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SUGGESTED SOLUTION

CA FINAL NOV'19

SUBJECT- INDIRECT TAX

Test Code – FNJ 7242 M

BRANCH - () (Date :)

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ANSWER-1**ANSWER-A****Computation of export duty**

Particulars	Amount (US \$)
Assessable value [Note 1]	1,00,000
	Amount (Rs.)
Assessable value = US \$ 1,00,000 x Rs. 65 [Note 2]	65,00,000
Export duty @ 10% [Note 3]	6,50,000

Notes:-

1. The transaction value, i.e. FOB price of export goods, is considered as assessable value in terms of section 14(1) of the Customs Act, 1962.
2. As per third proviso to section 14(1) of the Customs Act, 1962, assessable value has to be calculated with reference to the rate of exchange notified by CBEC on date of presentation of shipping bill of export.
3. The rate of duty prevalent on the date of let export order is considered for computing export duty in terms of section 16(1)(a) of the Customs Act, 1962.

(5 MARKS)**ANSWER-B****Computation of Assessable Value (Amount in Rs.) :**

FOB value being the invoice price		20,00,000
Add : Raw material supplied b assessee under Rule 10 (1)(b)		5,00,000
FOB value		25,00,000
Add : Transportation under Rule 10(2)	[WN]	
Sea Freight	45,000	
Ship demurrage charges	10,000	
Lighterage	25,000	
Barge charges	50,000	1,30,000
Add : Actual cost of insurance		20,000
CIF Value being Assessable value		26,50,000

Working Notes : The cost of transport of the imported goods includes the ship demurrage charges on chartered vessels, lighter age or barge charges.

(5 MARKS)**ANSWER-2****ANSWER-A**

Rule 3 of the General Rules for the Interpretation of the Import Tariff is used when the goods consists of more than one material or substance which are classifiable under two or more headings. The rule provides as under:

- (i) **Rule 3(a) - Specific over general:** The heading that provides a more specific description should be preferred over the heading that provides a general description. However, when two or more headings each refer to part only of the

materials or substances contained in mixed or composite goods or to part only of the items in a set up for retail sale, those headings are to be regarded as equally specific in relation to those goods, even if one of them gives a more complete or precise description of the goods.

- (ii) **Rule 3(b) – Essential character principle:** Sub-rule (b) would apply only if the goods cannot be classified under sub-rule (a). This sub-rule provides that composite goods consisting of different materials or made up of different components, and goods put up in sets for retail sale, should be classified on the basis of that material or substance that gives it its essential character.
- (iii) **Rule 3(c) – Latter the better:** If both sub-rules (a) and (b) fail to classify the goods in question, then resort may be had to sub-rule (c), which provides that composite goods shall be classified on the basis of the heading that occurs last in numerical order among those which equally merit consideration.

(5 MARKS)

ANSWER-B

- (i) No. The exemptions extended by Foreign Trade Policy can be taken only when the exemption notification is issued under the relevant tax laws. The provisions of FTP cannot override tax laws.
- (ii) Some of the categories of exports/sectors which are ineligible for duty credit scrip entitlement under MEIS are listed below:
- Supplies made from DTA units to SEZ units
 - Exports through trans-shipment, i.e. exports that are originating in third country but trans-shipped through India
 - Deemed Exports
 - SEZ/EOU/EHTP/BPT/FTWZ products exported through DTA units
 - Export products which are subject to Minimum export price or export duty.
 - Exports made by units in FTWZ

(5 MARKS)

ANSWER-3

ANSWER-A

Computation of customs duty payable thereon (amount in Rs.) :

Assessable value of sodium nitrite imported	30,00,000
Add : Basic custom duty @ 10% (Rs. 30,00,000 × 10%)	3,00,000
Add : Safeguard Duty	9,00,000
Add : Social Welfare Surcharge @ 10% of BCD [No SWS is leviable on safeguard duty]	30,000
Total for IGST	42,30,000
IGST u/s 3(7) of Customs Tariff Act (Rs. 42,30,000 × 18%)	7,61,400
Total Customs Duty Payable (Rs. 3,00,000 + Rs. 9,00,000 + Rs. 30,000 + Rs. 7,61,400)	19,91,400

Working Notes : Safeguard duty is imposable in the given case since share of imports of sodium nitrite from the developing country is more than 3% of the total imports of sodium nitrite into India.

(3 MARKS)

ANSWER-B

Rule 2(c) of the Customs and Central Excise Duties Drawback Rules, 2017 inter alia provides that "export" means "taking out of India to a place outside India". Section 2(27) of the Customs Act, 1962 provides that India includes the territorial waters of India.

In case of *CC v. Sun Industries* 1988 (35) ELT (241), the Supreme Court held that the expression "taking out of India to a place outside India" would also mean a place in high seas, if that place is beyond territorial waters of India. Therefore, the goods taken out to the high seas outside territorial waters of India would come within the ambit of expression "taking out of India to a place outside India". The emphasis in the aforementioned judgment was on the movement of the goods outside the territorial waters of India. It is then that an export may be said to have been taken place.

In the instant case, the vessel sunk within territorial waters of India and therefore, there is no export. Accordingly, no duty drawback shall be available in this case. Similar decision was given by the Supreme Court in the case of *UOI v. Rajindra Dyeing & Printing Mills Ltd.* 2005 (180) ELT 433 (SC).

In other words, if the goods cross the territorial waters, drawback will be available even if they do not reach the destination or are destroyed provided the payment for the goods is received in convertible foreign exchange. Para 2.85.2 of HBP Vol. 1 2015-20 states that payment through insurance cover from General Insurance and approved Insurance Companies would be treated as payment realised for exports under various export promotion schemes.

(4 MARKS)

ANSWER-C

Transit	Trans shipment
(i) Section 53 of the Customs Act, 1962 provides for transit of goods.	(i) Section 54 of the Customs Act, 1962 provides for trans shipment of goods.
(ii) In case of transit of goods, goods are allowed to remain on the same conveyance.	(ii) In case of trans shipment of goods, the conveyance changes i.e., the goods are unloaded from one conveyance and loaded in another conveyance.
(iii) In case of transit of goods, there is continuity of records.	(iii) In trans shipment of goods, continuity in the records is not maintained as the goods are transferred to another conveyance.

(3 MARKS)

ANSWER-4

ANSWER-A

The following points are to be taken note of –

- (i) The question clearly states that only basic customs duty, SWS thereon and anti – dumping duty are leviable on the goods in question and no other duty viz. Integrated tax u/s 3(7) or GST Compensation cess u/s 3(9) of CTA, 1975 is leviable.
- (ii) No SWS is imposable on anti – dumping duty.

Keeping into mind the aforesaid, the relevant computations are as under (amount in Rs.): -

CIF Value of the consignment being Assessable Value under Customs Laws (in Indian Rs.) [US \$ 1,20,000 × Rs. 65]		78,00,000
Add : Basic Customs Duty @ 10%		7,80,000
Add : SWS @ 10% on Basic Customs Duty		78,000
Landed Value /Cost of the goods	[A]	86,58,000
Cost of commodity for the purposes of anti – dumping notification [2,500 Kg. × US \$ 80 per Kg. × Rs. 65 per dollar]	[B]	1,30,00,000
Anti dumping duty [B – A]		43,42,000

(4 MARKS)

ANSWER-B

DGFT issues authorization (earlier called as licence) for import/ report. 'Authorization' means a permission in terms of the FT(D & R) Act to import or export.

- (1) **Terms and Conditions of an Authorisation** : Every Authorization shall, inter alia, include following terms and conditions (as application), in addition to such other conditions as may be specified :
 - (a) Description, quantity and value of goods;
 - (b) Actual User condition;
 - (c) Export Obligation;
 - (d) Minimum Value addition to be achieved;
 - (e) Minimum export/ import price;
 - (f) Bank guarantee/ Legal undertaking/ Bond with Customs Authority/ RA
 - (g) Validity period of import / export as specified in Handbook of Procedures.
- (2) **Application Fee** : Application for IEC / Authorisation / License / Scrips must be accompanied by application fees as indicated in the Appendix 2K of Appendices and Aayat Niryat Forms.
- (3) **Clearance of Goods from Customs against Authorization** : Goods already imported / shipped/ arrived, in advance but not cleared from Customs may also be cleared against an Authorisation issued subsequently. However, such goods already imported / shipped/ arrived, in advance are first warehoused against Bill of Entry for Warehousing and then cleared for home consumption against an Authorisation issued subsequently. This facility will however be not available to "restricted" items or items traded through STEs.
- (4) **Authorisation – Not a Right** : No person can claim an Authorisation as a right and **DGFT or RA shall have power to refuse to grant or renew** the same in accordance with provisions of FT (D & R) Act, Rules made there under and FTP.
- (5) **Penalty** : If an authorization holder violates any condition of such authorization or fails to fulfill export obligation, he shall be liable for action in accordance with FT (D & R) Act, the Rules and Orders made there under, FTP and any other law for time being in force.

(6 MARKS)

ANSWER : 5

(10*1 = 10 MARKS)

1. A
2. B
3. D
4. B
5. A
6. A
7. D
8. A
9. C
- 10.C