CHAPTER 1

LEVY OF AND EXEMPTIONS FROM CUSTOMS DUTY



LEARNING OUTCOMES

After studying this chapter, you would be able to:

- comprehend the basic concepts of customs law.
- gather knowledge of Constitutional provisions behind customs law.
- understand the broad provisions relating to customs law.
- analysis of determining factors to levy customs duty.
- identify the points & circumstances of levy of customs duty.
- analysis and application of procedure for assessment of duty.
- analyse and apply provisions pertaining to remission, abatement and exemptions under customs law.

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CHAPTER OVERVIEW

- **Basic Concepts**
- **Constitutional Provisions**
- **Overview of Customs law**
- **Point and circumstances of levy**
- **Remission, Abatement and Exemptions**

UNIT – I: INTRODUCTION TO CUSTOMS LAW

1. BASIC CONCEPTS

Meaning of word "customs"

Customs is a form of indirect tax. Standard English dictionary defines the term **'customs'** as duties imposed on imported/exported goods. This term is usually applied to those taxes which are payable upon goods or merchandise imported or exported.

Historical Background

The term **'customs'** derives its colour and essence from the term 'custom', which means a habitual practice or course of action that characteristically is repeated in

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like circumstances. Duties on import and export of goods have been levied from time immemorial by all the countries. In the times, when the predominant system of governance was monarchy, it was customary for a trader bringing the goods to a particular kingdom to offer certain offerings as gifts to the King for allowing him to sell his goods in that kingdom. Over a period of time, the system of governance took a paradigm shift from monarchy in favour of democracy.



Kautiliya's Arthashastra also refers to shulka (Customs Duty) consisting of import duty and export duty to be collected at the city gates on both goods coming in and going out. Subsequently, the levy of tax on goods imported into the country was organised through legislation during the British period.

The Customs Act was passed and promulgated in India by the Parliament in the year 1962 which replaced the erstwhile Sea Customs Act, 1878. Further, the Customs Tariff Act was passed in the year 1975 to replace the Indian Tariff Act, 1934. The Customs Tariff Act was amended in the year 1985 to move in times with and to deal with the complexities resulting from the rapid development in science and technology and consequent industrial development and expansion of manufacturing and trading activities.

Customs Act, 1962
Customs Tariff Act, 1975

The Customs Act, as it stands now, consolidates the entire law on the subject of import and export duties, which were earlier contained in various enactments like the Sea Customs Act, 1878, Inland Bonded Warehouses Act, 1896 and the Land Customs Act, 1924. Thus, now the Customs Act and Customs Tariff Act stand as a complete code in itself as to the levy and collection of duties on import and export of goods.

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2. CONSTITUTIONAL PROVISIONS

Article 265 of the Constitution provides that "No tax shall be levied or collected except by authority of law". All the enactments enacted by the Parliament should have its source in the Constitution of India. The power for enacting the laws is conferred on the Parliament and on the legislature of a State by Article 245 of the Constitution. The said Article provides:

Subject to the provisions of this Constitution, Parliament may make laws for the whole or any part of the territory of India, and the legislature of a State may make laws for the whole or any part of the state. No law made by the Parliament shall be deemed to be invalid on the ground that it would have extra-territorial operation.

Article 246 governs the subject matter of the laws made by the Parliament and by the legislature of a State. The matters are listed in the Seventh Schedule to the Constitution.

The seventh schedule is classified into three lists as follows:

List I [referred as Union List]



This list enumerates the matters in respect of which the Parliament has an exclusive right to make laws. Entry 83 of Union List has given the power to the Union to frame laws to levy duties of Customs including export duties.

List II [referred as State List]

This list enumerates the matters in respect of which the legislature of a State has an exclusive right to make laws.

List III [referred as the concurrent list]

This list enumerates the matters in respect of which both the Parliament and, subject to List I, legislature of a State, have powers to make laws.

Parliament has a further power to make any law for any part of India not comprised in a state, notwithstanding that such matter is included in the State List.

Article 286 of the Constitution provides for restrictions as to imposition of tax on certain supply of goods or services or both. The said Article provides as follows-

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No law of a State shall impose, or authorise the imposition of, a tax on the supply of goods or services or both, where such supply takes place-

(a) outside the State; or

(b) in the course of the import of the goods or services or both into, or export of the goods or services or both out of, territory of India.

Further, the said Article provides that Parliament may by law formulate principles for determining when a supply becomes, import or export.

Thus, the power to levy customs duties on import/export, as well as the power to legislate the principles to determine whether a transaction qualifies as import/export, lies solely with the Union i.e. the Parliament of India.

3. OVERVIEW OF CUSTOMS LAW

The Customs Act, 1962 extends to the whole of India ***fishing and fishing related activities by Indian-flagged fishing vessels beyond waters of India*** and, save as otherwise provided in this Act, it applies also to any offence or contravention thereunder committed outside India by any person. The entire gamut of the Act is grouped into 17 chapters.

❑ SOME IMPORTANT DEFINITIONS

Beneficial Owner means any person on whose behalf the goods are being imported or exported or who exercises effective control over the goods being imported or exported **[Section 2(3A)]**.

Board means the Central Board of Indirect Taxes and Customs constituted under the Central Boards of Revenue Act, 1963 **[Section 2(6)].**

Customs area means the area of a customs station or a warehouse and includes any area in which imported goods or export goods are ordinarily kept before clearance by Customs Authorities **[Section 2(11)]**.

Customs Station means any customs port, customs airport, international courier terminal, foreign post office, or land customs station **[Section 2(13)]**.

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***Indian-flagged fishing vessel* means a vessel which is used or intended to be used for the purpose of fishing in the seas and entitled to fly the flag of India *[Section 2(28A)]*.**

International courier terminal means any place appointed under clause (f) of sub-section (1) of section 7 to be an international courier terminal **[Section 2(28B)]**.

Warehouse means a public warehouse licensed under Section 57 or a private warehouse licensed under Section 58 or a special warehouse licensed under Section 58A **[Section 2(43)]**.

Export with its grammatical variations and cognate expressions, means taking out of India to a place outside India **[Section 2(18)]**.

Import with its grammatical variations and cognate expressions means bringing into India from a place outside India **[Section 2(23)]**.

India includes the territorial waters of India **[Section 2(27)]**.

Meaning and significance of territorial waters of India



As per Territorial Waters, Continental Shelf, Exclusive Economic Zone and other Maritime Zones Act, 1976, territorial waters of India extend to 12 nautical miles into sea from the appropriate base line.

India includes not only the surface of sea in the territorial waters, but also the air space above and the ground at the bottom of the sea.

Indian customs waters [Section 2(28)]

Indian customs waters means the waters extending into the sea up to the limit of Exclusive Economic Zone under section 7 of the Territorial Waters, Continental Shelf, Exclusive Economic Zone and other Maritime Zones Act, 1976 and includes any bay, gulf, harbour, creek or tidal river.

If a person has committed any offence punishable under customs law within the Indian customs waters, he may be arrested. Also, goods may be confiscated and vessel be stopped in the Indian customs waters if the same is found to be used in the smuggling. Further, prohibited goods can also be confiscated if brought within the Indian customs waters.

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ANALYSIS

Indian customs waters cover both the Indian territorial waters and exclusive economic zone as well. **Indian territorial waters** extend up to 12 nautical miles (nm) from the base line whereas, **exclusive economic zone of India** is an area beyond the Indian territorial waters. The limit of exclusive economic zone is 200 nautical miles from the nearest point of the baseline. Therefore, Indian customs waters extend to a total of 200 nm from base line.

Note: 1 nautical mile = 1.1508 land-measured (or statute) miles or 1.852 kilometers

Few other important terms

1. Baseline

It is the lower water mark along the coast.

2. Continental Shelf of India

Continental shelf is the part of the sea floor adjoining a land mass where the depth gradually increases before it plunges into the ocean deeps. Continental shelf of India extends beyond the limit of its territorial waters throughout the natural prolongation of its land territory to the outer edge of the continental margin or to a distance of 200 nautical miles from the baseline.

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UNIT – II : LEVY AND EXEMPTIONS

1. DETERMINING FACTORS

❑ **Three stages of imposition of taxes and duties**

All taxes and duties are imposed in three stages, which are levy, assessment and collection:-

(a) **Levy** is the stage where the declaration of liability is made and the persons or the properties in respect of which the tax or duty is to be levied is identified and charged.

(b) **Assessment** is the procedure of quantifying the amount of liability. The liability to pay tax or duty does not depend upon assessment.

(c) The final stage is where the tax or duty is actually collected. The **collection of tax or duty** may for administrative or other reasons be postponed to a later time.

❑ The liability towards customs duty is broadly based upon the following 3 factors:

1. the goods, the point and the circumstances under which the customs duty becomes leviable;
2. the procedure, the mechanism and the organization for determining the amount of customs duty and collection thereof;
3. the exemption to the levy based on public interest or as a result of the discretionary powers vested in the Government as a tool for planning tax structure and control of economic growth of the country.

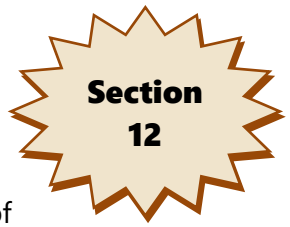
The customs duty is considered to be levied on the goods and not on the person importing the goods or paying the duty. Equitability requires charging of duty at the same level if the circumstances of importation are similar. This has given rise to a deemed provision under section 12 of the Customs Act to provide that customs duty shall be leviable in the same manner on goods belonging to Government as they apply in respect of goods not belonging to Government.

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2. POINT AND CIRCUMSTANCES OF LEVY

CHARGING SECTION [SECTION 12]

1. This section is the charging section of the Act. Except as provided in this Act, or any other law for the time being in force, duties of customs shall be levied at such rates as may be specified under the Customs Tariff Act, 1975, or any other law for the time being in force, on goods imported into, or exported from India [Sub-section (1)].



2. The provisions of sub-section (1) shall apply in respect of all goods belonging to Government as they apply in respect of goods not belonging to Government [Sub-section (2)].

Hence, there is no general exemption to goods imported by Government. But imports by Indian Navy, specific equipment required by police, Ministry of Defence, Costal Guard etc. are fully exempt from customs duty by virtue of specific notifications subject to fulfillment of conditions and/or procedure set out in the notification.

The following propositions arise from the above provisions: -

1. Duties of customs shall be levied on import or export of goods. In other words, the **taxable event is import or export of goods.**

2. However, it may be noted that this levy is subject to other sections in the Act. For instance:

   Section 13 – duty on pilfered goods.

   Section 22 – abatement of duty on damaged/deteriorated goods.

   Section 23 – remission of duty on lost/destroyed/abandoned goods.

3. The duty shall be charged at such rates as may be specified under the Customs Tariff Act, 1975.

4. Government goods shall be treated at par with non-Governmental goods for the purposes of levy of customs duty.

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ANALYSIS OF SECTION 12

(a) Charge on goods

The charge of customs duty is considered to be on the goods and not on the person importing them or paying the duty.

(b) Taxable event-Import of goods into India/export of goods from India

Section 12 makes it abundantly clear that importation or exportation of goods into or out of India is the taxable event for payment of the duty of customs.



Earlier, a lot of problems were faced in determining the point at which importation or exportation takes place. The root cause of the problem was the definition of "India" given by section 2(27). Under the said section, India includes territorial waters of India. Consequently, even an innocent entry of a vessel into the territorial waters of India would result in import of goods. Further, it was almost impossible to determine when exactly the vessel crossed the territorial waters limit. But this matter is no longer *res integra*.

Relevant judgments regarding the determination of taxable event

The main test for determining the taxable event is the happening of the event on which the charge is affixed.

I. Imports

(a) In case of goods cleared for home consumption

The Supreme Court observed that import of goods commences when they cross the territorial waters, but continues and is completed when they become part of the mass of goods within the country; the taxable event being reached at the time when the goods reach the customs barriers and bill of entry for home consumption is filed *[Garden Silk Mills v. UOI 1999 (113) E.L.T. 358 (S.C.)]*

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(b) In case of goods cleared for warehousing

In the case of warehoused goods, the goods continue to be in the customs bond. Hence, import takes place only when the goods are cleared from the warehouse. The taxable event occurs when goods cross customs barriers and not when goods land in India or enter territorial waters *[UOI v. Apar Ltd. 1999 (112) E.L.T. 3 (S.C.) and Kiran Spinning Mills v. Collector of Customs 1999 (113) E.L.T. 753 (S.C.)]*

II. Exports

Export of goods is complete when the goods cross the territorial waters of India.

DISTINCTION BETWEEN CLEARANCE FOR HOME CONSUMPTION AND CLEARANCE FOR WAREHOUSING

Clearance for home consumption implies that, the customs duty on import of the goods has been discharged and the goods are therefore cleared for utilization or consumption.

The goods may instead of being cleared for home consumption be deposited in warehouse and cleared at a later time. When the goods are deposited in the warehouse the collection of customs duty will be deferred till such goods are cleared for home consumption. The revenue for the Government is safeguarded by the importer by executing a bond binding himself in a sum equal to thrice the amount of duty assessed on the goods at the time of import. The importer is also liable to pay interest, rent and charges for storage of goods in warehouse.

DUTY LIABILITY IN CERTAIN SPECIAL CIRCUMSTANCES

(A) Re-importation of goods [Section 20]

If goods are imported into India after exportation therefrom, such goods shall be liable to duty and be subject to all the conditions and restrictions, if any, to which goods of the like kind and value are liable or subject, on the importation thereof.

CONCESSIONS IN THIS REGARD

However, the following notifications have provided certain concessions in this regard:

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(i) Concessional duty payable in case of re-importation of goods which are exported under duty drawback, exported for repairs, etc.

S.No.	Description of goods exported	Amount of import duty payable if re-imported
1.	Goods exported- (i) under claim for duty drawback[1]; (ii) under claim for refund of integrated tax paid on export goods; (iii) under bond without payment of integrated tax (iv) under duty exemption scheme (DEEC/ Advance Authorisation/ DFIA) or Export Promotion Capital Goods Scheme (EPCG) (v) under claim for RoDTEP (vi) under claim for RoSCTL	Amount of incentive availed of at the time of export subject to specified conditions. In case of point (iv) amount of IGST and compensation cess leviable at the time and place of importation of goods subject to specified conditions.
2.	Goods other than those falling under S. No. 1 exported for repairs abroad	Basic customs duty, IGST or GST compensation cess which would be leviable if the value of re-

[1]*Various schemes like EOU, SEZ, DFIA, Advance Authorisation, manufacture under bond etc. are available to obtain inputs without payment of customs duty or obtain refund of duty paid on inputs. Suppliers who are unable to avail any of these schemes can avail "duty drawback". Here, the customs duty paid on inputs is given back to the exporter of the finished product by way of "duty drawback". Duty drawback is granted when imported materials are used in the manufacture of goods which are then exported as well as when imported goods are re-exported as it is, and article is easily identifiable.*

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		imported goods after repairs were made up of the 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.
3.	Goods other than falling under S. No. 1 & 2 above[2]	NIL

Conditions to be satisfied for claiming the above two concession/exemptions:-

(a) Time-limit for re-importation



The time limit for re-importation is **5 years** which can be extended further for a period up to 2 years. In case of Bhutan, time limit is 7 years which can be extended further for a period up to 3 years for machinery and equipment exported.

In case of goods exported under DEEC/Advance

[2] *Notification also provides that in case where cut and polished precious and semi-precious stones exported for specified treatment abroad are re-imported, amount of import duty payable is basic customs duty, IGST or GST compensation cess which would be leviable if the value of re-imported precious and semiprecious stones after treatment were made up of the fair cost of treatment carried out including cost of materials used in such treatment, whether such costs are actually incurred for not, insurance and freight charges, both ways. On parts, components of aircraft replaced or removed during the course of maintenance, repair or overhaul of the aircraft in a Special Economic Zone and brought to any other place in India, (ii) lubricating oil imported in the engines of any aircraft registered in India or of any aircraft of the Indian Air Force and (iii) fuel other than Aviation Turbine Fuel in the tanks of the aircrafts of an Indian Airline or of the Indian Air Force, amount of basic customs duty, IGST and cess payable is nil subject to specified conditions. This is only for information of the students and not relevant for the examination purposes.*

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Authorisation/DFIA or EPCG or Duty Entitlement Passbook Scheme (DEPB) or **any scheme of Chapter 4 of Foreign Trade Policy 2023,** such time limit is 1 year which can be extended further for a period upto 1 year.

(b) Same goods

The exported goods and the re-imported goods must be the same. The goods shall not be deemed to be the same if these are re-imported after being subjected to re-manufacturing or reprocessing through melting, recycling or recasting abroad.

In case of goods re-imported through courier mode[3], risk-based treatment shall apply.

(c) No change in ownership

In case of goods at S. No. 2 in the above table, the ownership of the goods should not have changed.

However, these concessions would not be applicable if-

- re-imported goods had been exported by 100% Export Oriented Undertaking (EOU) or a unit in Free Trade Zone (FTZ).
- re-imported goods had been exported from a public/private warehouse.
- re-imported goods which fall under Fourth schedule to the Central Excise Act, 1944 (tobacco products and petroleum products)

[Notification No. 45/2017 Cus. dated 30.06.2017 as amended]

Clarification regarding applicability of *Notification No. 45/2017 Cus dated 30.06.2017* on goods which were exported earlier for exhibition purpose/consignment basis

CBIC has clarified vide *Circular No. 108/27/2019 GST dated 18.07.2019*[4] that the activity of sending / taking the specified goods (i.e. goods

[3] *other than goods specified in sub-regulation (4) of regulation 2 of the Courier Imports and Exports (Electronic Declaration and Processing) Regulations, 2010*

[4] *The same has already been discussed in Chapter-14 – Import and Export under GST of Module 3 of this Study Material.*

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sent/taken out of India for exhibition or on consignment basis for export promotion except the activities satisfying the tests laid down in Schedule I of the CGST Act, 2017) out of India do not constitute supply within the scope of Section 7 of the CGST Act as there is no consideration at that point in time. Since such activity is not a supply, the same cannot be considered as 'zero rated supply' as per the provisions contained in Section 16 of the IGST Act, 2017. Also, there is no requirement of filing any LUT/bond as required under section 16 of IGST Act, 2017 for such activity of taking specified goods out of India.

Therefore, no integrated tax is required to be paid for specified goods at the time of taking these out of India, the activity being not a supply, hence the situation of *Notification No. 45/2017-Customs dated 30.06.2017* (goods exported under bond without payment of integrated tax) requiring payment of integrated tax at the time of re-import of specified goods in such cases is not applicable.

It is clarified that such cases will fall more appropriately under residuary entry[5] of the said Notification and thus the exemption is available.

Further, this clarification is also applicable to cases where exports have been made to related or distinct persons or to principals or agents, as the case may be, for participation in exhibition or on consignment basis, but, such goods exported are returned after participation in exhibition or the goods are returned by such consignees without approval or acceptance, as the case may be, the basic requirement of 'supply' as defined cannot be said to be met as there has been no acceptance of the goods by the consignees. Hence, re import of such goods after return from such exhibition or from such consignees will be covered under the residual entry of the *Notification No. 45/2017 dated 30.06.2017*, provided re-import happens before 6 months from the date of delivery challan.

[Circular No. 21/2019 Cus dated 24.07.2019]

[5]*S.No. 3 of above table. Thus, no customs duty, IGST and GST compensation cess is payable on re-import.*

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(ii) Exemption to re-import of goods and parts thereof for repairs, reconditioning, reprocessing, remaking or similar other process

Notification No.158/95 Cus. exempts the goods re-imported into India for the purpose specified in Column (2) of below table from the whole of the basic customs duty and IGST subject to the conditions laid down in Column (3):

S. No.	Particulars	Time-limit for re-importation from the date of exportation	Other conditions to be satisfied
1.	Goods manufactured in India and re-imported for repairs or for reconditioning other than the specified goods	3 years In case of Nepal & Bhutan, such time-limit is 10 years.	(a) Goods must be re-exported within six months (extendable till one year) of the date of re-importation. (b) The Assistant Commissioner/Deputy Commissioner of Customs is satisfied as regards identity of the goods. (c) The importer at the time of importation executes a bond.
2*.	Goods manufactured in India and re-imported for (a) Reprocessing (b) Refining (c) Re-making (d) Subject to any process similar to the processes referred to in clauses (a) to (c) above.	1 year	

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3.	Specified goods[6] manufactured in India and re-imported into India for repairs or for reconditioning	7 years (10 years in case of Nepal and Bhutan)	(a) Goods must be re-exported within one year of the date of re-importation. (b) The Assistant Commissioner/Deputy Commissioner of Customs is satisfied as regards identity of the goods. (c) The importer at the time of importation executes a bond.

[Notification No.158/95 Cus. dated 14.11.1995 as amended]

Note: In 2* above, if any loss of imported goods is noticed during such operations, such loss shall be exempted from whole of the custom duties subject to the satisfaction of Assistant/ Deputy Commissioner of Customs.

Illustration 1

A machine was originally imported from Japan at ₹250 lakh in July on payment of all duties of customs. The said machine was exported (sent-back) to supplier for repairs in December and re-imported without any re-manufacturing or re-processing in October next year after repairs. Since the machine was under warranty period, the repairs were carried out free of cost.

However, the fair cost of repairs carried out (including cost of material ₹6 lakh) would have been ₹9 lakh. Actual insurance and freight charges (to

[6] *Some of the examples of specified goods are automatic data processing machines and units thereof; magnetic or optical readers, automatic bank note dispensers, static converters, audio-frequency electric amplifiers, telephone sets, projectors, colour TVs, electro-cardiographs, hearing aids. These examples are only for the sake of knowledge of the students and are not expected from the students in examination.*

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and from) were ₹ 3 lakh. The rate of basic customs duty is 10% and integrated tax is 18%. Ignore GST compensation cess & Agriculture infrastructure and development cess.

Compute the amount of customs duty payable (if any) on re-import of the machine after repairs. The ownership of the machine has not been changed during the period.

***Note:** The importer intends to avail exemption, if any, with regard to re-importation of goods which had been exported for repairs abroad.*

Answer

As per *Notification No. 45/2017 Cus. dated 30.06.2017,* duty payable on re-importation of goods which had been exported for repairs abroad is the duty of customs which would be leviable if the value of re-imported goods after repairs were made up of the 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. However, following conditions need to be satisfied for availing this concession:

(a) goods must be re-imported within 5 years, extendable by further 2 years, after their exportation;

(b) exported goods and the re-imported goods must be the same;

(c) ownership of the goods should not change.

Since all the conditions specified above are fulfilled in the given case, the customs duty payable on re-imported goods will be computed as under:

Particulars	₹
Value of goods re-imported after exports [₹ 9 lakh (including cost of materials) + ₹ 3 lakh]	12,00,000
Add: Basic customs duty @ 10% **(A)**	1,20,000
Add: Social Welfare Surcharge @ 10% on₹1,20,000**(B)**	12,000
Value for computing integrated tax	13,32,000
Integrated tax @ 18% (₹ 13,32,000 x 18%) - **(C)**	2,39,760
Customs duty and integrated tax payable [(A) +(B)+ (C)]	**3,71,760**

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(B) Goods derelict, wreck etc. [Section 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 be shown to the satisfaction of the proper officer that they are entitled to be admitted duty-free under this Act.

ANALYSIS OF SECTION 21

The concept of 'goods brought into India' is not confined to goods which are intentionally brought into India, but also extends to derelict, jetsam, flotsam and wreck brought or coming into India. This implies that apart from goods which are normally imported in the course of international trade, flotsam, and jetsam, which are washed ashore and derelict and wreck brought into India out of compulsion are also treated on par with trade goods.

Treated like imported goods

Meaning of the various terms

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.

Illustration 2

Distinguish between Jetsam and Flotsam

Answer

Jetsam and Flotsam are goods which are jettisoned (i.e. thrown overboard from a vessel) from the vessel into the sea to reduce weight of vessel to

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prevent it from sinking. They are not abandoned goods. Jetsam gets sunk whereas Flotsam does not sink but floats. Duty is payable on both unless they are entitled to be admitted free of duty.

(C) Customs (Import of Goods at Concessional Rate of Duty or for Specified End Use) Rules, 2022

The salient features of the rules are discussed hereunder:

1. Application [Rule 2]:

These rules **shall apply** where:

(a) a notification provides for the observance of these rules;

(b) an importer intends to avail the benefit of any notification and such benefit is dependent upon the use of the goods imported being covered by that notification for the manufacture of any commodity or provision of output service or being put to a specified end use.

2. Definition [Rule 3]: In these rules, unless the context otherwise requires, -

(a) **"Act"** means the Customs Act, 1962.

(b) **"capital goods"** means goods, the value of which is capitalized in the books of account of the importer;

(c) **"customs automated system"** means the Indian Customs Electronic Data Interchange System;

(d) **"date of import"** means the date of the order made by the proper officer under section 47, permitting clearance of the goods;

(e) **"Form"** means a form annexed to these rules;

(f) **"information"** means the information provided by the importer who intends to avail the benefit of a notification;

(g) **"job work"** means any treatment, process or manufacture, consistent with the notification undertaken by a person on goods belonging to the importer except gold, jewellery and articles

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thereof, and other precious metals or stones and the term **"job worker"** shall be construed accordingly;

(h) **"jurisdictional Custom Officer"** means an officer of Customs of a rank equivalent to the rank of Superintendent or Appraiser exercising jurisdiction over –

a. the premises where either the goods imported shall be put to use for manufacture or for rendering output services;

b. the primary address specified in the Importer Exporter Code issued by Directorate General of Foreign Trade in other cases;

(i) **"manufacture"** means the processing of raw materials or inputs by the importer in any manner that results in emergence of a new product having a distinct nature or character or use or name; and the term "manufacturer" shall be construed accordingly;

(j) **"notification"** includes any notification issued under sub-section (1) of section 25 and section 11 of the Act;

(k) **"output service"** means supply of service excluding after-sales service, utilising imported goods.

(ka) **"Quarter"** means a period comprising any three consecutive calendar months ending on the last day of March, June, September or December of a calendar year.

(l) **"section"** means a section of the Customs Act.

(m) **"specified end use"** means dealing with the goods imported in a manner specified in the notification and includes supply to the intended person and the term **"end use recipient"** shall be construed accordingly.

Note – The words and expressions used in these rules and not defined but defined in the Customs Act shall have the same meanings as assigned to them in the Customs Act.

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3. Importer to give one-time prior information [Rule 4]

(1) The importer shall provide one-time prior information on the common portal, in prescribed form containing the following particulars, namely: —

i. the name and address of the importer and his job worker, if any;

ii. the goods produced or process undertaken at the manufacturing facility of the importer or his job worker, if any, or both;

iii. the nature and description of goods imported used in the manufacture of goods at the premises of the importer or the job worker, if any;

iv. particulars of the notification applicable on such import;

v. nature of output service rendered utilising the goods imported;

vi. particulars of premises intended to be used in case of unit transfer;

vii. details of the end use recipient in cases where goods imported are supplied for specified end use; and

viii. the intended ports of import.

(2) On acceptance of the information, an Import of Goods at Concessional Rate of Duty (IGCR) Identification Number (IIN) shall be generated against such information.

However, such information may be updated on the common portal in case of a change in the details furnished in prescribed form.

(3) The importer who intends to avail the benefit of a notification shall submit a continuity bond with such surety or security as deemed appropriate by the Deputy Commissioner/Assistant Commissioner of Customs having jurisdiction over the premises where the goods imported shall be put to use for manufacture of goods or for rendering output service or being put to use for a specified end use, with an undertaking to pay-

a. in case of a notification that provides a duty exemption, the amount equal to the difference between the duty leviable on

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inputs but for the exemption and that already paid, if any, at the time of import, along with applicable interest, for the period starting from the date of import of the goods on which the exemption was availed and ending with the date of actual payment of the entire amount of the difference of duty that he is liable to pay ;

b. in all cases where the notification is other than one that provides an exemption benefit, the amount equal to the assessable value of the goods being imported.

4. Procedure to be followed [Rule 5]

(1) The importer who intends to avail the benefit of a notification shall be required to mention the IIN (referred to in sub-rule (2) of Rule 4) and continuity bond number and details while filing the Bill of Entry.

(2) The Deputy Commissioner/Assistant Commissioner of Customs at the custom station of importation shall allow the benefit of the notification to the importer.

(3) Where a Bill of Entry is cleared for home consumption, the bond submitted by the importer gets debited automatically in the customs automated system and the details shall be made available electronically to the jurisdictional Customs Officer.

5. Importer to maintain records [Rule 6]

(1) The importer shall maintain an account so as to clearly indicate -

i. quantity and value of goods imported;

ii. quantity and date of receipt of the goods imported in the relevant premises;

iii. quantity of such goods consumed including the quantity used domestically for manufacture, quantity exported, if any, to fulfil the intended purpose and quantity of goods sent to an end use recipient;

iv. quantity of goods sent for job work and the nature of job work carried out;

v. quantity of goods received after job work;

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vi. quantity of goods re-exported, if any, under rule 10; and

vii. quantity remaining in stock, according to bills of entry,

and shall produce the said account as and when required by the Deputy Commissioner/Assistant Commissioner of Customs having jurisdiction over the premises or where the goods imported shall be put to use for manufacture of goods or for rendering output service.

However, in case of non-receipt or short receipt of goods imported in the relevant premises, the importer shall intimate such non-receipt or short receipt immediately on the common portal in the prescribed form.

(2) The importer shall submit a quarterly statement on the common portal in the prescribed form by 10th day of the following quarter;

However, the importer may submit details of goods consumed in the prescribed form at any point of time, for immediate recredit of the bond which shall become a part of the quarterly statement of the subsequent quarter.

6. Procedure for allowing imported goods for job work [Rule 7]

(1) The importer shall maintain a record of the goods sent for job work during the month and mention the same in the quarterly statement referred to in sub-rule (2) of rule 6.

(2) The importer shall send the goods to the premises of the job worker under an invoice or wherever applicable, through an electronic-way bill, as specified in the CGST Act, 2017, mentioning the description and quantity of the goods.

(3) The maximum period for which the goods can be sent to the job worker shall be one year from the date of invoice or electronic way bill referred to in sub-rule (2).

(4) In case the importer is unable to establish that the goods sent for job work have been used as per the particulars mentioned under rule 4, the jurisdictional Customs Officer shall take necessary action against the importer under rule 11 and 12.

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(5) The job worker shall,-

i. maintain an account of receipt of goods, manufacturing process undertaken thereon and the waste generated, if any, during such process;

ii. produce the account details before the jurisdictional Customs Officer as and when required by the said officer;

iii. after completion of the job work send the processed goods to the importer or to another job worker as directed by the importer for carrying out the remaining processes, if any, under the cover of an invoice or electronic way bill.

7. Procedure for allowing imported goods for unit transfer [Rule 8]

(1) The importer shall maintain a record of the goods sent for unit transfer during the month and mention the same in the quarterly statement referred to in sub-rule (2) of rule 6.

(2) The importer shall send the goods under an invoice or wherever applicable, through an e-way bill, as specified in the CGST Act, 2017, mentioning the description and quantity of the goods.

(3) The importer shall in relation to transfer of goods to another unit,-

i. maintain an account of receipt of goods, manufacturing process undertaken thereon and the waste generated, if any, during such process;

ii. produce the account details before the jurisdictional Customs Officer as and when required by the said officer;

iii. after completion of the said process, send the processed goods back to the premises of the importer from where the goods were received or to a job worker for carrying out the remaining processes, if any, under the cover of an invoice or electronic way bill.

8. Procedure for supplying imported goods to the end use recipient [Rule 9]

(1) The importer shall maintain a record of the goods supplied to the end use recipient during the month and mention the same in the quarterly statement referred to in sub-rule (2) of rule 6.

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(2) The importer shall send the goods under an invoice or wherever applicable, through an electronic way bill, as specified in the CGST, 2017, mentioning the description and quantity of the goods.

(3) In case of supply for replenishment or export against supply, the end use recipient shall,-

i. maintain an account of receipt of goods, manufacturing process undertaken thereon and the waste generated, if any, during such process;

ii. produce the account details before the jurisdictional Customs Officer as and when required by the said officer;

iii. produce the relevant details to the importer for fulfilment of the benefit under the notification.

9. Re-export or clearance of unutilised or defective goods [Rule 10]

(1) The importer who has availed the benefit of a notification shall use the goods imported in accordance with the conditions mentioned in the concerned notification within the period and with respect to unutilised or defective goods, so imported, the importer shall have an option to either re-export or clear the same for home consumption, within the said period, namely –

(i) within the period specified in the notification;

(ii) within one year from the date of import, where the time period is not specified in the notification:

However, the said period of one year can be further extended by the jurisdictional Commissioner for a period not exceeding 3 months, if sufficient reason is shown that the causes for not conforming to the time period were beyond the importer's control.

(2) Any re-export of the unutilised or defective goods referred to in sub rule (1) shall be recorded by the importer in the quarterly statement by providing the details of necessary export documents:

However, the value of such goods for re-export shall not be less than the value of the said goods at the time of import.

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(3) The importer who intends to clear unutilised or defective goods for home consumption shall have an option of voluntary payment of applicable duty along with interest on the common portal and the particulars of such clearance and the duty payment shall be recorded by the importer in the quarterly statement.

(4) The importer shall have an option to clear the capital goods imported, after having been used for the specified purpose, on payment of duty equal to the difference between the duty leviable on such goods but for the exemption availed and that already paid, if any, at the time of importation, along with applicable interest, on the depreciated value allowed in straight line method as under —

i.	for every quarter in the first year	@ 4%;
ii.	for every quarter in the second year	@ 3%;
iii.	for every quarter in the third year	@ 3%;
iv.	for every quarter in the fourth and fifth year	@ 2.5%;
v.	and thereafter for every quarter	@ 2%;

Explanation. –

(1) For the purpose of computing rate of depreciation under this rule for any part of a quarter, a full quarter shall be taken into account.

(2) The depreciation shall be allowed from the date when the capital goods imported have come into use for the purpose as laid down in the notification, upto the date of its clearance.

(5) The importer shall have the option of voluntary payment of the duty along with interest, through the common portal and the particulars of such clearance and the duty payment shall be recorded by the importer in the quarterly statement.

10. Recovery of duty in certain case [Rule 11]

(1) In the event of any failure on the part of the importer to comply with the conditions mentioned in sub-rule (1) of rule 10 or where the

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payment referred in sub-rules (3) and (4) of rule 10 is not paid or short paid, the Deputy Commissioner of Customs or, as the case may be, Assistant Commissioner of Customs having jurisdiction over the premises where the imported goods shall be put to use for manufacture of goods or for specified end use or for rendering output service shall take action by invoking the Bond to initiate the recovery proceedings of an amount as under -

a. in case of a notification that provides a duty exemption, equal to the difference between the duty leviable on such goods but for the exemption and that already paid, if any, at the time of importation, along with interest[7], for the period starting from the date of import of the goods on which the exemption was availed and ending with the date of actual payment of the entire amount of the difference of duty that he is liable to pay;

b. in cases where the notification is other than one that provides an exemption benefit, an amount equal to the assessable value of the goods being imported.

(2) Notwithstanding anything contained in these rules in relation to removal and processing of imported goods for job-work, the importer shall be responsible for ensuring that the said goods are used in accordance with the purposes provided in the notification and in the event of failure to do so, the Deputy Commissioner of Customs, or, as the case may be, the Assistant Commissioner of Customs having jurisdiction over the premises where the imported goods shall be put to use for manufacture of goods or for specified end use or for rendering output service shall take action in accordance with these rules, without prejudice to any other action which may be taken under the Act, rules or regulations made thereunder or under any other law for the time being in force.

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[7] *Interest is to be computed at the rate fixed by notification issued under section 28AA. However, provisions of section 28AA relating to Interest on delayed payment of duty are outside the purview of the syllabus of Paper 5 – Indirect Tax Laws.*

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11. Penalty [Rule 12]

The importer or a job worker who contravenes any of the provisions of these rules or abets such contravention shall be liable to a specified penalty[8] without prejudice to any other action which may be taken under the Act, rules or regulations made thereunder or under any other law for the time being in force.

3. PROCEDURE, MECHANISM AND ORGANISATION FOR ASSESSMENT OF DUTY

MEANING OF ASSESSMENT

In the context of the customs duty, the term assessment means quantification of the amount of duty payable. The process of assessment involves the following stages.

a. Determination of the quantity and total value of the consignment.

b. Determination of the proper tariff classification of the goods.

c. Determination of the appropriate rate of duty after considering the various exemptions, abatements, remissions.

d. Determining whether the goods are to be cleared for home consumption or to be deposited in the warehouse.

VALUATION OF GOODS [SECTION 14]

The method of valuation has been explained in detail in chapter 4.

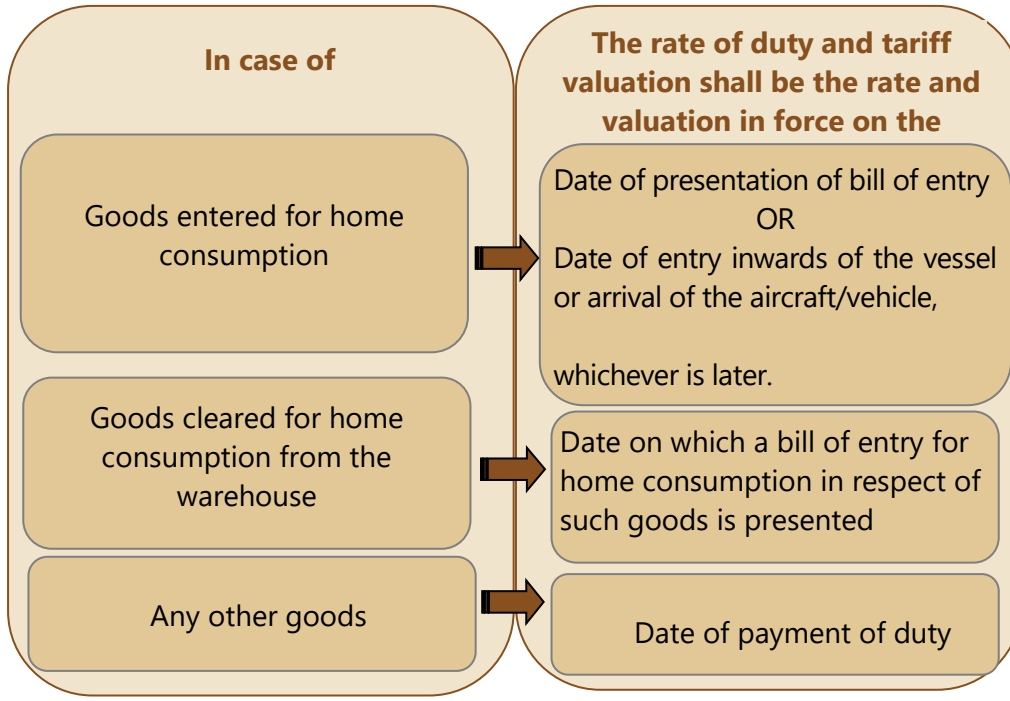
DATE FOR DETERMINING THE RATE OF DUTY AND TARIFF VALUATION OF IMPORTED GOODS [SECTION 15]

Section 15 prescribes the relevant date for determining the rate of duty and tariff valuation, if any, applicable to any imported goods in the following manner:

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[8] *penalty to an extent of the amount specified under clause (ii) of sub-section (2) of section 158 of the Customs Act. Provisions of section 158 are outside the purview of syllabus of Paper 5 - Indirect tax laws.*

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(1) Bill of entry is presented on 1st January, the vessel arrives on 3rd January. In this situation, relevant date for determination of the rate of import duty is 3rd January, because though for procedural purposes, the Bill of Entry was filed on 1st January but for the purpose of determining the rate of duty and tariff valuation of such goods Bill of Entry will be deemed to have been filed on 3rd January.

It is also relevant to note that section 15 deals with only the determination of rate of duty and tariff valuation of imported goods and not the valuation of goods as prescribed under section 14.

Illustration 3

An importer imported consignment of goods chargeable to duty @ 40% ad valorem. The vessel arrived on 31st May. A bill of entry for warehousing the goods was presented on 2nd June and the goods were duly warehoused. In the meantime, an exemption notification was issued on 15th October reducing the effective customs duty to 25% ad valorem.

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Thereafter, the importer filed a bill of entry for home consumption on 20th October claiming 25% duty. The customs Department charged higher rate of duty @ 40% ad valorem. Give your views on the same, discussing the relevant provisions of the Customs Act, 1962.

Answer

According to section 15(1)(b) of the Customs Act, the relevant date for determination of rate of duty and tariff value in case of goods cleared from a warehouse is the date on which a bill of entry for home consumption in respect of such goods is presented. Therefore, the relevant date for determining the duty in the given case will be 20th October (the date on which the bill of entry for home consumption is presented) and thus, the relevant rate of duty will be 25%.

4. REMISSION, ABATEMENT AND EXEMPTIONS

The Customs Act provides for remission, abatement and exemptions from customs duty in certain circumstances. These provisions are discussed in the subsequent paragraphs.

DUTY ON PILFERED GOODS [SECTION 13]

If any imported goods are pilfered after the unloading thereof and before the proper officer has made an order for clearance for home consumption or deposit in a warehouse, the importer shall not be liable to pay the duty leviable on such goods except where such goods are restored to the importer after pilferage. However, the custodian of the goods is liable to pay the duty in terms of section 46 of the Customs Act, 1962.

ANALYSIS

The logic behind this section is that when the goods are not under the control of the importer, he should not be required to pay duty on such goods.

(a) Conditions to be satisfied

a. The imported goods should have been pilfered.

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b. The pilferage should have occurred after the goods are unloaded, but before the proper officer makes the order of clearance for home consumption or for deposit into warehouse.

c. The pilfered goods should not have been restored back to the importer.

The term **'pilfer'** means "to steal, especially in small quantities; petty theft". Therefore, the term does not include loss of total package.

(b) Circumstances in which pilferage can be claimed

In order to claim pilferage the following circumstances should exist:

a. there should be evidence of tampering with the packages;

b. there should be blank space for the missing articles in the package; and

c. the missing articles should be unit article

(c) Pilferage noticed at the time of removal of goods by the importer

The pilferage of goods would normally be noticed at the time of physical verification of goods by the customs authorities. However, in some circumstances, it may so happen that the pilferage may be observed only at the time of removal of goods by the importer. In such case, the order for clearance, or as the case may be, for bonding would already have been passed. Therefore, the importer has to ask for survey either by the steamer agents or by the insurance surveyors and the report issued by them would form the basis for claiming remission. In such circumstances, the duty would already have been paid, the remission is allowed in the form of a refund.

(d) Following points merit consideration

1. If goods are pilfered after the order of clearance is made but before the goods are actually cleared, duty is leviable.

2. Section 13 deals with only pilferage. It does not deal with loss/destruction of goods.

3. Provisions of section 13 would not apply if it can be shown that pilferage took place prior to the unloading of goods.

4. In case of pilferage, only section 13 applies and claim of refund under section 23(1) is not permissible.

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5. Section 13 applies to the goods which are under the custody of the custodian under section 45. Duty on any pilferage from the custody of the custodian is payable by the custodian.

REMISSION OF DUTY ON GOODS LOST, DESTROYED OR ABANDONED [SECTION 23]

(a) Remission of duty

Without prejudice to the provisions of section 13, where it is shown to the satisfaction of the Assistant Commissioner of Customs or Deputy Commissioner of Customs that any imported goods have been lost (otherwise than as a result of pilferage) or destroyed, at any time before clearance for home consumption, the Assistant Commissioner of Customs or Deputy Commissioner of Customs shall remit the duty on such goods. [Sub-section (1)].



ANALYSIS

1. An analysis of section 23 shows that it applies where imported goods are lost or destroyed, otherwise than by pilferage, at any time before clearance for home consumption. Where duty has already been paid, the remission may result in refund subject to the applicable provisions

2. In respect of the goods which have been pilfered after they have been unloaded but before the goods are cleared for home consumption or for deposit in a warehouse, section 13 would apply and the importer would not be liable to pay the duty. In cases where section 23 is attracted, the importer is entitled to remission of duty.



3. The remission of duty is permissible only in the case of total loss of goods. This implies that the loss is forever and beyond recovery. The loss referred to in this section is generally due to natural causes like fire, flood, etc.

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4. The loss referred to in sub-section (1) may be at the warehouse also.

5. In the above situation, the loss/ destruction have to be proved to the satisfaction of the Assistant Commissioner or Deputy Commissioner. Thereupon, he may pass remission orders canceling the payment of duty. In case duty has already been paid, refund can be obtained after getting the remission orders.

(b) Right to relinquish the title to the goods-abandonment of goods

The owner of any imported goods may, at any time before an order for clearance of goods for home consumption under section 47 or an order for permitting the deposit of goods in a warehouse under section 60 has been made, relinquish his title to the goods and thereupon he shall not be liable to pay the duty thereon.

However, the owner of any such imported goods shall not be allowed to relinquish his title to such goods regarding which an offence appears to have been committed under this Act or any other law for the time being in force [Sub-section (2)].



ANALYSIS

1. **"Relinquish"** means to give over the possession or control of, to leave off.

2. The aforementioned right can be exercised at any time before the passing of the order for clearance for home consumption or an order permitting the deposit of goods in a warehouse. Before that date, it is open to the importer to relinquish the title to the goods.

3. **Goods abandoned by importers**

   Sometimes, it may so happen that the importer is unwilling or unable to take delivery of the imported goods. Some of the likely causes may be:

   (i) the goods may not be according to the specifications;

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(ii) the goods may have been damaged or deteriorated during voyage and as such may not be useful to the importer;

(iii) there might have been breach of contract and, therefore, the importer may be unwilling to take delivery of the goods.

In all the above cases, the goods having been imported, the liability to customs duty is imposed and, therefore, the importer has to relinquish his title to the goods unconditionally and abandon them. Relinquishment is done by endorsing the document of title, viz. Bill of Lading, Airway Bill, etc. in favour of the Principal Commissioner/ Commissioner of Customs along with the invoice. If the importer does so, he will not be required to pay the duty amount.

However, the owner of any such imported goods shall not be allowed to relinquish his title to such goods regarding which an offence appears to have been committed under this Act or any other law for the time being in force.

(c) Distinction between section 13 and section 23

The provisions of section 13 and section 23 can be better appreciated after going through the following points of distinction:-

Basis	Pilferage of goods under section 13	Loss or destruction of goods under section 23
Meaning	The word 'pilfer' means to steal, especially in small quantities; petty theft.	The word 'lost' or 'destroyed' refers to total loss of goods i.e. loss is forever and beyond recovery. Abandonment of goods is possible where the importer is unwilling/unable to take the delivery of the imported goods.

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Duty on goods	The importer shall not be liable to pay the duty leviable on such goods.	The duty paid on such goods shall be remitted to the importer.
Subsequent restoration of goods	Where the pilfered goods are restored to the importer after pilferage, the importer becomes liable to duty.	In case of destruction of goods, the restoration is not possible.
Warehoused goods	Provisions of section 13 are not applicable to warehoused goods.	Provisions of section 23 apply to warehoused goods also.
Onus to prove the pilferage/ destruction or loss of goods	The onus to prove the pilferage does not lie on the importer as it is obvious at the time of examination by the proper officer.	The importer has to prove the loss/destruction to the satisfaction of the Assistant/Deputy Commissioner of Customs.
Time of occurrence of pilferage or loss/destruction	The imported goods must have been pilfered after the unloading thereof and before the proper officer has made an order for clearance for home consumption or deposit in a warehouse.	The imported goods must have been lost/destroyed at any time before clearance for home consumption under section 47.

ABATEMENT OF DUTY ON DAMAGED OR DETERIORATED GOODS [SECTION 22]

Where it is shown to the satisfaction of the Assistant Commissioner of Customs or Deputy Commissioner of Customs -

(a) that any imported goods had been **damaged or had deteriorated** at any time before or during the unloading of the goods in India; or



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(b) that any imported goods, other than warehoused goods, had been **damaged** at any time **after the unloading** thereof in India but before their examination under section 17, on account of any accident not due to any wilful act, negligence or default of the importer, his employee or agent; or

(c) that any warehoused goods had been **damaged** at any time **before clearance for home consumption** on account of any accident not due to any wilful act, negligence or default of the owner, his employee or agent,

such goods shall be chargeable to duty in accordance with the provisions of sub-section (2) [Sub-section (1)].

The duty to be charged on the goods referred to in sub-section (1) shall bear the same proportion to the duty chargeable on the goods before the damage or deterioration which the value of the damaged or deteriorated goods bears to the value of the goods before the damage or deterioration [Sub-section (2)].

For the purposes of this section, the value of damaged or deteriorated goods may be ascertained by either of the following methods at the option of the owner:-

(a) the value of such goods may be ascertained by the proper officer, or

(b) such goods may be sold by the proper officer by public auction or by tender, or with the consent of the owner in any other manner, and the gross sale proceeds shall be deemed to be the value of such goods [Sub-section (3)].



ANALYSIS

(a) Cases where the abatement is available

Abatement is available if the goods are damaged/deteriorated under any of the following circumstances:

S.No.	Goods damaged/ deteriorated	Condition
1.	**before or during unloading**	

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2.	by accident **after unloading** but before examination for assessment by the customs authorities	Provided such accident is not due to any wilful act, negligence or default of the importer, his employee or agent
3.	by accident **in warehouse** before their actual clearance from such warehouse.	

Meaning of damage

The term **'damage'** denotes physical damage to the goods. This implies that the goods are not fit to be used for the purpose for which they are meant.

Meaning of deterioration

'Deterioration' is reduction in quality of goods due to natural causes.

(b) Amount of duty chargeable after abatement

$$= \text{Duty on goods before damage / deterioration} \times \frac{\text{Value of damaged / deteriorated goods *}}{\text{Value of goods before damage / deterioration}}$$

Illustration 4

If the value of goods is ₹ 10,000 and after damage the value is ₹ 2,000 and the duty payable on ₹ 10,000 is ₹ 1,000 then duty payable on damaged goods should be appropriately reduced to ₹ 200.

(c) *Valuation of the damaged or deteriorated goods

The value of damaged or deteriorated goods may be ascertained by either of the following methods at the option of the owner:

(a) Value may be ascertained by the proper officer

or

(b) 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.

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Illustration 5

Peerless Scraps, imported during August, by sea, a consignment of metal scrap weighing 6,000 M.T. (metric tons) from U.S.A. They filed a bill of entry for home consumption. The Assistant Commissioner passed an order for clearance of goods and applicable duty was paid by them. Peerless Scraps thereafter found, on taking delivery from the Port Trust Authorities (i.e., before the clearance for home consumption), that only 5,500 M.T. of scrap were available at the docks although they had paid duty for the entire 6,000 M.T., since there was no short-landing of cargo. The short-delivery of 500 M.T. was also substantiated by the Port-Trust Authorities, who gave a "weighment certificate" to Peerless Scraps.

On filing a representation to the Customs Department, Peerless Scraps has been directed in writing to justify as to which provision of the Customs Act, 1962 governs their claim for remission of duty on the 500 M.T. not delivered by the Port-Trust.

You are approached by Peerless Scraps as "Counsel" for an opinion/advice. Examine the issues and tender your opinion as per law, giving reasons.

Answer

As per provisions of section 23, where it is shown to the satisfaction of Assistant or Deputy Commissioner that any imported goods have been lost or destroyed, otherwise than as a result of pilferage at any time before clearance for home consumption, the Assistant or Deputy Commissioner shall remit the duty on such goods. Therefore, duty shall be remitted only if loss has occurred before clearance for home consumption.

In the given case, it is apparent from the facts that quantity of scrap received in India was 6,000 metric tonnes and 500 metric tonnes thereof was lost when it was in custody of Port Authorities i.e. before clearance for home consumption was made. Also, the loss of 500 MT of scrap cannot be construed to be pilferage, as loss of such huge quantity cannot be treated as "Petty Theft".

Hence, Peerless Scraps may take shelter under section 23 justifying its claim for remission of duty.

DENATURING OR MUTILATION OF GOODS [SECTION 24]

Section 24 of the Customs Act, 1962 empowers Central Government to make rules for permitting at the request of the owner the denaturing or mutilation of

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imported goods which are ordinarily used for more than one purpose so as to render them unfit for one or more of such purposes; and where any goods are so denatured or mutilated they shall be chargeable to duty at such rate as would be applicable if the goods had been imported in the denatured or mutilated form.

Goods made unfit for other purposes

If any imported goods can be used for more than one purpose and duty is leviable on the basis of its purpose of utilisation, then denaturing or mutilation of such goods is useful. By denaturing, goods are made unfit for other purposes. After denaturing process, goods can be used only for one purpose and accordingly duty can be levied. Denaturing of Spirit Rules, 1972 specify procedure for denaturing spirit.



(2) Ethyl Alcohol which is not denatured attracts a higher rate of customs duty as it can be used for industrial as well as human consumption purposes whereas, denatured ethyl alcohol can only be used for industrial purposes and hence attracts lower rate of duty. Assuming un-denatured ethyl alcohol is imported, which is to be used by the importer for industrial purposes only, then importer may make a request for denaturing of Ethyl Alcohol. Denaturants can be added to denature the spirits as per the above rules[9] and once they are denatured, they attract the lower rate of duty subject to the provisions of said rules.

EXEMPTION FROM CUSTOMS DUTY [SECTION 25]

Central Government's power to grant exemption

The power to grant exemption from payment of customs duty is given to Central Government. The power of the Central Government to alter the duty rate structure is known as delegated legislation. The reason for calling it delegated legislation is because the power is delegated by the Parliament to the Central Government. This power is always subject to superintendence and check by Parliament.

General Exemption

a. **General exemption:** If the Central Government is satisfied that it is necessary in the public interest so to do, it may, by notification in the Official Gazette,

[9] *Denaturing of Spirit Rules, 1972*

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exempt generally either absolutely or subject to such conditions (to be fulfilled before or after clearance) as may be specified in the notification, goods of any specified description from the whole or any part of duty of customs leviable thereon.

Where any exemption is granted subject to any condition, such exemption shall, unless otherwise specified or varied or rescinded, be valid up to 31st day of March falling immediately after two years from the date of such grant or variation.

However, limited period of validity shall not apply to any such exemption granted to, or in relation to,—

(a) any multilateral or bilateral trade agreement;

(b) obligations under international agreements, treaties, conventions or such other obligations including with respect to United Nations agencies, diplomats and international organisations;

(c) privileges of constitutional authorities;

(d) schemes under the Foreign Trade Policy;

(e) the Central Government schemes having validity of more than two years;

(f) re-imports, temporary imports, goods imported as gifts or personal baggage;

(g) any duty of customs under any law for the time being in force, including integrated tax leviable under sub-section (7) of section 3 of the Customs Tariff Act, 1975, other than duty of customs leviable under section 12.

b. Special exemption: If the Central Government is satisfied that it is necessary in the public interest so to do, it may, by special order in each case, exempt from payment of duty, any goods on which duty is leviable only under circumstances of an exceptional nature to be stated in such order. Further, no duty shall be collected if the amount of duty leviable is equal to, or less than, one hundred rupees.

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Both the above-mentioned exemptions may be granted by providing for the levy of duty on such goods at a rate expressed in a form or method different from the form or method in which the statutory duty is leviable.

Further, the duty leviable under such altered form or method shall in no case exceed the statutory duty leviable under the normal form or method.

RATIONALE FOR GRANT OF EXEMPTION

The power for grant of exemption vests with the Central Government subject to the overall control of the Parliament. The Government on a rational basis may discretely use this power and the exemptions may be based on any of the following factors:

a. Moral grounds, where the duty should not be levied at all. Some of the instances, which may be given, are;

   (i) Where the goods do not reach the Indian soil at all.

   (ii) Where the goods have reached the Indian soil but are not available for consumption.

   (iii) Where the goods get damaged or deteriorated in transit.

b. Discretionary provision, where the exemption is used for controlling the economy and industrial growth of the country.

Can exemption notification be modified or withdrawn?

As seen earlier, the liability to pay customs duty or additional duty under the Customs Act, 1962 arises when the taxable event occurs. **The power to grant exemption from payment of duty, additional duty etc. flows from the provisions of section 25(1). An exemption notification so issued has the effect of suspending the collection of customs duty.** It does not make items which are subject to levy of customs duty etc. as items not leviable to such duty. It only suspends the levy and collection of customs duty etc., wholly or partially and subject to such conditions as may be laid down in the notification by the Government in "public interest". Such an exemption by its very nature is susceptible of being revoked or modified or subjected to other conditions. **Thus, the power to exempt includes the power to modify or withdraw the same.**

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Under the General Clauses Act, 1897, an authority which has the power to issue a notification has the undoubted power to rescind or modify the notification in a like manner. **Where the Government on the basis of the material available before it, *bona fide*, is satisfied that the "public interest" would be served by either granting exemption or by withdrawing, modifying or rescinding an exemption already granted, it should be allowed a free hand to do so.** *[Kasinka Trading v. U.O.I. 1994 (74) E.L.T. 782 (SC)]*

The Supreme Court has held in *Pankaj Jain Agencies v. U.O.I. 1994 (72) E.L.T. 805* that a notification under section 25 of the Customs Act would come into operation as soon as it is published in the Gazette of India i.e. the date of publication of the Gazette.

In *Ruchi Soya Industries Ltd. v. UOI 2021 (375) E.L.T. 497,* the Gujarat High Court held that section 25(4) of Customs Act, 1962 stipulating that notification issued under sections 25(1) and 25(2A) would become effective on the date of its issue by the Central Government for publication in the Gazette is arbitrary and *ultra vires* the aforesaid sections as publication of gazette is essential.

Effective date: Section 25 of the Customs Act provides that the date of effect of the notification will be the date of its issue for publication in the Official Gazette.

The following issues need to be kept in mind in case of general exemption.

(i) Where the exemption notification does not mention the date of its effect, the notification comes into effect from the date of its issue by the Central Government for publication in the Official Gazette.

(ii) Where the exemption is through a special order, the above rules do not apply. Special orders are issued separately for each case and communicated to the beneficiary directly by the Government. The beneficiary can claim refund for the period reckoned from the date of its issue.

Sub-section (2A) empowers the Government to issue clarifications to the notifications within one year from the issue of the notification and such clarifications will have retrospective effect.

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EXEMPTION FROM CUSTOMS DUTY ON IMPORTED GOODS USED FOR INWARD PROCESSING OF GOODS [SECTION 25A]

Where the Central Government is satisfied that it is necessary in the public interest so to do, it may, by notification, exempt such of the goods which are imported for the purposes of repair, further processing or manufacture, as may be specified therein, from the whole or any part of duty of customs leviable thereon, subject to the following conditions, namely:—

(a) the goods shall be re-exported after such repair, further processing or manufacture, as the case may be, within a period of one year from the date on which the order for clearance of the imported goods is made;

(b) the imported goods are identifiable in the export goods; and

(c) such other conditions as may be specified in that notification.

EXEMPTION FROM CUSTOMS DUTY ON RE-IMPORTED GOODS USED FOR OUTWARD PROCESSING [SECTION 25B]

Notwithstanding anything contained in section 20, where the Central Government is satisfied that it is necessary in the public interest so to do, it may, by notification, exempt such of the goods which are re-imported after being exported for the purposes of repair, further processing or manufacture, as may be specified therein, from the whole or any part of duty of customs leviable thereon, subject to the following conditions, namely:—

(a) the goods shall be re-imported into India after such repair, further processing or manufacture, as the case may be, within a period of one year from the date on which the order permitting clearance for export is made;



(b) the exported goods are identifiable in the re-imported goods; and

(c) such other conditions as may be specified in that notification.

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LIST OF IMPORTANT JUDICIAL DECISIONS ON SCOPE OF EXEMPTION NOTIFICATIONS

Particulars	Citation
1. Exemption Notifications are part and parcel of an enactment and are supposed to be employed to further the objects of enactment provided it is not ultra vires the Act, and/or Article 14 of the Constitution of India.	*U.O.I. v. Paliwal Electricals P. Ltd 1996 (83) E.L.T. 241 (S.C.)*
2. **A person who claims exemption or concession has to establish that he is entitled to that exemption or concession**. Further, some of the provisions of an exemption notification may be directory in nature and some are of mandatory in nature. **An eligibility criterion deserves a strict construction**, although construction of a condition thereof may be given a liberal meaning if the same is directory in nature.	*CCE v. Hari Chand Shri Gopal 2010 (260) E.L.T. 3 (S.C.)*
3. If an applicant does not claim benefit under a particular exemption notification at the initial stage, he is **not debarred, prohibited or estopped from claiming such benefit at a later stage**.	*Share Medical Care v. UOI 2007 (209)* E.L.T. *321* (S.C.)
4. For purpose of claiming exemption from payment of tax applicable to a commodity, assessee must bring on record sufficient materials to show that it comes within the purview of notification.	*BoC India Ltd. v. State of Jharkhand & Ors. 2009 (237) E.L.T. 7 (S.C.)*
5. Section 25 of the Customs Act, 1962 is an enabling provision to exempt an item, otherwise liable to duty from payment thereof. It empowers the Government to grant such an exemption, if it is in "public interest". **The word "public interest" here means the act beneficial to general public.** It means action necessarily taken for public purpose. **The word "public" means**	*M. J. Exports v. Collector of Customs 1992 (59) E.L.T. 112 (T) [approved by SC]*

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	Indian Public, unless contrary is provided. Thus, whatever exemptions are given by virtue of section 25(1) of the Customs Act, 1962, they have to be interpreted as the one meant to benefit Indian Public.	
6.	No extended meaning can be given to the exempted item to enlarge the scope of exemption granted by the notification.	*Rajasthan Spg. & Wvg. Mills Ltd. v. CCE 1995 (77) E.L.T. 474 (S.C.)*
7.	The choice between a strict and a liberal construction arises only in case of doubt in regard to the intention of the legislature manifest on the statutory language. Indeed, the need to resort to any interpretative process arises only where the meaning is not manifest on the plain words of the statute. If the words are plain and clear and directly convey the meaning, there is no need for any interpretation.	*Novapan India Ltd. v. CCE 1994 (73) E.L.T. 769 (S.C.)*
8.	Liberal and strict construction of an exemption provision are to be invoked at different stages of interpreting it. When the question is whether a subject falls in the notification or in the exemption clause then it being in nature of exception is to be construed strictly and against the subject but once ambiguity or doubt about applicability is lifted and the subject falls in the notification, then full play should be given to it and it calls for a wider and liberal construction.	*Union of India v. Wood Papers Ltd. 1990 4 SCC 256*
9.	Burden to prove eligibility to exemption notification is on the party who claims exemption.	*Mysore Metal Industries v. CC 1988 (36) E.L.T. 369 (S.C.); Motiram Tolaram v. U.O.I. 1999 (112) E.L.T. 749 (SC)*

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10. When two notifications are applicable, assessee can opt for that notification which is more beneficial.	*CCE v. Indian Petro Chemicals 1997 (92) E.L.T. 13 (SC)*
11. Exemption notification to be read as an ordinary man would read it.	*Collector of Customs v. Shibani Engineering Systems 1996 (86) E.L.T. 453 (S.C.)*
12. Expressions used in the Act should be understood in the same sense if used in Rules and notifications. Once an expression is defined in the Act, that expression wherever it occurs in the Act, Rules or Notifications issued thereunder, should be understood in the same sense.	*Prestige Engg. India Ltd. v. CCE 1994 (73) E.L.T. 497 (S.C.)*

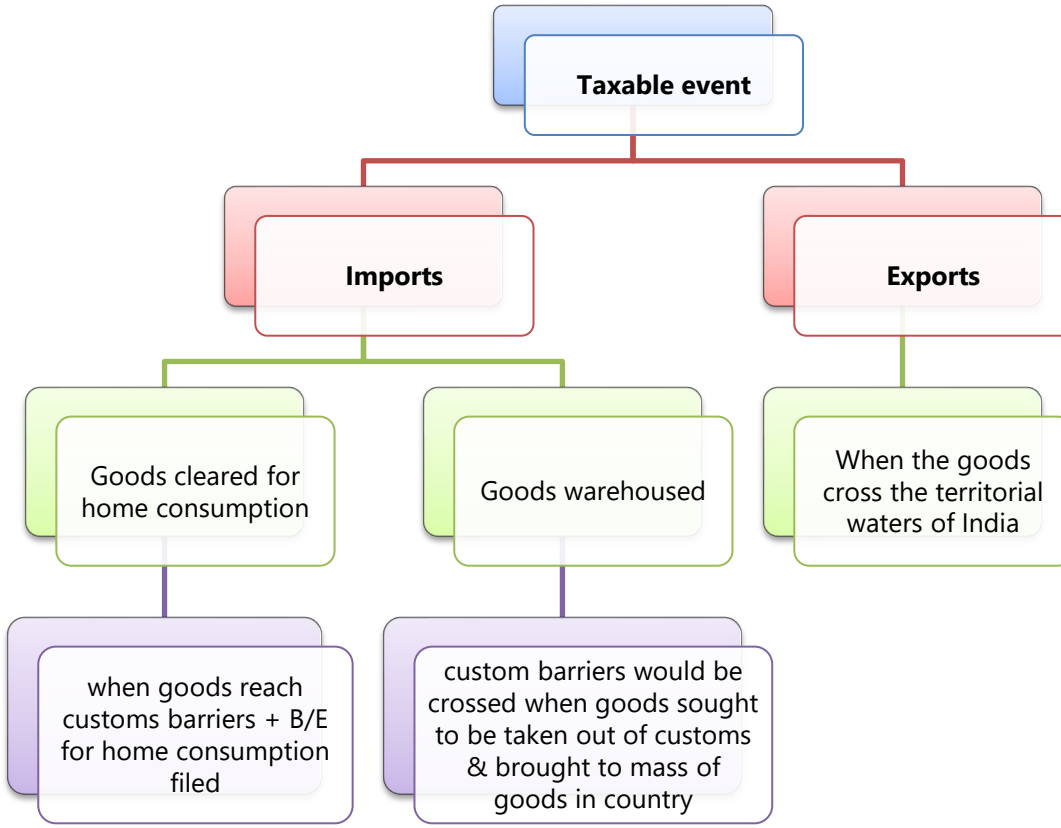
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LET US RECAPITULATE

Charging Section [Section 12]



Taxable event

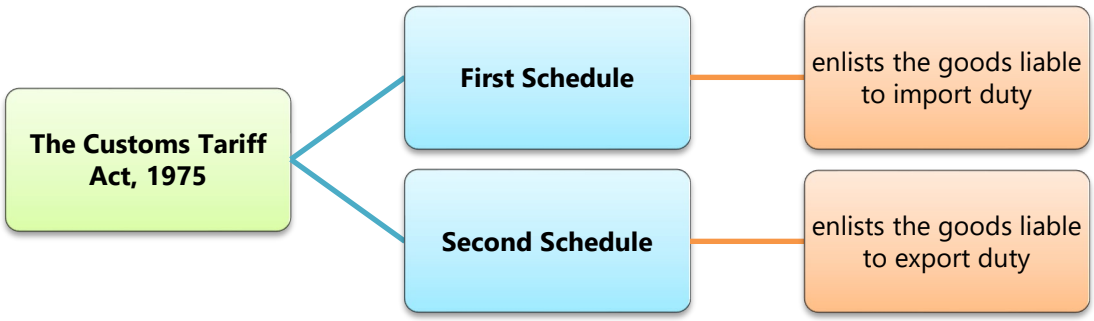


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Important Terms

- **Indian Customs waters** – means waters extending into the sea up to the limit of EEZ & **includes** any bay, gulf, harbour, creek or tidal river. Powers of customs officers extend upto Indian Customs Waters.
- **Territorial Waters of India (TWI)-** extends upto 12 nautical miles (nm) into sea from baseline.
- **Exclusive Economic Zone (EEZ) -** area beyond TWI. The limit of EEZ is 200 nm from the nearest point of the baseline. Area beyond that is **'high seas'**

Schedules of the Customs Tariff Act,1975



Duty liability in special circumstances

(A) Re-importation of goods

(i) Re-importation of goods exported under duty drawback, exported for repairs, etc. - Concessional duty payable

S. No.	Description of goods exported	Amount of import duty payable if re-imported
1.	Goods exported- (i) under claim for duty drawback; (ii) under claim for refund of integrated tax paid on export goods;	Amount of incentive availed of at the time of export subject to specified conditions

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	(iii) under bond without payment of integrated tax (iv) under duty exemption scheme (Advance Authorisation/ DFIAor EPCG) (v) under claim for RoDTEP (vi) under claim for RoSCTL	In case of point (iv), amount of IGST and compensation cess leviable at the time and place of importation of goods subject to specified conditions**.**
2.	Goods other than those falling under S. No. 1 exported for repairs abroad	BCD, IGST and GST compensation cess on value: =Fair cost of repairs including cost of materials (actually incurred or not), used in repairs **+** insurance and freight charges, both ways.
3.	Goods other than falling under S. No. 1 & 2 above	NIL

Conditions to be satisfied for claiming the above two concession/exemptions

Time-limit for re-importation

- 5 years further extendable for a period up to 2 years.
- 7 years further extendable for a period up to 3 years in case of Bhutan for machinery and equipment .
- In case of goods exported under AA/DFIA or EPCG etc - 1 year further extendable for a period upto 1 year

Same goods

No change in ownership

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(ii) Exemption to re-import of goods and parts thereof for repairs/reconditioning/reprocessing/remaking or similar other process

S. No.	Particulars	Time-limit for re-importation from the date of exportation	Other conditions to be satisfied
1.	Goods manufactured in India and re-imported for repairs/ reconditioning other than specified goods	3 years Export to Nepal & Bhutan - 10 years.	(a) Re-exported within 6 months (extendable till 1 year) of the date of re-importation. (b) The AC/DC of Customs is satisfied as regards identity of the goods. (c) Execution of bond
2.	Goods manufactured in India and re-imported for Reprocessing/Refining/Re-making/any other similar process	1 year	

(B) Goods derelict, wreck etc. [Section 21]

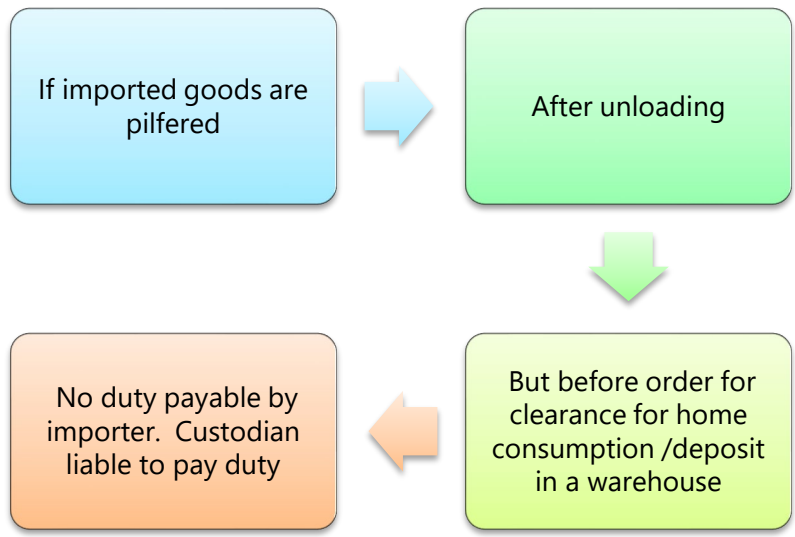


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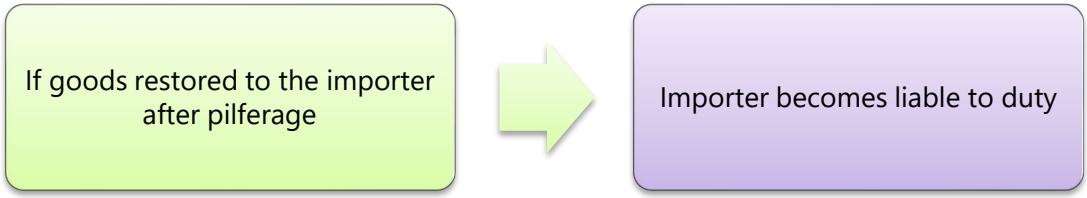
Date for determining the rate of duty and tariff valuation of imported goods [Section 15]

Goods entered for home consumption	•Date of presentation of bill of entry **OR** Date of entry inwards of the vessel or arrival of the aircraft/vehicle **whichever is later**
Goods cleared for home consumption from the warehouse	•Date on which a bill of entry for home consumption in respect of such goods is presented
Any other goods	•Date of payment of duty

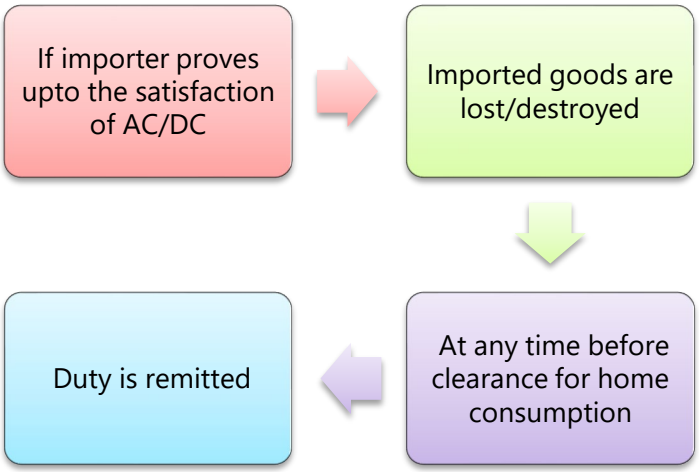
Duty on Pilfered goods [Section 13]



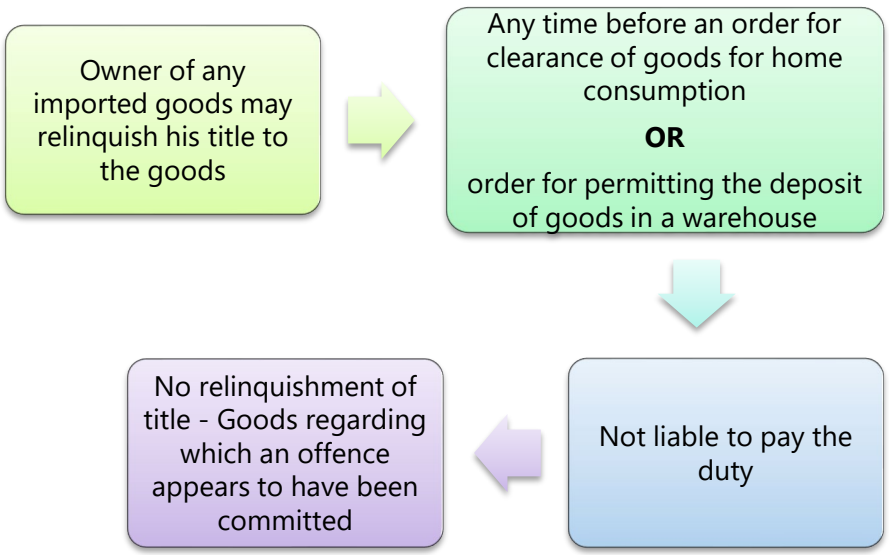
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Remission of duty on goods lost, destroyed or abandoned [Section 23(1)]



Right to relinquish the title to the goods-abandonment of goods [Section 23(2)]



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Abatement of duty on damaged or deteriorated goods [Section 22]

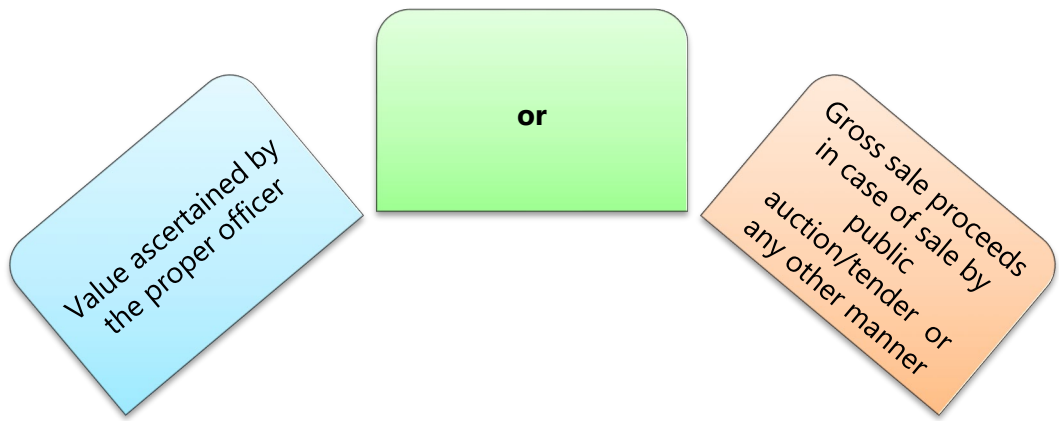
Cases where the abatement is available

Goods	Damaged/deteriorated upto the satisfaction of AC/DC	Condition
Any imported goods	before or during unloading	
Any imported goods, other than warehoused goods	by accident after unloading but before examination for assessment by the customs authorities	Provided such accident is not due to any wilful act, negligence or default of the importer, his employee or agent
Any warehoused goods	by accident in warehouse before their actual clearance from such warehouse	

Amount of duty chargeable after abatement

$$= \text{Duty on goods before damage / deterioration} \times \frac{\text{Value of damaged / deteriorated goods *}}{\text{Value of goods before damage / deterioration}}$$

*Valuation of the damaged or deteriorated goods

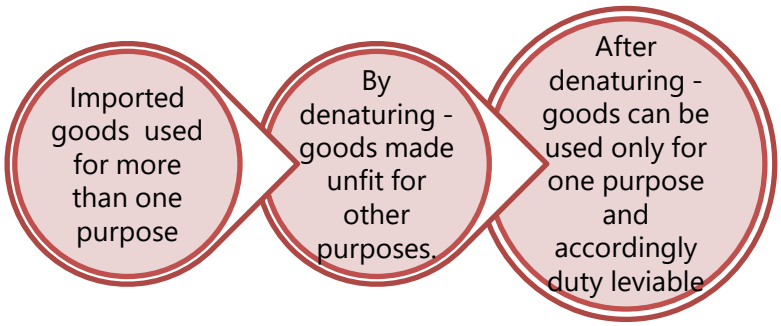


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Difference between section 13, 22 and 23 of the Customs Act, 1962

Section 13	Section 22	Section 23
DUTY on PILFERED goods is not payable by importer.	REDUCED duty on DAMAGED goods.	REMISSION of duty on DESTROYED goods.

Denaturing or mutilation of goods [Section 24]



Exemption from customs duty [Section 25]

General Exemption	Special Exemption
Central Government in public interest	Central Government in public interest
by notification in the Official Gazette	by special order in each case
exempt generally either absolutely or conditional exemption	exempt from payment of duty
conditional exemption-valid upto 31st day of March falling immediately after 2 years from the date of such grant/ variation **in other than specified cases**	only under circumstances - exceptional nature
	No duty - if the amount of duty leviable is equal to or less than ₹ 100.

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Effective date of notification

Effective date not mentioned	•Date of its issue by the Central Government for publication in the Official Gazette.
Exemption through a special order	•Date of its issue
Clarifications	•May be issued within 1 year from the issue of the notification •having retrospective effect

Exemption from customs duty on imported goods used for inward processing of goods [Section 25A]/re-imported goods used for outward processing [Section 25B]

- For repair/further processing/manufacture
- 1 year time limit
- identifiable goods
- other specified condition

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TEST YOUR KNOWLEDGE

1. *What are the provisions relating to effective date of notifications issued under section 25 of the Customs Act, 1962?*

2. *M/s. XYZ, a 100% export oriented undertaking (100% E.O.U. in short), imported DG sets and furnace oil duty free for setting up captive power plant for its power requirements for export production. This benefit was available vide an exemption notification. They used the power so generated for export production but sold surplus power in domestic tariff area as power could not be stored.*

   Customs Department has demanded duty on DG sets and furnace oil as surplus power has been sold in domestic tariff area. The notification does not contain specific restriction that the imported goods can only be used for manufacture of export goods.

   Do you think the demand of the Customs Department is valid.

3. *Referring to section 25 of the Customs Act, 1962, discuss the following:*

   (i) Special exemption

   (ii) General exemption

4. *Write a brief note on the following with reference to the Customs Act, 1962:*

   (i) Remission of duty on imported goods lost

   (ii) Pilfered goods

5. *Distinguish between pilfered goods and lost/destroyed goods*

6. *Goods manufactured or produced in India, which were earlier exported and thereafter imported into India will be treated at par with other goods imported into India. Is the proposition correct or any concession is provided on such import? Discuss briefly.*

7. *Write a brief note on stages of imposition of taxes and duties.*

8. *Discuss the provisions relating to denaturing or mutilation of goods.*

9. *Briefly explain the provisions relating to abatement of duty on damaged or deteriorated goods under section 22 of the Customs Act, 1962.*

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10. *Briefly explain the following with reference to the provisions of the Customs Act, 1962:*

    (i) Indian customs waters

    (ii) India

11. *Distinguish between Indian territorial waters and Indian custom waters.*

12. *Write a brief note on the constitutional provisions governing the levy of customs duties.*

13. *Examine the validity of the following statements:*

    (a) A beneficial owner of imported goods is a person on whose behalf the goods are being imported.

    (b) Customs area does not include a warehouse.

    (c) Customs station includes international courier terminal.

14. *Rock & Rock India Ltd. imported a consignment from U.S.A (by sea). The value of consignment was ₹ 7,50,000 and total duty payable was ₹ 1,50,000.*

    Company filed bill of entry for home consumption but before inspection and clearance for home consumption it found that the goods were damaged.

    On filing a representation to the Customs Department, the proper officer refused the claim for abatement because goods were already unloaded. The proper officer is in agreement with the claim that the value of goods has come down to only ₹ 1,50,000.

    Examine the issue with reference to the relevant statutory provisions and calculate the amount of total duty payable:

    Would your answer be different in the above case if the goods get deteriorated after unloading and examination but before clearance for home consumption, and value comes down to ₹ 7,00,000?

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ANSWERS/HINTS

1. Date of effect of every notification issued will be the date of its issue by the Central Government for publication in the Official Gazette, unless provided otherwise in the notification. Issue means signed by competent authority and sent for publication to Government press.

The provision is made as there may be delay of one or two days in publishing in Gazette e.g. if the notification is issued on 2nd November and published in Official Gazette on 4th November, the notification will be effective from 2nd November.

However, where any exemption is granted subject to any condition, such exemption shall, unless otherwise specified or varied or rescinded, be valid up to 31st day of March falling immediately after 2 years from the date of such grant or variation.

Further, such limited period of validity shall not apply to any such exemption granted to, or in relation to,—

(a) any multilateral or bilateral trade agreement;

(b) obligations under international agreements, treaties, conventions or such other obligations including with respect to United Nations agencies, diplomats and international organisations;

(c) privileges of constitutional authorities;

(d) schemes under the Foreign Trade Policy;

(e) the Central Government schemes having validity of more than two years;

(f) re-imports, temporary imports, goods imported as gifts or personal baggage;

(g) any duty of customs under any law for the time being in force, including integrated tax leviable under sub-section (7) of section 3 of the Customs Tariff Act, 1975, other than duty of customs leviable under section 12.

The above rules do not apply to exemptions granted through special orders. Special orders are issued separately for each case and communicated to the beneficiary directly by the Government.

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2. The facts of the case are similar to the case of *Commissioner v. Hanil Era Textile Ltd. 2005 (180) ELT A44 (SC)* wherein the Supreme Court agreed to the view taken by the Tribunal that in the absence of a restrictive clause in the notifications that imported goods are to be solely or exclusively used for manufacture of goods for export, there is no violation of any condition of notification, if surplus power generated due to unforeseen exigencies is sold in domestic tariff area.

Therefore, no duty can be demanded from M/s XYZ for selling the surplus power in domestic tariff area for the following reasons:

(i) They have used the DG sets and furnace oil imported duty free for generation of power, and

(ii) such power generated has been used for manufacturing goods for export, and

(iii) only the surplus power has been sold, as power cannot be stored.

3. **(i)** **Special Exemption:** As per section 25(2) of the Customs Act, 1962, if the Central Government is satisfied that it is necessary in the public interest so to do, it may, by special order in each case, exempt from payment of duty, any goods on which duty is leviable only under circumstances of an exceptional nature to be stated in such order. Further, no duty shall be collected if the amount of duty leviable is equal to, or less than, ₹ 100. This type of exemption is called as *ad hoc* exemption. Order under section 25(2) is not required to be published in the Official Gazette.

(ii) **General Exemption:** As per section 25(1) of the Customs Act, 1962, if the Central Government is satisfied that it is necessary in the public interest so to do, it may, by notification in the Official Gazette, exempt generally either absolutely or subject to such conditions (to be fulfilled before or after clearance) as may be specified in the notification, goods of any specified description from the whole or any part of duty of customs leviable thereon.

However, where any exemption is granted subject to any condition, such exemption shall, unless otherwise specified or varied or rescinded, be

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valid up to 31st day of March falling immediately after two years from the date of such grant or variation.

Further, limited period of validity shall not apply to any such exemption granted to, or in relation to,—

(a) any multilateral or bilateral trade agreement;

(b) obligations under international agreements, treaties, conventions or such other obligations including with respect to United Nations agencies, diplomats and international organisations;

(c) privileges of constitutional authorities;

(d) schemes under the Foreign Trade Policy;

(e) the Central Government schemes having validity of more than two years;

(f) re-imports, temporary imports, goods imported as gifts or personal baggage;

(g) any duty of customs under any law for the time being in force, including integrated tax leviable under sub-section (7) of section 3 of the Customs Tariff Act, 1975, other than duty of customs leviable under section 12.

Further, this exemption applies to all importers while exemption under section 25(2) is for specific importer and specific goods under import.

4. (i) **Remission of duty on imported goods lost:** Section 23(1) of the Customs Act, 1962 provides for remission of duty on imported goods lost (otherwise than as a result of pilferage) or destroyed, if such loss or destruction is at any time before clearance for home consumption. Such loss or destruction covers loss by leakage. Duty is payable under this section but it is remitted by Assistant/Deputy Commissioner of Customs if the importer is able to prove the loss or destruction. Thus, unless remitted, duty has to be paid and burden of proof is on the importer. The provisions of this section are applicable for warehoused goods also.

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(ii) **Pilfered goods:** Section 13 provides that if imported goods are pilfered after unloading thereof but before the proper officer has made an order for clearance for home consumption or deposit in a warehouse, the importer is not liable to pay the duty on the said pilfered goods unless the pilfered goods are restored to importer. In such a case, duty on pilfered goods is payable by the Port authorities. Also, the importer does not have to prove pilferage. However, the loss must be only due to pilferage. Section 13 is not applicable for warehoused goods.

5.

Pilfered goods	Lost/Destroyed goods
Covered by section 13	Covered by section 23(1)
Importer is not liable to pay duty on these goods	Duty paid on such goods to be remitted
Department gets compensation from the custodian [Section 45(3)]	No such compensation
Petty theft by human being	Loss/Destruction by fire, flood etc (Act of God)
Restoration possible	Restoration is not possible
Occurrence is after unloading and before Customs clearance order for home consumption or warehousing	Occurrence may be at any time before clearance for home consumption
Occurrence in warehouse not recognized	Occurrence in warehouse is recognized
No need to prove pilferage. It is quite obvious	Should be proved and remission sought for

6. The given proposition is correct i.e., goods produced in India, which were earlier exported and thereafter imported into India will be treated at par with

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other goods imported into India [Section 20 of the Customs Act, 1962]. However, the following concessions are being provided in this regard:

(i) Maximum import duty will be restricted to duty drawback or refund availed or integrated tax not paid at the time of export.

(ii) Where the goods were originally exported for repairs, the duty on re-importation is restricted to the fair cost of repairs including cost of materials used in repairs whether such costs are actually incurred or not, insurance and freight charges, both ways done abroad.

The above two concessions are given subject to the condition that:

(a) the re-importation is done within 5 years or 7 years if time is extended.

(b) the exported goods and re-imported goods must be the same.

In case of goods re-imported through courier mode[10], risk-based treatment shall apply.

In case of point (ii) above, the ownership of the goods should also not have changed.

However, these concessions would not be applicable if-

- re-imported goods had been exported by EOU or a unit in FTP
- re-imported goods had been exported from a public/private warehouse
- re-imported goods which fall under Fourth schedule to the Central Excise Act, 1944.

[Notification No. 45/2017 Cus dated 30.06.2017]

(iii) When exported goods come back for repairs and are re-exported, the re-imported goods other than the specified good scan avail exemption from paying of import duty subject to the following conditions:

[10] *other than goods specified in sub-regulation (4) of regulation 2 of the Courier Imports and Exports (Electronic Declaration and Processing) Regulations, 2010*

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(i) the re-importation is for repairs only

(ii) the time limit is 3 years. In case of Nepal & Bhutan, such time-limit is 10 years.

(iii) the goods must be re-exported after repairs

(iv) the time limit for export is 6 months (extendable to one year).

(v) certain goods, listed in the notification, are not covered by this exemption.

[Notification No. 158/95 Cus. dated 14.11.1995 as amended vide Notification No. 60/2018 Cus dated 11.09.2018]

7. [Refer para 1-Unit II]

8. [Refer para 4 -Unit II]

9. [Refer para 4 -Unit II]

10. [Refer para 3 -Unit I]

11. [Refer para 3 -Unit I]

12. [Refer para 2 -Unit I]

13. **(a)** **The statement is valid.** Section 2(3A) defines beneficial owner to mean any person on whose behalf the goods are being imported or exported or who exercises effective control over the goods being imported or exported.

(b) **The statement is not valid.** The definition of customs area includes within its ambit a warehouse too.

The customs area is defined to mean the area of a customs station or a warehouse and includes any area in which imported goods or export goods are ordinarily kept before clearance by customs authorities.

(c) **The statement is valid.** International courier terminal and foreign post office are included within the scope of customs station as defined under section 2(13) of the Customs Act, 1962.

As per section 2(13), a customs station means any customs port, customs airport, international courier terminal, foreign post office or land customs station.

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14. The situations covered in the question are -

(i) Damage after unloading

The abatement of duty is allowed **under section 22(b)** where it is shown to the satisfaction of the Assistant/Deputy Commissioner of Customs that, *inter alia,* any imported goods, other than warehoused goods, had been damaged at any time after the unloading thereof in India but before their examination, on account of any accident not due to any wilful act, negligence or default of the importer.

Thus, in view of the above-mentioned provisions, the stand taken by the proper officer of refusing the claim for abatement is not valid in law.

The duty to be charged on the damaged goods shall be reduced in proportion to the reduction in the value of goods on account of damage.

Thus, in the given case, the amount of total

= [₹ 1,50,000/₹ 7,50,000] x ₹1,50,000= ₹ 30,000

(ii) Deterioration after unloading

The abatement of duty is allowed in case of deterioration only if such deterioration occurs before or during the unloading of goods. Since in this case, imported goods have deteriorated before clearance for home consumption but after unloading, abatement of duty will not be allowed and full duty will have to be paid.

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