

CUSTOM LAW FOR JUNE AND DEC 2021 EXAMS

ABOUT CA SACHIN GUPTA

1. He is a **Fellow Member of ICAI** having teaching experience of more 15 years.
2. He is also a **Rank Holder** in CA exams.
3. He is the **Visiting Tax Faculty** of ICSI & ICAI.
4. He has Taught over 25,000 students all across India.
5. He is Winner of **Best Tax Faculty Award** from The Institute of Companies Secretaries of India.
6. He is Engaged with **Professional Institutes** for **content/study material generation**.
7. He had been engaged with **Income Tax Department** for Training of Income Tax personnel.
8. His Students have scored **All India Merit Ranks** & have been amongst **All India Toppers**.
9. He has **Contributed various Articles** for Professional Journals and **delivered lectures** at various forums.



CA SACHIN GUPTA
TAX HELPLINE : 9354-11-78-01
casachingupta@gmail.com

INDEX

C.NO.	CHAPTER NAME	PAGE NO.
	CUSTOMS ACT	
1.	Introduction	1 – 9
2.	Type of Duty	10 – 17
3.	Valuation	18 – 32
4.	Import & Export Procedure	33 – 43
5.	Duty Drawback	44 – 68
6.	Baggage	69 - 76
7.	Refund	77 – 83
8.	Transit & Transhipment	84 – 87

Chapter 1 : Introduction to Customs Duty

What is custom duty

Customs duty is an indirect tax and is levied on import of goods into India and export of goods out of India.

Power to levy custom duty :

The power to levy the Custom Duty is conferred by Entry No. 83 of Union list of Constitution of India.

Customs Law

(i) **The Customs Act, 1962** : It covers provisions relating to levy, assessment, collection, import export procedures, warehousing, duty drawback, baggage, adjudication, appeal, review, revision, refund, recovery, penalties, confiscation, powers of the department to stop, search, seize, arrest, etc.

The Customs Act, 1962 is a consolidated Act dealing with imports and exports by-

- air,
- water, and
- land route.

It extends to the whole of India including the State of Jammu and Kashmir.

Although, the main purpose of the Act is revenue collection but it has many other purposes such as prevention of smuggling, conservation of foreign exchange, protection of Indian industry from dumping, regulation of imports and exports, etc.

(ii) **The Customs Tariff Act, 1975** : The Customs Tariff Act, 1975 is the supporting Act dealing with *goods, its description, classification and rates of customs duties*

It contains the following two Schedules:

- (a) Schedule I known as 'Import Tariff. This schedule refers to goods liable to import duty of customs.
- (b) Schedule II known as 'Export Tariff. This schedule refers to goods liable to export duty of customs.

In addition, the Customs Tariff Act, makes certain provisions for levy of other duties like additional duty of Customs (also known as countervailing duty *i.e.* C.V.D.) preferential duty, anti-dumping duty, protective duties, etc.

(iii) **Rules under the Customs Act** : Section 156 of the Customs Act, 1962 provides that the Central Government has been empowered to make rules, consistent with provisions of the Act, to carry out the purposes of the Act. Some of the major rules are:

- (a) Customs Valuation Rules, 2007
- (b) Customs and Central Excise Duties Drawback Rules, 1995
- (c) Baggage Rules, 1998

(iv) **Customs Notifications and Circulars** :

Circulars, clarifications, notifications, etc. issued by the Central Board of Excise and Customs (CBEC) are also relevant for understanding the customs law. The circulars and clarifications are not binding on the assessee or any court, but these are binding on customs department.

Notifications issued by the Government as well as by Central Board of Excise and Customs are, however, binding on everyone.

In addition to the above acts, rules, notification circulars, etc. we have to study the judicial decision of CEST AT (Customs, Excise and Service Tax Appellate Tribunal)/ High Courts/Supreme Court in this regard.

(v) **Customs Manual, 2001**

The manual gives an overview of customs law and procedures. Whatever are the instructions given in the manual, they are to be followed.

Applicability of Customs Act

The Customs Act is applicable to the whole of **India**.

Sec 2 : Important definitions

1. **Section 2(27) : 'India'**, includes the territorial waters of India.(Territorial waters extend up to 12 nautical miles from the base line)
2. **Section 2(3) : “Baggage”** includes unaccompanied baggage but does not include motor vehicles.
3. **Section 2(4) : “Bill of entry”** means a bill of entry referred u/s 46.
4. **Section 2(5) : “Bill of export”** means a bill of export referred u/s 50.
5. **Section 2(6) : “Board ”** means the Central Board of Indirect Tax and Customs constituted under Central Boards of Revenue Act, 1963.
6. **Section 2(7) : “Coastal goods”** means goods, other than imported good , transported in a vessel from one port in India to another.
7. **Section 2(14) : “Dutiable goods”** means any goods which are chargeable to duty and on which duty has not been paid.
8. **Section 2(16) : "Entry"** in relation to goods means an entry made in a
 - Bill of entry u/s 46
 - Shipping bill or bill of export u/s 50
 - And includes the entry made under the regulations made u/s 84.
9. **Section 2(18) : “Export”**, with its grammatical variations and cognate expressions, means taking out of India to a place outside India.
10. **Section 2(19) : “Export goods”** means any goods which are to be taken out of India to a place outside India.
11. **Section 2(20) : "Exporter"**, in relation to any goods at any time between their entry for export and the time when they are exported, includes any owner, beneficial owner or any person holding himself out to be the exporter.
12. **Section 2(21) : “Foreign-going vessel or aircraft”** means any vessel or aircraft for the time being engaged in the carriage of goods or passengers between any port or airport in India and any port or airport outside India, whether touching any intermediate port or airport in India or not, and includes -
 - (i) any naval vessel of a foreign Government taking part in any naval exercises;
 - (ii) any vessel engaged in fishing or any other operations outside the territorial waters of India;
 - (iii) any vessel or aircraft proceeding to a place outside India for any purpose whatsoever.
13. **Section 2(22) : “Goods”** includes –
 - a) vessels, aircrafts and vehicles;
 - b) stores;
 - c) baggage;
 - d) currency and negotiable instruments; and
 - e) any other kind of movable property

- 14. Section 2(23) : “Import”,** with its grammatical variations and cognate expressions, means bringing into India from a place outside India.
- 15. Section 2(24) : “Import manifest” or “Import report”** means the manifest or report required to be delivered u/s 30.
- 16. Section 2(25) : “Imported goods”** means any goods brought into India from a place outside India but does not include goods which have been cleared for home consumption.[Means Imported goods are those goods which are lying under the control of the Custom Authority. These goods may attract Import duty (Dutiable goods) or may not attract duty.
- 17. Section 2 (26) : "Importer",** in relation to any goods at any time between their importation and the time when they are cleared for home consumption, includes any owner, beneficial owner or any person holding himself out to be the importer.
- 18. Section 2(27) : “India”** includes the territorial waters of India.
- 19. Section 2(28) : “Indian customs waters”** means the waters extending into the sea up to the limit of contiguous zone of India under section 5 of the Territorial Waters, Continental Shelf, Exclusive Economic Zone and other Maritime Zones Act, 1976 and includes any bay, gulf, harbour, creek or tidal river.
- 20. Section 2(31) : “Person-in-charge” means**
a) in relation to a vessel : Master of the vessel;
b) in relation to an aircraft, : Commander or pilot-in-charge of aircraft;
c) in relation to a railway train : Conductor, guard or other person having chief direction of train;
d) in relation to any other conveyance :Driver or other person-in-charge of the conveyance.
- 21. Section 2(33) : “Prohibited goods”** means any goods the import or export of which is subject to any prohibition under this Act or any other law for the time being in force but does not include any such goods in respect of which the conditions subject to which the goods are permitted to be imported or exported have been complied with.
- 22. Section 2(34) : “Proper officer”,** in relation to any functions to be performed under this Act, means the officer of customs who is assigned those functions by the Board or the Commissioner of Customs
- 23. Section 2(37) : “Shipping bill ”** means a shipping bill referred u/s50.
- 24. Section 2(38) : “Stores”** means goods for use in a vessel or aircraft and includes fuel and spare parts and other articles of equipment, whether or not for immediate fitting.
- 25. Section 2(39) : “Smuggling”,** in relation to any goods, means any act or omission which will render such goods liable to confiscation u/s 111 or u/s 113.
- 26. Section 2(40) : “Tariff value”,** in relation to any goods, means the tariff value fixed u/s 14(2).
- 27. Section 2(41) : “Value”,** in relation to any goods, means the value determined u/s Sec 14(1) or 14(2).
- 28. Section 2(42) : “Vehicle”** means conveyance of any kind used on land and includes a railway vehicle.
- 29. Section 2(43) : “Warehouse” means**
○ Public warehouse licensed under section 57 or
○ Private warehouse licensed under section 58 or
○ Special warehouse licensed under section 58A.
○
- 30. Section 2(44) : “Warehoused goods”** means goods deposited in a warehouse.
- 31. Section 2(3A) : “Beneficial owner”** means any person on whose behalf the goods are being imported or exporter or who exercises effective control over the goods being imported or exported.

- 32. Section 2(11) : "Customs area"** means the area of a customs station and includes any area in which imported goods or export goods are ordinarily kept before clearance by Customs Authorities; Customs area includes warehouse Imp note:
- 33. Section 2(13) : "Customs station"** means any customs port, customs airport, international courier terminal, foreign post office or land customs station.
- 34. Section 2(20A) : "Foreign post office"** means any post office appointed u/s 7(1)(e) to be a foreign post office.
- 35. Sec 2(28A) : "International courier terminal"** means any place appointed u/s 7(1)(f) to be an international courier terminal.

Levy of Customs Duty

Charging section : Section 12

- Duties of customs
- shall be levied
- at such rates as may be specified
- under the Customs Tariff Act, 1975
- on goods imported into, or exported from, India.

Special point :

1. Levy is made also on goods imported or exported by Government [Section 12(2)]
2. Customs duty is charged on goods and not on the person importing them or paying the duty.
3. Export Section 2(18) : Export means taking out of India to a place out of India.
- 4 Import [Section 2(23)] Bringing goods into India from a place outside India
5. India Section 2(27) : India includes its territorial waters.

Taxable Event

Goods become liable to import duty or export duty when there is import into or export from India. Import and export are two taxable events under customs.

Taxable Event for Imports

Import of goods commences when the Goods cross the territorial waters reached at the time when the goods reach the customs barriers

Taxable event for Exports

Taxable event of export commences when goods cross the customs barriers and is complete when goods cross the territorial waters of India. If ship sinks within the territorial waters, export is not complete.

Exemption/remission of duty

As per section 12, customs duties are levied on imported and exported goods. Duties of customs shall be levied at such rates as may be specified under the Customs Tariff Act, 1975. Levy is subject to certain exceptional cases.

Exceptional cases

- 1. Section 13 - No duty on pilfered goods by importer.*
- 2. Section 22 - Abatement of duty (reduced duty) on damaged or deteriorated goods.*
- 3. Section 23(1) - Remission of duty on goods lost destroyed or abandoned.*
- 4. Section 23(2) - Duty is not payable in case of relinquishment of the title to the goods*

(1) Section 13 : No duty payable by importer on pilfered goods :

- ✓ If any imported goods are pilfered
- ✓ after the unloading thereof and
- ✓ before the proper officer has made an order for clearance for home consumption or
- ✓ deposit in a warehouse,
- ✓ the importer shall not be liable
- ✓ to pay the duty leviable on such goods.

Special point :

1. Where such goods are recovered back after pilferage, the importer becomes liable to duty.

2. Where goods have been pilfered after the order of clearance but before taking actual delivery the assessee will not be eligible for benefit of Sec 13.

3. As per section 45(3), if any imported goods are pilfered after unloading thereof in a customs area while in the custody of a person approved by the Commissioner u/s 45(1), that person shall be liable to pay duty on such goods at the rate prevailing on the date of delivery of an import manifest or an import report to the proper officer u/s 30 for the arrival of the conveyance in which the said goods were carried.

(2) Section 23(1) : Remission of duty on goods lost, destroyed or abandoned :

- ✓ Without prejudice to the section 13
- ✓ where it is shown to the satisfaction of the AC/DC,
- ✓ that any imported goods have been lost (otherwise than as a result of pilferage) or destroyed,
- ✓ at any time before clearance for home consumption,
- ✓ the AC/DC shall remit the duty on such goods.

Special point : The remission of duty is permissible only in case of total loss of goods

Differences between section 13 and section 23(1)

Section 13	Section 23(1)
Section 13 deals with pilferage Only. The word 'pilfer' Means to steal, especially in small quantities/petty theft	Section 23(1) deals with loss or destruction of goods . The word 'lost' or 'destroyed' refers to total loss of goods i.e. loss is forever and beyond recovery
No duty is payable at all under section 13 However, where pilfered goods are restored to the importer after pilferage, the Importer becomes liable to duty.	Duty is payable under section 23(1), but it is remitted by the Assistant Commissioner of Custom. Thus, unless remitted, duty has to be paid under section 23(1). Further, in case of restoration recovery is not possible
Pilferage should be before order for clearance is made	Loss or destruction can be anytime before clearance.
Section 13 is not applicable for warehoused goods	Section 23(1) is applicable for warehouse goods also.
Importer does not have to prove pilferage.	Burden of proof is on the assessee

(3) Section 23(2) : Duty is not payable in case of relinquishment of the title to the goods

Sometimes the importer does not wish to take the delivery of imported goods due to certain reasons. Some of the reasons could be as under:

1. The goods imported are not according to the specifications;
2. the goods may have been damaged or deteriorated during voyage and as such may not be useful to the importer;
3. There might have been breach of contract and, therefore, the importer may be unwilling to take delivery of the goods.

In such cases

- The importer of the goods may
- At any time before an order of clearance of goods for home consumption or an order for permitting the deposits of goods in a warehouse has been made
- Relinquish title to the goods and
- There upon he shall not be liable to pay the duty thereon.

Special Point :

1. However, the owner of any such imported goods shall not be allowed to relinquish his title to such goods regarding which an offence appears to have been committed under this Act or any other law for the time being in force.
2. **Relinquishment at Warehouse [Proviso to section 68]**
 - **Provided that** the owner of any warehoused goods may,
 - at any time **before an order for clearance of goods for consumption**
 - has been made in respect of such goods,
 - **relinquish his title** to the goods **upon payment of penalties**
 - that may be payable in respect of the goods and
 - **upon such relinquishment,**
 - he shall not be liable to pay duty thereon.
 - ✓ **Provided further that** the owner
 - ✓ of any such warehoused goods
 - ✓ **shall not be allowed to relinquish his title to such goods**
 - ✓ regarding which an offence **appears to have been committed** under this Act
 - ✓ or any other law for the time being in force.

(4) Section 22 : Abatement of duty (reduced duty) on damaged or deteriorated goods

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

Specified circumstances where abatement is available

Abatement is available if it is shown to the satisfaction of the Assistant Commissioner/Deputy Commissioner of Customs that the goods are damaged/ deteriorated under any of the following circumstances:

1. Any imported goods had been damaged or had deteriorated at any time before or during the unloading of the goods in India.
2. Any imported goods, **other than warehoused goods**, had been damaged on account of any accident, at any time after the unloading thereof in India but before their examination for assessment by the customs authorities.
3. Any **warehoused goods** had been damaged on account of any accident at any time before clearance for home consumption.

Duty on damaged/deteriorated goods

$$\frac{\text{Value of goods after damage}}{\text{Value of goods before damage}} \times \text{Duty payable before damage}$$

Valuation of the damaged or deteriorated goods

The value shall be:

- (a) Value ascertained by the proper officer, or
- (b) The proper officer may sell such goods
 - By public auction or
 - In any other manner with the consent of owner
 and the gross sale proceeds shall be deemed to be the value of such goods.

(5) Section 5 : Duty to be paid on goods derelict, wreck, jetsam, etc. coming into India

- ✓ All goods Derelict, Jetsam, Flotsam & Wreck
- ✓ Brought or coming into India,
- ✓ shall be dealt with as if they were imported into India.

Special point :

1. Thus, such goods would be liable to import duty even though such goods had not been actually imported into India.
2. However, if such goods are entitled to be admitted duty free under this Act, duty would not be levied provided it is shown to the satisfaction of the proper officer that they are so entitled.

Derelict	Cargo or Vessel abandoned in the sea with no hope of recovery.
Jetsam	Goods jettisoned from the vessel to save her from sinking, Such goods got sunk
Flotsam	Goods jettisoned from the save vessel to save her for sinking In this case goods do not sink. They continue to float
Wreck	Cargo or vessel or property which is drifted ashore by tides after ship wreck

Other cases :**1. Sec 19 : Determination of duty where Goods consist of Articles Liable to different rates of duty**

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

a.	Articles liable to duty with reference to Quantity (specific duty)	Shall be chargeable to that duty
b	Articles liable to duty with reference to Value (ad volarem duty)	<ul style="list-style-type: none"> • If they are liable to duty at the same rate, be chargeable to duty at that rate • If they are liable to duty at different rates, be chargeable to duty at the highest of such rates
c	Articles not liable to duty	Shall be chargeable to duty at the rate at which articles liable to duty with reference to <i>value</i> are liable under clause (b).

<p>However, <i>(a) accessories of, and spare parts or maintenance and repairing implements for, any article which satisfy conditions specified in the rules made in this behalf shall be chargeable at the same rate of duty as that article;[shall be charged at the same rate at which the main article is charged]</i></p> <p>Conditions: <i>If accessories etc. satisfy the following conditions of Accessory Conditions Rules, 1963:</i> <i>i) These are compulsorily supplied along with main article.</i> <i>ii) No separate charge is made for such supply, their price being included in the price of the main article.</i></p> <p><i>(b) if the importer produces evidence to the satisfaction of the proper officer or the evidence is available regarding the value of any of the articles liable to different rates of duty, such article shall be chargeable to duty separately at the rate applicable to it. [Own rate]</i></p>
--

2. Sec 20 : Reimportation of Goods

- If goods are imported into India
- after exportation there from,
- such goods shall be liable to duty and be subject
- to all the conditions and restrictions, if any,
- to which goods of the like kind and value
- are liable or subject, on the importation thereof

3. Sec 24 : Denaturing or Mutilation of Goods

The Central Government may make rules

- For permitting at the request of owner
- For Denaturing or Mutilation of Imported goods
- Which are ordinarily used for more than one purpose
- So as to render them unfit for one or more of such purposes
- And where any goods are so denatured or mutilated they shall be chargeable to duty
- at such rate as would be applicable
- If the goods had been imported in the denatured or mutilated form.

4. Section 25: Power to grant exemption from duty

Sec 25(1) : General exemption

- If the Central Government
- is satisfied that it is necessary in the public interest so to do, it
- may, by notification in the Official Gazette,
- exempt Generally either absolutely or subject to such conditions
- (to be fulfilled before or after clearance)
- as may be specified in the notification,
- goods of any specified description from
- the whole or any part of duty of customs leviable thereon.

Sec 25(2) : Special Exemption

- If the Central Government is satisfied
- that it is necessary in the public interest so to do,
- it may, by special order in each case,
- exempt from payment of duty,
- any goods on which duty is leviable
- only under circumstances of an exceptional nature
- to be stated in such order.

Notwithstanding anything contained in this Act, no duty shall be collected if the amount of duty leviable is equal to, or less than, one hundred rupees.

Chapter 2 : Type of Customs Duty

1. **Basic Customs Duty**
2. **Additional Duty of Customs (Countervailing Duty i.e. CVD and Special CVD)**
3. **Safeguard Duty**
4. **Anti Dumping Duty**
5. **Protective duty**

Basic Duty

- 1 .It is levied u/s 12 of Customs Act, 1962, and specified u/s 2 of Tariff Act, 1975.
- 2 .The Basic Custom duty is levied on Imported Goods at rate specified in 1st schedule of Customs Tariff Act, 1975.
3. Whereas, basic custom duty on Export Goods is levied at rate specified in 2nd Schedule of Customs Tariff Act, 1975.
4. Such duty is levied either:
 - (a) On the basis of transaction value u/s 14(1) or
 - (b) Tariff value determined u/s 14(2)

There are two rates of duty in the First Schedule:

- (i) **Standard rate**
- (ii) **Preferential Rate**

Standard rate

Duty at the "Standard rate" is charged where there is no provision for preferential treatment. There are different rates for different goods. But the general basic rate is 10% which is also known as peak rate of customs duty. This basic duty may be exempted by a notification u/s 25.

Preferential rate

Preferential rate is applicable when goods are imported from "Most Favored Nation" (E.g. Bangladesh, Korea, Mauritius, Sri Lanka, Tonga, etc)

In such cases, lower preferential rate of duty will be applicable on such goods subject to fulfillment of certain conditions. The benefit of preferential rate shall be given to the importer only when he submits, at the time of importation, proof as to "Country of Origin" of goods, otherwise standard rate shall be applied.

The Central Government may by notification discontinue, increase, decrease the Preferential rate.

Additional Duty of Customs u/s 3(1) Countervailing Duty [CVD]

Countervailing duty is imposed when excisable articles are imported in order to counter balance the excise duty, which is leviable on similar goods if manufactured within the country.

- The amount of CVD is equivalent
- To the amount of **excise duty payable**
- on such goods as if manufactured or produced in India

Special point :

- When excise duty is exempt or nil rate of excise is applicable on goods imported, no CVD is levied.
- CVD is leviable even if similar goods are not produced in India. Such imported goods are charged with similar articles produced in India. If more than one similar articles are available attracting different rates of duty, highest of the rates is applied.
- Exemption of basic customs duty does not automatically mean exemption of CVD.
- GST is applicable in India w.e.f 1/7/2017. Excise duty is not applicable for goods covered under GST. IGST (Integrated goods and service tax) is chargeable on goods imported into India. Therefore CVD will not be applicable for those goods imported in India which are covered under GST
- Hence CVD is payable on imported goods on which GST is not applicable.
- Alcoholic liquor for human consumption is not covered under GST and it is still under state excise which has not been subsumed under GST. So, IGST is not leviable on its import. Hence CVD will continue to apply on it.

Therefore when it is imported into India, the Central Government may specify rate of additional duty having regard to the excise duty for the time being leviable on a like alcoholic liquor produced /manufactured in different States or, if like alcoholic liquor is not produced /manufactured in any State, then, having regard to the excise duty which would be leviable for the time being in different States on class or description of alcoholic liquor to which such imported alcoholic liquor belongs.

Special CVD [Section 3(5)] (also known as SAD)

- This is imposed on imported goods in addition to other duties if any.
- This is in lieu of sales tax/VAT, local tax or any other charges for the time being in force leviable on a like article on its sale, purchase or transportation in India
- It is levied on all goods at a rate as notified by the Government but not exceeding 4%.
- GST is applicable in India w.e.f 1/7/2017. VAT is not applicable for goods covered under GST. Therefore SAD will not be applicable for those goods imported in India which are covered under GST.
- Hence SAD is payable on imported goods on which VAT is not applicable.

Safeguard Duty u/s 8B of CTA

- The Central Government may impose safeguard duty on specified imported goods, if it is satisfied that certain goods are being imported in **Large Quantities** and they are causing serious injury to domestic Industry.

However, the safeguard duty shall not be imposed in the following cases:

- ✓ *Articles originating from developing country, so long as the share of imports of that article from that country does not **exceed 3% of total imports** of that article into India.*
- ✓ *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.*
- ✓ *Unless specifically made applicable in notification, the articles imported by a 100% EOU or units in Free Trade Zone or SEZ.*
- This duty can be imposed only for a limited period, by way of a notification, after an enquiry.
- It can be imposed provisionally for a **maximum period of 200 days** pending final determination of injury.
- If no duty has been imposed within 200 days of provisional levy or it was determined that there was no serious injury to domestic industry, then the amount collected provisionally is refundable.
- The safeguard duty is imposed initially for a **period of 4 years and is extendable upto 10 years**.

Anti-Dumping Duty (ADD) - u/s 9A of the CTA

- Dumping means selling at a throwaway price *i.e.* exporting goods to India, at prices lower than the ones in the domestic market of the exporting country.
- Safeguard duty is product specific and anti dumping duty is country specific.
- To prevent dumping, the Central Government, may levy Anti-Dumping Duty not exceeding the *margin of dumping*
- Margin of dumping means Normal value of goods - Export price of goods.
- Normal value means comparable price in the ordinary course of trade, in the exporting country, after making adjustments to the extent of conditions of sale, taxation, etc.
- The Central Government may, pending the determination in accordance with the provisions of this section and the rules made there under of the normal value and the margin of dumping in relation to any article, impose on the importation of such article into India an anti-dumping duty on the basis of a provisional estimate of such value and margin and if such anti-dumping duty exceeds the margin as so determined,-

- a) Central Government shall, having regard to such determination and as soon as may be after such determination, reduce such anti-dumping duty; and
 - b) refund shall be made of so much of the antidumping
- The CG may, by notification in the Official Gazette, levy anti-dumping duty retrospectively from a date prior to date of imposition of anti-dumping duty but not beyond 90 days from the date of notification, and notwithstanding anything contained in any other law, such duty shall be payable at such rate and from such date as may be specified in notification.
 - The anti-dumping duty imposed under this section shall, unless revoked earlier, cease to have effect on expiry of 5 years from the date of such imposition. However, if Central Government is of opinion that the cessation of such duty is likely to lead to continuation or recurrence of dumping and injury, it may, from time to time, extend the period of such imposition for a further period of 5 years and such further period shall commence from date of order of such extension.
 - Where a review initiated before the expiry of the aforesaid period of 5 years has not come to a conclusion before such expiry, the anti-dumping duty may continue to remain in force pending the outcome of such a review for a further period not exceeding 1 year.

Protective duty

- (1) This duty is levied to protect the interest of any industry established in India.
- (2) It is levied by the Central Government, upon a recommendation made to it in this behalf by the Tariff Commission.
- (3) It is levied for a period as specified in the notification issued by Central Government in the behalf.
- (4) The rate of duty shall be the rate specified by Central Government in the notification but it cannot exceed the amount recommended by tariff commission.

CVD on Subsidized Articles : Section 9 CTA, 1975

Section 9(1) provides that the countervailing duty on subsidized articles is imposed if any country or territory, directly or indirectly, pays or bestows subsidy upon the manufacture or production or exportation of any article.

- Such subsidy includes subsidy on transportation of such article.
- Such articles are imported into India.
- The importation may or may not directly be from the country of manufacture or production.

- The article, may be in the same condition as when exported from the country of manufacture or production or may be changed in condition by manufacture, production or otherwise.

Classification of imported/export goods

There are large varieties of imported goods and of export goods. The customs duty is chargeable on different goods at different rates. Therefore, imported goods and export goods are classified for determination of custom duty. All goods do not carry the same rate of duty.

Classification of imported goods is necessary for the following reasons:

1. Applicability of the rate of duty.
2. Applicability of import controls or restriction.
3. Applicability of anti dumping duty. safeguard duty. etc.
4. Benefit of duty exemption notification if any.

GST AND CUSTOM DUTY

1. Sec 5 of IGST Act , 2017

Sec 5(1) : Charge of IGST

- Subject to the provisions of sub-section (2),
- There shall be levied a tax called the IGST
- On all inter-State supplies of goods or services or both,
- Except on the supply of alcoholic liquor for human consumption,
- On the value determined u/s 15 of the CGST Act and
- At such rates, not exceeding 40%.
- As may be notified by the Government on the recommendations of Council and
- Collected in such manner as may be prescribed and
- Shall be paid by the taxable person:

Provided that integrated tax on goods imported into India shall be levied and collected in accordance with provisions of section 3 of Customs Tariff Act, 1975 on the value as determined under said Act at the point when duties of customs are levied on the said goods u/s 12 of the Customs Act, 1962.

Sec 5(2) : CGST ON PETROLEUM PRODUCTS

- The integrated tax on
- Supply of petroleum crude, high speed diesel, motor spirit (commonly known as petrol), natural gas and aviation turbine fuel
- shall be levied with effect from such date
- as may be notified by the Government

2. Amendment to Section 3 of Custom Tariff Act, 1975:**(a) Section 3(7) : Levy of IGST**

- Any article which is imported into India
- shall, in addition, be liable to integrated tax at such rate,
- not exceeding 40%
- as is leviable u/s 5 of IGST Act, 2017
- on a like article on its supply in India,
- on the value of the imported article as determined u/s (8).

(b) Section 3(8) : Determination of Value on which IGST is levied

- For purposes of calculating the integrated tax u/s 3(7)
- on any imported article where such tax is leviable at any % of its value,
- Value of the imported article shall,
- notwithstanding anything contained u/s 14 of Customs Act, 1962,
- be aggregate of:
 - Value of imported article determined u/s 14(1) of Customs Act, 1962 or Tariff value of such article fixed u/s 14(2), and
 - Any duty of customs chargeable on that article u/s 12 of Customs Act, 1962, & any sum chargeable on that article under any law for the time being in force as an addition to, and in the same manner as, a duty of customs, but does not include the tax referred to in sub-section (7) or the cess referred to in sub-section (9).

(c) Section 3(9) : Levy of Compensation Cess

- Any article which is imported into India
- shall, in addition,
- be liable to GST compensation cess
- at such rate, as is leviable u/s 8 of GST (Compensation to States) Cess Act, 2017
- on a like article on its supply in India,
- on the value of the imported article as determined under sub-section (10).

(d) Section 3(10) : Determination of Value on which Cess is levied

- For purposes of calculating GST Compensation cess u/s 3(9)
- On any imported article where such cess is leviable at any percentage of its value,
- Value of the imported article shall,
- Notwithstanding anything contained in section 14 of the Customs Act, 1962,
- Be the aggregate of:
 - Value of imported article determined u/s 14(1) of Customs Act, 1962 or Tariff value of such article fixed u/s 14(2) and
 - Any duty of customs chargeable on that article u/s 12 of Customs Act, 1962, and any sum chargeable on that article under any law for the time being in force as an addition to, and in the same manner as, a duty of customs, but does not include the tax referred to in sub-section (7) or the cess referred to in sub-section (9).

(e) Section 3(11) : The duty or tax or cess, as the case may be, chargeable under this section shall be in addition to any other duty or tax or cess, as the case may be, imposed under this Act or under any other law for the time being in force.

(f) Section 3(12) : The provisions of Customs Act, 1962 and rules/regulations made thereunder, including those relating to drawbacks, refunds & exemption from duties shall, so far as may be, apply to the duty or tax or cess, as the case may be, chargeable under this section as they apply in relation to the duties leviable under that Act."

3. **Social Welfare Surcharge & Customs Duty (Sec 110 of FA, 2018 wef 2/2/18)**

- SWS is levied on all imported goods with effect from 2nd Feb, 2018, to provide funding for Education, Health, and Social security.
- The Education Cess and the Secondary and Higher Education Cess levied on imported goods has been abolished by omitting chapter VI in Finance Act 2004, and Finance Act, 2007, respectively.
- Notification 11/ 2018- customs, of February 2, 2018, specified goods, which were exempt from the levy of Education Cess and the Secondary and Higher Education Cess are exempted from the levy of the SWS.
- SWS not levied on export of Goods
- SWS shall be calculated @ 10% on the aggregate of duties, taxes and cesses applicable u/s 12 (excluding safeguard duty, countervailing duty, anti-dumping duty, IGST and GST Compensation Cess).
- The import of petrol, high speed diesel, silver and gold shall be eligible to concessional rates of SWS @ 3%.

4. **Road & Infrastructure Cess (Sec 111 of FA, 2018 wef 2/2/18)**

- Road & Infrastructure Cess is levied wef 2nd Feb, 2018 as duty of Customs @ ₹ 8 per litre on motor spirit (petrol) and high speed diesel imported into India for purpose of financing infrastructure projects.

Steps for computation of Custom Duty

	Particulars	₹
(1)	Basic custom duty $[AV \times \text{Rate of BCD}]$	XXXX
(2)	Add : SWS $[AV + (1)] \times 10\%$	<u>XXXX</u>
(3)	Total Duty Incl SWS $[(1) + (2)]$	XXXX
(4)	Add : IGST $[\text{Rate of IGST} \times (3)]$	XXXX
(5)	Add : GST compst. Cess $[\text{Rate of cess} \times (3)]$	<u>XXXX</u>
(6)	Total duty payable $[(3) + (4) + (5)]$	<u>XXXX</u>

Chapter 3 : Valuation of Goods

Valuation of Imported Goods : Sec 14(1)

Value of imported goods shall be the Transaction Value of such goods.

- **Transaction value** shall be
- The price actually paid or payable
- For the goods when sold for export to India
- for **Delivery at Time and Place of importation**
- where **Buyer and Seller of goods are not related** and
- **Price is Sole consideration** for the sale
- Subject to such other conditions as specified in rules made in this behalf i.e. Customs Valuation (Determination of Value of Imported Goods) Rules, 2007.

Transaction value of imported goods shall include in addition to price aforesaid following [CIF] :

- Cost of services including commission and brokerage, engineering, design work, royalties and license fees.
- cost of Transportation to the place of importation,
- insurance, loading, unloading and handling charges
to the extent specified in the rules made in the behalf.

RULE10(2): ADJUSTMENTS IN TRANSACTION VALUE

	Particulars	Actual Cost- Ascertainable	Actual Cost- Not Ascertainable
1.	Cost of transport, loading, unloading and handling charges of the imported goods to the place of importation	Actual Charges [in case of importation by Air addition shall be restricted to 20% of FOB]	20% of FOB Where the FOB value of the goods is not ascertainable but the sum of FOB value of the goods and the cost of insurance is ascertainable then it shall be 20% of such amount
2.	Cost of Insurance to the place of importation	Actual Charges	1.125% of FOB Where the FOB value of the goods is not ascertainable but the sum of FOB value of the goods and the referred to in point 1 is ascertainable then it shall be 20% of such amount

Valuation of Exported goods : Sec 14(1)

Value of Exported goods shall be the Transaction Value of such goods.[FOB]

- **Transaction value** shall be
- Price actually paid or payable
- For Goods when goods are sold for export from India,
- For **Delivery at Time of and Place of exportation**,
- Provided buyer and seller **are not Related** to each other and
- Price is **Sole consideration**
- Subject to rules for valuation of export goods are given in Customs Valuation (Determination of Value of Export Goods) Rules, 2007.

Valuation on the basis of tariff values : Sec 14(2)

- Section 14(2) permits CBEC, to fix tariff values for the purpose of valuation of any class of import goods and capital goods.
- While fixing such values, the trend values (market values) of such goods shall be considered. The objective is to prevent undervaluation.
- Where any such tariff value is fixed, the transaction value becomes Irrelevant

CUSTOMS VALUATION (DETERMINATION OF PRICE OF IMPORTED GOODS)
RULES, 2007

Rule 3 : Determination of method of valuation

Rule 4 : Transaction value of identical goods

Rule 5 : Transaction value of similar goods

Rule 6 : Situation where above methods cannot be applied

Rule 7 : Deductive value method

Rule 8 : Computed value

Rule 9 : Residual method.-

Rule 10 : Cost and services.

Rule 11 : Declaration by the importer

Rule 12 : Rejection of declared value.

Rule 3: Determination of the method of Valuation

Rule 3(1) : The value of imported goods shall be the transaction value adjusted in accordance with provisions of rule 10 [Adjusted Transaction value]

Rule 3(2) : The adjusted transaction value [as discussed above Rule 3(1)] shall be accepted only if the following conditions are fulfilled:

- a) There are **no restrictions as to disposition or use of goods** by the buyer other than restrictions
 - i) Which are imposed or required by law or by public authorities in India; or
 - ii) Limit the geographical area in which the goods may be resold; or
 - iii) Do not substantially affect the value of the goods;
- b) The sale or price is not subject to some condition or consideration for which a value cannot be determined in respect of the goods being valued;
- c) No part of proceeds of any subsequent resale, disposal or use of goods by buyer will accrue directly or indirectly to seller, unless appropriate adjustment can be made in accordance with provisions of rule 10 of these rules;
- d) The buyer and the seller are not related

Rule 3(3) : In following 2 cases the transaction value shall be acceptable even if goods are sold to related persons :

- i) Where buyer & seller are related, the transaction value shall be accepted provided that examination of the circumstances of sale of the imported goods indicates that relationship did not influence the price.
- ii) In a sale between related persons, the transaction value shall be accepted, whenever importer demonstrates that the declared value of the goods being valued closely approximates to one of the following values ascertained at or about the same time.
 - The transaction value of identical goods, or of similar goods, in sales to unrelated buyers in India;
 - The deductive value for identical goods or similar goods [Rule 7];
 - The computed value for identical goods or similar goods [Rule 8];

However, in applying the values used for comparison, adjustment shall be made for:

- Commercial levels,
- Quantity levels, etc

A number of factors must be taken into consideration in determining whether one value "closely approximates" to another value. These factors include

- Type of the imported goods,
- Type of the industry itself,
- Season in which the goods are imported, and
- Whether the difference in values is commercially significant.

Rule 3(4) : If value cannot be determined under the provisions of rule 3(1), value shall be determined by proceeding sequentially through rule 4 to 9

Rule 4: Determination of TV in case of IDENTICAL GOODS

Identical Goods [Rule 2(1)(d)]

"Identical goods" means imported goods -

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

But shall not include imported goods where engineering, development work, art work, design work, plan or sketch undertaken in India were completed directly or indirectly by the buyer on these imported goods free of charge or at a reduced cost for use in connection with the production and sale for export of these imported goods;

Rule 4(1) : If the value cannot be determined under the provisions of rule 3(1), the value shall be the transaction value of the identical goods, which are sold for export to India and imported at or about the same time as the goods being valued.

However, such transaction value shall not be the value of the goods provisionally assessed u/s 18 of Customs Act, 1962.

- The transaction value of identical goods will be used in determining the value of imported goods only when such identical goods fulfill the following conditions:
 - i) These goods are in a sale at the same commercial level and
 - ii) These goods are substantially of the same quantity as the goods being valued.
- Where these two conditions are not satisfied then the transaction value in a sale of identical goods shall be used under any of the following circumstances;
 - ✓ sale at a same commercial level but in different quantities or
 - ✓ sale at a different commercial level but in substantially the same quantity
 - ✓ sale at a different commercial level and in different quantities.

However, such adjustments shall be made on the basis of demonstrated evidence which clearly establishes the reasonableness and accuracy of the adjustments, whether such adjustment leads to an increase or decrease in the value.

Rule 4(2) : An adjustment shall be made:

- ✓ If there are significant differences in such costs and charges referred in Rule 10(2)
- ✓ between the goods being valued and the identical goods in question
- ✓ arising from differences in distances and means of transport.

It is obvious that,

- ✓ The goods being valued might be imported through ocean on the other hand the identical goods in question might be imported through air. Therefore, the adjustments shall be made accordingly.
- ✓ The Cost of Transportation for 100 units (goods being valued) will certainly be different for 100 units (identical goods in question) & so with the Cost of Insurance therefore the adjustments are to be accordingly.

Rule 4(3) : If more than one transaction value of identical goods is found, the LOWEST such value shall be used to determine the value of imported goods.

Rule 5: Determination of TV in case of SIMILAR GOODS

Rule 2(1)(f) : Similar Goods

"Similar goods" means imported goods -

- i) which although not alike in all respects, have like characteristics and like component materials which enable them to perform the same functions and to be commercially interchangeable with the goods being valued having regard to the quality, reputation and the existence of trade mark;

ii) produced in the country in which the goods being valued were produced; and

iii) produced by the same person who produced the goods being valued, or where no such goods are available, goods produced by a different person in the same country.

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

Rule 5(1) : The value of imported goods shall be the transaction value of similar goods sold for export to India and imported at or about the same time as the goods being valued. However, such transaction value shall not be the value of the goods provisionally assessed under section 18 of the Customs Act, 1962.

Rule 5(2) : The provisions of rule 4 shall, mutatis mutandis, also apply in respect of similar goods.

Rule 6: Determination of value where value cannot be determined u/r 3,4 and 5 in case of SIMILAR GOODS

If the value of imported goods cannot be determined under the provisions of rules 3, 4 and 5, the value shall be determined SEQUENTIALLY under the provisions of rule 7 or, when the value cannot be determined under that rule, under rule 8.

However, at the request of the importer, and with the approval of the proper officer, the order of application of rules 7 and 8 shall be reversed.

Rule 7: Deductive value

Rule 7(1) : Sale at the time of valuation is available

- If the goods being valued or identical or similar imported goods are sold in India at or about the same time of importation of the goods being valued
- Then the value of imported goods (i.e. goods being valued) shall be based on the unit price at which the imported goods or identical or similar imported goods are sold in the greatest aggregate quantity to persons who are not related to the sellers in India, subject to the following deductions : —

- i) Either commission usually paid or agreed to be paid or additions usually made for profits and general expenses in connection with sales in India of imported goods of the same class or kind;
- ii) Usual costs of transport and insurance and associated costs incurred within India;
- iii) Customs duties and other taxes payable in India by reason of importation or sale of goods.

Rule 7(2) : Sale at the time of valuation is available

- If neither the imported goods nor identical nor similar imported goods are sold at or about the same time of importation of the goods being valued,
- The value of imported goods (i.e. goods being valued) shall, subject otherwise to provisions of sub-rule (1), be based on the unit price at which the imported goods or identical or similar imported goods are sold in India,
 - ✓ at the earliest date after importation but
 - ✓ before the expiry of ninety days after such importation.

Rule 7(3) : Sale at the time of valuation is available

- ✓ If neither the imported goods (i.e. goods being valued) nor identical nor similar imported goods are sold in India in the condition as imported, then,
- ✓ The value shall be based on the unit price at which the imported goods (i.e. goods being valued), after further processing, are sold in the greatest aggregate quantity to persons who are not related to the seller in India.
- ✓ In such determination, due allowance shall be made for the value added by processing
- ✓ and the deductions provided for in items (i) to (iii) of rule 7(1).

Unit/price at which goods are sold in Greatest Aggregate Quantity

The term "unit/price at which goods are sold in the greatest aggregate quantity" means the price at which the greatest number of units is sold in sales to persons who are not related to the persons from whom they buy such goods.

Rule 8: Computed Value

Computed Value : The value of imported goods (i.e. the goods being valued) shall be based on a computed value, which shall consist of the sum of:-

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

Rule 9: Residual Method

Rule 9(1) : Where the value of imported goods (i.e. goods being valued) cannot be determined under the provisions of any of the preceding rules, the value shall be determined using reasonable means consistent with the principles and general provisions of these rules.

Rule 9 (2) : No value shall be determined under the provisions of this rule on the basis of:

- i) Selling price in India of the goods produced in India;
- ii) Price of the goods on the domestic market of the country of exportation (USA market);
- iii) Price of the goods for the export to a country other than India (USA to UK);
- iv) Arbitrary or fictitious values
- v) Cost of production except as per the provisions of Rule 8 [computed value]
- vi) System which provides for the acceptance for customs purposes of the highest of the two alternative values (Reference GAQ);

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

Rule 10: Adjustments in Transaction Value

In determining the transaction value, there shall be added to the price actually paid or payable for the imported goods, —

(a) the following to the extent they are incurred by the buyer but are not included in the price actually paid or payable for the imported goods, namely:-

- i) commission and brokerage, except *buying commissions*
- ii) the cost of containers imported along with the goods
- iii) the cost of packing whether for labour or materials

(b) The value, apportioned as appropriate, of the following goods and services where supplied directly or indirectly by the buyer free of charge or at reduced cost for use in connection with the production and sale for export of imported goods, to the extent not included in the price actually paid or payable, namely:-

- i) materials, components, parts and similar items incorporated in the imported goods;
- ii) tools, dies, moulds and similar items used in the production of the Imported goods;
- iii) materials consumed in the production of the imported goods;
- iv) engineering, development, art work, design work, and plans and sketches undertaken elsewhere than in India and necessary for the production of the imported goods;

(c) royalties and licence fees related to the imported goods that the buyer is required to pay, directly or indirectly, as a condition of the sale of the goods being valued, to the extent that such royalties and fees are not included in the price actually paid or payable

(d) The value of any part of the proceeds of any subsequent resale, disposal or use of the imported goods that accrues, directly or indirectly, to the seller;

(e) all other payments actually made or to be made as a condition of sale of the imported goods, by the buyer to the seller, or by the buyer to a third party to satisfy an obligation of the seller to the extent that such payments are not included in the price actually paid or payable

Points for consideration regarding Price actually paid or payable:

1) The price actually paid or payable is the total payment made or to be made by the buyer to or for the benefit of the seller for the imported goods.

2) The payment need not necessarily take the form of a transfer of money. Payment may be made by way of letters of credit or negotiable instruments.

3) Payment may be made directly or indirectly. An example of an indirect payment would be the settlement by the buyer, whether in whole or in part, of a debt owed by the seller.

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

a) Charges for construction, erection, assembly, maintenance or technical assistance, undertaken after importation on imported goods such as industrial plant, machinery or equipment;

b) The cost of transport after importation

c) Duties and taxes in India.(obviously after importation)

5) The price actually paid or payable refers to the price for the imported goods. Thus the flow of dividends or other payments from the buyer to the seller that do not relate to the imported goods are not part of the customs value.

Other points for consideration:

1) In case of goods imported by sea stuffed in a container for clearance at an Inland Container Depot or Container Freight Station, the cost of freight incurred in the movement of container from the port of entry to the Inland Container Depot or Container Freight Station shall not be included in the cost of transport.

2) The cost of transport of the imported goods includes the ship demurrage charges on chartered vessels, lighterage or barge charges.

3) In Wipro vs. ACC (SC), the apex court held that the objective of section 14 of the Act is to accept actual cost paid or payable for customs valuation. Any fictional cost (like landing charges, insurance, freight etc.) can be added only when actual cost is not ascertainable.

Rule 11: Declaration by Importer

Rule 11(1) : The importer or his agent shall furnish -

- a) Declaration disclosing full and accurate details relating to the value of imported goods; and
- b) Any other statement, information or document as considered necessary by proper officer for determination of value of imported goods under these rules.

Rule 11(2) : The proper officer of customs has the power to satisfy himself as to the truth or accuracy of any statement, information, document or declaration presented for valuation purposes.

Rule 11(3) : The provisions of the Customs Act, 1962 relating to confiscation, penalty and prosecution shall apply to cases where wrong declaration, information, statement or documents are furnished.

Rule 12: Rejection of declared value by Custom Officer**Rule 12(1) :**

- When the proper officer has reason to doubt truth or accuracy of value declared in relation to any imported goods,
- He may ask the importer of such goods to furnish further information including documents or other evidence and if,
- After receiving such further information, or in the absence of a response of such importer, the proper officer still has reasonable doubt about the truth or accuracy of the value so declared,
- It shall be deemed that the TRANSACTION VALUE of such imported goods (i.e. goods being valued) cannot be determined under the provisions of rule 3(1).

Rule 12(2) :

- At the request of an importer,
- Proper officer, shall intimate the importer in writing
- Grounds for doubting the truth or accuracy of the value declared in relation to goods
- imported by such importer and
- Provide a reasonable opportunity of being heard, before taking a final decision.

Explanation 1:

For the removal of doubts, it is hereby declared that:-

i) This rule by itself does not provide a method for determination of value, it provides a mechanism and procedure for rejection of declared value in cases where there is reasonable doubt that the declared value does not represent the transaction value;

where the declared value is REJECTED, the value shall be determined by proceeding SEQUENTIALLY in accordance with rules 4 to 9

ii) The declared value shall be accepted where the proper officer is SATISFIED about the truth and accuracy of the declared value after the said enquiry in consultation with the importers.

iii) The proper officer shall have the powers to raise doubts on the truth or accuracy of the declared value based on certain reasons which may include –

- a) Significantly higher value at which identical or similar goods imported at or about the same time in comparable quantities in a comparable commercial transaction were assessed;
- b) Sale involves an abnormal discount or abnormal reduction from the ordinary competitive price;
- c) Sale involves special discounts limited to exclusive agents;

- d) Mis-declaration of goods in parameters such as description, quality, quantity, country of origin, year of manufacture or production;
- e) Non declaration of parameters such as brand, grade, specifications that have relevance to value;
- f) Fraudulent or manipulated documents.

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

Rule 3 : Determination of the method of valuation

Rule 4 : Determination of export value by comparison

Rule 5 : Computed value method

Rule 6 : Residual method

Rule 7 : Declaration by the exporter

Rule 8 : Rejection of declared value

Rule 3: Determination of the method of valuation:

Rule 3(1) : The value of export goods shall be its transaction value [Section 14(1)]. However, the transaction value may be rejected as per the provisions of Rule 8.

Rule 3(2) : The transaction value [Section 14(1)] shall be accepted even where the buyer and seller are related, provided that the relationship has not influenced the price.

Rule 3(3) : If the value cannot be determined under the provisions of Rule 3(1) and (2), the value shall be determined by proceeding SEQUENTIALLY through Rules 4 to 6.

Rule 4: Determination of Export Value by Comparison

Rule 4(1) : The value of the export goods shall be based on

- Transaction value [Section 14(1)] of “**goods of like kind and quality**”
- Exported at or about the same time to other buyers
- In same destination country of importation or in its absence another destination country of importation
- Adjusted in accordance with the provisions of Rule 4(2).

Rule 4(2): Adjustments

In determining the value of export goods under sub-rule (1), the proper officer shall make such adjustments as appear to him reasonable, taking into consideration the relevant factors, including)

- i) difference in the dates of exportation,
- ii) difference in commercial levels and quantity levels,
- iii) difference in composition, quality & design between goods to be assessed & goods with which they are being compared,
- iv) difference in domestic freight and insurance charges depending on the place of exportation.

Special point :

Goods of like kind and quality means export goods which are

- Identical or similar in physical characteristics, quality and reputation as the goods being valued, and
- perform the same functions or are commercially interchangeable with the goods being valued,
- produced by the same person or a different person;

Rule 5: Computed Value Method

If value cannot be determined u/r 4, it shall be based on computed value, which shall include following:-

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

Computed value = Cost of production + Charges if any for design or brand + Amount towards profit.

Special point :

Clarification by Board : The board has clarified that while determining the value under this rule, the proper officer shall give due consideration to the cost certificate issued by Cost Accountant or CA or Government approved valuer, as produced by the exporter.

Rule 6: Residual Method**Rule 6(1)**

Where value of export goods (i.e. goods being valued) cannot be determined as per rules 4 & 5, value shall be determined using reasonable means consistent with principles & general provisions of these rules

PROVIDED THAT local market price of the export goods may NOT be the ONLY basis for determining the value of export goods.

Rule 7: Declaration by the exporter

The exporter shall furnish a declaration relating to the value of export goods in the manner specified in this behalf [i.e. TRANSACTION VALUE]

Rule 8: Rejection of Declared Value**Rule 8(1) :**

- When the proper officer has reason to doubt the truth or accuracy of the value declared in relation to any export goods,
- he may ask exporter of such goods to furnish further information including documents or other evidence and if,
- after receiving such further information, or in the absence of a response of such exporter, the proper officer still has reasonable doubt about the truth or accuracy of the value so declared,
- transaction value [Section 14(1)] shall be deemed to have not been determined in accordance with Rule 3(1).

Rule 8(2) :

- At request of exporter,
- Proper officer shall intimate exporter in writing
- Grounds for doubting truth or accuracy of value declared in relation to export goods by such exporter and
- Provide reasonable opportunity of being heard, before taking a final decision under Rule 8(1).

Special point :

Explanation-1 : For the removal of doubts, it is hereby declared that

i) This rule by itself does not provide a method for determination of value, it provides a mechanism and procedure for rejection of declared value in cases where there is reasonable doubt that the declared value does not represent the transaction value;

where declared value is REJECTED, value shall be determined by proceeding SEQUENTIALLY in accordance with rules 4 to 6.

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

iii) The proper officer shall have the powers to raise doubts on the declared value based on certain reasons which may include –

- a) Significant variation in value at which goods of like kind and quality exported at or about the same time in comparable quantities in a comparable commercial transaction were assessed.
- b) Significantly higher value compared to the market value of goods of like kind and quality at the time of export.
- c) Mis-declaration of goods in parameters such as description, quality, quantity, year of manufacture or production.

Rate of Duty and Rate of Exchange

IMPORTED GOODS	RATE OF DUTY & TARIFF VALUATION (SEC 15)	RATE OF EXCHANGE (Proviso to Sec 14)
In case of goods Entered for home consumption u/s 46	Date of presentation of bill of entry or Date of entry inwards of Vessel / Arrival of Aircraft or Vehicle whichever is Later	On the date of presentation bill of entry.
In case of goods cleared from a warehouse u/s 68	On the date of presentation of bill of entry is presented in warehouse	On the date of presentation bill of entry.
EXPORTED GOODS	RATE OF DUTY & TARIFF VALUATION (SEC 16)	RATE OF EXCHANGE (Proviso to Sec 14)
In the case of goods are entered for export	On the date on which Customs Officer makes an order on shipping bill permitting clearance and loading of the goods for exportation.	On the date of presentation of shipping bill or bill of export.
In the case of any other goods (Eg: Smuggled Goods)	The date of payment of duty	---

The provisions of sec 15 & 16 shall not apply to baggage & goods exported by post

Chapter 4: Import & Export Procedure

Definitions

- 1) **Conveyance** includes a vessel, an aircraft and a vehicle.
- 2) **Vehicle** means conveyance of any kind used on land and includes a railway vehicle
- 3) **Customs airport** means any airport appointed u/s 7(a) to be a customs airport
- 4) **Customs area** means the area of a customs station and includes any area in which imported goods or export goods are ordinarily kept before clearance by Customs Authorities.
- 5) **Customs port** means any port appointed u/s 7(a) to be a customs port and includes a place appointed under clause (aa) of that section to be an inland container depot.
- 6) **Customs station** means any customs port, customs airport or land customs station
- 7) **Import** with its grammatical variations and cognate expressions, means bringing into India from a place outside India
- 8) **Import goods** means “any goods brought into India from a place outside India BUT DOES NOT INCLUDE goods which have been cleared for home consumption”
- 9) **Importer** in relation to any goods at any time between their importation and the time when they are cleared for home consumption, includes any owner or any person holding himself out to be importer.
- 10) **Import Manifest or Import report** means the manifest or report required to be delivered u/s 30.
- 11) **Person-in-charge** means, -
 - a. in relation to a vessel, the master of the vessel;
 - b. in relation to an aircraft, the commander or pilot-in-charge of the aircraft;
 - c. in relation to a railway train, the conductor, guard or other person having chief direction of train;
 - d. in relation to any other conveyance, the driver or other person-in-charge of conveyance;
- 12) **Land Customs Station** means any place appointed u/s 7(b) to be a land customs station

The organisations which play vital roles in the clearance of Import Cargo are:

1 The Steamer Agents/Airline Companies as the case may be who are “appointed by the person in charge of a conveyance and who represent to any officer of Customs as an agent, (Section 148) who transport the goods to India, (carriers).

2 The Port Trust Authorities or International Airport Authorities of India (IAAI) (in case of air consignments) who are approved by the Principal Commissioner of Customs as Custodians of Imported Cargo, (Section 45) who are responsible for the receipt, storage, custody and delivery of the goods, after the customs formalities are complied with by the Importers.

3 The Custom House Agents now renamed as CUSTOMS BROKERS, who are licenced by the Principal Commissioner of Customs (Section 45) to carry on business as an agent relating to the entry or departure of a conveyance or the Import or the Export of goods at any customs station. The agents are licensed in accordance with the Custom

House Agents (Licensing) Regulations which inter alia provide for:

- a) the validity of any such licence, the fees payable therefore;
- b) the qualification of persons who may apply for a licence;
- c) the qualification of persons to be employed by a licensee to assist him in his work as an agent;
- d) the restrictions and conditions subject to which a licence may be granted.

4 The Custom Houses is an office for the custom officials who processed the paper work associated with the importing and exporting goods into and out of a country comprising Officers of the Department, viz.,
the Appraisers, Examiners and supporting ministerial staff.

Import Procedure

(1) Loading of goods: In case goods are imported by sea/air, the goods shall be loaded in the vessel/aircraft in the exporting country and sent to India. In case goods are imported by land route, the goods shall be sent in a vehicle.

(2) Calling of vessels/landing of aircraft : When the vessel carrying imported goods arrives in India, the person in charge i.e. master of such vessel entering into India from outside India shall allow calling of the vessel only at the custom port unless otherwise permitted by CBEC. Similarly, when the aircraft carrying imported goods arrives in India, the person in charge *i.e.* the pilot of the aircraft entering into India from outside India shall allow landing of the aircraft only at the custom airport unless otherwise permitted by CBEC.

(3) Filing of import general manifest/import report: The person-in-charge of the vessel/aircraft is required to file the Import General Manifest (IGM) (detailed information about goods in vessel/aircraft) electronically before the arrival of the vessel or aircraft at customs port/customs airport.

In case of import by land, the person-in-charge of the vehicle shall deliver to the proper officer an import report [detailed information about goods in vehicle] within 12 hours of the arrival of vehicle at the customs station.

(4) Grant of entry Inwards: The customs authorities, on receiving import general manifest from the master of a vessel, shall check the documents, and

- (i) Grant entry inwards to the vessel,
- (ii) assign an IGM number to the manifest, and
- (iii) permit the master of the vessel to land and unload the cargo.

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

(5) Unloading of goods : Imported goods shall be unloaded:

- (i) only if mentioned in the import manifest/import report.
- (ii) only at the approved places in any customs port/customs airport/land customs station.
- (iii) under the supervision of the proper officer.
- (iv) during working hours and shall not be unloaded on Sunday/on any holiday.

(6) Unloaded goods to be in Custody of custodian until their clearances : Once the imported goods have entered the customs area, they shall remain in the custody of the Custodian [a person approved by the Commissioner of Customs for the purpose].

If the imported goods are pilfered after unloading in a customs area, while in the custody of the Custodian, then the Custodian shall be liable to pay duty on such goods.

(7) Filing of Bill of Entry : The importer of any goods, other than goods intended for transit or transshipment, thereafter, presents a bill of entry electronically for clearance of the goods either:

- (i) for home-consumption, or
- (ii) for deposit in the warehouse.

The Bill of Entry may be of three types as follows-

(i) Bill of Entry for Home Consumption

(ii) Bill of Entry for Warehousing: In case the importer does not require the imported goods immediately and wishes to store the same in a warehouse without payment of duty, and then clear them as and when required, he files a form called 'Bill of Entry for Warehousing'. The importer is required to execute a warehousing bond in the sum equal to double the duty determined. It is accepted by the customs and "Deposit into warehouse" order given. It is also called 'Into Bond Bill of Entry'.

(iii) Bill of Entry for Ex-bond clearance for home consumption: When goods have to cleared from warehouse, Bill of Entry is required for clearance from the warehouse on payment of duty which is known as ex-bond clearance for home consumption.

(8) Timing of Filing of Bill of Entry : A bill of entry may be presented at any time after the delivery of the import manifest/import report. However, a bill of entry may be presented even before the delivery of such import manifest if the vessel or the aircraft by is expected to arrive within 30 days from the date of such presentation.

(9) Assessment of duty : The bill of entry is assessed by importer himself. This is known as self assessment the importer will self assess the duty after considering the applicable rate of exchange and rate of import duty.

(10) Payment of duty: If the goods are cleared for home consumption, customs duty has to be paid. However, if the goods are cleared to be stored in a warehouse, payment of duty is deferred till the time of clearance from such warehouse.

The importer has to pay the duty within 2 days (excluding holidays) of the determination of such duty amount. In case he fails to do so, he is required to pay interest.

(11) Clearance of imported goods from the custom station: The goods lying under the custody of the custodian have to be cleared either for home consumption or for warehousing or for transshipment within 30 days (or such extended time as the proper officer may allow) from the date of unloading of goods at the customs station.

The importer may exercise any of the following options:

(i) Clearance for home consumption : If the goods are being cleared for home consumption, duty determined on the goods is collected and "pass out of customs charge" is given.

(ii) Warehousing of imported goods : If the goods are to be warehoused, a warehousing bond of sum equal to double the duty determined, is executed by importer and "deposit into warehouse" order is given.

Clearance of goods kept in warehouse:

(a) The importer files another bill of entry called the 'ex-bond bill of entry', whenever he wants to clear the whole or part of the warehoused cargo. This ex-bond bill of entry is again assessed to duty .

(b) After payment of customs duty so re-determined and other charges payable to the warehouse keeper including rent and interest, the goods are removed for home consumption.

Warehousing of imported goods

The importer may not clear the goods for home consumption and request the goods to be warehoused. In such a case, he shall file an Into-Bond Bill of Entry for warehousing and is assessed to duty.

Thereafter, he shall execute a bond binding himself in a sum equal to thrice the amount of the duty assessed on such goods. The proper officer after satisfying himself that all the requirements have been fulfilled shall make an order permitting the deposit of the goods in a warehouse.

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

(i) an ex-Bond Bill of Entry has been presented to the proper officer and duty is assessed and paid by him, and

(ii) an order for clearance of such goods for home consumption has been made by the proper officer*.

IMPORT PROCEDURE IN DETAILS

Provisions relating to Arrival and Departure of Goods

Section 29 : Not to land at any place other than Customs Port or Customs Airport:

The person-in-charge of vessel or aircraft entering India from any place outside India shall not cause or permit vessel or aircraft to call or land at any place other than a customs port or a customs airport –

(a) for first time after arrival in India; or

(b) at any time while it is carrying passengers or cargo brought in that vessel or aircraft as the case may be, unless permitted by the Board.

However, any vessel or aircraft which is compelled by accident, stress of weather or other unavoidable cause to call or land at a place other than a customs port or customs airport but the person-in-charge of any such vessel or aircraft –

(a) shall immediately report the arrival of the vessel or the landing of the aircraft to the nearest customs officer or the officer-in-charge of a police station and shall on demand produce to him the log book (origin to destination record) belonging to the vessel or the aircraft;

(b) shall not without the consent of any such officer permit any goods carried in the vessel or the aircraft to be unloaded from, or any of the crew or passengers to depart from the vicinity of, the vessel or the aircraft; and

(c) shall comply with any directions given by any such officer.

However, the departure of any crew or passengers shall not be prohibited from the vicinity of, or the removal of goods from, the vessel or aircraft where the departure or removal is necessary for reasons of health, safety or the preservation of life or property.

Section 30: Delivery of Import Manifest

The person in charge (Master / Agent) of the vessel or an aircraft has to deliver an import manifest electronically (an import report in case of a vehicle), prior to arrival in the case of a vessel and an aircraft or within 12 hours of arrival in case of a vehicle in the prescribed form.

In case of Vessel/ Aircraft - An Import manifest (filing electronically) - Before arrival of Vessel/ Aircraft

In case of a Vehicle - An import report - Within 12 hours after its arrival

Penalty

The time limit for filing the manifest is extendable on showing sufficient cause, but otherwise a penalty not exceeding Rs. 50,000/- can be imposed on account of any delay. A person filing the manifest/report declarations under this section has to declare the truthfulness of contents, which has legal consequences.

Now, it is mandatory to file Import manifest electronically. However, the commissioner of Customs may in cases where it is not feasible to deliver import manifest by presenting electronically allow the same to be delivered in any other manner (manually).

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

The person-in-charge of a conveyance that enters India from any place outside India or any other person as may be specified by the Central Government by notification in the Official Gazette, to deliver to the proper officer

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

Passenger name record information means: The records prepared by an operator of any aircraft or vessel or vehicle or his authorized agent for each journey booked by or on behalf of any passenger.

Special point :

Penalty : The said section also intends to provide for imposition of a penalty not exceeding Rs. 50,000/- as may be prescribed, in the case of delay in delivering the information.

Section 31: Imported goods not to be unloaded from Vessel until Entry Inwards granted

The master of a vessel shall not permit the unloading of any imported goods until an order has been given by the proper officer granting entry inwards to such vessel.

No entry inwards shall be given until an import manifest has been delivered or the proper officer is satisfied that there was sufficient cause for not delivering it.

Nothing in this section shall apply to the unloading of baggage accompanying a passenger or a member of the crew, mail bags, animals, perishable goods and hazardous goods.

Section 32: Imported goods not to be unloaded unless mentioned in Import Manifest or Import report

- No imported goods required to be mentioned under the regulations in an import manifest or import report shall, except with the permission of the proper officer,
- be unloaded at any customs station unless they are specified in such manifest or report for being unloaded at that customs station.

Section 33: Imported goods not to be unloaded unless mentioned in Import Manifest or Import report

- Except with the permission of the proper officer, no imported goods shall be unloaded, and
- no export goods shall be loaded, at any place other than a place approved u/s 8(a) for the unloading or loading of such goods.

Section 34 : Goods not to be unloaded or loaded except under the supervision of Custom Officer

Imported goods shall not be unloaded from, and export goods shall not be loaded on, any conveyance except under the supervision of the proper officer.

Section 46: Entry for Importation

The Bill of Entry inter alia, has columns for indicating description of goods, value, quantity, marks and numbers, country of origin etc.

There are three kinds of Bills of Entry viz.,

- (i) Bill of Entry for Home-consumption (White Colour)
- (ii) Warehousing (into-Bond) Bill of Entry (Yellow Colour)
- (iii) Bill of Entry for Clearance 'Ex-Bond' (Green Colour).

1. The importer of any goods, other than goods intended for transit or transshipment, shall make entry thereof by presenting electronically to the proper officer a bill of entry for home consumption (White) or warehousing (Yellow) in the prescribed form:

Provided that the Principal Commissioner of Customs or Commissioner of Customs may, in cases where it is not feasible to make entry by presenting electronically, allow an entry to be presented in any other manner: (manually)

Provided further that if the importer makes and subscribes to a declaration before the proper officer, to the effect that he is unable for want of full information to furnish all the particulars of the goods required under this sub-section, the proper officer may, pending the production of such information, permit him, previous to the entry thereof

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

2. The importer shall present bill of entry under sub-section (1) before tend of next day following the day (excluding holidays) on which aircraft or vessel or vehicle carrying goods arrives at a customs station at which such goods are to be cleared for home consumption or warehousing:

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

3. The importer while presenting a bill of entry shall make and subscribe to a declaration as to truth of the contents of such bill of entry and shall, in support of such declaration, produce to the proper officer the invoice, if any, relating to the imported goods.

Bill of Entry submitted under Section 46 for clearance of imported goods and shipping bill submitted for export of goods require to be filed electronically.

Section 45: Restrictions on Custody and removal of Imported Goods

Once the goods are imported have entered the Customs area, there arises the question of who is responsible for the safe custody of goods.

1. All imported goods unloaded in a customs area shall remain in the custody of such person as may be approved by the Commissioner of Customs until they are cleared for home consumption or are warehoused or are transshipped (three possible circumstances).

Responsibility of Custodian:

The person having custody [Custodian] of any imported goods in a customs area -

- (a) shall keep a record of such goods and send a copy thereof to the proper officer;
- (b) shall not permit such goods to be removed from the customs area or otherwise dealt with, except under and in accordance with the permission in writing of the proper officer.

- If any imported goods are pilfered after unloading thereof in a customs area while in the custody of a person, that person [the custodian] shall be liable to pay duty on such goods
- At the rate prevailing on the date of delivery of an import manifest or, as the case may be, an import report to the proper officer under section 30 for the arrival of the conveyance in which the said goods were carried.

Section 47: Clearance of Goods for Home Consumption

1. Clearance order for Home Consumption

Where the proper officer is satisfied that any goods entered for home consumption are not prohibited goods and

- Importer has paid the import duty, if any, assessed thereon and
- Any charges payable under this Act in respect of the same,

the proper officer may make an order permitting clearance of the goods for home consumption.

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

2. Interest on non payment

The importer shall pay the import duty:

(a) On date of presentation of the bill of entry in the case of self assessment; or

(b) within one day (excluding holidays) from the date on which the bill of entry is returned to him by the proper officer for payment of duty in the case of assessment, reassessment or assessment; or

(c) in the case of deferred payment under the proviso to sub-section (1), from such due date as may be specified by rules made in this behalf,

and if he fails to pay duty within the time so specified, he shall pay interest on the duty not paid or short paid till the date of its payment, at such rate, not less than ten per cent but not exceeding 36 % pa, as may be fixed by Central Government, by notification in the Official Gazette.

Section 48: Procedure in case goods are not cleared, warehoused or transhipped within 30 days after unloading

- If any goods brought into India from a place outside India are not cleared for home consumption or warehoused or transhipped within 30 days from date of unloading thereof at customs station or within such further time as the proper officer may allow or
- If title to any imported goods is relinquished,

Such goods may, after notice to the importer and with the permission of the proper officer be sold by the person having the custody thereof.

However, time period of 30 days shall not be applicable in the following cases:

- (a) animals, perishable goods and hazardous goods, may, with the permission of the proper officer, be sold at any time;
- (b) arms and ammunition may be sold at such time and place and in such manner as the Central Government may direct.

Section 49 : Storage of Imported goods in warehouse pending clearance

Where:

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

the goods may pending clearance or removal, as the case may be, be permitted to be stored in a public warehouse for a period not exceeding thirty days. Provided that the provisions of Chapter IX shall not apply to goods permitted to be stored in a public warehouse under this section

Provided further that the Principal Commissioner of Customs or Commissioner of Customs may extend period of storage for a further period not exceeding thirty days at a time.

Export Procedure

(1) Filing of Shipping Bill/Bill of Export : The exporter files an application electronically for export of goods known as Shipping Bill in case of export by a vessel or an aircraft. In case of export by a vehicle the exporter has to file a Bill of Export.

The exporter assesses the duty himself . Thereafter, the export duty, export cess etc., if any, are collected.

(2) Order permitting clearance and loading of goods : The Officer after satisfying himself that all the goods entered for export are not prohibited goods & export duty is paid, he passes order permitting clearance and loading of goods for exportation.

(3) Grant of Entry Outwards : A vessel intending to start loading of export goods must be first granted an 'Entry Outwards' by the proper officer. The master of a vessel shall not permit the loading of any export goods, until the proper officer grants entry-outwards to such vessel.

Entry onwards is the permission granted by the Customs authorities to a vessel / conveyance to go on a foreign voyage to the port of consignment

(4) Loading of Goods : The export goods shall be loaded on the conveyance for exportation with the permission of person-in-charge. He shall not permit the loading at a customs station unless a shipping bill/bill of export bill of transshipment, as the case may be, duly passed by the proper officer, has been handed over to him by the exporter.

(5) Delivery of Export General Manifest : The person-in-charge of a conveyance carrying export goods shall, before departure of the conveyance from a customs station, deliver to the proper officer in the case of a vessel or aircraft, an export manifest, and in the case of a vehicle, an export report,

(6) No conveyance to leave without written order : The person in charge of conveyance which has brought any imported goods or has loaded any export goods at a custom station shall not cause or permit the conveyance to depart from the custom station unless a written order to that effect has been given by the proper officer.

Chapter 5: Duty Drawback

An important principle in the levy of customs duty is that the goods should be consumed within the country of importation. If the goods are not so consumed, but are exported out of the country, the cost of export goods gets unduly escalated on account of incidence of customs duty.

The re-export of the goods imported into the country is broadly on two occasions:

- (a) Where the goods are sent back as such to the foreign country owing to any of the following mentioned reasons:-
 - (i) Goods not conforming to the specification of the order
 - (ii) Goods not permitted to be imported into the country on account of trade-restriction.
 - (iii) Goods after being imported are temporarily retained in the country and later taken out of the country. In other words, the very objective of the importation was limited to temporary retention in India.
- (b) Where the goods are used in the manufacture of other articles and such other articles are exported.

The latest cause for relief of import duty paid is when the goods are ultimately exported. This factor gained greater importance with the establishment of 100% Export Oriented Units where goods manufactured are mainly exported to earn foreign exchange.

On parallel plane was placed the goods imported by tourists and other passengers transmitting through India. Under this category was the motor vehicles brought by tourists which were used in the country for a short period of 6-12 months alone. The grant of duty relief is contingent upon factual export of the goods.

This consequentially necessitated grant of the rebate or drawback at the port of export of the goods. This in turn necessitated formulation of certain rules and the procedure for regulating the application for grant of drawback and the rates at which such drawback could be granted. In subsequent paragraphs we propose to examine the matter in some detail.

Overview of Duty Drawback under Customs Act, 1962

The scheme of duty drawback under customs law is to allow rebate of Customs Duty paid on imported goods, which in turn get exported out of India.

Duty drawback is of two types –

- (a) Duty drawback under Section 74 of Customs Act, 1962 is receivable by exporter when imported goods are re-exported as it is, and article is easily identifiable

- (b) Duty drawback under Section 75 of Customs Act, 1962 is granted when imported materials are used in the manufacture or processing of goods in India and such goods are then exported.

Schemes like EOU, SEZ, DFIA, Advance Authorisation, manufacture under bond etc. are available to procure inputs without payment of customs duty for manufacture or processing of goods within India and export of such final products thereof.

Exporters who are unable to avail any of these schemes can avail “duty drawback”. Here, the customs duty paid on inputs is paid back to the exporter of finished product by way of “Duty drawback” as per the regulations made under Customs law.

DRAWBACK ALLOWABLE ON RE-EXPORT OF DUTY PAID GOODS [SUB-SECTION (1) AND (3) OF SECTION 74]

Sub-section (1) of section 74 provides that when goods capable of being easily identified, which have been imported into India and upon which any duty has been paid on importation-

- (i) are entered for export and the proper officer makes an order permitting clearance and loading of the goods for exportation under section 51; or
- (ii) are to be exported as baggage and the owner of the baggage for the purposes of clearing it, makes a declaration of its contents to the proper officer under section 77 (which declaration shall be deemed to be an entry for export for the purposes of this section) and such officer makes an order permitting clearance of the goods for exportation, or are entered for export by post under clause (a) of Section 84 and the proper officer makes an order permitting clearance of the goods for exportation,

98% of such duty, shall except as otherwise provided hereafter, be paid back.

Conditions to be satisfied in this regard:-

- (a) the goods are identified to the satisfaction of the Assistant Commissioner of Customs or Deputy Commissioner of Customs as the goods which were imported and
- (b) the goods are entered for export within two years from the date of payment of duty on the importation thereof.

However, in any particular case, the aforesaid period of two years may, on sufficient cause being shown, be extended by the Board by such further period, as it may deem fit.

Sub-section (3) of section 74 provides that the Central Government may make rules for the purpose of carrying out the provisions of this section and, in particular, such rules may —

- (a) provide for the manner in which the identity of goods imported in different consignments which are ordinarily stored together in bulk, may be established;

- (b) specify the goods which shall be deemed to be not capable of being easily identified; and
- (c) provide for the manner and the time within which a claim for payment of drawback is to be filed.

Analysis of sub-sections (1) and (3) of section 74:

Conditions under section 74 : The substance of this provision is that

- (a) The goods should have been imported into India
- (b) The duty of customs should be paid thereon
- (c) 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 the goods for export.

- (d) the goods are identified to the satisfaction of the Assistant or Deputy Commissioner of Customs as the goods, which were imported, and
- (e) the goods are entered for export within two years from the date of payment of duty on the importation thereof

Once these conditions are satisfied, then the export goods are entitled to payment of drawback of an amount equal to 98%. The conditions could be amended or modified depending upon other factors.

Time limit for section 74 drawback

- Under sub-clause (b) of section 74(1), it has been provided that such imported goods should be entered for export within 2 years from the date of payment of duty on the importation. It may be noted that the time period is related to the date of payment of duty and not date of importation
- **Extension of time-limit:** In any particular case, if sufficient reason is shown by the importer as to why he was prevented from exporting the goods within the said period of two years, the Central Board of Indirect taxes and Customs may, in its discretion, extend the period further depending upon the merits of each case.
- Specifying the goods which shall be deemed to be not capable of being easily identified and

The manner and the time within which a claim for payment of drawback is to be filed.

S 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
	Not more than three months	95%
	More than three months but not more than six months	85%
	More than six months but not more than nine months	75%
	More than nine months but not more than twelve months	70%
	More than twelve months but not more than fifteen months	65%
	More than fifteen months but not more than eighteen months	60%
	More than eighteen months	NIL

[Notification No.23/2008-Customs dated 01.03.2008]

Even if imported goods are merely tested though not used, it will be treated as “used” after importation

Special rate of drawback in respect of motor vehicles

Having regard to the international practice, a different percentage of import duty to be paid as drawback has been prescribed in the case of motor vehicles and goods imported by the person for his personal and private use.

- (i) **If the car or specified goods are re-exported immediately:** 98% of the duty paid is refundable.
- (ii) **If the car or specified goods are re-exported after being used:** Percentage of reduction of the drawback is related to use of the motor vehicle per quarter as under:-

Year	Drawback of duty shall be calculated by reducing the import duty by
1	4% per quarter or part thereof
2	3% per quarter or part thereof
3	2 and Half % per quarter or part thereof
4	2% per quarter or part thereof

It has been specifically provided that where such cars are exported after the expiry of the period of two years, the drawback would be allowed only if the Central Board of Indirect taxes and Customs, on sufficient cause being shown, extends the period for expiry beyond two years. It is further provided that no drawback shall be allowed if such motor car or goods have been used for more than four years.

Note: Anti-dumping duty, Safeguard duties and countervailing duties are eligible for rebate as duty drawback.

CBIC has clarified that safeguard duties, anti-dumping duties and countervailing duties are eligible for rebate as drawback in terms of section 75 of the Customs Act

RE-EXPORT OF IMPORTED GOODS **(DRAWBACK OF CUSTOMS DUTIES) RULES, 1995**

In exercise of the powers conferred by section 74 of the Customs Act, 1962, the Central Government has notified the **Re-Export of Imported Goods (Drawback of Customs Duties) Rules, 1995** which provide as follows:-

Definitions: In these rules, unless the context otherwise requires“

- (a) **drawback**”, in relation to any goods exported out of India, means the refund of duty or tax or cess as referred to in the Customs Tariff Act, 1975 and paid on importation of such goods in terms of section 74 of the Customs Act.
- (b) **“export”**, with its grammatical variations and cognate expressions means taking out of India to a place outside India and includes loading of provisions or store or equipment for use on board a vessel or aircraft proceeding to a foreign port or airport.

Procedure for claiming drawback on goods exported by post [Rule 3]**(a) Goods exported by post**

Where goods are to be exported by post under a claim for drawback,-

- (a) the outer packing shall carry the words “DRAWBACK EXPORT”.
- (b) the exporter shall deliver to the competent Postal Authority a claim in the prescribed form.

(b) Date of filing of drawback claim for the purpose of section 75A: In case of export by post, the date of filing of drawback claim for the purpose of section 75A would be the date on which the aforesaid claim form is received by the proper officer of customs from the postal authorities.

(c) Deficiencies in the claim: In case the aforesaid claim form is not complete in all respects, the exporter shall be informed of the deficiencies therein within 15 days by a deficiency memo and such claim shall be deemed not to have been received.

When the exporter complies with the requirements specified in deficiency memo within 30 days, he shall be issued an acknowledgement.

The date of such acknowledgement shall be deemed to be date of filing the claim for the purpose of section 75A.

Statements/Declarations to be made on exports other than by post [Rule 4]

In the case of exports other than by post, the exporter shall at the time of export of the goods:-

(a) state on the shipping bill or bill of export, the description, quantity and such other particulars as are necessary for deciding whether the goods are entitled to drawback under section 74 and make a declaration on the relevant shipping bill or bill of export that-

- (i) the export is being made under a claim for drawback under section 74 of the Customs Act;
- (ii) that the duties of customs were paid on the goods imported;
- (iii) that the goods imported were not taken into use after importation;

or

(iii) that the goods were taken in use :

However, the Principal Commissioner/Commissioner of Customs may exempt the exporter or his authorized agent from the provisions of this clause if he is satisfied that failure to comply with the said provisions is due to the reasons beyond his (exporter/authorized agent) control.

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

Manner and time of claiming drawback on goods exported other than by post [Rule 5]

(a) Time-limit for filing drawback claim

A claim for drawback under these rules shall be filed:-

- in the prescribed form
- within **three months** (extendable by another three months)

from the date on which an order permitting clearance and loading of goods for exportation under section 51 is made by proper officer of customs.

Extension of the aforesaid time-Limit

Authority	Period of extension	Application fee	Grant/refusal of extension
Assistant/Deputy Commissioner of Customs	three months	(i) 1% of the FOB value of exports or (ii) ₹1000/- Whichever is less	The concerned authority may, on an application and after making such enquiry as he thinks fit, grant extension or refuse to grant extension after recording in writing the reasons for such refusal
Principal Commissioner/ Commissioner of Customs	further extension of 6 months	2% of the FOB value of exports or (ii) ₹2000/- whichever is less	

- (b) Documents to be filed along with drawback claim:** The claim shall be filed along with the following documents, namely:-
- (a) Triplicate copy of the Shipping Bill bearing examination report recorded by the proper officer of the customs at the time of export.
 - (b) Copy of Bill of Entry or any other prescribed document against which goods were cleared on importation.
 - (c) Import invoice.
 - (d) Evidence of payment of duty paid at the time of importation of the goods.
 - (e) Permission from Reserve Bank of India for re-export of goods, wherever necessary.
 - (f) Export invoice and packing list.
 - (g) Copy of Bill of lading or Airway bill.
 - (h) Any other documents as may be specified in the deficiency memo.
- (c) Date of filing of the claim for the purpose of section 75A:** The date of filing of the claim for the purpose of section 75A shall be the date of affixing the Dated Receipt Stamp on the claims.
- (d) Deficiencies in the claim:** In case of incomplete claim/claim without the specified documents, such claim shall be returned to the claimant with the deficiency memo within 15 days of submission and shall be deemed not to have been filed.

Where exporter complies with requirements specified in deficiency memo within thirty days from the date of receipt of deficiency memo, the same will be treated as a claim filed under sub-rule (1).

Under the GST regime, goods upon import shall be subject to integrated tax and compensation cess in terms of sections 3(7) and 3(9) respectively of the CTA, 1975. Further, in terms of section 3(12) of the CTA, 1975, the provisions of the Customs Act, 1962 and rules and regulations made there under relating *inter alia* to drawback shall apply to integrated tax and compensation cess also. Accordingly, drawback under section 74 would include refund of integrated tax and compensation cess along with basic customs duty, etc.

The goods, namely the inputs might have undergone changes in physical shape, property etc. Government would not be applicable. It would require to be revised. The fixation of a rate of drawback is, therefore a continuous process and the industry availing of such facility of drawback is required to furnish continuously its costing and production data to the organization entrusted with the responsibility of fixation of rates of drawback.

SECTION 75 : DRAWBACK ON IMPORTED MATERIALS USED IN THE MANUFACTURE OF EXPORT GOODS

The drawback under section 75 is on a totally different footing. The following important aspects should be remembered in this regard:

- (i) The goods exported are entirely different from the inputs.
- (ii) The input could be either imported goods on which duty of customs has been paid or indigenous goods on which central excise duty has been paid.
- (iii) The existence of the imported/indigenous excise duty paid goods in the final product is not capable of easy verification at the point of export.
- (iv) The goods, namely the inputs might have undergone changes in physical shape, property etc.
- (v) The quantity of inputs per piece of final product may not be uniform and may not also be capable of verification at the time of exportation.

The underlying principle of the drawback under section 75 is that, the Government fixes a rate per unit of final article to be exported out of the country as the amount of drawback payable on such goods.

This amount is dependent upon prior verification of the mode of manufacture, the quantum of raw material required, the average content of duty paid articles in the final product and lastly, the standardization of the final product conforming to these norms.

Statutory Provisions : Sub-section (1) of section 75 provides that where it appears to the Central Government that in respect of good of any class or description manufactured, processed or on which any operation has been carried out in India, being

- (1) the goods have been entered for export and an order permitting the clearance and holding thereof for exportation has been made under section 51 by the proper officer, or
- (2) the goods have been entered for export by post under clause (a) of Section 84 and an order permitting clearance for exportation has been made by the proper officer,

a drawback should be allowed of the duties of customs chargeable under this Act or any imported materials class or description used in the manufacture or processing of such goods or carrying out any operation on such goods, the Central Government may by notification in the Official Gazette, direct that drawback shall be allowed.

Explanation: In this case, the rate of duty is not determined by the officer granting the drawback nor is it related to the actual import duty or excise duty paid on the raw materials or the components used in the manufacture of the final product exported. It is, therefore, an average amount determined by the Government having regard to all the circumstances and the facts of the manufacturing industry.

As a corollary to this proposition, it would follow that the rate fixed by the Government would be applicable for a prescribed period only. If there is (a) any variation in the rate of duty paid on the input whether customs or excise duty; (b) variation in the composition of the final product and (c) change in the process of manufacture, the rate of duty already fixed by the

Government would not be applicable. It would require to be revised. The fixation of a rate of drawback is, therefore a continuous process and the industry availing of such facility of drawback is required to furnish continuously its costing and production data to the organization entrusted with the responsibility of fixation of rates of drawback.

Proviso to section 75(1) : Drawback not to be allowed in certain cases

It will be noticed that in the case of drawback under section 74 the amount of drawback was related to the actual duty paid on the goods. It did not have any correlation to either the valuation of the goods at the time of exportation or the prevailing rates of duty on the goods at the time of export. However, in the case of section 75 drawback, since the identity of the inputs which have suffered customs or excise duty as the case may be, is extinguished in the final product, there has been a necessity to correlate the grant of drawback with the value of the goods exported. It has therefore been prescribed under proviso to section 75(1) of the Customs Act that no drawback of duty shall be allowed under this section if:

- (a) the export value of the finished goods or the class of goods is less than the value of the imported material used in the manufacture or processing of such goods or carrying out any operation on such goods or class of goods; or
- (b) the export value is not more than such percentage of the value of the imported materials used in the manufacture or processing of such goods or carrying out any operation on such goods or class of goods as may be notified by the Central Government; or
- (c) any drawback has been allowed on any goods and the sale proceeds in respect of such goods are not received by or on behalf of the exporter in India within the time allowed under the Foreign Exchange Management Act (FEMA). In such a case, the drawback shall be deemed never to have been allowed and the Central Government, may, by rules made under sub-section (2) specify the procedure for the recovery or adjustment of the amount of such drawback. In this regard, Central Government is empowered to prescribe the circumstances under which duty drawback would not be disallowed even though the export remittances are not received within the period allowed under FEMA.

Section 75(1A): Where it appears to the Central Government that the quantity of a particular material imported into India is more than the total quantity of like material that has been used in the goods manufactured, processed or on which any operation has been carried out in India and exported outside India, then the Central Government, may, by notification in the Official Gazette declare that so much of the material as is contained in the goods exported shall for the purpose of sub-section (1) be deemed to be imported material.

Section 75(2) : Power of Central Government to frame rules

Sub-section (2) of section 75, empowers the Central Government to make rules, providing for, *inter alia*

- (a) the payment of drawback equal to the amount of duty actually paid on the imported materials used in the manufacture or processing of the goods or carrying out any operation on the goods or as is specified in the Rules as the average amount of duty paid on the materials of that class or description used in the manufacture or processing of export goods or carrying out any operation on export goods of that class or description either by manufacturers generally or by persons processing or carrying out any operation generally or by any particular manufacturer or particular person carrying on any process or other operation, and interest if any payable thereon.
- (b) Specifying the goods in respect of which no drawback shall be allowed and
- (c) Specifying the procedure for recovery or adjustment of the drawback in case where there is variation in the basic material on which the drawback rate or the interest chargeable has been prescribed
- (d) Prescribing the details of certificates, documents and other evidence necessary for determining the drawback amount and
- (e) Requiring the manufacturer or the person carrying on any process or other operation to give access to every part of his manufacturing factory or the place where any manufacture process or other operations are carried out to any officer of customs to enable such officer to make necessary examination of and study the process of manufacture, and to verify the data furnished about use of duty paid inputs etc.
- (f) The manner and the time within which the claim for payment of drawback may be filed.

Sub-section (3) extends the rule-making power to include the power to make rules to give drawback with retrospective effect from a date not earlier than the date of changes in the rates of duty on inputs used in the export of goods.

Type of drawback rates

Duty drawback rates are of following types –

- (a) All Industry Rate under rule 3 (and revised under rule 4) of Customs and Central Excise Duties Drawback Rules, 2017
- (b) Brand Rate under rule 6 of Customs and Central Excise Duties Drawback Rules, 2017 and
- (c) Special Brand Rate under rule 7 of Customs and Central Excise Duties Drawback Rules, 2017.

Duty drawback rates can be fixed with retrospective effect – Rule 5(2) Customs and Central Excise Duties Drawback Rules, 2017.

All Industry Drawback Rates

All Industry Drawback rates are fixed by Directorate of Drawback, Dept. of Revenue, Ministry of Finance, Govt. of India, Jeevan Deep, Parliament Street, New Delhi – 110 001. The rates are periodically revised. Data from industry is collected for this purpose.

The All Industry Drawback Rate is fixed under rule 3 of Drawback Rules by considering average quantity and value of each class of inputs imported. Average amount of customs duties is considered. These rates are fixed for broad categories of products. The rates include drawback on packing materials. HSD/furnace oil is also considered in duty drawback rate calculations.

The rates are fixed on basis of broad parameters like prevailing prices of input, SION published by DGFT, share of imports in total consumption of inputs, FOB value of export goods, applicable rates of customs duty etc.

Brand Rate of duty drawback

It is possible to fix All Industry Rate only for some standard products. It cannot be fixed for special type of products. In such cases, *brand rate* is fixed under Rule 6 of Customs and Central Excise Duties Drawback Rules, 2017.

Application shall be made to jurisdictional Principal Commissioner or Commissioner of Customs., having jurisdiction over the place of export, with all details of inputs etc. in prescribed forms.

Special Brand Rate of duty drawback

All Industry rate is fixed on average basis. Thus, a particular exporter may find that the actual customs duty paid on inputs is higher than All Industry Rate fixed for his product. In such case, he can apply under Rule 7 of Customs and Central Excise Duties Drawback Rules, 2017 for fixation of Special Brand Rate, within three months from export. He has to apply giving details in prescribed form.

The conditions of eligibility are that the All Industry Rate fixed for that product should be less than 80% of the duties actually paid by him on imports.

CUSTOM AND CENTRAL EXCISE DUTIES DRAWBACK RULES, 2017

In exercise of the powers conferred upon it by section 75(2), the Central Government has made the Customs and Central Excise Duties Drawback Rules, 2017 vide *Notification No.88/2017-N.T. dated 21.09.2017.*

Rule 2 : Definitions

(a) **Drawback** in relation to any goods manufactured in India and exported, means the rebate of duty excluding integrated tax leviable under sub-section (7) and compensation cess leviable under sub-section (9) respectively of section 3 of the Customs Tariff Act, 1975 chargeable on any imported materials or excisable materials used in the manufacture of such goods.

(b) **Excisable material:** means any material produced or manufactured in India subject to a duty of excise under the Central Excise Act, 1944.

(c) **Export:** with its grammatical variations and cognate expressions, means

- (i) taking out of India to a place outside India or
- (ii) taking out from a place in Domestic Tariff Area (DTA) to a special economic zone and

includes loading of provisions or store or equipment for use onboard a vessel or aircraft proceeding to a foreign port.

‘Export’ is defined as taking out of India to a place out of India. Hence, export is complete when goods leave territorial waters of India. It does not matter whether goods reach the destination or even not. Duty drawback will be available once ‘export’ is complete.

In *UOI v. Rajindra Dyeing and Printing Mills* 2005 (180) ELT 433 (SC), it has been held that export is complete when goods cross territorial waters of India. If ship sinks within territorial waters, export is not complete and hence duty drawback is not payable.

In *CC v. Sun Exports* 35 ELT 241 (SC), it was held that export is complete once the goods leave Indian waters and property passes to purchasers. Even if goods return due to engine trouble, duty drawback is payable.

(d) **Imported material:** means any material imported into India and on which duty is chargeable under the Customs Act, 1962.

- (e) **Manufacture:** includes processing of or any other operation carried out on goods, and the term manufacturer shall be construed accordingly.

Duty Drawback is allowable not only on manufacture but also if any process or any activity is carried out in India [refer: section 75(1) of Customs Act, 1962]. Thus, drawback is available not only on manufacture, but also on processing and job work, where goods may not change its identity and "no manufacture" has taken place.

- (f) **Tax invoice** : means the tax invoice referred to in section 31 of the Central Goods and Services Tax Act, 2017.

Rule 3 : Drawback

Subject to the provisions of the Customs Act, 1962, the Central Excise Act, 1944, and the rules made there-under; and these rules [Drawback rules], a drawback may be allowed on the export of goods at such amount, or at such rates, as may be determined by the Central Government.

However, where any goods are produced or manufactured from imported materials or excisable materials, on some of which only the duty chargeable thereon has been paid and not on the rest, or only a part of the duty chargeable has been paid; or the duty paid has been rebated or refunded in whole or in part or given as credit, under any of the provisions of the Customs Act, 1962 and the rules made thereunder, or of the Central Excise Act, 1944 and the rules made thereunder, the drawback admissible on the said goods shall be reduced taking into account the lesser duty paid or the rebate, refund or credit obtained.

No drawback in certain cases: No drawback shall be allowed -

- (i) if the said goods, except tea chests used as packing material for export of blended tea, have been taken into use after manufacture;
- (ii) if the said goods are produced or manufactured, using imported materials or excisable materials in respect of which duties have not been paid;
- (iii) on jute batching oil used in the manufacture of export goods, namely, jute (including Bimlipatam jute or mesta fibre) yarn, twist etc.
- (iv) if the said goods, being packing materials have been used in or in relation to the export of jute yarn, jute fabrics etc.

Factors considered while determining amount/rate of drawback: In determining the amount or rate of drawback under this rule, the Central Government shall have regard to -

- (a) the average quantity or value of each class or description of the materials from which a particular class of goods is ordinarily produced or manufactured in India.
- (b) the average quantity or value of the imported materials or excisable materials used for production or manufacture in India of a particular class of goods.
- (c) the average amount of duties paid on imported materials or excisable materials used in the manufacture of semis, components and intermediate products which are used in the manufacture of goods.
- (d) the average amount of duties paid on materials wasted in the process of manufacture and catalytic agents.

However, if any such waste or catalytic agent is re-used in any process of manufacture or is sold, the average amount of duties on the waste or catalytic agent re-used or sold shall also be deducted.

- (e) the average amount of duties paid on imported materials or excisable materials used for containing or, packing the export goods.
- (f) any other information which the Central Government may consider relevant or useful for the purpose.

Rule 4 : Revision of rates

The Central Government may revise amount or rates determined under rule 3.

- (g) duty is chargeable under the Customs Act, 1962.
- (h) **Manufacture:** includes processing of or any other operation carried out on goods, and the term manufacturer shall be construed accordingly.

Duty Drawback is allowable not only on manufacture but also if any process or any activity is carried out in India [refer: section 75(1) of Customs Act, 1962]. Thus, drawback is available not only on manufacture, but also on processing and job work, where goods may not change its identity and "no manufacture" has taken place.

- (i) **Tax invoice:** means the tax invoice referred to in section 31 of the Central Goods and Services Tax Act, 2017.

Rule 5 : Determination of date from which the amount or rate of drawback is to come into force and the effective date for application of amount or rate of drawback

- ❖ The Central Government may specify the period upto which any amount or rate of drawback determined under rule 3 or revised under rule 4, as the case may be, shall be in force.
- ❖ Where the amount or rate of drawback is allowed with retrospective effect, such amount or rate shall be allowed from such date as may be specified by the Central Government by notification in the Official Gazette which shall not be earlier than the date of changes in the rates of duty on inputs used in the export goods.
- ❖ The provisions of section 16, or section 83(2), of the Customs Act, 1962 shall determine the amount or rate of drawback applicable to any goods exported under these rules.

Rule 6 : Cases where amount or rate of drawback has not been determined:

Where no amount or rate of drawback has been determined in respect of any goods, any exporter of such goods may, within 3 months from the date relevant for the applicability of the amount/rate of drawback, apply to the Principal Commissioner/ Commissioner of Customs, as the case may be, having jurisdiction over the place of export, for determination of the amount or rate of drawback thereof stating all the relevant facts including the proportion in which the materials or components are used in the production or manufacture of goods and the duties paid on such materials or components.

However, in case an exporter is exporting the aforesaid goods from more than one place of export, he shall apply to the Principal Commissioner/Commissioner of Customs, having jurisdiction over any one of the said places of export.

On receipt of an application, the Principal Commissioner/ Commissioner of Customs, as the case may be, shall, after making or causing to be made such inquiry as it deems fit, determine the amount or rate of drawback in respect of such goods. Provisional drawback:

While making an application under this rule, an exporter may apply for a provisional amount of drawback pending determination of the amount or rate of drawback.

The Principal Commissioner/ Commissioner of Customs, may, after considering the application, allow provisionally payment of an amount not exceeding the amount claimed by the exporter in respect of such export.

For the said purpose, he may require the exporter to enter into a general bond for such amount, and subject to such conditions, as he may direct; or to enter into a bond for an amount not exceeding the full amount claimed by such

exporter as drawback in respect of a particular consignment and binding himself to refund the amount so allowed provisionally, if for any reason, it is found that the duty drawback was not admissible; or to refund the excess, if any, paid to such exporter provisionally if it is found that a lower amount was payable as duty drawback. The bond may be required to be furnished with prescribed surety or security.

When the amount or rate of drawback payable on such goods is finally determined, the amount provisionally paid to such exporter shall be adjusted against the drawback finally payable and if the amount so adjusted is in excess or falls short of the drawback finally payable, such exporter shall repay to the Principal Commissioner/ Commissioner of Customs, as the case may be, the excess or be entitled to the deficiency, as the case may be.

Revocation of or direction to withdraw the rate/ amount of drawback determined under this rule:

Where the Central Government considers it necessary so to do, it may revoke the rate of drawback/ amount of drawback determined under this rule or may direct the Principal Commissioner/ Commissioner of Customs to withdraw the rate of drawback or amount of drawback determined.

Explanation - For the purpose of this rule, “**place of export**” means customs station or any other place appointed for loading of export goods under section 7 of the Customs Act, 1962 from where the exporter has exported the goods or intends to export the goods in respect of which determination of amount or rate of drawback is sought.

Rule 7: Cases where amount or rate of drawback determined is low

Where, in respect of any goods, the exporter finds that the amount or rate of drawback determined under rule 3 or, as the case may be, revised under rule 4, for the class of goods is less than 80% of the duties paid on the materials or components used in the production or manufacture of the said goods, he may, except where a claim for drawback under rule 3 or rule 4 has been made, within 3 months from the date relevant for the applicability of the amount or rate of drawback, make an application to the Principal Commissioner/ Commissioner of Customs, as the case may be, having jurisdiction over the place of export, for determination of the amount or rate of drawback thereof stating all relevant facts including the proportion in which the materials or components are used in the production or manufacture of goods and the duties paid on such materials or components.

However, in case an exporter is exporting the aforesaid goods from more than one place of export, he shall apply to the Principal Commissioner/ Commissioner of Customs, having jurisdiction over any one of the said places of export.

Extension of the time-limits prescribed under rule 6 & 7

Authority	Period of extension	Application fee	Grant/refuse of extension
Assistant/Deputy Commissioner of customs	three months	i) 1% of the FOB value of exports or (ii) ₹1000/- whichever is less	The concerned authority may, on an application and after making such enquiry as he thinks fit, grant extension or refuse to grant extension after recording in writing the reasons for such refusal.
Principal Commissioner/ Commissioner of customs	further extension of six months	i) 2% of the FOB value of exports or (ii) ₹2000/- whichever is less	

On receipt of the application, the Principal Commissioner/ or Commissioner of Customs, as the case may be, may, after making or causing to be made such inquiry as it deems fit, allow payment of drawback to such exporter at such amount or at such rate as may be determined to be appropriate, if the amount or rate of drawback determined under rule 3 or, as the case may be, revised under rule 4, is in fact less than 80% of such amount or rate determined under this sub-rule.

Provisional drawback:

Provisional drawback amount, as may be specified by the Central Government, shall be paid by the proper officer of Customs and where the exporter desires that he may be granted further drawback provisionally, he may, while making an application, apply to the Principal Commissioner/ Commissioner of Customs, in this behalf in the manner as has been provided in rule 6 for the application made under that rule along with details of provisional drawback already paid and the grant of further provisional drawback shall be considered in the manner and subject to the conditions as specified in rule 6, subject to the condition that bond required to be executed by the claimant shall only be for the difference between amount or rate of drawback determined under rule 3 or, as the case may be, revised under rule 4 by the Central Government and the provisional drawback authorised by the Principal Commissioner/ Commissioner of Customs under this rule.

Revocation of or direction to withdraw the rate/ amount of drawback determined under this rule:

Where the Central Government considers it necessary so to do, it may revoke the rate of drawback/ amount of drawback determined under this rule or may direct the Principal Commissioner/ Commissioner of Customs to withdraw the rate of drawback or amount of drawback determined.

Explanation - For the purpose of this rule, “**place of export**” means customs station or any other place appointed for loading of export goods under section 7 of the Customs Act, 1962 from where the exporter has exported the goods or intends to export the goods in respect of which determination of amount or rate of drawback is sought.

Note: CBIC has clarified that since safeguard duties and countervailing duties are not taken into consideration while fixing All Industry Rates of drawback, the drawback of the same can be claimed under an application

for Brand Rate under rule 6 or rule 7 of the Customs & Central Excise Duties authorized Drawback Rules, 2017.

This implies that drawback shall be admissible only where the inputs which suffered safeguard duties were actually used in the goods exported as confirmed by the verification conducted for fixation of Brand Rate.

Further, where imported goods subject to safeguard duties/countervailing duties are exported out of the country as such, then the drawback payable under section 74 of the Customs Act would also include the incidence of safeguard duties/countervailing duties as part of total duties paid, subject to fulfillment of other conditions.

Rule 8 : Cases where no amount or rate of drawback is to be determined 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

- (i) less than the value of the imported materials used in the manufacture of such goods or class of goods, or
- (ii) 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.

Rule 9 : Upper limit of drawback amount or rate

The drawback amount or rate determined under rule 3 shall not exceed one third of the market price of the export product.

Rule 10 : Power to require submission of information and documents

For the purpose of -

- (a) determining the class or description of materials or components used in the production or manufacture of goods or for determining the amount of duty paid on such materials or components; or
- (b) verifying the correctness or otherwise of any information furnished by any manufacturer or exporter or other persons in connection with the determination of the amount or rate of drawback; or
- (c) verifying the correctness or otherwise of any claim for drawback; or
- (d) obtaining any other information considered by the Principal Commissioner of Customs or Commissioner of Customs, as the case may be, to be relevant or useful,

any officer of the Central Government specially authorised in this behalf by an Assistant Commissioner of Customs or Deputy Commissioner of Customs, as the case may be, may require any manufacturer or exporter of goods or any other person likely to be in possession of the same to furnish such information and to produce such books of account and other documents as are considered necessary by such officer.

Rule 11 : Access to manufactory

Whenever an officer of the Central Government specially authorised in this behalf by an Assistant Commissioner/ Deputy Commissioner of Customs, as the case may be, considers it necessary, the manufacturer shall give access at all reasonable times to the officer so authorised to every part of the premises in which the goods are manufactured, so as to enable the said officer to verify by inspection the process of, and the materials or components used for the manufacture of such goods, or otherwise the entitlement of the goods for drawback or for a particular amount or rate of drawback under these rules.

Rule 12 : Procedure for claiming drawback on goods exported by post

Where goods are to be exported by post under a claim for drawback under these rules,

- (a) the outer packing carrying the address of the consignee shall also carry in bold letters the words "DRAWBACK EXPORT";

- (b) the exporter shall deliver to the competent Postal Authority, along with the parcel or package, a claim in the Form at Annexure I, in quadruplicate, duly filled in.

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

Rule 13 : Statement/Declaration to be made on exports other than by Post

In the case of exports other than by post, the exporters shall at the time of export of the goods - state on the shipping bill or bill of export, the description, quantity and such other particulars as are necessary for deciding whether the goods are entitled to drawback, and if so, at what rate or rates and make a declaration on the relevant shipping bill or bill of export that -

- (i) a claim for drawback under these rules is being made;
- (ii) in respect of duties of Customs and Central Excise paid on containers, packing materials and materials used in the manufacture of the export goods on which drawback is claimed, no separate claim for rebate of duty under the Central Excise Rules, 2002 or any other law has been or will be made to the Central Excise authorities.

However, if the Principal Commissioner/ Commissioner of Customs, as the case may be, is satisfied that the exporter or his authorised agent has, for reasons beyond his control, failed to comply with the provisions of this clause, he may, after considering the representation, if any, made by such exporter or his authorised agent, and for reasons to be recorded, exempt such exporter or his authorised agent from the provisions of this clause;

- (b) furnish to the proper officer of Customs, a copy of shipment invoice or any other document giving particulars of the description, quantity and value of the goods to be exported.

Where the amount or rate of drawback has been determined under rule 6 or rule 7, the exporter shall make an additional declaration on the relevant shipping bill or bill of export that -

- (a) there is no change in the manufacturing formula and in the quantum per unit of the imported materials or components, if any, utilised in the manufacture of export goods; and

- (b) the materials or components, which have been stated in the application under rule 6 or rule 7 to have been imported, continue to be so imported and are not being obtained from indigenous sources.

Rule 14 : Manner and time for claiming drawback on goods exported other than by post

Electronic shipping bill in Electronic Data Interchange (EDI) under the claim of drawback or triplicate copy of the shipping bill for export of goods under a claim of drawback shall be deemed to be a claim for drawback filed on the date on which the proper officer of Customs makes an order permitting clearance and loading of goods for exportation under section 51 and said claim for drawback shall be retained by the proper officer making such order.

The said claim for drawback should be accompanied by the following documents, namely:

- (i) copy of export contract or letter of credit, as the case may be;
- (ii) copy of ARE-1, wherever applicable;
- (iii) insurance certificate, wherever necessary; and
- (iv) copy of communication regarding rate of drawback where the drawback claim is for a rate determined by the Principal Commissioner of Customs or Commissioner of Customs, as the case may be, under rule 6 or rule 7 of these rules.

If the said claim for drawback is incomplete in any material particulars or is without the documents specified above, shall be returned to the claimant with a deficiency memo in the form prescribed by the Principal Commissioner of Customs or Commissioner of Customs, as the case may be, within 10 days and shall be deemed not to have been filed for the purpose of section 75A.

Where the exporter resubmits the claim for drawback after complying with the requirements specified in the deficiency memo, the same will be treated as a claim filed in this rule for the purpose of section 75A.

For computing the period of 1 month prescribed under section 75A for payment of drawback to the claimant, the time taken in testing of the export goods, not more than 1 month, shall be excluded.

At the time of export, exporter shall endorse on the 'shipping bill' the description, quantity and other details to decide whether goods are eligible for duty drawback. Copy of invoice should be submitted.

If shipping bill under drawback is submitted electronically, that itself will be treated as claim for drawback.

Rule 15 : Payment of drawback and interest: The drawback under these rules and interest, if any, shall be paid by the proper officer of Customs to the exporter or to the agent specially authorised by the exporter to receive the said amount of drawback and interest.

The officer of Customs may combine one or more claims for the purpose of payment of drawback and interest, if any, as well as adjustment of any amount of drawback and interest already paid and may issue a consolidated order for payment.

The date of payment of drawback and interest, if any, shall be deemed to be, in the case of payment -

- (a) by cheque, the date of issue of such cheque; or
- (b) by credit in the exporter's account maintained with the Custom House, the date of such credit.

Rule 16 : Supplementary claim: Where any exporter finds that the amount of drawback paid to him is less than what he is entitled to on the basis of the amount or rate of drawback determined by the Central Government/ Principal Commissioner/ Commissioner of Customs, as the case may be, he may prefer a supplementary claim in the specified form.

However, the exporter shall prefer such supplementary claim within a period of 3 months:

- (i) where the rate of drawback is determined or revised under rule 3 or rule 4, from the date of publication of such rate in the Official Gazette;
- (ii) where the rate of drawback is determined or revised upward under rule 6 or rule 7, from the date of communicating the said rate to the person concerned;
- (iii) in all other cases, from the date of payment or settlement of the original drawback claim by the proper officer.

Authority	Period of extension	Application fee	Grant/refuse of extension
Assistant/Deputy Commissioner of customs	Nine months	i) 1% of the FOB value of exports or (ii) ₹1000/- whichever is less	The concerned authority may, on an application and after making such enquiry as he thinks fit, grant extension or refuse to grant extension after recording in writing the reasons for such refusal.
Principal Commissioner/ Commissioner of customs	further extension of six months	i) 2% of the FOB value of exports or (ii) ₹2000/- whichever is less	

The date of filing of the supplementary claim for the purpose of section 75A shall be the date of affixing the Dated Receipt Stamp on such claims which are complete in all respects and for which an acknowledgement shall be issued in the form prescribed by the Principal Commissioner of Customs or Commissioner of Customs, as the case may be

Rule 17: Repayment of erroneous or excess payment of drawback and interest

Where an amount of drawback and interest, if any, has been paid erroneously or the amount so paid is in excess of what the claimant is entitled to, the claimant shall, on demand by a proper officer of Customs repay the amount so paid erroneously or in excess, as the case may be, and where the claimant fails to repay the amount it shall be recovered in the manner laid down in sub-section (1) of section 142 of the Customs Act, 1962.

Rule 18 : Recovery of amount of drawback where export proceeds not realized

Where an amount of drawback has been paid to an exporter or a person authorised by him (hereinafter referred to as the claimant) but the sale proceeds in respect of such export goods have not been realised by or on behalf of the exporter in India within the period allowed under the Foreign Exchange Management Act, 1999 (FEMA), including any extension of such period, such drawback shall, except under circumstances or conditions specified in this rule, be recovered in the manner specified below.

However, the time-limit referred to in this sub-rule shall not be applicable to the goods exported from the DTA to a SEZ.

If the exporter fails to produce evidence in respect of realisation of export proceeds within the period allowed under the Foreign Exchange Management Act, 1999, or any extension of the said period by the Reserve Bank of India, the Deputy/Assistant Commissioner of Customs shall issue a notice to the exporter to produce evidence of realisation of export proceeds

within 30 days. Where the exporter does not produce such evidence within the said period of thirty days, the Assistant Commissioner of Customs or Deputy Commissioner of Customs shall pass an order to recover the amount of drawback paid to the claimant and the exporter shall repay the amount so demanded within thirty days of the receipt of the said order.

However, such recovery shall not be made in case the non-realisation of sale proceeds is compensated by the Export Credit Guarantee Corporation of India Ltd. under an insurance cover and the Reserve Bank of India writes off the requirement of realisation of sale proceeds on merits and the exporter produces a certificate from the concerned Foreign Mission of India about the fact of non-recovery of sale proceeds from the buyer.

If export proceeds are not realized, duty drawback allowed can be recovered even if proceedings under FEMA are dropped.

Rule 19 : Power to relax : Any relaxation in procedure may be made by the Government after recording the reasons in writing.

SEC 75A : INTEREST ON DRAWBACK

Section 75A provides for payment of interest on delayed payment of drawback.

- (a) Where any drawback payable to a claimant under section 74 or 75 is not paid within a period of one month from the date of filing a claim for payment of such drawback, there shall be paid to the claimant, in addition to the amount of drawback, interest at the rate fixed under section 27A from the date after the expiry of the said period of one month till the date of payment of such drawback.
- (b) Where any drawback has been paid to the claimant erroneously or it becomes otherwise recoverable under this Act or the Rules, the claimant shall within a period of 2 months from the date of demand, pay in addition to the said amount of drawback, interest at the rate fixed under section 28AA and the amount of interest shall be calculated for the period beginning from the date of payment of such drawback to the claimant till the date of recovery of such drawback.

SEC 76 : PROHIBITION AND REGULATION OF DRAWBACK

- (a) Notwithstanding anything herein before contained, no drawback shall be allowed
 - (i) in respect of any goods, the market price of which is less than the amount of drawback due thereon,
 - (ii) where the amount of drawback in respect of any goods is less than fifty rupees. [Sub-section (1)]
- (b) Without prejudice to the provision of sub- section (1), if the Central Government is of the opinion that goods of any specified description in respect of which drawback is claimed under this chapter are likely to be smuggled back into India, it may by notification in the Official Gazette, direct that drawback shall not be allowed in respect of such goods or may be allowed subject to such restrictions and conditions as may be specified in the notification.

The market price is as prevailing in India and not the price which exporter expects to receive from the foreign customer [*Om prakash Bhatia v. CC 2003(155) ELT 423 (SC)*].

Chapter 6: Baggage

BAGGAGE

The term “baggage” has been defined under section 2(3) of the Customs Act in an inclusive manner, to include unaccompanied baggage as well but does not include motor vehicles. In common parlance, the term means luggage of a passenger comprising trunks or bags and personal belongings of the passenger.

The term “goods” has been defined under section 2(22) of the Customs Act, to include *inter alia*, baggage also. Therefore, the restrictions and regulations governing the import and export of goods will apply *mutatis mutandis* to baggage also.

STATUTORY PROVISIONS

The statutory provisions relating to Baggage are covered by sections 77 to 81 of the Customs Act.

SEC 77 : ENTRY OF BAGGAGE BY OWNER

Under this section, the owner of the baggage has to make a declaration of its contents to the proper officer of customs, for the purpose of clearing it. This is known as Baggage Declaration Form.

Declaring packing list is sufficient declaration.

SEC 78 : RATE OF DUTY AND TARIFF VALUATION APPLICABLE TO BAGGAGE

Section 78 of the Customs Act stipulates that the rate of the duty and tariff valuation, if any applicable to baggage shall be the rate of and valuation in force on the date on which a declaration is made in respect of such baggage under section 77. Therefore, the relevant date for determining rate of duty is the date of filing baggage declaration under section 77

Rate of duty on baggage is 35% ad valorem. This rate of duty is not applicable to fire arms, cartridges of fire arms exceeding 50, cigarettes, cigars or tobacco in excess of the quantity prescribed for importation free of duty under the relevant baggage rules and goods imported through a courier service.

Fire arms, cartridges of fire arms exceeding 50 and cigarettes exceeding 100 sticks are not chargeable to rate applicable to baggage [*Notification No. 26/2016 Cus. dated 31.03.2016*]. These items are charged @ 100% applicable to baggage under Heading 9803 of the Customs Tariff.

Valuation rules apply to valuation of baggage also.

SEC 79 : DUTY EXEMPTION TO BAGGAGE

Section 79(1) of the Customs Act refers to the duty relief available in respect of baggage. It stipulates that the proper officer, may subject to any rules made under sub-section (2), pass free of duty

- (a) any article in the baggage, of a passenger or a member of the crew, in respect of which the said officer is satisfied that it has been in his use for such minimum period as may be specified in the rules;
- (b) any article in the baggage of a passenger in respect of which the officer is satisfied that it is for the use of the passenger or his family or is a bonafide gift or souvenir, provided that the value of each such article and the total value of all such articles does not exceed such limits as may be specified in the rule.

The law thus envisages two categories of baggage, namely those belonging to (a) passengers; and (b) members of the crew.

Similarly, it envisages three classes of goods, namely (a) personal effects, which have been in the use of the person for a minimum period; (b) household effects, which is used by the family including the person; and (c) gifts and souvenirs.

Sub-section (2) of section 79 enables the Central Government to make rules for the purposes of carrying out the provisions of section 79(1). It also stipulates that such rules may specify

- (a) the minimum period for which any article has been used by a passenger or a member of the crew for the purposes of [clause (a) of sub-section(1)] determining personal effects;
- (a) The maximum value of any individual article and the maximum total value of all the articles which may be passed free of duty [under clause (b) of sub-section (1)] i.e., household effects, gifts, souvenirs etc.;
- (c) the conditions to be fulfilled before or after clearance subject to which the baggage may be passed free of duty. Sub-section(3) of section 79 provides that different rules may be made for different classes of persons.

PASSENGER BAGGAGE RULES

In pursuance of the powers conferred under section 79 of the Customs Act, the Government had earlier issued the Baggage Rules 1998. The Baggage Rules, 1998 have been substituted with the Baggage Rules, 2016. The salient features of the Baggage Rules 2016 are discussed hereunder:

General duty-free baggage allowance: The general duty-free baggage allowance for different class of passengers coming from different countries is given hereunder

RuleNo	Class of passenger	Origin country from which the passenger is coming	Articles allowed free of duty
3	Indian resident or Foreigner residing in India or Tourist of Indian origin, excluding an infant	Any country other than Nepal, Bhutan or Myanmar	(i) Used personal effects and travel souvenirs; and (ii) Articles up to the value of ₹50,000 (excluding articles mentioned in Annexure I), if carried on in person or in the accompanied baggage of the passenger
3	Tourist of foreign origin excluding infant	Any country other than Nepal, Bhutan or Myanmar	(i) Used personal effects and travel souvenirs; and (ii) Articles up to the value of ₹15,000 (excluding articles mentioned in Annexure I), if carried on in person or in the accompanied baggage of the passenger
4	Indian resident or Foreigner residing in India or Tourist, excluding an infant	Nepal, Bhutan or Myanmar	(i) Used personal effects and travel souvenirs; and (ii) Articles up to the value of ₹15,000 (excluding articles mentioned in Annexure I), if carried on in person or in the accompanied baggage of the passenger. <u>On arriving by land:</u> Only used personal effects.

When a passenger is an infant, only used personal effects will be allowed duty free. The general duty-free baggage allowance of a passenger cannot be pooled with the general duty-free baggage allowance of any other passenger.

- “Infant” means a child not more than two years of age;
- “Resident” means a person holding a valid passport issued under the Passports Act, 1967 and normally residing in India;
- “Tourist” means a person not normally resident in India, who enters India for a stay of not more than six months in the course of any twelve months period for legitimate non-immigrant purposes;

“Personal effects” means things required for satisfying daily necessities but does not include jewellery

Rule 5 :Jewellery Allowance

Rule No	Class of passenger	Origin country from which the passenger is coming	Articles allowed free of duty
5	Passenger residing abroad for more than one year	Any country	<p><u>Gentleman:</u> Jewellery upto a weight of 20 gms with a value cap of ₹50,000</p> <p><u>Lady passenger:</u> Jewellery upto a weight of 40 gms with a value cap of ₹1,00,000</p>

Rule 6 :Transfer of residence

A person, who is engaged in a profession abroad, or is transferring his residence to India, will be allowed duty free clearance of articles on his return in the manner given in the Appendix below.

This allowance would be in addition to the general duty free baggage allowance under rule 3 or 4, as the case may be.

Appendix

Duration of stay abroad	Articles allowed free of duty	Conditions	Relaxation
From 3 months upto 6 months	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 ₹60,000	Indian passenger	-
From 6 months upto 1 year	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 ₹1,00,000	Indian passenger	-

Minimum Stay of 1 year during the preceding 2 years	Personal and household articles, other than those mentioned in Annexure I or Annexure II but including articles mentioned in Annexure III upto an aggregate value of ₹2,00,000	The Indian passenger should not have availed this concession in the preceding 3 years.	-
Minimum stay of 2 years or more	Personal and household articles, other than those listed at Annexure I or Annexure II but including articles mentioned in Annexure III upto an aggregate value of ₹5,00,000	(i) Minimum stay of 2 years abroad, immediately preceding the date of his arrival on transfer of residence;	The shortfall of upto 2 months in stay abroad can be condoned by Deputy/Assistant Commissioner of Customs if the early return is on account of - (i) Terminal leave or vacation being availed of by the passenger; or any other special circumstances for reasons to be recorded in writing
		(ii) Total stay in India on short visit during the two preceding years should not exceed 6 months; and	The Principal commissioner/commissioner may condone short visits in excess of 6 months in special circumstances for reasons to be recorded in writing.
		Passenger has not availed this concession in the preceding 3 years	No relaxation

Rule 7 : Currency The import and export of currency under these rules shall be governed in accordance with the provisions of the Foreign Exchange Management (Export and Import of Currency) Regulations, 2015, and the notifications issued thereunder.

Rule 8 : Unaccompanied Baggage The various provisions in the above rules are also applicable to the unaccompanied baggage, unless specifically excluded, if unaccompanied baggage had been in possession, abroad, of the passenger and is dispatched within 1 month of his arrival in India or such further period as the Deputy/Assistant Commissioner may allow.

The said unaccompanied baggage can also land in India upto 2 months before the arrival of the passenger. However, if the passenger is not able to arrive in India within two months due to circumstances beyond his control like sudden illness to himself or any member of family, natural calamities, disturbed conditions, disruption of the transport or travel arrangements in the country etc., the Deputy/Assistant Commissioner may extend the said period of 2 months upto a maximum of 1 year for reasons to be recorded.

Rule 9 : Crew baggage : These baggage rules are also applicable to the members of the crew engaged in foreign going conveyance for importation of their baggage, when they are finally paid off on termination of their engagement.

However, other crew members of a vessel and aircraft will be allowed to bring items like chocolates, cheese, cosmetics and other petty gift items for their personal or family use for a value not exceeding ₹ 1500.

Family, under these rules, includes all persons who are residing in the same house and form part of the same domestic establishment.

Goods listed in Annexure I, II and III are given below:

ANNEXURE-I (See rule 3, 4 and 6)

1. Firearms.
2. Cartridges of fire arms exceeding 50.
3. Cigarettes exceeding 100 sticks or cigars exceeding 25 or tobacco exceeding 125gms.
4. Alcoholic liquor or wines in excess of two litres.
5. Gold or silver in any form other than ornaments.
6. Flat Panel (Liquid Crystal Display/Light-Emitting Diode/Plasma) television.

ANNEXURE-II (See rule 6)

1. Colour Television.
2. Video Home Theatre System.
3. Dish Washer.

4. Domestic Refrigerators of capacity above 300 litres or its equivalent.
5. Deep Freezer.
6. Video camera or the combination of any such Video camera with one or more of the following goods, namely:-
 - (a) Television receiver;
 - (b) sound recording or reproducing apparatus;
 - (c) video reproducing apparatus.
7. Cinematographic films of 35 mm and above.
8. Gold or Silver, in any form, other than ornaments.

ANNEXURE III (See rule 6)

1. Video Cassette Recorder or Video Cassette Player or Video Television Receiver or Video Cassette Disk Player.
2. Digital Video Discplayer.
3. Music System.
4. Air-Conditioner.
5. Microwave Oven.
6. Word Processing Machine.
7. Fax Machine.
8. Portable Photocopying Machine.
9. Washing Machine.
10. Electrical or Liquefied Petroleum Gas Cooking Range
11. Personal Computer (Desktop Computer)
12. Laptop Computer (Note book Computer)
13. Domestic Refrigerators of capacity up to 300 litres or its equivalent.

SEC 80 : TEMPORARY DETENTION OF BAGGAGE

It may so happen that a passenger has brought with him an article, which is prohibited. The passenger may not insist on taking it into the Indian Territory. On the contrary, he may opt to re-export it or take it with him when he leaves the country.

Similarly, a passenger may not unnecessarily pay duty on an article, which he can conveniently avoid taking into the town, if the duty is heavy. In such case also, he may opt to take the article with him when he leaves the country.

In both the cases, he will have to deposit the article with the customs authorities and take it back at the port of his departure.

“Where the baggage of a passenger contains any article which is dutiable or the import of which is prohibited and in respect of which a true declaration has been made under section 77, the proper officer may, at the request of the passenger, detain such article for the purpose of being returned to him on his leaving India and if for any reason, the passenger is not able to collect the article at the time of his leaving India the article may be returned to him through any other passenger authorised by him and leaving India or as cargo consigned in his name”.

Declaration – the essence: The declaration of the goods brought in is an absolute necessity. If the goods are not declared under section 77, the passenger cannot subsequently claim the benefit under section 80 and the goods are liable for confiscation.

SEC 81 : REGULATIONS IN RESPECT OF BAGGAGE

Since the provisions in respect of baggage are a complete code by themselves, it is desirable to supplement detailed procedures wherever necessary with the rule making powers. Section 81 therefore provides that the Board may make regulations in the following matters:

- (a) providing for the manner of declaring the contents of any baggage;
- (b) providing for the custody, examination, assessment to duty and clearance of baggage;
- (c) providing for transit or transshipment of baggage from one customs station to another or to a place outside India.

Baggage declaration form : In exercise of these powers, the form of the baggage declaration has been prescribed and standardized. Transit or transshipment of baggage from one customs station to another becomes a necessity for convenient clearance of unaccompanied baggage.

In the Customs Baggage Declaration Regulations, 2013, the baggage declaration will have to be filed only by those passengers who come to India and carry dutiable or prohibited goods or have anything to declare.

Note: CBIC vide *Circular No. 08/2016 Cus. dated 08.03.2016* has clarified that the domestic passengers who board international flights in the domestic leg are not required to file the Customs Baggage Declaration Form.

Chapter 7: Refund

Sometimes customs duty is found to have been paid in excess of what was actually leviable on the goods. This may happen for various reasons, like error or lack of information. In such cases, refund of excess amount of duty paid can be claimed. Refund of any excess interest paid by the importer/exporter can also be claimed.

SEC 27 : APPLICATION FOR REFUND OF DUTY OR INTEREST

Person who can claim refund of duty / interest: The claim for refund of duty or interest can be made by (i) the person who paid the duty or interest in excess; or (ii) the person who bore the incidence of such duty or interest.

Application for refund to be made in proper form and manner: The claim for refund of any duty or interest paid or borne by the claimant must be made in such form or manner as may be prescribed.

Application for refund to be filed within one year: A claim by the importer / exporter for refund of duty / interest, must be made before the expiry of one year from the date of payment of such duty or interest [Section 27(1)].

A claim by another person, from whom duty was collected, must be made before expiry of one year from the date of purchase of the goods [Explanation to Section 27(1)].

Event	Limitation of one year to be computed from the
Exemption of duty by a special order issued under section 25(2)	Date of issue of such order [Section 27(1B)(a)]
Refund of duty arising as a consequence of any judgment decree, order or direction of the appellate authority, Appellate Tribunal or any court	Date of such judgment, decree, order or direction [Section 27(1B)(b)]
Provisional payment of duty under section 18	Date of adjustment of duty after the final assessment, or in case of re-assessment, from the date of such re-assessment [Section 27(1B)(c)].

No limitation in case of duty paid under protest: The limitation of one year shall

not apply where any duty or interest has been paid under protest. Hence, in case of duty/interest paid under protest, refund claim may be filed without any time-limit [Section 27(1) second proviso].

Minimum amount of refund: Where the amount claimed is less than ₹100, it will not be refunded. In other words, refund will be granted only when the duty amount involved is ₹100 or more [Section 27(1) third proviso].

Documentary evidence to be furnished to prove that incidence of the duty/interest for which refund claim has been filed is not passed onto any other person: Refund application must be accompanied by documentary or other evidence (including the documents, like invoice, referred to in section 28C to establish that the amount of duty or interest, in relation to which such refund is claimed, was collected from or paid by him, and that the incidence of such duty or interest has not been passed on by him to any other person [Section 27(1A)].

(It must be noted that Section 28D creates a statutory presumption that the incidence of duty has been passed on to the buyer, unless the contrary is proved. The documents enclosed to the refund claim must refute this presumption. Please see the section on unjust enrichment, later in this chapter.)

SEC 27(2) : PROCESSING OF REFUND CLAIM

The application of refund, if found to be complete in all respects by Customs, is processed to see if the whole or any part of the duty and interest paid by the applicant is refundable. In case the whole or any part of the duty and interest is found to be refundable, an order for refund is passed.

However, in view of the provisions of unjust enrichment (see below) enshrined in the Customs Act, the amount found refundable has to be transferred/credited to the Consumer Welfare Fund.

Only in following situations, the amount of duty and interest found refundable, instead of being credited to the Consumer Welfare Fund, is to be paid to the applicant:

- (a) if the importer or the exporter, as the case may be, has not passed on the incidence of such duty and interest to any other person;
- (b) if imports were made by an individual for his personal use;
- (c) if the buyer who has borne the duty and interest, has not passed on the incidence of such duty and interest to any other person;
- (d) if amount found refundable relates to export duty paid on goods which has returned to exporter as specified in section 26;
- (e) if amount relates to drawback of duty payable under section 74 and 75;
- (f) if the duty or interest was borne by a class of applicants which has been notified for such purpose in the Official Gazette by the Central Government.
- (g) if the duty paid in excess by the importer before an order permitting clearance of

goods for home consumption is made where—

- (i) such excess payment of duty is evident from the bill of entry in the case of self-assessed bill of entry; or
- (ii) the duty actually payable is reflected in the reassessed bill of entry in the case of reassessment.

DOCTRINE OF UNJUST ENRICHMENT WITH RESPECT TO REFUND OF DUTY

- (h) When an importer imports goods, he has to pay the customs duty on such goods. Similarly, in case of export goods, if the same are leviable to export duty, the exporter pays the export duty. This duty is recovered from the purchasers when the goods are sold by the importer or exporter, as the case may be. In other words, the incidence or burden of duty is passed on to the purchaser, from whom the importer or exporter collects the customs duty. Subsequently, if the importer or exporter makes a claim for refund of duty (due to excess payment) and receives the refund from the government, he would be called to have enriched himself as he collected the duty from his customer also and also as refund from the government. Such enrichment is referred to as 'unjust enrichment'.
- (i) Accordingly, the doctrine of 'unjust enrichment' implies that no person should enrich himself at the cost of others.
- (j) Therefore, wherever there is excess collection of duty, the refund is to be given only to the person who has borne the burden of duty and interest, if any. When the person who applies for refund is not the person who has borne the burden of duty, the refund is paid into a fund called 'Consumer Welfare Fund'. Therefore, it is noteworthy that even the customs authorities are not entitled to retain the excess payments of duty merely because the refund cannot be given to the applicant as he has passed on the incidence.
- (k) In terms of Section 27, the importer or his agent, or the buyer who has been charged the duty by the importer, has to prove that he has not passed the burden of duty to another person, in order to be given refund of duty. Section 28D creates a statutory presumption that he did pass on the burden of duty; this presumption has to be refuted by proving the contrary. If he succeeds in this, the claimant is given the refund in terms of Section 27(2), clause (a) for the importer and clause (c) for the buyer.

Exceptions to the Doctrine of Unjust Enrichment

As seen above, clauses (a) and (c) of sub-section (2) of section 27 provide that a refund may be paid to the applicant if the said applicant proves that he did not pass on the incidence of duty to another person. Sub-section (2) also provides for certain exceptions to the doctrine of unjust enrichment. In these exceptions refund of duty and interest may be paid to the applicant if such amount is relatable to:

- drawback of duty payable under sections 74 and 75;
- export duty as specified in section 26;
- the duty and interest on imports made by an individual for his personal use;
- the duty and interest borne by any other such class of applicants as the Central Government may, by notification in the Official Gazette, specify. However, no notification shall be issued unless in the opinion of the Central Government the incidence of duty and interest has not been passed on by the persons concerned to any other person.
- the duty paid in excess by the importer before an order permitting clearance of goods for home consumption is made where
 - (i) such excess payment of duty is evident from the bill of entry in the case of self-assessed bill of entry; or
 - (ii) the duty actually payable is reflected in the reassessed bill of entry in the case of reassessment.

SEC 27A : INTEREST ON DELAYE REFUND

The Customs has to finalize refund claims without delay upon receipt of the refund application in proper form along-with all the documents. In case any duty ordered to be refunded to an applicant is not refunded within 3 months from the date of receipt of application for refund, interest is to be paid to the applicant. The government is permitted to fix such interest between 5% and 30%.

Currently, the rate of interest is 6% vide *Notification No. 75/2003-Cus (NT) dated 12.09.2003.*

The interest is to be paid for the period beginning from the date immediately after the expiry of 3 months from the date of receipt of such application, till the date of refund of such duty. For the purpose of payment of interest, the application is deemed to have been received on the date on which a complete application, as acknowledged by the proper officer of Customs, has been made.

Where any order of refund is made by the Commissioner (Appeals), Appellate Tribunal, National Tax Tribunal or any Court against an order of the Assistant Commissioner/Deputy Commissioner of Customs, the order passed by the Commissioner (Appeals), Appellate Tribunal, National Tax Tribunal or by the Court, as the case may be is deemed to be an order for the purpose of payment of interest on delayed refund. In other words, in cases where no refund claim has been made, if a refund results from an order passed by the appellate authorities mentioned above or by a court of law, refund is to be paid

within 3 months of the order, and interest will be payable after that.

The interest on delayed refund is payable only in respect of delayed refunds of Customs duty and no interest is payable in respect of deposits such as deposits for project imports, security for provisional release of goods etc.

SEC 26 : REFUND OF EXPORT DUTY IN CERTAIN CASES

Where export duty has been paid on the exportation of any goods, such duty shall be refunded to the person by whom or on whose behalf it was paid, if -

- (a) the goods are returned to such person otherwise than by way of re-sale;
- (b) the goods are re-imported within one year from the date of exportation; and
- (c) an application for refund of such duty is made before the expiry of six months from the date on which the proper officer makes an order for the clearance of the goods.

This provision compensates the export duty in a situation where the goods which are exported are rejected and returned by the buyer.

SEC 26A : REFUND OF IMPORT DUTY IN CERTAIN CASES

Section 26A provides that the import duty paid on clearance of imported goods for home consumption shall be refunded to the person who has paid such duty subject to the fulfillment of the following conditions:

- (a) Goods are defective/not as per specifications:** The goods are found to be defective or otherwise not in conformity with the specifications agreed upon between the importer and the supplier of goods. However, the goods should not have been worked upon, repaired or used after importation except where such use was indispensable to discover the defects or non-conformity with the specifications;
- (b) Goods identified as imported goods:** The goods are identified to the satisfaction of the Assistant Commissioner of Customs or Deputy Commissioner of Customs as the goods which were imported;
- (c) No drawback claimed:** The importer does not claim drawback under any other provisions of this Act; and
- (d) Importer exports the goods/relinquishes title to goods/destroys or renders them commercially valueless**
 - (i) the goods are exported; or
 - (ii) the importer relinquishes his title to the goods and abandons them to customs; or
 - (iii) such goods are destroyed or rendered commercially valueless in the presence of the proper officer

in the prescribed manner within 30 days from the date on which the proper officer makes an order for the clearance of imported goods for home consumption under

section 47. However, the period of 30 days may, on sufficient cause being shown, be extended by the Principal Commissioner/Commissioner of Customs for a period not exceeding 3 months.

Goods in respect of which offence has been committed: It may be noted that the provisions of this section do not apply to the goods regarding which an offence appears to have been committed under this Act or any other law for the time being in force.

Application for refund of import duty: An application for refund of duty shall be made before the expiry of 6 months from the relevant date in such form and in such manner as may be prescribed [sub-section 2].

Meaning of relevant date: Explanation to sub-section (2) provides the relevant dates in various circumstances as under:-

S.No	Case	Relevant date
1	In case the goods are exported out of India	Date on which the proper officer makes an order permitting clearance and loading of goods for exportation under section 51
2	In case of relinquishment of title to the goods	Date of such relinquishment
3	In case of goods being destroyed or rendered commercially valueless	Date of such destruction or rendering of goods commercially valueless

No refund in case of perishable goods: In respect of perishable goods and goods which have exceeded their shelf life or their recommended storage-before-use period, the refund shall not be allowed [Sub-section (3)].

The Board may, by notification in the Official Gazette, specify any other condition subject to which the refund may be allowed [Sub-section (4)].

REFUND CLAIM CANNOT BE A SUBSTITUTE FOR APPEAL

The Customs Act, 1962 has separate provisions and timelines for filing appeal against an order passed by a customs officer. Appeal to the Commissioner (Appeals) is to be made within 60 days of receipt of the order against which the person is aggrieved. On the other hand, a refund claim can be filed within one year from the date of payment of duty or clearance of goods or such other events as specified in section 27. However, a refund claim cannot be a substitute for an appeal.

In the case of *Priya Blue Industries Limited, 2004 (172) ELT 145 (SC)*, duty was assessed on the imported item and the importer paid the duty under protest. Thereafter, the importer filed a claim for refund of the duty. In this matter the Supreme Court ruled that, "Once an Order of Assessment is passed the duty would be payable as per that order. Unless that

order of assessment has been reviewed under Section 28 and/or modified in an Appeal that Order stands. Solong as the Order of Assessment stands the duty would be payable as per that Order of Assessment. A refund claim is not an Appeal proceeding. The Officer considering a refund claim cannot sit in Appeal over an assessment made by a competent Officer. The Officer considering the refund claim cannot also review an assessment order.”

In view of the above ruling of the Supreme Court, refund claims based on challenge to an order of assessment are liable to be rejected.

Chapter 8: Transit and Transhipment

INTRODUCTION :TRANSIT AND TRANSHIPMENT OF IMPORT CARGO

A conveyance may not carry goods intended for a particular customs station only. It may carry goods intended for other Indian ports and other foreign ports. There are two distinct possibilities:

- (a) The conveyance may not call at all other Indian ports/customs stations and foreign ports for which it carries goods.
- (b) The conveyance may call at all other Indian ports/customs stations and foreign ports for which it carries goods.

In the case of the former, the goods will have to be transferred to any other conveyance onward carriage to the destination. This is called transhipment. This will cover both goods intended for Indian ports and foreign ports.

In the latter situation, the goods will continue to be carried by the same conveyance. This is called transit of goods.

In both the situations, import duty is not collected on the goods even though the liability has already accrued by the fact of import into India (which includes the territorial waters of India). It would be necessary to ensure that

- (a) in the case of goods intended for Indian ports, the goods have actually to be conveyed to the Indian port of destination and appropriate duty of customs is collected thereupon;
- (b) in the case of goods intended for foreign ports, the goods are actually conveyed out of India and are not landed in any Indian customs station.

DIFFERENCE BETWEEN TRANSIT AND TRANSHIPMENT

The essential difference between transit and transhipment lies in the continuity of records and documentation.

In the case of transit of goods by the same conveyance, the record already made in the ship's/aircraft's manifest will continue. The goods would have to be shown in the manifest as same bottom cargo. The destination of the cargo consignment wise has to be shown in the same bottom cargo manifest. These entries have necessarily to figure in the departure manifest or export manifest of the conveyance. Thereafter when the conveyance calls at the next Indian customs port or airport the goods have to figure in the Import General Manifest filed there as landing cargo or same bottom cargo as the case may be. Thus, there is continuity in the record and there is no chance of the control over such transit goods being lost.

- (a) The position of the transhipment is entirely different. In the first instance, such transhipment goods are landed in the particular Indian customs station. Thereafter, they have to be shipped by a conveyance to the destination to be transhipped. These are the following stages where care and caution have to be exercised to ensure that the goods are not illicitly landed and smuggled into India.
- (i) during the period when the transhipment goods lie in the Indian customs station;
 - (ii) when the goods are transhipped by another conveyance to their final destination;
 - (iii) where the transhipped goods are destined to another Indian customs station, care has to be taken at that station for actual landing and proper clearance.

STATUTORY PROVISIONS

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

EXCEPTIONS TO THIS CHAPTER [SEC 52]

The provisions of this chapter shall not apply to

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

TRANSIT OF GOODS IN THE SAME VESSEL OR AIR [SEC 53]

Subject to the provisions of section 11 (power to prohibit import or export of goods), where any goods imported in a conveyance and mentioned in the arrival manifest or import manifest or the import report, as the case maybe, as for transit in the same conveyance to any place outside India or to any customs station, the proper officer may allow the goods and the

conveyance to transit without payment of duty, subject to such conditions, as may be prescribed.

TRANSHIPMENT OF GOODS WITHOUT PAYMENT OF DUTY [SECTION 54]

- (1) Where any goods imported into a customs station are intended for transhipment, a bill of transhipment shall be presented to the proper officer in the prescribed form. Where the goods are being transferred under an international treaty or bilateral agreement between the Government of India and Government of a foreign country, a declaration for transhipment instead of a bill of transhipment shall be presented to the proper officer in the prescribed form.

- (2) Subject to the provisions of sections 11 (power to prohibit import or export of goods), where any goods imported into a customs station are mentioned in the arrival manifest or import manifest or the import report, as the case may be, as for transshipment to any place outside India, such goods may be allowed to be so transhipped without payment of duty.
- (3) Where any goods imported into a customs station are mentioned in the arrival manifest or import manifest or the import report, as the case may be, as for transshipment: -
- to any major port as defined in the Indian Ports Act, 1908 (15 of 1908), or the customs airport at Mumbai, Calcutta, Delhi, or Chennai or any other custom port or customs airport which the board may, by notification in the Official Gazette, specify in this behalf, or
 - to any other customs station and the proper officer is satisfied that the goods bonafide intended for transshipment to such customs station, the proper officer may allow the goods to be transhipped without payment of duty, subject to such conditions as may be prescribed for the due arrival of such goods at the customs station to which transshipment is allowed.

Difference between transit and transshipment of goods under Customs Act.

Transit	Transshipment
(i) Section 53 of the Customs Act, 1962 provides for transit of goods.	(i) Section 54 of the Customs Act, 1962 provides for transshipment of goods.
ii) In case of transit of goods, goods are allowed to remain on the same conveyance.	(ii) In case of transshipment of goods, the conveyance changes i.e., the goods are unloaded from one conveyance and loaded in another conveyance.
In case of transit of goods, there is continuity of records.	(iii) In transshipment of goods, continuity in the records is not maintained as the goods are transferred to another conveyance.

LIABILITY OF DUTY ON GOODS TRANSITED u/s 53 OR TRANSHIPPED u/s 54
[SECTION 55]

Where any goods are allowed to be transited under section 53 or transhipped under section 54(3) (transshipment within India) to any customs station, they shall, on their arrival at such station, be liable to duty and shall be entered in like manner as goods are entered on the first importation thereof and the provisions of this Act and any rules and regulations shall, so far as may be, apply in relation to such goods.

**TRANSPORT OF CERTAIN CLASSES OF GOODS SUBJECT TO PRESCRIBED
CONDITIONS [SEC 56]**

The provisions of sections 53 and 54 apply only to goods imported at an Indian customs port/airport and transmitted or transshipped to another Indian customs port/airport. They do not cover transport by land from one Indian land custom station to another Indian land customs station.

In the case of goods destined to foreign ports/airports/custom station, the problem had been specifically faced in the case where imported goods meant for Nepal landed at any Indian customs port/airport or land customs station. Such goods had to be transported by road or rail to Indian land customs station along the Indo Nepal Border and thereafter crossed over to the corresponding Nepalese customs station. Similarly, there was rail traffic between West and East Pakistan before the latter was liberated and named Bangladesh. The movement across the Indian territory was found to be faster and cheaper compared to movement by sea around the Indian subcontinent. Such a situation is dealt with by section 56 of the Customs Act.

Section 56 specifically provides that imported goods may be transported without payment of duty from one land customs station to another, and any goods may be transported from one part of India to another part through any foreign territory, subject to such conditions as may be prescribed for the due arrival of such goods at the place of destination.

In the first part, movement within Indian Territory is allowed without payment of customs duty, for goods imported from outside India for ultimate destination outside India.

In the second part, movement through foreign territory is allowed without payment of customs duty, for goods starting from one part of India to another part of India.