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B.Com Honours | Semester V | Calicut University

Indirect Tax Laws and Practice

Course Code: COM5EJ314 (7) • Module 4 Notes

MODULE IV: CUSTOMS LAW & PRACTICE

BORDER TAXATION, VALUATION, CLEARANCE PROCEDURES & PASSENGER BAGGAGE

MODULE OVERVIEW

Customs duty is the sovereign fiscal and regulatory barrier safeguarding a nation's borders, controlling the inflow and outflow of merchandise, protecting domestic industries from predatory international dumping, and generating vital central revenues. Enacted under Entry 83 of the Union List, Indian customs administration operates under the twin statutes of the **Customs Act, 1962** (the administrative and machinery statute) and the **Customs Tariff Act, 1975** (the tariff classification and rates statute). This module provides an exhaustive, advanced examination of Indian customs law: the administrative hierarchy and enforcement powers of Customs Authorities under Section 3; the judicial determination of the taxable event for imports and exports; the diverse types of customs duties (Basic Customs Duty, IGST, Protective, Countervailing, Anti-Dumping, and Safeguard duties); statutory valuation principles under Section 14 and the Customs Valuation Rules, 2007; end-to-end import and export clearance procedures (Bill of Entry, Shipping Bill, Out of Charge, and Let Export orders); the international passenger **Baggage Rules, 2016**; statutory exemptions under Section 25; and the legal doctrines governing duty refunds, unjust enrichment, recoveries (Section 28), and penal confiscations.

Authorities & Duties

Administrative hierarchy, search/seizure powers, BCD, IGST, Anti-Dumping, Safeguard, and Countervailing duties.

Valuation & Clearance

Section 14 Transaction Value, Rule 10 additions, CIF computation, Bill of Entry workflows, and ICEGATE digital clearance.

Baggage & Remedies

Baggage Rules 2016, ₹50,000 GFA, Section 25 exemptions, Section 27 refunds, unjust enrichment, and Section 28 recovery notices.

1. Customs Authorities and Their Enforcement Powers (Section 3)

Customs administration in India is centralized under the **Central Board of Indirect Taxes and Customs (CBIC)**, functioning within the Department of Revenue, Ministry of Finance. **Section 3 of the Customs Act, 1962** designates the statutory hierarchy of customs officers:

STATUTORY HIERARCHY OF CUSTOMS OFFICERS UNDER SECTION 3

CUSTOMS HIERARCHY

Executive & Appellate Cadre

• Principal Chief Commissioners & Chief Commissioners of Customs.
• Principal Commissioners & Commissioners of Customs (Appeals / Adjudication).
• Exercise territorial and functional jurisdiction over customs zones, major sea ports, air cargo complexes, and international ICD dry ports.

Assessment & Operational Cadre

• Additional Commissioners, Joint Commissioners, Deputy & Assistant Commissioners.
• Superintendents of Customs, Customs Appraisers (evaluating classification and valuation), and Preventive Officers / Inspectors (executing border anti-smuggling vigilance).

Comprehensive Statutory Powers of Customs Officers

- **Power to Search Persons [Section 100 & 101]:** Authority to search any person who has landed from or is on board any vessel, or who is entering or leaving India, if suspected of secreting contraband or dutiable goods. The passenger has the statutory right to request to be taken before a gazetted officer or Magistrate under Section 102.
- **Power to Stop and Search Conveyances [Section 106]:** Authority to stop, board, and inspect any vessel, aircraft, or vehicle within India or Indian Customs Waters (200 NM), and examine cargo, manifests, and crew compartments. Officers may use fire/weapons to compel a vessel to stop if it refuses to heave-to.
- **Power of Search of Premises [Section 105]:** Authority under search warrant issued by an Assistant/Deputy Commissioner to enter and search any building or premises suspected of harboring secreted contraband goods.
- **Power to Seize Goods and Documents [Section 110]:** Absolute authority to seize any goods, conveyances, or accounting records if there is reasonable belief that they are liable to confiscation under Section 111 or Section 113.
- **Power to Summon Persons to Give Evidence [Section 108]:** Authority to summon any person whose attendance is considered necessary to give evidence or produce documents. Proceedings under Section 108 are deemed to be **judicial proceedings** within the meaning of the Indian Penal Code (perjury triggers criminal prosecution).
- **Power of Arrest [Section 104]:** Authority to arrest any person suspected of committing grave customs offenses (smuggling goods worth over ₹50 Lakhs). Offenses involving evasion exceeding prescribed limits are non-bailable.

2. Types of Customs Duties in India

Imported goods are subject to an integrated bundle of statutory duties designed to balance fiscal revenue mobilization with the protection of domestic producers:

COMPREHENSIVE CATALOG OF CUSTOMS DUTIES UNDER THE CUSTOMS TARIFF ACT, 1975

CUSTOMS DUTIES

Type of Duty	Governing Statutory Provision	Fiscal Purpose & Assessment Standard
Basic Customs Duty (BCD)	Section 12 of Customs Act read with Section 2 of Customs Tariff Act, 1975.	Primary border revenue duty. Specified in the First Schedule; levied as an ad valorem percentage on the **Assessable Value (CIF)**. Standard rates apply universally; preferential rates apply under bilateral Free Trade Agreements (FTAs).
Integrated GST (IGST)	Section 3(7) of Customs Tariff Act, 1975.	Countervails domestic GST. Levied on imported goods to ensure parity with domestically manufactured goods. Assessed on: **[Assessable Value + BCD + Applicable Surcharges]**. Admissible as Input Tax Credit (ITC) to registered importers!
GST Compensation Cess	Section 3(9) of Customs Tariff Act, 1975.	Levied on notified luxury and sin imports (imported luxury SUVs, motor cars, tobacco, coal) over and above BCD and IGST to fund State compensation.
Social Welfare Surcharge (SWS)	Section 110 of Finance Act, 2018.	Levied at a flat **10% on the aggregate Basic Customs Duty** (excluding IGST) to finance education, public healthcare, and social security programs.
Anti-Dumping Duty (ADD)	Section 9A of Customs Tariff Act, 1975.	Imposed when a foreign manufacturer exports goods to India at an "export price" lower than its "normal value" in its domestic home market, causing material injury to Indian industry. **ADD = Margin of Dumping (Normal Value - Export Price)**.
Safeguard Duty	Section 8B of Customs Tariff Act, 1975.	Emergency protective duty imposed when a product is being imported in such increased quantities as to cause or threaten serious injury to domestic producers. Temporary relief measure (up to 4 years).
Countervailing Duty on Subsidized Goods (CVD)	Section 9 of Customs Tariff Act, 1975.	Imposed to neutralize unfair financial subsidies, tax bounties, or export grants given directly or indirectly by foreign governments to their domestic exporters.

3. Classification and Valuation of Imported Goods (Section 14 & Valuation Rules, 2007)

The calculation of customs duty requires determining two parameters: the proper **tariff classification** (HSN code) and the statutory **Assessable Value** under **Section 14 of the Customs Act, 1962**:

THE TRANSACTION VALUE HIERARCHY UNDER THE CUSTOMS VALUATION (DETERMINATION OF VALUE) RULES, 2007

VALUATION PROTOCOL

Valuation Rule	Statutory Method & Description	Operational Criteria & Conditions
Rule 3: Transaction Value (Primary Method)	The price actually paid or payable for the goods when sold for export to India for delivery at the time and place of importation.	**Must be accepted unless:** (i) Buyer and seller are related; (ii) Sale is subject to conditions whose value cannot be determined; or (iii) Price is not the sole consideration.
Rule 4: Identical Goods	Transaction value of identical goods sold for export to India at or about the same time.	Must be physical duplicates (same quality, manufacturer, reputation). Applied if Rule 3 is legitimately rejected.
Rule 5: Similar Goods	Transaction value of similar goods sold for export to India at or about the same time.	Goods having similar characteristics and commercial interchangeability produced in the same exporting country.
Rule 7: Deductive Value	Based on the unit price at which imported goods are sold in India to unrelated buyers.	Deductions made for Indian profit markups, local transport, and domestic customs duties paid.
Rule 8: Computed Value	Based on cost of production in foreign factory.	Cost of materials + foreign fabrication costs + standard profit margin of exporter.
Rule 9: Residual Method	Best judgment assessment.	Determined using reasonable means consistent with WTO and GATT valuation principles.

Mandatory Cost Additions under Rule 10(1) and 10(2) to Arrive at Assessable Value (CIF):

Assessable Value (CIF) = FOB Value (Free on Board) + Adjustments under Rule 10(1) + Sea/Air Freight + Transit Insurance

- **Rule 10(1) Additions:** Commissions and brokerage (excluding buying commissions), cost of containers and packing, value of design/engineering assists supplied free by buyer, and royalties/license fees related to the goods.
- **Cost of Freight [Rule 10(2)(a)]:** Actual sea freight paid; if air transport, freight is **capped at 20% of FOB value.**
- **Cost of Insurance [Rule 10(2)(b)]:** Actual transit insurance paid; if unascertainable, computed at **1.125% of FOB value.**

4. Import and Export Clearance Procedures in Practice

Cross-border cargo moves through structured, computerized statutory clearance workflows managed via **ICEGATE (Indian Customs Electronic Gateway)**:

1
IGM Filing
Carrier submits Import General Manifest prior to vessel arrival; Entry Inwards granted.

➔

2
Bill of Entry
Importer files electronic Bill of Entry on ICEGATE; classified under 8-digit HSN code.

➔

3
Assessment
Duty assessment verified; cargo examined or routed via green channel (Risk Management System).

➔

4
Out of Charge
Duties paid via Electronic Cash Ledger; proper officer passes "Out of Charge" order (Section 47).

TYPOLOGY OF BILLS OF ENTRY UNDER THE CUSTOMS ACT, 1962

CLEARANCE DOCUMENTS

Bill of Entry for Home Consumption (Form I - White)

Filed under **Section 46** when the importer intends to pay all customs duties immediately upon arrival and clear the cargo directly into the domestic commercial market.

Bill of Entry for Warehousing (Form II - Yellow / Into-Bond)

Filed under **Section 46** when the importer wants to defer duty payment and deposit the goods into a customs bonded warehouse under bond (Section 59). Zero duty paid at entry.

Bill of Entry for Ex-Bond (Form III - Green)

Filed under **Section 68** when the importer withdraws previously warehoused goods for domestic consumption. Duty is assessed at the rate in force on the date the Ex-Bond Bill of Entry is presented.

5. Baggage Rules, 2016: International Passenger Clearance

Goods imported by international air and sea travelers as part of their accompanied personal luggage are governed by **Chapter XI of the Customs Act** and the **Baggage Rules, 2016**:

DUAL CHANNEL PASSENGER CLEARANCE SYSTEM AT INTERNATIONAL AIRPORTS

BAGGAGE CLEARANCE

The Green Channel (Walk-Through)

• For passengers who carry **no dutiable goods or prohibited items**, and whose accompanied baggage value falls strictly within the General Free Allowance.
• Involves zero customs inspection; however, passengers are subject to random baggage scanning and spot checks. Walking through with undeclared dutiable goods constitutes criminal smuggling under Section 135.

The Red Channel (Declaration Counter)

• Mandatory for any passenger carrying: (a) Dutiable goods exceeding the free allowance; (b) Commercial trade merchandise; (c) Prohibited/restricted items (drones, satellite phones, firearms); or (d) Foreign currency cash exceeding USD 5,000 (or total forex exceeding USD 10,000).
• Passenger files formal declaration; duty assessed and paid at counter.

KEY PROVISIONS AND DUTY RATES UNDER THE BAGGAGE RULES, 2016

BAGGAGE ENTITLEMENTS

Category of Passenger	Country of Origin / Departure	General Free Allowance (GFA) & Entitlements
Indian Resident or Foreigner Residing in India	Arriving from any country **other than** Nepal, Bhutan, or Myanmar by air or sea.	**₹50,000 per passenger** (excluding infants). Plus: Used personal effects, 1 laptop computer (for passengers aged 18+), 2 liters of alcohol/wine, and 100 cigarettes.
Tourist of Foreign Origin	Arriving from any country other than Nepal, Bhutan, or Myanmar.	**₹15,000 per passenger** plus used personal effects.
Passengers Arriving from Nepal, Bhutan, or Myanmar	Arriving by air. (If arriving across land border, GFA is zero).	**₹15,000 per passenger**. (Indian residents or tourists).
Duty Rate on Excess Dutiable Baggage	Applies to all articles exceeding the General Free Allowance.	**Flat 35% Basic Customs Duty + 10% Social Welfare Surcharge = Effective 38.5% Rate**.

6. Exemptions, Refunds, Recoveries, and Penalties under Customs Law

The Customs Act balances sovereign border enforcement with equitable relief mechanisms:

- **Exemption from Duty [Section 25]:** The Central Government is empowered to grant general exemptions by notification in the public interest, or ad-hoc exemptions under exceptional circumstances (e.g., emergency import of life-saving medical oxygen concentrators or vaccines during national epidemics).
- **Refund of Duty and Doctrine of Unjust Enrichment [Section 27]:** Any person who has paid excess customs duty may claim a refund within **1 year** from the date of payment. However, under the doctrine of **Unjust Enrichment**, the claimant must prove beyond doubt that the financial burden of the duty was NOT passed onto the ultimate consumer. If passed on, the refund is credited to the **Consumer Welfare Fund**.
- **Recovery of Duties Short-Levied or Erroneously Refunded [Section 28]:** Where duty was not levied or erroneously refunded, customs officers issue a statutory demand notice within **2 years** (normal period). In cases involving **fraud, collusion, or willful misstatement**, the limitation period is extended to **5 years** along with mandatory 100% penalty and 15% interest under Section 28AA.
- **Confiscation and Penalties [Sections 111, 112, and 135]:** Prohibited goods imported contrary to law are liable to absolute confiscation (Section 111). Personal penalties up to three times the value of the goods can be imposed on conspirators (Section 112). Criminal prosecution under Section 135 carries up to 7 years rigorous imprisonment for grave economic offenses.

7. Comprehensive Worked Numerical Problems and Practical Applications

WORKED NUMERICAL PROBLEM 1: END-TO-END CUSTOMS DUTY & ASSESSABLE VALUE COMPUTATION

CUSTOMS VALUATION PROBLEM

Context: Bharat Electronics Ltd. imports telecommunication network servers from Japan. The commercial transaction terms report:
- FOB Value of servers = **USD 100,000**.
- Ocean Freight from Tokyo to Nhava Sheva = **USD 8,000**.
- Transit Insurance paid to Japanese underwriter = **USD 500**.
- Design and engineering charges paid in Japan necessary for manufacturing = **USD 2,500**.
- CBIC notified foreign exchange rate on the date the Bill of Entry was filed: **1 USD = ₹85.00**.
- Statutory Customs Duty Rates: Basic Customs Duty (BCD) = **10%**; Social Welfare Surcharge (SWS) = **10%**; Integrated GST (IGST) = **18%**.

Compute the Assessable Value (CIF) in Indian Rupees and the total customs duty liability payable.

Step 1: Computation of Assessable Value (CIF) in US Dollars:
- Base FOB Value = USD 100,000
- *Add:* Design & Engineering assists [Rule 10(1)(b)] = USD 2,500
- **Adjusted FOB Value = USD 102,500**
- *Add:* Actual Sea Freight [Rule 10(2)(a)] = USD 8,000
- *Add:* Actual Transit Insurance [Rule 10(2)(b)] = USD 500
- **Total CIF Value in USD = USD 111,000**

Step 2: Conversion to Indian Rupees (Assessable Value):
- **Assessable Value (AV)** = USD 111,000 × ₹85.00 = **₹9,435,000**.

Step 3: Sequential Duty Computation:

1. Basic Customs Duty (BCD) @ 10% on Assessable Value (₹9,435,000) = **₹943,500**.
2. Social Welfare Surcharge (SWS) @ 10% on BCD (₹943,500) = **₹94,350**.
3. Base for Integrated GST (IGST) = Assessable Value + BCD + SWS
IGST Base = ₹9,435,000 + ₹943,500 + ₹94,350 = **₹10,472,850**.
4. Integrated GST (IGST) @ 18% on ₹10,472,850 = **₹1,885,113**.

Total Customs Duty Payable to Government:
- BCD (₹943,500) + SWS (₹94,350) + IGST (₹1,885,113) = **₹2,922,963**.

(Note: Bharat Electronics Ltd. can claim the entire ₹1,885,113 IGST as Input Tax Credit against its domestic GST output liabilities!).

WORKED NUMERICAL PROBLEM 2: BAGGAGE DUTY ASSESSMENT FOR AN INTERNATIONAL PASSENGER

BAGGAGE PROBLEM

Context: Mr. Rajesh, an Indian resident returning from Dubai after a 2-week vacation, arrives at Cochin International Airport carrying the following items in his accompanied luggage:

- Used personal clothing, shoes, and toiletries: ₹40,000.
- Personal laptop computer: ₹80,000.
- One digital cinema camera purchased in Dubai: ₹95,000.
- Two 1-liter bottles of Scotch whisky (total 2 liters): ₹8,000.

Compute the net customs duty payable by Mr. Rajesh under the Baggage Rules, 2016.

Step-by-Step Baggage Duty Determination:
1. Used personal clothing and travel effects = **100% Exempt (Rule 3)**.
2. One laptop computer for passenger aged 18+ = **100% Exempt under specific notification**.
3. Two liters of alcoholic liquor = **Within statutory allowance limit (2 liters exempt under GFA)**.
4. Digital Cinema Camera = Dutiable item (Value = ₹95,000).

Calculation of Dutiable Excess:
- Total Dutiable Value = ₹95,000 (Camera) + ₹8,000 (Whisky) = ₹103,000.
- *Less:* General Free Allowance (GFA) for Indian resident = **(₹50,000)**.
- **Taxable Dutiable Baggage Value = ₹53,000.**

Customs Duty Payable:
- Basic Duty @ 35% on ₹53,000 = ₹18,550.
- *Add:* Social Welfare Surcharge (10% of BCD) = ₹1,855.
- **Total Baggage Duty Payable by Mr. Rajesh = ₹20,405** (Effective Rate: 38.5%).

8. Customs Warehousing and the MOOWR Manufacturing Scheme (Chapter IX)

Customs warehousing permits importers to defer customs duty payments by depositing imported cargo into officially licensed customs bonded warehouses without paying duty at the border:

TYPOLOGY OF CUSTOMS WAREHOUSES UNDER CHAPTER IX

WAREHOUSING TYPES

Public Warehouses [Section 57]

Operated by public bodies (Central Warehousing Corporation / CWC, State Warehousing Corporations) open for storage of dutiable imported goods by any commercial importer.

Private Warehouses [Section 58]

Licensed to individual corporate enterprises for exclusive storage of their own imported dutiable goods pending domestic clearance or re-exportation.

Special Warehouses [Section 58A]

High-security warehouses under permanent physical lock of customs officers for storing sensitive cargo: gold bullion, silver, arms, explosives, and duty-free shop merchandise.

THE MOOWR SCHEME: MANUFACTURING AND OTHER OPERATIONS IN BONDED WAREHOUSE

MOOWR FRAMEWORK

Under **Section 65 of the Customs Act** and the **Manufacturing and Other Operations in Warehouse Regulations (MOOWR)**, India provides one of the world's most competitive manufacturing incentives:

Operational Aspect	MOOWR Scheme Mechanism	Strategic Business Advantage
Upfront Duty Exemption	Importers can bring in capital goods (machinery) and raw materials into a MOOWR bonded unit **with 100% upfront deferral of Basic Customs Duty and IGST**.	Zero working capital blocked at port of entry. Preserves liquidity for business expansion.
Clearance for Export	If the finished manufactured products are exported outside India, **customs duty on the imported raw materials and capital machinery is 100% permanently waived and remitted**.	Empowers Indian manufacturing units to compete directly with global export giants on equal footing with zero domestic tariff burden.
Clearance for Home Consumption	If finished goods are sold domestically, customs duty is paid only on the imported raw materials consumed, payable on the date of domestic clearance.	Duty is deferred until sales revenue is actually realized, eliminating inventory holding interest costs.

9. The Duty Drawback Scheme (Sections 74 & 75) and Appellate Remedies

To ensure that Indian exported goods do not export domestic taxes into competitive international markets, the Customs Act establishes the **Duty Drawback** mechanism:

COMPARATIVE ANALYSIS: SECTION 74 VS. SECTION 75 DUTY DRAWBACK

DRAWBACK SCHEME

Statutory Dimension	Section 74: Drawback on Re-Export of Duty-Paid Goods	Section 75: Drawback on Export of Manufactured Articles
Nature of Transaction	Imported goods are cleared for home consumption on payment of duty, and subsequently **re-exported in the exact same condition** without processing.	Imported raw materials and components are used, processed, and incorporated in the **manufacture of new finished goods** that are exported.
Quantum of Relief	• **98% of customs duty paid** if re-exported without being used in India. • Graded percentage reduction (decreasing by quarter) if used before re-export.	Fixed percentage based on: (i) **All Industry Rates (AIR)**; (ii) Brand Rate; or (iii) Special Brand Rate fixed by Central Government.
Time Limit for Re-Export	Goods must be entered for export within **2 years** from the date of payment of duty (extendable by CBIC on reasonable grounds).	Subject to standard foreign trade policy shipping schedules and export fulfillment deadlines.
Mandatory Restriction	Goods must be easily identifiable by customs officers as the exact goods originally imported.	No drawback allowed if the market wholesale price of export goods is less than the drawback amount claimed.

THE FOUR-TIER APPELLATE HIERARCHY IN CUSTOMS JURISPRUDENCE

APPEALS HIERARCHY

Appellate Forum	Statutory Section & Jurisdiction	Limitation Period & Procedural Rules
1. Commissioner (Appeals)	Section 128: First departmental appellate authority against orders passed by officers lower in rank than a Commissioner.	Must be filed within **60 days** from communication of order. Condonation of delay permitted up to 30 days on sufficient cause.
2. CESTAT (Appellate Tribunal)	Section 129A: Independent judicial tribunal hearing second appeals against orders of Commissioner or Commissioner (Appeals).	Must be filed within **3 months**. Mandatory pre-deposit of 7.5% to 10% of duty/penalty in dispute under Section 129E.
3. High Court	Section 130: Direct appeal against CESTAT orders, strictly on a **substantial question of law**.	Must be filed within **180 days**. Does not entertain questions relating to classification or valuation of goods.
4. Supreme Court of India	Section 130E: Apex appeal directly from CESTAT on orders determining **the rate of duty or the valuation of goods**, or from High Courts.	Final constitutional arbiter of all customs and tariff disputes in India.

Synthesis: The Guardian of Economic Borders

Customs law embodies the intersection of international trade policy, sovereign border security, and national fiscal mobilization. By enforcing disciplined statutory valuation under Section 14, providing streamlined digital clearance through ICEGATE, and protecting domestic industries through trade remedial measures (anti-dumping and safeguard duties), customs authorities ensure that India engages with global commerce on terms of strength and reciprocity. Concurrently, through balanced passenger baggage concessions and robust anti-smuggling powers, the Customs Act, 1962 preserves national economic integrity while facilitating lawful cross-border movement of people and enterprise.