

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

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

- (i) *Meaning of "Assessment"*
- (ii) *"Clearance for home consumption" and "Clearance for warehousing"*

Answer

- (i) As per section 2(2) of the Customs Act, 1962, 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. 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.
- (ii) **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 3

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 4

Distinguish between- :

- (a) *Jetsam and Flotsam*
- (b) *Pilfered goods and Lost/destroyed goods*

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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.

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.

Question 5

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.

Question 6

What are the conditions required to be fulfilled by the importer to make the imported goods eligible for preferential rate of duty prescribed by the Central Government by notification under section 25 of the Customs Act, 1962?

Answer

The Government may by notification under **section 25** of the Customs Act, 1962 prescribe preferential rate of duty in respect of imports from certain preferential areas. The importer will have to fulfill the following conditions to make the imported goods eligible for preferential rate of duty:

- (i) At the time of importation, he should make a **specific claim** for the preferential rate.
- (ii) He should also claim that the **goods are produced or manufactured in such preferential area.**
- (iii) The **area** should be **notified under section 4(3)** of the Customs Tariff Act, 1975 to be a

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preferential area.

- (iv) The **origin of the goods shall be determined** in accordance with the rules made under section 4(2) of the Customs Tariff Act, 1975.

Question 7

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
- (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 whether such costs are actually incurred or not, insurance and freight charges, both ways done abroad.

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 would not be applicable if-

- re-imported goods had been exported by FTZ or EOU
- re-imported goods had been exported from a public/private warehouse
- the process of repairs to which the re-imported goods had been subjected to abroad amounts to 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 8

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 9

An importer, imported consignment of goods, chargeable to duty @ 40% ad valorem. The vessel arrived on 31st May, 2013. A bill of entry for warehousing the goods was completed on 2nd June, 2013 and the goods were duly warehoused. In the meantime, an exemption notification was issued on 15th October, 2013 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 20.10.2013 (the date on which the bill of entry for home consumption is presented). Therefore, the relevant rate will be 25%.

Question 10

Peerless Scraps, imported during August 2013, 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

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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.

Question 11

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.

Question 12

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. CCEs., Ghaziabad (2004) 174 ELT 5 (SC)*** wherein the Supreme Court has held that the benefit of the notifications cant 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.

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 13

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

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of the benefits under the notification.

Question 14

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. Write a brief note on stages of imposition of taxes and duties.
2. Discuss the provisions relating to denaturing or mutilation of goods.
3. Briefly explain the provisions relating to abatement of duty on damaged or deteriorated goods under section 22 of the Customs Act, 1962.