

Levy of and Exemptions from Customs Duty

Question 1

Referring to section 25 of the Customs Act, 1962, discuss the following:

- (i) Special exemption
- (ii) General exemption

Answer

- (i) **Special Exemption:** As per section 25 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, one hundred rupees.
- (ii) **General Exemption:** As per section 25 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.

Question 2

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.

Answer

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 can't 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.

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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.

Question 3

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. The certificate was not made available to the importer within a reasonable time by the Director General of Hydrocarbons. The customs department rejected the importers claim for exemption. Examine briefly whether the department’s action is sustainable in law.

Answer

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.

Question 4

Briefly explain the salient features of the Customs Act, 1962 relating to Special Economic Zones.

Answer

The salient features of Special Economic Zones (SEZ) are as follows:

- (i) SEZ is deemed as a separate island outside India where Inputs, Capital Goods and Input Services can be obtained without payment of duties and taxes such as Customs Duty, Excise Duty, Central Sales Tax, State VAT and Service Tax.
- (ii) For the sheer objective of ensuring consistent development of SEZ, an exclusive Act namely Special Economic Zone Act 2005(hereinafter abbreviated as SEZ Act 2005) was passed. The

twin prime purposes of foregoing Act are to ensure smooth operations in SEZ as well as Single Window Clearance with a view to set up either an SEZ or a Unit in SEZ.

- (iii) SEZ may be set up in the public, private or joint sector OR by the Central Government or State Government, jointly or severally [section 3(1) of SEZ Act 2005]
- (iv) Any goods imported directly from outside India or procured from within India shall be authorized for admission to the SEZ. Goods admitted to SEZ are exempt from duties of customs subject to certain conditions.
- (v) Any goods admitted to SEZ from DTA shall be chargeable to export duties at such rates as are leviable on such goods when exported, subject to any rules made in this behalf. Any goods removed from the SEZ to DTA shall be chargeable to the duties of customs including antidumping, countervailing and safeguard duties as leviable on such goods when imported.
- (vi) SEZ could be set up for manufacturing goods, rendering of services, production, processing, assembling, trading, repair, re-making, re-conditioning and re-engineering, making of gold, silver and other articles of precious metals and jewellery.
- (vii) It shall be under the administrative control of the Development Commissioner. All activities in the SEZ, unless otherwise specified, shall be carried out through self certification procedure.
- (viii) Goods going into SEZ from DTA shall be treated as deemed exports. At the same time, goods coming from SEZ to DTA shall be treated as import of goods.

Question 5

M/s Marwar Industries imported finishing agents, dye - carriers, printing paste etc. to be used for manufacture of textile articles. The importer claimed exemption for additional duty of customs (CVD) leviable under section 3 of the Customs Tariff Act, 1975, on the ground that there was an exemption for excise duty in respect of said goods used in the same factory for manufacture of textile articles. The Department contended that CVD is payable on the ground that the goods which were to be used must also be manufactured in the same factory. You are requested to comment upon the contention of Department, with reference to a decided case law, if any.

Answer

The contention of the Department is not valid in law. The Supreme Court in a similar case of **CCus. v. Malwa Industries Ltd. (2009) 235 ELT 214 (SC)** held that **literal meaning should be avoided if it leads to absurdity**. When the goods are imported, obviously, the same would not be manufactured in the same factory and therefore, it would become impossible to apply the provision of **section 3(1)** of the Customs Tariff Act, 1975. It was observed that the object of countervailing duty (CVD) is that importer should not be placed at some more advantageous position vis-a-vis purchaser/manufacturer of similar goods in India.

Considering the purpose of exemption, it was held that same factory means imported goods should be used in factory belonging to importer where manufacturing activity takes place. Hence, the exemption will be available to imported goods also and CVD is not applicable.

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Question 6

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*

Answer

- (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. **Remission is at the discretion of Customs authorities**. The provisions of this section are applicable for warehoused goods also.
- (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**.

Question 7

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

Answer

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. It shall be published and offered for sale on the date of its issue by the Directorate of Publicity and Public Relations of the CBEC.

A notification may come into force from a date later than the date of issue if so provided in the notification. In such a case it shall be published and offered for sale on or before the date on which it comes into force.

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.

Question 8

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?

Answer

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.

Exercise

1. *Distinguish between- :*

- (a) *Jetsam and Flotsam*
- (b) *Pilfered goods and Lost/destroyed goods*
- (c) *General exemptions and Ad hoc/special exemptions*

Answer

- (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.

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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. 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.
 - (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. *An importer, imported consignment of goods, chargeable to duty @ 40% ad valorem. The vessel arrived on 31st May, 2010. A bill of entry for warehousing the goods was completed on 2nd June, 2010 and the goods were duly warehoused. In the meantime, an exemption notification was issued on 15th October, 2010 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.*
- 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 20.10.2010 (the date on which the bill of entry for home consumption is presented). Therefore, the relevant rate will be 25%.
4. *Peerless Scraps, imported during August 2010, 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*

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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 "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.

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.

Answer: 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.