

Importation, Exportation and Transportation of Goods

Question 1

'Queen Marry', a vessel containing the goods imported by XML Ltd. entered the Indian Territorial waters on 26.05.2013. The Import Manifest was submitted on 24.05.2013. The vessel arrived at the customs port on 29.05.2013 but the entry inwards was given to the vessel on 04.06.2013. An 'Into Bond Bill of Entry' was presented by XML Ltd. on 06.06.2013 and thus, the goods were classified, valued and stored in the bonded warehouse. On 03.07.2013 safeguard duty @ 8% was imposed on such goods. XML Ltd. presented the 'Bill of Entry for Ex-Bond Clearance' in respect of such goods on 01.07.2013 and cleared the goods from the bonded warehouse on 05.07.2013.

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 04.07.2013? Give reasons in support of your opinion.

Answer

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 01.07.2013, the date on which the bill of entry for ex-bond clearance is submitted and not on 05.07.2013 when the goods are removed from the warehouse. The safeguard duty is imposed on 03.07.2013 and the bill of entry for ex-bond clearance is submitted on 01.07.2013, 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.

However, if the bill of entry for ex-bond clearance is filed on 04.07.2013, the date after the levy of safeguard duty, such duty will be levied on the goods.

Question 2

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

Answer

- (i) The provisions relating to Self-assessment of duty are contained in the 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/export goods at his office or at the premises of the importer/exporter.

Question 3

Mr. Krishna Bhansali, has imported some garments from Paris on 02.04.2013. 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? Discuss.

Answer

Yes, Mr. Krishna Bhansali can apply for provisional assessment under section 18 of the Customs Act, 1962. As per section 18(1), provisional assessment can be resorted to in the following circumstances:

- (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.

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In all the above circumstances, the proper officer may order for provisional assessment of duty if the importer/exporter, furnishes such security as the proper officer deems fit for the payment of the deficiency, if any, between the final re-assessed duty and the provisionally assessed duty.

Question 4

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. Payment of interest in case of provisional assessment is dealt in sub-sections (3) to (5) of section 18. **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 28AB 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 to the importer/exporter within three months from the date of final assessment of duty 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. Presently, the rate of interest has been fixed @ 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.
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Question 5

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.

Question 6

M/s Pipli Imports Ltd. imported certain goods, which were unloaded in the customs area on 01.10.2013. When order for clearance was passed by proper officer on 05.10.2013, 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 and 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 High 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).

Section 45(3) of the Customs Act, 1962 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, the Port Trust, as bailee of the goods, is liable for value of the goods to the importer.

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Question 7

An importer filed bill of entry after 60 days of filing Import General Manifest. The Deputy Commissioner of Customs imposed a penalty of ₹ 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

Section 46 of 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) against imposition of penalty since endorsement of penalty on the bill of entry can be considered as part of assessment.

Question 8

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 9

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.
(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.

Question 10

What is the crucial/relevant date for determination of rate of duty under the Customs Act in the case of clearance of baggage?

Answer

As per **section 78** of the Customs Act, 1962, the relevant date for determination of rate of duty in case of clearance of baggage is the date on which a declaration is made in respect of such baggage under section 77.

Question 11

Explain in brief the duty exemption to baggage 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

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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 12

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

- (1) As per Baggage Rules, 1998 in respect of a passenger of and above 10 years of age returning from a Country other than Nepal, Bhutan, Myanmar or China after a stay of more than three days

- (i) Personal effects are allowed duty free clearance without any value limit.
- (ii) Besides (i) above, articles upto a value of ₹ 35,000 carried as accompanied baggage are allowed duty free clearance [General free allowance].

Hence, duty shall be payable on ₹ 52,000 – ₹ 35,000 = ₹ 17,000.

- (2) One Laptop computer brought as baggage by a passenger of or above 18 years of age (other than member of crew) is fully exempt from customs duty [Notification No. 11/2004 Cus dated 08.01.2004]

- (3) **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 13

State the procedure for clearance of goods imported by post.

Answer

The **procedure for clearance of imported goods by post** is described hereunder:

- (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 14

Differentiate between Inland Container Depots (ICD) and Container Freight Stations (CFS).

Answer

Inland Container Depot (ICD)	Container Freight Station(CFS)
(i) ICD is a customs station like a port or air cargo unit for the purpose of unloading of imported goods and loading of export goods or any class of such goods.	(i) CFS is only a custom area located in the jurisdiction of a Commissioner of Customs exercising control over a specified custom port, airport, land customs station/ICD. It is an extension of a customs station set up with the main objective of decongesting the ports.
(ii) ICD can have an independent existence as it is a 'self contained customs station'.	(ii) CFS by itself cannot have an independent existence; it has to be linked to a customs station within the jurisdiction of the Commissioner of Customs.
(iii) Customs manifests, bills of entry, shipping bills and other declarations are filed in an ICD. Further, assessment and all the activities related to clearance of goods for home use, warehousing, temporary admissions, re-export, temporary storage for onward transit and outright export, transshipment, etc. take place in an ICD.	(iii) In CFS, only a part of the customs process - mainly the examination of goods - is normally carried out and goods are stuffed into containers and de-stuffed therefrom. Aggregation/segregation of cargo also takes place at CFS.

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*
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. *Briefly explain the provisions of Section 89 of the Customs Act, 1962 with regard to supply of ship stores.*
11. *Explain the obligation cast on person-in-charge on arrival of vessels or aircrafts in India under section 29 of the Customs Act, 1962.*
12. *Under what situations the amount of duty and interest refundable under section 18 of the Customs Act, 1962 shall be paid to the importer/exporter instead of being credited to the Consumer Welfare Fund?*