

Importation, Exportation and Transportation of Goods

Question 1

State briefly the provisions of section 17 of the Customs Act, 1962 relating to assessment of goods.

Answer

w.e.f.. 08.04.2011, section 17 dealing with assessment of duty, has been recast to provide **legal backing to self-assessment** by the importer or exporter. It has also been provided that the customs officer may **verify** the assessment and have the goods tested or examined for this purpose. An obligation has also been casted on the importer or exporter to furnish any required documents or information. Further, where it is found that the self-assessment is not in order, the customs officer is required to **re-assess** the bill of entry /shipping bill and issue a speaking order for the same unless the importer/exporter agrees with the re-assessment. Barring cases where a speaking order is issued on re-assessment, powers have also been assigned to customs officer to conduct **audit** either in their own office or at the premises of importer or exporter.

The detailed provisions of new section 17 have been presented below [along with brief heading) in the tabular format for the sake of simplicity and easy retention:

Relevant section and sub-section of Customs Act, 1962	Brief Heading	Relevant Details
17(1)	Self-assessment of duty by an importer	An importer entering any imported goods under section 46, or an exporter entering any export goods under section 50 shall, save as otherwise provided in section 85, self-assess the duty, if any, leviable on such goods.
17(2)	Verification of self-assessment of goods by the proper officer	The proper officer may verify the self-assessment of such goods and for this purpose, examine or test any imported goods or export goods or such part thereof as may be necessary.
17(3)	Furnishing of necessary	For verification of above self-assessment, the proper officer may

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	document or information by the importer, exporter or such other person	require the importer, exporter or any other person to produce any contract, broker's note, insurance policy, catalogue or other document, whereby the duty leviable on the imported goods or export goods can be ascertained, and to furnish any information required for such ascertainment which is in his power to produce or furnish, and thereupon, the importer, exporter or such other person shall produce such document or furnish such information.
17(4)	Re-assessment of duty if self-assessment is not found to be done correctly	Where it is found on verification, examination or testing of the goods or otherwise that the self-assessment is not done correctly, the proper officer may, without prejudice to any other action which may be taken under this Act, re-assess the duty leviable on such goods
17(5)	Passing of a speaking order on re-assessment in certain cases	Where any re-assessment done under sub-section (4) is contrary to the self-assessment done by the importer or exporter regarding valuation of goods, classification, exemption or concessions of duty availed consequent to any notification issued therefor under this Act and in cases other than those where the importer or exporter, confirms his acceptance of the said re-assessment in writing , the proper officer shall pass a speaking order on the re-assessment, within fifteen days from the date of re-assessment of the bill of entry or the shipping bill.
17(6))	Audit of assessment of duty in certain cases	Where re-assessment has not been done or a speaking order has not been passed on re-assessment, the proper officer may audit the assessment of duty of the imported goods or export goods at his office or at the premises of the importer or exporter, as may be expedient, in such manner as may be prescribed.

Question 2

Discuss the provisions regarding Transit of Goods and Transshipment of goods without payment of duty under the Customs Act.

Answer

Transit of goods: Section 53 provides that any goods imported in a conveyance and mentioned in the import manifest or the import report, as the case may be, as **for transit in the same conveyance** to any place outside India or any customs station, may be allowed to be so transited **without payment of duty**. However, the goods should not have been prohibited under section 11 of the Customs Act.

Transshipment of goods: This refers to **transfer of goods from one conveyance to another**. It may be from one port to any other major port or airport in India.

Section 54 provides that:

- (1) where any goods imported into a customs station are intended for transshipment, the person-in-charge of conveyance will have to present a bill of transshipment to the proper officer in the prescribed form;
- (2) where any goods imported into a customs station are mentioned in the import manifest or import report, as for transshipment to any place outside India, such goods will be allowed to be so transhipped without payment of duty. However, the goods should not have been prohibited under section 11 of the Customs Act.
- (3) where any goods imported into a customs station are mentioned in the import manifest or import report for transshipment to any major port (as defined in the Indian Ports Act, 1908) or to customs airport or customs port (as notified by the Board) or to any other customs station and the proper officer is satisfied about the bona-fide intention for transshipment of the goods to such customs station, the proper officer may allow the goods to be **transhipped, without payment of duty**.

Question 3

State the difference between transit and transshipment of goods under the provisions of the Customs Act.

Answer

Differences between transit and transshipment has been summarized in the table hereunder:-

Transit	Transshipment
(i) Section 53 of the Customs Act, 1962 provides for transit of goods.	(i) Section 54 of the Customs Act, 1962 provides for transshipment of goods.
(ii) In case of transit of goods, goods are allowed to remain on the same conveyance.	(ii) In case of transshipment of goods, the conveyance changes i.e., the goods are unloaded from one conveyance and loaded in another conveyance.

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(iii) In case of transit of goods, there is continuity of records.	(iii) In transshipment of goods, continuity in the records is not maintained as the goods are transferred to another conveyance.
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Question 4

After visiting USA, Mrs. & Mr. X brought to India a lap-top computer valued at ₹ 80,000, personal effects valued at ₹ 90,000 and a personal computer for ₹ 52,000. What is the customs duty payable?

Answer

As per the baggage provisions:

- (i) personal effects and one laptop are exempt from customs duty.
- (ii) general free allowance is ₹ 35,000
Hence, duty shall be payable on ₹ 52,000 – ₹ 35,000 = ₹ 17,000.
- (iii) **Effective rate of duty for baggage = 36.05% [35% + 2% primary education cess & 1% secondary & higher education cess]**
Therefore, duty payable = ₹ 5,950 + ₹ 179
Total customs duty = ₹ 6,129

Question 5

Explain in brief the duty exemption to baggages under section 79(1) of the Customs Act, 1962.

Answer

Section 79(1) of the Customs Act, 1961 exempts the bona fide baggage of the passengers. Following baggage is passed free of duty-

- (i) articles in the baggage of a passenger/crew for the minimum period prescribed by the Baggage Rules, 1998. These Rules, as on date, do not prescribe any minimum period for use of articles by the passenger/crew. However, totally unused articles may not be held as bona fide baggage.
- (ii) articles for use by passenger or his family or bona fide gifts or souvenirs provided that the value of each such article and the total value of all such articles does not exceed the limits prescribed in the aforesaid Baggage rules.

Question 6

State the procedure for clearance of goods imported by post.

Answer

Clearance of goods imported by post is governed by **sections 82 to 84** of the Customs Act, 1962. Any label or declaration accompanying the goods showing the description, quantity and value thereof, shall be treated as "an entry for import" under the Customs Act. **The rate of duty and tariff value applicable to goods imported by post** shall be the rate and valuation

in force on the date on which the postal authorities present to the proper officer a list containing the particulars of such goods for the purpose of assessment of duty. In case the goods are imported by a vessel and the list of the goods containing the particulars is presented before the date of the arrival of the vessel, the crucial date shall be the date of arrival of the vessel.

The **procedure for clearance of imported goods by post** is as under:

- (i) Post parcels are allowed to pass from port/airport to Foreign Parcel Department of Government Post Offices without payment of customs duty. The Postmaster hands over to Principal Appraiser of Customs the memo which shows total number of parcels from each country of origin, parcel bills or senders declaration, customs declaration and despatch notes, and other information that may be required.
- (ii) The mail bags are opened and scrutinised by Postmaster under supervision of Principal Postal Appraiser of Customs. Packets which are suspected of containing dutiable goods are separated and presented to Customs Appraiser with letter mail bill and assessment memos.
- (iii) The Customs Appraiser marks the parcels which are required to be detained as (a) necessary particulars are not available or (b) mis-declaration or under-valuation is suspected or (c) goods are prohibited for import. Other parcels are assessed without opening, on the basis of details given in parcel bill or dispatch notes. The duty is assessed and is entered on parcel bill. These are then audited and returned to Postmaster. Postmaster will hand over parcel to addressee only after collecting the customs duty.
- (iv) Parcels selected by Appraiser for examination are opened and examined. If required, details are called from addressee. After inspection, the parcels are sealed with a distinctive seal. If mis-declaration or under-valuation is noted or goods are prohibited goods for imports these will be detained and reported to Customs Commissioner. After assessment, these will be handed over to Post Master, who will further hand over to addressee on receipt of payment of customs duty.

Question 7

Briefly explain the provisions of Section 89 of the Customs Act, 1962 with regard to supply of ship stores.

Answer

Section 89 of the Customs Act, 1962 covers the case of indigenous goods, which are supplied to a vessel as ship stores. Goods produced or manufactured in India and required as stores on a foreign going vessel or aircraft **may be exported free of duty in such quantities** as the proper officer may determine having regard to the size of the vessel or the aircraft, the number of passengers and the crew and the length of voyage or journey on which the vessel or aircraft is about to depart. In other words, the **duty free supply of ship stores should be reasonable** and not in commercial quantities.

Question 8

Explain the obligation cast on person-in-charge on arrival of vessels or aircrafts in India under section 29 of the Customs Act, 1962.

Answer

Section 29(1) of the Customs Act, 1962 provides that the person-in-charge of a vessel or an aircraft entering India from any place outside India shall not cause or permit the vessel or aircraft to call or land:

- (i) for the first time after arrival in India; or
- (ii) at any time while it is carrying passengers or cargo brought in that vessel or aircraft at any place other than a customs port or a custom airport, as the case may be.

Exception:-Section 29(2) provides that the above provisions are not applicable in relation to any vessel or aircraft, which is compelled by accident, stress of weather or other unavoidable cause to call or land at a place other than a customs port or customs airport. However, in such a case the person-in-charge of such vessel or aircraft has the following obligations cast on him:

- (i) He shall have to report the arrival of the vessel/landing of the aircraft to the nearest customs officer or the officer-in-charge of a police station and shall produce the log book belonging to the vessel or the aircraft if demanded.
- (ii) He shall not without the consent of any such officer permit any goods carried in the vessel or the aircraft to be unloaded from, or any of the crew or passengers to depart from the vicinity of, the vessel or the aircraft. However, passengers and crew can be allowed to depart from the vicinity of, or the goods can be removed from, the vessel/aircraft if the same is necessary for reason of health, safety or preservation of life or property.
- (iii) He shall comply with any directions given by any such officer with respect to any such goods.

Question 9

What is meant by 'boat notes'?

Answer

In case the vessel arriving at the port does not get a berth, then, the import cargo is taken from the ship to the shore and the export cargo is taken from the shore to the ship in boats.

Section 35 of the Customs Act, 1962 stipulates that no imported goods shall be water borne for being loaded in any vessel, and no export goods which are not accompanied by a shipping bill, shall be water borne for being shipped unless the goods are accompanied by a '**boat note**' in the prescribed form. Boat Note Regulations provide that boat notes are to be issued in duplicate by a customs officer & these must be serially numbered.

Question 10

Write a detailed note on 'Provisional Assessment' under Customs Act, 1962.

Answer

'Provisional Assessment' is an assessment pending final assessment. The provisions relating to Provisional Assessment have been discussed under following broad headings for the sake of convenience:

- (i) **Circumstances under which provisional assessment may be done[Section 18(1)] :**
According to substituted Section 18(1) **w.e.f. 08.04.2011** the provisional assessment can be done in each of following cases independently if the concerned importer/exporter furnishes such security as the proper officer deems fit for the payment of the deficiency, if any between the duty finally assessed or **re-assessed** and the duty provisionally assessed:

Brief Heading	Relevant Details
Written request for making provisional assessment by the importer/exporter	Where the importer or exporter is unable to make self-assessment under sub-section (1) of section 17 and makes a request in writing to the proper officer for making provisional assessment.
Necessary Chemical or other testing of goods	Where the proper officer deems it necessary to subject any imported goods or export goods to any chemical or other test .
Necessary further enquiry even if after submission of necessary documents or information	Where the importer or exporter has produced all the necessary documents and furnished full information but the proper officer deems it necessary to make further enquiry .
Necessary further enquiry if necessary documents or information have not been submitted	Where necessary documents have not been produced or information has not been furnished and the proper officer deems it necessary to make further enquiry , the proper officer may direct that the duty leviable on such goods be assessed provisionally if the importer or the exporter, as the case may be, furnishes such security as the proper officer deems fit for the payment of the deficiency, if any, between the duty as may be finally assessed or re-assessed, as the case may be, and the duty provisionally assessed.

- (ii) **Adjustment of differential amount of duty under different circumstances [Section 18(2)] :** When the duty leviable on relevant goods is assessed finally or re-assessed by the proper officer, then differential amount of duty will be adjusted in the following manner:

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In case of goods cleared for home consumption or exportation	The amount paid provisionally shall be adjusted against the duty finally assessed or re-assessed, as the case may be in the following manner: (a) If the amount paid provisionally [for instance ₹ 4,00,000] falls short of the duty finally assessed or re-assessed [for instance ₹ 5,60,000]: The relevant importer/exporter shall be required to pay the deficiency [for instance ₹ 1,60,000] (b) If the amount paid provisionally [for instance ₹ 4,00,000] exceeds the duty finally assessed or re-assessed [For instance ₹ 3,65,000]: The relevant importer/exporter shall be entitled to a refund for the differential amount [for instance ₹ 35,000]
In case of warehoused goods	If the duty finally assessed or re-assessed [for instance ₹ 5,60,000] exceeds the duty provisionally assessed [For instance ₹ 4,00,000] : The importer may be required by the proper officer to execute a bond for a sum equal to twice the amount of excess duty [For instance ₹ 1,60,000 X 2] = ₹ 3,20,000/-

Question 11

State briefly the provisions of the Customs Act, 1962 relating to payment of interest in case of provisional assessment.

Answer

Payment of Interest in case of Provisional Assessment:-Section 18 of the Customs Act, 1962 provides for provisional assessment. Duty is paid in two stages in case of provisional assessment- firstly, at the time of provisional assessment and another at the stage of finalization of assessment. **Section 18(3)** of the Customs Act provides as under:

Brief Heading	Relevant details
Amount on which interest is to be paid by the importer or exporter	The importer or exporter shall be liable to pay interest, on any amount payable to the Central Government, consequent to the final assessment order or re-assessment order under section 18(2).

Rate of Interest	The interest shall be payable at the rate prescribed under section 28AA of the Customs Act, 1962. Presently, the Rate of Interest has been fixed @ 18% p.a.
Period of Interest	The interest shall be payable from the first day of the month in which the duty is provisionally assessed till the date of payment thereof.

Similarly, **section 18(4)** of the Customs Act, 1962 provides as under:

Brief Heading	Relevant details
Amount on which interest is to be paid by Central Government	Subject to the provisions of Section 18(5) [i.e. subject to principle of unjust enrichment] if any refundable amount is not refunded within three months from the date of assessment of duty finally or re-assessment of duty.
Rate of Interest	The interest shall be payable at the rate prescribed under section 27A of the Customs Act, 1962. The aforementioned Rate of Interest shall not be below 5% and shall not exceed 30% p.a. as is for the time being fixed by the Central Government. Presently, the Central Government has fixed interest @ 6% p.a.
Period of Interest	The interest shall be payable from the first day immediately succeeding the period of three months from the date of assessment of duty finally or re-assessment of duty till the date of refund of such amount.

Question 12

Under what situations the amount of duty refundable under section 18(2) together with interest under section 18(4) shall be paid to the importer/exporter instead of being credited to the Consumer Welfare Fund?

Answer

According to provision of Section 18(5) of Customs Act, 1962 under following situations the amount of duty refundable under section 18(2) together with interest under section 18(4) shall be paid to the importer/exporter instead of being credited to the Consumer Welfare Fund:

Relevant Situation	Details
If incidence of duty and interest has not been passed to any other person	The duty and interest, if any, paid on such duty paid by the importer/exporter if such importer/exporter has not passed the incidence of such duty and interest to any other person
Imports made by an individual for his	The duty and interest, if any paid on such duty

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personal use	on imports made by an individual for his personal use
Duty and interest related to export duty	The duty and interest, if any paid on such duty are related to export duty
Duty and interest related to duty drawback	The duty and interest, if any paid on such duty are related to drawback of duty payable under section 74 and 75.

Question 13

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

Answer

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

- (i) Maximum import duty will be restricted to duty drawback or rebate availed at the time of export – **Notification No. 94/96 Cus. dated 16.12.1996.**
- (ii) Where the goods were originally exported for repairs, the duty on re-importation is restricted to the fair cost of repairs (including cost of materials used in repairs, insurance and freight charges, both ways) done abroad, whether such costs are actually incurred or not.

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

- (a) the re-importation is done within 3 years or 5 years if time is extended.
- (b) the exported goods and re-imported goods must be the same.

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

However, these concessions are not applicable in case of exports from EPZ or EOU and if repair amounts to re-manufacture - **Notification No. 94/96 Cus dated 16.12.1996.**

- (iii) When exported goods come back for repairs and re-export, the re-imported goods can avail exemption from paying of import duty subject to the following conditions:
 - (i) the re-importation is for repairs only
 - (ii) the time limit is 3 years. In case of Nepal, such time-limit is 10 years.
 - (iii) the goods must be re-exported after repairs
 - (iv) the time limit for export is 6 months (extendable to one year).

Notification No. 158/95 Cus. dated 14.11.1995.

Question 14

Discuss with a brief note the distinction between the functioning of Inland Container Depots (ICD) and Container Freight Stations (CFS).

Answer

The differences between the functioning of Inland Container Depot (ICD) and Container Freight Station (CFS) are:

- (i) **Meaning:**-An ICD is a place where containers are aggregated for onward movement to or from the ports whereas CFS is a place where containers are stuffed, unstuffed and aggregation/segregation of cargo takes place.
- (ii) **Location:**-ICDs are normally **located** outside the port towns whereas no site restrictions apply to CFS.
- (iii) **Attachment/Extension:**-An ICD may have a CFS **attached** to it and CFS is treated as an extension of a port/ICD/air cargo complex.

Question 15

Briefly explain the provisions relating to transshipment of goods without payment of duty under Section 54 of the Customs Act, 1962.

Answer

Provisions relating to transshipment of goods without payment of duty under section 54 of the Customs Act, 1962 are as follows:-

- (1) Where any goods imported into a customs station are intended for transshipment, a bill of transshipment shall be presented to the proper officer in the prescribed form. Where the goods are being transhipped under an international treaty or bilateral agreement between the Government of India and Government of a foreign country, a declaration for transshipment instead of a bill of transshipment shall be presented to the proper officer in prescribed form.
- (2) Subject to the provisions of section 11, where any goods imported into a customs station are mentioned in the import manifest or the import report, as the case may be, as for transshipment to any place outside India, such goods may be allowed to be so transhipped without payment of duty.
- (3) Where any goods imported into a customs station are mentioned in the import manifest or import report, as the case may be, as for transshipment:
 - (a) to any major port as defined in the Indian Ports Act, 1908 (15 of 1908), or the customs airport at Mumbai, Calcutta, Delhi or Chennai or any other customs port or customs airport which the Board may, by notification in the Official Gazette, specify in this behalf, or
 - (b) to any other customs station and the proper officer is satisfied that the goods are bona fide intended for transshipment to such customs station.

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the proper officer may allow the goods to be transhipped, without payment of duty, subject to such conditions as may be prescribed for the due arrival of such goods at the customs station to which transshipment is allowed.

Question 16

Write a brief note on self assessment in customs under the Customs Act, 1962.

Answer

- (i) Self-assessment of duty has been introduced in the Customs Act, 1962 vide the Finance Act, 2011 by recasting section 17 of the Customs Act, 1962.
- (ii) The importer or the exporter has to self-assess the duty leviable on goods imported or exported.
- (iii) The proper officer may verify the self-assessment of such goods by examining/testing the goods, if necessary. He may also ask the importer or the exporter to furnish any document or information for ascertaining the duty.
- (iv) After verification, if it is found that the self-assessment has not been done correctly, the proper officer may re-assess the duty leviable on such goods.
- (v) If the order of the reassessment is contrary to the self-assessment, the proper officer should pass a speaking order on the re-assessment within 15 days from the date of reassessment.
- (vi) Where re-assessment has not been done or a speaking order has not been passed on re-assessment, the proper officer may audit the assessment of duty of the imported/exported goods at his office or at the premises of the importer/exporter.

Question 17

An importer filed bill of entry after 60 days of filing Import General Manifest. The Deputy Commissioner of Customs imposed a penalty of Rs. 10,000 by endorsement on the bill of entry. Since importer wanted to clear the goods he paid the penalty. Can penalty be imposed for late filing of bill of entry? Examine the issue in the light of relevant statutory provisions.

Answer

The Customs Act, 1962 does not prescribe any statutory time limit for filing Bill of Entry. However, under section 48 of the Customs Act, 1962, if imported goods are not cleared within 30 days from the date of unloading, goods can be disposed off by the custodian. Therefore, since no offence is committed by late filing of bill of entry, penalty cannot be imposed for the same. However, the custodian after giving notice to the importer and with the approval of the proper officer can sell the goods.

In the instant case, the importer can file an appeal before Commissioner (Appeals) since endorsement of penalty on the bill of entry can be considered as part of assessment.

Question 18

M/s Pipli Imports Ltd. imported certain goods, which were unloaded in the customs area on 01.10.2010. When order for clearance was passed by proper officer on 05.10.2010, it was found that there was some pilferage of such goods. As the imported goods were in the custody of Port Trust, the Department demanded duty from the custodian under Section 45(3) of the Customs Act, 1962, on such pilferage. The Port Trust denied such demand contending that it was not an approved custodian falling under Section 45 but possession of goods by it was by virtue of powers conferred under the Major Port Trust Act, 1963. Hence, it is not liable for customs duty on pilfered goods.

The importer has also asked the custodian to make good the loss of goods. Examine, whether the demands made by the Department and importer are justified in law, referring to decided case law.

Answer

The facts of the case are similar to the case of *Board of Trustees v. UOI* (2009) 241 ELT 513 (Bom HC DB), wherein the Court held that considering the language of section 45(3), the liability to pay duty is of the person, in whose custody the goods remain as an approved person under section 45 of the Act. Therefore, section 45(3) applies only to the private custodians who are required to be approved by Commissioner of Customs under section 45(1). Accordingly, the major ports and airports covered under Major Port Trust Act, 1963 who do not require any approval under section 45(1), are not covered by section 45(3).

However, the Board vide its *Circular No.13/2009-Cus. dated 23.2.2009* has clarified that major ports and airports would be required to discharge the responsibilities cast upon them as specified in Customs Areas Regulations, 2009 (which include the responsibility to pay customs duty on pilferage of goods).

Section 45(3) holds the custodian responsible only in respect of the customs duty in respect of pilfered goods. It does not extend to the value of goods lost. However, in case of *IAA v. Ashok Dhawan* (1999) 106 ELT 16 (SC), it was held that if the custodian has no explanation at all to show how the loss occurred in respect of goods in its custody, applying the principle *res ipo locquitor*, the custodian is liable for loss of goods.

Question 19

Champalal & Co. had smuggled rough diamonds into the country clandestinely without payment of duty. The Department issued a notice to Champalal & Co. proposing confiscation of the diamonds under clause (d) of section 111 of the Customs Act, 1962 and imposing penalties on various persons concerned.

However, the said goods were unconditionally exempted from the payment of the import duty vide an exemption notification. So, Champalal & Co. contended the benefit of the said exemption notification. However, the Department denied to give the benefit of exemption meant for imported goods to be given to the smuggled goods.

Do you think that Department's action is valid in law?

Answer

Yes, the Department's action is valid in law. The facts of the given case are similar to the case of *CCus. (Prev.), Mumbai v. M. Ambalal & Co. 2010 (260) E.L.T. 487 (SC)*. In the instant case, the question as to whether goods that were smuggled into the country could be considered as 'imported goods' for the purpose of granting the benefit of the exemption notification was decided by the Apex Court.

The Apex Court held that the smuggled goods could not be considered as 'imported goods' for the purpose of benefit of the exemption notification. It opined that if the smuggled goods and imported goods were to be treated as the same, then there would have been no need for two different definitions under the Customs Act, 1962.

The Court observed that one of the principal functions of the Customs Act was to curb the ills of smuggling on the economy. Hence, it held that it would be contrary to the purpose of exemption notifications to give the benefit meant for imported goods to smuggled goods.

Question 20

Examine, with the help of a decided case law, whether it is mandatory for the Revenue officers to make available the copies of the seized documents to the person from whose custody such documents were seized.

Answer

The question as to whether it is mandatory for the Revenue officers to make available the copies of the seized documents to the person from whose custody such documents were seized, has been decided by the Bombay High Court in case of *Manish Lalit Kumar Bavishi v. Addl. DIR. General, DRI 2011 (272) E.L.T. 42*. The High Court held that from the language of section 110(4), it was apparent that the Customs officers were mandatorily required to make available the copies asked for. It was the party concerned who had the choice of either asking for the document/seeking extract and not the officer.

If any document was seized during the course of any action by an officer and relatable to the provisions of the Customs Act, that officer was bound to make available copies of those documents. The denial by the Revenue to make the documents available was clearly an act without jurisdiction.

The High Court directed the Revenue to make available the copies of the documents asked for by the assessee which was seized during the course of the seizure action.

Question 21

Mr. Krishna Bhansali, an importer has imported some garments from Paris on 02.04.2012. He is unable to make self-assessment under section 17(1) of Customs Act and hence has made a request in writing to the proper officer for Provisional assessment. Can he apply for Provisional assessment? Will your answer be same had he imported the goods on 10.12.2011.

Answer

Section 18(1) of Customs Act has been amended vide Finance Act, 2011 to provide that the importer may make a request for assessment of goods by the officer when he is not in a position to self-assess. Section 18(1) provides as follows:-

Notwithstanding anything contained in this Act but without prejudice to the provisions of section 46, —

- (a) where the importer or exporter is unable to make self-assessment under sub-section (1) of section 17 and makes a request in writing to the proper officer for assessment; or
- (b) where the proper officer deems it necessary to subject any imported goods or export goods to any chemical or other test; or
- (c) where the importer or exporter has produced all the necessary documents and furnished full information but the proper officer deems it necessary to make further enquiry; or
- (d) where necessary documents have not been produced or information has not been furnished and the proper officer deems it necessary to make further enquiry, the proper officer may direct that the duty leviable on such goods be assessed provisionally if the importer or the exporter, as the case may be, furnishes such security as the proper officer deems fit for the payment of the deficiency, if any, between the duty as may be finally assessed or re-assessed as the case may be, and the duty provisionally assessed.

Hence, Mr. Krishna can apply for Provisional assessment for the garments imported on 02.04.2012. However, had he imported the goods on 10.12.2011, he could not apply for Provisional assessment as Prior to Finance Act, 2011 importer was not eligible to apply for Provisional assessment. Only Proper Officer was authorized to direct Provisional assessment of duty in certain specified situations.

Exercise

1. *What are the circumstances under which assessment is done provisionally under section 18?*
2. *State the provisions of transshipment of goods without payment of duty under section 54 of the Customs Act, 1962.*
3. *Explain the procedure prescribed in Customs Act, 1962 in case of goods not cleared, warehoused or transhipped within 30 days after unloading.*
4. *Write short notes on:*
 - (a) *Export general manifest*
 - (b) *Boat note (or restriction on goods being water borne)*
5. *Discuss briefly:*
 - (a) *Temporary detention of baggage*
 - (b) *Relevant date for rate of duty and tariff valuation in respect of goods imported and exported by post*

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6. What is the permissible time limit with respect to the following- :
 - (i) for filing a bill of entry
 - (ii) for paying the assessed duty
 - (iii) for delivery of import manifest/report and export manifest/report
7. State in brief the provisions of the Customs Act, 1962 relating to filing of "Import Manifest/ Report".
8. Write a brief note on the declaration made by the owner of Baggage.
9. State and summarise the provisions and procedure in the Customs Act, 1962 governing preparation and filing of a bill of entry.
10. 'Queen Marry', the vessel containing the goods imported by XML Ltd. entered the Indian Territorial waters on 26.05.2010. The Import Manifest was submitted on 24.05.2010. The vessel arrived at the customs port on 29.05.2010 but the entry inwards was given to the vessel on 04.06.2010. An 'Into Bond Bill of Entry' was presented by XML Ltd. on 06.06.2010 and thus, the goods were classified, valued and stored in the bonded warehouse. On 03.07.2010 safeguard duty @ 8% was imposed on such goods. XML Ltd. had presented the 'Bill of Entry for Ex-Bond Clearance' in respect of such goods on 01.07.2010 and cleared the goods from the bonded warehouse on 05.07.2010.

Discuss whether XML Ltd. is liable to pay safeguard duty on the goods imported by it. Will your answer be different if the 'Bill of Entry for Ex-Bond Clearance' is presented by XML Ltd. on 04.07.2010? Give reasons in support of your opinion.

Answer: The Supreme Court in the case of Kiran Spinning Mills 1999 (113) ELT 753 has held that the taxable event occurs when the customs barrier is crossed and not on the date when the goods had landed in India or had entered the territorial waters of India. For the goods stored in a warehouse the customs barrier would be crossed when they are sought to be taken out of customs and brought to the mass of goods in the country. As per section 15(1)(b) of the Customs Act 1962, the relevant date for determination of rate of duty and tariff valuation in case of warehoused goods is the date when a bill of entry for home consumption (bill of entry for ex-bond clearance) in respect of such goods has been presented under section 68 of the Customs Act, 1962. Therefore, in view of section 15(1)(b) the taxable event gets completed when the bill of entry for home consumption in case of warehoused goods is filed.

Thus, in the given problem, the taxable event gets completed on 01.07.2010, the date on which the bill of entry for ex-bond clearance is submitted and not on 05.07.2010 when the goods are removed from the warehouse. The safeguard duty is imposed on 03.07.2010 and the bill of entry for ex-bond clearance is submitted on 01.07.2010, thus, no safeguard duty can be imposed in such a case, as at the time when taxable event got completed there was no levy of safeguard duty. Further, as per section 15(1)(b) the relevant date for determining the rate of duty is the date of presentation of bill of entry for ex-bond clearance, and on that date there was no safeguard duty.

However, if the bill of entry for ex-bond clearance is filed on 04.07.2010, the date after the levy of safeguard duty, such duty will be levied on the goods.