

LEVY OF AND EXEMPTIONS FROM CUSTOMS DUTY

All taxes and duties are imposed in three stages, which are levy, assessment and collection. 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. Assessment is the procedure of quantifying the amount of liability. The liability to tax or duty does not depend upon assessment. 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 as done in the case of excise duty, wherein the liability towards duty arises upon manufacture of excisable goods, the duty is collected only upon removal of goods from the factory.

The Judicial Committee in the United Kingdom in the case of *Whilney Vs. Commissioners of Inland Revenue (1926)* appeal cases (reproduced in *Jain Shudh Vanaspathi Ltd. Vs. Union of India*) has observed as follows;

“Now there are three stages in the imposition of a tax; there is the declaration of the liability that is part of statute that determines what persons in respect of what properties are liable. Next there is assessment. Liability does not depend upon the assessment. That ex-hypothesis, has already been fixed. But assessment particularizes the exact sum which a person liable has to pay. Lastly comes the methods of recovery if the person taxed does not voluntarily pay”.

2.1 DETERMINING FACTORS

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.

2.2 Customs

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.

2.2 POINT AND CIRCUMSTANCES OF LEVY

2.2.1 Dutiable Goods [Section 12]: This section is the charging section of the Act.

1. Except as provided in this Act, or any other law for the time being in force, duties of customs shall be levied at such rates as may be specified under the Customs Tariff Act, 1975 (51 of 1975), or any other law for the time being in force, on goods imported into and exported from India.

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.

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 at such rates as may be specified under the Customs Tariff Act, 1975.

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

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.

Goods that are imported or exported: 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. Before the judgments of the Apex court in the landmark cases of *Union of India Vs. Apar Industries Ltd. (1999) 122 ELT 3 (SC)* and further in the case of *Garden Silk Mills Ltd. Vs. Union of India 1999 (113) ELT 358 (SC)* 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” as given by sec 2(27) to include

Levy of and Exemptions from Custom Duty 2.3

territorial waters of India because even an innocent entry of a vessel into the territorial waters of India would result in import of goods and further it was almost impossible to determine when exactly the vessel crossed the territorial waters limit.

But this matter is no longer *res integra*. The Supreme Court observed in the Garden Silk Mills case 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. The main test for determining the taxable event is the happening of the event on which the charge is affixed. Therefore, to conclude that importation is completed as soon as the goods enter the territorial waters of India would be a wrong interpretation of the law in the spirit in which is enacted and consequently the goods should become part of the mass of the goods within the country for the charge of customs duty to be attracted.

2.2.2 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.

2.2.3 Duty liability in certain special circumstances

a. Re-importation of goods produced or manufactured in India [Section 20]: Section 20 provides that -

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

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

- (i) where an exporter has availed export incentives in the nature of duty drawback, rebate under Central Excise Rules, etc., the import duty shall be restricted to the amount of incentive availed of at the time of export.

[Notification no. 94/96 Cus. dated 16.12.1996]

2.4 Customs

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

This is subject to the following conditions:

- (a) the time limit for re-importation is 3 years. This is extendable to 5 years.
(b) the exported goods and the re-imported goods must be the same.

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

However, the notification is not applicable to exports from FTZ or EOUs, etc. Further, it is not applicable if the repairs amount to re-manufacture.

[Notification no. 94/96 Cus. dated 16.12.1996]

- (iii) Sometimes, the situation might be reverse – exported goods may come back for repairs and re-export. In such a situation, the re-imported goods can avail exemption from paying of import duty subject to the following conditions:

- the re-importation is for repairs only
- the time limit is 3 years
- the goods must be re-exported after repairs
- the time limit for export is 6 months (extendable to one year).

[Notification no.158/95 Cus. dated 14.11.1995]

b. Goods derelict, wreck etc [Section 21] : Section 21 provides that -

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. 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.

The meanings of the various terms are as follows:

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 are 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.

2.3 PROCEDURE, MECHANISM AND ORGANISATION FOR ASSESSMENT OF DUTY

2.3.1 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.

2.3.2 Valuation of goods [Section 14] : The method of valuation has been explained in detail in chapter 5.

2.3.3 Date for determining the rate of duty and tariff valuation of imported goods [Section 15] : Section 15 provides that -

(1) The rate of duty and tariff valuation, if any, applicable to any imported goods, shall be the rate and valuation in force, -

- (a) in the case of goods entered for home consumption under section 46, on the date on which a bill of entry in respect of such goods is presented under that section;
- (b) in the case of goods cleared from a warehouse under section 68, on the date on which a bill of entry for home consumption in respect of such goods is presented.
- (c) in the case of any other goods, on the date of payment of duty:

Provided that if a bill of entry has been presented before the date of entry inwards of the vessel or the arrival of the aircraft by which the goods are imported, the bill of entry shall be deemed to have been presented on the date of such entry inwards or the arrival, as the case may be.

(2) The provisions of this section shall not apply to baggage and goods imported by post.

From the reading of the above provisions of section 15 the following propositions arise.

- a. If the goods are cleared for home consumption, the rate of duty and tariff valuation prevailing on the date on which the Bill of Entry in respect of such clearance is presented will be applicable. However, if the Bill of Entry is presented before the

2.6 Customs

entry inwards of the vessel or arrival of aircraft, then the rate of duty and tariff valuation prevailing on the date on which entry inwards is granted or as the case may be arrival of aircraft takes place will be applicable.

- b. If the goods are deposited into warehouse and cleared therefrom, then the rate of duty and tariff valuation prevailing on the date on which the bill of entry for home consumption is presented will be applicable.
- c. In any other case, the rate of duty and tariff valuation prevailing on the date of payment of duty will be applicable.
- d. 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.

Section 15 has generated a lot of interest in terms of case law development. In *Bharat Surfactants Pvt.Ltd vs 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 4.8.91 when the duty rate had been revised to 150%. The Supreme Court held that the rate applicable would be 150% only since the formality of entry inward could be done only on 4.8.91.

Clause (b) of Section 15(1) makes it abundantly clear that in respect of warehoused goods, duty becomes payable at the rate in force on the actual removal from the warehouse. See *Prakash Cotton Mills P.Ltd vs B.Sen 1979 (3) ELT J241 SC*. In *Priyanka Overseas Pvt.Ltd vs UOI 1990(31) ECR 569*, the Supreme Court held that if the goods could not be removed because of the fault of customs authorities and subsequently the liability arises, then no such duty would become payable by the importer. With effect from 14.05.2003, these decisions have been rendered redundant owing to the amendment made in section 15(b) by the Finance Act, 2003.

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*.

2.3.4 Flow of assessment and clearance procedure : a. The master of the vessel carrying the goods calls on the port, files the arrival report and the import general manifest [IGM] with customs authorities.

- b. Customs authorities check the documents, grant entry inwards to the vessel, assign an IGM number to the manifest and permit the master of the vessel to land and unload the cargo.
- c. The vessel discharges the cargo into the custody of the port trust authorities.

Levy of and Exemptions from Custom Duty 2.7

- d. The importer of the goods delivers the negotiable bill of lading received from the supplier of the goods to the master of the vessel and obtains the delivery order.
- e. It is the right and responsibility of the importer to file an application for clearance of goods and this application is called the bill of entry.
- f. The customs authorities check the bill of entry with the IGM and note the bill of entry in the IGM.
- g. The bill of entry is then processed by the appraising department to decide upon the tariff classification and valuation.
- h. The customs authorities may physically examine the goods for the above purpose of classification and valuation.
- i. If the bill of entry for home consumption is presented, then the customs duty is collected and "pass out of customs charge" is issued.
- j. If the bill of entry for warehousing is presented, then the importer executes a warehousing bond equal to twice the amount of duty assessed and then the goods are deposited into the warehouse.
- k. The importer on showing the "pass out of customs charge" to the port trust authorities takes delivery of the goods.
- l. In case the goods are warehoused, the importer files a bill of entry for ex-bond clearance for home consumption at the time of clearance of goods from such warehouse.
- m. The customs duty is then collected and the goods are allowed to be taken from the port.

2.4 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.

2.4.1 No duty on pilfered goods [Section 13] : Section 13 provides that -

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 become liable to duty.

The conditions to be satisfied for exemption from duty are as follows:

- a. The imported goods should have been pilfered.
- b. The pilferage should have occurred after the goods are unloaded but before the

2.8 Customs

proper officer makes the order for home consumption or for deposit into warehouse.

- c. The pilfered goods should not have been restored back to the importer.

The term 'pilfer' is defined to mean, "to steal, especially in small quantities; petty theft". Therefore, the term does not include loss of total package. 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]

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.

It is important to note that the Port Trust is the custodian of imported goods. Section 13 disables the Government from collecting the duty on pilfered goods from the importer. On the other hand, section 45 enables the Government to demand the duty so lost from the custodian. However, these are independent provisions. In other words, whether duty is paid by the custodian or not, refund cannot be denied to the importer by the department.

2.4.2 Abatement of duty on damaged or deteriorated goods [Section 22] : Section 22 provides that -

(1) 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).

(2) The duty to be charged on the goods referred to in sub-section (1) shall bear the

Levy of and Exemptions from Custom Duty 2.9

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.

(3) 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.

Thus the abatement is available under the following circumstances:

- (a) When the goods are damaged or deteriorated before or during the course of their unloading. At this stage, no distinction is made between warehoused goods and goods meant for home consumption.
- (b) In the case of goods cleared for home consumption, when the goods are damaged after unloading but before examination by the customs authorities;
- (c) In the case of warehoused goods, when the goods are damaged before their actual clearance from such warehouse.

The term 'damage' denotes physical damage to the goods. This implies that the goods are not fit to be used for the purpose for which they are meant. Deterioration is reduction in quality of goods due to natural causes. In order to avail the benefit of abatement, the damage should not have been caused by any willful act, negligence or default of the owner, his employee or agent.

Sub-section (3) provides for valuation of the damaged or deteriorated goods. It provides that the value shall be as ascertained by the proper officer or the proper officer may be sell such goods by public auction or by tender or in any other manner with the consent of the importer and the gross sale proceeds shall be deemed to be the value of such goods.

Sub-section (2) provides that the duty chargeable on damaged or deteriorated goods shall be on a proportionate to the duty chargeable on such goods before such damage or deterioration.

2.4.3 Remission of duty on goods lost, destroyed or abandoned [Section 23] : Section 23 provides that -

(1) Without prejudice to the provisions of section 13, where it is shown to the satisfaction of the Assistant Commissioner of Customs or Deputy Commissioner of Customs that any imported goods have been lost (otherwise than as a result of pilferage) or destroyed, at

2.10 Customs

any time before clearance for home consumption, the Assistant Commissioner of Customs or Deputy Commissioner of Customs shall remit the duty on such goods.

(2) 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.

The following propositions arise from the reading of the above provisions.

a. Goods lost or destroyed: 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. Further, such loss may take place at any time before the clearance of goods for home consumption. The loss may be at the warehouse also. The loss should not be in the nature of pilferage. If it is in the nature of pilferage, then the provisions of section 13 gets attracted and remission is consequently allowable under that section. It may be said that section 13 and section 23 are mutually exclusive.

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

b. Goods abandoned by importers: Some times 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 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

Levy of and Exemptions from Custom Duty 2.11

goods regarding which an offence appears to have been committed under this Act or any other law for the time being in force.

2.4.4 Denaturing or mutilation of goods [Section 24]: Section 24 of Customs Act, 1962 provides that an importer can request Central Government to denature or 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 the goods are denatured or mutilated, they are assessed as if the goods were imported in denatured or mutilated form. This provision helps the importer when he requires the goods for any one specific purpose but he is not able to import the same in such denatured or mutilated form. Denaturing of Spirit rules, 1972 specify procedure for denaturing spirit.

2.4.5 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 duty leviable under the normal form or method.

2.4.6 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.

2.12 Customs

- (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.

Effective date: Section 25 of the Act provides that the date of effect of the notification will be the date of its issue. It also provides for statutory obligation on the part of the Department to publish and sell the notifications to the public through Directorate of Publicity and Public Relations on or before the date on which the notification will be effective.

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. It shall be published and also offered for sale on the date of its issue.
- (ii) At times, the exemption notification may also come into force from a date later than the date of issue. In such a case the notification shall be published and offered for sale on or before the date from which it comes into force.
- (iii) 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

Levy of and Exemptions from Custom Duty 2.13

one year from the issue of the notification and such clarifications will have retrospective effect.

2.4.7 List of Important Judicial Decisions on Scope of Exemption Notifications

A. General Principles

Particulars	Citation
1. Exemption notifications represent the policy of the Government evolved to sub-serve public interest and public revenue. It is a part and parcel of the enactment subject to it not being against Article 14 of Constitution.	<i>U.O.I. v. Paliwal Electricals P. Ltd</i> 1996 (83) E.L.T. 241 (S.C.)
2. Supervening public equity overrides principle of promissory estoppel. Time bound notification can be withdrawn.	<i>Shrijee Sales Corporation v. U.O.I.</i> 1997 (89) E.L.T. 452 (S.C.) (See commentary for decision in Kasinka Trading)
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.	<i>U.O.I. v. Jalyan Udyog</i> 1993 (68) E.L.T. 9 (S.C.)
4. Classification between small and big manufacturers not discriminatory.	<i>Murthy Match Works v. AC</i> 1978 (2) E.L.T. J429 (S.C.)
5. Choice of date in exemption notifications cannot be questioned being a question of policy.	<i>ITC Bhadrachalam Paper Boards Ltd. v. CCE</i> 1994 (71) E.L.T. 334 (S.C.)
6. Exemption notification not valid if it does not recite public interest.	<i>Ramdhan Pandey v. State of UP</i> 1993 (66) E.L.T. 547 (S.C.)
7. Public interest means an act beneficial to general public.	<i>MJ Exports v. CCE</i> 1992 (59) E.L.T. 112 (T)

B. How to Interpret ?

Particulars	Citation
1. Notification to be treated as a part of the enactment itself.	<i>CCE v. Parle Exports P. Ltd.</i> 1998 (38) ELT 741 (SC)

2.14 Customs

2. Interpretation given at the time of enactment or issue to be given weight.	<i>CCE v. Parle Exports P. Ltd.</i> 1988 (38) E.L.T. 741 (S.C.)
3.(a) Exemption notification should be construed strictly and reasonably having regard to the language employed.	<i>HMM Ltd. v. CCE</i> 1996 (87) E.L.T. 593 (SC)
(b) Strictness of construction does not mean that circuitous process should be followed. Strictness should also result in giving full effect.	<i>Swadeshi Polytex Ltd. v. CCE</i> 1989 (44) E.L.T. 794 (SC)
(c) Express language to be given effect. Supposed intention to be gathered from language used.	<i>GSFC Ltd. v. CCE</i> 1997 (91) E.L.T. 3 (SC)
(d) Exemption notification not to be rendered nugatory or purposeless. The word singular includes plural.	<i>CC v. United Electrical Industries Ltd.</i> 1999 (108) E.L.T. 609 (SC).
4.(a) Exemption notification construable strictly. No room to be given for intendment in the light of clear words contained in the notification.	<i>Hemraj Gordhandas v. HH Dave</i> 1978 (2) E.L.T. J 350 (SC)
(b) Exemption notification need not be construed strictly when there is no doubt or ambiguity in it.	<i>SG Glass Works P. Ltd. v. CCE</i> 1994 (74) E.L.T. 775 (S.C.)
5. Liberal construction which enlarges the term and scope of notification not permissible.	<i>Rajasthan Spg. & Wvg. Mills Ltd. v. CCE</i> 1995 (77) E.L.T. 474 (S.C.)
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.	<i>CCE v. Shibani Engineering Systems</i> 1996 (86) E.L.T. 453 (S.C.)
7. Ambiguity in notification to be resolved in favour of Revenue.	<i>Novopan India Ltd. v. CCE</i> 1994 (73) E.L.T. 769 (SC); Contrary view in <i>STP Limited v. CCE</i> 1998 (97) E.L.T. 16 (S.C.)

Levy of and Exemptions from Custom Duty 2.15

8. Expressions used in the Act should be understood in the same sense if used in Rules and notifications.	<i>Prestige Engg. India Ltd. v. CCE</i> 1994 (73) E.L.T. 497 (S.C.)
9.(a) Exemption cannot be claimed on the strength of Finance Ministers Budget speech. (b) Notings on Government files cannot be used as an aid in construction.	<i>BK Industries v. U.O.I.</i> 1993 (65) E.L.T. 465 (S.C.) <i>Doypack Systems P. Ltd. v. U.O.I.</i> 1988 (36) E.L.T. 201 (S.C.)
10. 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.	<i>Bombay Chemicals P. Ltd. v. CCE</i> 1995 (77) E.L.T. 3 (SC), <i>Novapan India Ltd. v. CCE</i> 1994 (73) E.L.T. 769 (S.C.)
11.(a) Substantive conditions in notification to be satisfied mandatorily since it may facilitate fraud or introduce administrative inconveniences. Non- observance of procedural conditions condonable. (b) If non-observance of procedural condition may facilitate fraud or administrative convenience, exemption can be denied.	<i>MCF Ltd v. Dy. Commissioner</i> 1991 (55) E.L.T. 437 (S.C.); <i>Thermax P. Ltd. v. CCE</i> 1992 (61) E.L.T. 352 (SC); <i>Formica India Division v. CCE</i> 1995 (77) E.L.T. 511 (SC) <i>Indian Aluminium com-pany Ltd. v. Thane Municipal Corporation</i> 1991 (55) E.L.T. 454 (S.C.).
12. Burden to prove eligibility to exemption notification on the claimant.	<i>Mysore Metal Industries v. CCE</i> 1988 (36) E.L.T. 369 (S.C.); <i>Motiram tolaram v. U.O.I.</i> 1999 (112) E.L.T. 749 (SC)
13. Exemption cannot be denied on a ground not originally contended.	<i>Prince Khadi Woollen Handloom Prod. Coop. Indl. Society v. CCE</i> 1996 (88) E.L.T. 637 (SC)
14. Assessee can opt for that notification which is more beneficial.	<i>CCE v. Indian Petro Chemicals</i> 1997 (92) E.L.T. 13 (SC); <i>Abrol Watches Pvt. Ltd v. CC</i> 1997 (92) E.L.T. 311 (S.C.)

2.16 Customs

15. A particular item not expressly excluded does not mean that it is included.	<i>CC v. Perfect Machine Tools Co. P. Ltd</i> 1997 (96) E.L.T. 214 (S.C.)
16. Benefit not to be extended on the ground that such benefit is wrongly extended to others.	<i>Faridabad CT Scan Centre v. DG Health Services</i> 1997 (95) E.L.T. 161 (S.C.)
17. The term “appropriate amount of duty already has been paid” includes nil rate of duty.	<i>CCE v. Usha Martin Industries</i> 1997 (94) E.L.T. 460 (SC LB)
18. In interpreting an earlier notification, narrow or broader view to be taken can be decided based on subsequent notification.	<i>Johnson & Johnson Ltd. v. CCE</i> 1997 (92) E.L.T. 23 (S.C.)
19. Assessee cannot suffer on account of illegal act of Department. Exemption notification applicable.	<i>Kuil Fireworks Industries v. CCE</i> 1997 (95) E.L.T. 3 (S.C.)
20. Words in Tariff Schedule to be interpreted keeping in mind the rapid march of technology as industry is not static.	<i>CC v. Lekhraj Jessumal & Sons</i> 1996 (82) E.L.T. 162 (S.C.)

Self-examination questions

1. Distinguish between- :
 - (a) Jetsam and Flotsam
 - (b) Pilfered goods and Lost/destroyed goods
 - (c) General exemptions and Ad hoc/special exemptions
2. 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

Levy of and Exemptions from Custom Duty 2.17

3. An importer, imported consignment of goods, chargeable to duty @ 40% ad valorem. The vessel arrived on 31st May, 2008. A bill of entry for warehousing the goods was completed on 2nd June, 2008 and the goods were duly warehoused. In the meantime an exemption notification was issued on 15th October, 2008 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 view about the same, discussing the relevant provisions of the Customs Act, 1962.

4. Peerless Scraps, imported during August 2006, 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, 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 "weightment 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.

5. ASC Ltd. entered in to 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 a high 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.

Answers

1. (a) Jetsam and Flotsam are both jettisoned (i.e. thrown with speed) from the vessel to prevent it from sinking. They are not abandoned goods. Jetsam gets sunk and drifts to the shore whereas Flotsam does not sink but it floats and drifts to the shore.

2.18 Customs

Duty is payable for both unless they are entitled to be admitted free of duty.

(b)	Pilfered goods	Lost/Destroyed goods
1.	Covered by section 13	Covered by section 23(1)
2.	Department gets compensation from the custodian [Section 45(3)]	No such compensation
3.	Mandatory benefit	Remission is discretionary
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 recognised	Occurrence in warehouse is recognised
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.
10.	Refund arises if pilferage takes place after paying duty	Question of refund does not arise at all.

2. (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.

Levy of and Exemptions from Custom Duty 2.19

$$\frac{\text{Duty after damage}}{\text{Duty before damage}} = \frac{\text{Value after damage}}{\text{Value before damage}}$$

- (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.
 - (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.
3. 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 20.10.2008 (the date on which the bill of entry for home consumption is presented). Therefore, the relevant rate will be 25%.
4. 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".

2.20 Customs

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

5. 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.

