

TPP-X- CUSTOMS DUTY

A QUANTITATIVE SUBJECT WITH SOLID THEORETICAL
FRAMEWORK -

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UNIT I- EVALUATION AND DEVELOPMENT OF CUSTOMS LAW
SCOPE AND COVERAGE , REGULATORY FRAMEWORK , NATURE
OF CUSTOMS DUTY , TYPES OF CUSTOMS DUTIES.

~~UNIT II – CLASSIFICATION OF GOODS UNDER CUSTOMS TARIFF
ACT , PROHIBITION ON IMPORTATION AND EXPORTATION OF
GOODS , RELIEF FROM PAYMENT OF DUTY , EXEMPTION FROM
CUSTOMS DUTY.~~

- UNIT III- VALUATION FOR CUSTOMS DUTY, METHODS OF VALUATION FOR CUSTOMS, CUSTOMS VALUE- INCLUSION AND EXCLUSION.
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- UNIT IV- IMPORT PROCEDURE UNDER CUSTOMS , EXPORT PROCEDURE UNDER CUSTOMS , PROVISION FOR BAGGAGE,IMPORT AND EXPORT THROUGH POST AND CARRIER.

- As per Standard English Dictionary “ Customs” means “ duties imposed on imported or, less commonly exported goods’. It was an ancient ‘custom’ that whenever a merchant entered a kingdom with his merchandise , he had to make a suitable offering of gifts to the king. In course of time , the modern state formalised this custom into customs duty which the state collects on goods imported into or occasionally , exported out of its frontiers.
- Item No . 83 of the Union list of the constitution of India delegates the power to the Central government to levy duties of customs. The tax collections exclusively belong to the Central government.

- WTO (World Trade Organisation) has been formed on 1-1-1995 to replace GATT an international organization related to trade and finance and provides trade negotiations.
- Its basic principle is equal treatment to products and services of all other WTO Countries.
- The four main WTO guidelines are:
 - 1. trade without discrimination.
 - Promoting fair competition.
 - Predictable and growing market access
 - Encouraging development and economic reforms.

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- As per WTO guidelines all member countries should be treated equally.
 - All member countries should be treated as most favored nation.
 - ‘national treatment’ i.e. treating foreign goods and local goods equally
 - WTO promotes free trade by lowering tariff, import restriction, quantity restriction.
 - As a member country of WTO the Indian government is required to follow the regulation , rules governing customs duty, international trade with in the framework of WTO Agreement.

- Scope and coverage of customs duty:-
- Sec 12(1) of the customs Act is a charging section which provides that duties of customs shall be levied at such rate as may be specified as ~~customs tariff act 1975~~ or any other law for the time being in force on goods imported into/exported from India.
- Sec 12(2) of customs Act mainly deals that customs duty is payable by government also , thus there is no general exemption to goods imported by government . However various exemption notification have been issued and goods imported by Indian navy and specific equipment required by Police , Ministry of Defence , Coastal guard are fully exempt from customs duty . However if there is no exemption notification duty will be payable even if goods are imported by Central / State government.

- Regulatory framework under Customs:-

- The customs Act 1962: it provides for levy of import and export duties of customs on goods imported into and exported out from India.
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- The customs tariff Act 1975: customs tariff act 1975 has been enacted for classification of goods . It contains 2 schedules :

- The First schedule is known as “ Import tariff” and it refers to goods liable to import duties of customs.

- The second schedule is known as “ Export tariff” and it refers to goods liable to export duties of customs.

- Rules: section 156 of customs act 1962 empowers the central government to make the rules so framed are consistent with the provisions of customs act 1962

- Regulations: CBIC is empowered under section 157 of customs act 1962 to make regulations to carry out the purpose of Act.
- Notifications : The central govt has been empowered to issue notification under various sections of the customs Act 1962.

- **Functions of Customs department:-**

- Collection of customs duties on imports and exports as per the customs law.
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- Enforcement of various provisions of customs act governing import and exports , baggage, postal articles and arrival and departure of vessels , aircrafts etc.
- Discharge of various agency functions and enforcing various prohibitions and restrictions on imports and exports under customs act.
- Prevention of smuggling including prohibition of narcotics drug trafficking.
- International passengers processing.

- Taxable event for Import :- Goods become liable to import duty when there is import into India as per sec 2(23) of customs act. Import means bringing into India from a place outside India.
- ~~Sec 2(27) of the customs act defines “ India has inclusive of territorial waters , hence it was thought that import is complete as soon as goods enters territorial waters”.~~
- However there were conflicting judgement of high court by determining import on that basis. Finally in the year 1999, 3 members bench on the supreme court define taxable event in case of import (kiran spinning mills Vs Commissioner of customs).
- The taxable event is the day of crossing the customs barriers or reaching customs station and not on the day goods entered into territorial waters.

- Taxable event for Export:- In Union of India Vs Rajindra dyeing and printing mill case , 2005 , it has been held that export is complete when goods crossed territorial waters of India. If ship sinks within the territorial waters export is not complete and hence duty is not payable.

- Union of India Vs V.M.Salgaocar 1987, it was held that export is complete only when goods are taken out of territorial waters of India. In this case shipping bill for export of iron ore was filed by exporter on 08/03/1985 entry outward was granted on 11/03/1985 . Export duty of Rs 3,00,000 was deposited , loading was started in the meanwhile export duty on Iron ore was exempted with the notification dated 17/03/1985. the ship actually left territorial water on 25/03/1985, it was held that at the time of export the duty was exempted and hence there is no duty liability. Export duty deposited was ordered to be refunded.

- Definitions under Customs Act:-

1. Import:- Import means bringing into India from a place outside India .

2. Export :- Export means taking out of India to a place out of India.

3. ~~Importer :- Importer in relation to any goods at any time between their~~ importation and the time when they are cleared for home consumption includes any owner or any person holding himself out to be the importer.

4. Person –in-charge:- a. in relation to a vessel, the master of the vessel.

- b. in relation to an aircraft, the commander or pilot- in-charge of the aircraft;

- c. in relation to a railway train, the conductor, guard or other person having the chief direction of the train;

- d. In relation to any other conveyance, the driver or other person- in- charge of the conveyance.

- 5. Bill of entry:- it is a statutory duty paying document presented by the importer to the customs authorities before taking delivery of the goods imported.
- 6. Bill of export:- it is a duty paying document prepared by the exporter when the goods are exported by land.
- 7. Shipping bill:- it is a duty paying document prepared by the exporter when the goods are exported by air or sea.
- 8. Goods:- goods include:
 - a. Vessels, aircraft and vehicles;
 - b. Stores;
 - c. Baggage;
 - d. Currency and negotiable instruments;
 - e. any other kind of movable property.

- 9. Customs station: Customs station means any customs port, customs airport or land customs station.
- 10. Customs area: Means the area of a customs station and includes any ~~area in which imported goods or export goods are ordinarily kept before clearance by customs authorities.~~
- 11. Dutiable goods:- Means any goods which are chargeable to duty and on which duty has not been paid.
- 12. India:- the term “ India” includes the territorial waters of India.

- 13. Derelict, Jetsam, Flotsam, wreck:-
- Derelict- derelict is a term applied to any property whether vessel or cargo left in a open sea by person in charge of it without any hope of recovering or intention of returning to it.
- Jetsam- Jetsam is where the goods are thrown into sea with a view to lighten the ship in order to prevent it from sinking.
- Flotsam- flotsam is where the goods have been in ship are separated from it by some peril , the property in this case not renounced by the owner by throwing them overboard . The owner is entitled to recover the possession.
- Wreck- wreck refers to the property cast ashore with in the ebb and flow of the tide of the ship wreck. The property damaged may be a ship, cargo or portion there off.

- 14. Assessment:- assessment means determination of the dutiability of any goods and the amount of duty , tax, cess or any other sum so payable, if any, under this act or under the customs tariff act, 1975 or under any other law for the time being in force, with reference to-

- A) the tariff classification of such goods as determined in accordance with the provision of the customs tariff act;
- b) The value of such goods as determined in accordance with the provisions of this act and the customs tariff act;
- c) Exemption or concession of duty, tax, cess or any other sum, consequent upon any notification issued therefore under this act or under the customs tariff act or under any other law for the time being in force;

- D) the quantity , weight, volume, measurement or other specifics where such duty , tax, cess or any other sum is leviable on the basis of the quantity , weight, volume, measurement or other specific of such goods;
- E) the origin of such goods determined in accordance with the provisions of customs tariff act or the rules made there under, if the amount of duty ,tax, cess or any other sum is affected by the origin of such goods;
- F) any other specific factor which affects the duty, tax, cess or any other sum payable on such goods , and includes provisional assessment, self assessment , re-assessment and any assessment in which the duty assessed is nil;

.Indian customs waters:-

. As per sec 2 (28) of customs act, Indian customs waters means waters extending into the sea upto the limit of exclusive economic zone under section 7 of the territorial waters, continental shelf, exclusive economic zone and other maritime zone act 1976 and includes any Bay, gulf, harbor, creeks or tidal river thus Indian customs waters extended upto 200 nautical miles from the baseline inside sea.

Significance of Indian customs waters is as follows:

- a) Customs officers has powers to arrest a person in India or with in Indian customs waters.
- b) Customs officers has a power to stop and search any vessel.
- c) A vessel which is with in Indian customs waters or which has been in India can be confiscated which is constructed or fitted in any manner for the purpose of concealed goods.

- Denaturing or mutilation of goods: the central government may make for permitting , at the request of the owner , the denaturing / mutilation of imported goods which are ordinarily used for more than one purpose so as to render them unfit for one or more of such purpose and where any goods are so denatured or mutilated , they shall be chargeable to duty @ such rate as would be applicable if the goods had been imported in the denatured / mutilated form , denaturing is connected with liquid item and mutilation is associated with solid items . after the process of denaturing / mutilation, the goods are classified as

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- per the latest condition and the lower rate as applicable after mutilation / denaturing will be taken for assessment. This provision is importer friendly and this benefit is given to encourage him to undertake the mutilation/ denaturing process in India. The central govt has framed the denaturing of spirit rules 1972 in this regard

- Import general manifest:- import manifest/import report means manifest/report as required to be delivered u/s 30 of customs act 1962.
- Delivery of import manifest or import report (sec 30) :- the person in charge of conveyance has to present import manifest (in case of vessel / aircraft) or import report(in case vehicle) in the prescribed form.
- Time limit:- in case of vessel / aircraft electronically prior to the arrival of vessel / aircraft at customs station.
- In case of vehicle with in 12 hours after its arrival in customs station.
- Non-filing within the time limit:- in case of import manifest is not filed with in specified time limit (proper officer is satisfied that there is no sufficient cause for delay in filing import report) then the person in charge or any other person who caused delay shall be liable to a penalty not exceeding Rs 50,000.

Amendment of import general manifest:- if the proper officer is satisfied that the import manifest/report is incorrect or incomplete or there was no fraudulent intention , he may permit such import general manifest to be amended or supplemented.

TYPES OF CUSTOMS DUTIES:-

1) Basic Customs duty (BCD):- This is the duty levied under Section 12 of the customs act. Normally, it is levied as a percentage of value as determined under section 14(1). The rates vary for different items. The rate of duty may be at the standard rate or, in the case of import from notified countries, at the preferential rate. Standard rate of basic customs duty @ 10% and its calculated on Assessable value.

2) Social welfare surcharge:- while presenting the general budget 2018-19 the union minister for finance proposed to abolish the education cess and secondary higher education cess on imported goods and in its place impose social welfare surcharge @ 10% of the aggregate duties of customs. SWS is levied only on basic customs duty.

- 3) IGST(Integrated tax);- IGST came into effect from 2017 July. As per that goods imported into India are now subject to IGST.
- However petroleum and tobacco products are outside the purview of GST and hence CVD and special CVD are applicable to them as usual.
- IGST is leviable on the value of imported goods and for calculating integrated tax on any imported article , the value of such imported goods would be aggregate of (assessable value+ BCD+ SWS+all protective duties such as safeguard duty, Anti-dumping duty, countervailing duty, subsidy from central govt, NCCD except GST Compensation cess).

- 4) GST Compensation Cess:- Compensation cess is levied u/s 8 of GST (Compensation cess to state) Act ,2017 . GST compensation cess is levied on both intra state and interstate supply of goods and service to provide compensation to the states for loss of revenue due to implementation of GST. GST compensation cess is applicable only to such supply of goods and services that have been notified by central govt.any notified article imported into India shall in addition to BCD and integrated tax will be liable to GST Compensation cess at such rates is levied u/s 8 of the GST Act , 2017 on like article on its supplied to India on the value of imported article as determined under customs tariff act, 1975 . GST Compensation cess will be applicable on luxury goods like high end cars , sin goods like tobacco and pan masala . GST Compensation cess will be calculated on AV+BCD+SWS+ All protective duties except IGST.

- 5) Countervailing duty (CVD):- Additional duty of customs or countervailing duty(CVD) as per section 3(1) of customs tariff act, any article imported into India is liable to duty in India. No CVD on Anti-dumping duty, safeguard duty, protective duty and countervailing duty on subsidized articles.
- However, CVD has been subsumed with IGST w.e.f. 01/07/2017. Only few products such as pan masala and tobacco products, alcoholic liquor certain petroleum products which attract levy of CVD. This CVD is applied on the assessable value which is obtained after adding BCD and NCCD of customs to the transaction value.
- 6)National calamity contingent duty (NCCD):- It is levied on import of pan masala, chewing tobacco and cigarettes at different rates.

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- 7) Countervailing duty on subsidized articles:- Countervailing duty on subsidized articles as per section 9 of customs tariff Act, it is levied on articles which are imported by getting subsidies from other country. Goods can be imported / exported at a low price due to the subsidy given by the government. In order to bring it on an equal track with similar goods in our country, a duty equivalent to the amount of subsidy granted by the Government is imposed on such subsidized goods. This is called as countervailing duty on subsidized articles.

- 8) Safeguard duty:- As per section 8B(1) of Customs tariff Act , safeguard duty is imposed for protecting the interests of any domestic industry in India and it is product specific. Central government is empowered to impose safeguard duty on specified imported goods if central government is satisfied that the goods are being imported in large quantities and under such conditions that they are causing or threatening to cause serious injury to domestic industry.
- The duty once imposed, is valid for four years, unless revoked earlier. This can be extended , but total period of safeguard duty cannot be more than ten years.
- Safeguard duty is exempted if article originating from developing country , so long as the share of imports of that article from that country does not exceed 3% of the total imports of that articles to India.

**** Provisional safeguard duty:-**The central government is also empowered to impose provisional safeguard duty pending determination of final duty. The provisional duty may be imposed on the basis of preliminary determination that increased imports have caused / threatened to cause serious injury to domestic industry provided further that the provisional safeguard duty shall not remain force for more than 200 days from the date on which it was imposed.

****Refund:-** Further on final determination of the central government is of the opinion that increased imports have not caused / threatened to cause serious injury to a domestic industry it shall refund the duty so collected.

**** safeguard duty will also exempt if goods imported by 100% EOU or units in a SEZ.**

- 9) Anti-dumping duty:- when the export price of the product imported into India is less than the normal value of like articles sold in the domestic market of the exporter is known as dumping.
- Anti-dumping duty is levied if such dumping causes or threatens to cause material injury to the domestic industry of India . Dumping is a case where normal value in the exporting market is greater than export price.
- Section 9A of CTA 1975 provides that where any article is exported by an exporter or producer from any country to India at less than its normal value then upon the importation of such article into India, the central government may by a notification in the official gazette impose anti-dumping duty not exceeding the margin of dumping in relation to such article.

- Computation of anti-dumping duty:-
- Margin of dumping or injury margin whichever is less.
- Margin of dumping= Normal value- export price.
- Normal value= price at which the goods are sold in the domestic market of the exporting country in the ordinary course of trade.
- Export price= price at which goods sold by exporting country to importer.
- Injury margin= margin adequate to remove the injury to the domestic industry. It is the difference between the fair selling price due to the domestic industry and the landed price of the dumped imports.

- Example :- if normal value in exporting country is Rs 50 and export price is Rs 40 , dumping margin will be $\text{Rs } 50 - \text{Rs } 40 = \text{Rs } 10$. if landed cost is Rs 45 and fair selling price of domestic industry is Rs 48 then injury margin is Rs 3 (48-45) . Hence anti-dumping duty only Rs 3 can be imposed.

- **Re- importation of goods , concessions and exemptions on re- importation:-** Section 20 reads as under if goods are imported into India after exportation there from, 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 there off. In view of this , in TATA TEA LIMITED Vs COMMISSIONER OF CUSTOM (1997) it has been held that duty is payable on re-importation of goods . In this case, imported machinery was sent abroad for repairs, it was held that duty shall be payable on such re-imported machinery.
- As per chapter 19 para 2 of customs manual 2013, re-import are entitled to following concessions/exemptions: if the same goods which were exported are re-imported with in 03 years by same person , customs duty payable which is equal to duty drawback claimed(which was exempt when goods are initially exported).

- No customs duty is payable if goods are re-imported for repairs, re-conditioning, re-processing, dyeing, refining or similar process (such re-import should be within 03 years and goods must re-exported within 06 months after carrying out such repairs).

- If personal / private property which was imported earlier was re-exported after alteration and renovation etc. it can be re-imported without payment of customs duty.
- Imported goods sent abroad for repairs and re-import after repairs: As per notification no 94/ 1996 dated 16/12/1996 if goods are sent abroad for repairs, duty will be payable on re-imports on the value of re-imported goods after repairs were made up of –
 - A. Fair cost of repairs including cost of material used in repairs (whether such cost are actually incurred or not)
 - B. Freight and insurance charges, both ways.