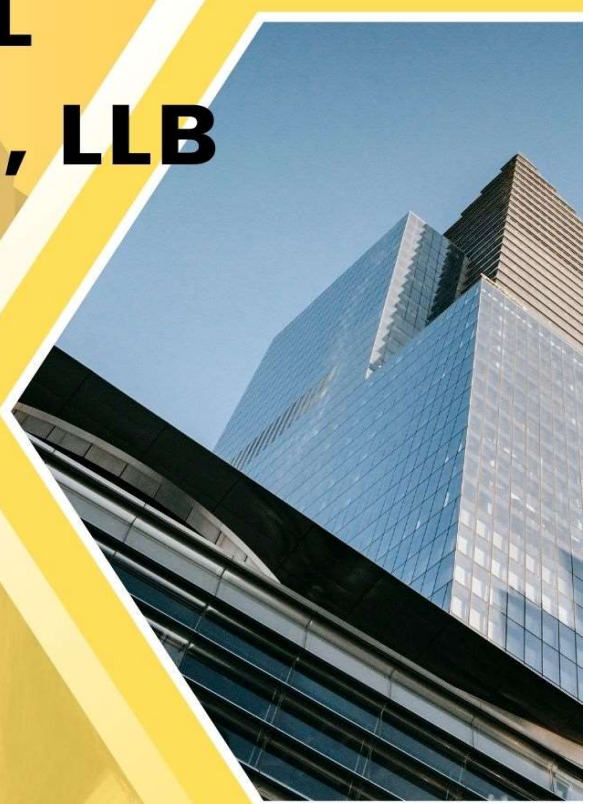


# **IDT SMART BOOK**

## **CA/CMA/CS FINAL**

### **Part 2 : Custom**

**JAY AGARWAL**  
**CA, CMA, CFA, LLB**  
**AIR 3 & 46**



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### **About author:**

**Jay Agarwal**

**CA, CMA, CFA (USA), LLB**

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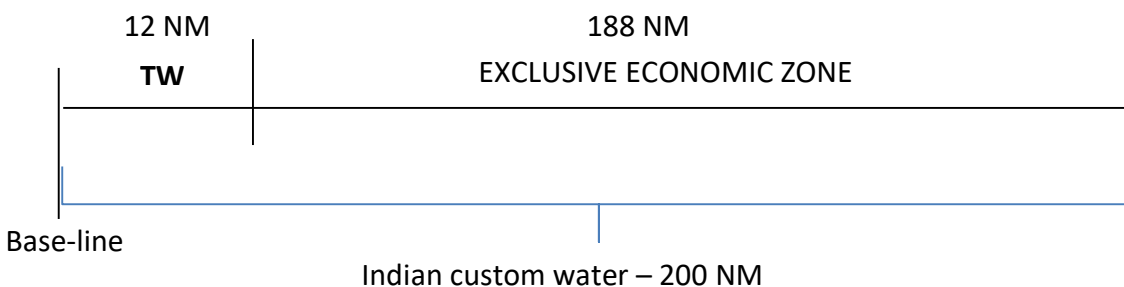
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## Chapter 1 : Levy and Exemptions from custom duty

### Basic

#### Custom duty applicable on

- Import:- Bringing **goods** into India from place outside India
- Export:- Taking **goods** out of India to place outside India  
At the rate specified in Custom Tarriff Act
- India:- India Includes territorial water (TW) of India :12 Nautical Mile (NM) from base-line
- Exclusive economic zone (EEZ) : 188 NM after TW
- Indian custom water: 200 NM from base-line i.e. TW + EEZ



- Import **starts** as soon as goods enter TW (12NM)
- But **complete** only when goods become part of mass goods of India
- **Taxable event** happens when goods enter custom barriers & **Bill of Entry for home consumption filed**
- In case goods **kept in warehouse**, taxable event happens when goods been **taken out** from warehouse.
- **Importance of Indian Custom water (200NM)**
  - In person commit offence under custom law e.g. smuggling, importing prohibited goods.
  - Legal action such as arrest and confiscation can be done in Indian custom water

### Accidental goods coming into India

- Import defined as : **Bringing** goods into India from outside India
- If following goods coming in India by floating or otherwise, then considered as import and liable to applicable duty unless officer satisfy that they are entitled to be duty free.
  1. **Derelict** : Cargo/vessel left in sea with no recovery hopes

2. **Wreck** : Destroyed ship's part or cargo came on shore with tides
3. **Jetsam** : **Goods** thrown from vessel to save it from sinking. Such **goods** sunk
4. **Flotsam** : thrown goods **remained floating** in sea

### Exemption from Custom Duty

- Who : By CG, in public interest
- **General exemption** : Through **notification** in official gazette (absolute or conditional)
- Noti. issued, unless otherwise provided, come into force on the **date of its issue by CG** (Issued on 2<sup>nd</sup> Nov ✓, published on 4<sup>th</sup> Nov ☒)
- If exemption granted subject to condition, it will be valid up to 31st March falling immediately after 2 years except in certain cases
- **Special Exemption** : Through **Special order** in each case under exceptional circumstances
- An explanation inserted in notification or order within 1 year will be valid from date of noti/order.
- No collection : If Custom duty  $\leq 100$

### Re-importation of goods

If **same** goods re-imported after exportation earlier, concessional duty payable as follows:

#### Permanent importation

Scenario	Duty to be paid on re-import
A. Goods exported earlier under:- (i) Claim of duty drawback/RoDTEP/RoSCTL (ii) Claim of IGST Refund (iii) Bond / LUT without IGST Payment (iv) Duty exemption / Advance authorization (AA) /EPCG	Amount of Incentive availed while exporting + Duty not paid while payable on export  In case of (iv) : Applicable IGST + Cess on import
B. Goods exported (sent) for repair abroad (Condition : Ownership of goods should not have changed)	Basic Custom duty + SWS + IGST + Cess <b>on Fair cost of repair</b> including cost of material used in repair (irrespective of cost actually incurred or not, due to warranty etc.) + Insurance & freight both sides
C. Re-imported goods exported ➤ by 100% EOU, FTZ ➤ from public / Private warehouse ➤ are tobacco & petroleum product	No exemption : Full import duty payable

D. <b>Re-manufacturing/re-processing done on goods</b>	
E. Other than above	No duty to be paid
F. Goods sent for exhibition/approval basis and returned within 6 months (To Related/unrelated)	

➤ Time limit for re-import

- |   |                           |
|---|---------------------------|
| (i) Exported under DEEC/DFIA/DEPB/AA/EPCG | 1 year + 1 year (Extn.)   |
| (ii) other cases                          | 3 years + 2 years (Extn.) |

### Temporary importation

Goods manufactured in India & re-imported for	<b>No duty to be paid - If imported within</b>
<ul style="list-style-type: none"> <li>• Reprocessing</li> <li>• Refining</li> <li>• Remaking</li> </ul> <div style="display: inline-block; vertical-align: middle; margin-left: 10px;">             }              or Similar              Process         </div>	<b>1 year</b>
<b>repair or reconditioning</b> other than specified Goods	From Nepal/Bhutan - <b>10 years</b> Other countries – <b>3 years</b>

• **Further Conditions to satisfy.**

- Must re-export within 6M + 6M from importations except goods lost during process in point B
- AC/DC satisfied with identity of goods (Goods should be same)
- While importing, importer shall execute bond

### Denaturing / mutilation of goods

• **If goods used for multipurpose and duty leviable depends on use of goods**

- Denaturing Process makes goods unfit for other use & goods can be used for one purpose only, accordingly duty levied.
- Ex. Alcohol can be used for medical or human consumption purpose, if importer **wants to pay lower duty** applicable on medical Purpose, custom officer mix chemical in it so to make unfit for human consumption, called **denaturing**.

### Custom (Import of goods at concessional duty or for specified end use) Rules

Example : If in above example of Alcohol, denaturing not possible then given process to be followed to ensure that goods been used for medical purpose only.

1. Rules apply when exemption notification requires to follow these rules, or
2. Importer intends to avail benefit which is dependent on “use of imported goods”

## I. Summary process of import @concessional duty

- Importer provide online information for goods to be imported
  - Custom portal provide IIN (Unique no. for such claim)
  - Submission of bond + security
  - Provide IIN & bond details while filing BOE
  - Officer will allow concession
- If failed to comply → Recovery by revoking the bond

## II. Details in prior information of import on portal

1. Name and address of importer and job worker
2. Nature & description of goods imported
3. Manufacturing process undertaken and FG produced
4. Nature of output service rendered using these goods
5. Details of applicable notification on such import
6. Premise details
7. Port of Import

### I. Importer to maintain following records

- Quantity & value of goods imported,
- Quantity of goods received in warehouse, consumed, sent for Job worker, received back, closing stock
- In case of short receipt of goods in warehouse, intimate on portal
- Provide details when asked by AC/DC
- Monthly statement by 10<sup>th</sup> of next month

### II. Procedure for allowing imported goods for job work

#### **Importer**

- Goods can be sent to Job worker with invoice and EWB for processing for max. up to 6 months
- Maintain proper record
- Prove uses of goods as per declaration given on portal else recovery of duty + penalty

#### **Job worker shall:-**

- Maintain A/c of receipt of goods, process undertaken and waste generated
- Provide such details before Jurisdictional customs officer when required

- After Completing Job work sent back goods to importer/another job-worker

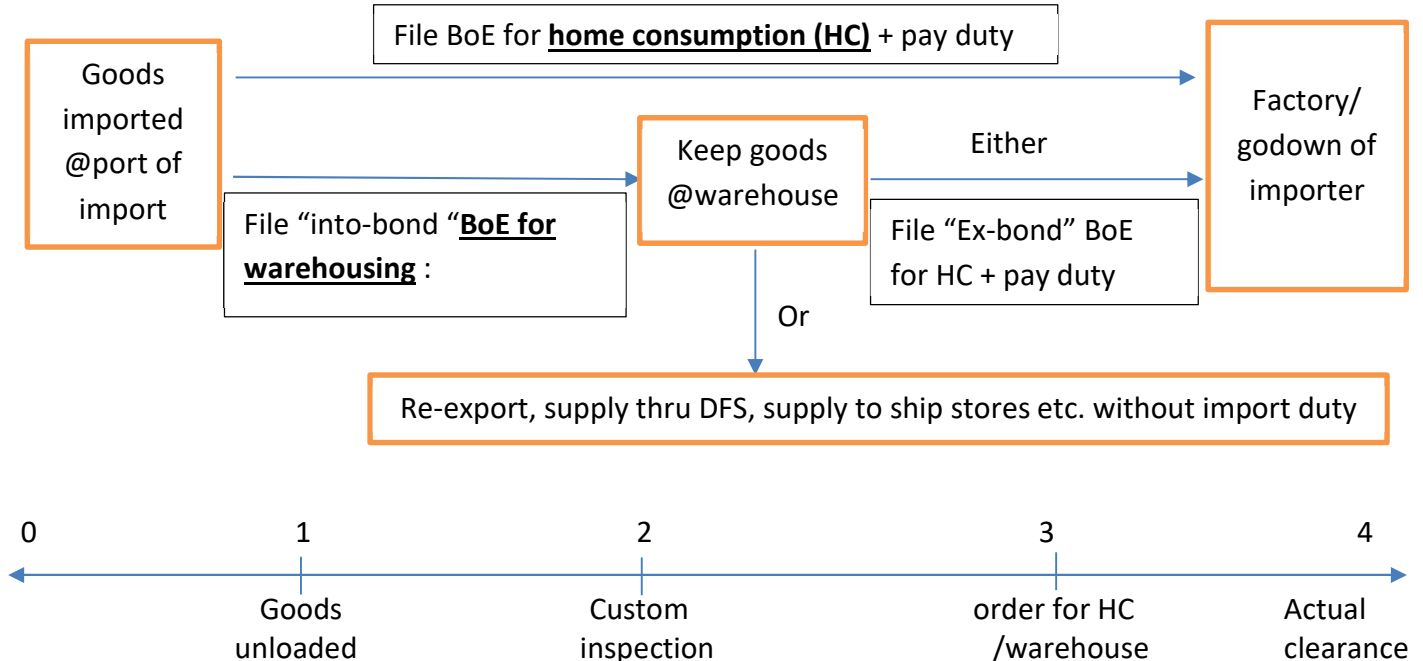
### III. Unutilised or defective goods

1. Re-export such goods at value not less than import value, or
2. Clear for home-consumption on payment of duty + int. (Now, can use for any purpose)
3. Capital Goods can also be cleared after use for specified purpose on payment of duty

Amount = duty leviable without exemption **on depreciated value** - already paid

Use period From : Date of <u>put to use</u> (not date of import) To : Date of clearance	Rate
for every quarter or part in 1 <sup>st</sup> year	@4 %
for every quarter or part in 2 <sup>nd</sup> and 3 <sup>rd</sup> year	@3%
for every quarter or part in 4 <sup>th</sup> & 5 <sup>th</sup> year	@2.5%
and thereafter for every quarter	@2 %

### Brief process of clearing of goods from port/airport



### Duty on Pilfered, lost, destroyed goods (Sec 13 & 23)

Goods pilfered (theft in small qty./petty theft)	Goods lost/destroyed
--	----------------------

<p><b>After unloading and before order</b> for home clearance/<b>deposit in warehouse (1-3)</b> (Means pilferage at port is only covered)</p>	<p><b>Any time before actual clearance for home consumption (0-4)</b> (Loss in warehouse is also covered here)</p>
<p>If pilferage noticed before pay → No need to pay If noticed after pay → remitted (refund) to importer back In both cases → Custodian of port will pay duty</p>	<p>If noticed before pay → No need to pay If noticed after pay → remitted (refund) to importer back <b>Custodian not to pay</b></p>
<p>Importer liable to pay duty, where</p> <ul style="list-style-type: none"> <li>• Goods pilfered before unloading</li> <li>• Goods pilfered after order passed but before actual clearance.</li> <li>• Goods found later on</li> </ul>	
<p>Following evidence of pilferage should exist</p> <ol style="list-style-type: none"> <li>i) Evidence of tampering with package</li> <li>ii) Blank space for missing article</li> <li>iii) Full article (not part) should miss.</li> </ol>	<p>Shown to the satisfaction of AC/DC</p>

Normal loss due to volatile nature like evaporation of petroleum in warehouse – No duty payment on such **notified goods**. (Sec -70)

### Remission of duty on relinquishment of title of goods - Sec-23(2)

Relinquish means giving possession / control to custom dept.

- Sometimes goods imported are not taken delivery by importer due to:  
Goods not as per specification, damaged, deteriorate etc.
- Importer may relinquish title of goods by endorsing document of title in favor of Commissioner
- Before **order for clearance** for home consumption/warehousing **(0-3)**
- Then, duty shall not be required to pay
- Relinquishment not allowed if offence appears to be committed under custom/other law, related to these goods

### Abatement of duty on damaged /deteriorated goods (Sec-22 & 70)

Shown to satisfaction of AC/DC , that Goods damaged / deteriorated

<b>Damaged or deteriorated :</b> ✓ before or during unloading <b>(0-1)</b>	Due to any reason
<b>Damaged :</b> ✓ After unloading but before custom examination <b>(1-2)</b> ✓ In warehouse before <u>actual</u> clearance <b>(3-4)</b>	<b>due to accident</b> and not due to willful act, negligence, default of importer/employee/agent.

$$\text{Duty on Damaged / Deteriorated goods} = \frac{\text{Value of damaged / deteriorated goods}}{\text{Value of goods before damaged/deterioration}} \times \text{Duty on goods before damage / deterioration}$$

### Sale from DTA to SEZ not chargeable to export duty

- Export means taking goods out of India
- DTA & SEZ both are in India, hence not attract export duty
- No section of SEZ act provide for export duty  
Hence no export duty levied on sale from DTA to SEZ

**Custom Station** means : Place where imported goods comes i.e. custom port + airport + international courier terminal + foreign post office + land custom station.

**Custom Area** means : Place where goods kept before clearance i.e. Custom Station + licenced warehouse

## Chapter 2 : Types of Duty

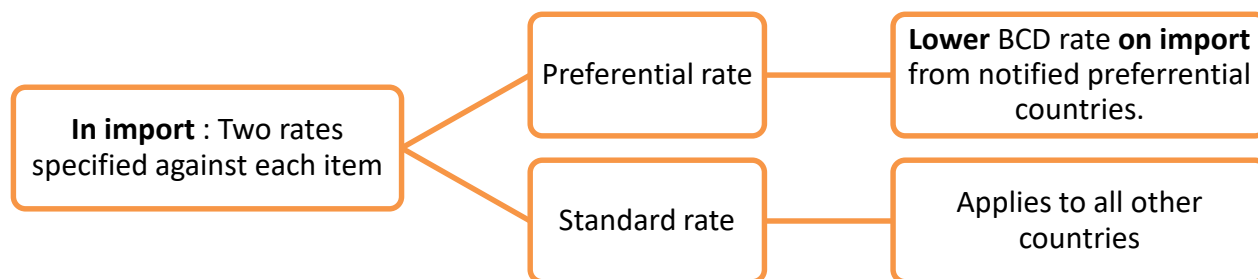
Basic summary of applicable duties/taxes on import/export of goods.

Name of duty	Applicability
Basic Custom Duty (BCD)	Apply on all imports from all countries at product wise rate Apply on export only on few products
IGST and Compensation cess	Apply on all imports @applicable GST rate on said goods in India
Protective duties, safeguard, CVD, ADD	CG notify on specific product/countries when import price is lower than usual

### Basic Custom Duty (BCD) (Sec-12)

Charging section : The duties of custom shall be levied

- on import or export of goods, as per rates specified in **Custom Tariff Act (CTA)**



- Condition to fulfil for availing preferential rate**
  - at time of importation, make specific claim for it
  - Importer to declare that goods **manufactured or produced** in preferential countries
  - area notified as preferential area under Custom Tariff Act
  - origin of goods determined in accordance with rules

**Duty on export** : Normally duties are not levied on export, however some items are chargeable to export duty to discourage the export of such limited items.

### Protective duties of custom (Sec 6 & 7 of CTA)

- Price of imported TV from China (1,00,000) + BCD (10,000) = Total 1,10,000/-
- Price of same quality TV by Indian manufacturer = @ 1,18,000/-  
This may be due to cheap labour /RM etc. in other country
- No one will buy Indian TV and company will shut down.

- To protect Indian company, Govt. by notification and on recommendation of tariff commission, can levy protective duty.
- Factors while deciding rate/amount of duty
  - a) Should not be very high
  - b) Should be sufficiently attractive so to bridge gap between demand and supply.

### Safeguard measure/duty (Sec 8A)

When	<ul style="list-style-type: none"> <li>➤ Articles imported into India in increased quantity</li> <li style="text-align: center;">+</li> <li>➤ Increased import is causing serious injury to domestic industry</li> </ul>																																			
Duration	For 4 years extended up-to 10 years																																			
Exemption	<p>1. Articles <b>originating</b> from developing countries if</p> <ul style="list-style-type: none"> <li>➤ Import of that goods from that country <math>\leq</math> 3% of total import of such good</li> <li>➤ If more than 1 developing country each less than 3% but aggregate <math>\leq</math> 9% of total Import of such goods in India</li> </ul> <table border="1" style="width: 100%; border-collapse: collapse; margin: 10px 0;"> <thead> <tr style="background-color: #ADD8E6;"> <th>Import from country</th> <th>Import %</th> <th>Duty <u>exempt</u></th> <th>Import %</th> <th>Duty <u>exempt</u></th> </tr> </thead> <tbody> <tr> <td style="text-align: center;">A</td> <td style="text-align: center;">4%</td> <td style="text-align: center;">No</td> <td style="text-align: center;">4%</td> <td style="text-align: center;">No</td> </tr> <tr> <td style="text-align: center;">B</td> <td style="text-align: center;">2.5%</td> <td style="text-align: center;">Yes</td> <td style="text-align: center;">2.5%</td> <td style="text-align: center;">No</td> </tr> <tr> <td style="text-align: center;">C</td> <td style="text-align: center;">2.8%</td> <td style="text-align: center;">Yes</td> <td style="text-align: center;">2.8%</td> <td style="text-align: center;">No</td> </tr> <tr> <td style="text-align: center;">D</td> <td style="text-align: center;">0</td> <td style="text-align: center;">NA</td> <td style="text-align: center;">2%</td> <td style="text-align: center;">No</td> </tr> <tr> <td style="text-align: center;">E</td> <td style="text-align: center;">0</td> <td style="text-align: center;">NA</td> <td style="text-align: center;">2%</td> <td style="text-align: center;">No</td> </tr> <tr> <td style="text-align: center;">Total of &lt; 3% countries</td> <td style="text-align: center;">5.3%</td> <td></td> <td style="text-align: center;">9.3%</td> <td></td> </tr> </tbody> </table> <p>2) Import by 100% EOU or SEZ is exempt. However, taxable if:</p> <ol style="list-style-type: none"> <li>a) specifically mention that duty will apply to them</li> <li>b) imported/manufactured goods sold in DTA (i.e. within India)</li> </ol>	Import from country	Import %	Duty <u>exempt</u>	Import %	Duty <u>exempt</u>	A	4%	No	4%	No	B	2.5%	Yes	2.5%	No	C	2.8%	Yes	2.8%	No	D	0	NA	2%	No	E	0	NA	2%	No	Total of < 3% countries	5.3%		9.3%	
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B	2.5%	Yes	2.5%	No																																
C	2.8%	Yes	2.8%	No																																
D	0	NA	2%	No																																
E	0	NA	2%	No																																
Total of < 3% countries	5.3%		9.3%																																	
Provisional safeguard duty	<p>Max. for 200 days</p> <p>Duty collected will be refunded, if finally duty not been imposed.</p>																																			
Approval in parliament	Any modification by parliament will be prospective.																																			

### Countervailing duty (CVD) on subsidized articles (Sec-9)

- **CG can imposed “countervailing duty” on import of goods if:**
  - Any country, directly or indirectly pays subsidy on manufacture, exportation or transportation of goods.
  - Such goods imported in India whether from producing country or through another country.

- Article may be is same condition or condition may have been changed by another country supplier
- Subsidy includes low interest rate loan, grant, tax benefits, price support by Govt. or Govt body or private body supported by Govt.
- CVD shall not exceed subsidy amount.
  
- ❖ Subsidy will reduce cost for exporter & can enter India at reduced Price & affect domestic industry, hence this duty.
  
- **CVD not to be levied, unless it is determined that**
  - i) Subsidy depends on export performance.
  - ii) Subsidy relates to use of domestic RM over imported RM
  - iii) Subsidy given to limited persons engaged in production/export of article

### Anti-dumping Duty (ADD) ( Sec-9A)

- Sometime outside exporter reduces their price to dump their products into India to cause injury to domestic industry of India
- In such case ADD can be levied only if "like articles" being produced in India
- ADD will be lower of :- **Margin of dumping** or **Injury margin**

Example :

Alibaba in China sell goods @ Rs. 1000 to China customer, selling price of such goods in India is Rs. 970/-  
A Ltd. imported such goods @ Rs. 800 and landed value is Rs. 820/-

A	Normal value Means : Selling price within exporting country If same not available: take Price charged from 3 <sup>rd</sup> country, or Cost of production + admin/selling cost + profit	1000
B	(Less) Export price If export price is not available/unreliable : take Price at which goods sold by importer to independent buyer	800
<b>(A-B)</b>	<b>Margin of dumping</b>	<b>200</b>
D	Fair selling price (FSP) in India (Cost + profit)	970
E	(Less) landed value (Assessable value + BCD)	820
<b>(D-E)</b>	<b>Injury margin</b>	<b>150</b>
	<b>ADD (Lower of 200 and 150)</b>	<b><u>150</u></b>

- ❖ If importer proves that ADD collected > actual margin of dumping
  - CG to reduce rate of ADD
  - Importer entitle to **refund** for such excess duty
  
- ❖ Date of commencement will be date of publication of notification imposing ADD/provisional, in Gazette.

## Common points for CVD and ADD

- ❖ **Duties not applicable**, if Import by 100% EOU or SEZ. However, duty apply if:
  - a) specifically mention that duty will apply to them, or
  - b) imported/manufactured goods sold in DTA (i.e. within India)
- ❖ CG may extend duties to other article say Y or other country say Hongkong, if importer **circumventing (by-passing)** duties levied on article X of China. Circumvention may be by following ways
  - By altering description, name, composition of article X
  - By importing in unassembled or disassembled form
  - By changing country of origin or export
  - Other manner to make duty ineffective
- ❖ **Absorption of duty**
  - After levying duties, foreign vendor decreased the export price even though there is no reduction in cost of production, or there is no change in resale price in India
  - Hence, duties become ineffective
  - Govt. may modify or increase such duty to counter such effect of absorption
- ❖ **Duration of duty**
  - 5 yrs + extention up-to 5 yrs
  - Temporary Revocation - Max 1 year at a time
- ❖ CG can impose **provisional** CVD/ADD, and will refund the excess duty if final duty < provisional.
- ❖ Duties can be levied **retrospectively** by CG, if:

CVD	ADD
Massive import in short period caused injury to domestic industry, and	History of dumping which caused injury OR importer was/should have aware that exporter is dumping which could cause injury
Retrospective levy is must to avoid recurrence of such injury.	Injury caused by massive dumping in short span can be remediated by retrospective levy.
Retrospective can-not be beyond 90 days from date of notification.	

## In following situation CVD & ADD can't be levied

- Both ADD & CVD can't be levied together on an article
- Can't be levied just because such articles are exempt or duties/tax being refunded in exporting country.

- Import from **WTO member or country with most favored nation agreement**, unless proved that import cause /threat material injury to domestic industry
- Provisional duty can't imposed on import from **specified countries** unless Preliminary finding of subsidy or dumping causing injury to domestic market and Determination has been made that provisional duty is necessary

### Surcharge/Cess

- Social welfare surcharge (SWS) @ 10% of (BCD + protective duty) (Apply on all imports, not on export)  
**Always calculate for import even if not given in question**
- Agriculture Infrastructure & Development Cess (AIDC) leviable on assessable value determined u/s 14 (value on which BCD charged)
  - AIDC applicable on only some notified goods e.g. apple, kabuli chana, gold, silver etc.

### IGST u/s 3(7) & GST compensation cess u/s 3(9)

- IGST and GST compensation cess is applicable on import of goods to be paid by importer along with custom duties.
- IGST and cess rate will be same as applicable on goods in India.
- Cess applies to only few notified luxury and sin goods like pan masala

### Assessable value for levying IGST & GST cess

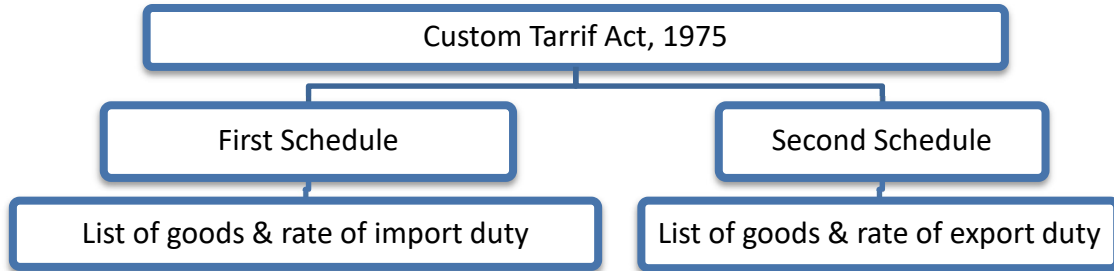
- Case 1 : Importer Mr. A filed BoE for home consumption
- Case 2 : If importer Mr. A kept goods in custom warehouse and sold to Mr. B and B sold to C within warehouse. Now C filing BoE for home consumption and paying taxes.

	Nature	Case 1	Case 2
(I)	Assessable value for custom (AV)	1,00,000	1,00,000
(II)	Basic custom Duty @10% on AV	10,000	10,000
(III)	Social welfare surcharge @10% of BCD	1000	1000
(IV)	Safeguard duty/CVD/ADD @5% on AV <b><u>(if applicable)</u></b>	5000	5000
<b>Total</b>	<b>Assessable value for GST : Total (I + II + III)</b>	<b>1,16,000</b>	<b>1,16,000</b>
Sale price	Transaction value (price) of last transaction in warehouse i.e. charged by B from C for e.g.	N.A.	1,20,000
<b>Higher</b>	<b>Take higher of above 2</b>	<b>1,16,000</b>	<b>1,20,000</b>
(IV)	IGST @ 18% on higher value	20,880	21,600
(V)	GST cess <b><u>(if applicable)</u></b> @12% on higher	13,920	14,400
<b>(II+III+IV +V)</b>	<b>Total duty + IGST + GST cess (Round off)</b>	<b>45,820</b>	<b>47,000</b>

Note : above rates are assumed rates.

## Chapter 3 – Classification of imported and export goods

Different goods are chargeable to different rates of custom duty as per 2 schedules of Custom Tariff Act.



### Specimen of First schedule

**SECTION I**  
**LIVE ANIMALS; ANIMAL PRODUCTS**

**Section notes**

**NOTES:**

- Any reference in this Section to a particular genus or species of an animal, except where the context otherwise requires, includes a reference to the young of that genus or species.
- Except where the context otherwise requires, throughout this Schedule, any reference to "dried" products also covers products which have been dehydrated, evaporated or freeze-dried.

**CHAPTER I**  
*Live animals*

**Chapter notes**

**NOTE:**

This Chapter covers all live animals except :

- fish and crustaceans, molluscs and other aquatic invertebrates, of heading 0301, 0306, 0307 or 0308;
- cultures of micro-organisms and other products of heading 3002; and
- animals of heading 9508.

Tariff Item (1)	Description of goods (2)	Unit (3)	Rate of duty	
			Standard (4)	Preferential Areas (5)
0101	LIVE HORSES, ASSES, MULES AND HINNIES			
	- Horses:			
0101 21 00	-- Pure-bred breeding animals:	u	30%	-
0101 29	-- Other:			
0101 29 10	--- Horses for polo		30%	-
0101 29 90	--- Other		30%	-
0101 30	- Asses			
0101 30 10	--- Pure-bred breeding animals:	u	30%	-
0101 30 20	--- livestock	u	30%	-
0101 30 90	--- Other	u	30%	-
0101 90	-- Other:			
0101 90 30	--- Mules and hinnies as livestock	u	30%	-
0101 90 90	--- Other	u	30%	-
0102	LIVE BOVINE ANIMALS			
	- Cattle:			

21 Sections → 98 Chapter → Heading → Subheading → Items

- Custom tariff is based on international Harmonized system of nomenclature (HSN)
- **Section notes** : To interpret respective sections & applicable on items in respective sections
- **Chapter notes** : To interpret respective chapters & applicable on items in respective chapters
- Coverage/scope of heading depends on section/chapter notes. These notes have over-riding effect on heading.

### Rules of interpretation

- The purpose of their inclusion of rules in CTA is
  - a) to standardize the manner in which the product nomenclature in the schedule is to be interpreted
  - b) Give statutory force to these rules
- Rules to be applied in sequence.

### Rule 1

- **Title** of section, chapter and sub-chapter are for ease of reference only and not having legal force.
- Classification shall be done based on heading, related section and chapter notes & Rule 2-6
- Rules need not to be referred, if classification possible based on heading, sub-heading, section notes & chapter notes

### Rule-2 (a) - Classification of incomplete/unfinished goods

- If “heading” refers to a finished/complete article, the incomplete, unfinished, unassembled, disassembled (IUUD) form of that article shall also be classified under the same heading, provided the IUUD goods have the **essential characteristics** of the finished goods.

Ex: Car without seats classified as Car

- Minor adjustment required in IUUD is ok, but if require major process then not considered having essential characteristic hence will not fall under 2(a)

### Rule-2(b)

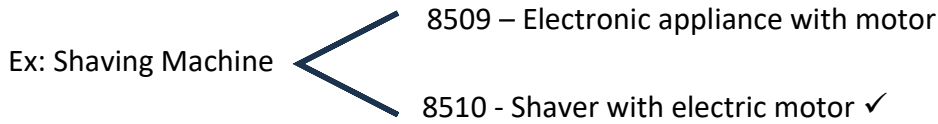
- Reference in heading to material/substance includes mixture having such material/substance  
Ex. : Coffee mixed with chicory will classified under coffee.
- Reference to goods containing a particular material/substance would include a reference to goods **consisting wholly or partly** of such material or substance.
- If goods have more than 1 material / substance - classify as per Rule-3

### Rule-3 - If goods classifiable under 2 or more headings

Classify as below

**Rule-3(a) - Specific over General**

- Classify in heading having more specific description over general



**Rule-3(b) - Essential Character Principal**

- Mixture/composite goods should be classified on the basis of that material or substance **that gives it, its essential character**. This applies only for retail sale products.

Ex : Pencil with eraser at back → Pencil ✓

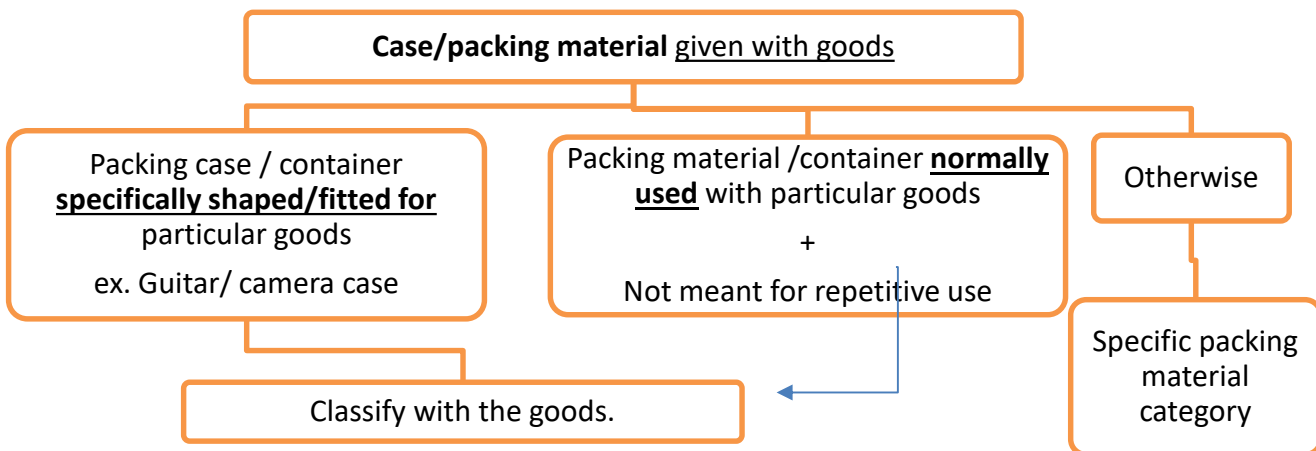
**Rule-3(c) - Latter the Better**

- If Can't be classified by rule 3(a) & rule 3(b), classify under heading occurring in last in numerical order among heading in which goods can be classified. (8232, 8935, 8114 → 8935 ✓)

**Rule-4 - Akin rule**

- If goods can-not be classified by above rules
- Classify under heading in which most akin (similar) goods are classified.

**Rules -5**



Container gives the whole essential character e.g. gold case : Classify considering separate goods.

Type of parts	Classification
Parts suitable for particular machine	Classify under machine
General purpose parts	Classify in respective heading

Separate heading given for parts

Classify in parts heading

## Rule- 6

Sub-heading can be compared with another sub-heading within same heading

## Project Imports

- Usually in a project, different types of items having different rate of duty, it is difficult to classify each separately, hence to simplifying such case, one consolidated rate of custom duty made applicable to all items in project.
  - However, Exemption will apply item-wise.
- Applies for initial set-up or substantial expansion
- Spare part / consumable/ raw material also allowed up to 10% of total import
- **Applies to :** Industrial plants, irrigation projects, power projects, mining/mineral exploration Projects

## Goods with multiple articles

If a goods with a single price consist of **multiple articles** → highest tax rate applicable on any article will apply on full value.

Exception : If goods contain **parts/accessories** in ordinary course, rate of main supply will apply.

If articles liable to tax based on quantity, respective rate will apply.

## Judgements

- In exemption notification, if item is mentioned without tariff heading, then exemption would be available even though for purpose of classification it may be otherwise.
- Without operating system (OS) laptop can't work hence laptop preloaded with OS classified as laptop. OS can't classify separately.

### Classification based on use of the goods (Market parlance theory)

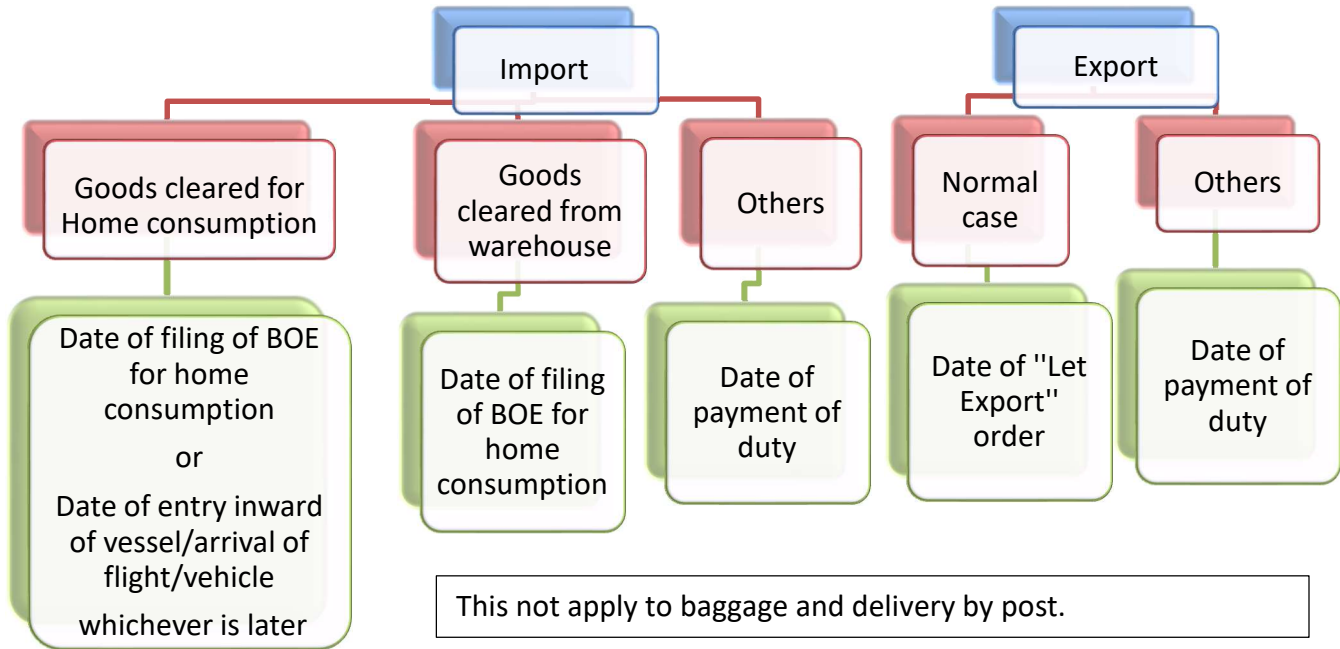
- Antiseptic cleaning solution used by doctors → Medicament not washing tools
- Dry skin cream generally prescribed by doctor → Medicament not cosmetic
- Soft Serve of Mc Donald → Ice-cream not edible Preparation

## General explanatory note – 1 (Relevance of number of dashes (-, --, ---, ----))

- Single dash "-" before article description denotes that the said article/group of article is sub-classification of the article/group covered by the said heading.
- Two dashes "--" denotes that that the said article is sub-classification of the immediately preceding article which has "-".
- " ---" or "----" denotes that the said article is a sub-classification of the immediately preceding description of the article which has "-" or "--"

## Chapter 4 : Valuation of goods

Rate of duty & tariff value shall be on date of (Sec-15/16)



### Rate of exchange (use only rates notified by CBIC)

#### Import

- Date on which **first BOE filed** for warehousing or home consumption

#### Export

- Date on which Shipping bill / Bill of Export filed

### Custom valuation (import) rules, 2007

If value can't be determined by rule 3, then refer rule 4 and so on i.e. sequentially.

Rule-3	Determining method of valuation
Rule- 4	Transaction value of identical goods
Rule-5	Transaction value of similar Goods
Rule-6	If not determined as per rule 3,4,5
Rule -7	Deductive value
Rule- 8	Computed value
Rule- 9	Residual method
Rule-10	Cost & service to include in valuation

## Related person

1. Officers/Directors
2. Legally recognised partners
3. Employer & employee
4. Sole agent/sole distributor
5. Members of same family
6. A Ltd. **control** B (A & B are related)
7. A Ltd. (i) **controls**, or (ii) own  $\geq 5\%$  voting shares, of B and C (B & C are related)
8. B & C together **control** A Ltd. (B & C are related)

Control generally means > 51% equity holding

At point no. 7, it is >25% in GST provision, all else are same.

## Rule 3

Assessable value = Transaction value + addition of rule 10(1) and 10(2)

If following conditions satisfied

- a) No restriction on buyer regarding use of goods except
  - i) imposed by Indian law/authorities, or
  - ii) limit of geographic area, or
  - iii) restriction doesn't affect the value
- b) Foreign vendor not entitle for any proceeds from sale value except given in 10(1)
- c) If seller/buyer are related than prove that
  - i) relationship doesn't affect the price
  - ii) declared value is approximately equal to identical/similar goods with unrelated buyer

**Transaction value (Sec 14)**, means

Price **actually paid or payable** of goods (final re-negotiated price)  
Less : discount provided before goods reached to Indian port

where:-

- Price is sole consideration &
- Seller and buyer are not related
- ✓ at place of importation (i.e. Indian port/airport) [in case of import]
- ✓ at place of exportation (i.e. Indian port/airport) [in case of export]

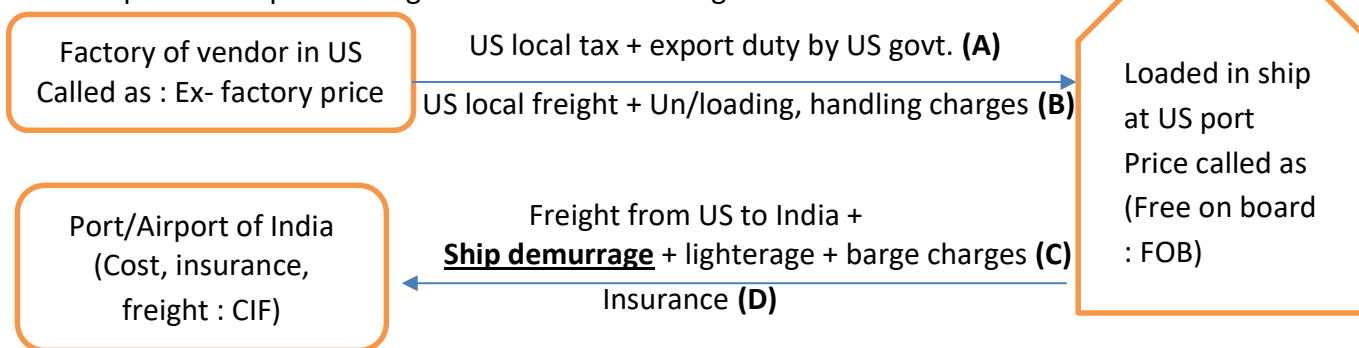
## Cost/services to include in valuation : Rule-10(1)

Following to be added : Only when same is not already included in price charged by supplier **(Rule 10(1))**

1. Following expenses when **incurred** by buyer
  - i) Commission & brokerage - except buying commission  
[Canalizing agent is not a buying agent]
  - ii) Cost of containers – if not returnable
  - iii) Cost of packing material + labour
2. Material, component, parts, tools, dies etc. provided by buyer
  - Free – add full value
  - At concessional rate – add difference value
3. Engineering, development, art work, design, sketches **only if undertaken out of India**
4. Royalty, licence fees, any other payment made by buyer as “**condition of the sale**” whether process undertaken before or post-import. (If nothing mentioned, assume payment is under “condition of sale”)
5. Amount paid to vendor out of resale amount of imported goods
6. Payment made by buyer to 3<sup>rd</sup> party to fulfil seller's obligation

### Concept : various pricing terms (inco terms)

Based on up-to which point foreign vendor incurred the given costs



After goods reached at port of India, further charges not to be included in valuation viz.

- Unloading/handling charges at Indian port
- Cost of trans-shipment (Means sending from one port to another port/ICD/CFS etc.)
- Port/airport/container demurrage charges (Charges for using property for more than agreed days)

### Calculation of assessable value and tax

	Desc	Amount
	FOB = (Ex-factory price + A + B) OR CIF - C - D OR FOB amount directly given in Question	XX
<b>Add</b>	Addition as per rule 10(1)	XX
<b>Total</b>	<b>Custom FOB value</b>	<b>XX</b>

Add	Amount of C is ascertainable and In case of AIR transport : 20% of custom FOB > B+C	Take C
Add	C not ascertainable OR In case of air transport : 20% of custom FOB < B+C	20% of custom FOB*
		Reduce amount of B, as same is already got included in FOB.
Add	Insurance amount ascertainable	XX
Add	Insurance not ascertainable	1.125% of custom FOB**
<b>Total</b>	<b>CIF value</b>	
(I)	Assessable value (AV) (Round off to CIF)	
(II)	Basic Custom Duty (BCD) @rate on AV	
(III)	Social welfare surcharge @10% of BCD	
(IV)	Safeguard + CVD + ADD	
<b>Total</b>	<b>Total (I + II + III + IV)</b>	
(V)	IGST @rate on "Total"	
(II+III +IV+ V)	Total duty + GST (Round off)	

If custom FOB can-not be calculated, then it is allowed to take

\*20% of (custom FOB + insurance)

\*\*1.125% of (custom FOB + C)

### Example

Price of imported goods ex-factory	10,000 \$
Transport charge from factory to port of shipment	500 \$
Handling and loading charge at export <b>airport</b>	750 \$
Unloading & handling at import airport	1000 \$
Transport cost from export airport to import airport	4000\$
Insurance cost not ascertainable	
Commission paid (not buying commission)	Rs. 50,000
Exchange rate@ 100₹ / \$	
Custom duty @20% and IGST @18%	

	Desc	Amount
	(Ex-factory price + A + B)	\$10,000
Add	Local freight	\$500
Add	Handling/loading charges	\$750
Total	FOB	\$11,250
	FOB in INR	11,25,000

Add	Commission	50,000
<b>Total</b>	<b>Custom FOB value</b>	<b>11,75,000</b>
Add	In case of air transport : 20% of custom FOB < B+C (WN 1)	2,35,000
Reduce	amount of local freight/loading $\$(500+750)*100$	(1,25,000)
Add	Insurance not ascertainable (1.125% of 11,75,000)	13,219
<b>Total</b>	<b>CIF value</b>	<b>12,98,219</b>
(I)	Assessable value (AV) (Round off to CIF)	12,98,219
(II)	Basic Custom Duty (BCD) @rate on AV	2,59,644
(III)	Social welfare surcharge @10% of BCD	25,964
<b>Total</b>	<b>Total (I + II + III + IV)</b>	<b>15,83,827</b>
(V)	IGST @rate on "Total"	<b>2,85,089</b>
(II+III +IV+ V)	Total duty + GST (Round off)	<b>5,70,697</b>

All transport + loading + unloading u/r 10(2)

$$\text{Actual} = [4000 + 500 + 750] = 5250\$ \times 100 = 525000$$

OR

$$\begin{aligned} 20\% \text{ of } [11,75,000] &= 2,35,000 \\ \text{Lower} &= 2,35,000/- \end{aligned}$$

### Rule -4/5 - Transaction value of identical/similar goods

- Assessable value = Transaction value of identical/similar goods **imported in India** at same commercial level & substantially same qty
- Or
- Transaction value of identical/ similar goods at different commercial level or different quantity  $\pm$  adjustment to take account of difference.
- Add : Freight & insurance cost on identical/similar goods transaction  $\pm$  adjustment due to difference in distance/mode.
  - More than one transaction value, **lowest** shall be taken.

Identical goods	Similar goods
Identical in characteristic, quality and reputation	Not alike in all respects, have like characteristics and component material and capable to perform same function

Manufactured in same country by same/ different manufacturer

If drawings / design etc. supplied from India on free of charge or concessional rate, not regarded as identical/similar goods.

### Rule-6

- If not able to determine value using rule 3-5, value shall be determined as per rule 7 and 8 sequentially
- However, with approval of P.O. rule 8 can be applied earlier

### Rule-7 - Deductive value method

<b>Price at which imported or identical or similar goods sold in <u>greatest aggregate quantity</u> to unrelated buyers in India at same time or up-to 90 days after import</b>	<b>xxx</b>
<b>LESS :</b>	
Commission, general/marketing exp. and profit in India	<b>(xxx)</b>
Transport, insurance and associated cost within India	<b>(xxx)</b>
Custom duty, GST, other taxes	<b>(xxx)</b>
Value addition due to further Processing [If Imported goods sold after further Processing]	<b>(xxx)</b>
<b>Assessable Value</b>	<b>xxx</b>

### Rule-8 - Computed value (cost Based)

Cost/value of material, fabrication, other processing cost in producing imported good	<b>xxx</b>
Add: Profit, selling and general expenses [made usually in same kind of goods <b>from same country</b> ]	<b>xxx</b>
Add : Transportation, un/loading, handling, insurance cost as per rule 10(2)	<b>xxx</b>
<b>Assessable value</b>	<b>xxx</b>

### Rule-9 Residual Value

Determine value using reasonable means consistent with general provisions and basis available data.

However, such value should not exceed price of such or like goods at same time/place of importation to unrelated buyer of India.

- However, value should not be determined in this rule on basis of
  - Selling price of goods produced in India
  - Price of goods in exporting country or export price to other country
  - Method which provides to take highest of two alternative values
  - Cost of production (CoP computation basis identical/similar goods allowed)

- Minimum custom values
- Arbitrary or fictitious value

### Rule-12 : Rejection of declared value

- P.O. has power to raise doubt about truth & accuracy of value declared on following grounds ie.
  - Significantly higher value was assessed for other identical/similar goods of similar quantities
  - Abnormal discount or abnormal reduction from ordinary price
  - Non declaration/misdeclaration of product details
  - Fraudulent or manipulated documents

In such case, transaction value will get rejected and valuation will be done as per Rule 4 to 9.

### Customs (Assistance in Value declaration of identified goods) Rules (CAVR)

- 1) CBIC can specify certain goods for which importer is required to fill additional details in BoE and fulfill additional obligations.
- 2) Officer to perform additional checks to ensure correct value declared, if doubt he can reject the valuation

Rules will not apply to :

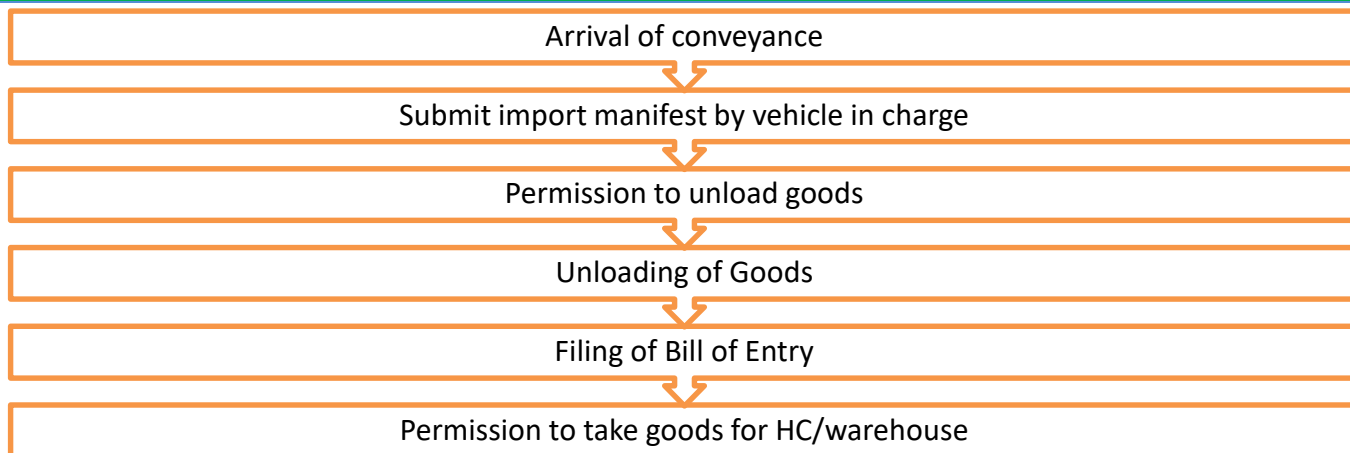
- 1) Imports not liable to duty or liable to duty at fixed tariff rate
- 2) Import under FTA license (AA, EPCG) or for re-export
- 3) Import where related party investigation finalized.
- 4) Project imports
- 5) Import by Govt/PSU

### Export Valuation Rules (Follow in sequence)

Rule	Method/applicability	Valuation
3	Seller and buyer a) Unrelated b) Related, however relationship has not influenced price	Transaction value (Price payable by foreign customer) Costs up-to loading at export port is included i.e. FOB price charged from customer.
4	Comparison	Transaction value of goods of like kind/quality after adjusting difference due to date, quantity, quality, freight etc.
5	Computed value	Cost of Production, manufacture or processing of Goods + Design or brand charges + profit

## Chapter 5 : Importation and Exportation (covers : baggage rules)

### IMPORT PROCEDURE (AT GLANCE)



### Arrival of vessel/aircraft in India (Sec-29)

Vessel or aircraft entering India shall not land at any place other than customs port or customs airport (so that custom duty can be collected)

**Except:-**

Landing due to accident, weather, other unavoidable cause, however in such case person in charge has obligation to:

- Report arrival/landing to nearest custom officer or police station & comply with directions
- Should not allow unloading of goods/ passengers/crew unless required for health & safety

### Filing arrival manifest or import manifest or import report (Sec-30)

What it is	Person in-charge of vessel/flight - to file document called "arrival manifest" or "Import manifest" to port officer before arrival vehicle – "import report" within 12 hours of arrival
What details it contain	<ul style="list-style-type: none"> <li>➤ Goods brought to India for unloading at that port / other port</li> <li>➤ Goods loaded from India for export carried in conveyance</li> </ul>
Belated	Accepted but if no valid reason then penalty up-to 50,000/-
Amendment	Allowed if error without fraudulent intent
Effect	Can't unload goods which are not mentioned in manifest without permission of officer

## Unloading and custody

Sec – 31	Goods shall not be unloaded from <b>vessel</b> unless “Entry inward” granted by officer. No need of entry inward for a) Aircraft/vehicle (Air and land route) b) Accompany baggage, mail bags, perishable/hazardous goods.
Sec-34	Loading/ unloaded allowed only under supervision of custom officer Exception : CBIC may allow by notification or officer may allow by special permission
Big vessel to small boat	Sometimes big vessel can't come to port due to less water or other reasons hence small boats <b>called as barge or lighterage</b> bring goods/cargo from vessel to port. Document called “ <b>Boat note</b> ” is required for that.
Additional fee	No loading/unloading on Sunday, holidays and after working hours unless prescribed fee paid
Checking	Officer may board and stay in conveyance for required period
Custodian	Goods after arrival of ship till clearance for home consumption/ warehousing remains in custody of custodian approved by Commissioner. He is to maintain record and not allow removal without following procedure

## Passenger & crew arrival manifest (Sec-30A)

What it is	Person in-charge of vessel/flight to file - before arrival vehicle by land - within 12 hours of arrival
What details it contain	Name and details of passenger

## Bill of Entry (BoE) (Sec 46)

- Every importer to file a document called Bill of Entry (BoE) to officer with import invoice for assessment of custom duty + IGST for **each** import.
- **Can not file before 30 days of expected arrival but last date to file is one day before actual arrival of conveyance.**
- If details not available for filing BoE, goods can be **temporary** kept in custom warehouse, called as “**warehousing without warehousing**”. Warehousing provisions **not apply** on it.

### **3 types of (BoEs)**

Action	BoE type
Take goods to own factory/godown	BoE for “Home consumption”
Store in custom warehouse	BoE for warehousing (Into bond BoE)

Take from warehouse to own factory/godown	BoE for “Home consumption” from warehouse (Ex-bond BoE)
---	---

### Time limit for payment of duty

In case of self – assessment	On date of presentation (filing) of BoE <b>for home consumption</b>
In case of assessment, re-assessment, provisional assessment	Within 1 <b>working</b> day (i.e. excluding holidays) from return of BoE by officer to importer
Where deferred payment permitted for AEO (Tier 2 and 3)	From due date as specified in rules

### Due date of deferred payment (clear first pay later)

For BoE returned	Due Date
From 1 <sup>st</sup> day to 15 <sup>th</sup> of any month	16 <sup>th</sup> of that month
From 16 <sup>th</sup> day to last day of any month	1 <sup>st</sup> of next month
16 <sup>th</sup> to 31 <sup>st</sup> March	31 <sup>st</sup> March

- **If due date is holiday, then next working day will be due date**
- Default more than once in 3 consecutive months, facility get withdrawn. Facility get re-stored once duty+int. paid.
- Facility not allowed if goods not declared in BoE

### Assessment (Sec-17)

- Means quantification of custom duties payable
- Importer by filing BoE and exporter **by filing “shipping bill” shall self-assess duty**
- Officer may verify on sample basis
- If found Self-assessment not correct, officer may re-assess duty
- If re-assessment increases duty which not agreed by taxpayer, officer to pass speaking order within 15 days of re-assessments

### Faceless assessment

System will identify BoEs which needs scrutiny and task of such scrutiny will be assigned to officer sitting at other port. Key objectives:

- a) Assessment by unknown officer will reduce physical interface/corruption
- b) Speed by better utilization of officers
- c) Uniformity
- d) Promoting sector/functional specialization by assign specific sector to officer.

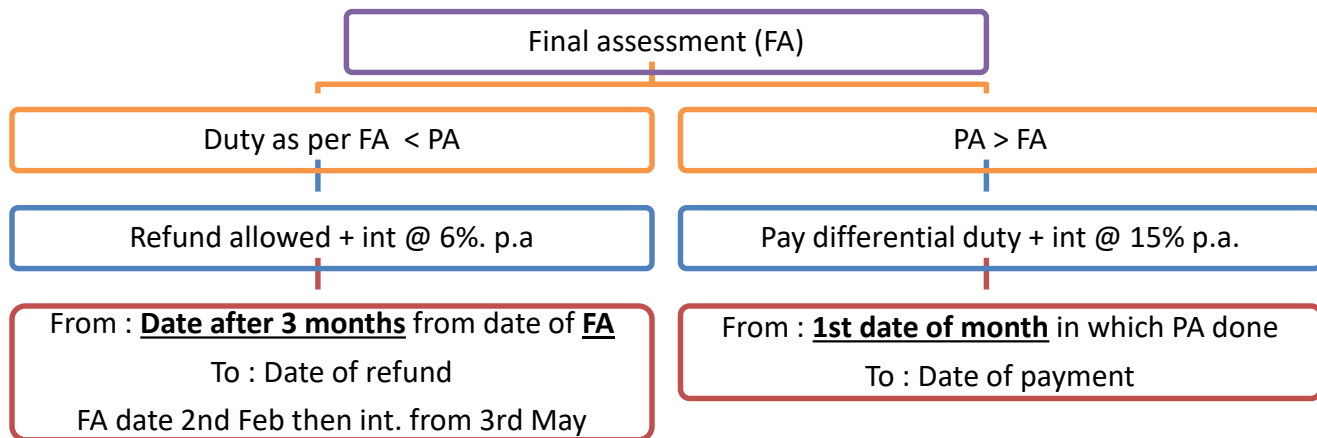
## Provisional Assessment (Sec-18)

- Provisional assessment (PA) allowed in following cases
  - Importer/exporter unable to make self-assessment
  - Officer feels that chemical or other test of goods is required.
  - Necessary doc & Info. provided **but** officer wants to make further enquiry
  - Necessary doc & Info. not provided **AND** officer wants to make further enquiry
- Taxpayer to pay provisional duty + execute bond + furnish security and clear the goods

## Final Assessment of PA

Officer to finalize assessment in 2 months [+3 month's extension by commissioner] from

- intimation of submission of all required doc/Info.
- chemical test or other test report
- enquiry, investigation, verification report



Separate calculation for each BoE.

Refund is subject to proof that burden of tax not passed to other (i.e. no unjust enrichment)

## Order for clearance of goods (i.e. allowing goods to leave port)

Once Custom officer satisfied that

- Goods not prohibited goods, and
  - duty has been paid
- make order for clearance of goods for home consumption

## Audit

- Officer may conduct audit even after clearance of goods
- Auditee includes importer, exporter as well as custodian, licensee of warehouse, person clearing, forwarding, storing, selling or purchasing such goods.
- Salient features
  - Auditee to preserve records for 5 years
  - Audit conducted at auditee premise with 15 day's intimation in advance

3. Auditee may accept finding & pay duty + int. + penalty
  4. Officer can avail assistance of experts viz. CA, CMA, IT etc with permission of commissioner
  5. Penalty for contravention Rs. 50,000
- Two types of audits
    - 1) Transaction Based Audit (TBA) : Particular transaction is audited. It may be converted to PBA.
    - 2) Premise Based Audit (PBA) : Cover import/export within a period and check commercial record, FS and contracts to verify correctness of BoEs/Shipping bills.

### Payment through electronic cash ledger (Sec-51A)

Old system : Login to net banking every-time and pay duty when every time BoE filed.

Cash ledger system : Deposit amount in wallet of custom dept in advance and use it for duty, int etc. payment. Easy!!

#### Apply to all except following (exemption)

- Goods imported/exported from custom station where custom automated system not in place
- Duty on accompanied baggage
- For payment **other than** duty, IGST, cess and interest/penalty, fee under Custom Act.
- ~~Goods imported/exported at International courier terminal~~ (Exemption removed on it)

### Ledger for duty credit (credit ledger)

Old system : Get physical copy of advance licence etc. as export benefit and submit it while import as payment of custom duty.

Credit ledger system : Such benefits, remission will credited in credit ledger electronically and can be used for payment of duties or can be transferred to other person.

### Disposal (sale) of goods not cleared (Sec-48)

- Custodian can sell off the imported goods through auction with approval of custom dept & notice to importer if:
  - Goods not cleared for home consumption or warehousing within 30 day or extended period
  - **Ownership relinquished** by importer u/s 23
- Custodian to file consolidated (buyer wise) BoE and pay duty.
- Animals/ foodstuff/ hazardous goods could be sold before 30 days with approval of officer.

### Storage of goods in public warehouse pending clearance

- BoE has been filed but goods can't be cleared within reasonable time.
- AC/DC on application allow to store goods in **public** warehouse for 30 days + 30 days extn.

### **Procedure of export (Sec- 50 & 51)**

- Exporter to file electronically shipping bill (for vessel/air) or Bill of Export (for land) and pay export duty (if applicable)
- **Custom officer will order for shipment known as “Let Export” order after satisfying that**
  - Goods not prohibited
  - Duty has been paid
- If Goods mentioned in shipping bill not exported, furnish information to officer within 7 days of departure

### **Requirement for loading of export goods (Sec-39/40)**

For loading of goods in conveyance required following

- Entry outward granted (only for vessel)
- Shipping bill / Bill of export approved by officer
- “Let export” order
- Boat note (if applicable)
- For baggage and mail, only after permission of export by officer

### **Filing of Departure manifest, Export Manifest, Export report (Sec-41)**

- To be filed before departure from port/airport by person in charge or person notified by CG
- Contain details of vessel, goods on boat, store, equipment, crew, Passenger etc.
- Delayed filing allowed, however if no sufficient reason penalty up-to Rs. 50,000/-
- Amendment allowed if error without fraudulent intent
- Prepared basis bill of lading (ship), air-consignment note (air) or lorry receipt (road) issued by conveyance to exporter.

### **No conveyance to leave without written order (Sec-42)**

Such order passed by custom officer only after

- Person in charge answered all questions put by custom officer
- Provision of Sec-41 complied with
- Shipping bill, Bill of export or any other required documents given to officer
- All charges or penalties been paid or secured by deposit/guarantee.
- Goods loaded in contravention have been unloaded or person in charge given undertaking to bring the goods back to India.

## Import/export by post or courier - Relevant date for rate of duty and tariff value

### For import

Date on which postal authority or courier agent, present list of goods to officer for assessment  
or  
Date of arrival of **vessel (only for post)**  
whichever is later

### For export

Date on which **goods delivered** by exporter to postal authority or courier agency

## Special provisions related to "Stores"

Store means goods like food, drinks, medicine, life boat for use in vessel/ aircraft and includes fuel, spare parts and equipment.

- 1) Goods imported meant for supply as "Stores" on foreign going vessel can be warehoused without assessing amount of duty.
- 2) Stores may be transferred from one vessel to another without duty (Transshipment)
- 3) No duty on imported goods consumed on vessel which will go outside India. However, duty would levy if vessel not going back outside India.
- 4) Imported stores supplied to foreign going vessel or Indian Navy ship considered export and entitle to 100% drawback (not 98%)
- 5) Indigenous goods, supplied as store for foreign going vessel/aircraft may be exported free of duty

## Baggage

- Means luggage, which comes with passenger called as "accompanied baggage" or comes separately before or after passenger comes called as "unaccompanied baggage", but not include motor vehicle.
- Owner of Baggage has to **make declaration** of its materials to officer of customs called Baggage declaration form.
- Rate of duty & tariff value will be as on date of filing baggage declaration form. Current rate is  

$$BCD \ 35\%$$

$$BCD + SWS = 35\% + 10\% \text{ of } 35\% = 38.5\%$$
- **Rate of duty is 100% on**
  - a. fire arms
  - b. Cartridges > 50 quantity
  - c. Cigarette > 100, cigars > 25, tobacco > 125gms
  - d. Goods imported **through courier**

## Passenger Baggage Rules

### General duty-free baggage allowance (Rule 3, 4, 5)

Class of passenger	Passenger coming from?	Articles allowed free of duty
<ul style="list-style-type: none"> <li>➤ Indian resident or</li> <li>➤ Foreigner residing in India or</li> <li>➤ Tourist of Indian origin</li> </ul>	Any country other than Nepal, Bhutan & Myanmar	a. Used personal effects & travel Souvenirs +  b. Goods up-to 50,000 in person/ <b>accompanied</b> baggage (excluding Annexure- I)
Tourist of foreign origin		a. Used personal effect & travel souvenir +  b. Goods up-to 15,000 in person/ <b>accompanied</b> baggage (excluding Annexure- I)
<ul style="list-style-type: none"> <li>➤ Indian resident or</li> <li>➤ Foreigner residing in India or</li> <li>➤ Tourist</li> </ul>	Nepal, Bhutan and Myanmar	a. Used personal effect & travel souvenir +  b. Goods up-to 15,000 in person/ <b>accompanied</b> baggage (excluding Annexure- I)
		If arriving by <b>land route</b> - Only personal effects allowed
Infant (2 yrs) in all above cases	Any	Only personal effects allowed
Person age $\geq$ 18 years	Any	One <b>laptop</b> (Note – Desktop/PC will cover above not here)
<b><u>Person returning India after residing abroad for &gt;1 year</u></b>	Any	<b>Additional jewellery:</b> <ul style="list-style-type: none"> <li>➤ Male – 20 gms with a value cap of Rs. 50,000</li> <li>➤ Female - 40 gms with a value cap of Rs. 1L</li> </ul>

- Allowance can't be pooled (clubbed) for 2 or more persons.  
 Mr. A & his wife coming from USA brings a music system worth Rs. 60,000/- in such case duty free only 50,000 & tax to be paid on 10,000.  
 However if brings 2 music system worth 30,000/- each then duty free allowed
- Ex. Female resided abroad > 1 year. Jewellery of 1L + 50,000 (in accompanied baggage) = 1.5L allowed
- a. **Tourist** means person not normally resident in India, enter India for stay  $\leq$  6 month for legal non-immigrant purpose
- b. Personal effect does not include Jewelry

### Example

Mr. Bush came India on travel visa with goods.

Travel Souvenir	85000
Personal effects	70000

Personal computer	45000
Other articles carried in person	1,50,000
120 sticks of cigarette	12,000
Fire arm with 100 cartridge of Rs. 500 each	1,00,000
2 new laptops of 60,000 each	1,20,000
Jewellery 25 gms.	75,000

Calculate custom duty, if effective rate is 38.5% including SWS

**Answer**

Computation of customs duty payable	Amt
Travel souvenir	Nil
Personal effects	Nil
Personal computer	45000
Articles carried on in person	1,50,000
Cigarettes [100 sticks can be accommodated in General Free Allowance (GFA)]	10,000
Fire arms cartridge (50 cartridges can be accommodated in GFA)	25,000
Laptop (1 laptop exempt)	60,000
Jewellery (No additional exemption applicable in this case)	75,000
Baggage than can be accommodated in GFA	3,65,000
Less: GFA	15,000
Baggage on which duty is payable	3,50,000
Duty payable @ 38.50% (including 10% Social welfare surcharge)	1,34,750

Items charged @100% custom duty	
Cigarettes above 100	2,000
Fire arm	50,000
Cartridges above 50	25,000
<b>Total</b>	<b>77,000</b>
Custom duty @100%	77,000

### Transfer of residence (Additional allowance) (Rule-6)

Person engaged in profession abroad or transferring his residence to India allowed duty free import of **personal and household goods**, other than article in Annex-I & II but includes article in Annex-III of value given in table.

(This is in addition to general allowance u/r 3 & 4)

Duration of stay abroad	Value	Conditions
3 months – 6 months	Up-to 60,000	Indian Passenger
6 month - 1 year	Up-to 1 Lac	Indian Passenger
≥1 year (Out of past 2 yrs)	Up-to 2 Lacs	1. Indian Passenger 2. Not availed such concession in last 3 yrs
≥ 2 years	Up-to 5 Lacs	1. Minimum 2 yrs stay abroad before arrival Relaxation : shortfall up-to 2 months may condone by AC/DC, if due to a) terminal leave/vacation or b) other special circumstances 2. Total stay in India ≤ 6 month in last 2 yrs - Commissioner may condone excess stay 3. Not availed such concession in last 3 yrs

**Rule-7** - Import and export of currency to govern by FEMA.

### Un-accompanied baggage (Rule- 8)

These rules apply to un-accompanied baggage also, only when person came in India say on 5th July, and

- Baggage came not before 2 months i.e. 5<sup>th</sup> May [AC/DC can allowed up-to 1 yr)
- & not after 1 month i.e. by 5<sup>th</sup> Aug. (or up to extended period)

Note: Benefit of 50,000/15,000 given in Rule 3 and 4 not available to un-accompanied baggage.

### Crew baggage (Rule- 9)

- Above rules shall apply on crew member of foreign going conveyance when they finally paid off on termination.
- In regular -time, can bring items like chocolate, cheese, cosmetics or petty gift up to Rs. 1500 for self/family use.

### ANNEXURE-I (Do remember)

- 1 Firearms.
- 2 Cartridges of fire arms > 50.
- 3 Cigarettes > 100 sticks or cigars > 25 or tobacco > 125 gms.
- 4 Alcoholic liquor or wines in excess of 2 **litres**.
- 5 Gold or silver in any form other than ornaments.
- 6 Flat Panel (LCD/LED/Plasma) television.

### ANNEXURE-II (May read a bit)

- 1 Colour Television
- 2 Video Home Theatre System
- 3 Dish Washer
- 4 Domestic Refrigerators of capacity above 300 liters or its equivalent.
- 5 Deep Freezer.
- 6 Video camera or the combination of such Video camera following goods, namely:-
  - (a) Television receiver;
  - (b) sound recording or reproducing apparatus;
  - (c) video reproducing apparatus.
- 7 Cinematographic films of  $\geq 35\text{mm}$
- 8 Gold or Silver, in any form, other than ornaments.

### ANNEXURE III (No need to remember)

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

### Temporary detention of baggage (Sec-80)

- Where baggage contain article

- which is prohibited, or
- allowed but passenger not want to pay duty

custom officer can detain (keep) such goods at request of passenger and will be returned to him while leaving India

- If not able to collect while leaving India may be returned
  - through another passenger
  - cargo consigned in his name
- Benefit of this provision apply, only if passenger truly declare the said goods.

## Transit & Transshipment

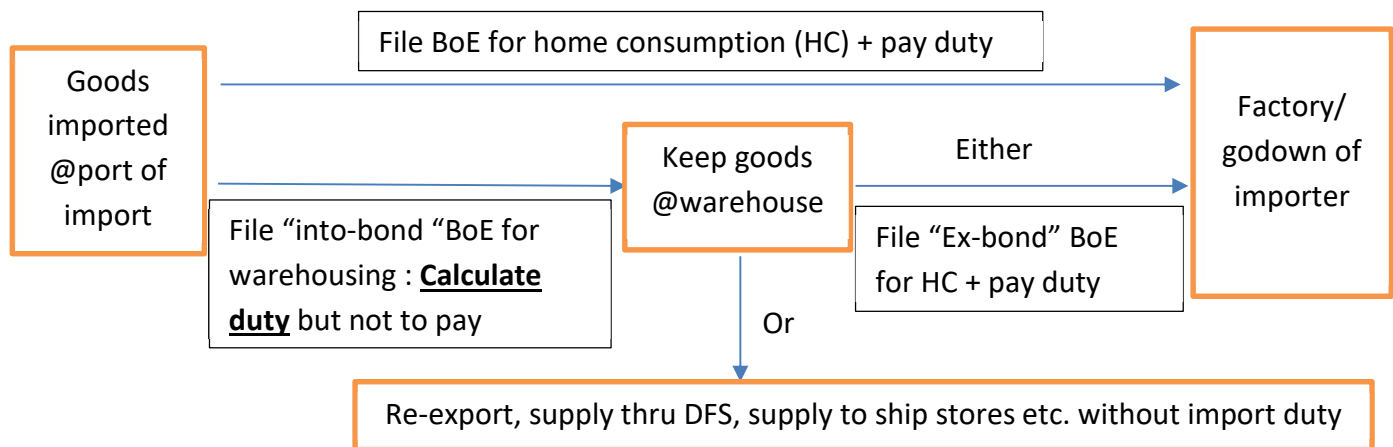
One vessel/aircraft containing goods intended to be unloaded at multiple ports of India/outside India.

- If same vessel will go to another port, it will be called as transit of goods
- If goods unloaded and then transport thru another vessel, it will be called as transshipment of goods.

Transit	Transshipment
Dealt by Sec .53	Dealt by Sec-54
Continuity of records	No continuity of records as change of conveyance
Mention goods as transit goods in arrival/import manifest	Separate “bill of transshipment” to be filed and Mention goods as transit goods in arrival/import manifest
Subject to compliance, custom officer may allow goods & conveyance to transit without duty Payment on that port.	
These provisions not apply on Baggage, import by post and stores	

## Chapter 6 : Warehousing

### Brief process



### 3 types of warehouse

1. Public warehouse	2. Private warehouse	3. Special warehouse
Record based control	Record based control	Remain under physical control thru custom lock
Goods kept by any importer	Kept by licensee importer only	Only notified goods can be stored e.g. gold, silver
		Licence non-transferrable and valid till cancellation

### Cancellation of warehouse licence

- If licensee contravene the provisions/conditions
- Pending inquiry, licence may be suspended. During suspense can't made deposit.
- On cancellation within 7 days all goods to be shifted to other warehouse or removed for HC.

### Warehousing bond

- Importer depositing goods in warehouse to submit bond for 3 times of duty involved.
- Two types of bonds
  - a) Consignment bond – For each consignment
  - b) General bond – For all imports during a specified period. Bond amt depends on past and expected imports

### Period for which goods can remain in warehouse (warehousing period)

- Where manufacturing permitted in the warehouse – Unlimited time till ex-bonding/consumption without any interest

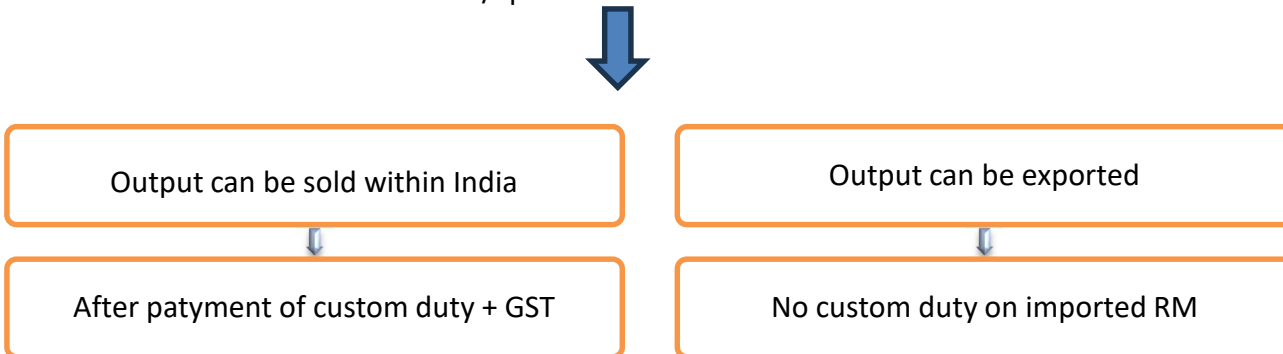
- Other cases – 1 year from **date of order of removal** from port/airport. Extension 1 yr at a time.
  - However, interest @15% p.a. on duty is chargeable from 91<sup>st</sup> day **from date of order of removal from port/airport TO actual payment.**
  - No interest if no duty payable for e.g. re-exporting from warehousing.
- If goods not removed within permitted/extended time, goods shall be **deemed to be removed** on expiry of Permitted / extended period
  - **Rate of custom duty** in such case will be rate applicable on last day of permissible/extended time period
  - **Exchange Rate:** CBIC notified rate on date of filing of BOE

### Owner right to deal with warehoused goods

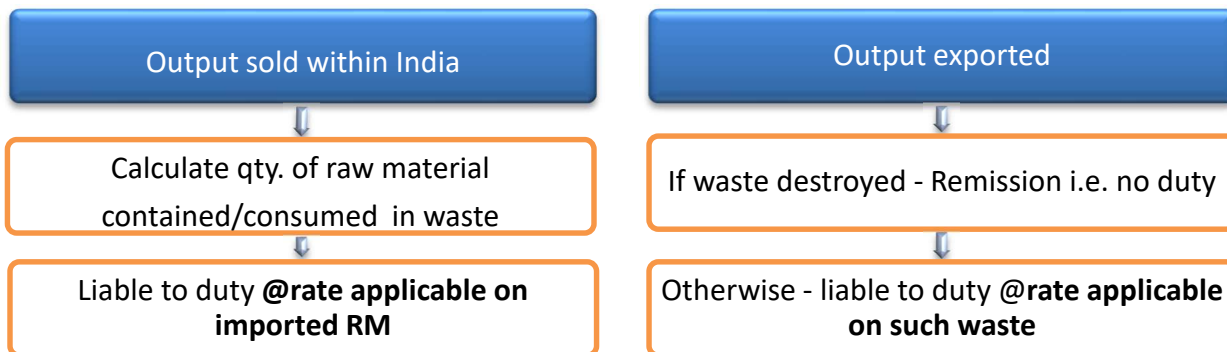
- Inspection
- Sorting
- Show goods for sale
- Ensure goods not damaged or deteriorate

### Manufacturing operations on warehoused goods (Sec 65 & 66) – MOOWR scheme

Importer can perform manufacturing operations on warehoused goods in Private/Special warehouse & after that



### Custom duty on waste generated in manufacturing



#### Example

Rubber imported & manufactured tyre in warehouse

Rubber imported and used	1500 kg.
Other domestic products used	210 kg
Tyre produced	100 Nos.
Weight per tyre	16.5 kg.
Tyre exported	75
Tyre sold in India	25

**Answer**

Calculation of wastage = $1710 \text{ kg} - (100 \times 16.5 \text{ kg})$ = 60 kg	
Waste Related to exported tyre = $60 \text{ kg} \times \frac{75}{100} = 45 \text{ kg}$	Waste related to domestic sale = $60 \text{ kg} \times \frac{25}{100} = 15 \text{ kg}$
Rubber content: $45 \text{ kg} \times \frac{1500}{1710} = 39.5 \text{ kg}$	Rubber content = $15 \text{ kg} \times \frac{1500}{1710} = 13.2 \text{ kg}$
Import duty gets remitted if waste of 45 kg. destroyed	Duty Payable on 13.2 kg @ duty rate applicable on rubber

### Improper removal of goods from warehouse

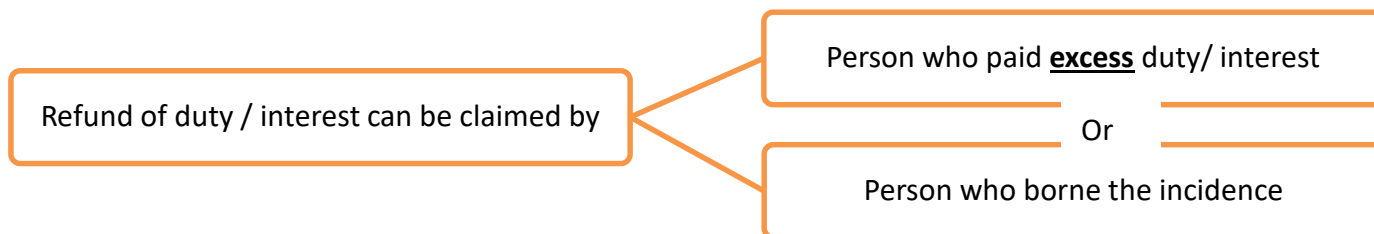
Sec-71 : Goods can be removed only by following process of HC, export, removal to another warehouse or other way provided in custom Act.

**Owner** of warehoused goods is required to pay duty immediately, if

- Goods removed in contravention of sec-71 i.e.
- Goods not removed within permitted time period of warehousing
- Goods not cleared for HC or export or not accounted for to satisfaction of officer

Warehouse owner also liable to pay duty, int., penalty if goods removed in contravention of sec-71.

## Chapter 7 : Refund



Application of Refund shall be made within 1 year from Relevant Date

Scenario	Relevant Date
Refund filed by importer or exporter	Date of payment of duty/interest
Refund filed by person from whom duty collected (i.e. purchaser)	Date of purchase of goods
Exemption by special order	Date of such order
Refund due to judgement /decree /order /direction	Date of such judgement/decree/order
Provisional Payment of duty	Date of adjustment of duty after final Assessment

- However, time limit of 1 year not applicable in case duty/interest paid “under protest”
- No refund if amount is up-to Rs. 99/- (less than 100) (Tip : In GST it is 999/- CGST and 999/- SGST)
- With refund application submit following
  - Documentary evidence to establish that duty / interest collected from or paid by him
  - evidence that incidence of duty not passed

### Refund of export duty, if

i) Goods returned by customer, or ii) Goods re-imported within 1 year	Application can be filed within 6 months from clearance
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### Refund of import duty (Sec -26A)

- If imported goods found **defective** or **not as per specification**
- Importer may **export** OR **destroy** OR **relinquish** i.e. handover goods to custom, within 30 days of clearance + 3 months extn.
- Refund application time limit (called as relevant date)
  - within 6 months of “Let export order” or date of destroy/relinquish.
- Following conditions should satisfy
  - Goods not worked upon, repaired or used

- AC/DC satisfy that goods are imported goods
- Importer doesn't claim drawback
- No offence been committed with respect to such goods.
- Goods are not perishable and not expired products.

## Unjust Enrichment (UE)

- Custom duty is an indirect tax, **generally**, such tax ultimately recovered from consumer with the price.
- When person who applies for refund is not the person who borne the burden, refund will not be given to applicant but paid into fund called "Consumer welfare fund" (CWF)
- However, in following situations, refund amount paid to applicant
  - Importer or exporter has not passed duty incidence to another person (Burden to prove is on applicant)
  - Buyer (who filing refund) not passed incidence of duty and interest
  - Import by **individual** for personal use
  - Refund of export duty on return of goods
  - Amount of drawback u/s 74/75
  - Duty/ interest borne by CG notified applicant
  - If excess duty paid by importer **before order for H.C.** evident from self/re-assessed BoE.

## Judgements on refund

- Doctrine of UE apply even when payment made under protest.
- It can't be concluded that burden not passed to buyer, even when same sale price before & after taxes, as price depends on various factors.
- UE applies to capital goods used in manufacture, if cost of it included in FG sold.
- Self-assesement/ final-asement done or demand confirmed, and payment made. In such case,
  - Appeal is required to be filed against demand/assessment to take refund.
  - Refund app. can-not substitute the appeal.

## Interest on delayed refund



Interest only on duty amount, no int. on deposits for project import, security for provisional release.

**Comparison between GST and custom**

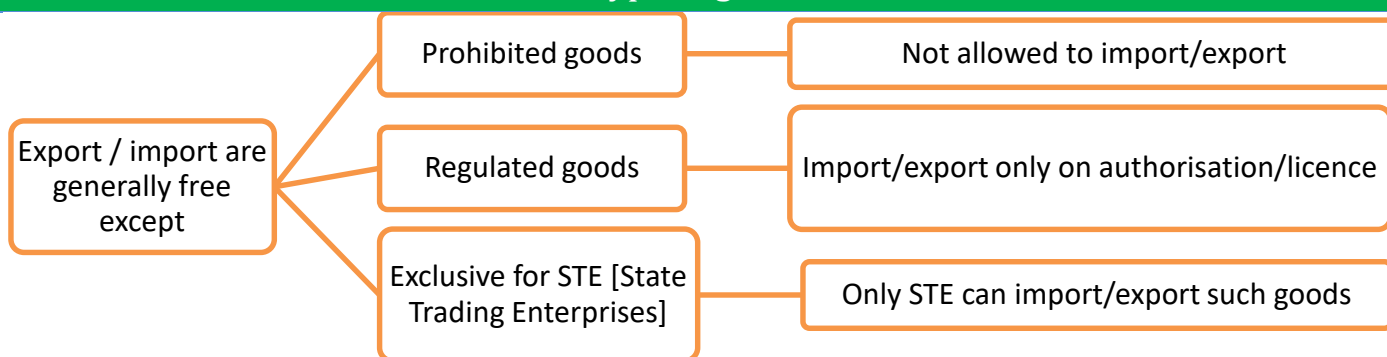
	<b>Custom</b>	<b>GST</b>
Time period	3 months	60 days
Rate – When order by adjudication/AA/court	6%	9%
Rate other cases	6%	6%
Order passed by AA/Tribunal/Court	3 months counts from <b>order date</b>	Refund app. has to file and 60 days counts from application date

## Chapter 8: Foreign Trade Policy (FTP)

### Administration of FTP

- CG issues FTP with powers from Foreign Trade (Development & Regulation) Act 1992
- Formulated and supervised by Director General Foreign Trade (DGFT)
- DGFT decision final & binding for in respect of interpretation of FTP, classification etc.
- DGFT can grant exemption, relaxation in public interest.
- DGFT issues import/export authorization and grant 10 digits Import Export code (IEC)  
It is the same number as applicant's PAN.

### Type of goods



### Authorised Economic Operator (AEO)

Custom dept grants AEO status to entity doing import/export if it is compliant with supply chain security standard. Benefits to AEO :

- 1) Reduced examination and faster clearance
- 2) Deferred payment of duty
- 3) Direct port entry/delivery
- 4) Greater facilitation & self-certification

### Towns of Export Excellence (TEE)

- Towns exporting goods of specified amount granted TEE recognition.
- Targeted support, infra development and privileges provided to them,
- for export competitiveness and tap new market.

### Developing districts as export hubs

- Dist. Export Promotion Committee (DEPC) created to provide support for export promotion and remove bottlenecks.
- Dist. Export Action Plan (DEAP) may be prepared for each dist.
- 2-3 high potential products from each district may be identified and implement plan for export growth

### “Status Holder” certificate

Exporter having IEC code eligible to be recognized as “Status Holder” based on export performance in current and **ALL 3 preceding** financial years.

Status category	Export Performance [In USD million]	Notes
1 Star	3	a) For 1 Star status, units in Northeastern States, J&K, Ladakh and MSME, ISO/BIS certified units given double weightage b) FOB value is to be taken c) For deemed export, convert INR amount to USD using exchange rate on 1 <sup>st</sup> April of that FY. d) Re-export and export under AA also included
2 Star	15	
3 Star	50	
4 Star	200	
5 Star	800	

- Benefits / Privilege to “Status Holder” unit.
  - 2 star & above eligible to setup export warehouses
  - Authorization & custom clearance on self-declaration basis
  - Fixation of Input-Output norms within 60 days
  - Exemption from furnishing BG for FTP schemes
  - 2 Star and above eligible to setup export warehouses
  - Preferential treatment and priority in handling consignments.

### SCOMET : Special chemical, organism, material, equipment and technology

It is a list of items which having dual use i.e. in industry and weapon production.

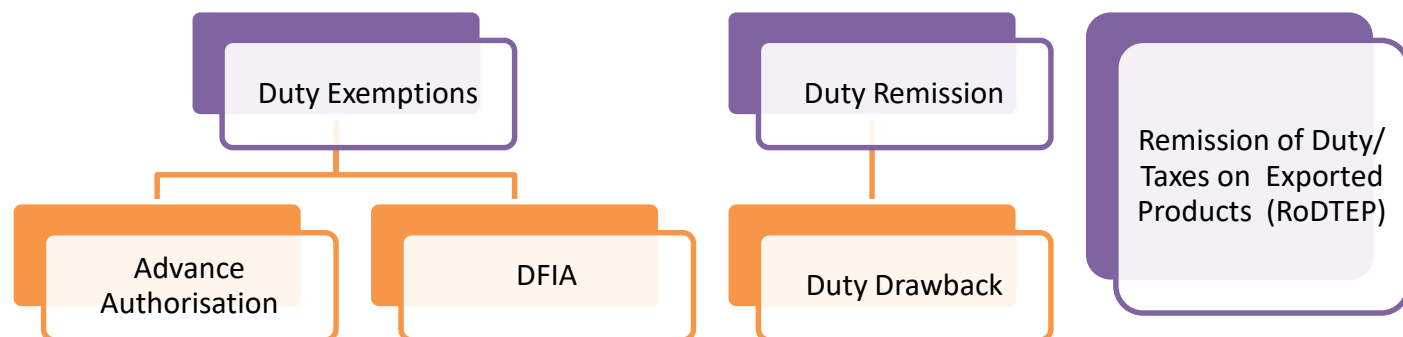
These goods are either prohibited or permitted thru authorization unless specific exempted

### Denied Entity List (DEL)

- For non-compliance an entity may be placed in DEL. Grant/renewal of licence/authorization etc. blocked
- Removed by DEL if complete export obligation, pay penalty/demand, submit doc as required.

### Various Duty Exemption & Remission Schemes

Benefits/concession on import of goods for export of FG.



- A person may opt duty drawback for part of inputs & duty exemption for part of inputs

### Advance Authorization (AA)

- Facility of **duty-free import** of goods used in manufacture of physical/ deemed export/ “Stores”
  - Import within 12 month + 12 months extn. from issue of AA
  - “Export Obligation” (EO) → Export FG within 90 days from clearance of Import consignment
  - Minimum value addition =  $15\% = \frac{A-B}{B} \times 100$ 
    - A = FOB value of export/DE
    - B = CIF value of input under AA/DBK } + notional value of input provided free by supplier
- Following goods can be imported
  - a. inputs used in manufacture of export Product
  - b. Oil, fuel, catalyst etc.
  - c. Spares meant for supply with export (Allowed up-to 10% of CIF value of AA)
- Following duties are exempted – BCD, ACD, CVD, ADD, safeguard duty, IGST, GST cess.
- **Applicable Conditions**
  - a. Pre-import condition - first import & use input in production
  - b. “Actual User Condition” applicable i.e. AA and imported material can-not be transferred/sale

### Advance authorisation for annual requirement

- Available for inputs notified in Standard Input Output Norms (SION) not on adhoc norms
- Exporter having export Performance in at-least 2 preceding F.Y.
- Entitlement of CIF value of import = Higher of
  - 300% of FOB value of export/deemed export in previous F.Y.,
  - Rs. 1 crore

### Duty Free Import Authorisation (DFIA) scheme

- Facility to import input used in manufacture of export products without payment of duty
  - Tyre not allowed to import under DFIA
  - Only BCD exempted
  - No DFIA can be issued for inputs, where SION prescribe “Actual user” or “pre-import condition”
  - DFIA will be issued on post export basis
  - No Actual User condition, Hence DFIA transferable.
  - Minimum value addition = 20%
  - Valid for 12 Months from issuance.

### Duty Drawback (DBK)

Custom duty paid on inputs, refunded to exporter. No refund of GST.

Allowed for manufactured goods or same goods re-export.

## RoDTEP

- Scheme applicable to refund such taxes/ duties paid on input, transport etc. which otherwise not exempted/refunded in other schemes.
- **Transferrable** E-Scrips given to exporter as benefit.
- Scrip can be used to pay BCD
- If sale proceed not realized within FEMA, return benefit.
- Following exports not eligible for benefit:
  - a. Re-export of same goods
  - b. Export subject to export duty or minimum export price
  - c. Goods restricted/prohibited
  - d. Deemed Export/ supply to SEZ
  - e. Export from non-EDI port

## Export Promotion Capital Goods (EPCG) scheme

- Permit import of Capital Goods at **Zero custom duty** or procure domestic CG without paying duty  
Zero IGST & Cess only for physical Export
- Scheme **available to** manufacturer/merchant exporter and **service provider**
- **Eligible CG**
  - a. CG including in CKD/ SKD condition
  - b. Spare, moulds, dies, Jigs, fixtures, Catalysts
  - c. Computer system and software
- Validity : Import within **24 months** from issue of authorization
- Actual user condition till completion of export obligation
- Export obligation (EO) to be completed in 6 years = Average EO + Specific EO  
Average EO = 6 years (x) Average export of previous 3 years of same product  
Specific EO = Imported CG = 6 times of duty/tax benefit  
Domestic CG = 4.5 times of notional duty/tax benefit

Incentive : If achieved 75% of total Specific EO + “Average EO till applicable date” within 3 years, rest EO waived

## EOU/EHTP/STP/BTP scheme

- Units undertaking to export whole production of goods and services. (trading units not covered)
- May import without paying BCD, IGST & cess
- Procure from DTA on payment of GST, however refund allowed under Deemed export provisions.
- Actual user condition applicable
- Unit shall be **positive** net foreign exchange earner (calculated in block of 5 years)
- Transfer from EOU/EHTP/BTP/STP to another EOU/EHTP/BTP/STP allowed on payment of GST.
- Unit may exit from scheme on payment of applicable tax & penalty if obligations not met.

### Deemed Export (DE)

DE means supply of <u>goods</u> by Mr. X	Benefits to Mr. X on such supply.
1) To AA, DFIA, EPCG holders or EOU etc. units 2) To mega power, nuclear power project 3) To UN or international organization or projects financed by them 4) Supply to project where BCD free import allowed	a) Mr. X will get AA/DFIA licence b) Duty drawback c) Refund of excise duty d) Refund of GST to Mr. X or buyer

### Miscellaneous

Samples	<b>Import</b> of "Restricted" items allowed without authorization. Defense item, seeds, bees and new drugs requires authorization. Duty free <b>import up-to 3 lacs</b> allowed to <b>exporter</b>  <b>Export</b> : No limit
Gift	<b>Import</b> of gift thru post/courier prohibited except Rakhi and life-saving medicine. However, can be imported on payment of applicable import duties.  <b>Export</b> up-to 5L in a FY allowed.
Prototype	Can be imported <b>without authorization, if</b> Importer is "actual user" (not for sale to other) He is producer or <b>licenced</b> researcher to research goods for which prototype required.
Waste/scrap	It should not contain hazardous, toxic waste, arms, cartridge etc.
Supporting manufacturer	Person who manufacture goods or parts/component for exporter. For export benefits, his name should also be mentioned in export docs.
Currency	Export contract may be in INR or foreign currency. Realization in forex only, In specified case, INR is allowed.
Non-realisation	Liable to return all benefits and penalty. No action if RBI write off.
Origin of goods	Self-certification allowed for "approved exporter"
Merchant trading	Shipment from one country to another country or <b>within same country</b> without touching Indian port allowed.