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**FINAL MAY 2019 EXAM**

**SUBJECT- CUSTOMS**

**Test Code - FNJ 7044**

**BRANCH - () (Date :)**

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**Answer 1:**

**(A)**

**Computation of assessable value of the imported machine**

| Particulars                                | US \$               |
|--|---------------------|
| Cost of the machine at the factory         | 17,000.00           |
| Transport charges up to port               | 850.00              |
| Handling charges at the port               | <u>85.00</u>        |
| FOB  | 17,935.00           |
| Freight charges up to India                | 1,700.00            |
| Insurance charges @ 1.125% of FOB [Note 1] | <u>201.77</u>       |
| CIF  | 19,836.77           |
| CIF in Indian rupees @ Rs. 60/ per \$      | Rs. 11,90,206.13    |
| <b>Assessable Value (rounded off)</b>      | <b>Rs.11,90,206</b> |

**Notes:**

- (1) Insurance charges have been included @ 1.125% of FOB value of the machine [Third proviso to rule 10(2) of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007].
- (2) Buying commission is not included in the assessable value [Rule 10(1)(a)(i) of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007].

**(B)**

According to section 127B of the Customs Act 1962, the following conditions are to be fulfilled for filing an application for settlement of cases:

- (i) the applicant has filed a bill of entry, or a shipping bill, or a bill of export, or made a baggage declaration, or a label or declaration accompanying the goods imported or exported through post or courier, as the case may be, and in relation to such document or documents, a show cause notice has been issued to him by the proper officer.
- (ii) the additional duty accepted is more than Rs. 3 lakhs.
- (iii) the applicant has paid the additional amount of customs duty accepted by him alongwith interest due under section 28AA.
- (iv) the case is not pending with CESTAT or any Court.
- (v) the application does not relate to goods to which section 123 applies or to goods in relation to which any offence under the Narcotic Drugs and Psychotropic Substances Act, 1985 has been committed.
- (vi) the application is not for the interpretation of the classification of the goods under the Customs Tariff Act, 1975

Further, application before Settlement Commission can be made only when adjudication is pending.

**Answer 2:**

**(A)**

- (i) 'Clear first-Pay later' i.e., deferred duty payment is a mechanism for delinking duty payment and customs clearance. The aim is to have a seamless wharf to warehouse transit in order to facilitate just-in-time manufacturing. This scheme is in force w.e.f. 16<sup>th</sup> November, 2016.
- (ii) Central Government has permitted importers certified under Authorized Economic

Operator programme as AEO (Tier-Two) and AEO (Tier-Three) to make deferred payment of import duty (eligible importers).

As a part of the ease of doing business focus of the Government of India, the CBEC has rolled out the AEO (Authorized Economic Operator) programme.

It is a trade facilitation move wherein benefits are extended to the entities who have demonstrated strong internal control systems and willingness to comply with the laws administered by the CBEC.

(iii) The due dates for payment of deferred duty are -

| S. No. | Goods corresponding to bill of entry returned for payment from       | Due date of payment of duty, inclusive of the period (excluding holidays) as mentioned in section 47(2) |
|--------|--|---|
| 1.     | 1 <sup>st</sup> day to 15 <sup>th</sup> day of any month             | 16 <sup>th</sup> day of that month  |
| 2.     | 16 <sup>th</sup> day till the last day of any month other than March | 1 <sup>st</sup> day of the following month  |
| 3.     | 16 <sup>th</sup> day till the 31 <sup>st</sup> day of March          | 31 <sup>st</sup> March  |

(iv) If there is default in payment of duty by due date more than once in three consecutive months, the facility of deferred payment will not be allowed unless the duty with interest has been paid in full. The benefit of deferred payment of duty will not be available in respect of the goods which have not been assessed or not declared by the importer in the bill of entry.

(B)

#### Computation of customs duty payable by Siya

| Particulars  | Amount (US \$)      |
|--|---------------------|
| Assessable value   | 1,00,000            |
|  | <b>Amount (Rs.)</b> |
| Value in Indian currency (US \$ 1,00,000 x Rs. 65.20) [Note 1] | 65,20,000           |
| Customs duty @ 10% [Note 2]                                    | 6,52,000            |
| Add: Education cess @ 2%                                       | 13,040              |
| Add: Secondary and higher education cess @ 1%                  | <u>6,520</u>        |
| Total customs duty payable                                     | <u>6,71,560</u>     |

#### Notes:

- 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 prevalent on the date on which the into bond bill of entry is presented for warehousing under section 46 of the Customs Act, 1962.
- Goods which are not removed within the permissible period are deemed to be improperly removed in terms of section 72 of the Customs Act, 1962 on the day they should have been removed [*Kesoram Rayon v. CC 1996 (86) ELT 464 (SC)*]. The applicable rate of duty in such a case is the rate of duty prevalent on the last date on which the goods should have been removed.

As per section 61(2) of the Customs Act, 1962, if goods (not meant for being used in an 100% EOU, STP unit, EHTP unit) remain in a warehouse beyond a period of 90 days from the date on which the order under section 60(1) of the Customs Act, 1962 is made, interest is payable at such rate as may be fixed by the Central Government under section 47 of the Customs Act, 1962 [i.e. 15% p.a.], on the amount of duty payable at the time of clearance of the goods, for the period from the expiry of the said 90 days till the date of payment of duty on the warehoused goods.

Therefore, interest payable will be computed as under:

|  |                   |
|--|-------------------|
| Period of ninety days commencing from the date of order made under 60(1) of the Customs Act, 1962 expires on     | 19.08.20XX        |
| No. of days for which interest shall be payable [12 days of August + 30 days of September + 14 days of October]  | 56 days           |
| <b>Interest payable = Rs. 6,71,560 x <math>\frac{15}{100}</math> x <math>\frac{56}{365}</math> (rounded off)</b> | <b>Rs. 15,455</b> |

**Answer 3:**

**(A)**

- (1) As per the Baggage Rules, 2016, an Indian resident arriving from a country other than Nepal, Bhutan or Myanmar is allowed duty free clearance of-
  - (i) Used personal effects and travel souvenirs without any value limit.
  - (ii) Articles [other than certain specified articles] upto a value of Rs. 50,000 carried as accompanied baggage [General duty free baggage allowance].

Further, such general duty free baggage allowance of a passenger cannot be pooled with the general duty free baggage allowance of any other passenger.

- (2) One laptop computer when imported into India by a passenger of the age of 18 years or above (other than member of crew) is exempt from whole of the customs duty [Notification No. 11/2004 Cus dated 08.01.2004].
- (3) Accordingly, there will be no customs duty on used personal effects (worth Rs. 1,20,000) of Mrs. and Mr. Subramanian and laptop computer brought by them will be exempt from duty.

Duty payable on personal computer after exhausting the duty free baggage allowance will be

$$\text{Rs. } 54,000 - \text{Rs. } 50,000 = \text{Rs. } 4,000.$$

Effective rate of duty for baggage = 36.05% [including education cess & secondary & higher education cess]

Therefore, total customs duty payable = Rs. 1,442.

**(B)**

**(1) Computation of interest payable to Sudhakar on duty drawback claimed**

| Particulars                                     |               |
|---|---------------|
| Duty drawback claimed                           | Rs.<br>61,500 |
| No. of days of delay [24.08.20XX to 21.10.20XX] | 59<br>days    |

|   |         |
|---|---------|
| Rate of interest  | 6%      |
| Quantum of interest (rounded off) [Rs. 61,500 x 59/365 x 6/100] | Rs. 596 |

**Note:** Since the claim of duty drawback is not paid to claimant within 1 month from the date of filing such claim, interest @ 6% per annum is payable from the date after the expiry of the said 1 month period till the date of payment of such drawback [Section 75A(1) of the Customs Act, 1962].

**(2) Computation of interest chargeable from Lalit on excess duty drawback paid**

| Particulars   |            |
|---|------------|
| Duty drawback erroneously refunded                                | Rs. 27,000 |
| No. of days of delay [17.06.20XX to 16.10.20XX]                   | 122 days   |
| Rate of interest  | 15%        |
| Quantum of interest (rounded off) [Rs. 27,000 x 122/365 x 15/100] | Rs. 1,354  |

**Note:** Interest is payable by the claimant on erroneous refund of duty drawback @ 15% per annum for the period beginning from the date of payment of such drawback to the claimant, till the date of recovery of such drawback [Section 75A(2) of the Customs Act, 1962].

**Answer 4:**

**(A)**

Difference between transit and transshipment of goods:

| Transit   | Transshipment   |
|---|---|
| (i) Section 53 of the Customs Act, 1962 provides for transit of goods.                | (i) Section 54 of the Customs Act, 1962 provides for transshipment of goods.  |
| (ii) In case of transit of goods, goods are allowed to remain on the same conveyance. | (ii) In case of transshipment 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 transshipment of goods, continuity in the records is not maintained as the goods are transferred to another conveyance.                  |

**(B)**

- (i) When the goods are damaged inside the warehouse abatement in customs duty, on resultant loss in value, has been provided through section 22 of the Customs Act, 1962. Section 22 contemplates that for claiming abatement of duty, the damage (not

deterioration) should occur at any time before clearance of the imported goods for home consumption from the warehouse. However, the damage should not be attributable to the importer. It should be proved to the satisfaction of Assistant Commissioner or Deputy Commissioner of Customs that the imported goods have actually suffered damages. The claim for abatement is not tenable unless the importer factually proves the damage. The following equation provides the way to calculate the abatement of duty.

$$\frac{\text{Duty after damage}}{\text{Duty before damage}} = \frac{\text{Value after damage}}{\text{Value before damage}}$$

- (ii) When the goods are destroyed in the warehouse before clearance for home consumption, customs duty will be remitted as per the provisions of section 23 of the Customs Act, 1962. Section 23(1) applies when the goods have been lost (otherwise than as a result of pilferage) or destroyed in entirety i.e. whole or part of goods is lost once for all. The goods cease to exist and cannot be retrieved. The loss is generally on account of natural causes such as fire, flood etc., and no human element is present as in section 13 of the Customs Act, 1962. The loss or destruction may occur at any time before clearance for home consumption. The loss/destruction has to be proved to the satisfaction of Assistant Commissioner or Deputy Commissioner.
- (iii) As all the conditions of section 23 of the Customs Act, 1962 are fulfilled, duty will be remitted in this case also.

**Answer 5:**  
**(A)**

#### Computation of assessable value of imported goods

| Particulars  | Amount<br>(US \$)   |
|--|---------------------|
| Price of the machine at the factory of the exporter                                  | 10,000              |
| <i>Add:</i> Transport charges up to the port in the country of the exporter [Note 1] | 500                 |
| Handling charges at the port in the country of the exporter [Note 1]                 | 50                  |
| Charges for design and engineering work undertaken for the machine in US [Note 2]    | 2,500               |
| Buying commission [Note 3]   | <u>Nil</u>          |
| FOB value  | 13,050.00           |
| <i>Add:</i> Freight charges up to India  | 1,000.00            |
| Insurance charges @ 1.125% of FOB [Note 4]   | 146.81              |
| Transport charges from Mumbai to Cochin port [Note 5]                                | <u>Nil</u>          |
| CIF value  | 14,196.81           |
| <i>Add:</i> Unloading and handling charges paid at the place of importation [Note 6] | <u>Nil</u>          |
| Assessable value   | 14,196.81           |
| Assessable value in Indian rupees @ Rs. 60/ per \$                                   | Rs. 8,51,808.60     |
| <b>Assessable value (rounded off)</b>  | <b>Rs. 8,51,809</b> |

**Notes:**

- (1) The cost of transport, loading, unloading and handling charges associated with the delivery of the imported goods to the place of importation are includible in the assessable value [Rule 10(2)(a) of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 (CVR)].
- (2) Design and engineering work undertaken elsewhere than in India and necessary for the production of the imported goods is includible in the assessable value [Rule 10(1)(b)(iv) of the CVR].
- (3) Buying commission is not included in the assessable value [Rule 10(1)(a)(i) of the CVR].
- (4) If insurance cost is not ascertainable, the same shall be added @ 1.125% of FOB value of the goods [Third proviso to rule 10(2) of the CVR].
- (5) Cost of insurance, transport, loading, unloading, handling charges associated with transshipment of imported goods to another customs station in India is not included in the assessable value [Sixth proviso to rule 10(2) of the CVR].
- (6) By virtue of the amendment carried out in rule 10(2) of the CVR vide *Notification No. 91/2017Cus. (NT) dated 26.09.2017*, only charges incurred for delivery of goods “to” the place of importation are includible in the transaction value.

The loading, unloading and handling charges associated with the delivery of the imported goods at the place of importation are not to be added to the CIF value of the goods. [*Circular No. 39 / 2017 Cus. dated 26.09.2017*].

**(B)**

The facts of the case are similar to the case of *BPL Display Devices Ltd. v. CCE., Ghaziabad (2004) 174 ELT 5 (SC)* wherein the Supreme Court has held that the benefit of the notifications cannot be denied in respect of goods which are intended for use for manufacture of the final product but cannot be so used due to shortage or leakage.

The Apex Court has held that no material distinction can be drawn between loss on account of leakage and loss on account of damage. The benefit of said exemption cannot be denied as inputs were intended for use in the manufacture of final product but could not be so used due to shortage/leakage/damage. It has been clarified by the Supreme Court that words “for use” have to be construed to mean “intended for use”.

Therefore, the importer can claim the benefit of the notification in respect of the entire lot of the inputs imported including those that were damaged in transit.