CHAPTER 4

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. It may be noted that while computing customs duty payable in all the Illustrations and Questions, GST compensation cess and agriculture infrastructure and development cess have been ignored.

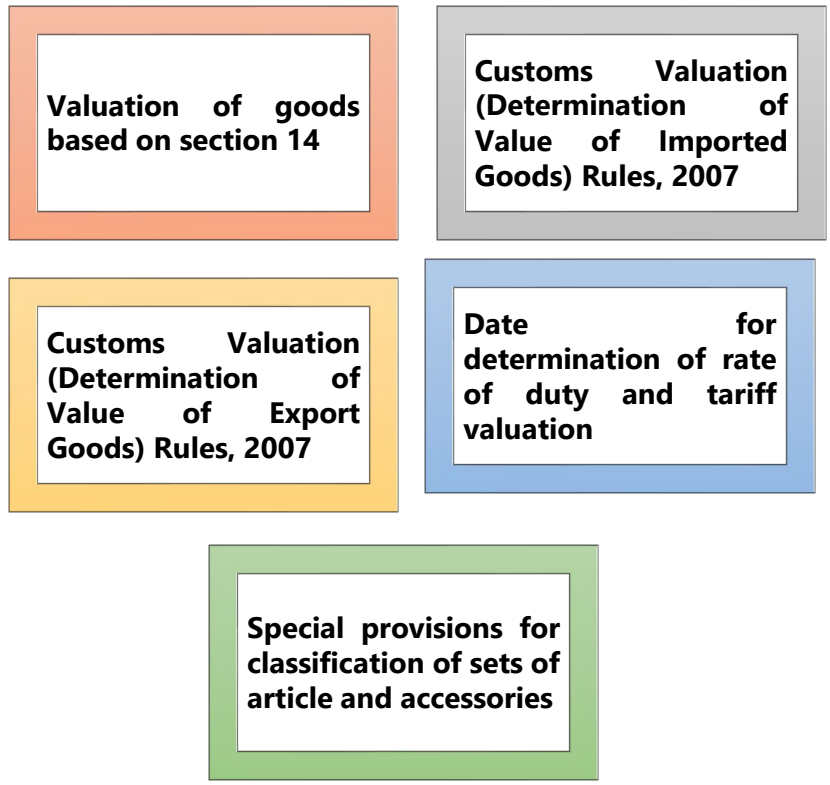
LEARNING OUTCOMES

After studying this chapter, you would be able to:

- comprehend the concept of value in relation to import or export
- analyse and apply the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 and Customs Valuation (Determination of Value of Export Goods) Rules, 2007
- 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/export goods and total customs duty and integrated tax payable on importation.

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CHAPTER OVERVIEW



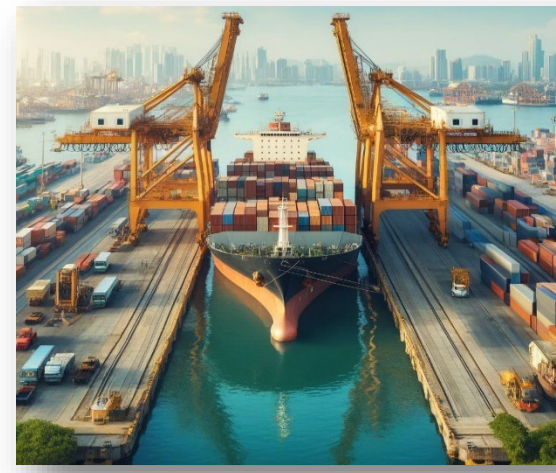
1. INTRODUCTION

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

(a) **Specific duty** where the duty is charged based on the quantity, weight or volume of the goods, rather than their value. For example, specific duty of ₹ 658 per 10 grams of gold; or

(b) ***Ad valorem* duty**, expressed as percentage of the value of the goods. For example, 10% ad valorem duty etc.

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India, like many countries, continues to levy both specific and *ad valorem* duties depending on the product and the policy objectives. In order to determine the customs duty payable on *ad valorem* basis, we need to ascertain the value of goods often called "assessable 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.

The value may be either be:

(i) **Transaction value** under section 14(1) of the Customs Act, 1962, or

(ii) **Tariff Value** under section 14(2) of the Customs Act, 1962.



The provisions of these sections alongwith relevant rules have been discussed in detail in the subsequent paras.

Before that, let us first get conversant with the technical terms relating to value in the course of import or export – International Commercial (INCO) Terms are as follows:

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Ex-Factory Price	F.A.S. (Free Alongside)	F.O.B. (Free on Board)	C.I.F. (Cost Insurance Freight)
•It is the price of the goods at the factory gate. It includes cost of production and manufacturer's margin of profit without cost of freight for outward delivery of goods.	•It is the cost at which the export goods are delivered by the seller to the port of shipment, but not on board. The buyer assumes the costs and risks from that point onwards, including loading the goods onto the ship, transit freight, insurance and further transportation. •It includes ex-factory price +local freight + local taxes.	•FOB means the stage at which the goods are placed on board vessel at the port of shipment. Once the goods are on board, the buyer assumes responsibility for freight, insurance and any other costs related to the transportation. •It can be said to include FAS + loading charges + export duty/cess.	•It is the cost at which the goods are delivered at the Indian port (F.O.B. +Insurance + Freight).

2. 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.

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(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.

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(iv) Such rules may provide for:

(a) the circumstances in which the buyer and the seller shall be deemed to be related;

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

(c) the manner of acceptance 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.

(d) the additional obligations of the importer in respect of any class of imported goods and the checks to be exercised, including the circumstances and manner of exercising thereof, as the Board may specify, where, the Board has reason to believe that the value of such goods may not be declared truthfully or accurately, having regard to the trend of declared value of such goods or any other relevant criteria.

In this regard, the **Customs (Assistance in Value Declaration of Identified Imported Goods) Rules, 2023** are issued to address concerns relating to the undervaluation of imported goods by prescribing procedures and additional obligations in respect of specified classes of imported goods. These rules enable the Central Board of Indirect Taxes and Customs (CBIC) to classify goods that are suspected of undervaluation as "identified goods".

Importers of such goods must provide detailed declarations while filing the bill of entry and adhere to additional obligations, if prompted by the Customs Automated System. If doubts persist about the declared value, further proceedings are to be undertaken in accordance with rule 12 of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 *(discussed subsequently in this chapter)*.

Before applying these rules, the Board must thoroughly examine a report from the Screening and Evaluation Committees. Exceptions to these rules include duty-exempt imports, tariff-valued goods, specific-rate duty goods, project imports, Government imports and imports for re-export. These procedures aim to prevent undervaluation and protect revenue, ensuring truthful import declarations.

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CONVERSION DATES

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



(ii) 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.

CURRENCY CONVERSION RATE

(i) A 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[1].

(ii) "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.

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[1] *The rates of exchange for conversion of foreign currency into Indian rupees, and vice versa, are determined by CBIC under section 14 of the Customs Act, 1962 for import and export goods. These rates are published through the Exchange Rate Automation Module (ERAM) on the ICEGATE website. The rates are generally revised on the 1st and 3rd Thursday of every month and the published rates take effect from 00:00 hrs on the following day. SBI forwards the exchange rate data directly to ICEGATE through an API. The rates for 22 currencies are integrated into the Indian Customs EDI System (ICES) and published for public viewing on ICEGATE (https://www.icegate.gov.in).*

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TARIFF VALUE

(i) Sub-section (2) of section 14 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.



(ii) 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) providing for transaction value.

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

Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 apply to imported goods. The rules are given below:

Rule Nos	Valuation Rules for Imports
2	Definitions
3	Determination of the method of valuation
4	Transaction value of identical goods
5	Transaction value of similar goods
6	Determination of value where value cannot be determined under rules 3, 4 and 5
7	Deductive value
8	Computed value
9	Residual Method
10	Cost and services
11	Declaration by the Importer
12	Rejection of declared value
13	Interpretative notes

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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 –

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(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;



(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.

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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.

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 the 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 atleast 51% of the equity shareholding of the other company.

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.

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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;

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(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.

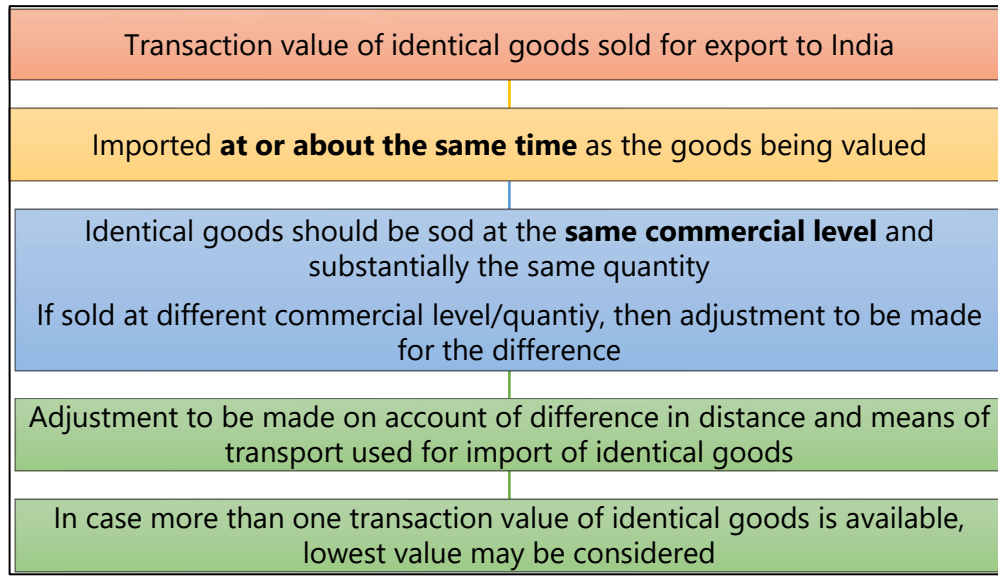
(b) In applying this rule, the transaction value of identical goods in a sale at the same commercial level and in substantially the same quantity as the goods being valued shall be used to determine the value of imported goods.

(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.

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(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.

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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.

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(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.



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(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.

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:-

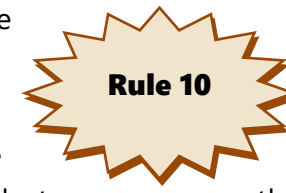
(i) commissions and brokerage, except buying commissions;

(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.

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(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

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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.

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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.

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(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.

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(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.

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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.

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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.

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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



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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:

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(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. In the absence of such an objective measure, however, the determination of a value under the provisions of rule 4 is not appropriate.

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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.

Sale quantity	Unit price	Number of sales	Total quantity sold at each price
1 -10 units	100	10 sales of 5 units 5 sales of 3 units	65
11-25 units	95	5 sales of 11 units	55
Over 25 units	90	1 sale of 30 units 1 sale of 50 units	80

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

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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

Sale quantity	**Unit price**
40 units	100
30 units	90
15 units	100
50 units	95
25 units	105
35 units	90
5 units	100

(b) Totals

Total quantity sold	**Unit price**
65	90
50	95
60	100
25	105

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 rule10 (l)(b), should not be taken into account in establishing the unit price for the purposes of rule 7.

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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.

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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.

Interpretative Notes

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)

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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 competitivity. 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

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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, for which the necessary information can be provided, should be examined. For the purposes of rule 8 "goods of the same class or kind" must be from the same country as the goods being valued.



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 of such methods would be in conformity with the aims and provisions of rule 9.

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.

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(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.

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(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.

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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

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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



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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.

Circular No. 38/2007 Cus. dated 09.10.2007 has been issued to clarify the major changes in the new Import Valuation Rules .

The clarifications are given below for proper application of the Valuation Rules 2007-

(i) Transaction Value has been defined to mean the value referred to in sub-section (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) An **'Explanation' has been added to Rule 10(1)** to clarify that the royalty, license 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.

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(iv) 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 v. Union of India 1999 (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.



(v) 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.

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Circular No. 39/2017 Cus. dated 26.09.2017 clarifies the amendment in Rule 10(2) of Import Valuation Rules 2007. Circular clarifies as follows-

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.

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.

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

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.

Inland Container Depots (ICDs) and Container Freight Stations (CFSs) handle all customs formalities related to import and export of goods.

The primary functions of ICD/CFS are receipt and dispatch/delivery of cargo, stuffing and stripping of containers, customs clearance, temporary storage of cargo and containers, maintenance and repair of container units etc.

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The key differences between ICD and CFS are as under:-

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

Air Freight Station (AFS) - An off-airport common user facility equipped with fixed installations of minimum requirement and offering services for handling and temporary storage of import and export cargo etc. While CFS handles maritime cargo, an AFS is meant to handle air cargo.

Levy of Social Welfare Surcharge on imported goods:

Social welfare surcharge @ 10% has been levied on imported goods. *[For detailed discussion, refer para 15 of Chapter-2.]*

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Levy of Agriculture Infrastructure and Development Cess on imported goods:

Agriculture infrastructure and development cess has been levied on notified imported goods at a specified rate. *[For detailed discussion, refer para 16 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 (Determination of Value of Imported Goods), 2007.

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 10th April. 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 15th April. The machine arrived in India on 18th April.

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

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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 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 tenable in law.

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

Notification No. 95/2007 Cus. (NT) dated 13.09.2007 has notified Customs Valuation (Determination of Value of Export Goods) Rules, 2007. They shall apply to the export goods. The rules are given below:-

Rule No.	Valuation Rules for Exports
2	Definitions
3	Determination of the method of valuation
4	Determination of export value by comparison
5	Computed value method
6	Residual Method
7	Declaration by the Exporter
8	Rejection of declared value

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).

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(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

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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.



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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.

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(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. Valuation Rules for export goods 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

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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

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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.

5. DATE FOR DETERMINATION OF RATE OF DUTY AND TARIFF VALUATION

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:

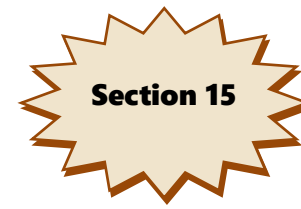
(a) Goods are entered for home consumption under section 46 – The relevant date for the three modes of transport as laid down by section 15(1)(a) read with proviso would be as follows:

(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.

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(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.

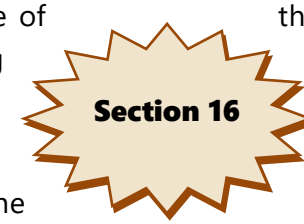
These provisions relating to determination of relevant date do not apply to baggage and imports by post, in which sections 78 and 83 apply respectively.

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 under section 50 (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.

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Answer

Computation of assessable value

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

Notes:

1. If the goods are imported by air, the freight cannot exceed 20% of FOB price [Fifth proviso to rule 10(2) of the Customs Valuation (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:

		US $
(i)	*Cost of the machine at the factory of the exporter*	*10,000*
(ii)	*Transport charges from the factory of exporter to the port for shipment*	*500*

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(iii)	*Handling charges paid for loading the machine in the ship*	*50*
(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

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

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].

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Illustration 7

Compute export duty from the following data:

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

(ii) Shipping bill presented electronically on 26th April.

(iii) Proper officer passed order permitting clearance and loading of goods for export (Let Export Order) on 4th May.

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

	Rate of Exchange	Rate of Export Duty
On 26th April	1 US $ = ₹ 70	10%
On 4th May	1 US $ = ₹ 72	8%

(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

Particulars	Amount (US $)
FOB price of goods [Note 1]	1,00,000
	Amount (₹)
Value in Indian currency (US $ 1,00,000 x ₹ 70) [Note 2]	70,00,000
Export duty @ 8% [Note 3]	**5,60,000**

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.

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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:

S. No.	Quantity imported in metric tonnes	Unit price in US $ (CIF)
1.	20	260
2.	100	220
3.	500	200
4.	900	175
5.	400	180
6.	780	160

The rate of exchange on the relevant date was 1 US $ = ₹ 70 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.

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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**:**

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= 800 x 160 = 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:

(i)	*Price of machine*	*8,000 UK Pounds*
(ii)	*Freight paid (air)*	*2,500 UK Pounds*
(iii)	*Design and development charges paid in UK*	*500 UK Pounds*
(iv)	*Commission payable to local agent of exporter @ 2% of price of machine, in Indian Rupees*	
(v)	*Date of bill of entry*	*24th October (Rate BCD 10%; Exchange rate as notified by CBIC ₹ 100 per UK Pound)*
(vi)	*Date of arrival of aircraft*	*20th October (Rate of BCD 20%; Exchange rate as notified by CBIC ₹ 98 per UK Pound)*
(vii)	*Integrated tax is 18%*	
(viii)	*Insurance charges have been actually paid but details are not available.*	

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

Note: Ignore GST Compensation Cess.

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Answer

Computation of total duty and integrated tax payable

Particular	Amount
Price of machine	8,000 UK pounds
Add: Design and development charges [Note 1]	500 UK pounds
Total	8,500 UK pounds
	(₹)
Total in rupees @ ₹ 100 per pound [Note 2]	₹ 8,50,000.00
Add: Local agency commission [Note 1] (2% of 8000 UK pounds) = 160 UK pounds × ₹ 100	₹ 16,000.00
FOB value as per Customs	8,66,000.00
Add: Air freight (8,66,000 x 20%) [Note 3]	1,73,200.00
Add: Insurance @ 1.125% of customs FOB [Note 4]	9,742.50
CIF Value	10,48,942.50
Assessable value (rounded off)	10,48,943.00
Add: Basic custom duty @ 10% [Note 5]	1,04,894.30
Add: Social Welfare Surcharge @ 10% on ₹ 1,04,894.30	10,489.43
Total	11,64,325.62
Add: Integrated tax @ 18% [Note 7]	2,09,578.61
Total duty and integrated tax payable (Rounded off) (₹ 1,04,894.30+ ₹ 10,489.42+ ₹ 2,09,578.61)	**3,24,962**

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

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value [Rule 10 of the Customs Valuation (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 Valuation (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 Valuation (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 25th April. 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 21st April. 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: 18%

(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.

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Answer

Computation of total customs duty and integrated tax payable

Particulars	₹
Assessable value ($ 10,100 x 65) [Note-1]	6,56,500.00
Add: Basic custom duty @ 10% [Note-2]	65,650.00
Add: Social Welfare Surcharge @ 10% on ₹ 65,650	6,565.00
Total	7,28,715.00
Add: Integrated tax @ 18% [Note-3]	1,31,168.70
Total Customs duty and integrated tax payable (rounded off to nearest rupee)	2,03,384

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 18%, and social welfare surcharge is 10% on duty. Compute the amount of total customs duty and integrated tax payable.

Note: Ignore GST Compensation Cess.

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Answer

Computation of total customs duty and integrated tax payable

	Particulars	₹
1.	Assessable Value	1,00,000
2.	Basic customs duty @ 10%	10,000
3.	Add: Social Welfare surcharge* @ 10% on ₹ 10,000	1000
4.	Sub-total	1,11,000
5.	Integrated tax @ 18% of ₹ 1,11,000	19,980
6.	**Total customs duty and integrated tax payable** [(2) + (3) + (5)]	**30,980**

*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: 20th June [Rate of BCD 20%; Inter-bank exchange rate: ₹ 61.60 and rate notified by CBIC ₹ 70].

(ii) Date of arrival of aircraft in India: 30th June [Rate of BCD 10%; Inter-bank exchange rate: ₹ 61.80 and rate notified by CBIC ₹ 73.00].

(iii) Rate of Integrated tax: 18%. 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%

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Answer

Computation of total customs duty and integrated tax payable

Particulars		Amount
CIF value		2000 US Dollars
Less: Freight	500	
Insurance	100	600 US Dollars
FOB Value		1400 US Dollars
Add: Air Freight [Note1]	280	
Insurance (actual amount)	100	380 US Dollars
		1780 US Dollars
		₹
Value @ ₹ 70.00 [Note 2]		1,24,600.00
Assessable Value		1,24,600.00
Basic Custom Duty @ 10% **(a)** [Note 3]		12,460.00
Add: Social Welfare Surcharge @ 10% on 12,460 **(b)**		1,246.00
Sub-total		1,38,306.00
Integrated tax (18% on₹ 1,38,306) **(c)** [Note 4]		24,895.08
Total duty and integrated tax (a +b + c) (rounded off)		**38,601**

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 Valuation (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].

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(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

15,000 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:

Sl. No.	Particulars	Amount
1.	Freight paid (air) (in USD)	4,500
2.	Design & development charges paid in USA (in USD)	2,500
3.	Commission payable to an agent in India (in ₹)	12,500
4.	Exchange rate notified by CBIC and rate of basic duty is as follows: Date of Bill of Entry — BCD — Exchange Rate in 8th September — 20% — ₹ 70 Date of arrival of aircraft — BCD — Exchange Rate in 30th September — 10% — ₹ 72 The inter-bank rate was 1 USD = ₹ 73	
5.	Integrated tax	18%
6.	Social Welfare surcharge as applicable	

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

Note: Ignore GST Compensation Cess.

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Answer

Computation of total customs duty and integrated tax payable

Particulars	Amount
FOB value computed by Customs Officer (including design and development charges)	20,000 US $
Exchange rate [Note 1]	₹ 70 per $
	₹
FOB value computed by Customs Officer (in rupees)	14,00,000.00
Add: Commission payable to agent in India	12,500.00
FOB value as per Customs	14,12,500.00
Add: Air freight (₹ 14,12,500 × 20%) [Note 2]	2,82,500.00
Add: Insurance (1.125% of ₹ 14,12,500) [Note 3]	15,890.63
CIF value for customs purposes	17,10,890.63
Assessable value	17,10,890.63
Add: Basic custom duty @ 10% (₹17,10,890.63× 10%) – rounded off [Note 4]	1,71,089
Add: Social Welfare surcharge @ 10% on ₹ 1,71,089 rounded off	17,109
Total	18,99,089
Integrated tax @ 18% (₹18,99,089× 18%) [Rounded off] [Note 5]	3,41,836
Total customs duty and integrated tax payable (₹ 1,71,089 + ₹ 17,109 + ₹ 3,41,836)	**5,30,034**

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].

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2. In case of goods imported by air, freight cannot exceed 20% of FOB value [fifth proviso to rule 10(2) of the Customs Valuation (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:

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

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

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

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Date of bill of entry	*Basic customs duty*	*Exchange rate in ₹ (notified by CBIC)*
18th February	*10%*	*102*
Date of arrival of aircraft	*Basic custom duty*	*Exchange rate in ₹ (notified by CBIC)*
15th February	*15%*	*98*

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

Particulars	Amount
CIF value (negotiated price) [Note-1]	5,500 £
Less: Air freight	500 £
Less: Insurance	600 £
FOB value	4,400 £
	₹
FOB Value (in ₹) [4,400 £ x ₹ 102] [Note-2]	4,48,800
Add: Vendor inspection charges [Note-3]	Nil
Add: Commission payable to local agent [1% of FOB value] [Note-4] = (US £ 4,400 × ₹ 102) × 1%	4,488
FOB value as per Customs	4,53,288
Freight [Note-5] [500 £ x ₹ 102]	51,000
Insurance [Note-6] [600 £ x ₹ 102]	61,200
Assessable value	5,65,488

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Add: Basic custom duty @ 10% [Note-7] – rounded off	56,548.80
Social Welfare Surcharge (10% of ₹ 56,548.80) [rounded off]	5,655
Customs duty payable [rounded off]	62,204

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. 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.

3. 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)]*.

4. 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].

5. 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].

6. Actual insurance charges paid are includible in the assessable value as per rule 10(2)(b) 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.

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Illustration 15

F. Ltd. imported a machine from UK in May. 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 20th May 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 25th May 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 18% 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.

Particular	Amount (£)
FOB value	10,000
Add: License fee required to be paid in UK [Note – 1]	400
Customs FOB value	10,400
Exchange rate is ₹ 99 per £ [Note – 2]	
	₹
Value in rupees	10,29,600.00
Add: Air freight [Restricted to 20% of ₹ 10,29,600 (customs FOB value)] [Note – 3]	2,05,920.00

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Insurance @ 1.125% of ₹ 10,29,600 [Note – 4]	11,583.00
Buying commission is not includible in the assessable value [Note – 5]	-
CIF Value	12,47,103.00
Assessable value	12,47,103.00
Rate of duty is 10% [Note – 6]	
Add: Basic custom duty @ 10% (₹ 12,47,103 × 10%) – rounded off (A)	1,24,710
Add: Social Welfare Surcharge (10% of ₹ 1,24,710) [rounded off] (B)	12,471
Value for integrated tax	13,84,284
Add: Integrated tax @ 18% -rounded off (C) [Note – 7]	2,49,171
Total customs duty and integrated tax payable [(A) + (B) + (C)]	**3,86,352**

Note:

1. Licence fee relating to imported goods payable by the buyer as a condition of sale is 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].

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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.

6. 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.

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TERMS USED IN COMMERCIAL PARLANCE

Students may refer the terms and contents of documents used in the International Trade transactions.

(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 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/value addition 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.
(5) Air Consignment Note	It is a document corresponding to Bill of Lading, in the case of cargo imported or exported by air.
(6) Indent	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.

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(7) Quotation	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.
(8) Acceptance	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 *inter alia* 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.
(9) Letter of Credit	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.
(10) Sight draft	A documentary bill of exchange between importer and exporter, promising payment to exporter immediately on delivery of original negotiable documents to the importer through banking channel. It is in contrast to time draft, where importer gets fixed time for making payment after delivery of original negotiable documents to importer.
(11) Delivery Order	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 deliver the consignment to the importer or his agent.
(12) Mate's Receipt	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.

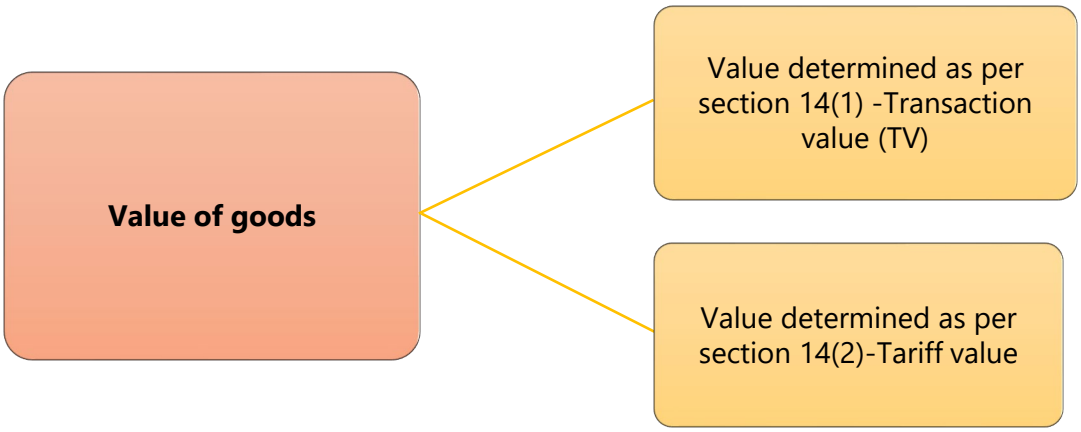
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(13) Retirement of documents	The process of handing over of original negotiable copies of the shipment documents like invoice, packing specification, certificate of origin, by the exporter to importer generally through a banker.
(14) Non-negotiable documents	Since retirement of the original document takes time, non-negotiable documents are given to the importer to facilitate clearance. Negotiable documents require original bill of lading/airway bill to be shown for taking delivery of the cargo. However, non-negotiable bill of lading/airway bill does not require original to be shown by the buyer. Delivery can be given upon authentication of consignee coordinates.
(15) Boat/Lighterage Charge	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.
(16) Customs Broker	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 adequate technical knowledge and expertise has been provided in the form of customs broker.
(17) Insurance cover	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 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.

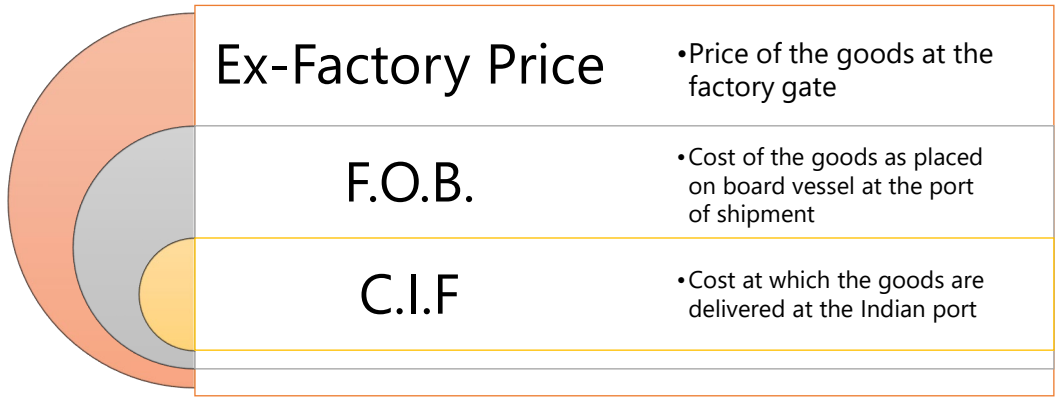
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LET US RECAPITULATE

Value of goods [Section 2(41) of the Customs Act]



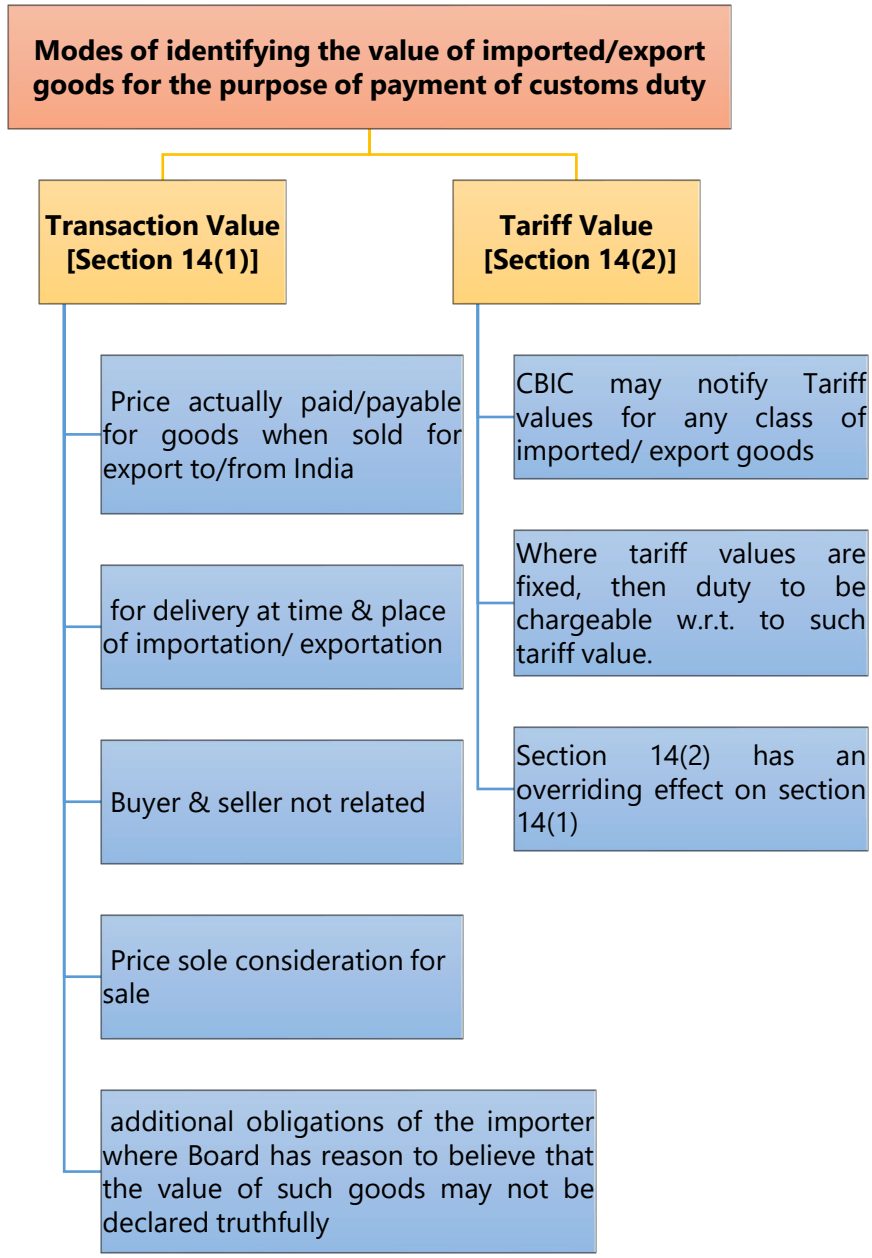
Technical terms relating to value in the course of Import or Export – International Commercial (INCO) Terms



Default mode of valuation = Declared transaction value + Elements that are to be added under law

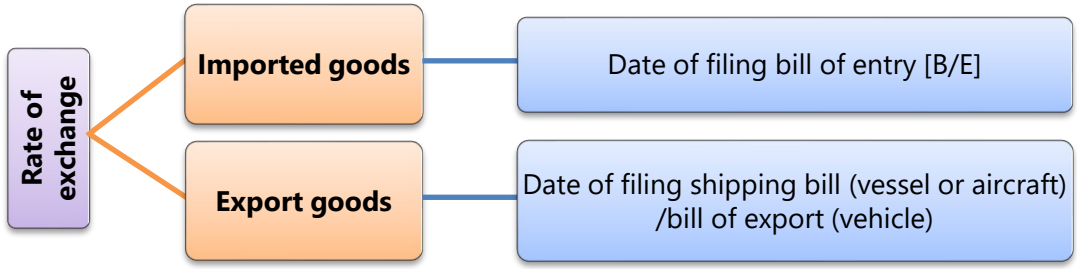
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Valuation of goods based on Section 14

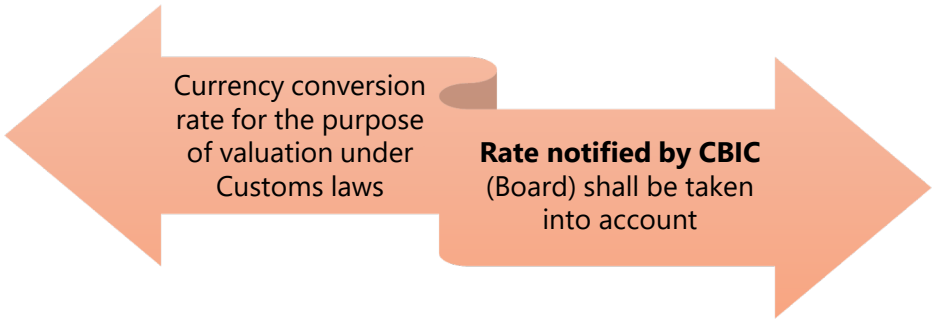


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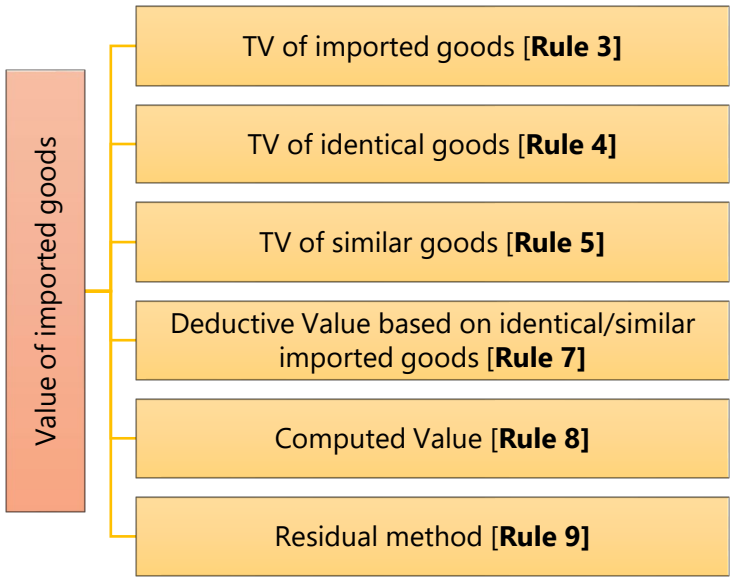
Conversion Dates



Currency conversion rate

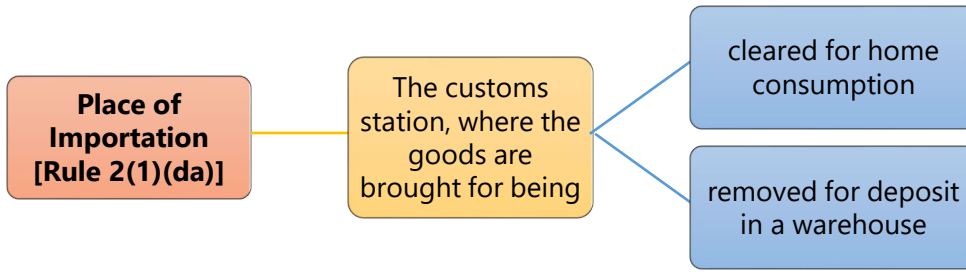


Customs Valuation (Determination of Value of Imported Goods) Rules, 2007

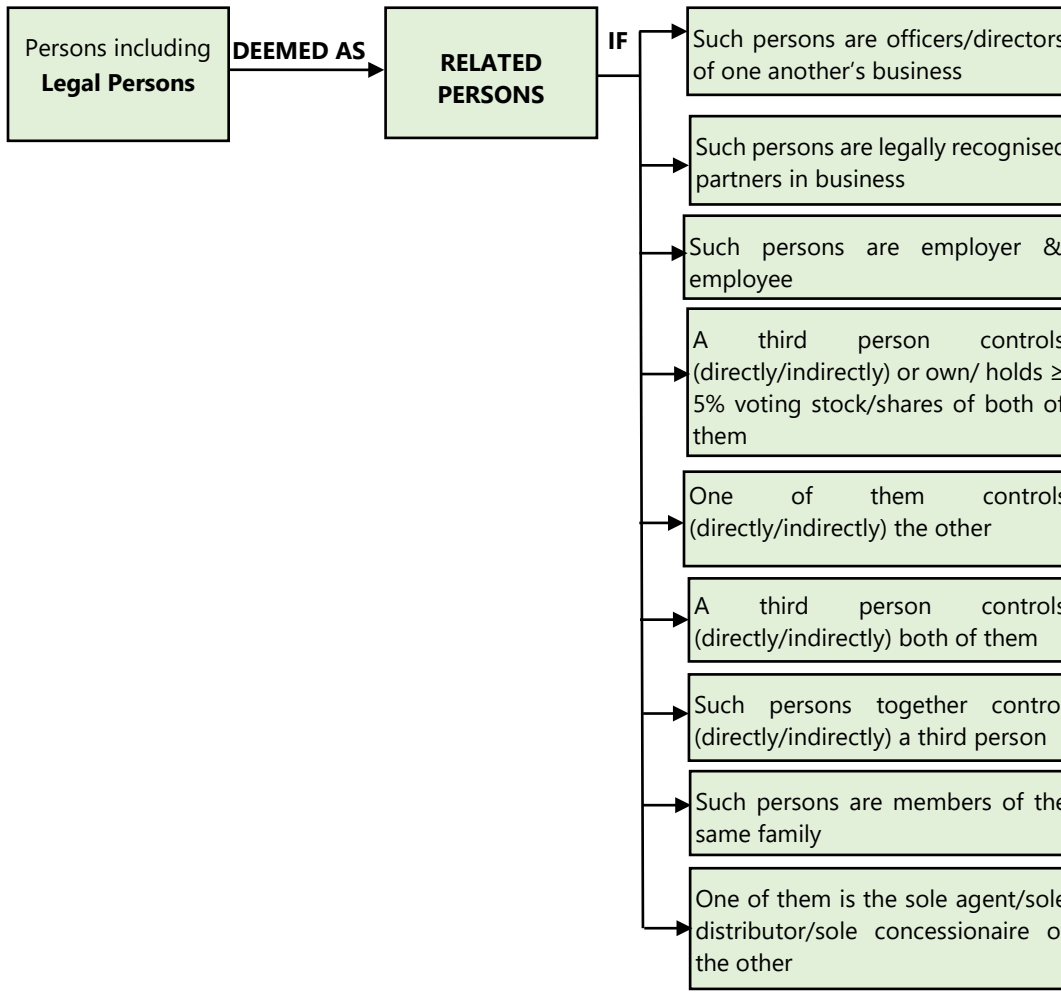


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Rule2 – Definitions
Place of Importation



Related Persons [Rule 2(2)]



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Rule 3 – Determination of the method of valuation

Value of imported goods under rule 3(1) = TV adjusted as per rule 10, subject to rule 12 (i.e. right of rejection by Proper Officer)

Such TV shall be accepted provided that -

- No restriction on buyer for disposal of goods
- Sale/Price is not subject to conditions/consideration for which value cannot be determined
- No further consideration will accrue to seller which is not adjustable as per rule 10
- Buyer & seller are unrelated

If buyer & seller are related, then also TV is accepted

- When relationship didn't influence price &
- Importer proves that price is close to TV of identical/ similar goods, in sales to unrelated buyers; deductive/ computed value of identical/similar goods

Rule 4 – Transaction value of identical goods

Transaction value of identical goods sold for export to India

Imported at or about the same time as the goods being valued

Sold at the same commercial level & substantially the same quantity
If sold at different commercial level/quantiy, then adjustment to be made for the difference

Adjustment to be made on account of difference in distance and means of transport

In case more than one transaction value of identical goods is available, lowest value to be considered

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Rule 5 – Transaction value of similar goods

The principles of valuation of identical goods also apply to valuation of similar goods

Rule 6 – Determination of value where value cannot be determined under rules 3, 4 and 5

Value to be determined under rule 7

Rule 8-when the value cannot be determined under rule 7

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

Rule 7 – Deductive value

Unit price at which imported/identical/similar imported goods are sold in greatest aggregate quantity to unrelated persons in India.

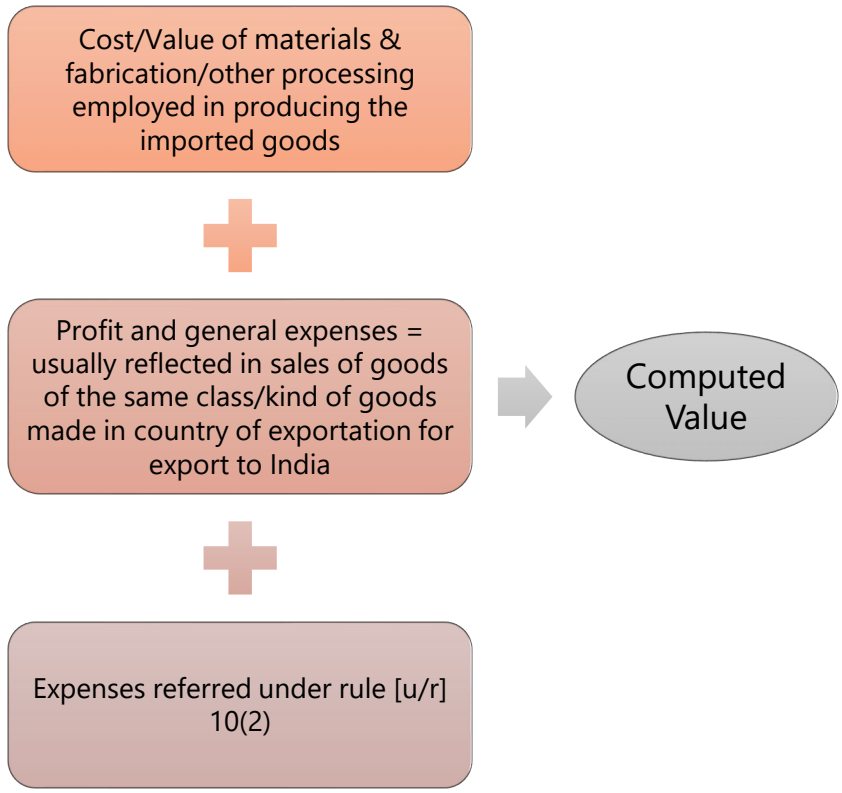
Commission, profit & general sales expenses

Transport, insurance costs & associated costs within India

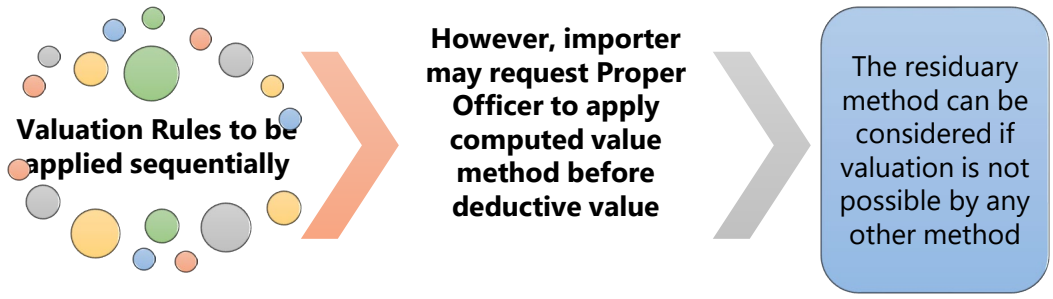
Customs duties & other taxes payable in India

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Rule 8 – Computed value



Method of application of valuation rules



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Rule 9 – Residual method

Value determined using reasonable means consistent with principles & general provisions of these rules and on the basis of data available in India

Value so determined ≤ Normal price of such goods

Residuary method shall not be used for valuation on the basis of—

- (i) 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 2 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/similar goods as per 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.

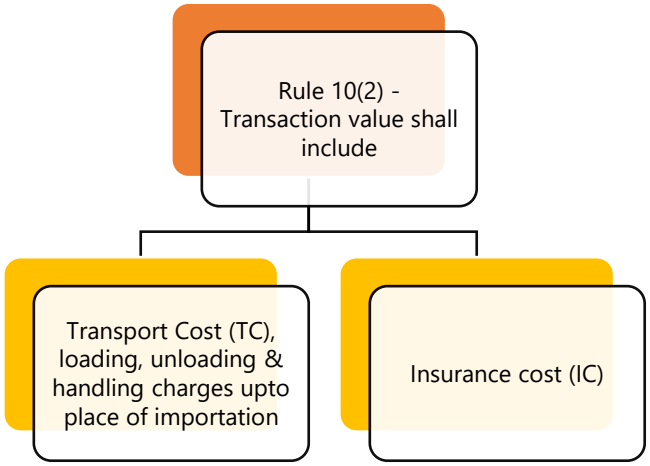
Rule10 – Cost and Services

Rule 10(1) - Costs to be added if not included:

- i) commissions etc. **except buying commissions**, cost of containers/ packing
- ii) engineering, design work etc. **undertaken elsewhere than in India**, materials, tools, dies, consumables etc. used in production of imported goods - supplied free of charge/ at reduced cost
- iii) royalties & license fees as condition of sale
- iv) Proceeds of any subsequent sale accruing to seller
- v) all other payments as condition of sale

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Rule 10(2)



Transport cost [TC]

If TC etc. not ascertainable,	•Transport cost etc = 20% of Customs FOB
If Customs FOB not ascertainable, but Customs FOB + Insurance cost ascertainable	•Transport cost, loading, unloading and handling charges = 20% of (Customs FOB + Insurance cost)

Insurance cost

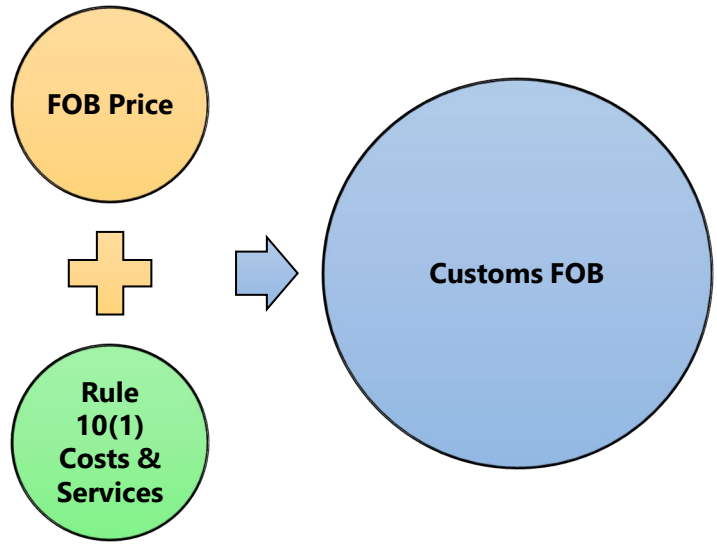
If insurance cost not ascertainable	•Insurance cost = 1.125% of Customs FOB
If Customs FOB not ascertainable, but Customs FOB + TC etc. ascertainable	•Insurance cost = 1.125% of (Customs FOB + transportation cost etc.)

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Key points regarding Transportation cost

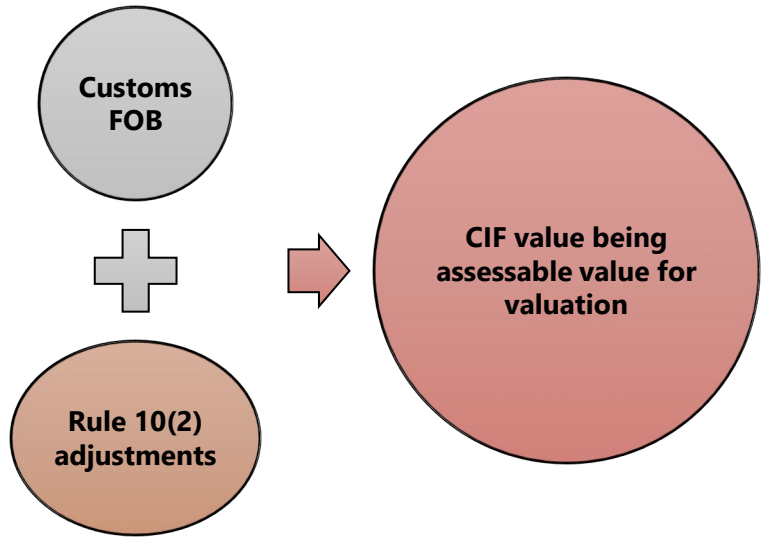
In case of goods imported by **air,** where transport, loading, unloading and handling charges is ascertainable	•such cost shall not exceed 20% of FOB value
In case of goods imported by sea or air and **transshipped** to another customs station in India	•the cost of insurance, transport, loading, unloading, handling charges associated with such transshipment shall be excluded. •TC does not include freight from port to ICD/CFS
Cost of transport of the imported goods	•includes the ship demurrage charges on chartered vessels, lighterage/barge charges.

Customs FOB



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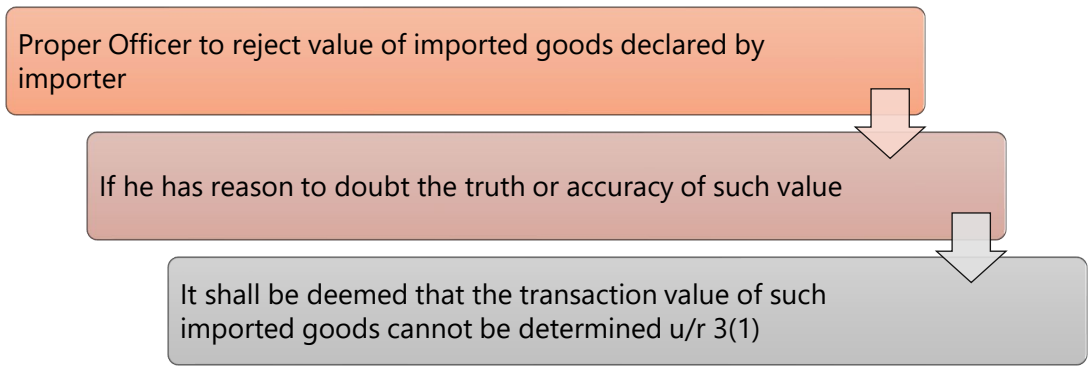
Assessable value



Rule 11 – Declaration by the Importer



Rule 12 – Rejection of declared value



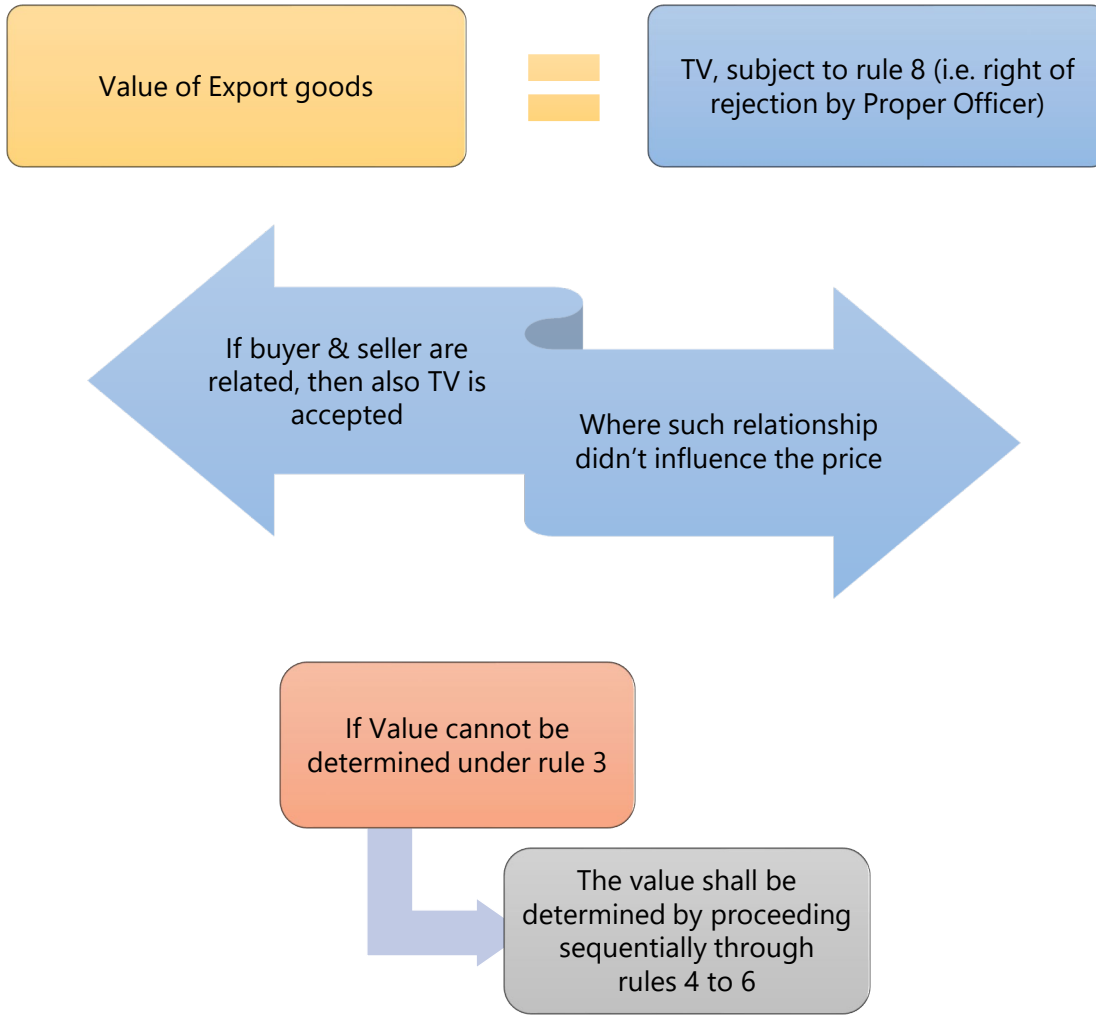
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Customs Valuation (Determination of value of Export goods) Rules, 2007

Rule 2 – Definitions

Goods of like kind and quality [Rule 2(1)(a)]	Export goods which are identical/similar in physical characteristics, quality & reputation as the goods being valued and;
	Perform the same functions/are commercially interchangeable with the goods being valued, produced by the same person/a different person

Rule 3 - Determination of the method of valuation



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Rule 4 - Determination of export value by comparison

Value = Transaction value of **"goods of like kind and quality"** exported at/about the same time to other buyers in the same destination country of importation/in its absence another destination country of importation adjusted by proper officer considering relevant factors, incuding -

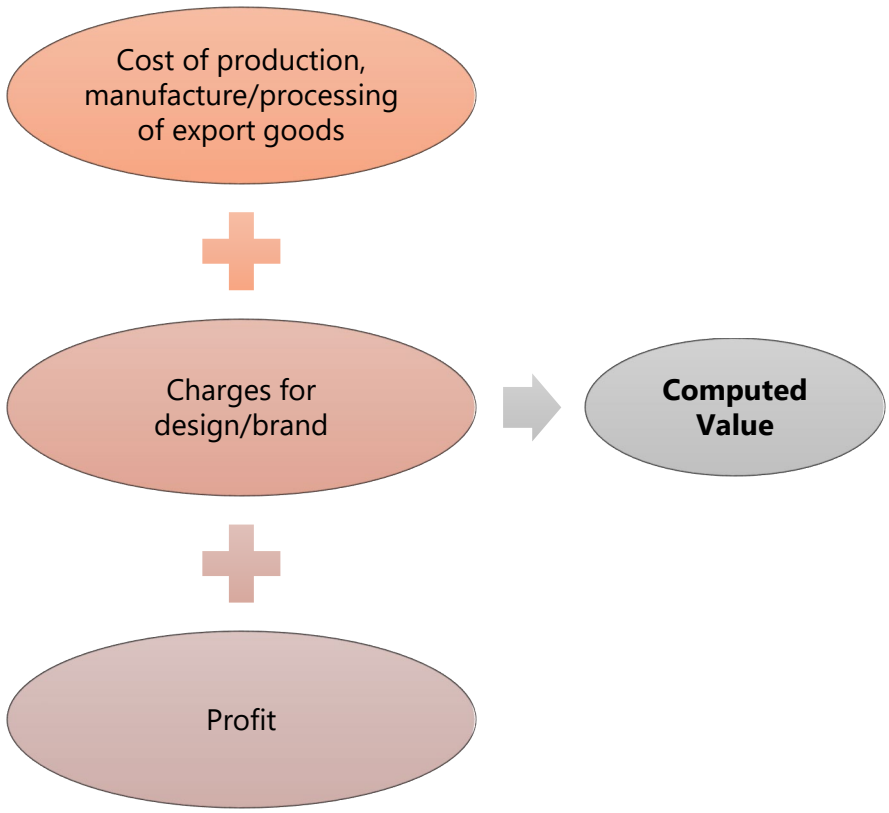
(i) difference in the dates of exportation

(ii) difference in commercial levels & quantity levels

(iii) difference in composition, quality & design

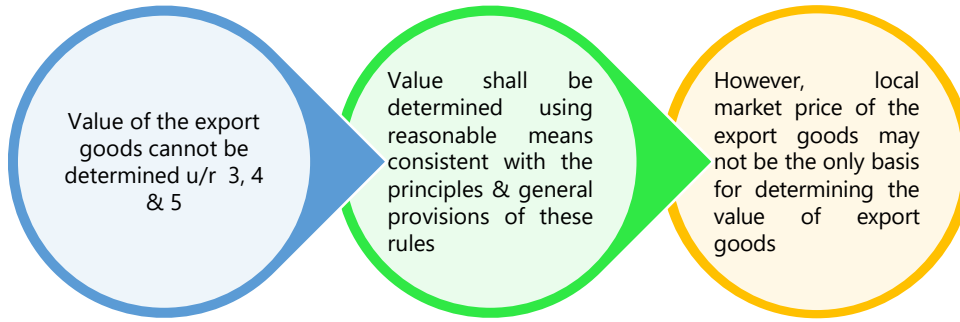
(iv) difference in domestic freight & insurance charges

Rule 5 - Computed value method

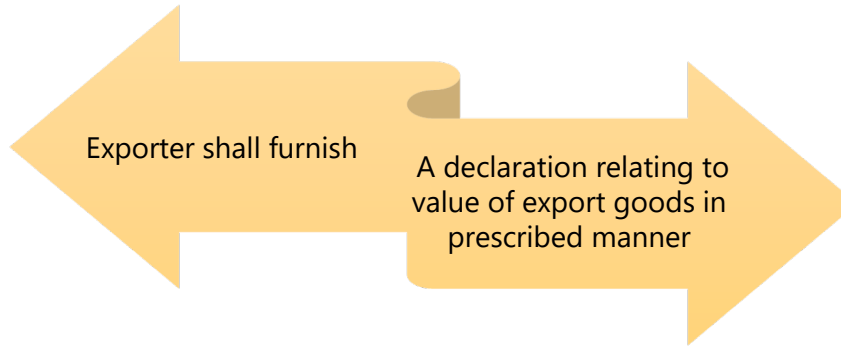


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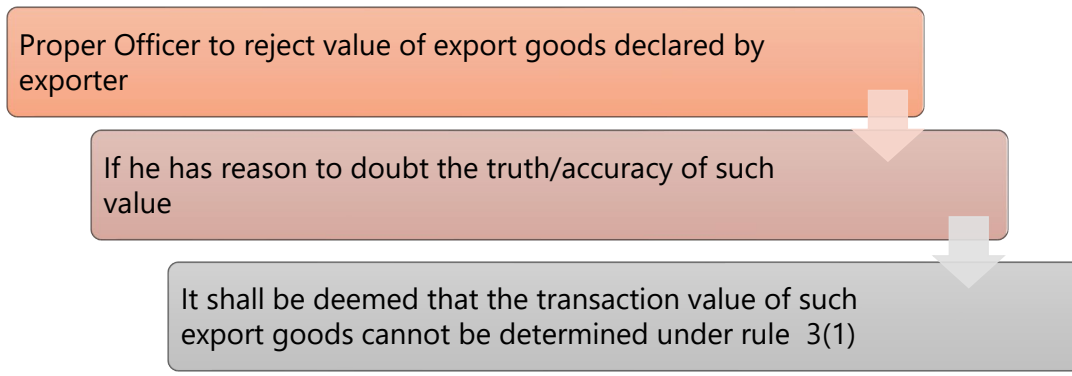
Rule 6 - Residual method



Rule 7 - Declaration by the exporter



Rule 8 - Rejection of declared value



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Date for determination of rate of duty & tariff valuation of imported goods [Section 15]

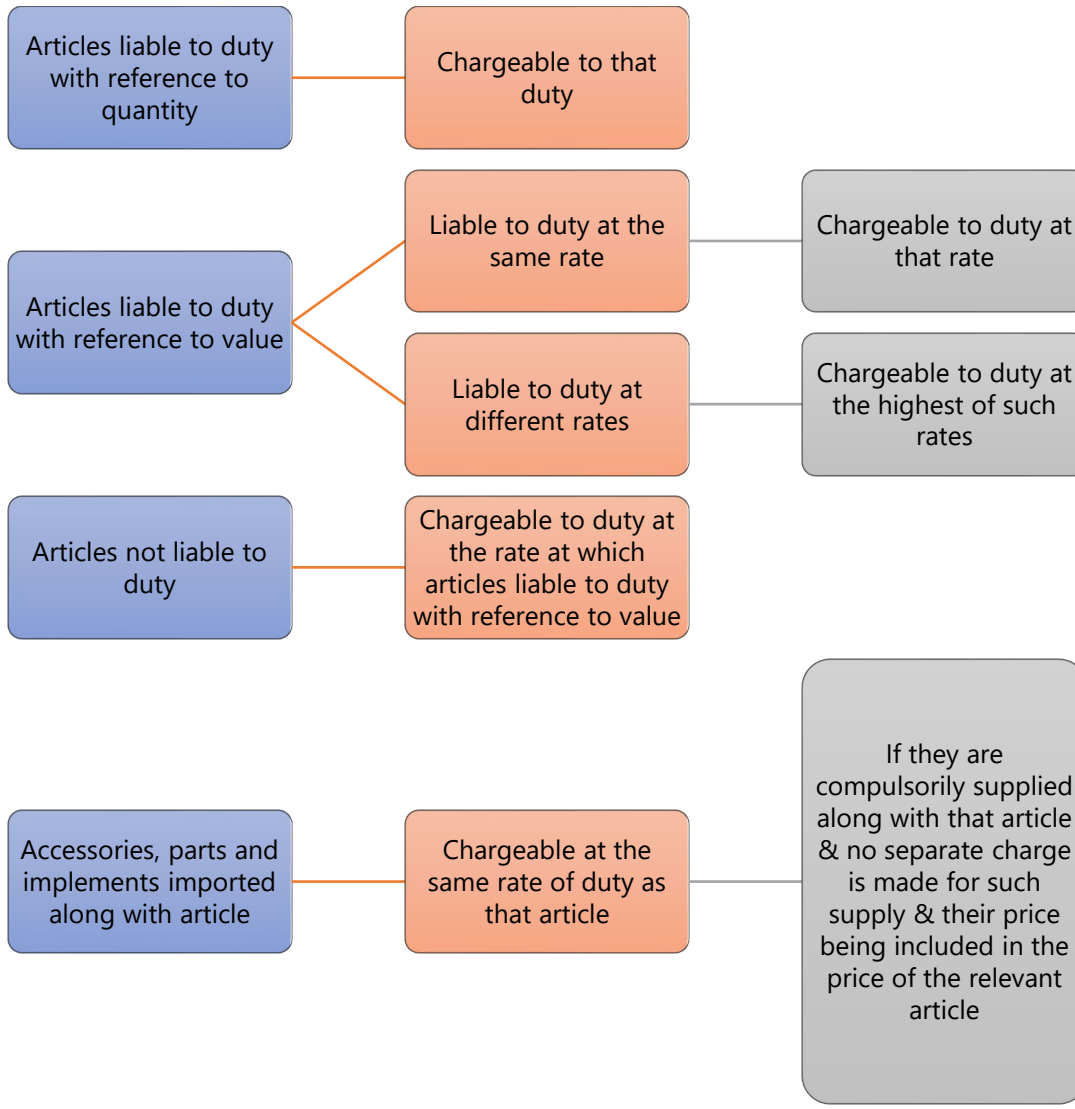
Imported goods	Date for determination of rate of duty/tariff value
Entered for home consumption	Later of (i)Date of filing B/E u/s 46 or (ii)Date of entry inwards of vessel or date of arrival of vehicle/aircraft
Cleared from Warehouse	Date on which B/E for home consumption is presented
Any other goods	Date of payment of duty

Date for determination of rate of duty & tariff valuation of export goods [Section 16]

Export goods	Date for determination of rate of duty/tariff value
Entered for Export	Date of the 'Let Export' order
Any other goods	Date of payment of duty

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Determination of duty where goods consist of a set of articles liable to different rates of duty [Section 19]



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TEST YOUR KNOWLEDGE

1. *Briefly explain the following with reference to the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007:*

   (i) Goods of the same class or kind

   (ii) Computed value

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

3. *Examine the validity of the following statements with reference to the Customs Act, 1962 giving brief reasons:*

   (i) Service charges paid to canalizing agent[2] 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.

4. *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.*

	Particulars	Amount
(i)	Price of the machine	10,000 U.K. Pounds

[2] *A canalising agent refers to a government-authorized organization or entity that has exclusive or special rights to import or export certain goods or commodities of strategic significance. The canalizing agent imports the specified strategic goods in bulk from the foreign sellers and then enters into sale agreement with the various producers or buyers in India. The consideration charged by the canalizing agent includes service charges apart from the purchase value.*

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(ii)	*Freight (air)*	*3,000 U.K. Pounds*
(iii)	*Engineering and design charges paid to a firm in U.K.*	*500 U.K. Pounds*
(iv)	*License fee relating to imported goods payable by the buyer as a condition of sale*	*20% of price of machine*
(v)	*Materials and components supplied in UK by the buyer free of cost valued at ₹ 20,000*	
(vi)	*Insurance paid to the insurer in India*	*₹ 6,000*
(vii)	*Buying commission paid by the buyer to his agent in U.K.*	*100 U.K. Pounds*

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)

5. *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.*

6. *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.*

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

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Authority	Rate of exchange
CBIC	1 US $ = ₹ 70
RBI	1 US $ = ₹ 71

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.

8. *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 @ 18% 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.

9. *Compute the total customs duty and integrated tax payable under Customs law on an imported machine, based on the following information:*

		US $
(i)	Cost of the machine at the factory of the exporter	20,000
(ii)	Transport charges from the factory of exporter to the port for shipment	800
(iii)	Handling charges paid for loading the machine in the ship	50
(iv)	Freight charges from exporting country to India	5,000

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(v)	Buying commission paid by the importer	100
		(₹)
(vi)	Lighterage charges paid by the importer at port of importation	12,000
(vii)	Freight incurred from port of entry to Inland Container depot	60,000
(viii)	Ship demurrage charges paid at port of importation	24,000
Date of bill of entry	20th January (Rate BCD 20%; Exchange rate as notified by CBIC ₹ 70 per US $)	
Date of entry inward	25th March (Rate of BCD 10%; Exchange rate as notified by CBIC ₹ 75 per US $)	
Integrated tax	18%	

Note: Ignore GST Compensation Cess.

10. *M/s Impex imported some consignment of goods on 1st June. A bill of entry for warehousing of goods was presented on 5th June and the materials were duly warehoused. The goods were subject to duty @ 50% ad valorem. In the meanwhile, on 1st July, 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 1st August 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 1st August could be adopted for purpose of conversion of foreign currency into local currency?

11. *Differentiate between deductive value and computed value.*

12. *What is residual method of valuation? Discuss with reference to the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007.*

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13. *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".*

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

    (i) Similar goods

    (ii) Identical goods

15. *Briefly discuss the provisions relating to date for determining the rate of duty and tariff valuation of imported goods.*

16. *Product 'Z' was imported by Mr. X by air. The details of the import transaction are as follows:*

Particulars	US $
Price of 'Z' at exporter's factory	8,500
Freight from factory of the exporter to load airport (airport in the country of exporter)	250
Loading and handling charges at the load airport	250
Freight from load airport to the airport of importation in India	4,500
Insurance charges	2,000

Though the aircraft arrived on 22nd August, the bill of entry for home consumption was presented by Mr. X on 20th August.

The other details furnished by Mr. X are:

	20th August	22nd August
Rate of basic customs duty	20%	10%
Exchange rate notified by CBIC	₹ 70 per US$	₹ 72 per US$
Exchange rate prescribed by RBI	₹ 71 per US$	₹ 72 per US$
Integrated tax leviable under section 3(7) of the Customs Tariff Act, 1975	18%	5%

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Compute-

(i) value of product 'Z' for the purpose of levying customs duty

(ii) customs duty and tax payable

17. *An importer from Cochin imports goods from an exporter in US. The vessel carrying the goods reaches Mumbai port first and from there goods are transshipped to Cochin port.*

Determine the assessable value of the imported goods under the Customs Act, 1962 from the following particulars:

S.No.	Particulars	Amount
(i)	Cost of the machine at the factory of the exporter	US $ 20,000
(ii)	Transport charges from the factory of exporter to the port for shipment	US $ 1,000
(iii)	Handling charges paid for loading the machine in the ship	US $ 100
(iv)	Buying commission paid by the importer	US $ 100
(v)	Freight charges from exporting country to India	US $ 2,000
(vi)	Actual insurance charges paid are not ascertainable	---
(vii)	Charges for design and engineering work undertaken for the machine in US	US $ 5,000
(viii)	Unloading and handling charges paid at the place of importation	₹ 1,500
(ix)	Transport charges from Mumbai to Cochin port	₹ 25,000
(x)	Exchange rate to be considered: 1$ = ₹ 70	

18. *ABC Industries Ltd. of Mumbai imported one machine through vessel from Japan, in the month of November.*

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The following particulars are made available:

S. No.	Particulars	Amount in Japanese Yen (¥)
(i)	Cost upto port of exportation incurred by exporter	6,00,000
(ii)	Loading charges at port of exportation	25,000
(iii)	Freight charges from port of export to port of import in India.	1,00,000

Following additional amounts paid by ABC Industries Ltd:-

S. No.	Particulars	Amount in Indian rupees (₹)
(i)	Designing charges, necessary for such machine, paid to consultancy firm in New Delhi	8,00,000
(ii)	Commission paid (not the buying commission) to local agent of exporter.	1,25,000
(iii)	Actual insurance charges paid to the place of importation are not ascertainable.	-
(iv)	Lighterage charges paid at the port of importation	20,000

Other Information :

(i)	Rate of basic customs duty is 10%
(ii)	Rate of social welfare surcharge is 10%
(iii)	Integrated tax leviable under section 3(7) of Customs Tariff Act, 1975 is 18%.
(iv)	Ignore GST compensation cess.
(v)	Rate of exchange to be taken is 1 Japanese Yen (¥) = ₹ 0.71

Arrive at the total customs duty, including integrated tax payable under section 3(7) of the Customs Tariff Act, 1975 with appropriate working notes.

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19. *Mr. X imported certain goods from a related person Mr. Q of US and transaction value has been rejected. Rules 4 and 5 of the Import Valuation Rules are found inapplicable as no similar/ identical goods are imported in India. Mr. X furnishes cost related data of imports and requests customs authorities to determine value accordingly as per rule 8. The relevant data are*

    1. *Cost of materials incurred by Mr. Q $ 2000*
    2. *Fabrication charges incurred by Mr. Q $ 1000*
    3. *Other chargeable expenses incurred by Mr. Q $ 400*
    4. *Other indirect costs incurred by Mr. Q $ 250*
    5. *Freight from Mr. Q 's factory to US port $ 250*
    6. *Loading charges at US port $ 100*
    7. *Normal net profit margin of Mr. Q is 20% of FOB*
    8. *Air freight from US port to Indian port $ 1,500*
    9. *Insurance from US port to Indian port $ 50*
    10. *Exchange rate ₹ 70 per $*

    The customs authorities are of the opinion that since value as per rule 7 can be determined at ₹ 4,00,000, there is no need to apply rule 8.

    Can the request of Mr. X be legally acceptable? If so, compute the assessable value under the Customs Act, 1962.



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

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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. 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.

3. **(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)]*.

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(ii) The statement is valid. As per rule 10(1)(e) of the Customs Valuation (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)]*.

4. Computation of assessable value of machine imported by BSA & Co.

Particulars	Amount (£)
Price of the machine	10,000
Add: Engineering and design charges paid in UK [Note 1]	500
Licence fee relating to imported goods payable by the buyer as a condition of sale (20% of Price of machine) [Note 1]	2,000
Total	12,500
	Amount (₹)
Value in Indian currency [£12,500 x ₹100] [Note 2]	12,50,000
Add: Materials and components supplied by the buyer free of cost [Note 1]	20,000
FOB	12,70,000
Add: Freight [Note 3]	2,54,000
Insurance paid to the insurer in India [Note 1]	6,000
CIF value	15,30,000
Assessable value	15,30,000

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

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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 Valuation (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 Valuation (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 Valuation (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 Valuation (Determination of Value of Imported Goods) Rules, 2007].

5. 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.

6. 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;

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(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.

7. Computation of total custom duty and integrated tax payable

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

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.

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

Particulars	Amount
CIF value	6,000 US $

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Less: Freight	1,200 US $
Less: Insurance	1,800 US $
FOB value	3,000 US $
Add: Freight (20% of FOB value) [Note 1]	600 US $
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 @ 18% of ₹ 4,19,580 [Note 5]	₹ 75,524.40
Total customs duty and integrated tax payable [₹37,800 + ₹ 3,780 + ₹ 75,524.40]	₹ 1,17,104.40
Total customs duty and integrated tax payable (rounded off)	**₹ 1,17,104**

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 Valuation (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.

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

9. Computation of customs duty and integrated tax payable on the imported goods

Particulars	US $
Cost of the machine at the factory	20,000
Transport charges up to port	800
Handling charges at the port	50
FOB	20,850
FOB value in Indian rupees @ ₹ 70/- per $ [Note 1]	14,59,500
Freight charges up to India [US $ 5,000 x ₹ 70]	3,50,000
Lighterage charges paid by the importer [Note 2]	12,000
Ship demurrage charges on chartered vessels [Note 2]	24,000
Insurance charges @ 1.125% of FOB [Note 3]	16,419.38
CIF	18,61,919.38
Add: Basic customs duty @ 10% [Note 4] **[a]**	1,86,192
Add: Social Welfare surcharge @ 10% **[b]**	18,619.20
Total	20,66,730.58
Add: Integrated tax @ 18% of ₹ 20,66,730.58 **[c]** [Note 5]	3,72,011.50
Total custom duty and integrated tax payable [(a) +(b) + (c)] rounded off	**5,76,823**

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].

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(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].

10. (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 1st August, 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. 5th June and

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not the one prevalent on date of presentation of bill of entry for home consumption i.e., 1st August, would be adopted.

11. [Refer Para 7]

12. [Refer Para 7]

13. [Refer Para 7]

14. [Refer Para 7]

15. [Refer Para 9]

16. Computation of assessable value of product 'Z'

Particulars		Amount
Ex-factory price of the goods		8,500 US $
Freight from factory of the exporter to load airport (airport in the country of exporter)	250 US $	
Loading and handling charges at the load airport	250 US $	
Freight from load airport to the airport of importation in India	4,500 US $	
Total cost of transport, loading and handling charges associated with the delivery of the imported goods to the place of importation	5,000 US $	
Add: Cost of transport, loading, unloading and handling charges associated with the delivery of the imported goods to the place of importation (restricted to 20% of FOB value) [Note 1]		1,800 US $
Insurance (actual)		2,000 US $
CIF for customs purpose		12,300 US $
Value for customs purpose		12,300 US $
Exchange rate as per CBIC [Note 2]		₹ 70 per US $

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	Amount (₹)
Assessable value (₹ 70 x 12,300 US $)	**8,61,000**
Add: Basic customs duty @ 10% [Note 3]	86,100
Add: SWS @ 10%	8,610
Value for the purpose of levying integrated tax [Note 4]	9,55,710
Add: Integrated tax @ 5% (rounded off)	47,786
Total duty & tax payable (rounded off)	**1,42,496**

Notes:

(1) In the case of goods imported by air, the cost of transport, loading, unloading and handling charges associated with the delivery of the imported goods to the place of importation shall not exceed 20% of the FOB value of the goods. [Fifth proviso to rule 10(2) of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 (CVR)].

FOB value in this case is the ex-factory price of the goods (8,500 US $) plus the cost of transport from factory to load airport (250 US $) plus loading and handling charges at the load airport (250 US $) which is 9,000 US $.

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

(3) 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.

(4) Integrated tax is levied on the sum total of the assessable value of the imported goods and customs duties [Section 3(8) of the Customs Tariff Act, 1975]. SWS leviable on integrated tax have been exempted.

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17. Computation of assessable value of imported goods

Particulars	Amount (US $)
Price of the machine at the factory of the exporter	20,000
Add: Transport charges up to the port in the country of the exporter [Note 1]	1,000
Handling charges at the port in the country of the exporter [Note 1]	100
Charges for design and engineering work undertaken for the machine in US [Note 2]	5,000
Buying commission [Note 3]	Nil
FOB value	26,100.00
Add: Freight charges up to India	2,000.00
Insurance charges @ 1.125% of FOB [Note 4]	293.63
Transport charges from Mumbai to Cochin port [Note 5]	Nil
CIF value	28,393.63
Add: Unloading and handling charges paid at the place of importation [Note 6]	Nil
Assessable value	28,393.63
Assessable value in Indian rupees @ ₹ 70/ per $	₹19,87,554.10
Assessable value (rounded off)	₹ 19,87,554

Notes:

(1) The cost of transport, loading, unloading and handling charges associated with the delivery of the imported goods to the place of importation are includible in the assessable value [Rule 10(2)(a) of the

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Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 (CVR)].

(2) Design and engineering work undertaken elsewhere than in India and necessary for the production of the imported goods is includible in the assessable value [Rule 10(1)(b)(iv) of the CVR].

(3) Buying commission is not included in the assessable value [Rule 10(1)(a)(i) of the CVR].

(4) If insurance cost is not ascertainable, the same shall be added @ 1.125% of FOB value of the goods [Third proviso to rule 10(2) of the CVR].

(5) Cost of insurance, transport, loading, unloading, handling charges associated with transshipment of imported goods to another customs station in India is not included in the assessable value [Sixth proviso to rule 10(2) of the CVR].

(6) As per rule 10(2) of the CVR, only charges incurred for delivery of goods "to" the place of importation are includible in the transaction value.

The loading, unloading and handling charges associated with the delivery of the imported goods at the place of importation are not to be added to the CIF value of the goods.

18. Computation of assessable value of the imported goods

	Japanese Yen
Cost upto port of exportation	6,00,000
Add: Loading charges at the port of exportation [Note-1]	25,000
Total in Japanese Yen	6,25,000
	₹
Total in Indian rupees @ ₹ 0.71 per Japanese Yen	4,43,750.00
Add: Commission paid to local agent of exporter [Note-3]	1,25,000.00
FOB value as per customs	5,68,750.00

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Add: Freight charges from port of export to port of import in India [Note-1] [1,00,000 Japanese Yen × 0.71 = ₹ 71,000]	71,000.00
Add: Lighterage charges paid by the importer at port of importation [Note-1]	20,000
Add: Insurance charges @ 1.125% of FOB [₹ 5,68,750 × 1.125%] [Note-4]	6,398.43
CIF value	6,66,148.43
Assessable Value (rounded off)	6,66,148
Add: Basic customs duty @ 10% of ₹ 6,66,148 (rounded off) (A)	66,615
Add: Social welfare surcharge @ 10% of ₹ 66,615 (rounded off) (B)	6,662
Total	7,39,425
Add: Integrated tax @ 18% of ₹ 7,39,425 (rounded off) (C)	1,33,097
Total custom duty and integrated tax payable [(A) +(B) + (C)] (rounded off)	**2,06,374**

Notes:

(1) The cost of transport, loading, unloading and handling charges associated with the delivery of the imported goods to the place of importation are includible in the assessable value [Rule 10(2) of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 (CVR)]. Further, explanation to rule 10(2), *inter alia,* clarifies that cost of transport of the imported goods includes lighterage charges.

(2) Design and engineering work is includible in the assessable value only when the same is undertaken elsewhere than in India and necessary for the production of the imported goods [Rule 10(1) of the CVR].

(3) Buying commission is not included in the assessable value [Rule 10(1) of the CVR]. Commission paid to local agent of exporter is includible in the assessable value since it is not buying commission.

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(4) If insurance cost is not ascertainable, the same shall be added @ 1.125% of FOB value of the goods [Rule 10(2) of the CVR].

(5) Cost of insurance, transport, loading, unloading, handling charges associated with transshipment of imported goods to another customs station in India is not included in the assessable value [Rule 10(2) of the CVR].

19. The value of the imported goods is determined under rule 8 of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 (hereinafter referred to as Import Valuation Rules) if the same cannot be determined under the earlier rules. However, the order of application of rules 7 and 8 can be reversed at the request of the importer and with the approval of the proper officer.

Thus, request of Mr. X for determination of value under rule 8 is legally acceptable, if the same is also approved by the proper officer.

Assuming that the request of Mr. X has been approved by the proper officer, the assessable value of the imported goods under rule 8 will be the sum of-

(a) the cost of materials and fabrication or other processing;

(b) an amount for profit and general expenses

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

Computation of assessable value

Particulars	Amount ($)
Cost of materials	2,000
Add: Fabrication charges	1,000
Other chargeable expenses	400
Other indirect costs	250
Cost of the goods at Mr. Q's factory	3,650
Add: Net profit margin @ 20% of FOB, i.e. 25% of total cost	1,000

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	Total cost till US port = Cost of the goods at factory + Freight from factory to US port and loading charges at US port = $ 4,000 [$ 3,650 + $ 250 + $ 100] FOB value = Total cost till port + profit = $ 5,000 ($ 4,000 +$ 1,000)	
Add:	Freight & loading/unloading charges [In case of import by air, the cost of transport, loading, unloading and handling charges associated with the delivery of the imported goods to the place of importation are restricted to 20% of FOB value]	1,000
	Insurance charges	50
Assessable value		5,700
Assessable value in Indian Rupees (Exchange rate - ₹ 70 per $)		3,99,000

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SIGNIFICANT SELECT CASES

1. In case of import of crude oil, whether customs duty is payable on the basis of the quantity of oil shown in the bill of lading or on the actual quantity received into shore tanks in India?

Mangalore Refinery & Petrochemicals Ltd v. CCus. 2015 (323) ELT 433 (SC)

Facts of the Case: The assessee imported crude oil. On account of ocean loss, the quantity of crude oil shown in the bill of lading was higher than the actual quantity received into the shore tanks in India. The assessee paid the customs duty on the actual quantity received into the shore tanks.

Point of Dispute: The Department contended that the quantity of crude oil mentioned in the various bills of lading should be the basis for payment of duty, and not the quantity actually received into the shore tanks in India. This was stated on the basis that duty was levied on an *ad valorem* basis and not on a specific rate. The assessee contended that it makes no difference as to whether the basis for customs duty is at a specific rate or is *ad valorem*, in as much as the quantity of goods at the time of import alone is to be looked at.

Tribunal's Observations: The Tribunal accepted the Department's contentions on the basis of the following reasons:

(i) Duty ought to be levied on the total payment made by the assessee irrespective of the quantity received.

(ii) An *ad valorem* duty would necessarily lead to this result but duty levied at the specific rate would not. The quantity of goods to be considered in the latter case will only be the quantity of crude oil received in the shore tank.

(iii) Section 14 of the Customs Act, 1962 kicks in when the duty is on an *ad valorem* basis and sections 13 and 23 of the Act do not stand in the way because it is not the question of demanding duty on goods not received, but it is the demand of duty on the transaction value. In spite of the "ocean loss", the assessee has to make payment on the basis of the bill of lading quantity.

Supreme Court's Observations: The assessee raised the issue before the Supreme Court. The Apex Court noted the following:

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(i) The levy of customs duty under section 12 of the Act 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.

(ii) 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 happen 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.

(iii) 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 gets 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.

(iv) 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.

The Supreme Court stated that Tribunal's reasoning for concluding that the bill of lading quantity alone should be considered for the purpose of valuing the imported goods is incorrect in law. The Apex Court examined each of the reasons given by the Tribunal as under:

(i) The Tribunal lost sight of the fact that a levy in the context of import duty can only be on imported goods, that is, on goods brought into India from a place outside of India. Till that is done, there is no charge to tax.

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(ii) The taxable event in the case of imported goods is "import". The taxable event in the case of a purchase tax is the purchase of goods. The quantity of goods stated in a bill of lading would perhaps reflect the quantity of goods in the purchase transaction between the parties, but would not reflect the quantity of goods at the time and place of importation. A bill of lading quantity, therefore, could only be validly looked at in the case of a purchase tax but not in the case of an import duty.

(iii) The Tribunal wholly lost sight of sections 13 and 23 of the Act. Where goods which are imported are lost, pilfered or destroyed, no import duty is leviable thereon until they are out of customs and come into the hands of the importer. It is clear, therefore, that it is only at this stage that the quantity of the goods imported is to be looked at for the purposes of valuation.

(iv) The basis of the judgment of the Tribunal is on a complete misreading of section 14 of the Customs Act. First and foremost, the said section is a section which affords the measure for the levy of customs duty which is to be found in section 12 of the said Act. Even when the measure talks of value of imported goods, it does so at the time and place of importation, which again is lost sight of by the Tribunal.

(v) The Tribunal's reasoning that somehow when customs duty is *ad valorem* the basis for arriving at the quantity of goods imported changes, is wholly unsustainable. Whether customs duty is at a specific rate or is *ad valorem* does not make the least difference to the statutory scheme. Customs duty whether at a specific rate or *ad valorem* is not leviable on goods that are pilfered, lost or destroyed until a bill of entry for home consumption is made or an order to warehouse the goods is made. This is for the reason that the import is not complete until what has been stated above has happened.

Supreme Court's Decision: The Supreme Court set aside the Tribunal's judgment and declared that the quantity of crude oil actually received into a shore tank in a port in India should be the basis for payment of customs duty.

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2. Whether the marketing, advertising, sponsorship and promotional expenses/payments should be includible in assessable value of imported goods as per rule 10(1)(e) of Customs Valuation Rules?

The Commissioner of Customs v. M/s Indo Rubber and Plastic Works 2021 (378) ELT A141(SC)

Facts of the Case: The assessee entered into distribution agreement with the exporter for the purpose of import and sale of 'Li Ning' branded sports goods within India.

Point of Dispute: The Department alleged that marketing, advertising, sponsorship and promotional expenses/ payments made by the assessee to promote the 'Li Ning' brand was a condition of sale and consequently, such amount was liable to be included in the value of the imported goods in terms of rule 10(1)(e) of the Customs Valuation Rules.

Tribunal's observation: The Tribunal rejected the Department's contentions on the basis of the following reasons:-

i. There was nothing in the agreement that a fixed amount or fixed percentage of the invoice value of the imported goods, was obliged to be spent by the assessee towards sales promotion/ advertisement, **as a condition of sale/ import**.

ii. The activity of **advertisement and sales promotion was a post import activity** incurred by the assessee on its own account and not for discharge for any obligation of the seller under the terms of sale.

iii. The assessee **importer was not obliged to give any account of expenditure incurred by it to the exporter**, unless such expenditure was incurred at the instance of the exporter under stipulation of reimbursement.

Supreme Court's Decision: The Apex Court upheld the tribunal's decision, rejecting the Department's claim, by holding that the **marketing, advertising, sponsorship and promotional expenses/payments made by the assessee for promotion of brand is not includible in assessable of imported goods** and thus, rule 10(1)(e) of the Customs Valuation Rules is not invokable.

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