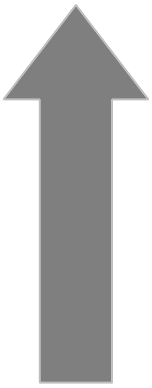
CUSTOMS ACT, 1962
Amendment Applicable for May, 2016

1. Types of Duty

1. Notification exempting education cesses CVD rescinded consequent to education cesses on excise duty being exempted. **[effective date 01.03.2015]**

    (a) It may be noted that rescinded of the said exemption notification for education cess does not imply that the same would become payable of CVD as these have now been exempted on excisable goods in general.

    (b) Thus, the ultimate position remains same education cesses were not payable on CVD earlier and will also not be payable on or after March 1, 2015.



With effect from 01.03.2015, effective rate of CVD is 12.5% (being EC and SHEC not being leviable at all)

Till 28.02.2015, effective rate of CVD Was 12% (with EC and SHEC exempted)

2. Exemption to customs component of EC and SHEC leviable on DTA clearance of specified goods produced in EOU/EHTP/STPs withdrawn.**[effective date 01.03.2015**

    (a) Since EC and SHEC leviable on excisable goods are being fully exempted, there will be no levy of these cesses either on CVD while calculating the aggregate of the duties of customs or on excise on CVD while calculating the aggregate of the duties of customs or on excise duty leviable under the proviso to section 3 of the Central Excise Act, 1944.

3. Exemption to customs component of EC and SHEC leviable on DTA clearance of specified goods produced in EOU/EHTP/STPs withdrawn.**[effective date 01.03.2015]**

    (a) There is no change in Education Cess leviable on imported goods u/s 91 read with section 94 of the Finance Act, 2004 as a duty of customs and SHEC leviable on imported goods under section 136 read with 139 of the Finance Act, 2007 as a duty of customs. These cesses will continue to be levied on imported goods.

2. Demand and Appeals

1. Penalty not to be imposed in non-fraud cases if duty and/or interest as specified in the notice is paid full within 30 days of receipt of notice **[effective 14.05.2015]**

(a) Sub-section (2) of section 28 provides that the person who has paid the duty along with interest or the amount of interest will inform the proper officer of such payment in writing, who, on receipt of such information, will not serve any notice u/s 28(1)(a) in respect of the duty or interest so paid or any penalty in respect of such duty or interest.

(b) A proviso has been inserted in sub-section (2) to lay down that where notice u/s 28(1)(a) has been served (non-fraud cases), penalty will not be imposed if the proper officer is of the opinion that amount of duty along with interest leviable u/s 28AA or the amount of interest, as the case may be, as specified in the notice, has been paid in full within 30 days from the date of receipt of notice. The proceeding in respect of such person or other persons to whom the notice is served will be deemed to be concluded.

2. Penalty in fraud cases reduced from 25% to 15% of the duty amount [**effective 14.05.2015]**

(a) Sub-section (5) of section 28 provides that when a notice is served in respect of cases involving fraud etc. if the noticee pays the duty in full or in part, as may be accepted by him, and the applicable interest within 30 days of the notice and inform the proper officer of such payment in writing, the penalty would be reduced to 25% of the duty specified in the notice or the duty so accepted by him provided such reduced penalty is also paid by him along with the duty and interest.

(b) Sub-section (5) has now been amended to reduce the quantum of such penalty from 25% to 15% of the duty specified in the notice or the duty accepted by the noticee.

3. Clarification on applicability of pre-deposit provisions u/s 129E of the Customs Act, 1962 to first stage appeal in matters relating to drawback [**Circular No. 993/17/2014-CX dated 05.01.2015]**

(a) CBEC has clarified that mandatory pre-deposit would be payable in cases of demand of drawback when the appeals is filed before Commissioner (Appeals) as the new section 129E of Customs Act, 1962 would apply to such cases. However, the ambit of section 129E does not extend to appeals u/s 129DD before Joint Secretary (Revision Application).
(b) Therefore, while mandatory pre-deposit would be required to be paid in cases of drawback, rebate and baggage at the first stage appeal before Commissioner (Appeals), no pre-deposit would be payable in such cases while filing appeal before the JS(RA)

3. Duty Drawback

1. Duty drawback on rice allowed [**effective from 13.02.2015]**

(a) Earlier, no drawback was allowed on **rice falling under heading 1006** of the Customs Tariff. However, **with effect from 13.02.2015,** drawback will be allowed in respect of rice falling under heading 1006.

(b) Rule 3 has been amended **Notification No. 20/2015 dated 10.02.2015** to give effect to this amendment. Consequential amendments have been made in rule 6(4) and rule 7(5) of the said rules.

2. <u>Application for special Brand Rate Cannot be made if a claim has been made under rule 3 or rule 4 [**effective from 22.11.2014**]</u>

   (a) Under rule 7, when the rate of duty drawback is lower than 4/5th of the duty/taxes paid, a Special Brand Rate may be applied. The said rule has been amended **Notification No. 109/2014 dated 17.11.2014** to provide that application for Special Brand Rate cannot be made where a claim for drawback under rule 3 or rule 4 has been made.

   (b) In other words, where the exporter has already filed a duty drawback claim under All Industry Rate (AIR) Schedule, he cannot request for fixation of Special Brand Rate of drawback. Thus, the exporter under AIR or Special Brand Rate.

3. <u>Safeguard duties are rebatable as duty drawback **[Circular No. 23/2015 dt. 20.05.15]**</u>

   (a) With respect to safeguard duties which are leviable u/s 8B or section 8C of the Customs Tariff Act, 1975 read with Section 12 of the Customs Act, it is clarified that these are rebatable as drawback in terms of Section 75 of the Customs Act.

   (b) Since safeguard duties are not taken into consideration while fixing All Industry Rate (AIR) of drawback, the drawback of the same can be claimed under an application for Brand Rate under rule 6 or rule 7 of the customs, central excise duties and service tax drawback rules 1995. This implies that drawback shall be admissible only where the inputs which suffered safeguard duties were actually used in the goods exported as confirmed by the verification conducted for fixation of Brand Rate.

   (c) Further, where imported goods subject to safeguard duties are exported out of the country as such, then the drawback payable u/s 74 of the Customs Act would also include the incidence of safeguard duties as part of total duties paid, subject to fulfilment of other conditions

4. Provision Relating To Illegal Import, Illegal Export, Confiscation, Penalty & Allied Provisions

1. Penalty for improper ***importation*** of non-prohibited dutiable goods reduced from up to 100% to up to 10% of duty sought to be evaded, subject to a minimum amount of ₹ 5,000 [**effective from 14.05.2015**]	2. Penalty for improper ***exportation*** of non-prohibited dutiable goods reduced from up to 100% to up to 10% of duty sought to be evaded, subject to a minimum amount of ₹ 5,000 [**effective from 14.05.2015**]
(a) Section 112 provides for penalty for improper importation of goods etc. In the case of dutiable goods, other than prohibited goods, clause (ii) of section 112 provided for a penalty not exceeding the duty sought to be evaded on such goods or ₹ 5,000, whichever is greater. (b) Sub-clause (ii) of section 112 has been substituted by a new sub-	(a) Section 114 provides for penalty for attempt to export improperly etc. In this case of dutiable goods, other than prohibited goods, clause (ii) of section 114 provided for a penalty not exceeding the duty sought to be evaded or ₹ 5,000, whichever is higher. (b) Clause (ii) has been substituted by a new clause. The new clauses

clause. The new sub-clause provides for a penalty not exceeding 10% of the duty sought to be evaded or ₹ 5,000, whichever is higher. Further, such penalty will be subject to the provisions of section 114A. (c) A proviso has also been inserted in clause (ii) to lay down that where such duty as determined u/s 28(8) and the interest payable thereon u/s 28AA **is paid within 30 days from the date of communication of the order of the proper officer determining such duty, the amount of penalty liable to be paid by such person under this section shall be 25% of the penalty so determined.**	provides for a penalty not exceeding 10% of the duty sought to be evaded or ₹ 5,000, whichever is higher. Further, such penalty will be subject to the provisions of section 114A. (c) A proviso has also been inserted in clause (ii) to lay down that where such duty as determined u/s 28(8) and the interest payable thereon u/s 28AA **is paid within 30 days from the date of communication of the order of the proper officer determining such duty, the amount of penalty liable to be paid by such person under this section shall be 25% of the penalty so determined.**

3. Monetary threshold limits enhanced for prosecution and arrest under customs

Revised guidelines have been issued on prosecution under the Custom Act, 1962.The significant aspect of the guidelines are:

1. **Person liable to be prosecuted:** As per the provision of the Custom Act, prosecution may be launched against any person including legal person for offences covered under sections 132, 133, 134, 135, 135A or 136 of the Customs Act, 1962.

2. **Threshold limits for launching the prosecution:** CBEC laid down the following limits for launching prosecution:

S. N.	Particulars	Threshold Limit
(1)	Baggage and Outright smuggling cases:	
	(a) Cases involving unauthorized importation in baggage/ cases under Transfer of Residence Rules	CIF value of the goods involved is ₹ 20 lakh or more
	(b) Outright smuggling of high value goods such as precious metal, restricted items or prohibited items notified under section 11 of the Custom Act, 1962 or goods notified under section 123 of the Act or offence involving foreign currency	Value of offending goods is ₹ 20 lakh or more
(2)	Appraising Cases/Commercial Frauds	
	(a) Importation of trade goods involving wilful miss-declaration in value/description of goods /concealment of restricted goods/goods notified u/s 11 of	CIF value of the offending goods is ₹ 1 crore or more

	the Custom Act, 1962	
	(b) Fraudulent availment of drawback or attempt to avail of drawback or any exemption from duty provided under the Custom Act, 1962	Amount of drawback or exemption from duty is ₹ 1 crore or more
	(c) Exportation of trade, goods involving wilful miss-declaration in value/ description of goods /concealment of restricted goods/goods notified u/s 11 of the Custom Act, 1962	FOB value of the offending goods is ₹ 1 crore or more

3. **Exceptions:**
Threshold limit will not apply in following cases:

(i) In case of habitual offenders or where criminal intent is evident in ingenious way of concealment, where prosecution can be considered irrespective of the value of goods/currency involved in such professional or habitual offenders, etc, provided the cumulative value of 3 or more such offences in past 5 years from the date of the decision exceeds the threshold limit(s) indicated in above table.

(ii) In cases involving offences relating to items i.e. fake Indian currency notes (FICN), arms, ammunitions and explosives, antiques, art treasures, wild life items and endangered species of flora and fauna, prosecution would be launched invariably, irrespective of value of offending goods involved.

(iii) In respect of cases involving non-declaration of foreign currency by foreign nationals and NRIs detected at the time of departure back from India, exceeding the threshold limits of ₹ 20 lakh, if it is claimed that the currency has been legally acquired and brought into India, prosecution would not be considered as routine.

Prosecution will not be launched as a matter of routine and/or in cases of technical nature, where the additional claim for duty is based solely on a difference of interpretation of the law.

4. **Authority to sanctioned prosecution:**

(a) Prosecution may be launched after due sanction by the Commissioner/Principal Commissioner or Additional Director General / Principal Additional Director General of Revenue Intelligence (collectively known as sanctioning authority).

(b) However, in case of habitual offenders and appraising cases/commercial frauds, prior approval of the Chief Commissioner/Principal Chief Commissioner or Director General of Revenue Intelligence, as the case may be, will be required for launching prosecution.

5. **Stage for launching prosecution:**

Normally, prosecution may be launched immediately on completion of adjudication proceedings.

Exceptions:

(i) Prosecution in respect of cases involving offences relating to items i.e. FICN, arms, ammunitions and explosive, antiques, art treasurer, wild life items and endangered species of flora and fauna may preferably be launched immediately after issuance of show cause notice.

(ii) If the party deliberately delays completion of adjudication proceedings, prosecution may be launched even during the pendency of the adjudication proceedings, where offence is grave and qualitative evidences are available.

Further, in following cases investigation may be completed in time bound manner preferably within **six months** and adjudication may be expedited to facilitate launching of prosecution. These cases are:

(a) Case where arrest has been made during investigation (for commercial fraud cases as well as outright smuggling cases) or in the case of a habitual offender.

(b) Case where arrest has not been made but it relates to outright smuggling of high value of goods such as precious metal, restricted items or prohibited items notified u/s 11 or goods notified u/s 123 of the Customs Act, 1962 or foreign currency where the value of goods is ₹ 20 lakh or more.

[Circular No. 27/2015 dated 23.10.2015

6. **Arrest:**

- Pursuant to the enhancement in threshold limits for prosecution, threshold limits for arrest have also been enhanced **circular no. 28/2015 dated 23.10.2015.** Threshold limits for arrest are also the same as mentioned in case of initiating prosecution. It has been clarified that powers of arrest should be exercised in exceptional situation.

- However, such threshold limit would not apply in case of offences relating to FICN, arms, ammunitions and explosive, antiques, art treasurer, wild life items and endangered species of flora and fauna. In such cases, arrest, if required on the basis of facts and circumstances of the case, may be considered irrespective of value of offending goods involved.

Case Study: Radhe Shyam Kejriwal 2011 Supreme Court

- The supreme court observed that

  (1) adjudication proceedings and criminal proceedings can be launched simultaneously;

  (2) decision in adjudication proceedings is not necessary before initiating criminal prosecution;

  (3) decision in adjudication proceedings and criminal proceedings are independent of each other in nature and

  (4) the findings against the person facing prosecution in the adjudication proceeding is not binding on the proceeding for criminal prosecution.