UNIT – 3: CUSTOMS DUTY

Learning objectives
After reading Unit- 3 of this Chapter, you will be able to understand:

- the concept of customs duty
- the Constitutional provisions relating to levy of customs duty
- the different types of customs duties and their computation
- the sources of customs law
- the various provisions relating to levy of customs duty namely, application of the Customs Act, charge of customs duty and taxable event
- exceptions to the levy of customs duty
- exemption from the customs duty
- the concepts of classification and valuation of imported/export goods in brief
- as to how to determine the relevant date for determination of rate of exchange
- as to how to determine the rate of duty and tariff valuation of imported and export goods

Apart from the above, after you finish reading this Unit, you will also get a brief idea of the import and export procedures under the customs law.

3.1 What is customs duty?

Customs duty is a duty or tax, which is levied by the Central Government on import of goods into, and export of goods from, India.

The term ‘customs’ derives its colour and essence from the term ‘custom’, which means a habitual practice or course of action that characteristically is repeated in like circumstances. Duties on import and export of goods have been levied from time immemorial by all the countries. In India, at the time when the predominant system of governance was monarchy, it was customary for a trader bringing the goods to a particular kingdom to offer gifts to the King for allowing him to sell his goods in that kingdom.

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.

Post independence, the Customs Act was passed and promulgated in India by the Parliament in the year 1962. It consolidated the erstwhile Sea Customs Act, 1878, Land Customs Act, 1924 and provisions for air customs. Further, the Customs Tariff Act was passed in the year 1975 to replace the erstwhile Indian Tariff Act, 1934.
3.2 Constitutional provisions

As learned earlier, customs duty is an indirect tax levied by the Central Government. The power to levy the customs duty is conferred by Entry 83 of the Union List of the Seventh Schedule to the Constitution of India.

Entry 83 provides as under:

**Duties of Customs including Export duties**

The various types of customs duties are as under:

- Basic customs duty
- Anti-dumping duty
- Countervailing duty on subsidized articles
- Safeguard duties
- Protective duties
- CVD
- Special CVD
- Countervailing duties on subsidized articles

The aforesaid duties have been elaborated subsequently in this Unit.

3.3 Sources of customs law


1. **Customs Act, 1962**: Customs Act, 1962 contains the provisions governing the import and export duty imposed on imports and exports of the goods.

2. **Customs Tariff Act, 1975**: contains the provisions relating to various types of customs duties and the classification of imported and export goods.

3. **Rules and regulations**: Some of the rules and regulations issued under the Customs Act, 1962 are the Customs Valuation (Determination of Value of Imported Goods) Rules,
1.52 Indirect Taxes


3.4 Levy of customs duty

### Application of the Act

The Customs Act, 1962 applies to the whole of India. India includes territorial waters of India. Besides, the Customs Act, 1962 and Customs Tariff Act, 1975 have been further extended to:

1. **the notified designated areas** in the Continental Shelf of India (CSI) and Exclusive Economic Zone of India (EEZI) and
2. **whole of EEZI and CSI for the purpose of** processing for extraction or production of mineral oils and supply of any goods in connection thereto.

India has sovereignty in its territorial waters whereas it has full and exclusive economic rights in its EEZ and Continental Shelf.

**Example:** The machinery purchased by the oil rigs carrying on operations in the EEZI shall be considered as imported goods.

1. **Baseline:** It is the lower water mark along the coast.
2. **Exclusive Economic Zone of India:** It is an area beyond the Indian territorial waters. The limit of exclusive economic zone is 200 nautical miles from the nearest point of the baseline.
3. **Continental Shelf of India:** Continental shelf is the part of the sea floor adjoining a land mass where the depth gradually increases before it plunges into the ocean deeps. Continental Shelf of India extends beyond the limit of its territorial waters throughout the natural prolongation of its land territory to the outer edge of the continental margin or to a distance of 200 nautical miles from the baseline.

(a) **Indian territorial waters:** Indian territorial waters extend up to 12 nautical miles (22 km) into the sea from the appropriate base line. India includes not only the surface of sea in the territorial waters, but also the air space above and the ground at the bottom of the sea.

(b) **Indian customs waters:** Indian customs waters means the waters extending into the sea up to the limit of contiguous zone of India and **includes** any bay, gulf, harbour, creek or tidal river [Section 2(28) of the Customs Act, 1962]. Indian customs waters cover both the Indian territorial waters and contiguous zone. Indian territorial waters extend up to 12 nautical miles (nm) from the base line whereas

---

1 The other sources relevant for the study of the customs law are similar to the sources of the central excise law. Students are advised to refer Unit-2: Central Excise Duty for detailed discussion on the same.
contiguous zone extend to a further 12 nm from the outer limit of the territorial waters. Therefore, Indian customs waters extend up to a total of 24 nm from base line.

**Contiguous zone of India:** It is an area 12 nautical miles (nm) beyond the Indian territorial waters. Therefore, it is at a distance of 24 nautical miles from the nearest point of the baseline.

(c) **Significance of Indian territorial waters and Indian customs waters:** Since India includes Indian territorial waters, all the provisions of the Customs Act and rules and regulations thereunder are applicable in Indian territorial waters. In addition to this, the Customs Act, 1962 has extended certain powers of the customs officers in the Indian customs waters as well (for example, power to stop and search any vessel, power to arrest a person in Indian customs waters etc.).

**Charging section** [Section 12 of the Customs Act, 1962]

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

2. The aforesaid provisions shall apply in respect of all goods belonging to Government as they apply in respect of goods not belonging to Government.

   However, imports by Indian Navy, specific equipment required by police, Ministry of Defence, Coast Guard etc. are fully exempt from customs duty by virtue of specific notifications subject to fulfillment of conditions and/or procedure set out in the said notifications.

**ANALYSIS:** The following propositions arise from the aforesaid section:-

1. Customs duty is charged on goods and not on the person importing them or paying the duty. The goods shall be such as are imported to or exported from India. Being such, it is expected to be passed on to the buyer.

2. It may, however, be noted that this levy is subject to other sections in the Act. For instance:
   - Section 13 – no duty on pilfered goods
   - Section 22 – reduced duty on damaged goods
   - Section 23 – remission of duty on destroyed goods or no duty in case of relinquishment of the title to the goods.

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

4. **Rates of duty:** The rates at which duties of customs shall be levied under the Customs Act 1962 are specified in the First and Second Schedules of the Customs Tariff Act, 1975.
(i) **Preferential rate of duty:** If the goods are imported from the **preferential areas** [as notified by the Central Government], then a lower preferential rate of duty will be applicable on such goods subject to the fulfillment of specified conditions.

(ii) **Standard rate of duty:** In any entry, if no preferential rate of duty has been notified, the standard rate of duty shall be applicable.

**Determination of duty where goods consist of articles liable to different rates of duty [Section 19]**

Except as otherwise provided in any law for the time being in force, where goods consist of a set of articles, duty shall be calculated as follows: -

(a) **Articles liable to duty with reference to quantity** (specific duty) shall be chargeable to that duty;

(b) **Articles liable to duty with reference to value** (ad valorem duty) shall:
   
   (i) if they are liable to duty at the same rate, be chargeable to duty at that rate, and
   (ii) if they are liable to duty at different rates, be chargeable to duty at the highest of such rates;

(c) **Articles not liable to duty** shall be chargeable to duty at the rate at which articles liable to duty with reference to value are liable under clause (b).

However, -

(a) Accessories of, and spare parts or maintenance and repairing implements for, any article which satisfy the conditions specified in the rules made in this behalf shall be chargeable at the same rate of duty as that article;

(b) If the importer produces evidence to the satisfaction of the proper officer or the evidence is available regarding the value of any of the articles liable to different rates of duty, such article shall be chargeable to duty separately at the rate applicable to it.

(III) **Taxable event in case of import of goods into India/export of goods from India**

Section 12 makes it abundantly clear that the taxable event for payment of the duty of customs is the **importation or exportation of goods into/out of India**. However, since India includes
territorial waters of India, even an innocent entry of a vessel into the territorial waters of India might have resulted in import of goods. The confusion in determining the point at which the importation or exportation takes place was cleared by the numerous legal decisions rendered in this regard. The major principles derived by these judgments are as follows:

(i) **TAXABLE EVENT IN CASE OF IMPORTS**

(a) **In case of goods cleared for home consumption**: Import of goods commences when they cross the territorial waters, but continues and is completed when they become part of the mass of goods within the country; the taxable event being reached at the time when the goods reach the customs barriers and bill of entry for home consumption is filed.

(b) **In case of goods cleared for warehousing**: In case of warehoused goods, the goods continue to be in customs bond. Hence, import takes place when the goods are cleared from the warehouse. The customs barriers would be crossed when they are sought to be taken out of the customs and brought to the mass of goods in the country.

*Clearance for home consumption*: It implies that customs duty on imported goods has been paid and thus, goods can be removed by the importer for utilization or consumption within the country.

**Clearance for warehousing**: In case where the goods are not immediately cleared for home consumption, they may be deposited in a warehouse and cleared at a later point of time. In such a case, the collection of customs duty will be deferred till such goods are cleared from warehouse for home consumption.

(ii) **TAXABLE EVENT IN CASE OF EXPORTS**

Export of goods is complete when the goods cross the territorial waters of India. If ship sinks within the territorial waters, export is not complete.

(1) **Goods**: includes-

(a) vessels, aircrafts and vehicles;
(b) stores;
(c) baggage;
(d) currency and negotiable instruments;
(e) any other kind of movable property [Section 2(22)].

For anything to be called as goods, it must moveable and marketable. The concept of movability and marketability of goods has been discussed at length in Unit 2: Central Excise Duty.
(2) **Export**: The term “export”, with its grammatical variations and cognate expressions, means taking out of India to a place outside India [Section 2(18)].

(3) **Export goods**: means any goods, which are to be taken out of India to a place outside India [Section 2(19)].

(4) **Exporter**: in relation to any goods at any time between their entry for export and the time when they are exported, includes any owner or any person holding himself out to be the exporter [Section 2(20)].

(5) **Import**: The term “import”, with its grammatical variations and cognate expressions, means bringing into India from a place outside India [Section 2(23)].

(6) **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 [Section 2(25)].

(7) **Importer**: in relation to any goods at any time between their importation and the time when they are cleared for home consumption, includes any owner or any person holding himself out to be the importer [Section 2(26)].

(IV) **Duty to be paid on goods derelict, wreck etc coming into India [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. Thus, even though such goods had not been actually imported, they would be liable to import duty.

However, if such goods are entitled to be admitted duty-free under this Act, duty would not be levied provided it is shown to the satisfaction of the proper officer that they are so entitled.

**Derelict** – This refers to any cargo, vessel, etc. abandoned in the sea with no hope of recovery.

**Jetsam** – This refers to goods jettisoned from the vessel to save her from sinking.

**Flotsam** – Jettisoned goods which continue floating in the sea are called flotsam.

**Wreck** – This refers to cargo or vessel or any property which are cast ashore by tides after ship wreck.
3.5 Customs duty not leviable in certain cases

| Section 13 | No duty on pilfered goods |
| Section 22 | Reduced duty on damaged goods |
| Section 23(1) | Remission of duty on destroyed goods |
| Section 23(2) | No duty on relinquishment of the title to the goods |

### 1. No duty on pilfered goods [Section 13]

If any imported goods are pilfered after the unloading thereof but before the proper officer has made an order for clearance for home consumption or deposit in a warehouse, the importer shall not be liable to pay the duty leviable on such goods. However, where such goods are restored to the importer after pilferage, the importer becomes liable to duty.

**Meaning of term 'pilfer':** The term ‘pilfer’ means “to steal, especially in small quantities; petty theft”. Therefore, the term does not include loss of total package.

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

**ANALYSIS:**

(a) **Conditions to be satisfied for exemption from duty**

- The imported goods should have been pilfered.
- The pilferage should have occurred after the goods are unloaded, but before the proper officer makes the order of clearance for home consumption or for deposit into warehouse.
- The pilfered goods should not have been restored back to the importer.

(b) **Points which merit consideration**

- 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. 

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

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

## 2. Remission of duty on goods lost or destroyed [Section 23(1)]

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

**ANALYSIS:**

(a) This section comes into play in case of loss/destruction of imported goods at any time before their clearance for home consumption.

(b) The remission of duty is permissible only in the case of total loss of goods. This implies that the loss is forever and beyond recovery. The loss referred to in this section is generally due to natural causes like fire, flood, etc. The loss of goods may be at the warehouse also.

(c) Since section 23(1) is subject to the provisions of section 13, in case the goods have been pilfered after they have been unloaded but before order for clearance for home consumption or deposit in a warehouse, section 13 would apply and the importer would not be liable to pay the duty.

**Distinction between section 13 and section 23(1):** The provisions of section 13 and section 23(1) can be better appreciated after going through the following points of distinction:-

<table>
<thead>
<tr>
<th>Basis</th>
<th>Pilferage of goods under section 13</th>
<th>Loss or destruction of goods under section 23(1)</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Meaning</strong></td>
<td>The word ‘pilfer’ means to steal, especially in small quantities; petty theft.</td>
<td>The word ‘lost’ or ‘destroyed’ refers to total loss of goods i.e. loss is forever and beyond recovery.</td>
</tr>
<tr>
<td><strong>Duty on goods</strong></td>
<td>Duty is not at all leviable on such goods.</td>
<td>The duty paid on the goods shall be remitted to the importer.</td>
</tr>
<tr>
<td><strong>Subsequent restoration of goods</strong></td>
<td>Where the pilfered goods are restored to the importer after pilferage, the importer becomes liable to duty.</td>
<td>In case of destruction of goods, the restoration of goods is not possible.</td>
</tr>
</tbody>
</table>
### 3. No duty in case of relinquishment of the title to the goods [Section 23(2)]

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

#### Meaning of relinquish: “Relinquish” means to give over the possession or control of, to leave off.

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.

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

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

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

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

In all the above cases, the goods having been imported, the liability to customs duty is imposed and, therefore, the importer 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.

### Table: 

<table>
<thead>
<tr>
<th>Warehoused goods</th>
<th>Provisions of section 13 are not applicable to warehoused goods.</th>
<th>Provisions of section 23(1) apply to warehoused goods also.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Onus to prove the pilferage/destruction or loss of goods</td>
<td>The onus to prove the pilferage does not lie on the importer.</td>
<td>The importer has to prove the loss/destruction to the satisfaction of the Assistant/ Deputy Commissioner of Customs.</td>
</tr>
<tr>
<td>Time of occurrence of pilferage or loss/destruction</td>
<td>The imported goods must have been pilfered after the unloading thereof and before the proper officer has made an order for clearance for home consumption or deposit in a warehouse.</td>
<td>The imported goods should have been lost/destroyed at any time before clearance for home consumption.</td>
</tr>
</tbody>
</table>
1.60 Indirect Taxes

It is open to the importer to exercise the above option at any time before the passing of the order for clearance for home consumption or before order permitting the deposit of goods in a warehouse.

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

Section 22 provides the importer with an option to pay the reduced duty if the goods are damaged or deteriorated under any of the specified circumstances.

**a) Cases where abatement is available:** Abatement is available if it is shown to the satisfaction of the Assistant Commissioner/Deputy Commissioner of Customs that the goods are damaged/deteriorated under any of the following circumstances:

<table>
<thead>
<tr>
<th>S.No.</th>
<th>In case</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.</td>
<td>any imported goods had been damaged or had deteriorated at any time before or during the unloading of the goods in India</td>
</tr>
<tr>
<td>2.</td>
<td>any imported goods, other than warehoused goods, had been damaged on account of any accident, at any time after the unloading thereof in India but before their examination for assessment by the customs authorities</td>
</tr>
<tr>
<td>3.</td>
<td>any warehoused goods had been damaged on account of any accident at any time before clearance for home consumption</td>
</tr>
</tbody>
</table>

- Provided such accident is not due to any wilful act, negligence or default of the importer, his employee or agent.

**Example:** If the value of goods is ₹50,000 and after damage the value is ₹10,000 then duty payable on ₹50,000/- should be appropriately reduced to 20% of the duty on such goods before their damage (proportion of 10,000 to 50,000).

- **Duty to be charged**
  - Value of damaged/deteriorated goods
  - Value of goods before damage/deterioration

- **Duty on goods before damage/deterioration**

**© The Institute of Chartered Accountants of India**
(c) *Valuation of the damaged or deteriorated goods: The value shall be:-

(a) Value ascertained by the proper officer

or

(b) The proper officer may sell such goods by public auction/tender or if the importer agrees, in any other manner and the gross sale proceeds shall be deemed to be the value of such goods.

3.6 Exemption from customs duty

Central Government’s power to grant exemption: Article 265 of the Constitution provides that “No tax shall be levied or collected except by authority of law”. The power of the Central Government to alter the duty rate structure is known as delegated legislation and this power is always subject to superintendence and check by the Parliament [Section 25].

a. General exemption: If the Central Government is satisfied that it is necessary in the public interest so to do, it may, by notification in the Official Gazette, exempt generally either absolutely or subject to such conditions (to be fulfilled before or after clearance) as may be specified in the notification, goods of any specified description from the whole or any part of duty of customs leviable thereon.

b. Special exemption: If the Central Government is satisfied that it is necessary in the public interest so to do, it may, by special order in each case, exempt from payment of duty, any goods on which duty is leviable only under circumstances of an exceptional nature to be stated in such order.

Both the above mentioned exemptions may be granted by providing for the levy of duty on such goods at a rate expressed in a form or method different from the form or method in which the statutory duty is leviable. Further, the duty leviable under such altered form or method shall in no case exceed the statutory duty leviable under the normal form or method.

The Central Government is vested with similar powers of granting exemption under central excise laws also. Thus, excise duty can also be exempted by Central Government by way of general and special exemptions.

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

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

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

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

(iii) Where the goods get damaged or deteriorated in transit.
b. Discretionary provision, where the exemption is used for controlling the economy and industrial growth of the country.

It may be noted that no customs duty shall be collected if the amount of duty leviable is equal to, or less than, ₹ 100.

3.7 Classification of imported/export goods

(1) What is classification?: Classification of goods under customs consists of determining the headings or sub-headings of the Customs Tariff Act, 1975 (CTA) under which the imported/export goods would be covered.

(2) Why is classification necessary?: Classification of imported goods determines (a) rate of applicable duty, (b) applicability of import controls or restrictions, (c) applicability of anti-dumping duty, safeguard duty etc., and (d) benefits of duty exemption notifications.

Unlike in imports, in exports there are no implications of classification on rates of duty except for the very few items on which export duty and cess are payable. However, the correct classification would have implications for grant of export benefits like Drawback.

(3) What is the scheme of classification?: The scheme of classification under customs is similar to the one in central excise. The said scheme has been discussed in detail under Unit 2: Central Excise Duty. Just like Central Excise Tariff Act, CTA is also based on the Harmonised System of Nomenclature (popularly known as HSN).

Customs Tariff Act has two schedules:-

First Schedule to CTA has 21 Sections that contain 98 Chapters. Importer needs to determine the correct classification of the goods imported by him.

3.8 Valuation of imported and export goods

The rates of Customs duties leviable on imported goods and export goods are either specific or on ad valorem basis\(^2\) or at times on specific cum ad valorem basis.

\(^2\) Duty on ad valorem basis is levied as a percentage of the value of the goods.
Section 14 of the Customs Act lays down the basis for valuation of imported and export goods where the customs duties are leviable on ad valorem basis. The value of imported goods and export goods may be determined in any of the following manner:

(I) **VALUATION ON THE BASIS OF TRANSACTION VALUE** [Section 14(1)]

(a) **Valuation of imported goods**: The value of the imported goods shall be the transaction value of such goods*.

In case of imported goods, the transaction value shall be
- the price actually paid or payable for the goods
- when sold for export to India
- for delivery at the time and place of importation
- where the buyer and seller of the goods are not related and
- price is the sole consideration for the sale

subject to such other conditions as may be specified in the rules made in this behalf i.e. the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007.

*The transaction value, in addition to the price as aforesaid, shall include any amount paid or payable for costs and services, including:

- commissions and brokerage
- engineering
- design work
- royalties and licence fees
- costs of transportation to the place of importation
- insurance
- loading, unloading and handling charges

*The transaction value, in addition to the price as aforesaid, shall include any amount paid or payable for costs and services, including:

- commissions and brokerage
- engineering
- design work
- royalties and licence fees
- costs of transportation to the place of importation
- insurance
- loading, unloading and handling charges

subject to such other conditions as may be specified in the rules made in this behalf i.e. the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007.

(b) **Valuation of export goods**: As per section 14(1) of the Customs Act, 1962, the value of the export goods shall be the transaction value of such goods.

---

3 Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 will be discussed in detail at Final Level in Paper 8: Indirect Tax Laws.
In case of export goods, the transaction value shall be

- the price actually paid or payable for the goods
- when sold for export from India
- for delivery at the time and place of exportation
- where the buyer and seller of the goods are not related and
- price is the sole consideration for the sale

subject to such other conditions as may be specified in the rules made in this behalf i.e. the Customs Valuation (Determination of Value of Export Goods) Rules 2007.

(II) **VALUATION ON THE BASIS OF TARIFF VALUE** [Section 14(2)]: CBEC may fix tariff values for any class of imported goods or export goods, having regard to the trend of value of such or like goods by notification in the Official Gazette if it is satisfied that it is necessary to do so. Where any such tariff values are fixed, the duty shall be chargeable with reference to such tariff value. Sub-section (2) overrides the provisions of sub-section (1). Tariff values have presently been fixed in respect of import of crude palm oil, crude palmolein, crude soyabean oil, brass scrap, poppy seeds etc.

### DATE RELEVANT FOR DETERMINATION OF RATE OF EXCHANGE

The price paid or payable as referred above shall be calculated with reference to the rate of exchange as in force on the date on which a bill of entry in relation to imported goods is presented, or a shipping bill (in case of export by vessel or aircraft) or bill of export (in case of export by vehicle) in relation to export goods is presented [Third proviso to section 14(1)].

**ANALYSIS**

1. **For imported goods**, the conversion in value shall be done with reference to the rate of exchange prevalent on the date of filing bill of entry.

2. **For export goods**, the conversion in value shall be done with reference to the rate of exchange prevalent on the date of filing shipping bill or bill of export.

---

4 Customs Valuation (Determination of Value of Export Goods) Rules 2007 will be discussed in detail at Final Level in Paper 8: Indirect Tax Laws.

5 The concept of presentation of Bill of Entry and Shipping Bill/ Bill of Export has been discussed subsequently in this Unit under the heading of Import and Export Procedures.
Basic Concepts of Indirect Taxes – Customs Duty

Rate of exchange means the rate of exchange —
(i) determined by the Board, or
(ii) ascertained in such manner as the Board may direct,
for the conversion of Indian currency into foreign currency or foreign currency into Indian currency [Explanation to section 14].

**ANALYSIS:** The rate of exchange is notified by three agencies - the Central Board of Excise and Customs (Board), the Reserve Bank of India and the Foreign Exchange Dealers’ Association of India. For the purpose of valuation under customs, rate notified by Board shall be taken into account. There are separate rates for imported goods (selling rate) and export goods (buying rate).

**Example:** ABC Manufacturers have imported machinery from US worth $10,000. Determine the rate of exchange for the purpose of computation of customs duty from the following additional information:

<table>
<thead>
<tr>
<th>Particulars</th>
<th>Date</th>
<th>Exchange rate as notified by CBEC</th>
<th>Exchange rate as notified by RBI</th>
</tr>
</thead>
<tbody>
<tr>
<td>Date of bill of entry</td>
<td>24.06.2015</td>
<td>₹ 68 per US dollar</td>
<td>₹ 69 per US dollar</td>
</tr>
<tr>
<td>Date of entry inward</td>
<td>20.06.2015</td>
<td>₹ 70 per US dollar</td>
<td>₹ 71 per US dollar</td>
</tr>
</tbody>
</table>

**Solution:**
Exchange rate in the given case will be the rate of exchange notified by CBEC on the date of presentation of bill of entry i.e. 24.06.2015. Hence, the rate of exchange for the purposes of computation of customs duty will be ₹68 per US dollar.

### 3.9 Date for determining the rate of duty and tariff valuation of imported goods

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

**Example:** Bill of entry is presented on 01.08.2015, the aircraft arrives on 03.08.2015. In this situation, relevant date for determination of the rate of import duty is 03.08.2015 because though for procedural purposes, the Bill of Entry was filed on 01.08.2015, for the purpose of determining the rate of duty and tariff valuation of such goods, Bill of Entry will be deemed to have been filed on 03.08.2015.

3.10 Date for determining the rate of duty and tariff valuation of export goods

Section 16 prescribes the relevant date for determining the rate of duty and tariff valuation, if any, applicable to any export goods as under:

**Example:**

**In case of**
- Goods entered for export
- Any other goods

**The rate of duty and tariff valuation shall be the rate and valuation in force on the**
- Date of presentation of bill of entry OR Date of entry inwards of the vessel/arrival of the aircraft or vehicle, whichever is later
- Date on which a bill of entry for home consumption in respect of such goods is presented
- Date of payment of duty

**In case of**
- Goods cleared for home consumption from the warehouse

**The rate of duty and tariff valuation shall be the rate and valuation in force on the**
- Date on which a proper officer makes an order permitting clearance and loading of the goods for exportation
- Date of payment of duty

© The Institute of Chartered Accountants of India
### Basic Concepts of Indirect Taxes

#### 3.11 Types of customs duties

<table>
<thead>
<tr>
<th>1. Basic customs duty (BCD)</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>It is the duty</strong></td>
</tr>
<tr>
<td><strong>Leviable on</strong></td>
</tr>
<tr>
<td><strong>Rate of duty</strong></td>
</tr>
<tr>
<td><strong>Assessable value for computing BCD (where duty is leviable on ad valorem basis)</strong></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>2. Additional customs duty under section 3(1) of the Customs Tariff Act, 1975 [also known as Countervailing duty (CVD)]</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>It is leviable on</strong></td>
</tr>
<tr>
<td><strong>It is the duty equal to</strong></td>
</tr>
<tr>
<td></td>
</tr>
<tr>
<td><strong>Rate of duty</strong></td>
</tr>
<tr>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>3. CVD under section 3(3) of the Customs Tariff Act, 1975</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Leviable on</strong></td>
</tr>
<tr>
<td><strong>It is the duty equal to</strong></td>
</tr>
<tr>
<td></td>
</tr>
<tr>
<td><strong>Assessable value for computing CVD under section 3(1) and 3(3) of the Customs Tariff Act, 1975</strong></td>
</tr>
<tr>
<td><strong>In case the duty is charged on the like article produced/manufactured in India</strong></td>
</tr>
</tbody>
</table>

---

6 There are special procedures prescribed for the import/export of baggage and import/export by post. The said provisions will be discussed at the Final Level.
1.68 Indirect Taxes

<table>
<thead>
<tr>
<th>(i)</th>
<th>On the basis of the tariff value fixed under 3(2) of the Central Excise Act, 1944</th>
<th>Such tariff value</th>
</tr>
</thead>
<tbody>
<tr>
<td>(ii)</td>
<td>On the basis of MRP under section 4A</td>
<td>Retail Sale Price (RSP) declared on the imported article</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Less: Abatement notified by Government for like article</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Assessable value of the imported article</td>
</tr>
<tr>
<td></td>
<td>Note: Where on any imported article more than one RSP is declared, the maximum of such RSP shall be deemed to be the RSP for the purposes of this section.</td>
<td></td>
</tr>
<tr>
<td>(iii)</td>
<td>Any other case</td>
<td>Value under section 14(1) /tariff value determined under section 14(2).</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Add: Basic custom duty</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Assessable value</td>
</tr>
<tr>
<td></td>
<td>Note: While computing CVD under sections 3(1) &amp; 3(3), duties leviable under section 8B/8C/9/9A shall not be included.</td>
<td></td>
</tr>
</tbody>
</table>

4. Special CVD under section 3(5) of the Customs Tariff Act, 1975

| It is leviable on | any imported article |
| Purpose of levy of this duty | To counter-balance the sales tax, VAT, local tax or any other charges for the time being in force leviable on a like article on its sale, purchase or transportation in India**. |
| Rate of duty | Rate as notified by the Central Government, but not exceeding 4%. |
| **If a like article is not so sold, purchased or transported, rate of duty is the rate at which such taxes/charges would be leviable on the class or description of articles to which the imported article belongs, and where such taxes/charges are leviable at different rates, the highest of such tax/ such charge. |

| Assessable value for computing special CVD under section 3(5) | Value under section 14(1) /tariff value determined section 14(2) |
|  | Add: Basic custom duty |
|  | Add: CVD under section 3(1)/ 3(3) |
|  | Add: Education cess [customs] |
|  | Add: Secondary and higher education cess [customs] |
|  | Assessable value |
| **Note:** While computing special CVD under section 3(5), duties leviable under section 8B/8C/9/9A shall not be included. |

5. Education cess (EC)

| Levied on | Imported goods |
| Rate of cess | 2% on aggregate of customs duties leviable on such goods |
Basic Concepts of Indirect Taxes – Customs Duty

### Duties to be excluded for computing this cess
- Special CVD under section 3(5), duties leviable under section 8B/8C/9/9A and SHEC and EC itself

#### 6. Secondary and Higher Education cess (SHEC)
- **Levied on:** Imported goods
- **Rate of cess:** 1% on aggregate of customs duties leviable on such goods
- **Duties to be excluded for computing this cess:** Special CVD under section 3(5), duties leviable under section 8B/8C/9/9A and EC and SHEC itself

#### Steps for computation of basic customs duty, CVD, special CVD and education cesses:

<table>
<thead>
<tr>
<th>S.No.</th>
<th>Particulars</th>
<th>₹</th>
</tr>
</thead>
<tbody>
<tr>
<td>(1)</td>
<td>Assessable value for computing basic customs duty [Transaction value under section 14(1)/Tariff value under section 14(2)]</td>
<td>xxx</td>
</tr>
<tr>
<td>(2)</td>
<td>Add: Basic custom duty [(1) × Rate of BCD]</td>
<td>xxx</td>
</tr>
<tr>
<td>(3)</td>
<td>Total value for computing additional customs duty u/s 3(1) [(1)+(2)]</td>
<td>xxx</td>
</tr>
<tr>
<td>(4)</td>
<td>Additional custom duty u/s 3(1) [(3) × Rate of CVD]</td>
<td>xxx</td>
</tr>
<tr>
<td>(5)</td>
<td>Total duty amount for education cess of customs [(2)+(4)]</td>
<td>xxx</td>
</tr>
<tr>
<td>(6)</td>
<td>Education cess @ 2% of (5)</td>
<td>xx</td>
</tr>
<tr>
<td>(7)</td>
<td>Secondary and higher education cess @ 1% of (5)</td>
<td>xx</td>
</tr>
<tr>
<td>(8)</td>
<td>Total duty payable before additional customs duty u/s 3(5) [(5)+(6)+(7)]</td>
<td>xxx</td>
</tr>
<tr>
<td>(9)</td>
<td>Total value for computing additional customs duty u/s 3(5) [(1)+(8)]</td>
<td>xxx</td>
</tr>
<tr>
<td>(10)</td>
<td>Additional customs duty u/s 3(5) [(9) × Rate of special CVD]</td>
<td>xxx</td>
</tr>
<tr>
<td>(11)</td>
<td>Total duty payable [(8)+(10)]</td>
<td>xxx</td>
</tr>
</tbody>
</table>

**Example:** Compute the customs duty payable from the following information available:

- **Assessable value under section 14:** ₹1,000.00
- **Rate of basic customs duty:** 10%
- **Rate of additional custom duty under section 3(1):** 12.5%
- **Rate of additional custom duty under section 3(5):** 4%

<table>
<thead>
<tr>
<th>Particulars</th>
<th>₹</th>
</tr>
</thead>
<tbody>
<tr>
<td>Assessable value for computing basic customs duty</td>
<td>1,000.00</td>
</tr>
<tr>
<td>Basic custom duty @ 10% of ₹ 1,000.00</td>
<td>100.00</td>
</tr>
<tr>
<td>Total value for computing additional customs duty u/s 3(1)</td>
<td>1,100.00</td>
</tr>
<tr>
<td>Additional custom duty u/s 3(1) [12.5% of ₹1100]</td>
<td>137.50</td>
</tr>
<tr>
<td>Total duty amount for EC and SHEC [100+137.50]</td>
<td>237.50</td>
</tr>
<tr>
<td>Education cess @ 2%</td>
<td>4.75</td>
</tr>
<tr>
<td>Secondary and higher education cess @ 1%</td>
<td>2.38</td>
</tr>
<tr>
<td>Total duty payable before additional customs duty u/s 3(5)</td>
<td>244.63</td>
</tr>
</tbody>
</table>
Illustration 1:
Hari India Ltd. has imported a machinery whose assessable value is ₹ 1,00,000. Rate of basic customs duty is 10%, additional duty of customs under section 3(1) is 12.5%, additional duty of customs under section 3(5) is 4% and education cess is 3% on customs duty. Compute the amount of total customs duty payable by Hari India Ltd.

Solution: Computation of customs duty payable:-

<table>
<thead>
<tr>
<th>Particulars</th>
<th>₹</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Assessable Value</td>
<td>1,00,000.00</td>
</tr>
<tr>
<td>2. Basic customs duty @ 10%</td>
<td>10,000.00</td>
</tr>
<tr>
<td>3. Sub-Total</td>
<td>1,10,000.00</td>
</tr>
<tr>
<td>4. Additional duty of customs (CVD) @ 12.5%</td>
<td>13,750.00</td>
</tr>
<tr>
<td>5. Education cess 3% of ₹ 23,750 [(2) + (4)]</td>
<td>712.50</td>
</tr>
<tr>
<td>6. Total customs duty payable before special CVD [(2) + (4) + (5)]</td>
<td>24,462.50</td>
</tr>
<tr>
<td>7. Special CVD @ 4% of [(1)+(6)]</td>
<td>4,978.50</td>
</tr>
<tr>
<td>8. Total customs duty payable [(6)+(7)] (Rounded off)</td>
<td>29,441</td>
</tr>
</tbody>
</table>

Illustration 2:
Kalaniketan Enterprises imported some goods from UK. The assessable value of the imported goods is ₹ 20,00,000. Compute the customs duty payable from the following additional information:

<table>
<thead>
<tr>
<th>Date of bill of entry</th>
<th>24.06.2015 (Rate of BCD is 10%)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Date of entry inward</td>
<td>20.06.2015 (Rate of BCD is 8%)</td>
</tr>
<tr>
<td>C.V.D. is payable @ 12.5%</td>
<td></td>
</tr>
<tr>
<td>Special C.V.D. – as applicable</td>
<td></td>
</tr>
</tbody>
</table>

Solution:

<table>
<thead>
<tr>
<th>Particulars</th>
<th>₹</th>
</tr>
</thead>
<tbody>
<tr>
<td>Assessable value</td>
<td>20,00,000.00</td>
</tr>
<tr>
<td>Add: Basic custom duty @ 10% (Note below)</td>
<td>2,00,000.00</td>
</tr>
<tr>
<td>Total</td>
<td>22,00,000.00</td>
</tr>
<tr>
<td>Add: CVD @12.5%</td>
<td>2,75,000</td>
</tr>
</tbody>
</table>
### Basic Concepts of Indirect Taxes – Customs Duty

<table>
<thead>
<tr>
<th>Add: Education cess (3% of custom duty)</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>= 3% of (₹ 2,00,000 + ₹ 2,75,000)</td>
<td>14,250</td>
</tr>
<tr>
<td>Total for Special CVD [₹ 22,00,000 + ₹ 2,75,000 + ₹ 14,250]</td>
<td>24,89,250</td>
</tr>
<tr>
<td>Special CVD @ 4%</td>
<td>99,570</td>
</tr>
<tr>
<td><strong>Total customs duty payable</strong> (₹ 2,00,000 + ₹ 2,75,000 + ₹ 14,250 + ₹ 99,570)</td>
<td><strong>5,88,820</strong></td>
</tr>
</tbody>
</table>

**Note:** The rate of duty shall be:-

(i) the rate in force on the date of presentation of bill of entry

or

(ii) the rate in force on the date of entry inward

whichever is later.

#### OTHER CUSTOM DUTIES

1. **Protective duties:** A duty imposed on imported goods for the protection of the interests of any industry established in India on the recommendation of the Tariff Commission. It is effective only and inclusive of the date, if any, specified in the First Schedule of the Tariff [Sections 6 and 7].

2. **Safeguard duty:** is levied if the Central Government is satisfied that:
   (a) any article is imported into India in increased quantities; and
   (b) such increased importation is causing or threatening to cause serious injury to domestic industry.

Safeguard duty is product specific i.e. it is applicable only for certain articles in respect of which it is imposed. This duty is in addition to any other duty levied under this Act or any other law in force. Education cess and secondary and higher education cess is not payable on safeguard duty. The duty imposed under this section shall be in force for a period of 4 years from the date of its imposition and can be extended with the total period of levy not exceeding 10 years. Safeguard duty shall not apply to articles imported by a 100% EOU/unit in a SEZ unless -

(i) specifically made applicable; or

(ii) the article imported is either cleared as such into DTA or used in the manufacture of any goods that are cleared into DTA [Section 8B].

In case the goods are imported in increased quantities from People’s Republic of China, a specific safeguard duty is imposed under section 8C.

3. **Countervailing duty on subsidized articles:** The countervailing duty on subsidized articles is imposed if:-

(a) Any country or territory, directly or indirectly, pays or bestows subsidy upon the manufacture or production or exportation of any article. Such subsidy includes subsidy on transportation of such article.
1.72 Indirect Taxes

(b) Such articles are imported into India.

(c) The importation may/may not directly be from the country of manufacture/production and

(d) The article, may be in the same condition as when exported from the country of manufacture or production or may be changed in condition by manufacture, production or otherwise.

The amount of countervailing duty shall not exceed the amount of subsidy paid or bestowed as aforesaid. This duty is in addition to any other duty chargeable under this Act or any other law for the time being in force. It shall be in force for a period of 5 years from the date of its imposition and can be extended for a further period of 5 years [Section 9].

4. Anti-dumping duty*: Where any article is exported by an exporter to India at less than its normal value, then, upon the importation of such article into India, the Central Government may impose an anti-dumping duty not exceeding the margin of dumping in relation to such article.

The duty imposed under this section shall be in force for a period of 5 years from the date of its imposition and can be extended for a further period of 5 years. The anti-dumping duty shall not be leviable on articles imported by a 100% EOU unless specifically made applicable for such units [Section 9A].

*Note: Dumping occurs when one country exports goods to another country at a price lower than its normal value. This is an unfair trade practice which can have a distortive effect on international trade. Anti dumping duty is a measure to rectify the situation arising out of the dumping of goods and its trade distortive effect.

3.12 Import and export procedures

The procedure for importation of goods by air, by sea or by land has been outlined below:

(1) Landing /calling of vessel/aircraft: In case goods are imported by sea/air, the goods shall be loaded in the vessel/aircraft in the exporting country and sent to India. In case of import by land, the goods shall be sent in a vehicle.

When the vessel/aircraft carrying imported goods arrives in India, the person-in-charge of such vessel/aircraft [master/pilot of the vessel/aircraft respectively] entering into India

7 The import and export procedures under customs will be discussed in detail at the Final level. In this unit, said procedures have been outlined to familiarize the students with the flow of import and export of goods.
from outside India shall allow calling/landing of the vessel/aircraft only at the customs port/customs airport unless otherwise permitted by CBEC.

(2) Delivery of Import Manifest/Report: The person-in-charge of a vessel/aircraft shall deliver to the proper officer an import manifest [detailed information about goods in vessel/aircraft] by presenting the same electronically before the arrival of the vessel/aircraft at the customs port/customs airport. In case of import by land, the person-in-charge of the vehicle shall deliver to the proper officer an import report [detailed information about goods in vehicle] within 12 hours of the arrival of vehicle at the customs station.

(3) Grant of Entry Inwards to the master of the vessel/permission to unload the goods: On receiving import manifest from the master of a vessel, the proper officer shall grant Entry Inwards to the master. The master of the vessel shall not permit the goods to be unloaded until the order of Entry Inwards has been granted by the proper officer to such vessel. Date of Entry Inwards is the date on which the vessel finds a berth place for discharge of cargo.

(4) Unloading of Goods: Imported goods shall be unloaded:
(a) only if mentioned in the import manifest/import report.
(b) only at the approved places in any customs port/customs airport.
(c) under the supervision of the proper officer.
(d) during working hours and shall not be unloaded on Sunday/on any holiday.

(5) Unloaded Goods to be in the custody of the Custodian until their clearance: Once the imported goods have entered the customs area, they shall remain in the custody of the Custodian [a person approved by the Commissioner of Customs for this purpose]. If the imported goods are pilfered after unloading in a customs area, while in the custody of the Custodian, then the Custodian shall be liable to pay duty on such goods.

(6) Filing of Entry for Import, i.e. Bill of Entry: The importer of any goods, other than goods intended for transit or transhipment [provisions of goods in transit/transhipment are discussed below in point (11)], shall file a Bill of Entry electronically for clearance of goods from the custom station port/airport.

In case the goods are to be cleared for home consumption, importer would file Bill of Entry for home consumption. However, if the importer does not need the goods immediately, he may request the goods to be warehoused. In that case, an Into-Bond Bill of Entry (for warehousing) would be filed. When subsequently, the goods are clearance from warehouse for home consumption, an Ex-Bond Bill of Entry is required to be filed.

(7) Timing of filing of Bill of Entry: A Bill of Entry may be presented at any time after the delivery of the Import Manifest/Import Report. However, a bill of entry may be presented even before the delivery of such Import Manifest/Import Report if the vessel or the
aircraft or the 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.

(8) **Assessment of duty on the imported goods:** Assessment is the procedure of quantifying the amount of liability. The importer will self-assess the duty considering the applicable rate of exchange and rate of import duty. This self-assessment is subject to verification by the proper officer of the Customs and may lead to reassessment by such officer if the assessment made by the importer is found to be incorrect. The proper officer shall return the Bill of Entry to the importer after determination of the duty amount.

(9) **Payment of duty:** If the goods are cleared to be stored in a warehouse, payment of duty is deferred till the time of clearance from such warehouse. However, in case the goods are cleared for home consumption, customs duty has to be paid.

The importer has to pay the duty within 2 days (excluding holidays) of the determination of such duty amount. In case he fails to do so, he is required to pay interest on the duty till the time he actually pays the duty and clears the goods.

(10) **Clearance of imported goods from the custom station:** The goods lying under the custody of the custodian have to cleared either for home consumption or for warehousing or for transhipment within 30 days (or such extended time as the proper officer may allow) from the date of unloading of goods at the customs station. The importer may exercise any of the following options:-

(a) **Clearance for home consumption:** In case the importer files the Bill of Entry for home consumption and the proper officer is satisfied that the imported goods are not prohibited goods and duty on the same has been paid, he may make an order permitting clearance of the goods for home consumption.

(b) **Warehousing of imported goods:** The importer may not clear the goods for home consumption and request the goods to be warehoused. In such a case, he shall file an Into-Bond Bill of Entry for warehousing and is assessed to duty. Thereafter, he shall execute a bond binding himself in a sum equal to twice the amount of the duty assessed on such goods. The proper officer after satisfying himself that all the requirements have been fulfilled shall make an order permitting the deposit of the goods in a warehouse.

Subsequently, the importer of any warehoused goods may clear them for home consumption provided:-

(i) an ex-Bond Bill of Entry has been presented to the proper officer and duty is assessed and paid by him

(ii) rent and warehousing charges along with any penalty on warehoused goods, if any, have been paid by importer, and

(iii) an order for clearance of such goods for home consumption has been made by the proper officer.
(11) Imported goods in transit or transhipment:

Transit of goods: Where any goods (not being prohibited goods) which are imported in a conveyance are mentioned, in the import manifest/import report, as for transit in the same conveyance to any place outside India or any customs station, they may be allowed to be so transited without payment of duty.

Transhipment of goods: Where any goods (not being prohibited goods) which are imported in a conveyance are mentioned, in the import manifest/import report, as for transhipment to any place outside India or to any major port/other port as notified /any other customs station, they may be allowed to be so transhipped without payment of duty. The importer shall present the Bill of Entry for transhipment to the proper officer.

Unlike transit under transhipment, goods are transferred from one conveyance to another.

1. Conveyance: includes:-
   (a) a vessel
   (b) an aircraft and
   (c) a vehicle [Section 2(9)].

2. Vehicle: means conveyance of any kind used on land and includes a railway vehicle [Section 2(42)].

3. Customs station: means any customs port, customs airport or land customs station [Section 2(13)].

Note: There are separate import procedures for import of baggage and import by post. The same will be discussed at Final level in Paper 8: Indirect Tax Laws.
The brief procedure for import of goods has been depicted in the diagram below:

1. Goods arrived at the Indian customs station
2. Import manifest/report (delivered by Person-in-charge to Proper Officer)
3. Entry Inwards (granted by Proper Officer to Person-in-charge)
4. Unloading of goods at the customs port
   - under the supervision of Proper Officer
   - at the approved places
   - on working days at working hours
5. Goods under the custody of custodian
6. Electronic filing of Bill of Entry (filed by importer with Proper Officer)
7. For home consumption
8. For transhipment
9. For warehousing (without payment of duty)
   - Payment of duty self-assessed
   - Bill of Entry filed for home consumption
   - Order for clearance for home-consumption
EXPORT PROCEDURES

The procedure for exportation of goods by air, by sea or by land has been outlined below:

(1) **Filing of shipping bill/ bill of export:** The exporter is required to present electronically to a proper officer of customs a shipping bill (in case of export by a vessel or by air) and a bill of export (in case of export by a vehicle).

An exporter entering any export goods self-assesses and pays the duty, if any, leviable on such goods subject to verification by the proper officer.

(2) **Order permitting clearance and loading of goods for exportation:** Where the proper officer is satisfied that:
   - goods entered for export are NOT prohibited goods and
   - exporter has paid duty, if any, on them,

he passes order permitting clearance and loading of goods for exportation called Let Export Order.

(3) **Grant of Entry Outwards:** A vessel intending to start loading of export goods must be first granted an ‘Entry Outwards’ by the proper officer. The master of a vessel shall not permit the loading of any export goods, until the proper officer grants entry-outwards to such vessel.

*Note:* Entry outwards is the permission granted by the Customs authorities to a vessel to go on a foreign voyage to the port of consignment.

(4) **Loading of goods on conveyance for exportation:** The export goods shall be loaded on the conveyance for exportation with the permission of person-in-charge. He shall not permit the loading at a customs station unless a shipping bill/bill of export/bill of transhipment, as the case may be, duly passed by the proper officer, has been handed over to him by the exporter.

*Note:* In case of goods exported in a vessel, grant of entry outwards is also mandatory requirement before loading of goods.

(5) **Delivery of export manifest/report:** The person-in-charge of a conveyance carrying export goods shall, before departure of the conveyance from a customs station, deliver to the proper officer in the case of a vessel or aircraft, an export manifest electronically, and in the case of a vehicle, an export report.

(6) **No conveyance to leave without written order:** The person-in-charge of a conveyance which has loaded any export goods at a customs station shall not cause or permit the conveyance to depart from that customs station until a written order to that effect has been given by the proper officer.

*Note:* There are separate export procedures prescribed for export of baggage and export by post. The same will be discussed at Final level in Paper 8: Indirect Tax Laws.
The brief procedure for export of goods has been depicted in the diagram below:

1. Exporter files Shipping Bill/ Bill of Export electronically.

2. If PO is satisfied that:
   - goods entered for export are NOT prohibited goods
   - Exporter has paid duty, IF ANY, on them

3. PO passes order permitting clearance and loading of goods for exportation.

4. Person-in-charge of conveyance delivers Export manifest/report to Proper Officer (PO).

5. Goods are loaded on conveyance for export with the permission of Person-in-charge.

6. Grant of Entry outwards (in case of export by vessel).

7. If duty is payable, it is assessed and paid.

Note: The rates of duties, wherever mentioned in the illustrations may not always be the actual rate prevalent during the period in question. They may be hypothetical rates assumed to explain the provisions of law with more clarity.
UNIT – 4: CENTRAL SALES TAX

Learning objectives
After reading Unit- 4 of this Chapter, you will be able to understand:

- the concept of sale
- historical background of central sales tax
- objects of the Central Sales Tax Act, 1956
- the Constitutional provisions relating to central sales tax
- the provisions relating to levy and collection of central sales tax
- as to what is an inter-State sale
- sales tax implications on inter-State stock transfer/consignment transfer
- as to what is a sale outside the State
- as to what is sale in course of import and export
- how to determine the applicable rates of central sales tax on the sales in the course of inter-State trade or commerce
- how to determine the turnover for computing central sales tax
- provisions relating to the goods of special importance

Apart from the above, after you finish reading this Unit, you will also get a brief idea of the forms and procedures under the central sales tax law.

4.1 Categories of sales

Sales may be classified as:-

(i) Intra-State sales
(ii) Inter-State sales
(iii) Sales in course of import
(iv) Sales in course of export

Central Sales Tax (CST) is a tax imposed on inter-State sales, i.e. sales made from one State to another whereas sales tax within the State is levied on the intra-State sales, i.e. sales made within a State. Sales made in course of imports and sales in course of export are not liable to sales tax.

Sales in course of import and export have been explained subsequently in this Unit.
1.80 Indirect Taxes

Examples depicting distinction between intra-State sales and inter-State sales

(I) INTRA-STATE SALES

Goods transferred within a State

A (Seller)  
Ahmedabad, Gujarat

Intra-State sale

B (Buyer)  
Surat, Gujarat

Liable to sales tax within the State

(II) INTER-STATE SALES

Goods transferred from one State to another

A (Seller)  
Ahmedabad, Gujarat

Inter-State sale

B (Buyer)  
Mumbai, Maharashtra

Liable to CST
4.2 Constitutional provisions

Intra-State sale is within the authority of the State Government while inter-State sale is within the authority of the Central Government. Central Government levies central sales tax by drawing power from Entry 92A of the Union List which provides as follows:

Entry 92A

Taxes on the sale or purchase of goods other than newspapers, where such sale or purchase takes place in the course of inter-State trade or commerce

It is important to note here that power to impose tax on sale of newspapers has been specifically excluded from the purview of the powers of the Central Government.

4.3 Sources of central sales tax law


(1) Central Sales Tax Act, 1956: Central Sales Tax Act, 1956 contains the provisions governing the sales tax imposed on inter-State sales, i.e. sales made from one State to another.

(2) Rules: The rules issued under the Central Sales Tax Act, 1956 are the Central Sales Tax (Registration and Turnover) Rules, 1957.

4.4 Historical background of central sales tax

A transaction of sales of goods has various ingredients, namely, contract of sale, consideration, transfer of property in goods and buyer and seller. For the purposes of levying sales tax, prior to adoption of Constitution, States selected any one of the foregoing ingredients and acting on the theory of territorial nexus* levied sales tax on a transaction if that ingredient exists in their State. Resultantly, same transaction got taxed in more than one State.

*Nexus means connection or link.

In order to resolve this problem, when Constitution was adopted, article 286 was introduced. Explanation to clause (a) of Article 286(1) provided that a sale or purchase shall be deemed to

---

2 Sales tax within the State is levied by State Government by virtue of Entry 54 of the State List i.e. “Taxes on the sale or purchase of goods other than newspapers, subject to the provisions of entry 92A of Union List”.

3 The other sources relevant for the study of the central sales tax law are similar to the sources of the central excise law. Students are advised to refer Unit-2: Central Excise Duty for detailed discussion on the same.
have taken place in the State in which the goods have actually been delivered as a direct result of such sale or purchase for the purpose of consumption in that State.

However, Supreme Court, in case of *Bengal Immunity Co. Ltd. v. State of Bihar 1955 6 STC 446 616 (SC)* elucidated that State cannot impose tax on inter-State sales as Article 286(2) prohibits the State from imposing tax on the sale of goods where such sale takes place in the course of inter-State trade or commerce subject to the removal of ban by legislation made by Parliament. Since Parliament had not passed any such law, no State can impose tax on inter-State sales.

The net result was that while intra-State sales could be taxed under the relevant State law, inter-State sales could neither be taxed by the State of despatch nor by the State of delivery until the Parliament provided for it.

On April 1, 1953, Taxation Enquiry Commission was appointed to set out basic considerations for the future development of the sales tax. In the light of the suggestions made by said Commission, the Constitution was amended. As a result:

1. Article 269(1)(g) was inserted to enlarge the powers of the Government of India. It provided that Government of India shall levy and collect taxes on the sale or purchase of goods other than newspapers where such sale or purchase takes place in the course of inter-state trade or commerce. However, it also provided for the assignment of such taxes to the States in the prescribed manner. Further, a new clause (3) was inserted in Article 269 whereby the Parliament was empowered to formulate principles for determining when a sale or purchase of goods takes place in the course of inter-state trade or commerce.

2. Article 286 was amended to provide as follows:
   i. No law of a State shall impose, or authorise the imposition of, a tax on the sale or purchase of goods where such sale or purchase takes place—
      a. outside the State or
      b. in the course of the import of the goods into, or export of the goods out of, the territory of India.
   ii. Parliament may by law formulate principles for determining when a sale or purchase of goods takes place in any of the ways mentioned in clause (1) namely, sale or purchase of goods outside the State or in the course of the import into or export out of territory of India 4.
   iii. Any law of a State shall, in so far as it imposes, or authorises the imposition, of a tax on the sale or purchase of goods declared by Parliament by law to be of special importance in inter-State trade or commerce, be subjected to such restrictions and

4 *Section 4 & 5 of the Central Sales Tax Act, 1956 are in exercise of the powers conferred under this clause [discussed in detail subsequently in this Unit].*
conditions in regard to the system of levy, rates and other incidents of the tax, as Parliament may, by law, specify. Acting on the powers thereby conferred, the Central Sales Tax Act, 1956 was enacted by the Parliament.

4.5 Objects of the Central Sales Tax Act

The objects of the Central Sales Tax Act include:

(i) formulation of principles for determining as to:
   (a) when a sale or purchase of goods takes place in the course of inter-State trade or commerce, or
   (b) when a sale or purchase takes place outside a State, or
   (c) when a sale or purchase takes place in the course of import into or export from India

(ii) provision for the levy, collection and distribution of taxes on sales of goods in the course of inter-State trade or commerce

(iii) declaration of certain goods to be of special importance in inter-State trade or commerce

(iv) State laws to be subjected to the restrictions and conditions in the matter of imposing taxes on the sale or purchase of goods declared by the Central Government to be of special importance.

4.6 Levy and collection of central sales tax

Central Sales Tax Act, 1956 extends to whole of India. Section 9(1) contains the provisions regarding levy and collection of CST as under:

(i) Levy: Being a Central legislation, CST payable by any dealer on sales of goods effected by him in the course of inter-State trade or commerce shall be levied by the Government of India.

(ii) Collection: CST so levied shall be collected by State Government of the State from which the movement of the goods is commenced.

4.7 Charge of central sales tax

Section 6(1) provides that subject to the other provisions contained in the Central Sales Tax Act, every dealer shall be liable to pay tax under this Act on sales of all goods, other than electrical energy, effected by him in the course of inter-State trade or commerce during any year.

CST is leviable on inter-State sale of any goods even if sale of such goods inside a State is exempt as per the sales tax law of that State.

5 Section 14 & 15 of the Central Sales Tax Act, 1956 are in exercise of the powers conferred under this clause [discussed in detail subsequently in this Unit].

© The Institute of Chartered Accountants of India
**Indirect Taxes**

**IMPORTANT TERMS**

1. **Goods**
   - Goods include all materials, articles, commodities and all other kinds of movable property, but does not include newspapers, actionable claims, stocks, shares and securities [Section 2(d)].

   **ANALYSIS:** As per the definition of goods, they must be movable, i.e. they include all kind of movable property. However, following are specifically excluded from the definition of goods:

   (i) **Newspapers:** Newspapers are not goods under the Central Sales Tax Act and State VAT laws. Although in general sense, newspapers are goods, but they have been specifically excluded from the definition of goods in view of Entry 92A of the Union List and Entry 54 of the State List. In both these entries, newspapers have been specifically excluded from the purview of taxes on inter-State sales and intra-State sales respectively.

   **Note:** Sale of bundles of old newspapers as waste paper is not sale of newspaper and is therefore, not exempt.

   (ii) **Stocks, shares and securities**

   (iii) **Actionable claims:** are outside the purview of definition of goods under CST Act. Actionable claim means a claim to any debt, other than a debt secured by mortgage of immovable property or by hypothecation or pledge of movable property, or to any beneficial interest in movable property not in the possession, either actual or constructive, of the claimant, which the civil courts recognise as affording grounds for relief, whether such debt or beneficial interest be existent, accruing, conditional or contingent [Section 3 of the Transfer of Property Act, 1882]. For example, a claim for arrears of rent, right to claim provident fund, lottery tickets, etc.

   **Note:** Electricity is capable of abstraction, consumption and use and it can be transmitted, transferred, delivered, stored, possessed, etc. and is, therefore, goods. However, it is important to note that although electricity is goods, it has specifically been excluded from the purview of CST by the charging section.
2. Sale

Sale, with its grammatical variations and cognate expressions, means any transfer of property in goods by one person to another for cash or deferred payment or for any other valuable consideration, and includes,—

(i) a transfer, otherwise than in pursuance of a contract, of property in any goods for cash, deferred payment or other valuable consideration;

(ii) a transfer of property in goods (whether as goods or in some other form) involved in the execution of a works contract;

(iii) a delivery of goods on hire-purchase or any system of payment by instalments;

(iv) a transfer of the right to use any goods for any purpose (whether or not for a specified period) for cash, deferred payment or other valuable consideration;

(v) a supply of goods by any unincorporated association or body of persons to a member thereof for cash, deferred payment or other valuable consideration;

(vi) a supply, by way of or as part of any service or in any other manner whatsoever, of goods, being food or any other article for human consumption or any drink (whether or not intoxicating), where such supply or service, is for cash, deferred payment or other valuable consideration,

but does not include a mortgage or hypothecation of or a charge or pledge on goods [Section 2(g)].

ANALYSIS: The definition of sales may be read in two parts:-

(A) Conventional sale

(B) Deemed sales

(A) CONVENTIONAL SALE: Sale means any transfer of property in goods by one person to another for cash or deferred payment or for any other valuable consideration, but does not include a mortgage or hypothecation of or a charge or pledge on goods.

Essential elements of a conventional sale are as follows:-

(I) There must be a contract of sale between buyer and seller.

(II) There must be transfer of goods.

(III) General property in goods must be transferred from buyer to seller.

(IV) Consideration must be paid or agreed to be paid. It may be cash or deferred payment or for any other valuable consideration.