

Chapter 4: Administrative and Other Aspects

SYNOPSIS

| | | |
|--------|--|-----|
| 4.1 | Introduction | 766 |
| 4.2 | Classes of Officers | 766 |
| 4.3 | Appointment of officers of customs | 766 |
| 4.4 | Powers of officers of customs | 766 |
| 4.5 | Importance of GST Department | 766 |
| 4.5.1 | Officers of other department | 767 |
| 4.5.2 | Circulars of the Central Board of Indirect Taxes and Customs (CBI&C) cannot prevail over law laid down by the Court | 767 |
| 4.6 | Appointment of customs ports, airports, etc. | 767 |
| 4.7 | Customs Port | 767 |
| 4.8 | Customs Airport | 767 |
| 4.9 | Customs Area | 767 |
| 4.10 | Customs Station | 767 |
| 4.11 | Land Customs Station | 768 |
| 4.12 | Container Freight Stations | 768 |
| 4.13 | Entry | 768 |
| 4.14 | First Appraisalment System | 768 |
| 4.15 | Second Appraisalment System | 768 |
| 4.15.1 | Fast Track Clearance' Scheme | 768 |
| 4.16 | Amendments to documents | 768 |
| 4.17 | Import General Manifest | 769 |
| 4.18 | Provisional assessment of duty | 769 |
| 4.19 | Interest on delayed refunds (i.e. @ 6% p.a.) | 771 |
| 4.20 | Duty under protest | 772 |
| 4.21 | Interest if duty paid late [Section 28AA of Customs Act 1962] | 772 |
| 4.22 | Importer Exporter Code (IEC Number) | 772 |
| 4.23 | Risk Management System | 772 |
| 4.23.1 | E-payment of Customs Duty (NT 83/2012-Cus, dated 17-9-2012): The following assesses are eligible for e-payment of Customs duty | 773 |
| 4.23.2 | Accredited Clients Programme (ACP) | 773 |
| 4.23.3 | This program (ACP) gives the following benefits | 773 |
| 4.24 | Detention Certificate | 773 |
| 4.25 | Boat Note | 773 |
| 4.26 | Prohibit the import or export of goods | 774 |
| 4.27 | Penalties under Customs | 774 |
| 4.28 | Whether custom authorities are authorized to auction the confiscated goods during the period of pendency of appeal | 774 |
| 4.29 | Offences and Prosecutions under Customs | 774 |
| 4.29.1 | Detention of goods | 774 |
| 4.29.2 | Seizure of goods (Section 110 of the Customs Act, 1962) | 774 |
| 4.29.3 | Confiscation of goods | 776 |
| 4.29.4 | Provisions governing Confiscation under Customs Act, 1962 | 776 |
| 4.29.5 | Redemption Fine (Section 125) | 781 |
| 4.29.6 | Offences under Customs | 782 |
| 4.30 | Compounding of offences | 783 |
| 4.31 | First charge on property of assessee (Section 142A of the Customs Act, 1962) | 784 |
| 4.32 | Integrated Declaration under Indian Customs Single Window Project w.e.f. 1-4-2016 | 784 |
| | Multiple Choice Questions (MCQs) | 785 |
| | SELF-EXAMINATION QUESTIONS | 786 |
| 1. | Theory Questions with Answers | 786 |
| 2. | Practical Problems with Answers | 787 |
| 3. | Case Studies with Answers | 789 |

Learning objectives

- Meaning of Adjudicating authority
- Various powers of officers of customs
- First and Second Appraisal System
- Procedure to obtain Import and Export Code

4.1 Introduction

It is essential to know the departmental set up of the Customs Department. The administration of the Customs Act, 1962 is carried out by the departmental adjudicating authority. Moreover, the Act specifies the class of officers who are responsible for the functioning of the law. As we know the Central Board of Indirect Taxes and Customs is empowered to regulate the Customs Act as well as GST Act.

4.2 Classes of Officers

There shall be the following classes of officers of customs under section 3 of the Customs Act, 1962, namely:—

- Chief Commissioners of Customs;
- Commissioners of Customs;
- Commissioners of Customs (Appeals);
- Joint Commissioners of Customs;
- Deputy Commissioners of Customs;
- Assistant Commissioners of Customs or Deputy Commissioner of Customs;
- Such other class of officers of customs as may be appointed for the purposes of this Act.

4.3 Appointment of officers of customs

As per section 4 of the Customs Act, the Central Board of Indirect Taxes and Customs may appoint such persons as it thinks fit to be officers of customs.

The Central Board of Indirect Taxes and Customs may authorize a Chief Commissioner of Customs or a Commissioner of Customs or a Joint Commissioner of Customs or Assistant Commissioner of Customs or Deputy Commissioner of Customs to appoint officers of customs below the rank of Assistant Commissioner of Customs.

4.4 Powers of officers of customs

As per section 5 of the Customs Act, subject to such conditions and limitations as the Central Board of Indirect Taxes and Customs (Board) may impose, an officer of customs may exercise the powers and discharge the duties conferred or imposed on him under this Act.

An officer of customs may exercise the powers and discharge the duties conferred or imposed under this Act on any other officer of customs who is subordinate to him.

Notwithstanding anything contained in this section, a Commissioner (Appeals) shall not exercise the powers and discharge the duties conferred or imposed on an officer of customs other than those specified in Chapter XV and section 108.

4.5 Importance of GST Department

The other class of officers of the GST is:

- **Officers under Section 3 of the CGST Act, 2017:**

| | |
|-----|---|
| (a) | • Principal Chief Commissioners of Central Tax or • Principal Directors General of Central Tax. |
| (b) | • Chief Commissioners of Central Tax or • Directors General of Central Tax. |
| (c) | • Principal Commissioners of Central Tax or • Principal Additional Directors General of Central Tax. |
| (d) | • Commissioners of Central Tax or • Additional Directors General of Central Tax. |
| (e) | • Additional Commissioners of Central Tax or • Additional Directors of Central Tax. |
| (f) | • Joint Commissioners of Central Tax or • Joint Directors of Central Tax. |
| (g) | • Deputy Commissioners of Central Tax or • Deputy Directors of Central Tax. |
| (h) | • Assistant Commissioners of Central Tax or • Assistant Directors of Central Tax, and |
| (i) | • any other class of officers as it may deem fit: |

These officers are not the officers of the Customs; it becomes necessary to empower them to be officers of Customs for the purpose of doing Customs work under section 4(1) of the Customs Act.

In addition to the GST and Customs officers to operate the Customs Law and regulations in all border areas, following Government officials are appointed:

- Border Security Police
- Indo Tibetan Border Police
- Coast Guard

4.5.1 Officers of another department

As per section 151 of the Customs Act, 1962, the following officers of other department are empowered to assist officers of the Customs.

- Officers of the GST Department
- Officers of the Navy
- Officers of Police

Officers of the Central or State Governments employed at any port or airport; such other officers of the Central or State Governments or a local authority as are specified by the Central Government in this behalf by notification in the Official Gazette.

4.5.2 Circulars of the Central Board of Indirect Taxes and Customs (CBI&C) cannot prevail over law laid down by the Court

In the case of *Commissioner of Central Excise, Bolpur v Ratan Melting and Wire Industries, Calcutta (2005)*, the Apex Court held that Circulars and instructions issued by the Central Board of Excise and Customs (CBIC) are no doubt binding in law on the authorities under the respective statutes (which grants power to CBIC), but when the Supreme Court or High Court declares the law on the question arising for consideration, it would not be appropriate for the Court to direct that the circular should be given effect to and not the view expressed in a decision of the Supreme Court or the High Court. **It means to say that court decisions are superior to that of circulars issued by the CBI&C.**

4.6 Appointment of customs ports, airports, etc.

As per section 7 of the Customs Act, 1962, the Central Board of Indirect Taxes and Customs may by notification in the Official Gazette, appoint—

- The ports and airports 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;
- The places which alone shall be land customs stations for the clearance of goods imported or to be exported by land or inland water or any class of such goods;
- The routes by which alone goods or any class of goods specified in the notification may pass by land or inland water into or out of India, or to or from any land customs station from or to any land frontier;
- 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.

The Commissioner of Customs may approve proper places in any customs port or customs airport or coastal port for the unloading and loading of goods or for any class of goods and specify the limits of any customs area as per section 8 of the Customs Act, 1962.

The Central Board of Indirect Taxes and Customs may by notification in the Official Gazette, declare places to be warehousing stations at which alone public warehouses may be appointed and private warehouses may be licensed.

4.7 Customs Port

The term “customs port” means any port appointed under clause (a) of section 7 to be a customs port [and includes a place appointed under clause (aa) of that section to be an inland container depot]; the vessel entering in India from a place outside India into India must land only at Customs Port.

4.8 Customs Airport

The term “customs airport” means any airport appointed under clause (a) of section 7 to be a customs airport; aircraft entering in India from a place outside India must land only at Customs Airport.

4.9 Customs Area

The term “customs area” means the area of a customs station and includes any area in which imported goods or export goods are ordinarily kept before clearance by Customs Authorities;

4.10 Customs Station

The term “customs station” means any customs port, customs airport or land customs station.

4.11 Land Customs Station

The term “land customs station” means any place appointed under clause (b) of section 7 to be a land customs station; it means goods imported by land should follow the prescribed route only to come to Land Customs Station. Such route will be specified by CBE & C.

4.12 Container Freight Stations

In short, we call as CFS or ICD (Inland Container Depot). After the imported goods are unloaded at the port, these containers are carried to Inland Container Depots for storage purpose. From these depots goods can be cleared for Domestic Tariff Area or cleared for export. Inland Container Depots are used for unloading of imported goods and loading of exported goods.

4.13 Entry

The term Entry means an entry made in a bill of entry, shipping bill or bill of export and includes in the case of goods imported or to be exported by post [As per section 2(16) of the Customs Act, 1962].

4.14 First Appraisal System

Section 17 of the Customs Act, 1962 stipulates that after submission of bill entry, goods will be examined and assessed. However, assessment can be made before examination of goods based on the submission of Bill of Entry and other documents produced before the Customs Authorities. The Importer on request has to submit the following:

- Contract Agreement
- Brokers note
- Insurance policy
- Other documents which help to ascertain the duty liability.

The goods are examined first and then assessed. This is called First Appraisal System

The goods are assessed first and then examined. This is called Second Appraisal System

The goods are examined first and then assessed. This is called as First Appraisal System. The appraiser normally resorts to this method if he is not able to make an assessment on the basis of declaration made in the bill of entry or shipping bill and the documents submitted along with them and deems that inspection is necessary. The importer himself may also request ‘first check procedure’, if he cannot give all required details regarding description/value of goods. He has to make request for first check examination at the time of filing of bill of entry.

4.15 Second Appraisal System

The information and documents furnished by the importer are adequate to determine the correct tariff nomenclature, tariff classification and valuation of the goods for purposes of assessment.

Physical examination of the goods or their weighing or testing is only a confirmatory check. Under this system, such an examination is carried out after assessment and collection of duty. Such a system is also called as Second check procedure.

4.15.1 Fast Track Clearance' Scheme

A pre-shipment inspection (PSI) is a set of import verification services, in the country of supply, developed to assist Customs in their mission or Destination Inspection (DI) is a set of verification and capacity building services, in the country of importation, developed to assist Customs their mission. Fast-track clearance is the process by which goods are cleared through Customs based on documentation inspection only.

Importers can benefit from fast-track clearance when all documentation is verified and cleared by Customs; the past history of the importer is usually verified.

4.16 Amendments to documents

Generally the importer, exporter or ‘person in-charge’ of the conveyance (namely Master of the Vessel, Pilot of the Aircraft, Guard of the Train and Driver of the Vehicle) have to submit various documents to customs authorities like bill of entry, import general manifest (IGM), export general manifest (EGM), etc. These documents need to be amended due to various genuine reasons.

► Example:

- Due to changes in classification,
- Due to clerical mistakes in document, and
- Due to change in unloading/loading plan of vessels etc.,

Under section 149 of the Customs Act, 1962, Customs Authorities can give permission to amend these documents. However, such permission cannot be given if there are fraudulent intentions.

4.17 Import General Manifest

It is basically a document necessarily carried by the Person in charge along with conveyance. It is a very important document without which customs authorities not allowed to grant inward entry to the vessel.

Features of Import General Manifest

- Person-in-charge of Vessel, Aircraft or Vehicle has to submit Import General Manifest.
- The IGM in case of a vessel or aircraft is required to be submitted prior to arrival of a vessel or aircraft.
- In case import is through a vehicle, the IGM (so called Import Report) has to be submitted within 12 hours of arrival at the Customs Station.
- Penalty up to ₹50,000 can be imposed on the person-in-charge who is responsible for delay in submission of Report or Manifest.
- If the customs station equipped electronically then IGM can be submitted electronically through floppy.
- Amendment can be done to Import General Manifest if the changes do not amount to illegal import.

4.18 Provisional assessment of duty

An importer or exporter is unable to produce any document or furnish any information necessary for the assessment of duty on the imported goods or export goods as the case may be and he can request to the Customs authorities to assess the duty liability on provisional basis. Provisional Assessment will be allowed by the Customs Officer, if he, satisfied with the request of the importer or exporter [Section 18 of the Customs Act, 1962].

Provisional assessment can be granted in the following three situations:

- An importer or exporter is unable to produce any document or furnish any information necessary for the assessment of duty.
- Any imported goods or export goods need to conduct any chemical or other test for the purpose of assessment of duty thereon.
- Where the importer or the exporter has produced all the necessary documents and furnished full information for the assessment of duty, but the proper officer deems it necessary to make further enquiry for assessing the duty

Adjustment of duty at the time of final assessment order is permissible.

| Provisional Assessment | Remarks |
|------------------------|---|
| Short paid | Pay the deficiency along with the interest from the first day of the month in which duty is provisionally assessed till date of payment. Interest in case of Provisional Assessment Section 18(3) of the Customs Act, 1962: If differential amount is found to be payable after final assessment or re-assessment, it will be paid with interest @15% p.a. w.e.f. 1-4-2016 (prior to 1-4-2016 interest rate was @18% p.a.) from the first day of the month in which duty is provisionally assessed till date of payment. |
| Excess paid | Refund will be granted. Interest will be payable if refund is not granted within three months from the date of assessment of duty finally ordered. Interest @ 6% p.a. is payable by the Government. |

Refund of duty is subject to unjust enrichment (i.e. should not be undue benefit).

Customs (Provisional Assessment) Regulations, 2011: [vide circular no. 38/2016-Customs, dated 22.08.2016]

| Prior to 22.08.2016 | w.e.f. 22.08.2016 |
|--|--|
| Deposit 20% of the duty provisionally assessed | Deposit 20% of the duty provisionally assessed is not required. |
| Execute a bond | Execute a bond |
| Provide surety or security or both, as deemed fit by the Proper Officer. | Provide security for the payment of the duty deficiency. The security to be obtained shall be in the form of a bank guarantee or a cash deposit as convenient to the importer. No sureties shall be obtained. |

Interest in case of Provisional Assessment (w.e.f. 8-4-2011):

w.e.f. 29.03.2018 As per section 18(1A) Where, pursuant to the provisional assessment under sub-section (1), if any document or information is required by the proper officer for final assessment, the importer or exporter, as the case may be, shall submit such document or information within such time, and the proper officer shall finalise the provisional assessment within such time and in such manner, as may be prescribed.";

Section 18(3) of the Customs Act, 1962 provides that if differential amount is found to be payable after final assessment or re-assessment, it will be paid with interest @15% p.a. w.e.f. 1-4-2016 (prior to 1-4-2016 interest rate was @18% p.a.) from the first day of the month in which duty is provisionally assessed till date of payment.

Section 18(4) of the Customs Act, 1962 provides that if any duty refundable after final assessment or re-assessment, is not refunded within 3 months from the date of assessment of duty finally, or re-assessment of duty, as the case may be shall be paid an interest on such unrefunded amount at such rate (i.e. 6% p.a.) under section 27A till the date of refund of such amount.

Problem:

X Ltd. imported goods on 29th March 2017, and approached to the department for grant of provisional assessment u/s 18 of the Customs Act, 1962. Provisional Assessment granted on 10th April 2017 by demanding duty of ₹1,00,000.

On 1st July 2017 provisional assessment has been finalized with ₹1,50,000 of customs duty. Differential duty has been paid on 2nd July 2017. Find the interest payable u/s 18(3) of the Customs Act, 1962.

Answer:

Interest = ₹1,911/-

(₹50,000 x 15/100 x 93/365 = ₹1,910.96)

CBIC prescribes Customs (Finalization of Provisional Assessment) Regulations, 2018 to ease the process of Provisional Assessments u/s 18 of the Customs Act, 1962:

The Finance Act, 2011 had introduced the self-assessment under the customs law. Resultantly, the circumstances when the provisional assessment could be resorted also underwent a change and revised Customs (Provisional Duty Assessment) Regulations, 2011 were issued. In 2016, CBIC reviewed the said regulations and rescinded Customs (Provisional Duty Assessment) Regulations, 2011 since section 18 itself lays down the procedure to be followed in the case of provisional assessment.

To further bring the uniformity in the process, CBIC vide *Notification No. 73/2018-Cus (NT)*, dated 14.8.2018 has prescribed Customs (Finalisation of Provisional Assessment) Regulations, 2018.

The significant provisions contained in said regulations are discussed as under:

Time-limit and manner for submission of documents or information by importer/exporter for the purpose of finalisation of provisional assessment:**(a) Reasons for Provisional Assessment:**

- (i) the necessary documents have not been produced or information has not been furnished
- (ii) the proper officer requires the importer or the exporter to produce any additional documents or information

Such information or documents shall be made available by the importer/exporter within 1 month from the date of such order of provisional assessment or the date of such requisition by the proper officer.

- (b) The proper officer shall within 15 days from the date of such order of provisional assessment, inform the importer or the exporter, in writing, the specific details of the information to be furnished or the documents to be produced. If the document/information is not made available within 15 days, this period may, for reasons recorded in writing, be further extended by proper officer for 3 months on his own or at the request of the importer or the exporter.
- (c) The Additional Commissioner or Joint Commissioner of Customs, may further extend the time period referred for another 3 months, in case the documents or the information required to be submitted by the importer or the exporter or requisitioned by the proper officer have not been made available within prescribed time limit.
- (d) If the aforesaid time limits don't suffice, the Commissioner of Customs, may extend the time period further as deemed fit.
- (e) All the requisite information/documents need to be submitted in one instance by importer/exporter and importer/exporter themselves or his authorised representative or Customs Broker shall inform the proper officer in writing that he has submitted all the documents or information to be furnished or requisitioned.
- (f) For the purpose of these regulations, each Bill of Entry or Shipping Bill, as the case may be, that has been assessed provisionally shall be treated as a separate case of provisional assessment.

Time-limit for finalisation of provisional assessment:

The proper officer shall finalise the provisional assessment within 2 months of receipt of:

- (a) an intimation from the importer or the exporter or his authorised representative or Customs Broker under sub-regulation (7) of regulation 4; or
- (b) a chemical or other test report, where the provisional assessment was ordered for that reason; or
- (c) an enquiry or investigation or verification report, where the provisional assessment was ordered for that reason.

However, where the documents or information required to be furnished by the importer or the exporter or requisitioned by the proper officer are made available intermittently, the time period of 2 months shall be reckoned from the date of last intimation referred to in clause (a) above.

Further, where the documents or information required to be furnished by the importer or exporter, as the case may be, or requisitioned by the proper officer are not made available or made partly available and no further extension of time has been allowed under sub-regulations (3), (4) or (5) of regulation 4, as the case may be, the proper officer shall proceed to finalise the provisional assessment within 2 months of the expiry of the time allowed for submission of the said documents or information.

- (d) The Commissioner of Customs concerned may allow, for reasons to be recorded in writing, a further time period of 3 months in case the proper officer is not able to finalise the provisional assessment within the period of 2 months as specified in sub-regulation (1) above.
- (e) This regulation shall not apply to such cases of provisional assessments, where Board has issued directions to keep that pending.

Manner of finalisation of provisional assessment

- (a) The provisional assessment shall be finalised as per the provisions of section 18 of the Act.

However, if the amount so paid at the time of provisional assessment or after adjustment under clause (a) to sub-section (2) of section 18 of the Act, falls short of the duty finally assessed or re-assessed, as the case may be, and the importer or the exporter has not paid the deficiency, the shortfall shall be adjusted from the security, if any, obtained at the time of provisional assessment, under intimation to the importer or the exporter,

However, if the amount so adjusted or paid falls short of the duty finally assessed or re-assessed, as the case may be, the importer or exporter of the goods shall pay the shortfall in terms of the provisions of section 18.

- (b) The Bond executed at the time of provisional assessment with security, if any, shall be cancelled after finalisation of provisional assessment and the security shall also be returned, if there are no pending dues.
- (c) Where the final assessment is contrary to the provisional assessment, the proper officer shall pass a speaking order following principles of natural justice.
- (d) Where the final assessment confirms the provisional assessment, the proper officer shall finalise the same after ascertaining the acceptance of such finalisation from the importer or the exporter on record and inform the importer or exporter in writing of the date of such finalisation.
- (e) Where a Bill of Entry or Shipping Bill is presented electronically on the Customs Automated system and is ordered to be provisionally assessed, the proper officer shall finalise the provisional assessment on the system also consequent to the procedure prescribed in these regulations.

Penalty:

If any importer or exporter or his authorised representative or Customs Broker contravenes any provision of these regulations or abets such contravention, or fails to comply with any provision of these regulations, he shall be liable to a penalty which may extend to ₹50,000/-.

[Notification No. 73/2018 Cus (NT), dated 14.08.2018]

4.19 Interest on delayed refunds (i.e. @ 6% p.a.):

If any duty ordered to be refunded under sub-section 2 of section 27 to an applicant is not refunded within 3 months from the date of receipt of application under Section 27(1) of that section, there shall be paid to that applicant interest at such rate (i.e. 6% p.a.), on such duty from the date immediately after the expiry of 3 months from the date of receipt of such application till the date of refund of such duty.

Problem:

X Ltd. imported goods on 29th March 2017, and approached to the department for grant of provisional assessment u/s 18 of the Customs Act, 1962. Provisional Assessment granted on 10th April 2017 by demanding duty of ₹1,00,000.

On 1st July 2017 provisional assessment has been finalized with ₹ 50,000 of customs duty. X Ltd. filed application for refund under section 27 on 1st July 2017. Differential duty has been paid on 22nd September 2018. Find the interest payable u/s 27A of the Customs Act, 1962.

Answer: Interest on delay refund is @6% p.a.

Delay No. of days =

1st July to 30th Sep = nil rate of interest

1st Oct 2017 to 21st September 2018 = 356 days

Interest = ₹ 50,000 x 6% x 356 / 365 = ₹2,926/-

Answer:

Interest = ₹ 1,911/-

(₹ 50,000 x 15/100 x 93/365 = ₹ 1,910.96)

Power to undertake controlled delivery (w.e.f. 29.3.2018):

Section 109A of the Customs Act, 1962, Notwithstanding anything contained in this Act, the proper officer or any other officer authorised by him in this behalf, may undertake controlled delivery of any consignment of such goods and in such manner as may be prescribed, to—

- (a) any destination in India; or
- (b) a foreign country, in consultation with the competent authority of such country to which such consignment is destined.

Explanation.—For the purposes of this section “controlled delivery” means the procedure of allowing consignment of such goods to pass out of, or into, the territory of India with the knowledge and under the supervision of proper officer for identifying the persons involved in the commission of an offence or contravention under this Act.’

4.20 Duty under protest

The term duty under protest means the Customs Officer completed the assessment and very clearly levied the duty; however, importer is aggrieved with the assessment. In such a situation importer has to pay the duty under protest at the time of clearing the goods from the customs station.

4.21. Interest if duty paid late [Section 28AA of Customs Act 1962]

w.e.f. 1-4-2016; Rate of interest is 15% p.a.

Period for which interest payable: from the first day of the month succeeding the month in which the duty ought to have been paid or from the date of such erroneous refund, as the case may be, up to the date of payment of such duty.

Example:

Mr. Lal, paid the customs duty in the month of June 2016 ₹10,300. It was found by the department officer, the actual amount of duty is ₹15,450 for the June 2016. Customs duty of ₹5,150 as demanded by the department has been paid on 31st July 2016. Find the interest under section 28AA of the Customs Act, 1962?

Answer: Interest = ₹66

(i.e. ₹5,150 x 15/100 x 31/365)

Case law:

M/s CPS Textiles P Ltd. v Joint Secretary 2010 (255) ELT 228 (Mad)

Decision: The High Court held that the description of the goods as per the documents submitted along with the Shipping Bill would be a relevant criterion for the purpose of classification, if not otherwise disputed on the basis of any technical opinion or test. The petitioner could not plead that the exported goods should be classified under different headings contrary to the description given in the invoice and the Shipping Bill, which had been assessed and cleared for export.

Further, the Court, while interpreting section 75A(2) of the Customs Act, 1962, noted that when the claimant is liable to pay the excess amount of drawback, he is liable to pay interest as well. The section provides for payment of interest automatically along with excess drawback. No notice for the payment of interest need be issued separately as the payment of interest becomes automatic, once it is held that excess drawback has to be repaid.

4.22 Importer Exporter Code (IEC Number)

- The legacy data, which is based on IEC, would be converted into PAN based in due course of time.
- For registered assesses under GST, GSTIN is relevant for import and export.
- Please refer lesson FTP.

4.23 Risk Management System

The Central Board of Indirect Taxes and Customs has decided to introduce the ‘Risk Management System’ (RMS) in major Customs locations where the Indian Customs EDI System (ICES) is operational. The implementation of the RMS is one of the most significant steps in the ongoing Business Process Re-engineering initiatives of the Customs and Central Excise Department [CircularNo. 43/2005-Customs]

Features of the Risk Management System:

- The Risk Management System replaces the existing system of concurrent audit and replaced by a Post-Clearance Compliance Verification (Audit) function.
- This system provides the special Customs clearance for Accredited Clients. (Accredited Client means importer whose value of imports during the previous financial year ₹10 crores or paid duty more than ₹1 crore).
- This system applies only to those importers whose track record is good for the last 3 financial years.
- The RMS is intended to improve the management of the resources of the department to enhance the efficiency and effectiveness in meeting stakeholder expectations and to bring the Customs processes at par with the best international practices.

4.23.1 E-payment of Customs Duty (NT 83/2012-Cus, dated 17-9-2012): the following assesses are eligible for e-payment of Customs duty.

- Importer registered under Accredited Clients Programme
- Importers paying customs duty of ₹1 lakh or more per bill of entry

4.23.2 Accredited Clients Programme (ACP):

The importers desirous of availing the facility as “Accredited Clients” are required to apply for registration under the scheme using the Application form attached at Annex-1. Importers meeting the following criteria shall be the eligible under the Accredited Clients Program:

- Accredited Clients means they should have imported goods at ₹10 crores in the previous financial year; or Paid customs duty more than ₹1 crore in the previous financial year; or Importers, who are also Central Excise assessee, paid Central Excise Duties over ₹One Crore from the Personal Ledger Account in the previous financial year.
- They should have filed at least 25 Bills of Entry in the previous financial year in one or more Indian Customs stations.
- They should have no cases of Customs, booked against them in the previous three financial years. Cases booked would imply that there should be at least a show cause notice, invoking penal provisions, issued to an importer.
- They should also not have any cases booked under any of the Allied Acts being implemented by Customs.
- The quality of the submissions made by the applicants to Customs should be good as measured by the number of amendments made in the bills of entry submitted by them in relation to classification of goods, valuation and claim for exemption benefits. The number of such amendments should not have exceeded 20% of the bills of entry during the previous financial year.
- They should have no duty demands pending on account of non-fulfilment of Export obligation.
- They should have reliable systems of record keeping and internal controls and their accounting systems should conform to recognized standards of accounting. They are required to provide the necessary certificate from their Chartered Accountants in this regard as per format given in the Application form.

4.23.3 This program (ACP) gives the following benefits

- The clients will get assured facilitation;
- In a small number of occasions their consignments will be randomly selected for checks by customs officers;
- The Indian Customs EDI system will accept the declared classification and valuation and assess duty on the basis of importers’ self-declaration;
- They will also not be subjected to examination;
- It will be ensured that their cargo is delivered quickly;
- These benefits are applicable at all ICES locations

4.24 Detention Certificate

Once goods are imported from a country outside India into India, such goods need to be cleared from the port within 3 working days from the date of import. For delay beyond 3 working days the port authorities will charge demurrage. If the delay is from the Customs authorities, then such authorities will issue a certificate called as Detention Certification for *bona fide* import.

If the imported goods are not cleared from the Customs Authority within 30 days from the date of import, then such goods can be stored in a warehouse pending clearance. Beyond the time limit these goods can be sold after giving show cause notice to such an importer.

4.25 Boat Note

In India we have certain ports where the ships cannot come to the shore for unloading or loading goods due to depth of the Sea or vessel may not find the time in having berth in the port. In such cases goods are sent to shore in

a small cargo (*i.e.* it may be loaded in a small boat and sent to shore). As per the Boat Note Regulations such a small boat must be accompanied by a Boat Note issued by the Customs Officer. The boat note must be in duplicate and machine numbered. Separate forms are prescribed for export cargo, import cargo and trans-shipment cargo.

4.26 Prohibit the import or export of goods

Section 11 of the Customs Act, 1962 enables the Central Government to notify in the Official Gazette the prohibition relating to the import or export goods. Twenty-two such purposes are specified therein, out of which some are given below:

- The maintenance of the security of India.
- The maintenance of public order, standards of decency or morality.
- Prevention of smuggling
- Prevention of shortage of goods of any description
- The establishment of any industry.
- Conservation of exhaustible natural resources
- Prevention of deceptive practices.
- Prevention of serious injury to domestic production of goods.
- Prevention of human/animal life or health.

4.27 Penalties under Customs

Where the duty has not been levied or has been short-levied or the interest has not been charged or paid or has been part paid or the duty or interest has been erroneously refunded by reason of collusion or any willful mis-statement or suppression of facts, the person who is liable to pay the duty or interest, as the case may be, as determined under sub-section (2) of section 28 shall also be liable to pay a penalty equal to the duty or interest so determined [Section 114A of the Customs Act, 1962]

4.28 Whether custom authorities are authorized to auction the confiscated goods during the period of pendency of appeal

The customs authorities are not authorized to auction the confiscated goods during the period of pendency of appeal. It means to say that the petitioner informed the customs authorities that he was filing an appeal against order of confiscation, then customs authorities are not authorized to auction the confiscated goods. [*Shabir Ahmed Abdul Rehman v UOI 2009 (235) ELT 402 (Bom)*].

4.29 Offences and Prosecutions under Customs

Persons involved in smuggling and other modus operandi (*i.e.* Manner of operation) of imports and exports, in violation of prohibitions or restrictions with intent to evade duties or fraudulently claim export incentives are liable to serious penal action under the Customs Act, 1962.

The offending goods can be confiscated and heavy fines and penalties imposed. There are provisions for arrests and prosecutions.

4.29.1 Detention of goods

It means the goods are temporarily detained by officer to check whether there is any violation of law. In the case of *Pro Musicals v Joint Commissioner Customs (Prev.)*, *Mumbai 2008 (227) ELT 182 (Mad)* the Court clarified that the detention of goods is actually taking the custody of the goods and keeping it under restraint from being taken by the parties; but, the party is entitled to produce sufficient documentary evidence, and if he shows proof, he can take it. At that juncture, no question of seizure would arise. If such person not shows proof, then said goods are seized.

4.29.2 Seizure of goods (Section 110 of the Customs Act, 1962)

The term seizure meant to take possession of the property contrary to the wishes of the owner of the goods in pursuance of a demand under legal right. Seizure involved not merely the custody of goods but also a deprivation (*i.e.* losing something) of possession of goods. It means to say that under seizure goods are taken in custody by the department. A stage before confiscation is called seizure. Generally goods liable to be confiscated may be seized.

Goods should be returned within SIX months if no Show Cause Notice has been issued

Detention is without seizure and possession of goods whereas seizure of goods necessarily means detention plus taking possession of goods by officer.

Show Cause Notice (SCN) shall be issued within SIX months from the date of seizure. This period can be further extended by SIX months on sufficient cause, by the Commissioner of Customs. If no show cause notice issued within SIX months, the goods shall be return to person from whose possession they were seized.

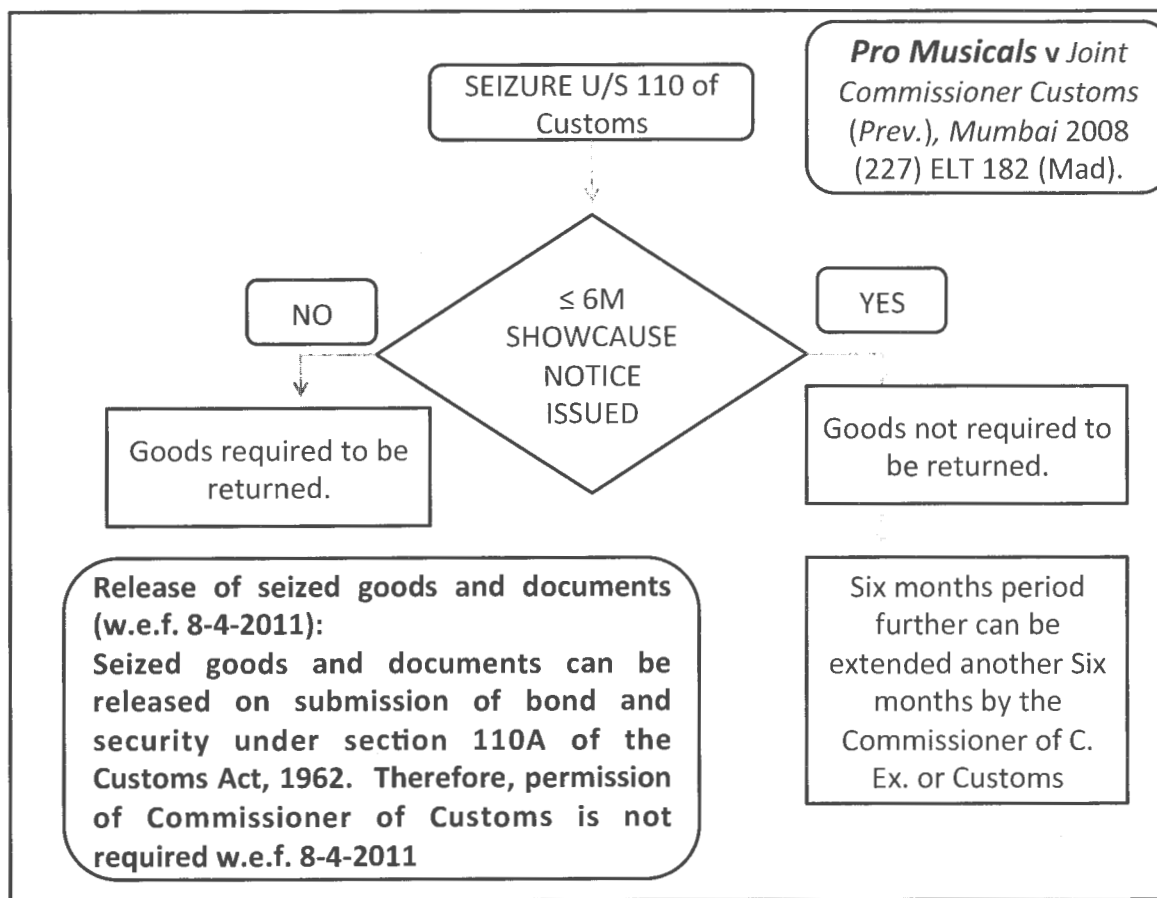
w.e.f. 29.3.2018:

“Provided that the Principal Commissioner of Customs or Commissioner of Customs may, for reasons to be recorded in writing, extend such period to a further period not exceeding six months and inform the person from whom such goods were seized before the expiry of the period so specified:

“Provided further that where any order for provisional release of the seized goods has been passed under section 110A, the specified period of six months shall not apply.”.

Release of seized goods and documents (w.e.f. 8-4-2011):

Seized goods and documents can be released by adjudicating authority on submission of bond and security under section 110A of the Customs Act, 1962. Therefore, permission of Commissioner of Customs is not required w.e.f. 8-4-2011.

**w.e.f. 1-8-2019 section 110(1) of the Customs Act, 1962:**

“Provided that where it is not practicable to remove, transport, store or take physical possession of the seized goods for any reason, the proper officer may give custody of the seized goods to the owner of the goods or the beneficial owner or any person holding himself out to be the importer, or any other person from whose custody such goods have been seized, on execution of an undertaking by such person that he shall not remove, part with, or otherwise deal with the goods except with the previous permission of such officer:

Provided further that where it is not practicable to seize any such goods, the proper officer may serve an order on the owner of the goods or the beneficial owner or any person holding himself out to be importer, or any other person from whose custody such goods have been found, directing that such person shall not remove, part with, or otherwise deal with such goods except with the previous permission of such officer.”;

Where the proper officer, during any proceedings under the Act, is of the opinion that for the purposes of protecting the interest of revenue or preventing smuggling, it is necessary so to do, he may, with the approval of the Principal Commissioner of Customs or Commissioner of Customs, by order in writing, provisionally attach any bank account for a period not exceeding six months:

Provided that the Principal Commissioner of Customs or Commissioner of Customs may, for reasons to be recorded in writing, extend such period to a further period not exceeding six months and inform such extension of time to the person whose bank account is provisionally attached, before the expiry of the period so specified.”

Case law:

Manish Lalith Kumar Bavishi (2011).

Point of dispute: If any documents seized during the course of any action by an officer and relatable to the provisions of Customs Act, that officer was bound to make the documents available copies of those documents?

Answer: Yes. The Bombay High Court held the same view in the case of **Manish Lalith Kumar Bavishi (2011).**

4.29.3 Confiscation of goods

The term confiscation of goods means the goods become property of Government and Government can deal with these goods as it desires. Once confiscated goods are becoming property of Central Government, no duty liability arises on assessee whose goods are confiscated.

Search, seizure and confiscation not applicable to service tax.

However, in some cases, the person from whom goods were seized can be get them back on payment of fine (i.e. Redemption fine in lieu of confiscation) under section 125(1) of the Customs Act, 1962.

4.29.4 Provisions governing Confiscation under Customs Act, 1962

Goods are liable for confiscation in the following circumstances:

- Confiscation of improperly imported goods – Section 111 of the Customs Act, 1962
- Export goods liable for confiscation – Section 113 of the Customs Act, 1962
- Confiscation of Conveyances (i.e. Vehicles, Vessels, Aircrafts, animals used as a means of transport in the smuggling) if used improperly for import or export of goods – Section 115 of the Customs Act, 1962
- Confiscation of packages and their contents – Section 118 of the Customs Act, 1962
- Confiscation of goods used for concealing smuggled goods – Section 119 of the Customs Act, 1962
- Confiscation of smuggled goods notwithstanding any change in form, etc. – Section 120 of the Customs Act, 1962

For example, gold biscuits converted into jewellery. Hence, the entire value of jewellery is liable for confiscation.

- Confiscation of sale proceeds of smuggled goods – Section 121

As per section 124 of the Customs Act, 1962, before confiscating goods, Show Cause Notice must be issued to owner of goods giving grounds for confiscation. Time limit of SIX months as given in Section 110 of the Customs Act, 1962 is not applicable. It means there is no time limit is specified in case of issue of SCN for confiscation of goods. As per section 28 of the Customs Act, 1962, goods can be confiscated even after the goods are cleared from customs station.

Goods already exported cannot be confiscated under Section 113 of the Customs Act, 1962

Wrong confiscation of goods:

Once the action of the Customs department with regard to confiscation of goods, set aside by Tribunal or Court (i.e. set aside means make inoperative or stop) the person is eligible to get back the goods. If in the meanwhile, goods have been sold by the Customs authorities, market value of goods as on date of setting aside confiscation of the order of confiscation by the judgment is payable (**Northern Plastics Ltd. v CCE (2000) (SC)**).

4.29.4.1 Confiscation of improperly imported goods – Section 111 of the Customs Act, 1962:

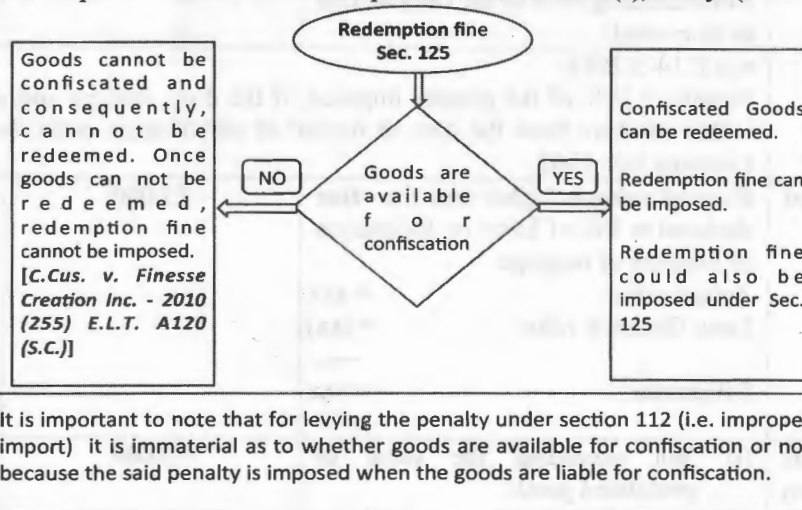
The following goods brought from a place outside India shall be liable to confiscation:

- (a) Any goods imported by sea or air which are unloaded or attempted to be unloaded at any place other than a customs port or customs airport.
- (b) Any goods imported by land or inland water through any route other than a route specified by the Govt.
- (c) Any dutiable or prohibited good brought into any bay, gulf, creek or tidal river for the purpose of being landed at a place other than a customs port.
- (d) Any goods which are imported or attempted to be imported or are brought within the Indian customs waters contrary to the provisions which are in force.
- (e) Any dutiable or prohibited goods found concealed (i.e. hid) in any manner in any conveyance
- (f) Goods not mentioned in the Import manifest or import report
- (g) Goods unloaded in contravention of the provisions of customs law
- (h) any dutiable or prohibited goods found concealed in any manner in any package either before or after the unloading thereof
- (i) any dutiable or prohibited goods removed or attempted to be removed from a customs area or warehouse without the permission of the proper officer.

- (j) Any dutiable or prohibited goods removed or attempted to be removed from a customs area or a warehouse without the permission of the proper
- (k) Any dutiable or prohibited goods which are not included or are in excess of those included in the entry made under this Act, or in the case of baggage in the declaration made under section 77.
- (l) Any goods which do not correspond in respect of value or in any other particular with the entry made under this Act or in the case of baggage with the declaration made under section 77.
- (m) Any dutiable or prohibited goods transited with or without transshipment in contravention of the provisions of customs.

Confiscated goods can be redeemed:

Under Customs Act, 1962 can redemption fine be imposed and penalty under section 112 of the Customs Act, 1962 be levied after release of imported goods on execution of a bond, if it is found subsequently that there has been an irregularity in the import? Discuss with the help of decided case law(s), if any. (CA Final RTP May 2016)



Case law:

Bussa Overseas & Properties P. Ltd. v C.L. Mahar, Asstt. C.C., Bombay 2004 (163) ELT 304 (Bom)

Facts of the case: Raghupati Energy Corporation had imported certain goods and got them cleared for home consumption. Subsequently, the Department discovered that import of such goods was prohibited under the Customs Act, 1962. Consequently, the goods were confiscated under section 111 of the Customs Act, 1962 and a penalty was levied under section 112 of the said Act.

Examine the veracity of confiscation of the goods and imposition of penalty by the Department, in the given case, with the help of a decided case law, if any. (CA Final RTP Nov 2018)

Answer:

The facts of the case are similar to the case of *Bussa Overseas & Properties P. Ltd. v C.L. Mahar, Asstt. C.C., Bombay 2004 (163) ELT 304 (Bom.)* [maintained by the Supreme Court] wherein the Bombay High Court observed that once goods are cleared for home consumption, they cease to be imported goods as defined in section 2(25) of the Customs Act, 1962. The goods lose its character of imported goods on being granted clearance for home consumption and thereafter the power to confiscate can be exercised only in cases where the order of clearance is revised and cancelled.

Therefore, in the given case the **confiscation of the goods by the Department is illegal.**

The power to impose penalty could be exercised not only when the goods are available for confiscation but when such goods are liable to confiscation under section 111 of the Customs Act, 1962.

Thus, **penalty levied by the Department in the given case is tenable in law.**

4.29.4.1.1 Penalties for improper import under section 112 of the Customs Act, 1962

Penalty can be imposed for improper import as well as attempt to improperly export goods. 'Improper' means without the knowledge of the Customs officers.

No question of penalizing the partners separately for the same contravention under section 112 of the Customs Act, 1962:

Once penalty was levied on the firm for contravention of any provision of the Act or the Rules framed there under, it amounted to levy of penalty on the partners. Hence, there was no question of penalizing the partners separately for the same contravention, unless the intention of the legislature to treat the firm and partners as distinct entities was borne out from the statute itself, i.e., expressly provided in the statute.

For Example: Explanation to section 140 of the Customs Act equated partnership firm with company (which stands as separate entity distinct from its shareholders) in respect of commission of offences.

However, there was no such corresponding provision in relation to imposition of penalty under section 112. The High Court held that separate penalty could not be imposed on the partners in addition to the penalty on the partnership firm [*CCE & C, Surat-II v Mohammed Farookh Mohammed Ghani* 2010 (259) ELT 179 (Guj)].

Penalties for improper import section 112 of the Customs Act, 1962

| Imported Goods (A) | Value in (₹) (B) | Minimum Penalty in (₹) (C) | Penalty in (₹) (B) or (C) |
|---|---|-------------------------------|------------------------------|
| Prohibited Goods | Not exceeding the value of prohibited goods | ₹5,000 | Whichever is Higher |
| Dutiable Goods (Other than Prohibited goods) including mis- declaration | w.e.f. 14-5-2015: Not exceeding 10% of the Duty sought to be evaded. w.e.f. 14-5-2015: Penalty = 25% of the penalty imposed, if the duty, interest and reduced penalty is paid within 30 days from the date of receipt of adjudication order Section 112(b)(ii) of the Customs Act, 1962. | ₹5,000 | Whichever is Higher |
| Misdeclaration of value | If actual value is higher than the value declared in Bill of Entry or declaration of contents of baggage: Actual value = xxx Less: Declared value = (xx) ----- Difference = xxx ===== | ₹5,000 | Whichever is Higher |
| Prohibited Goods plus Misdeclaration value | (i) Not exceeding the value of prohibited goods or (ii) Actual value = xxx Less: Declared value = (xx) ----- Difference = xxx ===== | ₹5,000 | Whichever is Higher |
| | WHICHEVER IS HIGHER | | |

4.29.4.2 Export goods liable for confiscation — Section 113 of the Customs Act, 1962

These are goods attempted to be improperly exported under clauses of section 113 of the Customs Act, 1962:—

- Goods attempted to be exported by sea or air from place other than customs port or customs airport
- Goods attempted to be exported by land or inland water through unspecified route
- Goods brought near land frontier or coast of India or near any bay, gulf, creek or tidal river for exporting from place other than customs port or customs station
- Goods attempted to be exported contrary to prohibition under Customs Act or any other law
- Goods concealed in any conveyance brought within limits of customs area for exportation
- Goods loaded or attempted to be loaded for eventual export out of India, without permission of proper officer, in contravention of section 33 and 34 of the Customs Act, 1962
- Goods stored at un-approved place or loaded without supervision of Customs Officer
- Goods not mentioned or found excess of those mentioned in Shipping Bill or declaration in respect of baggage
 - Any goods entered for exportation not corresponding in respect of value or any other particular in Shipping Bill or declaration of contents of baggage.
 - Goods entered for export under claim for duty drawback which do not correspond in any material particulars with any information provided for fixation of duty drawback.
- Goods imported without duty but re-exported under claim for duty drawback
- Goods cleared for exportation which are not loaded on account of willful act, negligence or default, or goods unloaded after loading for exportation, without permission.
- Provision in respect of 'Specified Goods' are contravened.

4.29.4.2.1 Penalties for improper export under section 114 of the Customs Act, 1962

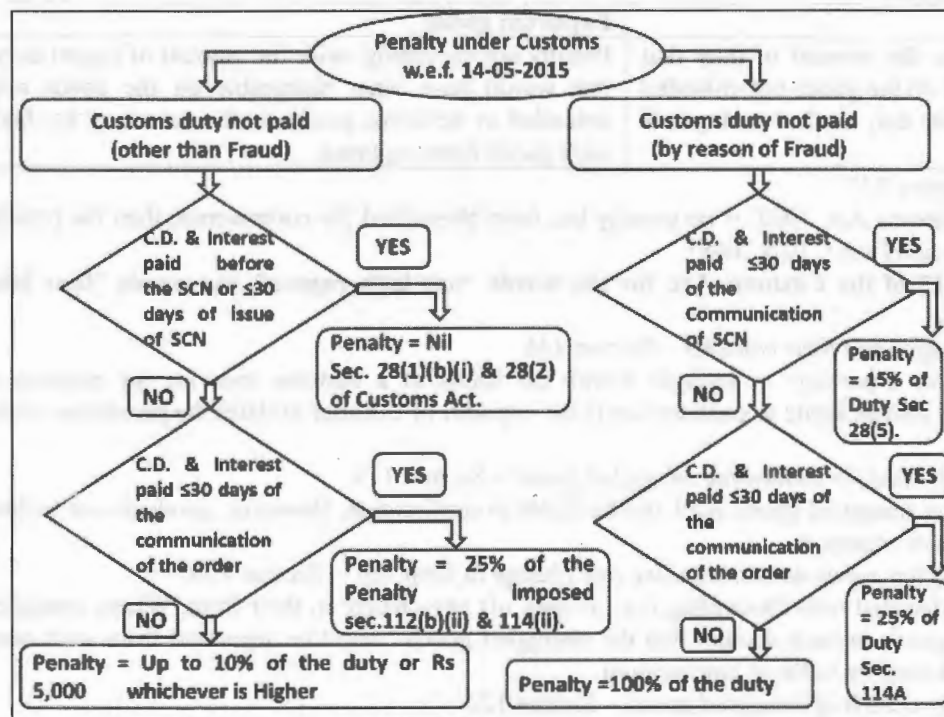
Following monetary penalties prescribed under the Customs Act, with regard to improper export:

| Attempt to improperly export (A) | Value in (₹) (B) | Minimum Penalty in (₹) (C) | Penalty in (₹) (B) or (C) |
|--|--|--|---------------------------------|
| Prohibited Goods | Three times the value of the goods as declared by the exporter | The value as determined under the Customs Act. | Whichever is Higher |
| Dutiable Goods (other than Prohibited goods) | Duty sought to be evaded | ₹5,000 | Whichever is Higher |
| Other goods | Value declared in short | The value as determined under the Customs Act. | Whichever is Higher |

Penalties for improper export U/S 114 of the Customs Act, 1962 (w.e.f.14-5-2015)

| Attempt to improperly export (A) | Value in (₹) (B) | Minimum Penalty in (₹) (C) | Penalty in (₹) (B) or (C) |
|--|---|--|------------------------------|
| Prohibited Goods | The value as determined under the Customs Act. | ₹5,000 | Whichever is Higher |
| Dutiable Goods (other than Prohibited goods) | w.e.f. 14-5-2015: Not exceeding 10% of duty sought to be evaded. w.e.f. 14-5-2015: Penalty = 25% of penalty imposed, if duty, interest and reduced penalty is paid within 30 days from date of receipt of adjudication order - Section 114(ii) of Customs Act, 1962. | ₹5,000 | Whichever is Higher |
| Other goods | Not exceeding the value of goods as declared by exporter | The value as determined under the Customs Act. | Whichever is Higher |

W.e.f. 14-5-2015
following amendments
have been made in
Section 28 of the Customs
Act, 1962:



w.e.f. 1-8-2019 As per Section 114AB of the Customs Act, 2019:

Where any person has obtained any instrument by fraud, collusion, willful misstatement or suppression of facts and such instrument has been utilised by such person or any other person for discharging duty, the person to whom the instrument was issued shall be liable for penalty not exceeding the face value of such instrument.

Explanation.—For the purposes of this section, the expression “instrument” shall have the same meaning as assigned to it in the Explanation 1 to section 28AAA.’.

W.e.f. 14-5-2015:

In pending cases (both fraud and non-fraud) where the order has not been passed before 14.05.2015, proceedings to conclude if duty, interest and penalty is paid in full within 30 days of 14.05.2015 [New Explanation 3 to section 28]

Explanation 3 has been inserted in section 28 to provide that where a notice under section 28(1) [non-fraud cases] or section 28(4) [fraud cases], as the case may be, has been served but an order determining duty under section 28(8) has not been passed before 14.05.2015 then, without prejudice to the provisions of sections 135, 135A and 140, as may be applicable, the proceedings in respect of such person or other persons to whom the notice is served will be deemed to be concluded if the payment of duty, interest and penalty under the proviso to section 28(2) or under section 28(5), as the case may be, is made in full within 30 days from 14.05.2015.

4.29.4.3 Confiscation of Conveyances Section 115 of the Customs Act, 1962:

Vehicles, Vessels, Aircrafts, animals used as a means of transport in the smuggling or improperly for import or export of goods shall be liable to confiscation.

Any such conveyance is used for the carriage of goods or passengers for hire, the owner of any conveyance shall be given an option to pay in lieu of the confiscation of the conveyance a fine not exceeding the market price of the goods which are sought to be smuggled or the smuggled goods as the case may be.

4.29.4.4 Penalty for not accounting for goods section 116 of the Customs Act, 1962:

The person-in-charge of the conveyance shall be liable to pay penalty if any goods loaded in a conveyance for importation into India, or any goods transhipped under the provisions of this Act or coastal goods carried in a conveyance:

- If not unloaded at their place of destination in India, or
- If the quantity unloaded is short of the quantity to be unloaded at that destination, or
- If the failure to unload or the deficiency is not accounted

Quantum of penalty under section 116:

| Imported goods: | Exported goods |
|--|---|
| Penalty not exceeding twice the amount of duty that would have been chargeable on the goods not unloaded or deficient goods, as the case may be, had such goods been imported. | Penalty not exceeding twice the amount of export duty that would have been chargeable on the goods not unloaded or deficient goods, as the case may be, had such goods been exported. |

4.29.4.5 Residual Penalty Section 117:

As per section 117 of the Customs Act, 1962, if no penalty has been prescribed for contravenes, then the penalty would be ₹1,00,000 can be levied (w.e.f. 10.5.2008).

w.e.f. 1-8-2019 In section 117 of the Customs Act, for the words “one lakh rupees”, the words “four lakh rupees” shall be substituted.

4.29.4.6 Confiscation of packages and their contents – Section 118

Where any goods imported in a package or brought within the limits of a customs area for the purpose of exportation in a package shall also be liable to confiscation if the importer or exporter violates the provisions of the customs provisions.

4.29.4.7 Confiscation of goods used for concealing smuggled goods – Section 119

Any goods used for concealing smuggled goods shall also be liable to confiscation. However, goods do not include a conveyance used as a means of transport.

4.29.4.8 Confiscation of smuggled goods notwithstanding any change in form, etc. – Section 120:

Smuggled goods may be confiscated notwithstanding (i.e. in spite of) any change in their form. Where smuggled goods are mixed with other goods in such manner that the smuggled goods cannot be separated from such other goods, the whole of the goods shall be liable to confiscation.

4.29.4.9 Confiscation of sale proceeds of smuggled goods – Section 121

Where any smuggled goods are sold by a person having knowledge or reason to believe that the goods are smuggled goods, the sale-proceeds thereof shall be liable to confiscation.

Smuggled goods cannot be treated par with imported goods for the purpose of granting the benefit of the exemption notification:

The Honorable Supreme Court of India held that if the smuggled goods and imported goods were to be treated as the same, then there would have been no need for two different definitions under the Customs Act, 1962.

The Court observed that one of the principal functions of the Customs Act, 1962 was to curb the ills of smuggling on the economy. Hence, it held that it would be contrary to the purpose of exemption notifications to give the benefit meant for imported goods to smuggled goods. Therefore, the court held that the smuggled goods could not be considered as 'imported goods' for the purpose of benefit of the exemption notification [*CCus. (Prev.)*, *Mumbai v M. Ambalal & Co.* 2010 (260) ELT 487 (SC)]

4.29.5 Redemption Fine (Section 125)

The term redemption fine means Option to pay fine in lieu of confiscation. A person makes an unauthorized import of goods liable to confiscation. After adjudication, Assistant Commissioner of Customs provides an option to the importer to pay fine in lieu of confiscation [Section 125(1) of the Customs Act.]:

Provided that, without prejudice to the provisions of the proviso to sub-section (2) of section 115, such fine shall not exceed the market price of the goods confiscated, less in the case of imported goods the duty chargeable thereon.

Such an importer is liable to pay in addition to the customs duty and charges payable in respect of such imports, the penalty.

Provisos to section 125(1) of the Customs Act, 1962 (w.e.f. 29.3.2018):

"Provided that where the proceedings are deemed to be concluded under the proviso to sub-section (2) of section 28 or under clause (i) of sub-section (6) of that section in respect of the goods which are not prohibited or restricted, the provisions of this section shall not apply:

Provided further that"; without prejudice to the provisions of the proviso to sub-section 2 of section 115 of the Customs Act, 1962, such fine shall not exceed the market price of the goods confiscated, less in the case of imported goods the duty chargeable thereon.

Section 125(2) of the Customs Act, 1962 where any fine lieu of confiscation of goods imposed under sub-section (1) of Section 125, the owner of such goods or the person referred to in sub-section (1) of Section 125 shall, in addition, be liable to any duty and charges payable in respect of such goods.

W.e.f. 29.3.2018, section 125(3) Where the fine imposed under sub-section (1) is not paid within a period of one hundred and twenty days from the date of option given thereunder, such option shall become void, unless an appeal against such order is pending.

Explanation.—For removal of doubts, it is hereby declared that in cases where an order under sub-section (1) has been passed before the date on which the Finance Bill, 2018 receives the assent of the President and no appeal is pending against such order as on that date, the option under said sub-section may be exercised within a period of one hundred and twenty days from the date on which such assent is received."

w.e.f. 1-8-2019 In section 125 of the Customs Act, in sub-section (1), in the first proviso, for the words "the provisions of this section shall not apply", the words "no such fine shall be imposed" shall be substituted.

► Example 1:

A person makes an unauthorized import of goods liable to confiscation. After adjudication, Assistant Commissioner provides an option to the importer to pay fine in lieu of confiscation. It is proposed to impose a fine (in lieu of confiscation) equal to 50% of margin of profit. From the following particulars calculate the amount of fine that can be imposed: Assessable value – ₹50,000, Total duty payable – ₹20,000, Market value – 1,00,000. Also calculate the amount of fine and the total payment to be made by the importer to clear the consignment.

(CA Final May 2004)

Answer

In the given case Assistant Commissioner intends to impose redemption fine equal to 50% of margin of profit.

Total cost to importer = ₹50,000 + ₹20,000 = ₹70,000.

Margin of profit:

Market value – Total cost to importer = ₹1,00,000 – ₹70,000 = ₹30,000.

Hence, redemption fine will be ₹15,000 (@ 50% of ₹30,000). In addition, duty of ₹20,000 is payable. Thus, importer will have to pay totally ₹35,000 to clear the goods from customs.

4.29.5.1 Option to pay fine in lieu of confiscation also given to exporter of prohibited goods

An exporter who had been held guilty of exporting 'prohibited goods', has an option to pay fine in lieu of confiscation under section 125 of the Customs Act. *CCus. (Preventive)*, *West Bengal v India Sales International* 2009 (241) ELT 182 (Cal).

4.29.5.2 Selling the confiscated goods during the period of pendency of appeal was not justified

The Customs Officer confiscated the gold carried by the petitioner from Muscat. The Customs Department received the letter from the petitioner about his willing to file an appeal against the order of confiscation. Revenue informed the petitioner that the confiscated goods had been handed over to the warehouse of the Custom House for disposal and consequently, auctioned the confiscated goods. The action of the custom authorities in selling the gold during the pendency of the appeal was not justified. [*Shabir Ahmed Abdul Rehman v UOI* 2009 (235) ELT 402 (Bom)]

4.29.5.3 Option to redeem the goods with Adjudicating Authority under section 125

Adjudicating Authority is vested with the **discretion to give an option either to confiscate or redeem** the prohibited goods imported/exported even though the goods are liable to absolute confiscation but in case of other goods. [*CCus v Alfred Menezes* 2009 (242) ELT 334 (Bom)]

4.29.5.4 Goods are not redeemed by paying fine

Where the imported goods are confiscated, u/s 125 and goods are not redeemed by paying fine, **the importer is bound to pay the customs duty** [*Poona Health Services v CCus*. 2009 (242) ELT 335 (Bom)]

4.29.5.5 No redemption of fine, if goods not available for confiscation

The concept of **redemption fine arises in the event when the goods are available and are to be redeemed**. If the goods are not available, there is no question of redemption of the goods under section 125. The question of confiscating the goods would not arise if there are no goods available for confiscation. [*CCus v Finesse Creation Inc.* 2009 (248) ELT 122 (Bom)]

4.29.6 Offences under Customs

The term Offence means a violation or breach of a law, like evasion of duty and breaking prohibitions under the Customs Act, 1962. However, offence not defined under Customs Act, 1962. Thereby, 'Offence' as any act or omission made punishable by any law for the time being in force.

There are basically two types of punishments namely civil penalty and criminal penalty. Civil penalty for violation of statutory provisions involving a penalty and confiscation of goods and can be exercised by the Department of Customs. Criminal punishment is of imprisonment and fine, which can be granted only in a criminal court after prosecution.

4.29.6.1 Evasion of duty or prohibition under section 135(1) of the Customs Act, 1962

If a person has nexus with mis-declaration of value or evasion of duty or handling in any manner goods liable for confiscation under section 111 (i.e. Confiscation of improperly imported goods) or section 113 (i.e. Export goods liable for confiscation), he shall be punishable in the following manner:

Imprisonment upto SEVEN years and FINE for the following four kinds of offences:

- Market value of offending goods exceeds ₹One Crore
- Value of evasion of duty exceeds ₹30 lakhs
- Offence pertains to prohibited goods notified by Central Government of India
- Value of fraudulent availment of drawback/exemption exceeds ₹30 lakhs

For all other kind of offences imprisonment is upto THREE years or fine or both.

For repeat conviction, the imprisonment can be SEVEN years and FINE and in absences of special and adequate reasons, the punishment shall not be less than ONE year.

w.e.f. 1-8-2019 In section 135 of the Customs Act, following sub-item shall be inserted:

obtaining an instrument from any authority by fraud, collusion, wilful misstatement or suppression of facts and such instrument has been utilised by any person, where the duty relatable to utilisation of the instrument exceeds fifty lakh rupees.”.

4.29.6.2 Cognizable and Non-Cognizable Offence

Cognizable offence means an offence for which a police officer may arrest without warrant (i.e. without the order of a Magistrate). Non-cognizable offence means offences under Customs where a police officer cannot investigate cases without the order of a Magistrate.

4.29.6.3 Cognizance of Offences

As per Section 137(1) of the Customs Act, 1962, Court cannot take cognizance of offences under the Customs Act, 1962 in the following cases without previous sanction of the Commissioner of Customs:

False declaration or documents (Section 132)

- (i) Obstruction (i.e. stop the progress) of Officers of Customs (Section 133)
- (ii) Refusal to be X-rayed (Section 134)
- (iii) Evasion of duty or prohibitions (Section 135)
- (iv) Preparation to do clandestine export (i.e. improper export) (Section 135A)

As per Section 137(2) of the Customs Act, 1962, for taking cognizance of an offence committed by a Customs officer under section 136 the Court needs previous sanction of the Central Government in respect of officers of the rank of Assistant or Deputy Commissioner and above and previous sanction of the Commissioner of Customs in respect of officers lower in rank than Assistant or Deputy Commissioner.

Section 136 of the Customs Act deals with offences by Officers of Customs which are as follows:

- An officer of customs facilitated to do fraudulent export
- Search of persons without reason to believe in the secreting of goods on them
- Arrest of person without reason to believe that they are guilty

These are called **vexatious actions** of department officers.

4.30 Compounding of offences

Compounding means basically a compromise between assessee and department. It means to say that instead of going to court for imposition of fine and imprisonment, the offender (i.e. importer or exporter committed an offence) may agree to pay composition amount. If the case is pending, the accused and the complainant can make a joint application to the court that the parties have come to an agreement not to prosecute further.

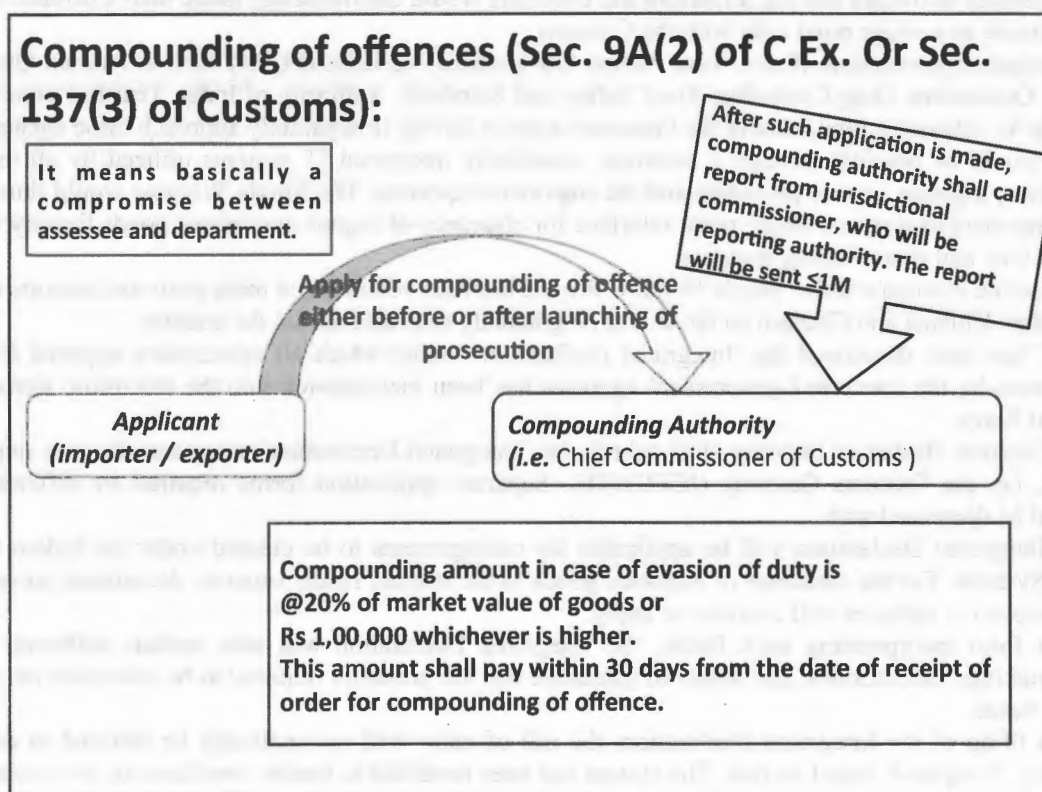
Applicant: any importer or exporter but shall not include officers of Customs. Therefore, applicant (importer or exporter) can apply for compounding of offence either before or after launching of prosecution.

Compounding Authority: means the Chief Commissioner of Customs having jurisdiction over place of applicant. The application can be made for compounding of offence before the Chief Commissioner of Customs by the applicant.

Reporting Authority: means the Commissioner of Customs, from whom report will get by compounding authority within one month from the date of request. After receiving the report, the compounding authority may allow application indicating the compounding amount and grant immunity from prosecution or reject the application.

Compounding amount in case of evasion of duty is @20% of market value of goods or ₹1,00,000, w.e.f. 13-11-2008, whichever is higher. This amount shall pay within 30 days from the date of receipt of order for compounding of offence.

Simplified approach:



Finance (No. 2) Act, 2009 provides that the following mentioned persons shall not be eligible for compounding under section 137(3) of the Customs Act, 1962:

- Offences under section 135 (i.e. Evasion of duty or prohibition) and section 135A (i.e. any person attempting to export goods illegally shall be punishable with imprisonment) of the Customs Act, 1962 already compounded. (i.e. **second time compounding not allowed**)

- (ii) Offences under the following Acts, namely:
 - the Narcotic Drugs and Psychotropic Substances Act, 1985;
 - the Chemical Weapons Convention Act, 2000;
 - the Arms Act, 1959;
 - the Wildlife (Protection) Act, 1972;
- (iii) A person involved in smuggling of goods falling under any of the following, namely:—
 - goods specified in the list of Special Chemicals, Organisms, Materials, Equipment and Technology
 - goods which are specified as prohibited items for import and export
 - any other goods or documents, which are likely to affect friendly relations with a foreign State
- (iv) Offences exceeding rupees one crore already compounded.
- (v) Person who has been convicted under this Act on or after 30.12.2005

w.e.f. 1-8-2019 section 103 of the Customs Act, 1962:

- (i) “(1) Where the proper officer has reason to believe that any person referred to in sub-section (2) of section 100 has any goods liable to confiscation secreted inside his body, he may detain such person and shall,—
 - (a) with the prior approval of the Deputy Commissioner of Customs or Assistant Commissioner of Customs, as soon as practicable, screen or scan such person using such equipment as may be available at the customs station, but without prejudice to any of the rights available to such person under any other law for the time being in force, including his consent for such screening or scanning, and forward a report of such screening or scanning to the nearest magistrate if such goods appear to be secreted inside his body; or
 - (b) produce him without unnecessary delay before the nearest magistrate.”;
- (ii) in sub-section (6), after the words “Where on receipt of a report”, the words, brackets, letter and figure “from the proper officer under clause (a) of sub-section (1) or” shall be inserted.

4.31 First charge on property of assessee (Section 142A of the Customs Act, 1962)

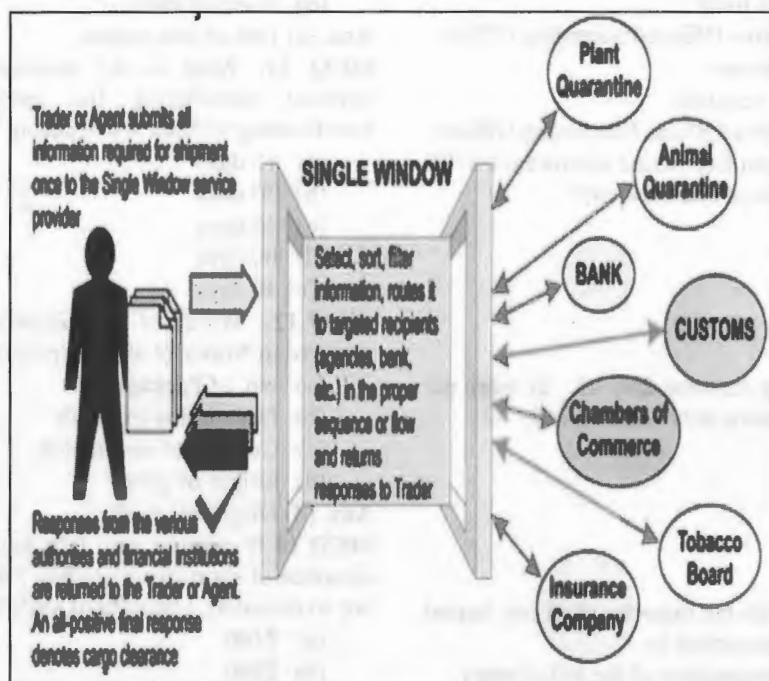
Customs duty, interest, penalty and other sum payable will have FIRST CHARGE ON PROPERTY of assessee.

4.32 Integrated Declaration under Indian Customs Single Window Project w.e.f. 1-4-2016

- (i) CBIC has taken-up the task of implementing ‘Indian Customs Single Window Project’ to facilitate trade. This project envisages that the importers and exporters would electronically lodge their Customs clearance documents at a single point only with the Customs.
- (ii) The required permission, if any, from Partner Government Agencies (PGAs) such as Animal Quarantine, Plant Quarantine, Drug Controller, Food Safety and Standards Authority of India, Textile Committee etc. would be obtained online without the importer/exporter having to separately approach these agencies.
- (iii) This would be possible through a common, seamlessly integrated IT systems utilized by all regulatory agencies, logistics service providers and the importers/exporters. The Single Window would thus provide the importers/exporters a single point interface for clearance of import and export goods thereby reducing dwell time and cost of doing business.
- (iv) This online clearance under Single Window Project has been rolled out at main ports and airports in Delhi, Mumbai, Kolkata and Chennai so far. It will be gradually extended across the country.
- (v) CBIC has since developed the ‘Integrated Declaration’, under which all information required for import clearance by the concerned government agencies has been incorporated into the electronic format of the Bill of Entry.
- (vi) The Customs Broker or Importer shall submit the “Integrated Declaration” electronically to a single-entry point, i.e. the Customs Gateway (ICEGATE). Separate application forms required by different PGAs would be dispensed with.
- (vii) The Integrated Declaration will be applicable for consignments to be cleared under the Indian Customs EDI Systems. For the clearance of imported goods in the manual mode, separate documents prescribed by the respective agencies will continue to apply.
- (viii) Apart from incorporating such forms, the Integrated Declaration will also include different types of undertakings, declarations, and letters of guarantee that are presently required to be submitted on company letter heads.
- (ix) Upon filing of the Integrated Declaration, the bill of entry will automatically be referred to concerned agency, if required, based on risk. The system has been modified to enable simultaneous processing of bill of entry by PGA and Customs. The Integrated Declaration has become effective from 1st April, 2016.

[Circular No. 10/2016-Cus., dated 15.03.2016]

Consequently, w.e.f. 01.04.2016, in the Bill of Entry (Electronic Declaration) Regulations, 2011, the term Electronic Declaration has been substituted with the term, Electronic Integrated Declaration vide **Notification No. 45/2016-Cus (NT), dated 01.04.2016.**

Overall view:**Integrated Declaration under Indian Customs Single Window Project w.e.f. 1-4-2016****w.e.f. 14.07.2016 Customs (Import of Goods at Concessional Rate of Duty for Manufacture of Excisable Goods) Rules, 2016**

- (i) Service providers also allowed to import goods at concessional rate of duty. Rule 2 has been amended so as to apply these rules mutatis mutandis to a service provider also.
- (ii) Furnishing of security also permitted Rule 5, inter alia, requires a manufacturer who intends to avail the benefit of an exemption notification, to submit a continuity bond with such surety undertaking to pay the amount equal to the difference between the duty leviable on such inputs but for the exemption and that already paid, if any, at the time of importation, along with applicable interest. Said rule has been amended to allow the manufacturer to either submit a security or a surety for the amount specified herein.
- (iii) Time period for re-export of unutilized or defective imported goods extended from 3 months to 6 months Rule 7 allows the manufacturer who has availed the benefit of exemption notification to re-export the unutilized or defective imported goods, with the permission of the jurisdictional Deputy/Assistant Commissioner of Customs within 3 months from the date of import, subject to specified conditions. The said time period allowed for re-export has been extended from 3 months to 6 months.