

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.

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

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.



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.

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.

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

Customs Act, 1962
Customs Tariff Act, 1975



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-

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 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)]**.

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.

12 Nautical miles

Goods are deemed to have been imported if the vessel enters the imaginary line on the sea at the 12th nautical mile i.e. if the vessel enters the territorial waters of India. Therefore, a vessel not bound to India should not enter these waters.

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.



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. The maximum depth of sea water in the continental shelf is 200 meters. 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.