

Basic Concepts

Question 1

Explain briefly, with reference to the provisions of the Customs Act, 1962, the following:

- (i) *Bill of export*
- (ii) *Import report*

Answer

- (i) As per **section 2(5)** of the Customs Act, 1962, bill of export means a bill of export referred to in section 50. **Section 50** *inter alia* provides that the exporter of any goods shall make entry thereof by presenting to the proper officer in the case of goods to be exported by land, a bill of export in the prescribed form.
- (ii) As per **section 2(24)** of the Customs Act, 1962, import report means the report required to be delivered under section 30. **Section 30** *inter alia* provides that the person-in-charge of a vehicle carrying imported goods or any other person as may be notified by the Central Government shall, in the case of a vehicle, deliver to the proper officer an import report within twelve hours after its arrival in the customs station, in the prescribed form.

Question 2

Explain briefly the following with reference to the Customs Act, 1962:

- (i) *Assessment*
- (ii) *Imported goods*

Answer

- (i) As per section 2(2) of the Customs Act, 1962, with effect from 08.04.2011 the term "assessment" is defined to include provisional assessment, self-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 this Act.
- (ii) The term "**imported goods**" has been defined in **section 2(25)** of the Customs Act, 1962 to mean any goods brought into India from a place outside India but does not include goods which have been cleared for home consumption.

Question 3

Briefly explain the following with reference to the provisions of the Customs Act:

- (i) *Entry*

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(ii) *Prohibited goods*

(iii) *Warehouses.*

Answer

- (i) As per **section 2(16)** of the Customs Act, 1962 **entry** in relation to goods means an entry made in a bill of entry, shipping bill or bill of export and includes in the case of goods imported or to be exported by post, the entry referred to in section 82 or the entry made under the regulations made under section 84.
- (ii) As per **section 2(33)** of the Customs Act, 1962 **prohibited goods** means any goods the import or export of which is subject to any prohibition under the Customs Act or any other law for the time being in force but does not include any such goods in respect of which the conditions subject to which the goods are permitted to be imported or exported have been complied with.
- (iii) As per **section 2(43)** of the Customs Act, 1962, **warehouse means a public warehouse** appointed under section 57 or **a private warehouse** licensed under section 58. A warehouse is a place where goods after landing are permitted to be removed without payment of duty. Duty is collected at the time of clearance from the warehouse. A public warehouse is owned and managed by a Government body like Central Warehousing Corporation. A private warehouse is licensed in a place where there is no public bonded warehouse.

Question 4

Explain briefly the following with reference to the provisions of the Customs Act, 1962:

(i) *Customs port*

(ii) *Goods*

(iii) *Stores.*

Answer

- (i) As per **section 2(12)** of the Customs Act, 1962, customs port means any port appointed under clause (a) of section 7 to be a customs port and includes a place appointed under clause (aa) of that section to be an inland container depot.

As per clause (a) and (aa) of section 7(1) of the Customs Act, the Board may, by notification in the Official Gazette, appoint the ports and airports and the places which alone shall be customs ports or customs airports and the inland container depots for the unloading of imported goods and the loading of export goods or any class of such goods.

- (ii) According to **section 2(22)** of the Customs Act, 1962, goods includes –
 - (a) vessels, aircrafts and vehicles;
 - (b) stores;
 - (c) baggage;

- (d) currency and negotiable instruments and
- (e) any other kind of movable property.
- (iii) As per **section 2(38)** of the Customs Act, 1962, 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.**

Question 5

Explain briefly the following with reference to the provisions of the Customs Act, 1962:

- (i) Conveyance
- (ii) Dutiable goods
- (iii) India

Answer

- (i) As per **section 2(9)** of the Customs Act, 1962, conveyance is defined to include 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).
- (ii) As per **section 2(14)** of the Customs Act, 1962, dutiable goods 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 section 2(22) and should find a mention in the Custom tariff.
- (iii) As per **section 2(27)** of the Customs Act, 1962, India includes the territorial waters of India. Territorial waters of India extend to 12 nautical miles into 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. **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.**

Question 6

Write short note on “Rules & Regulations” with reference to Customs Act 1962.

Answer

According to **section 2(36)** of the Act, “rules” means the **rules made by the Central Government** under any provision of this Act. **Section 156** of the Act gives the Central Government the general power to make rules.

As per **section 2(35)** of the Customs Act, 1962, “regulations” means the **regulations made**

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by the **Central Board of Excise and Customs (CBEC)** under any provision of this Act. The Board gets the authority to make regulations under **section 157** of the Customs Act, 1962.

While the rules are to be framed in consistence with the provisions of the Act, the regulations are subject to an additional limitation, i.e. they should not be contrary to the rules also.

Rules have to be placed before the Parliament, while regulations framed by CBEC are not required to be placed before the Parliament. However, both are “subordinate legislations” and are legally valid and enforceable.

Question 7

Explain briefly the expression person-in-charge. under the Customs Act, 1962.

Answer

Section 2(31) provides that **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.

The importance of person in charge is multidimensional for instance he is responsible for submitting Import Manifest and Export Manifest. He is also responsible for ensuring that the conveyance comes through approved route and lands at approved places only. He has also to ensure that goods are unloaded after written order, at proper place. Likewise he has also to ensure that goods are loaded only after proper permission.

Question 8

Briefly explain the following with reference to the provisions of the Customs Act, 1962:

- (i) *Adjudicating Authority*
- (ii) *Customs Area*
- (iii) *Smuggling*

Answer

- (i) As per **section 2(1)** of the Customs Act, 1962, **adjudicating authority** means any authority competent to pass any order or decision under this Act, but does not include the Board, Commissioner (Appeals) or Appellate Tribunal.
- (ii) As per **section 2(11)** of the Customs Act, 1962, **customs area** means the area of a customs station and includes any area in which imported goods or export goods are ordinarily kept before clearance by Customs Authorities.

- (iii) As per **section 2(39)** of the Customs Act, 1962, **smuggling**, in relation to any goods, means any act or omission which will render such goods liable to confiscation under section 111 or section 113.

Question 9

Briefly explain the following with reference to the provisions of the Customs Act 1962,:

- (i) Indian customs waters
- (ii) Foreign going vessel or aircraft

Answer

- (i) As defined by **section 2(28)** of the Customs Act, 1962 Indian customs waters means the waters extending into the sea up to the limit of **contiguous zone of India** (hereinafter abbreviated as **CZI**) 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. According to foregoing Act of 1976 CZI comes immediately after territorial waters. The outer limit of continuous zone is 24 nautical miles from the nearest point of base line. Therefore, area beyond 12 nautical miles & upto 24 nautical miles is CZI. Looking from another perspective, Indian Customs Waters extend upto 12 nautical miles beyond territorial waters. **The significance of Indian Customs Waters lies in the fact that customs officers can exercise certain powers [for instance under section 100(2)(a), 104, 106, 111(d), 115(1)(a) & 115(1)(c)] within Indian Customs Waters.**
- (ii) As per **section 2(21)** of the Customs Act, 1962, foreign going vessel or aircraft means 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-
- (a) any naval vessel of any foreign Government taking part in any naval exercises;
 - (b) any vessel engaged in fishing or any other operations outside the territorial waters of India;
 - (c) any vessel or aircraft proceeding to a place outside India for any purpose whatsoever.

The significance of foreign going vessel lies in the fact that stores supplied to foreign going vessel is treated as export as per provisions of section 89. Thus, duty drawback is available on such stores. Further, imported stores may be consumed on foreign going vessel without payment of duty as per section 87.

Question 10

Explain in detail, the significance of Indian customs waters under the Customs Act, 1962.

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Answer

Significance of Indian customs waters is as follows :

- (i) If an officer of Customs has reason to believe that any person in India or within the Indian customs waters has committed an offence punishable under section 132 or section 133 or section 135 or section 135A or section 136, he **may arrest such person** informing him of the grounds for such arrest [**Section 104** of the Customs Act, 1962].
- (ii) Where the proper officer has reason to believe that any vessel in India or within the Indian customs waters has been, is being, or is about to be, used in the smuggling of any goods or in the carriage of any smuggled goods, he may stop any such vehicle, animal or vessel or, in case of an aircraft, compel it to land [**Section 106** of the Customs Act, 1962].
- (iii) **Any vessel** which is or has been within the Indian customs waters is constructed, adapted, altered or fitted in any manner for the purpose of concealing goods shall be **liable to confiscation** [**Section 115(1)(a)** of the Customs Act, 1962].
- (iv) Customs officer has the **power to search any person** who has landed from/about to board/is on board any vessel within Indian customs waters and who has secreted about his person, any goods liable to confiscation or any documents relating thereto [**Section 100(2)(a)** of the Customs Act, 1962].
- (v) **Any goods** which are brought within the Indian customs waters for the purpose of being imported from a place outside India, contrary to any prohibition imposed by or under this Act or any other law for the time being in force, shall be **liable to confiscation** [**Section 111(d)** of the Customs Act, 1962].

Question 11

Explain briefly the following with reference to the provisions of the Customs Act, 1962 :

- (i) *“Import” and “Importer”*
- (ii) *Meaning of “Assessment”*
- (iii) *“Clearance for home consumption” and “Clearance for warehousing”*

Answer

- (i) The term import under **section 2(23)** of the Customs Act, 1962 refers to bringing into India from a place outside India. Import of goods into India commences when the goods enter the territorial waters of India, but gets completed only when the goods become part of the mass of goods within the country.

As per **section 2(26)** of the Customs Act, 1962 **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.

- (ii) In the context of customs duty, the term “**assessment**” means quantification of the amount of duty payable. The process of assessment involves determining:
- (i) the quantity and total value of the consignment
 - (ii) the proper tariff classification of the goods
 - (iii) the appropriate rate of duty after all abatements
 - (iv) whether the goods are to be cleared for home consumption or for warehousing.
- (iii) **Clearance for home consumption** implies that the customs duty on the imported goods has been discharged and goods are cleared for utilization. **Clearance for warehousing** implies that the goods may, instead of being cleared for home consumption, be deposited in a warehouse and cleared later. When the goods are deposited in a warehouse the collection of duty is deferred till the time such goods are cleared for home consumption. However, the importer has to **execute a bond up to a sum equal to twice** the amount of duty assessed on the goods at the time of import.

Question 12

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.

Answer

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 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].

Exercise

1. *Distinguish between Indian territorial waters and Indian custom waters.*
2. *Write a brief note on the constitutional provisions governing the levy of customs duties.*
3. *ONGC vessel and a foreign vessel are drilling oil beyond 12 nautical miles in the sea. Which of the two is a foreign going vessel? Explain.*

Answer: 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.