, pisciculture, viticulture, poultry and sericulture. Trading units are not covered under these schemes.

Objectives
of these schemes are to promote exports, enhance foreign exchange earnings, attract investment for export production and employment generation.

STP/ EHTP/ BTP schemes are similar to EOU themes and provisions are more/ less identical. EOU scheme is administered by Ministry of Commerce and Industry, while STP/EHTP/ BTP schemes are administered by their respective administrative ministries. STP is set up for development of software exports. EHTP are for export of electronics hardware and software. STP/ EHTP Scheme is administered by Ministry of Information technology. BTP is established on the recommendation of Department of Biotechnology.

Investment criteria and manner of making application to establish units in units under EOU/ EHTP/STP/ BTP.

(1) Investment Criteria - minimum investment Rs. 1 crore:
Only projects having a minimum investment of Rs. 1 crore in plant & machinery shall be considered for establishment as EOUs.
However, this shall not apply to existing units and units in EHTP/ STP/ BTP, Handicrafts/ Agriculture/ Floriculture/ Aquaculture/ Animal Husbandry/ Information Technology, Services, Brass Hardware and Handmade jewellery sectors.
BoA may also allow establishment of EOUs with a lower investment criteria.

(2) Applications & Approvals/ Letter of Permission/ Letter of Intent and Legal Undertaking:
(a) Application and approval:
(i) **Application for setting up an EOU** shall be considered by Unit Approval Committee (UAC)/ Board of Approval (BoA) as the case may be, as detailed in the Hand Book of Procedure. A detail of administration of EOUs and power of DC is given in HBP.

(ii) In case of units under EHTP / STP schemes, necessary approval / permission shall be granted by officer designated by Ministry of Communication and Information Technology, Department of Electronics & Information Technology, instead of DC, and by Inter-Ministerial Standing Committee (IMSC) instead of BOA.

(iii) Bio-Technology Parks (BTP) would be notified by DGFT on recommendations of Department of Biotechnology. In case of units in BTP, necessary approval / permission under relevant provisions of this chapter will be granted by designated officer of Department of Biotechnology.

(iv) On approval, a **Letter of Permission (LoP)/ Letter of Intent (Lol)** shall be issued by DC/ designated officer to EOU/ EHTP/ STP/ BTP unit. The validity of LoP/LoI shall be given in the Hand Book of Procedures.

(b) **LoP/ Lol issued deemed to be an Authorisation** : LoP/ Lol issued to EOU/ EHTP/ STP/ BTP units by concerned authority, subject to compliance of provision above, would be construed as an Authorisation for all purposes.

(c) **Penalty** : Unit shall execute an LUT with DC concerned. Failure to ensure positive NFE or to abide by any of the terms and conditions of LoP/ Lol/ IL/ LUT shall render the unit liable to under provisions of the FT (D&R) Act, as amended, and Rules and Orders made there under, without prejudice to action under any other law/rules and cancellation or revocation of LoP/ Lol/ IL.

### Net foreign exchange earnings requirement of units under EOU/ EHTP/ STP/ BTP.

**Net Foreign Exchange (NFE) earnings** : The provisions are as under -

1. **Positive NFE:**
   EOU / EHTP / STP / BTP unit shall be a **positive net foreign exchange earner**.

2. **NFE in block of 5 years:**
   NFE Earnings shall be calculated **cumulatively in blocks of 5 years**, starting from commencement of production.

   **Extension when export is prohibited or restricted** : Whenever a unit is unable to achieve NFE due to prohibition/restriction imposed on export of any product mentioned in LoP, the five year block period for calculation of NFE earnings may be suitably extended by BoA.

   **Extension upto one year due to adverse market conditions etc.** : Further, wherever a unit is unable to achieve NFE due to adverse market condition or any grounds of genuine hardship having adverse impact on functioning of the unit, the
5 year block period for calculation of NFE earnings may be extended by BOA for a period of up to one year, on a case to case basis.

**Supplies of goods in DTA by EOU/ EHTP/ STP/ BTP units to DTA which shall be counted for fulfillment of positive NFE.**

**Supplies to DTA can be counted for positive NFE:**
Following supplies effected from EOU/ EHTP/ STP/ BTP units to DTA will be counted for fulfillment of positive NFE. Such supplies shall not include "marble", except if such supply of marble is an inter unit supply as provided at sub-para (c) below :-

(a) Supplies effected in DTA to holders of Advance Authorisation/Advance Authorisation for annual requirement/ DFIA under duty exemption/ remission scheme/ EPCG scheme.

(b) Supplies effected in DTA against foreign exchange remittance received from overseas.

(c) Supplies to other EOU/EHTP/STP/BTP/SEZ units, provided that such goods are permissible for procurement in terms of relevant provisions of FTP.

(d) Supplies made to bonded warehouses set up under FTP and/ or under section 65 of Customs Act and free trade and warehousing zones, where payment is received in foreign exchange.

(e) Supplies of goods and services to such organizations which are entitled for duty free import of such items in terms of general exemption notification issued by MoF as may be provided in handbook of procedure (HBP).

(f) Supplies of Information Technology Agreement (ITA-1) items and notified zero duty telecom/electronics items.

(g) Supplies of items like tags, labels, printed bags, stickers, belts, buttons or hangers to DTA unit for export.

(h) Supply of LPG produced in an EOU refinery to Public Sector domestic oil companies for being supplied to household domestic consumers at subsidized prices under the Public Distribution System (PDS) Kerosene and Domestic LPG Subsidy Scheme, 2002, subject to specified conditions.

**Entitlement for supplies from DTA units by EOU/ EHTP/ STP/ BTP units.**

(1) **Deemed Exports:**
Supplies from DTA to EOU/ EHTP/ STP/ BTP units will be regarded as "deemed exports" and DTA supplier shall be eligible for relevant entitlements for deemed exports, besides discharge of export obligation, if any, on the supplier. The refund of GST paid on such supply would be available to the supplier subject to specified conditions and documentations under GST law.

In addition, EOU / EHTP / STP / BTP units shall be entitled to following:-
- Imported goods are exempt from basic customs duty. Further, IGST and GST compensation cess is exempt up to 31.03.2020.
- Input Tax Credit of GST paid on inputs and capital goods.

(2) **Replenishment Authorizations:**
Suppliers of precious and semi-precious stones, synthetic stones and processed pearls from DTA to EOU shall be eligible for grant of Replenishment Authorizations at rates and for items mentioned in HBP.

**Entitlements of EOU/ EHTP/ STP/ BTP units.**

1. **100% in EEFC account:**
Units will be allowed to retain **100% of its export earnings** in the Exchange Earners’ Foreign Currency (EEFC) account.

2. **No bank guarantee in certain cases:**
Unit will not be required to furnish bank guarantee at the time of import or going for job work in DTA, subject to fulfillment of required conditions.

3. **100% FDI**
100% FDI investment permitted **through automatic route** similar to SEZ units.

**Import or export under EOU/ EHTP/ BTP schemes.**

(A) **Export:**
1. **All goods and services other than prohibited goods can be exported:** Such units may export all kinds of goods and services except items that are prohibited in ITC(HS).
2. **Export through others:** Such units may export goods manufactured/software developed by it through another exporter or any other EOU/ EHTP/ STP/ SEZ unit subject to conditions as mentioned in hand book of procedures.
3. **Export of SCOMET ITC(HS) - Conditions to be fulfilled:** Export of Special Chemicals, Organisms, Materials, Equipment and Technologies (SCOMET) shall be subject to fulfilment of the conditions indicated in ITC (HS).
   BOA may permit export of prohibited items: In respect of an EOU, permission to export a prohibited item may be considered, by BOA, on a case to case basis, provided such raw materials are imported and there is no procurement of such raw material from DTA.

(B) **Import:**
Following imports are permitted:
(1) Export promotion material upto a maximum value limit of 1.5% of FOB value of previous years exports.

(2) All types of goods, including capital goods, required for its activities, from (i) DTA, (ii) bonded warehouses in DTA/ international exhibition held in India, subject to 'Actual User' condition, provided such goods are not prohibited items of import in the ITC (HS) subject following conditions:
   (a) The imports and/ or procurement from bonded warehouse in DTA/International exhibition held in India shall be without payment of basic customs duty. Such imports and/ or procurements shall be made without payment of integrated tax and GST compensation cess upto 31.03.2020.
   (b) The procurement of goods covered under GST from DTA would be on payment of applicable GST and compensation cess. The refund of GST paid on such supply from DTA to EOU would be available to the supplier subject to such conditions and documentations as specified under GST law.

   Goods including capital goods (on a self-certification basis) required for approved activity, free of cost or on loan/ lease from clients, subject to 'Actual User' condition are permitted to be imported.

(3) Certain specified goods from DTA for creating a central facility, with/without payment of duty/ taxes as provided in point 2(a) and 2(b) above.

(4) Second hand capital goods, without any age limit, with/without payment of duty/ taxes as provided in point 2(a) above.

The above indigenous and import procurement can be summarised as under:

<table>
<thead>
<tr>
<th>Procurement Mode</th>
<th>Duty exemption</th>
</tr>
</thead>
<tbody>
<tr>
<td>(i) (a) Import,</td>
<td>Without payment of –</td>
</tr>
<tr>
<td>(b) Procure from</td>
<td>➢ Basic customs duty</td>
</tr>
<tr>
<td>bonded warehouses in DTA, and</td>
<td>➢ Additional duty of Customs (CVD or Special CVD)</td>
</tr>
<tr>
<td>(c) Procure from</td>
<td>➢ IGST leviable u/s 3(7) of Customs Tariff Act, 1975</td>
</tr>
<tr>
<td>international exhibition held in India</td>
<td>➢ GST Compensation Cess leviable u/s 3(9) of Customs Tariff Act, 1975,</td>
</tr>
<tr>
<td></td>
<td>as per notification issued by the Department of Revenue. Exemption from IGST and GST compensation cess is available upto 31-03-2020.</td>
</tr>
<tr>
<td>(ii) Procurement from DTA</td>
<td>➢ GST payable : Procurement of GST goods from DTA would be on payment of applicable GST taxes. The refund of GST taxes for supply from DTA to EOU would be available to supplier as provided</td>
</tr>
</tbody>
</table>

36.55
| provisions of teasing of capital goods by an EOU/ EHTP/ STP/ BTP unit. |

(1) **Leasing of capital goods:**
An EOU/EHTP/STP/BTP unit may, on the basis of a firm contract between parties, source capital goods from a domestic/foreign leasing company with or without payment of duties/ taxes as provided above, as the case may be in such a case, EOU/EHTP/STP/BTP unit and domestic/ foreign leasing company shall jointly file documents to enable import/procurement of capital goods.

(2) **Sale and lease back transactions:**
An EOU/EHTP/BTP/STP unit may sell capital goods and lease back the same from a Non Banking Financial Company (NBFC), subject to the fulfillment of conditions.

**Provisions of inter unit transfer in case of EOU/ EHTP/ STP/ BTP units.**

**Inter Unit Transfer:** The provisions of inter unit transfer in case of EOU/EHTP/STP/BTP units are as under -

(1) **Transfer of manufactured goods - procedure:**
Transfer of manufactured goods from one EOU/EHTP/ STP/BTP unit to another EOU/EHTP/STP/BTP unit is **allowed on payment of applicable GST and compensation cess** with prior intimation to concerned Development Commissioners of the transferor and transeree units as well as concerned Customs authorities, following the prescribed procedure.

(2) **Transfer of Capital Goods:**
Capital goods may be transferred or given on loan to other EOU/EHTP/STP/ BTP/SEZ units, with prior intimation to concerned DC and Customs authorities **on payment of applicable GST and compensation cess.** Such transferred goods may also be returned by the second unit to the original unit in case of rejection or for any reason. On payment of applicable GST and compensation cess.

(3) **Supply of goods - Procedure:**
Goods supplied by one unit of EOU/EHTP/STP/BTP to another unit shall be on payment of applicable GST and compensation cess following the prescribed procedure.
**Provisions relating to Sale of Unutilized Material by an EOU/ EHTP/ STP/ BTP unit.**

(a) **Disposal of unutilised material:**
   In case an EOU/ EHTP/ STP/ BTP unit is unable to utilize goods and services, imported or procured from DTA, it may be -
   
   (i) transferred to another EOU/ EHTP/ STP/ BTP/ SEZ unit.
   
   (ii) Disposed of in DTA with intimation to Customs authorities on payment of applicable duties and/or taxes and compensation cess. Further, exemption of basic customs duties availed, if any, on the goods, at the time of import will also be payable and submission of import Authorisation; or
   
   (iii) exported.

   **Such transfer from EOU/ EHTP/ STP/ BTP unit to another such unit would be treated as import for receiving unit.**

(b) **Disposal of Capital goods:**
   Capital goods and spares that have become obsolete/surplus, may be exported or transferred to SEZ unit, transferred to another EOU/EHTP/STP/BTP/on payment of applicable GST and compensation cess or disposed of in DTA on payment of applicable GST and compensation cess and duties of Customs leviable under First Schedule of the Customs Tariff Act, 1975.

   Benefit of depreciation will be available in case of disposal in DTA only when the unit has achieved positive NFE taking into consideration the depreciation allowed.

   **In case of Destruction of goods - No duty payable:** No duty shall be payable other than the applicable taxes under GST laws in case capital goods, raw material consumables, spares, goods manufactured, processed or packaged, and scrap/waste/remnants/rejects are destroyed within unit after intimation to Customs authorities or destroyed outside unit with permission of Customs authorities. Destruction as stated above shall not apply to gold, silver, platinum, diamond, precious and semiprecious stones.

(c) **Disposal of Packing material:**
   Disposal of used packing material will be allowed on payment of duty on transaction value.

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**Provisions rotating to DTA Sale of Finished Products/ Rejects Waste/ Scrap/ Remnants and By-products by units under EOU/EHTP/STP/BTP.**

**DTA Sale of Finished Products/Rejects/Waste/ Scrap/ Remnants and By-products:**
Entire production of EOU/EHTP/STP/BTP units shall be exported. However, the following are allowed as exceptions subject to the conditions specified.
## DTA sale of goods:

| (a) | **DTA sale of finished goods by units which have achieved positive NFE** | Units (other than gem and jewellery units) will be permitted to sell finished goods manufactured by them which are freely importable under FTP in DTA, subject to fulfilment of positive NFE, on payment of applicable GST and compensation cess along with reversal of basic customs duty availed as exemption, if any on the inputs utilized for the purpose of manufacturing of such finished goods.  
**on the basis of SION published by DGFT or norms approved by Norms Committee of DGFT (when no SION is fixed)**  
No DTA sale shall be permissible in respect of, pepper & pepper products, marble and such other items as may be notified from time to time. |
| (ii) | **DTA Units to whom sale is not permissible** | No DTA sale shall be permissible in respect of, pepper & pepper products, marble and such other notified items as also to units engaged in only packaging. Labelling, refrigeration, pulverilasiton etc., |
| (iii) | | Such DTA sale shall also be subject to refund of any deemed export benefits availed by the EOU/supplier as per FTP, on the goods used for manufacture of the goods cleared into the DTA; |
| (iv) | **Imported goods subject to ADD liable to ADD in case of DTA sale** | An amount equal to Anti Dumping duty u/s 9A of the Customs Tariff Act, 1975 leviable at the time of import, shall be payable on the goods used for the purpose of manufacture or processing of the goods cleared into DTA from the unit. |
| (b) | **DTA supply of services** | For services (including software units), sale in DTA shall also be permissible up to 50% of FOB value of exports and/ or 50% of foreign exchange earned, where payment of such services is received in foreign exchange. |
| (c) | **Sale of rejects** | Rejects may be sold in DTA on payment of applicable GST and compensation cess along with reversal of basic customs duty availed as exemption on inputs on prior intimation to Customs authorities.  
**Sale of rejects upto 5% of FOB value of exports shall not be subject to achievement of NFE.** |
| (d) | **Sale of Scrap/waste/remnants** | Scrap/waste/remnants arising out of production process or in connection therewith may be sold in DTA, as per SION notified under Duty Exemption Scheme, on payment of applicable duties and/ or taxes and compensation cess. Such sales of scrap/waste/remnants shall not be subject to achievement of positive NFE.  
**Scrap/waste/remnants may also be exported.**  
**No duties on destruction** | There shall be no duties/ taxes on scrap/ waste/ remnants, in case same are destroyed with permission of Customs authorities.  
The expression "no duties/ taxes" shall not include applicable taxes and cess under the GST laws. |
| (e) | **Sale of by products** | By-products may also be sold in DTA subject to achievement |
of positive NFE, on payment of applicable GST and compensation cess along with reversal of basic customs duty availed as exemption on inputs.

(f) **Software and hardware - Separate requirement**: In case of units manufacturing electronics hardware and software, NFE and DTA sale entitlement shall be reckoned separately for hardware and software.

(g) In case of new EOUs, advance DTA sale will be allowed not exceeding 50% of its estimated exports for first year, except pharmaceutical units where this will be based on its estimated exports for first two years.

(h) Procurement of spares / components, up to 2% of the value of manufactured articles, cleared into DTA, during the preceding year, may be allowed for supply to the same consignee / buyer for the purpose of after-sale-service. The same can be cleared in DTA on payment of applicable GST and compensation cess along with reversal of basic customs duty availed as exemption on inputs.

(i) **Export through other exporter**: An EOU/ EHTP/ STP/ BTP unit may export goods manufactured/ software developed by it through another exporter or any other EOU/ EHTP/ STP/ SEZ unit subject to specified conditions

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### Other provisions relating to EOU scheme.

**Ans:** The other provisions are discussed as under:

1. **Exit from EOU Scheme:**
   - With approval of DC, an EOU may opt out of scheme. Such exit shall be subject to payment of applicable IGST/ CGST/ SGST/ UTGST and compensation cess, if any, and industrial policy in force. If unit has not achieved obligations, it shall also be liable to penalty at the time of exit.

2. **Conversion:**
   - Existing DTA units may also apply for conversion into an EOU/ EHTP/ STP/ BTP unit. Existing EHTP / STP units, who have applied for conversion / merger to EOU unit and vice-versa, can avail exemptions in duties and taxes as applicable.
   - Applications for conversion into an EOU / EHTP / STP / BTP unit from existing DTA units, having an investment of **Rs. 50 crores** and above in plant and machinery or exporting **Rs. 50 crores** and above annually, shall be placed before BOA for a decision.
PART 7: DEEMED EXPORTS

DEFINITION

(a) Deemed Exports for FTP : "Deemed Exports" for the purpose of this FTP refer to those transactions in which goods supplied do not leave country, and payment for such supplies is received either in Indian rupees or in free foreign exchange. Supply of goods as specified below shall be regarded as "Deemed Exports" provided goods are manufactured in India.

(b) Deemed Exports for GST : "Deemed Exports" for the purpose of GST would include only the supplies notified under Section 147 of the CGST/SGST Act, on the recommendations of the GST Council. The benefits of GST and conditions applicable for such benefits would be as specified by the GST Council and as per relevant rules and notification.

Objective of Deemed Exports:

The objective of deemed exports is to ensure that the domestic suppliers are not in disadvantageous position vis-a-vis foreign suppliers in terms of the fiscal concessions. The underlying theory is that foreign exchange saved must be treated at par with foreign exchange earned by placing Indian manufacturers on par with foreign suppliers. Besides this the objective is to provide a level-playing field to domestic manufacturers in certain specified cases, as may be decided by the Government from time to time.

Areas of Deemed Exports:

Deemed exports broadly cover three areas.

(a) Supplies to domestic entities who can import their requirements duty free or at reduced rates of duty.

(b) Supplies to projects or purposes that involve international competitive bidding.

(c) Supplies to infrastructure projects of national importance.

Categories of Supplies [Para 7.02 of policy]:

Supply of goods under following categories by a manufacturer and by main / sub-contractors shall be regarded as “Deemed Exports”.

Categories of supplies considered as ‘deemed Export’:

<table>
<thead>
<tr>
<th>Supply by manufacturer</th>
<th>Supply by main/sub-contractors(s)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Supply or goods against Advance Authorisation/ Advance Authorisation for Annual Requirement/ DFIA</td>
<td>Supply of goods to projects or turnkey contracts by multilateral or bilateral agencies / Funds notified by Department of Economic Affairs (DEA), under International Competitive Bidding.</td>
</tr>
<tr>
<td>Supply of goods to units located in</td>
<td>Supply of goods to any project where import is</td>
</tr>
<tr>
<td>EOU/ STP/BTP EHTP</td>
<td>permitted at zero customs duty as per customs Notification No 50/2017-Cus., dated 30-06-2017 and supply is made against International Competitive Bidding</td>
</tr>
<tr>
<td>Supply of capital goods against EPCG authorisation</td>
<td>Supply of goods to mega power projects against International Competitive Bidding (even if customs duty on imports made by such project is not zero). The ICB procedures should be followed. Supplier is eligible for benefits as specified International Competitive Bidding (ICB) is not mandatory for mega power projects if requisite quantum of power has been tied up through tariff based competitive bidding or if project has been awarded through tariff based competitive bidding.</td>
</tr>
<tr>
<td></td>
<td>Supply of goods to UN or international organisations for their official use or supplied to projects financed by them.</td>
</tr>
<tr>
<td></td>
<td>Supply of goods to nuclear projects through competitive bidding (need not be international competitive bidding)</td>
</tr>
</tbody>
</table>

**Benefits for Deemed Exports:**

Deemed Exports shall be eligible for any or all of the following benefits in respect of manufacture and supply of goods qualifying as deemed exports subject to conditions as given in HBP and ANF-7A,-

(a) Advance Authorisation/ Advance Authorisation for Annual requirement/ DFIA;

(b) Deemed Export Drawback for BCD.

**Deemed exports – Other provisions:**

1. **Refund of drawback:** Refund of drawback on the inputs used in manufacture and supply under the said category can be claimed on ‘All Industry Rate’ of Duty Drawback Schedule notified by Department of Revenue from time to time provided no CENVAT credit has been availed by supplier of goods on excisable inputs or on ‘Brand Rate Basis’ upon submission of documents evidencing actual payment of basic customs duties. [Amended by Notification No. 28/2015-2020 dated 31/10/2019]

2. **Common conditions for deemed export benefits:**

   (i) **Supplies must be to specified entity:** Supplies shall be made directly to entities listed above. Third party supply shall not be eligible for benefits / exemption.

   (ii) **Subcontractor may make supplies to main contractors:** In all cases, supplies shall be made directly to the designated Projects / Agencies / Units Advance Authorisation / EPCG Authorisation holder. Sub-conrractors may, however,
make supplies to main contractor instead of supplying directly to designated Projects/Agencies. Payments in such cases shall be made to sub-contractor by main-contractor and not by project Authority.

(iii) Indian subcontractor may supply to Indian/Foreign main contractor directly at project site - Name of sub-contractor must be indicated in main contract: Supply of domestically manufactured goods by an Indian Sub-contractor to any Indian or foreign main contractor, directly at the designated project’s/Agency’s site, shall also be eligible for deemed export benefit provided name of sub-contractor is indicated either originally or subsequently (but before the date of supply of such goods) in the main contract. In such cases payment shall be made directly to sub-contractor by the Project Authority.

**PART 8: PENALTIES**

In case any exporter or importer in the country violates any provision of the Foreign Trade Policy or for that matter any other law in force, like Central Excise or Customs or Foreign Exchange, his IEC number can be cancelled by the office of DGFT and thereupon that exporter or importer would not be able to transact any business in export or import. The premises where any violation of the provisions of FTP has taken place or is expected to take place can be searched and the suspicious material seized.

Violations would cover situations when import or export has been made by unauthorized persons who are not legally allowed to carry out import or export or when any person carries out or admits to carry out any import or export in contravention of the basic FTP.

**Q10 - EPCG scheme:** X Ltd. has imported capital good under EPCG scheme. The total amount of duty saved amounted Rs. 2,00,000. Discuss its export obligation and the time limit to achieve the same.

**Ans:** The benefit under EPCG is subject to the condition that export obligation equivalent to 6 times of duty saved on capital goods imported under EPCG scheme is to be fulfilled in 6 years reckoned from Authorization issue-date. Thus, X Ltd. has to fulfill export obligation amounting Rs. 12,00,000 and the same must be achieved in 6 years.

**Illustration 11 - EPCG scheme:** X Ltd. wants to import second hand capital goods under EPCG. Can it do so?

**Ans:** Second hand capital goods cannot be imported under EPCG. Hence, X Ltd. cannot import second hand capital goods under this scheme.

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