Rapid Revision on Customs
For CA - Final
(Nov 2014 Exams)

By

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CHAPTER - 1

TAXABLE EVENT FOR CUSTOMS

1. TAXABLE EVENT IN CASE OF IMPORTS

- As per sec. 12 of Customs Act, 1962, import into India is the taxable event.
- The point of payment of duty as per sec. 15 is the date of presentation of bill of entry (or) date of entry inwards, whichever is later.
- As per sec. 47, customs duty on import should be filed immediately on filing bill of entry.
- *Kiran Spinning Mills V. CC (1999)*, it was held that import is completed only when goods cross the customs barrier. The taxable event is the day of crossing customs barrier. But not on the date when goods landed in India or had entered territorial waters.

**Rate of Duty & Tariff Valuation:**

- If the goods are cleared for Home consumption ➔ Date of presentation of Bill of entry or grant of entry inwards whichever is later.
- If the goods are deposited into warehouse ➔ The rate of duty and tariff valuation prevailing on the date on which ex bond bill of entry for clearance from warehouse is presented will be applicable.

**Exchange rate:**

- If the goods are cleared for home consumption ➔ Date of filing bill of entry for home consumption
- If the goods are deposited into warehouse ➔ Date of filing bill of entry for warehousing (but not ex bond bill of entry for clearance from warehouse)

**Self Assessment (Sec. 17):**

The procedure for self assessment by importer or exporter is as follows:

1. Filing the self assessed Bill of entry or shipping bill
2. Verification of goods by proper officer
3. Speaking order, if importer/ exporter does not agree with re-assessment
4. Re-assessment if self assessment not done correctly
5. The proper officer may audit the assessment of duty

**Provisional Assessment (Sec. 18):**

Provisional assessment is applicable in the following cases:

1. Where the importer or exporter is unable to make self-assessment under Sec. 17 and makes a request in writing to the proper officer for assessment.
2. Where necessary documents have not been produced or information has not been furnished and the proper officer deems it necessary to make further enquiry.
3. Where it is deemed necessary to carry out chemical or other tests of goods
4. When importer/exporter has produced all documents but customs officer still deems it necessary to make further enquiry.

- When Final assessment > Provisional assessment → Interest payable on the difference @ 18% p.a under sec. 28AB, FROM – The first day of the month in which duty is provisionally assessed TILL – Date of payment
- When Provisional assessment > Final assessment → interest shall be receivable if refund not granted within 3 months after final assessment. Interest will be at the rate specified in sec. 27A (@6%).

2. TAXABLE EVENT IN CASE OF EXPORTS

- As per sec. 12 of Customs Act, 1962, export from India is the taxable event.
- The point of payment of duty as per sec. 16 is the date on which clearance for export (i.e. Let export order) is permitted by customs officer.
- As per sec. 51, customs duty on import should be filed immediately on filing shipping bill or bill of export.
- UOI V. Rajendra Dyeing and Printing Mills, it was held that export is complete when goods cross territorial waters of India. If ship sinks within territorial waters, export is not complete and hence duty drawback is not payable
- CC V. Sun Exports, it was held that export is complete once the goods leave Indian waters and property passes to purchasers. Even if goods return due to engine trouble, duty drawback is payable.
- **Rate of Duty & Tariff Valuation:**
  In case the goods are entered for export (irrespective of the mode of transport) → The relevant date is the date of the ‘let export order’ of the proper officer permitting export and loading of cargo on board under sec. 51
  In case of any other goods → The relevant date is the date of payment of duty.
- **Exchange Rate:**
  The exchange rate notified by CBEC prevalent on the date of filing shipping bill (Vessel or Aircraft) or Bill of Export (Vehicle) under sec. 50

<table>
<thead>
<tr>
<th>Levy</th>
<th>Point of payment</th>
<th>Collection</th>
</tr>
</thead>
</table>
| Sec. 12 – Import into or export from India| Sec. 15 – In case of Imports:
Date of presentation of bill of entry (or) date of entry inwards, whichever is later. |
| Sec. 16 – In case of Exports:
Date on which clearance for export is permitted by customs officer. | Sec. 47 – In case of Imports:
Immediately on filing bill of entry |
| Sec. 51 – In case of Exports:
Immediately on filing shipping bill or bill of export |

**Note:** In order to reduce the transaction cost of the importers and expedite the time taken for customs clearance the Board has decided to make e-payment of duty mandatory for the importers paying an amount of Rupees one lakh or more per transaction – Circular No. 33/2011
3. SPECIAL POINTS

3.1 What the cases in which central government is empowered to prohibit importation/ exportation of goods?

Section 11 ➔ This section empowers central government to prohibit either absolutely or conditionally the import or export of specified goods, for any of the following purposes.

The purposes referred to in sub-section (1) are the following:

a) the maintenance of the security of India;

b) the maintenance of public order and standards of decency or morality;

c) the prevention of smuggling;

d) the prevention of shortage of goods of any description;

e) the conservation of foreign exchange and the safeguarding of balance of payments;

f) the prevention of injury to the economy of the country by the uncontrolled import or export of gold or silver;

g) the prevention of surplus of any agricultural product or the product of fisheries;

h) the maintenance of standards for the classification, grading or marketing of goods in international trade;

i) the establishment of any industry;

j) the prevention of serious injury to domestic production of goods of any description;

k) the protection of human, animal or plant life or health;

l) the protection of: national treasures of artistic, historic or archaeological value;

m) the conservation of exhaustible natural resources;

n) The protection of patents, trade marks and copyrights; and also include designs and geographical indications

o) the prevention of deceptive practices;

p) the carrying on of foreign trade in any goods by the State, or by a Corporation owned or controlled by the State to the exclusion, complete or partial, of citizens of India;

q) the fulfilment of obligations under the Charter of the United Nations for the maintenance of international peace and security;

r) the implementation of any treaty, agreement or convention with any country;

s) the compliance of imported goods with any laws which are applicable to similar goods produced or manufactured in India;

t) the prevention of dissemination of documents containing any matter which is likely to prejudicially affect friendly relations with any foreign State or is derogatory to national prestige;

u) the prevention of the contravention of any law for the time being in force; and

v) any other purpose conducive to the interests of the general public.

3.2 When bill of entry must be filed?

According to sec. 46 bill of entry is to be normally filed after the delivery of the IGM or Import report. However, as per sec. 48 if imported goods are not cleared for home consumption/ warehousing/ transshipment within 30 days from the date of unloading

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1 Effective from 10.5.2013
thereof the same at the customs station, the same can be disposed off by the custodian. There is no penalty for delay in filing of bill of entry.

However, a prior bill of entry may be presented 30 days before the expected date of arrival of vessel or aircraft. Gujrat Highcourt in its recent judgement in the case CCus V. Shreeji Overseas (India) P. Ltd. (2013) held that the time limit prescribed under sec. 48 for clearance of goods within 30 days cannot be read into sec. 46 and it cannot be inferred that sec. 46 prescribes any time limit for filing bill of entry.

3.3 In case no statutory definition is provided under law, can the opinion of a trade expert who deals in those goods be considered while determining duty liability?

The Supreme Court in case of Konkan synthetic fibres (2012) stated that it was a settled proposition in a fiscal or taxation law that while ascertaining the scope or expressions used in a particular entry, the opinion of the expert in the field of trade, who deals in those goods, should not be ignored, rather it should be given due importance.

3.4 Are the clearance of goods from DTA to Special Economic Zone chargeable to export duty under the SEZ Act, 2005 or the Customs Act, 1962?

- SEZ Act does not contain any provision for levy and collection of export duty for goods supplied by a DTA unit to a Unit in a Special Economic Zone for its authorised operations.
- Customs Act, 1962 makes it clear that customs duty can be levied only on goods imported into or exported beyond the territorial waters of India.
- Since both the SEZ unit and the DTA unit are located within the territorial waters of India, Section 12(1) of the Customs Act 1962 is not attracted for supplies made by a DTA unit to a unit located within the SEZ. - TirupatiUdyog Ltd. v. UOI 2011 (AP)
**Case Studies:**

<table>
<thead>
<tr>
<th>Case</th>
<th>Description</th>
<th>Answer</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Mr. Suhaan imported a consignment of goods which was unloaded on 31.10.2013. He filed the bill of entry on 15.12.2013. The Deputy Commissioner of Customs imposed a penalty of ₹ 15,000 on Mr. Suhaan as there was a delay of 15 days in filing the bill of entry. The Deputy Commissioner contended that section 46 and 48 of the Customs Act, 1962 read together provide that bill of entry ought to be filed within 30 days from the date of unloading of the goods. Examine the issue in the light of relevant statutory provisions and decided case laws, if any.</td>
<td>Penalty cannot be imposed as laid down in <strong>CCus V. Shreeji Overseas (India) P. Ltd. (2013) (HC)</strong></td>
</tr>
<tr>
<td>2</td>
<td>Alpha Ltd. manufactures heavy machinery. 50% of its production is exported to European countries. The machinery is manufactured with the help of imported components as well as indigenous raw materials. Alpha Ltd. regularly pays import duty and central excise duty on the imported components and indigenous raw materials respectively and claims duty drawback on exports made by it. On 28.11.2013, it loaded a machinery manufactured by it on a vessel 'Victoria' for being exported to Germany. 'Victoria' set sail from Mumbai on 01.12.2013, but was caught up in the rough weather and sank in the territorial waters on 02.12.2013. The Customs Department has refused to grant duty drawback claimed by Alpha Limited in respect of the machinery loaded on 28.11.2013 for the reason that the machinery has not reached Germany. Examine the situation with the help of decided case laws, if any.</td>
<td>Duty drawback not available in the present case as laid down in <strong>UOI V. Rajendra Dyeing &amp; Printing mills Ltd. (2005) (SC)</strong></td>
</tr>
<tr>
<td>3</td>
<td>Certain goods were brought to the export shed on 5/10/2012. The goods were examined and ‘let export order’ was issued on the same day by noting of the shipping bill. Computer processed shipping bill was issued on 6/10/2012. DEPB rate was lowered on 6/10/2012 and the department allowed the DEPB at the rate prevailing on 6/10/2012. The goods were permitted for clearance and loading on 5/10/2012. It is the assessee’s case that under the Customs Act, 1962 they are entitled for a higher rate of DEPB prevailing on 5/10/2012. Write a brief note whether the assessees stand is correct in law.</td>
<td>The assessee is entitled for a higher rate of DEPB prevailing on 5/1/2012</td>
</tr>
</tbody>
</table>

[Nov 10 – CA]
CHAPTER - 2

VALUATION UNDER CUSTOMS

1. TRANSACTION VALUE OF IMPORTS (14) & RULE 3 READ WITH RULE 10.

Rule 3(1): value of imported goods shall be transaction value adjusted in accordance with provisions of rule 10

Transaction Value → In case of Imports: Price actually paid/payable for the goods when SOLD FOR EXPORT TO India for delivery at the TIME AND PLACE OF IMPORTATION (i.e. the price upto a port in India when goods are imported). Hence, CIF value should be considered.

Transaction Value → In case of Exports: Price actually paid/payable for the goods when SOLD FOR EXPORT FROM India for delivery at the TIME AND PLACE OF EXPORTATION (i.e. the price upto a port in India when goods are exported). Hence, FOB value should be considered.

2. IMPORTANT POINTS FOR COMPUTATION OF TRANSACTION VALUE IN CASE OF IMPORTS:

- CIF = FOB + Cost of Transport + Insurance
- If CIF price is given in the question, TV = CIF price + 1% of CIF as landing charges
- If FOB price is given in the question and if the information regarding cost of transport and Insurance is available, TV = FOB price + Cost of transport upto a port in India + Insurance + 1% of CIF as landing charges.
- If FOB price is given in the question and if the information regarding cost of transport and Insurance is not available, Consider cost of transport as 20% of FOB and Insurance as 1.125% of FOB and arrive at the TV.
- If Air freight is given in the question, For calculating TV consider cost of transportation as ACTUAL air freight or 20% of FOB, whichever is LOWER.
- If different tax rates are given in question, then consider those rates.
- Exchange rate determined by CBE&C should be considered.
- If goods are covered under MRP provisions, CVD (3(1)) shall be computed accordingly.

3. CUSTOMS IMPORT VALUATION RULES, 2007

<table>
<thead>
<tr>
<th>Rule Number</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>4</td>
<td>TV OF IDENTICAL GOODS SHALL BE AV OF GOODS IN QUESTION</td>
</tr>
<tr>
<td>5</td>
<td>TV OF SIMILAR GOODS SHALL BE AV OF GOODS IN QUESTION</td>
</tr>
<tr>
<td>7</td>
<td>DEDUCTIVE VALUE SHALL BE AV (BOTTOM UP APPROACH)</td>
</tr>
<tr>
<td>8</td>
<td>COMPUTED VALUE SHALL BE AV. (TOP DOWN APPROACH)</td>
</tr>
<tr>
<td>9</td>
<td>RESIDUAL METHOD</td>
</tr>
</tbody>
</table>

(TISDCR) THE ABOVE RULES SHOULD BE APPLIED SEQUENTIALLY.
4. CUSTOMS DUTY COMPUTATION:

CVD (3(1)) is levied to counter-balance excise duty and calculated on Assessable value + basic excise duty and SAD (3(5)) is levied to counter-balance sales tax and calculated on Assessable value + All customs duties excluding SAD.

Antidumping duty and safe-guard duty is added to the customs duty thus arrived and no EC and SHEC payable on it.

The duty under customs shall be computed as follows:

Step 1 - Ascertain the Assess-able value (AV)

Step 2 - Calculate the Customs duties [BCD @ 10% of AV + NCCD, if any + CVD @ 12% of (AV + BCD + NCCD)]

Step 3 - Calculate EC and SHEC on step 2

Step 4 - Total Customs Duty (Excluding SAD) = Step 2 + Step 3

Step 5 - Special Additional Duty (SAD) = 4% of (AV + Step 4)

Step 6 - Total customs duty (Including SAD) = AV + Step 4 + Step 5

Note: No EC and SHEC on CVD w.e.f 1/4/2012

5. INCLUSIONS/EXCLUSIONS FROM INVOICE PRICE IN CASE OF IMPORTS (R.10)

Inclusions:
1. Commission and Brokerage (Except buying commission)
2. Cost of container
3. Cost of packing (Materials and labour)
4. Materials, Components, tools, dies, moulds and consumables
5. Royalties and license fees relating to imported goods
6. Cost of transport upto place of Import
7. Any other payments made in relation to sale
8. Loading, unloading and handling charges
9. Cost of Insurance

Exclusions:
1. Payment made for activities undertaken by the buyer on his own account
2. Charges for construction, erection, assembly after importation
3. Duties and taxes in India
4. Cost of transport after importation
5. Dividends or other payments from buyer to seller that is not related to imported goods.

Note: subsequent increase in the market price of the imported goods due to inflation will NOT lead to increase in customs duty although the contract price between the parties has not increased accordingly unless there is a collusion between supplier and importer – Agarwal Industries Ltd. (2011) (SC)
5.1 C I F V S . F O B
Charges upto exporters port (port of origin) is FOB and charges upto importers port (port of destination) is CIF.
Landing charges is neither included in FOB nor in CIF but should be considered for value.

5.2 B U Y I N G V S . S E L L I N G C O M M I S S I O N :
“Buying Commission” is the fee paid by importer to his agent for representing importer, in abroad for purchase of goods.
Selling commission is the fee paid in Indian rupees to local agents in India appointed by exporters to promote their sales in India.
Hence, Selling commission being a payment made indirectly to exporter is INCLUDED

6. V A L U A T I O N I N C A S E O F E X P O R T S :

- Value of exported goods shall be TV specified u/s 14, provided price in the sole consideration for sale and buyer and seller are not related, if not value determined by valuation rules.
- FOB value is normally considered.
- However, the above can be rejected if there is over valuation (often done to get excess export benefits)
- Exchange rate as applicable on date of presentation of a shipping bill or bill of export, as determined by CBE&C or ascertained in manner determined by CBE&C should be considered.
- If valuation is not possible on basis of TV, valuation will be done by proceeding sequentially the following methods:

Comparison Method (R. 4)
TV of like goods exported at or about same time to the same destination country, if not other destination country.

Computed Value Method (R. 5)
Cost of Production + Charges for design/brand + Reasonable profit.

Residual Method (R.6)
Reasonable and consistent means by Customs Officer.

“Consider CIF for Imports and FOB for exports, CIF = FOB + Insurance + Freight. Always add 1% landing charges to CIF”
7. **DEDUCTIVE vs. COMPUTED VALUE FOR IMPORT:**

The order of applying deductive, computed value can be inter-changed.

**Deductive Value (R. 7)**

Unit price at which the imported goods (or) identical (or) similar imported goods are sold in the greatest aggregate quantity

Less: Commission, Selling expenses and profit made

Less: Transport, Insurance and associated cost within India

Less: Customs duties, Sales tax and other taxes levied in India

[The goods at or about same time can be considered, if not at the earliest date of importation but before the expiry of 90 days after such importation]

**Computed Value (R. 8)**

Cost (or) Value of materials used in producing the imported goods

+ Cost of fabrication/ other processing used in producing imported goods

+ Usual profit margin and general exp. Equal to sale of goods of the same class

+ All cost referred in Rule 10 (transport, insurance, loading, handling)

**CASE STUDIES:**

1. Compute the assessable value for the purpose of determination of customs duty from the following data:

<table>
<thead>
<tr>
<th>Item Description</th>
<th>Price</th>
</tr>
</thead>
<tbody>
<tr>
<td>Machinery imported from USA by air (FOB price)</td>
<td>US $ 5,000</td>
</tr>
<tr>
<td>Accessories compulsorily supplied along with the machinery</td>
<td>500</td>
</tr>
<tr>
<td>Air freight</td>
<td>1,800</td>
</tr>
<tr>
<td>Insurance charges</td>
<td>Actuals not available</td>
</tr>
<tr>
<td>Local agent’s commission to be paid in Indian currency</td>
<td>6,000</td>
</tr>
<tr>
<td>Transportation from Indian airport to factory</td>
<td>3,500</td>
</tr>
</tbody>
</table>

Date of presentation of bill of entry is 20.10.2013. Exchange rate notified by CBEC on 20.10.2013 is US $ 1 = ₹ 60

Date of arrival of aircraft is 25.10.2013. Exchange rate notified by CBEC on 25.10.2013 is US $ 1 = ₹ 62 [RTP – May 2014]

**Ans:**

<table>
<thead>
<tr>
<th>Description</th>
<th>Value</th>
</tr>
</thead>
<tbody>
<tr>
<td>AV for Accessories</td>
<td>₹ 37,252</td>
</tr>
<tr>
<td>AV for Machinery</td>
<td>₹ 3,72,518</td>
</tr>
</tbody>
</table>

2. An importer has imported certain goods and while determining the assessable value, landing charges @ 1% of CIF value were added. The importer has claimed that actual landing charges are much lower than 1% of the CIF value in his case. You have been asked to advice whether the importer can file bill of entry by adding actual landing charges instead of notional landing charges.

3. Assessable value of certain goods imported from USA is ₹ 5,00,000. The packet contains 5000 pieces with maximum retail price of ₹200 each. The goods are assessable under section 4A of
the Central Excise Act, 1944 after allowing an abatement of 40%. The excise duty rate is 10% ad-valorem. Calculate the amount of additional duty of customs under section 3(1) of the Customs Tariff Act, 1975 assuming basic customs duty @ 10% ad valorem.  

[June 11 – CMA]

<p>| | |</p>
<table>
<thead>
<tr>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>4</td>
<td>CIF value of imported goods is ₹10,00,000. Basic Customs Duty payable is 10%. If the goods were produced in India, Excise Duty payable would have been 12%. Education cess is 2% and Special Education Cess is 1%. Spl. CVD is payable at appropriate rates. Find the Customs duty payable. What are the duty refunds/benefits available if the importer is (a) manufacturer (b) Service provider (c) Trader?</td>
</tr>
<tr>
<td>5</td>
<td>An importer imported some goods in February, 2012 and the goods were cleared from Mumbai port for warehousing on 8th February, 2012 after assessment. Assessable value was ₹4,86,000 (US $ 10,000 at the rate of exchange ₹ 48.60 per US $). The rate of duty on that date was 35% (assume that no additional duty is payable). The goods were warehoused at Pune and were cleared from Pune warehouse on 4th March, 2012, when the rate of duty was 30% and exchange rate was ₹48.75 per US $. What is the duty payable while removing the goods from Pune on 4th March, 2012?</td>
</tr>
<tr>
<td>6</td>
<td>Mr. Roahn filed an into bond bill of entry on 20/2/12 for deposit of goods imported by him in a warehouse. The rate of customs duty on 20/2/12 was 25%. On 1/3/13, Roahn filed an ex-bond bill of entry for home consumption, on which date the rate of customs duty had been increased to 30%. Compute the imported cost of the goods, assuming that value of such goods is ₹1,00,000 and no additional duties of customs are payable. Education cess is 2% and SHEC is 1%.</td>
</tr>
</tbody>
</table>
CHAPTER - 3
PROCEDURES UNDER CUSTOMS

IMPORT PROCEDURES

Documents involved:

<table>
<thead>
<tr>
<th>Vessel</th>
<th>Import general manifest</th>
<th>Bill of entry</th>
</tr>
</thead>
<tbody>
<tr>
<td>Aircraft</td>
<td>Import general manifest</td>
<td>Bill of entry</td>
</tr>
</tbody>
</table>

Procedures to be followed by person in charge:

Sec. 29  The vessel/aircraft should arrive in India only at customs port or airport (except for reasons of health, safety etc.,). CBEC can permit landing of vessels and aircrafts at any place other than customs port or customs airport.

Sec. 30  Delivery of Import general Manifest (IGM)/Import report (IR). Penalty for belated filing - upto 50,000

- VESSEL – IGM – Before arrival (any time)
- AIRCRAFT – IGM – Before arrival (any time)
- VEHICLE – IR – After arrival (within 12 hours)

Sec. 31  Imported goods should not be unloaded until the “grant of entry inwards”

Sec. 32  Only goods mentioned in IGM/IR should be unloaded.

Sec. 35  The import cargo taken from the ship to the shore and export cargo taken from the shore to the ship, in boats should accompany BOAT NOTE in duplicate. It is not required in case the export cargo accompanies a shipping bill.

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2 Effective from 10.5.2013

3 Mandatory electronic filing of IGM/EGM w.e.f 10.5.2013. However, in cases where it is not feasible to deliver IGM/EGM electronically, the commissioner of customs may, allow the same to be delivered in any other manner.
Procedures to be followed by importer:

<table>
<thead>
<tr>
<th>Sec. 46</th>
<th>Bill of entry in case of vessel/aircraft should be submitted up to 30 days prior to the expected date of arrival. In case of vehicle, it should be submitted before person in charge submits import report. Types of bill of entry</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>1. Bill of entry for home consumption – For clearance on payment of duty (White colour)</td>
</tr>
<tr>
<td></td>
<td>2. Bill of entry for warehousing – For keeping goods in warehouse without payment of duty (Yellow Colour)</td>
</tr>
<tr>
<td></td>
<td>3. Ex bond bill of entry – For clearance from warehouse on payment of duty (Green colour)</td>
</tr>
</tbody>
</table>

| Sec. 47 | Clearance of goods on payment of duty. The import duty assessed on goods entered for home consumption should be paid within 2 days\(^4\) (excluding holidays) of the determination of such duty amount. In case he fails to do so, he is required to pay interest on the duty till the time he actually pays the duty and clears the goods. |

| Sec. 48 | Disposal of Goods, If Not Cleared Within 30 days after unloading |

| Sec. 49 | Where any imported goods entered for home consumption cannot be cleared within a reasonable time, the same may, pending clearance, be permitted to be stored in a public warehouse/ private warehouse. Such goods shall not be deemed to be warehoused goods and accordingly warehousing provisions shall not apply. This is known as warehousing without warehousing. Finance Act, 2013 has been amended to introduce a time limit of 30 days in such a case. This period can further be extended by 30 days by commissioner of customs. |

| Sec. 144(3) | No duty shall be chargeable on any sample of goods which is consumed or destroyed during the course of any test or examination thereof\(^5\) |

| Sec. 146 | The words customs house agents have been substituted with customs brokers. \(^6\) |

| Sec. 146A | A person convicted under Finance Act, 1994 (i.e. Service tax) has also been disqualified from acting as an authorized representative in customs matters. \(^7\) |

| Sec. 147 | This section stipulates that anything required to be done by the owner/ importer/ exporter of any goods can be done by his agent. Finance Act, 2013 casts equal responsibility on agents for making correct self assessment. |

\(^4\) The period of 5 days is reduced to 2 days w.e.f 10.5.2013

\(^5\) Previously, the duty shall not be chargeable if such duty amounts to ₹ 5 or more, but now this has not been omitted. Consequently, there shall be no duty liability on a sample of goods consumed/ destroyed during the course of testing/ examination.

\(^6\) Effective from 10.5.2013

\(^7\) Effective from 10.5.2013
EXPORT PROCEDURES

Documents involved:

<table>
<thead>
<tr>
<th>Vessel</th>
<th>Export general manifest</th>
<th>Exporter</th>
<th>Shipping bill</th>
</tr>
</thead>
<tbody>
<tr>
<td>Aircraft</td>
<td>Export general manifest</td>
<td>Exporter</td>
<td>Shipping bill</td>
</tr>
<tr>
<td>Vehicle</td>
<td>Export report</td>
<td>Exporter</td>
<td>Bill of Export</td>
</tr>
</tbody>
</table>

Procedures to be followed by person in charge:

- **Sec. 39**: Export Goods not to be loaded on Vessel unless “Entry Outward” granted
- **Sec. 40**: Export goods not to be loaded unless duly passed by the Customs Officer
- **Sec. 41**: Submission of Export General Manifest (EGM)/Export Report (ER) before departure

Procedures to be followed by Exporter:

- **Sec. 50**: File shipping bill/bill of export and it should contain details like name of exporter, consignee, Invoice number, Details of packing, Description of goods, Quantity, FOB value etc.,
  - Types of Shipping bill
    - 1. Export of goods under claim for duty drawback: Green Colour
    - 2. Export of dutiable goods: Yellow Colour
    - 3. Export of duty free goods: White Colour
    - 4. Export of goods under Bond: Pink Colour
    - 5. Export under DEPB scheme: Blue Colour
- **Sec. 51**: Customs officer shall verify the contents and after being satisfied that goods are not prohibited for exports will permit clearance by giving LET EXPORT order.
Sec. 20 – Concessions w.r.to re-importation of goods

Notification No. 94/96

Concessional duty payable in case of re-importation of goods exported for repairs or exported under duty drawback, rebate etc.

Conditions:
- The time limit for re-importation is 3 years. This is extendable to 5 years.
- The exported goods and the re-imported goods must be same.
- The ownership of the said goods must not have changed.

<table>
<thead>
<tr>
<th>Description of goods exported</th>
<th>Amount of import duty payable if re-imported</th>
</tr>
</thead>
<tbody>
<tr>
<td>Goods exported under claim for duty drawback, rebate of excise duty, bond without payment of duty, etc.</td>
<td>Amount of incentive availed of at the time of export</td>
</tr>
<tr>
<td>Goods exported for repairs abroad</td>
<td>Fair cost of repairs carried out including cost of materials used in repairs (whether such costs are actually incurred or not), insurance and freight charges, both ways.</td>
</tr>
</tbody>
</table>

Sec. 21 - Derelict, Jetsam, Flotsam and wreck

Derelict – This refers to any cargo, vessel, etc. abandoned in the sea with no hope of recovery.

Jetsam – This refers to goods jettisoned from the vessel to save her from sinking.

Flotsam – Jettisoned goods which continue floating in the sea are called flotsam.

Wreck – This refers to cargo or vessel or any property which are cast ashore by tides after ship wreck.

As per Sec. 21 All goods, derelict, jetsam, flotsam and wreck brought or coming into India, shall be dealt with as if they were imported into India, unless it is shown to the satisfaction of the proper officer that they are entitled to be admitted duty-free under this Act.

Sec. 13 Vs. Sec. 22 Vs. Sec. 23(1) – Relaxation from payment of duty.

Relaxation from payment of duty

- Sec. 13: On account of pilferage before order for clearance is made
- Sec. 22: Abatement if the goods are damaged or deteriorated
- Sec. 23(1): Remission, if the goods are destroyed before clearance
**Sec. 13 – Pilferage:**

- No duty payable under Sec. 13. But if goods are restored, liability of duty shall be revived.
- Importer does not have to prove pilferage.
- Pilferage should be before order for clearance is made.
- Loss must be only due to pilferage.
- Normally duty is not paid. However if duty is paid before examination of goods, refund can be claimed if goods are found to be pilfered during examination but before order for clearance is made.
- Section 13 is not applicable for warehoused goods.
- Refund arises if pilferage takes place after paying duty.

**Sec. 23(1) - Remission of duty**

- Deals with loss or destruction of goods, except pilferage.
- Duty shall be payable under Sec. 23(1), but it is remitted by AC of customs. Thus unless remitted, duty has to be paid under Sec. 23(1).
- Burden of proof is on importer to prove loss or destruction.
- Loss or destruction can be any time before clearance.
- Loss or destruction may be due to fire, accident etc. but not pilferage. Eg. Loss by leakage is covered under section 23.
- Under Sec. 23(1), if duty is paid then refund can be obtained only if remission is granted by customs authorities. Thus remission u/s 23(1) is at the discretion of customs authorities.
- Section 23(1) is applicable for warehoused goods also.
- Question of refund does not arise at all.

**Sec. 22 – Abatement of duty on damaged or deteriorated goods**

Damage → Denotes physical damage to goods. This implies that the goods are not fit to be used for the purpose for which they are meant.
Deterioration → Reduction in quality of goods due to natural causes.

Amount of duty chargeable after abatement =

\[
\text{Duty on goods before damage or deterioration} \times \frac{\text{Value of damaged/deteriorated goods}}{\text{Value of goods before damage/deterioration}}
\]

Note: The value as ascertained by the proper officer or the proper officer may sell such goods by public auction/tender or if the importer agrees, in any other manner and the gross sale proceeds shall be deemed to be the value of such goods.
### CASE STUDIES:

1. What will be the impact on customs duty if the goods are –
   (i) Damaged inside the warehouse before clearance for home consumption
   (ii) Deteriorated inside the warehouse before clearance for home consumption
   (iii) Destroyed in the warehouse before clearance for home consumption
   (iv) Destroyed on the wharf, before clearance for home consumption
   (v) Destroyed after Clarence from warehouse.

2. A machine was originally imported from the overseas supplier at ₹100 lakhs in 2012 on payment of all duties of customs (basic and additional duties). The said machine was sent back to supplier for repairs in 2012 itself. The machine is re-imported within 3 months after repairs. While the repairs were carried out free of cost *(under warranty)*, however, the fair cost of repairs carried out including the cost of materials would have been ₹7.5 lakhs and insurance and freight both ways (actual) were ₹2.5 lakhs. The rate of basic customs duty is 5%, while that of excise duty in India is 12%. Additional duty u/s 3(5) is nil.
CHAPTER - 4
BAGGAGE

Exclusions from baggage

Sec. 79 | Used personal effects other than jewellery
---|---
Rule 3 and Rule 4 | General Free Allowance
Rule 5 | Allowance to professionals returning India
Rule 6 | Exemption from jewellery
Rule 7 | Concessions to tourists
Rule 8 | Concessions to persons transferring residence

General Free Allowance—Rule 3 and Rule 4

Indian resident or a foreigner residing in India, returning from

- Nepal, Bhutan, Myanmar or China
  - Returning after stay abroad for > 3 days
    - Passenger Age ≥ 10 years: GFA of ₹6000
    - Passenger Age < 10 years: GFA of ₹1,500
  - Returning after stay abroad for ≤ 3 days
    - Passenger Age ≥ 10 years: No GFA
    - Passenger Age < 10 years: No GFA

Indian resident or a foreigner residing in India, returning from

- Other countries
  - Returning after stay abroad for > 3 days
    - Passenger Age ≥ 10 years: GFA of ₹35,000
    - Passenger Age < 10 years: GFA of ₹15,000
  - Returning after stay abroad for ≤ 3 days
    - Passenger Age ≥ 10 years: GFA of ₹15,000
    - Passenger Age < 10 years: GFA of ₹3,000
**Exemption from jewellery – Rule 6**

- Jewellery is exempt in respect of a passenger returning India.
- **Note:** Indian non-tourist passengers who stayed abroad for a period less than a year are not eligible for this additional jewellery allowance.

![Diagram of Jewellery Exemption]

**Concessions to Tourists – Rule 7**

![Diagram of Concessions to Tourists]

**Rate of duty on baggage**

- General Rate – 35% + EC & SHEC as applicable, which comes to 36.05%
- Goods upto ₹ 5,000 per passenger per visit can be purchased against rupee payments in duty free shops at international airport.
- One Laptop (or Notebook) brought as baggage by person over 18 years of age (other than member of crew) is fully exempt from customs duty – Notification 11/2004.
- **Import of LCD/LED/Plasma TV as part of free baggage allowance **disallowed** - import of flat panel (LCD/LED/Plasma) television as part of free baggage allowance has been disallowed from August 26 and travelers bringing in LCD/LED/Plasma TV as part of baggage will have to pay customs duty at 36.05% (35% + 3% education cesses).
- A crew member of a vessel/aircraft is allowed to bring items like chocolates, cheese, cosmetics and other petty gift items for their personal or family use while returning from foreign journey upto a value of ₹ 1,500
CHAPTER - 5
WAREHOUSING

- The imported goods can be stored in a warehouse without payment of duty.
- The goods can be warehoused when importer does not require it immediately.
- A Bond has to be executed for this purpose
- The goods can be cleared from the warehouse, on payment of duty and the bond gets released.
- The above is a benefit which will enable the importer to defer payment of customs duty till goods are actually required by him
- This facility is available to traders as well as direct importers.

FAQ’S ON WAREHOUSING PROVISIONS:

1. **What is the value for which bond must be executed?**
   - A bond has to be executed for an amount equal to twice the amount of duty assessed on such goods.
   - Generally, part of bond amount is secured by way of bank guarantee
   - Bond will continue to be valid even if goods are transferred to another person or removed to another warehouse.
   - Bond will be cancelled and returned only when duty and all other dues are paid on goods cleared and goods are actually accounted for.

2. **What is the period for which goods can be kept in a warehouse without payment of duty?**

   ![Warehousing period diagram]

   - In case of a person other than EOU
     - 1 year from the date of issue of order permitting deposit of goods
     - + 6 months by commissioner
     - + unlimited time by cheif commissioner
     - [Note: The period of 1 year can be reduced by commissioner if goods are likely to deteriorate]

   - In case of EOU
     - For Inputs and Spares
       - 3 years + Unlimited time by commissioner
     - For capital goods
       - 5 years + Unlimited time by commissioner.

When warehousing period expires without extension thereof, the date on which warehousing period comes to an end will be the date of deemed removal and the rate of duty prevalent on that date shall be applicable for determining customs duty.\(^8\)

\(^8\)Kesoram rayon V. CC (1996)(SC)
3. **What is the period 3 years/5 years in case of EOU signifies?**
   In case of EOU units, the whole factory is treated as bonded warehouse. Hence, the inputs, consumables and spares should be consumed for manufacture of export product within that warehousing period. If not, application for extension should be made.

4. **What will be the rate of interest in case of warehousing?**
   **In case of goods intended for use in any 100% EOU:**
   If such goods remain in a warehouse beyond a period of 3 years or 5 years, interest shall be payable @ 15% on the amount of duty payable at the time of removal for a period FROM the expiry of the said warehousing period TILL the date of payment of duty on warehoused goods.
   **In case of any other goods:**
   If such goods remain in warehouse beyond a period of 90 days, interest @ 15% shall be payable on the amount of duty payable at the time of clearance FROM the period after expiry of 90 days TILL the date of payment of duty on warehoused goods.
   Circular No. 39/2013 – The interest free period of 90 days will start from the date of deposit of goods in warehouse but not from the date of import.

5. **Will the interest be payable, if goods are kept for an extending period in the warehouse without payment of duty?**
   Interestingly, the interest shall be payable on those goods even before the expiry of warehouse period specified. Even if goods are permitted to be stored for one year (+ extended time), interest is payable for storing goods beyond a period of 90 days in the warehouse.

6. **What is the duty on which interest shall be payable. Is it the duty as assessed when goods are warehoused or is it the duty as assessed at the time of clearance?**
   The interest is payable on the basis of duty payable at the time of clearance and not duty assessed when goods were warehoused.

7. **Can the interest be waived? Who has the power to waive interest?**
   ✓ CBEC in exceptional circumstances can waive part or full interest
   ✓ CBEC can also specify the class of goods in respect of which interest will not be charged.
   ✓ If interest amount is upto ₹2 crores, waiver can be made by chief commissioner of customs.
CHAPTER – 6
PENAL PROVISIONS

SEIZURE OF GOODS, DOCUMENTS AND THINGS (SEC. 110)

1. If the proper officer has reason to believe that any goods are liable for confiscation, he may seize such goods. If it is not practicable to seize, he may serve an order on the owner of the goods not to remove, part with, and deal with the goods without previous permission of such officer. This order is known as “Restraint order” or “Detention”.
2. Under Sec. 124, SCN should be issued to the person before confiscation of goods and before passing confiscation order, an opportunity of personal hearing must be given. (Remember Confiscation and Seizure is different!!!)
3. If the goods are seized as per Sec. 110 but no notice under sec. 124 is served within 6 months from the date of such seizure, the goods shall be returned to the person from whose possession they were seized.
4. The above period of 6 months can be extended by a commissioner for a period not exceeding 6 months.
5. The person from whose custody any documents are seized shall be entitled to make copies thereof or take extracts there from in the presence of officer of customs.

Provisional release of goods pending adjudication (Sec. 110A)

Any goods, documents or things seized under section 110, may, pending the order of the adjudicating authority, be released to the owner on taking a bond from him in proper form with such security and conditions, as the adjudicating authority may require.

Option to pay fine in lieu of confiscation [Sec. 125]

- Customs officer has the power to grant an option to the adjudged person to pay fine in lieu of confiscation of the offending goods, which is known as “Redemption fine”.
- The amount of redemption fine cannot exceed the market price of the confiscated goods as reduced by import duty chargeable
- In case of prohibited goods, such option is at the discretion of the officer (i.e. may).
  But in case of other goods, he has an obligation to give such option (i.e. shall)

Can customs duty be demanded under section 28 and/or section 125(2) of the Customs Act, 1962 from a person dealing in smuggled goods when no such goods are seized from him?

CCus. v Dinesh Chhajer 2014 (300) E.L.T. 498 (Kar.)

Facts of the case: Department’s investigation revealed that the assessee was dealing in smuggled goods though no smuggled goods were seized from the assessee. Duty was demanded from the assessee under section 28 and 125(2) of the Customs Act, 1962.
The Tribunal, when the matter was brought before it, held that duty can be demanded under section 28 only from the person chargeable with duty, who is the importer as defined under section 2(26) of the Act. Further, it held that if the smuggled goods are seized, confiscated and then an option to pay fine is given to the person from whose possession the goods were seized or to the owner of the goods, duty could be demanded from such person under section 125(2) of the Act, apart from fine and penalty. However, since in the instant case, the assessee was not the importer and goods were also not confiscated, the demand of duty on the assessee was unsustainable in law. The matter was then taken before the High Court.

**Observations of the Court:** The High Court observed as under:

(i) Section 28 applies to a case where the goods are imported by an importer and the duty is not paid in accordance with law, for which a notice of demand is issued on the person. In case of notice demanding duty under section 125(2), firstly the goods should have been confiscated and the duty demandable is in addition to the fine payable under section 125(1) in respect of confiscated goods. Thus, notices issued under sections 28 and 125(2) are not identical and fall into completely different areas.

(ii) The material on record disclosed that the assessee did not import the goods. He was not the owner of the goods but only a dealer of the smuggled goods and therefore, there was no obligation cast on him under the Act to pay duty. Thus, the notice issued under section 28 of the Act to the assessee is unsustainable as he is not the person who is chargeable to duty under the Act.

(ii) Since no goods were seized, there could not be any confiscation and in the absence of a confiscation, question of payment of duty by the person who is the owner of the goods or from whose possession the goods are seized, does not arise.

**Decision:** The High Court held that Tribunal was justified in holding that no duty is leviable against the assessee as he is neither the importer nor the owner of the goods or was in possession of any goods.

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**Can penalty for short-landing of goods be imposed on the steamer agent of a vessel if he files the Import General Manifest, deals with the goods at different stages of shipment and conducts all affairs in compliance with the provisions of the Customs Act, 1962?**

**Caravel Logistics Pvt. Ltd. v. Joint Secretary (RA) 2013 (293) ELT 342 (Mad.)**

**Facts of the case:** In the instant case, the steamer agent (assessee) authored Import General Manifest and acted on behalf of the master of the vessel (the person-in-charge) before Customs Authorities to conduct all affairs in compliance with the Customs Act, 1962.

The assessee filed Import General Manifest, affixed the seal on the containers and took charge of the sealed containers. It also dealt with the customs department for appropriate orders that had to be passed in terms of section 42 of the Customs Act. Penalty under section 116 of the Customs Act was imposed by the Department on the steamer agent for short landing of goods.
Observations of the Court: The High Court noted that section 116 of the Act imposes a penalty on the person in-charge of the conveyance inter alia for short-landing of the goods at the place of destination and if the deficiency is not accounted for to the satisfaction of the Customs Authorities. Section 2(31) defines “person-in-charge” to inter alia mean in relation to a vessel, the master of the vessel. Section 148 provides that the agent appointed by the person-in-charge of the conveyance and any person who represents himself to any officer of customs as an agent of any such person-in-charge is held to be liable for fulfillment in respect of the matter in question of all obligations imposed on such person-in-charge by or under this Act and to penalties and confiscation which may be incurred in respect of that matter.

The High Court observed that if assessee affixed seal on containers after stuffing and took their charge, he stepped into shoes of/acted on behalf of master of vessel, the person-in-charge.

Decision: The High Court held that conjoint reading of sections 2(31), 116 and 148 of Customs Act, 1962 makes it clear that in case of short-landing of goods, if penalty is to be imposed on person-in-charge of conveyance/vessel, it can also be imposed on the agent appointed by him. Hence, duly appointed steamer agent of a vessel, would be liable to penalty. However, steamer agent, if innocent, could work out his remedy against the shipper for short-landing.

The High Court also clarified that in view of section 42 under which no conveyance can leave without written order, there is an automatic penalty for not accounting of goods which have been shown as loaded on vessel in terms of Import General Manifest. There is no requirement of proving mens rea on part of person-in-charge of conveyance to fall within the mischief of section 116 of the Customs Act.

Additional Case Studies:

1. Rapid Ltd. imported non prohibited goods from china. They had undervalued the goods to the extent of 50%. The commissioner of customs has ordered absolute confiscation of the said goods. Whether the prayer of Rapid Ltd. for release of goods on payment of certain fine is justified under customs Act? [June 04 – CS]

2. Compute the amount of interest, if any under sec. 18 of the Customs Act, 1962 in the following independent cases:
   (i) Mr. Raj imported a consignment valuing ₹100 lakhs vide a bill of entry presented before the proper officer on 25/9/11, on which date the rate of customs duty was 10%. On Mr. R failing to produce requisite documents for the purpose of assessment, the goods were provisionally assessed at a value of ₹100 lakhs and the duty was paid accordingly on the same date. On 1/11/2011, Mr. R voluntarily paid duty of ₹2 lakhs after informing the proper officer. The goods...
were finally assessed at duty of ₹15 lakhs on 1/12/2011 and the differential duty was paid on 2/12/2011.

(ii) Mr. V imported a consignment for personal use declaring a value of ₹5 lakhs by presenting a bill of entry on 8/4/2011, on which date the rate of duty was 20%. The proper officer decided to subject to the goods to chemical examination and assessed the said consignment at a value of ₹12 lakhs and the provisional duty was paid accordingly on that date. Thereafter, on receipt of report on chemical examination, the said goods were finally valued at ₹10 lakhs on 25/5/2011 and the amount of refund was granted to Mr. V on 25/9/2011.

3. Certain goods were imported in February 2012 “Into bond” bill of entry was presented on 14th February, 2012 and goods were cleared from the port for warehousing. Assessable value was $5,00,000. Rate of BCD 25%. Customs officer issued the order under section 60 permitting the deposit of the goods in warehouse on 21st February 2012 for 3 months. Goods were not cleared even after warehousing period was over, i.e., 21st May, 2012 and extension of time was also not obtained. Customs officer issued notice under section 72 demanding duty and other charges. Importer cleared goods on 28th June 2012. What is the amount of duty interest payable while removing the goods?

4. Mr. A made an unauthorized import of 1,000 pieces of a product whose CIF price is US$ 5 per piece. The other particulars are as under –

<table>
<thead>
<tr>
<th>Exchange Rate</th>
<th>₹50 per US $</th>
</tr>
</thead>
<tbody>
<tr>
<td>Basic customs duty</td>
<td>10%</td>
</tr>
<tr>
<td>CVD u/s 3(1)</td>
<td>12%</td>
</tr>
<tr>
<td>Special CVD u/s 3(5)</td>
<td>4%</td>
</tr>
<tr>
<td>EC &amp; SHEC</td>
<td>3%</td>
</tr>
<tr>
<td>Market price in India</td>
<td>₹500 per piece</td>
</tr>
</tbody>
</table>

Customs Authorities have confiscated the said goods and have given an option to the importer to get the said goods released at a fine equal to 50% of the maximum permissible in law. Compute the amount of Fine. Should the importer accept the option? What will be your answer if maximum fine is imposed?

5. Priyanshi imported certain goods in Mach 2012. An Into bond bill of entry was presented on 14th March, 2012 and goods were cleared from the port for warehousing. Assessable value was $10,00,000. The order permitting the deposit of the goods in warehouse for three months was issued on 21st March, 2012. Priyanshi did not clear the imported goods even after the warehousing period got over on 20th June, 2012. She did not obtain any extension of time as well. A notice was issued under section 72 demanding duty and other charges. Priyanshi cleared the goods on 28th July, 2012. Compute the amount of duty payable by Priyanshi while removing the goods on the basis of the following information.

<p>| 14/3/2012 | 20/6/2012 | 28/7/12 |</p>
<table>
<thead>
<tr>
<th>Rate of exchange per US $</th>
<th>₹48.20</th>
<th>₹48.40</th>
<th>₹48.50</th>
</tr>
</thead>
<tbody>
<tr>
<td>Basic Customs duty</td>
<td>15%</td>
<td>10%</td>
<td>12%</td>
</tr>
</tbody>
</table>

Assume that no additional duty or special additional duty is payable.

[May 10 – CA RTP]

6. An Indian resident aged 18 years, having gone to China on tour on 15/4/2012 purchased refrigerator of ₹20,000 and a vacuum cleaner of ₹5,000 and brings the same to India. What is the duty payable if
   (a) He returns to India on 17/4/2012
   (b) He returns to India on 20/4/2012

7. Mr. B, an Indian resident, aged 52 years, returned to India after visiting England on 31.10.2009. He had been to England on 10.10.2009. On his way back to India he brought following goods with him –
   (a) His personal effect like clothes etc. valued at ₹40,000.
   (b) 1 litre of Wine worth ₹1,000.
   (c) A video cassette recorder worth ₹1,000
   (d) A microwave oven worth ₹20,000.

What is the customs duty payable?