VALUATION UNDER THE CUSTOMS ACT, 1962

For the sake of brevity “Goods and Services Tax Compensation Cess” has been referred to as “GST compensation cess” respectively.

LEARNING OUTCOMES

After studying this chapter, you would be able to:

- comprehend the concept of value in relation to import or export
- appreciate the concept of indirect tax and valuation for the same
- identify two approaches for computing the assessable value
- identify the date for determination of rate of duty and tariff value.
- analyse and apply the special provisions for classification of sets of articles and accessories.
- synthesis of the above provisions to determine the assessable value of imported/exported goods and total customs duty and integrated tax payable on importation.
1. INTRODUCTION

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

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

The disadvantage with a specific rated levy is that the revenue to the Government remains fixed, unless there is variation in the quantum of total imports and exports. The continuous upward trend in the price of goods has suggested that the Government is losing increase in its revenue by not following ad valorem basis of duties.

2. CONCEPT OF VALUE

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

Some of the values commonly known to the public are:

(i) Cost price to the manufacturer: It is the total cost incurred by the manufacturer of an article or product in producing or manufacturing the product.

(ii) Sale price of the manufacture: It is the price at which the manufacturer is selling the goods to the buyer.

(iii) There are two sale prices namely

   (a) a domestic sale price

   (b) an export price in the course of international trade.

(iv) In the course of sale, there are two situations namely, wholesale transactions and retail trade. Thus we have (a) Whole sale price and (b) retail price
(v) The sale may be on down right cash basis, or payment on delivery of the goods or the title documents or deferred payment say either on installments or after 30 or 90 days.

These situations give rise to (a) cash price; (b) payment by sight draft; (60 or 90 days draft).

(vi) There are situations where the manufacturer himself may not be exporting the goods in the course of international trade. This gives rise to the concept of suppliers. As a result we have supplier’s price.

(vii) In the course of international trade, where the buyer is in another country, the seller has often to resort to price list or catalogues. This is in turn gives rise to list price.

(viii) There is always a negotiation between the buyer and the seller. The contracted price is arrived at by giving discounts to the list price. Such discounts are given for various considerations. We have therefore terms like

(i) Trade discount
(ii) Quantity discount
(iii) Prompt payment cash discount
(iv) L/C discount
(v) Special discount

(ix) There are situations where the goods are defective, sub – standard or there is a glut of stock and the goods have to be sold at the best price available. This yields disposal price.

(x) The price may vary from consignment from consignment even though there may not be any underhand dealing in the transaction. Such a price is called transaction value.

(xi) There may be a clear understanding between the overseas seller and the Indian buyer of the goods. They may have a special relationship, such as, the Indian buyer may be the sole selling agent for the goods of the overseas seller. He may be the sole distributor. He may even be a branch or subsidiary of the seller and the sale may be a stock transfer. In such a situation, the price is known as dealer’s price.
Lastly, if we have no information of any of the matters relating to the transaction and we have only the commercial invoice used in the transaction, the price is invoice price.

### 3. TERMS USED IN COMMERCIAL PARLANCE

It would be useful to know and understand the terms and contents of documents used in the International Trade transactions.

<p>| (1) Invoice | This is the basic commercial document showing particulars regarding description of goods - quantity and unit price - discounts and net price - names of consignor and consignee - payment particulars. - Contract or acceptance of order on the basis of which the goods are supplied. |
| (2) Packing specification | Giving particulars of the contents of each of each of the package in the consignment. |
| (3) Certificate of Origin | A certificate issued by the competent authority in the country of manufacture giving the extent of the manufacture in that country. |
| (4) Bill of Lading | A negotiable document given by the carriers of the cargo giving particulars of (a) Port of shipment (b) No. of packages covered by the consignment (c) Marks and numbers on the page (d) Name of the vessel in which the goods have been dispatched (e) Name of the consignee of the goods, (f) whether the freight has been pre-paid or is to be collected at the destination. It is a negotiable document which has to be surrendered to the carrier for getting delivery of the goods. |</p>
<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>5</strong></td>
<td>Air Consignment Note</td>
<td>It is a document corresponding to Bill of Lading, in the case of cargo imported or exported by air.</td>
</tr>
<tr>
<td><strong>6</strong></td>
<td>Indent</td>
<td>It is a document showing the particulars of the consignment for which the buyer has placed an order with the supplier. It normally gives particulars about (i) full description of the goods (ii) unit price (iii) mode of payment (iv) quantity required (v) delivery instructions.</td>
</tr>
<tr>
<td><strong>7</strong></td>
<td>Quotation</td>
<td>It is a document, which indicates the price, the terms and other conditions on which the seller is willing to supply goods to the buyer.</td>
</tr>
<tr>
<td><strong>8</strong></td>
<td>Acceptance</td>
<td>It refers to the formalisation of the contract of sale between the buyer and the seller. Once the seller of the goods sends his acceptance of the order of the buyer (the indent) the contract is complete. The acceptance will <em>inter alia</em> contain particulars of description of the goods to be supplied, unit price, including discounts and other charges, time and terms of delivery, penal clause for breach of contract, agreed terms of payment.</td>
</tr>
<tr>
<td><strong>9</strong></td>
<td>Letter of Credit</td>
<td>This is an instrument delivered by the bank intimating the seller that the buyer has instructed the bank and the bank will according to these instructions pay the seller of the goods, the bill amount for the supply of the goods on presentation of certain documents evidencing shipment of the goods.</td>
</tr>
<tr>
<td><strong>10</strong></td>
<td>Sight draft</td>
<td>A document evidencing the amount of money paid for the importation.</td>
</tr>
<tr>
<td><strong>11</strong></td>
<td>Delivery Order</td>
<td>An authorisation given by the local agent of the carriers, on surrender of the original negotiable copy of the bill of lading or air consignment note, directing the custodian of the cargo to</td>
</tr>
</tbody>
</table>
| (12) Mate’s Receipt | deliver the consignment to the importer or his agent.  
<table>
<thead>
<tr>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>A receipt given by the First mate or First officer or cargo supervisor of the conveyance certifying the total quantity of the consignment received on board the vessel or the aircraft. A bill of lading or air consignment note is issued by the agent of the Carrier Company on surrender of the mate’s receipt.</td>
</tr>
<tr>
<td>(13) Retirement of documents</td>
<td>The original negotiable copies of the shipment documents like invoice, packing specification, certificate of origin.</td>
</tr>
<tr>
<td>(14) Non-negotiable documents</td>
<td>Since retirement of the original document takes time, non negotiable documents are given to the importer to facilitate clearance.</td>
</tr>
<tr>
<td>(15) Boat/Lighterage Charge</td>
<td>Sometimes the vessel is unable to get a berth alongside the quay in the harbour. The goods are then transported from the ship to the shore by boats / lighters. The charges paid therefore are called Boat / Lighterage charges.</td>
</tr>
<tr>
<td>(16) Customs Broker</td>
<td>Since the importers / exporters may not be able to devote time and energy to clear imported goods or export goods, and since it involves running about to several organisations apart from customs, like Port, Trust, steamer agents, insurance companies, the assistance of agency organisation having adquate technical knowledge and expertise has been provided in the form of customs broker.</td>
</tr>
<tr>
<td>(17) Insurance cover</td>
<td>It is customary to insure all goods which are traded in the course of international trade. The general cover relates to risk on account of loss, pilferage, fire, storm etc. However, loss of goods</td>
</tr>
</tbody>
</table>
on account of seizure of goods due to war, is a separate cover. It is therefore customary to refer to the insurance as marine risk insurance and war risk insurance. The policy and cover of such insurance is a relevant document for valuation.

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

<table>
<thead>
<tr>
<th>(1) Ex-Factory Price</th>
<th>It is the price of the goods at the factory gate. It includes cost of production and manufacturer’s margin of profit.</th>
</tr>
</thead>
<tbody>
<tr>
<td>(2) F.A.S (Free Alongside)</td>
<td>It is the cost at which the export goods are delivered alongside the ship, ready for shipment. It includes ex-factory + local freight + local taxes.</td>
</tr>
<tr>
<td>(3) F.O.B. (Free on Board)</td>
<td>Technically there is not much of a difference between FAS and FOB cost. FOB means the stage at which the goods are placed on board the conveyance carrying the vessel. It can be said to include FAS + loading charges + export duty cess.</td>
</tr>
<tr>
<td>(4) C.I.F. (Cost Insurance Freight)</td>
<td>It is the cost at which the goods are delivered at the Indian port (F.O.B. +Insurance + Freight). It covers cost of goods. Sometimes there is referred as CFC also.</td>
</tr>
</tbody>
</table>

## 5. CONCEPT OF INDIRECT TAX AND VALUATION FOR THE SAME

Customs duty is an indirect tax. It is a tax on the goods and it is not a tax on the person having or owning the goods. The charge of tax attaches to the goods. Unless the tax liability is discharged, the goods are not allowed to proceed further. It becomes therefore necessary for the importer, who desires to take
clearance of the goods into town for home consumption, to discharge the duty liability. Similarly, in case of baggage of the passenger travelling from abroad, the passenger cannot take his goods unless the duty liability is discharged.

The essence is simple. Like articles in similar situations should attract the same burden. As a corollary it follows that

(i) There should be uniformity in tax burden.
(ii) Since the rate of duty is already fixed for like goods, the value of goods should be uniform for all imports / exports for like goods at the same time and place.
(iii) The value of the goods should be proximate to the point of taxation i.e. in the case of import the value at the point of import is relevant.
(iv) Variations in the price/agreed in each transaction on account of factors other than in the course of normal international wholesale trade should be adjusted.

6. TWO APPROACHES FOR COMPUTING THE ASSESSABLE VALUE

In the course of import, the goods take the following route.

1 2 3 4 5 6 7
Manufac→Supplier →Port of →Port of →Cost to → Cost to 
ufacturer shipment import Importer Wholesale Retailer/ 
Dealer consumer

Theoretically the value of the goods at stages (1) (2) (3) (5) (6) (7) is tangible and ascertainable. Furthermore, these values are documented and capable of verification by comparison with corresponding values for such or similar goods. The documents involved in such stages are

(i) Manufacturer’s price list / quotation / sale invoices.
(ii) Supplier’s sale invoices/ market prices
(iii) Customs approved attested documents showing value adopted for levy of export duty and allied controls.
(iv) Importer’s account books
(v) Sale invoices issued by importer to the wholesale dealer or the next purchaser. Market trend of the prices of the goods.

(vi) Sale invoices of wholesale dealers; and trend of prices in the market.

The invoice values normally give CIF or FOB values of the goods. The general rule is that the value declared by the importer i.e. the declared value shall be accepted by the customs officers subject to fulfillment of conditions. Else, the market value is the wholesale market price at which the importers are regularly selling imported goods. These two are the tangible and readily available data, at the hands of the customs officers to arrive at the “assessable value” i.e. a notional deducted value of the goods. This is an approach that may be used by the customs officers if the declared value is not acceptable in law.

Thus, two well accepted approaches have evolved for cases of rejection of declared value:

(i) one starting from the actual whole sale market price of the goods in question and giving necessary abatements to adjust the post – importation costs;

(ii) the second, to take as base, the value given in the invoice and make necessary adjustments for factors influencing the price in individual transactions.

However, the default mode of valuation is always the declared transaction value, plus the elements that are to be added under law (refer section 14).

7. VALUATION OF GOODS BASED ON SECTION 14

Section 14 of the Customs Act, 1962 prescribes the mode of identifying the value of imported or export goods for the purpose of payment of customs duty. The provisions of section 14 are discussed below:

TRANSACTION VALUE

(i) Sub-section (1) lays down that for the purposes of the Customs Tariff Act, 1975, or any other law for the time being in force, the value of the imported goods and export goods shall be the ‘transaction value’ of such goods.

(ii) In case of export goods, the transaction value shall be

- the price actually paid or payable for the goods
• when sold for export from India
• for delivery at the time and place of exportation
• where the buyer and seller of the goods are not related and
• price is the sole consideration for the sale.

However further conditions may be specified in the rules made in this behalf.

(iii) In case of imported goods, the transaction value shall be
• the price actually paid or payable for the goods when sold for export to India
• for delivery at the time and place of importation
• where the buyer and seller of the goods are not related and
• price is the sole consideration for the sale.

However, in this case also further conditions may be specified in the rules made in this behalf.

Such transaction value shall also include in addition to the price as aforesaid, any amount paid or payable for costs and services, including:
• commissions and brokerage,
• engineering,
• design work,
• royalties and licence fees,
• costs of transportation to the place of importation,
• insurance
• loading,
• unloading and
• handling charges

to the extent and in manner specified in the rules made in this behalf.

(iv) Such rules may provide for:
(a) the circumstances in which the buyer and the seller shall be deemed to be related;
VALUATION UNDER THE CUSTOMS ACT, 1962

4.11

(b) the manner of determination of value in respect of goods when there is no sale, or the buyer and the seller are related, or price is not the sole consideration for the sale or in any other case;

(c) the manner of acceptance or rejection of value declared by the importer or exporter, as the case may be, where the proper officer has reason to doubt the truth or accuracy of such value, and determination of value for the purposes of this section.

CONVERSION DATES

(v) For imported goods, the conversion in value shall be done with reference to the rate of exchange prevalent on the date of filing bill of entry under section 46.

(vi) For export goods, the conversion in value shall be done with reference to the rate of exchange prevalent on the date of filing shipping bill (vessel or aircraft) or bill of export (vehicle) under section 50.

In case of *Samar Timber Corporation v. ACC 1995 (79) E.L.T. 549 (Bom.)*, it was held that relevant date in respect of rate of duty payable is the date of presentation of Bill of Entry and not date of re-presentation after correction.

CURRENCY CONVERSION RATE

(vii) The rate of exchange is notified by three agencies— the Central Board of Indirect taxes and Customs (Board), the Reserve Bank of India and the Foreign Exchange Dealers’ Association of India. For the purpose of customs valuation, “rate of exchange” means the rate of exchange—

(i) determined by the Board, or

(ii) ascertained in such manner as the Board may direct,

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

The CBIC notifies the rates periodically, generally every fortnight. There are separate rates for imported goods (selling rate) and export goods (buying rate).

(viii) “Foreign currency” and “Indian currency” have the meanings respectively assigned to them in clause (m) and clause (q) of section 2 of the Foreign Exchange Management Act, 1999.
**TARIFF VALUE**

(ix) Sub-section (2) provides that the Board may fix tariff values for any class of imported goods or export goods, having regard to the trend of value of such or like goods by notification in the Official Gazette if it is satisfied that it is necessary to do so.

(x) Where any such tariff values are fixed, the duty shall be chargeable with reference to such tariff value. Provisions of sub-section (2) have an overriding effect on the provisions of sub-section (1).

---

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

*Notification No. 94/2007 Cus. (NT) dated 13.09.2007 notifified* Customs Valuation (Determination of Value of Imported Goods) Rules, 2007. They apply to imported goods. The rules are given below:

**RULE 2 – DEFINITIONS**

(1) In these rules, unless the context otherwise requires, -

(a) “computed value” means the value of imported goods determined in accordance with rule 8.

(b) “deductive value” means the value determined in accordance with rule 7.

(c) “goods of the same class or kind”, means imported goods that are within a group or range of imported goods produced by a particular industry or industrial sector and includes identical goods or similar goods.

(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
(iii) produced by the same person who produced the goods, or where no such goods are available, goods produced by a different person, but shall not include imported goods where engineering, development work, art work, design work, plan or sketch undertaken in India were completed directly or indirectly by the buyer on these imported goods free of charge or at a reduced cost for use in connection with the production and sale for export of these imported goods.

(da) “place of importation” means the customs station, where the goods are brought for being cleared for home consumption or for being removed for deposit in a warehouse.

(e) “produced” includes grown, manufactured and mined.

(f) “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, 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.

(g) “transaction value” means the value referred to in sub-section (1) of section 14 of the Customs Act, 1962.

(2) For the purpose of these rules, persons shall be deemed to be “related” only if –

(i) they are officers or directors of one another’s businesses;

(ii) they are legally recognised partners in business;
they are employer and employee;
(iv) any person directly or indirectly owns, controls or holds five per cent or more of the outstanding voting stock or shares of both of them;
(v) one of them directly or indirectly controls the other;
(vi) both of them are directly or indirectly controlled by a third person;
(vii) together they directly or indirectly control a third person; or
(viii) they are members of the same family.

Explanation I. – The term “person” also includes legal persons.

Explanation II. – Persons who are associated in the business of one another in that one is the sole agent or sole distributor or sole concessionaire, howsoever described, of the other shall be deemed to be related for the purpose of these rules, if they fall within the criteria of this sub-rule.

In case of CC v. East African Traders 2000 (115) E.L.T. 613 (S.C.), it was held that Customs authorities and Tribunal can pierce the veil of the respondent company to determine whether or not the buyer and the seller were ‘related persons within the scope of rule 2(2) of the erstwhile Customs Valuation (Determination of Price of Imported Goods) Rules, 1988 [now rule 2(2) of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007].

Illustration 1

M/s IES Ltd. (assessee) imported certain goods at US $ 20 per unit from an exporter who was holding 30% equity in the share capital of the importer company. Subsequently, the assessee entered into an agreement with the same exporter to import the said goods in bulk at US $ 14 per unit. When imports at the reduced price were effected pursuant to this agreement, the Department rejected the transaction value stating that the price was influenced by the relationship and completed the assessment on the basis of transaction value of the earlier imports i.e., at US $20 per unit under rule 4 of the Customs Valuation (Determination of Value of Imported Goods) Rules 2007.

State briefly, whether the Department’s action is sustainable in law?

Answer

No, the Department’s action is not sustainable in law. Rule 2(2) of Customs Valuation (Determination of Value of Imported Goods) Rules, 2007, inter alia, provides that persons shall be deemed to be “related” if one of them directly or
indirectly controls the other. The word “control” has not been defined under the said rules. As per common parlance, control is established when one enterprise holds at least 51% of the equity shareholding of the other company. However, in the instant case, the exporter company held only 30% of shareholding of the assessee. Thus, exporter company did not exercise control over the assessee. So, the two parties cannot be said to be related.

The fact that assessee had made bulk imports could be a reason for reduction of import price. The burden to prove under-valuation lies on the Revenue and in absence of any evidence from the Department to prove under-valuation, the price declared by the assessee is acceptable.

In the light of foregoing discussion, it can be inferred that Department’s action is not sustainable in law.

**RULE 3 – DETERMINATION OF THE METHOD OF VALUATION**

(1) Subject to rule 12, the value of imported goods shall be the transaction value adjusted in accordance with provisions of rule 10.

(2) Value of imported goods under sub-rule (1) shall be accepted:

Provided that-

(a) there are no restrictions as to the disposition or use of the goods by the buyer other than restrictions which –

(i) are imposed or required by law or by the public authorities in India; or

(ii) limit the geographical area in which the goods may be resold; or

(iii) do not substantially affect the value of the goods;

(b) the sale or price is not subject to some condition or consideration for which a value cannot be determined in respect of the goods being valued;

(c) no part of the proceeds of any subsequent resale, disposal or use of the goods by the buyer will accrue directly or indirectly to the seller, unless an appropriate adjustment can be made in accordance with the provisions of rule 10 of these rules; and

(d) the buyer and seller are not related, or where the buyer and seller are related, that transaction value is acceptable for customs purposes under the provisions of sub-rule (3) below.
(3)  (a) Where the buyer and seller are related, the transaction value shall be accepted provided that the examination of the circumstances of the sale of the imported goods indicate that the relationship did not influence the price.

(b) In a sale between related persons, the transaction value shall be accepted, whenever the 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.

(i) the transaction value of identical goods, or of similar goods, in sales to unrelated buyers in India;

(ii) the deductive value for identical goods or similar goods;

(iii) the computed value for identical goods or similar goods.

Provided that in applying the values used for comparison, due account shall be taken of demonstrated difference in commercial levels, quantity levels, adjustments in accordance with the provisions of rule 10 and cost incurred by the seller in sales in which he and the buyer are not related.

(c) substitute values shall not be established under the provisions of clause (b) of this sub-rule.

(4) If the value cannot be determined under the provisions of sub-rule (1), the value shall be determined by proceeding sequentially through rule 4 to 9.

**RULE 4 – TRANSACTION VALUE OF IDENTICAL GOODS**

(1)  (a) Subject to the provisions of rule 3, the value of imported goods shall be the transaction value of identical goods sold for export to India and imported at or about the same time as the goods being valued.

Provided that such transaction value shall not be the value of the goods provisionally assessed under section 18 of the Customs Act, 1962.

(b) In applying this rule, the transaction value of identical goods in a sale at the same commercial level and in substantially the same quantity as the goods being valued shall be used to determine the value of imported goods.
(c) Where no sale referred to in clause (b) of sub-rule (1), is found, the transaction value of identical goods sold at a different commercial level or in different quantities or both, adjusted to take account of the difference attributable to commercial level or to the quantity or both, shall be used, provided that 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.

(2) Where the costs and charges referred to in sub-rule (2) of rule 10 of these rules are included in the transaction value of identical goods, an adjustment shall be made, if there are significant differences in such costs and charges between the goods being valued and the identical goods in question arising from differences in distances and means of transport.

(3) In applying this rule, 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 – TRANSACTION VALUE OF SIMILAR GOODS

(1) Subject to the provisions of rule 3, the value of imported goods shall be the transaction value of similar goods sold for export to India and imported at or about the same time as the goods being valued.

Provided that such transaction value shall not be the value of the goods provisionally assessed under section 18 of the Customs Act, 1962.

(2) The provisions of clauses (b) and (c) of sub-rule (1), sub-rule (2) and sub-rule (3), of rule 4 shall, mutatis mutandis, also apply in respect of similar goods.

RULE 6 – DETERMINATION OF VALUE WHERE VALUE CAN NOT BE DETERMINED UNDER RULES 3, 4 AND 5

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

Provided that 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

(1) Subject to the provisions of rule 3, if the goods being valued or identical or similar imported goods are sold in India, in the condition as imported at or about the time at which the declaration for determination of value is presented, the value of imported goods shall be based on the unit price at which the imported goods or identical or similar imported goods are sold in the greatest aggregate quantity to persons who are not related to the sellers in India, subject to the following deductions: —

(i) either the commission usually paid or agreed to be paid or the additions usually made for profits and general expenses in connection with sales in India of imported goods of the same class or kind;

(ii) the usual costs of transport and insurance and associated costs incurred within India;

(iii) the customs duties and other taxes payable in India by reason of importation or sale of the goods.

(2) 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 shall, subject otherwise to the 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.

(3) (a) If neither the imported goods nor identical nor similar imported goods are sold in India in the condition as imported, then, the value shall be based on the unit price at which the imported goods, after further processing, are sold in the greatest aggregate quantity to persons who are not related to the seller in India.

(b) 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 sub-rule (1).

RULE 8 – COMPUTED VALUE

Subject to the provisions of rule 3, the value of imported goods shall be based on a computed value, which shall consist of the sum of:-
(a) the cost or value of materials and fabrication or other processing employed in producing the imported goods;

(b) an amount for profit and general expenses equal to that usually reflected in sales of goods of the same class or kind as the goods being valued which are made by producers in the country of exportation for export to India;

(c) the cost or value of all other expenses under sub-rule (2) of rule 10.

RULE 9 – RESIDUAL METHOD

(1) Subject to the provisions of rule 3, where the value of imported goods cannot be determined under the provisions of any of the preceding rules, the value shall be determined using reasonable means consistent with the principles and general provisions of these rules and on the basis of data available in India.

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

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

(i) the selling price in India of the goods produced in India;

(ii) a system which provides for the acceptance for customs purposes of the highest of the two alternative values;

(iii) the price of the goods on the domestic market of the country of exportation;

(iv) the cost of production other than computed values which have been determined for identical or similar goods in accordance with the provisions of rule 8;

(v) the price of the goods for the export to a country other than India;

(vi) minimum customs values; or

(vii) arbitrary or fictitious values.

The residuary method can be considered if valuation is not possible by any other method. [Sanjay Chandiram v. CC 1995 (77) E.L.T. 241 (S.C.)]
RULE 10 – COST AND SERVICES

(1) 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) commissions and brokerage, except buying commissions;

(ii) the cost of containers which are treated as being one for customs purposes with the goods in question;

(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 that such value has not been included in the price actually paid or payable, namely:

(i) materials, components, parts and similar items incorporated in the imported goods;

(ii) tools, dies, moulds and similar items used in the production of the imported goods;

(iii) materials consumed in the production of the imported goods;

(iv) engineering, development, art work, design work, and plans and sketches undertaken elsewhere than in India and necessary for the production of the imported goods.

(c) royalties and licence fees 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.

Explanation.- Where the royalty, licence fee or any other payment for a process, whether patented or otherwise, is includible referred to in clauses (c) and (e), such charges shall be added to the price actually paid or payable for the imported goods, notwithstanding the fact that such goods may be subjected to the said process after importation of such goods.

(2) For the purposes of sub-section (1) of section 14 of the Customs Act, 1962 and these rules, the value of the imported goods shall be the value of such goods, and shall include –

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

(b) the cost of insurance to the place of importation:

However, where the cost referred to in clause (a) is not ascertainable, such cost shall be 20% of the free on board value of the goods:

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

Where the cost referred to in clause (b) is not ascertainable, such cost shall be 1.125% of free on board value of the goods:

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

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

In the case of goods imported by sea or air and transshipped to another customs station in India, the cost of insurance, transport, loading, unloading, handling charges associated with such transshipment shall be excluded.
Explanation-

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

**Illustration 2**

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

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

(ii) Whether the payment for post-importation process is includible in the value if the same is related to imported goods and is a condition of the sale of the imported goods?

**Answer**

(i) The value of the imported goods or export goods is its transaction value, which means the price actually paid or payable for the goods. Where a contract has been entered into, the transaction value shall be the price stated in the contract, unless it is not legally acceptable.

Price rise between date of contract and date of actual import is irrelevant, as the price actually paid or payable shall be taken to be the value. Thus, price stated in the contract (unless unacceptable) shall be taken.

(ii) As per explanation to Rule 10(1) of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007, the payment for post-importation process is includible in the value of the imported goods if the same is related to such imported goods and is a condition of the sale thereof.

**RULE 11 – DECLARATION BY THE IMPORTER**

(1) The importer or his agent shall furnish –

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

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

(2) Nothing contained in these rules shall be construed as restricting or calling
into question the right of the proper officer of customs to satisfy himself as
to the truth or accuracy of any statement, information, document or
declaration presented for valuation purposes.

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

RULE 12 – REJECTION OF DECLARED VALUE

(1) When the proper officer has reason to doubt the truth or accuracy of the
value declared in relation to any imported goods, he may ask the importer
of such goods to furnish further information including documents or other
evidence 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 cannot be determined under
the provisions of sub-rule (1) of rule 3.

(2) At the request of an importer, the proper officer, shall intimate the importer
in writing the grounds for doubting the truth or accuracy of the value
declared in relation to goods imported by such importer and provide a
reasonable opportunity of being heard, before taking a final decision under
sub-rule (1).

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

(c) the sale involves special discounts limited to exclusive agents;

(d) the misdeclaration of goods in parameters such as description, quality, quantity, country of origin, year of manufacture or production;

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

(f) the fraudulent or manipulated documents.

RULE 13 – INTERPRETATIVE NOTES

The interpretative notes specified in the Schedule to these rules shall apply for the interpretation of these rules.

Interpretative Notes

General Note:

Use of generally accepted accounting principles

“Generally accepted accounting principles” refers to the recognized consensus or substantial authoritative support within a country at a particular time as to which economic resources and obligations shall be recorded as assets and liabilities, which changes in assets and liabilities should be recorded, how the assets and liabilities and changes in them should be measured, what information should be disclosed and how it should be disclosed and which financial statements should be prepared. These standards may be broad guidelines of general application as well as detailed practices and procedures.

Notes to Rules

Note to rule 2

In rule 2(2)(v), for the purposes of these rules, one person shall be deemed to control another when the former is legally or operationally in a position to exercise restraint or direction over the latter.
Note to rule 3

**Price actually paid or payable**

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. 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. 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.

Activities undertaken by the buyer on his own account, other than those for which an adjustment is provided in rule 10, are not considered to be an indirect payment to the seller, even though they might be regarded as of benefit to the seller. The costs of such activities shall not, therefore, be added to the price actually paid or payable in determining the value of imported goods.

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.

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.

**Rule 3(2)(a)(iii):** Among restrictions which would not render a price actually paid or payable unacceptable are restrictions which do not substantially affect the value of the goods. An example of such restrictions would be the case where a seller requires a buyer of automobiles not to sell or exhibit them prior to a fixed date which represents the beginning of a model year.

**Rule 3(2)(b):** If the sale or price is subject to some condition or consideration for which a value cannot be determined with respect to the goods being valued, the transaction value shall not be acceptable for customs purposes. Some examples of this include-
(a) The seller establishes the price of the imported goods on condition that the buyer will also buy other goods in specified quantities;

(b) the price of the imported goods is dependent upon the price or prices at which the buyer of the imported goods sells other goods to the seller of the imported goods;

(c) the price is established on the basis of a form of payment extraneous to the imported goods, such as where the imported goods are semifinished goods which have been provided by the seller on condition that he will receive a specified quantity of the finished goods.

However, conditions or considerations relating to the production or marketing of the imported goods shall not result in rejection of the transaction value. For example, the fact that the buyer furnishes the seller with engineering and plans undertaken in India shall not result in rejection of the transaction value for the purposes of rule 3. Likewise, if the buyer undertakes on his own account, even though by agreement with the seller, activities relating to the marketing of the imported goods, the value of these activities is not part of the value of imported goods nor shall such activities result in rejection of the transaction value.

**Rule 3(3)**

1. Rule 3(3)(a) and rule 3(3)(b) provide different means of establishing the acceptability of a transaction value.

2. Rule 3(3)(a) provides that where the buyer and the seller are related, the circumstances surrounding the sale shall be examined and the transaction value shall be accepted as the value of imported goods provided that the relationship did not influence the price. It is not intended that there should be an examination of the circumstances in all cases where the buyer and the seller are related. Such examination will only be required where there are doubts about the acceptability of the price. Where the proper officer of customs has no doubts about the acceptability of the price, it should be accepted without requesting further information from the importer. For example, the proper officer of customs may have previously examined the relationship, or he may already have detailed information concerning the buyer and the seller, and may already be satisfied from such examination or information that the relationship did not influence the price.

3. Where the proper officer of customs is unable to accept the transaction value without further inquiry, he should give the importer an opportunity to
supply such further detailed information as may be necessary to enable him to examine the circumstances surrounding the sale. In this context, the proper officer of customs should be prepared to examine relevant aspects of the transaction, including the way in which the buyer and seller organize their commercial relations and the way in which the price in question was arrived at, in order to determine whether the relationship influenced the price. Where it can be shown that the buyer and seller, although related under the provisions of rule 2(2), buy from and sell to each other as if they were not related, this would demonstrate that the price had not been influenced by the relationship. As an example of this, if the price had been settled in a manner consistent with the normal pricing practices of the industry in question or with the way the seller settles prices for sales to buyers who are not related to him, this would demonstrate that the price had not been influenced by the relationship. As a further example, where it is shown that the price is adequate to ensure recovery of all costs plus a profit which is representative of the firm’s overall profit realized over a representative period of time (e.g. on an annual basis) in sales of goods of the same class or kind, this would demonstrate that the price had not been influenced.

4. Rule 3(3)(b) provides an opportunity for the importer to demonstrate that the transaction value closely approximates to a “test” value previously accepted by the proper officer of customs and is therefore acceptable under the provisions of rule 3. Where a test under rule 3(3)(b) is met, it is not necessary to examine the question of influence under rule 3(3)(a). If the proper officer of customs has already sufficient information to be satisfied, without further detailed inquiries, that one of the tests provided in rule 3(3)(b) has been met, there is no reason for him to require the importer to demonstrate that the test can be met. In rule 3(3)(b) the term “unrelated buyers” means buyers who are not related to the seller in any particular case.

**Rule 3(3)(b):** A number of factors must be taken into consideration in determining whether one value “closely approximates” to another value. These factors include the nature of the imported goods, the nature of the industry itself, the season in which the goods are imported, and whether the difference in values is commercially significant. Since these factors may vary from case to case, it would be impossible to apply a uniform standard such as a fixed percentage, in each case. For example, a small difference in value in a case involving one type of goods could be unacceptable while a large difference in a case involving another
type of goods might be acceptable in determining whether the transaction value closely approximates to the “test” values set forth in rule 3(3)(b).

Notes to rule 4

1. In applying rule 4, the proper officer of customs shall, wherever possible, use a sale of identical goods at the same commercial level and in substantially the same quantities as the goods being valued. Where no such sale is found, a sale of identical goods that takes place under any one of the following three conditions may be used:
   (a) a sale at the same commercial level but in different quantities; or
   (b) a sale at a different commercial level but in substantially the same quantities; or
   (c) a sale at a different commercial level and in different quantities.

2. Having found a sale under any one of these three conditions adjustments will then be made, as the case may be, for:
   (a) quantity factors only;
   (b) commercial level factors only; or
   (c) both commercial level and quantity factors.

3. For the purposes of rule 4, the transaction value of identical imported goods means a value, adjusted as provided for in rule 4(1)(b) and (c) and rule 4(2) which has already been accepted under rule 3.

4. A condition for adjustment because of different commercial levels or different quantities is that such adjustment, whether it leads to an increase or a decrease in the value, be made only on the basis of demonstrated evidence that clearly establishes the reasonableness and accuracy of the adjustment, e.g. valid price lists containing prices referring to different levels or different quantities. As an example of this, if the imported goods being valued consist of a shipment of 10 units and the only identical imported goods for which a transaction value exists involved a sale of 500 units, and it is recognized that the seller grants quantity discounts, the required adjustment may be accomplished by resorting to the seller’s price list and using that price applicable to a sale of 10 units. This does not require that a sale had to have been made in quantities of 10 as long as the price list has been established as being bona fide through sales at other quantities.
absence of such an objective measure, however, the determination of a
data value under the provisions of rule 4 is not appropriate.

Note to rule 5
1. In applying rule 5, the proper officer of customs shall, wherever possible,
use a sale of similar goods at the same commercial level and in substantially
the same quantities as the goods being valued. For the purpose of rule 5,
the transaction value of similar imported goods means the value of
imported goods, adjusted as provided for in rule 5(2) which has already
been accepted under rule 3.

2. All other provisions contained in note to rule 4 shall mutatis mutandis also
apply in respect of similar goods.

Note to rule 7
1. 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 at the first commercial level after importation at which such
sales take place.

2. As an example of this, goods are sold from a price list which grants
favourable unit prices for purchases made in larger quantities.

<table>
<thead>
<tr>
<th>Sale quantity</th>
<th>Unit price</th>
<th>Number of sales</th>
<th>Total quantity sold at each price</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 -10 units</td>
<td>100</td>
<td>10 sales of 5 units 5 sales of 3 units</td>
<td>65</td>
</tr>
<tr>
<td>11-25 units</td>
<td>95</td>
<td>5 sales of 11 units</td>
<td>55</td>
</tr>
<tr>
<td>Over 25 units</td>
<td>90</td>
<td>1 sale of 30 units 1 sale of 50 units</td>
<td>80</td>
</tr>
</tbody>
</table>

The greatest number of units sold at a price is 80, therefore, the unit price in
the greatest aggregate quantity is 90.

3. As another example of this, two sales occur. In the first sale 500 units are
sold at a price of 95 currency units each. In the second sale 400 units are
sold at a price of 90 currency units each. In this example, the greatest
number of units sold at a particular price is 500, therefore, the unit price in
the greatest aggregate quantity is 95.
4. A third example would be the following situation where various quantities are sold at various prices.

(a) **Sales**

<table>
<thead>
<tr>
<th>Sale quantity</th>
<th>Unit price</th>
</tr>
</thead>
<tbody>
<tr>
<td>40 units</td>
<td>100</td>
</tr>
<tr>
<td>30 units</td>
<td>90</td>
</tr>
<tr>
<td>15 units</td>
<td>100</td>
</tr>
<tr>
<td>50 units</td>
<td>95</td>
</tr>
<tr>
<td>25 units</td>
<td>105</td>
</tr>
<tr>
<td>35 units</td>
<td>90</td>
</tr>
<tr>
<td>5 units</td>
<td>100</td>
</tr>
</tbody>
</table>

(b) **Totals**

<table>
<thead>
<tr>
<th>Total quantity sold</th>
<th>Unit price</th>
</tr>
</thead>
<tbody>
<tr>
<td>65</td>
<td>90</td>
</tr>
<tr>
<td>50</td>
<td>95</td>
</tr>
<tr>
<td>60</td>
<td>100</td>
</tr>
<tr>
<td>25</td>
<td>105</td>
</tr>
</tbody>
</table>

In this example, the greatest number of units sold at a particular price is 65, therefore, the unit price in the greatest aggregate quantity is 90.

5. Any sale in India, as described in paragraph 1 above to a person who supplies directly or indirectly free of charge or at reduced cost for use in connection with the production and sale for export of the imported goods any of the elements specified in rule 10(l)(b), should not be taken into account in establishing the unit price for the purposes of rule 7.

6. It should be noted that “profit and general expenses” referred to in rule 7(1) should be taken as a whole. The figure for the purposes of this deduction should be determined on the basis of information supplied by or on behalf of the importer unless his figures are inconsistent with those obtaining in sales in India, of imported goods of the same class or kind. Where the importer’s figures are inconsistent with such figures, the amount for profit
and general expenses may be based upon relevant information other than that supplied by or on behalf of the importer.

7. The “general expenses” include the direct and indirect costs of marketing the goods in question.

8. Local taxes payable by reason of the sale of the goods for which a deduction is not made under the provisions of rule 7(1)(iii) shall be deducted under the provisions of rule 7(1)(i).

9. In determining either the commissions or the usual profits and general expenses under the provisions of rule 7(1), the question whether certain goods are “of the same class or kind” as other goods must be determined on a case-by-case basis by reference to the circumstances involved. Sales in India, of the narrowest group or range of imported goods of the same class or kind, which includes the goods being valued, for which the necessary information can be provided, should be examined. For the purposes of rule 7 goods of the same class or kind” includes goods imported from the same country as the goods being valued as well as goods imported from other countries.

10. For the purposes of rule 7(2) the “earliest date” shall be the date by which sales of the imported goods or of identical or similar imported, goods are made in sufficient quantity to establish the unit price.

11. Where the method in rule 7(3) is used, deductions made for the value added by further processing shall be based on objective and quantifiable data relating to the cost of such work. Accepted industry formulas, recipes, methods of construction, and other industry practices would form the basis of the calculations.

12. It is recognized that the method of valuation provided for in rule 7(3) would normally not be applicable when, as a result of the further processing, the imported goods lose their identity. However, there can be instances where, although the identity of the imported goods is lost, the value added by the processing can be determined accurately without unreasonable difficulty. On the other hand, there can also be instances where the imported goods maintain their identity but form such a minor element in the goods sold in the country of importation that the use of this valuation method would be unjustified. In view of the above, each situation of this type must be considered on a case-by-case basis.
Note to rule 8

1. As a general rule, value of imported goods is determined under these rules on the basis of information readily available in India. In order to determine a computed value, however, it may be necessary to examine the costs of producing the goods being valued and other information which has to be obtained from outside India. Furthermore, in most cases, the producer of the goods will be outside the jurisdiction of the proper officer. The use of the computed value method will generally be limited to those cases where the buyer and seller are related, and the producer is prepared to supply to the proper officer the necessary costings and to provide facilities for any subsequent verification which may be necessary.

2. The “cost or value” referred to in clause (a) of rule 8 is to be determined on the basis of information relating to the production of the goods being valued supplied by or on behalf of the producer. It is to be based upon the commercial accounts of the producer, provided that such accounts are consistent with the generally accepted accounting principles applied in the country where the goods are produced.

3. The “cost or value” shall include the cost of elements specified in clauses (1)(a)(ii) and (1)(a)(iii) of rule 10. It shall also include the value, apportioned as appropriate under the provisions of the relevant note to rule 10, of any element specified in rule 10(l)(b) which has been supplied directly or indirectly by the buyer for use in connection with the production of the imported goods. The value of the elements specified in rule 10(l)(b)(iv) which are undertaken in India shall be included only to the extent that such elements are charged to the producer. It is to be understood that no cost or value of the elements referred to in this paragraph shall be counted twice in determining the computed value.

4. The “amount for profit and general expenses” referred to in clause(b) of rule 8 is to be determined on the basis of information supplied by or on behalf of the producer unless the producer’s figures are inconsistent with those 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.

5. It should be noted in this context that the “amount for profit and general expenses” has to be taken as a whole. It follows that if, in any particular case, producer’s profit figure is low and his general expenses are high, the
producer’s profit and general expenses taken together may nevertheless be consistent with that usually reflected in sales of goods of the same class or kind. Such a situation might occur, for example, if a product were being launched in India and the producer accepted a nil or low profit to offset high general expenses associated with the launch. Where the producer can demonstrate a low profit on his sales of the imported goods because of particular commercial circumstances, his actual profit figures should be taken into account provided that he has valid commercial reasons to justify them and his pricing policy reflects usual pricing policies in the branch of industry concerned. Such a situation might occur for example, where producers have been forced to lower prices temporarily because of an unforeseeable drop in demand, or where they sell goods to complement a range of goods being produced in India and accept a low profit to maintain competitiveness. Where the producer’s own figures for profit and general expenses are not consistent with those 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, the amount for profit and general expenses may be based upon relevant information other than that supplied by or on behalf of the producer of the goods.

6. The “general expenses” referred to in clause (b) of rule 8 covers the direct and indirect costs of producing and selling the goods for export which are not included under clause (a) of rule 8.

7. Whether certain goods are “of the same class or kind” as other goods must be determined on a case-by-case basis with reference to the circumstances involved. In determining the usual profits and general expenses under the provisions of rule 8, sales for export to India of the narrowest group or range of goods, which includes the goods being valued, which are made by producers in the country of exportation for export to India, the amount for profit and general expenses may be based upon relevant information other than that supplied by or on behalf of the producer of the goods.

Note to rule 9

1. Value of imported goods determined under the provisions of rule 9 should to the greatest extent possible, be based on previously determined customs values.

2. 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
3. Some examples of reasonable flexibility are as follows:

(a) **Identical goods.** The requirement that the identical goods should be imported at or about the same time as the goods being valued could be flexibly interpreted; identical imported goods produced in a country other than the country of exportation of the goods being valued could be the basis for customs valuation; customs values of identical imported goods already determined under the provisions of rules 7 and 8 could be used.

(b) **Similar goods.** The requirement that the similar goods should be imported at or about the same time as the goods being valued could be flexibly interpreted; similar imported goods produced in a country other than the country of exportation of the goods being valued could be the basis for customs valuation; customs values of similar imported goods already determined under the provisions of rules 7 and 8 could be used.

(c) **Deductive method.** The requirement that the goods shall have been sold in the “condition as imported” in rule 7(1) could be flexibly interpreted; the ninety days requirement could be administered flexibly.

**Note to rule 10**

In rule 10(l)(a)(i), the term “buying commissions” means fees paid by an importer to his agent for the service of representing him abroad in the purchase of the goods being valued.

**Rule 10(1)(b)(ii)**

1. There are two factors involved in the apportionment of the elements specified in rule 10(l)(b)(ii) to the imported goods – the value of the element itself and the way in which that value is to be apportioned to the imported goods. The apportionment of these elements should be made in a reasonable manner appropriate to the circumstances and in accordance with generally accepted accounting principles.

2. Concerning the value of the element, if the importer acquires the element from a seller not related to him at a given cost, the value of the element is that cost. If the element was produced by the importer or by a person
related to him, its value would be the cost of producing it. If the element had been previously used by the importer, regardless of whether it had been acquired or produced by such importer, the original cost of acquisition or production would have to be adjusted downward to reflect its use in order to arrive at the value of the element.

3. Once a value has been determined for the element it is necessary to apportion that value to the imported goods. Various possibilities exist. For example, the value might be apportioned to the first shipment if the importer wishes to pay duty on the entire value at one time. As another example, the importer may request that the value be apportioned over the number of units produced up to the time of the first shipment. As a further example, he may request that the value be apportioned over the entire anticipated production where contracts or firm commitments exist for that production. The method of apportionment used will depend upon the documentation provided by the importer.

4. As an illustration of the above, an importer provides the producer with a mould to be used in the production of the imported goods and contracts with him to buy 10,000 units. By the time of arrival of the first shipment of 1,000 units, the producer has already produced 4,000 units. The importer may request the proper officer of customs to apportion the value of the mould over 1,000 units, 4,000 units or 10,000 units.

**Rule 10(1)(b)(iv)**

1. Additions for the elements specified in rule 10(1)(b)(iv) should be based on objective and quantifiable data. In order to minimize the burden for both the importer and proper officer of customs in determining the values to be added, data readily available in the buyer’s commercial record system should be used in so far as possible.

2. For those elements supplied by the buyer which were purchased or leased by the buyer, the addition would be the cost of the purchase or the lease. No addition shall be made for those elements available in the public domain, other than the cost of obtaining copies of them.

3. The case with which it may be possible to calculate the values to be added will depend on a particular firm’s structure and management practice, as well as its accounting methods.

4. For example, it is possible that a firm which imports a variety of products from several countries maintains the records of its design centre outside the
country of importation in such a way as to show accurately the costs attributable to a given product. In such cases, a direct adjustment may appropriately be made under the provisions of rule 10.

5. In another case, a firm may carry the cost of the design centre outside the country of importation as a general overhead expense without allocation to specific products. In this instance, an appropriate adjustment could be made under the provisions of rule 10 with respect to the imported goods by apportioning total design centre costs over total production benefiting from the design centre and adding such apportioned cost on a unit basis to imports.

6. Variations in the above circumstances will, of course, require different factors to be considered in determining the proper method of allocation.

7. In cases where the production of the element in question involves a number of countries and over a period of time, the adjustment should be limited to the value actually added to that element outside the country of importation.

**Rule 10(1)(c)**

1. The royalties and licence fees referred to in rule 10(1)(c) may include among other things, payments in respect to patents, trademarks and copyrights. However, the charges for the right to reproduce the imported goods in the country of importation shall not be added to the price actually paid or payable for the imported goods in determining the customs value.

2. Payments made by the buyer for the right to distribute or resell the imported goods shall not be added to the price actually paid or payable for the imported goods if such payments are not a condition of the sale for export to the country of importation of the imported goods.

**Rule 10(3)**

Where objective and quantifiable data do not exist with regard to the additions required to be made under the provisions of rule 10, the transaction value cannot be determined under the provisions of rule 3. As an illustration of this, a royalty is paid on the basis of the price in a sale in the importing country of a litre of a particular product that was imported by the kilogram and made up into a solution after importation. If the royalty is based partially on the imported goods and partially on other factors, which have nothing to do with the imported goods (such as when the imported goods are mixed with domestic ingredients and are no longer separately identifiable, or when the royalty cannot be distinguished
from special financial arrangements between the buyer and the seller), it would be inappropriate to attempt to make an addition for the royalty. However, if the amount of this royalty is based only on the imported goods and can be readily quantified, an addition to the price actually paid or payable can be made.


The clarifications are given below for proper application of the Valuation Rules, i.e., Customs Valuation (Determination of Value of Imported Goods) Rules, 2007:-

(i) Transaction Value has been defined to mean the value referred to in subsection (1) of section 14 of the Customs Act, 1962.

(ii) A ‘proviso’ has been added to rules 4(1)(a) and 5(1) concerning identical goods and similar goods respectively, to the effect that the value of the goods provisionally assessed under section 18 of the Customs Act, 1962, shall not be the basis for determining the value of any other goods.

(iii) In the residual method of Valuation, which has been renumbered as Rule 9 (erstwhile Rule 8), a proviso has been added with a view to keeping Rule 9 in line with Article 7 of the WTO Valuation Agreement which corresponds to the said Rules and refers to the provisions of Article VII of the GATT.

(iv) An ‘Explanation’ has been added to Rule 10(1) [erstwhile Rule 9(1)] to clarify that the royalty, licence fee or any other payment for using a process, when they are otherwise includible in terms of clause (c) or (e) of Rule 10(1), shall be added to the price actually paid or payable, notwithstanding the fact that such goods may be subjected to the said process after their importation. At times, royalty, license fee or any other payment for a process to be paid by the importer may be linked to post-importation activity like running of the machine/plant, when the process is put to use. This Explanation has been added in the context of the Supreme Court judgement in the case of Commissioner of Customs (Port) Kolkata v. J.K. Corporation Ltd. 2007 (208) ELT 485 (SC) so as to clarify that such royalty, license fee, etc., if otherwise includible in terms of clauses (c) or (e) of Rule 10, will be includible in the value of the goods irrespective of the fact that such royalty, licence fee, etc., relates to a process which is made operational during the running of the machines, i.e., after importation of the goods.
(v) An ‘Explanation’ has been added to Rule 10(2) clarifying that the cost of transport of the imported goods includes ship demurrage charges on chartered vessels, lighterage charges or barge charges. This Explanation is to take care of cases of imports by time chartered vessels or bulk carriers discharging goods on high seas needing additional expenditure for delivery of the goods at the “Place of Importation” mentioned in Rule 10(2)(a). The ‘place of importation’, as observed by the Supreme Court in the case of Garden Silk Mills Ltd Versus Union of India 1993 (113) E.L.T. 358 (S.C) means the place where the imported goods reach the landmass of India in the Customs area of the port, airport or land customs station, or if they are consumed before reaching the landmass of India, the place of consumption. Therefore, in cases where ship demurrage charges are paid by the importer for detention of the ship in the harbour before touching the landmass at the docks or at the place of consumption, these charges would be includible in the cost of transportation. Similarly, in cases where the big mother vessels cannot enter the harbour for any reason and goods are brought to the docks by smaller vessels like barges, small boats, etc., the cost incurred by the importer for bringing the goods to the landmass or place of consumption, such as lighterage charges, barge charges will also be included in the cost of transportation.

(vi) An ‘Explanation’ has been added to Rule 12, which relates to rejection of declared value, to bring more clarity and objectivity in exercising the authority for rejection of declared value. The Explanation clarifies that this rule as such does not provide a method for determination of value, and that it merely provides a mechanism and procedure for rejection of declared value in certain cases. It also clarifies that where the proper officer is satisfied after consultation with the importer, the declared value shall be accepted. This Explanation also gives certain illustrative reasons which could form the basis for having doubt about the truth or accuracy of the declared value.

Circular No. 39/2017 Cus. dated 26.09.2017 has been issued to clarify the amendment in Rule 10(2) of Import Valuation Rules i.e., Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 (CVR).

The valuation of imported and export goods is governed by the provisions of Section 14 of the Customs Act, 1962 and the rules made thereunder. The Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 (CVR) contain
the detailed provisions for arriving at the transaction value of the imported goods, on which the customs duty is levied.

A need had arisen to examine certain provisions of the CVR in light of Supreme Court’s ruling in the case of M/s Wipro Ltd. Vs. Assistant Collector of Customs 2015 (319) ELT 177 SC dated 16.04.2015.

After examination and public consultations, the Government has amended the CVR vide Notification 91/2017 Customs (N.T) dated 26.09.2017, as explained below:

Definition of the term ‘place of importation’

The term “place of importation” has been used in the CVR; however, the term was not defined. To bring in clarity, the “place of importation” has been defined as:

“Place of Importation” means the customs station where the goods are brought for being cleared for home consumption or for being removed for deposit in a warehouse”

In view of the above definition, the transaction value of the imported goods in terms of section 14 of the Customs Act, 1962 would include the costs incurred up to the place of importation, as defined above.

Treatment of the loading, unloading and handling charges

The Hon’ble Supreme Court had ruled in the case of M/s Wipro Ltd. Vs Assistant Collector of Customs-2015 (319) ELT 177 (S.C.) dated 16.04.2015 that the landing charges to be added to the value of goods, should be based on actual charges incurred, and not a notional charge of 1% as has been provided in the Rules.

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

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

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

**Treatment of transshipment costs**

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

**Levy of Social Welfare Surcharge on imported goods:**

Social welfare surcharge @ 10% has been levied on imported goods. [For detailed discussion, refer para 14 of chapter-2.]

**Valuation of goods cleared from a 100% EOU to a depot from where the sale to DTA is effected through consignment agents:** Circular No. 933/23/2010 CX dated 16.08.2010 clarifies that the value of goods cleared from a 100% Export Oriented Undertaking to a depot from where the sale thereof to Domestic Tariff Area is effected through consignment agents will have to be determined by sequential application of Rules 3 to 9 of the Customs Valuation Rules (Determination of Price of Imported Goods), 2007.

**Determination of assessable value in case of sale of warehoused goods before being cleared for home consumption**

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

**Clarification:** Section 14 of the Customs Act provides that the value of the imported goods is the transaction value of goods. Transaction value is defined to mean the price actually paid or payable for the goods when sold for export to India for delivery at the time and place of importation. In the instant case, the goods are sold after being warehoused, therefore, it cannot be said that export of goods is not complete and thus the sale of warehoused goods cannot be
considered a sale for export to India. Hence, the price at which the imported goods are sold after warehousing them in India does not qualify to be the transaction value as per section 14.

[Circular No.11/2010 dated 03.06.2010]

**Illustration 3**

Mother Mary Hospital and Research Centre imported a machine from Delta Scientific Equipments, Chicago for in house research. The price of the machine was settled at US $ 5,000. The machine was shipped on 10.04.20XX. Meanwhile, the Hospital Authorities negotiated for a reduction in the price. As a result, Delta Scientific Equipments agreed to reduce the price by $ 850 and sent the revised price of $ 4,150 under a telex dated 15.04.20XX. The machine arrived in India on 18.04.20XX. The Commissioner of Customs has decided to take the original price as the transaction value of the goods on the ground that the price is reduced only after the goods have been shipped.

Do you agree to the stand taken by the Commissioner? Give reasons in support of your answer.

**Answer**

No, the Commissioner’s approach is not correct in law.

As per section 14 of the Customs Act, the transaction value of the goods is the price actually paid or payable for the goods at the time and place of importation. Further, the Supreme Court in the case *Garden Silk Mills v. UOI* has held that importation gets complete only when the goods become part of mass of goods within the country. Therefore, since in the instant case the price of the goods was reduced while they were in transit, it could not be contended that the price was revised after importation took place. Hence, the goods should be valued as per the reduced price, which was the price actually paid at the time of importation.

**Illustration 4**

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

Discuss the tenability of ‘A’s’ claim.
Answer

As per Rule 2(da), “place of importation” means the customs station, where the goods are brought for being cleared for home consumption or for being removed for deposit in a warehouse. Therefore, the outer anchorage where the goods are unloaded would not be the place of importation. Rule 10(2)(a) stipulates that for the purposes of section 14(1) of the Customs Act, 1962 and Valuation rules, value of imported goods shall be the value of such goods and shall include, the cost of transport, loading, unloading and handling charges associated with the delivery of the imported goods to the place of importation.

Therefore, in cases where the big mother vessels cannot enter the harbour for any reason and goods are brought to the docks by smaller vessels like barges, the cost incurred by the importer for bringing the goods to the landmass or place of consumption, such as barge charges will also be included in the cost of transportation. Therefore, ‘A’s claim is not tenable in law.

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


RULE 2 – DEFINITIONS

(1) In these rules, unless the context otherwise requires, -

(a) “goods of like kind and quality” means export goods which are identical or similar in physical characteristics, quality and reputation as the goods being valued, and perform the same functions or are commercially interchangeable with the goods being valued, produced by the same person or a different person; and

(b) “transaction value” means the value of export goods within the meaning of sub-section (1) of section 14 of the Customs Act, 1962 (52 of 1962).

(2) For the purposes of these rules, persons shall be deemed to be "related" only if –

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

Explanation I. - The term “person” also includes legal persons.

Explanation II. - Persons who are associated in the business of one another in that one is the sole agent or sole distributor or sole concessionaire, howsoever described, of the other shall be deemed to be related for the purpose of these rules, if they fall within the criteria of this sub-rule.

**RULE 3 - DETERMINATION OF THE METHOD OF VALUATION**

(1) Subject to rule 8, the value of export goods shall be the transaction value.

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

(3) If the value cannot be determined under the provisions of sub-rule (1) and sub-rule (2), the value shall be determined by proceeding sequentially through rules 4 to 6.

**RULE 4 - DETERMINATION OF EXPORT VALUE BY COMPARISON**

(1) The value of the export goods shall be based on the transaction value of goods of like kind and quality exported at or about the same time to other buyers in the same destination country of importation or in its absence another destination country of importation adjusted in accordance with the provisions of sub-rule (2).

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

(i) difference in the dates of exportation,

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

**RULE 5 - COMPUTED VALUE METHOD**

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

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

**RULE 6 - RESIDUAL METHOD**

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

**RULE 7 - DECLARATION BY THE EXPORTER**

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

**RULE 8 - REJECTION OF DECLARED VALUE**

(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 the exporter of such goods to furnish further information including documents or other evidence and if, after receiving such further information, or in the absence of a response of such exporter, the proper officer still has reasonable doubt about the truth or accuracy of the value so declared, the transaction value shall be deemed to have not been determined in accordance with sub-rule (1) of rule 3.

(2) At the request of an exporter, the proper officer shall intimate the exporter in writing the ground for doubting the truth or accuracy of the value declared in relation to the export goods by such exporter and provide a reasonable opportunity of being heard, before taking a final decision under sub-rule (1).
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 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) the significant variation in value at which goods of like kind and quality exported at or about the same time in comparable quantities in a comparable commercial transaction were assessed.

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

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

Analysis: Circular No. 37/2007 Cus. dated 09.10.2007 has been issued regarding the Customs Valuation (Determination of Value of Export Goods) Rules, 2007 notified vide Notification No 95/2007 Cus. (NT) dated 13.09.2007. The Customs Valuation (Determination of Value of Export Goods) Rules 2007 have been framed in a format similar to the Valuation Rules for the imported goods. Conceptually also, acceptance of Transaction Value for export goods has been emphasized in the said rules, in as much as Rule 3 specifically provides for it.

Rule 3 of the said rules also stipulates that the Transaction Value for export goods shall be accepted even where buyer and seller are related, provided that the relationship did not influence the price of the goods. Where the relationship is found to influence the price, as determined by the proper officer on receipt of further information from the exporter, the value of the export goods shall be determined by proceeding sequentially through rules 4 to 6 of the said Valuation Rules. The persons who shall be deemed to be ‘related’ have been specified in Rule 2(2) of the said Valuation Rules, and this provision has been adopted from the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007.
Thus, transaction value is the primary basis for valuation of export goods and the method specified under Rule 3 will be applicable in the vast majority of cases of export by acceptance of declared value. In cases where the transaction value is not accepted, the valuation of the export goods shall be done by application of Rules 4 to 6 sequentially.

Acceptance of transaction value is, however, subject to the provision of Rule 8 which provides for rejection of declared value for the export goods in certain exceptional cases. These are situations where the assessing officer has reasons to doubt the truth or accuracy of the declared value and further enquiry or investigation is needed to determine the appropriate value. It is hereby instructed that when an investigation / enquiry is undertaken to determine whether or not the Declared Value should be accepted as Transaction Value, the export consignment shall not be ordinarily detained. Wherever there are doubts about the declared value of the export goods, the proper officer shall retain representative sealed samples, wherever considered necessary and feasible, and allow the goods to be exported after due processing. However, it is clarified that in a situation of serious violation such as outright mis-declaration of goods, attempt to export the goods unauthorisedly, i.e., smuggle the goods out of the country, or where there is forgery or fraudulent documentation, the goods may be detained or seized as required. No export consignment shall be detained for reasons of doubts regarding valuation without the approval of the jurisdictional Principal Commissioner/Commissioner of Customs.

An ‘Explanation’ relating to rejection of declared value of export goods has been added to Rule 8 to bring clarity and objectivity in exercising the authority for rejection of declared value. The Explanation clarifies that this rule as such does not provide a method for determination of value, and that it merely provides a mechanism and procedure for rejection of declared value of export goods in certain cases. It also clarifies that where the proper officer is satisfied after consultation with the exporter, the declared value shall be accepted. This Explanation also gives certain illustrative reasons which could form the basis for having doubt about the truth or accuracy of the declared value.

While raising doubt about truth or accuracy of the declared value in terms of Rule 8, the proper officer shall issue a query memo specifying reasons for such doubt. Meanwhile, the goods will be released for export against a simple undertaking after drawal of representative sample as indicated in para 5. The decision to initiate the process of investigation into valuation aspects, if any, shall be taken at the earliest at the level of Joint /Additional Commissioner.
In a case where transaction value cannot be determined or the declared value is rejected under Rule 8, and export value has to be determined by comparison in terms of Rule 4, the proper officer shall take utmost care in selecting an export product for an in-depth inquiry. The proper officer will make the adjustments objectively on the basis of the relevant factors, some of which have been illustrated at sub rule (2) of Rule 4.

Where the value has to be determined by Computed value method under Rule 5, the proper officer shall give due consideration to the cost-certificate issued by a Cost Accountant or Chartered Accountant or Government approved valuer, as produced by the exporter.

It is clarified that the main purpose of introducing the Export Valuation Rules is to provide for a sound legal basis for the valuation of export goods. It is also expected to check deliberate overvaluation of export goods and mis-utilization of value based export incentive schemes. At the same time due care has to be taken to facilitate the movement of bonafide export goods which is vital for the country’s economic growth. The assessing officers shall, therefore, exercise due caution to avoid unnecessary queries regarding truth or accuracy of the declared export value. The Export Valuation Rules are not intended to bring about any significant change in the existing pattern of valuation of export goods. It is the responsibility of the supervisory officers to monitor regularly the export valuation practices, so as to ensure proper implementation of the said Valuation Rules without hindering the flow of bona fide export goods.

Rule 7 of the Export Valuation Rules calls for a declaration relating to the value to be filed by the exporter.

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

FOR IMPORTED GOODS [SECTION 15]

Section 15 of the Customs Act, 1962 specifies the relevant date for determining the rate of duty and tariff valuation of imported goods. They are different for different situations as given below:

(a) Goods are entered for home consumption under section 46 – The relevant date for the three modes of transport as laid down by section 15(1)(a) read with proviso would be as follows:
(i) For goods imported by vehicle at land customs station – the relevant date is the date of filing the B/E under section 46 or date of arrival of vehicle, whichever is later.

(ii) For goods imported by a vessel at a customs port – the relevant date is the date of filing the B/E under section 46 or date of entry inwards to vessel under section 31, whichever is later.

(iii) For goods imported by aircraft at a customs airport – the relevant date is the date of filing the B/E under section 46 or date of arrival of aircraft, whichever is later.

(b) Goods cleared from a warehouse under section 68 – the relevant date is the date on which a bill of entry for home consumption in respect of such goods is presented.

(c) In the case of any other goods – the relevant date is the date of payment of duty.

These provisions relating to determination of relevant date do not apply to baggage and imports by post, in which sections 78 and 83 apply respectively.

FOR EXPORT GOODS [SECTION 16]

The relevant date for export goods is determined as per section 16. However, the provisions do not apply to baggage and imports by post.

The provisions are as follows:

(a) In case of goods entered for export (irrespective of the mode of transport) – the relevant date is the date of the ‘let export’ order of the proper officer permitting export and loading of cargo on board under section 51.

(b) In case of any other goods – the relevant date is the date of payment of duty.

Illustration 5

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

<table>
<thead>
<tr>
<th>Particulars</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>CIF value</td>
<td>5000 US $</td>
</tr>
<tr>
<td>Less: Freight</td>
<td>1500 US $</td>
</tr>
<tr>
<td>Less: Insurance</td>
<td>500 US $</td>
</tr>
<tr>
<td>Therefore, FOB value</td>
<td>3000 US $</td>
</tr>
<tr>
<td>Assessable value for Customs purpose</td>
<td></td>
</tr>
<tr>
<td>FOB value</td>
<td>3000 US $</td>
</tr>
<tr>
<td>Add: Freight (20% of FOB value) [Note 1]</td>
<td>600 US $</td>
</tr>
<tr>
<td>Add: Insurance (actual)</td>
<td>500 US $</td>
</tr>
<tr>
<td>CIF for customs purpose</td>
<td>4100 US $</td>
</tr>
<tr>
<td>Exchange rate as per CBIC [Note 2]</td>
<td>₹ 70 per US $</td>
</tr>
<tr>
<td><strong>Assessable value (₹ 70 x 4100 US $)</strong></td>
<td>₹ 2,87,000</td>
</tr>
</tbody>
</table>

**Notes:**

1. If the goods are imported by air, the freight cannot exceed 20% of FOB price [Fifth proviso to rule 10(2) of the Customs (Determination of Value of Imported Goods) Rules, 2007].

2. Rate of exchange determined by CBIC is considered [clause (a) of the explanation to section 14 of the Customs Act, 1962].

**Illustration 6**

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

<table>
<thead>
<tr>
<th></th>
<th>US $</th>
</tr>
</thead>
<tbody>
<tr>
<td>(i) Cost of the machine at the factory of the exporter</td>
<td>10,000</td>
</tr>
<tr>
<td>(ii) Transport charges from the factory of exporter to the port for shipment</td>
<td>500</td>
</tr>
<tr>
<td>(iii) Handling charges paid for loading the machine in the ship</td>
<td>50</td>
</tr>
</tbody>
</table>
(iv) Buying commission paid by the importer 50
(v) Freight charges from exporting country to India 1,000
(vi) Exchange rate to be considered: 1$ = ₹ 70
(vii) Actual insurance charges paid are not ascertainable

Answer

Computation of assessable value of the imported goods

<table>
<thead>
<tr>
<th>Description</th>
<th>US $</th>
</tr>
</thead>
<tbody>
<tr>
<td>(i) Cost of the machine at the factory</td>
<td>10,000.00</td>
</tr>
<tr>
<td>(ii) Transport charges up to port</td>
<td>500.00</td>
</tr>
<tr>
<td>(iii) Handling charges at the port</td>
<td>50.00</td>
</tr>
<tr>
<td>FOB</td>
<td>10,550.00</td>
</tr>
<tr>
<td>(iv) Freight charges up to India</td>
<td>1,000.00</td>
</tr>
<tr>
<td>(v) Insurance charges @ 1.125% of FOB [Note 1]</td>
<td>118.69</td>
</tr>
<tr>
<td>CIF</td>
<td>11,668.69</td>
</tr>
<tr>
<td>CIF in Indian rupees @ ₹ 70/ per $</td>
<td>₹ 8,16,808.30</td>
</tr>
<tr>
<td>Assessable Value</td>
<td>₹ 8,16,808.30</td>
</tr>
<tr>
<td><strong>Assessable Value (rounded off)</strong></td>
<td>8,16,808</td>
</tr>
</tbody>
</table>

Notes:

(1) Insurance charges have been included @ 1.125% of FOB value of goods [Third proviso to rule 10(2) of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007].

(2) Buying commission is not included in the assessable value [Rule 10(1)(a)(i) of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007].
Illustration 7

Compute export duty from the following data:

(i) FOB price of goods: US $ 1,00,000.

(ii) Shipping bill presented electronically on 26.04.20XX.

(iii) Proper officer passed order permitting clearance and loading of goods for export (Let Export Order) on 04.05.20XX.

(iv) Rate of exchange and rate of export duty are as under:

<table>
<thead>
<tr>
<th>Rate of Exchange</th>
<th>Rate of Export Duty</th>
</tr>
</thead>
<tbody>
<tr>
<td>On 26.04.20XX</td>
<td>1 US $ = ₹ 70</td>
</tr>
<tr>
<td>On 04.05.20XX</td>
<td>1 US $ = ₹ 72</td>
</tr>
</tbody>
</table>

(v) Rate of exchange is notified for export by Central Board of Indirect taxes and Customs.

(Make suitable assumptions wherever required and show the workings.)

Answer

Computation of export duty

<table>
<thead>
<tr>
<th>Particulars</th>
<th>Amount (US $)</th>
</tr>
</thead>
<tbody>
<tr>
<td>FOB price of goods [Note 1]</td>
<td>1,00,000</td>
</tr>
<tr>
<td>Value in Indian currency (US $ 1,00,000 x ₹ 70) [Note 2]</td>
<td>70,00,000</td>
</tr>
<tr>
<td>Export duty @ 8% [Note 3]</td>
<td>5,60,000</td>
</tr>
</tbody>
</table>

Notes:

1. As per section 14(1) of the Customs Act, 1962, assessable value of the export goods is the transaction value of such goods which is the price actually paid or payable for the goods when sold for export from India for delivery at the time and place of exportation.

2. As per third proviso to section 14(1) of the Customs Act, 1962, assessable value has to be calculated with reference to the rate of exchange notified by the CBIC on the date of presentation of shipping bill of export.
3. As per section 16(1)(a) of the Customs Act, 1962, in case of goods entered for export, the rate of duty prevalent on the date on which the proper officer makes an order permitting clearance and loading of the goods for exportation, is considered.

**Illustration 8**

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

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

The rate of exchange on the relevant date was 1 US $ = ₹ 70.00 and the rate of basic customs duty was 10% ad valorem. Ignore Integrated tax and GST Compensation Cess. Calculate the amount of duty leviable on the consignment under the Customs Act, 1962 with appropriate assumptions and explanations, where required.

**Answer**

**Determination of transaction value of the subject goods:-**

In the instant case, while determining the transaction value of the goods, following factors need consideration:-
1. In the given case, US $10 per metric tonne has been paid only towards freight and insurance charges and no amount has been paid or payable towards the cost of goods. Thus, there is no transaction value for the subject goods. Consequently, we have to look for transaction value of identical goods under rule 4 of Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 [Customs Valuation (DVIG) Rules, 2007].

2. Rule 4(1)(a) of the aforementioned rules provides that subject to the provisions of rule 3, the value of imported goods shall be the transaction value of identical goods sold for export to India and imported at or about the same time as the goods being valued. In the six imports given during the relevant time, the goods are identical in description and of the same country of origin.

3. Further, clause (b) of rule 4(1) of the said rules requires that the comparable import should be at the same commercial level and in substantially same quantity as the goods being valued. Since, nothing is known about the level of the transactions of the comparable consignments, it is assumed to be at the same commercial level.

4. As far as the quantities are concerned, the consignments of 20 and 100 metric tonnes cannot be considered to be of substantially the same quantity. Hence, remaining 4 consignments are left for our consideration.

5. However, the unit prices in these 4 consignments are different. Rule 4(3) of Customs Valuation (DVIG) Rules, 2007 stipulates that in applying rule 4 of the said rules, if more than one transaction value of identical goods is found, the lowest of such value shall be used to determine the value of imported goods. Accordingly, the unit price of the consignment under valuation would be US $ 160 per metric tonne.

Computation of amount of duty payable

CIF value of 800 metric tonnes:

\[= 800 \times 160 = \text{US$ 1,28,000}\]

At the exchange rate of $ 1 = ₹ 70

CIF Value (in Rupees) = ₹ 89,60,000

Assessable Value = ₹ 89,60,000

10% of Ad Valorem duty on ₹ 89,60,000 = ₹ 8,96,000

Add: Social Welfare Surcharge @ 10% (rounded off) = ₹ 89,600

Total custom duty payable = ₹ 9,85,600
Illustration 9

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

<table>
<thead>
<tr>
<th>Particular</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>(i) Price of machine</td>
<td>8,000 UK pounds</td>
</tr>
<tr>
<td>(ii) Freight paid (air)</td>
<td>2,500 UK pounds</td>
</tr>
<tr>
<td>(iii) Design and development charges paid in UK</td>
<td>500 UK pounds</td>
</tr>
<tr>
<td>(iv) Commission payable to local agent of exporter @ 2% of price of machine, in Indian Rupees</td>
<td></td>
</tr>
<tr>
<td>(v) Date of bill of entry</td>
<td>24.10.20XX (Rate BCD 10%; Exchange rate as notified by CBIC ₹ 100 per UK Pound)</td>
</tr>
<tr>
<td>(vi) Date of arrival of aircraft</td>
<td>20.10.20XX (Rate of BCD 20%; Exchange rate as notified by CBIC ₹ 98 per UK Pound)</td>
</tr>
<tr>
<td>(vii) Integrated tax is 12%</td>
<td></td>
</tr>
<tr>
<td>(viii) Insurance charges have been actually paid but details are not available.</td>
<td></td>
</tr>
</tbody>
</table>

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

Note: Ignore GST Compensation Cess.

Answer

**Computation of total duty and integrated tax payable**

<table>
<thead>
<tr>
<th>Particular</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Price of machine</td>
<td>8,000 UK pounds</td>
</tr>
<tr>
<td>Add: Design and development charges [Note 1]</td>
<td>500 UK pounds</td>
</tr>
<tr>
<td>Total</td>
<td>8,500 UK pounds</td>
</tr>
</tbody>
</table>
### Valuation Under the Customs Act, 1962

<table>
<thead>
<tr>
<th>Calculation</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Total in rupees @ ₹ 100 per pound [Note 2]</td>
<td>₹ 8,50,000.00</td>
</tr>
<tr>
<td>Add: Local agency commission [Note 1]</td>
<td>₹ 16,000.00</td>
</tr>
<tr>
<td>(2% of 8000 UK pounds) = 160 UK pounds × ₹ 100</td>
<td></td>
</tr>
<tr>
<td>FOB value as per Customs</td>
<td>₹ 8,66,000.00</td>
</tr>
<tr>
<td>Add: Air freight (8,66,000 x 20%) [Note 3]</td>
<td>₹ 1,73,200.00</td>
</tr>
<tr>
<td>Add: Insurance @ 1.125% of customs FOB [Note 4]</td>
<td>₹ 9,742.50</td>
</tr>
<tr>
<td>CIF Value</td>
<td>₹ 10,48,942.50</td>
</tr>
<tr>
<td>Assessable value (rounded off)</td>
<td>₹ 10,48,942.00</td>
</tr>
<tr>
<td>Add: Basic custom duty @ 10% [Note 5]</td>
<td>₹ 1,04,894.20</td>
</tr>
<tr>
<td>Add: Social Welfare Surcharge @ 10% on ₹ 1,04,894.20</td>
<td>₹ 10,489.42</td>
</tr>
<tr>
<td>Total</td>
<td>₹ 11,64,325.62</td>
</tr>
<tr>
<td>Add: Integrated tax @ 12% [Note 7]</td>
<td>₹ 1,39,719.07</td>
</tr>
<tr>
<td><strong>Total duty and integrated tax payable (Rounded off)</strong></td>
<td>₹ 2,55,102.69</td>
</tr>
</tbody>
</table>

**Notes:**

1. Design and development charges paid in UK and commission paid to local agent (since it is not buying commission) are includible in the assessable value [Rule 10 of the Customs (Determination of Value of Imported Goods) Rules, 2007].

2. The rate of exchange notified by the CBIC on the date of presentation of bill of entry has been considered [Section 14 of the Customs Act, 1962].

3. If the goods are imported by air, the freight cannot exceed 20% of FOB price [Fifth proviso to rule 10(2) of the Customs (Determination of Value of Imported Goods) Rules, 2007].

4. Where the insurance charges are not ascertainable, such cost is taken as 1.125% of FOB value of the goods [Third proviso to Rule 10(2) of the Customs (Determination of value of Imported Goods) Rules, 2007].
5. Section 15 of the Customs Act, 1962 provides that rate of duty shall be the rate in force on the date of presentation of bill of entry or the rate in force on the date of arrival of aircraft, whichever is later.

6. Integrated tax is levied on the sum total of the assessable value of the imported goods, customs duties and applicable social welfare surcharge.

**Illustration 10**

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

(i) Assessable value of the imported equipment US $ 10,100

(ii) Date of bill of entry is 25.4.20XX. Basic customs duty on this date is 10% and exchange rate notified by the Central Board of Indirect taxes and Customs is US $ 1 = ₹ 65.

(iii) Date of entry inwards is 21.4.20XX. Basic customs duty on this date is 20% and exchange rate notified by the Central Board of Indirect taxes and Customs is US $ 1 = ₹ 70.

(iv) Integrated tax: 12%

(v) Social Welfare surcharge 10%

Make suitable assumptions where required and show the relevant workings and round off your answer to the nearest rupee.

*Note: Ignore GST Compensation Cess.*

**Answer**

**Computation of total customs duty and integrated tax payable**

<table>
<thead>
<tr>
<th>Particulars</th>
<th>₹</th>
</tr>
</thead>
<tbody>
<tr>
<td>Assessable value ($ 10,100 x 65) [Note-1]</td>
<td>6,56,500.00</td>
</tr>
<tr>
<td>Add: Basic custom duty @ 10% [Note-2]</td>
<td>65,650.00</td>
</tr>
<tr>
<td>Add: Social Welfare Surcharge @ 10% on ₹ 65,650</td>
<td>6,565.00</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td>7,28,715.00</td>
</tr>
<tr>
<td>Add: Integrated tax @ 12% [Note-3]</td>
<td>87,445.80</td>
</tr>
<tr>
<td><strong>Total Customs duty and integrated tax payable (rounded off to nearest rupee)</strong></td>
<td>1,59,660</td>
</tr>
</tbody>
</table>
Notes:

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

2. Rate of duty would be the rate as prevalent on the date of filing of bill of entry or entry inwards whichever is later. [Proviso to section 15 of the Customs Act, 1962].

3. Integrated tax is levied on the sum total of the assessable value of the imported goods, customs duties and applicable social welfare surcharge.

Illustration 11

Assessable value of an item imported is ₹ 1,00,000. Basic customs duty is 10%, integrated tax is 12%, and social welfare surcharge is 10% on duty. Compute the amount of total customs duty and integrated tax payable.

Note: Ignore GST Compensation Cess.

Answer

<table>
<thead>
<tr>
<th>Particulars</th>
<th>₹</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Assessable Value</td>
<td>1,00,000</td>
</tr>
<tr>
<td>2. Basic customs duty @ 10%</td>
<td>10,000</td>
</tr>
<tr>
<td>3. Add: Social Welfare surcharge* @ 10% on ₹ 10,000</td>
<td>1000</td>
</tr>
<tr>
<td>4. Sub-total</td>
<td>1,11,000</td>
</tr>
<tr>
<td>5. Integrated tax @ 12% of ₹ 1,11,000</td>
<td>13,320</td>
</tr>
<tr>
<td>6. <strong>Total customs duty and integrated tax payable</strong> [(2) + (3) + (5)]</td>
<td><strong>24,320</strong></td>
</tr>
</tbody>
</table>

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

Illustration 12

From the following particulars, calculate total customs duty and integrated tax payable:
(i) **Date of presentation of bill of entry:** 20.6.20XX [Rate of BCD 20%; Inter-bank exchange rate: ₹ 61.60 and rate notified by CBIC ₹ 70].

(ii) **Date of arrival of aircraft in India:** 30.6.20XX [Rate of BCD 10%; Inter-bank exchange rate: ₹ 61.80 and rate notified by CBIC ₹ 73.00].

(iii) **Rate of Integrated tax:** 12%. Ignore GST Compensation Cess.

(iv) **CIF value 2,000 US Dollars; Air freight 500 US Dollars, Insurance cost 100 US Dollars.**

(v) **Social Welfare Surcharge 10%**

**Answer**

**Computation of total customs duty and integrated tax payable**

<table>
<thead>
<tr>
<th>Particulars</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>CIF value</td>
<td>2000 US Dollars</td>
</tr>
<tr>
<td>Less: Freight</td>
<td>500</td>
</tr>
<tr>
<td>Insurance</td>
<td>100</td>
</tr>
<tr>
<td>FOB Value</td>
<td>1400 US Dollars</td>
</tr>
<tr>
<td>Add: Air Freight [Note1]</td>
<td>280</td>
</tr>
<tr>
<td>Insurance (actual amount)</td>
<td>100</td>
</tr>
<tr>
<td></td>
<td>1780 US Dollars</td>
</tr>
<tr>
<td>Value @ ₹ 70.00 [Note 2]</td>
<td>₹1,24,600.00</td>
</tr>
<tr>
<td>Assessable Value</td>
<td>₹1,24,600.00</td>
</tr>
<tr>
<td>Basic Custom Duty @ 10% (a) [Note 3]</td>
<td>₹12,460.00</td>
</tr>
<tr>
<td>Add: Social Welfare Surcharge @ 10% on 12,460 (b)</td>
<td>₹1,246.00</td>
</tr>
<tr>
<td>Sub-total</td>
<td>₹1,38,306.00</td>
</tr>
<tr>
<td>Integrated tax (12% on ₹ 1,38,306) (c) [Note 4]</td>
<td>₹16,596.72</td>
</tr>
<tr>
<td><strong>Total duty and integrated tax (a +b + c) (rounded off)</strong></td>
<td><strong>30,303</strong></td>
</tr>
</tbody>
</table>
Notes:

(1) If the goods are imported by air, the freight cannot exceed 20% of FOB price [Fifth proviso to Rule 10(2) of the Customs (Determination of Value of Imported Goods) Rules, 2007].

(2) Rate of exchange notified by CBIC on the date of presentation of bill of entry would be the applicate rate. [Proviso to Section 14(1) of the Customs Act, 1962].

(3) Rate of duty would be the rate as prevalent on the date of filing of bill of entry or arrival of aircraft, whichever is later [proviso to section 15 of the Customs Act, 1962].

(4) Integrated tax is levied on the sum total of the assessable value of the imported goods, customs duties and applicable social welfare surcharge.

Illustration 13

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

<table>
<thead>
<tr>
<th>Sl. No.</th>
<th>Particulars</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.</td>
<td>Freight paid (air) (in USD)</td>
<td>4,500</td>
</tr>
<tr>
<td>2.</td>
<td>Design &amp; development charges paid in USA (in USD)</td>
<td>2,500</td>
</tr>
<tr>
<td>3.</td>
<td>Commission payable to an agent in India (in ₹)</td>
<td>12,500</td>
</tr>
<tr>
<td>4.</td>
<td>Exchange rate notified by CBIC and rate of basic duty is as follows:</td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Date of Bill of Entry</th>
<th>BCD</th>
<th>Exchange Rate in ₹</th>
</tr>
</thead>
<tbody>
<tr>
<td>08.09.20XX</td>
<td>20%</td>
<td>70</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Date of arrival of aircraft</th>
<th>BCD</th>
<th>Exchange Rate in ₹</th>
</tr>
</thead>
<tbody>
<tr>
<td>30.09.20XX</td>
<td>10%</td>
<td>72</td>
</tr>
</tbody>
</table>

The inter-bank rate was 1 USD = ₹ 73

© The Institute of Chartered Accountants of India
Compute the amount of total customs duty and integrated tax payable on importation of chalices. Make suitable assumptions where required. Working notes should form part of your answer.

Note: Ignore GST Compensation Cess.

**Answer**

**Computation of total customs duty and integrated tax payable**

<table>
<thead>
<tr>
<th>Particulars</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>FOB value computed by Customs Officer (including design and development charges)</td>
<td>20,000 US $</td>
</tr>
<tr>
<td>Exchange rate [Note 1]</td>
<td>₹ 70 per $</td>
</tr>
<tr>
<td>FOB value computed by Customs Officer (in rupees)</td>
<td>₹ 14,00,000.00</td>
</tr>
<tr>
<td>Add: Commission payable to agent in India</td>
<td>₹ 12,500.00</td>
</tr>
<tr>
<td>FOB value as per customs</td>
<td>₹ 14,12,500.00</td>
</tr>
<tr>
<td>Add: Air freight (₹ 14,12,500 × 20%) [Note 2]</td>
<td>₹ 2,82,500.00</td>
</tr>
<tr>
<td>Add: Insurance (1.125% of ₹ 14,12,500) [Note 3]</td>
<td>₹ 15,890.63</td>
</tr>
<tr>
<td>CIF value for customs purposes</td>
<td>₹ 17,10,890.63</td>
</tr>
<tr>
<td>Assessable value</td>
<td>₹ 17,10,890.63</td>
</tr>
<tr>
<td>Add: Basic custom duty @ 10% (₹17,10,890.63× 10%) – rounded off [Note 4]</td>
<td>₹ 1,71,089</td>
</tr>
<tr>
<td>Add: Social Welfare surcharge @ 10% on ₹ 1,71,089 rounded off</td>
<td>₹ 17,109</td>
</tr>
<tr>
<td>Total</td>
<td>₹ 18,99,089</td>
</tr>
</tbody>
</table>

© The Institute of Chartered Accountants of India
Note:
1. Rate of exchange notified by CBIC on the date of filing of bill of entry has to be considered [Third proviso to section 14 of the Customs Act, 1962].
2. In case of goods imported by air, freight cannot exceed 20% of FOB value [fifth proviso to rule 10(2) of the Customs (Determination of Value of Imported Goods) Rules, 2007].
3. Insurance charges, when not ascertainable, have to be included @ 1.125% of FOB value of goods [Third proviso to rule 10(2) of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007].
4. Rate of duty will be the rate in force on the date of presentation of bill of entry or on the date of arrival of the aircraft, whichever is later [Proviso to section 15 of the Customs Act, 1962].
5. Integrated tax is levied on the sum total of the assessable value of the imported goods, customs duties and applicable social welfare surcharge.

Illustration 14

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

<table>
<thead>
<tr>
<th>Particulars</th>
<th>Contract Price (£)</th>
<th>Changed Price (£)</th>
<th>Negotiated Price (£)</th>
</tr>
</thead>
<tbody>
<tr>
<td>CIF Value</td>
<td>5000</td>
<td>5800</td>
<td>5500</td>
</tr>
<tr>
<td>Air Freight</td>
<td>300</td>
<td>600</td>
<td>500</td>
</tr>
<tr>
<td>Insurance</td>
<td>500</td>
<td>650</td>
<td>600</td>
</tr>
</tbody>
</table>
Other details for computing assessable value and duty payable are tabled below:

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

<table>
<thead>
<tr>
<th>Date of bill of entry</th>
<th>Basic customs duty</th>
<th>Exchange rate in ₹ (notified by CBIC)</th>
</tr>
</thead>
<tbody>
<tr>
<td>18.02.20XX</td>
<td>10%</td>
<td>102</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Date of arrival of aircraft</th>
<th>Basic custom duty</th>
<th>Exchange rate in ₹ (notified by CBIC)</th>
</tr>
</thead>
<tbody>
<tr>
<td>15.02.20XX</td>
<td>15%</td>
<td>98</td>
</tr>
</tbody>
</table>

Inter-bank rate 1 UK Pound = ₹106

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

**Answer**

**Computation of custom duty payable**

<table>
<thead>
<tr>
<th>Particulars</th>
<th>Amount (£)</th>
</tr>
</thead>
<tbody>
<tr>
<td>CIF value (negotiated price) [Note-1]</td>
<td>5,500</td>
</tr>
<tr>
<td>Less: Air freight</td>
<td>500</td>
</tr>
<tr>
<td>Less: Insurance</td>
<td>600</td>
</tr>
<tr>
<td>FOB value</td>
<td>4,400</td>
</tr>
<tr>
<td>Add: Vendor inspection charges [Note-2]</td>
<td>Nil</td>
</tr>
<tr>
<td>FOB value as per Customs</td>
<td>4,400</td>
</tr>
<tr>
<td>Freight [Note-3]</td>
<td>500</td>
</tr>
</tbody>
</table>
Insurance [Note-4] | 600
---|---
Exchange rate is ₹ 102 per £ [Note-5] | 5,500
Value in rupees | ₹
Add: Commission payable to local agent [1% of FOB value] [Note-6] = (US $ 4,400 × ₹ 102) × 1% | 4,488.00
Total | 5,65,488.00
Assessable value | 5,65,488.00
Add: Basic custom duty @ 10% [Note-7] – rounded off | 56,548.80
Social Welfare Surcharge (10% of ₹ 56,548.80) [rounded off] | 5,655.00
Customs duty payable [rounded off] | 62,204.00

Notes:

1. As per Section 14 of the Customs Act, 1962, the value of the imported goods is the transaction value, which means the price actually paid or payable for the goods. In this case, since the contract was re-negotiated and the importer paid the re-negotiated price, the transaction value would be such re-negotiated price and not the contract price.

2. Only the payments actually made as a condition of sale of the imported goods by the buyer to the seller are includible in the assessable value under rule 10(1)(e) of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007. Charges of vendor inspection on the goods carried out by foreign supplier on his own and not required for making the goods ready for shipment, are not includible in the assessable value of the imported goods [Bombay Dyeing & Mfg. v. CC 1997 (90) ELT 276 (SC)].

3. Actual amount incurred towards freight will be considered since freight is not more than 20% of FOB value [Fifth proviso to rule 10(2) of Customs Valuation Rules].

4. Actual insurance charges paid are includible in the assessable value as per rule 10(2)(b) of the Customs Valuation Rules.
5. Rate of exchange notified by CBIC on the date of filing of bill of entry will be considered as per third proviso to section 14 of the Customs Act, 1962.

6. Commission paid to local agent (since it is not buying commission) is includible in the assessable value on the presumption that local agent has been appointed by the exporter [Rule 10(1)(a)(i) of the Customs Valuation Rules].

7. As per proviso to section 15 of the Customs Act, 1962, rate of duty will be the rate in force on the date of presentation of bill of entry or on the date of arrival of the aircraft, whichever is later.

**Illustration 15**

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

(i) FOB value of the machine: 10,000 UK Pound

(ii) Freight (Air): 3,000 UK Pound

(iii) Licence fee, the buyer was required to pay in UK: 400 UK Pound

(iv) Buying commission paid in India: ₹20,000

(v) Date of bill of entry was 20.05.20XX and the rate of exchange notified by CBIC on this date was ₹99.00 per one pound. Rate of BCD was 7.5%.

(vi) Date of arrival of aircraft was 25.05.20XX and the rate of exchange notified by CBIC on this date was ₹98.50 per pound and rate of BCD was 10%.

(vii) Integrated tax was 12% and ignore GST Compensation Cess.

(viii) Insurance premium details were not available.

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

**Answer**

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

<table>
<thead>
<tr>
<th>Particular</th>
<th>Amount (£)</th>
</tr>
</thead>
<tbody>
<tr>
<td>FOB value</td>
<td>10,000</td>
</tr>
<tr>
<td>Add: License fee required to be paid in UK [Note – 1]</td>
<td>400</td>
</tr>
</tbody>
</table>
## VALUATION UNDER THE CUSTOMS ACT, 1962

<table>
<thead>
<tr>
<th>Description</th>
<th>Value</th>
</tr>
</thead>
<tbody>
<tr>
<td>Customs FOB value</td>
<td>10,400</td>
</tr>
<tr>
<td>Exchange rate is ₹ 99 per £ [Note – 2]</td>
<td></td>
</tr>
<tr>
<td>Value in rupees</td>
<td>10,29,600.00</td>
</tr>
<tr>
<td><strong>Add:</strong> Air freight [Restricted to 20% of ₹ 10,29,600 (customs FOB value)]</td>
<td>2,05,920.00</td>
</tr>
<tr>
<td>Insurance @ 1.125% of ₹ 10,29,600 [Note – 4]</td>
<td>11,583.00</td>
</tr>
<tr>
<td>Buying commission is not includible in the assessable value [Note – 5]</td>
<td></td>
</tr>
<tr>
<td>CIF Value</td>
<td>12,47,103.00</td>
</tr>
<tr>
<td>Assessable value</td>
<td>12,47,103.00</td>
</tr>
<tr>
<td>Rate of duty is 10% [Note – 6]</td>
<td></td>
</tr>
<tr>
<td><strong>Add:</strong> Basic custom duty @ 10% (₹ 12,47,103 × 10%) – rounded off (A)</td>
<td>1,24,710</td>
</tr>
<tr>
<td><strong>Add:</strong> Social Welfare Surcharge (10% of ₹ 1,24,710) [rounded off] (B)</td>
<td>12,471</td>
</tr>
<tr>
<td>Value for integrated tax</td>
<td>13,84,284</td>
</tr>
<tr>
<td><strong>Add:</strong> Integrated tax @ 12% -rounded off (C) [Note – 7]</td>
<td>1,66,114</td>
</tr>
<tr>
<td><strong>Total customs duty and integrated tax payable [(A) + (B) + (C)]</strong></td>
<td>3,03,295</td>
</tr>
</tbody>
</table>

### Note:

1. Engineering and design charges paid in UK, licence fee relating to imported goods payable by the buyer as a condition of sale, materials and components supplied by the buyer free of cost and actual insurance charges paid are all includible in the assessable value - Rule 10(1)(c) of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 [hereinafter referred to as Customs Valuation Rules].

2. Rate of exchange notified by CBIC on the date of filing of bill of entry has to be considered [Third proviso to section 14 of the Customs Act, 1962].
3. In case of goods imported by air, freight cannot exceed 20% of FOB value [Fifth proviso to rule 10(2) of the Customs Valuation Rules].

4. Insurance charges, when not ascertainable, have to be included @ 1.125% of FOB value of goods [Third proviso to rule 10(2) of the Customs Valuation Rules].

5. Buying commission is not included in the assessable value [Clause (a)(i) of sub-rule (1) of rule 10 of the Customs Valuation Rules].

6. Rate of duty will be the rate in force on the date of presentation of bill of entry or on the date of arrival of the aircraft, whichever is later [Proviso to section 15 of the Customs Act, 1962].

7. Integrated tax is levied on the sum total of the assessable value of the imported goods, customs duties and applicable social welfare surcharge.

11. SPECIAL PROVISIONS FOR CLASSIFICATION OF SETS OF ARTICLES AND ACCESSORIES

Section 19 of the Customs Act provides that:

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

(a) Articles liable to duty with reference to quantity shall be chargeable to that duty;

(b) Articles liable to duty with reference to value shall, if they are liable to duty at the same rate, be chargeable to duty at that rate, and 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 value are liable under clause (b).

However,

(a) Accessories of, and spare parts or maintenance and repairing implements for, any article which satisfy the conditions specified in the rules made in this behalf shall be chargeable at the same rate of duty as that article;

(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.

As per the Accessories (Conditions) Rules, 1963, accessories of and spare parts and maintenance or repairing implements for, any article when imported along with that article shall be chargeable at the same rate of duty as that article, if the proper officer is satisfied that in the ordinary course of trade such accessories, parts and implements are compulsorily supplied along with that article and no separate charge is made for such supply and their price being included in the price of the relevant article.

Relevant Case Law:

**CC Vs M/s Denso Kirloskar Industries Pvt Ltd dated 13.08.2015**

Consideration paid for the technical know-how - the technical information which was to be provided by the Japanese company to the respondent was for the manufacture of the contract products by the respondent herein, naturally, after the setting up of the plant. This cost is, thus, incurred after the importation of the goods and therefore cannot be loaded on to the assessable value of the imported goods. The matter is squarely covered by the judgment of the Court in the case of 'Commissioner of Customs, Ahmedabad v. M/s. Essar Steel Limited ' 2015 (319) ELT 202 (SC).

**Mangalore Refineries and Petrochemicals Ltd Vs CC 2015(323) ELT 433 (SC) dated 02.09.2015**

Quantity or Price - Duty is payable on the quantity received in India, not the quantity exported from another country. It is clear that the levy of customs duty under Section 12 is only on goods imported into India. Goods are said to be imported into India when they are brought into India from a place outside India. Unless such goods are brought into India, the act of importation which triggers the levy does not take place. If the goods are pilfered after they are unloaded or lost or destroyed at any time before clearance for home consumption or deposit in a warehouse, the importer is not liable to pay the duty leviable on such goods. This is for the reason that the import of goods does not take place until they become part of the land mass of India and until the act of importation is complete which under Sections 13 and 23 happens only after an order for clearance for home consumption is made and/or an order permitting the deposit of goods in a warehouse is made. Under Section 23(2), the owner of the imported goods may also at any time before such orders have been made relinquish his title to the goods and shall not be liable to pay any duty thereon.
In short, he may abandon the said goods even after they have physically landed at any port in India but before any of the aforesaid orders have been made. This again is for the good reason that the act of importation is only complete when goods are in the hands of the importer after they have been cleared either for home consumption or for deposit in a warehouse. Further, as per Section 47 of the Customs Act, the importer has to pay import duty only on goods that are entered for home consumption. Obviously, the quantity of goods imported will be the quantity of goods at the time they are entered for home consumption.

**TEST YOUR KNOWLEDGE**

1. Briefly explain the following with reference to the Customs (Determination of Value of Imported Goods) Rules, 2007:
   (i) Goods of the same class or kind
   (ii) Computed value

2. Whether the assessable value of the warehoused goods which are sold before being cleared for home consumption, should be taken as the price at which the original importer has sold the goods?

3. Explain when are the costs and services as given in rule 10 of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 be added to the value of the identical goods under rule 4.

4. Examine the validity of the following statements with reference to the Customs Act, 1962 giving brief reasons:
   (i) Service charges paid to canalizing agent are not includible in the assessable value of imports. Such agent imports the goods from foreign sellers and enters into an agreement to sell such goods with buyers in India in high seas.
   (ii) Charges for “vendor inspection” on the second hand goods carried out by foreign supplier on his own and not required for making the goods ready for shipment, are not includible in the assessable value of the imported goods.

5. An importer entered into a contract for supply of crude sunflower seed oil @ U.S. $ 435 C.I.F./Metric ton. Under the contract, the consignment was to be shipped in the month of July. The period was extended by mutual agreement and goods were shipped on 5th August at old prices.

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

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

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

<table>
<thead>
<tr>
<th>Particulars</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>(i) Price of the machine</td>
<td>10,000 U.K. Pounds</td>
</tr>
<tr>
<td>(ii) Freight (air)</td>
<td>3,000 U.K. Pounds</td>
</tr>
<tr>
<td>(iii) Engineering and design charges paid to a firm in U.K.</td>
<td>500 U.K. Pounds</td>
</tr>
<tr>
<td>(iv) License fee relating to imported goods payable by the buyer as a condition of sale</td>
<td>20% of Price of machine</td>
</tr>
<tr>
<td>(v) Materials and components supplied in UK by the buyer free of cost valued at ₹ 20,000</td>
<td></td>
</tr>
<tr>
<td>(vi) Insurance paid to the insurer in India</td>
<td>₹ 6,000</td>
</tr>
<tr>
<td>(vii) Buying commission paid by the buyer to his agent in U.K.</td>
<td>100 U.K. Pounds</td>
</tr>
</tbody>
</table>

Other particulars:

(i) Inter-bank exchange rate: ₹ 98 per U.K. Pound.
(ii) CBIC had notified for purpose of section 14 of the Customs Act, 1962, exchange rate of ₹ 100 per U.K. Pound.
(iii) Importer paid ₹ 5,000 towards demurrage charges for delay in clearing the machine from the Airport.

(Make suitable assumptions wherever required and show workings with explanations)
7. Briefly explain with reference to the provisions of the Customs Act, the relevant date for determination of rate of duty and tariff valuation for imports through a vehicle where bill of entry is filed prior to the arrival of the vehicle.

8. With reference to the provisions of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007, explain briefly the chief reasons on the basis of which the proper officer can raise doubts on the truth or accuracy of the declared value.

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

<table>
<thead>
<tr>
<th>Authority</th>
<th>Rate of exchange</th>
</tr>
</thead>
<tbody>
<tr>
<td>CBIC</td>
<td>1 US $=₹ 70</td>
</tr>
<tr>
<td>RBI</td>
<td>1 US $=₹ 71</td>
</tr>
</tbody>
</table>

CIF value of the goods is $ 1,50,000
Rate of basic custom duty is 10%
Rate of social welfare surcharge is 10%
Integrated tax is 18%. Ignore GST Compensation Cess.
Calculate total customs duty and integrated tax payable thereon.

10. ABC Industries Ltd. imports an equipment by air. CIF price of the equipment is 6,000 US$, freight paid is 1,200 US$ and insurance cost is 1,800 US$. The banker realizes the payment from importer at the exchange rate of ₹ 61 per US$. Central Board of Indirect taxes and Customs notifies the exchange rate as ₹ 70 per US$ while rate of exchange notified by RBI is ₹ 72 per US$. ABC Industries Ltd. expends ₹ 56,000 in India for certain development activities with respect to the imported equipment.

Basic customs duty is 10%, Integrated tax is leviable @ 12% and social welfare surcharge is 10% on duty. Ignore GST Compensation Cess.
You are required to compute the amount of total duty and integrated tax payable by ABC Industries Ltd. under Customs law.

11. Compute the total customs duty and integrated tax payable under Customs law on an imported machine, based on the following information:
<table>
<thead>
<tr>
<th>Description</th>
<th>Amount (US $)</th>
</tr>
</thead>
<tbody>
<tr>
<td>(i) Cost of the machine at the factory of the exporter</td>
<td>20,000</td>
</tr>
<tr>
<td>(ii) Transport charges from the factory of exporter to the port for shipment</td>
<td>800</td>
</tr>
<tr>
<td>(iii) Handling charges paid for loading the machine in the ship</td>
<td>50</td>
</tr>
<tr>
<td>(iv) Freight charges from exporting country to India</td>
<td>5,000</td>
</tr>
<tr>
<td>(v) Buying commission paid by the importer</td>
<td>100</td>
</tr>
<tr>
<td>(vi) Lighterage charges paid by the importer at port of importation</td>
<td>12,000</td>
</tr>
<tr>
<td>(vii) Freight incurred from port of entry to Inland Container depot</td>
<td>60,000</td>
</tr>
<tr>
<td>(viii) Ship demurrage charges paid at port of importation</td>
<td>24,000</td>
</tr>
</tbody>
</table>

Date of bill of entry: 20.01.20XX (Rate BCD 20%; Exchange rate as notified by CBIC ₹ 70 per US $)

Date of entry inward: 25.03.20XX (Rate of BCD 10%; Exchange rate as notified by CBIC ₹ 75 per US $)

Integrated tax: 12%

Note: Ignore GST Compensation Cess.

12. Kaveri Enterprises imported some goods from Italy. On the basis of certain information obtained through computer printouts from the Customs House, Department alleged that during the period in question, large number of consignments of such goods were imported at a much higher price than the price declared by Kaveri Enterprises. Therefore, Department valued such goods on the basis of transaction value of identical goods as per rule 4 of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 and demanded the differential duty along with penalty and interest from the Kaveri Enterprises. However, Department did not provide these printouts to Kaveri Enterprises.
Kaveri Enterprises contended that Department’s demand was without any basis in law, without any legally admissible evidence and opposed to the principles of natural justice as the computer printouts which formed the basis of such demand had not been supplied to them. Resultantly, they had no means of knowing as to whether any imports of comparable nature were made at the relevant point of time.

You are required to examine the contention of Kaveri Enterprises, with the help of a decided case law, if any.

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

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

(i) the rate of duty applicable for clearance for home consumption in this case.

(ii) whether the rate of exchange on 01.08.20XX could be adopted for purpose of conversion of foreign currency into local currency?

14. Differentiate between deductive value and computed value.


16. Enumerate the various costs and services that are to be added under rule 10 of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 to arrive at the “transaction value”.

17. In the context of Customs Valuation (Determination of Price of Imported Goods) Rules, 2007, explain the meaning of:

(i) Similar goods

(ii) Identical goods

18. Briefly discuss the provisions relating to date for determining the rate of duty and tariff valuation of imported goods.
ANSWERS/HINTS

1. (i) As per rule 2(1)(c) of Customs Valuation (Determination of Value of Imported Goods) Rules, 2007, goods of the same class or kind, means imported goods that are within a group or range of imported goods produced by a particular industry or industrial sector and includes identical goods or similar goods.

   (ii) As per rule 2(1)(a) of the said rules, computed value means the value of imported goods determined in accordance with rule 8. The value of imported goods is taken as computed value when valuation is not possible as per any of rules earlier than rule 8 and cost is ascertainable.

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

   (a) the cost or value of materials and fabrication or other processing employed in producing the imported goods;

   (b) an amount for profit and general expenses equal to that usually reflected in sales of goods of the same class or kind as the goods being valued which are made by producers in the country of exportation for export to India;

   (c) the cost or value of all other expenses under sub-rule (2) of rule 10.

2. Section 14 of the Customs Act provides that the value of the imported goods shall be the transaction value of goods which is the price actually paid or payable for the goods when sold for export to India for delivery at the time and place of importation. The sale of goods after warehousing them in India cannot be considered a sale for export to India. It cannot be stated that the export of goods is not complete even after the imported goods were cleared for warehousing in the country of import. Hence, the price at which the imported goods are sold after warehousing them in India does not qualify to be the transaction value as per section 14. This has been clarified vide Circular No. 11/2010 Cus. dated 03.06.2010.

3. As per rule 4(1)(c) of the Customs Valuation (Determination of Value of Imported Goods Rules, 2007) where imported goods are being valued as per rule 4, the value of the identical goods is adjusted to take into account
the difference attributable to the commercial level or to the quantity or both. According to rule 4(2) where costs and charges referred to in rule 10 are included in the value of identical goods, adjustment has to be made of the difference in such costs and charges between the imported goods and the identical goods.

Therefore, if the value of the identical goods does not include certain specific costs and charges relating to the imported goods, these are to be included as per rule 10.

4. (i) The statement is not valid. Since the canalizing agent is not the agent of the importer nor does he represent the importer abroad, purchases in bulk by canalizing agency from foreign seller and subsequent sale by it to Indian importer on high seas sale basis are independent of each other. Hence, the commission or service charges paid to the canalizing agent are includible in the assessable value as these cannot be termed as buying commission [Hyderabad Industries Ltd. v. UOI 2000 (115) ELT 593 (SC)].

(ii) The statement is valid. As per rule 10(1)(e) of the Customs (Determination of Value of Imported Goods) Rules, 2007, only the payments actually made as a condition of sale of the imported goods by the buyer to the seller are includible in the assessable value. Thus, charges of vendor inspection on the goods carried out by foreign supplier on his own and not required for making the goods ready for shipment, are not includible in the assessable value of the imported goods [Bombay Dyeing & Mfg. v. CC 1997 (90) ELT 276 (SC)].

5. No, the contention of the Department is not correct.

The facts of the given case are similar to the case of CCus., Vishakhapatnam v. Aggarwal Industries Ltd. 2011 (272) E.L.T. 641 (SC). The Supreme Court, in the instant case, observed that since the contract entered into for supply of crude sunflower seed oil @ US $ 435 CIF/metric ton could not be performed on time, the extension of time for shipment was agreed upon by the contracting parties.

The Supreme Court pointed out that the commodity involved had volatile fluctuations in its price in the international market, but having delayed the shipment; the supplier did not increase the price of the commodity even after the increase in its price in the international market.
Further, there was no allegation regarding the supplier and importer being in collusion. Thus, the appeal was allowed in the favour of the assessee and the contract price was accepted as the ‘transaction value’.

6. **Computation of assessable value of machine imported by BSA & Co.**

<table>
<thead>
<tr>
<th>Particulars</th>
<th>Amount (£)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Price of the machine</td>
<td>10,000</td>
</tr>
<tr>
<td>Add: Engineering and design charges paid in UK [Note 1]</td>
<td>500</td>
</tr>
<tr>
<td>Licence fee relating to imported goods payable by the buyer as a condition of sale (20% of Price of machine) [Note 1]</td>
<td>2,000</td>
</tr>
<tr>
<td>Total</td>
<td>12,500</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Particulars</th>
<th>Amount (₹)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Value in Indian currency (£12,500 x ₹100) [Note 2]</td>
<td>12,50,000</td>
</tr>
<tr>
<td>Add: Materials and components supplied by the buyer free of cost [Note 1]</td>
<td>20,000</td>
</tr>
<tr>
<td>FOB</td>
<td>12,70,000</td>
</tr>
<tr>
<td>Add: Freight [Note 3]</td>
<td>2,54,000</td>
</tr>
<tr>
<td>Insurance paid to the insurer in India [Note 1]</td>
<td>6,000</td>
</tr>
<tr>
<td>CIF value</td>
<td>15,30,000</td>
</tr>
<tr>
<td><strong>Assessable value</strong></td>
<td>15,30,000</td>
</tr>
</tbody>
</table>

**Notes:**

1. Engineering and design charges paid in UK, licence fee relating to imported goods payable by the buyer as a condition of sale, materials and components supplied by the buyer free of cost and actual insurance charges paid are all includible in the assessable value [Rule 10 of the Customs (Determination of Value of Imported Goods) Rules, 2007].
2. As per Explanation to section 14(1) of the Customs Act, 1962, assessable value should be calculated with reference to the rate of exchange notified by the CBIC.

3. If the goods are imported by air, the freight cannot exceed 20% of FOB price [Fifth proviso to rule 10(2) of the Customs (Determination of Value of Imported Goods) Rules, 2007].

4. Buying commission is not included in the assessable value [Rule 10(1)(a) of the Customs (Determination of Value of Imported Goods) Rules, 2007].

5. Only ship demurrage charges on chartered vessels are included in the cost of transport of the imported goods. Thus, demurrage charges for delay in clearing the machine from the Airport will not be includible in the assessable value [Explanation to Rule 10(2) of the Customs (Determination of Value of Imported Goods) Rules, 2007].

7. As per section 15(1) of the Customs Act, 1962, the relevant date for determination of rate of duty and tariff valuation of goods entered for imports through a vehicle is the date of presentation of bill of entry OR date of arrival of the vehicle, whichever is later.

Therefore, the relevant date for determination of rate of duty and tariff valuation for imports through a vehicle where bill of entry is filed prior to the arrival of the vehicle will be the date of the arrival of the vehicle.

8. As per explanation to rule 12 of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007, the chief reasons on the basis of which the proper officer can raise doubts on the truth or accuracy of the declared value may include:

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

(c) the sale involves special discounts limited to exclusive agents;

(d) the misdeclaration of goods in parameters such as description, quality, quantity, country of origin, year of manufacture or production;
(e) the non declaration of parameters such as brand, grade, specifications that have relevance to value;
(f) the fraudulent or manipulated documents.

9. **Computation of total custom duty and integrated tax payable**

<table>
<thead>
<tr>
<th>Particulars</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>CIF Value</td>
<td>$1,50,000.00</td>
</tr>
<tr>
<td>Assessable value (in ₹) = $1,50,000 × ₹ 70 (Note -1)</td>
<td>₹1,05,00,000.00</td>
</tr>
<tr>
<td>Add: Basic custom duty @ 10% (₹ 1,05,00,000 × 10%)</td>
<td>₹10,50,000.00</td>
</tr>
<tr>
<td>Add: Social Welfare surcharge (₹10,50,000 × 10%)</td>
<td>₹1,05,000</td>
</tr>
<tr>
<td>Sub-total</td>
<td>1,16,55,000.00</td>
</tr>
<tr>
<td>Add: Integrated tax (₹ 1,16,55,000 × 18%) (Note-2)</td>
<td>₹20,97,900.00</td>
</tr>
<tr>
<td><strong>Total custom duty and integrated tax payable</strong> (rounded off)</td>
<td>₹32,52,900</td>
</tr>
</tbody>
</table>

**Notes:**

(1) The applicable exchange rate is the rate notified by CBIC [Explanation to section 14(1) of the customs Act, 1962].

(2) Integrated tax is levied on the sum total of the assessable value of the imported goods, customs duties and applicable social welfare surcharge.

10. **Computation of customs duty and integrated tax payable by ABC Industries Ltd.**

<table>
<thead>
<tr>
<th>Particulars</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>CIF value</td>
<td>6,000 US $</td>
</tr>
<tr>
<td>Less: Freight</td>
<td>1,200 US $</td>
</tr>
<tr>
<td>Less: Insurance</td>
<td>1,800 US $</td>
</tr>
<tr>
<td>FOB value</td>
<td>3,000 US $</td>
</tr>
<tr>
<td>Add: Freight (20% of FOB value) [Note 1]</td>
<td>600 US $</td>
</tr>
</tbody>
</table>
Add: Insurance (actual) & 1,800 US $  
CIF & 5,400 US $  
Exchange rate as per CBIC [Note 3] & ₹ 70 per US $  
Assessable value = ₹ 70 x 5,400 US $ & ₹ 3,78,000  
Add: Basic customs duty @ 10% & ₹ 37,800  
Add: Social Welfare Surcharge @ 10% & ₹ 3,780  
Sub-total & ₹ 4,19,580  
Integrated tax @ 12% of ₹ 4,19,580[Note 5] & ₹ 50,349.60  
Total customs duty and integrated tax payable [₹37,800 + ₹ 3,780 + ₹ 50,349.60] & ₹ 91,929.60  
**Total customs duty and integrated tax payable (rounded off)** & ₹ 91,930  

**Notes:**

1. If the goods are imported by air, the freight cannot exceed 20% of FOB price [Fifth proviso to rule 10(2) of the Customs (Determination of Value of Imported Goods) Rules, 2007].
2. Rate of exchange determined by CBIC is considered [Clause (a) of the explanation to section 14 of the Customs Act, 1962].
3. Rule 10(1)(b)(iv) of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 *inter alia* provides that value of development work undertaken elsewhere than in India is includible in the value of the imported goods. Thus, development charges of ₹ 56,000 paid for work done in India have not been included for the purposes of arriving at the assessable value.
4. Integrated tax is levied on the sum total of the assessable value of the imported goods, customs duties and applicable social welfare surcharge.

**11. Computation of customs duty and integrated tax payable on the imported goods**
**VALUATION UNDER THE CUSTOMS ACT, 1962**

<table>
<thead>
<tr>
<th>Particulars</th>
<th>US $</th>
</tr>
</thead>
<tbody>
<tr>
<td>Cost of the machine at the factory</td>
<td>20,000</td>
</tr>
<tr>
<td>Transport charges up to port</td>
<td>800</td>
</tr>
<tr>
<td>Handling charges at the port</td>
<td>50</td>
</tr>
<tr>
<td><strong>FOB</strong></td>
<td>20,850</td>
</tr>
<tr>
<td>FOB value in Indian rupees @ `70/- per $ [Note 1]</td>
<td>14,59,500</td>
</tr>
<tr>
<td>Freight charges up to India [US $ 5,000 x `70]</td>
<td>3,50,000</td>
</tr>
<tr>
<td>lighterage charges paid by the importer [Note 2]</td>
<td>12,000</td>
</tr>
<tr>
<td>Ship demurrage charges on chartered vessels [Note 2]</td>
<td>24,000</td>
</tr>
<tr>
<td>Insurance charges @ 1.125% of FOB [Note 3]</td>
<td>16,419.38</td>
</tr>
<tr>
<td><strong>CIF</strong></td>
<td>18,61,919.38</td>
</tr>
<tr>
<td><strong>Add:</strong> Basic customs duty @ 10% [Note 4] [a]</td>
<td>1,86,192</td>
</tr>
<tr>
<td><strong>Add:</strong> Social Welfare surcharge @ 10% [b]</td>
<td>18,619.20</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td>20,66,730.58</td>
</tr>
<tr>
<td><strong>Add:</strong> Integrated tax @ 12% of `20,66,730.58 [c] [Note 5]</td>
<td>2,48,007.67</td>
</tr>
<tr>
<td><strong>Total custom duty and integrated tax payable [(a) + (b) + (c)] rounded off</strong></td>
<td>4,52,819</td>
</tr>
</tbody>
</table>

**Notes:**

1. Rate of exchange notified by CBIC on the date of presentation of bill of entry is considered [Explanation to section 14 of the Customs Act, 1962].

2. Cost of transport of the imported goods includes ship demurrage charges and lighterage charges [Explanation to Rule 10(2) of Customs Valuation (Determination of Value of Imported Goods) Rules, 2007].

3. Insurance charges is included @ 1.125% of FOB value of goods [Third proviso to rule 10(2) of Customs Valuation (Determination of Value of Imported Goods) Rules, 2007].
(4) Rate of duty is the rate prevalent on the date of presentation of bill of entry or the rate prevalent on the date of entry inwards, whichever is later [Section 15 of the Customs Act, 1962].

(5) Integrated tax is levied on the sum total of the assessable value of the imported goods, customs duties and applicable Social welfare surcharge.

(6) Buying commission is not included in the assessable value [Rule 10(1)(a)(i) of Customs Valuation (Determination of Value of Imported Goods) Rules, 2007].

(7) Freight incurred from port of entry to Inland Container depot is not includible in assessable value [Rule 10(2)(a) of Customs Valuation (Determination of Value of Imported Goods) Rules, 2007].

12. The facts of the given case are similar to the case of Gira Enterprises v. CCus. 2014 (307) ELT 209 (SC) decided by the Supreme Court. In the instant case, the Supreme Court observed that since Revenue did not supply the copy of the computer printout, which formed the basis of the conclusion that the appellants under-valued the imported goods, the appellants obviously could not and did not have any opportunity to demonstrate that the transactions relied upon by the Revenue were not comparable transactions. The Supreme Court held that mere existence of alleged computer printout was not proof of existence of comparable imports. Even if assumed that such printout did exist and content thereof were true, such printout must have been supplied to the appellant and they should have been given reasonable opportunity to establish that the import transactions were not comparable.

In view of the above-mentioned judgment, contention of Kaveri Enterprises is correct.

13. (i) Section 15(1)(b) of the Customs Act, 1962 provides that in the case of goods cleared from a warehouse, rate of duty applicable is the rate of duty in force on the date on which a bill of entry for home consumption in respect of such goods is presented.

In the given case, since M/s Impex has filed the bill of entry for home consumption on 01.08.20XX, rate of duty is the rate prevalent on the said date viz. 30%. 
(ii) Third proviso to section 14 of the Customs Act, 1962 provides that the rate of exchange notified by the CBIC as prevalent on the date of presentation of bill of entry for warehousing is the applicable rate of exchange for conversion of foreign currency into local currency.

Therefore, in the given case, rate of exchange that would be prevalent on date of presentation of bill of entry for warehousing i.e. 05.06.20XX and not the one prevalent on date of presentation of bill of entry for home consumption i.e., 01.08.20XX, would be adopted.

14. [Refer Papa 8]
15. [Refer Papa 8]
16. [Refer Papa 8]
17. [Refer Papa 8]
18. [Refer Papa 10]
SIGNIFICANT SELECT CASES

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

   **Gira Enterprises v. CCus. 2014 (307) ELT 209 (SC)**

   **Facts of the Case:** The appellant imported some goods from China. On the basis of certain information obtained through a computer printout from the Customs House, Department alleged that during the period in question, large number of such goods were imported at a much higher price than the price declared by the appellant. Therefore, Department valued such goods on the basis of transaction value of identical goods as per erstwhile rule 5 [now rule 4 of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007] and demanded the differential duty alongwith penalty and interest from the appellant. However, Department did not provide these printouts to the appellant.

   The appellant contended that Department’s demand was without any basis in law, without any legally admissible evidence and opposed to the principles of natural justice as the computer printout which formed the basis of such demand had not been supplied to them. Resultantly, the appellant had no means of knowing as to whether any imports of comparable nature were made at the relevant point of time.

   **Supreme Court’s Observations:** Supreme Court observed that since Revenue did not supply the copy of computer printout, which formed the basis of the conclusion that the appellants under-valued the imported goods, the appellants obviously could not and did not have any opportunity to demonstrate that the transactions relied upon by the Revenue were not comparable transactions.

   **Supreme Court’s Decision:** The Supreme Court held that mere existence of alleged computer printout was not proof of existence of comparable imports. Even if assumed that such printout did exist and content thereof were true, such printout must have been supplied to the appellant and it should have been given reasonable opportunity to establish that the import transactions were not comparable. Thus, in the given case, the value of imported goods could not be enhanced on the basis of value of identical goods as Department was not able to provide evidence of import of identical goods at higher prices.

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