



QUESTION BANK CUSTOMS AND FTP

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Chapter 1 – Introduction & Levy of Customs Duty and Exemptions under Custom Duty

Exercise Questions & Answers

Q 1. A machine was originally imported from Japan at Rs. 250 lakh in July, 20XX on payment of all duties of customs. The said machine was exported (sent-back) to supplier for repairs in December, 20XX and re-imported without any re-manufacturing or re-processing in October next year after repairs. Since the machine was under warranty period, the repairs were carried out free of cost. However, the fair cost of repairs carried out (including cost of material Rs. 6 lakh) would have been Rs. 9 lakh. Actual insurance and freight charges (to and fro) were Rs. 3 lakh. The rate of basic customs duty is 10% and integrated tax is 12%. Ignore GST compensation cess. Compute the amount of customs duty payable (if any) on re-import of the machine after repairs. The ownership of the machine has not been changed during the period.

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

Ans: As per Notification No. 46/2017 Cus. dated 30.06.2017, duty payable on re- importation of goods which had been exported for repairs abroad is the duty of customs which would be leviable if the value of re-imported goods after repairs were made up of the fair cost of repairs carried out including cost of materials used in repairs (whether such costs are actually incurred or not), insurance and freight charges, both ways. However, following conditions need to be satisfied for availing this concession:

- (a) goods must be re-imported within 3 years, extendable by further 2 years, after their exportation;
- (b) exported goods and the re-imported goods must be the same;
- (c) ownership of the goods should not change.

Since all the conditions specified above are fulfilled in the given case, the customs duty payable on re-imported goods will be computed as under:

Particulars	Amount
Value of goods re-imported after exports [Rs. 9 lakh (including cost of materials) + Rs. 3 lakh]	1200000
Add: Basic customs duty @ 10% (A)	120000
Add: Social Welfare Surcharge @ 10% on Rs. 1,20,000 (B)	12000
Value for computing integrated tax under section 3(7) of Customs Tariff Act, 1975	1332000
Integrated tax @ 12% (13,32,000 x 12%) - C	1,59,840
Customs duty and integrated tax payable [(A) +(B)+ (C)]	2,91,840

Q 2. What are the provisions relating to effective date of notifications issued under section 25 of the Customs Act, 1962?

Ans: Date of effect of every notification issued will be the date of its issue by the Central Government for publication in the Official Gazette, unless provided otherwise in the notification. Issue means signed by competent authority and sent for publication to Government press. The provision is made as there may be delay of one or two days in publishing in Gazette e.g. if the notification is issued on 2nd November and published in Official Gazette on 4th November, the notification will be effective from 2nd November. The above rules do not apply to exemptions granted through special orders. Special orders are issued separately for each case and communicated to the beneficiary directly by the Government.

Q 3. ASC Ltd. entered in to technical collaboration with MSC Ltd. of Netherlands and imported drawings and designs in paper form through professional courier and post parcels. ASC Ltd. declared the value of these drawings and designs at a very nominal value. However, the Assistant Commissioner of Customs valued these drawings and designs at intrinsic value and levied duty on them. ASC Ltd. contended that customs duty cannot be levied on drawings and designs as they do not fall in the definition of goods under the Customs Act, 1962.

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

Ans: This issue has been settled by the Supreme Court in the case of Associated Cement Companies Ltd. v. CC 2001 (128) ELT 21 (SC). The Apex Court observed that though technical advice or information technology are intangible assets, but the moment they are put on a media, whether paper or cassettes or diskettes or any other thing, they become movable and are thus, goods. Therefore, the Supreme Court held that drawings, designs, manuals and technical material are goods liable to customs duty. Therefore, the stand taken by the ASC Ltd. is not correct in law.

Q 4. An importer imported certain inputs for manufacture of final product. A small portion of the imported inputs were damaged in transit and could not be used in the manufacture of the final product. An exemption notification was in force providing exemption in respect of specified raw materials imported into India for use in manufacture of specified goods, which was applicable to the imports made by the importer in the present case. Briefly examine whether the importer could claim the benefit of the aforesaid notification in respect of the entire lot of the inputs imported including those that were damaged in transit.

Ans: The facts of the case are similar to the case of BPL Display Devices Ltd. v. CCE., Ghaziabad (2004) 174 ELT 5 (SC) wherein the Supreme Court has held that the benefit of the notifications cannot be denied in respect of goods which are intended for use for manufacture of the final product but cannot be so used due to shortage or leakage.

The Apex Court has held that no material distinction can be drawn between loss on account of leakage and loss on account of damage. The benefit of said exemption cannot be denied as inputs were intended for use in the manufacture of final product but could not be so used due to shortage/leakage/damage. It has been clarified by the Supreme Court **that words “for use” have to be construed to mean “intended for use”**. Therefore, the importer can claim the benefit of the notification in respect of the entire lot of the inputs imported including those that were damaged in transit.

Q 5. M/s. Pure Energy Ltd. is engaged in oil exploration and has imported software containing seismic data. The importer is entitled to exemption from customs duty subject to the condition that an “essentiality certificate” granted by the Director General of Hydrocarbons is produced at the time of importation of the goods. Though the importer applied for the certificate within the statutory time limit prescribed for the same, the certificate was not made available to the importer within a reasonable time by the Director General of Hydrocarbons. The customs department rejected the importer’s claim for exemption.

Ans: This issue has been addressed by the Supreme Court in the case of *Commissioner of Customs v. Tullow India Operations Ltd. (2005) 189 ELT 401 (SC)*. The Apex Court has observed that if a condition is not within the power and control of the importer and depends upon the acts of public functionaries, non-compliance of such a condition, subject to just exceptions cannot be held to be a condition precedent which would disable it from obtaining the benefit for all times to come. In the given case also the certificate has not been granted within a reasonable time. Therefore, in view of the above-mentioned judgement, the importer M/s Pure Energy Ltd. cannot be blamed for the lapse by the authorities. The Directorate General of Hydrocarbons is under the Ministry of Petroleum and Natural Gas and such a public functionary is supposed to grant the essentiality certificate within a reasonable time so as to enable the importer to avail of the benefits under the notification.

Q 6. Lucrative Laminates imported resin impregnated paper and plywood for the purpose of manufacture of furniture. The said goods were warehoused from the date of its import. Lucrative Laminates sought an extension of the warehousing period which was granted by the authorities. However, even after the expiry of the said date, it did not remove the goods from the warehouse. Subsequently, Lucrative Laminates applied for remission of duty under section 23 of the Customs Act, 1962 on the ground that the said goods had lost their shelf life and had become unfit for use on account of non-availability of orders for clearance. Explain, with the help of a decided case law, if any, whether the application for remission of duty filed by the Lucrative Laminates is valid in law?

Ans: No, the application for remission of duty filed by the Lucrative Laminates is not valid in law. The facts of the given case are similar to the case of *CCE v. Decorative Laminates (I) Pvt. Ltd. 2010 (257) E.L.T. 61 (Kar.)*. The High Court, while interpreting section 23, stipulated that section 23 states that only when the imported goods have been lost or destroyed at any time before clearance

for home consumption, the application for remission of duty can be considered. Further, even before an order for clearance of goods for home consumption is made, relinquishing of title to the goods can be made; in such event also, an importer would not be liable to pay duty. Therefore, the expression "at any time before clearance for home consumption" would mean the time period as per the initial order during which the goods are warehoused or before the expiry of the extended date for clearance and not any period after the lapse of the aforesaid periods. The said expression cannot extend to a period after the lapse of the extended period merely because the licence holder has not cleared the goods within the stipulated time. Moreover, since in the given case, the goods continued to be in the warehouse, even after the expiry of the warehousing period, it would be a case of goods improperly removed from the warehouse as per section 72(1)(b) read with section 71. The High Court, overruling the decision of the Tribunal, held that the circumstances made out under section 23 were not applicable to the present case since the destruction of the goods or loss of the goods had not occurred before the clearance for home consumption within the meaning of that section. When the goods are not cleared within the period or extended period as given by the authorities, their continuance in the warehouse will not attract section 23 of the Act. Further, in *Kesoram Rayon v. CC 1996 (86) ELT 464*, the Supreme Court has held that goods which are not removed from warehouse within the permissible period, are deemed to be improperly removed on the day they ought to have been removed. In view of this decision, goods would be deemed to have been removed when licensing period was over. Hence, section 23 would not be applicable as such loss occurred after 'deemed removal' of goods.

Q 7. 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.

Ans: In the case of Tirupati Udyog Ltd. v. UOI 2011 (272) E.L.T. 209 (A.P.), 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 along with sections 2(18), 2(23) and 2(27) 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) [charging section for customs duty].

The above view has also been confirmed in *Essar Steel v. UOI* 2010 (249) ELT 3 (Guj.) wherein the Departmental appeal has been dismissed by Supreme Court on 12.07.2010 - 2010 (255) ELT 115.

Q 8. M/s. XYZ, a 100% export oriented undertaking (100% E.O.U. in short) imported DG sets and furnace oil duty free for setting up captive power plant for its power requirements for export production. This benefit was available vide an exemptions notification. They used the power so generated for export production but sold surplus power in domestic tariff area. Customs Department has demanded duty on DG sets and furnace oil as surplus power has been sold in domestic tariff area. The notification does not specifically restrict the use of imported goods for manufacture of export goods. Do you think the demand of the Customs Department is valid in law.

Ans: The facts of the case are similar to the case of *Commissioner v. Hanil Era Textile Ltd.* 2005 (180) ELT A044 (SC) wherein the Supreme Court agreed to the view taken by the Tribunal that in the absence of a restrictive clause in the notifications that imported goods are to be solely or exclusively used for manufacture of goods for export, there is no violation of any condition of notification, if surplus power generated due to unforeseen exigencies is sold in domestic tariff area. Therefore, no duty can be demanded from M/s XYZ for selling the surplus power in domestic tariff area for the following reasons:

- (i) They have used the DG sets and furnace oil imported duty free for generation of power, and
- (ii) such power generated has been used for manufacturing goods for export, and
- (iii) only the surplus power has been sold, as power cannot be stored.

Q 9. Distinguish between Pilfered goods and Lost/destroyed goods

Ans:

Pilfered goods	Lost/Destroyed goods
Covered by section 13	Covered by section 23(1)
No duty goods payable on such	Duty paid on such goods to be remitted
Department gets compensation from the custodian [Section 45(3)]	No such compensation
Petty theft by human being	Loss/Destruction by fire, flood etc (Act of God)
Restoration possible	Restoration is not possible
Occurrence is after unloading and before Customs clearance order for home consumption or warehousing	Occurrence is after unloading and before Customs clearance order for home consumption or warehousing
Occurrence in warehouse not recognized	Occurrence recognized in warehouse is
Duty need not be calculated	Duty should be calculated for determining the remission amount
No need to prove pilferage. It is quite obvious	Should be proved and remission sought for

Q 10. Goods manufactured or produced in India, which were earlier exported and thereafter imported into India will be treated at par with other goods imported into India. Is the proposition correct or any concession is provided on such import? Discuss briefly.

Ans: The given proposition is correct i.e., goods produced in India, which were earlier exported and thereafter imported into India will be treated at par with other goods imported into India [Section 20 of the Customs Act, 1962]. However, the following concessions are being provided in this regard:

- (i) Maximum import duty will be restricted to duty drawback or rebate availed or central excise duty not paid at the time of export.
- (ii) Where the goods were originally exported for repairs, the duty on re- importation is restricted to the fair cost of repairs including cost of materials used in repairs whether such costs are actually incurred or not, insurance and freight charges, both ways done abroad.

The above two concessions are given subject to the condition that:

- (a) the re-importation is done within 3 years or 5 years if time is extended.
- (b) the exported goods and re-imported goods must be the same.

In case of point (ii) above, the ownership of the goods should also not have changed.

However, these concessions would not be applicable if-

- re-imported goods had been exported by EOU

- *re-imported goods had been exported from a public/private warehouse*
 - *the process of repairs to which the re-imported goods had been subjected to abroad amounts to manufacture*
- (iii) *When exported goods come back for repairs and re-export, the re- imported goods can avail exemption from paying of import duty subject to the following conditions:*
- *the re-importation is for repairs only*
 - *the time limit is 3 years. In case of Nepal, such time-limit is 10 years.*
 - *the goods must be re-exported after repairs*
 - *the time limit for export is 6 months (extendable to one year).*

Chapter 1: Introduction & Levy of Custom Duty

Multiple Choice Questions

1. Customs duty shall be levied at such rates as may be prescribed under Customs Tariff Act, 1975, or any other law in force on goods:

- a. Imported into India by any person other than Government
- b. Exported from India by any person other than Government
- c. Imported into or exported from India by government
- d. All of the above

Ans: d

2. The basic condition for levy of Customs Duty is:

- a. There must be import or export of goods
- b. There must be import or export of services
- c. There must be import or export of goods or services or both
- d. All of the above

Ans: a

3. As per Customs Act, 1962, Conveyance includes:

- a. Vessel

- b. Aircraft*
- c. Vehicle including railway vehicle*
- d. All of the above*

Ans: d

4. As per section 2(3) of Customs Act, 1962, Baggage includes:-

- a. Unaccompanied baggage*
- b. But does not include Motor Vehicles*
- c. Both a & b*
- d. None of the above*

Ans: c

5. Territorial water of India extends upto:

- a. 24 nautical miles into the sea from the appropriate base line*
- b. 24 nautical miles*
- c. 12 nautical miles into the sea from the appropriate base line*
- d. 12 nautical miles*

Ans: c

6. In case of import of goods, taxable event occurs when:

- a. Goods crosses the territorial water
- b. Goods crosses the customs barrier
- c. Goods goods have been dispatched by the supplier
- d. Goods become the part of land mass of India

Ans: b

7. Taxable event in case of warehoused goods arises when:

- a. Into bond bill of entry is filed
- b. Ex bond bill of entry is filed
- c. Goods deposited in warehouse for storage
- d. All of the above

Ans: b

8. The term Export with its grammatical variation & cognate expression means:

- a. Supply of goods to a recipient located outside India
- b. Supply beyond territorial water
- c. Both a & b above
- d. Taking out of India to a place outside India

Ans: d

9. The process of Export is said to be completed when the goods:

- a. Reached the destination port
- b. Crosses the Indian Port
- c. Crosses the Indian Territorial water
- d. Crosses the Indian Customs Water

Ans: c

10. As per Customs Act, 1962, the term "Import" with its grammatical variation and cognate expression means:

- a. Purchase from foreign country
- b. Supplier is located outside India
- c. Bringing into India from a place within India
- d. Bringing into India from a place outside India

Ans: d

Chapter 2 – Date for Determination of Duty rate & Tariff value, Assessment and types of duties

Exercise Questions & Answers

Q 1. Write a short note on the applicability of safeguard duty under the Customs Tariff Act, 1975 on articles imported by EOU/SEZ unit and cleared as such into domestic tariff area (DTA).

Ans: Section 8B(2A) of Customs Tariff Act, 1975, provides for levy of safeguard duty on articles imported by an 100% EOU/unit in a SEZ that are cleared as such into DTA. In such cases, safeguard duty shall be levied on that portion of the article so cleared as was leviable when it was imported into India.

Q 2. What will be the dates of commencement of the definitive anti-dumping duty in the following cases under section 9A of the Customs Tariff Act, 1975 and the rules made thereunder:

- I. where no provisional duty is imposed;
- II. where provisional duty is imposed;
- III. where anti-dumping duty is imposed retrospectively from a date prior to the date of imposition of provisional duty.

Ans: The Central Government has power to levy anti-dumping duty on dumped articles in accordance with the provisions of section 9A of the Customs Tariff Act, 1975 and the rules framed thereunder.

- i. In a case where no provisional duty is imposed, the date of commencement of anti-dumping duty will be the date of publication of notification, imposing anti-dumping duty under section 9A(1), in the Official Gazette.
- ii. In a case where provisional duty is imposed under section 9A(2), the date of commencement of anti-dumping duty will be the date of publication of notification, imposing provisional duty under section 9A(2), in the Official Gazette.
- iii. In a case where anti-dumping duty is imposed retrospectively under section 9A(3) from a date prior to the date of imposition of provisional duty, the date of commencement of anti-dumping duty will be such prior date as may be notified in the notification imposing anti-dumping duty retrospectively, but not beyond 90 days from the date of such notification of provisional duty.

Q 3. With reference to section 9AA of Customs Tariff Act, 1975, state briefly the provisions of refund of anti-dumping duty ?

Ans: According to the provisions of section 9AA of the Customs Tariff Act, 1975, where an importer proves to the satisfaction of the Central Government that he has paid any anti-dumping duty imposed on any article, in excess of the actual margin of dumping in relation to such article, he shall be entitled to refund of such excess duty. However, the importer will not be entitled for refund of provisional anti-dumping duty under section 9AA as the same is refundable under section

9A(2) of the said Act. Refund of excess anti-dumping duty paid is subject to provisions of unjust enrichment – *Automotive Tyre Manufacturers Association v. Designated Authority* 2011 (263) ELT 481 (SC).

Q 4. With reference to section 9A(1A) of the Customs Tariff Act, 1975, mention the ways that constitute circumvention of antidumping duty imposed on an article which may warrant action by the Central Government.

Ans: As per section 9A(1A) of the Customs Tariff Act, 1975, following are the ways that would constitute circumvention (avoiding levy of duty by unscrupulous means) of antidumping duty imposed on an article that may warrant action by the Central Government:

- (i) altering the description or name or composition of the article subject to such anti-dumping duty,
 - (ii) import of such article in an unassembled or disassembled form,
 - (iii) changing the country of its origin or export, or
 - (iv) any other manner, whereby the anti-dumping duty so imposed is rendered ineffective.
- In such cases, investigation can be carried out by Central Government and then anti dumping can be imposed on such articles.

Q 5. When shall the safeguard duty under section 8B of the Customs Tariff Act, 1975 be not imposed? Discuss briefly.

Ans: The safeguard duty under section 8B of the Customs Tariff Act, 1975 is not imposed on the import of the following types of articles:

- i. Articles originating from a developing country, so long as the share of imports of that article from that country does not exceed 3% of the total imports of that article into India;
- ii. Articles originating from more than one developing country, so long as the aggregate of imports from developing countries each with less than 3% import share taken together does not exceed 9% of the total imports of that article into India;
- iii. Articles imported by a 100% EOU or units in a Special Economic Zone unless the duty is specifically made applicable on them or the article imported is either cleared as such into DTA or used in the manufacture of any goods that are cleared into DTA. 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.

Q 6. What are the conditions required to be fulfilled by the importer to make the imported goods eligible for preferential rate of duty prescribed by the Central Government by notification under section 25 of the Customs Act, 1962?

Ans: The Government may by notification under section 25 of the Customs Act, 1962 prescribe preferential rate of duty in respect of imports from certain preferential areas. The importer will

have to fulfill the following conditions to make the imported goods eligible for preferential rate of duty:

- At the time of importation, he should make a specific claim for the preferential rate.
- He should also claim that the goods are produced or manufactured in such preferential area.
- The area should be notified under section 4(3) of the Customs Tariff Act, 1975 to be a preferential area.
- The origin of the goods shall be determined in accordance with the rules made under section 4(2) of the Customs Tariff Act, 1975.

Determination of Origin' is important to allow concessional rate of customs duty. Generally, as per the rules (a) if the goods are un-manufactured, it should be grown or produced in that area (b) If it is fully manufactured in that country, it should be manufactured from material produced or with un-manufactured materials from that country. (c) if it is partially manufactured in that country, final process should be completed in that country and at least specified percentage of expenditure on material or labour should be in that country.

Q 7. Determine the customs duty payable under the Customs Tariff Act, 1975 including the safeguard duty of 30% under section 8B of the said Act with the following details available on hand:

Assessable value (including landing charges) of Sodium Nitrite imported from a developing country from 26th February, 2017 to 25th February, 2018 (both days inclusive)	Rs. 30,00,000
Share of imports of Sodium Nitrite from the developing country against total imports of Sodium Nitrite to India	4%
Basic custom duty	10%
Integrated tax under section 3(7) of the Customs Tariff Act, 1975.	12%
Social welfare surcharge	10%
Note: Ignore GST compensation cess.	

Ans: Computation of customs duty and integrated tax payable thereon

Particulars	Amount (In Rs.)
Assessable value of sodium nitrite imported	3000000
Add: Basic custom duty @ 10% (Rs.30,00,000 × 10%)	300000.00
Safeguard duty @ 30% on ` 30,00,000 [Safeguard duty is imposable in the given case since share of imports of sodium nitrite from the developing country is more than 3% of the total imports of sodium nitrite into India (Proviso to section 8B(1) of the Customs Tariff Act, 1975)]	900000.00
Social welfare surcharge @ 10% x Rs. 3,00,000	30000.00
Total	4230000

Integrated tax leviable under section 3(7) of Customs Tariff Act (Rs. 42,30,000 × 12%)	5,07,600
Total Custom Duty Payable	1737600.00

Multiple Choice Question : Part I

1. Mr. Parekh imported readymade garments from China. The goods were dispatched by the supplier on 10/04/2018. The vessel crosses the territorial water on 14/04/2018 and reaches the customs station on 15/04/2018. The entry inward was granted by the customs officer on 16/04/2018 and bill of entry was filed by Mr. Parekh on 17/04/2018. Which is the relevant date for determining the rate of duty and tariff value?

- a. 14/04/2018
- b. 15/04/2018
- c. 16/04/2018
- d. 17/04/2018

Ans:- d

2. Calculate the amount of customs duty payable by the M/s Jupiter Ltd. From the following transactions. Imported machineries from Japan on 11/3/18 - ₹ 500000/- & duty rate on that date was - 10%. Goods arrived at the Indian Customs Airport on - 22/03/18, rate changes to - 12.5% Bill of entry presented by M/s Jupiter Ltd. on 20/03/18 & duty rate on that date was - 15%

- a. ₹ 50000
- b. ₹ 62500
- c. ₹ 75000
- d. ₹ 500000

Ans:- b

3. Punjab Sweets exported its products valuing ₹ 2500000 but not u/s 50 on 5.5.18, the rate of duty was 8%. The proper officer granted Let export order on 12.5.18 when rate was 10%. The shipping bill was filed on 8.5.18, duty rate on that date changes to 12.5%. The export duty was paid on 15.5.18 by Punjab Sweets when the rate 12%. Identify the rate of duty applicable to Punjab Sweets.

a.8%

b.10%

c.12.5%

d.12%

Ans:- d

4. The proper officer of customs shall pass a speaking order, if the importer/exporter does not confirm his acceptance on re-assessment, within:

a. One month from the date of re- assessment of bill of entry or shipping bill, as the case may be

b. 30 days from the date of re- assessment of bill of entry or shipping bill, as the case may be

c. 15 days from the date of re- assessment of bill of entry or shipping bill, as the case may be

d. 60 days from the date of re-assessment of bill of entry or shipping bill, as the case may be

Ans:- c

5. The importer or exporter shall be liable to pay interest, on any amount payable to Central Government when finally assessed or re-assessed duty amount is more than duty provisionally paid, at the rate of:

a. 24% p.a.

b. 15% p.a.

c. 18% p.a.

d. 12% p.a.

Ans:- b

6. If the finally assessed duty or re-assessed duty is less than duty provisionally paid, then the importer or exporter is entitled to refund along with interest on such unrefunded amount, if the amount is not paid within three months from the date of final or re-assessment of duty. The interest rate in such case shall be:

a. 6% p.a.

b. 10% p.a.

c. 5% p.a.

d. 12% p.a.

Ans:- a

7. If any importer or exporter or his authorized representative or customs broker contravenes any provision of Custom Finalisation of Provisional Assessment regulation or abets such contravention, or fails to comply with any provision of these regulations, he shall be liable to penalty which may extend to:

a. One lakh rupees

b. One lakh & fifty thousand rupees

c. Fifty thousand rupees

d. Ten thousand rupees

Ans:- d

8. Mr. Amit provided coaching service through video lectures on pen drive along with books in a kit. He Exported his services to Dubai and wants to know the duty rate to be imposed on export service. Tariff rate on coaching service is 18% and on books the rates are nil. But the exporter does not have any evidence to produce before the officer for different rates. The service of Mr. Vishal will be chargeable at the rate of:

a. 18%

b. Nil rate

c. 0%

d. 18% on pen drive value & nil rate on books value

Ans:- a

9. Any accessories supplied with main article which satisfy the condition of Accessories (condition) rule, 1963 are chargeable to duty at the:

a. Rate of that accessories

b. Same rate as that of the main article

c. Highest of the two rates

d. Either a or b above

Ans:- b

10. In the context of Customs Act, 1962, the term "pilfer" means:

a. to steal

b. petty theft

c. both a & b above

d. none of the above

Ans:- c

11. The duty is not payable by the importer in case of pilfered goods only if any goods are pilfered:

a. after unloading thereof

b. after unloading thereof but before order of clearance by proper officer for deposit in warehouse or home consumption

c. after clearance of order by proper officer

d. before unloading thereof

Ans:- b

12. The relevant date for duty payable on pilfered goods is the date of:

a. filing of bill of entry

b. order of clearance

c. filing of Import General Manifest or Report

d. granting entry inward

Ans:- c

13. If the pilfered goods are restored to the importer then importer is liable to pay duty at the rate prevailing on the date of:

- a. filing bill of entry by the importer
- b. filing import manifest or report by the person-in-charge
- c. restoration by the port authority to the importer
- d. order of clearance by the proper officer

Ans:- a

14. The abatement of duty on damaged or deteriorated goods can be granted by:

- a. Assistant Commissioner
- b. Deputy Commissioner
- c. Joint Commissioner
- d. a or b above

Ans:- d

15. If any warehoused goods had been damaged at any time before clearance for home consumption, the abatement is available only if such damaged is:

- a. on account of any accident
- b. due to willful act, negligence or default of owner, his employee or agent
- c. not due to willful act, negligence or default of owner, his employee or agent
- d. Both a and c above

Ans:- d

16. Mr. Purohit imported some goods from Germany the value of which is ₹ 10 lakhs and

duty is payable at the rate of 20%. Some goods has been damaged before the order of

clearance for home consumption has been granted by the proper officer. The value of goods after damages is ₹ 8 lakhs. Calculate the duty payable by Mr. Purohit at the time of clearance of goods for home consumption.

- a. ₹ 2 lakhs
- b. ₹ 1.6 lakhs
- c. ₹ 0.40 lakhs
- d. ₹ 0.50 lakhs

Ans:- b

17. Remission of duty can be granted by Assistant Commissioner on any imported goods that are:

- a. lost or stolen
- b. lost or destroyed
- c. pilfered
- d. Either a or b above

Ans:- b

18. Mr. Ajay found an abandoned ship along with some goods in high seas. He brought that ship along with him while returning to India. The custom officer imposed duty on such ship as if they are imported into India but Mr. Ajay denies paying the duty on the ground that it was available freely in the high seas. State whether the contention of Mr. Ajay is correct in law

- a. Correct
- b. Incorrect:- as all derelict, jetsam, flotsam & wreck goods brought into India are treated as imported goods and liable to duty unless proved otherwise

Ans:- b

Part - 2 Types of Duty

1. For the purpose of valuation under ACD 3(1), the value of imported article shall be the aggregate of:

- a. Transaction value u/s 14 (1) or Tariff value u/s 14(2) and Basic Customs Duty u/s 12
- b. Countervailing duty referred to in section 9
- c. Duty referred to in sub-section (3) &(5)
- d. All of the above

Ans:- a

2. For the purpose of valuation under ACD 3(1), the value of imported article shall not include:

- a. Transaction value or Tariff value [section 14]
- b. Basic Customs Duty [section 12]
- c. Social welfare surcharge on above
- d. Safeguard duty [section 8B and 8C]

Ans:- d

3. Mr. Palash imported some article on which retail sale price is required to be declared under “Legal

Metrology Act, of USA” and for the like article produced or manufactured in India, Central

Government has fixed a tariff value, the value of imported article shall be deemed to be such:

- a. Retail sale price
- b. Retail sale price less abatement if any

c. Transaction value

d. Tariff value

Ans:- d

4. Which of the following duties or taxes included for the calculation of duty referred to in section 3(5)?

a. Basic Customs Duty u/s 12

b. ACD 3(1) or 3(3)

c. Transaction value or Tariff value

d. All of the above

Ans:- d

5. Mr. Ajay imported sewing machines from Japan and warehoused such goods by filing into bond bill of entry. When the goods were in warehouse Mr. Ajay sold it to Mr. Vijay for ₹ 10lakhs. The imported values of such goods were as follows:

Transaction value section 14(1) - ₹ 7

lakhs BCD @ 10% on above - ₹ 70000

ACD 3(1) on above - ₹ 77000

Integrated Tax u/s 3(7) - - ₹ 126000

Calculate the value of such goods for the purpose of section 3(7) of Customs Act

a. ₹ 1000000

b. ₹ 847000

c. ₹ 973000

d. ₹ 700000

Ans:- a

6. Transaction value for the purpose calculating ACD on warehouse sale before clearance for home consumption or export, where only part of the warehoused goods has sold for more than once, shall be:

a. the transaction value of first of such transaction

b. the transaction value which is higher of such transaction

c. the transaction value of last of such transaction

d. none of the above

Ans:- c

7. Mr. Sanjay imported goods from Nepal valuing ₹ 10,50,000 which is inclusive of all duties & taxes. Mr. Sanjay deposited such goods in warehouse. While the goods were in warehouse Mr. Sanjay sold them to Mr. Ajay for ₹ 11,75,000 who in turn sold these goods to Mr. Vinay for ₹ 12,35,000 and such goods were further sold by Mr. Vinay to Mr. Pranay for ₹ 12,25,000. Determine the value of such imported goods

a. ₹ 1050000

b. ₹ 1175000

c. ₹ 1235000

d. ₹ 1225000

Ans:- d

8. FOB price of imported goods = \$4,00,000 Cost of transportation = ₹ 15000

Cost of Insurance = ₹ 5000

BCD rate = 12%,

Social welfare surcharge = 10%

GST on like article in India = 28%

The exchange rate notified by RBI = 1\$ = ₹ 62, CBIC rate = 1\$ = ₹ 62.50

Answer the following with respect to above

i. Calculate Basic Custom Duty

a. ₹ 30,02,400

b. ₹ 29,76,000

c. ₹ 31,27,500

d. ₹ 29,78,400

Ans:- a

ii. Determine the Assessable value or

CIF value.

a. ₹25000000

b. ₹24800000

c. ₹25020000

d. ₹24820000

Ans:- c

iii. Calculate the GST value

a. ₹ 8639306

b. ₹ 8723373

c. ₹ 8633706

d. ₹ 8636706

Ans:- b

Part 3 : Audit

1. The proper officer may carry out audit:

a. In his office

b. In the premises of the Auditee

c. Both a & b above

d. None of the above

Ans:- c

2. The proper officer shall give advance notice to the auditee before start of audit under customs, not less than:

a. 30 days

b. 25 days

c. 15 days

d. 60 days

Ans:- c

3. Where the audit is conducted at the premises of the auditee , the proper officer shall complete audit within:

a. 30 days from the date when audit documents are made available

b. 30 days from the date of starting of the audit

c. 15 days from the date when audit documents are made available

d. 15 days from the date of starting of the audit

Ans:- b

4. Books of account includes ledgers, daybook, cashbook, other accounts related records kept in:

a. written form

b. printed form

c. electronic form

d. any of the above

Ans:- d

Chapter 3 – Importation and Exportation Procedure

Exercise Questions & Answers

Q 1. 'Queen Marry', a vessel containing the goods imported by XML Ltd. entered the Indian Territorial waters on 24.05.20XX. It arrived at the customs port on 26.05.20XX and the Arrival manifest or import manifest was submitted on 29.05.20XX. However, the entry inwards were given to the vessel on 04.06.20XX. An 'Into Bond' Bill of Entry was presented by XML Ltd. on 06.06.20XX and thus, the goods were classified, valued and stored in the bonded warehouse.

XML Ltd. presented the 'Ex-Bond' Bill of Entry in respect of such goods on 01.07.20XX and cleared the goods from the bonded warehouse on 05.07.20XX. The rate of customs duty was increased from 8% to 10% on 04.07.20XX.

At what rate should XML Ltd. pay the customs duty on the goods imported by it?

Ans: As per section 15(1)(b) of the Customs Act 1962, the relevant date for determination of rate of duty and tariff valuation in case of warehoused goods is the date when a bill of entry for home consumption (or ex-bond bill of entry, if goods were warehoused after entry into India) in respect of such goods has been presented under section 68 of the Customs Act, 1962. Therefore, in the given problem, the relevant date for determination of rate of duty is 01.07.20XX (date of presentation of ex-bond bill of entry) and not 05.07.20XX when the goods are actually removed from the warehouse. Thus, the customs duty will be payable at 8% and not 10%.

Q 2. Write a brief note on self-assessment in customs under the Customs Act, 1962.

Ans: The provisions relating to self-assessment of duty, contained in the section 17 of the Customs Act, 1962, are as follows:

- (i) The importer or the exporter has to self-assess the duty leviable on goods imported or exported.
- (ii) The proper officer may verify **the entries made under section 46 or section 50 and the self-assessment of goods** and for this purpose, examine or test any imported goods or export goods or such part thereof as may be necessary. **Further, the selection of cases for verification shall primarily be on the basis of risk evaluation through appropriate selection criteria.**
- (iii) After verification, if it is found that the self-assessment has not been done correctly, the proper officer may re-assess the duty leviable on such goods.
- (iv) If the order of the reassessment is contrary to the self-assessment, the proper officer should pass a speaking order on the re-assessment within 15 days from the date of reassessment.

Q 3. State briefly the provisions of the Customs Act, 1962 relating to payment of interest in case of provisional assessment.

Ans: *The provisions of the Customs Act, 1962 relating to payment of interest in case of provisional assessment are as under:*

- I. Interest payable by the importer/exporter on amount payable to the Central Government, consequent to the final assessment/re- assessment:*
 - a. The importer or exporter shall be liable to pay interest, on any amount payable to the Central Government, consequent to the final assessment order/re-assessment order under section 18(2).*
 - b. The interest shall be payable at the rate prescribed under section 28AA of the Customs Act, 1962. Presently, the rate of interest has been fixed @ 15% p.a.*
 - c. The interest shall be payable from the first day of the month in which the duty is provisionally assessed till the date of payment thereof.*

- II. Interest payable by the Central Government to the importer/exporter on amount refundable to the importer/exporter on final assessment of duty/re-assessment of duty:*
 - (a) Subject to the provisions of unjust enrichment, if any refundable amount is not refunded to the importer/exporter on final assessment of duty or re-assessment of duty, within three months from the date of final assessment of duty or re- assessment of duty.*
 - (b) The interest shall be payable at the rate prescribed under section 27A of the Customs Act, 1962. Presently, the rate of interest has been fixed @ 6% p.a.*
 - (c) The interest shall be payable from the first day immediately succeeding the period of three months from the date of assessment of duty finally or re-assessment of duty till the date of refund of such amount.*

Q 4. What is meant by 'boat notes'?

Ans: *In certain specified customs ports, ships cannot come to the shore for unloading or loading, while in other ports, it is possible that not all ships arriving in the port get a berth. Further, sometimes, small import cargo is to be unloaded from a ship or small export cargo is to be loaded on a ship. In all the aforesaid cases, 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.*

Section 35 of the Customs Act stipulates that no imported goods shall be water borne for being loaded in any vessel, and no export goods which are not accompanied by a shipping bill, shall be water borne for being shipped unless the goods are accompanied by a boat note in the prescribed form.

However, the CBIC may, by notification 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.

Q 5. Discuss the provisions regarding transit of goods and transshipment of goods without payment of duty under the Customs Act.

Ans: Section 53 provides that 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, may be allowed by the proper officer to be so transited without payment of duty subject to such conditions, as may be prescribed. However, the goods should not have been prohibited under section 11 of the Customs Act. Transshipment of goods refers to transfer of goods from one conveyance to another. It may be from one port to any other major port or airport in India.

Section 54 provides that:

- (1) where any goods imported into a customs station are intended for transshipment, the person-in-charge of conveyance will have to present a bill of transshipment to the proper officer in the prescribed form;
- (2) where any goods imported into a customs station are mentioned in the arrival manifest or import manifest or import report, as for transshipment 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.
- (3) where any goods imported into a customs station are mentioned in the arrival manifest or import manifest or import report for transshipment 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 transshipment of the goods to such customs station, the proper officer may allow the goods to be transhipped, without payment of duty.

Q 6. Explain in brief the duty exemption to baggage under section 79(1) of the Customs Act, 1962.

Ans: Section 79(1) of the Customs Act, 1961 exempts the bona fide baggage of the passengers. Following baggage is passed free of duty-

- (i) articles in the baggage of a passenger/crew that have been in their use for such minimum period as may be prescribed by the Baggage Rules, 2016.
- (ii) articles for use by passenger or his family or bona fide gifts or souvenir, provided that the value of each such article and the total value of all such articles does not exceed the limits prescribed in the aforesaid Baggage Rules.

Q 7. Explain the obligation cast on person-in-charge on arrival of vessels or aircrafts in India under section 29 of the Customs Act, 1962.

Ans: Section 29(1) of the Customs Act, 1962 provides that 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:

(i) for the first time after arrival in India; or

(ii) 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 custom airport, as the case may be, unless permitted by the Board.

Exception:-Section 29(2) provides that the above provisions are not applicable 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. However, in such a case the person-in-charge of such vessel or aircraft has the following obligations cast on him:

(i) He shall have to report the arrival of the vessel/landing of the aircraft to the nearest customs officer or the officer-in-charge of a police station and shall produce the log book belonging to the vessel or the aircraft if demanded.

(ii) He 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. However, passengers and crew can be allowed to depart from the vicinity of, or the goods can be removed from, the vessel/aircraft if the same is necessary for reason of health, safety or preservation of life or property.

(iii) He shall comply with any directions given by any such officer with respect to any such goods.

Q 8. Explain briefly the meaning of entry inwards and entry outwards with reference to the customs law.

Ans: Entry inwards is a permission granted by the proper officer to a vessel after which the master of the vessel permits unloading of the imported goods. Such entry inwards is granted only after master of the vessel delivers import general manifest to the proper officer or the proper officer is satisfied that there was sufficient cause for not delivering it. Entry inwards, however, is not required for unloading of baggage accompanying a passenger or a member of the crew, mail bags, animals, perishable goods and hazardous goods [Section 31 of the Customs Act, 1962].

Entry outwards is a permission granted by the proper officer to a vessel to go on a foreign voyage to the port of consignment. The master of the vessel permits loading of export goods only after the proper officer grants entry outwards to the vessel. However, entry outwards is not required for loading of baggage and mail bags [Section 39 of the Customs Act, 1962].

Q 9. Which class of importers is required to pay customs duty electronically? Name the dedicated payment gateway set up by the Board (CBIC) to use e-payment facility easily by an importer.

Ans: E-payment of customs duty is mandatory for-

- (i) Importers paying customs duty of Rs. 1,00,000 or more per bill of entry
- (ii) Importers registered under Accredited Client Programme

Q 10. What is the new name of Customs House Agent?

Ans: Customs House Agents are now known as "Customs Brokers" in accordance with the global practice and internationally accepted nomenclature.

Q 11. Differentiate between Inland Container Depots (ICD) and Container Freight Stations (CFS).

Ans:

Inland Container Depot (ICD)	Container Freight Station(CFS)
(i) ICD is a customs station like a port or air cargo unit for the purpose of unloading of imported goods and loading of export goods or any class of such goods.	(i) CFS is only a custom area located in the jurisdiction of a Principal Commissioner/ Commissioner of Customs exercising control over a specified custom port, airport, land customs station/ICD. It is an extension of a customs station set up with the main objective of decongesting the ports.
(ii) ICD can have an independent existence as it is a 'self contained customs station'.	(ii) CFS by itself cannot have an independent existence; it has to be linked to a customs station within the jurisdiction of the Principal Commissioner/ Commissioner of Customs.
(iii) Customs manifests, bills of entry, shipping bills and other declarations are filed in an ICD. Further, assessment and all the activities related to clearance of goods for home use, warehousing, temporary admissions, re-export, temporary storage for onward transit and outright export, transshipment, etc. take place in an ICD.	(iii) In CFS, only a part of the customs process- mainly the examination of goods- is normally carried out and goods are stuffed into containers and de-stuffed therefrom. Aggregation/ segregation of cargo also takes place at CFS.

Q 12. ONGC oil rig and a foreign oil rig are drilling oil beyond 12 nautical miles in the sea in the Exclusive Economic Zone of India. Which of the two is a foreign going vessel? Explain.

Ans: *Foreign going vessel or aircraft is one that carries passengers and (or) goods between ports/airports in India and out of India. It does not matter if it touches any intermediate port/airport in India. The following are also included in the definition:*

- (a) A foreign naval vessel doing naval exercises in Indian waters.*
- (b) A vessel engaged in fishing or any other operation (like oil drilling by O.N.G.C. oil rig) outside territorial waters.*
- (c) A vessel or aircraft going to a place outside India for any purpose whatsoever [section 2(21)].*

However, it is to be noted that Customs Act, 1962 has been extended to the Continental Shelf and Exclusive Economic Zone of India for the purposes of extraction or production of mineral oils and supply of any goods as defined in section 2(22) of the Customs Act in connection with such activities vide Notification No. SO 189(E) dated 07.02.2002.

Further, In Aban Loyd Chiles v. UOI (2008) 227 ELT 24 (SC), it was held that oil rigs located beyond territorial waters of country but within exclusive economic zone are deemed to be in Indian territory and not a foreign going vessel as in that zone/area country's fiscal laws are applicable.

Hence, both the ONGC oil rig and the foreign oil rig will not be 'foreign going vessel'.

Chapter 3 : Importation and Exportation Procedure

Multiple Choice Question

1. Entry outward means general permission by customs authority to the master of vessels for allowing him to:

- a. load the cargo
- b. load passenger
- c. load mail bags
- d. All of the above

Ans:- a

2. Container Freight Station is a place where only a part of the customs process mainly with the examination of goods is carried out, is set up with the main objective of:

- a. Decongesting the Land Customs Station
- b. Decongesting the Ports
- c. Decongesting the ICD's
- d. Decongesting the Customs Airport

Ans:- b

3. Container Freight Station can carried out customs processes such as:

- a. Processing of Import Manifest & Export Manifest
- b. Processing of Bill of entry
- c. Examination of goods

d. All of the above

Ans:- c

4. In relation to Vessel, Person-in-charge is known as:

a. Sailor of the ship/vessel

b. Guard or person having the chief direction of the vessel

c. Master of the Vessel

d. Commander of the Vessel

Ans:- c

5. which of the following person is included as a Person-in-Charge

a. Master of the Vessel

b. Commander or Pilot in charge of aircraft

c. The Conductor, guard or any other person having the chief direction of the train

d. All of the above

Ans:- d

6. Any goods, the import or export of which is subject to any prohibition under the Customs Act or any Other law for the time being in force, is known as:

a. Restricted Goods

b. Ineligible Goods

c. Prohibited Goods

d. Both a & c above

Answer: c

7. Select the appropriate alternative from the following in relation to modes used for importation or exportation of goods.

i) Goods can be imported/exported by land/sea/air

ii) Goods can be imported/exported through post

iii) Goods can be imported by passenger as their baggage

iv) Ship/aircraft stores which are considered to be imported/exported and charged to customs duty

v) Motor Vehicle imported as baggage

a. All of the above

b. only i & ii above

c. i, ii, iii & iv above

d. i, iii & v above

Ans:- c

8. The document which contains the detailed information to customs about goods in the vessels/aircraft/ vehicle is called as

a. Arrival manifest or Import General Manifest /Import Manifest

b. Bill of entry

c. Import Report

d. Both a & c above

Ans:- a

10. Mr. X is a master of vessel. The vessel coming to India from China What is the time limit within which Mr. X need to submit the import general manifest

- a. any time prior to the arrival of the vessel
- b. any time after to the arrival of the vessel
- c. within 12 hours after its arrival
- d. All of the above

Ans:- a

9. Import Report is required to be delivered when goods are imported by a vehicle. The time limit to submit is:

- a. At any time before arrival of the vehicle at the customs station
- b. Within twelve hours before the arrival of the vehicle at the customs station
- c. Within twelve hours after the arrival of the vehicle at the customs station
- d. At any time after arrival of the vehicle at the customs station

Ans:- c

10. which of the following goods allow to unloaded from vessel even master of vessel not receives entry inward

- a. Baggage of crew
- b. mail bags
- c. Animals
- d. All of the above

Ans:- d

11. Bill of entry can be presented for:

- a. Home Consumption
- b. Warehousing i.e. Into Bond
- c. Clearance from warehouse for Home Consumption i.e. Ex-bond
- d. All of the above

Ans:- d

12. The importer who present a bill of entry shall ensure:

- a. The accuracy & completeness of the information given therein
- b. The authenticity and validity of any document supporting it
- c. Both a & b
- d. None of the above

Ans:- c

13. The importer who fails to pay the duty within the time so specified, he shall be liable to pay interest at the rate of----- on the amount of duty not paid or short paid till the date of its payment.

- a.18%
- b.12%
- c.15%
- d.24%

Ans:- c

14. Within -----from the date of unloading goods should be cleared, warehoused or transshipped

- a. Within 5 days
- b. Within 10 days
- c. Within 15 days
- d. Within 30 days

Ans:- d

15. Which of the following goods can be sale by port trust authority even if 30 days from unloading has not Been completed

- a. Animal
- b. Hazardous goods
- c. arms and ammunition
- d. all of the above

Ans:- d

16. Mr. A can store the goods in public warehouse under the provision of warehousing without warehousing For -----

- a. One year
- b. Six months
- c. One month
- d. 30 days

Ans:- d

17. Principal Commissioner of Customs or Commissioner of Customs may extend the period of storage of goods stored in warehouse without warehousing provisions, for a further period:

a. Not exceeding 180 days at a time

b. Not exceeding 30 days at a time

c. Not exceeding 60 days at a time

d. Not exceeding 90 days at a time

Ans:- b

18. The application by exporter to customs officer for clearance of goods for exportation is known as:

a. Shipping Bill

b. Bill of Export

c. Bill of Lading

d. Either a or b above

Ans:- d

Chapter 4: Valuation

⇒ Questions for Practice in case of Import

Example: A material was imported by air at CIF price of 5,000 US\$. Freight paid was 1,500 US\$ and insurance cost was 500 US\$. The banker realized the payment from importer at the exchange rate of Rs. . 71 per dollar. Central Board of Excise and Customs notified the exchange rate as Rs. 70 per US\$. Find the value of the material for the purpose of levying duty.

Solution:

Particulars	Amount
CIF value	5000 US \$
Less: Freight	(1500 US \$)
Less: Insurance	(500 US \$)
Therefore, FOB value	3000 US \$
Assessable value for Customs purpose	
FOB value	3000 US \$
Add: Freight (20% of FOB value) [Note 1]	600 US \$
Add: Insurance (actual)	500 US \$
CIF for customs purpose	4100 US \$
Exchange rate as per CBIC [Note 2]	Rs. 70 / US \$
Assessable value (70 x 4100 US \$)	Rs. 2,87,000

Notes:

1. If the goods are imported by air, the freight cannot exceed 20% of FOB price [Fifth proviso to rule 10(2) of the Customs (Determination of Value of Imported Goods) Rules, 2007].
2. Rate of exchange determined by CBIC is considered [clause (a) of the explanation to section 14 of the Customs Act, 1962]

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

- (i) Cost of the machine at the factory of the exporter
- 10000 US\$
- (ii) Transport charges from the factory of exporter to the port for shipment
- 500 US \$
- (iii) Handling charges paid for loading the machine in the ship
- 50 US \$

- (iv) Buying commission paid by the importer
- 50 US \$
- (v) Freight charges from exporting country to India
- 1000 US \$
- (vi) Exchange rate to be considered: 1\$ = Rs. 70
- (vii) Actual insurance charges paid are not ascertainable

Solution: Computation of assessable value of the imported goods

Particulars	Amount
Cost of the machine at the factory	10000 \$
Transport charges up to port	500 \$
Handling charges at the port	50 \$
FOB	10550 \$
Freight charges up to India	1000\$
Insurance charges @ 1.125% of FOB [Note 1]	118.69 \$
CIF	11,668.69
CIF in Indian rupees @ Rs. 70/ per \$	Rs. 8,16,808.30
Assessable Value	Rs. 8,16,808.30
Assessable Value (rounded off)	Rs. 8,16,808.00

Notes:

- (1) Insurance charges have been included @ 1.125% of FOB value of goods [Third proviso to rule 10(2) of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007].
- (2) Buying commission is not included in the assessable value [Rule 10(1)(a)(i) of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007].

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

(i)	Price 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 of exporter @ 2% of price of machine, in Indian Rupees	
(v)	Date of bill of entry	24.10.20XX (Rate BCD 10%; Exchange rate as notified by CBIC Rs. 100 per UK Pound)

(vi)	Date of arrival of aircraft	20.10.20XX (Rate of BCD20%; Exchange rate as notified by CBIC ` 98 per UK Pound)
(vii)	Integrated tax leviable under section 3(7) of the Customs Tariff Act, 1975 is 12%	
(viii)	Insurance charges have been actually paid but details are not available.	

Compute the total customs duty and integrated tax payable by Foreign Trade International Ltd.

Note: Ignore GST Compensation Cess.

Solution: Computation of total duty and integrated tax payable

Particulars	Amount
Price of machine	8,000 UK pounds
Add: Design and development charges [Note 1]	500 UK pounds
Total	8,500 UK pounds
Total in rupees @ Rs. 100 per pound [Note 2]	850000
Add: Local agency commission [Note 1] (2% of 8000 UK pounds) = 160 UK pounds × Rs. 100	Rs. 16,000
FOB value as per Customs	8,66,000.00
Add: Air freight (8,66,000 × 20%) [Note 3]	1,73,200.00
Add: Insurance @ 1.125% of customs FOB [Note 4]	9,742.50
CIF Value	10,48,942.50
Assessable value (rounded off)	10,48,942.00
Add: Basic custom duty @ 10% [Note 5]	1,04,894.20
Add: Social Welfare Surcharge @ 10% on ` 1,04,894.20	10,489.42
Total	11,64,325.62
Add: Integrated tax leviable under section 3(7) @ 12% [Note 7]	1,39,719.07
Total duty and integrated tax payable (Rounded off) (Rs. 1,04,894.20+ Rs. 10,489.42+ Rs. 1,39,719.07)	2,55,102

Notes:

- Design and development charges paid in UK and commission paid to local agent (since it is not buying commission) are includible in the assessable value [Rule 10 of the Customs (Determination of Value of Imported Goods) Rules, 2007]
- The rate of exchange notified by the CBIC on the date of presentation of bill of entry has been considered [Section 14 of the Customs Act, 1962].
- If the goods are imported by air, the freight cannot exceed 20% of FOB price [Fifth proviso to rule 10(2) of the Customs (Determination of Value of Imported Goods) Rules, 2007].

4. Where the insurance charges are not ascertainable, such cost is taken as 1.125% of FOB value of the goods [Third proviso to Rule 10(2) of the Customs (Determination of value of Imported Goods) Rules, 2007].
5. Section 15 of the Customs Act, 1962 provides that rate of duty shall be the rate in force on the date of presentation of bill of entry or the rate in force on the date of arrival of aircraft, whichever is later.
6. Integrated tax leviable under section 3(7) of the Customs Tariff Act, 1975 is levied on the sum total of the assessable value of the imported goods, customs duties and applicable social welfare surcharge.

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

- (i) Assessable value of the imported equipment US \$ 10,100
- (ii) Date of bill of entry is 25.4.20XX. Basic customs duty on this date is 10% and exchange rate notified by the Central Board of Excise and Customs is US \$ 1 = Rs. 65
- (iii) Date of entry inwards is 21.4.20XX. Basic customs duty on this date is 20% and exchange rate notified by the Central Board of Excise and Customs is US \$ 1 = ` 70.
- (iv) Integrated tax payable under section 3(7) of the Customs Tariff Act, 1975: 12%
- (v) Social Welfare surcharge 10%

Make suitable assumptions where required and show the relevant workings and round off your answer to the nearest rupee. Note: Ignore GST Compensation Cess.

Solution: Computation of total customs duty and integrated tax payable

Particulars	Amount
Assessable value (\$ 10,100 x 65) [Note-1]	6,56,500.00
Add: Basic custom duty @ 10% [Note-2]	65,650.00
ADD: SWS @ 10% on Rs. 65650	6565
Total	728715
Add: Integrated tax under section 3(7) @ 12% [Note-3]	87,445.80
Total Customs duty and integrated tax payable (rounded off to nearest rupee)	1,59,660.00

Notes:

1. Rate of exchange notified by CBIC as prevalent on the date of filing of bill of entry would be the applicable rate [Proviso to section 14(1) of Customs Act,1962].

2. Rate of duty would be the rate as prevalent on the date of filing of bill of entry or entry inwards whichever is later. [Proviso to section 15 of the Customs Act, 1962].
3. Integrated tax leviable under section 3(7) of the Customs Tariff Act, 1975 is levied on the sum total of the assessable value of the imported goods, customs duties and applicable social welfare surcharge.

Example: Assessable value of an item imported is Rs. 1,00,000. Basic customs duty is 10%, integrated tax leviable under section 3(7) of the Customs Tariff Act is 12%, and social welfare surcharge is 10% on duty. Compute the amount of total customs duty and integrated tax payable.

Note: Ignore GST Compensation Cess.

Solution: Computation of total customs duty and integrated tax payable

Particulars	Amount
Assessable Value	1,00,000.00
Basic customs duty @ 10%	10,000.00
Add: Social Welfare surcharge @ 10% on Rs. 10,000	1000
Sub-total	111000
Integrated tax u/s 3(7) of the Customs Tariff Act @ 12% of Rs. 1,11,000	13,320.00
Total customs duty and integrated tax payable (BCD + SWS + IGST)	24,320.00

*Social Welfare surcharge is presently exempt on IGST and GST compensation cess.

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

- (i) Date of presentation of bill of entry: 20.6.20XX [Rate of BCD 20%; Inter-bank exchange rate: Rs. 61.60 and rate notified by CBIC Rs. 70].
- (ii) Date of arrival of aircraft in India: 30.6.20XX [Rate of BCD 10%; Inter-bank exchange rate: Rs. 61.80 and rate notified by CBIC Rs. 73.00].
- (iii) Rate of Integrated tax leviable under section 3(7) of the Customs Tariff Act: 12%. Ignore GST Compensation Cess.
- (iv) CIF value 2,000 US Dollars; Air freight 500 US Dollars, Insurance cost 100 US Dollars [Landing charges not ascertainable].
- (v) Social Welfare Surcharge 10%

Solution: Computation of total customs duty and integrated tax payable

Particulars	Amount
CIF value	2000 US \$
Less: Freight	(500 US \$)
Less: Insurance	(100 US \$)

FOB Value	1400 US \$
Add: Air Freight [Note1]	280 US \$
Add: Insurance (actual amount)	100 US \$
CIF Being assessable Value in US \$	1780 US \$
CIF Being assessable Value in INR (Conversion @ Rs. 70)	1,24,600.00
Assessable Value	1,24,600.00
Basic Custom Duty @ 10% (a) [Note 3]	12,460.00
Add: Social Welfare Surcharge @ 10% on 1,24,600 (b)	1,246.00
Sub-total	1,38,306.00
Integrated tax under section 3(7) (12% on Rs. 1,38,306) (c) [Note 4]	16,596.72
Total duty and integrated tax (a + b + c) (rounded off)	30,303.00

Notes:

- (1) If the goods are imported by air, the freight cannot exceed 20% of FOB price [Fifth proviso to Rule 10(2) of the Customs (Determination of Value of Imported Goods) Rules, 2007].
- (2) Rate of exchange notified by CBIC on the date of presentation of bill of entry would be the applicable rate. [Proviso to Section 14(1) of the Customs Act, 1962].
- (3) Rate of duty would be the rate as prevalent on the date of filing of bill of entry or arrival of aircraft, whichever is later [proviso to section 15 of the Customs Act, 1962].
- (4) Integrated tax leviable under section 3(7) of the Customs Tariff Act, 1975 is levied on the sum total of the assessable value of the imported goods, customs duties and applicable social welfare surcharge.

Example: 15000 chalices were imported for charitable distribution in India by XY Charitable Trust. The Trust did not pay either for the cost of goods or for the design and development charges, which was borne by the supplier. Customs officer computed its FOB value at USD 20,000 (including design and development charges), which was accepted by the trust. Other details obtained were as follows:

Particulars	Amount
Freight paid (air) (in USD)	4,500.00
Design & development charges paid in USA (in USD)	2,500.00
Commission payable to an agent in India (in Rs.)	12,500

Exchange rate notified by CBIC and rate of basic duty is as follows: Date of Bill of Entry - 08.09.20XX, BCD - 20 % Exchange Rate in Rs. 70 Date of arrival of aircraft - 30.09.20XX, BCD - 10%, Exchange Rate in Rs. 72 The inter-bank rate was 1 USD = Rs. 73	
Integrated tax payable u/s 3(7) of the Customs Tariff Act, 1975	12 %
Social Welfare surcharge as applicable	

Compute the amount of total customs duty and integrated tax payable on importation of chalices. Make suitable assumptions where required. Working notes should form part of your answer. Note: Ignore GST Compensation Cess.

Solution: Computation of total customs duty and integrated tax payable

Particulars	Amount
FOB value computed by Customs Officer (including design and development charges)	20,000 US \$
Exchange rate [Note 1]	Rs. 70 per \$
FOB value computed by Customs Officer (in rupees)	14,00,000
Add: Commission payable to agent in India	12500
FOB value as per customs	14,12,500.00
Add: Air freight (14,12,500 × 20%) [Note 2]	2,82,500.00
Add: Insurance (1.125% of 14,12,500) [Note 3]	15,890.63
CIF value for customs purposes	17,10,890.63
Assessable value	17,10,890.63
Add: Basic custom duty @ 10% (17,10,890.63 × 10%) - rounded off [Note 4]	1,71,089.00
Add: Social Welfare surcharge @ 10% on Rs. 1,71,089 rounded off	17,109.00
Total	18,99,088.63
Integrated tax leviable under section 3(7) of Customs Tariff Act, 1975 @ 12% (18,99,089 × 12%) [Rounded off] [Note 5]	2,27,890.00
Total customs duty and integrated tax payable (Rs. 1,71,089 + Rs. 17,109 + Rs. 2,27,890)	4,16,088.00

Notes:

1. Rate of exchange notified by CBIC on the date of filing of bill of entry has to be considered [Third proviso to section 14 of the Customs Act, 1962].
2. In case of goods imported by air, freight cannot exceed 20% of FOB value [fifth

proviso to rule 10(2) of the Customs (Determination of Value of Imported Goods) Rules, 2007].

3. Insurance charges, when not ascertainable, have to be included @ 1.125% of FOB value of goods [Third proviso to rule 10(2) of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007].
4. Rate of duty will be the rate in force on the date of presentation of bill of entry or on the date of arrival of the aircraft, whichever is later [Proviso to section 15 of the Customs Act, 1962].
5. Integrated tax leviable under section 3(7) of the Customs Tariff Act, 1975 is levied on the sum total of the assessable value of the imported goods, customs duties and applicable social welfare surcharge.

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

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

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

Particulars	Amount
Vendor inspection charges (inspection carried out by foreign supplier on his own, not required under contract or for making the goods ready for shipment)	£ 600
Commission payable to local agent @ 1% of FOB in local currency	

Date of Bill of Entry	BCD	Exchange rate in Rs. (Notified by CBIC)
18.02.20XX	10%	102
Date of arrival of aircraft	BCD	Exchange rate in Rs. (Notified by CBIC)
15.02.20XX	15%	98

Inter-bank rate 1 UK Pound = Rs. 106. Compute the assessable value and calculate basic customs duty payable by Mr. Backpack.

Solution: Computation of custom duty payable

Particulars	Amount
CIF value (negotiated price) [Note-1]	5,500
Less: Air freight	500
Less: Insurance	600
FOB value	4400
Add: Vendor inspection charges [Note-2]	Nil
Add: Commission payable to local agent [1% of FOB value] i.e. $4400 * 1\% = 44$	44
FOB value as per Customs	4,444.00
Add: Freight [Note-3]	500.00
Add: Insurance [Note-4]	600.00
Total	5544
Value in rupees - Exchange rate is Rs. 102 per £ [Note-5]	565488
CIF being Assessable value	5,65,488.00
Add: Basic custom duty @ 10% [Note-7] - rounded off	56,548.80
Social Welfare Surcharge (10% of Rs. 56,548.80) [rounded off]	5,655
Customs duty payable [rounded off]	62,203

Notes:

1. As per Section 14 of the Customs Act, 1962, the value of the imported goods is the transaction value, which means the price actually paid or payable for the goods. In this case, since the contract was re-negotiated and the importer paid the re-negotiated price, the transaction value would be such re-negotiated price and not the contract price.
2. Only the payments actually made as a condition of sale of the imported goods by the buyer to the seller are includible in the assessable value under rule 10(1)(e) of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007. Charges of vendor inspection on the goods carried out by foreign supplier on his own and not required for making the goods ready for shipment, are not includible in the assessable value of the imported goods [Bombay Dyeing & Mfg. v. CC 1997 (90) ELT 276 (SC)].
3. Actual amount incurred towards freight will be considered since freight is not more than 20% of FOB value [Fifth proviso to rule 10(2) of Customs Valuation Rules].
4. Actual insurance charges paid are includible in the assessable value as per rule 10(2)(b) of the Customs Valuation Rules.

5. Rate of exchange notified by CBIC on the date of filing of bill of entry will be considered as per third proviso to section 14 of the Customs Act, 1962.
6. Commission paid to local agent (since it is not buying commission) is includible in the assessable value on the presumption that local agent has been appointed by the exporter [Rule 10(1)(a)(i) of the Customs Valuation Rules].
7. As per proviso to section 15 of the Customs Act, 1962, rate of duty will be the rate in force on the date of presentation of bill of entry or on the date of arrival of the aircraft, whichever is later

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

- (i) FOB value of the machine: 10,000 UK Pound
- (ii) Freight (Air): 3000 UK Pound
- (iii) Licence fee, the buyer was required to pay in UK: 400 UK Pound
- (iv) Buying commission paid in India Rs. 20,000
- (v) Date of bill of entry was 20.05.20XX and the rate of exchange notified by CBIC on this date was Rs. 99.00 per one pound. Rate of BCD was 7.5%.
- (vi) Date of arrival of aircraft was 25.05.20XX and the rate of exchange notified by CBIC on this date was Rs. 98.50 per pound and rate of BCD was 10%.
- (vii) Integrated tax under section 3(7) of Customs Tariff Act was 12% and ignore GST Compensation Cess.
- (viii) Insurance premium details were not available.

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

Solution: Computation of assessable value and total customs duty and integrated tax payable by F Ltd.

Particulars	Amount
FOB value (£)	10,000
Add: License fee required to be paid in UK [Note - 1] (£)	400
Adjusted FOB value (£)	10,400
Value in rupees - Exchange rate is Rs. 99 per £ [Note - 2]	1029600
Add: Air freight [Restricted to 20% of Rs. 10,29,600 (customs FOB value)] [Note - 3]	2,05,920.00
Insurance @ 1.125% of Rs. 10,29,600 [Note - 4]	11,583.00
Buying commission is not includible in the assessable value [Note - 5]	-

<i>CIF Being Assessable Value</i>	<i>12,47,103.00</i>
<i>Rate of duty is 10% [Note - 6]</i>	
<i>Add: Basic custom duty @ 10% (12,47,103 × 10%) - rounded off (A)</i>	<i>1,24,710.00</i>
<i>Add: Social Welfare Surcharge (10% of ` 1,24,710) [rounded off] (B)</i>	<i>12,471.00</i>
<i>Value for integrated tax under section 3(7) of the Customs Tariff Act, 1975</i>	<i>13,84,284.00</i>
<i>Add: Integrated tax under section 3(7) @ 12% - rounded off (C) [Note - 7]</i>	<i>1,66,115.00</i>
<i>Total customs duty and integrated tax payable [(A) + (B) + (C)]</i>	<i>3,03,295.00</i>

Notes:

- Engineering and design charges paid in UK, licence fee relating to imported goods payable by the buyer as a condition of sale, materials and components supplied by the buyer free of cost and actual insurance charges paid are all includible in the assessable value - Rule 10(1)(c) of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 [hereinafter referred to as Customs Valuation Rules].*
- Rate of exchange notified by CBIC on the date of filing of bill of entry has to be considered [Third proviso to section 14 of the Customs Act, 1962].*
- In case of goods imported by air, freight cannot exceed 20% of FOB value [Fifth proviso to rule 10(2) of the Customs Valuation Rules].*
- Insurance charges, when not ascertainable, have to be included @ 1.125% of FOB value of goods [Third proviso to rule 10(2) of the Customs Valuation Rules].*
- Buying commission is not included in the assessable value [Clause (a)(i) of sub-rule (1) of rule 10 of the Customs Valuation Rules].*
- Rate of duty will be the rate in force on the date of presentation of bill of entry or on the date of arrival of the aircraft, whichever is later [Proviso to section 15 of the Customs Act, 1962].*
- Integrated tax leviable under section 3(7) of the Customs Tariff Act, 1975 is levied on the sum total of the assessable value of the imported goods, customs duties and applicable social welfare surcharge.*

Example: Determine the assessable value of imported goods in the following cases:

Case 1

Particulars	US \$
<i>FOB value</i>	<i>1,000</i>
<i>Freight, loading, unloading and handling charges associated with the delivery</i>	<i>Not known</i>

<i>of the imported goods to the place of importation</i>	
<i>Insurance charges</i>	<i>10</i>

Case II

Particulars	US \$
<i>FOB value plus insurance charges</i>	<i>1,010</i>
<i>Freight, loading, unloading and handling charges associated with the delivery of the imported goods to the place of importation</i>	<i>Not known</i>

Case III

Particulars	US \$
<i>FOB value</i>	<i>1,000</i>
<i>Sea freight, loading, unloading and handling charges associated with the delivery of the imported goods to the place of importation</i>	<i>60</i>
<i>Insurance charges</i>	<i>Not known</i>

Case IV

Particulars	US \$
<i>FOB value plus sea freight and loading, unloading and handling charges associated with the delivery of the imported goods to the place of importation</i>	<i>1,060</i>
<i>Insurance charges</i>	<i>Not known</i>

Case V

Particulars	US \$
<i>FOB value</i>	<i>1,000</i>
<i>Air freight, loading, unloading and handling charges associated with the delivery of the imported goods to the place of importation</i>	<i>250</i>
<i>Insurance charges</i>	<i>10</i>

Solution:

Rule 10(2) of the Customs (Determination of Value of Imported Goods) Rules, 2007 (CVR) has been substituted by a new sub-rule. The new sub-rule provides that for the purposes of sub-section (1) of section 14 of the Customs Act, 1962 and these rules, the value of the imported goods shall be the value of such goods, and shall include -

- (a) the cost of transport, loading, unloading and handling charges associated with the delivery of the imported goods to the place of importation;*
- (b) the cost of insurance to the place of importation:*

Provided that where the cost referred to in clause (a) is not ascertainable, such cost shall be 20% of

the free on board value of the goods.

Provided further that where the free on board value of the goods is not ascertainable but the sum of free on board value of the goods and the cost referred to in clause (b) is ascertainable, the cost referred to in clause (a) shall be 20% of such sum:

Provided also that where the cost referred to in clause (b) is not ascertainable, such cost shall be 1.125% of free on board value of the goods.

Provided also that where the free on board value of the goods is not ascertainable but the sum of free on board value of the goods and the cost referred to in clause (a) is ascertainable, the cost referred to in clause (b) shall be 1.125% of such sum.

Provided also that in the case of goods imported by air, where the cost referred to in clause (a) is ascertainable, such cost shall not exceed 20% of free on board value of the goods.

Provided also that 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.

Explanation-The cost of transport of the imported goods referred to in clause (a) includes the ship demurrage charges on chartered vessels, lighterage or barge charges.

In the backdrop of the above provisions, the assessable value in the various cases will be computed as under:

Computation of assessable value

Case I

Particulars	US \$
FOB value	1,000
Add: Cost of transport, loading, unloading and handling charges associated with the delivery of the imported goods to the place of importation [20% of FOB value in terms of first proviso to rule 10(2) of CVR]	200
Cost of insurance [Includible in terms of rule 10(2)(b) of CVR]	<u>10</u>
Assessable value [CIF value]	1,210

Case II

Particulars	US \$
FOB value plus insurance charges	1,010
Add: Cost of transport, loading, unloading and handling charges associated with the delivery of the imported goods to the place of importation [20% of sum of FOB value of the goods and the cost of insurance in terms of second proviso to rule 10(2) of CVR]	202
Assessable value [CIF value]	1,212

Case III

Particulars	US \$
FOB value	1,000
Add: Cost of sea transport, loading, unloading and handling charges associated with the delivery of the imported goods to the place of importation [Includible in terms of rule 10(2)(a) of CVR]	60
Insurance [1.125% of sum of FOB value of the goods in terms of third proviso to rule 10(2) of CVR]	11.25
Assessable value [CIF value]	1,071.25
Assessable value rounded off	1,071

Case IV

Particulars	US \$
FOB value plus sea freight and loading, unloading and handling charges associated with the delivery of the imported goods to the place of importation	1,060
Add: Insurance [1.125% of sum of FOB value of the goods and sea	11.925

Case V

Particulars	US \$
FOB value	1,000
Add: Cost of air transport, loading, unloading and handling charges associated with the delivery of the imported goods to the place of importation is restricted to 20% of FOB value when transportation of goods is through air [Fifth proviso to rule 10(2) of CVR]	200
Cost of insurance	10
Assessable value [CIF value]	1,210

Chapter 4: Valuation

Multiple Choice Question

1. Social welfare surcharge is levied at the rate of:

- a. 10% of assessable value + basic custom duty
- b. 10% of basic custom duty + additional custom duty
- c. 10% of basic custom duty
- d. 10% of assessable value

Ans:- c

2. As per section 14(1) of Customs Act, transaction value means:

- a. Price paid to the seller of imported goods
- b. Price paid by the buyer of export goods
- c. Both a & b above
- d. Price actually paid or payable for goods

Ans:- d

3. In case of imported goods, transaction value also includes:

- a. Commission and brokerage
- b. Cost of transportation at the place of importation
- c. Landing charges at the Indian port
- d. Only b & c above

Ans:- a

4. In case of imported goods, the conversion from foreign currency to Indian currency shall be done with reference to the rate of exchange prevalent on the date of:

- a. Filing bill of entry for clearance from warehouse for home consumption u/s 68
- b. Filing bill of entry for home consumption u/s 46
- c. Filing bill of entry warehousing u/s 46
- d. Either b or c above

Ans:- d

5. Which of the following agency/agencies can notify the exchange rates?

- a. Central Board of Indirect Taxes & Customs
- b. The Reserve Bank of India
- c. Foreign Exchange Dealers' Association of India
- d. All of the above

Ans:- d

6. The tariff values for any class of imported goods or export goods may be fixed by:

- a. Central Board of Indirect Taxes and Customs
- b. Central Board of Excise and Customs
- c. Central Board of Direct Taxes
- d. None of above

Ans:- a

7. The board fixes tariff value for goods imported by Mr. Palash but he filed the bill of entry on the basis of transaction value. The customs officer rejected the bill of entry of Mr. Rohan on the contention that transaction value cannot be accepted for those goods for which board had given tariff value. State whose contention is valid as per the provision of law.

a. contention of Officer is invalid

b. contention of Officer is valid

c. contention of Mr. Palash is valid

d. Both a & c of the above

Ans:- b

8. Platinum Ltd. imported some goods from Canada. The tariff value notified for such goods by the board was ₹ 527000 and the transaction value was ₹520000. State the value to be taken by Platinum Ltd. for the purpose of customs valuation.

a. ₹ 527000

b. ₹ 520000

c. Either a or b above

d. None of the above

Ans:- a

9. Mr. Avdhesh enters into contract with the supplier of USA to purchase goods after 4 months. The contract price was ₹ 800000. Due to recession in international market the price of the goods reduced to ₹ 650000. The special discount offered by the seller to Mr. Avdhesh was ₹ 50000. Such special discount is not offered generally to all the buyers. Identify the transaction value to be declared by Mr. Avdhesh in his bill of entry.

a. ₹ 800000

b. ₹ 750000

c. ₹ 650000

d. ₹ 600000

Ans:- b

10. Adjustments in transaction value as per rule 10 includes:

i. Free assistance by the buyer in the form goods or services

ii. Moulds and dies supplied at reduced cost by the buyer

iii. Buying commission paid to local agent

iv. Engineering and design work undertaken in India

v. Transport charges paid as a condition of sale by the buyer on behalf of the seller.

Choose the correct alternative

a. i, ii, iii

b. All of the above except (iv) Above

c. All of the above except (iii) Above

d. All of the above except (iii) & (iv) above

Ans:- d

11. Which of the following is not included in transaction value?

i. Commission paid to canalizing agent

ii. Buying commission paid to local agent

- iii. Cost of container which is non- returnable
- iv. Engineering and art work undertaken in India
- v. Dividend distributed by the seller to the buyer

- a. i, ii, iii
- b. ii, iv & v above
- c. ii, iii & iv above
- d. i & iii above

Ans:- b

12. Ajanta Ltd. imported wrist watches from USA for ₹ 15 lakhs. The cost of transport through vessel is not ascertainable but the sum of free on board value of the goods and the cost of insurance is ₹ 15.35 lakhs. Calculate the cost of transport in case of Ajanta Ltd.

- a. ₹ 2.5 lakhs
- b. ₹ 3 lakhs
- c. ₹ 3.07 lakhs
- d. ₹ 2.56 lakhs

Ans:- c

13. If cost of transport, loading unloading & handling charges is not ascertainable, then such cost shall be:

- a. Nil
- b. 20% of FOB value of goods
- c. 20% of FAS value of goods

d.20% of CIF value of goods

Ans:- b

14. Cost of insurance shall be..... where actual amount of insurance is not ascertainable but the sum of free on board value of the goods and the cost referred to clause (a) of rule 10(2) is ascertainable. Fill in the blank

a.20% of FOB cum transport value of goods

b.1.125% of FOB value of goods

c.20% of FOB value of goods

d.1.125% of FOB cum transport value of goods

Ans:- d

15. In case of import of goods by sea route, FOB cum transport value is ₹ 20 lakhs, where actual cost of transport & cost of insurance is ₹ 1.5 lakh & ₹ 0.5 respectively. The cost of insurance includible in transaction value is:

a. Actual cost i.e. ₹ 0.5 lakh

b.1.125% of FOB i.e. ₹ 0.208 lakh

c.1.125% of FOB cum transport i.e. ₹ 0.225 lakh

d.20% of FOB cum transport i.e. ₹ 4 lakhs

Ans:- a

16. The cost of transport referred to in clause (a) of rule 10(2) includes:

a. Ship demurrage charges of normal vessels

b. Ship demurrage charges of vessels from which goods are not cleared with 30 days

c. Ship demurrage charges of chartered vessels

d. All of the above

Ans:- c

17. Mr. Kumar imported storage tanks from China. The goods were loaded on big mother vessels. Due to non-availability of berth on Mumbai port Mr. Kumar brought the goods on the dock by small boats. State whether Mr. Kumar can include such cost incurred on small boats in his transaction value (T.V.).

a. Yes, such cost is includible in T.V.

b. No, such cost is excludible from T.V.

c. No, such cost is includible subject to some condition

d. Yes, such cost is includible in T.V. with the prior permission of the proper officer

Ans:- a

18. In case of sale of goods to a related party, transaction value is accepted where:

a. the relationship does not influence the price

b. the declared value of the goods closely approximates to the transaction value of identical or similar goods to unrelated buyer in India

c. the declared value of the goods closely approximates to the deductive or computed value for identical or similar goods

d. All of the above

Ans:- d

19. Rio Ltd. USA holds 61% share in Jio Ltd. India. Rio Ltd. supplied some goods to Jio Ltd. through vessel at ₹ 45 lakhs on FOB basis. The identical goods were sold to an unrelated party Trio Ltd. India at ₹ 42 lakhs on FAS basis. The officer can:

- a. Accept the transaction value as relationship did not influence the price
- b. Reject the transaction value as buyer and seller are related
- c. Reject the transaction value as sale to unrelated buyer is at lower price
- d. Both b & c above

Ans:- a

20. In the context of imported goods, "Identical goods" means goods which are same in respect of:

- a. Physical characteristics of imported goods
- b. Quality of imported goods
- c. Reputation of imported goods
- d. All of the above

Ans:- d

21. For the purpose of valuation rules, in case of identical or similar goods, choose the correct alternative from the following:

- a. Produced in the same country in which goods being valued were produced
- b. Produced by the same manufacturer or producer
- c. Produced by different manufacturer or producer, where no such goods were available from same person
- d. All of the above

Ans:- d

22. If the imported goods are sold in India for which value of similar or identical goods is not available at or about the same time, then the value shall be based on the earliest date after importation but before the expiry of:

- a. thirty days after such importation
- b. sixty days after such importation
- c. ninety days after such importation
- d. ninety days before such importation

Ans:- c

23. For the purpose of deductive value, unit price is the price at which greatest aggregate quantity sold to person who are:

- a. related to the sellers in India
- b. importer
- c. not related to the sellers in India
- d. All of the above

Ans:- c

24. Mr. Vasu imported iron bars from Egypt but the value cannot be determined under rules 4 to 8 of customs valuation rules, then value of such imported goods shall be determined using

- a. Residual Method
- b. Reasonable means

c. *Either a or b above*

d. *None of above*

Ans:- c

Chapter – 5 Baggage

Exercise Questions & Answers

Q 1. What is the relevant date for determination of rate of duty under the Customs Act, 1962 in the case of clearance of baggage? (Practice Manual; Exam Question, Nov 2005)

Ans: As per section 78 of the Customs Act, 1962, the relevant date for determination of rate of duty in case of clearance of baggage is the **date on which a declaration is made** in respect of such baggage under section 77.

Q 2. Examine the correctness of the following statements under Customs.

Import of LCD TV is allowed as part of free Baggage allowance under Baggage Rules, 1998.

Ans: The said statement is Incorrect. With effect from 26.08.2013, Annexure 1 to the Baggage Rules, 2016 which specifies the items that cannot be allowed duty free clearance as part of free baggage allowance has been amended vide Notification No. 84/2013 to include Flat panel (LCD/LED/Plasma) Television therein Therefore, import of flat panel (LCD/LED/Plasma) television as part of free baggage allowance has been disallowed from August 26 2013.

Q 3. Mr. Nirvaan, an Indian resident, aged 40 years, returned to India on India on 10-02-2017 after visiting England. He had been to England on 01-02-2017. On his way back to India he brought following goods with him –

- Personal effects like clothes etc, valued at Rs. 2,00,000
- 1 litre of Wine worth Rs. 10,000
- Sound System worth Rs. 50,000
- A Mobile worth Rs. 20,000

What is the customs payable? Would your answer differ if Mr. Nirvaan the tourist foreign origin

Ans: Computation of Duty:

Particulars	Taxable Value (in Rs.)
1. Personal Effects	Nil
2. Others	
1 litre of Wine	10000
Sound System	50000
Mobile	20000
Total	80000
Less : Free Limit	(50000)
	Duty @ 38.5%
	11,550

If Mr. Nirvaan is the tourist of foreign origin then duty free limit is 15,000

Therefore Duty payable = $(80,000 - 15,000) \times 38.5\% = 11,550$

Note:

If passenger is coming from country other than Nepal, Bhutan & Myanmar personal effect allowed duty free. Other – Duty free limit is 50,000/-

Q 4. Mr. Sujoy, an Indian entrepreneur, went to London to explore new business opportunities on 01.04.2016. His wife also joined him in London after three months. The following details are submitted by them with the Customs authorities on their return to India on 15.04.2017:

- (a) used personal effects worth ` 80,000,
- (b) 2 Music system worth Rs. 50000 each
- (c) the jewellery brought by Mr. Sujoy worth ` 48,000 [20 grams] and the jewellery brought by his wife worth ` 96,000 [40 grams].

With reference to Baggage Rules, 2016, determine whether Mr. and Mrs. Sujoy will be required to pay any customs duty?

Ans: As per rule 3 of the Baggage Rules, 2016, an Indian resident arriving from any country other than Nepal, Bhutan or Myanmar, shall be allowed clearance free of duty articles in his bona fide baggage, that is to say, used personal effects and travel souvenirs; and articles [other than certain specified articles], up to the value of ` 50,000 if these are carried on the person or in the accompanied baggage of the passenger.

Thus, there is no customs duty on used personal effects and travel souvenirs and general duty free baggage allowance is 50,000 per passenger. Thus, duty liability of Mr. Sujoy and his wife is nil for the used personal effects worth ` 80,000 and 2 music systems each worth ` 50,000.

As per rule 5 of the Baggage Rules, 2016, the jewellery allowance is as follows:

Jewellery brought by	Jewellery brought by
Gentleman Passenger	Jewellery upto a weight of 20 grams with a value cap of ` 50,000
Lady Passenger	Jewellery upto a weight of 40 grams with a value cap of ` 1,00,000

However, the jewellery allowance is applicable only to a passenger residing abroad for more than 1 year.

Consequently, there is no duty liability on the jewellery brought by Mr. Sujoy as he had stayed abroad for period exceeding 1 year and weight of the jewellery brought by him is 20 grams with a value less than ` 50,000.

However, his wife is not eligible for this additional jewellery allowance as she had stayed abroad for a period of less than a year. Thus, she has to pay customs duty on the entire amount of jewellery brought by her as she has already exhausted the general duty free baggage allowance of ` 50,000 allowed under rule 3.

Q 5. After visiting USA for a month, Mrs. and Mr. X (Indian residents aged 40 and 45 years respectively) brought to India a laptop computer valued at ` 80,000, used personal effects valued at ` 90,000 and a personal computer for ` 52,000. What is the customs duty payable?

Ans: As per Baggage Rules, 2016, an Indian resident arriving from any country other than Nepal, Bhutan or Myanmar is allowed duty free clearance of-

- (i) Used personal effects and travel souvenirs without any value limit.
- (ii) Articles [other than certain specified articles] upto a value of Rs. 50,000 carried as accompanied baggage [General duty-free baggage allowance].

Further, such general duty-free baggage allowance of a passenger cannot be pooled with the general duty free baggage allowance of any other passenger.

One laptop computer when imported into India by a passenger of the age of 18 years or above (other than member of crew) is exempt from whole of the customs duty [Notification No. 11/2004 Cus. dated 08.01.2004].

Accordingly, there will be no customs duty on used personal effects (worth Rs. 90,000) of Mrs. and Mr. X and laptop computer brought by them will be exempt from duty.

Duty payable on personal computer after exhausting the duty free baggage allowance will be Rs. 52,000
- Rs. 50,000 = Rs. 2,000.

Effective rate of duty for baggage = 38.5% [including social welfare surcharge @10%]

Therefore, total customs duty = Rs. 770

Chapter 5 : Baggage

Multiple Choice Questions

1. Mr. Kabir of 25 years imported a laptop from USA for ₹ 25000 as baggage.

Calculate the amount of custom duty payable by Mr. Kabir.

- a. ₹ 8750
- b. ₹ 27500
- c. ₹ 25000
- d. No duty is payable as exemption is available on one laptop

Ans:- d

2. If a passenger of Indian Origin arriving from Bangladesh and carrying articles

other than mentioned in Annexure-1 as baggage then the free allowance limit is upto ₹:

- a. No limit is specified
- b. 15000
- c. 50000
- d. 35000

Ans:- c

3. Mr. John, tourist of foreign origin imported articles other than those mentioned in Annexure-1 by land Route from Bhutan valuing ₹ 5 lakhs. State the free allowance limit available to Mr. John

- a. No benefit
- b. ₹ 15000
- c. ₹ 50000
- d. ₹ 35000

Ans:- a

4. Identify the rate of custom duty applicable on articles imported within the limit specified in Annexure-1

- a. 35%
- b. 38.5%
- c. 0% (100% custom duty + 10% SWS)
- d. Exempted from custom duty

Ans:- b

5. Which of the following items are leviable to customs duty at the rate of 110% (including 10% SWS)?

- a. Cartridges of fire arms exceeding 50
- b. Cigars exceeding 25
- c. Alcohol & wines in excess of 2 liters
- d. All of the above

Ans:- d

6. 20 Cigars of ₹ 50000 were imported by Mr. Adnan from UK. Calculate the amount of custom duty payable by Mr. Adnan

- a. ₹50000
- b. ₹ 55000
- c. ₹ 19250
- d. No import duty payable

Ans:- d

7. Mrs. Ambani resident of India, returned back to India after residing in Dubai for a period of six months. State the limit upto which she can bring jewelry with herself without duty while returning to India.

- a. 40 grams
- b. ₹ 100000
- c. Lower of a or b above
- d. None of the above

Ans:- d

8. Mr. Aamir resident of India, returned back to India from UK after 2 years of stay and brought jewelry of ₹ 55000 (18 grams). Duty payable by Mr. Aamir:

- a. Nil
- b. ₹ 1925
- c. ₹ 1750

d. ₹ 1803

Ans:- b

9. Value of personal computer is ₹ 1,10,000 and personal effects is ₹ 60,000 and duty free allowance is ₹ 1,00,000 as per rule 6 of baggage as Passenger permanently transferring his residence after 9 month of stay In abroad. The value of baggage liable to duty will be:

a. ₹50,000

b. ₹ 60,000

c. ₹ 70,000

d. ₹ 10,000

Ans:- d

10. Mr. Sumit an Indian Passenger, permanently transferring his residence from Australia after 7 months of stay. Mr. Sumit will be allowed to bring duty free articles such as 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 of:

a. ₹50,000

b. ₹ 55,000

c. ₹ 60,000

d. ₹ 1,00,000

Ans:- d

Chapter 6 – Duty Drawback

Exercise Questions & Answers

Q 1. Write a short note on “prohibition and regulation of drawback” with reference to the provisions of section 76 of the Customs Act, 1962.

Ans: The provisions in respect of prohibition and regulation of drawback as contained in section 76 of the Customs Act, 1962 are explained hereunder:

- (1) No drawback is allowed in respect of any goods, the market price of which is less than the amount of drawback due thereon. This provision has been made to prohibit export of cheap goods at inflated price to get benefit of higher duty drawback. Further, drawback is also not allowed where the amount of drawback in respect of any goods is less than ` 50.
- (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, not allow drawback in respect of such goods or alternatively allow the drawback subject to certain restrictions and conditions.

Q 2. Explain briefly the provisions relating to drawback allowable on re-export of duty paid imported goods when:

- (i) Duty paid imported goods are re-exported as such
- (ii) Duty paid imported goods are used before being re-exported

Ans: (i) Duty paid imported goods re-exported as such

When duty paid goods are re-exported as such, drawback is allowed under the provisions of section 74(1) of the Customs Act, 1962. Sub-section (1) of section 74 of the Customs Act, 1962 provides that following conditions need to be satisfied before claiming drawback:

- the goods should have been imported into India;
- the import duty should have been paid thereon;
- the goods should be capable of being easily identified as the goods, which were originally imported;
- the goods should have been entered for export either on a shipping bill through sea or air or on a bill of export through land, or as baggage, or through post and the proper officer, after proper examination of the goods and after ensuring that there is no prohibition or restriction on their export, should have permitted clearance of such goods for export;

- the goods should have been identified to the satisfaction of the Assistant or Deputy Commissioner of Customs as the goods, which were imported, and
- the goods should have been entered for export within two years - which can be extended further by Board on sufficient cause being shown - from the date of payment of duty on the importation thereof.

Once these conditions are satisfied, then 98% of the import duty paid on such goods at the time of importation shall be repaid as drawback.

(ii) Duty paid imported goods re-exported after being used

When duty paid imported goods are used before re-export, drawback is allowed under the provisions of section 74(2) of the Customs Act, 1962. If the imported goods are used after importation, the drawback is allowed at reduced rates as fixed by the Central Government having regard to the duration of use, depreciation in value and other relevant circumstances prescribed by a Notification. If the goods were in possession of the importer, they are treated as used by the importer. Following percentages have been fixed vide Notification No. 19/65-Cus dated 6-2-1965 as amended as the rates at which drawback of import duty shall be allowed in respect of goods which were used after their importation and which have been out of Customs control:

Sr No.	Length of period between the date of clearance for home consumption and the date when the goods are placed under Customs control for export	Percentage of import duty to be paid as Drawback
1	Not more than three months	95%
2	More than three months but not more than six months	85%
3	More than six months but not more than nine months	75%
4	More than nine months but not more than twelve months	70%
5	More than twelve months but not more than fifteen months	65%
6	More than fifteen months but not more than eighteen months	60%
7	More than eighteen months	Nil

Q 3. Can the rate of drawback be granted provisionally to the exporter where amount or rate of drawback has not been determined? Briefly explain.

Ans: 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 the Principal Commissioner of Central Excise or Commissioner of Central Excise, as the case may be or the Principal Commissioner or Commissioner of Customs and Central Excise that a provisional amount be granted to him towards drawback on the export of such goods pending determination of the final amount of 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, it is to be noted that rate of drawback is determined provisionally only when exporter intends to get Brand Rate of duty drawback for his exports. The provision has no applicability when exporter intends to get duty drawback on the basis of All Industry Drawback Rates.

Q 4. Write a short note on "interest on drawback" with reference to section 75A of the Customs Act, 1962.

Ans: Refer Relevant para in Main Book

Q 5. What is the minimum and maximum rate or amount of duty drawback prescribed under the Customs & Central Excise Duties Drawback Rules, 2017? Explain with a brief note.

Ans: **Minimum rate of duty drawback** - Rule 8 of Customs and Central Excise Duties Drawback Rules, 2017 provides that no amount or rate of drawback shall be determined in respect of any goods or class of goods under rule 6 or rule 7, as the case may be, if the export value of each of such goods or class of goods in the bill of export or shipping bill is less than the value of the imported materials used in the manufacture of such goods or class of goods, or is not more than such percentage of the value of the imported materials used in the manufacture of such goods or class of goods as the Central Government may, by notification in the Official Gazette, specify in this behalf.

Maximum rate of duty drawback - Rule 9 of Customs and Central Excise Duties Drawback Rules, 2017 provides that the drawback amount or rate shall not exceed one third of the market price of the export product. This provision has been made to avoid over invoicing of export goods.

Q 6. Your client loaded a machine on the vessel for export. He has paid import duty and central excise duty on the components used in the manufacture. The vessel set sail from Mumbai, but runs into trouble and sinks in the Indian territorial waters. The customs department refuses to grant duty drawback for the reason that the goods have not reached their destination. Advise your client citing case law, if any.

Ans: Rule 2(c) of the Customs and Central Excise Duties Drawback Rules, 2017 inter alia provides that "export" means "taking out of India to a place outside India". Section 2(27) of the Customs Act, 1962 provides that India includes the territorial waters of India.

In case of *CC v. Sun Industries* 1988 (35) ELT (241), the Supreme Court held that the expression "taking out of India to a place outside India" would also mean a place in high seas, if that place is beyond territorial waters of India. Therefore, the goods taken out to the high seas outside territorial waters of India would come within the ambit of expression "taking out of India to a place outside India". The emphasis in the aforementioned judgment was on the movement of the goods outside the territorial waters of India. It is then that an export may be said to have been taken place. In the instant case, the vessel sunk within territorial waters of India and therefore, there is no export. Accordingly, no duty drawback shall be available in this case. Similar decision was given by the

Supreme Court in the case of *UOI v. Rajindra Dyeing & Printing Mills Ltd.* 2005 (180) ELT 433 (SC). In other words, if the goods cross the territorial waters, drawback will be available even if they do not reach the destination or are destroyed provided the payment for the goods is received in convertible foreign exchange. Para 2.85.2 of HBP Vol. 1 2015-20 states that payment through insurance cover from General Insurance and approved Insurance Companies would be treated as payment realised for exports under various export promotion schemes.

Q 7. M/s. RIL Ltd. claimed duty drawback in respect of its export products. Over 97% of the inputs by weight of the product were procured indigenously and were not excisable. All Industry Rates under the Customs & Central Excise Duties Drawback Rules, 1995 were fixed taking into account the incidence of customs duty on imported inputs.

Explain briefly with reference to clause (ii) of second proviso to rule 3 of the said rules whether the claim of M/s. RIL will merit consideration by the authorities.

Ans: Clause (ii) of second proviso to rule 3(c) of the Customs and Central Excise Duties Drawback Rules, 2017 inter alia provides that no drawback shall be allowed if the exported goods have been produced or manufactured using imported materials or excisable materials or taxable service in respect of which duties or taxes have not been paid.

In the given case, there was no duty incidence on 97% of the inputs of the export product except the duty incidence on remaining 3% of the inputs, which was insignificant. All Industry Rates fixed for particular export products are applicable to all exporters who export the same. However, in a case where there is clear evidence, as in the present one, that the inputs of such export products have not suffered any duty, no drawback can be claimed. Same view was expressed by the Tribunal in the case of *Rubfila International Ltd. v. CCus. Cochin* 2005 (190) ELT 485 (Tri.-Bang.) [maintained in *Rubfila International Ltd. v. Commissioner - 2008 (224) E.L.T. A133 (S.C.)*].

Q 8. With reference to drawback on re-export of duty paid imported goods under section 74 of the Customs Act, 1962, answer in brief the following questions:

- (a) What is the time limit for re-exportation of goods as such?
- (b) What is the rate of duty drawback if the goods are exported without use?
- (c) Is duty drawback allowed on re-export of wearing apparel without use?

Ans: (a) As per section 74 of the Customs Act, 1962, the duty paid imported goods are required to be entered for export within two years from the date of payment of duty on the importation. This period can be extended by CBIC if the importer shows sufficient reason for not exporting the goods within two years.

(b) If duty paid imported goods are exported without use, then 98% of such duty is re-paid as drawback.

(c) Yes, duty drawback is allowed when wearing apparels are re-exported without being used. However, Notification No. 19/65 Cus dated 06.02.1965 as amended provides that if wearing apparels have been used after their importation into India, drawback of import duty paid thereon shall not be allowed when they are exported out of India.

Q 9. With reference to the Customs & Central Excise Duties Drawback Rules, 2017, briefly state whether an exporter who has already filed a duty draw back claim under All Industry Rates, can file an application for fixation on special brand rate.

Ans: Rule 7 of the Customs and Central Excise Duties Drawback Rules, 2017 provides that application for Special Brand Rate cannot be made where a claim for drawback under rule 3 or rule 4 has been made.

In other words, where the exporter has already filed a duty drawback claim under All Industry Rates (AIR) Schedule, he cannot request for fixation of Special Brand Rate of drawback. Thus, the exporter should determine prior to export of goods, whether to claim drawback under AIR or Special Brand Rate.

Q 10. Calculate the amount of Drawback available under section 74 of the Customs Act, 1962 in the following cases :

- (a) X imported computers for office use & paid Rs. 5,00,000 as import duty. The computers are re-exported after 13 months.
- (b) Y imported goods for his personal use & paid Rs. 1,00,000 as import duty. Such goods are re-exported after 3 months 10 days.
- (c) Z imported wearing apparel & paid Rs.20,000 as import duty. These are re-exported after 6 months.

Ans: As per the provisions of section 74 of the Customs Act, 1962 -

(a) Since the computers have been taken into use & then re-exported duty drawback shall be allowed as per section 74(2). 65% of the import duty paid will be allowed as draw back.

Hence, the amount of drawback = Rs. 5,00,000 * 65 = Rs.3,25,000.

(b) In respect of goods imported by a person for his personal & private use, drawback of duty shall be equal to the import duty paid in respect of such goods as reduced by 4%, 3%, 2.5% & 2% for use for each quarter or part thereof during the period of 1st year, 2nd year, 3rd year & 4th year respectively. Hence, 92% of the import duty so paid shall be allowed as drawback. **Hence, duty drawback = Rs.1,00,000 * 92% = Rs.92,000**

(c) No duty drawback shall be allowed on wearing apparel which has been taken into use & re-exported.

Chapter 6 Duty Drawback

Multiple Choice Question :

1. The drawback on re-export is allowable on those goods which satisfies the conditions such as:

- a. they are originally imported into India
- b. duty has been paid at the time of importation
- c. goods which are to be re-exported must be easily identified as the same were imported into India
- d. All of the above

Ans:- d

2. To be eligible for drawback goods must be exported within from the date of payment of duty on the importation thereof.

- a. One year
- b. Two years
- c. Three years
- d. Five years

Ans:- b

3. The rate of drawback on imported goods which are exported as such other than fuel and lubricant oil used in aircraft is:

- a. 100%

b. 88%

c. 98%

d. 95%

Ans:- c

4. M/s Dinshaws Ltd. Imported refrigerator from Japan and paid import duty thereon. After using it for a month M/s Dinshaws Ltd. Export that refrigerator. The refrigerator was easily identified as such by the officer and it was exported within 2 years from the date of payment of import duty. The rate of drawback on such goods shall be:

a. 98%

b. 100%

c. at such percentage fix by Central Board of Indirect Taxes

d. at such percentage fix by Central Government by notification in official gazette

Ans:- d

5. Mr. Tushar imported ginning machine from Germany and paid import duty thereon. The part of that machinery was not as per the specification and hence, Mr. Tushar wants to export that part of the machinery. State whether drawback is available to Mr. Tushar on export of part of machinery.

a. The drawback is available at 98% if exported as such

b. The drawback is available at specified rate if exported after use

c. Drawback is not available, as export of part of machinery is not allowed

d. Either a or b above

Ans:- c

6. Millipore (I) Pvt. Ltd. Imported machinery from Korea and paid import duty thereon. The machinery was operated once in an exhibition for giving demonstration to the public. After that the machinery was exported back to Korea. State at what rate drawback will be available to Millipore (I) Pvt. Ltd.

a. 100%

b. 98%

c. at such rate as may be notify by Central Government in Official Gazette, having regard to duration of use, depreciation in value and other relevant circumstances.

d. No drawback will be available

Ans:- c

7. Any machinery used in an exhibition for display is not eligible for drawback at the rate of 98% u/s 74(1) but drawback can be claimed u/s 74(2) as goods being used for display in exhibition. State true or false

a. True

b. False

Ans:- b

8. What is the rate notified by Central Government if the goods are exported after using it for not more than nine months?

a. 98%

b. 95%

c. 85%

d. 75%

Ans:- d

9. Identify the rate of drawback available to Mr. Sinha on re-export of goods imported for business use after 13 months from the date of payment of import duty.

a. 98%

b. 85%

c. 65%

d. 70%

Ans:- c

10. Drawback is not available on items such as:

a. Wearing apparel, tea chests, unexposed photographic films, paper and plates and x-ray films &

Exposed cinematograph films duly passed by Censor Board if used

b. Exposed cinematograph films not duly passed by Censor Board

c. Exposed photographic films

d. All of the above

Ans:- a

11. The time limit for re-exportation of goods as such is from the date of payment of import duty thereon and for claim of drawback must be filed from the date of let export order, if not extended by AC/ DC

a. 2 years and 3 months

b. 3 years and 2 months

c. within 2 years and within 3 months

d. 2 years and within 2 months

Ans:- c

12. Import duty paid in respect of a motor car by James bond for personal use is ₹ 50000. James bond uses that motor car for 4 months. Calculate drawback to be allowed in this case.

a. ₹ 46000

b. ₹ 48000

c. ₹ 48500

d. ₹ 47500

Ans:- a

13. Decent Limited. imported 120 computer systems from USA & paid import duty of ₹ 50 lakhs. Due to mismatch in specification, all the computer systems were returned to the supplier after 7 months without using them at all. Calculate duty drawback thereon

a. ₹ 44 lakhs

b. ₹ 44.24 lakhs

c. ₹ 49 lakhs

d. ₹ 46 lakhs

Ans:- c

14. The modes of export allowable for drawback u/s 75 are:

a. Post and Cargo

b. Post, Cargo & Baggage

c. Cargo and Baggage

d. Post and Baggage

Ans:- a

15. Which of the following documents are required to be filed along with drawback claim application?

a. Import Invoice

b. Triplicate copy of the Shipping Bill bearing examination report recorded by the proper officer of the customs at the time of export

c. Copy of Bill of lading or Airway bill

d. All of the above

Ans:- d

16. An exporter who has already filed duty drawback claim under All Industry Rate cannot file an application for fixation of, if AIR is declared at 90% of duty paid.

a. Brand Rate

b. Special Brand Rate

c. Both a & b above

d. Reduced rate

Ans:- c

17. Application fees required to be paid by an exporter applying for special brand rate or brand rate is:

a. ₹ 1000

b. 1% of FOB

c. 1% of FOB or ₹ 1000 whichever is lower

d. Higher of a or b above

Ans:- c

18. Mr. Somesh has exported 2000 pairs of footwear at ₹ 1500 per pair and applied for drawback. The FOB value is ₹ 30 lakhs. The drawback is allowed @ 10% of FOB value subject to maximum of ₹ 55 per pair. Calculate the drawback amount.

a. ₹ 300000

b. ₹ 110000

c. ₹ 82500

d. No drawback will be allowed

Ans:- b

19. The time limit for payment of drawback to the claimant without interest is within from the date of filing a claim for payment of such drawback

a. Three months

b. One month

c. 90 days

d. 30 days

Ans:- b

20. Mr. Kunal was erroneously refunded a sum of ₹ 10000 which was payable to Mr. Ketan on 1.1.18. The same was returned to the Department on 15.4.18. Calculate the interest amount payable by Mr. Kunal

a. ₹ 500

b. ₹ 438

c. ₹ 432

d. ₹ 518

Ans:- c

21. Drawback shall not be allowed where:

a. the market price is less than the amount of drawback on any goods

b. the drawback amount on any goods is less than fifty rupees

c. the Central Government is of the opinion that goods are likely to be smuggled back into India

d. All of the above

Ans:- d

22. The relevant date in case of filing refund claim may be any one of the following:

a. Date of let export order

b. Date of abandonment of goods

c. Date of destruction of goods State true or false

a. True

b. False

Ans:- a

Chapter – 7 Refund

Exercise Questions & Answers

Q 1. State the situations in which the proper officer can issue a show-cause notice under section 28 of the Customs Act, 1962 and also the time limit for such issuance.

Ans: As per section 28(1) of the Customs Act, 1962, the proper officer can issue show cause notice in the following situations:

- (i) when duty has not been levied
- (ii) when duty has been short-levied
- (iii) when duty has been short paid
- (iv) when duty has not been paid
- (v) when duty has been erroneously refunded
- (vi) when interest payable has not been paid
- (vii) when interest payable has been part paid
- (viii) when interest payable has been erroneously refunded

Time Limit for issue of show-cause notice

- a) For any reason other than the reasons of collusion or any willful mis-statement or suppression of facts- within two years from the relevant date [section 28(1)].
However, before issuing notice, the proper officer shall hold pre-notice consultation with the person chargeable with duty or interest in the prescribed manner.
- b) In the case of collusion or any willful mis-statement or suppression of facts by the importer or the exporter or the agent or employee of the importer or exporter-within five years from the relevant date [section 28(4)].

Relevant date means -

- in a case where duty is not levied or interest is not charged, the date on which the proper officer makes an order for the clearance of goods;
- in the case of provisional assessment, the date of adjustment of duty after the final assessment;
- in case of erroneous refund of duty or interest, the date of refund
- in any other case, the date of payment of duty or interest.

Q 2. Explain briefly the option available to an importer or exporter or their agent or employee under sub-section (5) of section 28 of the Customs Act, 1962

Ans: Section 28(5) of the Customs Act provides an option to an importer or an exporter or the agent or employee of the importer or exporter to whom a notice has been served by the proper officer for short/non levy or short/non payment of duty or non charging/part payment of interest or erroneous refund of duty and interest by reason of collusion or any willful mis-statement or suppression of facts.

If such a person pays the duty in full or in part as may be accepted by him including the interest payable thereon under section 28AA and penalty within 30 days of the receipt of the notice, the penalty will be reduced to 15% of the duty specified in the notice or the duty so accepted by that person. The person should also inform the proper officer about such payment in writing.

According to provisions of section 28(6), where in the opinion of the proper officer duty is paid in full together with the interest and penalty under sub-section (5), the proceedings in respect of such persons to whom notice is served shall be deemed to have been concluded in respect of the matters stated therein. On the other hand, where in the opinion of the proper officer the duty with interest and penalty that has been paid falls short of the amount actually payable, then, the proper officer shall proceed to issue the notice as provided in section 28(1)(a) in respect of such amount which falls short of the amount actually payable within two years from the date of receipt of information under section 28(5).

Relief from penalty is provided to facilitate early closure of dispute which will, in turn, reduce litigation.

Q 3. A show cause notice demanding customs duty was issued in case of clearances made by 100% Export Oriented Undertaking (EOU) to Domestic Tariff Area (DTA). Is the show-cause notice defective in law?

Ans: Yes, the show cause notice issued is defective in law because in respect of clearances made by a 100% Export Oriented Undertaking (EOU) to Domestic Tariff Area, the duty to be paid by the 100% EOU is the duty of excise and not customs duty. Therefore, show cause notice using the word customs duty instead of central excise duty is not maintainable.

Similar view was expressed in the case of CCE v. Suresh Synthetics (2007) 216 ELT 662 (SC). It may be noted that excise duty chargeable on goods cleared by 100% EOUs in DTA, is equivalent to the aggregate of the customs duties which would be leviable under the Customs Act or any other law for the time being in force on like goods manufactured outside India if imported into India.

Note: The above case law may hold good even after the introduction of GST as GST[(CGST+SGST)/IGST] and customs duties are different.

Q 4. M/s. Vijay Exports, an EOU, is purchasing electricity generated by the captive power plant of its sister unit. The furnace oil required for running the captive power plant was imported by the assessee (M/s. Vijay Exports) and supplied to sister unit for generation of electricity. The assessee claimed exemption on import of furnace oil under the relevant exemption notification. The assessee had sought a clarification from the Development Commissioner seeking as to whether import of furnace oil and receipt of electricity would be liable to duty. The Development Commissioner replied in favour of the assessee and thereafter, the assessee claimed the exemption.

A show cause notice demanding duty was issued on the assessee invoking extended period of limitation of 5 years on grounds that the entitlement of duty free import of fuel for its captive power plant lies with the owner of the captive power plant, and not with the consumer of electricity generated from that power plant.

Is the action of the Department in invoking the extended period of limitation justified in light of the provisions of the Customs Act, 1962? Discuss with the help of a decided case law.

Ans: The facts of the given case are similar to the case of *Uniworth Textiles Ltd. vs. CCE*, 2013 (288) ELT 161 (SC), wherein the Supreme Court noted that section 28 of the Customs Act, 1962 clearly contemplates that for invoking extended period of limitation, the intention to deliberately default is a mandatory pre-requisite.

However, the assessee acted bona fide and claimed exemption by seeking clarification from the Development Commissioner. Hence, it could be inferred that assessee made efforts to adhere to the law rather than its breach.

The Apex Court held that mere non-payment of duties could not be equated with collusion or wilful misstatement or suppression of facts as then there would be no form of non-payment which would amount to ordinary default. Something more must be shown to construe the acts of the assessee as fit for applicability of extended period of limitation.

Therefore, in view of the above-mentioned ruling of the Supreme Court, the action of the Department of invoking extended period of limitation is not justified in the light of the provisions of the Customs Act, 1962.

Q 5. Mr. X, an importer, imported certain goods on 20.04.20XX and paid custom duty by understating the value of goods imported. A show cause notice was issued on Mr. X by the proper officer on 19.08.20XX demanding duty along with interest and penalty on the value of the goods understated. The said notice was received by Mr. X on 24.08.20XX. Mr. X deposited the amount of duty and interest along with penalty that should be payable as per provisions of law on 20.09.20XX. With reference to section 28 of the Customs Act, 1962, compute the penalty imposable, if any. Provide reasons for your answer.

Ans: The proviso to section 28(2) of the Customs Act, 1962 lays down that where notice under section 28(1)(a) has been served for short/non levy or erroneous refund of duty or interest, for reason other than the reasons of collusion or any wilful mis-statement or suppression of facts; penalty will not be imposed if the proper officer is of the opinion that amount of duty along with interest leviable under section 28AA or the amount of interest, as the case may be, as specified in the notice, has been paid in full within 30 days from the date of receipt of the notice. The proceedings in respect of such person or other persons to whom the notice is served will be deemed to be concluded.

Further, section 28(5) of the Customs Act, 1962 provides that when a notice is served in respect of cases involving fraud etc., if the noticee pays the duty in full or in part, as may be accepted by him, and the applicable interest within 30 days of the receipt of the notice and inform the proper officer of such payment in writing, the penalty would be reduced to 15% of the duty specified in the notice or the duty so accepted by him provided such reduced penalty is also paid by him along with the duty and interest.

In the given case, SCN was received by him on 24.08.20XX and he paid the duty, interest and the applicable penalty on 20.09.20XX, which is within 30 days of the receipt of the notice. Therefore, if Mr. X has understated the value of imported goods with a fraudulent intention and has informed the proper officer of the payment made by him, in writing, in view of the above-mentioned provisions, penalty leviable on Mr. X will be 15% of the duty specified in the notice. However, if Mr. X has understated the value of imported goods on account of bona fide reasons, no penalty will be imposable on him.

Q 6. Explain the provisions of Customs Act, 1962 relating to computation of limitation for submission of refund application.

Ans: According to section 27(1) of the Customs Act, 1962, a refund claim should be lodged before the expiry of one year from the date of payment of such duty or interest. The period of limitation of one year should be computed in the following manner:

- (a) If the refund claim is lodged by the importer, the time limit should be calculated from the date of payment of duty.
- (b) If the refund claim is lodged by the buyer of imported goods, the time limit should be calculated from the date of purchase of goods.

- (c) In case of goods which are exempt from payment of duty by an ad-hoc exemption, the limitation of one year should be computed from the date of issue of such exemption order.
- (d) Where any duty is paid provisionally, the time limit should be computed from the date of adjustment of duty after the final assessment thereof or in case of re-assessment, from the date of such re-assessment.

The time limit of one year is not applicable if duty is paid under protest. Finally, it is worth mentioning that above provisions regarding time limit are mandatory and customs authorities cannot grant a refund which is filed beyond the maximum permissible period.

Q 7. The assessee furnished bank guarantee to the department as required, and imported capital goods at concessional rate of duty under an authorisation with export obligation, but failed to complete the export obligation within the prescribed time. Consequently, the Department invoked the bank guarantee and realized the amount of duty foregone. Subsequently the assessee fulfilled the export obligation and the same was also accepted by the Department. The assessee filed a refund claim for the amount realized by the Department under the bank guarantee. The Department rejected the refund claim on the ground that it was time barred in terms of section 27 of the Customs Act, 1962.

Was the stand taken by the Department correct in law? Examine with the support of case law on the issue.

Ans: In this case the bank guarantee was for the purpose of security for fulfilment of export obligation. It cannot be construed as payment of 'duty'. As section 27 applies only to refund of duty and not to refund of other amounts, the time bar under the said section cannot be invoked to deny the refund.

The facts of given case are similar to the facts of *CCus. (Exports) v. Jraj Exports (P) Ltd.* 2007 (217) ELT 504 (Mad.). The High Court, in the instant case, held that furnishing of bank guarantee for export obligation could not be regarded as payment of duty; therefore time-bar was not applicable for its return.

The High Court relied on the Supreme Court's ruling in the case of *Oswal Agro Mills Ltd. and Another v. Asstt. Collector of Central Excise* 1994 (70) ELT 48 (SC), wherein it was held that furnishing of bank guarantee pursuant to an order of the Court would not be equivalent to payment of excise duty. The furnishing of bank guarantee is only a security to safeguard the interest of the Revenue. Since section 27 governs the refund of 'duty', and the bank guarantee is not 'duty', the limitation prescribed therein for refund of duty would not apply to refund of a bank guarantee.

Applying the principle laid down in the abovesaid case, the High Court stated that the requirement to establish that the duty incidence had not been passed on by the assessee to any other person would also not get attracted since section 27 has no application to this case. Therefore, the stand of the Department is not correct in law.

Q 8. M/s. HIL imports copper concentrate from different suppliers. At the time of import, the seller issues a provisional invoice and the goods are provisionally assessed under section 18 of the Customs Act, 1962 based on the invoice. When the final invoice is raised, based on the price prevalent in the London Metal Exchange on a predetermined date as agreed in the contract between the buyer and seller, the assessments are finalized on the basis of the price in such invoices. M/s HIL has filed a refund claim arising out of the finalization of the bill of entry by the authorities. The Department, however, has rejected the refund claim on the grounds of unjust enrichment. Discuss whether the action of the department is correct in law?

Ans: Section 18 (dealing with provisional assessment) incorporates the principle of unjust enrichment in case of refund arising out of finalization of provisional assessment. Sub-section (5) of section 18 of Customs Act, 1962 provides that if any amount is found to be refundable after finalisation of provisional assessment, such refund will be subject to doctrine of unjust enrichment. Further, section 28D places the onus on the person who has paid duty to prove that he has not passed on the incidence of such duty. In the absence of any proof from such person, section 28D deems that the burden of duty has been passed on to the buyer. Therefore, in the given case, the Department's action will be correct if M/s HIL does not produce any evidence of bearing the burden of duty.

Q 9. XYZ Ltd imported capital goods and used them in its factory to produce goods for sale. Upon discovery of an error by which excess import duty had been paid on the said capital goods, it filed a claim for refund. As regards unjust enrichment, it contended –

- (a) that the capital goods were not sold and hence the principle of unjust enrichment will not apply to the refund of import duty paid on capital goods; and
- (b) that in any case the price of the finished goods manufactured in the factory remained the same before and after the import and installation of the capital goods, which is sufficient proof to establish that duty burden has not been passed on.

Examine the merits of these contentions, with the support of case law, if any.

Ans: The incidence of duty can be passed directly or indirectly. Where the capital goods are used for manufacture, the duty paid on their import will go into the costing of the goods manufactured and sold, and can thus be passed on to the buyers. The Large Bench of the Tribunal in the case of *SRF Ltd. v. CCus. Chennai 2006 (193) ELT 186 (Tri. - LB)* has held that the doctrine of unjust

enrichment would be applicable in case of imported capital goods used captively for manufacture of excisable goods. As regards the relevance of the fact that price remained the same before and after the capital goods were imported, the Larger Bench also clarified that uniformity in price before and after assessment does not lead to inevitable conclusion that duty burden has not been passed, as such uniformity may be due to various reasons. In view of this, the contentions of XYZ Ltd are liable to be rejected.

Q 10. Section 26A of Customs Act, 1962 provides for refund of import duty paid if goods are found defective or not as per specifications. Discuss the conditions governing such refund in brief.

Ans: Often, goods imported are found to be defective or not according to specifications. In such cases, earlier, the refund of customs duty paid at the time of import could be obtained only if the imported goods were physically returned to foreign supplier. Generally, cost of return of the rejected goods is heavy and it is economical to dispose of the goods in India itself. Realising this practical difficulty, section 26A of Customs Act makes provision for refund of import duty paid if goods are found defective or not as per specifications. The refund is admissible if goods are re-exported or relinquished and abandoned to the customs authorities or destroyed. Thus, refund is possible even if goods are destroyed or relinquished in India without re-exporting the same. The section stipulates the following conditions for the refund:

- (i) the goods are found to be defective or otherwise not in conformity with the specification agreed upon between the importer and the supplier of goods;
- (ii) 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;
- (iii) the goods are identified to the satisfaction of Assistant/Deputy Commissioner of Customs as the goods which were imported;
- (iv) the importer does not claim drawback under any other provision of this Act; and
- (v) the goods are exported or the importer relinquishes his title to the goods and abandons them to customs or such goods are destroyed/rendered commercially valueless in the presence of proper officer in prescribed manner within 30 days from the date on which the order of clearance of imported goods for home consumption is made by the proper officer. This period of 30 days can be extended up to 3 months.
- (vi) An application for refund of duty shall be made before the expiry of 6 months from the relevant date in prescribed form and manner.
- (vii) Imported goods should not be such regarding which an offence appears to have been committed under this Act or any other law.
- (viii) Imported goods should not be perishable goods and goods which have exceeded their shelf life or their recommended storage before use period.

Q 11. What is the minimum monetary limit prescribed in the Customs law below which no refund shall be granted?

Ans: *As per third proviso to section 27(1) of the Customs Act, 1962, the minimum monetary limit below which refund cannot be granted is Rs. 100.*

Q 12. Explain the doctrine of unjust enrichment with respect to refund of duty.

Ans: *When an importer imports goods, he has to pay the customs duty on such goods. This duty is recovered from the purchaser when these goods are sold by the importer. In other words, the burden of duty is passed on to the purchaser. Subsequently, if the importer is refunded the duty by the government, this double benefit would be called as unjust enrichment, because he recovers the duty from customer and again gets the said amount from Government as refund. The same applies to a buyer who again passes on the incidence of duty to another person.*

Therefore, wherever there is excess payment or collection of duty, the refund is given only to the person who bears the burden of duty and interest, if any. If the person who claims the refund is not the person who bore the burden, the refund is paid into a fund called Consumer Welfare Fund. Therefore, even if the duty / interest is refundable on merits, it is important for the applicant for a refund to prove that he has not passed the burden of duty, in order to succeed in getting refund of duty.

Section 28D provides that every person who has paid duty under the Customs Act, unless the contrary is proved by him, shall be deemed to have passed the full incidence of such duty to the buyer; hence the applicant for refund has to refute the presumption of passing on the incidence of duty.

Q 13. Acme Sales' imports were being provisionally assessed pending a verification that the department was carrying out. Upon completion of the verification, the assessments were finalized, and Acme Sales was asked to pay ` 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 ` 8 lakhs on the ground that the differential amount should be ` 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.*

Q 14. Mr. N has, over three consignments of 200, 400 and 400 units, imported a total of 1000 units of an article "ZEP", which has been valued at ` 1,150 per unit. The customs duty on this article has been assessed ` 250 per unit. He adds his profit margin ` 350 per unit and sells the article for ` 1,750 per unit. After one month of selling the entire consignment of article "ZEP", Mr. N found that there had been an error in payment of amount of duty, in which duty for the consignment of 200 units was paid as if it was 400 units, resulting in excess payment of duty. Mr. N files an application for refund for ` 50,000 (200 X 250). Is the bar of unjust enrichment attracted?

Ans: Mr. N's invoices show that he collected duty of ` 250 per unit on 1,000 items. However he paid duty on 200 items more. This payment, in the normal course, was made before the order permitting the clearance of the goods. It would be evident from the bill of entry that the amount paid was more than the amount of duty assessed. Thus Mr N's case falls within the exception to unjust enrichment listed at clause (g) of the first proviso to section 27(2). He will be able to refute the charge of unjust enrichment. Furthermore, clause (a) of the same sub-section provides that the doctrine of unjust enrichment will not apply to the refund of duty and interest, if any, paid on such duty if such amount is relatable to the duty and interest paid by the importer/exporter, if he had not passed on the incidence of such duty and interest to any other person. Mr N's invoices will show how much duty he collected from his customers, hence he may be covered by this clause also to escape the bar of unjust enrichment.

Chapter 8 Foreign Trade Policy

Exercise Questions & Answers

- Q 1. Answer the following questions with reference to the provisions of Foreign Trade Policy:
- i. Flintex Manufacturers manufactures goods by using imported inputs and supplies the same under Aid Programme of the United Nations. The payment for such supply is received in free foreign exchange. Can Flintex Manufacturers seek Advance Authorization for the supplies made by it?
 - ii. XYZ Ltd. has imported inputs without payment of duty under Advance Authorization. The CIF value of such inputs is ` 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?
 - iii. 'A' has used some duty paid inputs in its export products. However, for the rest of the inputs, he wants to apply for the Advance Authorization. Can he do so? Explain.

Ans: Answer to above mentioned questions are given below:

- i. Supply to goods to UN or international organisations for their official use or supplied to projects financed by them are 'deemed exports'. Advance Authorization can be issued for supplies made to such 'deemed exports'. Therefore, Flintex Manufacturers can seek an Advance Authorization for the supplies made by it.
- ii. Advance Authorization necessitates exports with a minimum of 15% value addition (VA).
$$VA = [(A - B)/B \times 100]$$

A = FOB value of export realized, B = CIF value of inputs covered by authorization.
Therefore, the minimum FOB value of the exports made by XYZ Ltd. should be Rs. 11,50,000.
- iii. Yes, 'A' can do so. In case of part duty free and part duty paid imports, both Advance Authorization and drawback will be available. Drawback can be obtained for any duty paid material, whether imported or indigenous, used in goods exported, as per drawback rate fixed by DoR, Ministry of Finance (Directorate of Drawback). Advance Authorization can be used for importing duty free material. Drawback allowed must be mentioned in the application for Advance Authorization. In such case, All Industry Brand Rates are not applicable. The manufacturer has to get specific brand rate fixed from Commissioner for these exported goods.

Q 2. Discuss the similarities and differences between Advance Authorization and DFIA (Duty Free Import Authorization) schemes.

Ans: In both DFIA and Advance Authorization schemes, import of inputs, oil and catalyst which are required for export products are permitted without payment of customs duty. The differences between DFIA and Advance Authorisation schemes are as follows -

- (i) 'Advance Authorisation' is not transferable. DFIA is transferable after export obligation is fulfilled.
- (ii) Advance Authorisation scheme requires 15% value addition, while in case of DFIA, minimum 20% value addition is required.
- (iii) Advance Authorisation scheme is available to gem and jewellery sector but not DFIA.
- (iv) DFIA cannot be issued where SION (Standard Input Output Norms) prescribes actual user condition [as the material is transferable after fulfilment of export obligation].
- (v) Advance Authorisation can be issued even if SION for that product is not fixed. DFIA can be issued only if SION has been fixed for that product to be exported.
- (vi) IGST has been exempted on imports under Advance Authorisation scheme upto 31.03.2019, but there is no such exemption available if imports are under DFIA scheme

Q 3. What do you understand by the term 'Foreign Trade Policy' (FTP)? Which is the governing legislation for FTP? Which Government authorities administer FTP in India?

Ans: Foreign Trade Policy is a set of guidelines or instructions issued by the Central Government in matters related to import and export of goods in India viz., foreign trade. The FTP, in general, aims at developing export potential, improving export performance, encouraging foreign trade and creating favourable balance of payments position.

In India, Ministry of Commerce and Industry governs the affairs relating to the promotion and regulation of foreign trade. The main legislation concerning foreign trade is the Foreign Trade (Development and Regulation) Act, 1992 FT (D&R) Act.

In exercise of the powers conferred by the FT (D&R) Act, the Union Ministry of Commerce and Industry, Government of India announces the integrated Foreign Trade Policy (FTP) in every five years with certain underlined objectives. This policy is generally updated every year in April, in addition to changes that are made throughout the year.

The FTP is formulated, controlled and supervised by the office of the Director General of Foreign Trade (DGFT), an attached office of the Ministry of Commerce & Industry, Government of India. DGFT has several offices in various parts of the country which work on the basis of the policy formed by the headquarters at Delhi.

Though the FTP is formulated by DGFT, it is administered in close coordination with other agencies. Other important authorities dealing with FTP are:

- (i) Central Board of Indirect Taxes and Customs (CBIC)
- (ii) Reserve Bank of India (RBI)
- (iii) State VAT Department

Q 4. Briefly explain as to how FTP is linked with customs laws.

Ans: The Foreign Trade Policy is closely knit with the Customs 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., IGST Act, CGST Act, SGST/UTGST Act, Customs Tariff Act, 1975, Central Excise Act, 1944, Customs Act, 1962 etc.). 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). Decision of Director General of Foreign Trade (DGFT) is final and binding in respect of (a) Interpretation of any provision of foreign trade policy or provision of Handbook of Procedures, Appendices, Aayat Niryat Forms (b) Classification of any item in ITC(HS).

Q 5. Enumerate the various matters in respect of which policies and regulations are framed under FTP.

Ans: Following issues are covered under FTP 2015-2020 -

- ◆ General provisions regarding import and export of goods - Chapter 2 of FTP 2015-2020.
 - ◆ Export From India Scheme [MEIS and SEIS] to encourage exports of specified goods to specified countries and also export of services - Chapter 3 of FTP 2015-2020.
 - ◆ Duty Exemption and Remission Schemes [Advance Authorisation, DFIA and Duty Drawback Scheme and duty remissions schemes under GST law] to enable exporters to import inputs without payment of customs duty - Chapter 4 of FTP 2015-2020.
 - ◆ Export Promotion Capital Goods (EPCG) scheme [to obtain capital goods without payment of customs duty] - Chapter 5 of FTP 2015- 2020.
 - ◆ EOU/EHTP/STP and BTP schemes - Chapter 6 of FTP 2015-2020.
 - ◆ Deemed Exports - Chapter 7 of FTP 2015-2020.
 - ◆ Quality Complaints and Trade Disputes - Chapter 8 of FTP 2015-2020.
- Policy in respect of Special Economic Zones [SEZ] is contained in SEZ Act, 2005 and Rules.

Q 6. With reference to the provisions of FTP 2015-2020, discuss giving reasons whether the following statements are true or false:

- (a) If any doubt arises in respect of interpretation of any provision of FTP, the said doubt should be forwarded to CBIC, whose decision thereon would be final and binding.
- (b) Authorization once claimed by an importer cannot be refused by DGFT.
- (c) IEC is a unique 12 digit PAN based alphanumeric code allotted to a person for undertaking any export/ import activities.
- (d) Waste generated during manufacture in an SEZ Unit can be freely disposed in DTA on payment of applicable customs duty, without any authorization.
- (e) A Customs Clearance Permit (CCP) is required from DGFT in certain specific cases of import of gifts.

Ans:

- (a) **False.** If any question or doubt arises in respect of interpretation of any provision of the FTP, said question or doubt ought to be referred to DGFT whose decision thereon would be final and binding.
- (b) **False.** No person may claim an Authorization as a right and DGFT shall have power to refuse to grant or renew the same in accordance with provisions of FT(D&R) Act, rules made thereunder and FTP.
- (c) **False.** IEC is a unique 10 digit code allotted to a person for undertaking export/ import activities.
- (d) **True.** Any waste or scrap or remnant including any form of metallic waste & scrap generated during manufacturing or processing activities of an SEZ Unit/ Developer/ Co-developer are allowed to be disposed in DTA freely, without any authorization, subject to payment of applicable customs duty.
- (e) **True.** A Customs Clearance Permit (CCP) for import of gifts is not required from DGFT if such goods are otherwise freely importable under ITC(HS). Thus, only when the goods imported as gifts are not freely importable under ITC(HS), a CCP is required.

Q 7. Mr. A wants to import by air a laptop from USA. Such laptop has been used by Mr. B - the seller for few months there. Mr. A contends that he can freely import such laptop without any restriction/ authorization. Examine the correctness of Mr. A's claim in the light of the provisions of [FTP 2015-2020](#).

Ans: Import of one laptop computer (notebook computer) is exempt from whole of the customs duty. Further, Foreign Trade Policy 2015-2020 provides that import of second hand laptop requires authorization. In view of above, Mr. A's claim is not correct as second hand laptops can be imported only against an authorization.

Q 8. State in brief policy for import of samples.

Ans: No authorisation is required for import of bona fide technical and trade samples. These are importable freely. Samples upto Rs. 3,00,000 can be imported by all exporters without duty. Authorisation for import of samples is required only in case of vegetable seeds, bees and new drugs. Samples of tea upto Rs. 2,000 (CIF) per consignment will be allowed without authorization.

Q 9. State salient aspects of Advance authorisation for annual requirements to exporters.

Ans: Annual Advance authorisation would be issued to exporters having past export performance for at least two financial years, to enable them to import the inputs required by them on annual basis. Advance authorization for Annual Basis can be only on basis of prescribed manner and not on basis of ad hoc norms. Annual Advance Authorisation in terms of CIF value of imports will be granted upto 300% of FOB value of physical exports in preceding financial year and/or FOR value of deemed exports in preceding year or ` 1 crore, whichever is higher.

Q 10. What are the salient features of Duty-Free Import Authorization Scheme (DFIA)? Which duties are exempted under this scheme?

Ans: DFIA is issued to allow duty free import of inputs, oil and catalyst which are required for production of export product. The goods imported are exempt ONLY from basic customs duty.

DFIA shall be issued on post export basis for products for which SION have been notified. Separate DFIA shall be issued for each SION and each port.

No DFIA shall be issued for an export product where SION prescribes 'Actual User' condition for any input.

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. However, DFIA holder may obtain supplies from EOU/EHTP/BTP/STP/SEZ units, without obtaining ARO or Invalidation letter.

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.

DFIA or the inputs imported against it can be transferred after the fulfillment of the export obligation. A minimum 20% value addition is required for issuance of DFIA except for items in gems and jewellery sector.

Q 11. Answer the following questions with reference to the provisions of Duty Credit Scrips under Export from India Schemes under [FTP 2015-2020](#).

- I. Rishita provides services eligible for SEIS Scheme. She wants to sell SEIS scrips earned by her. Can she do so?
- II. Can a manufacturer, instead of importing the inputs, source the same indigenously without payment of GST?
- III. An exporter was issued duty credit scrip dated 15.07.2015. What is the period within which he must utilize the scrip?

IV. An exporter exported leather footwears through courier using e-commerce of value of Rs. 5,00,000. Can he apply for duty credit scrips under Merchandise Exports from India Scheme (MEIS)?

Ans: Answer to above mentioned questions are given below:

- (i) Yes. The duty credit scrips and goods imported or domestically procured against them are freely transferable.
- (ii) No. Utilization of duty credit scrip is not permitted for payment of GST for procurement from domestic sources.
- (iii) The duty credit scrip will be valid for 18 months from date of issue.
- (iv) Yes. Exports of leather footwears through courier using e-commerce of FOB value of 5,00,000 per consignment are eligible for MEIS.

Q 12. Mention the reward scheme provided under FTP which aims to promote the manufacture and export of notified goods/ products. Discuss the basis of computation of reward under said scheme. How can the duty scrips issued under the Scheme be utilized?

Ans: The scheme is known as Merchandise Exports from India Scheme (MEIS). The objective of MEIS scheme is to promote the manufacture and export of notified goods/ products. Under MEIS, exports of notified goods/products to notified markets shall be eligible for reward at the specified rate(s). Unless otherwise specified, the basis of calculation of reward would be:

- (i) on realised 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.

Q 13. Explain salient features of post export EPCG scheme.

Ans: In EPCG scheme, first capital goods are imported without payment of customs duty and then export obligation is fulfilled.

In case of post export EPCG scheme, the capital goods are imported on full payment of applicable duties in cash. Later, basic customs duty paid on Capital Goods shall be remitted in the form of freely transferable duty credit scrips. **Capital goods imported under EPCG Authorisation for physical exports are also exempt from IGST and Compensation Cess upto 31.03.2019.**

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.

These Duty Credit Scrips can be used for payment of applicable custom duties for imports. All other provisions of EPCG Scheme apply to post export EPCG scheme also.

Specific Export Obligation under this Scheme shall be 85% of the applicable specific EO [6 times of duties, taxes and cess saved on capital goods imported under EPCG scheme to be fulfilled in 6 years reckoned from authorization issue date]. Average EO remains unchanged.

Duty remission shall be in proportion to the Export Obligation fulfilled.

The advantage of the scheme is that the exporter does not have any specific export obligation when he imports capital goods on payment of full customs duty. Later, he gets remission on the basis of exports made by him.

Q 14. With reference to the provisions relating to EOU, EHTP, STP, BTP & SEZ Schemes as contained in FTP, answer the following questions:

- (a) A unit intending to trade in handicrafts wants to set up an EOU. Is it allowed?*
- (b) An EOU has started production after 4 years 10 months from the date of grant of Letter of Permission (LoP)/ Letter of Intent (LoI). Is it correct?*
- (c) A EOU wants to import a second hand capital goods which is prohibited under ITC (HS). Can it do so?*

Ans: Answer to above mentioned questions are given below:

- 1** **No.** 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 and rendering of services. Trading units are not covered under these schemes.
- 2** **No.** EOU/ BTP/ EHTP/ STPs should start production within 2 years from the date of grant of Letter of Permission (LoP)/ Letter of Intent (LoI). In other words, LoP/ LoI have an initial validity of 2 years, by which time unit should have commenced production. Its validity may be extended further up to 2 years by competent authority. However, proposals for extension beyond four years shall be considered in exceptional circumstances, on a case to case basis by BoA.
- 3** **No.** Though an EOU is permitted to import duty free second hand capital goods, without any age limit, it cannot import capital goods that are prohibited items of import in the ITC(HS).

Q 15. List some supplies which are 'deemed exports' for purpose of benefits under Foreign Trade Policy 2015-2020.

Ans: As per FTP 2015-2020, following are treated as deemed exports:

- ◆ *Supplies against Advance Authorisation/DFIA*
- ◆ *Supplies to EOU/STP/EHTP/BTP*
- ◆ *Supplies against EPCG authorization*
- ◆ *Supply of marine freight containers by 100% EOU*
- ◆ *Supplies to projects against International Competitive Bidding*
- ◆ *Supplies to projects where imports permitted at zero customs duty*
- ◆ *Supply to mega power projects*

- ◆ *Supplies to UN or International Organizations for their official use.*
- ◆ *Supplies to nuclear projects*

Q 16. 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".

Ans: *The benefits available to Status holders are as under:*

- (a) Authorization and custom clearances for both imports and exports on self-declaration basis.*
- (b) Fixation of Input Output Norms (SION) on priority i.e. within 60 days.*
- (c) Exemption from compulsory negotiation of documents through banks. The remittance receipts, however, would continue to be received through banking channels.*
- (d) Exemption from furnishing of Bank Guarantee for Schemes under FTP unless otherwise specified.*
- (e) Two Star Export Houses and above are permitted to establish export warehouses.*
- (f) Three Star and above Export House shall be entitled to get benefit of Accredited Clients Programme (ACP) as per the guidelines of CBEC.*