

Contents



| | PAGE |
|-------------------------|-------------|
| <i>About the Author</i> | <i>I-5</i> |
| <i>Preface</i> | <i>I-7</i> |
| <i>List of Cases</i> | <i>I-17</i> |

INTRODUCTION

| | | |
|-------------|---|-----------|
| 0.1 | Historical Background | <i>1</i> |
| 0.2 | GATT Valuation Code | <i>1</i> |
| 0.3 | Methods of Valuation under the GATT Code of Valuation | <i>2</i> |
| 0.4 | Indian Perspective | <i>4</i> |
| 0.5 | The Sea Customs Act, 1878 | <i>4</i> |
| 0.6 | Important judgments under the Sea Customs Act, 1878 | <i>5</i> |
| 0.7 | Valuation under section 14 of the Customs Act prior to 10-10-2007 | <i>6</i> |
| 0.8 | Valuation under Section 14 of the Customs Act effective from 10-10-2007 | <i>7</i> |
| 0.9 | Tariff Values | <i>9</i> |
| 0.10 | Rate of Exchange | <i>9</i> |
| 0.11 | Appendices attached and abbreviations used | <i>10</i> |

PART A

VALUATION OF IMPORTED GOODS

CHAPTER 1

TRANSACTION VALUE

| | | |
|------------|---|-----------|
| 1.1 | Transaction Value - Applicability of | <i>13</i> |
| 1.2 | Transaction Value and Apex Court judgment in Eicher Tractors case | <i>13</i> |

| | | |
|------------|--|-----------|
| 1.3 | Eicher Tractors Judgment followed under existing CVR, 2007 | 14 |
| 1.4 | Price actually paid or payable | 14 |

CHAPTER 2

TRANSACTION VALUE TO BE ACCEPTED IN THE ABSENCE OF CONDITIONS AND RESTRICTIONS UNDER RULE 3(2)

| | | |
|------------|--|-----------|
| 2.1 | Apex Court judgment in Eicher Tractor case | 16 |
| 2.2 | Eicher case judgment followed as precedent in subsequent cases | 17 |

CHAPTER 3

CONTRACT PRICES AND TRANSACTION VALUE

| | | |
|------------|--|-----------|
| 3.1 | Contract Price acceptable as Transaction Value | 18 |
| 3.2 | Judgments relating to contract price | 18 |
| 3.3 | Reduction in price in subsequent contract | 21 |

CHAPTER 4

HIGH SEA SALES AND TRANSACTION VALUE

| | | |
|------------|---|-----------|
| 4.1 | Price paid by the importer at High Sea is Transaction Value | 23 |
| 4.2 | Judgments relating to High Sea Sales | 23 |
| 4.3 | High Sea Sales Charges | 25 |
| 4.4 | High Seas Service Charges - Departmental Clarifications | 25 |
| 4.5 | High Sea Sales and IGST | 26 |
| 4.6 | CESTAT judgments on levy service charges on High Sea Sales | 27 |

CHAPTER 5

RELATED PERSONS

| | | |
|------------|---|-----------|
| 5.1 | Definition of related persons | 29 |
| 5.2 | Buyer and Seller Related yet price not influenced by Relationship | 29 |
| 5.3 | Lifting the Corporate veil | 30 |
| 5.4 | Relationship established | 30 |
| 5.5 | Relationship not established | 32 |
| 5.6 | Distributors not related persons | 37 |

| | PAGE |
|---|------|
| 5.7 Cases where 'Price' has not been influenced by relationship | 37 |
| 5.8 Test Values - Rule 3(3) | 41 |

CHAPTER 6

TRANSACTION VALUE OF IDENTICAL OR SIMILAR GOODS AND CONTEMPORANEOUS IMPORTS

| | |
|--|----|
| 6.1 On Rejection of Transaction Value, Rules 5 to 8 of Valuation Rules to be followed sequentially | 44 |
| 6.2 Same Commercial Level | 45 |
| 6.3 Comparison of Values and Contemporaneous Imports | 46 |
| 6.4 Cases in which transaction value was accepted | 46 |
| 6.5 Cases in which Transaction Value was not accepted | 59 |

CHAPTER 7

DEDUCTIVE VALUE

| | |
|---|----|
| 7.1 Deductive Value Explained | 61 |
| 7.2 CESTAT judgments on Deductive Value | 62 |

CHAPTER 8

COMPUTED VALUE

| | |
|---|----|
| 8.1 Computed Value Explained | 65 |
| 8.2 Rule 8 applied only if Rules 3, 4, 5 & 7 are inapplicable | 66 |
| 8.3 Rule 8 held to be applicable | 67 |

CHAPTER 9

RESIDUAL METHOD

| | |
|---|----|
| 9.1 Best Judgment Method when no other rule applicable | 68 |
| 9.2 Applicable to Valuation of Old Machinery and Old Cars | 68 |
| 9.3 Scale of Depreciation | 68 |
| 9.4 Judgments relating to valuation of Second Hand Machinery/ Vehicles | 70 |
| 9.5 Valuation of Old Cars by Residual Method | 76 |

CHAPTER 10**RELIANCE ON FOREIGN JOURNALS INDICATING
INTERNATIONAL PRICES FOR DETERMINING
ASSESSABLE VALUE**

| | | |
|-------------|---|----|
| 10.1 | General Principles for reliance on Foreign Journals | 78 |
| 10.2 | London Stock Exchange (LME Prices) | 79 |
| 10.3 | PLATT Prices | 80 |
| 10.4 | NIDB Data | 81 |
| 10.5 | World car catalogue price | 86 |
| 10.6 | Other journals | 86 |

CHAPTER 11**ADDITION TO TRANSACTION VALUE ROYALTY,
LICENCE AND TECHNICAL KNOW-HOW FEES**

| | | |
|-------------|---|----|
| 11.1 | Additions to Transaction Value - First Proviso to Section 14(1) | 88 |
| 11.2 | Royalty, Licence Fees and Technical Know-how Fees | 89 |
| 11.3 | Judgments relating to Royalty, Licence Fees and Technical Know-how Fees | 90 |

CHAPTER 12**OTHER ADDITION TO TRANSACTION VALUE**

| | | |
|-------------|--|-----|
| 12.1 | Other additions to value - First proviso to section 14(1) | 98 |
| 12.2 | Commission/Brokerage | 98 |
| 12.3 | Cost of Packing/Containers | 99 |
| 12.4 | Service Charge | 100 |
| 12.5 | Advertisement Expenses | 100 |
| 12.6 | Transportation charges | 101 |
| 12.7 | Judgments relating to transportation charges | 102 |
| 12.8 | Addition to Value to be made on the basis of objective and Quantitative Data | 104 |

CHAPTER 13**DECLARATION BY THE IMPORTER**

| | | |
|-------------|--|------------|
| 13.1 | Declaration in Bills of Entry to confirm truthfulness of the contents | <i>105</i> |
| 13.2 | Consequences of mis-declaration | <i>106</i> |
| 13.3 | Investigations to determine truth and accuracy of Declarations often exercised arbitrarily | <i>107</i> |

CHAPTER 14**REJECTION OF DECLARED VALUE**

| | | |
|-------------|---|------------|
| 14.1 | Procedure for rejection of declared value | <i>108</i> |
| 14.2 | Judgment in which rejection of value by proper officer was upheld | <i>109</i> |
| 14.3 | Judgments in which rejection of value by the proper officer was set aside | <i>110</i> |
| 14.4 | Burden of Proof | <i>117</i> |

CHAPTER 15**INVESTIGATION BY SPECIAL VALUATION BRANCH**

| | | |
|-------------|--|------------|
| 15.1 | Purpose of Investigation by Special Valuation Branch | <i>118</i> |
| 15.2 | Procedure for Investigation by SVB | <i>118</i> |

PART B**VALUATION OF EXPORT GOODS****CHAPTER 16****EXPORT VALUATION**

| | | |
|-------------|---|------------|
| 16.1 | Export Valuation under Section 14(1) of Customs Act | <i>125</i> |
| 16.2 | Apex Court guidelines on valuation of export goods | <i>126</i> |

CHAPTER 17**UNDER-INVOICING AND OVER-INVOICING OF EXPORTS**

| | | |
|-------------|--|------------|
| 17.1 | Reasons for Under-Invoicing/Over-invoicing | <i>128</i> |
|-------------|--|------------|

| | | |
|-------------|-------------------------------------|------------|
| 17.2 | Cases of Under-Invoicing of Exports | <i>128</i> |
| 17.3 | Cases of Over-Invoicing of Exports | <i>129</i> |

CHAPTER 18

**CUSTOMS VALUATION (DETERMINATION OF
VALUE OF EXPORT GOODS) RULES, 2007**

| | | |
|-------------|--|------------|
| 18.1 | Need for separate export valuation rules | <i>134</i> |
| 18.2 | Comparison between Import and Export Valuation Rules, both promulgated on 10-10-2007 | <i>135</i> |
| 18.3 | Judgments relating to Export Valuation Rules | <i>138</i> |

CHAPTER 19

**INCLUSION/EXCLUSION DUTY ELEMENT
FROM CUM DUTY PRICE**

| | | |
|-------------|--|------------|
| 19.1 | Long Standing Practice to exclude duty from cum-duty Export | <i>140</i> |
| 19.2 | CESTAT judgment in Sesa Goa case under challenge | <i>141</i> |
| 19.3 | Whether duty element of duty is to be excluded from the cum-duty price? | <i>141</i> |
| 19.4 | Unlike provisions of Central Excise Act and the Service Tax Act, there is no specific provision in Section 14 of the Customs Act, 1962 for exclusion of duty element from the cum-duty price. Whether correct? | <i>142</i> |
| 19.5 | Exclusion of duty element from the assessable value will be unworkable in view of frequent variations in the rate of duty Whether correct? | <i>143</i> |

CHAPTER 20

**VALUATION OF GOODS SOLD IN DTA FROM EOU
AND DEBONDING OF CAPITAL GOODS FROM EOU**

| | | |
|-------------|---|------------|
| 20.1 | DTA Sales | <i>144</i> |
| 20.2 | Valuation of capital goods on debonding | <i>146</i> |

APPENDICES

| | | |
|---------------------|--|------------|
| Appendix 1 : | Customs Valuation (Determination of Price of Imported Goods) Rules, 1988 | <i>151</i> |
|---------------------|--|------------|

| | PAGE |
|---|------|
| Appendix 2 : Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 | 169 |
| Appendix 3 : Valuation of second-hand machinery and fixation of scale of depreciation | 187 |
| Appendix 4 : Second hand machinery - Guidelines for valuation | 188 |
| Appendix 5 : Procedure for investigation of related party import cases and other cases by the special valuation branches | 196 |
| Appendix 6 : Customs Valuation (Determination of Value of Export Goods) Rules, 2007 | 212 |
| SUBJECT INDEX | 215 |