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# Charging Section – Sec 12 of Custom Act, 1962

**SECTION 12. Dutiable goods.** - (1) Except as otherwise provided in this Act, or any other law for the time being in force, duties of customs shall be levied at such rates as may be specified under the Customs Tariff Act, 1975\*, or any other law for the time being in force, on goods imported into, or exported from, India.

(2) The provisions of sub-section (1) shall apply in respect of all goods belonging to Government as they apply in respect of goods not belonging to Government.

## \*Customs Tariff Act, 1975

Sec 2 - BCD

Sec 3 –  
Additional Duty  
– Excise, VAT,  
IGST

Sec 6 & Sec 7 –  
Protective Duties

Sec 8&8A –  
Enhance Duty  
Sec 8B –  
Safeguard  
Duties

Sec 9 – CVD on  
Subsidised  
Articles, Sec 9A -  
Anti-Dumping  
Duties

Import (Schedule I)

Export (Schedule  
II)

Standard Rate  
(Column (4))

Preferential Rate  
(Column (5))

Additionally, following are charged –

1. NCCD
2. Education Cess – Exempt after 1-7-2017
3. Secondary and Higher Education Cess - Exempt after 1-7-2017
4. Social Welfare Surcharge - @10% on BCD

# Charging Section – Sec 12 of Custom Act, 1962

## **Preferential Rates of Duty**

- Preferential Rates of Duty is applicable only if goods are imported from MFN (Most Favoured Nation=WTO Member Countries + Non-member countries with whom a separate bilateral agreement has been entered)
- At the time of Filing of B/E for H/C, a “Certificate of Origin” is attached in case an importer needs to import goods on preferential rate of duty.
- In case goods are imported from Non-MFN but which were produced in USA, then the place of origin is USA and not Non-WTO member. Thus rate of duty will be Preferential rate of duty. Also note that invoice will not be conclusive evidence as to the place of origin. There are specific rules for obtaining certificate of origin, contained in Certificate of Origin Rules.

**Sec 4(1) of Customs Tariff Act** Where in respect of any article a preferential rate of revenue duty is specified in the First Schedule, or is admissible by virtue of a notification under section 25 of the Customs Act, 1962, the duty to be levied and collected shall be at the standard rate, unless the owner of the article claims at the time of importation that it is chargeable with a preferential rate of duty, being the produce or manufacture of such preferential area as is notified under sub-section (3) and the article is determined, in accordance with the rules made under sub-section (2), to be such produce or manufacture.

**Sec 4(2) of Customs Tariff Act** The Central Government may, by notification in the Official Gazette, make rules for determining if any article is the produce or manufacture of any preferential areas.

**Sec 4(3) of Customs Tariff Act** For the purposes of this section and the First Schedule, “preferential area” means any country or territory which the Central Government may, by notification in the Official Gazette, declare to be such area.

# Integrated Tax and GST Compensation Cess

**Integrated Tax - Sec 3(7) of the Customs Tariff Act** - 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 IGST, 2017 on a like article on its supply in India,
- on the value of the imported article as determined under sub-section (8), or sub-section (8A), as the case may be.

## **Note –**

1. It is the additional duty of customs which is charged to counter balance the GST leviable on the supply of same article in India. It will be charged only if such supply is chargeable to GST in India. If GST is not chargeable on supply of such goods in India, then, this duty shall also be not charged.
2. CG has exempted all goods imported by a unit or a developer in the Special Economic Zone (SEZ) for their authorized operations, from the whole of IGST leviable thereon u/s 3(7) of the CTA read with Sec 5 of the IGST Act, 2017 (NN 64/2017-Customs dt 5-7-2017)

**GST Compensation Cess - Sec 3(9) of the Customs Tariff Act** - Any article which is imported into India shall, in addition,

- be liable to the GST Compensation Cess at such rate, as is leviable under section 8 of the GST (Compensation to States) Cess Act, 2017 on a like article on its supply in India,
- on the value of the imported article as determined under sub-section (10) or subsection (10A), as the case may be.

## **Note -**

1. It is the additional duty of customs which is charged to counter balance the GST Compensation Cess leviable on the supply of same article in India. It will be charged only if such supply is chargeable to GST in India. If GST is not chargeable on supply of such goods in India, then, this duty shall also be not charged.

# Integrated Tax and GST Compensation Cess

## Integrated Tax – Manner of Computation of Assessable value for Levying IGST

**Sec 3(8) of the Customs Tariff Act** - For the purposes of *calculating the integrated tax under sub-section (7)* on any imported article where such tax is leviable at any percentage of its value, the value of the imported article shall, notwithstanding anything contained in section 14 of the Customs Act, 1962, be the **aggregate** of— **Assessable Value**

(a) the value of the imported article determined under sub-section (1) of section 14 of the Customs Act, 1962 or the tariff value of such article fixed under sub-section (2) of that section, as the case may be; and

(b) → any duty of customs chargeable on that article under section 12 of the Customs Act, 1962, and **BCD**  
→ any sum chargeable on that article under any law for the time being in force as an addition to, and in the same **SWS, OTHER**  
manner as, a duty of customs, **DUTIES**

→ **but does not include** the **tax referred to in sub-section (7)** or the **cess referred to in sub-section (9)**

**IGST**

**GST Compensation Cess**

## GST Compensation Cess – Manner of Computation of Assessable value for Levying GST (Compensation) Cess

**Sec 3(10) of the Customs Tariff Act** - For the purposes of *calculating the GST compensation cess under sub-section (9)* on any imported article where such cess is leviable at any percentage of its value, the value of the imported article shall, notwithstanding anything contained in section 14 of the Customs Act, 1962, be the **aggregate** of—

(a) the value of the imported article determined under sub-section (1) of section 14 of the Customs Act, 1962 or the tariff value of such article fixed under sub-section (2) of that section, as the case may be; and

(b) any duty of customs chargeable on that article under section 12 of the Customs Act, 1962, and any sum chargeable on that article under any law for the time being in force as an addition to, and in the same manner as, a duty of customs, **but does not include** the **tax referred to in sub-section (7)** or the **cess referred to in sub-section (9)**.

# Integrated Tax and GST Compensation Cess

## Assessable Value for computing IGST u/s 3(8) and Assessable Value for computing GST Compensation Cess u/s 3(10)

1. Value under Customs Act as per Sec 14(1) or Sec 14(2)	XXX
<b>2. Add</b> – All Customs Duties chargeable [ <b>except</b> IGST u/s 3(7) & GST Compensation Cess u/s 3(9)]	XXX
<b>3. Add</b> – Any sum chargeable on that article under any other law for the time being in force	XXX
4. Assessable value for computing IGST and GST Compensation Cess (1+2+3)	<b>XXX</b>
<b>5. Add</b> – ACD u/s 3(7) of CTA i.e. IGST computed on 4 above	XXX
<b>6. Add</b> – ACD u/s 3(9) of CTA i.e. GST Compensation Cess computed on 4 above	XXX

### **Note –**

**Duties not be included** – The following duties shall not be included while computing the value for the purposes of levy of social welfare surcharge.

- a) The safeguard duty referred to in sections 8B and 8C of the CTA, 1975
- b) The duty against subsidy referred to in section 9 of the CTA, 1975
- c) The anti-dumping duty referred to in section 9A of the CTA, 1975
- d) Social Welfare Surcharge
- e) ACD u/s 3(7) of CTA i.e. IGST
- f) ACD u/s 3(9) of CTA i.e. GST Compensation Cess

# Integrated Tax and GST Compensation Cess

## Integrated Tax – Manner of Computation of Assessable value for Levying IGST – IN CASE OF WAREHOUSED GOODS

**Sec 3(8A) of the Customs Tariff Act** - 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 subsection (7) shall be,—

- (a) where the **whole of the goods are sold**, → the value determined under sub-section (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 sub-section (8) or → the transaction value of such goods, whichever is higher:

**Provided** that 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 such transaction** shall be the transaction value for the purposes of clause (a) or clause (b):

**Provided** further that 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 sub-section (8)**.

**Explanation** — For the purposes of this sub-section, the expression “**transaction value**”, in relation to warehoused goods, **means the amount paid or payable as consideration for the sale of such goods**.

**Note** - Sec 3(10A) of Customs Tariff Act is absolutely same as Sec 3(8A) of Customs Tariff Act, just words sub-section (8) has been replaced by sub-section (10) and sub-section (7) is replaced by sub-section (9).

# Additional Duty of Customs

## Section 3 - Levy of additional duty equal to excise duty, sales tax, local taxes and other charges. —

**Sec 3(1)** Any article which is imported into India shall, in addition, be liable to a duty (hereafter in this section referred to as the additional duty) **EQUAL TO THE EXCISE DUTY FOR THE TIME BEING LEVIABLE ON A LIKE ARTICLE IF PRODUCED OR MANUFACTURED IN INDIA** and if such excise duty on a like article is leviable at any percentage of its value, the additional duty to which the imported article shall be so liable shall be calculated at that percentage of the value of the imported article :

**Provided** that in case of any **alcoholic liquor for human consumption** imported into India, the Central Government may, by notification in the Official Gazette, specify the rate of additional duty having regard to the excise duty for the time being leviable on a like alcoholic liquor produced or manufactured in different States or, 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.

**Note** – Sec 3(1) is applicable only if imported goods have been “manufactured” abroad.



# Additional Duty of Customs

**Sec 3(3)** If the Central Government is satisfied that it is necessary in the public interest to levy on any imported article whether on such article duty is leviable under sub-section (1) or not such additional duty as would counter-balance the **EXCISE DUTY LEVIABLE ON ANY RAW MATERIALS, COMPONENTS AND INGREDIENTS OF THE SAME NATURE AS, OR SIMILAR TO THOSE, USED IN THE PRODUCTION OR MANUFACTURE OF SUCH ARTICLE**, it may, by notification in the Official Gazette, direct that such imported article shall, in addition, be liable to an additional duty representing such portion of the excise duty leviable on such raw materials, components and ingredients as, in either case, may be determined by rules made by the Central Government in this behalf.

## **Note** –

1. It is charged to counter balance the excise duty leviable on Raw Materials used in the production or manufacture of like article in India.
2. The rate of this duty is fixed by CG as per rules made in this regard.
3. While fixing the rate of this duty, the CG shall have regard to the average quantum of the excise duty payable on the raw materials used in manufacture of such like article.
4. Logic of levying CVD u/s 3(3) – CVD u/s 3(3) is used when final product manufactured domestically is exempt from excise duty. In such a case, the duty paid on inputs imported from outside India is not eligible for CENVAT Credit (as final product is exempt). In this scenario, domestic manufacturers will be loser to that extent of duty paid and this duty paid on inputs will form part of cost of the domestic final product. On the other hand, imported goods entering into India (which are zero-rated by exporting country) don't have to pay CVD u/s 3(1) as the product is exempt from duty. Further, imported goods are not burdened with duty on their input (as they remain zero-rated by exporting country). Thus, imported goods get cost advantage to that extent. Sec 3(3) intends to set-off such cost advantage.

# Additional Duty of Customs

**Sec 3(5)** If the Central Government is satisfied that it is necessary in the public interest to levy on any imported article whether on such article duty is leviable under sub-section (1) or, as the case may be, sub-section (3) or not 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,** it may, by notification in the Official Gazette, direct that such imported article shall, in addition, be liable to an additional duty at a rate not exceeding four per cent of the value of the imported article as specified in that notification.

## **Note –**

1. Due to introduction of GST, the applicability of aforesaid additional duties [u/s 3(1), 3(3) and 3(5)] is very limited. GST is levied on all supply of goods and/or services, except supply of alcoholic liquor for human consumption. Further, GST on the supply of goods covered under section 5(2) of the IGST Act, 2017 [i.e. Petroleum crude, high speed diesel, motor spirit, (commonly known as petrol), natural gas and aviation turbine fuel] shall be levied w.e.f. 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 these few products and other goods, tobacco which are not leviable to GST.
2. Education Cess and Secondary & Higher Education Cess leviable on imported goods are abolished by omitting Chapter VI in Finance (No. 2) Act, 2004 and Finance Act, 2007, respectively by Sec 108 of the Finance Act, 2018, dt 28-03-2018. Further, till the enactment of Finance Bill, 2018, Education Cess and Secondary & Higher Education Cess leviable on imported goods were fully exempted by way of NN 7/2018-Customs and 8/2018-Customs, w.e.f. 2-2-2018 itself.

# Social Welfare Surcharge (SWS) on Imported Goods

- ❑ Social welfare surcharge (SWS) @ 10% is levied in lieu of education cesses for providing and financing education, health and social security.
- ❑ SWS is leviable, at the **rate of 10%** on the **aggregate** of
  1. **Duties, taxes** and **cesses** leviable on such goods under Sec 12 of the Customs Act, 1962 and
  2. **Any other 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.
- ❑ However, following duties shall be excluded for computing this cess.
  1. Safeguard duty under Sec 8B of the Customs Tariff Act, 1975
  2. Countervailing duty under Sec 9 of the Customs Tariff Act, 1975
  3. Anti-dumping duty under Sec 9A of the Customs Tariff Act, 1975
  4. SWS on imported goods
- ❑ The SWS on imported goods are 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.
- ❑ The provisions of Customs Act, 1962 and the rules and regulations made thereunder, including those relating to assessment, non-levy, short-levy, refunds, exemptions, interest, appeals, offences and penalties shall apply in relation to the levy and collection of social welfare surcharge on imported goods as they apply in relation to the levy and collection of the duties of customs on such goods.
- ❑ SWS leviable on integrated tax and GST(Compensation Cess) has been exempted vide NN 13/2018-Cus dt 2-2-2018.
- ❑ **Case Law** – When no custom duty is payable on electrical energy imported into India, no duty would be payable on similar goods transferred from SEZ to DTA in view of Sec 30 read with Sec 51 of the SEZ Act. **(UoI vs Adani Power Ltd 2016 (331) ELT A129 (SC) dt 20-11-2015)**

# Social Welfare Surcharge (SWS) on Imported Goods

- ❑ Social welfare surcharge (SWS) applies at the rate of 10% of the aggregate of customs duties payable on import of goods and not on the value of imported goods. If aggregate customs duty payable is zero on account of an exemption, the SWS shall be computed as 10% of value equal to 'Nil' (as aggregate amount of customs duties payable is zero). Law does not require computation of SWS on a notional customs duty calculated at tariff rate where applicable aggregate of duties of customs is zero. **[Circular No. 3/2022 – Customs, dated 01.02.2022]**

# Agriculture Infrastructure and Development Cess [Sec 124 of FA, 2021]

- There shall be levied and collected, in accordance with the provisions of this Section, for the purposes of the Union, a duty of Customs, to be called Agriculture Infrastructure and Development Cess, on the goods specified in the First Schedule to the Customs Tariff Act, 1975, being the goods imported into India, at the rate not exceeding the rate of customs duty as specified in the said Schedule, for the purposes of financing the agriculture infrastructure and other development expenditure.
- It shall be charged on value of goods as determined u/s 14 of the Customs Act, 1962.
- This is in addition to any other duties of customs.
- However, this Cess is exempted by Government on many of the goods.

# Types of Duties

## **Types of Custom Duties –**

- 1. Revenue Duties** – are those which are levied for the purpose of raising customs revenue.
- 2. Protective Duties** – are intended to give protection to indigenous industries. If resort to protective duties is not made, there could be bulk import of cheap imported articles in the market making the indigenous goods unattractive.

# Protective Duties (Sec 6 & Sec 7)

## SECTION 6 . Power of Central Government to levy protective duties in certain cases. —

- (1) Where the **CG**, upon a recommendation made to it in this behalf by the Tariff Commission established under the Tariff Commission Act, 1951, is satisfied that circumstances exist which render it necessary to take immediate action **to provide for the protection of the interests of any industry established in India**, the Central Government **may**, by notification in the Official Gazette, impose on any goods imported into India in respect of which the said recommendation is made, a duty of customs of such **amount**, not exceeding the amount proposed in the said recommendation, as it thinks fit.
- (2) Every duty imposed on any goods under sub-section (1) shall, for the purposes of this Act, be **deemed** to have been specified in the First Schedule as the duty leviable in respect of such goods.
- (3) Where a notification has been issued under sub-section (1), the Central Government shall, unless the notification is in the meantime rescinded, **have a Bill introduced in Parliament**, as soon as may be, but in any case during the next session of Parliament following the date of the issue of the notification to give effect to the proposals in regard to the continuance of a protective duty of customs on the goods to which the notification relates, and the **notification shall cease to have effect when such Bill becomes law**, whether with or without modifications, but without prejudice to the validity of anything previously done thereunder :

**Provided** that if the notification under sub-section (1) is issued when Parliament is in session, such a **Bill shall be introduced in Parliament during that session** :

**Provided** further that where, for any reason, a Bill as aforesaid does not become law within 6 months from the date of its introduction in Parliament, **the notification shall cease to have effect on the expiration of the said period of six months**, but without prejudice to the validity of anything previously done thereunder.

# Protective Duties (Sec 6 & Sec 7)

## Section 7 - Duration of protective duties and power of Central Government to alter them. —

- (1) When the duty specified in respect of any article in the First Schedule is characterised as protective in Column (5) of that Schedule, that duty shall have effect only up to and inclusive of the date, if any, specified in that Schedule.
- (2) Where in respect of any such article the **CG is satisfied** after such inquiry as it thinks necessary that such → duty has become ineffective or excessive for the purpose of securing the protection intended to be afforded by it to a similar article manufactured in India and → that circumstances exist which render it necessary to take immediate action, it **may**, by notification in the Official Gazette, **increase or reduce such duty to such extent as it thinks necessary.**
- (3) Every **notification under sub-section (2)**, insofar as it relates to increase of such duty, shall be laid before each House of Parliament if it is sitting as soon as may be after the issue of the notification, and if it is not sitting within 7 days of its re-assembly, and the Central Government shall seek the approval of Parliament to the notification by a resolution moved within a period of 15 days beginning with the day on which the notification is so laid before the House of the People and if Parliament makes any modification in the notification or directs that the notification should cease to have effect, the notification shall thereafter have effect only in such modified form or be of no effect, as the case may be, but without prejudice to the validity of anything previously done thereunder.
- (4) For the removal of doubts, it is hereby declared that any notification issued under sub-section (2), including any such notification approved or modified under sub-section (3), may be rescinded by the CG at any time by notification in the Official Gazette.



# Emergency Power of CG (Sec 8 & Sec 8A)

**Sec 8(1)** Where, in respect of any article, whether included in the Second Schedule or not, the **CG is satisfied that**

→ the **export duty** leviable thereon should be increased or

→ that an **export duty** should be levied,

and that circumstances exist which render it necessary to take **immediate action**, the CG **may, by notification** in the Official Gazette, **direct an amendment of the Second Schedule** to be made so as to provide for an increase in the export duty leviable or, as the case may be, for the levy of an export duty, on that article.

**Sec 8(2)** The **provisions of sub-section (3) and (4) of section 7 shall apply to any notification** issued under sub-section (1) as they apply in relation to any notification increasing duty issued under sub-section (2) of section 7.

**Eg – Generally in summer season, the production of milk becomes low as compared with other seasons. If the available milk is not able to meet the requirements of the people, the Govt. may impose or enhance the duty on exports of milk.**

# Emergency Power of CG (Sec 8 & Sec 8A)

**Sec 8A(1)** Where in respect of any article included in the First Schedule, the **CG is satisfied that**  
→ the **import duty** leviable thereon under section 12 of the Customs Act, 1962 **should be increased**  
and that circumstances exist which render it necessary to take **immediate action**, it **may, by notification** in the Official Gazette, **direct an amendment of that Schedule** to be made so as to provide for an increase in the import duty leviable on such article to such extent as it thinks necessary:

**Provided** that the **CG shall not issue any notification under this sub-section for substituting the rate of import duty in respect of any article as specified by an earlier notification issued under this sub-section** by that Government **before such earlier notification has been approved** with or without modifications under sub-section (2).

**Sec 8A(2)** The **provisions of sub-sections (3) and (4) of section 7 shall apply to any notification** issued under sub-section (1) as they apply in relation to any notification increasing duty issued under sub-section (2) of section 7.

# Power of CG to impose safeguard duty (Sec 8B) [As amended by FA, 2020]

**Sec 8B(1)** If the Central Government, after conducting such enquiry as it deems fit, is satisfied that any article is imported into India in such increased quantity and under such conditions so as to cause or threaten to cause serious injury to domestic industry, it may, by notification in the Official Gazette, apply such safeguard measures on that article, as it deems appropriate.

**Sec 8B(2)** The safeguard measures referred to in sub-section (1) shall include imposition of safeguard duty, application of tariff-rate quota or 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:

**Provided** that no such measure shall be applied on an article originating from a developing country so long as

- the share of imports of that article from that country does not exceed **3 per cent.** 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 per cent. import share taken together, does not exceed 9 per cent. of the total imports** of that article into India:

**Provided** further that the Central Government may, by notification in the Official Gazette, 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.

# Power of CG to impose safeguard duty (Sec 8B) [As amended by FA, 2020]

**Sec 8B(3)** 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.

**Sec 8B(4)** 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.

**Sec 8B(5)** The Central Government may, pending the determination under sub-section (1), apply provisional safeguard measures under this sub-section on the basis of a preliminary determination that increased imports have caused or threatened to cause serious injury to a domestic industry:

**Provided** that 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:

**Provided further** that any provisional safeguard measure shall not remain in force for more than two hundred days from the date on which it was applied.

# Power of CG to impose safeguard duty (Sec 8B) [As amended by FA, 2020]

**Sec 8B(6)** Notwithstanding anything contained in the foregoing sub-sections, a notification issued under sub-section (1) or any safeguard measures applied under sub-sections (2), (3), (4) and (5), 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, safeguard measures shall be applied on the portion of the article so cleared or used, as was applicable when it was imported into India.

**Explanation.**—For the purposes of this sub-section,

- (a) the expression “100% export-oriented undertaking” shall have the same meaning as assigned to it in clause (i) of Explanation 2 to sub-section (1) of section 3 of the Central Excise Act, 1944;
- (b) the expression “special economic zone” shall have the same meaning as assigned to it in clause (za) of section 2 of the Special Economic Zones Act, 2005.’

**Sec 8B(7)** The safeguard duty imposed under this section shall be in addition to any other duty imposed under this Act or under any other law for the time being in force.

# Power of CG to impose safeguard duty (Sec 8B) [As amended by FA, 2020]

**Sec 8B(8)** The safeguard measures applied under this section shall, unless revoked earlier, cease to have effect on the expiry of 4 years from the date of such application:

**Provided** that if the Central Government is of the opinion that the domestic industry has taken measures to adjust to such injury or threat thereof and it is necessary that the safeguard measures should continue to be applied, it may extend the period of such application:

**Provided further** that in no case the safeguard measures shall continue to be applied beyond a period of ten years from the date on which such measures were first applied.

**Sec 8B(9)** 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.

**Sec 8B(10)** The Central Government may, by notification in the Official Gazette, make rules for the purposes of this section, and without prejudice to the generality of the foregoing power, such rules may provide for—

- i. the manner in which articles liable for safeguard measures may be identified;
- ii. the manner in which the causes of serious injury or causes of threat of serious injury in relation to identified article may be determined;
- iii. the manner of assessment and collection of safeguard duty;

# Power of CG to impose safeguard duty (Sec 8B) [As amended by FA, 2020]

- iv. the manner in which tariff-rate quota on identified article may be allocated among supplying countries;
- v. the manner of implementing tariff-rate quota as a safeguard measure;
- vi. any other safeguard measure and the manner of its application.

**Sec 8B(11)** For the purposes of this section,—

- (a) “developing country” means a country notified by the Central Government in the Official Gazette;
- (b) “domestic industry” 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;
- (c) “serious injury” means an injury causing significant overall impairment in the position of a domestic industry;
- (d) “threat of serious injury” means a clear and imminent danger of serious injury.

**Sec 8B(12)** Every notification issued under this section shall be laid, as soon as may be after it is issued, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the notification or both Houses agree that the notification should not be issued, the notification shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that notification.’

# Power of CG to impose safeguard duty (Sec 8B) [As amended by FA, 2020]

## Illustration –

Developing Countries	(a)	(b)	(c)	(d)
Country A	2%	3%	4%	2.5%
Country B	2%	2%	2%	2.5%
Country C	2%	2%	2%	2.5%
Country D	2%	2%	2%	2.5%
Individual Injury	Not Imposable	Not Imposable	Imposable against imports from Country A	Not Imposable
Cartel Injury	Not Imposable	Not Imposable	Not Imposable	Imposable against all countries



# Power of CG to impose safeguard duty (Sec 8B) [As amended by FA, 2020]

**Question** – Determine the customs duty payable under the Customs Tariff Act, 1975 including the safeguard duty of 30% under sec 8B of the said Act with the following details available on hand –

Assessable value of Sodium Nitrite imported from a developing country from 26 <sup>th</sup> Feb, 2018 to 25 <sup>th</sup> Feb, 2019 (both days inclusive)	₹ 30,00,000
Share of imports of Sodium Nitrite from the developing country against total imports of Sodium Nitrite to India	4%
Basic Custom Duty	10%
Integrated Tax	12%
SWS	10%

**Ans** –

Assessable Value	₹ 30,00,000
Basic Custom Duty (10% * 30,00,000)	₹ 3,00,000
Safeguard Duty (30% * 30,00,000)	₹ 9,00,000
SWS (10%*300,000)	<u>₹ 30,000</u>
<b>Total</b>	₹ 42,30,000
Integrated Tax (12% * 42,30,000)	<u>₹ 507,600</u>
<b>Total Custom Duty (₹ 300,000 + ₹ 900,000 + ₹ 30,000 + ₹ 507,600)</b>	<b>17,37,600</b>

# Countervailing duty on subsidized articles (Sec 9)

(1) Where **any country or territory pays, or bestows, directly or indirectly, any subsidy** upon  
→ the **manufacture** or production therein or  
→ the **exportation** therefrom of any article **including** any subsidy on transportation of such article,  
**then,**

**upon the importation of any such article into India,**

- whether the same is **imported directly** from the country of manufacture, production or otherwise, **and**
  - whether it is imported in the same condition as when exported from the country of manufacture or production or has been changed in condition by manufacture, production or otherwise,
- the **CG may, by notification** in the Official Gazette, **IMPOSE A COUNTER-VAILING DUTY not exceeding the amount of such subsidy.**

**Explanation.** - For the purposes of this section, a “**SUBSIDY**” shall be **deemed** to exist if –

- (a) there is **financial contribution by a government, or any public body** in the exporting or producing country or territory, that is, **where** –
  - (i) a government practice involves a **direct transfer of funds** (including grants, loans and equity infusion), or potential direct transfer of funds or liabilities, or both;
  - (ii) **government revenue that is otherwise due is foregone** or not collected (including fiscal incentives)
  - (iii) a government provides **goods or services other than general infrastructure** or purchases goods;

# Countervailing duty on subsidized articles (Sec 9)

iv. 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 in clauses (i) to (iii) above which would normally be vested in the government and the practice in, no real sense, differs from practices normally followed by governments; or

(b) a government grants or maintains any form of income or price support, which operates directly or indirectly to increase export of any article from, or to reduce import of any article into, its territory, and a benefit is thereby conferred.

(1A) Where the CG, on such inquiry as it considers necessary, is of the opinion that **circumvention of countervailing duty imposed under sub-section (1) has taken place**, either

- by **altering the description** or name or composition of the article on which such duty has been imposed 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 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.* [Bold and Italic words inserted by the Finance Act, 2021, w.e.f. 28-3-2021]

# Countervailing duty on subsidized articles (Sec 9)

(1B) Where the Central Government, on such inquiry as it considers necessary, is of the opinion that **absorption of countervailing duty** imposed under sub-section (1) 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.

**Explanation.**—For the purposes of this sub-section, “**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  
**[Sec 9(1B) inserted by the Finance Act, 2021, w.e.f. 28-3-2021]**

## PROVISIONAL IMPOSITION

(2) The **CG may**, *pending the determination in accordance with the provisions of this section* and the rules made thereunder of the amount of subsidy, **IMPOSE A COUNTERVAILING DUTY** under this sub-section **not exceeding the amount of such subsidy as provisionally estimated by it** and if such countervailing duty exceeds the subsidy as so determined, -

- (a) the **CG shall**, having regard to such determination and as soon as may be after such determination, **reduce such countervailing duty**; and  
(b) **refund shall be made of so much of such countervailing duty** which has been collected as is in excess of the countervailing duty as so reduced.

# Countervailing duty on subsidized articles (Sec 9)

(2A) Notwithstanding anything contained in sub-sections (1) and (2), a notification issued under sub-section (1) or any countervailing duty imposed under sub-section (2) shall not apply to article 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, countervailing duty shall be imposed on that portion of the article so cleared or used, as was applicable when it was imported into India.

**Explanation.**—For the purposes of this sub-section,—

- (a) the expression “100% export-oriented undertaking” shall have the same meaning as assigned to it in clause (i) of Explanation 2 to sub-section (1) of section 3 of the Central Excise Act, 1944;
- (b) the expression “special economic zone” shall have the same meaning as assigned to it in clause (za) of section 2 of the Special Economic Zones Act, 2005.

**[Sec 9(2A) inserted by the Finance Act, 2021, w.e.f. 28-3-2021]**

# Countervailing duty on subsidized articles (Sec 9)

(3) Subject to any rules made by the Central Government, by notification in the Official Gazette, the **countervailing duty under subsection (1) or sub-section (2) 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,
  - (i) research activities** conducted by or on behalf of persons engaged in the manufacture, production or export;
  - (ii) assistance to disadvantaged regions** within the territory of the exporting country; or
  - (iii) assistance to promote adaptation of existing facilities to new environmental requirements.**

(4) If the **CG is of the opinion** that the injury to the domestic industry which is difficult to repair, is caused by massive imports in a relatively short period, of the article benefiting from subsidies paid or bestowed and where in order to preclude the recurrence of such injury, it is necessary to **LEVY COUNTERVAILING DUTY RETROSPECTIVELY**,

- the **CG may, by notification** in the Official Gazette, *levy countervailing duty from a date prior to the date of imposition of countervailing duty under sub-section (2) but not beyond 90 days from the date of notification under that sub-section* and notwithstanding any thing contained in any law for the time being in force, such duty shall be payable from the date as specified in the notification issued under this sub-section.

(5) The countervailing duty chargeable under this section shall be in addition to any other duty imposed under this Act or any other law for the time being in force.

# Countervailing duty on subsidized articles (Sec 9)

(6) 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**.

**Provided** that if the **CG**, in a review, is of the opinion that the cessation of such duty is likely to lead to continuation or recurrence of subsidization and injury, it may, from time to time, **EXTEND THE PERIOD OF SUCH IMPOSITION FOR A FURTHER PERIOD OF UPTO 5 YEARS** and such further period shall commence from the date of order of such extension: **[word 'of' substituted by 'upto' by Finance Act, 2021, w.e.f. 28-3-2021]**

**Provided further** that 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**.

**Provided also** that if the said duty is revoked temporarily, the period of such revocation shall not exceed one year at a time. **[proviso inserted by Finance Act, 2021, w.e.f. 28-3-2021]**

(7) The amount of any such subsidy as referred to in sub-section (1) or sub-section (2) shall, from time to time, be ascertained and determined 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 ARTICLES** and for the assessment and collection of any countervailing duty imposed upon the importation thereof under this section.

# Countervailing duty on subsidized articles (Sec 9)

(7A) **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.**

(8) **Every notification issued under this section shall, as soon as may be after it is issued, be laid before each House of Parliament.**



# Anti-dumping duty on dumped articles (Sec 9A)

(1) Where any article is **exported by an exporter or producer from any country or territory** (hereafter in this section referred to as the **exporting country** or territory) **to India**

**at less than its NORMAL VALUE,**

then, upon the importation of such article into India, the **CG may, by notification** in the Official Gazette, **impose an ANTI-DUMPING DUTY not exceeding the margin of dumping in relation to such article.**

**Anti-Dumping Duty = Margin of dumping or Injury Margin, whichever is lower**

**Explanation-**For the purposes of this section,-

a) **“MARGIN OF DUMPING”** in relation to an article, **means the difference between its EXPORT PRICE and its NORMAL VALUE;**

**Margin of Dumping = Normal Value – Export Price**

b) **“EXPORT PRICE”**, in relation to an article, **means the price of the article exported from the exporting country or territory and in cases**

→ where there is **no export price** or

→ where the **export price is unreliable** because of association or a compensatory arrangement between the exporter and the importer or a third party,

○ the export price may be constructed on the basis of the price at which the **imported articles are first resold to an independent buyer** or

○ **if the article is not resold** to an independent buyer, or not resold in the condition as imported, **on such reasonable basis as may be determined in accordance with the rules made under sub-section (6);**

# Anti-dumping duty on dumped articles (Sec 9A)

- c) **"NORMAL VALUE"**, in relation to an article, means-
- (i) the **comparable price**, in the ordinary course of trade, for the like article when **destined for consumption in the exporting country** or territory as determined in accordance with the rules made under subsection (6); or
  - (ii) → **when there are NO SALES** of the like article in the ordinary course of trade in the domestic market of the exporting country or territory, or
    - when because of the particular market situation or low volume of the **sales in the domestic market of the exporting country** or territory, such sales **do not permit a proper comparison**, the **normal value shall be either-**
      - (a) **comparable representative price** of the like article **when exported** from the exporting country or territory **to an APPROPRIATE THIRD COUNTRY** as determined in accordance with the rules made under sub-section (6); or
      - (b) **the 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 made under sub-section(6):

**Provided** that in the case of

- import of the article from a country other than the country of origin and → where the article has been merely transhipped through the country of export **or**
- such article is not produced in the country of export **or**
- there is no comparable price in the country of export,

**THE NORMAL VALUE SHALL BE DETERMINED WITH REFERENCE TO ITS PRICE IN THE COUNTRY OF ORIGIN.**

# Anti-dumping duty on dumped articles (Sec 9A)

**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 effected 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 (S.C.)].

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

# Anti-dumping duty on dumped articles (Sec 9A)

(1A) Where the **CG**, on such inquiry as it may consider necessary, is of the opinion that **circumvention of antidumping duty imposed under sub-section (1) has taken place**, either

→ by **altering the description** or name or composition of the article subject to such anti-dumping 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.* [**Bold and Italic words inserted by the Finance Act, 2021, w.e.f. 28-3-2021**]

(1B) Where the Central Government, on such inquiry as it may consider necessary, is of the opinion that **absorption of anti-dumping duty** imposed under sub-section (1) 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 than the date of initiation of the inquiry, as the Central Government may, by notification in the Official Gazette, specify.

**Explanation.**—For the purposes of this sub-section, “**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. [**Sec 9A(1B) inserted by the Finance Act, 2021, w.e.f. 28-3-2021**]

# Anti-dumping duty on dumped articles (Sec 9A)

## PROVISIONAL IMPOSITION

(2) The CG may, *pending the determination in accordance with the provisions of this section* and the rules made thereunder of the normal value and the margin of dumping in relation to any article, **IMPOSE ON THE IMPORTATION OF SUCH ARTICLE INTO INDIA AN ANTI-DUMPING DUTY on the basis of a provisional estimate of such value and margin** and **if such anti-dumping duty exceeds the margin as so determined,-**

- (a) the CG shall, having regard to such determination and as soon as may be after such determination, reduce such anti-dumping duty; and
- (b) refund shall be made of so much of the anti-dumping duty which has been collected as is in excess of the anti-dumping duty as so reduced.

(2A) Notwithstanding anything contained in sub-section (1) and sub-section (2), a notification issued under sub-section (1) or any anti-dumping duty imposed under sub-section (2) 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.

**Explanation.**—For the purposes of this section,— (a) the expression “100% export-oriented undertaking” shall have the same meaning as assigned to it in clause (i) of Explanation 2 to sub-section (1) of section 3 of the Central Excise Act, 1944; (b) the expression “special economic zone” shall have the same meaning as assigned to it in clause (za) of section 2 of the Special Economic Zones Act, 2005. **[Sec 9A(2A) substituted by ‘upto’ by Finance Act, 2021, w.e.f. 28-3-2021]**

# Anti-dumping duty on dumped articles (Sec 9A)

(3) If the **CG**, in respect of the dumped article under inquiry, is of the opinion that –

- (i) there is a history of dumping which caused injury or that the importer was, or should have been, aware that the exporter practices dumping and that such dumping would cause injury; and
- (ii) the injury is caused by massive dumping of an article imported in a relatively short time which in the light of the timing and the volume of imported article dumped and other circumstances is likely to seriously undermine the remedial effect of the antidumping duty liable to be levied,

the **CG** may, by notification in the Official Gazette, **levy anti-dumping duty RETROSPECTIVELY *from a date prior to the date of imposition of antidumping duty*** under sub-section (2) **but not beyond 90 days** from the date of notification under that sub-section, **and** notwithstanding any thing contained in any other law for the time being in force, such duty shall be payable at such rate and from such date as may be specified in the notification.

(4) The anti-dumping duty chargeable under this section shall be in addition to any other duty imposed under this Act or under any other law for the time being in force.

# Anti-dumping duty on dumped articles (Sec 9A)

(5) The anti-dumping 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**:

**Provided** that if the **CG**, in a review, is of the opinion that the cessation of such duty is likely to lead to continuation or recurrence of dumping and injury, it may, from time to time, **EXTEND THE PERIOD OF SUCH IMPOSITION FOR A FURTHER PERIOD OF UPTO 5 YEARS** and such further period shall commence from the date of order of such extension. **[word 'of' substituted by 'upto' by Finance Act, 2021, w.e.f. 28-3-2021]**

**Provided further** that where a *review initiated* before the expiry of the aforesaid period of five years *has not come to a conclusion before such expiry*, the anti-dumping duty may **CONTINUE TO REMAIN IN FORCE** pending the outcome of such **A REVIEW FOR A FURTHER PERIOD NOT EXCEEDING 1 YEAR.**

**Provided** also that if the said duty is revoked temporarily, the period of such revocation shall not exceed one year at a time. **[proviso inserted by Finance Act, 2021, w.e.f. 28-3-2021]**

(6) The **margin of dumping** as referred to in sub-section (1) or sub-section (2) shall, from time to time, **be ascertained and determined by the CG**, **after such inquiry as it may consider necessary** and the CG may, by notification in the Official Gazette, **MAKE RULES FOR THE PURPOSES OF THIS SECTION**, and without prejudice to the generality of the foregoing such rules may **PROVIDE FOR THE MANNER IN WHICH ARTICLES LIABLE FOR ANY ANTIDUMPING DUTY UNDER THIS SECTION MAY BE IDENTIFIED** and for the **MANNER IN WHICH THE EXPORT PRICE and the NORMAL VALUE OF AND THE MARGIN OF DUMPING** in relation to, such articles may be determined and for the assessment and collection of such anti-dumping duty.

# Anti-dumping duty on dumped articles (Sec 9A)

(6A) The **margin of dumping** in relation to an article, exported by an exporter or producer, under inquiry under sub-section (6) **shall be determined** on the basis of

- **records** concerning normal value and export price maintained, and
- **information provided, by such exporter** or producer:

**Provided** that 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.;

(7) Every notification issued under this section **shall**, as soon as may be after it is issued, **be laid before each House of Parliament.**

(8) 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.**



# Anti-dumping duty on dumped articles (Sec 9A)

**Question** – PCB Limited has imported printed circuit boards for sale in India from Country X, which are liable for anti-dumping duty. You are provided with the following details.

- (i) Country X does not sell these goods in its domestic market.
- (ii) The printed circuit board is sold in domestic industry @ USD 175 per piece.
- (iii) PCB Limited has imported the printed circuit boards at USD 100 per piece.
- (iv) Landed value of the printed circuit boards is USD 125 per piece.

**Compute the anti-dumping duty payable by PCB Limited for 1,000 pieces of printed circuit boards it has imported during the year assuming conversion rate @ ₹ 75 per USD. (CA-Final, Nov-2020, 5 Marks)**

**Ans** – The quantum of anti-dumping duty is –

- (i) Margin of dumping or (ii) injury margin, whichever is lower.

Margin of dumping is the difference between export price and normal value of the imported article and injury margin 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.

In the given case, anti-dumping duty per piece is

- (i) Margin of dumping is USD 100 [USD 200\* - USD 100#] OR
- (ii) Injury Margin is USD 50 [USD 175~ – USD 125^], whichever is lower.

**Anti-dumping duty for 1,000 pieces (in rupees) = USD 50 \* 1,000 pieces \* 75 = ₹ 37,50,000**

\* When there are no sales of the like article in the domestic market of the exporting country, normal value is taken as the comparable representative price of the like article when exported from the exporting country to an appropriate third country. # Export price is price of the article exported from the exporting country. ~ Fair Selling Price/Non-Injurious Price is that level of price, which the industry is, expected to have charged under normal circumstances in the Indian Market. ^Landed Value

# Refund of antidumping duty in certain cases (Sec 9AA)

(1) Where upon determination by an **officer authorised in this behalf by the CG** under clause (ii) of sub-section (2), an **importer proves** to the satisfaction of the CG that he has paid anti-dumping duty imposed under sub-section (1) of section 9A on any article, in **excess of the actual margin of dumping in relation to such article**, the **CG 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 such **IMPORTER SHALL BE ENTITLED TO REFUND OF SUCH EXCESS DUTY**.

**Provided** that such **importer shall not** be entitled to refund of so much of such excess duty under this sub-section which is **refundable under sub-section (2) of section 9A**.

**Explanation.-** For the purposes of this sub-section, the expressions, "margin of dumping", "export price" and "normal value" shall have the same meaning respectively assigned to them in the Explanation to subsection (1) of section 9A.

(2) the **CG may, by notification** in the Official Gazette, **make rules** to –

- (i) provide for the manner in which and the time within which the importer may make application for the purposes of sub-section (1);
- (ii) authorise the officer of the Central Government who shall dispose of such application on behalf of the Central Government within the time specified in such rules; and
- (iii) provide the manner in which the excess duty referred to in sub-section (1) shall be –
  - (A) determined by the officer referred to in clause (ii); and
  - (B) refunded by the Deputy Commissioner of Customs or Assistant Commissioner of Customs, as the case may be, after such determination;

**Note** – As per Sec 9AA, where an importer proves to the satisfaction of the CG that he has paid anti-dumping duty, in excess of the actual margin of dumping, then the CG shall reduce such anti-dumping duty and the importer shall be entitled to refund of such excess duty.

# No levy under section 9 or section 9A in certain cases (Sec 9B)

(1) Notwithstanding anything contained in section 9 or section 9A, -

- (a) **NO ARTICLE SHALL BE SUBJECTED TO BOTH countervailing duty (Duty against subsidy) and anti-dumping duty** to compensate for the same situation of dumping or export subsidization;
- (b) the **CG shall not levy** any countervailing duty or anti-dumping duty –
  - (i) under section 9 or section 9A
    - by reasons of exemption of such articles from duties or taxes borne by the like article when meant for consumption in the country of origin or exportation or
    - by reasons of refund of such duties or taxes;
  - (ii) **under sub-section (1) of each of these sections, on the import into India of any article from a member country of the WTO or from a country with whom Government of India has a most favoured nation (MFN) agreement** (hereinafter referred as a **specified country**), **unless** in accordance with the rules made under sub-section (2) of this section, a determination has been made that import of such article into India
    - **causes or threatens material injury to any established industry in India or**
    - **materially retards the establishment of any industry in India; and**
  - (iii) **under sub-section (2) of each of these sections, on import into India of any article from the specified countries unless** in accordance with the rules made under sub-section (2) of this section, a preliminary findings has been made of subsidy or dumping and consequent injury to domestic industry; and a further **determination has also been made that a duty is necessary to prevent injury being caused** during the investigation:

**Provided that NOTHING CONTAINED IN SUB-CLAUSES (II) AND (III) OF THIS CLAUSE SHALL APPLY** if a countervailing duty or an anti-dumping duty has been **imposed on any article to prevent injury or threat of an injury to the domestic industry of a third country exporting the like articles to India;**

# No levy under section 9 or section 9A in certain cases (Sec 9B)

(c) the **CG may not levy** –

- (i) 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 if the Central Government is satisfied that the injurious effect of the subsidy is eliminated thereby;
- (ii) any anti-dumping duty under **section 9A**, at any time, **upon receipt of satisfactory voluntary under taking 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.

(2) The **CG may, by notification** in the Official Gazette, **MAKE RULES FOR THE PURPOSES OF THIS SECTION**, and without prejudice to the generality of the foregoing, such rules may provide for the manner in which any investigation may be made for the purposes of this section, the factors to which regard shall be had in any such investigation and for all matters connected with such investigation.

# Appeal (Sec 9C)

- (1) An appeal against the order of determination or review thereof shall lie to the CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL (CESTAT) constituted under section 129 of the Customs Act, 1962 (hereinafter referred to as the Appellate Tribunal), in respect of the existence, degree and effect of—
- (i) any subsidy or dumping in relation to import of any article; or
  - (ii) 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.

(1A) An appeal under sub-section (1) shall be accompanied by a **fee of ₹15,000**.

(1B) Every application made before the Appellate Tribunal,-

- (a) in an **appeal** under sub-section (1), **for grant of stay** or **for rectification of mistake** or for any other purpose; or
- (b) for **restoration of an appeal** or an application, shall be accompanied by a **fee of ₹ 500**.

(2) Every appeal under this section shall be filed within **90 days of the date of order under appeal**:

**Provided** that 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

(3) 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 order appealed against.

# Appeal (Sec 9C)

(4) The provisions of sub-section (1), (2), (5) and (6) or section 129C of the Customs Act, 1962 shall apply to the Appellate Tribunal in the discharge of its functions under this Act as they apply to it in the discharge of its functions under the Customs Act, 1962.

(5) Every appeal under sub-section (1) shall be heard by a **SPECIAL BENCH** constituted by the President of the Appellate Tribunal for hearing such appeals and such Bench shall consist of the President and not less than 2 members and shall include one judicial member and one technical member.

# Anti-absorption Review in respect of Anti-Dumping duty or CVD on subsidized articles [Sec 9(1B) and Sec 9A(1B) of CTA] [NN 83 & 84/2021-Customs (N.T.), w.e.f. 27-10-2021]

- An Anti-Dumping duty or Countervailing duty may be considered to be absorbed when export prices of an article from the exporting country or countries decrease post imposition of Anti-Dumping duty or Countervailing duty, without any commensurate change in cost of production of such article or export prices of such article to countries other than India or resale price of such article in India imported from the exporting country or countries.
- In such cases, the designated authority may, after conducting review, recommend modification in the form or basis or quantum of the Anti-Dumping duty or Countervailing duty, after reassessing the dumping/subsidy margin and injury margin.
- Before proceeding to initiate the investigation to determine the existence and effect of alleged absorption of Anti-Dumping duty or Countervailing duty, the designated authority shall notify the government of the exporting country.
- The Central Government may, on the recommendation of the designated authority, resort to provisional assessment of the imports of the article alleged to be absorbing Anti-Dumping duty or Countervailing duty and may ask a guarantee from the importer, till the time a decision in this regard is taken by the Central Government.
- Upon determination that the absorption of Anti-Dumping duty or Countervailing duty exists, the Central Government may, pursuant to the recommendations made by designated authority, modify the form or basis or quantum of Anti-Dumping duty or Countervailing duty. Further, it shall be applicable to the imports of such articles retrospectively but not earlier than the date of initiation of the investigation or such date as may be recommended by the designated authority.