

# INDIRECT TAX

## Index

Sr. No.	Chapter	Page No
<b>Part 1 - GST</b>		
1	Supply under GST	1 - 88
2	Charge of GST and Composition Levy	89 - 125
3	Place of Supply	126 - 202
4	Exemptions from GST	203 - 283
5	Time of Supply	284 - 297
6	Value of Supply	298 - 337
7	Input Tax Credit	338 - 402
8	Registration	403 - 447
9	Tax Invoice; Credit and Debit Notes	448 - 481
10	Accounts and Records; E-way Bill	482 - 507
11	Payment of Tax	508 - 527
12	Electronic Commerce Transactions under GST	528 - 544
13	Returns	545 - 581
14	Import and Export under GST	582 - 614
15	Refunds	615 - 645
16	Job Work	646 - 655
17	Assessment and Audit	656 - 666
18	Inspection, Search, Seizure and Arrest	667 - 674

19	Administration, Demands and Recovery	675 - 713
20	Liability to Pay in Certain Case	714 - 719
21	Offences and Penalties and Ethical Aspects under GST	720 - 745
22	Appeals and Revision	746 - 772
23	Advance Rulings	773 - 779
24	Miscellaneous	780 - 802
<b>Part - 2</b>		
1	Levy of an Exemptions from Custom Duty	1-33
2	Types of Duty	34 - 53
3	Classification of Imported and Export Goods	54 - 62
4	Valuation under the Customs Act 1962	63 - 84
5	Importation and Exportation of Goods	85 - 119
6	Warehousing	120 - 130
7	Refunds	131 - 138
8	Foreign Trade Policy	139- 193

***CUSTOMS***

***PART - 2***



## TOPIC REFERENCER

- ⇒ *Constitutional Provisions and Definitions*
- ⇒ *Taxable Event and Date for Determination of Duty and Tariff Valuation in Case of Imported or Export Goods*
- ⇒ *Assessment, Provisional Assessment and Duty Liability of Goods in Sets*
- ⇒ *Remission/Abatement of Duty - Pilfered Goods, Damaged or Deteriorated Goods, Lost or Destroyed Goods*
- ⇒ *Derelict, Floatsam etc., Denatured or Mutilated Goods, Re-imported Goods*
- ⇒ *Power of Central Government to grant exemption from duty*
- ⇒ *Customs (Import of Goods at Concessional Rate of Duty or for Specified End Use) Rules, 2022*

### CONSTITUTIONAL PROVISIONS AND DEFINITIONS

1. Explain the constitutional authority for levy of customs duty and the body of Customs Law. (5 Marks, Jan.2021)

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

Thus, the power to make laws in respect of Customs duty vests with the Central Government. The tax receipts on account of customs duty are solely enjoyed by the Union.

The body of the Customs Law comprises of,–

1.	The Customs Act, 1962	It extends to the whole of India and, save as otherwise provided in this Act, it applies also to any offence or contravention thereunder committed outside India by any person. It provides for levy of import and export duties of customs on goods imported into or exported from India through sea, air or land. It contains provisions of levy and collection of duty, importation or exportation, transit and transshipment, prohibitions, warehousing, duty drawback, appeals, settlement, advance rulings, offences and prosecution etc.
2.	The Customs Tariff Act, 1975	The Customs Tariff Act, 1975 has been enacted for classification of goods. The various types of custom duties to be levied on the importation and exportation of the articles are provided under this Act. It contains two Schedules : a) The <b>First Schedule</b> is known as, " <b>Import Tariff</b> " and it refers to goods liable to import duties of customs.

## CHAPTER 1 – LEVY OF EXEMPTIONS FROM CUSTOMS DUTY

		b) The <b>Second Schedule</b> is known as, " <b>Export Tariff</b> " and it refers to goods liable to export duties of customs.
3.	Rules	Section 156 of the Customs Act, 1962 empowers the <b>Central Government</b> to make rules. Such rules may provide for matters relating to the manner of determining the value of imported goods/export goods, duty drawback, baggage etc. The Rules so framed are consistent with the provisions of the Customs Act, 1962.
4.	Regulations	The <b>Central Board of Indirect Taxes and Customs</b> is empowered under Section 157 of the Customs Act, 1962 to make regulations to carry out the purposes of the Act. The Regulations so framed are consistent with the provisions of the Act as well as the rules framed by Central Government.
5.	Notifications	The <b>Central Government</b> has been empowered to issue notifications under various sections of the Customs Act, 1962 for effective implementation of the provisions of the Customs Act, 1962.

Define the following:

Term	Definition
Adjudicating Authority	<p>Means –</p> <ul style="list-style-type: none"> <li>✓ any authority competent to pass any order or decision under this Act,</li> <li>✓ but does not include the Board, Commissioner (Appeals) or Appellate Tribunal. [Section 2(1)] (Nov. 2005)</li> </ul> <p>The Superintendent, Assistant Commissioner, Deputy Commissioner, Joint Commissioner and Principal Commissioner or Commissioner of Customs are adjudicating authorities. Adjudicating Authority adjudicates the cases i.e. it issues show cause notices in case of short levy/non-levy of duty or non-payment/short-payment of any duty and after giving the assessee an opportunity of being heard, passes its decision or order. In case, if any person is aggrieved by such decision or order, appeal can be filed to the concerned Appellate authority i.e. Commissioner (Appeals) and Appellate Tribunal. The Board (CBIC) is not an adjudicating authority but is an administrative authority.</p>
Aircraft	The same meaning as in the Aircraft Act, 1934. [Section 2(1A)]
Appellate Tribunal	Means the Customs, Excise and Service Tax Appellate Tribunal constituted under section 129. [Section 2(1B)]
Assessment	Means determination of the dutiability of any goods and the amount of duty, tax, cess or any other sum so payable, if any, under

## CHAPTER 1 – LEVY OF EXEMPTIONS FROM CUSTOMS DUTY

	<p>this Act or under the Customs Tariff Act, 1975 or under any other law for the time being in force, with reference to—</p> <ol style="list-style-type: none"> <li>a) the tariff classification of such goods as determined in accordance with the provisions of the Customs Tariff Act;</li> <li>b) the value of such goods as determined in accordance with the provisions of this Act and the Customs Tariff Act;</li> <li>c) exemption or concession of duty, tax, cess or any other sum, consequent upon any notification issued therefor under this Act or under the Customs Tariff Act or under any other law for the time being in force;</li> <li>d) the quantity, weight, volume, measurement or other specifics where such duty, tax, cess or any other sum is leviable on the basis of the quantity, weight, volume, measurement or other specifics of such goods;</li> <li>e) the origin of such goods determined in accordance with the provisions of the Customs Tariff Act or the rules made thereunder, if the amount of duty, tax, cess or any other sum is affected by the origin of such goods;</li> <li>f) any other specific factor which affects the duty, tax, cess or any other sum payable on such goods, and includes provisional assessment, self-assessment, re-assessment and any assessment in which the duty assessed is nil. [Section 2(2)]</li> </ol>
Baggage	Includes unaccompanied baggage but does not include motor vehicles. [Section 2(3)]
Beneficial owner	Means any person on whose behalf the goods are being imported or exported or who exercises effective control over the goods being imported or exported. [Section 2(3A)]
Bill of Entry	Means a bill of entry referred to in Section 46. [Section 2(4)] Bill of entry is the basic document for assessment of customs duty. The importer has to present electronically bill of entry for clearance of imported goods.
Bill of Export	Means a bill of export referred to in Section 50. [Section 2(5)]
Board	Means the Central Board of Indirect Taxes and Customs constituted under the Central Boards of Revenue Act, 1963. [Section 2(6)]
Coastal goods	Means goods, other than imported goods, transported in a vessel from one port in India to another. [Section 2(7)] (Nov. 2003)
Commissioner (Appeals)	Means a person appointed to be a Commissioner of Customs (Appeals) under section 4(1) of the Act. [Section 2(7A)]

## CHAPTER 1 – LEVY OF EXEMPTIONS FROM CUSTOMS DUTY

Common portal	<p>Means the Common Customs Electronic Portal referred to in section 154C; [Section 2(7B)]</p> <p>Common Customs Electronic Portal [154C] : The Board may notify a common portal, to be called the Common Customs Electronic Portal, for –</p> <ul style="list-style-type: none"> <li>✓ facilitating registration,</li> <li>✓ filing of bills of entry, shipping bills, other documents and forms prescribed under this Act or under any other law for the time being in force or the rules or regulations made thereunder,</li> <li>✓ payment of duty, and</li> <li>✓ for such other purposes, as the Board may, by notification, specify. Vide notification no. 33/2021-Cus (NT) dated 29-03-2021 <a href="https://www.icegate.gov.in">https://www.icegate.gov.in</a> has been notified as the Common Customs Electronic Portal.</li> </ul>
Principal Commissioner of Customs or Commissioner of Customs	<p>Except for the purposes of Chapter XV of the Customs Act 1962, includes an Additional Commissioner of Customs. [Section 2(8)]</p> <p>Chapter XV of the Customs Act, 1962, contains the provisions of Appeals and Revision. For the purpose of said chapter, Additional Commissioner is treated as an authority lower in rank to Principal Commissioner or Commissioner.</p>
Conveyance	<p>Includes a vessel, an aircraft and a vehicle. [Section 2(9)] (May 2007, Nov. 2014)</p>
Customs airport	<p>Means,—</p> <ul style="list-style-type: none"> <li>✓ any airport appointed under section 7(a) to be a customs airport,</li> <li>✓ and includes a place appointed u/s7(aa) to be an air freight station.[Sec2(10)]</li> </ul>
Customs area	<p>Means,—</p> <p>the area of a customs station or a warehouse;</p> <p>and includes any area in which imported goods or export goods are ordinarily kept before clearance by Customs Authorities. [Section 2(11)] (5 Marks: June 2009 &amp; Nov. 2003)</p>
Customs port	<p>Means,—</p> <ul style="list-style-type: none"> <li>✓ any port appointed u/s 7(a) to be a customs port,</li> <li>✓ and includes a place appointed u/s 7(aa) to be an inland container depot. [Section 2(12)] (Nov. 2006)</li> </ul>
Customs station	<p>Means any customs port, customs airport, international courier terminal, foreign post office or land customs station. [Section 2(13)] (May 2000)</p>

## CHAPTER 1 – LEVY OF EXEMPTIONS FROM CUSTOMS DUTY

Dutiable goods	<p>Means,—</p> <ul style="list-style-type: none"> <li>✓ any goods which are chargeable to duty, and</li> <li>✓ on which duty has not been paid. [Section 2(14)] (Nov. 2000, May 2007)</li> </ul> <p>The Supreme Court in <i>Associated Cement Companies Ltd. v. CC</i> [2001] 128 ELT 21 (SC) has held that the expression "chargeable to duty on which duty has not been paid" indicates that,—</p> <ul style="list-style-type: none"> <li>✓ If goods are chargeable with Nil rate of duty, then they are not dutiable goods since no duty can be paid at nil rate.</li> <li>✓ If goods are chargeable with duty and duty has been paid, then after such payment, the goods cease to be dutiable goods.</li> </ul> <p>Therefore, the goods on which no custom duty is payable either due to exemption notification or no duty is specified in tariff, will not be regarded as dutiable goods.</p>
Duty	Means a duty of customs leviable under this Act. [Section 2(15)]
Entry	<p>In relation to goods means an entry made in,—</p> <ul style="list-style-type: none"> <li>✓ a bill of entry,</li> <li>✓ shipping bill or bill of export</li> </ul> <p>and includes the entry made under the regulations made u/s 84. [Section 2(16)] (May: 1998, 2001, 2005)</p>
Examination	In relation to any goods, includes measurement and weightment thereof. [Section 2(17)]
Export	With its grammatical variations and cognate expressions, means taking out of India to a place outside India. [Section 2(18)]
Export goods	<p>Means any goods which are to be taken out of India to a place outside India. [Section 2(19)]</p> <p>Thus, the goods intended for export, when brought to the port and shipping bills for export of the same filed, become export goods. But, where the goods had already been exported pursuant to the order made under section 51 of the Customs Act, 1962, such goods cannot be deemed to be 'export goods' within the meaning of this sub-section.</p> <p>Export goods v. Exported goods : There is a distinction between export goods and exported goods. The former is one, which is to be taken out of India (and not taken out of India) while the latter is one, which has already crossed the territorial waters of India.</p>
Exporter	In relation to any goods at any time between their entry for export and the time when they are exported, includes any owner, beneficial owner or any person holding himself out to be the exporter. [Section 2(20)]

## CHAPTER 1 – LEVY OF EXEMPTIONS FROM CUSTOMS DUTY

Foreign post office	Means any post office appointed under section 7(1)(e) to be a foreign post office. [Section 2(20A)]
Foreign-going vessel or aircraft	<p>Means,—</p> <ul style="list-style-type: none"> <li>✓ any vessel or aircraft for the time being engaged in the carriage of goods or passengers between any port or airport in India and any port or airport outside India, whether touching any intermediate port or airport in India or not, and</li> <li>✓ includes –                             <ul style="list-style-type: none"> <li>a) Any naval vessel of a foreign Government taking part in any naval exercises;</li> <li>b) Any vessel engaged in fishing or any other operations outside the territorial waters of India;</li> <li>c) Any vessel or aircraft proceeding to a place outside India for any purpose whatsoever. [Section 2(21)] (Nov. 1998, Nov. 2004, May 2006)</li> </ul> </li> </ul>
Fund	Means the Consumer Welfare Fund established u/s 12C of the Central Excise Act, 1944. [Section 2(21A)]
Goods	<p>Includes,—</p> <ul style="list-style-type: none"> <li>✓ Vessels, aircrafts and vehicles;</li> <li>✓ Stores;</li> <li>✓ Baggage;</li> <li>✓ Currency and negotiable instruments; and</li> <li>✓ Any other kind of movable property. [Section 2(22)] (Nov.: 1999, 2000, 2004, 2006)</li> </ul>
Import	With its grammatical variations and cognate expressions, means bringing into India from a place outside India. [Section 2(23)] (Nov. 2007)
Arrival manifest or Import manifest or Import report	<p>Means the manifest or report required to be delivered u/s 30; [Section 2(24)]</p> <p>The person in charge of conveyance has to present arrival manifest or import manifest or import report in prescribed form.</p>
Imported goods	<p>Means,—</p> <ul style="list-style-type: none"> <li>✓ any goods brought into India from a place outside India;</li> <li>✓ but does not include goods, which have been cleared for home consumption. [Section 2(25)] (Nov. 2000, Nov. 2003, May 2010)</li> </ul> <p>The warehoused goods under section 59 are imported goods until they are cleared for home consumption from warehouse.</p>

## CHAPTER 1 – LEVY OF EXEMPTIONS FROM CUSTOMS DUTY

Importer	<p>In relation to any goods at any time between their importation and the time when they are cleared for home consumption includes any owner, beneficial owner or any person holding himself out to be the importer. [Section 2(26)] (Nov. 1998, May 2006, Nov. 2007)</p> <p>Owner is a person who is holding the documents of title to the goods. This will include a high sea buyer.</p> <p>However, importer also includes any person holding himself to be the importer for purpose of clearance of goods.</p> <p>This is the person who files the import documents.</p> <p>However, between the two, the owner takes precedence over person holding himself out to be the importer [UOI v. Sampath Raj Dugar [1991] 56 ELT 739 (Bom)]. The goods being abandoned by original importer, ownership thereof continues to vest in foreign supplier. The said goods if transferred by endorsement of Bill of Lading to another person, that another person holding document of title (Bill of Lading) to be regarded as 'importer' u/s 2(26) of the Customs Act, 1962. [Agrim Sampada Ltd v. UOI [2004] 168 ELT 15 (Del)]</p>
India	<p>Includes the territorial waters of India. [Section 2(27)] (May 2007, Nov. 2014)</p> <p>Territorial Water extends to 12 nautical miles from the baseline. It also includes any bay, gulf, harbour, creek or tidal river. The outer boundary of territorial waters is international boundary of India beyond which the high sea lies.</p> <p>Baseline is the lower water mark along the coast.</p>
Indian customs waters	<p>Means the waters extending into the sea up to the limit of Exclusive Economic Zone under section 7 of the Territorial Waters, Continental Shelf, Exclusive Economic Zone and other Maritime Zones Act, 1976 and includes any bay, gulf, harbour, creek or tidal river; [Section 2(28)] (Dec. 2001, June 2004)</p> <p>Continental shelf of India : Continental shelf is the part of the sea floor adjoining a land mass where the depth gradually increases before it plunges into the ocean deeps. The maximum depth of sea water in the continental shelf is 200 meters.</p> <p>Continental shelf of India extends beyond the limit of its territorial waters throughout the natural prolongation of its land territory to the outer edge of the continental margin or to a distance of 200 nautical miles from the baseline.</p>
International courier terminal	<p>Means any place appointed under section 7(1)(f) to be an international courier terminal. [Section 2(28A)]</p>

## CHAPTER 1 – LEVY OF EXEMPTIONS FROM CUSTOMS DUTY

Land customs station	Means any place appointed u/s 7(b) to be a land customs station. [Section 2(29)]
Market price	In relation to any goods, means the wholesale price of the goods in the ordinary course of trade in India. [Section 2(30)]
Notification	Means notification published in the Official Gazette and the expression "notify" with its cognate meaning and grammatical variation shall be construed accordingly. [Section 2(30AA)]
Passenger name record information	Means the records prepared by an operator of any aircraft or vessel or vehicle or his authorised agent for each journey booked by or on behalf of any passenger. [Section 2(30B)]
Person-in-charge	<ul style="list-style-type: none"> <li>✓ in relation to a vessel means the master of the vessel;</li> <li>✓ in relation to an aircraft means the commander or pilot-in-charge of the aircraft;</li> <li>✓ in relation to a railway train means the conductor, guard or other person having chief direction of the train;</li> <li>✓ in relation to any other conveyance means the driver or other person-in-charge of the conveyance. [Section 2(31)] (Nov. 1996, 2000, 2004, 2009, May 1999, 2006)</li> </ul>
Prescribed	Means prescribed by regulations made under this Act. [Section 2(32)]
Prohibited goods	<p>Means,—</p> <ul style="list-style-type: none"> <li>✓ any goods the import or export of which is subject to any prohibition under this Act or any other law for the time being in force;</li> <li>✓ but does not include any such goods in respect of which the conditions subject to which the goods are permitted to be imported or exported have been complied with. [Section 2(33)] (May 1998, May 2001, May 2005, Nov. 2002, May 2011)</li> </ul>
Proper officer	In relation to any functions to be performed under this Act, means the officer of customs who is assigned those functions by the Board or the Principal Commissioner or Commissioner of Customs. [Section 2(34)]
Regulations	Means the regulations made by the Board under any provision of this Act. [Section 2(35)]
Rules	Means the rules made by the Central Govt. under any provision of this Act. [Section 2(36)]
Shipping bill	Means a shipping bill referred to in section 50. Shipping bill is the basic document for assessment of export duty. The exporter has to

## CHAPTER 1 – LEVY OF EXEMPTIONS FROM CUSTOMS DUTY

	present shipping bill for clearance of export goods through vessel or aircraft. [Section 2(37)]
Stores	Means,— <ul style="list-style-type: none"> <li>◆ goods for use in a vessel or aircraft, and</li> <li>◆ includes fuel and spare parts and other articles of equipment, whether or not for immediate fitting. [Section 2(38)] (May 2001, Nov. 2006)</li> </ul>
Smuggling	In relation to any goods, means any act or omission which will render such goods liable to confiscation under section 111 (improper importation) or Section 113 (improper exportation). [Section 2(39)] (Nov. 1998, Nov. 2005)
Tariff value	In relation to any goods, means the tariff value fixed in respect thereof under section 14(2) of the Act. [Section 2(40)]
Value	In relation to any goods, means the value thereof determined in accordance with the provisions of Section 14(1)/(2) of the Act. [Section 2(41)]
Vehicle	Means conveyance of any kind used on land and includes a railway vehicle. [Section 2(42)]
Warehouse	Means,— <ul style="list-style-type: none"> <li>◆ a public warehouse licensed under section 57; or</li> <li>◆ a private warehouse licensed under section 58; or</li> <li>◆ a special warehouse licensed under section 58A. [Section 2(43)] (Nov. 2011)</li> </ul>
Warehoused goods	Means goods deposited in a warehouse. [Section 2(44)] (Nov. 2011)

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

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

Points of differenc	Rules	Regulations
Authority	Power to make rules vests with Central Government.	Power to make regulations vests with CBIC.
Section	Central government has been empowered to make Rules u/s 156.	CBIC has been empowered to make Regulations u/s 157.
Consistency	Rules must be consistent with the provisions of the Act.	Regulations must be consistent with the provisions of the act as well as the rules.

### TAXABLE EVENT AND DATE FOR DETERMINATION OF DUTY AND TARIFF VALUATION IN CASE OF IMPORTED OR EXPORT GOODS

#### 4. Explain the three stages of imposition of taxes and duties in India.

Ans: Three stages of imposition of taxes and duties: All taxes and duties are imposed in three stages, which are levy, assessment and collection:-

- (a) Levy is the stage where the declaration of liability is made and the persons or the properties in respect of which the tax or duty is to be levied is identified and charged.
- (b) Assessment is the procedure of quantifying the amount of liability. The liability to tax or duty does not depend upon assessment.
- (c) The final stage is where the tax or duty is actually collected. The collection of tax or duty may for administrative or other reasons be postponed to a later time.

The liability towards customs duty is broadly based upon the following 3 factors:

- i) The goods, the point and the circumstances under which the customs duty becomes leviable;
- ii) The procedure, the mechanism and the organization for determining the amount of customs duty and collection thereof;
- iii) The exemption to the levy either on grounds of morality or equity or as a result of the discretionary powers vested in the Government as a tool for planning tax structure and control of economic growth of the country.

The customs duty is considered to be levied on the goods and not on the person importing the goods or paying the duty. Equitability requires charging of duty at the same level if the circumstances of importation are similar. This has given rise to a deemed provision under section 12 of the Customs Act.

#### 5. What is taxable event under customs?

Ans: The provisions are discussed as under –

- (1) **Dutiable goods** : The provisions relating to charge of duties of customs are contained in Section 12 of the Customs Act, 1962 which is also known as Charging Section.
- (2) **Essential ingredients for Charge of custom duty** : The charging section provides the following,-
  - (a) The levy of duty is on goods.
  - (b) The goods must be imported into or exported from India.
  - (c) The rate at which duty of customs is to be levied is specified in the Customs Tariff Act, 1975 or any other law for the time being in force.
  - (d) Government goods shall be treated at par with the non-government goods for the purpose of levy of customs duty.
  - (e) Such levy of duty is subject to the exception as provided in this Act or any other law for the time being in force.

## CHAPTER 1 – LEVY OF EXEMPTIONS FROM CUSTOMS DUTY

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

- (3) In case of Importation : The Supreme Court has held in **Kiran Spinning Mills v. Collector [1999] 113 ELT 753 (SC)** that taxable event occurs when the customs barrier is crossed and not on the date when goods had landed in India or had entered the territorial waters of India.

Further, the Supreme Court in **Garden Silk Mills Ltd. v. UOI [1999] 113 ELT 358 (SC)** has held that importation starts when the vessel carrying goods crosses the territorial waters of India but is completed when such goods becomes part of the mass of the goods within the country.

Taxable event is reached when the goods reach the customs barrier and the bill of entry for home consumption is filed.

In case of warehoused goods, the custom barriers would be crossed when they are sought to be taken out of customs and brought to the mass of goods in the country. – **Kiran Spinning Mills v. Collector of Customs [1999] 113 ELT 753 (SC)**

- (4) In case of Exportation : Exportation commences when the shipping bill in respect of such goods is filed but the taxable event is completed when the goods cross the territorial waters of India.

6. As per Section 15 of the Customs Act, 1962, briefly discuss the date for determining the rate of duty and tariff valuation of imported goods. (4 Marks: Nov. 2005 & May 2007) (June 2009, 3 Marks) (2 Marks, May 2015)

Ans: The relevant provisions are discussed as under –

Date For Determination Of Rate Of Duty And Tariff Valuation Of Imported Goods [Section 15]:

- (1) According to Section 15 of the Customs Act, 1962, the provisions relating to date for determination of rate of duty and tariff valuation of imported goods are as under –
- in the case of goods entered for home consumption under section 46,
    - the date of presentation of Bill of Entry; or
    - the date of entry inwards of the vessel or the arrival of the aircraft or the vehicle by which the goods are imported, whichever is later.
  - in the case of goods cleared from a warehouse under section 68, the date of presentation of the Ex-Bond clearance Bill of Entry for home consumption under that section.
  - in the case of any other goods, the date of payment of duty.
- (2) Non Applicability of provisions of Section 15 : The provisions of Section 15 shall not apply to baggage and goods imported by post.

7. Explain the provisions under Section 16 of the Customs Act for determining the rate of duty and tariff valuation in case of export goods.

## CHAPTER 1 – LEVY OF EXEMPTIONS FROM CUSTOMS DUTY

Ans: The relevant provisions are discussed as under –

- (1) Date for determination of rate of duty and tariff valuation of export goods [Section 16]: According to Section 16 of the Customs Act, 1962, the provisions relating to date for determination of rate of duty and tariff valuation of export goods are as under-
  - (a) in the case of goods entered for export under section 50, the date on which the proper officer makes an order permitting clearance and loading of the goods for exportation under section 51.
  - (b) in the case of any other goods, the date of payment of duty.
- (2) Non Applicability of provisions of Section 16 [Section 16(2)]: The provisions of Section 16 shall not apply to baggage and goods exported by post.

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

Ans-In the case of Advait Steel Rolling Mills Pvt. Ltd. v. UOI [2012] 286 ELT 535 (Mad.) , it is held that the clearances of goods from DTA to Special Economic Zone are not chargeable to export duty either under the SEZ Act, 2005 or under the Customs Act, 1962 on the basis of the following observations –

- ✓ The charging section needs to be construed strictly. If a person is not expressly brought within the scope of the charging section, he cannot be taxed at all.
- ✓ SEZ Act does not contain any provision for levy and collection of export duty on goods supplied by a DTA unit to a unit in a SEZ for its authorised operations. Since there is no charging provision in the SEZ Act providing for the levy of customs duty on such goods, export duty cannot be levied on the DTA supplier.
- ✓ Reading Section 12(1) of the Customs Act, 1962 makes it apparent that customs duty can be levied only on goods imported into or exported beyond the territorial waters of India. Since both the SEZ unit and the DTA unit are located within the territorial waters of India, supplies from DTA to SEZ would not attract Section 12(1).

### ASSESSMENT, PROVISIONAL ASSESSMENT AND DUTY LIABILITY OF GOODS IN SETS

9. State briefly the provisions of Section 17 of the Customs Act, 1962 relating to assessment of goods. (5 Marks, Nov. 1996) (May 2000, 3 Marks) (Nov. 2002, 5 Marks) (Nov. 2006, 4 Marks) (Nov. 2008, 2 Marks) (Nov. 2003, 4 Marks) (May 2006, 4 Marks)

Ans: The provisions relating to assessment are discussed as under –

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

## CHAPTER 1 – LEVY OF EXEMPTIONS FROM CUSTOMS DUTY

(2) Assessment of duty [Section 17]:

(a) Self-assessment by Importer or Exporter : An –

(i) importer entering any imported goods under section 46 (i.e. Bill of entry is presented by him for clearance of goods), or

(ii) exporter entering any export goods under section 50 (i.e. Shipping bill or Bill of export is presented for clearance of export goods), shall self-assess the duty, if any, leviable on such goods. However, stores can be warehoused without assessment as provided in Section 85.

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

However, the selection of cases for verification shall primarily be on the basis of risk evaluation through appropriate selection criteria.

(c) Calling for information/ documents for verification of self assessment : For the purposes of verification, the proper officer may require the importer, exporter or any other person to produce any document or information, whereby the duty leviable on the imported goods or export goods, as the case may be, can be ascertained and thereupon, the importer, exporter or such other person shall produce such document or furnish such information.

(d) Re-assessment of duty in case of incorrect self assessment : Where it is found on verification, examination or testing of the goods or otherwise that the self-assessment is not done correctly, the proper officer may, re-assess the duty leviable on such goods. However, such reassessment, shall be without prejudice to any other action which may be taken under this Act.

(e) Reassessment contrary to self-assessment – Proper officer to pass speaking order within 15 days : Where any re-assessment done is contrary to the self-assessment done by the importer or exporter and in cases other than those where the importer or exporter, as the case may be, confirms his acceptance of the said re-assessment in writing, the proper officer shall pass a speaking order on the re-assessment. Such speaking order is passed **within 15 days** from the date of re-assessment of the bill of entry or the shipping bill, as the case may be.

10. State briefly the provisions relating to provisional assessment under Customs Act, 1962. (5 Marks, May 1996) (May 2001, 3 Marks) (CA Final June 2009 (NS) – 2 Marks) (May 2008, 5 Marks)

Ans: Provisional Assessment [Section 18] : The provisions relating to provisional assessment are discussed as under –

(1) Circumstances in which Provisional assessment can be ordered : As per Section 18(1), the provisional assessment can be directed by proper officer in the following circumstances,–

(a) where the **importer or exporter is unable to make self-assessment** under section 17(1) and makes a request in writing to the proper officer for assessment; or

## CHAPTER 1 – LEVY OF EXEMPTIONS FROM CUSTOMS DUTY

- (b) where the proper officer deems it necessary to subject any imported goods or export goods to any chemical or other test; or
  - (c) where the importer or exporter has produced all the necessary documents and furnished full information but the proper officer deems it necessary to make further enquiry; or
  - (d) where necessary documents have not been produced or information has not been furnished and the proper officer deems it necessary to make further enquiry.
- (2) Bill of entry to be filed for provisional assessment also : The provisions of section 18 apply without prejudice to the provisions of Section 46 and Section 50. Hence, the bill of entry/Shipping bill is required to be presented in accordance with the provisions of Section 46/Section 50 even for the purposes of provisional assessment as well.
- (3) Furnishing of documents or information and finalisation of assessment as prescribed : Where, pursuant to the provisional assessment Section 18(1), if any document or information is required by the proper officer for final assessment, the importer or exporter, as the case may be, shall submit such document or information within such time, and the proper officer shall finalise the provisional assessment within such time and in such manner, as may be prescribed.
- (4) Furnishing of Security : The proper officer may direct provisional assessment if the importer or the exporter, as the case may be, furnishes such security as the proper officer deems fit for the payment of the deficiency, if any, between the duty as may be finally assessed or re-assessed (as the case may be), and the duty provisionally assessed.
- (5) Finalisation of assessment : When the duty leviable on such goods is assessed finally or re-assessed by the proper officer in accordance with the provisions of this Act, then –
- (a) If the goods are cleared for home consumption or exportation, the amount paid shall be adjusted against the duty finally assessed or re-assessed. In case the amount so paid falls short or is in excess of duty finally assessed or re-assessed, the importer or the exporter of the goods shall pay the deficiency or is entitled to a refund.
  - (b) If the goods are warehoused and the duty finally assessed or re-assessed is in excess of the provisional duty, the proper officer may require the importer to execute a bond binding himself in a sum equal to twice the amount of the excess duty.
- (6) Interest on demand : The importer or exporter shall be liable to pay interest, on any amount payable to Central Government, consequent to the final assessment order or reassessment order, at the rate specified in Section 28AA of the Customs Act, 1962 i.e. @ 15% p.a. from the first day of the month in which the duty is provisionally assessed till the date of payment thereof.
- (7) Interest on delayed refund : If any amount refundable is not refunded within 3 months from the date of assessment of duty finally or reassessment of duty, as the case may be, there shall be paid an interest on such unrefunded amount at the rate specified in section 27A of the Customs Act, 1962 (i.e. @ 6% p.a.) till the date of refund of such amount.
- (8) Circumstances under which refund can be granted : The amount of duty refundable and the interest shall be credited to Consumer Welfare Fund. However, instead of being credited

## CHAPTER 1 – LEVY OF EXEMPTIONS FROM CUSTOMS DUTY

to Consumer Welfare Fund in the following cases it shall be paid to the importer or the exporter, if such amount is relatable to,—

- (a) the duty and interest, (if any, paid on such duty) paid by the importer, or the exporter, as the case may be, if he had not passed on the incidence of such duty and interest, to any other person;
- (b) duty and interest (if any, paid on such duty) on imports made by an individual for his personal use;
- (c) the duty and interest (if any, paid on such duty) borne by the buyer, if he had not passed on the incidence of such duty and interest, to any other person;
- (d) the export duty as specified in section 26;
- (e) drawback of duty payable under sections 74 and 75.

### 11. State briefly the provisions relating to Customs (Finalisation of Provisional Assessment) Regulations, 2018.

Ans: Customs (Finalisation of Provisional Assessment) Regulations, 2018: The significant provisions contained in said regulations are discussed as under—

- (1) Time-limit and manner for submission of documents or information by importer/ exporter for the purpose of finalisation of provisional assessment :
  - (a) Reasons for Provisional Assessment:
    - (i) the necessary documents have not been produced or information has not been furnished
    - (ii) the proper officer requires the importer or the exporter to produce any additional documents or informationSuch information or documents would be made available by the importer/ exporter within 1 month from the date of such order of provisional assessment or the date of such requisition by the proper officer.
  - (b) The proper officer would inform the importer or the exporter, in writing, the specific details of the information to be furnished or the documents to be produced **within 15 days** from the date of such order of provisional assessment. If the document/ information is not made available **within 15 days**, this period may, for reasons recorded in writing, be further extended by proper officer for 3 months on his own or at the request of the importer or the exporter.
  - (c) The Additional Commissioner/Joint Commissioner of Customs, may further extend the time period referred for another 3 months, in case the documents or the information required to be submitted by the importer or the exporter or requisitioned by the proper officer have not been made available within prescribed time limit.
  - (d) If the aforesaid time limits don't suffice, the Commissioner of Customs, may extend the time period further as deemed fit.
  - (e) All the requisite information/ documents need to be submitted in one instance by importer/ exporter and importer/exporter themselves or his authorised representative or

## CHAPTER 1 – LEVY OF EXEMPTIONS FROM CUSTOMS DUTY

Customs Broker shall inform the proper officer in writing that he has submitted all the documents or information to be furnished or requisitioned.

- (f) For the purpose of these regulations, each Bill of Entry or Shipping Bill, as the case may be, that has been assessed provisionally shall be treated as a separate case of provisional assessment.
- (2) Time-limit for finalisation of provisional assessment : The proper officer will finalise the provisional assessment **within 2 months** of receipt of —
- (a) an intimation from the importer or the exporter or his authorised representative or Customs Broker; or
  - (b) a chemical or other test report, where the provisional assessment was ordered for that reason; or
  - (c) an enquiry or investigation or verification report, where the provisional assessment was ordered for that reason.

However, where the documents or information required to be furnished by the importer or the exporter or requisitioned by the proper officer are made available intermittently, the time period of **2 months** shall be reckoned from the date of last intimation.

Further, where the documents or information required to be furnished by the importer or exporter, as the case may be, or requisitioned by the proper officer are not made available or made partly available and no further extension of time has been allowed, the proper officer shall proceed to finalise the provisional assessment **within 2 months** of the expiry of the time allowed for submission of the said documents or information.

- (d) The Commissioner of Customs concerned may allow, for reasons to be recorded in writing, a further time period of **3 months** in case the proper officer is not able to finalise the provisional assessment within the period of **2 months**.
  - (e) This regulation would not apply to such cases of provisional assessments, where Board has issued directions to keep that pending.
- (3) Manner of finalisation of provisional assessment :
- (a) The provisional assessment will be finalised as per the provisions of section 18 of the Act.

However, if the amount so paid at the time of provisional assessment or after adjustment under section 18(2)(a) of the Act, falls short of the duty finally assessed or re-assessed, as the case may be, and the importer or the exporter has not paid the deficiency, the shortfall will be adjusted from the security, if any, obtained at the time of provisional assessment, under intimation to the importer or the exporter,

However, if the amount so adjusted or paid falls short of the duty finally assessed or re-assessed, as the case may be, the importer or exporter of the goods would pay the shortfall in terms of the provisions of section 18.

- (b) The Bond executed at the time of provisional assessment with security, if any, will be cancelled after finalisation of provisional assessment and the security shall also be returned, if there are no pending dues.

## CHAPTER 1 – LEVY OF EXEMPTIONS FROM CUSTOMS DUTY

- (c) Where the final assessment is contrary to the provisional assessment, the proper officer will pass a speaking order following principles of natural justice.
  - (d) Where the final assessment confirms the provisional assessment, the proper officer will finalise the same after ascertaining the acceptance of such finalisation from the importer or the exporter on record and inform the importer or exporter in writing of the date of such finalisation.
  - (e) Where a Bill of Entry or Shipping Bill is presented electronically on the Customs Automated system and is ordered to be provisionally assessed, the proper officer will finalise the provisional assessment on the system also consequent to the procedure prescribed in these regulations.
- (4) **Penalty** : If any importer or exporter or his authorised representative or Customs Broker contravenes any provision of these regulations or abets such contravention, or fails to comply with any provision of these regulations, he shall be liable to a penalty which may extend to ₹ 50,000.

### 12. Explain the provisions of Audit as provided under Section 99A of the Customs Act, 1962.

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

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

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

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

## CHAPTER 1 – LEVY OF EXEMPTIONS FROM CUSTOMS DUTY

Types of Audit-Transaction Based Audit (TBA) and Premise Based Audit (PBA) – Circular No. 02/2019-Cus dated 08-01-2019

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

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

Selection criteria for audit

Directorate General of Analysis and Risk Management has been entrusted the responsibility of identifying the potential focus areas and entities for various types of audit.

Executive Commissionerate's to assist Audit Commissionerate's

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

**13. Explain with a brief note with reference to the Customs Act, 1962 how duty ought to be determined where the imported goods consist of articles liable to different rates of duty and imported as a "set of articles", (Nov. 2011, 3 Marks) OR Explain briefly with reference to the provisions of the Customs Act, 1962: (1 Marks Each, May 2001)**

- (i) Determination of duty on sets of articles imported.
- (ii) Assessment of accessories supplied with the main equipment that is imported.

Ans: The relevant provisions are as under –

## CHAPTER 1 – LEVY OF EXEMPTIONS FROM CUSTOMS DUTY

- (i) Determination of duty where goods consist of articles liable to different rates of duty : Except as otherwise provided in any law for the time being in force, where goods consist of a set of articles, duty shall be calculated as follows,–
- (a) articles liable to duty with reference to quantity shall be chargeable to that duty;
  - (b) articles liable to duty with reference to value shall be chargeable to duty as under,–
    - ✓ if such articles are liable with the same rate of duty then duty shall be levied at that rate;
    - ✓ if the articles in the set are liable to duty at different rates then duty shall be chargeable at the highest of those rates.
  - (c) articles not liable to duty, then they shall also be chargeable to duty at the highest of the rates specified in (b) above.
- Duty where evidence of separate value of articles is available : If the importer produces evidence to the satisfaction of the proper officer or the evidence is available regarding the value of any of the articles liable to different rates of duty, such article shall be chargeable to duty separately at the rate applicable to it.
- (ii) Rate of Duty applicable to accessories, etc. supplied with imported article [Accessories (Condition) Rules, 1963] : If any accessories of, spare parts and maintenance implements for, any article are imported along with that article, then such accessories/spare parts and maintenance implements shall be chargeable at the same rate of duty as that article, if the proper officer is satisfied that in the ordinary course of trade,–
- (a) such accessories, parts and implements are compulsorily supplied with that article; and
  - (b) no separate charge is made for such supply, their price being included in the price of that article.

### REMISSION/ABATEMENT OF DUTY - PILFERED GOODS, DAMAGED OR DETERIORATED GOODS, LOST OR DESTROYED GOODS

14. Explain briefly, legal provisions relating to pilfered goods under the Customs Act, 1962. (Nov. 2001, 3 Marks) (Nov. 1996, 3 Marks) (Nov. 2004, 2 Marks) (May 2007, 3 Marks) (June 2009–NS, 2 Marks)

Ans: The legal provisions relating to pilfered goods under the Customs Act, 1962 are discussed as under –

- (1) Duty on pilfered goods [Section 13]: If –
- ✚ any imported goods are pilfered;
  - ✚ after the unloading thereof;
  - ✚ but before the proper officer has made an order for clearance for home consumption or deposit in a warehouse;
  - ✚ the importer shall not be liable to pay the duty leviable on such goods;
  - ✚ except where such goods are restored to the importer after pilferage.

## CHAPTER 1 – LEVY OF EXEMPTIONS FROM CUSTOMS DUTY

**Meaning of Pilfer :** The term 'Pilfer' is defined to mean, loss of goods in small quantities by reasons of theft etc. Therefore, the term does not include loss of total package. In order to claim pilferage the following circumstances should exist:

- (a) there should be evidence of tampering with the packages;
  - (b) there should be blank space for the missing articles in the package; and
  - (c) the missing articles should be unit articles and not part articles.
- (2) **Liability of duty in case of pilfered goods [Section 45(3)] :** It is important to note that the Port Trust authority is the custodian of imported goods. Section 13 disables the Government from collecting the duty on pilfered goods from the importer. On the other hand, Section 45 of the Customs Act provides that if any imported goods are pilfered after unloading thereof in a customs area, while in the custody of a person approved by the Principal Commissioner or Commissioner u/s 45(1), then such custodian of cargo shall be liable to pay duty on such goods at the rate prevailing on the date of delivery of an arrival manifest or import manifest or an import report to the proper officer under section 30 for the arrival of the conveyance in which the said goods were carried. Thus, Section 45 enables the Government to demand the duty from the custodian of cargo.

### 15. State briefly the provisions relating to abatement of duty on damaged or deteriorated goods under Customs Act, 1962. (May 2002)

**Ans - Abatement Of Duty On Damaged Or Deteriorated Goods [Section 22]:** Where it is shown to the satisfaction of the Assistant

- (1) **Circumstances when abatement is allowed :** Where it is shown to the satisfaction of the Assistant Commissioner of Customs or Deputy Commissioner of Customs,—
- (a) that any imported goods had been damaged or had deteriorated at any time before or during the unloading of the goods in India; or
  - (b) that any imported goods, other than warehoused goods, had been damaged at any time after the unloading thereof in India but before their examination under section 17, on account of any accident not due to any wilful act, negligence or default of the importer, his employee or agent; or
  - (c) that any warehoused goods had been damaged at any time before clearance for home consumption on account of any accident not due to any wilful act, negligence or default of the owner, his employee or agent.
- (2) **Duty liability in case of abatement :** The goods shall be chargeable to duty determined in the following manner—

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

Abatement of duty on	=	Duty leviable on the goods damaged or deteriorated goods	-	Duty leviable on the goods before damage - after damage
----------------------	---	--	---	---

## CHAPTER 1 – LEVY OF EXEMPTIONS FROM CUSTOMS DUTY

- (3) Valuation of damaged/ deteriorated goods : The value of damaged or deteriorated goods may be ascertained by either of the following methods (at the option of the owner),–
- The value of such goods may be ascertained by the proper officer; or
  - Such goods may be sold by proper officer by public auction or by tender or with consent of owner in any other manner and the gross sale proceeds shall be deemed to be the value of such goods.

16. Write a brief note on Remission of Duty on Lost, Destroyed and Abandoned Goods with reference to the Customs Act, 1962. (May 1996, 5 Marks) (May 2000, 3 Marks) (May 2007, 3 Marks)

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

- (1) Loss or destruction of goods [Section 23(1)] : In case where it is shown to the satisfaction of Assistant or Deputy Commissioner of Customs –
- ✓ that any imported goods have been lost (otherwise than as a result of pilferage) or destroyed,
  - ✓ at any time before clearance for home consumption, then he shall remit the duty on such goods.
- (2) Abandonment or Relinquishment of goods by importer [Section 23(2)] : The owner of the imported goods may at any time before,-
- ✓ an order for clearance of goods for home consumption under section 47; or
  - ✓ an order permitting the deposit of the goods in a warehouse under section 60 has been made, relinquish his title to the goods and thereupon he shall not be liable to pay the duty thereon.

No relinquishment, if Offence Committed : The owner of any such imported goods, shall not be allowed to relinquish his title to such goods regarding which an offence appears to have been committed under the Customs Act, 1962 or any other law for the time being in force.

CCEx. v. Bakelite Hylam Ltd.  
[2016] 335 ELT 673 (SC)

No customs duty is payable on unsuitable goods rejected as waste including those damaged in transit and not put to further use.

### DERELICT, FLOATSAM ETC, DENATURED OR MUTILATED GOODS, RE-IMPORTED GOODS

17. Write short notes on the following:

- Levy of customs duty on goods derelict, wreck, jetsam etc. (Nov. 2003, 2 Marks)
- Power to make rules for denaturing or mutilation of goods. (May 2004, 2 Marks)

Ans: The aforesaid points have been discussed below –

## CHAPTER 1 – LEVY OF EXEMPTIONS FROM CUSTOMS DUTY

- (i) Goods derelict, wreck, etc. [Section 21] : All goods derelict, jetsam, flotsam and wreck brought or coming into India, shall be dealt with as if they were imported into India, unless it is shown to the satisfaction of the proper officer that they are entitled to be admitted duty-free under this Act.

Meaning of the various terms –

Derelict	This refers to any cargo, vessel, etc. abandoned in the sea with no hope of recovery.
Jetsam	This refers to goods jettisoned from the vessel to save her from sinking.
Flotsam	Jettisoned goods which continue floating in the sea are called flotsam.
Wreck	This refers to cargo or vessel or any property which are cast ashore by tides after ship wreck.

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

**18. Write short notes on Re-importation of goods. (Nov. 2004, 2 Marks) OR Goods manufactured or produced in India, which were earlier exported and thereafter imported into India will be treated at par with other goods imported into India'. Is the proposition correct or any concession is provided on such import? Discuss briefly. (Nov. 2009, 5 Marks)**

**Ans- Re-Importation of Goods [Section 20]:** In case if any goods have been imported into India after exportation therefrom, such goods shall be liable to duty and subject to such restrictions and conditions, if any, to which the goods of like kind and value are liable or subject on the importation thereof.

Re-imports are entitled for following concessions as have been notified by the Government [Notification No. 158/95 as amended by 60/2018 and Notification No. 45/2017-Cus.] :

	Case of re-import	Time-limit for re-import	BCD, IGST & GST Cess is exempt and following sum is payable
1.	Goods manufactured in India and exported and re-imported in India for –		Duty is Fully Exempt, if
	(i) Repairs or re-conditioning other than the specified goods	Within 3 years (10 years in case of	✓ Such goods are re-exported within 6 months from date of re-import (extension upto 6 months allowed by

## CHAPTER 1 – LEVY OF EXEMPTIONS FROM CUSTOMS DUTY

			Nepal and Bhutan)	Commissioner or Principal Commissioner); and
	(ii)+	Reprocessing/refining/re-making or other similar process [If any loss of imported goods is noticed during such operation, such loss shall be exempted from whole of the custom duties subject to the satisfaction of AC/DC of Customs. The exemption is available even if quantity re-imported is short or low in quantity as long as nature and variety of goods is same.]	Within 1 year	<ul style="list-style-type: none"> <li>✓ Assistant Commissioner is satisfied about identity of such goods.</li> <li>✓ The importer at the time of importation executes a bond.</li> </ul>
2.		Goods re-imported without being subjected to re-manufacturing or reprocessing through melting, recycling or recasting abroad—	Within 3 years from date of export (2 year extension)	
	(A)	If exported under following benefit—		
		(a) under claim for refund of integrated tax paid on export goods;		Amount of drawback/refund of IGST
		(b) Under bond without payment of IGST		Amount of IGST not paid
		(c) Under duty exemption scheme (DEEC/Advance Authorisation/ DFIA) or Export Promotion Capital Goods Scheme (EPCG)	[Only for (c): in 1 year from export (1 year extension)]	Amount of IGST and GST compensation cess leviable at time and place of import
		(d) under claim for RoDTEP		
		(e) under claim for RoSCTL		
	(B)	Re-import of any other Goods [not falling under 2(a) to 2(e)] exported for repairs abroad and there has been no change in ownership of		Value (for levy of duty) = Fair cost of repairs + Cost of materials used in repairs (such cost includible even if not actually

## CHAPTER 1 – LEVY OF EXEMPTIONS FROM CUSTOMS DUTY

		the goods between the time of export of such goods and re-import thereof.	incurred) + Insurance and freight charges both ways There must be no change in ownership.
	(C)	Re-import of any other exported goods	Nil
<p>However, these concessions would not be applicable if –</p> <ul style="list-style-type: none"> <li>✓ re-imported goods had been exported by 100% Export Oriented Undertaking (EOU) or a unit in Free Trade Zone (FTZ).</li> <li>✓ re-imported goods had been exported from a public/private warehouse.</li> <li>✓ re-imported goods which fall under Fourth schedule to the Central Excise Act, 1944 (tobacco products and petroleum products)</li> </ul>			

Re-import of goods which had been earlier exported either for participation in exhibition or on consignment basis – such re-imports not liable to IGST since the activity does not amount to supply at the time of taking/ sending goods out of India – Circular No. 21/2019-Cus. dated 24-07-2019

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

Departmental clarification :

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

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

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

As in the case of re-import of specified goods, no integrated tax was required to be paid for specified goods at the time of taking these out of India, the activity being not a supply, hence the said condition requiring payment of integrated tax at the time of re-import of

## CHAPTER 1 – LEVY OF EXEMPTIONS FROM CUSTOMS DUTY

specified goods in such cases is not applicable. Such cases will fall more appropriately under residuary entry of the said Notification even though those specified goods were exported under LUT, in view of the fact that the activity of sending/taking specified goods out of India is neither a supply nor a zero rated supply.

- (3) Goods sent to related or distinct persons or to principal or agent – returned after exhibition – not liable to integrated tax at the time of re-imports if such re-imports take place within 6 months from delivery challan : It is also clarified that, even in cases where exports have been made to related or distinct persons or to principals or agents, as the case may be, for participation in exhibition or on consignment basis, but, such goods exported are returned after participation in exhibition or the goods are returned by such consignees without approval or acceptance, as the case may be, the basic requirement of 'supply' as defined cannot be said to be met as there has been no acceptance of the goods by the consignees. Hence, re import of such goods after return from such exhibition or from such consignees will be covered by residuary entry, provided re-import happens before 6 months from the date of delivery challan.

### POWER OF CENTRAL GOVERNMENT TO GRANT EXEMPTION FROM DUTY

19. Explain the power of the Central Government to grant exemption from duties of customs. (7 Marks, May 1996)

What are the provisions relating to effective date of notifications issued under Section 25 of Customs Act, 1962? (3 Marks, Nov. 2010) OR

Referring to Section 25 of the Customs Act, 1962 discuss the following -

(i) General exemption (2 Marks, June 2009)

(ii) Special Exemption/Adhoc Exemption. (2 Marks, June 2009)/ (2 Marks, May 2014)

Ans: Power to grant exemption from Duty: The power to exempt goods from duties of customs is covered under Section 25 of the Customs Act, 1962. The provisions are as follows -

- (1) General exemption [Section 25(1)] : The Central Government in public interest may, by notification in Official Gazette, exempt the goods from duties of customs. The exemption may be from the whole of the duties or from part of duties of customs. The exemption may be with conditions (to be fulfilled before or after clearance) or unconditional (Absolute exemption).
- (2) Special exemption or Ad hoc Exemption [Section 25(2)] : If Central Government is satisfied that it is necessary in the public interest so to do, it may, by special order in each case, exempt from the payment of duty, under circumstances of an exceptional nature to be stated in such order, any goods on which duty is leviable.

## CHAPTER 1 – LEVY OF EXEMPTIONS FROM CUSTOMS DUTY

- (3) Power to clarify scope of exemption – Within a period of 1 year from date of issue of exemption notification [Section 25(2A)] : For the purpose of clarifying the scope and applicability of an exemption notification (i.e. general or special exemption) the Central Government may insert an explanation in the exemption notification within a period of 1 year from its issue. Such an explanation shall have the effect as if it had always been part of the first notification.
- (4) Exemption may be in different form or method [Section 25(3)] : The exemption whether general or special can be provided by levy of duty in a form or method different from form or method in which the statutory duty (i.e. the duty levied before exemption) is leviable. The duty after exemption cannot exceed the statutory duty.  
"Form or method", in relation to rate of duty means the basis, namely, valuation, weight, number, length, area, volume or other measure with reference to which the duty is leviable.
- (5) Effective date of exemption notification [Section 25(4)] : Every notification issued u/s 25(1) or 25(2A) shall, unless otherwise provided, come into force on the date of its issue by the Central Government for publication in the Official Gazette.
- (6) Validity of conditional exemption notification – 2 years from the end of F.Y. [Section 25(4A)] : Where any exemption is granted subject to any condition under section 25(1), such exemption shall, unless otherwise specified or varied or rescinded, be valid up to 31st day of March falling immediately after two years from the date of such grant or variation. However limited period of validity shall not apply to any such exemption granted to, or in relation to,—
- any multilateral or bilateral trade agreement;
  - obligations under international agreements, treaties, conventions or such other obligations including with respect to United Nations agencies, diplomats and international organisations;
  - privileges of constitutional authorities;
  - schemes under the Foreign Trade Policy;
  - day of March falling immediately
  - the Central Government schemes having validity of more than two years;
  - re-imports, temporary imports, goods imported as gifts or personal baggage;
  - any duty of customs under any law for the time being in force, including integrated tax leviable under section 3(7) of the Customs Tariff Act, 1975, other than duty of customs leviable under section 12[Inserted by finance Act,2023 w.e.f. 01-04-2023]
- (7) No collection of customs duty if it does not exceed ₹ 100 : No customs duty shall be collected if the amount of duty leviable is equal to, or less than, ₹ 100/-.

20. Explain the provisions relating to inward processing of goods as provided u/s 25A of the Customs Act, 1962 and provisions of outward processing of goods as provided in Section 25B of the Customs Act, 1962.

Ans: The provisions relating to Inward processing/ Outward processing of goods are as under-

Inward processing of goods [Section 25A]

Outward processing of goods [Section 25B]

## CHAPTER 1 – LEVY OF EXEMPTIONS FROM CUSTOMS DUTY

1.	Where the Central Government is satisfied that it is necessary in the public interest so to do, it may, by notification, exempt such of the goods which are—	
	Imported for the purposes of repair, further processing or manufacture,	processing or manufacture, Re-imported after being exported for the purposes of repair, further processing or manufacture,
	as may be specified therein, from the whole or any part of duty of customs leviable thereon.	
2.	Conditions for exemption : The following conditions must be satisfied for the purpose of claiming exemption, namely:-	
	<p>(a) the goods shall be re-exported after such repair, further processing or manufacture, as the case may be, within a period of one year from the date on which the order for clearance of the imported goods is made;</p> <p>(b) the imported goods are identifiable in the export goods; and</p> <p>(c) such other conditions as may be specified in that notification.</p>	<p>(a) the goods shall be re-imported into India after such repair, further processing or manufacture, as the case may be, within a period of one year from the date on which the order permitting clearance for export is made;</p> <p>(b) the exported goods are identifiable in the re-imported goods; and</p> <p>(c) such other conditions as may be specified in that notification.</p>
	It must be noted that the provisions of Section 25B has been given an overriding effect over provisions of Section 20.	

### CUSTOMS (IMPORT OF GOODS AT CONCESSIONAL RATE OF DUTY OR FOR SPECIFIED END USE) RULES, 2022

21. Write a note on Customs (Import of Goods at Concessional Rate of Duty or for Specified End Use) Rules, 2022.

Ans: The Customs (Import of Goods at Concessional Rate of Duty or for Specified End Use) Rules, 2022 (Amended by Notification No. 74/2022-Cus (NT) dated 09-10-2022) are as under-

- (1) Application [Rule 2] : These rules shall apply where
- (a) a notification provides for the observance of these rules;
  - (b) an importer intends to avail the benefit of any notification and such benefit is dependent upon the use of the goods imported being covered by that notification for the manufacture of any commodity or provision of output service or being put to a specified end use.

## CHAPTER 1 – LEVY OF EXEMPTIONS FROM CUSTOMS DUTY

- (2) Definition [Rule 3] : In these rules, unless the context otherwise requires,
- (a) "Act" means the Customs Act, 1962 ;
  - (b) "capital goods" means goods, the value of which is capitalized in the books of account of the importer;
  - (c) "customs automated system" means the Indian Customs Electronic Data Interchange System;
  - (d) "date of import" means the date of the order made by the proper officer u/s 47, permitting clearance of the goods;
  - (e) "Form" means a form annexed to these rules;
  - (f) "information" means the information provided by the importer who intends to avail the benefit of a notification;
  - (g) "job work" means any treatment, process or manufacture, consistent with the notification undertaken by a person on goods belonging to the importer except gold, jewellery and articles thereof, and other precious metals or stones and the term "job worker" shall be construed accordingly;
  - (h) "jurisdictional Custom Officer" means an officer of Customs of a rank equivalent to the rank of Superintendent or Appraiser exercising jurisdiction over –
    - ✓ the premises where either the goods imported shall be put to use for manufacture or for rendering output services;
    - ✓ the primary address specified in the Importer Exporter Code issued by Directorate General of Foreign Trade in other cases;
  - (i) "manufacture" means the processing of raw materials or inputs by the importer in any manner that results in emergence of a new product having a distinct nature or character or use or name; and the term "manufacturer" shall be construed accordingly;
  - (j) "notification" includes any notification issued under section 25(1) and section 11 of the Act;
  - (k) "output service" means supply of service excluding after-sales service, utilising imported goods.
  - (l) "section" means a section of the Act.
  - (m) "specified end use" means dealing with the goods imported in a manner specified in the notification and includes supply to the intended person and the term "end use recipient" shall be construed accordingly.
- (3) Importer to give one-time prior information [Rule 4] :
- ✓ One-time prior intimation of intent to avail IGCR Benefit : The importer shall provide onetime prior information on the common portal, in Form IGCR-1 containing the following particulars, namely:
    - (i) the name and address of the importer and his job worker, if any;
    - (ii) the goods produced or process undertaken at the manufacturing facility of the importer or his job worker, if any, or both;

## CHAPTER 1 – LEVY OF EXEMPTIONS FROM CUSTOMS DUTY

- (iii) the nature and description of goods imported used in the manufacture of goods at the premises of the importer or the job worker, if any;
  - (iv) particulars of the notification applicable on such import;
  - (v) nature of output service rendered utilising the goods imported;
  - (vi) particulars of premises intended to be used in case of unit transfer;
  - (vii) details of the end use recipient in cases where goods imported are supplied for specified end use; and
  - (viii) the intended ports of import.
- ✓ **Generation of IIN :** On acceptance of the information, an Import of Goods at Concessional Rate of Duty (IGCR) Identification Number (IIN) shall be generated against such information.  
However, such information may be updated on the common portal in case of a change in the details furnished in Form IGCR-1.
- ✓ **Submission of continuity bond :** The importer who intends to avail the benefit of a notification shall submit a continuity bond with such surety or security as deemed appropriate by the DC or AC of Customs having jurisdiction over the premises where the goods imported shall be put to use for manufacture of goods or for rendering output service or being put to use for a specified end use, with an undertaking to pay—
- in case of a notification that provides a duty exemption, the amount equal to the difference between the duty leviable on inputs but for the exemption and that already paid, if any, at the time of import, along with interest, @ 15% p.a., for the period starting from the date of import of the goods on which the exemption was availed and ending with the date of actual payment of the entire amount of the difference of duty that he is liable to pay;
- in all cases where the notification is other than one that provides an exemption benefit, the amount equal to the assessable value of the goods being imported.
- Procedure to be followed [Rule 5] :** (1) IIN and bond details to be given in bill of Entry :  
The importer who intends to avail the benefit of a notification shall be required to mention the IIN and continuity bond number and details while filing the Bill of Entry.
- **AC/DC to allow benefit of exemption notification :** The DC/AC of Customs at the custom station of importation shall allow the benefit of the notification to the importer.
  - **Debit in bond account :** Where a Bill of Entry is cleared for home consumption, the bond submitted by the importer gets debited automatically in the customs automated system and the details shall be made available electronically to the jurisdictional Customs Officer.
- (4) **Importer to maintain records [Rule 6] :**
- ✓ **Maintenance of accounts :** The importer shall maintain an account so as to clearly indicate—
- (i) quantity and value of goods imported;
  - (ii) quantity and date of receipt of the goods imported in the relevant premises;

## CHAPTER 1 – LEVY OF EXEMPTIONS FROM CUSTOMS DUTY

- (iii) quantity of such goods consumed including the quantity used domestically for manufacture, quantity exported, if any, to fulfil the intended purpose and quantity of goods sent to an end use recipient;
  - (iv) quantity of goods sent for job work and the nature of job work carried out;
  - (v) quantity of goods received after job work;
  - (vi) quantity of goods re-exported, if any, under rule 10; and
  - (vii) quantity remaining in stock, according to bills of entry, and shall produce the said account as and when required by the DC/AC of Customs having jurisdiction over the premises or where the goods imported shall be put to use for manufacture of goods or for rendering output service.  
Non receipt/ short receipt to be intimated : However, in case of non-receipt or short receipt of goods imported in the relevant premises, the importer shall intimate such non-receipt or short receipt immediately on the common portal in the **Form IGCR-2**.
- ✓ **Submission off monthly statement** : The importer shall submit a monthly statement on the common portal in the **Form IGCR-3** by the 10<sup>th</sup> of the following month; However, the importer may submit details of goods consumed in the **Form IGCR-3A** at any point of time, for immediate re-credit of the bond which shall become a part of the monthly statement of the subsequent month.
- (5) Procedure for allowing imported goods for job work [Rule 7] :
- ✓ **Record to be maintained** : The importer shall maintain a record of the goods sent for job work during the month and mention the same in the monthly statement referred to in Rule 6(2).
  - ✓ **Goods to be removed under cover of invoice and E-way bill** : The importer shall send the goods to the premises of the job worker under an invoice or wherever applicable, through an electronic-way bill, as specified in the CGST Act, 2017, mentioning the description and quantity of the goods.
  - ✓ **Maximum duration of job work – 6 months** : The maximum period for which the goods can be sent to the job worker shall be six months from the date of invoice or electronic way bill as referred above.
  - ✓ **Recovery in case of misuse of goods** : In case the importer is unable to establish that the goods sent for job work have been used as per the particulars mentioned under rule 4, the jurisdictional Customs Officer shall take necessary action against the importer under rule 11 and 12.
  - ✓ **Duties of job-worker** : The job worker shall,
    - maintain an account of receipt of goods, manufacturing process undertaken thereon and the waste generated, if any, during such process;
    - produce the account details before the jurisdictional Customs Officer as and when required by the said officer;

## CHAPTER 1 – LEVY OF EXEMPTIONS FROM CUSTOMS DUTY

- after completion of the job work send the processed goods to the importer or to another job worker as directed by the importer for carrying out the remaining processes, if any, under the cover of an invoice or electronic way bill.
- (6) Procedure for allowing imported goods for unit transfer [Rule 8] :
- ✓ Record of inter-unit transfer : The importer shall maintain a record of the goods sent for unit transfer during the month and mention the same in the monthly statement referred to in rule 6(2).
  - ✓ Goods to be removed under cover of invoice and E-way bill : The importer shall send the goods under an invoice or wherever applicable, through an electronic-way bill, as specified in the CGST Act, 2017, mentioning the description and quantity of the goods.
  - ✓ Other compliances : The importer shall in relation to transfer of goods to another unit,
    - (i) maintain an account of receipt of goods, manufacturing process undertaken thereon and the waste generated, if any, during such process;
    - (ii) produce the account details before the jurisdictional Customs Officer as and when required by the said officer;
    - (iii) after completion of the said process, send the processed goods back to the premises of the importer from where the goods were received or to a job worker for carrying out the remaining processes, if any, under the cover of an invoice or electronic way bill.
- (7) Procedure for supplying imported goods to the end use recipient [Rule 9] :
- ✓ Records to be maintained by importer : The importer shall maintain a record of the goods supplied to the end use recipient during the month and mention the same in the monthly statement referred to in rule 6(2).
  - ✓ Goods to be removed under cover of invoice and E-way bill : The importer shall send the goods under an invoice or wherever applicable, through an electronic way bill, as specified in the CGST Act, 2017, mentioning the description and quantity of the goods.
  - ✓ Records to be maintained by end use recipient : In case of supply for replenishment or Export against supply, the end use recipient shall,—
    - maintain an account of receipt of goods, manufacturing process undertaken thereon and the waste generated, if any, during such process;
    - Produce the account details before the jurisdictional Customs Officer as and when required by the said officer;
    - produce the relevant details to the importer for fulfilment of the benefit under the notification.
- (8) Re-export or clearance of unutilised or defective goods [Rule 10] :
- ✓ Re-Export or clearance for home consumption : The importer who has availed the benefit of a notification shall use the goods imported in accordance with the conditions mentioned in the concerned notification within the period and with respect to unutilised or defective goods, so imported, the importer shall have an option to either re-export or clear the same for home consumption, within the said period, namely –
    - within the period specified in the notification;

## CHAPTER 1 – LEVY OF EXEMPTIONS FROM CUSTOMS DUTY

- within **6 months** from the date of import, where the time period is not specified in the notification.  
However, the said period of **6 months** can be further extended by the jurisdictional Commissioner for a period not exceeding 3 months, if sufficient reason is shown that the causes for not conforming to the time period were beyond the importer's control.
- ✓ **Details of re-export in monthly statement** : Any re-export of the unutilised or defective goods shall be recorded by the importer in the monthly statement by providing the details of necessary export documents.  
However, the value of such goods for re-export shall not be less than the value of the said goods at the time of import
- ✓ **Payment of duty and interest on clearance for home consumption** : The importer who intends to clear unutilised or defective goods for home consumption shall have an option of voluntary payment of applicable duty along with interest on the common portal and the particulars of such clearance and the duty payment shall be recorded by the importer in the monthly statement.
- ✓ **Clearance of used capital goods** : The importer shall have an option to clear the capital goods imported, after having been used for the specified purpose, on payment of duty equal to the difference between the duty leviable on such goods but for the exemption availed and that already paid, if any, at the time of importation, along with interest @ **15% p.a.**, on the depreciated value allowed in straight line method as under –
  - (i) for every quarter in the **first year @ 4%**
  - (ii) for every quarter in the **second year @ 3%**
  - (iii) for every quarter in the **third year @ 3%**
  - (iv) for every quarter in the **fourth and fifth year @ 2.5%**
  - (v) and thereafter for **every quarter @ 2%**

### Explanation:

- For the purpose of computing rate of depreciation under this rule for any part of a quarter, a full quarter shall be taken into account.
  - The depreciation shall be allowed from the date when the capital goods imported have come into use for the purpose as laid down in the notification, upto the date of its clearance.
  - **Details to be given in monthly statement** : The importer shall have the option of voluntary payment of the duty along with interest, through the common portal and the particulars of such clearance and the duty payment shall be recorded by the importer in the monthly statement.
- (9) **Recovery of duty in certain case [Rule 11]** :
- ✓ **Recovery of duty along with interest** : In the event of any failure on the part of the importer to comply with the above conditions or where the payment as specified above is not paid or short paid, the DC/AC of Customs having jurisdiction over the premises where the imported goods shall be put to use for manufacture of goods or for specified end use or for rendering

output service shall take action by invoking the Bond to initiate the recovery proceedings of an amount as under –

- (a) in case of a notification that provides a duty exemption, equal to the difference between the duty leviable on such goods but for the exemption and that already paid, if any, at the time of importation, along with interest, @ 15% p.a. for the period starting from the date of import of the goods on which the exemption was availed and ending with the date of actual payment of the entire amount of the difference of duty that he is liable to pay;
  - (b) in cases where the notification is other than one that provides an exemption benefit, an amount equal to the assessable value of the goods being imported.
- ✓ Principal liable in case of Jobwork : Notwithstanding anything contained in these rules in relation to removal and processing of imported goods for job-work, the importer shall be responsible for ensuring that the said goods are used in accordance with the purposes provided in the notification and in the event of failure to do so, the DC/AC of Customs having jurisdiction over the premises where the imported goods shall be put to use for manufacture of goods or for specified end use or for rendering output service shall take action in accordance with these rules, without prejudice to any other action which may be taken under the Act, rules or regulations made thereunder or under any other law for the time being in force.
- (10) Penalty : The importer or a job worker who contravenes any of the provisions of these rules or abets such contravention shall be liable to a penalty to an extent of ₹ 2 lakh without prejudice to any other action which may be taken under the Act, rules or regulations made thereunder or under any other law for the time being in force.



# TOPIC REFERENCER

- ⇒ *Types of Duties*
- ⇒ *Additional Duties of Customs*
- ⇒ *Protective Duty*
- ⇒ *Safeguard Measures*
- ⇒ *Anti Subsidy Duty and Anti Dumping Duty*
- ⇒ *Project Imports and Eligible Projects*

## TYPES OF DUTIES

### 1. Write a note on basic customs duty.

Ans: Basic Customs Duty [Section 12 of the Customs Act and Section 2 of the Customs Tariff Act, 1975]: Basic Customs Duty is levied under the provisions of section 12 of the Customs Act and section 2 of the Customs Tariff Act. The rates at which duties of customs shall be levied under the Customs Act 1962 are specified in the First and Second Schedules of the Customs Tariff Act, 1975.

Standard rate of duty : Generally, the standard rate of BCD is applicable. Normal rate of customs duty on imports of non-agricultural goods is 10%, though there are wide variations.

Preferential rate of duty : If the goods are imported from the areas notified by the Central Government to be preferential areas, then lower preferential rate of BCD will be applicable. Preferential Rates of Duty are reduced tariff rates levied on the basis of trade agreements between two or more countries. These rates are usually substantially lower than the normal tariff rates.

### 2. Explain the provisions relating to levy of Social Welfare Surcharge and Road & Infrastructure Cess on imported goods.

Ans: The relevant provisions are discussed as under:

- (1) Social Welfare Surcharge (SWS) on imported goods [Section 110 of Finance Act, 2018 w.e.f. 02-02-2018] : SWS is a duty of Customs levied for the purpose of Union on the goods specified in the First Schedule to the Customs Tariff Act, 1975, being goods imported into India.
  - (a) Purpose of levy : SWS is levied to fulfil the commitment of the Government to provide and finance education, health and social security.
  - (b) Calculation of SWS : SWS shall be calculated @ 10% on the aggregate of duties, taxes and cesses which are levied and collected by the Central Government under section 12 of the Customs Act, 1962 and any sum chargeable on the imported goods specified under

## CHAPTER 2 – TYPES OF DUTY

any other law as an addition to, and in the same manner as, a duty of customs, but not including—

- (i) the safeguard duty referred to in sections 8B and 8C of the Customs Tariff Act;
- (ii) the countervailing duty referred to in section 9 of the Customs Tariff Act;
- (iii) the anti-dumping duty referred to in section 9A of the Customs Tariff Act;
- (iv) the Social Welfare Surcharge on imported goods i.e. no SWS shall be levied on SWS (which is a duty of customs).
- (v) No SWS on IGST and GST compensation cess : SWS on IGST and GST compensation cess has been made exempt vide Notification No. 11/2018 dated 02-02-2018.
- (c) The Social Welfare Surcharge on imported goods shall be in addition to any other duties of customs or tax or cess chargeable on such goods, under the Customs Act, 1962 or any other law for the time being in force.

Clarification regarding applicability of Social Welfare Surcharge on goods exempted from basic and other customs duties/ cesses : It is clarified that the amount of Social Welfare Surcharge payable would be 'Nil' in cases where the aggregate of customs duties (which form the base for computation of SWS) is zero even though SWS has not been exempted. – Circular No. 3/2022-Cus dated 01-02-2022

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

### 3. Explain the provisions relating to levy of Agriculture infrastructure and development cess on import of certain items.

**Ans:** An Agriculture Infrastructure and Development Cess (AIDC) has been levied on import of specified goods at the notified rate. For instance, some of the notified goods are apples, kabuli chana, various types of coal, urea, silver (including imports by eligible passengers), Silver Dore, Gold (including imports by eligible passengers), Gold Dore etc. This cess is used to finance the improvement of agriculture infrastructure and other development expenditure.

Where the duty is leviable on the goods at any percentage of its value, then, for the purposes of calculating the AIDC, the value of such goods is calculated in the same manner as the value of goods is calculated for the purpose of customs duty under section 14 of the Customs Act, 1962. The AIDC on imported goods is in addition to any other duties of customs chargeable on such goods, under the Customs Act, 1962 or any other law for the time being in force. The provisions of the Customs Act, 1962 and the rules and regulations made thereunder, including those relating to assessment, non-levy, short-levy, refund, exemptions, interest, appeals, offences and penalties shall apply in relation to the levy and collection of the AIDC on imported goods as

## CHAPTER 2 – TYPES OF DUTY

they apply in relation to the levy and collection of duties of customs on such goods under the said Act, or the rules or regulations, as the case may be.

4. What are the conditions required to be fulfilled by the importer to make the imported goods eligible for preferential rate of duty prescribed by the Central Government by notification under section 25 of the Customs Act, 1962? (Nov. 2008, 5 Marks)

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

- (1) Duty leviable at standard rate unless conditions for charge of duty at preferential rate fulfilled : The duty shall be levied and collected at the standard rates specified in the First Schedule to the Tariff. However, where in respect of any article a preferential rate of revenue duty is specified in the First Schedule, to the Customs Tariff Act, 1975 or a preferential rate is admissible by virtue of an exemption notification under section 25 of the Customs Act, 1962, the duty shall be levied and collected at the preferential rate only if all of the following conditions are fulfilled,-
  - (a) the importer/owner of the article must claim at the time of importation that the article is chargeable with a preferential rate of duty;
  - (b) the importer/owner must also claim that **such article has been produced or manufactured in a preferential area;**
  - (c) such preferential area, being a country or territory, must be notified as a preferential area by the Central Government; and
  - (d) the origin of such article (i.e. identification whether such article is a produce or manufacture of notified preferential area) must be determined in accordance with rules made in this behalf.
- (2) Power to discontinue or amend preferential rate : In the interests of trade including promotion of exports, the Central Government may direct an amendment of the First Schedule so as to,-
  - (a) provide for **discontinuance** of preferential rate ; or
  - (b) increase the preferential rate to a rate not exceeding the standard rate ; or
  - (c) decrease the preferential rate.

### ADDITIONAL DUTIES OF CUSTOMS

5. Explain Additional duty of customs and its manner of calculation. OR An importer imports an article into India and no like article is produced or

manufactured in India. State, giving reasons, whether the imported article is liable to the levy of additional duty of customs (CVD). (No.99, May 1997)

Ans: Levy of additional duty equal to excise duty, sales tax, local taxes and other charges [Section 3 of the Customs Tariff Act, 1975]: The provisions relating to additional duty of customs are as under,-

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

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

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

Rate of additional duty on alcoholic liquor for human consumption : In case of any alcoholic liquor for human consumption imported into India, the Central Government may notify the rate of additional duty,-

- a. having regard to the excise duty for the time being leviable on a like alcoholic liquor produced or manufactured in different States; or
- b. if a like alcoholic liquor is not produced or manufactured in any State, then, having regard to the excise duty which would be leviable for the time being in different States on the class or description of alcoholic liquor to which such imported alcoholic liquor belongs.

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

In case if any article is unconditionally exempt from excise duty then additional duty of customs shall also be exempt. The Supreme Court in *Aidek Tourism Services Pvt. Ltd. v. CCus.* [2015] 318 ELT 3 (SC) held that rate of additional duty leviable under section 3(1) of the Customs Tariff Act, 1975 would be only that which is payable under the Central Excise Act, 1944 on a like article.

Therefore, the importer would be entitled to payment of concessional/reduced or nil rate of countervailing duty if any notification is issued providing exemption/remission of excise duty with respect to a like article if produced/manufactured in India.

## CHAPTER 2 – TYPES OF DUTY

- (2) Special additional duty of customs equal to sales-tax/VAT (also known as Special CVD) [Section 3(5)] : If the Central Government is satisfied that it is necessary in the public interest to levy on any imported article such additional duty as would counter-balance the sales tax, value added tax, local tax or any other charges for the time being leviable on a like article on its sale, purchase or transportation in India then it may, by notification direct that such imported article shall be liable to an additional duty at a rate not exceeding 4% of the value of the imported article as specified in that notification.
- (3) The expression "sales tax, value added tax, local tax or any other charges for the time being leviable on a like article on its sale, purchase or transportation in India" means the sales tax, value added tax, local tax or other charges for the time being in force, which would be leviable on a like article if sold, purchased or transported in India or, if a like article is not so sold, purchased or transported, which would be leviable on the class or description of articles to which the imported article belongs, and where such taxes, or charges as the case may be are leviable at different rates, the highest rate or charge as the case may be shall be taken.
- (4) Mode of calculation of Additional duty of customs u/s 3(1) & 3(5) : The additional duty of customs under section 3(1) and 3(5) of the Custom Tariff Act on any imported article shall be calculated as follows –

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

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

- (a) Additional duty of customs referred to in Section 3(1), (3), (5), (7) and (9) of the CTA, 1975;
- (b) The safeguard duty referred to in Sections 8B and 8C of the CTA, 1975;
- (c) The countervailing duty referred to in Section 9 of the CTA, 1975; and (d) The anti-dumping duty referred to in Section 9A of the CTA, 1975.

## CHAPTER 2 – TYPES OF DUTY

Note: Due to introduction of GST, the applicability of additional duty of customs is very limited. GST is levied on all supplies of goods and /or services except supply of alcoholic liquor for human consumption. Further, GST on the supply of petroleum crude, high speed diesel, motor spirit (commonly known as petrol), natural gas and aviation turbine fuel shall be levied with effect from such date as may be notified by the Government on the recommendations of the Council. Thus, additional duty of customs will be levied only on the few products not leviable to GST.

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

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

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

- (a) Integrated tax referred to in Section 3(7) the CTA, 1975;
  - (b) GST compensation cess referred to in Sections 3(9) of the CTA, 1975.
- (7) Value for levy of integrated tax in respect of warehoused goods [Section 3(8A)] : Where the goods deposited in a warehouse under the provisions of the Customs Act, 1962 are sold to any person before clearance for home consumption or export under the said Act, the value of such goods for the purpose of calculating the integrated tax under section 3(7) shall be,—
- (a) where the whole of the goods are sold, the value determined under Section 3(8) or the transaction value of such goods, whichever is higher; or
  - (b) where any part of the goods is sold, the proportionate value of such goods as determined under Section 3(8) or the transaction value of such goods, whichever is higher.
- Last transaction value to be taken : However, where the whole of the warehoused goods or any part thereof are sold more than once before such clearance for home consumption

## CHAPTER 2 – TYPES OF DUTY

or export, the transaction value of the last such transaction shall be the transaction value for the purposes of clause (a)/(b).

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

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

(8) GST Compensation Cess [Section 3(9) of the Customs Tariff Act] : Any article which is imported into India shall, in addition, be liable to the goods and services tax compensation cess at such rate, as is leviable under section 8 of the Goods and Services Tax (Compensation to States) Cess Act, 2017 on a like article on its supply in India, on the value of the imported article as determined under Section 3(10). **The levy and collection of CGST compensation cess is extended till 31<sup>st</sup> March, 2026.**

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

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

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

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

(10) Value for levy of GST compensation cess in respect of warehoused goods [Section 3(10A)] : Where the goods deposited in a warehouse under the provisions of the Customs Act, 1962 are sold to any person before clearance for home consumption or export under the said Act, the value of such goods for the purpose of calculating the goods and services tax compensation cess u/s 3(9) shall be,–

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

## CHAPTER 2 – TYPES OF DUTY

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

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

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

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

(10) Mode of calculation of Integrated Tax u/s 3(7) & GST Compensation Cess 3(9) [Section 3(8) & 3(10) of the Customs Tariff Act] : The Integrated tax under section 3(7) and GST Compensation Cess under Section 3(9) of the Custom Tariff Act on any imported article shall be calculated as follows –

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

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

## CHAPTER 2 – TYPES OF DUTY

- (a) Integrated tax referred to in Section 3(7) the CTA, 1975;
- (b) GST compensation cess referred to in Sections 3(9) of the CTA, 1975.
- (11) Applicability of the provisions of the Customs Act, 1962 : The provisions of the Customs Act, 1962 and all rules and regulations made thereunder, including but not limited to those relating to the date for determination of rate of duty, assessment, non-levy, short-levy, refunds, exemptions, interest, recovery, appeals, offences and penalties shall, as far as may be, apply to the duty or tax or cess, as the case may be, chargeable under this section as they apply in relation to duties leviable under that Act or all rules or regulations made thereunder, as the case may be [Amended by the Finance (No. 2) Act, 2024 w.e.f. 16-08-2024].

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

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

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

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

### PROTECTIVE DUTY

8. Write short notes on Protective duty under Customs Tariff Act, 1975. (May 1997, 2½ Marks) (Nov. 2002, 3 Marks)

Ans: The provisions relating to levy of protective duties are as under-

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

## CHAPTER 2 – TYPES OF DUTY

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

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

Ans: The aforesaid points have been discussed below -

- (a) Emergency power of Central Government to increase or levy export duties [Section 8] : Where the Central Government is satisfied that in respect of any article, whether included in Second Schedule or not, -
- ✓ The export duty leviable thereon should be increased or an export duty should be levied, and
  - ✓ Circumstances exist which render it necessary to take immediate action, then, the Central Government may, by notification in Official Gazette, direct an amendment of the Second Schedule so as to provide for increase or levy of export duty on that article.
- (b) Emergency power of Central Government to increase import duties [Section 8A] : Where in respect of any article included in the First Schedule, the Central Government is satisfied that,-
- ✓ The import duty leviable thereon u/s 12 of the Customs Act, 1962 should be increased; and
  - ✓ Circumstances exist which render it necessary to take immediate action, it may, by notification in the Official Gazette, direct an amendment of the First Schedule so as to provide for an increase in the import duty leviable on such article to such extent as it thinks necessary.
- However, the Central Government shall not issue any notification for substituting the rate of import duty in respect of any article as specified by an earlier notification, unless such earlier notification has been approved with or without modifications.

### SAFEGUARD MEASURES

10. Explain the power of the Central Government to apply safeguard measure. (May 1998, 6 Marks) (May 2003, 3 Marks) (Nov. 2003, 2 Marks) (Nov. 2013, 3 Marks)

OR

## CHAPTER 2 – TYPES OF DUTY

Write a short note on the applicability of safeguard duty under the Customs Tariff Act, 1975 on articles imported by EOU/SEZ unit and cleared as such into domestic tariff area (DTA). (2 Marks, May 2015)

Ans: Power of Central Government to apply safeguard measures [Section 8B]: The relevant provisions are as under –

- (1) Circumstances in which safeguard measures can be imposed : Safeguard measures can be imposed if the Central Government on enquiry finds that the imports in increased quantity and under such conditions –
- have caused serious injury to domestic industry or,
  - is threatening to cause serious injury to domestic industry.

It can be imposed irrespective of origin of imported goods.

Term	Meaning
Serious injury	It means an injury causing significant overall impairment in the position of a domestic industry.
Threat of serious injury	It means a clear and imminent danger of serious injury.
Domestic Industry	It means the producers— (i) as a whole of the like article or a directly competitive article in India; or (ii) whose collective output of the like article or a directly competitive article in India constitutes a major share of the total production of the said article in India.

(2) Modes of safeguard measures : The safeguard measures shall include—

- imposition of safeguard duty,
- application of tariff-rate quota; or (c) such other measure,

as the Central Government may consider appropriate, to curb the increased quantity of imports of an article to prevent serious injury to domestic industry.

(3) Safeguard measures not to be imposed on articles originating from developing countries : No such measure shall be imposed on—

- If an article originating from a developing country so long as the share of imports of that article from that country **does not exceed 3%**; or
- where the article is originating from more than one developing country, then, so long as the aggregate of the imports from each of such developing countries with **less than 3%** import share taken together, **does not exceed 9%** of the total imports of that article into India.

Exemption from safeguard duty : The Central Government may exempt such quantity of any article as it may specify in the notification, when imported from any country or

territory into India, from payment of the whole or part of the safeguard duty leviable thereon.

- (4) Tariff quota not to be lower than average level of imports in last 3 years : Where tariff-rate quota is used as a safeguard measure, the Central Government shall not fix such quota lower than the average level of imports in the last 3 representative years for which statistics are available, unless a different level is deemed necessary to prevent or remedy serious injury.
- (5) Allocation of Tariff Quota as per rules : The Central Government may allocate such tariff-rate quota to supplying countries having a substantial interest in supplying the article concerned, in such manner as may be provided by rules.
- (6) Provisional safeguard measures : The Central Government may, pending the determination of final safeguard measures, apply provisional safeguard measures on the basis of a preliminary determination that increased imports have caused or threatened to cause serious injury to a domestic industry.
- (7) Refund of safeguard duty : Where, on final determination, the Central Government is of the opinion that increased imports have not caused or threatened to cause serious injury to a domestic industry, it shall refund the safeguard duty so collected.
- (8) Duration - Not exceeding 200 days : Any provisional safeguard measure shall not remain in force for more than 200 days from the date on which it was imposed.
- (9) Non applicability of Safeguard measures to 100% EOU or Unit in SEZ : Any safeguard measures shall not apply to articles imported by a 100% EOU or a unit in a SEZ, unless—
  - (i) it is specifically made applicable in such notification or to such undertaking or unit; or
  - (ii) such article is either cleared as such into the domestic tariff area or used in the manufacture of any goods that are cleared into the domestic tariff area, in which case, safeguard measures shall be imposed on the portion of the article so cleared or used, as was applicable when it was imported into India.
- (10) The safeguard duty imposed section shall be in addition to any other duty imposed under this Act or under any other law for the time being in force.
- (11) Duration of safeguard measures : The safeguard measures imposed shall, unless revoked earlier, cease to have effect on the **expiry of 4 years** from the date of such application.  
Extension of period : The Central Government may extend the period of such imposition from the date of first imposition provided it is of the opinion that:
  - (a) Domestic industry has taken measures to adjust to such injury or as the case may be to such threat and
  - (b) It is necessary that the safeguard measures should continue to be imposed.However, the total period of levy of safeguard measures is restricted to 10 years.
- (10) Applicability of all machinery provisions of the Customs Act, 1962 : The provisions of the Customs Act, 1962 and the rules and regulations made thereunder, including those relating to the date for determination of rate of duty, assessment, non-levy, short-levy, refunds, interest, appeals, offences and penalties shall, as far as may be, apply to the duty chargeable under this section as they apply in relation to duties leviable under that Act.

## CHAPTER 2 – TYPES OF DUTY

- (11) Applicability of the provisions of the Customs Act, 1962 : The provisions of the Customs Act, 1962 and all rules and regulations made thereunder, including but not limited to those relating to the date for determination of rate of duty, assessment, non-levy, short-levy, refunds, exemptions, interest, recovery, appeals, offences and penalties shall, as far as may be, apply to the duty chargeable under this section as they apply in relation to duties leviable under that Act or all rules or regulations made thereunder, as the case may be [Amended by the Finance (No. 2) Act, 2024 w.e.f. 16-08-2024.]
- (12) Rules to be framed : The Central Government may make rules and such rules may provide for—
- the manner in which articles liable for safeguard measures may be identified;
  - the manner in which the causes of serious injury or causes of threat of serious injury in relation to identified article may be determined;
  - the manner of assessment and collection of safeguard duty;
  - the manner in which tariff-rate quota on identified article may be allocated among supplying countries;
  - the manner of implementing tariff-rate quota as a safeguard measure;
  - any other safeguard measure and the manner of its application.

### ANTI SUBSIDY DUTY AND ANTI DUMPING DUTY

#### 11. Explain the "Countervailing duty on subsidized articles" or "Anti Subsidy Duty".

Ans: Countervailing duty on subsidized articles [Section 9] : Section 9 of the Customs for levy of countervailing duty on subsidized article the relevant provisions are as under –

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

Subsidy shall be deemed to exist if –

- There is financial contribution by the Government or any public body in the exporting or producing country or territory. Such contribution may include direct transfer of funds like grants, loans etc., waiver of revenue due to the Government etc.
- There is any form of income or price support granted or maintained by the Government, which results in increased export of such article or reduced import of any article into that country.
- A Government makes payments to a funding mechanism, or entrusts or directs a private body to carry out one or more of the type of functions specified above which would normally be vested in the Government and the practice in, no real sense, differs from practices normally followed by Governments.

- (2) CVD on subsidized article to be extended on articles imported by Altering form/ Description [Section 9(1A)] : Where the Central Government, on such inquiry as it considers necessary, is of the opinion that circumvention of countervailing duty imposed under section 9(1) has taken place, –
- (a) either by altering the description or name or composition of the article on which such duty has been imposed; or
  - (b) by import of such article in an unassembled or disassembled form; or
  - (c) by changing the country of its origin or export; or
  - (d) in any other manner,
- whereby the countervailing duty so imposed is rendered ineffective, it may extend the countervailing duty to such other article also from such date, not earlier than the date of initiation of the inquiry, as the Central Government may, by notification in the Official Gazette, specify.
- (3) Anti-Absorption provisions [Section 9(1B)] : Where the Central Government, on such inquiry as it considers necessary, is of the opinion that absorption of countervailing duty has taken place whereby the countervailing duty so imposed is rendered ineffective, it may modify such duty to counter the effect of such absorption, from such date, not earlier than the date of initiation of the inquiry, as the Central Government may, by notification in the Official Gazette, specify. "Absorption of countervailing duty" is said to have taken place,—
- (a) if there is a decrease in the export price of an article without any commensurate change in the resale price in India of such article imported from the exporting country or territory; or
  - (b) under such other circumstances as may be provided by rules. [Explanation]
- (4) No Countervailing duty to be imposed in certain cases : The countervailing duty shall not be levied unless it is determined that,—
- (a) the subsidy relates to export performance;
  - (b) the subsidy relates to the use of domestic goods over imported goods in the export article; or
  - (c) the subsidy has been conferred on a limited number of persons engaged in the manufacture, production or export of articles.
- (5) Provisional duty : The Central Government, pending the determination of the amount of subsidy, may impose a provisional countervailing duty not exceeding the amount of such subsidy as provisionally estimated by it. If the provisional countervailing duty exceeds the subsidy as so determined, then the Central Government shall,—
- (a) Mobile reduce such countervailing duty as soon as may be; and
  - (b) refund the countervailing duty collected in excess of such reduced countervailing duty.
- (6) Non applicability of countervailing duty to 100% EOU or Unit in SEZ : Any countervailing duty imposed shall not apply to article imported by a 100% export-oriented undertaking or a unit in a special economic zone, unless,—

## CHAPTER 2 – TYPES OF DUTY

- (i) it is specifically made applicable in such notification or to such undertaking or unit; or
  - (ii) such article is either cleared as such into the domestic tariff area or used in the manufacture of any goods that are cleared into the domestic tariff area, in which case, countervailing duty shall be imposed on that portion of the article so cleared or used, as was applicable when it was imported into India.
- (7) **Retrospective levy** : The Central Government has powers to levy countervailing duty retrospectively if massive imports in a relatively short period have caused injury to the domestic industry. Such duty can be imposed retrospectively from a date prior to the date of imposition of provisional countervailing duty but not beyond 90 days from the date of such notification of provisional duty.
- (8) **Duration of levy - 5 Years** : The countervailing duty imposed under this section shall, unless revoked earlier, cease to have effect on the expiry of 5 years from the date of such imposition.
- The Central Government may extend the period of such imposition for a further period upto 5 years, if, on consideration of a review, it is of the opinion that the cessation of such duty is likely to lead to continuation or recurrence of subsidization and injury and in that case, such further period shall commence from the date of order of such extension.
- Where a review initiated before the expiry of the aforesaid period of 5 years has not come to a conclusion before such expiry, the countervailing duty may continue to remain in force pending the outcome of such a review for a further period **not exceeding 1 year**.
- If the said duty is revoked temporarily, the period of such revocation shall not exceed 1 year at a time.
- (9) **Rules relating to countervailing duty** : The amount of any such subsidy shall, from time to time, be ascertained by the Central Government, after such inquiry as it may consider necessary and the Central Government may, by notification in the Official Gazette, make rules for the identification of such article and for the assessment and collection of any countervailing duty imposed upon the importation thereof under this section.
- (10) **Provisions of Customs Act, 1962 to Apply** : The provisions of the Customs Act, 1962 and all rules and regulations made thereunder, including but not limited to those relating to the date for determination of rate of duty, assessment, non-levy, short-levy, refunds, exemptions, interest, recovery, appeals, offences and penalties shall, as far as may be, apply to the duty chargeable under this section as they apply in relation to duties leviable under that Act or all rules or regulations made thereunder, as the case maybe [Amended by the Finance (No. 2) Act, 2024 w.e.f. 16-08-2024.]

12. Briefly examine the nature and significance of the levy of "anti-dumping duty", under the Customs Tariff Act, 1975. (Nov. 1998, 6 Marks) OR What are the ways that would constitute circumvention of anti-dumping duty imposed on an article that may warrant action by the Central Government based on inquiry as it may

## CHAPTER 2 – TYPES OF DUTY

consider necessary for purpose of Section 9A(1A) of the Custom Tariff Act, 1975.  
(May 2012, 3 Marks)

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

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

Under the General Agreement on Tariffs and Trade (GATT) provisions, anti-dumping duties higher than the margin of dumping cannot be imposed. However, a lesser duty which is adequate to remove the injury to the domestic industry, is permissible. In India, the Government is obliged to restrict the anti-dumping duty to the lower of the two i.e., dumping margin and the injury margin.

- (2) Computation of anti-dumping duty : Anti-dumping duty is—

(i) Margin of dumping

Or

(ii) Injury margin whichever is lower.

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

Normal Value, in relation to the article, means,—

- (a) Comparable domestic price of the like article, in the ordinary course of trade when destined for consumption in exporting country or territory, as determined in accordance with rules made in this behalf.
- (b) In circumstances where there are no sales of the like article in the domestic market of exporting country or the sales are under circumstances which do not permit a proper comparison, the normal value shall be either :
- (i) comparable representative price of the like article when exported from the exporting country/ territory to an appropriate third country as determined in accordance with rules made in this behalf; or
- (ii) cost of production of the said article in the country of origin along with reasonable addition for administrative, selling and general costs, and for profits, as determined in accordance with the rules. However, in case of import of article from a country other than country of origin, the normal value shall be determined with reference to its price in country of origin.

Export Price of the article is the price of the article exported from the exporting country. In case where there is no export price or export price is unreliable, then the export price is determined as follows :

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

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

Injury margin : Injury margin is the margin adequate to remove the injury to the domestic industry.

It is the difference between the **Fair Selling Price [Non-Injurious Price (NIP)]** due to the Domestic Industry and the Landed Value of the dumped imports.

Fair Selling Price (FSP) [Non-Injurious Price] : is that level of price, which the industry is, expected to have charged under normal circumstances in the Indian market during the period defined. This price would have enabled reasonable recovery of cost of production and profit after nullifying adverse impact of those factors of production which could have adversely affected the company and for which dumped imports can't be held responsible. In other words, it is the fair selling price of a product for the domestic industry. There would be a single Non-Injurious Price for a product and not several Non-Injurious Price for the same product. — Reliance Industries Ltd. v. Designated Authority [2006] 202 E.L.T. 23 (SC)

Landed Value: is taken as the assessable value under the Customs Act and the applicable basic customs duties except CVD, SAD and special duties.

- (3) Anti-dumping duty to be extended on articles imported by Altering form/ Description : Where the Central Government, on such inquiry as it may consider necessary, is of the opinion that circumvention of anti-dumping duty has taken place,—
- either by **altering the description or name or composition of the article** subject to such antidumping duty; or
  - by import of such article in an **unassembled or disassembled form**; or
  - by **changing the country of its origin or export**; or
  - in any other manner,
- whereby the anti-dumping duty so imposed is rendered ineffective, it may extend the anti-dumping duty to such article or an article originating in or exported from such country, as the case may be from such date, not earlier than the date of initiation of the inquiry, as the Central Government may, by notification in the Official Gazette, specify.
- (4) Anti - Absorption **provisions [Section 9A(1B)]** : Where the Central Government, on such inquiry as it may consider necessary, is of the opinion that absorption of anti-dumping duty has taken place whereby the anti-dumping duty so imposed is rendered ineffective, it may modify such duty to counter the effect of such absorption, from such date, not earlier

## CHAPTER 2 – TYPES OF DUTY

than the date of initiation of the inquiry, as the Central Government may, by notification in the Official Gazette, specify.

"Absorption of anti-dumping duty" is said to have taken place,—

- (a) if there is a decrease in the export price of an article without any commensurate change in the cost of production of such article or export price of such article to countries other than India or resale price in India of such article imported from the exporting country or territory; or
  - (b) under such other circumstances as may be provided by rules. [Explanation]
- (5) Non-imposition of anti-dumping duty [Section 9A(2A)] : Any anti-dumping duty imposed shall not apply to articles imported by a 100% export-oriented undertaking or a unit in a special economic zone, unless,—
- (i) it is specifically made applicable in such notification or to such undertaking or unit; or
  - (ii) such article is either cleared as such into the domestic tariff area or used in the manufacture of any goods that are cleared into the domestic tariff area, in which case, anti-dumping duty shall be imposed on that portion of the article so cleared or used, as was applicable when it was imported into India.
- (6) Other points similar to **Section 9** : The other provisions relating duration of levy, retrospective levy are same as that of countervailing duty on subsidized article.

### 13. State briefly provisions of refund on anti-dumping duty in certain cases. (Nov. 2005, 2 Marks)

Ans: The provisions of refund on anti-dumping duty in certain cases are as under –

- (1) Refund of anti-dumping duty : Where upon determination by an officer authorised in this behalf by the Central Government, an importer proves to the satisfaction of the Central Government that he has paid anti-dumping duty imposed under section 9A(1) on any article, **in excess of the actual margin of dumping** in relation to such article,—
  - (a) the Central Government shall, as soon as may be, reduce such anti-dumping duty as is in excess of actual margin of dumping so determined, in relation to such article or such importer, and
  - (b) such importer shall be entitled to refund of such excess duty.  
However, the importer will not be entitled for refund of provisional anti-dumping duty which is refundable under section 9A(2).
- (2) Rules : For this purpose refund of **Anti-Dumping Duty (Paid in Excess of Actual Margin of Dumping) Rules, 2012** have been framed and relevant provisions are as under –
  - (a) Filing of Application and time limit : An application for refund is to be made to **Assistant Commissioner/ Deputy Commissioner of Customs** at the port of importation in prescribed form **within 3 months** from date of publication of notification issued by Central Government reducing the anti-dumping duty. In case where such duty becomes refundable as a consequence of judgment, decree, order or direction of the Court, Appellate

## CHAPTER 2 – TYPES OF DUTY

Tribunal or Authority, the application is to be filed within 3 months from the date of such judgment, decree, order or direction.

- (b) Deficiency in application filed by Importer : In case of any deficiency in the application filed by importer, the same shall be returned to him **within one month** stating the deficiencies. The importer may re-submit the application after removing the deficiencies within one month of receipt of deficiency memo.
- (c) Refund of Claim to be made within 90 days : If the Assistant Commissioner/Deputy Commissioner is satisfied that the duty is to be refunded, in whole or in part, he may make an order accordingly and the amount so determined shall be refunded to the importer within 90 days of the receipt of the application (or application resubmitted after rectification of deficiency), subject to doctrine of unjust enrichment.

### 14. Explain the situations when anti-subsidy and anti-dumping duty cannot be levied?

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

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

### 15. What are the provisions of appeal against the order imposing/reviewing any anti-subsidy duty or antidumping duty or safeguard duty? (Nov. 1997)

Ans: The provisions of appeal against the order imposing/reviewing any anti-subsidy duty or anti-dumping or safeguard duty are as under –

- (1) **Appeal** : An appeal against the determination or review thereof shall lie to the CESTAT, in respect of the existence, degree and effect of—  
any subsidy or dumping in relation to import of any article; or  
import of any article into India in such increased quantities and under such condition so as to cause or threatening to cause serious injury to domestic industry requiring imposition of safeguard duty in relation to import of that article.
- (2) **Hearing before special bench** : This appeal shall be heard by special bench constituted by the President of Appellate Tribunal.
- (3) **Time limit of filing appeal** : Every appeal shall be filed within 90 days of the date of determination or review under appeal. The Appellate Tribunal may entertain any appeal after the expiry of the said period of 90 days, if it is satisfied that the appellant was prevented by sufficient cause from filing the appeal in time.
- (4) **Fees for Appeal** : The appeal shall be accompanied by a fee of ₹ 15,000. Every application made before the Tribunal for grant of stay or rectification of mistake or for restoration of appeal or application shall be accompanied by a fee of ₹ 500.
- (5) **Passing of order** : The Appellate Tribunal may, after giving the parties to the appeal an opportunity of being heard, pass such orders thereon as it thinks fit, confirming, modifying or annulling the determination or review appealed against.
- (6) "Determination" or "review" means the determination or review done in such manner as may be specified in the rules made under sections 8B, 9, 9A and 9B. [Explanation]



### TOPIC REFERENCER

- ⇒ *Customs Tariff Act, 1975*
- ⇒ *Interpretative Rules, General Explanatory Notes and Additional Notes to Tariff Schedule*
- ⇒ *Project Imports and Eligible Projects*

#### CUSTOMS TARIFF ACT, 1975

##### 1. What do you mean by Classification? What is the need for classifying the goods ?

Ans: The provisions relating to classification are discussed as under -

- (1) **Classification :** Classification of goods consists of determining the headings or sub-headings of the Customs Tariff under which the said goods are covered.
- (2) **Need for classification :**
  - (a) **Determination of rate of duty :** The rate of duty is determinable on the basis of classification of goods.
  - (b) **Determination of eligibility of exemption :** The classification of goods is also required to be decided for the purpose of determining eligibility to exemptions, most of which are with reference to the Tariff headings or sub headings.
- (3) **Relevant time for classification :** Classification is done at the time of importation or exportation of goods.

##### 2. Write a brief note on Customs Tariff Act, 1975 and Give the five column-heading as prescribed in the Schedule to the Customs Tariff Act, 1975. At what rate custom duties are levied. (May 1998, 5 Marks)

Ans: The Customs Tariff Act, 1975 provides the classification of the goods and rates of duties of customs. It comprises of two schedules :-

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

## CHAPTER 3 – CLASSIFICATION OF IMPORTED AND EXPORT GOODS

- (2) Second Schedule : In this schedule goods chargeable with export duty are listed. It is also known as 'Export Tariff'.
- (3) Column Headings : The five column headings as prescribed in schedules to Customs Tariff Act, 1975 are as under,–

Column No.	Particulars
1.	Tariff Item
2.	Description of the Goods
3.	Unit
4.	Standard Rate of duty
5.	Preferential Rate of duty

- (4) Rates of custom duty : The basic customs duty are 5%, 7.5% and 10%. Highest rate of basic customs duty is 10% for non-agricultural items, with some exceptions. On baggage, the general rate of duty is 35% and no additional duty of customs is leviable on baggage.
- (5) Social Welfare Surcharge (SWS) on Imports [w.e.f. 02-02-2018] : A social welfare surcharge has been imposed on imported goods @ 10% of total customs duties (excluding certain duties) w.e.f. 02-02-2018.
- Hence, effective rate of BCD = 10% general rate of basic customs duty (BCD) + SWS @ 10% of BCD = 11%.

### 3. What do you understand by HSN commodity description? Discuss briefly its relevance to the Indian Customs Tariff. (May 1996, 5 Marks) (May 1999, 3 Marks)

Ans: The provisions relating to HSN are discussed as under –

- (1) Harmonised Commodity description and Coding System : Harmonised System of Nomenclature (HSN) is an internationally accepted product coding system formulated under the auspices of the General Agreement on Tariffs and Trade (GATT). It forms the basis of the system of classification in the Customs Tariff Act, 1975. It has been developed by the Customs Co-operation Council, Brussels.
- (2) Explanatory Notes to the HSN :
- (a) Official notes issued by the Customs Co-operation Council : The Explanatory Notes to the HSN are the official notes issued by the Customs Co-operation Council, Brussels.
- (b) Explain and clarify the scope of headings of HSN : They explain and clarify the scope and extent of each and every heading of the HSN, on the basis of which the present Customs Tariff has been patterned.
- (c) Do not have a legal backing—are only of persuasive value : It is to be remembered that the Explanatory Notes do not have legal backing, unlike the Chapter Notes and Section Notes contained in the Tariff. Consequently, these Explanatory Notes are only of

## CHAPTER 3 – CLASSIFICATION OF IMPORTED AND EXPORT GOODS

persuasive value and can be used as an aid to classification of goods when there is ambiguity as to the scope of the entry.

(d) Can be resorted to only in case of ambiguity in tariff items in Customs Tariff :

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

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

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

### INTERPRETATIVE RULES, GENERAL EXPLANATORY NOTES AND ADDITIONAL NOTES TO TARIFF SCHEDULE

**4. What is the purpose of Interpretation Rule regarding Customs Tariff? Do they form part of the tariff schedule? (May 2006, 4 Marks) (May 2012, 3 Marks)**

Ans: The Customs Tariff has a set of six rules for Interpretation of the tariff schedule and three general explanatory notes. They help in appropriate classification of goods.

Purpose of Interpretation Rules of Tariff : The purpose of interpretation Rules of Tariff is –

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

The Interpretation Rules are integral part of the schedule.

**5. Write a brief note with specific reference to Rule 1 of the Rules of Interpretation of the First Schedule to Customs Tariff Act, 1975. (Nov. 2010-NS, 4 Marks)**

Ans: The Customs Tariff contains a set of six general rules, which aids in interpretation of the Tariff Schedule. The Rule 1 of interpretation of the tariff is as under –

Section And Chapter Titles Have No Legal Validity [Rule 1] :The titles of Sections and Chapters are provided for ease of reference only. But for legal purposes, classification shall be determined according to the terms of headings and any relative Section or Chapter Notes and, provided such headings or notes do not otherwise require, according to the provisions hereinafter contained.

## CHAPTER 3 – CLASSIFICATION OF IMPORTED AND EXPORT GOODS

Example: Classification of product : Letter closing and sealing machine. Sub-heading 8422 30 00 Machinery for filling, closing, sealing or labeling bottles, cans, boxes, bags or other containers; machinery for capsuling bottles, jars, tubes and similar containers; machinery for aerating beverages.

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

Both the headings appear to be relevant for the product in question.

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

6. Write a brief note on the classification of incomplete/unfinished articles with reference to Rule 2(a) of the Interpretative Rules to the First Schedule of the Customs Tariff. (Nov. 2011, 3 Marks) (4 Marks Nov. 2018-OS) (May 2003, 5 Marks)

Ans - Classification Of Incomplete Or Unfinished Articles – Classification As Complete/ Finished Goods [Rule 2(A)]: Any reference in a heading to an article shall be taken to include a reference to that article incomplete or unfinished, provided that, as presented, the incomplete or unfinished article has the essential character of the complete or finished article.

It shall also be taken to include a reference to that article complete or finished (or falling to be classified as complete or finished by virtue of this rule), removed unassembled or disassembled.

Only goods requiring minor adjustments can be construed as having the essential character : Only goods requiring minor adjustments would be construed as having the essential character. Those requiring major processes like turning, grinding, broaching, groove cutting, heat treatment, surface treatment etc., cannot be construed as having the essential character of complete and finished articles and cannot fall within the scope of rule 2(a) of the General Interpretative Rules.

Examples:

- (a) Railway coaches removed without seats would still be railway coaches.
- (b) A car without seats would still be classified as car.

7. Write a brief note on the Classification of Mixtures/ Combinations of a Material/ Substance with other Materials/ Substances with reference to Rule 2(b) of the Interpretative Rules to the First Schedule of the customs Tariff.

Ans- Classification Of Mixtures/ Combinations Of A Material/ Substance With Other Materials/ Substances - To Be Classified As That Material Or Substance [Rule 2(B)]:

Any reference in a heading to a material or substance shall be taken to include a reference to mixtures or combinations of that material or substance with other materials or substances. Any reference to goods of a given material or substance shall be taken to include a reference to goods consisting wholly or partly of such material or substance.

## CHAPTER 3 – CLASSIFICATION OF IMPORTED AND EXPORT GOODS

The classification of the goods consisting of more than one material or substance shall be according to the principle of Rule 3.

Examples:

- (a) The term coffee will include coffee mixed with chicory.
- (b) Natural rubber will cover a mixture of natural and synthetic rubber and rubber sheet would cover a sheet made up of a mixture of natural and synthetic rubber.

8. Explain briefly the provisions of Rule 3 of the General Rules for the Interpretation of the First Schedule to the Customs Tariff Act, 1975. (Nov. 2004, 4 Marks) OR  
Does the maxim "Latter the Better" apply in classifying the dutiable goods? (May 2005, 3 Marks)

Ans: Rule 3 is to be applied when classification cannot be decided by Rules 1 and 2, which is as under –

- (1) Classification when goods classifiable under two or more headings [Rule 3]: When by application of Rule 2(b), or for any other reason, goods are prima facie classifiable under two or more headings, classification effected as follows :- shall be
- (2) Most Specific description shall prevail over General Description [Rule 3(a)]: The heading, which provides the most specific description, shall be preferred to headings providing a more general description.

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

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

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

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

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

- (4) Latter the Better Maxim [Rule 3(c)] : When goods cannot be classified by reference to (a) or (b) they shall be classified under the heading, which occurs last in numerical order among those, which equally merit considerations. This rule is also known as 'latter the better maxim'.

## CHAPTER 3 – CLASSIFICATION OF IMPORTED AND EXPORT GOODS

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

4010 Conveyor or transmission belting;

5910 Transmission or conveyor belts or belting of textile material, whether or not reinforced with metal or other material.

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

### 9. Explain the 'Akin Rule' of interpretation. (May 2006, 4 Marks) (May 2012, 3 Marks)

**Ans:** Rule 4 of the Rules of Interpretation is Akin Rule which is as under –

**Akin Rule [Rule 4]:** Goods, which cannot be classified in accordance with the above rules, shall be classified under the heading appropriate to the goods to which they are most akin.

**Example:** Consider plastic films used to filter or remove the glare of the sunlight, pasted on car glass windows, window panes etc., there is no specific entry appropriate to the goods. However, consider the following tariff entry –

3925 30 00, Builders' ware of plastics not elsewhere specified – shutters, blinds (including Venetian blinds). Even though this is not a builders' ware of plastics, since it is most akin to the plastic blinds, it will appropriately be classified under the above heading.

### 10. Explain how the Packing materials will be classified as per Rule 5 of the General Rules for the Interpretation of the First Schedule to the Customs Tariff Act, 1975.

**Ans:** The classification of packing materials as per Rule 5 of the General Rules for the Interpretation of the First Schedule to the Customs Tariff Act, 1975 is as under,-

**Classification of Packing materials [Rule 5]:** In addition to the foregoing provisions, the following rules shall apply in respect of the goods referred to therein,-

- (a) **Classification of cases/ containers used for Packaging of Goods :** Camera cases, musical instrument cases, gun cases, drawing instrument cases, necklace cases and similar containers, specially shaped or fitted to contain a specific article or set of articles, suitable for long-term use and presented with the articles for which they are intended, shall be classified with such articles when of a kind normally sold therewith. **This rule does not, however, apply to containers which give the whole its essential character.**
- (b) **Classification of packing materials and Packing Containers :** Subject to the provisions of (a) above, packing materials and packing containers presented with the goods therein shall be classified with the goods if they are of a kind normally used for packing such goods. **However, this provision does not apply when such packing materials or packing containers are clearly suitable for repetitive use.**

## CHAPTER 3 – CLASSIFICATION OF IMPORTED AND EXPORT GOODS

**11. Explain Rule 6 of the General Rules for the Interpretation of the First Schedule to the Customs Tariff Act, 1975.**

**Ans:** Rule 6 of the General Rules for the Interpretation of the First Schedule to the Customs Tariff Act, 1975 is as under -

Only sub-headings at the same level are comparable [Rule 6]: For legal purposes, the classification of goods in the sub-headings of a heading shall be determined according to the terms of those sub-heading and any related sub-heading notes and, mutatis mutandis, to **the above Rules, on the understanding that** only sub-headings at the same level are comparable. For the purposes of this rule, the relative Chapter and Section Notes also apply, unless the context otherwise requires.

**12. Explain General Explanatory Notes to Tariff Schedule on system of numbering and dashes. (3 Marks, May 2002)**

**Ans:** The general explanatory notes are discussed as under-

- (1) General Explanatory Note No.1 - Relevance of Single dash [ ^ mu -m ^ prime prime ] Double dash [ ^ prime prime -- ^ prime prime ] f Triple dash ["---"] or Quadruple dash [ ^ prime prime ---- ^ prime prime ]: **The General Explanatory Note No. 1 outlines the scheme of description of the b Heading Nos, a system of dashes has also been adopted as under-**

	Where description of an article or group of articles is preceded by-	The said article or group of articles shall be taken to be a sub-classification of-
(a)	"-" (Single dash)	The article or group of articles covered by the said heading
(b)	"--" (Double dash)	The article or group of articles which has "-" (single dash).
(c)	"---" (Triple dash) or "----" (Quadruple dash)	The immediately preceding description of article or group of articles which has "-" (single dash) or "--" (double dash).

- (2) General Explanatory Note No. 2 – Meaning of abbreviation "%" in relation to the rate of duty : **The abbreviation "%" in any column of this Schedule in relation to the rate of duty indicates that duty on the goods to which the entry relates shall be charged on the basis of the value of the goods as defined in Section 14 of the Customs Act, 1962, the duty being equal to such percentage of the value as is indicated in that column.**

- (3) If preferential rate not specified - Standard Rate Applicable : **In any entry, if no rate of duty is shown in column (5), the rate shown under column (4) shall be applicable.**

**13. Briefly explain "standard unit of quantity" with reference to the First Schedule to the Customs Tariff Act, 1975. (Nov. 2006, 3 Marks)**

**Ans:** 'Standard Unit of Quantity' is a unit of measure. It has been prescribed in column 3 of the First Schedule to the Tariff for each tariff item **to facilitate the collection, comparison and**

**analysis of trade statistics.** The unit of measure is indicated by abbreviations. Some abbreviations are cc-cubic centimeter, cm-centimetre(s), g-gram(s), mt-Metric Tonne. An importer/manufacturer should use single standard unit of quantity. Use of different units of quantity for the same goods has been causing serious problems in data analysis for National Import Data Base.

### PROJECT IMPORTS AND ELIGIBLE PROJECTS

14. Write a note on "Project Imports" under the Customs Tariff Act, 1975 enumerating the eligible projects and the minimum investment criteria, if any. (May 2000, May 2001 & 2005: 4 Marks) (May 2008, 6 Marks)

Ans: The relevant provisions are discussed as under –

- (1) **Need of heading Project Import :** Setting up of a project in India may require a number of machines and equipments to be imported. This importation may spread over a period of time and thus assigning values and paying heavy customs duty on imported machineries make the initial project a cumbersome and costly process. Hence, concept of 'Project Import' has been introduced under heading 9801 of Customs Tariff Act, 1975.  
In the GST regime, for the purpose of levying IGST all the imports under the project import scheme will be classified under heading 9801 and duty shall be levied @ 18%.
- (2) **Scope of Project Import :** Machines, instruments, apparatus and appliances for research and development purposes, components of raw material required for manufacture of aforesaid items etc., utilized for initial setting up of project or substantial expansion of the existing project (i.e. increase in installed capacity by more than 25%) are covered under this heading. Spares etc. essential for maintenance of plant or a project are eligible only upto 10% of the value of goods and can be imported under project imports.
- (3) **Eligible Projects :** The eligible projects are –
  - (a) Industrial plant;
  - (b) Irrigation project;
  - (c) Power project;
  - (d) Mining project;
  - (e) Oil & other mineral exploration project;
  - (f) Other projects as notified by the Central Government.
- (4) **Minimum Investment :** Minimum investment criteria has not been specified.
- (5) **Construction equipments required for set-up/ substantial expansion are eligible for import under Project Imports :** Construction equipments, required for initial setting up or substantial expansion of registered projects are eligible for import as business equipments under Tariff Heading 9801. After completion of intended use of construction equipment, they may be transferred to other registered project under Tariff heading 9801, on recommendations of sponsoring authority.

## CHAPTER 3 – CLASSIFICATION OF IMPORTED AND EXPORT GOODS

IVRCL  
Infrastructure and  
Projects Ltd. v. CC  
[2015] 319 ELT 194  
(SC)

Where the "basic characters" of the Hot Mix plant for construction of roads was imported while the steel structure containers required for their assembling was indigenously procured, the exemption available on the import of the "plant" cannot be availed as what was imported was "parts of the plant" and not the "plant" in its entirety. Statements made to Customs Officer are admissible in evidence under section 108 of the Customs Act, 1962 and the Court has to merely scrutinize whether the admissions made were voluntary.

Note:



### TOPIC REFERENCER

- ⇒ *Concept of Valuation and Tariff Value*
- ⇒ *Valuation of Imported Goods : Transaction Value, Related Person, Valuation in case goods are sold to Related Persons*
- ⇒ *Adjustments for Costs and Services for Valuation of Imported Goods*
- ⇒ *Meaning of Identical Goods, Similar Goods, Transaction Value of Identical Goods and Similar Goods*
- ⇒ *Deductive Value, Computed Value and Residual Method of Valuation*
- ⇒ *Valuation of Export Goods*

### CONCEPT OF VALUATION AND TARIFF VALUE

1. State briefly the provisions of Section 14 of the Customs Act, 1962 regarding valuation of goods for purposes of assessment. (Nov. 1999, 6 Marks) (Nov. 2000, 6 Marks)

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

- (1) Valuation of goods [Section 14(1)] : For the purposes of the Customs Tariff Act, 1975, or any other law for the time being in force,—
  - ✓ the value of the –
    - a) imported goods, and
    - b) export goods,
      - shall be the transaction value of such goods, that is to say, the price actually paid or payable for the goods when sold –
      - (a) for export to India for delivery at the time and place of importation, or
      - (b) for export from India for delivery at the time and place of exportation, where the buyer and seller of the goods are not related, and
  - ✓ price is the sole consideration for the sale,
  - ✓ subject to such other conditions as may be specified in the rules made in this behalf.
- (2) Inclusions in transaction value in the case of imported goods : The transaction value in the case of imported goods shall include, in addition to the price as aforesaid, any amount paid or payable for costs and services, including commissions and brokerage, engineering, design work, royalties and licence fees, costs of transportation to the place of importation, insurance, loading, unloading and handling charges to the extent and in the manner specified in the rules made in this behalf.
- (3) Scope of valuation rules : The rules made in this behalf may provide for,—
  - (a) the circumstances in which the buyer and the seller shall be deemed to be related;

- (b) the manner of determination of value in respect of goods when there is no sale, or the buyer and the seller are related, or price is not the sole consideration for the sale, or in any other case;
- (c) the manner of acceptance or rejection of value declared by the importer or exporter where the proper officer has reason to doubt the truth or accuracy of such value, and determination of value for the purposes of this section.
- (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.

The said provision is a measure to address the issue of undervaluation in imports and it provides for rules to be framed by the Central Government whereby the Board can be enabled to specify the additional obligations of the importer in respect of a class of imported goods whose value is not being declared correctly, the criteria of selection of such goods, and the checks in respect of such goods. Customs (Assistance in Value Declaration of Identified Imported Goods) Rules, 2023 [CAVR, 2023] notified.

The aspects in these rules include –

- i) the processes to be followed before the Board may specify a class of imported goods, for which there is a reason to believe that the value may not be declared truthfully or accurately but below it, as identified goods.
- ii) the procedures for an importer of identified goods, once the relevant class of goods have been specified as identified goods by the Board. These include declaring certain aspects while filing the bill of entry. Further, if required by the Customs Automated System, such importer shall also fulfil the specified additional obligations, and specified checks shall be performed so as to enable and assist the importer to demonstrate the truthfulness and accuracy of the declared value.
- iii) the specification that where the proper officer still has reasonable doubt about the truth or accuracy of the value declared in relation to the identified goods, the further proceedings shall be taken in accordance with rule 12 of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 (CVR, 2007) only.

The CAVR, 2023 can be applied only by following the processes referred in the rules. The written reference must have been made to the Board which, if found suitable by Screening Committee for detailed examination, must have been comprehensively examined by Evaluation Committee which should have concluded the likelihood that the value of the relevant class of goods may not be declared truthfully, having regard to the trend of the declared value or other relevant criteria. Thereafter, the Screening Committee's recommendation confirming the completeness of such report must have been made to the Board. If satisfied that the recommended report should be accepted, the Board may specify the identified goods.

Exceptions: These rules shall not be applied to, –

- i) imports not involving duty;
- ii) goods for which tariff value has been fixed by the Board in terms of section 14(2) of the Act;
- iii) goods which attract import duty on specific rate basis;
- iv) imports made in terms of authorization or license issued under duty exemption scheme of the Foreign Trade (Development and Regulation) Act, 1992 in which the inputs imported prior to export are physically contained in the export product;
- v) imports where buyer and seller are related and an investigation on relationship has already been contemplated or finalized;
- vi) Project imports;
- vii) imports by Government, Public Sector Undertakings;
- viii) imports made in non-commercial quantities;
- ix) goods imported for the purpose of re-export; or
- x) imports specified by the Board.

[Notification No. O3/2023-Cus (N.T.) dated 11.01.2023 read with Circular No. 01/2023-Cus dated 11.01.2023]

- (4) Price to be computed with reference to exchange rate : The 'price' referred under section 14(1) is to be calculated with reference to the rate of exchange as in force on the date on which a bill of entry is presented under section 46, or a shipping bill or bill of export is presented under section 50.
- (5) Valuation of imported goods : Section 14(1) provides that the value of imported goods shall also include various items of costs and services to the extent provided by the rules. Hence, the value of imported goods shall be computed in accordance with Section 14(1) read with the **Customs Valuation (Determination of Value of Imported Goods) Rules, 2007** (for short "import valuation rules").

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

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

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

## CHAPTER 4 – VALUATION UNDER CUSTOMS ACT 1962

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

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

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

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

### 2. Explain briefly with reference to the provisions of the Customs Act, 1962 the following: Tariff value. (May 2008, 2 Marks)

Ans: The provisions relating to Tariff Value under the Customs Act, 1962 are discussed as under–

- (a) Tariff value : As per Section 2(40) of the Customs Act, 1962, 'tariff value' in relation to any goods, means the tariff value fixed in respect thereof under Section 14(2).
- (b) Overriding effect over Section 14(1) : The provisions of Section 14(2) has been given an overriding effect over Section 14(1).
- (c) Statutory provisions : As per Section 14(2) of the Act, if the CBIC is satisfied that it is necessary or expedient so to do, it may, by notification in the Official Gazette, fix tariff values for any class of imported goods or export goods, having regard to the trend of value of such or like goods, and where any such tariff values are fixed, the duty shall be chargeable with reference to such tariff value.
- (d) Goods covered : At present, tariff value has been fixed for some essential edible oils, brass scrap, gold or silver etc.

### 3. Discuss with reference to decided case laws as to how the 'value' shall be determined under Section 14 of the Customs Act, 1962 in the following case – The goods are purchased on high seas. (Nov. 2002)

Ans: The relevant provisions are discussed as under –

- (1) Meaning of high sea transactions : Purchase on high sea basis means that the imported goods are acquired by a buyer from the original importer while they in the high seas i.e., the purchase takes place before they reach India.
- (2) Valuation in case of goods purchased on high sea basis : In case of imported goods purchased on high sea sales basis, the price, at which the goods are acquired by the buyer from the original importer, can be the price for the delivery of such goods at the time and place of importation and, therefore, such price would be taken to be the value of such goods.

## CHAPTER 4 – VALUATION UNDER CUSTOMS ACT 1962

In case of more than one high sea sales, the last sale price i.e., the actual high-seas-sale-contract price paid by the last buyer would be taken as the value of such goods.

Circular No. 33/2017 dated 01-08-2017 Duty and IGST leviable only once on price paid by final importer

- ✓ IGST on high sea sale(s) transactions of imported goods, whether one or multiple, shall be levied and collected only at the time of importation i.e. when the import declarations are filed before the Customs authorities for the customs clearance purposes for the first time. Further, value addition accruing in each such high sea sale shall form part of the value on which IGST is collected at the time of clearance. Thus, every high sea sale would not be regarded as an interstate transaction so as to attract levy of IGST.
- ✓ The importer (last buyer in the chain) would be required to furnish the entire chain of documents, such as original Invoice, high-seas-sales-contract, details of service charges/commission paid etc, to establish a link between the first contracted price of the goods and the last transaction. In case of a doubt regarding the truth or accuracy of the declared value, the department may reject the declared transaction value and determination the price of the imported goods as provided in the Customs Valuation rules.

### VALUATION OF IMPORTED GOODS: TRANSACTION VALUE, RELATED PERSON, VALUATION IN CASE GOODS ARE SOLD TO RELATED PERSONS

#### 4. Define Place of Importation.

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

5. What do you understand by "transaction value" of imported goods? Briefly outline the adjustments to be made in order to arrive at such value under the Customs Act, 1962 and rules framed thereunder. (Nov. 1996, 5 Marks) OR

State the requirements to be satisfied to accept 'transaction value' under rule 3(2) of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007. (May 2007, 6 Marks)

Ans: The provisions are discussed as under –

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

According to Rule 2(g), transaction value means the value referred to in Section 14(1) of the Act. According to Section 14(1), transaction value means the 'price actually paid or payable' for goods when sold for export to India for delivery at the time and place of importation where the buyer and seller of the goods are not related and price is the sole consideration for the sale.

## CHAPTER 4 – VALUATION UNDER CUSTOMS ACT 1962

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

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

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

- (3) Charges for Post Importation Activities : As per interpretative notes, activities undertaken by the buyer on his own account, other than those, for which an adjustment is provided in Rule 10, are not considered to be an indirect payment to the seller, even though they might be regarded as benefit to the seller. Hence, **their cost shall not be added in determining the value of imported goods**. As the price actually paid or payable refers to the price for imported goods, the cost of the activities subsequent to importation are not includible. However, these charges are to be distinguished from the price actually paid or payable for the value of the goods in question i.e. such charges are to be shown separately in the invoice.

The following are a few examples of such charges,–

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

7. Explain briefly the term Related Persons with reference to the Customs Valuation Rules, 2007. (Nov. 2000, 4 Marks) OR

## CHAPTER 4 – VALUATION UNDER CUSTOMS ACT 1962

When can the 'transaction value' be accepted under the Customs Act, 1962 and the Customs Valuation Rules, 2007 even if the buyer and seller are related persons? Write a brief note. (Nov. 2003, 5 Marks)

Ans: The relevant provisions are discussed as under –

- (1) Related persons [Rule 2(2)] : Persons shall be deemed to be 'related' only if,
  - i) they are officers or directors of one another's businesses;
  - ii) they are legally recognised partners in business;
  - iii) they are employer and employee;
  - iv) any person directly or indirectly owns, controls or holds 5% or more of the outstanding voting stocks or shares of both of them;
  - v) one of them directly or indirectly controls the other;
  - vi) both of them are directly or indirectly controlled by a third person;
  - vii) together they directly or indirectly control a third person; or
  - viii) they are members of the same family.
- (2) Legal persons included : The term "person" also includes legal persons. [Explanation 1]
- (3) Sole agents, etc not related unless other relationship exists : A sole distributor or a sole agent or a sole concessionaire (by whatever name called) shall be deemed to be related only when he or it satisfies any of the above-mentioned criteria. [Explanation 2]
- (4) Cases where transaction value to be assessable value if goods sold to related person : According to Rule 3(3), even if goods are sold to related persons, the transaction value under Rule 3(1) shall be accepted in the following cases,—
  - (i) If the examination of circumstances of the sale of imported goods indicate that the relationship did not influence the price.
  - (ii) 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 :
    - (a) transaction value of the identical or similar goods, in sales to unrelated buyers in India;
    - (b) the deductive value of identical or similar goods; or
    - (c) the computed value of identical or similar goods.

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

Substitute values shall not be established under the provisions of (ii) above.

CCE & ST v.  
Sanjivani Non-  
ferrous Trading  
Pvt. Ltd [2019]  
365 ELT 3 (SC)

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

## CHAPTER 4 – VALUATION UNDER CUSTOMS ACT 1962

	give the reasons supported by material on the basis of which the Assessing Officer arrives at his own assessable value.
CC v. Bayer Corp. Science Ltd. [2015] 324 ELT 17 (SC)	Sole Distributorship is not the conclusive consideration for determination of "Related person" when the foreign supplier did not, directly or indirectly, control the assessee. To establish the fact of " Related Person", the case should fall in one of the clauses mentioned in Rule 2(2) of Customs Valuation Rules, 2007. Onus was on the Department to bring evidences to testify their claim of sales/ transaction at high price. In absence of any such evidence on record, agreement with another importer for prior periods cannot be relied upon as it was not contemporaneous.

### ADJUSTMENTS FOR COSTS AND SERVICES FOR VALUATION OF IMPORTED GOODS

8. Enumerate the various costs and services that are to be added to the 'Transaction Value' u/r 10(1) of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007. (May 2002, 4 Marks)

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

- (a) Cost and service charges [Rule 10(1)(a)] : The following costs and services, to the extent they are incurred by the buyer but have not been included in the price actually paid or payable for the imported goods –
- (i) commission and brokerage, **except buying commission**;  
[Buying Commission : As per interpretative notes, 'Buying commission' means fees paid by an importer to his agent for service of representing him abroad in purchase of goods being valued.
  - (ii) The Supreme Court in **Hyderabad Industries Ltd. v. UOI [2000] 115 ELT 593 (SC)** has held that commission paid to canalising agent in India is not 'buying commission', since they are independent parties.]
  - (iii) the **cost of containers** which are treated as being one for customs purposes with the goods in question i.e. cost of containers imported along with the goods;
  - (iv) **cost of packing** whether for labour or materials.
- (b) Apportioned value of goods and services supplied by the buyer free or at concessional rate [Rule 10(1)(b)] : The value, apportioned as appropriate of the following goods and services, which are supplied directly or indirectly by the buyer free of charge or at reduced costs for use in connection with the production and sale for export of imported goods, to the extent that such value has not been included in the price actually paid or payable, namely –
- (i) materials, components, parts and similar items incorporated in the imported goods;
  - (ii) tools, dies, moulds and similar items used in the production of the imported goods;

## CHAPTER 4 – VALUATION UNDER CUSTOMS ACT 1962

- (iii) materials consumed in the production of the imported goods;
- (iv) engineering, development, art work, design work, and plans and sketches undertaken elsewhere than in India and necessary for the production of the imported goods.
- (c) Royalties and licence fees payable as condition of sale [Rule 10(1)(c)] : Royalties and the licence fees related to the imported goods that the buyer is required to pay, directly or indirectly, as a condition of the sale of the goods being valued, to the extent the same is not included in the price actually paid or payable. [ royalty charges for reproduction not includible, payment for re-distribution / re-selling not includible]
- (d) Subsequent Sale Proceeds [Rule 10(1)(d)] : The value of any part of the proceeds of any subsequent resale, disposal or use of the imported goods that accrues, directly or indirectly, to the seller.
- (e) Other payments as a condition of sale [Rule 10(1)(e)] : All other payments actually made or to be made as a condition of sale of the imported goods, by the buyer to the seller, or by the buyer to a third party to satisfy an obligation of the seller, to the extent that such payments are not included in the price actually paid or payable.

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

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

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

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

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

Ans: The relevant provisions are discussed as under –

- (1) Royalties and license fees payable as condition of sale – Includible [Rule 10(1)(c)]: Royalty and License fees is added to the transaction value of the imported goods only if the following conditions are satisfied,-
  - (a) such royalties or license fees are related to the imported goods; and
  - (b) the buyer is required to pay the same as a condition of the sale of the goods being valued.
- (2) Nature and Scope of Royalty as per Interpretative Notes: Further, the interpretative notes provides for the following:
  - (a) The royalties and licence fees may include, among other things, payments in respect to patents, trademarks and copyrights.

## CHAPTER 4 – VALUATION UNDER CUSTOMS ACT 1962

- (b) Royalty charges for reproduction not includible : However, the charges for the right to reproduce the imported goods in the country of importation shall not be added to the price actually paid or payable for the imported goods in determining the customs value.
- (c) Payment for re-distribution/ re-selling not includible : Payments made by the buyer for the right to distribute or resell the imported goods shall not be added to the price actually paid or payable for the imported goods if such payments are not a condition of the sale for export to the country of importation of the imported goods.
- (3) Post-importation process [Explanation to Rule 10]: Where the royalty, licence fee or any other payment for a process, whether patented or otherwise, is includible, such charges shall be added to the price actually paid or payable for imported goods, even if such goods are subjected to the said process after importation of such goods.

<p>CC v. Steel Authority of India Ltd. [2020] 372 ELT 478 (SC)</p>	<p>Designs and drawings related to post-importation project and project implementation activities obtained from same vendor as of equipment and spares, would not automatically attract the "condition" clause contained in Rule 10(1)(e) of the Valuation Rules. Though the different components of a contract may give shape of a turnkey project, in absence of a specific 'condition clause' as contemplated in Rule 10(1)(e), value of all such items cannot be added to arrive at the assessable value as it would go against the provisions of Interpretative Note to Rule 3, which is part of the Valuation Rules.</p>
<p>CC v. Essar Steel Ltd. [2015] 319 ELT 202 (SC)</p>	<p>Technical services for setting up and commissioning of plant is post importation charges and cannot be added to value of plant since customs duty is chargeable on goods by reference to value at a price at which goods are ordinarily sold/ offered for sale at time and place of importation in international trade.</p>
<p>CC (Imports) Hindalco Industries Ltd. [2015] 320 ELT 42 (SC)</p>	<p>Fees for Licence, Basic Engineering, Training and Technical Services is neither related to import of capital goods nor is it a condition of sale. It pertains to services that are to be provided after importation of goods. Therefore, value of these cannot be loaded on to value of imported goods, services</p>
<p>CC v. Denso Kirloskar Industries Pvt. Ltd. [2015] 324 ELT 431 (SC)</p>	<p><i>Cost of technical know-how having been incurred post importation in relation to the manufacture of machinery will not be added to arrive at the assessable value of the components/raw material imported for the said manufacture.</i></p> <p>The assessee imported machinery components to manufacture air conditioners and for the same, it entered into a technical know-how agreement with a foreign company and paid fee as consideration.</p>

## CHAPTER 4 – VALUATION UNDER CUSTOMS ACT 1962

	<p>It was held that the know-how fee paid would not be added to arrive at the assessable value of the imported machinery components since the technical information was provided by the foreign company after the components were imported and the plant for the production of air conditioners was set up. Also, the said know-how fee is related to the finished products and not the imported components.</p>
<p>Commissioner of Customs (PORT), Kolkata v. Steel Authority of India Ltd. [2020] 116 taxmann.com 388 (SC)</p>	<p><i>Where SAIL imported equipments, spares and certain basic designs for modernisation of its plant, in view of fact that subject designs were meant for post-importation activities and there was no condition laid down that import of equipments were to be supplemented by post-importation work, price of designs could not be included in value of imported goods:</i></p> <p>SAIL entered into a contract with overseas consortia for modernisation, expansion and modification of their plant in West Bengal. As per said contract, consortia were to supply plant, equipments and spares as also certain basic designs and supervisory services. Subject designs did not relate to equipments imported and was meant for post-importation activities and there was no condition laid down that import of equipments were to be supplemented by post-importation work. In view of fact that subject designs were meant for post-importation activities and there was no condition laid down that import of equipments were to be supplemented by post-importation work, price of designs could not be included in value of imported goods</p>

**10. What are the adjustments specified in Rule 10(2), which are required to be made in price of imported goods with regard to cost of transportation, insurance, and loading, unloading and handling charges. (May 2002, 4 Marks)**

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

- (a) Cost of transportation, loading, unloading and handling charges : The cost of transport, loading, unloading and handling charges associated with the delivery of the imported goods TO the place of importation.
- ✓ Cost of transportation, loading, unloading and handling charges is not ascertainable [First Proviso to Rule 10(2)] : Where the cost referred to in 10(2)(a) i.e. Cost of transportation, loading, unloading and handling charges associated with the delivery of the imported

## CHAPTER 4 – VALUATION UNDER CUSTOMS ACT 1962

goods to the place of importation is not ascertainable, such cost shall be 20% of the free on board value of the goods.

- ✓ Cost of transportation, loading, unloading and handling charges when FOB value not ascertainable but FOB value + Cost of Insurance ascertainable [Second Proviso to Rule 10(2)] : Where the FOB value of the goods is not ascertainable but the sum of FOB value of the goods and the cost of insurance to the place of importation is ascertainable, the cost of transportation, loading, unloading and handling charges associated with the delivery of the imported goods to the place of importation shall be 20% of such sum i.e. 20% of [FOB Value + Cost of Insurance].
- ✓ Air freight etc. cannot exceed 20% of FOB value of the goods [Fifth Proviso to Rule 10(2)] : In case of importation of goods by air, even if the actual cost of transport, loading, unloading and handling charges associated with the delivery of the imported goods to the place of importation is ascertainable, the same shall not exceed 20% of FOB value of the goods.
- ✓ Transshipment costs to be excluded [Sixth Proviso to Rule 10(2)] : In the case of goods imported by sea or air and transshipped to another customs station in India, the cost of insurance, transport, loading, unloading, handling charges associated with such transshipment shall be excluded.
- ✓ Ship demurrage charges on chartered vessels, lighterage or barge charges - Includible [Explanation to Rule 10(2)] : The cost of transport of the imported goods referred above includes the ship demurrage charges on chartered vessels, lighterage or barge charges.
- (b) Insurance Charges : The cost of insurance TO the place of importation.
  - ✓ Cost of insurance not ascertainable [Third Proviso to Rule 10(2)] : In case the cost of insurance to the place of importation is not ascertainable, such cost shall be 1.125% of the FOB value of the goods.
  - ✓ Cost of insurance when FOB value not ascertainable but FOB value + Cost of transportation, loading, unloading and handling charges ascertainable [Fourth Proviso to Rule 10(2)] : Where the FOB value of the goods is not ascertainable but the sum of FOB value of the goods and the cost of transport, loading, unloading and handling charges associated with the delivery of the imported goods to the place of importation is ascertainable, the cost of insurance to the place of importation shall be 1.125% of such sum i.e. 1.125% of [FOB Value + Cost of transport, loading, unloading and handling charges associated with the delivery of the imported goods to the place of importation].

Circular No. 39/2017 dated 26.09.2017	No. Cus.	CBI has explained the above amendments as under- (1) Treatment of the loading, unloading and handling charges : The Hon'ble Supreme Court had ruled in the case of <i>M/s. Wipro Ltd. v. Assistant Collector of Customs</i> [2015] 319 ELT 177 (SC) dated 16-04-2015 that the landing charges to be added to the value of goods, should be based on actual charges incurred, and not a notional charge of 1% as has been provided in the Rules.
---------------------------------------	----------	--

## CHAPTER 4 – VALUATION UNDER CUSTOMS ACT 1962

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

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

- (2) **Computation of freight and insurance** : Now, the 2nd and 4th provisos to Rule 10(2) impart more clarity in computation of transport and insurance charges, when actuals of each individual element are not known, but the cumulative value of FOB and freight, or, FOB and insurance charges are known.
- (3) **Treatment of transshipment costs** : In the erstwhile 4th proviso to Rule 10(2), while the transshipment charges with respect to a container being moved from port to an ICD and CFS were excluded from the transaction value of the goods, there was no mention of a similar treatment to transshipment of goods by sea or air. Now, by virtue of the 6th proviso to Rule 10(2), costs related to transshipment of goods (from ports to ICDs; port to port, port to CFS, Airport to Airport etc.) within India will be excluded, providing uniform treatment to different modes of transshipment.

Chart showing the determination of assessable value after adjustments under rule 10 :

Particulars	Amount
FOB Price (Free on Board)	xxx
Add: Charges for costs and services as per Rule 10(1) (Excluding charges for Post-importation Activities)	xxx
Customs FOB	xxx
Add: The following adjustments [(a) and(b)] under Rule 10(2)—	
(a) Actual cost of transport, loading, unloading and handling charges associated with the delivery of the imported goods to the place of importation (In case of air it cannot exceed 20% of Customs FOB value of goods)	xxx

## CHAPTER 4 – VALUATION UNDER CUSTOMS ACT 1962

<p><i>If not ascertainable - 20% of the Customs FOB value of goods. In case Customs FOB value is also not ascertainable, then it will be 20% of [Customs FOB value + Cost of Insurance]</i></p> <p>(b) <b>Actual Cost of insurance</b></p> <p><i>If not ascertainable - 1.125% of the Customs FOB value of goods. In case Customs FOB value is also not ascertainable then it will be 1.125% of [Customs FOB value + Cost of transport, loading, unloading and handling charges]</i></p>	xxx
<p>CIF value (Customs FOB value + cost of transport + cost of insurance) being Assessable Value for the Purpose of calculating duties of custom.</p>	xxx

### MEANING OF IDENTICAL GOODS, SIMILAR GOODS, TRANSACTION VALUE OF IDENTICAL GOODS AND SIMILAR GOODS

**11. Explain the meaning of - (i) Identical goods; (ii) Similar goods. (May 2000, 2 Marks) (May 2002, 4 Marks) (Nov. 2002, 3 Marks) (May 2006, 3 + 3 = 6 Marks)**

Ans: The aforesaid points have been discussed below-

- (1) "Identical goods" means imported goods,-
  - (a) which are same in all respects, including physical characteristics, quality and reputation as the goods being valued except for minor differences in appearance that do not affect the value of goods;
  - (b) produced in the country in which the goods being valued were produced; and
  - (c) produced by the same person who produced the goods, or where no such goods are available, goods produced by a different person, but shall not include imported goods where engineering, development work, art work, design work, plan or sketch undertaken in India were completed directly or indirectly by the buyer on these imported goods free of charge or at a reduced cost for use in connection with the production and sale for export of these imported goods. [Rule 2(1)(d)]
- (2) "Similar goods" means imported goods,-
  - (a) which although not alike in all respects, have like characteristics and like component materials which enable them to perform the same functions and to be commercially interchangeable with the goods being valued having regard to the quality, reputation and the existence of trade mark;
  - (b) produced in the country in which the goods being valued were produced; and
  - (c) produced by the same person who produced the goods being valued, or where no such goods are available, goods produced by a different person, but shall not include imported goods where engineering, development work, art work, design work, plan or sketch undertaken in India were completed directly or indirectly by the buyer on these imported goods free of charge or at a reduced cost for use in connection with the production and sale for export of these imported goods. [Rule 2(1)(f)]

12. Explain the provisions of Rule 4 of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 which deals with determination of transaction value of identical goods. Explain whether 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 or similar imported goods under Rule 4 respectively. (May 2004, 3 Marks) & 5

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

- (1) Transaction value of identical goods : If the value of imported goods cannot be determined as per Rule 3 of Customs Valuation (Determination of Value of Imported Goods) Rules, 2007, then, the value thereof shall be the transaction value of the identical goods sold for export to India and imported at or about the same time as the goods being valued.
- (2) Value of goods provisionally assessed not to be taken : Such transaction value shall not be the value of the goods provisionally assessed under Section 18 of the Customs Act, 1962.
- (3) Goods at same commercial or quantity level to be taken for valuation : In applying this rule, the transaction value of identical goods in a sale at the same commercial level and in substantially the same quantity as the goods being valued, shall be used to determine the value of imported goods.
- (4) Adjustments for differences in commercial or quantity levels : In case any of the above conditions is not fulfilled, transaction value in a sale of identical goods that takes place under any one of the following three circumstances may be used:
  - (a) sale at the same commercial level but in different quantities;
  - (b) sale at a different commercial level but in substantially the same quantities; or
  - (c) sale at a different commercial level and in different quantities.
  - (d) Having found a sale under any one of these three conditions adjustments will then be made, as the case may be, for :
    - ✓ quantity factor only;
    - ✓ commercial level factors only; or
    - ✓ both commercial level and quantity factor.
- (5) Adjustment for costs and services as referred in Rule 10(2) : Where the costs and charges refer to in Rule 10(2) i.e. cost of transport, landing charges and insurance charges, are included in the transaction value of identical goods and it is found that, there are significant differences in such costs and charges between the goods being valued and the identical goods in question, arising from the differences in distances and means of transport, adjustments shall be made to account for the same.
- (6) More than one value is found – Lowest value shall be used : If more than one transaction value of identical goods is found, the lowest of such value shall be used to determine the value of the imported goods.

## CHAPTER 4 – VALUATION UNDER CUSTOMS ACT 1962

[Valuation of similar goods under Rule 5 : The above principles of valuation on basis of identical goods equally applies to similar goods which is covered in Rule 5.]

### DEDUCTIVE VALUE, COMPUTED VALUE AND RESIDUAL METHOD OF VALUATION

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

#### 13. What do you understand by Deductive value? How is it applied for customs valuation?

Ans : The provisions are discussed as under –

- (1) **Deductive Value** : If the value of imported goods cannot be determined as per provisions of Rule 4 and Rule 5, then value is to be determined as per Rule 7 i.e. deductive value. Deductive value is the unit price at which imported goods or identical goods or similar imported goods are sold in the **greatest aggregate quantity**, to persons who are not related to the sellers in India at the time when declaration for value is presented, **after making the following deductions from unit price**
  - (a) either the commission usually paid or agreed to be paid or the additions usually made for profits and general expenses in connection with sales in India of imported goods of the same class or kind;
  - (b) the usual costs of transport and insurance and associated cost incurred within India;
  - (c) the customs duties and other taxes payable in India by reason of importation or sale of the goods.
- (2) **Goods not sold at or about the same time of importation** : If neither the imported goods nor identical nor similar imported goods are sold at or about the same time of importation of the goods being valued, then the value of imported goods shall be based on the unit price at which the imported goods or identical or similar imported goods are sold in India, at the earliest date after importation but before the expiry of 90 days after such importation.
- (3) **Due allowance of value addition if goods are sold after further processing** : If neither the imported goods nor identical nor similar imported goods are sold in India in the condition as imported, then, the value shall be based on the unit price at which the imported goods, after further processing, are sold in the greatest aggregate quantity to person who are not related to the seller in India. In such determination, deduction shall be made for the value added by processing, besides the above deductions.

14. Briefly explain the following with reference to the Customs (Determination of Value of Imported Goods) Rules, 2007: Goods of the same class or kind. (Nov. 2009 3 Marks)

Ans: "Goods of the same class or kind", means –

- (i) imported goods that are within a group or range of imported goods produced by a particular industry or industrial sector; and
  - (ii) includes identical goods or similar goods. [Rule 2(c)]
- This expression has been used in Rule 7 and Rule 8 of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007.

15. Briefly explain the following with reference to the Customs (Determination of Value of Imported Goods) Rules, 2007: Computed value. (Nov. 2009 3 Marks)

Ans: Computed Value [Rule 8]: As per Rule 2(1)(a) of the said rules, computed value means the value of 8

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

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

Goods of the same class or kind", means –

- (i) imported goods that are within a group or range of imported goods produced by a particular industry or industrial sector; and
- (ii) includes identical goods or similar goods [Rule 2(c)]

this expression has been used in Rule 7 and Rule 8 of the customs valuation (determination of imported goods) Rules , 2007

16. Write a brief note on the 'residual method' of determination of value of imported goods under the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007. (May 2006, 6 Marks) (Nov. 2009 (NS), 2 Marks) (May 1998, 3 Marks) (Nov. 2000,

Ans: The residual method of valuation of imported goods is as under –

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

However, the value so determined shall not exceed the price at which such or like goods are ordinarily sold or offered for sale for delivery at the time and place of importation in the

## CHAPTER 4 – VALUATION UNDER CUSTOMS ACT 1962

course of international trade, when the seller or buyer has no interest in the business of other and price is the sole consideration for the sale or offer for sale.

- (2) Basis on which value cannot be determined under this Rule [Rule 9(2)] : The following shall not be considered in determining the value under this method,—
- (i) the selling price in India of the goods produced in India;
  - (ii) a system which provides for the acceptance for customs purposes of the highest of the two alternative values;
  - (iii) the price of goods on the domestic market of the country of exportation;
  - (iv) the cost of production other than the computed value of identical goods or similar goods as determined in Rule 8;
  - (v) the price of the goods for the export to a country other than India;
  - (vi) minimum customs values;
  - (vii) arbitrary or fictitious values.
- (3) Interpretative Notes : As per interpretative notes to Rule 9 –
- (a) Value of imported goods determined under the provisions of Rule 9 should to the greatest extent possible, be based on previously determined customs values.
  - (b) The methods of valuation to be employed under Rule 9 may be those laid down in Rules 3 to 8, inclusive, but a reasonable flexibility in the application of such methods would be in conformity with the aims and provisions of Rule 9.

**17. Write short notes on the following – Declarations to be furnished by the importer under Rule 11.**

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

- (1) The importer or his agent shall furnish,—
  - (a) a declaration disclosing full and accurate details relating to the value of imported goods; and
  - (b) any other statement, information or document as considered necessary by the proper officer for determination of the value of imported goods under these rules. The said statement, information or document includes an invoice of the manufacturer or producer of the imported goods, where the goods are imported from or through a person other than the manufacturer or producer.
- (2) The Customs officer has the power to satisfy himself as to the truth or accuracy of any statement, information, document or declaration presented for valuation purposes.
- (3) The provisions of the Customs Act, 1962 relating to confiscation, penalty and prosecution shall apply to cases where wrong declaration, information, statement or documents are furnished under these rules.

**18. Write short notes on the following: Rejection of declared value by the customs officer under Rule 12. OR Explain briefly with respect to the provisions of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 the chief reasons**

for which the proper officer could raise doubts on the truth or accuracy of the declared value. (4 Marks, May 2015)

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

(1) Proper officers power to call for Necessary Information : When the proper officer has reason to doubt the truth or accuracy of the value declared in relation to any imported goods, he may ask the importer of such goods to furnish further information including documents or other evidence.

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

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

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

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

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

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

- (i) significantly higher value at which identical or similar goods, imported at or about the same time in comparable quantities in a comparable commercial transaction, were assessed
- (ii) sale involves an abnormal discount or abnormal reduction from the ordinary competitive price;
- (iii) sale involves special discounts limited to exclusive agents;
- (iv) mis-declaration of goods in parameters such as description, quality, quantity, country of origin, year of manufacture or production;
- (v) non declaration of parameters such as brand, grade, specifications that have relevance to value;
- (vi) fraudulent or manipulated documents

19. Briefly explain the following with reference to the Customs (Determination of Value of Export Goods) Rules, 2007: Transaction value.

Ans: Determination of the method of valuation [Bule 3]:

- (1) Transaction value [Rule 3(1)] : The value of the export goods shall be the transaction value. However, such transaction value is subject to the provisions of Rule 8 i.e. the proper officer has a right to reject such transaction value.  
According to Section 14(1), transaction value means the 'price actually paid or payable' for goods when sold for export from India for delivery at the time and place of exportation, where the buyer and seller of the goods are not related, and price is the sole consideration for the sale.
- (2) Valuation in case of related persons : The transaction value shall be accepted even where the buyer and seller are related, provided that the relationship has not influenced the price.
- (3) Valuation when transaction value not acceptable : In case the transaction cannot be determined, then the value shall be determined proceeding sequentially through Rules 4 to 6.

20. Briefly explain the following with reference to the Customs (Determination Rules, 2007: Determination of export value by comparison. on of value of Export Goody

Ans-Determination of export value by comparison [Rule 4]:

- (1) The value of the export goods shall be based on the transaction value of "goods of like kind and quality" exported at or about the same time to other buyers in the same destination country of importation or, in its absence, another destination country of importation, adjusted in accordance with provisions given below.
- (2) Adjustments to be made : In determining the value of export goods as above the proper officer shall make such adjustments as appear to him reasonable, taking into consideration the relevant factors, including –
  - (a) difference in the dates of exportation
  - (b) difference in commercial levels and quantity levels,
  - (c) difference in composition, quality and design between the goods to be assessed and the goods with which they are being compared,
  - (d) difference in domestic freight and insurance charges depending on place of exportation.

21. Briefly explain the following with reference to the Customs (Determination of Value of Export Goods) Rules, 2007: Computed value. (Nov. 2009 3 Marks)

Ans: Computed value [Rule 5]: If the value cannot be determined under Rule 4, it shall be based on a computed value, which shall include the following:

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

22. Write a brief note on the 'residual method' of determination of value of export goods under the Customs (Determination of Value of Export Goods) Rules, 2007.

Ans: Residual method [Rule 6]: Where the value of the export goods cannot be determined under the provisions of Rules 4 and 5, the value shall be determined using reasonable means consistent with the principles and general provisions of these rules. However, **local market price of the export goods may not be the only basis for determining the value** of export goods.

23. Write a short note on the declaration by the exporter and rejection of declared value as provided in Rules 7 and 8 of the Customs Export Valuation Rules, 2007.

Ans: The provisions of Rule 7 and 8 of the Customs Export Valuation Rules, 2007 are as follows

- (1) Declaration by the exporter [Rule 7] : The exporter shall furnish a declaration relating to the value of export goods in the manner specified in this behalf.
- (2) Rejection of declared value [Rule 8] :
  - (a) When the proper officer has reason to doubt the truth or accuracy of the value declared in relation to any export goods, he may ask the exporter of such goods to furnish further information including documents or other evidence and if, after receiving such further information, or in the absence of a response of such exporter, the proper officer still has reasonable doubt about the truth or accuracy of the value so declared, the transaction value shall be deemed to have not been determined in accordance with Rule 3.
  - (b) At the request of an exporter, the proper officer shall intimate the exporter in writing the ground for doubting the truth or accuracy of the value declared in relation to the export goods by such exporter and provide a reasonable opportunity of being heard, before taking a final decision.

Other provisions [Explanation to Rule 8] :

- (i) This rule by itself does not provide a method for determination of value, it provides a mechanism and procedure for rejection of declared value, in case, where there is reasonable doubt that the declared value does not represent the transaction value, where the declared value is rejected, the value shall be determined by proceeding sequentially in accordance with Rules 4 to 6.
- (ii) The declared value shall be accepted where the proper officer is satisfied about the truth or accuracy of the declared value after the said enquiry in consultation with the exporter.
- (iii) Reasons for which doubts may be raised : The proper officer shall have the power to raise doubts on the declared value based on certain reasons, which may include,—
  - (a) significant variation in value at which goods of like kind and quality, exported at or about the same time in comparable quantities in a comparable commercial transaction, were assessed.
  - (b) the significantly higher value compared to the market value of goods of like kind and quality at the time of export.

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

**24. Briefly explain the methodology for calculation of export duty after the introduction of the 'transaction value' concept under section 14 of the Customs Act, 1962. (May 2010, 4 Marks)**

**Ans:** With effect from 01-01-2009, for the purpose of calculation of export duty, the transaction value, that is to say the price actually paid or payable for the goods for delivery at the time and place of exportation under Section 14, shall be the FOB price and the export duty shall be charged as a percentage of FOB price.

In case the transaction is on CIF basis, the FOB price may be deduced from the CIF value and then the export duty may be calculated as percentage of such FOB price.

**For example:** If FOB price is 15 lakhs and export duty is 10%, then the transaction value for the purposes of computation of export duty shall be ₹ 15 lakhs and export duty leviable there on shall be 10% of ₹ 15 lakhs = ₹ 1,50,000.

**Note**



### TOPIC REFERENCER

- ⇒ *Provisions Relating to Conveyances Carrying Imported Goods or Export Goods*
- ⇒ *Custodians of Cargo and Procedure for Clearance of Imported Goods*
- ⇒ *Flow Pattern of Export*
- ⇒ *Flow Pattern of Import*
- ⇒ *Procedure for Clearance of Export Goods*
- ⇒ *Payments Through Electronic Cash Ledger*
- ⇒ *Transit and Transshipment of Goods*
- ⇒ *Provisions Relating to Baggage*
- ⇒ *Baggage Rules, 2016*
- ⇒ *Goods Imported or Exported by Post/Courier Stores*

### FLOW PATTERN OF IMPORT

1. Briefly describe the flow pattern of import. OR Explain briefly the procedure for assessment and clearance of imported goods through a Customs Sea Port under the Customs Act, 1962. (May 1999, 8 Marks) (Nov. 2001, 6 Marks)

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

- (i) The person-in-charge of the vessel or aircraft or any other person notified by Central Government calls on the port and files the arrival report with the Customs Authorities.
- (ii) The Customs Authorities check the documents, **grant entry inwards to the vessel**, assign an Import General Manifest (IGM) number to the manifest, and permit the master of the vessel to land and unload the cargo.
- (iii) The **vessel discharges the cargo into the custody of the Port Trust Authorities**, or any other authority appointed in the particular port to receive the cargo.
- (iv) The **importer of the goods delivers the negotiable bill of lading** received from the shipper of the goods to **the master or the steamer agent of the vessel and obtains the delivery order**.
- (v) The importer, makes self assessment and thereafter, **presents a bill of entry** in prescribed form electronically for clearance of the goods for home-consumption or warehousing.
- (vi) In case bill of entry for home consumption is presented and proper self assessment made by importer, the **Proper Officer shall make an order of clearance of goods for home consumption** only after he is satisfied that such goods are not prohibited goods and import duty has been paid.

## CHAPTER 5 – IMPORTATION AND EXPORTATION OF GOODS

- (vii) In case bill of entry for warehousing is presented, the importer has to execute **triple duty bond**, and on such execution an order for deposit of goods in warehouse shall be made by Proper Officer.
- (viii) On showing the customs clearances to Port Trust Authorities or any other Custodian of the cargo, the **importer takes delivery of the cargo** for home consumption or for deposit in the warehouse.
- (ix) For removal of goods from warehouse, the importer files the **'ex-bond bill of entry'** for clearance of warehoused goods. Under this bill of entry, duty will be assessed again in terms of Section 15(1)(b) of Customs Act, 1962.
- (x) After payment of customs duty so re-determined and other charges payable to the warehouse keeper including rent and interest, **the goods are removed for home consumption.**

### PROVISIONS RELATING TO CONVEYANCES CARRYING IMPORTED GOODS OR EXPORT GOODS

2. Explain the obligation cast on person-in-charge on arrival of vessels or aircrafts in India under section 29 of the Customs Act, 1962. (Nov. 2008, 5 Marks) OR An aircraft was compelled to land at a place other than customs airport due to stress of weather. What are the statutory obligations cast on person-in-charge of the aircraft in such a situation? (Nov. 1997, 5 Marks)

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

- (1) Person in charge to call/ land conveyance at Custom port/Airport [Section 29(1)] : The person-in-charge of a vessel or an aircraft entering India from any place outside India **shall not cause or permit the vessel or aircraft to call or land –**
  - (a) for the first time after arrival in India; or
  - (b) at any time while it is carrying passengers or cargo brought in that vessel or aircraft;
  - (c) **at any place other than a customs port or a customs airport** as the case may be, unless permitted by the Board.
- (2) Emergency landing of conveyance – Other than Custom port/ Airport [Section 29(2)] : The above provisions shall not apply in relation to any vessel or aircraft which is compelled by **accident, stress of weather or other unavoidable cause** to call or land at a place other than a customs port or customs airport but the person-in-charge of any such vessel or aircraft,–
  - (a) shall immediately **report the arrival** of the vessel or the landing of the aircraft to the **nearest Customs Officer or the officer-in-charge of a police station** and, shall on demand, produce to him the log book belonging to the vessel or the aircraft;
  - (b) shall not without the consent of any such officer permit any goods carried in the vessel or the aircraft to be unloaded from, or any of the crew or passengers to depart from the vicinity of, the vessel or the aircraft ; and

## CHAPTER 5 – IMPORTATION AND EXPORTATION OF GOODS

- (c) shall comply with any directions given by any such officer with respect to any such goods,  
and no passenger or member of the crew shall, without the consent of any such officer, leave the immediate vicinity of the vessel or the aircraft.

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

### 3. Write a short note on Import General Manifest. (May 1996 & 2003: 3 Marks) (May 2004, 5 Marks) Explain Import Report. (Nov. 2008, 2 Marks)

Ans: Delivery of arrival manifest or import manifest or import report [Section 30]:

- (1) Arrival Manifest or Import manifest/ report : According to Section 2(24) of the Customs Act, 1962, "arrival manifest or import manifest" or "import report" means the manifest or report as required to be delivered under section 30 of the Customs Act, 1962.
- (2) Persons required to furnish the arrival manifest/ import manifest/ import report : The persons in charge of conveyance carrying imported goods or export goods has to present arrival manifest or import manifest (in case of vessel or aircraft) or import report (in case of vehicle) in such form and manner as may be prescribed. The Central Government can specify other persons who can furnish arrival manifest or import manifest in case of vessel or aircraft.
- (3) Time limit for presentation of arrival manifest/import manifest or import report : The arrival manifest or import manifest or import report has to be delivered within the following time limits,—
  - (a) In case of Vessel/ Aircraft : Electronically prior to the arrival of the vessel or aircraft at customs station.
  - (b) In case of Vehicle : Within twelve hours after its arrival in the customs station.  
Electronic filing not feasible – Filing in Other Manner : The Principal Commissioner or Commissioner of Customs may, in cases where it is not feasible to deliver arrival manifest or import manifest by presenting electronically, allow the same to be delivered in any other manner.
- (4) Penalty for non filing the arrival manifest/ import manifest/ report within time limit – Not exceeding ₹ 50,000 : In case the arrival manifest or import manifest or import report is not presented within specified time limit, and if the proper officer is satisfied that there was no sufficient cause for delay in filing arrival manifest or import report/manifest, then the person-in-charge or any other person specified above who caused such delay, shall be liable to a penalty not exceeding ₹ 50,000.
- (5) Arrival manifest/ Import manifest/ report can be amended or supplemented : If the proper officer is satisfied that the arrival manifest or import manifest/report is incorrect or incomplete and there was no fraudulent intention, he may permit it to be amended or supplemented.

## CHAPTER 5 – IMPORTATION AND EXPORTATION OF GOODS

- (6) Declaration as to truth of contents : The person delivering the arrival manifest or import manifest or import report shall at the foot thereof make and subscribe to a declaration as to the truth of its contents.

### 4. Explain the provisions relating to filing of manifest for arrival of passenger and crew.

Ans: Passenger and crew arrival manifest and passenger name record information [Section 30A]: The person-in-charge of a conveyance that enters India from any place outside India or any other person as may be specified by the Central Government by notification in the Official Gazette, shall deliver to the proper officer—

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

Penalty for non filing of manifest within time limit - Not exceeding ₹ 50,000 [Section 30A(2)]: Where the passenger and crew arrival manifest or the passenger name record information or any part thereof is not delivered to the proper officer within the prescribed time and if the proper officer is satisfied that there was no sufficient cause for such delay, the person-in-charge or the other person referred to in Section 30A(1) shall be liable to such penalty, not exceeding ₹ 50,000, as may be prescribed.

Passenger name record information [Section 2(30B)] : It means the records prepared by an operator of any aircraft or vessel or vehicle or his authorised agent for each journey booked by or on behalf of any passenger.

### 5. Write short notes on -

- (i) Entry Inwards. (May 1996, 2 Marks) (May 2014, 1½ Marks)
- (ii) Boat Note. (May 1997, 2½ Marks) (May 2006, 2 Marks)

Ans : The relevant provisions are as under ) Imported

- (1) Imported Goods Not To Be Unloaded From Vessel Until Entry Inwards Granted [Section 31]:
- (a) The master of a vessel shall not permit the unloading of any imported goods until an order has been given by the proper officer granting entry inwards to such vessel.
  - (b) No order shall be given until an arrival manifest or import manifest has been delivered or the proper officer is satisfied that there was sufficient cause for not delivering it.
  - (c) The provisions of this section shall not apply to the unloading of baggage accompanying a passenger or a member of the crew, mail bags, animals, perishable goods and hazardous goods.

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

- (2) Boat Note (Or Restrictions On Goods Being Water Borne) [Section 35]:

## CHAPTER 5 – IMPORTATION AND EXPORTATION OF GOODS

In case the vessel arriving at the port does not get a berth, then, the import cargo is taken from the ship to the shore and the export cargo is taken from the shore to the ship, in boats. No imported goods shall be water-borne for being landed from any vessel and no export goods which are not accompanied by a shipping bill, shall be water borne for being shipped unless the goods are accompanied by a boat-note in prescribed form.

Exemption from boat note : The Board may give general permission, and the proper officer may in any particular case give special permission, for any goods or any class of goods to be water-borne without being accompanied by a boat-note.

### 6. State briefly the other provisions in relation to conveyances carrying imported goods.

Ans: The other provisions relating to conveyances carrying imported goods are as follows,-

- (1) Imported goods not to be unloaded unless mentioned in arrival manifest or import manifest or import report [Section 32] : No imported goods required to be mentioned under the regulations in an arrival manifest or import manifest or import report shall, except with the permission of the proper officer, be unloaded at any customs station unless they are specified in such manifest or report for being unloaded at that customs station.
- (2) Unloading and loading of goods at approved places only [Section 33] : Except with the permission of the proper officer, no imported goods shall be unloaded, and no export goods shall be loaded, at any place other than a place approved u/s 8(a) for the unloading or loading of such goods.
- (3) Goods not to be unloaded or loaded except under supervision of customs officer [Section 34]: Imported goods shall not be unloaded from, and export goods shall not be loaded on, any conveyance except under the supervision of the proper officer.  
The Board may, by notification in the Official Gazette, give general permission and the proper officer may in any particular case give special permission, for any goods or class of goods to be unloaded or loaded without the supervision of the proper officer.
- (4) Restrictions on unloading and loading of goods on holidays etc. [Section 36] : No imported goods shall be unloaded from, and no export goods shall be loaded on, any conveyance on any Sunday or on any holiday observed by the Customs Department or on any other day after the working hours, except –
  - ✓ after giving the prescribed notice; and
  - ✓ on payment of the prescribed fees, if any.However, no fees shall be levied for the unloading and loading of baggage accompanying a passenger or a member of the crew, and mail bags.
- (5) Power to board conveyances [Section 37] : The proper officer may, at any time, board any conveyance carrying imported goods or export goods and may remain on such conveyance for such period as he considers necessary.
- (6) Power to require production of documents and ask questions [Section 38] : For purposes of carrying out the provisions of this Act, the proper officer may require the person-in-charge of any conveyance or animal carrying imported goods or export goods to produce any

## CHAPTER 5 – IMPORTATION AND EXPORTATION OF GOODS

document and to answer any questions and thereupon such person shall produce such documents and answer such questions.

### CUSTODIANS OF CARGO AND PROCEDURE FOR CLEARANCE OF IMPORTED GOODS

*Sections 45 to 51 not to apply to baggage and postal articles [Section 44]: The provisions of sections 45 to 51 shall not apply to baggage, and goods imported or to be exported by post.*

#### 7. Write a note on restriction on custody and removal of imported goods u/s 45 of customs Act, 1962.

Ans: The provisions relating to restrictions and custody of goods are as under –

- (1) Restrictions on custody and removal of imported goods : All the imported goods that are unloaded in the customs area shall remain in the custody of such person as may be approved by the Principal Commissioner or Commissioner of Customs until they are cleared for home consumption, or are warehoused, or are transhipped.
- (2) Duties of Custodian of cargo : The person having custody of any imported goods in a customs area –

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

In pursuance to this responsibility, the custodian is required to tally the particulars of the goods landed by a vessel, and send a report known as out turn statement to the customs authorities. This enables the customs authorities to check whether all goods manifested in the import general manifest for landing in a particular place have actually been landed. In case the goods are not so landed, action is taken against the carriers.

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

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

#### 8. State briefly the provisions of the Customs Act, 1962 relating to filing of "Import Bill of Entry". May 1996, 5 Marks) (Nov. 2004, 6 Marks)

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

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

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

- (2) Electronic filing not feasible - Filing in other manner : The Principal Commissioner or Commissioner of Customs may, in cases where it is not feasible to make entry by presenting electronically on the customs automated system, allow an entry to be presented in any other manner

Hence, manual submission of Bill of Entry is allowable in cases where electronic submission is not feasible. The form of the bill of entry is governed by Bill of Entry (Forms Regulations, 1976).

The goods may be cleared for home consumption or for deposit in a warehouse or for transit or transshipment. Therefore, there are three types of Bills of Entries prescribed for these three different purposes.

- Form I (White) – for home consumption.
- Form II (Yellow) – for warehousing (into bond).
- Form III (Green) – for ex-bond clearance for home consumption (ex-bond).

When Bill of Entry is filed electronically, it is in four copies:

- ✓ Original, meant for the customs authorities for assessment and collection of duty;
- ✓ Duplicate, intended as an authority to the custodian of the cargo to release cargo to the importer from his custody;
- ✓ Triplicate, as a copy for record for the importer; and
- ✓ Quadruplicate, as a copy to be presented to the bank or Reserve Bank of India for the purposes of making remittance for the imported goods.

The importer is required to declare in the Bill of Entry amongst other things the particulars of packages, the descriptions of the goods, in terms of the description given in the Customs Tariff to enable proper classification of the goods and the correct value of the goods for the determining the amount of duty.

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

## CHAPTER 5 – IMPORTATION AND EXPORTATION OF GOODS

(b) to deposit the goods in a public warehouse appointed under section 57 without warehousing the same.

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

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

However, the Board may, in such cases as it may deem fit, prescribe different time limits for presentation of the bill of entry, which shall not be later than the end of the day of such arrival.

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

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

(7) Compliance by Importer : The importer who presents a bill of entry shall ensure the following, namely:—

(a) the accuracy and completeness of the information given therein;

(b) the authenticity and validity of any document supporting it; and

(c) compliance with the restriction or prohibition, if any, relating to the goods under this Act or under any other law for the time being in force.

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

### 9. Discuss Bill of Entry (Electronic Integrated Declaration and Paperless Processing) Regulations, 2018.

Ans: Bill of Entry (Electronic Integrated Declaration and Paperless Processing) Regulations, 2018: The salient provisions of **Bill of Entry (Electronic Integrated Declaration and Paperless Processing) Regulations, 2018** are as under-

Title	Provisions
-------	------------

## CHAPTER 5 – IMPORTATION AND EXPORTATION OF GOODS

<b>1.</b>	Short title and commencement	<p>(1) These regulations may be called the Bill of Entry (Electronic Integrated Declaration and Paperless Processing) Regulations, 2018.</p> <p>(2) They shall apply to the import of goods through all customs stations where the Indian Customs Electronic Data Interchange System is in operation.</p> <p>(3) They shall come into force on 11-05-2018.</p>				
<b>2.</b>	Manner of filing electronic integrated declaration [Regulation 3]	<p>The authorised person shall enter the electronic integrated declaration and the supporting documents himself by affixing his digital signature and enter them on the <b>common portal</b> and he may also get the electronic integrated declaration made on the <b>common portal</b> along with the <b>supporting documents</b> by availing the services at the <b>service centre</b>.</p> <ul style="list-style-type: none"> <li>✓ "Authorised person" means an importer or a person authorised by him who has a valid licence under the Customs Brokers Licensing Regulations, 2013 or any other regulation dealing with the similar matters and it also includes an employee of the Customs broker who has been issued a photo identity card in Form G under the Customs Brokers Licensing Regulations, 2013 or any other regulation dealing with the similar matters;</li> <li>✓ "Customs Automated System" means the Indian Customs Electronic Data Interchange System;</li> <li>✓ "Electronic integrated declaration" means particulars relating to the imported goods that are entered in the Indian Customs Electronic Data Interchange System;</li> <li>✓ "Service centre" means the place specified by the Principal Commissioner or the Commissioner of Customs, as the case may be, where the data entry of an electronic integrated declaration, is carried out;</li> <li>✓ "Supporting documents" means the documents in the electronic form or otherwise, which are relevant to the assessment of the imported goods under sections 17 and 46 of the Act.</li> </ul>				
<b>3.</b>	Procedure for filing bill of entry [Regulation 4]	<p>(1) Time limit for presentation of Bill of entry : Time limit for presentation of Bill of entry by authorised person at customs station at which the at which goods are to be cleared for home consumption or warehousing</p> <table border="1" style="width: 100%; border-collapse: collapse; margin-top: 10px;"> <thead> <tr> <th style="width: 50%;">Customs Station</th> <th style="width: 50%;">Time limit</th> </tr> </thead> <tbody> <tr> <td>Customs Port</td> <td>✓ before the end of the day (including holidays) preceding the day on</td> </tr> </tbody> </table>	Customs Station	Time limit	Customs Port	✓ before the end of the day (including holidays) preceding the day on
Customs Station	Time limit					
Customs Port	✓ before the end of the day (including holidays) preceding the day on					

		<p>which the vessel carrying the goods arrives at the customs port.</p> <p>✓ before the end of the day (including holidays) of said arrival of the vessel where the goods are consigned from any of the countries mentioned below:</p> <ol style="list-style-type: none"> <li>a. Bangladesh;</li> <li>b. Maldives;</li> <li>c. Myanmar;</li> <li>d. Pakistan;</li> <li>e. Sri Lanka.</li> </ol>
	Customs Airport	before the end of the day (including holidays) of the arrival of the aircraft carrying the goods at the customs airport
	Inland container depot or air freight station	before the end of the day (including holidays) preceding the day on which the vehicle (which includes train) carrying the goods arrives at the inland container depot or air freight station.
	Land Customs Station	before the end of the day (including holidays) of the arrival of the vehicle (which includes train) carrying the goods at the land customs station.
<p>(2) The bill of entry shall be deemed to have been filed and selfassessment completed when after entry of the electronic integrated declaration on the common portal or by way of data entry through the service centre, a bill of entry number is generated by the Indian Customs Electronic Data Interchange System for the said declaration and the self-assessed copy of the Bill of Entry may be electronically transmitted to the authorised person or printed out at the service centre.</p> <p>(3) Where the bill of entry is not filed within the time specified above and the proper officer of Customs is satisfied that there was no sufficient cause for such delay, the importer shall be liable to pay charges for late presentation of the bill of entry at the rate of ₹ 5,000 per day for the initial 3 days of default and at the rate of ₹ 10,000 per day for each day of default thereafter.</p>		

## CHAPTER 5 – IMPORTATION AND EXPORTATION OF GOODS

		<p>Where the proper officer is satisfied with the reasons of delay, he may waive off the charges referred to in the second proviso to Section 46(3) of the Customs Act, 1962.</p> <p>(4) The late presentation charges in respect of any bill of entry shall not exceed the duty payable in respect of that particular bill of entry. Where the duty or any other charges in respect of any bill of entry are not payable for any reason like exemption or otherwise, the late presentation charges shall not exceed ₹ 50,000.</p> <p>"Bill of entry" means electronic integrated declaration accepted and a unique number generated and assigned to that particular bill of entry by the Indian Customs Electronic Data Interchange System, and includes its electronic records or print-outs; "ICEGATE" means the customs automated system of Central Board of Indirect Taxes and Customs;</p>
4.	Order permitting clearance of goods [Regulation 5]	After the completion of the assessment, an order permitting clearance u/s 47(1) or section 68, as the case may be, shall be made, after examination of the imported goods if so required and the order under regulation 5 may be recorded on the customs automated system and conveyed electronically to the authorised person, the custodian, and to any other person (s) designated by the authorised person.
5.	Retention of bill of entry and supporting documents [Regulation 6]	The authorised person shall retain, for a period of 5 years from the date of presentation of the bill of entry, the assessed copy of the bill of entry, digital or otherwise, and all supporting documents in original, which were used or relied upon by him in submitting the electronic integrated declaration, and shall produce them before Customs in connection with any action or proceedings under the Act or under any other law for the time being in force.
6.	Generation of authenticated copy of bill of entry [Regulation 7]	An authenticated copy of bill of entry may be generated at the request of the authorised person if possession of the said copy is required by him for compliance of provisions of law for the time being in force.
7.	Penalty [Regulation 8]	Any authorised person who contravenes any provision of these regulations or who fails to comply with any provisions of these regulations shall be liable to a penalty which may extend to ₹ 50,000.

10. What do you mean by substitution of bill of entry. How the same is different from amendment of bill of entry.

Ans: The provisions relating to substitution and amendment of bill of entry are as under-

- (1) Substitution of bill of entry: According to Section 46(5), a bill of entry for home consumption can be substituted for bill of entry for warehousing or vice versa. Such substitution is permissible only if proper officer is satisfied that the interest of revenue are not prejudicially affected and there was no fraudulent intention.

Duty applicable on the date of filing substituted bill of entry shall apply: In case of substitution of bill of entry, the date of submission of revised bill of entry will be the relevant date for determination of rate of duty and tariff valuation. In case importer seeks to substitute bill of entry originally filed, he has to file a new bill of entry in the prescribed form again along with the application for substitution.

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

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

11. Explain briefly with reference to the provisions of the Customs Act, 1962, clearance of goods for home consumption. (May 2002, Nov. 2007) (Nov. 2013, 3 Marks) (May 2014, 1 Marks) OR State the salient features of "Deferred duty payment facility" with reference to Customs Act, 1962 and rules thereunder. (5 Marks, May 2018-NS)

Ans: Clearance of goods for home consumption [Section 47]: The relevant provisions are discussed as under-

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

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

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

## CHAPTER 5 – IMPORTATION AND EXPORTATION OF GOODS

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

Importers certified under Authorized Economic Operator programme as **AEO (Tier-Two) and AEO (Tier-Three) or Authorised Public Undertaking.**

Explanation: 'AEO' means Authorized Economic Operator certified by the Directorate General of Performance Management under the Central Board of Indirect Taxes & Customs.

- (2) **Payment of duty electronically** : The Central Government may, by notification in the Official Gazette, specify the class or classes of importers who shall pay such duty electronically.

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

- (a) Importers registered under Accredited Clients Programme; and
  - (b) Importers paying customs duty of ₹ 10,000 or more per bill of entry.
- (3) **Time limit for payment of duty and interest @ 15% p.a. on delayed payment of duty** : The importer shall pay the import duty—
- (a) on the date of presentation of the bill of entry in the case of self-assessment; or
  - (b) within one day (excluding holidays) from the date on which the bill of entry is returned to him by the proper officer for payment of duty in the case of assessment, reassessment or provisional assessment; or
  - (c) in the case of deferred payment, from such due date as may be specified by rules made in this behalf, and where the importer fails to pay the duty within the time so specified, he shall pay interest on the duty not paid or short-paid till the date of its payment, @ 15% per annum.

**Power to waive interest** : If the Board is satisfied that it is necessary in the public interest so to do, it may, by order for reasons to be recorded, waive the whole or part of any interest payable under this section.

Deferred Payment of Import Duty Rules, 2016 - 'Clear first-Pay later' [Amended by Notification No. 58/2023 Customs (NT) dated 03-08-2023] :

	Title	Provisions
1.	Short title and commencement	(1) These rules may be called the Deferred Payment of Import Duty Rules, 2016. (2) They shall come into force on the 16-11-2016.
2.	Definitions	(1) In these rules, unless the context otherwise requires,— (a) "Act" means the Customs Act, 1962; (b) "due date" means the date specified in rule 5 of these rules; (c) "eligible importer" means any class of importers notified under proviso to Section 47(1) of the Act i.e. [Importers certified under Authorized Economic Operator programme as AEO

## CHAPTER 5 – IMPORTATION AND EXPORTATION OF GOODS

		<p>(TierTwo) and AEO (Tier-Three)] or Authorised Public Undertaking.</p> <p>(2) Words and expressions used and not defined herein but defined in the Act, shall have the meanings respectively assigned to them in the Act.</p>								
3.	Application	These rules shall apply to eligible importer who have been notified under the proviso to Section 47(1) of the Act.								
4.	Payment of duty	<p>The eligible importer shall pay the duty by the dates specified hereunder inclusive of the period (excluding holidays) as mentioned in Section 47(2) of the Act, namely:-</p> <table border="1" style="width: 100%; border-collapse: collapse; margin: 10px 0;"> <thead> <tr> <th style="width: 60%;">For goods corresponding to Bill of Entry returned for payment –</th> <th style="width: 40%;">Date for payment of Duty</th> </tr> </thead> <tbody> <tr> <td>from 1st day to 15<sup>th</sup> day of any month</td> <td>16<sup>th</sup> day of that month</td> </tr> <tr> <td>from 16<sup>th</sup> day till the last day of any month other than March</td> <td>1<sup>st</sup> day of the following Month</td> </tr> <tr> <td>from 16<sup>th</sup> day till the 31<sup>st</sup> day of March</td> <td>31<sup>st</sup> March</td> </tr> </tbody> </table> <p>Where the Central Government considers it necessary and expedient, it may, under exceptional circumstances, and for reasons to be recorded in writing, allow payment to be made on a different due date.</p>	For goods corresponding to Bill of Entry returned for payment –	Date for payment of Duty	from 1st day to 15 <sup>th</sup> day of any month	16 <sup>th</sup> day of that month	from 16 <sup>th</sup> day till the last day of any month other than March	1 <sup>st</sup> day of the following Month	from 16 <sup>th</sup> day till the 31 <sup>st</sup> day of March	31 <sup>st</sup> March
For goods corresponding to Bill of Entry returned for payment –	Date for payment of Duty									
from 1st day to 15 <sup>th</sup> day of any month	16 <sup>th</sup> day of that month									
from 16 <sup>th</sup> day till the last day of any month other than March	1 <sup>st</sup> day of the following Month									
from 16 <sup>th</sup> day till the 31 <sup>st</sup> day of March	31 <sup>st</sup> March									
5.	Manner of payment	The eligible importer shall pay the duty electronically. The Assistant Commissioner or the Deputy Commissioner of Customs, as the case may be, for reasons to be recorded in writing, may allow payment of duty by any mode other than electronic payment.								
6.	Deferred payment not to apply in certain cases	<p>An eligible importer who fails to pay duty in full by due date more than once in a period of three consecutive months shall not be permitted to make deferred payment. The facility of deferred payment shall not be restored unless the eligible importer has paid the duty in full along with the interest. The eligible importer shall be permitted to make the deferred payment if he has –</p> <ul style="list-style-type: none"> <li>(i) paid the duty for a bill of entry within due date in terms of rule 4; and</li> <li>(ii) paid the differential duty for the same bill of entry along with the interest on account of reassessment within one day (excluding holidays).</li> </ul>								

## CHAPTER 5 – IMPORTATION AND EXPORTATION OF GOODS

7.	<b>Non- applicability</b>	Nothing contained in these rules shall apply to the goods which have not been assessed or not declared by the importer in the entry made under the Act.
----	-------------------------------	---

### 12. What do you mean by Faceless assessment. What are the objectives of faceless assessment.

Ans: The relevant provisions are discussed as under-

(1) **Faceless Assessment** : Faceless Assessment is a major Customs Reforms where a Bill of Entry that is identified for scrutiny (non-facilitated Bill of Entry) is assigned to an assessing officer who is physically located at a Customs station, which is not the Port of Import in the Customs Automated System. It separates the assessment process from the physical location of Port of Import, using a technology platform.

Faceless Assessment (also referred to as virtual assessment or anonymised assessment) uses a technology platform to separate the Customs assessment process from the physical location of a Customs officer at the port of arrival. This measure will bolster efforts to ensure an objective, free, fair and just assessment.

From an importer's perspective, there will be no changes to the process of filing a Bill of entry. He will continue to file his documentation including bill of entry and supporting documents on the ICEGATE portal.

(2) **Key objectives of Faceless Assessment** :

- (i) Anonymity in assessment for reduced physical interface between trade and Customs
- (ii) Speedier Customs clearances through efficient utilisation of manpower
- (iii) Greater uniformity of assessment across locations
- (iv) Promoting sector specific and functional specialisation in assessment.

### 13. Describe the procedure prescribed in the Customs Act, 1962 in case of goods not cleared, warehoused or transhipped within 30 days after unloading. (May 1998, 6 Marks) (May 2004, 4 Marks)

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

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

- (a) after notice to the importer and with the permission of the proper officer,
- (b) such goods may be sold by the person having the custody thereof.

CBIC has clarified vide Circular No. 49/2018-Cus dated 03-12-2018 that after the successful bidder has been informed about the result of the auction, a consolidated bill of

## CHAPTER 5 – IMPORTATION AND EXPORTATION OF GOODS

entry, buyer-wise will be filed with the Customs in the prescribed format by the concerned custodian for clearance of the goods as per section 46 of the customs Act, 1962 read with Un-Cleared Goods (Bill of entry) regulations, 1972 (Regulation 2 & 3).

- (a) The proper officer of Customs shall assess the goods to duty in accordance with the extant law within 15 days of filing of Bill of Entry and after assessment inform the amount of duty payable to the concerned custodian.
  - (b) The auctioned goods shall be handed over to the successful bidder after assessment and outof-charge orders given by the proper officer, on payment of dues.
- (2) Special provisions in respect of animals, perishable goods and arms etc. However, the above time limit of 30 days will not be applicable in case of,-
- (a) animals, perishable goods and hazardous goods. The same may be sold at any time with the permission of the proper officer, and
  - (b) arms and ammunition's. The same may be sold at such time and place and in such manner as the Central Government may direct.

**14. Write a short note on Warehousing without warehousing under the Customs Act, 1962. (May 1999, 2 Marks) (May 2004, 4 Marks) (May 2014, 1 Marks)**

Ans: The provisions relating to warehousing without warehousing is as under –

- (a) in the case of any imported goods, whether dutiable or not, entered for home consumption, the Assistant Commissioner of Customs or Deputy Commissioner of Customs is satisfied on the application of the importer that the goods cannot be cleared within a reasonable time;
- (b) in the case of any imported dutiable goods, entered for warehousing, the Assistant Commissioner of Customs or Deputy Commissioner of Customs is satisfied on the application of the importer that the goods cannot be removed for deposit in a warehouse within a reasonable time, the goods may pending clearance or removal, as the case may be, be permitted to be stored in a public warehouse for a period not exceeding 30 days. However, goods which are permitted to be stored in a public warehouse shall not be deemed to be warehoused goods for the purposes of this Act under this section and accordingly the provisions of warehousing shall not apply to such goods.

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

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

### FLOW PATTERN OF EXPORT

**15. Explain the Flow Pattern of Export.**

Ans: The flow pattern of Export is as follows –

- (1) Presentation of Electronic Integrated declaration by the authorized person and assessment of goods to duty [Shipping Bill (Electronic Integrated Declaration and Paperless Processing) Regulations, 2019 applicable w.e.f. 25-04-2019]:
- (a) Authorised person to enter, etc. electronic integrated declaration : Any authorised person [i.e. exporter or custom broker authorised by him.] shall enter the electronic integrated declaration [i.e. particulars relating to the export goods] and upload the supporting documents on the ICEGATE by affixing his digital signature on the ICEGATE or get the electronic integrated declaration made on the ICEGATE along with the supporting documents by availing the services at the service centre. (Regulation 3)
  - (b) Shipping bill when deemed to be filed and self assessment completed : The shipping bill shall be deemed to have been filed and self-assessment completed when, after entry of the electronic integrated declaration on the ICEGATE or by way of data entry through the service centre, a shipping bill number is generated by the ICEDIS for the said declaration. (Regulation 4)
  - (c) Order under section 51 or section 69 : After the completion of assessment, payment of duty or cess, etc. if any, and examination of export goods, if so required, an order permitting clearance, under section 51(1) or section 69 as the case may be, shall be made and the order under this regulation may be recorded on the ICEGATE and conveyed electronically to the authorised person, the custodian, and to any other person(s) designated by the authorised person. (Regulation 5)
  - (d) Retention of assessed copy of shipping bill and supporting documents : The authorised person shall retain, for a period of 5 years from the date of presentation of the shipping bill, the assessed copy of the shipping bill, digital or otherwise, and all supporting documents in original, which were used or relied upon by him in submitting the electronic integrated declaration, and shall produce them before Customs authorities in connection with any action or proceedings under the Act or under any other law for the time being in force. (Regulation 6)
  - (e) Generation of authenticated copy of shipping bill : An authenticated copy of shipping bill may be generated at the request of the authorised person if possession of the said copy is required by him for compliance of provisions of any law for the time being in force. (Regulation 7)
  - (f) Penalty for contravention, etc. of regulations : Any authorised person who contravenes any provision of these regulations or who fails to comply with any provisions of these regulations shall be liable to a penalty which may extend to ₹ 50,000. (Regulation 8)
  - (g) The export goods along with assessed shipping bill is presented to preventive officers of customs i.e. (an officer-in-charge in-charge of supervision of the loading of cargo). Permission of loading of goods i.e. 'Let Ship' order is given by preventive officer, if he is satisfied that all the customs checks (including export trade control licence and export duty payment) have been completed.

## CHAPTER 5 – IMPORTATION AND EXPORTATION OF GOODS

- (2) Loading of goods :
- The assessed Shipping Bill is presented to the master/ agent/ mate of the vessel, who shall permit loading of goods.
  - If the vessel is anchored in mid sea, the goods have to be taken to the ship by boats/lighters, and the boat note procedure would be followed.
  - On receipt of the cargo on board the ship, the master/mate/agent of the ship issues a receipt of the quantity and particulars of the cargo loaded on the ship which is endorsed by Customs Officer.
- (3) Notice of Short-Export Rules, 1963 : If any goods mentioned in a shipping bill or bill of export and cleared for exportation are not exported, the exporter shall, **within 7 days**, from the date of departure of the conveyance by which such goods were intended to be exported,—
- furnish information in writing to proper officer in respect of the goods not so exported:
    - Number of Packages,
    - Description of goods,
    - Quantity,
    - Value,
    - Country of destination; or
  - present the shipping bill or the bill of export for cancellation or amendment.  
Penalty : Any exporter fails to comply with aforesaid provisions shall be liable to penalty not exceeding ₹ 100.

### PROCEDURE FOR CLEARANCE OF EXPORT GOODS

#### 16. Write a short note on Entry Outwards. (May 2004, 2 Marks) (May 2014, 15 Marks)

Ans: The relevant provisions are as under

- Export goods not to be loaded on vessel until entry-outwards granted [Section 39] : The master of a vessel shall not permit the loading of any export goods, other than baggage and mail bags, until an order has been given by the proper officer granting entry-outwards to such vessel.
- Export goods not to be loaded unless duly passed by proper officer [Section 40] : The person-incharge of a conveyance shall not permit the loading at a customs station,—
  - of export goods, **other than baggage and mail bags**, unless a shipping bill or bill of export or a bill of transshipment duly passed by the proper officer has been handed over to him by exporter;
  - of baggage and mail bags**, unless their export has been duly permitted by the proper officer.

#### 17. Explain Export General Manifest.

Ans: The provisions relating to filing of departure manifest or export manifest is as under –

## CHAPTER 5 – IMPORTATION AND EXPORTATION OF GOODS

- (1) Delivery of departure manifest or export manifest or export report [Section 41]: The person-in-charge of a conveyance carrying export goods or imported goods or any other person as may be specified by the Central Government, by notification, shall, before departure of the conveyance from a customs station, deliver to the proper officer –
  - (a) in the case of a vessel or aircraft, a departure manifest or an export manifest by presenting electronically, and
  - (b) in the case of a vehicle, an export report, in such form and manner as may be prescribed.Penalty – Not exceeding ₹ 50,000 : In case, such person-in-charge or other person fails to deliver the departure manifest or export manifest or the export report or any part thereof within such time, and the proper officer is satisfied that there is no sufficient cause for such delay, such person-in-charge or other person shall be liable to pay penalty not exceeding ₹ 50,000.
- (2) Electronic filing not feasible – Filing in other manner : The Principal Commissioner or Commissioner of Customs may, in cases where it is not feasible to deliver departure manifest or export manifest by presenting electronically, allow the same to be delivered in any other manner.
- (3) Declaration : The person delivering the departure manifest or export manifest or export report shall at the foot thereof make and subscribe to a declaration as to the truth of its contents.
- (4) Departure manifest or Export manifest/ report can be amended/ supplemented : If the proper officer is satisfied that the departure manifest or export manifest or export report is in any way incorrect or incomplete and **that there was no fraudulent intention**, he may permit such manifest or report to be amended or supplemented.

### 18. Explain the provisions relating to filing of manifest for departure of passenger and crew.

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

- (1) Person-in-charge to file departure manifest : The person-in-charge of a conveyance that departs from India to a place outside India or any other person as may be specified by the Central Government by notification in the Official Gazette, shall deliver to the proper officer—
  - (i) the passenger and crew departure manifest; and
  - (ii) the passenger name record information of departing passengers, in such form, containing such particulars, in such manner and within such time, as may be prescribed.
- (2) Penalty for non filing of manifest within time limit - Not exceeding ₹ 50,000 : Where the passenger and crew departure manifest or the passenger name record information or any part thereof is not delivered to the proper officer within the prescribed time and if the proper officer is satisfied that there was no sufficient cause for such delay, the person-in-

## CHAPTER 5 – IMPORTATION AND EXPORTATION OF GOODS

charge or the other person referred to in Section 40A(1) shall be liable to such penalty, **not exceeding ₹ 50,000**, as may be prescribed.

**19. Discuss the statement: "The conveyances are not allowed to leave India without the written permission from the Customs Authorities".**

Ans: The relevant provisions are discussed as under –

- (1) **No Conveyance To Leave Without Written Order [Section 42]:** The person-in-charge of a conveyance, which has brought any imported goods or has loaded any export goods at a customs station, **shall not cause or permit the conveyance to depart from that customs station until a written order has been given by the proper officer.**
- (2) **Conditions of giving such order by proper officer:** No such order shall be given by the proper officer until,—
  - (a) The person-in-charge has answered the questions put to him under section 38 of the Act.
  - (b) The provisions of Section 41 (delivery of departure manifest or export manifest/report) have been complied with.
  - (c) The shipping bill or bills of export, the bills of transshipment, if any, and such other documents as the proper officer may require have been delivered to him.
  - (d) All duties leviable on any stores consumed in such conveyance, and all charges and penalties due in respect of such conveyance or from the person-in-charge thereof have been paid or the payment secured by such guarantee or deposit of such amount as the proper officer may direct.
  - (e) The person-in-charge of the conveyance has satisfied the proper officer that no penalty is leviable on him under section 116 (Penalty for non accounting of goods) or the payment of any penalty that may be levied upon him under that section has been secured by such guarantee or deposit of such amount as the proper officer may direct.
  - (f) In any case, where any export goods have been loaded without payment of export duty or in contravention of any provision of this Act or any other law for the time being in force relating to export of goods,—
    - (i) such goods have been unloaded, or
    - (ii) where the Assistant/Deputy Commissioner is satisfied that it is not practicable to unload such goods, person-in-charge of conveyance has given an undertaking, secured by such guarantee or deposit of such amount as proper officer may direct, for bringing back the goods to India.
- (3) **Exemption Of Certain Classes Of Conveyances From Certain Provisions [Section 43]:**

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

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

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

## CHAPTER 5 – IMPORTATION AND EXPORTATION OF GOODS

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

20. State and summarise the procedure and documentation for clearance of "export cargo", under the Customs Act, 1962. (Nov. 1998, 6 Marks) OR Explain with reference to the provisions of the Customs Act, 1962 and the Shipping Bill and Bill of Export (Form) Regulations, 1991 as to what is meant by a "Shipping Bill". (May 2004, 3 Marks) OR Explain what is meant by a Shipping Bill, OR, Explain: 'Bill of Export'. (Nov. 2008, 2 Marks)

Ans: The procedure to be followed by the exporter for clearing the export cargo is as under –

- (1) Entry of goods for exportation : The exporter of goods shall make the entry of such goods by presenting electronically on the customs automated system to the proper officer in such form and manner as may be prescribed –

- a) a shipping bill (in case of goods to be exported in a vessel or aircraft); or
- b) a bill of export (in case of goods to be exported by land).

Electronic filing not feasible - Filing in other manner : The Principal Commissioner or Commissioner of Customs may, in cases where it is not feasible to make entry by presenting electronically on the customs automated system, allow an entry to be presented in any other manner.

Declaration as to truth of contents : The exporter of any goods, while presenting a shipping bill or bill of export, shall make and subscribe to a declaration as to the truth of its contents.

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

- (3) Clearance Of Goods For Exportation [Section 51]

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

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

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

- (iii) Interest on delayed payment of export duty [Section 51(2)] : Where the exporter fails to pay the export duty, either in full or in part, under section 51(1) by such due date as

## CHAPTER 5 – IMPORTATION AND EXPORTATION OF GOODS

may be specified by rules, he shall pay interest on said duty not paid or short-paid till the date of its payment at such rate, not below 5% and not exceeding 36% per annum, as may be fixed by the Central Government, by notification in the Official Gazette.

### PAYMENTS THROUGH ELECTRONIC CASH LEDGER

**21. Explain the manner of payment of duty interest and penalty as provided in Section 51A of the Customs Act, 1962.**

**Ans:** Payment of duty, interest, penalty, etc. [Section 51A]: The relevant provisions are discussed as under –

- (1) **Deposits to be credited in electronic cash ledger :** Every deposit made towards duty, interest, penalty, fee or any other sum payable by a person under the provisions of this Act or under the Customs Tariff Act, 1975 or under any other law for the time being in force or the rules and regulations made thereunder, using authorised mode of payment shall, subject to such conditions and restrictions, be credited to the electronic cash ledger of such person, to be maintained in such manner, as may be prescribed.
- (2) **Utilisation of Electronic cash ledger :** The amount available in the electronic cash ledger may be used for making any payment towards duty, interest, penalty, fees or any other sum payable under the provisions of this Act or under the Customs Tariff Act, 1975 or under any other law for the time being in force or the rules and regulations made thereunder in such manner and subject to such conditions and within such time as may be prescribed.
- (3) **Refund of balance :** The balance in the electronic cash ledger, after payment of duty, interest, penalty, fee or any other amount payable, may be refunded in such manner as may be prescribed.
- (4) **Exemption :** Notwithstanding anything contained in this section, if the Board is satisfied that it is necessary or expedient so to do, it may, by notification, exempt the deposits made by such class of persons or with respect to such categories of goods, as may be specified in the notification, from all or any of the provisions of this section.
- (5) **CBIC has exempted following deposits from the provisions of section 51A of the Customs Act**
  - (i) with respect to goods imported or exported in customs stations not in place; where customs automated system is not in place;
  - (ii) with respect to accompanied baggage;
  - (iii) other than those used for making electronic payment of:
    - (a) any duty of customs, including cesses and surcharges levied as duties of customs;
    - (b) IGST;
    - (c) GST Compensation Cess;
    - (d) interest, penalty, fees or any other amount payable under the Act, or Customs Tariff Act, 1975

### 22. Explain the provisions relating to creation of Electronic duty credit ledger in Customs system.

Ans: Ledger for duty credit [Section 51B]: The relevant provisions are discussed as under -

- (1) Manner of issuance of duty credit : The Central Government may by notification specify the manner in which it shall issue duty credit,
  - a) in lieu of remission of any duty or tax or levy, chargeable on any material used in the manufacture or processing of goods or for carrying out any operation on such goods in India that are exported; or
  - b) in lieu of such other financial benefit subject to such conditions and restrictions as may be specified therein.
- (2) Maintenance of duty credit ledger : The duty credit shall be maintained in the customs automated system in the form of an electronic duty credit ledger of the person who is the recipient of such duty credit, in such manner as may be prescribed.
- (3) Utilization of duty credit ledger : The duty credit available in the electronic duty credit ledger may be used by the person to whom it is issued or the person to whom it is transferred, towards making payment of duties payable under this Act or under the Customs Tariff Act, 1975 in such manner and subject to such conditions and restrictions and within such time as may be prescribed.

### TRANSIT AND TRANSHIPMENT OF GOODS

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

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

### 23. Discuss the provisions regarding 'Transit of Goods' and 'Transshipment of goods' without payment of duty under the Customs Act. (May 2005, 4 Marks)

Ans: The relevant provisions are as under -

- (1) Transit of goods [Section 53] : Where any goods imported in a conveyance and mentioned in the arrival manifest or import manifest or the import report, as the case may be, as for transit in the same conveyance to any place outside India or to any customs station, the proper officer may allow the goods and the conveyance to transit without payment of duty, subject to such conditions, as may be prescribed. However, the goods should not have been prohibited u/s 11 of the Customs Act.
- (2) Transshipment of goods [Section 54] : This refers to transfer of goods from one conveyance to another. It may be from one customs station to any custom station in India. Section 54 provides that,-

## CHAPTER 5 – IMPORTATION AND EXPORTATION OF GOODS

- (a) where any goods imported into a customs station are intended for transshipment, the person-in-charge of conveyance will have to present a bill of transshipment to the proper officer in such form and manner as may be prescribed;
- (b) where any goods imported into a customs station are mentioned in the arrival manifest or import manifest or import report, as for transshipment to any place outside India, such goods will be allowed to be so transhipped without payment of duty. **However, the goods should not have been prohibited under section 11 of the Customs Act.**
- (c) where any goods imported into a customs station are mentioned in the arrival manifest or import manifest or import report for transshipment to any major port (as defined in the Indian Ports Act, 1908) or to customs airport or customs port (as notified by the Board) or to any other customs station and the proper officer is satisfied about the bona-fide intention for transshipment of the goods to such customs station, the proper officer may allow the goods to be transhipped, without payment of duty.

### 24. State the difference between transit and transshipment of goods under the provisions of the Customs A (May 2007, 4 Marks)

Ans: The differences between transit and transshipment has been summarized in the table hereunder –

Basis of difference	Transit	Transshipment
Statutory provision	Section 53 of the Customs Act, 1962 provides for transit of goods and conveyance.	Section 54 of the Customs Act, 1962 provides for transshipment of goods
Conveyance	In case of transit of goods, goods are allowed to remain on the same conveyance.	In case of transshipment of goods, the conveyance changes i.e. the goods are unloaded from one conveyance and loaded in another conveyance.
Documentation	In case of transit, the record already made in the ship's/aircraft's manifest continues. The imported goods are shown in the manifest as the same bottom cargo. Thus, there is continuity in the records and there is no chance of the control over such transit goods being lost.	In transshipment of goods, continuity in the records is not maintained as the goods are transferred to another conveyance.
Supervision	No supervision is required for transit goods.	Transshipment takes place under the supervision of the proper officer.
Additional Formalities	No additional conditions or formalities are required.	Specific conditions are imposed if the goods are deliverable at Indian port

## CHAPTER 5 – IMPORTATION AND EXPORTATION OF GOODS

Port

Transit is allowed in every port normally.

Transshipment is allowed in specified ports only.

### 25. What is duty liability in cases of transit and transshipment of goods?

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

- (a) they shall be liable to duty,
- (b) they shall be entered in the like manner as the goods are entered on the first importation, and
- (c) the provisions of this Act and any rules and regulations shall apply in relation to such goods.

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

## PROVISIONS RELATING TO BAGGAGE

26. Explain briefly the Declaration by owner of Baggage with respect to the provisions of the Customs Act, 1962. (May 2004, 3 Marks)

OR

Explain briefly the provisions relating to "Baggage" under the Customs Act, 1962 and the Rules framed thereunder. (May 2003, 5 Marks)

OR

What is the crucial/ relevant date for determination of rate of duty under the Customs Act for clearance of Baggage. (Nov. 2005, 2 Marks)

Ans- The provisions relating to baggage are as under-

Baggage [Section 2(3)]: includes unaccompanied baggage but does not include motor vehicles. The term baggage is a comprehensive term which means the luggage of a passenger accompanied or unaccompanied, and comprises of trunks or bags and the personal belongings of the passenger.

Declaration by owner of baggage [Section 77] : The owner of any baggage shall, for the purpose of clearing it, make a declaration of its contents to the proper officer.

Date for determination of rate of duty and tariff valuation in case of baggage [Section 78] : The rate of duty and tariff valuation applicable to the baggage shall be the rate of duty and

## CHAPTER 5 – IMPORTATION AND EXPORTATION OF GOODS

valuation in force on the date on which a baggage declaration is made u/s 77 to the proper officer.

If such declaration has been made before the arrival of vessel, then same shall be deemed to have been made on the date of arrival of the vessel.

Rate of duty : The rate of duty applicable in respect of baggage is as under—

Description of articles	Rate
Any article the value of which exceeds the duty free allowance admissible to such passenger or member under the Baggage Rules, 2016.	35% ad valorem.
On the unaccompanied baggage.	35% ad valorem.
Integrated Tax u/s 3(7) of Customs Tariff Act = Nil. [Notification No.183/86-Cus, as amended v ide Entry 147 of Notification No. 2/2017-CT(Rate)/IT (Rate). GST is exempt on Passenger Baggage.	
The duty is to be increased by SWS @ 10%. Hence, effective duty is 38.5%	

The CBIC has clarified that the domestic passengers who board international flights in the domestic leg are not required to file the Customs Baggage declaration form. – Circular No. 08/2016-Cus. Dated 8-3-2016

27. What are the circumstances under which the goods imported by a passenger could be considered as his "bona fide baggage" under the Customs Act, 1962? (May 1997, 5 Marks) Explain in brief the duty exemption to baggages u/s 79(1) of Customs Act, 1962. (May 2010-NS, Marks 3)

Ans: The provisions are as under –

- (1) Bona fide baggage exempted from duty [Section 79] : The provision relating to duty exemption of baggage is provided under Section 79. The proper officer may, subject to the rules made under section 79(2), pass free of duty,—
  - a) any article in the baggage of a passenger or a member of the crew in respect of which the said officer is satisfied that it has been in his use for such minimum period as may be specified in rules;
  - b) any article in the baggage of a passenger in respect of which the said officer is satisfied that it is for the use of the passenger or his family or is a bona fide gift or souvenir, provided the value of each such article and the total value of all such articles does not exceed the limits specified in the rules.
  - c) Baggage Rules, 2016 : Baggage Rules, 2016 have been framed by the Central Government which specify the period, terms and conditions, value, limits etc. for the above purpose. They have come into force with effect from 01-04-2016
- (2) Regulations in respect of baggage [Section 81] : The Board may make regulations, in respect of,—
  - (a) the manner of declaring the contents of any baggage;

## CHAPTER 5 – IMPORTATION AND EXPORTATION OF GOODS

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

Note:

- (i) **Bona fide Baggage** : Imports of furniture, light fittings, bathroom accessories etc. by passengers making short visits abroad do not qualify as bona fide baggage.
- (ii) **Laptop exempt** : One laptop computer (notebook computer) is exempted from whole of the duty of Customs when imported by a passenger (other than member of crew) of the age of 18 years or above vide Notification No. 11/2004-Cus., dated 8-1-2004.

**28. Write a short note on temporary detention of baggage imported into India. (May 1997, 2½ marks) (May 2000, 4 Marks)**

Ans: Temporary detention of baggage [Section 80]: Where the baggage of a passenger contains any article,-

- ✓ which is dutiable or the import of which is prohibited, and
- ✓ in respect of which a true declaration has been made under section 77, the proper officer may, at the request of the passenger, detain such article for the purpose of being returned to him on his leaving India.

However, if, for any reason, the passenger is not able to collect the article at the time of his leaving India, the article may be returned to him,-

- ✓ through any other passenger authorised by him and leaving India, or
- ✓ as cargo consigned in his name.

### BAGGAGE RULES, 2016

**29. Briefly enumerate the articles that are allowed free of duty under Baggage Rules, 2016 to Indian resident coming from countries other than Nepal, Bhutan or Myanmar.**

Ans: Passengers arriving from countries other than Nepal, Bhutan or Myanmar [Rule 3] :

- (1) Duty free allowance in respect of Indian resident or a foreigner residing in India or tourists of Indian origin:
  - (a) An Indian resident; or
  - (b) A foreigner residing in India; or
  - (c) A tourist of Indian origin,  
not being an infant, arriving from any country other than Nepal, Bhutan or Myanmar, shall be allowed clearance free of duty articles in his bona fide baggage, that is to say,-
    - (d) used personal effects and travel souvenirs; and
    - (e) articles other than those mentioned in Annexure I, upto the value of ₹ 50,000 if these are carried on the person or in the accompanied baggage of the passenger.

## CHAPTER 5 – IMPORTATION AND EXPORTATION OF GOODS

- (2) Duty free allowance in respect of Tourist of Foreign Origin : A tourist of foreign origin, not being an infant, arriving from any country other than Nepal, Bhutan or Myanmar shall be allowed clearance free of duty articles in his bona fide baggage, that is to say,—
- used personal effects and travel souvenirs; and
  - articles other than those mentioned in Annexure I, upto the value of ₹ 15,000 if these are carried on the person or in the accompanied baggage of the passenger.
- (3) Duty free allowance in respect of infants : Where the passenger is an infant, only used personal effects shall be allowed duty free.

Notes:

- "Resident" means a person holding a valid passport issued under the Passports Act, 1967 and normally residing in India. [Rule 2(iv)]
- "Infant" means a child not more than 2 years of age. [Rule 2(iii)]
- "Tourist" means a person not normally resident in India, who enters India for a stay of not more than 6 months in the course of any 12 months period for legitimate non-immigrant purposes; [Rule 2(v)]
- "Personal effects" means things required for satisfying daily necessities but does not include jewellery. [Rule 2(vi)]
- Pooling not permissible : The General Free Allowance (GFA) of a passenger under this rule shall not be allowed to be pooled with the free allowance of any other passenger.

### ANNEXURE – I

(See rule)

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

Jewellery eligible for GFA under Rule 3 and Rule 4 : Jewellery has been specifically excluded from personal effects. The same is not eligible for full exemption as applicable in case of used personal effects. Gold or silver in any form other than ornaments is specifically included in Annexure I. Hence, Ornaments becomes eligible for GFA under Rule 3 and 4 within the monetary limits specified in the said Rules. The special provision for jewellery under Rule 5 may be regarded as an additional allowance subject to conditions specified in the said rule.

**30. Briefly enumerate the articles that are allowed free of duty under Baggage Rules, 2016 to resident Indian coming from countries Nepal, Bhutan or Myanmar.**

Ans: Passengers arriving from Nepal, Bhutan or Myanmar [Rule 4] :

- Duty free allowance in respect of Indian resident or a foreigner residing in India or tourists:
  - An Indian resident; or

## CHAPTER 5 – IMPORTATION AND EXPORTATION OF GOODS

- b) a foreigner residing in India; or  
 c) a tourist,  
 not being an infant, arriving from Nepal, Bhutan or Myanmar, shall be allowed clearance free of duty articles in his bona fide baggage, that is to say,—
- ✓ used personal effects and travel souvenirs; and
  - ✓ articles other than those mentioned in Annexure I upto the value of ₹ 15,000 if these are carried on the person or in the accompanied baggage of the passenger.
- (2) Duty free allowance in case of infant : Where the passenger is an infant, only used personal effects shall be allowed duty free.
- (3) Duty free allowance in case of passenger is arriving by land : Where the passenger, is arriving by land, only used personal effects shall be allowed duty free.
- Note: Pooling not permissible : The free allowance of a passenger under this rule shall not be allowed to be pooled with the free allowance of any other passenger.

### 31. State briefly the duty free allowance in respect of Jewellery.

Ans: Jewellery [Rule 5]: A passenger returning to India shall be allowed clearance free of duty jewellery in his bona fide baggage to the extent as given below:

Passenger who has been residing abroad for over one year	<ul style="list-style-type: none"> <li>✓ For a Gentleman passenger : Jewellery upto a weight, of 20 grams with a value cap of ₹ 50,000.</li> <li>✓ For a lady passenger : Jewellery upto a weight, of 40 grams with a value cap of ₹ 1,00,000.</li> </ul>
--	---

### 32. What conditions are to be satisfied by a person for availing concessions on transferring his residence?

Ans: Transfer of residence [Rule 6] :

- (1) A person, who is engaged in a profession abroad, or is transferring his residence to India, shall, on return, be allowed clearance free of duty in addition to what he is allowed under rule 3 or, as the case may be, under rule 4, articles in his bona fide baggage to the extent mentioned in column
- (2) of the Appendix below, subject to the conditions, if any, mentioned in the corresponding entry in column (3) of the said Appendix. (2) The conditions mentioned in column (3) of the said Appendix may be relaxed to the extent mentioned in column (4) of the said Appendix.

Duration of stay abroad	Articles allowed free of duty	Conditions	Relaxation
(1)	(2)	(3)	(4)
From 3 months upto 6 months	Personal and household articles, other than those mentioned in Annexure I or Annexure II but	Indian passenger	-

## CHAPTER 5 – IMPORTATION AND EXPORTATION OF GOODS

	including articles mentioned in Annexure III upto an aggregate value of ₹ 60,000.		
From 6 months upto 1 year	Personal and household articles, other than those mentioned in Annexure I or Annexure II but including articles mentioned in Annexure III, upto an aggregate value of ₹ 1,00,000.	Indian passenger	-
Minimum stay of 1 year during the preceding 2 years.	Personal and household articles, other than those mentioned in Annexure I or Annexure II but including articles mentioned in Annexure III upto an aggregate value of ₹ 2,00,000.	The Indian passenger should not have availed this concession in the preceding 3 years.	-
Minimum stay of 2 years more. or	Personal and household articles, other than those listed at Annexure I or Annexure II but including articles mentioned in Annexure III upto an aggregate value of ₹ 5,00,000.	(i) Minimum stay of 2 years abroad, immediately preceding the date of his arrival on transfer of residence;	Shortfall of upto 2 months in stay abroad can be condoned by Deputy Commissioner of Customs or Assistant Commissioner of Customs if the early return is on account of : (i) terminal leave or vacation being availed of by the passenger; or (ii) any other special circumstances for reasons to be recorded in writing.
		(ii) total stay in India on short visit during the 2 preceding years should	The Principal Commissioner of Customs or Commissioner of Customs may

## CHAPTER 5 – IMPORTATION AND EXPORTATION OF GOODS

		not exceed 6 months; and	condone short visits in excess of 6 months in special circumstances for reasons to be recorded in writing.
		(iii) passenger has not availed the concession in the preceding 3 years.	No relaxation

### ANNEXURE - II (See rule 6)

- i) Colour Television.
- ii) Video Home Theatre System.
- iii) Dish Washer.
- iv) Domestic refrigerators of capacity above 300 litres or its equivalent.
- v) Deep Freezer.
- vi) Video camera or the combination of any such Video camera with one or more of the following goods, namely:-
  - ✓ television receiver;
  - ✓ sound recording or reproducing apparatus;
  - ✓ video reproducing apparatus.
- vii) Cinematographic films of 35mm and above.
- viii) Gold or Silver, in any form, other than ornaments.

### ANNEXURE - III (See rule 6)

- i) Video Cassette Recorder or Video Cassette Player or Video Television Receiver or Video Cassette Disk Player.
- ii) Digital Video Disc player.
- iii) Music System.
- iv) Air-Conditioner.
- v) Microwave Oven.
- vi) Word Processing Machine.
- vii) Fax Machine .
- viii) Portable Photocopying Machine.
- ix) Washing Machine. 10.
- x) Electrical or Liquefied Petroleum Gas Cooking Range.
- xi) Personal Computer (Desktop Computer).
- xii) Laptop Computer (Note book Computer).

## CHAPTER 5 – IMPORTATION AND EXPORTATION OF GOODS

xiii) Domestic Refrigerators of capacity up to 300 litres or its equivalent.

### 33. State provisions of duty free allowance in case of currency.

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

### 34. State briefly the provisions relating to Unaccompanied Baggage under the Baggage Rules, 2016.

Ans: Provisions regarding unaccompanied baggage [Rule 8]: The provisions of free allowances given under Baggage Rules, 2016 shall be applicable to 'unaccompanied baggage' if-

- (1) the said unaccompanied baggage had been in the possession, abroad, of the passenger and is dispatched **within 1 month** of his arrival in India or within such further period as the Deputy Commissioner of Customs or Assistant Commissioner of Customs may allow.
- (2) the said unaccompanied baggage may land in India **upto 2 months before** the arrival of the passenger or within such period, **not exceeding 1 year**, as the Deputy Commissioner of Customs or Assistant Commissioner of Customs may allow, for reasons to be recorded, if he is satisfied that the passenger was prevented from arriving in India within the period of **2 months** due to circumstances beyond his control, such as –
  - ✓ sudden illness of the passenger or a member of his family, or
  - ✓ natural calamities, or
  - ✓ disturbed conditions, or
  - ✓ disruption of the transport or travel arrangements in the country or countries concerned, or
  - ✓ any other reasons, which necessitated a change in the travel schedule of the passenger.

Note: "Family" includes all persons who are residing in the same house and form part of the same domestic establishment;

### 35. State briefly the provisions relating to applicability of baggage rules to the members of crew.

Ans: Applicability of baggage rules to member of crew [Rule 9]: These rules shall also apply to the members of the crew engaged in a foreign going conveyance for importation of their baggage at the time of final pay off on termination of their engagement.

A member of crew of a vessel or an aircraft other than those referred above, shall be allowed to bring articles like **chocolates, cheese, cosmetics and other petty gift items** for their personal or family use which shall not exceed the value of **₹1,500**.

## GOODS IMPORTED OR EXPORTED BY POST/COURIER

## CHAPTER 5 – IMPORTATION AND EXPORTATION OF GOODS

36. In the context of the Customs Act, 1962, briefly discuss the following Date for purposes of determination of rate of duty and tariff valuation in respect of goods imported or exported by post or courier. (Nov. 1998, 3 Marks) (May 2014, 3 Marks)

Or

Write a short note on Postal Articles. (May 2003, 3 Marks)

Ans: The provisions relating to Postal Articles are as under –

(1) Rate of duty and tariff valuation in respect of goods imported or exported by post or courier [Section 83] : The provisions relating to the date for determination of rate of duty and tariff valuation in case of goods imported or exported by post or courier under section 83 are as follows,–

(a) For goods imported by Post/ Courier : The rate of duty and tariff value, if any, applicable to any goods imported by post or courier shall be the rate and valuation in force on the date on which the postal authorities or the authorised courier present to the proper officer a list containing the particulars of such goods for the purpose of assessing the duty thereon :

However, if such goods are imported by a vessel and the list was presented before the date of the arrival of the vessel, then it shall be deemed to have been presented on the date of such arrival.

(b) For goods exported by Post/ Courier : The rate of duty and tariff value, if any, applicable to any goods exported by post or courier shall be the rate and valuation in force on the date on which the exporter delivers such goods to the postal authorities or the authorised courier for exportation.

(2) Regulations regarding goods imported or to be exported by post or courier [Section 84] : The Board may make regulations providing for

(a) the form and manner in which an entry may be made in respect of goods imported or to be exported by post or courier;

(b) the examination, assessment to duty, and clearance of goods imported or to be exported by post or courier;

(c) the transit or transshipment of goods imported by post or courier, from one customs station to another or to a place outside India.

Exports by Post Regulations, 2018 [Notification No. 48/2018-Cus (N.T.) date 04-06-2018] :

	Particulars	Description
1.	Short title and commencement	<ul style="list-style-type: none"><li>✓ These regulations may be called the Exports by Post Regulations, 2018.</li><li>✓ They shall come into force on 21-06-2018.</li></ul>
2.	Application	These Regulations shall apply to export of goods by any person, holding a valid Import Export Code issued by the DGFT, in furtherance of business from any foreign post office notified under section 7(e) of the Customs Act, 1962.

## CHAPTER 5 – IMPORTATION AND EXPORTATION OF GOODS

3.	Definition	"E-commerce" means buying and selling of goods through the internet on an e-commerce platform, the payment for which shall be done through various electronic means and in accordance with the guidelines issued and as specified by the Reserve Bank of India from time to time.
4.	Entry to be made for export goods	In case of goods to be exported through a foreign post office, an entry shall be required to be presented to the proper officer at the foreign post office of clearance, in the FORM-I. [Postal Bill of Export - I (PBE-I)]

### STORES

37. How is expression "stores" defined under Customs Act, 1962? State briefly the provisions relating to warehousing, transit and consumption of stores without payment of duty under Act. (May 1996, 5 Marks)

Or

Write a short note on Stores. (May 2003, 3 Marks)

Or

Briefly explain the provisions of Section 89 of the Customs Act, 1962 with regard to supply of ship stores. (Nov. 2007, 2 Marks)

Ans: "Stores" means goods for use in a vessel or aircraft and includes fuel and spare parts and other articles of equipment, whether or not for immediate fitting. [Section 2(38)] The statutory provisions relating to stores are contained in Sections 85 to 90 which are as follows:-

- (1) Stores may be allowed to be warehoused without assessment of duty [Section 85] : Where any imported goods are entered for warehousing and the importer makes and subscribes to a declaration that the goods are to be supplied as stores to vessels or aircrafts without payment of import duty, the proper officer may permit the goods to be warehoused without being assessed to duty.
- (2) Transit and Transshipment of stores [Section 86] : Any stores imported in a vessel or aircraft may, without payment of duty, remain on board such vessel or aircraft while it is in India. Any stores imported in a vessel or aircraft may be transferred to any vessel or aircraft as stores for consumption therein as provided in Section 87 or Section 90, with the permission of the proper officer.
- (3) Imported stores may be consumed on board of a foreign-going vessel or aircraft [Section 87]: Any imported stores on board of foreign-going vessel or aircraft (other than stores meant for ship of Indian Navy to which Section 90 applies) may be consumed thereon as stores without payment of duty.
- (4) Drawback on export of stores [Section 88] : If any stores are "taken on board any foreign-going vessel or aircraft as stores", then the same shall be regarded as export and duty drawback shall be allowed of the import duty so paid. However, in case of fuel and

## CHAPTER 5 – IMPORTATION AND EXPORTATION OF GOODS

lubricating oil taken on board any foreign-going aircraft as stores, 100% drawback shall be admissible under section 74.

- (5) Stores to be free of export duty [Section 89] : Goods produced or manufactured in India and required as stores on any foreign-going vessel or aircraft may be exported free of duty in such quantities as the proper officer may determine, having regard to the size of the vessel/aircraft, the number of passengers and crew and the length of the voyage or journey on which the vessel or aircraft is about to depart.
- (6) Concessions in respect of imported stores for the Navy [Section 90] : Imported stores may, without payment of duty, be consumed on board a ship of the Indian Navy.

The stores taken on Board of the ship of Indian Navy will be treated as if they are exported out of India and will be entitled for duty drawback @100% of the import duty.

"Stores" means –

- (a) stores for the use of a ship of the Indian Navy;
- (b) stores supplied free by the Government for the use of the crew of a ship of the Indian Navy in accordance with their conditions of service.

Note



### TOPIC REFERENCER

- ⇒ *Licensing of Public Warehouses, Private Warehouses and Special Warehouses*
- ⇒ *Warehousing Bond, Warehousing Period, Control over Warehoused Goods*
- ⇒ *Owner's Right to deal with Warehoused Goods, Manufacture in Warehouse*
- ⇒ *Removal of Goods from Warehouse*
- ⇒ *Improper Removal of Goods from Warehouse*

#### LICENSING OF PUBLIC WAREHOUSES, PRIVATE WAREHOUSES AND SPECIAL WAREHOUSES

##### 1. Define warehouse. (2 Marks, Nov. 2011)

Ans "Warehouse" means –

- (i) a **public warehouse** licensed under section 57; or
- (ii) a **private warehouse** licensed under section 58; or
- (iii) a **special warehouse** licensed under section 58A. [Section 2(43)]

##### 2. Who has the powers to license public warehouse under the Customs Act, 1962? (Nov. 2008, 1 Mark)

Ans: Licensing of public **warehouses** [Section 57]: The Principal Commissioner of Customs or Commissioner of Customs may, subject to such conditions as may be prescribed, license a public warehouse wherein dutiable goods may be deposited.

##### 3. State the provisions relating to licensing of private bonded warehouses under Customs Act, 1962. (Nov. 2002, 6 Marks) (May 1997, 6 Marks) (May 1999, 6 Marks),(4 Marks, Nov. 2015)

Ans: Licensing of private warehouses [Section 58]: The Principal Commissioner of Customs or Commissioner of Customs may, subject to such conditions as may be prescribed, license a private warehouse wherein dutiable goods imported by or on behalf of the licensee may be deposited.

##### 4. Who has the powers to license special warehouse.

Ans- Licensing of special warehouse [Section warehouse]:

- (a) Special warehouse to be licensed : The Principal Commissioner of Customs or Commissioner of Customs may, subject to such conditions as may be prescribed, license a special warehouse wherein dutiable goods may be deposited.
- (b) Control over special warehouse : Such warehouse shall be caused to be locked by the proper officer and no person shall enter the warehouse or remove any goods therefrom without the permission of the proper officer.

- (c) Goods to be notified : The Board may, by notification in the Official Gazette, specify the class of goods which shall be deposited in the special warehouse licensed under section 58A(1).

Notification No. 66/2016-Cus (NT) dated 14-5-2016 - The CBIC has specified the following class of goods which shall be deposited in a special warehouse namely:

- (1) gold, silver, other precious metals and semi-precious metals and articles thereof;
- (2) goods warehoused for the purpose of –
  - (a) supply to duty free shops in a customs area;
  - (b) supply as stores to vessels or aircrafts under Chapter XI of the Customs Act, 1962;
  - (c) supply to foreign privileged persons in terms of the Foreign Privileged Persons (Regulation of Customs Privileges) Rules, 1957.

5. Write a note on Cancellation of Licence under section 58B of the Customs Act, 1962.

OR

Who can suspend/cancel the warehouse licence and on what grounds? What is the effect of suspension or cancellation on the warehouse and the goods in the warehouse? Explain in brief with reference to provisions relating to cancellation of licence of Warehouse u/s 58B of the Customs Act, 1962, (5 Marks, Nov. 2018 -NS)

Ans: Cancellation of Licence [Section 58B]:

- (1) Cancellation of Licence on Breach of Conditions : Where a licensee contravenes any of the provisions of this Act or the rules or regulations made thereunder or breaches any of the conditions of the licence, the Principal Commissioner of Customs or Commissioner of Customs may cancel the licence granted under section 57 or section 58 or section 58A:
- (2) Opportunity of being heard : Before any licence is cancelled, the licensee shall be given a reasonable opportunity of being heard.
- (3) Suspension of warehousing operations : The Principal Commissioner of Customs or Commissioner of Customs may, without prejudice to any other action that may be taken against the licensee and the goods under this Act or any other law for the time being in force, suspend operation of the warehouse during the pendency of an enquiry under Section 58B(1).
- (4) No goods to be deposited during suspension period : Where the operation of a warehouse is suspended under Section 58B(2), no goods shall be deposited in such warehouse during the period of suspension.
- (5) Warehousing provisions to apply for already deposited goods : The provisions of this Chapter shall continue to apply to the goods already deposited in the warehouse.
- (6) Goods to be removed within 7 days of cancellation : Where the licence issued under section 57 or section 58 or section 58A is cancelled, the goods warehoused shall, within 7 days from the date on which order of such cancellation is served on the licensee or within such extended

period as the proper officer may allow, be removed from such warehouse to another warehouse or be cleared for home consumption or export.

- (7) Warehousing provisions to apply for already deposited goods : The provisions of this Chapter shall continue to apply to the goods already deposited in the warehouse till they are removed to another warehouse or cleared for home consumption or for export, during such period.

### WAREHOUSING BOND, WAREHOUSING PERIOD, CONTROL OVER WAREHOUSED GOODS

#### 6. Write short note on: Warehousing Bond. (Nov. 1997) (2 Marks, May 2017)

Ans: Warehousing Bond [Section 59]: The relevant provisions are as under –

- (1) Triple duty bond to be executed : The importer of any goods in respect of which a bill of entry for warehousing has been presented under section 46 and assessed to duty under section 17 or section 18 shall execute a bond in a sum equal to thrice the amount of the duty assessed on such goods, binding himself–
- to comply with all the provisions of the Act and the rules and regulations made thereunder in respect of such goods;
  - to pay, on or before the date specified in the notice of demand, all duties and interest payable under Section 61(2); and
  - to pay all penalties and fines incurred for the contravention of the provisions of this Act or the rules or regulations, in respect of such goods.
- (2) Execution of general bond : The Assistant Commissioner of Customs or Deputy Commissioner of Customs may permit an importer to execute a general bond in such amount as the Assistant Commissioner of Customs or Deputy Commissioner of Customs may approve in respect of the warehousing of goods to be imported by him within a specified period.
- The bond amount is determined by Assistant/Deputy Commissioner of Customs, having regard to:
- ✓ past imports warehoused and the duty involved in such consignments;
  - ✓ anticipated imports and expected revenue involved.
- In practice, a running account is maintained which is debited when imported goods are warehoused and credited when warehoused goods are cleared ex-bond on payment of duty.
- (3) Security to be furnished : The importer shall, in addition to the execution of a bond under Section 59(1)/(2), furnish such security as may be prescribed.
- (4) Bond to remain in force even if goods are transferred to another warehouse : Any bond executed under this section by an importer in respect of any goods shall continue to be in force notwithstanding the transfer of the goods to another warehouse.
- (5) In case of transfer of goods – transferee to execute bond and furnish security : Where the whole of the goods or any part thereof are transferred to another person, the transferee shall

## CHAPTER 6 – WAREHOUSING

execute a bond in the manner specified in Section 59(1)/(2) and furnish security as specified under Section 59(3).

### 7. Write short note on: Permission for removal of goods for deposit in warehouse.

Ans: Permission for removal of goods for deposit in warehouse [Section 60]: The relevant provisions are asunder

- (1) When the provisions of section 59 have been complied with in respect of any goods, the proper officer may make an order permitting removal of the goods from a customs station for the purpose of deposit in a warehouse  
However, such order may also be made electronically through the customs automated system on the basis of risk evaluation through appropriate selection criteria.
- (2) Where an order is made under this section, the goods shall be deposited in a warehouse in such manner as may be prescribed.

### 8. Write a note on warehousing period under section 61 of the Customs Act, 1962. (May 2000, 3 Marks) (Nov 2001 & 2002: 3 Marks) (May 2006, 4 Marks)

OR

What is the warehousing period for capital goods and other goods in the case of EOUs, EHTPS, STPs, and for warehouses where manufacture/ other operations are permitted under section 65 of Customs Act, 1962 and also in other cases? Can the warehousing period be extended? (5 Marks, May 2018-NS)

Ans- Period For Which Goods May Remain Warehoused [Section 61]:

- (1) Warehousing period : Any warehoused goods may remain in the warehouse in which they are deposited or in any warehouse to which they may be removed,—
  - (a) in the case of capital goods intended for use in any –
    - (i) 100% export oriented undertaking; or
    - (ii) electronic hardware technology park unit; or
    - (iii) software technology park unit; or
    - (iv) any warehouse wherein manufacture or other operations have been permitted u/s 65, till their clearance from the warehouse;
  - (b) in the case of goods other than capital goods intended for use in any –
    - (i) 100% export oriented undertaking; or
    - (ii) electronic hardware technology park unit; or
    - (iii) software technology park unit; or
    - (iv) any warehouse wherein manufacture or other operations have been permitted under section 65, till their consumption or clearance from the warehouse; and
  - (c) in the case of any other goods, till the expiry of 1 year from the date on which the proper officer has made an order under section 60(1).

## CHAPTER 6 – WAREHOUSING

**Extension of Warehousing period :** However, the Principal Commissioner of Customs or Commissioner of Customs may, on sufficient cause being shown, extend the period for which the goods may remain in the warehouse, **by not more than one year at a time.**

**Reduction of Warehousing Period :** Where such goods are likely to deteriorate, the period referred above may be reduced by the Principal Commissioner of Customs or Commissioner of Customs to such shorter period as he may deem fit.

- (2) **Interest in case of warehoused goods :** Where any warehoused goods specified in Section 61(1)(c) remain in a warehouse **beyond a period of 90 days** from the date on which the proper officer has made an order under section 60(1), interest shall be payable at such rate as may be fixed by the Central Government under section 47 i.e. **15% p.a., on the amount of duty payable at the time of clearance of the goods, for the period from the expiry of the said 90 days till the date of payment of duty on the warehoused goods.**

**Exceptions:** If the Board considers it necessary so to do, in the public interest, it may,–

- (a) by order, and under the circumstances of an exceptional nature, to be specified in such order, waive the whole or any part of the interest payable under this section in respect of any warehoused goods;
- (b) by notification in the Official Gazette, specify the class of goods in respect of which no interest shall be charged under this section;
- (c) by notification in the Official Gazette, specify the class of goods in respect of which the interest shall be chargeable from the date on which the proper officer has made an order under section 60(1).

**Explanation:** For the purposes of this section,–

- (i) "Electronic hardware technology park unit" means a unit established under the Electronic Hardware Technology Park Scheme notified by the Government of India;
- (ii) "100% export oriented undertaking" has the same meaning as in clause (ii) of Explanation 2 to Section 3(1) of the Central Excise Act, 1944; and
- (iii) "Software technology park unit" means a unit established under the Software Technology Park Scheme notified by the Government of India.

Time period for which different class of goods may be warehoused and interest provisions are tabulated as under –

	Class of goods	Time for which the goods may remain warehoused	Interest provisions
(1)	Goods for use in any 100% EOU/ EHTP/ STP/ warehouse where manufacture or other operations are permitted u/s 65 :		
	(i) Capital goods	Till the clearance of such goods from warehouse	No interest is payable as goods can remain in the warehouse till their clearance or consumption

## CHAPTER 6 – WAREHOUSING

	(ii) Other goods	Till the consumption or clearance of such goods		
(2)	Goods other than (1) above	Till the expiry of 1 year from the date of order u/s 6O(1) permitting removal of goods from a customs station for deposit in warehouse	Interest will be payable if goods remain in the warehouse beyond <b>90 days</b> from the date on which the order u/s 6O(1) is made.	
			Rate of interest	Rate fixed u/s 47 which is 15% p.a.
			Amount on which interest is payable	Duty payable at the time of clearance of the goods
			Period for which interest is payable	From the expiry of the <b>90 days</b> till the date of payment of duty on the warehoused goods.

**No interest leviable in case of NIL duty :** The Supreme Court in *Pratibha Processors v. UOI* [1996] 88 ELT 12 (SC) has held that if on date of removal of goods from warehouse, such goods are chargeable with NIL rate of duty or are wholly exempt from duty, then no interest will be payable since interest is calculated on duty amount.

**Improper removal from warehouse :** Goods which are not removed from the warehouse after the expiry of the period permitted for warehousing or extended, are deemed to be improperly removed in terms of section 72. The rate of duty applicable in such case will be the rate in force on the date of deemed removal, i.e. the date on which the permitted period or its permitted extension comes to an end. When the demand notice is issued is not relevant for determining the rate of duty.

The Supreme Court in *Kesoram Rayon v. CC* [1996] 86 ELT 464 (SC) has held that Section 15(1)(b) has no application in such cases where the goods are removed from warehouse beyond the permitted period of warehousing; it is applicable only to the cases where a bill of entry is presented for removal from warehouse under section 68.

### OWNER'S RIGHT TO DEAL WITH WAREHOUSED GOODS, MANUFACTURE IN WAREHOUSE

9. Briefly state the rights of the owner of warehoused goods under the Customs Act, 1962. (May 2001, 4 Marks) (Nov. 2003, 6 Marks) (Marks 2, Nov. 2009-NS)

Ans: Owner's right to deal with warehoused goods [Section 64]: The owner of any warehoused goods may, after warehousing the same,-

- (a) inspect the goods;
- (b) deal with their containers in such manner as may be necessary to prevent loss or deterioration or damage to the goods;
- (c) sort the goods; or
- (d) show the goods for sale.

10. An owner of imported goods, which have been warehoused, wants to do some manufacturing operations on such goods inside the warehouse. Explain the provisions under the Customs Act, 1962 dealing with such operations. (May 1998, 8 Marks)

OR

In the context of Section 65 of the Customs Act, 1962 dealing with wastes or refuse arising during the manufacturing operations or other processes done in the warehouse:

- (i) Examine the validity of the following statement with brief reasons: "If finished products are cleared for home consumption on payment of appropriate import duty of customs, then appropriate duty of customs should be levied on the imported goods content in the waste or refuse." (Nov. 2007, 3 Marks)
- (ii) Explain briefly the "relevant date" for determination of rate of duty leviable on the imported material content in the waste or refuse. (Nov. 2007, 3 Marks) (4 Marks, May 2017)

Ans: The relevant provisions are as under –

- (1) Manufacture and other operations in relation to goods in a warehouse [Section 65(1)] : With the permission of the Principal Commissioner of Customs or Commissioner of Customs and subject to such conditions as may be prescribed, the owner of any warehoused goods may carry on any manufacturing process or other operations in the warehouse in relation to such goods.

However, the central government may, if satisfied it is necessary in the public interest so to do, by notification in the official gazette, specify the manufacturing process and other operations in relation to a class of goods that shall not be permitted in a warehouse. [inserted by the finance (no.2) act, 2024 w.e.f. 16-08-2024]

- (2) Duty liability on waste or refuse arising out of manufacturing or other operations [Section 65(2)] : In case, if any waste or refuse arises during the course of any operations permissible in relation to any warehoused goods, the same shall be dealt as under –
  - (a) In case finished goods are wholly or partly exported : If the whole or any part of the goods resulting from such operations are exported, import duty shall be remitted on the quantity of the warehoused goods contained in so much of the waste or refuse as has

## CHAPTER 6 – WAREHOUSING

arisen from the operations carried on in relation to the goods exported. However, this remission shall be allowed only if –

- (i) Such waste or refuse is destroyed; or
- (ii) Duty is paid on such waste or refuse, as if it had been imported into India in that form.

(b) In case finished products are wholly or partly cleared for home consumption : If the whole or any part of the goods resulting from such operations are cleared from the warehouse for home consumption, import duty shall be charged on the quantity of the warehoused goods contained in so much of the waste or refuse as has arisen from the operations carried on in relation to the goods cleared for home consumption.

Besides this, such a transaction squarely falls within the ambit of "supply" under Section 7 of the CGST Act, 2017. It would therefore be taxable in terms of section 9 of the CGST Act, 2017 or section 5 of the IGST Act, 2017 depending upon the supply being intra-state or inter-state. The resultant product will thus be supplied from the warehouse under the cover of GST invoice on the payment of appropriate GST and compensation cess, if any. Date for determination of rate of duty and tariff valuation of import material contained in the waste : The relevant date for determination of rate of duty and tariff valuation of import material contained in the waste will be the date of actual payment of duty, since the said goods category are covered by Section 15(1)(c).

- (3) To the extent that the resultant product whether emerging out of manufacturing or other operations in the warehouse is cleared for domestic consumption.
- (4) Power to exempt imported material used in the manufacture of goods in warehouse [Section 66] : If any imported materials are used in accordance with the provisions of Section 65 for the manufacture of any goods and the rate of duty leviable on the imported materials exceeds the rate of duty leviable on such goods, the Central Government, if satisfied that in the interests of the establishment or development of any domestic industry it is necessary so to do, may, by notification in the Official Gazette, exempt the imported materials from the whole or part of the excess rate of duty.

### REMOVAL OF GOODS FROM WAREHOUSE

11. State the circumstances under which the goods deposited in a bonded warehouse could be removed under the Customs Act, 1962. (May 2001, 4 Marks) (Nov. 1996, 5 Marks)

OR

Can warehoused goods be transferred from one warehouse to another under the Customs Act, 1962? (May 2003, 3 Marks) (Nov. 2008 (NS), 2 Marks)

Ans: Removal of goods from one warehouse to another [Section 67]: The owner of any warehoused goods may remove them from one warehouse to another, with the permission of the proper officer and subject to such conditions as may be prescribed for the due arrival of the warehoused goods at the warehouse to which removal is permitted.

**12. Explain briefly the procedure for clearance of warehoused goods for home consumption under Section 68 of the Customs Act, 1962. (Nov. 2004, 3 Marks)**

Ans: The procedure for clearance of warehoused goods for home consumption under Section 68 of the Customs Act, 1962 is as under –

- (1) Clearance of warehoused goods for home consumption [Section 68] : Any warehoused goods may be cleared from the warehouse for home consumption if following conditions are fulfilled,–
  - (a) a Bill of Entry (ex– bond bill of entry) for home consumption has been presented in prescribed form;
  - (b) the import duty, interest, fine and penalties payable in respect of such goods have been paid; and
  - (c) an order for clearance of such goods for home consumption has been made by the proper officer.  
However, the order may also be made electronically through the customs automated system on the basis of risk evaluation through appropriate selection criteria.
- (2) Relinquishment of title : The owner of any warehoused goods may relinquish his title to such warehoused goods –
  - (a) **at any time before an order for clearance** of goods for home consumption has been made, and
  - (b) **upon payment of penalties, if any, in respect of the goods**, and on such relinquishment, he shall not be liable to pay duty thereon.
- (3) No relinquishment, if offence committed : The owner of any such warehoused goods shall not be allowed to relinquish his title to such goods regarding which an offence appears to have been committed under this Act or any other law for the time being in force.

**13. Explain the provision relating to clearance of warehoused goods for 'export'. (May 2003, 3 Marks)**

Ans: The provision relating to clearance of warehoused goods for 'export' are as under –

- (1) Clearance of warehoused goods for export [Section 69] : Any warehoused goods may be exported to a place outside India without payment of import duty, if following conditions are fulfilled,–
  - (a) a shipping bill or a bill of export or the form as prescribed under section 84 has been presented in respect of such goods;
  - (b) the export duty, fine and penalties payable in respect of such goods have been paid; and
  - (c) an order for clearance of such goods for export has been made by the proper officer.  
However, the order referred to in clause (c) may also be made electronically through the customs automated system on the basis of risk evaluation through appropriate selection criteria.

## CHAPTER 6 – WAREHOUSING

Demand for payment of duty or conditions on export goods likely to be smuggled back : If the Central Government is of the opinion that goods of any specified description are likely to be smuggled back into India, it may, by notification in the Official Gazette, direct that such goods shall not be exported to any place outside India without payment of duty or may be allowed to be so exported subject to such restrictions and conditions as may be specified in the notification.

**14. Write a brief note on "remission of duty in case of volatile goods" under section 70 of the Customs Act, 1962. (Nov. 2006, 3 Marks)**

Ans: Allowance in case of volatile goods [Section 70]: The Assistant Commissioner or Deputy Commissioner of Customs is empowered to remit the import duty leviable on such shortage or deficiency of the warehoused goods if following conditions are satisfied-

- (i) The goods are found deficient in quantity at the time of delivery from the warehouse.
- (ii) This shortage is on account of natural loss i.e. evaporation etc.
- (iii) The goods are specified by the Central Government, having regard to the volatility of the goods and the manner of their storage. The following goods have been notified –
  - (a) aviation fuel, motor spirit, mineral turpentine, acetone, methanol, raw naphtha, vaporizing oil, kerosene, high speed diesel oil, batching oil, diesel oil, furnace oil and ethylene dichloride, kept in tanks;
  - (b) wine, spirit and beer, kept in casks;
  - (c) liquid helium gas kept in containers; and
  - (d) crude stored in caverns.

Goods not to be taken out of warehouse except as provided by this Act [Section 71]: The warehoused goods are not to be removed except for home consumption or export or to another warehouse or as otherwise provided by the Act.

### IMPROPER REMOVAL OF GOODS FROM WAREHOUSE

**15. Explain briefly the penal provisions of Section 72 of the Customs Act in respect of goods improperly removed from a warehouse. (May 2001, 4 Marks)**

**Mention the circumstances under which goods are considered to have been removed improperly from a warehouse under the Customs Act. (May 2005, 5 Marks)**

Ans: Goods improperly removed from warehouse, etc. [Section 72]: The penal provisions of Section 72 of the Customs Act in respect of goods improperly removed from a warehouse are as under –

- (1) Cases of improper removal of goods from warehouse [Section 72(1)]: The goods shall be treated as improperly removed from the warehouse in following cases –
  - (a) where any warehoused goods are removed from a warehouse in contravention of Section 71;

## CHAPTER 6 – WAREHOUSING

- (b) where any warehoused goods have not been removed from a warehouse at the expiration of the period during which such goods are permitted under section 61 to remain in a warehouse;
- (c) where any goods in respect of which a bond has been executed under section 59 and which have not been cleared for home consumption or export and are not duly accounted for to the satisfaction of the proper officer.

Duty Demand in case of improper removal: In case of improper removal of warehoused goods, the proper officer may demand the full amount of import duty chargeable on such goods along with interest, fine and penalties payable in respect of such goods.

- (2) Provisions of Penalty [Section 72(2)]: If any owner fails to pay any amount demanded, then the proper officer is authorised to detain and sell such portion of the goods as he may deem fit, after giving notice to the owner.

JSW Steel Ltd. v. CCEx. [2015] 325 ELT 629 (SC)	Goods not removed within permitted warehousing period are deemed to be improperly removed under section 72(1)(b) on expiry of such permitted period. In such case rate of duty prevalent on date of such expiry is applicable
Avenue Impex v. CC (Seaport) [2017] 345 ELT 173 (Mad.)	Where the warehoused goods were lost due to fire in public bonded warehouse after the out of charge order was given (order given on 07-10-2008 and the fire occurred on 09-10-2008); remission cannot be denied on ground that warehouse keeper and the customs authorities have no role after the out of charge order has been given. Since the Department did not dispute the fact that the goods were destroyed, it was directed to grant remission of duty.

Cancellation and return of warehousing bond [Section 73]:

When the whole of the goods covered by any bond executed under section 59 have been cleared for home consumption or exported or transferred or are otherwise duly accounted for, and when all amounts due on account of such goods have been paid, the proper officer shall cancel the bond as discharged in full, and shall on demand deliver it, so cancelled, to the person who has executed or is entitled to receive it.

Note

### REFUNDS, INTEREST THEREON AND OTHER PROVISIONS

1. What do you understand by "Unjust Enrichment"? (2 Marks, Nov. 2009-NS) (2 Marks, May 2003)

Ans: Doctrine of Unjust Enrichment: The doctrine of unjust enrichment means no person can be unjustly enriched at expense of another person. In indirect taxes, the duty burden passes on to the person who ultimately consumes goods. Since the law authorises recovery of indirect taxes (customs duty) from buyer, therefore, it is always presumed that incidence of duty has been passed.

Therefore, if any refund becomes due to the importer, then, since importer has recovered the duty from the buyer, thus, to be fair, refund should be made to consumer.

However, it is not possible to locate individual buyers and pay refund to them. Also without authority of law

Government cannot retain the excess duty. Therefore, Section 27 has been introduced which provides that any refund due to an assessee shall be transferred to Consumer Welfare Fund and will be used for the purpose of protection and welfare of the consumers. The refund shall be granted to the assessee only when he proves that incidence of duty has not been passed to any other person or in certain other specified cases.

2. Write a note on refund of customs duty u/s 27 of Customs Act. Under what circumstances will the refund of duty be granted to the assessee instead of being credited to Consumer Welfare Fund? (5 Marks, Nov. 2002)(3 Marks, Nov. 2006) (3 Marks, Nov. 2001) (4 Marks, May 2004) (4 Marks, Nov. 2010-NS) (2 Marks, Jan. 2021)

Ans: The provisions relating to refund of Custom duty are as under –

- (1) Application for Refund and time limit: Section 27 provides that any person claiming refund of any duty or interest –

- (a) paid by him; or
- (b) borne by him,

may make an application in such form and manner as may be prescribed for such refund to the Assistant Commissioner/Deputy Commissioner of Customs, before the expiry of 1 year, from the date of payment of such duty or interest.

Time Limit not applicable in case duty is paid under protest : The limitation of one year shall not apply where any duty or interest has been paid under protest. Hence, in case of duty/interest paid under protest, refund claim may be filed without any time-limit.

"The date of payment of duty or interest" in relation to a person, other than the importer, shall be construed as "the date of purchase of goods" by such person.

- (2) No refund admissible if amount is less than ₹ 100 : Where the amount of refund claimed is less than ₹ 100, the same shall not be refunded.

## CHAPTER 7 – REFUNDS

- (3) Documentary evidence to be furnished to prove that incidence of the duty/ interest for which refund claim has been filed is not passed on to any other person [Section 27(1A)] : Refund application shall be accompanied by such documentary or other evidence (including documents referred to in Section 28C) as the applicant may furnish to establish that the amount of duty or interest in relation to which such refund is claimed,—
- (a) was collected from, or paid by him; and
  - (b) the incidence of such duty or interest, has not been passed on by him to any other person.
- (4) Manner of computation of limitation period of one year [Section 27(1B)] : Save as otherwise provided in this section, the period of limitation of one year shall be computed in the following manner, namely,—

Sl. No.	In case	The limitation of one year shall be computed from the -
(1)	Goods are exempt from payment of duty by a special order issued u/s 25(2)	Date of issue of such order
(2)	Where the duty becomes refundable as a consequence of any judgment, decree, order or direction of the Appellate authority, Appellate Tribunal or any court	Date of such judgment, decree, order or direction
(3)	Where any duty is paid provisionally under Section 18	Date of adjustment of duty after the final assessment thereof or in case of re-assessment, from the date of such re-assessment.
(4)	In any other case	Date of payment of such duty or interest

- (5) Order of refund [Section 27(2)] : On receipt of such an application, if the Assistant/ Deputy Commissioner of Customs is satisfied that the whole or any part of the duty and interest, if any, paid thereon paid by the applicant is refundable, then, he shall make an order accordingly and the amount shall be credited to the Consumer Welfare Fund.
- (6) Circumstances when refund granted to assessee : The amount of customs duty along with interest, if any, paid thereon shall be paid to the applicant instead of being credited to the fund in the following circumstances,—
- (a) Refund to importer/exporter if duty incidence is not passed : If the importer or exporter has paid the duty and interest and has not passed on the incidence of such duty and interest to any other person.
  - (b) Imports made by individual for personal use : If the duty and interest is paid on imports made by an individual for his personal use.
  - (c) Refund to buyer if duty burden not passed : If the duty and interest has been borne by the buyer and he has not passed on the incidence thereof to any other person.

## CHAPTER 7 – REFUNDS

- (d) Duty drawback : In case of drawback of duty payable u/s 74 and 75 of the Customs Act 1962.
- (e) Refund of Export duty : In case the refund is in respect of the export duty as specified in Section 26 of Customs Act, 1962.
- (f) Notified class of applicants : In case the duty and interest is borne by any other such class of applicants as the Central Government may by notification in the official gazette specify and such class of persons have not passed on the incidence thereof to any other person.
- (g) Excess duty paid by importer : The duty paid in excess by the importer before an order permitting clearance of goods for home consumption is made where—
  - (i) such excess payment of duty is evident from the bill of entry in the case of self-assessed bill of entry; or
  - (ii) the duty actually payable is reflected in the reassessed bill of entry in the case of reassessment.

ITC Ltd. v. CCEx.  
[2019] 368 ELT 216  
(SC)

Refund claim against the assessed duty cannot be entertained without challenging the assessment order even in case of self assessment made by the assessee. Thus, only when the order of assessment or self-assessment is modified in accordance with law by taking recourse to the appropriate proceedings, refund claim u/s 27 of the Customs Act, 1962 is admissible.

**Facts:** The appellants paid custom duty on the basis of self assessment which was subsequently claimed as refund without challenging the assessment order.

**Question:** The question involved in these appeals is whether in the absence of any challenge to the order of assessment in appeal, any refund application against the assessed duty can be entertained?

**Appellants Argument :** It was argued that prior to the amendment by the Finance Act, 2011, the scheme of assessment under Section 17 of the Customs Act was such that once a bill of entry was filed, examination and testing of the imported goods were done by the proper officer, thereafter, an order of assessment was passed after the physical examination. Accordingly, Section 27 of the Customs Act provided that claim for refund to be made by any person who had (a) paid duty in pursuance of an order of assessment or (b) a person who had borne the duty. Earlier, there was a necessity for an order of assessment by a proper officer under Section 17 of the Customs Act.

After the amendment to the Act in 2011, there is no need to get the assessment of bill of exchange done for claiming a refund of excess duty paid under Section 27 of the Act, as now the bill of entry is to be selfassessed by the importer or exporter and will be subject to verification. Further, under Section 17(4) of the Customs Act if it is found that self-assessment of duty has not been done correctly by an importer or exporter the proper officer, may re-assess the duty. In the case of re-assessment done under Section 17(4), it is only in these circumstances an order is passed. If no order of assessment is passed in the case of selfassessment, the refund application can lie. It was

urged that Section 27 has also been amended by way of amendment by the Finance Act, 2011. An application for refund of duty and the requirement of order of assessment that was requisite before the amendment has now been expressly removed.

**Decision:**

- ✓ The expression which was earlier used in Section 27(1)(i) that "in pursuance of an order of assessment" has been deleted from the amended provision of Section 27 due to introduction of provision as to self-assessment. However, as self-assessment is nonetheless an order of assessment, no difference is made by deletion of aforesaid expression as no separate reasoned assessment order is required to be passed in the case of self-assessment.
- ✓ Refund provisions u/s 27 cannot be invoked in the absence of amendment or modification having been made in the bill of entry on the basis of which self-assessment has been made.
- ✓ The refund proceedings are in the nature of execution for refunding amount. It is not assessment or re-assessment proceedings at all. Existence of those exigencies is also to be proved which cannot be adjudicated within the scope of provisions as to refund. While processing a refund application, reassessment is not permitted nor conditions of exemption can be adjudicated.
- ✓ It will virtually amount to an order of assessment or re-assessment in case the Assistant Commissioner or Deputy Commissioner of Customs while dealing with refund application is permitted to adjudicate upon the entire issue which cannot be done in the ken of the refund provisions under Section 27.
- ✓ Thus, a claim for refund cannot be entertained unless the order of assessment or self-assessment is modified in accordance with law by taking recourse to the appropriate proceedings.

### 3. Write a note on refund of export duty. (4 Marks, Nov. 2003)

**Ans:** Refund of Export Duty [Section 26]: Any export duty paid on goods exported will be refunded if the following conditions are satisfied: -

- (i) Goods are re-imported within one year.
- (ii) The goods are returned otherwise than by way of resale, and
- (iii) Refund claim is made within 6 months from the date when the proper officer made an order for clearance of the goods for re-importation.

### 4. Section 26A of Customs Act provides for refund of import duty paid if goods are found defective or not as per specifications. Discuss the conditions governing such refund in brief. (Nov. 2010-NS, 6 Marks) OR

Explain the relevant dates as provided in section 26A(2) of the Customs Act, 1962 for purpose of refund of duty under specified circumstances, namely:

(4 Marks, Nov. 2016)

- (i) goods exported out of India

(ii) relinquishment of title to goods

(iii) goods destroyed or rendered valueless.

Ans: Refund of import duty in certain cases [Section 26A of the Customs Act, 1962]:

(1) Applicability: This section applies in respect of the importation of any goods capable of being easily identified as such imported goods, if –

- (a) any duty has been paid on clearance of such goods for home consumption;
- (b) the goods are found to be defective or otherwise not in conformity with the specifications agreed upon between the importer and the supplier of goods;
- (c) the goods have not been worked, repaired or used after importation except where such use was indispensable to discover the defects or non-conformity with the specifications;
- (d) the goods are identified to the satisfaction of the Assistant Commissioner or Deputy Commissioner as the goods which were imported;
- (e) the importer does not claim drawback under any other provision of this Act; and
- (f) either of the following –
  - (i) the goods are exported; or
  - (ii) the importer relinquishes his title to the goods and abandons them to customs; or
  - (iii) such goods are destroyed or rendered commercially valueless in the presence of the proper officer.

(2) Manner & Time-limit of export/ relinquishment/ destruction & extension of time-limit : The export/ relinquishment/ destruction, etc. [referred to in point (1)(f)] should be done in the prescribed manner and within a period of upto 30 days from the date on which the proper officer makes an order for the clearance of imported goods for home consumption under section 47.

Extension of upto 3 Months : However, the period of 30 days may, on sufficient cause being shown, be extended by the Principal Commissioner or Commissioner of Customs for a period not exceeding 3 months.

(3) Refund of import duty if aforesaid conditions fulfilled : If the aforesaid conditions are satisfied, then, such duty paid at the time of clearance of such goods shall be refunded to the person by whom or on whose behalf it was paid.

(4) Manner and time-limit of claiming refund : An application for refund of duty shall be made before the expiry of 6 months from the relevant date in prescribed form and manner. "Relevant date" means,–

- (a) in cases where the goods are exported out of India, the date on which the proper officer makes an order permitting clearance and loading of goods for exportation under section 51;
- (b) in cases where the title to the goods is relinquished, the date of such relinquishment;
- (c) in cases where the goods are destroyed or rendered commercially valueless, the date of such destruction or rendering of goods commercially valueless.

(5) Exceptions to this Section :

## CHAPTER 7 – REFUNDS

- (a) **Offending goods** : This section shall not apply to the goods regarding which an offence appears to have been committed under this Act or any other law for the time being in force.
  - (b) **Perishable goods or Expired goods** : No refund shall be allowed in under this section in respect of perishable goods and goods which have exceeded their shelf life or their recommended storage-before-use period.
- (6) **Power of Board to impose Additional Condition** : The Board may, by notification in Official Gazette, specify any other condition subject to which the refund under this section may be allowed.

5. State whether the principle of 'unjust enrichment' shall be applicable in the following cases –

- (1) Refund of duty paid on provisional basis under section 18 of the Customs Act.
- (2) Refund of an advance payment made in anticipation of importation of goods.
- (3) Refund of duty paid under protest.
- (4) Refund of wrongly encashed bank guarantee. (May 2008, 3 Marks)
- (5) Refund of excess interest paid by the assessee. (May 2008, 3 Marks)
- (6) Refund of duty on car imported for personal use. (May 2008, 3 Marks)
- (7) Refund of export duty. (Nov. 2004, 2 Marks)

Ans: The aforesaid points have been discussed below –

- (1) **Yes**. The doctrine of 'unjust enrichment' is applicable in case of refund of duty paid on raw materials which have been captively consumed, as has been judicially decided by the Supreme Court in **UOI v. Solar Pesticides (P) Ltd. [2000] 116 ELT 401 (SC)**. The Apex court held that the duty burden can be passed on directly or indirectly. In case of raw materials which is captively consumed and finished goods manufactured therefrom are sold, it can be said that incidence of duty has been passed on, since the same is included in value of finished goods and therefore the doctrine of unjust enrichment is applicable in such case.
- (2) **Yes**. Section 18 of the Customs Act, 1962 statutorily provides that refund of import duty of customs paid on provisional basis can be made only if the importer proves that he has not passed on the incidence of duty to any other person. Hence, doctrine of 'unjust enrichment' is applicable in such case.
- (3) **No**. The doctrine of "unjust enrichment" will not be applicable in case duty is paid in advance in anticipation of importation of goods. The Delhi High Court in **United News of India v. UOI [2004] 168 ELT 442 (Del.)** has held that till the advance payment is appropriated against the duty on actual importation of goods, such amount cannot be regarded as duty to be hit by doctrine of unjust enrichment. Thus, the time limit under section 27 and bar of unjust enrichment is not applicable in such cases.
- (4) **Yes**. The Supreme Court in **Allied Photographics India Ltd. [2004] 166 ELT 3 (SC)** has held that every claim of refund, even if duty is paid under protest, shall be dealt in

## CHAPTER 7 – REFUNDS

accordance with provisions of Section 27. Thus, refund of duty paid under protest is also governed by doctrine of unjust enrichment.

- (5) No. The provisions of section 27(2) apply when an assessee claims refund of duty, hence, bar of unjust enrichment will not apply to refund of wrongly encashed bank guarantee. An amount secured by bank guarantee cannot be held to be paid to the Revenue as duty. Hence, the Revenue will have to pay back the amount of bank guarantee (encashed wrongly), if the case is finally decided in favour of assessee. **Oswal Agro Mills Ltd. v. ACCE (1994) 70 ELT 48 (SC)**
- (6) Yes. The bar of unjust enrichment will apply in case of excess interest paid by the assessee as the words used under section 27(1) and 27(2) are "duty and interest, if any, paid on such duty". The payment of interest is inextricably linked with payment of duty. Thus, the excess amount of interest paid by the assessee will be refunded to him only if he does not pass on the incidence of such interest to any other person.
- (7) No. The principle of unjust enrichment will not apply to refund of duty on car imported for personal use, Section 27(2) stipulates that in case of imports made by an individual for his personal use, the refund should not be credited to consumer welfare fund, but shall be paid to the applicant.
- (8) No. The Tribunal in the case of **CC v. Ken Agritech Pvt. Ltd. [2004] 166 ELT 339 (Tri.-Bang)** has held that the provisions relating to unjust enrichment introduced in section 27 by way of amendment in the Customs Act could only apply to refund of import duty under the said section. Since refund of export duty is dealt with under section 26 of the Act and the same has not been amended by the Parliament, the provisions relating to unjust enrichment introduced under section 27 could not be made applicable to refund of export duty under the said section 26.

**6. Does the bar of unjust enrichment apply to all types of refunds? Does the refund of penalty attract such bar? (Nov. 2005, 2 Marks)**

Ans: No, the bar of unjust enrichment does not apply to all types of refunds. Only when the burden of the duty has been shifted by the manufacturer to the buyer, the refund gets hit by such bar.

No, refund of penalty does not attract bar of unjust enrichment. - **CCEx. v. Shivalik Agro Poly Products Ltd. [2004] 173 ELT 64 (Tri.)**

**7. Write a note on Interest on late disbursement of refund. (2 Marks, Nov. 2003)**

Ans: Interest on delayed refunds [**Section 27A**]: The provisions relating to interest on delayed refunds are as under:

- (1) Circumstances in which refund can be granted: If any duty, ordered to be refunded, is not refunded within 3 months from the date of receipt of application, interest shall be paid to that applicant.

## CHAPTER 7 – REFUNDS

- (2) Period for which interest will be paid: Interest will be paid on such duty from the date immediately after the expiry of three months from the date of receipt of such application till the date of refund of such duty.
- (3) Rate of interest: 6% p.a.
- (4) Refund in consequence of Appellate Authority's order : Where any order of refund is made by the Commissioner (Appeals), Appellate Tribunal or any court against an order of the Assistant Commissioner of Customs or Deputy Commissioner of Customs, the order passed by the Commissioner (Appeals), Appellate Tribunal or, as the case may be, by the court, shall be deemed to be an order passed for the purposes of this section.

Note



# TOPIC REFERENCER

- ⇒ *Basic Concepts of Foreign Trade Policy*
- ⇒ *FTP-Objectives, Administration and Legal Framework*
- ⇒ *Trade Facilitation and Ease of Doing Business*
- ⇒ *General Provisions Regarding Imports and Exports*
- ⇒ *Developing Districts as Export Hubs*
- ⇒ *Export Promotion Schemes*
  - ✓ *Status holders*
  - ✓ *Duty Exemption/Remission Schemes*
  - ✓ *Remission of Duties & Taxes on Export Product Scheme (RoDTEP)*
  - ✓ *Advance Authorization Scheme*
  - ✓ *Duty Free Import Authorization (DFIA) Scheme*
  - ✓ *Export Promotion Capital Goods Scheme (EPCG)*
  - ✓ *EOU, EHTP, STP & BTP Schemes*
  - ✓ *Deemed Exports*
- ⇒ *Promoting Cross Border Trade in Digital Economy*
- ⇒ *Penalties*

## BASIC CONCEPTS OF FOREIGN TRADE POLICY

### 1. What is Foreign Trade Policy? Explain the need of foreign trade.

Ans: Foreign Trade Policy (FTP) is a set of guidelines or instructions issued by the Central Government in matters related to import and export of goods in India i.e. foreign trade.

**Need of foreign trade :** In the era of globalization, foreign trade has become the lifeline of any economy. Its primary purpose is not merely to earn foreign exchange, but also to stimulate greater economic activity. International trade not only enables a nation to specialize in the goods which it can produce most cheaply and efficiently, but also to consume more than it would be able to produce with its own resources. International trade enlarges the potential markets for the goods of a particular economy.

### 2. Explain in brief the legislation governing foreign trade.

Ans: The relevant provisions are as under

- (1) Legislation governing foreign trade : The main legislation concerning foreign trade is the **Foreign Trade (Development and Regulation) Act, 1992** [FT (D&R) Act], which replaced the earlier Import and Export (Control) Act, 1947.

FT (D&R) Act, confers powers on the Union Ministry of Commerce and Industry, Government of India to –

- (a) make provisions for facilitating and controlling foreign trade;

- (b) prohibit, restrict and regulate exports and imports, in all or specified cases as well as subject them to exemptions;
  - (c) formulate and announce an export and import policy and also amend the same from time to time, by notification in the Official Gazette;
  - (d) appoint a 'Director General of Foreign Trade' for the purpose of the Act, including formulation and implementation of the export-import policy.
- (2) **New Foreign Trade Policy 2023** : The Foreign Trade Policy 2023 is being announced to provide the policy continuity and a responsive framework. The same is **effective from 01<sup>st</sup> April 2023**. Subsequent revision(s) in the FTP shall be done as and when required and shall not linked to any date. Continuous feedback from Trade and Industry to streamline processes and update Policy & procedures.
- (3) **Duration of FTP** : The Foreign Trade Policy (FTP) 2023 incorporating provisions relating to export and import of goods and services, shall come into force with **effect from 1<sup>st</sup> April 2023** and shall continue to be in operation unless otherwise specified or amended. All exports and imports made up to 31-03-2023 shall, accordingly, be governed by the relevant FTP, unless otherwise specified.
- (4) **Amendment to FTP** : Central Government, in exercise of powers conferred by Section 3 and Section 5 of FT (D&R) Act, 1992, as amended from time to time, reserves the right to make any amendment to the FTP, by means of notification, in public interest.
- (5) **4 Pillars of FTP 2023** :
- (a) From Incentives to Tax Remission.
  - (b) Greater Trade facilitation through technology, automation, and continuous process reengineering
  - (c) Export promotion through collaboration: Exporters, States, Districts
  - (d) Focus on Emerging Areas – E-commerce Exports, Developing Districts as Export Hubs, Streamlining SCOMET policy.

### 3. What are key highlights of new foreign trade policy.

Ans: The key highlights of new foreign trade policy are –

- (1) **Ease of Doing Business, Reduction in Transaction Cost and e-Initiatives** :
- (a) **Online approvals without Physical Interface** :
    - (i) Automatic approval of various permissions under Foreign Trade Policy based on process simplification and technology implementation.
    - (ii) Reduction in processing time and immediate approval of applications under automatic route for exporters.
  - (b) **Reduction in user charges for MSMEs under Advance Authorization (AA) and Export promotion capital goods (EPCG) scheme** :
    - (i) Application fee being reduced for Advance Authorization and EPCG Schemes
    - (ii) Will benefit 55-60% of exporters who are MSMEs.
  - (c) **E-Certificate of Origin**:

- (i) Revamp of the e-Certificate of Origin platform proposed- to provide for selfcertification of CoOs as well as automatic approval of CoOs, where feasible.
  - (ii) Initiatives for electronic exchange of CoO data with partner countries envisaged.
  - (d) Paperless filing of Export Obligation Discharge Applications : All authorisation redemption applications to be paperless – This is in addition to application process for issuance being already paperless. With this, the entire lifecycle of the authorization shall become paperless
- (2) Export Promotion Initiatives :
- (a) Status Holder Export Thresholds Rationalised : Export performance threshold for Recognition of Exporters as Status Holders rationalized. Enabling more exporters to achieve higher status and reduced transaction cost for exports.
  - (b) Merchanting Trade Reform : To boost merchanting activities from India – Merchanting trade involving shipment of goods from one foreign country to another foreign country without touching Indian ports, involving an Indian intermediary is allowed subject to compliance with RBI guidelines, except for goods/items in the SCOMET list.
  - (c) Rupee Payment to be accepted under FTP Schemes :
    - (i) Effective step towards internationalisation of Rupee
    - (ii) FTP benefits extended for rupee realisations through special Vostro accounts setup as per RBI circular issued on 11 July 2022
  - (d) Towns of Export Excellence (TEE) : Four new towns, namely Faridabad, Mirzapur, Moradabad, and Varanasi, have been designated as Towns of Export Excellence (TEE) in addition to the existing 39 towns. The TEEs will have priority access to export promotion funds under the MAI scheme and will be able to avail Common Service Provider (CSP) benefits for export fulfillment under the EPCG Scheme. This addition is expected to boost the exports of handlooms, handicrafts, and carpets.
- (3) Promoting export from the districts :
- (a) The FTP aims at building partnerships with State governments and taking forward the Districts as Export Hubs (DEH) initiative to promote exports at the district level and accelerate the development of grassroots trade ecosystem.
  - (b) Efforts to identify export worthy products & services and resolve concerns at the district level will be made through an institutional mechanism – State Export Promotion Committee and District Export Promotion Committee at the State and District level, respectively.
  - (c) District specific export action plans to be prepared for each district outlining the district specific strategy to promote export of identified products and services.
- (4) E-Commerce Exports :
- (a) Facilitating E-Commerce Exports :
    - (i) All FTP benefits to be extended to e-Commerce exports.
    - (ii) Necessary enablement of IT systems in Department of Commerce, Post, CBIC to be undertaken in the six months.

- (iii) To streamline e-Commerce export facilitation - Guidelines being formulated in consultation with other ministries to facilitate further exports under e-Commerce.
  - (iv) Special outreach and training activities for small e-commerce exporters
  - (v) Handholding through industry and knowledge partners
  - (vi) Value limit for exports through courier is increased to ₹ 10,00,000 per consignment.
  - (b) **Dak Ghar Niryat Kendras** : Dak Ghar Niryat Kendras shall be operationalised throughout the country to work in a hub-and-spoke model with Foreign Post Offices (FPOs) to facilitate cross-border e-Commerce and to enable artisans, weavers, craftsmen, MSMEs in the hinterland and land-locked regions to reach international markets.
  - (c) **E-Commerce Export Hubs** : Designated hubs with warehousing facility to be notified, to help e-commerce aggregators for easy stocking, customs clearance and returns processing. Processing facility to be allowed for last mile activities such as labelling, testing, repackaging etc.
- (5) **Steps to Boost Manufacturing** :
- (a) Prime Minister Mega Integrated Textile Region and Apparel Parks (PM MITRA) scheme has been added as an additional scheme eligible to claim benefits under CSP(Common Service Provider) Scheme of Export Promotion capital Goods Scheme(EPCG).
  - (b) Dairy sector to be exempted from maintaining Average Export Obligation – to support dairy sector to upgrade the technology.
  - (c) Battery Electric Vehicles (BEV) of all types, Vertical Farming equipment, Wastewater Treatment and Recycling, Rainwater harvesting system and Rainwater Filters, and Green Hydrogen are added to Green Technology products – will now be eligible for reduced Export Obligation requirement under EPCG Scheme.
  - (d) Special Advance Authorisation Scheme extended to export of Apparel and Clothing sector on self-declaration basis to facilitate prompt execution of export orders – Norms would be fixed within fixed timeframe.
  - (e) Benefits of Self-Ratification Scheme for fixation of Input-Output Norms extended to 2 star and above status holders in addition to Authorised Economic Operators at present.
  - (f) Fruits and Vegetables exporters are being included for double weightage for counting export performance under eligibility criteria for Status House certification. This is in addition to existing MSME sector who also get double weightage
- (6) **Amnesty Scheme** :
- (a) Government is strongly committed to reducing litigation and fostering trust based relationships to help alleviate issues faced by exporters.
  - (b) In line with the "Vivaad se Vishwaas" initiative, which sought to settle tax disputes amicably, Government is introducing a special one-time Amnesty Scheme to address noncompliance in Export Obligations by Advance Authorization and EPCG authorization holders.
  - (c) All pending cases of default in Export Obligation (EO) of authorizations mentioned can be regularized by the authorization holder on payment of all customs duties

## CHAPTER 8 – FOREIGN TRADE POLICY

exempted in proportion to unfulfilled Export Obligation and maximum interest is capped at 100% of such duties exempted. No interest is payable on the portion of Additional Customs Duty and Special Additional Customs Duty. Amnesty scheme shall be available for a limited period, up to 30-09-2023.

- (d) Cases under investigation for fraud and diversion are not eligible for this scheme.
- (7) Emphasis on Streamlining SCOMET Licensing Procedure :
- (a) Focus of FTP 2023 on **Special Chemicals, Organisms, Materials, Equipment and Technologies (SCOMET)**
- (b) Policy for export of dual use items under SCOMET consolidated at one place for ease of understanding and compliance by industry.
- (c) SCOMET policy emphasizes India's export control in line with its International commitments under various export control regimes (Wassenaar arrangement, Australia group and Missile Technology Control Regime) to control trade in sensitive and dual use items including software and technology
- (d) Recent policy changes introduced such as general authorizations for export of certain SCOMET items to streamline licensing of these items to make export of SCOMET items globally competitive.
- (e) Focus on simplifying policies to facilitate export of dual-use high-end goods/ technology such as UAV/ Drones, Cryogenic Tanks, Certain chemicals etc.

### 4. Write a note on contents of foreign trade policy.

Ans: Contents of Foreign Trade Policy: The contents of the FTP 2023 are as follows-

- (1) FTP 2023 : FTP 2023 having 11 Chapters giving basic policy. This has been notified by the Central Government on 01-04-2023. Subsequent revision(s) in the FTP shall be done as and when required and shall not linked to any date.
- (2) Handbook of Procedures 2023 : (HBP 2023) containing 9 chapters, covering **procedural aspects of policy**. This has been notified by Director General of Foreign Trade on 01-04-2023. It is amended from time to time as per requirements.
- (3) Appendices and Aayat Niryat Forms (AANF) Containing various appendices and forms relating to import and export.
- (4) Standard Input-Output Norms : Standard Input-Output Norms (SION) of various products are notified from time to time. Based on SION, exporters are provided the a permission in terms of the FT(D&R) Act to import or export. It also grants Importer facility to make duty-free import of inputs required for manufacture of export products under the Duty Exemption Schemes like Advance Authorisation and DFIA
- (5) ITC(HS) Classification of Exports and Import Items : The Export Import Policy regarding import or export of a specific item is given in the Indian Trade Classification Code based on Harmonized System of Coding [ITC(HS)]. ITC-HS Coding was adopted in India for import-export operations. Indian custom uses **eight digit ITC-HS** Codes to suit the national trade requirements.

## CHAPTER 8 – FOREIGN TRADE POLICY

ITC-HS codes are divided into two schedules. ITC(HS) **Import Schedule I** describe the rules and guidelines related to **import policies** where as **Schedule II** describe the rules and regulation related to **export policies**. Presently, most of the goods can be imported without any authorization. Schedule II contains very few products, where export is prohibited or restricted. Excluding those items, export of all other goods is free. Any changes or formulation or addition of new codes in ITC-HS Codes are carried out by DGFT (Directorate General of Foreign Trade).

- (6) **Foreign Trade Policy vis a vis tax laws** : The FTP is closely knit with the Customs, GST Laws and Excise laws of India. However, the policy provisions per-se do not override tax laws. The exemptions extended by FTP are given effect to by issue of notifications under respective tax laws (e.g., Customs Tariff Act). Thus, actual benefit of the exemption depends on the language of exemption notifications issued by the CBIC. In most of the cases the exemption notifications refer to policy provisions for detailed conditions. Ministry of Finance/Tax Authorities cannot question the decision of authorities under the Ministry of Commerce (so far as the issue of authorization etc. is concerned).

FTP, Handbook of procedures under FTP, CGST Act, SGST Act, IGST Act, Central Excise Act (for petroleum products and tobacco products), Customs Act and notifications issued hereunder form an integrated scheme of indirect taxation. All these statutes have to be read as a whole and not in isolation, since they are series of statutes relating to related subject matter.

### FTP - OBJECTIVES, ADMINISTRATION AND LEGAL FRAMEWORK

#### 5. What are the objectives of new foreign trade policy

Ans: The objectives of new foreign trade policy is –

- (1) Foreign Trade Policy to be dynamic and responsive to the emerging trade scenario.
- (2) Wider engagement with States and Districts to promote exports from the grassroots.
- (3) Focus on e-Commerce exports to streamline processes and make it easier for exports to grow in ecommerce space.
- (4) Sector specific targets to achieve the goal of one trillion-dollar merchandise exports and one trillion-dollar services exports by 2030.
- (5) Consultative mechanism to resolve issues of trade and Industry.
- (6) Work towards making Indian Rupees a global currency and facilitating
- (7) International Trade settlement in INR.
- (8) Restructuring of Department of Commerce to make it future ready.

#### 6. Explain the administrative machinery of Foreign Trade Policy.

Ans: The administrative machinery of the foreign trade policy is as under –

- (1) **Director General of Foreign Trade** : Director General of Foreign Trade (DGFT), an attached office of the Ministry of Commerce & Industry, Government of India formulates, controls

and supervises the Foreign Trade Policy. DGFT has several offices in various parts of the country for execution of the policy formed by the headquarters at Delhi.

DGFT may, specify Procedures to be followed by an exporter or importer or by any licensing/Regional Authority (RA) or by any other authority for purposes of implementation of the provisions of FT (D&R) Act, the Rules and the Orders made there under and the FTP. Such procedures, or amendments if any, shall be published by means of a Public Notice.

- (2) Other Authorities involved in administration of FTP : Though the FTP is formulated by DGFT, it is administered in close coordination with other agencies, like –
- (a) Central Board of Indirect Taxes (CBIC) : CBIC, along with its departments, under the Ministry of Finance, facilitate the implementation of FTP.
  - (b) Responsibilities of the departments : Customs Department which is responsible for clearance of export and import goods, follow the policy framed by FTP. On the other hand the GST Authorities are required to be involved for all matters of exports, where goods have to be cleared without payment of Integrated tax.
  - (c) Reserve Bank of India (RBI) : RBI which is the nodal bank in the country, working under the Ministry of Finance, is entrusted with policy formulation for foreign exchange management including the payments and receipts of foreign exchange and promotion and orderly development and maintenance of foreign exchange market in India.
  - (d) State GST Departments : To avoid dual control, some taxable persons are under jurisdiction of State GST authorities. In their case, State GST Authorities are controlling authorities.

### 7. Explain the scope of FTP. OR Enumerate the various matters in respect of which policies and regulations are framed under FTP.

Ans: The relevant provisions are discussed as under–

- (1) Scope of foreign trade policy : The FTP covers the policies and regulations with respect to the following matters:
- (a) Legal Framework and Trade Facilitation - Chapter 1
  - (b) General Provisions Regarding Imports and Exports - Chapter 2
  - (c) Developing Districts as Export Hubs -Chapter 3
  - (d) Duty Exemption / Remission Schemes - Chapter 4
  - (e) Export Promotion Capital Goods (EPCG) Scheme - Chapter 5
  - (f) Export Oriented Units (EOUs), Electronics Hardware Technology Parks (EHTPs), Software Technology Parks (STPs) and Bio-Technology Parks (BTPs) - Chapter 6
  - (e) Deemed Exports -Chapter 7
  - (g) Quality Complaints and Trade Disputes -Chapter 8
  - (h) Promoting Cross Border Trade in Digital Economy -Chapter 9
  - (i) SCOMET: Special Chemicals, Organisms, Materials, Equipment and Technologies - Chapter 10
  - (j) Definition -Chapter 11

## CHAPTER 8 – FOREIGN TRADE POLICY

- (2) Hand Book of Procedures (HBP) and Appendices & Aayat Niryat Forms (ANF) : Director General of Foreign Trade (DGFT) may, by means of a Public Notice, notify Hand Book of Procedures, including Appendices and Aayat Niryat Forms or amendment thereto, if any, laying down the procedure to be followed by an exporter or importer or by any Licensing/Regional Authority or by any other authority for purposes of implementing provisions of FT (D&R) Act, the Rules and the Orders made there under and provisions of FTP
- (3) Specific provision to prevail over the general : Where a specific provision is spelt out in the FTP/Hand Book of Procedures (HBP), the same shall prevail over the general provision

### TRADE FACILITATION AND EASE OF DOING BUSINESS

#### 8. Write a note on National Committee on Trade Facilitation (NCTF).

Ans: The relevant provisions are discussed as under –

- (1) National Committee on Trade Facilitation (NCTF) : India has ratified the World Trade Organization's Trade Facilitation Agreement (TFA) in April 2016. To facilitate coordination and implementation of the TFA provisions, an inter-ministerial body i.e. National Committee on Trade Facilitation (NCTF) has been constituted. TFA emanates from the following four pillars :
  - (i) Transparency - focus on improved access to accurate and complete information.
  - (ii) Technology - development and use of digital and detection technologies to ease out trade bottlenecks and improve efficiency.
  - (iii) Simplification of Procedures and Risk based Assessments - simplified, uniform and harmonised procedures with increased adoption of a risk based management approach.
  - (iv) Infrastructure Augmentation - enhancement of infrastructure, particularly the road and rail infrastructure leading to ports and the infrastructure within ports, airports, ICDs, Land Customs Stations is a major enabler for growth in trade that cuts across all stakeholders.
- (2) National Trade Facilitation Action Plan aims to achieve :
  - (i) Improvement in Ease of Doing Business through reduction in transaction cost and time;
  - (ii) Reduction in cargo release time;
  - (iii) A paperless regulatory environment;
  - (iv) A transparent and predictable legal regime;
  - (v) Improved investment climate through better infrastructure.

#### 9. What steps have been taken for ease of doing business.

Ans: The following steps have been taken for ease of doing business

- (1) DGFT as a facilitator of exports/ imports : DGFT has a commitment to function as a facilitator of exports and imports. Focus is on good governance, which depends on efficient, transparent and accountable delivery systems. In order to facilitate international trade, DGFT consults various Export Promotion Councils as well as Trade and Industry bodies from time to time.
- (2) Free passage of Export Consignment : Consignments of items meant for exports shall not be withheld/ delayed for any reason by any agency of Central/ State Government. In case of any doubt, authorities concerned may ask for an undertaking from exporter and release such consignment.
- (3) No seizure of export related stock : No seizure of stock shall be made by any agency so as to disrupt manufacturing activity and delivery schedule of exports. In exceptional cases, concerned agency may seize the stock on basis of prima facie evidence of serious irregularity. However, such seizure should be lifted within 7 days unless the irregularities are substantiated.
- (4) Export of perishable agricultural products : To reduce transaction and handling costs, a single window system to facilitate export of perishable agricultural produce is being facilitated through Agricultural and Processed Food Products Export Development Authority (APEDA).
- (5) Niryat Bandhu - Hand Holding Scheme for new export/ import entrepreneurs : DGFT is implementing the Niryat Bandhu Scheme for mentoring new and potential exporter on the intricacies of foreign trade through counseling, training and outreach programmes including the 'Districts as Export Hubs' initiative with 'industry partners', 'knowledge partners' and other stakeholders to create vibrant District-Product-Market relevant knowledge ecosystem.
- (6) DGFT Online Customer Portal : Export Import related information including Acts, Rules, Policy and Procedures etc. are available online at DGFT portal <https://dgft.gov.in/>.
- (7) Issue of e-IEC (Electronic-Importer Exporter Code) : Importer Exporter Code (IEC) is mandatory for export/ import from/to India. DGFT issues Importer Exporter Code in electronic form (e-IEC). For issuance of e-IEC, application can be made on DGFT website (<https://dgft.gov.in>).
- (8) Online facility for e-RCMC/RC Related Processes : DGFT has created a common digital platform for application of issuance, renewal, amendment and related processes pertaining to Registration Cum Membership Certificate (RCMC)/ Registration Certificate (RC) issued by Registering Authorities in electronic form.
- (9) Online facility for e-Certificate of Origin (e-CoO) : DGFT has created a common digital platform for issue of Preferential and Non-Preferential Certificate of Origin (e-CoO) by designated agencies. The CoO Certificates are issued in an online environment without any physical interface (<https://coo.dgft.gov.in>).  
A unique number i.e. UDIN (Unique Document Identification Number) and a QR code is endorsed on every e-CoO for validation and authentication by user agencies.

## CHAPTER 8 – FOREIGN TRADE POLICY

- (10) Online facility to file Quality Control and Trade Disputes (QCTD) : DGFT has created a common digital platform for handling Quality Control and Trade Disputes cases where all jurisdictional Indian Mission abroad and Regional Authorities of DGFT have been on boarded to work towards amicable resolution of disputes raised by Indian/ Foreigner Importer/ Exporter in online environment.
- (11) Electronic record of export proceeds through eBRC & EDPMS :
- (i) e-BRC (Electronic Bank Realisation Certificate) has enabled DGFT to capture details of realisation of export proceeds directly from the Banks through secured electronic mode. This has facilitated the implementation of various export promotion schemes without any physical interface with the stake holders.
  - (ii) RBI has also developed a comprehensive IT-based system called Export Data Processing and Monitoring System (EDPMS) for monitoring of export of goods and software and facilitating AD banks to report various returns through a single platform. RBI EDPMS data available in DGFT IT System can also be used by exporters on DGFT portal.
- (12) IT Initiatives in DGFT : DGFT has undertaken a number of IT Initiatives to enable a paperless, contactless and transparent environment for availing benefits under the export promotion schemes with a view to improve the ease of doing business.
- (13) 24 X 7 Helpdesk Facility : A dedicated 24 X 7 Helpdesk facility has been put in place to assist the exporters in filing online applications on the DGFT portal and other matters pertaining to Foreign Trade Policy.
- (14) Trade Data and Statistics : Continuous efforts are being made for better collection, compilation and wider dissemination of Trade Data and Statistics to help the policy makers, researchers, exporters and importers to formulate their trade strategy.
- (15) Duty Free Entitlements to Select Sectors : With a view to expand employment opportunities, certain special focus initiatives for Marine Products and Sports Goods & Toys sectors are required. These sectors are being provided the following duty free entitlements (only basic customs duty is exempted) as per the relevant Customs Notifications:
- (i) Marine Sector - Duty free import of specified specialized inputs/ chemicals and flavoring oils not exceeding 1% of FOB value of seafood exports during the preceding financial year.
  - (ii) Sports Goods and Toys - Duty free import of specified inputs not exceeding 3% of FOB value of sports goods exports during the preceding financial year.

### GENERAL PROVISIONS REGARDING IMPORTS AND EXPORTS

#### 10. Briefly explain the general provisions with respect to import/export of goods.

Ans: The general provisions with respect to import/export of goods are as under-

- (1) Exports and Imports – 'Free', unless regulated : Exports and Imports shall be 'Free' except when regulated by way of 'Prohibition', 'Restriction' or 'Exclusive trading through State

Trading Enterprises (STEs)' as laid down in Indian Trade Classification (Harmonized System) [ITC (HS)] of Exports and Imports.

Further, there are some items which are 'Free' for import/export, but subject to conditions stipulated in other Acts or in law for the time being in force.

- (2) **Compliance of Imports with Domestic Laws** : Domestic Laws/ Rules/ Orders/ Regulations/ technical specifications/ environmental/ safety and health norms applicable to domestically produced goods shall apply, mutatis mutandis, to imports, unless specifically exempted.

However, goods to be utilized/ consumed in manufacture of export products may be exempted by DGFT from domestic standards/ quality specifications.

- (3) **Interpretation of policy** : If any question or doubt arises in respect of interpretation of any provision, said question or doubt shall be referred to DGFT whose decision thereon shall be final and binding.
- (4) **Authority to specify procedures** : DGFT may specify procedure to be followed by an exporter or importer or by any licensing/ Regional Authority (RA) or by any other authority for purposes of implementing provisions of FT (D&R) Act, the Rules and the Orders made there under and FTP. Such procedure, or amendments, if any, shall be published by means of a Public Notice.
- (5) **Exemption from policy/ procedure** : DGFT may pass such orders or grant such relaxation or relief, as he may deem fit and proper, on grounds of genuine hardship and adverse impact on trade. DGFT may, in public interest, exempt any person or class or category of persons from any provision of FTP or any procedure and may, while granting such exemption, impose such conditions as he may deem fit.

### 11. What is Importer Exporter Code Number (IEC)?

tate the manner in which IEC has to be applied for. In what export/import documents should the same be stated?

**Ans:** IEC code : An IEC is a 10-character alpha-numeric number allotted to an entity(firm/company/LLP etc.) and is mandatory for undertaking any export/ import activities. With a view to maintain the unique identity of an entity, consequent upon introduction/ implementation of GST, IEC shall be same as Permanent Account Number (PAN) and shall be separately issued by DGFT based on an online application.

- (a) No export or import of goods shall be made by any person without obtaining an IEC unless specifically exempted. For export of services or technology, IEC shall be necessary on the date of rendering services for availing benefits under the Foreign Trade Policy.
- (b) Application process for IEC and updation in IEC is completely online and IEC can be generated by the applicant as per the procedure detailed in the Handbook of Procedures.
- (c) An IEC holder has to ensure that details in its IEC is updated electronically every year, during the April- June period. In cases where there are no changes in IEC details same also needs to be confirmed online.

- (d) An IEC shall be de-activated, if it is not updated within the prescribed period. An IEC so deactivated may be activated, on its successful updation. This would however be without prejudice to any other action taken for violation of any other provisions of the FTP.
- (e) An IEC may also be flagged for scrutiny. IEC holder(s) are required to ensure that any risks flagged by the system are timely addressed; failing which the IEC shall be de-activated.

### 12. What are the mandatory documents required for export/import of goods from/into India.

Ans: The mandatory documents for export/import of goods from/into India are as under-

- (1) Mandatory documents required for export of goods from India :
  - (a) Bill of Lading/ Airway Bill/ Lorry Receipt/ Railway Receipt/ Postal Receipt.
  - (b) Commercial Invoice cum Packing List [Separate Commercial Invoice and Packing List would also be accepted.]
  - (c) Shipping Bill/ Bill of Export.
- (2) Mandatory documents required for import of goods into India :
  - (a) Bill of Lading/ Airway Bill/ Lorry Receipt/ Railway Receipt/ Postal Receipt.
  - (b) Commercial Invoice cum Packing List [Separate Commercial Invoice and Packing List would also be accepted.]
  - (c) Bill of Entry
- (3) Additional documents required for restricted goods : For export or import of specific goods or category of goods, which are subject to any restrictions/ policy conditions or require NOC or product specific compliances under any statute, the regulatory authority concerned may notify additional documents for purposes of export or import.
- (4) Additional documents to ensure legal compliance : In specific cases of export or import, the regulatory authority concerned may electronically or in writing seek additional documents or information, as deemed necessary to ensure legal compliance.

### 13. Explain the 'Principle of Restriction' under FTP.

Ans: The relevant provisions are as under -

- (1) Reasons of restrictions : DGFT may, through a Notification, impose 'Prohibition' or 'Restriction' :
  - (a) on export of foodstuffs or other essential products for preventing or relieving critical shortages;
  - (b) on imports and exports necessary for the application of standards or regulations for the classification, grading or marketing of commodities in international trade;
  - (c) on imports of fisheries product, imported in any form, for enforcement of governmental measures to restrict production of the domestic product or for certain other purposes;
  - (d) on imports to safeguard country's external financial position and to ensure a level of reserves.
  - (e) on imports to promote establishment of a particular industry;

- (f) for preventing sudden increases in imports from causing serious injury to domestic producers or to relieve producers who have suffered such injury;
  - (d) on imports to promote establishment of a particular industry;
  - (e) for preventing sudden increases in imports from causing serious injury to domestic producers or to relieve producers who have suffered such injury;
  - (f) for protection of public morals or to maintain public order;
  - (g) for protection of human, animal or plant life or health;
  - (h) relating to the importations or exportation's of gold or silver;
  - (i) necessary to secure compliance with laws and regulation including those relating to the protection of patents, trademarks and copyrights, and the prevention of deceptive practices;
  - (j) relating to the products of prison labour;
  - (k) for the protection of national treasures of artistic, historic or archaeological value;
  - (l) for the conservation of exhaustible natural resources;
  - (m) for ensuring essential quantities for the domestic processing industry;
  - (n) essential to the acquisition or distribution of products in general or local short supply;
  - (o) for the protection of country's essential security interests:
    - (i) relating to fissionable materials or the materials from which they are derived;
    - (ii) relating to the traffic in arms, ammunition and implements of war;
    - (iii) taken in time of war or other emergency in international relations; or
  - (p) in pursuance of country's obligations under the United Nations Charter for the maintenance of international peace and security.
- (2) **Export/ Import of Restricted goods/ Services** : Any goods/service, the export or import of which is 'Restricted' may be exported or imported only in accordance with an Authorisation/ Permission or in accordance with the procedure prescribed in a Notification/ Public Notice issued in this regard.
- (3) **Actual user condition** : Goods which are importable freely without any 'Restriction' may be imported by any person. However, if such imports require an Authorisation, actual user alone may import such good(s) unless actual user condition is specifically dispensed with by DGFT.

### 14. What is meant by 'Authorization' in terms of FT(D&R) Act? What are the terms and conditions for the issue of authorization?

Ans-DGFT issues authorization (earlier called as licence) for import/export. 'Authorization' means a permission in terms of the FT (D&R) Act to import or export.

- (1) **Terms and Conditions of an Authorisation** : Every Authorisation shall, inter alia, include following terms and conditions (as applicable), in addition to such other conditions as may be specified :
- (a) Description, quantity and value of goods;
  - (b) Actual User condition;
  - (c) Export Obligation;

- (d) Minimum Value addition to be achieved;
  - (e) Minimum export/import price;
  - (f) Bank guarantee/Legal undertaking/Bond with Customs Authority/RA.
  - (g) Validity period of import/export as specified in Handbook of Procedures.
- (2) Application Fee : Application for IEC/ Authorisation/ License/ Scrips must be accompanied by application fees as indicated in the Appendix 2K of Appendices and Aayat Niryat Forms.
- (3) Clearance of goods from Customs against Authorization : Goods already imported/ shipped/ arrived, in advance, but not cleared from Customs may also be cleared against an Authorisation issued subsequently. However, such goods already imported/ shipped/ arrived, in advance are first warehoused against Bill of Entry for Warehousing and then cleared for home consumption against an Authorisation issued subsequently. This facility will however be not available to "restricted" items or items traded through STEs.
- (4) Authorisation - Not a Right : No person can claim an Authorisation as a right and **DGFT or RA shall have power to refuse to grant or renew** the same in accordance with provisions of FT (D&R) Act, Rules made there under and FTP.
- (5) Penalty : If an authorization holder violates any condition of such authorization or fails to fulfill export obligation, he shall be liable for action in accordance with FT (D&R) Act, the Rules and Orders made there under, FTP and any other law for time being in force.
- (6) Outstanding export obligations/liabilities to be informed to NCLT and RA : Any firm/company coming under the adjudication proceedings before the National Company Law Tribunal (NCLT) shall inform the concerned Regional Authority (RA) and NCLT of any outstanding export obligations/ liabilities under any of the schemes under FTP. The total outstanding duty saved amount/ dues along with interest, and any penalty imposed under FTD&R Act, or any other dues, shall be counted as part of the dues to the government against the said firm / company.

### 15. Explain the provisions relating to Import/Export Through State Trading Enterprises.

Ans: Import/Export Through State Trading Enterprises: The relevant provisions are as under-

- (1) State Trading Enterprises (STEs) : State Trading Enterprises (STEs) are governmental and nongovernmental enterprises, including marketing boards, which deal with goods for export and/or import. Any good, import or export of which is governed through exclusive or special privilege granted to State Trading Enterprises (STE), may be imported or exported by the concerned STE as per conditions specified in ITC (HS).
- (2) Imports or exports by STE in accordance with commercial considerations : Such STE (s) shall make any such purchases or sales involving imports or exports solely in accordance with commercial considerations, including price, quality, availability, marketability, transportation and other conditions of purchase or sale in a non discriminatory manner and shall afford enterprises of other countries adequate opportunity, in accordance with customary business practices, to compete for participation in such purchases or sales.

## CHAPTER 8 – FOREIGN TRADE POLICY

- (3) Other person can be granted authorization : DGFT may, however, grant an authorization to any other person to import or export any of the goods notified for exclusive trading through STEs.

### 16.Explain the general provisions relating to import of goods under FTP 2023.

Ans: The relevant provisions are discussed as under-

- (1) Trade with neighbouring Countries : DGFT may issue instructions or frame schemes as may be required to promote trade and strengthen economic ties with neighbouring countries.
- (2) Transit facility : Transit of goods through India from/ or to countries adjacent to India shall be enabled and regulated in accordance with strategic and economic interests of India as well as the bilateral treaties between India and those countries. Such arrangements will be subject to conditions and restrictions as may be specified by DGFT in accordance with International Conventions/Treaties/Agreements.

(3) Import Policy for Second Hand Goods :

Sl. No.	Categories of Second Hand Goods	Import Policy	Conditions, if any
(I)	Second Hand Capital Goods		
	(a) (i) Desktop computers (ii) Refurbished/reconditioned spares of refurbished parts of Personal Computers/ Laptops; (iii) Air conditioners (iv) Diesel generating sets.	Restricted	Importable against authorization
	(b) All electronics and IT Goods notified under the Electronics and IT Goods (Requirements of Compulsory Registration) Order, 2012 as amended from time to time	Restricted	(i) Importable against an authorization subject to conditions laid down under Electronics and IT Goods (Requirements of Compulsory Registration) Order, 2021 as amended from time to time. (ii) Import of unregistered/ noncompliant notified products as

## CHAPTER 8 – FOREIGN TRADE POLICY

				in CRO, 2021 as amended from time to time is "Prohibited"
	(c)	Refurbished/ re-conditioned spares of Capital Goods	Free	Subject to production of Chartered Engineer certificate to the effect that such spares have at least 80% residual life of original spare.
	(d)	All other second hand capital goods [other than (a) (b) & (c) above]	Free	
(II)		Second Hand Goods other than capital goods	Restricted	Importable against Authorization
(III)		Second Hand Goods imported for the purpose of repair/ refurbishing/ re-conditioning or re-engineering.	Free	Subject to condition that waste generated during the repair/ refurbishing of imported items is treated as per domestic Laws/ Rules/ Orders/ Regulations/ technical specifications/ Environmental/ safety and health norms and the imported item is re-exported back as per the Customs Notification.

- (4) Removal of Scrap/ waste from SEZ : A SEZ unit/Developer/ Co-developer may be allowed to dispose of in DTA any waste or scrap, including any form of metallic waste and scrap, generated during manufacturing or processing activity, without an authorization, on payment of applicable Customs Duty.
- (5) Import of samples : No Authorisation shall be required for Import of bonafide technical and trade samples of items "restricted" in ITC(HS) except defence/security items, seeds, bees and new drugs. Further, import of samples shall be governed by the prescribed procedures. Authorisation for import of samples is required only in case of vegetable seeds, bees and new drugs. Samples of tea upto ₹ 2,000 (CIF) per consignment will be allowed without authorization. Samples upto ₹ 3,00,000 can be imported by all exporters without duty.

- (6) **Import of Gifts** : Import of goods, including those purchased from e-commerce portals, through post or courier, where customs clearance is sought as gifts, is prohibited except for life saving drugs/ medicines and Rakhi (but not gifts related to Rakhi).

Explanation :

- (i) Rakhi (but not gifts related to Rakhi) will be covered under Section 25(6) of Customs Act, 1962 that reads "..... no duty shall be collected if the amount of duty leviable is equal to or less than ₹ 100/-"
- (ii) Import of goods as gifts with payment of full applicable duties is allowed.

- (7) **Execution of Legal Undertaking (LUT) / Bank Guarantee (BG)** : Whenever goods are imported duty free or otherwise specifically stated, importer shall execute prescribed LUT (Letter of Undertaking)/ BG (Bank Guarantee)/ Bond with Customs Authority before clearance of goods.

In case of indigenous sourcing, Authorization holder shall furnish LUT/ BG/ Bond to RA concerned before sourcing material from indigenous supplier/ nominated agency as per the prescribed procedures.

- (8) **Private/ public bonded warehouses for imports** : Private/ public bonded warehouses may be set up in DTA (Domestic Tariff Area) as per terms and conditions of notification issued by DoR. Any person may import goods, except prohibited items, arms and ammunition, hazardous waste and chemicals and warehouse them in such bonded warehouses. Such goods may be cleared for home consumption against authorisation, whenever required. Customs duty as applicable shall be paid at the time of clearance of such goods. The clearance of the warehoused goods shall be as per the provisions of the Customs Act, 1962.
- (9) **Import of goods used in projects abroad** : Project contractors after completion of projects abroad, may import without an Authorisation, goods including capital goods used in the project, provided they have been used for at least one year.
- (10) **Re-import of goods repaired abroad** : Capital goods, equipments, components, parts and accessories, whether imported or indigenous, except those restricted under ITC (HS) may be sent abroad for repairs, testing, quality improvement or upgradation or standardization of technology and re-imported without an Authorisation.
- (11) **Import of Prototypes** : Import of new/second hand prototypes/second hand samples may be allowed on payment of duty without an Authorisation to an Actual User (industrial) engaged in production of or having industrial license/ letter of intent for research in item for which prototype is sought for product development or research, as the case may be, upon a selfdeclaration to that effect, to the satisfaction of Customs authorities.
- (12) **Sale on High Seas** : Sale of goods on high seas for import into India may be made subject to FTP or any other law in force.
- (13) **Import under lease financing** : No specific permission of DGFT is required for import of lease financed Capital Goods.
- (14) **Merchanting Trade** : Merchanting trade involving shipment of goods from one foreign country to another foreign country without touching Indian ports, involving an Indian

## CHAPTER 8 – FOREIGN TRADE POLICY

intermediary is allowed subject to compliance with RBI guidelines, except for goods/items in the SCOMET list.

### 17. Write short notes on: Passenger Baggage - Import and Export thereof.

Ans: The relevant provisions are as under –

- (1) Import of Passenger Baggage : The provisions are as under –
  - (a) Bona-fide household goods and personal effects may be imported as part of passenger baggage as per limits, terms and conditions thereof in Baggage Rules notified by Ministry of Finance.
  - (b) Samples of such items that are otherwise freely importable under FTP may also be imported as part of passenger baggage without an Authorisation.
  - (c) Exporters coming from abroad are also allowed to import drawings, patterns, labels, price tags, buttons, belts, trimming and embellishments required for export, as part of their passenger baggage without an Authorisation.
  - (d) Any item(s) including Samples or Prototypes of items whose import policy is "restricted" or "prohibited" or is canalised through STEs are not permitted as part of passenger baggage except with a valid authorization/permission issued by DGFT.
- (2) Export of Passenger Baggage : The provisions are as under :
  - (a) Bona-fide personal baggage may be exported either along with passenger or, if unaccompanied, within one year before or after passenger's departure from India. However, items mentioned as restricted in ITC (HS) shall require an Authorisation. Government of India officials proceeding abroad on official postings shall, however, be permitted to carry along with their personal baggage, food items (free, restricted or prohibited) strictly for their personal consumption. The Provisions of the Para shall be subject to Baggage Rules issued under Customs Act, 1962.
  - (b) Samples of such items that are otherwise freely exportable under FTP may also be exported as part of passenger baggage without an Authorisation.

### 18. Explain the provisions with respect to private/ public bonded warehouses for imports and exports.

Ans: The relevant provisions are as under –

- (1) Private/ Public Bonded Warehouses for Imports :
  - (a) Private/ Public bonded warehouses may be set up in DTA as per terms and conditions of notification issued by DoR. Any person may import goods except prohibited items, arms and ammunition, hazardous waste and chemicals and warehouse them in such bonded warehouses.
  - (b) Such goods may be cleared for home consumption in accordance with provisions of FTP and against Authorisation, wherever required. Customs duty as applicable shall be paid at the time of clearance of such goods.

- (c) The clearance of the warehoused goods shall be as per the provisions of the Customs Act, 1962.
- (2) Private Bonded Warehouses for Exports :
- (a) Private bonded warehouses exclusively for exports may be set up in DTA as per terms and conditions of notifications issued by Department of Revenue.
- (b) Such warehouses shall be entitled to procure goods from domestic manufacturers without payment of duty.

### 19. Briefly explain the general provisions with respect to export of goods.

Ans: The miscellaneous provisions with respect to export of goods are as under -

- (1) Free exports : All goods may be exported without any restriction except to the extent that such exports are regulated by ITC (HS) or any other provision of FTP or any other law for the time being in force. DGFT may, however, specify through a public notice such terms and conditions according to which any goods, not included in ITC (HS), may be exported without an Authorisation.
- (2) Export of samples : Export of samples and free of charge goods shall be governed by prescribed procedures. Export of bona fide trade and technical samples of freely exportable item shall be allowed without any limit. **In case of restricted items, application should be made to DGFT.** Such samples can be exported as part of passenger baggage without an Authorisation.
- (3) Export of gifts : Goods, including edible items, of value not exceeding ₹ 5,00,000 in a licensing year, may be exported as a gift. However, items mentioned as restricted for exports in ITC(HS) shall not be exported as a gift, without an Authorization.
- (4) Export of spares : Warranty spares (whether indigenous or imported) of plant, equipment, machinery, automobiles or any other goods, [except those restricted under ITC(HS)] may be exported along with main equipment or subsequently, but within contracted warranty period of such goods subject to approval of RBI.
- (5) Third party exports : Third-party exports means **exports made by an exporter or manufacturer on behalf of another exporter(s).** In such cases, export documents such as shipping bills shall indicate name of both manufacturing exporter/manufacturer and third party exporter(s). Bank Realisation Certificate (BRC), Self Declaration Form (SDF), export order and invoice should be in the name of third party exporter.
- (6) Export of imported goods or Import for export : Goods imported, in accordance with FTP, may be exported in same or substantially the same form without an Authorization, provided that an item to be imported or exported is not restricted for import or export in ITC(HS).

Exports of such goods imported against payment in freely convertible currency would be permitted provided export proceeds are realized in freely convertible currency. However, export of such goods to notified countries will be permitted in Indian rupees subject to at least 15% value addition. Such exports shall not be eligible for any export incentives.

- (7) **Export of replacement goods** : Goods or parts thereof on being exported and found defective/damaged or otherwise unfit for use may be imported for replacement free of charge by the exporter in accordance with the relevant Customs Notification, and such goods shall be allowed for export by Customs authorities, provided that replacement goods are not under the restricted or SCOMET items for exports in ITC(HS). If the export item is 'Restricted' or under SCOMET list, the exporter shall require an Authorisation for export of such replacement goods.
- (8) **Export of repaired goods** : Goods or parts thereof, except restricted under ITC (HS), on being exported and found defective, damaged or otherwise unfit for use **may be imported for repair and subsequent re-export**. Such goods shall be allowed **clearance without an Authorisation** and in accordance with customs notification. To that extent the exporter shall return the benefits/ incentive availed on the returned goods. If the item is 'restricted' for import, the exporter shall require an import license.
- However, re-export of such defective parts/spares by the Companies/firms and Original Equipment Manufacturers shall not be mandatory if they are imported exclusively for undertaking root cause analysis, testing and evaluation purpose.

20. What are the provisions with respect to denomination and realisation of export contracts? OR Monotype traders wants to enter into export contracts with various customers. It intends to understand the currency denomination while entering into contracts with them and seeks your advice as to how it should ensure compliance (4 marks, May 2018)

Ans: The relevant provisions are as under –

- (1) **Denomination of Export Contracts** :
- (a) All export contracts and invoices shall be denominated **either in freely convertible currency or Indian rupees** but export proceeds shall be realized in freely convertible currency.
- (b) However, export proceeds against specific exports may also be realized in rupees, provided it is through a **freely convertible Vostro account** of a non resident bank situated in any country other than a member country of Asian Clearing Union (ACU) or Nepal or Bhutan. Additionally, rupee payment through Vostro account must be against payment in free foreign currency by buyer in his non-resident bank account. Free foreign exchange remitted by buyer to his non-resident bank (after deducting bank service charges) on account of this transaction would be taken as export realization under export promotion schemes of FTP.
- (c) Contracts (for which payments are received through Asian Clearing Union (ACU) shall be denominated in **ACU Dollar**. Central Government may relax provisions of this paragraph in appropriate cases. Export contracts and invoices can be denominated in Indian rupees against EXIM Bank/Government of India line of credit.

(d) Invoicing, payment and settlement of exports and imports is also permissible in INR. Accordingly, settlement of trade transactions in INR may also take place through the Special Rupee Vostro Accounts opened by AD banks in India as permitted under Regulation 7(1) of Foreign Exchange Management (Deposit) Regulations, 2016, in accordance to the following procedures :

- (i) Indian importers undertaking imports through this mechanism shall make payment in INR which shall be credited into the Special Vostro account of the correspondent bank of the partner country, against the invoices for the supply of goods or services from the overseas seller/ supplier.
- (ii) Indian exporters, undertaking exports of goods and services through this mechanism, shall be paid the export proceeds in INR from the balances in the designated Special Vostro account of the correspondent bank of the partner country. [Such export proceeds realized in Indian Rupees are permitted to avail exports benefits /incentives / fulfilment of Export Obligations under the FTP.]

(2) Non-Realisation of Export Proceeds :

- (a) If an exporter fails to realize export proceeds within time specified by RBI, he shall, without prejudice to any liability or penalty under any law in force, be liable to return all benefits / incentives availed against such exports and action in accordance with provisions of FT (D&R) Act, Rules and Orders made thereunder and the FTP.
- (b) In case an Exporter is unable to realize the export proceeds for reasons beyond his control (forcemajeure), he may approach RBI for writing off the unrealized amount in accordance with prescribed procedure.
- (c) The payment realized through insurance cover, would be eligible for benefits under FTP as per prescribed Procedures.

### 21. Write a note on export credit agencies.

Ans: Export Credit Agencies:

- (i) Export Credit Agencies (ECAs) are policy instruments for Government to support exports. ECAs support exports by insurance, guarantee and also direct lending. Export Credit Agencies (ECAs) like Export Credit Guarantee Corporation of India Ltd. (ECGC) provides credit insurance support to exports and export credit lending. Covers issued by ECGC to exporters, protect against losses arising out of payment failures due to insolvency or default of the buyers or due to political risks. Exporters can diversify their markets in addition to protecting existing markets through such covers. ECGC also supports Medium and Long term (MLT) exports including project exports. Exim Bank is the other ECA in the business of lending for MLT exports and fronting the government's line of credit.
- (ii) ECGC indemnifies losses of exporters in export trade due to insolvency or default of the buyer. Additionally, losses due to political risk like war, sudden import restriction, promulgation of law or decree after the shipment has been affected are also covered. Some of the anti- dumping measures or non-tariff barriers introduced after a shipment has

been made will come under the purview of the political risk. In such cases exporter's interest are protected by ECGC.

### 22. Write a note on Export Promotion Councils.

Ans: Export Promotion Councils:

- (1) Export Promotion Councils (EPCs) are organizations of exporters, set up with the objective to promote and develop Indian exports. Each Council is responsible for promotion of a particular group of products/ projects/services.
- (2) EPCs are also eligible to function as Registering Authorities to issue Registration-cum-Membership Certificate (RCMC) to its members.

### 23. What is a Registration-cum-Membership Certificate (RCMC) and what is its need?

Ans:

- (1) Registration-Cum-Membership Certificate : It means certificate of registration and membership granted by an Export Promotion Council/ Commodity Board/ Development Authority or other competent authority as prescribed in FTP or Handbook of Procedures.
- (2) CRES issued by Spices Board to be treated as RCMC : Certificate of Registration as Exporter of Spices (CRES) issued by Spices Board shall be treated as Registration-Cum-Membership Certificate (RCMC) for the purposes under this Policy.  
Certificate of Registration as **Exporter of coir & coir products** issued by the Coir Board shall be treated as Registration-Cum-Membership Certificate (RCMC) for the purposes under this Policy.

### 24. Explain the provisions of self-certification of originating goods.

Ans: The relevant provisions are discussed as under –

- (1) Approved Exporter Scheme for Self- Certification of Certificate of Origin :
  - (i) The Manufacturers who are also Status Holders shall be eligible for Approved Exporter Scheme. Approved exporters will be entitled to self-certify their manufactured goods as originating from India with a view to qualifying for preferential treatment under different PTAs/FTAs/CECAs/CEPAs which are in operation. Self-certification will be permitted only for the goods that are manufactured as per the Industrial Entrepreneurs Memorandum (IEM)/ Industrial License (IL)/Letter of Intent (LOI) issued to manufacturers.
  - (ii) Status Holders will be recognized by DGFT as Approved Exporters for self-certification based on availability of required infrastructure, capacity and trained manpower.
  - (iii) The details of the Scheme, along with the penalty provisions will come into effect only when India incorporates the scheme into a specific agreement with its partner/s and the same is appropriately notified by DGFT. Further the entities to whom such self-

certification will be extended bilaterally under FTA/PTA will be subject to the provisions and conditions of that FTA.

- (2) **Certification of Origin of Goods EU-GSP** : Exporters can self-certify the Statement on Origin of their goods, as per the self-certification scheme, Certification of Origin of Goods for European Union Generalised System of Preferences (EU-GSP), of the European Union (EU) under the Registered Exporter System (REX).

### 25. Write a note on Authorized Economic Operator (AEO).

**Ans:** Authorized Economic Operator (AEO): AEO is a flagship scheme which helped in improving India's rank in the World Bank's ease of doing business index. An AEO certified company becomes a Custom's trusted trade partner. The programme was started in 2011 and now has a membership of 4400 AEO entities or AEO registered companies.

As a step further towards trust-based compliance, Indian Customs has introduced the new/revamped Authorised Economic Operator (AEO) Programme wherein extensive benefits, including greater facilitation and self-certification, have been provided to those entities who have demonstrated internal strong control system and compliance with CBIC.

Under the AEO program of Indian Customs, the MSMEs are also covered.

Based upon WCO's SAFE Framework of Standards (FoS), 'Authorised Economic Operator (AEO) programme' has been developed by Indian Customs to enable business involved in the international trade to reap the following benefits:

- (i) Secure supply chain from point of export to import;
- (ii) Ability to demonstrate compliance with security standards when contracting to supply overseas importers /exporters;
- (iii) Enhanced border clearance privileges in Mutual Recognition Agreement (MRA) partner countries;
- (iv) Minimal disruption to flow of cargo after a security related disruption;
- (v) Reduction in dwell time and related costs; and
- (vi) Customs advice/assistance if trade faces unexpected issues with Customs of countries with which India have MRA.

### 26. Write a note on Towns of Export Excellence (TEE).

**Ans:** Towns of Export Excellence (TEE):

- (1) **Objective** : Development and growth of export production centres. A number of towns have emerged as dynamic industrial clusters contributing handsomely to India's exports. It is necessary to grant recognition to these industrial clusters with a view to maximize their potential and enable them to move up the value chain and also to tap new markets.
- (2) **Selection criteria** : Selected towns producing goods of ₹ 750 crore or more may be notified as TEE based on potential for growth in exports. However, for TEE in Handloom, Handicraft, Agriculture and Fisheries sector, threshold limit would be ₹ 150 Crore.
- (3) **Facilities** : The following facilities will be provided to such TEE:

- (i) Recognized associations of units will be provided financial assistance under MAI scheme, on priority basis, for export promotion projects for marketing, capacity building and technological services.
- (ii) Common Service Providers in these areas shall be entitled for Authorisation under EPCG scheme.

### DEVELOPING DISTRICTS AS EXPORT HUBS

#### 27. What is the objective of developing district as export hubs.

Ans: Objective of developing district as export hubs: To galvanise districts of the country to become export hubs by identifying products and services with export potential in the district, addressing bottlenecks for exporting these products/services, supporting local exporters/manufacturers to scale and find potential buyers outside India with the aim of promoting exports, manufacturing & services industry in the District. This is intended to bring greater level of awareness and commitment regarding exports at the district level, build capacity to create new exporters and identify new markets for the focused products and services. This will also empower MSMEs, farmers and small scale industries to get benefit of export opportunities in the overseas markets. This decentralised and focused approach will shift the focus on district led export growth for self-sufficiency and self-reliance by providing global platform to products and services from the districts.

#### 28. Write a note on District Export Promotion Committees.

Ans: District Export Promotion Committees. Institutional Mechanism at District Level: Every district has products and services which are being exported, and can be further promoted, along with new products/ services, to increase production, grow exports, generate economic activity and achieve the goal of AtmaNirbhar Bharat, Vocal for local and Make in India Products/services (GI products, agricultural clusters, toy clusters etc.) with export potential in each District have to be identified and institutional mechanism in the form of District Export Promotion Committees (DEPCs) at the district level is to be created to provide support for export promotion and address the bottlenecks for export growth in the Districts.

Each District shall constitute a District Export Promotion Committee (DEPC) chaired by Collector/DM/DC of the District and co-chaired by designated DGFT Regional Authority with various other stakeholders as its members.

The primary function of the DEPC will be to prepare and implement district specific Export Action Plans in collaboration with all the relevant stakeholders at the Central, State and the District level.

DGFT Regional Authorities will be engaging with all the relevant State and Central agencies to take forward this initiative in each district.

#### 29. Write a note on District Export Action Plans for Each District.

Ans: The relevant provisions are discussed as under –

- (1) **District Export Action Plans for Each District** : The District Export Action Plan (DEAP) may be prepared for each district. 2-3 high potential products/services from the districts may be prioritised and comprehensive plan for their export growth may be prepared.

It may include the support required by the local industry in boosting their manufacturing and exports with impetus on supporting the industry from the production stage to the exporting stage.

The DEAPs may also include specific quantifiable targets to be achieved in the short term and long term. These plans may outline the interventions that are required to promote the export of identified products and services from the district.

Each DEAP may be deliberated by the DEPC and various stakeholders before it is formally adopted by the DEPC of the each District. DEAP of each District, once adopted, may be published in the public domain on a dedicated Portal.

- (3) **State/UT Export Promotion Committees** : To synergise the efforts of the Department of Commerce/ DGFT and the State/UT governments in promotion of exports from the State, each State shall constitute a State Export Promotion Committee (SEPC) headed by Chief Secretary of the State.

The designated Regional Authority of DGFT shall be the co-convenor of the committee.

- (4) **Nodal DGFT Regional Authority** : Districts of the States/UTs have been assigned to the Jurisdictional DGFT Regional Authority and the nodal RA shall be responsible for the Districts under their jurisdiction for all activities related to Districts as Export Hubs initiative in those Districts.

- (5) **Online Monitoring of District Export Action Plans** : DGFT would develop an online monitoring portal that may be accessed on the DGFT website to enable the States/ DGFT RAs to upload all information related to the products/services with export potential of every District.

The portal may also help in monitoring the progress of District Export Action Plan and DEPC meetings in all the Districts. Each DGFT Jurisdictional RA to be primarily responsible for updating the information/ progress made in implementing Export Action Plan for each District under their Jurisdiction. The information and reports may also be available in public domain for the benefit of the exporters.

- (6) **Export Promotion Activities in Districts** : Support in the form of product/sector specific training and development needs of local industries, dissemination of information through outreach activities including buyer seller meets, trade fairs, workshops etc. may be provided in each District.

The training and development needs of District industries may be identified and trainings may be coordinated with other departments. DGFT RAs through DEPCs may facilitate such buyer-seller meets, exhibitions, trade fairs etc. in the District to encourage the industries to showcase their products/services to the world.

(7) Implementation of District Export Action Plans : The DEAP notified by the District Export Promotion Committee in each District may include clear identification of products (goods and services) with export potential in the District, institutional/ other responsibilities, specifics of policy, regulatory and operational reform, and infrastructure/ utilities/ logistics interventions required across the entire chain from producer/ farm to the export destination, to cover aspects like production, productivity/ competitiveness, improvements required in design, tie up of producers with exporters, aggregation, sorting, testing, certification, packaging, transportation through cold chain or otherwise, import export regulatory formalities, fulfilment of destination countries standards etc.

It may also include Identifying bottlenecks/ Issues in GI production, registration, marketing and its exports. The plan may also include the support required by the local industry in boosting their manufacturing and exports with impetus on supporting the industry from the production stage to the exporting stage.

Once the plan is formally adopted by the DEPC of the each District, the plan may be implemented by the DEPC by identifying the projects/activities required to be done to promote export growth from the Districts. Convergence of various schemes would be done on priority to build synergy and access the central government and State government scheme funds available for infrastructure development and skill/capacity building activities.

Department of Commerce schemes such as Market Access Initiative, Niryat Bandhu scheme etc. may also give priority to district specific needs identified under the District Export Action Plan.

### EXPORT PROMOTION SCHEMES STATUS HOLDERS

30. Explain with reference to Foreign Trade Policy 2023.

(i) What do you mean by "Status Holder"? Who are eligible for recognition as Status Holder?

(ii) What is the average export value to be achieved to become the Status Holder?

(iii) Indicate five benefits available to "Status Holders" under the reward scheme of Foreign Trade Policy 2023 There is no need to define the term "status holder". (5 Marks May 2018-NS)

Ans: The relevant provisions are discussed as under

(1) Status Holder :

(a) Meaning: Status Holders are business leaders who have excelled in international trade and have successfully contributed to country's foreign trade. Status Holders are expected to not only contribute towards India's exports but also provide guidance and hand holding to new entrepreneurs.

(b) Eligibility – Export performance : All exporters of goods, services and technology having an import-export code (IEC) number shall be eligible for recognition as a status holder.

## CHAPTER 8 – FOREIGN TRADE POLICY

Status recognition will depend on export performance. An applicant shall be categorized as status holder on achieving export performance during the **current and previous 3 financial years** (for Gems & Jewellery Sector the performance during the current and previous two financial years shall be considered for recognition as status holder) as indicated in table below.

- (c) Computation of export performance : The export performance will be counted on the basis of FOB of export earning in free foreign exchange.
- (d) For deemed export, FOR value of exports in Indian Rupees shall be converted in US \$ at the exchange rate notified by CBIC, as applicable on 1<sup>st</sup> April of each Financial Year.
- (e) Export performance necessary in all three years : For granting status, an export performance would be necessary in all the three preceding financial years (and in all the two preceding financial years for Gems & Jewelry Sector).

(2) Status Category :

Status Category	Export Performance FOB / FOR (as converted) Value (in US \$ million)
One Star Export House	3
Two Star Export House	15
Three Star Export House	50
Four Star Export House	200
Five Star Export House	800

(3) Grant of double weightage :

- (a) Eligible exports for double weightage : The exports by IEC holders under the following categories shall be **granted double weightage for calculation of export performance** for grant of status
  - (i) Micro, Small & Medium Enterprises (MSME) as defined in Micro, Small & Medium Enterprises Development (MSMED) Act 2006.
  - (ii) Manufacturing units having ISO/BIS.
  - (iii) Units located in North Eastern States including Sikkim, and Union Territories of J&K and Ladakh
  - (iv) Export of fruits and vegetables falling under Chapters 7 and 8 of ITC HS.
- (b) Double weightage only for determination of One Star Export House : Double Weightage shall be available for grant of One Star Export House Status category only. Such benefit of double weightage shall not be admissible for grant of status recognition of other categories namely Two Star Export House, Three Star Export House, Four Star export House and Five Star Export House.
- (c) Double weightage only once for each shipment : A merchandise shipment/ service rendered can get double weightage only once in any one of above categories.

(4) Other conditions for grant of status :

- (a) Export performance – Non transferable : Export performance of one IEC holder shall not be permitted to be transferred to another IEC holder. Hence, calculation of exports performance based on disclaimer shall not be allowed.
- (b) Re-exports not counted : Exports made on re-export basis shall not be counted for recognition.
- (c) Export of items under authorization, including SCOMET items, would be included for calculation of export performance.
- (5) Privileges of Status Holders : Status holders are granted certain benefits like—
  - (a) Self declaration based Clearances and authorizations : Authorisation and custom clearances for both imports and exports on self-declaration basis.
  - (b) Priority in SION fixation : Fixation of Input Output Norms (SION) on priority i.e. within 60 days. Special scheme in respect of Input Output Norms to be notified by DGFT from time to time, for specified status holder
  - (c) No need of negotiation of documents through banks – Only remittances through banks: Exemption from compulsory negotiation of documents through banks. The remittance receipts, however, would continue to be received through banking channels.
  - (d) Exemption form BG : Exemption from furnishing of Bank Guarantee in Schemes under FTP.
  - (e) Establishment of Export warehouses : Two Star Export Houses and above are permitted to establish export warehouses.
  - (f) Preferential treatment : The status holders would be entitled to preferential treatment and priority in handling of their consignments by the concerned agencies.
  - (g) Self-certification : Manufacturers who are also status holders (Three Star/Four Star/Five Star) will be enabled to self-certify their manufactured goods (as per their IEM/IL/LOI) as originating from India with a view to qualify for preferential treatment under different preferential trading agreements (PTA), Free Trade Agreements (FTAs), Comprehensive Economic Cooperation Agreements (CECA) and Comprehensive Economic Partnership Agreements (CEPA). Subsequently, the scheme may be extended to remaining Status Holders. Manufacturer exporters who are also Status Holders shall be eligible to self-certify their goods as originating from India as per prescribed procedure.
  - (h) Free of Cost Export supplies : Status holders shall be entitled to export freely exportable items (excluding Gems and Jewellery, Articles of Gold and precious metals) on free of cost basis for export promotion subject to an annual limit as below :
    - (i) Annual limit of 2% of average annual export realization during preceding 3 licensing years for all exporters [excluding the exporters of following sectors
    - (ii) Gems and Jewellery Sector,
    - (iii) Articles of Gold and precious metals sector].
    - (iv) Annual limit of ₹ 1 crore or 2% of average annual export realization during preceding 3 licensing years, whichever is lower. [for exporters of the following sectors
    - (v) Gems and Jewellery Sector,
    - (vi) Articles of Gold and precious metals sector].

## CHAPTER 8 – FOREIGN TRADE POLICY

(vii) In case of supplies of pharmaceutical products, vaccines and lifesaving drugs to health programmes of international agencies such as UN, WHO-PAHO and Government health programmes, the annual limit shall be upto 8% of the average annual export realisation during preceding 3 licensing years.

The free of cost supplies made as above shall not be entitled to Duty Drawback or any other export incentive under any export promotion scheme.

(6) Skilling and Mentorship Obligations :

(a) To improve the trade ecosystem by enhancing the available skilling opportunities, Status Holders are being made "partners" in providing mentoring and training in international trade. Status Holders will endeavor to provide skill upgradation/ training in international trade as detailed below :

Status	Number of Trainees per year
Two Star Export House	5
Three Star Export House	10
Four Star Export House	20
Five Star Export House	50

(b) A model training program of a minimum duration of 6 weeks would be put up in public domain for guidance.

(c) Detailed eligibility requirements, selection criteria, training curriculum etc. will be at the discretion of the Status Holder.

### DUTY EXEMPTION/REMISSION SCHEMES

31. Briefly discuss duty exemption/remission schemes.

Ans: The provisions are as under –

(1) Objective : Schemes under this Chapter enable duty free import of inputs for export production, including replenishment of input or duty remission.

(2) Schemes :

(a) Duty Exemption Schemes : The Duty Exemption schemes consist of the following –

(i) Advance Authorisation (AA) (which includes Advance Authorisation for Annual Requirement).

(ii) Duty Free Import Authorisation (DFIA).

(b) Duty remission scheme : Duty Drawback (DBK) Scheme, administered by Department of Revenue.

(c) Scheme for Rebate on State and Central Taxes and Levies (RoSCTL), as notified by the Ministry of Textiles.

(d) Scheme for Remission of duties and taxes on exported products (RoDTEP) notified by Department of Commerce and administered by Department of Revenue.

### REMISSION OF DUTIES & TAXES ON EXPORT PRODUCT SCHEME (RODTEP)

#### 32. Briefly discuss Remission of Duties & Taxes on Exported Product Scheme (RoDTEP).

Ans: Remission of Duties & Taxes on Exported Product Scheme (RoDTEP): with effect from 01-01-2021, Government has introduced a new scheme for Remission of Duties and Taxes on Exported Products (RoDTEP) for eligible export of goods. RoDTEP scheme is based on the globally accepted principle that taxes and duties should not be exported, and taxes and levies borne on the exported products should be either exempted or remitted to exporters. This scheme provides for remission of the amount in the form of duty credit scrip credited in an exporter's ledger account with customs.

(1) Objective of the Scheme :

- (i) The objective of the scheme is to refund, currently unrefunded –
  - (a) Duties/ taxes/ levies, at the Central, State & local level, borne on the exported product, including prior stage cumulative indirect taxes on goods & services used in production of the exported product, and
  - (b) Such indirect duties/taxes/levies in respect of distribution of exported products.
- (ii) Salient features of the scheme:
  - (a) It seeks to refund to exporters the embedded Central, State and local duties/ taxes that were so far not being rebated/refunded.
  - (b) Duty credit is issued –
    - ✓ in lieu of remission of any duty/ tax/ levy chargeable on any material used in the manufacture/ processing of goods or for carrying out any operation on such goods in India that are exported, where such duty/ tax/ levy is not exempted/ remitted/ credited under any other Scheme;
    - ✓ against export of notified goods under FTP. [Value of the said goods for calculation of duty credit to be allowed under the scheme shall be the declared export FOB value of the said goods or up to 1.5 times the market price of the said goods, whichever is less.]
    - ✓ against claim of duty credit under the Scheme made by an exporter by providing the appropriate declaration at the item level in the shipping bill or bill of export in the customs automated system;
    - ✓ against the shipping bill or bill of export, presented under section 50 of the said Act where the order permitting clearance and loading of goods for exportation under section 51 of the said Act has been made;
    - ✓ after the claim is allowed by Customs upon necessary checks, including on the basis of risk evaluation through appropriate selection criteria, and after filing of export manifest or export report;
    - ✓ in accordance with any rules or regulations made in relation to duty credit, scrip or electronic duty credit ledger;

- (c) The refund in the form duty credits would be credited in the electronic credit ledger in the customs automated account of the exporter.
- (d) Such duty credit shall be used only to pay basic customs duty on imported goods.
- (e) The duty credit scrips are freely transferable, i.e. credits can be transferred to other importers.
- (f) The rebate under the scheme shall not be available in respect of duties and taxes already exempted or remitted or credited.
- (2) Eligibility for the scheme : All exporters of eligible RoDTEP export items are eligible for the scheme.
- (3) Reward under the scheme : Rebate would be granted to eligible exporters at a notified rate as a % of FOB value with a value cap per unit of the eligible exported product, wherever required, on export of items. However, for certain export items, a fixed quantum of rebate amount per unit may also be notified.
- (g) Rebate would not be dependent on the realization of export proceeds at the time of issue of rebate. However, rebate will be deemed never to have been allowed in case of non-receipt of sale proceeds within time allowed under the Foreign Exchange Management Act, 1999.
- (4) Ineligible supplies/ items/ categories under RoDTEP : Following shall not be taken into account for calculation of entitlement under the scheme:
  - (i) Export of imported goods in same or substantially the same form
  - (ii) Exports through trans-shipment, meaning thereby exports that are originating in third country but trans-shipped through India
  - (iii) Export products which are subject to minimum export price or export duty
  - (iv) Products which are restricted/prohibited under FTP
  - (v) Supplies of products manufactured by DTA units to SEZ/FTWZ units.
  - (vi) Products manufactured in EHTP and BTP
  - (vii) Goods which have been taken into use after manufacture
  - (viii) Exports for which the electronic documentation in ICEGATE EDI has not been generated/ exports from non-EDI ports
  - (ix) Products manufactured or exported availing the benefit of Notification No. 32/1997-Cus dated 01-04-1997
  - (x) Deemed Exports
  - (xi) Products manufactured partly or wholly in a warehouse under section 65 of the Customs Act
  - (xii) Goods for which claim of duty credit is not filed in a shipping bill or bill of export in the customs automated system
  - (xiii) Products manufactured or exported in discharge of EO against an AA/DFIA/Special AA issued under a duty exemption scheme of relevant FTP\*
  - (xiv) Products manufactured/exported by a unit licensed as 100% EOU in terms of the provisions of FTP or by any of the units situated in FTZ/EPZ/SEZ\*

\*Inclusion of exports made under these categories in RoDTEP scheme will be decided later.

### ADVANCE AUTHORIZATION SCHEME

#### 33. Briefly explain Advance Authorization Scheme OK.

Ans-Advance Authorization Scheme: The key features of advance Authorization Scheme are as under-

- (1) Advance Authorisation : Under advance authorization scheme, INPUTS which are used in the export product can be imported without payment of customs duty.
- (2) Details of duties exempted : Imports under Advance Authorisation are exempted from payment of Basic Customs Duty, Additional Customs Duty, Education Cess, Anti-dumping Duty, Countervailing duty, Safeguard Duty and Transition Product Specific Safeguard Duty, wherever applicable. The conditions for duty free imports against physical exports are provided in notification issued under the Customs law.  
ADD/ Anti-subsidy/ Safeguard duty not exempt in Certain Cases : However, Import against following deemed exports will not be exempt from ADD, Anti-subsidy duty and Safeguard duty –
  - (a) Supply of capital goods against EPCG Authorisation;
  - (b) Supply of marine freight containers by 100% EOU (Domestic freight container manufacturers); and
  - (c) Supply of goods to United Nations or International Organisations, etc. IGST and GST Compensation Cess have been exempted on imports under Advance Authorisation for physical exports or deemed exports.
- (3) Validity Period of Advance Authorisation :
  - (a) Advance Authorisation – Valid for 12 months from the date of issue : Validity period for import of Advance Authorisation shall be 12 months from the date of issue of Authorisation.
  - (b) Advance Authorisation for Deemed Export : Advance Authorisation for Deemed Export shall be co-terminus with contracted duration of project execution or 12 months from the date of issue of Authorisation, whichever is more.
- (4) Export Obligation :
  - (a) Period for fulfillment of export obligation – 18 months : Period for fulfillment of export obligation under Advance Authorisation shall be 18 months from the date of issue of Authorisation or as notified by DGFT.
  - (b) Period in case of deemed exports or turnkey projects : In cases of supplies to projects in India under deemed export category or projects abroad, the Export Obligation period shall be co-terminus with contracted duration of the project execution or 18 months whichever is more.
  - (c) Period for fulfillment of export obligation for defence items – 24 months : Export Obligation for items falling in categories of defence, military store, aerospace and nuclear energy shall be 24 months from the date of issue of authorization or co-terminus with contracted duration of the export order whichever is more.

- (5) Currency for Realisation of Export Proceeds : Exports proceeds shall be realized in freely convertible currency except otherwise specified.
- (6) Basis of issue of Advance Authorisation : Advance Authorisation is issued for inputs in relation to resultant product, on the following basis :
- (a) As per Standard Input Output Norms (SION) notified; or
  - (b) On the basis of self declaration : Regional Authority may also issue Advance Authorisation where there is no SION/valid Ad hoc Norms for an export product or where SION/Ad hoc norms have been notified/published but exporter intends to use additional inputs in the manufacturing process, based on self-declaration by applicant. Wastage so claimed shall be subject to wastage norms as decided by Norms Committee. The applicant shall submit an undertaking to abide by decision of Norms Committee; or
  - (c) Applicant specific prior fixation of norm by the Norms Committee; or
  - (d) On the basis of Self Ratification Scheme : Where there is no SION/valid Adhoc Norms for an export product and where SION has been notified but exporter intends to use additional inputs in the manufacturing process, eligible exporter can apply for an Advance Authorisation under this scheme on self-declaration and self-ratification basis. RA may issue Advance Authorisations and such cases need not be referred to Norms Committees for ratification of norms. An exporter (manufacturer or merchant exporter) who holds AEO (Authorised Economic Operator) Certificate under Common Accreditation Programme of CBIC is eligible to opt for the scheme.
- (7) Items which can be imported duty free against advance authorization :
- (a) Inputs, which are physically incorporated in export product (making normal allowance for wastage).
  - (b) Fuel, oil, catalysts which are consumed/utilised to obtain export product.
  - (c) Mandatory spares which are required to be exported/supplied with resultant product permitted upto 10% of CIF value of Authorization.
  - (d) Specified spices only when used for activities like crushing/ grinding /sterilization/ manufacture of oils or oleoresins and not for simply cleaning, grading, re-packing etc. However, items reserved for imports by STEs cannot be imported against advance authorization.
- (8) Actual User Condition for Advance Authorisation :
- (a) Actual User Condition : Advance Authorisation and/or material imported under Advance Authorisation shall be subject to 'Actual User' condition.
  - (b) Authorisation Non transferable : The same shall not be transferable even after completion of export obligation. However, Authorisation holder will have option to dispose of product manufactured out of duty free input once export obligation is completed.
  - (c) If Input tax credit availed, imported inputs, to be used only in manufacture of dutiable goods : In case where CENVAT/input tax credit facility on input has been availed for the exported goods, even after completion of export obligation, the goods imported against

such Advance Authorisation shall be utilized only in the manufacture of dutiable goods whether within the same factory or outside (by a supporting manufacturer). For this, the Authorisation holder shall produce a certificate from either Chartered Accountant, at the option of the exporter, at the time of filing application for Export Obligation Discharge Certificate to Regional Authority concerned.

- (d) Disposal of waste and scrap on payment of duty : Waste/scrap arising out of manufacturing process, as allowed, can be disposed off on payment of applicable duty even before fulfillment of export obligation.
- (9) Eligible Applicant/Export/Supply :
- (a) Manufacturer Exporter/ Merchant Exporter : Advance Authorisation can be issued either to a **manufacturer exporter or merchant exporter tied to supporting manufacturer**.
- (b) Pharma products - Only Manufacturer exporter eligible : Advance Authorisation for pharmaceutical products manufactured through Non-Infringing (NI) process shall be issued to manufacturer exporter only.
- (c) Physical or Deemed Exports – Both eligible : Advance Authorisation shall be issued for
- Physical export (including export to SEZ);
  - Intermediate supply; and/or
  - Supplies made to specified categories of deemed exports ;
  - Supply of 'stores' on board of foreign going vessel/aircraft, subject to condition that there is specific Standard Input Output Norms in respect of item supplied.
- (10) Domestic sourcing of inputs : Holder of advance authorization has an option to procure the materials/ inputs from indigenous manufacturer/STE in lieu of direct import against Advance Release Order (ARO)/ Invalidation letter/Back to Back Inland Letter of Credit. However, Advance Authorisation holder may obtain supplies from EOU/EHTP/BTP/STP/SEZ units, without obtaining ARO or Invalidation letter.
- (11) Conditions for redeeming authorisation : Wherever SION permits use of either –
- a generic input; or
  - alternative input,
- unless the name of the specific input together with quantity [which has been used in manufacturing the export product] gets indicated/ endorsed in the relevant shipping bill and these inputs, so endorsed, within quantity specified and match the description in the relevant bill of entry, the concerned Authorisation will not be redeemed. The name/description of the input in the Authorisation must match exactly with the name/description endorsed in the shipping bill.
- Further, quantity of input to be allowed under Advance Authorisation shall be in proportion to the quantity of input actually used/ consumed in production. If goods are imported against advance authorization but export obligation is not fulfilled, duty and interest is payable. Aforesaid provisions will also be applicable for supplies to SEZs and supplies made under deemed exports.
- (12) Advance Authorisation for Annual Requirement :

- (a) Eligible for items notified in SION : Advance Authorisation for Annual Requirement shall only be issued for items notified in Standard Input Output Norms (SION), and it shall not be available in case of adhoc norms. It is not available on self-declaration basis.
- (b) Export performance in last 2 years : Exporters having past export performance (in at least preceding two financial years) shall be entitled for Advance Authorisation for Annual requirement.
- (c) Entitlement in terms of CIF value of imports shall be –
- ✓ upto 300% of the FOB value of physical export and/or FOR value of deemed export in preceding financial year; or
  - ✓ ₹1 crore,
- whichever is higher.
- (13) Value Addition : Value Addition for the purpose of this Chapter (except for Gems and Jewellery sector for which value addition is prescribed separately under FTP) shall be :
- $$\text{Value addition} = \frac{A-B}{B} \times 100,$$
- Where –
- A = FOB value of export realized/ FOR value of supply received
- B = CIF value of inputs covered by Authorisation, plus value of any other input used on which benefit of DBK is claimed or intended to be claimed.
- If some items are supplied free of cost by foreign buyer, its notional value will be added in the CIF value of import and FOB value of export for purpose of calculating value addition. Exports to SEZ Units/ supplies to Developers/ Co-developers, irrespective of currency of realization, would also be covered.
- (14) Minimum Value Addition – 50% in case of tea and 15% in other cases :
- a) Minimum value addition required to be achieved under Advance Authorisation is 15%.
  - b) In case of Tea, minimum value addition shall be 50%.
  - c) In case of spices, minimum value addition shall be 25%.
- (15) Admissibility of Drawback : Drawback as per rate determined and fixed by Central Excise authority shall be available for duty paid imported or indigenous inputs (not specified in the norms) used in the export product.
- For this purpose, applicant shall indicate clearly details of duty paid input in the application for Advance Authorisation. As per details mentioned in the application, Regional Authority shall also clearly endorse details of such duty paid inputs in the condition sheet of the Advance Authorisation.
- (16) Accounting of Input :
- (a) Name/description must match with shipping bill and quantity of input to be allowed shall be in same proportion to quantity of input actually used or consumed : Wherever SION permits use of either –
    - (i) a generic input, or

- (ii) alternative input,
  - (iii) unless the name of the specific input [which has been used in manufacturing the export product] gets indicated/endorsed in the relevant shipping bill and these inputs, so endorsed, match the description in the relevant bill of entry, the concerned Authorisation will not be redeemed. In other words, the name/description of the input used (or to be used) in the Authorisation must match exactly with the name/description endorsed in the shipping bill.
- (b) Proportion of inputs actually consumed to be used, if single quantity indicated in SION against more than one input : In addition, if in any SION, a single quantity has been indicated against a number of inputs (more than one input), then quantities of such inputs to be permitted for import shall be in proportion to the quantity of these inputs actually used/consumed in production, within overall quantity against such group of inputs. Proportion of these inputs actually used/consumed in production of export product shall be clearly indicated in shipping bills.
- (c) Discharge of export obligation – Aforesaid inputs to be indicated in shipping bill : At the time of discharge of export obligation (issue of Export obligation discharge certificate EODC) or at the time of redemption, Regional Authority shall allow only those inputs which have been specifically indicated in the shipping bill.
- (d) Provisions also be applicable for supplies to SEZs and supplies made under deemed export : The above provisions will also be applicable for supplies to SEZs and supplies made under Deemed export. Details as given above will have to be indicated in the relevant Bill of Export, ARE-3, Central Excise certified Invoice/import document/document for domestic procurement/supply.

### DUTY FREE IMPORT AUTHORIZATION (DFIA) SCHEME

#### 34. Briefly discuss Duty Free Import Authorization (DFIA) Scheme.

Ans- Duty Free Import Authorization (DFIA) Scheme: The key features are as under-

- (1) DFIA Scheme : DFIA is issued to allow duty free import of inputs. In addition, import of oil and catalyst which is consumed/utilised in the process of production of export product, may also be allowed. Provisions applicable to Advanced Authorisation are broadly applicable in case of DFIA. DFIA Scheme shall not be available for import of raw sugar.
- (2) Duties Exempted and Admissibility of CENVAT and Drawback :
  - (i) DFIA shall be exempted only from payment of Basic Customs Duty. IGST will be payable on imports.
  - (ii) Drawback as per rate determined and fixed by Customs authority shall be available for duty paid inputs, whether imported or indigenous, used in the export product. However, in case such drawback is claimed for inputs not specified in SION, the applicant should have indicated clearly details of such duty paid inputs also in the application for DFIA, and as per the details mentioned in the application, the Regional Authority should also

have clearly endorsed details of such duty paid inputs in the condition sheet of the DFIA.

- (3) Eligibility :
- (i) DFIA shall be issued on post export basis for products for which SION have been notified.
  - (ii) Merchant Exporter shall be required to mention name and address of supporting manufacturer of the export product on the export document viz. Shipping Bill/Bill of Export/Tax Invoice for export prescribed under the GST rules.
  - (iii) Application is to be filed with concerned Regional Authority before effecting export under DFIA.
  - (iv) No DFIA for 'Actual User' condition inputs : No DFIA shall be issued for an export product where SION prescribes 'Actual User' condition for any input.
- (4) Minimum Value Addition – 20% : Minimum value addition of 20% shall be required to be achieved except for physical exports for which payments are not received in freely convertible currency.
- (5) Validity & Transferability of DFIA :
- (i) Online application : Applicant shall file online application to Regional Authority concerned before starting export under DFIA.
  - (ii) Fulfillment of exports – 12 months : Export shall be completed within 12 months from the date of online filing of application and generation of file number.
  - (iii) Indication of file number : While doing export/supply, applicant shall indicate file number on the export/supply documents viz. Shipping Bill/Bill of Export/Tax invoice for supply prescribed under GST rules.
  - (iv) Endorsement of input name and quantity in documents : Wherever SION permits use of either –
    - (a) a generic input, or
    - (b) alternative input,the specific input together with quantity [which has been used in manufacturing the export product] should be indicated/endorsed in the relevant Shipping Bill/Bill of Export/Tax invoice for supply prescribed under GST rules.  
Only such inputs may be permitted for import in the authorisation in proportion to the quantity of these inputs actually used/consumed in production, within overall quantity against such generic input/ alternative input.
  - (v) If in any SION, a single quantity has been indicated against a number of inputs (more than one input), then quantities of such inputs to be permitted for import shall be in proportion to the quantity of these inputs actually used/consumed in production and declared in Shipping Bill/Bill of Export/Tax invoice for supply prescribed under GST rules within overall quantity against such group of inputs. Proportion of these inputs actually used/consumed in production of export product shall be clearly indicated in Shipping Bill/Bill of Export/Tax invoice for supply prescribed under GST rules.

## CHAPTER 8 – FOREIGN TRADE POLICY

- (vi) Separate DFIA shall be issued for each SION and each port.
- (vii) Exports from Listed Ports and separate application for EDI and Non EDI ports : Export under DFIA shall be made from any listed port. However, separate application shall be made for EDI and non-EDI ports. In case export is made from a non-EDI port, separate application shall be made for each non-EDI port.
- (viii) Transferability : Regional Authority shall issue transferable DFIA with a validity of **12 months** from the date of issue. No further revalidation shall be granted by Regional Authority. After completion of exports and realization of export proceeds, request for issuance of transferable DFIA may be made to concerned RA within a period of :
- 12 months from the date of export or
  - 6 months (or additional time allowed by RBI for realization) from the date of realization of export proceeds, whichever is later. Exports proceeds shall be realized in freely convertible currency except otherwise specified.
- (6) Domestic sourcing of inputs : Holder of DFIA has an option to procure the materials/ inputs from indigenous manufacturer/STE in lieu of direct import against Advance Release Order (ARO)/ Invalidation letter/Back to Back Inland Letter of Credit. DFIA holder may obtain supplies from EOU/ EHTP/ BTP/ STP/ SEZ units, without obtaining ARO or Invalidation letter.
- (7) Conditions for redeeming authorisation : It is necessary to establish that **inputs actually used in manufacture of the export product** should only be imported under the authorization and inputs actually imported must be used in the export product, for redeeming the DFIA. The name/ description of the input in the DFIA must match exactly with the name/description endorsed in the shipping bill. Further, quantity of input to be allowed under DFIA shall be in proportion to the quantity of input actually used/consumed in production. If goods are imported against advance authorization but export obligation is not fulfilled, duty and interest is payable. Aforesaid provisions will also be applicable for supplies to SEZs and supplies made under deemed exports.

### EXPORT PROMOTION CAPITAL GOODS (EPCG) SCHEME

35. Give a brief account of Export Promotion Capital Goods Scheme. Which exporters are eligible for Export Promotion Capital Goods Scheme as per Foreign Trade Policy 2023? Also describe which capital goods are eligible for import under this scheme? (4 Marks Nov, 2018-OS)

Ans-The relevant aspects are discussed as under-

- (1) Objective : The objective of the EPCG Scheme is to facilitate import of capital goods for producing quality goods and services to enhance India's export competitiveness.
- (2) EPCG Scheme :
  - (a) Imports free of duty : EPCG Scheme allows import of capital goods for pre-production, production and post-production at Zero customs duty.
  - (b) IGST and GST compensation cess exempt on imports : Capital goods imported under EPCG scheme for physical exports are also exempt from whole of the Integrated Tax leviable under Section 3(7) and Compensation Cess leviable thereon under Section 3(9) of the Customs Tariff Act, 1975.
  - (c) Indigenous purchases allowed : Alternatively, the Authorisation holder may also procure Capital Goods from indigenous sources.

Indigenous sourcing of capital goods and benefits to domestic supplier : A person holding an EPCG authorisation may source capital goods from a domestic manufacturer. Such domestic manufacturer shall be eligible for deemed export benefit and as may be provided under GST Rules under the category of Deemed Exports. Such domestic sourcing shall also be permitted from EOUs and these supplies shall be counted for purpose of fulfilment of positive NFE by said EOU.
  - (d) Eligible capital goods : Capital goods for the purpose of the EPCG scheme shall include
    - (i) Capital Goods including in CKD/SKD condition thereof;
    - (ii) Computer systems and software which are a part of the Capital Goods being imported
    - (iii) Spares, moulds, dies, jigs, fixtures, tools & refractories for initial lining and spare refractories; and
    - (iv) Catalysts for initial charge plus one subsequent Charge.
    - (v) Capital goods for Project Imports notified by CBIC.
  - (e) Ineligible capital goods include :
    - (i) Second hand capital goods
    - (ii) Any Capital Goods for generation/transmission of power (including Captive plants and Power Generator Sets of any kind) for:
      - ✓ Export of electrical energy (power);
      - ✓ Supply of electrical energy (power) under deemed exports;
      - ✓ Supply of power (energy) in their own unit, and
      - ✓ Supply/export of electricity transmission services
  - (f) EO equivalent to 6 times of duty saved on capital goods - Time limit of 6 years : Import under EPCG Scheme shall be subject to an export obligation equivalent to 6 times of duties, taxes and cess saved on capital goods, to be fulfilled in 6 years reckoned from date of issue of Authorisation.
  - (g) Authorisation validity – 24 months : Authorisation shall be valid for import for 24 months from the date of issue of Authorisation. Revalidation of EPCG Authorisation shall not be permitted.

- (h) IGST paid in cash – Not to be taken into account for net duty saved provided ITC not availed : In case Integrated Tax and Compensation Cess are paid in cash on imports under EPCG, incidence of the said Integrated Tax and Compensation Cess would not be taken for computation of net duty saved provided Input Tax Credit is not availed.
- (i) Restricted Imports – Approval of EFC required : Import of items which are restricted for import shall be permitted under EPCG Scheme only after approval from Exim Facilitation Committee (EFC) at DGFT Headquarters.
- (j) Restricted exports – Approval of EFC required : If the goods proposed to be exported under EPCG authorisation are restricted for export, the EPCG authorisation shall be issued only after approval for issuance of export authorisation from Exim Facilitation Committee at DGFT Headquarters.
- (k) Eligible exporters : Following are eligible for EPCG scheme :
- (i) Manufacturer exporters with or without supporting manufacturer(s)
  - (ii) Merchant exporters tied to supporting manufacturer(s)
  - (iii) Name of supporting manufacturer(s) shall be endorsed on the EPCG Authorisation before installation of the capital goods in the factory/premises of the supporting manufacturer (s).  
In case of any change in supporting manufacturer(s) the RA shall intimate such change to jurisdictional Customs Authority of existing as well as changed supporting manufacturer(s) and the Customs at port of registration of Authorisation.
  - (iv) A service provider who is certified as a Common Service Provider (CSP) by the DGFT HQs, Department of Commerce in a Town of Export Excellence or Prime Minister Mega Integrated Textile Region and Apparel Parks (PM MITRA) subject to provisions of Foreign Trade Policy/Handbook of Procedures with the following conditions:
    - ✓ Common utility services like providing Electricity, Water, Gas, Sanitation, Sewerage, Telecommunication, Transportation etc. shall not considered for benefit of CSP;
    - ✓ Export by users of the common service shall be counted towards fulfillment of EO of the CSP provided the EPCG Authorisation details of the CSP is mentioned in the respective Shipping bills and concerned RA must be informed about the details of the users prior to such export;
    - ✓ Such export will not count towards fulfillment of specific export obligation in respect of other EPCG Authorisations of the user;
    - ✓ Authorisation holder shall be required to submit Bank Guarantee (BG) which shall be equivalent to the duty saved. BG can be given by CSP or by any one of the users or a combination thereof, at the option of the CSP; and
    - ✓ Capital goods shall be installed within a Town of Export Excellence or PM MITRA.
- (l) Actual User Condition till export obligation fulfilled : Imported capital goods shall be subject to Actual User condition till export obligation is completed and EODC is granted.
- (3) Export Obligation (EO) : Export obligation means obligation to export product(s) covered by Authorisation/ permission in terms of quantity or value or both, as may be

## CHAPTER 8 – FOREIGN TRADE POLICY

prescribed/specified by Regional or competent authority. Export obligation consists of average export obligation and specific export obligation.

Specific export obligation (Specific EO) under EPCG scheme is equivalent to 6 times of duty saved on capital goods imported under EPCG scheme, to be fulfilled in 6 years reckoned from Authorization issue-date. Specific EO is over and above the Average EO. Average export obligation (Average EO) under EPCG scheme is the average level of exports made by the applicant in the preceding 3 licensing years for the same and similar products. It has to be achieved within the overall EO period (including extended period unless otherwise specified).

- (4) Conditions applicable to the fulfilment of the Export Obligation (EO) : Following conditions shall apply to the fulfilment of EO –
- Fulfillment through export of goods or services : EO shall be fulfilled by the authorisation holder through export of goods which are manufactured by him or his supporting manufacturer/services rendered by him, for which the EPCG authorisation has been granted.
  - EO is over and above average level of exports of last 3 years : EO under the scheme shall be, over and above, the average level of exports achieved by the applicant in the preceding 3 licensing years for the same and similar products within the overall EO period including extended period, if any; except for specified categories. Such average would be the arithmetic mean of export performance in the preceding three licensing years for same and similar products.  
25% less EO in case of ingeniousness sourcing of capital goods : In case of indigeneous sourcing of capital goods, specific EO shall be 25% less than the EO mentioned above, i.e. EO will be 4.5 times (75% of 6 times) of duty saved on such goods procured.
  - Shipments under AA/DFIA/Drawback scheme or reward schemes – Also eligible : Exports under Advance Authorisation, DFIA, Duty Drawback, RoSCTL and RoDTEP Schemes would also be eligible for fulfilment of EO under EPCG Scheme.
  - Physical exports and specific deemed exports included : Export shall be physical export. However, deemed exports shall also be counted towards fulfilment of export obligation.
  - Supply of ITA-I items to DTA - Counted for EO : EO can also be fulfilled by the supply of ITA-I items to DTA, provided realization is in free foreign exchange.
  - Royalty payments - Counted for EO : Royalty payments received by the Authorisation holder in freely convertible currency and foreign exchange received for R&D services shall also be counted for discharge under EPCG.
  - Payment received in rupee terms for such Services as notified in Appendix 5D shall also be counted towards discharge of export obligation under the EPCG scheme.
- (5) Provision for companies admitted under the provisions of Insolvency and Bankruptcy Code 2016 : A company holding EPCG authorizations and having been admitted under the provisions of Insolvency and Bankruptcy Code 2016 for commencement of insolvency proceedings and in respect of whom the resolution plan has been approved under Section 31

## CHAPTER 8 – FOREIGN TRADE POLICY

of IBC 2016 by Adjudicating Authority may be permitted to relief, concessions and waivers in accordance with the resolution plan approved/ finalised by Adjudicating Authority/Appellate Authorities as the case may be.

- (6) Calculation of export obligation : In case of direct imports, EO shall be reckoned with reference to actual duty saved amount. In case of domestic sourcing, EO shall be reckoned with reference to notional Customs duties saved on FOR value.
- (7) Incentive for early EO fulfilment : With a view to accelerating exports, in cases where Authorisation holder has fulfilled 75% or more of specific export obligation and 100% of Average Export Obligation till date, if any, in half or less than half the original export obligation period specified, remaining export obligation shall be condoned and the Authorisation redeemed by RA concerned. However no benefit under para 5.21 of HBP shall be permitted where incentive for early EO fulfilment has been availed.
- (8) Reduced EO for Green Technology Products : For exporters of Green Technology Products, Specific EO shall be 75% of EO. There shall be no change in average EO.
- (9) Reduced EO for North East Region and Jammu & Kashmir : For units located in Arunachal Pradesh, Assam, Manipur, Meghalaya, Mizoram, Nagaland, Sikkim, Tripura, Jammu & Kashmir and Ladakh, specific EO shall be 25% of the EO. There shall be no change in average EO imposed.

Thus, the export obligation to be fulfilled can be summarised as under:

	Case	Export Obligation (EO)	Duty Saved
(A)	Imports under EPCG Scheme	Duties, taxes and cess saved on capital goods × 6	Actual duty saved amount
(B)	Indigenous sourcing of Capital Goods	25% lesser than that in Item (A) i.e., Duties, taxes & cess saved × 4.5 times	Notional Customs duties saved on "FOR value"
(C)	For exporters of Green Technology Products	✓ In case falling in Item (A) : 75% of EO in Item (A) i.e., Duty saved × 4.5 times ✓ In any other case : No change	As applicable, as per above
(D)	For units located in Arunachal Pradesh, Assam, Manipur, Meghalaya, Mizoram, Nagaland, Sikkim, Tripura, Jammu & Kashmir and Ladakh	✓ In case falling in Item (A) : 25% of EO in Item (A) i.e., Duty saved × 1.5 times ✓ In an other case : No change	As applicable, as per above

- (10) Exemption from maintenance of average export obligation :

- (a) In case of export of goods relating to the following, the EPCG Authorisation holder shall not be required to maintain average export obligation (i) Handicrafts, (ii) Handlooms, (iii) Industries covered under Khadi and Village Industries Commission (KVIC) (iv) Agriculture (v) Aquaculture (including Fisheries), (vi) Pisciculture, (vii) Animal husbandry and Dairying, (viii) Floriculture & Horticulture, (ix) Poultry, (x) Viticulture, (xi) Sericulture, (xii) Carpets, (xiii) Coir, and (xiv) Jute
- (b) However, this exemption from maintenance of average export obligation shall not be allowed for import of fishing trawlers, boats, ships and other similar items.
- (c) Goods, excepting tools imported under EPCG scheme by sectors specified in subparagraph (a) above, shall not be allowed to be transferred for a period of five years from date of imports even in cases where export obligation has been fulfilled.

### EOU, EHTP, STP & BTP SCHEMES

#### 36. Give the brief the provision of EOU/ EHTP/BTP schemes.

Ans: The brief provisions are as under:

- (1) Introduction: EOU, EHTP, STP and BTP stands for Export Oriented Unit (EOU) Scheme, Electronics Hardware Technology Park (EHTP) Scheme, Software Technology Park (STP) Scheme or Bio-Technology Park (BTP). Units undertaking to export their entire production of goods and services (except permissible sales in DTA), may be set up under these schemes for manufacture of goods, including repair, re-making, reconditioning, re-engineering, rendering of services, development of software, agriculture including agro-processing, aquaculture, animal husbandry, biotechnology, floriculture, horticulture, pisciculture, viticulture, poultry and sericulture. **Trading units are not covered under these schemes.**
- (2) Objectives of these schemes are to promote exports, enhance foreign exchange earnings, attract investment for export production and employment generation. EOU/EHTP/STP/BTP units may export all kinds of goods and services except items that are prohibited in ITC (HS). An EOU / EHTP/STP/BTP unit may import and / or procure, from DTA or bonded warehouses in DTA / international exhibition held in India, all types of goods, required for its activities, without payment of basic customs duty, additional duty (leviable u/s 3 of the Customs Tariff Act), IGST and compensation cess. However, procurement of goods covered under GST from DTA would be on payment of applicable GST and compensation cess. Units can also import goods including capital goods required for approved activity on a self-certification basis. Goods imported by a unit shall be with actual user condition and shall be utilized for export production.  
State Trading regime shall not apply to EOU manufacturing units except for specified products.
- (3) Investment Criteria:
  - (a) Only projects having a minimum investment of 1 crore in plant & machinery shall be considered for establishment as EOUs. However, this shall not apply to existing units,

units in EHTP/STP/BTP, and EOUs in handicrafts/agriculture/floriculture/aquaculture/animal husbandry/information technology, services, brass hardware and handmade jewellery sectors.

BoA may allow establishment of EOUs with a lower investment criteria.

(b) Applications & Approvals/Letter of Permission/Letter of Intent and Legal Undertaking:

(i) Application and approval :

Application for setting up an EOU shall be considered by Unit Approval Committee (UAC)/ Board of Approval (BoA) as the case may be, as detailed in the Hand Book of Procedure. A detail of administration of EOUs and power of DC is given in HBP.

In case of units under EHTP/ STP schemes, necessary approval/ permission shall be granted by officer designated by Ministry of Communication and Information Technology, Department of Electronics & Information Technology, instead of DC, and by Inter-Ministerial Standing Committee (IMSC) instead of BOA.

Bio-Technology Parks (BTP) would be notified by DGFT on recommendations of Department of Biotechnology. In case of units in BTP, necessary approval / permission under relevant provisions of this chapter will be granted by designated officer of Department of Biotechnology.

On approval, a Letter of Permission (LoP)/ Letter of Intent (LoI) shall be issued by DC/ designated officer to EOU/ EHTP/ STP/ BTP unit. The validity of LoP/LoI shall be given in the Hand Book of Procedures.

(ii) LoP/ LoI issued deemed to be an Authorisation : LoP/ LoI issued to EOU/ EHTP/ STP/ BTP units by concerned authority, subject to compliance of provision above, would be construed as an Authorisation for all purposes.

(iii) Penalty : Unit shall execute an LUT with DC concerned. Failure to ensure positive NFE or to abide by any of the terms and conditions of LoP/LoI/IL/LUT shall render the unit liable to under provisions of the FT (D&R) Act, as amended, and Rules and Orders made there under, without prejudice to action under any other law/rules and cancellation or revocation of LoP/LoI/IL.

(2) Net Foreign Exchange (NFE) earnings :

(a) Positive NFE : EOU/EHTP/STP/BTP unit shall be a positive net foreign exchange earner.

(b) NFE in block of 5 years : NFE Earnings shall be calculated cumulatively in blocks of 5 years, starting from commencement of production.

Extension when export is prohibited or restricted : Whenever a unit is unable to achieve NFE due to prohibition/restriction imposed on export of any product mentioned in LoP, the five year block period for calculation of NFE earnings may be suitably extended by BoA.

Extension upto one year due to adverse market conditions etc. : Further, wherever a unit is unable to achieve NFE due to adverse market condition or any grounds of genuine hardship having adverse impact on functioning of the unit, the 5 year block period for calculation of NFE earnings may be extended by BOA for a period of upto one year, on a case to case basis.

- (3) Supplies to DTA can be counted for positive NFE : Following supplies effected from EOU/ EHTP/ STP/ BTP units to DTA will be counted for fulfillment of positive NFE. Such supplies shall not include "marble", except if such supply of marble is an inter unit supply as provided at sub-para (c) below :-
- (a) Supplies effected in DTA to holders of Advance Authorisation/Advance Authorisation for annual requirement/ DFIA under duty exemption/ remission scheme/ EPCG scheme.
  - (b) Supplies effected in DTA against foreign exchange remittance received from overseas.
  - (c) Supplies to other EOU/EHTP/STP/BTP/SEZ units, provided that such goods are permissible for procurement in terms of relevant provisions of FTP.
  - (d) Supplies made to bonded warehouses set up under FTP and/ or under section 65 of Customs Act and free trade and warehousing zones, where payment is received in foreign exchange.
  - (e) Supplies of goods and services to such organizations which are entitled for duty free import of such items in terms of general exemption notification issued by MoF as may be provided in handbook of procedure (HBP).
  - (f) Supplies of Information Technology Agreement (ITA-1) items and notified zero duty telecom/ electronics items.
  - (g) Supplies of items like tags, labels, printed bags, stickers, belts, buttons or hangers to DTA unit for export.
  - (h) Supply of LPG produced in an EOU refinery to Public Sector domestic oil companies for being supplied to household domestic consumers at subsidized prices under the Public Distribution System (PDS) Kerosene and Domestic LPG Subsidy Scheme, 2002, subject to specified conditions.
- (4) Entitlement for supplies from the DTA :
- (a) Deemed exports : Supplies from DTA to EOU/ EHTP/ STP/ BTP units will be regarded as "deemed exports" and DTA supplier shall be eligible for relevant entitlements for deemed exports, besides discharge of export obligation, if any, on the supplier. The refund of GST paid on such supply would be available to the supplier subject to specified conditions and documentations under GST law.

In addition, EOU/ EHTP/ STP/ BTP units shall be entitled to following:-

- (i) Imported goods are exempt from basic customs duty. Further, IGST and GST compensation cess is exempt.
  - (ii) Input Tax Credit of GST paid on inputs and capital goods.
  - (b) Replenishment Authorizations : Suppliers of precious and semi-precious stones, synthetic stones and processed pearls from DTA to EOU shall be eligible for grant of Replenishment Authorizations at rates and for items mentioned in HBP.
- (5) Other Entitlements : Other entitlements of EOU/ EHTP/ STP/ BTP units are as under –
- (a) Exemption from industrial licensing for manufacture of items reserved for micro and small enterprises.
  - (b) Export proceeds will be realized within nine months.

- (c) 100% in EEFC account : Units will be allowed to retain 100% of its export earnings in the Exchange Earners' Foreign Currency (EEFC) account.
  - (d) No bank guarantee in certain cases : Unit will not be required to furnish bank guarantee at the time of import or going for job work in DTA, subject to fulfillment of required conditions.
  - (e) 100% FDI : 100% FDI investment permitted through automatic route similar to SEZ units.
- (6) Export and Import of Goods :
- (A) Export :
- (1) All goods and services other than prohibited goods can be exported : Such units may export all kinds of goods and services except items that are prohibited in ITC(HS).
  - (2) Export through others : Such units may export goods manufactured/ software developed by it through another exporter or any other EOU/EHTP/STP/SEZ unit subject to conditions as mentioned in hand book of procedures.
  - (3) Export of SCOMET ITC(HS) - Conditions to be fulfilled : Export of Special Chemicals, Organisms, Materials, Equipment and Technologies (SCOMET) shall be subject to fulfilment of the conditions indicated in ITC (HS).

BOA may permit export of prohibited items : In respect of an EOU, permission to export a prohibited item may be considered, by BOA, on a case to case basis, provided such raw materials are imported and there is no procurement of such raw material from DTA.

(B) Import : Following imports are permitted:

- (1) Export promotion material upto a maximum value limit of 15% of FOB value of previous years exports.
- (2) All types of goods, including capital goods, required for its activities, from (i) DTA, (ii) bonded warehouses in DTA/ International exhibition held in India, subject to 'Actual User' condition, provided such goods are not prohibited items of import in the ITC (HS) subject following conditions:
  - (a) The imports and/or procurement from bonded warehouse in DTA/International exhibition held in India shall be without payment of basic customs duty. Such imports and/ or procurements shall be made without payment of integrated tax and GST compensation cess.
  - (b) The procurement of goods covered under GST from DTA would be on payment of applicable GST and compensation cess. The refund of GST paid on such supply from DTA to EOU would be available to the supplier subject to such conditions and documentations as specified under GST law.

Goods including capital goods (on a self-certification basis) required for approved activity, free of cost or on loan/ lease from clients, subject to 'Actual User' condition are permitted to be imported.

- (3) Certain specified goods from DTA for creating a central facility, with/without payment of duty/ taxes as provided in point 2(a) and 2(b) above.

(4) Second hand capital goods, without any age limit, with/without payment of duty/ taxes as provided in point 2(a) above.

(5) Procurement and export of spares/ components, upto 5% of FOB value of exports, may be allowed to same consignee/ buyer of the export article, subject to the condition that it shall not count for NFE and direct tax benefits.

The above indigenous and import procurement can be summarised as under :

Procurement Mode

(i)

(a) Import,

(b) Procure from bonded warehouses in DTA, and

(c) Procure from international exhibition held in India

(ii) Procurement from DTA

Duty exemption

Without payment of –

- Basic customs duty
- Additional duty of Customs (CVD or Special CVD)
- IGST leviable u/s 3(7) of Customs Tariff Act, 1975
- GST Compensation Cess leviable u/s 3(9) of Customs Tariff Act, 1975,

as per notification issued by the Department of Revenue.

GST payable : Procurement of GST goods from DTA would be on payment of applicable GST taxes. The refund of GST taxes for supply from DTA to EOU would be available to supplier as provided under GST rules subject to such conditions and documentations as specified there in under GST rules.

Excise duty not payable : EOU's can procure excisable goods, falling in Fourth Schedule of Central Excise Act, from DTA without payment of excise duty.

(7) Leasing of capital goods :

(a) Leasing of capital goods : An EOU/EHTP/STP/BTP unit may, on the basis of a firm contract between parties, source capital goods from a domestic/foreign leasing company with or without payment of duties/ taxes as provided above, as the case may be in such a case, EOU/EHTP/STP/BTP unit and domestic/ foreign leasing company shall jointly file documents to enable import/procurement of capital goods.

(b) Sale and lease back transactions : An EOU/EHTP/BTP/STP unit may sell capital goods and lease back the same from a Non Banking Financial Company (NBFC), subject to the fulfillment of conditions.

(8) Inter Unit Transfer : The provisions of inter unit transfer in case of EOU/EHTP/STP/BTP units are as under

(i) Transfer of manufactured goods – procedure : Transfer of manufactured goods from one EOU/EHTP/ STP/BTP unit to another EOU/EHTP/STP/BTP unit is allowed on payment of applicable GST and compensation cess with prior intimation to concerned Development

Commissioners of the transferor and transferee units as well as concerned Customs authorities, following the prescribed procedure.

(ii) Transfer of capital goods : Capital goods may be transferred or given on loan to other EOU/EHTP/STP/BTP/SEZ units, with prior intimation to concerned DC and Customs authorities on payment of applicable GST and compensation cess. Such transferred goods may also be returned by the second unit to the original unit in case of rejection or for any reason on payment of applicable GST and compensation cess.

(iii) Supply of goods – Procedure : Goods supplied by one unit of EOU/EHTP/STP/BTP to another unit shall be on payment of applicable GST and compensation cess following the prescribed procedure.

(9) Sale of unutilized material : (a) Disposal of unutilised material : In case an EOU/ EHTP/ STP/ BTP unit is unable to utilize goods and services, imported or procured from DTA, it may be –

(i) transferred to another EOU/ EHTP/ STP/ BTP/ SEZ unit.

(ii) Disposed of in DTA with intimation to Customs authorities on payment of applicable duties and/or taxes and compensation cess. Further, exemption of basic customs duties availed, if any, on the goods, at the time of import will also be payable and submission of import Authorisation; or

(iii) exported.

Such transfer from EOU/ EHTP/ STP/ BTP unit to another such unit would be treated as import for receiving unit.

(b) Disposal of Capital goods : Capital goods and spares that have become obsolete/ surplus, may be exported or transferred to SEZ unit, transferred to another EOU/EHTP/STP/BTP/on payment of applicable GST and compensation cess or disposed of in DTA on payment of applicable GST and compensation cess and duties of Customs leviable under First Schedule of the Customs Tariff Act, 1975.

Benefit of depreciation will be available in case of disposal in DTA only when the unit has achieved positive NFE taking into consideration the depreciation allowed.

In case of Destruction of goods – No duty payable : No duty shall be payable other than the applicable taxes under GST laws in case capital goods, raw material consumables, spares, goods manufactured, processed or packaged, and scrap/ waste/remnants/ rejects are destroyed within unit after intimation to Customs authorities or destroyed outside unit with permission of Customs authorities. Destruction as stated above shall not apply to gold, silver, platinum, diamond, precious and semiprecious stones.

(c) Disposal of packing material : Disposal of used packing material will be allowed on payment of duty on transaction value.

(10) DTA Sale of Finished Products/ Rejects/ Waste/ Scrap/ Remnants and By-products : Entire production of EOU/EHTP/STP/BTP units shall be exported. However, the following are allowed as exceptions subject to the conditions specified.

DTA sale of goods :

- (a) (i) DTA sale of finished goods by units which have achieved positive NFE : Units (other than gem and jewellery units) will be permitted to sell finished goods manufactured by them which are freely importable under FTP in DTA, subject to fulfilment of positive NFE, on payment of applicable GST and compensation cess along with reversal\*\* of basic customs duty availed as exemption, if any on the inputs utilized for the purpose of manufacturing of such finished goods. \*\*on the basis of SION published by DGFT or norms approved by Norms Committee of DGFT (when no SION is fixed)
- (ii) DTA Units to whom sale is not permissible : No DTA sale shall be permissible in respect of, pepper & pepper products, marble and such other notified items as also to units engaged in only packaging. Labelling, refrigeration, pulverilason etc.
- (iii) Such DTA sale shall also be subject to refund of any deemed export benefits availed by the EOU/supplier as per FTP, on the goods used for manufacture of the goods cleared into the DTA.
- (iv) Imported goods subject to ADD liable to ADD in case of DTA sale : An amount equal to Anti Dumping duty u/s 9A of the Customs Tariff Act, 1975 leviable at the time of import, shall be payable on the goods used for the purpose of manufacture or processing of the goods cleared into DTA from the unit.
- (b) DTA supply of services : For services (including software units), sale in DTA shall also be permissible up to 50% of FOB value of exports and/ or 50% of foreign exchange earned, where payment of such services is received in foreign exchange.
- (c) Sale of rejects : Rejects may be sold in DTA on payment of applicable GST and compensation cess along with reversal of basic customs duty availed as exemption on inputs on prior intimation to Customs authorities. Sale of rejects upto 5% of FOB value of exports shall not be subject to achievement of NFE.
- (d) Sale of Scrap/ waste/ remnants : Scrap/waste/remnants arising out of production process or in connection therewith may be sold in DTA, as per SION notified under Duty Exemption Scheme, on payment of applicable duties and/ or taxes and compensation cess. Such sales of scrap/waste/remnants shall not be subject to achievement of positive NFE. Scrap / waste / remnants may also be exported. No duties on destruction : There shall be no duties/ taxes on scrap/ waste/ remnants, in case same are destroyed with permission of Customs authorities. The expression "no duties/ taxes" shall not include applicable taxes and cess under the GST laws.
- (e) Sale of by products : By-products may also be sold in DTA subject to achievement of positive NFE, on payment of applicable GST and compensation cess along with reversal of basic customs duty availed as exemption on inputs.
- (f) Sale of by products : By-products may also be sold in DTA subject to achievement of positive NFE, on payment of applicable GST and compensation cess along with reversal of basic customs duty availed as exemption on inputs.
- (f) Software and hardware - Separate requirement : In case of units manufacturing electronics hardware and software, NFE and DTA sale entitlement shall be reckoned separately for hardware and software.

(g) In case of new EOUs, advance DTA sale will be allowed not exceeding 50% of its estimated exports for first year, except pharmaceutical units where this will be based on its estimated exports for first two years.

(h) Procurement of spares/components, up to 2% of the value of manufactured articles, cleared into DTA, during the preceding year, may be allowed for supply to the same consignee / buyer for the purpose of after-sale-service. The same can be cleared in DTA on payment of applicable GST and compensation cess along with reversal of basic customs duty availed as exemption on inputs.

(i) Export through other exporter : An EOU/ EHTP/ STP/ BTP unit may export goods manufactured/ software developed by it through another exporter or any other EOU/ EHTP/ STP/ SEZ unit subject to specified conditions

(11) Export through Exhibitions/ Export Promotion Tours/ Showrooms Abroad /Duty Free Shops : EOU / EHTP/ STP / BTP are permitted to –

(a) Export goods for holding/ participating in Exhibitions abroad with permission of DC/ Designated officer.

(b) Personal carriage of gold/silver/platinum jewellery, precious, semi-precious stones, beads and articles.

(c) Export goods for display/ sale in permitted shops set up abroad.

(d) Display/sell in permitted shops set up abroad, or in showrooms of their distributors/agents.

(e) Set up showrooms/retail outlets at International Airports.

(12) Other provisions relating to EOU scheme.

(a) Exit from EOU Scheme : With approval of DC, an EOU may opt out of scheme. Such exit shall be subject to payment of applicable IGST/ CGST/ SGST/ UTGST and compensation cess, if any, and industrial policy in force. If unit has not achieved obligations, it shall also be liable to penalty at the time of exit.

(b) Conversion : Existing DTA units may also apply for conversion into an EOU/ EHTP/ STP/ BTP unit. Existing EHTP/STP units, who have applied for conversion/merger to EOU unit and viceversa, can avail exemptions in duties and taxes as applicable. Applications for conversion into an EOU/EHTP/STP/BTP unit from existing DTA units, having an investment of ₹ 50 crores and above in plant and machinery or exporting ₹ 50 crores and above annually, shall be placed before BOA for a decision.

### 34.37 DEEMED EXPORTS

(1) Deemed Exports :

(a) Deemed Exports for FTP : "Deemed Exports" for the purpose of this FTP refer to those transactions in which goods supplied do not leave country, and payment for such supplies is received either in Indian rupees or in free foreign exchange. Supply of goods as specified below shall be regarded as "Deemed Exports" provided goods are manufactured in India.

(b) Deemed Exports for GST : "Deemed Exports" for the purpose of GST would include only the supplies notified under Section 147 of the CGST/SGST Act, on the recommendations of the GST

Council. The benefits of GST and conditions applicable for such benefits would be as specified by the GST Council and as per relevant rules and notification.

(2) Objective of deemed exports : The objective of deemed exports is to ensure that the domestic suppliers are not in disadvantageous position vis-a-vis foreign suppliers in terms of the fiscal concessions. The underlying theory is that foreign exchange saved must be treated at par with foreign exchange earned by placing Indian manufacturers on par with foreign suppliers. Besides this the objective is to provide a level-playing field to domestic manufacturers in certain specified cases, as may be decided by the Government from time to time.

(3) Areas of deemed exports : Deemed exports broadly cover three areas.

(a) Supplies to domestic entities who can import their requirements duty free or at reduced rates of duty.

(b) Supplies to projects or purposes that involve international competitive bidding. (c) Supplies to infrastructure projects of national importance.

(4) Categories of Supplies [Para 7.02 of policy] : Supply of goods under following categories by a manufacturer and by main/sub-contractors shall be regarded as "Deemed Exports":

### DEEMED EXPORTS

37. Write short notes on: "Deemed Exports" with reference to Foreign Trade Policy. (4 Marks, Nov. 2015)

Ans: The relevant provisions are as under –

(1) Deemed Exports :

(a) Deemed Exports for FTP : "Deemed Exports" for the purpose of this FTP refer to those transactions in which goods supplied do not leave country, and payment for such supplies is received either in Indian rupees or in free foreign exchange. Supply of goods as specified below shall be regarded as "Deemed Exports" provided goods are manufactured in India.

(b) Deemed Exports for GST : "Deemed Exports" for the purpose of GST would include only the supplies notified under Section 147 of the CGST/SGST Act, on the recommendations of the GST Council. The benefits of GST and conditions applicable for such benefits would be as specified by the GST Council and as per relevant rules and notification.

(2) Objective of deemed exports : The objective of deemed exports is to ensure that the domestic suppliers are not in disadvantageous position vis-a-vis foreign suppliers in terms of the fiscal concessions. The underlying theory is that foreign exchange saved must be treated at par with foreign exchange earned by placing Indian manufacturers on par with foreign suppliers. Besides this the objective is to provide a level-playing field to domestic manufacturers in certain specified cases, as may be decided by the Government from time to time.

(3) Areas of deemed exports : Deemed exports broadly cover three areas.

a) Supplies to domestic entities who can import their requirements duty free or at reduced rates of duty.

## CHAPTER 8 – FOREIGN TRADE POLICY

- b) Supplies to projects or purposes that involve international competitive bidding.
  - c) Supplies to infrastructure projects of national importance.
- (4) Categories of Supplies [Para 7.02 of policy] : Supply of goods under following categories by a manufacturer and by main/sub-contractors shall be regarded as "Deemed Exports":

Categories of supplies considered as 'Deemed Export':

Supply by manufacturer	Supply by main/sub-contractors(s)
Supply of goods against Advance Authorisation/ Advance Authorisation for Annual Requirement/ DFIA	Supply of goods to projects or turnkey contracts financed by multilateral or bilateral agencies/ Funds notified by Department of Economic Affairs (DEA), under International Competitive Bidding.
Supply of goods to units located in EOU/ STP/BTP/EHTP	Supply of goods to any project where import is permitted at zero customs duty as per customs Notification No. 50/2017-Cus., dated 30-06-2017 and supply is made against International Competitive Bidding.
Supply of capital goods against EPCG authorization	Supply of goods to mega power projects against International Competitive Bidding (even if customs duty on imports made by such project is not zero). The ICB procedures should be followed. Supplier is eligible for benefits as specified. International Competitive Bidding (ICB) is not mandatory for mega power projects if requisite quantum of power has been tied up through tariff based competitive bidding or if project has been awarded through tariff based competitive bidding.
	Supply of goods to UN or international organisations for their official use or supplied to projects financed by them.
	Supply of goods to nuclear projects through competitive bidding (need not be international competitive bidding).

### 38. Explain the benefits available in case of deemed exports.

Ans- Benefits for deemed exports : Deemed Exports shall be eligible for any or all of the following benefits in respect of manufacture and supply of goods qualifying as deemed exports subject to conditions as given in HBP and ANF-7A,-

- a) Advance Authorisation/ Advance Authorisation for Annual requirement/ DFIA;

### b) Deemed Export Drawback for BCD.

Deemed exports – Other provisions :

- (1) Refund of drawback : Refund of drawback on the inputs used in manufacture and supply under the said category can be claimed on 'All Industry Rate' of Duty Drawback Schedule notified by Department of Revenue from time to time provided no CENVAT credit has been availed by supplier of goods on excisable inputs or on 'Brand Rate Basis' upon submission of documents evidencing actual payment of basic customs duties.
- (2) Common conditions for deemed export benefits :
  - ✓ Supplies must be to specified entity : Supplies shall be made directly to entities listed above. Third party supply shall not be eligible for benefits/ exemption.
  - ✓ Subcontractor may make supplies to main contractors : In all cases, supplies shall be made directly to the designated Projects/Agencies/Units/ Advance Authorisation/ EPCG Authorisation holder. Sub-contractors may, however, make supplies to main contractor instead of supplying directly to designated Projects/ Agencies. Payments in such cases shall be made to subcontractor by main-contractor and not by project Authority.
  - ✓ Indian subcontractor may supply to Indian/ Foreign main contractor directly at project site – Name of sub-contractor must be indicated in main contract : Supply of domestically manufactured goods by an Indian Sub-contractor to any Indian or foreign main contractor, directly at the designated project's/ Agency's site, shall also be eligible for deemed export benefit provided name of sub-contractor is indicated either originally or subsequently (but before the date of supply of such goods) in the main contract. In such cases payment shall be made directly to sub-contractor by the Project Authority.

## PROMOTING CROSS BORDER TRADE IN DIGITAL ECONOMY

### 39. Explain the provisions relating to Promoting Cross Border Trade in Digital Economy.

Ans: The relevant provisions are discussed as under –

- (1) Objective : The objective of this chapter is to provide a framework for cross-border trade of goods and services from India in the digital economy and the promotion of e-Commerce and other emerging channels of exports from India.
- (2) E-Commerce exports of goods : Export of goods where selling is through the internet on an eCommerce platform, the payment for which shall be done through international credit or debit cards, or other authorised electronic payment channels and as specified by the RBI from time to time.
- (3) E-Commerce exports of services : Exports of services where selling is through the internet on an e-Commerce platform, the payment for which shall be done through international credit or debit cards, or other authorised electronic payment channels and as specified by the RBI from time to time.

- (4) E-Commerce platform : E-Commerce platform is an electronic platform, including a web-portal, that enables the commercial process of buying and selling through the internet.
- (5) E-Commerce export logistics provider : Any service provider who provides logistics services towards exports of goods or services for e-Commerce Exports.
- (6) Export through courier service/post : Exports through a registered courier service/Foreign Post Office is permitted as per Notification(s) issued under Customs Act, 1962. However, exportability of such items shall be regulated in accordance with FTP/Export Policy in ITC(HS) as notified. The value limit for exports through courier service shall be ₹ 10,00,000 per consignment.

### (7) FOREIGN TRADE POLICY

Import through Courier Service/Post :

- i) Imports through a registered courier service or Post are permitted as per Notification(s) issued under the Customs Act, 1962. However, importability of such items shall be regulated in accordance with FTP and the ITC(HS) based Import Policy as notified.
- ii) Exports by courier mode of precious Metal Jewellery through E-commerce and re-import of such export shipments returned by the buyer shall be allowed as per the Notification(s) issued and procedures prescribed under the Customs Act, 1962.

### 40. What steps have been taken for promotion of E-commerce exports.

Ans: The following steps have been taken for promotion of E-commerce exports –

- (1) Handholding and outreach to promote e-Commerce Exports:
  - (i) The Niryat Bandhu Scheme (NBS) as defined under Chapter 1 of the Policy shall have a component for the promotion of e-Commerce and other emerging channels of exports. Under the given NBS component, DGFT shall organise outreach activities/workshops in partnership with Customs Authorities, Department of Post, 'Industry Partners' and 'Knowledge Partners' for promotion of e-Commerce exports. Besides outreach/ workshops, specific focus may be on creation of electronic content as well.
  - (ii) In addition to increasing awareness on e-Commerce related rules and processes, actions may be undertaken under the said NBS component for capacity building and skill development for promotion of e-Commerce exports, in partnership with Customs Authorities, Department of Post, 'Industry Partners' or the 'Knowledge Partners'.
- (2) E-commerce Export Hubs (ECEHs) :
  - (i) Objective of E-Commerce Export Hubs : The objective is to establish designated areas as E-Commerce Export Hubs (hereafter called "ECEH"), which would act as a centre for favourable business infrastructure and facilities for Cross Border E-Commerce activities.
  - (ii) Creation of ECEH : The ECEH shall ordinarily be setup through private initiative. It may also be setup in Public-Private- Partnership (PPP) mode in partnership with the State governments/Central government. Request for approval of an ECEH proposed shall be submitted to the notified committee to be constituted by DGFT. Existing facility with the required infrastructure may also apply to be designated as ECEH.

(iii) Nature of ECEH Operations :

- a) ECEH will function to achieve agglomeration benefits for e-commerce exporters. The ECEH may provide for storage (including cold storage facilities), packaging, labelling, certification & testing and other common facilities for the purposes of export.
- b) The ECEH shall also provide for dedicated logistics infrastructure for connecting to and leveraging the services of the nearest Logistics hub(s).
- c) All goods, including SCOMET and Restricted goods (subject to suitable compliance of regulations and conditions) and except goods which are prohibited or otherwise disallowed, may be handled at ECEH.
- d) Capital goods brought to a ECEH shall be utilized only for activities as mentioned above on payment of the duties and taxes, as applicable, in terms of extant laws.

(iv) Entitlement under ECEHs : ECEH may be provided financial assistance under MAI scheme, for e-Commerce export promotion projects for marketing, capacity building and technological services such as imaging, cataloguing, product video creation of e-Commerce Goods.

(3) Dak Niryat Kendras : Dak Ghar Niryat Kendras shall be operationalised throughout the country to work in a hub-and-spoke model with Foreign Post Offices (FPOs) to facilitate cross-border eCommerce and to enable artisans, weavers, craftsmen, MSMEs in the hinterland and land-locked regions to reach international markets.

### PENALTIES

**41. Briefly explain penalty provisions with reference to foreign trade policy.**

**Ans:** In case any exporter or importer in the country violates any provision of the Foreign Trade Policy or for that matter any other law in force, like Central Excise or Customs or Foreign Exchange, his IEC number can be cancelled by the office of DGFT and thereupon that exporter or importer would not be able to transact any business in export or import. The premises where any violation of the provisions of FTP has taken place or is expected to take place can be searched and the suspicious material seized.

Violations would cover situations when import or export has been made by unauthorized persons who are not legally allowed to carry out import or export or when any person carries out or admits to carry out any import or export in contravention of the basic FTP.

Note