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Introduction

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

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

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

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

Ex-Factory Price	It is the price of the goods at the factory gate. It includes cost of production and manufacturer's margin of profit.
FAS (Free Alongside)	It is the cost at which the export goods are delivered alongside the ship, ready for shipment. It includes – Ex-Factory + Local Freight + Local Taxes
FOB (Free on Board)	Technically there is not much of a difference between FAS and FOB cost. FOB means the stage at which the goods are placed on Board the conveyance carrying the vessel. It includes – FAS + Loading charges + Export duty Cess
CIF (Cost Insurance Freight)	It is the cost at which the goods are delivered at the Indian port (FOB + Insurance + Freight).

Valuation of Goods based on Sec 14

Sec 14 - Valuation of goods –

(1) For the purposes of the Customs Tariff Act, 1975, or any other law for the time being in force, the value of the imported goods and export goods shall be the transaction value of such goods, that is to say,

→ the price actually paid or payable for the goods when sold for export to India for delivery **at the time and place of importation**, or as the case may be,

→ for export from India for delivery **at the time and place of exportation**,

where

→ the buyer and seller of the goods are not related **and**

→ price is the sole consideration for the sale subject to such other conditions as may be specified in the rules made in this behalf :

Provided that such transaction value in the case of imported goods **shall include**, in addition to the price as aforesaid, → any amount paid or payable for costs and services, including

- commissions and brokerage,
- engineering,
- design work,
- royalties and licence fees,
- costs of transportation to the place of importation,
- insurance,
- loading, unloading and handling charges

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

Valuation of Goods based on Sec 14

Provided further that the **rules** made in this behalf may provide for,-

- (i) the circumstances in which the buyer and the seller shall be **deemed** to be **related**;
- (ii) the manner of determination of value in respect of goods when
 - there is no sale, or
 - the buyer and the seller are related, or
 - price is not the sole consideration for the sale or in any other case;
- (iii) the manner of acceptance or rejection of value declared by the importer or exporter, as the case may be, where the proper officer has reason to doubt the truth or accuracy of such value, and determination of value for the purposes of this section :

Provided also that such price shall be calculated with reference to the rate of exchange as in force on the date on which a bill of entry is presented under section 46, or a shipping bill of export, as the case may be, is presented under section 50.

(2) Notwithstanding anything contained in sub-section (1), if the **Board (CBIC)** is satisfied that it is necessary or expedient so to do, it may, by notification in the Official Gazette, fix tariff values for any class of imported goods or export goods, having regard to the trend of value of such or like goods, and where any such tariff values are fixed, the duty shall be chargeable with reference to such tariff value.

Valuation of Goods based on Sec 14

Explanation. - For the purposes of this section -

(a) "**RATE OF EXCHANGE**" means the rate of exchange -

(i) determined by the Board (**CBIC**), or

(ii) ascertained in such manner as the Board may direct, for the conversion of Indian currency into foreign currency or foreign currency into Indian currency;

(b) "**FOREIGN CURRENCY**" and "**INDIAN CURRENCY**" have the meanings respectively assigned to them in clause (m) and clause (q) of section 2 of the FEMA, 1999.

Note –

1. The rate of exchange is notified by three agencies – the CBIC (Board), the RBI and the Foreign Exchange Dealers' Association of India. For the purpose of customs valuation, rate of exchange means rate determined by the Board. The CBIC notifies the rates periodically, generally every fortnight. There are separate rates for imported goods (selling rate) and export goods (buying rate).
2. **Conversion Dates –**
 - a) For imported goods, the conversion in value shall be done with reference to the rate of exchange prevalent on the date of filing bill of entry under sec 46 (whether for warehousing or home consumption).
 - b) For export goods, the conversion in value shall be done with reference to the rate of exchange prevalent on the date of filing shipping bill (vessel or aircraft) or bill of export (vehicle) under sec 50.
3. In case of Samar Timber Corporation vs ACC 1995 (79) ELT 549 (Bom.), it was held that relevant date in respect of rate of duty payable is the date of presentation of Bill of Entry and not date of re-presentation after correction. Meaning thus that FIRST Bill of Entry is to be considered for the purpose of computation of price of imported goods.

Valuation of Goods based on Sec 14

Note –

1. In case of Imports, we need to know 3 things to compute custom duty –

A. First, Value of Imported/Exported goods – This is determined under Sec 14(1) as the Transaction value (i.e. Price actually paid or payable) of the goods at the time and place of import or export

- Where price is the sole consideration and
- Seller and Buyer are not related.

Custom duty may also be levied at fixed tariff values under Sec 14(2). The Central Government may fix Tariff values for certain goods having regard to the trend of the value of such or like goods for the purpose of levy of Duty and where tariff value has been fixed, any other value shall be immaterial.

B. Secondly, Price to be computed with reference to exchange rate - Price referred u/s 14(1)d is to be computed with reference to the rate of exchange as in force on the date on which FIRST bill of entry is presented u/s 46 (whether for warehousing or home consumption) in case of imports, and in case of exports, rate of exchange as in force on the date on which the shipping bill or bill of export is presented u/s 50. The rate of conversion which is prescribed by the Central Board of Indirect Taxes and Customs (CBIC) is to be considered, not any other.

C. Thirdly, Rate of duty – Relevant date for Rate of duty and Tariff Valuation of Imported goods is given under Sec 15 (Filing of Bill of Entry for Home Consumption or grant of entry inwards to the vessel/arrival of vehicle or aircraft, whichever is later) and for exported goods is given under Sec 16 (Date of 'Let Export' Order).

Custom Duty (BCD) = Value of Goods * Exchange Rate * Rate of Duty

Example - Goods are shipped on 01.01.2018. Goods reaches land mass and are being removed for deposit in the bonded warehouse on 15.01.2018. Into bond BOE is filed on 15.01.2018 and ex-bond BOE on 01.02.2018. In the present case, date of 'Rate of Duty' shall be as prevailing on 01.02.2018 and transaction value shall be as on 15.01.2018.

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

Rules 2 – Definitions (1) In these rules, unless the context otherwise requires, -

- (a) "**COMPUTED VALUE**" means the value of imported goods determined in accordance with rule 8.
- (b) "**DEDUCTIVE VALUE**" means the value determined in accordance with rule 7.
- (c) "**GOODS OF THE SAME CLASS OR KIND**", means imported goods that are within a group or range of imported goods produced by a particular industry or industrial sector and **includes** identical goods or similar goods;
- (d) "**IDENTICAL GOODS**" means imported goods –
 - i. which are same in all respects, including
 - physical characteristics,
 - quality and
 - reputation as the goods being valuedexcept for minor differences in appearance that do not affect the value of the goods;
 - ii. produced in the country in which the goods being valued were produced; and
 - iii. produced by the same person who produced the goods, or where no such goods are available, goods produced by a different person,

but shall not include imported goods where engineering, development work, art work, design work, plan or sketch undertaken in India were completed directly or indirectly

→ by the buyer on these imported goods free of charge or at a reduced cost

→ for use in connection with the production **and** sale for export of these imported goods;

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

(da) "**PLACE OF IMPORTATION**" means the customs station, where the goods are brought for being cleared for home consumption or for being removed for deposit in a warehouse;

(e) "**PRODUCED**" includes grown, manufactured and mined

(f) "**SIMILAR GOODS**" means imported goods -

(i) which although not alike in all respects, have like characteristics and like component materials which enable them to perform the same functions and to be commercially interchangeable with the goods being valued having regard to the quality, reputation and the existence of trade mark;

(ii) produced in the country in which the goods being valued were produced; and

(iii) produced by the same person who produced the goods being valued, or where no such goods are available, goods produced by a different person,

but shall not include imported goods where engineering, development work, art work, design work, plan or sketch undertaken in India were completed directly or indirectly

→ by the buyer on these imported goods free of charge or at a reduced cost

→ for use in connection with the production and sale for export of these imported goods;

(g) "**TRANSACTION VALUE**" means the value referred to in sub-section (1) of section 14 of the Customs Act, 1962;

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

(2) For the purpose of these rules, persons shall be **deemed** to be "**related**" only if -

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

Explanation I. - The term "person" also includes legal persons.

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

Note to rule 2

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

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

Note –

1. In case of CC vs East African Traders 2000 (115) ELT 613 (SC), it was held that Customs authorities and Tribunal can pierce the veil of the respondent company to determine whether or not the buyer and the seller were 'related persons within the scope of rule 2(2) of the erstwhile Customs Valuation (Determination of Price of Imported Goods) Rules, 1988 (now rule 2(2) of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007)
2. **Illustration** – M/s ES Ltd (assessee) imported certain goods at US \$ 20 per unit from an exporter who was holding 30% equity in the share capital of the importer company. Subsequently, the assessee entered into an agreement with the same exporter to import the said goods in bulk at US \$ 14 per unit. When imports at the reduced price were effected pursuant to this agreement, the Dept rejected the transaction value stating that the price was influenced by the relationship and completed the assessment on the basis of transaction value of the earlier imports i.e. at US \$ 20 per unit under rule 4 of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007. Whether the Dept's action is sustainable in law

Ans – No, the Dept's action is not sustainable in law. Rule 2(2) of Customs Valuation (Determination of Value of Imported Goods) Rules, 2007, inter alia, provides that persons shall be deemed to be 'related' if one of them directly or indirectly controls the other. The word "control" has not been defined under the said rules. As per common parlance, control is established when one enterprise holds at least 51% of the equity shareholding of the other company. However, in the instant case, the exporter company held only 30% of shareholding of the assessee. Thus, exporter company did not exercise control over the assessee. So, the two parties cannot be said to be related. The fact that assessee had made bulk imports could be a reason for reduction in import price. The burden to prove other-wise lies on Revenue. In absence of any evidence from Dept., price declared by assessee is acceptable.

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

Rule 3 - Determination of the method of valuation.-

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

TRANSACTION VALUE IS ACCEPTED PROVIDED THERE IS NO POST IMPORTATION ACTIVITY

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

Provided that -

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

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

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

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

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

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

(d) the buyer and seller are not related, or where the buyer and seller are related, that transaction value is acceptable for customs purposes under the provisions of sub-rule (3) below.

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

Note to Rule 3 → Rule 3(2)(b)

If the sale or price is subject to some condition or consideration for which a value cannot be determined with respect to the goods being valued, the transaction value shall not be acceptable for customs purposes. Some examples of this include-

- (a) The seller establishes the price of the imported goods on condition that the buyer will also buy other goods in specified quantities;*
- (b) the price of the imported goods is dependent upon the price or prices at which the buyer of the imported goods sells other goods to the seller of the imported goods;*
- (c) the price is established on the basis of a form of payment extraneous to the imported goods, such as where the imported goods are semi-finished goods which have been provided by the seller on condition that he will receive a specified quantity of the finished goods.*

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

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

(3) (a) **Where the buyer and seller are related**, the transaction value shall be accepted provided that the examination of the circumstances of the sale of the imported goods indicate that the relationship did not influence the price.

(b) In a **sale between related persons**, the transaction value shall be accepted, whenever the importer demonstrates that the declared value of the goods being valued, closely approximates to one of the following values ascertained at or about the same time.

- TEST VALUE**
- (i) **the transaction value of identical goods, or of similar goods, in sales to unrelated buyers in India;**
 - (ii) **the deductive value for identical goods or similar goods;**
 - (iii) **the computed value for identical goods or similar goods;**

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

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

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

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

Note to Rule 3 → Rule 3(3)

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

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

Note to Rule 3 → Rule 3(3)

- 3.** *Where the proper officer of customs is unable to accept the transaction value without further inquiry, he should give the importer an opportunity to supply such further detailed information as may be necessary to enable him to examine the circumstances surrounding the sale. In this context, the proper officer of customs should be prepared to examine relevant aspects of the transaction, including the way in which the buyer and seller organize their commercial relations and the way in which the price in question was arrived at, in order to determine whether the relationship influenced the price. **Where it can be shown that the buyer and seller, although related under the provisions of rule 2(2), buy from and sell to each other as if they were not related, this would demonstrate that the price had not been influenced by the relationship.** As an example of this, if the price had been settled in a manner consistent with the normal pricing practices of the industry in question or with the way the seller settles prices for sales to buyers who are not related to him, this would demonstrate that the price had not been influenced by the relationship. As a further example, where it is shown that the price is adequate to ensure recovery of all costs plus a profit which is representative of the firm's overall profit realized over a representative period of time (e.g. on an annual basis) in sales of goods of the same class or kind, this would demonstrate that the price had not been influenced.*
- 4.** *Rule 3(3)(b) provides an opportunity for the importer to demonstrate that the transaction value closely approximates to a "test" value previously accepted by the proper officer of customs and is therefore acceptable under the provisions of rule 3. Where a test under rule 3(3)(b) is met, it is not necessary to examine the question of influence under rule 3(3)(a). If the proper officer of customs has already sufficient information to be satisfied, without further detailed inquiries, that one of the tests provided in rule 3(3)(b) has been met, there is no reason for him to require the importer to demonstrate that the test can be met.*

Note to Rule 3 → Rule 3(3)(b)

A number of factors must be taken into consideration in determining whether one value "closely approximates" to another value.

These factors include

- the nature of the imported goods,*
- the nature of the industry itself,*
- the season in which the goods are imported, and*
- whether the difference in values is commercially significant.*

Since these factors may vary from case to case, it would be impossible to apply a uniform standard such as a fixed percentage, in each case. For example, a small difference in value in a case involving one type of goods could be unacceptable while a large difference in a case involving another type of goods might be acceptable in determining whether the transaction value closely approximates to the "test" values set forth in rule 3(3)(b).

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

Note to rule 3

Price actually paid or payable

The price actually paid or payable is the **total payment made or to be made by the buyer to or for the benefit of the seller for the imported goods**. The payment need not necessarily take the form of a transfer of money. Payment may be made by way of letters of credit or negotiable instruments. Payment may be made directly or indirectly. An example of an indirect payment would be the settlement by the buyer, whether in whole or in part, of a debt owed by the seller.

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

The value of imported goods shall not include the following charges or costs, provided that they are distinguished from the price actually paid or payable for the imported goods:

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

The price actually paid or payable refers to the price for the imported goods. Thus, the flow of dividends or other payments from the buyer to the seller that do not relate to the imported goods are not part of the customs value.

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

Rule 4 - Transaction value of identical goods. -

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

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

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

(c) Where no sale referred to in clause (b) of sub-rule (1), is found, the transaction value of identical goods sold at a different commercial level or in different quantities or both, adjusted to take account of the difference attributable to commercial level or to the quantity or both, shall be used, provided that such adjustments shall be made on the basis of demonstrated evidence which clearly establishes the reasonableness and accuracy of the adjustments, whether such adjustment leads to an increase or decrease in the value.

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

(3) In applying this rule, if more than one transaction value of identical goods is found, the lowest such value shall be used to determine the value of imported goods.

Notes to rule 4

1. *In applying rule 4, the proper officer of customs shall, wherever possible, use a sale of identical goods at the same commercial level and in substantially the same quantities as the goods being valued. Where no such sale is found, a sale of identical goods that takes place under any one of the following three conditions may be used:*
 - a) *a sale at the same commercial level but in different quantities; or*
 - b) *a sale at a different commercial level but in substantially the same quantities; or*
 - c) *a sale at a different commercial level and in different quantities.*
2. *Having found a sale under any one of these three conditions adjustments will then be made, as the case may be, for :*
 - a) *quantity factors only;*
 - b) *commercial level factors only; or*
 - c) *both commercial level and quantity factors.*
3. *For the purposes of rule 4, the transaction value of identical imported goods means a value, adjusted as provided for in rule 4(1)(b) and (c) and rule 4(2) which has already been accepted under rule 3.*

Notes to rule 4

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

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

Rule 5 - Transaction value of similar goods.-

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

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

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

Note to Rule 5–

- 1. In applying rule 5, the proper officer of customs shall, wherever possible, use a sale of similar goods at the same commercial level and in substantially the same quantities as the goods being valued. For the purpose of rule 5, the transaction value of similar imported goods means the value of imported goods, adjusted as provided for in rule 5(2) which has already been accepted under rule 3.*
- 2. All other provisions contained in note to rule 4 shall mutatis mutandis also apply in respect of similar goods.*

Rule 6 - Determination of value where value can not be determined under rules 3, 4 and 5.-

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

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

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

Rule 7 - Deductive value.-

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

- (i) either the commission usually paid or agreed to be paid or the additions usually made for profits and general expenses in connection with sales in India of imported goods of the same class or kind;
- (ii) the usual costs of transport and insurance and associated costs incurred within India;
- (iii) the customs duties and other taxes payable in India by reason of importation or sale of the goods.

(2) If neither the imported goods nor identical nor similar imported goods are sold → at or about the same time of importation of the goods being valued, the value of imported goods shall, subject otherwise to the provisions of sub-rule (1), be based on the unit price at which the imported goods or identical or similar imported goods are sold in India, at **the earliest date after importation but before the expiry of 90 days after such importation**

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

(b) In such determination, due allowance shall be made for the value added by processing and the deductions provided for in items (i) to (iii) of sub-rule (1).

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

Note to rule 7 –

- 1. The term "unit/price at which goods are sold in the greatest aggregate quantity" means the price at which the greatest number of units is sold in sales to persons who are not related to the persons from whom they buy such goods at the first commercial level after importation at which such sales take place.*
- 2. As an **example** of this, goods are sold from a price list which grants favourable unit prices for purchases made in larger quantities.*

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

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

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

Note to rule 7 –

3. As another **example** of this, two sales occur. In the first sale 500 units are sold at a price of 95 currency units each. In the second sale 400 units are sold at a price of 90 currency units each. In this example, the greatest number of units sold at a particular price is 500, therefore, the unit price in the greatest aggregate quantity is 95.

4. A third **example** would be the following situation where various quantities are sold at various prices.

(a) Sales

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

(b) Totals

Total Quantity Sold	Unit Price
65	90
50	95
60	100
25	105

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

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

Note to rule 7 –

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

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

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

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

Note to rule 7 –

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

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

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

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

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

Illustration

KPO Pvt. Ltd. imported machinery declaring transaction value of Rs. 3,20,000, which was rejected. Rule 4 and 5 of the Import Valuation Rules are found inapplicable, as no similar/ identical machinery are imported in India. KPO Pvt. Ltd. furnishes you the following data and requests you to compute the value of imported goods as per Rule 7:

Sale price in India (after value addition) : Rs. 6,30,000 (inclusive of GST @ 5%)

Commission to Indian agent on above sale : 3% of sale price (before GST)

Value addition after import : Rs. 40,000

Freight and Insurance from port of import to factory of importation : Rs. 40,000 and Rs. 20,000.

General Expenses after importation : Rs. 60,000.

Net profit margin (normally earned by others also) : 10% of sale price (before GST)

Rate of basic customs duty @10%. IGST @ 5% under section 3(7) of CGST Act, 2017. Social welfare surcharge applicable (no other duty leviable).

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

Answer :

Computation of Customs Value under Rule 7

Particulars	Amount (in Rs.)
Selling price (inclusive of IGST)	6,30,000
Less: IGST (Rs. 6,30,000 × 5/105)	30,000
Sale Price before IGST	6,00,000
Less: Post importation expenses - Commission on sale to Indian agents	18,000
Value addition after import	40,000
Freight and insurance from port of import to factory of importation (Rs. 40,000 + 20,000 = 60,000)	60,000
General Expenses after importation	60,000
Net profit margin in India	60,000
Cum-duty price inclusive of IGST on import	3,62,000
Less: IGST u/s 3(7) @ 5% (Rs. 3,62,000*5/105)	17,238
Cum-duty price exclusive of IGST on imports	3,44,762
Less: Customs duty @ 11% (Rs. 3,44,762*11/111) [BCD including SWS]	34,166
Assessable value	3,10,596

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

Rule 8 - Computed value.-

*Subject to the provisions of rule 3, the value of imported goods shall be based on a computed value, which shall consist of the **sum of**:-*

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

Note to rule 8

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

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

Note to rule 8

3. The "**cost or value**" **shall include** *the cost of elements specified in clauses (1)(a)(ii) and (1)(a)(iii) of rule 10. It shall also include the value, apportioned as appropriate under the provisions of the relevant note to rule 10, of any element specified in rule 10(l)(b) which has been supplied directly or indirectly by the buyer for use in connection with the production of the imported goods. The value of the elements specified in rule 10(l)(b)(iv) which are undertaken in India shall be included only to the extent that such elements are charged to the producer. It is to be understood that no cost or value of the elements referred to in this paragraph shall be counted twice in determining the computed value.*
4. The "**amount for profit and general expenses**" referred to in clause(b) of rule 8 is to be determined on the basis of information supplied by or on behalf of the producer unless the producer's figures are inconsistent with those usually reflected in sales of goods of the same class or kind as the goods being valued which are made by producers in the country of exportation for export to India.

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

Note to rule 8

5. *It should be noted in this context that the "**amount for profit and general expenses**" has to be taken as a whole. It follows that if, in any particular case, producer's profit figure is low and his general expenses are high, the producer's profit and general expenses taken together may nevertheless be consistent with that usually reflected in sales of goods of the same class or kind. Such a situation might occur, for example, if a product were being launched in India and the producer accepted a nil or low profit to offset high general expenses associated with the launch. Where the producer can demonstrate a low profit on his sales of the imported goods because of particular commercial circumstances, his actual profit figures should be taken into account provided that he has valid commercial reasons to justify them and his pricing policy reflects usual pricing policies in the branch of industry concerned. Such a situation might occur for example, where producers have been forced to lower prices temporarily because of an unforeseeable drop in demand, or where they sell goods to complement a range of goods being produced in India and accept a low profit to maintain competitiveness. Where the producer's own figures for profit and general expenses are not consistent with those usually reflected in sales of goods of the same class or kind as the goods being valued which are made by producers in the country of exportation for export to India, the amount for profit and general expenses may be based upon relevant information other than that supplied by or on behalf of the producer of the goods.*
6. *The "**general expenses**" referred to in clause (b) of rule 8 covers the direct and indirect costs of producing and selling the goods for export which are not included under clause (a) of rule 8.*
7. *Whether certain goods are "**of the same class or kind**" as other goods must be determined on a case-by-case basis with reference to the circumstances involved. In determining the usual profits and general expenses under the provisions of rule 8, sales for export to India of the narrowest group or range of goods, which includes the goods being valued, for which the necessary information can be provided, should be examined. For the purposes of rule 8 "goods of the same class or kind" must be from the same country as the goods being valued.*

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

Illustration

Mr. Sharma imported certain goods from a related person Mr. Lee of UAE and transaction value has been rejected. Rule 4 and 5 of the Import Valuation Rules are found inapplicable, as no similar/ identical goods are imported in India. Mr. Sharma furnishes cost related data of imports and requests Customs Authorities to determine value accordingly as per Rule 8. The relevant data are-

Cost of materials incurred by Mr. Lee	\$ 5000
Fabrication charges incurred by Mr. Lee	\$ 3000
Other chargeable expenses incurred by Mr. Lee	\$ 1500
Other indirect costs incurred by Mr. Lee	\$ 1200
Freight from Mr. Lee factory to UAE port	\$ 1300
Loading charges at UAE port	\$ 1000
Normal net profit margin of Mr. Lee @ 20% of FOB	
Air freight from UAE port to Indian port	\$ 3750
Insurance from UAE port to Indian port	\$ 500
Exchange Rate Rs. 60 per \$	

The Customs Authorities are of the opinion that since value as per Rule 7 can be determined at Rs. 13,00,000, there is no need to apply Rule 8.

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

Answer - Computation of Customs Value under Rule 8

Particulars	Amount (in Rs.)
Cost of materials incurred by Mr. Lee	5,000
Fabrication charges incurred by Mr. Lee	3,000
Other chargeable expenses incurred by Mr. Lee	\$1,500
Other indirect costs incurred by Mr. Lee	\$1,200
Freight from Mr. Lee factory to UAE port	\$1,300
Loading charges at UAE port	\$1,000
Total cost incurred by Mr. Lee	\$13,000
Normal net profit margin of Mr. Lee [20% of FOB or 25% of cost = 25% of \$ 13,000]	\$3,250
FOB price	\$16,250
Air freight from UAE port to India [Actual=\$3,750][Air Freight can't exceed 20% of FOB, hence, restricted to 20% of \$16250]	\$3,250
Insurance from UAE port to Indian port	\$500
CIF/Assessable Value under Customs	\$20,000
Exchange Rate	Rs. 60
Assessable value under Customs	Rs. 12,00,000

Rule 9 - Residual method.-

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

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

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

- (i) the selling price in India of the goods produced in India;*
- (ii) a system which provides for the acceptance for customs purposes of the highest of the two alternative values;*
- (iii) the price of the goods on the domestic market of the country of exportation;*
- (iv) the cost of production other than computed values which have been determined for identical or similar goods in accordance with the provisions of rule 8;*
- (v) the price of the goods for the export to a country other than India;*
- (vi) minimum customs values; or*
- (vii) arbitrary or fictitious values.*

Note to rule 9

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

- 2. The methods of valuation to be employed under rule 9 may be those laid down in rules 3 to 8, inclusive, but a reasonable flexibility in the application of such methods would be in conformity with the aims and provisions of rule 9.*

- 3. Some examples of reasonable flexibility are as follows:*
 - 1. Identical goods.** - The requirement that the identical goods should be imported at or about the same time as the goods being valued could be flexibly interpreted; identical imported goods produced in a country other than the country of exportation of the goods being valued could be the basis for customs valuation; customs values of identical imported goods already determined under the provisions of rules 7 and 8 could be used.*
 - 2. Similar goods.** - The requirement that the similar goods should be imported at or about the same time as the goods being valued could be flexibly interpreted; similar imported goods produced in a country other than the country of exportation of the goods being valued could be the basis for customs valuation; customs values of similar imported goods already determined under the provisions of rules 7 and 8 could be used.*
 - 3. Deductive method.** - The requirement that the goods shall have been sold in the "condition as imported" in rule 7(1) could be flexibly interpreted; the ninety days requirement could be administered flexibly.*

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

Rule 10 - Cost and services. -

(1) In determining the transaction value, there **shall be added** to the price actually paid or payable for the imported goods, -

- a) the following to the extent they are **incurred by the buyer but are not included in the price actually paid or payable** for the imported goods, namely:-
- i. commissions and brokerage, except buying commissions;
 - ii. the cost of containers which are treated as being one for customs purposes with the goods in question;
 - iii. the cost of packing whether for labour or materials;

Note - The term "buying commissions" means fees paid by an importer to his agent for the service of representing him abroad in the purchase of the goods being valued.

- b) The value, **apportioned as appropriate**, of the following goods and services where **supplied** directly or indirectly **by the buyer free of charge or at reduced cost for use in connection with the production and sale** for export of imported goods, to the extent that such value has **not been included in the price actually paid or payable**, namely: -
- i. materials, components, parts and similar items incorporated in the imported goods;
 - ii. tools, dies, moulds and similar items used in the production of the Imported goods;
 - iii. materials consumed in the production of the imported goods;
 - iv. engineering, development, art work, design work, and plans and sketches undertaken elsewhere than in India and necessary for the production of the imported goods;

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

Note to rule 10 → Rule 10(1)(b)(ii)

1. There are 2 factors involved in the apportionment of the elements specified in rule 10(1)(b)(ii) to the imported goods –

1. the value of the element itself and
2. the way in which that value is to be apportioned to the imported goods.

The apportionment of these elements should be made in a reasonable manner appropriate to the circumstances and in accordance with generally accepted accounting principles.

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

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

2. As an illustration of the above, an importer provides the producer with a mould to be used in the production of the imported goods and contracts with him to buy 10000 units. By the time of arrival of the first shipment of 1000 units, the producer has already produced 4,000 units. The importer may request the proper officer of customs to apportion the value of the mould over 1,000 units, 4,000 units or 10,000 units.

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

Note to rule 10 → **Rule 10(1)(b)(iv)**

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

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

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

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

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

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

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

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

Rule 10 - Cost and services. -

- c) royalties and licence fees related to the imported goods that the buyer is required to pay, directly or indirectly, as a condition of the sale of the goods being valued, to the extent that such royalties and fees are not included in the price actually paid or payable;

Note to rule 10 → Rule 10(1)(c)

1. The royalties and licence fees referred to in rule 10(1)(c) may include among other things, payments in respect to patents, trademarks and copyrights. However, the charges for the right to reproduce the imported goods in the country of importation shall not be added to the price actually paid or payable for the imported goods in determining the customs value.
2. Payments made by the buyer for the right to distribute or resell the imported goods shall not be added to the price actually paid or payable for the imported goods if such payments are not a condition of the sale for export to the country of importation of the imported goods.

- d) The value of any part of the proceeds of any subsequent resale, disposal or use of the imported goods that accrues, directly or indirectly, to the seller;
- e) all other payments actually made or to be made as a condition of sale of the imported goods, by the buyer to the seller, or by the buyer to a third party to satisfy an obligation of the seller to the extent that such payments are not included in the price actually paid or payable.

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

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

Rule 10(2) For the purposes of sub-section (1) of section 14 of the Customs Act, 1962 (52 of 1962) and these rules, the value of the imported goods shall be the value of such goods, and **shall include –**

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

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

Provided that where the cost referred to in clause (a) is not ascertainable, such cost shall be **20% of the FOB value** of the goods:

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

Provided also that where the cost referred to in clause (b) is not ascertainable, such cost shall be **1.125% of FOB value** of the goods:

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

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

Provided also that in the case of goods imported by sea or air and transhipped to another customs station in India, the cost of insurance, transport, loading, unloading, handling charges associated with such transshipment **shall be excluded.**

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

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

Rule 10(2) - The cost of transport, loading, unloading and handling charges associated with the delivery of the imported goods to the place of importation:

If Ascertainable		If Not Ascertainable
In the case of <u>goods imported by air</u>	If imported by Water or Land Route	<u>20% of the FOB value</u> of the goods (Whether Imported by Air, Water or Land Route)
Such cost <u>shall not exceed 20% of free on board value of the goods:</u>	Actual Cost	

- Where the FOB value of the goods is not ascertainable but the sum of free on board value of the goods and Insurance is ascertainable, then, the cost of transport, loading, unloading and handling charges shall be 20% of such sum:
- The cost of transport of the imported goods includes the ship demurrage charges on chartered vessels, lighterage or barge charges.
- In the case of goods imported by sea or air and transhipped to another customs station in India, the cost of insurance, transport, loading, unloading, handling charges associated with such transshipment shall be excluded.

Rule 10(2) - The cost of insurance to the place of importation:

If Ascertainable	If Not Ascertainable
Actual	<u>1.125% of FOB value</u> of the goods

- Where the FOB value of the goods is not ascertainable but the sum of free on board value of the goods and the cost of transport, loading, unloading and handling charges is ascertainable, then, the cost of insurance shall be 1.125% of such sum:

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

Rule 10 - Cost and services. -

(3) Additions to the price actually paid or payable shall be made under this rule on the basis of objective and quantifiable data.

Note to rule 10 → Rule 10(3)

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

(4) No addition shall be made to the price actually paid or payable in determining the value of the imported goods except as provided for in this rule.

Note –

1. Expenses under Rule 10(1) will be added if those are incurred at the time of importation of goods, but if expenses are incurred after arrival of goods in India, then it is not to be added.
2. All the optional additions and other adjustments while computing the Assessable Value of imported goods are to be done in Price/FOB. And, the adjusted Price/FOB after making the adjustment under Rule 10(1) will be taken for the purpose of computation of insurance, freight, loading, unloading and handling charges. And, then, assessable value will be computed.

3. Computation Method under Customs –

Price/Cost/FOB Value

Add – Optional Additional Charges under Rule 10(1)

Less – Charges for post-importation activities

Adjusted Price/FOB Value

Add – Freight, Loading, unloading and handling charges associated with the delivery of the imported goods to be the place of importation.

Add – Insurance Charges

CIF Value being Assessable Value for the purpose of Calculating Duties of Customs

Rule 11 - Declaration by the importer. -

(1) The importer or his agent shall furnish -

- a) a declaration disclosing full and accurate details relating to the value of imported goods; and*
- b) any other statement, information or document including an invoice of the manufacturer or producer of the imported goods where the goods are imported from or through a person other than the manufacturer or producer, as considered necessary by the proper officer for determination of the value of imported goods under these rules.*

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

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

Rule 12 - Rejection of declared value. -

- (1) When the proper officer has reason to doubt the truth or accuracy of the value declared in relation to any imported goods, he may ask the importer of such goods to furnish further information including documents or other evidence and if, after receiving such further information, or in the absence of a response of such importer, the proper officer still has reasonable doubt about the truth or accuracy of the value so declared, it shall be deemed that the transaction value of such imported goods cannot be determined under the provisions of sub-rule (1) of rule 3.*
- (2) At the request of an importer, the proper officer, shall intimate the importer in writing the grounds for doubting the truth or accuracy of the value declared in relation to goods imported by such importer and provide a reasonable opportunity of being heard, before taking a final decision under sub-rule (1).*

Rule 12 - Rejection of declared value. –

Explanation.- (1) For the removal of doubts, it is hereby declared that:-

- (i) This rule by itself does not provide a method for determination of value, it provides a mechanism and procedure for rejection of declared value in cases where there is reasonable doubt that the declared value does not represent the transaction value; where the declared value is rejected, the value shall be determined by proceeding sequentially in accordance with rules 4 to 9.
- (ii) The declared value shall be accepted where the proper officer is satisfied about the truth and accuracy of the declared value after the said enquiry in consultation with the importers.
- (iii) The proper officer shall have the powers to raise doubts on the truth or accuracy of the declared value based on certain reasons which may include -
 - a) the significantly higher value at which identical or similar goods imported at or about the same time in comparable quantities in a comparable commercial transaction were assessed;
 - b) the sale involves an abnormal discount or abnormal reduction from the ordinary competitive price;
 - c) the sale involves special discounts limited to exclusive agents;
 - d) the misdeclaration of goods in parameters such as description, quality, quantity, country of origin, year of manufacture or production;

- e) *the non declaration of parameters such as brand, grade, specifications that have relevance to value;*
- f) *the fraudulent or manipulated documents.*

Rule 13 - Interpretative notes.-

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

The Schedule

(See rule 13)

Interpretative Notes

General Note:

Use of generally accepted accounting principles

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

Illustration –

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

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

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

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

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

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

Circular No. 38/2007 Cus. Dated 9-10-2007 has been issued to clarify the major changes in the new Import Valuation Rules i.e. Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 notified vide NN 94/2007-Cus (NT) dt 13-9-2007.

The clarification are given below for proper application of the Valuation Rules –

- (i) Transaction Value has been defined to mean the value referred to in sub-section (1) of section 14 of the Customs Act, 1962.
- (ii) A 'proviso' has been added to Rules 4(1)(a) and 5(1) concerning identical goods and similar goods respectively, to the effect that the value of the goods provisionally assessed under Section 18 of the Customs Act, 1962, shall not be the basis for determining the value of any other goods.
- (iii) In the residual method of Valuation, which has been renumbered as Rule 9 (erstwhile Rule 8), a proviso has been added with a view to keeping Rule 9 in line with Article 7 of the WTO Valuation Agreement which corresponds to the said Rules and refers to the provisions of Article VII of the GATT.
- (iv) An 'Explanation' has been added to Rule 10(1) (erstwhile Rule 9(1)) to clarify that the royalty, licence fee or any other payment for using a process, when they are otherwise includible in terms of Clause (c) or (e) of Rule 10(1), shall be added to the price actually paid or payable, notwithstanding the fact that such goods may be subjected to the said process after their importation. At times, royalty, license fee or any other payment for a process to be paid by the importer, may be linked to post-importation activity like running of the machine/ plant, when the process is put to use.

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

This Explanation has been added in the context of the Supreme Court judgement in the case of J.K. Corporation Ltd. Versus Commissioner of Customs (Port) Kolkata [2007 (208) ELT 485 (SC)] so as to clarify that such royalty, license fee, etc., if otherwise includible in terms of clauses (c) or (e) of Rule 10, will be includible in the value of the goods irrespective of the fact that such royalty, licence fee, etc., relates to a process which is made operational during the running of the machines, i.e., after importation of the goods.

(v) An 'Explanation' has been added to Rule 10(2) clarifying that the cost of transport of the imported goods includes ship demurrage charges on chartered vessels, lighterage charges or barge charges. This Explanation is to take care of cases of imports by time chartered vessels or bulk carriers discharging goods on high seas needing additional expenditure for delivery of the goods at the "Place of Importation" mentioned in Rule 10(2)(a). The 'place of importation', as observed by the Supreme Court in the case of Garden Silk Mills Ltd Versus Union of India [1993 (113) E.L.T.358(S.C)] means the place where the imported goods reach the landmass of India in the Customs area of the port, airport or land customs station, or if they are consumed before reaching the landmass of India, the place of consumption. Therefore, in cases where ship demurrage charges are paid by the importer for detention of the ship in the harbour before touching the landmass at the docks or at the place of consumption, these charges would be includible in the cost of transportation. Similarly, in cases where the big mother vessels cannot enter the harbour for any reason and goods are brought to the docks by smaller vessels like barges, small boats, etc., the cost incurred by the importer for bringing the goods to the landmass or place of consumption, such as lighterage charges, barge charges will also be included in the cost of transportation.

(vi) An 'Explanation' has been added to Rule 12 (erstwhile Rule 10A), which relates to rejection of declared value, to bring more clarity and objectivity in exercising the authority for rejection of declared value. The Explanation clarifies that this rule as such does not provide a method for determination of value, and that it merely provides a mechanism and procedure for rejection of declared value in certain cases. It also clarifies that where the proper officer is satisfied after consultation with the importer, the declared value shall be accepted. This Explanation also gives certain illustrative reasons which could form the basis for having doubt about the truth or accuracy of the declared value.

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

Circular No. 39/2017-Cus. Dated 26-9-2017 has been issued to clarify the amendment in Rule 10(2) of Import Valuation Rules. – The valuation of import and export goods is governed by the provisions of Sec 14 of the Customs Act, 1962 and the rules made thereunder. The Customs Import Valuation Rules contain the detailed provisions for arriving at the transaction value of the imported goods, on which the customs duty is levied.

A need had arisen to examine certain provisions of the CVR in light of Supreme Court's ruling in the case of M/s Wipro Ltd. Vs Assistant Collector of Customs 2015 (319) ELT 177 SC dated 16-4-2015.

After examination and public consultations, the Govt has amended the CVR vide NN 91/2017-Cus dated 26-9-2017, as explained below –

Definition of the term 'place of importation'

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

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

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

Treatment of the loading, unloading and handling charges

The Hon'ble Supreme Court had ruled in the case of M/s Wipro Ltd. Vs Assistant Collector of Customs-2015 (319) ELT 177 (S.C.) dated 16/04/2015 that the landing charges to be added to the value of goods, should be based on actual charges incurred, and not a notional charge of 1% as has been provided in the Rules.

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

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

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

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

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

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

Valuation of goods cleared from a 100% EOU to a depot from where the sale to DTA is effected through consignment agents: Circular No. 933/23/2010 CX dt 16-8-2010 clarifies that the value of goods cleared from a 100% EOU to a depot from where the sale thereof to DTA is effected through consignment agents will have to be determined by sequential application of Rules 3 to 9 of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007.

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

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

Clarification: Sec 14 of the Customs Act provides that the value of the imported goods is the transaction value of goods. Transaction value is defined to mean the price actually paid or payable for the goods when sold for export to India for delivery at the time and place of importation. In the instant case, the goods are sold after being warehoused, therefore, it cannot be said that export of goods is not complete and thus the sale of warehoused goods cannot be considered a sale for export to India. Hence, the price at which the imported goods are sold after warehousing them in India does not qualify to be the transaction value as per sec 14. **(Circular No. 11/2010 dt 3-6-2010)**

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

When question gives the following information:

(i) Price/Cost of the imported goods at the factory of the exporter	Rs. 85,000
(ii) Transport charges from the factory of exporter to the port for shipment	Rs. 12,000
(iii) Handling charges paid for loading the machine on the ship at the port of exportation	Rs. 3,000
(iv) Handling / Unloading charges paid at the port of importation	Rs. 2,000

Note: Transport & insurance cost from the exporting port to the port of importation is not ascertainable

Then, in such cases, FOB Value will be Rs. 1,00,000/- [85,000 + 12,000 + 3,000] for the purposes of calculation of Transport Cost (20% of FOB) & insurance cost (1.125% of FOB) from the exporting port to the port of importation. But, while calculating CIF Value (Assessable Value), only Price/Cost of the imported goods at the factory of the exporter (i.e. 85,000) and Transport Cost (20% of FOB) & insurance cost (1.125% of FOB) from the exporting port to the port of importation will be included. [i.e. Transport charges from the factory of exporter to the port for shipment and Handling charges paid for loading the machine on the ship at the port of exportation will not be included in the CIF Value (Assessable Value)]. Further, Handling / Unloading charges paid at the port of importation will also not form part of CIF Value (Assessable Value).

In this case, CIF Value (Assessable Value) shall be determined as under:

Price/Cost of the imported goods at the factory of the exporter	Rs. 85,000
Add:	
Transport cost from the exporting port to the port of importation [i.e. 20% of Rs. 1,00,000/-]	Rs. 20,000
Insurance cost from the exporting port to the port of importation [i.e. 1.125% of Rs. 1,00,000/-]	Rs. 1,125
CIF Value (Assessable Value)	Rs. 1,06,125

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

Illustration – MM Hospital imported a machine from SS Scientific Equipment's, Chicago for in house research. The price of the machine was settled at US \$ 5,000. The machine was shipped on 10-4-20XX. Meanwhile, the Hospital Authorities negotiated for a reduction in the price. As a result, SS Scientific Equipment's agreed to reduce the price by \$ 850 and sent the revised price of \$ 4,150 under a telex dt 15-4-20XX. The machine arrived in India on 18-04-20XX. The Commissioner of Customs has decided to take the original price as the transaction value of the goods on the ground that the price is reduced only after the goods have been shipped.

Do you agree to the stand taken by the Commissioner? Give reasons.

Ans – No, the Commissioner's approach is not correct in law. As per sec 14 of the Customs Act, the transaction value of the goods is the price actually paid or payable for the goods at the time and place of importation. Further, the Honorable SC in the case of Garden Silk Mills vs UOI has held that importation gets complete only when the goods become part of mass of goods within the country. Therefore, since in the instant case the price of the goods was reduced while they were in transit, it could not be contended that the price was revised after importation took place. Hence, the goods should be valued as per the reduced price, which was the price actually paid at the time of importation.

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

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

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

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

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

Rule 2 - Definitions. -

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

- (a) "**goods of like kind and quality**" means export goods which are identical or similar in physical characteristics, quality and reputation as the goods being valued, and perform the same functions or are commercially interchangeable with the goods being valued, produced by the same person or a different person; and
- (b) "**transaction value**" means the value of export goods within the meaning of sub-section (1) of section 14 of the Customs Act, 1962 (52 of 1962).

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

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

Explanation I. - The term "person" also includes legal persons.

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

Rule 3 - Determination of the method of valuation. -

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

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

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

Rule 4 - Determination of export value by comparison.-

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

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

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

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

Rule 5 - Computed value method. -

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

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

Rule 6 - Residual method. -

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

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

Rule 7 - Declaration by the exporter.-

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

Rule 8 - Rejection of declared value.-

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

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

Explanation. - *(1) For the removal of doubts, it is hereby declared that-*

(i) This rule by itself does not provide a method for determination of value, it provides a mechanism and procedure for rejection of declared value in cases where there is reasonable doubt that the declared value does not represent the transaction value; where the declared value is rejected, the value shall be determined by proceeding sequentially in accordance with rules 4 to 6.

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

(iii) The proper officer shall have the powers to raise doubts on the declared value based on certain reasons which may include -

- (a) the significant variation in value at which goods of like kind and quality exported at or about the same time in comparable quantities in a comparable commercial transaction were assessed.*
- (b) the significantly higher value compared to the market value of goods of like kind and quality at the time of export.*
- (c) the misdeclaration of goods in parameters such as description, quality, quantity, year of manufacture or production.*

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

Circular No. 37/2007-Cus dt 9-10-2007

Circular No. 37/2007-Cus dt 9-10-2007 has been issued regarding the Customs Valuation (Determination of Value of Export Goods) Rules, 2007

The Customs Valuation (Determination of Value of Export Goods) Rules 2007 have been framed in a format similar to the Valuation Rules for the imported goods. Conceptually also, acceptance of Transaction Value for export goods has been emphasized in the said rules, in as much as Rule 3 specifically provides for it.

Rule 3 of the said rules also stipulates that the Transaction Value for export goods shall be accepted even where buyer and seller are related, provided that the relationship did not influence the price of the goods. Where the relationship is found to influence the price, as determined by the proper officer on receipt of further information from the exporter, the value of the export goods shall be determined by proceeding sequentially through rules 4 to 6 of the said Valuation Rules. The persons who shall be deemed to be 'related' have been specified in Rule 2(2) of the said Valuation Rules, and this provision has been adopted from the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007.

Thus transaction value is the primary basis for valuation of export goods and the method specified under Rule 3 will be applicable in the vast majority of cases of export by acceptance of declared value. In cases where the transaction value is not accepted, the valuation of the export goods shall be done by application of Rules 4 to 6 sequentially.

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

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

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

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

While raising doubt about truth or accuracy of the declared value in terms of Rule 8, the proper officer shall issue a query memo specifying reasons for such doubt. Meanwhile, the goods will be released for export against a simple undertaking after drawal of representative sample as indicated in para 5. The decision to initiate the process of investigation into valuation aspects, if any, shall be taken at the earliest at the level of Joint /Additional Commissioner.

In a case where transaction value cannot be determined or the declared value is rejected under Rule 8, and export value has to be determined by comparison in terms of Rule 4, the proper officer shall take utmost care in selecting an export product for an in-depth inquiry. The proper officer will make the adjustments objectively on the basis of the relevant factors, some of which have been illustrated at sub rule (2) of Rule 4.

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

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

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

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

Special Provisions for Classification of Sets of Articles and Accessories (Sec 19)

Section 19 - Determination of duty where goods consist of articles liable to different rates of duty –

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

- a) articles liable to duty with reference to quantity shall be chargeable to that duty;*
- b) articles liable to duty with reference to value shall, if they are liable to duty at the same rate, be chargeable to duty at that rate, and if they are liable to duty at different rates, be chargeable to duty at the highest of such rates;*
- c) articles not liable to duty shall be chargeable to duty at the rate at which articles liable to duty with reference to value are liable under clause (b):*

Provided that, -

- (a) accessories of, and spare parts or maintenance and repairing implements for, any article which satisfy the conditions specified in the rules made in this behalf shall be chargeable at the same rate of duty as that article; if the importer*
- (b) produces evidence to the satisfaction of the proper officer 31[or the evidence is available] regarding the value of any of the articles liable to different rates of duty, such article shall be chargeable to duty separately at the rate applicable to it.*

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

CC vs M/s Denso Kirloskar Industries Pvt Ltd dt 13-08-2015

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

Mangalore Refineries and Petrochemicals Ltd vs CC 2015 (323) ELT 433 (SC) dt 2-9-2015

Quantity or Price – Duty is payable on the quantity received in India, not the quantity exported from another country. It is clear that the levy of customs duty under Sec 12 is only on goods imported into India. Goods are said to be imported into India when they are brought into India from a place outside India. Unless such goods are brought into India, the act of importation which triggers the levy does not take place. If the goods are pilfered after they are unloaded or lost or destroyed at any time before clearance for home consumption or deposit in a warehouse, the importer is not liable to pay the duty leviable on such goods. This is for the reason that the import of goods does not take place until they become part of the land mass of India and until the act of importation is complete which under Sec 13 and 23 happens only after an order for clearance for home consumption is made and/or an order permitting the deposit of goods in a warehouse is made. Under Sec 23(2), the owner of the imported goods may also at any time before such orders have been made relinquish his title to the goods and shall not be liable to pay any duty thereon.

Further, as per sec 47 of the Customs Act, the importer has to pay import duty only on goods that are entered for H/c

Relevant Case Law

Can the value of imported goods be increased if Dept fails to provide to the importer, evidence of import of identical goods at higher prices? (Gira Enterprises vs CCus 2014 (307) ELT 209 (SC))

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

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

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

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