

CUSTOMS LAW & PROCEDURES — AT A GLANCE

[See also Part 7 for C.B.I. & C. Customs Manual 2023]

1. INTRODUCTION TO CUSTOMS LAW

1.1 Background of customs law

Customs duty is on import into India and export out of India. As per ancient custom, a merchant entering a kingdom with his goods had to make a suitable gift to the King. In the course of time, this 'custom' was formalised into 'Customs Duty'. This is collected on imports (and 1 occasionally on exports too). The word 'Customary' is derived from 'customs', which indicates that it is a very old tax. Taxes on goods were levied on various goods right from the *Veda* period.

World Trade Organisation - WTO (World Trade Organisation) was formed on 1st January, 1995, based at Geneva, to replace GATT. WTO provides permanent forum for trade negotiations. WTO is the legal and institutional foundation of multilateral trading system. Its basic principle is equal treatment to products and services of all other WTO countries. (Of course, there are concessions and let-outs). The four main WTO guidelines are – (i) Trade without discrimination (ii) Predictable and growing market access (iii) Promoting fair competition and (iv) Encouraging development and economic reforms.

WTO promotes free trade by lowering tariffs, quotas, import restrictions, quantity restrictions etc. Countries should 'bind' their commitments so that stability and predictability and investment is encouraged.

TRIPS – TRIPS means Trade Related Intellectual Property Rights. It was agreed as follows - (i) Product Patents should be introduced in drugs, food products and chemicals in place of process patents as at present (India introduced product patents w.e.f. 1-1-2005). (ii) Patent and copyright period should be 20 years (Implemented by India) (iii) Agricultural hybrid seeds should be allowed to be patented (Not implemented). -- However, Government can undertake compulsory licensing for non-commercial public use and to prevent inadequate supply or exorbitant pricing.

WCO – World Customs Organisation (WCO) [earlier known as Customs Coordination Council] is an international body to develop coordination among customs offices in various countries. WCO has HQ at Brussels. WCO is organisation of 183 Customs Administrations. It is headed by Secretary General who is appointed for five years at a time. WCO was established on 26-1-1952.

CBIC's Customs Manual, 2023 - Customs Manual, 2023 has been released by CBI&C on 31-12-2022. The Manual gives an overview of Customs Law and Procedures, mostly based on CBI&C circulars. Salient instructions as contained in the Manual are discussed at appropriate places in this book.

1.2 Scope and coverage of Customs Law

Section 1(2) of Customs Act states that The Customs Act, 1962 extends to whole of India *and, save as otherwise provided in the Customs Act, it applies also to any offence or contravention thereunder committed outside India by any person.* [The words in italics inserted w.e.f. 29-3-2018]. The extension of scope outside India is only for purpose of offences and not for any other purposes.

Liability of customs duty - Entry 83 to List I - (Union List) of Seventh Schedule to Constitution reads 'Duties of customs including export duties'. Thus, import and export duty is a Union subject and power to levy is derived from Constitution of India.

Section 12(1) of Customs Act is the charging section, which provides that duties of customs shall be levied at such rates as may be specified under 'The Customs Tariff Act, 1975', or any other law for the time being in force, *on goods imported into, or exported from, India.* The rate of duty is as prescribed in Customs Tariff Act, 1975, read

with relevant exemption notifications. Import duty is levied on almost all items, while export duty is levied only on a few limited products, where India wants to discourage export of those goods.

Section 12 of Customs Act, 1962 and 'section 3 of The Customs Tariff Act, 1975' are the 'charging sections'.

1.2-1 Changes in Customs Law made vide Finance Act, 2023

Nirmala Sitharaman, Hon'ble Minister of Finance, Government of India, presented Budget 2023-24 on 1-2-2023. Finance Bill, 2023 was also presented. Finance Bill, 2023 has been passed by Parliament and became Finance Act, 2023 on 31-3-2023, after receiving assent of President. Some changes have become effective from 1-4-2023. Provisions in respect of section 65A of Customs Act will be effective from date to be notified.

The changes in Customs Act made by Finance Act, 2023 are as follows.

Specified conditional customs exemption notifications will be valid without limit of two years – Section 25(4A) of Customs Act inserted w.e.f. 28th March, 2021 provided that any conditional customs exemption notification issued under section 25(1) of Customs Act will have sunset clause. Unless otherwise specified, varied or rescinded, it will be valid only upto 31st March falling immediately after two years from date such grant or variation.

It is now provided that nothing contained in section 25(4A) of Customs Act shall apply to any such exemption granted to, or in relation to,—

- (a) any multilateral or bilateral trade agreement;
- (b) obligations under international agreements, treaties, conventions or such other obligations including with respect to United Nations agencies, diplomats and international organisations;
- (c) privileges of constitutional authorities;
- (d) schemes under the Foreign Trade Policy;
- (e) the Central Government schemes having validity of more than two years;
- (f) re-imports, temporary imports, goods imported as gifts or personal baggage;
- (g) any duty of customs under any law for the time being in force, including integrated tax leviable under section 3(7) of the Customs Tariff Act, 1975, other than duty of customs leviable under section 12 – *proviso* to section 25(4A) of Customs Act inserted *vide* Finance Act, 2023 w.e.f. 1-4-2023.

Manufacture in warehouse subject to section 65A of Customs Act - Permission for in-bond manufacture facility can be given by Principal Commissioner/Commissioner, subject to *section 65A of Customs Act* and such conditions as may be prescribed – Section 65(1) of Customs Act – Words in italics inserted by Finance Act, 2023 from date to be notified.

Warehousing of imported inputs or removed from other warehouse on which IGST and GST Compensation Cess has been paid for purpose of manufacture in warehouse - Section 65A of Customs Act has been introduced *vide* Finance Act, 2023, to make provisions of warehousing of goods on which IGST and Compensation Cess has been paid, for manufacture as per provisions of section 65 of Customs Act. Such goods may be imported goods or removed from another customs warehouse.

The intention seems to be allow bringing goods for manufacture in warehouse on payment of IGST and GST Compensation Cess. The exemption will be only to the extent of customs duty and social welfare surcharge.

The provision will be effective from date to be notified.

Settlement proceedings lapse if order is not passed within one year - The order of settlement commission under section 127C(5) of Customs Act shall be passed within a period of nine months (extendable by further three months) from the last day of the month in which the application under section 127B of Customs Act is made. If, no order is passed within the said period, the settlement proceedings shall abate, and the adjudicating authority before whom the proceeding at the time of making the application was pending shall dispose of the application in accordance with the provisions of Customs Act as if no application was made for settlement – section 127C(8A) of Customs Act inserted *vide* Finance Act, 2023 effective from 1-4-2023.

Really, why Applicant should suffer for delay by Settlement Commission? In fact, he will be in great trouble, as he has made full disclosure before Settlement Commission and is now defenseless.

1.2-2 Foreign Trade Policy 2023 effective from 1-4-2023

Foreign Trade Policy 2023 [FTP 2023] has been notified and made effective from 1-4-2023. Handbook of Procedures 2023 [HBP 2023] has also been notified. Salient aspects of new FTP 2023 have been discussed later in this writeup.

1.3 Functions of Customs Department

Indian Customs handle various tasks, important among them are as follows – Chapter 1 Para 1.2 of CBI&C's Customs Manual, 2023.

- Collection of Customs duties on imports and exports as per Customs Act, 1962 and Customs Tariff Act, 1975
- Enforcement of various provisions of Customs Act governing imports and exports of cargo, baggage, postal articles and arrival and departure of vessel, aircrafts etc.
- Discharge of various agency functions and enforcing various prohibitions and restrictions on imports and exports under Customs Act and other allied enactments.
- Prevention of smuggling including interdiction of narcotics drug trafficking.
- International Passenger clearance.

1.4 Taxable Event for Import duty and export duty

Goods become liable to import duty or export duty when there is '*import into, or export from India*'.

As per section 2(18), 'export' with its grammatical variations and cognate expressions, means taking out of India to a place outside India. As per section 2(23) of Customs Act, 'import' with its grammatical variations and cognate expressions, means bringing into India from a place outside India.

Section 2(27) of Customs Act defines 'India' as inclusive of territorial waters. Hence, it was thought that 'import' is complete as soon as goods enter territorial water. Similarly, export is complete only when goods cross territorial waters. There were conflicting judgments of High Courts.

Finally, in *Kiran Spinning Mills v. CC* 1999 (113) ELT 753 (SC) = AIR 2000 SC 3448 = 2000 AIR SCW 2090 (SC 3 member bench), it has been held that import is completed only when goods cross the customs barrier. The taxable event is the day of crossing of customs barrier and not on the date when goods landed in India or had entered territorial waters. In the case of goods which are in the warehouse the customs barrier would be crossed when they are sought to be taken out of the customs and brought to the mass of goods in the country.

Taxable event in case of warehoused goods - In case of warehoused goods, the goods continue to be in customs bond. Hence, 'import' takes place only when goods are cleared from the warehouse - confirmed in *UOI v. Apar P. Ltd.* 1999 AIR SCW 2676 = 1999 (112) ELT 3 (SC) = 1999(6) SCC 118 = AIR 1999 SC 2515 (SC 3 member bench).- followed in *Kiran Spinning Mills v. CC* 1999 (113) ELT 753 = AIR 2000 SC 3448 = 2000 AIR SCW 2090 (SC 3 member bench), where it was held that taxable event occurs when goods cross customs barrier and not when goods land in India or enter territorial waters.

Date of filing bill of entry is relevant for deciding duty liability - As we will see later, rate of duty and tariff valuation as on date of presentation of bill of entry or date of entry inward of the vessel, *whichever is later*, is relevant for determining the customs duty payable. Thus, rate of duty when ship enters the port is relevant and *not* the date when ship enters territorial waters.

Taxable event in case of exports- In *UOI v. Rajindra Dyeing and Printing Mills* (2005) 10 SCC 187 = 2005 (180) ELT 433 (SC), it has been held that export is complete when goods cross territorial waters of India. If ship sinks within territorial waters, export is not complete and hence duty drawback is not payable. In *CC v. Sun Exports* 1988 (35) ELT 241 (SC) = 71 STC 149 (SC), it was held that export is complete once the goods leave Indian waters and property passes to purchasers. Even if goods return due to Engine trouble, duty drawback is payable.

In *B.K. Wadeyar v. Daulatram Rameshwarlal* AIR 1961 SC 311 = 11 STC 757 (SC), it was held that export is complete when ship leaves territorial waters of India.

Note that even if export duty is collected before ship leaves the port, that does not mean that taxable event has occurred. Duty can be collected in advance also.

1.5 Territorial Waters and customs waters

Territorial waters means that portion of sea which is adjacent to the shores of a country. On 22nd March, 1956, President of India had issued a proclamation that territorial waters of India shall extend upto 6 nautical miles from the base line. This was extended to 12 nautical miles w.e.f. 30th Sept., 1967. Later, 'Territorial Waters, Continental Shelf, Exclusive Economic Zone and other Maritime Zone Act, 1976' was passed.

Section 3 of the 'Territorial Waters, Continental Shelf, Exclusive Economic Zone and other Maritime Zone Act, 1976' specifies that territorial water extend upto 12 nautical miles from the base line on the coast of India and include any bay, gulf, harbour, creek or tidal river. (1 nautical mile = 1.1515 miles = 1.853 Kms). Sovereignty of India extends to the territorial waters and to the seabed and subsoil underlying and the air space over the waters.

Extension of Income Tax Act, Customs Act and Excise Act to designated areas in EEZ – Customs Act has been extended to designated areas in Continental Shelf and Exclusive Economic Zone of India *vide* notification Nos. 11/87-Cus dated 14-1-1987 and 64/97-Cus dated 1-12-1997. Similarly, Central Excise Law and Service Tax (Chapter V of Finance Act, 1994) have been extended to designated areas in Continental Shelf and Exclusive Economic Zone of India, as declared by Notification No. S.O. 429(E) dated 18-7-1986 issued by Ministry of External Affairs, *vide* notification No 166/87-CE dated 11-6-1987.

Vide notification No. SO 189(E) dated 7-2-2002 issued by Ministry of External Affairs, Customs Act and Customs Tariff Act has been extended to whole of Exclusive Economic Zone (EEZ) and continental shelf of India for the purpose of (i) processing for extraction or production of mineral oils and (ii) Supply of any goods in connection with activities mentioned in clause (i).

Indian Customs Waters - As per section 2(28) of Customs Act, 'Indian Customs Waters' means the waters extending into the sea up to the limit of Exclusive Economic Zone under section 7 of the Territorial Waters, Continental Shelf, Exclusive Economic Zone and other Maritime Zones Act, 1976, and includes any bay, gulf, harbour, creek or tidal river.

Thus, 'Indian Customs Waters' extend upto 200 nautical miles from base line.

1.6 'Goods' under Customs Act

Customs duty is on 'goods' as per section 12 of Customs Act. The duty is payable on goods belonging to Government as well as goods not belonging to Government.

Section 2(22) gives inclusive definition of 'goods' as follows - 'Goods' includes (a) vessels, aircrafts and vehicles (b) stores (c) baggage (d) currency and negotiable instruments and (e) any other kind of movable property.

There is distinction between vessel/aircraft as mere goods and when they come to India as conveyance carrying imported goods. In former case, customs duty is payable and not in later case - *CCE v. Aban Lloyd Chiles Offshore* (2017) 3 SCC 211 = 60 GST 207 = 78 taxmann.com 25 = 2017 (346) ELT 513 (SC).

Thus, ships or aircrafts brought for use in India or for carrying cargo for ports out of India, would be dutiable. Definition of goods has been kept quite wide as Customs Act is used not only to collect duty on 'goods' but also to restrict/prohibit import or export of 'goods' of any description. Main two tests for 'goods' are (a) they must be movable and (b) they must be marketable. The very fact that goods are transported by sea/air/road means that they are 'movable'. Since most of imports are on payment basis, test of 'marketability' is obviously satisfied.

Dutiable Goods - Section 2(14) define 'dutiable goods' as any goods which are chargeable to duty and on which duty has not been paid. As per section 2(15), 'duty' means a duty of customs leviable under Customs Act. Thus, goods continue to be 'dutiable' till they are not cleared from the port. However, once goods are assessed at 'Nil' rate of duty, they no more remain 'dutiable goods'. Once duty is paid, the goods cease to be dutiable goods – *CCE v. Aban Lloyd Chiles Offshore* (2017) 3 SCC 211 = 60 GST 207 = 78 taxmann.com 25 = 2017 (346) ELT 513 (SC).

Imported Goods - Section 2(25) defines 'imported goods' as any goods brought in India from a place outside India, but does not include goods which have been cleared for home consumption. Thus, once goods are cleared by customs authorities from customs area, they are no longer 'imported goods'. (Though in common discussions, goods cleared from customs are also called 'imported goods'). If imported goods are not chargeable to duty, they will not be 'dutiable goods'.

Smuggled goods are not 'imported goods'. Hence, exemption that is available to imported goods is not available to smuggled goods – *CC v. M Ambalal & Co.* (2011) 2 SCC 74 = 196 Taxman 584 = 2017 (260) ELT 487 (SC).

Export Goods – As per section 2(19) of Customs Act, ‘export goods’ means any goods which are to be taken out of India to a place outside India. Goods brought near customs area for export purpose will be ‘**export goods**’. Note that once goods leave Indian territory, Indian laws have no control over them and hence the term ‘**exported goods**’ has *not been* used or defined.

2. TYPES OF CUSTOMS DUTIES ON IMPORTED AND EXPORT GOODS

Various types of duties are imposed under Customs Act and Customs Tariff Act on imported goods. In some cases, customs duty is imposed on export goods also.

2.1 Basic Customs Duty

Basic customs duty is levied under section 12 of Customs Act. Normally, it is levied as a percentage of Value as determined under section 14(1) of Customs Act. The rates vary for different items, but general rate on non-agricultural goods at present is 10%. Custom duty rates of baggage are discussed in a separate chapter.

Total customs duty payable generally comes to 31% w.e.f. 2-2-2018 - Total customs duty payable w.e.f. 2-2-2018 is 31%, as given below, if IGST rate is taken as 18% and basic customs duty rate is taken as 10%.

Assessable value = CIF Value of imported goods converted into Rupees at exchange rate specified in notification issued by CBI&C.

Calculation of customs duty payable is as follows, w.e.f. 2-2-2018

Seq.	Duty Description	Duty %	Amount	Total Customs Duty
(A)	Assessable Value Rs		10,000.00	
(B)	Basic Customs Duty	10	1,000.00	1,000.00
(C)	Social Welfare Surcharge on ‘B’		100.00	100.00
(D)	Sub-total for IGST - A + B+C		11,100.00	
(E)	IGST - on ‘D’ as per IGST rate	18	1,998.00	1,998.00
(F)	Total Customs Duty			3,098.00
(G)	Total duty rounded to	Rs.		3,100

2.2 IGST on goods at the time of import

Till 1-7-2017, CVD (Countervailing Duty) equal to excise duty was imposed on imported goods. In addition SAD (Special Additional Duty) of 4% was imposed in lieu of sales tax or Vat. Now, these two duties have been replaced by IGST w.e.f. 1-7-2017, except few products which are subject to excise duty even after 1-7-2017.

As per section 3(7) of Customs Tariff Act, any article being imported into India shall be liable to pay Integrated Goods and Services Tax (IGST) at such rate as is leviable under section 5 of IGST Act, 2017, on a like article on its supply in India, on the value of imported article as determined under section 3(8) or section 3(8A) of Customs Tariff Act.

As per section 3(8) of Customs Tariff Act, the ‘value’ will be – (a) Value of imported article determined under section 14(1) of Customs Act or tariff value of such article under section 14(2) of Customs Act (b) duty of customs leviable on that article under section 12 of Customs Act and any sum chargeable on that article under any law for the time being in force as an addition to, and in the same manner as, a duty of customs, but does not include any tax referred to in section 3(7) or the cess referred to in section 3(9) of Customs Tariff Act.

Thus, IGST will be payable on – (a) Assessable Value (b) Basic customs duty (c) Social Welfare Surcharge. As per section 3(11) of Customs Tariff Act, this duty or tax or cess shall be in addition to any other duty or tax or cess imposed under Customs Tariff Act or any other law. As per section 3(12) of Customs Tariff Act, all provisions of Customs Act and Rules, including those relating to drawbacks, refunds and exemptions will apply to this duty, tax or cess.

IGST is not customs duty – IGST collected at time of import is not levied under Customs Act or Customs Tariff Act. Only machinery of Customs Law is used to collect IGST.

IGST is levied under section 5(1) of the Integrated Tax Act and only the procedure for collection has been provided under section 3 of the Tariff Act - *Interglobe Aviation Ltd. v. CC, Air Cargo* [2020] 121 taxmann.com 70 (CESTAT) = 2020 (43) GSTL 410 (Tri-Del).

IGST on project imports - In case of project imports, the goods will be classified under 9801 and IGST rate will be taken as 18%.

No IGST on baggage - IGST is not payable on baggage.

No IGST and Compensation Cess on Imports Against Advance Authorisation - Imports under Advance Authorisation are exempted from payment of Basic Customs Duty, Additional Customs Duty, Education Cess, Anti-dumping Duty, Countervailing Duty, Safeguard Duty, Imports under Advance Authorisation for physical as well as deemed exports are also exempt from whole of the Integrated Tax (IGST) and Compensation Cess leviable under sub-section (7) and sub-section (9) respectively, of section 3 of the Customs Tariff Act, 1975 – Para 4.14 of FTP 2023.

No IGST and Compensation Cess on Imports against EPCG Authorisation - Capital goods imported under EPCG Authorisation for physical exports are exempt from IGST and Compensation Cess, leviable thereon under the sub-section (7) and sub-section (9) respectively, of section 3 of the Customs Tariff Act, 1975 - Para 5.01(a) of FTP 2023.

Import by EOU/STP/EHTP/BTP without payment of customs duty, IGST or Compensation Cess- The imports and/or procurement from bonded warehouse in DTA or from international exhibition held in India shall be without payment of duty of customs leviable thereon and additional duty, if any, leviable thereon under section 3(1), 3(3) and 3(5) of the said Customs Tariff Act. Such imports and/or procurements shall be made without payment of IGST and compensation cess – Para 6.01(d)(ii) of FTP 2023.

No exemption from IGST and Compensation Cess on imports under DFIA- There is no exemption from IGST and Compensation Cess in case of imports under DFIA under Customs Notification No. 19/2015-Cus., dated 1-4-2015, because the imported inputs are freely transferable after fulfilment of export obligation.

2.3 Refund of IGST paid on goods exported out of India

IGST is not payable when goods are exported. The exporter can export goods without payment of IGST and utilise the corresponding Input Tax Credit for payment of GST on other goods supplied by him. If this is not possible, he can claim refund of Input Credit corresponding to goods exported.

Alternatively, a taxable person has option to pay IGST on goods exported out of India and claim refund. He may like to do this if he has excess Input Tax Credit which may be otherwise not utilizable. Provisions are contained in rule 96 of CGST and SGST Rules, 2017.

Shipping Bill shall be deemed to be application for refund – Shipping Bill filed by exporter of goods shall be deemed to be application for refund of IGST. Export Manifest or Export Report covering the number and date of shipping bill should have been filed. The applicant should have filed valid return in form GSTR-3 or GSTR-3B as the case may be - Rule 96(1) of CGST and SGST Rules, 2017.

2.4 GST Compensation Cess on goods at the time of import

GST Compensation Cess is payable on imported goods w.e.f. 1-7-2017. The rate is same as applicable to similar goods supplied within India.

Thus, GST Compensation Cess will be payable on – (a) Assessable Value (b) Basic customs duty.

As per section 3(11) of Customs Tariff Act, this duty or tax or cess shall be in addition to any other duty or tax or cess imposed under Customs Tariff Act or any other law.

As per section 3(12) of Customs Tariff Act, all provisions of Customs Act and Rules, including those relating to drawbacks, refunds and exemptions will apply to this duty, tax or cess.

Valuation for GST Compensation Cess – The valuation for payment of GST Compensation cess is same as applicable to valuation of IGST under section 3(8A) of Customs Tariff Act - section 3(10A) of Customs Tariff Act inserted w.e.f. 29-3-2018.

2.5 Social Welfare Surcharge as duty of customs

A 'Social Welfare Surcharge' has been introduced w.e.f. 2-2-2018 *vide* section 110 of Finance Act, 2018 on all goods specified in First Schedule to Customs Tariff Act, 1975 imported into India.

It will be collected as duty of customs.

The general rate of Social Welfare Surcharge is 10% of 'aggregate duties of customs levied and collected under section 12 of Customs Act and any sum chargeable on the goods imported under any other law', as 'duty of customs'. Same rate applies to baggage also.

It has been clarified that Social Welfare Surcharge (SWS) is payable @ 10% of aggregate of customs duties. If aggregate customs duty payable is zero, SWS will also be Nil – MF(DR) circular No. 3/2022-Cus. dated 1-2-2022.

However, Social Welfare Surcharge will not be payable on following -

- (a) the safeguard duty referred to in sections 8B and 8C of the Customs Tariff Act;
- (b) the countervailing duty referred to in section 9 of the Customs Tariff Act;
- (c) the anti-dumping duty referred to in section 9A of the Customs Tariff Act;
- (d) the Social Welfare Surcharge (SWS) on imported goods levied under sub-section (1).

Social Welfare Surcharge on IGST and GST Compensation Cess payable on imported goods has been exempted vide Notification No. 13/2018-Cus dated 2-2-2018.

Thus, presently, SWS is payable on – (a) Basic Customs Duty (b) Countervailing Duty leviable on products which are still covered under Central Excise (mainly petroleum products).

Levy of Social Welfare Surcharge on IGST and GST Compensation Cess on imported goods has been exempted vide Notification No. 13/2018-Cus dated 2-2-2018.

Goods exempt from 'Social Welfare Surcharge' have been given in Notification No. 11/2018-Cus., dated 2-2-2018 as amended on 1-2-2023.

The Social Welfare Surcharge is to fulfil the commitment of the Government to provide and finance education, health and social security.

Social Welfare Surcharge on imports against Advance Authorisation, EPCG and EOU not required – Social Welfare Surcharge is not payable on imports against Advance Authorisation, EPCG and EOU units, when basic customs duty is not payable.

2.6 Road and Infrastructure Cess

A 'Road and Infrastructure Cess' on specified imported goods (petrol and diesel) has been introduced w.e.f. 2-2-2018 *vide* clause 109 of Finance Bill, 2018. Similar Cess has been imposed on excisable goods manufactured in India *vide* clause 110 of Finance Bill, 2018.

2.7 Health Cess

Section 141 of Finance Act, 2020 makes provisions to imposed health cess of 5% on imported medical devices falling under headings 9018, 9019, 9020, 9021 and 9022. The health cess is effective from 2-2-2020 itself. The 'value' for health cess will be 'value' as determined under section 14 of Customs Act.

The health cess is in addition to other duties of customs. All provisions of Customs Act in relation to refund, exemption, offences and penalty shall apply to health cess.

Health cess will be exempt for specified medical devices which are exempt from basic customs duty. Inputs/ parts used in manufacture of medical devices shall also be exempt – Notification No. 8/2020-Cus dated 2-2-2020 as amended on 29-3-2023. The proceeds of health cess shall be used for financing health infrastructure and services.

2.8 Agriculture Infrastructure and Development Cess (AIDC)

An Agriculture Infrastructure and Development Cess (AIDC) has been imposed on some specified products w.e.f. 2-2-2021, *vide* section 124 of Finance Act, 2021 as enacted on 28-3-2021. It is 'duty of customs'. The purpose is to finance agriculture infrastructure and other development expenditure. AIDC rate can be upto rate of customs duty as specified in First Schedule to Customs Tariff Act.

The value for purpose of AIDC is same as per section 14 of Customs Act. All provisions of Customs Act relating to assessment, levy, refund etc. will apply to AIDC.

The goods on which AIDC is leviable and rate of AIDC has been specified in Notification No. 11/2021-Cus dated 1-2-2021. AIDC is not leviable on goods imported under Advance Authorisation, EOU and FTA (Free Trade Agreements).

Gold & Silver (and their dore) imported under export promotion schemes (which is exempt under Notification Nos. 56/2000-Cus dated 5-5-2000 and 57/2000-Cus both dated 8-5-2000) has been exempted from Agriculture Infrastructure and Development Cess (AIDC) w.e.f. 17-2-2021.

AIDC is 'duty of customs' and hence has to be included while calculating Social Welfare Surcharge. However, social welfare surcharge is not leviable on AIDC on silver (7106) and Gold (7108) – Notification No. 13/2021-Cus dated 1-2-2021.

2.9 Additional Customs Duty under section 3(1) (CVD)

After introduction of GST w.e.f. 1-7-2017 and abolition of excise duty on most of products, additional customs duty (Countervailing Duty - CVD) is payable on very few products.

Additional Customs duty is equal to excise duty levied on a like product manufactured or produced in India. If like article is not produced or manufactured in India, the excise duty that would be leviable on that article had it been produced in India is the base. If the product is leviable with different rates, then highest rate among those rates is to be considered. The duty is leviable on Value of goods plus customs duty payable.

As per section 3(11) of Customs Tariff Act, this duty or tax or cess shall be in addition to any other duty or tax or cess imposed under Customs Tariff Act or any other law. [This sub-section was earlier 3(7). It has been re-numbered as section 3(11) of Customs Tariff Act w.e.f. 1-7-2017.].

Calculation of CVD- CVD is equal to excise duty levied on a like product manufactured or produced in India. If like article is not produced or manufactured in India, the excise duty that would be leviable on that article had it been produced in India is the base. If the product is leviable with different rates, then highest rate among those rates is to be considered.

Rate of CVD in case of alcoholic liquor – CVD is payable on alcoholic liquor imported. Additional duty is leviable even in case of goods chargeable to State Excise duty. - *Haryana Distillery v. CC* - 1992 (62) ELT 773 (CEGAT) (*alcoholic beverages are chargeable to State Excise*). The rate of CVD on liquor is Nil w.e.f. 3-7-2007. Education cess is also exempted.

2.10 Additional Duty under section 3(3)

In addition to Additional Duty under section 3(1) of Customs Tariff Act which is chargeable on all goods, further additional duty can be levied by Central Government to counter-balance excise duty leviable on raw materials, components etc. similar to those used in production of such article [Section 3(3) of Customs Tariff Act].

2.11 Additional Duty under section 3(5) (Special CVD - SAD)

Section 3(5) of Customs Tariff Act empowers Central Government to impose additional duty. This is in addition to Additional Duty leviable under section 3(1) and 3(3) of Customs Tariff Act. As per section 3(11) of Customs Tariff Act, this duty or tax or cess shall be in addition to any other duty or tax or cess imposed under Customs Tariff Act or any other law. [This sub-section was earlier 3(7). It has been re-numbered as section 3(11) of Customs Tariff Act w.e.f. 1-7-2017, vide Taxation Laws (Amendment) Act, 2017].

2.12 Protective Duties

'Tariff Commission' has been established under Tariff Commission Act, 1951. If the Tariff Commission recommends and Central Government is satisfied that immediate action is necessary to protect interests of Indian industry, protective customs duty at the rate recommended may be imposed under section 6 of Customs Tariff Act. This notification should be introduced in Parliament in next session by way of a Bill. (or in the same session if Parliament is in session). If the Bill is not passed within six months of introduction in Parliament, the notification ceases to have force, but action already taken remains valid. The protective duty will be valid till the date prescribed in the notification. The protective duty can be rescinded, reduced or increased by a notification. Such notification should also be placed before Parliament for approval in next session. [This duty does not seem to be compatible with WTO regulations and hence not being used]

2.13 Countervailing duty on subsidised goods

If a country or territory pays any subsidy or grant (directly or indirectly) to its exporters for exporting goods to India, Central Government can impose Countervailing duty upto the amount of such subsidy under section 9 of

Customs Tariff Act. If the amount of subsidy cannot be ascertained, provisional duty can be collected and after final determination, difference may be refunded. Such imposition should be by way of a notification.

Such countervailing duty can be imposed only if conditions as specified in section 9(3) of Customs Tariff Act are fulfilled. The countervailing duty on subsidized articles can be imposed even with retrospective effect if injury to domestic industry is difficult to repair. Such retrospective effect can be given only upto 90 days prior to date of issue of notification imposing such duty - section 9(4) of Customs Tariff Act.

The countervailing duty on subsidized articles can be imposed for a period of five years Customs Tariff (Identification, Assessment and Collection of Countervailing Duty on Subsidised Articles and for determination of Injury) Rules, 1995 [as amended upto 27-10-2021] provide detailed procedure for determining the injury in case of subsidised articles.

2.14 Anti-Dumping Duty on dumped articles

Often, large manufacturer from abroad may export goods to India at very low prices compared to prices normally prevalent in export market. Such dumping may be with intention to cripple domestic industry *or* to dispose of their excess stock. This is called 'dumping' and is an unfair trade practice. In order to avoid such dumping and to protect domestic industry, Central Government can impose, under section 9A of Customs Tariff Act, anti-dumping duty, if the goods are being sold at less than its normal value. Levy of such anti-dumping duty is permissible as per WTO agreement. Anti dumping action can be taken only when there is an Indian industry producing 'like articles'.

Anti dumping duty is on basis of GATT Agreement of 1994.

Presently, countries like China, Taiwan are said to be involved in dumping. Even Indian steel exporters were facing charges of dumping goods in USA.

Domestic Industry – The term 'domestic industry' has been elaborately defined in rule 2(b) of Anti-Dumping Duty Rules.

Provisional anti-dumping duty - Pending determination of margin of dumping, duty can be imposed on provisional basis. After dumping duty is finally determined, Central Government can reduce such duty and refund duty extra collected than that finally calculated. Such duty can be imposed upto 90 days prior to date of notification, if there is history of dumping which importer was aware or where serious injury is caused due to dumping.

No anti dumping duty in case of imports by EOU and SEZ, unless such goods are cleared in DTA - Anti-dumping duty is not applicable for imports by EOU or SEZ units, unless (i) it is specifically made applicable in the notification imposing anti-dumping duty *or* (ii) such article is either cleared as such into the domestic tariff area or used in the manufacture of any goods that are cleared into the domestic tariff area, in which case, anti-dumping duty shall be imposed on that portion of the article so cleared or used, as was applicable when it was imported into India. [section 9A(2A) of Customs Tariff Act as amended w.e.f. 28-3-2021].

Margin of Dumping - '*Margin of dumping*' means the difference between normal value and export price (i.e. the price at which these goods are exported). [section 9A(1)(a) of Customs Tariff Act].

'Normal Value' means comparable price in ordinary course in trade, for like article, when destined for consumption in the exporting country or territory. If such price is not available or not comparable (a) comparable representative price of like article exported from exporting country or territory to appropriate third country or (b) cost of production plus reasonable profit, can be considered [section 9A(1)(c) of Customs Tariff Act]. The 'normal value' is to be determined as per rules.

'Export Price' means the price at which goods are exported. If the export price is unreliable due to association or compensatory arrangement between exporter and importer or a third party, export price can be constructed (revised) on the basis of price at which the imported articles are first sold to independent buyer or according to rules made for determining margin of dumping. [section 9A(1)(b)].

Margin of dumping is determined on basis of weighted average of 'normal value' and the 'export price' of product under consideration.

In case of non-market economy countries (mostly communist countries), 'normal value' can be determined on basis of price in a market economy third country, price paid in India for a like product or any other reasonable basis.

Quantum of dumping duty - The anti-dumping duty will be dumping margin or injury margin, *whichever is lower*. 'Injury margin' means difference between fair selling price of domestic industry and landed cost of imported

product. The landed cost will include 1% basic customs duty. Thus, only anti-dumping duty enough to remove injury to domestic industry can be levied [landing charges of 1% not includible w.e.f. 26-9-2017].

For example, if normal value in exporting country is ₹ 11 and export price is ₹ 8, dumping margin is ₹ 3. If landed cost is ₹ 9 and fair selling price of domestic industry is ₹ 10, then injury margin is Re 1. Hence, anti-dumping duty of only Re 1 can be imposed.

Rules for deciding subsidy or dumping margin- Margin of dumping will be determined on basis of records concerning normal value and export value maintained and information provided by foreign exporter or producer. However, if he fails to provide such records or information, margin of dumping shall be determined on basis of facts available [section 9A(6A) of Customs Tariff Act].

Issue of notification after report of Designated Authority - Central Government shall impose anti-dumping duty on basis of recommendation of Designated Authority after carrying out investigation.

Appeal against order of designated authority determining existence of dumping- Appeal against the order determining or reviewing the duty can be made to CESTAT. The appeal can be filed in respect of the existence, degree and effect of – (i) any subsidy or dumping in relation to import of any article or (ii) import of any article into India in such increased quantities and under such condition so as to cause or threatening to cause serious injury to domestic industry requiring imposition of safeguard duty in relation to import of that article – section 9C(1) of Customs Tariff Act.

Review and extension of the countervailing duty upto further five years – Central Government can order review and extension of the countervailing duty and on consideration of review, can extend the period upto further five years. If order for review has been made, the countervailing duty can continue upto one more year – first and second provisos to section 9(6) of Customs Tariff Act as amended by Finance Act, 2023 w.r.e.f. 1-1-1995.

Mid-term review- Mid-term review of anti-dumping duty is permissible under rule 23 of Anti-Dumping Duty Rules.

New Shipper Review – After imposing of anti-dumping duty, a new exporter may want to export same goods to India. As per rule 22, if he had not exported earlier, he can ask for review of anti-dumping duty. During the period of review, Government may resort to provisional assessment and may allow imports on submission of guarantee, pending review. If anti-dumping duty is determined, it will be payable retrospectively from date of initiation of review. Such review is termed as ‘new Shipper Review’.

Anti-absorption review - Rules 29 to 31 of Customs Tariff (Identification, Assessment and Collection of Anti-dumping Duty on Dumped Articles and for Determination of Injury) Rules, 1995 inserted w.e.f. 27-10-2021 make provision for review of anti-dumping duty, investigation and determination of absorption.

2.15 Safeguard Measures

Provisions relating to safeguard duty are contained in section 8B of Customs Tariff Act. Safeguard measures is a step in providing a need based protection to domestic industry for a limited period, with ultimate objective of restoring free and fair competition. Safeguard measures are targeted at remedying or preventing serious injury to domestic industry with a view to making it competitive and to enable it to stand on its own.

Safeguard measures means safeguard duty or tariff rate quota or such other measures imposed under section 8B(1) of Customs Tariff Act – rule 2(fa) of Customs Tariff (Identification and Assessment of Safeguard Duty) Rules, 1997 and section 8B(2) of Customs Tariff Act, 1962.

Such measures are permissible under WTO agreement. The only condition under WTO is that it should not discriminate between imports from different countries having Most Favoured Nation (MFN) status.

Government has to conduct an enquiry and then issue a notification. [section 8B(1) of Customs Tariff Act w.e.f. 27-3-2020.].

“Serious injury” means an injury causing significant overall impairment in the position of a domestic industry – Section 8B(11)(c) of Customs Tariff Act as inserted vide section 116 of Finance Act, 2020.

“Threat of serious injury” means a clear and imminent danger of serious injury – Section 8B(11)(d) of Customs Tariff Act as inserted vide section 116 of Finance Act, 2020, w.e.f. 27-3-2020.

The safeguard measures referred to in section 8B(1) shall include imposition of safeguard duty, application of tariff-rate quota or such other measure, as the Central Government may consider appropriate, to curb the increased quantity of imports of an article to prevent serious injury to domestic industry - section 8B(2) of Customs Tariff Act.

All provisions of Customs Act apply to safeguard duty - section 8B(9) of Customs Tariff Act substituted w.e.f. 27-3-2020.

'Customs Tariff (Identification and Assessment of Safeguard Duty) Rules, 1997 as amended w.e.f. 2-2-2021, provide for procedure for investigation and fixing safeguard duty.

Safeguard measures - Safeguard measures means safeguard duty or tariff rate quota or such other measures imposed under section 8B(1) of Customs Tariff Act – rule 2(fa) inserted w.e.f. 2-2-2021.

2.16 NCCD of Customs

A 'National Calamity Contingent Duty' (NCCD) of customs has been imposed vide section 134 of Finance Act, 2003, on *pan masala*, chewing tobacco and cigarettes. Further, NCCD of customs of 1% has been imposed on PFY, motor cars, multi utility vehicles, two wheelers and on domestic crude oil. For purpose of calculation of NCCD, value will be same as calculated for purpose of CVD under section 3(2) of Customs Tariff Act. [There is no exemption to NCCD].

If goods are imported under Advance Authorisation Scheme of DFIA scheme, NCCD is payable. [Education cess on NCCD was also payable] – MF(DR) circular No. 22/2006-Cus dated 21-8-2006.

SEZ units are not required to pay NCCD on their exports - – CBI&C circular No. 881/1/2009-CX dated 7-1-2009.

2.17 Export duty

Since Government actively encourages export, there is export duty on very few products. Articles on which export duty is leviable are given in second schedule to Customs Tariff. This Schedule contains only 49 items (as substituted w.e.f. 1-3-2011). Out of these, many have been exempted by way of a notification.

Calculation of export duty – Export duty will be calculated on FOB price. If duty rate is 15% and FOB price is ₹ 100, the export duty will be ₹ 15.– MF(DR) circular No. 18/2008-Cus dated 10-11-2008.

Relevant date for rate of export duty - Date on which Let Export Order is given is the relevant date for determining rate of export duty as per section 16 of Customs Act - *Jindal Saw v. CC 2012 (280) ELT 135 (CESTAT)*.

2.18 Cess

Cess is leviable on export of some specific goods.

Distinction between cess and duty is that cess is a charge levied and collected for specified purposes, while duty (excise duty or customs duty) is for general revenue of Government. Duty is for general revenue purposes, while Cess is for a definite purpose. Cess may be on production of goods or on export of goods.

Cess on imports - Cess is levied on indigenous manufactured goods like sugar, tea, jute, beedis, automobiles, tobacco, coffee, rubber, paper and paper board, iron ore, limestone and dolomite, manganese ore, chrome ore and coking and non-coking coal. This is recoverable as excise duty. If these are imported, corresponding cess will be payable – view confirmed in *TTK-LIG Ltd. v. CC 2006 (193) ELT 169 (Tribunal-LB)*.

Clean Environment Cess - Clean Environment Cess (earlier termed as Clean Energy Cess) has been imposed w.e.f. 1-7-2010, vide section 83 of Finance Act, 2010, on gross quantity of raw coal, lignite and peat raised and despatched from a coal mine in India. This cess is levied and collected as a duty of excise from coal mines. This cess would apply to imported coal as CVD. The cess payable is ₹ 400 per metric tonne.

3. CLASSIFICATION OF GOODS

3.1 Customs Tariff Act (CTA) to classify goods

Once the liability of payment of customs duty is established, the next question is what is the amount of duty payable. The two step process is (a) Correctly classify the goods, to find out rate of customs duty, after referring to relevant exemption notification (b) Find its assessable value to which the rate of duty is to be applied for calculating amount of duty payable. The rate of duty is found out by classifying the product in its appropriate heading under Customs Tariff.

The Customs Tariff Act classifies all the goods under 97 chapters and specific code is assigned to each item. Chapter 77 is blank, which is kept reserved for future use. This classification forms basis for classifying the goods under particular Chapter head and Sub-head to prescribe customs duty to be charged on that particular product.

Customs Tariff Act is used for GST – Customs Tariff Act is being used for classification of goods for purpose of levy of GST w.e.f. 1-7-2017. There is no separate tariff for purpose of GST.

Linking of Tariff Act and Main Act -- Linking has been made in Customs, *vide* section 2 of Customs Tariff Act and section 12 of Customs Act.

Classification of a product is to be done by consignor only - Classification of a product is to be done by consignor only. Classification cannot be changed or questioned at consignee's end – *Steel Authority of India Ltd. v. CCE* (2022) 382 ELT 10 (SC).

Classification is responsibility of supplier, purchaser is not obliged to indicate classification - Classification is the responsibility of supplier, purchaser is not obliged to indicate classification of goods he is purchasing – *UOI v. Bharat Forge* (2022) 93 GST 731 = 141 taxmann.com 731 = 64 GSTL 3 (SC).

3.2 Background of the Customs Tariff

As international trade increased, need was felt to have universal standard system of classification of goods to facilitate trade flow and analysis of trade statistics. Hence, Harmonised Commodity Description and Coding System (Generally referred to as 'Harmonised System' or simply 'HS') was developed by World Customs Organisation (WCO) [www.wcoomd.org].

Harmonised System (HS) provides commodity/product codes and description upto 4-digit (Heading) and 6-digit (Sub-Heading) levels only and member countries of WCO are allowed to extend the codes upto any level subject to the condition that nothing changes at the 4-digit or 6-digit levels. India has developed 8-digit level classification to indicate specific statistical codes for indigenous products and also to monitor the trade volumes – *Chapter 4 Para 2.2 of CBIC's Customs Manual, 2023*.

HS is amended periodically in a cycle of 4/6 years, taking note of the trade flow, technological progress etc. Member countries including India are under obligation to amend the Tariff Schedules in alignment with HS – *Chapter 4 Para 2.3 of CBIC's Customs Manual, 2023*. (Latest changes have been brought into effect on 1-1-2022).

Customs Tariff uses 8 digit nomenclature. ITC (HS) published by DGFT has 10 digit classification.

Permissibility of import and export is governed by the DGFT's ITC(HS) [Import Trade Control (Harmonised System)] classification of import and export goods, published by DGFT. The nomenclature arranges goods as in the HS to regulate Foreign Trade Policy and collating the statistical analysis of imports and exports of the country – *Chapter 4 Para 2.11 of CBIC's Customs Manual, 2023*.

3.3 Schedules, sections, Chapters and headings to Tariff

Customs Tariff Act has two Schedules - first schedule is in respect of Import Tariff, which we have discussed above. Second Schedule is 'Export Tariff', showing export duties leviable. Since most of exports are exempt from export duty, the schedule contains only 50 items (as on 1-1-2022), out of which many are exempt by way of a Notification No. 27/2011-Cus, dated 1-3-2011 as amended.

Sections, Chapters and headings in Tariff- There are 21 sections in case of Customs Tariff. A 'section' is a grouping of a number of Chapters which codify a particular class of goods. Each of the sections is related to a broader class of goods. Section Notes are given at the beginning of each Section, which govern entries in that Section. These notes are applicable to all Chapters in that section.

Grouping of goods – In the Tariff Schedule, commodities/products are arranged in a fixed pattern with the duty rates specified against each of them. The pattern of arrangement of goods in the Tariff is in increasing degree of manufacture of commodities/products in the sequence of natural products, raw materials, semi finished goods and fully manufactured goods/article/machinery etc.

Eight Digit classification – All goods are classified using 4 digit system. These are called 'headings'. Further 2 digits are added for sub-classification, which are termed as 'sub-headings'. Further 2 digits are added for sub-sub-classification, which is termed as 'tariff item'. Rate of duty is indicated against each 'tariff item' and not against heading or sub-heading.

3.4 Overview of Customs Tariff

Following is broad grouping of goods in Tariff:

- Animal Products (Section I - Chapters 1 to 6)

- Vegetable Products (Section II - Chapters 6 to 14)
- Animal or vegetable fats and oils (Section III - Chapter 15)
- Prepared foodstuffs, beverages (Section IV - Chapters 16 to 24)
- Mineral Products (Section V - Chapters 25 to 27)
- Products of Chemicals and allied industries (Section VI - Chapters 28 to 38)
- Plastics and Rubber and their articles (Section VII - Chapters 39 and 40)
- Raw hides and Skins, Leather and articles (Section VIII - Chapters 41 to 43)
- Wood, cork, straw and their articles (Section IX - Chapters 44 and 46)
- Pulp of wood, Paper, Paper-board and articles (Section X - Chapters 47 to 49)
- Textile and Textile Products (Section XI - Chapters 50 to 63)
- Footwear, Headgear, Umbrellas, Articles of human hair (Section XII - Chapters 64 to 67).
- Articles of stone, plaster, ceramic, mica, glass (Section XIII - Chapters 68 to 70)
- Pearls, precious metals (Section XIV - Chapter 71)
- Base metals and articles of base metal (Iron, Steel, Copper, Nickel, Zinc, Tin etc.). (Section XV - Chapters 72 to 83) (Chapter 77 is blank).
- Machinery and mechanical appliances, electrical equipments, television etc. (Section XVI - Chapters 84 and 85)
- Vehicles, Aircrafts, vessels and associated transport equipment (Section XVII - Chapters 86 to 89)
- Optical, photographic, medical, surgical instruments, clocks, musical instruments (Section XVIII - Chapters 90 to 92)
- Arms and Ammunition (Section XIX - Chapter 93)
- Misc. Manufactured articles like Furniture, toys etc. (Section XX - Chapters 94 to 96)
- Works of Art, collectors' pieces and antiques (Section XXI - Chapters 97 to 98).

3.5 Rules for Interpretation of Tariff

Rules for Interpretation of Schedule to Tariff are given in the Tariff itself. These are termed as 'General Interpretative Rules' (GIR). Abbreviation '%' in Column 4 indicates that duty is charged 'ad valorem' on the value of goods as calculated in section 12 of Customs Act.

Rules if classification as per tariff and chapter/section notes not possible- Rule 1 of Rules for interpretation of the Schedule states that classification shall be determined according to the terms of the headings and any relative section or chapter notes and, provided such headings or Notes do not otherwise require, according to other provisions of the rules. These rules are required to be applied only if classification is not possible on basis of tariff entry read with Chapter notes and section notes.

Rule 1 gives primacy to the section and chapter notes along with terms of the headings. They should be first applied. If no clear picture emerges, then only one can resort to subsequent rules - *CCE v. Simplex Mills Co. Ltd.* 2005 (181) ELT 345 = 140 STC 125 (SC 3 member bench),

3.6 Steps in classification of a product

Following are the steps of classification of a product.

- (1) The titles of Sections and Chapters are provided for ease of reference only; for legal purposes, refer the heading and sub-heading. Read corresponding Section Notes and Chapter Notes (Rule 1 of GIR). If there is no ambiguity or confusion, the classification is final. You do not have to look to classification rules or trade practice or dictionary meaning. If classification is not possible, then only go to GIR. The rules are to be applied sequentially.
- (2) If meaning of word is not clear, refer to trade practice. If trade understanding of a product cannot be established, find technical or dictionary meaning of the term used in the tariff. You may also refer to BIS or other standards, but *trade parlance* is most important.

- (3) If goods are incomplete or un-finished, but classification of finished product is known, find if the un-finished item has *essential characteristics* of finished goods. If so, classify in same heading - Rule 2(a).
- (4) If ambiguity persists, find out which heading is specific and which heading is more general. Prefer specific heading.- Rule 3(a).
- (5) If problem is not resolved by Rule 3(a), find which material or component is giving 'essential character' to the goods in question - Rule 3(b).
- (6) If both are equally specific, find which comes last in the Tariff and take it - Rule 3(c).
- (7) If you are unable to find any entry which matches the goods in question, find goods which are most akin - Rule 4.
- (8) In case of mixtures or sets too, the procedure is more or less same, except that each ingredient of the mixture or set has to be seen in above sequence. As per rule 2(b), any reference to a material or substance includes a reference to mixtures or combinations of that material or substance with other material or substance.
- (9) Packing material is classified along with the goods except when the packing is for repetitive use – Rule 5

Application of GIR in Tariff - GIR (General Interpretative Rules) are to be applied for interpretation of Tariff, if classification is not possible on the basis of tariff entry and relevant chapter notes and section notes.

Rules to be applied sequentially - The Rules are to be applied sequentially. Rule 1 gives precedence to Section Notes/Chapter Notes while classifying a product - *Chapter 4 Para 2.6 of CBI&C's Customs Manual, 2023*.

Classification is to be first tested in light of Rule 1. Only when it is not possible to resolve the issue by applying this rule, recourse is taken to Rules 2, 3 and 4 in seriatim [Though rules nowhere state that these should be applied sequentially, the general arrangement and wording does clearly indicate that intention].

3.6-1 Classification of packing containers and packing materials

Rule 5 for interpretation of schedule to Customs Tariff Act and CETA specifically provides for classification of packing material and packing cases. Packing material for long term use is normally classified with the goods in which it was packed. As per this rule, cases for camera, musical instruments, drawing instruments, necklaces etc. specially shaped for that article, suitable for long term use will be classified along with that article, if such articles are normally sold along with such cases. Further, packing materials and containers are also to be classified with the goods *except when the packing is for repetitive use*.

This provision is obviously made to ensure that the packing and the goods are charged at same rate of duty.

3.6-2 Goods can be compared at the same level only

Sub-Headings can be compared only at the same level [Rule 6].

3.7 Classification of Parts

Classification of parts is subject to notes in Sections and Chapters. Question of classification of parts is relevant for parts of machinery, electrical equipment, vehicles, instruments, arms, furniture and toys (Chapters 82 to 96).

In *Electrosteel Castings v. CCE* 1989 (43) ELT 305 (CEGAT), it was observed that 'part' is a component whose absence will disable a machine or appliance. It must be regarded as an essential ingredient or part of that machine.

Broadly, parts suitable solely for a particular machine generally fall in the same heading number in which main item falls. However, there are many exceptions -

- Parts of general use are not to be classified as part of any particular machine. 'Parts of General Use' are to be classified in their respective specified heads and *not* to be classified under the heading of the machine where they are used.
- Parts are to be classified as parts if separate heading is available for parts, as per section note 2 to section XVI and section note 2 to section XVIII. (e.g. there is separate heading for parts of engine).
- Various articles as specified in notes to sections XVI and XVII are not to be classified as parts of any particular machine. [e.g. articles of leather, belts, tools and appliances, instruments, clocks, watches etc.]