

Chapter 1

CONSTITUTIONAL PROVISION & LEVY OF CUSTOMS DUTY

Constitutional Provision & Basics of Law



Friends,

I personally feel, before starting discussion on various law under Indirect Taxes, we must have knowledge of constitutional authority of such laws. Constitution of India contains the authority to make various legislations for the levy and collection of any tax in India which are given below:

So friends, let's have detailed discussion on each article.

Article 265: Taxes not to be imposed save by authority of law

"No tax shall be levied or collected except under authority of Law"

Tax is of two types Direct Taxes and Indirect Taxes.



Sir What?

If you read article 265 carefully, then it said for levy of any tax 'Authority of law' is needed...

Sir, who can make the laws in India?

Good question...Authority to make laws in India is given under Article 245 as below

Article 245: Extent of laws made by Parliament and by the Legislatures of States

It empowers the parliament to make Law for whole or any part of the territory of India, and the legislature of a state may make the Laws for the whole or any part of the state.

India is federal, not a unitary state. Laws are enacted by the union parliament as well as state legislature. The allocation of subject between the union & state is spelt out by Article 246 of the constitution through the schedule VII.

The allocation of subject between the union & state is spelt out by Article 246 of the constitution of India.

Article 246: Subject-matter of laws made by Parliament and by the Legislatures of States

Schedule VII divides the legislative powers into following three categories.

Schedule VII



List I [referred as Union list]:

This list enumerates the matters in respect of which the parliament has an exclusive right to make Laws

List II [referred as State List]:

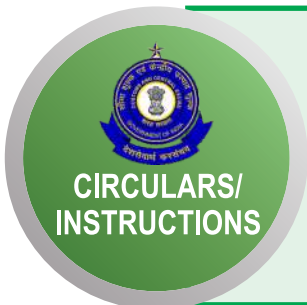
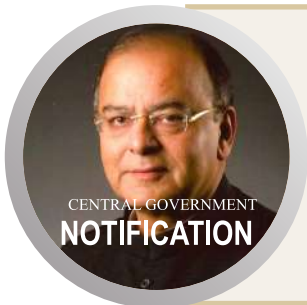
This list enumerates the matter in respect of which the legislature of any state has an exclusive right to make Laws.

List III [referred as the Concurrent List]:

This list enumerates the matters in respect of which both the parliament & legislature of any state have power to make Laws.

Entry No.	Items
83	Customs duty including export duty

TAX HIERARCHY



CUSTOMS ACT, 1962

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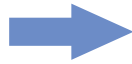
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LEVY OF CUSTOMS DUTY

All taxes are imposed in three stages

LEVY



ASSESSMENT



COLLECTION

Important Definitions

Sec 2(9) "CONVEYANCE"

includes a vessel, an aircraft and a vehicle;



Sec 2(42) VEHICLE

Means conveyance of any kind used on land and includes a railway vehicle.



Sec 2(14) "DUTIABLE GOODS"

means any goods which are chargeable to duty and on which duty has not been paid;



Tutorial Notes

Normally dutiable goods includes goods lying in customs area or customs bonded warehouse before clearance.



Point of Customs levy

SECTION 12 CHARGING SECTION



(1) Except as otherwise provided in this Act, or any other law for the time being in force, duties of customs shall be levied at such rates as may be specified under the Customs Tariff Act, 1975, or any other law for the time being in force, on goods imported into, or exported from, India.

(2) The provisions of sub-section (1) shall apply in respect of all goods belonging to Government as they apply in respect of goods not belonging to Government.

Note : Government also liable to pay customs duty similar as the goods imported by other person



Lets understand in simple words

Thus following are the conditions for levy of customs duty

- There must be goods
- The goods are imported into india or
- They are exported from india
- Customs duty shall be levied at such rates as may be specified under the customs tariff act, 1975, or any other law for the time being in force
- Importation of goods by government treated at par with other imported goods. Levy under this section is subject to other sections in this act.



The first Basic condition for levy of customs duty is that there must be a goods
Then, question arose in mind **"What is 'goods' under Customs Act 1962?"**

SEC 2(22) GOODS



'goods' includes

- a) Vessels, Aircraft and Vehicles b) Stores c) Baggage
d) Currency and Negotiable Instruments e) Any other kind of movable property.

As we have seen above, goods include;

VESSELS AIRCRAFT & VEHICLE

Ships or aircraft brought for use in India or for carrying cargo for ports out of India, would be dutiable.

SEC 2(38) STORE (detail discussion under sec 85 to 90)



Means – goods for use in a Vessels or Aircraft &

Includes – fuel and spare parts and other article of equipment, whether or not for immediate fitting.



Tutorial Notes

Stores principally cover up

Goods intended for consumption by the passengers and crew on board official aircraft with or not sold

- ▶ food, drink other need of passengers and crew
- ▶ certain essential medical items like first aid box, oxygen etc
- ▶ life saving things, life quotes & etc

- ▶ Entertainment equipment like musical instrument, video/ radio systems,

Goods necessary for the operation and maintenance of vessels or Aircraft

- ▶ Diesel oil, furnace oil, petrol, aviation turbine fuel
- ▶ spare parts for the maintenance and repairs of the conveyance



STORES



Goods for utility purpose of passengers or crew members used in vessels or aircraft.

Fuel or spare parts used in vessels or aircraft



SEC 2(3) BAGGAGE (detail discussion sec 77 to 79)

Bare Text

Baggage (custom tariff 9803) includes unaccompanied baggage but does not include motor vehicles. (custom tariff 8702) since motor vehicles are subject to higher rate of duty.

BAGGAGE



MOTOR VEHICLE (Not included in baggage)



CURRENCY AND NEGOTIABLE INSTRUMENTS

The most peculiar aspect of Customs Law is in treatment of the currency & cheque, demand drafts as goods. This compels passengers to declare the cash / currency on hand also. ("Paper money" is free of duty – Customs tariff entry 9912.00)

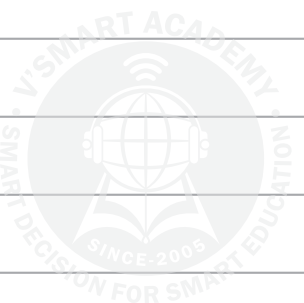
If any passenger fails to declare the value of currency and other negotiable instruments, the same can be confiscated and he will be penalized apart from other action taken against him.

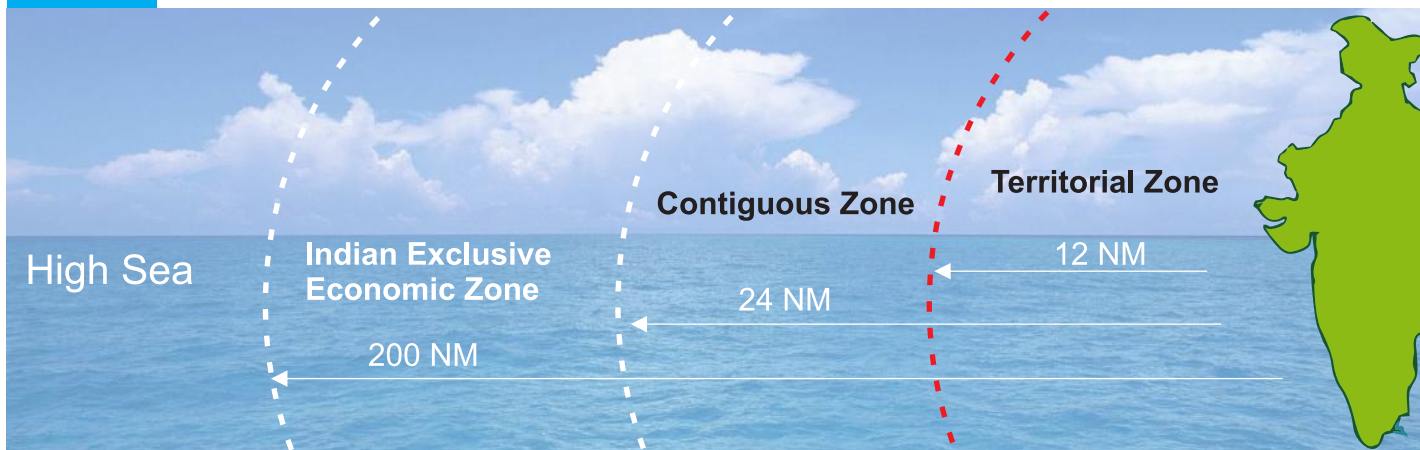
There is no duty liability on the paper money. But to ensure check over the flow of money in and out of the country, limit has been set at Rs. 10,000/-

CURRENCY & NEGOTIABLE INSTRUMENTS



Students
Notes





TAXABLE EVENT - IMPORT



WAREHOUSING



SEC 2(27) INDIA



India includes the territorial water of India.



Tutorial Notes

Territorial water of India extends to 12 nautical miles into the sea from appropriate base line. Goods are deemed to have been imported if the vessels enter the imaginary line on the sea at the 12th nautical mile i.e. if the vessel enters the territorial water of India. **India includes not only the surface of sea in the territorial water but also the air space above and the ground at the bottom of the sea**

For the purpose of extraction and production of mineral oils including petroleum and natural gases India is extended to the continental shelf of India and exclusive economic zone of India

SEC 2(23) IMPORT



The term with its grammatical variation and cognate expression is defined to mean **bringing into India from a place outside India**



Tutorial Notes

Goods are deemed to have been imported if the vessels enter the imaginary line on the sea at the 12th nautical mile i.e. if the vessel enters the territorial water of India.

Thus it was thought that import is complete as soon as goods enter territorial water and this is the root cause of following problem.

- ▶ Innocent entry of a vessels (vessels using Indian Territorial water as passage to go to another country without touching any port of India) into the territorial water of India would result into import of goods &
- ▶ It was almost impossible to determine when exactly the vessels crossed the territorial waters' limit.



Whether import shall be treated as complete with entry of goods in India(i.e. in territorial water) or when the goods are cleared from Customs Port ?

1. Garden Silk Mills Ltd v/s UOI 1999 (113) ELT 358 (sc)

The Supreme Court observed in the Garden silk mills Ltd.

- Case that import of goods will commence **when they cross territorial water but continues and is completed when they become part of the mass of goods within the country,**
- The taxable event being reached at the time when the goods reach the **Customs Barrier and Bill of Entry for Home Consumption is filed.**

Q : What is bill of entry?

Ans.: It is an application for clearance of goods from customs area to be submitted by importer to customs office.

Q : What is home consumption?

Ans.: It means clearance of goods in India for intended purpose

WAREHOUSING

Warehousing means keeping the goods at one place in the custody of Customs without duty, whether in a public warehouse or a private warehouse.

TAXABLE EVENT IN CASE OF WAREHOUSE GOODS

UOI v/s Apar Ind. Ltd [1999] 122 ELT 3 (SC)

Date of presentation of bill of entry for **home consumption for clearance from warehouse is applicable.**

Thus In case of warehousing Taxable event arise when ex-bond bill of entry is presented.

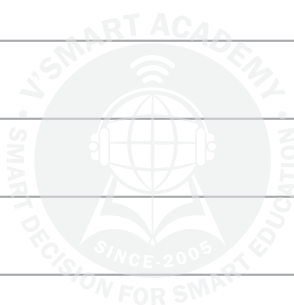
DIFFERENCE BETWEEN CLEARANCE FOR HOME CONSUMPTION AND CLEARANCE FOR WAREHOUSING

Clearance for home consumption: - It implies that, the Customs duty on import of the goods has been discharged and the goods are therefore cleared for utilization or consumption.

Clearance for warehousing: - Importer may, at any given point of time may require certain quantity. Either supplier may not agree to sell that much quantity or the freight may not be economical. In such case goods may instead of being cleared for home consumption, be deposited in warehouse and cleared at a later time.

When the goods are deposited in the warehouse the collection of Customs Duty will be deferred till such goods are cleared for Home Consumption.

The revenue for the Govt. is safeguarded by the importer executing a bond binds himself in a sum equal to **thrice** the amount of duty assessed on the goods at the time of import. The importer is also liable to pay interest, for storage of goods in warehouse.





SEC 2(25) IMPORTED GOODS

Means

Any goods brought into India from a place outside India but

But does not includes

Goods which have been cleared for home consumption.

SEC 2(26) IMPORTER

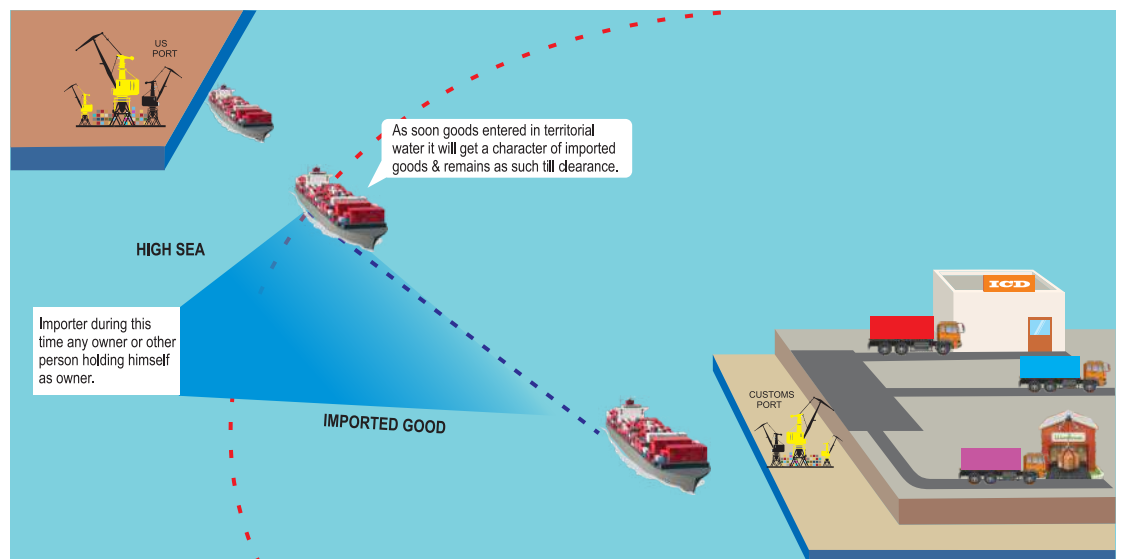
Importer in relation to any goods at any time between their importation and the time when they are cleared for home consumption includes any owner, **beneficial owner** or any person holding himself out to be the importer.

Sec 2(3A) Beneficial Owner

Means any person on whose behalf the goods are being imported or exported or who exercises effective control over the goods being imported or exported

Analysis

- If any person files the Bill of Entry under section 46 and pays the duty, then he will be treated as importer.
 - In case of high sea sale, the original importer will transfer the title of the goods to another person, before entering the customs frontiers, then the transferee will become the importer.
- If the exporter appoints an agent in India for selling the goods and that agent clears the goods by filing Bill of Entry and pays the duty, then the agent will become the importer.
- But a clearing agent who files bill of entry on behalf of the importer with importer's Import Export Code will not become the importer.



SEC 2(28) INDIAN CUSTOMS WATERS

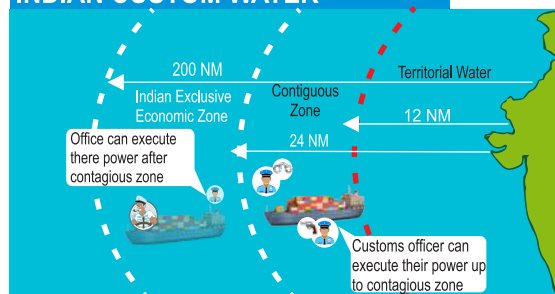
Means

The waters extending into the sea up to the limit of **exclusive economic zone under section 7** of the Territorial Waters, Continental Shelf, Exclusive Economic Zone and other Maritime Zone Act, 1976

Includes

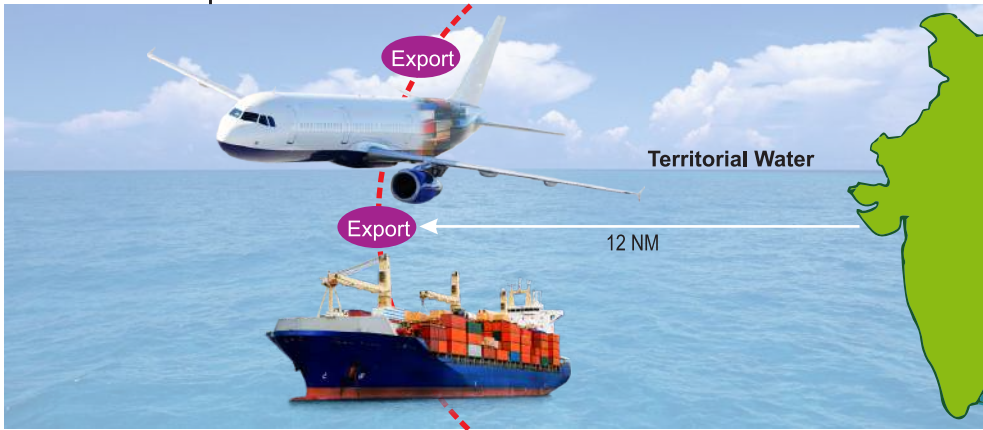
Any bay, gulf, harbour, creek or tidal river;

INDIAN CUSTOM WATER



TAXABLE EVENT IN CASE OF EXPORT

Taxable event for export



SEC 2(18) EXPORT

The term with its grammatical variation and cognate expression is defined to mean taking out of India to a place outside India.



SEC 2 (19) EXPORT GOODS

Any goods which are to be taken out of India to a place outside India



Tutorial Notes

The term "which are to be taken" means goods ready for export but not exported (i.e. goods lying in custom area or in conveyance but yet to cross territorial water of India.)

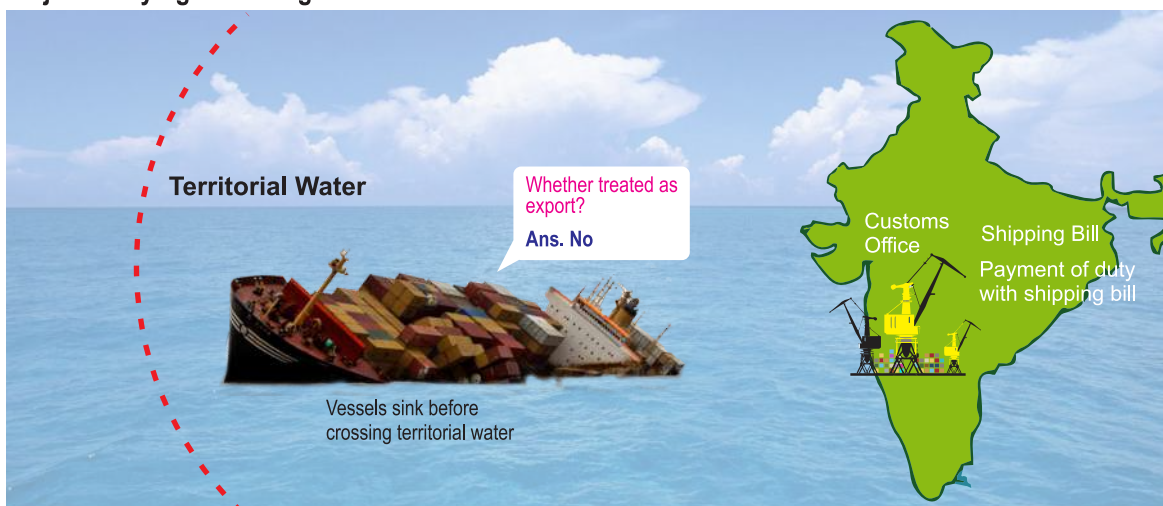
SEC 2(20) EXPORTER

In relation to any goods

MEANS At any time between their entry for export and the time when they are exported,

INCLUDES Any owner, **beneficial owner** or any person holding himself out to be the exporter

Rajendra Dying & Printing Mills Ltd.



CASE STUDY SUN EXPORTS [SC]

It was held that export is complete once goods pass the territorial water of India and property passes to purchaser. **The delivery of export goods at the destination is not essential.**

Rajindra Dyeing & Printing Mills Ltd. – 2005 – S.C.

Facts : Rajindra Dyeing & Printing Mills Ltd. Were manufacturers of readymade garments. They exported certain goods and filed shipping bill. The goods were examined by the customs authorities and loaded onto the ship. While it was within the territorial water, the ship sank. The cargo of assessee was destroyed.

Issue : The assessee filed their claim for duty drawback in relation to the goods which were destroyed. Whether their claim is valid.

Court Decision : Their claim was rejected on the grounds that the goods had not crossed the territorial waters and hence no export has taken place.

'Export' occurs only when the goods crossed beyond the territorial water of India.

