ANNEXURE - A

INDEX - CUSTOM CASE LAW SUMMARY

Case Law No	Case Law Name	Remarks
	Chapter-1 Levy of And Exemptions From Customs Duty	
1.	Garden Silk Mills v. UOI 1999 (113) E.L.T. 358 (S.C.)	Segment 21 & 26 of Resource Book
2.	Kiran Spinning Mills v. Collector of Customs 1999 (113) E.L.T. 753 (S.C.)	
3.	Bharat Surfacants Pvt. Ltd. v. UOI 1989 (43)	
4.	Rajkumar Knitting Mills P.Ltd vs CC 1998	
5.	Kasinka Trading v. U.O.I. 1994 (74) E.L.T. 782	
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12.	Essar Steel v. UOI 2010	
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14.	Mangalore Refinery & Petrochemicals Ltd v. CCus. 2015	
15.	Ramdhan Pandey V. State of UP 1993(66) E.L.T 547 (S.C)	
16.	BOC India Ltd. V State of Jharkhand 2009 (237) E.L.T 490 (Bom)	
17.	BK Industries V. UOI 1993 (65) ELT 465 (SC) & Doypack Systems P ltd v. UOI 1988 (36) ELT 201 (SC)	
18.	CC v. Lekhraj Jessumal & Sons 1996 (82) ELT 162 (SC)	
	Chapter-2 Types of Custom Duty	
19.	Reliance Industries ltd. v. Designated Authority 2006 (202) E.L.T. 23 (S.C.)	Segment 23 of Resource Book
20.	Rishiroop Polymers Pvt. Ltd. v. Designated Authority & Additional Secretary 2006 (196) ELT 385 (SC)	
21.	UOI Vs M/s Adani Power Ltd 2016 (331) ELT A129 (SC)	
22.	Automotive Tyre Manufacturers Association v. Designated Authority 2011 (263) ELT 481 (SC)	
23.	Designated Authority vs Haldor Topsoe 2000 (120) ELT 11.	
	Chapter-3 Classification of Imported Goods	
24.	Mahindra and Mahindra v. CCE 1999 (109) E.L.T. 739 (Tribunal)	Segment 22 of Resource Book
25.	Saurashtra Chemicals v. CC 1986 (23) ELT 283 (Tri-LB) [approved by SC]	
26.	CC v. Maestro Motors Ltd. 2004 (174) E.L.T 289 (S.C.)	
27.	CC v .Hewlett Packard India Sales (p) Ltd. 2007 (215) E.L.T. 484 (S.C.)	
28.	Keihin Penalfa Ltd. v. Commissioner of Customs 2012 (278) ELT 578 (SC)	
29.	State of Punjab v. Nokia India Private Limited 2015 (315) ELT 162 (SC)	
30.	M/s CPS Textiles P Ltd. v. Joint Secretary 2010 (255) ELT 228 (Mad.)	
	Chapter 4: Valuation under the Customs Act, 1962	

31.	Samar Timber Corporation v. ACC 1995 (79) E.L.T. 549 (Bom.)	Segment 24 of Resource Book
32.	CC v. East African Traders 2000 (115) E.L.T. 613 (S.C.)	
33.	Sanjay Chandiram v. CC 1995 (77) E.L.T. 241 (S.C.)	
34.	Commissioner of Customs (Port) Kolkata v. J.K. Corporation Ltd. 2007 (208) ELT 485 (SC)	
35.	Garden Silk Mills Ltd Versus Union of India 1993 (113) E.L.T. 358 (S.C)	
36.	Bombay Dyeing & Mfg. v. CC 1997 (90) ELT 276 (SC)	
37.	CC Vs M/s Denso Kirloskar Industries Pvt Ltd dated 13.08.2015	
38.	Mangalore Refineries and Petrochemicals Ltd Vs CC 2015(323) ELT 433 (SC) dated 02.09.2015	
39.	Hyderabad Industries Ltd. v. UOI 2000 (115) ELT 593 (SC)	
40.	CCus., Vishakhapatnam v. Aggarwal Industries Ltd. 2011 (272) E.L.T. 641 (SC)	
41.	Gira Enterprises v. CCus. 2014 (307) ELT 209 (SC)	
42.	M/s Wipro Ltd Vs. Assistant Collector of Customs 2015 (319) ELT 177 SC	
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43.	Union of India VS Sampath Raj Dugar 1991 (56) ELT 739 (BOM) & Agrim Sampada Ltd v Union of India, 2004 (168) ELT 15 (Del)	
44.	Bharat Surfactants Pvt Ltd v Union Of India, 1989 & SRS Engineering Industries v Secretary, Ministry of Finance 2009 (245) ELT 143 (DEL).	
45.	Board of Trustees v. UOI (2009) 241 ELT 513 (BOM HC DB).	
Chapter 6 Warehousing under customs		
46.	Pratibha processors v. UOI 1996 (88) ELT 12 SC.	
47.	Indian Oil Corporation v. commissioner of customs 1985 (21) ELT 881	
48.	CCus vs Biecco Lawrie Ltd. 2008 (223) ELT 3 (SC)	
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49.	Om Prakash Bhatia v. CC 2003(155) ELT 423 (SC)	Segment 28 of Resource Book
50.	CC v. Sun Industries 1988 (35) ELT (241) & UOI v. Rajindra Dyeing & Printing Mills Ltd. 005 (180) ELT 433 (SC)	
51.	Rubfila International Ltd. v. CCus. Cochin 2005 (190) ELT 485 (Tri.-Bang.) [maintained in Rubfila International Ltd. v. Commissioner - 2008 (224) E.L.T. A133 (S.C.)]	
52.	ABC India v. Union of India 1992 (61) E.L.T. 205 (Del.) [maintained by Supreme Court]	
Chapter-8 Refunds		
53.	Mafatlal Industries Ltd. v. U.O.I.- 1997 (89)	-
54.	Solar Pesticides case 2000 (116) ELT 401 & CCE v. Allied Photographics 2004 (166) ELT 3	
55.	Priya Blue Industries Limited, 2004 (172) ELT 145 (SC)	
56.	CCus. (Exports) v. Jraj Exports (P) Ltd. & Oswal Agro Mills Ltd. and Another v. Asstt. Collector of Central Excise	
57.	Parimal Ray v. CCus. 2015 (318)	
58.	SRF Ltd v. CCus Chennai 2006+ (193) ELT 186 (Tri -LB)	
59.	Corporation bank v. Saraswati Abharansala 2009 (233) ELT 3 SC	
60.	Jaswant b. shah v. CC1996 (81) ELT 669 (tribunal)	
61.	Banmore Foam v. CCE 2006 (193) ELT 112 (Tribunal – Delhi)	
62.	CCus v Consolidated Solvents and Chemical Corporation (2009) 243 ELT 625 (Tri).	

Custom Case Law Summary

Chapter-1 LEVY OF AND EXEMPTIONS FROM CUSTOMS DUTY	
1. Garden Silk Mills v. UOI 1999 (113) E.L.T. 358 (S.C.)]	
Issue	When are goods said to be Imported?
Conclusion	SC observed that import of goods will- • Commence-when they cross the territorial waters, but • continues and is completed when they become part of the mass of goods within the country; • the **taxable event** being reached at the time when the goods reach the customs barriers and **bill of entry for home consumption is filed**.
2. Kiran Spinning Mills v. Collector of Customs 1999 (113) E.L.T. 753 (S.C.)]	
Issue	Whether goods cleared for Warehousing are also considered as Goods Imported
Conclusion	In case of warehoused goods, the custom barriers would be crossed when they are sought to be taken out of customs and brought to the mass of goods in the country.
3. Bharat Surfacants Pvt. Ltd. v. UOI 1989 (43)	
Issue	Date for determining The Rate Of Duty And Tariff Valuation Of Imported Goods
Conclusion	SC held that the rate of duty and tariff valuation would be done on the date of final entry of the ship.
4. Rajkumar Knitting Mills P.Ltd vs CC 1998	
Issue	Date for determining The Rate of Duty And Tariff Valuation Of Imported Goods
Conclusion	The date of contract is not relevant and only the date of importation
5. Kasinka Trading v. U.O.I. 1994 (74) E.L.T. 782	
Issue	Interpretation of Exemption Notifications (Revocation or Modification)
Conclusion	SC held that the- • **power to exempt includes the power to modify or withdraw** in terms of Section 21 of the General Clauses Act, 1897. • Even a **time bound exemption notification issued** under section 5A of the Central Excise Act, 1944, or section 25 of the Customs Act, 1962 can be **modified and revoked if it is in public interest** and **the doctrine of Promissory Estoppel cannot be invoked** since a notification cannot be said to be making a representation or a promise to a party getting benefit thereof.
6. Pankaj Jain Agencies v. U.O.I. 1994	
Issue	Interpretation of Exemption Notifications (Effective Date)
Conclusion	Notification is to take effect from the date of the publication in the Official Gazette
7. ITC Ltd. v. CCE 1996	
Issue	Interpretation of Exemption Notifications
Conclusion	**Non-availability of the Gazette** on the date of issue of the notification will **not affect the operativeness and enforceability of the notification** particularly when there are radio announcements and press releases explaining the changes on the very day.
8. Associated Cement Companies Ltd. v. CC 2001	
Issue	Whether customs duty can be levied on drawings and designs as they do not fall in the definition of goods under the Customs Act, 1962?
Conclusion	Apex Court observed that though technical advice or information technology are intangible assets, but the moment they are put on a media, whether paper or cassettes or diskettes or any other thing, they become movable and are thus, goods. Therefore, the **Supreme Court held that drawings, designs, manuals and technical material are goods liable to customs duty**.
9. BPL Display Devices Ltd. v. CCEx., Ghaziabad (2004)	

Issue	Can the benefit of the particular notification in respect of the goods damaged in transit also be claimed?
Conclusion	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. It has been clarified by the Supreme Court that words **"for use"** have to be construed to mean **"intended for use"**.
10. Commissioner of Customs v. Tullow India Operations Ltd. (2005)	
Issue	Whether any condition for exemption, which is out of control & not fulfilled result not granting of Exemption?
Conclusion	The Apex Court has observed that if a condition is not within the power and control of the importer and depends upon the acts of public functionaries, non-compliance of such a condition, subject to just exceptions cannot be held to be a condition precedent which would disable it from obtaining the benefit for all times to come
11. Kesoram Rayon v. CC 1996	
Issue	In case if the Goods are not removed from Warehouse even after the expiry of the date for Warehousing and subsequently application for remission of duty under section 23 of the Customs Act, 1962 on the ground that the said goods had lost their shelf life and had become unfit for use on account of non- availability of orders for clearance. Whether such remission filed is valid?
Conclusion	SC has held that goods which are not removed from warehouse within the permissible period, are deemed to be improperly removed on the day they ought to have been removed.
12. Essar Steel v. UOI 2010	
Issue	Whether clearances of goods from DTA to Special Economic Zone are chargeable to export duty?
Conclusion	• The charging section needs to be construed strictly. If a person is not expressly brought within the scope of the charging section, he cannot be taxed at all. • SEZ Act does not contain any provision for levy and collection of export duty on goods supplied by a DTA unit to a Unit in a Special Economic Zone for its authorised operations. Since there is no charging provision in the SEZ Act providing for the levy of customs duty on such goods, export duty cannot be levied on the DTA supplier. • Reading section 12(1) of the Customs Act, 1962 along with sections 2(18), 2(23) and 2(27) makes it apparent that customs duty can be levied only on goods imported into or exported beyond the territorial waters of India. Since both the **SEZ unit and the DTA unit are located within the territorial waters of India, supplies from DTA to SEZ would not attract** section 12(1) [charging section for customs duty].
13. Commissioner v. Hanil Era Textile Ltd. 2005	
Issue	Whether duty can be levied on surplus sold to DTA after meeting export, in case if Notification does not specifically restrict the use of imported goods for manufacture of export goods?
Conclusion	In the absence of a **restrictive clause in the notifications that imported goods** are to be solely or exclusively used for manufacture of goods for export, there is no violation of any condition of notification, if surplus power generated due to unforeseen exigencies is sold in DTA.
14. Mangalore Refinery & Petrochemicals Ltd v. CCus. 2015	

Issue	In case of import of crude oil, whether customs duty is payable on the basis of the quantity of oil shown in the bill of lading or on the actual quantity received into shore tanks in India?
Conclusion	The Supreme Court stated that Tribunal's reasoning for concluding that the bill of lading quantity alone should be considered for the purpose of valuing the imported goods is incorrect in law. The Apex Court examined each of the reasons given by the Tribunal as under: (i) The Tribunal lost sight of the fact that a levy in the context of import duty can only be on imported goods, that is, on goods brought into India from a place outside of India. Till that is done, there is no charge to tax. (ii) The taxable event in the case of imported goods is "import". The taxable event in the case of a purchase tax is the purchase of goods The quantity of goods stated in a bill of lading would perhaps reflect the quantity of goods in the purchase transaction between the parties, but would not reflect the quantity of goods at the time and place of importation. A bill of lading quantity, therefore, could only be validly looked at in the case of a purchase tax but not in the case of an import duty. (iii) The Tribunal wholly lost sight of sections 13 and 23 of the Act. Where goods which are imported are lost, pilfered or destroyed, no import duty is leviable thereon until they are out of customs and come into the hands of the importer. It is clear, therefore, that it is only at this stage that the quantity of the goods imported is to be looked at for the purposes of valuation. (iv) The basis of the judgment of the Tribunal is on a complete misreading of section 14 of the Customs Act. First and foremost, the said section is a section which affords the measure for the levy of customs duty which is to be found in section 12 of the said Act. Even when the measure talks of value of imported goods, it does so at the time and place of importation, which again is lost sight of by the Tribunal. (v) The Tribunal's reasoning that somehow when customs duty is ad valorem the basis for arriving at the quantity of goods imported changes, is wholly unsustainable. Whether customs duty is at a specific rate or is ad valorem does not make the least difference to the statutory scheme. Customs duty whether at a specific rate or ad valorem is not leviable on goods that are pilfered, lost or destroyed until a bill of entry for home consumption is made or an order to warehouse the goods is made. This is for the reason that the import is not complete until what has been stated above has happened. **Supreme Court set aside the Tribunal's judgment and declared that the quantity of crude oil actually received into a shore tank in a port in India should be the basis for payment of customs duty.**
15. Ramdhan Pandey V. State of UP 1993(66) E.L.T 547 (S.C)	
Conclusion	Exemption Notification not valid if it does not recite public interest
16. BOC India Ltd. V State of Jharkhand 2009 (237) E.L.T 490 (Bom)	
Conclusion	For purpose of claiming exemption from payment of tax applicable to a commodity, assessee must bring on record sufficient materials to show that it comes within the purview of notification.
17. BK Industries V. UOI 1993 (65) ELT 465 (SC) & Doypack Systems P ltd v. UOI 1988 (36) ELT 201 (SC)	
Conclusion	a) Exemption cannot be claimed on the strength of finance ministers budget speech. b) Notings on Government files cannot be used as an aid in construction.
18. CC v. Lekhraj Jessumal & Sons 1996 (82) ELT 162 (SC)	

Conclusion	Words in tariff schedule to be interpreted keeping in mind the rapid march of technology as industry is not static.
Chapter-2 Types of Custom Duty	
19. Reliance Industries ltd. v. Designated Authority 2006 (202) E.L.T. 23 (S.C.)	
Issue	Can there be multiple non-injurious price for a particular product?
Conclusion	There would be a **single Non-Injurious Price for a product and not several Non-Injurious Price** for the same product.
20. Rishiroop Polymers Pvt. Ltd. v. Designated Authority and Additional Secretary 2006 (196) ELT 385 (SC)	
Issue	If the Central Government is of the opinion that the cessation of such duty is likely to lead to continuation or recurrence of dumping and injury, whether CG can time to time, extend the period of such imposition for a further period of 5 years and such further period shall commence from the date of order of such extension?
Conclusion	It was held, that the entire purpose of the **review enquiry is not to see whether there is a need for imposition** of anti-dumping duty **but to see whether in the absence of such continuance,** dumping would increase and the domestic industry suffer. Further, where a review initiated before the expiry of the aforesaid period of 5 years has not come to a conclusion before such expiry, the anti-dumping duty may continue to remain in force pending the outcome of such a review for a further period not exceeding 1 year
21. UoI Vs M/s Adani Power Ltd 2016 (331) ELT A129 (SC)	
Issue	Whether the custom duty would be payable on transfer of electrical energy goods from SEZ to DTA, on which no duty payable at the time of Import?
Conclusion	It was held that when **no customs duty is payable on electrical energy** imported into India, **no duty would be payable on similar goods transferred from SEZ to DTA** in view of Section 30 read with Section 51 of the SEZ Act.
22. Automotive Tyre Manufacturers Association v. Designated Authority 2011 (263) ELT 481 (SC)	
Issue	Whether the importer will be entitled for refund of excess anti-dumping duty paid?
Conclusion	SC held that **refund of excess anti-dumping duty** paid is **subject to** provisions **of unjust enrichment.**
23. Designated Authority vs Haldor Topsoe 2000 (120) ELT 11.	
Conclusion	The Supreme court held that anti-dumping duty could be fixed with reference to prices in a territory and that European union could also be a territory
Chapter-3 Classification of Imported Goods	
24. Mahindra and Mahindra v. CCE 1999 (109) E.L.T. 739 (Tribunal)	
Issue	If both sub-rules (a) – Specific over general and (b) – Essential character principle fails to classify the goods in question, how goods be classified?
Conclusion	If both sub-rules (a) and (b) fails to classify the goods in question, then resort may be had to sub-rule (c) – Latter the better, which provides that composite goods shall be classified on the basis of the heading that occurs last in numerical order. When the goods cleared by assessee were equally classifiable under the following two headings:- **Heading No. 87.03:** Motor cars and other vehicles principally designed for the transport of persons **Heading No. 87.04:** Motor vehicles meant for transport of goods. It was held that heading 87.04 occurs last and as both the headings equally merit classification, goods shall be classified under 87.04 applying the interpretative Rule 3(c).
25. Saurashtra Chemicals v. CC 1986 (23) ELT 283 (Tri-LB) [approved by SC]	
Issue	Are Section, Notes and Chapter Notes in the Customs Tariff a part of the statute and are relevant in the matter of classification of goods?

Conclusion	This case brings out the importance of section notes and chapter notes in the classification of goods. The Tribunal **observed that Section Notes and Chapter Notes in the Customs Tariff are a part of the statute and thus are relevant in the matter of classification of goods**. These notes sometimes restrict and **some times expand the scope of headings**. The scheme of the Customs Tariff is to determine the coverage of headings in the light of section notes and chapter notes. These notes, in this sense have an overriding effect on the headings.
26. CC v. Maestro Motors Ltd. 2004 (174) E.L.T 289 (S.C.)	
Issue	If the tariff heading is specially mentioned in exemption notification, the general interpretative rules would be applicable to such exemption notification?
Conclusion	It was held that if a **tariff heading is specially mentioned in exemption notification, the general interpretative rules would be applicable to such exemption notification**. But, if an item is specifically mentioned without any tariff heading, then exemption would be available even though for the purpose of classification, it may be otherwise.
27. CC v .Hewlett Packard India Sales (p) Ltd. 2007 (215) E.L.T. 484 (S.C.)	
Issue	If some software is installed in imported laptops or computers, how it will be classified for the purpose of custom duty calculation?
Conclusion	In this case the assessee was engaged in the manufacture of, and trading in, computers including Laptops (otherwise called 'Notebooks') falling under Heading 84.71 of the CTA Schedule. They imported Notebooks (Laptops) with Hard Disc Drivers (Hard Discs, for short) preloaded with Operating Software like Windows XP, XP Home etc. These computers were also accompanied by separate Compact Discs (CDs) containing the same software, which were intended to be used in the event of Hard Disc failure. The assessee classified the software separately and claimed exemption. The court held that ***without operating system like windows, the laptop cannot work***. Therefore, the laptop along with software ***has to be classified as laptop and valuation to be made as one unit.***
28. Keihin Penalfa Ltd. v. Commissioner of Customs 2012 (278) ELT 578 (SC)	
Issue	Department contended that 'Electronic Automatic Regulators' were classifiable under Chapter sub-heading 8543.89 whereas the assessee was of the view that the aforesaid goods were classifiable under Chapter sub-heading 9032.89. An exemption notification dated 1-3- 2002 exempted the disputed goods by classifying them under chapter sub- heading 9032.89. The period of dispute, however, was prior to 01.03.2002. The dispute was on classification of Electronic Automatic Regulators.
Conclusion	The Apex Court observed that the Central Government had issued an exemption notification dated 1-3-2002 and in the said notification it had classified the Electronic Automatic Regulators under Chapter sub-heading 9032.89. Since the Revenue itself had classified the goods in dispute under Chapter sub-heading 9032.89 from 1-3-2002, the said classification needs to be accepted for the period prior to it.
29. State of Punjab v. Nokia India Private Limited 2015 (315) ELT 162 (SC)	
Issue	Whether the mobile battery charger is classifiable as an accessory of the cell phone or as an integral part of the same?
Conclusion	The Apex Court held that **mobile battery charger is an accessory to mobile phone and not an integral part of it**. Further, battery charger cannot be held to be a composite part of the cell phone, but is an independent product which can be sold separately without selling the cell phone.
30. M/s CPS Textiles P Ltd. v. Joint Secretary 2010 (255) ELT 228 (Mad.)	
Issue	(i) Will the description of the goods as per the documents submitted along with the Shipping Bill be a relevant criterion for the purpose of classification, if not otherwise disputed on the basis of any technical opinion or test?

	(ii) Whether a separate notice is required to be issued for payment of interest which is mandatory and automatically applies for recovery of excess drawback?
Conclusion	The High Court held that the **description of the goods as per the documents submitted along with the Shipping Bill would be a relevant criterion for the purpose of classification**, if not otherwise disputed on the basis of any technical opinion or test. The petitioner could not plead that the exported goods should be classified under different headings contrary to the description given in the invoice and the Shipping Bill which had been assessed and cleared for export. Further, the Court, while interpreting section 75A(2) of the Customs Act, 1962, noted that when the claimant is liable to pay the excess amount of drawback, he is liable to pay interest as well. The section provides for payment of interest automatically along with excess drawback. No notice for the payment of interest need be issued separately as the payment of interest becomes automatic, once it is held that excess drawback has to be repaid.
Chapter 4: Valuation under the Customs Act, 1962	
31. Samar Timber Corporation v. ACC 1995 (79) E.L.T. 549 (Bom.)	
Issue	What is relevant date in respect of duty payable?
Conclusion	it was held that ***relevant date*** in respect of rate of duty payable is the ***date of presentation of Bill of Entry and not date of re-presentation after correction.***
32. CC v. East African Traders 2000 (115) E.L.T. 613 (S.C.)	
Issue	When the "person" is said to be related under Custom Act?
Conclusion	it was held that Customs authorities and Tribunal can ***pierce the veil of the respondent company*** to determine whether or not the buyer and the seller were 'related persons within the scope of rule 2(2) of the erstwhile Customs Valuation (Determination of Price of Imported Goods) Rules, 1988 [now rule 2(2) of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007].
33. Sanjay Chandiram v. CC 1995 (77) E.L.T. 241 (S.C.)	
Issue	When the "Residual Method" is to be considered?
Conclusion	The residuary method can be ***considered if valuation is not possible*** by any other method specified from rule 3 to rule 8.
34. Commissioner of Customs (Port) Kolkata v. J.K. Corporation Ltd. 2007 (208) ELT 485 (SC)	
Issue	Whether royalties, licence fee or any other charges be includible in price actually paid or payable.
Conclusion	At times, royalty, license fee or any other payment for a process to be paid by the importer may be ***linked to post-importation*** activity like running of the machine/ plant, ***when the process is put to use.*** so as to clarify that such royalty, license fee, etc., if otherwise includible in terms of clauses (c) or (e) of Rule 10, ***will be includible in the value of the goods irrespective of the fact*** that such ***royalty, licence fee, etc., relates to a process*** which is made operational ***during the running of the machines, i.e., after importation of the goods.***
35. Garden Silk Mills Ltd Versus Union of India 1993 (113) E.L.T. 358 (S.C)	
Issue	What is "place of Import" as mentioned in Rule 10(2)(a)?
Conclusion	The "Place of Import" as observed by the supreme court under this case law is the place where the imported goods reach the ***landmass of India*** in the Customs area of the port, airport or land customs station, or if they are consumed before reaching the landmass of India, ***the place of consumption.***
36. Bombay Dyeing & Mfg. v. CC 1997 (90) ELT 276 (SC)	
Issue	Whether the vendor inspection charges be includible in assessable value.
Conclusion	It was held that Only the ***payments actually made as a condition of sale*** of the imported goods by the buyer to the seller are includible in the assessable value under rule 10(1)(e) of the Customs Valuation (Determination of Value of Imported

	Goods) Rules, 2007. Hence if any charges of vendor inspection on the goods carried out by foreign supplier on his own is done which is not required for making the goods ready for shipment, are not includible in the assessable value of the imported goods.
37. CC Vs M/s Denso Kirloskar Industries Pvt Ltd dated 13.08.2015	
Issue	Whether consideration paid for the technical know-how be includible in assessable value.
Conclusion	It was held in the judgement that the consideration paid for the technical know-how, the technical information which was to be provided the Japanese Company to respondent was for manufacture of the contract products by the respondent herein, naturally, after the setting up of the plant. This ***cost is, thus incurred after importation of the goods*** and therefore ***can not be loaded to assessable value*** of the imported goods.
38. Mangalore Refineries and Petrochemicals Ltd Vs CC 2015(323) ELT 433 (SC) dated 02.09.2015	
Issue	Whether the custom duty is payable on quantity received in India or quantity exported from other country.
Conclusion	Quantity or Price - ***Duty is payable on the quantity received in India, not the quantity exported from another country.*** It is clear that the levy of customs duty under ***Section 12 is only on goods imported into India.*** Goods are said to be imported into India when they are brought into India from a place outside India. Unless such goods are brought into India, the act of importation which triggers the levy does not take place. If the goods are pilferred after they are unloaded or lost or destroyed at any time before clearance for home consumption or deposit in a warehouse, the ***importer is not liable to pay the duty leviable*** on such goods. This is for the reason that the import of goods does not take place until they become part of the land mass of India and until the act of importation is complete which under Sections 13 and 23 happens only after an order for clearance for home consumption is made and/or an order permitting the deposit of goods in a warehouse is made.
39. Hyderabad Industries Ltd. v. UOI 2000 (115) ELT 593 (SC)	
Issue	Whether Service charges paid to canalizing agent are includible in the assessable value of imports.
Conclusion	It was held in the judgement that Since the ***canalizing agent is not the agent of the importer nor does he represent the importer abroad, purchases*** in bulk by canalizing agency from foreign seller and ***subsequent sale*** by it to Indian importer on high seas sale basis ***are independent of each other.*** Hence, the ***commission or service charges paid to the canalizing agent are includible*** in the assessable value as these ***cannot be termed as buying commission.***
40. CCus., Vishakhapatnam v. Aggarwal Industries Ltd. 2011 (272) E.L.T. 641 (SC)	
Issue	In case of Import of Volatile goods where consignment was delayed mutually & at the same time the price in International Market rised. So, Should increased prices be taken as Assessable Value?
Conclusion	The Supreme Court, in the instant case, observed that since the contract entered into for supply of crude sunflower seed oil @ US $ XXX CIF/ metric ton could not be performed on time, the extension of time for shipment was agreed upon by the contracting parties. The Supreme Court pointed out that the ***commodity involved had volatile fluctuations in its price in the international market,*** but having delayed the shipment; the supplier ***did not increase the price of the commodity*** even after the increase in its price in the international market. Further, there was ***no allegation*** regarding the ***supplier and importer*** being ***in collusion.*** Thus, the appeal was allowed in the favour of the assessee and the contract price was accepted as the 'transaction value'.

41. Gira Enterprises v. CCus. 2014 (307) ELT 209 (SC)	
Issue	Can the value of imported goods be increased if Department fails to provide to the importer, evidence of import of identical goods at higher prices?
Conclusion	Supreme Court observed that ***since Revenue did not supply the copy of computer printout***, which formed the basis of the conclusion that the appellants under-valued the imported goods, the ***appellants obviously could not and did not have any opportunity to demonstrate*** that the transactions relied upon by the Revenue were ***not comparable transactions***. Thus, in the given case, the value of imported goods could ***not be enhanced on the basis of value of identical goods as Department was not able to provide evidence of import of identical goods at higher prices.***
42. M/S Wipro Ltd Vs Assistant Collector of Customs-2015 (319) ELT 177 (SC)	
Conclusion	The Supreme Court held that the landing charges to be added to the value of goods, should be based on actual charges incurred, and not a notional charges of 1% as has been provided in the rules. By virtue of the amendment now carried out to the CVR 2007, the loading unloading and handling charges associated with the delivery of the imported goods at the place of the importation, shall no longer be added to the CIF value of the goods. Thus only charges incurred for the delivery of goods "to" the place of importation shall now be includible in the transaction value.
Chapter 5 Import, Export and transportation of goods	
43. UOI VS Sampath Raj Dugar, 1991 (56) ELT 739 (BOM) & Agrim Sampada Ltd v Union of India,2004 (168) ELT 15 DEL.	
Issue	The definition of importer included not only the owner but also any person holding out to ben importer Owner is a person who is holding the documents of title of goods.This will include a high sea buyer. Importer also includes any person holding himself to be the importer for purpose of clearance of goods.This is the person who files the import documents.
Conclusion	However between the two, the owner takes precedence over person holding himself out to be the importer. The goods being abandoned by original importer ownershio continues to vest in foreign supplier. The said goods if transferred by endorsement of bill of lading to another person, that another person holding document of title to be regarded as "Importer" under section 2(26) of the customs act 1962
44. Bharat Surfactants Pvt Ltd v Union of India, 1989 (43) ELT 189 (SC) & SRS Engineering Industries v Secretary, Ministry of Finance 2009 (245) ELT 143 (DEL)	
Conclusion.	Section 31(2) provide that Entry inwards shall not given until the arrival manifest or import manifest has been delivered or the proper officer is satisfies that a valid reason is given for not delivering it within prescribed time. Grant of entry inwards is an acknowledgment of the fact that customs department is ready to supervise the unloading the cargo and is prepared to assess the goods to duty.Or is not given if there is no berth for the ship to dock or of customs supervision is not possible for other reasons.
45. Board of trustees v. UOI 2009 241 ELT 513 (BOM HC DB)	
Issue	The Imported goods were under the custody of Port trust, the department demanded duty from the custodian under section 45(3) of the customs act, 1962 on such pilferage.

	The port trust denied such demand contending that it was not an approved custodian falling under section 45 and possession of goods by it was by virtue of powers conferred under the major port trust act, 1963.
Conclusion	High court held that considering the language of Section 45(3), the liability to pay duty os one the person,in whopse custody the goods remain as an approved person under the section 45 of the act. Therefore. Section 45(3) applies only to the principal commissoner/Commissioner of customs under section 45(1). Accordingly the major ports and airports covered under major ports trust act, 1963 who do not require any approval under section 45(1), are not covered by section 45(3). Thus, the department cannot demand duty from the port trust on the pilferage under section 45(3) of the customs act, 1962. Section 45(3) of the customs act 1962 holds thje custodian responsible only in respect of the customs duty in respect of pilfered goods. It does not extend to the value of goods lost. However the port trust, as bailee of the goods, is liable for value of the goods to the importer.
Chapter 6 – Warehousing under Customs	
46. Prathiba Processors v.UOI 1996 (88) ELT 12 SC	
Conclusion	The Apex Court held that when goods at the time of removal from warehouse are wholly exempted from payment of duty, the liability to pay interest cannot be saddled on a non-existing duty. Liability to pay interest under section 61(2) of the customs act is solely dependant upon the exigibility or actual liability to pay duty. In case of the liability to pay duty is nil, then, the intrest will also be NIL>
47. Indian oil companies v. Commissioner of customs 1985 21 ELT 881 (TRI.-LB)	
Conclusion	Section 23 is a general provision applicable to cases where goods are lost before clearance for home consumption is made Whereas, section 70 provides for remission of duty in respect of loss during warehousing of only the goods notified by the central government under that section. Therefore granting remission for loss during transit between two warehouse does not render section 70 redundant.
48. CCus vs Biecco Lawrie Ltd 2008 223 ELT 3 SC	
Conclusion	The Supreme court held that where duty on the warehoused goods is paid and out of charge order for home consumption is made by the proper officer in compliance for the provisions of secton 68, the goods allowed to retain in the storage in the warehouse as permitted under section 49 of the Customs Act are not treated as warehoused goods and importer would not be required to pay anything more.
Chapter-7 Duty Drawback	
49. Om Prakash Bhatia v. CC 2003(155) ELT 423 (SC)	
Issue	What is ***market price*** in context of Prohibition And Regulation Of Drawback [Section 76] Which prohibits duty drawback "in respect of any goods, the ***market price*** of which is less than the amount of drawback due thereon".
Conclusion	The market price is as ***prevailing in India and not the price which exporter expects to receive*** from the foreign customer.
50. CC v. Sun Industries 1988 (35) ELT (241) & UOI v. Rajendra Dyeing & Printing Mills Ltd. 005 (180) ELT 433 (SC)	
Issue	When will "export" be said to be completed and exporter will be eligible to claim duty drawback.

Conclusion	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***". 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.
51. Rubfila International Ltd. v. CCus. Cochin 2005 (190) ELT 485 (Tri.-Bang.) [maintained in Rubfila International Ltd. v. Commissioner - 2008 (224) E.L.T. A133 (S.C.)]	
Issue	Can any exporter claim duty drawback where the inputs by weight of the product were procured indigenously and were not excisable?
Conclusion	Clause (ii) of second proviso to rule 3(c) of the Customs and Central Excise Duties Drawback Rules, 2017 provides that ***no drawback shall be allowed if the exported goods have been produced or manufactured using imported materials or excisable materials in respect of which duties have not been paid.*** Tribunal in this case held that in a case where there is clear evidence that the inputs of such export products have not suffered any duty, no drawback can be claimed.
52. ABC India v. Union of India 1992 (61) E.L.T. 205 (Del.) [maintained by Supreme Court]	
Issue	What are the importance of the basic principles underlying the law relating to grant of drawback?
Conclusion	There is distinction between section 74 and 75 of the Customs Act- ***section 74*** of the Customs Act ***comes into operation when articles are imported and thereupon exported***, such articles ***being easily identifiable***; and ***section 75*** comes into operation when ***imported materials are used in the manufacture of goods*** which are exported.
Chapter-8 Refunds	
53. Mafatlal Industries Ltd. v. U.O.I.- 1997 (89)	
Issue	It is found that there was an error resulting in excess payment of duty, such excess duty is liable to be refunded. But, the importer has already collected the duty from the purchaser and if any refund is granted to him, it would confer on him a double benefit to which he does not have a valid right. So whether in such cases the refund is credited to **the "Consumer Welfare Fund"?**
Conclusion	a) The theory of unjust enrichment is valid and constitutional. However, the theory that, conversely, the manufacturer would be unjustly impoverished in case of demands has not been agreed to. b) Section 27 (Customs Act) is self-contained code for refunds; resort to civil suits or writs is not permissible unless the taxing provision is struck down as unconstitutional. c) Unless the levy is struck down as unconstitutional, all Courts must exercise jurisdiction in terms of section 11B and refuse to grant relief if the incidence of tax has been passed on. d) Whatever amount is collected as duty will have to paid to the Government. If excess is collected than that payable, it would be credited to the Consumer Welfare Fund or given as refund to the person who has borne the incidence of duty.
54. Solar Pesticides case 2000 (116) ELT 401 & CCE v. Allied Photographics 2004 (166) ELT 3	
Issue	If captive consumption of inputs by the importer, as the incidence of duty paid on the inputs are passed on to the customers, in that case the bar of unjust enrichment will apply?

Conclusion	The Supreme Court has held that the bar of unjust enrichment will apply to refunds even in case of captive consumption of inputs by the importer, as the incidence of duty paid on the inputs are passed on to the customers. Further the Supreme Court in case of **CCE v. Allied Photographics 2004 (166) ELT 3** has held that doctrine of unjust enrichment applies even when duty is paid under protest. It has been held that even if there is no change in price before and after assessment (i.e. before and after imposition of duty), it does not lead to the inevitable conclusion that incidence of duty has been passed on to the buyer, as such uniformity may be due to various factors.
55. Priya Blue Industries Limited, 2004 (172) ELT 145 (SC)	
Issue	Duty was assessed on the imported item and the importer paid the duty under protest. Thereafter, the importer filed a claim for refund of the duty, then it would be treated as an appeal ?
Conclusion	In this matter the Supreme Court ruled that, **"Once an Order of Assessment is passed the duty would be payable as per that order".** Unless that order of assessment has been reviewed under Section 28 and/or modified in an Appeal that Order stands. So long as the Order of Assessment stands the duty would be payable as per that Order of Assessment. A refund claim is not an Appeal proceeding.
56. CCus. (Exports) v. Jraj Exports (P) Ltd. & Oswal Agro Mills Ltd. and Another v. Asstt. Collector of Central Excise	
Issue	Whether the refund of bank Guarantee which was invoked by department due to non-fulfillment of export obligation. However subsequently the export obligation was fulfilled and exporter file the refund claim of Bank Guarantee but the department rejected on the ground that it was time barred in terms of section 27 of the Customs Act, 1962 ?
Conclusion	The High Court, in the instant case, held that furnishing of bank guarantee for export obligation could not be regarded as payment of duty; therefore time-bar was not applicable for its return. **The furnishing of bank guarantee is only a security to safeguard the interest of the Revenue.** Since section 27 governs the refund of 'duty', and the bank guarantee is not 'duty', the limitation prescribed therein for refund of duty would not apply to refund of a bank guarantee.
57. Parimal Ray v. CCus. 2015 (318)	
Issue	Is limitation period of one year applicable for claiming the refund of amount paid on account of wrong classification of the imported goods ?
Conclusion	The High Court observed that the provisions of section 27 apply only when there is over payment of duty or interest under the Customs Act, 1962. When the petitioners' case is that tunnel boring machines imported by it were not exigible to any duty, any sum paid into the exchequer by them was not duty or excess duty but simply money paid into the Government account. The Government could not have claimed or appropriated any part of this as duty or interest. **When the said amount was paid by mistake by the petitioner to the Government of India, the latter instantly became a trustee to repay that amount to the petitioner.** The High Court, therefore, allowed the writ application and directed the respondents (Department) to refund the said sum to the petitioner.
58. SRF Ltd v. CCus Chennai 2006+ (193) ELT 186 (Tri -LB)	
Conclusion	Tribunal has held that the doctrine of unjust enrichment would be applicable in case of imported capital goods used captively for manufacture of excisable goods. The relevance of the fact that price remained the same before and after the capital goods were imported, the larger bench also clarified that uniformity in price before and after assessment does not lead to inevitable conclusion that duty burden has not been passed, as such uniformity may be due to various reasons.

59. Corporation Bank vs Saraswati Abharansala 2009 233 ELT 3 SC	
Conclusion	IF excess tax is paid except cases involving the principles of unjust enrichment the excess tax must be refunded.
60. Jaswant b. shah v CC 1996 81 ELT 669 TRIBUNAL	
Conclusion	Refund claim cannot be filed by the CH agent in his own name, without power of attorney
61. Banmore Foam v. CCE 2006 193 ELT 112 Tribunal – Delhi	
Conclusion	Burden of proof that incidence of duty has not been passed on to customers is on assessee
62. CCus V Consolidated Solvents and chemical Corporation 2009 243 ELT 625 Tri.	
Conclusion	Interest on delayed refund is payable at the rates as applicable time to time and not at the rate applicable on day when refund was due.

Notes: