

GENERAL AGREEMENT ON

RESTRICTED

TARIFFS AND TRADE

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Committee on Customs Valuation

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INFORMATION ON IMPLEMENTATION AND ADMINISTRATION OF THE AGREEMENT

Legislation of India

	<u>Page</u>
(i) Notification 50-NT/88-Customs Ministry of Finance, Department of Revenue	2
(ii) Notification 51-NT/88-Customs Ministry of Finance, Department of Revenue	3
(iii) Declaration form	22
(iv) The Customs (Amendment) Act, 1988 No. 27 of 1988	24
(v) Extract from the Customs Act, 1962	26

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Government of India (Ministry of Finance, Department of Revenue)

New Delhi, 18 July 1988
(27 Asadha, 1910 (Saka))

Notification

No. 50-NI/88-Customs

G.S.R. 977(E): In exercise of the powers conferred by sub-section (2) of section 1 of the Customs (Amendment) Act, 1988 (27 of 1988), the Central Government hereby appoints the sixteenth day of August 1988, as the date on which the said Act shall come into force.

(signed) (N. Sasidharan)
Deputy Secretary to the Government of India

F.No.493/46/85-Cus.VI.

Notification
No. 51-NT/88-Customs

G.S.R. 800(E): 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 supersession of the Customs Valuation Rules, 1963 except as respect things done or omitted to be done before such supersession, 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 16 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 the 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, artwork, design work, plant or sketch undertaken in India were completed directly or indirectly by the buyer on these imported goods free of charge or at a reduced cost for use in connection with the production and sale for export of these imported goods;

(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, artwork, design work, plan or sketch undertaken in India were completed directly or indirectly by the buyer on these imported goods free of charge or at a reduced cost for use in connection with the production and sale for export of these imported goods;

(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 recognized partners in business;

(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 sub-rule (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 some condition or consideration for which a value cannot be determined in respect of the goods being valued;
- (c) no part of the proceeds of any subsequent resale, disposal or use of the goods by the buyer will accrue directly or indirectly to the seller, unless an appropriate adjustment can be made in accordance with the provisions of rule 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, if found, the transaction value of identical goods sold at a different commercial level or in different quantities or both, adjusted to take account of the difference attributable to commercial level or to the quantity or both, shall be used, provided that such

adjustments shall be made on the basis of demonstrated evidence which clearly establishes the reasonableness and accuracy of the adjustments, whether such adjustment leads to an increase or decrease in the value.

- (2) Where the costs and charges referred to in sub-rule 2 of rule 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 for export of imported goods, to the extent that such value has not been included in the price actually paid or payable, namely:
 - (i) materials, components, parts and similar items incorporated in the imported goods;
 - (ii) tools, dies, moulds and similar items used in the production of the imported goods;
 - (iii) materials consumed in the production of the imported goods;
 - (iv) engineering, development, art work, design work, and plans and sketches undertaken elsewhere than in India and necessary for the production of the imported goods;
 - (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 purpose 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 20 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 20 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 to in clauses (a), (b) and (c) above are not ascertainable, such cost and charges shall be 25 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.

The Schedule
(See Rule 12)

INTERPRETATIVE NOTES

General note

Use of generally accepted accounting principles

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

Notes to Rules

Note to rule 2

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

Note to rule 4

Price actually paid or payable

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

Activities undertaken by the buyer on his own account, other than those for which an adjustment is provided in rule 9, are not considered to be an indirect payment to the seller, even though they might be regarded as of benefit to the seller. The costs of such activities shall not, therefore, be added to the price actually paid or payable in determining the value of imported goods.

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

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

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

Rule 4(2)(a)(iii)

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

Rule 4(2)(b)

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

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

However, conditions or considerations relating to the production or marketing of the imported goods shall not result in rejection of the transaction value. For example, the fact that the buyer furnishes the seller with engineering and plans undertaken in India shall not result in rejection of the transaction value for the purposes of rule 4. Likewise, if the buyer undertakes on his own account, even though by agreement with the seller, activities relating to the marketing of the imported goods, the value of these activities is not part of the value of imported goods nor shall such activities result in rejection of the transaction value.

Rule 4(3)

1. Rule 4(3)(a) and rule 4(3)(b) provide different means of establishing the acceptability of a transaction value.
2. Rule 4(3)(a) provides that where the buyer and seller are related, the circumstances surrounding the sale shall be examined and the transaction value shall be accepted as the value of imported goods provided that the relationship did not influence the price. It is not intended that there should be an examination of the circumstances in all cases where the buyer and the seller are related. Such examination will only be required where there are doubts about the acceptability of the price. Where the proper officer of customs has no doubts about the acceptability of the price, it should be accepted without requesting further information from the importer. For example, the proper officer of customs may have previously examined the relationship, or he may already have detailed information concerning the buyer and the seller, and may already be satisfied from such examination or information that the relationship did not influence the price.
3. Where the proper officer of customs is unable to accept the transaction value without further inquiry, he should give the importer an opportunity to supply such further detailed information as may be necessary to enable him to examine the circumstances surrounding the sale. In this context, the proper officer of customs should be prepared to examine relevant aspects of the transaction, including the way in which the buyer and seller organize their commercial relations and the way in which the price in question was arrived at, in order to determine whether the relationship influenced the price. Where it can be shown that the buyer and seller, although related under the provisions of rule 2(2), buy from and sell to each other as if they were not related, this would demonstrate that the price had not been influenced by the relationship. As an example of this, if the price had been settled in a manner consistent with the normal pricing practices of the industry in question or with the way the seller settles prices for sales to buyers who are not related to him, this would demonstrate that the price had not been influenced by the relationship.

As a further example, where it is shown that the price is adequate to ensure recovery of all costs plus a profit which is representative of the firm's overall profit realized over a representative period of time (e.g. on an annual basis) in sales of goods of the same class or kind, this would demonstrate that the price had not been influenced.

4. Rule 4(3)(b) provides an opportunity for the importer to demonstrate that the transaction value closely approximates to a "test" value previously accepted by the proper officer of customs and is therefore acceptable under the provisions of rule 4. Where a test under rule 4(3)(b) is met, it is not necessary to examine the question of influence under rule 3(a). If the proper officer of customs has already sufficient

information to be satisfied, without further detailed inquiries, that one of the tests provided in rule 4(3)(b) has been met, there is no reason for him to require the importer to demonstrate that the test can be met. In rule 4(3)() the term "unrelated buyers" means buyers who are not related to the seller in any particular case.

Rule 4(3)(b)

A number of factors must be taken into consideration in determining whether one value "closely approximates" to another value. These factors include the nature of the imported goods, the nature of the industry itself, the season in which the goods are imported, and, whether the difference in values is commercially significant. Since these factors may vary from case to case, it would be impossible to apply a uniform standard such as a fixed percentage, in each case. For example, a small difference in value in a case involving one type of goods could be unacceptable while a large difference in a case involving another type of goods might be acceptable in determining whether the transaction value closely approximates to the "test" values set forth in rule 4(3)(b).

Notes to rule 5

1. In applying rule 5, the proper officer of customs shall, wherever possible, use a sale of identical goods at the same commercial level and in substantially the same quantities as the goods being valued. Where no such sale is found, a sale of identical goods that takes place under any one of the following three conditions may be used:

- (a) a sale at the same commercial level but in different quantities;
- (b) a sale at a different commercial level but in substantially the same quantities; or
- (c) a sale at a different commercial level and in different quantities.

2. Having found a sale under any one of these three conditions adjustments will then be made, as the case may be, for:

- (a) quantity factors only;
- (b) commercial level factors only; or
- (c) both commercial level and quantity factors.

3. For the purposes of rule 5, the transaction value of identical imported goods means a value, adjusted as provided for in rule 5(1)(b) and (c) and rule 5(2), which has already been accepted under rule 4.

4. A condition for adjustment because of different commercial levels or different quantities is that such adjustment, whether it leads to an increase or a decrease in the value, be made only on the basis of demonstrated evidence that clearly establishes the reasonableness and accuracy of the adjustment, e.g. valid price lists containing prices referring to different levels or different quantities. As an example of this, if the imported goods being valued consist of a shipment of ten units and the only identical imported goods for which a transaction value exists involved a sale of 500 units, and it is recognized that the seller grants quantity discounts, the required adjustment may be accomplished by resorting to the seller's price list and using that price applicable to a sale of ten units. This does not require that a sale had to have been made in quantities of ten as long as the price list has been established as being bona fide through sales at other quantities. In the absence of such an objective measure, however, the determination of a value under the provisions of rule 5 is not appropriate.

Note to rule 6

In applying rule 6, the proper officer of customs shall, wherever possible, use a sale of similar goods at the same commercial level and is substantially the same quantities as the goods being valued. For the purpose of rule 6, the transaction value of similar imported goods means the value of imported goods, adjusted as provided for in rule 6(2) which has already been accepted under rule 4.

2. All other provisions contained in note to rule 5 shall mutatis mutandis also apply in respect of similar goods.

Note to rule 7

1. The term "unit price at which ... goods are sold in the greatest aggregate quantity" means the price at which the greatest number of units is sold in sales to persons who are not related to the persons from whom they buy such goods at the first commercial level after importation at which such sale takes place.

2. As an example of this, goods are sold from a price list which grants favourable unit prices for purchases made in larger quantities.

<u>Sale quantity</u>	<u>Unit price</u>	<u>Number of sales</u>	<u>Total quantity sold at each price</u>
10 units	100	10 sales of 5 units 5 sales of 3 units	65
11-25 units	95	5 sales of 11 units	55
over 25 units	90	1 sale of 30 units 1 sale of 50 units	80

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

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

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

(a) Sales

<u>Sale quantity</u>	<u>Unit price</u>
40 units	100
30 units	90
15 units	100
0 units	95
25 units	105
35 units	90
5 units	100

(b) Totals

<u>Total quantity sold</u>	<u>Unit price</u>
65	90
50	95
60	100
25	105

In this example, the greatest number of units sold at a particular price is sixty-five; therefore, the unit price in the greatest aggregate quantity is ninety.

5. Any sale in India, as described in paragraph 1 above to a person who supplies directly or indirectly free of charge or at reduced cost for use in connection with the production and sale for export of the imported goods any of the elements specified in rule 9(1)(b), should not be taken into account in establishing the unit price for the purposes of rule 7.

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

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

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

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

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

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

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

Note to rule 8

1. Value of imported goods determined under the provisions of rule 8 should, to the greatest extent possible, be based on previously determined customs values.

2. The methods of valuation to be employed under rule 8 may be those laid down in rules 4 to 7 inclusive, but a reasonable flexibility in the application of such methods would be in conformity with the aims and provisions of rule 8.

3. Some examples of reasonable flexibility are as follows:

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

Note to rule 9

In rule 9(1)(a)(i), the term "buying commissions" means fees paid by an importer to his agent for the service of representing him abroad in the purchase of the goods being valued.

Rule 9(1)(b)(ii)

1. There are two factors involved in the apportionment of the elements specified in rule 9(1)(b)(ii) to the imported goods - the value of the element itself and the way in which that value is to be apportioned to the imported goods. The apportionment of these elements should be made in a reasonable manner appropriate to the circumstances and in accordance with generally accepted accounting principles.

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

3. Once a value has been determined for the element, it is necessary to apportion that value to the imported goods. Various possibilities exist. For example, the value might be apportioned to the first shipment if the

importer wishes to pay duty on the entire value at one time. As another example, the importer may request that the value be apportioned over the number of units produced up to the time of the first shipment. As a further example, he may request that the value be apportioned over the entire anticipated production where contracts or firm commitments exist for that production. The method of apportionment used will depend upon the documentation provided by the importer.

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

Rule 9(1)(b)(iv)

1. Additions for the elements specified in rule 9(1)(b)(iv) should be based on objectives and quantifiable data. In order to minimize the burden for both the importer and proper officer of customs in determining the values to be added, data readily available in the buyer's commercial record system should be used in so far as possible.

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

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

4. For example, it is possible that a firm which imports a variety of products from several countries maintains the records of its design centre outside the country of exportation in such a way as to show accurately the costs attributable to a given product. In such cases, a direct adjustment may appropriately be made under the provisions of rule 9.

5. In another case, a firm may carry the cost of the design centre outside the country of importation as a general overhead expense without allocation to specific products. In this instance, an appropriate adjustment could be made under the provisions of rule 9 with respect to the imported goods by apportioning total design centre costs over total production benefiting from the design centre and adding such apportioned cost on a unit basis to imports.

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

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

Rule 9(1)(c)

1. The royalties and licence fees referred to in rule 9(1)(c) may include, among other things, payments in respect to patents, trademarks and copyrights. However, the charges for the right to reproduce the imported goods in the country of importation shall not be added to the price actually paid or payable for the imported goods in determining the customs value.

2. Payments made by the buyer for the right to distribute or resell the imported goods shall not be added to the price actually paid or payable for the imported goods if such payments are not a condition of the sale for export to the country of importation of the imported goods.

Rule 9(3)

Where objective and quantifiable data do not exist with regard to the additions required to be made under the provisions of rule 9, the transaction value cannot be determined under the provisions of rule 4. As an illustration of this, a royalty is paid on the basis of the price in a sale in the importing country of a litre of a particular product that was imported by the kilogram and made up into a solution after importation. If the royalty is based partially on the imported goods and partially on other factors which have nothing to do with the imported goods (such as when the imported goods are mixed with domestic ingredients and are no longer separately identifiable, or when the royalty cannot be distinguished from special financial arrangements between the buyer and the seller), it would be inappropriate to attempt to make an addition for the royalty. However, if the amount of this royalty is based only on the imported goods and can be readily quantified, an addition to the price actually paid or payable can be made.

(N. Sasidharan)
Deputy Secretary to the Government of India

NOF.528/167/88-CUS(TU)/ICD

Original
Duplicate

DECLARATION FORM

(See Rule 10 of Customs Valuation Rules, 1988)

Note: This declaration shall not be required for goods imported as passengers baggage, goods imported for personal use up to value of Re 1000.-, samples of no commercial value, or where the goods are subject to specific rate of duty.

1. Importers name and address;
2. Suppliers name and address;
3. Name and address of the agent, if any;
4. Description of goods;
5. Country of origin;
6. Port of shipment;
7. AW/BL number and date;
8. IGM number and date;
9. Contract number and date;
10. Nature of transaction;
(sale, consignment, hire, gift, etc.)
11. Invoice number and date;
12. Invoice value;
13. Terms of payment;
14. Currency of payment;
15. Exchange rate;
16. Terms of delivery;
17. Relationship between buyer and seller (Rule 2(2));
18. If related, what is the basis of declared value;
19. Conditions or restrictions attached with the sale (Rule 4(2));
20. Valuation method applicable; (see Rules 4 to 8)
21. Cost and services not included in the invoice value (Rule 9);
 - (a) Brokerage and commissions;
 - (b) Cost of containers;
 - (c) Packing cost;
 - (d) Cost of goods and services supplied by the buyer;
 - (e) Royalties and licence fees;

- (f) Value of proceeds which accrue to seller);
 - (g) Freight;
 - (h) Insurance;
 - (i) Loading, unloading, handling charges;
 - (j) Landing charges;
 - (k) Other payments, if any;
22. Assessable value in Re;
23. Previous imports of identical/similar goods, if any;
- (a) Bill of entry, number and date;
 - (b) IGM number and date;
24. Any other relevant information;
(Attach separate sheet, if necessary).

Declaration

1. I/We hereby declare that the information furnished above are true, complete and correct in every respect.
2. I/We also undertake to bring to the notice of the proper officer any particulars which subsequently come to my/our knowledge which will have a bearing on valuation.

Place

Signature of Importer

Date

For Customs House Use

- 1. Bill of entry, number and date;
- 2. Valuation method applied (see Rules 4 to 8);
- 3. If declared value not accepted, brief reasons;
- 4. Reference number and date of any previous decisions/ruling;
- 5. Value assessed.

A.O. Assistant Collector

Ministry of Law and Justice
(Legislative Department)

New Delhi, 19 May 1988/Vaisakha 29, 1910 (Saka)

The following Act of Parliament received the assent of the President on 18 May 1988, and is hereby published for general information:

The Customs (Amendment) Act, 1988
No. 27 of 1988

[18 May 1988]

An Act further to amend the Customs Act, 1962.

BE it enacted by Parliament in the Thirty-ninth Year of the Republic of India as follows:

- | | | |
|-------------|--|-------------------------------|
| 1. | (1) This Act may be called the Customs (Amendment) Act, 1988. | Short title and commencement. |
| | (2) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint. | |
| 52 of 1962. | 2. In section 14 of the Customs Act, 1962 (hereinafter referred to as the principal Act), | Amendment of section 14. |
| | (a) in sub-section (1); | |
| | (i) in clause (a), the brackets and letter "(a)" shall be omitted; | |
| | (ii) clause (b) shall be omitted; | |
| | (b) after sub-section (1), the following sub-section shall be inserted, namely: | |
| | "(1A) Subject to the provisions of sub-Section (1), the price referred to in that sub-section in respect of imported goods shall be determined in accordance with the rules made in this behalf."; | |
| | (c) in sub-section (2), after the words, brackets and figure "in sub-section (1)", the words, brackets, figure and letter "or sub-section (1A)" shall be inserted. | |

Amendment of
section 156.

3. In section 156 of the principal Act, in sub-section (2), for clause (a), the following clause shall be substituted, namely:

"(a) the manner of determining the price of imported goods under sub-section (1A) of Section 14:"

(signed) S. Ramaiah
Secretary to the Government of India

EXTRACT FROM CUSTOMS ACT, 1962

14. Valuation of goods for purposes of assessment

(1) For the purposes 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 value of such goods shall be deemed to be the price at which such or like 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 the 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, or a shipping bill or bill of export, as the case may be, is presented under section 50;]

(1A) Subject to the provisions of sub-section (1), the price referred to in that sub-section in respect of imported goods shall be determined in accordance with the rules made in this behalf.

18. Provisional assessment of duty

(1) Notwithstanding anything contained in this Act but without prejudice to the provisions contained in section 46:

- (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, as the case may be; or
- (b) where the proper officer deems it necessary to subject any imported goods or exported goods to any chemical or other test for the purpose of assessment of duty therein; 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.

(2) When the duty leviable on such goods is assessed finally in accordance with the provisions of this Act, then:

- (a) in the case of goods cleared for home consumption or exportation the amount paid shall be adjusted against the duty finally assessed and if the amount so paid falls short of, or is in excess of (the duty finally assessed), the importer or the exporter of the goods shall pay the deficiency or be entitled to a refund, as the case may be;
- (b) in the case of warehoused goods, the proper officer may, where the duty finally assessed is in excess of the duty provisionally assessed require the importer to execute a bond, binding himself in a sum equal to twice the amount of the excess duty.

22. Abatement of duty on damaged or deteriorated goods

(1) Where it is shown to the satisfaction of the Assistant Collector of Customs:

- (a) that any imported goods had been damaged or had deteriorated at any time before or during the unloading of the goods in India; or
- (b) that any imported goods, other than warehoused goods, had been damaged at any time after the unloading thereof in India but before their examination under section 17 on account of any accident not due to any wilful act, negligence or default of the importer, his employee or agent; or
- (c) that any warehoused goods had been damaged at any time before clearance for home consumption on account of any accident not due to any wilful act, negligence or default of the owner, his employee or agent,

such goods shall be chargeable to duty in accordance with the provisions of sub-section (2).

(2) The duty to be charged on the goods referred to in sub-section (1) shall bear the same proportion to the duty chargeable on the goods before the damage or deterioration which the value of the damaged or deteriorated goods bears to the value of the goods before the damage or deterioration.

(3) For the purpose of this section, the value of damaged or deteriorated goods may be ascertained by either of the following methods at the option of the owner:

- (a) the value of such goods may be ascertained by the proper officer; or

- (b) such goods may be sold by the proper officer by public auction or by tender, or with the consent of the owner in any other manner, and the gross sale proceeds shall be deemed to the value of such goods.

23. Remission of duty on lost, destroyed or abandoned goods

Without prejudice to the provisions of section 13, where it is shown to the satisfaction of the Assistant Collector of Customs that any imported goods have been lost (otherwise than as a result of pilferage) or destroyed at any time before clearance for home consumption, the Assistant Collector of Customs shall remit the duty on such goods.

- (2) The owner of any imported goods may at any time before an order for clearance of the goods for home consumption has been made, relinquish his title to the goods and thereupon he shall not be liable to pay the duty thereon.

EXTRACT FROM CUSTOMS ACT, 1962

Appeals

128. Appeals to Collector (Appeals). (1) Any person aggrieved by any decision or order passed under this Act by an Officer of customs lower in rank than a Collector of Customs may appeal to the Collector (Appeals) within three months from the date of recommunication to him of such decision or order:

Provided that the Collector (Appeals) may, if he is satisfied that the appellant was prevented by sufficient cause from presenting the appeal within the aforesaid period of three months, allow it to be presented within a further period of three months.

(2) Every appeal under this section shall be in such form and shall be verified in such manner as may be specified by rules made in this behalf.

128-A. Procedure in appeal. (1) The Collector (Appeals) shall give an opportunity to the appellant to be heard if he so desire.

(2) The Collector (Appeals) may, at the hearing of an appeal, allow the appellant to go into any ground of appeal not specified in the grounds of appeal, if the Collector (Appeals) is satisfied that the omission of that ground from the grounds of appeal was not wilful or unreasonable.

(3) The Collector (Appeals) may, after making such further inquiry as may be necessary, pass such order as he thinks fit confirming, modifying or annulling the decision or order appealed against, or may refer the case back to the adjudicating authority with such directions as he may think fit for a fresh adjudication or decision, as the case may be, after taking additional evidence, if necessary:

Provided that an order enhancing any penalty or fine in lieu of confiscation or confiscating goods of greater value or reducing the amount of refund shall not be passed unless the appellant has been given a reasonable opportunity of showing cause against the proposed order:

Provided further that where the Collector (Appeals) is of the opinion that any duty has not been levied or has been short-levied or erroneously refunded, no order requiring the appellant to pay any duty not levied, short-levied or erroneously refunded shall be passed unless the appellant is given notice within the time-limit specified in section 28 to show cause against the proposed order.

(4) The order of the Collector (Appeals) disposing of the appeal shall be in writing and shall state the points for determination, the decision thereon and the reasons for the decision.

(5) On the disposal of the appeal, the Collector (Appeals) shall communicate the order passed by him to the appellant, the adjudicating authority and the Collector of Customs.

129. Appellate Tribunal. (1) The Central Government shall constitute an Appellate Tribunal to be called the Customs Excise and Gold (Control) Appellate Tribunal consisting of as many judicial and technical members as it thinks fit to exercise the powers and discharge the functions conferred on the Appellate Tribunal by this Act.

²[(2) A judicial member shall be a person who has for at least ten years held a judicial office in the territory of India or who has been a member of the Central Legal Service and has held a post in Grade I of that service or any equivalent or higher post for at least three years, or who has been an advocate for at least ten years.

Explanation, For the purposes of this sub-section:

(i) in computing the period during which a person has held judicial office in the territory of India there shall be included any period, after he has held any judicial office, during which the person has been an advocate or has held the office of a member of a tribunal or any post, under the Union or a State, requiring special knowledge of law;

(ii) in computing the period during which a person has been an advocate, there shall be included any period during which the person has held a judicial office or the office of a member of a tribunal or any post, under the Union or a State requiring special knowledge of law after he became an advocate.

(2-A) A technical member shall be a person who has been a member of the Indian Customs and Central Excise Service, Group A, and has held the post of Collector of Customs or Central Excise or any equivalent or higher post for at least three years.]

(3) The Central Government shall appoint one of the members of the Appellate Tribunal to be the President thereof.

(4) The Central Government may appoint one or more members of the Appellate Tribunal to be the Vice-President, or, as the case may be, Vice-President, thereof.

³[(4-A) The Central Government may appoint one of the Vice-Presidents of the Appellate Tribunal to be the Senior Vice-President thereof.]

⁴[(5) The Senior Vice-President or a Vice-President shall exercise such of the powers and perform such of the functions of the President as may be delegated to him by the President by a general or special order in writing.]

¹[129-A. Appeals to the Appellate Tribunal. (1) Any person aggrieved by any of the following orders may appeal to the Appellate Tribunal against such orders:

- (a) a decision or order passed by the Collector of Customs as an adjudicating authority;
- (b) an order passed by the Collector (Appeals) under section 128-A;
- (c) an order passed by the Board or the Appellate Collector of Customs under section 128, as it stood immediately before the appointed day;
- (d) an order passed by the Board or the Collector of Customs, either before or after the appointed day, under section 130, as it stood immediately before that day:

²[Provided that no appeal shall lie to the Appellate Tribunal and the Appellate Tribunal shall not have jurisdiction to decide any appeal in respect of any order referred to in Clause (b) if such order relates to:

- (a) any goods imported or exported as baggage;
- (b) any goods loaded in a conveyance for importation into India, but which are not unloaded at their place of destination in India, or so much of the quantity of such goods as has not been unloaded at any such destination if goods unloaded at such destination are short of the quantity required to be unloaded at that destination;
- (c) payment of drawback as provided in Chapter X, and the rules made thereunder:

Provided further that]

The Appellate Tribunal may, in its discretion, refuse to admit an appeal in respect of an order referred to in Clause (b) or Clause (c) or Clause (d) where:

- (i) the value of the goods confiscated without option having been given to the owner of the goods to pay a fine in lieu of confiscation under section 125; or
- (ii) in any disputed case, other than a case where the determination of any question having a relation to the rate of duty of customs or to the value of goods for purposes of assessment is in issue or is one of the points in issue, the difference in duty involved or the duty involved; or
- (iii) the amount of fine or penalty determined by such order, does not exceed ten thousand rupees.

¹[(1-A) Every appeal against any order of the nature referred to in the first proviso to sub-section (1), which is pending immediately before the commencement of section 40 of the Finance Act, 1984 before the Appellate Tribunal and any matter arising out of or connected with such appeal and which is so pending shall stand transferred on such commencement to the Central Government and the Central Government shall deal with such appeal or matter under section 129-DD as if such appeal or matter were an application or a matter arising out of an application made to it under that section.]

(2) The Collector of Customs may, if he is of the opinion that an order passed by the Appellate Collector of Customs under section 128, as it stood immediately before the appointed day, or the Collector (Appeals) under section 128-A, is not legal or proper, direct the proper officer to appeal on his behalf to the Appellate Tribunal against such order.

(3) Every appeal under this section shall be filed within three months from the date on which the order sought to be appealed against is communicated to the Collector of Customs, or as the case may be, the other party preferring the appeal.

(4) On receipt of notice that an appeal has been preferred under this section, the party against whom the appeal has been preferred may, notwithstanding that he may not have appealed against such order or any part thereof, file, within forty-five days of the receipt of the notice, a memorandum of cross-objections verified in such manner as may be specified by rules made in this behalf against any part of the order appealed against and such memorandum shall be disposed of by the Appellate Tribunal as if it were an appeal presented within the time specified in sub-section (3).

(5) The Appellate Tribunal may admit an appeal or permit the filing of a memorandum of cross-objections after the expiry of the relevant period referred to in sub-section (3) or sub-section (4), if it is satisfied that there was sufficient cause for not presenting it within that period.

(6) An appeal to the Appellate Tribunal shall be in such form and shall be verified in such manner as may be specified by rules made in this behalf and shall, except in the case of an appeal referred to in sub-section (2) of a memorandum of cross-objection, referred to in sub-section (4), be accompanied by a fee of two hundred rupees.

129-B. Orders of Appellate Tribunal. (1) The Appellate Tribunal may after giving the parties to the appeal, an opportunity of being heard, pass such orders thereon as it thinks fit, confirming, modifying or annulling the decision or order appealed against or may refer the case back to the authority which passed such decision or order with such directions as the Appellate Tribunal may think fit, for a fresh adjudication or decision, as the case may be, after taking additional evidence, if necessary.

(2) The Appellate Tribunal may, at any time within four years from the date of the order, with a view to rectifying any mistake apparent from

the record, amend any order passed by it under sub-section (1) shall make such amendments if the mistake is brought to its notice by the Collector of Customs or the other party to the appeal:

Provided that an amendment which has the effect of enhancing the assessment or reducing a refund or otherwise increasing the liability of the other party shall not be made under this sub-section unless the Appellate Tribunal has given notice to him of its intention to do so and has allowed him a reasonable opportunity of being heard.

(3) The Appellate Tribunal shall send a copy of every order passed under this section to the Collector of Customs and the other party to the appeal.

(4) Save as otherwise provided in section 130 or section 130-E, orders passed by the Appellate Tribunal on appeal shall be final.

129-C. Procedure of Appellate Tribunal. (1) The powers and functions of the Appellate Tribunal may be exercised and discharged by Benches constituted by the President from amongst the members thereof.

(2) Subject to the provisions contained in sub-sections (3) and (4), a Bench shall consist of one judicial member and one technical member.

(3) Every appeal against a decision or order relating, among other things, to the determination of any question having a relation to the rate of duty of customs or to the value of goods for purposes of assessment, shall be heard by a Special Bench constituted by the President for hearing such appeals and such Bench shall consist of not less than three members and shall include at least one judicial member and one technical member.

(4) The President or any other member of the Appellate Tribunal authorized in this behalf by the President may, sitting singly, dispose of any case which has been allotted to the Bench of which he is a member where:

- (a) the value of the goods confiscated without option having been given to the owner of the goods to pay fine in of confiscation under section 125; or
- (b) in any disputed case, other than a case where the determination of any question having a relation to the rate of duty of customs or to the value of goods for purposes of assessment is in issue or is one of the points in issue, the difference in duty involved or the duty involved; or
- (c) the amount of fine or penalty involved, does not exceed ten thousand rupees.

(5) If the members of a Bench differ in opinion on any point, shall be decided according to the opinion of the majority, if there is a majority

but if the members are equally divided, they shall state the point or points on which they differ and the case shall be referred by the President for hearing on such point or points by one or more of the other members of the Appellate Tribunal, and such point or points shall be decided according to the opinion of the majority of the members of the Appellate Tribunal who have heard the case including those who first heard it.

(6) Subject to the provisions of this Act, the Appellate Tribunal shall have power to regulate its one procedure and the procedure of the Benches thereof in all matters arising out of the exercise of its powers or of the discharge of its functions, including the places at which the Benches shall hold their sittings.

(7) The Appellate Tribunal shall, for the purposes of discharging its functions, have the same powers as are vested in a court under the Code of Civil Procedure, 1908 (5 of 1908), when trying a suit in respect of the following matters, namely:

- (a) discovery and inspection;
- (b) enforcing the attendance of any person and examining him on oath;
- (c) compelling the production of books of account and other documents; and
- (d) issuing commissions.

(8) Any proceeding before the Appellate Tribunal shall be deemed to be a judicial proceeding within the meaning of sections 193 and 228 and for the purpose of section 196 of the Indian Penal Code (45 of 1860), and the Appellate Tribunal shall be deemed to be a civil court for all the purpose of section 195 and Chapter XXVI of the Code of Criminal Procedure, 1973 (2 of 1974).

129-D. Powers of a Board or Collector of Customs to pass certain orders. (1) The Board may, of its own motion, call for and examine the record of any proceeding in which a Collector of Customs as an adjudicating authority has passed any decision or order under this Act for the purpose of satisfying as to the legality or propriety of any such decision or order and may, by order, direct such Collector to apply to the Appellate Tribunal for the determination of such points arising out of the decision or order as may be specified by the Board in its order.

(2) The Collector of Customs may, of his own motion, call for and examine the record of any proceeding in which an adjudicating authority subordinate to him has passed any decision or order under this Act for the purpose of satisfying himself as to the legality or propriety of any such decision or order and may, by order, direct such authority to apply to the Collector (Appeals) for the determination of such points arising out of the decision or order as may be specified by the Collector of Customs in his order.

(3) No order shall be made under sub-section (1) or sub-section (2) after the expiry of one year from the date of the decision or order of the adjudicating authority.

(4) Where in pursuance of an order under sub-section (1) or sub-section (2), the adjudicating authority or any officer of customs authorized in this behalf by the Collector of Customs, makes an application to the Appellate Tribunal or the Collector (Appeal) within a period of three months from the date of communication of the order under sub-section (1) or sub-section (2) to the adjudicating authority, such application shall be heard by the Appellate Tribunal or the Collector (Appeals), as the case may be, as if such application were an appeal made against the decision or order of the adjudicating authority and the provisions of this Act regarding appeals, including the provisions of sub-section (4) of section 129-A shall, so far as may be, apply to such application.

129-E. Deposit pending appeal, of duty demanded or penalty levied. Where in any appeal under this Chapter, the decision or order appealed against relates to any duty demanded in respect of goods which are not under the control of the customs authorities or any penalty levied under this Act, the person desirous of appealing against such decision or order shall, pending the appeal, deposit with the proper officer the duty demanded or the penalty levied:

Provided that where in any particular case, the Collector (Appeals) or the Appellate Tribunal is of opinion that the deposit, of duty demanded or penalty levied would cause undue hardship to such person, the Collector (Appeals) or, as the case may be, the Appellate Tribunal may dispense with such deposit subject to such conditions as he or it may deem fit to impose so as to safeguard the interests of revenue.

130. Statement of case to High Court. (1) The Collector of Customs or the other party may, within sixty days of the date upon which he is served with notice of an order under section 129-B (not being an order relating, among other things, to the determination of any question having a relation to the rate of duty of customs or to the value of goods for purposes of assessment), by application in such form as may be specified by rule made in this behalf, accompanied, where the application is made by the other party, by a fee of two hundred rupees, require the Appellate Tribunal to refer to the High Court any question of law arising out of such order and, subject to the other provisions contained in this section, the Appellate Tribunal shall, within 120 days of the receipt of such application, draw up a statement of the case and refer it to the High Court:

Provided that the Appellate Tribunal may, if it is satisfied that the applicant was prevented by sufficient cause from presenting the application within the period herein before specified, allow it to be presented within a further period not exceeding thirty days.

(2) On receipt of notice that an application has been made under sub-section (1), the person against whom such application has been made, may notwithstanding that he may not have filed such an application, file, within forty-five days of the receipt of the notice, a memorandum of cross-objections verified in such manner as may be specified by rules made in this behalf against any part of the order in relation to which an application for reference has been made and such memorandum shall be disposed of by the Appellate Tribunal as if it were an application presented within the time specified in sub-section (1).

(3) If, on an application made under sub-section (1), the Appellate Tribunal refuses to state the case on the ground that no question of law arises, the Collector of customs or, as the case may be, the other party, may within six months from the date on which he is served with notice of such refusal, apply to the High Court and the High Court may if it is not satisfied with the correctness of the decision of the Appellate Tribunal, require the Appellate Tribunal to state the case and to refer it, and on receipt of any such requisition, the Appellate Tribunal shall state the case and refer it accordingly.

(4) Where in the exercise of its powers under sub-section (3), the Appellate Tribunal refuses to state a case which it has been required by an applicant to state, the applicant may, within thirty days from the date on which he receives notice of such refusal, withdraw his application and, if he does so, the fee, if any, paid by him shall be free-funded.

130-A. Statement of case to Supreme Court in certain cases - if, on an applicant made under section 130, the Appellate Tribunal is of opinion that, on account of conflict in the decision of High Courts in respect of any particular question of law, it is expedient that a reference should be made direct to the Supreme Court, the Appellate Tribunal may draw up a statement of the case and refer it through the President direct to the Supreme Court.

130-B. Power of High Court or Supreme Court to require statement to be amended. If the High Court or the Supreme Court is not satisfied that the statements in a case referred to it are sufficient to enable it to determine the questions raised thereby, the Court may refer the case back to the Appellate Tribunal for the purpose of making such additions thereto or alteration therein as it may direct in that behalf.

130-C. Case before High Court to be heard by not less than two judges. (1) Where any case has been referred to the High Court under section 130, it shall be heard by a Bench of not less than two judges of the High Court and shall be decided in accordance with the opinion of such judges or of the majority, if any, of such judges.

(2) Where there is no such majority, the judges shall state the point of law upon which they differ and the case shall then be heard upon that point only by one more of the other judges of the High Court, and such point shall be decided according to the opinion of the majority of the judges who have heard the case including those who first heard it.

130-D. Decision of High Court or Supreme Court on the case stated.

(1) The High Court or the Supreme Court hearing any such case shall decide the questions of law raised therein, and shall deliver its judgement thereon containing the ground on which such decision is founded and a copy of the judgement shall be sent under the seal of the Court and the signature of the Registrar to the Appellate Tribunal which shall pass such orders as are necessary to dispose of the case in conformity with such judgement.

(2) The costs of any reference to the High Court or the Supreme Court which shall not include the fee for making the reference shall be in the discretion of the Court.

130-E. Appeal to the Supreme Court. An appeal shall lie to the Supreme Court from :

- (a) any judgement of the High Court delivered on a reference made under section 130 in any case which, on its own motion or on an oral application made by or on behalf of the party aggrieved, immediately after the passing of the judgement, the High Court certifies to be a fit one for appeal to the Supreme Court; or
- (b) any order passed by the Appellate Tribunal relating, among other things, to the determination of any question having a relation to the rate of duty of customs or to the value of goods for purposes of assessment.

130-F. Hearing before Supreme Court. (1) The provisions of the Code of Civil Procedure, 1908 (5 of 1908), relating to appeals to the Supreme Court shall, so far as may be, apply in the case of appeals under section 130-E as they apply in the case of appeals from decrees of a High Court:

Provided that nothing in this sub-section shall be deemed to affect the provision of sub-section (1) of section 130-D or section 131.

(2) The costs of the appeal shall be in the discretion of the Supreme Court.

(3) Where the judgement of the High Court is varied or reversed in the appeal, effect shall be given to the order of the Supreme Court in the matter provided in section 130-D in the case of a judgement of the High Court.

131. Sums due to be paid notwithstanding reference, etc. Notwithstanding that a reference has been made to the High Court or the Supreme Court or an appeal has been preferred to the Supreme Court, sums due to the Government as a result of an order passed under sub-section (1) of section 129-B shall be payable in accordance with the order so passed.

131-A. Exclusion of time taken for copy. In computing the period of limitation specified for an appeal or application under this chapter, the day on which the order complained of was served, and if the party

preferring the appeal or making the application was not furnished with a copy of the order when the notice of the order was served upon him, the time requisite for obtaining a copy of such order shall be excluded.

131-B. Transfer of certain pending proceedings and transitional provisions. (1) Every appeal which is pending immediately before the appointed day before the Board under section 128, as it stood immediately before that day and any matter arising out of or connected with such appeal and which is so pending shall stand transferred on that day to the Appellate Tribunal and the Appellate Tribunal may proceed with such appeal or matter from the stage at which it was on that day:

Provided that the appellant may demand that before proceeding further with that appeal or matter, he may be re-heard.

(2) Every proceeding which is pending immediately before the appointed day before the Central Government under section 131, as it stood immediately before that day, and any matter arising out of or connected with such proceeding and which is so pending shall stand transferred on that day to the Appellate Tribunal and the Appellate Tribunal may proceed with such proceeding or matter from the stage at which it was on that day as if such proceeding or matter were on appeal filed before it.

Provided that if any such proceeding or matter relates to an order where:

- (a) the value of the goods confiscated without option having been given to the owner of the goods to pay a fine in lieu of confiscation under section 125; or
- (b) in any disputed case, other than a case where the determination of any question having a relation to the rate of duty of customs or to the value of goods for purposes of assessment is in issue or is one of the points in issue, the difference in duty involved or the duty involved; or
- (c) the amount of fine or penalty determined by such order, does not exceed Re 10,000, such proceeding or matter shall continue to be dealt with by the Central Government as if the said section 131 had not been substituted:

Provided further that the applicant or the other party may make a demand to the Appellate Tribunal that before proceeding further with that proceeding or matter, he may be re-heard.

(3) Every proceeding which is pending immediately before the appointed day before the Board or the Collector of Customs under section 130, as it stood immediately before that day, and any matter arising out of or connected with such proceeding and which is so pending shall continue to be dealt with by the Board or the Collector of Customs, as the case may be, as if the said section had not been substituted.

(4) Any person who immediately before the appointed day was authorized to appear in any appeal or proceeding transferred under

sub-section (1) or sub-section (2) shall, notwithstanding anything contained in section 146-A, have the right to appear before the Appellate Tribunal in relation to such appeal or proceeding.

131-C. Definitions. In this Chapter:

- (a) "appointed day" means the date of coming into force of the amendments to this Act specified in Part I of the Fifth Schedule to the Finance (No. 2) Act, 1980;
- (b) "High Court" means:
 - (i) in relation to any State, the High Court for that State;
 - (ii) in relation to a Union territory to which the jurisdiction of the High Court of a State has been extended by law, that High Court;
 - (iii) in relation to the Union territories of Dadra and Nagar Haveli and Goa, Daman and Diu, High court at Bombay;
 - (iv) in relation to any other Union territory, the high court of civil appeal for that territory other than the Supreme Court of India;
 - (v) "President" means the President of the Appellate Tribunal.)

129. DD. Revision by Central Government. The Central Government may, on the application of any person aggrieved by any order passed under section 128-A, where the order is of the nature referred to in the first proviso to sub-section (1) of section 129-A, annul or modify such order.

Explanation. For the purposes of the sub-section, "order passed under section 128-A" includes an order passed under that section before the commencement of Section 40 of the Finance Act, 1984, against which an appeal has not been preferred before such commencement and could have been, if the said section had not come into force, preferred after such commencement, to the Appellate Tribunal.

(2) An application under sub-section (1) shall be made within three months from the date of the communication to the applicant of the order against which the application is being made:

Provided that the Central Government may, if it is satisfied that the applicant was prevented by sufficient cause from presenting the application within the aforesaid period of three months, allow it to be presented within a further period of three months.

(3) An application under sub-section (1) shall be in such form and shall be verified in such manner as may be specified by rules made in this behalf and shall be accompanied by a fee of Re 200.

(4) The Central Government may, of its own motion, annul or modify any order referred to in sub-section (1).

(5) No order enhancing any penalty of fine in lieu of confiscation or confiscating goods of greater value shall be passed under this section:

- (a) in any case in which an order passed under section 128-A has enhanced any penalty or fine in lieu of confiscation or has confiscated goods of greater value; and
- (b) in any other case, unless the person affected by the proposed order has been given notice to show cause against it within one year from the date of the order sought to be annulled or modified.

(6) Where the Central Government is of opinion that any duty of customs has not been levied or has been short-levied, no order levying or enhancing the duty shall be made under this section unless the person affected by the proposed order is given notice to show cause against it within the time limit specified in section 28.]

Extract from Customs Act, 1962

136. Offences by Officers of customs. (1) If any officer of customs enters into or acquiesces in any agreement to do, abstains from doing, permits, conceals or connives at any act or thing whereby any duty of customs leviable on any goods, or any prohibition for the time being in force under this Act or any other law for the time being in force with respect to any goods is or may be evaded, he shall be punishable with imprisonment for a term which may extend to three years or with a fine, or with both.

(2) If any officer of customs:

- (a) requires any person to be searched for goods liable to confiscation or any document relating thereto, without having reason to believe that he has such goods or document secreted about his person; or
- (b) arrests any person without having reason to believe that he has been guilty of an offence punishable under section 135; or
- (c) searches or authorizes any other officer of customs to search any place without having reason to believe that any goods, documents or things of the nature referred to in section 105 are secreted in that place,

he shall be punishable with imprisonment for a term which may extend to six months, or with a fine which may extend to Re 1,000, or with both.

(3) If any officer of customs, except in the discharge in good faith of his duty as such officer or in compliance with any requisition made under any law for the time being in force, discloses any particulars learnt by him in his official capacity in respect of any goods, he shall be punishable with imprisonment for a term which may extend to six months, or with a fine which may extend to Re 1,000, or with both.