

# DETERMINATION OF ASSESSABLE VALUE AND CUSTOM DUTY.

Custom duty is imposed, on the value of goods assessed, as per the prescribed rates under the Act. As per section 2(41) of the Customs Act, 1962 the term "value", in relation to any goods, means the value thereof determined in accordance with the provisions of section 14(1) or 14(2) of the Act. Thus, assessable value is the value in respect of which custom duty liability arises.

As per the World Trade Organisation (WTO), most of custom duties are based on 'transaction value' i.e. ad-Valorem. So goods have to be valued for the purpose of assessment. Normally, the price paid by the importer for the goods imported in India is the value of goods imported. But under the Customs Act, 1962 the concept of value has been treated separately. The duty is paid on the basis of 'value' of goods. Such value can be either of the following :—

- (1) Value fixed under section 14(1) of the Customs Act, 1962
- (2) Tariff value fixed by the Central Government by notification in the official Gazette.

## (1) Transaction value

According to section 14(1) of the Customs Act, 1962 valuation based on transaction value is applicable for exported as well as imported goods, if the following conditions are satisfied :—

- (i) Price at which such or like goods are ordinarily sold or offered for sell.
- (ii) Price for delivery at the time and place of importation or exportation.
- (iii) Price should be in course of international trade.
- (iv) Seller and buyer have no interest in the business of each other.
- (v) Price should be sole consideration for sale.
- (vi) Rate of exchange as on date of presentation of Bill of Entry as fixed by the Central Board of Indirect Taxes and Customs (CBIC).

Such transaction value in the case of imported goods shall, in addition to the price as aforesaid, include :—

- (a) any amount paid or payable for costs and services including commissions and brokerage, engineering, design work, royalties and licence fees.
- (b) costs of transportation to the place of importation,
- (c) insurance,
- (d) loading, unloading and handling charges.

to the extent and in the manner specified in the rules made in this behalf. The rules made in this behalf may provide for :—

- (i) the circumstances in which the buyers and sellers shall be deemed to be related;

(ii) the manner of determination of value in respect of goods when :—

(iia) there is no sale; or

(iib) the buyer and the seller are related; or

(iic) the price is not the sole consideration for the sale; or

(iid) in any other case;

(iii) the manner of acceptance or rejection of value declared by the importer or exporter, when the proper officer has reason to doubt the truth or accuracy of such value, and determination of value for the purpose of this section.

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 u/s 46, or a shipping bill of export is presented u/s 50.

However, in case of imported goods, assessable value is to be determined in accordance with the customs valuation (Determination of value of Imported Goods) Rules, 2007.

## (2) Tariff value

According to section 14(2), tariff value is fixed by the Board. If the Board is satisfied that it is necessary or expedient to do so, it may, by notification, fix tariff value for any class of imported goods or export goods on the basis of the trend of value of such or like goods. When such tariff values are fixed, the duty shall be chargeable on such tariff value.

### □ Methods of valuation of imported goods

There are six methods of valuation of imported goods provided in the customs valuation (Determination of value of Imported Goods) Rules, 2007. These rules are framed as per the norm prescribed by GATT (General Agreement of Tariffs & Trade) and WTO (World Trade Organisation) that is transaction value or invoice value. *The methods of valuation are as under :—*

1. Transaction value of Imported goods,
2. Transaction value of Identical goods,
3. Transaction value of similar goods,
4. Deductive value,
5. Computed value,
6. Residual method.

(1) Transaction value of imported goods (Rule 3)—Transaction value has already been discussed in detail herebefore. Rule 3 provides that imported goods shall be valued on the basis of the transaction value. Transaction value is the value or the price actually paid or payable for the imported goods when sold for export to India for delivery at the time and place of importation after making adjustments in accordance with rule 10 of the valuation rules. *Transaction value shall be accepted under following conditions :—*

- (i) There are no restrictions as to the disposition or use of the goods by the buyer except the followings :—
  - (a) the restrictions imposed or required by law or by public authorities in India; or
  - (b) the restriction as to limit the geographical area in which the goods may be resold; or
  - (c) the restriction which do not substantially affect the value of goods.
- (ii) *The sale or price is not subject to some condition or consideration for which a value cannot be determined in respect of the goods being valued;*

- (iii) 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.
- (iv) *the buyer and seller are not related.*

**Transaction value when buyer and seller are related**—As per rule 3(3), the transaction value is acceptable for customs purposes under the following cases :—

- (i) when the relationship between the buyer and seller of imported goods has not influenced the price.
- (ii) when 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 :—
  - (a) the transaction value of identical goods, or of similar goods, in sales to unrelated buyers in India;
  - (b) the deductive value for identical goods or similar goods;
  - (c) the computed value of identical goods or similar goods.
- (iii) when substitute values shall not be established.

**Transaction value not acceptable**—Under the following circumstances, the transaction value shall not be acceptable for customs purposes :—

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

**(2) Transaction value of identical goods (Rule 4)**—As per Rule 4(1) (a), the value of the 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. As per Rule 4(3), if there are more than one transaction value of identical goods, then, the lowest such value shall be used to determine the value of imported goods.

As per Rule 2(d), "Identical Goods" means the 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 did 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 'identical goods' 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 or these imported goods free of charge or at a reduced cost for use in connection with the production and sale for export of these imported goods.

**(3) Transaction value of similar goods (Rule 5)**—As per Rule 5(1), 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. As per Rule 5(2), the provisions of Rule 4 related to transaction value of identical goods shall also apply in respect of similar goods.

As per Rule 2(f) "**Similar goods**" means imported goods :—

- (i) which, although not alike in all respects, *have like characteristics and component materials* which enable them to perform the same functions and be commercially inter changeable with the goods being valued having regard to the quality, reputation and the existence of trade mark;
- (ii) *produced in the country in which the goods being valued were produced;*
- (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 '*similar goods*' shall not include imported goods where engineering development work, art work, design work, plan or sketch undertaken in India completed directly or indirectly by the buyer on these imported goods free of charge or at a reduced cost for use in connection with the production and sale for export of the imported goods.

As per Rule 6, if the value of imported goods cannot be determined under provisions of Rule 3, Rule 4, and Rule 5, then, the value shall be determined as per Rule 7 or, if the value cannot be determined as per this rule, then under Rule 8. But on request of the importer, and with the approval of the proper officer, the order of application of Rule 7 and 8 shall be reversed.

**(4) Deductive value (Rule 7)**—Where the goods cannot be valued according to Rules 4, 5 and 6, the Deductive value method should be adopted. There are following provisions under this method :—

(i) **Goods sold in India in the condition as imported**—As per Rule 7 (1), if goods imported are sold in the same condition in which they were imported, then the value of imported goods or identical goods or similar goods shall be based on the price at which the imported goods or identical goods or similar goods are sold in the greatest aggregate quantity to persons who are not related to seller in India. For example quantities sold at different prices are as follows :—

Ist sale	1000 tonnes @ ₹ 100 per tonne.
2nd sale	1200 tonnes @ ₹ 110 per tonne
3rd sale	1000 tonnes @ ₹ 100 per tonne
4th sale	1500 tonnes @ ₹ 120 per tonne
5th sale	800 tonnes @ ₹ 100 per tonne
	<u>5,500</u>

Here largest number of units sold at ₹ 100 per tonne i.e. 2,800 tonnes. Hence, the price of greatest aggregate quantity is ₹ 100 per tonne, on which valuation will be based.

Following deductions shall be made from the price obtained as above :—

- (a) Profit margin, commission usually paid and general expenses in connection with sale;
- (b) Transport, insurance and other associated costs incurred within India;
- (c) Custom duties and other taxes payable in India.

(ii) **Goods not sold in the condition as imported**—As per Rule 7(3), if imported goods or identical goods or similar goods are not sold in India in the condition as imported, then the value shall be based on the unit price at which the imported goods or identical or similar imported goods after processing are sold in India, in the greatest aggregate quantity. In such a case due allowance should be made for the value added in processing and also the deductions as specified previously.