APPRAISING MANUAL
VOLUME I

Project imports:

1. Introduction:

Expansion of the Industrial field and adaptation of new technology to keep pace with the development in the outside world resulted in increasing industrial activity with new factories coming up and the existing ones expanding. This necessitates the import of capital goods in the form of machinery, equipment, materials for fabrication of equipment from abroad. Such imports were subjected to customs duty, 'on merits'. The importers were required to furnish individual value(s) for various items of capital goods classified for customs duty purposes separately and different rates of duty as per the tariff were levied and collected.

Heading 98.01 of the Customs Tariff Act envisages classifications of goods imported for the initial setting up or substantial expansion of plant or project. The objective is two fold namely,

(a) To simplify the assessment procedures in regard to import of capital goods and

(b) To levy a flat rate of duty in regard to the goods which were imported for the initial setting up of an industrial plant; irrigation project; power project; mining project; project for oil exploration and exploration of other minerals and other projects notified by the government. The same flat rate of duty was leviable in respect of capital goods required `for substantial expansion' of a plant or a project already in existence.

2. Heading no. 98.01- project imports: of and coverage regarding: Chapter 98, falling under section xxi in its note (I) stipulates that, chapter 98 is to be taken to apply to all goods which satisfy the condition prescribed therein, even though they may be covered by a more specific heading elsewhere in the schedule. In note 2, it is stated that, heading 98.1 is to be taken to apply to all goods which are imported in accordance with the regulations made under section 157 of the Customs Act, 1962 and the expressions used in this heading shall have the meaning assigned to them in the regulation. The goods sought to be covered by the heading 98.01 are-

(1) All items of machinery including prime movers, instruments, apparatus and appliances, central gear and transmission equipment.

(2) Auxiliary equipment including those required for research and development purposes, testing and quality control.

(3) Components (whether finished or not), or raw materials for the manufacture of the items listed at (1) and (2) and for the components of items listed at (1) and (2).

(4) Spare parts, other raw materials (including semi finished material) or consumable stores not exceeding 10% of the value of the goods covered by (1) to (3) above provided that such spare parts, raw materials or consumable stores are essential for the maintenance of the plant or project.

3. Project import regulations genesis: In chapter note 2 of chapter 98, it is stated, that heading 98.01 is to be taken to apply to all goods which are imported in accordance with the "regulations made under section 157 of the Customs Act, 1962" and expressions used in this heading shall have the meaning assigned to them in the said regulations. Section 157 of Customs Act provides general power to the Central Board of Excise and Customs, to make regulations in consistence with the Act (Customs Act) and the rules, generally to carry out the purposes of the Act.

Project Import Regulations, 1986 (notification no. 230/86 dated 3.4.86):

Regulation 1 is the short title and contains in it the date of commencement of these regulations. Regulation 2 deals with the scope of its operation i.e. these regulations shall apply for assessment and clearance of the goods falling under heading no.98.01 of the first schedule of the Customs Tariff Act, 1975 (as amended in 1985). Regulation 3 is the most important one. It gives the definitions of different terms for the purposes of these regulations and the heading no.98.01 as the following:

Industrial Plants:

It means an `industrial system' designed to be employed directly in the performance of any process or service of processes, necessary for manufacture, production or extraction of a commodity. But establishments designed to offer services of any description such as hotels, hospitals, photographic studios, photographic film processing laboratories, photocopying studios, laundries, garages and workshops are excluded from this. A `single machine' of a `composite machine' within the meaning assigned to it, in notes 3 and 4 to section xvi also excluded. According to note 3 of section xvi, `composite machines' consisting of two or more machines fitted together to form a "whole" (and other machines) adapted for the purpose of performing two or more `complimentary` functions or `alternative` functions are to be classified as if consisting only of that `components` or as being that `machine` which performs the `principal function`. Note 4 of the same section says that a "machine" is that which consists of individual components (whether separate or interconnected by piping, by transmission devices, by electric cables or by other devices) intended to contributes together to a clearly defined function.

Substantial Expansion:

It means an existing `installed capacity' being extended by not less than 25%. This definition sets at rest the difference of opinion regarding the applicability of the project import concession for modernisation, diversification, indigenization etc.

Unit:

It means any `self-contained' portion of an industrial plant or any self-contained portion of a project specified under the said heading no.98.01 and having an independent function in the execution of the said projects.

Regulation 4:

It sets out the eligibility criterion.

1) The assessment under the Heading no.98.01 shall be available only to these goods which are imported whether in one or more than one consignment, against one or more specific contracts.

2) The condition that these have to be registered with the appropriate custom house in the manner specified in regulation 5.

3) The registration of such contract or contracts must be done before any order is made by the proper officer of customs permitting the clearance of the goods for home consumption.

4) But in the case of goods cleared for home consumption without payment of duty subject to re-export in respect of fairs, exhibitions, demonstrations, seminars, congresses, and conferences (which are to be duly sponsored or approved by the Govt. of India or Trade Fair Authority of India as the case may be), before the date of payment of duty. In the condition (3), the clearance is for both, i.e. clearance for home consumption against (white) bill of entry as well as clearance for home consumption against an ex-bond (Green) bill of entry. In the condition (4), the goods cleared must be meant for initial setting up of plant or substantial expansion of a plant or project.

Regulation 5:

It sets out the manner in which the contracts are to be registered. The importer who is claiming assessment of the goods falling under the heading 98.01, `on or before their importation' shall

(apply `in writing in a prescribed form' to the proper officer at the port where the goods are to be imported or where the duty is to be paid, for the registration of the contract or contracts. But in the case where the consignment sought to be cleared through a custom house other than the custom house at which the contract is registered, the importer shall produce from the custom house of registration such information as the proper officer may require. Clause-2 of the regulation says that the application must be made as soon as possible by the importer, after he has obtained the import (trade control), licence wherever required by the contract. In case the imports do not require a licence the application for registration can be given with a letter from the sponsoring authority. The application shall specify:

1. The location of the plant or project.

2. The description of the articles to be manufactured, produced, mined or explored.

3. The installed or designed capacity of the plant, project and in the case of substantial expansion of an existing plant or project installed capacity and the proposed addition thereto.

4. And such other particulars as may be considered necessary by the proper officer for the purposes of assessment under said heading.

The following documents shall accompany the application:

(a) The original deed of contract together with the true copy thereof.

(b) The import (trade control) licence wherever required specifically describing the articles licensed to be imported or an approved list of items from the DGTD or from the concerned sponsoring authority in the case of imports covered by OGL or imports made by Central Government, any State Government, statutory corporation, public body or Government undertaking run as a joint stock company. The proper officer shall satisfy himself that the application is in order. Then he shall register the contract. The

particulars are entered in a book kept for the purpose. A number is assigned in token of registration and such number is communicated to the importer. All the original documents which are not required by him are returned to the importer.

Regulation 6:

Refers to the amendment of contract: If any contract referred to in regulation 5 is amended, whether before or after registration, the importer shall make an application for registration of amendments to the said contract to the proper officer. The application shall be accompanied by:

a) The original deed of the contract relating to the amendments together with the true copy thereof;
b) The documents if any, permitting consequential amendments to the import (trade control), licence, wherever required, for the import of articles covered by the contract and in the case of imports covered by OGL, as soon as the clearance from DGTD, or the concerned authority as the case may be, has been obtained along with the list of articles referred to in clause (4) of regulation (5), duly attested. The proper officer, after satisfying himself, shall make a note of amendment, in the register.

4. Procedure:

The bills of entry related to project imports are assessed in group 6 of the custom house. The bills of entry are assessed under P/D procedure. After all imports are over, and the equipment's are installed in the plant, the importer is required furnish:

1) A "reconciliation statement" in a prescribed form.

2) Certificates of final payment from different suppliers countersigned by the external auditors.

3) An affidavit on non-judicial stamp paper by responsible representative of the importer to the effect that all items of imported equipment's have been installed in the factory for which they were intended. The provisional assessments are then finalised.

The Harmonised system:

In the field of commodity taxation like customs and excise, the nomenclature should be so framed as to possess the basic virtues of clarity, comprehensives, and simplicity of language with a view to curtailing doubts and consequently disputes to the reducible minimum. In regard to customs duties, the modern thinking is to attempt one more objective viz., comparability with the tariff nomenclatures of the other countries in International trade. Internationally uniform classification of goods on a sound basis helps adoption of a common internationally accepted customs language, so that the terminology can be readily understood by the trading public, thus simplifying the task of importers, exporters, producers, carriers and customs administrations. This in turn would also promote more meaningful negotiations and application of correct interpretation to bilateral or multilateral customs agreements. Further, it will also help an internationally uniform collection of data to facilitate analysis and comparison of world trade statistics.

Evolution of International Customs Nomenclature:

The first attempt towards evolving an International customs nomenclature was made in 1853 at the Brussels convention. This was further pursued in the International Statistical Congresses held at the Hague (1869), St. Petersburg (1872) and Budapest (1876). The International Institute of Statistics was founded to carry on this work in 1885. The first International convention in this regard had to wait till 1913 when the nomenclature evolved in Brussels consisted of 186 items arranged in five groups. This was also used directly or indirectly for tariff, trade, and statistical purposes by some 30 nations. In 1927, the League of Nations evolved a new structure which was revised in 1937, known as the "Geneva nomenclature". It comprised 991

headings, arranged in 86 chapters which were grouped in 21 sections. The 991 headings were further sub-divided to permit adoption to suit national tariff needs. The drive for economic reconstruction and the desire for greater freedom of trade in the post-war period led to the formulation of the "Brussels tariff nomenclature" (BTN) by the Customs Co-Operation Council. It took final shape in 1959 and has ever since been kept constantly updated. In 1974 it was renamed as "Customs Co-Operation Council Nomenclature" (CCCN). While 52 countries are now contracting parties to the nomenclature convention of the CCC, about 150 countries, together accounting for 80% of International trade, use the CCCN as the basis for their customs Tariffs. India also, over several decades, after attempting several crude formats for its customs tariff including un-meaningful ones like alphabetical arrangements etc. introduced a new customs tariff in 1976, utilizing the CCCN as its base and making several innovative changes to suit our national needs.

Correlation between Customs and Statistical nomenclature:

In the field of International trade, there are close links, and even some degree of inter-dependence, between the customs and statistical aspects, the subject coverage being the same, that is, imports and exports. In most countries, primary data used for the preparation of International trade statistics are taken from customs import or export documents. To establish a clear nexus between tariff and statistical nomenclatures, "two-way coding keys" have gradually been evolved between CCCN and the Standard International Trade Classification (SITC).

The Origin of the Harmonised System:

In the 1960s, there was a growing awareness among all concerned with International trade, of the need to rationalize and harmonize trade documentation data and, in particular, to harmonize trade documentation data coding of countries, units of quantity, modes of transport, commodities, etc. which, it was felt, could promote free flow of International trade, by lubricating the wheels thereof. It was found that a commodity could be classified upto 17 times in the course

of a single International transaction, which clearly, was vexatious and problem prone, apart from time consuming. The development of automatic data transmission techniques was also being hampered to a substantial extent by such phenomena. In early 1970`s, the CCC discussed these aspects and the exploratory studies resulted 13 years later in the completion of the "Harmonized Commodity Description and Coding system" popularly known as the "Harmonized System" (HS).

The Harmonized System is both a multi-purpose six digit nomenclature and a structured nomenclature based on a series of sub-divided 4 digit headings. It is an instrument which can be used for a variety of purposes while retaining a structure such as is required for the purpose of tariff classification. The nomenclature comprises 5019 groups of goods identified by a six digit code, and is provided with necessary interpretative rules to ensure its uniform application. While at the six digit level there are 5019 headings, at 5 digits it is 3558 headings and at 4 digit 241 headings. The purpose of such structuring is to enable several digit levels being utilised for different purposes, such as customs classification, compilation of trade statistics, utilisation as transport tariff etc. The nomenclature is divided into 96 chapters grouped under 21 sections. Each heading of the system is identified by a 4 Digit code (column entity as the 'Heading No.'). The first two digits of which indicate the Chapter while the latter two digits indicates the position of the heading in the chapter. Thus, heading 53.09 ('Yarn of other vegetable textile fibers, paper yarn'), is the 9th heading in chapter 53. Further, all the headings (except 311 headings) are sub-divided into two or more 1 dash sub-headings which, wherever necessary, are themselves sub-divided into two or more 2 dash sub-headings (which are identified by a 6 digit code). For example, the H.S. code for vanilla is 0905, which means that heading 09.05 (vanilla has not been sub-divided (fifth and sixth digits are zero). The HS for buckwheat is 1008.10 which means that buckwheat is included in the first one dash subheading (fifth digit is one), but has not been further sub-divided (sixth digit is 0), again, `fescue seed' is coded 1209.23, i.e. this is a case of two dash sub- headings the last two digits being 2 and 3. As far as possible, the residual subheadings (other's) have been identified by the figures '9' (or 8, where the last sub- heading is set for 'parts'), to allow for the possibility of inserting

additional sub-headings in future without changing the code number of the existing sub-headings.

Structure of the System:

The Harmonised System comprises the following:

a. General rules for interpretation;
b. Section and chapter notes including sub- heading notes;
c. List of headings arranged in a systematic order sub-divided wherever appropriate. Interpretative rules:

The endeavour of any nomenclature is to ensure that each individual product is identified with a single heading or a sub-heading to which the product can be unequivocally assigned. Hence it must contain rules to ensure that a given product is always classified under one heading to the exclusion of the other which might merit consideration. The H.S. also incorporates a series of principles for the interpretation thereof. In brief, the interpretative rules provide a step by step basis for a classification of goods, so that, in every case, a product must first be classified to the appropriate 4 digit headings, going further if necessary, to the 5th and 6th digits.

There are 97 chapters spread over 21 sections. Out of this, chapter 77 has been reserved for possible future use. Two chapters 98 & 99 have been reserved for special use, by the contracting parties in Customs Tariff Act. We have chapters 98 & 99 to suit some of our imports.

Section and Chapter notes:

Certain sections/chapters of the HS are preceded by notes which facilitate appreciation of the scope and limitations of the respective headings there under. The methodology adopted in these notes is briefly as below:

a) Providing general definitions delimiting the scope of headings/sub-headings or the meaning of particular terms - e.g. chapter 5 note 3 defines 'ivory'. Section xi note 5 gives a general definition of 'sewing thread'.
b) Providing non-exhaustive list of typical examples. Thus chapter 25 note 4 specifies product covered by headings 25.30.
c) Providing exhaustive list of goods covered by headings or a group of headings, e.g. chapter 28 note 6 lists products covered by 28.44.
d) Providing exclusions, which list certain products which are not included in a particular section/chapter/heading/sub- heading (e.g. note i to section xi).

As a general rule, goods are arranged in the order of their degree of manufacture i.e. raw materials, un-worked products. The same sequence exists within the chapters/headings and sub-headings.

Complementary publications to the Harmonized System:

The Harmonized System is supported, by a number of complementary publications designed to facilitate its implementation and to further ensure its uniform interpretation and application.

a. Explanatory notes: The H.S. explanatory notes will constitute the interpretation of the H.S. at International level and will be an indispensable complement to the system. It will be useful to refer to them in order to ascertain the correct interpretation of the H.S. itself.

b. Alphabetical index to the H.S. and to the HS explanatory notes: To facilitate location of references in the H.S. or the explanatory notes, it is intended to publish an index, listing in alphabetical order, reference against each product or article in separate columns.

c. Compendium of H.S. classification opinions: The HS. committee will take up the task of examining classification disputes and give advisory opinions, which will be compiled into periodical publications titled ` Compendium of classification opinions'. These publications are useful while deciding classification.

Advantages of Harmonised system:

The H.S. represents the culmination of efforts made over several decades to work out a system on classification which can be applied by all, the interests pertaining to the production, carriage (both domestic and international) and trade pertaining to commodities as well as publication of statistics at each stage. Some of the major advantages sought to be derived by adoption of the H.S. are as below:

a. As a tariff nomenclature: as a base for the domestic tariff, it is more comprehensive and consequential more simple and precise. It takes into effect modern technological developments, and hence is more up-to-date. It is a thoroughly international nomenclature since it incorporates inputs received from all regions and from countries at different stages of economic growth. While it was being prepared, efforts were also made to resolve a large number of classification problems.

b. As a Statistical nomenclature: Under H.S., statistics collected can be used for a variety of purposes, including data processing, market studies and national economic analysis. It is truly a multi-purpose statistical nomenclature. This will enable the H.S. to function more effectively for comparison of import/export and domestic production statistics.

c. As a base for Harmonization of Economic classification: The structure of the H.S. can be used as building blocks for building a variety of economic classifications on a harmonized manner. The United Nations statistical commission has already agreed to the harmonization of goods, production and activity classifications being based on the H.S.

d. As a multi-purpose nomenclature: The H.S. is conceived and designed to function as an instrument to be used for a variety of purpose, yet retaining its structure as required for tariff classification. The International unions of railways, the International chamber of shipping and International air transport association have involved themselves in the preparation of the H.S., and it is hoped that

consequential the H.S. will be accepted by trade and transport interests all over the world.

e. As an International economic language: Irritants to International trade arising from a commodity being described and re-described a number of times as the goods pass from one country to another, and being classified repeatedly for different purposes, can be obviated by adopting the H.S. International trade data can be more easily tele-transmitted by utilizing this standardized code. Apart from better communication between importers and exporters, information of bilateral and multilateral trade contracts can also become more meaningful by adopting this international language.

f. Benefits to industry, trade and transport: Generation of more reliable and detailed national and international statistics will boost industrial efforts. Transactions between various institutes and documentation such as invoices, freight contracts, customs declarations, returns to the Government etc. can be standardized under the H.S. If domestic and international carriers also adopt H.S., it will help exporters to decide which the most favourable freight is charged by comparing the freight tariff of competitors. Exports to countries which apply H.S. will enable the correct determination of the relevant rate of duty and this will help exporters in pricing their products more meaningfully.

Classification & Valuation:

Introduction

The Constitution of India allocates the taxing powers between the Union and the States through precise entries and by virtue of entry no. 83 in the list-I to the Seventh Schedule to the Constitution. Union of India is empowered to levy "duties of customs including export duties". The basic legislation concerning levy of customs duties in the Indian Customs Act, 1962 read with Customs Tariff Act, 1975. Section 12 of the Customs Act, 1962 is the enabling section empowering levy of duties of customs on goods imported into or exported from India. However, the rates at which the different import or export goods shall

be leviable to duties of customs have been respectively specified in the first and second schedule to the Customs Tariff Act, 1975- called the 'import tariff and 'export tariff' respectively (vide section 2 of the Customs Tariff Act, 1975). Whereas the export tariff is very limited in scope as only a few specified types of articles are presently subject to export duties. The import tariff is all pervasive and very comprehensive. Prior to August, 1976, the scheme of levy of duties on import goods was specified in the first schedule attached to Indian Customs Tariff Act, 1934 wherein all import goods were classified into a limited number of specified headings with a residuary heading to take care of all goods not otherwise specified. However, it was felt for long that our import tariff has become out of date in the light of present conditions and substantial changes in the composition and pattern of Indian import trade. The International system of classifying the goods for customs purposes known as Brussels Tariff nomenclature (or Customs Co-operation Council Nomenclature) had been rapidly gaining ground in recent years and had been adopted by a large number of countries in the world (both developed and developing) as the basis of their national customs tariff. In the circumstances, there was a demand and need to modernize and rationalize the nomenclature of our import tariff in line with the contemporary conditions. Accordingly the erstwhile import tariff was replaced by a new tariff schedule based on CCCN which came into force from 2nd August, 1976. However, with effect from 28th February, 1986 the import schedule to Customs Tariff Act, has been replaced. The new schedule is based on International convention of "Harmonized Commodity and Coding" system commonly known as Harmonised system. The BTN (or CCCN) on which the nomenclature of the import tariff was based is administered by the Customs Co-operation Council an Inter Govt. agency with its headquarters at Brussels. The council is assisted in its work by the nomenclature committee established under its convention on nomenclature. India is a member of the council. But it is not a party to the nomenclature convention, and is not bound to follow the nomenclature (BTN or CCCN) in toto. The import tariff annexed to the CAT, '75 was not a complete adoption of BTN (or CCCN) but was essentially based on BTN/CCCN, some modifications having been effected to take care of the national needs. Basic features of the Brussels nomenclature which every assessing officer had to

consult even for interpreting our import tariff as also certain salient points of distinction between CCCN and CAT, '75 as explained in hand book by the Ministry of Finance at the time of introduction of the new import tariff are briefly mentioned below:-

STRUCTURE OF B.T.N.

The Brussels tariff nomenclature comprises:-

(a) A list of headings arranged in a systematic order.
(b) Section and chapter notes and
(c) General rules for the interpretation of the nomenclature.

(a) The headings of the BTN: The Brussels nomenclature comprises 1098 headings (of which 2 are optional namely, heading no. 27.05 for coal gas etc. and heading no. 27.17 for electric current). These are arranged in 99 chapters which are themselves grouped in 21 sections. Unlike the Geneva nomenclature, it contains no sub-headings. The possible introduction of sub-headings is left to the discretion of each country using the nomenclature as the basis for its national customs tariff. The construction of the nomenclature in sections and chapters is based on the general principle of classifying together in the same chapter all goods obtained from the same raw material and of arranging them progressively within each chapter i.e. starting from the raw material and progressing to the finished products or articles. This principle had not, however, been applied with undue rigidity, particularly where a given industry uses a variety of raw materials, for example, chapter 58 covers a wide variety of textile products whose classification is independent of their constituent textiles. Each heading in the BTN is identified by two groups of two digits each. The first group represents chapter in which the heading appears white the second indicates its position in that chapter.

(b) The section and chapter notes: Certain section and chapters are preceded by notes which form an integral part of the nomenclature. To distinguish them from the explanatory notes which are not legally binding, they are normally referred to as 'legal notes'. The function of these notes is to define the precise scope and limits of

each headings, chapter and section. This has been achieved, depending on the case by means of either general definitions delimiting the scope of a heading or the meaning of particular terms or non-exhaustive lists of typical examples of article covered by a heading or exhaustive lists of the goods covered by a heading, or exclusions which list certain articles that must not be included in a particular heading chapter or section.

(c) The interpretative rules: Like the section and chapter notes, the four interpretative rules also form an integral part of the nomenclature and have the same legal force. Interpretative rule 1, which takes precedence over following rules, provides that for legal purposes, classification is determined by the terms of the headings and of the section or chapter notes. There are, however cases where the texts of the headings and of these notes cannot, of themselves determine the appropriate heading with certainty, classification is then effected by the application of interpretative rues 2 to 4.

The first part of rule 2(a) extends the scope of any heading which refers to a particular article to cover not only the complete article but also that article incomplete or unfinished provided that, as imported, it has the essential character of the complete or finished articles. The second part of rule 2(a) provides that complete or finished articles imported unassembled or disassembled, usually for reasons such as requirements or convenience of packing, leading or transport are to be classified in the same heading as the assembled article.

Rule 2(b) extends any heading referring to a material or substance to include goods consisting partly of that material or substance. Under that rule, any goods consisting of several materials or substances may, unless a heading refers to them in their mixed or composite state, fall in two or more headings corresponding to each one of the constituent materials or substance. The classification of such goods, like that of any goods potentially classifiable under two or more headings, shall be according to the principles of rule 3. Rule 3 classifies the mixed or composite goods: either (i) in the heading which provides the most specific description (rule 3(a), or (ii) in the

heading applicable to the material or component which gives the goods their essential character (rule 3(b), or (iii) when goods cannot be classified by reference to (a) or (b) under the heading which occurs latest among those which equally merit consideration (rule 3(c)). However, and this is essential these classification criterion must be applied in the order in which they are set out criterion (b) does not therefore, become operative unless classification cannot be determined by application of criterion (a). Similarly, criterion (c) can be used only if neither (a) nor (b) is applicable. Application of criterion (c) is therefore, a fast resort governing the classification of goods not otherwise provided for.

Rule 4 provided that goods which (for example because they have newly appeared on the world market) are not specifically covered by any heading of the nomenclature, shall be classified in the heading, appropriate to the goods to which they are most akin. The interpretative rules thus establish the classification principles which, unless the texts of headings or of the section or chapter notes otherwise require are applicable throughout the nomenclature. Complementary publications with the same object to facilitating and ensuring uniformity in its interpretation, the BTN are supported by the following publications:

(i) Explanatory notes,

(ii) An alphabetical index to the nomenclature and the explanatory notes, and

(iii) The compendium of classification opinions.

(i) The explanatory notes: These do not form an integral part of the nomenclature but constitute the official interpretation of the nomenclature as approved by the Customs Co-operation Council.

(ii) The alphabetical index : In order to make it easy to locate in the nomenclature and in the explanatory notes references to all products or articles mentioned therein, the council has also published an alphabetical index which lists in alphabetical order, with reference against each article in two separate columns:-

(a) All goods specified in the section notes, chapter notes or headings of the nomenclature

(b) All the goods cited or described in the explanatory notes.

(iii) The compendium of classification opinion: This compendium lists all classification opinions adopted by the council as a result of the study of classification questions submitted by member or non member customs administrations.

Indian Import Tariff vis-à-vis BTN (CCCN) merger of BTN headings:

The nature of adoption of BTN to form the Import Tariff Schedule: In the import tariff schedule which formed part of CAT, '75 description of articles was based on the Brussels tariff nomenclature but the individual headings of that nomenclature had been merged where necessary, to accord with the pattern of India's import trade. Wherever the BTN classifications were found to be too detailed for our requirements, based on considerations of volume of imports, their composition etc., such headings had been merged into a single heading but care had been taken to ensure that these were adjacent headings and that the scope of the merged headings corresponded fully to the scope of the BTN headings.

Creation of sub-headings

In a number of headings (whether these were merged or original headings); separate sub-headings had been created to suit our needs. These sub-headings were mainly for the following purposes:

(i) To provide for differences in the rates of duty;

(ii) To specify individual articles of importance in our import trade; and

(iii) To show separately articles subject to a protective duty;

Where there was a difference in the rate of duty but the creation of a separate sub-heading was not considered to be necessary on the basis of the volume of import, such difference had been provided where necessary for issuing appropriate exemption notification under section 25 of the Customs Act, 1962.

Departures from the BTN

In a few cases, the Indian import tariff made a fundamental departure from the BTN these were:-

(i) Laboratory chemicals, both organic and inorganic, had been provided under a single sub-heading no. (19) in chapter 29 for administrative convenience.

(ii) Item 72a of the erstwhile Indian customs tariff which provided for assessment of project imports at a flat rate had been continued in the new tariff as heading no. 84.66 together with section note 6 to section xvi giving overriding force to this heading.

(iii) A new chapter (100) had been added to provide for assessment of passenger's baggage, personal importations by post or air and ship and aircraft stores corresponding to item 87a, 87b and 87c of the ICT numbering system.

The import tariff followed the numbering of the BTN. However in the case of merged headings, the various BTN headings, which had been merged, had been indicated by an oblique (/) sign. For example a main heading showed as 01.01/06 signified that six headings of the BTN viz. 01.01 to 01.06 had been merged into one main heading. In the case of sub-headings, serial numbers within brackets had been indicated.

Legal Notes:

The section and chapter notes in the BTN had by and large, been preserved. However, a number of consequential changes had been made. As a result of the merger of several headings, a number of legal notes were found to be redundant or had to be suitably modified and this had been done. Notes had also been provided to cover the departures from the BTN Interpretative rules. The import tariff preserved the four interpretative rules of the Brussels tariff nomenclature and these had also been made applicable to determine classification within a heading. The purpose of application of these interpretative rules has been explained in sub-para (a) para (3).

Classification in Import Tariff:

Though the import tariff followed the BTN pattern, in strict legal terms the classification of goods for customs duty purposes had to be decided according to the Import Tariff as actually worded and incorporated in the Customs Tariff Act, 1975 and not necessarily on the basis of the BTN or its explanatory notes or alphabetical index etc. The explanatory notes or compendium of classification opinions or alphabetical index taken out by Customs Co-operation Council were however available for guidance and were of considerable help is deciding the classification of an article in our import tariff which as indicated above, was essentially based on BTN only.

Scope of merged headings:

Wherever headings have been merged it should be deemed that the scope of the merged headings remains the same as in the case of CCCN unless a contrainternation distinctly appears in the scheme and in the wordings of the headings and sub-headings.
(Authority F. no. 527/56/76-Cus. (TU) dated03-09-76.)

Tariff based Harmonised Commodity Description and Coding System.

Harmonised commodity description and coding system (also known as Harmonised system) is meant to form the basis throughout the world of the classifications of goods used for various purposes. To

draw up the harmonised system the work was started in 1973 at Brussels under the auspices of the Customs Co-operation Council (C.C.C.) after compilation of new nomenclature (i.e. a systematically arranged list of goods). Harmonised system based tariff has been adopted in various countries of the world including India. In India H.S. tariff had been adopted on and from 28th February, 1986. The harmonised system concerns the following category of persons to a greater or lesser extent, and it is therefore, for them that this system is intended.

(i) Producers.
(ii) Dealers
(iii) Importers/exporters.
(iv) Shippers.
(v) Hoteliers.
(vi) Customs officials.
(vii) External trade, production and transport statistician

The Harmonised system is mainly evolved from the Customs Co-operation Council Nomenclature (C.C.C.N.) and Standard International Trade Classification (SITC). Both nomenclatures have been adopted to bring them in conformity with the current trade conditions. In addition some part of the Customs Co-operation Council Nomenclature has been modified to facilitate Harmonised system.

The Customs Co-operation Council nomenclature constitutes the core of the harmonised system. However, in developing the Harmonised system account has also been taken of other existing nomenclatures which are primarily representative of customs, statistical and transport requirement. Content and structure of the Harmonised system the "structured nomenclature" constitutes the core of the Harmonised system. This expression is intended to make it clear that the previous Customs Co-operation Council nomenclature of four digits maintained and merely further sub-divided ("structured") with the result those two extra digits making a total of six - have been added for coding the headings. Thus although the basic structure of the Customs Co-operation Council nomenclature has been maintained while drawing up of the Harmonised system, the Customs Co-

operation Council nomenclature has also been revised and reorganized to some extent. Certain groups of goods figuring in the Customs Co-operation Council nomenclature which are of no great significance in international trade have been combined and the numbers of chapters have been reduced. Chapters 98 and 99 have been left free to cover goods as per the internal requirement of each country. Chapters 98 and 99 of our H.S. tariff covers project import, passengers' baggage, importation by post/air laboratory chemicals and miscellaneous articles to suit our national needs. The Harmonised system provides sub-heading notes in addition to section and chapter notes. These are legal notes and render assistance in classification of goods and restrict the area of dispute. Like the Customs Co-operation Council nomenclature based tariff, the present tariff also contains a set of interpretative rules which govern the classification of goods. H.S. tariff has provided two additional rules to the interpretation of the schedule to tariff. They are rules 5 and 6. Rule 5 lays down that packing case of special shape designed to contain a specific article suitable for long term use and presented with the article for which they are intended shall be classified with such article when of a kind normally sold therewith subject to certain exceptions. Rule 6 deals with the classification of goods under sub-heading of a heading with reference to sub-heading notes. Finally, how the Harmonised system is built upon the Customs Co-operation Council nomenclature would be evident from the following example.

Heading no. 01.01 of the Customs Co-operation Council nomenclature is worded live horses, asses, mules and hinnies'. The structured nomenclature of the Harmonised system distinguishes first of all (i.e. at the 5 digit level) between 'horse' (no.0101.1) on the one hand and asses, mules and hinnies' (no. 0101.2) on the other. After that (i.e. at the 6-digit level) a further distinction is made in the case of ('Horses' according to whether they are pure-bred breeding animals (no. 0101.11) or other horses (no. 0101.19). There is no further sub-division however, in the case of 'asses, mules and hinnies' so that the sixth digit of the code is ought (no. 0101.20).

The Customs Co-operation Council nomenclature can therefore be structured, or not structured as the case may be in the different ways:

(1) The harmonized system does not create sub- divisions. In this case only the wording of the Customs Co-operation Council nomenclature is adopted while the code is extended by two nougats to make it clear that the harmonized system is being used.

Example: the CCCN heading 01.06 'other live animals' has the code number 016.00 in the harmonized system.

(2) The harmonized system creates a further sub- division only at the 5-digit level. The sixth digit is therefore a ought. Example: no. 0101.20 'asses, mules and hinnies.

(3) The harmonized system draws a distinction at both the five and six-digit levels. Example: no. 0101.11 'pure-bred breeding animals', it being made clear at the 5-digit level (no. 0101.19).

Finally the headings of the first chapter of the CCCN including the unstructured nomenclature as they stand at present are reproduced below: code number

CCCN	H.S.	TITLE
01.01		-LIVE HORSES, ASSES, MULES AND HINNIES -HORSES:
0101.11		-PURE-BRED BREEDING ANIMALS.
0101.19		-OTHERS
0101.20		-ASSES, MULES AND HINNIES.
01.03		-LIVE BOVINE ANIMALS.
0102.10		-PURE-BRED BREEDING ANIMALS.
0102.90		-OTHERS
01.03		-LIVE SWINE.
0103.10		-PURE-BRED BREEDING ANIMALS
-OTHERS		
0103.91		-WEIGHING LESS THAN 50 KG.

0103.92 -WEIGHING 50 KG OR MORE.
01.04 -LIVE SHEEP AND GOATS
0104.10 -SHEEP
0104.20 -GOATS
01.05 -LIVE POULTRY, THAT IS TO SAY, TOWLS OF
-THE SPECIES GALLUS DOMENSTICUS, DUCKS TURKEYS AND GUINEA FOWLS.
- WEIGHING NOT MORE THAN 185G
0105.11 -FOWLS OF THE SPECIES GALLUS DOMENSTICUS
0105.19 -OTHERS
-OTHERS

0105.91 -FOWLS OF THE SPECIES GALLUS DOMESTICUS.
105.99 -OTHERS
01.06
0106.00 -OTHER LIVE ANIMALS.

Assessing officers to consult classification decisions taken in Collectors' conference etc.:

Ever since the adoption of the new BTN based HS based, tariff schedule, there have been quite a large number of doubts about classification of individual products in the new tariff. These have been referred to and discussed in the tariff conferences of Collectors of Customs under the aegis of Member (Cus) and the decision taken have been circulated to all the assessing officers for guidance. These must be referred to for proper and uniform classification.

Assessing officers to consult the explanatory notes and tariff advice under the new tariff for Specification:

The specifications laid down in the HS on which the new tariff is based, as well as the explanatory notes to the HS should be referred to by the assessing officers for classification of goods under the new tariff. Where however no specifications have been laid down in the HS and the explanatory notes there to the specification laid down earlier by board in a past ruling may be referred to for guidance.

Assessing Officers to consult the tariffs:

It has been observed that assessing officers and other concerned do not carefully consult the Customs and Central Excise Tariff as a rule. Instead, he proceeds to complete the assessment of imported goods on the basis of knowledge or information they possess which is closely associated with similar goods used in certain industry or trade. This practice has resulted in serious errors in assessment. In order to avoid errors in assessments, it is imperative that assessing officers should as a rule, refer to the tariff to ascertain whether the imported goods fall clearly within the scope of the statutory wordings of tariff heading and/or sub-heading as the case may be under which the goods are assessable.
(Board's D.O. letter no. 20/7/66-Cus. i dated22.8.66)

Application of analogy of tariff ruling to other articles:

The Board is of the view that whenever it issues a ruling about an article that does not prevent the customs house from applying that analogy to other articles of a like nature unless such other articles have also been specifically considered by the Board and not approved of assessment as such. If in applying such analogy the Collector is in doubt, he may of course, refer the case to the Board for a ruling in the same way as he would refer any other doubtful assessment. As regards the general application of Board's tariff ruling, the Board considers that its rulings are to serve as models and will apply by analogy to other articles of similar nature whether or not the ruling indicates the reasons for the view taken or the principles to be followed. However, if such extension involves a change in an authorised practice such change should be made only with the prior concurrence of the Board unless any particular ruling indicates expressly to the contrary.
(Board's F. no. 25 (167)-Cus.iii/56 of 24.12.56).

International use should form the criteria for assessment under the Customs Tariff Act, as in BTN which deals with international

system of classification (Conference of Collectors of Customs on tariff matter held at Madras in June '76).

Assessment meaning-Instructions regarding:

In so far as the Customs Act, 1962 is concerned an inclusive definition of 'assessment' has been provided (under Section 2 ibid) and it indicates that assessment would cover provisional assessment, re-assessment and any other assessment in which the duty assessed .It has not been specifically elaborated. On the question of interpretation of the work 'assessment' as such have been various Court pronouncements both on the direct tax as well as in-direct tax side. In the case of A.N. Lakshman Shenoy -vs- ITO the Supreme Court held that the expression 'assessment' in its broad sweep could embrace all such proceedings for raising money by the exercise of the power of taxation. In other words the term 'assessment' has a very broad meaning. However, essentially speaking 'assessment' means fixation of amount of tax that may be leviable or determination of such tax. In the context of customs duty in the case of Ramnath Agarwal -vs- G.S.Iyer (AIR. 1961 Gujarat), the Court had taken the view that "assessment would mean computation and fixation of the precise amount of duty to be paid on the particular goods having regard to the prescribed category under which they fall and the mode or manner by which their value or real value has to be ascertained". Thus an assessing officer has to determine and fix the amount of duty which is leviable on the goods while resorting to an assessment contemplated in section 17 of the Customs Act, 1962. Section 17 provides certain guidelines as to how the assessment may be resorted to and in particular indicates that the goods may be examined or tested by the proper officer, the importer may be asked to produce any contract, broker's note, policy of insurance, catalogue or other documents or furnish any information required for ascertaining the duty leviable on the imported goods. For ascertaining the customs duty which is leviable in terms of section 12 of the Customs Act, 1962 read with the first schedule to the Customs Tariff Act, 75 the first primary task of an assessing officer is to classify the goods under appropriate heading or sub-heading of import tariff. This would enable him to determine the

standard rate of duty which is leviable. He has also to examine whether any exemptions have been granted to determine effective rate of customs duty leviable. The second important task is fixation of value of the goods whenever duties are ad-valorem or to determine the correct weight and quantity etc, where the goods are leviable.

Crucial dates for determining the standard/effective rates of duty:

Classification of an item in the import tariff enables an assessing officer to determine the standard rate of customs duty applicable to a particular item as prescribed by legislature. However, the standard rate of duty is not always the effective rate of duty that may be leviable as Govt. has been empowered to grant exemptions in terms of section 25 of the Customs Act, 1962. These exemptions can be granted by the Central Govt. in public interest, to goods of any specified description. An exemption may be available generally [under section 25(1)] or it may be made applicable by a special order in a particular case under circumstances of an exceptional nature [u/s 25(2) of Customs Act, 1962]. In exercise of the powers conferred under the above section a large number of exemptions have been granted by Government on economic, social or various other considerations. Most of these exemptions are of general nature issued under section 25(1) but exemptions under special circumstances of an exceptional nature are also issued from time to time. The exemptions issued under section 25(1) of the Customs Act, 1962 are published in the official gazette in the form of notifications and circulated to all custom houses. While exemption orders issued in exceptional circumstances in terms of Section 25(2) are sent to concerned custom houses where the goods are expected to arrive. These should be critically scrutinised by the assessing officer to see if particular goods which are subject matter of assessment are leviable to standard rate of duty or concessional rate of duty under particular exemption notification/order.

Very often disputes arise as regards the crucial date which would be taken for determining the standard rate of duty or

concessional rate applicable in terms of a particular exemption. Section 15 of the Customs Act, 1962 specifically lays down the relevant dates for determination of rates of duties for goods imported by sea/ air other than baggage. However, sometime it is claimed that section 12 being the enabling provision for charging customs duty; it would be chargeable at the rate prevalent at the point of importation. In other words, if after entry of the vessel into territorial waters of India but before grant of final entry inwards to the vessel the rates of duties on any goods enhanced are either by raising of standard rate of duty or by modification of an existing exemption, the enhanced rate would not be applicable to such goods. This issue has been subject mater of certain court pronouncements as well. The views of the Government (in consultation with Ministry of Law) are reproduced for the guidelines of assessing officers:

Instructions regarding scope of sections 12, 15 & 25 of the Customs Act, 1962:

The question of interpretation of sections 12, 15 & 25 of the Customs Act, 1962 has been engaging the attention of the Government for sometime. In supersession of the previous instructions on this subject, the following instructions are issued for guidance:

(2) The Government is advised that section 12 of the Customs Act is the charging section in terms of which unless otherwise provided in the Act itself or any other law for the time being in force, duties of customs shall be levied on goods imported into or exported from India at such rates as may be specified under the Customs Tariff Act, 1975 or any other law for the time being in force. It is clear that the duty is leviable under section 12 itself though at the rates prescribed elsewhere. The expression "goods imported into India or exported from India" must, of necessity be interpreted in the light of the definitions of "import" and "export" in sections 2(23) and 2(18) respectively. Section 12, which is the charging section, makes import or export of goods, as the may be, the taxable event. No doubt, import or export of takes place when the goods are physically brought in or as the case may be, taken out of the territory of India. But the provisions of sections 15 and 16 have to have their respective scope

and effect when one comes to the question of actually charging, determining and quantifying the duty. In this context, the relevant dates mentioned in section 15 and 16 are significant. The dates for the purposes of duty the statutory dates mentioned in section 15(1) or section 16 and not the date of physical entry or exit.

(3) The Government is not unmindful of the decision of the Bombay High Court in M/S. Sawhney- vs- M/s. Sylvania and Laximan Ltd., and M/s. Synthetics & Chemicals Ltd., -vs-S.C. Countinho & ors. Although physical entry into Indian Territory is the date of import, sections 12 and 15 read together fixes the statutory date for the purpose of levy of duty. This aspect of the matter was not canvassed or considered in the above decisions of the High Court.

(4) Section 25(1) enables the Central Government to exempt generally or absolutely or subject to conditions, goods of any specific description from the whole or any part of the duty of customs leviable thereon. On the other hand, sub-section (2) enables the Central Government by special order in each case, to exempt from payment of duty, under circumstances of an exceptional nature, any goods on which duty is payable. Although the words "to exempt from the payment of duty" in section 25(2) seem to suffuse that the exemption may be given before the duty is paid. Here again, one has to turn to section 15 which would determine the effective date of import for the purpose of what duty should be levied and how it should be quantified.

(5) The exemption under section 25(1) as well as (2) not being a remission or waiver of duty must be of a date prior to the time the goods become chargeable to duty. Taking together the scope of sections 12, 15 and 25 any exemption would have to be given either prior to the date of entry of the goods into the territory of India, or, at least, prior to the dates mentioned in section 15(1). In other words, on exemption whether it is under section 25(2) or 25(1) cannot be given post facto. To put it differently, it would be in order to apply and give effect to an exemption which is given by the Central Government either under section 25(1) or section 25(2) prior to the dates mentioned in section 15(1) or section 16 of the Customs Act, as the case may be.

M.F. (Deptt. of Rev) F.no. 370/80/78-Cus. i dated 26.3.1979).

(6) Scopes of Section 12 vis-à-vis Section 15 and Section 131 of Customs Act, 1962: Similar issues about the crucial date for the purpose of levy of customs duty was also argued at length in a number of cases (which were heard together by the govt. of India) wherein certain orders passed by the Appellate Collector of Customs were being reviewed. The decision of the Govt. of India is reproduced for reference and guidance. Order no.296 to 298b of 1981 of the Govt. of India on review under Section 131(3) of the Customs Act, 1962.

Sub: Order-in-Appeal no. S/49-1189, 1190, 1191/79-R dated 15-10-79, no. S/49-131/80 dated 26.2.80 and no. S/49-1607/79 dated 14.2.79 passed by the Appellate Collector of Customs, Bombay-review under section 131(3) of Customs Act, 1962 by the Government of India.

This order is being passed by the Central Govt. with reference to its Show Cause Notice F. No. 380/17, 19 and 61/80-cus.ii dated 07.08.80 served on M/s Jai mills, Delhi and M/s. Bayer (India) Ltd., Bombay, requiring them to show cause as to why the orders in appeal, as referred to above, passed by the Appellate Collector of Customs, Bombay should not be annulled or modified.

(2) The short question that arises for determination in these case is whether the impugned appellate orders holding that the date of importation of the goods, viz., the date on which the goods entered the territorial waters of India, should be regarded as the crucial date for the purpose of levy of customs duty on the goods imported is correct in law. The ratio of decisions of the said Appellate orders is that section 12 of the Customs Act, 1962 is the charging section under the Customs Act. The said section lies down that "duties of customs shall be levied at such rates as may be specified under the Indian Tariff Act, 1934 (now Customs Tariff Act, 1975) or any other law for the time being in force, on goods imported into, or exported from India". The appellate authority has, therefore, held that the date of actual importation of the goods is crucial for the purpose of levy of customs duty on the goods. in other words, if customs duty which included

additional duty was not chargeable on the date of importation of the goods, the said duty cannot be charged with reference to the rate prevailing on a subsequent date by virtue of the provisions of section 15 of the Customs Act, which provides the statutory date for the purpose of determination of the rate of duty applicable to any imported goods. The Central Government was tentatively of the view that the aforesaid orders of the Appellate Collector of Customs were not correct in law and the reasons for the said tentative view had been incorporated in the show cause notice. In their reply to the show cause notice and in the personal hearing granted subsequently to the importers, on 15-12-80, various points in defense have been urged with citation of judicial pronouncements. Before the contentions of the importer are examined in depth it is necessary to distinguish these 3 cases on facts.

(3) In the case of M/s. Jai Hind Oil Mills Ltd., three consignments of palmolein were imported prior to 1-3-79 and cleared vide bills of entry cash no. 253/2-4-79, 114/31-3-79 and 113/31-3-79. The item palmolein was chargeable to duty under the first schedule to the customs tariff at the rate of 60% till 30-6-77. However, by virtue of notification no. 129-CTS dated 1-7-77, the whole of the duty of customs leviable under first schedule on Palmolein was exempted. But on 28.2.79, as a result of budget proposals, the aforesaid notification granting total exemption from basic customs duty was deleted. In its place came another notification on 1.3.79 which reduced the quantum of exemption and as a result of which the effective rate of duty was fixed at 12.5% ad valorem. As the importers presented their bill of entry on 29.3.79 the custom house charged the new effective rate of duty at the rate of 12.5% ad valorem in terms of section15(1)(a).

(4) In the case of M/s. Vikas Woolen Mills, Delhi the goods on importation (prior to 1.3.79) were warehoused and eventually removed from the warehouse on 18.8.79 vide the bill of entry cash no. 3145/18.8.79. When the goods were imported, the same were exempted from payment of countervailing duty under notification no. 364-cus. dated 2.8.76 which was rescinded by notification no. 63-cus. dated 1-3-79. but as countervailing duty was chargeable on the goods on the date the same were removed from the warehouse, the benefit

of the said exemption notification was denied to the importers, it is, however, observed that the goods were chargeable to basic customs duty and auxiliary duty on the date of importation.

(5) In the case of M/s. Bayer (India) Ltd. five consignments were imported prior to 1.3.79 and cleared under the bill of entry cash no. 1237/13.3.79, 2412/23.3.79, 565/6.3.79, 1362/16.3.79 and 2165/22.3.79. On importation the goods were warehoused and subsequently removed from the warehouse, after 1.3.79. The date on which the earlier notification no. 364-cus dated 2.8.76 exempting the goods from payment of countervailing duty was rescinded by notification no. 36-cus. dated 1-3-79. The Customs house, therefore in terms of the provisions of section 15(1) (b) charged countervailing duty on the goods with reference to the date of their actual removal from the warehouse.

(6) The common, thread that runs through these 3 cases as stated above is the question whether the crucial date for the purpose of levy of customs duty on the goods should be the one which the goods have been actually imported into India or the dates is statutory determined under Section15(1) of the Customs Act.

(7) In the personal hearing granted to all the 3 importers on 15.12.80, Shri Soli j. Sorabji, Senior advocate, appearing on behalf of M/s. Bayer (India) Ltd., Bombay, referred to the definition of the term 'import' as provided in section 2(23) of the Customs Act. The said sub-section 23 of section 2 defines 'import' as bringing into India from a place outside India. Sub-section 27 of section 2 defines 'India' as including territorial waters of India. The senior advocate contended that it has to be found out in the first instance whether duty was chargeable when the goods were brought into the territorial waters of India. According to the senior advocate, once, it is established that duty was not chargeable at the point of importation, determination of rate of duty in terms of section 15 of the Customs Act, 1962 would become irrelevant. In support of his contention, he referred to certain observations of the Bombay High court made in M/.s. Sawhney vs. of M/s. Sylvania & Laxman Ltd., decided on 14/15.1.75 and in M/s. Synthetic Chemicals Ltd. vs.S.C. Countinho and others decided by the

division bench of the Bombay High Court on 14.3.80. In short, the point that was urged by the senior advocate was that if on the date of importation no duty was leviable on the goods, then by virtue of section 15 the goods cannot be levied to duty at a subsequent date. But if duty at whatsoever rate is chargeable on the goods on the date of its importation, then the date specified under section 15(1) will be relevant and rate of duty prevailing on that date shall be applicable. In the instant case, it was pointed out that additional duty was not chargeable at all on the goods on the date of their importation, and, therefore, following the ratio of the Bombay High Court's decision in M/s Synthetics and Chemicals LTD vs. Coutinho as referred to above, the senior advocate in-operative in this case.

(8) Smt. Shyamala pappu, senior advocate, representing M/s Jai Hind Oil Mills ltd. Bombay urged that section 12 of the Customs Act commences with an exclusion clause which reads as follows: "except as otherwise provided in this act". She contended that exemptions granted under Section25 of the Customs Act and, therefore, exemption notification if any, applicable to the goods would take them out of the purview of customs levy as provided in Section 15(1) of the Customs Act, because of the said exclusion clause. In support of her contention she has subsequently cited in her written resume of arguments a number of judgments of the Supreme Court. She has pointed out that in Celiac Nath vs. State of U.P. (AIR 1957 SC 790) and in Orient Weaving Mills vs. Union of India (AIR 1963 SC 98) the Supreme court observed in the context of the UP Sales Tax Act that "this notification having been made in accordance with the powers conferred by the statute has statutory force and validity, and therefore, the exemption is as if it is contained in the parent act itself" like observations have been made by the court in Orient Weaving Mills' case. By citing all these cases the senior advocate wanted to establish that exemption notification is part of the statute and once the goods are exempted at the point of importation, at a subsequent date the same would not be leviable to duty by operation of section 15(1).

(9) Smt. Pappu further contended that the show cause notice issued by the Govt. in the case of her clients was hit by limitation as much as the same was issued after expiry of 6 months from the date

of the Order-in-Appeal. According to her the subject case would fall in the category of non-levy in as much as the appellate authority held in his order that duty was not chargeable on the goods. For the cases of non-levy time limit has been clearly prescribed in Section 13(5) and as such the show cause notice issued to the importers by the Govt. was clearly time barred. In support of her contention she has cited the Delhi High court's decision in Associated Cement co. case (decided on 17-4-80) in the case under reference the Delhi High Court has observed that the time limit for review of any revenue decision ought to be construed as being within the time limit for refund. The said judgment was passed in central excise case where the time limit for review is prescribed for all types of cases in the Act itself.

(10) Shri Vajpayi appearing as counsel for M/s Vikas Woolen Mills, Delhi adopted the arguments set forth by Sri Sorabjee and smt. Pappu for his case.

(11) The Govt. has carefully examined the above contentions of the importers. The Government are aware, and it was also brought to the notice of the importers during the hearing that the Supreme Court in M/s. Prakash Cotton Mills Pvt. Ltd. vs. P. Sen and others (AIR 1979 SC 675) observed in para 6 of the judgment that "it is thus the clear requirement of clause (b) of sub-section 1 of section 15 of the Act that the rate of duty rate of exchange and tariff valuation applicable to any imported goods shall be the rate and valuation in force on the date on which the warehoused goods are actually removed from the warehouse". Although it is true that in the case under reference the Supreme Court was on the question of applicability of the rate of exchange prevailing on the date of ex-bond clearance, the Govt. observe that the said observations are pertinent in the context of the present cases as well. In the case of Prakash Cotton Mills (P) Ltd., excess duty became chargeable with reference to the date of ex-bond clearance in terms of the amended provisions of section 15 of the Customs Act. The said amendment came into force after importation of the goods. But by virtue of the provisions of section 15(1) (b) of the Customs Act, the rate of exchange prevailing on the date of ex-bond clearance was applied to the goods, notwithstanding the fact that at the time of importation of the goods the words "rate of exchange"

were not to be found in section 15(1) of the Customs Act, which were subsequently incorporated by way of amendment.

(12) The Govt. has come across another case decided by the Madras High Court (in M. Jamal co. vs. Union of India and others vide 1981 Excise and Customs Reporter 140). In the case under reference the ship by which the goods (Palmolein) were imported arrived on 22.2.79 and from 1.3.79 the Govt. of India vide notification no. 142-cus. granted exemption of duty to the extent of 871/2%. The petitioners presented the bill of entry on 13.3.79 and made a claim for exemption of the whole of the duty on the ground that on the date of importation basic customs duty was not chargeable on Palmolein in terms of exemption notification no.129-cus. dated 1-7-77. The Govt. observe that on facts, the case under reference corresponds to the case of M/s Jai Hind Oil Mills Ltd. The case under reference was decided on 4.8.80 and thus is the latest of the orders passed by the court on the question of leviability of duty with reference to the date of importation or the date as specified in Section 15. The Madras High Court observed that the definition of 'import' as contained in section 2 (23) states that "import" with its grammatical variations and cognate expressions, means bringing into India from a place outside India. "bringing into India" obviously would mean the clearance of the goods and Section 15 puts the matter beyond doubt. The Madras High court, therefore, held that the relevant date is the date of presentation of the bills of entry and not the date of actual importation of the goods. As regards the notification exempting the goods from payment of duty, the Madras High Court observed that the said notification nowhere purports to levy any duty. It merely exempts upto 87 1/2%. The logical corollary is that over and above this would be liable to duty. The power to grant exemption under Section 25 may be absolute or partial. In this case, it is the "latter". His lordship, therefore, rejected the petition.

(13) Further, the Govt., observe that in the case of M/s. Jai Hind Oil Mills Ltd., Bombay, it would not be correct to say that customs duty was not leviable on the goods on the date of importation. As a matter of fact, on the date, the goods viz. palmolein were imported, additional duty was leviable on it though the goods were exempted

from basic customs and auxiliary duties. Addl. duty is also a customs duty and, therefore, following the ratio of the decision of the division bench of the Bombay High Court in the matter of synthetics and chemicals as has been applied and discussed, it can be said that section 15 would apply in the circumstances of the case. In view of the above the Govt. are of the view that the Order-in-Appeal pertaining to the case of M/s. Jai Hind Oil Mills has to be set aside.

(14) In regard to the question of time limit as has been raised by Smt. Pappu, senior advocate, the Govt. observe that in a similar case in the matter of M/s. Jeep Flash Light Industries Ltd. vs. Union of India and others (1977 TIR 1697 AIR SC 456), their lordships of the Supreme Court observed that it is significant that section 131(5) does not speak of any limitation in regard to revision by the Central Government of its own motion to annual or modify any order of erroneous refund of duty. The provisions contained in Section 13(5) with regard to non-levy or short levy cannot be equated with erroneous refund in-as-much as the 3 categories of errors in the levy are dealt with separately. It has been also observed that "the contention of the appellant that refund will also be a case of short levy is not correct. Section 28 speaks of 3 kinds of errors in regard to duties. One is non-levy, the second is short levy and the third is erroneous refund. Levy is linked to assessment. Section 17 of the Act speaks of assessment order..... refund is dealt with in section 27 of the Act". It would thus be quite clear that these 3 terms viz. 'non-levy', 'short levy' and 'erroneous refund' are distinct from each other and erroneous refund cannot be treated as short levy or for that matter non-levy either. As the term erroneous refund does not appear under section 131(5) of the Customs Act, the time limit prescribed for other two categories of cases viz. non-levy and short levy cannot be imposed on the case of erroneous refund. In any case it is understood that no refund has so far been made in this case, on the basis of the appellate decision. In view of the above, the Govt. is clearly of the view, that the subject case is not hit by limitation of any sort. The Govt. therefore, has no hesitation to set aside the Order-in-Appeal pertaining to the case of M/s. Jai Hind Oil Mills Ltd., and restore the original orders.

(15) As regards the other two cases the Govt. observe that the ratio of the Bombay High court's decision in the case of M/s. Sylvania and Laxaman and M/s. Synthetics and Chemicals Ltd. cannot be applied to the cases of M/s. Vikas Woolen Mills, Delhi and M/s. Bayer (India) Ltd., Bombay. In these two cases, duty was not completely exempted on the date of importation. It is observed that the basic customs and auxiliary duties were chargeable on the goods and were so charged without such levy being disputed by the importers. The limited question that arose for determination was the date with reference to which addl. duty was chargeable. The Govt. observe that it would be anomalous to refer to the date of ex-bond clearance for the purpose charging addl. duty. When customs duty was leviable on the date of importation no matter which component of it, even going by the ratio of the Bombay High Court's decision in the matter of M/s. Sylvania & Laxaman and M/s. Synthetics and Chemicals Ltd., it can be said that for the purpose of levy of addl. duty also which is nothing but a customs duty, section 15 should be referred to.

(16) In view of the foregoing the Govt. set aside the Orders-in-Appeal pertaining to the cases of M/s. Bayer (India) Ltd., Bombay and M/s. Vikash Woolen Mills, Delhi as well and restores the original orders.

SD/(D.N. Lal)	SD/(D.N. Mehta)	SD/(M.G. Abrol)
Jt. Secretary to the Govt. of India	Addl. Secretary to the Govt. of India	Special Secretary the to the Govt. of India

F.no. 380/17, 1961/80-Cus.ii

Rate of duty and tariff valuation applicable:

(i) The rate of duty and the rate of tariff valuation (if any) applicable to goods entered for home consumption are those in force on the date on which the bill of entry is presented under section 46 of the Customs Act. Bills of entry are presented in the import department and the date of presentation of bills of entry, not submitted under the 'prior entry' system, is shown by the import department stamp in the top left hand corner of the original bill of entry. This date is usually, but not always the same as the date of noting.

(ii) In the case of bills of entry submitted under the 'prior entry' system, the date of presentation under section 46 is the date of the ship's final entry in the import department. This will ordinarily be after the bill of entry has been classified. If changes affecting the goods are made in the tariff after the bills of entry have been classified and not after the date of final entry of the ship, it will be necessary to re-classify and re-asses the goods. This should be done as early as possible, as per procedure already explained in the earlier chapter.

(iii) In the case of bill of entry submitted under proviso to section 46, the date of delivery under section 46 is the date on which the bill of entry is presented in the import department completed with particulars required by section 46 (i.e. "value", "quantity" and description" of the goods.) (Adopted from board's order in customs appeal no. 4 of 1932 of 19.1.32.)

(iv) The crucial date for determining the rate of customs duty under that section 20(i) would be the date of presentation of the bill of entry under section 46 of the Customs Act, 1962.

(v) The relevant date for the purpose of application of rates of duty, rate of exchange, and tariff valuation for levy of duty on ship's stores bills of entry concerned as modified by Government orders of exemption, and interpreted according to tariff rulings issued from time to time. Particular care should be taken to check up the correct effective rates from notifications before finalising old assessments; old editions of the tariff schedule should not be blindly relied on.
(Central Board of Rev. F.no. 55/45/62-Cus. IV dated 14.8.1962)

(vii) In the case of goods assessable to alternative duty, the appraisers should specify clearly on the bill of entry the rate applicable to the bill of entry under assessment.

Assessment section 17(4) Vs Section 18 of Customs Act:

The Board, in consultation with Ministry of Law considers that the custom house in the first instance should not assess the goods to duty under section 17(4) when the custom house is not satisfied as to the genuineness of the declared value. Section 17(4) was intended merely to legalize the second appraisement system and both the practice in this regard and the working of section 17(4) clearly indicate that instead of following the usual procedure of examining first and then assessing the goods, the Assistant Collector may permit the goods to be assessed first pending examination. This system should, therefore, be followed only when the check of documents has been finalised and every thing appears prima facie to be in order. The Board further considers that having resorted to assessment under section 17(4) in any particular case it should not be necessary for the custom house to switch over to section 18 of the Customs Act, 1962 because the former section itself gives to the customs house the power to re-assess the goods not only as a result of something having been found on an examination of the goods but even if something comes to notice otherwise. The correct course in such cases therefore would be to re-assess the goods as provided for under section 17(4) of the Customs Act, 1962.
(Board's F.no. 4/18/60-Cus. IV of 27.3.1963.)

Notice to Importer for Assessment:

Goods are assessed to duty by the assessing officers in exercise of the powers vested in them under the statute and there is no legal obligation to give notice of the intended assessment to the importers or to hear them in person. Government of India, Ministry of Finance (R.D.) New Delhi, letter no 18(45)-Customs 11/53 dated 12th February 1954 in file C.no.3783/52.

Customs tariff items-Indication and attestation:

(i) While classifying a bill of entry, the scrutinizing Appraiser should indicate the customs tariff headings under which the goods are

being assessed. This will facilitate speedy and correct posting under different tariff heads by the statistical department.

(ii) The outward distributions the appraising units will ensure as far as possible, that no bill of entry is finally released without indication of the headings of customs tariff. When importer of goods is willing to pay higher rate in the case of descriptions which are assessable to import duty at different rates, the Collector of Customs as a matter of administrative convenience, has the discretion of accepting a higher prescribed rate of duty and passing the consignment without examination provided that the importer is prepared to pay such a rate.
(G.O.I. Com. Deptt. no. 570 of 27.1.22, Bengal no. 326 S.R. of 13.2.22.)

Over-assessment as much an irregularity as under – assessment: An extract of the findings of the Public Accounts Committee is given below:

"Over-assessment is as much an irregularity as under assessment, and it causes undue hardship to the public for no fault of their own. Over- assessment also results from the same type of failures and mistakes as are responsible for underassessment. The committee have been given to understand that in all the case of over-assessment noticed in audit, the reasons have been wrong classification, levy of countervailing duty where none was leviable, non-application of correct rates etc. the committee trust that the department would profit by the mistakes pointed out by audit, and take suitable remedial measure to avoid a recurrence of the same in future". All Assessing Officers should therefore ensure that the cases of over-assessment are to be avoided just as much as those of under-assessment.

Finalisation of assessment before clearance- Instructions regarding:

Consequent upon the recommendation of the customs study team, it has been decided that as far as possible assessments should

be finalised before clearance of the goods. In cases, where doubt persists in regard to correct classification and assessment, the assessing officer should have recourse to either of the two alternatives laid down hereunder in order of preference:-

(i) Arriving at a final assessment quickly, if necessary by submission of case to senior officers.

(ii) Adopting the provisional assessment procedure but when the trader prefers to pay the higher duty and claim refund later, assessing on the higher basis.
(G.O.I. M.F. (D.R.I.) latter F.no. 25/13/68-Cus. (T.U.) dated 18.3.68.)

Expeditious clearance of imported goods-Action regarding:

It has come to the notice of the Board that in certain cases consignments are held up on the ground that reference has been made to the Board for instruction. In this connection Board has observed that assessment is to be made by the proper officer on the basis of import documents, examination and testing of goods and any other enquiries as deemed proper and as such it is for the custom house to decide the assessment matter. In respect of one particular held up at a port, the Minister of Revenue and Expenditure observed, "let the red tapism be cut short and the matter be settled expeditiously". He further observed that this applies to all cases in general, apart from this particular case.

In view of the above observations, all possible steps should be taken for expeditious clearance of imported goods so that there is no held up on any consignment due to one reason or other. In cases of doubt regarding assessment, where reference to Board has to be made the department should resort to provisional assessment and allow clearance pending Board's instructions. The above instructions should be scrupulously followed by all concerned.
(Board's letter F. no. 528/62/82-Cus (TU) dated 11.12.82)

Arbitrary assessment-Principles to be observed:

Where it becomes necessary to assess duty on an arbitrary value, though it may be desirable to pitch it at a figure to adequately protect the revenue interests, the assessing officers should exercise due care and prudence, so that the amount fixed is not grossly out of proportion to the correct value of the goods in question as otherwise the reputation of the department for common sense and fair play is bound to suffer.
(C.B.R. F. no. 3/55/62-Cus. VI dated 14.1.62)

Assessment in doubtful cases:

In cases in which doubts about the applicability of the tariff arise, it is wrong to release such goods after issue of demands for dues without enforcing the demands. In all cases of doubts, whether for reasons of classification or the rates of duty to be applied where more than one rate of duty has been prescribed, or of the liability to duty of the particular goods, duty should invariably be levied and collected before the goods are released, leaving it to the assessee to claim refund through the appellate or other appropriate procedure.
(C.B.R. F. no. 5/54/55-Cx ii dated 12.4.56)

Scopes of Section 19 Custom Act, 1962 vis-à-vis duty on accessories under the proviso clause to section 19 Customs Act, 1962: An important legal question was raised as to whether assessment as "accessories" under proviso (a) to section 19 of the Customs Act, 1962 will preclude or remove the operation of proviso (b) to the said section, so that assessment at the value applicable to main article is compulsory even where separate values are available.

(2) The Ministry of Law & Justice were consulted in the matter and their opinion is reproduced below: "the answer to the query in this reference would appear to be in the affirmative. A perusal of section 19 would reveal that there is no distinction made between 'articles' themselves and 'accessories' thereof. Clause (a), (b) and (c) to section 19 speak of 'articles'. Clause (b) of the proviso also speaks of 'articles'. It is only clause (a) of the proviso that speaks of accessories of articles. In the premises it would appear reasonable to hold that clause (b) to the proviso is inapplicable to accessories of articles."

(Board's letter F.no. 521/37/74-Cus (TU) New Delhi dated11th June 1975)

The Accessories (Condition) Rules, 1963:

(1) These rules may be called the Accessories (Condition) Rules, 1963.

(2) Accessories of and spare parts and maintenance or repairing implements for, any article, when imported alongwith that article shall be chargeable at the same rate of duty as that article, if the proper officer is satisfied that in the ordinary course of trade-

(i) Such accessories, parts and implements are compulsorily supplied alongwith that article; and

(ii) No separate charge is made for such supply, their price being included in the price of the article.
(m.f. (d.r.) notification no. 18-cus dated 23rd January, 1963) highest rate of duty under section 19 of the Customs Act, 1962.

"Section 19 of the Customs Act, 1962 provides for the application of the highest rate where the separate values of the various item in an article are not available for assessment of that article on its merit. Duty under section 19 Customs Act, 1962 includes the duty leviable under the first scheduled and the additional duty leviable under section 3 of the Customs Tariff Act, '75. The highest rate of duty is that rate which cumulatively gives the highest yield of revenue.

The conference, therefore, felt that the highest fields of revenue are one which fetches the maximum duty by application of both the basic and additional duty taken together".
(C.B.E. & C. F.no. 525/6/72-Cus (TU) dated 29.9.72)

Bill of entry- Date of presentation and rate of duty applicable:

While dealing with an appeal, the Board came across a case where a clearing agent presented bill of entry for clearance of a consignment before the noting clerk of the import department of the custom house. The clerk returned the bill of entry as the correct date of the arrival of the vessel had not been mentioned in the bill. The bill of entry was resubmitted after correcting the same on the next working day. In the meantime, the rate of duty had passed and the goods were assessed to duty at the higher rate. The appellants, however, contended that since the bill of entry was originally presented before the enhancement of the rate of duty, the goods were assessable to duty at the lower rate in force on the day of presentation of bill of entry.

(2) The matter was examined by the Board in consultation with the Ministry of Law, who opined that in this particular case the date for the purpose of determining the rate of duty under section 15(1) of the Customs Act, 1962 should be the date on which the bill of entry was originally presented to the import department. The appeal was allowed.

(3) In the light of the above legal position, the Board desire that when a bill of entry containing all the essential particulars required is presented to the noting clerk, it should be assigned a serial number and date on its presentation regardless of the fact that some additional information may have to be called for, where, however, the bill of entry as originally presented does not contain the prescribed particulars, it should not be noted on the date of its first presentation. In that case the crucial date for the purpose of section 15(1) of the Customs Act, 1962, would be the date on which the bill of entry containing all the prescribed particulars is subsequently presented to the department.
(C.1/303/69-Board's F.3/1/68. Cus.vi dated 27.8.69)

Presentation of Bill of Entry by Oil Company Under section 46(1) - Designation proper officer:

Having regard to the opinion given by the Ministry of law the Board directs that the officers whether Preventive Officers or

noting clerk or Central Excise Inspectors to whom bills of entries for home consumption are first presented showing provisional quantity of oil by the oil company for the purpose of effecting clearance on payment of duty should be designated as the proper officers for the purpose of section 46(1) of the Customs Act, 1962. The date of such presentation shall be the crucial date for the purpose of section 15 of the Customs Act, 1962.
(C.B.E. & C. F. no. 27/26/70-Cus. VI dated 30.3.1971)

Orders of higher authority taken for classification and Assessment to record duplicate bill of entry in order to facilitate audit check and for the guidance of the outside staff: Appraisers should in future invariably record a brief reference in the duplicate bills of entry to the orders the higher authority obtained on the original bills of entry regarding classification and assessment of the goods or when such orders involve any departure from the normal procedure applicable to goods.

Refund-Refund claim-Filing of appeals- Reasons to be given in the orders passed by the Assistant Collector:

The Board has decided that in case where the assessments against the assessee are made by or under the orders of the Assistant Collector a formal order should be issued so that the assessee could know the grounds on which the decision was taken and the procedure to be followed in getting his grievances redressed.
(Board's F.no. 16/23/67-LCI dated 18.5.1967 para 91, T.B. April-June 67)

Check of assessment on bills of entry by Assistant Collectors - Position regarding assessment order under the existing instructions:

Assistant Collectors have to check assessments on bills of entry and shipping bills upto a certain percentage. After assessment by the Appraisers, the bills of entry and shipping bills are required to be put up to the Assistant Collectors for check and counter signature as prescribed. The question whether in such cases where assessment are countersigned by the Assistant Collectors, the

refund procedure under section 27 of the Customs Act, 1962, would be appropriate, has been examined by the Board in consultation with the Ministry of Law. The Ministry of Law have opined that if the Assistant Collector " while he countersigns the bills of entry, checks the relevant entries and applies his mind to determine the duty leviable under the Act and passes an order accordingly (whether such an order is passed separately or on the bill of entry itself so long as the duty liability is determined thereby), then an appeal lies under section 128 of the Customs Act, against such order. As the Appraisers make the assessment and the counter signature of the Assistant Collector, is merely a token of a check exercised by him, it cannot be said that this check makes the Assessment order that of the Assistant Collector. If, however, the Assistant Collector, changes the assessment in any manner, whether by way of revised classification, valuation, or rate of duty, then the order of assessment will be that of the Assistant Collector. In the latter case, recourse to section 27, Customs Act, is ruled out and the appellate procedure will only be appropriate. In the latter type of cases, the assessing officers concerned shall endorse the importers copy of the bill of entry suitably to indicate the fact of decision being taken by an Assistant Collector.
(C.B.E.C. letter F.no.55/98/70-Cus. iv dated 25.8.71. C.1/259/70).

When an assessment order has been passed by or with the concurrence of Assistant Collector, a stamp will be affixed on the relevant bill of entry indicating this fact and advising the importer that if aggrieved, he may file an appeal to the Appellate Collector.

Ex-bond bills of entry:

(i) The rate of duty, and the rate of tariff valuation (if any) applicable to goods cleared for home consumption ex-bond are those in force on the date of removal of the goods from the bonded warehouse. Re-assessment is therefore necessary if the rate of duty or tariff valuation is changed after the duty has been assessed and paid on the ex-bond bill of entry and before the date of actual delivery out of the bonded warehouse. This re-assessment should be carried out before delivery of the goods is allowed. The rate of exchange applicable would be the rate of exchange prevailing on the date of

presentation of warehouse B/E u/s 46 Customs Act, 1962 in terms of amendment Act no. 25 of 1978. (For orders regarding procedure applicable to bonded goods see chapter 2, part VI volume ii).

(ii) With a view to ensure the Board's decision is strictly observed and to fix responsibility for collection of duty short levied the following procedure should be observed with immediate effect:-

(1) The warehousing bill of entry will be noted in the import department and classified in the appraising department. The tariff heading number will be shown by the classifying appraiser on the warehousing bill of entry against the description of the goods.

(2) The bill of entry will thereafter be registered in the import bond register with section 59 bond. The original of the warehousing Bill of entry will then be sent to the statistical department for trade posting and the duplicate released for warehousing action.

(3) The import bond register which is maintained in column form will show among other important particulars, in a separate column, the tariff heading number under which the goods have been classified. This should be done in red ink so that it may not escape attention of the clerk-in-charge.

(4) Whenever any tariff ruling is issued under the Board's order the file containing the ruling should be sent by the concerned unit to the proper section of the custom house for issuing circular and public notice. That section will record the tariff ruling in the following form:-

Sl. no.	Tariff ruling falls within the scope of the ruling	Description of the goods	Movement of the file	Whether any case reported by the import department if so, its particulars.	Date of re assessment
1					

	2	3	4	5	6

(5) After noting the particulars in column 1, 2 & 3 of the register, the assessment section will send the file containing the ruling to the import bond section to report with reference to bond register as to whether any bills of entry involving assessment under the particular tariff ruling have been registered within a period of 3 months preceding the date of issue of the ruling. A note to this effect will be kept in column 4 of the register mentioned in para 4 above under the initial of the supervisory head of the section.

(6) If any such bill of entry which has been affected as a result of issue of Board's ruling is noticed, the original copy of the warehousing bill of entry will be taken out by the clerk-in-charge of the import bond section from the batch of original bill of entry and sent to appraising department for the purpose of re-assessment. The Deputy Superintendent bonds will take particular care to see that such bills of entry, if any, are sent promptly to the Appraising department.

(7) As soon as the files containing the tariff ruling with warehousing bill of entry, if any, are received from the import section particulars will be recorded in column (5) of the register maintained in the assessment section and the files submitted for re-assessment to the appraiser concerned promptly keeping a note in column 4 of the register under the initial of the supervisory officer.

(8) The register maintained in the assessment section should be submitted to A.C. once a month through the supervisory officer of the unit concerned.
(C.B.R. letter no.2/6/57 Cus. iv dated 20.8.57)

Consulting experts for classification and valuation of specified types of engineering goods:

All scientific goods call for special or technical knowledge. For dealing adequately with the classification and valuation of such goods independent experts are consulted. It is necessary that the experts consulted in this regard should be men of integrity and

standing so that the opinion given by them can be relied upon as unbiased opinion. The assessing officers should as far as possible, endeavour to consult the experts of repute taking scrupulous care to see that the final decision is not based on the opinion of interested parties or be biased for or against the particular importer whose goods are involved. For this purpose, arrangements should be made to maintain confidential lists of experts comprising both officials and non-officials after obtaining recommendations from industrial or trade associations and making selections there from for such consultation. The primary object of such consultation is to reduce delays and disputes to a minimum and at the same time obtain reliable information from the market. The assessing officers who go out for the market enquiries and consultations should see that the name of the importer is not disclosed. The officers making such enquiries are not however debarred from making use of other sources of information, not included in the list of experts. The name of reputable firms or persons consulted as experts for deciding the issue should be entered in a separate register by each group for future reference whenever an expert is consulted an entry to that effect should be made in the register maintain by the group in the following form:-

Name of Appraiser	Description of goods	Issues involved	Brief nature of the Expert opinion obtained	Name of expert firm or Person consulted.	File no	Remarks
1	2	3	4	5	6	7

(G.O.I. M.F. letter F.no. 25/5/59-Cus dated 10.9.59 w.r.t. F.no. 24/25/59-Cus (C.R.C)

Advice, opinion etc. given by technical personnel attached to projects like M/s. Hindustan steel Ltd etc. on composition, use of goods, etc. and their assessments.

Advice or opinion given by technical personnel attached to government undertakings like M/s Hindusthan Steel Ltd., should be

given due weight while considering their claims for assessments etc. (Letter no.25/27/62-Cus iii dated 5.4.62 form C.B.R. C. no. 11.54/62)

Assessment in doubtful cases:

Where the assessment in any particular case is doubtful the following alternatives (in order of preference) should be followed: (i) Arriving at a final assessment quickly, if necessary by submission of case to senior officer; (ii) Adopting the provisional assessment procedure, but when the trader prefers to pay the higher duty and claim refund later, assessing on the higher basis.
Ref. extract form M.F. (D.R. & I.) F.no. 25/13/68-Customs(TU) dated 18.3.68 (para 133 pages 188/189 January- March 68)

The Customs Tariff Act, 1975- Application of Board's past Tariff rulings/Advices/Instruction regarding:

The Customs Tariff Act, 1975 (51 of 75) has come into force on the 2nd august, 1976, repealing the Indian Tariff Act, 1934 (32 of 1934).

The Board had in the past been issuing tariff advices on the classification matters which were expressions of opinion on the appropriate classification of goods under the Tariff Act, 1934. With the introduction of the Customs Tariff Act, 1975 which is passed on a scheme of nomenclature different from that followed under the repealed Act, the earlier tariff advices would no longer have any direct application for the classification of goods under the new tariff. The advices issued earlier would no doubt be valid and relevant for deciding old cases but would not be applicable to classification issues arising under the new tariff. Similarly established practice as generally understood will have no significance in terms of the new tariff.

Tariff advices issued under the new Act will, of course, have the same force and validity as the earlier advices had under the repealed Act. Some tariff advices, issued in the past, laid down specification for different types of goods. However, hereafter, the

specification laid down in the Customs Co-operation Council's nomenclature, on which the new tariff is based, as well as in the explanatory notes, to the nomenclature should be referred to for classification of goods under the new tariff. Where, however, no specifications have been laid down in the Customs Co-operation Council's nomenclature or the explanatory notes thereto the specifications laid down earlier by Board may be referred to for guidance. Therefore, the earlier rulings under the repealed Act which are not in conflict with the section notes, chapter notes, headings and sub-headings of CAT, '75 or with explanatory notes to CCCN could continue to be followed.
(F.no.523/15/76-Cus (TU) Central Board of Excise and Customs, New Delhi, the 24th November, 1976)

Divergence between practice at out-ports: Instances have come to notice where even though difference in practices at another port in the classification of goods either for tariff purposes or for ITC purposes have been brought to the notice of the assessing officers they, instead of pursuing the matter further in order to achieve uniformity have been content to maintain that each custom house was at liberty to maintain its own practice. The Board considers it to be of the utmost importance that the classification and treatment of goods under the tariff and ITC regulations should be uniform at all the ports and that whenever any differences in the interpretation or the application of the Import Tariff or the ITC regulations come to light, steps should be taken immediately to reconcile the discrepancy if necessary by a reference to the Board.

Appraisers and other officers will therefore in all cases, ensure that whenever they come across any evidence that particular goods are being classified at other ports under a different heading of the tariff, the matter is put up to the Assistant Collector for his orders where a definite practice exists for classifying the goods under a particular heading of the tariff, the goods will be assessed according to such practice and after release of the goods the case put up to Collector for issue of reference regarding the divergence in practice, in the meantime duty being accepted under protest if the party so desires. Where there is no authorized practice the Assistant Collector

will similarly decide the assessment of the goods according to his judgment or if necessary obtain Collector's orders and subsequently make a reference to the out-port. Similar action may be taken in those cases where any goods are held to be covered under a particular entry in any appendix to be covered under a particular policy or any provisions of the said policy and there is sufficient evidence to show that they are being treated differently at another port. Each case will however have to be treated on an individual basis. Assistant Collector's orders will also be taken in each case before release of the consignment where divergence of practice comes to the notice of the assessing officer. In all such cases where a divergence in practice in the interpretation of any provisions of import policy or scope of particular class of licences etc. is noticed a reference may be made to the port concerned with a view to arrive at a uniform practice. The Board has ordered that before asking for its confirmation on matters of assessment the collectors of other major ports should be consulted and that in urgent cases a reference may be made to the Board with a request to other Collectors to communicate their views to the Board directly.

Adopted from C.B.R. letter no. 36(61)-Cus. III /54 of 15.6.54)

Reference to other port for any problem-Solution to be indicated by custom house initiating the reference:

In making a reference to other ports for opinion, the custom house making the reference should not fail to state clearly its own solution of the problem and the effect of the orders proposed to be passed.

(C.B.R. D. dis. 652-Cus. 1/45 dated 10.8.45)

Instructions regarding change in assessment practice (authorised practice).

The principle of 'established practice' has been replaced by what may be called 'authorised practice'. 'Authorised practice of assessment' would be any practice of assessment which has its basis in a tariff advice ruling of the Board or of the Collectors-in- conference. In such cases, the ‘authorised practice' of assessment should continue

to hold the field, till such time as the Board itself revises the advice ruling, i.e. any change in practice based on such advice/ruling, should take place only from the date of issue of the revised advice from the Board. It may be noted that a change in a 'Collectors-in-conference' tariff advice would have to be effected by a tariff advice from board. Pending claims for refund, appeals, revision petitions, etc. which are alive at the time of change in advice/ruling will have to be decided on the basis of the changed advice but no attempt should be made to re-open past cases assessed in terms of the past practice by the issue of less charge demands, etc.

The rationale behind this decisions that tariff advices are issued by the Board or the 'Collectors-in- conference', as the case may be only after very careful deliberation and after consultation with technical authorities such as the DGTD, ISI, Chief Chemist etc. These are published for the information of the trade and are uniformly applicable all over India. Any practice of assessment which has its basis in such tariff advices would merit undisturbed continuance till altered circumstances or other factors result in the tariff advice being changed by the Board.

When an audit objection, whether by CRA or the internal audit, is raised against an assessment based on 'authorised practice', which objection the Collector feels that changed circumstances etc. are likely to have rendered any tariff advice/ruling of the Board or of the Collectors-in-conference as no longer valid, a reference should be made to the Board forthwith under intimation to the other Collectors of the major ports so that the matter could be included for consideration at the next conference of Collectors on classification matters (where a member of the Board would be present) and a decision could be taken without delay.

In all other cases of assessments, when an audit objection is raised, the question arises as to the type of cases in which less charge demands are to be issued. If the Collector is satisfied about the correctness of the assessment he may settle the objection by explaining the department's stand on the correctness of the assessment originally made. But what has to be ensured is that the

subject matter of the objection gets considered with the necessary expedition so that in case demands have to issue, the same do not get barred by limitation of time. But, where in the Collector's opinion, the position is not free from doubt; notices of demand should be issued pending a final decision in the matter. Notices of demand may be issued in the B/E under objection, other bills of entry which are still in audit with IAD or CRA and those which otherwise come to notice. After a final decision is taken on the objection, recovery of short levy or refund of excess levy of duty can be made. As far as fresh cases are concerned provisional assessment should be resorted to whenever the Collector is in doubt, till a decision is taken on the correct assessment.

If in any case where notices of demands are issued, the Collector feels that the enforcement of demands would result in undue hardship to the trade by reason of the incidence of duty having already been passed on to buyers of the goods or for other reasons, he may make a reference to the Government for relief by way of legal exemption or ex-gratia refund.

All previous instructions of the Board or Government of India on the subject including C.B.R. Customs instructions no.4 and 5 of 1934 may be deemed to have been modified to the extent indicated above.
(C.B.E. & C. F. no. 523/23/76-Cus (TU) dated 10.3.77)

Divergence of practice in assessment and ITC maintained in different departments of custom house. As and when divergence of practice whether in assessment or in ITC matters in different departments of a custom house including cargo complex or postal appraising department is noticed by any of the departments of the custom house (including the appeal unit); it should be promptly reported to the Collector through Assistant Collector/ Deputy Collector/Additional Collector/Appellate Collector as the case may be for follow up action. The report should state precisely the facts of the case, the loss of revenue, if any, noticed as a result of such divergence in practice.

Cases of Under/Over invoicing-follow-up action by the Custom Houses:

Board has advised that cases relating to under/over invoicing by importers/exporters besides involving infringement of the provision in the Customs Act, also attract the provisions of the Import/Export (Control) Act, 1947. Such offences would have a direct bearing on payment of cash assistance and other benefits like incentive licences etc. to those importers/exporters involved. Further, cases of under/over invoicing are required to be dealt with from the foreign exchange angle also. It is therefore, necessary that such cases are also reported to the Reserve Bank, Enforcement Directorate and the import trade control authorities for necessary action under their law.
(M.F. (D.R.) F.no. 493/20/77-Cus. vi dated 31.8.82)

Exemption notifications, tariff rulings, notifications and orders imposing prohibitions, restrictions, baggage and drawback notification procedure for immediate circulation amongst the staff directly concerned with them with a view to rationalize and streamline the various procedures now in vogue for the receipt of important orders/instructions of Government of India/Board, their immediate circulation thereof, the following thereon and implementation thereof, the following streamlined procedure, which inter alia specifically provides for time-limits within which such instructions/ orders should be circulated to the officers directly concerned with them and their acknowledgments taken, is detailed for immediate implementation by all concerned.

All the notifications, instructions and orders issued by the Government and the Board concerning the following subjects will be covered by these instructions:-

(1) Amendment of customs tariff.

(2) Tariff rulings.

(3) Notifications under section 25(1) of the Customs Act, 1962.

(4) Amendments to the Central Excise Tariff.

(5) Tariff rulings on countervailing duty.

(6) Central excise exemption notifications.

(7) Notifications under section 11 of the Customs Act, 1962.

(8) Notifications under section 75 of the Customs Act, 1962.

(9) Procedural orders and other executive instruction of the Board; Government of India concerning appraisement of goods to customs duty and

(10) Any other item which the Collector of Customs may like to add to this list.

Action on the above instructions will be in three stages:

(a) Immediate circulation of a limited number of copies to the officers directly concerned with the subject matter of the communication;

(b) Full circulation including issue of public notices; and

(c) Implementation.

3) Soon after the dak is received back in the correspondence department after its perusal by the Collector and the Additional Collectors of Customs, the Superintendent will sort out the orders of the above types. If sufficient numbers of copies have not been received, he will make arrangements to take out six to eight typed copies thereof. He will maintain a master register of all such 'action' copies taken and assign to them a running serial number. The immediate circulation copies will be distributed to the officers concerned personally and the initials or the officers concerned or his steno obtained on the master copy referred to above. This immediate circulation must be invariably completed the same day. If, however,

the dak is received in the correspondence department after 4 p.m., the circulation should be completed by the forenoon of the following working day.

The following will be the officers to whom these immediate circulation action copies will be distributed:

Customs Valuation (Determination of Price of Imported Goods) Amendment Rules, 1990;

In exercise of the powers conferred by section 156 of the Customs Act, 1962 (52 of 1962) the Central Government hereby makes following rules to amend Customs Valuation (Determination of Price of Imported Goods) Rules, 1988, namely:-

1. (1) These rules may be called the Customs Valuation (Determination of Price of Imported Goods) Amendment Rules, 1990.

(2) They shall come into force on the date of their publication in the official gazette.

2. In rule 9 of the Customs Valuation (Determination of Price of Imported Goods) Rules, 1988, in sub-rule (2) for provisos, the following provisos shall be substituted, namely: - "provided that-

(i) Where the cost of transport referred to in clause (a) is not ascertainable, such cost shall be 20% of the free on board value of the goods.

(ii) The charges referred to in clause (b) shall be 1% of the free on board value of the goods plus the cost of transport referred to in clause (a) plus the cost of insurance referred to in clause (c).

(iii) Where the cost in clause (c) is not ascertainable, such cost shall be 1.125% of free on board value of the goods provided further that in the case of goods imported by air, where the cost referred to in clause (a) shall be 20% of the free on board value of the goods plus cost of insurance for clause (i) above and the cost referred to in clause (c) shall be 1.125% of the free on board value of the goods plus cost of transport for clause (iii) above.

F.no. 467/17/89-Cus. v(ICD) 39/5.7.90.

Levy of customs duty on notional interest on advance payments made to the foreign suppliers/parties on import of goods:

1. The Board has received representations from several importers regarding the levy of customs duty on notional interest on advance payments made to the foreign supplier/parties on import of the goods. It has been further represented that consignments are pending clearance as customs authorizes are insisting for payment of customs duty on the notional interest.

2. In this connection I am directed to say that the issue of inclusion of interest charges in the assessable value for the purpose of levy of custom duty is under active consideration of the Board. Pending finalization of the issue the consignment may not be held up and allowed clearance on execution of bond with sureties for the differential amount of duty involved to safe guard the Government revenue.

F.no. 467/37/91 Cus. V dated 19.9.91.

Demurrage charges and dispatch money not to form part of the Assessable value:

The Kandla custom house had raised the issue relating to the inclusion of demurrage charges and exclusion of dispatch money for computing the assessable value ascertainable under section 14 of the Customs Act, 1962 pursuant to the decision taken in the tariff conference of Collectors held in August, 1981, and the issue was further discussed in the tariff conference of February, 1989. The conference had desired that the matter may be re-examined in totality especially in the context of current valuation principles based on GATT valuation at Goa on 4th and 5th April 1991 examined the problem posed in entirety. The conference came to the conclusion that in the post- dispatch money would not constitute elements of value since element for the carriage. These money are in the nature of penalties or rewards by virtue of contracted chartered agreement between the carrier and the charterer and this in no way could be conceived as

being part of the freight or for that matter part of the price actually paid or payable for the goods.

2. Having regard to the above and the fact that in no other custom house there was a practice to include or deduct such moneys, it has been decided that demurrage and dispatch money may not form a part of assessable value.
F. no. 467/21/89-Cus.v dated 14.8.1991.

Essential and perishable goods etc.:

According to existing instructions the custom houses are required to ensure expeditious clearance of consignments of perishable goods, life-saving drugs, and other essential items such as edible oil etc. The Board desires that you should review the existing arrangements in order to ensure that the instructions issued from time to time requiring expeditious clearance of such goods are being complied with in your customs house. In this regard, you should also lay down an arrangement for monitoring the processing of all bills of entry in respect of such goods at a sufficiently senior level for ensuring that delays in their clearance are avoided, in respect of such goods at a sufficiently senior level for ensuring that delays in their clearance are avoided.
F.no.446/97/87-Cus IV Min. of Finance Deptt. of Revenue/15.12.87.

Valuation of Second-Hand Machinery and Fixing up Scales of depreciation:

Attention is invited to Ministry's instructions of even number dated 19.11.87 wherein rates of depreciation were fixed for the purpose of arriving at the assessable value of second-hand machinery.

2. In para 3 of the above mentioned letter, it was stated that the depreciation will be calculated on the original value of the machinery under import and that officers of the customs houses would have to determine the original value of the machinery on the basis of the current CIF value of the machinery as shown in the certificate of the chartered engineer. In this regard, it has been reported to the Board

that a chartered engineer's certificate generally mentions the price of the new machinery and does not indicate clearly as to whether this is the current price or it is the price of the new machine in the year of its manufacture. Accordingly, where a certificate mentions the current price of the new machinery only, the customs officers do not have sufficient evidence to deduce the original value of the machinery as in its year of manufacture.

3. It has accordingly been decided that where the chartered engineer's certificate does not specifically mention the price of the new machinery as in its year of manufacture, the scale or depreciation should be calculated on the basis of the price of the new machinery as declared in the chartered engineer's certificate without going into the question as to whether this price pertains to the current CIF price in the year of its manufacture. The earlier instructions dated 19.11.87 are modified to the above extent.

F.no. 493/124/86-Cus vi Min. of Finance, Deptt. of Revenue/4.1.88

Assessment of ship stores of daughter vessels engaged in lightening of mother vessels.

The board has recently examined the issue of assessment of ship stores of "daughter" vessels engaged in lightening of "mother" vessels. After reviewing the practice at various ports and also various court cases and orders of the tribunal on the leviability of duty on stores supplied vessels which arrive from foreign ports for the purposes of lightening "mother" vessels and which go back to foreign ports thereafter, no duty shall be charged on ships stores consumed on the " daughter" vessels during their lightening operations. If the same vessel is, however, diverted to coastal run, it would then be treated as coastal vessels and duty would be chargeable on stores consumed by it.

F.no.450/109/92-Cus. IV, dated 24.12.1992.

Regarding release of consignment of the imported food grains and the applicability of section 6(2) of the Prevention of Food Adulteration Act, 1957:

Forwarded herewith a copy of D.O. letter no. 3-3/92/sf/33/93 dated the 3rd February, 1993 from the Secretary, Ministry of Food along with a copy of D.O. letter dated 25.7.92 from the Joint Secretary, Ministry of Health and Family Welfare on the above subject. Ministry of Health has taken a decision that testing for the purpose of Prevention of Food Adulteration Act, 1954 of food grains imported on behalf of Government of India will be conducted by the Food Corporation of India. In the light of this decision, sample for testing the food grains imported on behalf of Government of India should be directed to Food Corporation of India and not to the Officers of the Ministry of Health/Port Health Officer.

F.no.446/8/93-Cus-iv, dated 15.3.1993.