

Lecture 29: Indian Laws on Customs Valuation

Dear students, today we are going to discuss the customs valuation rules and regulations and Act on the practices of Indian customs valuation.

CONCEPTS COVERED

- **Indian laws on Custom Valuation**
- **Customs Act 1962**
- **Custom valuation - (Determination of Value of Imported Goods) Rules, 2007 – amended in 2017**
- **Customs Valuation (Determination of Value of Export Goods) Rules, 2007 - amended in 2017**

Basically, the Indian practices are mentioned in the new law which was passed in 1962, the Customs Act of 1962 and followed by the Customs Valuation Rules, 2007 amended in 2017 and we can find amendments later as well. Any point of time the central government can amend this particular rule. And it is very interesting to note that India has come out with a legislation much before the Tokyo round of negotiations and finalized this particular Act before the customs valuation code in 1988 in the Tokyo round of negotiations.

Indian law on CV

- **India implemented the ACV in August 1988 (Tokyo Round Codes).**
- **Section 2(41) of the Customs Act, 1962 defines 'Value' in relation to any goods to mean the value thereof determined in accordance with the provisions of sub-section (1) of Section 14 thereof.**
- **S.14(1) defines the value of the goods: "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**".**

So, many years back India legislated upon the customs valuation and come out with the Customs Act of 1962 and which almost now we can see that most of the definitions there is a close similarity between the Indian provisions and the WTO agreement on customs valuation. So, it means that, you can see that almost 20 years back India came out with rules and regulations on customs valuation which is closely related, has resemblance to the Tokyo round of negotiations and later on the WTO agreement on customs valuation came. So, the Section 14(1) which talks about the value of what is exactly the value of the goods exported or imported and also the tax is based on export value or import value that is the value of goods. So, section 14(1) of the 1962 Act defines the value of goods. So, it defines 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. So, we discussed about related parties and again we will discuss about the related parties buyer have no interest in the business of each other and the price is the sole consideration for the sale or offer for sale. So, value is the price at which the goods are or the like goods or similar goods, identical goods are sold, we will see the definitions for the similar goods and identical goods as well. So, the value is defined very clearly in the 1962 Act.

Principles

- **The provisions of sub-section (1) of Section 14 apply for the valuation of both imported goods and export goods.**
- ***The Customs Valuation (Determination of Price of Imported Goods) Rules, 1988* lays down the methods of valuation based on the ACV.**
- **Transaction value, which is the price paid or payable for the imported goods, is the primary basis for valuation.**
- **If the *transaction value* method is not applicable in a specific case, the other methods of valuation prescribed in the Rules (based on ACV) have to be followed in a hierarchical order, subject to certain exceptions**

So, it says that, the valuation definition is applicable to exports and imports of goods. So, we came out with the first rules in 1988 after the adoption of Tokyo round of negotiations. The *Customs Valuation Determination of Price of Imported Goods Rules 1988* came in 1988 as a part of the adoption of the Tokyo round of negotiations. So, you cannot find much differences between the Tokyo round of negotiations and the Uruguay round of negotiations with regard to the provisions. So, again the prime or the first or the foremost method of calculation of customs valuation is the transaction value and in certain cases, in the ordinary course of case also it is the transaction value and only exceptional cases this method is not applicable. And also, the other methods which are mentioned in the Indian provisions are to be followed in hierarchical order. What does it mean? It means that all other methods, all other five methods other than transaction value method will be used only on hierarchical basis, transaction value, transaction value

of the similar goods, etc. So, we will see again all six methods. So, these other five methods will be used as on hierarchical basis, hierarchical order. So, if one is not applicable then only you will go to the other one if already the transaction value is available then the entire transaction or calculation of the value should be based on the transaction value method. So, the transaction value method is the method India also adopted much before the Tokyo round of negotiations.

Custom Valuation in India

- **The rates of custom duties leviable on imported goods and export items in certain cases are either specific or on ad valorem basis or, at times specific cum ad valorem.**
- **Section 14** of the Customs Act, 1962 lays down the basis for the valuation of import and export goods in the country.

And also you can see that, so, basically it is on specific basis or ad valorem basis in earlier times or special cases in specific cum ad valorem basis. So, the basis of valuation is basically mentioned in the Act how you are going to impose the duties and what are the methods and how these methods are applicable, all these are explained.

Definitions

- **S.2(c) "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;**

So, as you can see that section 2(c) again defines *goods of the same class or kind*. So, we saw this second transaction method of identical goods and third method similar goods, the goods which are mentioned in other methods. So, we will come back to all the slides in detail and we will see one by one the method of calculation of the transaction value or other value methods, one by one. So, here, one more category which is included in the Indian Act is the goods of the same class or kind. So, here the goods that are within a group or range of imported goods produced by a particular industry or a particular industrial sector which includes identical goods or similar goods. So, the second method prescribed in the WTO valuation code is identical goods and third is the similar goods. So, here you can see that, they said that the Indian law says that goods of same class or same kind.

Tariff Value, S. 14(2)

- **The Central Govt. is the appropriate authority to fix tariff values for any product under the Customs Act, 1962.**
- **The tariff values are fixed for any class of imported or export goods having regard to the trend of value of such or like goods and the same has to be notified in the prescribed form.**
- **Once tariff value has been notified, customs duty cannot be paid on basis of transaction value – *CC v. Ashirvad Udyog* (2014) 43 GST 56 = 40 taxmann.com 449 (Mad HC DB).**

So, the Act and the rules which we are going to see in general. So, the central government and the board of Taxes is responsible for collecting these particular taxes, appropriate authority to fix the taxes under the particular Act. But also, the tariff values are fixed on classes that is why we completed the HS code harmonization. So, for each and every product which we can find in the DGFT site, each and every product imported, the value or you can see the taxes are mentioned, what is the percentage. And we said that the value of like products are also mentioned, notified, what is the exact meaning of like products are also notified. And once the tariff value is notified under the *Customs Tariff Act of 1975* of India then the duty cannot be paid on the basis of transaction value. That means if the tariff is already notified under the Customs Tariff Act of 1975, that is the duty. So, if that duty cannot be calculated, if it is not possible to calculate that particular duty then only you will come to the six methods of calculation. So, this position was confirmed by the Madras High Court in the Customs Commissioner(CC) versus Ashirvad Udyog, in the 2014 case. That means, once the tariff value has already been notified under the Customs Tariff Act of 1975 then there is no application of the six methods of customs valuation and you have to apply the tariff value which is notified. If it is not calculable, if it cannot be found out, then only you can go with the different methods.

Valuation of Imported/Export Goods where no Tariff Values fixed.

- S. 2(41) of the Custom Act, 1962 defines “Value” in relation to any goods to mean the value thereof determined in accordance with the provisions of s. 14(1) thereof.
- While s. 14(1) speaks that when a duty of customs is chargeable on any goods by reference to their value, the value of such goods shall be deemed to be:
 - a) The price at which such or like goods are ordinarily sold, or
 - b) Offered for sale, for delivery at the time and place of importation or exportation, 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.



So, that means, if the value is fixed under the Tariff Act that tariff is applicable to all the goods. If it cannot be calculated on transaction value then only you will go to the like goods and also the same level of business or offered for sale, delivery at the same time, the place of importation or exportation in the course of international trade, all these criteria or conditions are applicable. And most importantly, you can see where the seller and buyer does not have any interest. Related party transactions are considered separately.

Valuation of Imported/Export Goods where no Tariff Values fixed. (Contd.)

- S.14 provides a complete code of valuation by itself.
- For imported goods, the requisite provisions of Customs Valuation (Determination of Price of Imported Goods) Rules, 1988 shall be applicable to determine the values of those imported goods.
- S. 14 of the Customs Act, 1962 has been framed in accordance of Article VII of GATT.
- And the Customs Valuation Rules, follow the WTO Customs Valuation Agreement to implement Article VII of GATT.



So, section 14 completely talks about valuation, what you exactly mean by valuation and then subsequent rules in 1988, 2007, 2017 and even some amendments made in 2023 as well. So, the customs valuation rules came after the WTO agreement had been signed. So, India has amended in 2007 in accordance with the agreement on customs valuation.

Methods of Valuation

- **As per the Customs Valuation Rules, 1988, the customs value are termed as “Transaction Value” i.e., the price actually paid or payable after adjustment by Valuation Factors and shall be subjected to:**
 - a) **Compliance with the Valuation Conditions; and**
 - b) **Customs authorities being satisfied with the truth and accuracy of the Declared Value.**



So, different methods of valuation which we have discussed, six methods we have discussed under the WTO agreement and in 1988 much before the WTO we(India) based our calculation on transaction value. The transaction value is very clear, the price actually paid or payable after various adjustments of valuation factors and complying with the valuation conditions and also if the customs authorities have accepted the actual declared value. So, if the customs authorities found that the declared value is not correct then they can go ahead with other methods of calculation.

Transaction Value

- **Rule 3 of Customs Valuation Rules, 1988 – 2007-2017 refers that the value of imported goods shall be the transaction value.**
- **Rule 4 specifies that the transaction value of imported goods shall be the price actually paid or payable for the goods when sold for export to India.**
- **The price actually paid or payable is the total payment made or to be made by the buyer to the seller or for the benefit of the seller for the imported goods.**
- **This includes all payments 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**



And also you can see that the price is very important under the old rules. So, the price actually paid or payable for the goods when sold for export to India, that was the criteria. So, the price actually paid or payable that means, the total payment has to be made. So,

when importing goods, the buyer purchases the entire amount from the seller and also which includes all payments made as a condition of sale of the imported goods by the buyer to the seller. So, even in a third party transactions, the money is to be satisfied. So, the amount, the consideration is to be satisfactorily paid.

Transaction Value

- **Rule.2(g) "transaction value" means the value referred to in sub-section (1) of section 14 of the Customs Act, 1962;**
 - (2) **For the purpose of these rules, persons shall be deemed to be "related" only if -they are officers or directors of one another's businesses;**
- **they are legally recognised partners in business;**
- **they are employer and employee;**
- **any person directly or indirectly owns, controls or holds five per cent or more of the outstanding voting stock or shares of both of them;**
- **one of them directly or indirectly controls the other;**
- **both of them are directly or indirectly controlled by a third person;**
- **together they directly or indirectly control a third person; or**
- **they are members of the same family.**



So, we said that India also followed the transaction value method. So, what is this transaction value? So, the 1962 Act itself defined the transaction value. So, transaction value is legally recognised. So, these transaction values, which we talked about, how the valuation is paid in section 14. So, it talks about the transaction value other than related parties. So, who is the related party? So, the value will be taken for unrelated parties. So, the related parties are related parties. So, who is the related party? You can see similar languages which is used in the customs valuation code and also the Indian Act - They are legally recognized partners in business. They are employer and employee, person directly or indirectly owns or controls 5 percent or more of the stock outstanding voting stock or shares, on both the companies. One of them directly or indirectly controls the other, this is another reason. So, then, they are known as related parties, directly or indirectly controlled by third persons. So, both of them are controlled by a third person. So, exactly the same wordings are used in the Tokyo round of negotiations as well.

Dutiable factors

- Commissions and brokerage,
- The cost of containers which are treated as being one for Customs purposes .
- The cost of packing whether for labor or materials.
- material, components, parts and similar items incorporated in the imported goods.
- tools, dies, moulds and similar items used in the production of the imported goods.
- materials consumed in the imported goods;
- engineering, developing, artwork, design work, and plans and sketches undertaken elsewhere than in the importing country .
- Royalties and license fees .
- Freight charges up to the place of importation;
- Loading, unloading and handling charges.
- Insurance.



And what are the factors which are included? So, duty bill factors, commissions and brokerages, the cost of containers, cost of packaging, materials, components, parts, tools, dies, molds and similar items used in the production of imported goods. Then materials consumed, engineering, developing work, artwork, design work, plants, sketches undertaken outside, royalties and license fees, freight charges, loading, unloading, handling charges, insurance. And some of the factors, which you can see that are excluded as well for example, engineering, developing artwork, design work all these are non-dutiable, these are excluded as well.

Includes

1. Engineering
2. Brokerage and commissions
3. Royalty
4. License fees
5. Insurance
6. Loading
7. Cost of transportation to the place of importation
8. Handling charges
9. Unloading etc.



So, here you can see brokerage, commission, royalty, license fees, insurance, loading, unloading charges and all these are included actually.

Non-dutiable Factors

- **Buying commission;**
- **Interest charges for deferred payment;**
- **Post-importation charges (e.g. inland transportation charges, installation or erection charges, etc.);**
- **Duties and taxes payable in India.**

And non-dutiable factors which you can find are only buying commission and interest charges for deferred payments. Once the goods reach the territory of importation, then the transporting charges, installation, erection and other charges. And all the duties payable in India are excluded from the purview of valuation.

Suspected Valuation, Rule 10.A

- **rejection of transaction value method in cases of suspected valuation fraud.**
- **declared value was far below a series of contemporaneous transactions.**
- **Customs could ask the importer to produce additional information and evidence to justify the declared value.**
- **the goods should then be valued by applying any of the subsequent methods as laid down in the Valuation Rules.**

Then suspected valuation, we already talked about suspected valuation, it may be due to the related party transactions or the invoice price is not acceptable or invoice price is not believable and the customs authorities believe that it is not true. Then in that case rejection of transaction value method - suspected valuation fraud. So, transaction method is not going to be used in the case of suspected fraud. Then declared value as far below a series of contemporaneous transactions. So, the transaction value shows a very low value than the declared value of components or series of contemporaneous transactions. That

means some of the transactions show that these are fake transactions. The customs can ask for additional information to justify the declared value and the goods should then be valued by applying any of the subsequent methods as laid out in the valuation rules.

Identical Goods

2 (d) "identical goods" means imported goods -which are 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;

- produced in the country in which the goods being valued were produced; and
- 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, art work, 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;



So, we talked about the second method if the transaction value is not acceptable. So, rule 2(d) talks about identical goods. What are these identical goods? Here also you can see a very close definitional similarity between the Indian provisions and the code, the customs valuation code and the customs valuation agreement. What are these identical goods? Which are same in all respects, physical characteristics, quality, reputation. So, its reputation as the goods being valued except for minor differences in appearance that do not affect the value of goods and also the second condition, so, same physical characteristics, quality, reputation produced in the country in which the goods being valued were produced. The same country, the same goods, alternate goods, identical goods are also produced. So, if no such goods are available then a third person, goods produced by a third person. But other works engineering, development work, art work, design work, plan or sketch undertaken in India, completed directly or indirectly by the buyer on these imported goods free of charge or reduced cost. So, then this cannot be included in the value of imported goods. So, identical goods definitions also have a close similarity.

Transaction Value of the Identical Goods

- **Rule-4**
- **Identical goods have been defined under Rule 2 of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007.**
- **In simple terms, it refers to imported goods that are the same in all respects except for minor differences in appearance that do not affect the value of these goods.**
- **These are produced in the same country in which the goods being imported are produced.**
- **Further, these can be produced by the same person or different persons.**



So, what is the transaction value of identical goods? So, identical goods are defined. So, they are referred to imported goods that are the same in all respects except for minor differences. So, the definition we already saw and also produced in the same country. Ideally by the same person or by a third person in such cases.

Cases where transaction value may be rejected

- **Rule 4 deals with the categories under which transaction value may be rejected.**
 - a) **If there are restrictions on use or disposition of the goods by the buyer. However, the transaction value not be rejected on this ground, if:**
 - I. They are imposed by law or public authorities in India;**
 - II. Limit geographical area of re-sale;**
 - III. Do not affect the value of the goods substantially.**
 - b) **If the sale or price is subject to a condition or consideration for which a value cannot be determined. Such conditions or considerations relating to production or marketing of the goods shall not be subject of rejection.**



Then in certain cases we already said that transaction value may be rejected. So, this restriction with regard to certain cases, for example, if there are restrictions on use or disposition of the goods by the buyer. So, the transaction value cannot be rejected on this basis, on the following grounds: They are imposed by law or public authorities in India, limit geographical area of resale, do not affect the value of the goods substantially. And also if the price is subject to conditions and the value cannot be determined then such conditions also this alternate method will be used for the calculation of customs value.

Cases where transaction value may be rejected (Contd.)

- c) If the part of the proceeds of the subsequent resale, disposal or use of the goods accrues to the seller, unless an adjustment can be made as per valuation factors.
- d) Buyer and seller are related; unless it is established by the importer that-
 - I. The relationship has not influenced the price;
 - II. The importer demonstrates that the price closely approximately one of the test values.
- e) The transaction price declared can also be rejected, if the custom officer has reasons to doubt the truth or accuracy of the value declared and if even after furnishing of further information or other evidence, the officer is not satisfied and has reasonable doubts about the value declared.

And also resale subsequent disposal. So, all the adjustments can be made on the valuation factors in that case. For example, the related party transactions, unless the relationship has not influenced the price, practically it may not happen, the relationship has no influence on the price. So, if it is a related party transaction, there may be an influence on the other party as well. And also transaction price can be declared rejected if the customs officer has a reasonable doubt with the accuracy of the value declared. So, declared value is very important. If after furnishing certain evidences also the officer is not convinced that means, reasonable doubt on the value of declared price then you can go for the alternate second method.

Valuation of Imported goods in case of related party transaction

- Rule 2 specifies the persons who shall be deemed to be “related.”
- Rule 4 provides that where buyer and seller are related, the transaction value can be accepted:
 - If the examination of circumstances of the sale of the imported goods indicate that the relationship did not influence the price; or
 - If the importer demonstrates that the declared value of the goods being valued, closely approximately to one of the test values namely transaction value of identical/similar goods, deductive value for identical/similar goods or computed value for identical/similar goods ascertained at the same time.

So, related party transactions we have discussed elaborately, who is the related party and what are the different type of related party transactions. So, Rule 4 talks about, even

though they are related, the transaction value can be accepted. What are those circumstances? If the sale of the imported goods indicates that the relationship did not influence the price. So, the invoice should show that their relationships did not affect the price and then such kind of prices are accepted. And secondly, you can see that if the importer demonstrates that the declared value of the goods being valued closely and approximately to one of the test values, that is the transaction value of identical or similar goods, deductive value for identical or similar goods or computed value for identical or similar goods at the same time. So, this also can be taken into consideration for the calculation.

Related Parties

- **Transaction value is not acceptable if buyer and seller are ‘related’.**
- **Definition of ‘related person’ is identical in rule 2(2) of Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 and rule 2(2) of Customs Valuation (Determination of Value of Export Goods) Rules, 2007.**



Then related parties, the transaction value is not acceptable in the case of transaction between related parties. So, related parties are defined under the 2007 rules.

And also we saw the definition of related parties. And related party transactions in

Valuation of Imported goods in case of related party transaction (contd.)

- **The related party transactions are examined by Special Valuation Branches situated at four major Customs Houses:**
 - **Mumbai**
 - **Calcutta**
 - **Chennai**
 - **Delhi**

India are specifically looked into by four branches of the tax authorities in Mumbai, Kolkata, Chennai and Delhi. So, only on the case of related party transactions, all the details with related party transactions are looked after by these four offices.

Similar Goods

- (f) "similar goods" means imported goods 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 trade mark**;
- produced in the country in which the goods being valued were produced; and
- 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, art work, 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;

Then comes the third method similar goods. So, similar goods are defined under the rule 2(f). So, imported goods which are although not alike, similar goods not alike, in all respects, have like characteristics, like component materials, which do the same function and commercially interchangeable. And also with regard to quality, reputation and existence of trademarks and also produced in the same country. Same country of goods where the goods are valued, produced by the same person, or if the same person is not making this then an alternate person, a different person, but here also in the similar goods

also, the goods, engineering work, developmental work, art work, design work, plan or sketch undertaken in India that were completed directly or indirectly by the buyer on this imported goods then that connection, those goods are also, those particular charges are also not going to be calculated on similar goods.

Rule 5 – Transaction Value of Similar Goods

- Like identical goods, similar goods are also defined under Rule 2. It means imported goods that are not alike in all respects but have like component materials and characteristics that allow them to perform the same functions.
- They are commercially interchangeable with the goods being valued and are produced in the same country in which the goods being valued are produced.
- Also, they can be produced by the same person or different persons.

And transaction value of similar goods, like we talked about identical goods, similar goods are also defined. So, the most important part is that these are commercially interchangeable and produced by the same person or again produced by the third persons, so, they are similar goods.

Rule 7 – Deductive Value

- Another method of valuation under customs is deductive value.
- If the imported goods, identical goods,
- or similar goods are sold in India at the same time at which the declaration for the determination of the value is presented,
- then the value of the imported goods being valued should be based on the unit price of the identical or similar goods being sold in the greatest aggregate quantity to unrelated sellers in India

And we talked about deductive value and Rule 7 talks about deductive value. So, another method is the deductive value. So, it can be imported goods, it can be identical goods, similar goods and the goods coming to India at the same time. Also, the unique prices of

identical goods or similar goods sold in the greatest aggregate quantity to unrelated sellers will be taken into consideration in case of deductive value. So, it is in the hierarchical order - deductive value.

Deductive Value.

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Rule-7(1) Subject to the provisions of rule 3, 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 : —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;
•the usual costs of transport and insurance and associated costs incurred within India;
•the customs duties and other taxes payable in India by reason of importation or sale of the goods.

So, Rule 7 which talks about the deductive value. So, goods may be valued on the identical basis, or importer goods are sold in India with some conditions like the conditions as imported at or about the time at which the declaration of the determination of values is presented. The value of such goods shall be based on unique price at which the importer goods or identical or similar goods are sold in the aggregate quantity. So, the usual cost of transport and insurance and associated cost are incurred within India are also added. The customs duties and other taxes payable in India, within India, transportation charges, sale and duties, other duties, within India, also is excluded from deductive method.

Deductions

1. Commissions paid or agreed to be paid or any additions made for profits or general expenses incurred in relation to the sales in India
2. Costs of transportation and insurance that are incurred within India
3. Customs duty and other taxes payable in India due to the importation or sale of such goods
 - In case neither the imported goods, identical goods, or similar goods are sold at the same time as the relevant imported goods, then the transaction value shall be based on the unit price at which the imported, identical or similar goods are sold in India at the earliest date after importation.
 - But such a date should be before the expiry of 90 days after the importation.



So, here there is a list of deductions and deductions with regard to transport, deductions with regard to insurance and then other duties, customs duty and other taxes payable. So, in cases of imported goods, identical goods, and similar goods sold at the same time, the transaction value shall be based on the unique price. So, the first method is the transaction value and transaction value method will be adopted.

Rule 8 – Computed Value

- Subject to the provisions of rule 3, the value of imported goods shall be based on a computed value, which shall consist of the sum of:-the cost or value of materials and fabrication or other processing employed in producing the imported goods;
- an amount for profit and general expenses equal to that usually reflected in sales of goods of the same class or kind as the goods being valued which are made by producers in the country of exportation for export to India;
- the cost or value of all other expenses under sub-rule (2) of rule 10.



The next method is a computed value method. Computed value - the name itself says the computation consists of the sum of the cost or value of material and fabrication or other processing employed in producing the importer goods. Then the amount for profit, general expenses and other areas also is considered. So, the cost or value of all other expenses are excluded. So, this is the computed value.

Rule 9 – Residual Method

- (1) Subject to the provisions of rule 3, 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 on the basis of data available in India;
- Provided that the value so determined shall not exceed the price at which such or like goods are ordinarily sold or offered for sale for delivery at the time and place of importation in the course of international trade,
- when the seller or buyer has no interest in the business of other and price is the sole consideration for the sale or offer for sale.



So, India developed an additional method of valuation that is known as **Residual method**. Residual method is the value determined using reasonable means consistent with the principles and general provisions of the rules and on basis of data available in India. So, if the value of imported goods cannot be calculated then the last method, residual method is used. But in such calculations the value determined shall not exceed the price at which such goods are ordinarily sold or offered for sale or delivery at the time in the exporting country. That means, again the buyer and seller should not be interested people, buyer should not be related parties, then the residual method, that is the last method is mentioned in Indian rules is applicable.

Rule 9(2)

- (2) No value shall be determined under the provisions of this rule on the basis of —the selling price in India of the goods produced in India;
- a system which provides for the acceptance for customs purposes of the **highest of the two alternative values**;
- the price of the goods on the domestic market of the country of exportation;
- the cost of production other than computed values which have been determined for identical or similar goods in accordance with the provisions of rule 8;
- the price of the goods for the export to a country other than India;
- minimum customs values; or
- arbitrary or fictitious values.



So, simply the residual method is taking, accepting for the purpose of customs valuation the highest of the two alternative values. So, the price of the goods of the domestic

market of the country of exportation is taken to consideration, then the cost of production computed value will be added. So, minimum customs values and fictitious customs values are not going to be accepted by any country.

Declaration By the Importer

- **(1)The importer or his agent shall furnish -a declaration disclosing full and accurate details relating to the value of imported goods; and**
- **any other statement, information or document including an invoice of the manufacturer or producer of the imported goods where the goods are imported from or through a person other than the manufacturer or producer,**
- **as considered necessary by the proper officer for determination of the value of imported goods under these rules.**

Then there must be a declaration by both the importer and exporter. So, the importer will furnish a declaration disclosing full and accurate details rate in the value of imported goods. So, it is a strict compliance of the standards. So, this may be invoices, statements from manufacturer or producer and also you can see other persons, representatives of manufacturer or producer. Then these goods are going to be, a declaration to be given by the importer.

Rejection Of Declared Value

Rule 12-(1) When the proper officer has reason to doubt the truth or accuracy of the value declared in relation to any imported goods, he may ask the importer of such goods to furnish further information including documents or other evidence and if, after receiving such further information, or in the absence of a response of such importer, the proper officer still has reasonable doubt about the truth or accuracy of the value so declared, it shall be deemed that the transaction value of such imported goods cannot be determined under the provisions of sub-rule (1) of rule 3.

So, once the rejection happens, so if the customs officer did not believe in your declared value or there is a reasonable doubt about the truth or accuracy of the value or declared

value then such importer should furnish further information asked by the customs authorities and also the evidence to be produced. So, on receiving such information again the customs authorities will calculate the customs value and whether there is any relationship between or whether the parties are related parties or not. So, related party transactions are also taken into consideration by the special offices in four places in India.

ACV Implementation concerns

- **Core capacity building needs:**
 - **Design and adopt model customs legislation**
 - **Establish Valuation Divisions**
 - **Design and deliver public education programmes**
 - **Develop training material incl.procedures manuals**
 - **Acquire or update computer systems**
 - **Develop declaration forms**
 - **Develop valuation databases**
 - **Develop and implement appeals mechanisms**



And implementation - we know that model customs legislation is a problem. we have just amended the laws that is all and included new rules and then design and deliver public education programs. So, who will provide the public education programs about the customs valuation is important. Even though the education, public education is the function of every customs valuation office, they hardly do it. Training materials and updates of computer systems, declaration forms, valuation databases and appeal mechanisms are also to be included in the agreement on customs valuation.

ACV Implementation concerns

Computed value method presents some difficulty because of inability to get:

- **Information :**
 - On cost of production in developed countries
 - Other elements of cost
- **Other Issues such as:**
 - Distance from manufacturing locations
 - Confidentiality regarding commercial costing
 - Insufficient confidence in levels/type of mutual assistance provided by customs administrations in developed countries

And then computed value have some difficulties. So, they may meet with some difficulties if the cost of production(information) in developed countries is not provided. Then other issues which we can find is distance from manufacturing locations. Confidentiality regarding commercial costing, cost of production calculation is very difficult. Then, insufficient evidence or mutual assistance programs or evidence provided by these countries. So, what kind of information they are providing is a concern.

Capacity building

- **The National Import data Base (NIDB) provides reliable tool for comparison of declared values with contemporaneous import prices.**

And capacity building in India is very important with the help of the national import database which the government of India is providing. So, this particular database acts as a common ground. So, they will cross check these particular prices with the import data downloaded.

Conclusion

- **The Customs Act, 1962 of India governs import and export tariffs and sets the rules for customs valuation.**
- **It is observed that the Central Board of Indirect Taxes and Customs is the apex body for customs, excise, and goods and services tax related matters in India.**
- **Custom valuation - (Determination of Value of Imported Goods) Rules, 2007 – amended in 2017**
- **Customs Valuation (Determination of Value of Export Goods) Rules, 2007 - amended in 2017**



So, in general, in conclusion, I would say that the Indian Act, Customs Act, 1962 came much before the Tokyo round of negotiations and subsequently in the Uruguay round of negotiations. India passed law with sufficient provisions much before this particular date, the act had been passed by then. And also you can see that, it is the role of **Central Board of Indirect Taxes and Customs**, they are considered to be the apex bodies on customs valuation and they are looking into these matters. And the rules 2007 and 2017 provides the continuous rules for the valuation of customs.

So, customs valuation is an important agreement and important agreement among all importing and exporting countries because this agreement gives you the complete valuation process. The valuation should be based on actual data. Otherwise, the taxes will be very high, and it should not be based on fraudulent data submitted. So, it should be based on actual data. So, customs valuation is very important, in India also with very regard to importation because that will help the customs authorities to fix the correct duties and prices of the same goods. So, with this particular Indian scenario, after looking into the Indian scenario, we have completed the customs valuation code, the WTO customs valuation code and the Indian provisions. Next, we will go to the next WTO agreement.

Thank you.