

## INDEX FOR APPRAISING MANUAL

## VOLUME I                      Locate Symbol

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| 1. Introduction.      | \$ |
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## Understanding Customs System

## \$ Introduction To The Manual:-

Change is an integral part of human existence. This is more marked in the life of the nation or any Institution. The Customs Department is not an exception. The winds of change are blowing, more so in the recent past. A change for the better as a result of liberalisation, the economy is opening up. In order to achieve the free flow of goods, both Import & Export, the Rules and regulations guiding the working of the Customs department need to keep pace with the changing times. Reforms in the Economic policy of the country have become a reality. In order that these reforms be meaningful, it is absolutely necessary that suitable changes be incorporated in the rules, which form the guidelines for the day-to-day functioning of the Customs department all over India. In order to meet this challenge the Chief Commissioner of Customs Bombay decided to simplify and update the existing manuals. It is needless to say that the manuals form the backbone for the various rules used in the daily working of the Customs department.

The existing manuals are in six volumes. The first two volumes are titled "Customs Appraising Manual", while the remaining four volumes are titled "Central Appraising Manual". The last update of this manual was done in 1989-90, and was published in the year 1990. The Calcutta Custom House compiled these manuals. These manuals, which became the guide for the day-to-day working of the Customs department, did not keep pace with the changing times. Hence many of its provisions have become obsolete, and therefore to be jettisoned. New and dynamic provisions have to be incorporated keeping in view the need of the hour. Much water seems to have flowed under the bridge since the last update of the manual. The mode of transportation of the goods by containerisation has become

the order of the day. The concept of break-bulk cargo seems to be of a bygone era. Further in the field Of Exports The DEEC Scheme And 100% Export Oriented Unit have emerged very strongly. Computerisation has become a reality. In order to meet all these challenges it has become imperative to incorporate proper guidelines into the manual so that archaic or unrealistic provisions can be done away with. This will enable the smooth functioning of the department at the grass root level, where it matters the most. This manual is therefore made keeping in mind that an honest Importer/Exporter will have least hindrance while clearing their goods either on Import or Export. At the same time the loopholes are being plugged so that an unscrupulous person does not exploit the Rules framed in the manual. The whole exercise of updating the manual was done with this fact in view.

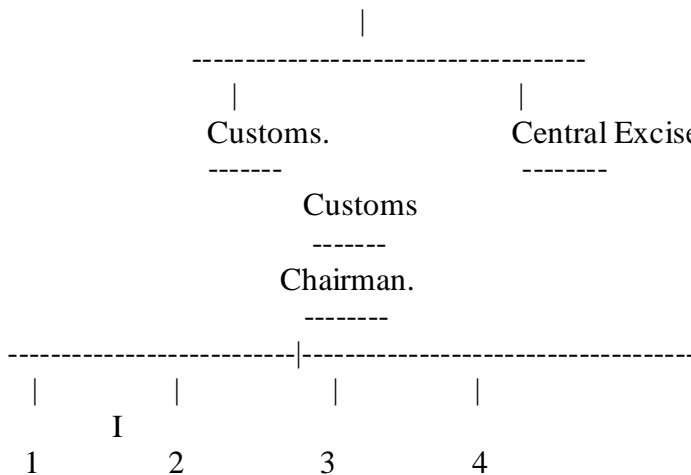
The Manual tries to incorporate the various standing orders and public notices and other instructions wherever possible to make it more meaningful with least ambiguity. The duties, responsibilities and the mode of working and the powers derived from the Customs act and other sources are lucidly enumerated so that the Officers know the parameters within which they are to function. The most important aspect of this manual is that it is fed into the computer. Hence easy access is possible at all time. The Computerization of the manual also permits random access to the data. Hence if the user wishes to see the manual guidelines for a particular department he can do so directly without going page-wise as in the case of a book. Further by feeding the manual in the computer the updating of the manual can be done easily. Hence this manual will never be obsolete. We present this manual to all the officers of customs.

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Organisational pattern of the Customs Department.

MINISTRY OF FINANCE

CENTRAL BOARD OF EXCISE AND CUSTOMS.



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Member Judicial    Member Anti-Smuggling    Member Customs    Member Budget.

5

Member Exports.

1. Member Judicial.

Director Review.                      Collector Of Customs Appeals.

2. Member Anti-Smuggling.

Director General Revenue Intelligence.

Director    Director    Director    Director    Director  
Preventive Operation    Narcotics    Enforcement    Revenue    Anti  
Foreign Exchange    Intelligence    Evasion

3. Member Customs.

1.Director Customs    2.Principal Collector    3.Director Drawback.

Principal Collector.

Collectors Of Customs    Director Training    Director Gen.Audit/Intel.  
Of That Area.

Under Respective Collectors.

Additional Collectors.

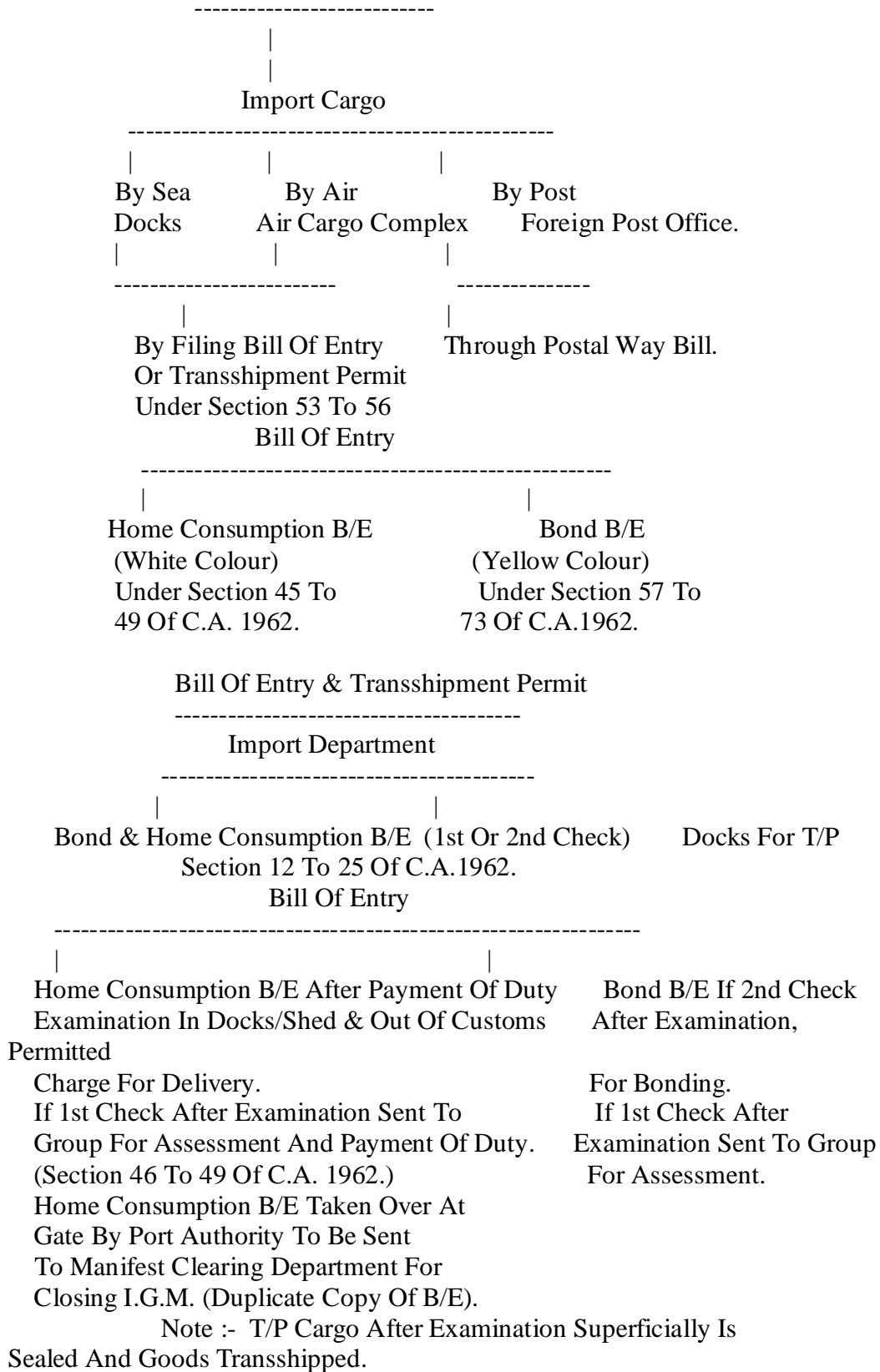
Deputy Collectors.

Assistant Collectors.

Appraisers & Examiners.

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Routing Of Bill Of Entry.



Routing Of Shipping Bill.

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Export Department

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| | | | |  
Free Shipping Bill | Dutiable S/B | Drawback S/B | Decc S/B | Free Air S/B.  
(White Colour) | (Yellow) | (Green) | (White) | (Red)  
Bond S/B

-----  
| | |  
Passing S/B | Transshipment Of | Ex-Bond Goods For  
For Indian Goods | Export Cargo Under | Export Under  
Under Section 50-51 | Section 52-56 Of | Section 65,65-71.  
Of C.A.1962. | C.A.1962. | 88 Of C.A. 1962.  
(1) | (2) | (3)  
(3) Ex-Bond Shipping Bill

-----  
| | |  
Same Goods | Manufactured Goods | Supply To Vessels  
Under 69 | Under 65/71 | Under 88  
Shipping Bills

-----  
| |  
Other Than Drawback | Drawback

-----  
| | | | |  
Free | Dutiable | Under Decc | Under Section 74 | Under Section 75.  
Section 12,50,51 | Of C.A.62 Expo. | Imported Goods | Other Goods.

Shipping Bills

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The Shipping Bills After Examination At The Docks Or Shed "Out Of Customs Charge" Is Given By Customs. The Steamer Agent Then Prepares the General Manifest By Taking Over All Shipping Bill After Loading The Cargo. All S/Bills Along With E.G.M. Sent To Manifest Clearing Department For Final Closing Of I.G.M.By Matching Original Copy Of Shipping Bill With The Duplicate S/Bill Received From Steamer Agents.

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Import Department

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6. Goods To Be Cleared for Transshipment To Other Places.
7. Presentation of Bill of Entry for Noting.
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### # Import Department: Working

The Import Department performs the first and pivotal function in the clearance of the Import goods as per the Customs Act, 1962. The relevant provisions of the Act are contained in the Section 29 to 38 of the Customs Act which provides the basis of exercising Customs control over the vessels and aircraft, which carry Imported goods in Customs port or airport. The Asstt. Collector of Customs incharge of Imports and is assisted by the Office Superintendent, Deputy Office Supdt, UDC & LDC's

The Main functions performed by the Import Department are:-

- (1) To receive the Import General Manifest from the Steamer agents/ Master of the vessels and grant `entry-inwards' and Rotation No. as per the section 30 and 31 of the C.A.62.
- (2) To receive the bills of entries filed by the Importers and Custom house agents as per section 46 of C.A.62 and scrutinize these bills of entries as per public notice no. 43/
- (3) To `note' the bills of entries accepted against the declared IGM i.e. (Rotation no.) and line no. (Item no.) by putting the `toka no.'(serial

no.of B/E) and date on the Bills of entries

(4) To allow the amendments in the Import Manifest and Bills of entries on the basis of applications received.

(5) To allow the Transshipment of the cargo from local to T.P. and from one port to other by Road, Rail etc under Customs supervision.

(6) To issue show-cause notice to the Importers/notifier, after 30 days of IGM date, for the clearance of the goods on payment of duty etc, otherwise the goods to be disposed off by auction/ sale by the Disposal department.

Procedures completed in the Import Department as per the provisions of the Customs Act., 1962.

(1) Submission of Import Manifest;/unloading of goods-entry-inwards.

The section 30 of the Customs Act, 1962 prescribes that the person-in-charge of a conveyance carrying imported goods shall, within 24 hours after arrival thereof at A Customs station, deliver to the Proper officer, in the case of a vessel or aircraft, an Import Manifest and in the case of a vehicle an Import report in the prescribed form. Section 31 of C.A.62 further provides that the imported goods shall not be unloaded from the vessels until 'entry-inwards' is granted by the Import Department. Section 32 of the C.A.62 prohibits the UN-loading of the goods unless they are mentioned in Import Manifest or Import Report. The Act provides for submission of such import Manifest in advance of the arrival of the vessel to enable submission and processing of Assessment documents pending arrival of the vessel to expedite ultimate clearance of the goods after the vessel arrives. The Advance Manifest so submitted by the Steamer Agents is known as 'prior entry manifest' and 'prior entry inwards' is granted to enable the trade to get the documents processed for the clearance of the goods. Such Advance Import Manifest can be filed 14/30 days advance of arrival of the vessel. When the entry inward is granted the cargo can be UN-loaded from the ship/vessel/aircraft. The cargo taken to the import shed where the Examination Work is done by the Appraisers/Examiners under the supervision of the Asstt. Collector of Customs(Docks).The goods are allowed for deliver to the Importer after the payment of duty etc. The goods arrived at Customs are broadly of three types :-

1. Goods to be cleared on payment of duty : Such goods can Be cleared from customs by filing 'white' colour 'bill of Entry' and payment of duty after completing the Customs Procedures. Goods covered under 'nil' duty are also covered under this procedure.

2. Goods cleared for warehousing :- Such goods can be Cleared by filing 'yellow' bill of entry as per the Provisions of Sec.49 of the C.A.62. The goods are allowed to be deposited in the public or private Warehouses approved



by the department. The goods allowed for deliveries to the Importer on filing 'green' colour bills of entry and payment of duty and interest payable as on the date of removal of the goods from warehouse. The goods in the warehouse are kept under the customs supervision.

3. Goods cleared for Transshipment: The Goods imported are allowed for Transshipment to other approved places for customs clearance etc. Such goods can be removed from port by filing 'Green colour' Transshipment bill and without payment of duty as per the provisions of Sec. 53 to 56 of the C.A.62. The goods can be unloaded only at Port authorities wharf's as approved by the Collector of Customs, after the permission for discharge of the cargo is given of an appropriate Import General Manifest. All the unloading and loading operations are supervised by the Preventive Department of the Custom House and they also allows discharge into boats by specific order. In each case they keep a systematic account of such deliveries. The port authorities, who act as custodian of all the goods landed in the port premises keep watch and tally/records of the goods landed on wharves, and permit deliveries to the Importers only after production of approved documents such as 'bills of entries' etc containing authorization for delivery by Customs.

#### Presentation of Bills of Entry for Noting-

Import Noting deptt. after the IGM has been filed by the Steamer Agent in the Custom House and 'entry inward' or 'prior entry' granted, The Importer or authorised Custom House Agent can file the Bill of Entry for completing various procedural formalities and payment of duties of Customs etc. The bill of entry is accompanied by documents like Bill of landing, Invoice, Import Licence, etc and presented in the Noting' department of the Custom House where it is Noted against the line no. i.e. particular entry of the Import General Manifest submitted by the Steamer Agent. The particulars declared on the bill of entry are broadly matched with those declared on the IGM and 'tokha' no. (serial no.) And the current date is put on the Bill /entry. The date of 'Noting' of the Bill of Entry is crucial date for determining the rate of duty applicable to the goods imported. The Bill of Entry alongwith the documents submitted is returned to the Importer/CHA for completing the Assessment procedure. The Noting procedure is done by the Noting clerk who puts his initials on the Bill of Entry and records the particulars in the IGM against the Line No. The Importers are required to Note the Bill of Entry within 30 days of arrival of goods otherwise the goods can be disposed off by auction/sale and the amount realised is adjusted against the duties of the customs levied. A list of such goods against which no bill of entry is noted is sent to the disposal section for the disposal of the goods and recovery of the duty leviable. Any discrepancies observed during the noting procedure is corrected by allowing the amendment on the application by the importer/ Steamer Agent. The IGM with the Amendment applications finally sent to the Manifest Clearance Department (MCD) for closing and taking appropriate steps.

Instructions regarding `noting' of different type of cases of B/E

1. Bill of Entry for part consignment: - Under the Sec.46 of the Customs Act, 62 The Owner of the Goods is bound to submit the Bill of Entry in respect of the entire consignment landed, Corresponding to the entry in the manifest. The request for part bill of entry to be allowed by the Customs authority to avoid hardship in certain cases subject to the scrutinizing each case on merit protecting any anticipated loss of revenue.

2. Filing of second bill of entry in case of original lost.:- The `second' set of bill of entry may be admitted for noting. In case the original Bill of entry is lost or misplaced etc, on payment of suitable fee and after obtaining no objection from the concerned Appraising group. The second bill of entry so admitted should bear the same date of noting as the first and should be endorsed "duplicate set".

3. Transfer of one bill of entry from one clearing agents to other

The Bills of Entry once noted against the Manifest in favor of any clearing agent or Importer are valid for clearance of the goods by the Importer or Clearing agent concerned, and Bill of entry once filed by a Clearing agent cannot be utilised by other Clearing agent or Importer. If occasion arises to effect clearance of the same goods by a different firm or Clearing agent, then the proper course is to cancel the previously noted bill of entry and to file a fresh bill of entry in favour of the newly appointed Clearing agent, and it is discouraged to allow the clearance by a different firm against a Bill of entry already noted in favour of the other party. The following alternative procedure may also be adopted in the matter:-

The Agent who handles the documents fresh and completes his part of processing the documents may return them to the owner of the goods, and the latter in turn may endorse them directly to the other clearing agent for doing the remaining part of the work.

4. Presentation of the Bill of Entry for Noting : Determining the Date for rate of duty. :- When a bill of entry is presented containing all the essential particulars required to the noting clerk, it should be assigned a serial number and date on its presentation regardless of the fact that some additional information may have to be called for. Where however, the Bill of entry as originally presented does not contain the prescribed particulars, it should not be noted on the date of its first presentation. In that case the crucial date for the purpose of section 15(1) of the customs Act, 62 would be the Date on which the bill of entry containing all the prescribed particulars is subsequently presented to the department.

STANDING ORDERS AND PUBLIC NOTICE.  
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1. S.O. NO. 6666 DATED 3-07-1978

SUB:- ACT. NO. 25 OF 1978 AMENDING CERTAIN PROVISIONS OF THE  
CUSTOMS ACT, 1962\_ MODIFIED PROCEDURES. REG.  
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2. S.O. NO. 6671 DATED 27-7-1978

SUB :- FACILITY FOR PRESENTING A BILL OF ENTRY EVEN BEFORE  
DELIVERY OF THE  
I.G.M. - AMENDMENT OF SECTION 46 OF THE CUSTOMS ACT 1962. REG.  
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3. S.O. NO. 6686 DATED 16-10-1978

SUB:- INTRODUCTION OF STAMPING SR. NO. AND DATE OF  
PRESENTATION OF B/E IN 3 COPIES.  
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4. S.O.NO.6995 DATED :-10-1-1992

SUB:- ADVANCE NOTING OF THE B/E'S BEFORE THE DELIVERY OF THE  
IGM IN THE  
IMPORT DEPARTMENT- PROCEDURE REG.  
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5. S.O. NO. 6727 DATED : 27-10-1979

SUB:- NOTING OF BILLS OF ENTRY IN THE JOINT NAMES OF BANKS/  
THEIR CLIENTS.

6. S.O. NO. 6748 DATED : 6-1-1981

SUB:- PROCEDURE FOR ALLOWING TRANSHIPMENT OF FCL  
CONTAINER TO KANDLA  
FREE TRADE ZONE.  
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7. S.O. NO. 6755 DATED : 24-6-1981

SUB;- MOVEMENT OF FCL CARGO BETWEEN BOMBAY PORT AND INLAND  
CONTAINER DEPOT,

NEW DELHI.

\*+ INDEX FOR APPRAISING GROUPS.

1. Working:-A) Scrutiny Of Documents
  - B) Appraisment Of Value
  - C) Determination Of Classification & Indication Of Duty.
  - D) First Appraisment Or First Check.
  - E) Second Appraisment Or Second Check.
2. Provisional Assessment.
3. General Information.
4. Duties Of Appraiser.
5. High Seas Sale.
6. Precautions While Working In The Group.
7. Import Of Cars.
8. Power Source Under The Customs Act.
9. Standing Orders Pertaining To Groups.
10. Other Instructions To Appraiser.
11. Customs Valuation Rules 1988.
12. Duty Exemption Scheme.
13. Customs Bonds & Guarantees.
14. Provisional Assessment Rules And Instructions.
15. Customs Tariff Act 1975.
16. Short Levies & Issue Of Demands.
17. Project Imports Rules & Instructions.
18. Harmonised System Of Tariff.
19. Classification And Valuation Instructions.
20. The Accessories (Conditions) Rules 1963.
21. Customs Valuations (Determination Of Price Of Imported Goods) Amendment Rules, 1990.
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23. Monitoring Of Bank Guarantees.
24. Import Of Commercial Goods As Part Of Baggage-Instructions.
25. General Instructions.
26. Additional (Countervailing) Duty.
27. Valuation Of Secondhand Machinery Instructions.
28. Instructions Regarding Invoices.
29. Other Instructions.

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Appraising Group : Working

After the Bill of Entry (both home consumption and bond) are noted in the Import department the same are presented to the Appraising Group. (The colour of the Home Consumption B/E is white, that of into- bond B/E is yellow, Ex-bond is 'green' and Defense Import cargo B/E is 'pink'). After the

Computerisation, the Appraising groups have been rearranged. There are basically 7 groups with Group no. 2,5 and 6 having sub-group. The groups along with the sub-groups form 10 effective groups dealing with tariff . Chapters as follows

:-

Group	Customs Tariff Chapter.
1	1 To 27
2a	28 To 38
2b	39 To 49
3	50 To 71
4	72 To 83
5a	84
5b	85 To 92
6	93 To 99 (Other Than 98.01)
6a	98.01 Contract Cell
7	Deals With DEEC Scheme 100% EOU,Exemption Etc.
7a	For Green Channel

The basis function of the group is Assessment. The meaning. Of Assessment is given in the Customs Act 1962. (Section 2(2) also refers Section 12 & 17). As per this Section Assessment. includes, provisional assessment, reassessment and any order of assessment in which the duty Assessed is `Nil'. Assessment would. mean computation and fixation of the precise amount of duty to be paid on the particular goods having regard to the. prescribed category under which they fall and the mode and manner by which their value or real value has to be ascertained. Hence Assessment involves three main functions. they are :-

1. Scrutiny of the documents presented
2. Appraisalment of value
3. Determination of classification and indicating the effective rate of duty.

Scrutiny of documents:

Along with the B/E relevant documents depending on the nature of the goods are submitted by the importer or his custom house agent (CHA). These documents generally are:-

1. Import invoice
2. Packing list
3. Certificate of origin
4. Indent i.e. order placed on the supplier
5. Acceptance i.e. confirmation of the order by the Supplier.

6. Bill Of Lading
7. Insurance Policy
8. Literature of The Product
9. Catalogue giving the details of The Product
10. Import License or O.G.L. (Not Covered By Negative List)  
Declaration As The case maybe.
11. No Commission Paid or Amount of Commission Paid Certificate.  
(Other Document As Required By Individual Group As Per S.O.& P.N.)

Section 17(3) of the Customs act 1962 provides that the proper officer (Appraiser) may for the purpose of Assessment ask the importer to produce such documents for levy of import duty on the goods and the importer is duty bound to produce such documents or furnish such information if the same are in his possession or can be obtained by him. Section 17 (4) of the customs act 1962 makes it mandatory to produce invoice and also to make declaration as to the truth of the contents given in the bill of entry. After the receipt of the above documents the Appraiser has to scrutinise these documents carefully and find out:-

1. Whether all the particulars declared in the B/E with the details given in the documents produced.
2. Whether there are any discrepancies in these documents or if the information required is insufficient.
3. Whether the goods require specific license or if declaration given is correct or not.
4. Whether the goods require testing to ascertain the parameters required for proper classification.
5. Whether any no objection certificate or other certificate from allied agencies like Asstt. Drug Controller, under the Insecticide Act., under Indian Explosives act., etc have to be obtained or their conditions to be fulfilled.

#### Appraisalment Of Value.

This is a very important function which is performed by the Group A.O. He has to arrive at the correct value of the goods in order to charge the customs duty. In order to understand the full aspect of valuation the A.O. has to consider the following aspects.

1. Is the value shown in the B/E is CIF/FOB/FAS/C&I  
CIF = Cost, Insurance & freight  
FOB = Free on board  
FAS = Free along side  
C&I = Cost & insurance
2. What should be the value for the purpose of customs Duty. The value of the goods is determined under Section 14(1) of customs act 1962. It

reads : For the purpose of the customs tariff act 1975 (51 of 1975) or any other law for the time being In force whereunder a duty of customs is chargeable On any goods by reference to their value, the of such goods shall be deemed to be :-

(a) The price at which such goods are ordinarily sold, or offered for sale, for delivery at the time and place of importation or exportation, as the case may be, in the course of international trade, where the seller and the buyer have no interest in the business of each other and the price is the sole consideration for sale or offer for sale. Provided 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 of C.A. 1962. the price of the goods would include

1. Cost of production
2. Cost of packing
3. Local taxes if any
4. Profit margin of supplier/seller/manufacturer.

However the value of the goods is something more than the price. Therefore the value of the goods would include the following.

1. Price as stated above
2. Cost of Delivery at The Place Of Importation

(Internal Freight).

3. Additional Packing if Any
4. Testing or similar Expenses Incurred on behalf of The

Buyer.

5. Freight Charges
6. Insurance Charges
7. Landing Charges (Being 1% of CIF Value of the Goods).

Apart from the above aspect there are certain other aspects which also are included into value they are

1. Warranty/guarantee allowances
2. Advertisement expenses \_except for introduction of

product.

3. Discounts in kind
4. Sample discount
5. Late Shipment allowance
6. Brokerage/commission allowance
7. Testing allowance
8. Interest prior to shipment.

However the value of the goods generally will not include :

- 1.Cash discount
- 2.Trade discount
- 3.Introductory discount
- 4.Quantity discount
- 5.Exchange loss allowance
- 6.Breakage allowance
- 7.Deffered freight allowance
- 8.Interest payable subsequent to Import, if shown

separately.

All these aspects will not form part of the value provided these are given to all importers.

3.The next aspect for consideration is, whether the buyer and seller are connected or related parties. if so the case is to be sent to Special Valuation Branch (GVC) to determine the loading of the value. If the case is already with SVB then value should be loaded according to SVB direction or instruction. After the correct value has been arrived at the freight and insurance is added to the fob value (if freight is not shown separately or freight memo is not submitted then a notional freight of 20% of fob value is taken. Similarly if the insurance is not shown separately or if insurance memo is not submitted,then a notional insurance of 1.125% of fob value is taken as insurance) If both freight and insurance is to be taken as notional then a total of 21.125% of FOB value is added as freight & insurance. Thereafter the proper exchange rate is applied. The rate of exchange means rate of exchange

1.Determined by the Government of India

2.Determined in such manner as directed by Govt. of India for conversion of Indian currency into foreign currency or foreign currency into Indian currency. the term foreign or Indian currency have the meaning assigned to them under FERA.1973(46 of 1973) The Central Govt. notifies exchange rates from time to time which are to be applied for the conversion after taking into consideration the proviso to section 14(1)a of C.A.1962. A copy of the exchange rate will be available in each Custom house.The relevant notification for exchange rate should be applied.

Note--A.O. should maintain valuation register and keep copies of earlier invoices.he may also refer to the computer for details of earlier clearance.

3. Determination of classification and indication of effective rate of duty.

This is a very important function of Assessment. We now follow the Harmonised System of tariff. The details of the Harmonised System with its rules and interpretation is given in details at the end of the chapter. At this stage it is necessary to keep the following points for determining classification.



1. Are the goods correctly classified under the proper CTH and CET headings of the tariff.
2. Are the correct rates of duty shown against the respective CTH/CET tariff headings.
3. Are the benefit of notifications due to the goods under clearance and are the conditions of the notifications fulfilled. (remember the wordings of the notification has to be read very carefully and the meaning of the words cannot be expanded to include goods which otherwise would not be eligible.

Note-- Read the rules of interpretation, section and Chapter notes including sub-heading notes. before completing assessment one important factor which has to be considered is to check the ITC validity.

There are two types of goods under import. One which requires an Import license as the goods figure in the negative list and the Second freely importable goods not figuring in the negative list. If the goods figure in the negative list then without a specific license it cannot be allowed clearance. If it is not figuring in the negative list then the same are permitted under para 22 of the import policy. Once all aspects are checked the B/E is ready for Appraisal. If all the required information is available then, the B/E can be passed on Second Appraisal (2nd check). If the required information is insufficient for proper classification then First Appraisal (1st check) can be resorted to. However it may be noted that First Appraisal should be resorted to only when it is impossible to complete the B/E on Second Appraisal.

First Appraisal: or First Check.- Under this method the imported goods are first subjected for physical examination. For this purpose the group A.O. after preliminary scrutiny gives examination order on the reverse of the original B/E. care should be taken to give the examination order in such manner, so that all the required parameters are obtained in the examination report. first Appraisal means the goods are examined first and based on the examination report the assessment is done. this system entails some delay in the processing of the B/E and hence should be avoided as far as possible, keeping the interest of revenue in view.

Second Appraisal : Second Check--Under this method the imported goods are first appraised and goods are classified and proper duty is charged based on the information provided by the importer by means of documentary evidence and other declarations. After the B/E is assessed the duty is recovered. The goods are then subjected to physical examination at the examination center. The examination order is given on the reverse of Duplicate B/E. Remember this method of Assessment is preferred as there is least delay in clearance of goods. The 'out of customs charge' is given by the Shed Appraiser in case of 'second Appraisal'.

Once the mode of Assessment is decided then the Group Appraiser completes the

bill of entry. For completing the B/E the A.O. will circle the quantity, weight, CIF value, Assesable value, CTH heading, CET heading, Rate of duty in red ink. He should put his dated initial near these parameters including notification no. And finally put his full dated signature on the face of the original copy of the B/E and initials on remaining copies of B/E. The Assistant Collector incharge of the group will sign the original copy of B/E. In the case of First Appraisment after the completion of the B/E the duty will be recovered by the cash department. The UDC/DOS In-charge of Cash section will give "out of customs charge". while in the case of Second Aparisement the out of customs charge will be given by the Shed Appraiser after he verifies the recovery of customs duty, and Examination of goods.

A set of B/E consists of five copies. They are ` Original', this is retained in Cash Deptt. The Duplicate given to importer for examination of goods, and this is retained by the Custodian at time of clearance of the goods at the gate & then sent to MCD. The `TriPLICATE' or the Importers copy which is to be retained by the importer of the goods The Quadruplicate or the exchange control copy, Which is given by the importer to his banker, for the purposes of Exchange control. Finally the quintuplicate or the custodians copy. This is generally known as the Port Trust copy in major ports. This is retained by the custodian for the port dues etc. The assessment as referred above pertains to Home Consumption, Ex-bond and Into-bond B/E. The procedure for passing Ex-bond B/E (green colour) is slightly different. At the time of Ex-bonding the goods the Importer/CHA presents a set of Ex-bond B/E along with The triplicate copy of Into Bond B/E. The A.O. has to check only the rate of duty and notification Applicable. At this stage he does not go into the ITC angle or the Valuation aspect. However if any discrepancy is brought to his notice He is empowered to initiate action on those aspects.

Provisional assessment :

There may be cases, where it may not be possible for the A.O. to Assess the B/E finally. The reason may be that the Assessment will have to be based on certain information which may be made available at a latter date. For example the Assessment can be done based on the Test Result or the Import license is not available, or a Court case. For any such reasons the B/E may be passed provisionally, and the Final assessment will be done at a later date. (P/D. Assessment cannot be resorted to in ITC cases). In case of Provisional Assessment, All the details of Assessment as stated above should be followed. The only difference is That in case of provisional assessment the endorsement "passed provisionally" is made on the face of the B/E on all copies, with remark of provisional collection, on Original/Duplicate B/E The advantage here is that, The time of limitation of six months for issue of less Charges does not run as in the case of "final assessment".

The details of Provisional Assessment is given at the end of his chapter. No P/D Assessment should be done without approval of the Collector. Also refer the "Provisional Duty Assessments Rules " framed under the

### Customs Act.

Note :-In addition to the usual precaution for Assessment,the A.O. must check up all the alerts issued by the various agencies before passing the B/E. An appraiser is expected to Assess about 10 to 15 Bills of entry of general nature and about 8 to 10 Bills of entry of machinery during the day.

Note:- It is expected of the Importer or the clearing agent of the importer as the case may be to present all the relevant documents at the time of Assessment.

However if any document like the bank attested invoice etc. is not readily available then the Assessing Appraiser may after taking the permission of the Assistant Collector or if there are orders to that effect,may Asses the Bill of entry without those documents. he should give specific order along with the examination order to check those documents at the examination stage. If such documents are not produced even at the examination stage, then the clearance of the goods may be stopped by not giving "the out of customs charge" till the production of the required documents.

Note:- Section 12 of the customs act 1962 is the charging section.

The first schedule to the tariff act which contains the dutiable goods, and the rate of duty to be levied under the customs act. Whenever there is a change in regard to the dutiable goods or the rate of duty to be applied appropriate amendments are generally made to the customs tariff act 1975, through the annual finance act. This is done by virtue of powers conferred on the Central Government by Section 25 of the customs act 1962. The Government by virtue of Section 25 can issue notifications exempting genarily either absolutely or subject to such conditions as may be specified in the notification, goods of any specified description from the whole or any part of the customs duty leviable thereon. therefore after the annual budget the tariff has to be updated to incorporate the changes in the duty. The changed duty is to be applied on the date specified.

Note:- General Information:

1.Customs duty liability begins the moment the goods enter the territorial waters of India.

2.Section 12 of the Customs Act 1962 authorises the charging of customs duty at the rate specified under the customs tariff act 1975. Section 3 of the Customs Tariff act separately specifies the rates of basic customs duty and additional customs duty, both of which are to be charged on the imported goods. The Additional customs duty or counter veiling duty is a customs duty. It is equivalent to the Central excise duty. The charging section of the customs act should be read with the computation provisions of the tariff act as both together form an integrated code.

3. Benefit of notification has to be claimed by the importer. If he fails to claim the duty can be levied without giving the benefit of notification.

4. No duty is leviable on pilfered goods as it will attract the provisions of section 13 of customs act 1962.

5. Landing charges form part of value as the sale of the goods takes place

only after it is landed. Hence the landing charges forms the part of price.

6. Fixation of value will include the price converted at the Exchange rate applicable along with the freight and insurance charges.

7. Comparison of value should be in respect of physical characteristics, quality, quantity, reputation, country of origin and timing of import.

8. Exemption given under the Customs Act cannot be claimed if exemption is given under the Central Excise Act

9. Show cause notice demanding duty invoking longer time limit of five years should be issued only by Collector of Customs.

10. An order under Section 47 of the Customs Act is an order against which a revision can lie under section 130 of the customs act 1962. Other Duties:in addition to the Assessment work. The A.O has to perform the following functions ;-

1. Where the goods are liable for penal action under section 111 of C.A.1962 he has to

issue show cause notice to the importer.

2. He has to put up the case for adjudication with full details of the case to the respective authorities.

3. A.O.. is expected to give parawise comments on reply to Show cause notice,Appeal notices etc.

4. Attending court cases filed by the importer & brief the advocate on behalf of the department.

5. Attending to audit objection and giving reply to the same.

6. Attending to inquiries from trade through PRO and to give suitable replies/clarifications.

7. Bond cancellation after final assessment or initiate recovery proceedings.

Note : When the A.O. is in doubt he should consult the ----- Assistant Collector incharge for orders.The responsibility of the A.O. will cease when he is acting on the written order of a superior officer,if it is contrary to the suggestion given by the Appraiser.Similarly if any superior officer gives order contrary to the proposal of the junior officer, then the responsibility will be solely of the senior officer who has given that order.

Note:- The date relevant for charging the rate of duty as per Section 15(1) (a) of the Customs Act 1962 is the date on which the Bill of entry is presented to the customs. This date of presentation is the date of the `tokka' Number given on the Bill of entry when the Bill of Entry is presented to the customs. The date of Noting the Bill of Entry can be different than the date of presentation of the Bill of Entry. The `Noting date' may be the same as that of the presentation or can be subsequent to the date of presentation. Similarly the date for taking the correct exchange rate is the date of the presentation of the bill of entry for Home Consumption according to Section 14(1) read with section 46 of the customs act 1962. Hence the crucial date for the rate of duty and the exchange rate is the date of presentation of the bill of entry.

Concurrent Audit : After the introduction of Computerisation Auditing of B/E has been split up into two parts

1. Concurrent audit and 2. Post audit. The procedure for Auditing is dealt with in a different chapter of "Audit". High Seas Sales:- (Public Notice 155 dated 18-9-92.) -----

In terms of para 35 of the Export-Import policy 1992-1997, sale of goods on high seas for importation in India is permissible subject to the policy laid down there in or under any other law for the time being in force. In suppression of earlier instructions contained in public notice nos:16/6.2.78, 116/22.6.82 and 154/25.1.88, the following procedure shall be followed for clearance of consignments imported on High Seas Sale basis under the aforesaid provisions of the Export-Import policy. The B/E'S will be allowed to be noted in the name of the High Seas buyer on the production of High Seas Sale contract alongwith the original negotiable copy of Bill of lading duly endorsed in favour of high seas sale buyer in support of the trans- saction. The sale contract should be valid document enforceable in law containing the date of commencement of the agreement and having provisions to discharge the agreement and having provisions to discharge the obligation and fulfilment of condition, if any, attached to the importation, assessment and clearance of the goods in terms of customs tariff act, 1975, the customs act, 1962, the import trade control order, 1955, read with the import export act, 1947 and other relevant allied acts required to be fulfilled by the buyer. Accordingly, any declaration/undertaking/bond etc required to be filed at the time of importation in terms of the provisions of the relevant act/order/notification etc. can be given by the High seas sale buyer. However, any declaration, under- king etc., by the High seas sale buyer shall not absolve the Original importers from fulfilling the conditions attached to the importation, assessment and clearance of the goods. The relevant transaction for determination of the value in such cases of high seas sale should be one that regarded as the importer. The high seas buyer shall be required to file the declaration form and it shall be his responsibility to obtain necessary data from the seller at high seas, for filing the declaration and giving any other information as may be required by the department Attested sd/-

(A.G.Shakkarwar)  
(Asstt. Collector of Customs)  
Bombay,correspondence Deptt.  
issued f.no.s/26-75/92 Appg.

(S.R.Narayanan)  
Pr.Collector of Customs  
Bombay

Precautions while working in Group :-

1. Check the B/E and all the relevant documents thoroughly. See that the value, weight, quantity and other such parameters are written in words, and in addition to be written in figures, to avoid manipulation. Check importers code number.

2. Check if the value shown in the invoice is reflected in identical manner in the B/E. Sometimes invoice show FOB value and the same value is shown as CIF in the B/E.
3. Check invoice to see which currency is shown therein. Sometimes the invoice may show the value in pound sterling while the same amount will be reflected in the B/E with the currency showing U.S.dollars.
4. See that your initial are not so simple, that it can easily be duplicated/forged.
5. Check the invoice to see if any special charges are mentioned, which are to be added to the value of the goods.
6. Check all the sheets of the invoice properly if invoice consist of more than one sheet. check the total on all the sheets and see if the final amount has been calculated properly.
7. Check if invoice is signed. do not accept unsigned invoice
8. Check weight shown in the Bill of lading with the declaration in invoice.
9. Check if correct invoice number & date is shown at the foot of the B/E.
10. Initial/sign with date all alteration or overwriting.
11. When accepting samples for inspection sent from examination sheds, check seals carefully, to avoid substitution.
12. If bank attested documents are produced, check the same are signed and stamped properly. For sensitive items bank attested documents are required for completing the Bill of entry.
13. Always be careful of pilot test consignment of small value. These should be checked thoroughly for proper valuation, classification, and giving benefit of notification. In addition check from ITC angle. Invariably a big consignment will follow if the pilot consignment is allowed to go without proper check.
14. Avoid putting signatures in a hurry without checking documents properly.
15. In Ex-Bond B/E when endorsement of out of custom charge is to be made, the state the number of packages and also the quantity/weight. this is essential in case of steel coils/ bundles wherein the importer may take out bigger coils of more weight while keeping number as shown in the ex-bond B/E. this generally happens in part ex-bond clearance.

16. Always write the rate of duty in words and initial them properly to avoid subsequent unauthorised alterations.
17. Exchange rates may be checked especially on the 1st week of the month when changes are likely.
18. Check if the Previous Test Report (PTR) is written correctly on the reverse of the original B/E and it is properly authenticated. PTR description should tally and the name of manufacturer/supplier should be same, along with other required parameters.
19. Check for any manipulation of catalogue/ literature produced by importer/agents, especially when photocopies are submitted.
20. Check the date of final entry carefully, especially when there is a likelihood of change of duty.
21. Compare the packing list with the invoice to check if the quantity and weight and other parameters are correctly reflected in both the documents.

#### Import of cars.

Passenger cars and automobile vehicles are covered in Section J, Part II of the Negative list of Imports in the Ex-Im policy, 1992-97. As such the import of cars are permitted against an Import Licence. However the various categories of persons/firms are allowed to import the cars without an import Licence, as per the ITC public notice no. 202/92-97 dt.30.3.94 subject to the conditions:-

- (i) The payment of the vehicle is made abroad and such payment does not involve, directly or indirectly, any remittance of foreign exchange from India.
- (ii) The payment of the customs duty is made in foreign exchange except by charitable and missionary institutions, physically handicapped persons and employees of Central /State Govts or Public Sector Undertaking posted in Indian embassies/high commissions or in foreign offices of Public Sector undertaking.

The major imports are made under this Public Notice by Indian nationals or foreign nationals coming back to India for permanent settlement after a stay abroad for a period of at least two years. Import of passenger cars with engine size not exceeding four cylinders and not exceeding 1600 cc is permitted whether the car is old or new. In case of the cars exceeding 4 cylinders and 1600cc, the car should be in the use of the importer for more than a year prior to his return to India. The car should be imported into India

within six months of the arrival of the importer in India for permanent settlement and the payment of the car is made abroad prior to the return of the importer into India.

In addition to the above cited category, the other categories who are eligible to import the cars into India without Import Licence subject to the condition laid down in the P.N.. 202/92-97 are:-

- (i) Foreign nationals (including persons of Indian origin) married to India nationals.
- (ii) Foreign nationals working in India.
- (iii) Branches/Offices of foreign firms, companies and institutions (corporate or otherwise) established in India.
- (iv) Companies incorporated in India having foreign equity participation of more than 25%.
- (v) Accredited journalists/correspondents in foreign news agencies.
- (vi) Indian firms executing contracts abroad.
- (vii) Charitable and missionary institutions.
- (viii) Physically handicapped persons.
- (ix) Honorary consults of Foreign Government.

However the import of spare parts along with the car are not permitted unless valid Import Licence is furnished for the clearance.

In addition to the various categories of persons/firms entitled to Import the car without Import Licence, the DGFT. is issuing the import licences for the following cases also.

- (a) Hotel/Tourism industry.
- (b) Star Trading Houses/Export Houses.

However for these categories the import clearance is allowed only against Licence.

#### VALUATION OF CARS.

The transaction value is not accepted for the purpose of valuation unless the invoice is that of the manufacturer. The Custom House does



the valuation of the cars on the basis of the price lists of the manufacturers and manufacturer's invoices for the similar models of cars. in the absence of these, the prices in the world car catalogue are relied upon for valuation on which 15% trade discount is extended. Depreciation is extended (subject to a maximum of 70%) from the date of 1st registration upto the date of shipment or the date of departure of the importer from abroad which ever is

1st year	4%	for every quarter
2nd year	3%	for every quarter
3rd year	2 1/2%	for every quarter
4th year	2%	for every quarter
5th year	2%	for every quarter
6th year	2%	for every quarter
7th year	2%	for every quarter

Registration book of the car is Original is relied upon for the purpose of examining the ITC angle and for extending the depreciation. The passports of the importers are endorsed to avoid any repeated imports by the same persons. Rate of duty the duty on the cars is

@ 65% + cvd 40% + m.v. cess 0.125% (which comes to a total of 131.20625%).

The duty on the fitted air conditioner is calculated @ 65% + cvd 60% ( i.e. total 164%). the duty on the fitted radio cassette player is charged @ 65% + cvd 20% (i.e. total 98%).

F.no.360/25/82-Cus.I  
Government of India  
Central Board of Excise & Customs  
New Delhi, The 22nd oct.1983.

To,  
All Collectors of Customs  
All Collectors of Customs & Central excise  
Deputy Collectors of Customs, Goa and Vizag,  
Sub: Scope of "substantial expansion" for the purpose of Assessment under heading 84.66 of the Customs tariff on Project Imports.

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Sir,

I am directed to say that the scope of expression "substantial expansion" appearing under heading 84.66 of the first schedule to the Customs tariff act for the purpose of assessment of project imports Goods has been examined in the board's office in consultation with the technical authorities and the Ministry of law. The Ministry of law on an earlier occasion had

clarified that "substantial expansion" for giving the benefit of project imports assessment would only mean the quantitative expansion but the extent of quantitative expansion which would qualify for assessment under heading 84.66 was still under doubt. This aspect was examined again in the board's office and it was concluded that the definition given for "substantial expansion" in the Industries (Development & Regulation) Act, 1951 that expansion should be of such a nature as to amount virtually to a new industrial undertaking could be followed for the purpose of customs duty assessment also. Accordingly it has been decided that for the purpose of Assessment under the heading 84.66 of the Customs tariff in respect of "substantial expansion" of the existing units, the importer should be asked to produce an industrial licences to this effect.

Receipt of this letter may please be acknowledged.

Yours faithfully,

( N. Sasidharan )

Under Secretary  
Central Excise and Customs

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|---------------------------------------|--|
| Power source :<br>Customs Act<br>1962 | 1. Section 2(2) Definition of Assessment.    |
|                                       | 2. Section 2(4) Meaning of B/E.              |
|                                       | 3. Section 2(11) Meaning of Customs area.    |
|                                       | 4. Section 2(12) Meaning of Customs port.    |
|                                       | 5. Section 2(13) Meaning of Customs          |
| station.                              | 6. Section 2(14) Meaning of dutiable goods.  |
|                                       | 7. Section 2(15) Meaning of duty.            |
|                                       | 8. Section 2(16) Meaning of "entry".         |
|                                       | 9. Section 2(17) Meaning of Examination.     |
|                                       | 10. Section 2(22) Meaning of Goods.          |
|                                       | 11. Section 2(23) Meaning of Import.         |
|                                       | 12. Section 2(24) Meaning of Import          |
| Manifest.                             | 13. Section 2(25) Meaning of Imported Goods. |
|                                       | 14. Section 2(26) Meaning of Importer.       |
|                                       | 15. Section 2(28) Meaning of Indian Customs  |
| water.                                | 16. Section 2(29) Meaning of Land Customs    |
| Station.                              | 17. Section 2(30) Meaning of Market price    |
|                                       | 18. Section 2(33) Meaning of prohibited      |
| &#141;goods.                          |  |

19. Section 2(34) Meaning of Proper officer.
20. Section 2(35) Meaning of Regulations.
21. Section 2(36) Meaning of Rules.
22. Section 2(39) Meaning of Smuggling.
23. Section 2(40) Meaning of Tariff value.
24. Section 2(41) Meaning of Value.
25. Section 12 - What is dutiable goods.
26. Section 14 - Valuation of goods for Assessment.
27. Section 15 - Date for Determination of rate of duty and tariff valuation of Imported goods.
28. Section 17 -Assessment of duty.
29. Section 18 - Provisional Assessment of duty.
30. Section 19 - Determination of duty where goods consist of article liable to different rates duty.
31. Section 20 - Re-Importation of goods produced Or manufactured in India.
32. Section 21 - Goods derelict, wrecks etc.
33. Section 22.- Abatement of duty on damaged or Deteriorated goods.
34. Section 23 - Remission of duty on lost Destroyed or abandoned goods.
35. Section 46 Entry of goods on Importation.
36. Section 47 clearance of goods for Home Consumption.
37. Section 48 procedure in case of goods not cleared, Warehoused or transhipped within 30 days after unloading.
38. Section 49 Storage of Imported goods in warehouse pending Clearance.
39. Section 68 Clearance of warehoused goods For home consumption.
40. Section 111 confiscation of improperly Imported goods.
41. Section 112 Penalty for improper Importation of goods.
42. Section 124 issue of show cause notice Before confiscation of goods.
43. Section 128 Appeals to Collector (appeal).
44. Section 129a Appeal to Tribunal.
45. Section 142 recovery of sums due to Govt.
46. Section 143 power to allow Import or Export On execution of bonds in certain cases.
47. Section 143a duty deferment.

- 48. Section 144 power to take samples.
- 49. Section 149 Amendment of documents.
- 50. Section 150 Correction of clerical

errors.

Standing order. Number 6486 dated 26-03-73. Gist:- Procedure for removal of Import cargo under section 49 - Instruction regarding (amendment no. 1 dated 09-07-76 amendment no 2 dated 10-08-76).

Number 6577 dated 17-02-77. Gist:- Import of samples of chemicals and other Goods in powder from -testing of – instruction Regarding. (refer S.O. For full text).

Number 6614 dated 30-08-77. Gist:- Duty Exemption scheme for Export production - Procedure to be followed for implementation of notification no. 138 customs dated 01-07-77. (refer S.O. 6853 of 1986).

Number 6626 dated 23-01-78. Gist:-Procedure for clearance of cargo against ad-hoc Exemption order. (suppression of S.O. No. 6569 dated 03-12-76.) (refer S.O. For full text).

Number 6660 dated 20-05-78. Gist:- Processing of ex-bond bills of entry - Checking of value vis-a-vis quantity of the Goods - procedure. (refer S.O. For full text).

Number 6666 dated 03-07-78. Gist:- Instruction in the light of act no. 25 of the customs Central excise and salt and central board of revenue (amendment) act 1978 amending certain provisions of The customs act 1962. The amendment pertains to the procedure of date Stamping and noting of both Home consumption and Bond bills of entry. (refer S.O. For full text).

Number 6671 dated 27-07-78. Gist:- Facility for presenting a bill of entry even Before the delivery of the import general Manifest- amendment of section 46 of the Customs act 1962. (refer S.O. For full text),

Number 6686 dated 16th October 1978. Gist:- Introduction of stamping serial number and date Of presentation of bill of entry in all 3 copies. (refer S.O. For full text).

Number 6699 dated 04-01-79. Gist:-Procedure for clearance of cargo against ad-hoc Exemption order. (S.O. 6636 dated 23-01-78 superseded by this S.O.) (refer S.O. For full text).

Number 6712 dated 03-05-79. Gist:- Clearance of goods on assurance by the privileged persons/ Organisations - non-production of the requisite exemption Certificate after clearance -action to be taken in those cases. (refer S.O. For

full text)

Number 6715 dated 15-06-79. Gist:- Goods of Indian origin exported under claim for Drawback of duty - reimportation thereof –expeditious Clearance - procedure regarding. (refer S.O. For full text).

Number 6719 dated 24-07-79. Gist:- Duty free clearance of containers imported along With the goods/ empty containers imported for Stuffing export cargo - procedure regarding. (refer public notice no. 29 dated 08-03-79.) (refer S.O. For full text).

Number 6720 dated 26-07-79. Gist:-Gifts of foodstuff, medicines, consumable stores etc. To charitable organisations free from duty - Procedure regarding. (refer notification 128 of 18-06-79.) (refer S.O. For full text).

Number 6727 dated 27-10-79. Gist:- Noting of bill of entry in the joint name of bank/ Their clients. (refer S.O. Forfull text).

Number 6709 dated 29-03-79. Gist:- Expeditious finalisation of provisional duty bonds. (refer S.O. For full text).

Number 6728 dated 09-11-79. Gist:- Calculation of landing charges. (0.75%) (refer S.O. 6562 dated 04-11-76. S.O. 6767 dated 13-08-82, (refer S.O. 6484 dated 15-02-73 and S.O. 6845 dated 25-03-86) (refer S.O. Forfull text).

Number 6757 Dated 31-08-81. Gist:- Procedure For Filing General Protest Letter For Payment Of Duty Under Protest Hence Time Limit Under Section 27 Of The Customs Act. (Refer S.O. For Full Text).

Number 6760 Dated 04-01-82. Gist:- Procedure Regarding Removal Of Goods Under Section 49 Of The Customs Act 1962. (Refer S.O. For Full Text).

Number 6762.Dated 01-02-82. Gist:-Levy Of Duty On Shortlanded Goods. - Adjustment Of Duty Already Paid At The Time Of Clearance Of The Parent Consignment With Duty Leviable On Subsequent Consignment. (Refer S.O. For Full Text).

Number 6766 Dated 24-06-82. Gist:- Powers Of Various Officer For Supervising Destruction Of Various Types Of Cargo. (Refer S.O. For Full Text) S.O.6556 Dated 29-09-76 Superseded.

Number 6765 Dated 09-06-82. Gist:- Storage Of Goods Imported In FCL Containers In The Central Warehousing Corporation At Bhandup – Under Section 49 Of The Customs Act 1962. And Stuffing Of Export Goods Into The Container. (Refer S.O. For Full Text),

Number 6783 Dated 12-05-83. Gist:- Expeditious Disposal Of Recommendatory Letter Received From The Licensing Authorities And Giving Examination Order On Bill Of Entry. (Refer S.O. For Full Text).

Number 6785 Dated 27-06-83 Gist:- Valuation Of Second-Hand Machinery - Procedure Regarding. (Refer Collectors Order In File S/10-243/80 Gr I Dated (02-12-80). (Refer S.O. For Full Text). (Refer Ministry's Instruction No 493/39/80-Cus Vi Dated 16-02-83).

Number 6788 Dated 27-08-83. Gist:- Customs Duty On De-Stuffing Charges On Cargo Imported In Containers, Not To Form Part Of Assessable Value. (Refer S.O. For Full Text).

Number 6800 Dated 01-03-84. Gist:- Procedure For Valuation And Assessment For Breaking Up Of Vessels. (Ship Breaking) (S.O. 6741 Dated 20-09-80 Is Superseded By This S.O.) (Refer S.O. 6618 Dated 06-10-77). (Refer S.O. For Full Text).

Number 6801 Dated 05-03-84. Gist:- Amendment In The I.G.M. & B/E - No Objection From The Group- Procedure . (Refer S.O. For Full Text).

Number 6805 Dated 01-05-84. Gist:- Filing System - Proper Maintenance Of Registers And Records - Procedure Regarding. (Refer S.O. For Full Text.)  
Corrigendum To S.O. 6805 Dated 01-05-84. Corrigendum Dated 22-05-84.

Number 6807 Dated 14-05-84. Gist:- Streamlining Of Procedure In Respect Of Goods Of Indian Origin Re-Imported Into India. (Refer To S.O. For Full Text)

Number 6812 Dated 15-10-84. Gist:- Procedure For Clearance Of Sludge Oil From The Sludge Tanks Of The Vessel For Home Consumption. (Refer S.O. For Full Text).

Number 6814 Dated 21-12-84. Gist:- Topping Of Indigenous High Aromatic Naptha With Imported Low Aromatic Naphtha By M/S Indian Oil Corporation. (Refer S.O. For Full Text).

Number 6823 Dated 22-05-85. Gist:- For Granting Benefit Of Notification Proper Verification Of The Original Certificate Of Origin Should Be Done By The Appraiser And Assistant Collector. (Refer S.O. For Full Text).

Number 6827 Dated 29-07-85. Gist:- Instruction Regarding Issue Of Detention Certificate. Amendment. To The Above S.O. Dated 15-06-88. Clarification And Additional Instruction For Issue Of Detention Certificate. (Refer S.O. And Amendment For Full Text).

Clarification To S.O. 6827 Dated 29-07-85. Clarification Dated 03-09-85. -  
Clarification For Issue Of Detention Certificate Pending Test. (Suppression Of S.O. 6243 Dt. 04-06-84. & S.O. 6455 Dt. 03-08-71. With All Its Six Amendments).

Number 6834 Dated 11-11-85. Gist:- Requirement Of Fresh Bank Guarantee On Expiry Of Validity Period Of Old One In Stamp Paper. (Refer S.O. For Full Text).

Number 6835 Dated 02-12-85. Gist:- Customs Tariff Amendment Act - Regarding Bounty Fed Articles And Anti-Dumping Duty – Procedure Regarding. (Refer S.O. For Full Text),

Number 6837 Dated 02-01-86. Gist :- Movement Of Full Container Load(FCL) Cargo Between Bombay Port And Inland Container Depots (I.C.Ds) In India- Streamlining The Procedure. (Refer S.O. For Full Text).

Number 6843 Dated 14-03-86. Gist:- Quantum Of Security/Surety/Bank Guarantee To Be Accepted In Case Of Various Bonds Etc. -Instructions Regarding - (Refer S.O. For Full Text).

Number 6845 Dated 25-03-86. Gist:- Landing Charges - Calculation Of (Refer S.O. For Full Text).

Number 6847 Dated 17-06-86. Gist:-Monitoring Over The Recovery Of Fine And Penalty In Adjudication Cases - Procedure Regarding. (Refer S.O. For Full Text). (Amendment No. 1 Dated 14-10-86.).

Number 6848 Dated 17-07-86. Gist:- Procedure For Micro-Filming Of Documents And Its Requirements. (Refer S.O. For Full Text).

Number 6851 Dated 07-10-86. Gist:- Movement Of Goods By Road Between Bombay And Noida Export Processing Zone.(Procedure). (Refer S.O. For Full Text),

Number 6853 Dated 01-12-86. Gist:- Duty Exemption Scheme - Revised Procedure. (Refer S.O.6614 Dated 30-08-77) (Refer S.O. For Full Text). (Also Refer Amendment No. 1 & 2 ).

Number 6858 Dated 24-03-87. Gist :- Re-Arrangement Of Groups With The Respective Distribution Of Customs Tariff Headings Chapterwise. (Refer S.O. For Full Text).

Number 6859 Dated 04-05-87. Gist:- Introduction Of Indian Trade Classification Based On Harmonised Commodity Description And Coding System. (Refer S.O. For Full Text).

Number 6861 Dated 04-05-87. Gist :- Procedure For Import And Clearance Of Crude Oil. Amendment Of S.O. No.6612 Dated 12-08-77. (Refer S.O. For Full Text).

Number 6867 Dated 23-11-87. Gist:- List Of Documents To Be Furnished With The

Bills Of Entry At The Time Of Presenting The Bill Of Entry. (Refer S.O. For Full Text).

Number 6869 Dated 13-01-88. Gist:- Procedure For Duty Free Import Of Consumable Goods When Imported Into India For The Purpose Of Research By Any Research Institution Registered With D.S.I.R./ University. (Refer Not. 321/87 Dated 22-09-87). (Refer S.O. For Full Text).

Number 6876 Dated 14-07-88. Gist:-Powers Of Adjudication Of Additional Collectors. (Refer S.O. For Full Text).

Number 6883 Dated 29-09-88. Gist:- Dispatch Of Appellable Order To Importer As Well As The Custom House Agent. (Refer S.O. For Full Text).

Number 6908 Dated 25-04-89. Gist:- Project Import-Applicability Of Exemption On Individual Goods Forming Part Of Project Import - Propriety And Legality -Regarding. (Refer S.O. For Full Text).

Number 6912 Dated 26-07-89. Gist:- Processing Of Documents In Respect Of 100% Export Oriented Unit In Bond Department Instead Of In Group 7. (Refer S.O. For Full Text).

Number 6915 Dated 19-09-89.:- Raising Of Queries On The Reverse Of Bill Of Entry Instead Of Issuing Query Memo. Instructions Regarding. (Refer S.O. For Full Text).

Number 6920 Dated 13-10-89. Gist:- Instructions Regarding The Correct Rate Of Duty In Cases Where The Goods Are Cleared From Bonded Warehouse As Per Section 15(1) (B) Of C.A.1962. (Refer S.O. For Full Text).

Number 6921 Dated 13-10-89. Gist:- Instruction regarding levy of interest on warehoused goods which are cleared from the warehouse without payment of duty either for export or for home consumption. Subsequent exemption of any kind shall not be regarded as automatically exempting such goods from interest liability. Such interest shall be calculated with reference to the rate of duty assessed at the stage of initial warehousing of the goods. (Refer S.O. for full text). (Law Ministry's Opinion M.S. I.D. note 5332/86/adv/mds. dated 25-07-86)

Number 6922 Dated 17-10-89. Gist:- Import Of Live Animals Through Bombay Customs, Obtaining No Objection From Wild Life, Regional Office Bombay. (Refer S.O. For Full Text).

Number 6932 Dated 19-10-89/27-10-89. Gist:- Validity Of Import Licence With Respect To Date Of Shipment. Date Of Bill Of Lading Should Be Taken As The Date Of Shipment But In The Case Of Land Locked Countries The Date Of "Through Bill



Of Lading" Is To Be Taken As The Date Of Shipment. (Refer S.O. For Full Text).

Number 6926 Dated 08-11-89. Gist:- Into-Bond Bills Of Entry Relating To Stores To Be Presented To Appraiser Attached To Bond Department. (Refer S.O. For Full Text).

Number 6925 Dated 22-11-89. Gist:- Guidelines For Implementation Of Certain Industry Based Notifications Which Do Not Contain End-Use Conditions. (Refer S.O. For Full Text).

Number 6928 Dated 24-11-89. Gist:- Norms To Be Adopted By The Custom House In Cases Where Decisions Of Collector (Appeals) Or Cegat Are In Favour Of The Party. (Refer Board's Instruction F.No. 390/56/89au Dated 17-10-89) (Refer S.O. For Full Text).

Number 6934 Dated 12-12-89. Gist:- Interpretation Of The Term "Advance Licence" Appearing In Notification No.116/88 Cus Dated 30-03-88. (Refer S.O. For Full Text).

Number 6948 Dated 14-05-90. Gist:- Issue Of Speaking Order By Assistant Collector In Case Of Disagreement With The Classification Or Valuation Claimed By The Importer, After Issue Of Show Cause Notice. (Refer Boards Instruction No. F.No. 55/98/70 Cus IVDated 25-08-71) (Refer Boards Instruction No.450/51/89cus Iv Dated 23-03-90) (Refer S.O. For Full Text).

Number 6949 Dated 21-05-90. Gist:- Customs Convention On Ata Carnet Procedure For Implementation - Instructions Regarding. (Also Refer S.O. 6976 Dated 28-07-91). (Refer S.O. For Full Text).

Number 6955 Dated 15-11-90. Gist :- Valuation In Case The Supplier Is Different From The Manufacturer/Producer Of The Goods. Calling For Manufacturer/Producers Invoices. (Refer S.O. For Full Text).

Number 6969 Dated 10-02-91. Gist:- Procedure In Respect Of Court Cases – Instruction Regarding. (Refer S.O. For Full Text).

Number 6970 Dated 04-03-91. Gist:- Procedure For Maintaining Provisional Duty Bond Register. (Refer S.O. For Full Text).

Number 6979 Dated 28-06-91 Gist :- Customs Convention On Ata Carnet (Ata Convention) Procedure For Duty Free Importation And Exportation Of Goods Intended To Be Displayed Etc. For Exhibition, And Fairs In India And Abroad. (Refer S.O. For Full Text). (Also Refer S.O.6946 Dated 21-05-90).

Number 6980 Dated 29-07-91. Gist:- Acceptance And Monitoring Of Bonds And Bank

Guarantees Conditions For Acceptance –

1. To Be Signed By Authorised Person Duly Attested
2. To Accompany With Covering Letter Of Bank.
3. After Acceptance Of Guarantee Registered Letter To Be Sent To Bank For Authentication.
4. Unconditional And Unlimited Guarantee Should Be Accepted. (Refer S.O. For Full Text). (Refer S.O. 6873 Dated 05-05-88). (Refer S.O. 6843 Dated 14-03-86)

Number 6981. Dated 21-08-91. Gist:- Simplification Of Import And Export Procedure (For Assessment And Examination Of Cargo) In Light Of Boards Instruction F.No. 446/42/91 Cus Iv Dated 06-08-91. (Refer S.O. For Full Text). (Refer S.O.6963 Dated 03-01-91 For Simplification Of Procedure In Appraising Groups).

Number 6983 Dated 03-09-91. Gist :- Bank Guarantees Should Bear Full Details Like File Number, Appraising Group Number, Description Of Goods Etc. On All Copies Especially Bank Copy, For Easy CO-Relation At The Time Of Correspondence. (Refer S.O. For Full Text)

Number 6984 Dated 10-09-91. Gist:- Demurrage Charges And Dispatch Money Not To Form Part Of The Assessable Value. (Refer S.O. For Full Text).

Number 6987 Dated 10-10-91. Gist:- Procedure For Processing Of Bills Of Entry For Re-Import Of Goods Of Indian Origin. (Refer S.O. For Full Text)

Number 6985 Dated 14-10-91. Gist:- Acceptance Of CHA Surety In Lieu Of Bank Guarantee In Certain Cases. (Refer Public Notice 13 Of 31-01-79) (Refer S.O. For Full Text).

Number 6986 Dated 26-11-91. Gist:- Payment Of Customs Duty In Foreign Convertible Currency For Import Of Cars/Vehicles (Refer S.O. For Full Text).

Number 6994 Dated 10-01-92. Gist :- Customs Amendment Act 1991 - Procedure Regarding Payment Of Interest On Bills Of Entry For Import Cargo. (Refer S.O. No. 6992 Dated 23-12-91 And S.O. No.6993 Dated 03-01-92).Procedure Regarding Movement Of Into- Bond And Ex-Bond B/E. (Refer S.O. For Full Text). Amendment No. 1 Dated 04-02-92 To S.O. No. 6992 Dated 23-12-91. --- Regarding Payment Of Interest Under Section 47(2) Of The Customs Act 1962.

Number 6995 Dated 10-01-92. Gist:- Advance Noting Of B/E Before Delivery Of I.G.M. In The Import Department Procedure Regarding. (Suppression Of Public Notice No 95 Dated 27-07-78.) (Refer S.O. For Full Text).

Number 6997 Dated 23-01-92. Gist :- Procedure For Removal Of Newly Manufactured Containers Out Of 100% E.O.U. For Export. (Refer S.O. For Full Text). ( S.O. No.6976 Dated 23-05-91 Superseded By This S.O.).

Number 6998 Dated 29-01-92 Gist:- Reference For Opinion Of Dy. C.C. (Laboratory) Should Be Sent Under Signature Of Concerned Additional Collector. (Refer To S.O. For Full Text).

Number 6999 Dated 29-01-92. Gist:- Procedure Regarding Drawal Of Representative Sample From Import Cargo Under D.E.E.C. And Acceptance Of Previous Test Reports. Except For

1. Polyester Etc.
2. Fabrics/ Leather Cloth
3. Synthetic Waste All Other Imports Previous Test Report Valid For
  1. Two Years For Import From Foreign Traders
  2. Three Years For Import From manufacturers. (Refer S.O. For Full Text).

Number 7001 Dated 17-03-92. Gist:- Procedure In Respect Of Discharge & Clearance Liquid Cargo In Bulk For Home Consumption/ Warehousing In Bonded Warehouse For The Purpose Of Determining Duty Liability Under Section 116 Of Customs Act 1962.

Number 7005 Dated 25-05-92. Gist:- Cancellation Of Bonds With End Use Conditions - Conditions To Be Complied With For Cancellation Of Such Bonds. (Refer S.O. For Full Text). (Refer S.O. No. 6964 Dated 08-01-91 For Procedure Of Acceptance Of And Monitoring Of End Use Bonds). (Refer S.O. 6882 Dated 26-09-88.)

Number 7013 Dated 27-08-92 Gist:- Introduction Of Self Assessment Procedure In The Processing Of Bills Of Entry- After Arrival Of Cargo The Importer Or CHA Will Present Self Assessed Bills Of Entry To Docks Appraiser For Assessment And Examination. ( Refer S.O. For Full Text ). (Refer Main S.O. 7010 Dated 30-06-92 --Amendment No 1 Dated 29-07-92.)

Number 7014 Dated 18-09-92. Gist:- Loading Of Invoice Value For Bulk Goods- Loaded Value To Be Entered Into The Computer For Future Reference. Instructions Regarding. (Refer S.O. For Full Text).

Number 7016 Dated 16-10-92 Gist :- Application For Release Advice Should Be Made To Group Vii Directly. After Necessary Endorsement The Same Will Be Sent To Licence Section For Issue. (Refer S.O. For Full Text).

Number 7018 Dated 29-10-92 Gist:- Introduction Of Self Assessment Procedure In Processing Bills Of Entry And Green Channel Of Examination Of Cargo. (Refer S.O. For Full Text).

Number 7020 Dated 06-11-92. Gist:- Monitoring Of Bills Of Entry In Appraising Group. (Refer S.O. For Full Text).

Number 7023 Dated 24-11-92. Gist:- Cancellation Of P.D. Bonds (Refer S.O. 6938

Dated 08-01-90 And S.O.6970 Dated 04-03-91). Refer S.O. For Full Text. (Refer S.O. 6709 Dated 29-03-79 - Expeditious Finalisation Of P.D. Bonds).

Number 7024 Dated 30-11-92. Gist:- Types Of Refund Cases To Be Dealt With By The Departments As Detailed In S.O. (Refer S.O. For Full Text).

Number 7028 Dated 24-12-92. Gist:- 100% Release Of Import Cargo Against Test Bond In Case Of Goods Imported In F.C.L./L.C.L.Containers. L.C.L. Cargo Can Be Cleared By Test Bond Supported With Bank Guarantee Is Given Alternatively 80% Of The Cargo Can Be Allowed Clearance. (Refer S.O. For Full Text).

1. Number 7023 Dated 24-11-92. Gist:- Instructions Regarding Cancellation Of P.D.Bonds. (Refer S.O. No.6938 Dated 08-01-90). (Refer S.O. For Full Text).

Number 7034 Dated 11-02-93. Gist :- As Per S.O. 6933 Dated 06-12-89 Benefit Of Any Notification With End Use Condition Was Not Extended To Into Bond Bills Of Entry At The Time Of Assessment. As Per The Present Notification This Benefit Can Be Extended To Into Bond B/E At The Time Of Assessment, Provided They Fulfill The Conditions. However At The Time Of Exbonding The Goods Again It Has To Be Verified If The Importer Is Fulfilling All The Conditions At The Time Of Ex-Bonding. (Refer S.O. For Full Text).

Number 7043 Dated 24-09-93. Gist:- Checks Prescribed While Noting Of Ex-Bond Bills Of Entry And Instructions Regarding. (Refer S.O. For Full Text).

Number 7046 Dated 08-11-93. Gist:- Monitoring Of Bank Guarantees By Feeding Data Into The Computer. Original Bank Guarantees To Be Kept In The Personal Custody Of Concerned Assistant Collectors. (Refer S.O.For Full Text)

Number 7058 Dated 040494. Gist:- Vessels For Breaking Up -- Valuation And Assessment Thereof Procedure Reg. (Refer S.O. For Full Text). (Refer Addendum No.1 Dated 31-05-94. )

Number 7061 Dated 19-05-94. Gist :- Expeditious Clearance Of Import Cargo Of 100% Export Oriented Units Landed At Ports/Airports/ ICD's/CFS Reg. (Refer S.O. For Full Text)

Number 7063 Dated 04-07-94. Gist:- Procedure For Expeditious Assessment And Clearance Of Goods Imported By Ssth/Sth/Th Reg. (Refer S.O. For Full Text)

Number 7065 Dated 090894 Gist:- Requirement Of Testing Samples In Import Consignments - Reg. (Refer S.O. For Full Text)

#### OTHER INSTRUCTIONS:

Duties Of Appraiser :-

In addition to the functions assigned to the Appraiser under the various Acts, Executive, Standing and Departmental Orders- The scrutinising Appraisers duties include the following:-

(i) He shall see that the Bill of entry has been typed out properly and in such a manner as to make any subsequent alteration easily discernible.

(ii) He shall check declarations of description, quantity, value and country of consignment by comparison with invoices or other documents and by any independent information he possesses. He shall initial and date each page of the invoice and other documents compared so that substitutes may not be presented at the time of passing the goods. He may allow the importer to correct unimportant errors. All such corrections made should be clearly written and initialed by the importer or his agent and counter-initialed by the Appraiser. Where revenue is affected and the loss or gain is involved, the case should be reported to the Asstt. Collector who may after satisfying himself that there is no cause for action under section 111 of the Customs Act allow the amendment.

Note:- Over declaration of value are to be reported just as well as under valuation.

(iii) Authority-regarding presentation of Bills of entry.-  
The Appraisers may check the authorisation of the presenter if he doubts the authenticity of the presenter. Every bill of entry presented by Importers/ Agents bears the name and address of the importer. Application for the change of name of importers in the Bills of entry or Import General Manifest shall be presented direct to the Import Department for scrutiny. Whenever necessary no objection may be taken from SIIB/CIU/STF. then the same should be sent to Group A.O. For scrutinising the application with reference to relevant documents such as Importer's Licence, Bill of entry or delivery order, copy of letter of credit etc. and satisfy himself that the application is bonafide and the mistake is genuine. He should then submit the application to Asstt. Collector. The amendment fee, if liable should be recovered by the Import Department and thereafter the necessary amendment in the bill of entry and the Import General Manifest should be done. Appraiser will see generally that a bill of entry has been properly made out and verify that weight of each category of goods is declared in addition to other particulars.

(iv) Prior entry, Bills of entry- The Appraiser will verify that in the case of Bills of entry presented and noted in the import department under the prior entry rules, are marked distinctly at the top with the words, "prior entry".

(v) Change of declaration in bill of entry- nature of article to be indicated.

(a) When the declaration of any goods is altered transferring them from one head of the tariff to another carrying a different rate of duty, the nature of the article should be clearly indicated on the Bill of Entry.

(b) The description in the Bill of Entry should be sufficiently amplified to relate to a definite item of the tariff. A classification that is merely implied by the rate of duty or tariff value is inadequate. Any amendment or amplifications made by an Appraiser in the description in the Bill of Entry, so as to justify Assessment under a special head of the tariff should be attested by the importer or his authorised agent. But when a responsible representative of the importer is not present and when the amplification required is necessary to relate the goods to the most highly dutiable item of that class in the tariff, the Appraiser need not himself insert the amplifications.

(vi) Discrepancies between bill of entry and Manifest examination to be ordered by appraisers. When the import department reports material discrepancies regarding marks and/or contents between a bill of entry and the manifest, the examining officer to open a certain percentage from the particular lots having discrepant marks and/or contents.

(vii) Discrepancy in the Country of Consignment (origin) checking of by Appraiser: In a case where there is prima facie discrepancy between the country of consignment and the port of shipment, the import department will satisfy (with the help of the appraising group where necessary) that the country of consignment is correct before noting the Bills of Entry.

(viii) Irregularity in number of packages on bill of entry advice to Import department by Appraisers The scrutinising Appraiser should bring to the notice of the Import department any irregularity in the number of packages discovered on the bill of entry at the time of classification from the scrutiny of the relative invoices.

(ix) He shall see that the importation of prohibited goods is not permitted. In the case of goods which require a Licence or special procedure, that appropriate Licence is produced or the special procedure carried out.

(x) Appraisers are instructed to see that the value debited and the balance available are endorsed on ITC.licences both in words and figures to avoid tampering of licences.

(xi) The Assessing Officer shall take the initiative in applying

the various provisions of the Import policy clarification as and when received from ITC.authorities.

(xii) Any discrepancy between the details of marks, number or description of goods etc., shown on the bill of entry and those shown on the invoice and any unauthorised or unattested alterations on the bill of entry should be reported and verified by the classifying and/or shed appraiser before the bill of entry is classified or the goods passed as the case may be.

(xiii) He shall initial the importer's declaration (which should be in words with 'only' added in figures) of the quantity and/or value upon which the calculation of the amount of duty has to be based. Declarations of quantity should be entered both in words and figures in all cases where quantity is a factor in the assessment of duty, e.g.tariff value and specific duty assessments.

(xiv) He shall classify the goods under the headings required by statistical department and see that all the details required by that department are given.

(xv) The Appraiser should refer to the Group Asstt. Collector for advice and direction when in doubt on any point of classification, Assessment or interpretation of import policy in regard to permissibility of import or as to the best method of dealing with a case. The assessment may thus have the benefit of the Asstt.Collector's knowledge and experience and be brought to a decision without unnecessary delay.

(xvi) Regular inquiries should be conducted by the Appraisers in the market. Each group should select representative articles which are regularly imported and detailed inquiries should be made regarding the market price of such articles, the trend of the market,anticipation by the traders of the margin of profit for different articles and any other information which may be useful from the customs point of view.

(xvii) Goods are "assessed" when the exact amount of duty leviable has been ascertained and written down.

#### Finalisation of certain types of B/E, by Appraiser

(xviii) As a measure of giving the Asstt.Collector's more time for supervision and in pursuance of the customs study team's recommendations,the board has decided that the following instruction should be followed by the Custom Houses.

(I) Bills of entry in which the total value exceeds rs.1,00,000/- should be endorsed to the

Asstt.Collectors of Customs for check.

That in the case of the following articles the Bills of entry may be finalised by the Appraisers themselves irrespective of value:

(a) Goods covered under item 72a of the Indian Customs Tariff (84.66 of CTH '86).

(b) Machines which are Assessed at 35% ad valorem (this clause not applicable in CTH '86).

(c) Other machines and bulk products which are often imported and in regard to which no difficulty is encountered. These articles should be listed by name, by the concerned Collector of Customs and the list compiled should be forwarded to the other Custom Houses. The Collector of Customs, Bombay shall CO-ordinate in this respect.

(d) Imports by Government Departments and Public undertakings.

(ii) Bills of entry covering products the imports of which are noticed for the first time should be endorsed to the Asstt.Collectors of Customs.

(iii) Bills of entry in respect of which there is a doubt felt by the Appraiser should also be endorsed to the Asstt.Collector.

(iv) The remaining Bills of entry should be sent to the Asstt.Collectors of Customs without making any specific endorsement. Asstt.Collectors will select 05 to 10 bills of entry for scrutiny, having regard to the complexity of classification or valuation of the articles imported, the efficiency of the Appraiser concerned and his experience in handling the classification etc. of that article. The selective check of 05 to 10 B/E by the Asstt.Collectors of Customs should also cover the types of cases mentioned at (a) to (d) in paragraph xviii (i) above. Wherever bills of entry are checked by the Asstt. Collector of Customs, The Asstt.Collectors will sign in full against the relevant entry in token of their having checked them. The other bills of entry will be merely initialed by the Asstt.Collectors. (Authority: CBEC.F.no.21/31/67 cus.iv dt.19-9-70). (further reviewed)

(xix) All relevant details should be recorded at the time of original assessment and important factors should not be put forward one by one, subsequent to clearance in answer to audit queries. As a general rule, all materials which guided the Appraiser to arrive at a value should also be made available to audit to enable it to carry out more than a routine arithmetical check.



## (xx) Warehoused goods-Assessment &amp; Re-Assessment

(a) Appraisers at the time of completion of the warehousing bill of entry must exercise proper care in accepting the declaration of the value of such goods, even where goods be assessed on tariff valuation or specific duty. The reason being that if the rate of duty be altered, while the goods are in bond to an ad valorem rate, the duty becomes payable when goods are cleared on the declared value on the bill of entry (subject to the stipulation under section 15 of the Customs Act, 1962).

(b) Warehoused goods removed in bond to another warehousing port:

The Customs Act 1962 does not authorise re-assessment of goods removed in Bond under Section 67 of the act. Appraisers must therefore scrutinise the values and other particulars declared in into-bond bills of entry as carefully and closely as they would scrutinise similar declarations in bills of entry for home consumption.

(c) Declaration of value in bond bills of entry: To enable the bond department to certify values and quantities in ex-bond bills of entry, The Appraiser should state on the reverse of the into-bond bills of entry; the quantity, value, and invoice currency separately for each individual case (its equivalent in Indian currency being shown by the bonder) together with the rate of duty. When however packages are of uniform contents and value, and assessment is based on weight, the Assessing officer should endorse on the reverse of the into-bond bill of entry "contents uniform". In such cases the Bond department will certify in Exbond documents the exact average weight for each package as reduced from the total assessed weight.

(xxi) Value declaration in bills of entry-checking of by Appraiser.

(a) Values are ordinarily declared under two heads viz.

(i) Invoice value and (ii) Tariff value. The position with regard to the checking, initialling in token of having checked these values should be as follows:-

(i) Invoice value: The Appraiser should check the amounts declared in appropriate columns of the bill of entry with reference to invoice and initial the value shown therein on the copies of the Bills of entry.

(ii) Tariff value: The appraiser will check and initial the tariff rate and value in appropriate columns on the copies of bills of entry. Total tariff value will also be checked by Accounts Department.

(b) In addition to the above requirements the rate of duty is to be written on the copies of Bills of entry by the Appraiser.

(c) Whenever any error is noticed by the Accounts Deptt. and amendment is considered necessary the bill of entry should be sent back to the Appraiser for necessary action.

(xxii) The Scrutinising Appraiser shall record on the Bill of entry (original and duplicate as the case may be) suitable instructions for the guidance of the shed staff in connection with examination of the goods. all such instructions should be addressed to the Shed Appraiser/Appraiser on-fee as the case may be. these instructions should be clear and unambiguous as to the extent of Appraisal or examination required, sample, if any, to be drawn from the consignment; packages, if any, to be detained (the reason should be recorded) etc. Where inspection of the goods is required it should be indicated. The Scrutinising Appraiser may specify half of the total number of packages required to be examined by indicating their marks, numbers etc. leaving the other half to be selected by the Shed Appraiser/Appraiser-on-fee as the case may be. In exceptional cases when, the selection of packages is found to involve hardship to the importer, the Scrutinising Appraiser himself, shall order the selection to be made by the Shed Appraiser.

In all cases the Bills of Entry should be presented by the Importer or his agent to the Shed Appraiser who may mark the bills of entry to one of the Examining officers under him for further action in compliance with the instructions given on the bills of entry by the Scrutinising Appraiser. In the case of Bills of entry requiring selection of packages by him the Shed Appraiser may mark the bill of entry to the examining officer and may specify the packages.

While passing orders for opening of packages on the bill of entry care should be taken that sufficient number of packages are opened so as to verify the correctness of the assessment. at the same time, however, care shall be taken to protect importers from avoidable inconvenience.

(xxiii) Asstt. Collector and Scrutinising Appraisers in the Group are held responsible for a proper use of their discretion regarding the extent of the examination or Appraisal to be ordered.

(xxiv) (a) When consignments consist of uniform packages with uniform contents and the documents show that the shippers and importers are firms of high standing and repute, it will ordinarily be sufficient to examine 1 per cent of the package, subject to a maximum of 20, the rest of the consignment being "lot inspected".

(b) When a bill of entry covers a variety of goods

imported by or on behalf of traders, orders shall be given as far as practicable to open proportion of the packages under each item representing each lot as shown in the invoice or packing list, within the percentage to be examined.

(xxv) The Scrutinising Appraisers are authorised to give examination orders in all first Appraisement bills of entry. These bills of entry need not therefore be put up to the Asstt. Collector for counter signature of the examination order. (f.22/665-cus.iv dated 08.05.1957)

(xxvi) Care should be taken to ensure that customs tariff etc. are corrected immediately on receipt of the copies of notifications, instructions issued by the government.

(xxvii) Invoice value register of Appraisers for Goods Assessed on invoice value:

For goods assessed on invoice values the invoice value register in the form as prepared by the directorate of inspection (customs & central excise) and shown below should be maintained by each Appraiser in the different groups.

DESCRIPTION OF ASSESSMENT	DATE OF INVOICE	DATE OF VESSEL'S NAME	B/E NO. & DATE &	ARTICLE
1	2	3	4	
5	6	7	8	9
10				
11	12	13		
14				

## IV DT.26.09.62)

(Xxviii) Action when details are insufficient for classification.

(a) When the documents submitted and the information given by the importer, are insufficient in one or more details to enable the Scrutinising Appraiser to classify and assess the goods declared in a bill of entry and it is necessary to obtain further particulars by examination of the goods, the Scrutinising Appraiser should in his order to the examining staff detail the points on which he requires specific information. this order should be combined with an "appraise" order so that it will not be necessary to examine the goods again after assessment. examples are given below:

(i) If the documents of a consignment of old newspaper in bales do not give the weight, the scrutinizing appraiser should give the order "examine and weigh and return the bill of entry to me".

(ii) If the documents of a consignment of paper insulated copper cable do not give the size of the cores (vide heading 85.44 of CAT 1986) the order should be "examine and report whether any cores less than 4.75 square millimeter's and return the bill of entry to me".

(xxix) Dealing with audit objections: All Appraisers will deal with audit objections raised against their own work. If the Appraiser concerned is absent from duty when the audit objection is raised, the matter shall be referred to the Asstt. Collector of the group concerned who will depute another officer to deal with the audit objection.

8. Appraiser's instructions to other department to note alteration etc.

The following departments are concerned in making notes on bills of entry under instruction from the appraisers. Appraisers should be careful to address their directions to the right department.

- (1) Audit-rate of exchange.
- (2) Import-packages marks and numbers.
- (3) Statistics-(a) country of consignment
  - (b) description, quantity and value of goods.

9. Transfer of complicated Appraising case involving disputes or investigation to SIB./investigation cell- procedure regarding.

Consequent of the recommendations of the customs study team it has been decided that all groups of the Appraising department including Air-Cargo Complex unit, Postal Appraising Department and other units shall

transfer cases of complicated nature involving disputes or requiring detailed investigation in which prima facie penal action is indicated to SIIB./ CIU. investigation cells for action. the object of transferring such cases is to concentrate cases in the SIIB/CIU/ Adjudication cells which can devote time for detailed work involved in them. Transfer of such cases should be effected under the orders of the Additional Collector of the Group/unit concerned subject to Additional Collector SIIB/CIU. and investigation cell's concurrence. To ensure that relatively similar cases of ITC. Violation or misdeclaration are not indiscriminately passed on.

Reconstruction of lost or destroyed bill of entry and its other relevant documents: If a bill of entry is lost or accidentally destroyed by the Importer or the CHA. then it is for the importer or his agent to prove that the loss or destruction was accidental and without malafide. They should lodge a police complaint in case of loss of documents. they should make an application for reconstruction of the noted bill of entry to the A.C. Import Department. the copy of the police complaint should also be attached along with the application. They should give a plain indemnity bond for any loss to the customs. After taking no-objection from the intelligence unit like CIU,SIIB. etc & from Groups and Docks the importer or the CHA. may be permitted to reconstruct the bill of entry with the permission of A.C. Import.

However if the bill of entry is lost by the Customs department and it is so proved, then the A.C. Import may grant permission for reconstruction without a bond. The lodging of the complaint to the police department by the importer/CHA. is mandatory. if the lost bill of entry is recovered after reconstruction, then the same should be surrendered to the customs department. A.C. MCD will take charge of all such bills of entry. For reconstruction of Original or Duplicate bill of entry which were in the possession of the Customs after the clearance of the goods, the same may be done after obtaining the permission of Additional Collector in-charge of Appraising. Such bills of entries are required to give refund or for such other purpose.

#### THE CUSTOMS VALUATION (DETERMINATION OF PRICE IMPORTED GOODS) RULES, 1988 :-

Notification No.51-NT/88-Customs,dated 18.07.1988.

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 In exercise of the powers conferred by section 156 of the Customs Act,1962 (52 of 1962) read with Section 22 of the general clauses act,1897 (10 of 1897) and in suppression of the Customs Valuation Rules,1963. Except as respect things done or omitted to be done before such suppression, the Central Government hereby makes the following rules, namely:-

1.Short title,commencement and application.-

(1) These rules may be called the Customs Valuation (determination of price of imported goods) rules, 1988.

(2) They shall come into force on the 16th August,1988.

(3) They shall apply to imported goods where a duty of Customs is chargeable by reference to their value.

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

(a) "deductive value" means the value determined in accordance with rule 7 of these rules;

(b) "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;

(c) "identical goods" means imported goods :-

(i) which are same in all respects, including physical characteristics,quality and reputation as the goods being valued except for minor differences in appearance that do not affect the value of 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 of these imported goods free of charge or at a reduced cost for use in connection with the production and sale or export of these imported goods;

(d)"produced" includes grown,manufactured and mined;

(e)"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 trademark;

(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 of these imported goods free of charge or at a reduced cost for use in connection with the production and sale or export of these imported goods;

(f)"transaction value" means the value determined in accordance with rule 4 of these rules.

(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 businesses;

(iii) They are employer and employee;

(iv) Any person directly or indirectly owns,controls or holds 5 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,however 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.

3. Determination of the method of Valuation.-for the purpose of these rules,-

(i) the value of imported goods shall be the transaction value;

(ii) if the value cannot be determined under the provisions of clause (i) above, the value shall be determined by proceeding sequentially through rule 5 to 8 of these rules.

#### 4. Transaction value. :-

(1) The transaction value of imported goods shall be the price actually paid or payable for the goods when sold for export to India, adjusted in accordance with the provisions of rule 9 of these rules.

(2) The transaction value of imported goods under subrule (1) above 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 same 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 9 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.

(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 :-



(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

:

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 9 of these rules 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.

#### 5. Transaction value of identical goods.-(1)

(a) Subject to the provisions of rule 3 of these rules, 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.

(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) of this rule, 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 subrule (2) of rule 9 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.

#### 6. Transaction value of similar goods.-

(1) Subject to the provisions of rule 3 of these rules, 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.

(2) The provisions of clauses (b) and (c) of sub-rule (1), sub-rule (2) and sub-rule (3) of rule 5 of these rules shall, mutatis mutandis, also apply in respect of similar goods.

#### 7. Deductive value.-

(1) Subject to provisions of rule 3 of these rules, 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) of this rule, 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 ninety 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) of This Rule.

#### 8. Residual method.-

(1) Subject to the provisions of rule 3 of these rules, 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 sub-section (1) of section 14 of the Customs Act, 1962 (52 of 1962) and on the basis of data available in India.

(2) No value shall be determined under the provisions of these rules 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 price of the goods for the export to a country other than India ;

(v) Minimum Customs values ; or

(vi) Arbitrary or fictitious values.

#### 9. 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 cost and services, 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;

(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 or 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 ;

(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 ;

(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.

(2) For the purposes of sub-section (1) and sub-section (1a) 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, for delivery at the time and place of importation and shall include-

(a) The cost of transport of the imported goods to the place of importation ;

(b) Loading, unloading, and handling charges associated with the delivery of the imported goods at the place of importation ; and

(c) The cost of insurance: provided that in the case of

goods imported by air, the cost and charges referred to in clauses (a),(b) and (c) above,-

(i) Where such cost and charges are ascertainable, shall not exceed twenty per cent of the free on board value of such goods,

(ii) Where such cost and charges are not ascertainable such cost and charges shall be twenty per cent of the free on board value of such goods:

Provided further that in the case of goods imported other than by air and the actual cost and charges referred in clauses (a),(b) and (c) above are not ascertainable, such cost and charges shall be twenty-five per cent of the free on board value of such goods.

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

(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.

#### 10. 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 as considered necessary by the Proper Officer of Customs 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 (52 of 1962) relating to confiscation, penalty and prosecution shall apply to cases where wrong declaration, information,statement or documents are furnished under these rules.

#### 11. Settlement of dispute.-

In case of dispute between the Importer and the Proper Officer of Customs valuing the goods, the same shall be resolved consistent with the provisions contained in sub section (1) of section 14 of the customs

Act,1962 (52 of 1962)

12. Interpretative notes.-- The interpretative notes specified in the schedule to these rules shall apply for the interpretation of these rules.

#### DUTY EXEMPTION SCHEME:-(DEEC)

The Duty Exemption scheme is an important instrument for export promotion. Under this scheme, Duty-free imports are allowed in respect of raw materials, components, intermediates, consumables, parts, spares including mandatory spares and packing materials required for the purpose of export production. The Duty-free Licence bears a suitable Export obligation for the purpose of achieving the objective of the scheme.

#### Objective:

The objective of the Duty exemption scheme is that exporters should be saved from blocking their funds by payment of Customs duty at the time of import of their inputs for export production and then to wait for drawback which they can claim only after the finished products have been exported. It is with this intention that where inputs are allowed duty-free, the exporter is not entitled to drawback on the product exported. In the previous import policy also, no drawback was admissible on the products exported under this scheme but there was a provision in the policy that in respect of any other duty-paid material whether imported or indigenous, which was not included in the duty-free Licence but was used in the manufacture of the product exported, the exporter could apply to the director of drawback for fixation of suitable brand rate. In the New Import Policy, however, para 70 of the policy book only lays down that drawback shall not be admissible on the products exported under the scheme. But unlike the previous policy, there is no mention that if any other duty-paid materials have been used, the exporter can apply for fixation of brand rate of drawback. Secondly, the New Import policy also provides that in cases where the exporter has availed of the duty exemption Licence, he will not be entitled to international price reimbursement scheme.

#### Limiting factors of duty-free Licence

In the earlier policy, there was a provision that both quantity and value will be the limiting factors in respect of each item of import. In the new policy, however, two separate categories of advance licences have been introduced, namely,

- (i) Value-based advance Licence and
- (ii) Quantity-based advance licence. these are explained below:

## (i) Value-based advance Licence

The value-based advance Licence will not have quantity as a limiting factor. It will have only value as the limiting factor. The Licence will contain the following information:-

(a) The names and description of the items to be imported and exported. (itemwise quantity for import nor the quantity of the product to be exported will be given).

(b) The CIF value of imports. (although the import policy does not mention clearly whether itemwise value will be indicated or the total value of the advance Licence will be indicated but having regard to the type of the advance Licence, it appears that only the total CIF value of the Licence will be given and not the itemwise CIF value).

(c) The FOB value of Exports & Qty. of Exports. The advance Licence holder will have to achieve a prescribed value addition. The Chief Controller of Imports & Exports has separately published a book which indicates Standard input-output and value addition norms. If any export product does not have the pre-determined input-output norms and the value addition, the value addition will be as decided by the competent authority as laid down in para 49 of import policy. There is, however, a separate para no.60 in the Import Policy which lays down that value addition norms as specified by means of a Public Notice shall apply to Duty-free licences and products not listed therein shall have a minimum value addition of 33%. but the advance licensing committee may consider requests for grant of licences on a lower value addition, but in no case below 25% on technical grounds. However, since 33% or 25% are only the minimum value addition norms fixed, the advance licensing committee can take a decision in each case whether to allow the duty-free Licence at the minimum value addition to be achieved or at a higher value addition to be achieved, in respect of export products for which there is no pre-determined value addition norms released under public notice no.2 dated 31.3.1992 in a separate book.

In the case of sensitive items, however, or case where the competent authority so decides the quantity or value or both of each sensitive item intended to be imported, shall be indicated in the duty-free Licence itself. the list of sensitive items as given at the end of the separate book released under public notice no.2 dated 31.3.1992 regarding input-output value addition norms. the licensing authority may treat any other item also as sensitive item even if such item does not appear in the list. for the purpose of issuing value-based licences, The Department of Revenue may have to amend their Customs notification no.159/90 dated 30th march 1990 Because the said notification mentions quantity of each item to be given as one of the conditions of the scheme. Even otherwise the said notification needs to be amended because

in the case of disposal of duty-exempt replenished material, the notification no.159/90 issued by the Customs authorities refers to para's 249 and 250 of the Import Policy, 1990-93 which is not relevant under the new policy.

(ii) Quantity based advance Licence.

The Quantity-based advance Licence will indicate the names and description of items to be imported and exported, the quantity of each item to be imported, the CIF value of each item to be imported, the quantity and the FOB value of the items to be exported and the value addition. In issuing the quantity-based advance Licence, the Standard Input-Output norms as published by DGFT along with the value addition prescribed against such norms will be adopted. In the case of sensitive items, of course the value addition as laid down in the Export & Import policy will be applicable. If there is no value addition given along with the Standard Input-Output norms as separately announced by the value addition subject to the minimum of 33% or 25% as laid down in para 60 of the new export & import policy is to be followed. As a matter of fact, para 52 of policy lays down that The Chief Controller of Import & Exports may modify the norms or prescribe additional norms on the recommendation of the advance licensing committee.

Para 53 of the New Import policy also makes a provision for flexible value addition. this para lays down that a quantity or value-based advance Licence may be given to a class or classes of export product in the same sector in order to provide flexibility to the exporter in achieving the value addition. It is laid down that the export obligation and value addition will be regarded as having been achieved in such cases by taking the value of Imports and Exports for each such class of products covered by the Licence.

#### VALUE ADDITION

Before taking up the other types of Duty-free licences, it is necessary to explain at this stage the definition of "value addition" for the purpose of Duty Exemption Scheme. the formula for calculating value addition is given in para 77 at page 24 of the New Export & Import policy. As will be seen therefrom, the percentage of value addition is calculated on the basis of the FOB value of exports to be made against duty-free Licence and the CIF value of the imported inputs covered by the Licence. The words "covered by the Licence" are significant, when compared to the corresponding provision in the previous policy. In the previous policy value addition was defined in para 342 of the hand book of procedures, 1990-93. According to that formula, the value addition was calculated by taking the fob value of exports vis-à-vis the CIF value of all imported inputs (other than capital goods) taken together, irrespective of the fact whether those inputs were imported directly by the applicant under the duty-free Licence or they were imported/procured otherwise, for manufacture of the product to be exported. The new import policy



as already stated takes into account the FOB value of Exports vis-à-vis CIF value of goods imported against the duty-free Licence itself and it does not take into account other imported items not covered by the duty-free Licence but used in the manufacture of product exported. This difference is significant as it will help the Exporters to easily achieve the prescribed value addition percentage.

#### SELF-DECLARED PASS BOOK SCHEME

This is a New scheme incorporated under duty exemption. The scheme is based on the issue of duty-free pass book based on self-certification and self-declaration of the Exporter. This scheme is applicable to Star Trading Houses, Trading Houses and Export Houses. Other Exporters (wrongly mentioned as exporters of other products under para 54 of the new import policy) as may be specified in this behalf by the DGFT may also be made eligible to make use of the scheme. Under this scheme, the eligible Exporter will be issued a pass book indicating the names and description of the items to be imported and exported by him and the value addition to be achieved through such exports. He will also give the CIF value of imports and will certify and declare that the particulars given by him are correct. It is presumed that the exporter will give only the total CIF value of the imports and not the itemwise value; This point should be immediately clarified by DGFT. based on such self-certification and self-declaration, the Customs Authorities will permit the Import of raw materials, components, intermediates, consumables, spares, including mandatory spares, parts and packing materials.

After the export is made, the exporter will enter the export particulars in the passbook, etc. The names and description of the items exported and the value addition achieved and certify that the particulars given by him are correct. It should again be clarified whether the exporter will be bound by any minimum addition to be achieved depending upon standard percentage of value addition as published by DGFT, the prescribed value addition in respect of sensitive items as given in the Import policy or the minimum value of 33% as given in para 60 of the import policy. This point should also be clarified because it is vague to say that the exporter will indicate the value addition achieved without specifying whether he will be bound by any minimum value addition. A clarification on this point is necessary particularly because even after the exporter has furnished self-certification and self-declaration, the end of para 54 of the new import policy says that the licensing authority will discharge the export obligation "after due verification". What is the type of verification that the licensing authority will do, has not been indicated and that by itself defeats the very purpose of the "self-declared passbook scheme."

The passbook will be valid for a period of one year and may be renewed from time to time. Here again, it is not clear whether the one year period is for completion of both the Import and the Export transactions and the renewal referred to in para 54 of the Import policy means renewing for the unfinished part of the transactions or it means that the Exporter will make

fresh entries of both Imports and Exports in the same passbook for subsequent transactions.

The exporter will also have to give a bank guarantee or a legal undertaking, as the case may be, to ensure compliance with the export obligation which in such cases appears to mean the achievement of value addition and not the quantity of the product exported and its value.

#### INTERMEDIATE ADVANCE LICENCES

Intermediate advance licences will be issued as before i.e. the intermediate manufacturer getting duty-free inputs will either export the end-product himself or supply the same to a duty-free Licence- holder. There are two points which must be mentioned in this regard. The first is that the intermediate advance Licence will have quantity limits of the items of import as laid down for advance licences and will have to achieve the value addition. Secondly para 55 of the import policy which relates to intermediate advance Licence lays down that the supply of the finished product to the ultimate exporter by the intermediate manufacturer will be under an agreement between the two parties. The purpose of the agreement is not clear when the import policy itself says that the intermediate advance Licence holder shall have the option either to supply to duty-free Licence holder or export directly within a specified period.

#### SPECIAL IMPREST LICENCES

A provision for special imprest Licence continues in the new policy. The new provision is comparatively enlarged in the sense that while in the earlier policy, the special imprest Licence could be used only for import of raw materials and components, the Licence under the new policy can be used for import of not only the raw materials and components but also intermediates, consumables, parts, spares, including mandatory spares and packing materials.

The special imprest Licence will also be quantity- based and will be subject to Input-Output norms as may be determined by the competent authority. This means the Standard Input-Output norms and the value addition as separately notified by the DGFT will apply to Special Imprest licences. Another point to be mentioned here is under the earlier policy a Special Imprest Licence could be issued for the manufacture of goods to be supplied to ONGC etc. at International price. The New policy does not mention about the supplies at International price.

Supplies to 100% Export-Oriented Units and Units in Free Trade Zones etc. continue to be covered under the Special Imprest licensing scheme. In the earlier policy, however, this specified products laid down in customs notification no.162/90 dated 30th march 1990.

In the new policy, it is laid down that the supplies covered by the scheme will be those as are specified by a public notice issued

in this behalf or any other goods specified in the Special Imprest Licence.

#### ADVANCE CUSTOMS CLEARANCE PERMITS

Like the previous policy, the new policy also contains a provision for issue of advance customs clearance permits. The only point to be mentioned is that the new policy does not make any mention of what would be the value addition to be achieved by the Indian Exporter for the services that he renders by way of jobbing, repairing etc. In the earlier policy, there was no definite value addition laid down for such purpose but the policy did provide that applications for advance customs clearance permits will be considered where there is a reasonable value addition after accounting for the freight/insurance involved in the shipment. Care to be taken while allowing clearance against

#### VALUE BASED ADVANCE LICENCES/QTY.BASED ADV.LICENCES.

(i) Value of the goods should be checked under goods imported against value based advance licences. Under this scheme, since the limiting factor is value only. There is a general tendency on the part of importers to under-value the in order to have more duty free entitlement. Such instances of under invoicing if any are required to be brought to the notice of Commissioner (DBK) New Delhi.

(ii) Since the notification 159/90, 203/92, 204/92 as were the policy in force lay down that the goods to be allowed clearance free of duty should be of a type required in the manufacture of product exported, care should be taken to ensure usability of goods imported vis-à-vis goods exported.

(iii) The Imports under this scheme shall be allowed only during the validity period of export obligation, which is now for (12) months from the date of issue of Licence.

In addition to the above information the following information on the above subject will clarify the whole scheme. The scheme applies to three categories of import Licence holders. they are eligible to clear goods imported against these categories of Licence without payment of duty on their fulfilling the requirements of the scheme. these three categories of licences are:

- 1) Advance Licence.
- 2) Advance Licence for intermediate product.
- 3) Special impost licences.

First category of Licence is for registered exporters. The second category of Licence is for an advance Licence holder with a tie up with another advance Licence holder who requires intermediate products for

manufacture of product to be exported. The third category of licences are issued to registered exporters for deemed exports against contracts entered with IDBRD/IDA aided projects. The benefits of clearance of goods without payment of duty is admissible to specified manufacturing activity, undertaken with the main aim of exporting finished goods. While issuing advance Licence, the licensing authority, simultaneously issues duty exemption-entitlement certificate in a prescribed form. on completion of imports and fulfilment of exports obligations, the certificate which is in two parts, duly completed by customs is returned to the issuing authority. Ordinarily the DEEC is to be registered & used at one port. The benefit of the scheme, can be availed of in one of the following manners for imports.

(1) DEEC holder can place order himself, import the goods and by following the prescribed procedures clear the goods without payment of duty.

(2) Goods covered by an Open General Licence can be imported, placed in a warehouse after bonding under the warehousing provisions of the C.A. 1962. and thereafter cleared without payment of duty utilizing valid advance Licence and under DEEC.

(3) Goods covered by the Licence may be allowed to be imported by another person under a valid letter of authority and the persons name must appear in DEEC.

(4) Export/Trading houses can also authorise other manufacturers, subject to one condition that they execute bond with bank guarantee for the payment of full customs duty.

Procedure to be followed for import is as follows :-

Clearance procedure actually starts before even filing of a Bill of entry u/s 46, if the first consignment is to be cleared. Importer has to execute a bond with bank guarantee. This bond is to be filed with the licensing authority. After the fulfilment of this requirement the importer will present a B/E duly endorsed "FOR DEEC", for noting in the normal manner. After the B/E is noted in the Import Dept., the same is to be presented to computer section for processing. The B/E must be accompanied by usual documents Licence and DEEC book. thereafter all the enclosed documents is passed on to the Appraising section. Concerned Appraising officer Assesses the goods completes the B/E and makes entries in the DEEC book and sends the B/E with endorsement to computer section for concurrent audit. The whole set of B/E again goes to Assessing Officer, where an entry made in the register maintained and file number is assigned; and the Officer signs the Bill of Entry and the register. Finally The Asstt. Collector signs. The comptist checks values and thereafter the Licence is registered and and audited. After the audit, the comptist signs

the /E & "nil" duty is indicated by the typist. After the registry of Licence, the B/E is endorsed after retaining the original B/E and its copy. In the docks the procedure followed is identical with other usual examination & clearance procedure.

#### EXPORT OF GOODS MANUFACTURED FROM IMPORTS UNDER DEEC

If Imports are under DEEC scheme, the Export obligations are to be fulfilled. For fulfilment of such obligation different periods have been fixed depending on the goods. The period may be 6,9 or 12 months extendable by three months. If the Export obligations are not fulfilled the following steps will be taken against the Importer & those who executed bond.

1. Proceedings for default will be initiated by licensing authority.
2. Benefits under policy may be withdrawn.
3. Importer will be asked to pay duty.
4. Importer will be asked to pay interest on duty which becomes payable from the date of clearance of import.
5. Customs authorities may initiate action as provided u/s 142 of C.A. 1962.

Note:- The procedure of exporting the goods manufactured for export under the DEEC scheme in nutshell is under

(Bombay Customs P.N. No.178 of 31.10.86 refers)

a) Where Advance Licence & DEEC book are received. a shipping bill duly endorsed with requirements for export under DEEC is to be presented in the form prescribed for free S/Bill, as in the case of ordinary export, with the exception that the S/Bill will also have a DEEC pass book, and bear on endorsement " corresponding to DEEC No....." or "Provisional under DEEC". the Export department will stamp the S/Bill for noting and then it will be entered in a register. After registration, the S/Bill will be taken up by the assessing officer for completion. The Assessing Officer will scrutinise the declarations and make entries in the pass book. After passing of the S/Bill by the Export Department, the goods will be examined.

b) Where Advance Licence & DEEC not available a S/Bill with relevant declarations for export under DEEC scheme for admitting provisionally is to be filed. The other procedure will be the same as in (a) with a slight difference that form 'F' will be filled in duplicate. This shipment will be regularised on receipt of DEEC book.

On completion of Export obligations as per the DEEC, all the entries in the DEEC have to be audited and after audit H & I parts of DEEC

will be completed by Customs. Such an audited DEEC with H part completed has to be submitted to licensing authorities, who on verification will cancel the bond executed before imports.

**CUSTOMS BONDS & GUARANTEES:-**

**STIPULATION FOR MODE OF RECOVERY UNDER SECTION 142 (1) CUSTOMS ACT 1962 :**

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 Bonds/ Guarantees executed under the provisions of the customs act, 1962 should contain provision regarding the mode of recovery as laid down under section 142 (2) of the Customs Act,1962. The importers should therefore be advised to include a separate clause, as indicated below, in all bonds and guarantees

**INVOLVING RECOVERY OF MONEY :-**

"Any amount due under this bond/guarantee may be recovered in the manner laid down in sub-section (1) of section 142 of the customs act 1962 without prejudice to any prejudice to any other mode of recovery". (bond's f.no.7/9/62-cus vii dated14-8-65)

**BOND IN REGARD TO PROJECT IMPORT REGULATION 1986 THE PRESIDENT OF INDIA. (THROUGH THE COLLECTOR OF CUSTOMS)**

.....  
 (Bond is executed under section 143 of Customs act, 1962)  
 whereas the Collector of Customs .... (herein called Collector) may under section 18 (1) of Customs act 1962, make Provisional Assessment under project Import regulation 1986 extending the benefit of item 98.01 of CTA.75 in respect of the main equipment, spares and raw materials as noted below to be imported from time to time for the initial setting up a plant by us namely Messrs./s..... on our undertaking to produce before him within three months from the date of arrival of the last consignment of goods,further documents proof regarding the real value and quantity of the said goods and any other documents that may be required under the Project Imports Regulation, 1986.

We do hereby bind ourselves our legal representative and successors to pay on demand and without any demur, the difference if any between the Duty provisionally assessed by the Collector of Customs under the said section 18 (1) of the Customs act, 1962 and the duty finally assessed by the Collector in respect of each consignment. It is also agreed that any amount due under this bond may be recovered in the manner laid down in sub-section (1) of section 142 of customs act, 1962 without prejudice to any other mode of recovery. The guarantee hereby given under section 143 of Customs act on.....shall be continuing one and shall not be revoked without the consent of the President or the Collector of Customs,.... In witness whereof the importer

had herein set and subscribed their hand and seals the day, month and year first above written. sealed and delivered by and on behalf of the importer in at.....in the presence of the witness.

- (1) Importers name.
- (2) Suppliers name and address.
- (3) Approximate value of goods of the plant namely.
- (4) Description of the plant
  - (a) Main Equipment value.
  - (b) Spares value.
  - (c) Raw materials value.
  - (d) Percentage between a & b & c.
- (5) Name of the plant.
- (6) Approximate date of completion of contracts.
- (7) Clearing Agent.
- (8) Import Licence No. & date.

In Witness

- (1) .....
- (2) .....

N.B..1 : We further undertake the responsibility of furnishing a statement describing the materials to be imported duly attested by the authorities issuing Import Trade Control Licence and duly scrutinised by the said authority from the angle of 98.01 of CAT '75 failing which we shall be bound to pay the difference of any between the duty provisionally Assessed under 98.01 of CAT '75 and the duty finally Assessed on merit.

Signature of the Importer.....

Accepted for and on behalf of President of India witness

- (1) .....
- (2) .....

(Designation of the Authorised Office)  
 (Ref. Provisional Assessment Regulation of 1963 contd. in  
 Bulletin no.3 of 1963 read with C.B. of Ex. & Cus. F. No. 21/36/65-Cus. I dated  
 18-12-65

FORMAT

SURETY BOND IN REGARD TO PROJECT IMPORT REGULATIONS,  
 1986

-----  
 The President of India,  
 Through the Collector of Customs,

.....  
 Surety (Bond is executed under section 143 of Customs  
 Act, 1962) on.....day .....month.....year in consideration of the Collector  
 of Customs at the request of messes M/s..... having agreed to the Customs  
 Act, 1962, in respect of the goods to be Imported by Messes..... namely  
 machinery, plant, equipment accessories and spares under Project Imports  
 Regulation 1986, valued approximately main equipment RS. ....  
 (Rupees.....spares RS..... and raw material RS. ....FOB.) We  
 Messes..... (herein called the importer) and the .....(herein  
 called the surety) are bound to the President in the sum of RS. ....  
 (Rupees.....) to be paid to the President of India for which payment we  
 bind ourselves and our legal representative. The condition of the bond is that  
 Messes ..... and their legal representatives shall observe all the provisions  
 of section 18 (1) of the customs act, 1962 in respect of the goods for which  
 duty has been assessed. And if Messes ..... pay the difference between the  
 duty finally assessed under section 18(2) of the Customs Act and the duty  
 provisionally assessed under section 18(1) of the Customs Act,1962, this  
 obligation shall be void, other- wise and on breach or failure in the  
 performance of any part of this condition, the same shall be in full force.

We declare that the bond is given under the order of  
 the Central Government for the performance of an act in which the public are  
 interested. our liability under this guarantee is restricted to RS.....  
 (Rupees.....) only . Our Guarantee shall remain in force until .... unless  
 an action to enforce a claim under the guarantee is filed against us within  
 that date all your rights under the said guarantee shall be forfeited and we  
 shall be relieved and discharged of all liability there under.

Place & Date .....Seal Signature of Importer

Signature of the Banker.

Witness

Address .....Occupation.



- (1) .....  
 (2) .....

(CB of Ex. & Cus. F. No.21/36?65-Cus. Dated 18-12-65).

## PROVISIONAL ASSESSMENT :-

### 1. SCOPE

Section 18(1) of the Customs Act,1962 prescribes Provisional Assessment of duty in respect of any of the following classes of Imports and Exports :

(a) Where the proper officer is satisfied that an Importer or Exporter is unable to produce any document or furnish any information necessary for the assessment of duty on the imported goods or the export goods, as the case may be; or

(b) Where the proper officer deems it necessary to subject any imported goods or export goods to any chemical or other test for the purpose of assessment of duty thereon; or

(c) Where the Importer or the Exporter has produced all the necessary documents and furnished full information for the Assessment of duty but the proper officer deems it necessary to make further enquiry for Assessing the duty; The Proper Officer may direct that the duty leviable on such goods may, pending the production of such documents or furnishing of such information or completion of such test or enquiry, be assessed provisionally if the importer or the exporter, as the case may be, Furnishes such security as the proper officer deems fit for the payment of the deficiency, if any, between the duty finally assessed and the duty provisionally assessed. For the implementation of the statutory provisions, the regulations, framed by the Central Board of Revenue, contained in Notification no. Cus. 181 dated 13.7.1963, are reproduced in para 2 below for the guidance of the Assessing Officers.

### 2. The Customs (Provisional Duty Assessment) Regulations, 1963

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In exercise of the powers conferred by section 157 of the Customs Act, 1962(52 of 1962) read with section 18 of the said Act, the Central Board of Revenue makes the following regulations, namely;-

#### Short Title

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1. These regulations may be called the Customs

(Provisional duty assessment) Regulations, 1963.

2. Conditions for allowing provisional assessment where the proper officer, on account of any of the grounds specified in sub-section (1) of section 18 of the customs act, 1962(52 of 1962) is not able to make a final assessment of the duty on the imported goods or the export goods, as the case may be, he shall make an estimate of the duty that is most likely to be levied, hereinafter refer to as the provisional duty. If the importer or the exporter, as the case may be, executes a bond in an amount equal to the difference between the duty that may be finally assessed and the provisional duty and deposit with the proper officer such sum not exceeding twenty percent of the provisional duty, as the proper officer may direct, he proper officer may assess the duty on the goods provisionally at an amount equal to the provisional duty.

3. Terms of the bond(a) where provisional assessment is allowed pending the production of any document or furnishing of any information by the importer or the exporter, as the case may be, the terms of the bond shall be that such document shall be produced or information shall be furnished within one month or within such extended period as the proper officer may allow, and the person executing the bond shall pay the deficiency, if any, between the duty finally assessed and the duty provisionally assessed.

(b) where provisional assessment is allowed pending the completion of any test or equity, the terms of the bond shall be that the person executing bond shall pay the deficiency, if any, between the duty finally assessed and the duty provisionally assessed.

4. Surety or security of the bond the proper officer may require that the bond to be executed under these regulations may be with such surety, or security, or both, as he deems fit,

[M.F. (D.R.) Notification Cus. no. 181/63. dated 13.7.1963.]

3. General Instructions to Assessing Officers reg :  
provisional assessment

(i) The provision under clause (b) of section 18 (1) of the customs act, will enable importers to secure immediate delivery of their goods pending test subject to suitable bonds, as required under the pro- provisional assessment regulations, are executed.

(ii) The board has ruled that where at the time of the first assessment the customs authorities have reason to believe that the value declared is less than the value in terms of section 14(1)(a) of the customs act, i.e. the cases of loading of invoices, the proper course, to adopt in such cases would be to have recourse to provisional assessment under section 18(1)

(c) of the Act Board's letter F. No. 4/37/57/cus. vi  
dt.15.10.60]

(iii) Provisional Assessment should be resorted to only an mature consideration-provisional assessment should not be resorted to just because there is no packing specification or itemwise invoice. In the absence of packing specification, the importers should be required to prepare detailed list of contents of all the packages under customs supervision. Thereafter examination order should be given by the scrutinizing appraiser with degree of examination fixed at double the usual percentage. The degree of examination may be reduced to the usual scale at the discretion of the Assistant Collector of Customs for Appraisalment concerned provided the importers are of sound financial status and good detailed examination. At the same time the assessing officers should be careful that the packing specifications of itemwise invoices are not deliberately withheld by the parties. In the absence of itemwise invoice, ordinarily assessment is made at the highest rate. As in those cases, check over declared value may not be possible, provisional assessment may be resorted to in respect of value.

[CBR. 1R. No. F.55/60-Cus. IV dated 21.5.60/]

(iv) The discretion to take deposit not exceeding 20% of the amount of duty provisionally assessed under the Customs (Provisional duty assessment) regulation 1963 should be judiciously exercised. The Assistant Collectors concerned should, while exercising their discretion consider whether a lower percentage of provisional deposit can be taken and whether, if at all, any additional deposit will be necessary. Assessing officers should ensure that no undue hardship is caused to the importers by the operation of the aforesaid regulations.

(v) There has been a fundamental change as a result of the Provisional Assessment regulations issued under the Customs Act. Assessing officers are now required to make the best possible estimate of the duty and they should proceed to process the papers on this basis the order of the Assistant Collector should be taken if 20% addition is to be made.

(vi) The estimate for the purpose of provisional assessment should be done by the Assessing Officer in the Appraising department, normally the question of further deposit will not arise, but if any further deposit is called for, the same should be covered by a suitable bond, in an extreme case if any cash deposit is considered essential, the same should be accepted in the accounts department as 'duty' subject to adjustment after final assessment, the assessing officers should write necessary instructions on the bills of entry to this effect.

(vii) In cases where misdeclaration is suspected and the goods are available for examination, investigation must be completed and penal action if necessary taken. the provisional assessment procedure should not be resorted to and the goods should not be allowed clearance.

(viii) The intention of para 4 of the provisional assessment regulations is to permit the proper officer taking security as an alternative to or alongwith surety (not necessarily a bank's surety). The proper officer may in his discretion, dispense with either security or surety but not both. it is not, however, necessary to make surety/security obligatory in respect of Government departments (or even Governments undertakings) where the proper officer is satisfied that this can be dispensed with.

[Board's letter F.No.21/92/57-Cus. IV  
dated 13.9.1961]

(ix) The Board has ruled that any procedure relating to any clearance of consignments under contract system should now conform to the provisions contained in the provisional duty assessment regulations under section 18(1) customs act, in accordance with which the initial provisional assessment is to be made on the basis of the estimated value declared by the importers and a bond either individual or a general one covering a series of consignments with sufficient surety/security taken from the importers. besides, the rules provide taking of a deposit upto 20% of the duty provisionally assessed. In so far as the taking of deposit is concerned the proper officer has the discretion either to take it in full or in part or completely waive the the same.

(x) Determination of amount of bond for provisional Assessment bond - Provisions of the Customs (provisional assessment) Regulations 1963 lay down that the Importer or Exporter claiming provisional assessment is required to execute a bond for the difference between the duty that may be finally assessed and the provisional duty. The same regulations also provide that the proper officer may require that the bond to be executed under these regulations may be with such surety, or security or both as the proper officer deems fit.

It would thus be seen that insisting on surety or security for CIF. value is not justified. there may of course, be cases where calculation of exact difference between duty provisionally assessed and duty finally assessed may not be possible. But even in such cases invariably, it would, be possible to make some estimate of the same. The Ministry therefore, desires that surety and security for provisional assessment cases should be restricted to the difference of duty provisionally assessed and duty which may be finally assessed. The above instructions of the Ministry should be scrupulously followed.

Authority: Government of India, Ministry of Finance Deptt.  
of Revenue f.no. 511/7/77-cus. vi dated 9.1.78.

(xi) Release of goods against bond in cases where technical authorities are being consulted-the board desire that it may be ensured that whenever cases are referred for advice to technical authorities or chief controller of imports & exports for clarification of doubts, the option to clear the goods against bonds should be given to the importers. (CBEC.F. No. 8/34/70-cus vii dt.29.7.1970)

(xii) Assessment on broad basis when reasonably adequate data submitted-if the case of a particular importer was kept pending for a long time, and the assessment of his consignment in the mean time was consider to be provisional he would be in difficulties if at a later stage the assessments were revised upwards. It has been decided that provided the importers furnishes reasonably adequate data, assessments on broad basis should be made straightway and that it should not be considered as provisional. it might be necessary to review such cases in the light of information subsequently obtained. But in genuine cases, that would not mean reopening of of previous assessment. [m.f.(d.r.) f.no. 3/48/63-cus. iv dated 25.1.1964]

(xiii) Provisional Assessment to be resorted only when final assessment is not possible-as far as possible assessment should be finalised before clearances, but when doubt persists provisional assessment procedure should be adopted.

The emphasis in this recommendation is on arriving at a final decision on assessment quickly, provisional assessment procedure is to be adopted only when final decision even at high level cannot be taken quickly. The following should be the alternative and order of preferences among them.

(i) Arriving at a final assessment quickly if necessary by submission of case to senior officers.

(ii) Adopting the provisional assessment procedure but when trade prefers to pay the highest duty and claims refund later, assessing on the higher basis. (Customs study team implementation instruction no. 24 f25/13/68-cus (t.u) dated 18.3.68)

(xiv) Ordinarily final adjustment of provisional duty will be made within two months after payment. in cases of extreme necessity in good causes shown, extension should however he granted very sparingly and in no case should an extension be granted beyond three months without the approval of Assistant collector. This of course will not apply to project imports or machinery contract cases where final adjustment should be made within two months of last import of the contract.

4. Assessment under section 17 (4) customs act-  
scope of - switching over to section 18 of c.a.  
62-instruction regarding. ----- In the Appellate Judgment, in

the case of M/s Agarwal Trading Corporation versus Collector of Customs Calcutta, The Calcutta, High Court has held that once an Assessment is made under section 29a, Sea Customs Act (corresponding to section 17 (4) of the Customs act, 1962) It is not open to the Customs Authorities to invoke the provisions of section 29b (corresponding to section 18 notwithstanding the provisions of section 29a because in the opinion of the learned judges, the two sections, viz.29a and 29b are mutually exclusive. They have further held that assessment of the duty prior to examination under section 29a sea Customs Act become final subject only to the assessment being re-opened in consequence of an examination of the goods themselves or on receipt of further information or other material justifying revision of the assessment already made and that before the assessment can be re-opened and a re-assessment made the pre-condition has to be fulfilled that the statement made in the bill of entry relating to value is found untrue. The Board, in consultation with the Ministry of law, considers that in. case like this, the Custom house in the first instance ought not to have assessed the goods to duty under section 29a when the Custom house was not satisfied as to the genuineness of the declared value. section 29a was intended merely to legalize the second Appraisement system and both the practice in this regard and the wording of section 29a clearly indicate that instead of following the usual procedure of examining first and then Assessing the goods, the Customs Collector may permit the goods to be Assessed first, pending examination. this system should therefore, be followed only when the check of documents has been finalised and everything appears. prima facie, to be in order. the board further considers that having resorted to assessment under section 17 (4)(corresponding to section 29a of the sea customs act) it should not be necessary for the custom house to switch over to section 18 customs act, 62 (corespon- ding to section 29b of s.c. a. 1978) because the former section itself gives to the customs house the power to re-assess the goods not only as a result of something having been found on an examination of the goods but even if something comes to notice otherwise. The correct course in such cases. therefore, would be to re-assess the goods as provided for under section 29a (corresponding to section 17(4) of the customs act.1962). in the type of cases, which form the subject matter of the high court judgment it should, in future, be dealt with as pointed out in para 2 above. (Board's f.no. 4/18/60-cus vi, dated 27.3.1963)

#### 5. Provisional assessment cases falling under clause

##### (A) of section 18 (1) of the Customs Act : Procedure

----- Regarding -----

In cases where the importer desires to avail of the procedure for provisional assessment of duty, he shall file duly noted bill of entry together with an application addressed to the Assistant Collector for Appraisement in the pigeon hole for submission of the bills of entry in the Appraising department. The application must bear the usual court fee stamp. The clerk will punch the court fee stamped will as usual distribute the bills of

entry together with the importer's application to the appraiser of the group concerned. In the application the importer must indicate for the satisfaction of the Assistant Collector for Appraisal that good grounds exist for his requesting the facility and he must furnish in writing the general description of the goods to the best of his knowledge. The value and the quantity of the goods as estimated by him and the grounds on which the estimate is based. In support of the statement, the applicant importer must produce all available documents and other documents which may be relevant for Assessment purpose.

(ii) The Appraiser, on receipt of the bill of entry together with the Importer's application, will submit them to the Assistant Collector concerned for consideration whether party's request for provisional assessment can be acceded to.

(iii) Where it is possible that the value and quantity of the goods can be determined by a detailed examination of the goods, the Asstt. Collector will pass orders on the Original Bill of entry directing the Shed Appraiser to examine the package and to report valuation and quantity of the goods by physical examination of the consignment, in terms of section 46(1) of the act. On receipt of the report from the Shed staff if the Assistant Collector considers that final assessment of the consignment, in terms of section 46(1) of the act can straightway be made even though the importer has requested Provisional Assessment, he will reject the party's request for provisional assessment and will direct the Appraiser to classify the bill of entry and to assess the goods on the basis of value and quantity as determined by the shed staff. No. P/D. bond should be taken in such cases.

(iv) If however, on scrutiny of the documents presented by the importer the Assistant Collector is satisfied that the request for provisions assessment is genuine and the real value and quantity of the goods cannot be determined by detailed examination of the consignment or otherwise, than by a reference to the documents in the absence of which the importers have requested for provisional assessment, he will pass orders on the original bill of entry directing the importers to execute a bond in the prescribed form as contemplated in para 3 of provisional assessment regulations, 1963.

(v) On receipt of the bond from the Importer the same will be scrutinised by the Appraiser and if found in order it will be put up to Assistant Collector for acceptance.

After acceptance by the Assistant Collector, the Appraiser will forward the bond to the bond clerk of the particular Appraising group for registration and will obtain report from the Shed Appraiser as to the value and quantity estimated by him in respect of the consignments on actual detailed examination of the packages.

(vi) The bond clerk will remove the bond executed by the importer and accepted by the Assistant Collector together with the importer's application. The bond will be endorsed on each copy of the Bills of entry. The bond clerk will then submit the Bills of entry to the scrutinising Appraiser who will impress on each copy of the Bills of entry with Rubber stamp

'Provisional duty' and on the Original copy of the Bills of entry ask the Shed staff to examine and report value and quantity of the consignment for which provisional assessment is requested by the importers, by such examination of the goods as would facilitate provisional assessment.

(vii) The examining officer attached to the shed where the goods have been landed will examine the contents of the packages as per order of Scrutinising Appraiser and will compare the description and quantity declared by the party on the bills of entry with reference to the available documents, viz., indents, letter of acceptance, correspondence. etc. furnished by the importer. He will record the details of his examination on the reverse of the original bill of entry. The Shed Appraiser will carefully check the packages examined by the examining officer and will endorse, alter or supplement as the case may be, examining officer's report and will give best possible value of the goods estimated by him together with brief reasons for arriving at such estimated value. The Shed Appraiser may examine further number of packages in addition to the percentages specified by the scrutinising Appraiser in case it is needed for determining satisfactorily the estimated value and for other purposes.

(viii) On receipt of the bills of entry from the shed staff the Scrutinising Appraiser will put up the bills of entry to the Assistant Collector for orders on the report of the Shed Appraiser and value estimated by the latter. If in the opinion of the Assistant Collector, the value estimated by the Shed Appraiser is adequate, he will instruct the party to declare the description, quantity and value as revealed in the report of the Shed Appraiser, if this has not already been done by the party, and direct the party depending upon the circumstances of each case to deposit a sum equal to 120 per cent or the provisional duty i.e. provisional duty plus 20 per cent loading or call for a supplementary bond to cover the probable duty or may waive the deposit of the provisional duty entirely if suitable bond with surety have already been filed by the importer.

(ix) The Scrutinising Appraiser will then scrutinise the bills of entry thoroughly and shall see that the importer's declaration the bills of entry in respect of the consignment is in order to complete assessment. He will then complete Assessment after loading 20 per cent on the amount of provisional duty, wherever applicable, but not allow clearance. He will sign all copies of document presented by the importer while claiming provisional assessment. He will then write in the margin of the original bill of entry, bond clerk to note provisional Assessment register and the bill of entry to me.

(x) After entering the detailed particulars of the consignments in the provisional duty register which shall be maintained in the Appraising department in form 6 B.R.Cus. no. 321, the group bond clerk concerned will detach all the documents presented by the party and place them in the case file and re-submit the bills of entry to the Scrutinising Appraiser for further action after boldly indicating on all the copies of the bills of entry the provisional duty no. which will be the serial no. of the case in the P/D.



register.

(xi) The Scrutinising Appraiser will satisfy him self that the importation has been duly entered in the provisional duty register in the Appraising department and then impress each copy of the bills of entry with the rubber stamp as shown below :- 'Examined under provisional duty Assessment regulations. Examination & provisional assessment completed. accounts & Cash Department to take deposit of duty Subject to adjustment after final assessment.'

\* \* \* \* \*

He will then release the bills of entry to the party for presentation to the comptists for calculation of duty and in the accounts & cash departments respectively, for recalculation and payment of the duty deposit.

6. Provisional assessment cases falling under clause (b) of section 18 (1) of the Customs Act-Procedure Regarding.

(i) When the Assessment is dependent on chemical or other test to be carried out by the Customs Department and the importer makes a request in writing for Provisional Assessment, such request may be entertained. if the Assessment of such goods involves two or more alternative basis, the provisional assessment shall be made on the basis that the goods are liable to duty at the highest of the rates applicable. Representative samples shall, however, be drawn and sent for test. No bonds shall be taken in such cases.

(ii) If however, the importer desires that the provisional assessment be made on the basis of the declaration made by him, the Appraiser will advise the importer to execute bond for the purpose.

(iii) On submission of the required bond the same will be scrutinised by the Appraiser and if found in order will be put up to Assistant Collector for acceptance. After acceptance by the Assistant Collector, the Appraiser will forward the bond with the bills of entry as usual to the group bond clerk for registration both in the bond register as well as in the provisional duty register. After this registration is done and the serial No. both in the bond register and the P/D. Register is endorsed boldly on each copy of the Bill of Entry, the bond will be detached by the bond clerk and kept in safe custody and the bills of entry sent to Scrutinising Appraiser who will then obtain the representative sample drawn by the shed staff in the presence of the importer's representative for the purposes of test, and will also efface each copy of the bills of entry with the rubber stamp 'provisional duty'. He will endorse the Appraisement order on the original B/E and ask the Shed staff to draw representative samples and to send them direct to the Dy. Chief Chemist (DCC) or incharge laboratory, Custom House for chemical test in accordance with the usual procedure. In such cases the scrutinizing Appraiser, if necessary, will specify the number of packages to be opened for drawal of required sample. For his satisfaction the Shed Appraiser may also select the number of packages

to be opened for drawal of samples in addition to those specified by the scrutinizing Appraiser.

(iv) The Scrutinising Appraiser will prepare the test Memo form indicating therein the provisional duty registration number which will be available from the Bills of entry and attach it to the Bill of entry. The Test Memo alongwith the Bill of Entry will then be referred to the group test clerk who will assign a number to the Test memo and enter it in a register and also indicate the test memo number on the Bill of Entry (Original or duplicate as the case may be). The Scrutinising Appraiser will thereafter complete the provisional assessment on the basis of declaration made by the importer and suitably endorse all copies of the bill of entry with usual loading of 20% on the duty provisionally assessed, if decided in any particular case. The Test Memo alongwith the bill of entry will then be released to the party for presentation to the comptist for calculation of the duty and in the account and cash department respectively for recalculation and payment of the duty and drawing of the samples called for by the group.

7. Provisional Assessment cases falling under clause(c) Of section 18(1) of the Customs Act-Procedure regarding.

(i) Cases where the importer has submitted full information in regard to real value or quantity of the goods but such particulars are not considered adequate and further proof in respect thereof is required for purposes of assessment, the appraiser will advise the importer to execute the appropriate bonds as is required under para 2 of the provisional duty assessment regulations.

(ii) On compliance by the party, The Appraiser will put up the bond to Assistant Collector for acceptance and then forward the accepted bonds together with the bill of entry to the bond clerk of the group for registration as usual, in the bond register. After registration and endorsement of the registration number on each copy of the bill of entry, the group bond clerk will detach the bond and place it in the case file and will forthwith submit the bill of entry to the Scrutinising Appraiser for classification and Assessment.

(iii) The goods will be assessed on the declared value and quantity at the rates of duty applicable to such goods (plus 20% of the amount of duty so leviable in any particular case, if so ordered). after assessment the scrutinising appraiser will efface each copy of the bill of entry with the rubber stamp as under :-

'Bond Clerk to note Provisional Assessment in the provisional Assessment register and then return the Bill of entry to me'

After the case is registered in the P.D. register the P/D. Register`s.No. will be boldly endorsed on all copies of the Bill of entry and the Bill of entry sent to Scrutinising Appraiser who will then endorse each

copy of the Bill of Entry as follows :-

'Provisional assessment on the declared value and quantity completed'

"Accounts & Cash department to take deposit duty subject to adjustment after final assessment."

He will then give orders for Second Appraisal to the Shed staff on the Duplicate Bill of entry and release the Bill of Entry to the Importer for presentation to the comptroller for calculation of duty and accounts & cash department respectively, for re-calculation and payment of provisional duty deposit. After payment, original copy will be retained in the accounts department and duplicate released to party as usual.

(iv) On presentation of the Duplicate Bill of Entry to the Shed staff, the Shed Appraiser will thoroughly check the Bill of Entry and will satisfy himself that the importer has duly deposited the provisional duty as per directions of the Scrutinising Appraiser. After examination by the Shed Appraiser, if he is satisfied will impress the 'pass out of customs control' stamp on the back of the duplicate bill of entry and will record a direction just on the top of the stamp 'duplicate Bill of Entry to S/A after clearance of the consignment'.

#### ROUTING OF BILL OF ENTRY

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After receipt of the deposit of Provisional duty, the accounts department will forward the Original Bill of Entry to the Appraising Department through the Statistical Department and IAD. On receipt of the Original Bill of entry from the IAD, the Appraising department will retain the copy in the case file and keep it pending till the Duplicate bill of entry is received from the dock staff.

Note :- The above will apply to cases referred to in paragraphs 5 and 7 of this chapter.

(ii) Provisional Assessment Bills of Entry should be again sent for pre-audit after the final assessment and before any refund or recovery is made.

#### 9. Action regarding adjustment of provisional duty

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(i) On receipt of the duplicate bill of entry, the Appraising department will place it in the relative case file where the original bill of entry is already placed. In case either original or duplicate or both the copies of bills of entry have not been received in the appraising department, the group concerned will obtain the required bill of entry and place it in the case file. The DOS will then put up to the Appraiser, the relative

case file together with the Original and Duplicate copies of bills of entry and the documents if any received, from the parties for final assessment.

(ii) Where Provisional Assessment has been made pending chemical test, the test clerk will put up the Test Memo, containing the reports of chemical department along with the case file containing both the original and duplicate copies of bills of entry and other documents.

(iii) The Asstt. Collector will then mark the file to the concerned Scrutinising Appraiser asking him to report regarding finalisation of assessment.

(iv) The Scrutinising Appraiser will then scrutinise the case thoroughly and if he is satisfied, will finalise the assessment under orders of the Assistant Collector. He will indicate whether the final adjustment involves refund or extra duty and take action in terms of sub-section (2) of section 18 of the Customs Act. The Appraiser will then efface the copies of original and duplicate bills of entry with the rubber stamp.

"assessment finalised"

and return the case file to the DOS. of the group for further action. similar action will be taken in respect of cases mentioned in sub-para (ii) above.

(v) Where however, the required documents are not produced within the period specified in the bond or after the expiry of the period extended on party's request or where the further documents produced by the party are considered, not adequate for determination of value and quantity, the Scrutinising Appraiser on receipt of the case file from the bond clerk of his group will report the merits of the case to Assistant Collector concerned who will consider whether the terms of the bond are to be enforced in any particular case.

#### 10. Request for extension of time for production of Documents -----

If the importer applies for extension of time specified in the bonds executed by him such extension may be granted under orders of Assistant Collector, subject to fulfilment of any condition that may be specified in this regard.

#### 11. Maintenance of lists of cases where the importers fail to produce documents -----

A list of all cases where the importers fail to produce the required documents, information or proof for finalisation of assessment shall be maintained in each group to ensure that this facilities of clearing goods on payment of provisional duty are not abused by the importers. the list should be submitted to Asstt. collector each month for information and action, if any.

12. Shortlanding against consignments passed under provisional duty adjustment of : -----

In cases where goods are shortlanded, entire quantity of the goods as originally declared in the provisional duty bill of entry is to be finally assessed without making any deduction for the short landed goods. Duty should be adjusted on the entire consignment and refund on the shortlanded goods subsequently granted in the course on fulfilment of the conditions for such refunds.

13. Stamp duty on bonds -----

Bonds executed inconnection with provisional assessment of duty or any other bond, either provided for in the Customs Act. or otherwise, should be considered as customs bonds and taxed with the proper stamp duty.

14. Provisional duty register-maintenance of -----

(i) The provisional duty register (CBR Cus. No. 321) maintained in the Appraising department has no connection with any accounts department form.

(ii) Column 1 to 2 are to be filled in as soon as the Assistant Collector has passed orders on the provisional assessment papers, which should be docketed and reference numbered.

(iii) After the importer has paid provisional duty the signed bond will be given the serial number of the entry in this register.

(iv) The register will be submitted to the Assistant Collector, Appraising department, on each occasion when Assessment is to be made final or an extension of time granted. It will also be submitted at the beginning of each month for inspection to see that it is correctly and punctually entered in, and extensions of time are granted by proper authority, that no undue delay has taken place in final adjustment, and in order that he may investigate cases in which the final duty is more than provisional duty and see whether the original under- valuation was avoidable.

(v) It will be sent once a month to the Internal Audit Department, which will draw the attention of the Assistant Collector Appraising department to any case requiring further investigations.

(vi) A copy of these rules and regulations shall be pasted on the fly leaf of the register.

15. Continuing bonds under provisional duty assessment regulation procedure regarding. -----

It has been decided to accept general bonds under the customs provisional duty assessment regulations, 1963 to cover a series of importation's made during one calendar year.

The following procedure should be observed when a firm executes a general bond \*-

(1) Where it is decided to extend this facility, a continuing bond on a stamped paper of the applicable value (i.e.) value determined by the scale or stamp duties) will be accepted by the assistant collector in charge of the group concerned.

(2) Such a continuing bond will be valid for the calendar year in which it is executed.

(3) Every such bond will be covered by a surety of a schedule bank.

(4) The surety amount will be settled by the importer in consultation with the custom house on the basis of the probable amount of duty realizable in one year as indicated by the volume of importation's made by him during the previous one year.

(5) For the sake of expeditious disposal, separate general bonds will be required to be executed for each Appraising group. If any importer is unwilling to adopt the above arrangements, the group where the general bond is first tendered will register the bond and will handle further clearances effected through other group under cover of the same general bond.

(6) Each such bond will be entered on a separate page in the register for provisional assessment. subsequent clearances will be recorded under the same entry and these will show the particulars of the vessel's name, rotation no. line no. description, quantity and value of goods and amount of surety and bonder's liability. each entry will be countersigned by the group Asstt. Collector after verifying accuracy and no clearance will be allowed till this has been done. Each bill of entry will be put up to the Assistant Collector seeking orders for provisional assessment and for fixing the amount of surety and bonder's liability. balance of amount available As surety will be struck after each entry. The liability of the bank will be for the validity period of the bond plus at least one year. The registration no. of the bond will be intimated to the importers who would quote this no. on each bill of entry covered by such bond. Individual clearances will be covered by specific letter of request for allowing clearance against the general bond.

(7) The Group Assistant Collector will be responsible for watching the progress of each case (i.e. finalisation of assessment of each case). He will also see that the surety amount as shown on the general bond is not exceeded.

(8) The Group concerned will see that in each case

assessment has been confirmed on the basis of documents submitted by the party as the proof of value or otherwise. If the continuing bond relates to other groups, the group Appraiser handling the bill of entry will have it noted from the group where the general bond was first registered.

(9) On finalisation of Assessment the group concerned will take necessary action to recredit the amount of each bond.

(10) Continuing bonds will be cancelled only after accounting for all the clearance covered by it and after adjustment of duty and final confirmation of assessment of all the cases.

16. Bonds and guarantees-need for indicating in the bond/guarantee the purpose for which documents are required to be produced.

Bonds/guarantees are often executed by importers/exporters for production of specified documents within the specified time. the board desires that it should invariably be indicated in the body of such bonds/guarantee as to,for what purpose or requirement and under which rules/regulation such documents are required to be produced. Such bonds/guarantees should also impose a monetary binding on the executors thereof. (F.no. 47713/74-Cus. VII. Government of India Central Board of Excise & Customs, New Delhi, the 17th July 1974)

17. Reassessment of duty on the basis of test result when necessary and when optional

----- The Ministry of law,  
who were consulted in the matter, have stated that re-assessment of export duty on the basis of the test results obtained in the customs laboratory would be optional provided the assessment at the time of export was made under section 29-a of the sea customs act, 62) Re-assessment on the basis of the test results obtained from the customs laboratory would be compulsory. Whether or not assessment was made initially under section) 29-a [section 17(4) customs act,] or section 29-b (section 18 customs act 62) is a question of fact which the customs house will be able to determine from the records, especially the wording of the guarantee taken prior to export and the procedure adopted in collecting and adjusting the export duty. in case of doubt about this, the local solicitor to the central government may be consulted placing before him all the relevant facts. The Exporters cannot claim a copy of the test memo as a matter of course. The test memo is a custom documents with which the exporter is not connected unless he is asked to pay extra duty or any penal action is taken against him on the basis of the test memo. M.F.(d.r.) f.no.1/8/58/cus. vi, dated 8-4-1958.

18. Non-negotiable documents when not readily available recourse to provisional assessment,can be made.

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19. Provisional Assessment-issue of Less charge demands before finalisation of provisional assessment.

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Whenever goods are assessed provisionally, it should be ensured that the goods are not allowed to pass into home consumption without payment of proper duty. If any erroneous assessment comes to light before the bill of entry is finally assessed, it should be ensured that the short levy is recovered promptly without waiting for the finalisation of bill of entry. In this connection a question arises whether a demand letter can be issued before a provisional duty bill of entry is finalised. It is true that a demand can be issued under section 28 customs act, '62 only after finalization of provisional duty. But it is important to determine what is provisional in the collection of duty in the first instance.

What is provisional at the time of clearance is clearly understood both by the importer and the departments. If a provisional assessment is made pending examination of relation ship between the suppliers and the importers and the provisional duty collected is erroneous due to incorrect application of rates of duty, there is no bar to the issue of a demand letter and collection of the amount short levied even before the provisional duty bill of entry is finally assessed.

19a. Expeditious finalisation of provisional assessment cases-fixation of time-limit

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In this regard the board have observed that it should be practicable to finalise most of the ordinary types of cases in which provisional assessment is resorted to within one year of the date of provisional assessment. In respect of machinery contract cases where imports take place over long periods, sometimes extending over a number of years and where action to finalise the cases can be taken only after all the imports under the contract have been made, every effort should be made to finalise the cases within 1 year of the date of import of the last consignment covered by the contract. (CBEC .F..no. 512/5/72-cus. vi dated 23.4.1973.

20. Opinion of the Law Ministry as to Whether Assessment at concessional rate under notification no.179 Customs dated 4.9.80 would be regarded as a case of Provisional assessment.

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The advice of the Ministry of law dated 5.1.1977 on the above subject conveyed by the board (vide letter f.no. 355/91/74-cus-i dated 28.1.1977) is reproduced below for information and guidance of all concerned. ministry of law, justice & C.A. (department of legal affairs advice).

I have carefully considered the matter,section 18 of the Customs Act, 1962 inter alia provides for provisional assessment of duty. The Proper Officer can make provisional assessment of duty only if he is



satisfied that any of the conditions laid down in clause (a) to (c) of sub-section (i) thereof is fulfilled. The question then is whether the proper officer can make a provisional assessment when the goods are cleared on payment of duty under notification no. 179 dated the 4th September, 1980, as amended from time to time.

2. Under the said notification, component parts of any machinery when imported into India for the purpose of initial setting up of that machinery or for its assembly or manufacture are exempt from payment of customs duty leviable under the act, as is in excess of the rate applicable under the tariff act, provided they produce a certificate from certain authorities mentioned in the notification recommending grant of exemption, and also if the importer executes a bond binding himself to pay, on demand, in respect of such component parts as are not proved to the satisfaction of the Customs Collector to have been used for the aforesaid purpose, the difference of duty which would have been leviable but for the exemption contained in the said notification.

3. It seems to me that under the said notification when goods are cleared, the importer only binds himself to pay the difference in duty in case it is found by the customs collector that the component parts had been used for a purpose other than the purpose of the import. in other words, once the collector of customs is satisfied that the goods had not been used for the purpose for which they are imported, he takes steps to enforce the bond and not to raise a demand under the act.

4. In view of the foregoing, it is not a case of provisional assessment when the goods are cleared under the notification. [f.no. 353/91/74-cus. dt.28.1.77]

## SALIENT FEATURES OF CUSTOMS ACT 1975.

Section 12 of the Customs Act 1962 relates to the levy of duties of Customs on goods imported in or exported from India. This section provides that duties of customs shall be levied at such rates as may be specified in the customs tariff act 1975, or any other law for the time being in force. Thus this section serves as the charging section for the purpose of levying of customs duties on imports and exports. the customs tariff act 1975, which came into force on 2.8.76 contains 13 sections, and 2 schedules.

### SECTION 2 :

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Section 2 of the Customs Tariff act provides that the rate at which duties of Customs shall be levied under the Customs act are specified in the first and second schedule It may be noted that this section refers to levy under the Customs acts. as already stated above the charging

section for the actual levy of customs duty is only under the Customs act and it is only the rates of duty that we have to refer to the first and second schedules which are referred to in this section 2.

#### First schedule to customs tariff act.

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The first schedule to the customs tariff act contain the rates of duties leviable on goods imported into India. it is generally known as the import tariff. the import tariff begins with the rules for the interpretation of the first schedule. there are six such rules according to these rules any imported article is considered to be covered by one or other items of the tariff. there is also a general explanatory note, to these rules which explains that the abbreviation "x" used in the schedule denotes the duty leviable is a percentage of the value of the goods as defined in section 14 of the customs act 1962. the first schedule itself contains 21 sections; each section is divided into one or more chapter. on the whole there are 99 chapters in the first schedule.

#### Second schedule to customs tariff act:

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The second schedule to the customs tariff act is the export tariff. at present it contains only 26 headings, in other words, while all imported articles have to be classified under one or the other of the headings of first schedule, only such of the articles which are specified in the second schedule, attract export duty and those articles which do not find mention or coverage by the second schedule are not to pay export duty at all.

#### Additional customs duty.

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Section 3(1) of the customs tariff act authorities levy of an additional duty on imported goods; this levy is in addition to the import duty leviable at the rates specified in the first schedule. The duty specified in the first schedule by section 2 is generally known as 'basic customs duty' and the duty under section 3(1) is known as additional customs duty, as this duty is equivalent to the duty already provided under section 2 of the act. The quantum of this additional duty is equivalent to the excise duty for the time being leviable on a like article. This additional duty to be charged on an imported article should be equal to the excise duty which is leviable on a like article if produced or manufactured in India. It is not necessary that the like goods of the imported article should actually be manufactured or produced in our country. If such an article is not being actually produced in this country, the rate of additional duty on the imported article will be the rate of excise duty on the class or description of articles to which the imported articles belongs. In other words, actual manufacture or production in India is not a condition to be satisfied for the levy of the additional duty on an imported article. this has been clarified by the explanation to sec.3(1), custom tariff act. this

explanation also clarifies that when an articles produced in India attracts excise duty at different rates, the additional duty on the imported articles should be equal to the highest of such rates of excise duty. When a commodity is produced or manufactured in India and the Central Excise duty is leviable on it as specified in the central excise tariff read with any exemption notification that may have been issued by the Government. it is possible that the effective rate of excise duty leviable on an indigenous product depends on several conditions. such as capital outlay of the manufacturer, number of worker in the factory, output of the factory, use or non-use of electricity, ultimate use of the product, or materials used in its manufacture. In such an event the rate at which additional duties to be collected on a like imported articles depends on the effective rate, of excise duty leviable on the indigenous article. In other words, if an articles is partially subjected to a certain condition, such conditional exemption is not relevant for determining the rate of additional duty on the imported articles. The expression used in section 3(1) is 'excise duty' and not 'central excise duty'; hence in determining the additional duty on an imported article, we should take into account not only the central excise duty in the central excise tariff which is the first schedule to the central excise and salt act, 1944 but also various other excise duties under various other enactment's; for example,

1. The Additional Duties of Excise (Goods of special importance) act, 1957.
2. The Mineral product (additional duties of excise and customs) act, 1958.
3. The Additional Excise duty (textiles and textiles articles) act, 1978.
4. The Industries (Development and Regulations) act, 1951
5. The Produce cess act, 1966.
6. The Tea act, 1953, The Coffee Act, 1942

The Annual Finance Act has imposed a Special Excise duty as a percentage of the basic excise duty leviable under the first schedule to the central excises and salt act 1944. This should also be taken into account while determining the rate of additional duty leviable on imported articles. The above mentioned enactment govern the excise duty leviable on goods by the central government under sl.no.84 of the union list in the 7th schedule of the constitution of India. The union has no jurisdiction to levy excise duty on alcoholic liquors for human consumption. opium and narcotics which are within the competence of the state legislatures by virtue of entry no.54 in the state list in the constitution hence, when such article are imported, additional duty under section 3(1) customs tariff act has to be collected by the customs officer at the highest of the various rates of state excise duties levied by different states on like articles. the task for the assessing officer to ascertain at the time of import the rates of excise duty prevalent in the various states and union territory is obviated by an exemption notification under section 25 of the customs Act, 1962, (now c.n.75 dt 19.2.86) in the case of alcoholic liquors for

human consumption, such as brandy, whisky, gin, rum, beer, wines, etc. Fixing in effect the ceiling rate at which additional duty is to be collected on such liquors. when goods not covered by such an exemption notification is imported, then assess the goods provisionally at the highest available effective rate of state excise duty on like article. The matter has to be referred to the Central Board of Excise and Customs to ascertain the actual rate at which additional duty is to be collected before finalization of the provisional assessment. Section 14 of the customs act 1962, contains the definition of value for collection of import and export duties. However, this definition is not applicable to the collection of additional duty mentioned in section 3(1). customs tariff act. section 3(2), of customs tariff act stipulates that the value for purpose of calculating the additional duty on an import article should be the aggregate of the value of the imported article as defined in section 14; Customs act, and any import duty thereon (except the additional duty under section 3(1). Section 3(3), Customs tariff act, empowers the Central Government to levy another additional duty equal to the excise duty leviable on any raw material, components and ingredient with reference to which the additional duty under section 3(3) is to be collected on the imported article. Such notifications have been issued in the case of the following three articles only so far :-

1. Fabrics containing more than 10% by weight of synthetic fibre or yarn.
2. Stainless steel manufactures for house hold use.
3. Transformer oil.

The effect of these notifications is as follows:-

When a fabric containing more than 10% synthetic fibre or yarn (known as man-made fabrics) is imported it will be normally subjected to basic customs duty under chapter 54 or 55 of the customs tariff, an auxiliary duty of customs with reference to the finance act read with relevant exemption notifications, the additional duty under section 3(1) customs tariffs act with reference to chapter 54 or 55 of the central excise tariff, as well as various excise duties leviable on such fabrics if produced in India under the Additional duty of Excise (goods of special importance) act, 1957, the khadi and other handloom industries development (additional excise duty) act, 1953, the additional excise duty (textiles and textile articles) act, 1978, and the special excise duty under the finance act, 1981. In addition to all these duties, the notifications issued under section 3(3) of the customs tariff act require the customs officer to collect a further additional duty equal to the excise duties leviable on indigenous synthetic fibre and yarn, on the synthetic fibre and yarn contents of the imported fabrics. in other words, as indigenous synthetic fibre and yarn are normally liable to excise duties under chapter 54

or 55 of the central excise tariff, as well as excise duties under the additional excise duty (textiles and textile articles) act 1978, and special excise duty under the finance act, the imported fabric should also be subjected to additional duty under section 3(3) equal to the aggregate of various excise duties mentioned above. The government has clarified in this connection that when synthetic fibre is converted into synthetic yarn and when a fabric is woven out of such synthetic yarn, such imported fabric would be liable to additional duty under section 3(3) with reference only to its synthetic yarn content and not to the synthetic fibre content of the synthetic yarn. Imported transformer oil is normally liable to basic Customs duty under chapter 27 of the customs tariff, an auxiliary duty of customs under the finance act and a duty equal to excise duty leviable on such transformer oil with reference to chapter 27 central excise tariff (depending on test results) together with excise duties leviable on transformer oil under the mineral products (additional duties of excise and customs) act, 1958. In addition to all these duties the customs officers have to collect on the imported transformer oil another additional duty under section 3(3) customs tariff act. equal to the excise duty leviable in India on its contents of transformer oil base stock (tobs) or transformer oil feed stock (tofs). Such tobs or tofs will attract excise duty under chapter 27 central excise tariff depending on test results. It will be difficult for the Assessing Officer to decide at the time of import the quantum and nature of raw material used in the imported transformer oil. Hence, the Ministry has itself fixed the rate of additional duty leviable with reference to section 3(3) on imported transformer oil. Section 3(4) enables the Central Government to adopt the average quantum of excise duty payable on raw materials components or ingredients in levying the additional duty under section 3(3). Section 3(5) indicates that the additional duties chargeable under section 3(1) and under section 3(3) are in addition to the basic customs duty imposed under the first schedule to the customs tariff act and the import duties levied under any other law for the time being in force. such as the auxiliary duty of customs currently leviable under the finance act. Section 3(6) mentions that the provisions of the Customs act, relevant rules and regulations, and provision regarding drawbacks, refunds and exemptions are also applicable to the additional duties leviable under section 3(1) and 3(3) customs tariff act. Section 4, Customs tariff act, relates to the levy of duties at preferential rates on certain articles imported from certain countries. Section 4(1) Customs tariff act, requires that whenever a preferential rate of duty is shown in the first schedule the importer must claim assessment at the preferential rate of duty at the time of importation. if no such claim is made at the time of importation, the consignment will not be eligible for assessment at the preferential rate of duty. Section 4(2) gives the Central Government powers to issue a notification framing the rules governing the determination of any imported article, if it is the produce or manufacture of any preferential area. it may be seen that the government of India has framed the customs tariff (determination of origin of the preferential areas) rules 1977, under notification no. 99- customs date 1.7.77. Under section 4(3) the Central Government can declare any country or territory

as a preferential area so that imports from such countries and territories may be eligible for preferential assessment if the rules for determination of their origin mentioned above are satisfied. notification 101 dated 1.4.1982 contains the countries and territories which are preferential areas for purpose of section 4 of the customs tariff act, namely, Mauritius, seychelles,toga..

Section 4(4) gives the Central Government the power to increase the rates of preferential duty by issuing the necessary notification in the gazette; but the preferential rate of duty cannot be increased to exceed the standard rate of duty specified in column (3) of the first schedule.

Section 4(5) requires that all notifications issued under section 4 be laid before the parliament.

#### SECTION 5:

Exemptions arising from agreement with country or territories and based on country of origin :

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The Government of India often enter into trade agreements with the countries. the trade agreements some- times provide for a lower rate of duty than the standard rate normally applicable, in the case of certain imports from certain countries; to give effect to the ' special tariff concession' envisaged in such agreements the government has the power under section 5(1) of the customs tariff act to issue notifications regarding rules or origin etc. For example, the Government of India has entered into tripartite agreement with the United Arab Republic (EGYPT) and Yugoslavia; the partial exemptions from duty on articles covered by this agreement are indicated in customs notification no. 341 dated 2.8.76. Similarly in the case of the Bangkok Agreement to which our country is also a signatory, duty exemption is contained in customs notification no. 431 dated 1.11.76. as regard the Rules or origin, customs notification no. 353 dt.2.8.76 issued under section 5(1), customs tariff act, contains the Customs tariff (determination of origin of the united Arab Republic and Yugoslavia) rules, 1976. the customs notification no. 430 dt.1.1.1976 contains the customs tariff (determination of origin of goods under the Bangkok agreement) rules, 1976. As in the case of imports from preferential areas (section 4 refers)importers desirous of availing of lower rate of duty on imports covered by such notification should produce a certificate of origin from the supplier in the foreign country in support of their claim that the goods conform to these rules. However, unlike Section 4, Section 5 requires that the evidence in support of the claim for the concessional assessment should also be produced at the time of importation itself. Section 6 and 7 of the Customs tariff act relate to levy of protective duties on imported goods for certain duration. According to these provisions the Government has the power to increase the standard rate of duty by a notification on the basis of the recommendation of the tariff commission in order to protect the interest of any Indian

industry.

Under the provisions of section 8 of customs tariff act Export duty of an item can be increased beyond the existing rate by issue of a notification. this section has also the provision to bring a new item into the second schedule

Under Section 8a of the CAT, tariff rates of import duties of items can be increased by issue of a notification in the official gazette. The Government of India may declare under section 9b by notification that the import of an article causes or threatens material injury to, or retards establishment of, any industry. this is because it is possible that a foreign country tries to export by offering bounties or subsidies to exporter; which may result in the Indian market being flooded with such goods thus adversely affecting indigenous industry in spite of the various duties leviable on such imports. under this section CAT bounty fed articles can be subjected to additional import duty. section 9a of CAT empowers the Central Government to impose Anti-dumping duty. However, no such duties have so far been introduced by the Government of India.(Refer Rules made in this regard i.e. Anti-dumping Rules)

Section 10 of the Customs tariff act requires that all rules made under the Customs tariff act should be placed before parliament within stipulated time limits.

Section 11 relates to the issue of notification implementing trade agreements during the period of transition from the repealed India tariff act, 1934 and the current customs tariff act, 1975.

Section 12 repeals the India tariff act of 1934 and the Indian tariff (amendment) act, 1949. In the Customs Act of 1962 there were reference to the Indian tariff act of 1934 in section 12 and 14;these reference have been amended to denote the customs tariff act, 1975, with effect from 2.8.76 by section 13 of this act.

## INTERPRETATIVE RULES TO THE IMPORT TARIFF - AN ANALYSIS

The Customs tariff based on the harmonized system provides a comprehensive classification system, capable of being applied objectively to secure uniformity in classification.

The interpretative rules form a legal and integral part of the customs tariff and as such they must be applied appropriately while classifying the item of goods and these rules are not to be over looked or omitted from consideration. there are six rules for

The interpretation of the import tariff. first part of this rule :-

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Rule 1 : This rule could be understood in two parts or could be taken as comprising two parts, begins by establishing that section, chapter and sub-chapter titles have no legal bearing on classification of goods and the titles are furnished for case of reference only.

Second part of Rule 1 postulates :-  
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(a) That classification shall be determined according to the terms of headings and according to the relative section and chapter notes; and

(b) That goods shall be classified according to the section notes and chapter notes provided, the above notes do not otherwise require. taking the first postulation for consideration, it is stated that, the section notes and chapter notes define the precise scope and limits of each heading and sub heading.

According to the second postulation, "if the section and chapter notes do not otherwise require" it is stated that the exclusions made in the section/chapter notes are to be borne in mind while classifying the goods.

Rule 2:- This rule, consists of two parts 2(a) and 2(b). this rule 2(a) has the effect of broadening the scope of various headings beyond the terms of their texts.

Under rule 2(a) classification in a heading is provided even if that article is incomplete, unfinished or presented in unassembled or disassembled condition. Two situations are embodied under this rule 2(a).

Situation (i) - Article presented (imported) in an incomplete/unfinished form, is to be classified under the heading provided for completed and finished article, subject to the important pre-requisite condition that the goods must have acquired the essential character of the finished or complete article.

Example :-  
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(a) Motor vehicle imported without wheels or engine;  
(b) Bicycle in frame without saddle or tyres;  
(c) Blanks having the approximate shape or outline of the finished article or part, not ready for direct use but can be used only on completion of certain processes which would make them as finished articles.

Situation (ii):-  
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Articles presented (imported)in unassembled/disassembled condition are to be classified in the same heading as assembled article. the unassembled or disassembled parts ( supplied in skd or ckd for the purpose of



convenience towards packing and transport) should have the essential character of the complete or finished article.

For the purpose of this rule, "articles presented, assembled or disassembled means, articles whose components are to be assembled by means of fixing devices such as screws, nuts and bolts or by reventing welding involving only simple assembly operations.

In both the situations as detailed above, classification of unfinished or semi-finished articles which have the essential character of the finished article and unassembled and disassembled parts which have the essential character of the finished article can be classified as finished article. Only if the section and chapter notes do not otherwise require either by specific coverage or by notes of exclusion.

Heading 87.06 covers specifically " chassis fitted with engines for motor vehicles of headings 8701 to 8705" in view of the term "fitted with engines" appearing in this headings. the scope of this heading, cannot be extended and rule 2(a) cannot be invoked. Heading 9108 - explicitly refers to watch movements complete and assembly therefore unassembled or UN-finished watch movements cannot be classified under this heading.

Rule 2(b) covers classification of "mixtures or combinations of materials or substances and goods consisting of two or more materials or substances. Under this rule, headings in which there is a reference to the material or substance also cover that materials or substance mixed or combined with other materials or substances.

Example: (a) milk to which vitamins or minerals added remains classified as milk.

(b) articles of natural cork covered with paraffin.

While applying rule 2(b) it is to be noted that invocation of this rule would not arise if there exists, a specific provision in the section,& chapter notes.

Example: (a) chapter 9 - coffee, tea, malt and spices. the manner of classification of goods falling under heading 0904 to 0910 have been specifically provided in legal note 1 of chapter 9.

(b) 1503 covers specifically hard stearin. lard oil, oleo stearin, oleo oil simplicitor and not mixed or otherwise prepared. Therefore, before applying interpretative rule

2(b) it is any essential pre-requisite to check that the headings, the section and chapter notes concerned do not incorporate specific

provision with regard to mixtures and combinations.

Whenever there is no specific provision in the heading, section and chapter note requiring the classification to be done otherwise and specifically, only rule 2(b) can be resorted to. Unlike in 2(a), this rule cannot be invoked generally to broaden the scope of the heading. It follows therefore that goods consisting of two or more materials or substances which might in principle become classifiable in two or more headings, then the same must be classified in accordance with the provisions of rule 3.

#### Rule 3 -----

This rule provides three methods of classifying the goods. These methods operate in the order of (a) (b) (c) as set out in the rule. The manner of resorting to the provisions of 3(a) and 3(b) and 3(c) should be made in sequential order by ruling out one, before considering the other - by the process of elimination made sequentially. The first method of classification is set out in rule 3(a) which provides that the heading covering specific description of the goods concerned is to be preferred to the headings which provide a more general description. Example : Steel forks are classified under heading 82.15 and not under heading 73.23 - "table kitchen and other household articles"

Rule 3(b): The second method of classification under rule 3 relates only to consisting of different materials (3) composite goods consisting of different components (4) goods put up in sets for retail sale. In all these cases, the goods are to be classified as if they consisted of the material or components which gives them their essential character. The factor which determines essential character will vary as between different kinds of goods. It may, for example, be determined by the nature of the material or components, its bulk, quantity, weight or value, or the role of constituent material in relation to the use made of the goods.

Rule 3(b) also applies to goods put up in sets for retail sale, to be regarded as goods put up in sets, goods must fulfill all of the following conditions. They must consist of products or articles having independent or complimentary uses, presented together for meeting a need for carrying out a specific activity.

#### Rule 3(c) -----

When goods cannot be classified with reference to rule 3(a) or 3(b) they are to be classified in the heading which occurs last in numerical order. Rule 4 relates to goods which cannot be classified in accordance with rules 1 to 3. Classification under rule 4 involves comparing the presented goods with similar products with a view to identifying those goods to which they are more akin. The presented goods are then classified in the same heading as the latter.

#### Rule 5 -----

The first of these (Rule 5) applies like Rules 1 to 4

to the four digit level of the system. It reads as follows:

In addition to the foregoing provisions, the following rules shall apply in respect of the goods referred to therein; camera cases, musical instrument cases, gun cases, drawing instrument cases, necklace cases and similar containers, specially shaped or fitted to contain a specific article or set of articles, suitable for long term use and presented with such articles when of a kind normally sold therewith. the rule does not, however, apply to containers which give the whole its essential character; subject to the provisions of rule 5(a) above , packing materials and packing containers presented with the goods therein shall be classified with the goods if they are of a kind normally used for packing such goods. however, this provision does not apply when such packing materials or packing containers are clearly suitable for repetitive use".

rule 5(b)

This rule governs the classification of packing materials and packing containers of a kind normally used for packing the goods to which they relate. however , this provision does not apply when such packing materials or packing containers are clearly suitable for repetitive use, for example, certain metal drums or containers of iron or steel for compressed or liquefied gas.

As this rule is subject to rule 5(a), the classification of cases, boxes and similar containers of the kind mentioned in rule 5(a) are to be determined by application of that rule.

Rule 6 -----

In this rule it is clearly stated that the classification of any product to its appropriate sub-heading in the harmonized systems may only be contemplated after the product concerned has already been properly classified to its appropriate 4-digit heading. the temptation to classify directly to what might appear to be the correct sub-heading, without first ensuring that the relevant 4-digit heading is correct, must be avoided at all costs; otherwise, incorrect classification will quite likely occur. Rule 6 provides that classification in the sub-headings of a heading must be determined, mutatis mutandis, in accordance with the principles applicable to classification in the 4-digit headings; consequently, the terms of sub-headings and sub-headings notes take precedence. the rule also specifies that, for classification purposes, only sub-headings at the same level are comparable; this means that, within the context of a single heading, the choice of 1-dash sub-heading may be made only on the basis of the texts of the 1-dash sub-headings; Similarly, where a 2-dash sub-headings; then has to be selected, this may be done only with reference to the texts of the sub-divisions within the applicable 1-dash sub-heading.

Finally, the last sentence of Rule 6 stipulates that the section and chapter notes also apply, unless the context otherwise requires. This means that, where they apply, the section and chapter notes, whether they

establish precedence, determine the classification of mixtures, etc. or contain definitions, also govern the choice of sub-headings. for example, in selecting a 1-dash sub-heading for goods, falling in heading 75.05 ( nickel bars, rods, profiles and wire) account must be taken of the definitions set out in note 1 to chapter 75 in which the expressions bars, rods, profiles and wires have been defined.

\* short levies:-

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1. Procedure to realise short-levy or non-levy demand under section 28 of customs act, 1962:-

When it is discovered that any duty has not been levied, or has been short-levied, or erroneously refunded, sub section (i) of sec. 28 of the customs act 1962 prescribes that a notice should be served on the importers or the persons chargeable with the duty asking them to show cause why the amount due should not be paid. ordinarily a period of 15 days should be allowed in the notice as at present. such notice should be issued within six (6) months or one year as the case may be from the "relevant date" as defined under sub- section (3) of section 28 of the customs act, 1962 a proforma of the notice is enclosed. (annexure `a').

(2) IT should be borne in mind that under the provision to sub-section (i) of section 28 that where any duty has not been levied. short-levied or erroneously refunded by reason of collusion or any willful mis-statement or suppression of facts by the importer or the agent or employee of the importer, the notice of demand may be made within five (5) years from the relevant date.

(3) After considering the representation if any made and after hearing the party a formal order (Annexure `b') should be communicated to them by the A.C."determining" the amount of duty and asking them to pay it within a further period of 15 days. The order should indicate the appellate course open to the party if they are aggrieved by the Assistant Collector's decisions.

Annexure `A'

No..... By regd.post a/d.

From:

The Assistant Collector of Customs in charge of  
group/department

To:

..... Custom house

..... Dated the

Sir/gentlemen.

Subject :-.....cases/packages ex.  
 S.S.....B/E No.....  
 Dated.....IGM No.....  
 Dated.....parcel/packet no.....  
 Dated.....contents.....

Senders.....

Whereas it appears that customs duty amounting to RS.....(Rupees.....) which was not levied/short levied/erroneously refunded in respect of the above consignment is due from you as indicated below :- As provided for under section 28 (1) of the customs act. 1962, you are hereby directed to show cause to the undersigned/Asstt. Collector of Customs, Group/Department why you should not pay the amount which was not levied/short levied/erroneously refunded as specified above within 15 days from the date of this notice. Any representation against this notice with necessary documentary evidence in support of the correctness of your stand should be made within the above said period. you are also requested to state if you would like to be heard in person. if no reply is received within the period as aforesaid or if you fail to turn up on the date when the case may be posted for hearing, orders will be passed on the basis of evidence on record without further reference to you.

Assistant Collector of Customs.

Copy forwarded to :-

M/s.

(Clearing agents) for information and necessary action. The original notice has been served on the importer without prejudice to the liability of M/s.....who are deemed to be the owners of the goods as contemplated in section 147 of the Customs act by virtue of having acted as importer's agent in respect of aforementioned goods.

Assistant Collector of Customs.

ANNEXURE `B'

Order confirming demand

No.....Appraising Department/Group  
 Custom House,  
 Dated The.....

To:  
 Mr./Messrs.....  
 .....

Sub:.....cases/packages.  
ex.S.S.....  
B.E.No.....DT.....  
contents.....

A notice under section 28, sub-section (1) of the Customs act 1962 for duty amounting to RS. ....was issued under this office memo of even number dated.....in respect of the above consignment. the importers have put forth the following plea :-

.....  
.....  
.....

And have produced the following documents:-

.....  
.....

They did not ask for a personal hearing/they were also heard in person and submitted that .....I have duly taken into account the above plea and consider that the duty originally demanded is correct/that the correct duty recoverable is as indicated below :-

.....

The demand is now confirmed to the above extent under sub-section (2) of section 28 of the customs act, 1962, and if the importers fail to fulfill the obligations in terms of this decision within 15 days hereof. it will be enforced in due course as provided for in section 142, sub- section 1. clause (a) clause (b) of the said act. An appeal against this order lies to the Appellate Collector of Customs, within three months from the date of receipt of this letter, as prescribed under section 128 of the said act and it should bear a court fee stamp of fifty paise. the amount of duty as stated above shall also be deposited with the custom house as required by section 129 of the said act before the Appeal is entertained.

Assistant Collector of Customs.

-----

Copy forwarded for information to (the custom

House Agent) M/s ..... their attention is invited to their liability under section 147 of the said act which provides for the recovery of the above mentioned amount if the above party fails to fulfill the obligations.

Assistant Collector of Customs

Note (i) Mode of communication of demand notice: The Central Board of Revenue has decided that the demand for less charge should be sent to the consignees with a copy to the respective clearing agents so that it may facilitate the later to pursue matters with their consignee principals. it

should be clearly stated in the copy sent to the clearing agents that the original has been sent to the importers but this is without prejudice to the liability of clearing agents in law to meet the demand. (board's letter no.52/3/52-Cus.I dated 22-10-52)

Note (ii) Prompt issue of demand :

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When the Directorate of Inspection (Customs & Central excise) in its correspondence with the Custom House raises doubts about an Assessment. Demands for short collections under section 39, of sea customs act (now section 28. customs act, 1962) should be issued promptly in order to obviate any loss of revenue on account time bar. (c.b.r.letter no.69 (169)-us. 1/50 dated 29-8-50)

1.(a) Issue of notices for ad-hoc demands-procedure regarding

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Reference is invited to the earlier provisions relating to the procedure for issuing demand notices for realisation of short-levy or non-levy under section 28 of-the customs act. Since it is not legally permissible to charge more duty, though justified on merits, than what has been initially asked for in the demand notice should be issued under section 28 of the customs act 1962, and at the time of issuing the ad-hoc demand notice the officer concerned should make the best estimate of the amount of duty short-levied/non-levied. correct amount of duty to be realised should be determined only after giving due consideration to the representation etc. if any, made by the person concerned. (c.b.e& c.f.no.369/3/74-Cus.I dated 23-10-75).

2. Section 28 Customs Act, 1962- Applicability in cases of short payment of duty.

The board had occasion to examine a case where the appellant's solicitor had put forth a contention that section 28 customs act.1962 will be applicable only in cases where duty was short levied and not in cases of short payment of duty accepted by the custom house. the substance of the argument is that section 28 can apply only if the assessment falls short of the amount correctly leviable under the act. ministry of law, who were consulted in the matter have advised that this distinction between `short levy' and `short payment' is neither relevant nor tenable. hence cases where the custom house accepts through mistake payment of duty which falls short of the amount actually assessed, will also be cases of duty short levied within the meaning of section 28 customs act. (c.b.e.&c.,new Delhi, lr.no.2/1/65-cus.vi dated 9-7-65)

3.(i) Extra Duty on account of Extra Debits raised by overseas buyer.

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The Board desires that in all cases where extra duty becomes leviable on account of extra debits raised by overseas suppliers, it should be ensured that the recovery is effected expeditiously, the original bills of entry should be traced and put up expeditiously. on no account should the realisation of extra duty be delayed when the extra duty can be recovered on the note sheet on the basis of the importers copy of the bill of entry after verification with the particulars in the Licence register, and after fresh debits are raised in the Licence, the duty realisation being later on but without delay endorsed on the original bill of entry. the appraising group will also examine the ITC.aspect before extra duty is recovered. (ref. : board's letter f.no.55/7/65-cus. Iv dt.1-4-65)

(ii) Interest charges on value coming to the knowledge of the custom houses within six months of payment of duty.

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In case where payment for goods is made long before their shipment, interest due on the amount thus paid in advance should be added to the value of the goods even in those cases where this department, within six months from the date of payment of duty, come to learn that such charges have been made.

3.a. Customs-loss of revenue due to non-issue of demands within prescribed time-limit-instructions-regarding.

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The public accounts committee (1981-82) in its 99th report has expressed great concern about the loss of revenue to the public exchequer due to non-issue of demands within prescribed time limit. the committee has desired that the reasons for these lapses should be analysed and appropriate measures to avoid such loss of revenue by eliminating the avoidable delays and short comings in the functioning of the department should be taken. the committee has also emphasised the need for finalising the assessments promptly and conducting the checks and audit of the assessment unit regularly. although the committee's report relates to the central excise, it would "mutatis mutandis" have application to customs as well because the element of time-bar is equally relevant to customs cases also. the main reasons for demands getting time-barred are reported to be as under :-

- (a) Objections :
- (b) Non-detection of irregularities in time :
- (c) Delay in raising the demands by the concerned departments

:

(d) Failure of the concerned officers/audit to detect the short levy in time. all concerned Asstt. collectors are, therefore required to ensure that prompt action for raising demand is taken so that they do not become time-barred. in particular, the follow- ing remedial measures should be adopted for this purpose :-



(i) Immediately on receipt of objection from the CRA, Demand-cum-Show cause notice should be issued without any loss of time, even if, the concerned officer does not agree with the audit's point of view. If the department does not agree with the audit objection and the Deptt's stand is ultimately accepted by the CRA, such demand-cum-show cause notice may be withdrawn on settlement of the audit objection. Till settlement of the audit objection, either the demand should be raised periodically or the the assessments made provisional, so that duty demand does not become time-barred for any period.

(ii) In respect of audit objection raised by the internal audit Deptt., the demand-cum-show cause notice should be issued immediately if the objection is prima facie, acceptable. Where the Asstt. Collector does not agree with the Internal audit Deptt's point of view, He should promptly refer the matter to the Collector who will take a final view within one month of the issue of the audit objection and indicate his views to the concerned Asstt. Collector and D.C./A.C. (Audit) for taking immediate necessary follow-up action.

(iii) On transfer of the Asstt. Collector of the group or unit. The report of taking over and handing over charge should clearly indicate details of pending provisional assessment on account of audit objection. the officer taking over the charge should thus assume the responsibility of finalizing these matters early and raising the demands within the prescribed time limit.

(iv) In case of proved negligence on the part of an officer resulting in revenue loss due to time-bar, appropriate disciplinary action should be initiated against such officer. (CBEC. letter F.No.210/28/81-cx-6 dated 10-3-83 circular no.5/83-cx-6).

Project imports :-

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#### 1. Introduction:

Expansion of the Industrial field and adaptation of new technology to keep pace with the development in the outside world resulted in increasing industrial activity with new factories coming up and the existing ones expanding. This necessitates the import of capital goods in the form of machinery, equipment, materials for fabrication of equipment from abroad. such imports were subjected to customs duty, 'on merits'. The importers were required to furnish individual value(s) for various items of capital goods classified for customs duty purposes' separately and different rates of duty as per the tariff were levied and collected.

Heading 98.01 of the Customs tariff act envisages classifications of goods imported for the initial setting up or substantial expansion of plant or project. The objective is two fold namely,

(a) To simplify the assessment procedures in regard to import of capital goods and

(b) To levy a flat rate of duty in regard to the goods which were imported for the initial setting up of an industrial plant; irrigation project; power project; mining project; project for oil exploration and exploration of other minerals and other projects notified by the government. The same flat rate of duty was leviable in respect of capital goods required 'for substantial expansion' of a plant or a project already in existence.

2. Heading no. 98.01- project imports : of and coverage regarding : Chapter 98, falling under section xxi in its note (I) stipulates that,chapter 98 is to be taken to apply to all goods which satisfy the condition prescribed therein, even though they may be covered by a more specific heading elsewhere in the schedule. In note 2, it is stated that,heading 98.1 is to be taken to apply to all goods which are imported in accordance with the regulations made under section 157 of the Customs Act, 1962 and the expressions used in this heading shall have the meaning assigned to them in the regulation. The goods sought to be covered by the heading 98.01 are

(1) All items of machinery including prime movers, instruments, apparatus and appliances, central gear and transmission equipment.

(2) Auxiliary equipment including those required for research and development purposes, testing and quality control.

(3) Components (whether finished or not), or raw materials for the manufacture of the items listed at (1) and (2) and for the components of items listed at (1) and (2).

(4) Spare parts, other raw materials (including semi finished material) or consumable stores not exceeding 10% of the value of the goods covered by (1) to (3) above provided that such spare parts, raw materials or consumable stores are essential for the maintenance of the plant or project.

3. Project import regulations genesis : In chapter note 2 of chapter 98, it is stated, that heading 98.01 is to be taken to apply to all goods which are imported in accordance with the "regulations made under section 157 of the Customs Act 1962" and expressions used in this heading shall have the meaning assigned to them in the said regulations. Section 157 of Customs Act provides general power to the Central Board of Excise and Customs, to make regulations in consistence with the Act (Customs Act) and the rules, generally to carry out the purposes of the act.

Project Import Regulations, 1986 (notification 230/86 dated 3.4.86) :

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Regulation 1 is the short title and contains in it the date of commencement of these regulations. regulation 2 deals with the scope of its operation i.e. these regulations shall apply for assessment and clearance of the goods falling under heading No.98.01 of the first schedule of the customs

tariff act 1975 (as amended in 1985). regulation 3 is the most important one. It gives the definitions of different terms for the purposes of these regulations and the heading no.98.01 as the following:

#### Industrial plants

It means an 'industrial system' designed to be employed directly in the performance of any process or service of processes, necessary for manufacture, production or extraction of a commodity. but establishments designed to offer services of any description such as hotels, hospitals, photographic studios, photographic film processing laboratories, photocopying studios, laundries, garages and workshops are excluded from this. A 'single machine' of a 'composite machine' within the meaning assigned to it, in notes 3 and 4 to Section xvi also excluded. According to note 3 of Sec.xvi, 'composite machines' consisting of two or more machines fitted together to form a "whole" (and other machines) adapted for the purpose of performing two or more 'complimentary' functions or 'alternative' functions are to be classified as if consisting only of that 'components' or as being that 'machine' which performs the 'principal function': Note 4 of the same section says that a "machine" is that which consists of individual components (whether separate or interconnected by piping, by transmission devices, by electric cables or by other devices) intended to contribute together to a clearly defined function.

#### Substantial expansion :

It means an existing 'installed capacity' being extended by not less than 25%. this definition sets at rest the difference of opinion regarding the applicability of the project import concession for modernisation, diversification, indigenisation etc.

#### unit :

It means any 'self-contained' portion of an industrial plant or any self-contained portion of a project specified under the said heading no.98.01 and having an independent function in the execution of the said projects.

#### Regulation 4 :

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It sets out the eligibility criterion.

1) The assessment under the Heading no.98.01 shall be available only to these goods which are imported whether in one or more than one consignment, against one or more specific contracts.

2) The condition that these have to be registered with

the appropriate custom house in the manner specified in regulation 5.

3) The registration of such contract or contracts must be done before any order is made by the proper officer of customs permitting the clearance of the goods for Home Consumption.

4) But in the case of goods cleared for Home Consumption without payment of duty subject to re-export in respect of fairs, exhibitions, demonstrations, seminars, congresses, and conferences (which are to be duly sponsored or approved by the Govt. of India or Trade Fair authority of India as the case may be), before the date of payment of duty. In the condition (3), the clearance is for both, i.e. clearance for Home Consumption against (white) bill of entry as well as clearance for Home Consumption against an Ex-Bond (Green) Bill of Entry. In the condition (4), the goods cleared must be meant for initial setting up of plant or substantial expansion of a plant or Project.

#### Regulation 5 :

It sets out the manner in which the contracts are to be registered. The importer who is claiming assessment of the goods falling under the heading 98.01, 'on or before their importation' shall (apply 'in writing in a prescribed form' to the Proper Officer at the port where the goods are to be imported or where the duty is to be paid, for the registration of the contract or contracts. But in the case where the consignment sought to be cleared through a Custom House other than the Custom House at which the contract is registered, the Importer shall produce from the Custom House of registration such information as the Proper Officer may require. Clause-2 of the Regulation says that the application must be made as soon as possible by the importer, after he has obtained the Import (Trade Control), Licence wherever required by the contract. In case the imports do not require a Licence the application for registration can be given with a letter from the sponsoring authority. The application shall specify :

1. The location of the plant or project.
  2. The description of the articles to be manufactured, produced, mined or explored.
  3. The installed or designed capacity of the plant, project and in the case of substantial expansion of an existing plant or project installed capacity and the proposed addition thereto.
  4. And such other particulars as may be considered necessary by the proper officer for the purposes of assessment under said heading.
- The following documents shall accompany the application :

(a) The original deed of contract together with the true copy thereof.

(b) The Import (Trade Control) Licence wherever required specifically describing the articles licenced to be imported or an approved list of items from the DGTD or from the concerned sponsoring authority in the case of Imports covered by OGL or Imports made by Central Government, any State Government, statutory corporation, Public body or Government Undertaking run as a joint stock company. The Proper Officer shall satisfy himself that the application is in order. then he shall Register the contract. The particulars are entered in a book kept for the purpose. A number is assigned in token of registration and such number is communicated to the Importer. All the original documents which are not required by him are returned to the importer.

#### Regulation 6 :

Refers to the amendment of contract. if any contract referred to in Regulation 5 is amended, whether before or after registration, the importer shall make an application for registration of amendments to the said contract to the proper officer. The application shall be accompanied by :

- a) The original deed of the contract relating to the amendments together with the true copy thereof;
- b) The documents if any, permitting consequential amendments to the Import (Trade Control), Licence, wherever required, for the import of articles covered by the contract and in the case of imports covered by OGL, as soon as the clearance from DGTD, or the concerned authority as the case may be, has been obtained along with the list of articles referred to in clause

(4) of regulation (5), duly attested. The proper officer, after satisfying himself, shall make a note of amendment, in the register.

#### 4. Procedure :

The Bills of Entry related to Project Imports or Assessed in group 6 of the Custom House. The Bills of entry are assessed under P/D procedure. After all imports are over, and the equipment's are installed in the plant, the importer is required furnish :

- 1) A "reconciliation statement" in a prescribed form.
- 2) Certificates of final payment from different suppliers countersigned by the external auditors.
- 3) An affidavit on non-judicial stamp paper by responsible representative of the importer to that effect that all items of imported equipment's have been installed in the factory for which they were intended. the provisional assessments are then finalised.

The Harmonised system :-

In the field of commodity taxation like Customs and Excise, the nomenclature should be so framed as to possess the basic virtues of clarity, comprehensives, and simplicity of language with a view to curtailing doubts and consequently disputes to the reducible minimum. In regard to customs duties, the modern thinking is to attempt one more objective viz., comparability with the tariff nomenclatures of the other countries in International trade. Internationally uniform classification of goods on a sound basis helps adoption of a common internationally accepted customs language, so that the terminology can be readily understood by the trading public, thus simplifying the task of importers, exporters, producers, carriers and customs administrations. This in turn would also promote more meaningful negotiations and application of correct interpretation to bilateral or multilateral customs agreements. Further, it will also help an internationally uniform collection of data to facilitate analysis and comparison of world trade statistics.

#### Evolution of International Customs Nomenclature

The first attempt towards evolving an International Customs Nomenclature was made in 1853 at the Brussels convention. This was further pursued in the International Statistical Congresses held at the Hague (1869), St. Petersburg (1872) and Budapest (1876). The International Institute of Statistics was founded to carry on this work in 1885. The first International convention in this regard had to wait till 1913 when the nomenclature evolved in Brussels consisted of 186 items arranged in five groups. This was also used directly or indirectly for tariff, trade, and statistical purposes by some 30 nations. In 1927, the league of nations evolved a new Structure which was revised in 1937, known as the "Geneva nomenclature" It comprised 991 headings, arranged in 86 chapters which were grouped in 21 sections. the 991 Headings were further sub-divided to permit adoption to suit national tariff needs. The drive for Economic reconstruction and the desire for greater freedom of trade in the post-war period led to the formulation of the "Brussels tariff nomenclature" (BTN) by The Customs Co-Operation Council. It took final shape in 1959 and has ever since been kept constantly updated. In 1974 it was renamed as "Customs Co-Operation Council Nomenclature" (CCN). While 52 countries are now contracting parties to the nomenclature convention of the CCC, about 150 countries, together accounting for 80% of International trade, use the CCCN as the basis for their customs Tariffs. India also, over several decades, after attempting several crude formats for its Customs tariff including UN-meaningful ones like alphabetical arrangements etc.introduced a New Customs Tariff in 1976, utilising the CCCN as its base and making several innovative changes to suit our national needs.

#### Correlation between Customs and Statistical nomenclature:

In the field of International trade, there are close

links, and even some degree of inter-dependence, between the Customs and Statistical aspects, the subject coverage being the same, that is, Imports and Exports. In most countries, primary data used for the preparation of International trade statistics are taken from Customs Import or Export documents. To establish a clear nexus between tariff and Statistical nomenclatures, "two-way coding keys" have gradually been evolved between CCCN and the Standard International Trade Classification (SITC).

#### The Origin of the Harmonised System :

In the last 1960s, there was a growing awareness among all concerned with International trade, of the need to rationalise and Harmonize trade documentation data and, in particular, to Harmonize Trade documentation data coding of countries, units of quantity, Modes of transport, commodities, etc. which, it was felt, could promote free flow of International trade, by lubricating the wheels thereof. It was found that a commodity could be classified upto 17 times in the course of a single International Transaction, which clearly, was vexatious and problem prone, apart from time consuming. The development of Automatic Data Transmission techniques was also being hampered to a substantial extent by such phenomena. In early 1970's, The CCC. discussed these aspects and the Exploratory studies resulted 13 years later in the completion of the "Harmonized Commodity Description and Coding system" popularly known as the "Harmonized System" (HS).

The Harmonized System is both a Multi-Purpose Six Digit nomenclature and a structured nomenclature based on a series of sub-divided 4 digit headings. It is an instrument which can be used for a variety of purposes while retaining a structure such as is required for the purpose of tariff classification. The nomenclature comprises 5019 groups of goods identified by a Six Digit code, and is provided with necessary interpretative rules to ensure its uniform application. While at the six digit level there are 5019 headings, at 5 digit it is 3558 Headings and at 4 digit 241 headings. The purpose of such structuring is to enable several digit levels being utilised for different purposes, such as Customs classification, compilation of Trade statistics, utilisation as transport tariff etc. The nomenclature is divided into 96 chapters grouped under 21 sections. Each heading of the system is identified by a 4 Digit code (column entity as the 'Heading No.'). The first two digits of which indicates the Chapter while the latter two digits indicates the position of the heading in the Chapter. Thus, Heading 53.09 ('Yarn of other vegetable textile fibers, paper yarn'), is the 9th heading in chapter 53. Further, all the Headings (except 311 headings) are sub-divided into two or more 1 dash (sub-headings which, wherever necessary, are themselves sub-divided into two or more 2 dash sub-headings ( which are identified by a 6 digit code). For Example, the H.S. code for Vanilla is 0905, which means that heading 09.05 (vanilla has not been sub-divided (fifth and sixth digits are zero). The HS for buckwheat is 1008.10 which means that buckwheat is included in the first one dash subheading (fifth digit is one), but has not been further sub-divided (sixth digit is 0)

again, 'fescue seed' is coded 1209.23 i.e. This is a case of two dash sub-headings the last two digits being 2 and 3. as far as possible, the residual subheadings (other's) have been identified by the figures '9' (or 8, where the last sub-heading is set for 'parts'), to allow for the possibility of inserting additional sub-headings in future without changing the code number of the existing sub-headings.

### Structure of the System

The Harmonised System comprises the following:

- a. General rules for interpretation;
- b. Section and chapter notes including sub-heading notes;
- c. List of headings arranged in a systematic order sub-divided wherever appropriate. interpretative rules

The endeavour of any nomenclature is to ensure that each individual product is identified with a single heading or a sub-heading to which the product can be unequivocally assigned. Hence it must contain rules to ensure that a given product is always classified under one heading to the exclusion of the other which might merit consideration. The H.S. also incorporates a series of principles for the interpretation thereof. In brief, the interpretative rules provide a step by step basis for a classification of goods, so that, in every case, a product must first be classified to the Appropriate 4 Digit headings, going further if necessary, to the 5th and 6th digits.

There are 97 chapters spread over 21 sections. Out of this, chapter 77 has been reserved for possible future use. Two chapters 98 & 99 have been reserved for special use, by the contracting parties. In CTA we have chapters 98 & 99 to suit some of our imports.

### Section and Chapter notes

Certain sections/chapters of the HS are preceded by notes which facilitate appreciation of the scope and limitations of the respective headings thereunder. The Methodology adopted in these notes is briefly as below:

- a. Providing General definitions delimiting the scope of Headings/Sub-headings or the meaning of particular terms - e.g. Chapter 5 note 3 defines 'ivory'. section xi note 5 gives a General definition of 'sewing thread'.
- b. Providing non-exhaustive list of typical examples. thus. Chapter 25 note 4 specifies product covered by headings 25.30.
- c. Providing exhaustive list of goods covered by headings or a group of headings, e.g. chapter 28 note 6 lists products covered by 28.44.



d. Providing exclusions, which list certain products which are not included in a particular section/chapter/heading/sub-Heading (e.g. Note i to Section xi).

As a general rule, goods are arranged in the order of their degree of manufacture i.e. raw materials, unworked products. The same sequence exists within the chapters/headings and sub-headings.

#### Complementary publications to the Harmonized System

The Harmonized System is supported, by a number of complementary publications designed to facilitate its implementation and to further ensure its uniform interpretation and application.

a. Explanatory notes: The H.S. Explanatory notes will constitute the interpretation of the H.S. at International level and will be an indispensable complement to the system. It will be useful to refer to them in order to ascertain the correct interpretation of the H.S. itself.

b. Alphabetical index to the H.S. and to the HS. Explanatory notes: To facilitate location of references in the H.S. or the Explanatory notes, it is intended to publish an index, listing in alphabetical order, reference against each product or article in separate columns.

c. Compendium of H.S. classification opinions: The HS. Committee will take up the task of Examining classification disputes and give advisory opinions, which will be compiled into periodical publications titled 'Compendium of classification opinions'. These publications are useful while deciding classification.

#### Advantages of Harmonised system

The H.S. represents the culmination of efforts made over several decades to work out a system on classification which can be applied by all, the interests pertaining to the production, carriage (both domestic and international) and trade pertaining to commodities as well as publication of statistics at each stage. Some of the major advantages sought to be derived by adoption of the H.S. are as below:

a. As a tariff nomenclature: as a base for the domestic tariff, it is more comprehensive and consequential more simple and precise. It takes into effect modern technological developments, and hence is more up to date. It is a thoroughly international nomenclature since it incorporates inputs received from all regions and from countries at different stages of economic growth. While it was being prepared, efforts were also made to resolve a large number of classification problems.

b. As a Statistical nomenclature: Under H.S., statistics collected can be used for a variety of purposes, including Data processing, market studies and national economic analysis. It is truly a

multi-purpose statistical nomenclature. This will enable the H.S. to function more effectively for comparison of import/export and domestic production statistics.

c. As a base for Harmonization of Economic classification: The structure of the H.S. can be used as building blocks for building a variety of economic classifications on a harmonized manner. The United Nations Statistical Commission has already agreed to the harmonization of goods, production and activity classifications being based on the H.S.

d. As a multi-purpose nomenclature: The H.S. is conceived and designed to function as an instrument to be used for a variety of purposes, yet retaining its structure as required for tariff classification. The International Union of Railways, the International Chamber of Shipping and International Air Transport Association have involved themselves in the preparation of the H.S., and it is hoped that consequentially the H.S. will be accepted by trade and transport interests all over the world.

e. As an International economic language:

Irritants to International trade arising from a commodity being described and redescribed a number of times as the goods pass from one country to another, and being classified repeatedly for different purposes, can be obviated by adopting the H.S. International trade data can be more easily tele-transmitted by utilising this standardised code. Apart from better communication between importers and exporters, information of bilateral and multilateral trade contracts can also become more meaningful by adopting this international language.

f. Benefits to industry, trade and transport:

Generation of more reliable and detailed national and international statistics will boost industrial efforts. Transactions between various institutes and documentation such as invoices, freight contracts, Customs declarations, returns to the Government etc. can be standardised under the H.S. If domestic and international carriers also adopt H.S., it will help exporters to decide which is the most favourable freight charged by comparing the freight tariff of competitors. Exports to countries which apply H.S. will enable the correct determination of the relevant rate of duty and this will help exporters in pricing their products more meaningfully.

Classification & Valuation :-

### Introduction

The Constitution of India allocates the taxing powers between the Union and the States through precise entries and by virtue of entry no. 83 in the List-I to the Seventh schedule to the constitution. Union of India is empowered to levy "duties of customs including export duties". The basic legislation concerning levy of Customs duties in the Indian Customs Act '62 read with Customs Tariff Act, 1975. Section 12 of the Customs Act '62 is the enabling section empowering levy of duties of Customs on goods imported into or exported

from India. However, the rates at which the different import or export goods shall be leviable to duties of Customs have been respectively specified in the first and second schedule to the Customs Tariff act, 1975- called the 'import tariff and 'export tariff' respectively (vide sec. 2 of the c.t.a. '75). Whereas the export tariff is very limited in scope as only a few specified types of articles are presently subject to export duties. The import tariff is all pervasive and very comprehensive. prior to august, 1976, the scheme of levy of duties on import goods was specified in the first schedule attached to Indian Customs Tariff act, 1934 wherein all import goods were classified into a limited number of specified Headings-with a residuary heading to take care of all goods not otherwise specified. However, it was felt for long that our import tariff has become out of date in the light of present conditions and substantial changes in the composition and pattern of Indian Import trade. The International system of classifying the goods for Customs purposes known as Brussels Tariff nomenclature (or Customs CO-operation council nomenclature) had been rapidly gaining ground in recent years and had been adopted by a large number of countries in the world (both developed and developing) as the basis of their national customs tariff. In the circumstances, there was a demand and need to modernise and rationalize the nomenclature of our Import tariff in line with the contemporary conditions. accordingly the erstwhile import tariff was replaced by a new tariff schedule based on CCCN. which came into force from 2nd august, 1976. "However, with effect from 28th February, 1986 the Import schedule to Customs Tariff act, has been replaced. the new schedule is based on International convention of" Harmonized commodity and coding system commonly known as Harmonised system. The BTN. (orCCCN.) on which the nomenclature of the Import Tariff was based is administered by the Customs Co-operation council an Inter Govt. agency with its headquarters at Brussels. The council is assisted in its work by the nomenclature committee established under its convention on nomenclature. India is a member of the council. But it is not a party to the nomenclature convention, and are not bound to follow the nomenclature (BTN. or CCCN.) in Toto. The Import Tariff annexed to the CAT '75 was not a complete adoption of BTN.(or CCCN. ) but was essentially based on BTN./CCCN. Some modifications having been effected to take care of the national needs. Basic features of the Brussels nomenclature-which every Assessing officer had to consult even for interpreting our Import tariff. as also certain salient points of distinction between CCCN. and CAT. '75 as explained in hand book by the Ministry of Finance at the time of introduction of the New Import Tariff are briefly mentioned below:-

#### STRUCTURE OF B.T.N.

The Brussels tariff nomenclature comprises:-

- (a) A list of headings arranged in a systematic order.
- (b) Section and chapter notes and
- (c) General rules for the interpretation of the

nomenclature.

(a) The Headings of the BTN.: The Brussels nomenclature comprises 1098 headings (of which 2 are optional namely, heading no. 27.05 for coal gas etc. and heading no. 27.17 for electric current). These are arranged in 99 chapters which are themselves grouped in 21 sections. Unlike the Geneva nomenclature, it contains no sub-headings. the possible introduction of sub-headings is left to the discretion of each country using the nomenclature as the basis for its national customs tariff. The construction of the nomenclature in sections and chapters is based on the general principle of classifying together in the same chapter all goods obtained from the same raw material and of arranging them progressively within each chapter. i.e. starting from the raw material and progressing to the finished products or articles. This principle had not, however, been applied with undue rigidity, particularly where a given industry uses a variety of raw materials, for example, chapter 58 covers a wide variety of textile products whose classification is independent of their constituent textiles. Each heading in the BTN is identified by two groups of two Digits each. The first group represents chapter in which the heading appears while the second indicates its position in that chapter.

(b) The Section and Chapter Notes : Certain section and chapters are preceded by notes which form an integral part of the nomenclature. To distinguish them from the explanatory notes. which are not legally binding, they are normally referred to as 'legal notes'. the function of these notes is to define the precise scope and limits of each headings, chapter and section. this has been achieved, depending on the case by means of either general definitions delimiting the scope of a heading or the meaning of particular terms: or non-exhaustive lists of typical examples of article covered by a heading or exhaustive lists of the goods covered by a heading, or exclusions which list certain articles that must not be included in a particular heading chapter or section.

(c) The Interpretative Rules : Like the section and chapter notes, the four interpretative rules also form an integral part of the nomenclature and have the same legal force. Interpretative rule 1, which takes precedence over following rules, provides that for legal purposes, classification is determined by the terms of the headings and of the section or chapter notes. There are, however cases where the texts of the headings and of these notes cannot, of themselves determine the appropriate heading with certainty, classification is then effected by the application of interpretative rules 2 to 4.

The first part of rule 2(a) extends the scope of any heading which refers to a particular article to cover not only the complete article but also that article incomplete or unfinished provided that, as imported, it has the essential character of the complete or finished articles.

the second part of rule 2(a) provides that complete or finished articles imported unassembled or disassembled, usually for reasons such as requirements or convenience of packing, leading or transport are to be classified in the same heading as the assembled article.

Rule 2(b) extends any heading referring to a material or substance to include goods consisting partly of that material or substance. under that rule, any goods consisting of several materials or substances may, unless a heading refers to them in their mixed or composite state, fall in two or more headings corresponding to each one of the constituent materials or substance. the classification of such goods, like that of any goods potentially classifiable under two or more headings, shall be according to the principles of Rule 3. Rule 3 classifies the mixed or composite goods: either (i) in the heading which provides the most specific description (rule 3(a). or (ii) in the heading applicable to the material or component which gives the goods their essential character (rule 3(b). or (iii) when goods cannot be classified by reference to (a) or (b) under the heading which occurs latest among those which equally merit consideration (rule 3(c)) however, and this is essential these classification criterion must be applied in the order in which they are set out criterion (b) does not therefore, become operative unless classification cannot be determined by application of criterion (a), similarly, criterion (c) can be used only if neither (a) nor (b) is applicable application of criterion (c) is therefore, a fast resort governing the classification of goods not otherwise provided for.

Rule 4 provided that goods which (for example because they have newly appeared on the world market) are not specifically covered by any heading of the nomenclature, shall be classified in the heading, appropriate to the goods to which they are most akin. The interpretative rules thus establish the classification principles which, unless the texts of headings or of the section or chapter notes otherwise require are applicable throughout the nomenclature. complementary publications With the same object to facilitating and ensuring uniformity in its interpretation, the BTN is supported by the following publications:

- (i) Explanatory notes,
- (ii) An alphabetical index to the nomenclature and the explanatory notes, and
- (iii) The compendium of classification opinions.

(i) The explanatory notes: These do not form an integral part of the nomenclature but constitute the official interpretation of the nomenclature as approved by the customs CO-operation council.

(ii) The alphabetical index : In order to make it easy to locate in the nomenclature and in the explanatory notes references to all products or articles mentioned therein, the council has also published an alphabetical index which lists in alphabetical order, with reference against each article in two separate columns:-

(a) all goods specified in the section notes, chapter notes or headings of the nomenclature

(b) all the goods cited or described in the explanatory notes.

(iii) the compendium of classification opinion: this compendium lists all classification opinions adopted by the council as a result of the study of classification questions submitted by member or non member customs administrations.

#### Indian Import Tariff vis-à-vis BTN (CCCN) merger of BTN headings

The nature of adoption of BTN. to form the Import tariff schedule. in the import tariff schedule which formed part of CAT. '75 description of articles was based on the Brussels tariff nomenclature but the individual headings of that nomenclature had been merged. Where necessary, to accord with the pattern of India's Import Trade, wherever the BTN classifications were found to be too detailed for our requirements, based on considerations of volume of imports, their composition etc., Such headings had been merged into a Single heading but care had been taken to ensure that these were adjacent headings and that the scope of the merged headings corresponded fully to the scope of the BTN. headings.

#### Creation of sub-headings

In a number of heading (whether these were merged or original headings), separate sub-headings had been created to suit our needs. these sub-headings were mainly for the following purposes:

(i) To provide for differences in the rates of duty;

(ii) To specify individual articles of importance in our import trade; and

(iii) To show separately articles subject to a protective duty;

Where there was a difference in the rate of duty but the creation of a separate sub-headings was not considered to be necessary on the basis of the volume of import, such difference had been provided where necessary for issuing appropriate exemption notification under section 25 of the Customs Act, 1962.

#### Departures from the BTN.

In a few cases, the Indian import tariff made a fundamental departure from the BTN. these were:-

(i) Laboratory chemicals, both organic and inorganic, had been provided under a single sub-heading no.(19) in chapter 29 for administrative convenience.

(ii) Item 72a of the erstwhile Indian Customs Tariff which provided for Assessment of Project Imports at a flat rate had been continued in the new tariff as heading no. 84.66 together with section note 6 to section xvi giving overriding force to this heading.

(iii) A new chapter (100) had been added to provide for assessment of passenger's baggage, personal importation's by post or air and ship and aircraft store corresponding to item 87a. 87b and 87c of the i.c.t. numbering system

The import tariff followed the numbering of the BTN however in the case of merged headings, the various BTN. headings, which had been merged, had been indicated by an oblique (/) sign. For example a main heading showed as 01.01/06 signified that six headings of the BTN. viz. 01.01 to 01.06 had been merged into one main heading. In the case of sub-headings, serial numbers within brackets had been indicated.

#### Legal notes

The section and chapter notes in the BTN. Had by and large, been preserved. However, a number of consequential changes had been made. As a result of the merger of several headings, a number of legal notes were found to be redundant or had to be suitably modified and this had been done. Notes had also been provided to cover the departures from the BTN. interpretative rules The Import tariff preserved the four interpretative rules of the Brussels tariff nomenclature and these had also been made applicable to determine classification within a heading. The purpose of application of these interpretative rules has been explained in sub-para (a) para (3).

#### Classification in Import Tariff.

Though the import tariff followed the BTN. pattern, in strict legal terms the classification of goods for Customs duty purposes had to be decided according to the Import Tariff as actually worded and incorporated in the Customs Tariff act, 1975 and not necessarily on the basis of the BTN. or its explanatory notes or alphabetical index etc. The explanatory notes or compendium of classification opinions or alphabetical index taken out by Customs CO-operation council were however available for guidance and were of considerable help in deciding the classification of an article in our import

tariff which as indicated above, was essentially based on BTN. only.

### Scope of merged headings

Wherever headings have been merged it should be deemed that the scope of the merged headings remains the same as in the case of CCCN unless a contra-intention distinctly appears in the scheme and in the wordings of the headings and sub-headings. (authority f.no. 527/56/76-cus(tu) dt.03-09-76.)

### Tariff based Harmonised Commodity Description and Coding System.

Harmonised commodity description and coding system (also known as Harmonised system) is meant to form the basis throughout the world of the classifications of goods used for various purposes. To draw up the Harmonised system the work was started in 1973 at Brussels under the auspices of the customs CO-operation council (c.c.c.) after compilation of new nomenclature (i.e. a systematically arranged list of goods). Harmonised system based tariff has been adopted in various countries of the world including India. In India H.S. tariff had been adopted on and from 28th February, 1986. The Harmonised system concerns the following categories of persons to a greater or lesser extent, and it is therefore, for them that this system is intended.

- (i) Producers.
- (ii) Dealers
- (iii) Importers/exporters.
- (iv) Shippers.
- (v) Hoteliers.
- (vi) Customs officials.
- (vii) External trade, production and transport statistician

The Harmonised system is mainly evolved from the customs CO-operation council nomenclature (c.c.c.n.) and standard international trade classification (s.i.t.c.) both nomenclatures have been adopted to bring them in conformity with the current trade conditions in addition some part of the c.c.c.n. has been modified to facilitate Harmonised system.

The c.c.c.n. constitutes the core of the harmonised system. However, in developing the Harmonised system account has also been taken of other existing nomenclatures which are primarily representative of customs, statistical and transport requirements. Content and structure of the Harmonised system the "structured nomenclature" constitutes the core of the Harmonised system. This expression is intended to make it clear that the previous c.c.c. nomenclature of four digits maintained and merely further sub-divided ("structured") with the result that two extra digits making a total of Six - have



been added for coding the headings. Thus although the basic structure of the c.c.c.n. has been maintained while drawing up of the Harmonised system, the c.c.c. nomenclature has also been revised and reorganised to some extent. certain groups of goods figuring in the c.c.c.n. which are of no great significance in international trade, have been combined and the number of chapters have been reduced. chapters 98 and 99 have been left free to cover goods as per the internal requirement of each country chapters 98 and 99 of our H.S. tariff covers project import, passengers baggage, importation by post/air. laboratory chemicals and miscellaneous articles to suit our national needs. the Harmonised system provides sub-heading notes in addition to section and chapter notes. These are legal notes and render assistance in classification of goods and restricts the area of dispute. like the c.c.c.n. based tariff, the present tariff also contains a set of interpretative rules which govern the classification of goods. H.S. tariff has provided two additional rules to the interpretation of the schedule to tariff. they are rules 5 and 6. rule 5 lays down that packing cases of special shape designed to contain a specific article suitable for long term use and presented with the article for which they are intended shall be classified with such article when of a kind normally sold therewith subject to certain exceptions. rule 6 deals with the classification of goods under sub-heading of a heading with reference to sub-heading notes. Finally, how the Harmonised system is built upon the c.c.c. nomenclature would be evident from the following example.

Heading no 01.01 of the c.c.c.n. is worded 'live horses, asses, mules and hinnies'. the structured nomenclature of the Harmonised system distinguishes first of all (i.e. at the 5 digit level) between 'horse' (no.0101.1) on the one hand and asses, mules and hinnies' (no. 0101.2) on the other. after that (i.e. at the 6-digit level) a further distinction is made in the case of 'Horse's' according to whether they are pure-bred breeding animals (no. 0101.11) or other horses (no. 0101.19). there is no further subdivision however, in the case of 'asses, mules and hinnies' so that the sixth digit of the code is a ought (no. 0101.20).

The c.c.c. nomenclature can therefore be structured , or not structured as the case may be in-the different ways:

(1) The harmonized system does not create sub-divisions. in this case only the wording of the c.c.c.n. is adopted while the code is extended by two noughts to make it clear that the harmonized system is being used.

example: the CCCN heading 01.06 'other live animals' has the code number 016.00 in the harmonized system.

(2) The harmonized system creates a further sub- division only at the 5-digit level. the sixth digit is therefore a ought. example: no. 0101.20 'asses, mules and hinnies'.

(3) The harmonized system draws a distinction at both the

five-and six-digit levels. example: no. 0101.11 'pure-bred breeding animals', it being made clear at the 5-digit level (no. 0101.19).

Finally the headings of the first chapter of the CCCN including the unstructured nomenclature as they stand at present are reproduced below: code number

CCCN	H.S.	TITLE
01.01		LIVE HORSES, ASSES,
MULES AND HINNIES -HORSES:		
0101.11		-PURE-BRED BREEDING
ANIMALS.		
0101.19		-OTHERS
0101.20		-ASSES, MULES AND HINNIES.
01.03		LIVE BOVINE ANIMALS.
0102.10		-PURE-BRED BREEDING
ANIMALS.		
0102.90		-OTHERS
01.03		LIVE SWINE.
0103.10		-PURE-BRED BREEDING
ANIMALS		
		-OTHERS
0103.91		-WEIGHING LESS THAN 50 KG.
0103.92		-WEIGHING 50 KG. OR MORE.
01.04		LIVE SHEEP AND GOATS
0104.10		-SHEEP
0104.20		-GOATS
01.05		LIVE POULTRY, THAT IS TO
SAY, TOWLS OF		
		THE SPECIES GALLUS DOMENSTICUS, DUCKS
TURKEYS AND GUINEA FOWLS.		
		- WEIGHING NOT MORE
THAN 185G		
0105.11		- FOWLS OF THE SPECIES
GALLUS DOMENSTICUS		
0105.19		-OTHERS
		-OTHERS
0105.91		-FOWLS OF THE SPECIES
GALLUS DOMESTICUS.		
105.99		-OTHERS
01.06		
0106.00		OTHER LIVE ANIMALS.

Assessing officers to consult classification decisions taken in collectors' conference etc.

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 Ever since the adoption of the new BTN based HS. based, tariff schedule, there have been quite a large number of doubts about classification of individual products in the new tariff. These have been referred to and discussed in the tariff conferences of Collectors of Customs under the Aegis of Member (Cus) and the decision taken have been circulated to all the Assessing Officers for guidance. these must be referred to for proper and uniform classification.

Assessing officers to consult the explanatory notes And tariff advice under the new tariff for

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 Specification  
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The specifications laid down in the HS. on which the new tariff is based, as well as the Explanatory notes to the HS. should be referred to by the Assessing officers for classification of goods under the New tariff, where however no specifications have been laid down in the HS. and the explanatory notes there to the specification laid down earlier by board in a past ruling may be referred to for guidance.

. Assessing Officers to consult the tariffs

It has been observed that Assessing Officers and other concerned do not carefully consult the Customs and Central Excise Tariff as a rule. Instead, he proceed to complete the Assessment of imported goods on the basis of knowledge or information they possess. which is closely associated with similar goods used in certain industry or trade. This practice has resulted in serious errors in Assessment. In order to avoid errors in Assessments, it is imperative that Assessing Officers should as a rule, refer to the tariff to ascertain whether the imported goods fall clearly within the scope of the statutory wordings of tariff heading and/or sub-heading as the case may be under which the goods are assessable. (Board's d.o. letter no. 20/7/66-cus. i dt.22.8.66)

Application of analogy of tariff ruling to other articles.

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 The board is of the view that whenever it issues a ruling about an article, that does not prevent the Customs house from applying that analogy to other articles of a like nature unless such other articles have also been specifically considered by the Board and not approved of assessment as such. If in applying such analogy the Collector is in doubt, he may of course, refer the case to the Board for a ruling in the same way as he would refer any other doubtful Assessment. As regards the general application of Board's tariff

ruling, the Board considers that its rulings are to serve as models and will apply by analogy to other articles of similar nature whether or not the ruling indicates the reasons for the view taken or the principles to be followed. However, if such extension involves a change in an authorised practice such change should be made only with the prior concurrence of the Board unless any particular ruling indicates expressly to the contrary. (Board's no. 25(167)-cus.iii/56 of 24.12.56).

International use should form the criteria for Assessment under the Customs Tariff act, as in BTN. which deals with international system of classification (Conference of Collectors of Customs on Tariff matter held at Madras in June '76).

#### Assessment meaning-instructions regarding.

In so far as the customs act.'62 is concerned an inclusive definition of 'assessment' has been provided (under Sec. 2 ibid) and it indicates that assessment would cover provisional assessment, re-assessment and any other assessment in which the duty assessed .It has not been specifically elaborated. on the question of interpretation of the work 'assessment' as such have been various Court pronouncements both on the direct tax as well as in-direct tax side. In the case of AN. Lakshman Shenoy-vs-ITO. The Supreme Court held that the expression 'Assessment' in its broad sweep could embrace all such proceedings for raising money by the exercise of the power of taxation. in other words the term 'assessment' has a very broad meaning. However, essentially speaking 'assessment' means fixation of amount of tax that may be leviable or determination of such tax. In the context of Customs duty in the case of Ramnath Agarwal vs-GS.Iyer (AIR. 1961 Gujarat), The Court had taken the view that "assessment would mean computation and fixation of the precise amount of duty to be paid on the particular goods having regard to the prescribed category under which they fall and the mode or manner by which their value or real value has to be ascertained". Thus an Assessing Officer has to determine and fix the amount of duty which is leviable on the goods while resorting to an assessment contemplated in section 17 of the customs act '62. Section 17 provides certain guidelines as to how the assessment may be resorted to and in particular indicates that the goods may be examined or tested by the Proper Officer, the importer may be asked to produce any contract, broker's note, policy of insurance, catalogue or other documents or furnish any information required for ascertaining the duty leviable on the imported goods. For ascertaining the Customs Duty which is leviable in terms of section 12 of the CA.'62 read with the first schedule to the Customs tariff act, 75 the first primary task of an Assessing Officer is to classify the goods under appropriate heading or sub-heading of import tariff. This would enable him to determine the Standard rate of duty which is leviable. He has also to examine whether any exemptions have been granted to determine effective rate of customs duty leviable. The second important task is fixation of value of the goods whenever

duties are ad-valorem or to determine the correct weight and quantity etc, where the goods are leviable.

Crucial dates for determining the standard/effective rates of duty

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Classification of an item in the import tariff enables an Assessing officer to determine the standard rate of Customs duty applicable to a particular item as prescribed by legislature. However, the Standard rate of duty is not always the effective rate of duty that may be leviable as govt. has been empowered to grant exemptions in terms of section 25 of the CA. '62. These exemptions can be granted by the Central Govt. in Public interest, to goods of any specified description An exemption may be available generally [under section 25(1)] or it may be made applicable by a special order in a particular case under circumstances of an exceptional nature [u/s 25(2) of CA. '62] In exercise of the powers conferred under the above section a large number of exemptions have been granted by government on economic, social or various other considerations. most of these exemptions are of general nature issued under section 25(1) but exemptions under special circumstances of an exceptional nature are also issued from time to time. The exemptions issued under Sec. 25(1) of the CA '62 are published in the official gazette in the form of notifications and circulated to all Custom Houses. While exemption orders issued in exceptional circumstances in terms of Sec. 25(2) are sent to concerned Custom Houses where the goods are expected to arrive. These should be critically scrutinised by the Assessing officer to see if particular goods which are subject matter of assessment are leviable to standard rate of duty or concessional rate of duty under particular exemption. notification/ order.

Very often disputes arise as regards the crucial date which would be taken for determining the standard rate of duty or concessional rate applicable in terms of a particular exemption. Section 15 of the CA. '62 specifically lays down the relevant dates for determination of rates of duties for goods imported by sea/ air other than baggage. However, sometime it is claimed that section 12 being the enabling provision for charging customs duty, it would be chargeable at the rate prevalent at the point of importation. In otherwords if after entry of the vessel into territorial waters of India but before grant of final entry inwards to the vessel. The rates of duties on any goods enhanced are either by raising of standard rate of duty or by modification of an existing exemption, the enhanced rate would not be applicable to such goods. This issue has been subject mater of certain court pronouncements as well. the views of the Government (in consultation with ministry of law) are reproduced for the guidelines of Assessing Officers:

Instructions regarding scope of section's 12, 15 & 25 of the Customs Act, 1962.

The question of interpretation of sections 12, 15 & 25 of the Customs Act, 1962 has been engaging the attention of the Government for sometime. In super-session of the previous instructions on this subject, the following instructions are issued for guidance:

(2) The Government is advised that Section 12 of the Customs Act is the charging section in terms of which unless otherwise provided in the act itself or any other law for the time being in force, duties of Customs shall be levied on goods imported into or Exported from India at such rates as may be specified under the Customs tariff act 1975 or any other law for the time being in force. It is clear that the duty is leviable under section 12 itself though at the rates prescribed elsewhere. The expression "goods imported into India or exported from India" must, of necessity be interpreted in the light of the definitions of "import" and "export" in sections 2(23) and 2(18) respectively. section 12, which is the charging section, makes import or export of goods, as the may be, the taxable event. no doubt, import or export of takes place when the goods are physically brought in or as the case may be, taken out of the territory of India. But the provisions of sections 15 and 16 have to have their respective scope and effect when one comes to the question of actually charging, determining and quantifying the duty. In this context, the relevant dates mentioned in section 15 and 16 are significant. The dates for the purposes of duty the statutory dates mentioned in section 15(1) or section 16 and not the date of physical entry or exit.

(3) The Government is not unmindful of the decision of the Bombay High Court in M/S. Sawhney- vs-M/s. Sylvania and Laximan Ltd., and M/s. Synthetics & Chemicals Ltd., -vs-S.C. Countinho & ors. Although physical entry into Indian territory is the date of Import, Sections 12 and 15 read together fixes the statutory date for the purpose of levy of duty. This aspect of the matter was not canvassed or considered in the above decisions of the high court.

(4) Section 25(1) enables the Central Government to exempt generally or absolutely or subject to conditions, goods of any specific description from the whole or any part of the duty of customs leviable thereon. on the other hand, sub-section (2) enables the Central Government by special order in each case, to exempt from payment of duty, under circumstances of an exceptional nature, any goods on which duty is payable. although the words "to exempt from the payment of duty" in section 25(2) seem to suffuse that the exemption may be given before the duty is paid. Here again, one has to turn to section 15 which would determine the effective date of import for the purpose of what duty should be levied and how it should be quantified.

(5) The Exemption under section 25(1) as well as (2) not being a remission or waiver of duty, must be of a date prior to the time the goods become chargeable to duty. Taking together the scope of sections 12.15 and 25

any exemption would have to be given either prior to the date of entry of the goods into the territory of India, or, at least, prior to the dates mentioned in section 15(1). In other words, an exemption whether it is under section 25(2) or 25(1) cannot be given post facto. To put it differently, it would be in order to apply and give effect to an exemption which is given by the Central Government either under section 25(1) or section 25(2) prior to the dates mentioned in section 15(1) or section 16 of the Customs Act, as the case may be. M.F. (Deptt. of rev) F.no. 370/80/78-cus. i DT. 26.3.1979).

(6). Scopes of Sec.12 vis-à-vis Sec. 15 and Sec. 131 of Customs Act '62

Similar issues about the crucial date for the purpose of levy of Customs Duty was also argued at length in a number of cases (which were heard together by the govt. of India) wherein certain orders passed by the Appellate Collector of Customs were being reviewed. The decision of the Govt. of India is reproduced for reference and guidance. Order no.296 to 298b of 1981 of the Govt. of India on review under Section 131(3) of the Customs act, 1962.

Sub: Order-in-Appeal no. S/49-1189,1190,1191/79-r dt.15-10-79, no. s/49-131/80 DT. 26.2.80 and no. S/49-1607/79 DT. 14.2.79 passed by the Appellate Collector of Customs. Bombay-review under sec. 131(3) of customs act, 1962 by the Government of India.

This order is being passed by the Central Govt. with reference to its Show Cause Notice F. No. 380/17, 19 and 61/80-cus.ii DT. 07.08.80 served on M/s Jai mills, Delhi and M/s. Bayer (India) Ltd., Bombay, requiring them to show cause as to why the orders in appeal, as referred to above, passed by the Appellate Collector of Customs, Bombay should not be annulled or modified.

(2) The short question that arises for determination in these cases is whether the impugned appellate orders holding that the date of importation of the goods, viz., the date on which the goods entered the territorial waters of India, should be regarded as the crucial date for the purpose of levy of customs duty on the goods imported is correct in law. The ratio decisions of the said Appellate orders is that Sec, 12. of the Customs Act, 1962 is the charging section under the Customs Act. The said section lays down that "duties of customs shall be levied at such rates as may be specified under the India tariff act. 1934 (now c.t.a. '75) or any other law for the time being in force, on goods imported into, or exported from India" . The appellate authority has, therefore, held that the date of actual importation of the goods is crucial for the purpose of levy of customs duty on the goods. In other words, if customs duty which included additional duty was not chargeable on the date of importation of the goods, the said duty cannot be charged with reference to the rate prevailing on a subsequent date by virtue of the provisions of sec.15 of the customs act, which provides the statutory date for the purpose of determination of the rate of duty applicable to any imported goods. The Central Government were tentatively of the view that the aforesaid orders of the

appellate collector of customs were not correct in law and the reasons for the said tentative view had been incorporated in the show cause notice. In their reply to the show cause notice and in the personal hearing granted subsequently to the importers, on 15-12-80, various points in Defense have been urged with citation of judicial pronouncements. Before the contentions of the importer are examined in depth. It is necessary to distinguish these 3 cases on facts. (3) in the case of M/s. Jai Hind Oil Mills Ltd., three consignments of palmolein were imported prior to 1-3-79 and cleared vide Bills of entry cash no. 253/2-4-79, 114/31-3-79 and 113/31-3-79. the item palmolein was chargeable to duty under the first schedule to the customs tariff at the rate of 60% till 30-6-77. however, by virtue of notfn. no. 129-CTS. dated 1-7-77, the whole of the duty of customs leviable under first schedule on palmolein was exempted. But on 28.2.79, as a result of budget proposals, the aforesaid notification granting total exemption from basic customs duty was deleted. In its place came another notification on 1.3.79 which reduced the quantum of exemption and as a result of which the effective rate of duty was fixed at 12.5% ad valorem. As the importers presented their bill of entry on 29.3.79 The custom house charged the new effective rate of duty at the rate of 12.5% ad valorem in terms of sec.15(1)(a). (4) in the case of M/s. Vikas woollen mills, Delhi the goods on importation (prior to 1.3.79) were warehoused and eventually removed from the warehouse on 18.8.79 vide the bill of entry cash no. 3145/18.8.79. when the goods were imported, the same were exempted from payment of countervailing duty under Notfn. no. 364-cus. DT. 2.8.76 which was rescinded by Notf no. 63-cus. DT. 1-3-79. but as countervailing duty was chargeable on the goods on the date the same were removed from the warehouse, the benefit of the said exemption notification was denied to the importers, it is, however, observed that the goods were chargeable to basic customs duty and auxiliary duty on the date of importation. (5) In the case of M/s. Bayer ( India) Ltd. five consignments were imported prior to 1.3.79 and cleared under the bill of entry cash no. 1237/13.3.79, 2412/23.3.79, 565/6.3.79, 1362/16.3.79 and 2165/22.3.79. On importation the goods were warehoused and subsequently removed from the warehouse, after 1.3.79. The date on which the earlier notification no. 364-cus. DT. 2.8.76 exempting the goods from payment of countervailing duty was rescinded by notification no. 36-cus. DT. 1-3-79. The Customs house, therefore in terms of the provisions of sec.15(1)(b) charged countervailing duty on the goods with reference to the date of their actual removal from the warehouse. (6) The common, thread that runs through these 3 cases as stated above is the question whether the crucial date for the purpose of levy of customs duty on the goods should be the one which the goods have been actually imported into India or the date as is statutory determined under Sec.15(1) of the customs act. (7) In the personal hearing granted to all the 3 importation on 15.12.80, Shri Soli j. Sorabji, Senior advocate, appearing on behalf of M/s. Bayer (India) Ltd., Bombay, referred to the definition of the term 'import' as provided in sec. 2(23) of the customs act. the said sub-section 23 of Sec.2 defines 'import' as bringing into India from a place outside India. subsection 27 of sec. 2 defines 'India' as including territorial waters of India. The senior advocate contended that it has to be



found out in the first instance whether duty was chargeable when the goods were brought into the territorial waters of India. According to the senior advocate, once, it is established that duty was not chargeable at the point of importation, determination of rate of duty in terms of Sec. 15 of the Customs Act, 1962 would become irrelevant. In support of his contention, he referred to certain observations of the Bombay High court made in *M/s. Sawhney vs. of M/s. Sylvania & Laxman Ltd.*, decided on 14/15.1.75 and in *M/s. Synthetic Chemicals Ltd. vs. S.C. Coutinho and others* decided by the division bench of the Bombay High Court on 14.3.80. In short, the point that was urged by the senior advocate was that if on the date of importation no duty was leviable on the goods, then by virtue of Sec.15 the goods cannot be levied to duty at a subsequent date. But if duty at whatsoever rate is chargeable

On the goods on the date of its importation, then the date specified under sec. 15(1) will be relevant and Rate of duty prevailing on that date shall be applicable. In the instant case, it was pointed out that additional duty was not chargeable at all on the goods on the date of their importation, and, therefore, following the ratio of the Bombay High Court's decision in *M/s Synthetics and Chemicals LTD vs. Coutinho* as referred to above, the senior advocate in-operative in this case.

(8) Smt. Shyamala pappu, senior advocate, representing M/s Jai Hind Oil Mills ltd. Bombay urged that section 12 of the Customs act. commences with an exclusion clause which reads as follows:

"except as otherwise provided in this act". She contended that exemptions granted under Sec.25 of the Customs act and, therefore, exemption notification if any, applicable to the goods would take them out of the purview of customs levy as provided in Sec. 15(1) of the customs act, because of the said exclusion clause. in support of her contention she has subsequently cited in her written resume of arguments a member of judgments of the Supreme Court. She has pointed out tention she has subsequently cited in her written resume of arguments a member of judgments of the Supreme Court. She has pointed out that in *Celiac nath vs. state of u.p. (air 1957 sc 790)* and in *orient weaving mills vs. union of India (air 1963 sc 98)* the Supreme court observed in the context of the UP. sales tax act that "this notification having been made in accordance with the powers conferred by the statute has statutory force and validity, and therefore, the exemption is as if it is contained in the parent act itself" like observations have been made by the court in *orient weaving mills' case*. by citing all these cases the senior advocate wanted to establish that exemption notification is part of the statute and once the goods are exempted at the point of importation, at a subsequent date the same would not be leviable to duty by operation of section 15(1).

(9) Smt. Pappu further contended that the show cause notice issued by the Govt. in the case of her clients was hit by limitation as much as the same was issued after expiry of 6 months from the date of the order-in-appeal. according to her the subject case would fall in the category of

non-levy in as much as the appellate authority held in his order that duty was not chargeable on the goods. for the cases of non-levy time limit has been clearly prescribed in Sec. 13(5) and as such the show cause notice issued to the Importers by the Govt. was clearly time barred. In support of her contention she has cited the Delhi High court's decision in Associated cement co. case (decided on 17-4-80) in the case under reference the Delhi high court has observed that the time limit for review of any revenue decision ought to be construed as being within the time limit for refund. The said judgment was passed in central excise case where the time limit for review is prescribed for all types of cases in the act itself.

(10) Shri Vajpayi appearing as counsel for M/s Vikas woollen mills. Delhi adopted the arguments set-forth by shri sorabjee and smt. pappu for his case.

(11) The Govt. have carefully examined the above contentions of the importers. the government are aware, and it was also brought to the notice of the importers during the hearing that the supreme court in m/s. prakash cotton mills p LTD vs. p. sen and others (air 1979 sc 675) observed in para 6 of the judgment that "it is thus the clear requirement of clause (b) of sub-section 1 of sec. 15 of the act that the rate of duty rate of exchange and tariff valuation applicable to any imported goods shall be the rate and valuation in force on the date on which the warehoused goods are actually removed from the warehouse". although it is true that in the case under reference the supreme court was on the question of applicability of the rate of exchange prevailing on the date of ex-bond clearance, the govt. observe that the said observations are pertinent in the context of the present cases as well. in the case of prakash cotton mills (p) ltd., excess duty became chargeable with reference to the date of ex-bond clearance in terms of the amended provisions of sec. 15 of the customs act. the said amendment came into force after importation of the goods . But by virtue of the provisions of sec. 15(1)(b) of the Customs Act, the rate of exchange prevailing on the date of ex-bond clearance was applied to the goods, notwithstanding the fact that at the time of importation of the goods the words "rate of exchange" were not to be found in sec, 15(1) of the customs act, which were subsequently incorporated by way of amendment.

(12) The Govt. have come across another cases decided by the Madras High Court (in m. jamal co.. vs. union of India and others vide 1981 excise and customs reporter 140). in the case under reference the ship by which the goods (palmolein) were imported arrived on 22.2.79 and from 1.3.79 the govt.of India vide notification no. 142-cus. granted exemption of duty to the extent of 87 1/2%. the petitioners presented the bill of entry on 13.3.79 and made a claim for exemption of the whole of the duty on the ground that on the date of importation basic customs duty was not chargeable on palmolein in terms of exemption notification no.129-cus. DT. 1-7-77. The Govt. observe that on facts, the case under reference corresponds to the case of M/s Jai Hind Oil mills ltd. the case under reference was decided on 4.8.80 and thus is the latest of the orders passed by the court on the question of leviability of duty with reference to the date of importation or the date as specified in Sec.15. the Madras high

court observed that the definition of 'import' as contained in sec.2(23) states that "import" with its grammatical variations and cognate expressions, means bringing into India from a place outside India. "bringing into India" obviously would mean the clearance of the goods and Sec.15 puts the matter beyond doubt. The Madras High court, therefore, held that the relevant date is the date of presentation of the bills of entry and not the date of actual importation of the goods. As regards the notification exempting the goods from payment of duty, the Madras high court observed that the said notification nowhere purports to levy any duty. It merely exempts upto 87 1/2%. the logical corollary is that over and above this would be liable to duty. The power to grant exemption under Sec. 25 may be absolute or partial. in this case, it is the "latter". His lordship, therefore, rejected the petition.

(13) Further, the Govt., observe that in the case of M/s. Jai hind oil mills ltd., Bombay, it would not be correct to say that Customs duty was not leviable on the goods on the date of importation. as a matter of fact, on the date, the goods viz. palmolein were imported, additional duty was leviable on it though the goods were exempted from basic customs and auxiliary duties. addl. duty is also a customs duty and, therefore, following the ratio of the decision of the division bench of the Bombay high court in the matter of synthetics and chemicals as has been apply in discussed, it can be said that Sec.15 would apply in the circumstances of the case. in view of the above the govt. are of the view that the order-in-appeal pertaining to their case of m/s. jai hind oil mills has to be set aside.

(14) In regard to the question of time limit as has been raised by Smt. Pappu senior advocate, The Govt. observe that in a similar case in the matter of M/s. Jeep flash light industries ltd. vs. union of India and others (1977 taxl.r. 1697 air...SC 456), their lordships of the supreme court observed that it is significant that section 131(5) does not speak of any limitation in regard to revision by the Central Government of its own motion to annual or modify any order of erroneous refund of duty. The provisions contained in Sec. 13(5) with regard to non-levy or short levy cannot be equated with erroneous refund inasmuch as the 3 categories of errors in the levy are dealt with separately. It has been also observed that "The contention of the appellants that refund will also be a case of short levy is not correct. sec.28 speaks of 3 kinds of errors in regard to duties. one is non-levy, the second is short levy and the third is erroneous refund. levy is linked to assessment. sec. 17 of the act speaks of assessment order..... refund is dealt with in sec. 27 of the act". it would thus be quite clear that these 3 terms viz. 'non-levy', 'short levy' and 'erroneous refund' are distinct from each other and erroneous refund cannot be treated as short levy or for that matter non-levy either. as the term erroneous refund does not appear under sec. 131(5) of the customs act, the time limit prescribed for other two categories of cases viz. non-levy and short levy. cannot be imposed on the case of erroneous refund. In any case it is understood that no refund has so far been made in this case, on the basis of the appellate decision. in view of the above, the govt. are clearly of the view, that the subject case is not hit by limitation of any sort. the

govt. therefore, have no hesitation to set aside the order-in-appeal pertaining to the case of m/s. jai hind oil mills ltd., and restore the original orders.

(15) As regards the other two cases the Govt. observe that the ratio of the Bombay High court's decision in the case of M/s. Sylvania and Laxaman and M/s.Synthetics and Chemicals ltd. cannot be applied to the cases of M/s. Vikas woollen mills. delhi and M/s. Bayer (India) ltd.,Bombay. In these two cases, duty was not completely exempted on the date of importation. it is observed that the basic customs and auxiliary duties were chargeable on the goods and were so charged without such levy being disputed by the importers. The limited question that arose for determination was the date with reference to which Addl. duty was chargeable. The Govt. observe that it would be anomalous to refer to the date of ex-bond clearance for the purpose charging addl. duty. when customs duty was leviable on the date of importation no matter which component of it, even going by the ratio of the Bombay high court's decision in the matter of m/s. sylvania & laxaman and m/s. synthetics and chemicals ltd., it can be said that for the purpose of levy of addl. duty also which is nothing but a customs duty, section 15 should be referred to.

(16) In view of the foregoing the govt. set aside the orders-in-appeal pertaining to the cases of m/s. Bayer (India) ltd., Bombay and m/s. vikash woolen mills, Delhi as well and restore the original orders.  
SD/(d.n.lal) SD/(d.n. mehta) SD/(m.g. abrol) jt.secretary to addl. secretary to special secretary the govt. of the govt. of India to the govt. of India f.no. 380/17, 1961/80-cus.ii

#### Rate of duty and tariff valuation applicable

(i) The rate of duty and the rate of tariff valuation (if any) applicable to goods entered for Home consumption are those in force on the date on which the bill of entry is presented under Section 46 of the Customs act, Bills of entry are presented in the import department and the date of presentation of bills of entry, not submitted under the 'prior entry' system, is shown by the import department stamp in the top left hand corner of the original bill of entry. this date is usually, but not always the same as the date of noting.

(ii) In the case of bills of entry submitted under the 'prior entry' system, the date of presentation under section 46 is the date of the ship's final entry in the import department. this will ordinarily be after the bill of entry has been classified. if changes affecting the goods are made in the tariff after the bills of entry have been classified and not after the date of final entry of the ship, it will be necessary to reclassify and re-asses the goods. this should be done as early as possible, as per procedure already explained in the earlier chapter.

(iii) In the case of bill of entry submitted under proviso

to section 46, the date of delivery under section 46 is the date on which the bill of entry is presented in the import department completed with particulars required by section 46 (i.e. "value", "quantity" and description" of the goods.) (adopted from board's order in customs appeal no. 4 of 1932 of 19.1.32.)

(iv) The crucial date for determining the rate of customs duty under that section 20(i) would be the date of presentation of the bill of entry under section 46 of the customs act, 1962.

(v) The relevant date for the purpose of application of rates of duty, rate of exchange, and tariff valuation for levy of duty on ship's stores bills of entry concerned as modified by government orders of exemption, and interpreted according to tariff rulings issued from time to time. particular care should be taken to check up the correct effective rates from notifications before finalising old assessments, old editions of the tariff schedule should not be blindly relied on. (Central Board of Rev.f.no. 55/45/62-cus. iv DT. 14.8.1962)

(vii) In the case of goods assessable to alternative duty, the appraisers should specify clearly on the bill of entry the rate applicable to the bill of entry under assessment.

Assessment sec. 17(4) Vs Sec. 18 of Customs Act.

The Board, in consultation with Ministry of Law considers that the Custom House in the first instance should not assess the goods to duty under section 17(4) When the Custom House is not satisfied as to the genuineness of the declared value. section 17(4) was intended merely to leaglised the second Appraisal system and both the practice in this regard and the working of section 17(4) clearly indicate that instead of following the usual procedure of examining first and then assessing the goods, The Asstt. Collector may permit the goods to be assessed first pending examination. this system should, therefore, be followed only when the check of documents has been finalised and every thing appears prima facie to be in order. the board further considers that having resorted to assessment under section 17(4) in any particular case it should not be necessary for the custom house to switch over to section 18 of the customs act, 1962 because the former section itself gives to the customs house the power to re-assess the goods not only as a result of something having been found on an examination of the goods but even if something comes to notice otherwise. the correct found on an examination of the goods but even if something comes to notice otherwise. the correct course in such cases therefore would be to re-assess the goods as provided for under section 17(4) of the customs act, 1962. (board's f.no. 4/18/60-cus. iv of 27.3.1963.)

. Notice to Importer for Assessment

Goods are assessed to duty by the Assessing Officers in exercise of the powers vested in them under the statute and there is no legal obligation to give notice of the intended assessment to the importers or to

hear them in person. Government of India, Ministry of finance (r.d.) New Delhi, letter no 18(45)-Customs 11/53 dated 12th February 1954 in file c.no.3783/52.

Customs tariff items-indication and attestation

(i) While classifying a bill of entry, the scrutinizing Appraiser should indicate the customs tariff headings under which the goods are being assessed. this will facilitate speedy and correct posting under different tariff heads by the statistical department.

(ii) The outward distributions the appraising units will ensure as far as possible, that no bill of entry is finally released without indication of the headings of customs tariff. when importer of goods agreeable to pay higher rate When importer of goods assessable at different rates. is willing to pay higher rate-in the case of descriptions which are assessable to import duty at different rates, the Collector of Customs as a matter of administrative convenience, has the discretion of accepting a higher prescribed rate of duty and passing the consignment without examination provided that the Importer is prepared to pay such a rate. (g.i. com. Deptt. no. 570 of 27.1.22, bengal no. 326 s.r. of 13.2.22.)

Over-assessment as much an irregularity as under  
-assessment An extract of the findings of the public accounting is given below:-

"Over-assessment is as much an irregularity as under assessment, and it causes undue hardship to the public for no fault of their own. over- assessment also results from the same type of failures and mistakes as are responsible for underassessment. the committee have been given to understand that in all the case of over-assessment noticed in audit, the reasons have been wrong classification, levy of countervailing duty where none was leviable, non-application of correct rates etc. the committee trust that the department would profit by the mistakes pointed out by audit, and take suitable remedial measure to avoid a recurrence of the same in future". All Assessing Officers should therefore ensure that the cases of over-assessment are to be avoided just as much as those of under-assessment.

Finalisation of assessment before clearance-  
instructions regarding

Consequent upon the recommendation of the customs study team, it has been decided that as far as possible assessments should be finalised before clearance of the goods. In cases, where doubt persists in regard to correct classification and assessment, the Assessing officer should have recourse to either of the two alternatives laid down hereunder in order of preference:-

(i) Arriving at a final assessment quickly, if necessary by submission of case to senior officers.

(ii) Adopting the provisional assessment procedure but when the trader prefers to pay the higher duty and claim refund later, assessing on the higher basis. (g.i.m.f. (d.r.i.) letter f.no. 25/13/68-cus. (t.u) dated 18.3.68.)

. Expeditions clearance of imported goods-action  
regarding

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It has come to the notice of the Board that in certain cases consignments are held up on the ground that reference has been made to the Board for instruction. in this connection board has observed that assessment is to be made by the Proper Officer on the basis of import documents, examination and testing of goods and any other enquiries as deemed proper and as such it is for the Custom House to decide the assessment matter. In respect of one particular held up at a port, the Minister of revenue and expenditure observed, "let the red tapism be cut short and the matter be settled expeditiously". he further observed that this applies to all cases in General, apart from this particular case.

In view of the above observations, all possible steps should be taken for expeditious clearance of imported goods so that there is no held up on any consignment due to one reason or other. in cases of doubt regarding assessment, where reference to board has to be made the department should resort to provisional assessment and allow clearance pending board's instructions. The above instructions Should be scrupulously followed by all concerned. (board's letter f. no. 528/62/82-cus(tu) dated 11.12.82)

Arbitrary assessment-principles to be observed

Where it becomes necessary to assess duty on an arbitrary value, though it may be desirable to pitch it at a figure to adequately protect the revenue interests, the Assessing officers should exercise due care and prudence, so that the amount fixed is not grossly out of proportion to the correct value of the goods in question as otherwise the reputation of the department for common sense and fairplay is bound to suffer. (c.b.r.f. no. 3/55/62-cus. vi DT. 14.1.62)

. Assessment in doubtful cases

In cases in which doubts about the applicability of the tariff arise, it is wrong to release such goods after issue of demands for dues without enforcing the demands. in all cases of doubts, whether for reasons of classification or the rates of duty to be applied where more than one rate of duty has been prescribed, or of the liability to duty of the particular goods, duty should invariably be levied and collected before the goods are released,

leaving it to the assess to claim refund through the appellate or other appropriate procedure. (c.b.r.f. no. 5/54/55-cxm ii DT. 12.4.56)

Scops of Sec 19 Custom Act '62 vis-à-vis duty on accessories under the proviso clause to section 19 c.a. '62. An important legal question was raised as to whether assessment as "accessories" under proviso (a) to section 19 of the custom act, 1962 will preclude or remove the operation of proviso (b) to the said section, so that assessment at the value applicable to main article is compulsory even where separate values are available.

(2) The Ministry of Law & justice, were consulted in the matter and their opinion is reproduced below: "the answer to the query in this reference would appear to be in the affirmative. a perusal of section 19 would reveal that there is no distinction made between 'articles' themselves and 'accessories' thereof. clause (a), (b) and (c) to section 19 speak of 'articles'. clause (b) of the proviso also speaks of 'articles'. it is only clause (a) of the proviso that speaks of accessories of articles. inthe premises it would appear reasonable to hold that clause (b) to the proviso is inapplicable to accessories of articles." (board's letter f.no. 521/37/74-cus (tu) new Delhi dt.11th June 1975)

The accessories (condition) rules, 1963  
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(1) These rules may be called the accessories (condition) rules, 1963.

(2) Accessories of and spare parts and maintenance or repairing implements for for, any article, when imported along with that article shall be chargeable at the same rate of duty as that article, if the proper officer is satisfied that in the ordinary course of trade-

(i) such accessories, parts and implements are compulsorily supplied along with that article; and

(ii) no separate charge is made for such supply, their price being included in the price of the article. (m.f. (d.r.) notfn. no. 18-cus DT. 23rd January, 1963) highest rate of duty under section 19 of the customs act, 1962.

"Section 19 of the Customs act, 1962 provides for the application of the highest rate where the separate values of the various item in an article are not available for assessment of that article on its merit. duty under section 19 customs act, 1962 includes the duty leviabale under the first scheduled and the additional duty leviabale under section 3 of the customs tariff act'75. the highest rate of duty is that rate which cumulatively gives the highest yield of revenue.

The conference, therefore, felt that the highest fields of revenue is one which fetches the maximum duty by application of both the basic



and additional duty taken together". (c.b.e. & c.f.no. 525/6/72-cus (tu) DT. 29.9.72)

Bill of entry-date of presentation and rate of duty applicable

While dealing with an appeal, the board came across a case where a clearing agent presented bill of entry for clearance of a consignment before the noting clerk of the import department of the custom house. the clerk returned the bill of entry as the correct date of the arrival of the vessel had not been mentioned in the bill. the bill of entry was resubmitted after correcting the same on the next working day. in the meantime, the rate of duty had passed and the goods were assessed to duty at the higher rate. the appellants, however, contended that since the bill of entry was originally presented before the enhancement of the rate of duty, the goods were assessable to duty at the lower rate in force on the day of presentation of bill of entry.

(2) The matter was examined by the board in consultation with the ministry of law, who opined that in this particular case the date for the purpose of determining the rate of duty under section 15(1) of the customs act, 1962 should be the date on which the bill of entry was originally presented to the import department. the appeal was allowed.

(3) In the light of the above legal position, the board desire that when a bill of entry containing all the essential particulars required is presented to the noting clerk, it should be assigned a serial number and date on its presentation regardless of the fact that some additional information may have to be called for, where, however, the bill of entry as originally presented does not contain the prescribed particulars, it should not be noted on the date of its first presentation. in that case the crucial date for the purpose of section 15(1) of the customs act, 1962, would be the date on which the bill of entry containing all the prescribed particulars is subsequently presented to the department. (c.1/303/69-board's f.3/1/68. cus.vi dated 27.8.69)

Presentation of Bill of Entry by oil company Under section 46(1) -Designation proper officer

Having regard to the opinion given by the Ministry of law the board directs that the officers whether Preventive Officers or Noting clerk or Central Excise Inspectors to whom Bills of Entries for Home Consumption are first presented showing provisional quantity of oil by the oil company for the purpose of effecting clearance on payment of duty should be designated as the Proper officers for the purpose of section 46(1) of the Customs Act, 1962. the date of such presentation shall be the crucial date for the purpose of section 15 of the customs act, 1962. (c.b.e. & c.f. no. 27/26/70-cus. vi DT. 30.3.1971)

Orders of higher authority taken for classification and Assessment to record duplicate bill of entry in order to facilitate audit check and for the guidance of the outside staff. Appraisers should in future invariably record a brief reference in the duplicate bills of entry to the orders the higher authority obtained on the Original bills of entry regarding classification and Assessment of the goods or when such orders involve any departure from the normal procedure applicable to goods.

Refund-refund claim-filing of appeals- Reasons to be given in the orders passed by the Assistant Collector

The Board have decided that in case where the assessments against the assessee are made by or under the orders of the Asstt. Collector a formal order should be issued so that the assessee could know the grounds on which the decision was taken and the procedure to be followed in getting his grievances redressed. (board's f.no. 16/23/67-lci DT. 18.5.1967 para 91, t.b. april-june 67)

Check of assessment on Bills of entry by Asstt.

Collectors-position regarding-assessment order under the existing instructions Asstt. Collectors have to check assessments on bills of entry and shipping bills upto a certain percentage. After assessment by the Appraisers, the bills of entry and shipping bills are required to be put up to the Asstt. Collectors for check and counter signature as prescribed. The question whether in such cases where assessment are countersigned by the Asstt. Collectors, the refund procedure under section 27 of the Customs act, 1962, would be appropriate, has been examined by the Board in consultation with the Ministry of law. The Ministry of law have opined that if the Asstt. Collector " while he countersigns the bills of entry, checks the relevant entries and applies his mind to determine the duty leviable under the act and passes an order accordingly (whether such an order is passed separately or on the bill of entry itself so long as the duty liability is determined thereby), then an appeal lies under section 128 of the Customs Act, against such order. As the Appraisers make the assessment and the counter signature of the Asstt. Collector, is merely a token of a check exercised by him, it cannot be said that this check makes the Assessment order that of the Asstt. Collector. If, however, the Asstt. Collector, changes the assessment in any manner, whether by way of revised classification, valuation, or rate of duty, then the order of assessment will be that of the Asstt. Collector. in the latter case,

Recourse to section 27, Customs act, is ruled out and the Appellate procedure will only be appropriate. In the latter type of cases, the Assessing officers concerned shall endorse the importers copy of the Bill of entry suitably to indicate the fact of decision being taken by an Asstt. Collector. (c.b.e.c. letter f.no.55/98/70.cus. iv DT. 25.8.71.c.1/259/70)

When an Assessment order has been passed by or with

the concurrence of Asstt. Collector-a stamp will be affixed on the relevant bill of entry indicating this fact and advising the importer that if aggrieved, he may file an appeal to the Appellate Collector.

Ex-bond bills of entry

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(i) The rate of duty, and the rate of tariff valuation (if any) applicable to goods cleared for Home consumption ex-bond are those in force on the date of removal of the goods from the bonded warehouse. Re-assessment is therefore necessary if the rate of duty or tariff valuation is changed after the duty has been assessed and paid on the Ex-bond bill of entry and before the date of actual delivery out of the bonded warehouse. This re-assessment should be carried out before delivery of the goods is allowed. the rate of exchange applicable would be the rate of exchange prevailing on the date of presentation of WR. b e u/s.46 C.A.'62 in terms of amendment act no. 25 of 1978. (for orders re:procedure applicable to bonded goods (see chapter 2, part vi volume ii).

(ii) When a view to ensuring that the Board's decision is strictly observed and to fix up responsibility for collection of duty short levied the following procedure should be observed with immediate effect:-

(1) The W/R Bill of entry will be noted in the Import department and classified in the Appraising department. the tariff heading number will be shown by the classifying appraiser on the W/R Bill of entry against the description of the goods.

(2) The bill of entry will thereafter be registered inthe import bond register with section 59 bond. The original of the W/R Bill of entry will then be sent to the Statistical department for trade posting and the duplicate released for warehousing action.

(3) The import bond register which is maintained in column form will show among other important particulars, in a separate column, the tariff heading number under which the goods have been classified. This should be done in red ink so that it may not escape attention of the clerk-in-charge.

(4) Whenever any tariff ruling is issued under the Board's order the file containing the ruling should be sent by the concerned unit to the proper section of the custom house for issuing circular and public notice. That section will record the tariff ruling in the following form:-

-----

Sl.no.	Tariff ruling	Description	Movement
Whether any case no. reported by the file	date of re of the goods of the assessment	of the import depart-	

ment falls within  
the scope of the  
ruling if so, its  
particulars.

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1	2	3	4	5	6
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(5) After noting the particulars in column 1, 2 & 3 of the register the Assessment section will send the file containing the ruling to the import bond section to report with reference to bond register as to whether any bills of entry involving assessment under the particular tariff ruling have been registered within a period of 3 months preceding the date of issue of the ruling. A note to this effect will be kept in column 4 of the register mentioned in para 4 above under the initial of the supervisory head of the section.

(6) If any such bill of entry which has been affected as a result of issue of board's ruling is noticed, the original copy of the W/R bill of entry will be taken out by the clerk-in-charge of the import bond section from the batch of original bill of entry and sent to appraising department for the purpose of re-assessment. The deputy superintendent bonds will take particular care to see that such bills of entry, if any, are sent promptly to the Appraising department.

(7) As soon as the files containing the tariff ruling with W/R bill of entry, if any are received from the import bond section. particulars will be recorded in column (5) of the register maintained in the assessment section and the files submitted for re-assessment to the appraiser concerned promptly keeping a note in column 4 of the register under the initial of the supervisory officer.

(8) The Register maintained in the Assessment section should be submitted to A.C. once a month through the supervisory officer of the unit concerned. (c.b.r. letter no.2/6/57 cus. iv DT. 20.8.57)

Consulting experts for classification and valuation the  
valuation of specified types of engineering

And Scientific goods calls for special or technical knowledge. For dealing adequately with the classification and valuation of such goods independent experts are consulted. It is necessary that the experts consulted in this regard should be men of integrity and standing so that the opinion given by them can be relied upon as unbiased opinion. The Assessing officers should as far as possible, endeavour to consult the experts of repute taking scrupulous care to see that the final decision is not based on the opinion of interested parties or be biased for or against the particular

importer whose goods are involved. For this purpose, arrangements should be made to maintain confidential lists of experts comprising both officials and non-officials after obtaining recommendations from industrial or trade associations and making selections therefrom for such consultation. The primary object of such consultation is to reduce delays and disputes to a minimum and at the same time obtain reliable information from the market. The Assessing Officers who go out for the market enquiries and consultations should see that the name of the importer is not disclosed. The officers making such enquiries are not however debarred from making use of other sources of information, not included in the list of experts. The name of reputable firms or persons consulted as experts for deciding the issue should be entered in a separate register by each group for future reference whenever an expert is consulted an entry to that effect should be made in the register maintained by the group in the following form:-

Name of File no	Description of goods	Issued	Brief nature of	Name of		
Appraiser expert, firm	Remarks of goods	involved the	Expert op-	Person consulted.		
1	2	3	4	5	6	7

(g.i.m.f. letter f.no. 25/5/59-cus dated 10.9.59 w.r.t.f. no. 24/25/59-cus(c.r.c Advice, opinion etc. given by technical personnel attached to projects like M/s. Hindustan steel LTD etc. On composition use of goods, etc. and their assessments.

Advice or opinion given by technical personnel attached to government undertakings like M/s Hindusthan Steel Ltd., should be given due weight while considering their claims for Assessments etc. (letter no.25/27/62-cus iii dated 5.4.62 form c.b.r.c. no. 11.54/62)

#### Assessment in doubtful cases

Where the Assessment in any particular case is doubtful the following alternatives (in order of preference) should be followed: (i) Arriving at a final assessment quickly, if necessary by submission of case to senior officer; (ii) Adopting the provisional assessment procedure, but when the trader prefers to pay the higher duty and claim refund later, assessing on the higher basis.

Ref. extract form m.f. (d.r. & i.) f.no. 25/13/68-Customs Act, 1962 (tu) DT. 18.3.68 (para 133 pages 188/189 January-march 68)

The Customs tariff act, 1975- Application of Board's past Tariff rulings/Advices/Instruction regarding

The Customs Tariff act, 1975(51 of 75) has come into force on the 2nd august, 1976, repealing the Indian tariff act, 1934 (32 of 1934).

The Board had in the past been issuing tariff advices on the classification matters which were expressions of opinion on the appropriate classification of goods under the tariff act, 1934. With the introduction of the Customs tariff act, 1975 which is passed on a scheme of nomenclature different from that followed under the repealed act the earlier tariff advices would no longer have any direct application for the classification of goods under the new tariff. The advices issued earlier would no doubt be valid and relevant for deciding old cases but would not be applicable to classification issues arising under the new tariff. similarly established practice as generally understood will have no significance in terms of the new tariff.

Tariff advices issued under the new act will, of course, have the same force and validity as the earlier advices had under the repealed act. Some tariff advices, issued in the past, laid down specification for different types of goods. However, hereafter, the specification laid down in the Customs CO-operation council's nomenclature, on which the new tariff is based, as well as in the explanatory notes, to the nomenclature should be referred to for classification of goods under the new tariff. Where, however, no specifications have been laid down in the customs CO-operation council's nomenclature or the explanatory notes thereto the specifications laid down earlier by board may be referred to for guidance. Therefore the earlier rulings under the repealed act which are not in conflict with the section notes, chapter notes, headings and sub-headings of CAT. '75 or with explanatory notes to CCCN. could continue to be followed. (f.no.523/15/76cus (tu) central board of excise and customs, new Delhi, the 24th November, 1976) Divergence between practice at out-ports instances have come to notice where even though difference in practices at another port in the classification of goods either for tariff purposes or for ITC. purposes have been brought to the notice of the Assessing officers they, instead of pursuing the matter further in order to achieve uniformity have been content to maintain that each custom house was at liberty to maintain its own practice. the board considers it to be of the utmost importance that the classification and treatment of goods under the tariff and ITC. Regulations should be uniform at all the ports and that whenever any differences in the interpretation or the application of the Import tariff or the ITC regulations come to light, steps should be taken immediately to reconcile the discrepancy if necessary by a reference to the Board.

Appraisers and other officers will therefore in all cases, ensure that whenever they come across any evidence that particular goods are being classified at other ports under a different heading of the tariff, the matter is put up to the Asstt. Collector for his orders where a definite

practice exists for classifying the goods under a particular heading of the tariff, the goods will be assessed according to such practice and after release of the goods the case put up to Collector for issue of reference regarding the divergence in practice: in the meantime duty being accepted under protest if the party so desires. where there is no authorized practice the Asstt. Collector will similarly decide the the Asstt. Collector will similarly decide the Assessment of the goods according to his judgment or if necessary obtain Collector's orders and subsequently make a reference to the Out-port. Similar action may be taken in those cases where any goods are held to be covered under a particular entry in any appendix to be covered under a particular policy or any provisions of the said policy and there is sufficient evidence to show that they are being treated differently at another port. Each case will however have to be treated on an individual basis. Asstt. Collector's orders will also be taken in each case before release of the consignment where divergence of practice comes to the notice of the Assessing Officer. In all such cases where a divergence in practice in the interpretation of any provisions of import policy or scope of particular class of licences etc. is noticed a reference may be made to the port concerned with a view to arrive at a uniform practice. The board has ordered that before asking for its confirmation on matters of assessment the collectors of other major ports should be consulted and that in urgent cases a reference may be made to the Board with a request to other Collectors to communicate their views to the Board direct. adopted from c.b.r. letter no. 36(61)-cus. iii/54 of 15.6.54)

. Reference to other port for any problem-solution to indicate by custom house initiating the reference. In making a reference to other ports for opinion, the custom house making the reference should not fail to state clearly its own solution of the problem and the effect of the orders proposed to be passed. (c.b.r.d. dis. 652-cus. 1/45 DT. 10.8.45)

. Instructions regarding change in Assessment practice (authorised practice).

The principle of 'established practice' has been replaced by what may be called 'authorised practice'. 'authorised practice of assessment' would be any practice of assessment which has its basis in a tariff advice ruling of the Board or of the Collectors-in-conference. In such cases, the authorised practice' of assessment should continue to hold the field, till such time as the Board itself revises the advice ruling, i.e. any change in practice based on such advice/ruling, should take place only from the date of issue of the revised advice from the Board. It may be noted that a change in a 'Collectors-in-conference' tariff advice would have to be effected by a tariff advice from board). Pending claims for refund, appeals, revision petitions, etc. which are alive at the time of change in advice/ruling will have to be decided on the basis of the changed advice but no attempt should be made to re-open past cases assessed in terms of the past practice by the issue of less charge

demands, etc.

. The rationale behind this decisions that tariff advices are issued by the Board or the 'Collectors-in- conference', as the case may be only after very careful deliberation and after consultation with technical authorities such as the DGTD,ISI.Chief Chemist etc. These are published for the information of the trade and are uniformly applicable all over India. Any practice of assessment which has its basis in such tariff advices would merit undisturbed continuance till altered circumstances or other factors result in the tariff advice being changed by the board.

When an audit objection, wither by CRA or the Internal Audit, is raised against an Assessment based on 'authorised practice', which objection the Collector feels that changed circumstances etc. are likely to have rendered any tariff advice/ruling of the Board or of the Collectors-in-conference as no longer valid, a reference should be made to the Board forthwith under intimation to the other collectors of the major ports so that the matter could be included for consideration at the next conference of collectors on classification matters (where a member of the board would be present) and a decision could be taken without delay.

In all other cases of Assessments, when an audit objection is raised, the question arises as to the type of cases in which less charge demands are to be issued. If the Collector is satisfied about the correctness of the Assessment he may settle the objection by explaining the department's stand on the correctness of the Assessment originally made. but what has to be ensured is that the subject matter of the objection gets considered with the necessary expedition so that in case demands have to issue, the same do not get barred by limitation of time. but, where in the Collector's opinion, the position is not free from doubt, notices of demand should issue pending a final decision in thematter. Notices of demand may issue in the B/E under objection, other bills of entry which are still in Audit with IAD. or CRA. and those which otherwise come to notice. After a final decision is taken on the objection, recovery of short levy or refund of excess levy of duty can be made. As far as fresh cases are concerned Provisional Assessment should be resorted to whenever the Collector is in doubt, till a decision is taken on the correct assessment.

If in any case where notices of demands are issued, the Collector feels that the enforcement of demands would result in undue hardship to the trade by reason of the incidence of duty having already been passed on to buyers of the goods or for other reasons, he may make a reference to the government for relief by way of legal exemption or ex-gratia refund.

All previous instructions of the Board or Government of India on the subject including c.b.r. Customs instructions no.4 and 5 of 1934 may be deemed to have been modified to the extent indicated above. (c.b.e. &



c.f. no. 523/23/76-cus (tu) DT. 10.3.77)

Divergence of practice in Assessment and ITC.. maintained in different departments of Custom house. As and when divergence of practice wither in assessment or in ITC matters in different departments of a Custom House including Cargo Complex or Postal Appraising department is noticed by any of the departments of the Custom House (including the appeal unit); it should be promptly reported to the Collector through Asstt. collector/ Deputy collector/Additional Collector/Appeal collector as the case may be for follow up action. The report should state precisely the facts of the case, the loss of revenue if any, noticed as a result of such divergence in practice.

Cases of Under/Over invoicing-follow-up action by the Custom Houses. Board has advised that cases relating to under/over invoicing by Importers/Exporters besides involving infringement of the provision in the Customs Act, also attract the provisions of the Import/Export (control) act, 1947. such offences would have a direct bearing on payment of cash assistance and other benefits like incentive licences etc. to those importers/exporters involved. further, cases of under/over invoicing are required to be dealt with from the foreign exchange angle also. It is therefore, necessary that such cases are also reported to the reserve bank enforcement directorate and the import trade control authorities for necessary action under their law. (m.f. (d.r.) f.no. 493/20/77-cus. vi dated 31.8.82)

. Exemption notifications, tariff rulings, notifications and orders imposing prohibitions, restrictions, baggage and drawback notification procedure for immediate circulation amongst the staff directly concerned with them with a view to rationalise and streamline the various procedures now in vogue for the receipt of important orders/instructions of government of India/board, their immediate circulation thereof, the following thereon and implementation thereof, the following streamlined procedure, which inter alia specifically provides for time-limits within which such instructions/ orders should be circulated to the officers directly concerned with them and their acknowledgments taken, is detailed for immediate implementation by all concerned.

All the notifications, instructions and orders issued by the Government and the Board concerning the following subjects will be covered by these instructions:-

(1) Amendment of customs tariff.

(2) Tariff rulings.

(3) Notifications under section 25(1) of the customs act,

1962.

(4) Amendments to the central excise tariff.

(5) Tariff rulings on countervailing duty.

(6) Central excise exemption notifications.

(7) Notifications under section 11 of the customs act,  
1962.

(8) Notifications under section 75 of the customs act,  
1962.

(9) Procedural orders and other executive instruction of  
the Board; Government of India concerning Appraisement of goods to customs duty  
and

(10) Any other item which the collector of customs may  
like to add to this list. action on the above instructions will be in three  
stages:

(a) Immediate circulation of a limited number of copies  
to the officers directly concerned with

the subject matter of the communication;

(b) Full circulation including issue of Public Notices;

and

(c) Implementation.

Immediate circulation of a limited number of copies.

3) Soon after the dak is received back in the correspondence department after its perusal by the Collector and the Additional Collectors of Customs, the Superintendent will sort out the orders of the above types. If sufficient number of copies have not been received, he will make arrangements to take out six to eight typed copies thereof. He will maintain a master register of all such 'action copies taken and assign to them a running serial number. The immediate circulation copies will be distributed to the officers concerned personally and the initials of the officers concerned or his steno obtained on the master copy referred to above. This immediate circulation must be invariably completed the same day. if, however, the dak is received in the correspondence department after 4 p.m., the circulation should be completed by the forenoon of the following working day.

The following will be the officers to whom these immediate  
circulation action copies will be  
distributed:

Customs valuation (determination of price of imported goods)

amendment rules, 1990.

In exercise of the powers conferred by section 156 of the custom act 1962 (52 of 1962) the central government hereby makes following rules to amend customs valuation (determination of price of imported goods) rules 1988, namely:-

1. (1) These rules may be called the Customs Valuation (determination of price of imported goods) amendment rules, 1990.

(2) They shall come into force on the date of their publication in the official gazette.

2. In rule 9 of the Customs Valuation (determination of price of imported goods) rules, 1988, in subrule(2) for provisos, the following provisos shall be substituted, namely:- "provided that-

(i) Where the cost of transport referred to in clause (a) is not ascertainable, such cost shall be 20% of the free on board value of the goods.

(ii) The charges referred to in clause (b) shall be 1% of the free on board value of the goods plus the cost of transport referred to in clause (a) plus the cost of insurance referred to in clause (c).

(iii) Where the cost in clause (c) is not ascertainable, such cost shall be 1.125% of free on board value of the goods provided further that in the case of goods imported by air, where the cost referred to in clause (a) shall be 20% of the free on board value of the goods plus cost of insurance for clause (i) above and the cost referred to in clause (c) shall be 1.125% of the free on board value of the goods plus cost of transport for clause (iii) above. f.no. 467/17/89-cus. v(icd) 39/5.7.90.

Levy of customs duty on notional interest on advance payments made to the foreign suppliers/parties on import of goods.

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1. The Board has received representations from several importers regarding the levy of Customs duty on notional interest on advance payments made to the foreign supplier/parties on import of the goods. it has been further represented that consignments are pending clearance as customs authorities are insisting for payment of customs duty on the notional interest.

2. In this connection i am directed to say that the issue of inclusion of interest charges in the assessable value for the purpose of levy of custom duty is under active consideration of the board. pending finalization of the issue the consignment may not be held up and allow clearance on execution of bond with sureties for the differential amount of duty involved to safe guard the government revenue. F.no. 467/37/91 cus. v dated 19.9.91.

Demurrage charges and dispatch money not to form part of the Assessable value

The KANDLA Custom House had raised the issue relating to the inclusion of

demurrage charges and exclusion or dispatch many for computing the assessable value ascertainable under section 14 of the customs act, 1962.pursuant to the decision taken in the tariff conference of collector held in august, 1981, the issue of further discussed in the tariff conference of February, 1989. The conference had desired that the matter may be reexamined in totality especially in the context of current valuation principles based on GATT valuation at Goa on 4th and 5th April 1991 examined the problem posed in entirety. the conference came to the conclusion that in the post- dispatch money would not constitute elements of value since element for the carriage. these money are in the nature of penalties or rewards by virtue of contracted chartered agreement between the carrier and the chartered and this in no way could be conceived as being part of the freight or for that matter part of the price actually paid or payable for the goods.

2. Having regard to the above and the fact that in no other custom house there was a practice to include or deduct such moneys, it has been decided that demurrage and dispatch money may not form a part of assessable value. f. no. 467/21/89-cus.v DT. 14.8.1991.

Essential and perishable goods etc.

According to existing instructions the custom houses are required to ensure expeditious clearance of consignments of perishable goods, life-saving drugs, and other essential items such as edible oil etc. The Board desires that you should review the existing arrangements in order to ensure that the instructions issued from time to time requiring expeditious clearance of such goods are being complied with in your customs house. In this regard, you should also lay down an arrangement for monitoring the processing of all bills of entry in respect of such goods at a sufficiently senior level for ensuring that delays in their clearance are avoided, in respect of such goods at a sufficiently senior level for ensuring that delays in their clearance are avoided. f.no.446/97/87-cus iv min. of finance Deptt. of revenue/15.12.87.

Valuation of Second-Hand Machinery and Fixing up Scales of depreciation

Attention is invited to Ministry's instructions of even number dated 19.11.87wherein rates of depreciation were fixed for the purpose of arriving at the assessable value of second-hand machinery.

2. In para 3 of the above mentioned letter, it was stated that the depreciation will be calculated on the original value of the machinery under import and that officers of the customs houses would have to determine the original value of the machinery on the basis of the current c.i.f. value of the machinery as shown in the certificate of the chartered engineer. in this regard, it has been reported to the Board that a chartered engineer's certificate generally mentions the price of the new machinery and does not indicate clearly as to whether this is the current price or it is the price of the new machine in the year of its

manufacture. accordingly, where a certificate mentions the current price of the new machinery only, the customs officers do not have sufficient evidence to deduce the original value of the machinery as in its year of manufacture.

3. It has accordingly been decided that where the chartered engineer's certificate does not specifically mention the price of the new machinery as in its year of manufacture, the scale or depreciation should be calculated on the basis of the price of the new machinery as declared in the chartered engineer's certificate without going into the question as to whether this price pertains to the current c.i.f. price in the year of its manufacture. The earlier instructions dated 19.11.87 are modified to the above extent. f.no.

493/124/86-cus vi

Min. of finance, Deptt. of revenue/4.1.88

Assessment of ship stores of daughter vessels engaged in lightening of mother vessels.

The board has recently examined the issued of assessment of ship stores of "daughter" vessels engaged in lightening of "mother" vessels. After reviewing the practice at various ports and also various court cases and orders of the tribunal on the leviability of duty on stores supplied vessels which arrive from foreign ports for the purposes of lightening "mother" vessels and which go back to foreign ports thereafter, no duty shall be charged on ships stores consumed on the " daughter" vessels during their lightening operations. if the same vessel is, however, diverted to coastal run, it would then be treated as coastal vessels and duty would be chargeable on stores consumed by it. f.no.450/109/92-cus. iv, DT. 24.12.1992.

Regarding release of consignment of the imported foodgrains and the applicability of section 6(2) of the prevention of food adulteration act, 1957.

Forwarded herewith a copy of d.o. letter no. 3-3/92/sf/33/93 dated the 3rd February, 1993 from the secretary ministry of food alongwith a copy of do. letter dated 25.7.92 from the joint secretary, ministry of health and family welfare on the above subject. ministry of health has taken a decision that testing for the purpose of prevention of food adulteration act, 1954 of foodgrains imported on behalf of government of India will be conducted by the food corpn. of India. in the light of this decision, sample for testing the foodgrains imported on behalf of government of India should be directed to f.c.i. and not to the officers of the ministry of health/port health officer. f.no.446/8/93-cus-iv, DT. 15.3.1993.

Signing of Bonds under Section 59 of the Customs Act, 1962.

During the 29th meeting of the Customs and Central Excise, advisory council held on 16th December, 1986 All India Small Scale pharmaceuticals manufacturers' association have pointed out difficulties in the authorised signatory required to come to the Custom houses for signing bonds under section 59, copies of instruction issued in this regard by the board from time to time are enclosed. it may be noticed that the existing instructions already stipulate that the person authorised to sign bonds need not come to the custom house if signatures are attested with stamp by

- (i) Notary public, or
- (ii) Justice of the peace, or
- (iii) A magistrate, or
- (iv) In a civil court.

2. During the discussion, it was mentioned by the federation of clearing agents' association that in the Bombay customs house, custom house agents were authenticating the signature of the importers on the bonds.

3. The board have accepted the suggestion and have decided that the practice prevalent in Bombay Custom House should be followed by other custom house also it is therefore requested that necessary instructions in this regard may be issued to the field formations under your charge. m.o.f. (Deptt. of rev.) f.no.473/156/87-cus-vii DT. 15.6.1987.

General requirements:

(i) Signatories to bonds and letters of guarantee executed in favour of the Custom House must be duly authorised in this behalf in the application form, duly supported by power of attorney, articles of memorandum or partnership deed etc. as the case may be, and their specimen signatures and authority must have been duly accepted and registered in the department concerned.

(ii) All bonds and guarantees presented for acceptance in the appraising epartment must be signed by the party/parties concerned in the presence of the ppraiser or principal appraiser, provided the parties signing bonds and uarantees will not be required to appear personally before the customs officers when their signatures are attested by:-

- (a) A notary public or
- (b) A justice of the peace, or
- (c) A magistrate, or
- (d) In a civil court,

and the attestation is confirmed by his official seal. the signatures on bonds and guarantees should invariably by verified from the department concerned to ascertain that the signatures are of authorised person duly empowered to sign on bonds and guanratees. copy of (c.b.r. 7/8/59-cus. vii dated 16.4.60)

Format of bond to be taken from importers in case of clearances allowed in pursuance of orders of court.

In view of the recommendations of the public accounts committee in its 151st report that the bond filed for the differential duty in respect of goods cleared in pursuance of court's orders where stay is granted against recovery of duty should have the conditions that duty becomes recoverable immediately on vacation of the stay order of the court have a provision for enforcement immediately on vacation of the stay order of the court or the final decision of the writ petition, whichever is earlier. a standard format for such a bond duly vetted by the ministry of law is enclosed.

2. It has been decided that all bond accepted in pursuance of court's orders should be in the enclosed format and that this should be brought into force with immediate effect. you are requested to bring this to the notice of the trade and the importers for compliance. f.no. 483/8/89-cus vii, dt.15.1.91.

Form of bond for differential duty of customs

Know all men by these presents that I/We  
Shri/Smt./M/s.-----  
of \*-----hereinafter called the "importer"  
(which expression shall include his/her/our/its successors/successors in interest/heirs, executors, administrators, legal representatives and assignees) am/are/is\*\*\*held and firmly bound upto the president of India hereinafter called the "president" in the sum of RS.----- (rupees-----only) to be paid to the president for which payment well and truly to be made i/we bind myself/ourselves, my/our successors, respective successors /successors in interest, heirs, executors, administrators legal representative and assignees \*\* firmly by these presents.

Signed/sealed with my/our seal (s)\*\*\*  
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this-----day of-----19-----  
Whereas in civil writ petition/civil miscellaneous petition/special leave application no.----- of 19----- (entitled-----vs. union of India and others, the hon'ble court-----was pleased to pass an order on----- (hereinafter referred to as said stay order) to the effect that the importer be allowed to clear the consignment of ----- (give full description of the goods, weight/quantity, etc) as per schedule annexed hereto arrived as per s.s.----- on the "condition that the importer furnish bond and a bank guarantee for 100% of the differential duty claimed by the respondents to the satisfaction of the collector of customs ----- before taking delivery of the goods. and whereas the importer has agreed to bind himself/themselves/it self firmly fully and unconditionally to the president to pay immediately on demand the aforesaid sum of RS.----- in the event of vacation of the said stay order or in the event of the decision adverse to the

importer being given by the said court or dismissal of writ petition/special leave application or any further order of the court whichever is earlier.

#### Monitoring of Bank Guarantees.

Attention is invited to Board's instruction in f.no. 7/10/58-cus. Vii dated 1.8.60 and f.no.477/1/87-cus.vii dated 23.1.1987 Wherein the Collectors were asked to closely monitor the bonds and bank guarantees to ensure that there was no revenue loss on account of expired bank guarantees for want of timely enforcement of bonds and guarantees.

2. In this regard board has once again reiterated that the collectors should work out an effective mechanism for personally monitoring the bonds and guarantees in order to ensure that action for enforcement or revalidation, as the case may be, is taken in respect of all bonds and guarantees before the expiry of the validity period.

3. In addition to the monitoring of the disposal of bonds and guarantees by the Collectors, the collectorate wise position will be monitored by the director general of inspection. f.no. 477/1/87-cus vii min. of finance, Deptt. of revenue/14.12.87.

Warehousing-chargeability of interest on warehoused goods under section 61(2) of the customs act, 1962-clarification regarding.

Reference is invited to d.o. letter no. s/6gen-266/87-88 b dated 5.8.87 and c.no.viii(30) cust/tech/12/16786 dated 31.7.1987 respectively on the above subject and the question of charging interest on warehoused goods where duty has been paid but goods are not cleared from the warehouse on the same day was considered by the board, and it has been decided the consider waiver of interest leviable on the warehoused goods for a period of 7 days after duty after duty thereon has been paid but goods could not be removed from the warehouse for reasons beyond the control of the bonder. forward these types of cases for board's consideration of waiver of interest after verifying the genuiness of the reasons for not clearing the goods from the warehouse after payment of duty. f.no.473/239/87-cus, vii dt.24.5.88.

Customs (amendment) act, 1991-Instructions reg.

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It is directed to forward herewith copies of the customs (amendment) act,1991 and the notification no 80/91-cus (nt) dated 23.12.91 and notification no.81 & 82/91(nt) dated 23.12.91 in connection with the implementationof the aforesaid amendment act for your information and necessary action. notification no.80/91 cus(nt) seeks to bring into force the provisions of the customs (amendment) act, 1991, with effect from 23.12.91. notification no.81/91-cus.(nt)and no.82/91-cus (nt) both dated 23.12.91 prescribe the rate of interest per annum. \*\*



2.1 As per the amended provisions of section 47 of the customs act, 1962, interest would be payable on such of the goods in respect of which bill of entry of home consumption has been assessed and returned to the importer but the duty leviable thereon has not been paid within seven days of such return. For calculating the period of interest, it is clarified, by way of an example, that if the bill of entry for home consumption has been returned to the importer say, on 24th of December, 1991, no interest will become payable if the duty assessed against such a bill of entry is paid by 31st December, 1991. If duty is paid on or after 1st Jan, 1992, interest will be payable for the period from 1st Jan, 92 till the date of payment of duty.

2.2 It may be noted that the date of return of the bill of entry to the importer is very crucial in view of the amended provisions of the customs act. Arrangements may be made to ensure that as soon as the assessment is completed and the bill of entry for home consumption is ready for return to the importer, the date of return is stamped on all the copies of each bill of entry and the bill of entry is returned to the importer on the said date.

\*\* Printed version of the customs (amendment) act, 1991 (55 of 1991) are yet to be received. The same will be sent shortly. However, copies of the customs (amendment) bill, 1991, have already been forwarded to you.

2.3 In case the bill of entry is being presented to the cash section of the Custom House by the importer for payment of duty after the expiry of seven days from the date of return to the importer of the bill of entry duly assessed no such duty shall be accepted and the importer shall be directed to approach the assessing group to indicate the interest amount payable on the bill of entry. In such cases, the importer should first approach the concerned assessing group for calculation of the interest.

2.4 In customs formations where the customs duty is paid against tr-6 challans the officer preparing the tr-6 challan would make an endorsement on the challan that the said challan is valid for payment of import duty upto the specified date which should be the 7th day from the date of return of the bill of entry. All the designated branches of banks should be instructed to accept the duty against the challans only when the payment is made within the time-period specified on the challan. In case the importer fails to make the payment of duty within the specified time, he will approach the assessing officer for indicating the interest due upto the date of payment and for preparing a revised tr-6 challan.

2.5 In all the cases mentioned above, it will also be the responsibility of the officer allowing "out of charge" of the imported goods to ensure that the duty and the interest for the appropriate period have been paid for, before the "out of charge" is given by him.

3.1 As per the new provisions introduced vide section 59 a of the customs act, an importer intending to warehouse his goods is required to deposit 50% of

the assessed duty before the goods are permitted to be warehoused under section 60 *ibid*, therefore, after assessment, the bill of entry should be returned to the importer for payment of 50% of the assessed duty. this deposit shall be made at the point of entry in all cases even if the goods are intended for warehousing at an inland station.

3.2 It should be ensured that the bill of entry is returned to the importer immediately after an order has been passed for warehousing the goods under section 60 and the date of return is duly endorsed on all the copies of the bill of entry.

3.3 It may be noted that while interest has to be calculated with reference to the date of return of the bill of entry, the 30 days period of warehousing in respect of goods specified in clause (b) of section 61 (1) has to be calculated from the date on which the proper officer has made an order under section 60 permitting deposit of the goods in a warehouse. it may also be noted that powers for extension of warehousing period of 30 days in respect of goods covered by clause (b) of section 61(1) have been withdrawn by this act. The goods have, therefore, to be cleared from the bonded warehouses within 30 days from the date on which the order for warehousing has been passed under section 60, failing which further action in terms of section 72 has to be taken for recovery of duty, interest and other dues.

3.4 In respect of goods covered by clause (a) of section 6(1) there is no charge in the initial warehousing period, and the existing instructions for grant of extension of the warehousing period will continue to be in force.

3.5 Where the warehoused goods are cleared in piecemeal and not in one lot, deposit made under section 59a (1) will be adjusted towards the latter clearances.

3.6 In all warehouse records, separate columns showing the date of return of bill of entry and the amount of duty deposited under section 59a should be inserted.

4.1 The amended provisions will apply in respect of all bills of entry which have not been assessed and returned to the importer for payment of duty on warehousing on or before the day of the commencement of this act even though the goods may have already landed. in respect of bills of entry for home consumption which have been assessed and returned to the importer for payment of duty before commencement of this amendment act, no interest would be chargeable if the duty assessed on such bill of entry is paid within 7 days of the commencement of this act i.e.....

4.2 Goods already warehoused (prior to the commencement of the amendment act) can continue to remain warehoused without attracting interest upto the expiry of initial warehousing period as was prevailing before the amendment of the customs act. however, such goods would not now be eligible for any extension after the

expiry of the initial warehousing period. likewise in respect of the goods already warehoused and where extension have been granted the goods would continue to remain warehoused for the period for which the extension had been granted before the commencement of this act. however, such goods would also not be eligible for grant of any further extension. Such goods would attract interest at the higher rate as is now being prescribed with effect from the date of the commencement of this act till the expiry of previously extended period. for the extended period prior to the commencement of this act interest at the old rate would continue to apply.

4.3 The amended provisions of section 48 will apply to the goods which have landed on or after the date of commencement of the act. f.no. 473/23/91-cus-vii, dt.23.12.1991

Customs (amendment) act, 1991 - instructions reg.

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Reference to the correspondence resting with the board's letter of even number dated the 23rd December, 1991 on the above subject and to say that the S.O. numbers to the notification numbers 80, 81 and 82/91 (nt) - customs all dated 23rd dec., 1991 may be read as S.O. 913(e) and 915(e), respectively.

2. Doubts have been raised by some custom houses regarding chargeability of interest both under section 61 and 47 of the customs act, 1962. it is hereby clarified that charging section is only 47 as has been clearly mentioned in section 61 and there is no question only under section 47 and will start accruing after the 8th day (i.e. seven days after the return of B/E to the importer) irrespective of whether the bills of entry are for home consumption or for warehousing. f.no.473/23/91-cus vii dt.1.1.1992.

Import of Commercial Goods as part of the Baggage - reg.

Reference to board's instructions of even no, dated 31.1.92 on the subject mentioned above and to state that the position has been reviewed in the context of the latest changes in the import policy wherein except for 87 categories of goods all other items are freely permissible for import. as a result, the import of permissible commercial goods by passengers cannot be held to be unauthorised merely because the goods are being imported through the baggage mode. the items which can be freely imported as normal cargo either by air or sea do not become prohibited goods if brought as part of a passenger's baggage. therefore, normal restrictions and prohibitions as have been specified in the revised import policy of goods, irrespective of whether they are brought by air, policy of goods, irrespective of whether they are brought by air, by sea or baggage, would be applicable. in this background fax machines imported as baggage, would not be subject to adjudication proceedings since fax machines are permitted for

imported without any licensing requirement in the Export-Import policy 1992-97]

3. In so far as the rate of duty is concerned, such commercial imports would be assessed to duty at the baggage rate covered by chapter note 5 to chapter 98.

4. Kindly acknowledge the receipt of this letter. f.no.495/10/92-cus.vi DT. 7.7.1992.

GENERAL INSTRUCTIONS  
(CUSTOMS)

June, 1990

Customs Valuation rules 1988-determination of value of imported goods in cases Where prima-facie evidence is available on under valuation.

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The difficulties in determination of the value of imported goods under the customs valuation rules, 1988 in cases where the goods, prima facie, appear to be undervalued have been considered by the board. It has been observed that the basic provisions of section 14(1) of the customs act continue to remain unchanged and provides sufficient authority to disregard the declared transaction value of imported goods where undervaluation is reasonably suspected and prima-facie evidence is available in spite of the fact that concrete evidence is not available to establish fraud. The prima-facie evidence with the customs department can be in the form of published price lists of the manufacturer or the previously accepted customs values of identical or similar goods in a series of imports at or about the same time, retrieved from the computer.

2. If the declared price is substantially lower than the known prices of the goods then the responsibility to explain the difference to the satisfaction of the customs authorities is with the importer. If the importer fails to do so it would be in order to disregard the declared value after giving reasonable opportunity to the importer to explain his case. The goods may then be valued under the subsequent methods of valuation laid down under the rules after rejecting the transaction value method (rule 4).

3. In this regard a copy of the order of the CEGAT in the case of M/s Delhi Plastics (vide order no. 137 to 141/88a, dated 11.2.88) is enclosed. The tribunal had confirmed the findings of the customs authorities in this particular case even though no concrete evidence was available to establish fraud. This was also confirmed by the Supreme Court. It is considered that the conclusions arrived at in this order would still be applicable under the new valuation rules. This may be brought to the notice of the assessing officers for guidance. MF(DR) f.no. 467/13/90-cus.v (ICD) DT. 7.5.90

Bonds and guarantees-need for indicating in the  
bond/guarantee the purpose for which documents are required to be produced.

Bonds/guarantees are often executed by importers/exporters for production of specified documents within the specified time. the board desires that it should in variably be indicated in the body of such bonds/guarantee as to for what purpose or requirement and under which which rules/regulations such documents are required to produced. such bonds/guarantees should also impose a monetary binding on the executors thereof. (f.no. 477/13/74-cus vii. government of India Central board of excise & customs, new Delhi, the 17th July 1974)

#### Re-assessment of duty on the basis of test result when necessary

The Ministry of law, who were consulted in the matter, have stated that re-assessment of export duty on the basis of the rest results obtained in the customs laboratory would be optional provided the assessment at he time of export was made under section 29-a of the sea customs act.[section 17(4) customs act, 62] on the other hand, after the original assessment was made under section 29-b of the sea customs act, (section 18 customs act, 62) re-assessment on the basis of the test results obtained from the customs laboratory would be compulsory. whether or not assessment was made initially under section)29-a [section 17(4) customs act,] or section 29-b (section 18 customs act 62) is a question of fact which the customs house will be able to determine from the records, especially the wording of the guarantee taken prior to export and the procedure adopted in collecting and adjusting the export duty. in case of doubt about this, the local solicitor to the central government may be consulted placing before him all the relevant facts.

The exporters cannot claim a copy of the test memo as a matter of course. the test memo is a custom documents with which the exporter is not connected unless he is asked to pay extra duty or any penal action is taken against him on the basis of the test memo. M.F. (d.r.) f.no. 1/8/58/cus. vi, dated 8.4.1958

#### Provisional assessment-issue of less charge demands before finalisation of provisional assessment.

Whenever goods are assessed provisionally, it should be ensured that the goods are not allowed to pass into home consumption without payment, of proper duty. If any erroneous assessment comes to light before the bill of entry is finally assessed, it should be ensured that the short levy is recovered promptly without waiting for the finalisation of bill of entry.

In this connection a question arises whether a demand letter can be issued before a provisional duty bill of entry is finalised. it is true that a demand can be issued under section 28 customs act, '62 only after finalization of provisional duty. but it is important to determine what is

provisional in the collection of duty in the first instance

What is provisional at the time of clearance is clearly understood both by the importer and the department. if a provisional assessment is made pending examination of relationship between the suppliers and the importers and the provisional duty collected is erroneous due to incorrect application of rates of duty, there is no bar to the issue of a demand letter and collection of the amount short levied even before the provisional duty bill of entry is finally assessed.

Opinion of the law ministry as to whether assessment at concessional rate under notification no. 179 customs dated 4.9.80 would be regarded as a case of provisional assessment.

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 The advice of the ministry of law dated 5.1.1977 on the above subject conveyed by the board (vide letter f.no. 355/91/74-cus-i dated 28.1.1977) is reproduced below for information and guidance of all concerned. Ministry of law, justice & c.a. (department of legal affairs advice)

I have carefully considered the matter section 18 of the customs act, 1962 inter alia provides for provisional assessment of duty. the proper officer can make provisional assessment of duty only if he is satisfied that any of the conditions laid down in clause (a) to (c) of sub-section (1) thereof is fulfilled. the question then is whether the proper officer can make a provisional assessment when the goods are cleared on payment of duty under notification no. 179 dated the 4th September, 1980, as amended from time to time.

2. Under the said notification, component parts of any machinery when imported into India for the purpose of initial setting up of that machinery or for its assembly or manufacture are exempt from payment of customs duty leviable under the act, as is in excess of the rate applicable under the tariff act, provided they produce a certificate from certain authorities mentioned in the notification recommending grant of exemption, and also if the importer executes a bond binding himself to pay, on demand, in respect of such component parts as are not proved to the satisfaction of the customs collector to have been used for the aforesaid purpose, the difference of duty which would have been leviable but for the exemption contained in the said notification.

3. It seems to me that under the said notification when goods are cleared, the importer only binds himself to pay the difference in duty in case it is found by the customs collector that the component parts had been used for a purpose other than the purpose of the import. in other words, once the collector of customs is satisfied that the goods had not been used for the purpose for which they are imported, he takes steps to enforce the bond and not to raise a demand under the act.

4. In view of the foregoing, it is not a case of provisional assessment when the goods are cleared under the notification [f.no. 353/91/74 cus. dr. 28.1.77]

### CUSTOMS BONDS AND GUARANTEES

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1. It is desirable in the interests and convenience of trade that the occasion for taking bonds and guarantees should be kept to the minimum. this is however, subject to two overriding considerations (a) avoidable detention of goods and (b) security of revenue.

Bonds and guarantees are executed by the importers exporters for the fulfilment of certain conditions or discharging obligations imposed under the customs act and such other allied acts, as the import & export trade control act or the rules issued thereunder. as the occasions for, and purpose of such bonds are varied and as the bonds may have to be enforced in a court of law, great care should be taken to ensure that in its terms and condition the form of the bond cover the fulfilment and bindings- required by the department in each case. Where standard forms are prescribed the bond should always be taken in such approved forms. in all other cases, the department concerned should get the draft form vetted by the local government solicitor before adoption. the following general considerations suggested by the ministry of law should be borne in mind in finalizing the forms :-

(i) Under act, 299(1) of the constitution all bonds are to be addressed to the president through the collector of customs.

(ii) Consequential changes should be made in the form replacing the word "you" (which now refers to the president) by the phrase "collector of customs".

(iii) Each bond should be accepted by the authorized officers for and on behalf of the president and an endorsement to that effect should be made on the document itself.

(iv) If a bond is being accepted under any of the provisions of the customs act, care should be taken to ensure that there is nothing in the form which would go against the provisions. care should be taken to see that all the required particulars are duly entered in the bond and the names and addressees of the parties executing the bonds and the sureties are properly recorded therein. a guarantee bond or a letter of guarantee must be properly stamped with non-judicial stamp. the guarantee executed by the surely (including bonds) should also be on stamped papers. (the amount of stamp duty applicable to bonds and guarantees varies from state to state & local supplements may be consulted for this purpose).

It has been decided by the Government of India that, whenever bonds are taken for any purpose an indication of the financial

liability of the executing should, as far as possible, be provided in the bond itself. (c.b.r. f.no. 21/46/56 cus.iv-v dated 4.2.56).

1(a) Bond and Guarantees-need for indicating in the Bond/Guarantee the purpose for which documents are required to be produced. bonds/guarantees are often executed by importers/exporters for production of specified documents within the specified time. the board desires that it should invariably be indicated in the body of such bond/guarantee as to for what purpose or requirement and under which rules/regulations such documents are required to be produced. such bonds/ guarantees should also impose a Monterey binding on the executors thereof. (f.no. 477/13/74-cus. vii. govt. of India, c.b.e. & c., new Delhi, the 17th july,1974).

1(b) (i) Financial liability-since it is not possible to standardise the financial liability of the executing in respect of each category of cases in which bonds are taken the amount of the bond should be arrived at on the basis of a proper estimate or calculation of the liability by the section or unit concerned and approved by assistant collector who should keep in mind the risk involved in each case.

1(b) (ii) Execution of bonds for provisional assessment -determination of amount thereof-instruction reg: the question regarding determining the amount of the bond for provisional assessment under section 18 of the customs act, 1962, has been considered in consultation with the directorate of inspection (customs and central excise). it has been considered necessary that the amount of the bond should cover the amount of duty involved and chargeable at the highest rate applicable in case of failure of the goods to pass chemical test etc. in addition to the amount of duty, it is also necessary to take cover for the ITC. Licence, if the goods are found on test to be other than those declared (vide board's letter enclosing bond forms in appendix form nos. 2 to 7 of vol.-vi) stipulating that the executor of the bond should produce a valid ITC. Licence or in the event of his failure to do so pay the fine or penalty. But since penal action can be, irrespective of the acceptance of the bond, it is necessary that the amount of the bond should not be inflated unnecessarily. in the case of reputed importers a bond with the surety of another reputable firm should suffice. even in the case of other importers, the occasion for insisting on a bond providing surety or guarantee should be kept to the minimum so that funds are not blocked up with banks unproductively. in this connection please refer to the board's instructions in para 3 below, on the subject urging the assistant collectors to dispense with bank sureties on bonds and letters of guarantee in appropriate cases. (board's f. 7/2/67-cus. vii dated 2.8.67 & 17.8.67).

1(c) Validity of bond in general-the validity period of the bond should not normally exceed 12 months within which the departments or unit concerned should complete all the stamps required to be taken under the bonds in case surety for a limited period is accepted in an exceptional case it



should be ensured that the period is at least 3 months more than the time required to discharge the obligation. f 9/5/59-cus (crc]

1(d) Stamp duty for bonds-on the question of applicability of stamp duty on different bonds, board has ordered as below:-

There should be no difficulty as to the stamp duty payable on a general continuing bond under section 59(2) customs act, 1962. as for other bonds the stamp duty will be governed by the respective state enactment's as may be applicable. (board's f.no. 3/29/60-cus. vii dated 2.7.1963.)

1(e) A Duplicate copy of bond/guarantee to file with original-whenver importers execute bonds or letters of guarantee with the custom house, they are required to submit an unstamped duplicate copy of the bond or guarantee, in all cases.

1(f) Where to file bond and where guarantee- in all Licence cases as well as all other cases involving more than RS. 1,000/ in customs duty, the parties should be required to execute bonds and not guarantee.

1(g) Rounding off value in customs bond-the values in customs bond may be rounded off provided the rounded value in higher than the exact amount of the bond

1(h) Continuation sheet of bond should be stamped paper-whenver a bond is executed on a stamped (non- judicial) paper and the schedule ANNEXED thereto has to be accommodated on a "continuation sheet" it should be ensured that the continuation sheet is itself a stamped paper and not a plain one. (cbr letter no. 7/28/60 cus viii dated 18.7.62).

Note: When a bond is accepted on a stamped paper but the entire bond cannot be typed on the stamped paper; the remaining portion of the bond including the "schedule" annexed thereto will be accommodated on a "continuation sheet". it should, however, be ensured that the continuation sheet is a demi-paper and not a plain paper. each such continuation sheet should be signed by the person executing the bond.

1(i) Addressees of guarantees & sureties to mention- the officers accepting bonds/guarantees will ensure before acceptance that the addresses of the guarantors and sureties are invariably furnished in the bond and its duplicate copy, otherwise the bond should Not be accepted. The period stipulated in the bond for production or Licence should normally not exceed 2 months. the officer accepting the bond will of course have the discretion to grant extension of time depending on the merits of the case.

1(j) Bond/guarantee amount to indicate clearly-officers recommending acceptance of bond and guarantees are to ensure that the amount for which the party undertakes liability is clearly written on the body of the bond/ guarantee in words and figures without any mark of erasement to avoid any defect from the legal point of view.

1(k) Bond/guarantee to include recovery clause as laid down under section 142 (1) of c.a. '62 bonds/guarantees executed under the provisions of the customs act, 1962 should contain provision regarding the mode of recovery as laid down under section 142(2) of the customs act 1962. the importers should therefore, be advised to include a separate clause, bonds and guarantees involving recovery of money:-

Any amount due under this bond/guarantee may be recovered in the manner laid down in sub-section(1) of section 142 of the customs act 1962 without prejudice to any other mode of recovery". (board's f.no. 7/9/62-cus. vii dated 14.8.63).

1(l) Bond/guarantee for ITC. regulations authority of bonds or instruments for the purpose of ITC regulations can also be taken under the customs act 1962 as section

143 of the said act is sufficiently wide enough to cover such bonds or instruments.

1(m) Higher rate of duty to form the basis of calculation of bond amount where there is doubt-in order to avoid delay, an approximate amount may be taken in the calculation of the bond amount in terms of sub-para (2) of notification no.179 dated 4.9.80. for this purpose, wherever there is a doubt, higher rate of duty should be the basis for the purpose of calculation. There is also no need to calculate duty correct to the paise. (c.b.r. letter no. f.7/18/60-cus. vii dated 8.9.61).

1(n) No bond/guarantee without surety-no bond or guarantee will be considered for acceptance unless it is countersigned by a proper surety.

1(o) Signatories of bond/guarantee must be authorized person-signatories to bonds and letters of guarantee executed in favour of the custom house must be duly authorised in this behalf in the application form, duly supported by power of attorney articles of memorandum or partnership deed etc.as the case may be, and their specimen signatures and authority must have been duly accepted and registered in the department concerned.

1(p) Signing of bonds and guarantees by various categories of business organisations-instructions regarding bonds and guarantees should be signed by the proper person as detailed below:

(a) Where the party is an individual he should himself sign the bond/letters of guarantee. (cbr letter no. 7/29/54-cus. i dated 8.2.1954).

(b) Where the party is a proprietary firm, the bond guarantee should be signed by the proprietor/or by person authorised to sign bonds or guarantee. the party or parties concerned should be asked to produce such evidence as may be necessary to establish that the person signing that bond is duly authorised to do so.

(c) Where the party is partnership firm, the signature of any one partner having power of attorney for signing on behalf of the firm may be accepted. the question whether the firm is registered as provided under the partnership act or not, is not relevant. what is really relevant is that the act of a partner is one which is done to carry on in the usual way the business of the kind carried on by the firm and that the person signing the instrument is actually a partner having the authority to bind the firm by his acts. in case of doubt, the authority accepting the instrument can satisfy itself on both these points by a reference to the original partnership deed. (c.b.r. lr.f.no. 7/7/63.cus. vii DT. 10.10.63).

(d) On behalf of a company incorporated under the Indian companies act, the signature should be that of a person duly authorised in accordance with the provision contained in his behalf in the articles of association of the company. under section 90 of the companies act, a company may, by writing under its common seal, give any person a general or particular power or attorney to act on its behalf and to execute deed on its behalf in any place or outside India or Pakistan and every deed signed by such attorney on behalf of the company shall be binding on the company and its successors shall have the same effect as if it were under its common seal. (c.b.r. lr. no. 70329/54 cus. i DT. 8.12.1954).

(e) If the importer is a company or a statutory corporation, its common seal it required to be affixed strictly in accordance with the provisions contained in its articles of association or rules and regulations as the case may be. (c.b.e. & c lr. f.no. 7/13363 cus. vii dated 18.1.1963)

(f) It has been advised by the ministry of law that a company may execute a contract by affixing its seal in accordance with its articles of association or by authorising a person to sign on its behalf by the hand of a constituted attorney duly appointed by writing under its common seal. when a duly constituted attorney under a company, the company's seal is not affixed to the document. the power of attorney should however be examined and a copy kept. (board's f.no. 7/4/646-cus.vii DT. 25.6.64 ).

(g) Signature of the person concerned should be registered in the establishment Deptt. import Deptt. as the case may be, (see form no. 39) of the appendix. vol.-vi for form of authorisation to sign customs documents).

1(q) Attestation of signature of signatories of bonds/  
guarantee-signing of bonds under section 59 of the customs act, 1962-during the 29th meeting of the customs and Central excise, advisory council held on 16th December, 1986, all India small scale pharmaceuticals manufacturers' association have pointed out difficulties in the authorised signatory required to come to the custom houses for signing bonds under section 59. copies of instructions issued in this regard by the board from time to time are enclosed. it may be noticed that the existing instructions already stipulate that the person authorised to sign bonds need not come to the custom house if signatures are

attested with stamp by

- (i) notary public, or
- (ii) justice of the peace, or
- (iii) a magistrate, or
- (iv) in a civil court.

2. During the discussion, it was mentioned by the federation of clearing agents' association that in the Bombay custom house. custom house agents were authenticating the signature of the importers on the bonds.

3. The board have accepted the suggestion and have decided that the practice prevalent in Bombay custom house should be followed by other custom houses also. it is therefore, requested that necessary instruction in this regard may be issued to the field formations under your charge. (m.o.f. (Deptt. of rev.f.no. 473/56/87-cus-vii dt.15.6.1987).

General requirements for bonds and letter of guarantee:-

(i) Signatories to bonds and letters of guarantee executed in favour of the custom house must be duly authorised in this behalf in the application form, duly supported by power of attorney, articles of memorandum or partnership deed etc, as the case may be, and their specimen signatures and authority must have been duly accepted and registered in the department concerned.

(ii) All bonds and guarantees presented for acceptance in the Appraising department must be signed by the party/parties concerned in the presence of the appraiser appraiser, provided the parties signing bonds and guarantees will not be required to appear personally before the customs officers when their signatures are attested by:-

- (a) a notary public, or
- (b) a justice of the peace, or
- (c) a magistrate, or
- (d) in a civil court,

and the attestation is confirmed by his official seal. The signatures on bonds and guarantees should invariably be verified from the department concerned to ascertain that the signatures are of authorised person duly empowered to sign on bonds and guarantees. (copy of (c.b.r. 7/8/59-cus. vii dated 16.4.60).

And the attestation is confirmed by his official seal. The signatures on bonds and guarantees should invariably be verified from the department concerned to ascertain that the signatures are of authorised person duly empowered to sign on bonds and guarantees. (copy of (c.b.r. 7/8/59-cus vii dated 16.4.60).

(ii) ref. crc report no 49 - as an additional facility to the trade, senior preventive officers of the custom house will be posted in deserving cases and subject to such officers being available, to witness the party's signature at his own premises on payment of the requisite fees.

In such cases, the party should be asked to make arrangements for the conveyance of the officers posted or in the alternative should be required to pay the conveyance charges.

(iii) The signatures of persons owning bonded warehouses may be attested by the preventive officer posted to the warehouse.

(iv) It has been decided that the parties signing bonds and guarantees will not be required to appear before the customs officers when their signatures on the bonds and guarantees are duly attested by a licensed clearing agent of the custom house, of status and standing, who are reliable and well known to the customs officers. for this purpose a clearing agent must have a satisfactory record in the custom house of service as a clearing agent for a period of 10 years or more. in cases of doubt the orders of the assistant collector in-charge should be obtained as to whether attestation by a particular clearing agent would be acceptable.

Only such office bearers of the firms of clearing agents will be permitted to witness signature on bonds and guarantee as have been duly authorised by the firm concerned to sign bonds and guarantees and whose the authorization has been duly registered in the custom house on being supported by a power of attorney. (c.b.c. circular no. 120 para 4, chapter xii vol-I of crc report).

(v) The signatories of bond/guarantee will notify in block letters their full names on the bond or guarantees.

(vi) Signature on the guarantee should be attested by witnesses (two) with the names and occupations of each. this will apply to banks as well when any of their officers sign as surety on behalf of the bank.

(vii) In all cases before bonds are accepted, checks should be exercised by the unit concerned to see that the signatures of executor(s) and surety (where there is one) are attested by two witnesses.

(viii) the signature of the officer authorised to accept a bond should also likewise be attested by two witnesses (may be departmental officers).

Note:- The above orders equally apply to sureties or guarantors of bonds whose signatures therefore should be attested in a similar manner. in case of banks standing as surety, however, the attestations of the signatures of their officials need not be insisted upon when the

guarantee bonds executed by them are accepted only on getting a confirmatory advice from r.b.i. getting a confirmatory advice from r.b.i. (c.b.r.7/8/59-cus. vii dated 16.4.60).

1(r) Surety and its nature-every bond or guarantee should be supported by a surety or where the rule provide by cash deposits or government securities or by national plan bonds. in cases where the 'form' of bonds or guarantees only set out the liability which the importer or exporter has undertaken and does not contain words indicating that the surety agrees to perform the promise or discharge the obligation in the event of his (importer's /exporter's) default, an endorsement to the following effect should be taken from the surety at the foot of the bond/guarantee where he signs.

"We guarantee to the president of India for due performance by..... of the terms and conditions of the agreement and under taking set out above and to pay on demand to the collector any extra duty levied and penalty imposed irrespective of any dispute between the said..... and the government regarding the same". the same and address of the surety and and also of the importer/exporter should always be legibly recorded on bonds/guarantees in block letters. in the case of bonds other than bonds of clearance of goods pending chemical test, the surely must be a scheduled bank and under conditions approved by the reserve bank of India, without this requirement being satisfied bonds will not be accepted. in respect of the bonds for clearance of goods pending chemical tests he surety need not necessarily be that of a scheduled bank and the assistant collector in charge may accept any other suitable surety in exercise of his discretion. No standing bond or guarantee whether in respect of chemical test or for any other purpose will ordinarily be accepted in the custom house unless countersigned by a scheduled bank. (see provision regarding surety of a firm of standing in lieu of bank guarantee in the para i (u) below). The surety of a scheduled bank should ordinarily be without any limitation of time. in cases of genuine difficulties, however, such surety be accepted with limitation of time at the discretion of the assistant collector concerned, provided that in all cases where the liability of the surety is limited in time, the time limit shall extend for at least one year beyond the date upto which the benefit under the bond or guarantee are to be enjoyed by the executor of the bond or guarantee or approximately four times the normal period for completion of action in the custom house whichever was safer for revenue. (c.b.r. letter c.no. 70326354-cus. i-iv DT. 30.11.56). In respect of the bonds executed in cases where the Licence is sent to ITC. authorities for amendment/ revalidation or is misplaced or lost, the period of surety should be 3 months over and above the period specified in the bond for production of the Licence. In respect of the bond executed in terms of exemption notification the period of surely shouldbe 6 months over and above the period specified for fulfilment of the condition.

1(s) Acceptance of bonds backed by securities placed in favour of customs authorities in lieu of surety by bank guarantees-it has been

decided that in respect of different bonds executed in the appraising department, national plan bonds, national savings certificates, treasury savings certificates and post office savings bank account will be accepted as securities in lieu of bank sureties. The following procedure should be observed in the appraising department/groups as soon as an importer applies for tendering securities of the above description in lieu of bank sureties.

The following procedure should be observed in the appraising department/groups as soon as an importer applies for tendering securities of the above description in lieu of bank sureties:

(1) The acceptable securities should either be purchased by the parties concerned in favour of the collector of customs or if the parties already possess securities in their names, the same should be transferred to the collector of customs. the securities of the types enclosed in sealed cover will accompany the bonds or guarantees which are to be accepted in groups.

(2) The A.C.. of the group concerned will check the bond or guarantee as to whether they are in proper form and should ensure that the relevant security is acceptable and fully covers the government dues, if any which may found payable by the party, subsequently. the sealed cover containing the securities intended to be pledged should not be opened by any body of the group, except by the group AC's in his room.

(3) If the securities pledged are found to be free from any defect and are acceptable, only then the bonds or guarantees should be accepted in the groups.

(4) The group after obtaining the orders of a.c.a. to accept the bond will re-seal the covers containing the securities and AC. of the group concerned should attest the re-sealing of the covers.

(5) The group will thereafter register the bonds and enter the details of the securities in a special register in the following proforma.

Sr.no. Line & vesseles date	Short details signature of of the security receiving the ACs.	Party tendering signature of the name & amount	Rot.& clerk		
1	2	3	4	5	6

SITNATURE OF RETURN OF TREASURER OF THE THE CASH DEPTT. PARTY	DATE OF REMARK CANCELLATION OF BOND.	DATE OF RECEIPT OF SECURITY FROM CASH DEPTT.	DATE OF SECURITY TO TO THE
7	8	9	10
			11

(6) After acceptance of the bonds or guarantees in the groups, the latter will take sufficient care to see that the securities, other than post office savings bank accounts, are forwarded to the treasurer, cash department in sealed covers. the security register maintained in the groups together with the relevant security should be sent to the cash department where the security will be received against signature in the group security register.

(7) The group AC. should also ensure that the post office savings bank accounts have been endorsed in favour of the collector, of customs. the particulars of the securities should be entered in the register as in para 5. The AC of the group concerned will retain all such post office savings bank accounts, after acceptance of bonds or guarantees, in the group almira. he will also be responsible for their safe custody till the documents are returned to the party.

(8) Should in any case, the bonds or guarantees be required to be enforced for default of the party the question of realisation of govt. dues will be taken up by the group A.C. concerned by enhancing the securities, in all such cases the group A.C. concerned should take the prior approval of the collector for realization of dues by encasement.

(9) After cancellation of each bond or guarantee, the group concerned should take back the pledged securities from the cash department, properly enter in the register and return to the party concerned together with the intimation memo for cancellation of bond.

1(t) deposit of cash as surety-cash deposit instead of a bank guarantee is acceptable. (ref. bd's f.no. 21/32/58 cus-iv DT. 1.9.1958).

1(u) Acceptance of surety from a firm of standing in lieu of bank surety. even in the case of continuing standing bonds/guarantees, the surety of a firm of not below the rank of an Asstt. collector. (cbr. lt no. f7/1/61-cus vii dt.28.3.61). in case where the bank surety is waived and it is proposed to accept surety of a firm of standing the following instructions should be observed.

(i) It should be verified that the surety firm is of good reputation, sound



financial position and is long established.

(ii) If the surety firm is a company registered under the Indian companies act, 1956 the concerned group or department should in cases of doubt verify by making a reference to the esstt. department who should first call for the memo, and arts, of association of the co. and refer them together with the bond or letter of guarantee under an u.o. unofficial reference to the local govt. solicitor for opinion as to whether the memo, of association of the co., permits giving of a surety by the co., for some other party and whether the draft bond or letter of guarantee has been drawn up on a manner permissible under the arts. of association of the co. only after such an opinion has been received the surety of the co. should be accepted. in order to avoid delay in the completion of the bill of entry in such cases they should be dealt with expeditiously at all stages by the groups or deptts. concerned and u.o. reference to the govt. solicitor should also be marked "immediate."

(iii) If the surety firm is a partnership concern the bonds or letter of guarantee should be signed by all the partners of the firm or by a partner who is expressly authorised by a power of attorney to execute guarantee bonds on behalf of his other partners.

(iv) Whenever partnership firms or limited companies intend to join execution of a bond by way of surety to another firm/company, the question arises whether the partnership firm or the limited company has the power to do guarantee and indemnity business. a bond executed by a partner for his firm or by the attorney holder/ director for his limited company will not be binding on the firm/company as the case may be if the purpose for which it has been executed is outside the scope of business of such firm/company. while execution such bonds where the firm/company itself is the principal debtor, it is quite normal, special care is, therefore, required to be taken when the firm/company is signing the same as a surety, in such cases, the partnership deed or the articles of association of the limited company should be examined to verify whether or not guarantee and indemnity business is within the scope of their normal business activities.(c.b.e. & c lr. no. 7/13/63-cus, vi DT. 181.1965)

Note : (1) The establishment department of the Custom House will from time to time verify financial standing of various firms from banking and other circles and make this information available to the departments where guarantees and bonds with commercial firms as surety are accepted.

(collector of custom Calcutta order DT. 29.11.69 file no. 821-385/68a)

Note : (2) Customs officers not below the rank of an assistant collector to accept in his discretion the surety of a firm of standing even in the case of continuing bond/guarantee will continue till further orders. (board's f.no. 7/1/61-cus. vii, DT. 8.2.1962).

1(v) Acceptance of surety from an individual-a private individual of sound financial standing as distinct from surety of a scheduled bank or firm or standing, may be accepted as a surety in the case of import of agricultural tractors. (board's f.no. 7/12/61-cus. vii DT. 1.4.63.)

1(w) Specification of amount recoverable under bond/ guarantee and limiting of surety's liability-the customs law in so far as it deals with unauthorised import of prohibited goods contemplates two distinct measures being taken. the first is the confiscation of the offending goods themselves. the second is action taken against the person concerned or otherwise responsible for the unauthorised import. the personal penalty is distinct from the fine in lieu of confiscation which operates to lift the order against the goods themselves. this principle should be kept in view while the amount covered by a bond/guarantee is fixed against which the goods are released. it should be ensured that the amount specified in the bond guarantee covers not only the redemption fine but also the personal penalty that may have to be imposed in the circumstances of the individual case. normally the liability of the surety under a bond/ guarantee is CO-extensive with the liability of the principal executor. where, however, the amount of penalty which might be imposed is uncertain the liability of the surety is not fixed. in such cases if the surety (e.g. a bank) wishes to limit his liability, there is no legal objection to the surety limiting the liability, by a suitable endorsement to that effect on the bond/guarantee. it should be ensured in such a cases that the limit fixed by the surety is sufficient to cover not only the estimated amount of fine in lieu of confiscation which is specified in the bond/guarantee but also any sum of money which may subsequently be imposed as personal penalty on the importers.

1(x) Surety or security-waiver of - (i) It is left to the discretion of the collector of customs to waive both surety and security altogether in the case of individual bonds or continuing bonds executed by importers in cases where provisional assessment is made under section 18(1) or the customs act, 1962. (bd's f.no. 7/12/61-cus.vii, DT. 1.4.63 see para (iii) below also).

(ii) The Customs Collector may in his discretion dispense with either security or surety but not both. it is not, however, necessary to make surety/security obligatory in respect of government departments (or even govt. undertakings) where the collector is satisfied that this can be safely dispensed with. (board's f.no. 21/92/57-cus.iv. dt.13.9.1961).

(iii) The bond agree that in case where letters of guarantee have been executed by the importers in lost cases where the consignments are pending tests, the collector should have discretion to waive both surety and security but the discretion should be utilised not with reference to the commodity, but with reference to the status of the importing firm only. (board's f.no. 7/12/61-cus.vii, DT. 1.4.1963).

(iv) It has been an uniform practice not to take surety for warehousing bonds since the warehouse goods themselves are a security in kind. there is no necessity to deviate from this practice merely because a general continuing bond is taken. (board's f.no. 3/29/60-cus. vii, DT.

2.6.1963).

(v) Guarantees executed by the state trading corporation of India (stc), may be accepted without sureties, since it is a govt. concern. (cbr lr. no. f.21/25/57-cus. iv, DT. 4.4.57).

1(y) waiver of surety of bonds in certain cases under recommendation of customs study team-on the recommendation of the customs study team it has been decided by the government of India that surely to bonds may be waived in the following types of cases in the discretion of the Asstt. collectors. viz.

(a) For regular importers, where the value of bond is not more than RS. 25000/- and the period of the bond not more than two months; and

(b) For specified commodities like newsprint, wood pulp, etc. imported by newspapers, established industrial undertakings, etc. in cases if previous tests have generally confirmed the declaration. the concession under (a) above should be extended to firm of repute which import regularly through the Port. firms which have been black listed by any authority should be denied this concession. (ref.g.i.m.f.(d.r. & i.)lr. no. f7/10/67-cus. vii. DT. 19.11.68 c.s.t. recommendation no.204 of part i-implimental instruction no. 66).

Notes: (1) Whenever such importers execute a bond with the custom house, the value of which does not exceed RS. 25,000/- and the total period of bond not more than 2 months, the following procedure should be observed :-

(i) The scrutinising appraiser before recommending acceptance of the bond will first ensure that the applicant is a regular importer through this port.

(ii) He will further ensure that the importer is a firm of repute and has not been blacklisted by any authority.

(iii) Thereafter the scrutinising appraiser concerned will recommend to the Asstt. collector of the group/ unit for waiver of surety and for acceptance of the bond for a period of one month. in no case should the bond be extended to cover a total period of more than 2 months.

(iv) In the light of the recommendations made by the Scrutinising Appraiser the Asstt. Collector in charge of the group/unit will exercise his discretion in the matter of waiver of the surety.

(2) In respect of bonds covering specified commodities like newsprint, wood pulp etc, the following procedure should be observed.

(i) The scrutinising Appraiser will ensure that the applicant is a newspaper or an established industrial undertaking.

(ii) He will then send the bond to the test clerk for

putting up the previous, test report in respect of the goods covered by the bond.

(iii) If the previous test report generally confirms the declaration, the scrutinising appraiser will make an endorsement on the guarantee as well as on the relative bill of entry "previous test report generally confirms the declaration."

(iv) He will thereafter put up the bond to the Asstt. collector, recommending waiver of surety and for accepting the bond.

(v) Before recommending acceptance of a bond of guarantee the officers concerned should carefully verify that the various requirements, prescribed in the matter have been duly complied with. he should in his note recommending acceptance of the bond or guarantee specially state that necessary verification has been done by him.

1(z) Bonds under section 18 customs act-consideration regarding-question of differential excess duty and bank surety-it has been reported to the board that in cases of provisional assessment under section 18 of the customs Act,1962, involving the question of correct assessment at a rate higher than that declared the differential excess duty is collected at the time of provisional assessment, and the same time bonds with bank surety are taken for the differential excess duty pending final assessment. the board considers that there is no justification for taking a bond with bank. surety when the excess differential duty is already collected. the board, therefore, desires that in these cases where the differential excess duty is collected at the time of provisional assessment, bonds under section 18 ibid may be accepted without any bank surety. in cases, where the differential excess duty is not collected at the time of provisional assessment, bonds with adequate surely should be taken. these instructions would not, however, affect the arrangements for covering attendant ITC. contravention's, if any, and suitable surely should

#### Bonds & guarantee special privileges to diplomatic mission

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The Government of India have decided that no bonds or guarantees on stamp papers will henceforth be required from the diplomatic missions in India in the case of importation made by them and that the custom house will in stead accept only simple letters of assurances from the embassy concerned, the assurance being given by a responsible officer like the ambassador or the first secretary in the name of the embassy. (bd's f.1/14/97-cus.iv, dated 22.2.1957, c.b.r. tech. bulletin customs vol-vii (1961) page 89).

Waiver of bank surety and bond formalities incase registered Licence lost in C.H. Has sufficient balance

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 Bank surety and detailed formalities in connection with execution of bonds may be waived where Licence lost in the custom house is found to be already registered in the custom house where the firm is of good standing and the ITC bulletin indicates that sufficient balance is available against the Licence. similar concession may be extended even if the Licence is not already registered with the custom house provided the group AC is satisfied that such a facility is deserving depending upon the merit of the case.

Conditional exemption notification under section 25 of customs act-question of retirements under bonds

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(a) Production of evidence regarding enduse question of time required for submission:- the government of India recently had occasion to consider as to what should be the time-limit for production of end-use certificates in cases where the exemption notification issued under section 23 of the sea customs act (section 25 customs act 62) specially provide for execution of bond to enable the customs authorities to demand end-use certificates in respect of the articles cleared at the concessional rate of duty. it is understood that the custom houses have generally prescribed period of six months for this purpose which is extended in the discretion of the customs- collector, if necessary it has been represented that this period is too short. accordingly the government of India have decided that the period should ordinarily be one year.

It has also been brought to the notice of the government of India that the firms who are borne on the list of the development wing, find difficulty in the production of end-use certificates from the state director of industries as demanded by the customs. it has been decided that in such case the end-use certificate issued by the development wing should be accepted if the are other wise in order. (m.f. (d.r.) letter no. 17/11/82-cus. i DT. 13.1.62)

(b) Bond submitted in terms of notfn. 179-cus. Dated 4.9.80- evidence of end-use. After the incomplete sets of machinery imported in each case have been actually utilised for fabrication indigenously, the importer will file a sworn-affidavit to that effect. In the case of all companies the affidavit should be made by the Managing director or the principal officer of the company. the said affidavit will be affirmed before magistrate or before any person who is authorised to administer oath. such affidavit will be made on the required stamp paper and further the required court fee stamp will be paid at the time of the affirmations before the officer entailed to administer oaths. a test check of the cases will be made by the custom house by random selection. action to cancel the bonds however, may not necessarily await the result of the test check.

Number of bonds required for assessment under project import

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 Board has considered that only one bond would be necessary in case the value of the bond is sufficient to cover the subsidiary contracts which are in existence when the bond is executed. (board's letter f.no. 369/14/78.cus. i dated 8.1.79).

Number of bonds in cases conditional exemption is claimed But goods warehoused pending fulfilment of condition

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 In regard to the assessment of goods covered by conditional exemption the board have observed that the goods claimed at the concessional rate under conditional exemption could also be warehouse at the discretion of the "importer". so long as the goods in a warehouse cannot satisfy the condition subject to which the conditional rate is applicable, it will be appropriate to calculate the amount of bond with reference to normal rate of duty applicable to the goods. however, the importer could also give two separate bonds, one for the warehousing calculated at twice the difference between the standard and concessional duty and the second bond for fulfilling the conditions for conditional exemption so that between the warehousing bond and bond for concessional rate, the full revenue risk could be covered.

If any bond is accepted from an importer for the goods to be re-exported within a certain period, there should always be a clause inserted that shipment will be made under customs supervision. (cbr letter no. 20(11)-cus. iv/55 dated 23.6.55).

Bonds/guarantees/letter of undertaking in the case of Charitable institution:

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 Consumption/Distribution certificates for charitable consumable stores for free distribution will be produced within six months. the board has been advised that the practice is legally in order. board has decided that-

(a) Asstt. Collector should liberally exercise their discretion in the matter of accepting letters of undertakings on plain paper instead of stamped paper. for this purpose custom house may maintain a record of organisation, individual based on experience who import charitable consignments on a regular basis and in their case undertakings on plain paper should be accepted and

(b) When the value of the consignment does not exceed RS. 100 and when certificate from state government certifying the institution/individual is deserving of duty concession is produced, a guarantee in non judicial stamp paper should not be insisted.

Board has on Administrative grounds decided that there

is no objection to taking continuity guarantees in such cases from organisations or individuals of repute. (bd's f.no. 10/215/59cus. v dated 24.11.60).

Bonds by public/private sector undertakings and government departments procedure reg.

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 (1) Government Undertakings : The question whether public sector undertakings also execute bonds paying appropriate stamp duty, in the same way as any private importer/exporter is called upon to with reference to the provisions of the customs act, 1962 or the regulations made thereunder has been considered in consultation with the ministry of law. public sector undertakings may be limited companies incorporated under the companies act '56 or may be statutory corporations. in either case, they are distinct legal entities

and therefore, it has been decided that they are under the obligation just as any other importer/exporter to execute the prescribed bonds on stamp paper with surety or security as the case may be. the quantum of security where applicable, need not, however, be the same as for private parties. it is within the discretion of the the proper officer to accept a low or a nominal security. Government of India have decided that ordinarily surety and security may be waived in respect of public sector undertakings. such undertakings should be encouraged to file continuing bonds to avoid procedural delays and difficulties in filing individual bonds. It is clarified, however, that where for valid reasons it is considered necessary, it is open to officers of and above the rank of assistant collectors to insist on surety and/or security while accepting bonds. the particular, if any public sector project which has been giving such bonds had not been CO-operating satisfactorily in finalisation of the bonds. Asstt.Collectors should consider requiring such projects to give security in the form of deposit (in preference to surety). (m.f. letter no 7/11/67-cus vii dated 22.12.67)

(2) Central Govt. Departments: the position is somewhat different when the govt. of India i.e. any ministry or a department or office of the govt. of India, is itself importer/exporter. since bonds are to be executed in favour of the president of India, and the importer/exporter is in a legal sense the president of India, it is not proper to have bonds executed in such cases it is necessary in the circumstances to have an assurance on plain durable paper. a specimen form of the assurance is given in form no. 6 of the appendix vol.-vi for guidance of all concerned and may be adopted suitably to meet the different situations arising during day-to-day work. government departments will in general be required to submit the undertakings in the following situations:-  
 (a) Where Government department has no invoice or related documents and undertakes produce the same after clearance of goods live stock as the case may be.

(b) Where valid Import Licence has been sent for

revalidation amendment etc. although it covers the imported goods and is registered in the custom house.

(c) Where provisional assessment is desired.

(d) Where post importation obligations are required to be fulfilled such as submission of distribution certificates for free gifts or end use certificates etc. The documents etc. the undertaking will be required to specify in situations (a) will be, bill of entry, invoice, import trade control Licence and other documents; in situation (b) import trade control Licence no. and date, and in situation (c) invoice, bank draft, contract other connected documents and information and situations in (d)-distribution certificate, end use certificate etc. The period which the undertaking will specify/ to fulfill the obligation normally will be 15 days/two months/one month/six months respectively for situations (a) and (d) above, however, for submission of end-use certificates the period should be ordinarily one year in terms of orders at para 4(a) above. The mention of the required documents and the period in the proper places of the undertakings will be ensured by the groups units according to the situation for which govt. of India department/office will submit the undertakings.

Indemnity bonds under merchandise marks act job Treated as security bond and not customs bond.

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Security bonds: indemnity bonds filed for detention of packages under the merchandise marks act should be treated as "security bonds" and not as customs bonds and should be charged with the stamp duty for such bonds.

Scope of alteration in bonds executed by the importers

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An alteration made in a bond even after its execution in some particulars, which are not material, would not in any way affect the validity of the bond. on the other hand, any material alteration in an instrument (which has already been executed) even with consent of the parties, vacates the original instrument and makes it an instrument liable to a fresh stamp duty. What alterations are material is a question which has been frequently considered by English and Indian courts. The result is summarized in Salisbury's laws of England as follows : "a material alteration is one which varies the rights, liabilities or legal position of the parties ascertained by the deed in its original state, or otherwise varies the legal effect of the instrument as originally expressed or reduced to certainty some provision which was originally UN-ascertained and as such void, or may otherwise prejudice the party bound by the deed originally executed". (Salisbury's laws of England volume ii page 368, section 599).



In this view of the matter, there would be no legal objection if the corrections and omissions are carried out in the original bond under attestation of the parties thereto, subject of course to the condition that the collector is fully satisfied that such omissions and corrections are not material alterations indicated above. in case of doubt, it would be safe to execute fresh supplemental document.

Bonds for reduced sums on partial fulfilment of the terms of the bond-instruction regarding renewal of :

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 (a) On the Recommendations of the Customs study team it has been decided to renew the bonds executed by the importers, exporters and others for reduced amounts on partial fulfilment of the conditions of the bond. requests for this purpose should be made to the assistant collector in the prescribed form of bond (from no. 40 of the appendix vol.-vi) with the prescribed form of application (see form no. 40 of the appendix) to the submitted by the parties concerned for reduction in the amount of bond. In allowing reduction in the amount of bond the following procedure shall be followed:-

(i) On receipt of the party's application in the prescribed form, supported by requisite documents, the appraiser concerned will verify the party's statement in the application with reference to the documents furnished by them as also by referring to the terms and conditions specified in the relative principal deed (original bond).

(ii) When the appraiser is satisfied that conditions of the bond have been partially fulfilled warranting reduction in the amount of the bond, he will make recommendation in that behalf and put up the relative case file to the assistant collector concerned for approval.

(iii) After Asstt. Collector has approved of the appraiser's recommendation, the party concerned will be asked to execute an agreement in duplicate (original being on requisite stamp paper) vide prescribed specimen at form 38 appendix vol.-vi. the surety concerned shall also be intimated suitably. the agreement so executed shall be deemed to have the effect of only reducing the amount specified in the principal deed (original bond) to the extent indicated in the agreements, the other terms and conditions contained in the relative principal deed (original bond) remaining the same. the sureties to the principal deed (original bond) and to the agreement shall be one and the same.

(iv) The bond register should invariably be noted and thereafter the original agreement shall be kept in safe custody together with the original bond. all action shall be taken on the duplicate copies in the case file except when the bond is to be discharged.

(v) The same procedure shall be applicable in respect of

reduction of amount in continuity bond as well.

#### ITC Bonds and Guarantees revision of the form

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In consideration of the fact that many schedule banks object to the signing of bonds as sureties as in the clause providing for "any other punishment provided by law" viz. punishment other than the payment of duty or fine and since it is considered that the banks should not be expected to stand surety for any punishment other than payment of duty, fine etc. the board in consultation with the ministry of law has decided that the clause in question be deleted from all the forms of bonds and letters of guarantee taken for import trade control purposes by the custom house. Accordingly, in all forms of bonds and letters guarantee taken by the custom house for ITC purposes, the clause viz. "any other punishment provided by law" should be deleted. it should however, be ensured that all forcible liabilities are specifically provided for in the bond. (c.b.r. letter f.no. 7/11/59-cus. vii dated 15.1.60)

#### Contract procedure-surety in respect of- revalidation stamp paper-orders regarding

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The surety bonds which are executed in respect of machinery imported under the contract procedure are required to be revalidated from time to time. in such an event the extension advice in respect of the period of validity of such surety bonds should be prepared on stamp paper and in the prescribed form.

Guarantee offered by banks to railways and other Government department regarding the payment of Freight, implementation of governments contracts,etc.

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The revised bank guarantee scheme introduced in terms of this ministry's office memorandum no. 7(27)- ei/54 dated the 25th February, 1955 covering all scheduled banks, has been allowed to remain in force until further orders, vide this ministry's office memorandum no.f. 7(136)-fi/55 dated the 8th February, 1956.

The requirements to be complied with by (a) scheduled commercial banks which tender guarantees, etc. and (b) the government departments which accept such guarantees, etc. under the existing bank guarantee scheme have been clarified in this ministry's office memorandum no.f. 7(27) fi/54 dated 17th may, 1955. following a review of the working of the scheme recently by government in consultation with the reserve bank of India, it has been decided to do away with all the said requirements. accordingly, in future, government departments may freely accept guarantees from all scheduled commercial banks without observing any of the formalities contained in the office memorandum of the 17th may, 1955, referred to above. The above arrangement will take affect from 1st September 1972, from the said date,

reserve bank of India will not issue any confirmatory advice in respect of guarantees etc. issued by scheduled commercial banks in favour of government departments, nor will it, from that date, accept from scheduled commercial banks cash/government securities as cover for guarantees issued by them to government departments. (Deptt. of banking O.M. no. f9 (5) BC/67 DT 29.6.72 & m.f. ir. g. no. 30/46/72 concerned date 26.7.72)

Dispatch of duplicate bills of entry to the appraising department, custom house

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The procedure laid down in chapter for examination of goods regarding endorsement of duplicate bills of entry in chemical test cases for their return to the superintendent. appraising department, immediately after the passing of the goods shall also be followed in cases where provisional duty or other bonds including import trade control bonds or guarantees have been submitted. on receipt of the bills of entry the superintendent, appraising department will send them to the concerned group clerks for necessary action.

Bond or guarantee-goods passed under-cases to be sent to the internal audit department

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Cases where the goods have been passed under bond or guarantee pending production of documents should be sent to the internal audit department with all the relevant documents for final audit after completion of action in the appraising department. Intimation regarding cancellation of the guarantee should not be sent to the importers until action in the internal audit department has been completed.

Importers failure to honour the terms of bond/ Surety's liability to pay the amount in connection Therewith

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Solicitor to the Central Government at Calcutta has advised that when a surety executes a bond binding him- self to pay a certain sum of money on the importer's failure to honour the terms of the bond, the liability will devolve upon the surety to pay the said sum under the bond. A demand should accordingly, be made on the surety calling upon to pay the total amounts that may be due as part of the money which he binds himself to pay in terms of the bond. for recovery of the amount due under bond and guarantee in the event of non-compliance of the conditions of the instruments, recourse to procedure under section 142 of the customs act may be taken.

Timely action against the obligers for not fulfilling the terms and condition of bond and guarantee

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It is desired by the board that all bonds and guarantee in respect of which some time-limit for the continuance of the obligation of the

surety is indicated, must be kept under special and close personal watch of the A.C. concerned in order to ensure that timely action is taken in respect of such bonds and guarantees and the relevant case is finalised and the amount, if any due under the guarantees or bond realised before the expiry of the time-limit specified. in order to take timely action against the obligor for not fulfilling the terms and conditions of the bond/guarantee it has been decided that a "forward diary" should be maintained by each bond and guarantee clerk in the custom house where in the file number in which action is required to be taken on a particular date, should be noted by him. this will ensure prompt follow-up action on the part of the custom house in each and every case as soon as it becomes ripe for initiating action. the forward diary should be periodically checked by the supervising officers to ensure that timely action is being taken in all the cases. The bonds and guarantees can be accepted only by the group A.C. registers in the following form should be devised, one for each one of the various groups in the appraising department.

SR. NO.	NAME OF THE INDIVIDUAL OR OBLIGATION UNDER THE BONDS IS TO BE DISCHARGED BY THE BOND OR THE EXECUTOR. GUARANTEE	NAME OF THE GUARANTEES OR SURETY.	FILE NO.
1	2	3	4
5	6	7	8
9	10		

Whenever any bond or guarantee is put up to the group A.C. for acceptance, the register must invariably be put up to him with as many columns filled in as possible. the A.C. will not accept any bond or guarantee unless and until entry thereof has been made in the register and the register put up to him for signature. The AC. will sign the entry in the register at the time of accepting the bond or the guarantee and will ensure that timely action is taken for finalisation of the cases in respect of each one of the bond and guarantee scheme in the respective group register which will be put up to him

periodically for the purpose. it must be ensured that in no case the time-limit is allowed to expire without action in respect of the bond or guarantee having been taken and the amount, if any, under the bond or guarantee recovered when necessary. (inst. no. 45 of 1963-bonds and guarantee- central board of revenue lr.f. no. 7/15/63- cus. vii DT. 4-12-63).

Registry, custody and cancellation of bonds and guarantee the guarantee and bonds after acceptance by the appropriate authority should be entered in full details together with expiry date in the register maintained for the purpose by group clerk and submitted to the supervisor-in-charge of the unit or section along with the register, the supervision-in-charge will check each entry in the register and put his initials against each entry in taken of his check. the register should be kept in proper custody under lock and key for which the deputy superintendent and/or d.o.s. of the department/group concerned will be held responsible.

Necessary actions should be taken on the duplicate unstamped copy of the guarantee or bond and on completion of all actions the guarantee or bond should be sent to IAD for having its approval of the recommendation of cancellation of the documents made by the department concerned. all bonds and guarantees should be reviewed by the deputy office superintendent or the superintendent concerned at least a month in advance of the expiry period and if the conditions of the bond guarantee have not been fulfilled, action should be taken to recover the amount asked to be held in deposit pending finalisation of the case. such action should be taken invariably except when orders for deferring such recovery is given by the Asstt. Collector for Deputy Collector. . Since all bonds and guarantees are to be treated as valuable securities their custody is to be with the treasury officer in the cash accounts departments who is personally responsible for them. as soon as the bond/ guarantee is accepted and registered the original bond/ bear the seals of the department and an indication of the contents namely, bond no., date of bond, party's name, and forwarded in a special transit book to be maintained by the cash department for entering the particulars of all bonds and guarantees received by it for safe custody.

Bonds and guarantees should after cancellation be normally retained with the relative papers. intimation of such cancellation should be immediately sent to the executor and surety. in cases where the executors demand return of the bond/guarantee the department concerned should return the original duly cancellation and retain the duplicate for record. (c.b.r. lr.no. 7/10/58-cus. vii DT. 1.8.60)

Notes : (i) Timely action should invariably be taken for cancellation/enforcement of guarantees and bonds accepted by the custom house with a view to avoid unnecessary cause for complaints and also loss to the importers. (S.O. (genl). no. 11 dt.11.6.63 :c.b.r. lr.no. 7/6/65-cus. vii DT. 22.5.63 inst. no. 19 of 63 bond and guarantees)

(ii) (a) Cancellation of banker's guarantees or bonds should be completed as far as possible within 30 days of fulfilment of the obligation written in the bonds or guarantees under intimation to the party's concerned.

(ii) (b) Cancellation of bank guarantee. It has been decided by the Government of India that all bonds executed by banks under the bank guarantee scheme (whether executed directly or by countersignature) should be returned to the bank concerned, on expiry of the guarantee period duly cancelled, after verifying that no action in terms of the bond is pending a duplicate copy may be retained for records. ref.: g.i.m.f. (d.r.i.) letter f.no. 7/6/66-cus. vii dated 8th may, 1969.

Expedition of cancellation of letters of guarantee accepted  
pending test order-regarding

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At the time of acceptance of guarantees assessing officers should indicate the following particulars on the reverse of the duplicate letter of guarantee.

(a) The particulars of import Licence numbers, thereof, ITC. sr. no. and description thereof.

(b) Test report no. under cover of which goods are sent for test.

(c) CAT/CET. item under which the goods have been assessed pending test result.

(d) Important particulars such as usage and technical information ascertained from the catalogue and literature etc. when the findings of test result alone would not be the only criterion to decide the ITC. classification and the issue of acceptability or otherwise of import Licence. the above details when indicated on letters of guarantee would enable quick allocation of letters of guarantee with relative documents and would also help the staff to take prompt decision regarding the appropriate CAT. classification and acceptability of import Licence produced.

Supervisory officers of the group concerned should ensure that parallel crossed lines are drawn and the word 'cancelled' written on both original and duplicate guarantees when any bond/guarantee is cancelled under collector/Asstt. collector's order in the relevant case file.

The relevant case file number and date of the collector Asstt. collector's order i.e. cancellation of the bond guarantee should also be endorsed on it at the time of the cancellation. (a.m.o. ap. no. 5 DT. 29.1.64 d.i.'s letter no. c121/38/63 DT. 17.7.63 f.no. cvii/39/63(pt).

Cancellation of letters of guarantee-production invoices for verification-procedure regarding.

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It is observed that a number of letters of guarantee

executed by the Exporters and/or Clearing agents for production of documents like original contract, letter of credit, consignee's acceptance etc. were pending cancellation for want of copies of invoices produced at the time of assessment. In some cases the exporters clearing agents produce the contract or letter of credit in terms of the letter of guarantee executed by them but fail to produce the relative invoice bearing the assessing officer's initials in spite of reminders. As verification of the unit price etc. accepted at the time of assessment can be verified only from the invoice the non-production of the same causes undue delay in closing the letters of guarantee. To obviate delay in such cases henceforth exporter clearing agents are required to file an additional copy of the invoice which should be checked by the assessing officer and kept with duplicate copy of the letter of guarantee executed so that the same will be readily available at the time of finalisation for scrutiny. (issued from Cochin custom house, file c. 1/116/75 cus.).

Note:- When a bond is accepted in lieu of an ITC. Licence for purposes of clearance of goods the amount/quantity covered by the Licence and the bond particulars should be noted in the Licence register against the entries relating to the Licence. Such amount or amounts should be taken into account in working out the balance before allowing clearance of another consignment against the same Licence. Acceptance of more than one bond against the same Licence must be carefully considered by the group concerned. Acceptance of bonds/bank guarantees and difficulties faced by foreign participants in India trade fairs-instructions regarding a representation was made to the board by the trade fair authority of India regarding the difficulties experienced by the participants in Indian trade fairs at the time of clearance of goods in terms of notfn. no. 116-cus. dated 1.6.79. It has been reported that the practice in the custom houses in this respect is to insist on bond/bank guarantees equivalent to 250% of the c.i.f. value of the goods and that as re-export and subsequent cancellation of the bonds take a long time their cash resources remain tied up for a considerable period. It has also been stated that permission for transport of the goods from the port of clearance to the site by road is not being granted, thereby causing difficulties for the participants.

The matter was examined by the board and the board has observed that in so far as bond/bank guarantee is concerned, the percentage for such bank guarantee should be lowered in appropriate cases instead of adopting a uniform rate. With regard to the advertisement and publicity materials covered by the notification the bank guarantee may be waived as most of them are used up or distributed. As regards transit of goods, board has observed that there is no statutory requirement that the imported good shall be transhipped by railways or airways only. Permission for road transit should also be given taking into consideration the merits of each case. Board has further observed that officers for the purpose of escorting the goods should be made available promptly to avoid delay in clearance.

Board's instructions indicated above should be noted by all concerned for guidance. In this connection however it may be noted that the value of the bond or the bank guarantee will depend upon the amount of duty otherwise leviable on the goods plus the approximate amount of penalty that may be imposed, in case of failure to re-export the goods. secondly the question of mode of transit and preventive escort would not arise as the importers under the subject notification have to execute the necessary re-export bonds/undertakings and also the goods are normally examined before clearance from the docks and suitable identification marks kept to facilitate identification at the time of re-export. Preventive escort may be necessary only in special cases where the goods are allowed to be Examined at Site after clearance from the docks. [authority:govt. of India, ministry of finance department of revenue, newdelhi, letter f.no. 523/83-cus (tu) DT. 19.5.83].

End-use bonds under exemption notification-execution of. a number of notifications have been issued by the government where the exemption on goods is based on the end-use for a specified purpose. in providing for the end-use, not in all cases the notifications prescribe for taking a bond for fulfilling the end use obligation. however, where a specific provision is made for taking a bond which is subject to cancellation on fulfillment of the condition, the bond should invariably be taken. There are some exemption notifications which do not specifically provide for execution of any end-use bond at the time of clearance of the goods but it is a condition of the notification that the imported goods are in fact used for the purpose specified in the notifications. To ensure that the goods are in fact so used, the custom house practice to accept end-use bonds in such cases may continue till further clarification as to whether in such cases end-use bonds should be insisted upon or not is reviewed from the board in case of import of fertilizer, however, since the import are by govt. undertaking and distribution is controlled by the govt. a declaration may be taken from the importers that the fertilizer imported shall be used solely for the purpose specified in the notification without insisting on an end-use bond unless the exemption notification expressly provides for it. As regards exemption notifications, which merely say that the specified goods when "imported for manufacture of etc."used in leather industry", required for manufacture of" etc. no end-use bond need be taken at the time of clearance of the goods. in such cases, the assessing officers will obtain a declaration from the importer regarding end-use of the goods and satisfy themselves by appropriate enquiries with the importers, which may include seeing documentary evidence that, prima facie, the imported goods are meant for the use specified in the exemption notification.

Cancellation of end-sue bond regarding. board, letter f.no.523/59/83-cus (tu) dated 28th may, 1983 on the above subject is reproduced below for guidance. f.no. 523/59/83-cus (tu) government of India Ministry of finance, department of revenue, central board or excise & cust., new Delhi, the 28th may, 83. I am directed to state that representations have been received by the board from the electronic component industries association regarding



difficulties faced by the members in getting end-use bonds cancelled as the central excise authorities take a long time in giving consumption certificate resulting in delay in finalisation of such cases. These representations have been carefully considered by the board. having regard to the difficulties pointed out and the need for quick finalisation of the end-use bonds, the board desires that in future the end-use bond may be cancelled on the basis of the consumption certificate either from central excise authorities of DGTD/director of industries or on the basis of the affidavit supported by the consumption certificate issued by a chartered accountant, if the assistant collector is satisfied about the bonafide consumption. all the pending cases of end-use bonds may be dealt with accordingly.

Sub: Monitoring of end-use for consignments imported at concessional rate of duty.

Inorder to effect monitoring of end-use for consignments imported at concessional rate of duty under various notifications, there should be CO-ordination between the customs and central excise departments for verification of the imported materials so as to ensure their proper use in the manufacture against particular end-use and to ensure that they are not put to any different use, it has been decided as per instructions contained in the ministry's letter f.no. 523/3/85-cus. (tu) dated 17.1.85 that particulars regarding import consignments (particularly raw materials and components valued over RS. 10 lakhs) should be referred to the collector of central excise with a copy to the assistant collector in whose jurisdiction the factory is located and also to d.r.i. before the end-use bonds are redeemed.

#### Additional duty-countervailing duty-its concept and authority

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Whereas customs duty is chargeable in terms of sec.12 of the customs act '62 as per rates specified in the first schedule to the c.a. '75, all imported goods are also leviable to an additional duty which is commonly known as ' countervailing duty and which is determined on the basis of excise duty leviable on like articles, produced or manufactured in India. The basic principle for such a levy is that when an indigenous product is subjected to an excise duty. An equivalent levy on similar imported products, besides import duty will be justified so as to ensure that the protection provided by the import duty to domestic industry is not eroded.

Section 3 of the customs tariff act, 1975 s no. 51 of 1975)  
section 3 of the customs tariff act, 75 empowering such a levy is reproduced below, along with various clarification issued on the subject.

(1) Any article which is imported into India, shall, in addition, be liable to a duty (hereafter in this section referred to as the additional duty) equal to the excise duty, for the time being leviable on a like article, if produced or manufactured in India and, if such excise duty on

a like article is leviable at any percentage of its value, the additional duty to which the imported article shall be so liable shall be calculated at that percentage of the value of the imported article.

Explanation: in this section, the expression "the excise duty for the time being leviable on a like article if produced or manufactured in India" means the excise duty for the time being in force which would be leviable on a like article if produced or manufactured, which would be leviable on the class or description of articles to which the imported article belongs, and where such duty is leviable at different rates, the highest duty.

(2) For the purpose of calculating under this section, the additional duty on any imported article, where such duty is leviable at any percentage of its value, the value of the imported article shall, notwithstanding anything contained in section 14 of the customs act, 1962, be the aggregate of-

(i) The value of the imported article determined under sub-section (1) of the said section 14 or the tariff value of such article fixed under sub-section (2) of that section, as the case may be; and

(ii) Any duty of customs chargeable on that article under section 12 of the customs act, 1962, and any sum chargeable on that article under any law for the time being in force as an addition to, and in the same manner as, a duty of customs, but not including the duty referred to in subsection(1)

(3) If the Central Government is satisfied that it is necessary in the public interest to levy on any imported article (whether on such article duty is leviable under sub-section (1) or not) such additional duty as would counter-balance the excise duty leviable on any raw materials, components and ingredients of the same nature as, or similar to those, used in the production or manufacture of such article, it may, by notification in the official gazette, direct that such imported article shall, in addition, be liable to an additional duty representing such portion of the excise duty leviable on such raw materials, components and ingredients as in either case, may be determined by rules made by the central government in this behalf.

(4) In making any rules for the purposes of sub-section (3), the central government shall have regard to the average quantum of the excise duty payable on the raw materials, components or ingredients used in the production or manufacture of such like article.

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

(6) The provisions of the customs act, 1962, and the rules and regulations made thereunder, including those relating to drawbacks refunds and exemption from duties, shall, so far as may be, apply to the duty chargeable under this section as they apply in relation to the duties leviable under that act.

Interpretation of the term 'excise duty' in the levy of  
countervailing duty

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In providing for the levy of countervailing customs duties (additional duty), the following terminology has been used:- 'plus the excise duty for the time being leviable on like articles if produced or manufactured in India and where such duty is leviable at different rates, the highest duty'.

A question has been raised whether the terms 'excise duty' in the above mentioned terminology refers to the quantum of excise duty or the rate of excise duty. The board is advised that the term 'excise duty' refers to the rate of excise duty and will not be the total amount of excise duty payable in respect of an article. assessable values arrived at under section 4 of the central excise and salt act or the tariff values fixed for purposes of levy of central excise duty will not, therefore, affect the assessment of customs duty. (m.f.(d.r.) f.no. 14/3/60-cus i, dated 23.4.1960)

Levy of special excise duty as countervailing duty

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A point has been raised regarding computation of countervailing duty including special excise duty introduced by clause 37 of the finance bill 1978. the matter was referred by the ministry of finance (department of revenue) by the ministry of law regarding C.V. Duty on items where c.v. duty has been fixed by exemption notifications. The Ministry of law has clarified that the maximum duty leviable under section 3 of the customs tariff act, 1975 is limited by virtue of exemption notification to the amounts specified therein. no further amount can be charged as additional duty, non-withstanding levy of special duties of excise. in view of this, countervailing duties by customs notifications cannot be increased by the amount of special excise duty. (telex f.no. s14/78-tru(cus) dated 9.5.78 of the ministry of finance (Deptt. of revenue)

Interpretation of term 'like articles' in the levy of  
countervailing duty

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It has been represented to the board that the above provision has been interpreted as meaning that where several rates are specified under a single item in the Central Excise tariff, covering a number of distinguishable articles, the countervailing duty to be charged on any of the said articles on import would be highest rate of duty shown against the central excise item.

In introducing the wording referred to above in para 2, the object was that where different rates of excise duty were chargeable on the same article (depending for instance on the output of manufacture). as in the case of paints, varnishes etc. the countervailing customs duty should be equal to the highest rate of excise duty chargeable on that article, which in practice

would be the rate chargeable from the manufacturer with the highest output. it is only where different rates of excise duty are chargeable on like articles that the highest rate of duty should be taken into account. the board is advised that this is also the correct legal interpretation of the clause. In the case of paper, the different varieties such as printing paper, pulp board, with board etc cannot be described as 'like articles'. the rate of countervailing customs duty leviable on each of these articles on import should therefore be equal to the excise duty applicable to that particular article. (c.b.r. no. 22/16/55-cus i DT. 16.7.55)

#### Additional duty in the excise duty

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(i) The additional (countervailing) duty leviable under section 3 of the customs tariff act, '75 is the excise duty for the time being leviable on goods manufactured or produced in India. it includes all elements of excise duty. (Extracts from g.i.m.f.(d.r.& i.) lr.f. no. 15/28/67/cus.i dated 3.6.67 and tariff circular 112/679.

(ii) The board agrees that the mere fact that any goods liable to central excise duty in India somehow escaped levy of such duty for sometime does not afford any immunity to imported goods of a like nature from countervailing duty if it is otherwise leviable. (board's no. 15/1/57-cus. i DT. 26.7.1957).

Leviability of, additional duty (countervailing duty) if the article or a like article is not actually manufactured in India at the time of importation of goods

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The question whether additional duty (countervailing duty) can be levied, on goods imported into India. under section 2 a of ITC. 1934 In respect of articles not actually manufactured or produced in India was raised and decided in a judgment of the high court of gujarat in the case of M/s Neomer ltd, baroda vs. union of India (s c a 637 of 1978). the honorable high court held that 'it is, thus, virtually impossible to argue that countervailing duty can be levied provided the article is manufactured or produced in India or that the manufacture or production of the article in question in India is a condition precedent to the valid levy of countervailing duty. Be it also realised that what is being imposed is not excise duty but an import duty named as countervailing duty at a rate equivalent to the rate at which excise is payable. It is only for the purposes of finding out measure of duty or the rate of duty that a reference has to be made to the relevant entry or item of the excise act. If a like article is actually produced or manufactured in India, duty would be leviable at a rate equivalent to the rate of excise duty for the time being leviable on a like article. If a like article is not so produced or manufactured then the duty would be leviable under the excise act on the class or description of articles to which the article belongs. in view of the explicit provision made by section 2a read with the explanation clause it is not possible for us to

accept the contention that countervailing duty cannot be levied if the article or a like article is not actually manufactured in India at the time of importation of the goods in question". (extracts of judgment as received from collector of customs & central excise, ahmedabad vide legal/sca-33/78 dt.19.2.81)

Additional (countervailing) duty on imported goods on the basis of state excise duties inst. Reg:

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 A question had arisen whether goods which are liable to excise duties under the state excise laws. should on import from abroad be subjected to additional duty in terms of section 3 of c.t.a. '75 in order to afford protection to the indigenous industry. the ministry of law, who were consulted in regard to the legality of levy of additional duty on such goods. have advised that the term 'excise duty' referred to in section 3 of c.t.a. '75 is not confined to the 'excise duty' leviable under the central excise act and that it would equally apply to the levy under the various state enactment's.

As the customs houses are aware, for the purpose of levy additional duty under section 3, where an article is liable to duty at different rates, the highest duty (not necessarily the highest duty prevalent in the importing state) has to be applied. as liquors constitute a very important item in the field of state excise levy, the rate of state excise duties in the different states on liquors have been ascertained and it has been decided to peg down the rate of additional duty on brandy,gin whisky and rum at RS. 33.30 per litre and that on beer RS. 2.00 per litre (without any test in regard to proof spirit) by way of notification no. 144-cus dated 2.8.76. Other varieties of liquors, and goods other than liquors which are liable to excise duties under the state enactment's would, in terms of the law ministry's advice, also attract levy of additional duty under section 3a of c.t.a. '1975. (f.no. 3/3/67-cus. i dated 7.10.67.)

Produce cess act, duty thereunder whether liable to duty under section 3 of the tariff act:

It has been decided in consultation with the ministry of law that imported cotton would not be liable to countervailing duty in terms of section 3 of the custom tariff act, 1975 as the duties of excise under the produce cess act, 1966, are leviable on consumption in mills in India and not when manufactured or produced in India. (tariff circular no. 10/69, file s4e1/69 pag) It is further clarified that as the duties of excise on copra under the produce cess act 1966 are also leviable on their consumption mills in India, imported duty. on the other hand, as the duties of excise on oils extracted from oil seeds under the produce cess act, are leviable on their production, corresponding countervailing duty is leviable on imports of such oils. however, in terms of notification no. 6, customs (now 136, cus/76 dated the 2nd January 1985) oils extracted from oil seeds have been exempted from the payment of

countervailing duty on that account. In view of the position explained above, imported copra and vegetable oils are not liable to any countervailing duty on account of the provisions in the produce cess act. (f.15/27/68-cus. i (pt) dt.7.1.69 tariff cir.10/69 and f. no. 15/27/68-cus. i dated 13.1.69 tariff cir. 14/69).

C.V. Duty on Agricultural Tractors in CKD Condition:

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 The board wishes to emphasise that the most important point is to decide under which tariff item the article in question is assessable for the levy of the basic duty. this assessment would in most cases be subject to an authorised practice. in case of agricultural tractors in c.k.d. condition the question is whether such a c.k.d is regarded as an agricultural tractor and assessed as such if so it will attract the countervailing duty leviable on agricultural tractors. (m.f.d.r. no. 14//1/60. ucs. i, dated 11.4.60).

Double levy of countervailing duty on certain articles-avoidance of:

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 The government of India have noted that the new provisions for the levy of countervailing duties have in certain cases resulted in the same article becoming liable to the countervailing duty twice over. it is not the intention of the government of India that countervailing duty should be levied twice over on the same article. the custom houses should go by the above intention i.e. countervailing duty should not be charged twice over on any article. Cases where the same article has become liable to double levy of countervailing duty may be brought to the notice of the government of India. (m.f.(d.r.) no. 14/16/62-cus.i, DT. 8.5.1962).

Exemption from central excise duty-question of applicability:

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 (a) The phrase 'excise duty for the time being leviable' means excise duty leviable after taking into account any exemption notification issued under central excise & salt act, 1944. (m.f.(d.r.) 14/3/61cus. i dated 10.3.61)

(b) Additional duty (countervailing) to reduce to the extent of exemption: The ministry of law has advised that if under rule 8(1) of the central excise rules, 1944, there is an exemption notification issued by the government, the duty for the time being leviable will be the duty reduced by the exemption notification and that is the additional duty under section 3 of customs tariff act, 1975. (board's letter f.no.15/9/66 cus dated 23.11.66; tariff circular 182/66).

(c) Conditional exemption.-there is nothing in the law that a conditional exemption on excise side cannot be applied on customs side. however, if the condition prescribed in the notification are such that they cannot be satisfied by the imported goods, then that notification would not

apply. (f.no.15/13/67-cus. i dated 8.7.68)

(d) Concessional rate of duty prescribed by any notification is not binding upon the importers. the importers may opt to avail of the benefits of the notification or may avail of the tariff rate if the same is lower than the rate prescribed by the notification. (on the basis of f.no. b-21/32/69-cx, i dated 15.4.69)

#### Nepal origin excisable goods-collection of additional duty

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Additional duty leviable under section 3 of customs tariff act, 1975 on goods of Nepalese origin imported into India may be collected on a bill of entry which may be suitably modified and simplified to the extent necessary. (g.i.m.f. lr. no. 80/1/166/l.c.i. dt.16.6.67)

#### Impact of customs tariff act 1975 on the levy of countervailing duty

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The questions before the conference was whether the introduction customs tariff act 1975 made any change in the position regarding the levy of countervailing duty on imported articles. the conference observed that for purpose of levy of countervailing duty under section 3 of the customs tariff act, the classification under central excise tariff had to be adopted. the fact as to how the same article was classified under the first schedule to the customs adopted. the fact as to how the same article was classified under the first schedule to the customs tariff act was not material to the levy of countervailing duty as very often the basis adopted for the two classifications were different.

As regards individual cases where the question of classification of articles for the purpose of levy of c.v. duty has arisen at various custom houses, these have to be referred to zonal/commodity collectors of central excise for discussion at their periodical conferences as instructed by the board in this connection, the conference was of the view that such zonal c.e.t. conferences should also be attended by the respective collectors of customs in the zone to facilitate discussion on the aspect of countervailing duty on imported articles at such conference if the question of countervailing duty was once raised by the c.r.a.d. the director of receipt audit or his representative could also be present. similarly, the presence of the chief chemist and the representative of d.g.t.d. would also be useful. (conference of collectors of customs on tariff held at madras on 24th/25th march 77)

#### Charges, discounts and allowances for exclusion from value

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(1) Discounts interpretation: in dealing with discounts shown in invoices. section 30(b) of the sea customs act must be interpreted as referring to the minimum cost at which goods can be delivered at the place of

importation in ordinary course of business. if the net price, after the discounts have been deducted, represents the agreed amount for which the goods have been contracted to be bought and sold in an ordinary sale and purchase transaction without usual conditions between independent parties, then this net price is acceptable as evidence for assessing the real value according to section 30(b) of the sea customs act. the essential condition regarding the admissibility of the discounts is that they have been granted by the seller without the imposition of any unusual condition of the buyer. (c.b.r. 151-i cus. of 16.2.25)

(2) Service stocking discounts inadmissible: discounts granted for "service" stocking purpose are inadmissible. (board's r. dis. no. 81-cus. i/27 of 193.3.27)

(3) Discount in kind: no abatement or deduction shall be allowed in respect of trade discount in kind when assessing goods under 30(b) of the sea customs act (position will remain the same under section 14(1) of the customs act, 6+2). Full duty will be charged on the extra quantity allowed as trade discount in kind.

(4) Discount for brokerage : no abatement for brokerage as trade discount is admissible for the purpose of computing the real value under section 30(b) of the sea customs act (position will remain the same under sec. 14(1) of the customs Act,62).

(5) Deferred and contractual discounts:- (a) rebate of duty should be allowed on unconditional deferred discount on goods assessed either under section 30(a) or 30(b) of the sea customs act, provided such discounts are proved, by documentary evidence, to have been included in the declared marked value or the invoice as the case may be. (c.b.r. letter no. 1034, dated the 19th April, 1924).

(b) A deferred discount or bonus which is allowed unconditionally to all buyers may be deducted when calculating the "real value" of the goods concerned under section 30(b). deferred freight rebate which is a rebate allowed by ship owners or agents to shippers with the object of confining shipments to particular "lines" and preventing 'rate cutting" or the intrusion of foreign lines, may be considered a normal discount in the ordinary run of business and admissible for deduction from the gross freight charges for customs assessment purposes if it is established before the goods leave customs control. (c.b.r. dis. no. 1165 cus./25 dated 23.11.1925)

(a) Deferred rebates on freight charges shown in invoices are admissible for deduction from c.i.f. values for purposes of assessment except when they are special and conditional. (board's letter r. dis. 162/cus. i/28 dated the 29th august, 1928)

(6) Quantity discounts-(i) quantity discounts are



admissible for deduction under section 30(b) of the sea customs act when such discount are proved, by documentary evidence, to have been actually earned by the importers and granted by the suppliers.

(ii) A case was noted in which certain quantity discount was earned by an importer by virtue of a consolidated order placed by him and a number of other importers together through a common indenting agent in order to make it acceptable to the supplier to give the aforesaid discount on the total quantity of the order placed. the discounts was shown in all individual invoices, issued to the different importers for their sub order, on a pro rata basis. As there is nothing exceptional in the discount, the board have decided that on the analogy of board's ruling contained in letter no. 131-i-cus. 25 dated 16.2.25 (reproduced in paragraph 33(iii) (a) at page 39 of compilation of rulings) the quantity discount in question should be treated as admissible under section 30(b) of the sea customs act for the purpose of assessment. (c.b.r. lr.no f. 3/29/60-cus. vi of 14.6.61 cvii/583/61, and o. ap. no. 71 of 2.9.61)

(iii) In certain cases the suppliers agree to allow a rebate in respect of orders exceeding a minimum specified quantity of the goods brought. they suggest to the indenting agents that it is not necessary for the minimum quantity to be brought by individual importers for the grant of this rebate. what the suppliers are interested in, in securing an order, however made, for the minimum quantity and in that event they will be prepared to show the same rebate to all the suborders also which make up the total minimum quantity. there is nothing very special or abnormal in this kind of business and so long as the rebate has been actually passed on to all the individual orders, even if they are individually less than the minimum, the rebate will be admissible for purpose of arriving at the value. it should however, be verified that the supplier have in actual fact indicated the rebate on the invoice to all parties whose orders are included in the total quantity for which they have placed an indent with the suppliers.

(7) Bonus for purchases exceeding certain quantity- discount of bonus allowed by shippers, when consignee contracts to import goods exceeding in value a fixed amount in one year should be admitted. (c.b.r.d. dis. 858-cus.i/36 of 8.5.36 r.dis. 392/36)

(8) Special introductory discounts, compensation discount.- special introductory discount or introductory sales promotional discount is given by manufacturing and incentive necessary to introduce a new and untried produce in the market. a forcibility like this is necessary during the introductory stage as the market reaction obtaining during the initial stages requires to be carefully watched and rvision of prices effected whenever found to be so warranted. for a new speciality a policy of this kind to achieve a reasonable monetary target cannot be considered to be unusual in any way. besides, this introductory discount would be available to any person interested in importing and marketing such goods. as such, this discount is in the nature of a trade discount, and , therefore, admissible for computation of assessable

value under section 308b) of the sea customs act.

Note- Compensation discount will be excluded provided it is proved that it could be obtained in the normal course of business. (c.b.e. &c. letter f.no. 14(41)56-cus. i/vi DT. 26.11.56)

(9) Cash Discounts-(a) cash discounts are admissible in arriving at value when they are available equally to all importers.

(b) This includes cash discounts allowed for prompt payment in India on the arrival of the goods. it does not cover discounts allowed for payment before the goods have reached India. but cash discounts for payments, under a letter of credit, in the country of export, may be admitted in arriving at the assessable value. normal cash discount on the invoices of a head office or buying agency at home should be admitted in calculating the assessable value. (c.b.r. no. 5257 of 5.11.24 cbr d. dis. no. 646/i/35 of 10.9.35, cbr r. dis. 247-cus/27 of 26.1.28 and cbr d.o. 56-cus i-29f. ap. x/1-43 og 29.30, cbr 983-cus i/35 of 10.9.35)

(c) Cash discount given by suppliers to principals or agents of importers in India should be treated as ordinary trade discount and should accordingly be allowed unless it is clear that they are for prompt payment 'abroad' and has not been passed on to the importers.

In determining value under section 30(b) of the sea customs act the principle is that, in accordance with the ordinary commercial practice, the cost, of financing the goods up to the time of their import falls on the foreign seller and, is therefore, an element in the price and in the real value. Any discount allowed in consideration of the buyer paying for the goods before importation is accordingly inadmissible for customs purposes. (g.i.f.d. (c.r.) lr. d.a. dis. no. 539-cus i/45 dated 3.10.45)

(10) Sample discounts.- in assessing the sample, any discount allowed other than the ordinary discount should not be taken into account for purposes of arriving at the real value under section 30(b) sea customs act [or under 14(1) customs act], as the fact with the particular goods are samples does not alter either their kind or their quality which is the same as that the goods which are not samples. (g.i. orders on customs revision application no. 23 of 1930 d.dis. 112-cus. i/30)

(11) Late Shipment allowance.- A late shipment discount is allowed for breach of term in a particular contract, i.e., the term as to the date of shipment. it is therefore, special to the parties and not normal in the ordinary way of business and should not be allowed in arriving at the real value for customs purposes. (orders on rev. appl. no. 46 of 1939 compilation of rulings of sea customs act p/35).

(12)-Payment barter discount of compensation discount.- The system detailed in short in this: "the Indian importer offers to the German manufacturer or the supplier of the goods, the price at which the respective goods can be sold in India. The German exporter makes the necessary compensation arrangement with the German importers of Indian produce. The invoice is made out

at proportionately higher rates than actual prices in favour of the latter concern and a discount at the rate sanctioned by the German government in respect of the goods is given to the importer. the discount varies according to the class of goods and represents the export bounty granted by government controlled institutions in Germany, in connection with compensation against imports from India, and the loss due to the discount granted in respect of German exports is met by these institutions from the compensation obtained in respect of Indian imports. since, however, the smaller value, viz., the gross value minus the discount is the one offered to purchasers in India irrespective of any condition and is admissible to all alike in the export market under this system, it is the value to be considered for the purpose of assessment under section 30(b), of the sea customs act, as it represents the correct landed cost of delivery of the goods at an Indian port.

(13) Discount on account of loss by exchange.- Discounts allowed by exchange banks with the concurrence of shippers on account of loss by exchange need not be included in the real value if it is proved that the shippers on account of loss by exchange losses had been reached, and the letter announcing it, dispatched before the goods were cleared. (g.i.f.d. cus rev. appl. no. 45 of 1932)

(14) Breakage allowance.- breakage allowance, given by the suppliers as a trade discount in respect of consignments of bottles or other cargo of a fragile kind to compensate the consignees for possible breakage of such goods in transit should be regarded as an admissible abatement for the purposes of determining the value under section 30(b) of the sea customs act provided it is available uniformly to all importers.

(15) Deferred payment-scheme-Value determination of  
of.-(a) the board considers that the interest charged to the importers by the foreign suppliers under deferred payment scheme (which is not deemed to be at par with the case of cash discounts) should be excluded for purposes of arriving at the assessable value under section 30(b) of the sea customs act as the real value need not necessarily be dependent on the financial arrangement, provided that the transaction is bonafied and the goods are not charged on the invoice differently from goods of like kind and quality at the time and place of importation.

(b) Goods purchased on the deferred payment basis  
-interest on- liability to customs duty-instructions reg.- the government of India has decided that the interest charged by the suppliers in the case of goods imported under the deferred payment scheme should be excluded from the calculation of real value provided such interest charges are shown separately in the invoices. (m.f.d.r. lr f3/12/57-cus. vi of 27.7.57)

(16) machinist Discount.- machinist discount allowed to the Indian manufacturing importers and to all CO-manufacturers in the same line of trade is a normal trade discount and is admissible for purposes of assessment under the provisions of the section 14(1)(a) of the customs act,

1962.

(17) Settlement discount may be allowed if proved to be in the nature of and similar to trade discount.

(18) Primage charge.-Primage charge means a sometimes levied by the steamer agent in addition to freight. when recovered from the importer, it should form part of value on which duty is chargeable, but if some proportion of primage charge is refunded to the shipper and if such refunds are passed on to the importing firm, they may be deducted.

#### MOTOR CARS AND OTHER MOTOR VEHICLES

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(1) Basis of valuation of motor cars.-motor cars whether new or old are assessable to duty on the basis of their list prices prevailing in the country of their manufacture. however, trade discount and depreciation on the value are deducted from the list price; but freight from the country of manufacture and insurance charges are added. the landing charges are also added to this to arrive at the final assessable value.

(2) Valuation of motor cars for personal use.- motor cars and motor cycles when imported by the owner personally and not in the ordinary way of invoiced cargo will be appraised in the following manner:

(a) The owner will be called upon to produce his bill, receipt or other evidence regarding date of purchase and the purchase price.

(b) In the case of a new car, the list price of the car prevailing in the country of manufacture should be ascertained and also the normal trade discount which is given by the manufacturer, irrespective of the fact, whether it is actually given by the manufacturer to a particular buyer or not. If the vehicle is bought second hand, the assessable value is to be computed with reference to the list price of the car in the country of manufacturer after deduction of trade discount and the depreciation in terms of the "scale of depreciation/trade discount" reproduced in sub paragraphs (3) to (5) below: however the average freight and insurance from the country of manufacture [and not from the port of shipment] actual packing charges, if any, and the landing charges are also to be added to arrive at the assessable value.

(3) Scale of depreciation for purposes of assessment of used cars, motor cycles, scooters etc. imported into India:

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Period of use	depreciation allowed
for every quarter during 1st year . . .	4%
for every quarter during 2nd year . . .	3%
for every quarter during 3rd year . . .	2 1/2%

for every quarter during 4th year . . . 2%

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If the car is more than 4 years old, the depreciation will have to be decided on the merits of each case and not on any schedule scale.

The above scale of depreciation will also be applied to motor cycles and scooters imported into India.

Note.-The amount of depreciation allowance on a car or motor cycle or scooter for the period of use exceeding 4 years will have to be decided on the merits of each case after physical examination of the vehicle by the assistant collector for completing of the assessment.

On the question as to how a part of a quarter of a year should be treated for computing the depreciation it has been decided that full depreciation as prescribed for a quarter should be allowed even where a car etc. has been used only for a part of a quarter. if the car has been registered in the country of export and used depreciation allowance on quarterly basis will be admissible.

As regards the basis for determining the period of use of motor cars for computing depreciation, the board consider that normally registration certificate date and bill of landing date should be the basis. But in the case of countries where cars are permitted to be used before registration, there should be no objection to consider other acceptable evidence. The practice of requiring the production of passports leads to delay in clearance and should not be resorted to in ordinary cases. (c.b.r. & c. f.no. 3/27/62-cus. vi of 7.1.64 & 24.1.64 & bd's letter f.no. 3/16/68-cus vi DT. 6.7.68)

(4) Extent of trade discount on list price.- the board had occasion to consider whether for purpose of assessment of (owner) imported cars, it would be order to allow a trade discount of 20% on the list price of the car, irrespective of the fact whether it was actually given or not by manufacturer to the buyers. it has now been decided that for purposes of valuation the custom houses should go by the wholesale price which would include the normal trade discount, whether or not it has been allowed to a particular buyer. as regards the question of discount to be allowed, it may be desirable that the discount applicable to the particular make of the car should be taken into account. however, if the range is a narrow one, such as 18% to 22% as reported by Bombay customs house, it would be convenient to adopt flat rate 20% (since brought down to 15% as revised by Bombay custom house in 1971 under circular 1/71 reproduced below) as is done at that custom house. this position would require to be reviewed periodically as is done for landing charges or rates of war risk insurance. (board of ex.& cus. letter f.no. 3/29/62-cus vi dt.21.1.64 para page 32, tech. bulletin, Jan-mar, 64)

(5) Fixation and review of trade discount on cars for computing the assessable value.- the board has designated the collector of customs Bombay as the CO-ordinating custom house, to review the rates of trade discounts for computing the assessable value in respect of motor cars

imported from abroad in accordance with the broad principles laid down by the board. in this connection the board has directed that the admissibility of trade discounts on cars imported into India, the custom house should go by the wholesale price of the manufacturer which would include the normal trade discount whether or not it is allowed to a particular buyers.

In accordance with the above orders the position has been reviewed information has called for from overseas manufacturers as well as their representatives/ distributors in India of the popular makes of cars regularly imported at this port by passengers, foreign nationals and diplomats with regard to the trade discounts allowed on the manufacturer's list prices on direct shipments of such cars to India. the custom house also maintains its own record of trade discounts allowed by such manufacturers from the import invoices of such manufactures presented to the custom house at the time of clearance of these imported cars.

From the above data collected by Bombay Custom house, it is seen that for different makes of American, English, German and Italian cars, the range of trade discounts allowed are as shown below:-

AVERAGE.

AMERICAN CARS	12% TO 24%	18%
ENGLISH CARS	10% TO 17%	13.50%
GERMAN CARS	10% TO 13%	11.50%
ITALIAN CARS	10% TO 15%	12.50%

It is seen that the average rate of trade discount allowed by the manufacturers in respect of cars shipped by them from these four principal car manufacturing countries ranges from 12% to 18%. the board in their letter f.no. 3/29/62-cus. vi dated 21.1.1964 cited above have directed that if the range of trade discounts is a narrow one, it would be convenient to adopt a flat rate. the present review shown the range of trade discount to be 12% to 18%. it is therefore proposed to fix a flat rate of 15% trade discount to be allowed of the manufacturers wholesale list price for purposes of arriving at the assessable value of cars imported from abroad under section 14 of the customs act, 1962. (misc. circular 1/71 of Bombay c.h\_ on the basis of board's authority in f.no. 3/23/62-cus. vi dated 21.1.64 and 3.4.64 cus. vi dated 16.3.65)

(6) Computation of period of use.-"in computing the period of use for the purpose of allowing depreciation both the first day and the last day, determined in terms of the above order should be counted." (c.b.r. lr.no. 70/110/52-cus. i of 21.6.55 c. 1085/53)

(7) Depreciation allowed on mobile van-in regard to the grant of a depreciation allowance granted at the Bombay custom house on a mobile van which was objected to by the crad on the ground that such allowance is admissible in respect of cars owned and imported by private individuals, the central board of revenue have ruled that a vehicle which is imported by other than a private person and which has been in use abroad, before import, is bound

to depreciate and to the same extent, as a vehicle imported by a private individual. the allowances were fixed as a rough and ready guide to prevent detailed examination in each case, but this did not mean that such depreciation allowances should not be given to other vehicles. It stands to reason that when a vehicle has been used abroad before import it is bound to depreciate to some extent in value and, therefore on import its value can not be at the same figure as that of a new vehicle. (c.b.r. lr.no. 10/80/cus. iv/54 of 25.4.55)

(8) Valuation of cars imported by private individuals- overhauling charges are included in running repairs and should not therefore be added to the assessable value of motor cars and cycles.

Motor cars and motor cycles of two different year's models cannot be regarded as being of 'like kind and quality'. when imported by private individuals, they should be assessed on the minimum landed cost in the year of their production subject to the usual depreciation allowance.

The make, horse-power and number of engine and chassis, number of cylinders should be recorded on the bill of entry for every car or cycle. Where the above method of assessment does not, for particular reasons, appear suitable, the case should be reported to the assistant collector for special orders.

In arriving at the value for assessment, the duty paid in a country other than that of manufacture shall not be taken into account.

The Board has ruled that the Customs Collector is competent to accept the trade price ascertained subsequently on a motor car imported by a private individual at a time when there was no import trade.

The Assessment of used cars is made on a conventional basis and the method employed gives a reasonably correct value of the car. in the circumstances, in cases where the trade price quoted is exfactory, it is not necessary in each case to ascertain the fob price of the car. the exfactory price, which is more readily ascertained, may be used as the basis for reducing the value of the used car.

The Board has decided that for purposes of assessment of motor cars, in the absence of satisfactory evidence regarding the actual amount of freight and insurance paid, the addition towards the same should be based on the best available estimates and not on a flat rate. further, the board consider that the average freight and insurance charges should be calculated from the country of manufacture and not from the port of shipment. c.b.r.lr. no. f 3/25/60-cus vi of 26.10.60 c.no. 6166/60)

Valuation of Second Hand machinery-instructions regarding  
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The question of valuation of Second-Hand machinery has been examined with a view to laying down a suitable procedure to avoid delay in clearance. The value of the secondhand machinery depends upon various factors such as the year or manufacture, model, extent of use, wear and tear, repairs and reconditioning and availability, etc. presently, in support of the price

paid, the importers are required to produce before the customs a chartered engineers certificates mentioning the condition of goods, the expected valuation after examination of the goods. even as per the requirement of the ITC had-book, the importers are to furnish such a certificate and other details before the customs when required. at the time of determining such value under rule 8, while a suitable deprecations given on the value of the new machine with reference to its year of manufacture, the cost of repairs and reconditioning, on the other hand, is added so as to form part of the value.

In the absence of suitable indicators or comparable data in respect of second hand machinery, generally a lot of difficulty is experienced in ascertaining the value and expediting clearance of such imports. further, as invoice value is not easily verifiable, the assessing officers find it difficult to accept straightway the invoice value as representing the actual transaction value. The question is how to make sure that the invoice value is really the actual transaction value. to ensure suitable checks without involving delay in clearance, it has been suggested that registration of such imports should be done well in advance right after the customs clearance permit is issued by the chief controller of imports & exports and , in the case of open general Licence imports, after the orders are placed by the importers. such advance registration, will enable the custom house to verify the value indicated in other customs clearance permits of comparable goods. in glaring cases it should also be possible to take the advice of other competent authorities or to ask for supporting document from the importers well in time. the importers should furnish all the documents (or copies thereof) on the basis of which ccp had been obtained and the information considered by them for placing orders, under O.G.L. or purposes of registration. though in the case of such imports exact comparison will not be possible, still such registration will enable the custom house to have a few cases on record to make a firm assessment as to what extent the transaction value can be lower than the new replacement cost. with this procedure the custom house can verify and make sure that the price indicated in the cap bears some relation with the new replacement cost and this also bears comparison with the registered case. once this is done, the custom house should go by the transaction value without unnecessarily raising queries which do not result in positive gains to revenue but delay clearance and also defeat the scheme of importation or second hand machinery. attention has to be confined only to the assessment aspect and for this purpose this arrangement is considered sufficient to detect any possible frauds.

The procedure cited above is not in replacement of the existing procedures (as referred to at para 2 above) but is an additional requirement to facilitate the valuation of second had machinery. the method of checking the adequacy of declared value of second hand machines by taking the new price of the second hand machines (i.e. the price when they were manufactured new) and then allowing the depreciation for every year of use on reduced balance basis and then escalating the depreciated price by 1/3rd of the



percentage by which the new machine has escalated in value over the specific period may serve as a guide to verify if the declared value is reasonable. for this purpose, calculation may be made, by allowing a depreciation of 15% for every year of use.

If the value so calculated does not differ much from the invoice value, invoice value should be accepted for the purpose of assessment without raising further queries. however, if the difference is very high the case may be proved further to find out if there is any fraud or mala fide transaction. but if there is no fraud or mala fide and the invoice value is found to be the actual transaction value, the same may be accepted for the purpose of assessment. (board's letter f.no. 493/39/80-cus. vi DT. 16.2.1983)

Unique articles:  
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The value of a unique article such as a family portrait shall be taken to be the cost of the article to the importer.

Valuation of Gold jeweler:  
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According to board's letter f.no. 23(a)55-cus. i/vi dated 13.11.1956 on the above subject, jewelry imported by passengers as a part of their baggage should be valued on the basis of the price of gold in the country of manufacture and 20% should be added towards making charges. it was also laid down that stones, if any, set in a jewelry article should be valued on the basis of Indian market price thereof. it has now been brought to the notice of the board that there is some divergence in the practice followed in different custom houses for the valuation of gold jewellery.

Since it is not easy to verify the price of gold in the country of maintenance, the board has decided that, the value of jewellery items, imported as baggage, should be determined on the basis of price of gold prevailing at London in case of passengers coming from the west and at hongkong in case of passengers arriving from the east. with a view to ensure uniformity in valuation of jewellery at different ports, the board also desires that Bombay custom house should inform all other customs houses and chandigarh and west Bengal central excise collectorates by the 29th of every month the average of the last 4 weeks gold prices at London and Hong Kong. these prices should form the basis for valuing the gold content of jewellery from the 1st of the following month after adding 20% thereto towards making charges. in respect of studded jewellery the value of the stones determined on the basis of the Indian market price thereof should also be added. (central board of excise & customs letter f.no. 495/52/75 cus. vi dated the 31st January, 78)

Woollen fabrics-flag allowance admissibility of order reg.  
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Pieces of woollen fabrics sometimes contain defects, the

number and nature of the defects are such that the whole piece is not always condemned at second grade, but at places where the defects occur strings attached handsome allowance either in terms of yardage or in terms of value, is allowed per string to the buyers. this is commonly known as the 'flag allowance' the question of treatment of this allowance for valuation purposes has had been under consideration of the board for sometime.

It has been decided by the board that the assessment of woollen fabrics should be made after taking into account for valuation purposes the actual flag allowance granted by the supplier subject to the usual maximum of 1/2 yard, where the allowance is given in terms of quantity, and to that of 1%, where it is given in terms of value.

In the case of levy of specific duties, however, there is no question of giving rebate for a flag allowance, the gross yardage has to be assessed to duty as the duty does not vary according to the quality. (board's f.no. 2(1)/56-cus. vi of 31.8.56 no. 4/cus. vi/56)

Loading of invoice value and examination of books of accounts-review ins. Regarding.

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 (i) The various decisions taken on the examination of books of accounts of firms effecting importation from connected suppliers' abroad, incorporated in a separate ANNEXURE as compiled from time to time by special section (valuation). cbr lr. no. 25(192)-cus. iii/56 of 9.11.56)

(ii) The Board has ruled that where at the time of the first assessment the customs authorities have reason to believe that the value declared is less than the value i.e. the cases of loading of invoices, the proper course to adopt in such cases would be to have recourse to provisional assessment under section 18 of the customs act the board has ruled that we should avoid any approach to the problem which may appear to be unrealistic or too complicated. adoption of complicated mathematical formula, basing of decisions on many assumption and fixation of criteria which might look arbitrary, and such other factors may be avoided. It is also imperative that the system of loading of invoices should not be resorted to indiscriminately but only where there is a strong justification for not accepting the invoice value.

There should be no question of keeping an assessment open for a year or so, in order that a complete years' accounts may be checked. in the case of importers whose books are being checked every year practice of applying a loading percentage base the figures of the previous year to imports made during the current year. where, however, any importer challenges this practice it should not be resorted to, but the import of the current year should serve as the basis. however, the assessments should be made under section 18 and should be finalised on the basis of two or three months' transaction, on the basis of the best judgment possible. it is again emphasised by the board that on

no account should finalisation of an assessment be kept pending for months or years on the ground that accounts have not been finalised. (c.b.r. lr.no. 4/37/57-cus. vi of 15.10.60 c.no. viii/9/61)

(iii) Decisions in matters of examination of books of accounts of various firms except the following types of cases should be taken by the assistant collector of customs for Appraisal in charge of the special section.

(1) Cases involving loading of raw material;

(2) Review cases where earlier decision is not confirmed even though there is no material change in the position; and

(3) Cases falling under SL. no. (1) should be put up to collector and that in SL. (2) should be put up to deputy collector (and in his absence to collector) for final orders. tentative decisions shall first be communicated to the parties inviting written representation and personal hearing before final decisions are taken. (order of collector of customs, Calcutta, with reference to board's letter f.no. 3/33/59-cus. vi dated 4.10.60)

Examination of books of accounts in connection with assessment of imported goods-periodical gap observation of public account committee.

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While considering an audit paragraph regarding loss of revenue due to wrong admission of agency commission the public accounts committee has observed that the department should take steps to examine the books of account of the importers well within the period of 5 years so that any claim against them could be preferred before the time bar becomes operative. the observation of the public account committee should be strictly followed hence forth to avoid any recurrence of such incidence. (c. 1/178/70-ministry's f. 3/12/70-cus vi DT. 20.6.70)

Determination of value by the special valuation branch, timely review of decision thereon and follow-up action by assessing groups-orders regarding.

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With a view to ensure compliance of the directives contained in the ministry's letter f.no. 512/10/79-cus. vi, dated 18th January, 1980, the following are issued for guidance of different sections in the custom house.

(1) A key advance reminder register in suitable proforma shall be maintained in the special valuation branch/section of the customs house.

(2) The review of investigation circular should be undertaken once in every three years and completed within a period of six months.

(3) Whenever a letter/order is issued by the special valuation branch to the party informing the results of the examination of the books of accounts, this letter/order should specifically instruct the party to make a declaration once in every 12 months regarding any changes in the basis of invoicing affecting the value of goods imported by him from a particular supplier and that this declaration should be addressed to the assistant collector, special valuation branch.

(4) It should further be added in the letter/order that the party should come forward for review of the order (of loading etc.) before the completion of three years from the date of special valuation branch order.

(5) The party should be asked within a month the date on which the declaration becomes due, to furnish such declaration.

(6) If no declaration is received from any party in time or if the declaration received, prima facie, indicate that there would be need for review of the earlier order, the special valuation branch should immediately issue a letter to all the appraising groups (including i.a.d.) advising them to resort to provisional assessment procedure in regard to imports made by that party, copies of the letter/order should also be sent to all other custom houses (in respect of the special valuation branch circulars which are already in vogue now, the special valuation branch/section should ensure by issue of a letter to the parties that the declaration is received in time.

(7) The special valuation branch should compile all circulars alphabetically and issue them to all appraising groups, audit and other concerned departments.

(8) The special valuation branch/section should compile and issue a quarterly catalogue of valuation circulars issued during the quarter. copies of the catalogues should also be sent to all other custom houses so that they could check that they have not missed any of the circulars. periodical corrections, if any, should also be issued and circulated.

(9) Copies of all valuation circulars and quarterly special valuation branch catalogues together with the correction lists, if any, should also be sent to the directorate of inspection for keeping a watch on the progress of review.

(10) In cases where it appears to valuation branch/sections that the review cannot be finalised within the stipulated period the special valuation branch should take prompt steps to have the import assessed provisionally under section 18(1) of the customs act, 1962. provisional assessment under section 18(1) of the customs act, 1962 should also be ordered in cases where the special valuation branch apprehends that dilatory tactics are

adopted by the importers/ exporters and also in cases where examination of books of account is likely to take a long time whether at the time of original study or review.

(11) Where the loading, if any, has increased and where it appears that such loading should have increased some time in the past, the change in the set-up, mode of invoicing, relationship etc. be intimated to the customs house in time, the special valuation branch/section should monitor any less charge that may be due under section 28(1) of the customs act, and under proviso thereto. for this purpose, special valuation branch/section should maintain a register. where details of such less charges as intimated to the concerned assessing groups are entered and the progress watched. this register should also be put up to Asstt. collector of the valuation branch/section every quarter.

(12) Each Appraising group should maintain a cardex, listing all the circulars together with the name of the concerned importers and the time upto which they are valid.

(13) All bills of entry received in an appraising group should be scrutinised with reference to the cardex by the appraisers.

(14) In the course of scrutiny of the bills of entry, the assessing officers in the group as well as the audit staff, should take particular care to check the declaration signed by the importer/ clearing agents, specially the certificate at columns 4 and 5. if the columns are not properly filled in or if they altogether struck off, he should investigate and should also bring this fact to the notice of the special valuation branch through his assistant collector.

(15) The assessing officers as well as audit staff should also carry out an intelligent scrutiny of the invoices, with special reference to the scale of discounts and codes mentioned therein and compare the same with those set out in the investigation circulars. if such scrutiny revealed any different pattern of invoicing it should immediately be brought to the notice of the special valuation branch/section through the assistant collector of the group, for necessary action. the Asstt. collector of the group should decide whether the assessment should be made provisionally in that case and the case of the same nature arising thereafter.

(16) As soon as intimation regarding the less charge due or likely to be due is received in the concerned assessing group, the said group should take prompt action to collect the necessary information regarding the less charge due and issue a less charge demand as early as possible and in cases, where less charge is established to be due, take steps to enforce payment in time. the assessing groups should keep the special branch/section informed of

the progress made in each stage.

(17) The valuation branch/section decisions, whether on original study or on review of an earlier decision, should be circulated to all assessing groups, audit, c.r.a. etc. as well as other custom houses & central excise collectorates, which have customs units. this work should be handled by a specified unit in the custom house which should ensure that there is no undue delay in cyclostyling/distributing the copies of the valuation branch circulars. It will be the duty of the staff of valuation branch/section to ensure that necessary entries in the alphabetical registers are made.

(18) The staff of valuation branch/section should also ensure that the circulars issued by other custom houses/custom units are arranged serially and maintained up to date and the particulars entered in the alphabetical master register maintained in the valuation branch/section if any circular is found missing a prompt reference should be made to the custom house concerned and a copy thereof obtained without delay. (authority :based on ministry's letter f.no. 512/10/79-cus. vi DT. 18.1.80 and Bombay so 6737/80)

Other orders regarding valuations: correspondence with other customs house.

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 The Board desires that in important matters, e.g. in case of interpretation of section 30 of the sea customs act (now 14 of the customs act), to correspondence amongst the custom houses/collectorates should be on collectors' level and not the assistant collectors' level. (board's no. 27/16/57-cus.vi of 20.11.57)

Goods imported from a country different from country of origin at a price lower than the price of comparable goods imported direct from the country of origin-acceptance of.

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 In recent cases, it was noticed by the board that an importer got goods of French origin from Hong Kong at a price lower than that of similar goods directly importer got goods of French origin from Hong Kong the lower price should be accepted as the real value. There can be several genuine reasons why the price at Hong Kong was lower than that in France. For instance, the particular goods may be of deteriorated quality or the sale might have been of a job lot or again the market conditions of Hong Kong may be different from the market conditions in France. Whether the lower price for import from Hong Kong is actually due to one of these reasons is a matter that has to be determined with reference to the facts of each particular case.

The Board desires that the greatest circumspection is necessary in deciding such cases and prima facie such low values should be regarded as suspect. normally, the price prevailing in Hong Kong has to be at least equal to that of the cost price in France and the transport charges. In those cases where it is conclusively established that the lower price obtainable

from Hong Kong is a particular case was on account of some special reason as stated above and not on account of special relationship between the importer and the exporter, the invoice price should be accepted for purposes of determining the value under section 30(b) of the sea customs act (now 14(1) of the customs act). in other cases where the reason for the lower price cannot be satisfactorily established, it will have to be disallowed and value will have to be calculated on the basis of the price of goods of the like kind and quality imported from France directly to India. the basis for this action would be that it is the only way of determining satisfactorily the price at which goods of the like kind and quality can be imported into India. (Board's no. 3/7/57-cus. vi of 24.8.57 inst. no. 28/real value cus. vi/57).

#### Invoices-acceptance of

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(i) As a general rule invoice values are not to be accepted as the sole guide except in the case of small personal importation where the good faith of the importer may reasonably be assumed. (g.i. circular no. 124-c of 1.5.1878).

Note: there is no obligation on the part of the customs collector to accept invoices even if genuine as proof of real value. the main idea underlying the sub-section is that the value should be fixed not in accordance with the cost to the importer but with reference to the average landed cost of goods of like kind and quality. (g.i.c. & i. no. d.o. 2881 of 6.6.22).

Acceptance of invoice values for the purpose of assessment with an allowance for variation due to some valid consideration

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The estimates committee (sixth lok sabha) in its 33rd report have made the following recommendations on the question of acceptability of invoice value for the purpose of assessment.

"the customs authorities should consider the question of correctness of invoice values with reference to the sources of import, quality of goods and commercial practices prevailing in different countries and make an allowance for variation of import price if justified on these and other valid considerations. the committee also feel that a reasonable differential in price between the bulk and retail buying should also be allowed as it is a normal commercial practice that bulk or long term buyer generally gets some price concession". the above recommendations is accepted by government.

( authority: ministry of finance Deptt. of revenue, government of India's letter f.no. 520/27/79- cus. vi dated 10.1.80.)

Production of the bank attested invoice before finalisation of the bill of entry-instruction reg.

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 Consequent on the acceptance of the recommendation of the study team on leakage of foreign exchanges through invoice-manipulation, it has been decided to adopt the following measures with immediate effect and as such, assessing officers and all others concerned should ensure that the instructions laid down hereunder are followed scrupulously-

(i) Assessing officers while processing the bills of entry should insist on production of the bank attested invoices before finalising the bills of entry.

(ii) There may be occasions when for one reason or another the importers may not be able to furnish a bank-attested invoice. in order that this does not become a point of unnecessary disputation and delay, the importers should be asked to subscribe to a declaration on all the copies of the bills of entry including the exchange control copy signifying their inability to secure and produce an invoice attested by the bank. on the importer making such a declaration the assessing officer should proceed with the scrutiny of value and other aspects in the normal course on the basis of the unattested invoice produced.

(iii) If any case of disparity between the value of the goods and the amount of remittance made or to be made is noticed, the assessing officers should immediately report the same to higher officers so that the reserve bank and the enforcement directorate are informed about it. (ref: board's letter f.no.s14/1/76-cus vi dated 23.1.76)

Rubber stamp signatures on documents or Photostat  
 copies-question of acceptance

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 The Government of India consider that copies made by mechanical process from the master copy of the invoice are only secondary evidence of the original and as there is no means of verifying that they are exact reproductions of the original it may be difficult to hold the importers responsible for misdeclaration in instances in which preferential assessment is claimed on the basis of such certificates which are found to be incorrect. besides, it would detract greatly from the solemnity of the certificates which are found issued in the manner as a matter of routine. The government of India have decided that such documents should not be accepted for revenue purposes. (ref:m.f.d.r. lr. no. f. 70237/53 cus. i dated 25.3.54. file c.no. 551?/54/.

#### RENEOTYPED INVOICES OF M/S YARDLEY & CO LTD ACCEPTANCE OF

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 It has been decided by the board that reneotyped invoices of Messrs. Yardley & co. London may be accepted provided:-

(a) That the invoices contain particulars of quantity



description and value to enable assessment being made without difficulty;

(b) That value and other particulars are shown separately for perfumed spirits and other toilet preparations containing spirit; and

(c) That the invoices are signed and subscribed by hand by the supplier or the sender. c.b.r. lr.no. d.dis. no.1577-cus.i/46 of 31.12.46 f.no.c/61/47)

#### Reason to record for non-acceptance

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The Board has decided that Appraiser should, while rejecting invoices or other documentary evidence of value submitted by importers invariably record on the relative files their reasons for doing so. the appraiser's note recording such reasons must be submitted to the assistant collector of the group for approval. (c.b.r. letter no. 25/134/52 cus. i of 26.6.52)

#### Valid grounds for rejecting invoice value

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It has been brought to the notice of government that where the invoice value is not accepted by the customs appraisers. proper care is not taken to ensure that the rejection is justified. board desires to instruct all officers to ensure that while rejecting the declared invoice price, care should be taken to ensure that there are valid grounds for rejecting the declared value and evidence exists of the actual value being higher. The details of such cases where invoice values have been enhanced should be reported to the board every quarter. (authority : m.f.d.r. letter f.no.520/37/85-cus.vi dated 8.10.85)

#### Suppliers invoices in dollar-payment in sterling- real value

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Where the american suppliers' invoices and drafts are in dollars but payment is arranged by a London bank in sterling the value under section 30(b) of the sea customs act (now section 14(i) of the customs act) in such cases should be calculated on the basis of the dollar value converted into rupees at the rate of exchange current on the date of presentation of the bill of entry. The relevant date will be determined in terms of section 37 of the sea customs act (now section 14 read with section 46 customs act, 1962).

#### Locally made invoices

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Reference is invited to the instructions contained in central Board of revenue's letter no.18/3/54-cus.i/vi dated the 6th november,1956 on the above subject in terms of which the facility of clearing goods on the basis of locally prepared invoices was confined to goods imported

under open general Licence only. recently the government of India had occasion to review the matter and have decided that the concession of accepting locally prepared invoices for any purpose whatsoever should be withdrawn forthwith. (m.f.(d.r.)no. 3/2/65-cus. vi dated 21.4.65)

Freight-basis of computation for inclusion in value.

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When the value shown in the invoice is fob and the freight and insurance charges are not available, 20 1/4% of the fob (in case the goods are coming from middle eastern ports) or 20 1/2% of fob (in case the goods are coming from Cyprus) or 20 1/8% of the fob(in case the goods are coming from other ports), as the case may be,should be added to the fob value towards freight and insurance charges (inclusive of war-risk insurance). unless there is evidence to show that the aforesaid addition to fob value (major part of which includes freight element) may not cover the actual freight. in this regard the list of commodities referred to in para 50(3) below,for which the aforesaid addition is not considered adequate, may also be referred to in such cases the actual freight should be ascertained and taken into consideration for arriving at the assessable value in terms of provisions of sec. 14 of the customs act'62

In case where fob value and freightare separately available and the insurance memo cannot be produced 1 1/4% of fob (in case the goods are coming from middle eastern posts),1 1/2% of fob (in case the goods are coming from Cyprus) or 1.1/8% of fob (in case the goods are coming from other ports) should be taken as insurance element. When the invoice value is c&f and insurance is not shown separately. 1 1/4% (in case the goods are coming from Cyprus) or 1.1/8% (in case the goods are coming from other ports) should be added to the invoice c&f value towards insurance charges. The above instructions will equally apply for imports by sea or air. however in case of imports by air,board's instructions in f.no.3/14/64-cus-vi dated 2.8.64 at para 50(6) of this part of apprg. manual should be kept in mind and wherever acceptable evidence of freight and other charges, ordinarily paid when the articles are imported by sea is forthcoming from the importer that may form as basis for arriving at the assessable value. [based upon ministry's/board's instructions as summerised in S.O. (apprg)-2/81 (cal) issued for file s 60(vii) 71/81a]

Freight charges by air

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As the freight and insurance charges for articles imported by air (which is not the ordinary means of importing such goods) are higher than those of the same articles,imported,through ordinary trade channels, the value under section 14(1) of the customs Act,1962 of the articles imported by air should be calculated on the basis of the freight and other charges ordinarily paid when such articles are imported through ordinary channels. where however it is known that the air freight is lower than the sea freight,air freight should

be taken into account in computing the value under section 14(1) of the customs act.

(b) The value, under section 14(1) of the customs act of articles imported by air, should be calculated on the basis of the freight and other charges ordinarily paid, when the articles are imported by sea. (c.b.r. l.r.dis.no. 1561-customs 1/36 of 4-2-37 board's f.no. 8/14/64-cus. vi of 2-8-64)

#### Landing charges

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The board has had under consideration. the basis and method of calculating the landing charges, that should be added to the invoice value of imported goods to arrive at their assessable value. the following decisions have been taken in this connection.

(a) The rates of landing charges should be reviewed once, every three years, or at shorter intervals, if substantial changes in the rates prescribed by the port trust authorities or other factors such as devaluation, warrant the same. for this purpose, review should be initiated four to six months prior to the due date, so that it is completed and finalised within three years.

(b) In computing the flat rate of landing charges, coastal cargo and free goods which do not attract the port trust landing charges, or attract only a very low rate, should be excluded wherever possible. (board's f.no.3/1/63-cus.vi dated 29-11-1963 as amended by c.b.e.c. f.no.512/7/72-cus vi dated 13-7-72)

#### No landing charges for air cargo

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In view of the fact that nothing comparable to landing charges is incurred actually in respect of air cargo, it has been decided that no addition on account of freight and others is made on actual sea freight basis or on an ad hoc basis of 20 1/2% or more as the case may be (c.b.e.c. letter no. 17(18)-56-cus. i/vi of 17-12-56)

#### Marine insurance charges

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Marine insurance charges should also be taken into account, whether they are actually incurred or not. (ind. c&i no.6074-116 of 10-5-15 ben.fin.no.990-s.r.of 18-5-15/f.x./1-1 of 1915-16)

Inclusion of freight and insurance charges where proper relevant memos are not produced acceptance of certificates from steamer agents and insurance companies.

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The certificates of steamer agents and the insurance companies regarding these charges should be acceptable where regular memos are not forthcoming. (f.no. 3/16/69-cus. vi govt.of india, ministry of finance. department of revenue & insurance, new delhi, the 16th may, 1969)

Semi-finished goods-criterion for arriving at value:

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Rules 4, makes it clear that in determining the value of imported goods, the proper officer shall make such adjustments as appear to him reasonable, taking into consideration all relevant factors. the rule mentions in particular under cause (3) "stage of manufacture" it may, therefore, be observed that the customs officers will be well within their rights to determine the value of semi-finished imported goods from the value of finished goods, by making suitable allowance for post-importation processes. there is nothing common between this method and the old reduced value method, whereunder, the starting point was the market price of finished goods in India from which an arbitrary margin of profit was deducted and then further deduction for post-importation manufacture was allowed.

Under the valuation rules, the starting point is the assessable value of finished goods and not their market price. the rules thus steer clear of the need to apply an arbitrary margin of profit, which was the real target of attack by the Bombay high court. (d.o. no. 14 sca/amdt/bill/62-car dated 22.5.63-m.f. (d.r.) f.no. 3/23/63-cus.vi DT. 1.6.63 para 4, page 207, technical bulletin volume ix, no.2)

C.K.D. PACK VALUATION-IN REGARD TO JUST, AS IT IS INCORRECT TO COMPARE THE price of a Complete machine with the total of the prices of individual component parts, similarly it will be incorrect to compute the value of a ckd pack (whether complete or incomplete) by totalling the value of the components parts if sold individually. the ckd packs (complete or incomplete) are for pricing purposes of different goods, rather than the component parts. (d.o. no. 14sca/amdt/bill/62-car, dated 25.5.63 g.i.m.f. (d.r.) f.no. 3/23/63-cus. vi of 1.6.63)

Component parts and parts in ckd conditions- distinction in valuation thereof.

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Several concerns in India have entered into collaboration agreements (also called manufacturing or consultancy or technical aid agreements) with foreign manufactures, whereby the latter's products, which were imported into India in the past un. Finalized condition, are to be progressively manufactured in India. the foreign manufacturer supplies the technical know-how and other requisite information data and secret and patented formula to the Indian collaborator and grants him also the Licence to use his registered trade marks or names on the Indian manufactured goods and receives royalty or consultancy and Licence-fees in return. these agreements are contracted with the approval of the government of India under the Indian industries (development and protection) act. the scheme envisages the submission by the Indian concern to the government of India, for approval, a program or

schedule showing

how the progressive and complete manufacture of the products in question is to be achieved over a span of a few years.

Thus, during the initial period of the manufacturing program, the Indian firm has necessarily to import from the foreign collaborator, several components, to enable him to complete the manufacture of the particular product, and the very same components are also imported simultaneously into India for resale as spare parts or replacements. these imports of identical components as above for the different but specific uses are found to be invoiced not at the same prices but at different prices. the issue therefore arose whether both the sets of prices though different, could be admitted under section 14 of the customs act '62 for purposes of assessment.

In this connection, it was urged by one of the Indian manufacturing concerns that a well-recognised practice and trade usage prevailed in the manufacturing circles, all over the world, whereby a manufacturer supplied components of his products to a CO-manufacturer (who buys the components for use in further manufacturing process) at price lower than what he charges to his distributors or dealers who buy the components for resale as spare parts or replacements, that this well established trade usage should be recognized in principle by the custom department and that the lower invoice prices charged by a foreign manufacturer to the Indian collaborator who imports the components solely for assembly purposes should accordingly be admitted. on careful inquiries made in the matter, it is understood that the commercial practice or usage referred to above, is fairly well established and in existence for a long time in western countries. it has accordingly been decided that the lower and preferential prices charged by a manufacturer to a CO-manufacturer or collaborator in India for components imported by the latter for assembly purposes be admitted provided (a) that the lower prices in question are reasonable and not unduly and deliberately lower than what they would be and (b) that the said prices are inclusive of the various elements which go to make the value under section 14 of the customs act, viz. factory, cost (cost of material and labour), factory overhead administration or commercial overheads and a reasonable margin of profit for the original manufacturer. The above decision has the approval of the central board of revenue and the same may be adopted mutatis mutandis if and when similar cases arise. ref:(board's lr.no.3/26/57-cus.vi of 30-10-57)

(ii) A question arose, as to whether, for purpose of valuation, replacements of ckd components spoilt or damaged in manufacturing processes, could be assessed at the lower prices chargeable for ckd parts. the board has observed in this connection that once the complete pack is cleared out of customs charge, the cause of damage cannot normally be ascertained. replacements of ckd components spoilt or damaged in manufacturing process after importation can, obviously, not be admitted to lower assessment. if, however, at the point of import any defective part is noticed during customs examination of the goods, there may be no objection to the substitutes being passed at lower

prices meant for ckd parts, provided, (i) these defective parts are surrendered to customs or destroyed under customs supervision, and (ii) the replacements have been supplied either free of charge or at the ckd price. (cbr lr.no.f.3/21/64-cus.vi of 1-6-64)

#### Acceptability of different discounts

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Having regard to the nature of business, if it is found that different rates of discounts are quoted to different purchasers, according to their bargaining ability, the quantity ordered out etc., the custom house cannot ensure a uniform real value to all importers in these types of cases. they should also not endeavour to force the higher discounts on an importer who does not get it, but are content to assess the goods imported by him on value, declared by him which are based on the lower discounts. further, the considerations should be different where the relationship between the supplier and the importer varies and it a common set of discounts to be applicable in every case. (c.b.r.lr.no.c.no.70/18/54-cus. i dated 8-9-55)

#### Quantity discounts-acceptability regarding

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The Board has decided that bonafide quantity discounts are admissible deductions, for purposes of computation of the value in accordance with the GATT definition of real value, as a reduction in the price offered by the suppliers, in bonafide consideration of a comparatively large quantity ordered, is not an exceptional feature of the trade. (c.b.r. lr. no. 23(2)55-cus. i dated 27.7.55 c. 2027/55)

#### Subsequent reduction in price-non acceptance of

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(i) Where the prices shown in the invoices are the correct ruling prices at the time of shipment and represent the correct landed cost under section 14(1) of the customs act, 1962 any subsequent reduction allowed by the suppliers in the nature of a special concession should not be taken into account in determining the correct assessable value under section 14(1) of the customs act 1962.

Central board of revenue letter no. 4(105) 54-cus. ii dated 23.3.55 on the above subject is reproduced below for the information and and guidance of the custom house staff concerned. "a Bombay firm imported a consignment of wood screws of Belgian origin through a firm of supplying agents in the u.k. on scrutinising the invoice, it was noticed that the prices shown therein were the prices in the manufacturer's price list less 5% discount. it was also found that identical goods supplied from the same period were invoiced at the same c.i.f. rates but without any discount.

The importers produced correspondence from their suppliers which showed that the manufacturers had effected a price reduction a day after an order had been placed with them for the goods in question. The makers agreed

to give the benefit of the reduction to the order already booked and the supplying agents passed on the discount to the Indian importers, in view of the long business relations between the two asking them at the same time to keep the matter confidential to prevent claims by other importers.

The custom house considered the discount to be a special reduction as it was not available to others and disallowed it for purposes of assessment. This reduction was confirmed in appeal.

On the matter coming before the government of India in revision the refund was admitted. the government of India observed that there was no reason to believe that the suppliers letter was not genuine. and that if it was regarded as genuine the reduced price should be accepted.

The Government of India desire that in similar marginal cases, the custom house should take a

liberal view if the reduction appears to be a genuine one, and refer them to the board for orders. In certain appeals before the board the cases related to refunds of duty assessed under section 30(b) sea customs act 1878, which were claimed on the ground of a reduction in price which took place after shipment of the goods in question, but which was made applicable to these goods. the question for decision was whether in such a case the reduced price even though made applicable to the goods, could be accepted for assessment purposes. The Board in its letter c.no. 351-cus. i/29 dated 1.6.29 (appearing at page 74 of the compilation of ruling and also under sub para (c) of para 2 of this chapter) has admitted that it was theoretically arguable that by the introduction of the words " goods of the like kind and quality" the legislature intended that value under section 30(b) sea customs act should be assessed in accordance with the cost of goods contracted for at the normal rate at which they would be of importation, and not contracted for at any other time. formerly it was not necessary to apply this condition strictly because the possibility of the importers getting registered invoices, even before the goods which had arrived by the surface mail being entered at the custom house, was remote. the problem however assumed greater significance now-a-days owing to the fact that air mails are much faster than sea mails and it is therefore possible to send revised invoices to catch up with the goods before their arrival.

(ii) Reduction in prices of goods effected after the shipment of the goods may also be admitted in computing real value provided the reductions generally available to all importers, and such reduced price was in force prospectively in the date of importation the importer should claim such reduction either at the time of clearing the goods or later, but not later than the time allowed by section 40 of the sea customs act (now section 27 of the customs act, '62). he should also be put to the strict proof of his claim where the claim is made by the importer after the goods have been removed from the custom house, the provisions of section 36 sea customs act 1887 (now section 149 of the customs act) may be waived if reassessment can be made without

re-examination of the goods. The date of importation mentioned above should be taken as the date on which the bill of entry is presented in the import department. (ref. c.b.r. lr. no. f. 23(18)55-cus ii dt.7.9.55 amended by bd's no. 3(6)/56-cus. vi of 10.1.1957 no. 1/real value/ customs vi/57).

Depreciation to be allowed for used motor vehicles imported into India-instructions-review of-regarding.

(1) The question of prescribing of fixed scale of depreciation to be allowed for valuation of imported second-hand motor vehicles has been under consideration of the board. this was considered necessary so as to avoid disputes in the valuation of imported second-hand motor vehicles and subsequent delays in their clearance.

(2) As per the existing instructions the scale of depreciation for old and used cars is as under :

- (i) for every quarter during the 1st year -4%
- (ii) for every quarter during the 2nd year -3%
- (iii) for every quarter during the 3rd year -2.50%
- (iv) for every quarter during the 4th year -2%

If the motor vehicles is more than 4 years old, depreciation is allowed on merit after inspection of the motor vehicles, subject to a maximum limit of 70%.

(3) In order to avoid possible disputes on the depreciation allowed on motor vehicles which are more than 4 years old, it has been decided by the board that the scale of depreciation on used motor vehicles henceforth will be on the same basis as for the imported second-hand machinery. as such the scale of depreciation for valuation of imported second-hand motor vehicles will be as under :

- (i) for every quarter during 1st year -4%
- (ii) for every quarter during 2nd year -3%
- (iii) for every quarter during 3rd year -2.50%
- (iv) for every quarter during 4th year -2% and thereafter

subject to an overall limit of 70%

(4) The above instructions may be brought to the notice of all assessing officers. the instructions the date of their issue and would apply to all pending assessment. f.no.495/16/93-cus.vi, dt.26-5-1993. eof:18023  
0: end ed. no corrections applied