

# Chapter 1: Basic Concepts

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### 1.0 Learning objectives

- Difference between Rules and Regulations
- Meaning of various terms used in the Customs Law
- Circumstance of Levy and Collection of Customs Duties
- Self-assessment procedure

### 1.1 Introduction

Kautiliya's Arthashastra also refers to 'shulka' consisting of import duty and export duty that was collected at the city gates on goods coming in and going out respectively.

Subsequently, the levy of customs duty was organised through legislation during the British period.

Constitutional Provision:

Entry 83 of the Union List of the Seventh Schedule to the Constitution of India is empowered to levy the customs duty by the Central Government of India.

**Section 1. Short title, extent and commencement.**—(1) This Act may be called the Customs Act, 1962.

(2) It extends to the whole of India [w.e.f. 29th March 2018 and, save as otherwise provided in this Act, it applies also to any offence or contravention thereunder committed outside India by any person.]

(3) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.

The term customs is not new for us. It was customary for a trader who brings the goods to a particular kingdom to offer gifts to the king for allowing him to sell his goods in that kingdom. The gifts given by the dealer to the king was nothing but a customary practice in those days. In the modern days, these gifts are collected by the Government of India in the form of Customs Duty from the importer who imports the goods from a country outside India and from an exporter who exports the goods to a country outside India.

The Customs Act was enacted by the Parliament in the year 1962, as per the List I of the Union List Parliament has an exclusive right to make laws. The Customs Act regulates import and export, protecting the Indigenous industry from other countries and so on. The Central Government of India has power to make rules under section 156 of Customs Act, 1962, and also has the power to issue Notifications from time to time for the purpose of smooth functioning and effective administration of the Act.

As per section 157 of the Custom Act, 1962, the Central Board of Excise and Customs (CBE&C), has been empowered to make regulations, consistent with provisions of the Act. The Commissioner of Customs has the power to issue the Public notices which are also called trade notices.

Difference between the Rules and Regulations

Rules	Regulations
(1) Issued by the Government of India	(1) Issued by the CBIC
(2) Rules have to be approved by the Parliament	(2) Regulations do not need to be approved by the Parliament
(3) Has statutory force	(3) Has statutory force

It is important to know the various terms used in the Customs Law to have better understanding of the subject.

## 1.2 Definitions

(1) **Adjudicating Authority:** As per section 2(1) of the Customs Act, 1962, adjudicating authority means any authority competent to pass any order or decision under this Act, but does not include:

- The Central Board of Excise and Customs (CBE&C),
- Commissioner of Customs (Appeals) or
- Customs, Excise and Service Tax Appellate Tribunal (CESTAT)

(2) **Assessment:**

As per the Finance Act, 2018 (w.e.f. 29th March 2018):

**Assessment:** As per section 2(2) of the Customs Act, 1962, 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 (hereinafter referred to as the Customs Tariff Act) 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 provisions 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 therefor 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 specifics of such goods;
- (e) the origin of such goods determined in accordance with the provisions of the Customs Tariff Act or the rules made thereunder, 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;

**Section 2(6) of the Customs Act, 1962:**

w.e.f. 29.3.2018 “Central Board of Excise and Customs”, the words “Central Board of Indirect Taxes and Customs” shall be substituted;

- (3) **Conveyance:** As per section 2(9) of the Customs Act Defines, ‘Conveyance includes a Vessel, an Aircraft and a Vehicle’. The specific terms are vessel (by sea), aircraft (by air) and vehicle (by land).



Vessel



Aircraft



Vehicle

- (4) **Coastal Goods:** As per section 2(7) of the Customs Act, the term coastal goods means goods, other than imported goods, transported in a vessel from one port in India to another.

Under section 7(1)(d) of the Customs Act, 1962, the Central Board of Excise and Customs (CBE&C), may by notification in the Official Gazette, appoint the ports which alone shall be coastal ports for the carrying on of trade in coastal goods or any class of such goods with all or any specified ports in India.

► **Example:**



Chennai Port

Goods originally originated from India



Vizag Port

- (5) **Customs Area:** As per section 2(11) of the Customs Act, customs area means the area of a customs station and includes any area in which imported goods or exported goods are ordinarily kept before clearance by Customs Authorities.

- (6) **Customs port:** As per section 2(12) of the Customs Act, customs port means any port appointed under section 7(a) of the Customs Act, to be a customs port and includes a place appointed under section 7(aa) of the Customs Act, to be an inland container depot (ICD).

Customs Airport under section 7(a) means any airport and includes a place appointed under section 7(aa) (w.e.f. 28-5-2012) to be an air freight station.

Section 7(a): The CBIC may, by notification in the Official Gazette, appoint the ports and air ports which alone shall be customs ports or customs airports for the unloading of imported goods and the loading of export goods or any class of such goods.

Section 7(aa): The places which alone shall be inland container depots (ICD's) for the unloading of imported goods and the loading of export goods or any class of such goods.

- (7) **Customs station:** As per section 2(13) of the Customs Act, customs station means any customs port, customs airport or land customs station.

As per Section 8 of the Customs Act, 1962, the Commissioner of Customs may (i) approve proper places in any customs port or customs airport or coastal port for the unloading of goods or for any class of goods; (ii) specify the limits of any customs area.

As per Section 141 of the Customs Act, 1962, all conveyances and goods in customs area are subject to control of officers of customs for enforcing the provisions of the Customs Act, 1962. The receipt/storage/delivery/dispatch/any other handling of goods (import/export) in the Customs area shall be in the prescribed manner and the responsibility thereon lies on the persons engaged in such activities (i.e. Custodian of the said goods).

**CBIC empowered to permit landing of vessels and aircrafts at any place other than customs port or customs airport [Section 29(1)] w.e.f. 10-5-2013:**

The Finance Act, 2013 has amended section 29(1) to empower CBIC to permit landing of vessels and aircrafts at any place other than customs port or customs airport.

- (8) **Dutiable Goods:** As per section 2(14) of the Customs Act, the term is defined to mean any goods which are chargeable to duty and on which duty has not been paid. It means to say that the name of the product or goods should find a mention in the Customs Tariff Act,

- (9) **Entry:** As per section 2(16) of the Customs Act, entry in relation to goods means an entry made in bill of entry, shipping bill or bill of export and includes in the case of goods imported or to be exported by post, the entry referred to in section 82 or the entry made under the regulations made under section 84 of the Customs Act.
- (10) **Export:** As per section 2(18) of the Customs Act, the term export means taking out of India to a place outside India.
- (11) **Exported Goods:** As per section 2(19) of the Customs Act, the term exported goods means any goods, which are to be taken out of India to a place outside India.

► **Example:**

The vessel sunk within territorial waters of India and therefore there is no export. Accordingly, no duty drawback shall be available in this case. [*Union of India v Rajindra Dyeing & Printing Mills Ltd.* 2005 (180) ELT 433 (SC)]. The territorial waters extend to 12 nautical miles into the sea from the base line.

- (12) **Foreign going Vessel or aircraft:** As per section 2(21) of the Customs Act, the foreign going vessel or aircraft means any vessel or aircraft for the time being in the carriage of goods or passengers between any port or airport in India and any port or airport outside India, whether touching any intermediate port or airport in India or not. The following are also included in the definition:

- (i) A foreign naval vessel doing naval exercises in Indian waters
- (ii) A vessel engaged in fishing or any other operation (like oil drilling by domestic vessel or foreign vessel) outside territorial waters
- (iii) A vessel going to a place outside India for any purpose whatsoever.

**Example:** An ONGC vessel and a vessel owned by A Ltd. of USA are drilling oil beyond 12 nautical miles in the sea. Hence, both the vessels are called as foreign going vessels.

- (13) **Goods:** As per section 2(22) of the Customs Act, the term goods includes (a) Vessels, aircrafts and vehicles (b) stores (c) baggage (d) currency and negotiable instruments and (e) any other kind of movable property.

**Case Law:**

RST Ltd. imported drawings and designs in paper form through professional courier and post parcels.

However, the Assistant Commissioner of Customs valued these drawings and designs and levied duty on them.

RST Ltd. Contended that customs duty cannot be levied on drawings and designs as they do not fall in the definition of goods under the Customs Act, 1962.

Do you feel the stand taken by the RST Ltd. is tenable in law? Support your answer with a decided case law, if any.

(Mock Test CA Final May 2014)

**Answer:**

***Associated Cement Companies Ltd. v CC 2001 (128) ELT 21 (SC)***

The Apex Court observed that though technical advice or information technology are intangible assets, but the moment they are put on a media, whether paper or cassettes or diskettes or any other thing, they become movable and are thus, goods.

Therefore, the Supreme Court held that drawings, designs, manuals and technical material are goods liable to customs duty.

Therefore, the stand taken by the RST Ltd. is not correct in law.

- (14) **Import:** As per the section 2(23) of the Customs Act, the term import means bringing into India from a place outside India.
- (15) **Imported Goods:** As per section 2(25) of the Customs Act, the term imported goods means any goods brought into India from a place outside India but does not include goods which have been cleared for home consumption.
- (16) **Importer:** As per section 2(26) of the Customs Act, the term importer means 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.
- (17) **India (i.e. Territorial Waters):** As per section 2(27) of the Customs Act, the term India is an inclusive definition and includes not only the land mass of India but also territorial waters of India. The territorial waters extend to 12 nautical miles into the sea from the base line. Therefore, a vessel not intended to deliver goods should not enter these waters.

- (18) **Indian Customs Waters:** As per section 2(28) of the Customs Act, the term Indian Customs Waters means the waters extending into the sea upto the limit of contiguous zone of India under section 5 of the Territorial Waters, Continental Shelf, Exclusive Economic Zone and other Maritime Zone Act, 1976 and includes any bay, gulf, harbour, creek or tidal river.

Continental Shelf means the area of relatively shallow seabed between the shore of a continent and deeper ocean

Indian Customs Waters extend upto 24 nautical miles from the base line. Thereby, Indian Customs Waters cover both the Indian Territorial Waters and Contiguous Zone as well. Indian Territorial Waters extend upto 12 nautical miles from the base line whereas Contiguous Zone extended to a further 12 nautical miles from the outer limit of territorial waters.

**Example:**

If the proper officer of customs has reason to believe that any vessel in Indian Customs waters is being used in the smuggling of any goods, he may at any time stop any such vessel and examine and search any goods in the vessel (Section 106(1)(b) of the Customs Act, 1962).

- (19) **Stores:** As per section 2(38) of the Customs Act, stores means goods for use in a vessel or aircraft and includes fuel and spare parts and other articles of equipment, whether or not for immediate fitting.

**Case Law:**

A Big Ship carrying merchandize and stores enters the territorial waters of India, but it cannot enter the port. In order to unload the merchandize lighter ships are employed. Stores are consumed on board the ship as well as by the small ships. Examine whether such consumption of stores attracts customs duty. Quote relevant section and case law if any. Stores are supplied to the above ships. Will such supplies be treated as exports and be entitled to draw back? (CMA Final Dec 2013)

**Answer:** Bringing of 'stores' is treated as import. However, there is special provision for stores under section 87. Imported stores consumed on board an ocean going vessel (i.e. foreign going vessel) are exempt from import duty under section 87. Since the ship is ocean going, stores consumed on board will not attract customs duty.

Regarding the smaller ships which are employed to unload the cargo from the mother ship, they are termed as "Transshippers". These are also treated as ocean going vessels as was decided in *UOI v V M Salgaoncar AIR 1998 SC 1367: 99 ELT 3 (SC)*.

Hence stores consumed by small vessels would also be exempt from customs duty.

Stores supplied to the vessel will be treated as export as per Section 89 of Customs Act and hence will be eligible for duty drawback.

- (20) **Person-in-charge:** As per section 2(31) person-in-charge means

(a) Vessel	Master
(b) Aircraft	Commander or Pilot in Charge
(c) Train	Conductor or Guard
(d) Vehicle	Driver
(e) Other Conveyance	Person in Charge

- (21) **Bill of Export:** As per Section 2(5) of the Customs Act, 1962, the exporter of any goods shall make entry thereof by presenting to the proper officer in the case of goods to be exported by land, a bill of export in the prescribed form.

- (22) **Import Report:** As per Section 2(24) of the Customs Act, 1962, the person-in-charge of a vehicle carrying imported goods or any other person as may be notified by the Central Government shall, in the case of a vehicle, deliver to the proper officer an import report within twelve hours after its arrival in the customs station, in the prescribed form.

**As per Finance Act, Import Manifest Report – Amendment to IGM – Procedure:-**

On receipt of representation from the Trade that owing to tedious process of IGM amendment, there is reluctance to avail the facility of advance/prior Bill of Entry, the Department of Revenue prescribing revised procedure has clarified that the responsibility of amendment in the IGM rest solely with Shipping Line/ Agent, as they file IGM with Customs under section 30 of the Customs Act, 1962, the fine/penalty impose, if any, upon adjudication in such cases, shall be payable by the Shipping Line only or such other person as specified; No fine/penalty is required to be imposed on the consignee or otherwise; and No request for any amendment in the IGM from Customs Broker/Importer will be entertained (M.F. Circular No. 14/2017-Cus, dated 11-4-2017).

w.e.f. 29.3.2018, for the words “import manifest” and “export manifest”, wherever they occur, the words “arrival manifest or import manifest” and “departure manifest or export manifest” shall, respectively, be substituted, and such other consequential amendments as the rules of grammar may require shall also be made. “such form and manner as may be prescribed and in case, the person-in charge fails to deliver the departure manifest or export manifest or the export report or any part thereof within such time, and the proper officer is satisfied that there is no sufficient cause for such delay, such person-in-charge shall be liable to pay penalty not exceeding **fifty thousand rupees**”.

**Time limit for submission of Arrival Manifest or Import Report:**

As per Section 30(1) of the Customs Act, 1962, an arrival manifest by presenting electronically prior to the arrival of vessel or the aircraft, as the case may be, and in case of a vehicle, an import report within 12 hours, after its arrival in the Customs Station.

At the discretion of the Principal Commissioner or Commissioner of Customs this declaration may be filed within 24 hours of arrival of the vessel or Aircraft.

**IN CASE OF VESSEL OR AIRCRAFT PERSON-IN-CHARGE, DELIVER TO THE PROPER OFFICER IMPORT GENERAL MANIFEST (electronic filing mandatory w.e.f. 10-5-2013)**

- (23) **Tariff Value:** The CBIC has the power to fix tariff values for any class of imported goods or exported goods. Fixing the tariff value for any class of imported goods or exported goods means the duty shall be chargeable with reference to such tariff value. (For example, please refer the duty based on the % of tariff value under Customs).
- (24) **High Seas:** An area beyond 200 nautical miles from the base line is called High Seas. All countries have equal rights in this area.
- (25) **Exclusive Economic Zone:** Exclusive Economic Zone extends to 200 nautical miles from the baseline. In this zone, the coastal State has exclusive rights to exploit it for economic purpose like constructing artificial islands for oil exploration, power generation and so on.

*Note:* one nautical mile = 1.1515 miles or 1.853 kms.

- (26) **Domestic Tariff Area** means the whole of India (including the territorial waters and continental shelf) but does not include the areas of the Special Economic Zones (Section 2(i) of Special Economic Zones Act, 2005), 100% Export Oriented Units (EOUs)/Electronic Hardware Technology Park (EHTP)/Software Technology Park (STP)/Bio Technology Park (BTP).

**CASE LAW:**

**GOODS CLEARED FROM UNIT OF DTA TO SPECIAL ECONOMIC ZONE (SEZ) CHARGEABLE TO DUTY UNDER THE SEZ ACT, 2005 OR THE CUSTOMS ACT, 1962?**

**ANSWER:**

*Tirupati Udyog Ltd. v UOI 2011 (272) ELT 209 (AP)*

**DECISION:** Customs duty can be levied only on goods imported into or exported beyond the territorial waters of India, section 12(1) of the Customs Act, 1962 (i.e. charging section) is not attracted for supplies made by a DTA unit to a unit located within the Special Economic Zone.

**Therefore, goods cleared from DTA to SEZ are not liable to export duty either under SEZ Act, 2005 or under the Customs Act, 1962.**

- (27) Customs Act, 1962 and Customs Tariff Act, 1975 have been extended to whole of Exclusive Economic Zone (EEZ) and Continental Shelf of India for the purpose of (i) processing for extraction or production of mineral oils and (ii) Supply of any goods in connection with processing for extraction or production of mineral oils.

**Example:** Goods imported by the assessee for consumption on oil rigs which are situated in Continental Shelf/Exclusive Economic Zones of India, are deemed to be a part of Indian Territory. Therefore, the supply of imported spares or goods or equipments to the rigs by a ship will attract import duty. [*Aban Lloyd Chillies Offshore Ltd. v UOI (2008) 227 ELT 24 (SC)*]

- (28) **Prohibited goods:** means any goods the import or export of which is subject to any prohibition under this Act or any other law for the time being in force but does not include any such goods in respect of which the conditions subject to which the goods are permitted to be imported or exported have been complied with.



Oil Rig



**Example:** Pornographic and obscene materials, Maps and literature where Indian external boundaries have been shown incorrectly, Narcotic Drugs and Psychotropic Substances, Counterfeit goods and goods violating any of the legally enforceable intellectual property right, Chemicals mentioned in Schedule 1 to the Chemical Weapons Convention of U.N. 1993, Wild life products, Specified Live birds and animals, Wild animals, their parts and products, Exotic birds except a few specified ones, Beef, tallow, fat/oil of animal origin. Specified Seashells, Human skeleton.

W.e.f. 10-5-2013: Clause (n) of section 11(2) provided that importation/exportation of goods may be prohibited for the protection of patents, trademarks and copyrights.

The Finance Act, 2013 has expanded the scope of clause (n) to include designs and geographical indications so as to provide for protection of these legal rights also. Consequently, Central Government can now prohibit the import/export of specified goods for protection of **designs and geographical indications** also apart from patents, trademarks and copyrights.

### 1.3 Circumstances of Levy

Section 12 of the Customs Act makes it clear that import or export of goods into or out of India is the taxable event for payment of the duty of customs. Lot of problems were faced in determining the point at which the importation or exportation takes place. The root cause of the problem was the definition of India.

The Supreme Court of India has given the landmark judgments in cases of *Union of India v Apar Industries Ltd* (1999) and further in the case of *Garden Silk Mills Ltd v Union of India* (1999). The import of goods will commence when they cross the territorial waters but continues and is completed when they become part of the mass of goods within the country, and the taxable event being reached at the time when goods reach the customs barriers and bill of entry for home consumption is filed.

#### 1.3.1 Taxable event for imported goods

In the case of *Kiran Spinning Mills* (1999) the Hon'ble Supreme Court of India held that import is completed only when goods cross the customs barrier. The taxable event is the day of crossing of customs barrier and not on the date when goods landed in India or had entered territorial waters of India.

Hence, taxable event in case of imported goods can be summed up in the following lines:

The taxable event occurs in the course of imports under the customs law with reference to the principles laid down by the Supreme Court in the cases of *Garden Silk Mills Ltd. v Union of India*; and *Kiran Spinning Mills v CC*:

- (i) Unloading of imported goods at the customs port – *is not a taxable event*
- (ii) Date of entry into Indian territorial waters – *is not a taxable event*
- (iii) **Date on which the goods cross the customs barrier - is a taxable event**
- (iv) Date of presentation of bill of entry – *is not a taxable event*

#### Crossing customs barrier:

*when goods are imported into India even after the goods are unloaded from the ship, and even after the goods are assessed to duty subsequent to the filing of a bill of entry, the goods cannot be regarded as having crossed the customs barrier until the duty is paid and the goods are brought out of the limits of the customs station.*

#### No time limit for submission of bill of entry after the delivery of Import General Manifest (IGM):

*As per Section 46(3) of the Customs Act, 1962 a bill of entry may be presented at any time after the delivery of import manifest or import report. Therefore, no time limit has been fixed for submission of bill of entry. Hence, no penalty can be imposed if there is delay in submission of Bill of Entry. However, cargo should be cleared from the wharf within 30 days of unloading.*

#### W.e.f. 31-3-2017 Finance Act, 2017 Section 46 amended: Submission of Bill of entry:

The importer shall have presented the bill of entry under section 46(1) of the Customs Act, 1962 before the end of the next day following the day (excluding holidays) on which the aircraft or vessel or vehicle carrying the goods arrives at a customs station at which such goods are to be cleared for home consumption or for warehousing.

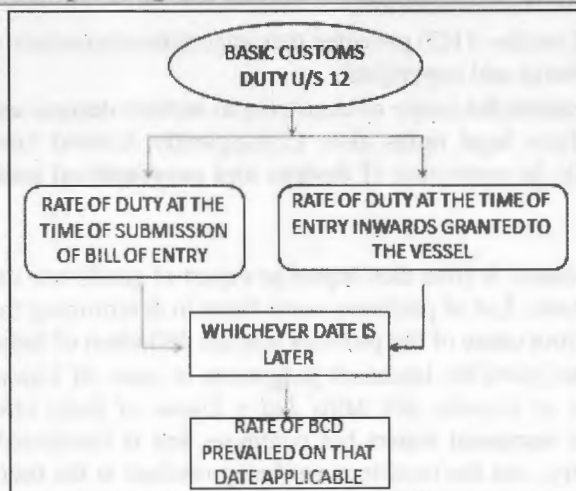
Provided that a bill of entry may be presented within 30 days of the expected arrival of the aircraft or vessel or vehicle by which the goods have been shipped for importation into India.

Provided further that where the bill of entry is not presented within the time so specified and the proper officer is satisfied that there was no sufficient cause for such delay, the importer shall pay such charges for the late presentation of the bill of entry as may be prescribed.

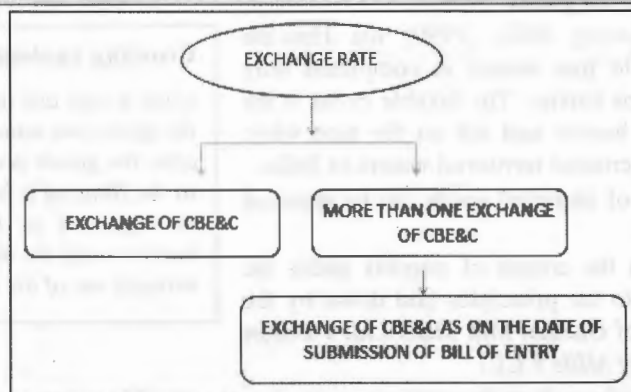
*Note:* Bill of entry may be allowed to present 30 days before the entry inward granted to the vessel.

**W.e.f. 6-8-2014** The first proviso to section 46(3) has now been omitted and second proviso amended to lay down that a bill of entry may be presented before the delivery of import manifest (import through vessel or aircraft) or **import report** (import through land route) if the vessel/aircraft/**vehicle** by which the goods have been shipped for importation into India is expected to arrive within 30 days from the date of such presentation.

#### Basic Customs Duty (BCD) on imported goods



#### Exchange rate for Imported Goods



#### Clearance of goods for home consumption section 47(1) of the Customs Act, 1962

w.e.f. 14-5-2016, Section 47(1) Where the proper officer is satisfied that any goods entered for home consumption are not prohibited goods and the importer has paid the import duty, if any, assessed thereon and any charges payable under this Act in respect of the same, the proper officer may make an order permitting clearance of the goods for home consumption:

Provided that the Central Government may, by notification in the Official Gazette, permit certain class of importers to make deferred payment of said duty [i.e. duty payable under section 47(1)] or any charges in such manner as may be provided by rules (w.e.f. 14-5-2016).

#### w.e.f. 31-3-2017 Finance Act, 2017 section 47(2) amended:

Importer shall have to make payment of duty on the same day in case of self-assessed Bill of Entry and in case of re-assessment or provisional assessment, within one day after the return of Bill of Entry.

As per section 47(2) of Customs Act, the importer is liable to pay interest where—

- the importer fails to pay the import duty under this section on the same day in case of self-assessed Bill of Entry and in case of re-assessment or provisional assessment, within one day after the return of Bill of Entry from the date on which the bill of entry is returned to him for payment of duty, he shall pay interest @ 15% p.a. on such duty till the date of payment of the said duty.
- w.e.f. 14-5-2016: in the case of deferred payment under the proviso to sub-section (1), from such due date as may be specified by rules made in this behalf, he shall pay interest @15% p.a. on the duty not paid or short-paid till the date of its payment.



**Note:** if the CBIC satisfied that it is necessary in the public interest so to do, it may, by order for reasons to be recorded, waive the whole or part of any interest payable under this section.

**Example:** An importer imported some goods for subsequent sale in India at \$ 10,000 on Assessable value basis. Relevant exchange rate and rate of duty are as follows:

Particulars	Date	Exchange rate declared by the CBE&C	Rate of Basic Customs Duty
Date of submission of bill of entry	25th February 2018	₹58/USD	10%
Date of entry inwards granted to the vessel	5th March 2018	₹58.75/USD	12%

Calculate Assessable value and Customs Duty in Indian rupees?

**Answer:**

Relevant rate of duty for the imported goods is 12% (i.e. Date of submission of bill of entry or Date of entry inwards granted to the vessel whichever is later)

Exchange Rate is ₹58 per USD (i.e. the rate of CBE&C as on the date of submission of Bill of Entry by the importer)

**Assessable value** = ₹5,80,000

(i.e. USD 10,000 x ₹58)

**Basic Customs Duty** = ₹69,600 (i.e. ₹5,80,000 x 12%)

**Social Welfare Surcharge** = ₹ 6,960 (i.e. 69,600 x 10%)

**Total Customs Duty** = ₹76,560

### 1.3.2 Taxable event for warehoused goods

The taxable event in case of warehoused goods is when goods are cleared from customs bonded warehouse, by submitting sub-bill of entry. As per Section 15(1)(b) of the Customs Act, 1962, when goods have been deposited into a warehouse, and they are removed there from for home consumption, the relevant date for determination of rate of duty is the date of presentation of ex-bond bill of entry (i.e. Sub-bill of Entry) for home consumption.

Section 15(1) has been amended to provide for determination of rate of duty and tariff valuation for imports through a vehicle in cases where the bill of entry is filed prior to the delivery of import report. The proviso to section 15(1) has been amended to lay down that if a bill of entry has been presented before the date of arrival of the vehicle by which the goods are imported, the bill of entry shall be deemed to have been presented on the date of such arrival. Therefore, under the amended provisions, the relevant date for determination of rate of duty and tariff valuation of imported goods in different cases will be as under:

Particulars	Relevant date w.e.f. 6-8-2014
Goods entered for home consumption under section 46	Date of presentation of bill of entry OR Date of entry inwards of the vessel/arrival of the aircraft or <b>vehicle whichever is later</b>
Goods cleared from a warehouse under section 68	Date of presentation of bill of entry for home consumption
Other goods	Date of payment of duty

**Example:** An importer imported some goods. Entry inwards granted to the vessel on 7th February, and the goods were cleared from Chennai port for warehousing on 8th February, after assessment. The Bill of Entry was presented on 1st February for warehousing. Assessable value was US \$ 10,000. Assume that no additional duty is payable. The goods were warehoused at Chennai and were cleared from Chennai warehouse on 4th March. What is the duty payable while removing the goods from Chennai warehouse on 4th March? Exchange rates and rate of Customs Duties are as follows:

Particulars	Date	Exchange rate declared by the CBE&C	Basic Customs Duty
Date of submission of bill of entry for warehousing	1st February	₹55/USD	10%
Date of entry inwards granted to the vessel	7th February	₹59/USD	15%
Date of clearance of goods from warehouse	4th March	₹60/USD	12%

**Answer:**

Relevant rate of duty for the imported goods warehoused is 12%

(i.e. Date of submission of sub-bill of entry) Exchange Rate is ₹55 per USD

(i.e. the rate of CBE&C as on the date of submission of Bill of Entry by the importer)

**Assessable value** = ₹5,50,000 (i.e. USD 10,000 x ₹55)

**Basic Customs Duty** = ₹66,000 (i.e. ₹5,50,000 x 12%)

**Social Welfare Surcharge** = ₹6,600

**Total Customs Duty** = ₹72,600

**1.3.3 Taxable event for exported goods**

As per section 16(1) of the Customs Act, 1962, taxable event arises only when proper officer makes an order permitting clearance (i.e. entry outwards) granted — *Esajee Tayabally Kapasi (1995) (SC)* and loading of the goods for exportation took place under section 51 of the Customs Act, 1962. In the case of any other goods, on the date of payment of duty.

Therefore, export duty rate prevailing as on the date of entry outwards granted to the vessel by the Customs Officer is relevant.

**Example 1:** An assessee submitted the shipping bill on 1st January 2014. At that time, the export duty was nil (i.e. duty free). Let export order (i.e. entry outwards) was granted on 5th January 2014. However, due to some problems goods could not be loaded into ship. On 25th March 2014, the shipping bills were voluntarily resubmitted by the assessee with the request to permit the shipment by a different vessel. Subsequently, on 27th March 2014, let export order was granted. However, in the meantime the duty at the rate of 12% ad valorem was levied with effect from 1st March 2014. Examine, whether exporter is liable to pay duty?

**Answer:** In the given case actual export took place only after revised shipping bill was submitted on 25th March 2014, for which entry outwards granted on 27th March 2014. Hence, the rate prevalent as on the date of entry outwards granted to the vessel is relevant for determination of rate of duty. Therefore, assessee is liable to pay export duty @12%.

**Rate of foreign exchange:** In case of exports, rate of exchange of the CEBC as in force on the date on which a shipping bill or bill of export, as the case may be, is presented under section 50 of the Customs Act, 1962 is applicable.

**FOB Value of exports:**

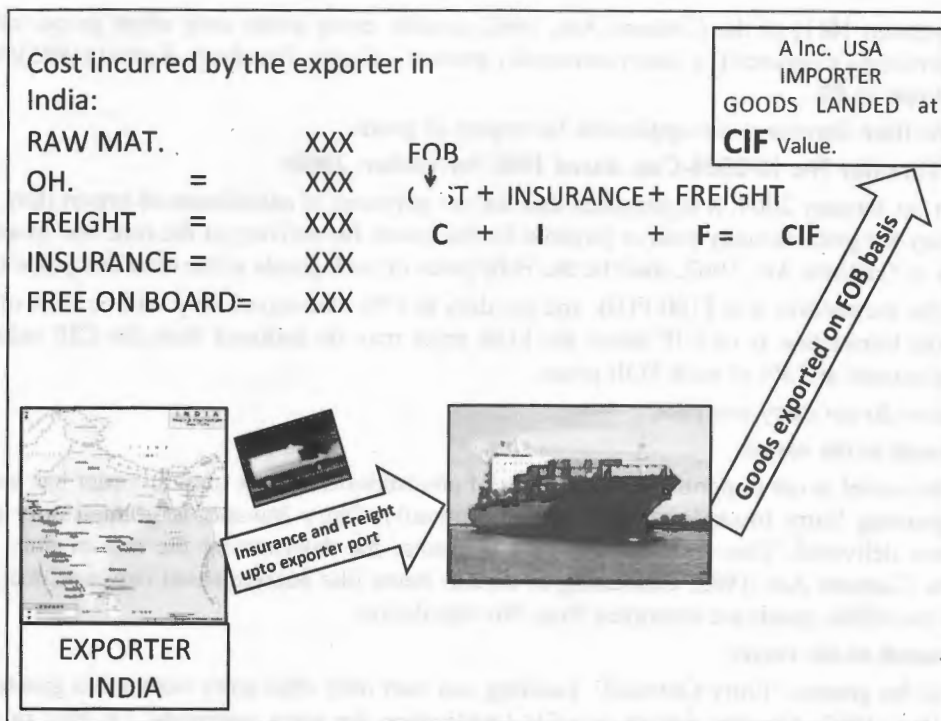
FOB value is normally considered as 'value' for export valuation. However, this can be rejected if there is over valuation (often done to get excess export benefits).

**ASSESSABLE VALUE (for Exported Goods) = FREE ON BOARD (i.e. FOB)**

**Free on Board (FOB):** FOB means all expenditure incurred by exporter upto the point of loading goods into the vessel or aircraft or vehicle is incurred by the exporter and hence, from importer point of view it is Free on Board.

**Cost Insurance and Freight (CIF):** CIF means once the goods are reached to the importer country port or airport importer has to pay Cost (i.e. FOB value) along with Insurance and Freight from exporter country to importer country.

**Important point:** As per our Foreign Trade Policy (2015-2020) all imports into India are measured in terms of CIF value whereas exports from India are measured in terms of FOB value.

**Simplified approach:**

**Example:** Compute export duty from the following data:

- FOB price of goods: US \$ 1,00,000
- Shipping bill presented electronically on 28-02-2018
- Proper officer passed order permitting clearance and loading of goods for export on 01-03-2018.
- Rate of exchange and rate of export duty are as under

	Rate of Exchange	Rate of Export Duty
On 28-02-2018	1 US \$ = ₹65	10%
On 01-03-2018	1 US \$ = ₹66	8%

- Rate of exchange is notified for export by Central Board of Excise and Customs (Make suitable assumptions wherever required and show the workings)

**Answer:**

Particulars	Value in ₹	Remarks
FOB	65,00,000	1,00,000 x ₹65
Customs Duty	5,20,000	₹65 lakhs x 8%

**Note:** Export duty does not attract Social Welfare Surcharge.

Exchange rate for export of goods is the rate of CBIC at the time of submission of shipping bill.

Rate of duty for export is the date on which entry outward granted for export and loading of goods taken place.

**Example 3.** An Exporter exported goods valuing ₹1,00,000 to United States of America (USA) by a vessel. Other details are as follows:

Particulars	Date of submission	Rate of export duty
Shipping Bill	1.8.2017	10%
Entry outwards granted to the vessel by the proper officer of Customs	5.8.2017	8%
Ship let for USA from the Indian port	7.8.2017	15%
Ship crossed the territorial waters of India	8.8.2017	12%

You are required to find the customs duty payable for exported goods?

**Answer:**

Customs Duty = ₹8,000 (i.e. ₹1,00,000 x 8%)

Note:

- (i) As per section 16(1) of the Customs Act, 1962, taxable event arises only when proper officer makes an order permitting clearance (i.e. entry outwards) granted - *Esajee Tayabally Kapasi (1995)(SC)*. Therefore, relevant rate is 8%
- (ii) Social Welfare Surcharge not applicable for export of goods.

As per CBE&C Circular No. 18/2008-Cus, dated 10th November, 2008:

With effect from 1st January 2009, it is proposed that for the purposes of calculation of export duty, the transaction value, that is to say the price actually paid or payable for the goods for delivery at the time and place of exportation under section 14 of Customs Act, 1962, shall be the FOB price of such goods at the time and place of exportation.

For example, if the transaction is at ₹100 FOB, and the duty is 15%, the export duty will be 15% of FOB price that is ₹15. In case the transaction is on CIF basis, the FOB price may be deduced from the CIF value, and then the export duty is calculated as 15% of such FOB price.

Note: Export duties do not carry any cess.

### 1.3.4 Entry Inwards to the vessel

The Master of the vessel is not to permit the unloading of any imported goods until an order has been given by the proper officer granting Entry Inwards of such vessel. Normally, Entry Inwards is granted only after the import manifest has been delivered. This entry inward date is crucial for determining the rate of duty, as provided in section 15 of the Customs Act, 1962. Unloading of certain items like accompanied baggage, mail bags, animals, perishables and hazardous goods are exempted from this stipulation.

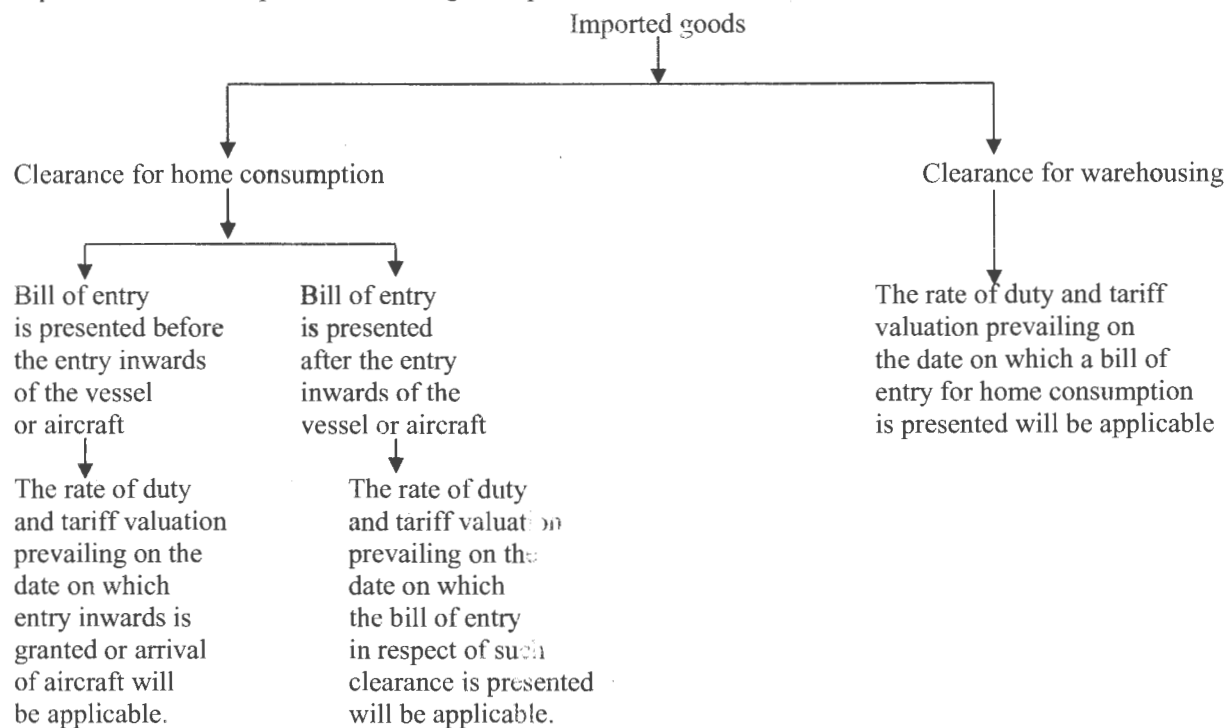
### 1.3.5 Entry outwards to the vessel

The vessel should be granted 'Entry Outward'. Loading can start only after entry outward is granted under section 39 of Customs Act, 1962. Steamer Agents can file 'application for entry outwards' 14 days in advance so that intending exporters can start submitting 'Shipping Bills'. This ensures that formalities are completed as quickly as possible and loading in ship starts quickly.

If the shipping bill has been presented before the date of entry outwards of the vessel by which the goods are to be exported, the shipping bill shall be deemed to have been presented on the date of such entry outwards. The provisions of this section shall not apply to baggage and goods exported by post.

### 1.3.6 Rate of duty and tariff valuation for imported goods

Date for determining the rate of duty and tariff valuation of imported goods will depend upon the imported goods cleared for home consumption and cleared for warehousing. The determination of appropriate rate of duty can be explained with the help of the following example:



*Note:* The applicable exchange rate is the rate declared by the CBIC on the date of submission of Bill of Entry. If more than one exchange of CEBC is available, then consider the exchange rate which was prevailed as on the date of submission of Bill of Entry.

#### 1.4 Circumstance under which no duty will be levied

- (1) No duty will be levied on pilfered goods under section 13 of the Customs Act. 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, then the importer shall not be liable to pay the duty leviable on such goods.
- (2) No duty will be levied when the goods are damaged or deteriorated before or during the course of their unloading, where it is shown to the satisfaction of the Assistant or Deputy Commissioner of Customs (Section 22).
- (3) No duty will be levied in case of warehoused goods, when the goods are damaged before their actual clearance from such warehouse, where it is shown to the satisfaction of the Assistant or Deputy Commissioner of Customs (Section 22).
- (4) No duty will be levied in case of goods lost or destroyed due to natural causes like fire, flood, etc. such loss may take place at any time before the clearance of goods for home consumption. The loss may be at the warehouse (Section 22).
- (5) No duty will be levied in case of goods abandoned by importers. Sometimes it may so happen that importer is unwilling or unable to take delivery of the imported goods due to the following reasons:
  - the said goods may not be according to the specification,
  - the goods may have been damaged during voyage,
  - there might have been breach of contract.

In all the above cases the importer has to relinquish his title to the goods unconditionally and abandon them. The relinquishment is done by endorsing the document of title to the goods in favour of the Commissioner of Customs along with invoice.

- (6) No duty will be levied, if the Central Government is satisfied that it is necessary in the public interest not to levy import duty by issuing the notification in the Official Gazette.

##### 1.4.1 Transit of Goods (Section 53 of the Customs Act, 1962)

Any goods imported in any conveyance will be allowed to remain on the conveyance and to be transited without payment of duty, to any place out of India or any customs station.

CONVEYANCE, includes a vessel, an aircraft and a vehicle

These goods should be mentioned as Transit Goods in the Import General Manifest (IGM). They are allowed by customs to be transited through Indian port without payment of duty.

However, Section 53 is not applicable in case of prohibited goods. It means to say transit of goods does not cover prohibited goods, which will not be allowed to be transited.

##### w.e.f. 14-5-2016:

Subject to the provisions of section 11 (i.e. power to prohibit importation or exportation of goods), where any goods imported in a conveyance and mentioned in the import manifest or the import report, as the case may be, as for transit in the same conveyance to any place outside India or to any customs station, **the proper officer** may allow the goods and the conveyance to transit without payment of duty, subject to such conditions, as may be prescribed.

W.e.f. 29.03.2019:

Section 11(3) of the Customs Act, 1962, Any prohibition or restriction or obligation relating to import or export of any goods or class of goods or clearance thereof provided in any other law for the time being in force, or any rule or regulation made or any order or notification issued thereunder, shall be executed under the provisions of that Act only if such prohibition or restriction or obligation is notified under the provisions of this Act, subject to such exceptions, modifications or adaptations as the Central Government deems fit.”.

##### Example 1:

A vessel Bhishma, sailing from U.S.A. to Australia via India. Bhishma carries various types of goods namely ‘A, B, C & D’. ‘A & B’ are destined to Mumbai Port and balance remains in the same vessel. Subsequently vessel chartered to Australia.

Find the imported goods and transit goods?



**Answer:**

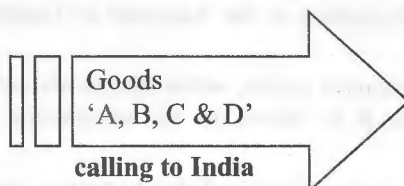
Imported Goods are A & B

Transit goods are C & D

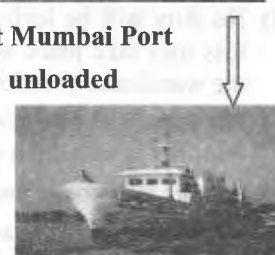
The same example has been explained with the help of a diagram.



Ship at U.S.A. Port



Ship arrived at Mumbai Port  
Goods 'A & B' unloaded



Ship arrived at Australian Port  
Goods 'C & D' unloaded

#### 1.4.2 Transshipment of Goods (Section 54 of the Customs Act, 1962)

Transshipment means transfer from one conveyance to another with or without payment of duty. It means to say that goods originally imported from outside India into India, then transshipped to another vessel to a place within India or outside India.

If the imported goods are intended for transshipment, a '**bill of transshipment**' shall be presented to the proper officer by the person-in-charge of conveyance or the person authorized by the exporter to transship along with a fee of ₹20 and also a bond.

If the transshipped goods are covered by an international treaty or a bilateral agreement between India and another country, then a '**Declaration of Transshipment**' will be presented in the place of Bill of Transshipment.

#### Transshipment of goods without payment of duty under Section 54(3):

Transshipment of goods without payment of import duty is permissible only if the following conditions satisfy:

- Transshipment of goods with foreign destination
- The goods find place as Transshipment Goods in the Import of General Manifest (IGM) or Import Report in case of goods imported in a vehicle
- Bill of Transshipment or Declaration of Transshipment filed.
- Goods must be transshipped to another vessel to place outside India.

#### 1.4.3 Duty on Transit or Transshipment of goods (Section 55 of the Customs Act, 1956)

Where any goods are allowed to be transited or transshipped, they shall, on their arrival at such station, be liable to duty and shall be entered in like manner as goods are entered on the first importation thereof and the provisions of this act and any rules and regulations shall, so far as may be, apply in relation to such goods.

If the goods arrive at such customs station in India as ultimate destination, then

- these goods are examined and assessed to pay duty,
- they shall be entered in the like manner as the goods are entered on the first importation and
- they are governed by the Customs Act, 1962 and the rules and regulations thereunder are same as applicable to any imported goods.

#### Example 2:

A vessel Bhishma, sailing from U.S.A. to Australia via, India carries various types of products namely 'A, B, C & D'. 'A & B' are destined to Mumbai Port. On account of submission of **bill of transshipment** product 'A' transshipped to Chennai port as ultimate destination in India and product 'B' transshipped to Srilanka.

Find the imported goods, Transshipment goods and transit goods?

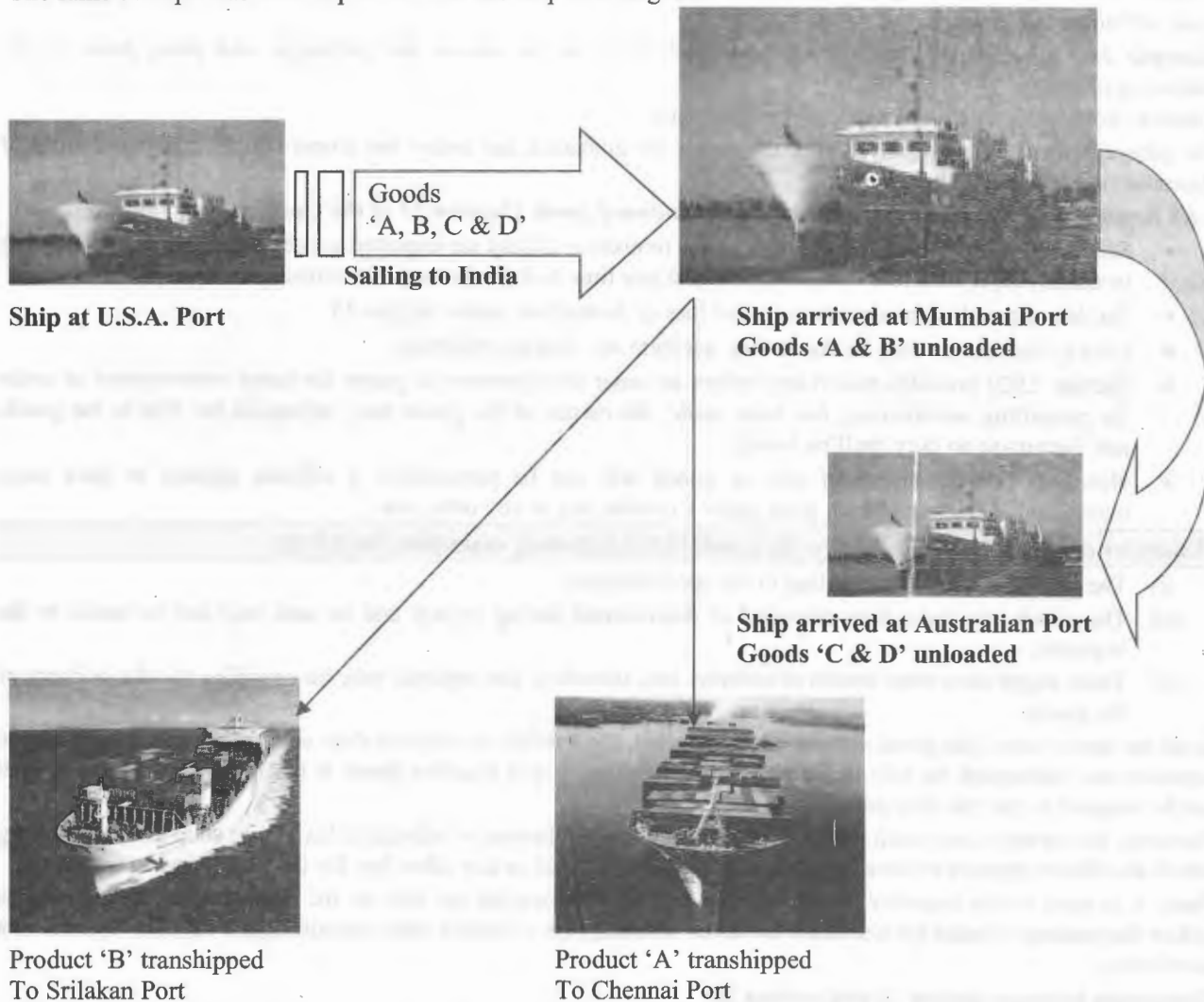
**Answer 2:**

Product 'A' is imported goods because its ultimate destination is in India.

Products 'A & B' are called as Transshipment goods, since these goods are transshipped to another vessel, Product 'A' transshipped to Chennai attracts import duty whereas product 'B' is destined to Srilanka without payment of duty.

Products C & D are transit goods since these goods remains in the same vessel Bhishma chartered to Australia.

The same example has been explained with the help of a diagram.

**1.4.4 Pilferage: Section 13 of the Customs Act, 1962**

- Pilferage means loss arising out of theft.
- No duty is payable under section 13, if the goods are pilfered
- 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
- If the duty is paid before finding the pilferage, refund can be claimed if goods are found to be pilfered during examination but before order for clearance is made.
- Section 13 does not apply for the warehoused goods.

**w.e.f. 10-5-2013**, there shall be no duty liability on a sample of goods consumed/destroyed during the course of testing/examination.

**Important points:**

- If goods are pilfered after the order of clearance is made but before the goods are actually cleared, section 13 is not applicable and thus, duty would be leviable.
- Section 13 deals with only pilferage. It does not deal with loss/destruction of goods.

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

(d) In case of pilferage, only section 13 applies and remission of duty under section 23(1) is not permissible.

**Example 1:** If goods are pilfered after the order of clearance is made but before the goods are actually cleared, duty would be leviable?

**Answer:** Yes. Importer has to pay duty.

*Note:* refund can be claimed.

**Example 2:** Provisions of section 13 would apply if it can be shown that pilferage took place prior to the unloading of goods?

**Answer:** Section 13 would not apply in the given case.

The pilferage should have occurred after the goods are unloaded, but before the proper officer makes the order of clearance.

#### 1.4.5 Remission of Duty on Loss, destroyed or abandoned goods [Section 23 of the Customs Act, 1962]

- Section 23(1) of Customs Act provides for remission of duty on imported goods lost (other than pilferage) or destroyed, if such loss or destruction is at any time before clearance for home consumption.
- Burden of proof is on importer to prove loss or destruction under section 23
- Loss or destruction may be due to fire, accident etc., but not pilferage
- Section 23(2) provides that at any time before an order for clearance of goods for home consumption or order for permitting warehousing has been made, the owner of the goods may relinquish his title to the goods and thereupon no duty shall be levied.
- However, relinquishment of title of goods will not be permissible if offence appears to have been committed in respect of such goods under Customs Act or any other law

#### Importer may relinquish his title to the goods in the following cases [Section 23(2)]:

- The goods may not be according to the specifications;
- The goods may have been damaged or deteriorated during voyage and as such may not be useful to the importer;
- 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 may relinquish his title to the goods unconditionally and abandon them. 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.

**Note:** It is open to the importer to exercise the option to relinquish the title on the imported goods at any time before the passing of order for clearance for home consumption or before order permitting the deposit of goods in a warehouse.

#### Distinction between section 13 and section 23:

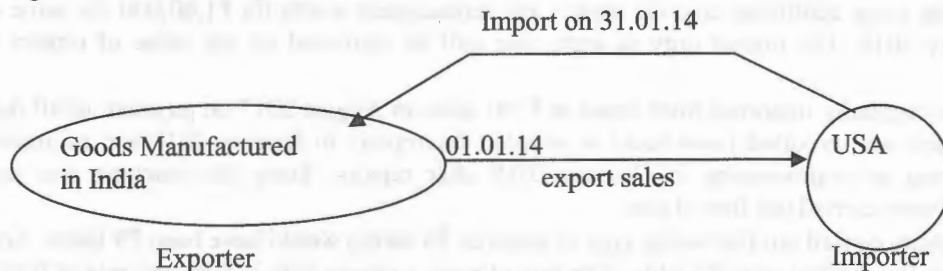
Pilferage of goods Sec. 13	Loss or destruction of goods Sec. 23
No duty payable on such goods	Duty paid on such goods to be remitted
Department gets compensation from the custodian (Section 45(3) of Customs Act, 1962)	No such compensation
Petty theft by human being	Loss/destruction by fire, flood etc (i.e. 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 recognised	Occurrence in warehouse is recognised
Duty need not be calculated	Duty should be calculated for determining the remission amount
No need to prove pilferage	Should be proved and remission sought for

**Duty liability in certain special circumstances**

- Goods are imported into India after exportation therefrom.
- Imported goods have been originally exported to the overseas supplier for repairs.
- Exported goods may come back for repairs and re-export.

**(1) Goods are imported into India after exportation therefrom**

Good manufactured or produced in India, which are exported and thereafter re-imported are treated on par with other goods, which are imported.



If the exporter has availed of export incentives in the nature of duty drawback, other incentives like MEIS and so on the import duty shall be restricted to the amount of incentive availed of at the time of export.

**► Example**

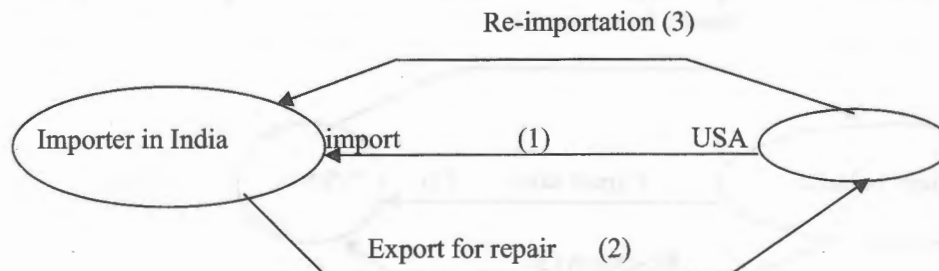
Mr. M manufactured goods worth ₹1,00,000 exported to Mr. U of USA on 1st January 2014. Mr. M availed the duty drawback for ₹1,000. If Mr. M imported the same on 31st January 2014, the import duty that can be levied on Mr. M is ₹1,000.

CBIC vide Notification No. 60/2018-Cus., dated 11.09.2018 has amended Notification No. 158/95-Cus., dated 14.11.1995 exempting goods manufactured in India and re-imported for repairs/reconditioning/reprocessing/refining/remaking etc. as under

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 <b>other than the specified goods</b>	7 years In case of export to Nepal, such time-limit is 10 years	Goods must be re-exported within six months (extendable till one year) of the date of re-importation.
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	The Assistant Commissioner/Deputy Commissioner of Customs is satisfied as regards identity of the goods. The importer at the time of importation executes a bond

**(2) Imported goods have been originally exported to the overseas supplier for repairs**

If the imported goods are exported for repairs, then import duty on re-importation of such repaired goods is restricted to the cost of repairs done abroad, insurance and freight charges.



Conditions to avail the aforesaid benefit:

- the time limit for re-importation is 3 years from the date of export (extended upto 5 years)
- The exported and imported goods must be in the same form and ownership of the goods should also not have changed.
- This concept is not applicable if the repairs amount to manufacture and exports from EPZ or EOU.

► **Example 1:** Mr. A imported an Air conditioner on 1st January 2018 for ₹5,00,000 from USA. Mr. A has paid import duty for ₹50,000. Due to some technical problems, the same was exported for want of repairs on 31st January 2018. After incurring some additional cost for repairs and replacement worth for ₹1,00,000 the same was re-imported on 5th February 2018. The import duty in such case will be restricted on the value of repairs and replacement of ₹1,00,000.

**Example 2:** A machine was originally imported from Japan at ₹250 lakhs in August 2017 on payment of all duties of customs. The said machine was exported (sent-back) to supplier for repairs in January 2018 and re-imported without any re-manufacturing or re-processing in October 2018 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 lakhs) would have been ₹9 lakhs. Actual insurance and freight charges (to and fro) were ₹3 lakhs. The rate of basic customs duty is 10% and rate of IGST in India on like article is 12%.

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.

**Answer:**

Particulars	₹
Value of goods re-imported after exports	12,00,000
[₹9 lakhs (including cost of materials) + ₹3 lakhs]	
Basic customs duty @ 10%	1,20,000
Social welfare Surcharge 10% on (BCD)	12,000
Balance (i.e. Transaction value)	13,32,000
Add: IGST @12% on ₹13,32,000	1,59,840
Landed Value	14,91,840
Total Customs Duty	2,91,840

*Note:* the goods which had been sent for repairs abroad, would on their re-importation, be subjected to a customs duty calculated on the fair cost of repairs including the cost of materials used in repairs, insurance and freight charges, both ways (vide Circular No. 61/95, dated 6/6/95)

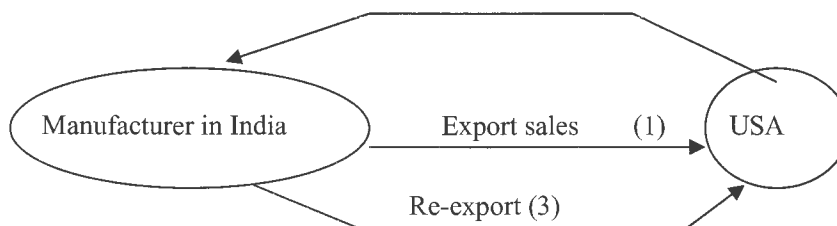
### (3) Exported goods may come back for repairs and re-export

Sometimes exported goods come back for repairs into India, in such situation the re-imported goods can avail exemption from paying duty subject to satisfaction of some conditions.

Conditions:

- The re-importation is for repairs or reconditioning only
- The time limit for re-import should be within 3 years from the date of export. In case of export to Nepal, such time limit is 10 years.
- The time limit for re-export is 6 months from the date of import (extended upto 12 months).
- The importer at the time of importation executes a Bond.
- The re-importation is for reprocessing, refining or re-making then the time limit for re-importation should be within 1 year from the date of exportation.

Import for repairs (2)





**Example:** Mr. B exported the Machinery to Mr. S of USA on 1st January 2014 for ₹10,00,000. Due to technical problems Mr. S of USA returned the goods for want of repairs and the same was imported by Mr. B on 15th January 2014. The same was repaired and brought into good condition and re-exported to Mr. S. Hence, Mr. B is not liable to pay any import duty.

**Note:** any loss notice during reprocessing, refining or re-making shall be exempt from the whole the customs duties subject to the satisfaction of the Assistant or Deputy Commissioner of Customs.

#### 1.4.6 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.

**Goods brought into India:** apart from goods which are normally imported in the course of import, flotsam and jetsam, which are washed ashore, and derelict and wreck brought into India out of compulsion are also treated as par with goods brought into India.



**Goods Derelict**

Derelict means vessel or cargo which is abandoned in sea without any hope of recovering it.

Jetsam means where goods are cast into sea to reduce weight of ship to prevent it from sinking and the thrown goods sink.

Flotsam means when goods continue to float after thrown in sea

Wreck means cargo or vessel or any property which are cast ashore by tides after ship-wreck

**Jetsam means where goods are cast into sea to reduce weight of ship to prevent it from sinking and the thrown goods sink.**

Jetsam gets  
sunk and drifts  
to the shore



**Flotsam means when goods continue to float after thrown in sea**



**Distinguish between derelict, jetsam and flotsam**

Derelict	Jetsam	Flotsam
Goods abandoned by the owner of goods without any hope of recovering it.	Owner of goods has no intention to abandon	Owner of goods has no intention to abandon
Goods are not thrown from the vessel to prevent it from sinking	Goods are thrown with speed from the vessel to prevent it from sinking	Goods are thrown with speed from the vessel to prevent it from sinking
Derelict gets sunk and does not drift to the shore	Jetsam gets sunk and drifts to the shore	Flotsam does not sink but it floats and drifts to the shore.

**Wreck means cargo or vessel or any property which are cast ashore by tides after ship-wreck**



Case law:

***Mangalore Refinery & Petrochemicals Ltd v CCus. 2015 (323) ELT 433 (SC):***

**Facts of the Case:** The assessee imported crude oil. Because ocean loss, the quantity of crude oil shown in the bill of lading was higher than the actual quantity received into the shore tanks in India. The assessee paid the customs duty on the actual quantity received into the shore tanks.

The Department contended that the quantity of crude oil mentioned in the various bills of lading should be the basis for payment of duty, and not the quantity actually received into the shore tanks in India. This was stated on the basis that duty was levied on an ad valorem basis and not on a specific rate.

The assessee contended that it makes no difference as to whether the basis for customs duty is at a specific rate or is ad valorem, inasmuch as the quantity of goods at the time of import alone is to be looked at.

**DECISION:** The Supreme Court held that the quantity of crude oil actually received into a shore tank in a port in India should be the basis for payment of customs duty.

**Power to grant exemption from duty (Section 25 of the Customs Act, 1962).**

**Inward processing of goods (w.e.f. 29.3.2018 Section 25A of the Customs Act, 1962:**

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:—

- 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;
- the imported goods are identifiable in the export goods; and
- such other conditions as may be specified in that notification.

**Outward processing of goods (w.e.f. 29.3.2018 Section 25B of the Customs Act, 1962):**

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.”.

**Case law:*****ESJ Metal Impex (P) Ltd. v Under Secretary (Cus.) M.F. (D.R.) 2015 (294) ELT 211 (Mad)***

**Facts of the case:** Section 3(5) of the Customs Tariff Act, 1975 provides for levy of special additional duty (under GST Law it is called as IGST) in addition to duty leviable under section 3(1) of the Customs Tariff Act, 1975 to counter balance sales tax, value added tax, local tax or any other charges. *Notification No. 102/2007-Cus, dated 14.09.2007*, issued under section 25(1) of the Customs Act, 1962, grants exemption in respect of such special CVD subject to certain conditions.

The exemption under the said notification is being granted by way of refund of the special CVD. In other words, exemption is not given *ab initio* but duty has to be paid first and thereafter, refund for the same needs to be claimed.

The assessee paid the special CVD and applied for the refund of the same under section 27 of the Customs Act, 1962 along with interest in pursuance of the above-mentioned notification.

The Department, however, rejected the assessee's claim for the interest in view of paragraph 4.3 of *CBIC Circular No. 6/2008-Cus., dated 28.04.2008* which stipulated that interest could not be granted as *Notification No. 102/2007-Cus.* did not have any specific provision for payment of the same on refund of duty.

**Decision:** When section 27 of the Customs Act, 1962 provides for refund of duty and section 27A of the Customs Act, 1962 provides for interest on delayed refunds, the Department cannot override the said provisions by a Circular and deny the right which is granted by the provisions of the Customs Act, 1962 and Customs Tariff Act, 1975.

Paragraph 4.3 of the *Circular No. 6/2008-Cus., dated 28.04.2008* being contrary to the statute has to be struck down as bad.

*The provisions relating to payment of interest on delayed refund of duty as contained in section 27A of the Customs Act also become applicable in respect of delayed refunds of special CVD which is granted to give effect to the exemption contained in an exemption notification.*

**1.5 Refund of customs duty**

Importer or Exporter who has actually paid the duty on import or export, which is not required to be paid alone, is eligible to claim refund.

**1.5.1 Refund of export duty**

As per Section 26 of the Customs Act, 1962, duty paid on exported goods can be claim for refund in the case of combined reading of the following if:

- The goods are returned to such person otherwise than by way of re-sale;
- The goods are re-imported within **One year** from the date of exportation and
- An application for refund of such duty is made before the expiry of **six months** from the date on which the Customs officer makes an order for importation.

**Example 1:** X Ltd. exported product 'P' to Y Ltd of USA on 1.1.2014. The duty paid on export of product 'P' for ₹1,00,000. Y Ltd. returned product 'P' to X Ltd., on 1.8.2014. The return is otherwise than by way of sale (i.e. it may be sale return or rejected goods, goods sent on consignment returned by the overseas agent or goods sent for exhibition coming back etc.). It means to say that Y Ltd. should not be sold 'P' to X Ltd. Moreover, exported goods are returned within **One year** from the date of exportation. Hence, X Ltd. can claim for refund of ₹1,00,000 within **Six months** from Customs clearances order for imported goods (i.e. 1.8.2014).

**1.5.2 Refund of import duty**

As per Section 26A of the Customs Act, 1962, duty paid on imported goods can be claimed for refund on account of satisfying the following conditions:

**(a) Goods are found defective**

The goods are found to be defective or otherwise not in conformity with the specifications agreed upon between the importer and the supplier of goods:

**Provided** that the goods have not been worked, repaired or used after importation except where such use was indispensable to discover the defects or non-conformity with the specifications;

Moreover, nothing contained in this section (Sec. 26A of the Customs Act, 1962) shall apply to the goods regarding which an offence appears to have been committed under this Act or any other law for the time being in force.

**(b) Goods are easily identifiable as imported goods**

The goods are identified to the satisfaction of the Assistant Commissioner of Customs or Deputy Commissioner of Customs as the goods which were imported;

**(c) No drawback claim is made**

The importer does not claim drawback under any other provisions of this Act; and

**(d) Activities carried out after importation**

- (i) The goods are exported; or
- (ii) The importer relinquishes his title to the goods and abandons them to customs; or

An application for refund of duty shall be made before the expiry of 6 months from the relevant date in such form and in such manner as may be prescribed

- (iii) Such goods are destroyed or rendered commercially valueless in the presence of the proper officer, in such manner as may be prescribed and within a period not exceeding 30 days from the date on which the proper officer makes an order for the clearance of imported goods for home consumption under section 47.

*Note:*

- (1) However, the period of 30 days may, on sufficient cause being shown, be extended by the Commissioner of Customs for a period not exceeding three months.
- (2) No refund under section 26 is allowed in respect of perishable goods and goods which have exceeded their shelf life.

**Relevant date:**

Relevant date in case of filing refund claim may be any one of the following:

- Let export order issued or
- Date of abandonment or
- Date of destruction of goods as the case may be.

**1.6 Claim for Refund of duty (Section 27 of the Customs Act, 1962)**

Section 27 of the Customs Act, 1962 deals with refund of duty paid on imported or exported goods in excess of what was actually payable. Sometimes, such excess payment of duty may be due to shortage/short landing, pilferage of goods or even incorrect assessment of duty by Customs. In such cases, any excess interest has been paid by the importer or exporter can also be claimed for refund.

**No refund and recovery if the amount of customs duty involved is less than ₹100:**

Third proviso to section 27(1) of Customs Act, provides that where the amount of refund claimed is less than ₹100, the same shall not be refunded. In other words, there would be no refund if the amount of customs duty involved is less than ₹100. (w.e.f. 10.05.2013)

A refund claim can be made u/s 27 if the payment of higher duty and interest in ignorance of a notification which allowed payment of duty at a concessional rate even if there was no assessment order and the payment u/s 27(i) has not been made pursuant to an assessment order. Section 27(ii) covers those classes of cases where the duty is paid by a person without an order of assessment. It means a refund claim can be filed under section 27 of the Customs Act, 1962 even if the payment of duty has not been made pursuant to an assessment order [*Aman Medical Products Ltd. v CCus., Delhi 2010 (250) ELT 30 (Del.)*].

**Attested Xerox copy of the GAR-7 Challan sufficient for claiming refund:**

Refund claim *CAN NOT BE DENIED* purely on a technical contention that the assessee had produced the attested copy of GAR-7 (earlier TR-6) challan and not the original of the GAR-7 challan. Also, as per clarification issued vide F. No. 275/37/2K-CX.8A, dated 2-1-2002, *a simple letter from the person who* made the deposit, requesting for return of the amount, along with the appellate order and attested Xerox copy of the Challan in Form GAR-7 would suffice for processing the refund application. [*Narayan Nambiar Meloths v CCus. 2010 (251) ELT 57 (Ker)*]

**Time Limit for claiming refund:**

Person claiming refund	Time limit for claiming refund	Remarks
Individual – imported goods for his personnel use, Government or Any educational institutions or Any research institutions or Charitable institutions or hospitals	Application for refund can be made before the expiry of ONE year from the date of payment of duty and interest	The application for refund in duplicate has to be filed before the Assistant Commissioner or Dy. Commissioner of Customs.
Individual – for business use Companies or Firm etc.	Application for refund can be made before the expiry of ONE year (w.e.f. 8-4-2011) from the date of payment of duty and interest	The application for refund in duplicate has to file before the Assistant Commissioner or Dy. Commissioner of Customs.

**Interest on delayed refunds:** As per section 27A of the Customs Act, 1962, if the refund ordered is not paid within 3 months from the date of receipt of refund application by the Assistant Commissioner or Deputy Commissioner of Customs, then the department is liable to pay interest at the rate of 6% p.a. (i.e. interest is liable to be paid after expiry of three months from the date of receipt of the application for refund).

**Few differences between section 26 and section 27 of the Customs Act, 1962:**

Section 26 deals with refund of export duty whereas Section 27 deals with refund of any export duty, import duty interest paid thereon.

Refund of duty under section 26 is allowed on account of satisfying certain conditions whereas refund under section 27 is allowed only when duty paid in excess of normal duty.

Refund is payable to the exporter who paid the duty under section 26 whereas refund is payable to the importer who paid the duty or to the buyer by whom the duty was borne.

**Chartered Accountant Certificate not sufficient to claim refund under section 27**

As per section 27 of the Customs Act, 1962 the importer to produce such documents or other evidence, while seeking refund, to establish that the amount of duty in relation to which such refund is claimed, has not been passed on by him to any other person.

However, if importer had not produced any document other than the certificate issued by the Chartered Accountant to substantiate its refund claim.

In the given case Madras High Court held that, the certificate issued by the Chartered Accountant was merely a piece of evidence acknowledging certain facts. It would not automatically entitle a person to refund in the absence of any other evidence. Hence, the importer could not be granted refund merely on the basis of the said certificate [CCus., *Chennai v BPL Ltd.* 2010 (259) ELT 526 (Mad)]

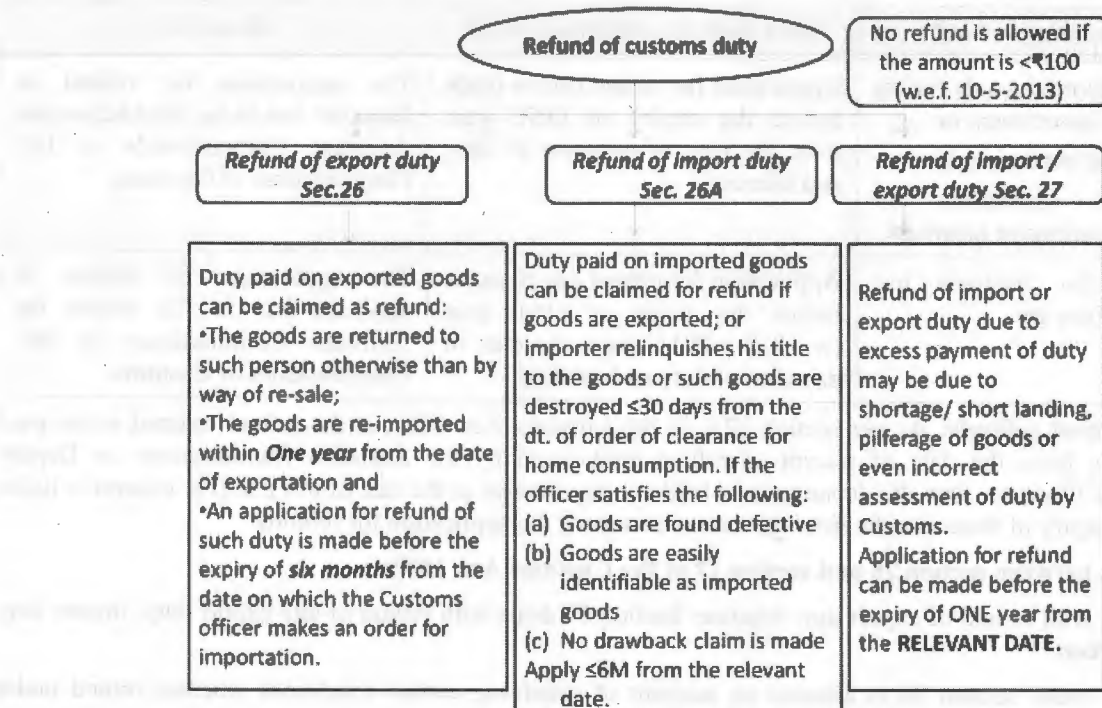
The period of limitation of one year for the purpose of refund of duty under section 27(1B) shall be computed in the following manner, namely:

- In the case of goods which are exempt from payment of duty by a special order issued under section 25(2) of the Custom Act, the limitation of one year shall be computed from the date of issue of such order;
- Where the duty becomes refundable as a consequence of any judgment, the limitation of one year shall be computed from the date of such judgment.
- Where any duty is paid provisionally under section 18, the limitation of one year shall be computed from the date of adjustment of duty after the final assessment thereof or in case of re-assessment, from the date of such re-assessment.

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Refund of customs duties can be recollected in the following table:



### 1.7 Tax planning v Tax Management

It is essential to note differences between tax planning and tax management for effective learning of tax matters.

Tax Planning	Tax Management
Tax planning primarily aims at adopting an arrangement so as to bring lesser incidence of tax.	Tax Management is dealing with compliance of statutory provisions, prospective planning etc. so as to ease the financial constraints that would arise when discharging the commitments through payment of tax, keep close watch and monitor statutory requirements etc
Tax planning may not be essential for every assessee.	Tax management is essential for every tax paying person otherwise he may become liable for penalty. For example, improper import of goods attract penalty.
Tax planning essentially looks at future benefits arising out of present actions.	Tax management relates to past, present and future. For Example: <ul style="list-style-type: none"> <li>(i) appeals, revisions, rectification of mistakes deal with the past.</li> <li>(ii) maintenance of records, self-assessment, filing of returns and other documents are present activities.</li> </ul>
Tax planning is focusing on saving taxes by choosing best among the alternatives.	Tax management is focusing on compliance with legal formalities: e.g. filing of return, payment of tax, documentation, records, maintenance of accounts etc.

### 1.8 Customs Tariff Act, 1975

Duties of customs will be levied by the customs department by referring Customs Tariff Act, 1975. The Customs Tariff Act, 1975 has been divided into 21 sections (i.e. XXI sections) and 99 chapters out of which chapter 77 is blank. It is pertinent to note that goods are classified under Customs Tariff Act, 1975 based on the Harmonised System of Nomenclature (HSN). The Customs Tariff Act, 1975 contains five columns—

1. Tariff Item
2. Description of goods

3. Unit
4. Standard Rate of Duty
5. Rate of duty for Preferential Area.

**Rate of duty for Preferential Area** means Government of India may charge lower customs duty than that of standard rate of duty for some specified goods if imported from friendly countries like Myanmar, Bangladesh, Mauritius, Seychelles, Nepal, Tonga etc.

### 1.8.1 Classification of goods

Under the Customs Tariff Act, 1975 goods are classified into FOUR-digit system, these are called as HEADINGS. Further TWO digits are called as sub-classification, which are termed as SUB-HEADINGS. Furthermore, TWO digits are added for sub-classification, which is known as TARIFF ITEM. Rate of duty is indicated against each tariff item and not against heading or sub-heading

Each section is divided into chapters and each chapter contains goods of one class. These chapters are divided into sub-chapters. Each chapter and sub-chapter further divided into various headings depending on different types of goods belonging to same class of products.

### 1.8.2 Coding of dashes

As per Customs Tariff Act, 1975, dashes are very useful to classify the commodities into classification, sub-classification and so on.

- Single dash (i.e. -) = Primary classification of article covered by the heading
- Double dash (i.e. - -) = sub-classification of primary classification
- Triple dash (i.e. - - -) = sub-sub classification of primary classification or sub-classification of primary classification.
- Quadruple dash (i.e. - - - -) = sub-sub classification of primary classification or sub-classification of primary classification.

*Note:* Both three dashes or four dashes are used to indicate EIGHT-digit classification known as tariff item.

### 1.8.3 Schedules to the Customs Tariff Act, 1975

The Customs Tariff Act, 1975, contains following two schedules namely:

First Schedule	Deals with import tariff, showing import duties leviable.
Second schedule	Deals with export tariff, showing export duties leviable.

### 1.8.4 Specimen sheet of the Customs Tariff Act, 1975

#### Section-XVI

#### Chapter-85

Tariff Item	Description of goods	Unit	Standard Rate of duty	Preferential Areas Rate of duty
1	2	3	4	5
8512	Electrical lighting or signaling Equipment (excluding articles of Heading 8539), windscreen wipers, Defrosters and demisters, of a kind Used for cycles or motor vehicles			
8512 10 00	Lighting or visual signaling equipment of a kind used on bicycles	U	10%	—
8512 20	Other lighting or visual signaling equipment:			
8512 20 10	Head lamps, tail lamps, stop lamps, side lamps and blinkers	U	10%	—
8512 20 20	Other automobile lighting equipment	U	10%	—
8512 20 90	Other	U	7.5%	—
8512 30	Sound signaling equipment:			
8512 30 10	Horns	U	10%	—
8512 30 90	Other	U	7.5%	—

Tariff Item	Description of goods	Unit	Standard Rate of duty	Preferential Areas Rate of duty
1	2	3	4	5
8512 40 00	Windscreen wipers, defrosters and demisters	U	10%	
8512 90 00	Parts	Kg.	7.5%	
8513	Portable electric lamps designed to Function by their own source of energy (for Example, dry batteries, accumulators, Magnetos), other than lighting equipment of heading 8512			
8513 10	<i>Lamps:</i>			
8513 10 10	Torch	U	10%	—
8513 10 20	Other flashlights excluding those for photographic purposes	U	7.5%	—
8513 10 30	Miners' safety lamps	U	7.5%	—
8513 10 40	Magneto lamps	U	7.5%	—
8513 90 00	Parts	Kg.	7.5%	—

### 1.9 General Rules for the Interpretation of Import Tariff

Classification of goods as per the Customs Tariff Act, 1975 shall be governed by the following principles:

These rules come into play only if there is an ambiguity or confusion in classification.

#### Rule 1: No ambiguity in classifications:

The titles of Sections and Chapters are provided for ease of reference only; for legal purposes, refer the heading and sub-heading. Read corresponding Section Notes and Chapter Notes. If there is no ambiguity or confusion in classification of the goods, then the classification is final.

#### Rule 2(a): Incomplete or unfinished goods:

Even if the goods are incomplete or unfinished, if they have *essential character* of finished goods, then classify them under same heading.

*Example:*

- Passenger Aircraft not fitted with seats will still be a passenger Aircraft.
- Motor Car not fitted with wheels or tires will be classified under the heading of Motor Vehicle
- Parts of air conditioning machines removed in completely knocked down (CKD) or semi knocked down (SKD) packs will be classified as complete machine, if it contains essential elements of air conditioning machines. Because CKD or SKD is only for convenience of transport. [note that assembly at site does not amount to manufacture, these goods have already been manufactured in the factory]

#### Rule 2(b): Mixture or Combinations of goods falls under different classifications:

Any reference in a heading to a material or substance shall be taken to include a reference to mixtures or combinations of that material or substance with other materials or substances. Any reference to goods of a given material or substance shall be taken to include a reference to goods consisting wholly or partly of such material or substance. The classification of goods consisting of more than one material or substance shall be according to the principles of rule 3.

*Example:* The Motor Car contains the stereo (music system), here two different products namely Motor Vehicle and Electronic System, hence we must refer the Rule 3 for solution. It means to say that if Rule 2(b) is not applied for any reason then classification shall be under Rule 3.

#### Rule 3(a): Specific Description:

The heading which provides the most specific description shall be preferred to one of providing a general description. It means to say that a specific heading should be preferred over a general heading [*CCE v Maharshi Ayurveda Corporation Ltd* (SC) (2006)].

*Example:* Electrical lighting used for motor vehicles is more specifically classified under the heading 8512 but not under the heading 8513.

Lamps or torch used with dry batteries is more specifically classified under the heading 8513 but not under the heading 8512.

**Rule 3(b): Essential Character:**

If the product consists of different materials or made up of different components, mixtures or composite goods and cannot be classified based on Rule 3(a), it should be classified as if they consisted of material or component which gives them their essential character.

*Example 1:* Cell phone which also contains a calculator will be called as Cell phone and not a calculator. It means to say that the classification should be done according to its main function and additional function may be ignored.

*Example 2:* Software loaded into a laptop can be classified as laptop and considered as one unit. The essential character here is the laptop.

*Example 3:* ABC Info Tech. developed a software and the same was loaded into a hard disc drive. The value of software is ₹100 lakhs and the value of hard disc drive is ₹1 lakh. Hence, the computer software gives the essential character and the drive is only a packing material. Therefore, the entire value of goods will be classified as software. [*Sprint RPG India Ltd v Commissioner of Customs (SC) (2000)*].

**Rule 3(c): Latter the Better:**

When goods cannot be classified by reference to rule 3(a) or rule 3(b), they shall be classified under the heading which occurs last in the numerical order among those which equally merit consideration. It means to say that, where two or more headings seem equal, priority should be given to the essential character.

*Example:* If a product by virtue of its essential character comes under two headings namely 8512 and 8513 equally then the said product can be classified under the heading 8513 (i.e. Later the better)

**Rule 4: Most Akin Goods:**

Goods which cannot be classified in accordance with the above rules shall be classified under the heading appropriate to the goods to which they are **most akin**.

As per the Oxford dictionary 'Most Akin' can be understood as the majority of similar character or most related character. This means relationship between twins can be understood as most akin.

*Example:* Manufacturer manufacturing the following products can be understood as most akin products:

- (a) Window mirror of the car
- (b) Front mirror of the car

**Rule 5: Packing Materials:**

In addition to the forgoing provisions namely Rule 1, 2, 3 and 4, the following sub rules shall apply in respect of the goods referred therein.

Rule 5(a): packing material used as cases for camera, musical instrument cases, gun cases, drawing instrument cases, necklace cases and similar containers special shaped or fitted to contain a specific article or set of articles, suitable for long term use, will be classified along with that article, if such articles are normally sold along with such cases.

Rule 5(b): subject to the provisions of Rule 5(a) above, packing materials and packing containers presented with the goods therein shall be classified with the goods if they are of a kind normally used for packing such goods. [Rule 5(a) or (b) does not apply in case the packing material is for repetitive use].

**Rule 6: Goods compared at the same level of sub-headings:**

The classification of goods in the sub-headings of a heading shall be determined according to the terms of those sub-headings and any related sub-heading Notes and, *mutatis mutandis*, to the above rules, on the understanding that only sub-headings at the same level are comparable. For the purposes of this rule the relative Section and Chapter Notes also apply, unless the context otherwise requires.

This means to say that if one heading contains 4-5 sub-headings, these sub-headings can be compared with each other. However, sub-heading under one heading should not be compared with the sub-heading of another heading.

**Trade Parlance Theory:**

If a product is not defined in the Schedules and Section Notes and Chapter Notes of the Customs Tariff Act, 1975, then it should be classified according to its popular meaning or meaning attached to it by those dealing with it i.e., in its commercial sense.

**Example 1:** Glass mirror cannot be classified as Glass and Glassware because glass loses its basic character after it is converted into mirror. It means that mirror has the reflective function [*Atul Glass Industries Ltd v CCE (SC) (1986)*]

**Example 2:** Where the Tariff headings itself uses highly scientific or technical terms, goods should be classified in scientific or technical sense. It means that if the tariff entry is used in a scientific or technical manner then the Trade Paralance Theory does not apply [*Akbar Badruddin Jiwani v CC* (SC) (1990)].

**Case law:**

**Where a classification (under a Customs Tariff head) is recognized by the Government in a notification at any point of time, can the same be made applicable in a previous classification in the absence of any conscious modification in the Tariff?**

***Keihin Penalfa Ltd. v Commissioner of Customs* 2012 (278) ELT 578 (SC)**

**Facts of the Case:** Department contended that 'Electronic Automatic Regulators' were classifiable under Chapter sub-heading 8543.89 whereas the assessee was of the view that the aforesaid goods were classifiable under Chapter sub-heading 9032.89. An exemption notification dated 1-3-2002 exempted the disputed goods by classifying them under chapter sub-heading 9032.89. The period of dispute, however, was prior to 01.03.2002.

**Point of Dispute:** The dispute was on classification of Electronic Automatic Regulators.

**Decision:** The Apex Court observed that the Central Government had issued an exemption notification dated 1-3-2002 and in the said notification it had classified the Electronic Automatic Regulators under Chapter sub-heading 9032.89. Since the Revenue itself had classified the goods in dispute under Chapter sub-heading 9032.89 from 1-3-2002, the said classification needs to be accepted for the period prior to it. (CA Final Direct & Indirect Taxes case studies)

**1.10 Self-assessment of Customs Duty (Section 17 of the Customs Act, 1962, w.e.f. 8-4-2011)**

The importer or exporter shall self-assess the duty leviable on imported or exported goods respectively (except where goods are to be cleared as 'stores' for supply to vessels or aircrafts without payment of duty and without assessment under section 85 of Customs Act, 1962) as per section 17(1) of the Customs Act, 1962. The procedure of self-assessment is same for imports and exports. Importer importing goods is required to submit Bill of Entry under section 46 of Customs Act, 1962. Exporter is required to submit shipping bill at the time of export under section 50 of Customs Act, 1962. Bill of Entry and Shipping Bill must be submitted electronically, unless manual submission is specifically permitted by Commissioner of Customs.

**1.10.1 Verification by proper officer**

The self-assessment may be verified by 'proper officer' by examining or testing the goods [section 17(2) of Customs Act 1962, w.e.f. 8-4-2011]. For verification of self-assessment, 'Proper Officer' may ask importer, exporter or any other person (i.e. Customs House Agent or person who has purchased goods on high seas sale basis) to produce any contract, broker's note, insurance policy, catalogue or other documents whereby duty payable can be ascertained and to furnish further information for ascertainment.

**1.10.2 Re-assessment**

The proper officer can ask for only those documents which are within the powers of importer or exporter or other person to furnish [section 17(3) of Customs Act 1962, w.e.f. 8-4-2011]. On Such verification, 'proper officer' may re-assess the Bill of entry. Such re-assessment would be without prejudice to any other action which may be taken under Customs Act [section 17(4) of Customs Act, 1962, w.e.f. 8-4-2011].

If the importer or exporter accepts in writing the reassessment made by proper officer about classification or valuation or exemption or concession, then no question of issuing any formal order arises.

**1.10.3 Speaking order**

Where the importer or exporter does not accept the re-assessment in writing, the proper officer shall pass a speaking order within 15 days from the date of re-assessment of 'Bill of Entry' [section 17(5) of Customs Act, 1962].

**1.10.4 Audit**

If the goods are not taken for verification of self-assessment, the goods will be allowed to be cleared from customs. However, later, proper officer may audit the assessment of duty. Such audit can be done either in the office of proper officer or at the premises of importer, as may be expedient [section 17(6) of Customs Act, 1962]. Subsequent to such audit, demand for differential duty and interest can be made under section 28 of Custom Act, 1962. This section also makes provisions in respect of penalty for such short payment.



**1.10.5 General provisions**

Assessment includes provisional assessment, self-assessment, re-assessment and any assessment in which the duty assessed is Nil [section 2(2) of Customs Act, 1962].

As per section 2(34) of Customs Act, 'proper officer' in relation to any function under Customs Act, means the officer of customs who is assigned those functions by Board (CBE & C) or Commissioner of Customs.

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