

BASIC CONCEPTS & DEFINITIONS**Sec 2: Definitions**

- **INDIA – 2(27)** includes the territorial waters of India
- **INDIAN CUSTOMS WATER – 2(28)** means the waters extending into the sea up to the limit of Contiguous Zone Of India **(i.e., Upto 24 NM)**
- **IMPORT – 2(23)** means bringing into India from a place outside India.
(with its grammatical variations and cognate expressions.)
- KIRAN SPINNING MILLS -1999 - SC**
Taxable Event – When the goods reach the CUSTOMS BARRIER and the bill of entry for home consumption is filed.
[Warehoused Goods = When B/E for H/C is filed]
- **IMPORTED GOODS – 2(25)** Means → any goods brought into India from a place outside India
But doesn't include → goods which have been cleared for home consumption.
- **IMPORTER – 2(26)** Includes any owner **or** any person holding himself out to be the importer.
- **EXPORT – 2(18)** means Taking out of India to a place outside India.
(with its grammatical variations and cognate expressions.)
- SUN INDUSTRIES – 1988 - SC**
*For holding out completion of export, delivery at ultimate destination is not essential
[Goods once crossed TWI --- export shall be held to be complete --- DBK shall be admissible to the assessee]*
- RAJENDRRA DYEING & PRINTING MILLS LTD.- 2005 -SC**
[Goods loaded onto the ship --- goods destroyed – ship hadn't even crossed TWI - --Export can't be said to be complete --- DBK shalln't be admissible to the assessee]
- **EXPORT GOODS – 2(19)** Means → any goods which are to be taken out of India to a place outside India
- **EXPORTER – 2(20)** Includes any owner or any person holding himself out to be the exporter.
- **CONVEYANCE – 2(9)** means ---- A **Vessel**,
---- An **Aircraft** and
---- A **Vehicle**
- **PERSON IN CHARGE – 2(31)** means
- (a) *In relation to a vessel* ----- the master of the vessel;
(b) *In relation to an aircraft* ----- the commander or pilot-in-charge of the aircraft;
(c) *In relation to a railway train* -- the conductor, guard or other person having the chief direction of the train;
(d) *In relation to any other conveyance* -- the driver or other person-in-charge of the conveyance.
- **GOODS – 2(22)** includes –
- (a) Vessels, aircrafts and vehicles;
(b) Stores;
(c) Baggage;
(d) Currency and negotiable instruments; and
(e) Any other kind of movable property.
- **COASTAL GOODS – 2(7)** means goods, *other than imported goods*, transported in a vessel **from** one port in India **to** another.
- **PROHIBITED GOODS – 2(33)** Means any goods the **import or export** of which is subject to any prohibition ---- under this Act or ---- any other law for the time being in force
but does not include → any such goods in respect of which the **conditions** subject to which the goods are permitted to be imported or exported **have been complied with**.

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- ❑ **CUSTOMS AREA – 2(11)** Means → *the area of **A Customs Station** [Customs Port (including ICD/CFS) / Airport / land Customs Station]*
& includes → *any area in which imported goods or export goods are **ordinarily kept before clearance by Customs Authorities** (e.g., Customs Warehouse)*
 - ❑ **RULES – 2(36)** Means → *the rules made **by the Central Government** under Customs Act.*
 - ❑ **REGULATIONS – 2(35)** means → *the regulations made **by the Board [CBEC]** Customs Act.*

ASSESSMENT SYSTEM

Sec 17 : Final Assessment

Sec 18 : Provisional Assessment

FAS

SAS

Situations

[First Appraisal/ Examination system]

[Second Appraisal/ Examination system]

Sec 17(1) : Entry of goods
 --- Importer (by filing B/E)
 --- Exporter (by filing Shipping Bill / Bill of Export)
 & then **Examination & Testing of Goods**

Sec 17(2) : After Examination/testing, Assessment of Duty

Sec 17(3) : PO may demand – Documents / Information

Sec 17(4) : Assessment of duty relying upon [B/E] or [Shipping Bill or Bill of Export] & thereafter – Examination & Testing of Goods

This is always subject to "re-assessment" if particulars furnished in the entry found inaccurate

- (1) Inability of Importer to produce any document / furnish any information
- (2) PO thinks it necessary to conduct certain Chemical or other tests on the goods
- (3) PO thinks it necessary to make further enquiry to verify genuineness of document submitted/ information furnished

PA Order : (security shall be furnished)

- ❑ PA Duty paid to be adjusted against FA duty
- ❑ PA Duty < FA Duty – Int @ 13% p.a. payable alongwith
- ❑ PA Duty > FA Duty – Int @ 6% p.a. payable alongwith
- ❑ Refund arising out of finalization of PA shall be subject to doctrine of Unjust enrichment

Assessment contrary to claim of assessee – assessee not in agreement with the assessment of the PO – **PO shall pass separate assessment order—within 15 days of assessment on B/E or Shipping Bill [Sec 17(5)]**

Special Cases

Sec 19 : Assessment of "SET OF ARTICLES"

Project Import Scheme : Heading No. 98.01

Article therein	Applicable Rate
Article attracting "Specific Duty"	→ Shall be charged to that specific duty only
Article attracting "Ad-Valorem Duty"	→ Shall be charged to MAXIMUM of the "ad-valorem" rates
Article Not liable to duty at all	→ Shall be charged to the "Ad-Valorem Rate" as decided above

- Benefits:**
- (1) Single Classification of different machineries;
 - (2) **Concessional rate of duty** (i.e., relatively lower rate of duty)

Some Examples of "Eligible Project"

- (1) NTPC Power Plant;
- (2) NHPC Power Plant;
- (3) Power Projects of Tehri Hydro Development Corporation Ltd;

2 Exceptions: (Proviso)

■ **Set of Article = [Main Article + Accessories / Spare Parts / Repairs & Maintenance Implements]**

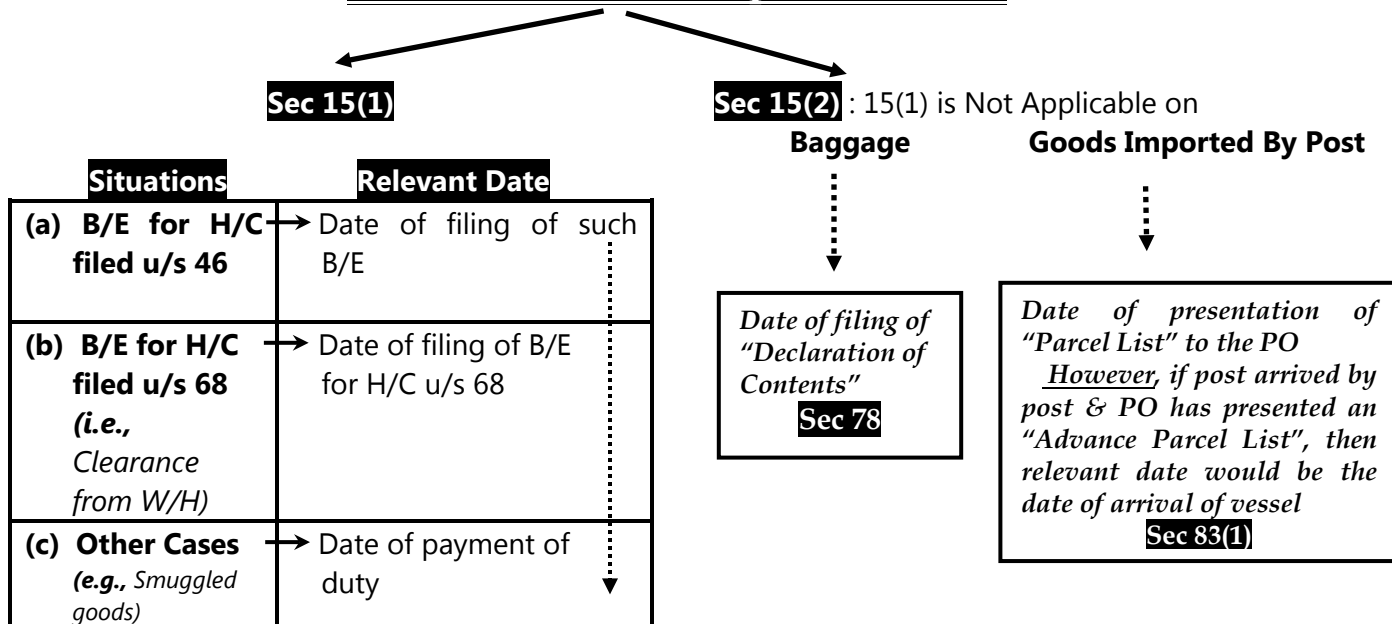
- Main Article --- @ ROD as applicable to it
- **Accessory etc.** -- @ ROD as applicable on the main article

Conditions:

- i) Compulsory Supply;
- ii) Price of Main Article is inclusive of charges for accessories etc.

■ **Any Set of Article** – Importer furnishes proper evidence as to the independent values of different articles therein – then, each of the article shall be charged to duty as applicable to it independently

Relevant date for Imported Goods

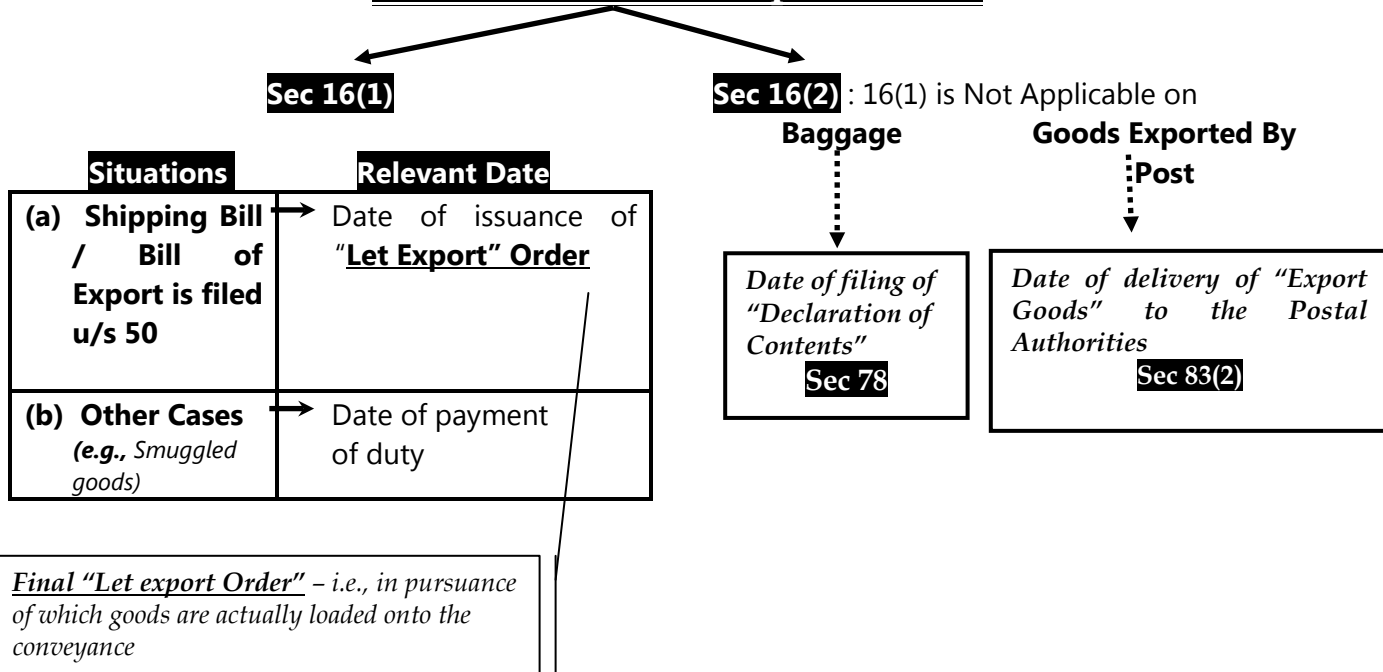


Note: Sec 46(3) permits filing of Advance B/E (B/E filed before filing of IGM/IR)

Where Advance B/E is filed in case of

- **VESSEL** == Relevant date = Date of grant of entry Inward to such vessel
- **AIRCRAFT** == Relevant date = Date of arrival of Aircraft into India
- **VEHICLE** == Relevant date = Date of presentation of B/E [Proviso is Not Applicable to such situation]

Relevant date for Export Goods



Chances always favour a prepared mind
Dippak Gupta

IMPORT PROCEDURES

Procedures for PIC

(Provisions relating to conveyance carrying Imported Goods)

Sec 29 : Arrival of Conveyance (vessels and aircrafts) in India (only at Customs Port / Airport)

Arrival at other place is possible:

---- Forced landing or calling due to Accident // Stress of Weather // Other Unavoidable reason

OBLIGATIONS

PIC

- shall report the arrival to nearest Customs Officer or Police Officer (& produce before him the log book)
- Shall not permit unloading of goods or departure of passengers/crew
- Shall comply with all the directions given to him

Passengers / Crew

- shall not leave the surrounding area

Exceptions:

Due to reasons of Health, Safety or Preservation of life & Property

Sec 30: Delivery of IGM/IR

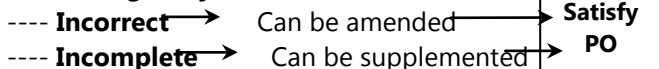
By: --- PIC of Conveyance

--- Other Notified person (MMO, Consolidator etc.)

Vessel	IGM	Before Arrival (any time)
Aircraft	IGM	Before Arrival (any time)
Vehicle	IR	After Arrival (within 12 hours)

Belated filing --- Penalty upto Rs 50,000/-

IGM/IR originally filed



Sec 31: Imported goods not to be unloaded unless Entry inwards granted

- In case of import by Vessel --- unloading of goods only subsequent to grant of Entry Inward
- Entry Inward is granted only subsequent to filing of IGM.
- For unloading of following Entry Inward is not required:

Baggage Mail Bags	Animals Perishable / Hazardous
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UNLOADING

Sec 32 : Imported goods not to be unloaded unless mentioned in the Import Manifest (IGM) / Import Report (IR)

Sec 33 : Imported goods shall be unloaded at approved places only [Such places are called

Procedures for IMPORTER

(Clearance of Imported Goods)

Sec 46 : Entry of goods on Importation

Clearance for H/C	File B/E for H/C u/s 46	
Clearance for W/Hing	File B/E for W/Hing u/s 46	[Subsequently, another B/E for H/C is filed u/s 68]
Transshipment (i.e., ttd. To another station)	No B/E	[Rather Bill / Declaration of Transshipment is filed – u/s 54]

Intended Clearance = Clearance for H/C ---

but importer unable to furnish information of all requisite particulars --- (Goods lying at port & attracting Demurrage Charges) --- Importer can request PO and submit him a declaration to furnish all relevant information --- PO may allow him to transfer the goods to WAREHOUSE (Public) – even without filing of any B/E in relation to the goods

[WAREHOUSING WITHOUT WAREHOUSING – Proviso to Sec 46(1)]

- B/E shall cover all goods as mentioned in Bill of Lading / Airway Bill / Railway Receipt // Lorry Receipt etc.

Time-Limit:

	B/E in normal course	Advance B/E
Vessel	Any time after filing of IGM	Before IGM [Expected arrival of ship – within 30 days]
Aircraft	Any time after filing of IGM	Before IGM [Expected arrival of aircraft – within 30 days]
Vehicle	Any time after filing of IR	Before IGM [Special Circumstances – PO satisfied]

- B/E shall be signed by the Importer.
- **Substitution of B/E :---** Date of filing of substituted B/E shall be considered as "relevant date" for the purposes of Sec 15 (i.e., for determination of applicable rate of duty and assessable value)

Sec 47: Clearance of goods for Home Consumption (B/E filed for H/C – assessed and returned – Assessed Duty & other charges (e.g., custodian dues etc.) paid within **5 Working days** – Clearance Order issued (this order is called "out-of-Charge Order" --- Delivery given to importer

"landing Places" – approved by Commissioner]

Sec 34 : Imported goods shall be unloaded under supervision of customs officer

Sec 35 : Restrictions on goods being water-borne (Boat Note is must --- which is obtained from PO)

Sec 36 : Restrictions on unloading of goods on holidays etc. (Unloading after Working Hours or on Holiday (Sunday / other Holiday) --- only upon payment of **Merchant Overtime Fees**)

Sec 42 : Conveyance which has brought Imported Goods shall leave customs station only upon receipt of "written order to that effect" (This order is known as "Departure Permission")

Non-Payment within 5 days – Interest @ 13% p.a. is also payable

Sec 48 : Procedure in case of goods not cleared, warehoused or transhipped goods within 30 days after unloading [= disposal of Unclaimed or Uncleared Goods]

--- Unloaded goods – lying at Customs Area (say, Port) – blocking the customs area --- 30 days have expired but no-body has cleared such goods from the area (whether for H/C or for W/Hing or for transshipment)

or

--- Title of such unloaded goods has been surrendered (relinquished) by the importer

Such goods may be sold by the Custodian
Conditions: Notice to the importer + Permission of PO

Proviso:

Animals + Perishable / Hazardous Goods	→ May be sold even before expiry of 30 days (PO permission must)
Arms & Ammunition	Manner of sale may be directed by CG

Sec 49: Warehousing without warehousing

(Goods intended to be cleared for H/C – **B/E for H/C also filed** – but such clearance not possible within a reasonable period ----- Storage of Goods in W/H allowable)

--- Goods reached the warehouse but provisions of "Warehousing Chapter" will not be applicable to such goods.

Custody of Custodian --- Sec 45

(Unloaded goods shall lie in the custody of Custodian pending clearance thereof)

OBLIGATIONS

- (1) Custodian Shall keep a record of goods & shall give a copy thereof to the PO
- (2) He shall not allow removal of goods or other treatment of goods – unless permitted by PO

Loss of goods in Custody of Custodian: [Sec 45(3)]

(Importer shall not be liable for payment of Import Duty on such goods) ---- Custodian shall be personally liable for payment of such duty

Sec 37: Power to Board Conveyance

PO may, if he thinks it necessary, board any conveyance carrying imported goods.

Sec 38: Power to require production of documents and ask questions

Any document may be demanded from PIC --- Questions may also be asked by the PO.

Sec 44: -- Sec 45, 46, 47, 48, 49 are Not Applicable to
a) *Baggage,*
b) *Goods imported by post*

"The Game's not over until it's over" Dippak Gupta

EXPORT PROCEDURES

Procedures for EXPORTER

(Clearance of Export Goods)

Procedures for PIC

(Provisions relating to conveyance carrying Export Goods)

Sec 50 : Entry of goods for Exportation

[Filing of

- ⇒ **Shipping Bill** (if Export is in Vessel / Aircraft) or
- ⇒ **Bill of Export** (if Export is in Vehicle)]

Prescribed forms of Shipping Bill

	Colour
1. SB for Export of Goods under claim of Duty Drawback	Green
2. SB for export of dutiable goods	Yellow
3. SB for export of duty free goods	White
4. SB for export of duty free goods ex-bond (i.e., direct exportation from the Customs Warehouse)	Pink
5. SB for export under DEPB (Duty Entitlement Pass Book) Scheme	Blue

Sec 51: Clearance of goods for Exportation [SB // BE filed – PO satisfied that goods are not prohibited goods and assessed duty (if any) and any other charges have been paid --- **Clearance Order** issued (Order permitting clearance and loading of goods onto the conveyance – such order is known as **“Let Export Order” / “Let Ship Order”**)]

Sec 39 : Export goods not to be loaded on vessel unless “Entry Outward” granted

Master of Vessel shall not permit loading of export goods – until receipt of Entry Outward” from the PO

Exceptions: i) Baggage & ii) Mail Bags]

Sec 40: Export Goods not to be loaded unless duly passed by the PO

PIC of Conveyance shall allow loading of goods only upon submission by the Exporter to him of a duly assessed Shipping Bill // Bill of Export]

Exceptions: i) Baggage & ii) Mail Bags]

Loading of Goods

- **Sec 33** [Loading shall be done only at approved places]
- **Sec 34** [Loading shall be done under supervision of Customs Officer]
- **Sec 35** [Export Goods can be loaded with the help of small boats. If **goods are accompanied with Shipping Bill**, no Boat Note is required. However, **if goods are not accompanied with shipping bill**, boat note is must.]
- **Sec 36** [Loading after Working Hours or on Holiday --- only upon payment of Merchant Overtime Fees)

Sec 41: Delivery by PIC (before departure from India)

- **Export Manifest (EGM)** (Vessel / Aircraft) or
- **Export Report (ER)** (Vehicle)

[EGM/ER **has to be filed EGM/ER before Departure**]

Sec 42 : Conveyance carrying Export Goods shall leave Customs Station only upon receipt of “written order to that effect” (This order is known as **“Departure Permission”)**

Sec 44: -- Sec 50 & 51 are Not Applicable to

- a) **Baggage,**
- b) **Goods imported by post**

Sec 37: Power to Board Conveyance

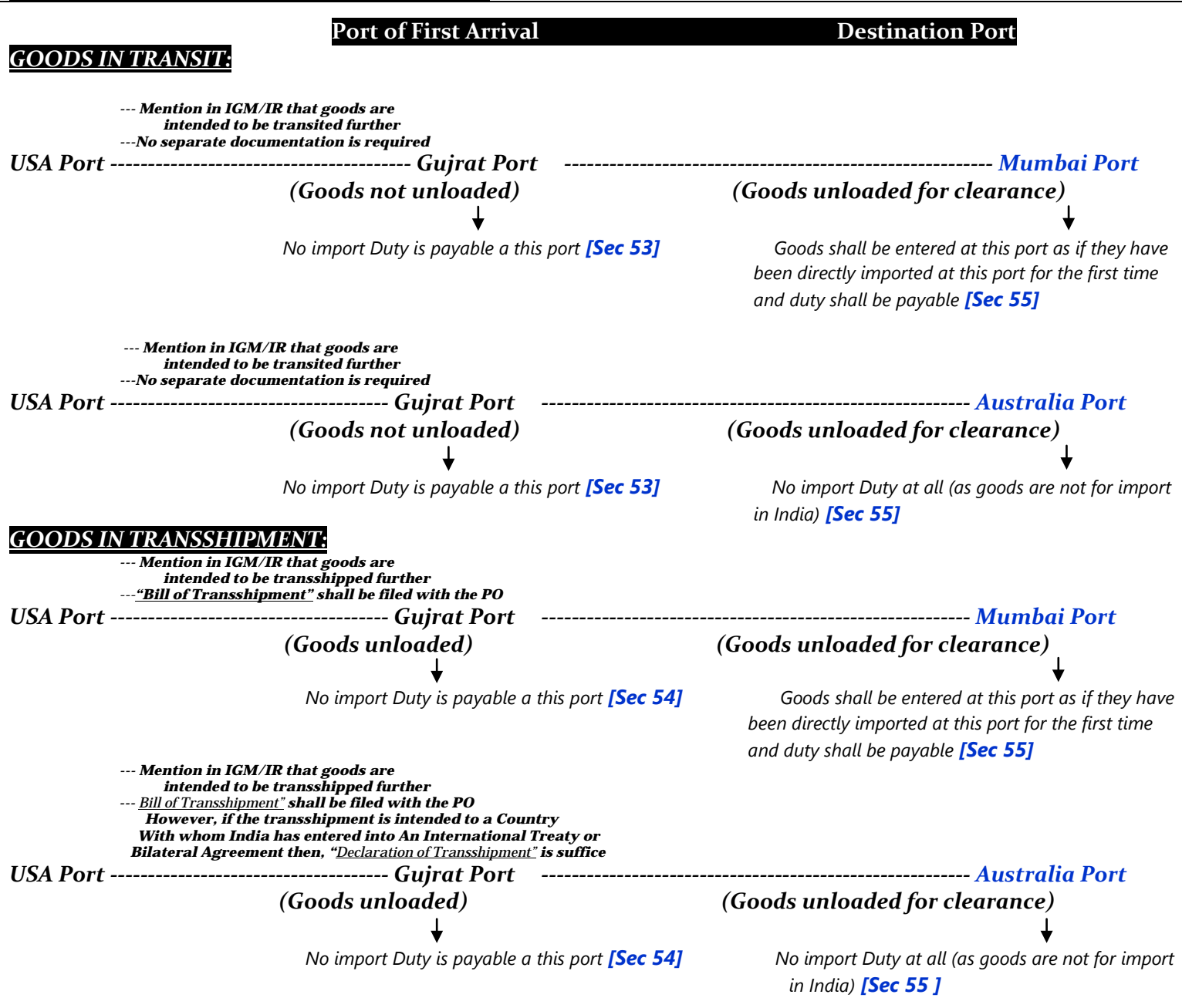
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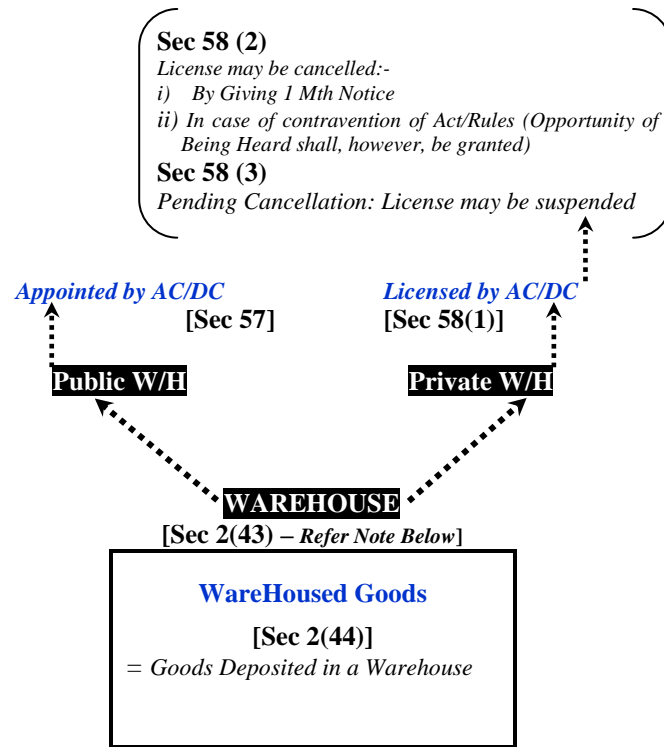
“ You will never get ahead of others as long as you are trying to get even.”
 --- Dippak Gupta

TRANSIT & TRANSHIPMENT OF GOODS



TRANSIT vs TRANSHIPMENT	
TRANSIT	TRANSHIPMENT
Sec 53 & 55	Sec 54 & 55
Goods are transited in the same conveyance which brings the goods into India	Goods are transhipped in a conveyance other than the conveyance which brings the goods into India
No need of filing any fresh documentation for carrying goods from first port to another port	Fresh documentation is required for carrying goods from first port to another port

WAREHOUSING OF IMPORTED GOODS



- Only **DUTIABLE GOODS** can be stored in Customs Warehouse.

DUTIABLE GOODS [Sec 2(14)] : Any goods which are chargeable to duty & on which duty has not been paid.

(It shall be noted - Goods must be dutiable (chargeable to duty) at the time of their insertion/deposit in the Warehouse. --- Subsequent exemption from duty (at time of their clearance from the factory) is not relevant in this regard)

- **W/Hing = B/E for W/Hing (Yellow Colour - u/s 46) + Execution of Bond (Sec 59) + W/Hing Order (Sec 60)**

- However, if goods reached the warehouse, without following ALL or ANY of the following conditions, then it is called **WAREHOUSING WITHOUT WAREHOUSING.**

3 Situations:

- i) **Proviso to Sec 46(1):** Inability of importer to file any B/E (whether for H/C or for W/Hing) - due to non-availability of full information --- Goods may be allowed to deposited in PUBLIC W/H
- ii) **Sec 49:** B/E for H/C filed by importer -inability to clear the goods within a reasonable time - Goods may be allowed to be deposited in Warehouse (Public W/H or Private W/H) (Such goods may be dutiable or non-dutiable)
- iii) **Sec 85:** B/E filed for W/Hing - Importer submitting a declaration that these are to be supplied as Stores - without payment of duty (i.e., to Foreign Going Vessel/Aircraft or Ship of Indian Navy) --- such stores may be warehoused without assessment of duty thereon (i.e., No Bond Execution).

- **WAREHOUSING BOND [Sec 59] = (2 * Duty Assessed thereon)**

(Tentative Assessment: Based upon RoD & AV - as prevailing on the date of filing of Bill of Entry for Warehousing u/s 46)

Undertaking as to :

- a) Observing all the provisions of Customs Act + Rules + Regulations
- b) Payment (within the demand period) of
 - DUTY & W/Hing INTEREST (u/s 61(2))
 - W/H ing RENT & CHARGES (alongwith Interest thereon u/s 63(2))
- c) Discharge ALL PENALTIES

⇒ General Bond (consolidated bond for goods expected to be imported within a specified period) --- AO may allow it to be executed.

⇒ Bond Executed by Importer - Goods Warehoused --- Goods sold to another person --- **Bond Executed by Importer (seller) shall remain in force notwithstanding such sale/transfer**

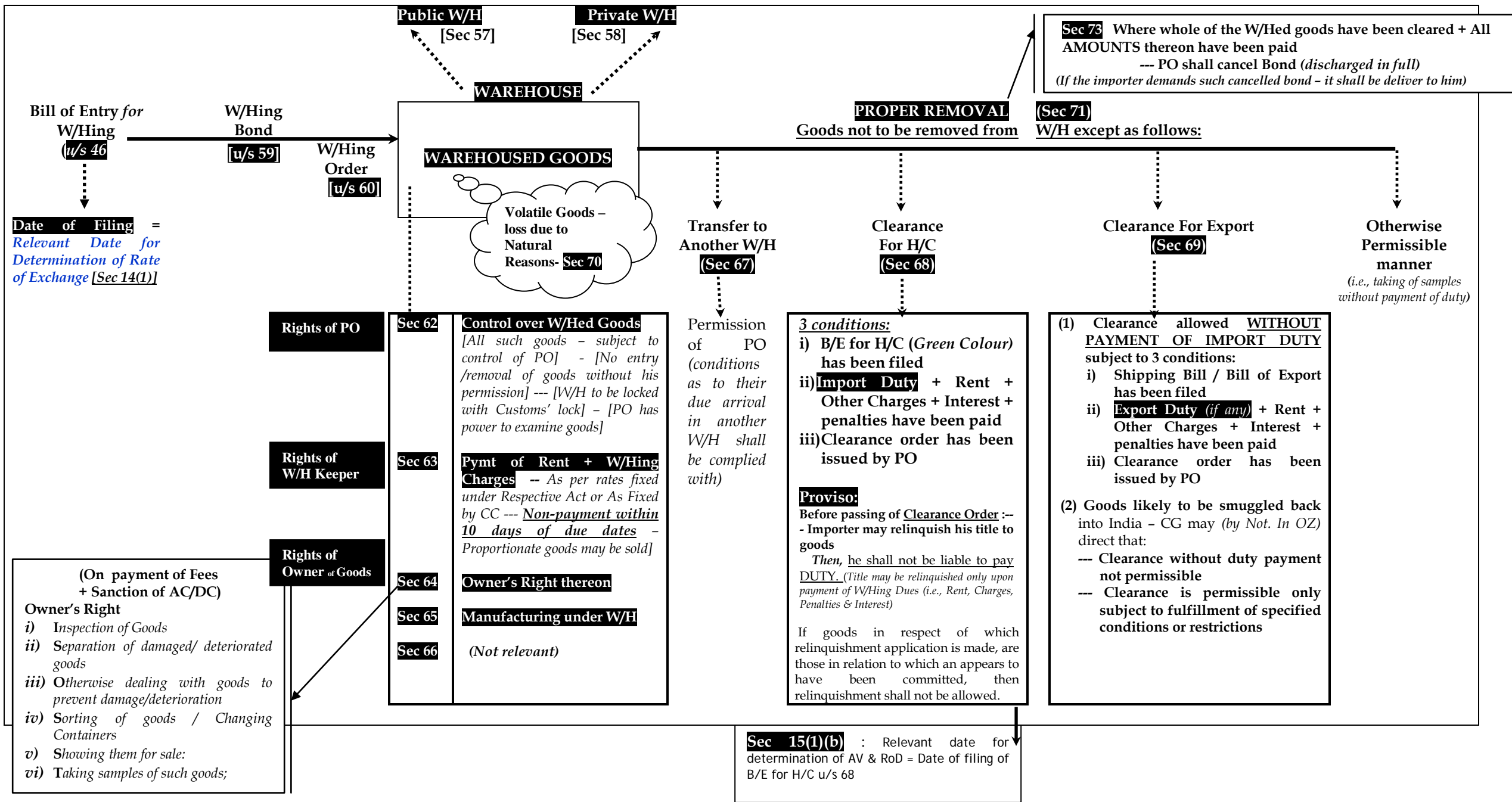
But if the Buyer gives a FRESH Bond i.r.o. goods sold to him by the importer - Bond executed by Importer shall remain in force only for balance amount [Original Amount of Bond - Amount of Fresh Bond]

- **Sec 2(45): Warehousing Station** means a place declared as Warehousing Station u/s 9.

Sec 9 authorises **CBEC to declare W/Hing Station** (It is only at W/Hing Station - that Public W/H may be appointed or Private W/H may be licensed)

- **Sec 2(44): -- Warehouse** means:
 - A Public Warehouse as appointed u/s 57; or
 - A private warehouse as licensed u/s 58

These are also Known as "Customs Warehouse" or "Bonded Warehouse"



Additional Notes:

□

WAREHOUSING PERIOD -- Sec 61(1)

	Goods intended to be used in an 100% EOU		Goods intended to be used in Other Units (Units other than 100% EOU)
	CAPITAL GOODS	OTHER GOODS	
WAREHOUSING PERIOD	5 YEARS	3 YEARS	1 YEAR
	from the date of W/Hing order		from the date of W/Hing order
EXTENSION (if the goods are not likely to deteriorate & sufficient cause is shown for such extension)	The said period of 5 years / 3 YEARS may be extended further -- By CC ---- for such period as he may deem fit.		The said period of 1 year may be extended further : -- By CC—for maximum 6 months; -- By Chief CC ---- for such period as he may deem fit.
REDUCTION (if the goods are likely to deteriorate)	Can't be reduced.		The said period of 1 year may be reduced by CC— to such shorter period as he may deem fit.

WAREHOUSING INTEREST -- Sec 61(2)

Chargeability of interest	Goods intended for use in any 100% EOU (whether capital goods or goods other than capital goods)	Goods intended to be used in OTHER UNITS (Units other than 100% EOU)
When	Such goods remain in the warehouse beyond 5 years or 3 years [Interest will be chargeable on extended period also]	Such goods remain in the warehouse beyond 90 days
@	15% p.a.	15% p.a.
AMOUNT on which chargeable	Amount of <u>duty payable at the time of clearance of the goods</u> (in accordance with Sec 15)	Amount of <u>duty payable at the time of clearance of the goods</u> (in accordance with Sec 15)
PERIOD for which chargeable	From -- Expiry of permitted W/Hing (excluding extension) Till -- date of payment of duty	From -- Expiry of 90 days Till -- date of payment of duty

PRATHIBA PROCESSORS-1996-SC (M.Imp).

□ Calculation of interest is always on the principal amount. The “interest” payable under Section 61(2) of the Act is a mere “accessory” of the principal and if the principal is not recoverable/payable, so is the interest on it. **The interest provided under Section 61(2) has no independent or separate existence. When the goods are wholly exempted from the payment of duty on removal from the warehouse, one cannot be saddled (burdened) with the liability to pay interest on a non-existing duty.**

□ **MANUFACTURING FACILITIES WITHIN WAREHOUSE : SEC 65**

Sanction of PO + Fulfillment of specified conditions + Payment of prescribed fees ===== Manufacturing activity may be carried out in the W/H (This facility is intended to be given to EOUs – CBEC Policy)

Goods Warehoused ----- Mfing process done in W/H ----- FP + Waste/Refuse

⇒ **If FP Exported** ---- Then, on Goods contained in Waste/Refuse—Import Duty shall be remitted if ---

i) Such waste/refuse is destroyed; or

ii) Duty paid thereon – assuming that Waste/Refuse has been imported as it is.

⇒ **If FP Cleared for H/C** ---- Then, on Goods contained in Waste/Refuse—Import Duty shall be chargeable thereon (i.e., No remission allowable)

□ **IMPROPER REMOVAL --- SEC 72**

PO may issue DEMAND NOTICE i.r.o. W/Hed Goods under following 4 Situations:

- ⇒ Goods removed in contravention of Sec 71 (i.e., other than permissible manner);
- ⇒ Goods not removed within the permissible W/Hing period (including extension);
- ⇒ Goods taken as samples without payment of duty;
- ⇒ Goods not cleared for H/C or Exportation & not duly accounted for

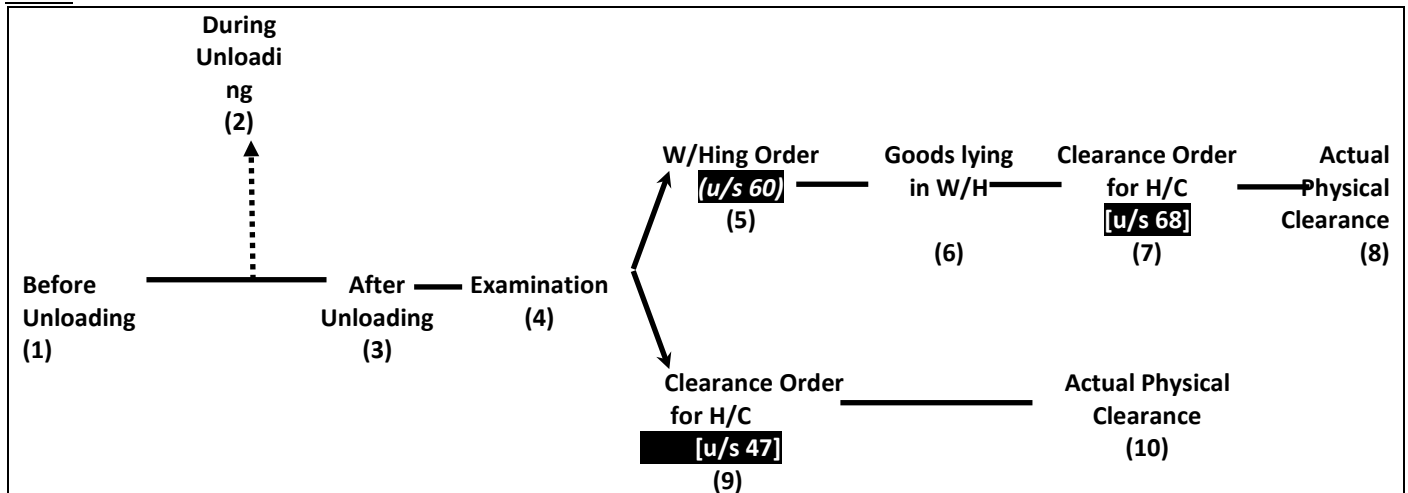
Upon issuance of such notice --- Importer shall pay FULL DUTY + (PENALTIES + RENT + W/Hing CHARGES + INTEREST) DUES
Failure to pay --- PO may detain and sell goods (notwithstanding the fact that importer has already transferred the title of goods to other person)

□ **SEC 70 : REMISSION OF DUTY**

VOLATILE GOODS (As notified by CG – e.g. Wine/Bear/Spirits/Fuel/Liquid Gases etc.) – found **deficient in quantity** (at time of taking delivery from W/H) – **due to NATURAL LOSSES** ===== AC/DC may remit such duty.

REMISSION & ABATEMENT OF DUTY

Chart:



SEC

COVERAGE

EFFECT

SEC 13

PILFERED GOODS

NO DUTY

- [(3) to (5)]
- [(3) to (9)]

[Importer not liable for duty payment [as Custodian is liable for duty payment – Sec 45(3)], but if goods are restored back to him – then, he will become liable for duty payment]

SEC 22

DAMAGED OR DETERIORATED GOODS

REDUCED/ABATED DUTY

- (a) Any goods --- [(1) & (2)]
- (b) Goods in respect of which B/E (H/C) filed: [(3) & (4)]
- (c) Goods in respect of which B/E (W/H) filed: [(3) to (8)]

Duty will be reduced proportionate to reduction in value of goods due to damage/deterioration

Value of Damaged/Deteriorated Goods – Determination --- Option of Importer

- He can leave determination of value with the PO;
- He can get the goods sold (in Auction // By tender // Any other method) and then “GROSS SALE PROCEEDS” shall be taken as the value of damaged/deteriorated goods]

Not due to Wilful Act / Negligence of Importer

SEC 23(1)

GOODS LOST (otherwise than by way of pilferage) /// DESTROYED

REMISSION OF DUTY

- [(1) to (8)]
- [(1) to (10)]

Remission Application to AC/DC – then AC/DC will pass “Remission Order” [if duty has already been paid, then Importer shall be entitled to refund in pursuance of the “remission order”]

23(2)

GOODS TITLE OF WHICH IS ABANDONDED

NO DUTY

- [(1) to (5)]
- [(1) to (9)]

If goods in relation to which title is sought to be surrendered are those in relation to which PO is of the opinion that offence appears to have been committed --
-- relinquishment not possible

SEC 24

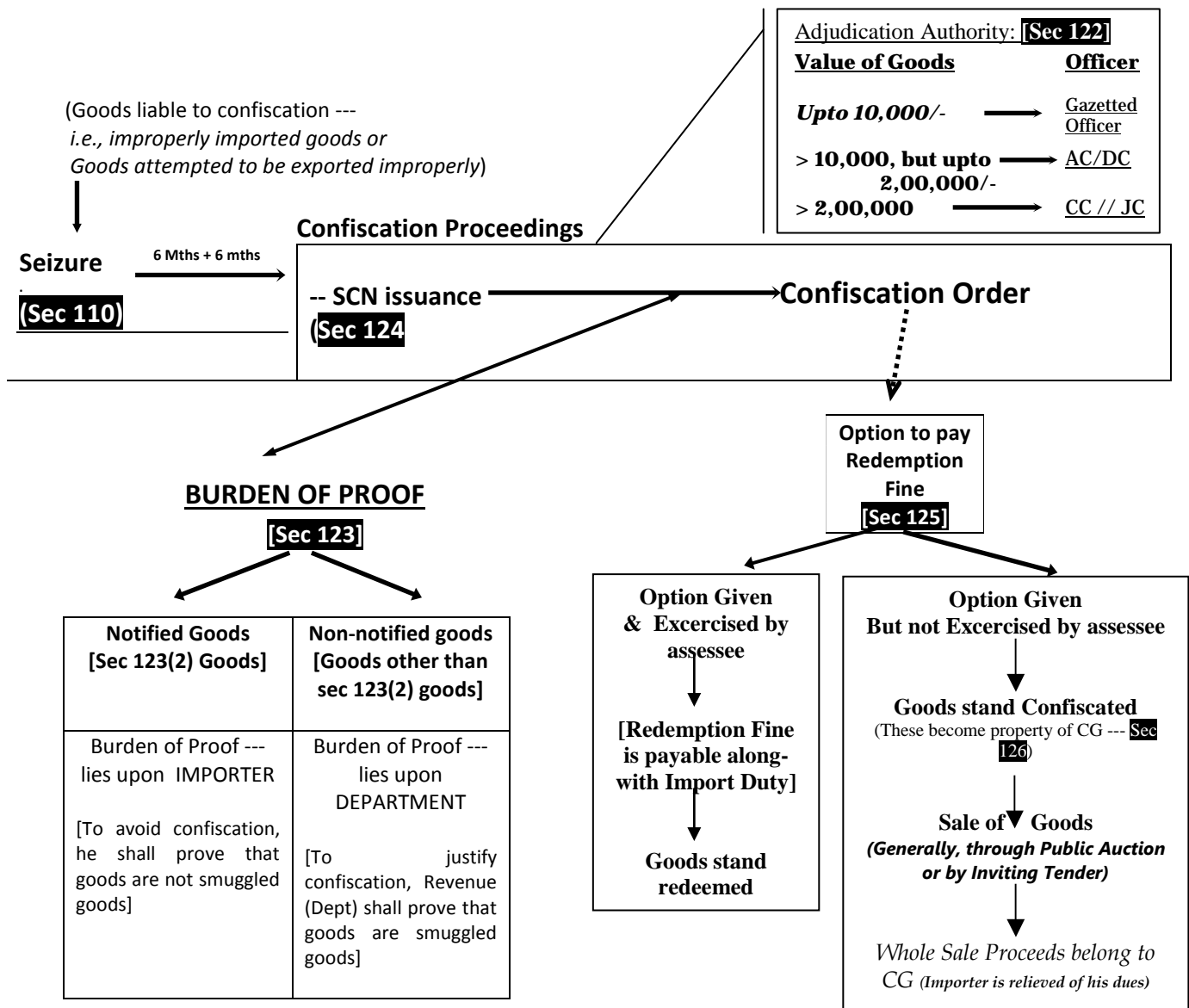
GOODS DENATURED / MUTILATED

DUTY ON GOODS IN DENATURED / MUTILATED FORM

- [E.g.,
- Alcohol Imported as such --- but contended to be used as “Industrial Alcohol] --- DENATURING
 - Second-Hand Machinery Imported by a Junk-Dealer --- but contended to be used as “Waste/Scrap] --- MUTILATION

Confiscation & Penalty

Civil Proceedings --- CONFISCATION OF GOODS



Sec 125: Option to pay redemption fine (Imp)

To be given mandatorily by PO: in case of non-prohibited goods

In case of prohibited goods: he shall exercise his discretion (i.e., he can pass confiscation order without giving any option to redeem goods on payment of fine)

Liability in terms of Sec 125

Max Redemption Fine = [Mkt Value - Import Duty] → [Import Duty payable separately to release the goods]

Judicial Decisions

- If title to the goods is relinquished & such relinquishment is accepted by the Department --- there remains no scope for levy and payment of Redemption fine. --- If redemption fine has already been paid, then assessee shall be entitled to refund of such fine.

PURFINA CHEMICALS (P) LTD. - 2004- Mad HC

BAGGAGE Sec 2(3)

It includes – unaccompanied baggage

But doesn't include-- Motor Vehicle

[Sec 77 to 81]

Sec 77	<p><u>Declaration by Owner of the Baggage</u></p> <p>For clearing Baggage (for import or export) ---- DECLARATION OF ITS CONTENT shall be filed with the PO</p> <ul style="list-style-type: none"> ⇒ Bill of Entry is not filed for clearing Baggage. ⇒ Such declaration may be ORAL or IN WRITING. [Walking through Green Channel (at Customs Airport) would amount to filing of "Oral Declaration" within the meaning of Sec 77 of Customs Act, 1962.]
Sec 78	<p><u>Relevant Date for determination of AV & RoD</u></p> <p>Relevant Date = Date of filing of Declaration of its contents</p> <ul style="list-style-type: none"> ⇒ All dutiable Articles <u>when imported as Baggage</u> shall be classifiable into Entry No. 98.03 [they shall be assessed collectively under this Heading --- & not to their individual Heading]. ⇒ Applicable RoD: 36.05% (in total)
Sec 79	<p><u>Bonafide Baggage Exempt from Customs Duty</u></p> <p>Subject to LIMITS & CONDITIONS as specified in the BAGGAGE RULES, 1998 --- PO will allow clearance of baggage without charging any customs duty:</p> <ul style="list-style-type: none"> <input type="checkbox"/> Used Articles in the Baggage : Any Quantity (which appears reasonable keeping in mind status of the passenger) <input type="checkbox"/> Unused Articles in the Baggage: Upto certain value [this limit is called General Free Allowance] <p style="text-align: right;"><i>Following can not be accommodated in GFA</i></p> <ol style="list-style-type: none"> 1) Fire Arms 2) Cartridges of fire arms > 50 units 3) Cigarettes > 200 no 4) Cigar > 50 no. 5) Tobacco > 250 g 6) Alcoholic Liquor > 2 lt 7) Gold or silver, in any form, other than jewellery]
Sec 80	<p><u>Temporary Detention of the Baggage</u></p> <p>Article in the Baggage ---- [Dutiable // Prohibited Article + True Declaration about the article has been made u/s 77]</p> <p>↓ Passenger may request PO to detain ^(keep in custody) such article with him for the purpose of returning him said article at the time of his leaving India</p> <p>↓ If passenger is not able to collect the article at the time of his leaving India, he can claim return of his articles in either of the following modes:</p> <ol style="list-style-type: none"> i) He can authorize any other passenger (who is also leaving India) to collect the detained baggage on his behalf; or ii) He can make a request to PO to later on send the baggage as cargo consigned in his name.
Sec 81	<p>-----Not Relevant -----</p>

	TYPE OF DUTY	ASSESSABLE VALUE	RATE OF DUTY	OTHER POINTS
CUSTOMS ACT, 1962 Sec 12	Basic Customs Duty [BCD] <i>[Leviable upon: Imported Goods as well as Export Goods]</i>	Sec 14(1): AV= TV Sec 14(2): AV= Tariff Value (as fixed by CBEC)	<p>Rates of Duty</p> <p>[When import is from specified countries (MFN) --- & proof as to source of origin is submitted at the time of clearance]</p>	<input type="checkbox"/> Non-Cenvatable Duty (i.e., Cenvat Credit – not available of BCD)
Finance Act, 2004	EC on Imported Goods	AV ↓ BCD + CVD [ED _{FP}] – Sec 3(1) + CVD [ED _{R/M}] – Sec 3(3) + ADD [ST/VAT_{FP}] – Sec 3(5)	2% (a single rate)	e.g. Sec 14(1) Value = Rs 1,000 BCD = 1000 * 20% = Rs 200/- CVD = (1000 + 200) * 16.48%) EC (Imported Goods) = [200 + 196] * 2%)
Finance Act, 2007	SHEC on Imported Goods	AV ↓ BCD + CVD [ED _{FP}] – Sec 3(1) + CVD [ED _{R/M}] – Sec 3(3)	1% (a single rate)	e.g. Sec 14(1) Value = Rs 1,000 BCD = 1000 * 20% = Rs 200/- CVD = (1000 + 200) * 16.48%) EC (Imported Goods) = [200 + 196] * 2%) SHEC (Imported Goods) = [200 + 196] * 1%

CUSTOMS TARIFF ACT, 1975 (Imposition by Notification in Official Gazette)

	TYPE OF DUTY		OTHER POINTS									
Sec 6	Protective Duty	<p>Tariff Commission ----- Recommendation -----CG</p> <p style="text-align: center;">↓</p> <p>IMMEDIATE ACTION ----- necessary To protect the interest of Domestic Industry [Desired increase in ROD is also recommended]</p> <p style="text-align: center;">↓</p> <p>CG can impose PROTECTIVE DUTY (Max Imposition = Recommended Duty)</p>	<ul style="list-style-type: none"> <input type="checkbox"/> WTO—Non-compatible <input type="checkbox"/> Once Imposed, Protective Duty = Deemed BCD (treated as BCD for all practical purposes) 									
Sec 8B	Safeguard Duty	<div style="display: flex; justify-content: space-between;"> <div style="width: 45%;"> <p>Domestic Industry</p> <p><i>Spl Notes:</i></p> <p>i) INCREASED IMPORTS: Developed Countries --- Any Qty</p> <p>Developing Country sharing > 3% Share of Total Imports in India</p> <p>More than One Developing Countries sharing : (Aggregate of imports from Developing Countries with less than 3% share) > 9% of Total Imports in India)</p> <p>ii) Serious Injury = Significant Overall Impairment in the position of Domestic Industry.</p> <p>iii) Threat to Serious Injury = Clear & Imminent danger of Serious Injury</p> </div> <div style="width: 45%;"> <p>Designated Authority [DG (Safeguards)]</p> <p>Written Application</p> <p style="text-align: center;">↓</p> <p><u>Supported by Evidence of :</u></p> <p>ii) Increased Imports;</p> <p>iii) Serious Injury to Domestic Industry (or threat of Serious Injury);</p> <p>iv) Casual Link between Increased Import & Serious Injury/Threat of Serious Injury</p> <p style="text-align: center;">↓</p> <p>Initiate Investigation</p> <p style="text-align: center;">↓</p> <p>Satisfied that Increase Imports ----- Casual Link ----- Injury</p> <p style="text-align: center;">↓</p> <p>Recommendation</p> <p>i) Amount of Safeguard Duty (which would prevent/remedy serious injury & would facilitate positive adjustments)</p> <p>ii) Duration of Levy</p> <p style="text-align: center;">↓</p> <p>CG --- shall impose by Notification in OZ (If duration of Levy > 1 year ----- then, the duty shall be progressively liberalized (i.e., lowered down) at regular intervals during the period of imposition)</p> <p><u>e.g., Notified Safeguard Duty</u></p> <p>First Year --- @ 12, 950 PMT</p> <p>Ind Year --- @ 8,830/- PMT</p> </div> </div>	<ul style="list-style-type: none"> <input type="checkbox"/> Amount of Safeguard Duty = Injury Margin <div style="border: 1px solid black; padding: 5px; margin: 10px 0;"> <p style="text-align: center;">INJURY MARGIN</p> <table style="width: 100%; border-collapse: collapse;"> <tr> <td style="text-align: center; width: 50%;">Fair S.P.</td> <td style="text-align: center; width: 10%;"><i>less</i></td> <td style="text-align: center; width: 40%;">Landed Cost of IG</td> </tr> <tr> <td style="text-align: center;">↓</td> <td></td> <td style="text-align: center;">↓</td> </tr> <tr> <td style="text-align: center;">Price which the domestic producers may reasonably be expected to realize on their sales in Domestic Market</td> <td></td> <td style="text-align: center;">[CIF Value + Landing Charges + Customs Duties]</td> </tr> </table> </div> <ul style="list-style-type: none"> <input type="checkbox"/> Pending Investigation --- Provisional Imposition is possible for a period of 200 days (However, retrospective Imposition is not possible) <input type="checkbox"/> Final Imposition : Time Limit 4 Years + Extension [Total --- 10 Years] <input type="checkbox"/> Unless specifically stated in Notification, it is <u>not</u> leviable on articles imported by 100% EOU / SEZ Unit. 	Fair S.P.	<i>less</i>	Landed Cost of IG	↓		↓	Price which the domestic producers may reasonably be expected to realize on their sales in Domestic Market		[CIF Value + Landing Charges + Customs Duties]
Fair S.P.	<i>less</i>	Landed Cost of IG										
↓		↓										
Price which the domestic producers may reasonably be expected to realize on their sales in Domestic Market		[CIF Value + Landing Charges + Customs Duties]										
Sec 8C	Safeguard Duty on		<ul style="list-style-type: none"> <input type="checkbox"/> All points same as in Sec 8B 									

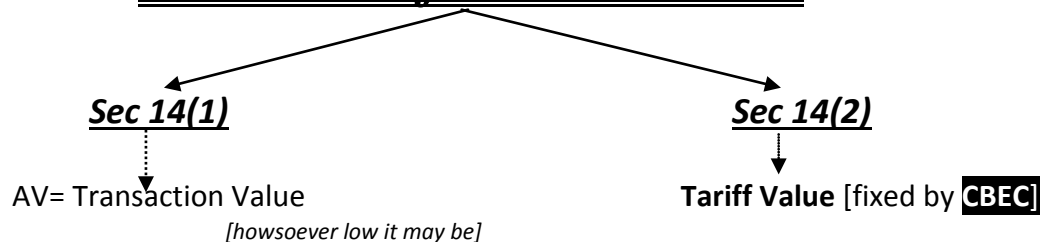
<p>Goods Imported from China</p>	<p>Domestic Industry → <i>Written Application</i> → Designated Authority [DG (Safeguards)]</p> <p><i>SpI Notes:</i> Market Disruption = Rapid Increase in Imports (in a relatively short span of time --- causing/threatening to cause material injury to Domestic Industry.)</p> <p><i>Supported by Evidence of :</i> i) Increased Imports from China; ii) Market Disruption; v) Casual Link between Increased Imports & Market Disruption</p>	
<p>Sec 9 CVD on subsidized Article</p>	<p>Domestic Industry → <i>Written Application</i> → Designated Authority [DG(Anti-Dumping)]</p> <p><i>Supported by Evidence of :</i> i) Subsidy (if possible, amount also) (See Below); ii) Injury; iii) Casual Link between Subsidized Imports & injury to domestic industry</p> <p>Initiate Investigation ↓ Satisfied that Subsidy ----- Casual Link ----- Injury ↓ Recommendation ↓ CG --- shall impose by Not. In OZ</p> <p><i>Special Note:</i> 1. Subsidy shall be deemed to be granted if there is i. FINANCIAL CONTRIBUTION ----- By Govt. or Any Public Body i) Direct tfd. Of funds (including any potential tfd of funds) ii) Foregoing Revenue (which is otherwise due) iii) Provisioning of Goods & Services (other than the general infrastructure); iv) Above 3 done through a –FUNDING MECHANISM / PVT. BODY] ii. PRICE or INCOME SUPPORT ----- By Govt. through which any benefit is conferred upon the manufacturer of goods.</p>	<ul style="list-style-type: none"> <input type="checkbox"/> Maximum Amt of CVD (SA) = Subsidy Margin However, generally CVD (SA) = Injury Margin <input type="checkbox"/> Pending Investigation --- Provisional Imposition is possible for a period of 4 Months (However, retrospective Imposition is possible for 90 days) <input type="checkbox"/> Final Imposition : Time Limit 5 Years + Extension [Total --- 10 Years] <input type="checkbox"/> Unless specifically stated in Notification, it is <u>not leviable</u> on articles imported by 100% EOU / SEZ Unit.

<p>Sec 9AA</p>	<p>Anti-Dumping Duty</p>	<div data-bbox="504 159 1444 678" style="border: 1px solid black; padding: 10px;"> <pre> graph TD DI[Domestic Industry] -- "Written Application" --> DA[Designated Authority [DG(Anti-Dumping)]] subgraph Evidence E1[Supported by Evidence of: i) Dumping (See Below); ii) Injury; ii) Casual Link between Dumping & injury to domestic industry] end DA -.-> E1 DA -.-> I[Initiate Investigation] I -.-> S[Satisfied that Dumping ----- Casual Link ----- Injury] S -.-> R[Recommendation] R -.-> CG[CG --- shall impose by Notification In OZ] </pre> </div> <p>Spl. Notes:</p> <ol style="list-style-type: none"> DUMPING --- When Normal Value < Export Price Margin of Dumping = [Normal Value – Export Price] Normal Value: <ol style="list-style-type: none"> Domestic Sale Price in country of export However, if <ul style="list-style-type: none"> ⇒ there is no sale of “like article” in the exporting country/territory in the ordinary course of trade OR ⇒ Mkt. Situation/ Volume of Sales in the Exporting Country/territory is such that it doesn’t provide a proper comparison base then, Normal Value shall be <ul style="list-style-type: none"> --- EXPORT PRICE to an Appropriate third Country --- CONSTRUCTED SALE PRICE (constructed on basis of “Cost of Production” thereof alongwith a reasonable addition for [Adm., Selling & Distribution Exp & Profit Margins]) Export Price: Price for article imported in India; <ul style="list-style-type: none"> But, if <ul style="list-style-type: none"> ⇒ There is no Export Price; or ⇒ Export Price is unreliable (<i>bcoz of some compensatory arrangement</i>) Then, it shall be constructed on basis of <ul style="list-style-type: none"> ⇒ Sale price to Unrelated Persons In India; ⇒ If not sold so sold or sold in changed condition – then Export Price shall be constructed as per Rules. 	<ul style="list-style-type: none"> ❑ Maximum Amt of ADD = Dumping Margin However, generally ADD = Injury Margin ❑ Pending Investigation --- Provisional Imposition is possible (no period specified) (However, retrospective Imposition is possible for 90 days) ❑ Final Imposition : Time Limit 5 Years + Extension [Total --- 10 Years] ❑ Unless specifically stated in Notification, it is <u>not leviable</u> on articles imported by 100% EOU / SEZ Unit. <p>Other Points:</p> <ul style="list-style-type: none"> ❑ Refund of ADD: Where an importer proves to the satisfaction of the CG that he has paid ADD in excess of the actual margin of dumping in relation to such article, then he shall be entitled to refund of such excess duty [Sec 9-AA] ❑ Person Aggrieved by Imposition of ADD (in any aspect --- Existence , Degree or Effect) --- Appeal lie to CESTAT [Appeal Fee – Rs 15,000/-] (Time Limit – 90 days) [Sec 9C]
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	CVD (ED _{FP})	CVD (ED _{raw-material})	ADD [(ST/Local Charges – VAT) _{FP}]
Leviability u/s	Sec 3(1) of CTA, 1975	Sec 3(3) of CTA, 1975	Sec 3(5) of CTA, 1975
Leviability on	Any imported Article <i>[which is capable of being produced/manufactured in India – HYDERABAD INDUSTRIES-SC]</i>	Notified Imported Article At present, it is leviable on the following 3 imported goods:: (i) Stainless steel manufactures^[*products] for household use; (ii) Transformer Oil; (iii) Computers (From Year 2004)	Notified Imported Article At present, it is leviable on ALL IMPORTED ARTICLES. <i>However, if importer is a trader (i.e., has imported goods for re-sale), then Special CVD is exempt [E/N 102/2007]</i>
Purpose/Objective	Counter-balance the excise duty leviable on the like article produced/manufactured in India	Counter-balance the excise duty leviable on Raw Material used in the production or manufacture of like article in India	Counter-balance the Sales tax/ VAT/Local Tax or any other charges for the time being leviable on a like article on its sale, purchase or transportation in India
Assessable Value	<p style="text-align: center;">AV</p> <p style="text-align: center;">↙ ↘</p> <p>Other Cases</p> <div style="border: 1px solid black; padding: 5px; margin: 10px 0;"> <p>Sec 14(1)/(2) Value + BCD [Sec 12 of CA, 1962] + NCDC FA, 2003</p> </div> <p>When "like article of India" is assessed on MRP basis</p> <div style="border: 1px solid black; padding: 5px; margin: 10px 0;"> <p>MRP^[imported article] xxx</p> <p>Less: Notified % (xxx)</p> <p>Abated MRP Value XXXX</p> </div> <p style="text-align: center; font-size: small;">* If Multiple MRPs printed on a single package, then Maximum of such MRP shall be considered.</p>	AV will be same as in case of imposition of CVD (ED _{FP}) leviable u/s 3(1)	AV will be <div style="border: 1px solid black; padding: 5px; margin: 10px 0;"> <p>Sec 14(1)/(2) Value + BCD [Sec 12 of CA, 1962] + CVD (ED_{FP}) [Sec 3(1) of CTA, 1975] + CVD (ED_{R/M}) [Sec 3(3) of CTA, 1975] + EC (Imported Goods) + SHEC (Imported Goods)</p> </div>

<p>Rate</p>	<p style="text-align: center;">Rate</p> <p style="text-align: center;"> Other Goods Alcoholic for Human Consumption </p> <p> ED as leviable on “like article” if produced/manufactured in India </p> <p> Where like article is not produced /manufactured in India ED as leviable on related <u>Class/Description of Articles</u> </p> <p> & If duty is leviable at Diff Rates ---then HIGHEST RATE </p> <p> * Excise Exemption (whether conditional or unconditional) – shall also be considered </p>	<p>As notified by CG [CG notified rate on average basis]</p>	<p>As notified by CG [CG can notify 4% as maximum rate]</p> <p>At present, the notified rate is 4% (the maximum rate).</p>
<p>Special Point</p>	<p>-----</p>	<p>CVD (ED_{raw-material}) can be levied - --</p> <p>a) When CVD (ED_{FP}) is not leviable; or</p> <p>b) When CVD (ED_{FP}) is leviable;</p>	<p>ADD [(ST/Local Charges – VAT)_{FP}] can be levied ---</p> <p>a) When CVD (ED_{FP}) and/or CVD (ED_{raw-material}) is not leviable; or</p> <p>b) When CVD (ED_{FP}) and/or CVD (ED_{raw-material}) is leviable;</p>

Valuation of Goods: Sec 14



[Applicable Rate of Exchange: **CBEC Notified Rate** as prevailing on date of Presentation of
B/E u/s 46 (For Imported goods)]

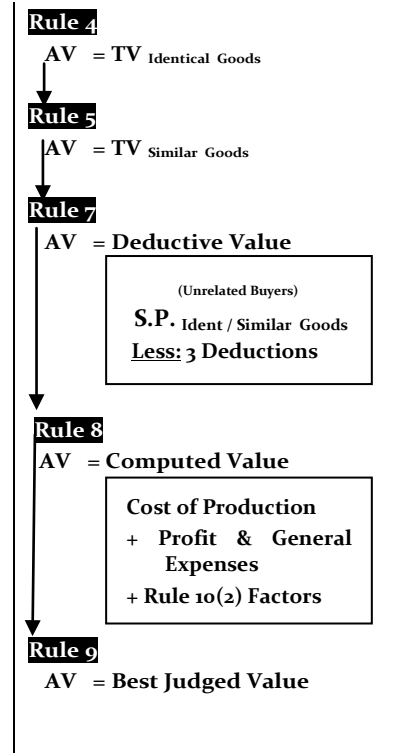
Import Valuation (w.e.f 10th Oct, 2007)

Customs Valuation (Determination Of VALUE Of Imported Goods) Rules, 2007

<u>Rule 1</u>	<u>Short Title, Commencement and Applicability</u>
<u>Rule 2</u>	<u>Definitions</u>
<u>Rule 3</u>	<u>Conditions for acceptance of Transaction Value</u>
<u>Rule 4</u>	<u>TV of identical goods</u>
<u>Rule 5</u>	<u>TV of similar goods</u>
<u>Rule 6</u>	<u>Determination of value when value can not be determined under Rule 3, 4 and 5</u>
<u>Rule 7</u>	<u>Deductive Value</u>
<u>Rule 8</u>	<u>Computed Value</u>
<u>Rule 9</u>	<u>Best Judged Value</u>
<u>Rule 10</u>	<u>Cost and services liable to be included in TV</u>
<u>Rule 11</u>	<u>Valuation Declaration</u>
<u>Rule 12</u>	<u>Rejection of declared TV</u>
<u>Rule 13</u>	<u>Interpretative Notes to be used for interpretation of rules</u>

Rule 3:

$$AV \text{ (Imported Goods / Goods Being Valued)} = TV \text{ (Imported Goods / Goods Being Valued)}$$



Sec 14(1) read with Rule 3

$$AV \text{ (Imported Goods / Goods Being Valued)} = TV \text{ (Imported Goods / Goods Being Valued)}$$

Price actually paid/payable for the goods

Add: Adjustments for Rule 10- Valuation Factors (also known as Dutiable factors)

Rule 10(1)

- (a) (i) **Commission & Brokerage;**
[But Buying Comm: Not includible]
- (ii) **Cost of Containers;**
- (iii) **Cost of Packing** (Labour or Material).

(b) Value of ASSISTS [4 Types of Assists]

- i) **Materials / Components / Parts contained in FP** (Place of Origin: May be India or Outside India):
- ii) **Tools/ Moulds / Dies / Similar Items** (Place of Origin: May be India or Outside India):
- iii) **Materials consumed in production of imported goods;** (Place of Origin: May be India or Outside India):
- iv) **Engg / Development/Art Work/ Design Work / Plans & Sketches** (Place of Origin: Must be Outside India):

Rule 10(2)

(a) Cost of Transport;

	Ascertainable	Not ascertainable
Air	Actual amount (restricted to 20% of FOB)	20% of FOB
Sea	Actual amount	20% of FOB
Land	Actual amount	20% of FOB

Notes:

1. **Cost of Transport incurred within India:** Not includible [Interpretative Note to CVR]
2. **Transshipment of Cargo (Customs Port --- to --- ICD/CFS):** Not includible [Illrd Proviso to Rule 9(2)]
3. **Demurrage Charges:** Includible [Explanation inserted by FA, 2007]
4. **Barging / Lighter age Charges** Includible [Explanation inserted by FA, 2007]

(c) Royalties & License Fees;

[But "Charges for Right of Reproduction of Imported Goods in India" – **Not Includible**]

(d) Subsequent Sale Proceeds – accruing to the seller;

[But "Dividend Payments" – **Not Includible** (since payment of dividend can't be equated with accrual of sale proceeds subsequently)]

(e) All Other Payments.

--- Payment is made as a condition for sale of imported goods; &

--- Payment is made by buyer to the seller directly or to a third party to satisfy an obligation of seller

e.g.,

Dismantling charges incurred in respect of dismantling of machinery in the country of exportation

The payment shall not be a post-importation expenditure.

(b) Transit Insurance;

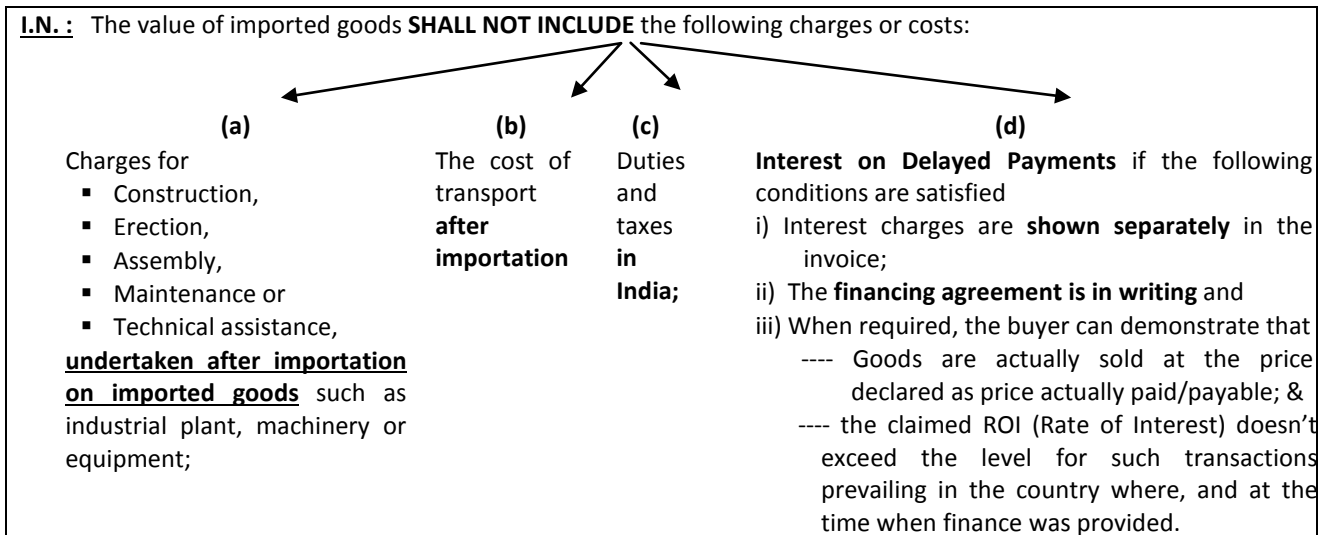
Ascertainable	Not ascertainable
Actual amount	1.125% of FOB

(c) Landing Charges

Ascertainable	Not ascertainable
1% of CIF	1% of CIF

Notes:

1. CIF Value (Not the contracted CIF); rather than it is "Derived /Computed CIF"
2. Landing charges (Of 1%) covers totality of all the exp associated with delivery of goods to buyer (No separate addition on account of any other exp – **COROMANDAL FERTILIZERS LTD. – 2000-SC**)



TV shall be acceptable only if

Rule 3(2) Valuation conditions are also satisfied)

i) Sale is not subject to any *restrictions as to the disposition/use of the goods by the buyer*

However, following restrictions may be imposed:

- (i) Rest. imposed by law or Public Authorities In India; or
- (ii) Rest as to allocation of sales territory;; or
- (iii) Rest. Which doesn't affect value of goods (e.g., rest. as to display of goods till a

Proper Officer doesn't have reason to doubt as to truth & accuracy of declared value [Rule 12]

PO having "reason to doubt" –truthness & accuracy of decalred value

--- Notice to importer

---- No response to importer // Unsatisfactory response from importer

PO shall have power to reject declared TV and determine the valuation under other valuation rules

specified date);

[if importer requests,

- ii) There is no **condition or consideration associated with the transaction for which value cannot be determined**

(e.g., Clubbed Sale (Sale of A at “x” p.u. subject to sale of B at “y” p.u. – condition is such that impact of this on value of A can’t be determined);

- then opportunity of being heard shall be given before rejection ;
- Rejection order shall be made containing the grounds of rejection]

- iii) **Subsequent sale proceeds of imported goods are accruing to the seller and it is possible to make adjustment thereof in terms of Rule 9(1)(d)**

(if such adj is not possible, then TV can’t be accepted);

- iv) **Buyer and seller are not related persons** (RP defined in Rule 2)

Related Person [Rule2(2)]

<u>THEY ARE</u>	<u>BOTH OF THEM</u>	<u>ONE OF THEM</u>	<u>ANY PERSON</u>
⇒ Officer/Director in each other’s business; ⇒ Legally Recognized partner; ⇒ Employer & Employee; ⇒ Members of same family;	⇒ Are controlled by a third person; ⇒ Control a third person;	⇒ Control the other	⇒ Owns/controls 5% or more of voting stock/shares in both of them

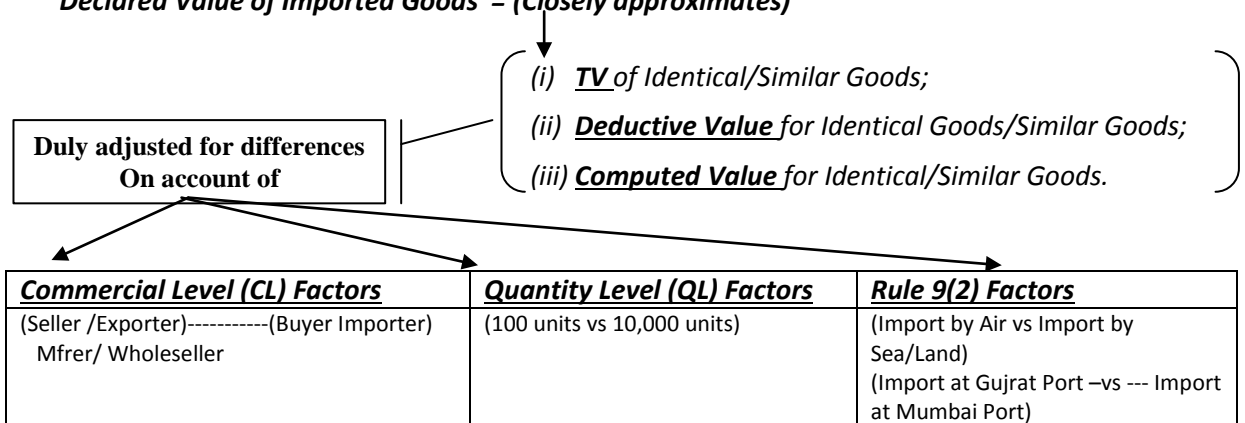
Explanation: Sole Distributor/ Sole Selling Agent – shall not be treated as RP unless they fall under any of the above criteria.

Rule 4(3): Even if buyer and seller are related, **that TV shall be accepted** under the following 2 conditions:

- (a) **Examination** of the circumstances of the sale –shows price has not been influenced on account of relationship;

OR

- (b) **When the importer proves (by leading evidence) that Declared Value of Imported Goods = (Closely approximates)**



Rule 4

Identical Goods – means – those Imported Goods which are	
i)	Same in all respects (including physical characteristics, quality & reputation);
ii)	Produced in same country;
iii)	Producer may be same or different
But doesn't include:	
-- those imported goods in respect of which Engg/ Design/ Development work etc. has been undertaken in India by the buyer importer and supplied to exporter (free of cost or at concessional rate)	

AV (Imported Goods / Goods Being Valued) = **TV** (Identical goods) – imported at/about the same time

↓

Imported at/about same time

Assessment made

Final Assessment made

Final Assessment made under Rule 3

Take care!

- (i) Choose that sale transaction of Id Goods in which Id Goods were sold
 - a. At same QL & same sale CL
- (ii) If no such transaction is available, then adjust the available sale for
 - a. Differences in the QL or
 - b. Differences in the QL As the case may be
- (iii) Adj the transactions for diff in Transport Cost, Insurance cost etc.

• CHOOSE LOWEST OUT OF MULTIPLE ELIGIBLE VALUES

Rule 5

Similar Goods – means – those Imported Goods which are	
i)	Not same in all respects, but still have like components & parts which enable them to perform <u>same functions and be commercially interchangeable</u> ;
ii)	Produced in same country;
iii)	Producer may be same or different
But doesn't include:	
-- those imported goods in respect of which Engg/ Design/ Development work etc. has been undertaken in India by the buyer importer and supplied to exporter (free of cost or at concessional rate)	

AV (Imported Goods / Goods Being Valued) = **TV** (Similar goods) – imported at/about the same time

Rule 7 [Deductive Value]

Identical / Similar goods	7(1)	7(2)	7(3)
▪ Sold after importation into India	✓	✓	✓
▪ Sold to unrelated persons	✓	✓	✓
▪ Sold at/about the time of filing of valuation declaration of imported goods	✓	x	✓
▪ Sold as such (i.e., in the condition in which imported)	✓	✓	x
AV	S.P (pu) at which GAQ sold Less: 3 Deductions ⇒ [Profits & General Expenses] // [Commission] ⇒ COT & Transit Insurance (within India) ⇒ Customs Duties / Sales Tax (within India)	Sales transactions after-importation but upto a period of 90 days can be considered for calculating [Sale Price (p.u.) at which GAQ has been sold	Value Addition done by processing shall also be deducted.

Rule 8 [Computed Value] (* Used for valuation of “Related Party Transactions”)

AV: Sum total of

- ⇒ Cost of Material & Fabrication/ Processing;
- ⇒ Margin for “Profit & General Expenses” (that of exporter)
- ⇒ Cost/Value of Rule 9(2) Factors [Transport + Transit Insurance + Landing Charges]

Rule 9 [Best Judged Value] (*When no other rule is suitable for valuation)

AV: As per Any Reasonable Means

[However, that value can not be more than the price at which these goods are offered for sale as on the date of importation—Proviso inserted by 2007]

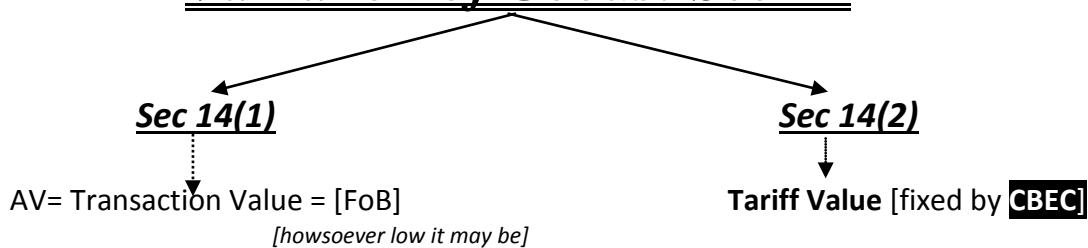
Rule 9 prohibits selection of following basis for valuation:[PROHIBITED BASES]

[Bases linked to Sale Price]	<ul style="list-style-type: none"> ⇒ Sale Price of DOMESTIC GOODS ^[goods produced in India], ⇒ Sale price of Imported goods in the domestic market of the exporter; ⇒ Sale price of goods when sold for the export to any other country.
[Bases linked to Cost]	⇒ Cost of production which has not been determined in terms of Rule 7A;
[Bases linked to Choice of PO]	<ul style="list-style-type: none"> ⇒ Choosing Highest among the alternative values; ⇒ Choosing minimum among the alternative values; or ⇒ Choosing Arbitrary or fictitious values.

TOLIN RUBBERS PVT LTD. – 2004—SC : Second Hand machinery can not be directly taken to Rule 9 for valuation.

M S Shoes India (p) Ltd- 2007-SC: When IInd Hand Machinery is valued under Rule 9, depreciated value is acceptable as Best Judged Value. However, maximum allowable depreciation shall be as admissible upto date of filing of bill of entry.

Valuation of Goods: Sec 14



[Applicable Rate of Exchange: **CBEC Notified Rate** as prevailing on date of Presentation of Shipping Bill or Bill of Export u/s 50 (For Export goods)]

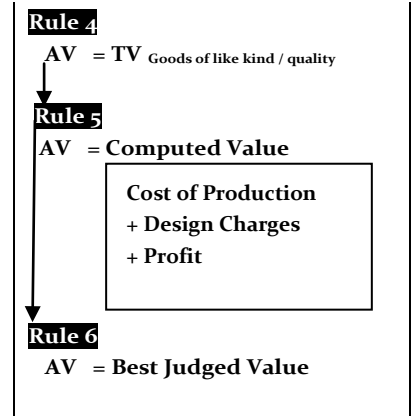
Export Valuation (w.e.f 10th Oct, 2007)

Customs Valuation (Determination of VALUE Of Export Goods) Rules, 2007

		<u>Comparison with IVR, 1988</u>
<u>Rule 1</u>	<u>Short Title, Commencement and Applicability</u>	[=Rule 1 of IVR, 2007]
<u>Rule 2</u>	<u>Definitions</u> → <u>“Goods of like kind and quality”</u> → <u>“Related Person”</u>	[=Rule 2 of IVR, 2007] [=Mixed Def of Identical & Similar Goods] [=Same as in Rule 2(2) of IVR, 2007]
<u>Rule 3</u>	<u>Conditions for acceptance of Transaction Value</u>	[=Rule 3 of IVR, 2007 (with some differences—No condition laid down for acceptance of TV)]
<u>Rule 4</u>	<u>Determination of export value by comparison</u>	[=Rule 4 & 5 of IVR, 2007]
<u>Rule 5</u>	<u>Computed Value method</u>	[=Rule 8 of IVR, 2007]
<u>Rule 6</u>	<u>Residual Method</u>	[=Rule 9 of IVR, 2007]
<u>Rule 7</u>	<u>Valuation Declaration</u>	[=Rule 11 of IVR, 2007]
<u>Rule 8</u>	<u>Rejection of declared TV</u>	[=Rule 12 of IVR, 2007]

Rule 3:

$$AV \text{ (Imported Goods / Goods Being Valued)} = TV \text{ (Imported Goods / Goods Being Valued)}$$



Sec 14(1) read with Rule 3

$$AV \text{ (Imported Goods / Goods Being Valued)} = TV \text{ (Imported Goods / Goods Being Valued)}$$

TV shall be acceptable only if

Rule 3(2) Valuation condition is

Buyer and seller are not related persons

[Even if buyer and seller are related, **that TV shall be accepted if price has not been influenced on account of relationship**]

Proper Officer doesn't have reason to doubt as to truth & accuracy of declared value [Rule 8]

PO having "reason to doubt" –truthness & accuracy of declared value

--- Notice to importer

---- No response to importer // Unsatisfactory response from importer

PO shall have power to reject declared TV and determine the valuation under other valuation rules

Rule 4

$$AV \text{ (Imported Goods / Goods Being Valued)} = TV \text{ (Goods of like kind and quality)}$$

↓
Exported at/about same time
Exported to same destination country
[but if that's not possible, then exported to another destination country]

Take care!

Permissible Adjustments

- a. Differences in the QL or
- b. Differences in the CL
- c. Diff in Transport Cost, Insurance cost etc.

Rule 5 [Computed Value]

- AV:** Sum total of
- ⇒ Cost of Material & Fabrication/ Processing;
 - ⇒ Charges of design/brand
 - ⇒ Margin for “Profit & General Expenses” (that of exporter)

Rule 6 [Best Judged Value] **When no other rule is suitable for valuation)*

- AV:** As per Any Reasonable Means
- [However, Local Market Sale Price (Indian Sale Price) shall not be the only value which can be taken as reasonable under Rule 6]***

Duty Drawback

	<u>DBK u/s 74</u>	<u>DBK u/s 75</u>
When admissible	Imported goods exported as such (without being used) or after use	IG used in manufacture of goods which are exported
Related Rules	Re-export of Imported Goods (DBK of Customs Duties) Rules, 1995	Customs, Central Excise Duties and Service Tax Drawback Rules, 1995
Situations	i) General Export of Cargo; ii) Baggage Export; iii) Export by Post	i) General Export of Cargo; ii) Baggage Export; iii) Export by Post
Coverage of Duty	Customs Duty is only refunded.	Customs, Excise Duty as well as Service Tax are refunded.
Rates of DBK	Sec 74(1): 98% of the import duty paid at the time of importation Sec 74(2): DBK at reduced rate (Notified Rates)	i) AIR (All Industry Rate) --- generally; ii) BR (Brand Rate)—when no AIR is fixed in the DBK Schedule; iii) SBR (Special Brand Rate)--- when fixed AIR < 80% of the actual duties incidence

Sec 74 DBK

	<u>DBK u/s 74(1)</u>	<u>DBK u/s 74(2)</u>
When admissible	Imported goods exported as such (without being used)	Imported goods exported as such ---after having being used in India for some period
Rates of DBK	98% of the import duty paid at the time of importation	DBK at reduced rate (Notified Rates)
Permissible Time Period of Exportation	2 years from date of payment of initial import duty [+ Unlimited Extension by CBEC]	Maximum upto 3 Years or 4 years , As the case may be

a) No DBK for used --- i) Wearing Apparel; ii) Tea; iii) Exposed Cinema Film; iv) Unexposed Photographic films/Paper Plates/X-ray films;

b) In respect of [Motor Cars] & [Any goods imported by an individual],

Admissible DBK = [100% - "X"]

- i) 1st Year ---- Take "X" as 4% per quarter/part of quarter;
 - ii) 2nd Year ---- Take "X" as [16% + 3% per quarter/part of quarter];
 - iii) 3rd Year ---- Take "X" as [28% + 2.5% per quarter/part of quarter];
 - iv) 4th Year ---- Take "X" as [38% + 2% per quarter/part of quarter];

More than 4 years old imports --- NO DBK admissible at all

c) *In any other case, admissible DBK shall be :*

<u>Period Of Usage</u>	<u>Notified Rate</u>
Upto 3 months	95%
More than 3 months, upto 6 months	85%
More than 6 months, upto 9 months	75%
More than 9 months, upto 12 months	70%
More than 12 months, upto 15 months	65%
More than 15 months, upto 18 months	60%
More than 18 months, upto 21 months	55%
More than 21 months, upto 24 months	50%
More than 24 months, upto 27 months	45%
More than 27 months, upto 30 months	40%
More than 30 months, upto 33 months	35%
More than 33 months, upto 36 months	30%
More than 36 months	Nil

Sec 75 DBK

Basic conditions to be satisfied for admissibility of DBK Claim [Sec 75]

- ⇒ There shall NOT BE (-ve) Value Addition .
- ⇒ The (+ve) Value Addition shall exceed the minimum notified % of Value Addition.

Customs, Central Excise Duties and Service Tax (DBK) Rules, 1995

DBK	DBK = Refund of [Customs Duty / Excise Duty (Inputs) + Service Tax (Input Service)] [this DBK covers all three]
Rates of DBK	<p>⇒ <u>AIR (All Industry Rate)</u> <i>fixed by CG (annually) ---- [Rule 3]</i> [this rate is fixed by CG considering the average incidence of duty on a representative cross-section of importer. The duty incidence of inputs and input service is considered]</p> <p>In respect of export of manufactured goods, a Assessee manufacturer exporter is also entitled to take CCR</p> <div style="border: 1px solid black; padding: 5px; text-align: center;"> <p><i>Cenvat Credit = Credit of [Excise Duties + Customs Duties {CVD+Spl CVD}, + Service Tax]</i></p> </div> <p style="text-align: center;"><i>If CCR is taken of these duties, then Admissible DBK shall be reduced by the amount of such CCR & only net amount shall be available as DBK.</i></p> <p><u>Determination of relevant date for application of amount or rate of DBK [Rule 5]</u> The relevant date shall be:</p> <ul style="list-style-type: none"> ▪ In case of Goods exported by filing → <i>Date of issuance by “Let Export Order / Let Ship Order”</i> ▪ In case of Goods Exported by Post → <i>Date of delivery of Export Goods to the Postal Authority</i> <p>⇒ <u>BR (Brand Rate)</u> <i>fixed by CCE / CC&CE on application by importer---- [Rule 6]</i> [Importer can make application in respect of his product if no AIR has been fixed (Period of submission of Application:-- 60 Days + 30 Days Extension)]</p> <p>⇒ <u>SBR (Special Brand Rate)</u> <i>fixed by CCE / CC&CE on application by importer---- [Rule 7]</i> [Importer can make application in respect of his product when AIR fixed in respect of his product is lower than 4/5th of the actual duty incidence suffered by him (Period of submission of Application:-- 60 Days + 30 Days Extension)]</p>

Restriction on determination/ grant of DBK	<p>No DBK shall be sanctioned if :-- it is less than 1% of FOB [However, in respect of any shipment it exceeds Rs 500/-, then it shall be sanctioned even if it is less than 1% of FOB] Further: The aforesaid restriction wouldn't be applicable to:</p> <p>a) Goods Imported by Post; b) Exports made in discharge of export obligations under Advance License;</p>	
Procedure for claiming DBK	Export by Post	Mention "DBK Export" on outer package + Prepare DBK claim separately & hand it over to the postal authorities along with the package [Rule 11]
	Export other than by Post	Mention "DBK Export" on Shipping Bill/Bill of Export + DBK claim needn't be prepared separately (as Triplicate Copy of Shipping Bill shall be deemed to be the DBK Claim itself) [Rule 12 + 13]
DBK Order	<p>It is issued under Rule 14. <i>[Supplementary claim can be made under Rule 15, if DBK sanction is found to be less Than what the assessee exporter is entitled to]</i></p>	
Erroneous DBK – refund	It shall be repaid upon demand by the PO.	
Recovery of DBK upon failure to realize Forex	<p>Rule 16-A AC/DC will send notice to Importer to bring evidence of sale proceeds (30 days time given) --- failure to bring the evidence, AC/DC shall pass recovery orders --- Importer shall pay within next 30 days (Failure will attract recovery Procedures of Sec 142 <i>[refund adjustments, sale of properties etc]</i>) However, as and when foreign exchange is brought in India ---- Proof can be submitted and then, recovered DBK shall be repaid to the importer.</p>	

Common provisions for : Sec 74 & 75 DBK

Sec 75-A	<p>(1) <u>Failure to pay DBK due to the importer within 1 Month of filing of DBK Claim</u> ---- Importer shall be entitled to interest @ 6% p.a. for the period of delay beyond 1 Month</p> <p>(2) <u>DBK granted erroneously to Importer --- SCN served for recovery of such DBK –</u> ---- Importer shall pay interest @ 13% p.a. <u>from the date the DBK was erroneously granted</u> till the date of actual payment <i>Failure of importer to pay the demand within 2 Month from date of demand, recovery action shall be initiated</i></p>
Sec 76	<p><u>PROHIBITION & REGULATION OF DBK</u></p> <p>(1) No DBK if ☞ DBK due is less than Rs 50/- [*thus, minimum amount of admissible DBK is Rs 50/] <u>OR</u> ☞ Market Price (of Export Goods) is < the DBK Due</p> <p>(2) Goods likely to be smuggled back into India CG (by Notification in OZ)--- may ☞ Prohibit allowance of DBK on export of such goods; or ☞ Impose restrictions and conditions as to allowance of DBK on export of such goods.</p>

Demand & Recovery: A comparative analysis

	Section under Excise	Section Under Customs
Recovery of duty (tax)	<p>Sec 11-A of CEA, 1944</p> <ul style="list-style-type: none"> ■ Not levied, Not paid ■ Short Levied, Short paid ■ Erroneously Refunded <p><u>Relevant date:</u> FA of PA: Date of adjst of ED on PA Erroneous Refund: Date of refund</p> <p>Return filed: Date of filing Return not filed: Last Date of filing Return not required to be filed: Date of payment</p> <p><u>Time Period:</u> Normally: 1 Year Fraud cases: 5 years</p>	<p>Sec 28 of CA, 1962</p> <ul style="list-style-type: none"> ■ Not levied, Not paid ■ Short Levied, Short paid ■ Erroneously refunded <p>[[under Customs, assessment is done by Customs Officer (not by importer himself). Thus, any non-payment will be only on account of non-levy and any short-payment will be on account of short-levy by customs officer.]</p> <p><u>Relevant date:</u> FA of PA: Date of adjst of ED on PA Erroneous Refund: Date of refund</p> <p><u>Non-levy:</u> Date of clearance order <u>Short-levy:</u> Date of payment</p> <p>[Tutorial note: Under Customs, there are no provisions as to filing of returns by importer/exporter. Thus, to that extent, relevant date has been changed under Customs]</p> <p><u>Time Period:</u> Normally: : In case of imports made by – ⇒ Any Individual for his personal use, or ⇒ Govt. // Educational, Research or Charitable (ERC) Institution or Hospital :--- 1 Year : In any other case :--- 6 months</p> <p><u>Fraud cases:</u> 5 years</p>
Levy of interest (on recovered duty/tax)	Sec 11-AB of CEA, 1944 (@13% p.a.)	Sec 28-AB of CA, 1962 (@13% p.a.)
Penalty in fraud cases	Sec 11-AC of CEA, 1944	Sec 114-A of CA, 1962
Recovery Amount collected in excess from buyer (customer)	Sec 11-D of CEA, 1944	Sec 28-B of CA, 1962
Interest leviable on amount collected in excess	Sec 11-DD of CEA, 1944 (@15% p.a.)	-- No Corrsponding provisions [No interest liability will arise under Customs]
Provisional attachment of property	Sec 11-DDA of CEA, 1944	Sec 28-BA of CA, 1962
Recovery of <u>any amount</u> due to CG	Sec 11 of CEA, 1944 <u>[3 modes:</u>	Sec 142 of CA, 1962 <u>[4 modes:</u>

[Co-ercive methods for recovery of amount due to CG]	1) Adj agst <u>Excise refund</u> due 2) Attachment & sale of EG 3) Certificate Action Section under Excise	1) Adj agst Customs Duty due 2) Attachment & sale of <u>any movable or immovable property</u> 3) Certificate Action Section Under ST provisions, if any difference
Recovery of duty (tax) <ul style="list-style-type: none"> ■ Not levied , Not paid ■ Short Levied, Short paid ■ Erroneously refunded 	1 mode of recovery also applicable [(Attachment and sale of any movable or immovable property)] Recovery Action can be initiated against successor for dues of predecessor Sec 11-A of CEA, 1944	Recovery Action can be initiated against successor for dues of predecessor Sec 73 of FA, 1994
Power to exempt duty (tax) not levied	Sec 11-C of CEA, 1944	Sec 28-A of CA, 1962
levy of interest on recovered duty (tax) practice of industry	Sec 11-AB of CEA, 1944 (@13% p.a.)	Sec 75 of FA, 1994 (@13% p.a.)

Demand & Recovery: A comparative analysis

<p>Levy of penalty in case of non-payment of duty (tax) due to fraud, suppression etc.</p>	<p>Sec 11-AC of CEA, 1944 (straightway penalty equal to duty recovered – subject to reduction benefit in case of payment within 30 days)</p>	<p>Sec 78 of FA, 1994 (Penalty as per discretion of CEO Minimum = 100% of tax recovered Maximum = 200% of tax recovered – subject to reduction benefit in case of payment within 30 days)</p>	<p>Additional Penalty under ST Sec 76 of FA, 1994 Higher of two: (i) 2% p.m.; or (ii) 200/- per day starting with the first day after the due date till the date of actual payment of the outstanding amount of ST. <i>[This penalty is leviable even if default is not willful]</i></p>
<p>Amount collected in excess from buyer (customer) shall be deposited with CG</p>	<p>Sec 11-D of CEA, 1944 (1) (ED payable less but collected more, the excess shall also be deposit with CG) (2) (If not so paid, CEO shall issue SCN for recovery) (3) (Demand Order in pursuance of SCN) (4) (Surplus to paid can be claim as adjustment in subsequent proceedings relating thereto) (5) (Any surplus so collected shall either be credited to CWF- or refunded to the consumer)</p>	<p>Sec 73-A of FA, 1994 (1) (ST payable less but collected more, the excess shall also be deposit with CG) (2) _____ (3) (If not so paid, CEO shall issue SCN for recovery) (4) (Demand Order in pursuance of SCN) (5) (Surplus to paid can be claim as adjustment in subsequent proceedings relating thereto) (6) (Any surplus so collected shall either be credited to CWF- or refunded to the consumer)</p>	<p>It makes provision for obligation of deposit of ST if collected by person who was not all liable for payment of ST.</p>
<p>Interest leviable on amount collected in excess</p>	<p>Sec 11-DD of CEA, 1944 (@15% p.a.)</p>	<p>Sec 73-B of FA, 1994 (@15% p.a.)</p>	
<p>Provisional attachment of property to safeguard interest of revenue during the pendency of certain proceedings</p>	<p>Sec 11-DDA of CEA, 1944</p>	<p>Sec 73-C of FA, 1994</p>	
<p>Recovery of <u>any amount</u> due to CG [Co-ercive methods for recovery of amount due to CG]</p>	<p>Sec 11 of CEA, 1944 [3 modes: 4) Adj agst <u>Excise refund</u> due 5) Attachment & sale of EG 6) Certificate Action 1 mode of customs also made applicable (Attachment and sale of any movable or immovable property)]</p>	<p>Sec 87 of FA, 1994 [4 modes: 1) Adj agst ST refund due / <u>Excise or Customs Refund Due</u> 2) Garnishee Notice 3) Attachment & sale of any movable or immovable property 4) Certificate Action]</p>	<p>Notice can be served to defaulter's banking company, post office, insurer or any other person to pay defaulter's deposit to CEO for adjustment against CG dues from such defaulter.</p>

	Recovery Action can be initiated against successor for dues of predecessor	No parallel Provisions <i>(thus, no recovery action can be initiated against successor for dues of predecessor)</i>	
Power to exempt duty (tax) not-levied or short-levied as a result of general practice of industry	Sec 11-C of CEA, 1944	Sec 83 of FA, 1994 It makes Sec 11-C of CEA applicable to ST also. Thus, same provisions are applicable	

Refund under Customs

	Refund of Excise Duty	Refund of Customs Duty
Refund of Duty	<p>Sec 11-B of CEA, 1944 <i>Time limit:</i> "1 Year from Relevant date"</p> <p><u>Exceptions to Doctrine of Unjust Enrich:</u> 6 <i>Exceptions</i></p> <p>(a) Rebate on export of goods (b) Refund of Cenvat Credit; (c) Unspent balance of PLA; (d) ED paid and borne by manufacturer; (e) ED paid and borne by buyer (f) ED paid and borne by notified persons</p>	<p>Sec 27 of Customs Act, 1962 <i>Time limit:</i> 2 time limits</p> <p>(a) In the case of any import made - by any Individual for his personal use or - by Government or - by any Educational, Research or charitable institution or hospital, -- 1 year from relevant date; (b) Other Cases: - 6 months from relevant date</p> <p><u>Exceptions to Doctrine of Unjust Enrich:</u> 6 <i>Exceptions</i></p> <p>(a) Duty Drawback on export of goods; ----- ----- (b) CD paid and borne by importer/exporter; (c) CD paid and borne by buyer (d) CD paid and borne by notified persons (e) CD paid on imports made by an individual for his personal use (in such case he must have not passed on burden of such duty), (f) Refund of Export duty on re-import of goods (in situation covered in section 26);</p>
Interest on delayed refund	Sec 11-BB	= Sec 27-A.
ED/ST to be shown separately on invoice	Sec 12-A	= Sec 28-C
Presumption that duty burden passed on	Sec 12-B	= Sec 28-D

Refund under Service Tax

	Refund of Excise Duty	Refund of Service Tax
	Sec 11-B of CEA, 1944	Sec 83 of FA, 1994
Refund of ED	Sec 11-B	Sec 83 makes provision of Sec 11-B to be applicable to ST mutatis mutandis.
Interest on delayed refund	Sec 11-BB	Sec 83 makes provision of Sec 11-BB to be applicable to ST mutatis mutandis.
ED/ST to be shown separately on invoice	Sec 12-A	Sec 83 makes provision of Sec 12-A to be applicable to ST mutatis mutandis.
Presumption that duty burden passed on	Sec 12-B	Sec 83 makes provision of Sec 12-B to be applicable to ST mutatis mutandis.