1. DETERMINING FACTORS

Three stages of imposition of taxes and duties

All taxes and duties are imposed in three stages, which are levy, assessment and collection:

(a) **Levy** is the stage where the declaration of liability is made and the persons or the properties in respect of which the tax or duty is to be levied is identified and charged.

(b) **Assessment** is the procedure of quantifying the amount of liability. The liability to tax or duty does not depend upon assessment.

(c) The final stage is where the tax or duty is actually collected. The **collection of tax or duty** may for administrative or other reasons be postponed to a later time.

The liability towards customs duty is broadly based upon the following 3 factors:

1. the goods, the point and the circumstances under which the customs duty becomes leviable;

2. the procedure, the mechanism and the organization for determining the amount of customs duty and collection thereof;

3. the exemption to the levy either on grounds of morality or equity or as a result of the discretionary powers vested in the Government as a tool for planning tax structure and control of economic growth of the country.

The customs duty is considered to be levied on the goods and not on the person importing the goods or paying the duty. Equitability requires charging of duty at the same level if the circumstances of importation are similar. This has given rise to a deemed provision under section 12 of the Customs Act.
2. POINT AND CIRCUMSTANCES OF LEVY

CHARGING SECTION [SECTION 12]

1. This section is the charging section of the Act. 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 (51 of 1975), or any other law for the time being in force, on goods imported into and exported from India [Sub-section (1)].

2. The provisions of sub-section (1) shall apply in respect of all goods belonging to Government as they apply in respect of goods not belonging to Government. Hence, there is no general exemption to goods imported by Government. But imports by Indian Navy, specific equipment required by police, Ministry of Defence, Costal 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 notification.

The following propositions arise from the above provisions:-

1. Duties of customs shall be levied on goods. However, it may 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.

2. The goods shall be such as are imported or exported to or from India;

3. The duty shall be charged at such rates as may be specified under the Customs Tariff Act, 1975.

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

ANALYSIS OF SECTION 12

(a) Charge on goods

The charge of customs duty is considered to be on the goods and not on the person importing them or paying the duty. Being such, it is expected to be passed on to the buyer.
(b) Taxable event - Import of goods into India/export of goods from India

Section 12 makes it abundantly clear that importation or exportation of goods into or out of India is the taxable event for payment of the duty of customs.

Earlier, a lot of problems were faced in determining the point at which the importation or exportation takes place. The root cause of the problem was the definition of “India” given by section 2(27). Under the said section, India includes territorial waters of India. Consequently, even an innocent entry of a vessel into the territorial waters of India would result in import of goods. Further, it was almost impossible to determine when exactly the vessel crossed the territorial waters limit. But this matter is no longer res integra.

Relevant judgments regarding the determination of taxable event

The main test for determining the taxable event is the happening of the event on which the charge is affixed.

I. Imports

(a) In case of goods cleared for home consumption

The Supreme Court observed that import of goods will commence when they cross the territorial waters, but continues and is completed when they become part of the mass of goods within the country; 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 custom barriers would be crossed when they are sought to be taken out of customs and brought to the mass of goods in the country.


II. Exports

Export of goods is complete when the goods cross the territorial waters of India.
DISTINCTION BETWEEN CLEARANCE FOR HOME CONSUMPTION AND CLEARANCE FOR WAREHOUSING

Clearance for home consumption implies that, the customs duty on import of the goods has been discharged and the goods are therefore cleared for utilization or consumption. The goods may instead of being cleared for home consumption be deposited in warehouse and cleared at a later time. When the goods are deposited in the warehouse the collection of customs duty will be deferred till such goods are cleared for home consumption. The revenue for the Government is safeguarded by the importer executing a bond binding himself in a sum equal to twice the amount of duty assessed on the goods at the time of import. The importer is also liable to pay interest, rent and charges for storage of goods in warehouse.

DUTY LIABILITY IN CERTAIN SPECIAL CIRCUMSTANCES

(A) Re-importation of goods produced/manufactured in India [Section 20]

If goods are imported into India after exportation therefrom, such goods shall be liable to duty and be subject to all the conditions and restrictions, if any, to which goods of the like kind and value are liable or subject, on the importation thereof.

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

CONCESSIONS IN THIS REGARD

However, the following notifications have provided certain concessions in this regard:

(i) Concessional duty payable in case of re-importation of goods exported for repairs or exported under duty drawback etc.

<table>
<thead>
<tr>
<th>S.No.</th>
<th>Description of goods exported</th>
<th>Amount of import duty payable if re-imported</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.</td>
<td>Goods exported under claim for duty drawback, refund of integrated tax paid on export goods, bond without payment of integrated tax, etc.</td>
<td>Amount of incentive availed of at the time of export</td>
</tr>
</tbody>
</table>
### 2*. Goods other than those falling under Sl. No. 1 exported for repairs abroad

Duty of customs which would be leviable if the value of re-imported goods after repairs were made up of the fair cost of repairs carried out including cost of materials used in repairs (whether such costs are actually incurred or not), insurance and freight charges, both ways.

### Conditions to be satisfied for claiming the above two concession/exemptions:

(a) **Time-limit for re-importation**

   The time limit for re-importation is 3 years. This is extendable to 5 years.

(b) **Same goods**

   The exported goods and the re-imported goods must be the same.

(c) **No change in ownership**

   In case of point (2*), the ownership of the goods should also not have changed.

**However, these concessions would not be applicable if**-

- re-imported goods had been exported by EOU or a unit in FTP
- re-imported goods had been exported from a public/private warehouse
- re-imported goods which fall under Fourth schedule to the Central Excise Act, 1944.

*[Notification No. 45/2017 Cus. dated 30.06.2017]*
(ii) Exemption to re-import of goods and parts thereof for repairs, reconditioning, reprocessing, remaking or similar other process

<table>
<thead>
<tr>
<th>S. No.</th>
<th>Particulars</th>
<th>Time-limit for re-importation from the date of exportation</th>
<th>Other conditions to be satisfied</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.</td>
<td>Goods manufactured in India and re-imported for repairs or for reconditioning other than the specified goods</td>
<td>3 years In case of export to Nepal, such time-limit is 10 years.</td>
<td>(a) Goods must be re-exported within six months (extendable till one year) of the date of re-importation.</td>
</tr>
<tr>
<td>2*</td>
<td>Goods manufactured in India and re-imported for (a) Reprocessing (b) Refining (c) Re-making (d) Subject to any process similar to the processes referred to in clauses (a) to (c) above.</td>
<td>1 year</td>
<td>(b) The Assistant Commissioner/Deputy Commissioner of Customs is satisfied as regards identity of the goods. (c) The importer at the time of importation executes a bond.</td>
</tr>
</tbody>
</table>


**Note:** In 2* above, if any loss of imported goods is noticed during such operation, such loss shall be exempted from whole of the custom duties subject to the satisfaction of Assistant/Deputy Commissioner of Customs.

The exemption is available even if quantity re-imported is short or low in quantity as long as nature and variety of goods is same.
Illustration 1

A machine was originally imported from Japan at ₹ 250 lakh in July, 20XX on payment of all duties of customs. The said machine was exported (sent-back) to supplier for repairs in December, 20XX and re-imported without any re-manufacturing or re-processing in October next year after repairs. Since the machine was under warranty period, the repairs were carried out free of cost.

However, the fair cost of repairs carried out (including cost of material ₹ 6 lakh) would have been ₹ 9 lakh. Actual insurance and freight charges (to and fro) were ₹ 3 lakh. The rate of basic customs duty is 10% and integrated tax is 12%. Ignore GST compensation cess.

Compute the amount of customs duty payable (if any) on re-import of the machine after repairs. The ownership of the machine has not been changed during the period.

Note: The importer intends to avail exemption, if any, with regard to re-importation of goods which had been exported for repairs abroad.

Answer

As per Notification No. 45/2017 Cus. dated 30.06.2017, duty payable on re-importation of goods which had been exported for repairs abroad is the duty of customs which would be leviable if the value of re-imported goods after repairs were made up of the fair cost of repairs carried out including cost of materials used in repairs (whether such costs are actually incurred or not), insurance and freight charges, both ways. However, following conditions need to be satisfied for availing this concession:

(a) goods must be re-imported within 3 years, extendable by further 2 years, after their exportation;
(b) exported goods and the re-imported goods must be the same;
(c) ownership of the goods should not change.

Since all the conditions specified above are fulfilled in the given case, the customs duty payable on re-imported goods will be computed as under:

<table>
<thead>
<tr>
<th>Particulars</th>
<th>₹</th>
</tr>
</thead>
<tbody>
<tr>
<td>Value of goods re-imported after exports [₹ 9 lakh (including cost of materials) + ₹ 3 lakh]</td>
<td>12,00,000</td>
</tr>
</tbody>
</table>
Add: Basic customs duty @ 10% (A) | 1,20,000
Add: Social Welfare Surcharge @ 10% on ₹ 1,20,000 (B) | 12,000
Value for computing integrated tax | 13,32,000
Integrated tax @ 12% (₹ 13,32,000 x 12%) - (C) | 1,59,840
Customs duty and integrated tax payable [(A) + (B) + (C)] | 2,91,840

(B) Goods derelict, wreck etc. [Section 21]

All goods, derelict, jetsam, flotsam and wreck brought or coming into India, shall be dealt with as if they were imported into India, unless it be shown to the satisfaction of the proper officer that they are entitled to be admitted duty-free under this Act.

**ANALYSIS OF SECTION 21**

The concept of ‘goods brought into India’ is not confined to goods, which are intentionally brought into India, but also extends to derelict, jetsam, flotsam and wreck brought or coming into India. This implies that apart from goods which are normally imported in the course of international trade, flotsam, and jetsam, which are washed ashore and derelict and wreck brought into India out of compulsion are also treated on par with trade goods.

**Meaning of the various terms**

**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.

**Illustration 2**

*Distinguish between Jetsam and Flotsam*
Answer

Jetsam and Flotsam are goods which are jettisoned (i.e. thrown with speed) from the vessel into the sea to reduce weight of vessel to prevent it from sinking. They are not abandoned goods. Jetsam gets sunk whereas Flotsam does not sink but floats. Duty is payable on both unless they are entitled to be admitted free of duty.

C. Customs (Import of Goods at Concessional Rate of Duty) Rules, 2017

The salient features of the rules are discussed hereunder:

1. Application [Rule 2]: These rules shall apply to an importer, who intends to avail the benefit of an exemption notification issued under section 25(1) of the Customs Act, 1962 and where the benefit of such exemption is dependent upon the use of imported goods covered by that notification for the manufacture of any commodity or provision of output service. These rules shall apply only in respect of such exemption notifications which provide for the observance of these rules.

2. Definition [Rule 3]: In these rules, unless the context otherwise requires, -
   (a) Exemption notification: means a notification issued under section 25(1) of the Customs Act, 1962.
   (b) Information: means the information provided by the manufacturer who intends to avail the benefit of an exemption notification.
   (c) Jurisdictional Custom Officer: means an officer of Customs of a rank equivalent to the rank of Superintendent or an Appraiser exercising jurisdiction over the premises where either the imported goods shall be put to use for manufacture or for rendering output services.
   (d) Manufacture: means the processing of raw material or inputs in any manner that results in emergence of a new product having a distinct name, character and use and the term “manufacturer” shall be construed accordingly.
   (e) Output service: means supply of service with the use of the imported goods.
3. **Information about intent to avail benefit of exemption notification [Rule 4]**: An importer who intends to avail the benefit of an exemption notification shall provide the information to the Deputy Commissioner of Customs or, as the case may be, Assistant Commissioner of Customs having jurisdiction over the premises where the imported goods shall be put to use for manufacture of goods or for rendering output service, the particulars, namely:

(i) the name and address of the manufacturer;
(ii) the goods produced at his manufacturing facility;
(iii) the nature and description of imported goods used in the manufacture of goods or providing an output service.

4. **Procedure to be followed [Rule 5]**

(i) The importer who intends to avail the benefit of an exemption notification shall provide information -

(a) in duplicate, to the Deputy/Assistant Commissioner of Customs having jurisdiction over the premises where the imported goods shall be put to use for manufacture of goods or for rendering output service, the estimated quantity and value of the goods to be imported, particulars of the exemption notification applicable on such import and the port of import in respect of a particular consignment for a period not exceeding 1 year; and

(b) in one set, to the Deputy/Assistant Commissioner of Customs at the Custom Station of importation.

(ii) The importer who intends to avail the benefit of an exemption notification shall submit a continuity bond with such surety or security as deemed appropriate by the Deputy/Assistant Commissioner of Customs having jurisdiction over the premises where the imported goods shall be put to use for manufacture of goods or for rendering output service, with an undertaking to pay the amount equal to the difference between the duty leviable on inputs but for the exemption and that already paid, if any, at the time of importation, along with interest, at the rate fixed by notification issued under section 28AA of the Customs Act, 1956, for the period starting from the date of importation of the goods on which the exemption was availed and ending with the date of...
actual payment of the entire amount of the difference of duty that he is liable to pay.

(iii) The Deputy/Assistant Commissioner of Customs having jurisdiction over the premises where the imported goods shall be put to use for manufacture of goods or for rendering output service, shall forward one copy of information received from the importer to the Deputy/Assistant Commissioner of Customs at the Custom Station of importation.

(iv) On receipt of the copy of the information, the Deputy/Assistant Commissioner of Customs at the Custom Station of importation shall allow the benefit of the exemption notification to the importer who intends to avail the benefit of exemption notification.

5. **Importer who intends to avail the benefit of an exemption notification to give information regarding receipt of imported goods and maintain records [Rule 6]**

(i) The importer who intends to avail the benefit of an exemption notification shall provide the information of the receipt of the imported goods in his premises where goods shall be put to use for manufacture, within 2 days (excluding holidays, if any) of such receipt to the jurisdictional Customs Officer.

(ii) The importer who has availed the benefit of an exemption notification shall maintain an account in such manner so as to clearly indicate the quantity and value of goods imported, the quantity of imported goods consumed in accordance with provisions of the exemption notification, the quantity of goods re-exported, if any, under rule 7 and the quantity remaining in stock, bill of entry wise and shall produce the said account as and when required by the Deputy/Assistant Commissioner of Customs having jurisdiction over the premises where the imported goods shall be put to use for manufacture of goods or for rendering output service.

(iii) The importer who has availed the benefit of an exemption notification shall submit a quarterly return, in the prescribed form, to the Deputy/Assistant Commissioner of Customs having jurisdiction over the premises where the imported goods shall be
put to use for manufacture of goods or for rendering output service, by the tenth day of the following quarter.

6. Re-export or clearance of unutilised or defective goods [Rule 7]

(i) The importer who has availed benefit of an exemption notification, prescribing observance of these rules may re-export the unutilised or defective imported goods, within 6 months from the date of import, with the permission of the jurisdictional Deputy/Assistant Commissioner of Customs having jurisdiction over the premises where the imported goods shall be put to use for manufacture of goods or for rendering output service. However, the value of such goods for re-export shall not be less than the value of the said goods at the time of import.

(ii) The importer who has availed benefit of an exemption notification, prescribing observance of these rules may also clear the unutilised or defective imported goods, with the permission of the jurisdictional Deputy/Assistant Commissioner of Customs having jurisdiction over the premises where the imported goods shall be put to use for manufacture of goods or for rendering output service, within a period of 6 months from the date of import on payment of import duty equal to the difference between the duty leviable on such goods but for the exemption availed and that already paid, if any, at the time of importation, along with interest, at the rate fixed by notification issued under section 28AA of the Customs Act, for the period starting from the date of importation of the goods on which the exemption was availed and ending with the date of actual payment of the entire amount of the difference of duty that he is liable to pay.

7. Recovery of duty in certain case [Rule 8]: The importer who has availed the benefit of an exemption notification shall use the goods imported in accordance with the conditions mentioned in the concerned exemption notification or take action by re-export or clearance of unutilised or defective goods under rule 7 and in the event of any failure, the Deputy Commissioner of Customs or, as the case may be, Assistant Commissioner of Customs having jurisdiction over the premises where the imported goods shall be put to use for manufacture of goods or for rendering output service shall take action by invoking the Bond to initiate the recovery proceedings of the amount equal to
the difference between the duty leviable on such goods but for the exemption and that already paid, if any, at the time of importation, along with interest, at the rate fixed by notification issued under section 28AA of the Customs Act, for the period starting from the date of importation of the goods on which the exemption was availed and ending with the date of actual payment of the entire amount of the difference of duty that he is liable to pay.

[Notification No. 68/2017 Cus (NT) 30.06.2017 and Circular No. 25/2017 Cus dated 30.06.2017]

3. PROCEDURE, MECHANISM AND ORGANISATION FOR ASSESSMENT OF DUTY

MEANING OF ASSESSMENT

In the context of the customs duty, the term assessment means quantification of the amount of duty payable. The process of assessment involves the following stages.

a. Determination of the quantity and total value of the consignment.

b. Determination of the proper tariff classification of the goods.

c. Determination of the appropriate rate of duty after considering the various exemptions, abatements, remissions.

d. Determining whether the goods are to be cleared for home consumption or to be deposited in the warehouse.

VALUATION OF GOODS [SECTION 14]

The method of valuation has been explained in detail in chapter 4.

DATE FOR DETERMINING THE RATE OF DUTY AND TARIFF VALUATION OF IMPORTED GOODS [SECTION 15]

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:
Bill of entry is presented on 01.01.20XX, the vessel arrives on 03.01.20XX. In this situation, relevant date for determination of the rate of import duty is 03.01.20XX because though for procedural purposes, the Bill of Entry was filed on 01.01.20XX, 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 03.01.20XX.

In respect of baggage and goods imported by post, the provisions of section 15 will not be applicable as they are independently covered by other sections.

**Relevant case laws**

Section 15 has generated a lot of interest in terms of case law development. In *Bharat Surfacants Pvt. Ltd. v. UOI 1989 (43) ELT 189*, the Supreme Court held that the rate of duty and tariff valuation would be done on the date of final entry of the ship. In this case, a ship entered Bombay and made prior entry on 4.7.81 at which time the duty was 12.5%. Since there was no space, the ship proceeded to Karachi and after that came back to Bombay on 23.7.81 and was granted final entry on 4.8.81 when the duty rate had been revised to 15.0%. The Supreme Court held that the rate applicable would be 15.0% only since the formality of entry inward could be done only on 4.8.81.

It would also be important to note that date of contract is not relevant and only the date of importation is relevant as per the decision of the Supreme Court in
Rajkumar Knitting Mills P.Ltd vs CC 1998 (98) ELT 292.

It is also relevant to note that Section 15 deals with only the rate of duty and tariff valuation and not the valuation under section 14.

Illustration 3

An importer, imported consignment of goods, chargeable to duty @ 40% ad valorem. The vessel arrived on 31st May, 20XX. A bill of entry for warehousing the goods was presented on 2nd June, 20XX and the goods were duly warehoused. In the meantime, an exemption notification was issued on 15th October, 20XX reducing the effective customs duty to 25% ad valorem. Thereafter, the importer filed a bill of entry for home consumption on 20th October claiming 25% duty. The customs Department charged higher rate of duty @ 40% ad valorem. Give your views on the same, discussing the relevant provisions of the Customs Act, 1962.

Answer

According to section 15(1)(b) of the Customs Act, the relevant date for determination of rate of duty and tariff value in case of goods cleared from a warehouse is the date on which a bill of entry for home consumption in respect of such goods is presented. Therefore, the relevant date for determining the duty in the given case will be 20.10.20XX (the date on which the bill of entry for home consumption is presented) and thus, the relevant rate of duty will be 25%.

4. REMISSION, ABATEMENT AND EXEMPTIONS

The Customs Act provides for remission, abatement and exemptions from customs duty in certain circumstances. These provisions are discussed in the subsequent paragraphs.

NO DUTY ON PILFERED GOODS [SECTION 13]

If any imported goods are pilfered after the unloading thereof and before the proper officer has made an order for clearance for home consumption or deposit in a warehouse, 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.
ANALYSIS OF SECTION 13

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

(a) Conditions to be satisfied for exemption from duty
   a. The imported goods should have been pilfered.
   b. 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.
   c. The pilfered goods should not have been restored back to the importer.

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

(b) Circumstances in which pilferage can be claimed
   In order to claim pilferage the following circumstances should exist:
   a. there should be evidence of tampering with the packages;
   b. there should be blank space for the missing articles in the package; and
   c. the missing articles should be unit articles [and not part articles]

(c) Pilferage noticed at the time of removal of goods by the importer
   The pilferage of goods would normally be noticed at the time of physical verification of goods by the customs authorities. However, in some circumstances, it may so happen that the pilferage may be observed only at the time of removal of goods by the importer. In such case, the order for clearance, or as the case may be, for bonding would already have been passed. Therefore, the importer has to ask for survey either by the steamer agents or by the insurance surveyors and the report issued by them would form the basis for claiming remission. As in such the circumstances, the duty would already have been paid, the remission is allowed in the form of a refund.

(d) Following points merit consideration
   1. If goods are pilfered after the order of clearance is made but before the goods are actually cleared, duty is leviable.
2. Section 13 deals with only pilferage. It does not deal with loss/destruction of goods.

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

4. In case of pilferage, only section 13 applies and claim of refund under section 23(1) is not permissible.

5. Section 13 applies to the goods which are under the custody of the custodian under section 45. The goods, even though held by the custodian appointed by the Collector, are held by him for the purposes of customs formalities. Any pilferage noticed during the period is on the account of the Customs formalities. Section 13 and section 45 are independent provisions. In other words, whether duty is paid/ payable by the custodian or not, remission cannot be denied to the importer by the Department.

REMISSION OF DUTY ON GOODS LOST, DESTROYED OR ABANDONED
[SECTION 23]

(a) Remission of duty

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. [Sub-section (1)].

ANALYSIS

1. An analysis of section 23 shows that it comes into play after the duty has been paid and even after an order for home consumption has been passed, but before the goods are actually cleared, and then it is found that they have been lost/destroyed. In that case the provision is not that goods will not be liable to duty, but duty paid on such goods shall be remitted by the Assistant/Deputy Commissioner of Customs.

2. In respect of the goods which have been pilfered after they have been unloaded but before the goods are cleared for home consumption or
deposit in a warehouse, section 13 would apply and the importer would not be liable to pay the duty. In cases where section 23 is attracted, the importer is entitled to remission of duty.

3. 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.

4. The loss referred to in sub-section (1) may be at the warehouse also.

5. In the above situation, the loss/ destruction have to be proved to the satisfaction of the Assistant Commissioner or Deputy Commissioner. Thereupon, he may pass remission orders canceling the payment of duty. In case duty has already been paid, refund can be obtained after getting the remission orders.

(b) Right to relinquish the title to the goods-abandonment of goods

The owner of any imported goods may, at any time before an order for clearance of goods for home consumption under section 47 or an order for permitting the deposit of goods in a warehouse under section 60 has been made, relinquish his title to the goods and thereupon he shall not be liable to pay the duty thereon.

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

1. Meaning of relinquish

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

2. The aforementioned right can be exercised at any time before the passing of the order for clearance for home consumption. Before that date, it is open to the importer to relinquish the title to the goods.
3. **Goods abandoned by importers**

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 has to relinquish his title to the goods unconditionally and abandon them. Relinquishment is done by endorsing the document of title, viz. Bill of Lading, Airway Bill, etc. in favour of the Principal Commissioner/Commissioner of Customs along with the invoice. 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.

(c) **Distinction between section 13 and section 23**

The provisions of section 13 and section 23 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</th>
</tr>
</thead>
<tbody>
<tr>
<td>Meaning</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. Abandonment of goods is possible where the importer is</td>
</tr>
</tbody>
</table>
### Duty on goods
- The importer shall not be liable to pay the duty leviable on such goods.
- The duty paid on such goods shall be remitted to the importer.

### Subsequent restoration of goods
- Where the pilfered goods are restored to the importer after pilferage, the importer become liable to duty.
- In case of destruction of goods, the restoration is not possible.

### Warehoused goods
- Provisions of section 13 are not applicable to warehoused goods.
- Provisions of section 23 apply to warehoused goods also.

### Onus to prove the pilferage/destruction or loss of goods
- The onus to prove the pilferage does not lie on the importer as it is obvious at the time of examination by the proper officer.
- The importer has to prove the loss/destruction to the satisfaction of the Assistant/Deputy Commissioner of Customs.

### Time of occurrence of pilferage or loss/destruction
- 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.
- The imported goods must have been lost/destroyed at any time before clearance for home consumption under section 47.
ABATEMENT OF DUTY ON DAMAGED OR DETERIORATED GOODS [SECTION 22]

Where it is shown to the satisfaction of the Assistant Commissioner of Customs or Deputy Commissioner of Customs -

(a) that any imported goods had been damaged or had deteriorated at any time before or during the unloading of the goods in India; or

(b) that any imported goods, other than warehoused goods, had been damaged at any time after the unloading thereof in India but before their examination under section 17, on account of any accident not due to any wilful act, negligence or default of the importer, his employee or agent; or

(c) that any warehoused goods had been damaged at any time before clearance for home consumption on account of any accident not due to any wilful act, negligence or default of the owner, his employee or agent,

such goods shall be chargeable to duty in accordance with the provisions of sub-section (2) [Sub-section (1)].

The duty to be charged on the goods referred to in sub-section (1) shall bear the same proportion to the duty chargeable on the goods before the damage or deterioration which the value of the damaged or deteriorated goods bears to the value of the goods before the damage or deterioration [Sub-section (2)].

For the purposes of this section, the value of damaged or deteriorated goods may be ascertained by either of the following methods at the option of the owner:-

(a) the value of such goods may be ascertained by the proper officer, or

(b) such goods may be sold by the proper officer by public auction or by tender, or with the consent of the owner in any other manner, and the gross sale proceeds shall be deemed to be the value of such goods [Sub-section (3)].

ANALYSIS

(a) Cases where the abatement is available

Abatement is available if the goods are damaged/deteriorated under any of the following circumstances:
### LEVY OF AND EXEMPTIONS FROM CUSTOMS DUTY

#### (b) Amount of duty chargeable after abatement

\[
\text{Amount of duty chargeable after abatement} = \frac{\text{Duty on goods before damage/deterioration}}{\text{Value of goods before damage/deterioration}} \times \left( \frac{\text{Value of damaged/deteriorated goods}}{\text{Value of goods before damage/deterioration}} \right)
\]

**Illustration 4**

*If the value of goods is ₹ 10,000 and after damage the value is ₹ 2,000 then duty payable on ₹ 10,000/- should be appropriately reduced to 20% (proportion of 2000 to 10000).*

#### (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.
Illustration 5

What will be the impact on the customs duty if the goods are –:

(i) damaged inside the warehouse before clearance for home consumption
(ii) deteriorated inside the warehouse before clearance for home consumption
(iii) destroyed in the warehouse before clearance for home consumption
(iv) destroyed on the wharf, before clearance for home consumption
(v) destroyed after clearance from warehouse

Answer

(i) When the goods are damaged inside the warehouse abatement in customs duty, on resultant loss in value, has been provided through section 22. Section 22 contemplates that for claiming abatement of duty, the damage (not deterioration) should occur at any time before clearance of the imported goods for home consumption from the warehouse. However, the damage should not be attributable to the importer. It should be proved to the satisfaction of Assistant Commissioner or Deputy Commissioner of Customs that the imported goods have actually suffered damages. The claim for abatement is not tenable unless the importer factually proves the damage. The following equation provides the way to calculate the abatement of duty.

\[
\frac{\text{Duty after damage}}{\text{Duty before damage}} = \frac{\text{Value after damage}}{\text{Value before damage}}
\]

(ii) As discussed above, in case of warehoused goods, only damages are covered and not deterioration, hence abatement will not be available in this case and full duty will have to be paid.

However, as per first proviso to section 68 of Customs Act, 1962, owner of any warehoused goods may, at any time before an order for clearance of goods for home consumption has been made in respect of such goods, relinquish his title to the goods. Upon such relinquishment, duty will not be payable on such goods but rent, interest, other charges and penalties would be payable.

(iii) When the goods are destroyed in the warehouse before clearance for home consumption, customs duty will be remitted as per the provisions of section 23. Section 23(1) applies when the goods have been lost (otherwise than as a result of pilferage) or destroyed in entirety i.e. whole or part of goods is lost once for all. The goods cease to exist and cannot be retrieved. The loss is
generally on account of natural causes such as fire, flood etc., and no human element is present as in section 13. The loss or destruction may occur at any time before clearance for home consumption. The loss/destruction has to be proved to the satisfaction of Assistant Commissioner or Deputy Commissioner.

(iv) As all the conditions of section 23 are fulfilled, duty will be remitted in this case also.

(v) As per the discussion made in (iii) above it is clear that remission of duty is possible only when destruction occurs before clearance for home consumption. In case of destruction after clearance from a warehouse, no remission of duty is possible.

Illustration 6

Peerless Scraps, imported during August 20XX, by sea, a consignment of metal scrap weighing 6,000 M.T. (metric tonnes) from U.S.A. They filed a bill of entry for home consumption. The Assistant Commissioner passed an order for clearance of goods and applicable duty was paid by them. Peerless Scraps thereafter found, on taking delivery from the Port Trust Authorities (i.e., before the clearance for home consumption), that only 5,500 M.T. of scrap were available at the docks although they had paid duty for the entire 6,000 M.T., since there was no short-landing of cargo. The short-delivery of 500 M.T. was also substantiated by the Port-Trust Authorities, who gave a “weighment certificate” to Peerless Scraps.

On filing a representation to the Customs Department, Peerless Scraps has been directed in writing to justify as to which provision of the Customs Act, 1962 governs their claim for remission of duty on the 500 M.T. not delivered by the Port-Trust.

You are approached by Peerless Scraps as “Counsel” for an opinion/advice. Examine the issues and tender your opinion as per law, giving reasons.

Answer

As per provisions of section 23, where it is shown to the satisfaction of Assistant or Deputy Commissioner that any imported goods have been lost or destroyed, otherwise than as a result of pilferage at any time before clearance for home consumption, the Assistant or Deputy Commissioner shall remit the duty on such goods. Therefore, duty shall be remitted only if loss has occurred before clearance for home consumption.
In the given case, it is apparent from the facts that quantity of scrap received in India was 6000 metric tonnes and 500 metric tonnes thereof was lost when it was in custody of Port Authorities i.e. before clearance for home consumption was made. Also, the loss of 500 MT of scrap cannot be construed to be pilferage, as loss of such huge quantity cannot be treated as “Petty Theft”.

Hence, Peerless Scraps may take shelter under section 23 justifying his claim for remission of duty.

**DENATURED OR MUTILATION OF GOODS [SECTION 24]**

Section 24 of the Customs Act, 1962 provides that an importer can request Central Government to make rules for permitting to denature/mutilate the imported goods, which are ordinarily used for more than one purpose, so as to render them unfit for one or more of such purpose.

If any imported goods can be used for more than one purpose and duty is leviable on the basis of its purpose of utilisation, than denaturing or mutilation of such goods is useful. By denaturing, goods are made unfit for other purposes. After denaturing process, goods can be used only for one purpose and accordingly duty can be levied.

Denaturing of Spirit Rules, 1972 specify procedure for denaturing spirit.

**Example**

Ethyl Alcohol which is not denatured attracts a higher rate of customs duty whereas denatured ethyl alcohol attracts lower rate of duty. Assuming undenatured ethyl alcohol is imported, certain very bitter chemicals can be added to denature the spirits as per Rules and once they are denatured, they attract the lower rate of duty.

**EXEMPTION FROM CUSTOMS DUTY [SECTION 25]**

**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 Parliament.

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. Further, no duty shall be collected if the amount of duty leviable is equal to, or less than, one hundred rupees.

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.

**RATIONALE FOR GRANT OF 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 discretely use this power and the exemptions may be based on any of the following bases:

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.

**Interpretation of Exemption Notifications**

In *Kasinka Trading v. U.O.I. 1994 (74) E.L.T. 782*, the Supreme Court held that the power to exempt includes the power to modify or withdraw in terms of Section 21 of the General Clauses Act, 1897. It was held that even a time bound exemption notification issued under section 5A of the Central Excise Act, 1944, or section 25 of the Customs Act, 1962 can be modified and revoked if it is in public interest and the doctrine of Promissory Estoppel cannot be invoked since a notification cannot be said to be making a representation or a promise to a party getting benefit thereof.

The Supreme Court has held in *Pankaj Jain Agencies v. U.O.I. 1994 (72) E.L.T. 805* that a Notification is to take effect from the date of the publication in the Official
Gazette. In *ITC Ltd. v. CCE 1996 (86) E.L.T. 477* the Supreme Court reiterated this view and said that non-availability of the Gazette on the date of issue of the notification will not affect the operativeness and enforceability of the notification particularly when there are radio announcements and press releases explaining the changes on the very day.

An exemption notification cannot be withdrawn and duty cannot be demanded with retrospective effect [*Honest Corporation v. State of Tamil Nadu 1999 STC 113 (HC)*].

**Effective date:** Section 25 of the Act provides that the date of effect of the notification will be the date of its issue.

The following issues need to be kept in mind in case of general exemption.

(i) Where the exemption notification does not mention the date of its effect, the notification comes into effect from the date of its issue by the Central Government for publication in the Official Gazette.

(ii) Where the exemption is through a special order, the above rules do not apply. Special orders are issued separately for each case and communicated to the beneficiary directly by the Government. The beneficiary can claim refund for the period reckoned from the date of its issue.

Sub-section 2A empowers the Government to issue clarifications to the notifications within one year from the issue of the notification and such clarifications will have retrospective effect.

**EXEMPTION FROM CUSTOMS DUTY ON IMPORTED GOODS USED FOR INWARD PROCESSING OF GOODS [SECTION 25A]**

Where the Central Government is satisfied that it is necessary in the public interest so to do, it may, by notification, exempt such of the goods which are imported for the purposes of repair, further processing or manufacture, as may be specified therein, from the whole or any part of duty of customs leviable thereon, subject to the following conditions, namely:—

(a) the goods shall be re-exported after such repair, further processing or manufacture, as the case may be, within a period of one year from the date on which the order for clearance of the imported goods is made;

(b) the imported goods are identifiable in the export goods; and

(c) such other conditions as may be specified in that notification.
EXEMPTION FROM CUSTOMS DUTY ON RE-IMPORTED GOODS USED FOR OUTWARD PROCESSING [SECTION 25B]

Notwithstanding anything contained in section 20, where the Central Government is satisfied that it is necessary in the public interest so to do, it may, by notification, exempt such of the goods which are re-imported after being exported for the purposes of repair, further processing or manufacture, as may be specified therein, from the whole or any part of duty of customs leviable thereon, subject to the following conditions, namely:

(a) the goods shall be re-imported into India after such repair, further processing or manufacture, as the case may be, within a period of one year from the date on which the order permitting clearance for export is made;

(b) the exported goods are identifiable in the re-imported goods; and

(c) such other conditions as may be specified in that notification.”

LIST OF IMPORTANT JUDICIAL DECISIONS ON SCOPE OF EXEMPTION NOTIFICATIONS

A. General Principles

<table>
<thead>
<tr>
<th>Particulars</th>
<th>Citation</th>
</tr>
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<tbody>
<tr>
<td>1. Exemption notifications represent the policy of the Government evolved to subserve public interest and public revenue. It is a part and parcel of the enactment subject to it not being against Article 14 of Constitution.</td>
<td><em>U.O.I. v. Paliwal Electricals P. Ltd</em> 1996 (83) E.L.T. 241 (S.C.)</td>
</tr>
<tr>
<td>3. Exemption notification is a class of delegated or conditional legislation. Power can be used not only for raising revenue but also to regulate the economy and for serving social objectives.</td>
<td><em>U.O.I. v. Jalyan Udyog</em> 1993 (68) E.L.T. 9 (S.C.)</td>
</tr>
</tbody>
</table>
1. Classification between small and big manufacturers not discriminatory.  
   *Murthy Match Works v. AC*  
   1978 (2) E.L.T. J429 (S.C.)

2. Choice of date in exemption notifications cannot be questioned being a question of policy.  
   *ITC Bhadrachalam Paper Boards Ltd. v. CCE*  
   1994 (71) E.L.T. 334 (S.C.)

3. Exemption notification not valid if it does not recite public interest.  
   *Ramdhon Pandey v. State of UP*  
   1993 (66) E.L.T. 547 (S.C.)

4. Public interest means an act beneficial to general public.  
   *MJ Exports v. CCE*  
   1992 (59) E.L.T. 112 (T) [approved by SC]

5. In case of omission to claim exemption does not result in denial of benefit.  
   *Hero Cycles Ltd. v Union of India*  
   2009 (240) E.L.T. 490 (Bom.) [maintained by SC]

6. For purpose of claiming exemption from payment of tax applicable to a commodity, assessee must bring on record sufficient materials to show that it comes within the purview of notification.  
   *Boc India Ltd. v State Of Jharkhand*  
   2009 (237) E.L.T. 7 (S.C.)

### How to Interpret?

<table>
<thead>
<tr>
<th>Particulars</th>
<th>Citation</th>
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</table>
| 1. Notification to be treated as a part of the enactment itself. | *CCE v. Parle Exports P. Ltd.*  
1988 (38) ELT 741 (SC) |
| 2. Interpretation given at the time of enactment or issue to be given weight. | *HMM Ltd. v. CCE*  
1996 (87) E.L.T. 593 (SC) |
| 3. (a) Exemption notification should be construed strictly and reasonably having regard to the language employed. | *Swadeshi Polytex Ltd. v. CCE*  
1989 (44) E.L.T. 794 (SC) |
| (b) Strictness of construction does not mean that circuitous process should be followed. Strictness should also result in giving full effect. | |
| (c) Express language to be given effect. Supposed intention to be gathered from language used. | *GSFC Ltd. v. CCE*  
1997 (91) E.L.T. 3 (SC) |
<table>
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<tr>
<th>(d) Exemption notification not to be rendered nugatory or purposeless. The word singular includes plural.</th>
<th>CC v. United Electrical Industries Ltd. 1999 (108) E.L.T. 609 (SC).</th>
</tr>
</thead>
<tbody>
<tr>
<td>4. (a) Exemption notification construable strictly.</td>
<td>Novopan India Ltd. v. CCE 1994 (73) E.L.T. 769 (SC)</td>
</tr>
<tr>
<td>(b) Exemption notification need not be construed strictly when there is no doubt or ambiguity in it.</td>
<td>SG Glass Works P. Ltd. v. CCE 1994 (74) E.L.T. 775 (S.C.)</td>
</tr>
<tr>
<td>6. Exemption notification to be read as an ordinary man would read it. The word “and” to be read conjunctively as any one would do so.</td>
<td>CCE v. Shibani Engineering Systems 1996 (86) E.L.T. 453 (S.C.)</td>
</tr>
<tr>
<td>7. Expressions used in the Act should be understood in the same sense if used in Rules and notifications.</td>
<td>Prestige Engg. India Ltd. v. CCE 1994 (73) E.L.T. 497 (S.C.)</td>
</tr>
<tr>
<td>9. Exemption notification to be interpreted differently from statute. Strict interpretation applicable to find out whether a subject falls under the exemption. Once this is solved, liberal interpretation to be given by reading the notification as a whole.</td>
<td>Bombay Chemicals P. Ltd. v. CCE 1995 (77) E.L.T. 3 (SC), Novapan India Ltd. v. CCE 1994 (73) E.L.T. 769 (S.C.)</td>
</tr>
<tr>
<td>10. (a) Substantive conditions in notification to be satisfied mandatorily since it may facilitate fraud or introduce administrative inconveniences. Non-observance of procedural conditions</td>
<td>MCF Ltd v. Dy. Commissioner 1991 (55) E.L.T. 437 (S.C.); Thermax P. Ltd. v. CCE 1992 (61) E.L.T. 352 (SC); Formica India Division v. CCE 1995</td>
</tr>
<tr>
<td>Condition</td>
<td>Case References</td>
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<tr>
<td>If non-observance of procedural condition may facilitate fraud or administrative convenience, exemption can be denied.</td>
<td>(77) E.L.T. 511 (SC) <em>Indian Aluminium company Ltd. v. Thane Municipal Corporation</em> 1991 (55) E.L.T. 454 (S.C.)</td>
</tr>
<tr>
<td>Assessee can opt for that notification which is more beneficial.</td>
<td><em>CCE v. Indian Petro Chemicals</em> 1997 (92) E.L.T. 13 (SC); <em>Abrol Watches Pvt. Ltd v. CC</em> 1997 (92) E.L.T. 311 (S.C.)</td>
</tr>
<tr>
<td>A particular item not expressly excluded does not mean that it is included.</td>
<td><em>CC v. Perfect Machine Tools Co. P. Ltd</em> 1997 (96) E.L.T. 214 (S.C.)</td>
</tr>
<tr>
<td>Benefit not to be extended on the ground that such benefit is wrongly extended to others.</td>
<td><em>Faridabad CT Scan Centre v. DG Health Services</em> 1997 (95) E.L.T. 161 (S.C.)</td>
</tr>
<tr>
<td>In interpreting an earlier notification, narrow or broader view to be taken can be decided based on subsequent notification.</td>
<td><em>Johnson &amp; Johnson Ltd. v. CCE</em> 1997 (92) E.L.T. 23 (S.C.)</td>
</tr>
<tr>
<td>Assessee cannot suffer on account of illegal act of Department. Exemption notification applicable.</td>
<td><em>Kuil Fireworks Industries v. CCE</em> 1997 (95) E.L.T. 3 (S.C.)</td>
</tr>
<tr>
<td>Words in Tariff Schedule to be interpreted keeping in mind the rapid march of technology as industry is not static.</td>
<td><em>CC v. Lekhraj Jessumal &amp; Sons</em> 1996 (82) E.L.T. 162 (S.C.)</td>
</tr>
</tbody>
</table>
TEST YOUR KNOWLEDGE

1. What are the provisions relating to effective date of notifications issued under section 25 of the Customs Act, 1962?

2. ASC Ltd. entered into technical collaboration with MSC Ltd. of Netherlands and imported drawings and designs in paper form through professional courier and post parcels. ASC Ltd. declared the value of these drawings and designs at a very nominal value. However, the Assistant Commissioner of Customs valued these drawings and designs at intrinsic value and levied duty on them. ASC Ltd. contended that customs duty cannot be levied on drawings and designs as they do not fall in the definition of goods under the Customs Act, 1962.

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

3. An importer imported certain inputs for manufacture of final product. A small portion of the imported inputs were damaged in transit and could not be used in the manufacture of the final product. An exemption notification was in force providing exemption in respect of specified raw materials imported into India for use in manufacture of specified goods, which was applicable to the imports made by the importer in the present case.

Briefly examine whether the importer could claim the benefit of the aforesaid notification in respect of the entire lot of the inputs imported including those that were damaged in transit.

4. M/s. Pure Energy Ltd. is engaged in oil exploration and has imported software containing seismic data. The importer is entitled to exemption from customs duty subject to the condition that an “essentiality certificate” granted by the Director General of Hydrocarbons is produced at the time of importation of the goods. Though the importer applied for the certificate within the statutory time limit prescribed for the same, the certificate was not made available to the importer within a reasonable time by the Director General of Hydrocarbons. The customs department rejected the importer’s claim for exemption.

Examine briefly whether the department’s action is sustainable in law.

5. Lucrative Laminates imported resin impregnated paper and plywood for the purpose of manufacture of furniture. The said goods were warehoused from the date of its import. Lucrative Laminates sought an extension of the
warehousing period which was granted by the authorities. However, even after the expiry of the said date, it did not remove the goods from the warehouse. Subsequently, Lucrative Laminates applied for remission of duty under section 23 of the Customs Act, 1962 on the ground that the said goods had lost their shelf life and had become unfit for use on account of non-availability of orders for clearance.

Explain, with the help of a decided case law, if any, whether the application for remission of duty filed by the Lucrative Laminates is valid in law?

6. Explain, with reference to decided case law, whether clearances from Domestic Tariff Area (DTA) to Special Economic Zone is chargeable to export duty under the SEZ Act, 2005 or the Customs Act, 1962.

7. M/s. XYZ, a 100% export oriented undertaking (100% E.O.U. in short) imported DG sets and furnace oil duty free for setting up captive power plant for its power requirements for export production. This benefit was available vide an exemptions notification. They used the power so generated for export production but sold surplus power in domestic tariff area.

Customs Department has demanded duty on DG sets and furnace oil as surplus power has been sold in domestic tariff area. The notification does not specifically restrict the use of imported goods for manufacture of export goods.

Do you think the demand of the Customs Department is valid in law.

8. Referring to section 25 of the Customs Act, 1962, discuss the following:
   (i) Special exemption
   (ii) General exemption

9. Write a brief note on the following with reference to the Customs Act, 1962:
   (i) Remission of duty on imported goods lost
   (ii) Pilfered goods

10. Distinguish between Pilfered goods and Lost/destroyed goods

11. Goods manufactured or produced in India, which were earlier exported and thereafter imported into India will be treated at par with other goods imported into India. Is the proposition correct or any concession is provided on such import? Discuss briefly.

12. Write a brief note on stages of imposition of taxes and duties.
13. Discuss the provisions relating to denaturing or mutilation of goods.

14. Briefly explain the provisions relating to abatement of duty on damaged or deteriorated goods under section 22 of the Customs Act, 1962.

15. Briefly explain the following with reference to the provisions of the Customs Act, 1962:
   (i) Indian customs waters
   (ii) India

16. Distinguish between Indian territorial waters and Indian custom waters.

17. Write a brief note on the constitutional provisions governing the levy of customs duties.

**ANSWERS/HINTS**

1. Date of effect of every notification issued will be the date of its issue by the Central Government for publication in the Official Gazette, unless provided otherwise in the notification. Issue means signed by competent authority and sent for publication to Government press.

   The provision is made as there may be delay of one or two days in publishing in Gazette e.g. if the notification is issued on 2\(^{nd}\) November and published in Official Gazette on 4\(^{th}\) November, the notification will be effective from 2\(^{nd}\) November.

   The above rules do not apply to exemptions granted through special orders. Special orders are issued separately for each case and communicated to the beneficiary directly by the Government.

2. This issue has been settled by the Supreme Court in the case of Associated Cement Companies Ltd. v. CC 2001 (128) ELT 21 (SC). The Apex Court observed that though technical advice or information technology are intangible assets, but the moment they are put on a media, whether paper or cassettes or diskettes or any other thing, they become movable and are thus, goods. Therefore, the Supreme Court held that drawings, designs, manuals and technical material are goods liable to customs duty.

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

   Note: At present, drawings fall under heading under 4906 and 4911 and are exempt as per Sr No. 275 of Notification No. 12/2012 Cus dated 17.03.2012.
3. The facts of the case are similar to the case of *BPL Display Devices Ltd. v. CCE, Ghaziabad* (2004) 174 ELT 5 (SC) wherein the Supreme Court has held that the benefit of the notifications cannot be denied in respect of goods which are intended for use for manufacture of the final product but cannot be so used due to shortage or leakage.

The Apex Court has held that no material distinction can be drawn between loss on account of leakage and loss on account of damage. The benefit of said exemption cannot be denied as inputs were intended for use in the manufacture of final product but could not be so used due to shortage/leakage/damage. It has been clarified by the Supreme Court that words “for use” have to be construed to mean “intended for use”.

Therefore, the importer can claim the benefit of the notification in respect of the entire lot of the inputs imported including those that were damaged in transit.

4. This issue has been addressed by the Supreme Court in the case of *Commissioner of Customs v. Tullow India Operations Ltd.* (2005) 189 ELT 401 (SC). The Apex Court has observed that if a condition is not within the power and control of the importer and depends upon the acts of public functionaries, non-compliance of such a condition, subject to just exceptions cannot be held to be a condition precedent which would disable it from obtaining the benefit for all times to come.

In the given case also the certificate has not been granted within a reasonable time. Therefore, in view of the above-mentioned judgement, the importer M/s Pure Energy Ltd. cannot be blamed for the lapse by the authorities. The Directorate General of Hydrocarbons is under the Ministry of Petroleum and Natural Gas and such a public functionary is supposed to grant the essentiality certificate within a reasonable time so as to enable the importer to avail of the benefits under the notification.

5. No, the application for remission of duty filed by the Lucrative Laminates is not valid in law. The facts of the given case are similar to the case of *CCE v. Decorative Laminates (I) Pvt. Ltd.* 2010 (257) E.L.T. 61 (Kar.). The High Court, while interpreting section 23, stipulated that section 23 states that only when the imported goods have been lost or destroyed at any time before clearance for home consumption, the application for remission of duty can be considered. Further, even before an order for clearance of goods for home consumption is made, relinquishing of title to the goods can be made; in such event also, an importer would not be liable to pay duty.
Therefore, the expression “at any time before clearance for home consumption” would mean the time period as per the initial order during which the goods are warehoused or before the expiry of the extended date for clearance and not any period after the lapse of the aforesaid periods. The said expression cannot extend to a period after the lapse of the extended period merely because the licence holder has not cleared the goods within the stipulated time.

Moreover, since in the given case, the goods continued to be in the warehouse, even after the expiry of the warehousing period, it would be a case of goods improperly removed from the warehouse as per section 72(1)(b) read with section 71.

The High Court, overruling the decision of the Tribunal, held that the circumstances made out under section 23 were not applicable to the present case since the destruction of the goods or loss of the goods had not occurred before the clearance for home consumption within the meaning of that section. When the goods are not cleared within the period or extended period as given by the authorities, their continuance in the warehouse will not attract section 23 of the Act.

Further, in Kesoram Rayon v. CC 1996 (86) ELT 464, the Supreme Court has held that goods which are not removed from warehouse within the permissible period, are deemed to be improperly removed on the day they ought to have been removed. In view of this decision, goods would be deemed to have been removed when licensing period was over. Hence, section 23 would not be applicable as such loss occurred after ‘deemed removal’ of goods.

6. In the case of Tirupati Udyog Ltd. v. UOI 2011 (272) E.L.T. 209 (A.P.), it is held that the clearances of goods from DTA to Special Economic Zone are not chargeable to export duty either under the SEZ Act, 2005 or under the Customs Act, 1962 on the basis of the following observations:-

- The charging section needs to be construed strictly. If a person is not expressly brought within the scope of the charging section, he cannot be taxed at all.
- SEZ Act does not contain any provision for levy and collection of export duty on goods supplied by a DTA unit to a Unit in a Special Economic Zone for its authorised operations. Since there is no charging provision
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in the SEZ Act providing for the levy of customs duty on such goods, export duty cannot be levied on the DTA supplier.

- Reading section 12(1) of the Customs Act, 1962 along with sections 2(18), 2(23) and 2(27) makes it apparent that customs duty can be levied only on goods imported into or exported beyond the territorial waters of India.

Since both the SEZ unit and the DTA unit are located within the territorial waters of India, supplies from DTA to SEZ would not attract section 12(1) [charging section for customs duty].

The above view has also been confirmed in *Essar Steel v. UOI 2010 (249) ELT 3 (Guj.)* [maintained by SC] wherein the Departmental appeal has been dismissed by Supreme Court on 12.07.2010 - 2010 (255) ELT A115.

7. The facts of the case are similar to the case of *Commissioner v. Hanil Era Textile Ltd. 2005 (180) ELT A044 (SC)* wherein the Supreme Court agreed to the view taken by the Tribunal that in the absence of a restrictive clause in the notifications that imported goods are to be solely or exclusively used for manufacture of goods for export, there is no violation of any condition of notification, if surplus power generated due to unforeseen exigencies is sold in domestic tariff area.

Therefore, no duty can be demanded from M/s XYZ for selling the surplus power in domestic tariff area for the following reasons:

(i) They have used the DG sets and furnace oil imported duty free for generation of power, and

(ii) such power generated has been used for manufacturing goods for export, and

(iii) only the surplus power has been sold, as power cannot be stored.

8. (i) **Special Exemption:** As per section 25(2) of the Customs Act, 1962, 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. Further, no duty shall be collected if the amount of duty leviable is equal to, or less than, ₹ 100. This type of exemption is called as *ad hoc* exemption. Order under section 25(2) is not required to be published in the Official Gazette.
(ii) **General Exemption:** As per section 25(1) of the Customs Act, 1962, 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. Further, this exemption applies to all importers while exemption under section 25(2) is for specific importer and specific goods under import.

9. (i) **Remission of duty on imported goods lost:** Section 23(1) of the Customs Act, 1962 provides for remission of duty on imported goods lost (otherwise than as a result of pilferage) or destroyed, if such loss or destruction is at any time before clearance for home consumption. Such loss or destruction covers loss by leakage. Duty is payable under this section but it is remitted by Assistant/Deputy Commissioner of Customs if the importer is able to prove the loss or destruction. Thus, unless remitted, duty has to be paid and burden of proof is on the importer. The provisions of this section are applicable for warehoused goods also.

9. (ii) **Pilfered goods:** Section 13 provides that if imported goods are pilfered after unloading thereof but before the proper officer has made an order for clearance for home consumption or deposit in a warehouse, no duty is payable on the goods, unless the pilfered goods are restored to importer. In such a case, duty on pilfered goods is payable by the Port authorities. Also, the importer does not have to prove pilferage. However, the loss must be only due to pilferage. Section 13 is not applicable for warehoused goods.

10. |

<table>
<thead>
<tr>
<th></th>
<th>Pilfered goods</th>
<th>Lost/Destroyed goods</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.</td>
<td>Covered by section 13</td>
<td>Covered by section 23(1)</td>
</tr>
<tr>
<td>2.</td>
<td>No duty payable on such goods</td>
<td>Duty paid on such goods to be remitted</td>
</tr>
</tbody>
</table>
3. | Department gets compensation from the custodian [Section 45(3)] | No such compensation |
---|---|---|
4. | Petty theft by human being | Loss/Destruction by fire, flood etc (Act of God) |
5. | Restoration possible | Restoration is not possible |
6. | Occurrence is after unloading and before Customs clearance order for home consumption or warehousing | Occurrence may be at any time before clearance for home consumption |
7. | Occurrence in warehouse not recognized | Occurrence in warehouse is recognized |
8. | Duty need not be calculated | Duty should be calculated for determining the remission amount |
9. | No need to prove pilferage. It is quite obvious | Should be proved and remission sought for |

11. The given proposition is correct i.e., goods produced in India, which were earlier exported and thereafter imported into India will be treated at par with other goods imported into India [Section 20 of the Customs Act, 1962]. However, the following concessions are being provided in this regard:

(i) Maximum import duty will be restricted to duty drawback or refund availed or integrated tax not paid at the time of export.

(ii) Where the goods were originally exported for repairs, the duty on re-importation is restricted to the fair cost of repairs including cost of materials used in repairs whether such costs are actually incurred or not, insurance and freight charges, both ways done abroad.

The above two concessions are given subject to the condition that:

(a) the re-importation is done within 3 years or 5 years if time is extended.

(b) the exported goods and re-imported goods must be the same.
In case of point (ii) above, the ownership of the goods should also not have changed.

However, these concessions would not be applicable if-

- re-imported goods had been exported by EOU or a unit in FTP
- re-imported goods had been exported from a public/private warehouse
- re-imported goods which fall under Fourth schedule to the Central Excise Act, 1944.

[Notification No. 45/2017 Cus dated 30.06.2017]

(iii) When exported goods come back for repairs and re-export, the re-imported goods other than the specified goods can avail exemption from paying of import duty subject to the following conditions:

(i) the re-importation is for repairs only
(ii) the time limit is 3 years. In case of Nepal, such time-limit is 10 years.
(iii) the goods must be re-exported after repairs
(iv) the time limit for export is 6 months (extendable to one year).

1. In case of import of crude oil, whether customs duty is payable on the basis of the quantity of oil shown in the bill of lading or on the actual quantity received into shore tanks in India?

_Mangalore Refinery & Petrochemicals Ltd v. CCus. 2015 (323) ELT 433 (SC)_

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

_Point of Dispute:_ The Department contended that the quantity of crude oil mentioned in the various bills of lading should be the basis for payment of duty, and not the quantity actually received into the shore tanks in India. This was stated on the basis that duty was levied on an _ad valorem_ basis and not on a specific rate. The assessee contended that it makes no difference as to whether the basis for customs duty is at a specific rate or is _ad valorem_, inasmuch as the quantity of goods at the time of import alone is to be looked at.

_Tribunal’s Observations:_ The Tribunal accepted the Department’s contentions on the basis of the following reasons:

(i) Duty ought to be levied on the total payment made by the assessee irrespective of the quantity received.

(ii) An _ad valorem_ duty would necessarily lead to this result but duty levied at the specific rate would not. The quantity of goods to be considered in the latter case will only be the quantity of crude oil received in the shore tank.

(iii) Section 14 of the Customs Act, 1962 kicks in when the duty is on an _ad valorem_ basis and sections 13 and 23 of the Act do not stand in the way because it is not the question of demanding duty on goods not received, but it is the demand of duty on the transaction value. In spite of the “ocean loss”, the assessee has to make payment on the basis of the bill of lading quantity.

_Supreme Court’s Observations:_ The assessee raised the issue before the Supreme Court. The Apex Court noted the following:
(i) The levy of customs duty under section 12 of the Act is only on goods imported into India. Goods are said to be imported into India when they are brought into India from a place outside India. Unless such goods are brought into India, the act of importation which triggers the levy does not take place.

(ii) If the goods are pilfered after they are unloaded or lost or destroyed at any time before clearance for home consumption or deposit in a warehouse, the importer is not liable to pay the duty leviable on such goods. This is for the reason that the import of goods does not take place until they become part of the land mass of India and until the act of importation is complete which under sections 13 and 23 happen only after an order for clearance for home consumption is made and/or an order permitting the deposit of goods in a warehouse is made.

(iii) Under section 23(2), the owner of the imported goods may also at any time before such orders have been made relinquish his title to the goods and shall not be liable to pay any duty thereon. In short, he may abandon the said goods even after they have physically landed at any port in India but before any of the aforesaid orders have been made. This again is for the good reason that the act of importation gets complete when goods are in the hands of the importer after they have been cleared either for home consumption or for deposit in a warehouse.

(iv) Further, as per section 47 of the Customs Act, the importer has to pay import duty only on goods that are entered for home consumption. Obviously, the quantity of goods imported will be the quantity of goods at the time they are entered for home consumption.

The Supreme Court stated that Tribunal’s reasoning for concluding that the bill of lading quantity alone should be considered for the purpose of valuing the imported goods is incorrect in law. The Apex Court examined each of the reasons given by the Tribunal as under:

(i) The Tribunal lost sight of the fact that a levy in the context of import duty can only be on imported goods, that is, on goods brought into India from a place outside of India. Till that is done, there is no charge to tax.

(ii) The taxable event in the case of imported goods is “import”. The taxable event in the case of a purchase tax is the purchase of goods.
The quantity of goods stated in a bill of lading would perhaps reflect the quantity of goods in the purchase transaction between the parties, but would not reflect the quantity of goods at the time and place of importation. A bill of lading quantity, therefore, could only be validly looked at in the case of a purchase tax but not in the case of an import duty.

(iii) The Tribunal wholly lost sight of sections 13 and 23 of the Act. Where goods which are imported are lost, pilfered or destroyed, no import duty is leviable thereon until they are out of customs and come into the hands of the importer. It is clear, therefore, that it is only at this stage that the quantity of the goods imported is to be looked at for the purposes of valuation.

(iv) The basis of the judgment of the Tribunal is on a complete misreading of section 14 of the Customs Act. First and foremost, the said section is a section which affords the measure for the levy of customs duty which is to be found in section 12 of the said Act. Even when the measure talks of value of imported goods, it does so at the time and place of importation, which again is lost sight of by the Tribunal.

(v) The Tribunal’s reasoning that somehow when customs duty is *ad valorem* the basis for arriving at the quantity of goods imported changes, is wholly unsustainable. Whether customs duty is at a specific rate or is *ad valorem* does not make the least difference to the statutory scheme. Customs duty whether at a specific rate or *ad valorem* is not leviable on goods that are pilfered, lost or destroyed until a bill of entry for home consumption is made or an order to warehouse the goods is made. This is for the reason that the import is not complete until what has been stated above has happened.

**Supreme Court’s Decision:** The Supreme Court set aside the Tribunal’s judgment and declared that the quantity of crude oil actually received into a shore tank in a port in India should be the basis for payment of customs duty.

2. **Are the clearance of goods from DTA to Special Economic Zone chargeable to export duty under the SEZ Act, 2005 or the Customs Act, 1962?**

   *Tirupati Udyog Ltd. v. UOI 2011 (272) ELT 209 (AP) [maintained by SC]*
High Court’s Observations and Decision: The High Court, on the basis of the following observations, inferred that the clearance of goods from DTA to Special Economic Zone is not liable to export duty either under the SEZ Act, 2005 or under the Customs Act, 1962:

- A charging section has to be construed strictly. If a person has not been brought within the ambit of the charging section by clear words, he cannot be taxed at all.

- SEZ Act does not contain any provision for levy and collection of export duty for goods supplied by a DTA unit to a Unit in a Special Economic Zone for its authorised operations. In the absence of a charging provision in the SEZ Act providing for the levy of customs duty on such goods, export duty cannot be levied on the DTA supplier by implication.

- With regard to the Customs Act, 1962, a conjoint reading of section 12(1) with sections 2(18), 2(23) and 2(27) of the Customs Act, 1962 makes it clear that customs duty can be levied only on goods imported into or exported beyond the territorial waters of India. Since both the SEZ unit and the DTA unit are located within the territorial waters of India, section 12(1) of the Customs Act 1962 (which is the charging section for levy of customs duty) is not attracted for supplies made by a DTA unit to a unit located within the Special Economic Zone.

Notes:

1. Chapter X-A of the Customs Act, 1962, inserted by the Finance Act 2002, contained special provisions relating to Special Economic Zones. However, with effect from 11-5-2007, Chapter X-A, in its entirety, was repealed by the Finance Act, 2007. Consequently, Chapter X-A of the Customs Act is considered as a law which never existed for the purposes of actions initiated after its repeal and thus, the provisions contained in this chapter are no longer applicable.

2. Karnataka High Court in case of CCE v. Biocon Ltd. 2011 (267) ELT 28 has also taken a similar view as elucidated in the aforesaid judgment.