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The recent budget has revived the mathematician inside everyone, in either its calculation of the newly imposed Additional Customs Duty (Additional CVD) under Section 3(5) of the Customs Tariff Act (CTA) or for the DTA clearances effected by the 100% EOU's.

First let us see the calculation of the Additional CVD imposed under Section 3(5) of the CTA. The method of calculation of this Additional CVD is explained hereunder by way an illustration:

1	Let the Assessable Value (AV) be	Rs.100.00
2	Basic Customs Duty @ 12.5 %	Rs. 12.50
3	Total	Rs.112.50
4	Old CVD @ 16.32 %	Rs. 18.36
5	Total Customs Duties (SI no. 2 + 4)	Rs. 30.86
6	Education CESS @ 2 % (EC) on Customs Duties (i.e. 2 % on SI no. 5)	Rs. 0.62
7	AV for the new Addl. CVD (SI no. 3+ 4+ 6)	Rs.131.48
8	Addl. CVD @ 4% (i.e. 4 % on SI no. 7)	Rs. 5.26
9	Total duties of Customs	Rs. 36.74
10	Cenvatable – Old CVD	Rs.18.36
11	Cenvatable – New CVD *	Rs. 5.26

* Even in case of capital goods, the total duty can be availed as credit in full, the same year. In other words, in cases of capital goods, whereas the Old CVD could be availed only @ 50% on each financial year, the new CVD can be availed in full, in the same year of receipt. Further, the output service providers are not allowed to avail Cenvat credit of this Additional CVD.

The rationale of the above calculation is explained hereunder.

The new additional CVD is levied under Section 3 (5) of the Customs Tariff Act (CTA). As per sub section 6 thereof, the value for the purpose of calculation of this additional CVD is value plus all duties of customs, except:

- (i) CVD leviable under section 3 (5) (New Additional CVD).
- (ii) Safeguard duty.
- (iii) CVD on subsidized articles under section 9 (leviable in pursuance of certain treaties)
- (iv) Anti-dumping duty under section 9 A.

Education CESS is payable on all duties of customs, save a few. It is a moot question, as to whether Education CESS shall once again be paid on the Additional CVD also. In this connection, it is relevant to refer to the amended clause 124 of the Finance Act, 2005, which excludes the new additional CVD under Section 3 (5), for the purposes of calculation of Education CESS.

Now to another hair splitting riddle. The calculation of duty payable on DTA clearances by 100 % EOUs.

Notification 23/2003 Dated 31/3/2003 deals with the duty payable by 100 % EOUs, in case of different categories of DTA clearances. It may be observed that only S.No. 2 of the table, attached to Notification 23/2003, has been amended. As such, the entries contained in other S.No. of the table are still effective.

Earlier, for the cases covered by S.No. 2, the EOUs have to pay 50 % of the aggregate of the duties of customs, in case of DTA clearances.

Now, after the present amendment, the duty calculation for DTA clearances shall be as below:

- (a) 25 % of the Basic Customs duty leviable on like goods, when imported into India.
- (b) CVD payable on like goods when imported into India.
- (c) Educational CESS, as applicable, hitherto.
- (d) Newly levied additional CVD, only if the goods cleared in DTA are exempted from VAT/Sales tax.

Let us see the following examples:

Let us assume a case, wherein, the Transaction Value is Rs.100, the BCD is 10 %, the CVD is 16 % and the Education Cess is 2 %.

	Duty payable before amendment	Duty payable after amendment	Duty payable after amendment
		When the goods are not exempted from VAT/ Sales Tax	When the goods are exempted from VAT/ Sales Tax
Value	Rs.100.00	Rs.100	Rs.100
BCD, when imported	Rs. 10.00		
CVD, when imported 16.32% (including Education CESS) on Rs.110.00	Rs. 17.95		
Total duties of Customs	Rs. 27.95		
Education CESS thereon	Rs. 0.56		
Aggregate of duties of Customs	Rs. 28.51		
50 % of the aggregate of duties of customs, as per S.No. 2 of Notification	Rs.14.26		

23/2003			
Excise duty payable for DTA clearance	Rs.14.26		
Education CESS on this Excise duty	Rs. 0.29		
Total duty payable	Rs.14.55		
25 % of the BCD		Rs. 2.50	Rs. 2.50
CVD, when imported 16.32% (including Education CESS) on Rs.102.50)		Rs. 16.73	Rs. 16.73
Education CESS		Rs. 0.38	Rs. 0.38
Total		RS.119.61	Rs.119.61
CVD, now levied under Sec. 3 (5) Of the Customs Tariff Act		NIL	Rs. 4.78 (being 4 % on Rs.119.61)
Total ED payable by the EOU		Rs.19.61	Rs. 24.39
Education CESS thereon		Rs. 0.39	Rs. 0.48
Total duty payable by EOU, for DTA		Rs. 20.00	Rs. 24.87

Before parting...

Presently Rule 3 (6) of the Cenvat Credit Rules, 2004 prescribes a formula to determine the quantum of Cenvat Credit admissible to the recipient unit, out of the total duties paid by the 100 % EOUs, in case of their DTA clearances. This formula is aimed to determine the CVD component, out of the total duty paid by the 100 % EOU. Now, as per the present method of calculation, the CVD component is separately identifiable from the total duty paid and hence the formula in the Cenvat Credit Rules, 2004 is no more relevant and thus needs to be scrapped. If the present formula under Rule 3(6) of the CCR, 2004, is removed then the recipient unit shall avail the entire CVD component (marked in bold in the illustration) as per Rule 3 of the CCR, 2004, which we feel is the right proposition.