

1.1 INTRODUCTION

In a general sense, tax is any contribution imposed by the Government upon individuals, for the use and service of the State, whether under the name of toll, tollgate, tribute, gabel, impost, duty, customs, excise, subsidy, aid, supply or other name. The power of taxation is used not only for raising revenue but also to regulate economy, to encourage or discourage a situation which calls for import or/and export of goods. Taxation is also resorted to achieve the social objectives of the state.

Basically taxes can be classified as direct taxes and indirect taxes. The basic distinction between Direct taxes and Indirect taxes is that whereas the former is meant to be borne by the persons on whom it is levied, the latter is expected to be passed on to the buyer and thus an indirect levy on the person paying the tax. One of the forms of tax is referred to as 'duty'. Though there appears to be no difference between a tax and a duty, a subtle distinction can be made in the fact that the latter as opposed to the former is paid before the act permitted under the law is carried out or performed. For instance, Customs duty is paid before the goods are cleared whereas income-tax is paid subsequent to the taxable event, which is earning of income.

Customs is a form of indirect tax. Standard English dictionary defines the term 'Customs' as duties imposed on imported or less commonly exported goods. This term is usually applied to those taxes which are payable upon goods or merchandise imported or exported.

The term 'Customs' derives its colour and essence from the term 'Custom', which means a habitual practice or course of action that characteristically is repeated in like circumstances. Duties on import and export of goods have been levied from time immemorial by all the countries. In the times, when the predominant system of governance was monarchy, it was customary for a trader bringing the goods to a particular kingdom to offer certain offerings as gifts to the King for allowing him to sell his goods in that kingdom. Over a period of time, the system of governance took a paradigm shift from monarchy in favour of democracy. The Constitution forms the base upon which the system of democracy works on. The taxes are levied, imposed and collected under express powers derived from statutes. These statutes have the legal backing, which is necessary for their enforcement and these statutes and Acts are passed by the legislature under the powers conferred upon it by the Constitution.

1.2 Customs

In India, the Customs Act was passed and promulgated by the Parliament in the year 1962 which replaced the erstwhile Sea Customs Act, 1878. Further, The Customs Tariff Act was passed in the year 1975 to replace the Indian Tariff Act, 1934. The Customs Tariff Act was amended in the year 1985 to move in times with and to deal with the complexities resulting from the rapid development in science and technology and consequent industrial development and expansion of manufacturing and trading activities. The Customs Act as it stands now, consolidates the entire law on the subject of import and export duties, which were earlier contained in various enactments like the Sea Customs Act, 1878, In-land Bounded Warehousing Act, 1896 and Land Customs Act, 1924. Thus now the Act stands as a complete code in itself as to the levy and collection of duties on import and export of goods.

1.2 CONSTITUTIONAL PROVISIONS

All the enactments enacted by the Parliament should have its source in the Constitution of India. The power for enacting the laws is conferred on the Parliament and on the legislature of a State by Article 245 of the Constitution. The said Article states:

Subject to the provisions of this Constitution, Parliament may make laws for the whole or any part of the territory of India, and the legislature of a State may make laws for the whole or any part of the state. No law made by the Parliament shall be deemed to be invalid on the ground that it would have extra-territorial operation.

Article 246 governs the subject matter of the laws made by the Parliament and by the legislature of states. The matters are listed in the seventh schedule to the Constitution. The seventh schedule is classified into three lists as follows:

List I [referred as Union List]: This list enumerates the matters in respect of which the Parliament has an exclusive right to make laws.

List II [referred as State List]: This list enumerates the matters in respect of which the legislature of any state has an exclusive right to make laws.

List III [referred as the concurrent list]: This list enumerates the matters in respect of which both the Parliament and, subject to List I, legislature of any state, have powers to make laws.

Parliament has a further power to make any law for any part of India not comprised in a state, notwithstanding that such matter is included in the state list.

Some of the relevant entries in the lists referred to above are;

◆ Union List

Entry No. Subject matter

- 82 Taxes on income other than agricultural income
- 83 Duties of Customs including Export duties
- 84 Duties of excise on tobacco and other goods manufactured or produced in India, except:
 - (a) alcoholic liquors for human consumption

- (b) opium, Indian hemp and other narcotic drugs and narcotics; but including, medicinal and toilet preparations containing alcohol, or any substance stated before.

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.

◆ **Concurrent List**

Entry No. Subject matter

- 35 Mechanically propelled vehicles including the principles on which taxes on such vehicles are to be levied.
- 44 Stamp duties other than duties or fees collected by means of judicial stamps, but not including rates of stamp duty.

The Parliament is authorised by virtue of Article 271 to increase any of the taxes or duties by imposing a surcharge and the amount collected as such shall form part of the Consolidated Fund of India.

1.3 AN OVERVIEW OF THE CUSTOMS ACT, 1962

The entire gamut of the Act is grouped into seventeen chapters. The following table presents an overview of the said chapters and aims at securing the reader's understanding of the provisions of the Act in a proper perspective.

Ch. No.	Ch. Heading	Sections	Content
I	Preliminary	1 & 2	Short title and definitions
II	Officers of Customs	3 to 6	Classes, appointment and powers of the customs officers.
III	Appointment of Customs ports, airports, warehousing stations etc.	7 to 10	Appointment of ports, Airports, landing stations and customs area
IV	Prohibition on importation and exportation of goods	11	Power and coverage of prohibition.
IVA	Detection of illegally imported goods and prevention of the disposal thereof	11A to 11G	Notified goods, control over storage, sale, accounting, transportation etc.
IVB	Detection and prevention of illegal export of goods	11H to 11M	Notified goods, storage, transportation etc.
IVC	Exemption from Ch. IVA and Ch. IVB	11N	Central Government's power to grant exemption.

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V	Levy and exemption of Customs duty	12 to 28BA	Dutiable goods, valuation, rate of duty, assessment, remission, exemption, interest on delayed payments.
VA	Indicating amount of duty in the price of goods	28C & 28D	Price of goods and passing of incidence of duty
VB	Advance rulings	28E to 28M	Authority, application, procedure, applicability and powers.
VI	Control over conveyances carrying imported or export goods	29 to 43	Arrival/departure reports, Import/Export general manifest, entry inwards, place time and restrictions on loading/unloading, water borne goods etc.
VII	Clearance of goods	44 to 51	Bill of entry, shipping bill, clearance for home consumption/warehousing, storage of goods,
VIII	Goods in transit	52 to 56	Transit and transshipment procedures
IX	Warehousing	57 to 73	Appointment & licensing of warehouse, bonding of goods, period of warehousing, payment of rent and charges, clearance of warehoused goods, allowance for volatile goods
X	Drawback	74 to 76	Drawback allowable, Interest allowable, prohibition and regulation
XA	Special Provisions relating to Special Economic Zone	76A to 76N	Omitted in view of the introduction of a separate Act namely, Special Economic Zones Act, 2005
XI	Special provisions relating to baggage, goods imported or exported by posts and stores	77 to 90	Declaration, rate of duty and valuation, exemption and procedures
XII	Coastal goods and vessels carrying coastal goods	91 to 99	Entry, restrictions, clearance, loading and unloading and application.

XIII	Search, Seizure and Arrest	100 to 110A	Powers and procedures of search, seizure and arrest.
XIV	Confiscation and penalties	111 to 127	Powers and procedures for confiscation and for levy and collection of penalties.
XIVA	Settlement of cases	127A to 127N	Application for settlement, procedure, powers of settlement commission, inspection etc.
XV	Appeals and revision	128 to 131C	Procedure and time limits for appeals and revisions
XVI	Offences and prosecutions	132 to 140A	Cognizable offences and procedures for prosecution.
XVII	Miscellaneous	141 to 161	Recovery of sums due, power to take samples, licensing of custom house agents, liability of principal and agent, delegation of powers, general power to make rules etc.

1.4 SOME IMPORTANT DEFINITIONS

1.4.1 Assessment: [Sec 2(2)]: The term is defined to include provisional assessment, reassessment and any order of assessment in which the duty assessed is nil. Assessment is the name given to the process of determining the tax liability in accordance with the provisions of the Act.

1.4.2 Conveyance: [Sec 2(9)]: The term is defined to include a vessel, an aircraft and a vehicle. As the Customs Act seeks to consolidate the laws relating to levy of duties on import and export of goods, it is necessary to cover all the modes of transport. Therefore, the Act uses the term conveyance with an inclusive definition covering all the 3 modes of transport i.e., water, air and land. The specific terms are: vessel (by sea), aircraft (by air) and vehicle (by land).

1.4.3 Dutiable goods: [Sec 2(14)]: The term is defined to mean any goods which are chargeable to duty and on which duty has not been paid. In order to be dutiable, any article should be within the ambit of the word goods as defined under sec 2(22) and should find a mention in the Customs Tariff.

1.4.4 Export: [Sec 2(18)]: The term with its grammatical variations and cognate expressions is defined to mean taking out of India to a place outside India.

1.4.5 Export goods: [Sec 2(19)]: The term is defined to mean any goods, which are to be taken out of India to a place outside India.

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1.4.6 Foreign going vessel or aircraft: [Sec 2(21)]: The term is defined to mean any vessel or aircraft for the time being engaged in the carriage of goods or passengers between any port or airport in India and any port or airport outside India, whether touching any intermediate port or airport in India or not, and includes-

- any naval vessel of any foreign Government taking part in any naval exercise;
- any vessel engaged in fishing or any other operations outside the territorial waters of India;
- any vessel or aircraft proceeding to a place outside India for any purpose whatsoever;

1.4.7 Goods: [Sec 2(22)]: As per the said section 'goods' includes-

- (a) vessels, aircrafts and vehicles;
- (b) stores;
- (c) baggage;
- (d) currency and negotiable instruments;
- (e) any other kind of movable property;

There are two fundamental aspects for any thing to be called as goods and they are moveability and marketability.

Concept of moveable: The first aspect of goods is that they should be movables. The Supreme Court has enunciated this principle in the case of *UOI Vs. Delhi Cloth Mills (1977) ELT J – 199* and in *South Bihar Sugar Mills Vs. UOI (1978) ELTJ 336* by holding that to be called goods, the articles are such as are capable of being bought and sold in the market. Though these judgments are rendered in the context of Excise duty, the subject matter being *pari materia*, they can also be applied in the context of Customs duty.

Concept of marketable: The second fundamental aspect of goods is that they should be capable of being marketed. Marketability is the capability of an article to be put into market for sale. Whether a particular article is marketable or not is decided on the circumstances of each case.

Detailed discussions on these subjects can be found in Chapter 1 of the Excise module.

1.4.8 Import: [Sec 2(23)]: The term with its grammatical variations and cognate expressions is defined to mean bringing into India from a place outside India. For a detailed discussion refer to the Chapter on Importation, Exportation and Transportation of Goods.

1.4.9 Imported goods: [Sec 2(25)]: The term is defined to mean any goods brought into India from a place outside India but does not include goods which have been cleared for home consumption. For a detailed discussion refer to the Chapter on Importation, Exportation and Transportation of Goods.

1.4.10 Importer: [Sec 2(26)]: 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. For a detailed discussion refer to the Chapter on Importation, Exportation and Transportation of Goods.

1.4.11 India: [Sec 2(27)]: "India" includes the territorial waters of India. Territorial waters of India extend to 12 nautical miles into the sea from the appropriate base line. Goods are deemed to have been imported if the vessel enters the imaginary line on the sea at the 12th nautical mile i.e. if the vessel enters the territorial waters of India. Therefore, a vessel not bound to India should not enter these waters. India includes not only the surface of sea in the territorial waters but also the air space above and the ground at the bottom of the sea.

1.4.12 Indian customs waters: [Sec 2(28)]: "Indian customs waters" means the waters extending into the sea up to the limit of contiguous zone of India under section 5 of the Territorial Waters, Continental Shelf, Exclusive Economic Zone and other Maritime Zones Act, 1976 and includes any bay, gulf, harbour, creek or tidal river.

Indian customs waters cover both the Indian territorial waters and contiguous zone as well. Indian territorial waters extend up to 12 nm from the base line whereas contiguous zone extend to a further 12 nm from the outer limit of territorial waters. Therefore, Indian customs waters extend to a total of 24 nm from base line.

1.4.13 Person-in-charge: [Sec 2(31)]: "Person-in-charge" means-

- (a) in relation to a vessel, the master of the vessel;
- (b) in relation to an aircraft, the commander or the pilot-in-charge of the aircraft;
- (c) in relation to a railway train, the conductor, guard or other person having the chief direction of the train;
- (d) in relation to any other conveyance, the driver or other person-in-charge of the conveyance.

1.4.14 Stores: [Sec 2(38)]: "Stores" means goods for use in a vessel or aircraft and includes fuel and spare parts and other articles of equipment, whether or not for immediate fitting. Stores are also goods but are covered by special provisions in sections 85 to 90. The definition does not cover goods for use in a vehicle. For a detailed discussion refer to the Chapter on Importation, Exportation and Transportation of Goods.

1.4.15 Tariff value: [Sec 2(40)]: "Tariff value", in relation to any goods, means the tariff value fixed in respect thereof under sub-section (2) of section 14.

1.4.16 Value: [Sec 2(41)]: "Value", in relation to any goods, means the value thereof determined in accordance with the provisions of sub-section (1) or sub-section (2) of section 14.

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Self-examination questions

1. Define the following terms as used in the Customs Act, 1962:
 - (i) Conveyance
 - (ii) Goods
 - (iii) Person-in-charge
 - (iv) Stores
 - (v) Foreign going vessel or aircraft
2. Distinguish between Indian territorial waters and Indian custom waters.
3. With reference to the provisions of the Customs Act, 1962, explain the following briefly:
 - (i) Stores
 - (ii) Dutiable goods and Imported goods
4. Write a brief note on the constitutional provisions governing the levy of customs duties.
5. ONGC vessel and foreign vessel are drilling oil beyond 12 nautical miles in the sea. Which of the two is a foreign going vessel? Explain.

Answer

5. Foreign going vessel or aircraft is one that carries passengers and (or) goods between ports/airports in India and out of India. It does not matter if it touches any intermediate port/airport in India. The following are also included in the definition:
 - (a) A foreign naval vessel doing naval exercises in Indian waters.
 - (b) A vessel engaged in fishing or any other operation (like oil drilling by O.N.G.C.) outside territorial waters.
 - (c) A vessel or aircraft going to a place outside India for any purpose whatsoever [section 2(21)].

In the given case both the vessels are beyond territorial waters hence both of them are foreign going vessels.